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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
December 7, 2018)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
December 7, 2018
9:00 a.m.

BEFORE CHAIR CHRIS DEVENY,
BOARD MEMBER JOHN DEARMENT;
and CHRIS TWEETEN, DEXTER BUSBY,
TIM WARNER (By telephone)

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

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

3 * * * * *

4 CHAIR DEVENY: Welcome everybody. I'd
5 like to call to order this meeting of the Board of
6 Environmental Review. I'm Chris Deveny, Chair.
7 And we'll have a roll call now. Lindsay.

8 MS. FORD: Chris Deveny.

9 CHAIR DEVENY: Present.

10 MS. FORD: John Felton.

11 (No response)

12 MS. FORD: Dexter Busby.

13 MR. BUSBY: I'm here.

14 MS. FORD: Hillary Hanson.

15 (No response)

16 MS. FORD: Tim Warner.

17 MR. WARNER: Here.

18 MS. FORD: John Dearment.

19 MR. DEARMENT: Here.

20 MS. FORD: Chris Tweeten.

21 (No response)

22 MS. FORD: I have four Board members
23 present. That is a quorum.

24 CHAIR DEVENY: Thank you, Lindsay. Next
25 I'd like to go around the room, and we'll start

1 here with Sarah.

2 MS. CLERGET: Sarah Clerget, attorney
3 for the Board.

4 MR. MATHIEUS: George Mathieus, Board
5 liaison, Department liaison for the Board.

6 MS. FORD: Lindsay Ford, Board
7 secretary.

8 MS. SCHERER: Sandy Scherer, legal
9 secretary, DEQ.

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

12 MR. LUCAS: Mark Lucas, DEQ staff
13 attorney.

14 MS. BOWERS: Kirstin Bowers, DEQ
15 attorney.

16 MR. FREELAND: Dan Freeland, compliance
17 inspector, DEQ.

18 MS. MCCARTHY: Mindy McCarthy,
19 compliance, DEQ.

20 MR. PETTIS: Aaron Pettis, attorney,
21 DEQ.

22 MS. CHRISTOPHERSON: Sarah
23 Christopherson, attorney, DEQ.

24 MR. MOSER: Kurt Moser, attorney, DEQ.

25 MR. SIVERS: Eric Sivers, DEQ Water

1 Protection Bureau.

2 MR. GARBER: Jason Garber, Water
3 Protection Bureau, DEQ.

4 MR. DILLIARD: John Dilliard, DEQ,
5 Public Water Supply Bureau.

6 MS. CLARK: Rachel Clark, DEQ,
7 Engineering Bureau.

8 MS. BAWDEN: Susan Bawden, DEQ
9 Enforcement.

10 MR. ANDERSON: Chad Anderson, DEQ
11 Enforcement Program Manager.

12 MS. STEINMETZ: Amy Steinmetz, Waste
13 Management and Remediation Division.

14 MS. KELLY: Myla Kelly, Water Quality
15 Standards.

16 MR. DAVIS: Tim Davis, Water Quality
17 Division.

18 MR. REGENSBURGER: Eric Regensburger,
19 Water Quality Standards.

20 MR. STEER: Wade Steer (phonetic),
21 Western Energy Company.

22 MR. MARTIN: John Martin, Holland and
23 Hart, for Western Energy.

24 MR. LEEP: Lundy Leep with Copper Ridge
25 Development.

1 MS. MARQUIS: Vicki Marquis with Holland
2 and Hart representing Copper Ridge and Reflections
3 at Copper Ridge.

4 MR. BRICE: Greg Brice (phonetic) with
5 Hydrometrics.

6 MR. STORY: Steve Story with DNRC and
7 the Board of Water Well Contractors.

8 MR. URBAN: Eric Urban, DEQ.

9 MR. KENNING: Jon Kenning, DEQ.

10 DR. SUPLEE: Mike Suplee, DEQ Water
11 Quality Standards and Modeling Section.

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

14 MS. HARBAGE: Rebecca Harbage, DEQ, Air
15 Quality.

16 MS. ULRICH: Liz Ulrich, DEQ Air Quality
17 Bureau.

18 MR. WARNER: Ed Warner, DEQ, Air Quality
19 Bureau.

20 MR. JUERS: Shawn Juers, DEQ, Air
21 Quality Bureau.

22 MR. WHITAKER: Nick Whitaker, DEQ staff
23 attorney.

24 MR. BARTON: Darryl Barton, DEQ.

25 MR. ANDERSON: Carl Anderson, DEQ, Air

1 Monitoring.

2 MS. McLAUGHLIN: Joanne McLaughlin,
3 Water Protection Bureau.

4 MS. SIR: Haley Sir, DEQ.

5 MR. FLEMING: Derek Fleming, DEQ, Water
6 Protection Bureau.

7 MR. TIETZ: John Tietz with Browning,
8 Kaleczyc, Berry and Hoven for Columbia Falls
9 Aluminum Company.

10 MR. THOMPSON: Brian Thompson at
11 Browning, Kaleczyc, Berry and Hoven for Montana
12 Contractors Association.

13 MR. COLEMAN: I'm Ed Coleman. I'm with
14 the DEQ Coal and Opencut Mining Bureau.

15 CHAIR DEVENY: And we had two people
16 that came in just recently. If you want to find a
17 chair, and would us let know who you are, that
18 would be good.

19 MR. KLEMP: David Klemp, DEQ, Air
20 Quality Bureau.

21 MR. HERNANDEZ: Shiloh Hernandez with
22 Western Environmental Law Center representing the
23 Montana Environmental Information Center.

24 CHAIR DEVENY: There is a couple seats
25 up here or somewhere in there, anyplace you can

1 find. Are there other people on the phone lines
2 that are here to listen to or participate in this
3 meeting today besides our two Board members?

4 (No response)

5 CHAIR DEVENY: Hearing none, welcome,
6 Dexter, welcome, Tim. Thank you both for being on
7 here. We do have a quorum. I'd like to just
8 remind anybody that does call in on the phone to
9 please mute your phones so that we don't have a
10 lot of interference, and when you speak, to please
11 identify yourself so that our Court Reporter can
12 get all of the information into the record today.

13 So next we'll review the minutes from
14 our October meeting. Do any Board members have
15 any additions or corrections to the minutes?

16 (No response)

17 CHAIR DEVENY: Hearing none, are there
18 any members of DEQ or the public that have
19 comments on the minutes?

20 (No response)

21 CHAIR DEVENY: Is there a motion to
22 approve the minutes?

23 MR. DEARMENT: So moved.

24 CHAIR DEVENY: It's been moved. I'll
25 second it. It's been moved and seconded. All

1 those in favor, signify by saying aye.

2 (Response)

3 CHAIR DEVENY: Anybody opposed?

4 (No response)

5 CHAIR DEVENY: It looks like we have
6 approved the minutes. Next the Board needs to
7 review our 2019 meeting schedule which you should
8 have in your packet. Was there any discussion on
9 those dates, or do Board members agree that those
10 are dates that will work for us?

11 (No response)

12 CHAIR DEVENY: Hearing none, would there
13 be a motion to approve those meeting dates?

14 MR. DEARMENT: So moved.

15 CHAIR DEVENY: It's been moved. I'll
16 second it. Any public comments?

17 (No response)

18 CHAIR DEVENY: Hearing none, all those
19 members in favor of the 2019 schedule, signify by
20 saying aye.

21 (Response)

22 CHAIR DEVENY: Any opposed?

23 (No response)

24 CHAIR DEVENY: Okay. So the 2019
25 meeting schedule has been established.

1 And the next order of business are the
2 briefing items, and I'll turn this over to our
3 Board attorney Sarah Clerget.

4 MS. CLERGET: Hi, everybody. Sarah
5 Clerget. I will just reiterate what's on the
6 agenda for you, going through them one by one.

7 Briefing item II(A)(1)(a), CMG
8 Construction, technical experts in the case have
9 met, and DEQ is in the process of reviewing CMG's
10 scope of work in regard to the remediation. Once
11 those technical details are worked out, it will be
12 reduced to writing, and CMG will file a notice of
13 dismissal. The last status report they filed was
14 on November 23rd of 2018.

15 Fischer Land Development is Item (b). I
16 just got an update from that on December 6th. DEQ
17 filed a status report indicating that petitioner
18 has signed and executed the order on consent, and
19 a stipulation for dismissal should be filed
20 shortly. So that's an oral update even from
21 what's in the agenda.

22 MR. TWEETEN: Excuse me, Sarah. Can I
23 break in just a second? This is Chris Tweeten. I
24 finally brought the technology to its knees and I
25 am on the call.

1 MS. CLERGET: Oh, good, Chris. Thank
2 you.

3 CHAIR DEVENY: Welcome, Chris. Thank
4 you for coming in.

5 MR. TWEETEN: It's great to be here.

6 CHAIR DEVENY: Before we continue, there
7 have been some people that have come into the
8 room. I'd like to ask them to each identify
9 themselves.

10 MS. WEAVER: Christine Weaver with the
11 MPDES Permitting Program.

12 MS. ERICH HOFFMAN: Emilee Erich
13 Hoffman, MPDES program.

14 MS. HEDGES: Ann Hedges with MEIC.

15 CHAIR DEVENY: Thank you. Okay. Go
16 ahead.

17 MS. CLERGET: And I apologize. I think
18 I just switched these in my notes. Wagoner Family
19 is the one that I just got the update on, on
20 December 6th, so I apologize that the update I
21 just gave you was Wagoner Family, which is Item
22 (c).

23 Item (b) Fischer Land Development, the
24 stay is still in place as they work on their
25 settlement terms.

1 So moving on to Item (d), the Bob Weaver
2 Pit, there is a scheduling order in place and the
3 parties are proceeding accordingly.

4 Two of the nonenforcement cases,
5 Absaloka Mine, they are waiting on -- There is a
6 stay in the underlying case pending the outcome of
7 MEIC and Sierra Club v. DEQ and Western Energy,
8 and there's still no decision on that case yet.

9 2(b), Signal Peak, I extended all
10 pretrial motions pending an issue that's before
11 the District Court right now regarding a subpoena.
12 That issue has been resolved by the District Court
13 substantially, but they are still working on
14 attorneys fees, so that remains pending before the
15 District Court and stayed in our action.

16 Item (c), the AM4 Western Energy, I have
17 the proposed findings of fact and conclusions of
18 law from the parties, and hope to get a decision
19 out to you as soon as possible. The goal is to
20 have that on the agenda for February. We will see
21 if we can manage that. If not, it will be at the
22 April meeting.

23 In Montanore, I held a trial on that
24 case Monday and Tuesday of this week, so the
25 parties are now going to work on their proposed

1 findings of fact and conclusions of law, and get
2 those submitted to me. I would expect that one to
3 come before you sometime in the summer probably.

4 Item (e), the Laurel Refinery case,
5 there is a six month stay in place until February
6 25th, 2019.

7 Item (f), Golden West Properties,
8 Wagner, and Weyer cases, as you remember, we
9 dismissed the one, so only Mr. Weyer's appeal
10 continues. And I've issued a scheduling order on
11 September 20th, and the parties are proceeding
12 accordingly.

13 Columbia Falls Aluminum Company is not
14 on the agenda. However, I note that the parties
15 are present here. And my understanding is that
16 essentially the agreement that was reached at the
17 end of the last meeting they are continuing to
18 work on, and there should be an update in February
19 as originally stated.

20 And Item 3(a) is for DEQ to update.

21 CHAIR DEVENY: Could we have an update
22 from DEQ on the Western Energy permit.

23 MS. BOWERS: And Madam Chair, members of
24 the Board, I'm Kirsten Bowers, DEQ attorney. And
25 that case is before the Supreme Court, and really

1 the only update is that Western Energy filed an
2 unopposed motion for an extension of the due date
3 to file reply brief, and that was granted, so
4 reply briefs are now due January 11th, 2019. So
5 the matter is still being briefed before the
6 Montana Supreme Court.

7 CHAIR DEVENY: Thank you. Anything
8 else, Sarah?

9 MS. CLERGET: No, that completes the
10 briefing items.

11 CHAIR DEVENY: We're ready to move on to
12 our action items for the day. We have a lot on
13 our agenda, so try to keep this meeting moving.
14 Let's hear from DEQ. George, I think I'll ask you
15 to introduce your staff on the particular
16 rulemaking that we're discussing today.

17 MR. MATHIEUS: Thanks, Madam Chair. We
18 have four rulemaking items before you today. And
19 our first one is DEQ Circular 7, I believe is Mike
20 Suplee. So Dr. Mike Suplee is going to present
21 for you this morning. It looks like you have a
22 power point.

23 CHAIR DEVENY: Is this power point
24 available to those who are on the phone?

25 MS. CLERGET: Yes. I mailed it to them

1 this morning, and it was posted to the Board
2 website.

3 CHAIR DEVENY: So Dexter, Chris, and
4 Tim, do you need a minute to get your power point
5 up, or are you ready?

6 MR. BUSBY: I can't get it up because I
7 have no internet.

8 CHAIR DEVENY: Tim and Chris, are you
9 ready to proceed?

10 MR. TWEETEN: Yes, I think so.

11 DR. SUPLEE: Madam Chair, members of the
12 Board, good morning. Again, my name is Dr.
13 Michael Suplee. I'm with the Montana Department
14 of Environmental Quality's Water Quality Modeling
15 and Standards Section, and we are requesting
16 initiation of rulemaking this morning.

17 This rule change is before both the
18 Board and the Department because DEQ7, the
19 circular in question, is referenced in both Board
20 rules and Department rules. We're proposing six
21 new groundwater human health criteria specifically
22 for groundwater, and I will walk you through these
23 briefly.

24 The groundwater standards are going to
25 be housed here in this. This is a page from DEQ7.

1 They will be housed here under the groundwater
2 section of the circular. All these criteria were
3 derived using drinking water as the source only,
4 so here are the six.

5 And the adoption is being driven
6 primarily by requests from DEQ's Waste Management
7 and Remediation Division, including their
8 hazardous waste program. These standards will
9 provide cleanup end points for remediation work
10 that they are doing. So in brief, I'll give you
11 just a real brief rundown on the six criteria
12 since there's not many of them.

13 Diallylate, the first on the list, you
14 can see there, is a carcinogen. This is an
15 herbicide that's been used to control weeds and
16 grasses in crops. High levels of it affect the
17 central nervous system, and long term exposure can
18 cause liver damage. That is the background on
19 that.

20 Dioxane, 1,4 is an organic compound used
21 as a solvent. It has affected groundwater in many
22 areas in the United States, and it is highly
23 soluble in water, and does not bind well with
24 soils, and therefore it has found its way into
25 groundwater. This is part of the reason that

1 remediation is seeking this in DEQ7 as a cleanup
2 end point.

3 I'm going to jump over iron and
4 manganese, and go to the last two, perfluorooctane
5 sulfonate, or for short PFOS, and
6 perfluorooctanoic acid, or PFOA.

7 These are compounds that have been
8 around since the 1940's. They've been widely used
9 for all kinds of purposes: As a resistant for
10 stains, such as Scotchgard; they've been used in
11 Teflon cookware; they are used for firefighting
12 purposes.

13 And they have a very long life. They
14 persist indefinitely in the environment. And in
15 fact, it has been found that 98 percent of the
16 general US population has these compounds in small
17 levels in them.

18 So in 2002, under pressure from EPA,
19 began to phase out the production of these
20 compounds. Eight other companies that have
21 produced these followed suit by 2015, and they
22 agreed to finish producing these. But they are
23 commonly found in various areas in groundwater.

24 EPA studies show that it can cause
25 developmental effects on human fetuses during

1 pregnancy, including low birth weight, skeletal
2 variations. It can also reduce the chance of
3 pregnancy; it interferes with the body's hormone
4 systems; affects the immune system; a possible
5 cancer risk. However, these have been derived as
6 toxic criteria in this case.

7 So I'm going to now jump forward a
8 little bit here on iron and manganese. Now, iron
9 and manganese criteria are interesting, in that
10 probably most of you in the room are familiar with
11 the idea that some people take iron as a
12 supplement, so why are we having criteria for
13 this?

14 Both iron and manganese demonstrate
15 what's known as a U-shaped adversity or health
16 impact curve, so if you look at that, what you're
17 seeing is that if you don't get enough of either
18 of these compounds, you can have health effects,
19 too low of iron, too low of manganese, and other
20 micronutrients. So that would be there on the
21 left side of the curve.

22 Then there is the area in the middle
23 where most of us operate where we're getting
24 enough of these. And then if you get too much on
25 the other side, you start to get adverse health

1 impacts from too much of these compounds. For
2 example, at a dosage of 200 to 300 milligrams per
3 kilogram, iron is actually lethal.

4 Now manganese -- I'm going to jump back
5 down to a previous slide. Manganese in excess
6 levels causes neurobehavioral and neurocognitive
7 impacts to infants. There has been a lot of work
8 done just recently, and the collective evidence
9 suggests that early manganese exposure at too high
10 of levels may produce deficits in learning,
11 memory, and attention.

12 And this brings me to the idea that
13 there are special populations that some of these
14 criteria have been derived for. Our standard
15 assumption when we derive a drinking water based
16 standard is that a person who weighs 80 kilograms,
17 and they drink 2.4 liters of water per day during
18 their lifetime.

19 However, some subpopulations are more
20 vulnerable than others, and the criteria are
21 derived to protect them. We have two criteria,
22 actually three here, that are derived for specific
23 subpopulations. PFOS and PFOA, which I mentioned
24 earlier can affect pregnancy, etc.

25 Those have been derived to protect

1 lactating women, and they use the 90 percentile of
2 their daily water intake and also lower assumed
3 body weight than is normally used. Those were
4 derived by EPA.

5 Manganese was derived by the Department
6 with the assistance from EPA. This is derived to
7 protect infants, and specifically the criteria
8 were derived for zero to six month old infants,
9 who do have a much lower body weight obviously,
10 and a much larger percentage of water intake. The
11 assumption is that up to 80 percent of their water
12 is coming from the mixing of formula.

13 And just as an aside, both Canada and
14 the State of Minnesota have derived criteria for
15 manganese, and they basically came up with the
16 same number we did, which is 100 micrograms per
17 liter.

18 Additional details on the rulemaking.
19 I'm almost finished. There is going to be a new
20 Footnote 40. This is going to provide a means to
21 cross reference the Montana administrative record,
22 pages and date, in cases where the details of how
23 DEQ derived a criteria or criteria is housed in
24 the MAR.

25 You probably noticed that the MAR Notice

1 had a fair amount of technical information about
2 how we went through and derived the criteria, so
3 that we don't lose that linkage, or if people need
4 to find out more about that in the future, they
5 will be able to look at the footnote, and we will
6 specifically link that MAR notice to the iron and
7 manganese criteria.

8 There is a new Footnote 41. Essentially
9 all that says is that the combination of PFOS and
10 PFOA cannot exceed the .07 criterion shown up
11 there on the board.

12 There is a stringency issue. We've
13 looked at all these criteria relative to the
14 federal, and we have one criterion that is
15 currently more stringent than Federal manganese
16 value. But the Department has provided, and will
17 provide more as needed, all the information in
18 order to meet the requirements of more stringent
19 than Federal, which is at 75-5-203. Some of that
20 information is already in the notice.

21 In the future -- this is now stepping
22 away from the rulemaking that's immediately before
23 us -- the Department is planning via the Public
24 Water Supply Bureau, which will be probably
25 approximately in the next year or so, to adopt

1 manganese as a drinking water standard.

2 But I want to point out that today's
3 rulemaking will not affect the drinking water
4 rules. This is strictly for groundwater,
5 groundwater cleanup, remediation, that sort of
6 thing.

7 At that time, the drinking water
8 standard will be developed in light of DEQ7's
9 groundwater standard here, EPA recommendations,
10 and other requirements that would be detailed in
11 the drinking water program's rules. So that's
12 something that you should probably expect to see
13 coming into the future, but not today.

14 That's all I have on the rulemaking.
15 I'd be happy to answer any questions you may have.

16 CHAIR DEVENY: Thank you. And I'm
17 sorry. I didn't get your name.

18 DR. SUPLEE: My name is Michael Suplee.

19 CHAIR DEVENY: Thank you for that
20 presentation. Do Board members have questions of
21 Dr. Suplee or any of the DEQ?

22 (No response)

23 CHAIR DEVENY: Questions from the Board?

24 (No response)

25 CHAIR DEVENY: I have a question on the

1 manganese. You mentioned I believe Canada and
2 Minnesota have similar concentration limits. Are
3 those also for remediation, or are those for
4 drinking water?

5 DR. SUPLEE: To be honest, I don't know
6 the answer to that.

7 CHAIR DEVENY: And no other state has
8 that number for -- those numbers for remediation
9 at this time?

10 DR. SUPLEE: I'm not aware of other
11 states that have them adopted in rule. I know
12 that even the EPA has been looking at updating the
13 number that they have proposed, which is 300,
14 based on older studies; but they are not in a
15 position at this point to quite move forward on a
16 national recommendation.

17 CHAIR DEVENY: So it sounds like these
18 are some updates that are needed, it sounds like
19 to me. Board members don't appear to have any
20 questions or comments. So at this time, we'll
21 take comments from the public if there are any.
22 Is anybody here interested in speaking to these?

23 MR. BRICE: I would like to speak to
24 those comments, please.

25 CHAIR DEVENY: If you could be sure to

1 give your name clearly for our Court Reporter.

2 MR. BRICE: Absolutely. My name is Greg
3 Brice. I'm with Hydrometrics in Helena, Montana,
4 and I'm a hydrogeologist. I'd like to, Madam
5 Chair and Board, thank you for your time today.

6 I would like to request the Board to
7 delay any decision on initiating rulemaking at
8 this time for a few reasons.

9 The first reasoning is that many of our
10 -- we represent many clients that these rules
11 would affect, especially with respect to iron and
12 manganese. Many of our clients did not know about
13 this proposed change. We are unaware why they
14 were not provided this information, as many of us
15 at Hydrometrics are also on the list to be
16 notified for such changes, and those were not
17 provided to anybody in our group that was on those
18 lists.

19 And then these changes, these rule
20 changes, could adversely affect many of these
21 based on -- many of these clients based on these
22 standards, and that has been not been fully
23 evaluated on by the Department.

24 The other thing is we have had only a
25 small amount of time to actually review the data

1 that the Department provided, but we did find
2 numerous technical issues that we think the Board
3 should consider.

4 The technical issues that I have
5 identified in my preliminary review show that the
6 addition of numeric criteria for iron and
7 manganese is, we believe, unnecessary, as these
8 parameters may be regulated under Montana's
9 surface and groundwater rules that contain
10 narrative standards.

11 The Department also notes that the
12 reason for adding numeric standards for iron is
13 that the standard is an important criterion to
14 Wastewater Management Remediation Division as a
15 cleanup end point.

16 The standards applied in DEQ7 have much
17 wider impacts than just cleanup end points, and
18 there are a variety of factors, including land use
19 and site specific exposure assumptions that can be
20 used by the Department in more site specific risk
21 assessments, to establish cleanup criteria and end
22 points.

23 It is hard for us to understand why the
24 Department removed the narrative standards only a
25 few years back, and now is coming back to add

1 numeric standards to both iron and manganese. The
2 Department does not make a clear case on why
3 additional standards are necessary to protect
4 human health.

5 It should also be noted that both iron
6 and manganese are essential dietary needs for
7 human health, and any development of a numeric
8 standard must take into account both the need for
9 that constituent, and the toxicity, potential
10 toxicity or harmfulness of that constituent.

11 More specifically with iron, the
12 Department has identified iron as a toxic.
13 However, it gives no reasoning to this
14 designation. Currently iron is designated as a
15 harmful in DEQ7, and the change from a toxic to a
16 harmful has many effects with respect to
17 nondegradation standards.

18 Circular DEQ7 provides trigger values
19 for toxic parameters that determine whether a
20 change in water quality is significant under
21 nondeg rules. In this rulemaking proposal, DEQ
22 has not identified a proposed trigger value for
23 iron, thus the current proposal is incomplete.

24 Furthermore, the Department references
25 that the iron criterion was calculated using an

1 RFD of 0.592 kilograms per -- and I know I'm
2 getting into the weeds here, but it is important
3 -- based on EPA's provisional peer review toxicity
4 value for iron compounds.

5 However, the actual document uses an RFD
6 of 0.7. So the document, if you accept that
7 document's RFD value, is higher than what the
8 actual was in EPA's documentation.

9 Further, the reference documents had
10 many disclaimers about the proper use of this
11 data, some of which of these are concerning. I'll
12 quote a few of them for you.

13 The first one states, "It is important
14 to remember that provisional values alone tell
15 very little about the adverse effects of a
16 chemical, or the quality of evidence on which that
17 value is based on."

18 It also notes in the documentation that
19 EPA's health effect assessment summary table
20 reported that data regarding iron were inadequate
21 for quantitative risk assessments. The chemical
22 assessment and related activities list provided by
23 EPA includes a health effect assessment for iron
24 and compounds that found no reliable quantitative
25 oral toxicity data.

1 Lastly it states that the studies used
2 to develop the provisional RFD's are based on
3 durations of two weeks to approximately three
4 months, and that no chronic exposure studies
5 reporting gastrointestinal toxicity were
6 identified, and the RFD that was developed in that
7 documentation used data solely on the two weeks to
8 approximately three months on gastrointestinal
9 toxicity to develop that criteria.

10 The disclaimers in the document must be
11 considered in determining if it is valid to use
12 provisional RFD for establishing statewide numeric
13 standards.

14 The referenced EPA document provided a
15 provisional subchronic and chronic RFD value of
16 0.7, as I stated earlier. It is higher than used
17 by the Department, and therefore the Department
18 would be required under 75-5-203 to provide
19 written findings that include information from the
20 hearing records regarding the cost of the
21 regulated community that are directly attributable
22 to the proposed state standards requirement.

23 That was not provided in this proposed
24 rulemaking, and it should be done prior to
25 initiating rulemaking, because we know rulemaking

1 takes a lot of energy, time by the Department, by
2 the Board, and by the regulated community, and is
3 important to have this information before we start
4 initiating rulemaking on these things.

5 With respect to manganese, a similar
6 scenario is that Dr. Suplee noted that manganese,
7 if they're proposing a standard that is lower than
8 the actual Federal standard. When that is done,
9 the cost analysis needs to be done as to the --
10 before, and this was not done, and therefore we
11 would request that prior to initiating rulemaking,
12 that this information be provided so it can be
13 reviewed by the Board and the public.

14 One thing that we think the Department
15 states in their rules is that at a municipal
16 scale, dissolved manganese can be removed by
17 several technologies. They give an example of
18 oxidation and physical separation, which can
19 achieve concentrations of 40 micrograms per liter.

20 This statement is slightly misleading.
21 I think Dr. Suplee correctly noted that these are
22 standards for DEQ7. They do not apply to drinking
23 water criteria, which would be able to meet --
24 which is where the 40 micrograms per liter would
25 come into play for that.

1 These standards will actually most
2 likely be used for treatment technologies for
3 cleanup sites, and more importantly, will be used
4 to determine nondegradation criteria for discharge
5 permits to the groundwater.

6 They also could be used for establishing
7 nondeg criteria for MPDES permits for surface
8 water because many MPDES permits are discharged to
9 groundwater that are in connection to surface
10 water, and therefore they need to meet groundwater
11 nondeg criteria in those MPDES permits, as well as
12 surface water, and those costs and feasibilities
13 for municipalities and other industries to meet
14 these nondeg criteria for discharges could be
15 significant.

16 I thank you for your time. I ask you
17 consider the information that I've provided, and
18 delaying any determination or initiation of
19 rulemaking. Thank you.

20 CHAIR DEVENY: Thank you. Would you
21 stay for questions? Okay. Thank you. Do Board
22 members have questions of Mr. Brice?

23 (No response)

24 CHAIR DEVENY: Dexter or Chris, any
25 questions?

1 MR. TWEETEN: I'd like to hear from --
2 This is Chris. I'd like to hear from the
3 Department in response.

4 CHAIR DEVENY: Absolutely, we will. I
5 wanted to see if anybody had any questions first.

6 (No response)

7 CHAIR DEVENY: With that, could we hear
8 from DEQ in response to Mr. Brice's comments and
9 concerns. And I would particularly like to ask up
10 front that you address his issue about the notice,
11 no notice being given to him, or what you've done
12 to engage any stakeholders up front if there has
13 been that effort.

14 DR. SUPLEE: This is Mike Suplee with
15 the Department. I can address some of these
16 things. Some of these other issues may have to
17 bump to other individuals in the Department.

18 Regarding the public notice, we have not
19 outreached a great deal to stakeholders because
20 that is a part of what the process is going
21 forward.

22 What we have done quite extensively is
23 internally met and discussed among the multiple
24 groups within our Department that deal with
25 groundwater -- so this would be remediation.

1 We have a groundwater working group who
2 has been meeting off and on over the last couple
3 of years, and they are fully aware of the
4 implications of putting standard like this in
5 place, and they're aware of the fact that in some
6 areas, groundwater does have numbers far higher
7 naturally, for example, than these numbers.

8 And there are elements of our law, for
9 example 75-5-306, where you don't have to treat to
10 purer than natural that come into play and are
11 incorporated into the rules that we work under.
12 So that is part of how we have looked at this.

13 There is no individual or group among
14 the groundwater working group that again
15 represents the full array of folks within the
16 Department that deal with groundwater and
17 groundwater remediation and treatment that have
18 shown concern about us adopting these standards at
19 this point. We've had many meetings with them.

20 But that's not outreach to the general
21 public. Again, that is generally what we would do
22 going forward with the 45 day public comment
23 period that's coming, etc.

24 Regarding the reference dose that he
25 referred to, our calculation is actually correct.

1 If you've read the document more closely, he would
2 see that that reference dose is based on a 70
3 kilogram assumed body weight. That is what the
4 assumed body weight was at the national scale, and
5 was in Montana up to recently.

6 In more recent DEQ7's, it was updated to
7 80 kilograms. When you run back through those
8 calculations, and readjust that reference dose,
9 you will find that you come up with the number
10 that we used.

11 Regarding having us remove iron and
12 manganese more recently as narratives, that is
13 correct. Those were removed. They were in DEQ7
14 in the 1990s as a full standards, then they moved
15 to a footnote, and by 2012 they were actually
16 removed from DEQ7 completely.

17 Those were based on national secondary
18 standards for drinking water based on staining and
19 esthetics in drinking water supply, so they really
20 had never had a lot of direct usage for purposes
21 of protection of human health.

22 In contrast, these two criteria that
23 we're talking about here, and the numbers that are
24 shown, are based on the protection of human health
25 as we discussed. And I did again point out that

1 U-shaped curve. We're fully aware that you need
2 these things in small quantities. These criteria
3 are set at the other end of the spectrum where if
4 it gets too high it's a problem.

5 Beyond that, I think if there is any
6 specific questions or further thing, there may be
7 other people in the Department that may be better
8 suited to answer those questions. That's all I
9 have at the moment. Do you have any questions for
10 me?

11 CHAIR DEVENY: John?

12 MR. DEARMENT: No.

13 CHAIR DEVENY: Dexter or Chris?

14 MR. TWEETEN: Madam Chair, maybe a
15 question for George. George, given the concerns
16 that have been expressed -- I realize that many of
17 these are questions that can't be addressed during
18 the rulemaking process, and certainly I think the
19 timeliness of notice becomes less significant in
20 light of the significant opportunities for comment
21 and input that are provided to the stakeholders
22 during a rulemaking process.

23 But I guess my question is: Have you
24 heard anything that might make you think that
25 perhaps since these are not emergency rules, it

1 might not be wise to go back and look at some of
2 these comments and questions in more detail before
3 we initiate rulemaking, as opposed to taking them
4 up on the back end after you conduct your hearing
5 and receive the public input?

6 MR. MATHIEUS: Thanks, Chris. I would
7 just say that personally I didn't hear anything
8 that I thought couldn't be handled under a normal
9 rulemaking, some of the statements that were made.

10 Just typically, and on the contrary to
11 that, the Department goes through a great deal of
12 effort I think with all our rulemaking to try to
13 determine the level of interest and controversy
14 that may arise, and when we see ones that it is
15 obvious, then we do slow down, we form work
16 groups, and we work through that. I think we're
17 known for that.

18 I would probably defer to Tim, or Eric,
19 or someone in the management of the program to
20 give a better perspective on that, but from what I
21 heard, a lot of the things I picked up on seemed
22 to be normal processes that would occur during
23 rulemaking.

24 CHAIR DEVENY: Chris, are you satisfied
25 with that answer, or should we ask Tim Davis or

1 any other DEQ staff members to speak to that?

2 MR. TWEETEN: Well, Madam Chair, I would
3 be curious if anybody else within DEQ has anything
4 to add to what George told us. I don't want to
5 extend the discussion unnecessarily. But since
6 this isn't an emergency rulemaking, I think we do
7 have the option of asking DEQ to take up some of
8 these concerns now rather than rulemaking.

9 On the other hand, the rulemaking
10 process is designed for extensive public input,
11 both verbally and in writing. And I didn't hear
12 anything -- I'm no expert -- but I didn't hear
13 anything out of the ordinary for the kind of
14 comments or discussion that would occur during the
15 rulemaking process, so --

16 CHAIR DEVENY: I am going to ask Tim
17 Davis just to speak to that, just very briefly.

18 MR. DAVIS: Madam Chair, members of the
19 Board, Tim Davis, Water Quality Division
20 Administrator at DEQ.

21 I agree. I concur with Mr. Mathieus
22 that I think this could be taken -- the public
23 comment process could address the comments that
24 were raised. I would point out -- and I don't
25 remember Mr. Suplee bringing this up -- but it did

1 go before WPCAC as well, so these rules --

2 CHAIR DEVENY: Would you define WPCAC?

3 MR. URBAN: Water Pollution Control
4 Advisory Council.

5 MR. DAVIS: Water Pollution Control
6 Advisory Council. I should know that. One too
7 many acronyms on a Friday. So it went before
8 WPCAC prior to coming to the Board, so there was
9 an opportunity there for them to ask questions.

10 We would certainly take the comments
11 that have been raised today, and work with the
12 commenters during the public comment period as
13 well, to be able to address those when it came
14 back for adoption, Madam Chair.

15 CHAIR DEVENY: Thank you, Mr. Davis. Do
16 Board members have any other comments or questions
17 of DEQ?

18 MR. BUSBY: I've got a couple of
19 comments. Usually before you start setting
20 criteria, you go through all the stakeholders, but
21 something like iron and manganese which are very
22 much naturally occurring, and very much part of
23 the environment, I don't know that we know who all
24 the stakeholders are involved in this.

25 And I'm a little concerned that when we

1 get a little bit ahead of ourselves with those two
2 items. I'd be willing to make a motion we
3 separate those out, let the other four other items
4 proceed with rulemaking, and have a separate
5 rulemaking for manganese and iron, simply because
6 they are different breeds of cats and have wholly
7 different set of stakeholders.

8 CHAIR DEVENY: Okay. There is a motion
9 before the Board. Is there a second to that
10 motion?

11 (No response)

12 CHAIR DEVENY: I don't hear a second to
13 that motion so --

14 MR. TWEETEN: Madam Chair, this is
15 Chris. I'll second it for purposes of discussion.
16 I'm not sure I'm going to vote for it or not, but
17 I'd like to hear from the Department about the
18 idea of segregating those two items.

19 CHAIR DEVENY: George, who would you
20 like best from DEQ to address this issue that
21 Dexter has just raised?

22 MR. MATHIEUS: Tim.

23 CHAIR DEVENY: Mr. Davis, you're back up
24 here again, please.

25 MR. DAVIS: Madam Chair, members of the

1 Board, I think it would be fine if the Board
2 wanted to do that, I mean require multiple
3 rulemaking processes, because we would propose to
4 come back and bring iron and manganese at a
5 separate rulemaking if what's what you chose to
6 do.

7 I do think that dealing with PFOS, PFOA,
8 the other parameters would be important to move
9 forward with in the near term. Dr. Suplee could
10 provide other criteria if there is other -- answer
11 technical questions if you have about the
12 manganese and iron as well.

13 But if that's what the Board chose to
14 do, we would still propose to come back in the
15 future to address those that you separated out,
16 but that would just create a series of rulemakings
17 if what's what you chose to do.

18 CHAIR DEVENY: Could you address how you
19 will go about bringing stakeholders together
20 during -- if we were to initiate rulemaking today,
21 what would the process be that you would go to to
22 ensure that folks that would be impacted by this
23 would have an opportunity to bring their concerns
24 before the Department?

25 MR. DAVIS: Madam Chair, members of the

1 Board, we would certainly -- we do have a number
2 of stakeholder groups that we could pull together,
3 and essentially offer to meet, sit and talk about
4 some of the concerns or questions, technical
5 questions that were raised today, give people an
6 opportunity to have a discussion in a task force
7 forum; also that would prepare us for response to
8 comments if the Board would receive them later.

9 CHAIR DEVENY: And Mr. Brice indicated
10 that he was not aware that this was happening
11 until I believe he saw it on the agenda. Is Mr.
12 Brice or are others that work with the consulting
13 industry members of your stakeholders groups?

14 MR. DAVIS: Madam Chair, members of the
15 Board. They're certainly on our interested
16 parties list, and did go -- this was noticed, we
17 went before WPCAC as well, but just don't ask me
18 to spell out the acronym again. But we can
19 certainly send out a request more broadly to make
20 sure that if people have questions, concerns,
21 comments they want to discuss, we can discuss
22 those between now and the adoption and initiation.

23 CHAIR DEVENY: Do Board members have any
24 further questions of Mr. Davis?

25 MR. TWEETEN: Madam Chair, just a

1 followup on what Tim just said. Under MAPA, the
2 rulemaking begins with publication of the notice
3 of intent to adopt rules into the Montana
4 Administrative Register, and certainly a
5 sophisticated interested party or group would be
6 following the Administrative Register, and would
7 receive notice of the intent to make rules on this
8 subject at that point.

9 In addition, anybody who is specifically
10 interested in DEQ business, and who has put their
11 identifying information on the DEQ mailing list,
12 would receive a personal copy mailed and emailed
13 from the DEQ of the notice of proposed rulemaking.

14 So that would flesh out I think the
15 majority of the interested parties who had
16 previously indicated some interest in DEQ's
17 business.

18 You can never discount the possibility
19 that some person or entity out there doesn't
20 follow the Administrative Register, hasn't put
21 their name on the list, and those folks would be
22 on constructive notice of the proposed rulemaking,
23 but wouldn't have actual notice.

24 That can't be avoided, and that's
25 inherent in the rulemaking process, that we do our

1 best to give notice to those people that we know
2 of, and those people who are interested can always
3 find it in the register, but there is a certain
4 amount of responsibility that's placed on the
5 interested parties to follow along with this stuff
6 if they want to have a chance to comment.

7 And that's sort of the balance that MAPA
8 strikes, so I think anybody that's previously been
9 identified as having an interest in this area
10 would receive actual notice through the rulemaking
11 process.

12 CHAIR DEVENY: Thank you, Chris, for
13 reminding us of the MAPA process. And I think
14 with that, I'm inclined to vote against the motion
15 that's before the Board, because I do think
16 initiating the rulemaking will allow for ample
17 public input, and that the Board can -- or that
18 the Department can move forward with that. Any
19 other discussion on the motion before the Board?

20 MR. DEARMENT: I would also add, Madam
21 Chair that --

22 CHAIR DEVENY: John Dearment.

23 MR. DEARMENT: Thank you. And in terms
24 of what Dexter had to say, with all due respect to
25 Dexter, I also disagree and inclined to vote

1 against it. I think that DEQ regulates a lot of
2 parameters that are naturally occurring and
3 essential to human health at low levels, like iron
4 and manganese, become dangerous at more toxic
5 levels. I just don't really see anything so
6 special about them that would require us to call
7 them out separately for a separate rulemaking.

8 CHAIR DEVENY: Dexter, you had another
9 comment?

10 MR. BUSBY: Just one quick question
11 then. This is for the fellow from, I believe it
12 was Hydrometrics.

13 He mentioned that there was some
14 criteria about cost analysis, and I could not hear
15 most of what he said, and I'd like him to repeat
16 that if possible.

17 CHAIR DEVENY: Yes. Mr. Brice from
18 Hydrometrics.

19 MR. BRICE: Madam Chair and members of
20 the Board. I was essentially talking to -- I
21 can't remember the exact criteria off the top of
22 my head now -- 75-5-203 I believe it is, that
23 since manganese is a lower standard than Federal,
24 that the Department is proposing that a cost
25 analysis must be evaluated by the Board and the

1 Department that evaluates the impacts to the
2 regulated community.

3 And that was not done or provided at
4 least in the proposed rules, and therefore we
5 would ask that be provided by prior to initiating
6 rulemaking.

7 CHAIR DEVENY: Could I have DEQ speak to
8 that.

9 MR. MATHIEUS: Madam Chair, I can.

10 CHAIR DEVENY: George Mathieus.

11 MR. MATHIEUS: It is part of the
12 rulemaking process to conduct that analysis.

13 CHAIR DEVENY: Dexter, did you hear
14 that?

15 MR. BUSBY: I could hear parts of it.
16 If I understood that, it is supposed to be
17 provided as part but not before the rulemaking
18 process? Is that what I understood?

19 MR. MATHIEUS: Dexter, this is George.
20 That's correct. It is a requirement of the
21 rulemaking process, so we will conduct that
22 analysis during rulemaking, should the Board
23 decide to initiate rulemaking.

24 MR. BUSBY: Okay. I don't have any
25 other questions.

1 MR. TWEETEN: Madam Chair, this is
2 Chris. Just a quick one for George. Will that
3 analysis be available to the public prior to the
4 hearing on the rule?

5 MR. MATHIEUS: Chris, this is George.
6 We'll make sure that happens.

7 MR. TWEETEN: I think that's important.

8 MR. MATHIEUS: Okay.

9 MR. BUSBY: What's the timing on the
10 hearing on this?

11 MS. CLERGET: This is Sarah Clerget.
12 And I believe I just discussed with Sandy that we
13 would set this for January 11th.

14 MR. BUSBY: That's a pretty short time
15 period with the holidays in there, but --

16 MS. CLERGET: We can extend that out as
17 needed. So I can discuss that with DEQ and we can
18 set a further date out.

19 MR. BUSBY: Okay.

20 CHAIR DEVENY: There is a motion and a
21 second before the Board. I'd like to call for the
22 question on that. So all those in favor of the
23 motion, please signify by saying aye.

24 MR. BUSBY: I'm going to say aye, since
25 it is my motion.

1 CHAIR DEVENY: All those opposed,
2 signify by saying nay.

3 (Response)

4 MR. TWEETEN: This is Chris. I'm a no
5 as well.

6 CHAIR DEVENY: So that's I believe four
7 nays and one aye, so the motion fails.

8 MR. DEARMENT: Madam Chair, this is
9 John. I will move that we proceed to initiate
10 rulemaking as requested by the Department, and
11 with all due respect to Hydrometrics -- I
12 appreciate their input here today, and look
13 forward to hearing more from them and other
14 stakeholders. But with the Department having
15 already reached out to WPCAC and so forth, I think
16 we can deal with this through the regular
17 rulemaking process. So I move that we initiate as
18 requested.

19 CHAIR DEVENY: Mr. Dearment, would you
20 agree to add on to your motion that we also
21 appoint Sarah Clerget as the Hearing Officer for
22 the purpose of holding the public hearing on this
23 proposed rulemaking?

24 MR. DEARMENT: Yes, absolutely.

25 CHAIR DEVENY: Is everybody clear on

1 what the motion is?

2 (No response)

3 CHAIR DEVENY: Anybody unclear? I would
4 second that motion. Is there any discussion on
5 the motion?

6 (No response)

7 CHAIR DEVENY: All those in favor of the
8 motion, please signify by saying aye.

9 (Response)

10 CHAIR DEVENY: All those opposed?

11 MR. BUSBY: Aye.

12 CHAIR DEVENY: Motion carries for the
13 Department to initiate rulemaking, and for Sarah
14 to serve as the Hearings Officer. Thank you very
15 much.

16 Our next rulemaking initiation to
17 discuss is with the Air Quality.

18 MR. MATHIEUS: Yes, Madam Chair. I
19 believe the Board had a briefing on this, and
20 Rebecca Harbage is going to present to the Board
21 this morning.

22 CHAIR DEVENY: I think maybe we should
23 take a break at this point. So let's reconvene in
24 ten minutes.

25 (Recess taken)

1 (Mr. Warner not present)

2 CHAIR DEVENY: We're going to reconvene
3 here. Lindsay, would you please take roll call.

4 MS. FORD: Chris Deveny.

5 CHAIR DEVENY: Present.

6 MS. FORD: Dexter Busby.

7 MR. BUSBY: I'm here.

8 MS. FORD: Tim Warner.

9 (No response)

10 MS. FORD: Tim Warner.

11 (No response)

12 CHAIR DEVENY: John Dearment.

13 MR. DEARMENT: Here.

14 MS. FORD: Chris Tweeten.

15 MR. TWEETEN: Present.

16 MS. FORD: Tim Warner.

17 (No response)

18 MS. FORD: We have four Board members
19 now. It is still a quorum.

20 CHAIR DEVENY: We'll go ahead. We were
21 getting ready to address the next rulemaking
22 initiation, and DEQ.

23 MS. HARBAGE: Good morning, Madam Chair,
24 members of the Board. My name is Rebecca Harbage,
25 and I'm an Environmental Planner with the

1 Department's Air Quality Bureau. I'm also the
2 project manager for the Bureau's efforts to
3 develop a registration program for portable
4 sources of emissions.

5 I have a great team working on that
6 project as well, many of whom are here, so if you
7 do have questions, we'll be here to answer them.
8 Portable sources, before I get into this, include
9 crushing and screening plants, concrete batch
10 plants, and asphalt plants. Today I'm here to
11 request that the Board initiate rulemaking to
12 begin the formal process of taking public comment
13 on proposed new and amended Administrative Rules.

14 CHAIR DEVENY: Chris and Dexter, and Tim
15 if you come on, can you still hear us right now?

16 MR. BUSBY: I cannot. I can hear you,
17 but I can't hear anybody else.

18 CHAIR DEVENY: Chris Tweeten, are you
19 still on?

20 MR. TWEETEN: Yes, I am.

21 CHAIR DEVENY: Okay. Excuse us for the
22 interruption.

23 MS. HARBAGE: No problem. At the Board
24 meeting in October, I presented an overview of
25 this project that covered some of the background

1 as to why the Air Quality Bureau is deciding to
2 move forward with a new registration program for
3 portable sources at this time. I just want to
4 give you a quick refresher before I get any
5 further into this project.

6 First of all, given the demands on our
7 time and our limited resources, it's essential
8 that we streamline the way we do our work, so we
9 can redistribute staff time where they can have
10 the most environmental benefit.

11 The bureau has been permitting portable
12 sources like the ones we're talking about today
13 for decades, and we've been doing it the same way.
14 We've identified this as an area where we can
15 improve our process, while maintaining equivalent
16 or better protection of air quality.

17 A registration program, what that does
18 is essentially adopt the operating requirements
19 that are currently included as permit conditions
20 into Administrative Rules that would apply
21 generally to all eligible sources. In this way,
22 the registration program wouldn't change the
23 operating requirements themselves. They would
24 change the way those requirements are applied to
25 sources.

1 This type of approach is appropriate for
2 portable sources because the operating
3 requirements for those sources and their
4 environmental impacts are nearly identical from
5 one source to the next, and those haven't changed
6 in many decades.

7 The Air Quality Bureau has been
8 interested in this project, which is a portable
9 source registration program, for about a decade,
10 actually since before the Board adopted a similar
11 registration program for oil and gas well
12 facilities in 2006.

13 Montana's oil and gas well air quality
14 registration program was one of the first
15 registration programs in the country, and it was
16 approved by the Environmental Protection Agency as
17 part of Montana's State Implementation Plan.

18 In the years since 2006, many other
19 registration type programs have been developed in
20 other states for a variety of source categories,
21 including the portable sources we're talking about
22 today.

23 EPA also recognized the opportunity to
24 streamline the regulation of these types of minor
25 sources on tribal lands, and they implemented

1 general permits and permits by rule for these
2 sources, the last of which were adopted in 2016.

3 Before I get into the proposed
4 rulemaking itself, I do want to take just a minute
5 to acknowledge that there were many stakeholders
6 who worked with us to develop this program. When
7 the Air Quality Bureau started planning to move
8 forward with this project a couple years ago, we
9 had a pretty good idea of where we wanted to go,
10 but we also recognized that we couldn't develop a
11 successful program in a vacuum. We would not be
12 here today with draft rules if stakeholders hadn't
13 taken the time to share their experiences and
14 support this project along the way.

15 Over the course of a little more than a
16 year, we've had many conversations and meetings
17 with a variety of stakeholders, including our
18 Clean Air Act Advisory Committee, the Opencut
19 Section stakeholders, the Montana Contractors
20 Association, environmental groups, county air
21 quality programs, as well as the EPA.

22 From these conversations, we then formed
23 a technical working group comprised of
24 representatives from industry who could help us
25 work on the details of how a registration program

1 might actually work for portable sources.

2 Internally to the agency we've also coordinated
3 with the Opencut Section, as well as our own Oil
4 and Gas Services Section.

5 Along the way we've provided updates,
6 we've shared draft rules, and we've had open
7 conversations about potential concerns and how to
8 address them. As a result of these conversations
9 with stakeholders, and not hearing any significant
10 concerns with the rules as proposed, we believe
11 we're ready to move forward into the formal
12 rulemaking process.

13 Of course, as you know, stakeholder
14 input doesn't end with initiation of rulemaking.
15 We do anticipate many more conversations as well
16 as comments on the proposed draft rules. Should
17 you decide to initiate rulemaking today, that will
18 kick off a period during which interested parties
19 may submit comments on the rules and the
20 associated programmatic environmental assessments,
21 which will be posted alongside the rules for
22 public comment.

23 In addition, the rulemaking process
24 would eventually be followed by additional
25 conversations with stakeholders regarding program

1 implementation, as well as then a process to
2 submit these rules into the Montana State
3 Implementation Plan.

4 So what I want to do now is not give you
5 as much detail as you have in your packets
6 already, but walk through what I've been calling
7 the main pillars of the program, and there are six
8 of them.

9 So first, the main goal of this
10 registration program is really to streamline the
11 process. What that means is that we've identified
12 three types of sources for which case-by-case
13 analysis does not provide substantial benefit.
14 Therefore, part of the proposed new program is to
15 eliminate the need for case specific applicability
16 determinations by requiring that all sources of a
17 certain type register with the Department. To be
18 clear, this eliminates the lower applicability
19 threshold that exists in permitting today.

20 The Department did assess the potential
21 impact of this new program, and determined that it
22 will not significantly and directly impact small
23 businesses.

24 Second, we believe that major sources do
25 continue to warrant the additional scrutiny that

1 comes with case-by-case permitting. Therefore,
2 the proposed registration program is only
3 applicable to sources that do not exceed set
4 production limits in rule. These limits are
5 essentially surrogates for emission limits, but we
6 believe that these production limits are much
7 easier for sources to track than emissions.

8 Our project team carefully calculated
9 the limits that are in rule for each different
10 type of source that are covered by the rule to
11 ensure that the registered sources stay well below
12 100 tons per year of the pollutant that is emitted
13 in the greatest amount by that type of source.

14 This is the major source threshold at
15 which additional permitting requirements would
16 apply. A source that exceeds the production limit
17 in rule would not be in compliance with the rules.
18 We would require that that source either come back
19 into compliance by getting below the production
20 limit, or obtain the appropriate permit. To be
21 clear, there are no portable sources that are
22 currently permitted as major sources today.

23 So this production limit also has the
24 secondary effect of providing certainty to sources
25 that if they remain registration eligible, no

1 additional air quality permitting conditions would
2 be triggered.

3 Third, in developing this new program,
4 we stand by the goal of providing meaningful
5 public notice of the registration and location of
6 all sources of emissions. To notify the public,
7 the Department must be notified of each physical
8 location of each type of source that is being
9 registered or that is relocating around the state.

10 This also enables the Department to do
11 our due diligence in performing site inspections
12 that ensure emissions are appropriately controlled
13 at each site.

14 The proposed new rules actually improve
15 on the existing process because they require
16 confirmation when a facility moves to a location
17 or vacates a location. This goes beyond what is
18 required today to ensure that the Department's
19 record, and therefore the public record, are
20 current.

21 That brings me to the fourth pillar,
22 which is that the sources proposed to be covered
23 by this program must control dust or particulate
24 emissions from their operations. The control
25 requirements you see in rule are essentially

1 transferred from existing permits to achieve that
2 goal, and they ensure that this new program will
3 be just as protective of air quality.

4 The proposed new program clarifies a
5 point of confusion that exists in our current
6 program by describing very clearly for both
7 sources and for the Department inspectors at what
8 point water or chemical dust suppression is
9 required to be in use, and not just present at the
10 site.

11 It is equally important to note that
12 registration does not supersede any other
13 applicable requirements, whether they be other
14 requirements in the Clean Air Act of Montana, or
15 other State, local, or Federal regulations. This
16 new program is just one piece of Montana's Air
17 Quality Program, and that is also just one piece
18 of a broader regulatory universe for these
19 sources. So it is important to note that air
20 quality registration is not the only requirement
21 for these sources to operate.

22 Finally, the sixth pillar. We learned
23 from our own Oil and Gas Well Registration Program
24 that we must provide a way for sources or the
25 Department to essentially revoke a registration.

1 This is an important part of our permitting
2 program today, and therefore it should carry
3 forward into the registration program as well.

4 The proposed rules include a process for
5 what we're calling deregistration, either by
6 request of a source or by the Department, for
7 violation of the Air Quality Rules. The rules
8 also provide the same due process for that
9 deregistration as is provided for Montana air
10 quality permits today.

11 With that, Madam Chair, Board members,
12 the Department does request that the Board
13 initiate rulemaking, and designate a Hearings
14 Officer for a public hearing to consider the
15 proposed amendment and adoption of Administrative
16 Rules. These rules will implement the new air
17 quality registration program for certain portable
18 sources of emissions.

19 Before I'm done, I do have to note that
20 in the draft notice that's in your packets, there
21 is one error on Page 15 of the notice, and I think
22 it is Page 118 of your PDF.

23 In Paragraph 4, we state a date that is
24 the close of the public comment period. Currently
25 that date is listed as January 16th. We would

1 request that any motion to initiate rulemaking
2 include a change of date from January 16th to
3 January 25th in order to provide the sufficient
4 amount of time for comment and hearing.

5 So with that, I'm happy to answer any
6 questions you may have. If you want to go into
7 more details, I do have the project team here as
8 well, so I would request the ability to defer
9 anything to them.

10 CHAIR DEVENY: Thank you. Why don't you
11 go ahead and stay up there. We've had to mute the
12 phone, so the phone is now on mute. We figured
13 out, Dexter, somehow it is happening from your
14 phone, but we're going to deal with it on this
15 end. So Dexter, Chris, and Tim, are you with us?

16 MR. BUSBY: I'm here.

17 MR. TWEETEN: I'm still here.

18 CHAIR DEVENY: Tim, have you come on
19 yet?

20 (No response)

21 CHAIR DEVENY: Questions of DEQ from
22 Board members?

23 MR. TWEETEN: Madam Chair, is there any
24 commenters from the public?

25 CHAIR DEVENY: I haven't asked for them

1 yet. I was seeing if the Board members had any
2 questions yet.

3 MR. TWEETEN: I have one. How many
4 other examples exist of groups of emitters who
5 have been placed under registration as opposed to
6 permitting?

7 MS. HARBAGE: Madam Chair, Mr. Tweeten,
8 are you talking just in Montana?

9 MR. TWEETEN: Yes, just in Montana.

10 MS. HARBAGE: Just in Montana, we have
11 the Oil and Gas Well Registration Program, and
12 that is the only other registration program
13 currently for air quality.

14 MR. TWEETEN: Okay. And I guess I've
15 noticed that the permission to go this route as
16 opposed to permitting has been in effect since
17 2003. Why is it suddenly current to move in that
18 direction for this particular group of emitters?

19 MS. HARBAGE: Sure. That's a good
20 question. Madam Chair, Mr. Tweeten, the
21 Department has been thinking about additional
22 registration programs since it was essentially
23 allowed in Montana Code Annotated. We were
24 considering this Gravel Crusher Registration
25 Program at the same time as we brought the Oil and

1 Gas Well Registration Program before the Board.

2 Unfortunately at that time we just had
3 such an onslaught of new oil and gas development
4 in the state that we had to move forward quickly
5 to address the Oil and Gas Well Registration
6 Program. We just didn't have the staff to deal
7 with the number of permits that were coming in for
8 oil and gas wells, and we had to put this program
9 on hold.

10 It has come up again at this point
11 because we're feeling the crunch in both resources
12 and also staff, and so it has become really
13 essential that we figure out a better way to deal
14 with these minor sources that may not benefit from
15 case-by-case permitting. Does that answer your
16 question?

17 MR. TWEETEN: Yes, it does. Thank you.

18 CHAIR DEVENY: Any other questions from
19 Board members?

20 (No response)

21 CHAIR DEVENY: Any questions or comments
22 from the public? Please state your name for the
23 record.

24 MR. THOMPSON: Certainly. My name is
25 Brian Thompson. I'm an attorney at Browning,

1 Kaleczyc, Berry and Hoven in Helena. I'm here
2 representing the Montana Contractors Association.

3 Madam Chair, members of the Board, the
4 Montana Contractors Association appreciates the
5 opportunity to comment on the request of DEQ to
6 initiate rulemaking on the Portable Source
7 Registration Program. On behalf of the
8 Contractors Association, we would like to express
9 our thanks to the Department's Air Quality
10 Management Bureau for their hard work and the
11 outreach to stakeholders, including us.

12 MCA has participated in several meetings
13 and information exchange with the bureau to
14 develop the rule package that will streamline the
15 permitting process, and improve air quality in the
16 state of Montana.

17 We also understand that if these rules
18 are adopted, that the contractors will need to
19 continue to collaborate with the Department. We
20 urge you to approve this rulemaking package, and
21 we appreciate the opportunity. Thank you.

22 CHAIR DEVENY: Thank you, Mr. Thompson.
23 Any other comments from the public?

24 (No response)

25 CHAIR DEVENY: Seeing none, I would like

1 to ask for a motion on this particular issue. Are
2 Board members ready?

3 MR. DEARMENT: I will move that we
4 initiate rulemaking as requested by the
5 Department, assign Sarah as the Hearing Examiner,
6 and change the date as Rebecca requested in the
7 notice.

8 CHAIR DEVENY: I would second that.

9 MR. BUSBY: I'll second that.

10 CHAIR DEVENY: We got a double second on
11 that, so that's great. Thank you, Dexter. Any
12 discussion by Board members?

13 MR. DEARMENT: Madam Chair, I would
14 second the word of gratitude to DEQ, because I
15 know it has been a long time and a lot of work for
16 the Air Quality Bureau. It's a win for the
17 environment, win for the regulated community, and
18 a win for DEQ. Happy to move forward with
19 initiation today.

20 CHAIR DEVENY: Thank you, John. I
21 concur with that. The Department has done a good
22 job in moving forward with something that's going
23 to expedite things, and will be good for the
24 regulated community as well as the environment.
25 So all those in favor, please signify by saying

1 aye.

2 (Response)

3 CHAIR DEVENY: Any opposed, signify by
4 saying nay.

5 (No response)

6 CHAIR DEVENY: Motion carries. Thank
7 you.

8 (Mr. Warner present)

9 CHAIR DEVENY: Moving right along, our
10 next rulemaking is water quality. Welcome, Tim.
11 Thank you for coming back on.

12 We have a request from the Department
13 for the Board to initiate rulemaking for proposed
14 amendments to some rules and circulars regarding
15 new community and non-community water wells and
16 checklists. DEQ.

17 MR. REGENSBURGER: Good morning, Madam
18 Chairwoman, members of the Board. My name is Eric
19 Regensburger. I'm a hydrologist with the
20 Department. And today --

21 CHAIR DEVENY: We have got another power
22 point for those of you who are on the phone, if
23 you wanted to bring it up on your end. Are Board
24 members ready to proceed?

25 MR. TWEETEN: Madam Chair, I'm ready.

1 CHAIR DEVENY: Mr. Regensburger.

2 MR. REGENSBURGER: Thank you. So we're
3 proposing a new rule regarding sewage lagoons and
4 water well setbacks. First of all, I want to
5 mention to the Board that this should be a fairly
6 simple process for the Board since the rule is
7 actually a DEQ rule, not a Board rule.

8 However as you can see from this slide,
9 the new rule will have to be referenced in several
10 Board rules listed there at the top of the slide.
11 It also has to be listed in other DEQ rules, and
12 also DNRC rules, which the Department has been
13 talking and meeting with DNRC to set up those
14 changes in their rules as well.

15 So although I'm going to discuss all the
16 details of the rule, and the technicalities for
17 the Board, it is merely adopting, citing this rule
18 in their rules.

19 And as far as outreach, considering the
20 some of the previous comments on some of the
21 previous rules you've been looking at, the
22 Department has been in front of WPCAC twice
23 regarding this rule. We did one this spring, and
24 we did one recently.

25 We have been talking with NRCS, which is

1 the Natural Resource Conservation Service, a
2 Federal agency, as they help with the finance and
3 technical issues on a lot of small sewage lagoons
4 for agricultural uses, so they have interest in
5 this. We've been talking to them for over a year
6 and getting their feedback on the rule.

7 We've also met with one of the members
8 of WPCAC personally down in Bozeman to discuss the
9 rule. And we recently sent out the draft rule to
10 several engineers that work with sewage lagoons,
11 and haven't heard any feedback either way from
12 them. But that's been the extent of our outreach
13 outside of the Department.

14 So on to the rule. It is designed to
15 protect wells, water wells, from pathogens,
16 bacterial and viral pathogens. There was a
17 previous setback in statute in the Water Quality
18 Act of 500 feet. And in 2017 the Legislature
19 passed House Bill 368, which removed that set in
20 stone 500 foot setback, and directed DEQ to
21 establish new rules for these setbacks. Hence
22 that's why we're here today.

23 Some of the things that the new rule
24 does that the old rule or the old statute didn't
25 do was it allows for variable setback conditions

1 for site specific conditions, instead of just one
2 single setback. It prescribes that both new
3 sewage lagoons and new water wells have to meet
4 these setbacks. The previous rule just regulated
5 the sewage lagoons, not wells, so there was kind
6 of a little bit of a loophole there.

7 And then as I said, we coordinated with
8 DNRC to update the well drillers rules, so their
9 rules will be comparable and the same as our
10 rules. They'll actually cite our rule.

11 So we already went through this slide.
12 So the technical summary of the rule is that the
13 default setback is 1,000 feet. Without any other
14 information, you have to have a 1,000 foot
15 distance between the well and the lagoons.

16 And the minimum setback is always 100
17 feet. It can't be any closer than 100 feet no
18 matter what anything else -- any other issues
19 arise. So as I said, the rule allows for site
20 specific conditions that allow you to be less than
21 the default setback of 1,000 feet, and those
22 include, as are listed here on the slide, what we
23 call hydraulic disconnection, where any wastewater
24 that leaks from the lagoons cannot physically get
25 to the water well due to groundwater flow or due

1 to geologic conditions. And I'll have some slides
2 to kind of these describe these scenarios to give
3 you a little better idea what this actually means.

4 The second method is providing what's
5 called 4-log or 99.9 percent reduction in
6 pathogens from the water that might leak from the
7 lagoons before it gets to the well; and using
8 those calculations, which are in the rule, the
9 setback can be reduced anywhere from less than
10 1,000 feet to no less than 100 feet.

11 And then we also have a provision in the
12 rule that allows the setback to be 200 feet if the
13 well is a public well, and it is disinfected, or
14 if the wastewater in the lagoons is disinfected to
15 a certain level. And those details are in the
16 rule as far as what the exact levels of
17 disinfection are required.

18 One thing I want to add is that these
19 rules don't apply to existing lagoons or existing
20 water wells unless that lagoon or well proposes to
21 increase their capacity, or increase the size of
22 the lagoon and the wastewater treated.

23 So I'm going to go through a couple
24 examples here of what some of those exemptions, or
25 what those methods are to reduce the default

1 setback. So one of them is when the groundwater
2 won't allow any leakage from the lagoons to enter
3 the well.

4 So what you see here is the lagoon is
5 going to have some leakage. They're all allowed
6 to have a certain amount of leakage out of them.
7 And if the groundwater is flowing away from the
8 well under pumping conditions, then they don't
9 have to keep the 1,000 foot. They can reduce that
10 distance to whatever distance is necessary to keep
11 the groundwater flowing away from the well. So
12 that's one of the scenarios where they can reduce
13 it to less than 1,000 feet.

14 Another scenario where they can reduce
15 distance to less than 1,000 feet is if the well is
16 completed in what's called a confined aquifer.
17 That's where the -- as you can see here -- where
18 there is what we call an impervious geologic
19 layer, usually some sort of glacial till or clay
20 layer, where water that leaks from the lagoons
21 can't physically get down to where the water well
22 -- you can see the well is actually collecting
23 water from down here below this impervious layer,
24 so any wastewater from the lagoon can travel
25 towards the well, but since the well is sealed, it

1 can't get into the water supply for that well.

2 So in that case they could get their
3 distance down to as close to 100 feet between the
4 well and the lagoon.

5 And then the last more complicated
6 method is what we call the 4-log reduction, which
7 is used in other areas of the Department for
8 determining the proper setbacks between wells and
9 wastewater sources.

10 In this case, we're looking at a well
11 that is down gradient of the lagoon, and the
12 lagoon is leaking a certain amount of wastewater,
13 and we have calculations to determine the amount
14 of time it takes for the leaking wastewater to get
15 to the water table. That's called a vertical
16 travel time. And based on the amount of time it
17 takes, there is a certain set log reduction of
18 pathogens that occurs in that time. So we had
19 that value.

20 And then we have a horizontal component,
21 as the leakage flows towards the well in the
22 aquifer, in the groundwater, and we can calculate
23 the time it takes for that wastewater to migrate
24 to the well, and then apply -- Again, we can
25 determine the amount of log reduction based on

1 standard values from EPA.

2 And if the log reduction in the vertical
3 time plus the log reduction in the horizontal time
4 of movement provides the 4-log removal, then that
5 well and that lagoon can be whatever -- how many
6 feet that calculation tells us is necessary to
7 achieve the 4-log removal.

8 One thing to note here is with only
9 several feet of -- depending on the type of soil,
10 it could be a couple feet, it could be ten feet.
11 In many cases the 4-log reduction can be achieved
12 before the wastewater even hits the groundwater
13 table. In that case the lagoon and the well can
14 be as close as 100 feet together in those
15 situations, or further if they want to be further,
16 but they can go as close as 100 when you get
17 enough reduction in the vertical movement of the
18 wastewater.

19 So that's pretty much the nuts and bolts
20 of the rule. And again, like I said, this is a
21 Department rule. It will be cited in Board rules.
22 So hopefully this is a fairly simple process for
23 the Board. With that, I'll take any questions.

24 CHAIR DEVENY: Thank you, Mr.
25 Regensburger. I have a few questions. Does this

1 rule apply to new lagoons, or to new wells that
2 would be drilled near a lagoon, or both?

3 MR. REGENSBURGER: Madam Chairwoman, the
4 rule applies to both new water wells -- which
5 encompasses public wells, individual wells, stock
6 wells, any type of water well -- and it applies to
7 new lagoons as well.

8 CHAIR DEVENY: And who's responsible for
9 the monitoring? I'm assuming you're putting in
10 groundwater monitoring wells to determine
11 groundwater flow, and existing conditions, that
12 sort of thing. Who is responsible for that?

13 MR. REGENSBURGER: Madam Chairwoman, in
14 the situations where groundwater monitoring is
15 necessary -- and it may not be in some of the
16 situations -- but for a lot of them, where they
17 want to go less than 1,000 feet, it may be
18 required.

19 We have three different ways of
20 determining groundwater flow. One, as you
21 mentioned, is putting in wells and actually
22 measuring the groundwater, and determining the
23 exact flow there. That would be the applicant's
24 responsibility to do that.

25 Another method is some areas have

1 published reports of groundwater tables. We can
2 use those. And then a third method we put in
3 there, in the interest of finances for some of
4 these smaller lagoons, is that they can estimate
5 the groundwater flow, and it's a conservative
6 estimate, using topography, using the topography
7 between the lagoon and the well.

8 And that's a very simple way to do it,
9 and very inexpensive. But it is conservative
10 because it's generally going to over estimate the
11 hydraulic gradient, which will provide a faster
12 travel time, and less pathogen reduction in our
13 calculations.

14 So in that respect it is inexpensive,
15 but conservative. If it works, then great, then
16 they don't have to spend a lot of money in putting
17 in wells or doing monitoring, and we're still
18 protecting the well from the wastewater.

19 CHAIR DEVENY: Would you say in your
20 opinion is this rule more protective of public
21 health than the existing rule?

22 MR. REGENSBURGER: It's better suited to
23 the individual -- Madam Chairwoman, the new rule
24 is better suited, so I think it is better suited
25 to the particular situation. So I think it is as

1 protective or more protective in the large
2 majority of cases.

3 CHAIR DEVENY: Do other Board members
4 have questions of Mr. Regensburger?

5 (No response)

6 CHAIR DEVENY: Thank you very much. Are
7 there any public comments on the proposed rule
8 initiation?

9 (No response)

10 CHAIR DEVENY: Seeing none, what is the
11 pleasure of our Board? Would anybody like to
12 entertain a motion?

13 MR. TWEETEN: Madam Chair, this is
14 Chris. I'll move to initiate rulemaking as
15 requested by the Department.

16 CHAIR DEVENY: And also to appoint Sarah
17 Clerget as the Hearing Officer?

18 MR. TWEETEN: And also to appoint Sarah
19 as Hearing Officer, correct.

20 CHAIR DEVENY: Is everybody clear on the
21 motion before the Board?

22 (No response)

23 CHAIR DEVENY: All those in favor,
24 signify by saying aye.

25 (Response)

1 CHAIR DEVENY: Any opposed?

2 (No response)

3 CHAIR DEVENY: Hearing none, this motion
4 passes. Thank you very much. I believe we have
5 one more rulemaking, and this has to do with 401
6 certification.

7 MR. GARBER: Thank you, Madam Chair. My
8 name is Jason Garber, my last name is spelled
9 G-A-R-B-E-R, and I'm the Section 401 coordinator
10 for DEQ.

11 In August, the Department initiated
12 rulemaking to update and amend the Administrative
13 Rules for 401 certification. Just by way of
14 background, under 401 of the Clean Water Act,
15 states and tribes can review and approve,
16 condition, or deny all Federal permits or licenses
17 that might result in a discharge to State or
18 tribal waters, including wetlands.

19 In Montana, the major Federal licenses
20 and permits that we deal with are Section 404
21 dredge and fill permits administered by the US
22 Army Corps of Engineers, and Federal Energy
23 Regulatory Commission hydro power licenses for
24 hydroelectric projects.

25 I'm just going to summarize what these

1 amendments did here. The proposed amendments will
2 update and clarify the policies and procedures for
3 State water quality certification for activities
4 requiring Federal permits under Section 401 of the
5 Federal Clean Water Act, and they allow us more
6 flexibility to coordinate with our federal
7 partners and applicants during 401 reviews.

8 The agency went before WPCAC prior to
9 coming before the Board to initiate rulemaking.
10 We also had a 45 day public comment period whereby
11 the agency did not receive any comments from the
12 public. A hearing was held September 18th, 2018.
13 The Department testified in support of the
14 proposed amendments at the hearing. No written
15 comments or oral testimony were received from the
16 public.

17 So therefore, DEQ requests that the
18 Board adopt these proposed amendments to the 401
19 certification rules for the Administrative Rules
20 of Montana.

21 CHAIR DEVENY: Thank you, Mr. Garber.
22 Do Board members have any questions of Mr. Garber?

23 (No response)

24 CHAIR DEVENY: Hearing none, I would
25 like to move that -- I guess we need some public

1 comment first. Are there any members of the
2 public that would like to comment on this rule
3 adoption before the Board?

4 (No response)

5 CHAIR DEVENY: Seeing none and hearing
6 none, I will then move that we adopt the
7 amendments to the Administrative Rules of Montana
8 pertaining to 401 certification, and that we adopt
9 them.

10 MR. DEARMENT: I'll second that.

11 CHAIR DEVENY: It's been moved and
12 seconded. Any further discussion by Board
13 members?

14 (No response)

15 CHAIR DEVENY: Hearing none, all those
16 in favor of the motion, signify by saying aye.

17 (Response)

18 CHAIR DEVENY: Any opposed?

19 (No response)

20 CHAIR DEVENY: Motion carries. Thank
21 you.

22 With that, our next item on our agenda
23 is the case. And I'm wondering if we should take
24 a break now. Would it be a good time or do we
25 want to --

1 MS. CLERGET: I think just five minutes
2 and let them set up.

3 CHAIR DEVENY: Could we take a five
4 minute break and allow the parties to get ready
5 for this case, and everybody else to get up and
6 stretch.

7 (Oral argument on BER 2015-01 WQ
8 and BER 2015-02 WQ bound separately
9 and heard at 11:00 a.m.)

10 * * * * *

11 (Reconvened at 1:08 p.m.)

12 (Mr. Tweeten and Mr. Warner not present)

13 CHAIR DEVENY: Do you have a Board
14 Counsel update, Sarah?

15 MS. CLERGET: There are no remaining
16 agenda items, there are no updates.

17 CHAIR DEVENY: Is there any public
18 comment today on anything? You can't comment on
19 contested cases, but you can comment on anything
20 else.

21 (No response)

22 CHAIR DEVENY: I would move to adjourn
23 this meeting.

24 MR. DEARMENT: I'll second.

25 CHAIR DEVENY: It's been moved and

1 seconded. All those in favor, signify by saying
2 aye.

3 (Response)

4 CHAIR DEVENY: The meeting is adjourned.
5 Thank you.

6 (The proceedings were concluded
7 at 1:10 P.M.)

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

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 78 - 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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