



1           WHEREUPON, the following proceedings were  
2 had:

3                           \* \* \* \* \*

4           CHAIRMAN RUSSELL: It's 9:07, and I will  
5 call this regular meeting of the Board of  
6 Environmental Review to order. I believe that all  
7 Board members are present except for Bill Rossbach  
8 at this time. And so the first item on the agenda  
9 is to review and approve the minutes of the  
10 October 3rd teleconference regular meeting. I'm  
11 sure everyone has reviewed that. Do I have a  
12 motion to approve?

13           MS. WITTENBERG: Joe, I did get one  
14 change sent to me via email. It is a  
15 typographical error. I will make that change. I  
16 don't have that in front of me, but it was an  
17 error.

18           CHAIRMAN RUSSELL: A grammatical error?

19           MS. WITTENBERG: Yes. I'll change that.

20           CHAIRMAN RUSSELL: Do I have a motion to  
21 accept and approve the minutes as they will be  
22 amended with a grammatical error that was  
23 submitted to Joyce?

24           MR. MIRES: So moved. This is Larry.

25           CHAIRMAN RUSSELL: It's been moved by

1 Larry. Is there a second?

2 MR. SKUNKCAP: This is Gayle. Second.

3 CHAIRMAN RUSSELL: I'll take Gayle  
4 second. Any further questions?

5 (No response)

6 CHAIRMAN RUSSELL: Hearing none, all  
7 those in favor, signify by saying aye.

8 (Response)

9 CHAIRMAN RUSSELL: Opposed.

10 (No response)

11 CHAIRMAN RUSSELL: Motion carries. The  
12 next item on the agenda is the meeting schedule  
13 for 2009. We were briefed on this a couple  
14 meetings ago, were we not, Tom?

15 MR. LIVERS: Mr. Chairman, members of  
16 the Board, for the record, this is Tom Livers with  
17 Department. We brought it up briefly. I don't  
18 think we had proposed the dates at the last  
19 meeting. But John has developed some draft dates  
20 there. We wanted to get them out to you so you  
21 had a chance to check them against your calendars.  
22 To the extent that you -- at least on the close  
23 ones, you know whether you've got potential  
24 conflicts.

25 But as usual, we have kind of oriented

1     them around some of the rule deadlines from the  
2     Secretary of State's Office.  There is some  
3     flexibility on ability to move them, but it's  
4     pretty standard in terms of the schedule you've  
5     seen in past years.

6             MR. MIRES:  This is Larry.  And I looked  
7     at that closely, and checked my calendars, and I  
8     have three of them that -- two of them are iffy,  
9     but if they're held by phone conference, we can  
10    accomplish them.  But July 31st is a definite no.  
11    I can do the 24th of July or August 7th.

12            CHAIRMAN RUSSELL:  How about everyone  
13    with 24th?

14            MS. KAISER:  I'm good with that.

15            MR. SKUNKCAP:  This is Gayle.  That's  
16    fine.

17            CHAIRMAN RUSSELL:  The 24th would work  
18    for me.  Anyone else have any comments?

19            MS. KAISER:  I have a comment about the  
20    January date.  I would prefer to move that to the  
21    week earlier, if possible, which would be the  
22    23rd.

23            MR. MIRES:  This is Larry.  I would  
24    concur with that.

25            CHAIRMAN RUSSELL:  That's fine with me

1 also.

2 MR. MIRES: That's one of my iffy ones.

3 MS. SHROPSHIRE: I don't have any  
4 conflicts.

5 CHAIRMAN RUSSELL: I don't have any  
6 life, so I guess I'm good.

7 OPERATOR: -- is joining the meeting.

8 CHAIRMAN RUSSELL: Who just joined?

9 MS. PALAGI: This is Linda Palagi. I'm  
10 with the Department of Commerce, Energy Division.

11 CHAIRMAN RUSSELL: So are there any  
12 other -- Larry, do you have one more that might --

13 MR. MIRES: The March 27th one I could  
14 -- if that's a phone conference, I could do it.  
15 Otherwise I'm probably going to be in D.C.

16 MR. LIVERS: This is Tom. I think  
17 regardless of whether we end up with a  
18 teleconference or a face-to-face meeting, we could  
19 certainly patch you in by telephone.

20 MR. MIRES: That would be the only one  
21 that I have -- the only other one that I had a  
22 conflict or an iffy with.

23 MR. LIVERS: That tends to be the most  
24 problematic. I know John has to check several  
25 spring break schedules to find what days are going

1 to work. So I guess what I'm hearing is we're  
2 looking to move the January meeting one week  
3 earlier to the 23rd, and the July meeting one week  
4 earlier to the 24th.

5 CHAIRMAN RUSSELL: Can you just hold on  
6 for one second? I've got to check for one other  
7 conflict that I might have. I guess that would be  
8 better, the 23rd would be better, because I would  
9 have a conflict that next week anyway. So are we  
10 going to stick with the March date?

11 MR. NORTH: Both spring breaks, the  
12 Kalispell and Helena are both on the week of April  
13 6th.

14 MR. LIVERS: That works for us. John  
15 was just pointing out that Helena and Kalispell  
16 spring breaks are the week of April 6th, but we'll  
17 make whatever works for the Board's schedule.

18 CHAIRMAN RUSSELL: With that in mind,  
19 Larry, are you okay getting patched in on the  
20 27th?

21 MR. MIRES: Yes, unless we're having --  
22 if it's a real contentious issue that requires a  
23 face-to-face, that would be the only place that  
24 would be an issue there. Other than that, a  
25 conference call could work quite well.

1           MR. LIVERS: Mr. Chairman, this is Tom.  
2    What I would recommend is, based on discussion,  
3    why don't we go with the 27th. If something comes  
4    up that suggests we should try to find an  
5    alternate date, we'll know that at the next  
6    meeting. We can do that sometime before that  
7    time. From our end, we'll work to avoid any  
8    briefing items that might have Power Point or  
9    other media, and we can just avoid those at that  
10   meeting.

11           CHAIRMAN RUSSELL: So I will entertain a  
12   motion to accept the calendar as submitted with a  
13   January 23rd date instead of the 30th, and a July  
14   24th date instead of the 31st. Do I have a  
15   motion?

16           MS. KAISER: This is Heidi. I'll so  
17   move.

18           CHAIRMAN RUSSELL: It's been moved by  
19   Heidi. Is there second?

20           MS. SHROPSHIRE: I'll second it.

21           CHAIRMAN RUSSELL: It's been moved and  
22   seconded. Gayle, are you okay with it?

23           MR. SKUNKCAP: Right now. I don't have  
24   my calendar for July.

25           CHAIRMAN RUSSELL: Let's move on, and if

1 we have some big conflicts, we might have to  
2 resolve them at the next meeting.

3 Hearing no more, all those in favor,  
4 signify by saying aye.

5 (Response)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response)

8 CHAIRMAN RUSSELL: Motion carries.

9 MR. LIVERS: Mr. Chairman, if I could  
10 before we go forward, just a couple things. First  
11 on the meeting schedule, we are at this point  
12 anticipating a face-to-face meeting in January.  
13 It will not be at the Capitol where we have moved  
14 for these teleconferences. During the legislative  
15 session, we'll be meeting back at the Department  
16 of Environmental Quality. So the next couple  
17 meetings, the January and May meetings, will be at  
18 DEQ.

19 And during the legislative session,  
20 obviously we may have some conflicts, but we'll  
21 make sure the meetings are staffed.

22 And one other agenda item for today.  
23 Actually before we leave this, Katherine did just  
24 point out that we gave you a choice on December  
25 4th or 11th. I don't know if there was a

1 preference on the Board's part there.

2 CHAIRMAN RUSSELL: That's a long ways  
3 away.

4 MR. MIRES: Either will work for me.  
5 This is Larry.

6 MR. LIVERS: We can hold off if you  
7 would like, and final that at the next meeting,  
8 unless you want to go ahead and lock in a date  
9 now.

10 CHAIRMAN RUSSELL: Can you just put it  
11 on your calendar to check with us on that?

12 MR. LIVERS: Sure. We'll do that. Then  
13 switching gears, one of our new contested cases, I  
14 think it's III(C)5, 6, and 7, the three involving  
15 the Montana Alberta Tie Limited line, we do have  
16 some people who are calling in regarding that  
17 case, and rather than leave them on the hook for  
18 the entire morning or the unpredictability of  
19 later in the agenda --

20 OPERATOR: Michelle McCormick is joining  
21 the meeting.

22 MR. LIVERS: We had just suggested that  
23 we would be taking up that item approximately  
24 9:30. I know a couple of the folks who have come  
25 on I think are on for that agenda item, and then

1 we're anticipating some landowners as well from  
2 the Petitioners will be calling in sometime in the  
3 neighborhood of 9:30. So what I would request,  
4 with the Board's permission, is once those folks  
5 are on the phone, at the next opportunity we just  
6 switch to that agenda item.

7 CHAIRMAN RUSSELL: Works for me. We'll  
8 just leave it up to you to intervene there then,  
9 Tom.

10 MR. LIVERS: Okay. That sounds good.  
11 Thank you.

12 CHAIRMAN RUSSELL: The next item on the  
13 agenda are the briefings by Katherine regarding  
14 the contested cases.

15 MS. ORR: Good morning, members of the  
16 Board. Most of these are self explanatory, but  
17 I'd be glad to entertain any questions that you  
18 might have.

19 There is one change that I wanted to  
20 note for the Board, and Item II(A)(1)(i) regarding  
21 the Eastgate Water and Sewer Association of Helena  
22 Sand and Gravel, the parties have asked for a stay  
23 in this case to allow them to resolve their  
24 differences. This is one of the cases where the  
25 Board had retained jurisdiction except for the

1 prehearing logistical matters, and so I just  
2 recently received that request for a stay, and  
3 would be inclined to grant it. So that's what's  
4 happening there.

5 There was a motion to dismiss filed by  
6 the Department, and that has been fully briefed,  
7 but now the parties have asked for a stay, so I  
8 take that as a good sign that they're working on  
9 resolving their differences.

10 On Item II(A)(1)(1), which involves the  
11 Open Cut Mining Act and Helena Sand and Gravel,  
12 there was a scheduling order that went out, and  
13 discovery is to be completed by today. And that's  
14 another case that is before the Board. I'm not  
15 sure where the parties are with that, but I just  
16 thought I'd mention that.

17 I will use the Board hearing on the 23rd  
18 if any of these cases before the Board need to be  
19 brought up insofar as an actual schedule for the  
20 hearing. Now that I know the Board's schedule, I  
21 think I'll be inclined to set those hearings, if  
22 any, for probably the March 27th meeting.

23 CHAIRMAN RUSSELL: Okay. Thanks,  
24 Katherine. The next item on the agenda is  
25 initiation of rulemaking. We have in front of us

1 the Department request to make amendments to the  
2 Public Water Supply and Wastewater System Rules.  
3 Tom.

4 MR. LIVERS: Thanks, Mr. Chairman.  
5 We're going to be briefed on that this morning by  
6 Todd Teegarden, Chief of the Technical and  
7 Financial Assistance Bureau in our Planning,  
8 Prevention, and Assistance Division. Todd.

9 MR. TEEGARDEN: Chairman Russell,  
10 members of the Board, I am Todd Teegarden, Bureau  
11 Chief of the Technical Financial Assistance Bureau  
12 in the Planning Division of the Department of  
13 Environmental Quality. I manage the Drinking  
14 Water State Revolving Fund and Water Pollution  
15 Revolving Fund programs which provide funding and  
16 technical assistance to public water and  
17 wastewater facilities in Montana.

18 As the Department representative, we  
19 request approval of amendments to the Public Water  
20 Supply and Wastewater System Rules to, one, amend  
21 the existing rules to make them consistent with  
22 2007 federal categorical exclusion rules regarding  
23 categorical exclusion for environmental reviews  
24 for eligible water pollution control state  
25 revolving fund projects; and two, adopt a new rule

1 to allow for categorical exclusions for  
2 environmental review for eligible drinking water  
3 State revolving fund projects, and non-SRF public  
4 drinking water and public wastewater projects.

5 The affected rules are ARM 7.40.318,  
6 which are the WPCRF rules, and 17.38.101, which is  
7 the public water supply rules. This rule affects  
8 owners of public water systems and public sewage  
9 systems. Example of these systems include cities,  
10 towns, water and sewer districts, subdivisions,  
11 mobile parks, businesses, and schools.

12 These amendments will provide  
13 consistency and efficiencies within the Department  
14 on MEPA reviews that meet the federal definition  
15 of a categorical exclusion requirement. Examples  
16 of projects are water and sewer extensions within  
17 community existing right-of-ways in previously  
18 disturbed areas, water and sewer main replacement  
19 projects, and minor unit process improvements of  
20 community water and wastewater treatment  
21 facilities.

22 We plan to present our proposed  
23 amendments to the Public Water Supply Focus Group  
24 on December 18th at their quarterly meeting for  
25 their input and comments. If you'd like

1 additional information on the specific criteria, I  
2 am available to discuss and answer questions.

3 Thank you.

4 CHAIRMAN RUSSELL: Thanks, Todd. Any  
5 questions for Todd?

6 MR. MIRES: This is Larry. This rule  
7 change, how does it, or how would it, or would it  
8 affect the contested case that we have coming up  
9 for us coming up on the agenda? Which I think is  
10 Blue Cloud or something, that has something to do  
11 with the water system issue. Does this affect  
12 them in any way, shape, or form?

13 MR. LIVERS: Larry, this is Tom. Could  
14 you repeat which contested case? We had some  
15 interference.

16 MR. MIRES: It would be C(1), which is  
17 the Moose Lodge No. 639 in Helena. And they have  
18 appealed some kind of a hearing on their public  
19 water system. Does this rule change affect them  
20 in any way?

21 MR. LIVERS: Mr. Chairman, Mr. Mires,  
22 this is Tom. No, it does not.

23 CHAIRMAN RUSSELL: I just have a general  
24 question regarding having a rule exclude something  
25 from the MEPA. Is that okay?

1 MR. LIVERS: If I understand your  
2 question, Mr. Chairman, it's putting in rulemaking  
3 to exclude something from the law? Is that kind  
4 of the crux of --

5 CHAIRMAN RUSSELL: That's kind of my  
6 gist, yes.

7 MR. LIVERS: Well, I think John North  
8 will tackle that one.

9 MR. NORTH: Mr. Chairman, members of the  
10 Board, John North, Chief Legal Counsel with the  
11 Department. The MEPA rules themselves, which were  
12 adopted shortly after MEPA was passed, provide  
13 that an agency may provide for a categorical  
14 exclusion from the requirement to prepare an EA or  
15 an EIS, and the rules provide that the agency may  
16 do it either by doing a programmatic Environmental  
17 Assessment or impact statement to support it, or  
18 by adopting a rule, and this follows the latter  
19 provision. So it's a concept that's already  
20 incorporated into the MEPA rules.

21 CHAIRMAN RUSSELL: All right. I didn't  
22 know that.

23 MS. SHROPSHIRE: This is Robin. Could I  
24 ask a question? If we initiate rulemaking, could  
25 that topic still come up, or do we need to decide

1 that at this point in terms of exclusion of MEPA  
2 for this?

3 CHAIRMAN RUSSELL: I think it could  
4 become part of the record if someone wants to  
5 challenge that.

6 MR. LIVERS: Mr. Chairman, this is Tom.  
7 Ms. Shropshire, is your question the whole  
8 validity of categorical exclusions? Is that the  
9 topic you're referring to?

10 MS. SHROPSHIRE: Right. In terms of the  
11 scope of the rulemaking, do we need to decide that  
12 now, or how does that impact the rulemaking in the  
13 future?

14 MR. LIVERS: I'd say -- and I'll defer  
15 to an attorney if they want to elaborate on this  
16 -- but there is ample precedence for categorical  
17 exclusions. This isn't really new ground. It's  
18 just defining another area where there is a  
19 relatively straight forward process, and a move to  
20 streamline that. So we're really not charting new  
21 territory here.

22 MS. ORR: If I might -- this is  
23 Katherine. I agree with Joe. I think that in  
24 response to Robin's question, any questions about  
25 the appropriateness of the rule, or the scope, or

1 compliance with MEPA can be brought up during the  
2 rulemaking process.

3 OPERATOR: Mike Koenig is joining the  
4 meeting

5 MS. SHROPSHIRE: That's what I wanted to  
6 confirm.

7 CHAIRMAN RUSSELL: With all that  
8 prompting, I'm sure that the testimony provided by  
9 the Department will address that. Any further  
10 questions for the Department?

11 (No response)

12 CHAIRMAN RUSSELL: Katherine, are you  
13 able to hear this?

14 MS. ORR: Yes, I am.

15 CHAIRMAN RUSSELL: Great. I would  
16 entertain a motion to initiate rulemaking, and  
17 appoint Katherine the Hearings Examiner for this  
18 matter. I know you're all looking around the room  
19 for someone to make the motion.

20 MR. MIRES: Larry will make the motion.

21 CHAIRMAN RUSSELL: Is there a second?

22 MS. KAISER: I'll second. This is  
23 Heidi.

24 CHAIRMAN RUSSELL: It's been moved and  
25 seconded. Any further discussion?

1 (No response)

2 CHAIRMAN RUSSELL: Hearing none, all  
3 those in favor, signify by saying aye.

4 (Response)

5 CHAIRMAN RUSSELL: Opposed.

6 (No response)

7 CHAIRMAN RUSSELL: Motion carries.

8 Thanks, Tom and Todd, for your briefing. And the  
9 next item on the agenda is executive summary for  
10 action on rule initiation. The Department  
11 requests the Board to initiate rulemaking to amend  
12 a rule to exclude Subpart HHHH, incorporation by  
13 reference in CFR Part 6 of State law. Tom.

14 MR. LIVERS: Mr. Chairman, Deb Wolfe is  
15 here to present a briefing on this item.

16 MS. WOLFE: Good morning, Chairman  
17 Russell and members of the Board. My name is  
18 Debra Wolfe, and I'm a planner with the Air  
19 Resources Management Bureau. I'm here today to  
20 represent the Department regarding the initiation  
21 of rulemaking in the matter of the amendment of  
22 ARM 17.8.102(2) to exempt 40 CFR Part 60 Subpart  
23 HHHH from incorporation by reference into State  
24 law.

25 We'd like the Board to consider the

1 proposal to specifically exempt from the  
2 incorporation by reference 40 CFR Part 60 Subpart  
3 HHHH, which establishes a scheme for regulating  
4 atmospheric emissions of mercury under a national  
5 trading program.

6 The US Court of Appeals for the Circuit  
7 Court for the District of Columbia vacated Subpart  
8 HHHH on February 8, 2008. Failure to exempt  
9 Subpart HHHH jeopardizes the appropriate  
10 implementation of Montana's mercury control  
11 program by imposing dates for certain activities  
12 that conflict with deadlines in Montana's Air  
13 Quality Permit Program.

14 Existing mercury emitting sources that  
15 are required to file an application for a Montana  
16 air quality permit to comply with Montana's  
17 mercury emission regulations face a requirement  
18 under the now vacated subpart HHHH to install,  
19 certify, and operate mercury monitoring  
20 requirement equipment by January 1, 2009, which is  
21 before their Montana air quality permit would  
22 impose Montana's deadlines and guidelines for the  
23 same requirements.

24 The Department has prepared for the  
25 Board's consideration a draft notice of the

1 proposed amendment. The Department recommends  
2 that the Board initiate rulemaking, schedule a  
3 date for hearing, appoint a presiding officer to  
4 conduct the hearing as described in the proposed  
5 MAR Notice. Thank you.

6 CHAIRMAN RUSSELL: Thanks, Deb.

7 Questions from the Board?

8 (No response)

9 CHAIRMAN RUSSELL: Katherine, are you  
10 able to hear this?

11 MS. ORR: Yes, I am.

12 CHAIRMAN RUSSELL: We usually don't  
13 schedule for a hearing. You have to do that.

14 MS. ORR: Right.

15 CHAIRMAN RUSSELL: So we won't put that  
16 Deb asked us part.

17 MS. WOLFE: That's my error. I'm sorry,  
18 Mr. Chairman, members of the Board.

19 CHAIRMAN RUSSELL: It just had me  
20 confused, and it's not that hard. I will  
21 entertain a motion to initiate rulemaking and  
22 appoint Katherine Orr the Hearings Officer.

23 MR. LIVERS: Mr. Chairman, I should have  
24 caught this on the last item, too. But before you  
25 do that, there are some people in the audience. I

1 don't know that anyone is here for this item, but  
2 you may want to see if there is public comment on  
3 this item.

4 CHAIRMAN RUSSELL: Is there anyone out  
5 in the audience or that has joined us on the  
6 telephone that would like to comment on this?

7 (No response)

8 MR. LIVERS: Apparently not.

9 CHAIRMAN RUSSELL: Thanks, Tom.

10 MS. SHROPSHIRE: I have a question. The  
11 part that refers to install and certify monitoring  
12 equipment by January 1, 2009. If we don't  
13 initiate rulemaking, would individuals be out of  
14 compliance on that date?

15 MS. WOLFE: Mr. Chairman, members of the  
16 Board, I actually have Hoby Rash available. He's  
17 our technical specialist that would be in charge  
18 of the compliance regarding this particular issue,  
19 and so I'd ask that Hoby Rash would answer that  
20 question.

21 MR. RASH: Good morning. My name is  
22 Hoby Rash. I'm a Compliance Inspector in the Air  
23 Resources Management Bureau. And I think the  
24 answer to your question is technically yes, those  
25 facilities would be out of compliance with that

1 requirement because we are still including that by  
2 reference in our Montana rule.

3           So what we would hope to do is because  
4 these facilities must also apply for a permit by  
5 January 1st, that we would include monitoring  
6 provisions in those permits probably by about  
7 March of next year, so at that time, then both  
8 sets of regulations would be essentially the same  
9 requiring those monitoring provisions for the  
10 facilities.

11           OPERATOR: Chris Stephens is joining the  
12 meeting.

13           CHAIRMAN RUSSELL: So Hoby, I guess I  
14 have a question regarding that. The literal  
15 regulation, will there be a void in requirements  
16 to comply?

17           MR. RASH: Between January 1st of 2009  
18 and the dates that those monitors are required by  
19 their air quality permits, yes, technically there  
20 would be.

21           CHAIRMAN RUSSELL: Does that concern the  
22 Department?

23           MR. RASH: As a practical matter, no,  
24 because most of the facilities that are applicable  
25 facilities under these regulations are already

1 working on installing their monitoring equipment.  
2 So with I think just one exception, those monitors  
3 are in process of being certified even now.

4 CHAIRMAN RUSSELL: Based on our mercury  
5 rule.

6 MR. RASH: Yes, and based on the fact  
7 that there was some confusion about which set of  
8 regulations apply, so most of them have gone ahead  
9 and initiated some actions to try and take some  
10 compliance steps anyway.

11 CHAIRMAN RUSSELL: Robin, does that  
12 address your concern?

13 MS. SHROPSHIRE: I think so. It seems  
14 like we're a bit behind the eight ball here, but I  
15 think it does address my concern.

16 CHAIRMAN RUSSELL: We have our rule in  
17 place.

18 MR. RASH: Correct.

19 CHAIRMAN RUSSELL: Okay. Any further  
20 questions for Hoby, or Deb, or Tom, or John, or --  
21 I could go down the list.

22 (No response)

23 CHAIRMAN RUSSELL: Hearing none, I would  
24 entertain a motion -- I already did that. I will  
25 call. All those in favor of initiating rulemaking

1 and appointing Katherine, signify by saying aye.

2 MR. LIVERS: Mr. Chairman, I think I  
3 interrupted you before you had a motion, as you  
4 were starting to call for a motion. I don't think  
5 we've got one on the table yet.

6 CHAIRMAN RUSSELL: Then I will call for  
7 a motion to initiate rulemaking based on the  
8 notice submitted, and appoint Katherine the  
9 Hearings Examiner. Is there a motion?

10 MS. KAISER: So moved. This is Heidi.

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

13 MS. SHROPSHIRE: I'll second it.

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

16 (No response)

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

19 (Response)

20 CHAIRMAN RUSSELL: Opposed.

21 (No response)

22 CHAIRMAN RUSSELL: Motion carries.  
23 Thank you. The next item on the agenda is summary  
24 for rule adoption.

25 MR. LIVERS: Mr. Chairman, I would

1 recommend at this time -- I think we have most of  
2 the parties on the line regarding the contested  
3 cases (C)5, 6, and 7, so maybe we could move to  
4 that item.

5 CHAIRMAN RUSSELL: I will do that. We  
6 are going to move new contested cases on appeal,  
7 the matter of the Montana Alberta Tie Transmission  
8 Line. Katherine, do you want to kick us off here?

9 MS. ORR: Sure. I'd be glad to. The  
10 Board received three appeals of the issuance of a  
11 certificate, a certification under the Major  
12 Facilities Siting Act, and there are three  
13 different appellants, and those are listed in  
14 five, six, and seven. They each have a little bit  
15 different basis for appeal, and I think there is  
16 going to be a question about putting this on an  
17 expedited track, the appeals, that is.

18 And also, as you know, the Board must  
19 decide whether it wants to hear these cases  
20 itself, or whether it wants to delegate to a  
21 Hearing Officer such as me the responsibility to  
22 take these cases to hearing.

23 And what you might do is we could first  
24 address Item 5, which is the appeal by Jerry McRae  
25 and Katrina Wilson Martin. I don't know if

1 they're represented by Counsel today, or if in  
2 fact there has been discussion among Counsel about  
3 a consolidation of these cases, and if there is a  
4 spokesman. So what you might do is ask our  
5 Department attorney Ed Hayes about that.

6 CHAIRMAN RUSSELL: You're kind of  
7 breaking up, Katherine, so I didn't catch maybe  
8 your last three sentences.

9 MS. ORR: What I was mentioning is the  
10 Department attorney Ed Hayes is here, and he might  
11 have spoken with Counsel for all three cases to  
12 indicate to the Board whether there is a request  
13 to have these consolidated.

14 CHAIRMAN RUSSELL: We'll go to Ed if he  
15 -- (inaudible) -- be there.

16 MR. HAYES: Chairman Russell, other  
17 members of the Board. This is Ed Hayes with the  
18 Department of Environmental Quality. And I did  
19 speak with the each of Appellants yesterday  
20 regarding -- just to facilitate their  
21 participation in the meeting, and I at least  
22 raised the issue of whether these appeals should  
23 be consolidated into one case or not. That wasn't  
24 really before the Board, so I really didn't try to  
25 reach an agreement with any of the parties on

1 that, but I think that is something we will  
2 discuss with them.

3 MS. ORR: I guess for the purposes of  
4 this morning, is there a spokesman for all three  
5 cases, or how shall we handle --

6 MR. HAYES: I don't think there is a  
7 spokesman. Mr. McRae and Ms. Martin are actually  
8 here present, and I understand, I heard the other  
9 two Appellants announce themselves on -- they're  
10 listening in on the conference.

11 CHAIRMAN RUSSELL: I know I'm trying to  
12 keep up here, but what is the basis of the appeal  
13 in No. 5? Do we have that?

14 MS. ORR: Well, we have a very scant  
15 record of it. Just basically an objection to the  
16 issuance of the certificate. It's an appeal of  
17 Findings No. 3 and 11 of the certificate of  
18 compliance.

19 CHAIRMAN RUSSELL: Got it. There is  
20 nothing that mentions how they're -- (inaudible)  
21 -- affected.

22 MS. ORR: I'm sorry. You're breaking up  
23 a little.

24 CHAIRMAN RUSSELL: Is there something  
25 that states how the -- (inaudible) -- affected?

1 MS. ORR: Joe, do you mind repeating  
2 that one more time.

3 CHAIRMAN RUSSELL: Is there something in  
4 the record that states how they're adversely  
5 affected?

6 MS. ORR: No, there is not. And I guess  
7 that would be up to, say, Department Counsel to  
8 address the need for some sort of fleshed out  
9 notice of what's contained in the appeal.

10 CHAIRMAN RUSSELL: All right. I don't  
11 know if anyone else is having problems, but  
12 Katherine is cutting out, and apparently I am  
13 also.

14 MR. MIRES: I'm having the same problem.

15 MR. SKUNKCAP: I'm having the same  
16 problems. This is Gayle.

17 CHAIRMAN RUSSELL: I guess we'll just  
18 have to bear with it. We can't call --  
19 (inaudible) --

20 MR. LIVERS: Mr. Chairman, if you'd like  
21 to take a brief recess, we've got a lot of people  
22 connecting now, so I'm a little reluctant to do  
23 that, but we could see if we could get some  
24 technical staff from the building here, and see if  
25 they can help us with the sound.

1           CHAIRMAN RUSSELL:  Why don't we keep  
2 moving.  Maybe you could send someone to find --  
3 someone that might be able to help us.  So --  
4 (inaudible) --

5           MS. ORR:  So the first thing to discuss,  
6 I guess, is whether the Board wants to have  
7 jurisdiction of this case itself.

8           MR. MIRES:  This is Larry.  In light of  
9 the urgency that this thing needs to move forward,  
10 I question whether the Board can actually listen  
11 to the entire thing, and if it wouldn't be in the  
12 Appellant's best interests, as well as MATL's best  
13 interests, if this was turned over to a Hearing  
14 Officer that could expedite the hearings to  
15 accommodate the needs of MATL as well as the  
16 Appellants.  Because looking at everybody's  
17 schedule, from what I heard earlier this morning,  
18 I think it's going to be a bit of a challenge to  
19 throw this thing into a rather bit of a tail spin,  
20 and I don't think that's what we want to  
21 accomplish.

22           CHAIRMAN RUSSELL:  I concur with Larry.  
23 Anyone else want to chime in on that?

24           MS. KAISER:  I agree.

25           CHAIRMAN RUSSELL:  Another agree from

1 Heidi. I know we're taking some sort of a roll  
2 call. I guess it's public. Robin, do you have  
3 any --

4 MS. SHROPSHIRE: I'm not opposed to  
5 doing that.

6 CHAIRMAN RUSSELL: How about you, Gayle?

7 MR. SKUNKCAP: No, I'm not.

8 CHAIRMAN RUSSELL: Running up towards  
9 your country. Okay. With that, Katherine, just  
10 another thought. Do we want to handle each of  
11 these separately? If they want this expedited,  
12 they've got to congeal, don't they? I know that's  
13 not a legal term, pretty gross thoughts. But I  
14 mean they have to get together if they're going to  
15 expedite this.

16 MS. ORR: Mr. Chairman, it would  
17 certainly make things easier if these were  
18 consolidated. To me, it's up to the parties  
19 whether they want to do that. There may be some  
20 parties who are not as interested in an expedited  
21 schedule. I guess I'd urge them to consolidate,  
22 and if they don't, I don't think I would press it.

23 CHAIRMAN RUSSELL: But you would make  
24 that clear to them that it would probably expedite  
25 it if all three were combined.

1 MS. ORR: Right.

2 MR. MIRES: This is Larry. In my  
3 reading of what I'm seeing on these things, it  
4 appears to me that all three of them have a basic,  
5 same, similar theme, and that is diagonal crossing  
6 of agricultural property. Unless I'm misreading  
7 that, that seems to be the general disagreement on  
8 the permit issue. Is that correct, Katherine?

9 MS. ORR: Yes, with the exception of the  
10 Appellants Jerry McRae and Katrina Martin. They  
11 are also objecting to other items in Item 3,  
12 minimization of adverse environmental impacts. So  
13 their scope may be a little bit broader. We don't  
14 know yet.

15 MR. MIRES: I don't know. That one  
16 seems to me like that was addressed in the permit  
17 itself and the process, and I have a little bit of  
18 a problem with that one, but that's all right. I  
19 still recommend that they would consolidate into  
20 one appeal so we could expedite it on their  
21 benefit and everybody's benefit.

22 CHAIRMAN RUSSELL: I agree with you, but  
23 that's up to the parties, and so all we can do is  
24 handle each of these individually. And I think  
25 from what I heard from you, Larry, and others,

1 certainly the best way we can expedite it is to  
2 assign this to Katherine, and let her do that work  
3 that she does.

4 MR. MIRES: I would so move.

5 CHAIRMAN RUSSELL: It's been moved. Is  
6 there a second? And this is just on the matter of  
7 -- the first matter, No. Subpart 5. Is there a  
8 second?

9 MS. SHROPSHIRE: Second.

10 CHAIRMAN RUSSELL: It's been moved and  
11 seconded. Don, I haven't heard from you. Are you  
12 okay, Don? This is up in your country, too. Are  
13 you okay?

14 MR. MARBLE: Yes.

15 CHAIRMAN RUSSELL: With that, all those  
16 in favor, signify by saying aye.

17 (Response)

18 CHAIRMAN RUSSELL: Opposed.

19 (No response)

20 CHAIRMAN RUSSELL: Motion carries  
21 unanimously. Next one, Katherine.

22 MS. ORR: Mr. Chairman, members of the  
23 Board, this is an appeal by Chris Stephens.

24 OPERATOR: Chantelle McCormick is  
25 leaving the meeting.

1 MS. ORR: I don't know if Mr. Stephens  
2 has Counsel who would like to address the Board  
3 this morning. But as Larry was saying, the basis  
4 for the objection to this appeal is the use of  
5 diagonal crossings of cropland, much like the  
6 appeal in Item 7. So maybe the Board would like  
7 to also just now go to the question of whether I  
8 should hear that case, unless there is Counsel  
9 here representing Mr. Stephens.

10 CHAIRMAN RUSSELL: Is there someone who  
11 would like to speak on behalf of Mr. Stephens, or  
12 maybe Mr. Stephens?

13 MR. STEPHENS: This is Chris Stephens.  
14 I have no Counsel representing me at this time.

15 CHAIRMAN RUSSELL: That doesn't mean you  
16 can't talk, Chris.

17 MR. STEPHENS: (Inaudible)

18 CHAIRMAN RUSSELL: He stated that he  
19 does not have Counsel at this time.

20 MS. ORR: And at this time, we don't  
21 really need to hear from Mr. Stephens. If he  
22 wants to move either the Board or the Hearing  
23 Examiner for an expedited schedule, he can do that  
24 after the Board has made its decision this  
25 morning, and address himself either to the Board

1 or the Hearing Examiner to request that.

2 CHAIRMAN RUSSELL: That's basically the  
3 only thing he can ask is for the Board to hear it.

4 MS. ORR: Right.

5 CHAIRMAN RUSSELL: It doesn't sound like  
6 -- I haven't heard anything.

7 MR. MIRES: This is Larry. I would  
8 repeat what I said earlier on this issue, and also  
9 on seven. I think all three of them are -- to  
10 move them along, I think we need to go to  
11 Katherine, if she can do it, and expedite them.

12 CHAIRMAN RUSSELL: With that, I would  
13 entertain a motion to appoint Katherine the  
14 permanent Hearings Examiner for the appeal by Mr.  
15 Stephens, and also by Michael Koenig. Do I have a  
16 motion?

17 MR. MIRES: If nobody will, I will.  
18 This is Larry.

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

21 MS. SHROPSHIRE: I'll second it.

22 CHAIRMAN RUSSELL: It's been seconded by  
23 Robin. Any further discussion?

24 MS. KAISER: Does Katherine have time?

25 CHAIRMAN RUSSELL: I'm sure --

1 Katherine, you have time, don't you?

2 MS. ORR: I can make time.

3 CHAIRMAN RUSSELL: Thanks, Katherine.

4 With that, all those in favor, signify by saying  
5 aye.

6 (Response)

7 CHAIRMAN RUSSELL: Opposed.

8 (No response)

9 CHAIRMAN RUSSELL: Motion carries.

10 Okay. Thank you for the folks that joined us on  
11 the phone and in person on this matter, and we'll  
12 get back to our regular --

13 MR. LIVERS: Mr. Chairman, there is one  
14 more, Item 7.

15 CHAIRMAN RUSSELL: I think we combined  
16 it.

17 MR. LIVERS: Oh, did you? I'm sorry.  
18 My mistake.

19 CHAIRMAN RUSSELL: I mentioned Koenig.  
20 That was the Appellant on that one. We didn't  
21 combine it. We combined the motion. Okay. Let's  
22 get back to --

23 MR. LIVERS: Mr. Chairman, before we go  
24 further, to see if we can resolve some of this  
25 interference problem. We may have a problem with

1 cell phone connections. So if we could get anyone  
2 on a cell phone to maybe temporarily disconnect  
3 and try logging in again, we can see if that might  
4 help out a little.

5 CHAIRMAN RUSSELL: That's a good idea.

6 MR. SKUNKCAP: This is Gayle. I'm off.

7 OPERATOR: -- is leaving the meeting.

8 MS. SHROPSHIRE: This is Robin. I'll  
9 call back and ---

10 OPERATOR: Gayle is leaving the meeting.

11 CHAIRMAN RUSSELL: Did you notice that?

12 MR. LIVERS: Sound better on this end.

13 OPERATOR: Robin is leaving the meeting.

14 CHAIRMAN RUSSELL: Make sure all phones  
15 are off the hook so they can't get back on. Don't  
16 tell them I said that.

17 MR. LIVERS: It's already on the record.

18 CHAIRMAN RUSSELL: It was kind of funny.

19 MR. LIVERS: As did Helena Civic  
20 Television.

21 CHAIRMAN RUSSELL: Oh, that's great.  
22 Well, they can't tell how red my face is then.

23 MR. LIVERS: That might be a problem.  
24 It sure sounds better on this end.

25 CHAIRMAN RUSSELL: I'm guessing it was

1 Gayle's. It just sounded like digital  
2 interference.

3 MR. LIVERS: So do you want to take just  
4 a short break while we're waiting for them to  
5 reconnect?

6 CHAIRMAN RUSSELL: Maybe we need to call  
7 them. I'm going to go grab a little coffee  
8 because I need to get my titer up just a little  
9 higher. I'll be right back.

10 OPERATOR: Robin Shropshire is joining  
11 the meeting.

12 MR. LIVERS: That sounds better. Thank  
13 you. We're just taking a short break, waiting for  
14 Gayle to come back on, too. He may not be in a  
15 place where he's got a land line alternative.

16 CHAIRMAN RUSSELL: I'm guessing not.

17 MR. LIVERS: I tried to make it clear we  
18 weren't asking him to leave the meeting, but just  
19 try logging in again, so we'll try calling him if  
20 we don't hear soon.

21 (Recess taken)

22 CHAIRMAN RUSSELL: Let's go ahead and  
23 get back on it then. We have -- I've only got  
24 about twenty things open on my desktop now.

25 MR. LIVERS: We're in "B" on --

1 CHAIRMAN RUSSELL: 3(B)(1)?

2 MR. LIVERS: Yes.

3 CHAIRMAN RUSSELL: This is the executive  
4 summary for rule adoption. The Department  
5 requests approval of amendments to the Public  
6 Water Supply Rules to amend circular PWS5, adopt a  
7 new rule to clarify requirements, amend existing  
8 rules to clarify residual monitoring, and a few  
9 other things. Tom, you have probably have someone  
10 from the --

11 OPERATOR: Mike Koenig is leaving the  
12 meeting. Chris Stephens is leaving the meeting.

13 MR. LIVERS: Mr. Chairman, Eugene  
14 Pizzini is here to speak to this rulemaking.

15 MR. PIZZINI: Chairman Russell, members  
16 of the Board, for the record, my name is Eugene  
17 Pizzini. I'm the Public Water Supply Section's  
18 Rule Manager.

19 On August 8th, 2008, the BER initiated  
20 rulemaking to amend public water supply rules. On  
21 September 17th, 2008, Katherine Orr conducted a  
22 public hearing on the proposed amendments. At the  
23 time of the hearing, Montana Rural Water System,  
24 on behalf of some of its members, offered both  
25 verbal and written comment.

1           The vast majority of their comments  
2 related to the proposed changes to the Department  
3 Circular PWS5. PWS5 is the document that  
4 describes the process used by the Department to  
5 make GWUDISW determinations. Systems and the  
6 Department are very aware of the potential impacts  
7 to systems and the system users based on the  
8 outcome of these determinations.

9           At the time of the public hearing, it  
10 became very clear from the oral comments given  
11 that there was a misunderstanding as to the effect  
12 of the proposed changes. In fact, many of the  
13 commenters were asking questions as opposed to  
14 making comment. Immediately after the hearing,  
15 the Department held a question and answer session  
16 with the commenters.

17           In response to comments received during  
18 the comment period, the Department has provided  
19 the Board with draft responses which you have  
20 before you. The statement of reasonable necessity  
21 seems to have created the majority of the interest  
22 and confusion on the proposed changes. The  
23 consternation was probably caused by language used  
24 in the statement of reasonable necessity that  
25 stated that preliminary assessment is not a final

1 determination, and that a determination may be  
2 changed at any time. Although these statements  
3 are correct, some clarification in addition to  
4 that given in the responses may be in order.

5           This language caused systems to believe  
6 that the Department was going to require every  
7 source to start over in the determination process.  
8 This is incorrect. The Department only intends to  
9 make changes to previous determinations when  
10 additional information indicates that something  
11 has altered the source, requiring further  
12 assessment. The requirement to review any surface  
13 water determination has been with us since the  
14 surface water treatment rule guidance document was  
15 published.

16           The clarifications to PWS5 were deemed  
17 necessary in response to an interaction between  
18 the Department and a regulated system. This  
19 system has a well located fifteen feet from a lake  
20 in a fractured bedrock system. At some point a  
21 preliminary assessment form was completed that  
22 stated that the source passed and was listed as  
23 groundwater. For various reasons, the adequacy of  
24 that determination was questioned by the  
25 Department, and the system was notified that

1 further assessment was necessary.

2 The system responded by saying that the  
3 Department had no authority to require additional  
4 testing as the source had already been classified  
5 as groundwater. It appears that this system  
6 believed that a one time determination removed  
7 them from any further questions as to the quality  
8 of their source of water. Upon reviewing PWS5 and  
9 the PA form, it appeared that language could be  
10 misleading in that regard, and the Department  
11 proposed language for clarification.

12 Common sense, as well as the EPA's  
13 guidance document, dictate that source  
14 determinations must be reviewed to assure that a  
15 source's users are protected. Even wells that are  
16 miles from the closest surface water source have  
17 the potential for surface water contamination due  
18 to degradation or failure of the constructed  
19 source, not the mention geological changes.

20 This information was given during the  
21 question and answer question after the public  
22 hearing closed. When the question and answer  
23 session ended, three of the systems that attended  
24 and gave oral comment stated to me that had they  
25 had this information before, they would not have

1 driven to Helena or made comment.

2 The Department believes that the  
3 proposed responses of comments received adequately  
4 addressed those comments, and recommends that the  
5 Board adopt the proposed changes as amended during  
6 the comment period. Thank you.

7 CHAIRMAN RUSSELL: Thanks, Gene. Is  
8 there any comments before we turn this over to  
9 Katherine, the presiding Hearing Officer?

10 MR. LIVERS: There may also be public  
11 comment on this one, Mr. Chairman.

12 CHAIRMAN RUSSELL: Let's take that  
13 public comment now before we turn it over to  
14 Katherine. Is there anyone in the audience there  
15 or on the phone that would like to speak to this  
16 matter before the Board makes a determination?

17 MR. WADE: Mr. Chairman, this is Steve  
18 Wade. I'm here on behalf of Montana Rural Water  
19 Systems. It is an organization of over 400  
20 systems throughout Montana. And as you'll see in  
21 your packet, we commented extensively on the rule,  
22 and we would like to comment, and just reiterate  
23 that we think the changes to PWS5 are making the  
24 process more complex, creating more uncertainty  
25 with the systems, potentially be more expensive.

1           And we would ask that the guidance  
2 document PWS5 that is well guidance is being  
3 incorporated into a rule be sent back to the  
4 Department for them to involve stakeholders, and  
5 go through it with their stakeholders to come out  
6 with a product that works for everybody. We  
7 appreciate the opportunity to talk to the Board.

8           CHAIRMAN RUSSELL: Anyone else?

9           (No response)

10           CHAIRMAN RUSSELL: -- (inaudible)  
11 regarding Mr. Wade's comment, so that there is  
12 Department responses to those. Tom?

13           MR. LIVERS: Yes, Mr. Chairman. Hang on  
14 just a second, please. Response to Steve's  
15 comments?

16           MR. PIZZINI: No.

17           MR. LIVERS: We don't have a response to  
18 that, Mr. Chairman. This is Tom. Again, we think  
19 that some of the initial concern came from a  
20 misunderstanding, and I think we've been able to  
21 clear it up, and our sense is that we really are  
22 ready to go forward with this.

23           MR. PIZZINI: Chairman Russell, members  
24 of the Board, this is Gene Pizzini again. As I  
25 said at the end of my testimony, the Department

1 believes that we have adequately responded to  
2 comments, and we would like to move forward with  
3 this.

4           The document that Montana Rural Water  
5 System and the systems used to make their comments  
6 is a guidance document created by EPA, that when  
7 EPA told states that they had to make these  
8 determinations, they didn't just say, "You have to  
9 make the determinations," they said, "Here is one  
10 way you can do it.

11           Specifically in that document, it tells  
12 a state that it's the state's responsibility to  
13 determine what information it needs to make that  
14 decision, and it's the system's responsibility to  
15 supply it.

16           And I guess we are not looking at these  
17 changes as being a complete rewrite of PWS5. The  
18 majority of the changes in there are things where  
19 we're changing "will," for example, to be the word  
20 "may." If you look at like the preliminary  
21 assessment form, I believe it's Item 5 or 6, it  
22 says, "System fails will pass if corrections are  
23 made." That "will" is what got us in trouble.

24           The source that I was talking about did  
25 not have a sanitary seal on it. The preliminary

1 assessment form was marked, "If you correct that,  
2 you will be classified as groundwater." They put  
3 the sanitary seal on the well, it was changed to  
4 groundwater, and then we have fecal hits in the  
5 well, which is what triggered the further  
6 analysis.

7 So I guess we're not looking at this as  
8 changing the way the Department is doing business.  
9 The intent of these changes are to clarify to  
10 systems that when we make these determinations,  
11 they're at that point in time; but if we come back  
12 a week later, or a year later, or five years  
13 later, and there's something that has changed  
14 that's putting system users at risk, we're going  
15 to make a further determination.

16 CHAIRMAN RUSSELL: Well, from a  
17 professional perspective and someone who has dealt  
18 with this issue of groundwater under the  
19 influence, I'm grateful that you're doing what  
20 you're doing, because I think there is a few  
21 systems up here that years ago we tried to get --  
22 when it first came around, we tried to get them in  
23 that category, and really the criteria weren't  
24 there to do that. And you could almost see the  
25 interconnectivity in a few of them.

1           MR. PIZZINI: Chairman Russell, members  
2 of the Board, one further comment. I believe that  
3 the Department has reviewed or has made available  
4 for comment PWS5 on three different occasions to  
5 the focus group, which is a group of regulated  
6 entities, contract operators, counties, engineers,  
7 and basically we use them as a sounding board for  
8 these changes. Montana Rural Water is party to  
9 that focus group as well.

10           So over the initiation and the proposal  
11 to make these changes, they have had numerous  
12 opportunities to comment and work with the  
13 Department.

14           CHAIRMAN RUSSELL: Thanks, Gene. Is  
15 there any other member of the Board have any  
16 follow up questions before we -- I'm guessing  
17 there is no one else at the podium that wants to  
18 speak from the public or the regulated community.

19           MR. LIVERS: That's correct, Mr.  
20 Chairman.

21           CHAIRMAN RUSSELL: It looks like the  
22 Department had a lot of -- (inaudible) -- to make,  
23 and I believe they -- (inaudible) -- for the  
24 Board.

25           With that, I will entertain a motion to

1 amend the before stated rules, adopt the presiding  
2 officer report, adopt the HB311 or the stringency  
3 and the takings requirements, and the response to  
4 comments. Is there a motion?

5 (No response)

6 CHAIRMAN RUSSELL: If I could make a  
7 motion, I would have done it already.

8 MR. MIRES: It must be the weather that  
9 has everybody's tongue tied up. I'll go ahead and  
10 make the motion so we can move forward.

11 CHAIRMAN RUSSELL: Is there a second?

12 MS. KAISER: I'll second.

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

15 (No response)

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

18 (Response)

19 CHAIRMAN RUSSELL: Opposed.

20 (No response)

21 CHAIRMAN RUSSELL: Hearing no  
22 opposition, the motion carries unanimously.

23 The next item on the agenda -- I think  
24 we are on to new contested cases on appeal.  
25 Katherine.

1 MS. ORR: Mr. Chairman, members of the  
2 Board, the first item, Item (C)(1) involves the  
3 Loyal Order of the Moose here in Helena that is  
4 deemed to be a supplier of water and a transient  
5 non-community water system. The allegations in  
6 the notice of violation, which is now being  
7 appealed, concern the failure to monitor monthly.  
8 The Loyal Order of the Moose missed three months,  
9 and also failed to report the fact that they  
10 failed to monitor for the three months. And the  
11 monitoring is for a total toll of coliform  
12 bacteria, and the penalty sought is \$772.

13 CHAIRMAN RUSSELL: Does anybody have  
14 questions? I'm not going to ask. It seems  
15 interesting they just fell off the earth. They've  
16 been a public water supply for awhile. No comment  
17 necessary.

18 Katherine, if we appoint this to you,  
19 and you learn their secret hand shake, could you  
20 tell us?

21 MS. ORR: I'm not sure that's under my  
22 jurisdiction, but maybe informally I could find  
23 out.

24 CHAIRMAN RUSSELL: I will entertain a  
25 motion to appoint Katherine the permanent Hearings

1 Examiner for this matter.

2 MR. SKUNKCAP: This is GAyle. I'll make  
3 that motion.

4 CHAIRMAN RUSSELL: Is there a second?

5 MS. SHROPSHIRE: Second.

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

9 (Response)

10 CHAIRMAN RUSSELL: Opposed.

11 (No response)

12 CHAIRMAN RUSSELL: The next one, Dutton  
13 Public School System.

14 MS. ORR: Mr. Chairman, members of the  
15 Board, this involves a school district that is now  
16 a hybrid Dutton/Brady School District. It  
17 involves a 10,000 gallon underground storage tank,  
18 and an operating permit.

19 There was a notice of violation issued  
20 because there were no leak detection monitoring  
21 records, and there was a failure to conduct  
22 release detection monitoring, and the penalty  
23 sought is \$1,445.

24 CHAIRMAN RUSSELL: Any questions for  
25 Katherine?

1           MR. MIRES: I just have a comment. In  
2 reading the Superintendent's comments on this, it  
3 raises some real concerns, and it kind of goes  
4 along with another one that's coming up in the  
5 future. And if his comments are correct in any  
6 way, shape, or form relating to the Department and  
7 wanting accuracy, but yet they don't have all of  
8 the correct information on who is the  
9 superintendent and everything, his comments in  
10 here don't -- they're a little disturbing to me as  
11 to what's going on on this particular issue, but I  
12 would certainly like to see this thing resolved.

13           And I'm referencing the superintendent's  
14 final comments in regards to the DEQ obligating to  
15 maintain accurate records, but their records are  
16 so far out of date, like ten years, and their  
17 addresses and everything is wrong, yet we're  
18 coming back and ostracizing somebody. And just  
19 knowing how school systems operate on these kinds  
20 of things and maintenance personnel, there was no  
21 doubt that they were monitoring it, but the well  
22 is dry. I have some weird thoughts here. I'll  
23 quit.

24           CHAIRMAN RUSSELL: Thanks for your  
25 comments. Any other comments? I'm sure that

1 Katherine's record will -- (inaudible) --

2 MS. AMDAHL: Mr. Chairman, members of  
3 the Board, this is Jane Amdahl, and I'm a staff  
4 attorney with the Department. I just wanted to  
5 very briefly respond to the prior comment that is  
6 having to do with records being up to date.

7 The Department keeps the address, names  
8 of contacts, and so on, that are provided to them  
9 by the permittee, and it's the permittee's  
10 obligation to advise us if any of that information  
11 changes. So I would just ask that the Board keep  
12 that in mind when looking at the matters in this  
13 case.

14 CHAIRMAN RUSSELL: Thanks, Jane. I  
15 would take a motion to -- Katherine, we're going  
16 to dump on you, at least for the time being.

17 MS. ORR: That's fine. What I'll do is  
18 I'll just clear my schedule to the best of my  
19 ability.

20 CHAIRMAN RUSSELL: Do I have a motion to  
21 appoint Katherine the permanent Hearings Examiner  
22 for this matter?

23 MS. KAISER: So moved.

24 CHAIRMAN RUSSELL: It's been moved.  
25 That must have been Heidi?

1 MS. KAISER: Yes.

2 CHAIRMAN RUSSELL: Is there a second?

3 MR. MARBLE: Second by Don.

4 CHAIRMAN RUSSELL: Second by Don. All  
5 those in favor, signify by saying aye.

6 (Response)

7 CHAIRMAN RUSSELL: Opposed.

8 (No response)

9 CHAIRMAN RUSSELL: Okay. Next item on  
10 the agenda -- I'm having trouble navigating today.  
11 The next item on the agenda is the matter of  
12 violations of the Montana Septic Disposal and  
13 Licensure laws by Missoula Septic Service, Inc.,  
14 Missoula County. Katherine.

15 MS. ORR: Mr. Chairman, members of the  
16 Board, this involves the septic disposal and  
17 licensure laws, and a septic cleaning and disposal  
18 license that expired on December 31st of 2007, and  
19 it was renewed on July 12th of 2008; but in that  
20 interim there was a disposal of septage, and  
21 cleaning of cesspools and septic tanks without a  
22 license, and there is a per day violation amount,  
23 that then adds up to the requested administrative  
24 penalty of \$21,450.

25 CHAIRMAN RUSSELL: That's more than the

1     guy that dumped septage right into the Flathead  
2     River had to pay. Any questions of Katherine?  
3     Any questions for the Department that are of  
4     natures not delving into the case?

5             (No response)

6             CHAIRMAN RUSSELL: Hearing none,  
7     Katherine, once again, let's entertain a motion to  
8     appoint Katherine the permanent Hearings Examiner  
9     for this.

10            MR. MARBLE: Don moves.

11            CHAIRMAN RUSSELL: Is there a second?

12            MR. SKUNKCAP: Second. This is Gayle.

13            CHAIRMAN RUSSELL: Seconded by Gayle.  
14     Any further discussion?

15            MS. KAISER: This is Heidi. I agree  
16     with you, Joe. It seems fairly steep. It --  
17     (inaudible) -- operate without a permit, but I  
18     guess it was six months. But it still seems  
19     pretty steep to me.

20            CHAIRMAN RUSSELL: It's interesting that  
21     something like that could go on in a county, but  
22     I'm sure that the Department has reason to move  
23     forward.

24            MR. LIVERS: Mr. Chairman, we can speak  
25     to that now if you'd like.

1           CHAIRMAN RUSSELL: Well, the septic  
2 pumpers are kind of an interesting group. I  
3 wouldn't mind hearing why the Department --

4           MS. KAISER: I would also.

5           MR. ARRIGO: Mr. Chairman, members of  
6 the Board, this is John Arrigo, Administrator of  
7 the Enforcement Division.

8           And without getting into the specifics  
9 of either of the cases, the case you referred to,  
10 as far as the pumper dumping into the river in the  
11 Flathead region, I believe that was one day of  
12 violation. And if you recall from our penalty  
13 calculation rules, we start with the base penalty,  
14 and then the big multiplier is the number of days  
15 of violation. And in the Missoula septic case,  
16 there were months of violations. So that's the  
17 large inflater in this penalty calculation.

18           CHAIRMAN RUSSELL: I understood that,  
19 John. I did hear that.

20           MR. ARRIGO: It is also the first time  
21 the Department has exercised its administrative  
22 penalty enforcement authority which we obtained  
23 two sessions ago from the Legislature. Normally  
24 we'd have to go to court to get a penalty.

25           CHAIRMAN RUSSELL: Thanks, John.

1 Anything else for John?

2 (No response)

3 CHAIRMAN RUSSELL: Hearing none, as much  
4 as I'd like to wallow around in this one, I'd  
5 rather entertain a motion to appoint Katherine the  
6 permanent Hearings Examiner.

7 MR. LIVERS: You already have a motion  
8 on the table, Mr. Chairman. I think we're ready  
9 to call.

10 CHAIRMAN RUSSELL: It's been moved and  
11 seconded to appoint Katherine the permanent  
12 Hearing Examiner. All those in favor, signify by  
13 saying aye.

14 (Response)

15 CHAIRMAN RUSSELL: Opposed.

16 (No response)

17 CHAIRMAN RUSSELL: We are on to Item 8.

18 MR. LIVERS: Four, Mr. Chairman.

19 CHAIRMAN RUSSELL: Four. Sorry.

20 MS. ORR: Mr. Chairman, members of the  
21 Board, this involves two 6,000 gallon UST's, and  
22 two 8,000 gallon UST's. It comes from an appeal  
23 of a notice of violation in which the allegations  
24 are: One, there was a failure to conduct release  
25 detection monitoring, no records there; a failure

1 to provide corrosion protection; a failure to  
2 obtain compliance inspection; and operating UST's  
3 without an operating permit and operating tags.  
4 And the requested penalty is \$4,573.

5 CHAIRMAN RUSSELL: Thanks. Terrible  
6 feedback again. Any questions of the Board?

7 MR. MIRES: This is Larry. My comments  
8 kind of reflect back with my previous comment, and  
9 I appreciate the DEQ's situation they have in  
10 dealing with -- (inaudible) -- people out there.  
11 I know everyone was trying to take advantage of  
12 bureaucracy as much as possible. But I also know  
13 as a first time business venture, you buy a  
14 business such as this particular one, has the one  
15 stop licensing, and go through the frustration  
16 that you people have gone through to make sure  
17 that you have those kind of things, only to find  
18 out that there is a whole bunch more things that  
19 you have to accomplish.

20 I don't have an answer for it other than  
21 the fact that in dealing with this, I think that  
22 has to be given a great deal of consideration. In  
23 dealing in Montana, how do we help businesses get  
24 started, make sure that they follow the rules and  
25 regulations, and left out in the cold; but at the

1 same time, I don't think we need to be penalizing  
2 people for trying to start businesses when we have  
3 so many regulations that -- Starting up a new  
4 business, it's damn tough to realize all of the  
5 issues, and I realize you've got to do your due  
6 diligence.

7 But many times we get buried in all of  
8 the rules and regulations of all of the different  
9 agencies and government entities that exist, and  
10 it's overwhelming at certain points. As an  
11 economic development person, I have the privilege  
12 to wallow in that -- (inaudible) -- basis. Even  
13 for us it's difficult knowing exactly what has to  
14 happen.

15 So whatever the decision we make in  
16 this, and I would certainly hope that we would  
17 take that into consideration on the dispensation.

18 The other one is the comment that these  
19 folks make in regards to the agency individual  
20 that they dealt with, they reference them being  
21 rude. And I can certainly understand his point in  
22 dealing with young businesses, because sometimes  
23 the public is just as rude. But as agency people,  
24 we have to remember always that regardless of how  
25 rude the public is to us, we have a certain degree

1 professionalism we have to maintain, and not fall  
2 into that trap. And I just offer those comments.  
3 Thank you, sir.

4 CHAIRMAN RUSSELL: Thanks. I'm getting  
5 that terrible feedback again. We can get this one  
6 done, and then if one of the final new contested  
7 cases on appeal is going to take some discussion,  
8 I think we need to clear that up, because I'm  
9 having a lot of trouble hearing everything that's  
10 said.

11 MS. KAISER: So am I.

12 MR. MIRES: So am I.

13 MR. LIVERS: Mr. Chairman, it seems to  
14 get worse over time. So maybe you can dispense  
15 with this item, we can take a break, have Mr.  
16 Skunkcap disconnect, reconnect -- and I would  
17 encourage him to reconnect. And it seems like we  
18 have kind of a grace period where we can almost  
19 get some work done without interference. We're  
20 closing in on the end of the agenda, so that would  
21 be my recommendation.

22 CHAIRMAN RUSSELL: I think that's a  
23 great recommendation. Let's go ahead, and if  
24 Katherine doesn't object, I would entertain a  
25 motion to appoint Katherine the Hearing Examiner

1 for this UST matter.

2 MR. MIRES: This is Larry, and I would  
3 so move.

4 CHAIRMAN RUSSELL: It's been moved. Is  
5 there a second?

6 MR. MARBLE: Second.

7 CHAIRMAN RUSSELL: It's been seconded.  
8 That was Don?

9 MR. MARBLE: Yes.

10 CHAIRMAN RUSSELL: All those in favor,  
11 signify by saying aye.

12 (Response)

13 CHAIRMAN RUSSELL: Opposed.

14 (No response)

15 CHAIRMAN RUSSELL: Let's take a quick  
16 break for a couple minutes, and Gayle, if you  
17 would get off and reconnect, and then we'll get on  
18 to the rest of the agenda.

19 MR. SKUNKCAP: Okay.

20 CHAIRMAN RUSSELL: Robin, I may ask you  
21 to do the same thing. It's just some digital  
22 feedback, is what it is. Let's give it a go.

23 MS. SHROPSHIRE: I'll wait to see if  
24 Gayle logging off changes it. If not, I'll hang  
25 up, too.

1                   CHAIRMAN RUSSELL:  Let's go right now  
2   then.

3                                   (Recess taken)

4           (Ms. Shropshire and Mr. Skunkcap not present).

5                   OPERATOR:  Abigail Dillen is joining the  
6   meeting.

7                   MR. LIVERS:  I don't know if we need a  
8   quick roll call, given the fact that we're right  
9   on the border of a quorum, just to make sure that  
10  everybody's still with us and here.

11                  CHAIRMAN RUSSELL:  I think that's wise.  
12  I kind of thought the same thing.

13                  MR. LIVERS:  I'll just do a run down  
14  real quickly, if I could.  Joe.

15                  CHAIRMAN RUSSELL:  Yes.

16                  MR. LIVERS:  Heidi.

17                  MS. KAISER:  I'm here.

18                  MR. LIVERS:  Don.

19                  MR. MARBLE:  Here.

20                  MR. LIVERS:  Larry.

21                  MR. MIRES:  Here.

22                  MR. LIVERS:  Okay.  We're good to go.  
23  Thank you very much.

24                  CHAIRMAN RUSSELL:  I'm sure John is  
25  already churning on the fact that -- (inaudible)

1 -- majority of the Board.

2 MR. LIVERS: We were aware of it. It  
3 could depend on a particular vote, but we do have  
4 a quorum at least to proceed.

5 CHAIRMAN RUSSELL: Thanks. We are on to  
6 Item 8, the matter of appeal of the request for  
7 hearing to -- no. The USDA Forest Service  
8 Northern Region contesting the air quality permit  
9 fee.

10 MS. ORR: Mr. Chairman, members of the  
11 Board --

12 OPERATOR: Gayle is joining the meeting.

13 MS. ORR: Mr. Chairman, members of the  
14 Board, on Item 8 involving the USDA Forest Service  
15 appeal, they are appealing a fee assessment, and  
16 this is under ARM 17.8.511. The letter that they  
17 wrote is fairly self-explanatory. The source of  
18 the dispute has to do with whether the assessment  
19 was based on actual usage as opposed to estimated  
20 usage.

21 CHAIRMAN RUSSELL: Okay. Thanks. Any  
22 questions for Katherine?

23 (No response)

24 CHAIRMAN RUSSELL: You mentioned  
25 estimated. I'm not going to -- never mind.

1 Katherine, we're going to dump this one  
2 on you, too, probably.

3 MS. ORR: Okay.

4 CHAIRMAN RUSSELL: Do I have a motion to  
5 appoint Katherine the permanent Hearings Examiner?

6 MS. KAISER: So moved.

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

9 MR. MIRES: Second.

10 CHAIRMAN RUSSELL: Seconded by Larry.  
11 All those in favor, signify by saying aye.

12 (Response)

13 CHAIRMAN RUSSELL: Opposed.

14 (No response)

15 CHAIRMAN RUSSELL: Motion carries. The  
16 next item on the agenda, the last actual new  
17 contested case, is the matter of the appeal and  
18 request for hearing by the Montana Environmental  
19 Information Center, Centers for Clean Energy,  
20 Sierra Club, National Park Conservation  
21 Association, of the Southern Montana Electric  
22 Generation and Transmission Cooperative, Highwood  
23 Generating Station air quality permit. Katherine.

24 MS. ORR: Yes, Mr. Chairman, members of  
25 the Board. This appears to be an appeal of the

1 permit that was issued on November 26th of this  
2 year. And we don't have the affidavit yet to know  
3 what the basis of the appeal is, but the first  
4 order of business is for the Board to decide  
5 whether it will hear this case itself.

6 CHAIRMAN RUSSELL: Okay. That's kind of  
7 a question, isn't it?

8 MS. ORR: Yes, it is.

9 CHAIRMAN RUSSELL: The Board members  
10 present, how do you feel about that?

11 MS. KAISER: I have a question. If we  
12 don't have the affidavit providing the background  
13 for the appeal, why is it even an agenda item?

14 CHAIRMAN RUSSELL: Well, that's a good  
15 question, and I think the -- Katherine, I'm not  
16 going to -- this is a legal question. I shouldn't  
17 answer it.

18 MS. ORR: Well, I would say the appeal  
19 has been submitted, and then now it has to be  
20 documented by December 10th. And it is true the  
21 Board doesn't have before it now a very good idea  
22 of how extensive the appeal will be.

23 So if you wanted to take this up again  
24 in January to determine whether you will hear it,  
25 that's fine. I guess what I'd recommend is that

1 the Board reserve it to itself as the forum before  
2 which this will be heard, and that just like last  
3 time, you allow me to handle prehearing matters.  
4 And there probably will be more filings before the  
5 January 23rd meeting which I can take up, or if  
6 need be, bring it to the Board.

7 CHAIRMAN RUSSELL: I like that. I do  
8 want to echo Heidi that it would have been nice to  
9 see the affidavit attached so we knew what we were  
10 getting into, and I don't want to wait until the  
11 next hearing because there is an effect of us not  
12 doing anything until then.

13 So I would entertain a motion to allow  
14 the Board to reserve the right to hear this  
15 matter, but appoint Katherine our officer to take  
16 care of any prehearing matters that come before  
17 the Board that aren't at a scheduled meeting. Is  
18 there a motion?

19 MR. MIRES: I have a question. If we do  
20 that, what does that do to SME as far as their  
21 construction on the project? Does that stop  
22 everything that they can do from moving forward?

23 CHAIRMAN RUSSELL: Procedurally, Larry,  
24 I wonder if we should get a motion on the table  
25 before we --

1           MR. MIRES: In that case, then I will  
2 make the motion.

3           CHAIRMAN RUSSELL: Is there a second?

4           MS. KAISER: Can I ask a question. I  
5 guess I'm a little confused with the motion. You  
6 didn't make a motion to actually have the Board  
7 hear this, you just --

8           CHAIRMAN RUSSELL: No. I just reserved  
9 the right to hear it, and appoint Katherine our  
10 agent in all matters --

11          MS. KAISER: Okay.

12          CHAIRMAN RUSSELL: -- relating to this.

13          MS. KAISER: I'll second then.

14          CHAIRMAN RUSSELL: It's been moved and  
15 seconded. Larry, your question?

16          MR. MIRES: In this process on this  
17 appeal, does this stymie SME from moving forward  
18 on construction of the project? Because it seems  
19 to me that they were up against some deadlines,  
20 that they had to do some construction prior to a  
21 certain date, or they would lose an air quality  
22 permit. Is this just a move to stop them from  
23 being able to move forward?

24          CHAIRMAN RUSSELL: I thought they  
25 actually moved some earth this summer.

1           MR. MIRES: They did, and I think they  
2 got slapped because they did move some earth. Is  
3 that correct, Tom?

4           MR. LIVERS: Mr. Chairman, Mr. Mires,  
5 there are two questions on the table. Let me  
6 first address your earlier question about: Will  
7 this stymie or stop anything? Only if the Board  
8 had grounds and saw a need to issue a stay would  
9 that affect construction. So no, in answer to  
10 your first question.

11           Your second question, we did encounter,  
12 in our opinion on inspection, construction prior  
13 to a permit taking effect, so we did have a  
14 violation that we moved on.

15           MR. MIRES: I just don't want to be  
16 creating more problems for them in that process if  
17 it can be avoided, but I'll stand where I'm at.

18           CHAIRMAN RUSSELL: I don't know how we  
19 can dump any more problems on this.

20           MR. MIRES: No.

21           CHAIRMAN RUSSELL: Any other questions?

22           MS. KAISER: What is going to happen  
23 between now and our next meeting as far as  
24 Katherine is concerned? She will be receiving  
25 more information?

1 MS. ORR: Mr. Chairman, Heidi, I think,  
2 without knowing for sure, there will be an  
3 affidavit submitted supporting the appeal, and I  
4 will probably issue a prehearing order to have the  
5 parties submit a schedule for the hearing process.  
6 There might be possibly some motions maybe for an  
7 expedited hearing or whatever, and I would report  
8 on those to the Board on January 23rd.

9 CHAIRMAN RUSSELL: Would it be  
10 appropriate to get that affidavit as soon as it's  
11 filed?

12 MS. ORR: That can be done.

13 CHAIRMAN RUSSELL: I would like that.

14 MR. MIRES: So would I.

15 CHAIRMAN RUSSELL: Any further questions  
16 for our attorney, Katherine, or any other?

17 (No response)

18 CHAIRMAN RUSSELL: We have a motion on  
19 the table to basically not turn this over to a  
20 Hearings Examiner, but have Katherine act on our  
21 behalf concerning matters and interim things  
22 between Board meetings. Any further discussion on  
23 that?

24 (No response)

25 CHAIRMAN RUSSELL: Hearing none, all

1 those in favor, signify by saying aye.

2 (Response)

3 CHAIRMAN RUSSELL: Opposed.

4 (No response)

5 CHAIRMAN RUSSELL: I've got to make  
6 sure. Did everyone vote in the affirmative on  
7 that?

8 (Response)

9 CHAIRMAN RUSSELL: So that motion  
10 carried unanimously, and there is five of us, so I  
11 guess we're in good shape.

12 We're on to final actions on contested  
13 cases then.

14 MS. ORR: Mr. Chairman, members of the  
15 Board, the first one is a water quality case in  
16 which there was a challenge to some terms of a  
17 Montana groundwater pollution and MPDES permit by  
18 Plum Creek, and Plum Creek has withdrawn its  
19 appeal, and the dismissal order reflects that.

20 CHAIRMAN RUSSELL: Thanks. I do have an  
21 order dismissing based on the Appellant's request.  
22 Do I have a motion to authorize the Board Chair to  
23 sign?

24 MS. KAISER: So moved.

25 CHAIRMAN RUSSELL: It's been moved by

1 Heidi. Is there a second?

2 MR. SKUNKCAP: Second. This is Gayle.

3 CHAIRMAN RUSSELL: Seconded by Gayle.

4 All those in favor, signify by saying aye.

5 (Response)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response)

8 CHAIRMAN RUSSELL: The last item,  
9 Katherine.

10 OPERATOR: Abigail is leaving the  
11 meeting.

12 MS. ORR: Mr. Chairman, members of the  
13 Board, this involves an air quality matter,  
14 Livingston Sand and Gravel, a failure to pay  
15 annual air quality operation fee. And there is an  
16 administrative order on consent, and there is a  
17 proposed order of dismissal taking care of the  
18 question of payment of the fee.

19 CHAIRMAN RUSSELL: Do you know what the  
20 payment was?

21 MS. ORR: I believe it was the amount of  
22 the penalty that was assessed.

23 CHAIRMAN RUSSELL: Like \$440?

24 MS. ORR: \$1,508.33, I think.

25 CHAIRMAN RUSSELL: So I have in front of

1 me an order of dismissal, and I need a motion to  
2 authorize the Board Chair to sign.

3 MR. SKUNKCAP: This is Gayle. I'll make  
4 the motion.

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

7 MR. MIRES: Second.

8 CHAIRMAN RUSSELL: It's been moved and  
9 seconded. All those in favor, signify by saying  
10 aye.

11 (Response)

12 CHAIRMAN RUSSELL: Opposed.

13 (No response)

14 CHAIRMAN RUSSELL: Motion carries.

15 We're on to general public comment. Anyone on the  
16 phone or in Helena that would like to speak to the  
17 Board regarding any matters that the Board has  
18 jurisdiction upon?

19 MR. LIVERS: We do have someone here,  
20 Mr. Chair.

21 MR. STIMAC: Mr. Chairman, I'm Ole  
22 Stimac (phonetic) with Central Labor Council.

23 I grew up in the neighborhood of  
24 Riverview in Great Falls in the 1960s, and at that  
25 time there were probably three to one children to

1 adults. We played long and hard. One thing that  
2 -- one rule we did have was that the rules didn't  
3 change in the middle of the game.

4 With this permitting process that I see  
5 with Highwood, it seems that every time one thing  
6 is -- every time something is settled, something  
7 new is brought up, and that just goes against my  
8 sense of fair play. That's my comment. Thank  
9 you.

10 CHAIRMAN RUSSELL: All right. Thank  
11 you, Ole. Anyone else?

12 MR. LIVERS: No one else here, Mr.  
13 Chairman, but I would like to maybe talk on just a  
14 couple items real quickly. I didn't want to get  
15 into this while we were in the middle of a  
16 contested case discussion, just didn't want to  
17 pursue it too far.

18 But on behalf of the Department, I do  
19 appreciate the comments from Mr. Mires in terms of  
20 how we conduct ourselves with the public. I'd  
21 like to say that none of our 400 employees ever  
22 gets out of line, but it may happen. But I also  
23 know that we put a very strong emphasis on good  
24 customer service.

25 We're frequently in a position where we

1 have to deliver news that people don't want to  
2 hear, and we try to do that as professionally,  
3 civilly, and respectfully as we can. Sometimes  
4 it's the nature of the news that we have to  
5 deliver that taints how people hear it, but  
6 nonetheless, we always can do better, we always  
7 have to police ourselves, but I do want to say  
8 that I'm proud of the way our employees conduct  
9 themselves, but I do appreciate kind of the  
10 continued emphasis on treating people with  
11 respect, and that is an important value in the  
12 Department, and one of our top goals. So thank  
13 you for the comments.

14           And then the other item I just wanted to  
15 mention is that we do have four Board members  
16 whose terms are up at the calendar year, and I  
17 want to make sure that if those four are  
18 interested in reappointment, that they have let  
19 that be known with the Governor's Office, but it's  
20 also a good idea to file just a letter to that  
21 effect with us, with the Board secretary, so we've  
22 got that on record, and we'll forward those. I  
23 don't know if all four are interested in coming  
24 back. I'm hoping so.

25           But regardless, I do want to just take a

1 minute to thank all four. I'm hoping to see you  
2 again. But there has been incredible time  
3 commitment; we've dealt with a lot of real complex  
4 controversial, contentious issues; it hasn't  
5 always been fun; but I've always been proud to be  
6 associated with you folks.

7 So in terms of Gayle, and Bill, Robin,  
8 Don, I just really appreciate the commitment to  
9 the issues we've dealt with, and the manner in  
10 which all of you have taken on the responsibility  
11 and the work involved in being on this Board. So  
12 thank you.

13 CHAIRMAN RUSSELL: What about us that  
14 are staying on?

15 MR. LIVERS: Well, I have kind of mixed  
16 feelings on those, so we probably won't get into  
17 that at this point.

18 CHAIRMAN RUSSELL: Thanks, Tom. Well,  
19 and I know it's the holiday season starting, and  
20 it's early and stuff, but I do want to wish  
21 everyone a happy holiday. And I also want to say  
22 that we have done some -- the last few meetings  
23 have been pretty boring, and certainly not worthy  
24 of a trip to Helena, but things may start up  
25 again, and the work that we've done --

1 OPERATOR: Gayle is leaving the meeting.

2 CHAIRMAN RUSSELL: I guess Gayle didn't  
3 want to hear what I had to say. But we've done  
4 some pretty intensive work, and it's been very  
5 gratifying to see how we've worked through  
6 processes, and stayed civil, with the exception of  
7 me. But it's been really a gratifying process for  
8 me also.

9 So with that, I will thank you again,  
10 and we will see you in the New Year, and happy  
11 holidays, and I'll entertain a motion to adjourn.

12 MR. MIRES: I would so move, with happy  
13 holidays to everybody as well.

14 CHAIRMAN RUSSELL: It's been moved.  
15 Second.

16 MR. MARBLE: Second.

17 CHAIRMAN RUSSELL: All right.  
18 All those in favor, signify by saying aye.

19 (Response)

20 (The proceedings were concluded

21 at 11:00 a.m. )

22 \* \* \* \* \*

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1 C E R T I F I C A T E

2 STATE OF MONTANA )

3 : SS.

4 COUNTY OF LEWIS & CLARK )

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

8 That the proceedings were taken before me at  
9 the time and place herein named; that the  
10 proceedings were reported by me in shorthand and  
11 transcribed using computer-aided transcription,  
12 and that the foregoing - 74 - pages contain a true  
13 record of the proceedings to the best of my  
14 ability.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand and affixed my notarial seal  
17 this day of , 2008.

18

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

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