BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING                 )
APRIL 6, 2018                  )

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
April 6, 2018
9:00 a.m.

BEFORE CHAIR CHRIS DEVENY,
BOARD MEMBERS JOHN DEARMENT, DEXTER BUSBY,
and HILLARY HANSON.
CHRISS TWEETEN and JOHN FENTON (By telephone)

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC
WHEREUPON, the following proceedings were had and testimony taken, to-wit:

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CHAIR DEVENY: It is 9:00. Welcome everybody to the Board of Environmental Review. I'm Chris Deveny, Chair. Lindsay, I'll ask you to take the roll call.

MS. FORD: Chris Deveny.

CHAIR DEVENY: Present.

MS. FORD: John Felton.

UNKNOWN SPEAKER: The following participant has entered the conference. No names are available.

MS. FORD: John Felton.

MR. FELTON: I'm here. Thank you.

UNKNOWN SPEAKER: The following participant has entered the conference.

MR. OLSON: Alan Olson.

MS. FORD: Dexter Busby.

MR. BUSBY: Here.

MS. FORD: Hillary Hanson.

MS. HANSON: Here.

MS. FORD: Tim Warner.

(No response)

MS. FORD: Tim Warner.
MS. FORD:  John Dearment.

MR. DEARMENT:  Here.

MS. FORD:  Chris Tweeten.

MR. TWEETEN:  Here.

MS. FORD:  Tim Warner is the only one I don't have present, so you have a quorum.

CHAIR DEVENY:  Before we get started today, on behalf of the Board, I'd like to offer condolences to the DEQ staff on their recent loss of their coworker, Chief Legal Counsel, and friend, John North, who passed suddenly last month.

John diligently served State government and DEQ for many years, and he genuinely was a very nice person. And I know several of us on the Board were well acquainted with John, too, and there is no question he's going to be missed by a lot of people both professionally and personally. So I just wanted to offer that.

MR. MATHIEUS:  Thanks, Chris.

CHAIR DEVENY:  With that, we should identify the rest of the people in the room, and then those on line. And so Sarah, if you'd like to start.
MS. CLERGET:  Sarah Clerget. I'm Board attorney.

MS. SOLHEIM:  Aleisha Solheim, paralegal to Sarah Clerget.

MS. FORD:  Lindsay Ford, Board secretary.

MR. MATHIEUS:  George Mathieus, Department/Board liaison.

MR. DAVIS:  Tim Davis, Water Quality Division Administrator, DEQ.

MR. HAYES:  Ed Hayes, Acting Chief Legal Counsel, DEQ.

MR. LUCAS:  Mark Lucas, DEQ attorney.

MS. KELLY:  Myla Kelly, Water Quality Standards.

MS. SCHAAR:  Melissa Schaar, Water Quality Standards.

MS. SHERER:  Sandy Sherer, legal secretary.

MS. HARBAGE:  Rebecca Harbage, Air Quality Bureau.

MS. ULRICH:  Liz Ulrich, Air Quality Bureau.

MR. PETTIT:  Aaron Pettis, DEQ attorney.

MS. McLAUGHLIN:  Joanna McLaughlin,
Water Protection Bureau.

MR. MEYER: John Meyer, Cottonwood Environmental Law Center.

MS. COEFIELD: Sarah Coefield, Missoula City-County Health Department.


MS. MERKEL: Julie Merkel, DEQ Air Quality Bureau.

MS. TRENK: Peggy Trenk with Treasure State Resources Association.

MR. JOST: Rich Jost, DEQ Enforcement.

MS. Bawden: Susan Bawden, DEQ Enforcement.

MR. KENNING: Jon Kenning, Water Protection Bureau Chief.

MS. DUNNING: DarAnne Dunning, Northern Plains Resource Council.

CHAIR DEVENY: Thank you. And now if we could start with the people on the phone, if they would please identify themselves if they wish.

MR. OLSON: Alan Olson, Montana Petroleum Association.

CHAIR DEVENY: Next person.

(No response)
CHAIR DEVENY: Okay. I guess we don't have any others. I would remind anybody that is on the phone today to please remember to mute your phones, so that we don't have a lot of interference with our phone calls. And also when you speak up, since we don't have a face to match with your voice, that you identify yourselves.

And with that, we'll go ahead and review the minutes. The Board has before them the minutes of the February meeting. Are there any additions or corrections to these minutes?

(No response)

CHAIR DEVENY: Seeing none, is there a motion to approve the minutes?

MR. BUSBY: So moved.

CHAIR DEVENY: It has been moved. Is there a second?

MS. HANSON: Second.

CHAIR DEVENY: It's been moved and seconded. Any discussion?

(No response)

CHAIR DEVENY: Any public comment on the minutes?

(No response)

CHAIR DEVENY: Hearing none, would Board
members please voice their vote. All those in favor, say aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Motion passes. The meeting minutes are approved.

Next I will turn the meeting to Sarah, and have her give the Board an update on the briefing items, contested cases.

MS. CLERGET: So going through the contested cases, the first 1(a) is CMG, which is a new one that we just got, and that one is just they're in settlement discussions, so it's just stayed for a minute while that happens, and they're going to give me an update and propose a schedule.

CFAC. I'm still in the process of reviewing the record. I have not issued an order in that yet.

Copper Ridge and (c) and (d), those are two cases being done together. We had a three day hearing on that since the last time we met, and the parties are currently in the process of providing me with proposed findings of fact and
conclusions of law.

(e) is Wagoner. We're in the process of scheduling the penalty phase of that case, and the parties are in the midst of proposing me a schedule for that.

In Westmoreland there is a stay, and they have to provide me an update within thirty days of the Supreme Court's decision that they're waiting for.

Signal Peak Energy is proceeding according to the scheduling order that I just issued, so they're in early stages of that.

Western Energy, we just did a four day hearing since the last meeting on that, and the transcript just came in, so the parties are in the process of providing me proposed findings of fact and conclusions of law.

Montanore Minerals, there is a scheduling order, and the parties are proceeding. Again, we're in the sort of middle stage of that. Probably will have some motions here shortly.

Laurel Refinery. There is a status report, and they want to continue the stay, so I for good cause issued an order allowing them to do that. It will be stayed until August, and then
they're going to give me an update.

JR Civil is a new one that we just got at the last meeting, I think, so we just had put a scheduling order in place, and then they asked for a stay, and so they're working on the settlement agreement apparently, and they will be either filing a status update or a motion to dismiss on that case, and I think they have every thirty days.

Then 3(a) is a matter for DEQ to give an update on.

CHAIR DEVENY: Before we move to that, do any of the Board members have questions of Sarah regarding any of procedural matters on these contested cases?

(No response)

CHAIR DEVENY: Hearing none, George, can we turn to you on the Western Energy case.

MR. MATHIEUS: Yes. I think we'll get an update from Legal.

MR. HAYES: Chair Deveny and other members of the Board, my name is Ed Hayes. I'm Acting Chief Legal Counsel for DEQ.

The update in regard to Western Energy is that, as the Board recalls, the District Court
entered some adverse rulings on a number of issues before the Court, and both Western Energy and DEQ have filed an appeal of the District Court's order.

The issues that DEQ are appealing focus on the issue on ephemeral drainages; and then the issue of representative sampling. So notices of appeal have been filed with the Supreme Court. Briefing schedule is in effect. I know DEQ and Western Energy's first briefs will be due I think April 26th, this month. So it will move quite quickly under the briefing schedule.

CHAIR DEVENY: Okay. Thank you.

George, I'll go back to you. You had some other briefing items from the Air Quality Bureau.

MR. MATHIEUS: Yes. Thank you, Chair.

I think Liz Ulrich is going to present to the Board today on this briefing item.

MS. ULRICH: Good morning, Madam Chair, members of the Board. For the record, my name is Liz Ulrich. I am the Supervisor of the Analysis and Planning Section within the Air Quality Bureau for the Department. I'm here to review on two future rulemakings that we'll be bringing before the Board this year.
At the September 2017 Board meeting, during the annual Air Quality Fee update, I informed you that we hadn't increased operating fees since 2009, and that one may occur in 2018. So at your next meeting on June 8th, we will be doing just that, asking you to approve a fee increase that will allow us to collect sufficient revenue to support our program.

On March 22nd we met with the Clean Air Act Advisory Committee, our primary stakeholder group, and identified our need to raise revenue through increasing fees, both our operating fees which are based on emissions, and some of our flat fees. We are working with them to determine equitable fee rates and how to align our funding with areas of increased focus. We'll be having further conversations with our stakeholders, and plan on coming before you at the next Board meeting with a fee increase they support.

We are well aware that we need to make sure our bureau is operating efficiently before we ask our stakeholders to increase fees. While improvement is a continuous process, we did report to the Clean Air Act Advisory Committee on some efforts we've made to decrease our expenditures,
from streamlining internal processes, scrutinizing the decision to fill or not fill vacancies, and develop some programs that are more efficient.

Which leads me into the second rulemaking that we'll be bringing this year. It is an example of our efforts to operate more efficiently.

We are working to streamline the air quality permitting process for portable facilities, including crushers and screens, asphalt plants, and concrete batch plants. The control requirements for these facilities are nearly identical from permit to permit, and they have not changed in many years.

However, the current case-by-case permitting process can take up to three months. We are looking to move away from case-by-case permitting, and transition to a registration type program, which will drastically reduce application and modification time lines.

Considering that portable facilities make up more than half of all active Montana air quality permits, simplifying the process could save a lot of time for both DEQ staff and the companies that are required to get air quality
permits. These changes will ultimately take the form of a new and revised rule that will be presented to the Board later this year.

To date we've discussed the project with the Clean Air Act Advisory Committee on several occasions, with positive feedback from stakeholders. We have also sought broader involvement from companies that will be directly affected by the changes through presentations to the Montana Contractors Association, as well as the opencut mine stakeholders.

We are currently in the process of gathering feedback from stakeholders on the technical details of how a registration program will work. Our next steps include discussing the potential program changes with EPA, as well as with DEQ's legal team. We will also be drafting a programmatic MEPA analysis to accompany the rule package.

So these are two future rules that we're going to be bringing before the Board. We understand that they're pretty big substantial rules, and we just wanted to give you a heads up ahead of time, so that when we come to initiate, it's not the first time you've heard about these.
And with that, are there any questions about either of these rule packages?

CHAIR DEVENY: Do Board members have questions of Liz?

(No response)

CHAIR DEVENY: Hearing and seeing none, go on. Thank you, Liz, for the update. We'll look forward to it. George, is there anything else that DEQ wanted to update us on?

MR. MATHIEUS: No.

CHAIR DEVENY: With that, we will move then to one of the main action items of today, and that's the final rules on the MCA 75-5-222, which are variances from water quality standards. And if I could have a show of hands of people in the room that plan to speak on that, it would be helpful.

(No response)

CHAIR DEVENY: Just one. Could I get a feel for those that are on the phone? I'd like to get an idea of how many people are planning to speak on the proposed air quality rules.

(No response)

CHAIR DEVENY: I'm sorry. Water rules.

(No response)
CHAIR DEVENY: Okay. I wanted to just clarify that there was a change in the Board packet that went out on Thursday. DEQ had inadvertently put my signature on the rule, and I had not yet approved the rule, so my signature was taken off. And also for clarification, it was indicated in the packet replacement that this was a draft proposal, and that it has not yet been approved. So I just wanted to make sure that that was clear to everybody in the room. That was an oversight on DEQ's part, and I'm sure that we won't see that again.

With that, the way I thought I would do this would be to take testimony and information from DEQ, then open it up for public comment, and then have a Board discussion. So with that, would DEQ give an update.

MR. MATHIEUS: Myla Kelly is --


MS. KELLY: Good morning, Madam Chair, members of the Board. My name is Myla Kelly. I'm a Section Supervisor within the Water Quality Division at Montana DEQ.

In December we presented New Rule I to the Board, and the Board decided to initiate
rulemaking to implement MCA 75-5-222 Sub (2).
That's the statute that states that if pollution
upstream of a discharger is due to anthropogenic
or human caused sources, that a variance from the
water quality standards may be appropriate in
certain circumstances.

Today DEQ is requesting adoption of that
rule, again referred to as New Rule I, that
describes the conditions under which those
variances from water quality standards may be
issued.

In the legislative session of 2015, MCA
75-5-222 was made into law which directed the
Board to adopt rules for implementation. To do
this, the Department convened a public stakeholder
work group comprised of representatives from
Montana of widely varying interests.

The work group has had 21 meetings thus
far, working on both Parts 1 and 2 of that
statute. We've worked collaboratively together
with the work group, responded to the work group's
suggestions and requests throughout the process,
all of that within the bounds of the directive
language of the statute, and then the Clean Water
Act as well.
In addition to working with our stakeholder work group, we've worked hand in hand with the US EPA to make sure that these rules met the requirements of the Clean Water Act.

When the Board initiated rulemaking in December, the public review and comment process began, which included a public hearing and a public comment period. One change to the rule was proposed in response to those comments, and that is a language change in Section 1 of the rule that replaced, "The Department determines in writing that the following conditions are met."

With respect to all comments pertaining to whether New Rule I meets the Clean Water Act requirements, we are confident that the rule is consistent with applicable Federal regulations, and most importantly we have had that assurance provided from EPA, who is of course the administrative authority of the Clean Water Act.

With respect to comments pertaining to material contribution language, we again reiterate that no material contribution is an additional level of stringency that's above and beyond Clean Water Act requirements, and it is a directive by the statute itself.
And finally, with respect to comments regarding changes from "may" to "shall."

UNKNOWN SPEAKER: The following participant has entered the conference.

MR. NAGLE: Ken Nagle. (Phonetic)

MS. KELLY: We refer to Section 5 of New Rule I, which states that, "If the Department finds that the requirements of Section 1 and 2 are met, and that a variance is needed, the Department shall approve the variance after conducting a public review process."

This provision balances the need for the Department to carry out our regulatory authority, while demonstrating to the applicant that a variance will be approved when the required conditions are met.

One last point. New Rule I outlines the process of applying for a variance, so again, each applicant seeking a variance under this rulemaking will have to request an individual variance, which requires the public review process, and it requires approval by EPA.

So with that, we respectfully request adoption of New Rule I in accordance with the notice of adoption.
CHAIR DEVENY: Okay. Thank you. I think unless Board members have burning questions now, we will hold questions until after we have public comment. So the individual that just entered by phone, are you interested in providing public comment on the Water Quality rule? I'm just trying to get an idea of how many people are commenting.

MR. NAGLE: This is Ken Nagle. I just called. I was going to offer comment on the -- I just had it.

CHAIR DEVENY: That's okay. We will start with public comment on the Water Quality proposed rule, and there was an individual here in the room, and we will ask her to step forward and speak on it.

UNKNOWN SPEAKER: The following participant has entered the conference.

CHAIR DEVENY: Before you start, I'm asking people to limit their comments to five minutes if we could. And also if your testimony is something that's already been provided, and the Board has heard already in the hearing and other times, we ask you not to be repetitive if that's possible.
MS. DUNNING: Good morning, Madam Chair, members of the Board. My name is DarAnne Dunning. I'm a member of Northern Plains Resource Council.

For those of you who aren't familiar with Northern Plains, it was formed by a group of ranchers and landowners in southeastern Montana, and we've worked to protect Montana's land quality, and water quality, and agricultural way of life for the past several decades in Montana. I'm originally from southeastern Montana.

Northern Plains has previously submitted written comments. I don't intend to completely go over those comments today. Our written comments that were submitted on February 9th, 2018 begin I believe at Page 57 in your packet. We basically today want to incorporate those concerns that were previously raised because they were not addressed by the Department in the rule.

And today there was one new issue that was created by one amendment to the rule that I wanted to raise, and I wanted to reemphasize I guess what the major point of concern for Northern Plains was with the proposed rule.

The new issue of concern was that the Department has struck that "The Department must
determine in writing," which we understand to mean that for the Department to issue a variance, it would not be required to put its reasoning into writing, or outline the analysis for why the conditions would or would not have been met.

So in the interest of making sure that the variance process is open, and the public has a meaningful opportunity to understand and participate in the process, we ask that this change should be rejected.

Northern Plains' largest area of concern with the new rule deals with the use of the term "materially contribute" in what the Department would analyze the impact of the variance that that would have on the receiving water. And really the heart of the Department's analysis in whether to grant or deny a variance permit centers on whether that discharge would materially contribute to the degraded water condition.

And so despite the importance of this term, the Department has both insisted on using the term, but also that has not defined the term. And we request that BER, that the Board reject the rule, or at the very least not adopt a rule that uses this new term of art without providing a
definition to guide the analysis on what would be considered a material alteration of water quality.

The purpose of a rulemaking is not simply to reiterate what the statute says. It is to provide guidance to the agency, and also certainty for the public in understanding how that statute would be implemented. And by using this term "materially contribute" without clarification, it would allow whatever future administrations deem to be minor non-material increase in pollution, which could lead to further degradation of Montana's Water Quality.

While many of the comments that were received by the Board have focused on the impact of variance to water quality across the state, Northern Plains' concerns primarily focus on protecting water quality for irrigators in southeastern Montana, especially because this is an area with a history of legacy coal mines, and of coal bed methane or CBM discharges in the area. It is also an area where we have a large threat of future development of coal and CBM discharges.

One of our concerns is that in the rulemaking, DEQ has stated that they would analyze salinity, a primary concern from coal bed methane
discharges, less stringently than other parameters. Northern Plains requested rule modifications --

UNKNOWN SPEAKER: The following participant has entered the conference.

MS. BILLS: Erin Bills. (Phonetic)

MS. DUNNING: To clarify, we'd request a clarification of application of the variance to CBM discharges. The Department failed to incorporate that.

But there was one really important point that we wanted to make for the record, and in response to Comments 8 and 9 that the Department raised, Northern Plains would like to remind the Board that the Montana Supreme Court has determined that whether or not the EPA has created industry wide effluent limit guidelines, or ELG's, for CBM discharges, the law does require them to use best availability technology, or BAT.

We want to emphasize that DEQ's comment is not accurate, that the law does require the use of best available technology, and we want to make sure that the variance process is not an exception to the best available technology case law requirements.
So thank you for your time today, and for allowing the opportunity for public comment. Thank you.

CHAIR DEVENY: Thank you. Are there other individuals in this room that wanted to speak on the rule change?

(No response)

CHAIR DEVENY: The proposed rule. Excuse me.

(No response)

CHAIR DEVENY: With that, would individuals on the phone who wanted to make public comments on the proposed water quality rule change, please speak up and identify themselves, and we will have comment from you.

(No response)

CHAIR DEVENY: Is there anyone on the phone that wishes to speak?

(No response)

CHAIR DEVENY: Hearing none, let's have a Board discussion about what we've heard, and I think it would be good for us to refer to the proposed new rules and the comment section that starts on Page 62 of the Board packet. q

MR. DEARMENT: Madam Chair, before we
begin, I'm going to recuse myself from the discussion and vote on this one.

CHAIR DEVENY: Okay. And that was Board member John Dearment who was recusing himself. So we still have a quorum, don't we, Lindsay?

MS. FORD: Yes.

CHAIR DEVENY: Do any Board members have any comments or questions that they'd like to ask of DEQ, or the commenter, or otherwise make any comments? Dexter.

MR. BUSBY: Madam Chair, I just want to congratulate DEQ and the stakeholders. That's a lot of meetings on one issue, and over a couple of year period in time, and I think that speaks positively of DEQ and the stakeholders that were involved. Thank you.

CHAIR DEVENY: I have a question. I would like DEQ to respond to the comments that the person from Northern Plains made regarding the best available technology aspects.

MS. KELLY: Thank you. Again, Myla Kelly with the Water Quality Division. I might refer this to another colleague, but just to get things started, we did respond to that comment with the response that in order to meet the
Federal regulations, the highest attainable condition of the water body must be met, which we consider to be analogous to the best available technologies.

CHAIR DEVENY: With regard to -- I believe she said the Supreme Court decision on that?

MS. KELLY: With that, I would need to refer to another colleague from DEQ. I'm not versed on that.

MS. BOWERS: Well, I believe that -- this is Kirsten Bowers, Madam Chair, members of the Board -- that case said that with regard to CBM point dischargers they would have to use best available technology, and we believe the rule is consistent with that, in that it requires, as Myla said, for the discharger to meet highest attainable condition of the water body, and that may include the greatest pollutant reduction achievable, that's one of the conditions of the variance, and we believe that would be consistent with best available technology.

And the Department would use its best professional judgment to make sure that is achieved.
CHAIR DEVENY: And is there a reason you didn't include that in the proposed rule?

MS. BOWERS: That language?

CHAIR DEVENY: Yes.

MS. BOWERS: We kept the language consistent with the Federal regulation on variances, which uses the greatest pollutant reduction achievable, and also highest attainable condition is the level that a discharger must achieve if they're under a variance.

So we believe the language is consistent with Federal law, and also would be consistent with the State Supreme Court.

CHAIR DEVENY: Okay. Thank you. Board members have any other questions?

MR. TWEETEN: Madam Chair, this is Chris Tweeten. I have one.

CHAIR DEVENY: Okay, Chris, go ahead, and then Hillary has one.

MR. TWEETEN: With respect to Ms. Dunning's comment regarding the amendment in Subsection (1) that strikes the language, "The Department determines in writing," and replaces it with "the following conditions are met," the response to Comment 45 refers back to Comment 13.
Comment 13 doesn't say anything about
the deletion of the determination in writing
language about which Ms. Dunning commented. Could
someone from the Department explain how it is that
the requirement for a written determination was
being struck by this proposed amendment.

CHAIR DEVENY: Could we have someone
from DEQ talk to that change, the proposed change,
that deals with taking out the "not in writing,"
the "comment in writing," "approval in writing."

MS. KELLY: Sure. This is Myla Kelly.
So I just wanted to point to Section 6 of the
rule, which again states that, "The Department
submits the variance and any supporting
documentation and analysis to EPA." So all of
that does need to come in a written form, so it
would certainly be a written record.

And that's consistent with any
rulemaking that we do. That incorporates any
justification for the rulemaking, and it includes
any public comments, and record, and all of that
is submitted to EPA for approval. So there would
absolutely be a written record.

CHAIR DEVENY: Chris, does that answer
your question?
MR. TWEETEN: Madam Chair, I'm not sure.

Just one second here.

MS. CLERGET: Chris, for help, the full rule is on Page 14 of the packet. That's the Section 6.

MR. TWEETEN: I was looking back at the comments on 45 language, which is on Page 72, I guess it was.

I guess I'm concerned about the absence of -- I mean what harm would be done by leaving the "in writing" language in place? What's the compelling need for making the change that's discussed in the Department's response to Comment 35? I'm not sure I understand what the difference is between the amended language and the original language, and why there is a significant need to make that change.

And I note that it doesn't seem to have been made in response to any particular comment that was made by a stakeholder, so I'm just wondering what -- I mean it seems to me the language as proposed was perfectly clear, and as Ms. Dunning points out, the change --

UNKNOWN SPEAKER: The following participant has entered the conference. No names
MR. TWEETEN: Excuse me -- the change to "the following conditions are met" introduces an element of ambiguity as to whether the Department's initial decision on the variance has to be written, or whether it should be verbal, and then the written rationale for the change be concocted later -- "concoct" is not the right word -- be developed later after the -- or in the process of preparing the submittal documents to EPA. I think the original proposed language to me appears to be preferable.

MS. KELLY: The Department again made the change in response to comments, and we did not think that the outcome, that there would be a really a substantial difference in whether it was "the Department determines in writing" or "the following conditions are met."

And we thought that the outcome of those two was really essentially analogous, but we would certainly be willing to change that language to say that "the Department determines in writing that the following conditions are met," if that is something that's acceptable to the Board.

MR. TWEETEN: I certainly think that
would be clearer for me.

CHAIR DEVENY: Okay.

MR. FELTON: This is John Felton. I was going to make exactly that suggestion. I don't think those two issues are mutually exclusively. I think if we just use that language, it covers both sides.

CHAIR DEVENY: Thank you, John. Any other comments on this particular issue regarding the changing of the language in Section 1?

Hillary.

MS. HANSON: I just have -- I guess I'm getting a little confused, and maybe it is just me, but the "may" versus "shall" in Section 1, I'm just not sure where it landed. So I'm seeing like on Page 32 it is changed to "shall," on Page 62 it's still "may," and I read the comments to feel like it was staying in "may." Yes?

MS. KELLY: That's correct.

MS. HANSON: I just want to make sure I understand what's being voted on.

MS. KELLY: That's correct.

CHAIR DEVENY: I had another question of DEQ in regards to Ms. Dunning's comments about the definition of material contributable. Could you
speak to that as well? Is this a new term, and did you consider defining it?

MS. KELLY: The term is new, so there is no definition of material contribution that we have used as a Department. We thought long and hard about trying to define that, and to write a definition for that.

But because of the differing impacts of different pollutants and how those would impact different water bodies, there is just such a landscape of differential impacts, I guess, that it is really quite difficult to define, and it is really on a case-by-case basis looking at the particular water body, the particular pollutant, the particular scenario. And we felt that it is really only in that context that we could actually accurately define material contribution.

CHAIR DEVENY: Doesn't that leave it open to a lot of interpretation on the part of the DEQ as to what that means then?

MS. KELLY: We did try and put some bounds around that, and I think I presented to the Board on some examples where we know that would be where we can definitively say, "This would be a material contribution."
So if the pollutant was going further downstream, that would be a clear indication of material contribution. So we did try to put some bounds around what material contribution would absolutely look like. But as far as a blanket definition, it is very difficult to do that on an umbrella basis.

CHAIR DEVENY: Were there any other terms that are already defined that you could have used in place of that?

MS. KELLY: It is possible, but again, that was language that was directed by statute. That was actually in the statute itself.

CHAIR DEVENY: Hillary.

MS. HANSON: How will you ensure consistency then during that process in defining that term?

MS. KELLY: Again, I think that will just have to be on a case-by-case basis. The key to this process is that it is an individual variance, and so that will come again before the Department, before the EPA, before the public review process. So there will be adequate opportunity for all of those parties to comment on how we've defined and utilized "material
contribution."

CHAIR DEVENY: During a lot of your stakeholder meetings, was this talked about a lot?

MS. KELLY: You know, interestingly we worked together to put our guidance document together, which actually set sort of those bounds on material contribution, and there was not a lot of -- In fact, there was many discussions as far as what that meant, what those bounds are, but that was the extent of it, and that was captured in our guidance document.

CHAIR DEVENY: I'm a little uncomfortable having a term in the rule that isn't defined because it does leave it so wide open.

Any other comments by Board members at this time, or George, did you have a comment?

MR. MATHIEUS: Madam Chair, yes, just maybe I could just help just a little bit.

Just looking at the concept that's being discussed on trying to attach a definition that's broadly used across the state, I would just say that it's somewhat analogous to our site specific standards process, which recognizes that certain conditions across the geography we have in Montana would require a very specific and very in-depth
analysis of that situation; and what's good for that situation wouldn't be for another.

So I guess in this case, for the Department to have the ability -- what pollutant is being discussed, how does it react in this particular watershed, what are the uses -- that's so variable across the state, and I think it is difficult to apply a very specific definition to such a broad usage.

CHAIR DEVENY: Dexter, you had a comment.

MR. BUSBY: I think just form of a comment. Since EPA did not have a particular issue with the word "material change," I think that makes me a lot more comfortable with the terminology, because they recognize just what George said, that it is specific to the water body and the pollutant, not something that's very generalized that you can grab a specific definition for. So I'm not as uncomfortable as I would have been if EPA would have challenged that concept.

MS. KELLY: Again, this is an additional level of stringency beyond the Clean Water Act requirements.
MR. TWEETEN: Madam Chair, this is Chris Tweeten again.

CHAIR DEVENY: Chris, and then Hillary again. Go ahead, Chris.

MR. TWEETEN: With respect to "materially contribute," I think it is a term that actually confers or directs a lot of the inquiry to the informed discretion of DEQ to determine whether a contribution is material or not in a particular case.

And the term "material," it seems to me, is the equivalent of some other words that could have been used, like for example "significant" could have been used instead of "material." I'm not saying it should be replaced with "significant," I'm just saying that it seems to exclude those contributions that are insignificant or immaterial, but to require --

If DEQ were to make a finding of a material contribution, a significant contribution, a contribution that is the capable of calculation, for example, as possible uses of that term; and DEQ would be required, if it couldn't find materiality as to a contribution and also grant the variance at the same time.
So I think it provides an adequate basis for judicial review. I think it expresses the Board's intention that this be a matter that is directed to DEQ's discretion, informed by the record that's before it, and its expertise in dealing with these kinds of matters; and hopefully a reviewing Court would recognize that this is a technical question that's particularly within the competence of DEQ, and not try to substitute its judgment as a Court for the technical determination that DEQ were to make as the question of materiality.

And I think this dovetails with the "decision in writing" issue that we just talked about, because I think it would be incumbent on DEQ, in situations where this language is in controversy, to include in its written decision a discussion of materiality and an explanation of those factors that led the Department to determine that a certain contribution was or was not material for purposes of this section of the rule.

So I think actually the language is appropriate the way it is, and I agree with DEQ that an attempt to define it might have some unintended consequences down the road, in the
sense that you could craft your definition in a way that might make it difficult to apply this particular language in the context of a case that might come up, the facts of which we can't even speculate about right now.

And rather than make an attempt to give further content to the rule, it would be just developed on a case-by-case basis, and it would be up to the reviewing Courts then to make sure that DEQ applies this language in a manner that is consistent from case to case, that's fair to the applicants, and also true to the intention of the Legislature when it put this language in the statute.

So I think I'm pretty comfortable with the language as it is; and even though it is not defined, I think it is probably appropriate to leave it the way it is.

CHAIR DEVENY: Okay. Hillary, you had a comment.

MS. HANSON: I was just curious, and maybe this goes more towards the representative from Northern Plains, but at least in the comments I had seen no other suggestions for words. Did you guys receive any suggestions for how to
replace that or better define it?

MS. KELLY: No.

CHAIR DEVENY: Other comments or questions by Board members?

MR. FELTON: This is John Felton. I have sort of a question and a comment, if I could.

CHAIR DEVENY: Okay. Go ahead.

MR. FELTON: My comment first. I agree on -- I feel comfortable with the "materiality" language as it is. If you make that analogous to a different place where that term is used, say, in financial audits, what's material for, for instance, a large non-profit hospital system, is very different from what's material for a small non-profit social service agency.

So I think it is to some extent a term of art, but the requirement that DEQ demonstrate that a condition is met or not met, I think I agree with the previous, my colleague, that I think that does address that.

My question is: I don't see in here any mechanism -- and maybe it exists elsewhere, and I should know this. So imagine that a waiver is granted. Could a stakeholder, an affected stakeholder appeal that to somewhere other than
Court; or if a waiver is not granted, could the applicant appeal that?

So I'm wondering is there a Board appeal process, or only appeal to a Court, from either one of those situations?

CHAIR DEVENY: The question on appeal, could somebody from DEQ address that.

MS. BOWERS: Madam Chair, members of the Board, this is Kirsten Bowers, and yes, I believe a stakeholder or a permittee applying for a variance that was denied, or otherwise unhappy with the variance, would appeal to District Court.

CHAIR DEVENY: So this Board does not hear those appeals?

MS. BOWERS: No.

CHAIR DEVENY: Does that answer your question, John?

MR. FELTON: It does. Thank you very much.

MS. BOWERS: Let me clarify. If the appeal were related to a permit decision, it would come to the Board by the permittee. If the permittee appealed their permit, which incorporated a variance, it is possible you could hear a variance issue.
MS. CLERGET: But I just want to clarify. This is Sarah. I want to clarify that a variance and permit are different things. So the variance would have to be included in the permit.

MS. BOWERS: Yes, as a condition.

MS. CLERGET: Is that clear?

CHAIR DEVENY: And then it would come before this Board?

MS. CLERGET: No. What she's saying is if a variance -- this is Sarah again. If a variance became part of a permit, and there was an issue with the permit, then the permit issue would come before this Board, and the variance might be wrapped up in that. But if it is just a straight variance decision, that is not going to be appealed to this Board, like the permit stuff does. Does that make sense?

CHAIR DEVENY: It does. Are Board members clear on that?

MR. FELTON: This is John again. So is it conceivable that you could have someone that has an existing permit, who then requests a variance. If there is an appeal of that variance, that would go to Court, but if the permit incorporated a variance, then the Board would hear
that? Is that how that works?

CHAIR DEVENY: I'll defer to Sarah.

MS. CLERGET: This is Sarah. Yes, that's my understanding, and I think that's consistent with what Kirsten said. She's nodding at me, so I think we agree.

MR. FELTON: Thank you.

CHAIR DEVENY: Any other comments, questions by the Board?

(No response)

CHAIR DEVENY: I just had one more, and this comment came up from a lot of people who testified at the hearing, and that was relating to the history of the legislation, and whether or not it was to be broadly implemented, or if it was more specifically to be dealt with relating to publicly owned water supplies, or the publicly owned entities who had permits.

And I'm wondering. Could DEQ discuss what your research into the legislative history was, and how you came up with the determination that it was more broad than just applying to municipalities.

MS. BOWERS: Madam Chair, members of the Board. DEQ found that the examples of a POTW was
used a lot in the Legislature. But the language itself, and based on conversations with Representative Keane, the legislation was not intended to be limited to POTW's, but that was used as an example of a discharger that could be affected by an upstream contributor of anthropogenic pollution.

So it was DEQ's conclusion that the Senate Bill 325 and the statute is not limited to certain users, it is limited to dischargers who meet the conditions.

CHAIR DEVENY: And what sort of legislative history research did you do to make that determination?

MS. BOWERS: Well, we did read different versions of the bill, and went back and looked at some testimony. It would be very hard to draft a rule that's limited to certain users.

CHAIR DEVENY: That was my next question. Is there a way to do that within the confines of meeting the EPA regulations?

MS. BOWERS: Our best conclusion was that it was important to make the variance consistent with Federal requirements, and that limiting it to dischargers who meet the conditions
in Parts 1 and 2 of the rule, that would limit the dischargers who would be eligible for variance. That would be a pretty significant limitation.

CHAIR DEVENY: Okay. And it looks like somebody else from -- Tim Davis from DEQ is --

MR. DAVIS: Madam Chair, members of the Commission. Tim Davis. I'm the Water Quality Division Administrator.

When we're looking at legislative history, you also have to weigh that against the plain reading of that statute itself, and the plain reading of the statute is that if you meet the conditions, then you can seek the variance. So it is not --

The statute itself did not limit it to POTW's or others, so we have to base our decision on the variance on the plain reading of the statute itself, unless that is unclear, then we can go to legislative history.

CHAIR DEVENY: Thank you for clarifying that. Any other questions or comments by Board members?

(No response)

CHAIR DEVENY: What's the Board's pleasure regards to these proposed Water Quality
Chris suggested we put that "in writing" language in. I guess the question is: That would, just as the term "in writing," two words that would be added?

CHAIR DEVENY: I believe that if you look on Page 62, I believe under Section 2, the language that was originally there which reads, "If the Department determines in writing," is what we would go back to.

MS. HANSON: I think they said "determines in writing that the following conditions are met." I thought that was where we landed.

MS. CLERGET: So if I'm hearing what you guys say, all you would do is reject the change to strike that language, and accept the change to add, "the following conditions are met"? Does that make sense? So you're accepting one of the changes, and rejecting one of the other changes.

MR. TWEETEN: Madam Chair, this is Chris. I think Sarah is correct. I think what you would do is remove the strike out from the language, "The Department determines in writing
that," and then insert the word "the" before "following." Then it would read correctly, and I think that would be the intention of an amendment if I were to propose it certainly.

So I guess procedurally at this -- No one has moved the adoption of the rules, so I don't think we can move an amendment to the proposed rule at this point.

CHAIR DEVENY: That's correct.

MR. TWEETEN: For those purposes, Madam Chair, I'll move the adoption of the rule as proposed by DEQ as found on Page 62 and following of the packet materials.

CHAIR DEVENY: The motion has been moved.

MR. TWEETEN: Then I'll move an amendment.

CHAIR DEVENY: And is there a second on this?

MR. TWEETEN: If there is a second to that motion, I'll move --

CHAIR DEVENY: Is there a second?

MR. BUSBY: Second.

CHAIR DEVENY: We have a motion to accept, approve the proposed rules, and there has
been a second.

MR. TWEETEN: Madam Chair, I move an amendment to the draft rule as found on Page 62 of the packet, and my amendment is to delete the strike out of the words, "The Department determines in writing that," and then to insert the word "the" before the word "following," and then adopt the underscored language as proposed by the Department.

CHAIR DEVENY: I would second that amendment to the motion. Is there any discussion on the motion and/or the amendment to the motion?

MR. BUSBY: Just a quick question. Are we referencing the right pages here?

MS. CLERGET: Yes, I think you're doing fine.

MR. BUSBY: Okay. Because I know it is on 14 and 15 where the proposed rule as it is is set, so I'm --

MS. CLERGET: Yes. The notice of adoption is what we're referring to, which is what is eventually going to be the final document. So you're okay.

MR. TWEETEN: This is the document that the Department created following the hearing that
contains that part of it, the comments and the
response to comments that were required by MAPA,
so I think that's the appropriate place to be.

CHAIR DEVENY: Any discussion or
questions by Board members?
(No response)

CHAIR DEVENY: Hearing none, all in
favor of the amendment, signify by saying aye.
(Response)

CHAIR DEVENY: Any opposed to the
amendment?
(No response)

CHAIR DEVENY: The amendment passes.
All in favor of the proposed adoption of the Water
Quality Rule with the amendment, please signify by
saying aye.
(Response)

CHAIR DEVENY: Any opposed?
(No response)

CHAIR DEVENY: Motion passes. The rules
are passed with change. I think we will go ahead,
and let's take a break now.
(Recess taken)
(Mr. Tweeten not present)

CHAIR DEVENY: I think we'll go ahead
and get started again. Lindsay, would you check
with Board members to see who is all here.

MS. FORD: Chris Deveny.

CHAIR DEVENY: Here.

MS. FORD: John Felton.

MR. FELTON: Here.

MS. FORD: Dexter Busby.

MR. BUSBY: Here.

MS. FORD: Hillary Hanson.

MS. HANSON: Here.

MS. FORD: Tim Warner.

(NO response)

MS. FORD: John Dearment.

MR. DEARMENT: Here.

MS. FORD: Chris Tweeten.

(NO response)

CHAIR DEVENY: Somebody on line has
music playing, and it's very entertaining, but
it's a little distracting, so if you could turn it
off, that would be appreciated.

MS. CLERGET: I expect if they're on
hold, they're probably --

CHAIR DEVENY: Oh, okay. Hold music.

Are there other people in the room that came in
the second part of the meeting that haven't
identified themselves?

MR. CRONIN: I'm Chris Cronin, the Opencut Mining Section Supervisor.

CHAIR DEVENY: Any other people?

(No response)

CHAIR DEVENY: Let's move on to the next item on our agenda, which is a proposal from the Missoula City-County Public Health Department, and before I turn it over to Missoula, I'd like DEQ to explain this procedure to us for how this is works.

Chris, are you here yet?

(No response)

MS. ULRICH: So again, Madam Chair, members of the Board, Liz Ulrich from the Air Quality Bureau here at the Department, and I was planning on providing some context for this upcoming item on the agenda. Just a couple things that I've prepared.

We have a number of local programs in the state that have their own air quality programs, including Missoula County. They implement their air quality programs as approved by the Board under Montana Code Annotated 75-2-301. And I saw on the Board, on the website
that there was a link to that MCA on there.

Local air program's purpose of the rule
is to protect and maintain local air resources.
We work closely with the air quality programs, and
in this case particularly Missoula County to
ensure that their programs are appropriate and
consistent with statute.

Contrary to the typical Board rulemaking
process where we have the initiation, hearing,
then an adoption at a later meeting, this is
simply we're asking Missoula County --

UNKNOWN SPEAKER: The following
participant has entered the conference. No names
are available.

MS. ULRICH: We're just going to ask you
to approve their rule revision. They go through
their own rule initiation and associated public
process, and you have that in your Board packet,
evidence of their lengthy and extensive process.

So if there is additional questions, I
guess maybe let's just see if we can field some of
those before I introduce Missoula County.

CHAIR DEVENY: Do Board members have
questions of the procedure that we'll use based on
what DEQ has just provided us with? Hillary.
MS. HANSON: I guess I just wanted to understand a little bit about then the local process. So am I reading it correctly Missoula has to go through three places? And why is that?

MS. ULRICH: That's definitely their local process.

MS. HANSON: Okay. So that's a local piece.

MS. ULRICH: Yes.

MS. HANSON: It could just be the Commissioners, and then it's brought before the Board, etc.?

MS. ULRICH: Exactly.

UNKNOWN SPEAKER: The following participant has entered the conference.

MR. TWEETEN: Chris Tweeten.

(Mr. Tweeten present)

CHAIR DEVENY: Welcome back, Chris. We're in the middle of talking about the Missoula City-County Public Health proposal for their air quality regulations.

MS. ULRICH: Is there anything else for the Department?

CHAIR DEVENY: Not right now. We may have some questions for you later --
MS. ULRICH: So I would like to introduce Sarah Coefield from Missoula County, and she's going to go ahead and talk to you about the rule revision.

MS. COEFIELD: Madam Chair, members of the Board, thank you for your time. I'm Sarah Coefield. I'm an Air Quality Specialist with the Missoula City-County Health Department.

The Missoula City-County Health Department -- which I'm just going to call the department -- the department is requesting that the Montana State Board of Environmental Review approve a rule change and accompanying record of adoption for the Missoula City-County Air Pollution Control Program.

Specifically we're asking that the Board approve the proposed changes to Rule 4.112 of the that air pollution program.

UNKNOWN SPEAKER: The following participant has entered the conference. No names are available.

MS. COEFIELD: On July 20th of 2017, the Missoula City-County Air Pollution Control Board approved changes to Rule 4.112 of the Missoula City-County Air Pollution Control Program.
However following that approval in July, the department noticed that the Air Board acted less than thirty days after the hearing was publicly noticed, which was in violation of State law, specifically MCA 75-2-301(13)(b), which requires a local air program to have something noticed for thirty days before the Board hold that hearing.

To correct that conflict, the department rennoticed the hearing, and following that 30 day notice, the Air Board held a second hearing on September 21st, 2017, and this is why you have records of adoption for two Air Board hearings in your packet.

The Air Board approved the changes to Rule 4.112 at the September hearing. The changes were then approved by the Missoula Board of County Commissioners on March 8th of 2018, and the Missoula City Council on March 12th of 2018. You can see the record for adoption for complete details on that process.

All public notice requirements were met, and processes accompanying those notice requirements were followed for this rulemaking process.
In the material sent earlier to the Board, you will find written explanations for the changes to Rule 4.112 are not more stringent than existing State rules, and MCA 75-2-301(4) does not apply to this rule change.

The Department undertook this rule change in response to concerns US EPA identified when reviewing our PM10 redesignation request and limited maintenance plan. The EPA expressed concerns that the Rule 4.112 in its current state was too vague. Accordingly we revised 4.112 to clarify and codify department actions during wildfire smoke episodes.

This proposed revision does not alter the original intent or substance of this rule. So I'm available for any questions or comments you may have. We're just here requesting you approve the final steps so we can get it into our rule package.

CHAIR DEVENY: Thank you, Sarah. I'd like to ask DEQ if they feel that Missoula followed the requirements in Subsection (4) for ensuring that the standards are compatible with or more stringent than those in the State rule.

MS. ULRICH: Yes, we've worked through
Madam Chair, members of the Board. The Department, the State has worked through this whole process with Missoula County and concurrently with them, so we believe that they've met all the requirements for their rule revision.

CHAIR DEVENY: Okay. Thank you. Are there any questions from the Board members of Ms. Coefield or DEQ regarding these air quality changes for Missoula County? Hillary.

MS. HANSON: I just have a question. You mentioned that this was part of a -- did you say non-attainment? Are you guys trying to change the designation of an area?

MS. COEFIELD: Sarah Coefield again. We were designated non-attainment for PM10 back in 1989, and have not violated that standard since basically 1989 or 1990. So several years ago we started the process of redesignation to a maintenance attainment for PM-10. That particular process started years ago, but at the pace of EPA reviewing things, we are just now in kind of the final steps of that approval process.

Yes. We are still technically a PM10 non-attainment area until we have that final approval.
CHAIR DEVENY: Any other questions or comments by Board members?
(No response)
CHAIR DEVENY: Is there any public comment on this proposal by Missoula County?
(No response)
CHAIR DEVENY: Anybody in the room?
(No response)
CHAIR DEVENY: Anybody on the phone want to comment on this?
(No response)
CHAIR DEVENY: Hearing none, what's the Board's pleasure?
MS. HANSON: I move that we accept the rules.
CHAIR DEVENY: There has been a motion. I'll second it for approving the proposed rules from Missoula City-County Health Department. Any discussion?
(No response)
CHAIR DEVENY: We'll vote.
MR. TWEETEN: If you need a second, I'll second that.
CHAIR DEVENY: It has been seconded.
Thanks, Chris. We'll go ahead and vote then. All
those in favor, signify by saying aye.

(Response)

CHAIR DEVENY: Opposed.

(No response)

CHAIR DEVENY: None opposed, the motion passes. Thank you, Missoula County. Continue the good work.

Moving right along, we have some new contested cases. Sarah, would you run us through those.

MS. CLERGET: Sure. So there are three new cases that you'll need to decide what you want to do with. Again, your options as we've discussed before are: You can keep everything about the case; you can assign it to a Hearing Examiner for procedural purposes only; or you can assign it to a Hearing Examiner for both procedural and substantive purposes, and then you'll get a proposed decision at the end.

You can break that up any way you want to, if you want to keep summary judgment, or if you want to keep the hearing. So you are aware of those options, but I think we need to take one these one by one.

So the first case is the violation of
the Metal Mine Reclamation Act by Little Bear
Construction. And you have the material, the
notice of appeal, in your packet for this.

CHAIR DEVENY: 164.

MS. CLERGET: Thank you. Do we need
a --

MS. HANSON: I move we assign it to a
Hearing Examiner for the totality of the case.

CHAIR DEVENY: I'll second that. Any
Board discussion?

(No response)

CHAIR DEVENY: All those in favor of
assigning this case to Sarah in its entirety,
signify by saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Motion carries. Go on to
the next case.

MS. CLERGET: The next one is Denial of
Motor Vehicle Wrecking Facility License MVWF-0376.
Same options.

MS. HANSON: I move we assign it to a
Hearing Examiner for the totality of the case.

CHAIR DEVENY: Is there a second?
MR. DEARMENT: I'll second.

CHAIR DEVENY: It's been moved and seconded. Any discussion?

(No response)

MR. BUSBY: A quick question of Sarah. Timing. Are you starting to become over worked, under worked, or --

MS. CLERGET: So far it is manageable. I will let you know when it is no longer manageable.

MR. BUSBY: That's what I wanted to hear.

MS. CLERGET: Pending budgetary concerns.

CHAIR DEVENY: Any other discussion by Board members?

(No response)

CHAIR DEVENY: Hearing none, we'll vote on this motion. All those in favor of assigning this case to Sarah in its totality, signify by saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Motion carries.
MS. CLERGET: The third is the Revocation of the Cosa, for Fischer Land Development Subdivision. The same options there.

MR. DEARMENT: Since Sarah's not too busy, I'll move she can do the whole thing.

CHAIR DEVENY: In its totality?

MR. DEARMENT: Yes.

CHAIR DEVENY: It has been moved. I'll second it. Any discussion?

(No response)

CHAIR DEVENY: Hearing none, all those in favor, signify by saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Hearing none, motion carries.

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(Oral Argument on Oil Fields Rock and Logistics, BER 2016-11-OC at 10:27 a.m. and reconvened at 11:03 a.m.)

* * * * *

CHAIR DEVENY: Next we have before us a petition for rulemaking from the Cottonwood Environmental Law Center, and the Gallatin
Wildlife Association.

This is kind of an unusual thing, nothing that this Board has had before. So I'm going to first ask DEQ to talk about the procedures that the Board goes through when this particular proposal was brought before them, and then I'll ask for comments and a presentation by Cottonwood Environmental Law Center.

MS. CLERGET: Would you like to put a time limit on it?

CHAIR DEVENY: Let's talk about the procedures first, and then I will ask Cottonwood to limit their comments based on our meeting.

MR. MATHIEUS: Madam Chair, might I just add that the Department also was planning on providing you guys with some history of a petition similar to this that was before a previous Board. And so we thought that would be helpful to lay out that history as well as the process, and then we asked the petitioners if they could be here today to answer questions, and help with some of this. Thank you.

CHAIR DEVENY: Tim Davis from DEQ is here.

MR. DAVIS: Madam Chair, members of the
Board, Tim Davis, Water Quality Division Administrator at DEQ. I apologize for calling the Board a commission earlier. I feel pretty bad about that. But this was my first time speaking in front of you, so I'll try to get it straight going forward.

So I'm going to start by giving the Board some history on the Outstanding Resource Water statute, as well as the prior petition for the Gallatin that is similar to this petition that is before the Board right now, and then I'll walk through kind of the process, too.

So the Outstanding Resource Water designation offers the greatest level of protection under nondegradation laws, and these waters are to be afforded the greatest protection feasible under law after a thorough examination, and that's really the process piece, because they are of such environmental, and ecological, and economic value.

The protections that are afforded Outstanding Resource Waters are: No permanent change is allowed to water quality for new or increased point source discharge, and this is a higher bar than nonsignificance change; and an
application to degrade State waters that are granted ORW designation may not be granted.

Any designation that the Board would make, so if you decided to grant this petition -- after accepting it, after public comment, after hearing, the Department conducting an EIS, adopting the EIS, that's kind of the different steps in the process. If the Board decided to adopt the rule, then the rule can be approved by the Board, but does not go into effect until the Legislature has approved it. So it is kind of the different, in summary, that's kind of the different steps.

When this petition was previously submitted to the Board, it was submitted in December of 2001 by American Wildlands. In March -- so it was December 2001. In March of 2002, the Board received comments on the Outstanding Resource Water petition, and directed DEQ to prepare an EIS.

The EIS was delayed at that time until DEQ could secure the funding to develop the EIS, and subsequently the statute was changed to require that the Petitioner pay for the estimated costs for an EIS. The draft EIS was completed,
released for public comment September 2006; the comment period closed in October 2006; and a final EIS was adopted in January of 2007.

The Petitioners did ask from March 2007 to 2012, the Petitioners did ask the Board to delay action on rulemaking every six months. And because the Petitioners were working with several organizations to develop a wastewater plan for the region -- and this was the Big Sky area -- called the Wastewater Solutions Forum, the Board agreed to delay rulemaking between 2007 and 2012 as Petitioners developed a plan, and attempted to secure funding for wastewater improvements in the area.

In December of 2012, at the request of the interested parties, including the Petitioners and DEQ, BER decided to not extend the rulemaking another six months, and thereby terminated the notice of rulemaking for that Outstanding Resource Water petition.

DEQ did tell the Board at the time that someone could petition the Board in the future, but that the EIS would likely be outdated at that point. It would need to be supplemented and updated in any future rulemaking at that point. I
would just say that the final EIS was already five years old when that rulemaking was allowed to terminate.

So going forward, to give you an idea of what we looked at in that EIS, the proposed petition past and now was for designation of the Outstanding Resource Water in the Gallatin River starting at the northwest boundary of the Yellowstone National Park, and ending at the confluence of Spanish Peak, about 40 river miles.

The ORW designation requires a finding that no other alternative exists that would provide the same level of protection as the proposed ORW section, and we did evaluate three different alternatives in that EIS: A no action alternative continue, which would essentially be continuing to review impacts to the Gallatin on a development by development basis; a cumulative impacts analysis; and the Outstanding Resource Water designation.

So in that EIS, we looked at the hydrologic, and we looked a variety of factors -- hydrogeology, water quality, socioeconomic considerations, land use and recreation impacts assessed, aquatic life and habitats, fisheries,
vegetation, wildlife, air quality, cultural resources, and esthetics.

So again, that EIS would now be, what, eleven years old, so we have not yet gone through the process to estimate what steps we would need to take, or the costs that would need to -- or estimate the costs for updating and supplementing that EIS. That would be part of the process going forward, and the Outstanding Resource Water rules as well and the process as laid out under MCA 75-5-316.

And so at this point, we just wanted to come before the Board, kind of lay out the general process, explain the history that's taken place in the past, and talk about the analysis that we previously had done, and then invite the Petitioners to address the Board to describe the petition that they've submitted.

CHAIR DEVENY: Just one question, Tim. So today if the Board decides to move forward, would we assign this particular project I guess to you to proceed with the parties, if we were to go forward with it, or -- Sarah.

MS. CLERGET: I think the process is outlined in 75-5-316, and I think Tim tried to lay
that out a little bit.

I think the first decision that has to be made under 75-5-316(3)(a) is whether the petition contains sufficient credible information. So I think that's the determination that you guys need to make, and you don't have to make it today if you don't want to. There is not a timeline.

But I think you have to make that determination. You can't delegate that to DEQ necessarily. They can give you information, you can ask them for information, but you need to make that determination.

And then if not, we have to provide reasons in writing under the statute. If yes, if it does provide sufficient credible information, then we have to decide whether to adopt the petition under 75-5-316. If that happens, then there is a public notice process that we have to go through that BER has to administer. It can't be DEQ.

And after that public process is done, and you make the final determination about whether to -- essentially you decide that you're going to adopt it, then you go through the public process. Then after the public process is done, you can
decide officially to adopt it.

Then we go through a rulemaking process, which is the additional public notice period after that. So all of that has to be administered by -- all of those processes have to be administered by BER, although you can ask for information at any stage from the parties or from DEQ. Does that make sense?

CHAIR DEVENY: Yes.

MR. DAVIS: Madam Chair, if I may.

Thank you, Sarah. Our recommendation today is that you don't make that determination as to whether it meets the criteria, but we've introduced the petition, the petition itself; hear from the Petitioners, hear from the Department, and then consider making that determination on the criteria going forward at a future meeting.

CHAIR DEVENY: All right. Let's hear from --

MR. MATHIEUS: Madam Chair, I'd just like to provide a clarification, if you would, to my statement earlier. I just want to be clear that there was no requirement for the Petitioners today that we just asked them to present or anything of that nature. We just called them and
said, "It would be great if you guys could come. The Board may have questions of you." I thought that might help. I don't think I quite clearly stated that previously. Thank you.

CHAIR DEVENY: That's good.

MR. DEARMENT: Madam Chair.

CHAIR DEVENY: Yes.

MR. DEARMENT: Mr. Davis, so you don't want the Board to decide today. What will happen in the interim before when we do decide?

MR. DAVIS: Madam Chair, Mr. Dearment. That is where the Board would have to decide, as Sarah laid it out, would have to decide whether the petition meets the criteria. So you could direct the Department to give you a recommendation on that between this meeting and the next meeting, but that is the Board's decision going forward.

MR. DEARMENT: Thank you.

MR. DAVIS: Sarah, does that fit with what --

MS. CLERGET: Yes, I think you may be conflating two of the steps. There is a first step in 75-5-316(3)(a) whether the petition contains sufficient credible information is the first step. If that's a yes, then we go to the
more technical question of: Does it meet all of the various technical requirements? Do you want to accept it or reject it? So there are sort of two steps in there. I just want to be clear.

MS. HANSON: So when we talk about the petition in terms of being credible, etc., does the petition include the EIS that's in here, or are they two separate things?

MR. DAVIS: Madam Chair, Ms. Hanson. It is does not include the EIS itself. The petition submits the information that the Petitioners believe meets the criteria, but also has the substantial credible evidence. The EIS was developed for the previous rulemaking itself by the Department.

CHAIR DEVENY: Okay. Thank you, Tim. We may have more questions. But now I'd like to turn it over to folks from Cottonwood.

MR. MEYER: Madam Chair, members of the Board. I'm nervous.

MS. CLERGET: Start with your name and where you come from.

MR. MEYER: Thank you. My name is John Meyer. I'm with Cottonwood Environmental Law Center. I come from northwest Indiana. I was
born and raised in the midwest.

And that's part of the story of why I'm here today, because in northwest Indiana, there is steel mills, and there is a lot of industrial infrastructure. And growing up in the woods, we could play, and then eventually it all got bulldozed down. The tree houses that I built as a kid, they're not there anymore. These trees aren't there. There is houses there now.

And that's happening today in Big Sky. They're building houses there. And what happens in the interim, and what's happening right now, is that Big Sky evidently has asked engineers to propose or develop a plan to discharge their wastewater, their treated wastewater, into the Gallatin River. And so I like to climb in the Gallatin Canyon, and I like to swim in the Gallatin River. I swam there last summer.

And the Minnesota agencies in charge of pollution are concerned that when you discharge wastewater, treated wastewater even, you get pharmaceuticals in that wastewater, and there is no treating that. And so I don't want my -- I'm going to have kids. My kids and I don't want to be swimming in the treated wastewater where there
CHAIR DEVENY: Mr. Meyer, I'm going to limit your comments to ten minutes, if you could do that. And if you can really talk about the petition and why your organizations are looking for it, that would be great.

MR. MEYER: So we are here before you so that we can maintain the water quality of the Gallatin River, and we think the only way to do that is to designate the Gallatin River as an Outstanding Resource Water. We believe that our petition meets the criteria to move forward as an Outstanding Resource Water.

MS. CLERGET: Might I ask a question, Madam Chair?

CHAIR DEVENY: Yes.

MS. CLERGET: Does your organization understand the change in the statute about the cost of the EIS?

MR. MEYER: My understanding is that the Department of Environmental Quality used to pay for the cost of the EIS, and since that original EIS was issued, the statute has changed, and now the Petitioner has to pay for the cost.

And so Cottonwood is a very small group.
We have lots of members across Montana and the US, but we only have a few staff members, and so our money goes towards petitions. It doesn't go towards -- we don't have -- Honestly we're not going to have the money. DEQ is saying that we're going to need to do some supplemental Environmental Impact Statement. We don't have the money to pay for that. That's the short answer.

If we don't move forward with this, if the DEQ says we need to supplement the Environmental Impact Statement, that it falls on us, this is done because we don't have the money to do it.

MS. CLERGET: Do you understand that that's the statute that says that, that it was a change in the statute, and it is not a matter of DEQ saying it? That's just what the statute says.

MR. MEYER: Yes.

MS. CLERGET: So if I understand what you're saying right, then now that you have that understanding about that you would have to pay for that going forward, that you would have to withdraw your petition based on that because you're not going to be able to --

MR. MEYER: I know for a fact we don't
have the money to pay the Department of Environmental Quality to supplement its Environmental Impact Statement.

    MS. CLERGET: Okay. I just thought the Board might need that information.

    CHAIR DEVENY: That's important. Any other questions by Board members of Mr. Meyer?

    MR. DEARMENT: I have one, Madam Chair. Madam Chair, Mr. Meyer. There has been a multi-year effort in Big Sky, or the Big Sky area, to kind of deal with wastewater treatment issues related to the build-out of Big Sky. Has your organization participated in that?

    MR. MEYER: We have. We've gone down to meetings in Big Sky. We've hosted a forum in Bozeman as well where the general manager of Big Sky attended the Bozeman meeting as well. We've participated, commented during the forum as well.

    MR. DEARMENT: And are you pursuing this listing because you're dissatisfied with the outcome of that effort in part?

    MR. MEYER: We're pursuing the designation of the Gallatin River as an Outstanding Resource Water to provide the river with the most protective status it can get,
because this is one of the most amazing rivers in
the state, if not the country, if not the world.
People come here from over all over the world to
go fly fish, to go kayak, to go whitewater rafting
in the Gallatin River, and we want to protect it
to the extent that we can.

MR. DEARMENT: Madam Chair, Mr. Meyer,
one more question. Does that coalition of folks
that have been working in Big Sky, either in whole
or in part, individual organizations support this
effort that you're aware of?

MR. MEYER: Absolutely. There are
groups that -- I spoke with somebody yesterday who
is part of the coalition, and he said, "Good luck
talking to the Board tomorrow."

MR. DEARMENT: Thank you.

CHAIR DEVENY: So a little bit of
follow-up to both Sarah and John's question with
regard to funding any supplemental EIS. Have you
had any discussions with other groups about the
fact that the EIS may need to be updated and how
that could possibly be funded?

MR. MEYER: Your Honor, I just spoke
with Tim out in the hallway, and he said to me
that one of the main things that we see needs to
be supplemented is the criteria for water protection right now. It has changed.

It used to be what's called a narrative standard, and now it is a numeric standard. And so narrative says whatever it says. It is permit by permit. So if you want to discharge into the Gallatin River, you have a narrative standard. And if you want to discharge now, it is a numeric standard. So here's the hard line is across the state that applies to every river.

And so we don't understand why that makes a difference. At the end of the day, we're trying to protect the Gallatin River. So whether you have a narrative standard or whether you have a numeric standard shouldn't matter.

The only thing that needs to be supplemented in the Environmental Impact Statement is that the fact that there is more and more homes being built that want to discharge waste into our water. I don't understand what else would need to be supplemented in the Environmental Impact Statement.

CHAIR DEVENY: So you haven't had any discussions about any funding that would be forthcoming from the Petitioners or their
MR. MEYER: No, Your Honor. No. I was just informed in the hallway fifteen minutes ago that the DEQ was thinking that they needed to supplement their EIS.

CHAIR DEVENY: Thank you. Other questions from Board members?

MR. BUSBY: I have a quick question.

CHAIR DEVENY: Dexter.

MR. BUSBY: If I understand you correctly -- and you can tell me I'm all wet or not -- but ultimately your goal is to minimize or stop development in Big Sky?

MR. MEYER: No. Our goal is to protect the water quality in the Gallatin River.

MR. BUSBY: I understand that. You stated that. But you keep coming back to Big Sky and development in Big Sky is going to cause you difficulty on maintaining water quality. I think you'll find folks at DEQ may dispute that a little bit.

But ultimately if you get -- you feel if you get this designation, you'll have better control on development in Big Sky or -- I guess I'm not sure what your ultimate -- because Big Sky
looks like on the map to be the big discharger into the Gallatin in this area. So is that what you're worried about?

    MR. MEYER: We're worried that Big Sky has issued a request for proposal for an engineering firm to design a way to discharge treated wastewater into the Gallatin River.

    MR. BUSBY: So you want to stop that?

    MR. MEYER: We don't want treated wastewater discharging into the Gallatin River. I don't think anybody in Montana wants treated wastewater discharging into the Gallatin River.

    Mr. Dearment, do you?

    MR. DEARMENT: Madam Chair, Mr. Meyer. I'm prepared to answer that. The water is going somewhere. There are quite a few houses there already. I guess I'm reluctant to foreclose on any potential options down there sitting here today. I think that would require a pretty thorough analysis of the impacts and the other options.

    MR. MEYER: The Department of Environmental Quality has already done the analysis, and they had actually chosen an alternative that would designate the Gallatin
River as an Outstanding Resource Water.

MR. DEARMENT: Madam Chair, Mr. Meyer.
I'm not familiar with that history. I don't know
if the Department can speak to that or not or
would like to.

CHAIR DEVENY: Could the Department
speak to the Environmental Impact Statement, the
likelihood that it will need to be updated or not.

MR. DAVIS: Madam Chair, members of the
Board, again, Tim Davis. I grabbed Mr. Meyer
before this item came up on the Board's agenda
just to give him a heads up that, "A," what we
were planning to do today was to give a history,
talk about the process, talk about the fact that
the law does require -- as Sarah pointed out --
that an EIS, that any estimated cost for an EIS as
part of the petition process would need to be
borne by the Petitioners themselves.

I did tell him that we've not done an
estimate yet of what that cost would be. We
haven't gotten into that level of detail. Simply
saying that it is an eleven year old EIS, and that
there have been changes, including going from a
narrative nutrient criteria to a numeric nutrient
criteria. We believe that could change the
analysis that was done. Clearly the demographic data and other data that was used back to develop the 2007 final EIS needs to be updated.

So we haven't done an estimate at this point. Before we could work on it, we would need to do an estimate, and the Petitioner would have to pay the cost.

CHAIR DEVENY: Can you give us a general idea what sort of effort it would take for you to come up with an estimate? Is that going to be a tremendous amount of work? Even if it was just ballpark. I'm not asking you to do it now. If we gave you time between now and the next meeting --

MR. DAVIS: I would be happy to. That's what I was going to ask, rather than -- Madam Chair, I asked some of my staff --

CHAIR DEVENY: I apologize. I put you on the spot.

MR. DAVIS: We could get you a ballpark, Madam Chair, of what we think it would take.

MS. CLERGET: Madam Chair, I just want to be clear. It was the statute that requires the EIS. It is not optional.

CHAIR DEVENY: Oh, I wasn't aware of that.
MR. DAVIS: So we can get, Madam Chair, we can get you a general estimate in the future.

CHAIR DEVENY: Before we go on with further Board discussion, I believe we have to open this to public comment; is that right? So I would like to ask if there is anybody else in the room or on the phone that would like to comment on this particular proposal for designating the Gallatin River as an Outstanding Resource Water. There's somebody here. If you could state your name.

MR. LEWIS: It's Greg Lewis. I'm with Montana Fly Fishing Magazine. We have 10,000 subscribers world wide, and lot of them, 2,500 of them have already signed an online petition in favor of this designating the Gallatin River an Outstanding Resource Water. I live in Big Sky full time. It took me three hours to get here today.

What we're seeing up there as far as development is significant. I don't know if you've been up there in awhile, but it is -- If Environmental Impact Statement, EIS, means impacting the environment, what was twelve years ago is twelve times worse on the river.
So the streams in Big Sky are impaired, if I'm not mistaken. They are designated as impaired by the State. And to learn that even though the stakeholders held this meeting, we still know that Ron Edwards, Gallatin River Task Force, and some of those members are still pursuing direct discharge permits. Within a year we anticipate you will have those.

That needs to stop. We need to declare this river an outstanding resource. It needs some protective designation, and it needs it now. We can't wait any longer. I would appreciate if you would give it some consideration, moving it forward.

And I'd also be curious to know how much it would cost to -- if we have to do the environmental impact assessment or whatever it is. I may be able to come up with those funds. So thank you for your time.

CHAIR DEVENY: Thank you. Further questions or discussion by the Board?

MR. FELTON: This is John Felton. I have a question if I could.

CHAIR DEVENY: Go ahead, John.

MR. FELTON: With respect to the EIS, we
have one that's now twelve years old, and we've
just heard from someone who lives in the area that
issues are twelve times worse. I understand
that's not a numeric thing.

But would the expectation be that the
EIS would be done de novo, in other words, you
start completely over; or is it reasonable from
the Department's perspective to have something
that's twelve years old, eleven or twelve years
old updated?

CHAIR DEVENY: I'll put that question to
Tim Davis of DEQ. Could the EIS possibly be
updated rather than having to start the whole EIS
process over?

MR. DAVIS: Madam Chair, I don't
anticipate us redoing, starting de novo. But what
we'll do when we do look at an estimate for the
Board is we'll look at, we'll go over the existing
eleven year old EIS's, and discuss what would need
to be updated, and how much work do we think that
would take.

MR. FELTON: Okay. Thank you.

CHAIR DEVENY: Thanks, John. I'd like
to suggest that the Board postpone making a
decision on this today, ask DEQ to make an
estimate on what the cost of the EIS would be, and communicate that cost to the parties; and at a future Board meeting, if it is possible to get it on the next one, or at least next one or two, have both parties come first with the estimate of the amount, and then the parties indicating whether or not they have the capability of funding the EIS, which if it is not funded would be a hindrance for the Board to put a lot of effort into it. And I'd like to ask Sarah if that seems legal to do that.

MS. CLERGET: I think that seems reasonable. I just want you to keep in mind the decisions that you have to make by the statute. So the first decision is: "The Board shall initially review a petition against the criterion --" identified in (3)(c) "-- to determine whether the petition contains sufficient credible information for the Board to accept the petition." So that's the decision point.

So although the information about the EIS might be helpful, just remember that that's what you're deciding.

CHAIR DEVENY: But don't have to decide that today.

MS. CLERGET: No, absolutely not.
CHAIR DEVENY: I understand that.

MS. HANSON: But am I correct, Sarah, what I heard you say earlier that to some extent we need to know if that EIS piece can be funded. Otherwise the petition should be --

UNKNOWN SPEAKER: The following participant has entered the conference.

MS. HANSON: Is that not totally true? I guess I was just thinking -- I understand what you're saying from the statute first step, but it seems like an essential component of even knowing whether this petition should be in front of us for action.

MS. CLERGET: I think that's more a question for the Petitioners -- that's more whether the Petitioners want to withdraw their petition based on that information is I think the more practical useful piece, as opposed to how much that piece goes into the initial review decision.

CHAIR DEVENY: So unless there is further discussion by Board members, I would make what I just suggested as a motion, that we ask DEQ to make a cost estimate before, if possible, the next Board meeting, and to meet with the
Petitioners to discuss that, and we use that information to make our required decision.

MR. TWEETEN: Madam Chair, this is Chris Tweeten. I wonder if I might -- First of all, let me second your motion, and then if I might speak to the motion.

CHAIR DEVENY: Go ahead.

MR. TWEETEN: Having read through the statute several times, it is a complicated statute, and it proposes a kind of rulemaking. The decision to designate or not designate has to be done by rule or by rulemaking. And if we wish to designate, we do it by adopting a rule to that effect, which then is subject to legislative review, and is not effective until the Legislature has reviewed it.

So there is a two stage, as I read the statute, there is a two stage process that the Board follows in cases like this. First, we have to make a decision whether to accept or reject the petition. And the statute contains notice of hearing requirements before that determination can be made, and that determination then has to be made in writing, with reference to information that was presented during the notice of hearing.
process. And it's sort like of a mini-rulemaking in and of itself.

And the second stage, if at that stage we reject the petition, then the matter is over. It's the final agency action and subject to judicial review, I guess, under the provisions of MAPA.

If we accept the petition, then there is a further process that takes place, and that is the process where the EIS comes into play. So it is only after we've decided whether to accept the petition that the EIS even becomes material.

So it seems to me we're very early in this multi-stage process right now, and I don't think we have enough information at this stage to decide whether or on its face the petition makes a case for designation or not. And so I think we can carry that over, and take that up on its merits at our next meeting, leading to a determination by the Board as to whether we accept or reject the petition, remembering that acceptance is not the same thing as initiating rulemaking.

If we decide to accept the petition at our June meeting, the next step would be to go
through the EIS process, assuming that the Petitioners are able to make the financial contributions that are required under the statute to meet their obligations to pay for the EIS. And once the EIS is completed, then we would decide whether or not we want to initiate rulemaking, and adopt a rule designating the river as an Outstanding Resource Water.

So I think being at this very early stage, I'm in favor of carrying this matter over until the next meeting, and conducting an inquiry at that point as to whether we want to reject the petition off the top, or whether we want to go forward with the notice and comment process that's set forth in the statute, as the next step before deciding whether to accept the petition.

I don't know if that is clear to everybody, and Sarah, I'm not sure you would agree with me that that's what the statute says; but it seems to me that's what it says. And so given that procedural outline, I'm not ready to decide today whether there is a grounds for rejecting this petition at this point.

MS. CLERGET: May I, Madam Chair?

CHAIR DEVENY: Go ahead, Sarah.
MS. CLERGET: Chris, just one clarification of what you said. I think I agree with everything you said about the two steps coming. I believe there is an initial first step that is contained in (3)(a) that is the initial review decision, to determine whether the petition contains sufficient credible information, that occurs before the decision to accept or reject the petition.

So that's the only modification I would make, and that would be the determination. The initial review would be the decision I would suggest the Board make at the next meeting.

CHAIR DEVENY: That was my understanding.

MR. TWEETEN: Right. And I agree with that, Sarah. But I think the only decision we can make after initial review is to reject the petition. If we don't decide to reject the petition, then that notice and comment process is triggered before we decide whether to accept it.

MS. CLERGET: Correct.

MR. TWEETEN: Am I correct on that?

MS. CLERGET: Yes, I agree.

MR. TWEETEN: So I think we're on the
same page there. Madam Chair, I support your
motion, and I think at our June meeting we should
have an action item on the agenda to make that
initial determination under (3)(a) of the statute,
and whether we want to trigger it going forward of
this notice and comment process, and make the
ultimate determination of whether to accept or
reject.

CHAIR DEVENY: I would agree with that.

There is a motion before the Board. Is there any
other discussion?

(No response)

CHAIR DEVENY: Any other clarification
or discussion?

(No response)

CHAIR DEVENY: Let's vote on the motion,
which I think you all know what it is. Let's just
vote on it. All those in favor, please say aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Motion carries. Dexter
has a comment.

MR. BUSBY: Just a quick and easy
comment. This is actually to Sarah. Could you
put together just a little one page outline of the process that we need to go through on this thing starting with the next meeting, please?

MS. CLERGET: Sure.

MR. BUSBY: Because I think I understand it, but I'm not absolutely sure, and it is an involved process.

MS. CLERGET: Yes, I can do that.

CHAIR DEVENY: That's a good suggestion.


MS. CLERGET: Just one quick practical question here for you guys. Going forward you saw in my memo on the Oil Field case that was in front of you today that there was a reference if anybody had anything they wanted to look at in the record, to contact Aleisha.

And I expected decisions coming in front of you. Going forward there may be times where in order to decide whether or not you want to accept, reject, or modify my orders, you want to look at something in the record. This is probably going to be true as the records get bigger on the bigger cases, even more when the parties are arguing specific portions of the record.
So the practical question for you is how would you like those records, especially when they're big? So for example, some of these cases we're talking about book case worth of a record.

The options I've thought about are we can make the record available in hard copy in, for example, the conference room in my office, and you can come look at any part of it that you want at any time.

The other option is we can give you all a thumb drive -- assuming it will usually fit on a thumb drive -- we can give you a thumb drive that has the whole record, so you can pick what parts you want to look at.

We can file transfer service it to you with the State, which is like a cloud service, but the problem with the State file transfer service is that it will have to be done in multiple different sections, given the way that the file transfer service works. And so you'll probably be getting several emails about that, and so there are just some issues with the file transfer service.

And then the other option is that we can continue to just say, "Let Aleisha know if you
want to see anything." You can email Aleisha, and she can email it back to you. If it's too big to email, she can file transfer just the portion of the record that you want to see.

So it's sort of what your pleasure is going forward with these cases making the record available to you.

CHAIR DEVENY: I'm thinking that different Board members might have different preferences, so are all those options available?

MS. CLERGET: I think the one that would cover all of those options would be to say going forward that you contact Aleisha and let her know which of those options you would prefer.

I just want to make it clear mostly that in my orders, I'm going to tell parties not to attach things to their exceptions briefs, and I want to make it clear to everybody that anything that you see cited in a brief, you have the ability to go look at in the way that's most easy for you to do that.

CHAIR DEVENY: I appreciate that. Do Board members have any questions or comments about that?

MS. HANSON: I think the only comment I
would make is while I appreciated being in your office, coming from out of town, I think that would be difficult to do and get here in time to review it. So my preference would be one of the electronic, probably my preference is flash drive, just because it takes away the need to get into systems. But I guess I would say at least one electronic option I think is needed.

MS. CLERGET: That's all for Counsel update.

CHAIR DEVENY: Great. Thank you. All right. Is there any comment from the general public about any issues that weren't discussed here today already? And contested cases are definitely off limits.

(No response)

CHAIR DEVENY: Anybody on the phone?

MR. SECKINGER: My name is Josh Seckinger. (Phonetic) I'm a Cottonwood member and Montana fishing guide licensed --

CHAIR DEVENY: I'm sorry, but according to our attorney, our comment period was over for that particular agenda item, so we're not able to let you comment now.

MR. SECKINGER: Okay.
CHAIR DEVENY: This public comment period is for issues that were not previously discussed at the Board meeting.

MR. TWEETEN: Madam Chair, I'd just point out for the commenter's benefit, though, that if at our next meeting we determine not to reject the petition on its face, you're going to have plenty of opportunities to get your views in the record.

MR. SECKINGER: Thank you.

MR. TWEETEN: And the statute. So I think we're only saying that for today's purposes we're done with that issue, but you're going to have all kinds of opportunities to speak and --

MR. SECKINGER: I understand that.

CHAIR DEVENY: Thank you for clarifying that, Chris. Okay. Hearing no other comments from any of the other general public, we'll move into adjournment. Motion for that?

MR. BUSBY: I will move it.

CHAIR DEVENY: I'll second it. Any discussion on adjournment?

(No response)

CHAIR DEVENY: All in favor, signify by saying aye.
(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Meeting is adjourned.

(The proceedings were concluded

   at 11:50 a.m. )

  * * * * *
CERTIFICATE

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 - 97 - 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 ________, 2018.

___________________________
LAURIE CRUTCHER, RPR
Court Reporter - Notary Public

My commission expires

March 9, 2020.
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causation - 16:4
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certify - 98:7
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