

**In Re:**

*Board Meeting*

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*Transcript of Proceedings*  
*January 27, 2012*

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

BOARD MEETING  
JANUARY 27, 2012

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building  
1520 East Sixth Avenue  
Helena, Montana  
January 27, 2012  
9:00 a.m.

BEFORE CHAIRMAN JOSEPH RUSSELL,  
BOARD MEMBERS LARRY MIRES, HEIDI KAISER,  
LARRY ANDERSON, ROBIN SHROPSHIRE,  
JOE WHALEN, and MARVIN MILLER  
(Appearing by Telephone)

PREPARED BY: SUSAN JOHNSON, RPR  
COURT REPORTER, NOTARY PUBLIC

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

3 \* \* \* \* \*

4 CHAIRMAN RUSSELL: I'll call the Board of  
5 Environmental Review to order. Do you want to take a  
6 roll?

7 MR. LIVERS: Yes. Mr. Chair, for the record,  
8 this is Tom Livers, Deputy Director of DEQ. I'll just  
9 run through the alphabetical list on board members.

10 Mr. Anderson.

11 MR. ANDERSON: Here.

12 MR. LIVERS: Ms. Kaiser.

13 MS. KAISER: Here.

14 MR. LIVERS: Mr. Miller.

15 MR. MILLER: Here.

16 MR. LIVERS: Mr. Mires.

17 MR. MIRES: Here.

18 MR. LIVERS: Ms. Shropshire.

19 (No response.)

20 MR. LIVERS: Mr. Whalen.

21 MR. WHALEN: Here.

22 MR. LIVERS: Chairman Russell.

23 CHAIRMAN RUSSELL: Present.

24 MR. LIVERS: All right. We clearly have a  
25 quorum.

1           CHAIRMAN RUSSELL: The first item on the  
2 agenda is the review and approval of the minutes from  
3 the November 2nd, 2011 meeting. Are there any comments  
4 regarding the minutes?

5           MR. MIRES: Larry Mires would so move to  
6 adopt them.

7           MR. MILLER: Second by Marv Miller.

8           CHAIRMAN RUSSELL: It's been seconded by  
9 Marv. Any further discussion? Hearing none, all those  
10 in favor signify by saying aye. Opposed? Motion  
11 carries unanimously.

12           The next item on the agenda, and I probably  
13 should have mentioned this, Katherine Orr is not with us  
14 today and she had asked if a substitute would be  
15 required. And because of the short notice and the type  
16 of the information that is on the agenda, I elected to  
17 not have someone.

18           So the next item on the agenda are the  
19 briefing items on contested case updates. If you have  
20 any questions -- everything is up to date on the agenda.  
21 If you have any questions, we'll note that and follow up  
22 with Katherine when she gets back.

23           I'll let you go through them and give you a  
24 few more minutes, if you'd like.

25           MR. MILLER: Joe, this is Marv Miller. On

1 the other cases assigned to the hearing examiner on 2(e)  
2 and (f), particularly (e), it says the contested case  
3 hearing is set for April 16th, 2011. I really wonder if  
4 that shouldn't be 2012.

5 CHAIRMAN RUSSELL: I bet it is because  
6 December 16th is right above there.

7 MR. LIVERS: Mr. Chairman, Mr. Miller, yes, I  
8 think that's probably what the case is. So we'll note  
9 that correction. Thank you. Good catch.

10 CHAIRMAN RUSSELL: Anything else on the  
11 contested cases before we move to the next part of our  
12 agenda?

13 All right. I guess that's enough silence.  
14 So we're going to go ahead and move on to agenda item  
15 3(a)(1), which is the initiation of rule-making. Amend  
16 Title 17, Chapter 38, Sub-Chapter 3 regarding cross  
17 connections in drinking water supplies. Tom?

18 MR. LIVERS: Thanks, Mr. Chairman, Eugene  
19 Pizzini is here to walk through this initiation.

20 MR. PIZZINI: Good morning, Chairman Russell  
21 and members of the board. For the record, my name is  
22 Eugene Pizzini, and I'm the rules expert for the public  
23 water supply section. The department is proposing the  
24 following changes:

25 Amend existing rules to remove duplicative

1 language. Amend existing rules for clarification. And  
2 update existing rules. The proposed amendment to  
3 17.38.208 are rule duplicative language. The proposed  
4 amendment to remove language that was previously needed  
5 in order to adopt federal requirements that were not  
6 described in the version of the Code of Federal  
7 Regulations that the Board adopted by reference. When  
8 the board adopted a later version of the CFRs, the  
9 required language was present. Unfortunately, these  
10 rules were missed in the cleanup. The proposed  
11 amendment has no regulatory effect other than to remove  
12 confusing language.

13 The proposed amendment to 17.38.225 are  
14 intended to allow the department the discretion to waive  
15 chlorine residual monitoring for ground water systems  
16 and consecutive connections to those systems where the  
17 collection of those samples does not add to the  
18 protection of health. The cost associated with  
19 collecting and reporting these samples can be  
20 significant and should only being required where there  
21 is a health benefit.

22 The proposed amendment to 17.38.234 is  
23 intended to connect the record retention requirements  
24 described in 17.38.513, the water hauler tests rules, to  
25 the record retention and reporting requirements in ARM

1 17.38.234. The proposed amendments add no new  
2 regulatory requirements but is for clarification only.

3 The proposed amendments to ARM 17.38,  
4 Sub-Chapter 3, cross connections and drinking water  
5 supplies update and clarify existing requirements but do  
6 not add new requirements. The department is proposing  
7 to update the cross connection rule by updating the  
8 adoption by reference of the manual for cross connection  
9 control to the 10th edition incorporating industry  
10 standard language into the rule, eliminating the  
11 adoption by reference of the list of approved backflow  
12 prevention assemblies and by clarifying those agencies  
13 that certify backload device testers. The manual for  
14 cross connection control describes the process required  
15 to protect drinking water supplies from cross  
16 connections that may not be removed. The current  
17 edition adopted by reference is the 9th edition and was  
18 released in 1993. The list of approved backload  
19 prevention assemblies is a list of tools that may be  
20 used to prevent various cross connection situations from  
21 variously affecting drinking water supplies. The list  
22 is updated every quarter. Because it is impractical to  
23 adopt rules every quarter to stay current, Montana's  
24 regulated community is currently unable to use all of  
25 the available tools to address their cross connection

1 issues. By removing the adoption by reference of the  
2 list and instead referring to assemblies or devices  
3 approved by the department, the regulated public will be  
4 able to use the full range of options available.

5 Both the manual and the list are produced by  
6 the Foundation for Cross Connection Control and  
7 Hydraulic Research. This foundation is a division of  
8 the University of Southern California and is dedicated  
9 to the prevention of dangerous cross connections between  
10 safe drinking water systems and other unsafe, unapproved  
11 or hazardous systems.

12 At this point, Mr. Chairman, I would like to  
13 make or propose or ask for two amendments to the notice.  
14 The first is, in this recent statement for a proposed  
15 amendment to 17.38.302, and I'm not sure if the paging  
16 on mine is the same as yours. But in that statement,  
17 near the end of the first paragraph, it says, by  
18 removing the list and referring only to assemblies  
19 approved by the department as is being proposed in  
20 17.38.305, Sub-Chapter 3, the department may then still  
21 use the list and refer to the most recent edition. I  
22 need to ask that we amend, as guidance, so it would  
23 read, then still use the list as guidance and refer to  
24 the most recent edition.

25 The second proposal for amendment in the



1 notice would be if this deletion of adoption by  
2 reference of the list is accepted, there was a reference  
3 in section 302 of the definitions that also references  
4 that adoption by reference. Excuse me, 301. And so we  
5 would amend the notice to change the definition of  
6 approved backflow prevention assembly or device to mean,  
7 means any assembly or device approved by the department.

8 Continuing on. The significant changes  
9 between the 9th and 10th edition deal with testing  
10 procedures and do not add new regulatory requirements,  
11 but are intended to remove or correct testing procedures  
12 that may cause contamination or inaccurate testing  
13 results. Changes in vocabulary are intended to clarify  
14 the requirements and to unify the language used. For  
15 instance, the current term used in our rule, water  
16 pollution, is referred to in the manual as non-health  
17 hazard. Because they have the same meaning but seem to  
18 be so different, there is the potential for confusion.  
19 In addition, the term water pollution, as used in the  
20 cross connection rules, is not the same definition as  
21 used in other Montana statutes and rules.

22 The last significant proposed amendments are  
23 necessary to correct language that indicates that the  
24 Foundation for Cross Connection Control and hydraulic  
25 research and the American Water Works Association are

1 certifying agencies. Both of these agencies offer  
2 training and testing, but certification is through the  
3 organizations now listed in the proposed amendment rule.  
4 These proposed amendments do not add any significant  
5 requirements of the regulated public, and in fact reduce  
6 those requirements in some cases and remove potential  
7 areas of confusion that may lead to noncompliance.  
8 Therefore, the department recommends initiation of  
9 rulemaking and appointment of a hearings officer for a  
10 public hearing.

11 Thank you.

12 CHAIRMAN RUSSELL: Thanks, Gene.

13 I have a question for you. I think I know  
14 the answer, but I just want to make sure. Would you  
15 define a consecutive system?

16 MR. PIZZINI: Without having the rule so I  
17 could give you the exact language, basically a  
18 consecutive connection is a privately-owned distribution  
19 system that is connected to a wholesaler system.  
20 Basically it's a system without a source of its own. It  
21 purchases water from someone else.

22 CHAIRMAN RUSSELL: I thought that is what it  
23 was, but I wanted to make sure it was clear. And so  
24 basically they wouldn't have any system testing  
25 requirements.

1           MR. PIZZINI: Chairman Russell, members of  
2 the board, depending on how the system is set up, for  
3 instance, if you had a distribution system, and I call  
4 them dangling participles where they just run a line out  
5 to like a subdivision, supply them with water, there  
6 would not necessarily be a need to collect an entry  
7 point sample for the chlorine residual in that  
8 consecutive connection. As long as they have a residual  
9 spread out through the rest of the distribution system,  
10 you have to assume that the water that they're getting  
11 from the wholesaler also had chlorine in it. If that  
12 system was set up the same way, but instead of being a  
13 dead end, the line ran from is the other side of that  
14 distribution system and back to the wholesaler so it was  
15 looped, it may be that the wholesaler's chlorine  
16 residual monitoring would cover the distribution of that  
17 system, as well. And so there is no benefit to having  
18 the system doing it a second time.

19           But that's what we want to be able to do, is  
20 use our expertise to say, in this case, it's not needed.  
21 And currently we can't do that. And if you're receiving  
22 chlorinated water right now, you have to do the  
23 residuals and reporting.

24           CHAIRMAN RUSSELL: If the system is only  
25 supplied by public water supply, they purchase water for

1 like eight users, they don't have that requirement;  
2 right?

3 MR. PIZZINI: Chairman Russell, members of  
4 the board, that's correct, our rules only apply to those  
5 systems that meet the definition of a public water  
6 supply, whether it's a wholesale system or a consecutive  
7 connection.

8 CHAIRMAN RUSSELL: I got one for you, then.  
9 So I'm the supplier, I have a really nice well, I have  
10 seven users on my system and I let someone who has  
11 another seven update eight units on their system,  
12 purchase water. Collectively, are we a public water  
13 supply?

14 MR. PIZZINI: Chairman Russell, members of  
15 the board, that question has recently come to me via my  
16 bureau chief, and it was in a slightly different manner.  
17 And quite frankly, it would require a legal opinion to  
18 make that determination, and the reason being is when  
19 you look at the definition of a public water supply, it  
20 says a system for the provision. When you look in our  
21 rules and law, there is no definition for the term  
22 system. So when you go and look in Webster's, it says  
23 parts making a whole.

24 I would assume, or it would be possible in  
25 some cases where an effective attorney would say that

1 the two combined make the system, not just parts. In  
2 other cases, I would assume that an effective attorney  
3 could say that they are separate and indivisible. So in  
4 your hypothetical situation, there is not enough  
5 information to answer the question in the method you  
6 want or in the manner you wish.

7 CHAIRMAN RUSSELL: I would hope only an  
8 ineffective attorney would answer it wrong. You know,  
9 it's so evasive, and the reason I bring it up is this  
10 stuff happens and it's important that we consider these,  
11 close these loops whenever possible. And that's just a  
12 statement.

13 Thank you, Gene. Nicely done.

14 Is there any board members that have any  
15 questions for the department?

16 I guess I have another one. And the reason  
17 when you put, and it is in the reason, but when you put  
18 "as guidance" there, aren't you adopting those by  
19 reference so you can regulate by them?

20 MR. PIZZINI: Chairman Russell, members of  
21 the board, I do not believe that guidance documents are  
22 required to be adopted by reference. The intent of this  
23 change is to allow our cross connection expert to use  
24 his best professional judgment in making determinations  
25 as to whether an assembly or device that is being

1 proposed is going to protect public health. Right now,  
2 by having that list adopted by reference, if that list  
3 changes, we are unable to use all of the available  
4 tools. By looking at it as a guidance document, our  
5 expert is able to look at that list and other  
6 information and make a determination as to whether a  
7 device or an assembly is appropriate.

8 Does that answer your question, sir?

9 CHAIRMAN RUSSELL: It does.

10 Questions for the department?

11 MR. WHALEN: None for me, Mr. Chairman.

12 CHAIRMAN RUSSELL: Anyone else?

13 MR. LIVERS: Mr. Chairman, this is Tom. Just  
14 a couple things real quickly.

15 It's my understanding that Katherine will be  
16 available to serve as hearing officer, if you want to  
17 appoint her to this. And just a reminder to call for  
18 other public comment.

19 CHAIRMAN RUSSELL: Actually, is there anyone  
20 out there, a person in Helena or on the phone that would  
21 like to speak to this matter before we take any action?

22 MR. LIVERS: Apparently, not here in Helena,  
23 Mr. Chairman.

24 CHAIRMAN RUSSELL: All right. With that, I  
25 would enter the motion to the department's request to

1 move forward on rulemaking and appoint Katherine to  
2 hearings attorney for this matter.

3 MR. WHALEN: Mr. Chairman.

4 CHAIRMAN RUSSELL: Joe.

5 MR. WHALEN: This is Joe Whalen. I would so  
6 move.

7 CHAIRMAN RUSSELL: It's been moved. Is there  
8 a second?

9 MR. MILLER: I'll second it, Miller.

10 CHAIRMAN RUSSELL: All right. And this  
11 motion does include the department's request for the two  
12 modifications; is that correct?

13 MR. WHALEN: Yes, I assume so.

14 CHAIRMAN RUSSELL: All in agreement?

15 MR. WHALEN: I concur, Mr. Chairman.

16 CHAIRMAN RUSSELL: With that being said, is  
17 there any further discussion?

18 Hearing none, all those in favor of the  
19 motion signify by saying aye. Opposed? Motion carries  
20 unanimously. Thank you. We'll move forward.

21 The next item on the agenda is final action on  
22 contested cases. The first item is in the matter of  
23 request for hearing by Plum Creek regarding the final  
24 revision of the amendment on their ground water permit.  
25 And I have in front of me an order dismissing the appeal

1 of Case No. BER 2011-21 WQ and would entertain a motion  
2 to authorize board chair to sign.

3 MR. MILLER: So moved.

4 CHAIRMAN RUSSELL: It's been moved by Marv.  
5 Is there a second?

6 MS. KAISER: Second.

7 CHAIRMAN RUSSELL: Seconded by Heidi.  
8 Further discussion? Hearing none, all those in favor,  
9 signify by saying aye. Opposed? None. Motion carries  
10 unanimously.

11 The next item are new contested cases. And  
12 the first one is in the matter of violations of the  
13 Opencut Mining Act by the City of Ronan at Ronan, Lake  
14 County, Montana. Since we really don't have Katherine  
15 here, if you have any questions regarding any  
16 substantive matter on this, we probably should defer  
17 that to Katherine and only take action assigned, or not  
18 assigned to Katherine.

19 So I have the first notice of violation  
20 matter, violations of opencut mining. Do I have a  
21 motion to assign Katherine?

22 MS. KAISER: I would move.

23 CHAIRMAN RUSSELL: It's been moved by Heidi.  
24 Is there a second?

25 MR. MIRES: Second.



1 CHAIRMAN RUSSELL: Second by Larry Mires.  
2 Any further discussion? Hearing none, all those in  
3 favor of the motion signify by saying aye. Opposed?  
4 Motion carries unanimously.

5 The next item on the agenda is in the matter  
6 of violation of the Metal Mine Reclamation Act by Noble  
7 Excavating, Inc. at Nickleback Rock Quarry, Lincoln  
8 County, BER 2011-24 MM.

9 MR. MIRES: Mr. Chairman, this is Larry  
10 Mires. I have a question.

11 CHAIRMAN RUSSELL: Yes.

12 MR. MIRES: I don't know if we can ask this  
13 or not, but I'm just going to ask it. Do we know what  
14 it is that they're mining under this permit? Is that  
15 specified?

16 MR. LIVERS: Mr. Chairman, Mr. Mires,  
17 actually, I heard a couple of different choices. Give  
18 us just a second and I'll get an answer for you.

19 CHAIRMAN RUSSELL: It says a rock quarry in  
20 here.

21 MR. LIVERS: Mr. Chairman, they are mining  
22 and blasting rock and crushing it for gravel.

23 MR. MIRES: Thank you.

24 CHAIRMAN RUSSELL: I had to chuckle when I  
25 read this. It seems like they overshot their five-acre

1 footprint by quite a bit. All right.

2 Do I have a motion to assign this to  
3 Katherine as a permanent hearing examiner?

4 MS. KAISER: This is Heidi. I move to assign  
5 Katherine.

6 CHAIRMAN RUSSELL: It's moved by Heidi. Is  
7 there a second?

8 MR. MILLER: I'll second it --

9 CHAIRMAN RUSSELL: Seconded by Marv. Further  
10 discussion? Hearing none, all those in favor signify by  
11 saying aye. Opposed? Motion carries unanimously.

12 The third item, as I race through my file  
13 here, is in the matter of the violation of the Opencut  
14 Mining Act by Emerald Hills Development Company at the  
15 Emerald Hills Pit, Yellowstone Country, BER 2011-25 OC.  
16 Any questions before we take this up? Hearing none, I  
17 would entertain a motion to assign Katherine as the  
18 permanent hearings examiner on this matter.

19 MR. MILLER: I so move.

20 MR. MIRES: Second.

21 CHAIRMAN RUSSELL: Further discussion?  
22 Hearing none, all those in favor signify by saying aye.  
23 Opposed? All right, the motion carries unanimously.

24 The last item is in the matter of the  
25 violation of the Opencut Mining Act by Brad Blakeman at

1 the Camas Prairie Gravel Pit, Sanders County, BER  
2 2012-01 OC. Are there any questions you might want to  
3 ask?

4 MR. MIRES: Mr. Chairman, this is Larry  
5 Mires. In reading that, it stated that if that pit is  
6 owned or permitted primarily by Sanders County, and as  
7 I'm reading this, it sounds like there is a private  
8 individual that is doing work in a permit granted to  
9 Sanders County. Is that stealing? I'm just confused  
10 here.

11 CHAIRMAN RUSSELL: John or Tom?

12 MR. NORTH: Mr. Chairman, we can offer  
13 information on that. John Arrigo is here to discuss  
14 this.

15 MR. ARRIGO: Mr. Chairman, members of the  
16 board, this is John Arrigo with the DEQ enforcement  
17 division. And in this instance, the county had the  
18 permit and were alleging an individual went in and mined  
19 outside the permit boundary. We're not getting into  
20 stealing product or anything.

21 CHAIRMAN RUSSELL: It doesn't clarify. Why  
22 wouldn't it be the permit holder's responsibility to  
23 stay within the pit?

24 MR. LIVERS: Mr. Chairman, we're probably  
25 about at the edge of what we should talk about in this

1 case since we're one of the parties. I apologize, we  
2 don't have Katherine here, but I think we need to be  
3 pretty careful here.

4 CHAIRMAN RUSSELL: I agree.

5 MR. MIRES: That's why I didn't know if we  
6 could do that.

7 CHAIRMAN RUSSELL: I agree with Tom, we're  
8 probably right on the edge because the other party is  
9 not present.

10 MR. LIVERS: Mr. Chairman and Mr. Mires,  
11 we'll relate the question to Ms. Orr and ask her to  
12 provide any clarification she's able to.

13 MR. MIRES: Thank you.

14 CHAIRMAN RUSSELL: With all that said, I  
15 would entertain a motion to appoint Katherine the  
16 permanent hearings examiner.

17 MR. MIRES: So moved.

18 CHAIRMAN RUSSELL: Moved by Larry. Is there  
19 a second?

20 MR. MILLER: I'll second it.

21 CHAIRMAN RUSSELL: Seconded by Marv. Further  
22 discussion? Joe.

23 MR. WHALEN: Mr. Chairman, I would just point  
24 out that this is probably a fairly common situation  
25 across the state, and it would be worthwhile for the

1 board to hear it. We've already had a couple of  
2 questions, so I'll just kind of put that out there. I'm  
3 mulling it over right now, given the answers to some of  
4 these questions. We haven't heard a case in awhile.

5 CHAIRMAN RUSSELL: Okay. Further discussion?

6 MR. LIVERS: Mr. Chairman, this is Tom. I  
7 just remind the board that if you wanted to appoint  
8 Katherine as an interim hearings examiner, you keep open  
9 your options if the board chose to hear it itself.

10 CHAIRMAN RUSSELL: How would that be, Joe?

11 MR. WHALEN: That sounds like a good remedy.

12 Thank you, Tom.

13 CHAIRMAN RUSSELL: We won't take action on  
14 this one. We have a motion on the floor, which we'll  
15 take action on that.

16 MR. MIRES: Does that need to be amended or  
17 withdrawn or anything?

18 CHAIRMAN RUSSELL: I think a negative action  
19 on appointment would be enough.

20 MR. MIRES: Okay.

21 CHAIRMAN RUSSELL: I gave you guys a yes,  
22 vote no. So all those in favor of appointment of  
23 Katherine signify by saying aye. All those not in favor  
24 signify by same.

25 All right. So that motion did not carry.

1 We'll leave this as it is and she'll continue as the  
2 interim hearings examiner. Tom, if you could relay our  
3 question to her, maybe she could brief us a little bit.

4 MR. LIVERS: We'll do that, Mr. Chairman.

5 CHAIRMAN RUSSELL: The last thing on the  
6 agenda is any public comment. Is there anyone out there  
7 that would like to speak to the board on matters  
8 pertaining to the board's authority?

9 MR. LIVERS: Apparently not, Mr. Chairman.  
10 And before you adjourn, I'd just say a thing or two  
11 about the next meeting.

12 CHAIRMAN RUSSELL: Okay. Go ahead, Tom.

13 MR. LIVERS: Mr. Chairman, members of the  
14 board, just a reminder the next meeting is scheduled for  
15 Friday, March 23rd. We are planning on an in-person  
16 meeting in Helena that day. We'll have several briefing  
17 items, among other things. We'll also return with DEQ  
18 4, which we discussed at length at the last meeting, the  
19 December meeting. And then we're also going to have  
20 some briefings on some water re-use standards, some  
21 changes in DEQ 2, some nutrient issues.

22 And one of the things we've thought about  
23 after our last meeting is we're going to try to do a  
24 better job of anticipating those topics where we expect  
25 a fair amount of board interest and discussion

1 questions. And we'll try to, rather than jump right  
2 into initiation in those cases, we're going to present a  
3 briefing item first and then initiate it at a subsequent  
4 meeting. That gives a little more flexibility for the  
5 board to weigh in on kind of the main overall issues  
6 before we put it into the formal rulemaking process.  
7 That's some of what you'll see at the next meeting, at  
8 the March 23rd meeting. But if you could plan to extend  
9 possible meeting in Helena and a little more media  
10 agenda, that is what you can expect.

11 MR. MIRES: Mr. Chairman.

12 CHAIRMAN RUSSELL: Yes.

13 MR. MIRES: This is Larry Mires, and I have a  
14 question probably for Tom and the department and maybe  
15 for the rest of the board, if their interest is here.  
16 And it deals with the oil and gas that is going on in  
17 North Dakota and in eastern Montana. As I've traveled  
18 around the country to a variety of different meetings  
19 dealing with this, pertaining to oil and gas development  
20 and economic development and infrastructure issues, the  
21 concerns that I deal with are primarily water issues, in  
22 particular some of that comes back into the rules and  
23 regulations and some of it deals with waste water and  
24 some of it deals with drinking water. So it's pretty  
25 broad and it's pretty, I guess, would be overwhelming at

1 times.

2 But I guess my thought was, I went to a  
3 meeting in North Dakota and there was a presentation by  
4 their oil and gas individual, and it was explaining some  
5 of the rules and regulations that they're going with  
6 from their experience in North Dakota. And I don't  
7 really know exactly what we're doing here in Montana and  
8 I don't know exactly how the oil and gas development may  
9 have or may not affect BER DEQ. But I would certainly  
10 suspect that there has to be some overlap with oil and  
11 gas or maybe the health and human services are charged  
12 with.

13 Is there any way that we could get some kind  
14 of a board briefing and understanding or maybe a joint  
15 board with oil and gas and health and human services or  
16 whatever so that we can have a better understanding of  
17 what our role and responsibilities are and what is it  
18 that they are doing so that they don't do something that  
19 inadvertently affects DEQ and BER?

20 MR. LIVERS: Mr. Chairman, Mr. Mires, this is  
21 Tom Livers. Yes. And I do appreciate that you and I  
22 had a discussion along these lines, as well, Mr. Mires.  
23 I think it would make sense for us to provide a fairly  
24 high-level overview of what role DEQ has in oil and gas  
25 development. It's not necessarily as extensive as some



1 people might think, in that we're not the primary state  
2 entity for permitting the drilling itself. But there  
3 are some circumstances in which the department has some  
4 authority with respect to fracking when there is a  
5 discharge.

6 Most of our involvement really is coming with  
7 some of the derivative impacts of the population  
8 increases with systems, people basically splitting  
9 garden hoses multiple times and calling it a drinking  
10 water system and overloading waste water treatment  
11 systems. But nonetheless, I think it probably would  
12 help the board for us to just come in and kind of  
13 outline what our role is, what the role is of the Board  
14 of Oil and Gas and what the department's doing.

15 Actually, Steve Kilbreath is going on the road next week  
16 in eastern Montana to look at some of the systems and  
17 meet with folks to see how we can better keep up with  
18 the demand for services out there. So we certainly  
19 could provide a briefing on that.

20 I think, since we're having an in-person  
21 meeting in March, that would be a good time to do it.  
22 And I'd certainly take that suggestion and plan on that.

23 MR. MIRES: One more question.

24 CHAIRMAN RUSSELL: Yes. Go ahead.

25 MR. MIRES: How involved or what

1 responsibility will DEQ and BER have with clean air?  
2 And I'm referencing with the burnoff of the excess gas  
3 that's going on.

4 MR. LIVERS: Mr. Chairman, Mr. Mires, we do  
5 have air permitting responsibility for stations out  
6 there, and that is done through a registration rule. We  
7 can certainly address that, as well, in the briefing.

8 MR. MIRES: I guess that's what I'm looking  
9 at, is kind of an overall responsibility to the whole  
10 thing, not just fracking, but there is all kinds of  
11 environmental issues that are trying to be addressed,  
12 but I'm not sure they're accomplishing the goal in an  
13 efficient manner. That's my concern.

14 We certainly do not want to repeat what  
15 Wyoming did or Pennsylvania or Ohio. I think what North  
16 Dakota is doing has some good common sense meaning to it  
17 and a lesson to be learned there.

18 MR. WHALEN: Maybe just to move on a little  
19 bit here. Part of me thinks it would be interesting to  
20 look at each of the programs in DEQ and look at what is  
21 going on in eastern Montana that is impacting those  
22 programs. And I know some of this stuff doesn't involve  
23 us, but I know our bank here locally just funded a big  
24 hotel in Sidney.

25 You know, I've been to Sidney. I don't know

1 if there was a 50-room hotel in Sidney before this, but  
2 that's a big use of our public water and sewer supply.  
3 So it would be interesting to look at, and it would be  
4 interesting in kind of what Steve's doing out there from  
5 a water and sewer point, see what Steve says.

6 MR. LIVERS: Mr. Chairman, we can certainly  
7 do that. I think I understand, as well, Mr. Mires'  
8 concern that with different agencies involved in  
9 different aspects of regulation of oil and gas  
10 development, there is maybe a concern that it's  
11 fragmented and stuff could fall through the cracks.

12 I'm not sure exactly the best way to proceed  
13 with that because I don't want the board to go down a  
14 road where it doesn't have authority. And I think we  
15 want to be careful about how much time we commit to  
16 subjects that are outside the board's purview. But I  
17 think we can probably strike a balance of giving an  
18 overview of the regulatory structure, who does what with  
19 oil and gas, maybe spend a little more time on those  
20 areas that are within the department and the board's  
21 purview and touch on some of the others, maybe not in as  
22 much detail. Does that make sense?

23 MR. MIRES: Yes. And that would be  
24 appropriate because open pit mining is a big one out  
25 here that I think is going to be an issue shortly.

1 MR. LIVERS: I think I've got direction  
2 there, and I can certainly follow up with discussions  
3 with Mr. Mires as this starts to come together. But why  
4 don't we plan on a briefing session at the March 23rd  
5 meeting.

6 MR. WHALEN: Thank you. The other thing is,  
7 I know we have contractors out there that are doing  
8 work, too, so it would be interesting to know how much  
9 more impact open cut mining has, too.

10 MR. LIVERS: We can do that, Mr. Chairman.  
11 That certainly is an impact of development that has been  
12 challenging for us out there.

13 CHAIRMAN RUSSELL: Okay. Well, Larry, good  
14 point. And I know this is really a passionate issue  
15 with you, and I'm glad you keep pulling it up to the top  
16 of the list.

17 Anything else? All right. I'll entertain a  
18 motion to adjourn this meeting.

19 MR. MILLER: I will so move.

20 CHAIRMAN RUSSELL: Is there a second?

21 MS. KAISER: Second.

22 CHAIRMAN RUSSELL: I guess that was a second  
23 by Heidi. Is there any further discussion? All those  
24 in favor signify by saying aye. Opposed? We are  
25 adjourned.

Transcript of Proceedings

1 (Whereupon, the hearing was adjourned at 9:45 AM.)

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C E R T I F I C A T E

I, Susan Johnson, Registered Professional Reporter, do hereby certify:

That the foregoing hearing was taken before me at the time and place herein named, that the hearing was reported by me and that the foregoing \_\_\_\_\_ pages contain a true record of the testimony of the witness to the best of my ability.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
SUSAN JOHNSON