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BEFORE THE WATER POLLUTION CONTROL
ADVISORY COUNCIL (WPCAC)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111, Metcalf Building
1520 East Sixth Avenue
Helena, Montana
November 8, 2013
10:00 a.m.

CHAIRMAN TREVOR SELCH; MEMBERS
EARL SALLEY, MITCHELL LEU,
STEVIE NEUMAN, KAREN BUCKLIN-SANCHEZ,
and MICHAEL WENDLAND; and
KATHLEEN WILLIAMS and KEITH SMITH (By telephone)

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

3 * * * * *

4 (Ms. Williams not present)

5 CHAIRMAN SELCH: I'll call the meeting
6 to order here. And since it looks like we haven't
7 met since last April, maybe we'll just quickly go
8 around and everyone introduce themselves again,
9 and we'll find out who's on the phone as well.

10 MS. NEUMAN: Stevie Neuman for the
11 conservation Districts.

12 MR. LEU: Mitchell Leu with industry
13 concerned with disposal of organic waste.

14 MR. SALLEY: Earl Salley, I'm concerned
15 with nonorganic waste disposal.

16 MR. SUPLEE: Mike Suplee, Water Quality
17 Standards.

18 MR. WENDLAND: Mike Wendland, production
19 agriculture.

20 MS. STEINMETZ: Amy Steinmetz, Water
21 Quality Standards.

22 CHAIRMAN SELCH: Trevor Selch,
23 fisheries.

24 MS. NORMAN: Sarah Norman, DEQ Water
25 Quality Planning Bureau.

1 CHAIRMAN SELCH: And who have we got on
2 the phone?

3 MR. SCHAEFER: My name is Mark Schaefer.
4 (Phonetic) I'm concerned with site specific
5 criteria.

6 MR. SMITH: And this is Keith Smith.
7 I'm concerned with municipal water and waste
8 systems as a Public Works Director.

9 CHAIRMAN SELCH: Can you guys hear us
10 okay on the phone?

11 MR. SMITH: Yes.

12 MS. BUCKLIN-SANCHEZ: Last, Karen
13 Sanchez, and I represent professional engineers
14 working with sanitary engineering.

15 CHAIRMAN SELCH: First we'll be
16 approving the agenda from our last meeting, which
17 was actually all the way back on April 19th, and I
18 was not present at the time, and several of us
19 were missing, but those that were here, did you
20 all have a chance to review the minutes?

21 MR. SALLEY: I move to approve the
22 minutes as stated.

23 MR. WENDLAND: Second.

24 CHAIRMAN SELCH: So approved. The next
25 item is approval of the agenda for today, and the

1 first action item we'll be discussing is our
2 meeting time for the next meeting, and then also
3 obviously the numeric nutrient standards package
4 that Mike Suplee will be presenting. Does anyone
5 have any additions or edits to the agenda for
6 today?

7 (No response)

8 CHAIRMAN SELCH: We'll just move to pass
9 that. So moving on to our first action item,
10 talking about our next meeting.

11 MS. STEINMETZ: We have at least one
12 agenda time for the next meeting. The next Board
13 meeting is going to be January 21st, which means
14 because of when the rule would be published, we
15 need to have a meeting in order to be able to
16 review the material before December 30th. So we
17 need to find a time in December when we can meet,
18 or if it's just that one agenda item, we might be
19 able to just do a teleconference, but I'll open it
20 up for discussion on when you all might be
21 available to meet in December. Maybe mid December
22 before the holidays is too hard.

23 CHAIRMAN SELCH: Does anyone have any
24 conflicts, absolutely cannot do days, or weeks?

25 MR. SMITH: This is Keith Smith. I'm

1 not available December 9th through 16th for sure,
2 and maybe one or two days, either Friday -- so
3 whatever that Friday is, I think that's the 13th.
4 That Friday the 13th I would not be available.

5 MS. STEINMETZ: It doesn't necessarily
6 have to be a Friday either, if you all can do
7 another day.

8 MS. BUCKLIN-SANCHEZ: I'm not available
9 on the 6th.

10 CHAIRMAN SELCH: I think Fridays are --
11 is that still a good day overall for people, other
12 than the conflicts? I think we had decided that
13 worked for most folks. So the 28th, is that
14 getting too close to the holidays for people?

15 MR. LEU: The 20th is probably pushing
16 it.

17 MR. SALLEY: The 17th, Tuesday?

18 MR. LEU: That works.

19 CHAIRMAN SELCH: The 17th, does that
20 work for the folks on the phone? I know that
21 Keith mentioned that that might be a conflict, but
22 otherwise it looks like that should work.

23 MR. SMITH: As long as we do a
24 teleconference, because we do our council meetings
25 on Tuesday night. I would probably be back in

1 time for that, because we always end at noon, so I
2 should be fine.

3 CHAIRMAN SELCH: Okay. Pencil in the
4 17th, and take it from there.

5 So I guess we'll move right into Mike
6 talking to us about his numeric nutrient
7 standards.

8 MR. SUPLEE: Okay. Good morning
9 everyone. I don't have a formal presentation, so
10 what I'd like to do, if it's all right with you,
11 is I just want to make a few statements regarding
12 kind of the nutrient standards overall, where
13 we've been, how we got here, and then go over a
14 couple of details relative to the rule package
15 that you need to be aware of; introduce a new rule
16 change that was not part of your packet that we
17 could talk about; and Subchapter 5, which is the
18 mixing zone rules. I just want to present that to
19 you, and then after that open it up for questions
20 on anything, any aspect of this entire rule
21 package that you'd like to go over. And we have a
22 computer here if there is anything we need to look
23 at in detail or get into, that sort of thing.

24 So I thought I would just start by
25 saying that if you go back and look at the Montana

1 Water Quality Act, it directs the Board, which
2 means indirectly directs us and you, to formulate
3 and adopt standards of water quality, giving
4 consideration to the economics of waste treatment
5 and prevention. So I think that with nutrient
6 standards, that statement, and the way they expect
7 this to be done, was taken very much to heart in
8 the way the standards were developed.

9 I recently read that science is about
10 how things are, not how we would like them to be,
11 and I think that is also very applicable in this
12 case. The science that we carried out over about
13 ten years here at the Department, building upon
14 science that was already decades in development,
15 since the 1960s primarily, kept bringing us back
16 to numbers that are very difficult to meet in some
17 cases relative to where wastewater treatment is.

18 So that's that disparity between numbers
19 that would protect beneficial uses and how we
20 would like them to be. How we would like the
21 water quality standards for nutrients to be is in
22 close alignment with the levels of treatment that
23 we typically see from wastewater treatment plants.
24 Unfortunately that's not how it worked out, and so
25 given the law that we operate under, we had to

1 determine how to implement these standards in a
2 way that accounts for the economics of waste
3 treatment and prevention.

4 A great deal of the work that has been
5 between two legislative sessions, what we have now
6 in statute, etc., aims to do that. Standards are
7 set up so that once adopted, they can be achieved
8 over time, and that was really a goal that we set
9 out for starting about 2005 --

10 UNKNOWN SPEAKER: Now joining.

11 MS. WILLIAMS: Kathleen.

12 MR. SUPLEE: -- when we realized how low
13 the numbers were going to be. I believe we've
14 reached the point where probably not all, but most
15 of the key issues pertaining to these standards
16 has been vetted, and resolved, and that's why the
17 Department has decided to bring the rule package
18 to you at this time.

19 So getting into the more detail oriented
20 elements, there is a couple things I want to bring
21 to your attention. One is the version that you
22 had to look at, I think it was -- so let's just
23 start with the Statement of Reasonable Necessity
24 in the rules. So this starts at the top. It
25 says, "Nutrient Standards Rule Version 7.8."

1 That's what you would have been looking at. There
2 were --

3 Unfortunately we built these some time
4 ago, and some of the standards that are the rule
5 changes that you're seeing here are actually built
6 on a version of the standards one iteration old.
7 There is no substantive problems, in other words,
8 there is nothing that would change the intent or
9 content of the rules; but things that point to No.
10 4 are now No. 2, etc. There are some things like
11 that in the rule package.

12 We do have an updated version which is
13 completely up to speed and correct with the rules
14 that are currently on the books, so just wanted to
15 bring that to your attention; but again, I want to
16 restate that there is nothing substantively going
17 to change in terms of the ideas behind anything.

18 The other thing I wanted to bring your
19 attention to is new. We unfortunately did not get
20 this to you as part of the rule package submittal
21 a couple weeks ago because we only discovered that
22 we needed to address this very recently. So I
23 draw your attention to the handout that was back
24 on the table called "Water Quality Subchapter 5."

25 What this is, these are the mixing zone

1 rules. So these are the rules that tell the
2 Department how they should, when you have an
3 effluent going into a surface water or a ground
4 water, for that matter, how do you do that, what
5 kind of calculations do you make, etc. And as
6 you're aware from looking at the other work that
7 we've done, we've going to have a new circular,
8 DEQ12, which lays out the nutrient standards.

9 The main thing we've done in Subchapter
10 5 here is incorporate the new circular into the
11 mixing zone rules, because previously it only
12 talked about essentially DEQ7 type of parameters.
13 It will also have, as the other rules have had, a
14 severability clause, such that if either a Court
15 or if the EPA disapproves our rule package, then
16 these rules will all collapse, which is as per
17 design. DEQ 12 and the rule package would go
18 away.

19 The only other thing I think that's of
20 interest specifically within this rule package and
21 Subchapter 5 -- and again, we're going to come
22 back to the whole thing here right after this, so
23 if you have other questions, we'll get to that. I
24 just wanted to cover this real briefly.

25 If you look at the Subchapter 5 changes,

1 and go to the second to the last page, you'll see
2 at the bottom -- I'm sorry they're not numbered.
3 It is a page -- If I can direct you to find the
4 page that near the top talks about 17.30.16. If
5 you guys could find that. It is about the third
6 actual page in.

7 Down at the bottom, you'll see a bullet
8 that says -- What this section does is it tells
9 the Department how do you go about calculating a
10 standard mixing zone, so it is just a typical
11 mixing zone, and how long it is, and all that sort
12 of thing. We've added a bullet "E," which now
13 reads, "Facilities that discharge to surface
14 waters, the parameters found in DEQ12 Part (a),"
15 so that basically says look at those standards,
16 "discharge limitations shall be based on dilution
17 with the entire seasonal 14Q5 flow of the
18 receiving water."

19 So the idea here is that for other types
20 of parameters, mixing zones are sometimes
21 calculated using a fraction of the 7Q10 flow, the
22 flow that is typically used for calculating toxic
23 compounds. In this case, because of the nature of
24 nutrients, they're harmful or more in that
25 direction, they're not toxic at these

1 concentrations. Discussions with the Nutrient
2 Work Group, and Permitting has also been okay with
3 this. The entire flow, whatever that flow
4 calculates out to be of the 14Q5, can be used to
5 calculate the mixing zone instead of some fraction
6 of it.

7 So those are the main substantive
8 changes in that chapter. I know we just dropped
9 this on you today. I also want to point out that
10 Permitting is still looking this over and may have
11 some internal comments. So it would probably be
12 better to forego any decisions about this, maybe
13 have some time to look at it. We'll get back to
14 you soon if we have any other internal comments
15 about it that may change it, and then let us know
16 what you think later down the road.

17 So those were the main things that I
18 wanted to just state or bring to your attention;
19 and after that, I really just am here to answer
20 questions about anything in the rule package that
21 you would like to discuss.

22 CHAIRMAN SELCH: Thanks, Mike. Does
23 anyone have any questions for Mike? I've got a
24 couple things.

25 MS. BUCKLIN-SANCHEZ: Yes, please.

1 Mike, can you, in more layman's terms, tell us
2 about this change to Subchapter 5 of 17.30. I see
3 that it changes the mixing zone from the 10Q7 to
4 the 14Q5, and that was in the DEQ12, and it talked
5 about it a little bit, and it is based on --
6 because you're looking at summer times for the
7 nutrient standards? Tell me if I'm wrong.

8 MR. SUPLEE: So your question is about
9 why do we have a different flow?

10 MS. BUCKLIN-SANCHEZ: Well, I think I
11 understand it. It is actually more -- Yes, why
12 don't you answer that. Thank you.

13 MR. SUPLEE: In essence, if you go back
14 to the basis of the 7Q10, that's the flow that is
15 typically -- When they're designing a discharge of
16 a wastewater, they have to design it to some
17 design flow, and what they do is they pick a flow
18 that occurs relatively infrequently. So the idea
19 is that you're going to meet the standards on
20 almost any given year, and only rarely will the
21 water levels develop low enough that you may
22 actually have not a dilution to meet the
23 calculations that you've run.

24 So the 7Q10, the standard one that's
25 been used up to now, was based on the idea that

1 you shouldn't have an exceedence of a water
2 quality standard more than once in every three
3 years over a certain averaging period. And there
4 are complicated ways to do that, which have never
5 really been practical to apply by the Department's
6 dynamic modeling and these sorts of things.
7 However, the 7Q10 flow, which is a statistically
8 calculated flow that the USGS can generate, has
9 been used consistently to basically mimic that one
10 in three violation concept.

11 When we came to look at nutrients, we
12 knew that their mode of action was different. One
13 of their modes of action is that algae has to grow
14 up to a certain level in a stream before it
15 becomes nuisance, before it starts to impact DO,
16 etc.; and through a number of studies that are in
17 the scientific literature and work we've carried
18 out ourselves here in the Department, it looks
19 like that takes about 14 to 20 days, something in
20 that ballpark, probably less than a month, but
21 more than two weeks for algae once nutrients are
22 elevated to go from a low level to a problem
23 level. So that's where the 14 days came from.

24 Then we looked at the idea of one in
25 three, so the idea would be that you don't want

1 this to occur more than one in three summers in
2 this case. There were no statistically calculated
3 flows for one in three, but there was for one in
4 five on USGS, so we meshed it up with that, and
5 it's a little bit more protective. There is not a
6 big difference. So a permit writer now can turn
7 to standard publications by USGS, and find a 14Q5
8 seasonal flow which they can then plug right into
9 their calculations for mixing zones dilution, etc.

10 MS. BUCKLIN-SANCHEZ: Can I ask another
11 question? So then to take it a step farther --
12 This is a question I've been having, because the
13 last time we met was in April, and so I'm kind of
14 getting back up to speed on the DEQ12. Plus over
15 the summer I started thinking about it, and trying
16 to read and ask questions. So this is my first
17 chance to ask the questions I've had.

18 So when DEQ12 is in place, and a
19 community with a discharge permit needs to meet
20 the limit for their ecoregion or their river; and
21 then assuming a general variance is in place at
22 first, so they have that general variance. Let's
23 say they're less than a million gallons, less than
24 one milligram per liter then ten milligrams per
25 liter; or let's say if later and the variances

1 have expired or got ratcheted down, and you're at
2 the ecoregion micrograms per liter.

3 MR. SUPLEE: That's going to be twenty
4 years out.

5 MS. BUCKLIN-SANCHEZ: So let's focus on
6 the one in ten. So will those numbers then be put
7 through the same dilution calculations?

8 MR. SUPLEE: No. The way that works is
9 -- the first thing a permit writer will do, will
10 say, "Okay, we have a whole series of water
11 quality standards that we have to make sure that
12 people are complying with, and now that will
13 include nutrient standards." So they'll run their
14 calculations to see if there is a reasonable
15 potential to violate a nutrient standard. In many
16 cases the answer is going to be yes. There may
17 not -- as we just discussed -- the criteria are
18 low, there may not be dilution available, etc.

19 At that point, the permittee has the
20 right to request a general variance, and they will
21 be granted a general variance based on statute.
22 And that is not really calculated. The dilution
23 flows no longer come into play. You can think of
24 it in a simple way as a kind of an end of pipe
25 type of --

1 MS. BUCKLIN-SANCHEZ: So it's a strict
2 standard, because usually -- this is how I
3 understand permits, which believe me I'm not even
4 like up to speed on how permits are written. But
5 generally the water quality is measured, say, in
6 the stream; and then the discharge is measured in
7 terms of concentration or loading; and then the
8 permit is written around that, like you said, the
9 acceptable level or the probable level of
10 violations.

11 So that number might not be -- if the
12 nutrient standards are applied the same way, the
13 number might not be one in ten, it might be less
14 than one, or it might be greater than one,
15 depending on the quality in the river and the
16 receiving water?

17 MR. SUPLEE: That's actually not the
18 case. You're kind of mixing and matching some
19 things. So if there is dilution available, and it
20 is possible for the wastewater facility to get
21 down to a certain level of treatment, then the
22 permit writer will put that in the permit, and
23 then the permittee will decide if they can achieve
24 that or not. They might say, "Well, in order to
25 do this, I have to get down to six milligrams

1 total nitrogen per liter." I can just do that.

2 That's a case where, for example, in
3 Missoula, they can kind of just get right in
4 there, so they don't need to go down the road of a
5 variance. In many other cases, it would require
6 someone to discharge at half a milligram TN per
7 liter, or at the standard, and that's not doable.
8 In that case, a general variance is really at that
9 point calculated independently from the flows. It
10 is an end of pipe type of number.

11 And the way we've structured this thing,
12 because it is run through the technical support
13 document that permits uses, the net effect is that
14 they'll probably end up discharging, or be
15 required to meet on a monthly basis, a number
16 slightly more liberal than the one in ten. It
17 might be like 1.1 to 10.4, something like that,
18 and that's just because of the statistics of the
19 calculations. And that's what they have to meet
20 end of pipe as an average monthly level.

21 But it is fully understood that the
22 concentration that is going out on the river is
23 way beyond the levels that should meet the
24 standard, and that's why it is a variance. It is
25 a temporary step in our movement ultimately to

1 move towards the standards as wastewater treatment
2 approves and costs come down, etc.

3 So the thing to remember is if a person
4 can't meet the standards at the end of their
5 mixing zone, the general variances and the other
6 variances are available, and it is fully
7 understood that those will exceed the standards in
8 the river, but that's okay because they're
9 operating under the variance. Does that make
10 sense?

11 MS. BUCKLIN-SANCHEZ: Yes. Thank you.

12 CHAIRMAN SELCH: I've got a question.
13 It is written that if flow records on affected
14 surface water are insufficient to calculate the
15 ten year ten day flow that the Department will set
16 the stream flow of the disposal system. How often
17 does this occur, if ever? Do we have no data or
18 enough to calculate? Then I guess what would be
19 the criteria for determining that?

20 MR. SUPLEE: I think it happens.
21 Unfortunately that's a Permitting action, that
22 they're the ones that routinely do that. Is there
23 anybody in Permitting here who could answer that
24 question?

25 MS. WEAVER: I can. I'm Christine

1 Weaver. I've been a permit writer for five years.
2 And sometimes we don't have an exact number for
3 7Q10, for instance, because there is no monitoring
4 station between two streams that join. We will do
5 the best we can to find the closest USGS. We have
6 actually asked folks what they've observed,
7 because it tends to be smaller streams that don't
8 have data; and oftentimes if they have seen it dry
9 up, it's like, "I'm sorry. You're a zero."

10 We don't have that many new ones, so at
11 this point everything we've been renewing has
12 tended to have some established 7Q10 in it at this
13 point. So when there is a new facility, we do ask
14 them to provide flows and other data with their
15 application. Is that enough?

16 CHAIRMAN SELCH: Sure. I was kind of
17 curious. I didn't know how often it would occur
18 in a place that would have requested a permit. So
19 you're saying that it's more than likely they'd
20 have to -- ideally they'd start collecting data
21 before they --

22 MS. WEAVER: For a new permit. With
23 14Q5 it will be different than when we start
24 renewing; but everything we've been renewing now
25 has had an established 7Q10 somehow through the

1 years. USGS straight up is obviously the best.
2 Sometimes there's an addition or subtraction.
3 I've talked to people upstairs who have done
4 monitoring just to find out what they've known for
5 their water quality assessments before. So it
6 isn't always possible to get an exact number, but
7 we can approximate.

8 I don't know -- I guess that is a good
9 question as we go forward with the renewals, and
10 14Q5 are new numbers no longer established through
11 15 years. I personally don't know what -- we
12 haven't discussed that yet. I don't know what
13 we'd be doing.

14 MR. SUPLEE: That's part of the reason
15 this Subchapter 5 is being reviewed by Permits
16 right now to get their feedback. And again, it
17 came on kind of suddenly, but we did want to bring
18 it to your attention that we're working on this.

19 CHAIRMAN SELCH: Any more questions?

20 MR. LEU: I have a question regarding
21 the -- again, getting back to the dilution mixing
22 zone, and it is probably just my misunderstanding
23 of it. But if you're granted a variance to exceed
24 a standard, and that doesn't cause any detriment,
25 why would the standard be lower than treatment

1 technology is capable of achieving?

2 MR. SUPLEE: Well, based on the science
3 we've done, the variance will cause detriment. It
4 will cause detriment locally in the stream, and to
5 some distance downstream. And we've seen this
6 ourselves in many cases. Again, that's that place
7 where what the science tells us the criteria
8 should be, based on harm to use levels, and what
9 our treatment levels especially for nitrogen are,
10 are very disparate right now.

11 And so the variance is in keeping with
12 this idea that we formulate standards of water
13 quality giving consideration to the economics of
14 waste treatment. What we're saying is we can't
15 get there right now today at this cost in many,
16 many cases. We need to get there over time. So
17 the variance is -- so really to get into the way
18 the Federal Clean Water Act is structured, you
19 have a couple of options.

20 One is you can remove a use altogether.
21 We can say fisheries or recreation is simply not a
22 use, and we're going to remove it, but that's
23 difficult, especially if the use already exists,
24 or exists in some maybe semi-complete state.

25 The other option -- and this is an

1 option that tends to be preferred by EPA and by
2 the Department -- is to grant a variance which
3 says, "All right. We know what the water quality
4 should be to get to the level of treatment, but
5 we're not going to get there over night; and
6 instead of removing the use, we're going to work
7 our way down to it over time." So that's the
8 distinction.

9 MR. LEU: I guess to that effect, why
10 have a standard that we can't achieve and set a
11 number on that, thinking that we will be able to
12 do that twenty years from now or whatever? Why
13 not just set that standard to something that's
14 achievable, and then work on that standard over a
15 series of time and lowering that as treatment
16 technology catches up?

17 MR. SUPLEE: That's a good question, and
18 it has been brought up before.

19 MR. LEU: I just don't want us getting
20 into setting standards that are unachievable; and
21 anytime you apply for a variance, that always
22 takes more trouble, more time and money to come up
23 with something that is achievable, rather than --
24 it is a little bit different way of looking at it,
25 I guess.

1 MR. SUPLEE: Let me answer that a couple
2 ways. First, just the way the Montana Water
3 Quality Act is set up, and the way the Federal
4 Clean Water Act is set up, our water quality
5 standards need to be established at levels that
6 protect the beneficial uses of the river which are
7 already adopted, and that has to be based on a
8 scientific method, and that's what we've done.

9 So to do it the other way, we'll just
10 say, let's just set the standards at a level that
11 wastewater facilities can currently achieve, and
12 would not be consistent with either the Montana
13 Water Quality Act or the Federal Clean Water Act.
14 That's not how it's done. We set standards based
15 on the science, and then we say "Where are we at
16 relative to treatment technologies?"

17 Particularly the Federal Clean Water Act
18 was intended to be technology driven. As
19 technologies improve, and get better, that's what
20 gets you towards your standards. So we also
21 believe --

22 So there is a fundamental assumption
23 standing behind all this. The Department believes
24 that ultimately the standards are achievable, and
25 that would come about by improvements in

1 wastewater technology over time. There's a lot of
2 stuff in the wings, the engineers will tell you,
3 that can bring nutrients way down from what they
4 are today.

5 There are facility optimizations that
6 we've seen go in place that have knocked
7 concentrations of nitrogen down without any
8 expenditures other than just improvements in the
9 way the facility was operated, from like 50
10 milligrams TN per liter down to four or five, and
11 that's just by facility operation changes. So by
12 presenting the criteria that science shows are the
13 levels of protection, everybody knows what the
14 goal is.

15 Another thing that we've often seen in
16 discussions with our counterparts from the east is
17 that they, in many cases or in some cases, took
18 the approach more like what you described, and
19 said, "Why don't we start with a milligram total
20 phosphorus per liter," and then the next permit
21 cycle it's .8 and then it goes to .7, and the
22 permittees are saying, "What is this regulation
23 creep? Why do these go down, and what's the basis
24 of them?"

25 Well, they don't really have a good

1 answer because they really didn't know what their
2 nutrient standards should have been to begin with.
3 They knew they needed to be lower, they just
4 didn't have them. This is a case where we're
5 saying right up front, "This is what they need to
6 be, and we fully recognize that we need time to
7 get there."

8 So it is consistent with the State and
9 Federal law, and it is consistent with the
10 approaches that allow us to get there over time,
11 we believe.

12 MS. BUCKLIN-SANCHEZ: So if I could go
13 ahead and ask. So that the water quality
14 standards are based on what the concentrations of
15 nutrients should be in the water itself, in the
16 stream, in the river?

17 MR. SUPLEE: Yes, to maintain the uses
18 that have been adopted by law.

19 MS. BUCKLIN-SANCHEZ: So the point
20 discharges, the small towns, the large cities in
21 Montana, they would do their part and get down to
22 that concentration, but yet there is still other
23 sources, the nonpoint sources. And this is
24 something that I thought about a lot, and also in
25 talking to engineers and trying to get input for

1 this meeting, that has been brought up
2 consistently. And I've bugged Tina Laidlaw about
3 it a lot, too.

4 What sparked me on this was I went to a
5 one day seminar at the AWWA, the joint AWWA/MWA
6 conference in Great Falls in May, so this was
7 after our last meeting in April. And Tina gave a
8 good presentation on nutrients there, and had a
9 slide. And my understanding was that a lot of
10 this is driven not only by the Montana Water
11 Quality Act, but also EPA.

12 MR. SUPLEE: Yes.

13 MS. BUCKLIN-SANCHEZ: So her slide was
14 interesting because it did talk about that. One
15 of the recommended elements and strategy for the
16 states from EPA is to develop a work plan for
17 numeric nutrient standard for phosphorus and
18 nitrogen; and then there was seven other things.
19 And some of them were things that obviously aren't
20 regulated, like agricultural areas, set watershed
21 load reduction goals, annual reporting,
22 prioritized watersheds for reduction. So some of
23 those the DEQ doesn't have any ability to
24 regulate, but others do, like septic tanks.

25 And so I'm wondering. Is there other

1 things that the State of Montana, either DEQ or
2 other agencies are doing? Because if we just rely
3 only on the wastewater treatment plants,
4 especially the little towns, the small towns, they
5 may not be the biggest polluters contributing to
6 start with. In a time where money is really,
7 really tight, could we more effectively work with
8 the nonpoint sources, like the septic tanks, and
9 reduce those nutrients down so that everybody is
10 working together, and the burden isn't just on to
11 the ratepayers for the small towns.

12 And I bring this up because I watched on
13 Tuesday, and three communities that I saw just in
14 the newspapers, where mayors got voted out.
15 Communities that have administrative orders
16 currently for wastewater, or had for wastewater
17 treatment plant improvements, and these aren't
18 nutrients, these are BOD and public health related
19 things. And those Mayors got voted out.

20 So I guess I'm extrapolating here quite
21 a bit, but what can we do, or what is being done
22 currently, or are there any plans to work with the
23 nonpoint sources?

24 MR. SUPLEE: There is some folks in the
25 audience I think who can really give you the big

1 picture of what DEQ is working on independently of
2 this, so I'll come to them in just a second.

3 But I would point out by saying that,
4 first of all, the variance process buys a
5 tremendous amount of time, twenty full years, and
6 it is fully expected that during that time, a lot
7 of things will occur on the nonpoint source side.
8 You're correct that we do not have direct
9 regulatory authority over nonpoint sources at this
10 time. There are no laws in the State of Montana
11 that require that.

12 So what we've done is we've been very
13 careful about crafting the laws that we put
14 together so that they will work well with the
15 people that are regulated, but that doesn't mean
16 that nothing is happening on the other side. So
17 maybe Mark could kind of go over that. We had
18 talked about that several times at the BER and
19 other places.

20 MR. BOSTROM: This is Mark Bostrom. I'm
21 Bureau Chief of the Water Quality Planning Bureau.

22 One of the programs that is within Water
23 Quality Planning Bureau is the Nonpoint Source
24 Program. So I think overall when we think of the
25 nutrients, it is not just about the standards in

1 and of themselves, it is about the nutrient
2 reduction strategy that we have for the state.
3 And over the course of the last few sessions, we
4 have built effectively a tool box of different
5 means to do nutrient reduction that helps
6 incorporate nonpoint source pollution.

7 Included in that are wastewater reuse --
8 which I can't remember, I think it was Senate Bill
9 52 from two sessions ago. We have adopted a
10 nutrient trading program that was vetted through
11 the Board and adopted at BER last year late. And
12 effectively what those trading programs do is it
13 allows a point source to work with a nonpoint
14 source to achieve reductions that would provide
15 assimilative capacity in a stream, so they then
16 would have a mixing zone potentially, rather than
17 having to go down the variance route.

18 The wastewater reuse allows options like
19 spray irrigation or snow making for their
20 effluent, or watering a golf course, basically
21 taking that discharge out of the whole system, and
22 using it for another beneficial purpose.

23 And the State has just recently, last
24 year, we had our nonpoint source management plan,
25 which is a five year strategy for reduction of

1 pollutants, all pollutants; and included in that
2 is kind of this nitrogen and phosphorus context.

3 And part of the nonpoint source
4 reduction strategy for the State includes the
5 resources that are available to us from the EPA
6 under the Clean Water Act 319 Grant Program, and
7 those dollars go out specifically for nonpoint
8 source pollution reduction and projects, and
9 implementation of watershed restoration plans.

10 So those are the kind of main pieces
11 that we're doing. I'll leave it at that unless
12 there are other questions relative to that.

13 MS. BUCKLIN-SANCHEZ: That was a good
14 overview. Thank you.

15 MR. BOSTROM: I would point out that
16 both Helena and Missoula in their recent permit
17 renewals, there was effectively an offset that was
18 allowed within those permits, that is, as they go
19 out and hook up new areas of septics and put them
20 into their system, they get an allowance for that
21 load, which was nonpoint source, into their
22 permit; and there is a trading ratio that overall
23 provides for a reduction in nutrients when those
24 offsets occur.

25 So those are effectively happening now.

1 Even though we haven't had a true trade come
2 through right now, we have used offsets within
3 permit cycles.

4 MS. BUCKLIN-SANCHEZ: So the cost of
5 doing that is still on the wastewater user in
6 order to connect into that, into the public
7 system?

8 MR. BOSTROM: Right. There will be a
9 cost in the infrastructure to build that
10 collection system, but they're also picking up
11 additional ratepayers in that system.

12 MS. BUCKLIN-SANCHEZ: Is there any way
13 to do like every septic tank gets -- if you're not
14 connected into a public system, is there a way to
15 hold septic tank systems accountable? Because
16 that seems like, when you look at some -- I don't
17 have data, but it seems like in a lot of reasons
18 to put in a public system, and septic tanks do
19 cause a lot of nonpoint source pollution.

20 Is there a way to hold those accountable
21 without having to hold the public systems -- do
22 you know what I'm saying? Is there a way to get
23 their nutrient reduction there now, rather than
24 having users pay for it in the public systems, in
25 the point systems?

1 MR. BOSTROM: That's a tough question.

2 MS. BUCKLIN-SANCHEZ: Has the
3 legislature looked at that?

4 MR. BOSTROM: It would almost
5 effectively take some kind of a control mechanism
6 to regulate septic. Those are generally done at
7 the local level.

8 MS. BUCKLIN-SANCHEZ: Do you guys think
9 that to get down to the numeric nutrient
10 standards, that we can do it only with the point
11 sources, or do you think it is going to take the
12 nonpoint sources also to get to those?

13 MR. BOSTROM: Ultimately the nonpoint
14 sources are going to have to come around with
15 reductions to meet in-stream standards across the
16 state. Nonpoint sources are a key component. The
17 Clean Water Act, as well as the Montana Water
18 Quality Act, are clear that nonpoint sources and
19 pollution reduction relative to nonpoint sources
20 is a voluntary measure.

21 MS. BUCKLIN-SANCHEZ: If it was a
22 perfect world, right?

23 MR. BOSTROM: If it was a perfect world,
24 everybody would be happy and jump on board. And I
25 think there is a great deal of work done in

1 nonpoint sources. I think some of the watersheds
2 that we work with in the nonpoint source program
3 have done a fantastic job of controlling nonpoint
4 source pollution, and I think I'd point to perhaps
5 the Blackfoot as a really good example. And if
6 you look at the Clark Fork River below Missoula,
7 it benefits greatly from the good water that comes
8 out of the Blackfoot and Rock Creek.

9 And those streams, as they all converge
10 above Missoula, provide actually some assimilative
11 capacity. We've been looking at whether or not
12 the Clark Fork below Missoula is impaired, and
13 Mike might actually be able to speak to that. I
14 think it's really close. It might not be. And a
15 lot of that is due to the nonpoint source
16 activities that have occurred upstream.

17 MS. BUCKLIN-SANCHEZ: What about
18 agriculture?

19 MR. WENDLAND: I think we get a bad name
20 a lot of times. Agriculture gets blamed for
21 pollution a lot of times that isn't hitting the
22 stream; or like I was just thinking, too, a lot of
23 times storm water runoff from these larger areas
24 hits the stream. How do you control that? How do
25 you permit that?

1 MR. SUPLEE: I think I can elaborate a
2 little bit on this question on what Mark said.
3 Again, remember, when we looked at the standards,
4 these are seasonal standards, so it is anticipated
5 that -- Obviously some sources, if it is coming
6 from ground water, they get there all year around,
7 etc.; but the time period that we're targeting to
8 make sure that those levels are achieved this
9 summer, because that's when the aquatic plants
10 grow, and you get the algae blooms, and all that
11 kind of thing.

12 In the summertime, phosphorus, I would
13 say -- you asked earlier could point source clean
14 up this issue by themselves. I'd say on the
15 phosphorus side, they could do a lot to get down
16 to that, because in the summer, if you go to a lot
17 of our systems, you go to our big rivers, and you
18 look where the phosphorus levels are cranked up,
19 it is below point sources.

20 In contrast, the nitrogen is much more
21 of a diverse source. There often are high levels
22 from point sources. There is also often high
23 levels that are coming in from elevated nitrates,
24 etc., in ground water that are working their way
25 to surface water. It is more complicated.

1 So the answer is it kind of depends on
2 which of two nutrients you're looking at. Frankly
3 I think a lot could be done on the phosphorus side
4 by point source alone, because of the summertime
5 nature of the standards.

6 MS. WILLIAMS: Trevor, can I ask a
7 question? This is Kathleen. This is for Mike.
8 And I just want to apologize to the group that I
9 couldn't be there today in person. Excellent
10 discussion so far, and lots of great comments and
11 questions about equity, and how we all achieve
12 these common goals.

13 And on that topic, Mike, I think I've
14 brought this up several times before when we
15 talked about this process. But Mike, can you tell
16 me where in the rule package it talks about -- and
17 what the approach is that doesn't just give people
18 kind of a twenty year bye. When the technology
19 does advance -- which we hope it will -- what is
20 the process for either revisiting -- was it every
21 five years or something? Can you explain how that
22 works, and where it is in the rule, or do you
23 think it is a 20 year bye.

24 MR. SUPLEE: Let's start with statute.
25 Basically 75-5-313, which is what we're building

1 our rules underneath, states that if somebody is
2 granted a variance, a permittee is granted a
3 variance, then the Department has to go back and
4 revisit those variances, the basis of those
5 variances, every three years. That's part of our
6 triennial review. So basically the numbers that
7 are currently in statute are a starting point, the
8 one and the ten, the two and the fifteen,
9 milligrams per liter that we've been talking
10 about, and it is anticipated that those will drop
11 over time.

12 Now, from the Department's perspective,
13 one of the main drivers, especially for the
14 general variances which we expect most people to
15 be operating under that are going to need them,
16 would be that there was a significant
17 technological advancement that could be
18 implemented on wastewater facilities. If that
19 were to come along, then we would lower those
20 concentrations -- perhaps one in ten would drop to
21 .5 and four, for example -- and then that would be
22 the level that you would need to meet if you still
23 needed a general variance. So that's built into
24 the process over the twenty years, and that could
25 change at any point.

1 Engineers don't seem to have -- they
2 seem to tell me that there is a lot of stuff on
3 the horizon, and so do I expect us to lower the
4 general variance numbers based on that concept in
5 the next three years? Probably not. But in the
6 next ten or so, things may come along.

7 In the meantime, something that is in
8 the guidance document -- which you had a link to
9 in the materials, and we can look at it if we want
10 to look at it in detail -- folks that are in the
11 League of Cities and Towns, and others that are
12 involved in the Nutrient Work Group, have actually
13 already identified a series of reduction steps
14 going out fifteen years that they want to target
15 for themselves, so that they can plan now for what
16 they expect to try to achieve over the time
17 windows that they usually finance their
18 facilities, and these numbers are considerably
19 lower than the one in ten that you currently see
20 in statute.

21 And we can look at those if you would
22 like to see those. They're not going to be at
23 this point in rule. We cannot legally adopt them
24 in a rule, but they are going to go into guidance.
25 It is anticipated, because they've been vetted and

1 worked through with engineers, with the Nutrient
2 Work Group, with the League of Cities and Towns,
3 etc., that those are the targets that people would
4 use to make plans, and provide regulatory
5 certainty well out in the future as they design
6 their upgrade to their facilities.

7 MS. WILLIAMS: So in the rule it is a
8 reference to the triennial reviews that sort of
9 brings all this into the rule package; is that
10 correct?

11 MR. SUPLEE: That is correct.

12 MS. WILLIAMS: Then Trevor, if you don't
13 mind my continuing on on this topic, which I know
14 you guys -- I've obviously been interested in it
15 for awhile.

16 But I would share with the group that in
17 a legislative hearing there was -- I think we were
18 talking about these standards. There is some kind
19 of other proposed regulation. And there was a
20 venture capitalist in the audience that stood up,
21 and he said something that a lot of us remembered,
22 and he was looking to invest in Montana, and he
23 basically said that regulation drives innovation.
24 And he was investing in a company in the
25 Bitterroot that was working on improved water

1 treatment technology.

2 And so it is interesting. These are
3 difficult times and difficult questions, but
4 setting our sights and then encouraging technology
5 to help us I think is a reasonable option, rather
6 than giving up and accepting water quality that is
7 less than what Montana deserves. So just I guess
8 a comment there.

9 And based on that -- and I think I've
10 asked this before, and I hope things are moving in
11 this direction -- is we can work on these
12 standards, and guidance, and help, but we also
13 need to as a state provide the resources for this
14 type of innovation. And you mentioned the 319
15 program helping with sort of the interface between
16 point source and nonpoint source, and that's
17 great.

18 What about -- Is DEQ sort of crossing
19 agency bounds, and working with DNRC and maybe
20 Commerce on grant programs that help with this as
21 well, this sort of innovation, so that we're
22 putting our resources where our regulations are
23 driving our communities? So can you comment on
24 that, Mike, or maybe Mark. I don't know which.

25 MR. SUPLEE: I'll take a first stab at

1 it. I know we've definitely worked, especially
2 through our State Revolving Fund Program, we've
3 worked with the financing side of all this. They
4 are part of the Nutrient Work Group. And because
5 they're aware of the financing cycles, and how the
6 money is granted, and all that, they've been
7 coming to those meetings and providing a lot of
8 input on the variance process.

9 They like the idea that there is a
10 target out fifteen years or so within the general
11 variance, under that umbrella, because again, it
12 provides that regulatory certainty which allows
13 people to plan. So that's one aspect of it.

14 I know our Department has worked
15 indirectly, or at least had communications with a
16 small company in the Bitterroot Valley who is
17 attempting to use some pretty advanced algae type
18 of technology to reduce wastes. I don't know if
19 we provided any financing to them -- I don't think
20 so. I could find out -- but we certainly have had
21 communications with them. I visited their
22 facility. We've discussed the basis of the
23 standards, and where the standards come from with
24 them, so they're aware of the regulatory
25 background.

1 Is there anybody -- did I miss
2 something? Someone from Commerce is here that
3 would like to comment further.

4 MS. WILLIAMS: I'm focusing not on the
5 funds that help the facilities comply, but funds
6 that will help us advance technology, and advance
7 our business sector here in Montana as well.
8 Maybe a partnership with the university or
9 something. So just to clarify.

10 MS. MILLER: Kathleen, this is Kate
11 Miller. I'm an engineer with the Community
12 Development Division for the Department of
13 Commerce.

14 And we do have planning grants available
15 that while we do require that the end product be a
16 PER or a capital improvements plan, our community
17 development block grants program is a little more
18 liberal. We will allow other products as well.
19 But under these products, we do -- eligible
20 expenses are for studies and evaluations.

21 And we just met with an individual who
22 is looking at underground wastewater injection as
23 an alternate for sprinkler irrigation for land
24 application of municipal wastewater, for instance.
25 And so field studies for things like this.

1 UNKNOWN SPEAKER: Now joining.

2 MR. SMITH: Keith Smith.

3 MS. MILLER: So field studies for ideas
4 like this would be eligible expenses under our
5 planning grants program. And we do have a
6 category called "Other" that on a case-by-case
7 basis, we could consider our -- just remember that
8 our overarching goal for our grants programs,
9 legislative charge, is protection of public health
10 and safety, but we are interested in seeing
11 alternative processes, treatment methods
12 especially, for dealing with nutrients, toxic, and
13 wastewater treatment. Most of our applicants are
14 coming in right now seeking alternatives to
15 wastewater treatment.

16 MS. WILLIAMS: Thank you. And I would
17 just suggest, Mike, if there is any way that I
18 might help facilitate some conversations with the
19 university system or the Biofilm Institute or
20 something like that. I mean I know we're sort of
21 depending on the big urban centers to lead the way
22 on technology, but I just hope we're not
23 overlooking some potential options here in Montana
24 that could lead to both innovation here, and
25 business development, and solutions tailored to

1 Montana. So I'd just offer to help if I can.

2 MR. SUPLEE: Thank you.

3 MR. LAVIGNE: Kathleen, this is Paul
4 LaVigne with the SRF program at DEQ.

5 And to your question about partnering
6 with the university, we're kind of doing that
7 right now with Otto Stein down there, and funding
8 a vertical soil pilot wetlands project, which is
9 kind of a low tech nitrogen removal process. It's
10 done in Europe. And our intent is to develop
11 design standards here in the United States anyone
12 can use. So there is a pilot program going on
13 right now, a pilot project, at Bridger Bowl.

14 MS. WILLIAMS: Great. It would be nice
15 to get some of these partnerships into the
16 Watershed News or something like that, so that
17 more people heard about them. So thank you.

18 CHAIRMAN SELCH: Keith, did you have a
19 question?

20 MR. SMITH: I've got a couple questions.
21 And I've already been dropped once on this drive,
22 so I don't know how much longer I'll last.

23 But number one, Mike, are not most of
24 the watersheds doing TMDL studies by DEQ? Is that
25 not a true statement?

1 MR. SUPLEE: You mean is there a TMDL on
2 every watershed, or --

3 MR. SMITH: Are there not studies
4 underway on most watersheds?

5 MR. SUPLEE: I'm going to venture a
6 guess here and say probably not. It depends on
7 what scale you operate on. There's going to be a
8 lot of little watersheds that no one is looking at
9 at all. If you get on a larger scale, probably
10 every watershed, large watershed in the state has
11 something going on in it.

12 MR. SMITH: Because I think only one or
13 two have actually been completed. I know the
14 Bitterroot is close to completion; I think the
15 Clark Fork and one other may have been completed.
16 Maybe it was up by the Flathead Lake. I think
17 that one might be completed.

18 Anyway, my question is: The purpose of
19 the TMDL study for these major watersheds is to
20 characterize the nutrients and other things, like
21 sediment and temperature, identify the sources of
22 those and come up with recommendations. So I
23 guess my question is: Why are we trying to push
24 through this ten in one now, instead of giving
25 these TMDL studies a chance to finish and actually

1 characterize the true problem, versus a standard
2 ten to one that you think will fit to everybody.

3 MR. BOSTROM: This is Mark Bostrom. The
4 TMDL schedule that we're running on right now is
5 driven off of a lawsuit, and there is a specific
6 area of interest and focus for that lawsuit to
7 settle it, and that's generally in the west. So
8 those TMDL studies that are required under the
9 lawsuit will be completed by 2014. And so all
10 areas basically in the west that have watersheds
11 impaired by nutrients will have a TMDL, and those
12 TMDL's will describe an equitable distribution of
13 reductions from both point and nonpoint sources.

14 Now, right now, we're having to use the
15 science that Mike has developed and apply that
16 under the narrative standard that exists on the
17 books, and yes, that is being put into TMDL's
18 currently. I think the importance of getting this
19 numeric nutrient standard package through is that
20 it has the accompanying variance procedure tied to
21 it at the hip. The TMDL does not effectively have
22 that type of mechanism available to it.

23 So the best case scenario is that the
24 DEQ12 Parts A and B advance together, "A" being
25 adopted by the Board, "B" being adopted by the

1 Department, and that's going to greatly facilitate
2 the development of TMDL's, because then we'll have
3 numbers that we can work with, and communities
4 will have a variance to achieve the load
5 reductions over time.

6 MR. SMITH: So a follow up to that, and
7 you kind of hinted at it with a variance. The
8 variance package I'm reading, you've got the
9 general variance -- which I guess just buys us a
10 little bit of time -- but you've got the variances
11 in there, based on technology or economic need,
12 which technology would be a little bit easier to
13 do, but economic need, every system out there, it
14 will be difficult for them to prove that. A study
15 has to be done in order to prove economic.

16 But I didn't see anything in there for
17 those watersheds -- and you mentioned the
18 Blackfoot, and I can tell you the Bitterroot is
19 the same way -- where the rivers are not impaired
20 now. So why are we being forced to do a standard
21 when we already exceed water quality standards?
22 In other words, is there a variance available for
23 systems like those?

24 MR. SUPLEE: That would be a case -- if
25 you're also already meeting water quality

1 standards, then the river is not impaired; and
2 then if there is a point source discharge, there
3 is dilution available. So that, when calculated
4 into the standard, can often mean that it is
5 achievable, and that the water quality in that
6 river system will stay meeting standards.

7 So the Blackfoot is not really a good
8 example per se, because I can't think of any point
9 sources right off the top of my head. I'm sure
10 there are some along there. But for example on
11 the Clark Fork River downstream, the river is
12 functionally right at or just a little below the
13 nutrient standards after the Blackfoot joins it,
14 and Missoula takes full advantage of that dilution
15 capacity because they can basically achieve the
16 water quality standards below their mixing zone,
17 because the water coming in above them is of high
18 quality.

19 MR. SMITH: So I can assume then that
20 Darby, Hamilton, Stevensville, we can all do the
21 same. And for most of us, I think phosphorus is
22 the issue, not nitrogen. We already meet the
23 nitrogen ten milligrams per liter standard, so it
24 is not an issue. Phosphorus is our concern.
25 We're right around six right now. But I do know

1 that the TMDL has already identified our areas
2 will not require a TMDL solutions for nutrients
3 because we already exceed the standards that's in
4 the river now with our current flows.

5 So I'm not sure what we have to do to
6 stay where we're at, and maybe it is just -- you
7 know, we've already done one mixing zone study for
8 the last permit. Maybe we just keep doing mixing
9 zone studies and identify nutrients. Is that what
10 you're saying the approach is?

11 MR. SUPLEE: Well, if I understood what
12 you said, the TMDL has determined that the rivers
13 that you discharge to are currently meeting
14 standards; is that correct?

15 MR. SMITH: Yes, that's correct.

16 MR. SUPLEE: So if that is the case,
17 then once the standards are adopted -- and
18 remember, the Bitterroot River and those river
19 systems in that area are already operating under
20 the water quality standards that we're proposing,
21 or the Clark Fork standards may be a driver, and
22 they're already on the books.

23 At this point then going forward, as
24 your population grows, it is really just a matter
25 of holding the line. In other words, your load

1 needs to remain the same. As long as your load
2 remains the same going forward, then the river
3 will continue to meet those standards.

4 MR. SMITH: But you're not talking the
5 end of pipe one milligram. You're talking the
6 total pounds per day.

7 MR. SUPLEE: Yes, I think so.

8 MR. SMITH: So as we grow, you're saying
9 we still have to reduce as we grow, unless we pick
10 up septic systems, in which case there is some
11 credit for that. Otherwise we still have to treat
12 better to keep our loading the same.

13 MR. SUPLEE: That is correct, yes. But
14 then again -- remember there is another element to
15 this. If nonpoint sources in the watershed begin
16 to do more cleanups, there could, theoretically at
17 least, be more assimilative capacity in the river,
18 in which case you may not have to change anything
19 at all, and that's revisited each five years when
20 a permit is renewed, because they look at that
21 upstream water quality coming in just above your
22 facility.

23 MR. SMITH: I do know with our TMDL they
24 are looking at that on the lower end of the river
25 up by Lolo, because they will have a TMDL

1 established there for nutrients. And I'm not
2 sure. Some of the side streams will have it for
3 temperature and sediment, but I think the only
4 nutrient one is up by Lolo and where it goes into
5 the Clark Fork. But that's at the north end when
6 all the irrigation ditches go through, and then go
7 back into the river.

8 I think they're picking up some
9 nutrients. As one of the members earlier
10 mentioned, there is some runoff during storms.
11 There are still some people that flood irrigate.
12 Most of them do sprinklers now, but there's still
13 people that flood irrigate. We may gain a little
14 bit there, but I'm just trying to figure out.

15 For systems for ours, and for people out
16 east where there are really small systems, that
17 are such a minute part of the problem in the
18 loading to begin with, what's this impact going to
19 be? Because for us, all of the point sources on
20 the Bitterroot make up 4 percent of the nitrogen
21 loading and 7 percent of the phosphorus. So if
22 we've got to spend a lot of money and reduce it
23 one percent, what have we gained? Nothing really.

24 So I'm just trying to figure out what's
25 driving this for point sources, and why don't we

1 wait to get caught up with nonpoint sources? It
2 just seems -- I know you-all regulate point
3 sources, which is kind of the low hanging fruit
4 for you-all, but it doesn't do our ratepayers or
5 taxpayers any good when we're trying to ratchet
6 everything down, and spend a lot of money, and
7 there is very minimal benefit in the overall
8 picture on the stream we discharge to. Do you see
9 where I'm coming from?

10 MR. SUPLEE: Yes. We've heard this
11 point of view many, many, many times through the
12 whole process of meeting with the Nutrient Work
13 Group. Again, the way we've handled this is we've
14 operated under the laws that we have, and we don't
15 have laws that allows us to regulate nonpoint
16 source. As I actually pointed out earlier, in
17 many cases, the point sources really are in many
18 cases a big piece of the phosphorus puzzle in the
19 summer -- not year around, but in the summer where
20 we're concerned. So I'm not sure I completely
21 agree with you on that.

22 And the variances allow this time,
23 again, it buys this time to allow people to move
24 towards this, and have these other factors that
25 the Department has developed, these other

1 programs, get in place and operate.

2 MR. BOSTROM: I'd add something to that
3 really quickly. Mark Bostrom again.

4 There is a regulation on the books that
5 came from, I think it was Senate Bill 200, which
6 is a phosphorus detergent ban, that becomes
7 effective upon adoption of numeric nutrient
8 standards. And what that does is it really drives
9 toward reduction and regulation of phosphorus from
10 the detergent manufacturers, and what they
11 actually put on the shelf. So upon adoption of
12 the standards, we would expect to see less
13 phosphorus overall in the waste stream because it
14 has been regulated at the supply side.

15 So I think an example of that would be
16 the Clark Fork, where the numeric nutrient
17 standards are already on the books, and that
18 phosphorus ban does apply. And really all it
19 takes is for the major cities that are the drivers
20 in the supply chain to have numeric standards, and
21 then the detergent manufacturers are simply not
22 going to have different products for smaller
23 communities. Once several of them are there, all
24 of them will be there, because it simply won't be
25 available in the supply chain anymore.

1 MR. SUPLEE: To follow up on that, we
2 did an analysis just a couple years ago of how
3 things have improved on the Clark Fork River since
4 the initiation of the voluntary nutrient reduction
5 program in 1998, and we looked at it over the ten
6 year window; and retrospectively, the single
7 largest reduction in phosphorus occurred due to an
8 earlier ban on phosphorus detergents. The one
9 we're talking about now pertains to dishwashing,
10 the other one was laundry soap.

11 That single action brought down
12 phosphorus in the river in 1989 by the largest
13 single step of phosphorus reduction that occurred
14 over the last twenty years. So a lot of
15 facilities were seeing 30 percent drops in their
16 phosphorus within a couple of months. I'm talking
17 about the waste stream coming into the facility.
18 That's documented.

19 So that alone is another benefit that
20 you would see occurring, because another source of
21 phosphorus that's still out there, which was
22 dishwashing soap type of laundry soaps, would be,
23 once these laws were passed, taken off the shelves
24 and replaced with non-phosphorus bearing
25 equivalents.

1 MS. BUCKLIN-SANCHEZ: Is it essential
2 for the phosphorus ban to be tied to the numeric
3 nutrient standards? Could it be enacted
4 separately?

5 MR. SUPLEE: If you want to go and
6 change the statute, it could, yes. As it is
7 built, it is tied specifically to places where
8 numeric phosphorus standards or algae standards
9 are adopted. We're not proposing algae standards,
10 as you noticed in the rule package, but we are
11 proposing phosphorus standards. So therefore,
12 where those go in place -- which right now is only
13 the Clark Fork Basin -- if there are stream
14 systems that exceed that phosphorus criterion,
15 then the ban goes in place.

16 MS. WILLIAMS: Mike, could you describe
17 the status of the public review period on this?
18 When did it start? What have you gotten? Has it
19 started? What are the plans?

20 MR. SUPLEE: Yes. I guess the big
21 picture, I could say public review really started
22 in late 2008. That's when we met with the first
23 predecessor to the Nutrient Work Group, a
24 predecessor group, which actually did quite a lot.
25 Then with the various Senate Bills, the Nutrient

1 Work Group was created, and they have been
2 operating as the functioning advisory group on
3 this topic since 2009. So five, six years of
4 public outreach. As of today, we'll have had 24
5 public meetings with the Nutrient Work Group, and
6 I think we had something on the order of seven or
7 eight public meetings with the predecessor group.

8 Now going forward, the Nutrient Work
9 Group will continue to meet, I believe, over the
10 next year to provide input, especially on the
11 variance side, the Department rules, because the
12 Board won't be acting on those directly. But the
13 rule package as a whole, my understanding would be
14 is that we would like to take this to the Board in
15 December, and then that would initiate a public
16 comment period, a formal comment period, etc., and
17 it would be no sooner than six months before the
18 rules would be adopted.

19 That's kind of an optimistic timeline.
20 Of course, as you know, if the Board concludes
21 that more time is needed, or they want more time
22 for comments to be addressed, they can extend
23 that.

24 MS. WILLIAMS: You mentioned that you
25 thought you had worked out most of the issues over

1 this time period, but there were some that you
2 weren't able to, if I interpreted that correctly.
3 If that's correct, what were the ones you still
4 feel are outstanding?

5 MR. SUPLEE: I think it would be fair to
6 say that the major outstanding one is
7 implementation of the nondegradation laws.
8 They're going to need to be figured out I believe
9 on a case-by-case basis. Those laws are not going
10 to affect communities and towns that have
11 wastewater permits today. They already exist, and
12 the variance is available to them, etc. The
13 variance may or may not be available to new
14 sources. The way our rules are written, they are.
15 It gets complicated from there. And the folks
16 that this would most likely affect are aware of
17 this.

18 And George and the Director have been
19 working with those folks directly to try to come
20 to an understanding on how that would work out.
21 That is kind of still in play, I think it would be
22 fair to say.

23 MS. WILLIAMS: And the justification for
24 moving forward, even though that is still in play?

25 MR. SUPLEE: I believe it has been

1 because we believe that there are pathways forward
2 with the rule package as it exists, it is
3 functional; and both the people above me on up to
4 the Director have basically stated that they would
5 like to see this rule package move forward.

6 MS. WILLIAMS: So you think that the
7 nondeg portion is sufficiently severable from this
8 package that it can be resolved without affecting
9 too much -- well, or at all, I guess -- the
10 ability to move forward on this portion?

11 MR. BOSTROM: Kathleen, this is Mark.
12 Looking at how these nutrient standards packages
13 in different states have moved forward, I know
14 that both Florida and Colorado have moved forward
15 with their criteria separate from nondeg, and I
16 think that's kind of modeled the way for the
17 nation. The questions and resolutions of how
18 nondeg applied to this harmful parameter rather
19 than a toxic I think is a question. It is a
20 national question that's still working its way
21 through. But yes, I think there is an ability to
22 distinguish those out and move forward with the
23 nutrient rules separately.

24 MS. WILLIAMS: Thanks to you both for
25 addressing that.

1 CHAIRMAN SELCH: Any other questions for
2 Mike?

3 (No response)

4 CHAIRMAN SELCH: Any public questions to
5 make at this time?

6 MR. SUGDEN: Hello. My name is Brian
7 Sugden. I'm a hydrologist with Plum Creek, and
8 have been participating on the Nutrient Work Group
9 for the past four and a half years.

10 And I think the Department has done some
11 fantastic work in kind of figuring this out.
12 There is no other western state I believe that's
13 as close to being able to move forward on numeric
14 standards as Montana. But as you heard, there is
15 still a few things that the Nutrient Work Group is
16 trying to work through. And it is my personal
17 opinion that a little bit of delay in moving this
18 on to the Board would be appropriate.

19 I guess one thing that hasn't been
20 discussed so far today that is part of this
21 Circular 12 that also includes some standards for
22 Flathead Lake, and I don't know that those
23 standards, that you've discussed those at any
24 length, but those standards were originally
25 incorporated into a Phase 1 TMDL for Flathead Lake

1 back in I believe about 2000; and at the time they
2 were incorporated in the Phase 1 TMDL as TMDL
3 targets, and now those are being proposed to be
4 included in Circular 12 as numeric criteria for
5 Flathead Lake.

6 Those particular numbers, the science,
7 original science for those is about fifteen years
8 old, and I haven't seen in the past ten years that
9 the TMDL has been in place for Flathead Lake that
10 there has been any synthesis.

11 So in the ten years that that TMDL has
12 been in place, there has been no reports or any
13 analysis that I've seen as to how -- is Flathead
14 Lake meetings those numbers? Is it not meeting
15 the numbers? Is there new science that's
16 available?

17 Right now Flathead Lake is in the
18 process of developing a Phase 2 TMDL, and I serve
19 on the technical committee for that Flathead Lake
20 TMDL. And this is one of the issues that I was
21 hoping would be visited as part of the TMDL is
22 whether or not these TMDL targets that were set
23 ten years ago are still appropriate today. And I
24 made that request about a year ago, and we still
25 haven't seen, I haven't seen any analysis of the

1 information relative to those proposed standards
2 for Flathead Lake.

3 So anyway, I guess in particular to
4 Flathead Lake, I think that needs a lot more
5 consideration before those are forwarded on as
6 part of Circular 12. And I guess that's about all
7 I've got. Thank you.

8 MR. SUPLEE: I'd like to address that
9 idea. I'll tell you the Department's point of
10 view on the Flathead Lake standards, how we got to
11 have them in here, and I'll let you guys decide
12 from there.

13 About a year ago, we began
14 correspondence with the Flathead Lake Biological
15 Station, having a dialogue with them about the
16 idea that we think that the TMDL targets -- which
17 if you step back and look at it, a really well
18 developed TMDL target should almost be the same as
19 a water quality standard, they should converge to
20 the same thing, because the target represents what
21 you want the lake to be, or the stream, not where
22 it is, or where it is trending. Like all these
23 standards. So anyway, we had this conversation.

24 And there is a couple things that's kind
25 of interesting about Flathead Lake in particular.

1 One is it is a highly protected water to begin
2 with. I believe it is A-1, about the highest
3 water quality level protection we offer in the
4 state; and "B," the creation of the Flathead Basin
5 Commission in the mid-1980s, one of their
6 directives under statute was to protect the
7 current or existing high quality water of the
8 Flathead Basin.

9 So putting those two pieces together, we
10 looked at the science, and talked to the major
11 scientists up there at the biostation about the
12 derivation in the criteria in the late 1990s, and
13 those were very significantly vetted throughout
14 the 1990s. There was a lot of public meetings
15 between DEQ, the Flathead Basin Commission,
16 scientists, stakeholders in the region, that led
17 to these criteria.

18 And in recent discussions with the
19 scientists up there, they felt that the total
20 nitrogen and total phosphorus criteria are still
21 meaningful, and even though they are aware that
22 there has been some shifts in the lake's
23 biological structure due to the introduction of
24 the mysis shrimp -- which occurred right around
25 the time that the Flathead Basin Commission was

1 being created coincidentally.

2 So we could get into a discussion about
3 whose science do we want to believe, but our view
4 is that the basis of keeping the lake kind of
5 status quo is established based on its long term
6 intent as a high quality water, an A-1 water, and
7 the Flathead Basin Commission's statute saying
8 what it should do, keep it as it is. These
9 criteria would keep it as it is in terms of
10 phytoplankton, etc.

11 The secchi depth that we provided there
12 was derived by the Flathead Lake biostation
13 scientists as one of the other tools that we
14 believe is really fundamentally linked to lake
15 water quality standards, water clarity. It's a
16 real basic one. It's used all over the country,
17 and they worked with us to develop that, so that's
18 the only one that's really new in this package
19 independent of the three other things, the total
20 phosphorus, the total nitrogen, and the
21 Phytoplankton Chlorophyll A, which, as Brian
22 pointed out, date back to the late 1990s.

23 The biostation scientists have expressed
24 that perhaps something better could be done with a
25 very advanced model for which they don't have

1 funding. They'd love to do it, and it would be
2 many years out, my guess. So even if they have
3 funding, it would be some years before they would
4 provide something different, if they would provide
5 something different at all; but based on all of
6 the analysis and numbers that they have currently
7 looked at, they believed that the numbers that are
8 here in this package mesh with our goals, which is
9 maintenance of the lake as it is in its current
10 status, and that they are defensible.

11 CHAIRMAN SELCH: Do we have any other
12 questions? Any other public comment?

13 (No response)

14 CHAIRMAN SELCH: Mike, what you're
15 looking for today is a motion to accept the rule
16 package and DEQ12 Part A?

17 MR. SUPLEE: I don't think it would be
18 fair to ask you to make a decision about
19 Subchapter 5, because we dropped this on you at
20 the last minute, and we're still looking at it
21 internally, so maybe that needs to be kept out.

22 Again, I would point out -- I apologize
23 that the rule package version 7.8 was not based on
24 the absolute most recent version of the rules, but
25 we reviewed it, and there is nothing substantive

1 that would cause you to be voting on something
2 that was dramatically different than what you had
3 anticipated. It is mostly linkages to procedural
4 numbers and "A" versus "B," that sort of thing.

5 CHAIRMAN SELCH: I think we've had lots
6 of good discussion today. This is obviously a
7 real complex issue, no easy answers, differing
8 opinions. In view of the complexity -- I know
9 Mike has been here, and given us updates as the
10 process moves along, several years. This is not
11 the first time we've heard most of this stuff. So
12 I've had the luxury -- I get to work with the DEQ
13 folks more on a one-on-one basis a lot of times,
14 so I've been exposed to a lot of these things, and
15 been able to ask questions on my own.

16 I guess that being said, does anyone on
17 the Council have a motion they'd like to put
18 forward?

19 MR. WENDLAND: I would move that we send
20 this forward.

21 MS. WILLIAMS: Second.

22 CHAIRMAN SELCH: Was that with the
23 exception of --

24 MR. WENDLAND: Excluding Subchapter 5.

25 CHAIRMAN SELCH: Second from Kathleen.

1 Any discussion?

2 MS. BUCKLIN-SANCHEZ: I'd like to just
3 say, add some points here. In working up to
4 today, as I represent professional engineers, I
5 contacted a lot of engineers, and asked them,
6 "What do you think? Should this move forward or
7 not?," and it depended who you asked.

8 The engineers that I've worked closely
9 with the Nutrient Work Group said yes. They said,
10 "The Nutrient Work Group, the DEQ, everybody has
11 worked really, really hard on this for many years.
12 We've made a lot of progress, and we're tired,"
13 and they're recommending go forward.

14 The kinks for the variances and the
15 nondegradation, those can be worked out once the
16 rule is enacted and so on. But they do express,
17 the engineers that I talked to that worked on the
18 Nutrient Work Group, also expressed concerns about
19 the point sources, the small community point
20 sources. They said they've had a lot of
21 involvement in the Nutrient Work Group with larger
22 point sources, but the smaller point sources for
23 some reason haven't been as involved, although
24 they've been invited and represented.

25 And then the engineers I've talked to

1 that haven't been so involved with the Nutrient
2 Work Group -- maybe gone to a few meetings, or
3 maybe not any -- have said no, they don't think it
4 should move forward, and the reason is given
5 mainly three kind of general concerns, and I
6 wanted to let you know what those were.

7 One is something that Keith talked about
8 a little, kind of a blanket approach to
9 implementing in nondegraded streams or rivers.
10 The second is the lagoon variance. The concern is
11 with the ammonia standards, that all of the small
12 treatment lagoons that can't go to non-discharging
13 are going to be upgraded anyway, so they're not
14 going to get the lagoon variance. So taking
15 another look at that, and see if that could be
16 extended for those small systems.

17 And then the nonpoint sources and the
18 large portion of nutrients that this causes, and
19 then in addition to the unintended consequences.
20 Basically as user rates go up, are we going to be
21 driving people away from the public systems and on
22 to septic systems, that is, are people going to be
23 I guess instead of instead of trying to get people
24 on to regulated systems that are treating the high
25 levels, are we going to push them out.

1 Then I was thinking, well, gee, okay.
2 Here I am. So these are the thoughts that I've
3 gathered from the professional engineers.

4 MS. WILLIAMS: Can we get Mike to
5 respond to those three concerns?

6 MR. SUPLEE: I'd be happy to do that. I
7 remember driving people out on to the -- off the
8 public into private systems. That concern has
9 been with us all along, and actually that's very
10 carefully calibrated when you look at the starting
11 points of where our variances are.

12 One in ten is very achievable for a lot
13 of these big facilities. You're not going to see
14 a big rate increase, and you're not going to see
15 suddenly a massive disparity of big facilities,
16 for example, between what it costs to own and
17 operate your own personal septic systems versus
18 what it costs every month to be on the public
19 system. Lagoon systems, because the variance,
20 basically all it says is just hold the line, we
21 don't expect to see any major issues there.

22 How we deal with those discharges in the
23 long haul is not clear, but we have a lot of time
24 to try to figure it out if it is solvable. And
25 the intermediate size one appears to be the areas

1 where there could in some cases be high cost
2 increases or not. It varies on a case-by-case
3 basis.

4 But we always have the option for people
5 to pursue an individual variance which is
6 structured such that it is calibrated to the
7 economics of a particular community, which again
8 would prevent that cost from getting
9 extraordinarily high and out of balance with what
10 people do if they're really taking care of their
11 septic system. In theory, they're supposed to be
12 draining and cleaning and maintaining, which many
13 people don't, but if they were, we've run many
14 numbers that show that it's comparable to a lot of
15 -- in many cases being on a public system.

16 And remind me what those questions were?

17 MS. BUCKLIN-SANCHEZ: The blanket
18 approach to implementing the standards in areas
19 where the water quality already meets standards.

20 MR. SUPLEE: That's just basically the
21 way water quality standards work. You don't adopt
22 water quality standards only where there is
23 problems, you adopt them where there currently are
24 problems and where there are not problems, with
25 the idea being that if it's already better than

1 the standard, then there is some assimilative
2 capacity before you hit a problem point. So the
3 standards as a rule -- and you can look at any of
4 the standards in DEQ7 -- they apply everywhere.
5 We don't just apply them to places where perhaps a
6 TMDL is being developed.

7 What was the third question?

8 MS. BUCKLIN-SANCHEZ: The lagoon
9 variance, and you covered that.

10 MR. SUPLEE: So that's our thinking, and
11 there has been a lot of discussion and thought on
12 this subject, but the Department has had a high
13 level of sensitivity to the idea of not driving
14 people out from the public system, and what you're
15 seeing in statute is a reflection of that, the
16 starting points that we talked about in the
17 variances.

18 MS. MILLER: This is Kate Miller with
19 Commerce again. And we have some applicants that
20 we work with who are currently struggling with
21 trying to get their projects started up. Many of
22 them are asking us for money to hook up their
23 septic systems into a central treatment facility.
24 And it was in the news just a day or two ago.
25 Lockwood, for instance, lost its debt elections.

1 This is an important issue. In order
2 for these communities to take on these large
3 wastewater projects, they have to encumber a great
4 deal of debt. That means their user rates go up
5 very high. There's oftentimes a one time user
6 fee. In this case it was nearly \$1,000 to hook
7 up.

8 The economics in most cases generally
9 are not there for septic systems into hook into
10 municipal facilities unless the population
11 densities of the septic systems are extremely
12 high. And in the Lockwood area, it's been very
13 well documented that the nitrates in the
14 groundwater are extremely high. So I'm just
15 injecting that as sort of the counterpoint to
16 DEQ's considerations over balancing out the costs
17 of hooking up to municipal systems versus the one
18 in ten rules.

19 MS. WILLIAMS: Kate, have you been
20 working with the Nutrient Work Group?

21 MS. MILLER: Yes, I have. I sit on the
22 committee.

23 MS. WILLIAMS: Thank you.

24 CHAIRMAN SELCH: Any other comments?

25 MR. LEU: Is there a timeline need for

1 advancing this at this point in time? I'm just
2 wondering why, if the work group isn't finished
3 yet, why are we pushing this forward.

4 MR. SUPLEE: Again, you should probably
5 direct that to my superiors in the Department
6 about the specific timeline. On a practical
7 level, I believe if we wanted to go to the Board
8 in December, we would need at least, for example,
9 in addition to support for what we've given you
10 already, a review and support for the Subchapter 5
11 changes sometime before November 21st, or well
12 before that. That's just on a practical level.

13 Mark, any comments on why now versus
14 later?

15 MR. BOSTROM: Mark Bostrom. I think
16 within 75-5-313, there is a date that exists in
17 there where the Department is driven to have these
18 standards on the books, or the variance at least.

19 And really, as I guess a practical
20 matter, effectively the TMDL lawsuit that we're
21 operating under right now compels us to use the
22 science that exists. It would be better and
23 probably cleaner if we were operating with numeric
24 nutrient standards rather than using a translation
25 through a narrative. We do have to do those

1 TMDL's. We do have to set waste load allocations
2 and load allocations to separate out the pollution
3 reductions.

4 Having numeric nutrient standards and
5 the accompanying variance is kind of part and
6 parcel to a better path forward than using the
7 TMDL as the solution, because the TMDL doesn't
8 have the bite, I guess, and authority that was
9 granted by the Legislature through the variance
10 process in 75-5-313. I think that's really kind
11 of the driving force, in my view, behind the whole
12 water quality management construct.

13 There are a lot of moving parts, and the
14 nonpoint source obviously is one that we have to
15 work with, and the TMDL does address that, but it
16 doesn't have the regulatory mechanism. But having
17 the recognition and the goal, the water quality
18 criteria goal, explicitly stated and adopted as a
19 rule makes things just so much cleaner, and
20 prevents or minimizes the risk of a third party
21 lawsuit coming in and really kicking the legs out
22 from underneath the chairs.

23 MR. LEU: I fully agree with the
24 ultimate intent. I'm just wondering are we
25 rushing it too much. Can the future meetings of

1 the Nutrient Work Group make it just a little bit
2 better if we were to delay this a little bit?

3 MR. BOSTROM: Perhaps. This is Mark
4 again. My marching orders from my boss are to
5 continue moving forward, and I think we still are
6 viewing the December Board meeting as our goal.
7 We do have a Nutrient Work Group meeting this
8 afternoon, so I guess we'll look at the outcome of
9 that. But as we stand now, December is our goal,
10 and I haven't been necessarily given the latitude
11 and authority to pull that yet.

12 MS. WILLIAMS: This is Kathleen. Did I
13 misunderstand, Mike? It sounded like the work
14 group felt like they were done with this portion,
15 and that they were going to work on nondeg
16 further, but they felt like they had completed
17 their work on this; is that correct?

18 MR. SUPLEE: I think by and large, yes.
19 I think there is probably always going to --
20 because this is so complicated, and there is a lot
21 of moving parts, there's probably always some
22 little minor element that is not 100 percent
23 resolved, or someone is just going to have to make
24 a call on at some point. But I would say, having
25 sat through all the Nutrient Work Group meetings,

1 we are definitely --

2 UNKNOWN SPEAKER: Now joining.

3 MR. SMITH: Keith Smith.

4 MR. SUPLEE: -- we're definitely way,
5 way, way out at the tail end of it. We've gotten
6 mostly all of the issues resolved, and the ones
7 that are outstanding, it is because they are
8 primarily associated with the Department rules,
9 which the Board won't be acting on. It is
10 understood that the Nutrient Work Group will
11 continue to attempt to refine those as needed over
12 the next coming months, so that when the
13 Department rules are ultimately signed by the
14 Director, that if there is any outstanding issues,
15 that they would then be resolved as best possible.

16 MS. WILLIAMS: I don't know the
17 structure of the work group, but do they vote that
18 this should come to us, and we should start the
19 process, or do they have a --

20 MR. SUPLEE: They kind of run -- they're
21 a completely stand alone advisory council that was
22 not created with WPCAC in mind. So that's why
23 we've been meeting with them all along, and there
24 is nothing that says that if WPCAC makes a
25 decision, especially on the Board rules, that the

1 Nutrient Work Group can't continue to do some
2 refinement on the other element, which is really
3 where most of the work is, all of it really
4 anymore, on the implementation variance side. So
5 yes, they kind of run parallel with this group.

6 MS. WILLIAMS: I was trying to determine
7 if any formal nod from the working group that DEQ
8 was taking this forward, or a recommendation from
9 them, that it were --

10 MR. SUPLEE: I think we're going to be
11 looking to ask at some point soon if the Nutrient
12 Work Group as a whole will take a vote. We have
13 not so far done that. But we anticipate it pretty
14 soon.

15 MS. WILLIAMS: Well, I wonder -- and you
16 have a meeting today?

17 MR. SUPLEE: Yes, right after this one.

18 MS. WILLIAMS: Again, I apologize to my
19 colleagues, but I would wonder if a substitute
20 motion where we approve this moving forward,
21 contingent on the working group voting for it.
22 Mike, would that be agreeable to DEQ?

23 MR. SUPLEE: Well, really it is your
24 prerogative how you vote. I don't know if we can
25 tell you which way you should go.

1 MS. WILLIAMS: I'll leave the motion on
2 the table.

3 UNKNOWN SPEAKER: Now joining.

4 MR. SMITH: Keith Smith.

5 CHAIRMAN SELCH: It looks like we have a
6 motion to accept the rules, and we have a
7 substitute motion. Kathleen, am I interpreting
8 you correctly that you want to wait to see if
9 there is any substantive changes from the Nutrient
10 Work Group?

11 MS. WILLIAMS: I'll withdraw my
12 substitute motion, and we'll see how this vote
13 goes.

14 CHAIRMAN SELCH: Is there any public
15 comment on the motion?

16 (No response)

17 CHAIRMAN SELCH: Hearing none, I guess
18 we'll have a vote. Those in favor of the motion
19 to accept the rule package and DEQ12 without
20 Subchapter 5, all those in favor, say aye.

21 (Response)

22 CHAIRMAN SELCH: Opposed.

23 MR. LEU: Aye.

24 MR. SMITH: No from Keith Smith.

25 MS. BUCKLIN-SANCHEZ: No.

1 CHAIRMAN SELCH: We've got Keith,
2 Mitchell, and Karen in opposition. I believe
3 Kathleen was in favor. Keith, Mitch, and Karen,
4 three. I guess the motion carries with a five to
5 three vote.

6 MS. WILLIAMS: Can you repeat that?

7 CHAIRMAN SELCH: The motion carried,
8 passed five to three in favor.

9 Thanks everyone for the good discussion.

10 The next briefing item is just if there
11 is any other public comment from anyone at this
12 time.

13 (No response)

14 CHAIRMAN SELCH: Hearing none, agenda
15 items for the next meeting. You mentioned one
16 already.

17 MS. STEINMETZ: The only one that I'm
18 aware of so far for the next meeting is extension
19 of temporary standards for the New World Mine. I
20 haven't heard of any others, but there may be.
21 And also at the next meeting we should have a
22 couple new members, so we'll be able to introduce
23 them. We'll talk about the meeting calendar for
24 2014. By that time, the Board of Environmental
25 Review will have adopted their calendar.

1 And I would also like to -- we've talked
2 about this before -- but invite John North to come
3 talk to the Council about Council
4 responsibilities, and how the Council interacts
5 with the Department. So those are the couple of
6 things that --

7 MR. SUPLEE: Amy, if we go ahead --
8 We're moving on this schedule. If there is a
9 piece of this puzzle that we've left hanging out,
10 how would you like us to go about handling a
11 review of Subchapter 5 by everybody, and then
12 their thoughts and opinions on that?

13 MS. STEINMETZ: Well, we don't
14 necessarily have to have a vote. Your
15 responsibility is to comment, review and comment
16 on water quality issues. So if you could all
17 review and get Mike comments by the 21st. The
18 other option would be if you would like to have a
19 teleconference on -- Well, to give you enough
20 time, maybe we could have a teleconference, you
21 could all vote on Subchapter 5.

22 MR. SUPLEE: We'll make every effort to
23 make sure that if Permitting or others internally
24 have comments on this, and those are being
25 incorporated, I'll get you the latest versions

1 through Amy.

2 MS. NEUMAN: And any updates from the
3 nutrient meeting this afternoon?

4 MR. SUPLEE: Yes. How do you want
5 handle that? We do that a couple of ways. We
6 have a formal set of minutes that have been kept
7 going back to the beginning. Those are on the
8 website if you're interested; or it might be
9 better that I kind of give Amy a summary of the
10 main issues that she can pass on to you. I'll do
11 it that way then.

12 MS. STEINMETZ: Then we could also send
13 a link to the minutes. So Mike will provide a
14 summary, and then we'll provide a link.

15 MR. SUPLEE: To the actual minutes of
16 the Nutrient Work Group. They're all posted on
17 the internet.

18 MS. STEINMETZ: So do you all want to
19 provide comments? Do you want a teleconference on
20 maybe the 18th? Does that give you enough time?

21 MR. SUPLEE: Permitting says that
22 they'll probably have comments to us by Tuesday
23 already. So give us a day after that in case
24 there's others. But I would say towards the end
25 of next week, we're probably going to be in a

1 position to say where we're standing with
2 Subchapter 5 changes.

3 CHAIRMAN SELCH: Do we need to vote on
4 this as a rule, I guess is my question?

5 MS. STEINMETZ: There is nothing in
6 statute or rule that says that WPCAC has to have a
7 vote. It says that you need to comment. So if
8 you want to comment separately, great. If you
9 want to have a unified vote for the Department or
10 the Board, it is up to you.

11 CHAIRMAN SELCH: Is there a feeling one
12 way or the other?

13 MR. LEU: I guess once we see the stuff,
14 if we feel a need to have a formal meeting, then
15 we can. But otherwise I guess right now, just
16 send in comments individually, and go from there.

17 MS. STEINMETZ: Send them to me, and I
18 can forward them to Mike.

19 MR. LEU: If anybody wants to have a
20 meeting that's great, too.

21 MS. STEINMETZ: Just use the email list.

22 CHAIRMAN SELCH: Plan on sending them in
23 unless someone feels it warrants a vote. Any
24 other comments?

25 (No response)

1 CHAIRMAN SELCH: Hearing none, I guess a
2 motion to adjourn.

3 MR. SALLEY: So moved.

4 MR. LEU: Second.

5 CHAIRMAN SELCH: Thank you all for
6 coming.

7 (The proceedings were concluded
8 at 11:52 a.m.)

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C E R T I F I C A T E

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 - 82 - 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 _____, 2013.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 12, 2016.

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