



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

3                           \* \* \* \* \*

4                           (Ms. Kaiser not present)

5           CHAIRMAN RUSSELL: It is 9:10 and I will  
6 call this regular meeting of the Board of  
7 Environmental Review to order. It looks like all  
8 of our members are present. Heidi is out fixing a  
9 computer glitch, and so we'll get rolling without  
10 her.

11                          The first item on the agenda is the  
12 review and approval of the October 8th, 2010  
13 teleconference meeting.

14                          MR. WHALEN: Mr. Chairman, I'll move to  
15 approve those minutes.

16                          CHAIRMAN RUSSELL: It's been moved. Is  
17 there a second?

18                          MR. MILLER: I second.

19                          CHAIRMAN RUSSELL: Is there any  
20 discussion?

21                          (No response)

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

24                          (Response)

25                          CHAIRMAN RUSSELL: Opposed.

1 (No response)

2 CHAIRMAN RUSSELL: Motion carried. The  
3 next item on the agenda is the 2011 meeting  
4 schedule.

5 MR. LIVERS: Mr. Chairman, members of  
6 the Board, for the record, Tom Livers with the  
7 Department. We have proposed dates scheduled  
8 somewhat around the rule filing schedules, and  
9 that sort of thing, but we do obviously have some  
10 flexibility within there. So we try to get those  
11 to you a little bit ahead of time so you could  
12 check calendars to see if there were significant  
13 conflicts.

14 Just to recap, we're looking at January  
15 28th, March 25th, May 20th, July 22nd, September  
16 23rd, and December 2nd for the 2011 meeting dates.

17 (Ms. Kaiser enters)

18 MR. WHALEN: Do we anticipate that the  
19 May meeting is going to be a teleconference or a  
20 personal meeting?

21 MR. LIVERS: Mr. Chairman, Mr. Whalen,  
22 at this point it's probably too early to know for  
23 sure. Typically it will depend on the size of the  
24 agenda, and the amount of briefing, initiations,  
25 and that sort of thing, but we also have some

1 control. Sometimes we have some discretion in  
2 terms of, particularly on briefing items, when  
3 they come forward to the Board. So if there is an  
4 interest in making that a teleconference, I think  
5 to some degree we'll have some flexibility on the  
6 agenda to accommodate that, and it's certainly  
7 something we could do.

8 CHAIRMAN RUSSELL: Would not some of  
9 these initiations come up on that May meeting?

10 MR. LIVERS: Mr. Chairman, the  
11 initiations we're making now for final action, the  
12 bulk of them might happen by March, but certainly  
13 it's possible.

14 MR. MIRES: What is the date that was  
15 questioned?

16 MR. WHALEN: The third weekend in May.  
17 It's kind of a big weekend in Miles City.

18 CHAIRMAN RUSSELL: Thanks.

19 MR. LIVERS: That was our oversight, Mr.  
20 Chairman, Mr. Mayor.

21 MR. WHALEN: Is there an opportunity to  
22 adjust that particular date?

23 CHAIRMAN RUSSELL: There certainly is.

24 MR. LIVERS: Mr. Chairman, Mr. Mayor, if  
25 we were to -- I think I might suggest moving

1 forward on that date, because I believe we're  
2 getting into Memorial Day Weekend if we make it  
3 later. So we probably would want to look at the  
4 13th potentially.

5 MR. WHALEN: That would be helpful.  
6 Thank you.

7 MR. MIRES: We want to look at moving  
8 that to May 13th, is what you're saying?

9 MR. WHALEN: I'd like to if possible.

10 MR. LIVERS: Mr. Chairman, we can  
11 certainly accommodate that. I don't know that it  
12 would take a motion as long as -- I mean it would  
13 be part of the motion when you adopt the dates.

14 CHAIRMAN RUSSELL: Well, we'll just move  
15 that up a week, and set this as our schedule. And  
16 I don't think -- Do we take action on this  
17 usually? It's really -- unless there is an issue.

18 MR. LIVERS: I don't think formal action  
19 is necessary, Mr. Chairman. We'll go ahead and  
20 work with these dates as proposed with the one  
21 change. May 20th will become May 13th, and we'll  
22 publish those.

23 CHAIRMAN RUSSELL: Perfect. All right.  
24 Katherine.

25 MS. ORR: These cases "A" through "G"

1 are all in the stage of proceeding to hearing  
2 except for Item (c). There was a stipulation to  
3 dismiss that was submitted on December 1st of  
4 2010, and that dismissal will be entertained by  
5 the Board at the next Board meeting. Other than  
6 that, there isn't very much to add.

7 As to Item (g), there was a request for  
8 a third extension filed on November 23rd to  
9 respond to the first prehearing order. That's all  
10 I have there.

11 CHAIRMAN RUSSELL: Thanks, Katherine.  
12 The next item on the agenda is rule initiation,  
13 and the Department requests the Board to initiate  
14 rulemaking to amend the air quality open burning  
15 rules, and to change some procedural issues around  
16 that based on some legislative changes. Tom.

17 MR. LIVERS: Thanks, Mr. Chairman. Deb  
18 Wolfe from our Air Resource Management Bureau will  
19 present this initiation.

20 MS. WOLFE: Good morning Chairman  
21 Russell, members of the Board. My name is Debra  
22 Wolfe, and I work in the Air Resources Management  
23 Bureau, and I'm here today to represent the  
24 Department regarding action on the proposed  
25 revisions to the open burning rules.

1           I'll start with 17.8.604, which is open  
2 burning, and the list of prohibited materials. By  
3 way of background, I'll review the most recent  
4 history of Board action for the rules that  
5 prohibit the burning of certain materials.

6           In 2002, the Board amended 17.8.604 to  
7 provide an exception to the general prohibition  
8 that in order to allow wood waste generated in  
9 areas where burning would be unwise, to be moved  
10 to areas where burning could take place under  
11 conditions applicable to other open burning.

12           The Board originally approved the rule  
13 as a response to situations that occur when a city  
14 experiences a heavy snowfall or a severe wind  
15 storm, causing tree limbs to break and fall to the  
16 ground. If other disposal methods are unavailable  
17 or not feasible, it was felt that instituting open  
18 burning would be unacceptable, and would  
19 unacceptably increase particulate concentrations  
20 in populated areas, and that it would be more  
21 appropriate to move fallen tree limbs downwind  
22 away from town before open burning.

23           The rule was submitted to EPA for  
24 inclusion into the State Implementation Plan after  
25 the Board approved it in 2003. In 2004, EPA

1 proposed to disapprove the amended provision. EPA  
2 has not followed up to finalize the proposed  
3 disapproval since that time, but has recently  
4 indicated in discussion an inclination to approve  
5 if the rule was changed in some way to condition  
6 Department approval.

7           So the suggested revisions before you  
8 are intended to provide appropriate conditions for  
9 that approval. The revisions ensure that waste is  
10 moved from the premises where it is generated, and  
11 it's still prohibited material, and may not be  
12 burned unless it is conducted pursuant to a  
13 landfill or conditional open burning permit.  
14 The revisions also ensure that movement and  
15 burning is only an option for wood that is not  
16 already described as prohibited. So if you'll  
17 look at 604(1)(e), for instance. The proposed  
18 revisions ensure other methods of disposal are  
19 considered. Finally the proposal would require  
20 the open burning to comply with BACT for open  
21 burning.

22           The proposed revision to ARM 17-8-610(2)  
23 merely corrects a grammatical error. The rest of  
24 the revisions are made to make the rules  
25 consistent with legislation removing the automatic

1 stay during the process for appealing air quality  
2 permits pursuant to 75-2-211 in the Montana code.  
3 That would be House Bill 700.

4 So the Department hereby requests that  
5 the Board initiate rulemaking and conduct a public  
6 hearing to consider the proposed amendments to  
7 these rules. Thank you.

8 CHAIRMAN RUSSELL: Thanks, Deb. How  
9 does this not automatic stay, how is that going to  
10 work?

11 MS. WOLFE: Chairman Russell, members of  
12 the Board, that is simply a change that makes it  
13 consistent to the statutory rules, and so when you  
14 say, "How does that work?," I guess that we could  
15 review the legislation and find out what the  
16 intent was, but it simply makes it consistent with  
17 the legislation.

18 CHAIRMAN RUSSELL: But let's say I'm  
19 sitting -- I have a home next to a permitted  
20 process, and I know that because of my location  
21 that I'm going to be adversely affected, and that  
22 the only thing I want is some stricter conditions  
23 put in the permit. So I file an appeal, and an  
24 affidavit, and I submit it. What happens next?

25 MS. WOLFE: There is no automatic stay

1 at that point.

2 CHAIRMAN RUSSELL: So then you just keep  
3 on burning? Are you getting my point?

4 MS. WOLFE: I am getting your point.

5 CHAIRMAN RUSSELL: That's literally why  
6 the air pollution control regulations were written  
7 and allowed, not just literally that -- You can't  
8 just say, "I'm adversely affected." You file an  
9 affidavit and it makes sense. Who at that point  
10 considers if a stay is in the best interests of  
11 public health or not?

12 MS. WOLFE: I'm actually going to let  
13 Dave answer this one.

14 MR. KLEMP: Mr. Chairman, members of the  
15 Board, for the record, Dave Klemp. I'm Bureau  
16 Chief of the Air Resources Management Bureau,  
17 former permitting supervisor in the Air Resources  
18 Management Bureau.

19 And Chairman Russell, your question is a  
20 very good one, and one we've been struggling with,  
21 as you know, for many years now as a result of  
22 appeals. And the open burning provisions would be  
23 handled very similarly to those provisions under  
24 the Montana Air Quality Permit provision, which is  
25 basically our preconstruction permitting program,

1 and that if an appeal is filed, unless the stay is  
2 granted, and the Board may consider granting a  
3 stay if one is requested, that permit would go  
4 final, and those activities would be allowed to  
5 occur, much like a stay in a coal fired -- if  
6 there was an appeal in a power plant or something  
7 like that, they would be able to begin  
8 construction. They would have the authorizations  
9 necessary to proceed, again, without a stay  
10 granted.

11 CHAIRMAN RUSSELL: If this was in an  
12 area that wasn't a nonattainment area or something  
13 like that, where you just applied BACT, I could be  
14 adversely affected if I were the neighboring  
15 property. Literally I could. You know that.

16 MR. KLEMP: Absolutely. I'm not sure  
17 what recourse we have to, I guess, to be  
18 inconsistent with the statute.

19 CHAIRMAN RUSSELL: All I'm doing is  
20 bringing up some issues that could be of grave  
21 public health concern if a stay isn't granted, and  
22 there seems to be merit based on the affidavit.  
23 It triggers -- I don't know if there are triggers  
24 out there that could be used. I don't know what  
25 the intent of the legislation was. I literally

1 don't. But I don't think the intent was to harm  
2 public health.

3 MR. KLEMP: Mr. Chairman, the intent was  
4 for projects to be able to move forward while the  
5 appeal was being heard.

6 CHAIRMAN RUSSELL: And open burning is  
7 different. It's more localized.

8 MR. KLEMP: Much shorter time frames.

9 CHAIRMAN RUSSELL: It's much shorter  
10 time frames. Just keep that in mind moving  
11 forward. I'm not going to be an obstructionist  
12 here. I think that we need to be consistent with  
13 what the statute says, but you have to also  
14 consider the public health ramifications of not  
15 granting a stay when it seems to be -- when there  
16 seems to be merit.

17 MR. KLEMP: Absolutely. Thank you.

18 CHAIRMAN RUSSELL: Thanks for jumping up  
19 there and taking command.

20 MS. SHROPSHIRE: I have a question. The  
21 addition of the BACT analysis, and I guess the  
22 question is: That's a new addition? Is that a  
23 new addition?

24 MS. WOLFE: I don't know that it's  
25 necessarily a new addition. There was certainly a

1 very good argument that regardless BACT would  
2 apply when you conduct open burning. I suppose a  
3 person previously could have argued -- little tiny  
4 crack in the door -- that maybe this wouldn't  
5 apply, that BACT wouldn't apply to this. This  
6 absolutely ensures that BACT will apply.

7 MS. SHROPSHIRE: Just clarifying. Okay.  
8 Thank you.

9 CHAIRMAN RUSSELL: Further questions for  
10 Deb?

11 MR. WHALEN: Mr. Chairman, as someone  
12 from a part of the state that doesn't seem to be  
13 as adversely affected from open burning, this does  
14 seem to be an issue that is fairly localized to  
15 this part of the state and west. Some of my  
16 questions have to do with the application of best  
17 achievable control, or best available control  
18 technology to this issue.

19 Did we go directly BACT as opposed to  
20 kind of graduating up from lowest achievable  
21 emission rates, or reasonably available control  
22 technology? Was there any sort of graduation, or  
23 did we just propose, or is the Department  
24 proposing to go straight to BACT application in  
25 this case?

1 MS. WOLFE: Chairman Russell, Mr.  
2 Whalen, BACT is the control technology for open  
3 burning in Montana. I don't know that there is a  
4 graduated -- maybe I'm misunderstanding your  
5 question.

6 MR. WHALEN: The question goes to a  
7 little bit of research on the EPA site that  
8 provides for a spectrum of controls depending on  
9 upon the severity of the concern, beginning with  
10 lowest achievable emission rate, and then moving  
11 through describing reasonably available control  
12 technology, then at the high end is best available  
13 control technology.

14 So my concern is in an area where we  
15 typically endure wildland fire smoke, are we  
16 applying the highest and best technologies to a  
17 problem that might be mitigated at a lower level?

18 MS. WOLFE: Mr. Chairman, Mr. Whalen,  
19 what you're describing, these various type of  
20 controls, are controls that depend on the type of  
21 source, and the area, the status of the air  
22 quality of the particular area. And I can  
23 actually -- We don't do this in a vacuum, we have  
24 a team, and so I do have an engineer that is  
25 available to talk to you a little bit about those

1 various control strategies, and that may actually  
2 answer your question.

3 CHAIRMAN RUSSELL: Before you jump up,  
4 wildland open burning is not considered here at  
5 all.

6 MR. WHALEN: I understand.

7 CHAIRMAN RUSSELL: And quite frankly, I  
8 wanted to put cudros in. This Department does a  
9 great job in applying BACT for wildland open  
10 burning in the west. John Coefield is an  
11 incredible meteorologist. He does a super job.  
12 So this is really focused on those activities that  
13 are less than that. Wildland open burning is one  
14 of the best BACT applied programs that I've ever  
15 witnessed out of DEQ.

16 But we need to stay to the focus. These  
17 are more, as you mentioned, these are very  
18 localized issues. Christmas tree burning,  
19 conditional open burning permits, those are much  
20 more localized than area wide issues around  
21 wildland open burning.

22 MR. WHALEN: But we're still discussing  
23 wood smoke, right?

24 MS. WOLFE: Yes.

25 CHAIRMAN RUSSELL: But you can't

1 commingle them. The problem is -- That's where  
2 the Department does a great job with the major  
3 open burning sources. They look at particulate  
4 loading in the western valleys quite well before  
5 they allow the majors to burn, and most of these  
6 literally are just a small percentage of the  
7 particulate that comes from wildland open burning.

8 Any further questions?

9 (No response)

10 CHAIRMAN RUSSELL: Hearing none, I would  
11 entertain a motion to initiate rulemaking. And  
12 Katherine, are you going to take this one on?

13 MS. ORR: Yes.

14 CHAIRMAN RUSSELL: Adopt the MAR, and  
15 get this thing going.

16 MS. KAISER: So moved.

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

19 MR. MILLER: Second.

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

22 (No response)

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

25 (Response)

1 CHAIRMAN RUSSELL: Opposed.

2 (No response)

3 CHAIRMAN RUSSELL: Motion carries  
4 unanimously.

5 The next item on the agenda is another  
6 rule initiation. The Department requests the  
7 Board initiate rulemaking to streamline the  
8 revocation permit, revocation permits for those  
9 that are not operating.

10 MS. WOLFE: Good morning again.  
11 Chairman Russell, members of the Board, again, for  
12 the record, my name is Debra Wolfe, and I'm with  
13 the Air Resources Management Bureau, and I'm here  
14 to represent the Department regarding action on  
15 this proposed revision to the Montana air quality  
16 permit rules.

17 The proposed revision to ARM 17.8.763  
18 would set forth a process for notice by  
19 publication regarding the Department's intent to  
20 revoke a permit for a source that's regulated  
21 under Title 17, Chapter 8, Subchapter 7, the  
22 Montana air quality permit.

23 The current rule fails to set forth a  
24 method of alternative service in the event an  
25 owner or operator cannot be found for regular mail

1 delivery. The Department feels including the  
2 provision would help close the loop in situations  
3 where the owner or operator is delinquent in its  
4 fee payment, and the Department is obligated to  
5 pursue them, even though the owner or operator  
6 leaves no forwarding address or other information.  
7 Chasing down a cold trail and maintaining an  
8 administrative record for an inactive source takes  
9 resources that the Department can ill afford.  
10 The publication of an intent to revoke a permit  
11 will provide any owner or operator sufficient time  
12 to halt the process, and remedy the situation.

13 The Department requests the Board  
14 initiate rulemaking, and conduct a public hearing  
15 to consider the proposed amendments to these  
16 rules. Thank you.

17 CHAIRMAN RUSSELL: Questions for the  
18 Department, Deb?

19 MS. SHROPSHIRE: I have a question. Do  
20 you ever call them, or is the phone number ever  
21 part of the process where you leave a phone  
22 message or anything like that to show added intent  
23 to locate them? Is that --

24 MS. WOLFE: Chairman Russell, Ms.  
25 Shropshire, I actually will have Dan Walsh, who is

1 our compliance supervisor, tell you a little bit  
2 about how this rule is implemented and answer your  
3 question.

4 MR. WALSH: Mr. Chairman, Ms.  
5 Shropshire, for the record, my name is Dan Walsh.  
6 I'm the air compliance supervisor for the  
7 Department.

8 And in response your question, yes, we  
9 make every effort we can to contact these sources  
10 when this comes up. We have inspectors that are  
11 assigned to individual facilities, and they try to  
12 maintain a relationship where they're able to call  
13 them. A lot of times when we're in this position,  
14 the company will longer be in existence in a  
15 general area, and all of the information we have  
16 on file with them is no longer applicable, and we  
17 have a real difficult time trying to track them  
18 down in situations.

19 MS. SHROPSHIRE: So the point where  
20 you're at where you're sending these certified  
21 requests is way beyond the phone call sort of  
22 stage? This is the last effort that is made to  
23 get in contact with them, that's being verified, I  
24 guess.

25 MR. WALSH: Mr. Chairman, Ms.

1 Shropshire, typically the process, there is a  
2 number of steps, and we start out with --  
3 particularly with this example we're talking about  
4 with the billing -- we start out with sending them  
5 a first notice that they owe us a bill; and then  
6 we start with the second and third notices. And  
7 during those times, we also have inspectors that  
8 are trying to get a hold of them to try and  
9 encourage them to stay up to speed with their air  
10 fee payment that they owe.

11           As we get further down the process,  
12 that's when we're talking about sending them the  
13 certified mail, and also trying to do this public  
14 notice to take care of that issue, and kind of  
15 close the loop, as mentioned.

16           MS. SHROPSHIRE: Thank you.

17           MR. MIRES: How often does this occur?

18           MR. WALSH: Mr. Chairman, Mr. Mires, we  
19 deal with this issue approximately, I would say,  
20 anywhere from a half dozen to a dozen times a year  
21 where we have sources that we're having a  
22 difficult time identifying them. And then what  
23 happens with those is that they stay on the books  
24 until we find some way to notify them the way that  
25 the rules are currently set up right now, and a

1 lot of these may stay on the books for years while  
2 we're trying to figure out how to actually notify  
3 them to close that loop and basically get rid of  
4 the administrative process for them.

5 CHAIRMAN RUSSELL: So how many of these  
6 are stationary sources?

7 MR. WALSH: Mr. Chairman, typically,  
8 we're talking mainly about portable sources. It's  
9 not something we deal with a lot with stationary  
10 sources. It's portable asphalt plants and  
11 crushers is typically what we're dealing with.

12 MR. LIVERS: Dan, I wonder if just for  
13 context. You say half a dozen a year, but out of  
14 what kind of a permit universe?

15 MR. WALSH: Our permit universe is  
16 approximately 650 or 700 sources. Portable  
17 sources is about half of that universe, so we're  
18 talking about anywhere from six to twelve of that  
19 350 per year is typically what we're talking  
20 about.

21 CHAIRMAN RUSSELL: We get a lot of them  
22 up in the Flathead.

23 MR. WHALEN: Mr. Walsh, I noticed in the  
24 literature that this is run by the Attorney  
25 General's Office as the methodology for contacting

1 these people, or these firms. To kind of follow  
2 up on Ms. Shropshire's point earlier about -- It  
3 just seems archaic that we're still publishing in  
4 the newspapers these kind of notices. Did you  
5 sense from the Attorney General's Office that  
6 there was any sort of movement into some other  
7 means of notifying people aside from publication  
8 into newspapers?

9 MR. WALSH: Mr. Chairman, Mr. Whalen, if  
10 I could have Deb Wolfe answer that.

11 MR. WHALEN: I should have directed that  
12 question to you, Mr. Chairman.

13 MS. WOLFE: Chairman Russell, Mr.  
14 Whalen. Maybe it is more appropriate for Joe.  
15 The newspaper publication, I realize that a large  
16 part of the population is seeing it as archaic.  
17 It is used for other types of processes, such as  
18 under the Rules of Civil Procedure, for instance.  
19 It doesn't mean that we're locked into this  
20 particular, but it is still somewhat acceptable.  
21 Does that mean that in five years we won't be back  
22 here looking for something that maybe is more  
23 timely, or electronic, or something that's more  
24 widely accepted? No. But right now that's what  
25 we're dealing with.

1           CHAIRMAN RUSSELL:  When we have to start  
2  tweeting people.  Actually there is a lot of Title  
3  7s that requires publication.  I don't know what  
4  -- Title 7 is the county rules, but I don't know  
5  what --

6           MR. WHALEN:  The City as well.

7           CHAIRMAN RUSSELL:  Most of that stuff  
8  comes right out of there still.  Times will  
9  change.

10          MR. WHALEN:  My understanding is that  
11  posting those kinds of notices on the Department  
12  website would serve as public notice as well.

13          CHAIRMAN RUSSELL:  Possibly.  We can't  
14  post things publicly on our website.  There still  
15  has to be a paper that --

16          MR. WHALEN:  That doesn't reach the  
17  public notice criteria?

18          CHAIRMAN RUSSELL:  Not for noticing  
19  meetings.  That will change.  You're right.  It's  
20  not that far off that things will start to change  
21  in the universe.

22          MR. WHALEN:  Thank you, Mr. Chairman.

23          CHAIRMAN RUSSELL:  So with that, I would  
24  entertain a motion to initiate rulemaking, adopt  
25  the notice, and appoint Katherine the Hearing

1 Examiner for this.

2 MR. WHALEN: So moved, Mr. Chairman.

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

5 MR. MIRES: Second.

6 CHAIRMAN RUSSELL: Seconded by Mr.  
7 Mires. Any further questions? Comments?

8 (No response)

9 CHAIRMAN RUSSELL: All those in favor,  
10 signify by saying aye.

11 (Response)

12 CHAIRMAN RUSSELL: Opposed.

13 (No response)

14 CHAIRMAN RUSSELL: Thanks, Deb.

15 MR. LIVERS: Mr. Chairman, public  
16 comment on --

17 CHAIRMAN RUSSELL: You know, I missed  
18 two, haven't I? You let me blow the first one,  
19 and you let me blow the second one. I will not  
20 screw up again.

21 MR. LIVERS: I think you could still ask  
22 for it.

23 CHAIRMAN RUSSELL: On the last two  
24 initiations, is there anyone here that would like  
25 to speak to these matters?

1 (No response)

2 CHAIRMAN RUSSELL: When we don't meet  
3 that often in person, I tend to forget.

4 All right. The next item on the agenda  
5 is the Department's request for initiation of  
6 rulemaking around 17.30.1341, general permit  
7 category for pesticide, and a few other little  
8 things. Tom.

9 MR. LIVERS: Mr. Chairman. Thank you.  
10 Jenny Chambers, head of our Water Protection  
11 Bureau, will walk through this initiation.

12 MS. CHAMBERS: Thank you. Chairman,  
13 members of the Board, my name is Jenny Chambers,  
14 Chief of the Water Protection Bureau.

15 The Department requests the Board concur  
16 in its recommendation to initiate rulemaking to  
17 proceed with minor amendments to ARM 17.30.201,  
18 the rules pertaining to the permit fees, and ARM  
19 17.30.1341. The primary purpose of this  
20 rulemaking is to provide an administrative  
21 framework to allow the Department to proceed with  
22 the development of a Montana pollutant discharge  
23 elimination system general permit for pesticides,  
24 and also to provide a fee schedule and necessary  
25 information that's required under the Montana

1 Water Quality Act.

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

8 For a little background information, in  
9 2007, the United States Environmental Protection  
10 Agency issued a rule exempting pesticide  
11 application from discharge permit requirements  
12 under the Clean Water Act. The rule concluded  
13 that if pesticides were applied in accordance with  
14 the Federal Insecticide, Fungicide, and  
15 Rodenticide Act, or commonly referred to as FIFRA,  
16 then it was exempt from Clean Water Act permit  
17 requirements.

18 In January of 2009, the EPA rule was  
19 vacated by the Federal Court of Appeals, and EPA  
20 received a two year stay on the rule. By April  
21 9th, 2011, application of pesticides to State  
22 waters is no longer exempt, and must comply with  
23 Clean Water Act requirements.

24 Therefore, this rulemaking is requested  
25 to establish the administrative framework

1 necessary for the Department to comply with that  
2 ruling, and also to provide the Department the  
3 mechanism to develop a Montana pollutant discharge  
4 elimination system for Montana pesticide  
5 applicators.

6           The major proposed amendment to ARM  
7 17.30.201 is to add a definition for pesticides.  
8 Since this is a fairly new program for the  
9 Department, we're working very closely with  
10 stakeholders, and a work group, and also our  
11 Montana Department of Agriculture, plus working  
12 really close with our legal staff, and making sure  
13 we're not being more stringent than the federal  
14 EPA requirements.

15           I do have a new MAR notice to hand out  
16 to you with a different definition for pesticide  
17 definition. (Provides document) It is still  
18 located in the same location. It's on the bottom  
19 of Page 1, under 17.2, starts with Subpart (a).  
20 Basically the definition is very similar. It just  
21 provides some exemptions that we thought was  
22 necessary to ensure that we weren't being more  
23 stringent than the federal EPA.

24           Some additional amendments to ARM  
25 17.30.201 remain the same. We're going to add the

1 definition for multi-county versus single county  
2 coverage areas; we're going to correct the suction  
3 dredge fee amounts to align with the statutory  
4 amount in Title 75; and we're going to reduce the  
5 fee amount for short term water quality standard  
6 308 authorization, which is a Montana Water  
7 Quality Act requirement for application of  
8 pesticides that will exceed water quality  
9 standards; and we're going to add some additional  
10 clarification language.

11           The changes to ARM 17.30.1341 start on  
12 Page 6 of the notice that I handed out. We are  
13 requesting that we add a pesticide application to  
14 the list of general permits to allow the  
15 Department to issue the general permit, instead of  
16 requiring us to issue all individual discharge  
17 permits to applicators.

18           We're also going to add and change --  
19 which is a change from the notice that you guys  
20 received electronically -- in Part 4 to allow the  
21 Department to issue Notice of Intent to process  
22 the pesticide general permits. This change would  
23 clarify that authorizations are not needed when a  
24 Notice of Intent form is filed, and allows  
25 coverage upon receipt of a complete NOI.

1           In turn, the Department will send out an  
2 acknowledgment letter as opposed to reviewing an  
3 application, determine the application complete,  
4 and then sending approval under that application  
5 process. The Notice of Intent allows the  
6 Department to reduce our amount of expenses as far  
7 as resource time, and then the permittees will  
8 have coverage when they file a complete NOI, and  
9 not wait for us to, 30 to 60 to 90 days, turn  
10 around and give them an authorization letter.

11           MS. SHROPSHIRE: Question, Mr. Chairman.  
12 Can you elaborate a little bit on the NOI, or  
13 Notice of Intent, and what that is, just for  
14 background.

15           MS. CHAMBERS: Certainly. Under the  
16 MPDES program, surface waters discharge permit  
17 program, you can either send out a standard  
18 application form that's going to require more of a  
19 Department review, and approval, and confirmation,  
20 that indeed that that application is going to meet  
21 the intent of that permit. We review all the  
22 information, determine whether or not the  
23 application is complete, whether or not we need to  
24 send any deficiency letters out in order to get  
25 additional information, so that we can actually

1 develop possibly an individual MPDES permit if  
2 they meet the requirements of a more complex  
3 possibly general permit.

4           A Notice of Intent is very similar to  
5 what we do in the storm water construction  
6 program, where there are short term quicker  
7 projects that receive -- require immediate  
8 coverage for the application of what they're  
9 doing. You're either building a building, and  
10 you're getting ready to start that project, you  
11 need to have approval right away to have coverage;  
12 or for pesticide applicators who are going to go  
13 out and spray those fields because maybe there's  
14 health impacts associated with that, and you need  
15 to get on the ground and do that as soon as  
16 possible.

17           They submit a Notice of Intent to the  
18 Department. As long as all of the T's are  
19 crossed, and the I's are dotted, and all of the  
20 check boxes were filled out, and they had the  
21 appropriate fee paid, they automatically have got  
22 coverage, so we'll just turn around a quick  
23 authorization letter to them, telling them that  
24 they're good to go.

25           We could probably do Notice of Intent

1 within anywhere from two to ten days, versus an  
2 application is normally at least a 30 day review  
3 process with possible deficiencies later.

4 MS. SHROPSHIRE: Okay. Thank you.

5 MS. CHAMBERS: That basically concludes  
6 a summary of the proposed revisions, and the  
7 Department requests the Board concur with this  
8 recommendation to initiate rulemaking of the  
9 package, and appoint a Hearing Officer for a  
10 public hearing. Thank you, and I'd be happy to  
11 answer any questions.

12 CHAIRMAN RUSSELL: Questions?

13 MR. MILLER: Mr. Chairman, Jenny, you  
14 mentioned you had talked to the Department of Ag.  
15 How about, have they commented on this, or the  
16 county weed groups, and so forth?

17 MS. CHAMBERS: Mr. Chairman, Mr. Miller,  
18 yes. We've had huge stakeholder involvement, not  
19 necessarily on us building this rule package to  
20 allow us to have the administrative framework in  
21 order to go with the MPDES general permit, and to  
22 establish an actual fee setting for us to actually  
23 implement this program when April rolls around.

24 But definitely as far as the  
25 requirements of the general permit, what we're

1 doing to implement the program, trying to ensure  
2 that we're not being more stringent than the  
3 federal requirements, making sure we're not  
4 duplicating efforts between the EPA efforts,  
5 Montana DEQ efforts, and also Department of  
6 Agriculture efforts. They still have to comply  
7 with FIFRA. We want to make sure we're not  
8 duplicating efforts.

9 Weed districts are involved with our  
10 stakeholder group, with Montana Department of Ag.  
11 In addition, we have done probably three or four  
12 conferences, and trainings, and discussions  
13 throughout the state, and will continue to do  
14 that.

15 In addition, we have a website set up  
16 that is specifically geared toward this pesticide  
17 general permit development, and internal draft  
18 review of a general permit is published on there  
19 for internal comments prior to us going out for  
20 formal public comment. We're taking it very  
21 seriously as far as trying to get as much input as  
22 we can to reduce the impacts on this particular  
23 program.

24 MR. MILLER: Thank you.

25 MR. MIRES: Mr. Chairman, I have several

1 questions, and kind of follow up to Mr. Miller's.

2 I'm really interested in what the  
3 Department of Agriculture has to say, and weeds,  
4 in relationship to this rulemaking as it relates  
5 to irrigation and the agricultural community. I  
6 see some real concerns here that are going to be  
7 developed, and justifiably so, and some hardships  
8 that this is going to create. What is their  
9 response or reply back?

10 MS. CHAMBERS: Mr. Chairman, Mr. Mires.  
11 Basically this general permit is for application  
12 of pesticide to state waters. If you're doing  
13 irrigation, spraying as far as weed districts, or  
14 if you're spraying your grain field, or you're  
15 spraying other type of agricultural activities  
16 that aren't directly sprayed on water, then you  
17 will not need to have coverage under the general  
18 permit. It's the application of pesticides to  
19 state waters.

20 If you have over spray, or you're  
21 spraying a forest canopy type of application, and  
22 you're going to have an unavoidable impact to the  
23 water, meaning it's going to drip down, or you're  
24 going to have impact, yes, you would have to get  
25 coverage, or have some kind of best management

1 practices in place.

2           The general permit is looking at  
3 basically six pattern uses: Nuisance animals,  
4 weeds and algae, forest canopy, mosquito and other  
5 flying insects -- which are broken out into three  
6 different categories: Larva chemical control,  
7 chemical adulticide, and biological control -- and  
8 then research and development. The general permit  
9 cannot be more stringent than EPA currently is  
10 proposing. We have threshold levels.

11           If it's a piscicide, which is  
12 automatically sprayed on water, that the sole  
13 purpose is to have fish kills, that's going to  
14 have a zero threshold level, very similar to  
15 research and development. When they are not sure  
16 what they're doing when they're applying this to  
17 the water, and they need to have some kind of  
18 coverage, and they're not really sure what the  
19 impacts are going to be, that's also going to have  
20 a zero threshold.

21           So for weed and algae, like you  
22 mentioned, that's a 64 acre threshold. So if  
23 you're in an irrigation zone, and you're not going  
24 to spray pesticides to exceed more than 64 acres,  
25 you will not need to get coverage under this

1 general permit. However, if you're applying  
2 directly to state waters, and you're below those  
3 thresholds, and you're going to exceed the water  
4 quality standard, you may still need a Section 308  
5 authorization.

6 That's why we still have the 308 number  
7 in this particular rule package, is because we may  
8 still need to have some 308s or 4(a)s, drinking  
9 water treatment plants, that apply copper sulphate  
10 to their drinking water reservoir. They may still  
11 need to have 308 coverage, but they're probably  
12 going not to hit the threshold for this particular  
13 permit.

14 So to answer your question in a quick  
15 summary, basically, is that we're not seeing a lot  
16 of impacts to the irrigation districts and/or weed  
17 and algae control if they're just spraying on dry  
18 land, and they're taking precautions, and they're  
19 not doing it during a rain event, and following  
20 their BMP's.

21 MR. MIRES: So how about an irrigation  
22 district that maybe is using a pesticide in the  
23 canals that covers a pretty broad area, it's their  
24 main canal, that has the potential -- I guess all  
25 of them would have a potential of that pesticide

1 at some point seeping back into state waters. How  
2 is that going to affect --

3 MS. CHAMBERS: Mr. Chairman, Mr. Mires.  
4 It is not overspray, and it is not runoff or storm  
5 water runoff. It is direct application that you  
6 unavoidably cannot avoid not spraying it into  
7 state waters.

8 CHAIRMAN RUSSELL: If you were a  
9 pesticide applicator, you'd know better than to  
10 let that happen anyway.

11 MR. MIRES: I would hope so.

12 MS. CHAMBERS: Mr. Chairman, Mr. Mires,  
13 that is a good point that Chairman Russell stated.  
14 There is some pesticide applicators under the  
15 FIFRA label that aren't allowed to be sprayed on  
16 state waters. Therefore we are not going provide  
17 a permittee -- allow them to do that if the FIFRA  
18 label exempts them from applying it to state  
19 waters. So we're going to have watch that between  
20 the two agencies.

21 CHAIRMAN RUSSELL: Are you going to ever  
22 finish? Go ahead.

23 MR. MIRES: No. And this one comes to  
24 the fee structure. As I'm looking at this fee  
25 structure -- and it may be that I'm totally

1 confused -- but I'm looking at suction dredge,  
2 resident of Montana. You're going to increase  
3 that permit fee for a new permit to \$50, and the  
4 application or the renewal fee is \$25. I'm  
5 looking at a concentrated animal feeding operation  
6 where their annual fee is \$600, and new is \$12.  
7 Fish farms, \$600.

8           And we come back into suction dredge.  
9 Doesn't suction dredge create a heck of a lot more  
10 pollution and problem issues than -- and I realize  
11 all of the things that come out of an animal farm,  
12 but let's get more closely into the suction  
13 dredge, such as sand and gravel at \$900 as opposed  
14 to suction dredge at \$25. I'm having a hard time  
15 understanding that.

16           MS. CHAMBERS: Mr. Chairman, Mr. Mires,  
17 that is an excellent question. We would agree  
18 with you at the Department. Those two categories,  
19 suction dredge and CAFO, are set in statute.  
20 They're set in Title 75. I have no control to  
21 change those unless I go back to the Legislature  
22 to get those numbers changed.

23           The other program elements are, the ones  
24 that we've evaluated at the Department, to  
25 evaluate what the time and expenses it takes, and

1 amount of volume and concentration of the  
2 pollution that those may impact in the State of  
3 Montana. CAFOs would run us quite a bit higher  
4 than what we could get as far as the cost to  
5 manage that program, in addition to the suction  
6 dredge category.

7 MR. MIRES: And that same concern would  
8 come down to pesticides. I'm looking at single  
9 county at \$450 and multi-county at \$1,400. I am  
10 trying to get a handle on how you justify that.

11 MS. CHAMBERS: Mr. Chairman, Mr. Mires.  
12 Yes, we looked at that long and hard, and again,  
13 it's single counties, meaning they're going to get  
14 coverage for their whole county, all of Rosebud  
15 County, all of Lewis & Clark County, impacts for  
16 that whole county area. We have very large  
17 counties in the state. We looked at acreage, as  
18 far as the smallest acreages to the large acreages  
19 within counties. Or they could get that  
20 multi-county, which is equivalent to the Montana  
21 Department of Ag. district area, which could be up  
22 to three to four different counties, you know,  
23 where they're applying -- when they apply  
24 pesticides.

25 We compared that specifically to storm

1 water construction and construction dewatering  
2 authorizations for the single county annual fee;  
3 and then for multi-county, since it's going to be  
4 three or four acres, we three timesed the amount  
5 as far as the fee associated with that for the  
6 single county location. And again, it's depending  
7 on the pattern use, and depending on the size of  
8 acreage, they may or may not need to get the  
9 general permit NOI coverage. So it's kind of  
10 determined on the amount of volume that they grow.

11 For instance, forest canopy applying  
12 possibly in western Montana, that's 640 acres for  
13 them to apply currently under this general permit.  
14 So a lot of application of pesticides. That's a  
15 lot of impact to the state of Montana potentially.  
16 Therefore the fee is commensurate with that  
17 expense.

18 MR. MIRES: Thank you, sir. Your turn.

19 CHAIRMAN RUSSELL: You just mentioned  
20 640 acres. Anything above that requires a permit?

21 MS. CHAMBERS: Mr. Chairman, again, the  
22 threshold triggers and there's a cumulative  
23 impact, so there's six different pattern uses. If  
24 you're an applicator that sprays piscicides, but  
25 you also spray in forest canopy, forest canopy is

1 640 acres, but piscicides is a zero threshold.

2 CHAIRMAN RUSSELL: What about larvicide?

3 MS. CHAMBERS: Larvicide for mosquitoes  
4 is 74 acres. And these are again are just drafts.  
5 We're trying to mimic and watch EPA's general  
6 permits to ensure that we're not being more  
7 stringent, and to allow justification on our fact  
8 sheet of what makes sense for Montana, since we  
9 are the fourth largest state, and population isn't  
10 impacted, and we're trying to take some of those  
11 factors into consideration.

12 CHAIRMAN RUSSELL: The definition that  
13 you actually had in first MAR notice, I liked the  
14 first part better than I like what you did in the  
15 new one, and basically because Part (A), I know  
16 the intent is for larva, but is a larva, a  
17 mosquito larva, a pest?

18 MS. CHAMBERS: Mr. Chairman, this is new  
19 as far as definitions, and pesticides, and these  
20 terminologies that we're getting for these work  
21 groups, and actually making a determination and  
22 cutoff between what's a larvicide, what's a  
23 nuisance animal control, what's a flying insect.  
24 We're working closely with the Montana Department  
25 of Ag on. Again, this definition is just to avoid

1 us having the impact be more stringent than the  
2 federal EPA. This is a definition within FIFRA.

3 CHAIRMAN RUSSELL: The first one was a  
4 definition in FIFRA.

5 MS. CHAMBERS: The first one was a  
6 definition from the Montana Department of  
7 Agriculture.

8 CHAIRMAN RUSSELL: Yes, and it's much  
9 more clear when you're dealing with larva and pupa  
10 in the stage of mosquito development because it  
11 hits living organisms. One of the main things we  
12 use is bacillus to kill larva, and we also use a  
13 hormone.

14 So this is very explicit to where I  
15 think a lot of the pesticide application of water  
16 is, which is larviciding, and this isn't. The new  
17 one isn't. So just a thought that you may want to  
18 look at that as a very -- at least the one, the  
19 first part of it, where you're talking about  
20 everything up in the animal kingdom, and then you  
21 can take off on the plants, weeds, and other  
22 things, and take that out. But I would strongly  
23 encourage you look at that, and I don't think even  
24 if we adopted the new one, it wouldn't preclude  
25 you from looking at that, and putting some of that

1 definition for clarification on what a larvicide  
2 is.

3 MS. CHAMBERS: Mr. Chairman, we will  
4 definitely clarify that definition in the fact  
5 sheet as far as what our intent is as far as who  
6 needs to be regulated under this general permit,  
7 and also more explicitly in the permit. Again,  
8 this was a legal review based upon not the  
9 stringency within EPA.

10 I do have my legal Counsel here, Jim  
11 Madden, if you want more specifics on why we chose  
12 the FIFRA definition versus the Montana Department  
13 of Ag. definition. And as far as legal review,  
14 they felt that all of that information with the  
15 Montana Department of Ag. was still covered within  
16 the definition, but also provides those  
17 exemptions, so we weren't going beyond our  
18 statutory, and not being more stringent than the  
19 EPA.

20 MS. SHROPSHIRE: Can I follow up on this  
21 topic before we move on? That was one of my  
22 questions, because the second definition, it  
23 includes description of a critical or  
24 semi-critical device, and I wasn't sure the  
25 application of that. In terms of potentially

1 tidying up the definition, is that all within the  
2 scope of the rulemaking? Can you change a  
3 definition moving forward, or how do you word it  
4 so that if a definition needs to change, that that  
5 is not outside of the scope of the rulemaking?

6 MS. CHAMBERS: Mr. Chairman, Ms.  
7 Shropshire, if we get significant comments on this  
8 definition being consistent with EPA and using the  
9 FIFRA definition, and we wanted to modify or  
10 change that definition to provide more clarity,  
11 and go back to the Montana Department of Ag.  
12 definition, in addition we have to provide you in  
13 the final rule adoption our review and analysis of  
14 why we are requesting to be more stringent than  
15 the federal EPA. And we'll have to weigh that  
16 decision heavily on whether or not we want to go  
17 that path or leave it consistent.

18 The critical devices I agree. It  
19 doesn't really apply. But evidently there must be  
20 some application of pesticides to be used in human  
21 bodies or experimental programs to see whether or  
22 not they solve some kind of medical disease or  
23 implications.

24 There is one exemption that does help  
25 with fish farms, the animal food exemption. This

1 definition would allow us not to regulate  
2 application of pesticides at fish farms as a  
3 duplicated application to state waters if we  
4 already have a fish farm general permit. So there  
5 are portions of this that have the pros and cons  
6 on both sides of using the FIFRA definition.

7 MS. SHROPSHIRE: I can appreciate that  
8 there may be pesticide application for humans, but  
9 I wouldn't think that that would impact the Clean  
10 Water Act. It just seems out of place, that part  
11 of the definition. It didn't make sense to me.

12 MS. CHAMBERS: Mr. Chairman, Ms.  
13 Shropshire. Yes, I'm not saying that it is or  
14 isn't, but it's hard saying where they're going  
15 with the Clean Water Act these days, and it's  
16 better to have the definition to say those are  
17 exempt just in case environmental or somebody  
18 changes the regulation.

19 CHAIRMAN RUSSELL: Here is a case when  
20 we're dealing with pharmaceuticals, and one of the  
21 known pharmaceuticals does get into the water that  
22 would actually go through a wastewater treatment  
23 plant, or would be --

24 MS. SHROPSHIRE: Ibuprofen.

25 CHAIRMAN RUSSELL: -- or female

1 hormones, which could be considered on the other  
2 side of something that could affect wildlife  
3 differently. So my guess is that they're throwing  
4 that in to catch some of the stuff that might go  
5 through POTW's. It's just a thought. I wouldn't  
6 know that for a fact, but I would think that if it  
7 goes through a POTW, and they can't control it,  
8 then it should be excluded. I don't know. Jim,  
9 maybe you know more about that.

10 MR. MADDEN: I'm sorry, Mr. Chairman. I  
11 didn't hear your question.

12 CHAIRMAN RUSSELL: My thought was  
13 because there are human products that literally go  
14 through a body intact, and are excreted, and go  
15 through a POTW, that maybe they're trying to catch  
16 these exclusions, so publicly owned treatment  
17 works are going to be nailed for having human  
18 hormones or human pharmaceuticals in the waste  
19 stream. But it's a stretch.

20 MR. MADDEN: Mr. Chairman, I could offer  
21 a comment. I think the definition in FIFRA was  
22 never drafted with the intent that it would  
23 address discharges to water necessarily. That has  
24 been created by a Court decision that says FIFRA  
25 pesticides now have to be looked at from that

1 perspective. So I wouldn't try to read the  
2 definition with the idea that was drafted  
3 intending to address discharges to water.

4           How well the definition works, I'm not  
5 sure. What we're recommending today is that the  
6 Board adopt the FIFRA definition because that is  
7 the definition that the federal EPA is going to  
8 use in their permit, their pesticide permit. We  
9 want to just make it real clear at the front that  
10 we are not using a definition that's any different  
11 than theirs for the stringency review.

12           The Department of Ag., the Montana  
13 Department of Agriculture definition, I looked at  
14 that. I think it is more clear and easier to  
15 understand. And I talked to the Agriculture  
16 Department people, and they say they interpret  
17 that definition to be completely consistent with  
18 the FIFRA definition.

19           The problem is in the FIFRA definition,  
20 I saw a couple of exclusions, one for this  
21 critical device, I think, that's in the human  
22 body, and another new animal products; and the  
23 fact that there is exclusions in the definition  
24 seems to make it narrower. So if we were to use  
25 the State definition, it would appear to be

1 broader, and therefore we may be sweeping a  
2 broader regulatory sweep, and that would be more  
3 stringent. So just to avoid at the outside the  
4 question of stringency, we elected to follow the  
5 FIFRA definition. We'll clarify when we draft the  
6 permit exactly how we're going to use that  
7 definition to address the water discharges.

8 CHAIRMAN RUSSELL: If your permitting is  
9 consistent with a larva being a pest, then I guess  
10 that's okay. But I can assure you that from a  
11 nuisance standpoint, a larva in the water is not a  
12 human pest. It isn't. So I don't understand why  
13 they would come up with a definition that wasn't a  
14 little bit more clear, because our State  
15 definition is much more clear about what a pest  
16 is. And you just already said that, and I'm just  
17 being redundant. I don't want to be redundant.  
18 Thanks for your comments, Jim.

19 MR. ANDERSON: Let me ask a more general  
20 question. My impression is that all of these  
21 rules have been drafted to be consistent with the  
22 EPA rules, and to not be more stringent than the  
23 EPA rules. Does the EPA, does the statutory  
24 framework of the EPA prohibit the State's rules  
25 from being more stringent?

1           MR. MADDEN: Mr. Chairman, Mr. Anderson,  
2 no. The federal laws and regulations don't  
3 prohibit states from being more stringent in this  
4 area. We have a State law that prohibits the  
5 State agency, including the Board, from drafting a  
6 rule that is more stringent than comparable  
7 federal rules unless you make special findings.

8           So it doesn't outright prohibit you from  
9 drafting a more stringent rule, but you have to  
10 accompany that with findings that the rule is  
11 needed to address environmental or health issues.  
12 So routinely with a rulemaking here, we will look  
13 at the stringency question, provide a memo for the  
14 rulemaking record indicating whether or not there  
15 is a stringency issue. If there is a stringency  
16 question, we will try to put on the records any  
17 testimony, or evidence, or scientific studies that  
18 we have to show that the more stringent  
19 requirement is justified.

20           In this case, the intent all along is to  
21 be simply implementing the federal program as they  
22 envision it has to be, so we wanted to avoid at  
23 the outside any question of stringency, so we'll  
24 just make our definition coincide with theirs  
25 exactly.

1           MR. ANDERSON: Have you done any  
2 analysis to determine whether Montana's particular  
3 circumstances call for more stringent regulations  
4 in this area?

5           MS. CHAMBERS: Mr. Chairman, Mr.  
6 Anderson, in accordance with the Montana Water  
7 Quality Act, we already have regulations in place  
8 that provide more stringency than the federal EPA.  
9 We have the Section 308 of the Montana Water  
10 Quality Act that requires under that threshold  
11 level, or even prior to the decision in January  
12 2009, that require pesticide applicators to state  
13 waters to get a 308 authorization.

14           So yes, there are circumstances based  
15 upon this general permit that were already  
16 providing that stringency level. What we're  
17 trying not to do is to avoid the steps and  
18 requirements of this general permit as far as  
19 additional best management practices annual  
20 reporting requirements, the development of pest  
21 discharge management plan for all applications to  
22 state waters, and only limit those to the ones  
23 that exceed the threshold levels that would have  
24 the potential to have a greater impact as far as a  
25 volume of concentration of pesticides that they're

1 applying.

2           So Mr. Chairman, we do in Montana have  
3 an impact for pesticides, and we do have a little  
4 bit higher stringency with our Water Quality Act  
5 requirements. We didn't want to necessarily go  
6 there with the general permit MPDES Clean Water  
7 Act requirement.

8           MR. WHALEN: Mr. Chairman, thank you.  
9 A question for you, Jenny. First I'd like to  
10 thank the Department for proposing this  
11 rulemaking. I'm going to have no trouble in  
12 supporting.

13           I do have a question that goes back to  
14 Ms. Shropshire's question about Notice of Intent,  
15 the difference between the online packet that we  
16 have with respect to this proposal and what you  
17 have handed out.

18           One of the key differences is in this  
19 issue of Notice of Intent. Can you kind of walk  
20 us again through the thinking of the Department to  
21 provide for this fast track for permittees; and  
22 then if you could, explain to us what provisions  
23 that there are for public participation once a  
24 Notice of Intent has been issued with the  
25 Department.

1 MS. CHAMBERS: Mr. Chairman, Mr. Whalen,  
2 yes, I can certainly do that. It's been our  
3 process all along to look at general permits, and  
4 all of our general permits we issue, and see if  
5 there is a way that we can do Notices of Intent.

6 A general permit in itself allows for  
7 public participation when we go out for public  
8 comment on that general permit, and propose the  
9 EA. It's a state wide general permit for certain  
10 categories or areas of application that make it at  
11 a higher volume of potential permittees, meaning  
12 storm water construction, there's up to 1,500 to  
13 2,000 permittees. We would not be able to manage  
14 that as far as workloads and Department efforts if  
15 we had to require all those individual permits.

16 The pesticides, we're looking at  
17 anywhere from 200 to 400 or may or may not hit  
18 this threshold, depending on what they're doing.  
19 And again, to minimize resources at the  
20 Department, which would ensure that we know who's  
21 out there applying for these folks, and have them  
22 file paperwork with the Notice of Intent process,  
23 we know where they're at. We can do oversight and  
24 compliance on them, but we don't have the up-front  
25 paperwork to process and review all the forms, and

1 procedures, and documentation, and proposals for  
2 public comment.

3 A Notice of Intent, when it comes into  
4 the Department, we review the checked boxes, make  
5 sure everything is filled out; we send back an  
6 acknowledgement letter that says, "We have  
7 received. You are compliant. You need to comply  
8 with the provisions of the general permit," and we  
9 give them a copy of the general permit. There is  
10 no public participation at that particular time,  
11 because the public participation was done at the  
12 general permit stage for that five year term of  
13 that general permit.

14 The public is available to contact us to  
15 get copies of Notice of Intent, or know we have  
16 Notice of Intent filed with, but there won't be a  
17 public process as far as public Notices of Intent  
18 within the state.

19 Mr. Chairman, Mr. Whalen, we were  
20 planning on trying to go forward with this all  
21 along. It was kind of an oversight that we had  
22 exemption for the storm water construction in that  
23 section of the rule that we thought since we were  
24 already opening up 17.30.1341, that we would add  
25 that category in there just to get that exemption

1 to allow us to look at Notices of Intent as a  
2 process just to move forward with a general  
3 permit.

4 MR. WHALEN: Follow-up, Mr. Chairman.  
5 So is it fair to say that this is an attempt by  
6 the Department to mitigate the economic impact of  
7 the enforcement of these permits or the cost to  
8 permittees in pursuing these activities?

9 MS. CHAMBERS: Mr. Chairman, Mr. Whalen,  
10 I'm a little confused with that question. We're  
11 not trying to mitigate or look at this for  
12 economic purposes. We just really want to provide  
13 the flexibility to the weed applicator districts,  
14 mosquito control districts, so that if they get a  
15 call from the county as far as an applicator, they  
16 need to go spray in a certain area, that they can  
17 just file a Notice Of Intent, and have coverage  
18 the minute they file that complete Notice of  
19 Intent with us, and go and do what they need to  
20 do, and then get the acknowledgement letter, that  
21 they know they need to comply with the conditions.

22 And then we will also be able to track  
23 those as far as knowing where they're at, where  
24 they're applying, and that the program is going to  
25 require an annual report so that we can do any

1 kind of reviews after the fact, to kind of get a  
2 trend on what pesticides are being applied in the  
3 state, and require additional corrective action on  
4 this part if there is adverse impact to  
5 applicators; or if we get citizen complaints, then  
6 we can follow up on those as they come up.

7 I don't know if I really answered your  
8 question, but --

9 MR. WHALEN: Sure, you did. Thank you,  
10 Jenny. Thank you, Mr. Chairman.

11 CHAIRMAN RUSSELL: Hopefully this will  
12 be a quick question. Do you feel that the way  
13 this was noticed, that removing the 25 percent  
14 discount for those that aren't being good  
15 permittees is properly noticed in here? Because  
16 that applies to every general permit, right?

17 MS. CHAMBERS: Mr. Chairman, yes. That  
18 -- You're on Page 4, I believe, subpart (e). That  
19 was provided in the 2009 rulemaking package to  
20 clarify that we don't provide a 25 percent  
21 reduction for those that aren't maintaining  
22 compliance as an incentive for those that -- a  
23 bonus basically for those that do maintain  
24 compliance, and for all of our permits within the  
25 Water Protection Bureau, all of our MPDES

1 individual permits, all of our general permits,  
2 all of our authorizations, and all of our  
3 groundwater pollution control system permits.

4           The sentence that we added was just to  
5 clarify that if you're under formal enforcement  
6 for any time during that year period, you don't  
7 get your 25 percent reduction because you're under  
8 formal enforcement because there's violations that  
9 are occurring, and we're trying to work with you  
10 to address those violations.

11           We had some confusion on that from the  
12 2009. There was some permittees that thought they  
13 got a 25 percent reduction even though they were  
14 under formal enforcement, so we just wanted to add  
15 that sentence to clarify it.

16           CHAIRMAN RUSSELL: I wholeheartedly  
17 agree with the concept. I just hope it was  
18 noticed enough. Wouldn't it be nice to have some  
19 of these guys like that come forward and say, "We  
20 would still like our 75 percent discount"?

21           Thank you very much. Any further  
22 questions before we take action, and I ask the  
23 public if they want to comment?

24           (No response)

25           CHAIRMAN RUSSELL: Is there anyone

1 in the public that would like to comment on this?  
2 I'm pretty sure the Board has pretty much covered  
3 every base here. Rightfully so.

4 MR. LIVERS: Mr. Chairman, on your last  
5 question regarding whether that provision was  
6 called out adequately. We felt it was covered  
7 under the general statement to provide  
8 clarification. Obviously that's pretty broad.  
9 And if there is interest on the Board's part, you  
10 can certainly direct us to amend the notice to be  
11 more specific.

12 CHAIRMAN RUSSELL: I don't have an  
13 interest to do it, but I just thought I would --

14 MS. SHROPSHIRE: If you feel it's  
15 properly covered, I don't think we need to, but I  
16 think it's a good comment. I had a similar  
17 question.

18 MR. LIVERS: Mr. Chairman, we feel that  
19 legally we are covered there, but obviously it  
20 will be called out during the public process of  
21 the rulemaking.

22 CHAIRMAN RUSSELL: Anyone in the public  
23 would like to speak to this?

24 (No response)

25 CHAIRMAN RUSSELL: Seeing none, I would

1 entertain a motion to initiate rulemaking, adopt  
2 the new MAR that Jenny handed out, and appoint  
3 Katherine the Hearing Officer for this.

4 MS. SHROPSHIRE: So moved.

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

7 MR. ANDERSON: Second.

8 CHAIRMAN RUSSELL: It's been seconded by  
9 Larry. Further comments, questions?

10 (No response)

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

13 (Response)

14 CHAIRMAN RUSSELL: Opposed.

15 (No response)

16 CHAIRMAN RUSSELL: Motion carries  
17 unanimously. We're going to take about a ten  
18 minute break.

19 (Recess taken)

20 CHAIRMAN RUSSELL: The next item on the  
21 agenda is proposed rulemaking to amend the rules  
22 to designate a portion of the Gallatin River as an  
23 Outstanding Resource Water. Tom.

24 MR. LIVERS: Mr. Chairman, I'll give  
25 just a little bit of context before Todd Teegarden

1 gets up. This is obviously something that's come  
2 before the Board repeatedly. I think even for new  
3 Board members, it's getting to be an old issue.

4 But the Department is recommending -- we  
5 received a request from one of the parties to  
6 again extend the rulemaking, and the manner to do  
7 that is by extending public comment, and we agree  
8 with it. And this will probably come before you a  
9 few more times for the same action because we're  
10 only able to extend six months at a time.

11 There is a lot of good work going on. I  
12 know about a year ago, when this came before the  
13 Board, we suggested we dive in and make sure there  
14 is still progress being made, that it hadn't just  
15 gone to back burner, and perhaps we should  
16 consider not extending. We've met with the  
17 parties, with the group that's actively looking at  
18 different approaches here, so we do believe there  
19 is a lot of good discussion.

20 I think the concern or the position  
21 expressed by American Rivers in their request to  
22 extend stated that this has provided impetus to  
23 get the parties to the table and keep them there.  
24 There is a good group. They may have that  
25 momentum without this, but it certainly does give

1 a context to keep those discussions going.

2 The Big Sky Water and Sewer District is  
3 almost certainly -- well, it is pivotal to any  
4 solution in the canyon, in the corridor, and they  
5 are looking at the pilot snow making project. It  
6 will not happen this year, but they are looking at  
7 next year. And I think Todd is prepared to give a  
8 little update on it, give a little more detail on  
9 that.

10 CHAIRMAN RUSSELL: Okay.

11 MR. TEEGARDEN: Mr. Chairman, members of  
12 the Board, for the record, I'm Todd Teegarden with  
13 DEQ. I'm the Bureau Chief of the Technical  
14 Financial Assistance Bureau. And I'm involved  
15 with the pilot project because the bureau I work  
16 with is involved with water, wastewater, and  
17 source water issues.

18 We're going to be working closely with  
19 Jenny Chambers in permitting on this pilot. And  
20 in October we got a submittal from the wastewater  
21 forum subgroup proposing a snow making site --  
22 it's off site up in Yellowstone Club -- and they  
23 basically want to pilot making snow out of  
24 treated, highly treated wastewater, not on ski  
25 slopes, on a timbered area that's got some slopes.

1           Long story short, Terry Campbell and I  
2 took a site visit to meet with them, to look at  
3 the site, and discuss monitoring parameters. And  
4 when we got to the site, it was not a great site,  
5 and they had proposed another site which is up by  
6 their storage pond. They have a large storage  
7 pond. They've got some big open land above it.

8           And so what was agreed to at that  
9 meeting was this winter season is here. It's too  
10 early to do it this year -- it's too late to do it  
11 this year. So they're going to propose this new  
12 site with the new submittal of plans and specs to  
13 the Department for a pilot study next winter. And  
14 so we have written them a letter back saying,  
15 "Please resubmit." We want to work out the  
16 details this winter on what the monitoring  
17 requirements will be, so that we can make this a  
18 go next winter. And that's kind of the update on  
19 that part of the project.

20           MR. LIVERS: Mr. Chairman, I kind of  
21 glossed over, too. I want to make sure everybody  
22 understands the connection when I say that the Big  
23 Sky treatment plant is pivotal.

24           And basically, one of the things we're  
25 obviously looking at is the ability to bring more

1 systems, more onsite systems, septics, in the  
2 corridor onto that system. There is a capacity  
3 issue where Big Sky wants to make sure it has some  
4 growth capability on the treatment plants, but the  
5 capacity issue with how much can be brought on,  
6 and that's most acute during the winter when they  
7 are more limited in their land application. In  
8 summer, they're land applying on golf courses down  
9 there.

10 So I apologize. I just want to make  
11 sure people understood how the Big Sky system fits  
12 into the overall scheme.

13 CHAIRMAN RUSSELL: So I guess the Big  
14 Sky system land applies in the summer, and just  
15 stores in the winter right now?

16 MR. TEEGARDEN: That's correct, and they  
17 do that at the Big Sky Water and Sewer District,  
18 they do that up at the Yellowstone Club. They're  
19 on dual systems. And again, this effort was  
20 derived from that wastewater solutions forum that  
21 is looking at the river corridor, the Gallatin  
22 River ORW, and potentially sewerage some of those  
23 onsite systems that are impacting the Gallatin.

24 CHAIRMAN RUSSELL: So the snow making  
25 would just take care of new sources, or are they

1 going to try to take on some of the existing --

2 MR. TEEGARDEN: They want to take on  
3 some of the existing as well as new. So if you  
4 look at sewerage that corridor, they've got  
5 developers that have vacant land that might hook  
6 on, but also cleaning up and sewerage the existing  
7 ones.

8 CHAIRMAN RUSSELL: So that's all well  
9 and good up there at the top of the headwater on  
10 this. What if you're 20 miles down river, and you  
11 want to do something? You're not going to run a  
12 sewer line twenty miles up there. Are they  
13 proposing any offsets or --

14 MR. TEEGARDEN: That's a good question,  
15 in that I don't know how far this corridor or this  
16 planning effort looks at the whole reach that was  
17 proposed designated as an Outstanding Resource  
18 Water. But there is economics that drives what  
19 can actually be hooked up.

20 CHAIRMAN RUSSELL: It would be a  
21 challenge to run a sewer line that far back up.

22 MR. LIVERS: Mr. Chairman, I didn't mean  
23 to suggest that the entire corridor would be  
24 sewerage, but certainly there are pockets of  
25 concentration in proximity to the Big Sky turnoff,

1 and there is likely to be some cost effectiveness  
2 within some reasonable radius. I don't know what  
3 that is going to prove to be. But certainly  
4 taking some of that heavy concentration off of  
5 septic in that area is going to help with the  
6 problem.

7 CHAIRMAN RUSSELL: I wholeheartedly  
8 agree. I'm just wondering about twenty miles down  
9 that's still in the confines of the ORW and what's  
10 going to happen there. The only reason I bring  
11 that up is you can pull them on, but are you going  
12 to allow offsets? For ones that you pull off, are  
13 you going to allow something to go on?

14 And then the only other question I would  
15 have is: Since we started this, and I had dark  
16 hair, how much additional capacity has been put  
17 into this ORW designated area since we started  
18 this? And don't answer that now, but it's just  
19 kind of an interesting question. How much growth  
20 have we seen up there while we've tried to figure  
21 this out? And we have an EIS that's getting  
22 dated.

23 MR. MIREs: Coming back to the snow  
24 making question. Maybe they have done some small  
25 scale testing of this theory. Is there any chance

1 that they could do some more of that same testing,  
2 or if they haven't done any, can they do some  
3 testing this year, maybe on a smaller scale or  
4 smaller area, rather than a larger area? And why  
5 not use the ski slopes?

6 MR. TEEGARDEN: Mr. Chairman, Mr. Mires,  
7 they want to limit the size and the potential for  
8 runoff. If you have runoff from the site, which  
9 you would have on a snow making site, you need to  
10 get a permit from the Department, either  
11 groundwater or surface water permit.

12 The goal of this pilot is to do  
13 something on a detailed scale enough that we can  
14 then look at that, and go to the larger scale  
15 applications, maybe not again on ski hills, but in  
16 forested areas, larger areas. But there haven't  
17 been a lot of studies done, and the site they're  
18 proposing that we went and looked at is about a  
19 three acre site. So it's big, but it's not that  
20 big, and it all would drain into their storage  
21 pond. We would be able to catch all potential  
22 runoff, and do a lot of testing to see what  
23 quality comes out of there and what the runoff  
24 water would look like.

25 MS. KAISER: You said it's highly

1 treated water that you're going to be testing snow  
2 making, and it's treated to -- Actually you could  
3 discharge that water in the river; is that  
4 correct?

5 MR. TEEGARDEN: Mr. Chairman, Ms.  
6 Kaiser, yes, again, if you had a permit.

7 MS. KAISER: From a quality standpoint.

8 MR. TEEGARDEN: From a quality  
9 standpoint. Big Sky treats via mechanical plant  
10 with filtration, chlorination, to meet our land  
11 application standards for golf courses, because  
12 that's what they irrigate is the golf courses up  
13 there. So it is tertiary treated effluent that is  
14 put in these storage ponds, held, and irrigated  
15 during the winter, and it would be that same  
16 treated water that would then be applied to this  
17 site. We would certainly have a lot of  
18 information on the effluent quality originally  
19 when they apply it, and --

20 MS. KAISER: The current capacity of the  
21 wastewater plant, is it sized such that you can  
22 bring additional flow to it if you do add more  
23 homes or facilities to it? If your snow making is  
24 successful, you can go that route?

25 MR. TEEGARDEN: Mr. Chairman, Ms.

1 Kaiser, yes. There is capacity, but Big Sky has  
2 legal commitments to what they built their plant  
3 to. It's about a ten year old plant now. And  
4 part of this study is Big Sky saying, "If we are  
5 going to add capacity, we need to expand our  
6 plant, what will that cost, and we need to find  
7 new ways and new sites to do it," thus the snow  
8 making is an idea, and a pilot that they want to  
9 try to see, but they would have to expand their  
10 plant if they have many new hook-ups.

11 CHAIRMAN RUSSELL: They wouldn't have to  
12 expand their storage.

13 MR. TEEGARDEN: Right.

14 MS. SHROPSHIRE: The first -- this is  
15 not really a question, but a comment. You can  
16 comment if you disagree with me. But I guess  
17 "highly treated" to me is a little bit misleading  
18 because it's not treating for nitrates or  
19 phosphates, as I understand it, and those are the  
20 constituents that are of most concern with regards  
21 to discharge to the river, so -- is that correct?

22 MR. TEEGARDEN: Mr. Chairman, Ms.  
23 Shropshire, it is a nitrogen removal plant. They  
24 really haven't optimized. It's a batch reactor  
25 plant that is mechanical in nature, and can be

1 adjusted and operated to achieve quite good  
2 nitrogen removal, not so much phosphorus.

3           Again, when they built this plant --  
4 "they" being the Big Sky Water Sewer District --  
5 they wanted to treat nitrogen down to a level that  
6 allows them to apply on the golf courses a  
7 non-discharging option. And phosphorus wasn't  
8 accounted for because phosphorus is assumed to be  
9 taken up in the soil.

10           Certainly if they were to discharge to  
11 the river, then you'd have the nitrogen and  
12 phosphorus issues.

13           MS. SHROPSHIRE: Just for my own  
14 clarification, what's in front of us today is to  
15 extend this rulemaking timeline, and what you're  
16 discussing is an example of why we would want to  
17 extend it. This doesn't necessarily apply to the  
18 rulemaking. I just want to clarify the connection  
19 between those.

20           MR. LIVERS: Mr. Chairman, Ms.  
21 Shropshire, that's correct. You folks have heard  
22 the overall rationale for extending in the past,  
23 and I asked Todd to come today to basically bring  
24 some additional detail on this aspect of the  
25 overall picture. So it doesn't bear directly on

1 your decision whether to extend the rulemaking,  
2 but it's such a key element of the overall  
3 strategy, and the reason we think there is still  
4 rationale for extending and extending through next  
5 winter.

6 I just wanted you to have enough  
7 background, and have an opportunity to learn a  
8 little more about this piece of the puzzle, and  
9 the overall -- It's an integral piece to the  
10 solution, and I just think it gives you a little  
11 background and context to making the decision to  
12 continue to extend the rulemaking.

13 MS. SHROPSHIRE: I appreciate that.  
14 Thank you.

15 CHAIRMAN RUSSELL: And it's one of the  
16 only reasons why we would extend, if there is  
17 something on the horizon.

18 MR. LIVERS: This is the light at the  
19 end of the tunnel potentially. Yes, there is  
20 something on the horizon.

21 CHAIRMAN RUSSELL: And just maybe a head  
22 shake. They have ground water discharge permit  
23 now, don't they, that --

24 MR. TEEGARDEN: They do not, Mr.  
25 Chairman.

1                   CHAIRMAN RUSSELL: They actually do  
2 subsurface?

3                   MR. TEEGARDEN: It's surface application  
4 of treated effluent on the golf course, both at  
5 Yellowstone Mountain Club and down at the Meadow  
6 Village golf course.

7                   CHAIRMAN RUSSELL: So they just do this  
8 at night.

9                   MR. TEEGARDEN: It's done at night.

10                  CHAIRMAN RUSSELL: Because, you know,  
11 just like the snow thing. I fall face first into  
12 the snow, and I can't keep a golf ball out of the  
13 rough, so you'd better be doing this at night.

14                  MR. LIVERS: When there is no moon.

15                  MR. WHALEN: Mr. Chairman, I have a  
16 couple questions for Mr. Teegarden.

17                  Mr. Teegarden, after doing a little  
18 research on the web trying to find out who the  
19 stakeholders are in the wastewater solutions  
20 forum, I've come up blank. Can you identify for  
21 me who those stakeholders are currently, and do  
22 they include the original Petitioners for the  
23 Outstanding Resource Water designation?

24                  MR. TEEGARDEN: Mr. Chairman, Mr.  
25 Whalen. Tom, do you have --

1           MR. LIVERS: I can certainly answer, Mr.  
2 Chairman, Mr. Whalen. I can probably add some  
3 insight on the second part of that question for  
4 sure. The original petitioner -- I shouldn't have  
5 said for sure. The original petitioner I think  
6 was American Wildlands. It was an environmental  
7 group. At one point, that group kind of ceded the  
8 lead to the Greater Yellowstone Coalition; and now  
9 American Rivers has chosen to take point on this.  
10 It's probably, from a mission standpoint, the  
11 right group.

12           Scott Bossee (phonetic) is the principal  
13 with American Rivers on this issue, and he has had  
14 historic involvement with this issue. I think he  
15 may have been involved in the original petition.  
16 That predates me. So part of it is that while the  
17 lead organization on the petition has changed  
18 hands, some of the original players are still  
19 involved, the individuals. So I think that  
20 answers the second part of your question.

21           And Todd, I can go from memory, if you'd  
22 like, from what I know on the wastewater solutions  
23 forum, and Bob Bukantis might also have a little  
24 more direct. He's been maybe more directly  
25 involved. Bob, would that be a fair thing? And

1 Mr. Chairman, with your permission.

2 MR. BUKANTIS: I haven't been involved  
3 so much with the forum.

4 MR. LIVERS: The folks that we met with  
5 on the solutions group last summer included Mr.  
6 Bossee from American Rivers; it included  
7 representatives from the Yellowstone Mountain  
8 Club; Big Sky Water and Sewer District has been  
9 involved, but were not able to attend the meeting  
10 with Director Opper and me last summer.

11 There was a representative of an  
12 organization called the Blue Water Task Force that  
13 I think was -- that individual was based out of  
14 the university, out of MSU. There was an employee  
15 of HKM Engineering who I think was retained by the  
16 water and sewer district. Anyone else that you  
17 can think of?

18 MS. CHAMBERS: Spanish Peaks.

19 MR. LIVERS: Spanish Peaks.

20 MR. TEEGARDEN: Spanish Peaks  
21 Development.

22 MR. LIVERS: Spanish Peaks Development,  
23 and Moonlight Basin up there as well.

24 MR. TEEGARDEN: Yellowstone Coalition.

25 MR. LIVERS: Yellowstone Coalition was

1 present as well.

2 MR. WHALEN: A follow-up would be -- and  
3 it relates directly to the idea of extension. If  
4 we were to choose not to extend, would this issue  
5 see the light of day in the current legislative  
6 session? Because if we choose to extend, it  
7 won't. It will be April before we're able to take  
8 it up again.

9 MR. LIVERS: Mr. Chairman, Mr. Whalen,  
10 it's an interesting question. I think there is a  
11 couple of things that could happen if the Board  
12 chose not to extend. Possibly you could let the  
13 entire process die, in which case if there were to  
14 be another Outstanding Resource Water petition, it  
15 would have to come in. And there have been some  
16 law changes since this time. This was  
17 grandfathered in. So it's questionable as to  
18 whether another petition would come in.

19 And from the standpoint of the working  
20 group, there may be sufficient momentum that it  
21 would continue anyway without this acting as the  
22 sword of Damocles over them.

23 I think the other alternative is the  
24 Board could choose, instead of extending, to grant  
25 the ORW status based on the record, and in that

1 case, yes, the next step would be the ultimate  
2 designation for ORW rests with the Legislature.  
3 So it would come out of the Board of Environmental  
4 Review. Depending on the outcome, depending on  
5 the vote, if it were approved, if the Board were  
6 to approve ORW status for the stretch of Gallatin,  
7 the next step is it would go before the  
8 Legislature. And I presume given the timing, it  
9 would go before the 2011 session. That's the  
10 factual --

11 CHAIRMAN RUSSELL: We couldn't take  
12 action on it today.

13 MR. LIVERS: You have not noticed that  
14 action today, so basically since we asked -- the  
15 rulemaking would have exceeded six months before  
16 the January meeting, so if we would ask it to be  
17 brought today, you'd probably have to look at a  
18 special meeting to consider if you wanted to move  
19 on that.

20 MR. WHALEN: Thank you, Mr. Livers, Mr.  
21 Chairman.

22 CHAIRMAN RUSSELL: It wouldn't be  
23 prudent for us to take this up without some real  
24 ability for people to actually comply.

25 MR. LIVERS: I would agree, Mr.

1 Chairman. And again, we are awfully encouraged by  
2 the amount of discussion that's going on. We see  
3 the snow making pilot and the results of that as  
4 really key to how viable it's going to be to look  
5 at bringing folks outside the district onto that  
6 system. Right now that disposal, particularly the  
7 winter disposal, is probably the key bottleneck  
8 that has to be addressed if we're going to look at  
9 the district agreeing to take on additional  
10 connections outside its boundaries.

11 So we'd like to see this pilot have time  
12 to run its course, get some good data on it, and  
13 we're optimistic that it will be a potential  
14 solution, but obviously want to kind of go through  
15 the steps.

16 So from the Department standpoint, we  
17 think the best course of action is to continue to  
18 extend the rulemaking to allow this pilot to  
19 happen over the course of next year, and then we'd  
20 come back before you a year from spring, in spring  
21 of 2012 ideally, with some information from the  
22 pilot, and see -- ideally going forward with the  
23 ability to look at some additional connections.

24 CHAIRMAN RUSSELL: Okay. Why don't we  
25 see if there is anyone out in the audience who

1 would like to speak to this.

2 (No response)

3 CHAIRMAN RUSSELL: Seeing none, if there  
4 is no further comment, I would entertain a motion  
5 to adopt the initiation which would extend the  
6 public comment period to April 29th.

7 MR. MIRES: So moved.

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

10 MR. MILLER: I'll second.

11 CHAIRMAN RUSSELL: Seconded by Marv.  
12 Any further comments?

13 (No response)

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

16 (Response)

17 CHAIRMAN RUSSELL: Opposed.

18 (No response)

19 CHAIRMAN RUSSELL: Motion carries.

20 Thanks for your input on that because I was going  
21 to vote no. I'm just kidding.

22 The next item on the agenda are the new  
23 contested cases. Katherine, I'm going to let you  
24 take over here.

25 MS. ORR: Mr. Chairman, members of the

1 Board, the first item is in the matter of  
2 violations of the public water supply laws by  
3 Gregory C. MacDonald at Highwood Mobile Home Park.  
4 This is a case arising out of an alleged violation  
5 in Great Falls, Montana. The mobile home park is  
6 deemed to be a supplier of water, a community  
7 water system, and to have a consecutive connection  
8 to the City of Great Falls, and is subject to the  
9 Public Water Supply Act.

10 And the violations that have been cited  
11 are failure to monitor monthly for total coliform  
12 bacteria; no report regarding the monitoring for  
13 four months; and no public notice for monitoring,  
14 for failing to monitor the violations. And the  
15 penalty requested is \$1,024.

16 CHAIRMAN RUSSELL: Okay. Any procedural  
17 questions for Katherine?

18 (No response)

19 CHAIRMAN RUSSELL: Katherine, are you  
20 able to take this up?

21 MS. ORR: Yes, I am.

22 CHAIRMAN RUSSELL: I will entertain a  
23 motion to appoint Katherine the permanent Hearings  
24 Examiner on this matter.

25 MS. KAISER: So moved.

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

3           MR. ANDERSON:  Second.

4           CHAIRMAN RUSSELL:  It's been seconded by  
5 Larry.  Comments?

6           (No response)

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

9           (Response)

10          CHAIRMAN RUSSELL:  Opposed.

11          (No response)

12          CHAIRMAN RUSSELL:  Motion carries  
13 unanimously.  Katherine.

14          MS. ORR:  The next item on the agenda in  
15 the matter of the appeal and request for hearing  
16 by Ronald and Debbie Laubach regarding the DEQ's  
17 final decision to amend the MATL certificate of  
18 compliance.

19                 Today, the decision point for the Board  
20 is to determine whether to appoint me as a  
21 permanent Hearings Examiner.  This case has had  
22 some developments, some procedural developments.  
23 There is a pending request to have this case heard  
24 today, and that pending request is opposed by  
25 Counsel for MATL.  There is also a motion to

1 intervene, and also there has been a prehearing  
2 order issued that invites the parties to have a  
3 hearing -- or excuse me -- to agree by December  
4 6th to propose a hearing schedule.

5 And so those contested case matters are  
6 pending, and I would expect that there would  
7 possibly be a request for a hearing on the  
8 outstanding request that exists in the file for an  
9 expedited hearing, or the parties may agree to  
10 having the hearing sooner, and then would indicate  
11 that to me on or before December 6th.

12 There is also a motion to dismiss in  
13 this case that will be addressed shortly.

14 So all by way of saying there are some  
15 procedural matters that have been proceeding along  
16 in the contested case, but that doesn't have  
17 anything to do today with the Board's decision  
18 point to decide whether to hear this itself or to  
19 appoint me as Hearing Examiner.

20 CHAIRMAN RUSSELL: Thanks, Katherine.  
21 And that is the question in front of us, only that  
22 question. We're not going to argue this case  
23 today. We're not prepared. We don't have  
24 substantive background to do that from what was  
25 sent to us. So really the matter in front of us

1 is if we're going to appoint Katherine, or we're  
2 going to hear this ourselves, and allow Katherine  
3 to finish up the procedural issues regarding a  
4 hearing.

5 I would entertain a motion.

6 MR. MIRES: I would so move to appoint  
7 Katherine permanent Hearings Examiner.

8 CHAIRMAN RUSSEL: Is there a second?

9 MR. MILLER: I second.

10 CHAIRMAN RUSSELL: It's been seconded by  
11 Marv, moved by Larry. Is there further  
12 discussion?

13 (No response)

14 CHAIRMAN RUSSELL: Heidi.

15 MS. KAISER: I would actually --

16 CHAIRMAN RUSSELL: I'm not going to hear  
17 from you.

18 MR. LAUBACH: Can we do the public  
19 comment now?

20 CHAIRMAN RUSSELL: I can't do that.  
21 There is no public comment on matters of contested  
22 cases.

23 MR. LAUBACH: Not on our case.

24 CHAIRMAN RUSSELL: There is a public  
25 comment that is scheduled at the end of the

1 meeting, and you can certainly bring any matters  
2 up in front of us at that point.

3 We have a question. Any further  
4 comments or questions?

5 MS. KAISER: My comment is I would like  
6 the Board to hear this.

7 MR. WHALEN: I would like to explore  
8 that a little bit. Would there be some merit to  
9 the Board hearing this case, do you think? If so,  
10 what would those merits be?

11 MS. KAISER: From my point of view --  
12 and maybe if we have some more information on the  
13 whole issue, that would go away in my mind, but --  
14 Actually if we had some more information regarding  
15 this, if we can be supplied that, depending on how  
16 this proceeds, that may clear up some questions I  
17 have, and having the Board hear it may be a moot  
18 point. Right now I've got some concerns.

19 MR. MIRES: I guess, Mr. Chairman, my  
20 thought in making Katherine the Hearing Examiner  
21 is since procedures have already gone at this  
22 point, and she's been involved in this thing, it  
23 just seems to me it would be more appropriate that  
24 she finish up with where she's at, and possibly  
25 there would be a resolve to it, rather than

1 dragging this on, making it harder for the  
2 landowners, as well as for the company.

3 I think in my mind it is quicker and  
4 more prudent to have Katherine finish up with  
5 where she's at, and I don't know. If that's not  
6 doable, then can it come back to the Board?

7 CHAIRMAN RUSSELL: Absolutely. It's  
8 still our decision. And we can adopt Katherine's  
9 position as our Hearing Examiner, or we can state  
10 that it's not our position, and we can go back at  
11 it. But from a position that this may expedite  
12 the process, I agree that we should allow the  
13 proceedings to continue.

14 MS. KAISER: I also agree.

15 CHAIRMAN RUSSELL: We will get the  
16 record, and if we're doing our jobs, we at that  
17 point will have the record, and we'll understand.

18 MS. SHROPSHIRE: For clarification,  
19 during this process we have access to Katherine,  
20 to discuss this with Katherine?

21 CHAIRMAN RUSSELL: She's our attorney.

22 MS. SHROPSHIRE: I just wanted to  
23 clarify that. We don't have to wait until we're  
24 voting on her recommendation. We can talk to her  
25 before then.

1           CHAIRMAN RUSSELL: Absolutely. The  
2 people we can't talk to are out there.

3           MS. SHROPSHIRE: So we can be involved  
4 in the process with Katherine along the way.

5           CHAIRMAN RUSSELL: I'm sure Katherine  
6 would relish that thought. Any comments,  
7 Katherine?

8           MS. ORR: The decision is what you want  
9 to delegate and when, and the way we've been doing  
10 this in the absence of delegating fully to me, the  
11 Board entrusts to me prehearing matters, and  
12 always can take back the case, so to speak, if it  
13 doesn't do anything explicit today. And maybe  
14 that's the thing to do here.

15           Like I say, there are some procedural  
16 motions before the Board, and you can go ahead and  
17 decide to delegate to me all of the  
18 responsibilities concerning this case, or  
19 implicitly or impliedly to handle the procedural  
20 motions. That's up to you.

21           If you were to delegate to me all of the  
22 responsibilities up through hearing the contested  
23 case, I think it would be kind of improper for me  
24 to sort of spontaneously, or extemporaneously, or  
25 ex parte hear a comment from a Board member,

1 because the parties wouldn't have the benefit of  
2 hearing what that is. To me, that would be a  
3 little odd.

4 CHAIRMAN RUSSELL: I was thinking more  
5 along the lines that we would get the information,  
6 that the information could be provided to us on  
7 your rulings in a timely manner, so we can keep up  
8 with what's going on.

9 MS. ORR: Right. Of course. Yes.

10 MS. SHROPSHIRE: Thank you for that  
11 clarification.

12 CHAIRMAN RUSSELL: So we have a motion  
13 on the floor. All those in favor, signify by  
14 saying aye.

15 (Response)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response)

18 CHAIRMAN RUSSELL: Motion carries. You  
19 will have an opportunity at the end of the meeting  
20 to discuss with the Board your position, but we  
21 will not talk about the contested case.

22 Next item, Katherine.

23 MS. ORR: Mr. Chairman, members of the  
24 Board, this is a very similar case. This is a  
25 challenge by -- that you can see in the caption,

1 appeal and request for a hearing by Maurer Farms,  
2 Inc., etc., and they are also challenging the  
3 final decision of the Board to amend MATL's  
4 certificate of compliance, which is an amendment  
5 for construction activities in wetlands.

6 And again, there are procedural motions  
7 pending, and those need to be ruled on. And  
8 again, there has been a first prehearing order  
9 which governs the progress of the case, prior to a  
10 determination of the parties of what schedule they  
11 want to hold the hearing on. So very similar.

12 MR. MIRES: Question. Would the outcome  
13 of the previous one have an effect on this  
14 outcome, whatever the outcome is of the previous  
15 one?

16 MS. ORR: Mr. Chairman, members of the  
17 Board, without delving too much into the waters of  
18 the contested case, and me being bound not to  
19 prejudge whatever is decided, I would say no.  
20 These are fact intensive cases.

21 CHAIRMAN RUSSELL: But they're not --  
22 the implication of each are not on the same  
23 material. They're different, right?

24 MS. ORR: Yes.

25 CHAIRMAN RUSSELL: They're both

1 proposing that there's degradation associated in  
2 different areas because of this?

3 MS. ORR: That's correct, Mr. Chairman.

4 CHAIRMAN RUSSELL: So that's not why  
5 they're joined.

6 MR. MIRES: I was hoping they could  
7 maybe resolve each other here, but I see the point  
8 here.

9 CHAIRMAN RUSSELL: So any other  
10 questions on this matter?

11 MS. SHROPSHIRE: Again, this is a  
12 question for Katherine to proceed as the Hearing  
13 Examiner?

14 CHAIRMAN RUSSELL: Correct. I will  
15 entertain a motion to appoint her the permanent  
16 Hearings Examiner on this matter.

17 MR. MILLER: So moved.

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

20 MS. KAISER: Second.

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

23 (No response)

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

1 (Response)

2 CHAIRMAN RUSSELL: Opposed.

3 (No response)

4 CHAIRMAN RUSSELL: Motion carries. The  
5 next item is Montana Strip and Underground Mine  
6 Reclamation.

7 MS. ORR: The next item involves Bull  
8 Mountain Mine in Roundup. And a Notice of  
9 Violation was issued on September 22nd of this  
10 year. The first alleged violation is a failure to  
11 compact portions of the coal processing waste  
12 disposal site to 90 percent of maximum dry density  
13 to prevent spontaneous combustion, and to provide  
14 strength required for stability of the coal  
15 processing waste structure.

16 Also included in the recitation of  
17 violations related to that is a failure to have  
18 the structure inspected by a licensed engineer,  
19 well, a qualified licensed professional engineer;  
20 and the second violation is the failure to submit  
21 certification that the sedimentation pond was  
22 properly constructed.

23 The penalty requested in the first set  
24 of alleged violations is \$3,500, and the penalty  
25 requested in the second set is \$7,200.

1 CHAIRMAN RUSSELL: Any further comments  
2 or questions for Katherine?

3 MS. KAISER: Mr. Chairman, I wish to  
4 recuse myself from taking action on this matter.

5 CHAIRMAN RUSSELL: Heidi has recused  
6 herself from further action on this. Questions?  
7 Comments?

8 (No response)

9 CHAIRMAN RUSSELL: Hearing none, I would  
10 entertain a motion to appoint Katherine the  
11 permanent Hearings Examiner.

12 MR. WHALEN: So moved, Mr. Chairman.

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

15 MR. ANDERSON: Second.

16 CHAIRMAN RUSSELL: Seconded by Larry.  
17 Further discussion?

18 (No response)

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

21 (Response)

22 CHAIRMAN RUSSELL: Opposed.

23 (No response)

24 CHAIRMAN RUSSELL: Next item.

25 MS. ORR: Mr. Chairman, members of the

1 Board, the next item involves a challenge by Meat  
2 Production, Inc., otherwise known as Stampede  
3 Packing Company. This is a challenge to decisions  
4 made -- a challenge to the notice of final  
5 decision for the groundwater pollution control  
6 system permit issued by the Department. It takes  
7 place in Kalispell.

8 There are numerous objections to various  
9 parameters, pH, conductivity, total nitrogen, and  
10 to the monitoring frequency of those parameters.

11 CHAIRMAN RUSSELL: And I just want to  
12 mention that I do have a lot of history on this  
13 site when they were discharging to the flood  
14 plain, and we had a lot to do with that. And  
15 after I left my office yesterday, I got a call  
16 asking if I had a Stampede file in my room. So I  
17 may have some records on this, but I don't believe  
18 that I have any conflict at this point. But I  
19 will certainly talk to our attorney about that.  
20 Any other questions?

21 (No response)

22 CHAIRMAN RUSSELL: Hearing none, I would  
23 entertain a motion to appoint Katherine the  
24 permanent Hearings Examiner on this matter.

25 MS. SHROPSHIRE: So moved.

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

3                   MR. MILLER:  Second.

4                   CHAIRMAN RUSSELL:  It's been seconded by  
5 Marv.  Further discussion?

6                   (No response)

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

9                   (Response)

10                  CHAIRMAN RUSSELL:  Opposed.

11                  (No response)

12                  CHAIRMAN RUSSELL:  Let's keep rolling  
13 then.

14                  MS. ORR:  Mr. Chairman, members of the  
15 Board, this is the segment of the meeting  
16 concerning final action on contested cases.  The  
17 first one is in the matter of violations of the  
18 Montana Underground Storage Tank Act by Hi-Noon  
19 Petroleum.  This is a case where Hi-Noon allegedly  
20 failed to monitor its tank and piping releases  
21 through a release detection system every three  
22 days during the previous twelve months.

23                  And the parties decided to enter into an  
24 administrative order, and are asking for dismissal  
25 under 41(a).

1           CHAIRMAN RUSSELL: Thank you. I have a  
2 dismissal order for Case No. BER 2010-11 UST. I  
3 would entertain a motion that would allow the  
4 Board Chair to sign on behalf of the Board.

5           MS. KAISER: So moved.

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

8           MR. MIRES: Second.

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

11           (No response)

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

14           (Response)

15           CHAIRMAN RUSSELL: Opposed.

16           (No response)

17           CHAIRMAN RUSSELL: Motion carries.  
18 Next.

19           MS. ORR: The next item on the agenda is  
20 in the matter of the request for hearing by the  
21 City of Great Falls regarding the DEQ's notice of  
22 final decision for MPDES Permit No. MT0021920.  
23 The parties have filed a stipulation and request  
24 for dismissal, having apparently agreed to the  
25 terms of the permit, so that order of dismissal is

1 before the Board.

2 CHAIRMAN RUSSELL: All right. I have an  
3 order of dismissal for Case No. BER 2009-21 WQ. I  
4 would entertain a motion to have the Board Chair  
5 sign on behalf of the Board.

6 MR. MILLER: So moved.

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

9 MS. SHROPSHIRE: Second.

10 CHAIRMAN RUSSELL: It's been seconded by  
11 Robin. Further discussion?

12 (No response)

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

15 (Response)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response)

18 CHAIRMAN RUSSELL: Motion carries.

19 MS. ORR: Moving right along, this next  
20 case is in the matter of violations of the Clean  
21 Air Act of Montana by Sheep Mountain Properties,  
22 has been through a lot of procedural, and I would  
23 say substantive activity, and the parties have  
24 gotten together happily, and have decided to enter  
25 into an Administrative Order on Consent. There

1 was a reduction of the penalties from \$4,800 to  
2 \$500.

3 The case involved an inspection by the  
4 Department -- well, basically a report and then an  
5 inspection by the Department, of slash piles that  
6 were burning beyond the permitted time. That's  
7 one of the alleged violations. And then the other  
8 is a failure to obtain a ventilation forecast.

9 And the parties were able to work this  
10 out, and present an Administrative Order on  
11 Consent and a request for dismissal. This is a  
12 good thing.

13 CHAIRMAN RUSSELL: Thanks, Katherine. I  
14 do have a dismissal order for Case No. BER 2009-11  
15 AQ, and would entertain a motion to authorize the  
16 Board Chair to sign on behalf of the Board.

17 MR. WHALEN: So moved.

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

20 MS. KAISER: Second.

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

23 (No response)

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

1 (Response)

2 CHAIRMAN RUSSELL: Opposed.

3 (No response)

4 CHAIRMAN RUSSELL: Saturday Sunday.

5 MS. ORR: Mr. Chairman, this case has  
6 been before you. You may recall there were cross  
7 motions for summary judgment that were filed, and  
8 a proposed order was put before the Board in the  
9 beginning part of this year, and the Board  
10 approved the proposed order on summary judgment at  
11 that time.

12 The underlying violation was a failure  
13 of the mining entity to obtain an exploration  
14 license prior to starting exploration activities.  
15 The disposition on that summary judgment was to  
16 enter an order on liability for that violation,  
17 and then the next step in the case was to have a  
18 hearing or disposition on the amount of penalties  
19 that were assessed by the Department.

20 And the issue of penalties came to  
21 hearing, was noticed and came to hearing on July  
22 19th, 2010, and the appealing party did not appear  
23 at that hearing; and the Department made a motion  
24 for default, and that was granted, and I issued an  
25 order assessing those penalties.

1           And as you know, though, that order is  
2 merely a proposed order, and so I wrote a  
3 clarifying order explaining those steps which you  
4 have in your packet; and then you also have in  
5 your packet an order for signature by the Board  
6 approving the proposed order imposing penalties,  
7 and that penalty amount is \$1,262.

8           CHAIRMAN RUSSELL: Thank you, Katherine.  
9 In front of me I have an order of the Board  
10 imposing penalties for Case No. BER 2009-02 MM. I  
11 would entertain a motion to allow the Board Chair  
12 to sign this order on behalf of the Board.

13           MR. ANDERSON: So moved.

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

16           MR. MIRES: Second.

17           CHAIRMAN RUSSELL: Seconded by Larry.  
18 Any further comments?

19           (No response)

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

22           (Response)

23           CHAIRMAN RUSSELL: Opposed.

24           (No response)

25           CHAIRMAN RUSSELL: Motion carries.

1 We're going to take a break.

2 (Recess taken)

3 CHAIRMAN RUSSELL: Are we ready to roll?  
4 The next item on the agenda is a matter regarding  
5 the Gallatin local water quality district. And I  
6 guess you'll tee this up, Tom.

7 MR. LIVERS: Thank you, Mr. Chairman,  
8 members of the Board. These issues don't come  
9 before the Board frequently, but part of the  
10 Board's authority includes establishment and  
11 amendments, major amendments, to the boundaries  
12 for local water quality districts. So you have a  
13 request before you for a boundary change. We  
14 talked about this during the initiation of this  
15 process.

16 But at this point I'm going to turn it  
17 over again to Todd Teegarden from our Technical  
18 and Financial Assistance Bureau.

19 MR. TEEGARDEN: Mr. Chairman, members of  
20 the Board, again, I'm Todd Teegarden with  
21 Technical and Financial Assistance Bureau.

22 One of our programs is source water  
23 protection program, reviews and approves local  
24 water quality districts, formations, work plans,  
25 and amendments, and then we bring that to the

1 Board for your approval. And Alan English, who is  
2 manager of the Gallatin local water quality  
3 district, is here to describe briefly the  
4 expansion, and what they're asking for approval  
5 for. So with that, I guess I'd introduce Alan.

6 MR. ENGLISH: Thanks, Todd. I guess  
7 it's still officially morning. Good morning, Mr.  
8 Chairman, members of the Board. For the record,  
9 my name is Alan English. And I wasn't exactly  
10 sure what the format was here, so I don't have a  
11 real formal presentation, but I think in your  
12 packet you do have our five year strategic plan,  
13 and in there is a map.

14 You can see in there basically what we  
15 did is we've expanded the district boundary to the  
16 north, to the west, and to the south; and the idea  
17 of that was to pick up in the north the Logan  
18 area; and a fair amount of growth on the north  
19 side of the valley; over in the west the Churchill  
20 and Amsterdam area; and we also pick up the Logan  
21 Landfill; and then to the south obviously the Big  
22 Sky area.

23 Over the years we've actually -- our  
24 district boundary doesn't quite cover the Gallatin  
25 Valley in terms of the watershed. We've always

1 had a philosophy that if somebody calls, and they  
2 want something, and they're outside the district  
3 boundary, it's tough luck, you're out of luck.

4           So we have over the years worked with a  
5 lot of individuals in all these expansion areas.  
6 We currently monitor wells in the western and  
7 northern area in cooperation with the Bureau of  
8 Mines and Geology, and we have from time to time  
9 gotten requests for assistance, and so that was  
10 sort of the impetus for changing the boundaries.  
11 Specifically even going back to I believe 1999, we  
12 actually got a letter from Big Sky Sewer and Water  
13 District expressing interest in us expanding into  
14 Big Sky.

15           For a little bit of review, the original  
16 -- why we're really here today, the statute says  
17 that we have to come back to the Board of  
18 Environmental Review to request approval of any  
19 modifications to our work plan, and you originally  
20 approved that work plan in 1997. So in my mind,  
21 that's when the district really got up and  
22 running.

23           We are funded by a six dollar fee that's  
24 assessed on -- the term is "fee assessed parcels,"  
25 basically parcels with improvements. And it's one

1 thing that we're actually pretty proud of because  
2 that was not a very significant fee. That's an  
3 annual fee of six bucks. We've never increased  
4 it. And we certainly may have to someday, but  
5 that's not on the immediate horizon. To 1997 to  
6 now, given everything that's happened, I think  
7 we've been pretty frugal with our money on that.

8 I'm not sure if you're aware or not.  
9 There are three other local water quality  
10 districts in the state. There is one in Missoula,  
11 Missoula Valley Water Quality District; and then  
12 Lewis & Clark County, the Lewis & Clark County  
13 Water Quality District focused over the Helena  
14 valley; and then Butte-Silver Bow still has an  
15 active local water quality district.

16 So of those, Butte, I'm not really sure  
17 of. Butte hasn't been as active as the others.  
18 But one thing that's unique about us is we're not  
19 -- we've always from the beginning committed to  
20 not being a regulatory department of the county,  
21 so everything we do is generally on a cooperative  
22 basis.

23 With that said, we do -- if a citizen  
24 calls us, and they think they know some issue,  
25 like they're picking up gasoline fumes in the

1 basement, we would certainly forward that to the  
2 UST program, and make sure that they get to the  
3 appropriate place. Our whole mission is to  
4 protect and improve water quality, so we do pursue  
5 compliance type issues, but not directly. We tend  
6 to get people in contact with the proper  
7 authorities.

8           As we went through this process, a  
9 little bit of background, I will tell you that the  
10 reason we did three different expansions rather  
11 than one -- that may be a question the Board has  
12 -- is that with the population at Big Sky, being  
13 the primary population center if you look at the  
14 three areas combined, we did get some comments  
15 from some folks in the western part of the county  
16 that said, "Well, even if we don't want it, and  
17 all of the people down in Big Sky want it, we're  
18 going to get drug into it."

19           We split those three areas out so  
20 that each individual area had a little bit more  
21 control over their own destiny, so to speak. And  
22 we have worked very closely with the Gallatin  
23 County Attorney's Office to make sure we follow  
24 the statute and the process for changing the  
25 boundaries, and we feel we followed it to a "T,"

1 if not going above and beyond.

2 I don't think you got it in your Board  
3 packets, but I can certainly provide copies of the  
4 final signed resolution that the Board passed, and  
5 they include copies of the affidavits of public  
6 notice. Postcards were sent out to all impacted  
7 property owners with information on how to  
8 protest.

9 And the long and short of it is that I  
10 was somewhat surprised that we actually got a lot  
11 less protest than I anticipated. In the western  
12 part of the valley, which is primarily  
13 agricultural, we have probably -- I don't have the  
14 exact number, but I believe there was something in  
15 the range of 600 parcels that would be impacted,  
16 so potentially 600 protesters, and we had two  
17 protesters certified, so less than one percent.

18 In the south area, the Big Sky area,  
19 which is the biggest, about 2,300 parcels  
20 impacted, and we also had two protests.

21 The northern area was a little  
22 different. The first time around we proposed a  
23 larger change to the north, and we did get some  
24 public comment, and there was some valid points  
25 made, and we adjusted that boundary. We shrunk it

1 down a little bit because some people were  
2 claiming that we were going way out beyond where  
3 there really was much development, and there  
4 really wasn't much need for the district. We said  
5 that was fair enough.

6           There was also a small area way up along  
7 the north end of the Bridgers on the east side  
8 where it drains into the Yellowstone drainage that  
9 is a whole different watershed. People there  
10 said, "We don't really have much to do with the  
11 Gallatin watershed, so we don't have an interest,"  
12 so we removed that area as well.

13           We still had one landowner in that area,  
14 if not more, that were a little upset about the  
15 idea, so we had somebody going around with a  
16 letter with a protest form on the back, and  
17 talking to folks. And we ended up, in that area  
18 we ended up with 43 protests out of about 500 and  
19 some, 8 percent protest rate, so a little higher.  
20 But the statute say if it's less than 20, you can  
21 proceed, so overall we were way less than that.

22           I think in general, I'm hoping that  
23 that's because people don't really cause a lot of  
24 problems, and maybe helping them. But that's  
25 really not my place to say. So I don't have any

1 thing else specific. I'm happy to answer any  
2 questions about our program, water quality  
3 districts in general, and just here mainly asking  
4 for the Board's approval of our revised work plan,  
5 so we can actually implement the program in those  
6 new areas.

7 CHAIRMAN RUSSELL: Alan, just a quick  
8 question, and actually for more clarification. So  
9 you used the Commissioners' resolution to create  
10 these expanded boundaries?

11 MR. ENGLISH: No.

12 CHAIRMAN RUSSELL: You didn't do it by  
13 public vote, did you?

14 MR. ENGLISH: We did not do it by public  
15 vote, but the statute -- Let me grab it real quick  
16 so I don't misstate it -- 7-13-4522 is changes in  
17 district boundaries, and that's kind of the  
18 statutory starting point for this. It says, "The  
19 Board of Directors may by resolution change the  
20 boundaries following the same procedures that the  
21 Commission uses when they create the district."  
22 So actually the Board of Directors of the water  
23 quality district that held the hearings, and  
24 passed the resolutions.

25 CHAIRMAN RUSSELL: I thought it still

1 had to go through the Commissioners. Questions  
2 for Alan?

3 MR. MIRES: I have one question. How is  
4 the expansion down in the Big Sky area going to  
5 affect this Outstanding Resource Water issue?

6 MR. ENGLISH: Good question. I would  
7 say in general, probably if there was any impact  
8 at all, it would just be that we may end up being  
9 one of the stakeholders and would weigh in on some  
10 of the meetings. Again, we're not regulatory.  
11 We've stayed out of that. Even I think some of  
12 the designation actually extends into the current  
13 water quality district, and we have made it a  
14 point not to weigh in on it, because we feel we're  
15 -- we support the idea, but you're looking at  
16 potentially land use regulations and limitations,  
17 and so we've stayed away from it.

18 But for example, if the sewer and water  
19 district and other folks were looking at studying  
20 the snow making as an option, and there is some  
21 way we could help with that from a scientific  
22 standpoint, we might get involved in that, but we  
23 have intentionally not weighed in on the decision  
24 to designate the river or not. That's a political  
25 regulatory decision, so we've stayed away from it.

1 Does that answer your question?

2 MR. WHALEN: Mr. Chairman. Given the  
3 expanded boundaries, how did the Board, the  
4 current Board, address the issue of representation  
5 from those areas that are being annexed into the  
6 district?

7 MR. ENGLISH: According to the statute,  
8 there is no change in our Board composition  
9 because the only time you pull another Board  
10 member is if you pull in an incorporated area, and  
11 none of the areas that we added had any  
12 incorporated areas in them. And so what we've got  
13 in our work plan is to explore -- If folks in the  
14 area are interested in participating to appoint  
15 some sort of a Board liaison, it wouldn't be a  
16 full blown voting Board member, but we would get  
17 more representation.

18 And we've been doing that with -- For  
19 example, now we have on our Board liaisons from  
20 the Planning Department, and the Planning Board,  
21 and Environmental Health, some of the other county  
22 departments, so we get better communication. But  
23 the Board make-up is set by statute, and it does  
24 not include adding more Board members  
25 specifically, unless there is a -- If Big Sky was

1 to incorporate, then we could have one.

2 MR. WHALEN: Thank you.

3 CHAIRMAN RUSSELL: Other questions?

4 (No response)

5 CHAIRMAN RUSSELL: We do this formally,  
6 I guess. I haven't seen anything in here. I will  
7 entertain a motion to adopt the new plan set forth  
8 by the Gallatin Water Quality District, which  
9 would incorporate new boundaries.

10 MS. SHROPSHIRE: Public comment?

11 CHAIRMAN RUSSELL: We could.

12 MR. LIVERS: We should.

13 CHAIRMAN RUSSELL: Public comment?

14 (No response)

15 CHAIRMAN RUSSELL: Thanks, Robin.

16 MR. WHALEN: I would support that  
17 motion.

18 CHAIRMAN RUSSELL: So it's been moved by  
19 Joe.

20 MR. MILLER: I'll second.

21 CHAIRMAN RUSSELL: It's been seconded by  
22 Marv. Is there any further discussion?

23 MR. LIVERS: Mr. Chairman, Mr. North  
24 just pointed out this is an approval function as  
25 opposed to an adoption, so you might want to tweak

1 the motion.

2 CHAIRMAN RUSSELL: I would recommend, if  
3 it's okay by the mover and seconder, that we would  
4 change the language to "approve," not "adopt."

5 MR. WHALEN: No objection.

6 MR. MILLER: No objection.

7 CHAIRMAN RUSSELL: All right. Hearing  
8 no objections, all those in favor, signify by  
9 saying aye.

10 (Response)

11 CHAIRMAN RUSSELL: Opposed.

12 (No response)

13 CHAIRMAN RUSSELL: Thanks for coming up,  
14 Alan.

15 MR. ENGLISH: Thank you very much.

16 CHAIRMAN RUSSELL: Nice job on this.  
17 We've tried it and failed.

18 MR. ENGLISH: I've tried to help a few  
19 times, but I'll come back if you want me.

20 CHAIRMAN RUSSELL: The next item on the  
21 agenda is to consider comments made on pesticides  
22 and the biotic ligand model during the 2010  
23 triennial review.

24 MR. LIVERS: Mr. Chairman, the only  
25 thing I would say before I turn it over to Mr.

1 Bukantis. Again, this is a continuation of the  
2 triennial review process that began last spring,  
3 and our action today is limited to just one aspect  
4 of that, just those public comments we got as  
5 listed here.

6 This is going to sound a little bit like  
7 a briefing because we are not recommending action  
8 on the Board's part, but we chose to put it as an  
9 action item rather than a briefing item because we  
10 didn't want to simply presume what the Board  
11 wanted to do with it.

12 We wanted to preserve the Board's  
13 ability to act if it chooses to. We're not  
14 recommending action. It will be clearer, I think,  
15 as Bob walks through this, but we did want to  
16 close the loop, and bring back some information on  
17 this aspect of the triennial review, lay out our  
18 reasoning, and you'll see why we're not  
19 recommending action. But again, it's here as an  
20 action item so that we don't simply take away that  
21 ability of the Board.

22 MR. BUKANTIS: Mr. Chairman, members of  
23 the Board, for the record, my name is Bob  
24 Bukantis, Water Quality Standards Manager for the  
25 Department. And I seem to be experiencing

1 technical difficulties here. And actually it  
2 looks like the calvary has arrived. So Allen, if  
3 you could please get my presentation up on the  
4 screen. And in deference to your time, and that  
5 we're running a little late, maybe I'll just get  
6 going and get started.

7 Tom has basically already offered you my  
8 punchline, so to speak, and given you a little bit  
9 of background, so I'll jump in right into some of  
10 the specifics.

11 We received comments from a couple  
12 commenters relative to DEQ7, and those comments we  
13 view as they've been very constructive, and  
14 they're consistent with a lot of the things that  
15 we want to do to DEQ7 anyways, if you would, and  
16 they fit right in with our plan of continual  
17 maintenance and update.

18 So as Tom indicated, we're not going to  
19 ask you to act at this time, and what we want to  
20 propose is that we will just roll the comments,  
21 and how we respond to these comments, into the  
22 2011 version of DEQ7, and continue to look at the  
23 biotic ligand model, and I'll get a little bit  
24 more into some of the specifics.

25 Some of the specific comments we had

1 were specific to several pesticides, atrazine,  
2 symizine, and metolachlor, basically talked about  
3 their categorization as carcinogen or not,  
4 presumably not being toxic; and a change in EPA's  
5 basic number, health advisory number that we use  
6 as the basis for metolachlor, and basically asked  
7 that we not sum -- argued that we not sum  
8 degradates of parent compounds with parent  
9 compounds in the standards. Basically I'll just  
10 explain those comments in a little bit more detail  
11 and what we think we should do with them.

12           Basically the attribution of atrazine  
13 and symizine is not a carcinogen. That requires a  
14 little bit of background. How we decide whether a  
15 compound is a carcinogen or not on DEQ7 depends on  
16 how EPA categorizes that compound; and they have  
17 just recently adopted a new system with how they  
18 evaluate carcinicity. So the commenter I think  
19 was basing their comment on EPA's new position on  
20 how they evaluate those classes of carcinogens.

21           And so EPA, what they're doing as they  
22 transition, if you would, from the old system to  
23 the new system, they're not doing it all at once,  
24 and they do it as they look at reregistering an  
25 old compound and registering a new compound. And

1 so that's going to -- I think we're going to have  
2 to do a couple things to adapt to that.

3 One is as EPA changes how they view  
4 these compounds, we'll need to make those  
5 modifications in DEQ7; and in addition, we'll have  
6 to modify Footnote 2 in DEQ7 to adjust, to allow  
7 us to use simultaneously both EPA classifications  
8 systems, if you would. So that's how we plan to  
9 address the carcinogen compound.

10 The piece I missed there, by the way, I  
11 probably should mention, is these comments in  
12 general were focused on specific compounds, but  
13 they have more widespread impact on other similar  
14 compounds within DEQ7; so rather than just do some  
15 spot checks, we figure this is a good time for us  
16 to do some more general clean-up.

17 So to try to speed through that, at this  
18 point I'm not sure if it's -- maybe I should just  
19 continue on the course I'm going.

20 We think that we should just do a  
21 general clean-up adjustment update, if you would,  
22 to DEQ7, rather than react specifically to these  
23 specific comments.

24 Another example is the commenter telling  
25 us that metolachlor had changed on the federal

1 level. That EPA number that we base our standard  
2 on had been relaxed. But in the document that EPA  
3 published to announce that, that came out during  
4 the last -- when we were in process for the last  
5 rulemaking for the 2010 DEQ7, and there is eleven  
6 other compounds that we should probably similarly  
7 make those types of adjustments to.

8           So to just try to get through that  
9 quickly, basically we think the best way to  
10 address this is with the next overall set of  
11 changes to DEQ7. We have a bunch of other changes  
12 that we're planning to make to DEQ7. Rather than  
13 react to these comments, jump in, start a  
14 rulemaking now, we think it's better to throw  
15 these into the next set of general changes that we  
16 plan to bring to you next year.

17           And there is a third question in there  
18 with pesticides, and that has to do with how we  
19 handle the degraded compounds. We think there is  
20 a consistency issue there. We've identified  
21 several places where we think we need to do a  
22 little clean-up because this is a twenty year old  
23 document. There has been various technical people  
24 involved, and there is several places where we  
25 want to do a little bit of homework, and make sure

1 we're consistent with how we handle degraded  
2 compounds.

3           So with that, I think I'll move right on  
4 to the copper biotic ligand model, give you  
5 perhaps a whirlwind tour what that is about.

6           Basically in 2007, EPA came out with a  
7 new water quality standard for aquatic life for  
8 copper. It's called a copper biotic ligand model.  
9 The current standard on the books for aquatic life  
10 is based on a calculation of hardness. You just  
11 put hardness in the equation. Based on ambient  
12 hardness, it spits out a copper toxicity value.

13           Biotic ligand model has, in addition to  
14 hardness, it also takes into account dissolved  
15 organic carbon, pH, temperature, sulphate,  
16 sulfides, sodium, potassium, and total alkalinity;  
17 and it's basically a computer program that you  
18 feed that information, it calculates out your end  
19 result. And EPA has recommended to us that we  
20 adopt that at least initially as an option to the  
21 hardness based calculation.

22           And so what we've done, because I think  
23 in all cases, especially when we're talking about  
24 a new approach to how we do things, that we need  
25 to be very sensitive to how the programs that

1 implement the standards, like Jenny's permit  
2 program, for example, what is this going to do to  
3 those programs, how is this going to influence  
4 TMDL's permitting, etc. So we've had  
5 conversations with remediation, those programs I  
6 just mentioned, etc., and they have concerns about  
7 how we would implement the copper BLM.

8           So basically the punchline I want to get  
9 to on that, because of those concerns, we're not  
10 sure what we want to -- we see this as probably  
11 the way of the future for aquatic life standards,  
12 for metals, at least the hardness based metals.  
13 There is about six or seven of them, and this is  
14 the first one. But we want to be real careful  
15 about implementing this.

16           For example, EPA has recommended that we  
17 put it out there as an option. Well, what do you  
18 do when you have two different ways to calculate  
19 the standards on the blocks? Are you going to  
20 allow people to cherry pick the number they want  
21 or what? So there is a lot of things for us to  
22 look at. We need to carefully consider.

23           Perhaps telling on this item is that to  
24 date, no other state in the country has adopted  
25 the copper biotic ligand model, so we're reluctant

1 to want to be the first ones out there to try this  
2 out, if you would.

3           So I kind of zoomed through this. There  
4 is a lot of technical depth on all these issues,  
5 if you would. But basically our recommendation to  
6 you is that we take no action at this point. What  
7 the Department plans to do is take the suggestions  
8 and comments that we had seriously. We have  
9 planned to address those on pesticides in the next  
10 version of DEQ7 that we expect to bring to you  
11 next year.

12           And the copper biotic ligand model I  
13 think is going to -- I don't want to offer you a  
14 timeline on that. I think we need to be careful  
15 on how we move forward with that, but we are  
16 working through some issues with that. For  
17 example, we have a conference call with EPA next  
18 week to talk about some issues about how we might  
19 implement that.

20           So with that, I'll be happy to answer  
21 any questions, and I have Rod McNeil here also,  
22 who is much more familiar with a lot of the  
23 technical stuff behind this.

24           CHAIRMAN RUSSELL: All right.  
25 Questions?

1           MR. MIRES: How does this, or does it  
2 tie in to A(3) that we looked at earlier on the  
3 administrative rule 17.30.201 with pesticides?  
4 The comments in here, does that reflect back to  
5 earlier discussions?

6           MR. BUKANTIS: Mr. Chairman, Board  
7 member Mires, only in the sense that these  
8 pesticides would be some of the pesticides that  
9 would be regulated under that rule. Currently I  
10 think we have somewhere in the neighborhood of 100  
11 pesticides on DEQ7.

12           CHAIRMAN RUSSELL: Other questions?

13           MR. WHALEN: Mr. Bukantis, so EPA has  
14 relaxed for atrazine and symizine its standards  
15 with respect to categorizing those as human  
16 carcinogens; is that correct?

17           MR. BUKANTIS: I guess the way I would  
18 characterize it -- and in your executive summary,  
19 if you have that handy. The old categories are  
20 under group categories, and they're "A" through  
21 "E." Right now atrazine and symizine is  
22 classified or categorized as a possible human  
23 carcinogen. Under their new approach, they have  
24 it categorized as "N," and that is "not likely to  
25 be carcinogenic to humans." Presumably that is

1 based on newer data and information that support  
2 that.

3 One of the things that I think we need  
4 to think about as we're working through this is  
5 Rod tells me that they were using a lower risk  
6 level for causing cancer on that end than they  
7 used in the older system.

8 MS. SHROPSHIRE: So they went from ten  
9 to the minus five to ten to the minus six? That's  
10 way it switched?

11 MR. BUKANTIS: I think it's ten to the  
12 minus six to ten to the minus four on that one; is  
13 that correct?

14 MR. WHALEN: But both of those elements  
15 would still be considered carcinogenic for aquatic  
16 life forms?

17 MR. BUKANTIS: No. This is for -- How  
18 we apply this -- Mr. Chairman, Board member  
19 Whalen. How we apply this is as a human  
20 carcinogen. So right now, everything from "A" to  
21 "C" we just lump as a carcinogen on DEQ7. We  
22 don't break down all these different categories.  
23 And Footnote 2 of DEQ7 says that we use this  
24 system, and if it's "A" through "C," we call it a  
25 carcinogen. Right now in our rules, we don't say

1 anything about the second category. Since EPA is  
2 changing that, we're going to need to make that  
3 modification.

4 And a lot of these things kind of  
5 correspond, but we need to work through that, and  
6 we'll need to basically make the decision on the  
7 new categories what are we going to lump in as a  
8 carcinogen. That's some of the homework we need  
9 to do yet.

10 And we'll be working with stakeholders,  
11 and Water Pollution Control Advisory Council,  
12 etc., Department of Ag., and bring something back  
13 to you on that.

14 MS. SHROPSHIRE: Does the State have  
15 flexibility in choosing that ten to the minus six  
16 versus ten to the minus four? Is there a range  
17 that -- For example, if it remained ten to the  
18 minus six, it may have changed that category. So  
19 how does DEQ decide on which threshold to use?

20 MR. BUKANTIS: And I think I know what  
21 you're getting at, Mr. Chairman, Board member  
22 Shropshire. Basically in the Montana Water  
23 Quality Act, part of the directive that we get in  
24 how to set water quality standards is that when  
25 we're setting a standard for a human carcinogen, I

1 think in all cases, we go to numbers that are  
2 published by EPA, and they're published typically  
3 at some -- if they decide it's a carcinogen -- at  
4 some cancer, risk of excess cancers over a course  
5 of a lifetime based on certain assumptions,  
6 consumption rates of water, size of the person,  
7 life span, etc. And then we move the decimal  
8 point to, in Montana's case, to one in 100,000  
9 excess lifetime cancer risks.

10           Unfortunately -- I don't know if I  
11 should use that word -- but basically the  
12 Legislature has put that in State law. So right  
13 now that's set in State law. We're told to use  
14 the most protective of the MCL, which is designed  
15 for drinking water under the Safe Drinking Water  
16 Act, or the cancer risk level. And so we use one  
17 in 100,000 excess lifetime cancer risk to set  
18 those numbers that are calculated that way, at  
19 that risk level, as specified by State law in  
20 statute.

21           MS. SHROPSHIRE: Do you have the ability  
22 to look at cumulative? If you look at individual  
23 pesticide versus both of them, and how it changes  
24 that risk, or does it have to be only on the  
25 individual one? For example, you might have two

1 things that impact your liver, and if you had both  
2 of them, it exceeds that threshold.

3 MR. BUKANTIS: Mr. Chairman, Board  
4 member Shropshire, we really don't. The standard  
5 is set on a compound by compound basis, so those  
6 synergistic effects are not taken into account, if  
7 you would.

8 MS. SHROPSHIRE: And the DEQ doesn't  
9 have that flexibility to include that in your  
10 rule?

11 MR. BUKANTIS: No. That's laid out  
12 pretty clearly in State law. I might offer a  
13 little bit of history on that. A couple sessions  
14 ago --

15 CHAIRMAN RUSSELL: What would your R&D  
16 budget be if you had to do that?

17 MR. BUKANTIS: If we had to do that? It  
18 would be a lot of money.

19 CHAIRMAN RUSSELL: That's university  
20 level studies.

21 MS. SHROPSHIRE: But they're not  
22 questions that -- in terms of Super Fund and  
23 projects in Butte. They're questions that have  
24 been asked many, many times, so it's not an  
25 unusual question.

1           MR. BUKANTIS: Right. And that  
2 basically raises an important point. A lot of  
3 these things, it's very expensive to do all the  
4 toxicology work behind this. So under Section  
5 304(a) of the Clean Water Act, EPA does much of  
6 science course, or in practice they borrow from  
7 the toxicology that's been done in some of the  
8 formerly rich states that have been shutting down  
9 their offices under the economic crunch: New  
10 Jersey, California, etc.

11           MS. SHROPSHIRE: One other question.  
12 With regards to the copper, the biotic ligand  
13 model for copper, have you assessed, for example,  
14 if you were to apply that now in some of the Super  
15 Fund sites in Butte, would it be stricter? Is  
16 there any sort of bright line that you can say how  
17 it's going to impact some of the copper  
18 contaminated sites that we have in Montana?

19           MR. BUKANTIS: I would say there's two  
20 sides to that question, one of which has to do  
21 with difficulty in how we deal with it at this  
22 point. That is, copper biotic ligand model, one  
23 of the things that we need to work out on how we  
24 would implement it is it's based on dissolved  
25 metals, dissolved copper. Our standard is

1 currently totally recoverable, so it ignores that  
2 suspended part, if you would.

3           And the other piece is it's very much  
4 dependent on those other chemical ions. So the  
5 root of exposure that the copper biotic ligand  
6 model is looking at is solely the copper that  
7 would go in through the gills of the aquatic  
8 organisms, and nothing effectively goes in through  
9 bugs that they ingest. And that's very much  
10 influenced by things like total organic, dissolved  
11 organic carbon, etc.

12           So it depends on the chemistry on a site  
13 specific basis, so sometimes the number can be  
14 higher than the old standard, sometimes lower.  
15 And I don't know -- Rod, have you -- I know Rod  
16 has done some comparisons. That's another problem  
17 with the copper biotic ligand model is our legacy  
18 data sets typically don't have all the necessary  
19 supporting data to calculate the number. I don't  
20 know if there is any generalizations we could make  
21 based on what you've seen so far, Rod? Rod has  
22 dug into this a little bit.

23           MR. McNEIL: Mr. Chairman, Ms.  
24 Shropshire. We've been looking at specifically  
25 the data from Silver Bow Creek, and there are a

1 series of sampling stations along the creek within  
2 Butte; and if we were to apply that standard  
3 throughout the run of the creek at existing  
4 standard stations, and two of them, the biotic  
5 ligand model would generate a lower standard; at  
6 four of them, it would generate a higher standard;  
7 and a considerably higher standard below the  
8 wastewater treatment plant.

9           So we're talking about a factor of three  
10 or four difference in terms of the level of  
11 standard generated by the BLM versus the hardness  
12 model.

13           CHAIRMAN RUSSELL: Any further  
14 questions?

15           (No response)

16           CHAIRMAN RUSSELL: At this time, I think  
17 at least by recommendation, we're going to wait to  
18 see what comes up in the WQB7. So thanks for  
19 coming up and talking to us, and we'll await your  
20 next comments regarding this.

21           MS. SHROPSHIRE: It's not WQB7.

22           MR. BUKANTIS: DEQ7 now.

23           CHAIRMAN RUSSELL: Thanks, Bob. I  
24 appreciate your presentation.

25           The last, almost the last matter is

1 violations of the Underground Storage Tank Act by  
2 Juniper Hill Farms, LLC. Katherine, I'm going to  
3 let you tee this up.

4 MS. ORR: Mr. Chairman, members of the  
5 Board, we are at the juncture here where a  
6 decision was issued regarding -- again, there was  
7 a contested case hearing on the issue of the  
8 proper penalty to be assessed, and that hearing  
9 occurred on June 4th, and then on September 21st,  
10 a proposed order on the penalty was issued by me.

11 And according to the Montana  
12 Administrative Procedure Act, Section 2-4-621,  
13 there is an opportunity for the party adversely  
14 affected to file exceptions to the decision that  
15 the Hearing Officer makes, and that has happened.  
16 And in the proposed order, I invited the parties  
17 to file exceptions, and response to exceptions,  
18 and that has been done, and those are in your  
19 packet.

20 And the decision point today basically  
21 for the Board is whether upon argument there is a  
22 necessity for the Board to change the findings of  
23 fact. And I'll back up one step there. In order  
24 to do that, the Board has to determine from a  
25 review of the complete record that the findings of

1 fact are not supported by the record. And just to  
2 kind of go further into this statute, the Board  
3 can make decisions today, for example, regarding  
4 whether there should be a change to the  
5 conclusions of law.

6 That's easy. But that's not what's  
7 before the Board. There are exceptions that have  
8 been filed, and they delve into somewhat the  
9 findings of fact that have been proposed; and also  
10 the exceptions address admission of additional  
11 evidence that wasn't part of the record, so that  
12 raises a difficulty.

13 But what should happen right now is that  
14 you hear oral argument, and decide for yourselves  
15 whether or not the fact record that's been  
16 established through the proposed findings of fact  
17 should somehow be reopened, and so I would counsel  
18 you to just hear these arguments, and you will  
19 make that decision.

20 The one other small wrinkle is that the  
21 Department filed a notice of clerical errors, and  
22 I have reviewed those, and if you were  
23 hypothetically to today move and decide to adopt  
24 the proposed findings of fact, you could instruct  
25 me to enter proposed, a final proposed findings of

1 fact that would take into account whatever those  
2 proposed clerical errors are, if that makes sense.

3 So the first order of business is to  
4 hear the parties on their exceptions. And it's  
5 Mr. Morrison who is here representing Juniper Hill  
6 who filed exceptions, and then the Department is  
7 here represented by Ms. Jane Amdahl, and she filed  
8 a response, and then Mr. Morrison filed sort of  
9 supplemental exceptions. So I'm sure you'll hear  
10 about that today.

11 MR. MORRISON: Mr. Chairman and members  
12 of the Board, and Ms. Orr, Hearing Examiner Orr,  
13 this process is foreign to me. I'm an attorney,  
14 but I'm a tax lawyer who happened to unfortunately  
15 use my sole -- I'm also in conflict because I own  
16 Juniper Hill Farm, LLC, which bought the Lakeside  
17 General Store Station. That's a small convenience  
18 store out by Lakeside. I apologize to all of you  
19 for having to take your time today, and I don't  
20 want to take much of it. I know it's your lunch  
21 hour, so I will make this very brief.

22 But I just want to give you a background  
23 of what this is all about. I'm not Hi-Noon,  
24 somebody that knows a lot about running filling  
25 stations. I just happen to have a store because

1 it's next door to where I live. And when I first  
2 bought the store, the owner that had the store had  
3 a reputation for having problems with complying  
4 with DEQ.

5 And I had some elderly ladies that ran  
6 the store, and they were going to have to go out  
7 dip big sticks in the ground to see what the fuel  
8 levels were. I spent quite a bit of money  
9 avoiding that problem when I bought the store  
10 installing this expensive equipment to read the  
11 fuel levels.

12 And one of the problems that I didn't  
13 know was going to be a problem, after spending all  
14 that money, was that apparently the equipment that  
15 was installed wasn't capable of reading lower fuel  
16 levels, and we -- very, very low fuel levels, and  
17 with the cost of fuel, and the low amount of sales  
18 that we had in the store, especially during the  
19 winter, we didn't like to -- I don't want to have  
20 10,000 gallons of gas that it took me ten months  
21 to sell, so we kept fairly low levels of fuel in  
22 these tanks.

23 I didn't realize it was a problem until,  
24 as the record indicates, in November of 2008, I  
25 got a notice that we weren't reporting to DEQ the

1 fuel levels that we should have been reporting.  
2 And the best that I could establish from my own  
3 memory was the facts, which is in the record, that  
4 shows I indicated to DEQ I tried to get Northwest  
5 Fuel -- I learned that there was a computer chip.  
6 Too bad it wasn't installed in the first place  
7 when they put this equipment in -- but I could buy  
8 this for an extra \$1,000, buy this computer chip.  
9 The Hearing Examiner, I think, at least her record  
10 shows she does agree that it cost \$1,000 to put  
11 this little clip in that would allow the fuel  
12 tanks to read the right fuel levels.

13           And I thought that was taken care of  
14 until the following April, I got a notice that we  
15 were still not in compliance. The lady that ran  
16 the store, she wasn't really experienced much in  
17 running -- This is a small convenience store out  
18 in the country here. So I don't know what all  
19 happened. The records show all this, and I've  
20 taken exceptions to the Hearing Examiner's -- some  
21 of the things she said.

22           If the government had offered to settle  
23 this for \$500 like that other case I heard this  
24 morning, I wouldn't be here, and we wouldn't be  
25 wasting your time. So I'm simply asking you to

1 use whatever authority you have to be a little bit  
2 more understanding.

3           We have fiberglass tanks, fairly new  
4 tanks in the store. It's a fairly new store. I'm  
5 apologetic again that this even ever had to  
6 happen. I would ask, if you have any authority,  
7 to understand what I'm asking. I would certainly  
8 appreciate if there is some way you could reduce  
9 -- I don't want to ask you to totally eliminate  
10 the fine that's involved here, but I would  
11 certainly appreciate it if you could help me out  
12 on that. Thank you.

13           CHAIRMAN RUSSELL: Jane, do you want to  
14 respond?

15           MS. AMDAHL: I guess it's good afternoon  
16 by now. Mr. Chairman, members of the Board, my  
17 name is Jane Amdahl. I'm an attorney with the  
18 Montana Department of Environmental Quality, and I  
19 do represent the Department in this contested  
20 case.

21           I do not want to repeat everything I set  
22 forth in my brief in response to the exceptions  
23 filed by Juniper Hill. I trust that the Board  
24 members are certainly fully capable of reading  
25 those arguments.

1           I would like to point out, however, as  
2 Ms. Orr stated already, when a party files  
3 exceptions to findings of fact, the Board may not  
4 make any changes in the finding of fact unless  
5 they review the record as a whole, and determines  
6 that there is no competent substantial evidence to  
7 support the finding. The Board may not merely  
8 make its own credibility determination. That is  
9 solely in the hands of the Hearing Examiner, which  
10 in this case of course was Ms. Orr.

11           In this case, to my knowledge, no record  
12 has been presented to the Board to review. That  
13 is the obligation of the person or entity that is  
14 raising the appeal or the challenge, and the last  
15 time I checked with the Court Reporter, she told  
16 me that no record had been ordered. So the Board  
17 has no basis on which to do what is necessary in  
18 order to make any changes to the findings of fact.

19           So I would suggest that on that basis  
20 alone, that the Board should deny the exceptions  
21 raised by Juniper Hill.

22           Secondly, one other issue that I believe  
23 I pointed out in the hearing, I don't recall that  
24 I pointed it out in my actual response to the  
25 exceptions, and that is: The Board should keep in

1 mind that Juniper Hill property is not the same as  
2 Mr. Thomas Morrison. He may own the company, but  
3 the company includes its employees.

4 For instance, if General Motors, merely  
5 because the COE is not aware of something that  
6 happened in one of its offices or car dealerships,  
7 does not mean that General Motors is still not  
8 liable or responsible for the actions just because  
9 the COE or the shareholders are not aware of it.

10 In this case the evidence is clear that  
11 Juniper Hill was made aware, through its employee  
12 who signed for a copy of the inspection report in  
13 September 2008, that there were at least eight  
14 violations of monitoring requirements from the  
15 prior year.

16 Nothing was done until Mr. Morrison  
17 received the warning letter, in which case he  
18 stated at the hearing that he communicated with  
19 Northwest Fuels to have a chip put in. There was  
20 no follow up by Mr. Morrison; there was no follow  
21 up by anybody else at Juniper Hill. It was not  
22 done. Juniper Hill did not have it installed. It  
23 was not until April of 2009 that any action  
24 actually was taken to prevent future violations  
25 because during that whole time, violations were

1 continuing to occur.

2           So I would simply ask the Board to  
3 remember that Juniper Hill is a company. It is  
4 not Mr. Morrison. You are to look at what Juniper  
5 Hill knew, what Juniper Hill did, not what Mr.  
6 Morrison personally may have known or done.

7           I would also remind the Board that the  
8 initial penalty assessed for the 16 different  
9 violations that were established in the prior one  
10 year would have resulted, and the Department  
11 calculation came to a penalty of \$6,720. The  
12 Department determined that that was more money  
13 than was truly necessary to act as a deterrent,  
14 not only to Juniper Hill, but to other operators,  
15 and unilaterally reduced that penalty to \$2,100.

16           Even if we take all of Mr. Morrison's  
17 arguments into account, and take all penalty  
18 factors in favor of Juniper Hill where there is  
19 any discretion -- such as whether there was deemed  
20 significant cooperation, good faith -- and do not  
21 take any of the discretionary things against  
22 Juniper Hill, some of the other factors, the  
23 penalty still ultimately comes out to be a penalty  
24 higher than the penalty that was assessed, \$2,100.

25           The Hearing Examiner stated that in her

1 proposed order. So even if some of the arguments  
2 Juniper Hill made were true, ultimately that the  
3 Department already reduced the penalty by well  
4 over \$4,000, and a \$2,100 penalty was appropriate.  
5 I would simply ask the Board members to review the  
6 filings and make their determination based on  
7 that. I'm open to any questions.

8 CHAIRMAN RUSSELL: I think we'll direct  
9 our questions to Katherine.

10 MS. AMDAHL: Okay. Thank you very much.

11 CHAIRMAN RUSSELL: First of all,  
12 Katherine, a question for you. When you acted on  
13 behalf of the Board, you reviewed the Department's  
14 record on how they calculated the penalties.

15 MS. ORR: Mr. Chairman, that is correct.  
16 And we had an evidentiary hearing with testimony,  
17 cross-examination, on the proper assessment of  
18 penalties.

19 CHAIRMAN RUSSELL: And you didn't modify  
20 those penalties because that wouldn't be a  
21 position you should take if you take up the  
22 findings as they were presented as accurate and  
23 factual.

24 MS. ORR: Well, I think the  
25 determination at that hearing was whether the

1 facts existed to support the conclusions -- Well,  
2 let me put it another way -- whether the facts  
3 existed such that the way the rule was applied was  
4 correct.

5 CHAIRMAN RUSSELL: The only point I'm  
6 trying to make is it was several years ago that we  
7 had adopted a formal process to assess penalties,  
8 and over the last four years that that's been in  
9 effect, four plus -- I can't remember -- we've  
10 allowed the Department to use a very specific  
11 penalty assessment process. And I'm guessing that  
12 the reduction of the initial penalty that was  
13 higher was allowed in that process, but the  
14 Department does not act arbitrarily in their  
15 assessment of penalties. We made that when we  
16 adopted the rule on how to assess those penalties,  
17 as I recall, John, many years ago now.

18 So at least from my perspective -- and I  
19 speak only for myself at this point -- over the  
20 years that I've watched the Department bring  
21 penalties to us, they've been based on -- those  
22 conclusions based on the findings, and they've  
23 been accurately assessed and fairly judged.

24 So that certainly is my opinion, and I  
25 know that some of the older Board members can

1 agree or disagree with me, but that's been my  
2 position over the years of watching these  
3 penalties come, even to the fact that we would  
4 have literally five, four or five in a row that  
5 were assessed the exact same penalty because they  
6 were literally the exact same violations that the  
7 Department noted.

8           So that is my opinion. We can argue  
9 this more, but I would certainly entertain a  
10 motion to support the Hearing Examiner's position  
11 and assess a \$2,100 penalty.

12           MS. KAISER: So moved.

13           CHAIRMAN RUSSELL: It's been moved by  
14 Heidi. Second?

15           MR. WHALEN: Second.

16           CHAIRMAN RUSSELL: Seconded by Joe.  
17 Further discussion? We certainly have more time  
18 for discussion here.

19           MS. SHROPSHIRE: Mr. Chairman, I always  
20 have trouble with some of these things in terms of  
21 questions that are appropriate to the case, but is  
22 it fair to ask if there was impact to the  
23 environment in this case, or it was a failure to  
24 monitor?

25           MS. ORR: Mr. Chairman, Ms. Shropshire,

1 I would say a little of both. In the penalty  
2 calculation, the question was whether there was a  
3 possible exposure to the environment of the  
4 contaminants -- "potential" I guess is the word in  
5 the rule -- and that's why the Department  
6 suggested that it apply the gravity and extent  
7 factors the way it did.

8 And yes, the underlying admitted  
9 violation was a failure to monitor correctly.  
10 There were monitoring results, but they were not  
11 valid because of the testing method that was used.

12 MS. SHROPSHIRE: Follow up. Did the  
13 tank leak?

14 MS. ORR: No, there was nothing in the  
15 record that showed an actual leak.

16 CHAIRMAN RUSSELL: And I guess I'm going  
17 to be very careful here, but I went through, when  
18 the UST program literally got off its feet. If  
19 you can't monitor, you don't know if you have a  
20 leak. This is a prevention oriented program. If  
21 you cannot monitor for the presence or absence of  
22 a leak, then how do you know it's not leaking?  
23 This could have been a grave environmental  
24 disaster, and it would have never been picked up.

25 And the reason why monitoring became so

1 important in the 1990s, I think 1992 was a real  
2 benchmark time, that you couldn't monitor before,  
3 and a stick test isn't accurate. The stick test  
4 changes with temperatures. So you really have to  
5 -- I mean you buy this equipment, and you buy the  
6 chip, so you can accurately monitor for the  
7 presence or absence of a product in your tank  
8 which would indicate a leak.

9 MS. SHROPSHIRE: I'm just -- I do --  
10 Trust me, I appreciate that. Just in terms of how  
11 the -- If the gravity is applied to -- what the  
12 gravity is applied to. It's not applied to impact  
13 to the environment, but potential impact to the  
14 environment, so I'm just trying to make that  
15 clarification.

16 CHAIRMAN RUSSELL: I think that's  
17 probably why some of the \$4,600 of the initial  
18 fine was reduced. Not seeing the calculations  
19 right now, but --

20 Further comments? And we really should  
21 be directing most of our comments to Katherine and  
22 between ourselves. Since there's a motion, let's  
23 direct them between ourselves or Katherine.

24 Further?

25 (No response)

1           CHAIRMAN RUSSELL: Hearing none, I'll  
2 call for the question. All those in favor,  
3 signify by saying aye.

4           (Response)

5           CHAIRMAN RUSSELL: Opposed.

6           (No response)

7           CHAIRMAN RUSSELL: Thank you for your  
8 time. I believe we're done.

9           MS. ORR: Mr. Chairman, there is one  
10 thing that I was addressing, if I may, and that  
11 there is a proposal to change my order slightly,  
12 and that was characterized as clerical orders by  
13 the Department. And I have reviewed those, and if  
14 you would allow me, I can change the wording of  
15 the order to address and incorporate at least the  
16 intent of those comments regarding the clerical  
17 errors.

18           CHAIRMAN RUSSELL: Was this the "S" and  
19 the "K"? Was that one of them?

20           MS. ORR: One is to say that there were  
21 no -- there was no valid -- I plugged it in here  
22 in the order. One is in Paragraph 8. The  
23 Department determined that -- My finding of fact  
24 is the Department determined that the number of  
25 days of violation amounted to sixteen days, namely

1 eleven months for Tank No. 1, plus five months for  
2 Tank No. 2, regarding which there were no monthly  
3 leak detection records generated; and the  
4 suggested change is valid leak detection records  
5 generated, and I would agree with that. That's a  
6 good change. So I would suggest putting that in  
7 the order.

8           And then the second one is in finding of  
9 fact -- well, the first one actually the way it  
10 appeared in the request -- is as to finding of  
11 fact No. 6, and the suggested language is to  
12 clarify that the 70 percent -- or the .7 gravity  
13 and extent factor did not result in a reduction to  
14 70 percent of the -- she's saying that it seemed  
15 like there was an implication that it was reduced  
16 down to 30 percent, and that wasn't the intent.

17           So I guess what I would add is something  
18 like, "The base penalty was determined by reducing  
19 the maximum statutory penalty downward by applying  
20 a factor of .7 for gravity and extent to yield a  
21 base penalty of \$350, which is .7 times \$500." So  
22 all by way of indicating that it wasn't reduced  
23 down to 30 percent, it was reduced down to 70  
24 percent, if I could do that.

25           CHAIRMAN RUSSELL: All right. Because

1 we can get this closed up if we do that, we'll  
2 entertain a motion to allow Katherine to make  
3 those changes to her order.

4 MR. MIRES: So moved.

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

7 MR. MILLER: Second.

8 CHAIRMAN RUSSELL: It's been seconded by  
9 Marv. Any other comments?

10 (No response)

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

13 (Response)

14 CHAIRMAN RUSSELL: Opposed.

15 (No response)

16 CHAIRMAN RUSSELL: Motion carries  
17 unanimously. Thank you. That actually went  
18 smoother than I thought it would.

19 We are at the time of the agenda that we  
20 allow general public comment. This is the time  
21 for the public to speak to matters that the Board  
22 has jurisdiction over. I know that you've stuck  
23 around to talk to us. Please be careful that we  
24 do not start talking about a contested case,  
25 because we are not here to hear your case. Okay?

1           MR. LAUBACH: My name is Ron Laubach.  
2 My wife Debbie is there. We have three children,  
3 healthful children. One goes to school in  
4 Bozeman, one goes to school here, and one goes to  
5 school -- he's a junior at Power, Montana. And I  
6 farm, and I farm a piece of ground that my great  
7 grandfather homesteaded 100 years ago this year,  
8 and on that farm is a coulee that has great  
9 hunting, antelope, deer, pheasants, sharp tail  
10 grouse.

11           And why I'm here is to see if you guys  
12 can get DEQ to reevaluate or adopt their policy  
13 and statutes. In listening to you guys today, I  
14 believe that you all are concerned and care about  
15 a healthful environment. I'm just going to read  
16 it, so I don't know how personal it will be that  
17 way, but we'll get it through faster.

18           As a property owner, to prevent  
19 hazardous type issues, I would like to see DEQ  
20 adopt a policy or statute -- whatever it is -- to  
21 send out certified letters to each property owner  
22 that would be affected by DEQ's decisions; all  
23 decisions by DEQ be made totally clear on any  
24 proposals or decisions before certificates are  
25 granted.

1 All maps should be accurate in their  
2 depictions of the routes being taken by any  
3 company that might affect the family issues,  
4 farming practices, wildlife, etc.; and all route  
5 issues on property must be clearly defined in all  
6 information presented or discussed.

7 I'm going to be repeating a bunch of  
8 stuff, too, but hopefully the main points come  
9 out.

10 Once a problem has been realized, there  
11 also should be a policy in place to correct the  
12 problem without the threat of time issues,  
13 especially when all parties, including DEQ, agree  
14 and determine that there is a more viable  
15 alternative route. Time is an issue that comes  
16 up. DEQ employs a state that change could be done  
17 in thirty days. DOE out of Washington state that  
18 change could be done in thirty days.

19 DOE and NEPA also state -- and I have it  
20 on my cell phone message -- that DEQ, that it's  
21 their issue. They can change and make things  
22 work. There is no one -- but yet no one wants to  
23 take the initiative to make the change. All and  
24 any certificates should not be granted unless all  
25 issues have been addressed with each individual

1 landowner.

2           Money is an issue. Why should one  
3 landowner accept \$800 an acre when another  
4 landowner -- or land is selling for 1,200 bucks an  
5 acre? Why should any property owner have to  
6 absorb all of the costs of restoring and enhancing  
7 wildlife, deer, antelope, pheasants, and so forth?  
8 Why should any family have to accept to live under  
9 either power lines or a train going through the  
10 middle of your property, or behind your house,  
11 when all these negatives can be avoided very  
12 simply?

13           It is not a fact that DEQ policy is to  
14 avoid -- Is it not a fact that DEQ's policy should  
15 be avoiding tipi rings, keep a mile away from a  
16 house, a residence? All studies on soils,  
17 wildlife, should be done before certificates are  
18 granted. Certified letters sent to all property  
19 owners with a complete, and accurate, and clear  
20 design of the project affecting the property  
21 owners.

22           This would help to eliminate any  
23 misunderstandings, devious behavior, and keep an  
24 honest and straight forward relationship. With  
25 all of the parties communicating, it would be a

1 better way to address the healthiest use. What  
2 I'm trying to say is if all the parties would  
3 communicate, you could address the health issues,  
4 the wildlife, the wetlands, the farming practices,  
5 the value of property loss, liability issues.

6           When a deal has been reached and signed,  
7 then changed, then when you've got -- you know,  
8 when you make a deal with somebody, and you sign  
9 the paper, and you made an agreement, and then  
10 somebody else changes it, and they don't let you  
11 know, so you don't know where they're going, and  
12 then you find out later they're going right  
13 through your property?

14           I believe it would help if there was a  
15 communication, if there was a way to make things  
16 work with landowners, DEQ employees, companies,  
17 then it would help to eliminate the process of  
18 condemnation actions over your head; and if DEQ  
19 employees are having a tailgate party, then send  
20 an invitation to each individual landowner. How  
21 many of you would go to a party that's just  
22 advertised in the paper? It would be like  
23 crashing the party, right?

24           I've got one last statement, but I want  
25 you guys to kind of think of your own situation

1 where you live, your own house, your own kids, and  
2 picture a train running -- taking over and running  
3 right through your yard, or a power line right  
4 over your house. Would any of you want to subject  
5 your children to that? I'm 64 years old. I was  
6 blessed with great kids. I want them -- and I'm a  
7 healthy guy so far at my age, but I want them to  
8 have that same opportunity.

9           Mr. Russell, I would like you to  
10 entertain a motion for the Board to take some  
11 action to make things right, to get DEQ to be more  
12 flexible, to make a policy to let us know as  
13 landowners, individually though. Don't expect --  
14 There is so many issues in life. You can have a  
15 parent that's either got Alzheimer's, dementia,  
16 blind, can't hear, so we don't want to be  
17 depending on newspaper, radio, TV; or, as I was  
18 told, I think your policy is you put it into some  
19 United States register thing. I don't exactly  
20 remember what it was. And we're supposed to go  
21 look that up.

22           So to try to simplify this, there was a  
23 sign out there, too, on your desk, all of the  
24 different things you guys handle, and one of them  
25 said citizens complaint, so maybe this sounds like

1 a citizen complaint. Maybe this wasn't the way to  
2 do it. I don't know. But I am looking for help.  
3 I want to see the process changed. I want  
4 individual farmers, landowners, to be recognized  
5 individually, if that's the right word.

6 Thanks a lot. You guys earned your  
7 money today. See you later.

8 CHAIRMAN RUSSELL: Thanks for your  
9 comments. Any other comments?

10 MR. WILSON: Members of the Board, and  
11 Mr. Chairman, for the record, my name is Kim  
12 Wilson, and I was here today, and am here today  
13 representing MATL, the power line that these  
14 appeals are about. I won't go into those appeals.  
15 I just want to very briefly respond to Mr.  
16 Laubach's general comments, and just say a couple  
17 of things.

18 One is we, too, think that support of  
19 the healthful environment for the state and for  
20 the residents of the state is a worthy cause, and  
21 that's, of course, in line with MATL's promotion  
22 of wind power as an alternative energy source.

23 It seems to me, though, that most of Mr.  
24 Laubach's concerns deal with the original  
25 certification of the line, and concerns about the

1 public comment and notice period that went with  
2 that, and the environmental review that went with  
3 that. There was a comprehensive environmental  
4 review performed at that time, and we think that  
5 those questions have been addressed at that time.

6 And so with that, we'll deal with this  
7 appeal as a separate matter, but I did want to  
8 just respond to that extent.

9 CHAIRMAN RUSSELL: All right. Thanks  
10 for your comments. Any further comments from the  
11 public?

12 (No response)

13 CHAIRMAN RUSSELL: Hearing none,  
14 anything, Tom?

15 MR. LIVERS: No, Mr. Chairman. Thank  
16 you.

17 MS. SHROPSHIRE: Mr. Chairman?

18 CHAIRMAN RUSSELL: But generally we take  
19 public comment, and we will take anything up. You  
20 can call me, if you want to take something up in  
21 the rulemaking process, and I would be glad to  
22 bring it to them. But this isn't a very good time  
23 to make comments on public comments, so we should  
24 be cognizant of that. This is not a good time to  
25 do that, and there is a lot of good reasons. But

1 if you want to work on any rulemaking around this,  
2 Robin, I'd be glad to talk to you about it.

3 MS. SHROPSHIRE: Point taken.

4 MR. LAUBACH: Mr. Russell, would it be  
5 all right to just make one more comment?

6 CHAIRMAN RUSSELL: We're done. You've  
7 verged on the line of stating your case, and we  
8 allowed you to do that, and we're just not going  
9 to allow it any longer. So with that, I'll  
10 entertain a motion to adjourn.

11 MS. SHROPSHIRE: So moved.

12 CHAIRMAN RUSSELL: It's been moved. Is  
13 there a second?

14 MS. KAISER: Second.

15 CHAIRMAN RUSSELL: All those in favor,  
16 signify by saying aye.

17 (Response)

18 CHAIRMAN RUSSELL: Meeting is over.

19 (The proceedings were concluded

20 at 12:56 p.m. )

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C E R T I F I C A T E

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

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

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing - 147 - 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                      , 2010.

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