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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
January 31, 2017)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
January 31, 2017
10:00 a.m.

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

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

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

3 * * * * *

4 (Mr. Tweeten not present)

5 CHAIR MILES: Welcome to the January
6 31st, 2017 Board meeting. Hillary, would you take
7 the roll, please.

8 MS. HOULE: Absolutely, Madam Chair. I
9 am just going to go ahead and announce those that
10 are in person, and then I will go through the
11 list, and if you're on the phone, when I say your
12 name, if you could just say "here," that would be
13 great.

14 In attendance we have Chairperson Joan
15 Miles, Dr. Robert Byron, Marietta Canty. And for
16 those on the phone, Mr. O'Connor.

17 (No response)

18 MS. HOULE: Ms. Reinhart-Levine.

19 MS. REINHART-LEVINE: Here.

20 MS. HOULE: And Ms. Shropshire.

21 MS. SHROPSHIRE: Here.

22 MS. HOULE: Mr. Tweeten.

23 (No response)

24 MS. HOULE: Maybe we'll give them a few
25 minutes, Madam Chair. It was my understanding

1 that they would be both be attending on the phone.

2 CHAIR MILES: Sure. And it's just
3 10:00. If everybody is okay, we'll just take
4 about two, three minutes here. And I don't think
5 this should be a particularly long Board meeting,
6 so I don't think that will hold us up just waiting
7 a few minutes.

8 (Off the record briefly)

9 CHAIR MILES: I think maybe we'll just
10 get going. We have a quorum, and the first
11 section of the Board meeting is updates anyway, so
12 the first item of business is to review and
13 approve the minutes from December 9, 2016. I have
14 a couple of corrections before we take a motion,
15 or before we see if anyone else --

16 On the second page, Hillary, I.A.1, it
17 said, "Review and approve the September 30th, 3016
18 minutes." I've been on the Board a long time.

19 And I was just a little confused on Item
20 No. II.A.2(h). It says, "Intervenor Clark Canyon
21 Hydro filed a summary judgment motion before its
22 motion before its intervention was granted," and I
23 wasn't sure that sentence made a lot of sense.

24 MS. HOULE: Madam Chair, I can be sure
25 to clarify that for you. Maybe take out a few of

1 the duplicative words. Absolutely.

2 CHAIR MILES: I wasn't sure what
3 happened there, but with those changes, I'd be
4 happy to sign the signature page, because it
5 doesn't impact that. Are there any other comments
6 or corrections on the minutes?

7 (No response)

8 CHAIR MILES: I'll accept a motion to
9 approve the minutes with those amendments.

10 DR. BYRON: Madam Chair, so moved.

11 CHAIR MILES: Rob, Thank you. Is there
12 a second?

13 MS. CANTY: I'll second.

14 (Mr. Tweeten present by telephone)

15 MR. TWEETEN: This is Chris.

16 CHAIR MILES: Hi, Chris. This is Joan.
17 Thank you for joining. You're just a tad bit
18 late, and we're just voting on adoption of the
19 minutes with a couple of amendments here. So Rob
20 moved to approve, Marietta seconded. Is there any
21 further discussion?

22 (No response)

23 CHAIR MILES: Hearing none, all in
24 favor, please say aye.

25 (Response)

1 CHAIR MILES: Opposed.

2 (No response)

3 CHAIR MILES: Motion carries. Chris,
4 just for your information -- and thank you for
5 phoning in -- we have Robin on the phone, and
6 Michele on the phone; Rob Byron is here, Marietta
7 Canty is here, and I'm here, so that's six of the
8 Board members with you phoning in. Thank you.

9 We'll turn now to contested case
10 updates, and I'll turn it over to Andres Haladay.

11 MR. HALADAY: Thank you, Chair.

12 Enforcement cases assigned to a Hearing Examiner,
13 Items (a) and (b), Copper Ridge respectively,
14 Copper Ridge just recently filed a summary
15 judgment in both of those, so we're just on a
16 briefing schedule for the parties to respond.

17 Item (c), Buscher Construction, the
18 parties had an order previously signed giving them
19 until January 27th to either reach a settlement or
20 a revised hearing schedule. I haven't heard from
21 them yet either way, but the 27th was recently, so
22 I assume that something is either in the mail or
23 I'll be getting an update soon.

24 Item (d), Big Rock, a show cause order
25 was issued on January 29th giving Big Rock until

1 January 18th to show cause why the matter
2 shouldn't be terminated or dismissed. At this
3 point no response has been forthcoming from Big
4 Rock.

5 Goran, the parties recently stipulated
6 to an amended scheduling order, so that order is
7 in effect, and the matter is proceeding.

8 If you have any questions on those.

9 CHAIR MILES: Any questions?

10 (No response)

11 CHAIR MILES: No.

12 MR. HALADAY: I'll move on to
13 non-enforcement cases.

14 Item (a), Phillips 66, there is a
15 stipulation in effect staying all proceedings
16 until December 31, 2017, so that item will remain
17 on there unless we hear otherwise, but it will be
18 the same update. Generally moving forward.

19 LT Trucking. LT was issued an Order to
20 Show Cause, did respond, and the matter is going
21 to continue. LT has entered into a stipulated
22 scheduling order with the Department, and so that
23 is just under a scheduling order and proceeding
24 forward at this point.

25 CFAC, Item (c), that's still assigned

1 and remains with Ben Reed, who is going to handle
2 all the post-hearing proceedings.

3 Item (d), Heart K, an order denying
4 summary judgment was issued, and the parties,
5 pursuant to their previous agreement, have been
6 ordered to develop a joint proposed scheduling
7 order going forward.

8 Westmoreland Resources is stayed pending
9 a decision by the Montana Supreme Court, and the
10 parties are under an order to let me know within
11 thirty days of a decision by the Court.

12 Laurel Refinery. On January 26th, the
13 parties entered a joint stipulation regarding a
14 number of contested issues, and so they're going
15 to present that, or they intend to at least
16 present that to the Board at the June 2017 meeting
17 for Board approval. That won't dispose of the
18 entire matter, so after the Board determines what
19 it wants to do with that stipulation, the parties
20 will then revisit a subsequent scheduling order.

21 CHAIR MILES: So would we be just
22 approving the stipulation effects or what --

23 MR. HALADAY: I think it is that they
24 have approximately seven outstanding issues, or
25 six outstanding issues, and they'd be resolving

1 all but one of them, according to the proposed
2 stipulation, and so they'd be asking for Board
3 approval of that portion, disposing of that part
4 of the matter. They intend at least to present
5 more than one remaining issue that would have to
6 continue on to a contested case proceeding, or at
7 least summary judgment briefing.

8 CHAIR MILES: We'll anticipate that in
9 June.

10 MR. HALADAY: They'll let me know how
11 they want to set that schedule after the Board
12 determines whether to even accept the proposed
13 stipulation, and they would be providing that in
14 time for the Board to have and review those
15 stipulations prior to the meeting.

16 Item (g), Signal Peak Bull Mountain.
17 The outstanding motion to amend to join the Sierra
18 Club was denied, and they're just proceeding under
19 a scheduling order.

20 Item (h), Clark Canyon. Just because it
21 came up in the Chair's comments, I would just give
22 the Board a little bit of background.

23 Clark Canyon was an Intervenor in this
24 matter, and upon their attempt to intervene also
25 filed a motion for summary judgment, and so when

1 they were allowed to intervene, that motion, it
2 was unclear whether that motion had been deemed
3 filed or not, and so the parties were somewhat
4 unsure whether or not they should be actually
5 briefing summary judgment at the time, and so
6 that's why that wording in the minutes may have
7 been a little bit confusing. At this point, the
8 motion has been deemed filed, and is fully
9 briefed.

10 Upper Missouri Waterkeeper, who is in
11 the case, has also filed for summary judgment, and
12 so the parties are briefing that summary judgment
13 as well. So they're just on a briefing schedule
14 at this point.

15 Item (i), Timbershor. Both the
16 Department and Timbershor, which has intervened at
17 this point, have moved to dismiss. Those motions
18 were converted to summary judgment motions, and
19 the Petitioners are on the clock to respond at
20 this point, so we're just under a briefing
21 schedule in that case as well.

22 Payne Logging. A scheduling order was
23 put into effect. That's the matter that this
24 Board rejected the Hearing Examiner's proposed
25 findings and conclusions at the last meeting. So

1 that's been just reset under a schedule, and
2 that's Item (j), if you're looking.

3 And then Item (k), WECO. That is the
4 item that the Board denied summary judgment at the
5 last Board meeting, and the parties are going to
6 provide witness and exhibit lists, and propose
7 some hearing dates, as the Board assigned that to
8 be heard by me for a hearing at the last Board
9 meeting.

10 CHAIR MILES: That was at the special
11 meeting in December, wasn't it, that we did that?
12 We didn't do that --

13 MS. CANTY: I think that was the special
14 meeting. I think.

15 MR. HALADAY: My understanding is that
16 the end --

17 MS. CANTY: I had to recuse myself at
18 the end of that.

19 CHAIR MILES: What was the date of that?

20 MR. HALADAY: That was December 9th.
21 The Board moved to deny summary judgment, and then
22 remand to the Hearing Examiner for all prehearing
23 matters and to --

24 CHAIR MILES: I absolutely remember
25 that. I thought it was --

1 MS. CANTY: The special meeting in
2 November.

3 CHAIR MILES: I thought it was in
4 November, the special meeting in November.

5 MR. HALADAY: I believe there was a
6 special meeting, and maybe -- Ms. Houle is looking
7 at me.

8 CHAIR MILES: It wasn't in the December
9 minutes. It was in November, wasn't it? Did I
10 just skip over that?

11 MS. HOULE: Should I defer to Mr.
12 Mathieus?

13 MR. MATHIEUS: Our recollection is that
14 there was oral argument at the special meeting
15 like maybe the 15th of November, and then this was
16 discussed at the December 9th meeting.

17 CHAIR MILES: Yes. That's right.

18 MR. HALADAY: And just to give a little
19 bit more background, there was a bit of discussion
20 between the parties regarding whether witness and
21 exhibit lists would be provided, and where things
22 were, and so that should be settled at this point
23 and just moving forward with the contested case.

24 And so that is all of them, all of the
25 updates for me, unless Board members have

1 questions.

2 CHAIR MILES: Are there any questions
3 for Andres?

4 (No response)

5 CHAIR MILES: Thank you very much. I
6 appreciate your work on that. Item No. 3 -- or
7 did we just do that? No. Contested cases not
8 assigned to a Hearing Examiner.

9 MR. HALADAY: I defer to Mr. North on
10 this.

11 MR. NORTH: Madam Chair, the status in
12 that case has not changed. We're still -- The
13 District Court has granted the Plaintiffs' summary
14 judgment motion, and we're awaiting a
15 determination on the Plaintiffs' motion for
16 attorneys fees in that case, and at that point,
17 the case will be appealed to the Montana Supreme
18 Court, but it is premature until the District
19 Court rules on the attorney fees motion.

20 CHAIR MILES: So we don't have to do
21 anything on this at this point?

22 MR. NORTH: No, ma'am.

23 CHAIR MILES: Any questions of John
24 North?

25 (No response)

1 CHAIR MILES: Seeing none, we'll move to
2 other briefing items. Thank you for putting this
3 on the agenda. We talked about this after the
4 last meeting. We're going to get an update on the
5 development of rules to implement Senate Bill 325.
6 This was passed during the last legislative
7 session. I had asked for an update on that, being
8 mindful of the fact that the Legislature is in
9 session, and also that we have some Board members
10 who will be going through confirmation, and just
11 wanted to make sure if any legislators who had
12 particular interest in that bill asked about it
13 that we all can report on the status of that.

14 So turn it over to you.

15 MR. URBAN: Madam Chair, members of the
16 Board, for the record, my name is Eric Urban. I'm
17 the Bureau Chief of Water Quality Planning Bureau
18 here at the Department.

19 In that role, I have the pleasure of
20 overseeing all the Clean Water Act data, the
21 Monitoring Assessment Program, and with respect to
22 this bill, water quality standards and modeling
23 programs.

24 So Senate Bill 325 is a 2015 bill that
25 was passed and codified as 75-5-222. As a

1 reminder, this bill has two very distinct parts to
2 it. One is implementing a non-anthropogenic
3 condition as the standard. The second part to the
4 bill specifically directs the Board to develop
5 rules for how to implement variance from a water
6 quality standard when the in-stream conditions
7 exceed that standard.

8 So the update on that is that they're
9 two very distinct pieces. So we took on Sub (2),
10 as it was explicit that the Board would do that
11 work, and I am happy to report we are currently
12 planning to take this rule draft to WPCAC on
13 February 17th. After that, we will incorporate
14 WPCAC's comments, and return to the Board at the
15 March meeting for a request to initiate the
16 rulemaking.

17 Sub (1), the non-anthropogenic, while a
18 simple concept, I'm not doing it justice to
19 describe the complexities on how to do that. We
20 have made great gains on the subject in
21 understanding how we would implement it in clean
22 water programs, and it looks like we're on pace
23 for a summer 2017 initiation of rulemaking, or at
24 least initiating the process through WPCAC and
25 outreach.

1 CHAIR MILES: So Eric, the Board portion
2 of it, that Sub(b), is more of a procedural rules,
3 and wouldn't be impacted by the substance of what
4 is contained in Sub(a)?

5 MR. URBAN: Madam Chair, members of the
6 Board, I think that's a good description. It is
7 procedural.

8 CHAIR MILES: Any other questions for
9 Mr. Urban?

10 (No response)

11 CHAIR MILES: Anyone on the phone have
12 any questions?

13 (No response)

14 CHAIR MILES: Thank you. So we all can
15 give the same update if any of us are asked about
16 that, as well as the Department, so thank you for
17 the update on that.

18 New contested cases.

19 MR. HALADAY: Chair Miles, two have come
20 in. One is the matter of the appeal of Oil Field
21 Rock and Logistics; and the other, the appeal of
22 Vanak Transportation. I know as much you all do
23 based on what's been supplied in the packet. It
24 has been minimal -- might be overly gracious to
25 the filings. So I would leave it to the Board to

1 determine if it wants to keep those matters, or
2 assign them to a Hearing Examiner.

3 CHAIR MILES: So the Board action then
4 is to decide whether we want to retain those
5 matters, or assign a permanent Hearing Examiner.
6 Do you want to do these one at a time? I know
7 there is not much substance, but I think that --

8 MR. HALADAY: It's probably best to just
9 do them as individual motions.

10 CHAIR MILES: That's what I thought. So
11 in the matter of the appeal of Oil Field Rock and
12 Logistics, is there a motion from the Board?

13 MS. REINHART-LEVINE: Madam Chair, this
14 is Michele. So moved.

15 CHAIR MILES: Is the motion to assign to
16 a permanent Hearing Examiner?

17 MS. REINHART-LEVINE: Yes.

18 CHAIR MILES: Thank you. Is there a
19 second?

20 DR. BYRON: Second.

21 CHAIR MILES: Rob Byron seconds. Is
22 there any further discussion on that?

23 (No response)

24 CHAIR MILES: You're able to take that
25 on, Andres?

1 MR. HALADAY: I'll get that tee'ed up.

2 CHAIR MILES: No further discussion, all
3 in favor, please say aye.

4 (Response)

5 CHAIR MILES: Opposed.

6 (No response)

7 CHAIR MILES: Hearing none, the motion
8 carries unanimously.

9 In the Appeal of Vanak Transportation,
10 is there a motion pertaining to that?

11 MR. TWEETEN: Madam Chair, this is
12 Chris. If we don't really know anything about
13 this, I would move to assign it to the Hearing
14 Examiner.

15 CHAIR MILES: Thank you, Chris. Is
16 there a second?

17 MS. CANTY: I'll second.

18 CHAIR MILES: Marietta Canty seconds.
19 Any further discussion?

20 (No response)

21 CHAIR MILES: All in favor, please say
22 aye.

23 (Response)

24 CHAIR MILES: Opposed.

25 (No response)

1 CHAIR MILES: Hearing none, motion
2 carries unanimously.

3 And I think that the final action item
4 on contested cases, and I'm going to let Andres
5 explain this.

6 MR. HALADAY: So the final action item
7 is in the Matter of Violations of the Public Water
8 Supply Laws at Highlander Bar and Grill. This has
9 been stayed pending the parties' resolution or a
10 stipulation by the parties for quite some time.

11 The Department has provided a notice of
12 and a proposed order dismissing this as the
13 settlement, or that they've satisfied all of the
14 conditions in the stipulation. So at this point,
15 based on the Department's representation, it is up
16 to the Board whether to dismiss this matter as the
17 conditions have been satisfied by Highlander.

18 CHAIR MILES: So this proposed order of
19 dismissal was not included in the packet, and it
20 is very short. I can basically read it to people.

21 "The parties having stipulated that Rene
22 Requa shall pay a penalty of \$1,000, and that upon
23 payment, this case shall be dismissed and Rene
24 Requa having paid the penalty in full, it is
25 hereby ordered that this case is dismissed dated

1 this 31st day of January 2017."

2 So that's the language in the proposed
3 order. Pretty straight forward. Is there a
4 motion I guess to have the Board approve the
5 order?

6 MR. HALADAY: That would be correct.

7 CHAIR MILES: Yes, Chris.

8 MR. TWEETEN: May I ask Andres a
9 question?

10 CHAIR MILES: Yes, absolutely.

11 MR. TWEETEN: The dismissal that's been
12 agreed to and the stipulation, is that dismissal
13 with prejudice or without?

14 MR. HALADAY: I would understand that to
15 be with prejudice, but I'm looking over at Mr.
16 North right now. And if it is not specified in
17 there, I believe it should be with prejudice.

18 MR. TWEETEN: I think the general rule
19 is if you don't specify, the presumption is that
20 it is with prejudice, but it would be better to
21 state it in the order one way or the other, don't
22 you think?

23 MR. HALADAY: That's probably correct.
24 We may be able to also -- The Board could probably
25 specify in the motion as well, or just amend the

1 proposed order to include with prejudice.

2 And just as an aside, under Rule 41 of
3 the Rules of Civil Procedure, which while they
4 don't necessarily apply to MAPA proceedings, would
5 allow the parties to stipulate to these dismissals
6 in many cases. It just happened that because this
7 matter has been pending for quite some time, it is
8 brought before the Board, but in many of these
9 cases, the parties might able to simply stipulate
10 to dismissal without the Board being involved.
11 But here it just seemed pertinent to bring it
12 before the Board. So I think that Board Member
13 Tweeten is probably correct in what he's
14 suggesting.

15 CHAIR MILES: So Chris, I don't know if
16 you're prepared to make a motion, but based on the
17 answer to that question, it would be to authorize
18 the Chair to sign the order of dismissal including
19 the language "with prejudice."

20 MR. TWEETEN: Madam Chair, I believe you
21 can just interlineate by hand the words "with
22 prejudice," and then put your initials next to it,
23 and that should be sufficient to amend the motion;
24 or your Counsel could go back and redraft the
25 order and have it sent. Either way I think would

1 be effective. Since the matter is done by
2 stipulation, it seems to me likely that there
3 won't be any dispute over that.

4 MR. HALADAY: That's correct. If the
5 Board Chair just wants to insert the words "with
6 prejudice."

7 CHAIR MILES: I think that would be
8 helpful, so we're not trying to redraft this, and
9 then finding a time that I can sign it. So I
10 guess the motion would be to authorize me to add
11 that language to the order of dismissal and sign
12 it.

13 MR. TWEETEN: So moved.

14 CHAIR MILES: Thank you, Chris. Is
15 there a second?

16 MS. CANTY: I'll second.

17 CHAIR MILES: Marietta seconded. Any
18 further discussion?

19 (No response)

20 CHAIR MILES: All in favor, please say
21 aye.

22 (Response)

23 CHAIR MILES: Motion carries
24 unanimously, and I didn't hear anyone not weigh
25 in. Thank you very much.

1 Final repeal and adoption of the 2015
2 Federal Public Water Supply Rules. Who is going
3 to handle that?

4 MS. FILLIATER: Madam Chair, members of
5 the Board, my name is Tammy Filliater, and I'm an
6 environmental science specialist for the Public
7 Water Supply Bureau of the Montana DEQ.

8 On September 30th, 2016, the Board
9 initiated the rulemaking process to propose the
10 2015 Code of Federal Regulations for Public
11 Drinking Water Systems, which includes the revised
12 total coliform rule, and several housekeeping
13 items.

14 A public hearing was held on the 22nd of
15 November in 2016, and the public comment period
16 ended 11/25/2016. No public comments or testimony
17 opposing or proposing amendments to the rulemaking
18 were received. As part of these rulemaking
19 proceedings, the Department has identified the
20 monitoring requirement and the proposed amendments
21 for certain small groundwater systems as being
22 more stringent than the comparable federal
23 monitoring requirement.

24 Even though this requirement is more
25 stringent than the federal requirement, it is the

1 same as existing Montana rules, which were
2 established in 1999 after the Board made written
3 findings that the monthly monitoring requirement
4 was necessary.

5 Nevertheless, even though this is the
6 same requirement as existing Montana law, House
7 Bill 521 requires the Board, before adopting rules
8 that are more stringent than federal rules, to
9 make written findings that the rule protects
10 public health, can mitigate harm to the public
11 health, and is achievable under current
12 technology.

13 Appendix III of the Department's HB521
14 memo contains evidence from various registered
15 sanitarians, city and county health departments,
16 and other individuals that demonstrates the need
17 for a monthly monitoring baseline for
18 non-community water systems serving 1,000 or fewer
19 people, and using only groundwater.

20 The Department thus asks the Board to
21 make written findings in accordance with 521 that
22 the monthly monitoring baseline for these systems
23 protects public health, can mitigate harm to the
24 public health, and is achievable under current
25 technology.

1 The Department gave two presentations to
2 the Board, one in April of 2016, and one in
3 September of 2016. Therefore, unless there are
4 questions on this rule package, we will not
5 consume any more of the Board's time with yet
6 another presentation. The Department recommends
7 that the Board adopt the Department's HB521 and
8 311 analysis, the submitted written findings, the
9 small business impact analysis, and the rule
10 amendments as proposed in MAR Notice No. 17-386.

11 Thank you.

12 CHAIR MILES: I have a question, and
13 then I'll turn it over to other Board members. I
14 was just a little confused about one of the
15 documents at the very end of the packet, and there
16 is no date on it. So is the written findings
17 about 521, is that the one proposed now, or is
18 that an appendix from the previous --

19 MS. FILLIATER: Madam Chair, members of
20 the Board, if Aaron can --

21 MR. PETTIS: My name is Aaron Pettis.
22 I'm an attorney here at DEQ. Those were the
23 proposed written findings for the Board to make
24 today.

25 CHAIR MILES: So that very last document

1 Page 53 and 54.

2 MR. PETTIS: Yes.

3 CHAIR MILES: I wasn't sure if I was
4 reading that correctly, or if that was a copy of
5 what the Board had done earlier. Any further
6 questions? Any discussion from Board members?

7 MS. CANTY: I just had a question. With
8 the small business impact and reading through
9 that, could you maybe just explain what was done
10 in the findings of that?

11 MS. FILLIATER: For the small business
12 impact, what we did is we went through, and before
13 we -- we've already implemented the RTCR. We were
14 using something called the total coliform rule.
15 And so what we did is we went back, and we pulled
16 data, and said, "Okay, if the RTCR was in effect
17 two years ago, what would the numbers look like?"
18 And so it enabled us to get some figures and allow
19 you to look at those figures.

20 And so we pulled that data, and we took
21 a look at costs associated with implementing the
22 RTCR, and it ranged anywhere from learning the new
23 rule, and training operators, implementing that.
24 And so some of that information we pulled from the
25 EPA guidance, because we weren't sure what numbers

1 to use. And so the EPA estimated a certain number
2 of hours that it would take for systems to learn
3 the rule and implement the rules. And some of the
4 other data we could actually pull numbers from our
5 data set from previous years.

6 And so long story short, the small
7 businesses, there's going to be several things.
8 First of all, time and effort to learn the rules.
9 Some of those costs can be kind of absorbed
10 because the operators are already attending water
11 schools, and so while they're already attending
12 water school, we have had massive outreach, so
13 that the systems can learn what they need to do.

14 They can also call us, and we've spent
15 hours and hours on the phone, the rule managers
16 have, talking with the systems. So we've tried to
17 help out there.

18 Another component for the small system
19 is that they needed to submit a site sampling
20 plan. Once again, the EPA had guidance for us on
21 how long that would take. The Department tried to
22 help out. When I attended water school, the rule
23 managers were actually filling out paperwork for
24 the operators to help them out.

25 Some of the things that are more costly.

1 We have assessments called Level 1 and Level 2
2 assessments. These Level 2 assessments is where
3 it could get really expensive. So for example,
4 let's say we have a system that has an E. coli
5 hit. Very serious. We send inspectors out to the
6 site. That site visit does not cost the operator
7 or the system anything.

8 We go out, lend another set of eyes, and
9 then depending on what is found during that
10 inspection, the system needs to fix what's called
11 sanitary defects. So these are things that are
12 determined to be the likely causes. Sometimes we
13 don't know, but they're determined to be the
14 likely causes of an E. coli positive hit.

15 And so when we look at the causes, it
16 could be anything from requiring a new well cap
17 because the well cap is split; it could be
18 operator training; it could be that they didn't
19 wash their hands before they collected the sample.
20 Worst case scenario, it could be that there is a
21 storage tank that has an open hatch, and it now
22 needs to be cleaned, which could cost a lot of
23 money. It could also mean that a storage tank or
24 something in the system needs to be replaced or
25 fixed, which potentially could lead to thousands

1 and thousands of dollars.

2 And so when we look at these systems,
3 these costs are costs that they're going to
4 eventually spend, and so it is a cost. In some
5 cases it is triggered from the Level 2, but in the
6 case of a split well cap, it is something that
7 would eventually be discovered during a sanitary
8 survey, and it should be fixed. Other things,
9 everything has a useful life, and so over time,
10 these things need to be replaced.

11 The other way that you can trigger a
12 Level 2 is by having two Level 1's, and so a Level
13 1 is where you have your total coliform hit, so
14 not severe as E. coli, but if you keep getting
15 these hits, then we go out and we conduct the
16 Level 2 and the same thing.

17 So it was really hard to assess how much
18 it would cost, because a system that is regularly
19 replacing components, they're not going to be
20 involved in the equation. Systems that we go out,
21 we don't know what we're going to find, and so we
22 do our best, and to help mitigate those costs -- I
23 don't know if mitigate is the right word -- but to
24 help with that, what we do is we send an inspector
25 out; we write up a report; that report comes back

1 to the DEQ.

2 We actually have a committee, and that
3 committee sits down and they say, "Okay, Tammy,
4 you've submitted five different things that you
5 think are these sanitary defects, and they need to
6 be fixed." Number one is a broken well cap, for
7 example. We agree it needs to be fixed. No. 2,
8 do you think a distribution system line needs to
9 be replaced? We don't agree with that, and so we
10 take that off the list.

11 And so the Department has stepped back,
12 and we've tried to put procedures in place where
13 we can minimize the costs to the systems before we
14 say, "You need to do this, this, and this," and in
15 some cases it may be that we start with the two
16 most important components, and then work our way
17 down.

18 And so overall, it is going to be a cost
19 to the system. We look at those costs. Some of
20 those costs are costs that are already like, for
21 example, attending water school; replacing
22 components of the system; sometimes it may be
23 training. We just don't know until we go out and
24 take a look.

25 So I went through the economic analysis

1 with our economist, and I think he stated that the
2 costs were significant to the small business
3 owner, and he said as soon as we added anytime at
4 all, it was considered significant. Who am I?
5 But I don't know if I agree that it is
6 significant. In a lot of cases, some of the
7 things need to be done anyways, and we're
8 protecting public health. And our inspectors go
9 out during sanitary surveys, and they're looking
10 for some of the same things. It is just a
11 different process to follow.

12 Sorry I took so long. Any follow-up
13 questions, or is there something you want me to
14 expand on?

15 MS. CANTY: Thank you. That helped.

16 CHAIR MILES: Thank you. Any other
17 questions or discussion?

18 (No response)

19 CHAIR MILES: So Board members, just to
20 refresh ourselves here, we have three options: We
21 can adopt the amendments as proposed with the
22 House Bill 521 and 311 analysis, as well as the
23 small business impact analysis; we can adopt the
24 proposed amendments with revisions that we find
25 appropriate; or we can decide not to adopt the

1 amendments.

2 The Department's recommendation is that
3 we do adopt the rules as well as the House Bill
4 521 and House Bill 311 analyses, the attached
5 findings, the small business impact analysis, and
6 the rule amendments as proposed.

7 Is there any motion from the Board?

8 MS. CANTY: So moved.

9 CHAIR MILES: Marietta moves adoption of
10 the amendments with the supporting documentation.

11 Is there a second?

12 DR. BYRON: Second.

13 CHAIR MILES: Dr. Byron has seconded.

14 Is there any further discussion by the Board?

15 (No response)

16 CHAIR MILES: All in favor, please say
17 aye.

18 (Response)

19 CHAIR MILES: Anyone opposed?

20 (No response)

21 CHAIR MILES: Hearing none, the motion
22 carries. Thank you very much, and that's done.

23 Is there any further business or
24 questions Board members want to bring up before we
25 open up for public comment?

1 (No response)

2 CHAIR MILES: Is there anyone in the
3 audience who would like to comment on any matters
4 within the jurisdiction of the Board that are not
5 otherwise on this agenda and that are not
6 contested cases?

7 (No response)

8 CHAIR MILES: Seeing none, thank you all
9 for being here. Is there a motion to adjourn? I
10 think we're ready to adjourn. The next meeting is
11 March 31st. Motion to adjourn.

12 MS. CANTY: So moved.

13 CHAIR MILES: I don't know if we
14 actually vote on that, or we just adjourn. We're
15 adjourned.

16 (The proceedings were concluded
17 at 10:41 a.m.)

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C E R T I F I C A T E

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

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 32 - 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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