

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 Koocanusa)

TRANSCRIPT OF PROCEEDINGS

Heard at the Montana Department
of Environmental Quality
Metcalf Building, Room 111
1520 East Sixth Avenue, Helena, MT
October 14, 2022, 9:15 a.m.

BEFORE CHAIRMAN STEVEN RUFFATTO (via Zoom),
VICE CHAIR STACY AGUIRRE,
BOARD MEMBERS DAVID SIMPSON,
JON REITEN (via Zoom), JOSEPH SMITH,
JULIA ALTEMUS (via zoom),
and DAVID LEHNHERR (via Zoom)

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC
lauriecrutcher@gmail.com

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY APPEARING ON BEHALF OF TECK COAL:

MS. VICKI MARQUIS, ESQ.
Attorney at Law
Holland & Hart
401 North 31st St., Suite 1500
Billings, MT 59101

APPEARING ON BEHALF OF LINCOLN COUNTY BOARD OF
COUNTY COMMISSIONERS:

MR. MURRY WARHANK, ESQ. (Via Zoom)
Attorney at Law
Jackson, Murdo and Grant, PC
203 North Ewing Street
Helena, MT 59601

ATTORNEY APPEARING ON BEHALF OF THE DEPARTMENT:

MS. KIRSTEN BOWERS, ESQ.
Special Assistant Attorney General
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620

1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 VICE CHAIR AGUIRRE: We'll move to the
5 action items, and the first matter is the
6 petitions of Teck Coal, Limited, and the Board of
7 County Commissioners of Lincoln County, Montana,
8 for review of ARM 17.30.632(7)(a) pursuant to
9 Montana Code Annotated Section 75-5-203,
10 stringency review of rule pertaining to selenium
11 standard for Lake Kooocanusa, BER 2021-04 and 08,
12 Water Quality, DEQ.

13 I'd like to move to the last paragraph
14 of this section and address that motion first. At
15 the last meeting, this motion was tabled -- a
16 motion was made by Board Member Altemus and
17 seconded by Chairman Ruffatto -- based on the fact
18 that there was not a quorum, so the motion was
19 tabled. So I'd like us to move that motion to a
20 vote at this meeting, and so I'm calling for a
21 motion to consider DEQ's motion to alter or amend
22 be made at this time.

23 I don't think we need a new motion.
24 That's correct, right? No new motion? The motion
25 has already been made, so we're calling for the

1 vote at this time.

2 BOARD MEMBER SIMPSON: Madam Chairman,
3 could we please repeat the motion.

4 VICE CHAIR AGUIRRE: Yes. We will have
5 to go back in the record to find the motion.

6 CHAIR RUFFATTO: Stacy, I don't think
7 Dave is needing it word for word. Can't we -- The
8 motion was to deny DEQ's motion to alter or amend.
9 Is that adequate from your view, Board Member
10 Simpson?

11 BOARD MEMBER SIMPSON: Yes, it is. I
12 just wanted to repeat the motion, even though
13 we've circulated the minutes for the benefit of
14 those who weren't present at the last meeting.
15 That's the reason for the request, just to refresh
16 our memories as to what it was about, and I
17 remember, having been there.

18 CHAIR RUFFATTO: So the motion was to
19 deny DEQ's request to alter or amend.

20 BOARD MEMBER SIMPSON: I'll make that
21 motion.

22 BOARD MEMBER SMITH: So I was not
23 present at the last meeting. I've read through
24 the minutes. I'm still a little confused about
25 what all was discussed, and it looks like

1 basically the amendment would be just the one
2 paragraph, right, of the filing from I think April
3 or May.

4 But I'm not sure how to get at it, but
5 I'm wondering, I guess, what the purpose of
6 deleting the one paragraph, what will be achieved
7 by that. And I don't want to reinvent the wheel
8 for everybody who was in the meeting, but I'm
9 still just a little fuzzy on the intent.

10 MS. SCHERER: Dr. Lehnherr.

11 BOARD MEMBER LEHNHERR: Thank you. I
12 think it's appropriate to have a very clear
13 motion, have it be very clear what the motion is
14 regarding, and then have some discussion, since
15 there are new people here, and it's been a couple
16 of months since the last meeting. Thank you.

17 VICE CHAIR AGUIRRE: I think it's
18 appropriate then to have Kirsten Bowers with DEQ
19 to read that and discuss it.

20 MS. SCHERER: Chairman Ruffatto has his
21 hand up as well.

22 VICE CHAIR AGUIRRE: Chairman Ruffatto.

23 CHAIR RUFFATTO: I have no problem
24 having some discussion, but everybody had the
25 opportunity to read the transcript, and read all

1 the briefs, so I don't think it's appropriate to
2 take up everybody's time to any great extent here,
3 because there was ample opportunity to read
4 through that stuff.

5 But if we want to have discussion, let's
6 go ahead. So Vice Chair Aguirre, I suppose we
7 could start with DEQ giving their position, but I
8 think we're duplicating effort that isn't
9 necessary.

10 BOARD MEMBER SIMPSON: Madam Chairman,
11 I'd ask Chairman Ruffatto to -- his comment. If
12 I'm off base here. But as I recall, the issue has
13 to do with the statement in the order ordering the
14 Department to start a new rulemaking process on
15 the selenium rule.

16 And the basis for that was that because
17 the stringency statute was not issued, the rule
18 was issued improvidently, and there is a -- not
19 being an attorney, I don't recall the legal basis
20 for that -- but is a standard, as I understood it,
21 it was a standard requirement in the law that if a
22 rule is issued improvidently, that is, if it does
23 not follow the rules of procedure, then rulemaking
24 must start all over again. Is that essentially
25 correct, Steve?

1 CHAIR RUFFATTO: Yes, you stated it ⁷
2 better than I could.

3 BOARD MEMBER SIMPSON: Sorry. I
4 couldn't hear you.

5 VICE CHAIR AGUIRRE: We couldn't hear
6 you, Chairman Ruffatto.

7 CHAIR RUFFATTO: Yes. That is stating
8 it very well. Can you hear me?

9 BOARD MEMBER SIMPSON: Yes. So it's
10 even though the Department went -- As I understand
11 it, even though the Department went through the
12 rulemaking process. And initially my thought was
13 that since that process had been already
14 undertaken and completed, that it didn't need to
15 be repeated. I was persuaded to change my mind
16 based on the legal standard. And so that's why
17 I'm supporting the motion.

18 BOARD MEMBER SMITH: I think for me, my
19 question, if I were here during the last meeting,
20 I think more evolves around -- I can't find it
21 anywhere in the manuscripts, but I guess --

22 I know one of the options was for DEQ,
23 was to go back into the public comment period,
24 which is one of the potential remedies, and I was
25 just wondering if that was maybe the intent of

1 striking the one paragraph.

2 VICE CHAIR AGUIRRE: Board Member
3 Lehnherr.

4 BOARD MEMBER LEHNHERR: Thank you. Just
5 a couple points. I certainly disagree with the
6 notion that the rulemaking process was done
7 incorrectly by the previous Board.

8 But I'm also wondering if, after this
9 vote, we will then deal with the issue of whether
10 or not we will submit our opinion to the EPA.
11 Thank you.

12 VICE CHAIR AGUIRRE: Yes. That will be
13 the second matter that we deal with on this item.

14 BOARD MEMBER LEHNHERR: Thank you.

15 MS. BOWERS: Would you like me to
16 proceed? Thank you, Vice Chair Aguirre, members
17 of the Board, Chair Ruffatto. Out of respect for
18 the Board's time, I won't reargue my motion, but
19 just state the reason for the motion.

20 And in its pending motion to alter or
21 amend the Board's final agency action and order,
22 DEQ requests that the Board strike the portion of
23 the order that provides, "Because the Board's
24 rulemaking failed to comply with Section 75-5-203,
25 Montana Code Annotated, in order to have a valid

1 and enforceable lake water column standard, new
2 rulemaking must be initiated." This is in
3 paragraph Roman Numeral IV sub (6) of the Board's
4 order.

5 And the reason for the motion is because
6 the stringency determination by the Board answered
7 a narrow question, and that is whether the Lake
8 Kooocanusa water column standard is more stringent
9 than Federal; and upon that determination, DEQ
10 implemented the remedy set forth in the stringency
11 statute, which provides two options:

12 One is to comply with the section by
13 revising the rule to conform to the Federal
14 regulations or guidelines, and the other is to
15 make the written findings. And DEQ did make the
16 written findings which were subject to a public
17 notice hearing comment period, but that remedy
18 does not provide for initiation of new rulemaking.
19 That was the reason for the DEQ's motion.

20 VICE CHAIR AGUIRRE: Thank you for that
21 re-explanation.

22 MS. BOWERS: Thank you.

23 VICE CHAIR AGUIRRE: Is there any more
24 discussion? Board Member Altemus.

25 BOARD MEMBER ALTEMUS: Thank you. Since

1 the Department was able to state their case, is it
2 possible to hear from Ms. Marquis to refresh the
3 memory of their position as well, please.

4 VICE CHAIR AGUIRRE: Yes.

5 BOARD MEMBER ALTEMUS: I believe she's
6 in the room.

7 VICE CHAIR AGUIRRE: Yes, Ms. Marquis.

8 MS. MARQUIS: Hi. Good morning. I
9 would first like to acknowledge Murry Warhank
10 represents the Lincoln County Commissioners. I'm
11 Vicki Marquis with Crowley Fleck. I represent
12 Teck.

13 I would like to defer to Murry Warhank.
14 I see he's participating virtually. He represents
15 the Lincoln County Commissioners. So if it's okay
16 with the Board, I'd like to give him a moment or
17 two to weigh in, because he had a portion of our
18 argument at the last meeting as well. Is that
19 okay?

20 VICE CHAIR AGUIRRE: Yes.

21 MS. SCHERER: He's being promoted to
22 panelist, so he should be --

23 VICE CHAIR AGUIRRE: He should be able
24 to speak.

25 MS. SCHERER: There he is. Okay.

1 MR. WARHANK: I'm sorry. I cut out a
2 moment as I was promoted to panelist. Can
3 everybody hear me okay?

4 VICE CHAIR AGUIRRE: Yes.

5 MR. WARHANK: Thank you for the
6 opportunity to speak on behalf of my client,
7 Lincoln County.

8 Just briefly, the portion of the
9 argument that I want to cover this morning is with
10 regards to the legal standard. The motion is
11 based on Rule 59, and Rule 59 is not appropriate
12 in this case.

13 Rule 59 from the Montana Supreme Court
14 is not intended to be a situation where parties
15 re-argue what has already been presented to the
16 Court, or in this case to the Board.

17 Here there's no question that this was
18 presented to the Board significantly throughout
19 the process. It was in DEQ's comments on January
20 13th; and it was discussed at length in the
21 Board's hearing on the 25th of February at Pages
22 57 through 75; and at the April 8th hearing at
23 Pages 26 through 45.

24 So it's our position that this just
25 isn't an appropriate motion. The Board has made

1 its decision on this matter, and it should not be
2 subject to continually revising every opinion it
3 makes. If there needs to be revision, that should
4 happen through the judicial process.

5 So that's the position we have, and I
6 know Ms. Marquis has further argument on the
7 substantive issues.

8 VICE CHAIR AGUIRRE: Thank you.

9 MS. MARQUIS: Thank you. I won't go
10 back through the argument that we raised last
11 month, but I do want to point out a couple things
12 that have come to light since then.

13 And I have a couple hand-outs. I
14 apologize for those participating virtually.
15 These are documents that have been in front of the
16 Board before. The first one is House Bill No. 521
17 from 1995, and this is the House Bill where the
18 Legislature passed and enacted the stringency
19 statute that is the subject of this issue. So I
20 have a copy I'd like to pass out, if that's okay,
21 to the Board members.

22 VICE CHAIR AGUIRRE: I believe that's,
23 yes, acceptable.

24 MS. MARQUIS: (Provides document)

25 VICE CHAIR AGUIRRE: We need to figure

1 out how to get an electronic copy distributed.

2 BOARD MEMBER LEHNHERR: A point of
3 order.

4 VICE CHAIR AGUIRRE: Yes, Board Member
5 Lehnherr.

6 BOARD MEMBER LEHNHERR: I have a
7 question about the propriety of information being
8 provided to some Board members and not others.

9 MS. MARQUIS: Certainly. This is House
10 Bill No. 521, and I believe Chairman Ruffatto
11 cited it during the last Board meeting. I can
12 forward that by email. If you'd like me to take a
13 few minutes and do that now, I can do that.

14 VICE CHAIR AGUIRRE: Probably need to.
15 Thank you.

16 MS. MARQUIS: Should I send it to Sandy?

17 VICE CHAIR AGUIRRE: I believe that
18 would be Sandy and Chairman Ruffatto probably,
19 correct?

20 MS. SCHERER: Yes.

21 CHAIRMAN RUFFATTO: Pardon me?

22 VICE CHAIR AGUIRRE: Is that correct,
23 that if the email is getting forwarded to those
24 Board members that are on the call virtually, that
25 it should go to yourself and Sandy?

1 CHAIR RUFFATTO: No, it should go to
2 myself, and Julia, and Jon, and David.

3 But I'm going to ask Vice Chair Aguirre
4 that we terminate this discussion. We don't want
5 to open this up to discussion again. We beat it
6 to death two months ago. All of this is in the
7 record. I would say let's cut the discussion off
8 here because we're just rehashing old stuff that's
9 in the record, and everybody had an opportunity to
10 review that.

11 I emailed all the members of the Board
12 two or three weeks ago to please review all of
13 that, and so everybody had an opportunity. So I
14 move that we terminate this repeat discussion and
15 argument, and if Board members have specific
16 questions, let's hear those specific questions.

17 So I move to stop the oral arguments,
18 stop the arguments, and only hear specific
19 questions from Board members.

20 VICE CHAIR AGUIRRE: Is there a second
21 to that motion?

22 BOARD MEMBER ALTEMUS: This is Julia. I
23 second.

24 VICE CHAIR AGUIRRE: Okay. All in favor
25 of that motion, say aye.

1 (Response)

2 VICE CHAIR AGUIRRE: All opposed.

3 (No response)

4 VICE CHAIR AGUIRRE: Okay. Motion
5 carries. So based on that, are there specific
6 questions that the Board members have on this
7 matter prior to a vote on the motion that is on
8 the table to deny DEQ's motion to alter or amend?

9 BOARD MEMBER SIMPSON: Madam Chairman, I
10 don't believe the motion was seconded.

11 VICE CHAIR AGUIRRE: Which motion?

12 BOARD MEMBER SIMPSON: My motion to deny
13 DEQ's petition to change the Board's order.

14 VICE CHAIR AGUIRRE: Was it not seconded
15 at the last meeting?

16 BOARD MEMBER SIMPSON: It was not
17 seconded at this meeting. So I don't know that
18 the motion needs to be remade, but I'm just
19 pointing out that you had asked for a motion on
20 the issue, which was to deny the Department's
21 petition for the Board to change its order with
22 respect to rulemaking.

23 That motion was made at the last
24 meeting. I repeated it here. I don't know that
25 it needs to be repeated, but that's the substance

1 of the motion.

2 VICE CHAIR AGUIRRE: I think I misspoke
3 in my working through managing the meeting that
4 the motion was made to deny DEQ's motion to alter
5 or amend at the last meeting.

6 BOARD MEMBER SIMPSON: Correct.

7 VICE CHAIR AGUIRRE: And that meeting
8 was made -- or that motion that was made and
9 seconded at the last meeting. So I spoke
10 incorrectly by talking about the previous motion
11 that was already made and seconded and on the
12 table.

13 I should have gone directly to the
14 discussion, any questions by the Board, and so I
15 think I took that in a direction that it didn't
16 need to go to because the motion was already on
17 the table.

18 BOARD MEMBER SIMPSON: So the essence is
19 that my motion made earlier was unnecessary?

20 VICE CHAIR AGUIRRE: Correct.

21 BOARD MEMBER SIMPSON: Then I'll
22 withdraw it.

23 VICE CHAIR AGUIRRE: Thank you. So
24 we're at the place where if any of the Board
25 members have questions on the motion to deny DEQ's

1 motion to alter or amend, that's where we're at.
2 Are there any further questions by the Board
3 members?

4 (No response)

5 VICE CHAIR AGUIRRE: Hearing none, I'd
6 like to move the motion to a vote. All in favor
7 of the motion made to deny DEQ's motion to alter
8 or amend, say aye.

9 (Response)

10 VICE CHAIR AGUIRRE: All opposed.

11 (Response)

12 VICE CHAIR AGUIRRE: Roll call.

13 MS. SCHERER: Chairman Ruffatto.

14 CHAIR RUFFATTO: Aye.

15 MS. SCHERER: Vice Chair Aguirre.

16 VICE CHAIR AGUIRRE: Aye.

17 MS. SCHERER: Board Member Altemus.

18 BOARD MEMBER ALTEMUS: Aye.

19 MS. SCHERER: Board Member Lehnherr.

20 BOARD MEMBER LEHNHERR: Nay.

21 MS. SCHERER: Board Member Reiten.

22 BOARD MEMBER REITEN: Nay.

23 MS. SCHERER: Board Member Simpson.

24 BOARD MEMBER SIMPSON: Aye.

25 MS. SCHERER: Board Member Smith.

1 BOARD MEMBER SMITH: Aye.

2 VICE CHAIR AGUIRRE: Motion carried.

3 Moving to the Joint Notice and Motion to Submit
4 Final Agency Action to EPA that was filed by
5 Lincoln County and Teck Coal on July 20th, 2022.

6 DEQ filed a response to the joint notice
7 and motion on August 3rd, Petitioners' reply in
8 support of the motion was filed on August 18th,
9 and this motion is ready for a Board decision.

10 At this point we're going to move to
11 oral argument, and we're going to call for oral
12 argument, and we're going to give Lincoln County
13 and Teck Coal ten minutes. You can divide that up
14 however you choose. And then we'll move to ten
15 minutes for DEQ oral argument. At that point
16 we'll open it up to the Board for questions and
17 then move forward. So we're going to start with
18 oral argument from Lincoln County and Teck Coal.

19 MR. WARHANK: Lincoln County will defer
20 its time to Ms. Marquis.

21 VICE CHAIR AGUIRRE: Ms. Marquis.

22 MS. MARQUIS: Thank you. I'll take
23 approximately three to four minutes and save the
24 rest for rebuttal.

25 We filed this Notice and Motion to

1 Submit the Board's Agency Action to EPA for a
2 couple of reasons. I think the first most obvious
3 reason is to ensure that there's clear and
4 consistent communication between the State of
5 Montana and EPA Region 8 on Montana's water
6 quality standards.

7 We see that in the history of this
8 standard itself. We know that it was submitted to
9 EPA for approval immediately after it was
10 promulgated in December of 2020. Exhibit A to our
11 filing is a copy of EPA's approval letter, which
12 was submitted to this Board on February 25th,
13 2021, and that letter was signed by Judy Bloom,
14 the Manager of the Clean Water branch at EPA
15 Region 8.

16 We also know that EPA's approval was
17 premised at least in part on their reliance on a
18 legal certification that came from Montana
19 certifying that the new standard had been
20 promulgated in accordance with all State laws.

21 We know now that was in error. This
22 Board order that was signed in April that you just
23 upheld establishes that there is a legal error in
24 the rulemaking, so the rulemaking was not
25 conducted in accordance with all State laws. The

1 stringency statute is an important part of the
2 Montana Water Quality Act, and that law was
3 violated during that rulemaking.

4 So we also know that EPA cannot approve
5 a water quality standard that has been promulgated
6 in violation of State laws. Because EPA approved
7 the standard based on a certification from the
8 State, that certification is now erroneous.

9 EPA should formally be informed of that
10 legal error, and given the opportunity to respond
11 and address their approval by either revoking it
12 or taking some other action, but there needs to be
13 that next step to clarify the communication, and
14 allow EPA to take whatever action it wants to
15 take.

16 The second reason is, as I've already
17 touched on, the legal error that occurred in the
18 Board's rulemaking carries over to the EPA's
19 decision. So in order to clean all of this up,
20 and get back to a legally defensible standard, we
21 need to go through all of the same steps again.

22 The steps that the Board followed and
23 DEQ followed in the beginning were rulemaking,
24 Board decision, and then it was submitted to EPA.
25 EPA then submitted a document back to the Board.

1 So we need to do that process again, submit the
2 Board's decision to EPA, and allow EPA to make a
3 decision on that.

4 And that's all I have unless Mr. Warhank
5 wants to add more, or if the Board has questions,
6 and then I'll save the remainder of my time for
7 rebuttal. Thank you.

8 VICE CHAIR AGUIRRE: Thank you, Ms.
9 Marquis. DEQ.

10 MS. BOWERS: Thank you, Vice Chair
11 Aguirre, members of the Board. For the record, my
12 name is Kirsten Bowers. I'm an attorney with DEQ,
13 responding to Teck's motion, Teck and Lincoln
14 County's motion to submit the Board's final agency
15 action and order to EPA.

16 Teck and Lincoln County argue the Board
17 should submit the final agency action and order to
18 EPA to notify EPA of legal errors in the December
19 2020 submission of the Lake Kooconusa water column
20 standard, and request that EPA vacate its 2021
21 approval of the lake numeric standard.

22 Teck and Lincoln County further allege
23 that EPA's approval of the lake numeric standard
24 relied on the State of Montana's 2020
25 certification that the Board duly adopted ARM

1 17.30.632 under authority of the Montana Water
2 Quality Act, the Montana Administrative Procedure
3 Act, and all relevant laws and regulations, and
4 they cite to the DEQ Chief Legal Counsel's
5 certification of that water quality standard to
6 EPA.

7 Teck argues that DEQ's 2020 legal
8 certification of the lake numeric standard was
9 erroneous, and EPA's approval of the lake numeric
10 standard was therefore erroneous, and the Board
11 should resubmit final agency action and order to
12 EPA, and request vacatur of its approval of the
13 Lake Koochanusa water column standard for selenium
14 for Federal Clean Water Act purposes.

15 When the Board accepted the Teck and
16 Lincoln County petitions, it recognized that the
17 petitions presented a narrow issue for the Board's
18 consideration: Whether the Board complied with
19 the stringency statute when it adopted the Lake
20 Koochanusa water column standard.

21 The Board considered the petitions in a
22 non-formal administrative process that was neither
23 a contested case nor a rulemaking. The Board's
24 decision found the lake numeric standard more
25 stringent than comparable Federal regulations or

1 guidelines, and that required DEQ to implement the
2 statutory remedy.

3 The Board's final decision is not a
4 water quality standard that EPA has the authority
5 or the duty to approve or disapprove, because the
6 Board order finding the Lake Kooconusa numeric
7 standard more stringent than comparable Federal
8 regulations or guidelines does not address
9 designated uses, water quality criteria, or
10 nondegradation, and it does not express the
11 desired condition of Lake Kooconusa.

12 The Board order is therefore not a new
13 water quality standard or a revised water quality
14 standard that EPA has the authority and duty to
15 approve or disapprove under the Clean Water Act.

16 DEQ acknowledged the Board's
17 determination that the Lake Kooconusa water column
18 standard was more stringent than comparable
19 Federal regulations or guidelines, and implemented
20 the statutory remedy available to a successful
21 petitioner by making the findings under Section
22 75-5-203 Sub (2) and (3).

23 DEQ did recognize the Board's authority
24 to make this determination, and DEQ's
25 interpretation of the statute is in accordance

1 with the clear stringency provisions of the
2 Montana Water Quality Act, which grants DEQ the
3 authority to implement the remedy.

4 This remedy may involve either
5 rulemaking to adopt a rule that is consistent with
6 the comparable Federal regulation or guidance, or
7 to make the stringency findings necessary to
8 support the more stringent standard, and DEQ chose
9 to make the findings in response to the Board's
10 determination that the Lake Koocanusa water column
11 standard is more stringent.

12 DEQ reviews its water quality standards
13 every three years, and a review of the Lake
14 Koocanusa water column standard will be completed
15 by the end of 2023.

16 A revised standard is not a guaranteed
17 outcome of this review process, but Teck, and
18 Lincoln County, and all stakeholders will have the
19 opportunity to provide new or updated data, and
20 DEQ can address any questions, concerns, about its
21 model at that time.

22 And if there are revisions to the Lake
23 Koocanusa water column standard, they will occur
24 after rulemaking conducted in accordance with
25 MAPA, the Montana Water Quality Act, and they will

1 be based on sound science.

2 DEQ disagrees there is an outstanding
3 legal error related to the adoption of the Lake
4 Kooconusa water column standard. In response to
5 the Board's stringency determination, DEQ
6 implemented the remedy by making the findings to
7 support the Lake Kooconusa selenium standard, and
8 this is one of the statutory remedies to cure a
9 standard that the Board finds more stringent than
10 Federal, but these statutory remedies do not
11 include invalidation of a rule that's consistent
12 with the intent and purpose of the Water Quality
13 Act and the Montana Administrative Procedures Act.

14 In its briefing and motion, Teck cites
15 the Clark Fork Coalition v. Tubbs case for the
16 proposition that when a Court invalidates a rule,
17 the effect is return to the former rule. However,
18 this ignores the fact that the stringency statute
19 provides a remedy for a successful petitioner, and
20 that remedy was implemented in this case.

21 The Clark Fork versus Tubbs case
22 involved the question of validity of an
23 administrative rule under MAPA. Under the
24 provision in Section 2-4-305 sub (6), Montana Code
25 Annotated, that provides a rule is not valid or

1 effective unless it is, "A," consistent and not in
2 conflict with the statute; and "B," reasonably
3 necessary to effectuate the purpose of the
4 statute.

5 Teck did not challenge the Lake
6 Kooconusa water column standard based on
7 consistency with the Water Quality Act, or whether
8 the agency's rulemaking authority under that act
9 was exceeded.

10 Teck does not dispute that the Lake
11 Kooconusa water column standard was adopted in
12 accordance with MAPA. Teck's challenge is based
13 solely on the stringency statute, and the remedy
14 provided to a successful petitioner under that
15 statute cannot be ignored.

16 That remedy provides an alternative when
17 the Board determines that the rule is more
18 stringent than comparable Federal regulations or
19 guidelines, and the Department shall comply with
20 this section by either revising the rule to
21 conform to the Federal regulations or guidelines,
22 or by making the written findings as provided in
23 Subsection (2) within a reasonable period of time
24 not to exceed eight months, which DEQ did.

25 Furthermore, the stringency statute

1 provides the Department may adopt a rule to
2 implement the Montana Water Quality Act that is
3 more stringent than comparable Federal regulations
4 or guidelines if they make the written findings in
5 Subsection (2), but both Subsection (4), the
6 remedy provision, and Subsection (2) require
7 written findings after public hearings, public
8 comment, and based on evidence in the record, but
9 neither require a new rulemaking process to make
10 those findings.

11 In the construction of a statute, a
12 decision maker must ascertain and declare what is
13 in terms or in substance contained in the statute,
14 not insert language that has been omitted or omit
15 language that is in the statute; and the Board
16 can't insert a rulemaking requirement into the
17 statute when it isn't there.

18 And additionally, when there are several
19 provisions in a statute, all must be read in a way
20 that they all are given effect. So the remedy
21 provisions in the stringency statute can't be read
22 out of the statute.

23 DEQ respected the Board's authority to
24 determine the petitioned rule is more stringent
25 than Federal, and made the findings after a public

1 comment period, and a hearing, and based on
2 evidence in the record.

3 One of the eight factors that EPA would
4 consider in reviewing and approving a state
5 standard is whether that standard was adopted in
6 accordance with applicable legal procedures for
7 revising or adopting standards.

8 The Lake Koochanusa water column standard
9 was adopted after rulemaking conducted in
10 accordance with MAPA, and under the authority of
11 Montana Water Quality Act.

12 The Board's stringency determination was
13 also made under the Montana Water Quality Act, and
14 triggered the remedy provisions in the stringency
15 statute. The Board's stringency decision did not
16 result in a new or revised water quality standard
17 that includes criteria to protect designated uses,
18 a scientific rationale, and consideration of the
19 State nondegradation policy.

20 The BER should not submit its final
21 agency action to EPA for review and approval
22 because under the Federal regulation 40 CFR 131.5,
23 EPA approves or disapproves state adopted water
24 quality standards, and the regulation does not
25 provide for EPA's vacatur of prior approval of

1 those state water quality standards. Thank you.

2 VICE CHAIR AGUIRRE: Thank you. Ms.
3 Marquis, rebuttal.

4 MR. WARHANK: Just briefly in rebuttal.
5 This is Murry Warhank. May I just say that to the
6 extent it's unclear, Lincoln County is part of
7 this motion as well and we join in it.

8 VICE CHAIR AGUIRRE: Yes.

9 MS. MARQUIS: Thank you. I think what
10 you just heard from DEQ is continued argument
11 about the remedy which was the focus of their
12 motion that this Board just denied.

13 The remedy is clear, and this Board's
14 order just established that new rulemaking is
15 required in order to have a valid site specific
16 water column standard for Lake Kooconusa. The
17 remedy argument is done. The Board's order is
18 well supported by legislative history, the statute
19 itself, and case law, both State and Federal case
20 law.

21 The issue before the Board right now is
22 what's the next step that is necessary to clear up
23 the legal error, and that next step is the same as
24 you did before. This Board before forwarded its
25 decision to EPA. You've now found legal error in

1 that decision, and that should also be forwarded
2 to EPA to take appropriate action, which we
3 believe is to vacate the standard at the Federal
4 level.

5 One thing DEQ said I want to clarify. I
6 believe they said that Teck does not dispute that
7 the rule was promulgated in accordance with the
8 Montana Administrative Procedures Act.

9 I want to clarify that there is a
10 dispute there. There is no current litigation
11 pending on that, but please don't assume that Teck
12 believes that the rest of the rulemaking was in
13 compliance with the statutes because that is not
14 the case.

15 Teck and Lincoln County had the right to
16 bring this petition before the Board, and there
17 were timelines in which we felt we needed to do
18 that, and give the Board a chance to clear up the
19 record. That's what we've done.

20 The legal effect of the Board's order is
21 that the rule is void, and it has been void since
22 its inception. That means that the governing
23 statewide standard for selenium, which is five
24 micrograms per liter, is what governs Lake
25 Kooocanusa at this time.

1 DEQ talks about doing a triennial
2 review, and that's fine. They are statutorily
3 required to do a triennial review of all their
4 water quality standards. So if DEQ chooses to
5 wait and review and go into new rulemaking after
6 the triennial review, they can do that, but in the
7 meantime the water column standard that governs
8 Lake Kooconusa is the statewide standard of five
9 micrograms per liter.

10 The final point I want to make is that
11 that statewide standard was acknowledged by EPA on
12 Page 5 of its EPA approval letter, so that
13 standard is on the books. It's been on the books
14 for a long time, and EPA has acknowledged that on
15 a statewide level.

16 I'm sorry. I do have one other point.
17 This is an important issue statewide. Selenium is
18 not just found in Lake Kooconusa, it is found
19 statewide.

20 It's also an important point for how our
21 water quality standards are administered and acted
22 upon by our State agencies. In our notice and
23 motion on Page 9 we provided a table, and on the
24 first column on the left-hand side we pulled out
25 specific citations from the Board's orders; and

1 the other column on right-hand side, we pulled out
2 quotations from DEQ, either in their filings, in
3 their public comments, or in their legislative
4 testimony.

5 And it is clear, and what you just heard
6 today again, is that DEQ intends to continue
7 forward as if the standard governing Lake
8 Koochanusa is 0.8 micrograms per liter. That
9 standard is invalid. It was promulgated in
10 violation of a State law.

11 And so to give effect to the Board's
12 order, we need that next step to occur. DEQ has
13 said in other forums that for Federal Clean Water
14 Act purposes, they're going to rely on that
15 standard. We need to send that standard, the
16 Board's decision on the standard, up to EPA to
17 have them vacate their approval of the standard,
18 and to give effect to the Board's order. Thank
19 you.

20 VICE CHAIR AGUIRRE: Thank you. I
21 believe it might be best to take a quick break at
22 this time, a ten minute break, and we'll come back
23 and move into the opening questions of the Board.
24 We're in recess for ten minutes.

25 (Recess taken)

1 VICE CHAIR AGUIRRE: I'm going to call
2 the meeting back to order. Sandy, will you do a
3 roll call.

4 MS. SCHERER: Chairman Ruffatto.

5 CHAIR RUFFATTO: Here.

6 MS. SCHERER: Vice Chair Aguirre.

7 VICE CHAIR AGUIRRE: Here.

8 MS. SCHERER: Board Member Altemus.

9 BOARD MEMBER ALTEMUS: Here.

10 MS. SCHERER: Board Member Lehnherr.

11 BOARD MEMBER LEHNHERR: Here.

12 MS. SCHERER: Board Member Reiten.

13 BOARD MEMBER REITEN: Here.

14 MS. SCHERER: Board Member Simpson.

15 BOARD MEMBER SIMPSON: Here.

16 MS. SCHERER: Board Member Smith.

17 BOARD MEMBER SMITH: Here.

18 MS. SCHERER: All present.

19 VICE CHAIR AGUIRRE: Thank you. Moving
20 from the oral argument, we'll open up to the Board
21 to ask any questions that you have on this matter.

22 (No response)

23 VICE CHAIR AGUIRRE: Do any Board
24 members have questions?

25 BOARD MEMBER SIMPSON: I have one

1 question for Ms. Bowers. As I was listening to
2 the oral arguments, I believe Ms. Marquis answered
3 a question that was on my mind, and that was what
4 was the standard up until -- the selenium standard
5 for Lake Kooconusa up until the time that the new
6 standard was adopted in the Department's view.

7 Do you concur with the view that before
8 that -- her point that before that standard was
9 adopted, the standard was, the statewide standard
10 was five? Is that correct? Is that the statement
11 that would have been in --

12 MS. BOWERS: Yes, Board Member Simpson,
13 members of the Board. That's correct. The
14 statewide standard is five, and that was the
15 standard also for Lake Kooconusa.

16 BOARD MEMBER SIMPSON: So that in the
17 case that the rule is now invalid because of
18 improper procedure, improper administrative
19 procedure, that's what the standard would defer
20 to, is the five, statewide standard of five,
21 because that standard has not changed? That's my
22 main question. That standard has not changed?

23 MS. BOWERS: That's correct. That
24 standard hasn't changed.

25 BOARD MEMBER SIMPSON: Thank you.

1 MS. SCHERER: Chairman Ruffatto has his
2 hand up.

3 VICE CHAIR AGUIRRE: I just want to ask
4 that it has a different basis, though, correct?
5 The five has a different basis of application? I
6 think that is good for everybody to know as well.

7 MS. BOWERS: Yes, Vice Chair Aguirre,
8 members of the Board. The statewide standard of
9 five is supported by different rationale and
10 different basis, and the site specific standard
11 for Lake Koochanusa and the Kootenai River Basin
12 was based on site specific scientific rationale.

13 VICE CHAIR AGUIRRE: Thank you. Chair
14 Ruffatto.

15 CHAIR RUFFATTO: My question is -- and
16 I'd like both lawyers to answer this question --
17 but if the Board is correct, and the rulemaking
18 was invalid, and therefore the rule was invalid
19 from the start, the first question is: Would you
20 agree, assuming that, that then the rule is
21 invalid for Montana purposes and Federal purposes?
22 Would you agree with that?

23 MS. MARQUIS: Certainly. I can address
24 that question first. Make sure I understand the
25 question, as I heard it was it was assuming --

1 VICE CHAIR AGUIRRE: Would you please
2 just reidentify yourself for the record.

3 MS. MARQUIS: Vicki Marquis representing
4 Teck Coal.

5 VICE CHAIR AGUIRRE: Thank you.

6 MS. MARQUIS: The rulemaking is invalid,
7 which makes the rule invalid from its inception,
8 is supported by case law. And then the question
9 was: Does that make the rule invalid for both
10 Montana and Federal purposes?

11 And Teck's position is that, yes, it
12 does. EPA has no authority to enforce a state
13 water quality standard that was enacted in
14 violation of state laws, and that is obvious from
15 the fact that one of their check points, when they
16 approve a state water quality standard, they have
17 to check to ensure that it was promulgated in
18 accordance with state law.

19 This one was not, so it cannot be in
20 effect for State purposes, and it cannot be used
21 for Federal Clean Water Act purposes, because EPA
22 cannot approve a standard that was enacted in
23 violation of a state law. Does that answer your
24 question, Chairman Ruffatto?

25 CHAIR RUFFATTO: Yes, it does. Thank

1 you.

2 VICE CHAIR AGUIRRE: DEQ.

3 MS. BOWERS: Vice Chair Aguirre, members
4 of the Board.

5 VICE CHAIR AGUIRRE: Would you please
6 reidentify yourself.

7 MS. BOWERS: I'm Kirsten Bowers, DEQ
8 attorney.

9 DEQ does not agree that the Board's
10 stringency determination repealed or invalidated
11 the rule, and the rule is still in effect for
12 Clean Water Act purposes until a new standard is
13 submitted to EPA for EPA's review and approval.

14 CHAIR RUFFATTO: That wasn't my
15 question. My question was: If the Board is
16 correct, is the rule invalid for state and Federal
17 law purposes?

18 MS. BOWERS: Chair Ruffatto, members of
19 the Board, if the Board is correct that it
20 invalidated the Montana water quality standard, it
21 doesn't change the fact that EPA reviewed and
22 approved that standard, and that standard would
23 still remain in effect for Clean Water Act
24 purposes until EPA reviews and approves a new
25 standard.

1 CHAIR RUFFATTO: Do you have authority
2 for that proposition?

3 MS. BOWERS: Well, I believe it's
4 consistent with the Clean Water Act Section 303,
5 and also with 40 CFR 131.5. And that Federal
6 regulation goes on to say that if EPA would
7 disapprove a state water quality standard, EPA
8 could promulgate their own standard for the state.

9 CHAIR RUFFATTO: But Ms. Bowers, this is
10 not a water quality standard if the Board is
11 right. It's a nullity. So how does that apply?

12 I know you disagree with the proposition
13 that the Board might be right, but how would that
14 point you just made even apply if there was no
15 standard, it was void from the beginning?

16 MS. BOWERS: It's my position that the
17 Board's voidance of the Lake Kooconusa water
18 column standard does not mean that EPA's review
19 and approval of that standard is also vacated.

20 CHAIR RUFFATTO: Thank you.

21 VICE CHAIR AGUIRRE: Board Member
22 Simpson, did you have a question?

23 BOARD MEMBER SIMPSON: I'm pondering.
24 The point I've been turning over in my mind is
25 that what we're debating here is really a fine

1 point of law as to what the standard is, given the
2 situation as it's unfolded.

3 The fact of the matter is that it really
4 doesn't change anything on the ground as far as
5 new permitting or any action that's going to have
6 an impact on selenium levels in Lake Kooocanusa
7 beyond what's already there.

8 So we're not talking about an
9 environmental risk here. What we're talking about
10 is a point of law as to the validity of the
11 standard, and then beyond that, the question of
12 proceeding with a new rulemaking.

13 And in my own mind -- and maybe I'm
14 getting ahead of the game here -- but having gone
15 through all of the process that we have, we have
16 the legal question, but there's also a technical
17 question. And I certainly have no quarrel with
18 all the information that was developed in the
19 process of coming up with a selenium standard for
20 Lake Kooocanusa.

21 However, I believe there are indications
22 in the record that that conclusion of 0.8 parts
23 per billion micrograms per liter is open to
24 question, and in my mind the reason it's open to
25 question is there are suggestions that when you

1 review the process, it appears that the -- and I'm
2 not sure this is the case -- but there's certainly
3 an appearance that the result was predetermined,
4 and that the model was backfilled to come up with
5 that standard.

6 I would strongly recommend that in
7 proceeding with the new rulemaking, that that
8 model be revisited, properly calibrated, and
9 subjected to sensitivity analysis, to give us more
10 confidence that it's giving us a reliable answer.

11 And I sound like a broken record. I've
12 repeated this numerous times during the course of
13 these discussions in various Board meetings, but
14 as of now that's my view of where we stand.

15 VICE CHAIR AGUIRRE: Board Member
16 Lehnherr.

17 BOARD MEMBER LEHNHERR: Thank you. I
18 had a little problem with the audio there. I
19 don't know if we're asking questions. I guess I
20 have a question, and then I have a comment. I can
21 save the comment if we come up with a motion and a
22 discussion period after a motion has been made.

23 But I think Board Member Simpson raises
24 an interesting point. Maybe I misunderstood what
25 he was saying when he said that the 0.8 standard

1 would have basically no practical effect.

2 And I think Teck Coal years ago or
3 months ago made that same point, saying whatever
4 the standard was wouldn't really affect them. But
5 I wanted to know if that's really the case, that
6 if this standard didn't have any practical
7 implications, then why is Teck Coal here, and why
8 have they challenged the standard.

9 That is coming up in my mind, it's come
10 up over and over. Part of it is because Teck Coal
11 is taking different approaches here, and it's been
12 a bit confusing, what approach they're going to
13 stick with. But maybe I'll save further comments
14 until we have a motion. Thank you.

15 VICE CHAIR AGUIRRE: Thank you.

16 BOARD MEMBER SIMPSON: Madam Chairman,
17 if I could respond briefly. My comment that the
18 0.8 has no impact on the ground is, in my view, in
19 the short term. It certainly has an impact in the
20 longer term. And I'm talking about the time frame
21 between now and the time the administrative
22 procedure is repeated to backfill the rulemaking.
23 Certainly in the long haul it's very material as
24 to what that standard is.

25 So I just want to make that point. I'm

1 not saying that it's inconsequential. All my
2 point is is that there is nothing pending in the
3 way of new activity, new permitting, new
4 proposals, that would have an impact on Lake
5 Kooocanusa.

6 The big issue has been Teck Coal, and
7 Elk River, and the content of selenium in the Elk
8 River flowing into the Kootenai. And of course,
9 we're aware of the efforts that Teck is making to
10 mitigate its discharges and so on and so forth.

11 But my point is there is no
12 environmental risk on proceeding with a new
13 rulemaking, and the time frame that will take.
14 That's all I'm saying.

15 VICE CHAIR AGUIRRE: Chairman Ruffatto.

16 CHAIR RUFFATTO: I want to ask both
17 parties a question, and again, I want to make an
18 assumption -- I know DEQ will not agree with the
19 assumption.

20 But if you accept the assumption that
21 the Board is correct, and DEQ goes forward with
22 establishing various additional standards, total
23 maximum daily loads and allocations -- which I
24 expect are fairly expensive processes -- and if
25 the Board is right, what will be the effect on

1 those further actions that are based on this rule?

2 MS. BOWERS: Chair Ruffatto, Vice Chair
3 Aguirre, members of the Board. I'm kind of just
4 guessing here.

5 If you're right, and the Lake Kooconusa
6 water column standard is vacated, DEQ is not
7 immediately going to go out and start doing an
8 assessment and setting a TMDL based on .8.

9 I think more likely -- and I'm guessing.
10 I can't speak for water quality planning folks --
11 but I think more likely the next step will be the
12 triennial review process to revisit the standard,
13 and look at new data, and answer questions about
14 the model that have been raised, and consult with
15 stakeholders.

16 And then after that process, which is
17 supposed to be completed at the end of 2023, after
18 that process, if it seems like the standard needs
19 to be revised, then we would initiate rulemaking
20 to do that.

21 CHAIR RUFFATTO: Thank you.

22 VICE CHAIR AGUIRRE: Thank you.

23 MS. MARQUIS: Chairman Ruffatto, members
24 of the Board. Vicki Marquis for Teck Coal. Thank
25 you for the question.

1 And the path forward that DEQ has laid
2 out in legislative testimony and in their written
3 documents differs a bit. You've heard them today
4 insist that the .8 standard remains, and that they
5 will revise it, if at all, during or after the
6 triennial review. The triennial review would
7 conclude in 2023. Typically rulemaking hasn't
8 occurred until the following year, so that would
9 put it into 2024.

10 But in the meantime, DEQ's public
11 statements have indicated that they intend to move
12 forward with a water quality assessment of Lake
13 Koochanusa, and Teck's view is that a water quality
14 assessment should proceed with the statewide water
15 column standard of five, as well as the fish
16 tissue standards which were not subject to these
17 petitions, and those are still on the books and
18 still govern.

19 So that water quality assessment should
20 be done in that matter. If it's done comparing
21 water quality data to the invalid 0.8 standard
22 that would result in an invalid water quality
23 assessment, which could potentially result in an
24 impairment determination, development of a total
25 maximum daily load, or TMDL, and waste load

1 allocation, those are steps that DEQ has said that
2 they would take using the .8 standard.

3 And those steps are time intensive and
4 expensive for the agency. I believe DEQ's
5 statement about the waste load allocation was then
6 that they would seek to have that waste load
7 allocation enforced against Canada.

8 All of that would be invalid if it was
9 premised on a water quality standard at .8, unless
10 new rulemaking occurs and establishes the standard
11 legally at that level. Does that answer your
12 question? Thank you.

13 VICE CHAIR AGUIRRE: Additional
14 questions from the Board prior to moving to a
15 motion?

16 (No response)

17 VICE CHAIR AGUIRRE: At this time I'd
18 like to call for a motion to grant or deny the
19 joint motion.

20 (No response)

21 VICE CHAIR AGUIRRE: Calling for a
22 motion to grant or deny the Joint Notice and
23 Motion to Submit the Final Agency Action to EPA
24 that was filed by Lincoln County and Teck Coal.
25 Board Member Altemus.

1 BOARD MEMBER ALTEMUS: I guess for
2 discussion purposes, I will move the motion
3 forward to accept their motion to send this
4 information to EPA for review.

5 VICE CHAIR AGUIRRE: So motion to grant
6 the Joint Notice and Motion?

7 BOARD MEMBER ALTEMUS: Yes. Thank you.

8 VICE CHAIR AGUIRRE: Is there a second?

9 BOARD MEMBER SIMPSON: Second.

10 VICE CHAIR AGUIRRE: Discussion on the
11 motion.

12 BOARD MEMBER SIMPSON: Madam Chairman.

13 VICE CHAIR AGUIRRE: Board Member
14 Lehnherr.

15 BOARD MEMBER LEHNHERR: Board Member
16 Simpson can go ahead.

17 VICE CHAIR AGUIRRE: Okay. Board Member
18 Simpson.

19 BOARD MEMBER SIMPSON: The Board has
20 made a determination that the standard of 0.8 is
21 not valid and hasn't been valid from the time it
22 was adopted. We realize there's not full
23 agreement within the Board on that.

24 But I guess my question is: What is the
25 down side of notifying EPA of that fact?

1 VICE CHAIR AGUIRRE: Are you asking that
2 question maybe --

3 BOARD MEMBER SIMPSON: I'm asking that
4 question for consideration by the Board, and
5 points of view or opinions.

6 I guess my view is that, again, it may
7 have some implications, as was discussed here
8 earlier, about water quality administration moving
9 forward having to do with TMDL's, and impairment
10 determinations, and things of that nature.

11 And it would essentially -- not knowing
12 the schedule, I would assume that those kinds of
13 activities would be deferred until there is a
14 valid standard in place, be it 0.8 or something
15 else.

16 But I guess that's how I see the impact
17 of notifying or not notifying EPA at this point.
18 This is not a -- Obviously we wouldn't be
19 struggling with it so much. It's not a straight
20 forward situation. But I think in order to start
21 with a clean slate, EPA needs to be notified of
22 such, which is why I seconded the motion. I don't
23 see a down side of that.

24 BOARD MEMBER SMITH: I agree with those
25 thoughts, Board Member Simpson. I don't see a

1 reason why we wouldn't. We decided this as a
2 Board, and I think -- not that it was an oversight
3 -- but by original decision, I think maybe it was
4 an assumption that that would make it to the EPA,
5 but I don't see why we wouldn't send that formally
6 to them.

7 VICE CHAIR AGUIRRE: Board Member
8 Lehnherr.

9 BOARD MEMBER LEHNHERR: Thanks for
10 letting me comment, Vice Chair Aguirre.

11 Even though this selenium standard
12 process in my mind has been strangely convoluted
13 and fraught with significant errors ever since the
14 new Board took it up, and I won't go into all of
15 the various convolutions again, it seems the Board
16 is determined to do whatever it takes to put the
17 interests of the Canadian coal company Teck before
18 the interests of Montana's water quality.

19 Lincoln County politicians jumped in I
20 think to give Teck a sense of legitimacy with
21 Montanans. The route Teck and the Board decided
22 to take was to take a very narrow approach to
23 attack the selenium standard using the concept of
24 stringency, which as I've said before I think was
25 incorrectly applied.

1 But that's all we dealt with. We didn't
2 deal with the hundreds of public comments, the
3 thousands of pages of scientific documents and
4 scientific input that the previous Board
5 considered.

6 We had a couple of periods of public
7 comments. We had a meeting where we listened to
8 an attorney for Teck and an attorney for the DEQ.
9 I think the whole process was woefully inadequate,
10 but there seems to be a goal of arriving at a
11 certain place regardless.

12 But I invite you to read the letter from
13 the EPA that's on Page 0093 of our packet. It's
14 sort of a nice summary of why the previous Board
15 had it correctly.

16 But it's interesting to see how Teck's
17 legalistic contortions continue. Teck is
18 apparently unhappy it would have to comply with
19 the older, more appropriate selenium standard
20 until the selenium standard is reworked.

21 So now they're trying to do an end run,
22 and have us submit the outcome of our work to the
23 EPA, when the EPA has definite guidelines for when
24 they will consider a state standard, and we
25 haven't met their criteria for resubmitting this

1 new situation to them. So I think it is just an
2 unnecessary step.

3 And as has been pointed out, there's
4 probably no practical implications apparently to
5 leaving the standard as it is for now. But
6 regardless, what will be done will be done. The
7 Board I believe is on the wrong side of history,
8 and I think that will be shown with time, and it
9 has been shown by hundreds of scientific documents
10 and public comments. I wouldn't be surprised if
11 this ends up before the Supreme Court.

12 But I have one final comment, because
13 it's been implied by some Board members, at least
14 one Board member, in the meetings that the DEQ is
15 looking for trouble, or manufacturing numbers, and
16 then trying to manipulate things to justify those
17 numbers.

18 And I think that perspective is just a
19 slap in face to DEQ, and to the citizens of
20 Montana. The DEQ is charged with protecting
21 Montana's air and water quality, and believe me,
22 there are plenty of people out there and
23 corporations that are willing to do whatever they
24 want regardless of the consequences for air and
25 water quality in Montana, and to the air and water

1 quality of our neighbors and their communities,
2 and goodness knows, we have enough Superfund sites
3 in Montana.

4 If people are attacking the integrity of
5 DEQ and undermining its work, then we'll end up
6 with more Superfund sites. If the only thing you
7 care about is dollars, it's a heck of a lot of
8 cheaper to keep air and water clean proactively
9 than it is to clean up the mess, sort of the
10 classic, "An ounce of prevention is worth a pound
11 of cure."

12 Anyway I know I'm not going to change
13 anyone's mind. I just wanted this perspective to
14 be on the record. I just think it's too bad that
15 Teck Coal didn't spend the money they've been
16 spending trying to fight the selenium standard,
17 it's too bad they didn't spend that money on
18 cleaning up their acts, so that they don't get
19 fined \$60 million again for selenium pollution.

20 Anyway, thanks for letting me comment.

21 VICE CHAIR AGUIRRE: Board Member
22 Altemus.

23 BOARD MEMBER ALTEMUS: Thank you, Vice
24 Chair. I guess we're kind of off topic of the
25 motion, but I understand the frustration of some

1 of the Board members, but I do feel like the Board
2 was also just attacked as far as our credibility
3 goes.

4 And I do think that all of us came to
5 this job, came to this Board, with good
6 intentions, and I think we all look at these cases
7 with good intentions, and try to do the best that
8 we can.

9 And we have a very narrow legal issue
10 with this one. I think we made the right decision
11 because of that very narrow legal issue that,
12 again, all these comments are on the record, and I
13 just also want to be on record that I don't think
14 the Board has some kind of a goal. I don't think
15 the Board has some kind of end game on this. We
16 are trying to do the best that we know how, that
17 we can do. And so I just wanted to make that
18 comment. Thank you.

19 VICE CHAIR AGUIRRE: Thank you.
20 Chairman Ruffatto, did you have a comment? I saw
21 your hand up.

22 CHAIR RUFFATTO: I have refrained from
23 arguing with Dr. Lehnherr because I understand his
24 position. I understand he feels strongly about
25 it. But he does insult the Board with his

1 comments.

2 We are not backing Teck Coal, we are
3 backing the rule of law, and what's so important
4 to our process is to follow the law. And so I
5 think I need to try to set forth again maybe in a
6 different fashion what I think has gone on here.

7 In 2020, EPA pushed forward a rule, made
8 the determination that it was not more stringent
9 than the Federal guideline, contrary to what is
10 virtually obvious.

11 Then DEQ defended its position that it
12 was not more stringent, and in that process it
13 says, "But it doesn't matter. We'll just do it.
14 We'll just make the findings."

15 And then we issue an order, and DEQ is
16 now ignoring our order, refusing to comply. And
17 that is fine. But under our juris prudence, we
18 don't just refuse to comply and act like the order
19 didn't happen. What we do is appeal the order,
20 and get that decision from the Court, because
21 there is a way to get a final decision, and DEQ is
22 not doing that.

23 And as far as hurting the credibility of
24 DEQ, I think they're doing it to themselves over
25 and over again. And let me explain why, using an

1 analogy that Dr. Lehnherr used last time, the
2 baking of a cake.

3 If you have a recipe for a cake, and you
4 take that recipe and you make the cake, but you
5 leave out the key ingredient, two eggs. And you
6 bake the cake, and you pull it out, and it just
7 isn't right.

8 What DEQ wants to do is to take those
9 two eggs and just spread them over the top and
10 say, "Now we're good," but it doesn't work that
11 way. You've got to start all over, and make it
12 right. So those are my comments. I support the
13 motion.

14 VICE CHAIR AGUIRRE: Does the Board have
15 any more questions or comments on the motion?

16 (No response)

17 VICE CHAIR AGUIRRE: No more comments or
18 questions on the motion?

19 (No response)

20 VICE CHAIR AGUIRRE: Move forward with a
21 vote on the motion. All in favor of the motion to
22 grant the Joint Notice and Motion moving forward
23 to EPA, say aye.

24 (Response)

25 VICE CHAIR AGUIRRE: Opposed.

1 (Response)

2 VICE CHAIR AGUIRRE: Could you do a roll
3 call.

4 MS. SCHERER: Chairman Ruffatto.

5 CHAIR RUFFATTO: Aye.

6 MS. SCHERER: Vice Chair Aguirre.

7 VICE CHAIR AGUIRRE: Aye.

8 MS. SCHERER: Board Member Altemus.

9 BOARD MEMBER ALTEMUS: Aye.

10 MS. SCHERER: Board Member Lehnherr.

11 BOARD MEMBER LEHNHERR: Nay.

12 MS. SCHERER: Board Member Reiten.

13 BOARD MEMBER REITEN: Nay.

14 MS. SCHERER: Board Member Simpson.

15 BOARD MEMBER SIMPSON: Aye.

16 MS. SCHERER: Board Member Smith.

17 BOARD MEMBER SMITH: Aye.

18 VICE CHAIR AGUIRRE: Motion carries.

19 Moving on to the new contested case in
20 the matter of appeal and request for hearing by --

21 CHAIR RUFFATTO: Vice Chair Aguirre.

22 VICE CHAIR AGUIRRE: Yes, Chairman.

23 CHAIR RUFFATTO: Before you move on, I
24 have a motion to make, actually two motions to
25 make.

1 VICE CHAIR AGUIRRE: You have the floor.

2 CHAIR RUFFATTO: The first motion is
3 that we should direct Board Counsel working with
4 the Chairman to draft a reasoned decision on the
5 -- our decision to deny DEQ's request to amend.

6 VICE CHAIR AGUIRRE: I need to have you
7 repeat that, just because you broke up in the
8 middle. You're making a motion to direct the
9 Board Counsel --

10 CHAIR RUFFATTO: -- to draft a reasoned
11 decision for consideration at the December meeting
12 to explain our decision in denying DEQ's motion to
13 amend.

14 VICE CHAIR AGUIRRE: I'll second that
15 motion. Is there any discussion on that motion?

16 (No response)

17 VICE CHAIR AGUIRRE: I'll call for a
18 vote. All in favor say aye.

19 (Response)

20 VICE CHAIR AGUIRRE: All opposed.

21 (Response)

22 VICE CHAIR AGUIRRE: We need to do a
23 roll call.

24 MS. SCHERER: Chairman Ruffatto.

25 CHAIR RUFFATTO: Aye.

1 MS. SCHERER: Vice Chair Aguirre.
2 VICE CHAIR AGUIRRE: Aye.
3 MS. SCHERER: Board Member Altemus.
4 BOARD MEMBER ALTEMUS: Aye.
5 MS. SCHERER: Board Member Lehnherr.
6 BOARD MEMBER LEHNHERR: Nay.
7 MS. SCHERER: Board Member Reiten.
8 BOARD MEMBER REITEN: Nay.
9 MS. SCHERER: Board Member Simpson.
10 BOARD MEMBER SIMPSON: Aye.
11 MS. SCHERER: Board Member Smith.
12 BOARD MEMBER SMITH: Aye.
13 VICE CHAIR AGUIRRE: Motion carries.

14 Chairman Ruffatto, you said you had a second
15 motion.

16 CHAIR RUFFATTO: My second motion is to
17 request Lincoln County -- is that the Board
18 request that Lincoln County and Teck Coal jointly
19 file a proposed letter to EPA transmitting the
20 Board's order, and to submit that to the Board by
21 November 4th.

22 VICE CHAIR AGUIRRE: I'll second that
23 motion. Is there any discussion?

24 (No response)

25 VICE CHAIR AGUIRRE: Hearing no

1 discussion, I'll call for a vote. All in favor
2 say aye.

3 (Response)

4 VICE CHAIR AGUIRRE: All opposed.

5 (Response)

6 VICE CHAIR AGUIRRE: Please do roll
7 call.

8 MS. SCHERER: Chairman Ruffatto.

9 CHAIR RUFFATTO: Aye.

10 MS. SCHERER: Vice Chair Aguirre.

11 VICE CHAIR AGUIRRE: Aye.

12 MS. SCHERER: Board Member Altemus.

13 BOARD MEMBER ALTEMUS: Aye.

14 MS. SCHERER: Board Member Lehnherr.

15 BOARD MEMBER LEHNHERR: Nay.

16 MS. SCHERER: Board Member Reiten.

17 BOARD MEMBER REITEN: Nay.

18 MS. SCHERER: Board Member Simpson.

19 BOARD MEMBER SIMPSON: Aye.

20 MS. SCHERER: Board Member Smith.

21 BOARD MEMBER SMITH: Aye.

22 VICE CHAIR AGUIRRE: Motion carries.

23 (The proceedings were concluded

24 at 10:50 a.m.)

25 * * * * *

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 - 58 - 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 22nd day of
October, 2022.

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

<p style="text-align: center;"><u> </u> \$ <u> </u></p> <p>\$60 - 51:19</p> <p style="text-align: center;"><u> </u> 0 <u> </u></p> <p>0.8 [7] 32:8, 39:22, 40:25, 41:18, 44:21, 46:20, 47:14 0093 - 49:13 08 - 3:11</p> <p style="text-align: center;"><u> </u> 1 <u> </u></p> <p>10:50 - 58:24 111 - 1:13 131.5 [2] 28:22, 38:5 13th - 11:20 14 - 1:14 1500 - 2:5 1520 - 1:13 17.30.632 - 22:1 17.30.632(7)(a) [2] 1:6, 3:8 18th - 18:8 1995 - 12:17</p> <p style="text-align: center;"><u> </u> 2 <u> </u></p> <p>2 [4] 23:22, 26:23, 27:5, 27:6 2-4-305 - 25:24 200901 - 2:13 2020 [5] 19:10, 21:19, 21:24, 22:7, 53:7 2021 [2] 19:13, 21:20 2021-04 - 3:11 2022 [3] 1:14, 18:5, 59:17 2023 [3] 24:15, 43:17, 44:7 2024 [2] 44:9, 59:22 203 - 2:9 20th - 18:5 22nd - 59:16 25th [2] 11:21, 19:12 26 - 11:23</p>	<p style="text-align: center;"><u> </u> 3 <u> </u></p> <p>3 - 23:22 303 - 38:4 31st - 2:5 3rd - 18:7</p> <p style="text-align: center;"><u> </u> 4 <u> </u></p> <p>4 - 27:5 40 [2] 28:22, 38:5 401 - 2:5 45 - 11:23 4th - 57:21</p> <p style="text-align: center;"><u> </u> 5 <u> </u></p> <p>5 - 31:12 521 [2] 12:16, 13:10 57 - 11:22 58 - 59:12 59 [3] 11:11, 11:11, 11:13 59101 - 2:5 59601 - 2:10 59620 - 2:14</p> <p style="text-align: center;"><u> </u> 6 <u> </u></p> <p>6 [2] 9:3, 25:24</p> <p style="text-align: center;"><u> </u> 7 <u> </u></p> <p>75 - 11:22 75-5-203 [4] 1:6, 3:9, 8:24, 23:22</p> <p style="text-align: center;"><u> </u> 8 <u> </u></p> <p>8 [6] 19:5, 19:15, 43:8, 44:4, 45:2, 45:9 8th - 11:22</p> <p style="text-align: center;"><u> </u> 9 <u> </u></p> <p>9 [2] 31:23, 59:22 9:15 - 1:14</p> <p style="text-align: center;"><u> </u> A <u> </u></p> <p>a.m [2] 1:14, 58:24 ability - 59:14 able [2] 10:1, 10:23 accept [2] 42:20, 46:3</p>	<p>acceptable - 12:23 accepted - 22:15 accordance [9] 19:20, 19:25, 23:25, 24:24, 26:12, 28:6, 28:10, 30:7, 36:18 achieved - 5:6 acknowledge - 10:9 acknowledged [3] 23:16, 31:11, 31:14 act [21] 20:2, 22:2, 22:3, 22:14, 23:15, 24:2, 24:25, 25:13, 25:13, 26:7, 26:8, 27:2, 28:11, 28:13, 30:8, 32:14, 36:21, 37:12, 37:23, 38:4, 53:18 acted - 31:21 action [13] 3:5, 8:21, 18:4, 19:1, 20:12, 20:14, 21:15, 21:17, 22:11, 28:21, 30:2, 39:5, 45:23 actions - 43:1 activities - 47:13 activity - 42:3 acts - 51:18 add - 21:5 additional [2] 42:22, 45:13 additionally - 27:18 address [5] 3:14, 20:11, 23:8, 24:20, 35:23 adequate - 4:9 administered - 31:21 administration - 47:8 administrative [7] 22:2,</p>	<p>22:22, 25:13, 25:23, 30:8, 34:18, 41:21 adopt [2] 24:5, 27:1 adopted [9] 21:25, 22:19, 26:11, 28:5, 28:9, 28:23, 34:6, 34:9, 46:22 adopting - 28:7 adoption - 25:3 affect - 41:4 affixed - 59:16 against - 45:7 agencies - 31:22 agency [9] 8:21, 18:4, 19:1, 21:14, 21:17, 22:11, 28:21, 45:4, 45:23 agency's - 26:8 agree [5] 35:20, 35:22, 37:9, 42:18, 47:24 agreement - 46:23 Aguirre [105] 1:16, 3:4, 4:4, 5:17, 5:22, 6:6, 7:5, 8:2, 8:12, 8:16, 9:20, 9:23, 10:4, 10:7, 10:20, 10:23, 11:4, 12:8, 12:22, 12:25, 13:4, 13:14, 13:17, 13:22, 14:3, 14:20, 14:24, 15:2, 15:4, 15:11, 15:14, 16:2, 16:7, 16:20, 16:23, 17:5, 17:10, 17:12, 17:15, 17:16, 18:2, 18:21, 21:8, 21:11, 29:2, 29:8, 32:20,</p>	<p>33:1, 33:6, 33:7, 33:19, 33:23, 35:3, 35:7, 35:13, 36:1, 36:5, 37:2, 37:3, 37:5, 38:21, 40:15, 41:15, 42:15, 43:3, 43:22, 45:13, 45:17, 45:21, 46:5, 46:8, 46:10, 46:13, 46:17, 47:1, 48:7, 48:10, 51:21, 52:19, 54:14, 54:17, 54:20, 54:25, 55:2, 55:6, 55:7, 55:18, 55:21, 55:22, 56:1, 56:6, 56:14, 56:17, 56:20, 56:22, 57:1, 57:2, 57:13, 57:22, 57:25, 58:4, 58:6, 58:10, 58:11, 58:22 ahead [3] 6:6, 39:14, 46:16 allege - 21:22 allocation [3] 45:1, 45:5, 45:7 allocations - 42:23 allow [2] 20:14, 21:2 already [7] 3:25, 7:13, 11:15, 16:11, 16:16, 20:16, 39:7 Altemus [21] 1:19, 3:16, 9:24, 9:25, 10:5, 14:22, 17:17, 17:18, 33:8, 33:9, 45:25, 46:1, 46:7, 51:22, 51:23, 55:8, 55:9, 57:3, 57:4, 58:12, 58:13</p>	<p>alter [8] 3:21, 4:8, 4:19, 8:20, 15:8, 16:4, 17:1, 17:7 alternative - 26:16 amend [10] 3:21, 4:8, 4:19, 8:21, 15:8, 16:5, 17:1, 17:8, 56:5, 56:13 amendment - 5:1 ample - 6:3 analogy - 54:1 analysis - 40:9 Ann - 1:6 Annotated [3] 3:9, 8:25, 25:25 answered [2] 9:6, 34:2 anyone's - 51:13 Anyway [2] 51:12, 51:20 apologize - 12:14 apparently [2] 49:18, 50:4 appeal [2] 53:19, 55:20 appearance - 40:3 APPEARING [3] 2:2, 2:6, 2:11 appears - 40:1 applicable - 28:6 application - 35:5 applied - 48:25 apply [2] 38:11, 38:14 approach [2] 41:12, 48:22 approaches - 41:11 appropriate [7] 5:12, 5:18, 6:1, 11:11, 11:25, 30:2, 49:19 approval [14] 19:9, 19:11, 19:16, 20:11, 21:21,</p>
--	---	---	--	---	---

21:23, 22:9, 22:12, 28:21, 28:25, 31:12, 32:17, 37:13, 38:19 approve [5] 20:4, 23:5, 23:15, 36:16, 36:22 approved [2] 20:6, 37:22 approves [2] 28:23, 37:24 approving - 28:4 approximately - 18:23 April [3] 5:2, 11:22, 19:22 argue - 21:16 argues - 22:7 arguing - 52:23 argument [12] 10:18, 11:9, 12:6, 12:10, 14:15, 18:11, 18:12, 18:15, 18:18, 29:10, 29:17, 33:20 arguments [3] 14:17, 14:18, 34:2 ARM [3] 1:5, 3:8, 21:25 arriving - 49:10 ascertain - 27:12 asking [3] 40:19, 47:1, 47:3 assessment [5] 43:8, 44:12, 44:14, 44:19, 44:23 Assistant - 2:12 assume [2] 30:11, 47:12 assuming [2] 35:20, 35:25 assumption [4] 42:18, 42:19, 42:20, 48:4 attack - 48:23 attacked - 52:2 attacking -	51:4 attorney [10] 2:2, 2:4, 2:8, 2:11, 2:12, 6:19, 21:12, 37:8, 49:8, 49:8 audio - 40:18 August [2] 18:7, 18:8 authority [10] 22:1, 23:4, 23:14, 23:23, 24:3, 26:8, 27:23, 28:10, 36:12, 38:1 available - 23:20 Avenue - 1:13 aye [25] 14:25, 17:8, 17:14, 17:16, 17:18, 17:24, 18:1, 54:23, 55:5, 55:7, 55:9, 55:15, 55:17, 56:18, 56:25, 57:2, 57:4, 57:10, 57:12, 58:2, 58:9, 58:11, 58:13, 58:19, 58:21 <hr/> B backfill - 41:22 backfilled - 40:4 backing [2] 53:2, 53:3 bad [2] 51:14, 51:17 bake - 54:6 baking - 54:2 base - 6:12 basically [2] 5:1, 41:1 Basin - 35:11 beat - 14:5 beginning [2] 20:23, 38:15 behalf [4] 2:2, 2:6, 2:11, 11:6 believes - 30:12 benefit - 4:13 BER [2] 3:11, 28:20 best [4]	32:21, 52:7, 52:16, 59:13 better - 7:2 beyond [2] 39:7, 39:11 Bill [3] 12:16, 12:17, 13:10 Billings - 2:5 billion - 39:23 bit [2] 41:12, 44:3 Bloom - 19:13 Board [196] 1:1, 1:4, 1:17, 2:6, 3:6, 3:16, 4:2, 4:9, 4:11, 4:20, 4:22, 5:11, 6:10, 7:3, 7:9, 7:18, 8:2, 8:4, 8:7, 8:14, 8:17, 8:22, 9:6, 9:24, 9:25, 10:5, 10:16, 11:16, 11:18, 11:25, 12:16, 12:21, 13:2, 13:4, 13:6, 13:8, 13:11, 13:24, 14:11, 14:15, 14:19, 14:22, 15:6, 15:9, 15:12, 15:16, 15:21, 16:6, 16:14, 16:18, 16:21, 16:24, 17:2, 17:17, 17:18, 17:19, 17:20, 17:21, 17:22, 17:23, 17:24, 17:25, 18:1, 18:9, 18:16, 19:12, 19:22, 20:22, 20:24, 20:25, 21:5, 21:11, 21:16, 21:25, 22:10, 22:15,	22:18, 22:21, 23:6, 23:12, 25:9, 26:17, 27:15, 29:12, 29:21, 29:24, 30:16, 30:18, 32:23, 33:8, 33:9, 33:10, 33:11, 33:12, 33:13, 33:14, 33:15, 33:16, 33:17, 33:20, 33:23, 33:25, 34:12, 34:13, 34:16, 34:25, 35:8, 35:17, 37:4, 37:15, 37:19, 37:19, 38:10, 38:13, 38:21, 38:23, 40:13, 40:15, 40:17, 40:23, 41:16, 42:21, 42:25, 43:3, 43:24, 45:14, 45:25, 46:1, 46:7, 46:9, 46:12, 46:13, 46:15, 46:15, 46:17, 46:19, 46:19, 46:19, 46:23, 47:3, 47:4, 47:24, 47:25, 48:2, 48:7, 48:9, 48:14, 48:15, 48:21, 49:4, 49:14, 50:7, 50:13, 50:14, 51:21, 51:23, 52:1, 52:1, 52:5, 52:14,	52:15, 52:25, 54:14, 55:8, 55:9, 55:10, 55:11, 55:12, 55:13, 55:14, 55:15, 55:16, 55:17, 56:3, 56:9, 57:3, 57:4, 57:5, 57:6, 57:7, 57:8, 57:9, 57:10, 57:11, 57:12, 57:17, 57:20, 58:12, 58:13, 58:14, 58:15, 58:16, 58:17, 58:18, 58:19, 58:20, 58:21 Board's [30] 8:18, 8:21, 8:23, 9:3, 11:21, 15:13, 19:1, 20:18, 21:2, 21:14, 22:17, 22:23, 23:3, 23:16, 23:23, 24:9, 25:5, 27:23, 28:12, 28:15, 29:13, 29:17, 30:20, 31:25, 32:11, 32:16, 32:18, 37:9, 38:17, 57:20 books [3] 31:13, 31:13, 44:17 Bowers [18] 2:12, 5:18, 8:15, 9:22, 21:10, 21:12, 34:1, 34:12, 34:23, 35:7, 37:3, 37:7, 37:7, 37:18, 38:3, 38:9, 38:16, 43:2 Box - 2:13	branch - 19:14 break [2] 32:21, 32:22 briefing - 25:14 briefly [3] 11:8, 29:4, 41:17 briefs - 6:1 bring - 30:16 broke - 56:7 broken - 40:11 Building - 1:13 <hr/> C cake [4] 54:2, 54:3, 54:4, 54:6 calibrated - 40:8 calling [3] 3:20, 3:25, 45:21 can't [5] 4:7, 7:20, 27:16, 27:21, 43:10 Canada - 45:7 Canadian - 48:17 cannot [5] 20:4, 26:15, 36:19, 36:20, 36:22 care - 51:7 carried - 18:2 carries [5] 15:5, 20:18, 55:18, 57:13, 58:22 case [15] 10:1, 11:12, 11:16, 22:23, 25:15, 25:20, 25:21, 29:19, 29:19, 29:19, 30:14, 34:17, 36:8, 40:2, 41:5, 55:19 cases - 52:6 certain - 49:11 certainly [7] 8:5, 13:9, 35:23, 39:17, 40:2, 41:19, 41:23 certification [6] 19:18,
---	--	---	---	--	---

20:7, 20:8, 21:25, 22:5, 22:8 certify - 59:7 certifying - 19:19 CFR [2] 28:22, 38:5 Chair [135] 1:16, 3:4, 4:4, 4:6, 4:18, 5:17, 5:22, 5:23, 6:6, 7:1, 7:5, 7:7, 8:2, 8:12, 8:16, 8:17, 9:20, 9:23, 10:4, 10:7, 10:20, 10:23, 11:4, 12:8, 12:22, 12:25, 13:4, 13:14, 13:17, 13:22, 14:1, 14:3, 14:20, 14:24, 15:2, 15:4, 15:11, 15:14, 16:2, 16:7, 16:20, 16:23, 17:5, 17:10, 17:12, 17:14, 17:15, 17:16, 18:2, 18:21, 21:8, 21:10, 29:2, 29:8, 32:20, 33:1, 33:5, 33:6, 33:7, 33:19, 33:23, 35:3, 35:7, 35:13, 35:13, 35:15, 36:1, 36:5, 36:25, 37:2, 37:3, 37:5, 37:14, 37:18, 38:1, 38:9, 38:20, 38:21, 40:15, 41:15, 42:15, 42:16, 43:2, 43:2, 43:21, 43:22, 45:13, 45:17, 45:21, 46:5, 46:8, 46:10, 46:13, 46:17, 47:1, 48:7, 48:10,	51:21, 51:24, 52:19, 52:22, 54:14, 54:17, 54:20, 54:25, 55:2, 55:5, 55:6, 55:7, 55:18, 55:21, 55:21, 55:22, 55:23, 56:1, 56:2, 56:6, 56:10, 56:14, 56:17, 56:20, 56:22, 56:25, 57:1, 57:2, 57:13, 57:16, 57:22, 57:25, 58:4, 58:6, 58:9, 58:10, 58:11, 58:22 Chairman [27] 1:15, 3:17, 4:2, 5:20, 5:22, 6:10, 6:11, 7:6, 13:10, 13:18, 13:21, 15:9, 17:13, 33:4, 35:1, 36:24, 41:16, 42:15, 43:23, 46:12, 52:20, 55:4, 55:22, 56:4, 56:24, 57:14, 58:8 challenge [2] 26:5, 26:12 challenged - 41:8 chance - 30:18 change [6] 7:15, 15:13, 15:21, 37:21, 39:4, 51:12 changed [3] 34:21, 34:22, 34:24 charged - 50:20 cheaper - 51:8 check [2] 36:15, 36:17	Chief - 22:4 choose - 18:14 chooses - 31:4 chose - 24:8 circulated - 4:13 citations - 31:25 cite - 22:4 cited - 13:11 cites - 25:14 citizens - 50:19 clarify [3] 20:13, 30:5, 30:9 Clark [4] 25:15, 25:21, 59:4, 59:7 classic - 51:10 clean [12] 19:14, 20:19, 22:14, 23:15, 32:13, 36:21, 37:12, 37:23, 38:4, 47:21, 51:8, 51:9 cleaning - 51:18 clear [8] 5:12, 5:13, 19:3, 24:1, 29:13, 29:22, 30:18, 32:5 client - 11:6 coal [17] 1:4, 2:2, 3:6, 18:5, 18:13, 18:18, 36:4, 41:2, 41:7, 41:10, 42:6, 43:24, 45:24, 48:17, 51:15, 53:2, 57:18 Coalition - 25:15 Code [4] 1:6, 3:9, 8:25, 25:24 column [20] 9:1, 9:8, 21:19, 22:13, 22:20, 23:17,	24:10, 24:14, 24:23, 25:4, 26:6, 26:11, 28:8, 29:16, 31:7, 31:24, 32:1, 38:18, 43:6, 44:15 coming [2] 39:19, 41:9 comment [13] 6:11, 7:23, 9:17, 27:8, 28:1, 40:20, 40:21, 41:17, 48:10, 50:12, 51:20, 52:18, 52:20 comments [11] 11:19, 32:3, 41:13, 49:2, 49:7, 50:10, 52:12, 53:1, 54:12, 54:15, 54:17 commission - 59:21 Commissioners [5] 1:5, 2:7, 3:7, 10:10, 10:15 communication [2] 19:4, 20:13 communities - 51:1 company - 48:17 comparable [6] 22:25, 23:7, 23:18, 24:6, 26:18, 27:3 comparing - 44:20 completed [3] 7:14, 24:14, 43:17 compliance - 30:13 complied - 22:18 comply [6] 8:24, 9:12, 26:19, 49:18, 53:16, 53:18 computer-aided - 59:11 concept - 48:23 concerns - 24:20	conclude - 44:7 concluded - 58:23 conclusion - 39:22 concur - 34:7 condition - 23:11 conducted [3] 19:25, 24:24, 28:9 confidence - 40:10 conflict - 26:2 conform [2] 9:13, 26:21 confused - 4:24 confusing - 41:12 consequences - 50:24 consider [3] 3:21, 28:4, 49:24 consideration [4] 22:18, 28:18, 47:4, 56:11 considered [2] 22:21, 49:5 consistency - 26:7 consistent [5] 19:4, 24:5, 25:11, 26:1, 38:4 construction - 27:11 consult - 43:14 contain - 59:12 contained - 27:13 content - 42:7 contested [2] 22:23, 55:19 continually - 12:2 continue [2] 32:6, 49:17 continued - 29:10 contortions - 49:17 contrary - 53:9 convoluted - 48:12 convolutions - 48:15 corporations - 50:23 correct [14]	3:24, 6:25, 13:19, 13:22, 16:6, 16:20, 34:10, 34:13, 34:23, 35:4, 35:17, 37:16, 37:19, 42:21 correctly - 49:15 couldn't [2] 7:4, 7:5 Counsel [2] 56:3, 56:9 Counsel's - 22:4 County [25] 1:4, 1:5, 2:6, 2:7, 3:7, 3:7, 10:10, 10:15, 11:7, 18:5, 18:12, 18:18, 18:19, 21:16, 21:22, 22:16, 24:18, 29:6, 30:15, 45:24, 48:19, 57:17, 57:18, 59:4, 59:6 County's - 21:14 couple [6] 5:15, 8:5, 12:11, 12:13, 19:2, 49:6 course [2] 40:12, 42:8 Court [8] 1:23, 11:13, 11:16, 25:16, 50:11, 53:20, 59:5, 59:20 cover - 11:9 credibility [2] 52:2, 53:23 criteria [3] 23:9, 28:17, 49:25 Crowley - 10:11 CRUTCHER [3] 1:22, 59:5, 59:19 cure [2] 25:8, 51:11
--	---	--	---	---	--

<p>current - 30:10</p> <p>cut [2] 11:1, 14:7</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily [2] 42:23, 44:25</p> <p>data [3] 24:19, 43:13, 44:21</p> <p>Dave - 4:7</p> <p>David [3] 1:17, 1:20, 14:2</p> <p>deal [3] 8:9, 8:13, 49:2</p> <p>dealt - 49:1</p> <p>death - 14:6</p> <p>debating - 38:25</p> <p>December [3] 19:10, 21:18, 56:11</p> <p>decided [2] 48:1, 48:21</p> <p>decision [21] 12:1, 18:9, 20:19, 20:24, 21:2, 21:3, 22:24, 23:3, 27:12, 28:15, 29:25, 30:1, 32:16, 48:3, 52:10, 53:20, 53:21, 56:4, 56:5, 56:11, 56:12</p> <p>declare - 27:12</p> <p>defended - 53:11</p> <p>defensible - 20:20</p> <p>defer [3] 10:13, 18:19, 34:19</p> <p>deferred - 47:13</p> <p>definite - 49:23</p> <p>deleting - 5:6</p> <p>denied - 29:12</p> <p>deny [11] 4:8, 4:19, 15:8, 15:12, 15:20, 16:4, 16:25, 17:7, 45:18, 45:22, 56:5</p> <p>denying - 56:12</p>	<p>Department [9] 1:12, 2:11, 2:13, 6:14, 7:10, 7:11, 10:1, 26:19, 27:1</p> <p>Department's [2] 15:20, 34:6</p> <p>DEQ [49] 3:12, 5:18, 6:7, 7:22, 8:22, 9:9, 9:15, 18:6, 18:15, 20:23, 21:9, 21:12, 22:4, 23:1, 23:16, 23:23, 24:2, 24:8, 24:12, 24:20, 25:2, 25:5, 26:24, 27:23, 29:10, 30:5, 31:1, 31:4, 32:2, 32:6, 32:12, 37:2, 37:7, 37:9, 42:18, 42:21, 43:6, 44:1, 45:1, 49:8, 50:14, 50:19, 50:20, 51:5, 53:11, 53:15, 53:21, 53:24, 54:8</p> <p>DEQ's [16] 3:21, 4:8, 4:19, 9:19, 11:19, 15:8, 15:13, 16:4, 16:25, 17:7, 22:7, 23:24, 44:10, 45:4, 56:5, 56:12</p> <p>designated [2] 23:9, 28:17</p> <p>desired - 23:11</p> <p>determination [11] 9:6, 9:9, 23:17, 23:24, 24:10, 25:5, 28:12, 37:10, 44:24, 46:20, 53:8</p> <p>determinations - 47:10</p> <p>determine - 27:24</p> <p>determined - 48:16</p>	<p>determines - 26:17</p> <p>developed - 39:18</p> <p>development - 44:24</p> <p>differs - 44:3</p> <p>direct [2] 56:3, 56:8</p> <p>direction - 16:15</p> <p>directly - 16:13</p> <p>disagree [2] 8:5, 38:12</p> <p>disagrees - 25:2</p> <p>disapprove [3] 23:5, 23:15, 38:7</p> <p>disapproves - 28:23</p> <p>discharges - 42:10</p> <p>discuss - 5:19</p> <p>discussed [3] 4:25, 11:20, 47:7</p> <p>discussion [15] 5:14, 5:24, 6:5, 9:24, 14:4, 14:5, 14:7, 14:14, 16:14, 40:22, 46:2, 46:10, 56:15, 57:23, 58:1</p> <p>discussions - 40:13</p> <p>dispute [3] 26:10, 30:6, 30:10</p> <p>distributed - 13:1</p> <p>divide - 18:13</p> <p>document [2] 12:24, 20:25</p> <p>documents [4] 12:15, 44:3, 49:3, 50:9</p> <p>dollars - 51:7</p> <p>Dr [3] 5:10, 52:23, 54:1</p> <p>draft [2] 56:4, 56:10</p> <p>duly - 21:25</p> <p>duplicating - 6:8</p> <p>duty [2] 23:5, 23:14</p>	<hr/> <p>E</p> <hr/>	<p>earlier [2] 16:19, 47:8</p> <p>East - 1:13</p> <p>effect [10] 25:17, 27:20, 30:20, 32:11, 32:18, 36:20, 37:11, 37:23, 41:1, 42:25</p> <p>effective - 26:1</p> <p>effectuate - 26:3</p> <p>effort - 6:8</p> <p>efforts - 42:9</p> <p>eggs [2] 54:5, 54:9</p> <p>eight [2] 26:24, 28:3</p> <p>either [4] 20:11, 24:4, 26:20, 32:2</p> <p>electronic - 13:1</p> <p>Elk [2] 42:7, 42:7</p> <p>email [2] 13:12, 13:23</p> <p>emailed - 14:11</p> <p>enacted [3] 12:18, 36:13, 36:22</p> <p>ends - 50:11</p> <p>enforce - 36:12</p> <p>enforceable - 9:1</p> <p>enforced - 45:7</p> <p>ensure [2] 19:3, 36:17</p> <p>environmental [5] 1:1, 1:12, 2:13, 39:9, 42:12</p> <p>EPA [50] 8:10, 18:4, 19:1, 19:5, 19:9, 19:14, 20:4, 20:6, 20:9, 20:14, 20:24, 20:25, 21:2, 21:2, 21:15, 21:18, 21:18, 21:20, 22:6, 22:12, 23:4,</p>	<p>23:14, 28:3, 28:21, 28:23, 29:25, 30:2, 31:11, 31:12, 31:14, 32:16, 36:12, 36:21, 37:13, 37:21, 37:24, 38:6, 38:7, 45:23, 46:4, 46:25, 47:17, 47:21, 48:4, 49:13, 49:23, 49:23, 53:7, 54:23, 57:19</p> <p>EPA's [8] 19:11, 19:16, 20:18, 21:23, 22:9, 28:25, 37:13, 38:18</p> <p>erroneous [3] 20:8, 22:9, 22:10</p> <p>error [7] 19:21, 19:23, 20:10, 20:17, 25:3, 29:23, 29:25</p> <p>errors [2] 21:18, 48:13</p> <p>ESQ [3] 2:3, 2:8, 2:12</p> <p>essence - 16:18</p> <p>essentially [2] 6:24, 47:11</p> <p>established - 29:14</p> <p>establishes [2] 19:23, 45:10</p> <p>establishing - 42:22</p> <p>everybody [6] 5:8, 5:24, 11:3, 14:9, 14:13, 35:6</p> <p>everybody's - 6:2</p> <p>evidence [2] 27:8, 28:2</p> <p>evolves - 7:20</p> <p>Ewing - 2:9</p> <p>exceed - 26:24</p> <p>exceeded - 26:9</p>	<p>Exhibit - 19:10</p> <p>expect - 42:24</p> <p>expensive [2] 42:24, 45:4</p> <p>expires - 59:21</p> <p>explain [2] 53:25, 56:12</p> <p>express - 23:10</p> <p>extent [2] 6:2, 29:6</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face - 50:19</p> <p>factors - 28:3</p> <p>failed - 8:24</p> <p>fairly - 42:24</p> <p>fashion - 53:6</p> <p>favor [5] 14:24, 17:6, 54:21, 56:18, 58:1</p> <p>February [2] 11:21, 19:12</p> <p>Federal [22] 9:9, 9:13, 22:14, 22:25, 23:7, 23:19, 24:6, 25:10, 26:18, 26:21, 27:3, 27:25, 28:22, 29:19, 30:3, 32:13, 35:21, 36:10, 36:21, 37:16, 38:5, 53:9</p> <p>feel - 52:1</p> <p>feels - 52:24</p> <p>felt - 30:17</p> <p>fight - 51:16</p> <p>figure - 12:25</p> <p>file - 57:19</p> <p>filed [5] 18:4, 18:6, 18:8, 18:25, 45:24</p> <p>filing [2] 5:2, 19:11</p> <p>filings - 32:2</p> <p>final [11] 8:21, 18:4, 21:14, 21:17, 22:11, 23:3, 28:20, 31:10, 45:23, 50:12, 53:21</p>
---	--	---	-----------------------------	---	--	--

<p>finding - 23:6 findings [12] 9:15, 9:16, 23:21, 24:7, 24:9, 25:6, 26:22, 27:4, 27:7, 27:10, 27:25, 53:14 finds - 25:9 fine [3] 31:2, 38:25, 53:17 fined - 51:19 fish - 44:15 five [9] 30:23, 31:8, 34:10, 34:14, 34:20, 34:20, 35:5, 35:9, 44:15 Fleck - 10:11 floor - 56:1 flowing - 42:8 focus - 29:11 folks - 43:10 follow [2] 6:23, 53:4 followed [2] 20:22, 20:23 foregoing - 59:12 Fork [2] 25:15, 25:21 formally [2] 20:9, 48:5 former - 25:17 forth [3] 9:10, 42:10, 53:5 forums - 32:13 forward [12] 13:12, 18:17, 32:7, 42:21, 44:1, 44:12, 46:3, 47:9, 47:20, 53:7, 54:20, 54:22 forwarded [3] 13:23, 29:24, 30:1 frame [2] 41:20, 42:13 fraught - 48:13 front - 12:15 frustration - 51:25 full - 46:22 Furthermore - 26:25 fuzzy - 5:9</p>	<p style="text-align: center;">G</p> <p>game [2] 39:14, 52:15 General - 2:12 given [3] 20:10, 27:20, 39:1 giving [2] 6:7, 40:10 goal [2] 49:10, 52:14 goes [3] 38:6, 42:21, 52:3 gone [3] 16:13, 39:14, 53:6 goodness - 51:2 govern - 44:18 governing [2] 30:22, 32:7 governs [2] 30:24, 31:7 grant [5] 2:9, 45:18, 45:22, 46:5, 54:22 grants - 24:2 ground [2] 39:4, 41:18 guaranteed - 24:16 guess [8] 5:5, 7:21, 40:19, 46:1, 46:24, 47:6, 47:16, 51:24 guessing [2] 43:4, 43:9 guidance - 24:6 guideline - 53:9 guidelines [8] 9:14, 23:1, 23:8, 23:19, 26:19, 26:21, 27:4, 49:23</p> <p style="text-align: center;">H</p> <p>hand-outs - 12:13 happen [2] 12:4, 53:19 Hart - 2:4 hasn't [3] 34:24, 44:7, 46:21 haul - 41:23 haven't -</p>	<p>49:25 having [4] 4:17, 5:24, 39:14, 47:9 he's [2] 10:14, 10:21 hear [7] 7:4, 7:5, 7:8, 10:2, 11:3, 14:16, 14:18 heard [5] 1:12, 29:10, 32:5, 35:25, 44:3 hearing [7] 9:17, 11:21, 11:22, 17:5, 28:1, 55:20, 57:25 hearings - 27:7 heck - 51:7 Helena [3] 1:13, 2:10, 2:14 hereby - 59:7 herein - 59:9 hereunto - 59:15 Hi - 10:8 history [3] 19:7, 29:18, 50:7 Holland - 2:4 however [3] 18:14, 25:17, 39:21 hundreds [2] 49:2, 50:9 hurting - 53:23</p> <p style="text-align: center;">I</p> <p>ignored - 26:15 ignores - 25:18 ignoring - 53:16 immediately [2] 19:9, 43:7 impact [5] 39:6, 41:18, 41:19, 42:4, 47:16 impairment [2] 44:24, 47:9 implement [3] 23:1, 24:3, 27:2 implemented [4] 9:10, 23:19, 25:6, 25:20</p>	<p>implications [3] 41:7, 47:7, 50:4 implied - 50:13 improper [2] 34:18, 34:18 improvidently [2] 6:18, 6:22 inadequate - 49:9 inception [2] 30:22, 36:7 include - 25:11 includes - 28:17 inconsequential - 42:1 incorrectly [3] 8:7, 16:10, 48:25 indicated - 44:11 indications - 39:21 information [3] 13:7, 39:18, 46:4 informed - 20:9 ingrident - 54:5 initially - 7:12 initiate - 43:19 initiated - 9:2 initiation - 9:18 input - 49:4 insert [2] 27:14, 27:16 insist - 44:4 insult - 52:25 integrity - 51:4 intend - 44:11 intended - 11:14 intends - 32:6 intensive - 45:3 intent [3] 5:9, 7:25, 25:12 intentions [2] 52:6, 52:7 interesting [2] 40:24, 49:16 interests [2] 48:17, 48:18 interpretation - 23:25 invalid [12] 32:9, 34:17, 35:18, 35:18,</p>	<p>35:21, 36:6, 36:7, 36:9, 37:16, 44:21, 44:22, 45:8 invalidated [2] 37:10, 37:20 invalidates - 25:16 invalidation - 25:11 invite - 49:12 involve - 24:4 involved - 25:22 isn't [4] 6:8, 11:25, 27:17, 54:7 issue [11] 6:12, 8:9, 12:19, 15:20, 22:17, 29:21, 31:17, 42:6, 52:9, 52:11, 53:15 issued [3] 6:17, 6:18, 6:22 issues - 12:7 item - 8:13 items - 3:5 itself [2] 19:8, 29:19 IV - 9:3</p> <p style="text-align: center;">J</p> <p>Jackson - 2:9 January - 11:19 job - 52:5 join - 29:7 joint [6] 18:3, 18:6, 45:19, 45:22, 46:6, 54:22 jointly - 57:18 Jon [2] 1:18, 14:2 JOSEPH - 1:18 judicial - 12:4 Judy - 19:13 Julia [3] 1:19, 14:2, 14:22 July - 18:5 jumped - 48:19 juris - 53:17 justify - 50:16</p>	<p style="text-align: center;">K</p> <p>key - 54:5 kinds - 47:12 Kirsten [4] 2:12, 5:18, 21:12, 37:7 knowing - 47:11 knows - 51:2 Kooconusa [31] 1:7, 3:11, 9:8, 21:19, 22:13, 22:20, 23:6, 23:11, 23:17, 24:10, 24:14, 24:23, 25:4, 25:7, 26:6, 26:11, 28:8, 29:16, 30:25, 31:8, 31:18, 32:8, 34:5, 34:15, 35:11, 38:17, 39:6, 39:20, 42:5, 43:5, 44:13 Kootenai [2] 35:11, 42:8</p> <p style="text-align: center;">L</p> <p>laid - 44:1 lake [37] 1:7, 3:11, 9:1, 9:7, 21:19, 21:21, 21:23, 22:8, 22:9, 22:13, 22:19, 22:24, 23:6, 23:11, 23:17, 24:10, 24:13, 24:22, 25:3, 25:7, 26:5, 26:10, 28:8, 29:16, 30:24, 31:8, 31:18, 32:7, 34:5, 34:15, 35:11, 38:17, 39:6, 39:20, 42:4, 43:5, 44:12 language [2] 27:14, 27:15 LAURIE [3] 1:22, 59:5,</p>
---	--	--	--	---	--

59:19 lauriecrutcher@g - 1:24 law [15] 2:4, 2:8, 6:21, 20:2, 29:19, 29:20, 32:10, 36:8, 36:18, 36:23, 37:17, 39:1, 39:10, 53:3, 53:4 laws [5] 19:20, 19:25, 20:6, 22:3, 36:14 lawyers - 35:16 least [2] 19:17, 50:13 leave - 54:5 leaving - 50:5 left-hand - 31:24 legal [18] 6:19, 7:16, 11:10, 19:18, 19:23, 20:10, 20:17, 21:18, 22:4, 22:7, 25:3, 28:6, 29:23, 29:25, 30:20, 39:16, 52:9, 52:11 legalistic - 49:17 legally [2] 20:20, 45:11 legislative [3] 29:18, 32:3, 44:2 Legislature - 12:18 legitimacy - 48:20 Lehnherr [27] 1:20, 5:10, 5:11, 8:3, 8:4, 8:14, 13:2, 13:5, 13:6, 17:19, 17:20, 33:10, 33:11, 40:16, 40:17, 46:14, 46:15, 48:8, 48:9, 52:23, 54:1, 55:10, 55:11, 57:5,	57:6, 58:14, 58:15 length - 11:20 let's [3] 6:5, 14:7, 14:16 letter [5] 19:11, 19:13, 31:12, 49:12, 57:19 letting [2] 48:10, 51:20 level [3] 30:4, 31:15, 45:11 levels - 39:6 Lewis [2] 59:4, 59:6 likely [2] 43:9, 43:11 Limited [2] 1:4, 3:6 Lincoln [21] 1:5, 2:6, 3:7, 10:10, 10:15, 11:7, 18:5, 18:12, 18:18, 18:19, 21:13, 21:16, 21:22, 22:16, 24:18, 29:6, 30:15, 45:24, 48:19, 57:17, 57:18 listened - 49:7 listening - 34:1 liter [4] 30:24, 31:9, 32:8, 39:23 litigation - 30:10 load [4] 44:25, 44:25, 45:5, 45:6 loads - 42:23 longer - 41:20 looking - 50:15 looks - 4:25 <hr/> M <hr/> Madam [5] 4:2, 6:10, 15:9, 41:16, 46:12 main - 34:22 maker - 27:12 makes [2]	12:3, 36:7 making [5] 23:21, 25:6, 26:22, 42:9, 56:8 Manager - 19:14 managing - 16:3 manipulate - 50:16 manufacturing - 50:15 manuscripts - 7:21 MAPA [4] 24:25, 25:23, 26:12, 28:10 March - 59:22 Marquis [23] 2:3, 10:2, 10:7, 10:8, 10:11, 12:6, 12:9, 12:24, 13:9, 13:16, 18:20, 18:21, 18:22, 21:9, 29:3, 29:9, 34:2, 35:23, 36:3, 36:3, 36:6, 43:23, 43:24 material - 41:23 matter [10] 1:4, 3:5, 8:13, 12:1, 15:7, 33:21, 39:3, 44:20, 53:13, 55:20 maximum [2] 42:23, 44:25 maybe [7] 7:25, 39:13, 40:24, 41:13, 47:2, 48:3, 53:5 means - 30:22 meantime [2] 31:7, 44:10 meeting [19] 3:15, 3:20, 4:14, 4:23, 5:8, 5:16, 7:19, 10:18, 13:11, 15:15, 15:17, 15:24, 16:3, 16:5, 16:7, 16:9, 33:2, 49:7, 56:11 meetings [2] 40:13, 50:14	member [105] 3:16, 4:2, 4:9, 4:11, 4:20, 4:22, 5:11, 6:10, 7:3, 7:9, 7:18, 8:2, 8:4, 8:14, 9:24, 9:25, 10:5, 13:2, 13:4, 13:6, 14:22, 15:9, 15:12, 15:16, 16:6, 16:18, 16:21, 17:17, 17:18, 17:19, 17:20, 17:21, 17:22, 17:23, 17:24, 17:25, 18:1, 33:8, 33:9, 33:10, 33:11, 33:12, 33:13, 33:14, 33:15, 33:16, 33:17, 33:25, 34:12, 34:16, 34:25, 38:21, 38:23, 40:15, 40:17, 40:23, 41:16, 45:25, 46:1, 46:7, 46:9, 46:12, 46:13, 46:15, 46:15, 46:17, 46:19, 47:3, 47:24, 47:25, 48:7, 48:9, 50:14, 51:21, 51:23, 55:8, 55:9, 55:10, 55:11, 55:12, 55:13, 55:14, 55:15, 55:16, 55:17, 57:3, 57:4, 57:5,	57:6, 57:7, 57:8, 57:9, 57:10, 57:11, 57:12, 58:12, 58:13, 58:14, 58:15, 58:16, 58:17, 58:18, 58:19, 58:20, 58:21 members [21] 1:17, 8:16, 12:21, 13:8, 13:24, 14:11, 14:15, 14:19, 15:6, 16:25, 17:3, 21:11, 33:24, 34:13, 35:8, 37:3, 37:18, 43:3, 43:23, 50:13, 52:1 memories - 4:16 memory - 10:3 mess - 51:9 met - 49:25 Metcalf - 1:13 micrograms [4] 30:24, 31:9, 32:8, 39:23 middle - 56:8 million - 51:19 mind [8] 7:15, 34:3, 38:24, 39:13, 39:24, 41:9, 48:12, 51:13 minute - 32:22 minutes [7] 4:13, 4:24, 13:13, 18:13, 18:15, 18:23, 32:24 misspoke - 16:2 misunderstood - 40:24 mitigate - 42:10 model [4] 24:21, 40:4, 40:8, 43:14 moment [2]	10:16, 11:2 money [2] 51:15, 51:17 Mont - 1:6 Montana [28] 1:2, 1:5, 1:12, 3:7, 3:9, 8:25, 11:13, 19:5, 19:18, 20:2, 22:1, 22:2, 24:2, 24:25, 25:13, 25:24, 27:2, 28:11, 28:13, 30:8, 35:21, 36:10, 37:20, 50:20, 50:25, 51:3, 59:2, 59:7 Montana's [4] 19:5, 21:24, 48:18, 50:21 Montanans - 48:21 month - 12:11 months [4] 5:16, 14:6, 26:24, 41:3 morning [2] 10:8, 11:9 motion [95] 3:14, 3:15, 3:16, 3:18, 3:19, 3:21, 3:21, 3:23, 3:24, 3:24, 4:3, 4:5, 4:8, 4:8, 4:12, 4:18, 4:21, 5:13, 5:13, 7:17, 8:18, 8:19, 8:20, 9:5, 9:19, 11:10, 11:25, 14:21, 14:25, 15:4, 15:7, 15:8, 15:10, 15:11, 15:12, 15:18, 15:19, 15:23, 16:1, 16:4, 16:4, 16:8, 16:10, 16:16, 16:19, 16:25, 17:1, 17:6, 17:7, 17:7, 18:2, 18:3, 18:7, 18:8, 18:9,
---	--	---	--	--	--

18:25, 21:13, 21:14, 25:14, 29:7, 29:12, 31:23, 40:21, 40:22, 41:14, 45:15, 45:18, 45:19, 45:22, 45:23, 46:2, 46:3, 46:5, 46:6, 46:11, 47:22, 51:25, 54:13, 54:15, 54:18, 54:21, 54:21, 54:22, 55:18, 55:24, 56:2, 56:8, 56:12, 56:15, 56:15, 57:13, 57:15, 57:16, 57:23, 58:22	47:10 Nay [8] 17:20, 17:22, 55:11, 55:13, 57:6, 57:8, 58:15, 58:17 necessary [4] 6:9, 24:7, 26:3, 29:22 needed - 30:17 needing - 4:7 needs [6] 12:3, 15:18, 15:25, 20:12, 43:18, 47:21 neighbors - 51:1 neither [2] 22:22, 27:9 nice - 49:14 non-formal - 22:22 nondegradation [2] 23:10, 28:19 none - 17:5 nor - 22:23 North [2] 2:5, 2:9 notarial - 59:16 Notary [3] 1:23, 59:6, 59:20 nothing - 42:2 notice [8] 9:17, 18:3, 18:6, 18:25, 31:22, 45:22, 46:6, 54:22 notified - 47:21 notify - 21:18 notifying [3] 46:25, 47:17, 47:17 notion - 8:6 November - 57:21 nullity - 38:11 numbers [2] 50:15, 50:17 Numeral - 9:3 numeric [6] 21:21, 21:23, 22:8, 22:9, 22:24, 23:6 numerous - 40:12	<hr/> O <hr/>	53:15, 53:16, 53:18, 53:19, 57:20 ordering - 6:13 orders - 31:25 original - 48:3 others - 13:8 ounce - 51:10 outcome [2] 24:17, 49:22 outstanding - 25:2 oversight - 48:2	<hr/> P <hr/>	P.O - 2:13 packet - 49:13 pages [4] 11:21, 11:23, 49:3, 59:12 panelist [2] 10:22, 11:2 paragraph [5] 3:13, 5:2, 5:6, 8:1, 9:3 Pardon - 13:21 participating [2] 10:14, 12:14 parties [2] 11:14, 42:17 pass - 12:20 passed - 12:18 path - 44:1 PC - 2:9 pending [3] 8:20, 30:11, 42:2 per [5] 30:24, 31:9, 32:8, 39:23, 39:23 period [5] 7:23, 9:17, 26:23, 28:1, 40:22 periods - 49:6 permitting [2] 39:5, 42:3 perspective [2] 50:18, 51:13 persuaded - 7:15 pertaining [2] 1:7, 3:10 petition [3] 15:13, 15:21, 30:16	petitioned - 27:24 petitioner [3] 23:21, 25:19, 26:14 Petitioners - 18:7 petitions [6] 1:4, 3:6, 22:16, 22:17, 22:21, 44:17 planning - 43:10 please [7] 4:3, 10:3, 14:12, 30:11, 36:1, 37:5, 58:6 plenty - 50:22 point [18] 12:11, 13:2, 18:10, 18:15, 31:10, 31:16, 31:20, 34:8, 38:14, 38:24, 39:1, 39:10, 40:24, 41:3, 41:25, 42:2, 42:11, 47:17 pointed - 50:3 pointing - 15:19 points [3] 8:5, 36:15, 47:5 policy - 28:19 politicians - 48:19 pollution - 51:19 pondering - 38:23 portion [3] 8:22, 10:17, 11:8 position [8] 6:7, 10:3, 11:24, 12:5, 36:11, 38:16, 52:24, 53:11 possible - 10:2 potential - 7:24 potentially - 44:23 pound - 51:10 practical [3] 41:1, 41:6, 50:4 predetermined	- 40:3 premised [2] 19:17, 45:9 PREPARED - 1:22 present [3] 4:14, 4:23, 33:18 presented [3] 11:15, 11:18, 22:17 prevention - 51:10 previous [4] 8:7, 16:10, 49:4, 49:14 prior [3] 15:7, 28:25, 45:14 proactively - 51:8 probably [3] 13:14, 13:18, 50:4 problem [2] 5:23, 40:18 procedure [5] 6:23, 22:2, 34:18, 34:19, 41:22 procedures [3] 25:13, 28:6, 30:8 proceed [2] 8:16, 44:14 proceeding [3] 39:12, 40:7, 42:12 proceedings [6] 1:10, 3:1, 58:23, 59:8, 59:10, 59:13 process [20] 6:14, 7:12, 7:13, 8:6, 11:19, 12:4, 21:1, 22:22, 24:17, 27:9, 39:15, 39:19, 40:1, 43:12, 43:16, 43:18, 48:12, 49:9, 53:4, 53:12 processes - 42:24 promoted [2] 10:21, 11:2 promulgate - 38:8 promulgated [6] 19:10, 19:20, 20:5, 30:7, 32:9, 36:17
motions - 55:24 move [14] 3:4, 3:13, 3:19, 14:14, 14:17, 17:6, 18:10, 18:14, 18:17, 32:23, 44:11, 46:2, 54:20, 55:23 moving [6] 18:3, 33:19, 45:14, 47:8, 54:22, 55:19 MT [4] 1:13, 2:5, 2:10, 2:14 Murdo - 2:9 Murry [4] 2:8, 10:9, 10:13, 29:5 myself - 14:2	<hr/> N <hr/>	named - 59:9 narrow [5] 9:7, 22:17, 48:22, 52:9, 52:11 nature -					

properly - 40:8 proposals - 42:4 proposed - 57:19 proposition [3] 25:16, 38:2, 38:12 propriety - 13:7 protect - 28:17 protecting - 50:20 provide [3] 9:18, 24:19, 28:25 provided [4] 13:8, 26:14, 26:22, 31:23 provides [7] 8:23, 9:11, 12:24, 25:19, 25:25, 26:16, 27:1 provision [2] 25:24, 27:6 provisions [4] 24:1, 27:19, 27:21, 28:14 prudence - 53:17 public [13] 1:23, 7:23, 9:16, 27:7, 27:7, 27:25, 32:3, 44:10, 49:2, 49:6, 50:10, 59:6, 59:20 pull - 54:6 pulled [2] 31:24, 32:1 purpose [3] 5:5, 25:12, 26:3 purposes [11] 22:14, 32:14, 35:21, 35:21, 36:10, 36:20, 36:21, 37:12, 37:17, 37:24, 46:2 pursuant [2] 1:6, 3:8 pushed - 53:7	Q	26:23 reasonably - 26:2 reasoned [2] 56:4, 56:10 reasons - 19:2 rebuttal [4] 18:24, 21:7, 29:3, 29:4 recess [2] 32:24, 32:25 recipe [2] 54:3, 54:4 recognize - 23:23 recognized - 22:16 recommend - 40:6 record [14] 4:5, 14:7, 14:9, 21:11, 27:8, 28:2, 30:19, 36:2, 39:22, 40:11, 51:14, 52:12, 52:13, 59:13 refrained - 52:22 refresh [2] 4:15, 10:2 refuse - 53:18 refusing - 53:16 regarding - 5:14 regardless [3] 49:11, 50:6, 50:24 regards - 11:10 Region [2] 19:5, 19:15 regulation [4] 24:6, 28:22, 28:24, 38:6 regulations [8] 9:14, 22:3, 22:25, 23:8, 23:19, 26:18, 26:21, 27:3 rehashing - 14:8 reidentify [2] 36:2, 37:6 reinvent - 5:7 Reiten [11] 1:18, 17:21, 17:22, 33:12, 33:13, 55:12, 55:13, 57:7,	57:8, 58:16, 58:17 related - 25:3 relevant - 22:3 reliable - 40:10 reliance - 19:17 relied - 21:24 rely - 32:14 remade - 15:18 remain - 37:23 remainder - 21:6 remains - 44:4 remedies [3] 7:24, 25:8, 25:10 remedy [17] 9:10, 9:17, 23:2, 23:20, 24:3, 24:4, 25:6, 25:19, 25:20, 26:13, 26:16, 27:6, 27:20, 28:14, 29:11, 29:13, 29:17 repealed - 37:10 repeat [4] 4:3, 4:12, 14:14, 56:7 repeated [5] 7:15, 15:24, 15:25, 40:12, 41:22 reply - 18:7 reported - 59:10 Reporter [3] 1:23, 59:5, 59:20 represent - 10:11 representing - 36:3 represents [2] 10:10, 10:14 request [8] 4:15, 4:19, 21:20, 22:12, 55:20, 56:5, 57:17, 57:18 requests - 8:22 require [2] 27:6, 27:9 required [3]	23:1, 29:15, 31:3 requirement [2] 6:21, 27:16 respect [2] 8:17, 15:22 respected - 27:23 respond [2] 20:10, 41:17 responding - 21:13 response [21] 15:1, 15:3, 17:4, 17:9, 17:11, 18:6, 24:9, 25:4, 33:22, 45:16, 45:20, 54:16, 54:19, 54:24, 55:1, 56:16, 56:19, 56:21, 57:24, 58:3, 58:5 rest [2] 18:24, 30:12 resubmit - 22:11 resubmitting - 49:25 result [4] 28:16, 40:3, 44:22, 44:23 return - 25:17 review [21] 1:1, 1:5, 1:7, 3:8, 3:10, 14:10, 14:12, 24:13, 24:17, 28:21, 31:2, 31:3, 31:5, 31:6, 37:13, 38:18, 40:1, 43:12, 44:6, 44:6, 46:4 reviewed - 37:21 reviewing - 28:4 reviews [2] 24:12, 37:24 revise - 44:5 revised [4] 23:13, 24:16, 28:16, 43:19 revising [4] 9:13, 12:2, 26:20, 28:7	revision - 12:3 revisions - 24:22 revisit - 43:12 revisited - 40:8 revoking - 20:11 reworked - 49:20 right-hand - 32:1 risk [2] 39:9, 42:12 River [3] 35:11, 42:7, 42:8 roll [5] 17:12, 33:3, 55:2, 56:23, 58:6 Roman - 9:3 room [2] 1:13, 10:6 route - 48:21 RPR [3] 1:22, 59:5, 59:19 Ruffatto [49] 1:15, 3:17, 4:6, 4:18, 5:20, 5:22, 5:23, 6:11, 7:1, 7:6, 7:7, 8:17, 13:10, 13:18, 13:21, 14:1, 17:13, 17:14, 33:4, 33:5, 35:1, 35:14, 35:15, 36:24, 36:25, 37:14, 37:18, 38:1, 38:9, 38:20, 42:15, 42:16, 43:2, 43:21, 43:23, 52:20, 52:22, 55:4, 55:5, 55:21, 55:23, 56:2, 56:10, 56:24, 56:25, 57:14, 57:16, 58:8, 58:9 rule [32] 1:7, 3:10, 6:15, 6:17, 6:22, 9:13, 11:11, 11:11,
	R				

<p>11:13, 24:5, 25:11, 25:16, 25:17, 25:23, 25:25, 26:17, 26:20, 27:1, 27:24, 30:7, 30:21, 34:17, 35:18, 35:20, 36:7, 36:9, 37:11, 37:11, 37:16, 43:1, 53:3, 53:7</p> <p>rulemaking [32] 6:14, 6:23, 7:12, 8:6, 8:24, 9:2, 9:18, 15:22, 19:24, 19:24, 20:3, 20:18, 20:23, 22:23, 24:5, 24:24, 26:8, 27:9, 27:16, 28:9, 29:14, 30:12, 31:5, 35:17, 36:6, 39:12, 40:7, 41:22, 42:13, 43:19, 44:7, 45:10</p> <p>rules - 6:23 run - 49:21</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>Sandy [4] 13:16, 13:18, 13:25, 33:2</p> <p>save [4] 18:23, 21:6, 40:21, 41:13</p> <p>saying [4] 40:25, 41:3, 42:1, 42:14</p> <p>says - 53:13</p> <p>schedule - 47:12</p> <p>SCHERER [42] 5:10, 5:20, 10:21, 10:25, 13:20, 17:13, 17:15, 17:17, 17:19, 17:21,</p>	<p>17:23, 17:25, 33:4, 33:6, 33:8, 33:10, 33:12, 33:14, 33:16, 33:18, 35:1, 55:4, 55:6, 55:8, 55:10, 55:12, 55:14, 55:16, 56:24, 57:1, 57:3, 57:5, 57:7, 57:9, 57:11, 58:8, 58:10, 58:12, 58:14, 58:16, 58:18, 58:20</p> <p>science - 25:1</p> <p>scientific [5] 28:18, 35:12, 49:3, 49:4, 50:9</p> <p>seal - 59:16</p> <p>seconded [7] 3:17, 15:10, 15:14, 15:17, 16:9, 16:11, 47:22</p> <p>section [9] 1:6, 3:9, 3:14, 8:24, 9:12, 23:21, 25:24, 26:20, 38:4</p> <p>seek - 45:6</p> <p>seems [3] 43:18, 48:15, 49:10</p> <p>selenium [17] 1:7, 3:10, 6:15, 22:13, 25:7, 30:23, 31:17, 34:4, 39:6, 39:19, 42:7, 48:11, 48:23, 49:19, 49:20, 51:16, 51:19</p> <p>send [4] 13:16, 32:15, 46:3, 48:5</p> <p>sense - 48:20</p> <p>sensitivity - 40:9</p> <p>setting - 43:8</p> <p>several - 27:18</p> <p>shall - 26:19</p> <p>she's - 10:5</p>	<p>short - 41:19</p> <p>shorthand - 59:10</p> <p>shown [2] 50:8, 50:9</p> <p>signed [2] 19:13, 19:22</p> <p>significant - 48:13</p> <p>significantly - 11:18</p> <p>Simpson [39] 1:17, 4:2, 4:10, 4:11, 4:20, 6:10, 7:3, 7:9, 15:9, 15:12, 15:16, 16:6, 16:18, 16:21, 17:23, 17:24, 33:14, 33:15, 33:25, 34:12, 34:16, 34:25, 38:22, 38:23, 40:23, 41:16, 46:9, 46:12, 46:16, 46:18, 46:19, 47:3, 47:25, 55:14, 55:15, 57:9, 57:10, 58:18, 58:19</p> <p>site [3] 29:15, 35:10, 35:12</p> <p>sites [2] 51:2, 51:6</p> <p>situation [4] 11:14, 39:2, 47:20, 50:1</p> <p>Sixth - 1:13</p> <p>slap - 50:19</p> <p>slate - 47:21</p> <p>Smith [14] 1:18, 4:22, 7:18, 17:25, 18:1, 33:16, 33:17, 47:24, 55:16, 55:17, 57:11, 57:12, 58:20, 58:21</p> <p>solely - 26:13</p> <p>sorry [3] 7:3, 11:1, 31:16</p>	<p>sort [2] 49:14, 51:9</p> <p>speak [3] 10:24, 11:6, 43:10</p> <p>Special - 2:12</p> <p>specific [8] 14:15, 14:16, 14:18, 15:5, 29:15, 31:25, 35:10, 35:12</p> <p>spend [2] 51:15, 51:17</p> <p>spending - 51:16</p> <p>spoke - 16:9</p> <p>spread - 54:9</p> <p>SS - 59:3</p> <p>St - 2:5</p> <p>Stacy [2] 1:16, 4:6</p> <p>stakeholders [2] 24:18, 43:15</p> <p>stand - 40:14</p> <p>standard [110] 1:7, 3:11, 6:20, 6:21, 7:16, 9:1, 9:8, 11:10, 19:8, 19:19, 20:5, 20:7, 20:20, 21:20, 21:21, 21:23, 22:5, 22:8, 22:10, 22:13, 22:20, 22:24, 23:4, 23:7, 23:13, 23:14, 23:18, 24:8, 24:11, 24:14, 24:16, 24:23, 25:4, 25:7, 25:9, 26:6, 26:11, 28:5, 28:5, 28:8, 28:16, 29:16, 30:3, 30:23, 31:7, 31:8, 31:11, 31:13, 32:7, 32:9, 32:15, 32:15, 32:16, 32:17, 34:4, 34:4, 34:6, 34:8, 34:9, 34:9, 34:14, 34:15, 34:19,</p>	<p>34:20, 34:21, 34:22, 34:24, 35:8, 35:10, 36:13, 36:16, 36:22, 37:12, 37:20, 37:22, 37:22, 37:25, 38:7, 38:8, 38:10, 38:15, 38:18, 38:19, 39:1, 39:11, 39:19, 40:5, 40:25, 41:4, 41:6, 41:8, 41:24, 43:6, 43:12, 43:18, 44:4, 44:15, 44:21, 45:2, 45:9, 45:10, 46:20, 47:14, 48:11, 48:23, 49:19, 49:20, 49:24, 50:5, 51:16</p> <p>standards [9] 19:6, 24:12, 28:7, 28:24, 29:1, 31:4, 31:21, 42:22, 44:16</p> <p>start [8] 6:7, 6:14, 6:24, 18:17, 35:19, 43:7, 47:20, 54:11</p> <p>state [28] 1:2, 8:19, 10:1, 19:4, 19:20, 19:25, 20:6, 20:8, 21:24, 28:4, 28:19, 28:23, 29:1, 29:19, 31:22, 32:10, 36:12, 36:14, 36:16, 36:18, 36:20, 36:23, 37:16, 38:7, 38:8, 49:24, 59:2, 59:7</p>	<p>stated - 7:1</p> <p>statement [3] 6:13, 34:10, 45:5</p> <p>statements - 44:11</p> <p>statewide [11] 30:23, 31:8, 31:11, 31:15, 31:17, 31:19, 34:9, 34:14, 34:20, 35:8, 44:14</p> <p>stating - 7:7</p> <p>statute [21] 6:17, 9:11, 12:19, 20:1, 22:19, 23:25, 25:18, 26:2, 26:4, 26:13, 26:15, 26:25, 27:11, 27:13, 27:15, 27:17, 27:19, 27:21, 27:22, 28:15, 29:18</p> <p>statutes - 30:13</p> <p>statutorily - 31:2</p> <p>statutory [4] 23:2, 23:20, 25:8, 25:10</p> <p>step [6] 20:13, 29:22, 29:23, 32:12, 43:11, 50:2</p> <p>steps [4] 20:21, 20:22, 45:1, 45:3</p> <p>Steve - 6:25</p> <p>STEVEN - 1:15</p> <p>stick - 41:13</p> <p>stop [2] 14:17, 14:18</p> <p>straight - 47:19</p> <p>strangely - 48:12</p> <p>Street - 2:9</p> <p>strike - 8:22</p> <p>striking - 8:1</p> <p>stringency [20] 1:6, 3:10, 6:17, 9:6, 9:10,</p>
--	--	--	---	--	--

12:18, 20:1, 22:19, 24:1, 24:7, 25:5, 25:18, 26:13, 26:25, 27:21, 28:12, 28:14, 28:15, 37:10, 48:24 stringent [12] 9:8, 22:25, 23:7, 23:18, 24:8, 24:11, 25:9, 26:18, 27:3, 27:24, 53:8, 53:12 strongly [2] 40:6, 52:24 struggling - 47:19 stuff [2] 6:4, 14:8 sub [3] 9:3, 23:22, 25:24 subject [4] 9:16, 12:2, 12:19, 44:16 subjected - 40:9 submission - 21:19 submit [10] 8:10, 18:3, 19:1, 21:1, 21:14, 21:17, 28:20, 45:23, 49:22, 57:20 submitted [5] 19:8, 19:12, 20:24, 20:25, 37:13 Subsection [4] 26:23, 27:5, 27:5, 27:6 substance [2] 15:25, 27:13 substantive - 12:7 successful [3] 23:20, 25:19, 26:14 suggestions - 39:25 Suite - 2:5 summary - 49:14 Superfund [2] 51:2, 51:6 support [4] 18:8, 24:8, 25:7, 54:12 supported [3]	29:18, 35:9, 36:8 supporting - 7:17 suppose - 6:6 supposed - 43:17 Supreme [2] 11:13, 50:11 surprised - 50:10 <hr/> T <hr/> table [4] 15:8, 16:12, 16:17, 31:23 tabled [2] 3:15, 3:19 taken [2] 32:25, 59:8 takes - 48:16 taking [2] 20:12, 41:11 talks - 31:1 technical - 39:16 Teck [35] 1:4, 2:2, 3:6, 10:12, 18:5, 18:13, 18:18, 21:13, 21:16, 21:22, 22:7, 22:15, 24:17, 25:14, 26:5, 26:10, 30:6, 30:11, 30:15, 36:4, 41:2, 41:7, 41:10, 42:6, 42:9, 43:24, 45:24, 48:17, 48:20, 48:21, 49:8, 49:17, 51:15, 53:2, 57:18 Teck's [5] 21:13, 26:12, 36:11, 44:13, 49:16 ten [4] 18:13, 18:14, 32:22, 32:24 term [2] 41:19, 41:20 terminate [2] 14:4, 14:14 terms - 27:13 testimony [2] 32:4, 44:2	Thank [40] 5:11, 5:16, 8:4, 8:11, 8:14, 8:16, 9:20, 9:22, 9:25, 11:5, 12:8, 12:9, 13:15, 16:23, 18:22, 21:7, 21:8, 21:10, 29:1, 29:2, 29:9, 32:18, 32:20, 33:19, 34:25, 35:13, 36:5, 36:25, 38:20, 40:17, 41:14, 41:15, 43:21, 43:22, 43:24, 45:12, 46:7, 51:23, 52:18, 52:19 thanks [2] 48:9, 51:20 themselves - 53:24 there's [6] 11:17, 19:3, 39:16, 40:2, 46:22, 50:3 therefore [3] 22:10, 23:12, 35:18 they're [4] 32:14, 41:12, 49:21, 53:24 they've - 51:15 thing [2] 30:5, 51:6 though [5] 4:12, 7:10, 7:11, 35:4, 48:11 thoughts - 47:25 thousands - 49:3 throughout - 11:18 timelines - 30:17 tissue - 44:16 TMDL [2] 43:8, 44:25 TMDL's - 47:9 today [2] 32:6, 44:3 top - 54:9	topic - 51:24 total [2] 42:22, 44:24 touched - 20:17 transcribed - 59:11 transcript [2] 1:10, 5:25 transcription - 59:11 transmitting - 57:19 triennial [6] 31:1, 31:3, 31:6, 43:12, 44:6, 44:6 triggered - 28:14 trouble - 50:15 true - 59:12 Tubbs [2] 25:15, 25:21 turning - 38:24 Typically - 44:7 <hr/> U <hr/> unclear - 29:6 undermining - 51:5 understand [5] 7:10, 35:24, 51:25, 52:23, 52:24 understood - 6:20 undertaken - 7:14 unfolded - 39:2 unhappy - 49:18 unless [3] 21:4, 26:1, 45:9 unnecessary [2] 16:19, 50:2 updated - 24:19 upheld - 19:23 upon [2] 9:9, 31:22 uses [2] 23:9, 28:17 using [4] 45:2, 48:23, 53:25, 59:11	<hr/> V <hr/> vacate [3] 21:20, 30:3, 32:17 vacated [2] 38:19, 43:6 vacatur [2] 22:12, 28:25 valid [6] 8:25, 25:25, 29:15, 46:21, 46:21, 47:14 validity [2] 25:22, 39:10 various [3] 40:13, 42:22, 48:15 versus - 25:21 via [5] 1:15, 1:18, 1:19, 1:20, 2:8 Vice [106] 1:16, 3:4, 4:4, 5:17, 5:22, 6:6, 7:5, 8:2, 8:12, 8:16, 9:20, 9:23, 10:4, 10:7, 10:20, 10:23, 11:4, 12:8, 12:22, 12:25, 13:4, 13:14, 13:17, 13:22, 14:3, 14:20, 14:24, 15:2, 15:4, 15:11, 15:14, 16:2, 16:7, 16:20, 16:23, 17:5, 17:10, 17:12, 17:15, 17:16, 18:2, 18:21, 21:8, 21:10, 29:2, 29:8, 32:20, 33:1, 33:6, 33:7, 33:19, 33:23, 35:3, 35:7, 35:13, 36:1, 36:5, 37:2, 37:3, 37:5, 38:21, 40:15, 41:15, 42:15, 43:2, 43:22, 45:13, 45:17, 45:21, 46:5,	46:8, 46:10, 46:13, 46:17, 47:1, 48:7, 48:10, 51:21, 51:23, 52:19, 54:14, 54:17, 54:20, 54:25, 55:2, 55:6, 55:7, 55:18, 55:21, 55:22, 56:1, 56:6, 56:14, 56:17, 56:20, 56:22, 57:1, 57:2, 57:13, 57:22, 57:25, 58:4, 58:6, 58:10, 58:11, 58:22 Vicki [4] 2:3, 10:11, 36:3, 43:24 view [8] 4:9, 34:6, 34:7, 40:14, 41:18, 44:13, 47:5, 47:6 violated - 20:3 violation [4] 20:6, 32:10, 36:14, 36:23 virtually [4] 10:14, 12:14, 13:24, 53:10 void [3] 30:21, 30:21, 38:15 voidance - 38:17 vote [8] 3:20, 4:1, 8:9, 15:7, 17:6, 54:21, 56:18, 58:1 <hr/> W <hr/> wait - 31:5 wanted [4] 4:12, 41:5, 51:13, 52:17 wants [3] 20:14, 21:5, 54:8 Warhank [9] 2:8, 10:9, 10:13, 11:1, 11:5, 18:19,
---	--	--	---	--	---

<p>21:4, 29:4, 29:5 waste [3] 44:25, 45:5, 45:6 we'll [8] 3:4, 18:14, 18:16, 32:22, 33:20, 51:5, 53:13, 53:14 we're [17] 3:25, 6:8, 14:8, 16:24, 17:1, 18:10, 18:11, 18:12, 18:17, 32:24, 38:25, 39:8, 39:9, 40:19, 42:9, 51:24, 54:10 we've [2] 4:13, 30:19 weeks - 14:12 weigh - 10:17 weren't - 4:14 what's [3] 29:22, 39:7, 53:3 whatever [4] 20:14, 41:3, 48:16, 50:23 wheel - 5:7 WHEREOF - 59:15 WHEREUPON - 3:1 whether [5] 8:9, 9:7, 22:18, 26:7, 28:5 whole - 49:9 willing - 50:23 withdraw - 16:22 within [2] 26:23, 46:23 WITNESS - 59:15 woefully - 49:9 won't [3] 8:18, 12:9, 48:14 wondering [3] 5:5, 7:25, 8:8 worth - 51:10 wouldn't [5] 41:4, 47:18, 48:1, 48:5, 50:10 written [6]</p>	<p>9:15, 9:16, 26:22, 27:4, 27:7, 44:2 wrong - 50:7</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>you'd - 13:12 yourself [3] 13:25, 36:2, 37:6</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoom [5] 1:15, 1:18, 1:19, 1:20, 2:8</p>				
--	---	--	--	--	--