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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
December 9, 2016 )

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TRANSCRIPT OF PROCEEDINGS

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Heard at Room 111 of the Metcalf Building  
1520 East Sixth Avenue  
Helena, Montana  
December 9, 2016  
10:00 a.m.

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

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

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

3                           \* \* \* \* \*

4           (Board member Roy O'Connor not present)

5           CHAIRMAN MILES: I'll call the meeting  
6 to order. Joan Miles is here, Dr. Byron is here,  
7 we have Michele Reinhart-Levine on the phone and  
8 Chris Tweeten on the phone, and that is a quorum.  
9 I know that Robin Shropshire is not attending  
10 today, and I believe Marietta Canty was going to  
11 phone in.

12           BOARD MEMBER CANTY: I'm on the phone.

13           CHAIRMAN MILES: Thank you. Marietta is  
14 on the phone. And Roy O'Connor I'm not sure  
15 about. He may actually be in transit, which may  
16 not be a great idea on a day like today.

17           Board members who are on the phone, and  
18 I know Marietta, I need to have you on the phone  
19 for a couple of items. This is going to be fairly  
20 difficult and complex to have this meeting today  
21 with just two of us here in person and everyone  
22 else at a distance.

23           A couple of the major items that we have  
24 coming up, there will be a presentation on the  
25 proposed water quality standards changing, and

1 that will take about 35 minutes, and we'll just  
2 need to know during that presentation that you're  
3 able to hear. Is there any video presentation,  
4 any slides or anything?

5 MS. STEINMETZ: There is a power point,  
6 and that power point is available on the Board  
7 website.

8 CHAIRMAN MILES: So we have power  
9 points. When was that posted, do you know?

10 MS. STEINMETZ: Two days ago.

11 CHAIRMAN MILES: So for Board members  
12 that are taking this by phone, you should be able  
13 to access the power point from the Board's website  
14 to go along with Amy's presentation.

15 I believe we have representatives from  
16 Payne Logging here.

17 MR. REED: Madam Chair, Ben Reed. I  
18 don't see Mr. Brown here today. He's the attorney  
19 for Payne Logging. But when and as he arrives,  
20 I'll let you know.

21 CHAIRMAN MILES: So I anticipate that  
22 Payne Logging will be here, and that is a short  
23 hearing scheduled, it is my understanding, so we  
24 would proceed with that.

25 I guess out of courtesy for everyone

1 else that is here, and given the weather, I just  
2 need to ask Board members if you feel that we can  
3 effectively address the Western Energy summary  
4 judgment issue. We really need to have a good  
5 discussion about that, and some very technical  
6 issues, and I just need to hear from Board members  
7 if you feel that we can do that with just four of  
8 us and two of you from Missoula.

9 (No response)

10 CHAIRMAN MILES: I don't know whether to  
11 take silence as a yes or no.

12 BOARD MEMBER TWEETEN: This is Chris.  
13 Can you hear me?

14 CHAIRMAN MILES: Yes.

15 BOARD MEMBER TWEETEN: I guess I'd like  
16 to at least delve into the Western Energy matter.  
17 As we get into it, we may find that it's simply  
18 logistically impossible to try to come up with a  
19 concept for a final order in that matter under the  
20 circumstances, but I'd like to at least delve into  
21 it, and visit about it, and see if we can reach --  
22 if we can't reach a final decision, that will  
23 allow us to give directions to our Counsel  
24 regarding drafting a final order. At least we'd  
25 be able to sort of figure out what needs to be

1 done in order to be ready to do that, so at our  
2 next meeting we can proceed as expeditiously as  
3 possible.

4 CHAIRMAN MILES: Michele, does that work  
5 for you? Can you hear everything okay?

6 BOARD MEMBER REINHART-LEVINE: Yes, I  
7 can, and I agree with Chris. I think we should at  
8 least attempt to have some discussion today and  
9 see where that leaves us.

10 CHAIRMAN MILES: Okay. Then we've got a  
11 lot of work today.

12 BOARD MEMBER CANTY: Do we have a quorum  
13 even with the fact that I have to recuse myself  
14 from Western Energy?

15 CHAIRMAN MILES: We do. You make five  
16 of us, and I do hope you're able to stay on the  
17 phone up until the Western Energy case.

18 BOARD MEMBER CANTY: Okay.

19 CHAIRMAN MILES: Thank you. Did you  
20 have a question?

21 MR. MATHIEUS: No.

22 CHAIRMAN MILES: So the first order of  
23 business is to review and approve -- There is  
24 actually two sets of minutes, from September 30th,  
25 our regular Board meeting, and then November 15th

1 special meeting. I think both sets were posted,  
2 the correct sets were posted yesterday. Have  
3 people had a chance to look at those?

4 (No response)

5 CHAIRMAN MILES: Is there a motion to  
6 approve the minutes from September 30th?

7 BOARD MEMBER REINHART-LEVINE: So moved.

8 CHAIRMAN MILES: Thank you, Michele. Is  
9 there a second?

10 BOARD MEMBER DR. BYRON: Second.

11 CHAIRMAN MILES: Dr. Byron. He's the  
12 second. Thank you. Is there any further  
13 discussion?

14 (No response)

15 CHAIRMAN MILES: All in favor, please  
16 say aye.

17 (Response)

18 CHAIRMAN MILES: Opposed.

19 (No response)

20 CHAIRMAN MILES: Motion carries.

21 Minutes from the November 15th, 2016 hearing,  
22 that's fairly short. Is there a motion to approve  
23 those minutes?

24 BOARD MEMBER DR. BYRON: So moved, Madam  
25 Chair.

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CHAIRMAN MILES: Dr. Byron moved. <sup>7</sup> Is there a second?

BOARD MEMBER REINHART-LEVINE: Second.

CHAIRMAN MILES: Any further discussion?

(No response)

CHAIRMAN MILES: All in favor, please say aye.

(Response)

CHAIRMAN MILES: Opposed.

(No response)

CHAIRMAN MILES: Minutes have been approved.

(Board member Roy O'Connor present)

CHAIRMAN MILES: Roy O'Connor just walked in the door, so we've got three of us here in Helena now. We have Chris Tweeten, Michele Reinhart-Levine, and Marietta Canty on the phone. We are proceeding with business. We will let you get settled.

The first item of brief business that we need to do is look at the 2017 proposed meeting schedule. I asked the Board members in an email last night to please make sure they had their calendars in front of them and review these proposed dates, and it is particularly important

1 for Mr. O'Connor, Dr. Byron, and Michele  
2 Reinhart-Levine, because you are the three members  
3 who are in the middle of your terms. The other  
4 four of us I think things are unknown perhaps how  
5 long we will be on the Board until the Governor  
6 makes new appointments. So I think particularly  
7 the three of you need to see if the schedule works  
8 for you.

9 I did ask a couple of folks to look at  
10 the February 3rd date. I would anticipate that I  
11 think it is likely that the other four of us would  
12 still be on the Board at least through part of the  
13 legislative session. I don't know when the  
14 Governor might make appointments. So in  
15 anticipation that the four of us who term out may  
16 still be on the Board, I would like to see if  
17 there is any possibility of moving that February  
18 3rd date just up a few days, if that would have  
19 any impact on rules, Administrative Rules  
20 announcements.

21 BOARD MEMBER DR. BYRON: Madam Chair, as  
22 I made aware to you and the other Board members  
23 through that email, too, is I am not available on  
24 the 3rd or the 2nd, which was another date you had  
25 proposed.

1           CHAIRMAN MILES: I'm wondering if the  
2 31st or the 1st would work. I actually am out of  
3 the country the prior week, and then leave again  
4 on the 3rd, so if the 31st or the 1st would work  
5 for the Department? Board members?

6           BOARD MEMBER O'CONNOR: It will not work  
7 for me. I am leaving on the 20th of January and  
8 won't return until the 6th of February.

9           MR. MATHIEUS: Madam Chair, I'm not sure  
10 the exact date. That may be the Budget  
11 Subcommittee for us, but we can make it work.

12           BOARD MEMBER O'CONNOR: I would be able  
13 to call in, too.

14           CHAIRMAN MILES: You would?

15           BOARD MEMBER O'CONNOR: Yes.

16           CHAIRMAN MILES: Otherwise I think we'd  
17 have to push it to the middle of February, and  
18 that may cause problems. Would the 31st or the  
19 1st --

20           BOARD MEMBER TWEETEN: Joan, this is  
21 Chris. I can do the 31st of January. I cannot do  
22 the 1st of February because I have a conflicting  
23 meeting.

24           CHAIRMAN MILES: So Tuesday, January  
25 31st. Michele, would that work for you?

1 BOARD MEMBER REINHART-LEVINE: Madam  
2 Chair, it works for me. Thank you.

3 CHAIRMAN MILES: Marietta.

4 BOARD MEMBER CANTY: Madam Chair, it  
5 works for me as well.

6 CHAIRMAN MILES: Let's do that then.  
7 Tuesday January 31st instead of February 3rd.  
8 What about the other dates that are being  
9 proposed? Does anyone have any conflicts with  
10 those?

11 BOARD MEMBER REINHART-LEVINE: I'm  
12 expecting a baby at the end of March, so that  
13 could be a conflict. It is unknown at this time,  
14 though.

15 CHAIRMAN MILES: You can phone in.

16 BOARD MEMBER REINHART-LEVINE: That may  
17 not be possible.

18 CHAIRMAN MILES: The March date is the  
19 31st, and then it's June 2nd, August 4th,  
20 September 29th, and December 8th. I imagine  
21 that's pretty hard for people to tell right now,  
22 but if you have that on your calendar, hopefully  
23 you can schedule around that. Hearing no other  
24 conflicts, those dates that were proposed with the  
25 change to January 31st, please. Do we need a

1 motion on that?

2 MR. MATHIEUS: No.

3 CHAIRMAN MILES: Those dates have been  
4 set for 2017. It looks like we're going to move  
5 to briefing items, and Ben, do you have an  
6 announcement for us?

7 MR. REED: Yes, Madam Chair, I have.  
8 The vicissitudes of life have required that I  
9 leave the country for a variety of reasons. My  
10 practice was primarily overseas, and then I've  
11 spent the last five years here in the great state  
12 of Montana. Anyway, I've tendered my resignation  
13 to the Attorney General's Office effective at the  
14 end of this year.

15 I will be superseded by a newer and  
16 improved version of myself, who is Andres Haladay,  
17 who is one of the other attorneys in the Agency  
18 Legal Services Bureau. Andres has a wide and deep  
19 background in administrative law, and I think that  
20 he'll perform at or substantially above my own  
21 previous abilities. I would recommend that the  
22 Board use and endorse Mr. Haladay in my absence.

23 There is one matter that I will retain,  
24 which is the Columbia Falls Aluminum Company  
25 appeal. As I was the Hearing Officer who heard

1 that, and was there when the testimony of the  
2 various witnesses was given, under Montana law,  
3 I'm the person who has to deliver the proposal for  
4 decision in that matter. However, once that's  
5 concluded, that will be referred back to the  
6 Board.

7 Over the next week or so, I'll be  
8 transferring the various and sundry items of  
9 business that I'll be discussing here today, and  
10 other stuff that I've been doing for the Board and  
11 for the Department over to Mr. Haladay.

12 CHAIRMAN MILES: Thank you. Thank you  
13 for your work, and welcome, Andres.

14 MR. REED: That having been said.

15 CHAIRMAN MILES: Best of luck to you.

16 MR. REED: Thank you very much, Madam  
17 Chair.

18 In the matter of the violations of the  
19 Public Water Supply laws, this matter is currently  
20 being resolved as per the stipulation filed in  
21 July of this year. Sorry. That's for A(1)(a).

22 For both "B" and "C," the parties are  
23 currently following the two August scheduling  
24 orders.

25 For "D," the violations of the Water

1 Quality Act by Buscher Construction, that matter  
2 was to be stayed pending mediation. It is my  
3 understanding that mediation was ultimately  
4 unsuccessful in resolving that case, and so the  
5 parties are going to continue on with the  
6 contested case.

7 In the matter of "E," violations of the  
8 Opencut Mining Act by Big Rock, LLC, I'm drafting  
9 a proposal for decision in that matter.

10 Fundamentally what happened was that Big Rock  
11 filed an appeal that was sort of a one sentence  
12 appeal. The Department asked for that appeal to  
13 be clarified as to its basis. Big Rock has never  
14 responded, and so the Department has filed a  
15 motion to dismiss.

16 Procedurally, I think it is possible for  
17 the Hearing Officer to simply dismiss it out of  
18 hand because the matter has not been heard.

19 However under Montana Code Annotated 2-4-621, the  
20 matter cannot be resolved unless it has been heard  
21 by a majority of the Board. And I'm not sure if  
22 Mr. Tweeten has an opinion that differs  
23 significantly from mine. There is no clear law on  
24 the subject, but I think it would be prudent for  
25 the Hearings Officer not to dismiss the matter

1 without the Board's review of the determination.  
2 And so that's going to be the status, is that I'll  
3 be sending the Board a proposal for decision that  
4 will dismiss the matter since Big Rock has been  
5 completely unresponsive.

6 CHAIRMAN MILES: But you're recommending  
7 that there be a hearing?

8 MR. REED: No, Madam Chair, I'm not. It  
9 is simply that -- and I apologize for my lack of  
10 clarity. I believe that there is a lack of  
11 clarity in the Montana Administrative Procedures  
12 Act that would keep me from definitively being  
13 able to simply dismiss the matter out of hand.

14 BOARD MEMBER TWEETEN: I think that's  
15 correct. I think the Hearing Officer has to  
16 submit a proposed decision to the Board, and then  
17 the Board would either accept it or reject it.  
18 There need not be a hearing necessarily in front  
19 of the Board, although I think all parties to the  
20 proceeding in front of the Hearing Examiner would  
21 need to receive notice, and I think it would be  
22 prudent to give them an opportunity to be heard  
23 briefly in front of the Board and before the Board  
24 acts on the Hearing Examiner's proposed decision.

25 CHAIRMAN MILES: Thank you. Ben is

1 nodding I think in agreement.

2 MR. REED: Yes, Madam Chair.

3 CHAIRMAN MILES: Thanks, Chris.

4 MR. REED: And then as to the appeal in  
5 the matter of the violations of the Opencut Mining  
6 Act by Goran, LLC, the proposed scheduling order  
7 was filed, as the Board can see, on October 7th,  
8 and through inadvertence and neglect on my part,  
9 that hasn't been issued, but that will go out  
10 today.

11 Moving to nonenforcement cases assigned  
12 to me at this time. Under "A," the order  
13 approving the stipulation to stay appeal is  
14 ongoing.

15 In the matter of LT Trucking, the  
16 parties were requested to propose a schedule, and  
17 there was some initial lack of clarity on my part  
18 as to whether LT Trucking was in fact a business  
19 organization like an LLC, which it says that it  
20 is, if it were, whether it could be represented by  
21 the individual who had filed the appeal. That  
22 individual later hired Counsel, but it wasn't  
23 clear from that Counsel's letter to what purpose  
24 that individual had been hired.

25 I asked Ms. Houle to contact the

1 parties, and so far, I believe that DEQ has been  
2 trying to get some clarity from the Appellant, but  
3 without any sort of success. So I anticipate, I'm  
4 optimistic, that we'll have some resolution by the  
5 next Board meeting in this particular matter.

6 Under "C," the matter of Columbia Falls  
7 Aluminum Company's appeal, that matter was heard.  
8 Subsequent to the hearing, there was one issue  
9 that remained for briefing. The briefing schedule  
10 was issued for both parties, and both parties were  
11 asked to produce proposed findings of fact and  
12 conclusions of law.

13 CHAIRMAN MILES: This is the one you're  
14 going to retain?

15 MR. REED: Yes, Madam Chair. I  
16 anticipate that the matter will be ready for the  
17 Board sometime in March. Sometime in March would  
18 be my relatively optimistic judgment.

19 In the matter of Heart K Land and  
20 Cattle, that matter came before me regarding the  
21 motion for summary judgment. I need to finalize  
22 the draft of my response to that motion. I  
23 anticipate that that will go out next week.

24 In the matter of Westmoreland Resources'  
25 appeal of its final MPDES permit, there will be an

1 order staying the proceeding as per the request of  
2 both parties that will be going out today.

3 In the matter of the notice of appeal  
4 for the Laurel Refinery, that appeal is ongoing.

5 In the matter of Signal Peak Energy's  
6 Bull Mountain Coal Mine permit, the scheduling  
7 order is going to be signed today. It needs to be  
8 slightly modified, simply to clarify to all  
9 parties that the length of briefs that the Board  
10 is likely to be interested in entertaining does  
11 need to comport with some page limits, some fairly  
12 specific page limits.

13 So in the matter of the 401  
14 certification for the Clark Hydroelectric Project,  
15 that matter is going to need to have some minor  
16 clarification. The parties seem to have gotten a  
17 bit cross wise of each other regarding the initial  
18 scheduling order, and regarding an intervenor's  
19 joinder in the matter.

20 Briefly, what happened was that the  
21 intervenors, Clark Canyon Hydro, filed a motion to  
22 intervene in the matter, and then before that  
23 motion had been granted, they filed a motion for  
24 summary judgment. Typically parties to litigation  
25 are the only parties who are allowed to file

1 documents in litigation, and until the party is  
2 certified or is approved as an intervenor they're  
3 not allowed to file anything. And so basically  
4 there was some confusion, I'll say no small amount  
5 of confusion has resulted, but I'm optimistic that  
6 that can be clarified in the next few days.

7 Those are the most significant matters.  
8 I'm sorry. Those are the matters that are  
9 currently in front of me, but not technically  
10 assigned to me for determination.

11 CHAIRMAN MILES: And then the contested  
12 cases not assigned to a Hearing Examiner.

13 MR. REED: That's only WECO regarding  
14 Rosebud. This is a 2012 case, Madam Chair, and  
15 that is currently in litigation regarding  
16 attorneys fees.

17 CHAIRMAN MILES: Are there any questions  
18 for Ben?

19 (No response)

20 CHAIRMAN MILES: Okay. Thank you. New  
21 contested cases. Can you address that, please,  
22 Ben.

23 MR. REED: Yes, Madam Chair. This  
24 appeal for conditions of certification for  
25 Timbershor has been brought to the Board, and I

1 would propose that the Board, rather than  
2 assigning it to me as the Hearing Officer, assign  
3 it to Andres Haladay who will be succeeding me.

4 CHAIRMAN MILES: Thanks. Is there a  
5 motion to that effect? Unless the Board wants to  
6 hear this case directly, I think a motion to the  
7 effect that we would assign Mr. Haladay to be the  
8 Hearing Examiner. Is there a motion to that?

9 BOARD MEMBER REINHART-LEVINE: Madam  
10 Chair, this is Michele. So moved.

11 BOARD MEMBER O'CONNOR: Second.

12 CHAIRMAN MILES: Is there any  
13 discussion?

14 (No response)

15 CHAIRMAN MILES: All in favor, please  
16 say aye.

17 (Response)

18 CHAIRMAN MILES: Opposed.

19 (No response)

20 CHAIRMAN MILES: Hearing none. Thank  
21 you. We'll look forward to working with you on  
22 that.

23 I think at this point we'll get into the  
24 proposal for the Board to initiate rulemaking to  
25 establish new and revised water quality standards

1 in Circular DEQ7. I think we'll take that matter  
2 up, and then take a short break after that, and  
3 then move into the last two action items.

4 If any of the Board members have trouble  
5 hearing, Amy is at the same microphone system, so  
6 it should be fine, but please let us know. If you  
7 need a clarification during the presentation,  
8 please let us know. We'd like to not get into  
9 lengthy discussions about this since it is a  
10 fairly long presentation, but if you do need  
11 something clarified, please shout it out. Thank  
12 you.

13 MS. STEINMETZ: Thank you, Madam Chair,  
14 Board members. For the record, my name is Amy  
15 Steinmetz. I work in the Water Quality Standards  
16 and Modeling Section at DEQ.

17 The last time that I visited with the  
18 Board was in February of 2016. At that time I  
19 explained the triennial review, and the Board  
20 initiated our triennial review by opening our  
21 water quality standards for public comment.

22 Just as a brief reminder -- we're on  
23 Slide 2 for those of you on the phone -- the  
24 triennial review is required in state and federal  
25 laws. Montana Code Annotated 75-5-301 requires

1 that the Board review, and if necessary and  
2 appropriate, revise Montana's water quality  
3 standards at least every three years. Montana's  
4 last triennial review ended in October of 2012,  
5 and we did begin the process of the triennial  
6 review shortly after that time.

7 The rules that are open to comment, that  
8 were open to comment, include the mixing zone  
9 rules, surface water quality standards,  
10 nondegradation rules, groundwater rules. And this  
11 is a little bit unique -- I will get into more of  
12 an explanation of this later -- but a compliance  
13 schedule authorizing provision that is in our  
14 permitting rules. That's the only part of the  
15 permitting rules that was open to comment.

16 Also open to comment were DEQ's numeric  
17 water quality criteria included in DEQ7 and  
18 DEQ-12-A and B. Those are Montana's numeric water  
19 quality standards and nutrient standard standards  
20 variance.

21 Slide 4. This is just a brief timeline  
22 of our activities over the last year. In January  
23 we met with the Water Pollution Control Advisory  
24 Council, gave them the same presentation that you  
25 saw in February. In March we went back to WPCAC,

1 and we briefed them on anticipated changes to the  
2 water quality standards. Because the public  
3 comment period had not closed, those anticipated  
4 changes were based on federal water quality  
5 standards changes, and things that we had  
6 discussed across the Department and with other  
7 State agencies.

8 January 3rd the public comment period  
9 closed. You all probably remember you held the  
10 public hearing. There were no comments submitted  
11 at the public hearing, but the Department did  
12 receive five letters out of the public comment  
13 period. And we had sent out 500 hard copies of  
14 letters to interested parties, we sent out  
15 hundreds of emails to interested parties through  
16 our list serves, and we published the notice in  
17 eight different newspapers across the state, so we  
18 felt that that was a pretty wide outreach there.

19 In November, we met with WPCAC with the  
20 proposed changes that you'll see today, and they  
21 recommended at that time that we move forward to  
22 you to request initiation of rulemaking on the  
23 rule package. If you choose to do so today,  
24 initiate rulemaking, then hopefully we would adopt  
25 the package in 2017, and at that time we would

1 then submit the rule package to EPA for their  
2 review and approval.

3 As I mentioned, the public comment  
4 period ended in June. We received comments from  
5 five parties. Before I explain the things that we  
6 are proposing to change, I'm going to go over the  
7 comments and our responses to comments.

8 The responses to comments are included  
9 in the Board packet, along with the five letters  
10 that we received. The responses to comments  
11 addressed three different categories: First of  
12 all, federally adopted standards; second, the  
13 public comments; and third, EPA recommendations.  
14 The five letters are comprised of those last two  
15 bullets.

16 Slide 6. Federally adopted standards.  
17 In 2015, EPA updated several of their regulations.  
18 One regulation now states that during their  
19 triennial review, states must either adopt Federal  
20 Clean Water Quality Act 304(a) criteria, or they  
21 have to explain their decision not to adopt them.

22 There are four federally adopted  
23 standards that we are not proposing to update at  
24 this time, and before I go any further explaining  
25 these, I do want to be very clear that we do have

1 Water Quality Standards on the books for these  
2 four parameters. They're the older federal  
3 standards. And so we are being protective.

4 In some cases, the new standards are  
5 more conservative, but it may not be appropriate  
6 to apply them on a statewide basis, so we need to  
7 understand how to implement the standards, and we  
8 need to know what effects their implementation may  
9 have in Montana. So at this time we're just  
10 recommending continued retention of the current  
11 standards while we research the implementation of  
12 the new standards. And I'm going to go into a  
13 little bit more explanation of each of those in  
14 the next four slides.

15 First all, aluminum. In 1988, EPA  
16 adopted total recoverable aluminum aquatic life  
17 standards. Around 1993, the Board adopted the  
18 same numbers, but the dissolved fraction. In the  
19 Montana Administrative Register published February  
20 23rd, 2006, the Board justified keeping the  
21 dissolved fraction as the water quality standards.  
22 The Board explained that aluminum is an extremely  
23 abundant element and mineral that compose sediment  
24 in water bodies.

25 While the dissolved aluminum laboratory

1 method does not measure sediments, the total  
2 recoverable analysis method does, and just  
3 briefly, if you look at that picture up at the top  
4 of the slide, the beaker on the left would be a  
5 total recoverable sample. Somebody could go out  
6 to a turbid river, collect a sample, and that's  
7 what it would look like. If they sent that to the  
8 lab, the lab analyzed that, would be total  
9 recoverable. The beaker on the right has been  
10 filtered, the same sample but it has been  
11 filtered, so that would be dissolved.

12 So anytime you have these two samples,  
13 the same location, collected at the same time, the  
14 total recoverable should always give you a bigger  
15 or at least the same number as the dissolved.

16 So the Board went on to explain that  
17 aluminum contained in the sediment -- so what you  
18 would measure in the total recoverable -- is not  
19 in a form that is available to living systems. In  
20 other words, it remains bound in its mineral  
21 state, and it passes through organisms that  
22 consume it. The Board believes that the dissolved  
23 aquatic life standard for aluminum was protective,  
24 and was a better estimate of the bioavailable  
25 fraction in the water.

1           EPA has since stated that they believe  
2           that using the dissolved fraction of the water  
3           quality standards is under-protective. Aluminum  
4           is such a naturally abundant mineral in Montana  
5           that adopting a total recoverable fraction as the  
6           water quality standard has the potential to affect  
7           a lot of communities and industries in Montana.

8           Because EPA feels that the current  
9           dissolved standard is under-protective, DEQ has  
10          made aluminum a priority for 2017. A couple of  
11          Standards staff have been assigned to lead in  
12          comparing the science that was used to lead the  
13          BER to their decision in 2006, to the science that  
14          EPA has used. They'll be evaluating data gaps,  
15          research needs, and looking at the complexities  
16          and implications of adopting the total recoverable  
17          aluminum standard. As research is conducted and  
18          analyzed, stakeholder input will be incorporated  
19          into this process.

20          Moving on to ammonia, EPA adopted new  
21          ammonia standards in 2013. They were calculated  
22          to be protective of more sensitive species than  
23          our current ammonia standards protect. We have  
24          reviewed this science, and there are substantial  
25          technical, social, and economic challenges to

1 implementing these very low ammonia standards.

2 The State does have an obligation to  
3 implement standards that are protective and  
4 possible to achieve. Remember that water quality  
5 standards include beneficial uses of water bodies,  
6 it includes numeric and narrative water quality  
7 criteria to protect those uses, and they also  
8 include nondegradation policy; and beyond that,  
9 there are some tools that can be used in the  
10 permitting process, such as compliance schedules  
11 and variances.

12 The first things that have to be read  
13 are the designated uses. It doesn't make sense to  
14 protect a use that does not and cannot naturally  
15 exist in a water body. Then we look at the  
16 criteria. The new ammonia criteria are lower  
17 because they were calculated to protect more  
18 sensitive species. So we ask: Are those species  
19 present in Montana? If they're not, are there  
20 similarly sensitive species that still need to be  
21 protected by those lower numbers? If not, then it  
22 may make sense to recalculate the criteria  
23 according to the species that we do need to  
24 protect.

25 The bottom line with numeric water

1 quality criteria is that they need to protect  
2 uses, and they need to be based on science. They  
3 can't consider limits of technology or  
4 socioeconomic factors. However, when we implement  
5 the standards in permits, those factors can be  
6 considered, and that's why we have variances in  
7 compliance schedules to protect the economic  
8 welfare of Montana.

9 Therefore before we adopt criteria, we  
10 have to have a good understanding of all of these  
11 pieces. We know to know how the standards will be  
12 implemented, and we may need to have tools in  
13 place for when they are adopted.

14 That's why DEQ has developed a list of  
15 strategy options to accompany the potential future  
16 adoption of the ammonia standards. Those are  
17 included in the response to comments in your  
18 packet, and I'm not planning on going through  
19 those, but they do address some of the issues I  
20 just mentioned. Ammonia has been a Department  
21 priority since the standards came out in 2013, and  
22 it will continue to be a priority in 2017.

23 Slide 9, we're talking about  
24 methylmercury. DEQ currently uses the former  
25 mercury Clean Water Act, 304(a) human health

1 criterion, of .05 micrograms per liter. The  
2 current federal standard is a methylmercury fish  
3 tissue based standard of .3 milligrams per  
4 kilogram. This was adopted in 2001.

5 For years there was no guidance for the  
6 states on how to implement this standard. How do  
7 we take a fish tissue based standard, and put that  
8 in a permit where a discharger needs an effluent  
9 limit for water?

10 EPA did publish guidance on how to  
11 implement the fish tissue standards in 2010. This  
12 is a 250 page document, and it is a very  
13 complicated process of translating the fish tissue  
14 based standard into a water quality standard. For  
15 now we're recommending retaining the old mercury  
16 water quality standard until staff is available to  
17 tackle the process of developing a water quality  
18 standard.

19 We feel that the old standard's low  
20 level does help protect against accumulation of  
21 mercury in fish tissue, and we also have other  
22 safeguards in place, such as fish consumption  
23 advisories. So we feel that for now we're being  
24 protective, but we're going to look into this  
25 moving into the future.

1           This is a new one, selenium. Our  
2 current numbers, acute and chronic aquatic life  
3 standards for selenium are twenty and five  
4 micrograms per liter. In June of this year, EPA  
5 adopted new water quality life standards for  
6 selenium. The new standards include fish tissue  
7 and water column components that vary for flowing  
8 in still waters.

9           The only thing that's comparable to the  
10 existing criteria is thirty day chronic, so it's  
11 not apples to apples, but there is a chronic water  
12 quality standard of 3.1 micrograms per liter for  
13 flowing water. So you can see that it is a little  
14 lower than the old chronic aquatic life standard.

15           EPA did develop a draft technical  
16 support document to go with this standard. This  
17 is out for public comment until February of 2017.  
18 DEQ is currently reviewing this draft technical  
19 support document, and we're also developing  
20 selenium site specific criteria for Lake  
21 Kookanoosa. A selenium technical subcommittee is  
22 working on development of the site specific  
23 standards, and we may be able to apply suggestions  
24 from the technical subcommittee to the  
25 implementation across the state. This is another

1 current standards priority that will continue into  
2 2017.

3 Moving on to the public comments that we  
4 received, your packet includes all five of the  
5 letters that we received. The responses to  
6 comments only include those issues that were  
7 specific to water quality standards, so we did  
8 receive some comments on the permitting rules.  
9 Because those are outside of the scope of the  
10 triennial review of water quality standards, we  
11 are not responding to those.

12 One commenter stated that Montana should  
13 use dissolved metal standards rather than the  
14 current total recoverable metal standards. This  
15 situation is in direct opposition to the aluminum  
16 issue. In 1993, EPA adopted dissolved metal  
17 standards for all metals except aluminum, and  
18 Montana adopted the same numbers, but total  
19 recoverable, of course with the exception of  
20 aluminum.

21 At the time of adoption of the dissolved  
22 standards, EPA did state that the total  
23 recoverable fraction is scientifically defensible,  
24 and that it would approve individual states'  
25 decisions to retain the total recoverable

1 standards. They also said that if the states were  
2 to adopt the dissolved fraction, they should also  
3 consider adopting sediment standards, because  
4 there is that pathway for aquatic organisms to  
5 ingest the metal in the sediments in the water.

6 At this time there are no sediment  
7 standards, only guidance values. The total  
8 recoverable standards are more conservative, but  
9 they include those particulates, which minimizes  
10 for a complementary sediment standard, and so for  
11 now we're recommending retaining the total  
12 recoverable standards.

13 That being said, DEQ has been looking  
14 into this issue because it has been brought up by  
15 stakeholders in the past, and we're currently  
16 researching how sediment standards might be  
17 developed, and how permits might change if we were  
18 to adopt the dissolved standard.

19 Another commenter stated that Montana  
20 should allow for copper standards to be calculated  
21 using the copper biotic ligand model. Metals  
22 toxicity is dependent on many factors that affect  
23 the bioavailability of the metal in the aquatic  
24 environment, and the biotic ligand model does  
25 account for those complex interactions.

1           A few issues that we have at this time  
2 are that the biotic ligand model requires ten  
3 parameters to run, most of which are not sampled  
4 on a regular basis.

5           Another big issue is the same as with  
6 the total recoverable versus dissolved. We don't  
7 have a copper sediment standard. However, DEQ is  
8 researching a process for use of the biotic ligand  
9 model for site specific standards.

10           Slide 12. Another public comment  
11 commenter stated that, "Publicly owned treatment  
12 works should not be forced to shoulder the cost  
13 burden of cleaning up our lakes, rivers, and  
14 streams." This commenter stated that reduction of  
15 nitrogen and phosphorus will have little effect on  
16 water quality without addressing other sources of  
17 contamination. DEQ agrees that it is important to  
18 address other sources of nitrogen and phosphorus  
19 contamination. The increasing price of community  
20 wastewater fees needs to be given careful  
21 consideration.

22           To this end, rules, policies, and DEQ  
23 programs have been crafted to address nutrients  
24 coming from sources other than publicly owned  
25 treatment works. For example, the twenty year

1 period over which nutrient standard variances are  
2 in place not only allows dischargers time to make  
3 improvements in wastewater treatment, but also  
4 allows time to institute trading arrangements with  
5 nonpoint sources of nutrients, and for DEQ and  
6 others to better address nonpoint sources of  
7 nutrients.

8 DEQ's nonpoint source program is  
9 constantly looking for opportunities to fund  
10 projects to reduce diffuse nutrient sources from  
11 agriculture and other nonpoint sources. Total  
12 maximum daily loads developed around the state  
13 include a load allocation to nonpoint source, and  
14 these documents are often the starting point for  
15 working in watersheds where nonpoint sources of  
16 nutrients need to be addressed. In short, we're  
17 doing everything we can within the current  
18 regulatory structure to address nutrients from all  
19 sources point and nonpoint.

20 Now we're moving on to Slide 13,  
21 comments received from EPA. First, EPA  
22 recommended that we retain the maximum contaminant  
23 levels where they are more stringent than 304(a)  
24 criteria. I'll get into a little bit more  
25 explanation of this in a couple minutes. We

1 currently do this, and we will continue to do so.

2 EPA also recommended that we clarify  
3 which water quality criteria apply to which  
4 designated uses. There are many areas where the  
5 designated uses and/or the criteria that apply to  
6 a water body are not clear. Montana has seventeen  
7 water use classes, and 23 distinct but often very  
8 similar uses, so it is impossible to provide  
9 clarification without changes to the structure of  
10 our water uses and use classes.

11 Therefore, DEQ will research and address  
12 this issue over the next several years, ultimately  
13 providing clarity through a proposed new surface  
14 water use structure for Board action. Beginning  
15 this effort is one of my personal priority  
16 projects for 2017.

17 EPA also recommended improving Montana's  
18 nondeg rules. This is outlined in more detail in  
19 your packet, but we agree that Montana's nondeg  
20 rules should be reviewed. This effort has already  
21 begun. There's a cross-sectional group of folks  
22 from across the Department that's already meeting  
23 on a periodic basis to identify issues and  
24 brainstorm ways to resolve those issues.

25 One of the reasons why this issue is so

1 complex is that Montana's nondeg rules are used  
2 not only by the Surface Water Discharge Permitting  
3 Program, but also other programs throughout DEQ  
4 such as the Groundwater and Subdivision Programs.  
5 Therefore, modifications to the rules really do  
6 require an understanding of the potential impacts  
7 to more than just Clean Water Act administration.

8 The research and amendments necessary to  
9 revise and clarify the nondeg rules will likely  
10 require several years of planning and outreach.  
11 Therefore potential revision of Montana's  
12 nondegradation rules will be addressed in a future  
13 rulemaking.

14 EPA recommended considering a broad  
15 narrative statement to protect downstream water  
16 quality standards. This is a statement that would  
17 go into Subchapter 6, our surface water quality  
18 standards, just to protect downstream water  
19 quality standards. That raises some questions.  
20 How far downstream do we look?

21 DEQ participated in the national work  
22 group that developed customizable templates for a  
23 narrative downstream use protection standard, and  
24 during this process, Montana and many other states  
25 shared concerns on how such a narrative standard

1 could be implemented within water quality  
2 programs. Montana is looking forward to seeing  
3 technical guidance to support how such a broad and  
4 generic standard could be implemented. When this  
5 information is available, we'll be able to  
6 determine how to proceed.

7 And finally, EPA recommended that  
8 efforts regarding water quality standards and  
9 natural conditions must meet EPA's public  
10 participation requirements, and be submitted to  
11 EPA for review and action. We agree. We  
12 currently do this, and we will continue to do so  
13 with other water quality standards rulemaking into  
14 the future.

15 So you've just gotten a pretty  
16 comprehensive list of several items that the Board  
17 will be seeing over the next several years. So  
18 even though we're not proposing changes based on  
19 all of these comments in this particular  
20 rulemaking, it did raise a lot of issues for us to  
21 look at going into the future. DEQ is 100 percent  
22 committed to working with WPCAC, the Board, and  
23 the public to continue to improve our water  
24 quality standards, so that we can ensure  
25 protection of Montana's surface and groundwater

1 standards into the future.

2 I now move on to the shorter part of the  
3 presentation, the actual proposed rule amendment.  
4 For those of you on the phone, it starts on Slide  
5 14.

6 Most of the changes that we're proposing  
7 are in DEQ7, Montana's numeric water quality  
8 standards. DEQ7 is then adopted into several of  
9 the Department's rules. And other changes that  
10 we're proposing are in the Administrative Rules of  
11 Montana themselves, primarily in Subchapter 6.

12 We'll start out by talking about changes  
13 that we're recommending to DEQ7, and first very  
14 briefly, we're recommending several housekeeping  
15 changes, things such as grammar, wordsmithing,  
16 technical edits, the corrections of errors.

17 The bulk of the changes to DEQ7 are  
18 human health standards changes, and before I go  
19 into those specifically, I want to give a little  
20 either refresher or lesson -- depending on your  
21 background -- of the source of the human health  
22 standards in DEQ7. Most of those are either Clean  
23 Water Act Numbers or Safe Drinking Water Act  
24 numbers.

25 When you think of the Clean Water Act,

1 think of surface water. Under the Clean Water  
2 Act, EPA adopts national recommended water quality  
3 criteria -- think 304(a) criteria. Those are  
4 broken out into priority pollutants and  
5 non-priority pollutants, so anytime you see any of  
6 those things, those are Clean Water Act numbers  
7 meant to protect surface waters.

8 Safe Drinking Water Act, that one is  
9 obvious. Drinking water is right in the name.  
10 Under the Safe Drinking Water Act, EPA adopts  
11 maximum contaminant levels. These are numbers  
12 that must be met at the tap before consumption.  
13 DEQ does use Safe Drinking Water numbers as human  
14 health standards in some cases, and I'll explain  
15 when in just a minute.

16 This is the first line out of DEQ7, and  
17 I'd like to draw your attention to a couple  
18 columns over toward the right. We're on Slide 18.  
19 Human health standards. We have separate human  
20 health standards for surface water and  
21 groundwater. Sometimes those numbers are the  
22 same. As in this case, sometimes they're  
23 different. But the source is always listed right  
24 under the number.

25 How do we determine what source, where

1 we're getting that number, that's what I'm going  
2 to talk about right now. Surface water versus  
3 groundwater.

4 For surface water, we'll always use the  
5 more restrictive of the MCL or priority pollutant  
6 or non-priority pollutant. We're being as  
7 protective as we can. If the priority pollutant,  
8 non-priority pollutant, and the MCL are the same  
9 number, the priority pollutant or non-priority  
10 pollutant is listed as the source in DEQ7, and  
11 that's because EPA's Clean Water Act standards  
12 program reviews and approves our DEQ7, and DEQ7 is  
13 primarily used by Clean Water Act programs; also  
14 other programs, but primarily it was intended as a  
15 Clean Water Act document. If none of those are  
16 available, DEQ will use a health advisory  
17 recommended by EPA.

18 For groundwater, if there is an MCL  
19 available, we'll typically use the MCL. If there  
20 is not, we'll use a priority pollutant or  
21 non-priority pollutant; and again, if neither of  
22 those are available, we'll use a health advisory.

23 Now moving on to those changes that  
24 we're proposing to the human health standards. In  
25 2015, EPA did a major overhaul to their national

1 recommended water quality criteria for the  
2 protection of public human health. They adopted  
3 94 new and updated criteria. We went through, we  
4 took a look at that science, and we compared,  
5 updated where it was appropriate in DEQ7. If the  
6 MCL was more stringent, we retained the MCL, or in  
7 some cases replaced that number with the MCL  
8 because the priority pollutant or non-priority  
9 pollutant number went up.

10 We're also proposing to update 67 human  
11 standards to incorporate EPA's newly recommended  
12 human exposure input. These human health  
13 standards are primarily pesticide standards, and  
14 these all have that HA, that health advisory  
15 designation. So we worked with EPA on updating  
16 these numbers. And the human exposure inputs, the  
17 new ones, are listed there below. Daily water  
18 intake went from two liters to 2.4 liters; mean  
19 adult body weight went from 70 kilograms to 80  
20 kilograms; and fish consumption went from 17.5  
21 grams to 22 grams.

22 We're also proposing adoption of five  
23 new pesticide standards. This is required under  
24 the Montana Agricultural Chemical Groundwater  
25 Protection Act, and these are health advisory

1 numbers that are then adopted into DEQ7.

2 The Montana Agricultural Chemical  
3 Groundwater Protection Act says if a new pesticide  
4 is detected in groundwater in Montana, and DEQ  
5 does not have a standard for that pesticide, that  
6 we have a year to adopt a number for that. So  
7 we've worked with EPA, calculated numbers for  
8 these, and we are proposing adoption of those  
9 numbers.

10 Just a couple of aquatic life standards  
11 changes since 2012. Cadmium, the current and  
12 acute chronic numbers are .52 and .097 micrograms  
13 per liter at 25 milligrams per liter hardness.  
14 This is hardness based, so it is based on an  
15 equation. These are calculated for 25 milligrams  
16 per liter. The proposed acute and chronic numbers  
17 are .49 and .25 micrograms per liter.

18 And carbaryl, this is a new standard  
19 that came out in 2012 after adoption of our  
20 updated rule package, after the most current  
21 revision to DEQ7. The proposed acute and chronic  
22 numbers in this case are the same. They're both  
23 2.1 micrograms per liter.

24 A couple of other DEQ7 changes that  
25 we're proposing. When EPA updated those 94 new

1 and updated national recommended water quality  
2 criteria, some of those were just in response to  
3 the new human exposure inputs. Others are based  
4 on new science, and in some cases the category of  
5 the pollutant went from toxic to carcinogen and  
6 vice versa. So we're just recommending in the  
7 DEQ7 table where we have category listed, that we  
8 just update that to be current with the most  
9 recent science.

10 And the last change that I'll talk about  
11 that we are proposing to DEQ7 is just a  
12 technicality really. We're not proposing a  
13 change. Narrative standards are housed in  
14 Subchapter 6, Administrative Rules of Montana  
15 Title 17, Chapter 30, Subchapter 6. And four of  
16 those are referenced in DEQ7: Color, pH,  
17 temperature, and turbidity.

18 By doing, so we introduced some  
19 confusion about how those standards are supposed  
20 to be implemented. It is very clear in the rule  
21 how the standards are to be implemented in permits  
22 and in nondegradation nonsignificance reviews, but  
23 by putting them in DEQ7, it introduced some  
24 confusion to how that was supposed to be done.

25 So we're not proposing changes to the

1 standards themselves. They will be maintained in  
2 Subchapter 6. We're simply recommending removal  
3 of the reference in DEQ7.

4 Moving on to a couple of the changes  
5 that we're recommending in Subchapter 6. We are  
6 recommending to add most probable number as  
7 acceptable units for E.coli measurements.

8 Currently Subchapter 6 says that E. coli  
9 measurements must be submitted as colony forming  
10 units. Colony forming units and most probable  
11 number, both of those methods that generate those  
12 numbers are approved in 40 CFR 136, which lays out  
13 methods that are appropriate to use for surface  
14 water discharge permits, and we're just simply  
15 adding, proposing to add the most probable number  
16 in addition to colony forming units in the rules,  
17 so that both can be used, submitted to DEQ, and  
18 that information can be used by DEQ.

19 We're also recommending to modify the  
20 surface water use designations to have defined  
21 start and end points. When these use classes were  
22 defined back in the 1950s or 1960s, many of the  
23 start and end points were drinking water intakes.  
24 Some of those drinking water intakes have moved,  
25 some of them are no longer there, so we've used

1 GIS to identify where those points were or are,  
2 and we're just recommending adding lats and longs  
3 to the descriptor so that there is no question  
4 about where a use class begins and ends.

5           Along those same lines with the surface  
6 water use designations, we're also recommending  
7 removal of tribal waters on our jurisdictional  
8 boundaries. DEQ does not have jurisdiction over  
9 tribal waters, so it doesn't make sense to have  
10 those waters categorized or in our rules, so we're  
11 recommending removing those waters from the rules.

12           And finally -- I said that I was going  
13 to come back to this -- the compliance schedule  
14 authorizing provision that's in our permitting  
15 rules. In those regular revisions that EPA did in  
16 2015, one of things that they said was that if  
17 states are going to use compliance schedules in  
18 their permits, the state's compliance schedule  
19 authorizing provision has to be approved as a part  
20 of the state's water quality standards.

21           So in order to make that happen, in  
22 order for EPA to review and approve our compliance  
23 schedule authorizing provision, we're just  
24 recommending adding a reference to that provision  
25 in the standards rules. So that way when we

1 submit our package to EPA for their review and  
2 approval, they'll also be reviewing and approving  
3 the compliance schedule authorizing provision.

4 Are there questions on any of that? I  
5 went through it really fast. That's a lot of  
6 information.

7 CHAIRMAN MILES: Are there any questions  
8 from the Board members for Ms. Steinmetz?

9 (No response)

10 CHAIRMAN MILES: Chris or Michele or  
11 Marietta?

12 BOARD MEMBER TWEETEN: None for me.  
13 Thanks.

14 CHAIRMAN MILES: Thank you.

15 BOARD MEMBER REINHART-LEVINE: None for  
16 me.

17 CHAIRMAN MILES: I know it has been a  
18 long process. Before the Board takes up  
19 discussion, are there any comments from the public  
20 about the proposal to initiate rulemaking?

21 (No response)

22 CHAIRMAN MILES: Hearing none,  
23 discussion by the Board on the proposal to  
24 initiate rulemaking. Is there a motion to  
25 initiate rulemaking?

1 BOARD MEMBER O'CONNOR: I would so move.

2 CHAIRMAN MILES: Second.

3 BOARD MEMBER DR. BYRON: Second.

4 CHAIRMAN MILES: Is there any further  
5 discussion?

6 MR. MATHIEUS: Madam Chair, if I may. I  
7 believe the Board needs to either initiate  
8 rulemaking and adopt or not adopt the public  
9 response to comments.

10 CHAIRMAN MILES: All right. So that  
11 would just be -- do you want to revise --

12 MR. MATHIEUS: You can do it.

13 CHAIRMAN MILES: Revise the motion to  
14 approve that, just revise the motion to include  
15 that which recognizes --

16 BOARD MEMBER TWEETEN: Joan, this is  
17 Chris. I think we've already initiated  
18 rulemaking. Unless we vote to initiate  
19 rulemaking, I don't think DEQ has the authority to  
20 go ahead with the notice of comments. And so I'm  
21 thinking that at some point in the past we must  
22 have authorized initiation of rulemaking on this  
23 point. And I guess --

24 CHAIRMAN MILES: I'm going to turn it  
25 over to John North.

1 BOARD MEMBER TWEETEN: John, maybe you  
2 can clarify that for me.

3 CHAIRMAN MILES: Thanks for bringing  
4 that up.

5 MR. NORTH: Madam Chair, Mr. Tweeten.  
6 Actually what the Board authorized in February was  
7 for publication of the triennial review notice to  
8 solicit comments on what parts of the water  
9 quality standards should be amended, and then the  
10 responses to comments that have been attached with  
11 the agenda item are the proposed responses for  
12 that triennial review process; and then the second  
13 step is for the Board to initiate rulemaking, so  
14 the Board would need to vote to initiate  
15 rulemaking at this meeting.

16 CHAIRMAN MILES: So this is the first  
17 time we've seen the actual proposed revisions to  
18 DEQ Circular 7?

19 MR. NORTH: That's correct, Madam Chair.

20 CHAIRMAN MILES: Does that make sense,  
21 Chris?

22 BOARD MEMBER TWEETEN: Yes, it does.

23 CHAIRMAN MILES: So I guess what we're  
24 looking for is just to have that motion that Mr.  
25 O'Connor made revised to reflect to initiate

1 rulemaking, and adopt the responses to comments  
2 that the Department received.

3 BOARD MEMBER O'CONNOR: And I would so  
4 move that we initiate rulemaking, and adopt the  
5 responses that the Department has received.

6 BOARD MEMBER DR. BYRON: Second.

7 CHAIRMAN MILES: It's been moved and  
8 seconded. Any further discussion?

9 (No response)

10 CHAIRMAN MILES: All in favor, please  
11 say aye.

12 (Response)

13 CHAIRMAN MILES: Anyone opposed?

14 (No response)

15 CHAIRMAN MILES: Hearing none, the  
16 motion carries. Thank you for the Department's  
17 work on this. It has been a lot of work, and more  
18 to come, it sounds like.

19 At this point, I think a short break,  
20 take a short break, just ten minutes, and then  
21 we'll get into Payne Logging and Lincoln County.  
22 Do we have the parties here, Ben?

23 MR. REED: Madam Chair, yes, we do.

24 (Recess taken)

25 CHAIRMAN MILES: Chris, on the phone.

1 BOARD MEMBER TWEETEN: Yes.

2 CHAIRMAN MILES: Michele.

3 BOARD MEMBER REINHART-LEVINE: Yes.

4 CHAIRMAN MILES: Marietta?

5 BOARD MEMBER CANTY: Yes, I'm here.

6 CHAIRMAN MILES: So we have everybody  
7 accounted for. Folks are coming back in the room.

8 Just a couple of quick things. I have a  
9 question for George, and he's not here.

10 We've asked the Department to update us  
11 on Senate Bill 325 activities which involves some  
12 rulemaking, and rulemaking that the Board is  
13 supposed to undertake, and I would just like to  
14 get updated on that before the legislative  
15 session, or at least during the legislative  
16 session in case that topic comes up. So I'll save  
17 my other questions for George when he comes in.

18 (Board meeting recessed to hear  
19 contested cases at 11:20 a.m.)

20 \* \* \* \* \*

21 (Board meeting reconvened at 1:23 p.m.)

22 CHAIRMAN MILES: Any public comment on  
23 matters not on the agenda? Nothing, please, that  
24 relates to any contested cases, but is there any  
25 public comment on any other matters of import,

1 such as the Berkeley Pit or anything like that?

2 (No response)

3 CHAIRMAN MILES: Not to plant ideas.

4 MR. REED: Madam Chair, if I may. Ben  
5 Reed. As a member of the public, I'd like to say  
6 that one of the great privileges of my time with  
7 the Department of Justice has been watching, as it  
8 were, the sausage get made by the Board of  
9 Environmental Review, and I can't tell you how  
10 much of a pleasure and privilege it has been  
11 watching the citizens of this state step up and do  
12 the work that you've done. So I thank you very  
13 much. Congratulations on your hard work, and that  
14 was --

15 CHAIRMAN MILES: I do want to wish you  
16 the very best, and thank you. You've been a  
17 tremendous support for me. I probably call Ben  
18 about fifteen times before every meeting, and you  
19 always call back right away, so I appreciate that  
20 very much.

21 BOARD MEMBER TWEETEN: Madam Chair, may  
22 I second what you've just said. I want to state  
23 that -- and I think I probably speak for the rest  
24 of the Board as well -- that it has been a real  
25 pleasure to work with a lawyer of Ben's particular

1 abilities in handling the business that comes in  
2 front of this Board; and it has also been a  
3 pleasure to deal with a lawyer whose personal  
4 manner is as easy going as Ben's is.

5 And there is a real opportunity I think  
6 for disagreements and conflicts to exist between  
7 the Board and its Counsel, and we've managed to  
8 avoid all of those. I think Ben deserves a lot of  
9 credit for that. So I also wish you well in your  
10 future endeavors, and I just wanted you to know  
11 how much I've enjoyed working with you during your  
12 time on the Board.

13 MR. REED: Thank you, Mr. Tweeten.

14 CHAIRMAN MILES: I'm just wondering how  
15 Andres Haladay feels today.

16 MR. REED: I would say that he's nowhere  
17 near as obsequious and as much a toady as I am.

18 MR. HALADAY: I don't even know what  
19 those words mean.

20 CHAIRMAN MILES: We look forward to  
21 working with you. Thank you. Thank you,  
22 everybody. I appreciate your being here. Motion  
23 to adjourn.

24 BOARD MEMBER O'CONNOR: So moved.

25 BOARD MEMBER DR. BYRON: Second.

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CHAIRMAN MILES: All in favor.

(Response)

CHAIRMAN MILES: Thank, you everyone.

Meeting is adjourned.

(The proceedings were concluded

at 1:26 p.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 - 53 - 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 \_\_\_\_\_, 2017.

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



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