BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
May 13, 2011)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
May 13, 2011
9:00 a.m.

BEFORE CHAIRMAN JOSEPH RUSSELL,
BOARD MEMBERS LARRY MIRES,
LARRY ANDERSON, ROBIN SHROPSHIRE,
JOE WHALEN; and HEIDI KAISER (By telephone)

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

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CHAIRMAN RUSSELL: It is just a few minutes after nine, and I will call this meeting of the Board of Environmental Review to order. The first item on the agenda is the review and approval of the minutes of the March 25, 2011 Board meeting. Any comments, questions, anything need to be changed?

MR. WHALEN: Mr. Chairman, I move to approve the minutes of the March 25th, 2011 Board meeting.

CHAIRMAN RUSSELL: There has been a motion to approve. Is there a second?

MR. MIRES: Second.

CHAIRMAN RUSSELL: It's been moved and seconded. Any further discussion?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Motion carries.

The next item on the agenda is the Hearing Examiner's --

MS. ORR: Mr. Chairman, members of the Board, there is not much more to report other than what's on the agenda.

In Item II(A)(1)(c), there was a motion for summary judgment that was filed, and we just recently got a response from Berg to the motion for summary judgment, and a motion to strike the defense, and to enter judgment in favor of the Department, and so that's pending.

And then Item II(A)(1)(j), there was a request to change the hearing date and the schedule leading up to it on May 6th, and so the hearing won't be on July 11th, it will be on August 29th.

And that's about all I have to report.

CHAIRMAN RUSSELL: Is that still going to be in Kalispell?

MS. ORR: Referring to?

CHAIRMAN RUSSELL: Is that hearing still going to be in Kalispell, Katherine?

MS. ORR: The one on Meat Production, Inc.?

CHAIRMAN RUSSELL: Yes.

MS. ORR: I believe so. I can check that.

CHAIRMAN RUSSELL: I think the previous packets mentioned that the hearing was going to be in Kalispell.

MS. ORR: Yes.

CHAIRMAN RUSSELL: So anything else?

MS. ORR: No, that's it.

CHAIRMAN RUSSELL: The next item on the agenda is legislation review. I'm guessing, Tom, you're going to do that?

MR. LIVERS: Mr. Chairman, John North and I will do that. John will cover the bills. I may weigh in a little bit on some of those.

But basically just as an overview, it was an interesting session obviously, but from the standpoint of impacts to the Department, we took some budget reductions, like all agencies did. They're generally things we're going to be able to live with.

There were several pieces of legislation impacting some of the key environmental laws, MEPA and the facility siting Act. John will go into those that survived, and his focus is going to be -- We're focusing on those pieces of legislation

that are directly relevant to the Board.

There are some other bills. We probably had several dozen bills that impacted the Department one way or the other, but a lot of those are in areas that really aren't in the Board's purview, under Board jurisdiction. So I could certainly comment on those, but I guess I didn't want to -- I wanted to stay focused, because there is plenty of information that will be germane to and impact rulemaking that Board may end up needing to do.

So with that, I guess I'll turn it over to John North, our Chief Legal Counsel.

MR. NORTH: Mr. Chairman, members of the Board, John North, Chief Legal Counsel for the Department.

I'm passing around a handout here. What I've done is divided the report into three different categories. The first one is ones that will require rulemaking action by the Board. The second one is major bills, major amendments to statutes that the Board hears contested cases on, and coincidentally adopts rules for a lot of them, but wouldn't require rulemaking. Then the third one is general bills which pertain to the

Administrative Procedures Act, that sort of thing, general procedural things that apply to the Board.

In the first subset, bills requiring Board rulemaking, there are two bills that will require major rulemaking efforts by the Board, and the others will simply -- the Board will simply need to conform the existing rules to amendments that have been made in the statute.

The first one, House Bill 52, is one of those that will require a major rulemaking effort by the Board. House Bill 52 amends the Public Water Supply Act to require that the Board adopt rules governing the reuse of wastewater from wastewater treatment plants. The bill provides that the Board should determine what uses can be made of reused wastewater, and then set standards for the quality, the treatment standards to determine the quality that the water has to meet if it's being reused for that particular purpose. Then third, the Board rules are to prevent the reuse of wastewater from wastewater treatment plants unless the rules are met.

This is an effort that's been going on around the nation. The Department has looked at the various statutes and rules that have been

adopted around the nation, and the Department will be coming to the Board with a proposed set of rules to implement this.

This bill doesn't become effective until October 1st, but under the Administrative Procedures Act, if we have rules ready to propose to the Board before that time, the Board can actually initiate action earlier than that. Right now I don't know exactly what our schedule is for that.

The second bill is Senate Bill 47, and it amends the Clean Air Act and the Board's rulemaking authority, and it basically says that the Board can't adopt a rule regulating forestry equipment and its associated engines that's used for forestry practices if it remains in a single location for less than 12 months, in other words, portable forest equipment. And of course there are exceptions, if necessary, to regulate it under the Federal Clean Air Act and rules, then the Board can regulate.

This is very similar to an exception that was put in the Clean Air Act about four years ago, maybe six years ago, that exempted hay grinders from the Clean Air Act. So this would

just simply require the Board to amend its rules to take temporary forestry equipment out in the same rule, I think, that exempts hay grinding equipment.

CHAIRMAN RUSSELL: John, the hay grinding was a little different, I'm hoping is a little different than this. That was creating emissions, right?

MR. NORTH: Yes.

CHAIRMAN RUSSELL: Is this the emissions from the engines or --

MR. NORTH: Yes.

CHAIRMAN RUSSELL: Okay.

MR. NORTH: Yes, it is. Senate Bill 206 is a major, a fairly major amendment to the Major Facilities Siting Act for linear facilities, pipelines and transmission lines. Right now, the Department reviews three corridors. The applicant has to propose its preferred corridor and two alternatives. The Department examines those, and then issues a certificate with a 500 foot corridor, and the line can be located anywhere within that 500 feet. Then if the certificate holder wants to deviate from that 500 foot corridor, the certificate holder has to come in

for an amendment to the certificate.

This would change the Department's process for administering MFSA, in that when we do our review of the three corridors, we are directed by this bill to prepare an EIS that covers one mile corridors, and so we have done the environmental evaluation for a one mile corridor.

Then we still select a narrower corridor within that one mile corridor, but if the certificate holder wants to deviate from that narrower corridor, it can do so by notifying the Department, as long as the deviation would stay within the one mile evaluation corridor, and as long as the landowners, the affected landowners do not object, and as long as the Department determines that the adjustment wouldn't materially increase any unmitigated environmental impact.

The next bill is Senate Bill 286. It amends the Strip and Underground Mine Reclamation Act to provide an expedited process, permitting process, for drilling operations that are exploring for coal, prospecting for coal. The process currently has very detailed application requirements, and this process provides a streamlined permit application, and actually sets

out permit review times in statute.

This is only intended to apply if there is no other substantial impacts, such as blading and dozing of roads, using cut and fill, that sort of thing. They have to go through the full process if any of that occurs, but as long as they're simply prospecting by drilling and not creating any other substantial disturbance, this new process applies.

It doesn't change the reclamation requirements, the environmental protection requirements, or the bonding requirements; and amendments to the strip mine rules will be necessary to conform the strip mine rules to the statute, in that the permit application requirements are set out in the rules, and the rules will have to contain an exception saying "except for drilling operations subject to Senate Bill 286."

Senate Bill 299 is the other major rulemaking requirement for the Board coming out of the 2011 session. It amends the Strip and Underground Mine Reclamation Act again, and requires the Board to adopt a set of regulations that are specific to underground coal mining using

in situ gasification.

Right now the rules cover it, but they only cover it in a general way by saying that underground in situ gasification has to comply with any other rule that is applicable, and that leaves the persons out there who are contemplating in situ coal gasification to simply guess what their requirements might be.

So this bill would require the Board to come up with specific requirements -- application requirements, reclamation requirements, and environmental protection requirements -- for in situ gas.

The Department intends -- and you'll see this is to be done by next May. The Department is evaluating rules that have been adopted in other states, but it is also intends to hire a consultant to glean from the environmental perspective what Montana's rules ought to contain, and obviously the Department will be coming to the Board sometime, I would anticipate no later than the January meeting, perhaps even the December meeting.

And finally, Senate Bill 297 removes coal beneficiation plants from regulation under

the Strip Mine Act, and a beneficiation plant is commercial facility where the coal is prepared, and it defines it as coal preparation where the preparation occurs is owned by someone other than the strip mine operator. So the idea is that if the strip mine operator is operating a beneficiation at the mine or close thereto, it is covered under the act; but if another party is doing it, simply buying from the mine, then that party is not covered.

This bill has a unique feature because it becomes effective only upon approval by the Secretary of Interior. Of course that's because our strip mine program is one of the delegated programs, and consequently we have to have federal approval for that. And we asked that this be put in because we have serious doubts that the Secretary of Interior will approve this, and we did not want to, one, to be allowing actions to occur based on this until the Secretary of Interior approves.

So we think that coal beneficiation, whether or not it's owned by a coal company, is required to be regulated with certain exceptions, those at power plants, that sort of thing. So I

don't know that this one will ever come into effect.

Some other bills of interest. House Bill 28 amends the Sanitation in Subdivisions Act to say that a drainfield mixing zone has to be located within the boundaries of the proposed subdivision unless you obtain an easement or other authorization if it's public land for the mixing zone to extend beyond the boundaries.

House Bill 352 amends the Public Water Supply Act to allow the Department to grant a variance of up to five years for a public water system that has a nitrate violation to use bottled water. The intention there is, if the Department is to use that, to have a compliance plan in place to bring them into compliance within five years. And you'll also notice that they have to post signs and deliver notices where variances have been granted.

Senate Bill 312 is a major overhaul to the way we administer the Hard Rock Mining Act, the gold mining/silver mining law. It makes the process, the permit review and approval process, very similar to what's in the Water Quality Act and rules and Air Quality Act and rules, in that

upon receipt of an application, we have a certain period of time, I think it's 90 days, to review and determine if it's complete, and make a preliminary determination as to whether it meets requirements of the act.

Once we have determined on a preliminary basis that it does, we then issue a draft permit. The draft permit goes out for public comment along with our MEPA compliance, which is not done until we've issued a draft permit; and then the MEPA is done on the issuance of the draft permit as a final permit; and then once MEPA is done, then we can either issue the draft permit as a final, deny the permit application, or issue the permit in a modified fashion.

Senate Bill 320 modifies the Major Facilities Siting Act by exempting more facilities from the act. New transmission lines that are 230 KV or larger are exempt -- ones smaller than that are exempt already -- when the operator obtains right-of-way from 75 percent of the landowners owning at least 75 percent of the land. So this extended that to any power line no matter -- 75/75 to any power line, no matter what the size.

The second one is new transmission lines

that are collectively less than 150 miles in length, and go to the grid from basically wind generation, biomass, certain small electrical generation facilities.

And finally, upgrades are now exempt. So an upgrade of 69 KV to 230 can be done without Major Facilities Siting Act review.

And the last bill in the ones regarding the acts administered by the Board and the Department is Senate Bill 367. At some point the Board is going to be adopting numeric nutrient standards, and there is a concern out there that the standards may be so stringent that there may be difficulty in meeting those standards by municipalities and so forth.

So this adopts a variance process, three kinds of variances: General variances, individual variances, and alternative variances. And people can either come under the general variance, which I think can be good for twenty years, but with three year reviews to determine whether or not the technology has advanced to the point where the Board standards can be met. And for those that can't meet the general variance criteria, there is individual variances and alternative variances as

well.

So the idea is that the Board would adopt standards that are protective in terms of nutrients; and then if those are too stringent to meet, then there is a methodology for slowly bring the dischargers into compliance given the state of technology, and given the economics, so that Board standards can be met eventually.

Then general bills. House Bill 23 amends, just clears up an ambiguity in the bill sponsor notification requirement. I think as you know, whenever any agency that administers an act adopts rules to implement a statute or an amendment to the statute for the first time, they have to notify the bill sponsor when they begin drafting, and then they have to send the bill sponsor a notice of proposed rulemaking, and give them an opportunity to comment at both stages.

Right now the statute can be read to say that we have to phone them, we have to write them, and we have email, all three; and this simply clarifies that any one of those complies.

House Bill 543 amends the Administrative Procedures Act when it comes to adopting federal rules or other model codes by reference, which of

course the Board does a lot. There was a bill in the session that would have required that if the Board, if any agency were to adopt a federal rule by reference, the rule could not go into effect until the next legislative session, and until a bill was introduced and approved that rule.

That made it through one house, but was killed in the Senate, and this is sort of the kinder gentler version of that, which basically says that if we do that, we have to make the full text of the federal rule that's being incorporated by reference available on our website, so that people can see exactly what the Board is proposing without having to go to a library or whatever. And we think that's just good government, and shouldn't be a problem for us to comply.

House Bill 53 simply says that for those people who have agreed to receive notice of rulemakings by email as opposed to hard mail, that we can also send them a notice that you can look at the rule notice on our website if they agree to that, because sometimes we send large notices to people, and it ties up their email, and we don't know if they've gotten it or not. This is just an administrative efficiency bill.

And finally Senate Bill 120 provides that the website of any Board has to have the name of each member, an address, telephone number, or email address for each member, and when the member's term expires.

CHAIRMAN RUSSELL: John, I have a couple questions. On Senate Bill 120, the term expiration, is that so people have something to look forward to or --

MR. NORTH: Some legislators may have voted for it for that reason.

CHAIRMAN RUSSELL: Someone in the Senate voted against me, so I'm very pleased, and sure some of them are really looking at that date.

House Bill 543, you mentioned in here "only if it is reasonable to do so." Is this the reasonableness about the posting of the federal regulations, or is it actually something other than that?

MR. NORTH: I can give you some background on that. There was another bill in the session. There were a number of administrative code bills that were fairly drastic in terms of their effect on the act and the agencies that died.

There was another one of those bills that said that agencies could -- Right now the law is that in order to adopt a rule, we have to find that it's reasonably necessary to effectuate the purposes of the statute. One of the bills would have taken away "reasonably," and said that it had to be absolutely necessary, an agency had to find it's absolutely necessary to administer the act.

That bill failed, and this bill is also sort of a kinder gentler version of that which really affirms the reasonableness standard.

OPERATOR: Mark Fix is joining the meeting.

MR. NORTH: And so this pertains to whether or not the agency should adopt it by reference as opposed to adopting it in toto. So for example, if a federal rule is one paragraph long, it may be more reasonable to simply put the language in the rule, in the state rule itself, as opposed to incorporating it by reference. That's the kind of consideration that that's anticipating.

CHAIRMAN RUSSELL: Any comments for John or other Department --

MS. SHROPSHIRE: I have a quick

question. What transmission lines still fall under the Major Facilities Siting Act? It seems like everything is gone, but I wasn't sure what was left.

MR. NORTH: Well, nothing where they can obtain 75/75, 75 percent of the landowners owning 75 percent of the land. So it's now the others, and it's above 69 KV.

MS. SHROPSHIRE: Okay.

CHAIRMAN RUSSELL: Maybe this is for Katherine. We have some cases that are just -- Will they affect the two that we have?

MS. ORR: I'd have to look at the effective date. I don't know if they're retroactive, or effective on approval, or effective in October.

MR. NORTH: If you're talking about the Senate Bill 320 -- excuse me -- Senate Bill 206 on the permitting process, that applies, has an immediate effective date, but it's only applicable to certificates issued after the effective date of the act. So anything that's under current challenge wouldn't be affected by it.

CHAIRMAN RUSSELL: Which makes sense.

MR. LIVERS: It was certainly a bill

that was at least in part prompted by some of the concerns that have been raised that have come before this Board.

CHAIRMAN RUSSELL: John, thank you very much. That was very informative.

The next item on the agenda is some thoughtful discussion around EC and SAR.

MR. LIVERS: Mr. Chairman, as you'll recall, the Department requested and the Board initiated last spring its triennial review of water quality standards, and included in that review was a specific focus, not exclusively, but a focus on electrical conductivity and sodium adsorption rate. We kind of reported back to the Board last fall on the other aspects of the triennial review, and now we're coming back to focus particularly on the EC and SAR discussions and some of the updated rationale. So Art Compton from the Department is prepared for the presentation this morning.

MR. COMPTON: Good morning, Mr. Chairman, and members. Art Compton from Water Quality Standards. Mr. Chairman, this power point presentation is going to be brief by design to leave some time for Board discussion.

The first thing that I'll touch on is the legal and administrative steps that have taken the Board to where we are this morning on the question of EC and SAR issues; we'll take a very brief walk through the science; and we will conclude with the Department's recommendation that no additional rulemaking is necessary at this time.

This is the Tongue River at the USGS stateline station. In fact, the Montana permitted discharges all come into the river not too far from this station. This is the Powder River close to the Wyoming state line at Moorehead, Montana. We don't have any discharges in Montana to the Powder. However, as I'm sure you're aware, the Powder hosts the bulk of the CBM development in Wyoming.

The Board's involvement with the EC and SAR issues began in about 2002 when the Department started briefing you on our work that had dated back several years, and you were also petitioned by some agriculture and conservation groups to establish numeric standards. At the time Montana had a narrative standard for salinity and sodium, which means that there can't be levels of these

constituents in state waters that affect the beneficial use, a narrative standard.

As you'll recall, Mr. Chairman, a pretty exhaustive review going over several years, probably a dozen public meetings. The Board had us establish a collaborative group within the industry and the water users, and we hired a technical expert from UC Riverside in California.

The culmination of the compilation of that administrative record was that the Board adopted numeric standards in 2003. They were approved later that year by EPA. And again, numeric standards mean that instead of a level that can't affect beneficial use, we have actual numbers. Again, we'll take a brief walk through how we arrived at the numbers.

I've heard the difference between a narrative standard and a numeric standard, an analogy, is compared to telling your preteenager, a narrative standard to be telling your preteenager that he or she have to go to bed when they get tired. A numeric standard would say 8:30 p.m. So again, that's a reasonable analogy.

The BER -- Generally most parameters that have numeric standards, they also have a

numeric anti-deg limit, and the Department recommended and the Board adopted an approach that left the narrative nondegradation limit in place. So instead of the nondeg limit being a fraction of the standard, it's essentially the same as the standard. And I have some slides on nondeg later on that I won't call up unless there is discussions on nondegradation.

So we have numeric standards in place, but a narrative nondeg criteria. In 2005, the Board was petitioned by some of the same agricultural, and conservation, and water use groups to get rid of that narrative nondeg approach, and adopt numeric standards, a numeric anti-degradation limit as well. It also asked that the Board require reinjection of produced water and a few other administrative adjustments.

Following compilation of another administrative record through public hearings, several Board hearings, Board discussion, in 2006 the Board adopted that numeric nondegradation criteria, but did not require, did not adopt the requirement to reinject all produced water.

The EPA approved the 2006 rulemaking, I believe it was in February of 2008.

Following that, a Wyoming producer filed suit against the Department and the Board in State District Court in Montana. Also the State of Wyoming and other Wyoming producers filed suit in Federal Court, the Federal District Court in Cheyenne, Wyoming, against EPA for not disapproving that 2006 and 2003 rulemaking. And again, you can see the items of complaint there at the bottom of the slide.

Montana prevailed in State District Court. That was appealed to the Supreme Court and upheld. The State of Wyoming and Wyoming producers won in Federal District Court in Cheyenne, and when that happened, the Federal Judge remanded our Montana state standards back to EPA for reconsideration, or whatever a remand means. I might add that they remain, and that's where we are today. I might add that our State standards are in effect inside the state, but they don't apply outside of Montana, and they are not enforceable against upstream states.

So as Tom mentioned, we decided to take advantage of this remand period by tightening up the technical basis that we produced back in 2002 for the standards. As an element of the triennial

review, we did a specific solicitation for public input on those standards. We compiled every study we could find that had been undertaken between 2003, the Board's original action, and 2010, technical studies that reflect on produced water, salinity, sodium, what have you.

We posted those to support public comment, and had a 60 day public comment period that ended in June of 2010. We received about 70 comments. Those 70 comments constituted about 48 issues, and as you might have noticed in your packet, those comments and responses are Appendix II to your updated rationale.

So again, I'm going to go through this pretty quickly, a brief walk through the science. I would encourage, Mr. Chairman, anybody who has a question to stop the discussion right then, and work that out.

Salinity is generally measured by TDS. We use electric conductivity as a measure of salinity. And when you think salinity, you think of harm to plants. The greater the soil salinity in the soil and the soil water, the harder time a plant has in drawing moisture out of that soil.

Sodium or sodicity is a ratio, sodium in

the numerator, and calcium plus magnesium in the denominator, and sodium affects not plants, but soils. Higher clay soils, tighter soils, as the sodium, the SAR, sodium adsorption ratio increases, it tends to break down clay soil structure, it reduces infiltration into the soil and permeability of the soil, the hydraulic conductivity of the soil. So again, when you think salinity, think plants, crop, forage. When you think sodium, think clay soils as being particularly susceptible to elevated effects.

Salinity first. EC effects depend upon the crop. In the Tongue, we used field beans because they and truck vegetables, truck fruit and vegetable farms produce, like strawberries, other common fruits, all have about the same salinity tolerance, and they are the most sensitive crops grown.

Irrigation practices. The more water you put into soil, the more that winds up being in excess of the plant's agronomic need. That water moves through the root zone, and tends to flush salts from the root zone, and you can get by with higher EC's, the more water you put on them.

And then finally, the proportion of

rainfall to irrigation water is important, because rainfall, the EC of rainfall is essentially zero, so it tends to buffer the salinity in irrigation water.

This is a graph out of the authoritative literature that shows different leaching fractions, and the way those leaching fractions affect the difference between the irrigation water you apply and the average root zone salinity.

And for the Tongue River, we used a 15 percent leach rate on advice of our technical expert. On the Powder River, we used 30 percent leach rate. That comes right out of the authoritative literature. On the Tongue you have more sprinkler and conventional flood irrigation, which is more efficient, and that's why the 15 percent leach rate on the Tongue. And again, the 30 percent on Powder comes right out of the book.

So again, to set the salinity criteria for the crop, we've got our most sensitive crop -- that's field beans, some people call them pinto beans or common beans. We will out of the literature get the soil water/EC threshold, above which point that particular species of plant -- in this case field beans -- is going to have a tough

time drawing water out of the soil.

We have a leaching fraction. I mentioned those. And on the Tongue, we will have a proportion of irrigation water to precip, and we will not have that on the Powder, and I'll explain why when we get there.

So again on the Tongue, we have an average annual precip of about 14 and a half inches. We have an infiltration factor of 80 percent. That comes right out of the literature. That's the amount that infiltrates. The other 20 percent tends to run off on an average. That gives you an effective infiltration of eleven and a half inches.

The agronomic need of plants and forage in the Powder River/Tongue River Basin is 30 inches. That's going to -- You multiply that by 1.15 -- remember 15 percent is our leaching fraction that moves through the root zone -- and that gives you an agronomic need of 34 and a half inches.

So irrigation water, the amount of irrigation water you're going to have to apply is going to be the agronomic need minus the effective infiltration, and we come up with 23 inches. This

sounds kind of academic, and it is. It's a fairly academic mathematical calculation. Our ground truthing, though, we've been told by at least one Tongue River irrigator that in fact he puts about two feet of water a year on his crop with a pivot.

The correction factor then will be the precip plus irrigation water, divided by the irrigation water, which leaves you with a dilution factor or a correction factor of 1.5. Clear as mud, I know.

So again on the Tongue, field beans. The published literature says that they need soil water that is less than or equal 1,000 microsiemens per centimeter. If it goes above that, you start seeing a decrease in the yield in your field bean crop.

Out of one of the authoritative publications, Ayers and Westcot, 1985, it's one of two documents that most ag salinity experts consider the bibles, at a 15 percent leach rate, that means the irrigation water has to be at 667. You apply the correction factor of 1.5, and it takes you back to 1,000, and in fact, that is our irrigation season standard on the Tongue for EC.

The Powder is much simpler. You don't

have to go through all those equations and all that math, and the reason you don't is the target crop is alfalfa. That has about twice the salinity tolerance of field beans and the other more sensitive crops grown on the Tongue. So again, from the bible, irrigation water has got to be less than or equal to about 2,000.

I mentioned that we are using a 30 percent leach rate. There is no -- At a 30 percent leach rate, the irrigation water and soil water is one-to-one off the graph I showed you before. So we don't need to change the 2,000 there.

But on the Powder, because irrigation water is so iffy -- it's not available all of the time -- a lot of the time it's not available because it's too saline to put on the crops, and some of our stakeholders, the agricultural operators in the Powder that we work with, are pretty darn good at figuring out when they can open those head gates, when they can make the siphons available to their fields for their flood irrigation. They use salinity meters generally. Again, they had become expert at using what is a marginally supportive water source, the Powder

River, to support their alfalfa crops.

So because you don't have sufficient water to fully meet that agronomic need, you're probably not going to get a full three cuttings in most years. The water balance that we used on the Tongue to come up with a correction factor cannot be calculated. Therefore, it's the 2,000 right out of the book.

Again, as you might have noticed in your rationale, personal communications from Powder River irrigators, one of whom doesn't put water that exceeds 2,000 on his fields, another one that does not put water that exceeds 1,700 EC on a new alfalfa crop. So again, our ground truthing, this fairly academic exercise, led us to believe that we're at about the right place.

The tributaries are the third sort of type of water body, if you will. The calculations that brought us to where we are on the Tongue and Powder don't work on the tribs because rather than having a 50 percent leach rate on the Tongue and a 30 percent leaching rate on the Powder, tributaries only catch enough water through spreader dike systems and the head gate systems on their lower reaches to get enough water to leach

the roots, the root zone, about once every eight to ten years.

Therefore, there is three publications listed up there, and they're also in the references section of your rationale, that as you probably saw from Appendix I of the rationale, you have a fairly complex and extensive set of calculations, including precipitation, probability curves, and all that stuff, assumptions for initial soil salinity, and water holding capacity of soil, brings you to your final number. And the reason that we put it in the appendix is because it is a pretty unwieldy set of calculations. It's not easy to get through.

But what it brings you to the end is that a standard of 500 microsiemens per centimeter for salinity will result in soil salinity of 2,300 microsiemens, if you get a leaching -- if the last ten year look back gives you a leach event, enough rainfall to leach once every eight years. If it's once every ten years, then that soil salinity has built up to 2,800.

Those two numbers result in an alfalfa yield decrease of 2 to 5 percent. And remember, our job here is to protect beneficial use. That's

as high as we can go. You might have noticed in your rationale that we ran the numbers to 600 as well, and that 600 brought us up to a yield decrease of, I think, 6 to almost 10 percent. Too much. That's not being protective of beneficial use, and again, that's why the standard for salinity is 500 on the tribs.

Sodium. Sodium again impacts soils, and so the sensitivity of soils has a bearing here. However, the Montana standards are drawn from the published literature, and the charts that I show you are pretty much blind to soil type. What that means is that our sodium standards or SAR standards may be a little overly protective for loose, sandy, loamy soils. They are probably about right on target for soils that have a clay factor, a clay constituent to them.

And as we learned in one study that we commissioned since you were all here last, very sensitive soils -- soils where you're looking at a clay content up above 50 percent, or a smectitic clay they call it. That's the most problematic kind, a proportion greater than 30 percent -- they're probably not even protective enough for that. But what we did is we gauged our numbers on

what we felt were the most sensitive soils that are widespread in the basins.

The second thing with the sodium is the salinity of water makes an effect on how damaging sodium can be to that soil. The higher the EC, the more sodium you can get away from. And the reason that that is so significant, and we pointed out here, is that rainfall -- again, remember with its zero EC -- tends to lower the salinity of the soil water, and that exacerbates the existing level of sodium.

In other words, a clay soil can experience some loss of structure and loss of infiltration ability from a rain storm, with the same sodium content. That's why we call it the rainfall effect, and that's why I'm going to talk specifically about that here in a second. And I think this is what we pretty much just talked about.

The relationship between salinity and sodium, they are again inexorably tied, is published. It's the most famous diagram in all of agricultural salinity management literature. It's called the Hanson Diagram, and there it is. It's pretty much self-explanatory. As you can see, as

the EC of irrigation water increases, the relative effect of that same amount of sodium is going to go down.

So ordinarily, what we do to generate the SAR levels that correspond with the EC level that is standard, if you'll take your 1,000 on the Tongue, and you'll see at an EC of 1,000, you can get away with about an SAR of five without causing a decrease in infiltration. But now we have to make way for the rain. We have to add precip.

MS. SHROPSHIRE: Can you go back to that graph, the top graph, or the top line. What are the differences between the two lines?

MR. COMPTON: It's actually -- think of it not -- Ms. Shropshire, Mr. Chairman -- is not necessarily two lines, but three zones. Below the bottom line there is effectively no reduction in infiltration. In other words, the amount of sodium in the soil is not enough to cause loss of soil structure, and a decrease in infiltration.

In that middle zone, you're going to have slight to moderate decrease; and then of course, on the far left side, you're looking at a severe reduction.

MS. SHROPSHIRE: For what soil types?

MR. COMPTON: Actually, as I mentioned, this is blind to soil type. This is average soils. That's why I mentioned that, again, very loose and sandy soils, maybe our numbers are a little lower than they need to be. The smectitic soils that are widely distributed through both the Tongue and Powder River Basin, and that we know some of our operators are trying to make a living on, their numbers are about right; and we have found that for some very problematic soils, almost nothing helps.

The literature, since you were all here last, has emphasized the importance of applying this rainfall effect that I'll talk about next. And again, you can see these quotes. But basically what they're saying is what our staff Ph.D. water chemist and our hired expert felt was important to do eight, nine years ago. The literature has caught up to their positions now. And as you can see, three studies in 2006 and 2008 confirmed how important it is to apply this rainfall effect. And these cites are in your references, in your rationale.

So here we have the same table, and the smaller red arrow is the change that I just walked

us through on the Tongue. The standard is 1,000, so let's assume that an agricultural operator is applying water right at the standard to his fields.

We assumed on the Tongue that rainfall event precipitation could lower the EC and the surface horizons about 30 percent from 1,000 down to about 700. If you follow that red arrow over to the left, and then come down to the line, you can see that takes you down to an SAR of about three to prevent harmful effects, and three in fact is our SAR standard on the Tongue. Again, we used a 30 percent reduction in EC caused by a precipitation event.

On the Powder, we were advised because the EC's and SAR's are higher, and again, the EC of rain water is zero, that a larger correction is necessary. So whereas we used a 30 percent correction on the Tongue, we used a 50 percent correction on the Powder.

In other words, we assumed that a rainfall event could lower the salinity in the surface horizons from 2,000 -- which is our standard on the Powder -- down to about 1,000. And then if you follow that line down, and

following the blue arrow, you'll see that takes you down to the five that we recommended to the Board back in 2003 and that the Board adopted.

That's pretty much what we had to go on back in 2003, but we've got more help now. The 2006 study led by Dr. Suarez, who is head of the US Department of Agriculture Soil Salinity Lab in California, took Tongue River soils, took them back to California, put them through standard benchmark soil analysis protocols, and found that for bare clay soil, an increase from an SAR of two to four resulted in significant decrease in infiltration rate. I remind you the Board adopted a three.

This is information we didn't have in 2003, but I guess the Department looks on it as affirmation that the Board wound up in a pretty good place. You can see for looser, sandier, loamier soils, it was significant at the SAR of six level; and then again, the regression models again showed that for both the bare and crop clay soils, that infiltration was reduced as you went from an SAR of two to four; and for bare loam soil, the decrease in infiltration starts above four percent, and that was the modeled approach

rather than the actual measurements using Tongue River soils that were again sampled and taken back to the lab.

So this is where we wound up in 2003. On the Tongue, 1,000 EC, three SAR. During the non-irrigation season, our levels are designed to protect riparian vegetation. Back in 2003, that's about all we told you, Mr. Chairman, that the riparian vegetation requires some modicum of water quality during the non-irrigation season; and I think the original technical basis in 2002 said because riparian vegetation is apparently thriving, then we guessed that around the ambient levels are apparently doing it.

We have a lot more help now. We have riparian species inventories that DEQ and Tetratech, our consultant, have done on both the Tongue and the Powder that inventory actual riparian species, and we did that as part of our TMDL watershed characterization. And then we have a piece of literature led by Dr. Jim Bauder at MSU, and with some other investigators, that measured the relative salinity tolerances of those riparian species that we inventoried.

And to give you an example, the types of

riparian species on the Tongue had a tolerance of about 2,000, EC of 2,000; the Board chose 1,500. On the Powder, the species that we inventoried were in Dr. Bauder's moderately tolerant, rather than sensitive area, they could take actually up to an EC of 4,000; the Board adopted 2,500 back in 2003.

So again -- let me see what I've got next here. That pretty much takes us to our recommendations. Again, we feel that the literature that we compiled, the public comments we received, pretty much confirm the need for the standards, the way we went about calculating them, and the ultimate values that the Board adopted. We don't see anything in the public comment period we went through or in our review of those 40 studies that suggests that we should really be in any other place when taken as a whole.

And so our recommendation is that you move not to initiate rulemaking to reopen the EC and SAR standards at this time. Our intention is to submit this updated rationale you have to Region 8 EPA, and ask them to reapprove the water quality standards that the Board adopted in 2003, and the numeric nondegradation approach that the

Board adopted in 2006. End of story.

CHAIRMAN RUSSELL: Thanks, Art. I'd like to set this -- I know there is some folks in the audience that want to speak, and then I think we're going to have a lot of questions, and it might be better to hear from -- I'm guessing a few of you want to speak to this before we talk. Is there anyone out here wants to speak to this? Are you just going to scowl at us if we make a bad decision?

(No response)

CHAIRMAN RUSSELL: Mark, did you want to say anything?

MR. FIX: Can you hear me, Joe?

CHAIRMAN RUSSELL: Yes. Absolutely.

MR. FIX: We've been listening in, and basically our thoughts were that the standards were not good enough at the time. We still feel that the most sensitive soils were not protected. But you know, I don't think it's worth going through a whole rulemaking process again. I think that the recommendation is good to go ahead with proceeding with the standards that you've got, even though we'd like to see better standards.

And I've got Roger and Charlie here, and

they might want to talk a little bit, too.

MR. MUGGLI: This is Roger Muggli. I have a farm in the affected area, and I also manage the Tongue and Yellowstone Irrigation District, and have completed the fish passage project on our diversion dam south of Miles City.

And I guess in light of the Suarez report, and using the entire farm, now we have the liberty to have all these years of effects of CBM water on our farm. So the whole thing is a test site. We don't have to worry about sampled spots and spots of soil of montmorillonitic clay, in three feet it's changed to something else, or less montmorillonitic clay.

Now before the days of this event, we had our alfalfa production up to about seven and a quarter tons per acre, and now we're looking at about a 420. It's falling off of that. We've spent $90,000 on two pieces of equipment to try to improve soil infiltration to try to move these salts down further into the profile. We're in a habit of praying for no rain, because once the rain events hits this soil that's been irrigated with this sodium bicarbonate in it, we're sort of on the back side of this disaster.

We're replacing the hay that we're not raising, and it's been the last few years to do from our seven and a quarter to seven and a half ton an acre average, we're down to this 420, and it's about $200,000 event every year.

And I'm not sure. The barley is supposed to be able to be grown on this. We've watched our barley yield, we always had over 100 bushels to the acre average on the farm on our rotation, and we used barley, and have used that for years. Now it's down to in that 40, 50 range.

And in light of that, we're trying -- this year we raised barley, because we can use it in our feed plant, or do use it in our feed processing plant, and which this year we've processed 18,000 tons of pelletized seed product for eastern Montana that we market all over the eastern end of the state and Wyoming, and some in North Dakota, and as far west as Missoula.

And now we have got this huge problem of this failed attempt to try to figure out what we're going to allow this water to be, when on our farm, it's way over the limit. I don't know how we're going to get our production back. We've tried everything under the sun, and we can't seem

to get past this 420 range tons per acre. And the standards are not protective enough.

And of course everybody has the opinion that if the thing is going to fail, it's certainly going to be in the Muggli place because I'm anti-everything. Well, I'm here to say we're pretty progressive. We don't take any -- we're not under any farm programs. We stand on our own two pegs. We don't have any government financed stuff through soil conservation, through farm subsidy programs whatsoever. We elected to go as a feed plant, and process our product, and then some.

And it's pretty disheartening to see this happen to this farm, because of the magnitude it has. The ripper machine that we brought, it's a disc ripper, 16 feet wide. We had to hook a Challenger crawler tractor on the front of it, and a four wheel drive Wagner tractor on the front of that, to get through this soil, it's such a disaster. And we have the liberty now of looking at the entire farm as a test plot.

And we need to -- I would love to have folks come and look at this disaster, but it's a little disheartening to be where we are with this

mess.

And the Suarez report, as Art stated, was taken on our place, and I translate it a bit different. I tend to look at things in a more conservative value. We're doing things with our soil, rather than now looking at soil sample test plots, whatever. We have got the luxury of looking at the entire farm, and the total loss of production on this farm. And we're even scratching our heads anymore about maybe we need to even stop farming some of it.

So I don't know where we are going to go, but it is truly a disaster, and I don't know what we can do about it. I'm pretty disheartened about the whole thing, and really don't know which way to go with this. But anyway, that's the sum of it. Thank you.

CHAIRMAN RUSSELL: Thanks, Roger. Anyone else?

MR. MUGGLI: No.

CHAIRMAN RUSSELL: Do you have some questions for the Department?

MR. MUGGLI: Do I have some? Yes.

CHAIRMAN RUSSELL: I know you do, but I thought I'd let the Board.

MR. METROPOLIS: Mr. Chairman, members of the Board, my name is John Metropolis. I'm a lawyer in Helena here. I represent Fidelity Exploration and Production, which is the sole commercially viable coal bed methane producer in Montana. Its discharge points are 100 miles from Roger Muggli upstream, near the border with Wyoming.

I want to try to choose my words very carefully here. Fidelity does not believe any change in the standards is necessary. We strongly disagree with the interpretation of some facts, and some speculation by others that have participated in this decade long effort. So we strongly support the Department's recommendation of no change in the EC and SAR. Thank you.

CHAIRMAN RUSSELL: Thanks, John. Other commenters?

MS. LINDLIEF-HALL: Mr. Chairman, I guess I might as well jump in here since everybody else has. My name is Brenda Lindlief-Hall. I'm an attorney here in Helena. I represent the Tongue River Water Users Association, as you know, Mr. Chairman. I've represented them since about 2000, and have been actively participating in the

establishment of the water quality standards.

The Tongue River Water Users Association does fully support the Department's recommendation that the standards be approved as they are, and resubmitted to EPA for hopefully the EPA's approval.

I would like to note one thing however. There has been some discussion here today about the 2006 rule and nondegradation, the nondegradation standards. I would like for everyone just to understand that nondegradation in the coal bed methane context has not to date ever been required. Permits have been reissued, and nondegradation has not been applied.

So certainly, while we support the standards, we do feel that the nondegradation rule should be applied as it was promulgated by the Board in 2006. But we do fully support the standards. Thank you.

CHAIRMAN RUSSELL: I have a question related to that then, Art. Nondeg has always applied, it's just if it's below the discharge that doesn't clip nondeg, then there isn't any action on nondeg; is that correct?

MR. COMPTON: Mr. Chairman, I think what

Ms. Hall is referring to is the original Fidelity permits were issued before the Board's action adopting numeric nondeg in 2006. When those permits are renewed, if the discharges do not constitute a new or increased discharge, then nondeg is not applied. In order to change the -- in order to incorporate nondeg into the permit, it would have to be a new or increased source. That has not been the case with Fidelity discharges.

And that's about the limit of my knowledge on permitting. Jenny Chambers is here, the Bureau Chief from Water Protection Bureau, who could expound on that if you need her to.

CHAIRMAN RUSSELL: Just because I have been to the site. Nondeg is applied at the pipe, right? I mean they have a discharge, a pipe that goes into State waters. That's where nondeg is applied.

MR. COMPTON: Mr. Chairman, I think that would be a question for Jenny.

MS. CHAMBERS: Mr. Chairman, members of the Board, my name is Jenny Chambers. And yes, that's correct. We would look at two factors. Is the water high quality, or is the water impaired? It's a parameter by parameter evaluation, and then

if it's high quality water to that certain parameter, then yes, we would apply nondegradation to any new or increased discharge when we renew a permit, or if we issue a new discharge permit.

There has been one newly issued discharge permit with OW Ranch on Hanging Woman Creek that's been referenced before in the past with the Board. We did apply nondeg based on the 2006 rules. Fidelity's reissued permit was not an increased load or increased source on parameter by parameter look evaluation, and so nondeg was already applied in the previous permits.

CHAIRMAN RUSSELL: So maybe to set this up a little different, let's say they have 20 wells out there, and they want to put five new wells in; but at the pipe, they haven't increased the discharge, and they haven't changed the characteristics of the water.

MS. CHAMBERS: Mr. Chairman, members of the Board. Yes, that is correct. And with Fidelity and other coal bed methane dischargers, they have a certain amount of capacity they can run through their treatment process, and so we look at what is the design of that treatment process, and are they increasing how much they

could run through that plant or facility. So in the case of Fidelity, they only have one treatment process, which is a plant. All the wells they have produced have to get stored prior to being run through that treatment process before they can discharge, so it has not been an increase.

CHAIRMAN RUSSELL: Thanks, Jenny. Other questions for the Department?

MS. SHROPSHIRE: I have a couple questions. The focus has been on the soil type and vegetative, you know, the crop. Have there been any macroinvertebrate studies conducted?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, actually we have a fisheries biologist in the Water Quality Standards Section that is working on I guess the technical steps that might precede a rule for bicarbonate. And I think Roger mentioned bicarbonate. Bicarbonate is one of the constituents, one of the elements of salinity in water, and it happens to be the constituent that had the greatest impact on aquatic life and fish.

And so we do not have a standard for -- these EC and SAR standards are aimed at protecting the beneficial use of agriculture. We don't have a standard for bicarbonate, but I can tell you

that the technical work that would lead any Department initiative on that effort is being conducted now up in the Water Quality Standards Section.

MS. SHROPSHIRE: And another question. The choice to use alfalfa for the Powder instead of something more conservative, or depending on how you look at it, instead of beans, what's the rationale for that?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, again, we have much better information now than we did back in 2002. Our approach with respect to selection of target crop in 2002, if you'll recall, was a survey, three surveys sent to agricultural operators in the Tongue and Powder; and it seemed to us that the predominant, overwhelmingly predominant crop on the Powder was alfalfa.

We have much better information now. We have two sources of remote imagery generated GIS overlays. One is crop acreages, and that comes out of the US Department of Agricultural National Agricultural Statistics Survey Office; and the other one is a GIS coverage of irrigated acreage that comes out of the Farm Service Agencies GIS

work, and our Department of Revenue uses this overlay to assess lands, because of course irrigated lands are assessed at a higher rate than nonirrigated.

When you combine those two overlays, what we found was a total of -- I don't remember how many beans on the Powder. It was somewhere around a little less than 100 -- but the intersection of the two overlays identified 13 acres of irrigated beans on the Powder, as opposed to 16,000, I think -- I'd have to look the number up -- but 16,000 acres of alfalfa. So we didn't figure that 13 acres of irrigated beans on the Powder was worthy of having driving that as a target crop. Comparatively on the Tongue, there is several hundred acres of irrigated beans.

MS. SHROPSHIRE: If there is a guidance on choosing the target, or you just went with your best guess? Do you have to use the majority crop or could you have gone with something different?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, it wouldn't be the majority crop because of course there is still more alfalfa on the Tongue than there are field beans and truck farming going on; but because field beans and

fruits and truck farm vegetables all have that same tolerance, and they're around 1,000. And there was significant acreages, like I said, several hundred acres of field beans irrigated on the Tongue. Although it was only a fraction of the amount of alfalfa there, we selected that as our target crop.

So it wouldn't be the majority crop, it would be -- I guess a reasonable amount I guess of that. And so I guess we'd say, a direct answer to your question, several hundred acres of irrigated beans on the Tongue we felt was obviously significant and worthy of protection; but we did not want to have the 13 acres of irrigated beans on the Powder drive the target crop on the Powder. We didn't think 13 acres was significant.

MS. SHROPSHIRE: If the price of beans quadrupled, and it was beneficial to plant beans versus alfalfa, I guess you could argue -- those sorts of considerations didn't go into your assessment, or did they? Could you argue that that's unlikely to happen?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, we did look at the economic value per acre of crops, and produced, multiplied it by our

GIS coverage acreages, and came up with total cash value of that crop; and certainly that is a player. You bet.

And I guess it might still take more than 13 acres of beans, even if their price went up, to I guess in our mind have that drive all the numbers on the Powder, remembering that the Powder exceeds, even the 2002 for alfalfa regularly. And again, that's why in our watershed assessment that drives the TMDL program, the Powder is classified as marginally suitable of agriculture uses. And I mentioned how good the Powder operators have had to be to make good such good use of that marginal water.

MS. SHROPSHIRE: The last question I had was just with regards to the soil type and the Hanson diagram versus using the diagram that was higher in clays, and if you were to get detailed soil data from those areas. Have you looked at the values -- I'm sure you have -- for what percentage clays versus how that compares to the Hanson diagram? And just if you could talk on that.

MR. COMPTON: I guess having the Hanson diagram be blind to soil type, it is pretty much

just a starting point. And certainly there are soils out there that Mr. Muggli referred to, the problems that he's had in the one particular field or two. We did investigate. We commissioned Dr. Bauder again from MSU to look at what was pretty much a collapse of an alfalfa crop on portions of Mr. Muggli's field.

And Dr. Bauder took soil samples, took them back to the lab, spent a fair amount of time on it. His conclusions were that soil dispersion appeared to be a significant factor in the death of an alfalfa crop in a field in the lower Tongue River valley, Mr. Muggli's field. He concluded that the event appeared to be a consequence of a combination of natural soil physical and chemical properties, and an extended period of rainfall, followed by elevated evaporative demand of a first year alfalfa crop. This was a new planting.

He said that dispersion was specific to areas where soil was more than 30 percent smectite clay, had higher cation exchange capacity values. He concluded that the dispersion on Mr. Muggli's field was not necessarily a direct consequence of the quality of the water, but rather a consequence of wetting; and that all of the soils demonstrated

a progressive decrease in hydraulic conductivity upon repeated wetting, alternating with periods of drainage.

So he didn't put the collapse of Mr. Muggli's crop really on a water quality basis. He put it on very sensitive soils, and the heavy rainfall, and intermittent drying and wetting. Again, it was not a water quality issue, according to Dr. Bauder.

MS. SHROPSHIRE: Did you make estimates of what an appropriate SAR would be for those soil types?

MR. COMPTON: An appropriate SAR for a tighter soil?

MS. SHROPSHIRE: For the types of soils that you just described.

MR. COMPTON: You know, Mr. Chairman, Ms. Shropshire, I'd have to go back to Dr. Suarez's conclusions, and that is for clay soil. He doesn't say how much clay, he doesn't say how much the smectitic clays that predominantly are the most sensitive type of clay. These were Tongue River soils. In fact, I think Mr. Muggli mentioned that the soil samples came from some of his fields.

Dr. Suarez and his team found that when you go from an SAR of two to four, your infiltration is reduced. I guess that's the most specific information that we're aware of in the literature that addresses sensitive soils.

MS. SHROPSHIRE: That's all I have. Thank you.

CHAIRMAN RUSSELL: Other questions? Joe.

MR. WHALEN: Thank you, Mr. Chairman. I have one question for Mr. Compton and one question for Ms. Chambers.

Mr. Compton, as we have seen, this question really goes to the science and the reporting that's been done that we've been charged with reviewing. As we've seen with respect to the Powder River and the Tongue River areas, the annual rainfall is typically between 13 and 15 inches. It can go less, it can go more, depending upon the year. That would typically classify that area as either semi-arid to arid.

One of the key factors that wasn't really addressed too much specifically in the report was the issue of evaporation and evapotranspiration in plants, so I wanted to ask

you. How is evapotranspiration in plants related to electrical conductivity, and how does that impact the ratings the Department is recommending? And then two, how does the evaporation impact SAR, and how does that impact the rates the Department is recommending for SAR?

MR. COMPTON: Mr. Chairman, Mr. Whalen, I believe it was 30 inches we identified as the agronomic need of plants and forage in the Powder River Basin, the Tongue and Powder River Basins, that came from the literature. I can tell you that evapotranspiration takes out moisture, but leaves the salts in the soil. And in fact that's the reason, I believe -- if I can find -- I'll just have to leave it at that.

The literature addresses that phenomenon, the fact that evapotranspiration will withdraw waters from the soils, but leave the salts, bind it directly, and it works into these numbers. That is all I can tell you.

CHAIRMAN RUSSELL: It wouldn't change the SAR very much because it's just a cation ratio. So if those ratios don't change, the SAR doesn't change. I don't know.

MS. SHROPSHIRE: Unless it changes the

salinity.

CHAIRMAN RUSSELL: We're talking about the sodicity.

MS. SHROPSHIRE: I know, but the salinity impacts the sodicity.

CHAIRMAN RUSSELL: The EC changes, but the SAR shouldn't change much. Would you agree, Bob?

MR. BUKANTIS: Right. Mr. Chairman, members of the Board, for the record, my name is Bob Bukantis, Water Quality Standards Section Supervisor for the Department.

And two things. One thing is, Mr. Whalen, Mr. Chairman, your question about evaporation, that's basically taken into account. That's implicit, if you would, in the numbers -- Art had them up there -- on the total agronomic need, because if you want to evaluate how much water a crop is using, if a plant is just cranking along full photosynthesis, getting all the water it needs, it's kind of equivalent to just regular evaporation, because that water is just coming out through the leaves.

And so that number is basically included in the agronomic need, and so that agronomic need

is basically determined by evapotranspiration, so that number is right in there.

In terms of the effect on the salinity in the salt balance things, remember that the overall salinity has to do with its effect on the crop. The SAR is the measure of sodium balance relative to other ions. That's more effect on the soil. Where the two of them really come together is with this rainfall event, where basically you're diluting the salt a lot faster in the SAR. The SAR is real slow to change in response to evaporation or dilution because it is just the relative amount of sodium relative to the other compounds in there.

And I think where the evaporation comes in in terms of that soil impact, if you would, is how it affects that relationship that's explained in the Hanson diagram relative to how the SAR and the overall salinity interact. I hope that helps.

MR. WHALEN: If I can just follow up, Mr. Chairman.

CHAIRMAN RUSSELL: Sure.

MR. WHALEN: So higher evaporation rate does not impact the tightening of soils; is that what you're saying?

MR. BUKANTIS: Well, I guess from our perspective, the basic principle of science called Occam's Razor, and evaporation rate is kind of something we can't control, and so it's given out there. That's kind of already part of what the -- it's part of how we determine the agronomic need, because if you moved the stuff to a more humid climate, if you would, your crop need would go way down because that water wouldn't be coming off.

And these standards and these relationships we apply using the local factors. That's kind of implicit in there, and so that gets into -- that will change from day to day, as all these factors can change from day to day, because what we're trying to do is basically make reasonable assumptions on a highly variable natural system, and that's one of those things that kind of fluctuates in there, and is built into -- I guess the way I look at it -- it's built into that crop need number, because that's one of the driving factors, is how much water is coming off. Because you're in a more humid area, you don't get much evapotranspiration, and you don't need to apply so much water. I don't know if that --

MR. WHALEN: That answers my question, Bob. Thank you.

I have a question for Ms. Chambers, if I may.

CHAIRMAN RUSSELL: Sure.

MR. WHALEN: Ms. Chambers, this is a clarification question with respect to the measurement of EC and SAR coming off of activity in Wyoming and then downstream a little bit.

We had talked about where these measurements are taken. Can you outline for us -- My understanding is there are some USGS stations along the Tongue running from -- essentially to the Tongue River Reservoir, down to the mouth of the Yellowstone.

In terms of our nondegradation standards, and where those are measured, are they only measured at that station near the Tongue River Reservoir, or are they measured at each USGS station all the way down to the Yellowstone? And relative to that, is there some CBM activity taking place that's discharging produced water into the watershed below that USGS station up near the Tongue River Reservoir, to your knowledge?

MS. CHAMBERS: Mr. Chairman, Mr. Whalen,

I guess I'd like to address that in kind of two parts.

When we evaluate nondeg for purposes of discharge permits, that's just to set the effluent limit requirement on the end of pipe discharge. So when we evaluate whether nondeg is being met, it's an effluent condition based upon compliance with that permit limit, and based upon that individual permittee. So if we protect the discharge water at the end of pipe, then we're assuming it's protecting water quality and the ambient condition based upon the water quality standards.

I don't evaluate and look a lot at ambient conditions in stream based on whether or not it meets water quality standards or ambient conditions. However, we do require a lot of permittees to do a lot of ambient in-stream monitoring upstream of their outfall and downstream just to see if there's any cross-reference, based upon whether or not we set the permit limits correctly.

In addition, we look at some studies on US gauging stations on ambient conditions, and we look at and renew those discharge permits when we

evaluate whether or not there is a condition in the stream that needs to be met.

So specifically on where the US gauging stations are, I'm not comfortable in saying exactly where those are located and where we have discharge permits or not. We only have one discharging facility currently, that's on the Tongue, is Fidelity. We have two other discharge permits that are authorized to discharge, but currently do not. Pinnacle or Summit Gas has land application on off storage channel, and OW Ranch has a newly issued permit that hasn't even developed a treatment plant or produced wells in order to even have a discharge potential.

We've done a lot of look at what comes across the border from Wyoming into Montana with some of those gauging stations, just some sampling of the monitoring program, and Bob's shop has also proceeded with.

MR. WHALEN: Can the Department confirm that the only discharging of produced water into the Tongue River and Powder River watersheds are coming from permitted outfalls, pipes?

MS. CHAMBERS: Mr. Chairman, Mr. Whalen, I would say yes. We have a compliance inspector

that's currently in the Billings field office, has been on site in that area numerous times. There is others from the Department that have taken a lot of field note visits out, both in Wyoming and Montana. We've got a lot of on the ground agricultural type stakeholders that I'm sure we would be notified if there was a discharge that we weren't aware of through the complaint process at our Enforcement Division.

But I'm pretty comfortable that, yes, any produced water that has an outfall has an authorized discharge permit.

MR. WHALEN: Thank you, Ms. Chambers. Thank you, Mr. Chairman.

CHAIRMAN RUSSELL: Do you have --

MR. ANDERSON: Is Mr. Muggli still on the line?

MR. MUGGLI: Yes. I'm on the line.

MR. ANDERSON: This is Larry Anderson. I'm interested in your response to the Department's explanation of the problems in yield that you're having on your place.

MR. MUGGLI: Well, the problems we're having are really sort of a combination of worry about this discharge of this water. And I can

remember my grandfather and my dad having a conversation a long, long time ago, worried about salt loading increases from -- whatever the case -- from the Badlands south of Miles City wherever, the impacts into the river, and the effects on this montmorillonitic clay.

The Suarez report -- and my dad died some 15 years ago, so that was long before the worry about CBM came along.

The Suarez report was generated off of a soil test that was taken off of our place. We sacked up tons of soil to send to California, and it happened to be montmorillonitic clay 54 percent, so those results were based on that test. We have fields that have as high as 90 percent montmorillonitic clay, and so the problem is just absolutely exacerbated.

So here we have this big test plot, the whole entire farm with yields going awry. We have my fish passage project, which came on line five years ago on the west side of the Tongue River, and it's called the Muggli Fish Passage because I've put a lifetime of work in getting that achieved, and there is yet to have a sauger and walleye go up that. They have netted the fish out

of there a 24 hour period one day a week. There is not a sauger or walleye in there when there used to be.

It's because the hatch rate, when the EC reaches 1,000, drops to four percent, and so those fish are devoid of that part of the Tongue River anymore, and it is a result of this increased salting load. And I don't know what it is going to take to have the problem recognized, because I'm telling you we're in a bad way on this mess, and I wish there was some result.

CHAIRMAN RUSSELL: Thanks, Roger.

MR. ANDERSON: I just want to ask one of the people from the Department. Is the position of the Department that Mr. Muggli's farm's problems are unique to Mr. Muggli's particular soil characteristics and particular circumstances?

MR. COMPTON: Mr. Chairman, Mr. Anderson, I guess not necessarily unique to Mr. Muggli's circumstances, but as he stated, the field that we investigated, that we had Dr. Bauder investigate, that had partial collapse of a newly planted alfalfa crop was very tight soil. I believe -- I think Mr. Muggli is right. The clay percentages that Dr. Bauder and his team reported

on were up to 62 percent, and that is tough ground to work.

Again, it was more of a -- Dr. Bauder felt it was more of a water quantity and timing issue than a water quality issue that resulted in the breakdown of that very tight, that very clayey soil, so I don't think it's probably specific to Mr. Muggli. There is probably other fields out there. And I think I mentioned at the get go that our standards are no doubt overly protective for less sensitive soils like loam and sandy soils. We think they're right on for the more sensitive soils out there, but it could be that some soils out there that are so high in clay content, again, that is less the water quality, and more the timing and amount of water that's applied to them that has been causing problems.

MS. SHROPSHIRE: Can I follow up?

CHAIRMAN RUSSELL: Let's just take a break, and as short as possible, and make sure we're back at it by eleven.

(Recess taken)

(Ms. Shropshire not present)

CHAIRMAN RUSSELL: We didn't make it by two minutes, so that's not bad for this group.

I'm talking about that group back there, not us. Let's get rolling again. Any more questions that --

MR. LIVERS: Mr. Chairman, Ms. Shropshire did have a follow-up question she was about to ask prior to the break, so before we move to anything procedural, we'll want to allow her to follow up with substantive questions.

CHAIRMAN RUSSELL: Are there any others?

MR. MIRES: This document that we received, does this pertain to this particular topic? Is that the purpose of this?

CHAIRMAN RUSSELL: It is. It's part of the record.

MS. KAISER: I have a question. This is Heidi. I have a question for Art. I just wanted clarification on the lower standards for the tributaries. You had stated I think -- unless I misheard you -- that generally the water quality in the tributaries is lower in SAR than the Tongue River in particular. And I guess the data that I have looked at is contrary to that, at least at the confluence of the Tongue, is generally higher than the Tongue River. So I guess I know you --

I also understand there is a component

of the frequency of irrigation and leaching on those tributaries. If you could just really briefly clarify that for me.

MR. COMPTON: Mr. Chairman, Ms. Kaiser, again, the clarification is the SAR levels on the tribs relative to the standard?

MS. KAISER: Yes.

MR. COMPTON: Okay. Mr. Chairman, Ms. Kaiser, the tributaries irrigation season SAR is three, and the reason -- that comes directly from the literature, both Ayers and Westcot, and DeMooy and Franklin state -- and both of those studies have been quoted by a Montana water quality scientist, Dr. Schaeffer -- that at lower EC's, EC's below about 700, the lowest you need to go to be protective is an SAR of three. So that three came right out of the literature.

Ordinarily at an EC of 500, the SAR would be way, way down there, maybe even one or lower. But again, the literature says you don't need to go lower than a three at lower EC's.

So Ms. Kaiser, certainly that is likely lower than the ambient conditions on the tributaries, just as there is no doubt that an EC of 500, that standard is lower than ambient on the

tributaries a lot of the time. But remember, a water quality standard is largely independent of the ambient condition. Rather the water quality standard is that level that the science argues is protective of the beneficial use.

When the natural condition -- I don't want to confuse ambient and natural, or Claudia will get mad at me -- but whenever the natural condition is higher than the standard, it's the natural condition that drives permitting, and that's because of Section 306 of the Montana Water Quality Act that says that a discharger need not treat to a conditional purer than natural.

So I know the 500 and perhaps the three SAR may seem kind of academic on the tributaries, but in fact that is the level that would fully protect the beneficial use. I hope that answers your question.

MS. KAISER: Oh, yes. That was very helpful. Thank you, Art.

(Ms. Shropshire present)

MS. SHROPSHIRE: Mr. Chairman, I want to follow up on a couple of points. The one you just made about natural versus ambient, is that -- is natural -- would that be the same as baseline, the

original I guess pre-coal bed methane concentration, is that what natural would be? I guess is there data that says what those values were pre-coal bed methane development?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, yes, I guess we would call natural the water quality that has not been affected by any anthropogenic factor, any human cause, I think we call it natural. Whether or not there are numbers out there that reflect natural, we certainly have numbers out there, water quality data, historical data, that predates CBM development. So I think it's fairly straight forward to come up with a water quality suite that is preindustrial discharge, certainly pre-CBM discharges.

Whether there are other issues, any other human caused factors, whether it would be from increased nitrates from soil disturbance, salinity from agricultural return flows, and what have you, is a fairly complex question, and some of those complexities have been drafted by our Tongue River model which we've done in conjunction with EPA and with Tetratech, and has gone just about as far as we can go to establishing what true baseline really is, and what the natural

condition is.

MS. SHROPSHIRE: I wanted to follow up from a conversation that we had right before the break, if that's all right. It goes back to Mr. Muggli's property, and it sounded like Mr. Bauder's conclusion that -- I don't know if it was a conclusion -- but that potentially the soil conditions and rain were contributing factors to the inability to grow alfalfa there. And it seems to me that those are constants. Do you know if he addressed if a lower SAR water were applied, if it would have improved the ability to grow alfalfa?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, I think he implied through his conclusions that because he did not implicate water quality in the collapse of that crop, that was in fact other factors. I think in his study, he used the USGS real time stream gauge data to estimate what the SAR of the water that was applied -- and Mr. Muggli, you can correct me if I'm wrong -- but if I recall, it was around 1.75 or something, in other words, well within the standard for the time that irrigation was conducted.

MS. SHROPSHIRE: And even though it was

within the standard, I was curious if it could have still had an impact, i.e., the standard maybe was too high. Did he look at that?

MR. COMPTON: Mr. Chairman, Ms. Shropshire, I'd say that certainly every increment of SAR over a very neglible amount would have an adverse effect under those conditions. Again, very tight soils, very high clay content, heavy irrigation followed by heavy rainfall. Certainly I would say the lower SAR is the better, but I'm just not sure, based on Dr. Bauder's conclusions, that -- I think what he is suggesting is you'd have to crank the number much lower than a three to have any practical effect in that situation.

CHAIRMAN RUSSELL: Robin, if you look at that chart, it doesn't matter. If you have any SAR, if you have an event where you put something on there that has no EC, you're going to have impact. That's what the chart demonstrates. So you'd have to have an SAR of zero before you have no impact.

MS. SHROPSHIRE: Okay. To follow up on that point, it seemed that you looked at crop use in terms of developing the standards, but I wasn't clear in terms of the SAR and soil properties, how

much the average soil properties in the area impacted the standards that were developed.

MR. COMPTON: Mr. Chairman, Ms. Shropshire, we really didn't have any literature that would give us anything other than this information here until these studies came out. These are really the first ones that linked a -- Actually it is not that one. It's these -- that linked a number to a soil. And again, we know that this was based on Tongue River soils. I think Mr. Muggli stated that some of the samples came from his fields, although they may not have been the most sensitive soils. I know there was an attempt to get kind of a cross section.

I think bottom line is there may be some soils out there that are so tight and so high in smectitic clay content that can be factors other than SAR that can contribute to dispersion and lack of infiltration, and I think that's what we saw on Mr. Muggli's field.

MS. SHROPSHIRE: Maybe this is a question for Mr. Muggli, but has that field been able to sustain vegetation before?

MR. MUGGLI: This is Roger Muggli. Yes, we did sustain a reasonably good crop before this

event.

The thing is that one has to take into account that now that we have subjected the entire 1,700 or 1,600 acres of our irrigated farm to this ten year test or twelve year test, we're seeing these results, and so we can split hairs on this part of the soil and this part of the farm, the smectitic montmorillonitic clay, but the overall production that's in the negative to that degree. And I'm telling you this isn't perceived, this isn't made up. This is looking our crop records, and we keep all these crop records, and they're relative to our feed production processing plant. That's why this stuff is all so important.

And now to replace that hay it's a $200,000 a year event, and I am tired to death of hearing this. We're splitting hairs on whether it's this amount or montmorillonitic clay or that. It is just an absolute disaster, and it's something I am desperately trying to get past on this place, and I don't know how to do it. The standards are just too high to accommodate this type of soil when we once had this over seven ton average, and we're scarcely over four now, and I don't know what to do.

CHAIRMAN RUSSELL: Any further questions?

MR. MIRES: In regards to this sheet that we received this morning from the Tongue River Water Users Association -- and I suppose this is to Art on this one -- they do raise an interesting question. I'm curious as to what response has been provided back to the association as to --

We've had a lot of water in the last couple years, and is there a proposal that the Department has, or how are they answering the question? What's the Department's proposal when we have drought years then, which quite frequently happen in this part of the country? Have you responded to their letter yet?

MR. COMPTON: Mr. Chairman, Mr. Mires, this issue that the letter refers to has become an annual event for the last four or five years. And the problem has been late March/early April pre-runoff elevated EC's. The first time it happened about five years ago, we went to the Wyoming DEQ and asked if there was any water management incidents that they were aware of; and I think the first year or two they might say,

"Well, we had one pond blow out that wasn't reported to DEQ," something like that, but it wasn't a big enough event to cause the three to four weeks of elevated EC's before this runoff started.

As recently as about maybe three or four years ago, their conclusion was that these elevated EC's pre-runoff were a mobilization of salts from low elevation runoff -- and we do have salinity soils out there in the upper Tongue in Wyoming -- and that's kind of what we chalked it up to.

The Department started putting in some pretty serious investment in this issue last year when we did our own water balance, our own salinity balance, based on USGS data to try and get at what was behind this creep that we were seeing in pre-runoff EC's in the Tongue.

Our conclusions, in looking at the amount of water and the water quality of that water coming in in the upper Tongue, was that our permitted discharges accounted for about 2 to 3 percent of the salt load at the state line station.

You're aware of the Supreme Court

decision that all discharges in Montana have to be treated. I believe Fidelity will have their last outfalls treated by this fall, and really that number should go from 2 to 3 percent to negligible, I would think.

The other major source that we looked at was Prairie Dog Creek, which is a tributary of the Tongue in Wyoming, that has extensive CBM development on it, I think 1,200, 1,300 wells, and several hundred on-channel ponds; and we calculated, based on the flow and quality of Prairie Dog Creek, that it contributed between 10 and 15 percent of the salt load at state line depending on the time of year.

So I'd say the answer is there is an anthropogenic or human caused element in this spring time creep we see. I suppose when we have water quality standards in effect, Wyoming's responsibility to us to meet the standard at the border, and they're doing that, and this creep is not such that it's exceeding the standard at the border, but nevertheless having this EC level creep up from mid March to mid April, 100 EC units a year -- which is about what it's been doing the three or four, five years -- is troublesome.

And I think Mr. Whalen asked the question of Jenny, "Do you know that you've got all of your discharges monitored, do you keep track of them, do you know where they all are?," and Jenny's answer was right on. Yes, we do as far as the permitted outfalls and what have you. We know where those are. I believe industry reporting on that and our follow up field inspections are accurate.

The problem we're going to see -- and Prairie Dog Creek is a perfect example -- some of the water that's managed through the National Pollutant Discharge Elimination System in Wyoming. We have MPDES permits, Montana Pollution Discharge Elimination System, and Wyoming has WPDES permits, Wyoming Discharge Pollution Elimination System. Water that's managed through that federally delegated system in Wyoming gets as far as their ponds, and then it starts affecting us as a nonpoint source.

We think that's one of the things implicated in the spring time creep that Mr. Hayes' letter is referring to. That is a tough problem to get around. Nobody regulates nonpoint sources, the water that moves through alluvial

soils into the Tongue and winds up entering Montana, and winds up affecting the state line station.

All those ponds and Prairie Dog Creek, the couple hundred on-channel ponds, are prohibited from discharging overtopping unless there is a precipitation event. Some of them can't overtop unless it's a five to ten year event, a pretty significant rain storm; but others can overtop anytime there is any rain. But again, you have to ask yourself if we can calculate from a mass balance that Prairie Dog Creek contributes 10 to 15 percent surface flow, I guess we don't know where else to go with this spring time EC creep. There is other influences, and it could be subsurface flow.

Like I said, this is the type of nonpoint flow that the literature, recent literature, suggests you get a tributary that's full of CBM wells and CBM ponds, and I don't think we do have an answer to that.

We have really a good relationship with the Wyoming DEQ. We have a monthly conference call with them where we looked at their current batch of permits, and I think Director Corra

mentioned to Director Opper yesterday, when they were at the same meeting, that he didn't think there had been a CBM well drilled in the Powder River Basin in two years, and I can tell you that the monthly permits are all renewals. There is not much, if any, new water being produced in Wyoming, but there is a lot of water in ponds, a lot of CBM produced water in ponds. There is no doubt some of the effects is the nonpoint source.

What we do about it is I think we continue to rely upon our relationship with the Wyoming DEQ to make sure that their water management strategies are as tight as they can be, but with respect to the stuff that leaks through the sieve, I'm not sure. I don't think we have an answer for that.

MR. MIRES: Thank you.

CHAIRMAN RUSSELL: Any other questions?

(No response)

CHAIRMAN RUSSELL: Tom.

MR. LIVERS: Mr. Chairman, members of the Board, Tom Livers with the Department. Just after hearing the discussion, I thought it might be useful to the Board to take a minute and

outline the options you have in moving forward on this issue.

The first thing is this is something we do anytime there is a potential decision point, even if our recommendation to you might be no action or not initiating rulemaking. We don't want to presume that you will agree with that, and we don't want to preclude you from acting. If we were to notice something like this as a briefing item, it would essentially run afoul of the public notice requirements if you were then to take action, so we try to keep your options open and notice it as an action item. But we've done that before on similar issues when we don't recommend, so it's basically, we don't want to just presume that you're going to agree with us.

I think in addition to that, this issue probably merits some kind of formal action by the Board. I think it was -- when we opened the triennial review a year ago, the standards were a specific point of emphasis. We've certainly done what we think is a rigorous analysis here to look at this issue. We've presented that information to your packet, we've summarized it this morning. I think we've had a good vigorous discussion this

morning and good questions from the Board. So we do appreciate that.

Given that, it seemed to simply take no action in my mind seems a little maybe ambiguous or not reflective of the kind of discussion we've had here. Certainly our recommendation is that you reaffirm the standards. We think these standards are necessary for protecting beneficial uses on these three stream categories, on the Tongue, the Powder, and the tributaries.

So it would be the Department's recommendation that the Board reaffirm that, finding the standards necessary. Obviously the Board can disagree, the Board can choose to take no action, or the Board could choose to initiate rulemaking and revisit the standards. We're not recommending that. I don't think anyone here has recommended that this morning.

What I wanted to outline is why we noticed it the way we did, to give you a sense of what your options are on this issue.

CHAIRMAN RUSSELL: Thanks, Tom. For purposes of keeping this moving, in the past we've done no action by just moving to the next agenda item, and I don't think that -- if that's as the

Department recommends, I don't think that that puts enough meat on where we need to be right now.

So I'm going to ask for a motion specifically based on the following. The information presented today makes it clear to the Board that the EC and SAR standards for the Tongue, the Powder, and the tributaries are necessary to protect water quality and soils in the basin; and with that in mind, that we would not take action to initiate rulemaking at this time.

MS. SHROPSHIRE: Can you repeat that?

CHAIRMAN RUSSELL: I'm not sure I can. But based on the information presented today, that the Board finds that the current standards in the rule for EC and SAR for the Tongue, the Powder, and its tributaries are necessary to protect water quality in the basin and soils; and based on that, that we would not initiate rulemaking at this time to change those standards.

MR. WHALEN: Mr. Chairman, I support the statement that you've made. My concern was in making a negative motion parliamentarily.

CHAIRMAN RUSSELL: Before we do, we probably ought to get it out there for discussion.

So for discussion purposes, would you move that?

MR. WHALEN: I would if we could maybe remove the word "not," if we could insert the words "affirming the position of the Department's recommendation."

CHAIRMAN RUSSELL: That based on the information that we've received today, that the EC and SAR standards are necessary, the current ones are necessary to protect water quality in the basing and soils.

MR. WHALEN: So the motion would essentially be that statement?

CHAIRMAN RUSSELL: And that we would not take up rulemaking at this time. That's the only negative, and I don't know how we could make a positive statement that we weren't going to do it.

MR. LIVERS: Mr. Chairman, I wonder if that last piece is implicit in the reaffirmation. It might be.

CHAIRMAN RUSSELL: If it is then, I would just strike, ask to strike, that based on the information that the Board has received today, that the current standards in rule for EC and SAR are necessary for water quality and soil protection.

MR. WHALEN: So moved.

CHAIRMAN RUSSELL: It's been moved by Joe. Is there a second?

MR. ANDERSON: I'll second.

CHAIRMAN RUSSELL: Seconded by Larry. Further discussion?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Motion carries unanimously. I really appreciate the Department's work on this. I lived through the whole thing, and I appreciate the new information that you brought, and I'm very grateful that it affirms really what we did nine years ago, nine and six years ago. So thank you.

And Roger, I appreciate your comments about this, and I hope you can keep working with us, that you're not throwing arrows at us because the guy on the board has got the sling. That's an inside joke.

Let's move on to the next item.

MR. MUGGLI: Thank you very much.

MR. LIVERS: Mr. Chairman, Tom Livers. I guess I would just like to pile on or add to your statement. I'm taking this very seriously. I think those of you who have been here for awhile remember Art Compton from when he was our Planning Division Administrator, and we're glad that when he chose to retire, he was still willing to make himself available for what turned out to be a really key project for us. So much appreciated.

CHAIRMAN RUSSELL: It's always nice to see Art. We have history.

All right. Let's move on then. The next item on the agenda is III(B)(1), executive summary for rulemaking, and listed affected rules are ARM Title 17, Chapter 30, Subchapter 12, Water Quality Act.

MR. LIVERS: Mr. Chairman, these next few probably won't be the quick slam dunk that the last one was. Request for initiation of rulemaking, and Jenny Chambers is on deck for this.

MS. CHAMBERS: Good afternoon, members of the Board. My name is Jenny Chambers, Chief of the Water Protection Bureau. Today I'm before

you. The Department requests the Board concur with our recommendation to initiate rulemaking to amend the rules establishing effluent limitations, standards of performance, and treatment requirements for the Montana Discharge Elimination System Permit, also referred to as MPDES permit program, which are located in the Administrative Rules of Montana, Title 17, Chapter 30, Subchapter 12.

The Department is requesting these rules amendments in order to maintain compliance with the federal regulations governing states with delegated authority to implement the Federal Clean Water Act permitting program. Federal requirements are listed in 40 CFR 125.23, that requires delegated states to adopt the technology based effluent limits and standards found in subparts A, B, D, H, I, and N, of the 40 CFR Part 125; also 40 CFR Part 133; also CFR 40 Part 129; and 40 CFR Chapter "I" and Subchapter "N".

The Board's existing rules that are set forth in the ARM Title 17, Chapter 30, Subchapter 12, incorporate by reference the technology based effluent limits and standards of performance that were promulgated by EPA prior to 1989. So in

summary of the rules that are required, we propose the revisions necessary to adopt effluent limitations and standards promulgated by EPA after 1989.

Part of the updates will also eliminate existing incorporation by reference prior to 1989, and adopt some of those texts of those federal regulations into the state rules. We've evaluated that working with our permittees, and also with my staff within the Permitting Section, that if we take the text from the federal rules, and plug those in word by word, versus incorporating by reference, that it's going to provide an easier mechanism to figure out what our approach is and what we're trying to evaluate when we're making a permit decision, and so having cross-references back to the federal regulations and so forth.

We're going to also add a new section of rule to adopt the text of a recently promulgated federal regulation that imposes treatment requirements on cooling water intake structures. Those are your rule packet under New Rule I and New Rule II starting on Page 11.

It's kind of a change of position when you look at Water Protection Bureau and wastewater

discharge permits, that's a discharge of wastewater into a receiving water or surface water source. This is a cooling water intake structure for power generating facilities, and will regulate how much -- not how much water they can pull in, but how they pull that water intake from the intake structures. It evaluates minimum control measures for impingement and entrapment of fish, and certain screen levels based upon the size of cooling water intake structure that they are proposing.

Another revision is to eliminate some of the federal requirements that are not applicable to Montana Pollutant Discharge Elimination System Programs. For instance, we had some old references in there prior to 1989 for federal requirements for ocean discharges. We don't have a lot of ocean discharges in Montana, so that's not required to be in our rule package.

Also there was language in there for pretreatment program requirements. Montana currently does not have delegated authority to implement a pretreatment program. That's still administered by EPA at the federal level.

Another change that we have is just to

provide an ease in federal regulations as far as delegated state. In some of the areas there are still some incorporation by references if the rule was too cumbersome to add in, but we do have a lot more text. That's why the rule package is fairly large to roll that incorporation by reference into actual text.

Another change is just to clarify existing language and clarify some of our definitions, just to make sure that we're providing a service to our permittees and our permit writers to know exactly what we're trying to follow.

In an effort to bring the MPDES rules up to date, this is the first phase of a possible five other phase process, so I will be coming in front of you in the next couple of years to incorporate the other subchapter rules to bring them up to current status.

This package has been reviewed by the Water Quality Advisory Council and other stakeholders, but since most of the federal requirements that were incorporated into the state rules in 1989 have not been revised by EPA since original promulgation, these revisions don't

impose additional requirements on the Montana MPDES permit holders. The only new rule is the Clean Water Intake Structure requirement.

This MAR notice has been provided and contained proposed revisions, and the Department requests the Board concur with this recommendation to initiate rulemaking, and to appoint a Hearings Officer for the public hearing. I'd be happy to answer any questions.

CHAIRMAN RUSSELL: Questions for Jenny?

MS. SHROPSHIRE: I do have a question. I was trying to find this in here. On this cooling water intake structures, I thought you said there wasn't a volume portion of that. I just wasn't sure for new facilities or old facilities both, if there is a threshold above which their regulation applies.

MS. CHAMBERS: Mr. Chairman, Ms. Shropshire, to answer your question in regards to the cooling water intake structure, I indicated there wasn't a volume of what we would regulate. We're not looking at quantity issues on how much water they're pulling in. It's based upon the design of the facility that's looking at using the cooling water intake structure.

So in the New Rule I and New Rule II there is requirements for both a new source that's being proposed, an existing, and then based upon the size of facility, as far as percent of water they intend to pull from that structure. But not -- we don't -- we're not doing a water rights requirement as far as you can only pull "X" amount of quantity in, but it depends on how much water they choose to use for that generating facility what the criteria would be within that new rule.

MS. SHROPSHIRE: My understanding -- and maybe this is old -- but was above 50 million gallons per day, the regulation applied to existing facilities, i.e., they would be subject to retrofits versus less than 50 million gallons per day, but maybe it's become -- I was thinking that the more stringent, like ten million gallons per day applied or didn't apply. In terms of how the facilities are designed, I wasn't sure what that threshold was.

MS. CHAMBERS: Mr. Chairman, if you look through Page 13 on New Rule II, basically there is certain requirements in there. If you look under like Subpart 7, New Rule II, Subpart 7, "The owner or operator of a new facility will withdraw equal

to or greater than ten million gallons a day shall comply with those requirements," but that's just one. On Page 15 under Subpart 8, that's a new facility that's equal to, greater than, two million gallons per day and less than ten million gallons per day.

So based upon the design and what type of facility we're talking about, either existing or new, there is these different subcomponents in there that states what requirements we would follow based upon that type of facility.

MS. SHROPSHIRE: This is maybe a question for John North, and just full disclosure. I work for a company that manages power plants. I don't know for this rulemaking if I would need to recuse myself.

CHAIRMAN RUSSELL: You know, you need to -- actually you probably need to ask Katherine that, but it's your decision if you need to recuse yourself. But I think you should ask Katherine that.

MS. SHROPSHIRE: I'm sorry to do this now. I apologize.

MS. CHAMBERS: Which power plant?

MS. SHROPSHIRE: Nothing in Montana.

MS. ORR: So do you represent the interests of any company that would be subject to these rules?

MS. SHROPSHIRE: Yes, but not in Montana.

MS. ORR: But those --

MS. SHROPSHIRE: So let me just say they could move to Montana theoretically, but there is nothing in Montana now.

MS. ORR: How speculative is it that they would move to Montana?

MS. SHROPSHIRE: There would be a definite possibility that that could happen.

MS. ORR: A definite possibility?

MS. SHROPSHIRE: I don't know that they have -- I am aware that they don't have any plans to do that, but there is nothing --

MS. ORR: Then would you be in a position of interpreting these rules regarding the client or the companies that you advise?

MS. CHAMBERS: Mr. Chairman, I'd just like to clarify maybe that these are federal rules, that we just incorporated the text into the Montana rules. So whether they're in Montana or located in other states, they would be subject to

these federal rules under the Clean Water Act. So I don't know that helps weigh in the decision at all.

MS. ORR: It might be good to recuse yourself.

MS. SHROPSHIRE: Okay. I guess I would -- maybe upon further discussion I think I'll choose to do that, but we should talk about it more. I'm sorry to bring this up now. I apologize.

CHAIRMAN RUSSELL: I'm glad you did. It might have kept our process from moving forward. So I appreciate you doing that.

Jenny, I have a question. I don't have any conflicts. I'm just conflicted. When you talk about technology based treatment requirements, is that imposed throughout the MPDES process?

MS. CHAMBERS: Mr. Chairman, members of the Board, yes, it is. There is two requirements we have to look at when we evaluate an MPDES permit. The first is technology based effluent limits, and then we have to apply water quality based effluent limits. So for every discharger, there is a certain set of categories for

technology based effluent limits, mainly POTWs have their own separate requirements, but that each industry have federal effluent limit guidelines, federal ELGs that are promulgated that we have to apply those as well.

In the absence of federal ELGs for industrial type dischargers, we have to do -- effluent limit guidelines. Federal effluent limit guidelines, or ELG. We have to look at BPJ or best professional judgment in order to establish a technology based effluent limit. So that's the first step in every process.

CHAIRMAN RUSSELL: I've got several treatment plants up in Flathead County, one in Kalispell that if they needed to go through the MPDES process, has a very high technology applied to wastewater, even though they may have some other problems. Then I have another one up in the north valley that is certainly much more primitive in its treatment technology. I'm not saying it's not adequate, but it is not as high a treatment technology as one in the same basin. And then there is another one up there that's even a different technology. You're getting my point.

So when they go in, are they going to be

applied to the highest treatment technology that's available, or what's -- this kind of brings back some BACT stuff that I'm not sure I want to get into. But if they use extended aeration, is it going to be the technology based on what the plant is doing now? Let's say it's an SBR or something like that, and there is a new add-on for the sequencing batch reactor. It's a sewage treatment plant, a type of technology.

Let's say that they can put that on there and be better. Are you going to require that?

MS. CHAMBERS: Mr. Chairman, members of the Board, no, I'm not going to require that based upon each level operation for each municipal in the whole state. What we look at is not the treatment or their design of what they're using. It's a minimal level of treatment necessary based upon a condition of the effluent.

So EPA under the federal regulations states that for these conventional pollutants -- BOD, pH, TSS, some of those conventional parameters -- all municipal dischargers should meet this effluent limit at the end of pipe.

How they get there to meet that minimum

level of treatment is up to them on which type of technology they'd like to employ; but if one is doing better than the other, we don't say, "This is the best available control technology to get to these levels." This is just a minimal level of treatment that's necessary to -- that they have to comply with.

The reason why someone within the Flathead area's discharge better than the others is sometimes also due to water quality standards, other requirements that are imposed on a case-by-case basis, based upon those dischargers and where they discharge as far as the receiving water.

I hope that answered your question.

CHAIRMAN RUSSELL: Yes, it does. I'm really intrigued by the concept of best professional judgment, because I think I do that all the time. I get the point. I think I do that all the time. How defensible is that? Is it a very defensible term?

MS. CHAMBERS: Mr. Chairman, I would say yes, it is. And it's not needed in every circumstance. It's only needed when EPA has promulgated a federal effluent limit level of

technology. There is two industries in Montana that we currently don't have federal ELGs for. One of course is coal bed methane, and the other is water treatment plant discharges, back wash water filtration discharges.

There is a large guidance document and regulations that say what you would need to look at in order to establish PBJ, and that you look at economic treatment, you look at research that's out there based upon the minimal level of treatment or best available -- based upon either a new source or existing source, existing dischargers.

We looked, at least for the coal bed permits, extensive review of Wyoming dischargers, Montana's dischargers, some in Colorado, on what treatment they were using, what alternatives were possibly out there, the cost associated with having them upgrade their treatment to a certain level, how much volume they could run through those processes; and then we had an economist look at whether our financials were correct based upon whether or not it was economically achievable.

So no, it's not something we want to do in every situation as far as using best

professional judgment, but in those actions EPA hasn't promulgated federal ELG, and we will take that effort on.

CHAIRMAN RUSSELL: Doesn't that sound a little like top down BACT? Just a little?

MR. LIVERS: No, Mr. Chairman.

MS. SHROPSHIRE: Just regular old BACT, not top down.

CHAIRMAN RUSSELL: Jenny, I appreciate your comments. Any other comments?

Hearing none, I would entertain a motion to -- Katherine, you're probably ready, willing, and able to do this one.

MS. ORR: I am.

CHAIRMAN RUSSELL: We have to take public comment. Thanks, Larry. Is there anyone out in the public that would like to speak to this matter before the Board takes action?

(No response)

CHAIRMAN RUSSELL: Anyone like to speak to this matter before the Board takes action?

(No response)

CHAIRMAN RUSSELL: Katherine, you're available?

MS. ORR: I am.

CHAIRMAN RUSSELL: With that, I would entertain a motion to accept the Department's recommendation, and move forward with rulemaking on this matter.

MR. MIRES: I would so move.

CHAIRMAN RUSSELL: And appoint a Hearing Examiner, and publish the notice, and all that stuff.

MR. MIRES: So moved.

CHAIRMAN RUSSELL: It's been moved by Larry. Second.

MR. ANDERSON: I'll second.

CHAIRMAN RUSSELL: It's seconded by Larry. Further discussion?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Motion carries unanimously.

Thank you. The next item on the agenda is initiation of rulemaking regarding ARM 17.8.801, 804, 818, 820, 822, 825, 901, 904, and

1007.

MR. LIVERS: Thank you, Mr. Chairman. This is air quality rulemaking, and Deb Wolfe will be presenting our request for initiation.

MS. WOLFE: Good morning, Mr. Chairman, members of the Board. For the record, my name is Debra Wolfe, and I'm here to represent the Department regarding the amendment of air quality rules.

What we're requesting the Board to do today is initiate rulemaking that would amend air quality rules in Title 17, Chapter 8, Subchapters 8, 9, and 10, as our chair pointed out, to update requirements for PM2.5 for sources that are subject to major source permitting rules. These are big sources.

PM2.5 is a criteria pollutant for which EPA has established an ambient standard pursuant to the Clean Air Act. So in this case, the National Ambient Air Quality Standard, or NAAQS, limits were revised in 2006, reducing the allowed concentrations in the ambient air to 35 micrograms per cubic meter measured as a 24 hour average and calculated as the 98 percentile value for three years. In other words, the 24 hour standard is

considered to be met if the 98 percentile 24 hour PM2.5 concentrations in a year averaged over three years is less than or equal to 35 micrograms.

The point is it changed, and the inclusion of PM2.5 in major source permitting actions supports the assumptions that NAAQS are maintained because Montana's rules require a source to demonstrate that emissions from a proposed construction or modification will not cause or contribute to air quality in excess of any maximum allowable increase or maximum allowable concentration for any NAAQS pollutant, and these amendments would require those demonstrations.

So what we're asking for today is for two different federal rulemakings that would update PSD and New Source Review for Montana's major source permitting programs. The Department requests the Board would initiate rulemaking pursuant to the materials that are in your packet, publish notice of the proposed rule amendments, and appoint a Hearing Officer to consider the amendments to the above stated rules.

CHAIRMAN RUSSELL: Thanks, Deb. Questions?

MS. SHROPSHIRE: Mr. Chairman, for the previous, same previous reason, I'm going to recuse myself on this one.

CHAIRMAN RUSSELL: Duly noted. Other questions, other than from Robin?

MR. WHALEN: Mr. Chairman, just as a briefing question for a new member, relatively new member.

So EPA changed these requirements back in 2006, and we're now considering in 2011. Is that pretty much a standard time frame for trickle down from the federal to the state level in terms of enacting these changes?

MS. WOLFE: Mr. Chairman, members of the Board, I would say that the reason that there is an apparent lag is that these standards have been challenged over time, and I don't have the complete timeline in front of me, but the standards have been challenged and reissued, and 2006 was when they finally were issued in the form that they're issued in now.

When a standard is revised, there are things that have to happen following that to implement the standards with regard to permitting programs. There were two different rulemakings at

the federal level issued that basically set out different requirements for these major sources, and so we're now going to incorporate them into our rules.

And I expect that ozone will be revised here shortly -- that's another criteria pollutant -- and I'll back before you guys doing a very similar thing for major source permitting.

CHAIRMAN RUSSELL: This is interesting because this was actually a lawsuit against the EPA filed by the American Lung Association, I believe, that promulgated the 2.5 stuff in the first place.

MS. WOLFE: Yes, the American Trucking lawsuits were the PM lawsuits, I guess. It was a series of different opinions.

CHAIRMAN RUSSELL: But it started with ALA going after EPA, didn't it?

MS. WOLFE: Mr. Chairman, members of the Board, I'm not going to speculate, but it is a point of curiosity.

CHAIRMAN RUSSELL: Don't speculate then. Any questions?

(No response)

CHAIRMAN RUSSELL: Hearing none,

Katherine, are you ready, willing, and able?

MS. ORR: I am.

CHAIRMAN RUSSELL: I will entertain a motion to initiate rulemaking, appoint Katherine the Hearing officer, and publish the notice.

MR. WHALEN: I would so move, Mr. Chairman.

CHAIRMAN RUSSELL: It's been moved by Mr. Whalen. Is there a second?

MR. MIRES: I would second it.

CHAIRMAN RUSSELL: It's been seconded by Larry. Further discussion? Anyone in the audience that I forgot to mention before we took up a motion?

(No response)

CHAIRMAN RUSSELL: It looks like all DEQ people now. Seeing nothing else come before us, all those in favor, signify by saying aye.

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Motion carries unanimously.

The next item -- this is the Gallatin River ORW coming back before us again. Tom.

MR. LIVERS: Mr. Chairman, it's ground hog day. The Department is again requesting extension of this rulemaking, and it's been happening for several years, and we still believe it is the right course of action. You'll recall that last year, given the fact that we had come before the Board several times previously to issue a supplemental rulemaking notice and extend rulemaking, but it made sense to really drill down and make sure that there was still progress being made, and that this was still the right course of action.

And as we reported back to the Board on a couple of occasions last year, we do believe this is still the right course of action. The reason for that is this really has -- the Board's initial action to initiate this designation provided the impetus for the parties to come together to work on solutions to discharge issues in the Gallatin River in the canyon, and there is a good working group established. We met with them. They came here to Helena. We met with them last summer.

And they're currently working on a pilot snow making project, snow making effluent, to

solve the problem of storage during the winter months. And you'll recall we provided a briefing to this Board I think last fall. Todd Teegarden was here to go into that. The Department has been working with that group to work through the discharge permit issues, and we've made good progress. We have essentially a pilot that they will undertake next winter. So we believe that it makes sense to continue this effort.

Because we can only extend by six months at a time, you see this frequently. You usually see it a little bit more than twice a year or a little bit sooner than six months, just to allow the rulemaking notice deadlines to be met. So progress continues on this, and I think there is a very good effort, very sincere and promising effort underway, and I think this rulemaking has set the table for that effort, and continues to help provide impetus.

So with that, the Department is recommending again that the Board issue a notice of supplemental rulemaking, which has the effect of extending public comment period extending the rulemaking period.

CHAIRMAN RUSSELL: Thanks, Tom. You

probably don't even need a script for that anymore, do you?

Did anyone read Jim Johnson's email?

MR. WHALEN: It is interesting.

CHAIRMAN RUSSELL: There is an email from Jim Johnson in here that's interesting, require or obiento (phonetic) or something like that. All right, Tom. Thank you so much for your comments regarding this.

MR. MIRES: I have one question. Does the Department have any idea how many more extensions we're going to look at, given the fact that we're looking at a test next winter on the snow issue?

MR. LIVERS: Mr. Chairman, Mr. Mires, good question. I don't know if I can answer that. I'm not sure we have people here -- Todd Teegarden is here to answer that. He might be able to give a sense of what the plan is for the pilot. I think it wouldn't be out of the question that this may continue for another couple years, and I think that's what you're getting at. We'll look at this pilot, we'll have to evaluate it.

MR. MIRES: So with that concept in mind, does that negate then all the studies that

have been done over the past years as far as Environmental Impact Statements and other issues, or do we end up starting all over again in a couple years when we get to the end of the pilot program, or is it best to maybe kill it now and then start all over? Is that what we're looking at? I don't know.

CHAIRMAN RUSSELL: We don't want to do that.

MR. LIVERS: Mr. Chairman, Mr. Mires, that wouldn't be our recommendation. I think what you're getting at is obviously any environmental document, in this case the EIS that was done, has a shelf life. There might be others from the Department who could speak to just how temporal this one is.

My sense is it was based on certain assumptions of a footprint for hydrologic connectivity that I think probably will be as good a few years from now as they were when it was first postulated. So I think we'll still have a good starting point in that EIS. I think our hope is that the alternative solution will essentially eliminate the need for designation as an Outstanding Resource Water, because they're

attacking the key problem in the canyon with this.

You'll recall that basically the issue, of course, centers around development generally in the west fork area and then in the Big Sky area. The Big Sky Water and Sewer District has some capacity left in the system, but it wants to preserve some growth capacity. Getting some of the denser development onto that system in the vicinity of the west fork and up and down the Gallatin main stem will certainly help, but in order to do that, the district doesn't want to preclude its growth capacity, and the real limiting factor right now is storage during the winter months.

So I think I'm repeating things you folks already know, but just to kind of lay out the basic thesis. The snow effluent capacity since -- during the summer months, we're land applying on the three golf courses in the area. The real constraint is in the winter. If we can really test out, and find that the snow effluent option is a viable way to proceed, it will essentially, in our opinion, really alleviate the key pressure points on the discharges in the canyon.

But ultimately I think the hope for the solutions that the working group has put together on this is that they hope to -- they think they're coming up with a solution that, if it pans out, will be as or more protective than would be the ORW, Outstanding Resource Water designation. So I hope that answers your question.

MR. MIRES: It does.

CHAIRMAN RUSSELL: I was looking at the notice, and it actually doesn't have any dates in it, so do you have some suggestions for some dates? It just has a bracket for the date. We only have six months.

MR. NORTH: Mr. Chairman, John North. Yes. I recall something about the Board didn't want to have dates in notices, because then if people saw it in draft form, they would think the notice had been already sent out or whatever, so that's why it doesn't have that. As I recall, I checked, and it would have to go to the December meeting, so I believe that the date would be somewhere around November 8th or so. So if the Board could just give us the ability to set the comment period at a time that would allow us to get to the December Board meeting, that would be

sufficient, I think.

CHAIRMAN RUSSELL: Works for me. All right. Is there anyone out there that would like to speak to this before we take action?

(No response)

CHAIRMAN RUSSELL: I don't see anyone jumping up, so although I have lots of questions, I'm going to hold them. I would entertain a motion to extend the rulemaking to a date that is accommodative of the December Board meeting. Do we have to -- You're still the Hearing Officer if this ever gets to -- or are we ---

MS. ORR: I think it's before the Board.

CHAIRMAN RUSSELL: Everything is still in place.

MR. LIVERS: Mr. Chairman, I believe we're hearing this.

CHAIRMAN RUSSELL: So all I need to do is have a motion to extend the rulemaking, and give the Department latitude to put in an appropriate date.

MS. SHROPSHIRE: So moved.

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

MR. MIRES: I will second it.

CHAIRMAN RUSSELL: It's been seconded by Larry. Further discussion?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Hearing none, carried unanimously.

The next item on the agenda is executive summary for action on rule adoption with the list of affected rules 17.30.201, 17.30.1341.

MR. LIVERS: Final adoption, Jenny Chambers is going to present this.

MS. CHAMBERS: Again, Jenny Chambers, Chief of the Water Protection Bureau. The Department requests the Board adopt the final rules that amend ARM 17.30.201 and the rules pertaining to the permit fees under ARM 17.30.1341.

As stated in the initiation meeting, the primary purpose of this rulemaking is to provide the administrative framework to allow the Department to proceed with implementation of the

Montana Pollutant Discharge Elimination System Pesticide General Permit. In addition, this rule package provides a fee schedule information as required in the Montana Water Quality Act.

The Montana Water Quality Act requires the Board to adopt rules that are sufficient to recover the cost of issuing permits, licenses, and other authorizations issued by the Department, as well as administrative cost of operating the program.

As a little bit of a background and providing update on program activities, in 2007, EPA issued a rule exempting pesticide application for discharge permitting requirements under the Federal Clean Water Act. This rule concluded that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act, also referred to as FIFRA, was exempt from Clean Water Act permitting.

In January of 2009, the EPA rule was vacated by the Federal Court of Appeals, and EPA received a two year stay. The original deadline for permit coverage was April 9, 2011. Due to the delays from EPA on finalizing their permit and addressing other numerous comments they received

in their draft permit process, EPA received an extension from the Courts until October 31, 2011.

Due to the timing and to comply with the original Court order, Montana DEQ did issue the permit on April 9, 2011. This delay -- this issued date permit had a delayed effective date until November 1, 2011 to coincide with the extension received by the Courts. The delay will allow us to watch the federal action that may change federal legislation, that would hopefully clarify that FIFRA would govern application of pesticides to water, or any other programmatic changes that may impact the Montana pesticide general permit, in order to inactivate the permit or reopen that permit to make any necessary changes.

Therefore, in order to have this fee infrastructure in place by the November 1, 2011 date, finalization of this rule package is still needed. There has been a tremendous amount of stakeholder involvement and outreach before, during, and after formal public comment period. The public comment was from December 23, 2010 through January 24, 2011. We held a public hearing on January 12, 2011.

Due to solicitation of comments and the Department urging affected parties to comment on the fee rules, we received over 30 comments. After serious consideration from the Department, we reviewed all comments, and had made some major changes to the draft rule package. These changes would allow us to align the fee rules to the permit that was also implemented and currently effective -- or issued but not effective.

We modified the definition of multi-county and single county to remove any reference to agricultural district, and instead clarified that permit coverage and associated permit fees could be up to 20 contiguous counties that may be included into one multi-county permit coverage. We also introduced a less than threshold categories in the permit. There is two different tiers. There is a Tier 1, which is less than a pattern use category; and a Tier 2, which is a greater than threshold permit category.

In EPA's permit and other state permits, there is a certain level of amount of acreage of pesticides that can be applied to state waters before this would trigger permit coverage, so they're upholding kind of a permit by rule for

anybody that would apply less than that pattern use threshold.

In Montana we have a less than threshold category, because there was some concerns from stakeholders that they might be liable to lawsuits if they weren't able to obtain a permit coverage because they didn't meet that threshold category. It doesn't exempt them from applying from the general permit coverage, it just would say they have to get an individual permit, or have to maybe comply with more stringent requirements under the general permit.

So we structured the permit to have a Tier 1 less than threshold category, less fees, less owners permit requirements; and then a greater than threshold, higher fees, more requirements as far as best management practices and compliance in monitoring requirements.

The fees associated with the less than category in your packet is $50 for single county, $100 for multi-county. That's for the application of first year annual fee. For annual fees after the permit has been issued is $25 single county and $50 for multi-county.

We also reduced, greatly reduced the

greater than threshold category by over 50 percent of the rates proposed in December. The rates now are $500 single county, $1,200 multi-county, application first year annual, and then $250 and $600 for the annual fees associated with that.

I do have to provide a clarification and correct an error in your guys' package. So if you could see Page 2 of the notice that was in your -- So on the bottom of Page 2, you can see there the underlined item, single county less than threshold, multi-county less than threshold, and then single county greater than threshold, and multi-county greater than threshold.

When you go across and you see single county greater than threshold, it's $250 and then $500, which is correct. Multi-county greater than threshold, there is a typo in there. They pulled down the numbers from the multi-county less than threshold into the greater than threshold category. Those numbers should reflect $600 and $1,200. So multi-county greater than threshold, the renewal fee is $600, and the new permit fee, which includes the initial annual fee, is $1,200.

The Department is committed and will continue to work with permittees and stakeholders

on future projections, revenue needs, and pesticide program implementation; and we respectfully request the Board adopt the final rules to amend ARM 17.30.201 and ARM 17.30.1341 as modified. Thank you.

CHAIRMAN RUSSELL: Thank you. Questions?

MR. MIRES: I have a ton of them.

CHAIRMAN RUSSELL: You already warned me. Larry.

MR. MIRES: First I really have to commend the Department on addressing the comments so well, and especially in amending what has come out. But just so that you realize, I supported initiating rulemaking because I really wanted to hear comments of what other people had to say on this issue, and I have been following this since the legislation and the legal outcome of it. And I have a variety of questions.

After attending meetings from San Diego clear to Washington, D.C. on this topic, and sitting through several House committee hearings on it, I think the Senator's first lead-off letter has a lot in it, and I have to agree with where we're at on it at this particular point in time.

OMB has been asked to do a review on it because there is a significant dollar factor involved in it, and under the executive order. Has that review ever come out from OMB to the states, or to anybody to see yet, do you know?

MS. CHAMBERS: Mr. Chairman, Mr. Mires, no, to date I don't believe we've seen any OMB review on the costs associated with implementing of the general permit requirement. The fee rule package was specifically to have the framework to move forward, but we're watching very closely to see if they make any significant changes to the actual permit requirement and requirement that we have to implement this program.

I'm on a couple stakeholder groups. I'm very closely working with EPA Region 8 on any new development and new guidance that we need to evaluate our state program. So to date, we haven't received any.

MR. MIRES: The Senators, in their comment in their letter to OMB, issued a comment that EPA decided to develop PGP under the Clean Water Act instead of challenging the Court's mistaken ruling, and they seemed to be quite adamant in understanding that the Court has a

mis-ruling, or consequently into the House they have HR872. And as of April 4, Senator Roberts introduced Senate Bill 718, which is a companion of 872, and he currently has 17 co-signers, and he's waiting for action in the Agriculture Committee.

And I thought it was unique how the Department interpreted the anticipation of both of this legislation as it passes through Congress, that if this does pass, then everything we're doing here now becomes moot.

So I guess my question is, before we go too far down the road, would it not be better to wait until October 31 and see if Congress actually has acted on this before proceeding forward into this, and then act upon the rulemaking? Would that -- I don't know how to pose that question. I guess I'm asking: Would it be to our advantage to hold off before we enact it?

MS. CHAMBERS: Mr. Chairman, Mr. Mires, to answer your question, we did evaluate that, and the rulemaking process, as you're aware, is about a six month process at least. If we adopt the rules this month, they will go into effect in June. That will allow us to work with the

permittees to obtain permit coverage necessary under new fee rule structure.

If the rules don't go into place, and I wait until October or November to come back to you to either ask for extension and then adopt the rules, it will be a delayed process, and any applicants that need to apply for permit coverage would pay the old fees, which is a very, very higher amount, which is only one fee associated with one general permit category, that they wouldn't have the mechanism of a single threshold multi-county. They'd have to file NOI for each time they apply pesticides to state waters.

If these rules don't get adopted at this time, and let's say Congress does move forward with changing some of the requirements, these will just sit stagnant on the rule package. We won't be used because we won't have anybody come in for permit coverage under the pesticide general permit category. They will have to comply with the 308 provision, which we did lower that fee category, because we think that number is going to go up if that does go into place.

So that's also a benefit to adopt the rules now. Just in case this does change, we'd

have a lower fee for those folks that needed to comply with 308 in the future. Hopefully that answered your question.

We also just had additional -- some clarification stuff in this fee rule package we wanted to also get corrected. I will be back to you in the October and November time frame to initiate rulemaking to take that part of the fee rule package out if we don't need to use that pesticide general permit category numbers in the fee rule package. I'll ask for those to be repealed.

MR. MIRES: Under 308, is that just for -- Under the existing 308, is that just for cities and counties, or does that apply to all pesticide applicators? Can you explain 308 to me a little bit?

MS. CHAMBERS: Sure. Mr. Chairman, Mr. Mires, when I referred to 308, it's under the MCA subsection of 308, which says it's an exemption, short term exemption to exceed a water quality standard. The application of pesticides is for that sole purpose, is to exceed a water quality standard for whatever type of pesticide they're applying. It's a residual amount that's left over

that we're concerned with. So it would apply to anybody that would apply pesticides to state waters that would have the potential to exceed a water quality standard.

Currently we probably have about 40, 45 that have active 308 authorizations. Those include municipal, counties, some of the National Forest, Parks, Yellowstone County; piscicides, Fish, Wildlife, and Parks have a lot of piscicide applications of pesticides that actually do fish kills. They're required to get 308 coverage. We're estimating that if this pesticide general permit goes away, that the 308 authorization would potentially go up to 100, 150, from about the 40 that we're currently at.

There has been some talk, at least from some of the larger applicators -- Fish, Wildlife, and Parks, some of the national park applicators -- they like the general permit structure better than they like the 308 process.

So whichever direction this goes, we'll probably continue to work with stakeholders to figure out what we do to clean up the 308 process, use new forms, new requirements, or provide education and outreach, so that folks can comply

with general permit requirements. So either way, we'll be working closely with stakeholders.

MR. MIRES: So then if I understood your response to Comment No. 3, if this was enacted, then basically the 308 fee is going to drop to $250, and that would include their permitting of pesticide as well?

MS. CHAMBERS: Yes, Mr. Chairman, yes, that is correct. Under the Water Quality Act, they would have the requirement in Montana to have a 308 authorization. It would no longer be required under the MPDES or Clean Water Act requirement, so they would have the 308 authorizations under the Montana Water Quality Act at the $250 fee to cover that application for that year.

MR. MIRES: You make it very difficult to make a decision. It's a no brainer, but by the same token, it has raised a great deal of concern for everybody in the agricultural community. And I guess, Mr. Chairman, from my perspective, I'm concerned about adding the pesticide into here now when it's already covered under the FIFRA, unless you can explain to me how FIFRA does not cover what we're accomplishing today.

MS. CHAMBERS: Mr. Chairman. I see where your question lies within -- that it's a pesticide applicator. They have to get licensed, they have comply with permit conditions. Department of Ag has primacy to regulate FIFRA within the State of Montana. It's the Courts that made the decision that the nozzle of the pesticide and any residual to state waters is not exempt from the Clean Water Act, and therefore needs to have a permit under the Clean Water Act, and it's no longer subject to just be regulated under FIFRA.

So I'm not questioning whether or not that logically makes sense from a water quality perspective, or whether or not each act or regulation can comply with conditions associated with that act. We're just trying to implement and have our applicators be -- have permit coverage if they so choose to, so that they're not open for liability and lawsuits.

We worked very close, numerous stakeholders meetings, had -- went out and did training and seminars to counties, weed control districts, been to a couple of the national park conferences. I think in Montana I can honestly

say I think they're comfortable with the direction we've headed. If they have to be regulated under the Clean Water Act, they like the permit we came up with. I believe they're comfortable with the fees that are associated with it if that's the direction they go.

They're still holding their breath, thinking that hopefully somebody will enact something so that FIFRA would be the only regulation they need to comply with; but at least I think we've done the leg work in Montana to try to move this forward. If we have to regulate it, this is the best we can do with what we've got to deal with. I probably made it tougher there, too, with --

MR. MIRES: No, you didn't. It's very obvious. I will relinquish --

CHAIRMAN RUSSELL: Just some procedural questions. When you addressed the responses to comments and made the changes to the rule, do you still feel that it meets the intent of rulemaking that we started with? You took out some major categories.

MS. CHAMBERS: Right. Mr. Chairman, I also have my Legal Counsel here, Jim Madden, also

available if you want to talk about the administrative process.

But it's my understanding that if we get comments specifically to our rule package that could be addressed to make significant changes in the rule package, that we could make those necessary changes.

I would maybe not be as comfortable if we vett these rules through the stakeholder groups as far as the comments we received, what intent we thought we were going to do, the options as far as multi-county changes, the amount of fees associated with that in order to have this final rule package. I would probably agree with you that we probably would need to go out again for public comment and start the process over again.

But the folks that provided those comments have had an opportunity to see our responses, and we have also provided the opportunity for the other folks that were part of this stakeholders group as far as the changes we've made in the process. And a lot of the changes were to align with the permit that was also going through drafting when I came forward to initiate rulemaking, how that permitting program

would be implemented versus how the fees would be established. But do you want legal --

MS. SHROPSHIRE: I would like to hear the legal response, if that's -- because just --

MR. MADDEN: Mr. Chairman, members of the Board, for the record, my name is Jim Madden. I'm Department Legal Counsel, and I did work on this pesticide rule.

The general principle in administrative rulemaking is that agencies have a broad latitude to make changes to their proposed rule in response to comments, and there is quite a bit of case law on that on the federal side, and we have looked at it. The federal case law in fact is so broad that it's almost unlimited. Agencies can make very broad changes.

Generally what we tried to do here is avoid making changes in the response to comment process that's going to significantly surprise anyone in terms of putting an increased burden on somebody. A person who reads the initial notice understands that they're going to be subject to "X" amount of regulation. We try to not, in the response to comments, double that amount of regulation.

And in fact what happened here, though, I think was -- the main comment was the fees are too high, and we lowered them; and the other main comment was the definition of the county permit was restrictive and tough to work with, and so we changed that to make it less restrictive, too. So I felt like we were well within the scope.

CHAIRMAN RUSSELL: I felt it should be on the record. Any further questions for the Department?

MR. WHALEN: Mr. Chairman, I have two questions. One would be for probably Ms. Chambers, and the other might be for Tom.

Ms. Chambers, my first question is assuming the rulemaking is approved, and it goes forward, and we have a new regulatory structure, are federal agencies responsive to that regulatory structure? In other words, if BLM has some spraying that they need to do out at some range research laboratories, or if the Forest Service has some spraying that they need to do, are they subject to Montana rules, or are they subject simply to EPA rules?

MS. CHAMBERS: Mr. Chairman, Mr. Whalen, they are subject to Montana rules. We have

delegated primacy and authority to implement permits on federal facilities and federal agencies, so federal partners, everybody in the state of Montana, will be required to be subject to the Montana requirements and fees.

MR. WHALEN: Thank you. The second question, Tom, relates to budget. Like Mr. Mires, I'd like to compliment the Department on trying to make some accommodations to some of the objections that were made. My perennial concern with some of these adjustments that are made is that the new fee structures as amended don't cover the cost of permitting and enforcement.

I guess my question would be: With these adjustments, is the agency going to be able to handle budgetarily the additional cost of permitting?

MR. LIVERS: Mr. Chairman, Mr. Whalen, let me make a general statement, and then I might actually rely on Jenny to talk specifically about this particular budget. I don't know the answer in that detail.

Generally on fee based programs, we do try to cover our costs; and in some cases, we have some statutory requirements in Montana law that

require us to collect fees commensurate with costs. It's kind of a mixed bag in the Department. There were other places where we had fee caps. In some cases those caps are set in statute. In other cases, the Board has sole authority to establish fees. Sometimes in those former cases, the Board has authority to establish up to those statutory caps, and in other cases, like air quality, for example, we don't have those statutory caps.

So we do try to cover them. In some cases we've operated programs that are a little bit of a hybrid, in that they're more than just a fee based regulatory program. We might have, on delegated programs, we might have some money out of our main EPA grants to help cover some of the costs. Often those costs go toward compliance and other kind of permit related activity, but is not germane to the permit process itself.

So there is no one size fits all answer, I guess is what I'm getting at, from the Department. We do run into places where I think we're subsidizing from some of the these other sources, maybe federal sources in particular. We're subsidizing the costs of the program and not

fully collecting under permit fees.

In some cases, we haven't brought air quality permit increases for a couple years because we're mindful of the economy, but in that case, we're deferring some things that we can defer in the short term; and probably the long term, we can't ignore forever, so we'll have to come back on that.

But specifically, I don't know the answer, and maybe I would ask Jenny to comment on your specific question about, "Are we able to cover our costs, and if so how?," and then depending on that answer, I may weigh in again on I guess the Department's position.

MS. CHAMBERS: Mr. Chairman, Mr. Whalen, we did evaluate specifically on trying to establish what that fee would be in December, and then also subsequently how we lowered those fees. We're estimating about one and a half FTE within the program to kind of manage the new pesticide permit program, which not only includes getting authorizations out under the pesticide general permit, but also compliance and possible enforcement if potentially needed, but that's going to be several years out into this permit

cycle before we start taking that approach.

A lot of the comments we got from the stakeholders during some informal comments were: "How can you just justify the fees it's currently at when you don't know what universe and what kind of compliance you're trying to evaluate to say is that going to be sufficient to cover the cost?"

So we took a step back, saying, "Yes, we think this is a good fair ground to start with," continue to work with stakeholders on budget projection and resource needs. If this ramps up and we end up getting more than our estimated amount of people that need to apply for permit coverage, or if complaints or compliance is getting ramped up because EPA hasn't come out with their compliance strategy under the federal requirements, then we might have to come back to the Board to say we need to have an increase in fees based upon the more we know now that we tried to implement the program.

So we thought it was a fair offer to say, "You're right. We don't really know what universe we're dealing with. We're not really sure how we're going to implement this program, what kind of compliance and outreach is going to

be needed," but we think this is going to be enough to get us started for the couple years, and then may have to come back and reevaluate the fees at a later stage.

MR. WHALEN: Thank you.

CHAIRMAN RUSSELL: Further questions?

(No response)

CHAIRMAN RUSSELL: Anyone in the audience that isn't the DEQ people? No? All right.

With all that said, I would entertain a motion to adopt the rules as amended by comment, accept the Presiding Officer's comment, the House Bill 521 and 311 analysis, and the Department's responses to comments.

MR. LIVERS: Mr. Chairman, Mr. North pointed out that if that motion could also incorporate the change that was presented verbally, that Jenny presented.

CHAIRMAN RUSSELL: And I need those restated.

MS. CHAMBERS: Mr. Chairman, the changes that would also need to be noted are on Page 2 of the rule packet. For single county greater than threshold -- actually for multi-county greater

than threshold, the renewal fee is $600, and new permit fee is $1,200. So just on Page 2, multi-county greater than threshold fee amounts.

CHAIRMAN RUSSELL: All right. We'll start again. I would entertain a motion to adopt the rules as amended, written, and the inclusion of the $600 and $1,200 fees to be added to Rule II of the new notice, the Presiding Officer's report, the House Bill 521 and 311 analysis, and the Department's responses to comments.

MR. WHALEN: So moved, Mr. Chairman.

CHAIRMAN RUSSELL: It's been moved by Mr. Whalen. Is there a second?

MR. ANDERSON: I'll second.

CHAIRMAN RUSSELL: It's been seconded by Larry. Further comments?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Thank you for your work on this.

MR. MIRES: Mr. Chairman, can I make one

comment?

CHAIRMAN RUSSELL: Sure.

MR. MIRES: I really would like to commend the Department for addressing those comments. And prior to coming in here I was adamantly opposed to this rulemaking, but I think the amendments that the Department did, and how they went out of their way to address the issues and concerns of Montana, serves Montanans better than when the original concept came out. I think you've put in enough safeguards that protects everybody's interests in the future. So I really commend you on a stellar job that everybody did.

MR. LIVERS: Thank you for those comments, and certainly we appreciate it, and Jenny and Jim and Jenny's staff did a very good job on this rulemaking, so thank you for that recognition.

CHAIRMAN RUSSELL: The next item on the agenda is a stipulation to dismiss violations of the Open Cut Mining Act by M. K. Weeden Construction. Katherine.

MS. ORR: Mr. Chairman, members of the Board, this is a case out in the Lewistown area. It involved an Open Cut Mining Act violation,

conducting an open cut operation without a permit. In this case there were soils stripped and stockpiled in preparation for mining activities, but a permit had not been approved. There were a disturbed area of 3.9 acres without a permit. The penalty requested by the Department was $5,000, and that was paid by the violator.

CHAIRMAN RUSSELL: Okay. So with all that in mind, I do have a dismissal order for Case No. 2011-03-0C, and I would entertain a motion to authorize the Board Chair to sign the dismissal order.

MR. ANDERSON: So moved.

CHAIRMAN RUSSELL: It's been moved by Larry. Is there a second?

MS. KAISER: I'll second.

CHAIRMAN RUSSELL: It's been seconded by Heidi. Any further discussion?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: All right. The next

item on the agenda appears to be an appeal of a violation of open cut mining. Katherine.

MS. ORR: Mr. Chairman, members of the Board, this is a case out of Belgrade, Concrete Materials of Montana. The notice of violation was issued on March 21, 2011. The operator had a permit for disturbance of 6.5 acres.

On inspection on April 29th, 2010, it appeared that the size that had been permitted had increased to 12 acres without a permit amendment application. So the violations are conducting an open cut permit operation on a non-permitted area, and also a failure to follow the approved plan of operation, which involved failure to install and maintain permit boundary markers, and maintenance of soil piles that are unstable and eroding, and inappropriately storing concrete and asphalt. And the penalty requested by the Department is $11,640.

CHAIRMAN RUSSELL: And Katherine, what are they appealing?

MS. ORR: Well, I guess they're appealing the request of the Department to impose that penalty, but I can double check that.

CHAIRMAN RUSSELL: That doesn't need to

be answered. All right.

MS. ORR: I see what you're saying.

CHAIRMAN RUSSELL: Just irony. With that, the action we need to take is appointment of permanent Hearing Examiner. I'm sure Katherine is ready, willing, and able --

MS. ORR: I am.

CHAIRMAN RUSSELL: -- to do that. So I would entertain a motion to assign this case to Katherine.

MS. SHROPSHIRE: So moved.

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

MR. MIRES: Second.

CHAIRMAN RUSSELL: It's been seconded by Larry. Further discussion?

(No response)

CHAIRMAN RUSSELL: Seeing and hearing none, all those in favor, signify by saying aye.

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Motion carries unanimously.

MS. ORR: Go to the next one, Mr.

Chairman?

CHAIRMAN RUSSELL: Yes. There is an appeal. Yes. Violations of the public water supply laws by Jore Corporation. And I do have to tell you that I was contacted by their environmental engineer, I believe, and asked them to contact the Department for further discussion because I certainly wasn't going to engage in offline comment.

MS. ORR: Mr. Chairman, members of the Board, this is a somewhat different appeal, in that it's an appeal of an amendment to a Notice of Violation. The original Notice of Violation I have not seen, but it is an appeal to the amendment. And the appellants are I think basically objecting to the portion of the corrective action plan in the amendment to the NOV, which requires that the Appellant retain a licensed professional who can help them implement the corrective action plan.

Other items under the corrective action plan are to meet or serve, implement the MCL's; as I mentioned, retain a licensed professional engineer; funding plan to implement corrective action; and present a schedule.

CHAIRMAN RUSSELL: All right. The action in front of us is to either hear this or appoint Katherine as the Hearings Examiner. Do I have motion to appoint Katherine?

MR. WHALEN: So moved, Mr. Chairman.

CHAIRMAN RUSSELL: It's been moved by Joe. Is there a second?

MS. SHROPSHIRE: Second.

CHAIRMAN RUSSELL: It's been seconded by Robin. Any further discussion?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: The last one is septage disposal licensure law violation.

MS. ORR: Mr. Chairman, members of the Board, there was an issuance of a Notice of Violation, a compliance and penalty order. The violation involves disposing of septage on a site not approved by the Department after notification to the operator that he should not operate his business until the disposal site was approved, and

the operator/owner land applied ten loads of septage on his own property. The requested penalty is $5,000.

CHAIRMAN RUSSELL: There is something in the law about own property, isn't there? Probably not by a business. I think it's something for farmers that they can do that? I guess I need to ask you.

MS. ORR: Well, in construing the statute after this case is over, I'll be able to answer it.

CHAIRMAN RUSSELL: I'll just await your comments on that then. Since you're already ready to go on it, I will entertain a motion to have Katherine be appointed as our permanent Hearings Examiner on this.

MR. ANDERSON: So moved.

CHAIRMAN RUSSELL: Larry Anderson has moved. Is there a second?

MR. MIRES: Second.

CHAIRMAN RUSSELL: Larry Mires second. Any further comments?

(No response)

CHAIRMAN RUSSELL: Seeing none, all those in favor, signify by saying aye.

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: That is it except for general public comment. Is there anyone out there that's not affiliated that would like to speak to the Board on matters that the Board has jurisdiction on?

(No response)

CHAIRMAN RUSSELL: Seeing none, I will entertain a motion to --

MR. LIVERS: Mr. Chairman, I have a couple of quick administrative things if I may. Just a reminder, the next meeting is July 22nd. We do not know yet if that is going to be face to face or teleconference. I think we have a few rulemakings, so there is a chance we may do it in person.

Another thing I left out of my legislative summary, Senate Resolution 9, 10, 11 and 12, which successfully confirmed the four Board members who were subject to confirmation: Mr. Anderson, Ms. Kaiser, Mr. Mires, and Joe Russell. So we're pleased to see that.

Finally just a personal note. I

appreciate the discussion this morning. I think we've had a good meeting, good substantive issues, and good questions from the Board, good discussion, so I want to thank you for that.

MR. WHALEN: Move to adjourn.

CHAIRMAN RUSSELL: It's been moved to adjourn. Is there a second?

MR. ANDERSON: Second.

CHAIRMAN RUSSELL: It's been seconded by Larry. Any one who really doesn't want to adjourn?

(No response)

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

(Response)

CHAIRMAN RUSSELL: Opposed.

(No response)

CHAIRMAN RUSSELL: Good meeting.

(The proceedings were concluded at 12:47 p.m.)

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C E R T I F I C A T E

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

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

That the proceedings were taken before me at the time and place herein named; that the proceedings were reported by me in shorthand and transcribed using computer-aided transcription, and that the foregoing - 149 - pages contain a true record of the proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this day of , 2011.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2012.