

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

3 * * * * *

4 CHAIRMAN RUSSELL: It's 9:01, and I will
5 call this regular Board of Environmental Review
6 meeting to order. The first item on the agenda is
7 the review and approval of the May 14th, 2010
8 Board teleconference meeting.

9 MR. MIRES: So moved.

10 MR. MILLER: Second.

11 CHAIRMAN RUSSELL: It's been moved by
12 Larry and seconded by Marv to approve those
13 minutes. Discussion?

14 (No response)

15 CHAIRMAN RUSSELL: Seeing none, all
16 those in favor, signify by saying aye.

17 (Response)

18 CHAIRMAN RUSSELL: Opposed.

19 (No response)

20 CHAIRMAN RUSSELL: Motion carries. The
21 minutes are approved.

22 The next item on the agenda is the
23 review and approval of the May 28th teleconference
24 minutes.

25 MR. MILLER: I so move.

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

3 MS. KAISER: Second.

4 CHAIRMAN RUSSELL: It's been seconded by
5 Heidi. Any discussion?

6 (No response)

7 CHAIRMAN RUSSELL: Seeing none, all
8 those in favor, signify by saying aye.

9 (Response)

10 CHAIRMAN RUSSELL: Opposed.

11 (No response)

12 CHAIRMAN RUSSELL: Motion carries. The
13 next item on the agenda are the briefing items,
14 contested case updates. Katherine.

15 MS. ORR: Mr. Chairman, members of the
16 Board, good morning. Good to see everybody.
17 There have been some activities since we prepared
18 the agenda, and let me just go over those really
19 quickly. On the second item A(1) --

20 CHAIRMAN RUSSELL: Katherine, can I butt
21 in for a minute. Before the meeting, I was
22 supposed to read some emergency procedures on
23 evacuating this room in case there is a fire, or
24 earthquake, or other natural or unnatural
25 disaster.

1 Therefore, in case of evacuation, you
2 will be notified of an evacuation either through a
3 fire alarm or directly from trained emergency
4 personnel, people in orange vests. That would be
5 Misty. If you are informed of an emergency,
6 immediately proceed to the north stairwell, go
7 down and out the building. The north stairwell is
8 east of us. Has everyone got that? This is the
9 north side of the building, that is the east
10 stairwell. Are you following along? All right.

11 Proceed to the main door and exit the
12 building. Proceed to the grassy knoll north of
13 the building out this way, across the parking
14 lots. If this area is unsafe for any reason,
15 proceed to the grassy area across Sixth Avenue
16 east of the State Library -- (indicating) -- that
17 way. But we will go out that way, and around, and
18 go up. Okay, John? We still evacuate this side,
19 and we'll circuitously go around and end up up
20 here. Check in with the meeting facilitator for
21 an accounting of personnel. I will inform you
22 right now that Misty will be our meeting
23 facilitator.

24 Do not leave the assembly area until
25 instructed that it is safe to do so. If at any

1 time you are unsure of what to do, follow the
2 directions of emergency personnel. Any questions?

3 (No response)

4 CHAIRMAN RUSSELL: I am really sorry I
5 butted in, but Katherine, it's yours now.

6 MS. SHROPSHIRE: Katherine, can you get
7 a little closer to the mike, please?

8 MS. ORR: Is that better?

9 MS. SHROPSHIRE: I think so, yes.

10 MS. ORR: On Item II(A)1(b), which is in
11 the matter of violations of the Metal Mine
12 Reclamation Act by Saturday Sunday, there was a
13 hearing held on July 19th, and Counsel for
14 Saturday Sunday did not appear, and there was a
15 motion for a default, and the default was granted,
16 and an order was issued for default, and ordering
17 Saturday Sunday to pay the penalties, and that
18 will come before the Board in the next Board
19 meeting.

20 On Item (d), Sheep Mountain, there is a
21 pending motion to consolidate with one of the new
22 cases that we have. It's in the matter of
23 violations of the Clean Air Act of Montana by Todd
24 Michael Mihalko. And we haven't heard a response
25 on that yet from the other side, but a ruling will

1 be imminent on that.

2 On Item (e), this is Great Falls. This
3 is a permit challenge case. There was a motion to
4 vacate and dismiss pending before the Hearing
5 Examiner -- actually I misstated. This is a
6 challenge of a septic service business, and there
7 has been actually an agreement in that case, and a
8 motion to vacate and dismiss is pending before the
9 Hearing Examiner.

10 In Juniper Hill, there was a hearing
11 held on June 4th, and a decision is forthcoming on
12 that.

13 On Item (h), City of Great Falls, that's
14 the one I was thinking about. This is a permit
15 challenge. An agreement in principle has been
16 reached in this case.

17 And in Item (j), there was a motion for
18 a stay of proceedings pending an application for
19 eligibility, and that was denied -- eligibility
20 before the Petroleum Board -- and that was denied
21 on July 20th.

22 And then moving right along to the cases
23 that the Board retained unto itself, on Item (a),
24 which is Signal Peak Energy, just yesterday I
25 received a settlement, a stipulation for

1 settlement, and a proposed order of dismissal.

2 And City of Belgrade, a second order
3 granting extension of time was issued on July 15,
4 2010.

5 CHAIRMAN RUSSELL: Thank you, Katherine.
6 The next item on the agenda are some briefing
7 items, and we will hear initially from John on the
8 triennial review of Montana Water Quality
9 Standards. You can turn it over to anyone you
10 want.

11 MR. NORTH: Mr. Chairman, Bob Bukantis
12 from the Department will make that presentation.

13 MR. BUKANTIS: Mr. Chairman, members of
14 the Board, good morning. For the record, my name
15 is Bob Bukantis, and I'm the Water Quality
16 Standards Program Manager for the State of
17 Montana, DEQ. And what I'm going to do is give
18 you a real brief update on the triennial review
19 portion of our triennial review, meaning that
20 you'll notice there is basically two items on the
21 agenda, and this is going to be an overview of the
22 general comment that we received outside of the
23 scope of our proposed changes to the standards.

24 And Rod McNeil, during the action items,
25 will bring you an action item on the changes that

1 we propose to make directly to the standards as
2 part of this triennial review.

3 So I'm just going to basically give you
4 a real quick overview on what we received for
5 comments, more focusing on what we plan to do to
6 wrap these up, and summarize, and report back to
7 you with recommendations.

8 So just to reorient you a little bit, we
9 opened up the 45 day public comment period on tax
10 day, April 15th, and planned to run that to June
11 16th. We did get a request from the Montana
12 Petroleum Association to extend the public comment
13 period based on a recent Supreme Court ruling
14 related to the permitting of EC and SAR, so we
15 granted that request and extended that public
16 comment period for 15 days.

17 So we closed the comment period roughly
18 a month ago, and what we received was three
19 categories of comment basically. We had a comment
20 from Syngenta Corporation regarding how we handle
21 carcinogenicity with some of the pesticides that
22 we have listed in our standards. And that also
23 shows up in the action item, by the way, because
24 they directed their comment towards our changes,
25 but we really didn't propose any changes on any of

1 the pesticides that they talked about. So we're
2 wrapping it up as part of the more general comment
3 review, if you would.

4 And we also received a comment from
5 American Chemet, which is proposing adoption of
6 EPA's 2007 Aquatic Life National Recommended Water
7 Quality Criterion for the copper biotic ligand
8 model as a copper standard.

9 And then the other major category of
10 comments that we received, of course, was on EC
11 and SAR, and we got about two pounds of comments
12 on EC and SAR. And it's not quite as bad as it
13 sounds. It's actually about 700 pages. But most
14 of the bulk of that was additional comments that
15 were appended, if you would, additional documents
16 that were appended, if you would, to the, say, one
17 to six page cover letters.

18 And of those, we started to summarize
19 that information, we've got about 50 different
20 comment categories; and we got comments from
21 Northern Plains Resource Council, Marathon Oil,
22 Tongue River Water Users, Fidelity, Devon,
23 Williams, Wyoming DEQ, and Wyoming Attorney
24 General's Office.

25 So what we're planning to do with all

1 this stuff is to prepare a report, bring it back
2 to you in October. What we'd like to do is put
3 these comments in context, in the case of the EC
4 and SAR ones -- which are really the complicated
5 ones to pull together -- basically around, say, a
6 structure of explaining the basis for the
7 standards that we have on the books now; also
8 weave into that the additional 33 documents that
9 we identified as new science, if you would, since
10 the 2003 rulemaking; and also additional documents
11 and comments that we received during the public
12 comment period.

13 So we're going to try to organize this
14 stuff, kind of digest it for you, and then provide
15 you with our recommendations on where to go from
16 here, and we're planning to bring that back in
17 October, and of course support it with our
18 rationale for what we think. And I guess with
19 that, I'd be happy to answer any questions.

20 CHAIRMAN RUSSELL: Bob, on the new body
21 of knowledge around EC and SAR, is there something
22 drastically different about how we should approach
23 it?

24 MR. BUKANTIS: I guess I'd say my first
25 take on this -- I don't want to take a firm

1 position on this because I think it's important
2 that we objectively kind of pull this together and
3 digest it -- but nothing jumped out at me -- I
4 guess I'll go that far -- to say we're off base.
5 And my sense is I think we're pretty good, but
6 it's premature to take that as any kind of firm
7 position.

8 CHAIRMAN RUSSELL: Any questions for
9 Bob?

10 MR. WHALEN: Mr. Bukantis, as someone
11 who is new to the Board, relatively new, is it
12 typical for the Department to take comment on
13 items that are outside of the scope of the changes
14 that are proposed?

15 MR. BUKANTIS: Historically we haven't
16 been very aggressive that way, if you would say.
17 We often do get comment that way, and that's
18 something that EPA has been pushing us to do more,
19 and independent of the whole EC and SAR thing.
20 And we're thinking that we like this model. We
21 think it's good public policy. And I think it
22 might be a good way, when we get this kind of
23 information, then digest it, and come back to you
24 in a formal way; and then, if you would, and
25 document what those comments are, and then make

1 recommendations.

2 So we're thinking that this is likely
3 the wave of the future, if you would.

4 MR. WHALEN: Thank you, Mr. Bukantis.

5 MR. NORTH: Mr. Chairman, I'd add to
6 that that is a requirement of the EPA rules under
7 the Federal Clean Water Act, and there is also a
8 statutory provision in the Montana Water Quality
9 Act that says that the Board is to review the
10 water quality standards every three years -- hence
11 the term "triennial review" -- to determine if
12 changes or additions need to be made.

13 CHAIRMAN RUSSELL: It's a little
14 different rulemaking process than we're generally
15 accustomed to. Someone else is forcing the review
16 of this rulemaking process. Not forcing. At what
17 point do you feel that -- At least one of us has
18 been through this in depth, and I wonder at what
19 point the Board needs an EC and SAR 401 course. I
20 didn't say 101.

21 MR. BUKANTIS: Art Compton is the one
22 that started to pull this document together for
23 us, and he and I have talked about that some. We
24 have recognized that not all of you have been
25 through the CBM wringer on this, if you would, and

1 through all of the details, so we think we need to
2 write it fairly general so that folks will have a
3 good basic understanding of what's going on here
4 and what's being proposed. I don't know if that
5 answers your question, Mr. Chairman.

6 CHAIRMAN RUSSELL: It does. Just wanted
7 to tee it up. Thanks, Bob. Any other questions?

8 (No response)

9 CHAIRMAN RUSSELL: Thank you. The next
10 item on the agenda is we are going to get a little
11 briefing on individual waste water discharge
12 permit appeal activity. John.

13 MR. NORTH: Mr. Chairman, the Board
14 indicated at the last meeting that it would like
15 to have this information. Jenny Chambers will
16 provide it to you.

17 MS. CHAMBERS: Good morning, Chairman,
18 members of the Board. My name is Jenny Chambers,
19 Chief of the Water Protection Bureau here at DEQ.
20 As a briefing item on the agenda, I will provide
21 an overview of the waste water discharge permit,
22 and summarize recent activity in relation to
23 permit appeals.

24 In general, under the Montana Water
25 Quality Act, 75-5-605, Montana Code Annotated, it

1 is unlawful to cause pollution of any State
2 waters, or place a waste where it will cause
3 pollution of any state waters, unless it's
4 authorized under a discharge permit.

5 The Montana Water Quality Act regulates
6 discharge of pollutants into State waters through
7 the adoption of water quality standards and permit
8 application processes. Subsequent administrative
9 rules are established to provide a framework and
10 establish a common system of issuing these
11 permits. There are two main types of discharge
12 permits, either discharge to surface water or a
13 discharge to groundwater. Both of these are
14 protective of State waters in Montana.

15 For surface water discharges, Montana
16 DEQ has been delegated primacy from EPA to issue
17 what's called a Montana pollutant discharge
18 elimination system permit. Those are surface
19 water discharge permits, and they're pursuant to
20 402, Section 402 of the Clean Water Act, and are
21 identified in our administrative rules.

22 MPDES permits are issued either as
23 individual permits or authorization to discharge
24 under general permits. General permits are used
25 for categories of discharge that after an

1 evaluation of technology based effluent limits, or
2 an evaluation of water quality based effluent
3 limits, that these requirements are similar in
4 nature that we can provide permit coverage for a
5 full universe of permit types, and then separate
6 authorizations are granted under those general
7 permit authorizations.

8 Some general permit examples include
9 storm water construction; storm water industrial;
10 storm water mining, oil and gas; small municipal
11 separate storm sewers systems; CAFOs --
12 Concentrated Animal Feeding Operations --
13 construction dewatering; produced water; suction
14 dredges; and disinfected water.

15 There are other types of discharges that
16 discharge to groundwater. These permits are
17 issued under what's called a groundwater pollution
18 control system permit, and we have separate
19 Administrative Rules of Montana to regulate our
20 groundwater discharges. The main groundwater
21 discharges are either sanitary and domestic waste
22 -- from subdivisions, from homeowners
23 associations, things of that nature -- that have a
24 design capacity of more than 5,000 gallons per
25 day; and then any amount of industrial wastewater

1 discharged into the groundwater also needs to have
2 a groundwater pollution control system permit.

3 These regulations are found in the
4 Administrative Rules of Montana 17.30.102(2). The
5 handout that was provided in your packets that's
6 entitled Water Protection Bureau Permit Appeals
7 provides a comparison of the number of individual
8 permits issued in relation to the number of
9 permits -- number of permits issued in relation to
10 the number of permit appeals.

11 The table does not take into account
12 additional workload or other activities we have
13 within the bureau, such as a general permit
14 authorization, or any permit modifications that we
15 may have based upon an individual permit that we
16 have already issued.

17 So I just want to go through a little
18 bit that actual table, kind of just to walk you
19 through that as far as what I gathered for you.

20 It's broken out by Federal fiscal year.
21 Water Protection Bureau, since it's a delegated
22 program from EPA, we track based upon the federal
23 fiscal year as far as bean counting numbers. We
24 have two different types of MPDES surface water,
25 as I indicated, and the groundwater pollution

1 control numbers. And federal fiscal year 2010, as
2 of July 9, 2010 when this document was developed,
3 we issued 27 MPDES permits, we issued 20
4 groundwater permits, the number of appealed MPDES
5 permits were zero, and the number of groundwater
6 appeals were three.

7 So the total permits issued was 47,
8 total appealed was four, and that provides a
9 percentage ratio of 9 percent. So as you track
10 those down the table, it's kind of an increased
11 possibility of permit appeals if you increase the
12 number of permits that you issue.

13 I just wanted to note also that there is
14 currently ten more MPDES permits out for public
15 notice, so that number 27 theoretically could go
16 up to 37 between now and September 30th. So after
17 you track all this information, and you kind of
18 look at total permit appeals for the last five
19 years, the average is only about 7 percent.

20 So you guys are looking at the Board
21 document, and it comes through, and you see all
22 these water quality permit appeals. The last
23 couple years they've been groundwater permit
24 appeals. We haven't had too many surface water
25 permit appeals. And so that kind of provides you

1 the number and some kind of relationship table to
2 look at a little clearer.

3 So after looking at this, I really did
4 think that there would be a more increased number
5 because we've started issuing more permits in the
6 last couple years, but really there's not been any
7 particular trend in permit appeals. I looked to
8 see what exactly we're getting permit appeals on
9 to see if there is some certain regulation, or
10 certain policy or procedure that we could change
11 or modify based upon the permit appeals. Nothing
12 is really striking or sticking out as far as
13 something we could modify in the future to reduce
14 those, but we will definitely keep track of those
15 and looking at those as we move forward.

16 One initiative that the Water Protection
17 Bureau is taking that we underwent in 2009 was a
18 Kaison Gynon (phonetic) review process to evaluate
19 our whole permitting process to see where we can
20 streamline and make efficiencies in the program.

21 With that, we're going to implement in
22 Federal fiscal year 2011 a preapplication process,
23 and a prepermitting process that will increase the
24 communication with the permittees up front during
25 the process, so when they get a permit issued, it

1 may not be as shocking or surprise to them. And
2 it may reduce the number of appeals, or at least
3 provide a better framework of where we're headed
4 moving forward.

5 I also wanted to indicate and let the
6 Board know that if any changes in permits during a
7 negotiation process or a discussion, as we're
8 asking for extensions, any changes in the permits
9 do go out again for public comment, so the public
10 does get an opportunity to provide us comment if
11 we do make any changes to the permits that we've
12 already issued that are now appealed.

13 And then I wanted to provide a list of
14 the type of permits that we have issued in the
15 last two years as far as reissuance or renewal,
16 and that's the last part of that table, MPDES
17 permits and groundwater permits. So you can see
18 there's like a wide range of permits, from ASARCO,
19 to Sidney Sugars, to the Town of Dillon, to the
20 City of Belgrade, to River Rock, to Utility
21 Solutions, and Gallatin County as far as
22 groundwater permits go, so you can kind of get a
23 sense of who our permittees are in the state, who
24 we've been working with in the last couple years.

25 With that, I'll be happy to take any

1 questions.

2 CHAIRMAN RUSSELL: Questions?

3 MS. KAISER: I have one. It is in
4 regards to the table of the list of permits. If
5 you mentioned this, and I missed it, I apologize.
6 Some are labeled MPDES priority.

7 MS. CHAMBERS: Right. Currently all of
8 the permits that we're currently issuing are
9 what's referred to as MPDES priority permits.
10 Those are the permits from EPA that are expired
11 more than two years. It doesn't mean that they
12 haven't had permit coverage, just their previous
13 permit was administratively extended. They have
14 to maintain permit compliance under that existing
15 permit, but they have applied for renewal of that
16 permit, and the permit is only good for five
17 years, and we just have a backlog of permits, and
18 so those are priority permits that we're trying to
19 get out that are expired more than two years.

20 In Federal fiscal year 2011, we're
21 actually taking a different approach with EPA as
22 far as a backlog reduction plan to issue the
23 permits and keep the permits current, and then
24 slowly pick away at the backlog as a way to not
25 have a backlog in 2015, is the planned proposal as

1 far as the workload and resources that we have
2 available.

3 So they're all priority permits, in my
4 mind, as far as the State of Montana goes; but in
5 EPA's eyes, it's a priority permit if it's expired
6 more than two years.

7 MS. KAISER: So are these most -- but
8 these have all been issued?

9 MS. CHAMBERS: All of these on the list
10 have been issued. Those are the ones we've had
11 completed. I get the bean count for EPA that says
12 I have issued those priority permits in the last
13 Federal fiscal year.

14 MS. KAISER: Do you have a backlog now
15 of --

16 MS. CHAMBERS: Yes, and the backlog --
17 Sorry. Chairman, Ms. Kaiser. The backlog is
18 expired to -- or estimated to last until 2015 as
19 far as our goal into reaching the actual no --
20 zero backlog of discharge permits under surface
21 water.

22 MS. KAISER: Thank you.

23 MR. ANDERSON: What's the percentage of
24 these appeals that are permittee type appeals
25 versus public appeals?

1 MS. CHAMBERS: Mr. Chairman, Mr.
2 Anderson, excellent question. Within the Water
3 Quality Act and the Administrative Rules of
4 Montana for establishing our discharge permits,
5 the only person that can appeal our permits are
6 the permittees. It's different than the air
7 quality program where the public can appeal the
8 permits. On MPDES permits or groundwater permits,
9 only the permittee can appeal their permit. If
10 the public was in question or had any issues with
11 the actual permit, they'd have to file a complaint
12 in court.

13 MR. ANDERSON: Do you have a lot of
14 participation by the public in this permitting
15 process?

16 MS. CHAMBERS: Mr. Chairman, Mr.
17 Anderson, it varies based upon the type of permit
18 that we're issuing. Most of the municipalities,
19 we get little comments from the public on --
20 mainly just from the permittee. On some of the
21 larger facilities, such as the coal mines, power
22 plants, industrial facilities, it's a wide range.
23 We get comments from the public as well. I don't
24 even want to talk about coal bed methane. We get
25 comments from even out of state participants on

1 that process.

2 MR. ANDERSON: Thank you.

3 CHAIRMAN RUSSELL: I have just a couple.
4 Yesterday in our local Board of Health meeting,
5 the City Manager of Kalispell came in and made a
6 comment to our Board about how drastically DEQ
7 reduced the nutrient discharges of the Helena
8 treatment plant, but looking on here -- and I
9 don't even see Helena on here. Is that a factual
10 statement?

11 MS. CHAMBERS: Mr. Chairman, members of
12 the Board, we are currently working with the City
13 of Helena through that preapplication process that
14 I had explained to try to test that out to see how
15 we could work better with permittees up front. We
16 have a draft City of Helena permit that we've
17 completed, and we've had meetings with them to
18 discuss that permit prior to going out for public
19 notice.

20 Yes, there are changes drastically in
21 their City of Helena permit to address the total
22 maximum daily load of the Lake Helena TMDL
23 document. We're looking at opportunities for them
24 to hook up septic as far as a trading opportunity
25 within the City of Helena permit, and we're just

1 trying to address all of the concerns right now to
2 the best of our ability that is still within the
3 constraints of rules and regulations, and we
4 should be going out for public comment in August
5 on that permit, receive and evaluate what comments
6 we receive during public comment, and then issue a
7 permit, and then proceed.

8 CHAIRMAN RUSSELL: You mentioned
9 something that I just can't let go. You are
10 actually going to give them credit for connecting
11 the septic systems?

12 MS. CHAMBERS: We are evaluating that
13 under our proposed trading policy, and just
14 looking at whether or not that's a possibility.
15 It's not necessarily a trade or offset because
16 that TMDL is kind of a phased document, that
17 indicates that there will be no increase or phased
18 approached as they look on increasing their
19 treatment and operation expenses, so we're just --
20 There is not definitive right now how we're going
21 to offset that, or even evaluate within the
22 permit. We're just exploring all the options that
23 the City of Helena has proposed to us, and then
24 we'll make a final decision before we go out
25 public comment.

1 CHAIRMAN RUSSELL: I'm very interested
2 in this trading, because you've got groundwater
3 discharge versus surface water discharge. When
4 you figure out how to trade, I want to know.

5 MS. CHAMBERS: Mr. Chairman, members of
6 the Board, it's not just my decision necessarily.
7 We're working together as a whole interim group,
8 working with John and legal staff as far as what
9 our trading policy. Maybe that's something that
10 as we get more formalized we'll be able to brief
11 the Board on what that trading policy looks like,
12 and give you an opportunity to review it and look
13 at it.

14 CHAIRMAN RUSSELL: It's just a major
15 dilemma of TMDL. What you set a TMDL for a
16 surface water body and what you allow in
17 groundwater is so different. When you look at
18 nutrients and how they look as a discharge are
19 very different. And so I'm very interested in
20 this whole concept.

21 MS. CHAMBERS: Yes.

22 CHAIRMAN RUSSELL: Any further
23 questions?

24 (No response)

25 CHAIRMAN RUSSELL: Thanks, Jenny. I

1 appreciate it.

2 The next item is the Gallatin ORW.

3 John.

4 MR. NORTH: Mr. Chairman, assuming that
5 Tom is not driving through Wyoming like last
6 meeting, and he is stationary, Tom Livers will
7 provide the briefing on this issue.

8 CHAIRMAN RUSSELL: Tom, are you there?

9 MR. LIVERS: Mr. Chairman, I'm here.
10 Can you hear me okay?

11 CHAIRMAN RUSSELL: Very well. Thanks.

12 MR. LIVERS: I'm here, I am stationary.
13 Mr. Chairman, members of the Board, for the
14 record, I'm Tom Livers, Deputy Director of the
15 Department. And before we move into this, let me
16 just make, if I could, one quick comment on the
17 backlog of MPDES permits.

18 This has been a long term issue with the
19 Department, long term concern on EPA's part as
20 well. It dates back many years, in part due to
21 heavier reliance on the water quality based
22 permitting approach that's more labor intensive,
23 but there have been a number of factors
24 contributing to it. Staffing levels is one, but a
25 lot of process issues as well. And I feel that

1 the Department has finally made just excellent
2 progress on sending out a work plan for backlog
3 reduction and actually making progress against
4 that reduction.

5 So although we're still several years
6 away from completely eliminating the backlog, I
7 think the work that Jenny and her staff have done
8 is really productive, and finally, on a very long
9 term situation, we're starting to see the light at
10 the end of the tunnel in terms of making real
11 progress and eliminating that backlog.

12 So with that, let me move into the
13 update on the Gallatin River Outstanding Resource
14 Water designation. At the last regular Board
15 meeting, the Board approved again an extension of
16 the rulemaking on this designation, and partly in
17 response to Department comments, the Board asked
18 the Department, directed the Department to
19 communicate with the parties involved in some of
20 the discussions around this to make sure that
21 indeed things were progressing, and not stalled
22 out, and that's what I want to get here.

23 I guess I'll give you a little bit of
24 background on the rulemaking first, but the short
25 answer is that we're real encouraged by the work

1 that is going on there, and I can tell you that
2 the parties have not shelved this effort. It's
3 very much on the front burner, and it's still
4 moving forward.

5 So a brief history on the rulemaking,
6 and this dates back several years. But the past
7 few years, upon completion of the Environmental
8 Impact Statement on this issue, the Board
9 resurrected rulemaking and had pending designation
10 of Outstanding Resource Water designation. We
11 talked about this quite a bit. The most
12 protective designation available in our hierarchy
13 of water quality standards.

14 That action served as an impetus to
15 bring disparate interests together in the
16 Gallatin, development and environmental community
17 both, and others that are maybe not closely
18 aligned with either side, to try to find good
19 alternatives to this designation, and they formed
20 what was known as the Wastewater Solutions Group.
21 That is a group that's been looking at different
22 approaches to protecting the Gallatin, and they
23 have come to the Board several times asking for an
24 extension of rulemaking as they continue to
25 explore their alternatives.

1 Any scheme for protecting water quality
2 in the canyon is going to have to rely to some
3 degree on the only wastewater treatment system in
4 the canyon, and that is the one at Big Sky, Big
5 Sky Water and Sewer District. There is a sense
6 that if more of the corridor can be brought on
7 line with that system, it will have significant
8 impacts on protection and reducing potential
9 groundwater/surface water interference.

10 Obviously the big concentration of
11 population is on the west fork in the Big Sky and
12 above area, but there is also relatively more
13 dense development above and immediately below that
14 area. So there is potential that if there can be
15 greater utilization of the treatment system, that
16 could really have a positive impact on protection
17 of the Gallatin, but there are challenges to that,
18 the biggest being capacity.

19 The treatment system has two capacity
20 concerns. One is a winter storage concern. They
21 have limited ability for land application, really
22 none currently in the winter. They do their land
23 application in the summer on the three golf
24 courses in the area. They do have a discharge
25 permit, but no one is hoping to have to use that.

1 So to counter these capacity issues, the
2 group has been looking at an increased use of snow
3 making for treated effluent. There was some early
4 work, maybe ten years ago, in looking at this kind
5 of controlled non-discharging areas; but several
6 states, including ski areas, do actual slope
7 application, both on timbered slopes, and in some
8 cases on ski slopes. So there is an interest in
9 doing that because it would solve the winter
10 storage capacity issues, or at least not really
11 solve them, but have significant impact on that.

12 The other capacity issue with respect to
13 the district is they do want to reserve a certain
14 amount of growth capacity for that area, so they
15 have to some degree a disincentive on bringing
16 some of the corridor in as well.

17 The group has been working together to
18 look at a snow making pilot, slope application,
19 and they've got to move forward. They've got a
20 clock ticking on that money. I think they have to
21 have some progress this calendar year on that.

22 One of the challenges with that is going
23 to be permitting issues, some of the monitoring
24 required even for a pilot project; and the concern
25 with the group is they're willing to meet all the

1 permit conditions on a permanent basis, but some
2 of the conditions may not be cost effective for a
3 pilot scale approach, and so we're working with
4 them to see where we might have some ability to
5 help facilitate that effort, without compromising
6 our requirements.

7 So that's where that issue is right now,
8 and I guess just as a personal comment, there were
9 three of us from the Department in the meeting.
10 John North was there, Director Opper was there,
11 and I was there. I was really struck by, I guess,
12 the mutual concern, the mutual trust that that
13 group has engendered from working together.

14 I think everyone, including the
15 environmental representatives, feel that some of
16 the approaches they're looking at would be a
17 better alternative than designation as an
18 Outstanding Resource Water, better protection of
19 the Gallatin in the long run. I don't think
20 anybody is trying to shut down development, but
21 rather find ways to do so in a way that still
22 preserves the water quality in the canyon.

23 So I was pretty impressed by those
24 efforts, and by the individuals, and the group
25 dynamic. So there is no action pending before the

1 Board in the near future. Having just extended
2 the rulemaking, I would expect that as the six
3 month time frame comes up on that, we might have
4 some more progress to report, but we would
5 probably entertain a request from that group to
6 extend again.

7 But I guess the bottom line for me, and
8 I hope for the Board, is: There is concern that
9 maybe with the down turn in development, this has
10 one to the back burner, and things weren't
11 progressing. There are certainly plenty of
12 challenges, but there is a real sincere effort
13 down there and a lot of activity to move forward
14 on this issue.

15 That's it, Mr. Chairman.

16 CHAIRMAN RUSSELL: Thanks, Tom. Any
17 questions for Tom?

18 (No response)

19 CHAIRMAN RUSSELL: Thanks, Tom. The
20 next item on the agenda is proposed legislation
21 for the 2011 legislative session. John.

22 MR. NORTH: Mr. Chairman, Mr. Tom Livers
23 will provide that as well.

24 MR. LIVERS: Okay. Thank you, Mr.
25 Chairman, members of the Board. Again, Tom

1 Livers.

2 We had an attachment in your packet of
3 the five proposed bills that we are requesting
4 this legislative session. We never go in with a
5 real heavy agenda, but this is a little light on
6 our end. We really have boiled it down to just
7 those areas that we really want to focus on.

8 I just want to point out that only one
9 of these is going to directly impact the Board.
10 The rest we just wanted to provide. Typically the
11 Department will give the Board, just for
12 information, some of the other items we're going
13 to go forward with legislatively, as a courtesy or
14 as context.

15 But the first one will have a direct
16 impact, and that's the wastewater reuse
17 authorization. Basically this would expand -- if
18 passed, this legislation would allow for some
19 expanded use of treated municipal wastewater
20 effluent. There is already some use -- obviously
21 we just talked about it in the Gallatin in terms
22 of land application on the golf courses -- but
23 this would really expand those potentials in not
24 only landscape irrigation, but firefighting in
25 certain cases, and construction water, some

1 industrial applications. There is discussion of
2 the impact on closed basin, how this might go.
3 But what would happen if this passes.

4 The Legislature then would authorize the
5 Board of Environmental Review to establish rules
6 for these systems, and standards for reuse options
7 that are not currently available, and then those
8 rules would be permissive. Individual municipal
9 systems could determine whether they wanted to
10 implement these rules.

11 So the entire approach at this stage is
12 permissive. The Board would be authorized to
13 adopt these rules, and individual municipal
14 systems could choose to implement them. What we
15 would anticipate is we'll come back after the
16 legislative session, give the Board a briefing,
17 probably a progress briefing during the session as
18 well, but afterward on what's passed, what hasn't,
19 what effect it's going to have to the Board, and
20 assuming this would go -- and I'm sure there would
21 be some controversy around it -- but I think there
22 is a pretty good chance that this will come out,
23 and people will start to see the potential
24 resource value of treated effluent. I expect this
25 will come forward, and we'll be back to you next

1 spring with a game plan for rulemaking.

2 So I can take questions one at a time on
3 these, Mr. Chairman, whatever you prefer.

4 CHAIRMAN RUSSELL: Why don't we
5 entertain questions. If you've read through.

6 MR. WHALEN: Mr. Chairman. Tom, are
7 there any models that are currently being used by
8 the Department with respect to the development of
9 this wastewater reuse authorization legislation
10 from other states, other cities, in particular?

11 MR. LIVERS: Mr. Chairman, Mr. Whalen, I
12 don't know that specifically, and John, perhaps
13 Todd Teegarden would could answer that more
14 directly. I know we're certainly looking at other
15 states being much more aggressive on wastewater
16 reuse. In terms of -- I expect that when it comes
17 time to developing some of the actual rules, we'll
18 probably look pretty heavily to those states, at
19 least those that have maybe similar water and land
20 interests to Montana. I expect once we begin
21 drafting the legislation itself, we probably will
22 look to what other states have done.

23 And just as a footnote, just yesterday,
24 the Environmental Quality Council, the
25 quasi-legislative body that among other things has

1 authority to approve our proposed legislation for
2 predrafting -- they approved all five of these, so
3 now we are moving into the bill drafting stage
4 along with the legislative staff. So we'll be
5 doing that in the next couple months, and I expect
6 as we draft these bills, we'll be looking at what
7 other states have done for guidance.

8 MR. WHALEN: Thank you, Mr. Chairman.
9 Thanks, Tom.

10 MR. MIRES: Tom, this is Larry Mires.
11 Is this something that then would be used in the
12 Gallatin Outstanding Resource Water for their
13 issue down there? Could this help them with their
14 concern, like, say, snow making with wastewater in
15 the winter time?

16 MR. LIVERS: Mr. Chairman, Mr. Mires, I
17 think that's certainly possible. I think as we're
18 -- Again, assuming that this is passed, and we're
19 developing rules -- Well, also in the legislative
20 stage -- I think we'll certainly make sure that
21 appropriate snow making applications are allowed
22 under this. So yes, I do think -- it may be -- I
23 don't know for sure. It may be that we might have
24 some authority already to do some of this work,
25 but I think nonetheless, we'll make sure that as

1 long as appropriate treatment and safeguards are
2 in place, that, yes, snow making would be an
3 option allowed under this.

4 CHAIRMAN RUSSELL: Tom, then I would
5 guess that you'd want to expand this outside of
6 just municipal, because that would be a POTW, and
7 it wouldn't be municipal then.

8 MR. NORTH: Mr. Chairman, I can talk
9 about that a little bit. We had a discussion
10 about this before the EQC meeting yesterday, which
11 Tom wasn't here for, but the program has indicated
12 that they would like to do that, and when the
13 Director presented that to the EQC yesterday, that
14 was the recommendation that came out. So we're
15 anticipating it would be drafted to apply to all
16 public sewage systems, not just municipal.

17 CHAIRMAN RUSSELL: That's great. There
18 is a tremendous potential for even subdivisions
19 that become districts to irrigate green belts
20 twelve months out of the year. We do everything
21 in a box, and we never think about how we could
22 really expand this, and I think this is great
23 legislation.

24 MR. LIVERS: Thanks, Mr. Chairman, and
25 John, thanks for that update. That's great news.

1 So I'm assuming no other questions on this,
2 although we can always pull back, of course. The
3 piece of legislation, while it's not directly
4 under the purview of the Board, obviously a lot of
5 the rulemakings, and maybe even contested cases
6 the Board gets involved with, interact with the
7 TMDL process, the total maximum daily load
8 process.

9 And just to make sure everyone is
10 generally familiar, very quickly, TMDL, total
11 maximum daily loads, are essentially watershed
12 plans that are developed to restore water quality.
13 We have a long history with this. This is another
14 area where I think it took the Department and most
15 states a long time really to come up to speed and
16 develop effective programs for creating these
17 TMDL's.

18 Montana was no exception, and faced a
19 lawsuit several years ago that was pushing a Court
20 deadline for preparing TMDL's. That Court ruling
21 was based on our 2006 impaired waters list, the
22 202(3)(d) list, and gave us a 15 year deadline
23 that will come due in 2012.

24 What we have been doing for the past
25 several years is we've really gotten this program

1 working effectively. We have shifted from an
2 approach that deals with developing TMDL's in
3 isolated stream segments and other water bodies,
4 to more of a cohesive watershed approach. I think
5 intuitively you can probably see the benefits of
6 that kind of approach. There is both efficiency
7 and quality gains in moving that direction.

8 A lot of the monitoring, a lot of the
9 resource analysis, and a lot of the interested
10 parties interaction comes with a watershed, and
11 being able to deal with all water bodies in that
12 watershed at one time, as opposed to grabbing a
13 stream segment here, maybe two there, and going
14 over to another watershed. This is just a lot
15 better product, much more efficient, much more
16 effective, the engagement of the parties and
17 analysis of the situation.

18 So we have shifted that approach, and
19 the only hitch in doing so is that both the
20 current Federal Court settlement on the lawsuit I
21 mentioned, and then State statute, driven by us
22 completing the analysis of the roughly 430
23 impaired reaches on our 2006 impaired waters list,
24 which has frankly since been updated. So we can't
25 do both. We can't both satisfy the conditions of

1 that lawsuit, and meet current State law, and
2 shift to what is a longer term, much better, and
3 more efficient approach.

4 So we're running two concurrent tracks
5 to address this issue, and to try to make sure the
6 Department is able to fully shift over to the
7 watershed based approach. You'll also hear the
8 term "list neutral," and that's meaning it's not
9 driven by any one iteration of this list, and
10 specifically the 2006 iteration.

11 So we've had extensive discussion with
12 the Plaintiffs to petition Judge Molloy to
13 re-examine this, and generally we're finding a lot
14 of support. I think there is still interest that
15 the Department is held to producing a similar
16 quantity of analysis, but really for the most
17 part, folks just wanted to see progress being
18 made, and significant progress has been made
19 recently. And I think the Plaintiffs in the
20 lawsuit also recognize the value of this list
21 neutral watershed based approach.

22 So we're optimistic that we'll be able
23 to have that reconsidered, and it's obviously
24 going to depend -- that piece is going to depend
25 on Judge Molloy. But if we're to shift over, we

1 also have to address the statutory piece in this,
2 and there is nothing in statute that prevents the
3 watershed based approach, but again, we're held to
4 delivering on the impaired waters on the 2006
5 list.

6 So we're trying to make a shift there
7 that would authorize the same quantity of work,
8 but allow the 2006 list into the watershed based
9 approach. So that's very briefly a description of
10 what that would accomplish.

11 MR. MIRES: Tom, this is Larry Mires.
12 In dealing with TMDL and the watersheds, is the
13 Department working closely with DNRC? And the
14 second part of it: Are the watershed councils
15 involved in any of this discussion, so that we
16 have legislation that everybody can work with?

17 MR. LIVERS: Mr. Chairman, Mr. Mires,
18 I'll give a real brief response, but I think
19 probably a lot more detail could come from one of
20 the program representatives, maybe George
21 Mathieus, Mark Bostrom, or someone else from that
22 shop.

23 But essentially there has been a lot of
24 communication on this whole TMDL program with
25 local watershed groups throughout the process. I

1 think that's one of the reasons it was a little
2 bit slow to get started, and by that, I'm not
3 blaming the local groups, I'm just saying that
4 kind of consensus building takes a lot of time.

5 I don't know specifically how much
6 discussion there has been on the legislation
7 itself, and I might defer that to someone else
8 from the Department.

9 CHAIRMAN RUSSELL: George.

10 MR. MATHIEUS: Mr. Chairman, members of
11 the Board, for the record, my name is George
12 Mathieus, Administrator of the Planning Division
13 of DEQ.

14 I don't have much to add to what Tom
15 said, other than the whole point of the watershed
16 approach was to engage stakeholders and other
17 agencies. I think the key piece of it is really
18 the implementation. We wanted to develop a
19 program that just didn't become a book report that
20 sat on a shelf, and integration of everything from
21 a permitting program in this Department to the
22 local watershed groups actually can make
23 restoration occur on the ground was the whole
24 premise behind the program.

25 As far as specifically needing that in

1 the legislation, that ability already exists under
2 current statute, to my knowledge. Would you
3 agree, John?

4 MR. NORTH: Ability for --

5 MR. MATHIEUS: To implement TMDLs.

6 MR. NORTH: To implement the TMDLs does,
7 yes, on a watershed basis, it's just that we'd
8 have to have all of the 1996 list done by 2012.

9 MR. MATHIEUS: That's the key point is
10 that, as Tom alluded to, we're bound by a number
11 based on a specific list, the 1996 list. The
12 reality is we could jump all across the state and
13 pick up these beans -- as we like to call them
14 internally -- and really not get that more
15 watershed approach implementation effect that we
16 were trying to get. So subsequently we're picking
17 up a watershed approach, maybe streams that were
18 listed in 1996, 1998, 2000, 2002, maybe 2008, and
19 doing a more holistic approach, and that's the
20 benefit.

21 And we've spent a lot of time with the
22 stakeholders, with other agencies. There is an
23 advisory group called the State TMDL Advisory
24 Group that we keep apprised of this.

25 So I think it's just been a great

1 success story, and we have that support. Does
2 that answer the question?

3 CHAIRMAN RUSSELL: Thanks, George.
4 Moving on. Tom.

5 MR. LIVERS: The next one on your sheet
6 is updated fiscal requirements, and basically that
7 deals with our State Super Fund Program, the CECRA
8 program, and that's for cleanup of sites that
9 merit cleanup, but don't fit the national priority
10 list status to be included under Federal Super
11 Fund cleanup activities. Really this is kind of a
12 mechanical cash management queue, although some
13 parties may not see it that way, and there may be
14 some controversy associated with this.

15 But it's in part by a legislative
16 performance audit received on the program about a
17 year or two ago, I guess, and it is just -- we've
18 been working to improve our cash management of
19 this program. Essentially we receive a portion of
20 resource indemnity tax funds to front end some of
21 these cleanups, and then we do cost recovery with
22 responsible parties, so that ultimately those
23 responsible for either the pollution or at least
24 the current landowners do end up footing the bill
25 or the bulk of the bill.

1 We have been billing on a variable
2 basis, variable time basis, and as part of our
3 push to have tighter cost recovery controls and be
4 able to develop more money through and get more
5 cleanup quicker, we're asking for some teeth to
6 require thirty day reimbursement when it makes
7 sense. It just lets us get more done faster, and
8 that was one of the recommendations of the
9 performance audit.

10 Any questions on that one, Mr. Chairman?

11 CHAIRMAN RUSSELL: Questions?

12 (No response)

13 CHAIRMAN RUSSELL: None.

14 MR. LIVERS: Thank you. The information
15 program revisions, this also is prompted by the
16 legislative performance audit. Our Department has
17 been involved in overseeing and financing cost
18 effective energy and water use retrofits to State
19 buildings for years. We were involved in it when
20 that function was still part of DNRC, and then
21 when DEQ was formed in the mid 1990s, that
22 function came over to DEQ along with some other
23 energy programs, and we've done a variety of
24 mechanisms for financing that.

25 But essentially this is really again

1 kind of a mechanical change that would make sure
2 that what we're doing lines up with law, or
3 actually in this case the law lines up with what
4 we're doing, and it has to do with how we account
5 for savings in terms of repayment.

6 The original program language
7 legislation was ambiguous on whether we were
8 supposed to continue to recover costs of the
9 useful life of the improvements, or until the
10 amount of the original investment was repaid; and
11 this is going to specify that it's the latter,
12 that we will cost recover from those projects
13 until the original investment is repaid, and that
14 aligns it with the current approach in this
15 program, lends some of the older existing projects
16 with that approach.

17 So that's all on that. I can certainly
18 answer questions on either that legislation or
19 that --

20 CHAIRMAN RUSSELL: Any questions?

21 (No response)

22 CHAIRMAN RUSSELL: Why don't we move on
23 to the last one, Tom.

24 MR. LIVERS: Okay. Thank you, Mr.
25 Chairman. Post mining revegetation period for

1 strip and underground mine reclamation. There was
2 some changes made by the Montana Legislature in
3 the last session to the Montana Strip and
4 Underground Mine Reclamation Act. Basically the
5 act requires -- and it's aligned with Federal law
6 -- it requires essentially kind of a ten year test
7 period before you can ensure that certain
8 reclamation activities are successful and then can
9 be considered completed.

10 House Bill 278 from the last session,
11 the 2009 Legislature, exempted certain things from
12 that -- pond diversions, stock piles, access
13 roads, some of those things -- and I think there
14 were good reasons for doing that.

15 However, the way that program was set
16 up, it's delegated to the State from the Office of
17 Surface Mining within the Department of the
18 Interior. They're the ones who regulate the
19 Federal Act, the Federal Surface Mining Control
20 and Reclamation Act, and they are charged with
21 ensuring that State programs are consistent with
22 and no less stringent than the Federal
23 requirements.

24 When the OSM, the Office of Surface
25 Mining, reviewed the changes made during the last

1 session, they concluded that a couple of the
2 provisions that were changed are less stringent
3 than the Federal act, and we've had ongoing
4 negotiations with them. We've narrowed their
5 concerns, and ultimately agreement with OSM that
6 if we can amend our law to revert those changes,
7 just those couple of changes they consider less
8 stringent than the remaining ones that were
9 changed last session will stay in place, and will
10 be consistent, and receive Federal approval.

11 So in our mind, it's a cleanup piece of
12 legislation. There might be some controversy by
13 some legislators looking at State authority versus
14 Federal authority, but that's essentially what's
15 happening there.

16 And we have checked. The Board does
17 adopt coal regulations. This will not impact any
18 of the Board's rulemaking. And that's it, Mr.
19 Chairman.

20 CHAIRMAN RUSSELL: Questions for Tom?

21 MR. WHALEN: Mr. Chairman. Tom, when
22 this legislation was initially proposed by whoever
23 sponsored the bill, did that legislator come to
24 the Department and verify that it would meet
25 approval with OSM prior to introduction into the

1 Legislature?

2 MR. LIVERS: Mr. Chairman, Mr. Whalen.
3 I don't know the answer to that question, and I
4 can look it up real quickly. I want to say it was
5 Representative McChesney, but I don't know for
6 sure, so I probably shouldn't have said that. But
7 I don't know.

8 John, do you have any background on this
9 one?

10 MR. NORTH: Yes. Mr. Chairman, Mr.
11 Whalen. They did come to the Department, and it
12 appeared to us that the Office of Surface Mining
13 had approved very similar language in the South
14 Dakota program, and it was on that basis that we
15 concluded that it would be okay.

16 And it turns out since that time we have
17 determined that OSM adopted a policy back in 1983,
18 and the policy laid out what could and couldn't be
19 exempted, and I'm not sure whether they did not
20 apply it to the South Dakota program, or whether
21 unbeknownst to us for some of the nuances in their
22 language the South Dakota program did comply.

23 But at the time it was the impression of
24 everyone involved that House Bill 278, everything
25 in it would pass muster, and it was only after it

1 was passed, and the Legislature went home, and we
2 submitted this to OSM for approval that probably
3 they got their lawyers working on it, and they
4 determined that part of it wouldn't.

5 MR. WHALEN: Thank you.

6 CHAIRMAN RUSSELL: Any other questions?

7 MR. ANDERSON: One, Joe. This is Larry
8 Anderson. Are you all monitoring the interim
9 committees for bill requests, and things such as
10 that, to deal with issues that come up in that
11 context?

12 MR. LIVERS: Mr. Chairman, Mr. Anderson.
13 Yes, we are. Occasionally something might come
14 out of a committee that we don't normally work
15 with, but certainly on the Resource Interim
16 Committees, we have a pretty strong presence
17 there. We're involved with the Water Policy
18 Interim Committee very closely; Energy,
19 Telecommunications. Occasionally something might
20 come out of, say, local government that we don't
21 see coming. And I can't say that we've always
22 caught 100 percent of them, but we really have a
23 pretty good sense of what's coming in, and try to
24 weigh in when we're given the opportunity.

25 MR. ANDERSON: Thank you.

1 CHAIRMAN RUSSELL: Any other questions?

2 (No response)

3 CHAIRMAN RUSSELL: Seeing none, let's
4 move on to the next item on the agenda. And we
5 are in the process of rule adoption for amending
6 ARM 17.50.410 Section 7. Is that right? All
7 right. So, John.

8 MR. NORTH: Mr. Chairman, Rick Thompson
9 from the Solid Waste Program will make a
10 presentation on this.

11 MR. THOMPSON: Chairman Russell, members
12 of the committee or the Board, good morning. My
13 name is Rick Thompson, and I'm the Section
14 Supervisor of the Solid Waste Management Section
15 in the Waste and Underground Tank Management
16 Bureau. I'm here to represent the Department
17 regarding action on the solid waste rulemaking
18 concerning Administrative Rules Title 17 Chapter
19 50 Subchapters 403 and 410. These are in the
20 solid waste fee rules.

21 On April 15, 2010, the Secretary of
22 State published MAR Notice 17-305 pertaining to
23 the proposed amendment of ARM 17.50.403 and 410.
24 The Department recently revised and adopted solid
25 waste rules ARM 17.50 Subchapter 5, which included

1 the repeal of 17.50.503. ARM 17.50.403 and 410
2 contained cross-references to the repealed
3 17.50.503. That's an awful lot of numbers there,
4 so I hope we're straight on those.

5 The proposed amendments would correct
6 outdated citations to the hazardous waste rules,
7 language concerning the suspension of quarterly
8 solid waste management system fees after a
9 facility is placed in interim closure status, and
10 would make minor editorial changes that will not
11 really have any impact on the new rules. So the
12 Montana Code Annotated Title 75 Chapter 10 Part
13 106 Subpart 2 provides that the Board shall amend
14 solid waste fee rules, which would include Title
15 17, ARM 17.50.403 and 410.

16 Because these proposed amendments are
17 basically clerical in nature, and no public
18 comments have been received to date, we're asking
19 that the Board adopt the amendments as proposed,
20 and as are proposed in the MAR notice published on
21 April 15, 2010.

22 CHAIRMAN RUSSELL: Thanks, Rick.

23 Questions for Rick?

24 (No response)

25 CHAIRMAN RUSSELL: All right. Before we

1 take action, is there anyone in the audience that
2 would like to speak to this matter before the
3 Board takes action?

4 MR. LIVERS: Thank you, Mr. Chairman.

5 CHAIRMAN RUSSELL: I don't see anyone
6 jumping up. Therefore, I would entertain a motion
7 to adopt the rule as proposed, and also adopt the
8 521 and 311 analysis.

9 MR. WHALEN: So moved.

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

12 MR. MILLER: I'll second.

13 CHAIRMAN RUSSELL: It's been seconded by
14 Marv. Further discussion?

15 (No response)

16 CHAIRMAN RUSSELL: Seeing none, all
17 those in favor, signify by saying aye.

18 (Response)

19 CHAIRMAN RUSSELL: Opposed.

20 (No response)

21 CHAIRMAN RUSSELL: Thank you. Motion
22 carries unanimously. We'll go to the next one
23 then.

24 The Board is being requested to adopt
25 amendments to ARM Title 17.38 subchapter two. Mr.

1 Pizzini.

2 MR. PIZZINI: Good morning, Chairman
3 Russell, members of the Board. For the record,
4 Eugene Pizzini, and I'm the Rules Expert in the
5 Public Water Supply Section.

6 On March 19, 2010, this Board proposed
7 or initiated an amendment to the Public Water
8 Supply rules, basically dealing with changing the
9 adoption by reference to reference the newer
10 version of the Code of Federal Regulations,
11 bringing the Department requirements into
12 conformance with Federal requirements, and
13 removing confusing language in our existing rules.

14 On May 11, 2010, Katherine Orr conducted
15 a public hearing. Notice was sent to all public
16 water supply owners, operators, and county
17 sanitarians. No comments were received.

18 These proposed amendments do not add any
19 new significant requirements, and in fact reduce
20 some of the requirements that are in place today.
21 In addition, they remove potential areas of
22 confusion for the regulated public, and therefore
23 should reduce the number of violations that we
24 have.

25 Therefore, the Department recommends

1 adoption of the proposed amendments as set forth
2 in the notice of public hearing on the proposed
3 amendments, and I can answer any questions you may
4 have.

5 CHAIRMAN RUSSELL: Thanks, Gene.

6 Questions for Gene?

7 (No response)

8 CHAIRMAN RUSSELL: Seeing none, is there
9 anyone in the audience that would like to speak to
10 this matter before the Board takes action?

11 (No response)

12 CHAIRMAN RUSSELL: Seeing none, I will
13 entertain a motion to adopt the amendments as
14 submitted, and approve the Presiding Officer's
15 report, as well as the 521 and 311 analysis.

16 MS. KAISER: So moved.

17 CHAIRMAN RUSSELL: It's been moved by
18 Heidi.

19 MR. MIRES: I second.

20 CHAIRMAN RUSSELL: It's been seconded by
21 Larry. Any further discussion?

22 MR. NORTH: Larry Mires.

23 CHAIRMAN RUSSELL: Larry Mires. Any
24 further discussion?

25 (No response)

1 CHAIRMAN RUSSELL: Seeing none, all
2 those in favor, signify by saying aye.

3 (Response)

4 CHAIRMAN RUSSELL: Opposed.

5 (No response)

6 CHAIRMAN RUSSELL: Motion carries. The
7 last item in this area is a request to adopt
8 proposed amendments to the Department's Circular
9 DEQ-7, and incorporate the updated water quality
10 standards into the Circular by amending 17.30
11 subchapters 5, 6, 7, and 10, and there is some
12 more, but I'm not going to read any further.

13 MR. NORTH: Rod McNeil will make a
14 presentation for the Department.

15 MR. McNEIL: Mr. Chairman, members of
16 the Board, my name is Rod McNeil. I'm with the
17 Water Quality Standards section as an aquatic
18 ecologist.

19 We have submitted these proposed rule
20 modifications to you in April, and we submitted
21 these proposals to you in March, and the public
22 comment period opened on April 15th. It was to be
23 closed on June 1st, and was extended by 15 days as
24 we were running the comment period on the proposed
25 rule changes contemporaneous with the triennial

1 review. The extension extended through the 16th
2 of June.

3 We received no comments relative to the
4 proposed rule changes, proposed for DEQ-7. The
5 primary goal of these changes was to increase or
6 to add certain water quality standards for DEQ-7,
7 and incorporate DEQ-7 changes into the rule cited
8 in the package that was submitted to you. Changes
9 include adoption of new rules, amending existing
10 rules, and clarifying existing language.

11 We received one letter of support from
12 the EPA recommending that the Board adopt the
13 proposed changes to DEQ-7 on the 7th of May, and
14 are now requesting that the Board adopt the
15 proposed changes, and the Department supports the
16 rules as recommended.

17 CHAIRMAN RUSSELL: All right. Thank
18 you. Questions for Rod?

19 MR. MIRES: Mr. McNeil, does EPA
20 currently have standards that these rules would be
21 equal to, or are these rules more stringent than
22 current standards that EPA currently has?

23 MR. McNEIL: Mr. Chairman, Mr. Mires.
24 These rules are no more stringent than the
25 existing standards that EPA has. Some of the

1 proposed changes involve the development of health
2 advisories for human health for pesticides where
3 there are no existing standards within the EPA
4 rules. Those standards are developed in
5 conjunction with working with the toxicologists at
6 the EPA in creating those advisories.

7 MR. MIRES: I guess my concern comes in
8 the fact that June 4th, some of the water
9 irrigators around have expressed concerns over
10 EPA's ruling on aquatic life, rulings that are
11 coming out, and I notice that the Idaho delegation
12 has taken up very strong opposition to what EPA is
13 requiring because some of the rules are going to
14 very negatively impact the irrigation or the
15 agricultural community. And primarily they're
16 addressing aquatic herbicides in the irrigation
17 districts.

18 How is our rulemaking here going to line
19 up with that?

20 MR. McNEIL: Our proposed rulemaking
21 would coincide with the EPA recommendations. As
22 far as aquatic life criteria goes, we have the EPA
23 304(a) criteria on acrilene, and we are following
24 their recommendation exactly in terms of what we
25 are proposing as a standard for acrilene. There

1 are also a series of six other aquatic life
2 standards that we are modifying. They already
3 existed in our State regulations, but we are
4 modifying it to more closely follow the EPA 304(a)
5 criteria guidance on aquatic life.

6 MR. MIRES: So if the EPA rules are not
7 enacted, or if they're stopped, that they're
8 currently proposing, can we enact this rulemaking
9 now? We would then in essence have more stringent
10 rules than EPA currently has.

11 MR. McNEIL: No, sir, I don't think --
12 perhaps I was unclear. We are adopting already
13 existing criteria from the EPA. These are not
14 proposed standards from the EPA. These are
15 existing criteria that have already been approved,
16 and are existing in Federal law. We're simply
17 adopting those same standards.

18 MR. NORTH: Mr. Chairman, Mr. Mires. I
19 think perhaps your question touches more on
20 permitting than it does on standards, so with the
21 Board's permission, I think Jenny Chambers could
22 shed some light on this issue.

23 MS. CHAMBERS: Mr. Chairman, Mr. Mires.
24 Again, Jenny Chambers, Chief of the Water
25 Protection Bureau.

1 I believe some of the concerns you're
2 hearing in regards to the agricultural industry
3 and irrigation ditch of application of pesticides,
4 especially in Idaho directly, is that there has
5 been a District Court ruling by the District Court
6 on requirements to have Montana pollutant
7 discharge elimination systems for application of
8 pesticides on or near water.

9 Idaho isn't a delegated MPDES program.
10 Therefore, they're going to meet the requirements
11 strictly imposed by them by the general permit
12 provisions by EPA.

13 The rulemaking that Rod proposed to you
14 as a Board to apply water quality standards won't
15 be impacted by the general permit. Currently the
16 way EPA has drafted that general permit, it's a
17 technology based general permit provisions to
18 establish and maintain best management practices
19 from applicators on applying the pesticides on the
20 water or near the waters.

21 We're working closely right now with the
22 Department of Agriculture to move forward in
23 development of our general permit on pesticide
24 applicators to make sure that we're not imposing
25 more restrictive measures than necessary to meet

1 the Federal requirements, or impose regulations as
2 far as water quality standards or increased
3 monitoring that's different than what they're
4 currently doing under FIFRA, the Federal
5 Insecticide Rodenticide Act that's administrated
6 by the Department of Agriculture.

7 So I will be before you later probably
8 within the next couple months, maybe the December
9 session, to address maybe our fee rule process as
10 we move forward with this general permit on
11 pesticide applicators, but currently there won't
12 be any water quality monitoring or impact as it's
13 proposed by EPA now, based upon what Rod proposed
14 to you.

15 MR. MIRES: That's better.

16 CHAIRMAN RUSSELL: Are you better now?

17 MR. MIRES: A little bit.

18 MR. WHALEN: Mr. Chairman, I have a
19 couple questions for Mr. McNeil. Mr. McNeil, do I
20 understand correctly that the Department is
21 proposing that the Board adopt changes to all
22 State waters?

23 MR. McNEIL: Mr. Chairman, Mr. Whalen.
24 Yes, that is correct. This would apply to all
25 State waters.

1 MR. WHALEN: Thank you. The second
2 question is: There is a movement here, it looks
3 like, to exempt endosulfan sulfate from aquatic
4 life standards criteria because of what Mr. Mires
5 had referred to with respect to more stringent
6 application of standards in the state of Montana
7 versus what EPA is currently enforcing. Can you
8 speak to this issue of endosulfan sulfate a little
9 bit?

10 MR. McNEIL: Yes, Mr. Chairman, Mr.
11 Whalen. Endosulfan and sulfate are two of the
12 pesticides that were under consideration in the
13 rule changes. The issue is that these are health
14 advisories that are developed in compliance with
15 the Montana Groundwater Protection Act --
16 Agricultural Groundwater Protection Act. I'm
17 sorry. These compounds have been detected in
18 groundwater supplies, and therefore we are
19 required to develop a standard for that compound.

20 The standard is developed by researching
21 the literature on endosulfan and sulfate, and then
22 working with EPA's toxicologists to develop a
23 human health advisory specific to those compounds.
24 So there is a requirement under state law to
25 develop those standards. They are not more

1 stringent than the Federal standards because there
2 are no Federal standards. It is developed as a
3 health advisory in conjunction with EPA.

4 MR. WHALEN: Just a quick followup.
5 With respect to the standards issue and health
6 advisories, you are an aquatic life specialist,
7 correct?

8 MR. McNEIL: Yes.

9 MR. WHALEN: These health advisories are
10 human health advisories.

11 MR. McNEIL: That's correct.

12 MR. WHALEN: As opposed to aquatic life
13 health advisories.

14 MR. McNEIL: That's correct.

15 MR. WHALEN: That answers my question.

16 CHAIRMAN RUSSELL: Further questions?

17 (No response)

18 CHAIRMAN RUSSELL: Thank you. Is there
19 anyone in the audience that wants to speak to this
20 matter before the Board takes action?

21 (No response)

22 CHAIRMAN RUSSELL: With that, I will
23 entertain a motion to adopt the amendments as
24 proposed, accept the Presiding Officer's report,
25 the 521 and 311 analysis, and the Department's

1 responses to comments.

2 MR. WHALEN: Just for clarification, are
3 you entertaining a motion to adopt application to
4 all State waters, standards to all State waters,
5 groundwater and surface waters?

6 CHAIRMAN RUSSELL: As they apply. As
7 DEQ-7 applies to State waters.

8 MR. WHALEN: I'll make that motion.

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

11 MS. KAISER: Second.

12 CHAIRMAN RUSSELL: It's been seconded by
13 Heidi. Further discussion?

14 (No response)

15 CHAIRMAN RUSSELL: Seeing none, all
16 those in favor, signify by saying aye.

17 (Response)

18 CHAIRMAN RUSSELL: Opposed.

19 (No response)

20 CHAIRMAN RUSSELL: Motion carries
21 unanimously. We're going to take a quick break.

22 (Recess taken)

23 CHAIRMAN RUSSELL: Let's go ahead and
24 get started. The next item on the agenda is new
25 contested cases on appeal. The first one is in

1 the matter of appeal and request for hearing by
2 Roseburg Forest Products. Katherine.

3 MS. ORR: Mr. Chairman, members of the
4 Board, this is a case involving Roseburg Forest
5 Products Company, a particle board mill in
6 Missoula. It is an appeal of a groundwater
7 pollution control permit. And you saw some of the
8 challenges in the file: No testing for oil and
9 grease, no continuous flow monitor, quarterly
10 testing for pH and TDS. Most of these permit
11 challenges seem to challenge some of the
12 constituent levels and the monitoring frequency,
13 and this is no different.

14 CHAIRMAN RUSSELL: Thank you. With
15 that, we can entertain a motion to have Katherine
16 be appointed as the permanent Hearings Examiner
17 for this, or we can hear it ourselves. I'll
18 entertain a motion either way.

19 MR. WHALEN: I would move the former.

20 CHAIRMAN RUSSELL: That would be to
21 appoint Katherine the Hearings Examiner. Is there
22 a second?

23 MR. MILLER: I'll second.

24 CHAIRMAN RUSSELL: That was moved by
25 Joe, and seconded by Marv. Any further

1 discussion?

2 (No response)

3 CHAIRMAN RUSSELL: Seeing none, all
4 those in favor, signify by saying aye.

5 (Response)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response)

8 MS. ORR: Mr. Chairman, the next case is
9 in the matter of violations of the Clean Air Act
10 of Montana by Todd Michael Mihalko, Jefferson
11 County, a case nearby. This involves an open burn
12 in one day with no ventilation forecast, or
13 completion of the burning within one day, and it
14 happened in closed winter time open burning
15 season. The penalty requested is \$4,800.

16 CHAIRMAN RUSSELL: It must have been a
17 pretty good burn. So when did it occur? Just
18 during those closed winter months, December,
19 January, February?

20 MS. ORR: Right, and I think the notice
21 of violation mentions finding piles of burn
22 several days thereafter.

23 CHAIRMAN RUSSELL: All right. Once
24 again, since Katherine knows so much about this, I
25 will entertain a motion to appoint Katherine the

1 permanent Hearings Examiner.

2 MR. MIRES: So moved.

3 CHAIRMAN RUSSELL: It's been moved by
4 Larry Mires. Is there a second?

5 MR. MILLER: I'll second.

6 CHAIRMAN RUSSELL: It's been seconded by
7 Marv. All those in favor, signify by saying aye.

8 (Response)

9 CHAIRMAN RUSSELL: All right.

10 MS. ORR: And the final action, there
11 are a number of cases. This is the stack right
12 here. You can see visual evidence of progress.

13 The first case involved a notice of
14 violation that was filed in 2005, and it involved
15 the Paymaster Mine Adit here in Lewis and Clark
16 County. And there was a request -- or the
17 violation cited was a failure to pay permit fees,
18 and then there were permit fees running with
19 interest. There was an order staying proceedings
20 because of the ASARCO bankruptcy in January of
21 2006, and finally there has been a stipulation to
22 dismiss under 41(a), and that's what's before you
23 right now.

24 CHAIRMAN RUSSELL: Any other questions
25 before we move on this?

1 (No response)

2 CHAIRMAN RUSSELL: Seeing none, I will
3 entertain a motion to authorize the Board Chair to
4 sign the order of dismissal regarding this matter.

5 MS. SHROPSHIRE: So moved.

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

8 MR. MILLER: I'll second.

9 CHAIRMAN RUSSELL: It's been seconded by
10 Marv. Further discussion?

11 MR. ANDERSON: Let me ask a question
12 more generally, Katherine. I'm sitting here
13 reflecting on the Massey Minerals problem, and
14 that occurred in West Virginia. And I've read
15 quite a bit about one of the tactics of major
16 industrial polluters of appealing citations to a
17 point where they exhaust administrative agencies.
18 Is that an issue here? Do you see that at all?

19 MS. ORR: Mr. Chairman, Mr. Anderson.
20 It would be hard to discern this. You mean the
21 delay here?

22 MR. ANDERSON: Right.

23 MS. ORR: It seems like the delay was --
24 This case was eclipsed by the bankruptcy
25 proceeding for years and years.

1 MR. ANDERSON: So a stay?

2 MS. ORR: Yes.

3 MR. ANDERSON: But otherwise do you see
4 that?

5 MS. ORR: That's hard for me to answer.
6 I can't tell from the elements of the file.

7 MR. ANDERSON: Okay. No further
8 questions.

9 CHAIRMAN RUSSELL: Any other questions?

10 (No response)

11 CHAIRMAN RUSSELL: We do have a motion
12 and a second. All those in favor, signify by
13 saying aye.

14 (Response)

15 CHAIRMAN RUSSELL: Opposed.

16 (No response)

17 CHAIRMAN RUSSELL: Motion carries. Next
18 is the St. Mary's Enterprise, Inc.

19 MS. ORR: Mr. Chairman, members of the
20 Board. This involves a public water supply
21 system, a supplier of water, a transient
22 non-community water system; and the violations
23 cited in the Notice of Violation were failure to
24 monitor for total coliform bacteria, failure to
25 provide public notification of the monitoring

1 violations, failure to report the monitoring
2 violations. The penalty initially requested was
3 \$23,000, and this is also a 41(a)(1) dismissal.

4 CHAIRMAN RUSSELL: Questions before we
5 go?

6 (No response)

7 CHAIRMAN RUSSELL: Seeing none, I will
8 entertain a motion to authorize the Board Chair to
9 sign the order of dismissal for Case No. BER
10 2009-04-PWS.

11 MR. MIRES: So moved.

12 CHAIRMAN RUSSELL: It's been moved by
13 Larry Mires. Is there a second?

14 MS. KAISER: I'll second.

15 CHAIRMAN RUSSELL: It's been seconded by
16 Heidi. Discussion?

17 (No response)

18 CHAIRMAN RUSSELL: Seeing none, all
19 those in favor, signify by saying aye.

20 (Response)

21 CHAIRMAN RUSSELL: Opposed.

22 (No response)

23 CHAIRMAN RUSSELL: Motion carries. The
24 next item is another water quality, Fidelity.
25 Katherine.

1 MS. ORR: Mr. Chairman, members of the
2 Board. This involved the Department's denial of a
3 request for modification to Fidelity's MPDES
4 permit, and there was an appeal from the
5 Department's decision on November 16th, 2009, and
6 the parties apparently settled what differences
7 they had, and have brought a 41(a) dismissal in
8 front of the Board.

9 CHAIRMAN RUSSELL: I have the
10 stipulation for dismissal, but I don't have an
11 order, so there must be one prepared but not in
12 our packet.

13 MS. ORR: Okay. I'll get with Misty and
14 make sure you have that.

15 CHAIRMAN RUSSELL: So even though I
16 don't have an order, I would ask for a motion to
17 authorize the Board Chair to sign that order when
18 it is in front of me.

19 MR. ANDERSON: So moved.

20 CHAIRMAN RUSSELL: It's been moved by
21 Larry Anderson.

22 MR. MILLER: Second.

23 CHAIRMAN RUSSELL: It's been seconded by
24 Marv. Further discussion?

25 (No response)

1 CHAIRMAN RUSSELL: Seeing none, all
2 those in favor, signify by saying aye.

3 (Response)

4 CHAIRMAN RUSSELL: Opposed.

5 (No response)

6 CHAIRMAN RUSSELL: Motion carries. The
7 next one, AquaFlo.

8 MS. ORR: AquaFlo, Mr. Chairman, members
9 of the Board, is a case involving a challenge to a
10 Department MPDES or groundwater pollution control
11 system permit that was issued on December 14th,
12 2009. Some of the challenges were total nitrogen,
13 total nitrogen load, reduction, components
14 regarding nondegradation, and monthly compliance
15 and reporting requirements. And the parties
16 apparently reached agreement, and there is a 41(a)
17 dismissal before the Board again.

18 CHAIRMAN RUSSELL: I have a stipulation.
19 I don't have the order, but I may have. I will
20 get one, I'm sure.

21 MS. ORR: Yes.

22 CHAIRMAN RUSSELL: So when I have an
23 order in front of me, I will need an authorization
24 for the Chair to sign that said order on BER
25 2010-03-WQ.

1 MR. MILLER: I so move.

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

4 MR. WHALEN: Second.

5 CHAIRMAN RUSSELL: It's been seconded by
6 Joe. Further discussion?

7 (No response)

8 CHAIRMAN RUSSELL: Seeing none, all
9 those in favor, signify by saying aye.

10 (Response)

11 CHAIRMAN RUSSELL: Opposed.

12 (No response)

13 CHAIRMAN RUSSELL: The next item on the
14 agenda is in the matter of violations of the
15 public water supply laws by Red Cliff Estates
16 Homeowners Association.

17 MS. ORR: Mr. Chairman, members of the
18 Board, this is a public water supply case where
19 the allegations were failure to monitor for lead
20 and copper during the monitoring period; failure
21 to notify the Department of monitoring violations.
22 There was a notice of violation issued on February
23 11th of this year, and then an amendment to that
24 on February 25th of this year, and the remaining
25 penalty from the suspended penalties is \$179. And

1 you have a stipulation for dismissal before you.

2 CHAIRMAN RUSSELL: I also have an order
3 for dismissal. With that, any questions for
4 Katherine before we move on this?

5 (No response)

6 CHAIRMAN RUSSELL: Seeing no questions,
7 I will entertain a motion to authorize the Board
8 Chair to sign the order of dismissal for Case No.
9 BER 2010-05-PWS.

10 MR. WHALEN: So moved, Mr. Chairman.

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

13 MR. ANDERSON: Second.

14 CHAIRMAN RUSSELL: It's been seconded by
15 Larry Anderson. Further discussion?

16 (No response)

17 CHAIRMAN RUSSELL: Seeing and hearing
18 none, all those in favor, signify by saying aye.

19 (Response)

20 CHAIRMAN RUSSELL: Opposed.

21 (No response)

22 CHAIRMAN RUSSELL: Motion carries. The
23 next one is Citizens Awareness Network, Women's
24 Voices of the Earth, Thompson River CO-Gen.

25 MS. ORR: Mr. Chairman, members of the

1 Board. You will recall this case. It was
2 appealed to District Court, and then the Montana
3 Supreme Court, on the issue of the Hearing
4 Examiner's denial of a motion to amend, and it was
5 remanded to the District Court, and ultimately
6 through the Board to the Hearing Officer. And the
7 parties have reached an agreement, and you have a
8 dismissal before you. I have that order that I
9 wrote for you, and I will give that to you.

10 CHAIRMAN RUSSELL: All right. A little
11 different process here. Any questions on that?

12 (No response)

13 CHAIRMAN RUSSELL: Seeing none, I will
14 entertain a motion to have the Chairman sign the
15 order of dismissal for BER Case 2006-18-AQ.

16 MR. MIRES: So moved.

17 CHAIRMAN RUSSELL: It's been moved by
18 Larry Mires.

19 MR. MILLER: Second.

20 CHAIRMAN RUSSELL: It's been seconded by
21 Marv. Further discussion?

22 (No response)

23 CHAIRMAN RUSSELL: Seeing none, all
24 those in favor, signify by saying aye.

25 (Response)

1 CHAIRMAN RUSSELL: Opposed.

2 (No response)

3 CHAIRMAN RUSSELL: The last one is in
4 the matter of violations of public water supply
5 laws by Jason Ellsworth in Ravalli County.

6 MS. ORR: Mr. Chairman, members of the
7 Board. This involves a public water supply
8 system, a supplier of water, non-transient,
9 non-community water system, and the allegations in
10 the administrative order were operation of a
11 public water supply system without Department
12 approval, no plans and specs submitted before
13 operation, failure to retain a certified operator,
14 failure to monitor for copper and lead, total
15 coliform bacteria, and failure to report
16 violations. The penalty initially requested was
17 \$9,598, and there were a significant list of
18 corrective actions requested.

19 CHAIRMAN RUSSELL: Was the fee actually
20 modified? Was that the fee that was finally
21 imposed on them?

22 MS. ORR: I don't know.

23 CHAIRMAN RUSSELL: I can't ask any more
24 because it's a 41(a). Any other questions for
25 Katherine?

1 (No response)

2 CHAIRMAN RUSSELL: Seeing none, I will
3 entertain a motion for the Board Chair to sign the
4 order of dismissal for Case No. BER 2010-01-PWS.

5 MR. WHALEN: So moved, Mr. Chairman.

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

8 MR. ANDERSON: Second.

9 CHAIRMAN RUSSELL: It's been seconded by
10 Larry Anderson. Further discussion?

11 (No response)

12 CHAIRMAN RUSSELL: Seeing none, all
13 those in favor, signify by saying aye.

14 (Response)

15 CHAIRMAN RUSSELL: Opposed.

16 (No response)

17 CHAIRMAN RUSSELL: Motion carries. The
18 next item, I've got -- Tom is still on, but I know
19 we're going to take this up, but we're not going
20 to take any action on the Gallatin.

21 MR. NORTH: Mr. Chairman, if I might,
22 the statutes that govern local governments and the
23 Montana Water Quality Act contain provisions that
24 allow for creation of local water quality
25 districts, and the Water Quality Act provides that

1 before one can be created, the Board has to hold a
2 hearing and approve it; and then a statute further
3 provides that if there is any modification
4 extension of the district, that has to come back
5 to the Board for approval.

6 And the Gallatin Local Water Quality
7 District is proposing to extend its boundaries
8 quite significantly, so they intended to come to
9 the Board for approval at this meeting. However,
10 earlier this week, we got a call from the District
11 indicating that they had not completed their work
12 plan yet for this expansion, and they therefore
13 asked that the Board defer this until probably the
14 October meeting. So there is no one here from the
15 Board.

16 We are prepared, if the Board is
17 interested, to give you a general overview of the
18 water quality district laws and the Board's role;
19 or if the Board would prefer, we can wait until
20 October and do that in conjunction with the
21 petition to approve it. That's your discretion.
22 Todd Teegarden is here and is available.

23 CHAIRMAN RUSSELL: I know, and maybe
24 some others know a little bit about them, but it
25 would be better to brief now. Everyone will still

1 be seated unless they decide not to be. So why
2 don't we go ahead and do that. Todd.

3 MS. SHROPSHIRE: Chairman Russell, I
4 didn't want to interrupt the presentation, but
5 I'll probably hang up midway through. But thanks.

6 CHAIRMAN RUSSELL: Thanks, Robin.
7 Thanks for participating.

8 MR. TEEGARDEN: Mr. Chairman, members of
9 the Board, for the record, Todd Teegarden. I'm
10 Bureau Chief of the Technical Financial Assistance
11 Division here at DEQ. And one of the sections in
12 our bureau is the Source Water Protection Section
13 which does source water protection plans, looks at
14 groundwater issues, public health issues, and also
15 is involved with oversight of these local water
16 quality districts.

17 And as John mentioned, DEQ is required
18 by statute 75-5-311 to monitor the implementation
19 of local water quality district programs, and to
20 ensure that they are adequate to protect surface
21 and groundwater and local programs consistent with
22 Title 75 Chapter 5.

23 Local water quality districts range from
24 regulatory type of districts, of which Missoula
25 County was organized; and there are four local

1 water quality districts in the State of Montana
2 currently. Again, as I mentioned, Missoula County
3 is regulatory; then there is also water quality
4 districts that are formed more for data
5 collection, monitoring, public education programs,
6 and those type of outreach efforts. There's been
7 three of those formed in Lewis & Clark County,
8 Silver Bow County, and Gallatin County.

9 As John mentioned, Gallatin County has
10 received some -- Well, they were established in
11 1997 by the Board's approval through the County
12 Commissioners, and it includes the communities of
13 Bozeman, Belgrade, and Manhattan. Since then,
14 they've had numerous requests, with the growth in
15 the area from the Big Sky area out towards
16 Amsterdam and towards Logan, to potentially expand
17 the district. So as you'll hear from the
18 District's Board next meeting, they are looking to
19 basically expand the district in three directions
20 in those growth areas.

21 Again, I want to emphasize that Gallatin
22 County is not regulatory in nature. They're more
23 monitoring, public education, and dissemination of
24 information, water quality data.

25 With that, again, the Department is

1 involved with the oversight of the local water
2 quality districts. Once a year they submit a work
3 plan and an annual report on what activities have
4 happened in those districts. We're involved with
5 some counties that are interested in potentially
6 forming districts. There is a few of those
7 counties out there -- which, Joe, you're aware of
8 -- Lake County and Flathead County have had this
9 discussion over the years.

10 So we're involved as needed for septic
11 education workshops in areas that aren't local
12 water quality districts, but counties that are
13 interested and have sanitary programs or public
14 health programs that want DEQ's assistance in
15 those efforts.

16 So with that, that's what I had to
17 present, and I'm open for questions.

18 CHAIRMAN RUSSELL: Questions for Todd?

19 OPERATOR: Ms. Shropshire is leaving the
20 meeting.

21 MR. WHALEN: Mr. Chairman. Mr.
22 Teegarden, the district would indicate this is
23 essentially a government entity, so this action or
24 proposal before the Board, when it comes in
25 October, does it require the petition of those

1 residents or businesses that are living outside of
2 the current district at the local level prior to
3 coming to the Board, or is it coming to the Board
4 after the fact, is number one. I guess we can
5 just start and leave there.

6 MR. TEEGARDEN: Sure. Because Gallatin
7 County specifically is not a regulatory program,
8 their activities are determined by the County
9 Commissioners. The County Commissioners have had
10 a hearing on this, they have had a public
11 notification on who might be and who's out there.
12 There has been a few protests, but in general very
13 high support for this expansion, and the
14 Commissioners have okayed it, as well as the
15 Board. Then the final step is to come to get
16 approval by the BER.

17 CHAIRMAN RUSSELL: I'll explain that
18 because I've been through this and have been
19 soundly kicked around for trying to do one in
20 Flathead County.

21 There is two ways you can adopt these.
22 You can adopt them by resolution, which means the
23 County Commissioners, if it is a county wide, the
24 County Commissioners would resolve to adopt the
25 district, and then it would be up to a petition --

1 I think it's 35 percent.

2 MR. TEEGARDEN: 30 percent.

3 CHAIRMAN RUSSELL: -- 30 percent of the
4 property owners can come back and petition that it
5 not occur; or you can just go to a public vote and
6 simple majority. So it really does take that --
7 It's no different than any district you set up.
8 It's a taxing district. So those people that will
9 come into the district have the right to vote it
10 out or vote it in, and there is two ways the law
11 will allow it.

12 MR. WHALEN: Board approval is required
13 for that -- if I can use the term -- annexation of
14 those outer areas into that district before it
15 occurs; is that correct?

16 MR. TEEGARDEN: That's correct.

17 CHAIRMAN RUSSELL: Board of
18 Commissioners.

19 MR. WHALEN: Not the Board of
20 Environmental Review.

21 CHAIRMAN RUSSELL: We approve the plan.
22 We don't approve the public process. That's not
23 part of us.

24 MR. TEEGARDEN: And they will be
25 submitting the plan, they said, in mid August, so

1 you will get to see that in advance of the next
2 meeting, their presentation on it.

3 CHAIRMAN RUSSELL: Todd has worked a lot
4 on these districts, and Joe Meeks has, and so the
5 Department is lock step with these districts. So
6 there isn't any conflict what Title 75 does or
7 anything of that nature.

8 MR. WHALEN: Thank you, Mr. Teegarden.

9 CHAIRMAN RUSSELL: Sorry to steal your
10 thunder.

11 MR. TEEGARDEN: No. Thanks for the
12 input.

13 CHAIRMAN RUSSELL: I've been literally
14 beat down trying to establish a water quality
15 district in Flathead County. You can laugh.
16 Yours is funded by the mining industry, and didn't
17 have even have to go to a --

18 MR. TEEGARDEN: One point that I might
19 add, if you're interested in the Board. The Board
20 by statute must require the County Commissioners
21 on the Board, representatives of the cities or
22 towns that are in the district, in this case
23 Bozeman, Manhattan, and Belgrade, and I think Big
24 Sky, if they're added, would have a
25 representative. It has to be a minimum of five

1 people.

2 If there is large landowners, they can
3 ask to be a member of this. The board is
4 representative of the communities, county, private
5 individuals, and there is also a member of the
6 Public Health Department, County Health
7 Department.

8 CHAIRMAN RUSSELL: Thanks, Todd. I
9 really appreciate it.

10 Anything else on that?

11 (No response)

12 CHAIRMAN RUSSELL: We'll see that in
13 October. Well, as we wind down towards the close,
14 this is the time of the meeting where anyone in
15 the audience that's actually public can address
16 the Board on matters that relate to the Board's
17 actions. If there is anyone out there that would
18 like to speak, come on up.

19 MS. LINDLIEF-HALL: Mr. Chairman,
20 members of the Board, my name is Brenda
21 Lindlief-Hall. I am here on behalf of the Tongue
22 River Water Users Association. I'm their
23 attorney. I've represented them since about
24 January of 2000. I am here to address the issue
25 of the Fidelity contested case matter regarding

1 its Whole Effluent Toxicity tests. I hope you'll
2 bear with me because this is going to be a little
3 bit of a rant. I'll try and keep it short.

4 But first of all, I just want to commend
5 the Department of Environmental Quality for not
6 amending Fidelity's permit with regard to the
7 whole effluent toxicity tests. However, I do want
8 to express my clients' extreme displeasure over
9 the Department's decision to not assess any
10 penalties or to waive any penalties, the \$40,425
11 penalty as provided in the administrative order on
12 consent.

13 That brings me into kind of another
14 issue. We don't agree that those penalties should
15 have been dismissed. There was recently a
16 decision issued by the Montana Supreme Court. It
17 was a decision by the full seven justice panel, a
18 unanimous decision in a case called Northern
19 Cheyenne Tribe versus the Montana Department of
20 Environmental Quality. My client, the Tongue
21 River Water Users Association, intervened in that
22 case, as did Northern Plains Resource Council.

23 In that case, the Montana Supreme Court
24 voided the permit, the same permit that is at
25 issue, with regard to the Whole Effluent Toxicity

1 test called WET tests. Those WET tests, as you
2 probably know by now, are regarding aquatic life,
3 and they're tests that are required by EPA to
4 ensure that aquatic life are not endangered by
5 discharges of this effluent.

6 So Fidelity doesn't have to pay any sort
7 of fine. The permit has now been voided. If you
8 read that Northern Cheyenne decision, you will see
9 the whole history of this permit laid out very
10 nicely by Justice Morris. The Department first
11 issued Fidelity that permit, or first allowed
12 Fidelity to discharge without any permit starting
13 in 1998, coal bed methane produced water
14 discharges directly into the Tongue River starting
15 in 1998.

16 Finally in 2000, the DEQ issued a permit
17 to discharge. Chairman Russell knows a lot of
18 this history because there were two petitions to
19 establish water quality standards, one where the
20 Board finally promulgated standards in 2003,
21 numeric water quality standards for electrical
22 conductivity and sodium adsorption ratio. Another
23 petition was brought in 2005. In March of 2006,
24 the Board again promulgated or amended that rule,
25 and determined that EC and SAR are harmful

1 parameters, and that therefore nondegradation
2 review would be required.

3 The Board at that time also declined to
4 impose any kind of treatment requirements, but did
5 direct the Department of Environmental Quality to
6 come back in September of 2006 with a treatment
7 option. That never happened.

8 So the Northern Cheyenne Tribe brought
9 the case challenging Fidelity's permit in 2006.
10 The Tongue River Water Users Association, as I
11 already said, intervened, as did Northern Plains
12 Resource Council.

13 Ultimately the Montana Supreme Court
14 voided that permit because the Department did not
15 exercise its best professional judgment and
16 require treatment technology based effluent
17 limitations. That permit is now void.

18 The DEQ has recently issued that permit.
19 Comments are due on August 3rd. They're calling
20 it a reissuance of a permit, even though the
21 permit has been voided by the Montana Supreme
22 Court.

23 And if you look at the public notice and
24 you look at the statement of basis for the
25 Fidelity permits, you will see that even though

1 the Board of Environmental Review required
2 nondegradation review in its amended rule in March
3 of 2006, the Department of Environmental Quality
4 is still attempting to allow Fidelity to have a
5 permit without undergoing the rigorous
6 nondegradation review.

7 Granted, the Supreme Court in that
8 Northern Cheyenne case issued on May 18th of this
9 year did not address the issue of nondegradation
10 review, but it clearly voided the permit. So the
11 DEQ can't just reissue the permit without
12 requiring nondegradation review, and that is what
13 it appears to be.

14 Additionally, in that Supreme Court
15 order, the Montana Supreme Court remanded to the
16 DEQ for reissuance of the permit in compliance
17 with the law within ninety days. Fidelity
18 Exploration and Production Company comes back in,
19 they file a motion. Even though the remand was
20 not to Fidelity, Fidelity files a motion seeking
21 additional time to comply.

22 In reviewing, the Department said,
23 "Well, we're going to try and comply with the
24 Court's initial ninety day time frame." In that
25 order on Fidelity's motion, the Montana Supreme

1 Court said -- and that was issued on June 29th, I
2 believe, of this year. The Montana Supreme Court
3 says, "As noted by Appellants, Fidelity has
4 enjoyed the benefits derived from its now void
5 permit for several years."

6 Several years is a vast understatement.
7 Of course, the Supreme Court didn't know all of
8 the underlying background, but it did note that
9 Fidelity has been discharging without treatment
10 since 1998, and it's 2010.

11 And so the reason that I bring this up
12 at this point in time is because I don't think
13 that you've seen the last of the Fidelity permit
14 issues, unfortunately. And I would encourage you
15 all to read the opinion of the Montana Supreme
16 Court. It's the Northern Cheyenne Tribe, Tongue
17 River Water Users Association, Northern Plains
18 Resource Council, versus the Montana Department of
19 Environmental Quality and Fidelity Exploration and
20 Production Company. Again, that was issued on May
21 18th of 2010.

22 I would also encourage you to go to the
23 DEQ's website, read the statements of basis, read
24 those permits. The Department of Environmental
25 Quality is proposing to allow Fidelity a year from

1 the date the permits are issued to comply, so
2 they're going to get another year before they're
3 required to treat the water because of the
4 economics.

5 So they don't have to pay any penalty
6 for the WET Test failures, which by the way have
7 been documented since the permit was issued in
8 2006. If you'll look at that Administrative Order
9 on Consent, the discharge monitoring reports first
10 show that Fidelity was not meeting the
11 requirements of the WET Test. They were violating
12 the permits beginning in April of 2006. It's
13 constantly been in violation of its permit. It
14 doesn't have to pay any money.

15 My clients, ranchers, have to pay to
16 litigate these issues. They have paid a lot of
17 money now. Since 2000, they have been litigating
18 these issues.

19 I would ask you please to look at those
20 permits, and make comments if you feel they are
21 appropriate, because I guarantee you, you will
22 more than likely be seeing the issue of the
23 Fidelity permits again. Thank you.

24 CHAIRMAN RUSSELL: Any questions?

25 MR. WHALEN: Mr. Chairman, that kind of

1 raises an earlier question that I had to you
2 regarding the settlement of these issues that the
3 Board chooses to hear. We chose to hear this
4 Fidelity Exploration violation, and then we show
5 up at this meeting, and learn that the issue was
6 settled. Was it settled under a 41(a)
7 arrangement, Katherine?

8 MS. ORR: Mr. Chairman, it was.

9 MR. WHALEN: Does that essentially
10 preclude us from hearing the terms of the
11 settlement? Because this is really interesting
12 testimony, and it was news to me that this was
13 part of the settlement agreement. Does that mean
14 -- If it is settled under 41(a), we therefore have
15 no interest in learning about the settlement, or
16 authority to learn about the settlement; is that
17 accurate?

18 MS. ORR: I would say after it's
19 dismissed, I think you can hear about it if you
20 want; and I think the Department can voluntarily,
21 if it wants, provide the terms of the settlement.

22 MR. WHALEN: Voluntarily? We can't
23 order the Department to come and testify before
24 the Board, and identify what the terms were?

25 MS. ORR: Well, I think after it's been

1 dismissed, you can. But what I'm talking about is
2 it seems to me that in other meetings that we've
3 had -- and I'm now losing track in my mind -- that
4 the Department was going to provide the terms of
5 this stipulation or the Administrative Order on
6 Consent with the settlements. I don't know if you
7 remember that, John, but --

8 MR. NORTH: Yes, I think there was some
9 discussion along those lines, and we can certainly
10 do that. And I think the distinction here is that
11 when it's a 41(a) settlement, the parties have
12 settled the matter, and there is not a contested
13 case before the Board anymore, so the case has
14 gone away. But in terms of discussing or being
15 notified of the terms of the settlement, that's
16 something we can and will do in the future.

17 MR. LIVERS: Mr. Chairman, this is Tom
18 Livers. I would agree with John's assessment
19 there, and with Katherine's statement. And this
20 may be our oversight, because as I recall, when we
21 did provide an explanation, a briefing for the
22 Board on its authority or lack of authority under
23 41(a), it was in the context that the Board had
24 interest in seeing the terms of the settlements.

25 So we were certainly willing to do that,

1 but wanted the Board to understand that in those
2 cases, it really didn't have authority to impact
3 those terms. But I think it was in that context,
4 so I think it was our oversight for not supplying
5 settlement terms, and that's something we
6 certainly have agreed to do in the past, and can
7 do.

8 CHAIRMAN RUSSELL: I guess I have a
9 question to the bookend attorneys here then. Does
10 Montana's FOIA laws preclude any of this prior to
11 it being settled by the Board? There is
12 exclusions in the Federal act that would say these
13 types of proceedings wouldn't be releasable until
14 they be settled.

15 MR. NORTH: Well, I'll take the first
16 shot, Katherine. I think that there is no similar
17 provisions in Montana's laws, find an exclusion
18 for that, and it certainly would be public
19 information.

20 MS. ORR: And Mr. Chairman, this has
21 come up in my career anyway where there has been a
22 pending case, and there has been an information
23 request under our Constitution, and --

24 MR. LIVERS: Mr. Chairman, could I ask
25 Katherine to speak closer to the microphone,

1 please?

2 MS. ORR: Okay. This can come up where
3 there might be a public information request during
4 the course of a proceeding, and I would say that
5 as long as the request has not been advanced by a
6 party, or an adjudicating body, that that request
7 can be entertained.

8 CHAIRMAN RUSSELL: Wouldn't we be the
9 adjudicating body?

10 MS. ORR: We would be.

11 CHAIRMAN RUSSELL: I've just been doing
12 some research around FOIA, and I know that there
13 is Federal exclusions to providing information
14 during a case that's still pending.

15 MR. NORTH: And Mr. Chairman, I'm
16 talking about a case where there hasn't been a
17 stipulated settlement, so there is really no
18 longer a conflict.

19 MS. ORR: The significance of 41(a) is
20 that the parties themselves have decided to
21 withdraw from the jurisdiction of the Board, and
22 so that having been done, the Board doesn't any
23 longer have any jurisdiction to probe the terms of
24 this settlement.

25 MR. WHALEN: Mr. Chairman, if the Board

1 orders a hearing, doesn't that remove this issue
2 from that process?

3 MS. ORR: Well, I think the parties at
4 any time can say, "You, adjudicating body, we
5 don't need you anymore." Now, there is one sort
6 of exception to that that I see, which is when the
7 parties withdraw from jurisdiction of the Board,
8 they can no longer use the Board to enforce the
9 terms of their settlement.

10 MR. NORTH: Mr. Chairman, I would add I
11 agree totally with what Katherine Orr said, and
12 just point out to the Board that when you act on
13 contested cases, you're acting in a quasi-judicial
14 capacity, so you essentially derive or have the
15 same powers with regard to that case as a Court
16 has. And 41(a) is a Court rule, and the same rule
17 applies to District Courts. Once the parties have
18 resolved the issue, the Court is deprived of
19 jurisdiction.

20 And Mr. Chairman, I would also add one
21 other thing, if I might, and that is I think with
22 regard to the particular contested case that we're
23 talking about here, there may be some confusion as
24 to whether or not that was a penalty case or
25 whether it was a permit appeal, and I think that

1 the attorney whose handling that, Claudia Massman,
2 could provide some clarification on that, too.

3 CHAIRMAN RUSSELL: You didn't sit here
4 for two-and-a-half hours not to say something,
5 Claudia.

6 MS. MASSMAN: Mr. Chairman, members of
7 the Board, for the record, my name is Claudia
8 Massman, and I was the attorney that was
9 representing the Department on Fidelity's appeal.
10 But the appeal is not of an enforcement order, it
11 was an appeal of a denial to modify their permit.

12 And as Brenda explained, the permit has
13 been declared -- both permits. Fidelity has two
14 permits -- both permits were declared void by the
15 Montana Supreme Court, in which case Fidelity came
16 in, and stipulated to dismiss its appeal of a
17 permit modification because it no longer had a
18 permit.

19 And the Department was in the process of
20 complying with the Supreme Court's order to redo
21 both permits, and to look at treatment as
22 something that needed to be considered in those
23 permits. So the Department has done that. The
24 draft permits are now out, and this had nothing to
25 do -- there is no settlement agreement. It was

1 just a decision by Fidelity that they no longer
2 needed to appeal the permit modification denial.

3 The enforcement case -- and if you have
4 questions on that, Mr. Arrigo is here -- but that
5 was an Administrative Order on Consent, so that
6 never was something that the Board was involved
7 in, and that did address the WET violations.

8 MR. WHALEN: Okay.

9 CHAIRMAN RUSSELL: Thank you. Any other
10 questions for -- John.

11 MR. NORTH: Mr. Chairman, I guess I
12 would bring up one other thing, and also look at
13 Katherine at the same time. You've been urged to
14 look at the current permit, and make comments on
15 that permit. Keep in mind that if that permit
16 becomes appealed by Fidelity, that appeal will
17 come to you, and if you are on record as having
18 made comments during that comment period, I would
19 suggest that at that point you would need to
20 recuse yourself.

21 CHAIRMAN RUSSELL: The whole Board?

22 MR. NORTH: No, whichever person made
23 the comment.

24 CHAIRMAN RUSSELL: I want to recuse
25 myself right now. I really don't mean that,

1 Brenda. Why would I want to quit now? I have
2 been through the whole bloody mess.

3 MR. ANDERSON: What is the status of the
4 enforcement action right now?

5 MR. ARRIGO: Mr. Chairman, Mr. Anderson.
6 My name is John Arrigo. I'm the Administrator of
7 the Enforcement Division.

8 And the permit program identified
9 violations of the Fidelity permit. They detected
10 acute toxicity in their discharge based upon the
11 WET Test. There is no numerical limit for whole
12 effluent toxicity. There is a prohibition in the
13 permit that says there shall be no acute toxicity.
14 Failing the test means they have acute toxicity in
15 the discharge.

16 We notified Fidelity that we thought
17 these were violations, and we offered them an
18 Order on Consent to resolve them. We calculated
19 and assessed a penalty in the neighborhood of
20 \$42,000 for the violations, but we suspended the
21 penalty pending their performance of certain
22 activities. The national guidance requires that
23 if you have WET failures, you're supposed to try
24 and identify the constituent in the discharge that
25 is causing the toxicity, and then develop a plan

1 to correct those problems.

2 We suspended the penalty on the
3 condition that they perform those studies. They
4 had performed some studies in the past in response
5 to the violations, but we didn't think they were
6 definitive enough, so the Order on Consent
7 required them to do it again. In fact, we made
8 them do it a third time.

9 The issue is that Fidelity believes that
10 total dissolved solids is causing the toxicity in
11 the discharge. They're probably right, but we
12 were trying to have them find out -- Total
13 dissolved solids is a bunch of constituents --
14 which, if any of those, individual constituents
15 that make up TDS are the toxic parameter. They
16 did a variety of studies, and we couldn't really
17 determine exactly what it was. There is some
18 suspicion that it might be bicarbonate, but we
19 don't know for sure.

20 So they've completed those studies, and
21 then they proposed a plan on how to address the
22 TDS concentration. They are treating part of
23 their discharge, but they blend it with some
24 untreated wastewater, and they wanted to modify
25 that blending to meet a concentration of TDS that

1 would not cause any WET failures.

2 They applied for a permit amendment to
3 incorporate that change in the treatment and
4 blending into their permit. The Department denied
5 that permit modification. They appealed that.
6 They've since withdrawn that appeal.

7 After the Supreme Court decision, and
8 after they completed all of their studies, we
9 decided that they had complied with the
10 requirements of the Order on Consent, and had
11 fulfilled all of those requirements, so we have
12 closed that order. So the enforcement action and
13 penalty are done.

14 CHAIRMAN RUSSELL: Questions for John?

15 (No response)

16 CHAIRMAN RUSSELL: Thanks, John. Any
17 further questions?

18 (No response)

19 CHAIRMAN RUSSELL: Any other member of
20 the audience that would like to speak to us before
21 we adjourn?

22 MS. LINDLIEF-HALL: Mr. Chairman,
23 members of the Board, if I may. I would just like
24 to redact that statement that I made about making
25 comments, cueing off John North's comment. Please

1 don't comment. But I do ask that you go and read
2 those draft permits. Thanks.

3 CHAIRMAN RUSSELL: Thanks, Brenda. All
4 right. Seeing no other member of the audience
5 that would like to speak to us, I will entertain a
6 motion to adjourn.

7 MR. MILLER: So moved.

8 CHAIRMAN RUSSELL: It's been moved by
9 Marvin. Is there second?

10 MR. WHALEN: Second.

11 CHAIRMAN RUSSELL: It's been seconded by
12 Joe. Comments before -- Seeing none, all those in
13 favor, signify by saying aye.

14 (Response)

15 CHAIRMAN RUSSELL: Opposed.

16 (No response)

17 CHAIRMAN RUSSELL: All right. We are
18 adjourned.

19 (The proceedings were concluded

20 at 11:30 a.m.)

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

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 102 - pages contain a
true record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal
this day of , 2010.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2012.