

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the Matter of the Petitions of Teck)
Coal Limited and the Board of County)
Commissioners of Lincoln County,)
Montana, for review of ARM)
17.30.632(7)(a) pursuant to Mont. Code)
Ann. Section 75-5-203 - Stringency)
Review of Rule Pertaining to Selenium)
Standard for Lake Koochanusa)

TRANSCRIPT OF PROCEEDINGS - VIA ZOOM

Heard Via Zoom

April 8, 2022

9:30 a.m.

BEFORE CHAIRMAN STEVEN RUFFATTO,
BOARD MEMBERS DAVID SIMPSON,
JON REITEN, JOSEPH SMITH, JULIA ALTEMUS
and DAVID LEHNHERR

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A P P E A R A N C E S

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1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIR RUFFATTO: Now we're moving right
5 into our action items, and I will make some
6 introductory comments. First I will state the
7 matter, the first matter.

8 The first matter is on Page 6 of our
9 agenda, and it's the petitions of Teck Coal,
10 Limited, and the Board of County Commissioners of
11 Lincoln County to review ARM 17.30.632(7)(a),
12 pursuant to Montana Code Annotated 75-5-203.
13 We've been referring to this as the stringency
14 review.

15 The Board will now consider a proposed
16 order with findings of fact, conclusions of law,
17 to implement the decisions that were made at the
18 Board meeting on February 25th. And the Board can
19 either accept, amend, or reject the language in
20 the proposed order.

21 As an introductory matter, I would like
22 to just point out that the proposed final findings
23 of fact and conclusions of law and order were in
24 your packet. I hope all of the Board members have
25 that in front of them in some manner. I take

1 responsibility for the content of that proposed
2 final findings of fact and conclusions. I
3 received some help from ALS, but I'm responsible
4 for the content.

5 The purpose, as I drafted it, my purpose
6 was to incorporate the decisions from the February
7 25th meeting. There were two issues that we were
8 less definitive about at the last meeting for
9 various reasons, at the February 25th meeting.

10 Those two issues were whether the Board
11 was going to conclude that new rulemaking is
12 required; and two, whether the record contains
13 sufficient evidence. We had a motion on that, but
14 it was fairly inspecific.

15 We have now found out from the notice
16 that came out earlier this week that the DEQ has
17 answered one of the questions that we were asking
18 last meeting, and that's whether DEQ is going to
19 proceed with new rulemaking or some other process.
20 And they have initiated a process that is not new
21 rulemaking, so we've got an answer to that
22 question.

23 As we go through the proposed final
24 decision document, I will call to your attention
25 where these questions come up, and they're near

1 the end, so we won't have to address them until we
2 get close to the end, but we will address them at
3 that time.

4 My concept is to go through the decision
5 document fairly slowly and deliberately, giving
6 all of the Board members a chance to make
7 comments, suggest changes, ask questions, and we
8 will work through the document. Does anybody have
9 any questions, comments, suggestions, before we
10 proceed with that process? Yes, Doctor.

11 BOARD MEMBER LEHNHERR: Thank you,
12 Chairman Ruffatto. I have a few points to make,
13 and then I will end with comments specifically
14 about the FOFCOL.

15 I'm the only person on the Board that
16 was with the previous Board that made the rule,
17 and as I've said before, that rule was made after
18 hearing from dozens of citizens, and some of the
19 most competent water quality scientists in North
20 America, if not the world.

21 Thousands of pages of documentation were
22 created in support of the science and the rule,
23 and we were all given thousands of pages of
24 documents for the last meeting, so everyone has
25 had an opportunity to review those written

1 findings, those multiple peer reviewed studies
2 that are referenced.

3 I saw them the first time around, and
4 had a chance to take a quick look at them the
5 second time around. And it's really clear that
6 the 1.5 micrograms per liter number was
7 misinterpreted by us last time. It is really --

8 It's not a hard stop black and white
9 number. It's not a black and white standard.
10 It's basically a guideline established by the EPA
11 with a huge asterisk attached to it that asks that
12 multiple factors be considered by authorities,
13 local regulatory bodies, when they create their
14 standard. And I obviously think we erred at the
15 last meeting, and that we ignored the science, but
16 it is what it is.

17 I have a second point, though. We were
18 going through a series of questions regarding
19 stringency, and whether or not the EPA standard
20 was more stringent, and we looked at, we dealt
21 with various points, dealt with them in a logical
22 way.

23 We dealt with the standing issue,
24 whether or not Teck Coal had standing. It's sort
25 of ridiculous that Teck Coal can be considered a

1 person, but I realize from a technical and
2 legalese, standpoint, they're considered a person.

3 But we did not consider whether or not
4 they were affected by the rule. And the first go
5 around, when we created the rule, Teck Coal said,
6 "You're wasting your time. This rule will not
7 affect us." And now with the newly reconstituted
8 Board, Teck Coal sort of tripped over itself,
9 hurrying to get back to this Board, saying, "Oh,
10 now we've changed our mind. This rule does affect
11 us." And I think it will be interesting to see
12 what happens when British Columbia lowers its
13 standard to almost the 0.8 standard that Montana
14 has.

15 My last point is just regarding this
16 FOFCOL, and why we're even faced with it. I
17 didn't think we'd be dealing with this issue again
18 so soon. I'm more than happy that we are, because
19 it allows me to comment and clarify some things,
20 and it may not do any good.

21 But usually a FOFCOL is created after a
22 quasi-judicial, a very formal hearing, and created
23 by a Hearing Examiner. I've never seen a FOFCOL
24 written by a Board member. And I'm just
25 wondering.

1 It was clear what our intent was at the
2 last meeting, and we handed things back to DEQ.
3 So I'm not sure why we need the FOFCOL, and
4 perhaps we do, but it certainly raises a lot of
5 questions. It's somewhat irregular to have a
6 Board member write a FOFCOL, and have a FOFCOL
7 created under these circumstances. So maybe we
8 could just address that briefly.

9 And then I just want to say finally I
10 find great irony in this whole process that we are
11 -- well, some people are trying to create a
12 different standard for Montana for a foreign
13 company that was fined \$60 million last year for
14 selenium pollution in Canada. You'd think we'd
15 want to pay attention to that. But I do find it
16 somewhat ironic.

17 But anyway, perhaps we could deal with
18 the issue of why we even need the FOFCOL. Thank
19 you.

20 CHAIR RUFFATTO: I will address that
21 question, and if you have other questions, Doctor,
22 I'll try to address them.

23 If you read the transcript from the last
24 meeting, it was very clear that we were making
25 decisions that would be finalized in a document at

1 the next meeting, so I don't think there's any
2 doubt that that was the intent of the last
3 meeting. So I'm surprised that you're surprised,
4 because if you go back and read, it will be very
5 clear to you.

6 What other questions would you like
7 answered?

8 BOARD MEMBER LEHNHERR: Well, why the
9 form of a FOFCOL, and why was it written by a
10 Board member?

11 CHAIR RUFFATTO: The form of a FOFCOL is
12 a typical form for a decision document, and it's
13 perfectly appropriate for any -- I mean there's no
14 requirement. As a matter of fact, the concept
15 would be that the Board would write all of the
16 FOFCOLs. We just don't have time to do that.

17 The only reason why it might be unusual
18 is because we usually refer those things to
19 Hearing Examiners. We didn't refer this to a
20 Hearing Examiner, so the only way for that to
21 occur was either to have our Counsel write it, or
22 one of the Board members write it.

23 I felt I was the most familiar with the
24 issues, and I felt that I could accomplish it more
25 efficiently and effectively than trying to get

1 some other lawyer up to speed to write it.

2 BOARD MEMBER LEHNHERR: Thank you.

3 CHAIR RUFFATTO: Thank you. Any other
4 questions or comments?

5 (No response)

6 CHAIR RUFFATTO: Okay. What I propose
7 that we do, I propose that we go through the
8 document, not quite page by page. I'm going to
9 call it kind of section by section. I'm going to
10 give each of you, or all of you, a chance to
11 comment, suggest changes, whatever you want to do
12 with each section, and we'll see how that goes and
13 see how that proceeds.

14 And the first section I would call your
15 attention to is Section 1, the procedural history,
16 and that is covered on Pages 1, 2, and 3. Do
17 Board members have any comments or questions or
18 suggested changes?

19 (No response)

20 CHAIR RUFFATTO: I will give you a
21 little time each time we change to give you a
22 chance to glance at what you're looking at, and
23 see if you have some changes. I'm assuming you've
24 all read it and made whatever notes that you want
25 to talk about.

1 (No response)

2 CHAIR RUFFATTO: Hearing none on that
3 first section, I will go to Paragraph 1 under
4 findings of fact, and that's the statute that
5 we're dealing with. It's that portion of the
6 statute which is relevant. Any questions,
7 comments, suggestions on Section 1 or Paragraph 1
8 under findings of fact?

9 (No response)

10 CHAIR RUFFATTO: Then I'm going to go to
11 what I refer to as the next section. It will be
12 Paragraphs 2 through 5 of the findings of fact,
13 and that's on Pages 4, 5, and 6 of the document.

14 And these paragraphs relate to the
15 rulemaking process that was conducted in 2020 to
16 make the lake numerical standard and adopt the
17 lake numerical standard of .8 micrograms per
18 liter. I'll pause for minute and let you look.

19 If I'm going too fast, speak up and we
20 can slow down.

21 (No response)

22 CHAIR RUFFATTO: I'm going to Page 6
23 now, and we're going to look at Paragraph 6
24 through 15, and this relates to the petitions that
25 were filed and the findings of fact. That's

1 Paragraph 6 through 15 of the findings of fact,
2 and this relates to the petitions and the
3 Petitioners' standing.

4 I'm now going to move to Page 9 and look
5 at Paragraphs 16 through 19, and these paragraphs
6 deal with the federal guideline of 1.5 and the
7 site specific procedures that were adopted as a
8 guideline by EPA. That's Paragraph 16 through 19.

9 MS. SCHERER: Chairman Ruffatto, Kirsten
10 Bowers has her hand up.

11 CHAIR RUFFATTO: Yes, Kirsten, let's
12 hear what you have to say.

13 MS. BOWERS: So I just have a question,
14 and that is whether interested parties will have
15 the opportunity to state any exceptions or
16 objections to findings of fact and conclusions of
17 law in the proposed FOFCOL.

18 CHAIR RUFFATTO: No. If Board members
19 -- because you had your opportunity to speak about
20 all these things last meeting. If a Board member
21 has a question of you, then we will entertain
22 that, but we're not going to open this up to
23 exceptions because you and the Teck Coal people
24 have had, and Lincoln County, have had ample
25 opportunity to make your positions known with

1 briefing and a lot of arguments at the last
2 meeting.

3 MS. BOWERS: Okay. Thank you, Chair
4 Ruffatto.

5 CHAIR RUFFATTO: I would repeat. If any
6 Board member wants to call on the interested
7 parties, they can do that, but we're not going to
8 open it up for oral argument as such.

9 Paragraphs 16 through 19.

10 Then I'm going to go to Page 11
11 Paragraphs 20 through 23, and these paragraphs
12 deal with the basis for comparing the lake
13 numerical standard with the appropriate federal
14 guideline.

15 BOARD MEMBER SIMPSON: Mr. Chairman.

16 CHAIR RUFFATTO: Yes, Dave.

17 BOARD MEMBER SIMPSON: I'm not asking
18 for any changes, but I just wanted to highlight
19 Item 22 there that talks about the use of whole
20 body fish tissue threshold of 5.6 as opposed to
21 8.5.

22 I had not picked that up in my reading
23 of the background, and I don't believe that I read
24 the minutes of that particular meeting. But at
25 the last meeting I had commented that I thought

1 the inputs to the model were excessively
2 conservative, and if this quote is correct, I
3 think it confirms that the result of 0.8 was
4 predetermined, and that it appears that the
5 modeling inputs were essentially doctored to reach
6 that conclusion.

7 CHAIR RUFFATTO: Thank you, Dave. I
8 think if you go to the cites here, you will see
9 the accuracy of these statements, and these points
10 were discussed in the briefs.

11 BOARD MEMBER SIMPSON: Thank you.

12 CHAIR RUFFATTO: You're welcome.

13 BOARD MEMBER SMITH: Chairman Ruffatto.

14 CHAIR RUFFATTO: Yes. Okay. Joe.

15 BOARD MEMBER SMITH: I didn't know if it
16 was time to comment on specific numbers yet, but
17 back up to item No. 16.

18 CHAIR RUFFATTO: Yes. We're wanting all
19 the comments that we can get.

20 BOARD MEMBER SMITH: There's no federal
21 standard for selenium, and I thought during the
22 last meeting we discussed that the federal
23 standard was the specific number. Like say for
24 the water column, the number 1.5 micrograms per
25 liter was the standard. Am I incorrect?

1 CHAIR RUFFATTO: This is a matter of
2 terminology. There is no federal standard because
3 standards relate to the specific standards adopted
4 by states and tribes. These are the federal
5 guidelines, and they're not standards.

6 And if you go back to the statute
7 itself, you will see that the statute deals with
8 both standards or guidelines, where it talks about
9 regulations or guidelines. So the 1.5 is the
10 guideline established by EPA and applied
11 nationally.

12 BOARD MEMBER SMITH: Understood. Thank
13 you for that.

14 CHAIR RUFFATTO: And anybody can back up
15 anytime. Maybe I'm going too fast here. And
16 don't be bashful. I want all the comments that
17 you have and suggested changes.

18 We're still on Paragraphs 16 through 19.

19 I'm moving on then to Page 11,
20 Paragraphs 20 through 23, which is the basis for
21 comparison between the .8 standard and the
22 appropriate federal guideline.

23 I'm moving to Page 12 Paragraphs 24
24 through 28, and these generally deal with the
25 rulemaking.

1 BOARD MEMBER LEHNHERR: Chairman
2 Ruffatto.

3 CHAIR RUFFATTO: Yes. Dr. Lehnherr.

4 BOARD MEMBER LEHNHERR: Dr. Lehnherr
5 here. I haven't been saying anything just because
6 I disagree with most of the points in this
7 document obviously. I disagree about the need for
8 this document, but I certainly disagree with most
9 of the contents, so there's really --

10 I think this is a train that has left
11 the station, and there's really no point in me
12 taking up time pointing out why so many of these
13 points are in error.

14 But I do want to point out what I think
15 is particularly egregious in Item 27, where the
16 supporting document it says is Teck comments,
17 which I just -- I think it's totally unacceptable
18 to have the Teck Coal being used to support this
19 document, and it feels like we are supposed to be
20 building a henhouse, but we're taking instructions
21 from the fox.

22 So that's just an example of one of the
23 many things that I disagree with about this
24 document, but I won't take up time working on
25 every point here because I don't think it's going

1 to matter, but I just wanted to point that out.
2 Thank you.

3 CHAIR RUFFATTO: I appreciate your point
4 actually. I'm glad you pointed that out because
5 this is one of the areas where we did not make a
6 sufficiently definitive decision at the last
7 meeting.

8 And when I was drafting this I realized
9 that, and I struggled with how to deal with it,
10 and in the end, I wrote this to leave open the
11 question of whether or not the existing record --
12 and I put in a cite for the Teck comments to
13 demonstrate that there are questions. So that
14 citation only points to the fact that questions
15 have been raised. Does that make sense to you,
16 Doctor?

17 BOARD MEMBER LEHNHERR: Yes. That makes
18 sense. I appreciate that. Thank you.

19 CHAIR RUFFATTO: Now, again, we'll deal
20 with that. Actually I think it might be
21 appropriate to deal with that right now as long as
22 it has come up, the question of what do we do,
23 what does the Board want to say in the final
24 decision document regarding the record, and
25 whether it could support the findings that are

1 required.

2 And if you recall at the last meeting,
3 David Simpson raised a whole series of questions,
4 but then when the motion was made, we could not
5 reach a conclusion on that point conclusively.

6 When I was going through this, I
7 realized that we had not decided that
8 definitively, so I left this question open. I did
9 not have the Board decide this question, and so
10 that's the position I took when I drafted it.

11 But I want you all to consider whether
12 or not you want to take a position as a Board on
13 the adequacy of the rulemaking record to provide
14 evidence to support the required findings.

15 If I've confused you all, please ask and
16 I'll try to clarify.

17 (No response)

18 CHAIR RUFFATTO: I will repeat myself in
19 hopes that maybe if I state it a little
20 differently.

21 In this draft I have not provided that
22 the Board has made a decision on the adequacy of
23 the record to support the required findings. I've
24 left that as an open question, which I'll
25 elaborate a little bit.

1 I think there are a lot of issues with
2 that question, both legal and factual, and so my
3 conclusion in the end was it was better to leave
4 that as an open question that the DEQ will have to
5 wrestle with in its process, and I expect that
6 question may come up in some forum in the future,
7 but I'm suggesting at this point that we not
8 address it.

9 BOARD MEMBER SIMPSON: Mr. Chairman.

10 CHAIR RUFFATTO: Yes.

11 BOARD MEMBER SIMPSON: Just an
12 observation, and that is that here we're
13 questioning whether the record, rulemaking record,
14 contained the evidence, included the evidence
15 specifically required to support the finding, and
16 in reading the draft that DEQ has circulated, I
17 believe it would be an accurate statement to say
18 that they have concluded that there was enough
19 information to support the finding. So it's a
20 rather important point, particularly if the Board
21 does not take a position on it.

22 CHAIR RUFFATTO: I agree with you
23 completely that the draft circulated by DEQ this
24 week does take a position on that, and all I can
25 say is that I'm still inclined to leave the

1 question open for the reasons I stated. There are
2 clearly factual and legal questions associated
3 with this.

4 I'm inclined to let DEQ's process work
5 out, and we don't know what the end result of that
6 will be, because there's a process which could
7 produce changes in those findings, and so we don't
8 know what's going to happen in that process. So
9 I'm inclined to leave this question open.

10 (No response)

11 CHAIR RUFFATTO: I'm going to move on,
12 but if someone wants to change that, they can make
13 a motion or argue in favor of changing what is
14 drafted.

15 (No response)

16 CHAIR RUFFATTO: I'm going to move on to
17 the conclusions of law. Conclusions of Law 1
18 through 5, I view those as kind of the
19 introductory conclusions of law that set up the
20 rest of them, and this is on Page 13 and 14.

21 (No response)

22 CHAIR RUFFATTO: Hearing none, I will
23 move on to the next group. These are conclusions
24 of law regarding standing. These are six through
25 eight. And Doctor, here would be your time to

1 talk about these conclusions.

2 BOARD MEMBER LEHNHERR: Chairman
3 Ruffatto, not so much specific to this document,
4 but it might be helpful to remind -- and maybe
5 everyone on the Board is aware of this -- but
6 sometimes -- I know it took me awhile to have it
7 sink it in.

8 As I understand it, if we had
9 significantly changed or changed points in the
10 findings of fact, we would have to basically go
11 back and review the record, whereas we can change
12 points in the conclusions of law without having to
13 do that. Am I correct?

14 CHAIR RUFFATTO: No, that's not accurate
15 in this case, Doctor. The standard that you're
16 talking about is when a findings of fact and
17 conclusions of law come from a Hearing Examiner.
18 These didn't come from a Hearing Examiner, so that
19 point does not apply here. But we can change
20 anything in the findings or fact or conclusions of
21 law in this document without violating any rules.

22 BOARD MEMBER LEHNHERR: Thank you.

23 CHAIR RUFFATTO: All right. I'm going
24 to go to Page 14. No, I've already done those.
25 I'm sorry. We just finished Paragraphs 6 through

1 8 on standing, and now we're going to nine through
2 sixteen which concerns the comparison of the lake
3 numeric standard and the Federal guideline.

4 (No response)

5 CHAIR RUFFATTO: Now I'm going to go to
6 Page 18. Again, if I'm moving too fast, or
7 anybody wants to back up, we can do that at any
8 time.

9 Page 18 Paragraph 17 through 19 deal
10 with the failure to comply with the stringency
11 statute. Actually I should say 17 and 18.

12 (No response)

13 CHAIR RUFFATTO: Then let's look at
14 Paragraph 19 on Page 19, and this is the paragraph
15 that I alluded to before where the Board is
16 determining that we do not need to make a
17 determination as to the adequacy of the evidence
18 in the record to support the required findings.

19 (No response)

20 CHAIR RUFFATTO: Hearing no points on
21 that, I'm going to go to Conclusions of Law 20,
22 Paragraph 20 on Page 19, which states that the
23 stringency statute expressly requires peer
24 reviewed scientific studies.

25 BOARD MEMBER REITEN: Mr. Chairman. So

1 does this mean that for what we're working on now,
2 we're supposed to ignore the draft written
3 findings that DEQ provided us for this meeting?

4 CHAIR RUFFATTO: So DEQ provided us
5 written findings for the last meeting.

6 BOARD MEMBER REITEN: I'm talking about
7 the March 2022 draft written findings for the
8 water column standard.

9 CHAIR RUFFATTO: Oh, okay. You're
10 talking about the document that came out on
11 Sunday, I think.

12 BOARD MEMBER REITEN: Yes.

13 CHAIR RUFFATTO: That's not a part of
14 this process. It kind of informs this process,
15 but that's not we're doing here.

16 BOARD MEMBER REITEN: That's what I
17 understand, and I just wanted to clarify that,
18 because it definitely discusses the fact that all
19 of the stuff has been peer reviewed. So that's my
20 only comment. Thanks.

21 CHAIR RUFFATTO: Thanks, Jon. You're
22 right about that.

23 Hearing none on Paragraph 20, let's go
24 to the order, also on Paragraph 19. And to begin
25 with, I want to move that we adopt an initial

1 sentence that I overlooked when I wrote this.
2 That initial sentence should read: "Teck and
3 Lincoln County both have standing to bring the
4 petitions." I should say "each have standing."

5 I will read that again. I move that we
6 add an initial sentence after the words "ordered
7 that," "Teck and Lincoln County each have standing
8 to bring the petitions." Is there a second to my
9 motion?

10 Mr. Simpson, if you said something,
11 you're on mute.

12 BOARD MEMBER SIMPSON: Second.

13 CHAIR RUFFATTO: Yes, thank you. A
14 motion has been made and seconded that we add the
15 sentence, "Teck and Lincoln County each have
16 standing to bring the petitions." Discussion.

17 (No response)

18 CHAIR RUFFATTO: Any discussion?

19 (No response)

20 CHAIR RUFFATTO: I will call the
21 question. I will call this by roll call vote. So
22 Sandy, please take a roll call vote, either yes or
23 no.

24 MS. SCHERER: Chairman Ruffatto.

25 CHAIR RUFFATTO: Yes.

1 MS. SCHERER: Board Member Lehnherr.

2 BOARD MEMBER LEHNHERR: No.

3 MS. SCHERER: Board Member Simpson.

4 BOARD MEMBER SIMPSON: Yes.

5 MS. SCHERER: Board Member Reiten.

6 BOARD MEMBER REITEN: No.

7 MS. SCHERER: Board Member Smith.

8 BOARD MEMBER SMITH: Yes.

9 MS. SCHERER: Board Member Altemus.

10 BOARD MEMBER ALTEMUS: Yes.

11 CHAIR RUFFATTO: I think the vote is
12 five to two. It passes. So I'm going to -- I'm
13 not going to read these, but if anybody has any
14 more questions about the order portion, please
15 raise them.

16 I have one more point I want to discuss,
17 but it's not evident from what you have in front
18 of you, or it may not be. The point I want to
19 discuss is a point that we did not actually vote
20 on the last meeting, and that is whether -- go
21 ahead, David.

22 BOARD MEMBER LEHNHERR: Just a point of
23 order. What was the vote again? The four versus
24 against --

25 CHAIR RUFFATTO: Oh, you're exactly

1 right. Stacy isn't on. I appreciate your
2 correction. It's four to two.

3 BOARD MEMBER LEHNHERR: Thank you.

4 CHAIR RUFFATTO: Thank you. The last
5 point I want to discuss is a point that we did not
6 discuss -- or no, we did not reach a conclusion.
7 We discussed it at length, but we did not reach a
8 conclusion, and that is whether the Board is going
9 to make a determination of whether or not
10 rulemaking, initiation of rulemaking is required
11 to produce a valid and enforceable rule for the
12 water column standard, and that's actually
13 reflected in the last sentence of the order, which
14 in essence leaves it up to DEQ how they proceed.

15 When we were discussing this last time,
16 we asked DEQ how they were going to proceed. They
17 declined to give us an answer, and I had no
18 problem with that. They probably hadn't decided.
19 But now we do have an answer to the question, so
20 whether or not we as a Board want to make a
21 statement, conclusion, and order that says that
22 rulemaking is required.

23 I have mixed kind of thinking on this.
24 As I articulated last meeting, it was my view that
25 new rulemaking is required, and for that reason I

1 would think maybe we should.

2 The flip side of that is that DEQ,
3 although they could have initiated rulemaking --
4 I'm sure they have their reasons for not. I don't
5 know what they are -- but this question, again, I
6 think will come up in other forums, so I don't
7 think we need to make a conclusion, but I think we
8 could, and we would be able to do that.

9 I'm sure -- I will state it. I'm
10 confident, based on what the record reflected last
11 time, that it's DEQ's position that we do not have
12 jurisdiction to state that -- I disagree with that
13 -- but that doesn't mean that we should exercise
14 that jurisdiction.

15 So I'm asking the question of whether or
16 not you want to add something to state that the
17 Board is of the view that the initiation of new
18 rulemaking is required.

19 BOARD MEMBER ALTEMUS: Mr. Chair.

20 CHAIR RUFFATTO: Yes.

21 BOARD MEMBER ALTEMUS: And members of
22 the Board. I think the Board should ask DEQ to go
23 through the process of new rulemaking, just so
24 that we have all our T's crossed and I's dotted.
25 I don't know that it will be any different than

1 what they came up with a couple years ago, because
2 even the proposed findings weren't any different
3 without any new information, but I do think that
4 we should be on the record, personally I think we
5 should be on the record to request that. Thank
6 you.

7 CHAIR RUFFATTO: I appreciate your
8 comments. Any other comments, discussion?

9 BOARD MEMBER SIMPSON: Mr. Chairman,
10 members of the Board. DEQ in preparing its
11 written findings will either sustain the rule as
12 it is written right now or repeal it, which
13 certainly would require rulemaking to repeal the
14 rule.

15 I guess the question I have is that I
16 believe we determined that because the proper
17 procedure was not followed, the existing rule is
18 essentially not in effect. That being the case,
19 does that mean that the rulemaking continues until
20 the written findings are complete? And then my
21 question is: Who makes the determination that the
22 written findings are adequate?

23 CHAIR RUFFATTO: I think there are a
24 number of questions in that question, Dave.

25 BOARD MEMBER SIMPSON: There are at

1 least three.

2 CHAIR RUFFATTO: At least three. I will
3 answer my views on that, and they don't
4 necessarily mean that they're correct.

5 Number one, the rulemaking that the
6 Board completed was completed in 2020. There's no
7 ongoing process. That's my view.

8 Number two, the Board has not made the
9 statement that the existing rule is unenforceable
10 and invalid. That's my view. I believe there are
11 counter arguments to that, if DEQ effectively goes
12 through the process and makes adequate written
13 findings based on adequate evidence, but that's
14 just my view, that even if they complete the
15 process that they're on, it's my view that the
16 rule will not be valid.

17 Now, the question that I raise is: Do
18 we want to make that statement, or anything close
19 to it? And I drafted this so we didn't make that
20 statement, so we left it open to some other time
21 and place for some forum, a Court or this Board,
22 to address that question.

23 I don't think DEQ is going to change
24 their mind if we make that statement as Board
25 Member Altemus suggested. I don't think they're

1 going to change their mind. We made it clear that
2 we would -- or at least I made it clear that we
3 would prefer that they started a rulemaking
4 process, but they decided to go a different route,
5 and stated that we have no jurisdiction there.

6 So I don't think that they're going to
7 change their mind, and that's part of my conflict.
8 I'm not sure that I want the Board to take a
9 position directly counter to DEQ when we know that
10 that will be coming, or I expect -- I don't know
11 -- I expect that will be coming up in some forum
12 at some point in the future, and it can be
13 addressed then.

14 So we're back to Julia's statement that
15 she thinks we should make the statement. I'm
16 torn, and I could be convinced either way, if the
17 Board members have some views and have other
18 considerations.

19 BOARD MEMBER LEHNHERR: Chair Ruffatto.

20 CHAIR RUFFATTO: Yes.

21 BOARD MEMBER LEHNHERR: Thank you for
22 letting me comment. It just seems like rulemaking
23 would be unnecessarily energy and time consuming
24 for DEQ, and so much has been done already, and so
25 I would tend to be against a call for rulemaking.

1 Thank you.

2 CHAIR RUFFATTO: That's a valid point.

3 BOARD MEMBER SIMPSON: Mr. Chairman, I
4 tend to agree with your reasoning that this
5 probably should be left to the Department as they
6 go through the process, and if there is a
7 definitive reason for initiating rulemaking, it
8 will come up along the way, either from the
9 Department or interested parties, I would think.
10 I guess I'm on the same page you are. I'm not
11 sure either way.

12 CHAIR RUFFATTO: Okay.

13 BOARD MEMBER ALTEMUS: Mr. Chairman, I'm
14 sorry. Just one last thought here. I think since
15 our findings -- we haven't actually voted on them
16 -- but our findings are different than what the
17 DEQ had come up with a couple years ago, and
18 that's why I'm thinking that we need to be on the
19 record now.

20 I do agree it's going to come up in the
21 future and we're going to revisit this, but I
22 think it strengthens our position if and when we
23 get around to voting on your order. So I guess
24 that's my feeling as to why I think we should do
25 it now, but I will defer. Thank you.

1 CHAIR RUFFATTO: Julia, I really
2 appreciate your comments because as I said, I'm
3 torn. I will give you some language, and then you
4 can decide if you want to make a motion, and then
5 if it's seconded, we can vote on it. Do you want
6 to do that, or do you want to not do that? I'll
7 give you some language that I drafted that we
8 could add to accomplish the purpose I think that
9 you're driving at.

10 BOARD MEMBER ALTEMUS: (Nods head)

11 CHAIR RUFFATTO: Okay. The language
12 that I drafted was to add a sentence at the end of
13 the order portion which reads:

14 "Because the Board's rulemaking failed
15 to comply with MCA Section 75-5-203, in order to
16 have a valid and enforceable lake water column
17 standard, new rulemaking must be initiated."

18 BOARD MEMBER ALTEMUS: I support that
19 statement. Thank you, Mr. Chair.

20 CHAIR RUFFATTO: Do you want to move
21 that we add it?

22 BOARD MEMBER ALTEMUS: Thank you. I so
23 move.

24 CHAIR RUFFATTO: Do we have a second?

25 BOARD MEMBER SIMPSON: I'll second.

1 CHAIR RUFFATTO: It's been moved and
2 seconded that we add the language. Let's discuss
3 it.

4 (No response)

5 CHAIR RUFFATTO: Let me articulate why I
6 would say that new rulemaking is required, and
7 that is because the statute calls for a particular
8 kind of rulemaking, and that rulemaking has to be
9 initiated with a statement that the rule that's
10 proposed is more stringent, and with the findings
11 included in that initiation. That's what the
12 statute requires.

13 Because that's what is required, the
14 failure to have done that back in 2020, in my
15 opinion, makes the current rule in violation of
16 the statute, and therefore not enforceable.

17 And now I am prepared to -- if Kirsten
18 Bowers, I will ask her a question. Would you like
19 to comment on this, and that was the -- I left
20 that open, and if you comment, I will probably ask
21 Ms. Marquis to comment. And my question is: How
22 do you justify not initiating new rulemaking?

23 MS. BOWERS: Chair Ruffatto, members of
24 the Board.

25 First of all, the initial publication of

1 the rule did contain a statement the rule was not
2 more stringent than Federal regulations, and
3 that's why the Board didn't make the findings. So
4 I don't think basing a determination that the
5 rulemaking is defective on the fact that the
6 public wasn't given notice of the Board's
7 stringency determination is not factually correct,
8 because the public did have notice, and they had
9 actual notice, because they commented on the
10 stringency.

11 CHAIR RUFFATTO: Thank you. Ms.
12 Marquis, would you like to address that issue?

13 MS. MARQUIS: Yes. Good morning. Thank
14 you, Chairman Ruffatto, members of the Board.

15 I agree with Chairman Ruffatto's
16 statement, and that has been Teck's position from
17 the beginning. Teck pointed out in its comments
18 to the draft rule in the letter dated, I believe
19 it's November 23rd, 2020, that the rule is more
20 stringent than federal, and that for the
21 rulemaking to be valid, that stringency needed to
22 be pointed out at the beginning of the rulemaking
23 process, and the written findings needed to be
24 provided to the public at the front end, so that
25 the public had a clear view of everything.

1 It's not fair to the public to say it's
2 not more stringent, and then go through the whole
3 process, and then come back and say that it is
4 more stringent. We don't know how that would have
5 hit other members of the public, how they would
6 have received that information.

7 So we pointed in our briefing to the
8 legislative history on this matter, and it was
9 clear in the legislative history that when this
10 statute was being contemplated, the Legislature,
11 their intent was that the public would be
12 adequately informed of the stringency at the front
13 end of the rulemaking, and that the written
14 findings would be proposed and clarified at the
15 front end, so that the public could comment on
16 that stringency, and decide if it supported the
17 need for the rule at the initiation and throughout
18 that MAPA process of public comment.

19 So Chairman Ruffatto, members of the
20 Board, I agree with Chairman Ruffatto's statement
21 earlier that the initiation of the rulemaking
22 needed to comply with the stringency statute and
23 it did not. Thank you.

24 CHAIR RUFFATTO: I'm going to put a
25 little more meat on my opinion. Okay.

1 DEQ's argument is that because one or
2 two of the people commenting on the rule figured
3 out that it was more stringent doesn't mean that
4 the vast majority of the public accepted the
5 Board's statement that it was not more stringent,
6 and proceeded through the whole proceeding without
7 knowing that that was the case.

8 So what we need is a process that tells
9 the public, "It's going to be more stringent than
10 the federal, so take that into consideration in
11 the rulemaking process."

12 So that's my reasoning. So I think
13 we've been going now for an hour and 15 minutes.
14 Yes, Dave.

15 BOARD MEMBER SIMPSON: Sorry, Mr.
16 Chairman, to interrupt. If I could just follow up
17 briefly on your comment just now.

18 Looking at 75-5-203, it is contemplated
19 that the written finding be a part of the
20 rulemaking, but in this case as was pointed out,
21 it was not.

22 So under Paragraph 4 of that section, a
23 person affected by the rule and believes it to be
24 more stringent may petition the Board to review
25 the rule, which has happened. And the cure for

1 that is that if the Board determines -- or excuse
2 me -- the Department determines that the rule is
3 more stringent -- I'm reading from -- no, "If the
4 Board determines its rule is more stringent than
5 comparable Federal regulations or guidelines, the
6 Department, previously the Board, shall comply
7 with this section by either revising the rule,
8 which constitutes rulemaking, to conform to the
9 federal regulations or guidelines, or by making
10 the written findings as provided under Subsection
11 (2)," which I don't believe is rulemaking. It
12 appears to be a separate document.

13 CHAIR RUFFATTO: That is a reasonable
14 approach, but I think that if you read the statute
15 as a whole, the way that the DEQ can accomplish
16 what they're charged to do is to go through
17 rulemaking, and the fact that they've decided not
18 to I don't understand, because of the defective
19 rulemaking from the start.

20 And because the public is not addressing
21 now whether or not the rule is right, what the
22 document as presented is whether or not they have
23 made the finding which is after the fact. There's
24 words in the law that describe this, but it's an
25 after the fact justification.

1 When the rulemaking was going on, the
2 public was told, "It's not more stringent," and
3 what the public does, that the public doesn't do,
4 what a few people did, and figure out that it was
5 more stringent, but they accept what the Board
6 announced at the beginning and went with that.

7 So I'm going to call a recess of about
8 ten minutes, we're going to come back and have
9 whatever further discussion you want, and then we
10 will vote on this point. So it is now 10:35.
11 Let's come back at -- oh, excuse me -- 12:35.
12 Let's come back at twelve -- Well, I just blew
13 past lunch. Let's break for lunch for 45 minutes
14 and --

15 BOARD MEMBER ALTEMUS: Mr. Chair, it's
16 10:35. I'm not sure what time zone you're in, but
17 it's 10:35.

18 CHAIR RUFFATTO: Thank you. I'm in
19 eastern time zone, so I'm having trouble here
20 making the calculation. All right. We're going
21 to come back at 10:45.

22 (Recess taken)

23 CHAIR RUFFATTO: Sandy, if you would
24 call roll, I would appreciate it.

25 MS. SCHERER: Chairman Ruffatto.

1 CHAIR RUFFATTO: Here.

2 MS. SCHERER: Board Member Lehnherr.

3 BOARD MEMBER LEHNHERR: Here.

4 MS. SCHERER: Board Member Simpson.

5 BOARD MEMBER SIMPSON: Here.

6 MS. SCHERER: Vice Chair Aguirre.

7 (No response)

8 MS. SCHERER: Board Member Reiten.

9 BOARD MEMBER REITEN: Here.

10 MS. SCHERER: Board Member Smith.

11 (No response)

12 MS. SCHERER: Board Member Smith.

13 (No response)

14 MS. SCHERER: Board Member Altemus.

15 BOARD MEMBER ALTEMUS: Here.

16 CHAIR RUFFATTO: Let's wait just a
17 moment to see if Board Member Smith is going to
18 come back.

19 (Pause)

20 CHAIR RUFFATTO: Joe, are you there, Joe
21 Smith?

22 BOARD MEMBER SMITH: Yes, I'm back.

23 CHAIR RUFFATTO: We have a quorum of
24 six.

25 Board Member Altemus has made a motion

1 that we add some language to state that rulemaking
2 is required. Further discussion.

3 BOARD MEMBER SMITH: I guess I'll just
4 state. It seems like the decision on this just
5 comes down to interpretation of Paragraph 4 in the
6 MCA 75-5-203 on basically what that reasonable
7 period of time not to exceed eight months, like
8 what that looks like. Is that correct? I mean it
9 seems like we're just basically interpreting that
10 that is or will require new rulemaking, in our
11 opinion.

12 CHAIR RUFFATTO: No. I think that's
13 close, Joe, but I think what the question is is
14 that when you read the statute as a whole, in
15 order to adopt a rule that is more stringent than
16 the federal guideline, you have to have a
17 rulemaking process that is initiated with the
18 statement that it's more stringent and with the
19 findings.

20 Otherwise -- the argument is -- that the
21 public is misled all through the rulemaking,
22 because the Board said that it wasn't more
23 stringent. And so the public was misled in the
24 rulemaking process, and it doesn't fix it just to
25 make the findings after the fact. That's the

1 point.

2 So it's not just Subpart (4), it's the
3 provisions of the statute that require the initial
4 notice to contain, the initial notice of the
5 rulemaking, to contain the statement that it is
6 more stringent, so that people, the public can
7 comment on that with that in mind. Does that make
8 sense?

9 BOARD MEMBER SMITH: I think so. And so
10 it doesn't necessarily change overall the approach
11 to adopting a rule more strict, it just changes
12 the wording that's necessary to get there.

13 CHAIR RUFFATTO: Yes. I mean there
14 clearly would have been time to do rulemaking had
15 DEQ gone that way, because they did rulemaking in
16 2020 in about two months, so they could have done
17 it again if they thought they could get it done
18 during that time. And they certainly think they
19 can. So they could have done it, they just chose
20 not to initiate it that way.

21 BOARD MEMBER SMITH: And so the whole
22 purpose of Subsection (4) of this MCA is what you
23 do once basically an interested party says that a
24 rule is more strict than a federal standard, and
25 so basically we're just stating how that should be

1 worded from here on out.

2 CHAIR RUFFATTO: Yes, we're taking a
3 position on that. Yes. Dr. Lehnherr.

4 BOARD MEMBER LEHNHERR: Thank you,
5 Chairman Ruffatto.

6 Of course I don't think the 0.8 is more
7 stringent, but we're sort of assuming what people
8 were thinking when it comes to their response to
9 the proposed rule and their attitudes.

10 Again, I don't think the rule was, the
11 standard that Montana set was more stringent, but
12 I don't think most people really cared if it was
13 more stringent or not. I think they were just
14 concerned about what was in the best interests of
15 Lake Kooocanusa, and what the science said.

16 That's of course just my perspective on
17 what people were thinking. Thank you.

18 CHAIR RUFFATTO: Thank you. Kirsten
19 Bowers, go ahead.

20 MS. BOWERS: Thank you, Chair Ruffatto,
21 members of the Board.

22 I just want to point out that in your
23 rulemaking record at Page 1330, the initial --
24 it's the initial notice of rulemaking and notice
25 of the hearing that was provided to the public,

1 and it does say, "The proposed Lake Koochanusa
2 water column standard is no more stringent than
3 the recommended EPA 304(a) criteria."

4 And so that was available to the public,
5 and the public commented on the rule and commented
6 on that stringency finding.

7 CHAIR RUFFATTO: Thank you. Well, I
8 have made my decision. I'm going to support
9 Julia's motion, and for the reasons I've stated,
10 and the main reason is because I think the law
11 says that if you -- that you need to follow the
12 statute, and in this case the intent of the
13 statute was to make it crystal clear to the public
14 before you start a rulemaking that is more
15 stringent than the federal standard, because the
16 Legislature was trying to avoid unnecessary rules
17 which were unnecessarily stringent.

18 So I believe -- I mean of course I do
19 not know what the public had in their mind, but I
20 know what they would have had in their mind if
21 they relied upon the Board's statement. They
22 would have had, "Oh, this is no more stringent."
23 So I'm going to support Julia's motion.

24 Any more discussion?

25 (No response)

1 CHAIR RUFFATTO: Any more discussion?

2 (No response)

3 CHAIR RUFFATTO: I'm going to take a
4 vote, but I'm going to state the motion. A motion
5 has been made and seconded to add a sentence to
6 the order portion of the proposed decision
7 document which reads: "Because the Board's
8 rulemaking failed to comply with MCA Section
9 75-5-203, in order to have a valid and enforceable
10 lake water column standard, new rulemaking must be
11 initiated."

12 All in favor of the motion. And we'll
13 take a roll call, yes or no.

14 MS. SCHERER: Chairman Ruffatto.

15 CHAIR RUFFATTO: Yes.

16 MS. SCHERER: Board Member Lehnherr.

17 BOARD MEMBER LEHNHERR: No.

18 MS. SCHERER: Board Member Simpson.

19 BOARD MEMBER SIMPSON: Yes.

20 MS. SCHERER: Board Member Reiten.

21 BOARD MEMBER REITEN: No.

22 MS. SCHERER: Board Member Smith.

23 BOARD MEMBER SMITH: Yes.

24 MS. SCHERER: Board Member Altemus.

25 BOARD MEMBER ALTEMUS: Yes.

1 CHAIR RUFFATTO: Motion carries four to
2 two.

3 Since we've worked our way through the
4 document, I'm going to make a motion now that the
5 proposed decision document as amended by the two
6 motions that have passed be adopted as the final
7 decision document of the Board. Do I have a
8 second?

9 BOARD MEMBER SIMPSON: Second.

10 CHAIR RUFFATTO: Discussion.

11 BOARD MEMBER SIMPSON: Mr. Chairman,
12 I've got some comments that I guess don't
13 specifically address the language of the document,
14 but I think really need to be stated, and this is
15 probably the time to do it.

16 Looking back on the history of this,
17 there's obviously been a lot of work gone into it.
18 And just to look back at the origins, the
19 rulemaking was, as I understand it, originated by
20 the Department to address transboundary pollution,
21 i.e., selenium, originating in the Elk River, and
22 emanating -- our understanding -- from the Elk
23 River mining properties.

24 There's a lot of information presented
25 to the Board. I confess that I have not read

1 every page of it. I've concentrated on the
2 presentation that was made to the Board to
3 summarize the process that they went through, and
4 the reasoning behind the change from -- the change
5 from the federal guideline to the standard of 0.8
6 micrograms per liter.

7 It appears from -- and also the EPA
8 review, which is pretty -- of the standard of the
9 rulemaking which is pretty detailed.

10 It appears from some of the information
11 contained in this document citing testimony before
12 the Board, the EPA review, and the summary that
13 was provided to the Board, that the standard was
14 adopted apparently -- I will not say definitely --
15 but it appears that the standard was adopted to
16 create an impairment situation for Lake Koochanusa
17 with respect to selenium.

18 And then in turn -- and it's supported,
19 I think at least obliquely by communications
20 stated in this document with authorities in Canada
21 -- that it was intended to put pressure on the
22 authorities, regulatory authorities in British
23 Columbia to in turn bring pressure on Teck to
24 reduce their selenium discharges.

25 The potential for selenium pollution in

1 Lake Koochanusa as a result of inflows from the Elk
2 River certainly is real. I will not argue against
3 that.

4 What I don't see is a definitive
5 analysis of identification of an existing problem
6 in Lake Koochanusa based on fish tissue analysis.
7 There is some fish tissue analysis, but from what
8 I can gather, it doesn't follow the EPA
9 procedures.

10 And so in the written findings, I guess
11 I would encourage the Department to address the
12 question of whether or not there is in fact an
13 existing problem with bioaccumulation of selenium
14 in the fish populations in Lake Koochanusa, by
15 essentially revisiting the fish tissue analysis
16 and providing some background for it.

17 As far as the strategy of creating an
18 impairment, as I said, I can certainly understand
19 the merit, and the necessity, and the
20 responsibility of the Department to address
21 transboundary pollution the best way they can.
22 Maybe that is or maybe it is not the best way to
23 address it, but it seems to me to be at least
24 somewhat intellectually dishonest, and so that is
25 where I come down on this whole thing.

1 CHAIR RUFFATTO: Thank you, Dave. As
2 long as we're making little speeches here, I am
3 confident that the people at DEQ, and all the
4 people that were involved, thought they were doing
5 what was best, but I'm not confident that it -- I
6 mean I'm confident that it didn't comply with the
7 law.

8 But when I said I see legal questions --
9 here's the difference between you and I, Dave.
10 You're a scientist, so you saw some scientific
11 problems. I'm a lawyer, so I saw law problems.

12 Is adopting a standard that is, by the
13 statements of DEQ never going to be applied in
14 Montana, a proper use of the Water Quality Act?
15 Is that what was intended by the Water Quality Act
16 to affect things in Canada? Is that a purpose?
17 I'm just stating that as a question in my mind.
18 Is that a legitimate purpose of our Water Quality
19 Act?

20 And when they're considering that, it
21 seems to me that you have to consider what are the
22 unintended consequences of using a tool that, to
23 me, was never designed to put pressure on an
24 international border, to accomplish an
25 international border issue, to address an

1 international border problem. But those are
2 issues that will be addressed down the road.

3 Any more discussion?

4 BOARD MEMBER REITEN: I guess I just
5 want to talk a little bit about the science.

6 One of the things that really struck me
7 was -- I didn't really get to it until I read this
8 new March 2022 DEQ draft report on water column
9 selenium.

10 In there, the history of increasing
11 selenium bioaccumulates, and some of the serious
12 hazards that are associated with it, and so that's
13 kind of why I've been against going ahead with
14 some of this anyway. That's my thoughts on it
15 anyway. So that was one of the things that struck
16 me.

17 CHAIR RUFFATTO: I appreciate that, Jon,
18 and I don't question your motives or Dr.
19 Lehnherr's motives. I think they're valid and
20 fine motives, so it's a good debate. Yes, Doctor.

21 BOARD MEMBER LEHNHERR: I'll just throw
22 a two cents worth in, and that's that I don't
23 think we addressed whether or not Teck Coal is
24 affected by the rule at all, and I think they've
25 been all over the map on that, depending on what

1 is most expedient for them.

2 But we've been talking about how this is
3 a Canadian company, so what effect will any
4 rulemaking have. So I don't think we've
5 established that Teck is even affected by the
6 rule, and I think that's a significant oversight.
7 Thanks.

8 CHAIR RUFFATTO: You bet. Thank you.
9 Any more discussion?

10 (No response)

11 CHAIR RUFFATTO: A motion has been made
12 and seconded. I'm going to call the question if
13 there's no more discussion. A motion has been
14 made and seconded that we adopt the proposed
15 decision document with the two amendments that we
16 have adopted as the final decision document of the
17 Board. All in favor say aye, and we'll do a roll
18 call again, please.

19 MS. SCHERER: Chairman Ruffatto.

20 CHAIR RUFFATTO: Yes.

21 MS. SCHERER: Board Member Lehnherr.

22 BOARD MEMBER LEHNHERR: No.

23 MS. SCHERER: Board Member Simpson.

24 BOARD MEMBER SIMPSON: Yes.

25 MS. SCHERER: Board Member Reiten.

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BOARD MEMBER REITEN: No.

MS. SCHERER: Board Member Smith.

BOARD MEMBER SMITH: Yes.

MS. SCHERER: Board Member Altemus.

BOARD MEMBER ALTEMUS: Yes.

CHAIR RUFFATTO: Motion passes four to
two.

At this point in our agenda, we will
introduce the next action item.

(The proceedings were concluded
at 11:07 a.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 - 51 - 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 20th day of
April, 2022.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2024.

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