

MONTANA BOARD OF ENVIRONMENTAL REVIEW
BOARD MEETING

TRANSCRIPT OF THE PROCEEDINGS

Held at the Metcalf Building, Room 111
1520 East Sixth Avenue
Helena, Montana

March 19, 2010
9:03 a.m.

REPORTED BY: CHERYL ROMSA

FOR: CRUTCHER COURT REPORTING

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1 Joyce Wittenberg; Cheryl Romsa is our court reporter; and
2 we have probably 15, 20 people in the room, predominantly
3 DEQ staff, but we also have a few members -- or a few
4 other folks here who I believe are here for specific
5 agenda items that we'll identify when that comes up.
6 And at this time, I'd like to see if anyone else is on
7 the conference by telephone besides board members.
8 (No audible response.)
9 MR. LIVERS: It's our understanding we'll
10 probably be joined by a representative of the Greater
11 Yellowstone Coalition and also Northern Plains Resource
12 Council later in the meeting.
13 So, Mr. Chairman, I think with that, we can move into
14 the agenda.
15 CHAIRMAN RUSSELL: All right. First up on the
16 agenda are review and approval of the minutes; first, the
17 January 14th board teleconference. I'm sure anyone who
18 wanted to read through those has done that. Do I have a
19 motion to approve the minutes as submitted?
20 MR. MIREs: This is Larry Mires; I would so move.
21 CHAIRMAN RUSSELL: Is there a second?
22 MR. MILLER: Miller; I'll second.
23 CHAIRMAN RUSSELL: It's been seconded by Marv.
24 Any discussion?
25 (No audible response.)

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1 WHEREUPON, the following proceedings were had:
2 CHAIRMAN RUSSELL: It is 9:03, and I'll call this
3 regular meeting of the Board of Environmental Review to
4 order.
5 Tom, why don't we go ahead with the roll call.
6 MR. LIVERS: Okay. Thank you, Mr. Chairman.
7 Members of the Board, for the record, Tom Livers,
8 Deputy Director of the DEQ. We'll do a roll call of
9 membership.
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 MS. SHROPSHIRE: Here.
20 MR. LIVERS: Mr. Whelan.
21 MR. WHELAN: Here.
22 MR. LIVERS: Chairman Russell.
23 CHAIRMAN RUSSELL: Here.
24 MR. LIVERS: Okay. Also here in Helena, we've
25 got the board attorney, Katherine Orr; board secretary,

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1 CHAIRMAN RUSSELL: Hearing none, all those in
2 favor, signify by saying "aye."
3 (Vote.)
4 CHAIRMAN RUSSELL: Opposed.
5 (No audible response.)
6 CHAIRMAN RUSSELL: Motion carries.
7 The next item are the review and approval of the
8 January 22, 2010 teleconference minutes.
9 MR. WHELAN: This is Joe Whelan; I move to
10 approve those minutes, Mr. Chairman.
11 CHAIRMAN RUSSELL: All right, it's been moved.
12 Is there a second?
13 MS. KAISER: I'll second; this is Heidi.
14 CHAIRMAN RUSSELL: It's been seconded by Heidi.
15 Any comments?
16 (No audible response.)
17 CHAIRMAN RUSSELL: Hearing none, all those in
18 favor, signify by saying "aye."
19 (Vote.)
20 CHAIRMAN RUSSELL: All right, thank you.
21 Next item on the agenda are the briefings by
22 Katherine Orr, contested case update.
23 Katherine.
24 MS. ORR: Good morning, members of the Board.
25 Not too much to report on the first item under

1 contested cases, cases assigned to me, and I'll just move
2 through some of the ones that maybe should have some
3 comment.

4 Item f is a case in the matter of violations of the
5 Clean Air Act of Montana by Sheep Mountain Properties.
6 That was a case where the Board granted a motion for
7 sanctions and gave a deadline for filing, a response to
8 discovery, and that was done.

9 In item g, in the matter of violations of the Montana
10 Septage Disposal and Licensure Laws by Steven Kunkel,
11 Montana Septic Service, Great Falls, this is an example of
12 a case where one of the parties is acting pro se, but must
13 get an attorney. So we are going to have a status
14 conference on March 26 regarding the future of -- what the
15 parties might envision for proceeding on with the case.

16 Juniper Hill Farm, the next one, has developed into a
17 summary judgment posture, which I'll be ruling on.

18 Item k, I issued a second order granting extension of
19 time on March 11th.

20 Item l, the Department filed a request for extension
21 on March 12th.

22 On item 2a there, the parties filed a stipulation for
23 extension on March 12th.

24 And on item 2b, an order granting extension was issued
25 on March 11th.

1 So that's that update.

2 CHAIRMAN RUSSELL: Thanks, Katherine.

3 Does the Board have any questions for Katherine
4 regarding any of these?

5 (No audible response.)

6 CHAIRMAN RUSSELL: Hearing none, let's keep
7 moving, then. The next item on the agenda, initiation of
8 rulemaking and appointment of hearings officer. No. 1,
9 amend 17.50 --

10 MR. LIVERS: Mr. Chairman, before you start on
11 that, if we could, we're still waiting on the department
12 representative on that one, so I might ask if we could go
13 ahead to No. 2, and then we'll circle back on item 1, on
14 the solid waste rules.

15 CHAIRMAN RUSSELL: Okay, that's fine. Not 3,
16 though?

17 MR. LIVERS: No. We'll catch 2 and then circle
18 back to 1, and I think we'll be ready to go at that time.

19 CHAIRMAN RUSSELL: So the first initiation we
20 will take up is to amend ARM 27.38.201A to update the
21 adoption by reference to the 2009 edition of the CFR.

22 MR. LIVERS: Thank you, Mr. Chairman. And we
23 have Mr. Eugene Pizzini here for the Department.

24 MR. PIZZINI: Good morning, Chairman Russell and
25 members of the Board. For the record, my name is

1 Eugene Pizzini, and I'm the rules expert for the Public
2 Water Supply Section of MDEQ.

3 The Department is proposing the following changes:

4 Update the adoption by a reference to reference the newest
5 edition of the applicable federal regulations, bring
6 department requirements into conformance with federal
7 requirements, and to amend existing rules to remove
8 language that may cause confusion to the regulated public.

9 As part of the Department's primacy agreement with the
10 USEPA for implementation of the requirements of the Safe
11 Drinking Water Act, the Department is required to have
12 rules no less stringent than comparable federal
13 requirements. Montana law requires that the state
14 regulations be no more stringent than federal requirements
15 unless specific requirements are met. In order to comply
16 with these two requirements, the Board of Environmental
17 Review adopts by a reference the federal requirements
18 listed in 40 CFR, Part 141. Currently, that adoption by
19 reference refers to the 2007 edition. The Department
20 proposes to update the reference to the 2009 edition. The
21 proposed amendment would produce no significant regulatory
22 changes.

23 In a previous rulemaking, the Board amended its rules
24 regarding the requirement that all systems that disinfect
25 with chlorine maintain a minimum disinfectant residual

1 of .2 milligrams per liter. This change removed the
2 numeric value and replaced it with the comparable federal
3 language "not detected." The proposed amendment to
4 ARM 17.38.234 would apply this change to the reporting
5 requirements, as well.

6 The proposed amendment to ARM 17.38.206 removes a
7 reference to federal language that no longer exists at
8 that location. Deletion of these erroneous citations
9 would remove a potential point of confusion to the
10 regulated community without adding to or removing
11 regulatory requirements.

12 The remainder of the proposed amendments are also
13 intended to clarify the requirements for regulated
14 systems. When the Board adopted the 2007 edition of the
15 CFR by reference, it modified that adoption in various
16 rules to incorporate federal changes that were modified in
17 the Federal Register, which did not appear in the CFR at
18 that time. If the Board adopts the proposed amendment to
19 the 2009 edition of the CFR, the existing language would
20 be redundant and confusing.

21 These proposed amendments do not add any new
22 significant requirements to the regulated public, and, in
23 fact, reduce those requirements in some cases and remove
24 potential areas of confusion that could lead to
25 noncompliance.

<p style="text-align: right;">Page 10</p> <p>1 Therefore, the Department recommends initiation of</p> <p>2 rulemaking and appointment of a hearings officer for a</p> <p>3 public hearing.</p> <p>4 Thank you.</p> <p>5 CHAIRMAN RUSSELL: Thanks.</p> <p>6 Does the Board have any questions for the Department?</p> <p>7 (No audible response.)</p> <p>8 CHAIRMAN RUSSELL: Hearing none, Katherine, are</p> <p>9 you available for this one?</p> <p>10 MS. ORR: Yes, I am.</p> <p>11 CHAIRMAN RUSSELL: All right. I would ask for a</p> <p>12 motion to initiate rulemaking on this matter and appoint</p> <p>13 Katherine the presiding or hearings officer.</p> <p>14 MR. MILLER: This is Miller; I so move.</p> <p>15 CHAIRMAN RUSSELL: It's been moved by Marv. Is</p> <p>16 there a second?</p> <p>17 MS. SHROPSHIRE: This is Robin; I second.</p> <p>18 CHAIRMAN RUSSELL: It's been seconded by Robin.</p> <p>19 MR. LIVERS: And, Mr. Chairman, I don't</p> <p>20 anticipate public comment on this, but we'll probably want</p> <p>21 to ask before the vote.</p> <p>22 CHAIRMAN RUSSELL: I was really going to go</p> <p>23 there, Tom.</p> <p>24 MR. LIVERS: Great. Thank you.</p> <p>25 CHAIRMAN RUSSELL: But thanks for reminding me.</p>	<p style="text-align: right;">Page 12</p> <p>1 Tom.</p> <p>2 MR. LIVERS: Okay, I'm going to turn it over to</p> <p>3 Rick Thompson of our Permitting and Compliance Division.</p> <p>4 MR. THOMPSON: Good morning, Mr. Chairman,</p> <p>5 members of the Board. I'm sorry for my tardiness, but Tom</p> <p>6 took the blame for that one. For the record, my name is</p> <p>7 Ricknold Thompson. I'm the supervisor of the Solid Waste</p> <p>8 Management Section in the Waste and Underground Tank</p> <p>9 Management Bureau.</p> <p>10 The Department at this time requests that the Board</p> <p>11 concur with the recommendation to initiate rulemaking to</p> <p>12 amend Administrative Rule 17.50.403 and 410. Because the</p> <p>13 proposed amendments are clerical in nature, no public</p> <p>14 hearing is contemplated for this rulemaking. The proposed</p> <p>15 amendments would correct citations and references.</p> <p>16 A year ago, the Department requested the Board</p> <p>17 initiate rulemaking for the same amendments. At that</p> <p>18 time, the Department was working on rulemaking that would</p> <p>19 repeal most of the existing solid waste rules and adopt</p> <p>20 new rules. One of the rules that was repealed and</p> <p>21 replaced by a new rule was 17.50.530, ARM. There are</p> <p>22 references in 17.50.403 and 410 to this particular rule,</p> <p>23 and that must be updated. Because the revision of the</p> <p>24 solid waste rules took longer to complete than</p> <p>25 anticipated, the Department must now repropose corrections</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. LIVERS: We weren't able to make eye contact,</p> <p>2 Mr. Chairman.</p> <p>3 CHAIRMAN RUSSELL: I'm about 30 percent on these.</p> <p>4 Is there anyone from the public that wants to speak to</p> <p>5 this before the Board takes action?</p> <p>6 (No audible response.)</p> <p>7 MR. LIVERS: Doesn't appear so, Mr. Chairman.</p> <p>8 CHAIRMAN RUSSELL: Any further question or</p> <p>9 comment before the Board -- or by the Board before we take</p> <p>10 action?</p> <p>11 (No audible response.)</p> <p>12 CHAIRMAN RUSSELL: Hearing none, all those in</p> <p>13 favor, signify by saying "aye."</p> <p>14 (Vote.)</p> <p>15 CHAIRMAN RUSSELL: Opposed.</p> <p>16 (No audible response.)</p> <p>17 CHAIRMAN RUSSELL: Motion carries.</p> <p>18 MR. LIVERS: Okay, Mr. Chairman, I'd recommend we</p> <p>19 swing back to No. 1. I had erroneously told Mr. Thompson</p> <p>20 he probably had until 9:15 before this item came up, but</p> <p>21 you're moving a little faster. But I think we're ready to</p> <p>22 go on the solid waste rules now.</p> <p>23 CHAIRMAN RUSSELL: All right. In the matter --</p> <p>24 The Department is proposing that the Board initiate</p> <p>25 rulemaking on ARM 17.50.403 and 410.</p>	<p style="text-align: right;">Page 13</p> <p>1 to the outdated citations.</p> <p>2 As a note, the new rules were effective -- the new</p> <p>3 solid waste rules were effective on February 12th of this</p> <p>4 year.</p> <p>5 The Department recommends initiation of rulemaking.</p> <p>6 And I'm willing to answer any questions.</p> <p>7 CHAIRMAN RUSSELL: Thanks, Rick.</p> <p>8 Questions for Rick?</p> <p>9 MS. SHROPSHIRE: I have a question.</p> <p>10 CHAIRMAN RUSSELL: Robin.</p> <p>11 MS. SHROPSHIRE: And it's not necessarily related</p> <p>12 to the rulemaking, but I was curious. The definition does</p> <p>13 not include soils contaminated solely by inorganic metals,</p> <p>14 and I was just curious. In terms of contaminated by, can</p> <p>15 that be natural or -- well, if there's soil that has</p> <p>16 naturally high concentrations of some metal, that would</p> <p>17 still be considered contaminated; is that correct?</p> <p>18 Do you understand the question? Whether it's natural</p> <p>19 or exergonic, I guess is where I'm going.</p> <p>20 CHAIRMAN RUSSELL: Well, we'd be mining it, then,</p> <p>21 wouldn't we?</p> <p>22 MS. SHROPSHIRE: What's that?</p> <p>23 CHAIRMAN RUSSELL: We would be mining it at that</p> <p>24 point, wouldn't we?</p> <p>25 MS. SHROPSHIRE: Well --</p>

1 CHAIRMAN RUSSELL: I'm just being --
 2 MS. SHROPSHIRE: I'm thinking of arsenic in
 3 particular.
 4 MR. THOMPSON: Mr. Chairman, members of the
 5 Board, I think do understand that question.
 6 And the contaminant levels, some contaminant levels
 7 can be treated at what we call subtitle (e) or solid waste
 8 type facilities, such as what we're proposing here, and
 9 above certain levels they are hazardous. So I think the
 10 definition for contaminated soil, to answer your question,
 11 does cover naturally -- well, doesn't cover naturally
 12 occurring, but only manmade contaminants.
 13 MS. SHROPSHIRE: Okay. It was an awkward
 14 question, anyway. I apologize. But thank you, appreciate
 15 that.
 16 CHAIRMAN RUSSELL: Any other questions?
 17 (No audible response.)
 18 CHAIRMAN RUSSELL: Katherine, you're available?
 19 MS. ORR: Yes. They did say that no public
 20 hearing was required, though.
 21 CHAIRMAN RUSSELL: Oh, that's right. Or
 22 contemplated.
 23 MS. ORR: Or contemplated.
 24 CHAIRMAN RUSSELL: So you don't need to be
 25 available.

1 MS. ORR: I can show up.
 2 CHAIRMAN RUSSELL: That's all right.
 3 Okay. So with all of that in mind, I would entertain
 4 a motion to initiate rulemaking on this matter and wait to
 5 see the results.
 6 MR. WHELAN: Mr. Chairman, this is Joe Whelan; I
 7 would so move.
 8 CHAIRMAN RUSSELL: It's been moved by Joe. Is
 9 there a second?
 10 MR. MILLER: This is Miller; I second.
 11 CHAIRMAN RUSSELL: Seconded by Marv. Any further
 12 discussion?
 13 (No audible response.)
 14 CHAIRMAN RUSSELL: Is there anyone in the public
 15 that would like to speak to this matter before the Board
 16 takes action?
 17 (No audible response.)
 18 MR. LIVERS: No one here, Mr. Chairman.
 19 CHAIRMAN RUSSELL: All right. With all that in
 20 mind, all those in favor, signify by saying "aye."
 21 (Vote.)
 22 CHAIRMAN RUSSELL: All those opposed.
 23 (No audible response.)
 24 CHAIRMAN RUSSELL: Motion carries.
 25 We will move on to item No. 3, which is lengthy, and

1 I'm not going to try to describe all of the inputs to it.
 2 So, Tom, take it over.
 3 MR. LIVERS: Sure.
 4 Mr. Chairman, we're in the process of keying up a
 5 PowerPoint here. I'd ask that -- I think that the board
 6 members were sent a PowerPoint presentation on this
 7 matter, so if you have that available at this time, you
 8 may want to refer to that.
 9 And if we need additional time, while we're getting
 10 this queued up, Mr. Chairman, I'll ask you to pronounce
 11 the various new standards -- human health standards that
 12 are involved here. I think we're doing well.
 13 We're asking for comments on some changes to DEQ-7 as
 14 part of our triennial review. And Bob Bukantis is going
 15 to give the presentation this morning.
 16 CHAIRMAN RUSSELL: All right. Bob.
 17 MR. BUKANTIS: Mr. Chairman, members of the
 18 Board, for the record, my name is Bob Bukantis, and I'm
 19 head of the Water Quality Standards Section for the
 20 Department. Good morning.
 21 Joe, I might have a hard time catching your jokes, not
 22 being able to make eye contact, but I'll do the best I
 23 can.
 24 CHAIRMAN RUSSELL: I'll keep them to a minimum,
 25 then.

1 MR. BUKANTIS: But, anyway, the first thing I
 2 want to do is just make sure -- bring your attention to
 3 the fact that we sent out a second draft Administrative
 4 Register Notice. We picked up a couple errors in some
 5 last-minute review, added a couple more compounds where we
 6 did have changes in DEQ-7, but we missed them in the
 7 Administrative Register Notice.
 8 But to get into this, the first thing I want to do is
 9 try to put this package in a little bit of context from
 10 the perspective of the Department, and I just want to tell
 11 you that this is really the first in a series of planned
 12 rule packages that we're planning on bringing to you in
 13 the next year or so, where we're looking at a series of
 14 changes to our water quality standards that we envision,
 15 and work also in concert with our Permitting Division on
 16 some planned changes and how some of these things might
 17 fit in with permitting rules and guidance, et cetera.
 18 You know, just with that context, the main thing we're
 19 asking for in this rulemaking and what we're proposing and
 20 putting on the table is a bunch of changes right now to
 21 DEQ-7 that fit into several different categories. Just to
 22 improve format and introduction, we want to make -- we've
 23 made it so it's a handier document, if you will,
 24 physically, as well as much more computer searchable.
 25 We've got new pesticide standards updated and updated many

1 of our aquatic life and human health standards to be
 2 consistent with national recommended water quality
 3 criteria and also made some footnote changes. I'll talk a
 4 little more about those items in detail.

5 Some of the things that you can expect to see soon,
 6 is, in the next meeting or so, some proposed changes for
 7 subchapter 6, which is the standards, and also permitting
 8 guidance in subchapters 12 and 13. And later in the year,
 9 we'll bring some more proposed changes to DEQ-7 once we
 10 receive this year's new pesticides from the Department
 11 of Ag heading towards the 2011 version. And we anticipate
 12 bringing you later this year, or perhaps early next year,
 13 draft numeric nutrient standards. And there's several
 14 other things on the horizon that EPA's working on and
 15 we're looking at; for example, biotic ligand model
 16 approaches to metals criteria, draft ammonia standards,
 17 methylmercury, fish tissue based, et cetera. So a lot of
 18 potential things coming up with water quality standards.

19 Okay, just to get into a little more on the specifics
 20 of what we are proposing and asking to act on in this
 21 package, again, is basically all contained in DEQ-7, other
 22 than perhaps references to DEQ-7 in the rules, to maintain
 23 those as current with the current version of DEQ-7. So,
 24 again, there's the formatting, a rewrite of the
 25 introduction to try to make that more readable, better

1 explanation of what we actually have in the document,
 2 pesticide standards, and national recommended water
 3 quality criteria.

4 I'll just talk a little bit more about the national
 5 recommended water quality criteria. These are often
 6 referred to as 304(a) criteria. EPA, under Section 304(a)
 7 of the Clean Water Act, is required to take the best
 8 available science and propose draft or recommended
 9 criteria for states to adopt. And you've heard about
 10 these in the past, or at least the Board has, and,
 11 basically, what EPA does is take a pretty sound science,
 12 toxicology, et cetera, get proposed numbers, develop
 13 documents providing the basis for those numbers, and put
 14 those out for public review, and then put those in place.
 15 And those become, if you will, the gold standard for human
 16 health water quality criteria under the Clean Water Act,
 17 and aquatic life water quality criteria also. So those
 18 numbers are really easy for the states to just pull
 19 into -- in our case, into Montana's standards and provide
 20 the appropriate level of protection for our citizens and
 21 for our aquatic resources.

22 Part and parcel of how EPA does those recommended
 23 water quality criteria is, they also include footnote
 24 modifications, and I'm going to talk a little bit more
 25 about that. And part of what we want to do is bring our

1 numeric aquatic life standards more closely in line with
 2 the basis for these numbers by including those modifiers,
 3 if you will, in our footnotes. But I'll talk a little bit
 4 more about that.

5 Just to work through this, come back to the
 6 pesticides, we have a list of pesticides, 21 new
 7 pesticides, including a couple breakdown products,
 8 metabolites, that are done under the Montana Ag Chemical
 9 Ground Water Protection Act that tells us that once the
 10 Department of Agriculture detects new pesticides in
 11 Montana's water, they require that you, the Board or
 12 Environmental Review, establish interim standards to
 13 provide levels of protection for those pesticides until
 14 EPA would establish a 304(a) criteria, for example. And
 15 as your staff, of course, we do the work behind that and
 16 have developed the proposed standards that you have in
 17 front of you with the help of EPA's regional toxicologist.
 18 I'm not going to dwell on this list of pesticides, but I
 19 just want to throw those up there.

20 Again, coming back around to the national recommended
 21 water quality criteria list of pesticides, we've got a new
 22 one for acrolein, some revised numbers, just, you know,
 23 some background. It's just good science to update your
 24 standards as appropriate when we have a better
 25 understanding of the appropriate level of protection.

1 Science tends to develop and evolve over time. We've got
 2 one error correction for endosulfan sulfate. And then,
 3 again, for human health standards, we have five new
 4 numbers proposed and six revisions.

5 Okay, just to come back around to those footnotes,
 6 again, EPA, when they've -- Actually, since 1985, when
 7 they've been developing aquatic life standards, looking at
 8 potential toxic effects on compounds, the basis of those
 9 standards considers averaging sort of effects on the
 10 organisms, et cetera, and allows for a once-in-three-year
 11 exceedance frequency. This builds in a certain, I guess,
 12 realistic application sort of thing, and it's consistent
 13 with how EPA puts their permit writing guidance out there.
 14 And if we adopt these suggested changes, we see a couple
 15 different benefits to our programs.

16 One thing I do want to point out, that these
 17 footnotes -- it's a little bit confusing because of having
 18 to rearrange the previous footnotes, but basically try to
 19 focus on exactly what we're trying to accomplish here, is
 20 to put averaging period and one-in-three-year exceedance
 21 frequency for acute and chronic aquatic life standards and
 22 point out that this will not change the do-not-exceed
 23 value currently in our human health standards.

24 So we're looking for a better consistency with EPA's
 25 304(a) criteria, which is the basis of most of our numeric

1 water quality standards in DEQ-7. And we also see value
2 in terms of helping out our TMDL Program, for example, and
3 being more consistent with national standards, with how
4 standards are done, if you will, and better concurrence
5 with the basis for writing discharge permits.

6 Now, that is basically a summary of the proposed
7 changes. This time, we're looking at doing something a
8 little different. We've done many triennial reviews in
9 the past. Generally, if this was like one of the past
10 ones, we'd stop right here. In this case, we want to be
11 more explicit in terms of asking for general review and
12 comment on all of Montana's water quality standards,
13 including those for EC and SAR.

14 An important point here, I think, in my haste -- I
15 need to apologize, but in my haste to get out a
16 presentation for you, I left a word out of the third
17 bullet there. What that third bullet -- You'll notice the
18 wording is a little awkward without the third word that I
19 have up on the slide here, but I'll read the statement
20 that we want in there: "DEQ does not," and I emphasize
21 does not, "contemplate or plan to propose changes," and I
22 will qualify that, especially for EC and SAR, "unless we
23 are presented with compelling reason to do so."

24 So we're not trying to line up for something that we
25 think we need to see changed. We are just trying to

1 maintain all our standards with the best available
2 science. In particular, I'm sure you're aware that our
3 approval for our EC and SAR standards, EPA's approval was
4 vacated by Judge Brimmer's court. We are about to ask EPA
5 to hold off acting on that remand until we have a chance
6 to make sure that we're looking at all of the best
7 available science and information to support the best
8 possible decision. That being said, again, we don't have
9 anything that we're trying to line up to change. We think
10 our standards are appropriate; we just want to nail that
11 down, if you will.

12 And a last important point perhaps on this slide, any
13 changes that may come out of this triennial review that
14 we're not anticipating, it's important to realize that
15 we're not going to jump in and propose any last-minute
16 changes. We think the best way to handle those would be
17 to bring those forward through initiation of a new
18 rulemaking, starting the full public review process from
19 the beginning, with appropriate outreach, working with
20 WPCAC, and then bringing it to you again.

21 So, in summary, this is really the first of a planned
22 series of proposed rule packages that we expect to bring
23 to you from both standards and water quality permitting.
24 I hit the highlights of some specific changes that we're
25 proposing in DEQ-7. And when we open this rulemaking, we

1 also would like to request review and comment on all of
2 our standards, including those for EC and SAR.

3 So just to conclude, we request that you initiate
4 rulemaking on the proposed changes, and then we would ask
5 the Secretary of State's Office to then publish the
6 MAR notice the day after your taxes are due and initiate a
7 45-day public comment period to close the 1st of June, is
8 what we recommend. And then we'd like to hold a public
9 hearing on the proposed changes only on or after the 5th
10 of May, to be consistent with our statutory requirements.

11 With that, Mr. Chairman and members of the Board, I'd
12 be happy to take any questions.

13 CHAIRMAN RUSSELL: Any questions for Bob?

14 MR. ANDERSON: This is Larry Anderson.

15 In looking through the standards, it appears to me
16 that the only standard that is changed -- substantively
17 changed is the acrolein standard. Is that -- The human
18 health standards there.

19 MR. BUKANTIS: Mr. Anderson, Chairman Russell, I
20 think we've got a number of substantial changes, because I
21 know some of those -- well, some of the numbers are
22 completely new. And --

23 MR. ANDERSON: I just haven't got through the
24 entire 40 pages of standards, I guess.

25 MR. BUKANTIS: Yeah, there's a lot of detail

1 there.

2 CHAIRMAN RUSSELL: I kind of get a queasy stomach
3 when you start through WQB7.

4 MR. BUKANTIS: You know, it makes good bedtime
5 reading.

6 MS. SHROPSHIRE: I have a question.

7 CHAIRMAN RUSSELL: Is that Heidi or Robin?

8 MS. SHROPSHIRE: It's Robin.

9 CHAIRMAN RUSSELL: Robin.

10 MS. SHROPSHIRE: This is sort of a two-part
11 question, but with these changes, are you -- I was curious
12 if you're -- in terms of the laboratories, the duties,
13 analyses, if there's any requirement that they have to be
14 certified. And I guess I'm not really sure what being
15 certified means or how you would determine that.

16 And then the second part is, do you anticipate that
17 there's going to be labs in the state that won't be able
18 to do these new analyses or able to detect at the levels
19 that the new levels are?

20 MR. BUKANTIS: That might be something that we
21 might need to get back to you on, but we've had no
22 indication that there's an issue with this. And I will
23 say that we have had this package -- We worked with the
24 Western Environmental Trades Association to get out a
25 draft version of this package and got the feedback that no

<p style="text-align: right;">Page 26</p> <p>1 one saw any issues. So I would say we implicitly 2 addressed that, if you will, although we didn't explicitly 3 ask for that feedback. 4 And the other piece of that is, I think two triennial 5 reviews ago, we got some pretty focused feedback on 6 proposed detection limits and worked with the labs to work 7 out what we have, and we didn't get anything like that 8 this go-around. 9 CHAIRMAN RUSSELL: Well, isn't it -- I mean, 10 historically, haven't some of the limits been set based to 11 what level we can detect to? 12 MR. BUKANTIS: Yes. And I think that, 13 Mr. Chairman, the things that come to mind -- or thing 14 that quickly comes to mind, is, I know on some of those 15 metal limits, when you get in waters -- some of the metals 16 that are hardness dependent for their toxicity, when you 17 get into waters that have very low hardness values, 18 sometimes those values are below detection limits. And 19 so, yeah, to get what's seen as the appropriate level of 20 protection -- I guess what that -- To back up a little 21 bit, what that does support is, if you have those sorts of 22 numbers on the books, at least you can do some 23 mathematical calculations to get down to what would be the 24 appropriate level of protection, if you will. 25 I don't know if that helped. Does that help?</p>	<p style="text-align: right;">Page 28</p> <p>1 certification potentially, either through the NELAC 2 certification, which is the National Environmental 3 Laboratory Accreditation Council, or having an acceptable 4 quality system that could show that these compounds could 5 be analyzed effectively with acceptable precision and 6 accuracy and independent oversight of the quality 7 assurance system that the laboratory would have. 8 MS. SHROPSHIRE: That answers my question. 9 Thanks. 10 CHAIRMAN RUSSELL: I know on the bio side, 11 there's some pretty significant certification 12 requirements, but I don't know about the chemistry side. 13 MR. LIVERS: Mr. Chairman, before we proceed with 14 questions, I think we had someone recently join the 15 teleconference. And just a couple things, just for 16 orientation, if they haven't figured it out already, we're 17 on IIIA3, which is the water quality standards, the 18 triennial review. 19 And I would ask if whoever joined could please, just 20 for the record, identify themselves. 21 MR. PEARSON: Yeah. Mark Pearson, with the 22 Greater Yellowstone Coalition. 23 MR. LIVERS: Thanks, Mr. Pearson. Appreciate it. 24 CHAIRMAN RUSSELL: Further questions the Board 25 may have of the Department?</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. SHROPSHIRE: The first part of the question 2 in terms of labs being certified -- you know, I don't know 3 how it's related to this, necessarily, but I was curious. 4 If there's a simple answer to that, I was curious if labs 5 are required to be certified and how they go about doing 6 that. 7 MR. BUKANTIS: Yeah, I'm sorry, I dropped that 8 piece, Member Shropshire, but we've got someone here, 9 Mark Bostrom, the Water Quality Planning bureau chief, 10 that can help with that piece. 11 MR. BOSTROM: For the record, my name is 12 Mark Bostrom; I'm bureau chief of the Water Quality 13 Planning Bureau. 14 Chairman Russell, Ms. Shropshire, prior to becoming 15 bureau chief, I was the quality assurance officer for the 16 Water Quality Planning Bureau. One of the issues, I 17 guess, that there is with the structure of certification 18 in Montana is that the only certification that's granted 19 by a Montana entity is the drinking water certification 20 through the Department of Health. So the parameters that 21 would be certified are exclusive to Safe Drinking Water 22 Act parameters. 23 The DEQ-7 parameters include numerous compounds that 24 aren't a part of that Safe Drinking Water Act, and for 25 that, we would rely upon laboratories having a broader</p>	<p style="text-align: right;">Page 29</p> <p>1 MS. SHROPSHIRE: Chairman Russell, just a 2 comment, if you don't mind. 3 CHAIRMAN RUSSELL: Sure. 4 MS. SHROPSHIRE: I know that sometimes, in terms 5 of doing these for the sampling side or the analysis, it's 6 not entirely clear when something is supposed to be a 7 dissolve component or totally recoverable, and I wasn't 8 sure if that -- if there has been any clarity to that in 9 the footnotes. I didn't look to see if that was clear or 10 not. But I guess more a suggestion or comment, that 11 sometimes it's confusing to people, when they're 12 collecting the samples, whether or not it should be 13 dissolved or totally recoverable. 14 So that's just more of a comment rather than a 15 question. 16 MR. LIVERS: That's been noted. 17 Thanks, Mr. Chairman, Ms. Shropshire. 18 CHAIRMAN RUSSELL: All right. Any further 19 questions? 20 MR. WHELAN: Mr. Chairman, this is Joe Whelan. 21 CHAIRMAN RUSSELL: Yes. 22 MR. WHELAN: A question for Mr. Bukantis. 23 First, Mr. Bukantis, I want to thank you for the 24 PowerPoint and for the context. I'm not going to pretend 25 to know precisely what it is that we're asked to decide</p>

1 here today. But I do know that the mission of DEQ and
2 this board is different than the mission of the Department
3 of Public Health and Human Services. So I guess my
4 question goes to aquatic life standards.

5 In going through these 46 tables of roughly
6 300 different elements or chemical compounds, you know, we
7 have headings for aquatic life standards. Roughly a third
8 of those compounds are carcinogenic. Are you telling us
9 that if we initiate rulemaking based upon the proposal,
10 that aquatic life standards are going to become -- You
11 know, without some precise numerical standards or a
12 narrative standard, can we be assured that the
13 environmental quality for aquatic life is going to be
14 maintained if we initiate this rulemaking?

15 MR. BUKANTIS: Thank you for compliment,
16 Mr. Whelan.

17 Mr. Whelan, Mr. Chairman, I might step back a little
18 bit and just try to summarize what we're proposing.
19 Typically in DEQ-7, in many cases, we have standards for
20 both human health and aquatic life, and both those
21 standards remain on the books. The modifications to the
22 footnotes, for example, for the aquatic life standards in
23 no way change the human health standards and how we might
24 handle those that are carcinogens.

25 And I guess the other thing I'll throw in there -- And

1 help me, Mr. Whelan, if I'm not getting at the heart of
2 what you're trying to understand here. But in many cases,
3 I'll point out, too, that for certain compounds, the
4 critters that live in the water are more sensitive to
5 those compounds than people occasionally drinking it, if
6 you will. So sometimes those standards provide a higher
7 level of protection, if anything. Because when we're
8 looking at permitting or writing TMDLs, what we tend to
9 focus on -- or I'd say the normal thing to focus on is the
10 most protective of those numbers when you have a couple
11 different numbers in place for different uses.

12 Does that help? Is there something...

13 MR. WHELAN: It does. And it sounds as though
14 we're focusing on the drinking water component, but I
15 think we all understand that there's various forms of
16 aquatic life in the food chain and that they ultimately
17 end up in the body of the fish, and as we eat fish, we
18 consume what it is that the invertebrates are eating.

19 So I guess my central concern is that in making this
20 decision, we're being mindful of the fact that those
21 elements that are listed in these tables ultimately
22 provide some residue that can be absorbed, yes, for human
23 health, but also for, you know, biodiversity. And so I
24 guess I was looking for a little bit --

25 As sort of a follow up, if I may, Mr. Chairman, there

1 was a comment in the proposal that the State of Montana
2 did not have the resources in order to develop numeric
3 standards for aquatic life. And I'm wondering if maybe
4 you can walk us through the development of numeric
5 standards for aquatic life at the federal level and how
6 they would relate to, you know, our needs here in this
7 state.

8 MR. BUKANTIS: Sure, I'd be happy to do that. In
9 terms of, you know, walking you through in detail, that
10 might be best handled as a briefing at another meeting,
11 but I'll try to give you the outline, if you will, because
12 it's a pretty complicated process.

13 Because what we're talking about is, as you've noted,
14 Mr. Whelan, hundreds of chemical compounds. Some of these
15 are complex organics or metals or metaloids, if you will,
16 and there's a bunch of toxicology lab work that's done.
17 Typically, some of the more populated states, like
18 New Jersey and California, have -- I'm not sure, with the
19 current budget crisis, if they're still maintaining, but
20 they've, in the past, had large staffs of toxicologists in
21 labs where they do a bunch of different tests on each of
22 these compounds on a whole range of different organisms,
23 including things like invertebrates, fish, you know, trout
24 as well as non-trout sort of species, different levels of
25 organisms in the food chain that may also include plants.

1 So there's an EPA protocol, if you will, on how all
2 that data is pulled together, and it includes building in
3 some buffer in the assumptions to provide some extra
4 protection, if you will. And so EPA pulls together all of
5 this science, which may be done in federal labs or state
6 labs or university labs, pulls it together into a document
7 that might be, say, an inch thick or so, sends that out
8 for public review around the country, pulls back the
9 public review, and then ultimately may publish a final
10 document, assuming they think it's appropriate, and get
11 that out.

12 One thing I will comment while we're on this is,
13 Rod McNeil, who works for us on this sort of thing, came
14 back from a national meeting recently on exactly this
15 issue. And part of the reason why you see a lot of -- a
16 fair number of new numbers that we're proposing to adopt
17 as national recommended water quality criteria is, EPA has
18 ramped up its efforts in terms of addressing the many
19 compounds out there.

20 So EPA does a lot of this science. This would be
21 extremely expensive for the State to do on any of these
22 compounds, and, if you will, they kind of produce, again,
23 what would be kind of the gold standard. And given that
24 the Federal Government has done all this work, often in
25 conjunction and support with some of the wealthier states,

1 if you will, and universities, then it's very easy for us
2 to take these numbers, which we have the best available
3 science out there, to help maintain appropriate levels of
4 protection for our citizens and our resources.

5 MR. WHELAN: Okay. Thank you very much. That
6 addresses my concerns, Mr. Bukantis.

7 CHAIRMAN RUSSELL: Well, I'm going to pile on
8 that for a minute. Generally, there's -- When you look at
9 WQB7, oftentimes a pollutant won't have the aquatic life
10 standard, acute or chronic, but that doesn't mean -- but
11 if you go to the human health standard, and there's a
12 potential that there is some interrelationship with
13 drinking water, those would be the standards, right? I
14 mean, you could not have higher standards in your water
15 than the human health standards.

16 MR. BUKANTIS: Well, Mr. Chairman, members of the
17 Board, the aquatic life standard, if there was one, may be
18 a larger number, but in many cases we don't necessarily
19 have numbers for the aquatic life standard because it's so
20 much work to establish those numbers; it just hasn't been
21 done yet. And some of the numbers that we have in there,
22 remember, is because of Montana being very progressive
23 with addressing some of these pesticides.

24 So if, for example, you are noting a pesticide where
25 the Board has adopted a number under the Montana Ag

1 Chemical Ground Water Protection Act, it may be that
2 because of Montana saying, Hey, we in effect have
3 discovered that some of these pesticides are in our
4 waters; we don't want to wait for EPA to develop a
5 national recommended water quality criteria and go through
6 all that work, we want to protect our citizens now and we
7 want the best number on the books. And then we then go
8 work with them to get the best science that's out there
9 that maybe hasn't made it as far as national recommended
10 water quality criteria.

11 So in many cases, we'll have those pesticide numbers
12 on the books to protect human health and have those for
13 ground water and surface water, but we don't have a good
14 number for aquatic life. So we just don't have them there
15 yet.

16 CHAIRMAN RUSSELL: Well, if you found -- Let's
17 say you found a pesticide that doesn't have an aquatic
18 life standard above the human health standard. That's
19 problematic in that water body.

20 MR. BUKANTIS: Yes. And we would address --

21 CHAIRMAN RUSSELL: Even without an aquatic life
22 standard, there's an issue with a pollutant in that water.
23 And oftentimes the aquatic life standards, and I don't
24 have one in front of me, but are quite a bit lower than
25 the human health standards, and it's that -- You know, one

1 of your first comments in responding to Joe Whelan's
2 request was that; that if you have it, they can generally
3 be lower than the human health standard. The only one
4 that I've found is odd is dieldrin; the aquatic life
5 standards are actually higher than the human. I'm not
6 sure where that one is. That wasn't Montana, that was
7 a -- But if you kind of thumb through WQB7, you can find
8 that oftentimes the aquatic life standards are lower than
9 the human health standards.

10 MS. SHROPSHIRE: Copper is another one.

11 MR. BUKANTIS: Yes.

12 MR. WHELAN: Mr. Chairman, when you use the terms
13 "higher standard" and "lower standard," are you saying
14 that a lower standard is less stringent than that that
15 would be required for human health or more stringent?

16 CHAIRMAN RUSSELL: Less. A lower standard would
17 be less restrictive.

18 Any other questions for Bob?

19 MS. SHROPSHIRE: Mr. Chairman, I actually do have
20 one other question, if you don't mind.

21 CHAIRMAN RUSSELL: Go ahead, Robin.

22 MS. SHROPSHIRE: If you go to the tables under
23 the -- there's the American Chemical Society numbers and
24 the NIOSH and the SAX numbers, and it looks like you've
25 done some tidying up of that.

1 MR. BUKANTIS: Yes.

2 MS. SHROPSHIRE: And I guess in terms of -- I
3 mean, is that the intent, is that it represents
4 specifically, say, this is a NIOSH number or this is a
5 whatever number, that people are supposed to know which
6 number it is?

7 MR. BUKANTIS: Well, Ms. Shropshire and
8 Chairman Russell, basically, Rod, who is a real science --
9 chemo geek, if you will, dug into this in great detail and
10 tried to clean this up and organize it and did yeoman
11 service in trying to make this so it would be a good,
12 solid technical document, so someone else who is also very
13 much into the chemistry and knows about how to search on
14 that kind of stuff could -- you know, that we'd have those
15 things correct and cleaned up and readily computer
16 searchable, if you will, to kind of make it more helpful
17 for anyone in the interested public.

18 MS. SHROPSHIRE: Could I follow up, Mr. Chairman?

19 CHAIRMAN RUSSELL: Certainly.

20 MS. SHROPSHIRE: And I think that's great. But
21 on some of them, there's only one number, and maybe to the
22 untrained eye, it's not clear which one of those
23 categories it falls under.

24 MR. BUKANTIS: Yeah. You know, I'm groping here.
25 Maybe I should ask Rod, who really deserves credit for all

1 this work anyways, to come up here and answer that
2 question.

3 MR. McNEIL: Good morning, Mr. Chairman and board
4 members. My name is Rod McNeil, and I am in the
5 Department of Environmental Quality Water Quality Section.

6 In answer to your question, ma'am, the numbers are
7 assigned by different groups. The CASRN number is
8 required by law. It's set by the Federal Government.
9 It's part of the Chemical Abstract Services Regulatory
10 Number. There's over a million chemicals that are now
11 recognized under the CASRN number system.

12 In terms of which number means what, not all compounds
13 get number assignments. The SAX code system is specific
14 for human health in an industrial environment, and so only
15 about five percent of all the compounds get SAX
16 assignments. If you use the numbers as they are currently
17 provided in the search service, online or whatever, the
18 number will come up automatically as assigned by NIOSH or
19 CASRN. But if you look at the numbers physically, the
20 NIOSH number -- or, I'm sorry, the CASRN number always has
21 a three-section partition, so that's why we did away with
22 the running numerics, because that doesn't identify it as
23 a CASRN number.

24 So I'm looking at dieldrin here. 60-57-1 identifies
25 that one chemical compound.

1 MS. SHROPSHIRE: I'm sorry, hold on one second.
2 I want to catch up with you here and get to that one. I'm
3 sorry, I apologize.

4 MR. McNEIL: Okay. That's on page 25, if that
5 will help.

6 MS. SHROPSHIRE: Okay, I'm with you. Thank you.

7 MR. McNEIL: Sure.

8 The NIOSH number is what we call a string number, so
9 it's a long number, uninterrupted. Again, if you use that
10 citation in a search index online, you'll get a NIOSH
11 citation. The SAX number has an alphanumeric prefix,
12 which, if you break it down and look up the code online,
13 it will tell you in what type; is it in aerosol, is it in
14 solution, et cetera. So the number conveys some direct
15 information in and of itself.

16 If you'll look a little further down that page, you'll
17 see difenoconazole, which is one of the new pesticides
18 that we have listed. There's a single number there. In
19 order for it to be produced and sold in the United States,
20 it has to have a CASRN number, and that's the only number
21 that has yet been assigned.

22 So that's the reason for some compounds having one
23 number, others having two, and sometimes even three
24 numbers. Basically, it reflects how old the compound is.
25 An older compound that's been used in industry longer will

1 have three numbers; a newer compound that's just been
2 produced will only have a CASRN citation.

3 Does that address your --

4 MS. SHROPSHIRE: No, I think that's great. And I
5 really appreciate the focus to that detail and tidying
6 this up. I certainly found your explanation helpful. And
7 maybe, you know, without adding too much language to the
8 footnotes, but, you know, maybe putting some of what you
9 said in the footnotes, if it's not already there, would be
10 helpful for people that are using that. So thank you.

11 MR. McNEIL: You're welcome, ma'am.

12 CHAIRMAN RUSSELL: Further questions?

13 (No audible response.)

14 CHAIRMAN RUSSELL: I'm going to change it up a
15 little bit, because I don't want to lose the potential of
16 where we're going to be with a motion. Is there anyone in
17 the audience that would like to speak to this matter
18 before the Board takes up -- takes this matter up?

19 MR. LIVERS: We do have someone here,
20 Mr. Chairman.

21 CHAIRMAN RUSSELL: All right.

22 MR. ALLEN: Chairman Russell and members of the
23 Board, for the record, my name is Don Allen, and I'm here
24 on behalf of the Western Environmental Trade Association.

25 I just want to mention, first of all, that we're very

1 appreciative of the cooperation of Bob and Rod and others
2 on the staff in helping us get a handle on what was really
3 coming with these rules. And we did have an opportunity
4 to try to understand them and to circulate them to a wide
5 variety of people to see what their concerns were. This
6 was an earlier version, which included other changes, as
7 well, and so they have not seen this particular version.
8 But, actually, I don't think there are any changes,
9 really, in the main part of the rules from what was there
10 before. So I don't anticipate any opposition to these,
11 but I could be wrong. But, hopefully, you know, we were
12 able to explain to folks or have explanation from them,
13 and I just wanted to say that we appreciate the work that
14 Bob and Rod did on this; it was good.

15 So the only reason I'm up here is for one thing. And
16 I did tell Bob that I would do this. One of the things
17 that I'm concerned about is not the rules themselves, but
18 the decision of the Department to include comments on
19 other issues as part of the rulemaking publication itself.
20 I think this is a dangerous precedent. I think it's the
21 wrong way to do it. I think that what we've encouraged,
22 like we do with the Clean Air Act Advisory Committee,
23 which has worked very well, is to have those discussions
24 and input from the stakeholders in an informal situation
25 rather than to ask that they be commented on with the

1 rules.

2 I can't remember -- maybe this has happened before,
3 but I can't remember this being done on rulemaking before,
4 where you commented on other things you might have a
5 concern about. To me, it just takes away from the
6 concentration on the rules themselves, and I think it
7 confuses the issue. I just don't think it's the right way
8 to do it.

9 So from the standpoint of setting a precedent that I
10 think would not be good, I just wanted to make that point,
11 Mr. Chairman. And, again, at this point at least, and
12 that could change, but I don't anticipate really any
13 problems with the rules themselves. But I think the other
14 issue is something that the Board should take a careful
15 look at in saying, Yeah, we want to, in the future, go
16 ahead and do this. I just see it happening over and over
17 again. I just don't think it's the way to proceed.

18 So with that, I appreciate the opportunity to make the
19 comments, and I would just put that on the table for your
20 consideration.

21 Thank you, Mr. Chairman.

22 CHAIRMAN RUSSELL: Thank you for your comment,
23 Don. Thanks for your comment.

24 Any other questions or comments to the Board?

25 MR. LIVERS: There are additional comments,

1 MS. LINDLIEF-HALL: And we support the 45-day
2 public comment period.

3 Thank you.

4 CHAIRMAN RUSSELL: Further comments?

5 MR. LIVERS: Mr. Chairman, this is Tom Livers in
6 Helena. Just for the benefit of Becca, who just came on,
7 we are in public comment on item IIIA3, water quality
8 standards.

9 MS. FISCHER: Great.

10 CHAIRMAN RUSSELL: Someone from Northern Plains
11 just joined us. Did you want to speak to this matter?

12 MS. FISCHER: Not knowing what's quite going
13 on -- We're on IIIA, is what you said?

14 MR. LIVERS: IIIA, No. 3.

15 MS. FISCHER: Yeah. I guess the main reason, I
16 guess, I'm on today is just because the Board is looking
17 at -- or accepting more information on the EC and SAR
18 standards. And we are, you know, just here to make sure
19 that they don't get reopened and, more, that it's just
20 accepting new information. Because, you know, I'm sure
21 some of the longtime board members have known that in 2003
22 and in 2006, the Board looked at the standards and
23 approved them in terms of coalbed methane.

24 So that's why I'm on, if that helps.

25 CHAIRMAN RUSSELL: All right, thank you.

1 Mr. Chairman.

2 MS. LINDLIEF-HALL: Mr. Chairman, members of the
3 Board, my name is Brenda Lindlief-Hall. I am here on
4 behalf of the Tongue River Water Users Association.

5 I would also like to commend the Department,
6 Bob Bukantis, and everybody that has spent time on this.
7 I can't -- I probably shouldn't be speaking for Mr. Allen,
8 but it seems to me that perhaps his comments go to the
9 issue of the public comment -- or request for review and
10 comment, and probably in particular regarding EC and SAR.
11 Because those are water quality standards and because it
12 is time for that triennial review process -- those
13 standards as, you know, were last dealt with in 2006 -- I
14 believe this is an appropriate time and place to address
15 those issues, to take additional comment. And I think
16 that the 45-day time period is very appropriate. I think
17 that everybody that is concerned about this issue has been
18 apprised. They will be paying attention. They know that
19 this is coming and that this is part of this rule package.
20 So I don't see that it sets a dangerous precedent. It
21 seems absolutely appropriate in light of the overall
22 triennial review process.

23 So with that, I would just end with saying that we do
24 support the review and comment period and the 45-day --

25 RECORDING: Becca Fischer is joining the meeting.

1 And I don't know if we got your name. It kind of got
2 cut off when you got on.

3 THE WITNESS: Oh, sorry. Becca Fischer.

4 CHAIRMAN RUSSELL: Thanks, Becca.

5 Other questions, comments to the Board?

6 MR. LIVERS: No additional comment here in
7 Helena, Mr. Chairman.

8 CHAIRMAN RUSSELL: Okay.

9 MR. WHELAN: Mr. Chairman.

10 CHAIRMAN RUSSELL: Joe.

11 MR. WHELAN: One final question, and maybe
12 Mr. Bukantis can address this.

13 In terms of working with other agencies at the State,
14 Department of Agriculture, by statute, is required to
15 inform DEQ when there are new pesticides that are being
16 introduced into Montana watersheds. My question is, with
17 respect to the development of these aquatic life water
18 standards or consideration of the change or revision to
19 those standards, are there other departments within the
20 State, such as Department of Public Health and Human
21 Services or Fish, Wildlife & Parks or DNRC, that are also
22 consulted by the DEQ in this process of rulemaking?

23 MR. BUKANTIS: We do not explicitly consult those
24 other agencies in the process of this rulemaking. We are
25 kind of, I don't know what the right word is, but tied at

1 the hip perhaps, in terms of the Montana Ag Chemical
2 Ground Water Protection Act implementation, to work
3 closely with the Department of Ag. And a basic piece of
4 that is regular communication and giving us the
5 information to move forward with these other standards.

6 We do have regular coordination meetings with Health
7 and Human Services, for example. But in terms of the
8 basic science of setting the numbers down, the sequence
9 is, Department of Ag detects the standards, they notify
10 us, we work with EPA to get the best updated science, put
11 those numbers in place, and those numbers are there for
12 anyone to use -- you know, for the Board -- ask the Board
13 to put those numbers in place, and then those numbers are
14 there for anyone to use for evaluating water quality.

15 MR. WHELAN: Okay. Thank you, Mr. Bukantis.

16 MR. BUKANTIS: You're welcome.

17 MR. ANDERSON: This is Larry Anderson.

18 I'm studying this as we go, and I notice that with
19 respect to the aquatic life standards, it says that the
20 numeric values for those standards require a consensus of
21 information within the scientific community. Does that
22 mean that the standards themselves are consensus standards
23 or that they require a consensus of information? And with
24 respect to both of those elements, how is the consensus of
25 information and the decision respecting those standards

1 arrived at?

2 MR. BUKANTIS: Well, in hindsight and in light of
3 that question, I'm not sure if consensus is perhaps the
4 best way to characterize it. I think there may be some
5 consensus in detail. But, basically, EPA has a formal
6 process where, you know, for example -- Well, I'll use a
7 hypothetical example.

8 It may be that there's been six studies done on
9 dieldrin, for example, using daphnia magna as a test
10 organism, and three on rainbow trout, four on freshwater
11 muscles. All that stuff is pulled together and then -- So
12 in a sense, there's, you know, a consensus of science, but
13 all that stuff is pulled together in a fairly formalized
14 and laid-out fashion so that, you know, basically, EPA
15 would calculate what's called a species mean value based
16 on any number of studies, and then pulling all the species
17 together into the genera -- I'm using scientific terms
18 maybe too much, but, basically, there's a formal way to
19 pull together all the data and information and to come out
20 with a number that is, by design, statistically aimed at
21 protecting 95 percent of all the critters out there, and
22 then a margin of safety is pulled in.

23 So a little more detail, you know, "consensus" was a
24 term we used in there, but it would take a separate manual
25 to spell out in detail what actually goes into this. In

1 fact, EPA has those out there.

2 MR. ANDERSON: Thank you.

3 MR. BUKANTIS: You're welcome.

4 CHAIRMAN RUSSELL: Further questions for the
5 Department?

6 Just jurisdictionally, WQB7 is a matter solely for the
7 Board, is that correct? I mean, that's under our
8 jurisdiction, but some of these incorporations go into
9 areas where we don't have rulemaking authority, like
10 underground storage tanks.

11 MR. LIVERS: Mr. Chairman, I'm going to ask
12 Mr. North to speak to this.

13 CHAIRMAN RUSSELL: Okay.

14 MR. NORTH: Mr. Chairman, members of the Board,
15 John North, chief legal counsel, DEQ.

16 WQB7 is adopted by the Board under the Water Quality
17 Act. In some of the other acts, such as the Underground
18 Storage Tank Act, it also gets adopted by reference and
19 serves as, for example, cleanup levels. But the prime
20 authority to adopt WQB7, because they are water quality
21 standards, is with the Board.

22 MR. LIVERS: And, Mr. Chairman, one point of
23 clarification for possibly some of the newer board
24 members: WQB7 is the historic name, and it's been
25 referenced by both board members and staff, but DEQ-7 is

1 essentially the same document. The reference was changed
2 a few years back.

3 CHAIRMAN RUSSELL: I'm probably the only one on
4 the board that was there when the reference changed. It's
5 been a while, actually, Tom.

6 MR. LIVERS: I was being kind, Mr. Chairman.

7 CHAIRMAN RUSSELL: I probably had dark hair when
8 we did that one.

9 So, hypothetically, let's say we do something and the
10 Department, because they have some rulemaking under this,
11 don't like it. We're not going to have some demon past
12 type thing going on, are we?

13 That's for you, John.

14 All right, no one is going to bite on that one.

15 MR. LIVERS: Well, we can offer a response, if
16 you'd like, Mr. Chairman.

17 CHAIRMAN RUSSELL: No, probably don't need to sit
18 on that one.

19 I guess we need to get on with this. It's going to be
20 interesting how comments that aren't specifically being
21 amended might be put into a document. I guess that's just
22 for the triennial review. And that takes public comment,
23 correct?

24 MR. LIVERS: Correct, Mr. Chairman. And we will
25 have a public comment period and a public hearing on the

1 DEQ-7 changes.

2 CHAIRMAN RUSSELL: Well, with all that mind, I
3 will entertain a motion to initiate rulemaking on this
4 matter, and, at this time, I'll entertain a motion to
5 appoint a hearings officer. Katherine, if you're
6 available.

7 MS. ORR: Yes, I am, Mr. Chairman.

8 CHAIRMAN RUSSELL: And also adopt kind of a
9 different schedule than normal on the matter that's been
10 proposed by the Department.

11 MR. LIVERS: The 45-day comment period, yes,
12 Mr. Chairman.

13 CHAIRMAN RUSSELL: Yes.

14 MR. WHELAN: Mr. Chairman.

15 CHAIRMAN RUSSELL: Joe.

16 MR. WHELAN: Joe Whelan; I would move to initiate
17 rulemaking, to appoint Katherine Orr as our hearings
18 examiner, and to adopt the 45-day comment period.

19 CHAIRMAN RUSSELL: All right, it's been moved.
20 Is there a second?

21 MR. MILLER: This is Miller; I'll second it.

22 CHAIRMAN RUSSELL: Seconded by Marv. Further
23 discussion?

24 (No audible response.)

25 CHAIRMAN RUSSELL: Hearing none, all those in

1 favor, signify by saying "aye."

2 (Vote.)

3 CHAIRMAN RUSSELL: Opposed.

4 (No audible response.)

5 CHAIRMAN RUSSELL: Motion carries.

6 How is our court -- Cheryl, how are you doing?

7 MR. LIVERS: Thanks, Mr. Chairman. I appreciate
8 your consideration. I think, for our court reporter's
9 benefit, maybe a five-minute break, which is code for not
10 to exceed ten.

11 CHAIRMAN RUSSELL: All right. We'll stay on the
12 line.

13 MR. LIVERS: Sounds good. Thank you.

14 (A brief recess was taken.)

15 CHAIRMAN RUSSELL: Next items on the agenda are
16 some repeal, amendment, or adoption of final rules. No. 1
17 is to amend ARM 17.38.106 regarding engineering plan fees.
18 Tom.

19 MR. LIVERS: Okay, Mr. Chairman, we'll have an
20 encore performance by Mr. Eugene Pizzini.

21 MR. PIZZINI: Good morning, Chairman Russell and
22 members of the Board. Again, for the record, my name is
23 Eugene Pizzini; I'm the rules expert for the Public Water
24 Supply Section.

25 As part of the Department's primacy agreement with the

1 USEPA for implementation of the requirements of the Safe
2 Drinking Water Act, the Department is required to have a
3 program in place to assure that the design and
4 construction of new or substantially modified public water
5 systems will be capable of compliance with the state
6 primary drinking water regulations. That's in 40 CFR
7 142.10.

8 Montana Code Annotated 75-6-103, 104, and 112 set
9 requirements for plan and specification review for the
10 BER, the Department, and the regulated public
11 respectively. The Legislature requires the Department to
12 collect fees commensurate with the cost of those reviews.
13 75-6-108(3), MCA, states: "The board shall by rule
14 prescribe fees to be assessed by the department on persons
15 who submit plans and specifications for construction,
16 alteration, or extension of a public water supply system
17 or public sewage system. The fees must be commensurate
18 with the cost to the department of reviewing the plans and
19 specifications." Legislative audits conducted in fiscal
20 year 1999-2000 and fiscal year 2001-2002 concluded the
21 Department does not recover costs commensurate with the
22 cost of doing those reviews.

23 In December 2005 and again in July of 2007, the Board
24 initiated rule amendments to the engineering fees to
25 address the issues identified in the fiscal year '99-2000

1 and fiscal year '01-'02 legislative audits. Because of
2 the amount of increase needed, and with input from the
3 public water supply focus group, the Department decided to
4 raise in the -- excuse me, decided to phase in the
5 increase over a few years.

6 Notice was sent to all public water supply owners,
7 operators, consulting engineers that had submitted plans
8 and specifications to the Department in the last three to
9 five years. Of the 4,000 notices -- excuse me, of the
10 approximately 4,000 notices sent out, the Board received
11 two relevant comments in 2005 for specific line items in
12 the proposed fee schedule and adjusted the schedule to
13 accommodate those comments. Of the approximately 4,000
14 notices sent out for the 2007 proposed amendments, no
15 comments were received during the public hearing.

16 The Board did receive two written comments. One
17 comment suggested the Department go to a straight hourly
18 rate, and although the Department has considered that as
19 an option in the past, there are inherent problems with
20 that that have caused the Department to dismiss that as a
21 viable option. The second comment was outside the scope
22 of rule writing.

23 At its December 11th, 2009 board hearing, the Board of
24 Environmental Review initiated rulemaking to amend the
25 engineering fees to recover fees commensurate with the

1 cost of performing those reviews. Prior to proposing the
2 amendments to the Board, the Department presented the
3 proposed amendments to the public water supply focus
4 group, a group made up of municipal and private regulated
5 systems, consulting engineers, Montana Rural Water,
6 contract operators, and department staff. No significant
7 negative comments were received from group members, and
8 the consulting engineers present stated the rates were
9 consistent with their estimated costs for performing the
10 type of work involved.

11 On January 13th, 2010, the Board held a public hearing
12 regarding the proposed engineering fee amendments. A
13 notice of the public hearing was sent to the owners and
14 operators of all public water supply systems in the
15 Department's database, all county sanitarians, all
16 engineering consulting firms and owners/developers that
17 had submitted plans and specifications for department
18 review in the last three years. Again, approximately
19 4,000 notices were sent. The public comment period closed
20 January 21st, 2010. No comments were received through the
21 comment period, either written or verbal.

22 Therefore, the Department recommends adoption of the
23 proposed amendments as set forth in the notice of the
24 public hearing and proposed amendments.

25 CHAIRMAN RUSSELL: Thanks, Gene.

1 mind, I would like to discuss the proposed fee increases
2 in Chapter 8, 30, and 40 for charges from 10 cents to
3 25 cents per lineal foot. This is a 250 percent increase.
4 These chapters need some revisions. For an example, a
5 five-mile review for a large community is much more
6 complex than a five-mile review for a rural system, such
7 as Tiber County Water District, Hill County, Loma, Vaughn,
8 Carter, Tri-County, Dry Prairie, Rocky Boy, Northcentral
9 Project, and Fort Peck. These are all rural community
10 systems that are basically farming communities.

11 I would also like to give some examples with the
12 increase. And I'm using five miles. At 10 cents, at the
13 present cost, it would be \$2,640; a 25-cent increase is
14 \$6,600, roughly a \$4,000 increase. And we all know that
15 our infrastructures -- this is not a one-time deal, this
16 will be forever. We always have to replace our
17 infrastructures over time. So if we had a 20-mile
18 project, that would be a 16,000 increase. And the
19 ratepayers have to pay that.

20 So with that in mind, I would ask the Board at this
21 time to not adopt this rule, ask the PWS Program to make
22 some amendments and corrections to the distribution side
23 before a final adoption.

24 Thank you.

25 CHAIRMAN RUSSELL: Thanks, John.

1 Questions for Mr. Pizzini?

2 (No audible response.)

3 CHAIRMAN RUSSELL: Is there anyone in the general
4 audience that wants to speak to this before the Board
5 takes action?

6 MR. LIVERS: We do have someone here,
7 Mr. Chairman.

8 CHAIRMAN RUSSELL: So we'll move forward.

9 MR. LIVERS: He's coming to the podium now, so if
10 you're ready for public comment, we can go.

11 CHAIRMAN RUSSELL: All right. Public comment.

12 MR. CAMDEN: For the record, my name is
13 John Camden; I'm with Montana Rural Water Systems.

14 Montana Rural Water supports the purpose of the fee
15 increase by the PWS Program to have engineering plan
16 review. We value the need for plan review in that it's
17 necessary to protect the systems and consulting firms.
18 However, Montana Rural Water does not agree with all the
19 proposed fee increases. We would like to see no increases
20 greater than 75 percent, and if it is needed, we would
21 like justification to the Board on why.

22 I would like to give you some economic facts from EPA
23 and AWWA. In the next 30 years, it is estimated that the
24 US infrastructures, distribution, storage systems will
25 cost \$3 trillion to repair and replace. With that in

1 It's a little awkward to not have a formal response to
2 a comment by the Department, and I feel real awkward
3 asking the Department to defend a rule that no one, during
4 the public comment period, provided a comment on. So
5 unless the Board feels differently, I'm going to move on
6 with this and take some more public comment, if it's out
7 there.

8 (No audible response.)

9 CHAIRMAN RUSSELL: You know, it's not that it
10 can't be resolved at a later date, or you can ask for
11 rulemaking specific to that issue.

12 MR. LIVERS: Mr. Chairman, I do not see
13 additional public comment here in Helena.

14 CHAIRMAN RUSSELL: All right. Well, I'll
15 entertain a motion to adopt the rule as noticed, accept
16 the presiding officer's report, the Department's 521 and
17 311 analysis, and I guess that's it, since there's no
18 department comments.

19 MS. SHROPSHIRE: Mr. Chairman, this is Robin; I
20 so move.

21 CHAIRMAN RUSSELL: It's been moved by Robin. Is
22 there a second?

23 MS. KAISER: This is Heidi; I'll second.

24 CHAIRMAN RUSSELL: It's been moved and seconded
25 by Heidi. Further discussion?

1 MS. KAISER: Joe, this is Heidi.

2 CHAIRMAN RUSSELL: Heidi.

3 MS. KAISER: You know, I'm all for going forward
4 with this, but the gentleman that spoke, John, I believe
5 it was, I think had a valid concern, a valid comment.
6 It's unfortunate that it was submitted after the comment
7 period. But I would recommend to the Department that they
8 look into this for future changes into the distribution.

9 MR. LIVERS: Mr. Chairman, Ms. Kaiser, this is
10 Tom Livers. We can certainly do that, and would have had
11 this comment come up during the public comment on the
12 rulemaking.

13 You know, typically, as Mr. Pizzini lined out, we'll
14 look for a starting point that reflects our costs, and, in
15 this case, it's maybe even more significant given the fact
16 that we've had legislative audits saying we have to base
17 our cost recovery -- our rate structure on the
18 commensurate cost of review. So, clearly, that's what we
19 did when we put this together and looked at the 25 cents
20 per lineal foot. And in any rulemaking, we certainly take
21 into account the position and interests of the various
22 parties, and sometimes there are negotiations that cause
23 us to move off of that, even though in this case we've got
24 kind of a clear statutory requirement. So we're certainly
25 open to that. It's just kind of unfortunate on the timing

1 at this point. It doesn't preclude us from reconsidering
2 that outside of this rulemaking in the future.

3 CHAIRMAN RUSSELL: And I wholeheartedly agree
4 with that, that this can be taken up again. And there
5 probably are some differences between, let's say --
6 Bigfork recently put in ground water drinking wells quite
7 a bit north of the community, and they basically ran them
8 straight in to Bigfork, which is probably a fairly easy
9 review. But when you have connections all along that same
10 path, then the review starts to get quite a bit more
11 difficult or can get more difficult. And that goes with
12 the sewer side, too, with collection or a force main. It
13 does take a lot more engineering than just a force main
14 that runs three miles.

15 So with that, we do have a motion on the floor.

16 I appreciate your comments, Tom.

17 All those in favor, signify by saying "aye."
18 (Vote.)

19 CHAIRMAN RUSSELL: Opposed.

20 (No audible response.)

21 CHAIRMAN RUSSELL: Motion carries.

22 All right, the next item on the agenda is repeal,
23 amendment, or adoption of final rule concerning
24 ARM 17.24.1109.

25 Tom.

1 MR. LIVERS: Mr. Chairman, Department Attorney
2 Ed Hayes will speak to this.

3 MR. HAYES: Good morning, Chairman Russell, other
4 members of the Board. My name is Ed Hayes; I'm an
5 attorney with the Department of Environmental Quality.
6 Before you is a proposed amendment to ARM 17.24.1109.
7 That administrative rule sets forth criteria that must be
8 met by a banking institution before the Department accepts
9 a letter of credit from them to assure reclamation of a
10 coal mine.

11 The proposed amendment does two things. It first
12 deletes subsection (f) of the current rule. That
13 subsection currently requires a bank to have a specified
14 rating from one of three national credit services that are
15 listed there. That subsection has proven difficult to
16 apply because the national credit rating services change
17 over time. One of the credit rating services currently
18 listed no longer offers ratings. And then the credit
19 rating services use different scales to score banking
20 institutions, and the subsection only lists one of the
21 scales, and so it's hard to apply to all of the credit
22 rating services across the board.

23 I guess the driving factor, though, is that the
24 national credit rating services only rank -- or rate
25 nationally-chartered banks, not state-chartered banks, so

1 that rule precludes any state-chartered bank from issuing
2 a letter of credit that the Department would find
3 acceptable under the currently written rule.

4 The second thing that the rule does is amend the
5 definition of total stockholders equity that is in
6 subsection (e)(iii). While (e)(iii) currently has a
7 correct definition of total stockholders equity, the
8 proposed amendment to the proposed new definition is more
9 correct as that term is used in the banking industry.

10 It is believed that even with the deletion of
11 subsection (f), that the rule still provides an adequate
12 basis for the Department to ascertain the financial
13 strength of a banking institution in order to determine
14 whether to accept a letter of credit. Subsections (d) and
15 (e) provide additional criteria of a financial nature
16 based on the balance sheet of the issuing bank and provide
17 a sufficient basis for the Department to ascertain the
18 financial strength of the bank.

19 At the time the Department proposed to initiate
20 rulemaking, the Board had a question; I believe it came
21 from Commissioner Whelan. The Department couldn't answer
22 that at the time rulemaking was initiated. We got
23 additional information from the Banking Commission, and
24 they provided the information that I believe Mr. Whelan
25 was requesting in a letter from Commissioner

1 Annie Goodwin, is her last name, and that was included in
2 your board packet.

3 The notice of rule adoption gave the public until
4 February 26 to submit comments, and the Department did not
5 receive any comments during that time.

6 And I'll also indicate that present today is Deputy
7 Commissioner David Novotny, of the Banking Commission, and
8 he would be available if the Board has any additional
9 questions regarding the proposed rule amendment.

10 With that, the Department recommends adoption of
11 Rule 17.24.1109 as proposed.

12 CHAIRMAN RUSSELL: Thanks, Ed.

13 Questions for the Department, Board?

14 MR. WHELAN: Mr. Chairman.

15 CHAIRMAN RUSSELL: Yes, Joe.

16 MR. WHELAN: I would just like to thank the
17 Department for following through with my request for more
18 information from the banking department with respect to
19 the relative strength of state-chartered banks versus
20 nationally-chartered banks. That letter addresses my
21 concerns.

22 MR. LIVERS: Thank you, Mr. Whelan. You're
23 welcome.

24 CHAIRMAN RUSSELL: Okay. Anything else?

25 (No audible response.)

1 CHAIRMAN RUSSELL: All right, hearing none --
2 this is kind of a weird one -- I would entertain a motion
3 to adopt the rule as noticed. And, apparently, 521
4 doesn't -- and there was no public hearing, so basically
5 it's just the notice and House Bill 311 analysis.

6 MR. MIREs: Mr. Chairman, this is Larry Mires,
7 and I would so move.

8 MR. MILLER: This is Miller; I'll second it.

9 CHAIRMAN RUSSELL: It's been moved and seconded.
10 Further discussion?

11 (No audible response.)

12 CHAIRMAN RUSSELL: Hearing none, all those in
13 favor, signify by saying "aye."

14 (Vote.)

15 CHAIRMAN RUSSELL: Opposed.

16 (No audible response.)

17 CHAIRMAN RUSSELL: All right, we'll move on.

18 MR. LIVERS: Mr. Chairman, on behalf of the
19 Department and the Board, I'd like to thank Mr. Novotny
20 for coming today. He probably knows a lot more than he
21 ever intended to about water quality standards and solid
22 waste regulations and other matters, sitting through this.

23 CHAIRMAN RUSSELL: Okay, thank you.

24 The next item on the agenda is new contested case
25 appeals. In the matter of the appeal of the 7th Day

1 Adventist Church, Ravalli County.

2 Katherine.

3 MS. ORR: Mr. Chairman, members of the Board,
4 this case involves a public water supply system,
5 7th Day Adventist school in Hamilton, Montana. The
6 Department issued its notice of violation, administrative
7 compliance, and penalty order on January 7th, 2010, and is
8 asking for \$1,315 in penalties for various violations
9 involving the following: Failure to monitor total
10 coliform bacteria, failure to report monitoring
11 violations, exceedance of MCLs for total coliform bacteria
12 four times, failure to report for nonacute MCL total
13 coliform bacteria violations, and failure to provide
14 public notification.

15 CHAIRMAN RUSSELL: I have a quick question for
16 you, Katherine.

17 MS. ORR: Yes.

18 CHAIRMAN RUSSELL: There's a letter in there from
19 Ravalli County Environmental Health. There's a date on
20 that. Did all of this stuff happen after the date that
21 the Environmental Health Department basically said it was
22 okay?

23 MS. ORR: Let me look and see about the letter
24 here.

25 Let's see, May 14th, and these violations occurred --

1 Yeah, it looks like the letter references -- is earlier
2 than the cited violations, which is odd.

3 CHAIRMAN RUSSELL: They must have decided to take
4 everything off once they got such a gleaming record from
5 the Ravalli County Environmental Health people.

6 MS. ORR: That is odd.

7 CHAIRMAN RUSSELL: Yes, it seems odd to me.
8 Any comments for Katherine, or questions even?
9 (No audible response.)

10 CHAIRMAN RUSSELL: Hearing none, I'd entertain a
11 motion to assign Katherine the permanent hearings officer
12 for this matter.

13 MR. MILLER: This is Miller; I so move.

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

16 MR. WHELAN: Mr. Chairman, this is Joe Whelan;
17 I'll second.

18 CHAIRMAN RUSSELL: It's been seconded by Joe.
19 Further comments?

20 MS. SHROPSHIRE: Mr. Chairman, can you hear me?

21 CHAIRMAN RUSSELL: Yeah, I can, but I'm not sure
22 who this is yet.

23 MS. SHROPSHIRE: Sorry, it's Robin. I couldn't
24 tell if my phone was on mute or not.

25 CHAIRMAN RUSSELL: Oh, it's off mute now. You

1 need to turn it back on.

2 MS. SHROPSHIRE: You didn't hear all the things I
3 said when it was on mute.

4 CHAIRMAN RUSSELL: Oh, I've heard them all,
5 Robin.

6 MS. SHROPSHIRE: And maybe it's -- I don't know
7 if it's a -- I guess it's a question for Katherine, but I
8 noticed that it seemed that they were in violation for
9 five months, but they were assessed for a violation of
10 five days. I'm not sure if that was an error or
11 intentional.

12 MS. ORR: Mr. Chairman, Ms. Shropshire, I think
13 we could maybe hear from the Department on that, noting
14 that this is a contested case.

15 MS. SHROPSHIRE: Well, I don't know if that's
16 appropriate, but I just wanted to comment on it.

17 CHAIRMAN RUSSELL: It probably isn't appropriate.

18 MS. ORR: That may be a subject for the
19 determination of the penalties portion of the case.

20 MS. SHROPSHIRE: I'll leave it at that. We don't
21 need to hear from the Department, I guess, unless it's
22 appropriate. So I just wanted to make note of that.

23 MS. ORR: Mr. Arrigo would like to give a generic
24 response to this issue.

25 MR. ARRIGO: Mr. Chairman, members of the Board,

1 for the record, my name is John Arrigo, administrator of
2 the DEQ Enforcement Division.

3 Just as a generic comment, not specific to this case,
4 when the Department calculates penalties for public water
5 supply monitoring violations, it's a monthly monitoring
6 requirement, and so we consider that one day of violation.
7 We do not consider the entity to be in violation for
8 30 days of the entire month.

9 MS. SHROPSHIRE: Follow-up?

10 CHAIRMAN RUSSELL: Carefully.

11 MS. SHROPSHIRE: That's all right. I'll leave it
12 at that. I'll wait until we're on a different matter and
13 ask the question, but I don't want to risk conflicting the
14 Department, so I'll leave it at that. Thank you,
15 Mr. Chairman.

16 CHAIRMAN RUSSELL: All right. Thanks, Robin.

17 So we have a motion. All those in favor, signify by
18 saying "aye."

19 (Vote.)

20 CHAIRMAN RUSSELL: Opposed.

21 (No audible response.)

22 CHAIRMAN RUSSELL: Motion carries.

23 The next matter on the agenda is other action on
24 contested cases. In the matter of the notice of appeal
25 and request for hearing for the Citizens Awareness

1 Network, Women's Voices for the Earth, and the Clark Fork
2 Coalition on Thompson River CO-Gen.

3 Katherine.

4 MS. ORR: Mr. Chairman, members of the Board,
5 this is a case that originated in the Department when it
6 issued a modified air quality permit to Thompson River
7 CO-Gen, LLC, and that occurred on August 21st of 2006.
8 That modified air quality permit -- And let me just say
9 parenthetically this is for an electricity and steam
10 cogeneration plant in the Thompson River Falls area that
11 uses a wood waste biomass fired by a stoker boiler.

12 An appeal was filed from the issuance of this modified
13 permit on September 6, 2006, and the case went to hearing
14 on the merits May 3rd, 4th, and 17th of 2007. The Board
15 issued of findings of fact, conclusions of law on oral
16 argument and on exceptions, and that decision was appealed
17 to the district court on the exclusive basis that there
18 had been a prehearing denial of a motion to amend the
19 appeal with the addition to the affidavit that went to
20 the -- went with the appeal. The addition to the
21 affidavit that was requested was that the Department deem
22 the plant to be a major stationary source.

23 And the hearing officer, I, denied that request for
24 amendment under Rule 15(c) of the Montana Rules of Civil
25 Procedure, saying that the requested amendment did not

1 relate back to the initial claim pertaining to the plant.

2 The initial appeal or claims had to do with a failure to
3 properly apply a BACT analysis. And as the board members
4 will recall, the Board did remand the case back to the
5 Department and the plant for supplemental BACT analysis
6 for periods of non-steady state operation, including
7 startup and shutdown.

8 The district court ruled that the hearing examiner --
9 in essence, it was a prehearing decision, so it
10 technically was incorporated by the Board, but they were
11 addressing an opinion that I wrote on the subject of
12 whether the amendment should be allowed. And the district
13 court opinion was reviewing on an arbitrary, capricious,
14 and abuse of discretion standard and found that there was
15 no basis to reverse the hearing officer's decision.

16 Then it went to the Montana Supreme Court, and the
17 Montana Supreme Court reviewed the case on a different
18 standard, which was whether there was an incorrect
19 conclusion of law that prejudices the substantial rights
20 of an appellant, and the Supreme Court found that, indeed,
21 under and applying the Rules of Civil Procedure, there
22 must be a liberal construction given to Rule 15(c) that
23 addresses amendments in this kind of circumstance, and
24 reversed the district court opinion and remanded for
25 further proceedings.

1 That's the barebones kind of description of the
 2 Supreme Court case. I'd be glad to answer questions. But
 3 before the Board today is an order which -- Well, let me
 4 back up. The Supreme Court, after issuing its order in
 5 January, remanded to the district court, which, in turn,
 6 has remanded the case for further proceedings and
 7 consideration of granting of the motion to amend and
 8 consideration of the amended claims. So it went all the
 9 way up and came all the way back down, and now you have
 10 before you, in compliance with the district court's order,
 11 an order remanding this to the hearing officer for further
 12 consideration of the issue of the amended claims.

13 CHAIRMAN RUSSELL: All right. Thanks, Katherine.
 14 Questions for Katherine?

15 MS. SHROPSHIRE: I have a question, Mr. Chairman.

16 CHAIRMAN RUSSELL: Robin.

17 MS. SHROPSHIRE: Katherine, I have heard that
 18 recently, there was a Supreme Court ruling, and I don't
 19 know if it was Texas or federal, and I should know that,
 20 but regarding startup and shutdown of a -- and whether or
 21 not -- And, basically, the facility there was required to
 22 meet standards during startup and shutdown essentially.
 23 And that would have happened between, I think -- you know,
 24 the beginning of this and now. And I'm curious if that
 25 ruling would apply to this case at all; if the federal

1 Supreme Court had made a ruling regarding startup and
 2 shutdown, if that would apply to this or impact the
 3 decision here.

4 MS. ORR: It won't apply -- Well, I think it
 5 could.

6 MS. SHROPSHIRE: Okay. I'm sorry, it's a recent
 7 ruling, and I don't mean to catch you off guard there.

8 That's all I have, Mr. Chairman.

9 CHAIRMAN RUSSELL: All right. Anything further?
 10 (No audible response.)

11 CHAIRMAN RUSSELL: Hearing none, I will entertain
 12 a motion to authorize the board chair to sign the order on
 13 reversal remanding the matter to the hearings officer.

14 MS. SHROPSHIRE: Mr. Chairman, is this something
 15 that the Board would hear?

16 CHAIRMAN RUSSELL: No, I don't think we can,
 17 because we actually gave it to Katherine to hear.

18 MS. SHROPSHIRE: Okay.

19 CHAIRMAN RUSSELL: Is that correct?

20 MS. ORR: Mr. Chairman, that is correct.

21 However, I think you have the discretion to reverse that
 22 decision and hear it yourselves, if you like.

23 CHAIRMAN RUSSELL: I really wasn't looking for
 24 that response, Katherine. You're way down the track, so I
 25 don't think that the Board wants to -- I mean, we would

1 have to take up every matter.

2 MS. SHROPSHIRE: That's fine. I'm not suggesting
 3 we hear it. I just was curious if we had to make that
 4 decision, but it sounds like we don't, Mr. Chairman.

5 CHAIRMAN RUSSELL: So I am looking for a motion.

6 MS. SHROPSHIRE: So moved.

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

9 MR. MIRE: Larry Mires seconds.

10 CHAIRMAN RUSSELL: Larry Mires seconds the
 11 motion. Any further discussion?

12 (No audible response.)

13 CHAIRMAN RUSSELL: Hearing none, all those in
 14 favor, signify by saying "aye."

15 (Vote.)

16 CHAIRMAN RUSSELL: Opposed.

17 (No audible response.)

18 CHAIRMAN RUSSELL: Motion carries unanimously.
 19 Thanks, Katherine.

20 MS. ORR: You're welcome.

21 CHAIRMAN RUSSELL: The next item on the agenda
 22 is -- actually, it's another action item, regarding the
 23 McLaren tailings near Cooke City.

24 Tom.

25 MR. LIVERS: Sure.

1 Mr. Chairman, this is kind of an interesting one.

2 Without a lot of setup, I'm just going to turn it over to
 3 Tom Henderson of our Remediation Division, and we'll go
 4 from there. This is the second of the two PowerPoints you
 5 were sent, so if you want to refer to that during this
 6 discussion, that would be helpful. And with that, I'll
 7 turn it over to Tom.

8 MR. HENDERSON: Mr. Chairman and the Board, my
 9 name is Tom Henderson, and I'm a reclamation specialist
 10 with the Department of Environmental Quality. Let me just
 11 get my PowerPoint up here. I wanted to give you some
 12 context to the decision, and I'm going to try to keep it
 13 as brief as I can.

14 I've got 14 slides I'd like to go through just, once
 15 again, to provide a little context. What we're looking at
 16 here in slide 2 of 14 is a plan view of the McLaren
 17 tailings abandoned mine site reclamation project.
 18 Soda Butte Creek borders the project to the north;
 19 Yellowstone National Park is located approximately
 20 five miles downstream. It's a large tailings impoundment
 21 from -- associated with mining between the 1930s and
 22 1950s, the gold mining. The blue lines that run through
 23 the middle of the project are what will be relocated,
 24 Soda Butte Creek and Miller Creek drainages.

25 And I'll move on to slide 3 of 14.

1 CHAIRMAN RUSSELL: Just for orientation, this is
2 the one that's very close to Cooke City at basically the
3 same elevation, correct?

4 MR. HENDERSON: It is very close to Cooke City.
5 It's approximately one-eighth of a mile east of
6 Cooke City. It's within walking distance of Cooke City.
7 Cooke City is just -- the lines north of the project site
8 are Highway 212. Cooke City is just little bit to the
9 west of the project.

10 Any other questions?

11 (No audible response.)

12 MR. HENDERSON: Just a quick look at what we're
13 dealing with in materials, there's approximately
14 237,000 cubic yards of pitric tailings. And just
15 two quick slides of Soda Butte Creek showing what the
16 tailings -- the impact is of having tailings in their
17 present location. They're overlying the historic location
18 of Soda Butte Creek, and given that fact, they're
19 saturated with ground water. So when you get downstream
20 of the tailings, and it depends on what your color
21 reproduction is like, but what the slide is indicating is
22 significant iron staining, significant discharges of
23 metals from the base of the tailings to Soda Butte Creek.

24 The recent history of the project, the Board of
25 Environmental Review and the DEQ are property owners. We

1 purchased the property in 2008. At the time, it was
2 necessary to keep the proposed repository location as part
3 of this project. I think EPA was pressuring the property
4 owner to sell the proposed repository location in order to
5 pay for some fencing. Site assessment and reclamation
6 design was completed recently. The other thing we did in
7 2008, September, is looked at all the historic information
8 concerning the gold content of the tailings. The
9 specifications for the reclamation work were developed
10 April 2009 to October 2009; bid opening just a little over
11 a month ago.

12 Throughout the work I was describing in the previous
13 slide, one thing -- one significant item that has come up
14 is that we are at full design capacity of the repository.
15 Another thing that I guess we're certainly aware of is
16 that we're very close to Yellowstone National Park. Some
17 of the limitations with the repository capacity are that
18 we are designing it to survive a 250-year seismic event in
19 the area, and that factors into the buffer zone between
20 the repository and the slopes of the repository.

21 When we bid this job, we thought -- we were going to
22 price out three alternatives. One was to place all of the
23 wastes in the repository; the second alternative was to
24 haul -- one of the years, haul tailings to Golden Sunlight
25 Mine, reprocess the tailings, and have the moneys from

1 that reprocessing help offset the trucking costs; the
2 final option being hauling two of the years. It's a
3 five-year project -- six-year project, excuse me, that
4 we're looking at, and four of those years would be
5 stabilizing and disposing of the tailings. So in
6 option 2, we would be looking at handling approximately
7 25 to 35 percent of the tailings.

8 Option 2 -- DEQ looked at the pros and cons to all
9 these three options, and we've determined that option 2 is
10 the most desirable. And the primary reasons are: It
11 gives some flexibility, as we're digging out wastes, in
12 terms of not worrying about the repository capacity in
13 case we find additional wastes that we haven't found in
14 the assessment program. In addition, we think alternative
15 2 is very desirable in the sense that we are relocating
16 wastes away from Yellowstone National Park and away from
17 Soda Butte Creek. Finally, we think that if we get a
18 component of the tailings offsite, we can build a
19 repository with a greater buffer distance from the creek
20 and with gentler slopes, more stable for the possibility
21 of seismic events.

22 CHAIRMAN RUSSELL: Tom, I know I'm probably the
23 only one that's been there in a board capacity, but the
24 repository is actually on the -- north of the tailings
25 site, right?

1 MR. HENDERSON: I would call it west of the
2 tailings site.

3 CHAIRMAN RUSSELL: West?

4 MR. HENDERSON: Yeah. Let me go back to the --
5 So the tailings are -- Do you see the existing tailings
6 impoundment?

7 CHAIRMAN RUSSELL: Correct. Yeah.

8 MR. HENDERSON: And then the tailings dam, and
9 then the repository location is on a bench above
10 Soda Butte Creek, which has been assessed for depth to
11 ground water. But that's the -- The proposed repository
12 location is west of the --

13 CHAIRMAN RUSSELL: Oh. So this isn't the one
14 that's located on the other side of the highway up quite a
15 bit in elevation.

16 MR. HENDERSON: I think what you're thinking of
17 is the repository that the Forest Service constructed
18 associated -- on their lands associated with the New World
19 reclamation project.

20 CHAIRMAN RUSSELL: Right. That's not the one.

21 MR. HENDERSON: That's not the one.

22 CHAIRMAN RUSSELL: Okay.

23 MR. HENDERSON: Any other questions?

24 MR. MILLER: Tom, this is Miller -- or
25 Mr. Chairman, I'd like to ask Tom a question.

1 CHAIRMAN RUSSELL: Yeah, that's great, Marv. Go
2 ahead.

3 MR. MILLER: I was just wondering, Tom, why did
4 the State purchase these tailings?

5 MR. HENDERSON: At the time, the Environmental
6 Protection Agency was pressuring the property owner. It
7 was a small mining company out of Great Falls. What the
8 Environmental Protection Agency was looking at was having
9 this little company fence off the property and effectively
10 do no reclamation associated with the acid mine discharge.
11 And the little company, as I understand it, said, We don't
12 have any funding even to put these fences up. EPA was
13 pressuring the company -- it was Camjac, I believe -- to
14 sell a portion of their property and then use those
15 revenues to pay for the fencing.

16 At that point, we were concerned that the acid mining
17 drainage emanating from the base of the tailings would not
18 be remediated and we'd be losing the repository location.

19 MR. MILLER: Okay, thank you.

20 MR. HENDERSON: Any other questions?

21 CHAIRMAN RUSSELL: So where is the reprocessing
22 going to occur, Tom?

23 MR. HENDERSON: That would be the Barrick Golden
24 Sunlight Mine adjacent to Whitehall. It's about
25 five miles from Whitehall.

1 CHAIRMAN RUSSELL: So just for us slow people,
2 like me, so you would be hauling it there and then hauling
3 the reprocessed tailings back for deposition?

4 MR. HENDERSON: No, that's not the case. One of
5 the most attractive components of this project to us is
6 that we would be hauling the tailings to Barrick Golden
7 Sunlight, they would be extracting the gold, we would be
8 receiving funding for the gold, which we would use to
9 offset the trucking costs, but the tailings, then, would
10 be placed in their own permitted tailings impoundment.

11 CHAIRMAN RUSSELL: Okay. So anything that's left
12 is basically -- How will you know what to leave?

13 MR. HENDERSON: For the tailings onsite?

14 CHAIRMAN RUSSELL: Yes.

15 MR. HENDERSON: Our plan right now is just to
16 haul the 2011 year, and what we achieve by hauling in 2011
17 is that we get approximately 30 percent of the tailings
18 off the site; we alleviate the volume considerations we
19 have with the repository. At the same time, I think we
20 give ourselves the opportunity to see exactly how well the
21 process works, and DEQ, at the end of 2011, depending on
22 the success of the project, we may entertain the
23 possibility of additional hauling in 2012. But right now,
24 what is on the table is hauling in 2011.

25 CHAIRMAN RUSSELL: And you feel pretty

1 comfortable with what you're going to capture in revenue
2 for the gold that's left in the tailings?

3 MR. HENDERSON: There are several components to
4 that question. One of the components is the market value
5 of gold, a second component is the actual gold content of
6 the tailings, and a third component to that is the
7 recoverable, the --

8 (Unintelligible interruption.)

9 CHAIRMAN RUSSELL: Go ahead, Tom.

10 MR. HENDERSON: -- the efficiency of the
11 recovery. And, certainly, on items 2 and 3, I think we
12 feel comfortable both with current and historical data.
13 I'm going to address that question, though, in a slide
14 down -- a few more slides down the line.

15 CHAIRMAN RUSSELL: Okay. Go ahead.

16 MR. HENDERSON: Any other questions?

17 MR. MILLER: Mr. Chairman, a follow-up to Tom?

18 CHAIRMAN RUSSELL: Yeah, go ahead.

19 MR. MILLER: Who did the assaying on determining
20 the amount of goal in the deposits?

21 MR. HENDERSON: The historic -- I think much of
22 the historic work was done, I believe there's a
23 Granada Exploration Company. The current stuff was done
24 both by Newmont and by Golden Sunlight.

25 MR. MILLER: Okay. Thank you.

1 MR. HENDERSON: When I indicated Newmont did some
2 of the assaying, they contracted with Montana Bureau of
3 Mines and Geology.

4 MR. MILLER: Okay.

5 CHAIRMAN RUSSELL: I wouldn't trust them, Marv.
6 Okay, keep going before I get in real trouble here.

7 MR. HENDERSON: I don't want to -- I've got two
8 slides with our analysis of advantages and disadvantages.

9 Now, one of the alternatives we had was just going
10 with the onsite repository, hauling nothing to the
11 Golden Sunlight. I think the biggest -- the advantages
12 are certainly the simplicity and the lower cost. The
13 disadvantages are the space limitations, and especially
14 the problems that any additional wastes may pose as they
15 may be discovered during the actual excavation of the
16 tailings. Certainly, the proximity of the repository to
17 Yellowstone National Park, I think, gives us a little
18 additional emphasis in constructing something that we
19 think is very stable, certainly in the context of seismic
20 events.

21 The primary -- Here you have alternatives 2 and 3.
22 I'm on slide 10 of 14. And, I'm sorry, I'm not doing a
23 very good job of keeping abreast of the slides. But I
24 think the primary advantage that the DEQ is interested in,
25 in this alternative, is the reduction of long-term

1 liabilities associated with repository stability. We also
2 think a primary benefit is the removal of a significant
3 quantity of waste from the boundary of Yellowstone
4 National Park. I'll get into the economics in a second.

5 We do have stakeholder support. We got a letter from
6 the Greater Yellowstone Coalition strongly supporting this
7 alternative. We've contacted the Beartooth Alliance; they
8 support the removal of a portion of the tailings in order
9 to enhance the stability of the repository. I have also
10 gotten support from Mary Beth Marks at the U.S. Forest
11 Service and from a gentleman at the Bureau of Land
12 Management. I think the biggest disadvantage which has
13 been brought to our attention is the increased carbon
14 footprint, and, secondarily, the traffic risks associated
15 with offsite hauling of the tailings.

16 I'm going to move on to slide 11. There is no hauling
17 through Yellowstone National Park. The map indicates the
18 proposed haul route, which leaves Cooke City, travels
19 east, utilizes the Chief Joseph Highway into Wyoming, then
20 north into Belfry and Bridger, Montana, up to Laurel,
21 Montana, and then picking up I-90 to Whitehall. And we
22 have had a traffic safety analysis done on the proposed
23 haul route, looking at accidents, frequency of use,
24 especially focusing on the Chief Joseph Highway. That's
25 the -- I guess the curviest section of the haul route.

1 Moving on to slide 12. The reprocessing cost
2 overview, if we hauled that one year, in 2011, we're
3 essentially incurring \$4.9 million. We would spend
4 \$4.9 million more than we would spend placing materials in
5 the repository. When we look at this, I want to emphasize
6 that we're not looking at this project as a
7 money-generating -- we're not looking at it for the money;
8 we're looking at it for the environmental benefits of
9 getting the materials away from the national park and
10 having a repository that is not at its design capacity.
11 So you'll see that as a break-even at 1,220 ounces --
12 dollars per ounce of gold. Even if gold went down to,
13 say, \$700, \$900, this is a very significant project, and
14 we think these additional expenditures are acceptable in
15 the context of what we're going to spend at this project
16 for stabilizing the tailings, for treating the water
17 that's -- the ground water that's present in the tailings.

18 And I don't want to take too much time here, so I'll
19 move on to slide 13, right to our action required. The
20 DEQ, in our analysis, we believe that hauling in 2011 --
21 the benefits from hauling in 2011 outweigh the negative
22 aspects. However, we're both listed on the deed as
23 owners, and your concurrence is required in order to enter
24 into an ore purchase agreement with Barrick Golden
25 Sunlight.

1 And with that, I'll conclude my presentation.

2 CHAIRMAN RUSSELL: Thanks, Tom. Well done.

3 What path -- I'm trying to do this on the map. How
4 are you going to get from Cooke City to Whitehall?

5 MR. HENDERSON: Yeah, the map may not be entirely
6 clear. So from Cooke City, you travel east going uphill,
7 and the first thing you hit in about a mile is Colter
8 Pass, and you are technically on the Beartooth Highway at
9 that point; it's 212. As you travel approximately
10 20 miles further to the east, then there's a junction in
11 the road where the Beartooth Highway splits off to the
12 north heading to Red Lodge, and then to the south is, I
13 believe it's called the Chief Joseph Scenic Highway; it
14 travels in the direction of Cody. And then as you travel
15 down the Chief Joseph Scenic Highway, you go through a
16 place called Sunlight Basin. After Sunlight Basin, then
17 you cross, I believe it's Dead Indian Hill. And if you
18 have a good resolution on your map, that's where the line
19 turns a bit squiggly.

20 You don't actually get to Cody. You get to -- About
21 20 miles before Cody, there's an intersection with, I
22 think it's unofficially called the Belfry Highway. It's
23 Highway 120. And you head north then, and after about 10,
24 15 miles, you leave Wyoming, you pass through the little
25 towns of Belfry and Bridger, which are in Montana, and

1 then you continue up towards Laurel. And in Laurel, then
2 you turn left on I-80 and then travel through Big Timber,
3 Bozeman, and on towards Whitehall.

4 CHAIRMAN RUSSELL: So it's a big trek.

5 MR. HENDERSON: It is a big trek. Certainly,
6 it's a long trek. It certainly would not be even feasible
7 without the -- It would be economically very painful
8 without the possibility of recovering the gold value in
9 the tailings.

10 MR. LIVERS: And we determined it was
11 advantageous to disrupt tourist traffic in Wyoming as
12 opposed to Montana.

13 CHAIRMAN RUSSELL: I am all for that. You can
14 put me on the record on that one. I'll probably get
15 thrown out of here if I keep this up.

16 Tom, we appreciate your presentation.

17 MR. HENDERSON: Thank you.

18 CHAIRMAN RUSSELL: With all that in mind, we'll
19 get back to --

20 MR. MILLER: Mr. Chairman, maybe I'll make a
21 comment.

22 And maybe, Tom, you want to comment, too, but I've
23 done -- I did some checking here on all the forecasters of
24 gold prices for the next five years, and they all suggest
25 that we might even make a little money on this, and it

1 should stay somewhere between 1,100 and \$2,000 an ounce.
 2 So maybe this is the time to move it.
 3 CHAIRMAN RUSSELL: I'm with you. I don't think
 4 gold prices are going down anytime soon.
 5 MR. LIVERS: We could start having in-person
 6 meetings again, if that's the case.
 7 CHAIRMAN RUSSELL: And even a road trip.
 8 MR. WHELAN: Mr. Chairman.
 9 CHAIRMAN RUSSELL: Yes, Joe.
 10 MR. WHELAN: Since it is the month of the luck of
 11 the Irish, let's assume gold drops down to \$700 an ounce
 12 and we lose two-and-a-half million dollars through this
 13 project. Is the Department going to capitalize that loss
 14 all in one year or, being viewed as a four-year project,
 15 does it get capitalized over a period of four years?
 16 MR. HENDERSON: This is Tom Henderson. One thing
 17 I guess I would like to highlight is, we're in the bidding
 18 process and we're spec'ing under job and trying to
 19 determine which alternative to select. At any point --
 20 And this is what I want to emphasize. Down the road, I
 21 think we would have opportunities via a change order if,
 22 indeed -- And I know this is not exactly what you were
 23 asking, but I just wanted to bring this up, that if,
 24 indeed, gold prices were down, we would have the
 25 opportunity of going to our successful bidder and

1 potentially entering into a negotiation.
 2 Now, with regard to the capitalization question, I'm
 3 looking around the room for someone to take that.
 4 CHAIRMAN RUSSELL: But this is a year-by-year
 5 matter, isn't it?
 6 MR. HENDERSON: Yeah. What's on the table right
 7 now is 2011.
 8 MR. WHELAN: Okay. So, Tom, your Reprocessing
 9 Cost Overview slide, you have the estimated profits and
 10 losses, if I could use those terms, based upon certain
 11 prices of gold per ounce.
 12 MR. HENDERSON: That's correct.
 13 MR. WHELAN: That \$700 figure and the
 14 two-and-a-half-million-dollar loss figure is just for the
 15 year 2011; is that correct?
 16 MR. HENDERSON: That is correct.
 17 MR. WHELAN: Follow-up question, if I may,
 18 Mr. Chairman?
 19 CHAIRMAN RUSSELL: Go for it, Joe.
 20 MR. WHELAN: Do you have an estimate in terms of
 21 the number of truckloads that would be required to move
 22 these tailings from the site to Whitehall?
 23 MR. HENDERSON: For the year 2011, it would be
 24 approximately 1,700.
 25 MR. WHELAN: Okay. If you were to select

1 option 3 and do it over two years, are we looking at
 2 doubling that figure?
 3 MR. HENDERSON: Doubling and, like I say, times
 4 2.2. Do you know what I mean? Just slightly over
 5 doubling it.
 6 MR. WHELAN: Right.
 7 MR. HENDERSON: Let me just return to your
 8 trucking question, though. We would be looking at moving
 9 the gold in 42-ton trucking -- it's a double trailer, and
 10 that 1700 trips corresponds to once every half hour, which
 11 is in our specs. So there would be a truck leaving our
 12 site once every half hour over a 10-to-12-hour day. So
 13 every day, we'd be moving a maximum of 25 trucks. So it's
 14 part of our consideration in not having the hauling
 15 interfere with our actual reclamation job, but we would be
 16 looking at moving a truck approximately once every half
 17 hour.
 18 MR. WHELAN: If we get these tailings moved to
 19 the Golden Sunlight Mine, and we sign this ore purchase
 20 agreement, I understand that one of the advantages of the
 21 haul is reduced liability concerns. Are we indemnified
 22 from that point forward; if we just drop those tailings
 23 off there, we have no further responsibility for them?
 24 MR. HENDERSON: I believe it's the time of the
 25 morning for a lawyer to approach the microphone.

1 MR. ROOT: My name is Tom Root, and I represent
 2 the abandoned mine group within DEQ.
 3 Mr. Chairman, members of the Board, in terms of
 4 liability, let me lay out the whole picture for you so
 5 that we don't have piecemeal inquiries.
 6 If you begin at the McLaren tailings, you have
 7 potential liability for accidents, personal injuries, car
 8 wrecks, busted shovels, and all that kind of thing. That
 9 is handled through the bid package by the insurance
 10 requirements for the contractor, and we have reviewed the
 11 insurance amounts and think that they're more than
 12 adequate to handle those kinds of issues. Once it's
 13 loaded into a truck, you move from McLaren to Whitehall,
 14 you have the potential for automobile accidents, drunk
 15 driver, slip, going off the road. That, too, we believe
 16 is adequately covered by the insurance coverage in the bid
 17 package that the contractor is required to have.
 18 Once we get to McLaren -- I'm sorry. Once we get to
 19 Whitehall, the ore purchase agreement becomes effective
 20 once we cross their property boundary and they take
 21 delivery at crossing the property boundary of the site.
 22 The liability that could occur would be handled by
 23 Golden Sunlight for activities under their control on
 24 their site. If you are concerned about potential
 25 Superfund or other liability for putting the material into

1 their tailings pond, that is theirs; once they take
 2 possession, then they are an operator, they are then the
 3 owner of the tailings. That would be their liability.
 4 Concern would be, if they were to find themselves
 5 named as a Superfund site, that they would name DEQ as a
 6 potentially responsible party because we delivered ore to
 7 their facility. We believe that that risk is extremely
 8 small. The reason for it is as follows: The mill
 9 tailings site, the tailings pile, the entire complex, is
 10 fully permitted by DEQ, and they are in compliance.
 11 They've had violations; everybody has had some violations.
 12 But they are a fully permitted facility. So we believe
 13 that that gives us one layer of protection, if you will.
 14 The potential would require that the site be named by
 15 EPA as a Superfund site and proceed forward. We are
 16 not -- And this is getting into the esoteric Superfund,
 17 but in our view, this is not waste material at all. The
 18 gold value of the material -- For example, today, I think
 19 the price is 1,150 an ounce. The amount of money we can
 20 receive from that makes it fall within the definition of
 21 ore as that term is commonly understood in the mining
 22 business. Ore is defined as a mineral that can be sold at
 23 a profit, therefore, it is not waste. It was waste when
 24 it was laid down in the 1930s to the 1950s. The price
 25 then was \$35 an ounce. Today, it's in excess of 1,100.

1 I think I've probably exhausted all of the questions
 2 that you might have, but if there's more, I'd be happy to
 3 go on.
 4 MR. WHELAN: That was a wonderful summary. Thank
 5 you very much.
 6 MR. ROOT: Thank you.
 7 MR. WHELAN: The question I have goes back to
 8 DEQ, and that would be, do we have any concerns that
 9 Golden Sunlight has enough capacity to accommodate all of
 10 these tailings, should they all be transferred there in a
 11 year?
 12 MR. HENDERSON: Yeah, we've had several
 13 discussions with both their environmental coordinator and
 14 their facilities manager, and that is not an issue they're
 15 concerned with. We've described our trucking schedule to
 16 them, we've described our total volume to them, and, no,
 17 that has not been a concern relayed to us at all.
 18 MR. WHELAN: Okay. Thank you very much,
 19 Mr. Chairman.
 20 CHAIRMAN RUSSELL: All right.
 21 MR. MIRES: Mr. Chairman, this is Larry Mires; I
 22 have one question.
 23 CHAIRMAN RUSSELL: Larry, go for it.
 24 MR. MIRES: How does -- The State of Montana
 25 Department of Transportation, and what's our feedback out

1 of the Wyoming Department of Transportation for this plan,
 2 where do they stand?
 3 MR. HENDERSON: The analysis we've done is a
 4 safety analysis, and all we've done is pulled some of
 5 their records with regard to average travel speeds, sight
 6 distances necessary close to our facility. But in terms
 7 of formal comment, we've not gone to either DOT for a
 8 formal comment.
 9 MR. MIRES: A follow-up on that, Mr. Chairman.
 10 CHAIRMAN RUSSELL: Absolutely.
 11 MR. MIRES: Is there a reason why we haven't?
 12 MR. HENDERSON: Our feeling is that these are
 13 legal hauls and that the road damage or any road wear
 14 would be paid for by taxes, and we're just using the roads
 15 that are intended for this use. And, once again, I'll
 16 just reiterate, these are legal hauls.
 17 MR. MIRES: Thank you.
 18 CHAIRMAN RUSSELL: Further questions?
 19 MS. SHROPSHIRE: Mr. Chairman, I have a couple of
 20 questions and a comment.
 21 CHAIRMAN RUSSELL: Okay.
 22 MS. SHROPSHIRE: I guess my comment is that, you
 23 know, it's my belief that if we're in possession of these
 24 tailings as good stewards, I'm in favor of what we're
 25 doing, absolutely; we need to take care of it and be

1 responsible for it. So I'm happy with the way we're
 2 approaching it.
 3 I think this may be a question for Mr. Root. I
 4 thought he gave a great explanation of the liability, and
 5 I'm just wondering, is there a possibility in the contract
 6 of having -- once it leaves the site, that it becomes the
 7 owner, Golden Sunlight, rather than before it enters their
 8 boundary? I mean, could we require them to have the
 9 liability as soon as it leaves our site in the contract?
 10 And then the second part of the question is, is it as
 11 simple as just saying within the contract that they
 12 wouldn't name us as a PRP?
 13 MR. ROOT: Two nasty questions, both asked
 14 several times.
 15 As far as them accepting liability, their business
 16 practice -- and this goes back from when the mill first
 17 started to operate -- they take title at the property line
 18 and they don't want anything to do with the extraction or
 19 transportation of the ore. They're in the milling
 20 business, and that's where they draw the line.
 21 We asked them about that and they said, No; we'll
 22 accept title at the property line, period, because our
 23 operation involves milling. We're not involved in the
 24 transportation part of it, we're not involved in the
 25 extraction part of it. So from their standpoint, the

1 answer to that is no. I will tell you that they are not
2 being arbitrary in that regard. I did about 125 or 150 of
3 these ore purchase contracts earlier in my career, and we
4 were emphatic that we had nothing to do with the material
5 until it was delivered to our site on our pad, precisely
6 because we didn't want to get wrapped into any liabilities
7 that occurred previously in the mining and transportation
8 process.

9 Your second question is now cloudy because I've been
10 talking too much, thinking about your first question.

11 MS. SHROPSHIRE: The second question was whether
12 or not we could just simply say that they agree that we're
13 not a PRP, whether that be some sort of an unknown --

14 MR. ROOT: They are unwilling to do that. That's
15 sort of an indemnity question; you know, will they
16 indemnify us. We have gone back and forth with them about
17 the indemnity issue and decided that it would be best left
18 unsaid. They can't indemnify us for potential liabilities
19 they can't quantify. As a business matter, they won't do
20 it. And when they are discussing -- You know, were I
21 their attorney and somebody suggested I sign something
22 like that, I would say, That begins to look sneakily like
23 an admission that we ought to be a Superfund site, if
24 we're indemnifying people down the road.

25 So the answer is, as a business matter, they will not

1 do that.

2 MS. SHROPSHIRE: Thank you. That answers my
3 questions.

4 And I guess, just to reiterate what I said before, I
5 am in support of doing this. Regardless of what the price
6 is, or profit, and I think it's the right thing to do.

7 Thanks, Mr. Chairman.

8 MR. ROOT: Thank you.

9 CHAIRMAN RUSSELL: Nice comments, Robin.
10 Anything further?

11 (No audible response.)

12 CHAIRMAN RUSSELL: Last chance.

13 (No audible response.)

14 CHAIRMAN RUSSELL: Well, I would entertain a
15 motion to authorize the Chairman to sign a material
16 purchase agreement when it is finalized.

17 MS. SHROPSHIRE: So moved; this is Robin.

18 CHAIRMAN RUSSELL: It's been moved by Robin.
19 Second?

20 MR. MILLER: This is Miller; I second it.

21 CHAIRMAN RUSSELL: It's been seconded by Marv.
22 Further discussion?

23 (No audible response.)

24 CHAIRMAN RUSSELL: Hearing none, all those --

25 MR. LIVERS: Mr. Chairman.

1 CHAIRMAN RUSSELL: Yes.

2 MR. LIVERS: This will be a board action, so I'd
3 ask you to consider public comment.

4 CHAIRMAN RUSSELL: Is there anyone in the
5 audience who would like to speak to this matter?

6 MR. PEARSON: Mr. Chairman, this is Mark Pearson,
7 with the Greater Yellowstone Coalition.

8 CHAIRMAN RUSSELL: Go ahead, Mark.

9 MR. PEARSON: Mr. Chairman, members of the Board,
10 my name is Mark Pearson, and I work for the Greater
11 Yellowstone Coalition.

12 We've been monitoring activities in New World Mining
13 District and associated properties and have expressed our
14 strong support for the option of hauling as much of the
15 tailings as possible out of the Soda Butte watershed there
16 right upstream of Yellowstone. So we're certainly in
17 strong support of the motion and urge you guys to support
18 it.

19 Thanks.

20 CHAIRMAN RUSSELL: Thanks, Mark.

21 Further comments?

22 MR. LIVERS: None here in Helena, Mr. Chairman.

23 CHAIRMAN RUSSELL: No one on the phone?

24 (No audible response.)

25 CHAIRMAN RUSSELL: All right. All those in

1 favor, signify by saying "aye."

2 (Vote.)

3 CHAIRMAN RUSSELL: Opposed.

4 (No audible response.)

5 CHAIRMAN RUSSELL: Motion carries unanimously.

6 Nice work on this, Department. I think this is a
7 great thing.

8 MR. LIVERS: On behalf of those who did the work,
9 thank you, Mr. Chairman.

10 CHAIRMAN RUSSELL: Where are we now? Well, we
11 are at the time of the meeting that we would take general
12 public comment on matters that the Board has jurisdiction
13 upon.

14 (No audible response.)

15 CHAIRMAN RUSSELL: Nothing there in Helena, Tom?

16 MR. LIVERS: None here in Helena, Mr. Chairman.

17 The only thing I would like to say quickly prior to
18 adjournment is to express my appreciation to the board
19 members. I know the decision to go to a teleconference
20 was pretty late in the process. Obviously, we're mindful
21 of the state budget situation, trying to look at reducing
22 costs when we can. I hope, at least when you have enough
23 notice, that this is a little more convenient for board
24 members.

25 We will be looking at in-person meetings when they are

1 important or necessary to do so. It was a little bit
 2 awkward with the PowerPoints; I know there would have been
 3 some value being here. And, certainly, I think if we're
 4 in a situation where the Board is directly hearing
 5 contested cases, that's something where we'd want to have
 6 an in-person meeting.

7 But one of the things we will try to do on our end,
 8 we're going to move up our dry run a little earlier in the
 9 process so we can gauge the length of the meeting and try
 10 to give a little more notice in the future if we do
 11 recommend a teleconference. So that's what we'll be
 12 doing.

13 But, again, I just want to express my appreciation to
 14 all the board members for their flexibility on fairly
 15 short notice.

16 CHAIRMAN RUSSELL: Thanks, Tom.

17 And I don't know if all the board members -- I don't
 18 know if I asked you to forward on the letter, but all
 19 board chairs, you know, administrative boards and
 20 committees, all chairs were given a letter from the
 21 governor's office asking us to minimize costs associated
 22 with board meetings, and this is one of the
 23 recommendations they had.

24 Did we send that on to all the Board?

25 MR. LIVERS: I don't think we did, Mr. Chairman.

COURT REPORTER'S CERTIFICATE

STATE OF MONTANA)
 ss.
 COUNTY OF LEWIS AND CLARK)

I, CHERYL ROMSA, Court Reporter, Notary Public in
 and for the County of Lewis and Clark, State of Montana,
 do hereby certify:

That the foregoing proceedings were reported by
 me in shorthand and later transcribed into typewriting;
 and that the -99- pages contain a true record of the
 proceedings to the best of my ability.

DATED this 26th day of March 2010.

/s/Cheryl A. Romsa
 CHERYL A. ROMSA

1 CHAIRMAN RUSSELL: Maybe we can dig that up and
 2 send it to the Board so they understand the governor's
 3 directives on this.

4 MR. LIVERS: You bet.

5 CHAIRMAN RUSSELL: And, you know, maybe now that
 6 they've sold some coal tracts, we'll be in good shape.

7 With that, I would entertain a motion to adjourn.

8 MR. MILLER: This is Miller; so moved.

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

11 MS. KAISER: This is Heidi; I'll second.

12 CHAIRMAN RUSSELL: It's been seconded by Heidi.
 13 Further comments before we adjourn?

14 (No audible response.)

15 CHAIRMAN RUSSELL: Hearing none, all those in
 16 favor, signify by saying "aye."

17 (Vote.)

18 CHAIRMAN RUSSELL: All right. As telephonic
 19 meetings go, this was a good one. We'll see you sometime
 20 soon.

21 MR. LIVERS: Sounds good. Thank you all.

22 (The proceedings were concluded at 11:47 a.m.)

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