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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

TRANSCRIPT OF PROCEEDINGS - PUBLIC HEARING

Heard in the Auditorium
Montana Department of Public Health
and Human Services
Helena, Montana
January 31, 2022
10:00 a.m.

BEFORE HEARING EXAMINER ANDREW CZIOK

PREPARED BY: LAURIE CRUTCHER, RPR
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1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 * * * * *

4 HEARING EXAMINER CZIOK: Good morning,
5 everyone. My name is Drew Cziok. I'm a Hearing
6 Examiner for the Board of Environmental Review,
7 and I'm here to facilitate the public meeting to
8 allow comment on the Board's stringency review of
9 the selenium regulations.

10 Thank you for all for being patient with
11 us this morning. We had some IT issues in the
12 auditorium that we're using. Could somebody on
13 here just confirm that you can hear me right now
14 and that the audio is coming through? I see some
15 thumbs up. Great.

16 So if everyone is familiar with the hand
17 raising function, I'm going to use that to see how
18 many folks we have today to make comment. If you
19 know how to raise your hand on Zoom. I've got
20 folks in the room as well, but I want to be able
21 to get an accurate count.

22 So could everyone who plans to speak
23 today just raise their hand, so we can take a note
24 of how many folks will be offering public comment.
25 I'm seeing a lot of hands. Folks are figuring

1 this out. We're going to take a quick tally, so
2 don't unclick that just yet. We've got three in
3 the room as well, so that's 25. I'm going to do
4 some quick math.

5 So in looking at how many people we have
6 to comment today, and how much time we have, and I
7 plan to give you all the full two hours. The IT
8 issues are on us, so we're going to go a little
9 bit past twelve noon today.

10 It looks like we've got space for about
11 four minutes per speaker, so I'll be keeping time
12 on that, and I'll just let folks know when they're
13 getting close to that, especially on Zoom, since
14 folks aren't here in the room. But I'll just let
15 you know when we're getting close, and we'll go
16 from there.

17 We're going to take proponents first,
18 and then opponents. But I've heard from at least
19 one party that they're offering more or less a
20 neutral comment, so I'm going to put in the
21 neutrals with the opponents. It doesn't mean that
22 you're actually being designated as an opponent in
23 this review, but we need to put you somewhere, so
24 that will be where neutrals will be fitting in.

25 So if anyone in the room is here to

1 speak in support of this as a proponent, I'd love
2 to see your hand at this point, and we'll start
3 with you here, and then we'll go to the Zoom
4 folks. So do we have any proponents in the room?

5 (No response)

6 HEARING EXAMINER CZIOK: All right.

7 Seeing none -- Proponents. We do have a proponent
8 in the room; is that right?

9 SENATOR CUFF: Yes.

10 HEARING EXAMINER CZIOK: If you want to
11 come up to the -- you're not? Opponent?

12 SENATOR CUFF: No, I'm an opponent.

13 HEARING EXAMINER CZIOK: Opponent of the
14 review. So the question before the Board of
15 Environmental Review is whether this regulation is
16 more stringent than the federal standards. So if
17 there are folks here to say that this record is
18 more stringent, and that the additional review
19 required under Montana Code Annotated 75-5-203 is
20 necessary, that would make you a proponent today.
21 I'm sorry if that's a little confusing.

22 SENATOR CUFF: I'm a proponent.

23 HEARING EXAMINER CZIOK: In that case,
24 it sounds like we do have someone who is coming up
25 to speak in support of this stringency review. So

1 if you want to come up to the podium and introduce
2 yourself.

3 We'll actually have you on a camera. It
4 will be more clear when you get to the podium.
5 You'll be able to see yourself, and then you'll be
6 reflected in that as well.

7 SENATOR CUFF: Thank you. My name is
8 Senator Mike Cuff. I represent Senate District 1,
9 Northwest Lincoln County, Lake Koocanusa, Libby
10 Dam, and the Kootenai River. All the parts of it
11 in Montana are in my district.

12 I live a mile or two from the river,
13 from the lake, and a few miles from the mouth of
14 the Elk River, and not far from the mining area.
15 I've been familiar with the project a very long
16 time. I was involved I think actually before the
17 real process began. When the working group first
18 started, I was involved.

19 Now, my concern is, yes, I believe that
20 .8 is lower than the Federal. I fully expected a
21 lower standard was going to be imposed as we went
22 along. Initially I would have, I thought it would
23 probably be the 1.5, equalling the federal, and I
24 did not expect it certainly to go below 1.0, which
25 the lake has been averaging for a number of years.

1 I was very surprised to see it at a .8.

2 And I was very disappointed in the
3 process that we went to to get that number. I
4 have yet to see, I believe, the science. I
5 haven't seen the actual science. I'd like to see
6 a chart or something saying here are the water
7 measurements, here are fish tissue measurements,
8 and here is how we get to a .8 standard rather
9 than one of the others.

10 I'd like to know what is the point of
11 endangerment, and what is the safety factor that
12 was added in, so that it came down to the .8.

13 So yes, I very much do think that the
14 process was hurried. I actually think the process
15 was flawed. Many times I asked to slow it down,
16 talked to the Director of DEQ to back it off a
17 little bit, and help us to understand before we
18 come to a major decision, and that never happened.
19 It never happened, and the details and the science
20 that I kept asking for was not given.

21 I'm not standing alone. All the other
22 State representatives, both from Lincoln County,
23 stand with me. All three Lincoln Commissioners
24 who have filed this action I believe right now
25 stood with me. I have testified in committees,

1 and I've asked for information. I don't believe
2 we've heard it yet.

3 The DEQ presentation most recently last
4 week was very detailed -- it was the best they've
5 given, I believe -- but I still did not see what
6 is the science that's driving the lowest standard
7 in the world.

8 And I understand it's site specific to
9 Lake Koochanusa, but I also heard at that meeting
10 that there are a number of other bodies of water
11 in Montana that perhaps have an elevated level of
12 selenium above what's this standard, and that
13 perhaps now we're going to be moving on across the
14 state, which is kind of like divide and conquer.
15 Take out the lonely little guys up in the corner
16 of the state that are at the end of the road. If
17 you're going to get to Lincoln County, you're
18 either going to Canada, or you're going to Idaho,
19 or Spokane. And we're at the end of the road.

20 We've been hurt by a number of other
21 federal land management decisions that may or may
22 not have been necessary, and I don't believe they
23 were necessary.

24 But at any rate, I fear we're bringing
25 in a new federal standard that may have some

1 economic negative impact on the county. I fear
2 that other economic activity, most of which the
3 County drains into that system.

4 And it takes one person to file an
5 objection on a commercial project, timber sale or
6 other kind of a project; and it takes one Judge
7 who frequently upholds appeals in these cases.

8 And that is why I'm concerned. If the
9 standard is real, if we truly need that to protect
10 the people and the land of Lincoln County, prove
11 it to me, and I'll be the biggest fighter in favor
12 of it; but it hasn't been presented to me in that
13 manner.

14 All three Lincoln County Commissioners,
15 all three State elected officials, are saying,
16 "What's the proof?" So thank you for your time,
17 and I may want to present something later, or I
18 may ask for time to come back to the podium. Who
19 knows?

20 HEARING EXAMINER CZIOK: Hi, folks. I
21 have a question that came in. I don't think it
22 was broadcast to the entire group, but I'm happy
23 to read it. It is a question from Vicki Marquis.

24 "Hi, Drew. I believe the Board order
25 states that proponents and opponents will have

1 equal total time, which I interpret to mean the
2 proponents will have one hour and the opponents
3 will have one hour, instead of dividing the two
4 hours among all speakers."

5 Given the number of people that we have,
6 and the fact that it's a relatively short of
7 amount of time to speak, and that parties have had
8 extensive opportunities to offer written comment,
9 I think I would waste a lot more of your time
10 dividing everyone up and figuring out which side
11 you're on.

12 I think equally divided time means
13 everyone who's come today to speak should be
14 heard, regardless of which side that they're on,
15 especially given that some folks are neutral.

16 If I'm wrong, I am happy to be corrected
17 by the Board in that process, but I would disagree
18 with your interpretation, while I thank you for
19 your input.

20 We're on to the next proponent. We're
21 on to the online section. So folks, if you've got
22 your hands raised just from my last count, if you
23 want to uncheck that so that I can see. Just
24 everyone's hand go away for a moment. Then we're
25 going to start with folks who want to speak as

1 proponents, and then I'm going to come back in
2 once again to make sure that we get everybody
3 heard today.

4 So we'll give you a second to catch up,
5 and then I'll assume that anyone who has got their
6 hand up at this point is here to speak as a
7 proponent. So we'll start there. How many do we
8 have? Three.

9 Again, I'm sorry if it's confusing, but
10 proponents will be those who are speaking in favor
11 of the stringency review. Great. Let's start
12 with Ms. Marquis. I'm so sorry if I'm pronouncing
13 your name incorrectly. If you want to unmute her
14 and we can give her the floor.

15 MS. MARQUIS: Thank you. Can you hear
16 me?

17 HEARING EXAMINER CZIOK: We can hear
18 you.

19 MS. MARQUIS: Okay. Great. Thank you.
20 Thank you so much. My name is Vicki Marquis, and
21 I'm an attorney with Holland and Hart in Billings,
22 and I represent Teck, one of the Petitioners in
23 this case.

24 One of the most important functions of
25 the Board here is to ensure that the agency

1 rulemaking is done properly and in compliance with
2 State law. That's the narrow issue before the
3 Board in this case, whether promulgation of the
4 new selenium rule was done properly and in
5 compliance with State law, specifically the no
6 more stringent than Federal statute found at
7 75-5-203.

8 Now, the Board has received and heard
9 comments from organizations and people who clearly
10 do not like Teck or coal mining, but the question
11 before the Board is not whether it supports Teck
12 or whether it supports coal mining. The question
13 before the Board is much more important than that.
14 It is whether the Board's promulgation of the new
15 selenium rule was done properly.

16 Now, no one here disputes the
17 legislative intent as it was presented in Teck's
18 original comments on the filing, and that
19 legislative intent makes any standard proposed
20 that is more stringent than federal is subject to
21 the stringency statute, and that the public must
22 be informed of such stringency in the initial rule
23 publication. It also requires that a written
24 finding must be published prior to rule adoption.

25 I'd like to respond briefly to DEQ's

1 response at Page 11. They argue that there's no
2 need to show that the Federal regulation is
3 inadequate to protect public health, and I refer
4 you to Teck's initial comment Pages 3 to 7, where
5 it is clear from the whereas clauses in the
6 legislation that the Legislature intended there to
7 be an analysis of whether the Federal guideline is
8 sufficiently protective for the public, and for
9 the public to be advised of the agency conclusions
10 in that regard. That legislative issue is found
11 at Exhibit A, specifically Pages 1 and 2 of our
12 comments.

13 Everyone agrees that the finding
14 required by the no more stringent than Federal
15 statute was not made here. At most some comments
16 hypothesize that the water column standard is not
17 really a standard, but that's belied by the
18 legislative intent of the statute, and really it
19 is also belied by the rule itself.

20 The best evidence that the water column
21 standard is a standard is the language of the rule
22 itself. If you look at ARM 17.30.632 -- that's
23 the new selenium rule, specifically Subparagraphs
24 1, 2, 5, and 7 -- it calls the water column
25 standard a standard. So that new selenium rule

1 does not get a free pass through the stringency
2 statute.

3 Other comments ignore EPA's numeric
4 criteria of 1.5 in favor of some other number, so
5 that ignores the relevant case law, and it ignores
6 EPA's statement in its approval letter that 0.8 is
7 more stringent than the recommended water column
8 criterion, end quote.

9 Now, EPA and DEQ sort of mix words or
10 they confuse statements when they say that EPA did
11 not conduct a stringency review pursuant to State
12 law, but they don't deny EPA's conclusion that 0.8
13 is more stringent than the recommended water
14 column standard of 1.5.

15 And regarding whether the required
16 finding can be made from the record, DEQ only
17 offers conclusory statements which are not enough.
18 A finding implies that one searches through and
19 weighs the evidence in order to find a particular
20 fact.

21 Here DEQ offers no record citation to
22 actual evidence, only record citations to
23 conclusory statements. The most egregious example
24 of this is whether the standard is achievable.

25 DEQ cites to one statement in the

1 Board's Response to Comments 78. In there the
2 Board states that the degree to which the standard
3 is achievable depends on Teck's efforts. It is
4 not an achievability determination.

5 And this is a very important point
6 because if the standard is not achievable, meaning
7 that the lake cannot meet the standard, then the
8 next logical step is for DEQ to pursue downgrading
9 the designated uses of the lake, meaning would
10 they downgrade or delete aquatic life as a
11 designated use of the lake because the lake can't
12 meet the standard. We find that provision in
13 Montana statute at 75 --

14 HEARING EXAMINER CZIOK: Ms. Marquis,
15 your time is up.

16 MS. MARQUIS: I have more comments
17 prepared. I wasn't prepared for the format
18 limitation.

19 But I'll just conclude by saying that
20 the evidence does not support the standard that
21 was put in place. It is clearly more stringent
22 than Federal. The written finding was not made,
23 and the Board does have authority and should
24 invalidate the new selenium rule. Thank you.

25 HEARING EXAMINER CZIOK: Thank you, Ms.

1 Marquis. I apologize for getting your name wrong
2 earlier.

3 I see we've got another hand raised from
4 someone whose name placard reads Jackson, Murdo
5 and Grant. Sorry. One second. We're having some
6 audio issues. I'm going to speak from Elena's
7 monitor when I can here. It sounds like we're
8 getting feedback whenever I sign in.

9 Mr. Warhank, I apologize. If you want
10 to start again. We have a Court Reporter
11 recording this in the room, and she wasn't able to
12 hear you in that first part.

13 MR. WARHANK: Yes. My name is Murry
14 Warhank. I'm with the Law Firm of Jackson, Murdo
15 and Grant. I represent the Lincoln County Board
16 of County Commissioners.

17 Most of the comments that I had intended
18 to proffer have been covered very well by Senator
19 Cuff, as well as Ms. Marquis.

20 I just want to reiterate that there is
21 real concern in this local area, being one that
22 has been affected year after year by --
23 (inaudible) -- they've been assured are not going
24 to cause economic hardship in their county, but
25 have indeed caused significant economic hardship

1 in terms of the jobs created by the lumber
2 industry, for example.

3 And so the County is very concerned
4 that, one, the public be given the proper notice
5 under the stringency statute, so that they can
6 fully participate, and that the full economic
7 costs of this can be weighed properly after a full
8 review; and secondly, that the proper law and the
9 proper process be followed, so that a good outcome
10 can be achieved.

11 Now, they recognize that perhaps the
12 standard after full review can go forward, but we
13 definitely believe that that process must as a
14 matter of law be followed.

15 Given that I have no further comments, I
16 would offer to allow Ms. Marquis to continue her
17 comments for the remainder of my time since we
18 represent basically the same position.

19 HEARING EXAMINER CZIOK: I appreciate
20 the sentiment. I think what that's going to end
21 up doing is really complicating this if we're
22 going to be trading time around. I want to make
23 sure that everyone who came to speak today is able
24 to speak, and I don't really have a good way to
25 divide up between folks.

1 I understand both of you have submitted
2 pretty extensive briefing in this case and some
3 written comments, so again, if you'd like to use
4 the remainder of your three minutes to speak, that
5 would be great, but I'm not going to start passing
6 time around between folks. I think you can
7 understand that that's going to needlessly
8 complicate the comment period.

9 MR. WARHANK: Understood. Thank you
10 very much. I'm finished with my remarks.

11 HEARING EXAMINER CZIOK: Thank you, Mr.
12 Warhank. I believe we had one more person who was
13 raising their hand in their video feed, but wasn't
14 able to get their hand raise function. Was that
15 you, Mr. O'Connor, that I see down there? Give me
16 a wave if that's --

17 So if you want to just unmute your
18 microphone. You'll find that button on the bottom
19 left of your screen. There should be a little
20 microphone icon with a slash through it. If you
21 just click on that, it should unmute your input,
22 and you should be able to speak to us.

23 MR. O'CONNOR: Yes. I am a proponent.
24 I got a message from somebody running the meeting
25 that had me down as a proponent.

1 HEARING EXAMINER CZIOK: Well, it's your
2 turn. We'd love to hear from you. So go right
3 ahead, Mr. O'Connor.

4 MR. O'CONNOR: My name is John O'Connor.
5 I live in Bonners Ferry just across the border
6 from Montana. I've lived here for 41 years.

7 And the Kootenai River has a complicated
8 political situation. It begins in British
9 Columbia, flows through Montana, before it reaches
10 Idaho.

11 I count on the river to be clean when it
12 arrives here to be able to support aquatic life
13 properly; and because of that, I count on the good
14 will of the people upstream.

15 The current standards, the new
16 standards, do the best job of protecting those
17 concerns. They do an adequate job of protecting
18 those concerns. It's arguable that the previous
19 Federal guidelines do not. It's certainly
20 arguable that what Teck is doing in British
21 Columbia does not.

22 As somebody who lives on the river and
23 with the river, I want to put my full support
24 behind the present newer standards. That's all I
25 have to say.

1 HEARING EXAMINER CZIOK: All right.

2 Thank you, Mr. O'Connor. If anyone else could
3 indicate using the hand raise function on their
4 screen if they are here to speak as a proponent of
5 the review.

6 I will say again. Proponent means that
7 the petitioned review -- so basically the argument
8 that the current selenium standard is more
9 stringent than the Federal standard -- that would
10 make you a proponent.

11 So I see some more hands coming up now.
12 The first one I see here is Jerry Bennett, so Mr.
13 Bennett, if you'd like to unmute yourself, I will
14 give you the floor. That mute button can be found
15 again at the bottom left of your screen in the
16 Zoom window.

17 MR. BENNETT: Thank you very much.
18 Jerry Bennett. I'm a Lincoln County Commissioner.

19 I want to emphasize what Mr. Warhank
20 stated on our behalf. And having lived in Lincoln
21 County pretty much my whole life, my family is
22 from here, and we've lived in this area for
23 decades and decades.

24 And as a Commissioner, I'm very
25 concerned, and as a former State legislator, that

1 the laws we pass as a legislator are adhered to,
2 that the intent is adhered to, and that we do this
3 in a proper and right way.

4 We all agree as Commissioners if the
5 standard is truly what needs to be, we will live
6 with that and agree with that; but we don't
7 believe it is. I don't think from looking at the
8 graphs and the science that we have seen that it's
9 a proper standard.

10 So we are proponents of this being
11 looked at, and handled in a public and proper way.
12 So I thank you for the time to comment.

13 HEARING EXAMINER CZIOK: Thank you, Mr.
14 Bennett. I see another hand raised by Mr. Josh
15 Letcher. I hope I'm saying that right. If you
16 could unmute yourself.

17 MR. LETCHER: Yes. I'm Josh Letcher.
18 I'm also a Lincoln County Commissioner.

19 And I started listening in on this
20 process long ago when they first started studying
21 it, and have been involved for quite awhile. And
22 to say that the .8 standard is not less stringent
23 than 1.5 to me doesn't even make sense
24 mathematically.

25 And the only thing I've been able to

1 come across so far that could even correlate that
2 is emotions based on people that didn't have all
3 the facts.

4 I'm a little disappointed that Vicki
5 Marquis was able to show up, bringing facts,
6 showing what some of the studies said, and the
7 things that were said, and she was only able to be
8 allowed four minutes; but yet we're getting a lot
9 of people showing up that are just against Teck
10 Coal.

11 And we can't regulate what Teck Coal is
12 doing in a foreign country. And this standard
13 didn't follow the laws of our country to even get
14 here, that some of the process was bypassed, and
15 we didn't get a lot of input from industries
16 within Montana that are going to be regulated by a
17 standard that was targeting an industry outside of
18 this country, let alone outside of Montana.

19 And I'd just like to see this go back to
20 review, and if truly the science says that we need
21 to be at .08, then we do, but right now the
22 science isn't saying that. The process was
23 bypassed, and none of the information, as Ms.
24 Marquis had brought up points to meeting such a
25 stringent standard.

1 So I just believe we need to go back and
2 start over and actually use the science to come up
3 with the standard. Thank you.

4 HEARING EXAMINER CZIOK: Thank you, Mr.
5 Letcher. I will ask again before we shift. Is
6 there anybody else here who came to speak today as
7 a proponent? Go ahead and raise your hand if you
8 do. Make sure on the second page I don't miss
9 anybody there.

10 I'm going to shift to folks -- I know at
11 least one person who has expressed that they want
12 to speak neutrally, that is, they're not going to
13 identify as a proponent or opponent. If there's
14 anyone who that's your position, you're here to
15 offer public comment, but not as a proponent or an
16 opponent, please use that hand raise function
17 again, and I can call on you and give you the
18 floor for the public comment.

19 I see one hand from Tonya Fish at the
20 EPA. Tonya, if you want to unmute yourself.

21 MS. FISH: Thank you. Good morning. My
22 name is Tonya Fish, T-O-N-Y-A F-I-S-H, and I am
23 representing the Environmental Protection Agency.
24 Thank you for the opportunity to comment today.

25 My statement is intended to clarify our

1 previous comments, so that EPA's position is
2 clear.

3 EPA agrees that the water column element
4 for Lake Koochanusa is a water quality standard.
5 Water quality standards include criteria,
6 designated uses, and anti-degradation policies.

7 The selenium criterion at issue in these
8 proceedings is more complex than many of EPA's
9 recommended criteria because it has multiple
10 elements. Montana's selenium criterion includes
11 three elements, one of which is the water column
12 element.

13 EPA's February 2021 action evaluated the
14 State's submission to determine compliance with
15 the Federal Clean Water Act and EPA regulatory
16 requirements. The focus of that analysis is
17 whether the fish tissue and water column criterion
18 elements are protective of the aquatic life
19 designated uses in Lake Koochanusa.

20 The State concluded, based on data from
21 Lake Koochanusa, that 1.5 micrograms per liter
22 would not protect the aquatic life use, and 0.8
23 micrograms per liter was necessary to achieve
24 EPA's recommended fish tissue concentrations in
25 that aquatic system.

1 EPA determined that ARM 17.30.632 was
2 based on sound scientific rationale and protected
3 the designated use.

4 Future rulemaking is part of the relief
5 requested in the petitions. Therefore EPA
6 appropriately commented on this issue. In
7 addition, it has been proposed the Board could
8 void the current water column element of 0.8, and
9 suggest it be replaced with 1.5 or five micrograms
10 per liter until a later rule is promulgated.

11 EPA approved 0.8 micrograms per liter,
12 and it remains in effect for Clean Water Act
13 purposes unless and until EPA approves a new State
14 submission.

15 EPA's comments do not presuppose that a
16 standard set in compliance with the stringency
17 statute will not comply with the Federal law. In
18 the event of any future rulemaking, EPA was
19 clarifying for the Board what the State submission
20 would need to include to comply with Federal
21 requirements, including a site specific
22 demonstration that any new water column element
23 protects the designated uses of Lake Kooconusa and
24 the downstream uses in the Kootenai River.

25 Thank you for your consideration of

1 EPA's comments.

2 HEARING EXAMINER CZIOK: Thank you, Ms.
3 Fish. Is there anyone else here who similarly
4 wants to offer a neutral opinion? Go ahead and
5 raise your hand if there are.

6 (No response)

7 HEARING EXAMINER CZIOK: All right.
8 Then we will move to opponents. So again, what
9 would designate you as an opponent is if you are
10 opposed to the stringency review process
11 occurring; in other words, you don't think that
12 the current administrative record standard is more
13 stringent than Federal standard.

14 So I'm seeing hands go up now. I know
15 there will probably be some more hands as folks
16 get to that function, so I'm just going to start
17 with what's at the top of the list on my screen,
18 so that will be Richard Janssen. So Mr. Janssen,
19 if you want to unmute, and I will start the timer
20 and give you the floor.

21 I forgot my folks in the room. Mr.
22 Janssen, I've got to put you on hold. I was so
23 busy looking at the hands on my screen I missed
24 the hands in my room. If you want to come up and
25 go ahead and speak from this podium. I'll just

1 leave the timer for you so you can see it.

2 MS. BOWERS: Good morning. My name is
3 Kirsten Bowers, B-O-W-E-R-S. I'm a DEQ staff
4 attorney offering comments in opposition to the
5 petition for stringency.

6 I first want to emphasize that the only
7 question for the Board is whether the Lake
8 Kooconusa water column standard at ARM 17.30.632
9 Sub(7) Sub(a) is more stringent than comparable
10 Federal regulations or guidelines that address the
11 same circumstances.

12 The Board's adoption of the Lake
13 Kooconusa water column standard in December 2020
14 was consistent with the stringency statute. By
15 its plain statutory language, the requirement to
16 make the written findings under the stringency
17 statute after a public hearing and public comment
18 is only triggered when the Board adopts a rule
19 that is more stringent than comparable Federal
20 regulations or guidelines.

21 The Board correctly determined that the
22 Lake Kooconusa water column standard is not more
23 stringent, and the Board should not reverse this
24 previous determination.

25 Because the Board found the Lake

1 Kooocanusa water column standard no more stringent
2 than Federal, it was not required to make the
3 written findings under the stringency statute.

4 The Board's tentative stringency
5 determination was presented to the public in the
6 October 9th, 2020 initial rule notice -- that's in
7 the rulemaking record at Pages 1328 to 1330 -- and
8 the public was adequately advised of the Board's
9 conclusions regarding stringency.

10 The public had the opportunity to
11 comment on the Board's stringency position, and in
12 fact, the public did provide comments on the
13 Board's stringency analysis.

14 The Petitioner's argument that the Board
15 did not make a stringency determination as to the
16 Lake Kooocanusa water column standard is wrong.
17 Upon adoption of the rule, the Board considered
18 the stringency requirements.

19 DEQ has not argued that the Lake
20 Kooocanusa water column standard is not a water
21 quality standard. It is a water quality standard
22 developed in accordance with Federal guidelines,
23 and based on a translation of Federal fish tissue
24 criteria, to develop a water column standard that
25 is protective of aquatic life in Lake Kooocanusa.

1 The Federal criteria recognized that 1.5
2 micrograms per liter is not protective in all
3 cases, and provides guidance for states and tribes
4 to develop site specific criteria. If the EPA
5 guideline of 1.5 micrograms per liter were
6 intended to apply in all cases, there would be no
7 need for Federal guidance on development of site
8 specific criteria.

9 I do want to address briefly Lincoln
10 County's comments that they had only limited
11 ability to participate in the rulemaking and their
12 concerns were dismissed by DEQ.

13 This is not supported by the rulemaking
14 record. Lincoln County participated fully in the
15 rulemaking process, and DEQ considered Lincoln
16 County's concerns, including concerns that
17 development might be impacted by the water column
18 standard for Lake Koochanusa.

19 In fact there are no MPDES permits
20 authorizing point source discharges to the lake,
21 and no pending permit applications, and discharges
22 under general storm water and industrial permits
23 already must avoid discharges to State water, and
24 are subject to technology based effluent limits
25 and BMP's. This will not change with the Lake

1 Kooconusa selenium rule.

2 As of July 1, 2021, DEQ rather than the
3 Board has sole authority to adopt rules for the
4 administration of the Montana Water Quality Act
5 subject to the stringency provisions.

6 If the Board should find that 17.30.632
7 is more stringent than comparable Federal
8 regulations or guidelines, DEQ must either revise
9 the rule or make the findings under the stringency
10 statute, and DEQ can make the required findings
11 based on evidence in the record.

12 Finally, the Board should not reverse
13 the stringency determinations, and should deny all
14 relief requested by the Petitioners. Thank you.

15 HEARING EXAMINER CZIOK: And I see we
16 have one more commenter in the room, so I will
17 give you the floor.

18 MS. KELLY: Good morning. My name is
19 Myla Kelly. I'm the manager of the Water Quality
20 Standards and Modeling Section at Montana DEQ.

21 On December 11th, 2020, the Board
22 determined that the selenium standards for Lake
23 Kooconusa and the Kootenai River are no more
24 stringent than currently recommended EPA 304(a)
25 criteria for the following reasons:

1 One, they correspond to Federal
2 standards; two, they were developed using
3 Federally recommended site specific procedures
4 outlined in Appendix K, titled "Translation of a
5 selenium fish tissue criterion element to a site
6 specific water column value," from EPA's National
7 Aquatic Life Ambient Water Quality Criterion for
8 Selenium in Fresh Water.

9 The EPA guideline document mentions the
10 word "site specific" approximately 150 times, and
11 develops the guidelines for site specific water
12 column translation procedures for selenium,
13 because as stated in the guidance, quote,
14 "Appendix K also provides information on the data
15 necessary to derive a site specific criterion, as
16 well as scientifically defensible methods,
17 including the use of traditional bioaccumulation
18 factors, in addition to the more comprehensive
19 mechanistic modeling," end quote. That can be
20 found in the rule record on Page 418.

21 Appendix K of the Federal guideline
22 document provides a step wide process for deriving
23 each parameter used to perform a site specific
24 translation. The Department followed this step
25 wide process for translating the concentration of

1 selenium in tissue to a concentration in water
2 using the mechanistic bioaccumulation modeling.

3 The Board determined that the adopted
4 selenium standards for Lake Kooconusa and the
5 Kootenai River are not more stringent than
6 comparable Federal guidelines, and the Board
7 therefore was not required to make the written
8 findings in 75-5-203 Sub (2) and (3).

9 The EPA 304(a) criteria for selenium is
10 the first criteria based on fish tissue. It's
11 comprised of multiple elements, including egg
12 ovaries, muscle or whole body, and the water
13 column.

14 The selenium standards are fish tissue
15 based, not water column based, meaning the
16 standards account for dietary exposure, and
17 bioaccumulation as the primary pathway for
18 selenium exposure, rather than the exposure from
19 the water column. This can be found in the rule
20 record from Pages 73 to 76, Page 1520, and 1525.

21 While both fish and water column
22 standards were adopted for Lake Kooconusa and the
23 Kootenai River, the Petitioners are only
24 petitioning that the 0.8 micrograms per liter
25 water column standard be reviewed.

1 The Federal egg ovary criterion element
2 of 15.1 which Montana adopted is the foundation
3 for the EPA's criteria structure, whereby
4 reproductive tissue has primacy over data for
5 other fish tissue and water column criterion
6 elements.

7 The EPA water column criterion element
8 is translated from the egg ovary criteria. The
9 muscle, whole body, and water column standards are
10 all set at levels to ultimately protect the egg
11 ovary from exceedences.

12 Therefore, to be more stringent than the
13 Federal criteria, the site specific standard for
14 Lake Koochanusa would have to be based on an egg
15 ovary criterion that is less than 15.1 milligrams
16 per kilogram of dry weight. The State adopted an
17 egg ovary standard that is 15.1 milligrams per
18 kilogram of dry weight.

19 In summary, the water quality standards
20 adopted for Lake Koochanusa by the Board of
21 Environmental Review are no more stringent than
22 Federal standards for two clear reasons: The
23 water column standard was translated from the fish
24 tissue standard using the exact site specific
25 procedures outlined in Federal guidelines; and the

1 Federal and Lake Koochanusa water column standard
2 is translated from the Federal fish tissue
3 criteria that is directly linked to the egg ovary
4 of 15.1 milligrams per kilogram value. Thank you.

5 HEARING EXAMINER CZIOK: All right. I
6 believe that does it for the folks in the room, so
7 I will go back to the Zoom queue, and Mr. Janssen,
8 I apologize for stopping and starting for you, but
9 if you want to unmute, you have the floor.

10 MR. JANSSEN: Thank you. My name is
11 Rich Janssen. I'm a lifetime Montana resident in
12 Ronan, Montana. I also the Natural Resource
13 Department head, and enrolled Upper Kalispell
14 member with the Confederated Salish and Kootenai
15 Tribes.

16 Lake Koochanusa and the surrounding areas
17 are aboriginal homeland of my Tribes and many
18 other Native American Tribes. As I have stated
19 many times in other meetings, venues, or hearings,
20 the CSKT are not against mining. However, we are
21 against mining that does not protect the
22 ecological, cultural, and the fish and wildlife
23 resources of Lake Koochanusa and the surrounding
24 areas.

25 Regarding stringency review, we submit

1 the following comments. They are only a portion
2 of our and the Kootenai Tribe of Idaho's responses
3 to the Board of Environmental Review's notice of
4 schedule for implementation of review in the
5 matter of the Petitions of Teck Coal, Limited, and
6 the Board of County Commissioners of Lincoln
7 County, Montana, stringency review of rule
8 pertaining to selenium standards for Lake
9 Kooocanusa.

10 After a step wide six year process
11 attended by Teck and politicians from the area, as
12 well as many world renowned scientists, we believe
13 the new selenium standard does not violate Montana
14 law because it is not more stringent than the
15 Federal standard.

16 The new criteria adopted the Federal
17 standard for fish tissue at 15.1 micrograms per
18 kilogram, and then back calculated the water
19 column number to protect the fish based on current
20 data for selenium and fish tissue in the
21 reservoir. The process and results are consistent
22 with applicable Montana and Federal law.

23 Additionally, EPA guidance on the
24 development of site specific selenium criteria
25 specifically states that when implementing the

1 criteria, the fish tissue elements take precedent
2 over the water column elements, except in certain
3 circumstances.

4 This is because chronic exposure to
5 selenium in fish can result in reproductive
6 impairments, including deformity and mortality.
7 The EPA guidance also recommends that states and
8 tribes develop site specific recommendations to
9 account for local conditions.

10 This is precisely the process that was
11 undertaken over six years ago by state,
12 provincial, local, and Tribal First Nations
13 governments to jointly develop the selenium
14 standard of .8 for Koochanusa Reservoir.

15 In fact, over the last ten years, data
16 from Koochanusa demonstrates that several species
17 of fish exceed the egg ovary toxicity threshold
18 for selenium, provides a scientific basis for
19 adopting the Federal standard of 15.1 for egg
20 ovary, and .8 for the water column.

21 Below Libby Dam and the Kootenai River,
22 the Kootenai Tribes of Idaho has measured elevated
23 selenium concentrations in both Burbot and
24 Sturgeon eggs tissue, along with other native fish
25 species that are culturally important to the

1 Kootenai Tribe. A criterion exceedence of native
2 Mountain Whitefish have been documented.

3 In Idaho, selenium from the mines is
4 both persistent and pervasive throughout the lower
5 Kootenai, Kootenai River. Currently the Kootenai
6 River in Idaho is listed as impaired for selenium.

7 It is further relevant to note in
8 November 2021, at the last meeting of the joint
9 Montana BC Lake Kooconusa Monitoring and Research
10 Working Group, the Province of British Columbia
11 announced its proposed revised selenium objective
12 of .8, arrived at based on the site specific
13 tissue data for Kooconusa Reservoir.

14 So the Salish and Kootenai Tribes
15 incorporate their previous comments and submission
16 to the Board of Environmental Review regarding a
17 selenium standard for Lake Kooconusa.

18 With the submission of these comments or
19 participation in any forum, we do not expressly or
20 implied waive any collective or independent legal
21 rights, causes of actions, or the right to raise
22 additional matters, or provide supplemental
23 supporting information regarding any legislative,
24 administrative, legal, or other process in any
25 legal, administrative or forum relevant to this

1 matter. So thank you, sir. I am done.

2 HEARING EXAMINER CZIOK: Thank you, Mr.
3 Janssen. I'm going to go right down my list here.
4 The next person I see with their hand raised is
5 Genny Hoyle.

6 MS. HOYLE: Can you hear me?

7 HEARING EXAMINER CZIOK: Yes. I'll give
8 you the floor. You've got four minutes to offer
9 comment. Thank you.

10 MS. HOYLE: Thank you. On behalf of the
11 Kootenai Tribe of Idaho, as a Tribal river
12 biologist for the Fish and Wildlife Department, we
13 believe that the Montana Department of
14 Environmental Quality standard is appropriate, and
15 was reached by sound and rigorous science and
16 under the law.

17 The Kootenai Tribal water chemistry data
18 is showing that the current selenium
19 concentrations coming out of the Koocanusa
20 Reservoir about one to 1.2 micrograms per liter
21 selenium, are persistent and pervasive through the
22 Kootenai River ecosystem below Libby Dam.

23 Kootenai River fish are being negatively
24 impacted by selenium at these current
25 concentrations. Allowing these concentrations to

1 increase would further negatively impact an
2 already impaired ecosystem. The newly open Burbot
3 fishery and the recovery of native Kootenai River
4 White Sturgeon are at risk from the increased body
5 burdens of selenium coming from the Elk River
6 mining activities.

7 Kootenai River data is showing Burbot
8 tissue concentrations that are known to be
9 harmful. The Idaho Department of Environmental
10 Quality has listed portions of the Kootenai River
11 as impaired specifically for selenium. The
12 current data clearly depicts an ecosystem at risk
13 to increasing selenium concentrations.

14 In summary, the Kootenai Tribe of Idaho
15 supports the Montana DEQ's standard, and
16 respectfully requests that the Board of
17 Environmental Review summarily reject Teck's
18 request for a review. Thank you for your time.

19 HEARING EXAMINER CZIOK: Thank you.
20 Moving right on to the next one, I have Ellie
21 Hudson-Heck as the next on my list. And folks, if
22 you don't mind, once you've spoken, if you want to
23 just uncheck the raised hand on your box, that
24 will bump you off my list. I don't want to double
25 call on anybody, but I'm keeping track just in

1 case.

2 Ms. Hudson-Heck, can you hear me all
3 right?

4 MS. HUDSON-HECK: Yes. Can you hear me
5 okay?

6 HEARING EXAMINER CZIOK: Yes. I will
7 start the timer. Go ahead with your comment.

8 MS. HUDSON-HECK: Hi, everyone. My name
9 is Dr. Ellie Hudson-Heck, last name is H-U-D-S-O-N
10 hyphen H-E-C-K. And today I'd like to offer
11 comments on behalf of the Idaho Conservation
12 League.

13 We have been heavily involved in this
14 issue over the last two years, including being
15 present during the development and adoption of
16 these water quality standards. I also submitted
17 detailed written comments, so I'm just going to
18 try to keep my comments brief to give others a
19 chance to comment.

20 The first thing I'd like point out, and
21 really question, is that it's still really unclear
22 to me how a Canadian company that operates solely
23 in Canada even has standing to be challenging this
24 US Clean Water Act law.

25 The second thing is that the Montana

1 Water Quality Act requires stringency review only
2 when Montana adopts a water quality standard that
3 is more stringent than the comparable Federal
4 regulations or guidelines that addresses the same
5 circumstances.

6 Teck and the County argue that anything
7 that deviates from the generic 304(a) standards
8 triggers this stringency review. However, they
9 have completely ignored the language in the
10 Montana statute about the same circumstances.

11 The circumstances here are not the same
12 circumstances that the EPA recommended criteria
13 were intended for, because as many have pointed
14 out in the rulemaking, Lake Koochanusa has a high
15 selenium bioaccumulation potential.

16 Because of this, Montana decided to
17 follow EPA guidance, and adopt the site specific
18 standard. Therefore it's inappropriate for the
19 stringency review statute to be triggered at all
20 because these are not the same circumstances.

21 My final point is that as a downstream
22 entity, the decisions that Montana makes directly
23 impact the water quality and fish of Idaho rivers.

24 For years this pollution has been slowly
25 trickling into the Idaho Kootenai River, and new

1 data collected by the Kootenai Tribe of Idaho is
2 showing that maybe these standards that we're
3 discussing aren't actually stringent enough to be
4 protecting our fish and water quality.

5 Even with the current Lake Kooconusa
6 water column standard of 0.8, we're still seeing
7 selenium concentrations in Idaho fish that are far
8 above what the Clean Water Act requires.

9 So because we're essentially putting the
10 fate of our river in the hands of Montana, if the
11 Board decides to initiate further proceedings to
12 revise these standards, the Idaho Conservation
13 League intends to seek more stringent selenium
14 criteria to protect the Kootenai River watershed.
15 Thank you for your time.

16 HEARING EXAMINER CZIOK: Thank you,
17 Doctor. Next we have Emily Qiu. If you want to
18 unmute, I will let you introduce yourself and
19 offer your comment.

20 MS. QUI: Thank you. Good morning,
21 everyone. My name is Emily Qui from EarthJustice.
22 I represent the Montana Environmental Information
23 Center and Clark Fork Coalition.

24 The Board should deny Teck and Lincoln
25 County's petition seeking stringency review of the

1 selenium rule for Lake Koochanusa for the following
2 four reasons that I'm going to address today.

3 First, the Board has already determined
4 that the selenium rule is no more stringent than
5 the Federal standard. Ms. Marquis incorrectly
6 states that the stringency of the selenium rule
7 has not been reviewed before.

8 In 2020 Teck raised this identical
9 stringency issue with the Board, and the Board at
10 the time specifically determined that the selenium
11 rule was, quote, "no more stringent than the
12 Federal standard."

13 This Board stated, and I again quote,
14 "Although the .8 micrograms per liter standard for
15 Lake Koochanusa is lower than the EPA's national
16 criteria of 1.5 micrograms per liter for lakes,
17 the proposed Lake Koochanusa water column standard
18 is no more stringent than the recommended EPA 304
19 criteria because it was developed using federally
20 recommended site specific procedures.
21 Therefore it is more accurate than the generally
22 applicable national lentic number."

23 Teck and Lincoln County do not provide
24 any new justifications or data for reviewing this
25 prior determination. So if the Board were to

1 change its determination, given that no new
2 justifications or data exist for it to provide a
3 reasoned decision for a weaker selenium rule, it
4 would be acting arbitrarily and capriciously.

5 Second, the selenium rule is no more
6 stringent than the Federal standard. Some of the
7 proponents attempt to over-simplify this
8 discussion by stating that .5 micrograms per liter
9 is less than 1.5 micrograms per liter.

10 This is a misrepresentation of the
11 Federal standard, which ignores Federal guidelines
12 allowing the site specific water quality standard
13 because 1.5 micrograms per liter is not protective
14 for certain water bodies, including Lake
15 Kooacanusa.

16 The standard is no more stringent than
17 the Federal standard. Under the Clean Water Act,
18 states must adopt into their water quality
19 criteria that protect designated uses of water
20 bodies.

21 EPA explicitly provides that states can
22 choose to adopt scientifically defensible site
23 specific criteria that are different from EPA's
24 national recommended criteria, as long as the site
25 specific criteria are protective of the designated

1 use.

2 The selenium rule was developed based on
3 the best available science, in a multi-year,
4 multi-stakeholder effort in order to protect Lake
5 Kooocanusa's beneficial uses. And in that effort,
6 Montana DEQ chose to develop the site specific
7 column criteria as expressly permitted by EPA.

8 DEQ followed the protocols provided by
9 EPA, it approved the selenium rule. This in
10 itself shows that the selenium rule was developed
11 in accordance with EPA protocols, and cannot be
12 more stringent than the Federal standard, and is
13 scientifically defensible.

14 Third, the selenium rule is
15 scientifically defensible as I mentioned before.

16 Some of the proponents appear to imply
17 that they have not seen science supporting the
18 selenium rule.

19 There is a difference between no data
20 and not liking what the data says. Here to
21 develop the selenium rule, DEQ initiated a four
22 year data collection effort, and participated in a
23 binational working group. Data came from multiple
24 sources, including the EPA, US Geologic Survey,
25 DEQ, and the Kootenai Tribe of Idaho, and

1 Confederated Salish and Kootenai Tribes.

2 All of this data demonstrates the need
3 for site specific selenium criterion in order to
4 protect Lake Kooconusa's designated uses, because
5 the lake is highly susceptible to selenium
6 bioaccumulation.

7 Then based on this data, and following
8 EPA's protocols for developing site specific
9 standards, DEQ established a site specific
10 standard.

11 Teck and Lincoln County provide no
12 additional science-based justifications for
13 revisiting this scientifically defensible rule.

14 Fourth. Teck and Lincoln County's
15 effort to undermine the selenium rule are not
16 supported by the EPA, and EPA cannot approve a
17 weaker rule.

18 The Clean Water Act requires protection
19 of waters in Montana. Mr. Letcher states the
20 selenium rule is trying to target a foreign
21 company. The selenium rule is designed to protect
22 Montana's waters. I want to emphasize that the
23 point that the selenium pollution --

24 HEARING EXAMINER CZIOK: I don't mean to
25 interrupt. I ran you out of time, but I didn't

1 want to cut you off mid-sentence, so if you want
2 to just finish that --

3 MS. QUI: Sure. I can go ahead and
4 finish.

5 Finally to note that the selenium rule
6 is intended to protect Montana's waters, and to
7 portray it as an attack on a foreign entity is
8 inaccurate. So we respectfully request that you
9 deny the petition seeking stringency review.
10 Thank you so much.

11 HEARING EXAMINER CZIOK: Thank you. The
12 next person I see with their hand raised is Wyatt
13 Petryshen. Can you hear us?

14 MR. PETRYSHEN: Yes, I can. Thank you.
15 So my name is Wyatt Petryshen. I'm with
16 Wildsight. My last name is spelled
17 P-E-T-R-Y-S-H-E-N. We had submitted written
18 comments, but I'd like to add a couple points in
19 this public comment period.

20 So the one main point I'd like to make
21 is that the new site specific standard for Lake
22 Kooconusa is no more stringent than the Federal
23 standard, and I'd like to provide a quote from the
24 rulemaking record, from rulemaking citation
25 RR000001-2, and that is that the proposed water

1 quality standard for Lake Koochanusa was based on
2 EPA 304(a) fish tissue criteria, and site specific
3 bioaccumulation modeling, following site specific
4 procedures set forth by EPA in its current 304
5 guidance.

6 The new rule includes fish tissue
7 standards which correspond exactly to the EPA's
8 currently recommended 304(a) fish tissue criteria.
9 Therefore the proposed Kootenai River and the Lake
10 Koochanusa water column and fish tissue standards
11 are no more stringent than the currently
12 recommended EPA 304(a) criteria, because they
13 correspond to Federal standards, or were developed
14 using federally recommended site specific
15 procedures.

16 And one more quote on the procedures
17 used to develop this from RR002544, was that the
18 EPA's 2016 selenium criteria were developed from
19 Appendix K, and it describes methods by which site
20 specific selenium standards may be developed for
21 individual water bodies.

22 If you look at fish tissue data coming
23 out or below the US/Canada border, there are
24 current exceedences to the 15.1 fish tissue
25 guideline, which can be found on the Lake

1 Kooconusa Monitoring and Research Working Group
2 website, which is publicly available data as well.
3 So the prior Federal guideline was not protective
4 of fish species.

5 Those are my comments. Thanks.

6 HEARING EXAMINER CZIOK: Thank you, Mr.
7 Petryshen. Next up I see Steven Pfeiffer. If you
8 want to unmute, and I'll start your time as well.

9 MR. PFEIFFER: Thank you. Thank you,
10 Board members, for the opportunity to provide
11 public comment. I'm speaking on behalf of Idaho
12 Rivers United, a conservation group dedicated to
13 advocating for healthy, free-flowing rivers, and
14 abundant fish populations across the state of
15 Idaho.

16 We strongly oppose the petition to
17 review the selenium standard for Lake Kooconusa.
18 The recently adopted selenium criteria for the
19 Kootenai River and Lake Kooconusa was correctly
20 determined by Montana to be no more stringent than
21 EPA requirements, and was approved by the EPA.

22 The new selenium standards are vital to
23 ensuring the continued health of the Kootenai
24 watershed, its fisheries, and the communities that
25 rely on the clean river system, not only in

1 Montana, but downstream Idaho as well.

2 The Board of Environmental Review must
3 acknowledge the years of collaborative research
4 and discussion amongst a wide range of
5 stakeholders that went into establishing the
6 science based standard, and reject the review.

7 The approved selenium criteria is
8 protective of important native fish species in the
9 Kootenai watersheds, and limits the threat of
10 bioaccumulation.

11 It is clear that selenium is present and
12 accumulating in the river system into Idaho, based
13 on numerous fish tissue samples. Why revert to a
14 weaker standard that leaves the door open for more
15 and more selenium pollution in Montana waters,
16 effectively waiting until it's too late for the
17 health and success of the river's fish
18 populations.

19 The State of Montana must be proactive,
20 not reactive, in setting water quality standards,
21 for the benefit of aquatic life and the people
22 that rely on this waterway in Montana and in
23 Idaho. Those are my comments. Thank you.

24 HEARING EXAMINER CZIOK: Thank you very
25 much. Next up on my list I see Erin Sexton. If

1 you would like to unmute and introduce yourself,
2 you can start your comments as well.

3 MS. SEXTON: So hi. My name is Erin
4 Sexton, that's S-E-X-T-O-N, and I'm here to
5 comment in opposition to the stringency review of
6 the selenium rule.

7 I served on both the Lake Koochanusa
8 Monitoring and Research Working Group, and the
9 Selenium Technical Subcommittee from the inception
10 of both of those committees on behalf of the
11 Confederated Salish and Kootenai Tribes. I'm also
12 a research scientist, and I collected water
13 quality data in the Elk River down river of the
14 mines from 2005 to 2011.

15 The process to arrive at this criteria
16 took over six years of one of the most
17 collaborative, transparent, and scientifically
18 robust processes that I've ever been a part of.

19 For those of us that attended the
20 Koochanusa Working Group meetings and the Selenium
21 Technical Subcommittee meetings, this petition
22 aimed at weakening Montana's own water quality
23 standards demonstrates no scientific basis.

24 The petition demonstrates a fundamental
25 misunderstanding of the Federal selenium standard,

1 which clearly states that fish ovary
2 concentrations can take primacy over water column
3 concentrations, based on site specific conditions.

4 In fact, Montana DEQ did adopt the
5 Federal fish tissue criteria of 15.1 micrograms
6 per liter, and then back calculated to determine
7 the 0.8 micrograms per liter water column
8 concentration, based on the current site specific
9 data for fish tissue in Koochanusa Reservoir.

10 The petition also demonstrates a
11 fundamental misunderstanding of the site specific
12 data in Koochanusa Reservoir. Over the six years
13 that we met to determine the criteria, data were
14 collected for fish tissue in the reservoir and the
15 Kootenai River downstream. These data were
16 collected by several of the entities that
17 participated in the process, including Teck Coal.

18 Data for fish egg ovary concentrations
19 in Lake Koochanusa for three species of fish
20 currently exceed the Federal standard of 15.1
21 micrograms per liter. This is the justification
22 scientifically founded for the 0.8 water column
23 concentration.

24 Montana has a legal obligation under the
25 Clean Water Act to protect the beneficial uses in

1 Koochanusa Reservoir and the Kootenai River
2 downstream.

3 Montana also has a legal obligation to
4 protect waters downstream in Idaho. Based on the
5 data for selenium in fish tissue in Lake Koochanusa
6 and the Kootenai River, and the site specific
7 data, any number above 0.8 micrograms per liter
8 would not be protective of the beneficial uses in
9 the lake and the river downstream.

10 In summary, the Montana selenium
11 standard is not more stringent than the Federal
12 standard, and this stringency review is
13 fundamentally inconsistent with the site specific
14 data from Lake Koochanusa. Thank you very much for
15 the opportunity to provide these comments.

16 HEARING EXAMINER CZIOK: Thank you. I
17 have next on my list Clayton Elliott. If you'd
18 like to unmute yourself.

19 MR. ELLIOTT: Thank you very much. For
20 the record, Clayton Elliott, E-L-L-I-O-T-T. I'm
21 here today representing Montana Trout Unlimited,
22 and our members in Lincoln County affected.

23 I'll be brief, because I do agree with
24 Ms. Marquis that the purpose of today's hearing is
25 to focus narrowly on the question of whether or

1 not the standard is more stringent than the
2 Federal level, and if so, and what process by
3 which was used to determine that.

4 Our position, Montana Trout Unlimited's
5 position is the standard is no more stringent than
6 the Federal level, as I think Ms. Bowers and Ms.
7 Kelly adequately demonstrated, and that the review
8 was complete. So we would urge you to resist this
9 petition. Thank you.

10 HEARING EXAMINER CZIOK: Thank you, Mr.
11 Elliott. Next up I see someone without a last
12 name, just listed as Lexie. If you want to unmute
13 and state your full name for the record. We do
14 have a Court Reporter taking down minutes today.

15 MS. DEFREMERY: Thank you. Thanks for
16 the opportunity to give comment. My name is Lexie
17 L-E-X-I-E, last name is Defremery,
18 D-E-F-R-E-M-E-R-Y.

19 I have been a Bonner County, Idaho
20 resident for 23 years, and I love to explore. I
21 go up to Boundary County quite a bit. I'm very
22 familiar with the Kootenai River and the Kootenai
23 River Valley. I love the wildlife refuge,
24 Kootenai Falls and so on.

25 I first became familiar with the

1 selenium issue because I was a horse owner, and I
2 learned that selenium can be very toxic to horses,
3 to humans, and it can also concentrate in soils
4 which is difficult for agriculture.

5 So as an Idahoan, I am very grateful
6 that the Montana Board of Environmental Review is
7 interested in protecting waters downstream from
8 Lake Koochanusa.

9 To that end, I ask that you hear the
10 support from everyone today who are opposed to the
11 review to prevent pollution of the Kootenai River,
12 which is US waters. If the existing standard has
13 succeeded, and it is in compliance or no greater
14 than the EPA standard which we have heard today,
15 because of the nature of the --

16 Sorry. I'm blanking out. I'm hearing a
17 lot of terms that I'm not familiar with. But
18 because of the nature of Lake Koochanusa and the
19 waters that go into it, then that solves the issue
20 that the proponents of the review were concerned
21 about.

22 And I would think that the only point of
23 a review then would be to make it easier for a
24 Canadian mining company to release more pollutants
25 into the waterways, and I am vehemently opposed to

1 that. Thank you for hearing me.

2 HEARING EXAMINER CZIOK: Thank you.

3 Next on my list I have Becca Rodack.

4 MS. RODACK: My name is Becca Rodack,
5 R-O-D-A-C-K. I'm a resident of Boundary County in
6 north Idaho as well.

7 There was a comment made that we in the
8 US are not allowed to tell a company in a foreign
9 country what to do. In that same spirit, the
10 company in a foreign country has no right to say
11 what standards we put in place to protect our
12 waters from practices that have demonstrated
13 detrimental effects in our aquatic life.

14 We've heard from experts today that
15 these standard are not more stringent, and heard
16 nothing from the proponents and from Teck other
17 than that they want some more detailed review of
18 the process.

19 We've also heard that this was a six
20 year process, a very collaborative process. And
21 these standards have proven over and over again to
22 be protective, which is why the EPA approved them.
23 So I ask that the Board keep these standards in
24 place to protect Montana and Idaho's waters.
25 Thanks.

1 HEARING EXAMINER CZIOK: Thank you. And
2 next on my list I have Bill Hanlon. Can you hear
3 me?

4 MR. HANLON: Yes, I can.

5 HEARING EXAMINER CZIOK: Go ahead.

6 MR. HANLON: Thank you for the
7 opportunity to speak today. My name is Bill
8 Hanlon. I sit on the North American Board of
9 Directors for Back Country Hunters and Anglers,
10 and I represent the British Columbia and Montana
11 chapters today.

12 We have over 40,000 members in our
13 organization. We're the fastest growing
14 conservation organization in North America. We
15 have chapters in 48 states, District of Columbia,
16 British Columbia, Alberta, and Yukon Territory.

17 We are truly a continental conservation
18 organization. We are your voice for wild public
19 lands, clean water, and wildlife. And like I
20 mentioned, I am speaking on behalf of the BC and
21 Montana chapters today on this very important
22 cross-border issue.

23 The Montana chapter submitted a written
24 statement to the Water Policy Interim Committee
25 dated January 26th, 2022, in opposition to this

1 review, and in support of the current 0.8
2 micrograms per liter selenium standards on Lake
3 Koochanusa. So I'd like to support that, both the
4 opposition to this review, and in support of
5 continuing on with that 0.8 micrograms per liter.

6 The BC government has committed to
7 meeting these Montana standards, so our next job
8 is going to be lobbying the BC government to
9 ensure that that occurs, and we'd like to thank
10 Montana for putting on these strict limits so that
11 we can begin to get a handle on our selenium
12 problems here in the Elk Valley.

13 On a personal note, I live in the Elk
14 Valley. I live on the banks of the Elk River. I
15 live south of three of the major coal mines and
16 adjacent to the fourth. I manage personally a
17 short term rental fishing lodge on the Elk River.

18 Teck has been providing us drinking
19 water to the lodge for the last three years
20 because the lodge seems to be the ground zero of
21 the highest density selenium levels in the Elk
22 Valley, and we have reached 14 micrograms per
23 liter; 14, not eight zero like you are trying to
24 suggest in Koochanusa, but 14 micrograms per liter
25 in our drinking water. So Teck has committed to

1 providing us with drinking water through a special
2 system that they have developed, and we are the
3 test facility.

4 I say this because we applaud the
5 Department of Environmental Quality for trying to
6 get ahead of this, because we are already seeing
7 fish collapses as a result of selenium levels in
8 the Elk Valley, and the Fording River, and Grave
9 Creek, and Harbor Creeks, and we're starting to
10 see an effect in our drinking water for humans.
11 We are already having the problem.

12 And I'd really like to applaud
13 Department of Environmental Quality for
14 establishing such strict selenium limits on Lake
15 Koochanusa. So thank you again for the opportunity
16 to speak.

17 HEARING EXAMINER CZIOK: Thank you, Mr.
18 Hanlon. So that just ran us through all of the
19 folks who had their hands raised speaking as
20 opponents.

21 Is there anybody else who wants to speak
22 as an opponent to the stringency review who hasn't
23 yet had an opportunity to speak who would like to?
24 If you want to raise your hand using the hand
25 raise feature. If for some reason it's not

1 working for you, you can also put a comment into
2 the chat -- that window is going to be on the
3 bottom right-hand corner -- to enter in a message
4 that would go to the group.

5 I just want to give it one more second
6 to make sure that anybody who is going to add
7 something or want to add something is able to. I
8 don't see any hands.

9 I want to return to the concerns that
10 Ms. Marquis raised earlier about equal time, and
11 trying to carry out the Board's request as best as
12 possible. As I read that equal division, really
13 my first goal was to make sure there was no one
14 here who wasn't able to speak because there wasn't
15 time to hear them.

16 It looks like we've heard from everyone
17 who wanted to speak today, and we still have some
18 time left in our block, so what I'd like to do --
19 I know, Ms. Marquis, you had some concerns about
20 being able to say everything that you wanted to
21 put on the record. And we've got a little extra
22 time.

23 I wanted to see if there's anybody else
24 who feels that same way, who has something
25 substantive to add. I will remind you, "A," I'm

1 not the person making this decision. I'm here to
2 facilitate a record for the Board of Environmental
3 Review; and two, all of your written comments will
4 be seen.

5 So obviously everyone has the right to
6 speak, but I would say be respectful of the fact
7 that if you're just offering duplicate statements
8 into the record, you're probably wasting
9 everyone's time.

10 If there's anyone else, in light of
11 those admonitions, who would also like a little
12 more time, I'd love to see a show of hands so I
13 know how many folks would like to have a little
14 extra time to speak. So if you want to use that
15 hand raise function for that, or just pop
16 something into the chat for me.

17 I see Ms. Marquis is raising her hand.
18 Is there anyone else?

19 (No response)

20 HEARING EXAMINER CZIOK: Ms. Marquis, if
21 you want to unmute, I had a question for you.

22 MS. MARQUIS: (Complies)

23 HEARING EXAMINER CZIOK: I was just
24 trying to track the time between how long
25 proponents and opponents have spoken, and it seems

1 we're a little bit ahead on the opponent side by
2 number of people, but pretty close on the time
3 spoken because folks didn't use their full time.

4 Would ten minutes of additional speaking
5 time be enough for you to get the points that you
6 need to get onto the record that aren't adequately
7 captured by your written comments that you've
8 submitted so far?

9 MS. MARQUIS: Absolutely. Yes, it
10 would. Thank you.

11 HEARING EXAMINER CZIOK: Great. Well,
12 I'd love to give you some additional time so that
13 everyone can say everything they'd like to say
14 today. So I'll start you on ten minutes, and I'll
15 just pop back into this frame at about the nine
16 minute mark, so you know, without interrupting
17 you, how much time you have left.

18 MS. MARQUIS: Thank you so much. I do
19 appreciate it. Again, Vicki Marquis, attorney for
20 Teck. And I'll pick up where I left off. I was
21 talking about the importance of making the finding
22 that the water quality standards is actually
23 achievable, because if it's not achievable, the
24 reality is that the next step is to consider
25 downgrading uses of Lake Koochanusa. Achievability

1 is one of the important components of the written
2 finding that's required during this stringency
3 review pursuant to the statute.

4 In specific response to -- or specific
5 reply to DEQ's response, their response document
6 on Page 4, they state this -- and we've heard it
7 throughout the process -- that fish egg and ovary
8 values have been recorded above the 15.1
9 milligrams per kilogram dry weight tissue standard
10 at the water column levels below 1.5 micrograms
11 per liter.

12 DEQ often states, as do some of the
13 opponents, to support their suggestion that Lake
14 Koochanusa would be under-protected by a water
15 column standard at 1.5 micrograms per liter.

16 Teck and others have continually taken
17 issue with this statement, because it does not
18 align with the rule. DEQ itself in their response
19 to comments refers only to individual fish,
20 alleging that they had egg ovary levels exceeding
21 the Federal guidelines, but DEQ has not clarified
22 whether that egg ovary data is valid.

23 Now, if you go to the USGS model, they
24 note the importance of timing and gathering
25 specifically ripe or gravid egg ovary samples.

1 EPA confirms this in their 2021 draft technical
2 guidance, which they cite in their response
3 letter.

4 On Page 12 of that 2021 guidance, they
5 say that collection of fish samples for egg ovary
6 analysis poses special challenges, as only gravid
7 female fish can be sampled.

8 Now, the Board admitted that there were
9 problems with the egg ovary sample collection, but
10 we haven't seen a data set where that problematic
11 egg ovary data has been taken out as being too
12 uncertain, which is what it should be considered
13 under the USGS and the EPA guidelines.

14 When you take that data out, and then
15 when you follow the process outlined in the rule
16 -- and this is Subparagraph 6 of the rule -- it
17 says, "Fish tissue sample results shall be
18 reported as a single value represented in average
19 of individual fish samples, or a composite sample,
20 each option requiring a minimum number of five
21 individuals from the same species."

22 So the rule requires averaging, but what
23 EPA has told everyone is that they're relying on
24 individual fish samples, so that's not a proper
25 use of the data that aligns with the rule itself.

1 We believe that when the invalid data
2 are rejected, and the remaining data are analyzed
3 in accordance with the rule, that you find no
4 exceedences.

5 DEQ has also argued that the standard
6 was designed to protect fish as the most sensitive
7 ecological end point, including downstream
8 federally listed threatened species.

9 We've heard a lot of comments today
10 about the downstream effects, but what doesn't
11 make sense is how the downstream river standard is
12 set at 3.1 on both sides of the Montana and Idaho
13 border, and whether Lake Koochanusa standard is set
14 at 0.8 or 1.5, it is less than 3.1, so it doesn't
15 make sense how the Lake Koochanusa standard could
16 harm things in Idaho.

17 Plus the 2016 EPA guideline was designed
18 to protect the most sensitive fish species,
19 including White Sturgeon. In fact it was intended
20 to protect 95 percent of species nationwide.
21 That's a quote from DEQ's technical support
22 document at Section 1.3.2.

23 And DEQ now has said that they did not
24 promulgate the standard under the site specific
25 statute, but they don't say why -- it leads to

1 questions of why they did promulgate the standard,
2 and what's the authority for that.

3 And we've never heard an explanation of
4 how Lake Koochanusa meets the level for site
5 specific standards even under the federal
6 guideline which says that's for areas where
7 there's high bioaccumulation, and there's been no
8 evidence in the record finding that Lake Koochanusa
9 has any higher bioaccumulation than anywhere else
10 in Montana.

11 The interesting part of DEQ's response
12 about peer reviewed studies is they cite to a
13 snippet in the legislative history to support
14 their position, saying that the Legislature didn't
15 intend to require peer reviewed studies, but that
16 makes the rule or the law a nullity.

17 And also if you read just past the area
18 where DEQ cites -- and this is on Page 5 of
19 Exhibit 1 to their response -- you'll see that
20 Senator Brooke clarified about the peer review
21 study requirements, stating, quote, "The
22 proponents made it very clear that it should be in
23 the bill, and they demanded that decisions should
24 be made on peer reviewed scientific studies," end
25 quote.

1 So after that statement, the language
2 was not changed, and the bill was passed,
3 indicating that peer reviewed studies are an
4 important component of this stringency review.

5 DEQ's assertion that there is no
6 compelling evidence that industry or future
7 development would be hindered by the rule.

8 In response to that, I direct your
9 attention to the Board's Response to Comment 50 in
10 the record at RR002118, and this is cited in DEQ's
11 response document at Page 20.

12 In response to comment 50, the Board
13 notes that, "New projects would need to discharge
14 at levels less than or equal to the standard of
15 0.8 micrograms per liter."

16 Now, whatever DEQ says now about a
17 pollutant load reduction plan -- which seems to be
18 a non-regulatory plan without the force of law --
19 does not negate the fact that the Board concluded
20 that any new projects or developments discharging
21 into Lake Kooconusa would need to meet or be below
22 the standard of .8 micrograms per liter, but we
23 don't even know whether technology exists to meet
24 that level, or how expensive that treatment is, or
25 what the economic impact of that would be on

1 Lincoln County.

2 I note that one of the purposes of the
3 Water Quality Act is to balance protection of the
4 environment with protection of individuals'
5 fundamental rights to pursue life's basic
6 necessities. That's found in the statutes at
7 75-5-101.

8 So it's contrary to the Water Quality
9 Act, and it's just plain not fair to the public to
10 promulgate a standard without considering the
11 economic impacts.

12 Now, specific to some of the responses
13 from EPA and some of the -- I think it's been
14 implied that either the standard, if it's revised,
15 it won't be approvable or it won't be approved. I
16 just want to back up and take a bigger, a higher
17 level look at the Water Quality Act and the
18 cooperative federalism between the state and
19 federal levels.

20 It's important to note that the Federal
21 Clean Water Act at 33 USC Section 1251
22 Subparagraph (b) states, quote, "It is the policy
23 of the Congress to recognize, preserve, and
24 protect the primary responsibilities and rights of
25 states to prevent, reduce, and eliminate

1 pollution," end quote.

2 And that's been validated throughout
3 case law, stating that states, not the Federal
4 government, have the primary role in setting water
5 quality standards; and that Congress clearly
6 intended the EPA to have a limited non-rulemaking
7 role in establishing water quality standards by
8 states.

9 Those are quotes from NRDC versus EPA 16
10 F3d 1395 at 1399 -- that's out of the Fourth
11 Circuit -- and Chevron v. Hammond, 726 F2d 483 at
12 489. That's out of the Ninth Circuit.

13 So there's no doubt that states have the
14 primary role, and that EPA's sole function is to
15 approve or disprove the standards, and when they
16 approve or disapprove the standards, EPA looks at
17 whether it protects the designated beneficial
18 uses.

19 Again, we rely on the fact that there's
20 no clear evidence that the designated uses aren't
21 currently being protected, and wouldn't be
22 protected at the Federal level.

23 I also want to cite one more citation
24 from the rule that allows the EPA to promulgate
25 Federal standards for states. And when that rule

1 was promulgated in 1983 -- this comes from the
2 Federal Register Volume 48 No. 217 Page 51412, it
3 says, "EPA approval of a standard should not be
4 interpreted as a superseding the state's right to
5 amend its own laws," end quote. It also says,
6 quote, "Only as a last resort will EPA promulgate
7 Federal standards."

8 So this is where we are today. There's
9 no Federal mandatory standard for selenium. There
10 is Federal guidelines, guidelines for selenium.
11 Montana's Water Quality Act contains the
12 stringency statute, and when you analyze the new
13 selenium rule, compare it to the law, the
14 stringency statute, it has violated State law. It
15 needs to be invalidated by the Board.

16 Thank you for the extra time. I
17 appreciate it, and thanks for your consideration
18 and patience.

19 HEARING EXAMINER CZIOK: Thank you, Ms.
20 Marquis. Was there anyone else out there, similar
21 to Ms. Marquis, who felt that they had more that
22 they wanted to put onto the record today that they
23 didn't have an opportunity? And I'll put that to
24 the room as well. Senator.

25 The same question I posed to Ms.

1 Marquis. Is ten enough? Is ten too much?

2 SENATOR CUFF: It won't take me very
3 long.

4 HEARING EXAMINER CZIOK: I'll get the
5 crook ready, and I'll start, and we'll pull you
6 off with the hook if not. It's all yours.

7 SENATOR CUFF: Thank you for the
8 opportunity to step up again.

9 A couple of things that -- I mean this
10 is very complicated, very confusing. And when we
11 say 0.8 is not more restrictive than 1.5, that's
12 zipping around in my head, and I'm thinking, "How
13 do we get there?"

14 I finally heard some explanation. If I
15 understand it right, it's backed up from 15.1
16 fish tissue. But it is still more restrictive.
17 There's no question it's more restrictive in the
18 water quality, water quality standards. I mean
19 that's like saying up is not up, up is down, or --

20 So I want to bring up just a little bit
21 more on the process, and part of why we're
22 standing here talking about this today. But a
23 year ago, a year and a half ago, I and others
24 requested to slow down the process and help
25 everybody to understand it.

1 Today you have every elected official of
2 County Commissioners and State Legislators saying
3 they didn't understand it. Well, that's the
4 truth. We didn't. I'm not sure that we still do.
5 I'm not sure that the Emperor has clothes on, or
6 does not have clothes on. But I want to say a
7 couple of things about the process that got the
8 BER to the decision it made roughly a year ago.

9 There were meetings held. I had
10 requested some legislative oversight committees to
11 review this process as it was going forward.

12 We actually requested for a delay in
13 time. And if I remember right, there were ten
14 members of the Board, and it was coming down to --
15 It appeared to me that there was going to be a six
16 to four vote in favor of extending a deadline, so
17 that there could be a little more understanding
18 given, that rather than trying to push it, shove
19 it through, to meet an artificial calendar
20 deadline of December, or whatever the date was.

21 So some incorrect statements were made.
22 An incorrect statement was made in a legislative
23 hearing by the Director of DEQ having to do with
24 what the issue was. Now we're talking about fish
25 tissue, and water column. At that time we were

1 talking about selenium falling out of the water
2 into the bottom of Lake Koochanusa.

3 The question was asked by a State
4 Representative, "If it is true that the problem is
5 the water comes down the river and drops, goes
6 into the lake, slows down, and drops out of the
7 water, and builds up in the bottom of the lake."
8 Representative Brad Hamlett asked the question.

9 Director McGrath said, "Yes. That's
10 exactly it. It builds up, and it becomes a
11 greater problem," and Brad said, "And then it
12 builds up every year, becomes worse and worse?,"
13 and the Director said, "Yes, that's true. That's
14 the problem."

15 Okay. But it's not true. The selenium
16 is bonded to the water, and it travels with the
17 water. And sediment studies have been done on the
18 lake, and there's not any great buildup of
19 selenium at the bottom of the lake. I mean that
20 was like a smoke screen.

21 Brad Hamlett, because of the Director's
22 statements, changed his vote to a no. It came
23 down to a tie vote, so the proposal to the
24 committee that there be an extension at that time
25 to give us time to understand failed on a five to

1 five vote, instead of passing on a six to four
2 vote.

3 And that's where I get so frustrated
4 with the system and with the numbers. And the
5 other two Representatives for -- one very tragic
6 circumstance. Representative Gunderson would have
7 been here to speak. His mother died yesterday,
8 and he is tied up, and could not come, and I think
9 it's very understandable.

10 Representative Durham is a Highway
11 Patrol Officer. He's on duty today, and is unable
12 to come and testify. But I can tell you
13 truthfully, you can see it on record, they voiced
14 the same as I do.

15 And we've been in many meetings along
16 the way, including a year ago -- and I'm going to
17 have another one with Myla Kelly today to help me
18 understand the process of how we get from water
19 quality issues, how we get to a .8, and how this
20 .8 is no different than 1.5.

21 So anyway thank you for the chance to
22 come back up. I find it very frustrating the
23 difference in what I referred to of Director
24 McGrath. And I'm not saying he intentionally
25 tried to monkey up the system. I think he

1 probably said what he thought was the truth, which
2 adds to my position that there was great
3 confusion.

4 If the Director of the Department
5 answers a question in a public meeting on this
6 particular issue, and he provides the wrong
7 information, he's confused, and everybody that
8 heard that was confused.

9 And later in the BER Brad Hamlett wrote
10 a letter, I wrote a letter, describing the
11 situation, because we're saying, "Hey, what a poor
12 process." And BER heard that. There was a little
13 bit of discussion, but it didn't matter.

14 Although there would have been a request
15 for a little bit more time, it went right ahead.
16 The train was on the tracks, and it was running,
17 and to our notion, it was like, "Hey, out of
18 control. Get out of the way, Lincoln County."
19 Thank you.

20 HEARING EXAMINER CZIOK: Thank you,
21 Senator Cuff.

22 SENATOR CUFF: I want to get that word
23 back to the BER.

24 HEARING EXAMINER CZIOK: I appreciate
25 that.

1 As a summary, everything that has been
2 offered today as public comment that's been
3 discussed here, that I'm saying right now, is
4 being transcribed by a Court Reporter. That
5 transcript will be placed on the Board of
6 Environmental Review's website as soon as
7 possible, but it will take some time for
8 transcription from the Court Reporter. So stay
9 tuned for that, but that's where you'll find that,
10 the same place that you found notice for today and
11 for the entirety of that selenium review.

12 From here I will just point the parties
13 and anyone who is interested to Item No. 3 on the
14 notice for today. Interested parties and
15 Petitioners are invited to submit proposed
16 decisions to the Board of Environmental Review.
17 Those will be due by February 11th, 2022, so
18 that's not this Friday, but the next Friday.

19 Those proposed decision documents should
20 contain proposed findings and legal authority,
21 similar to proposed findings of fact, conclusions
22 of law, that you would for a contested case
23 proceeding under the Montana Administrative
24 Procedures Act.

25 Likewise those will, I believe those

1 will find their way onto the Board's website as
2 well, and all of this will be made a part of the
3 record for the Board's actual review under the
4 statute, and that will be considered at a future
5 Board meeting. I believe that will be the
6 upcoming meeting, the next one that we're going to
7 have.

8 So I want to thank all of you for coming
9 out today, for speaking, offering your comments,
10 especially for your patience with us as we dealt
11 with some of the technological issues on this
12 Monday morning.

13 So again, thank you very much, and
14 please look for any updates on the BER's websites
15 posted as noticed. So thank you all, and seeing
16 no other comments, I'm going to adjourn today's
17 public comment meeting.

18 (The proceedings were concluded

19 at 11:43 a.m.)

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C E R T I F I C A T E

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

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 76 - 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 3rd day of
February, 2022.

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

0	2	6	7	8	9	A
<p>0.8 [15] 13:6, 13:12, 23:22, 24:8, 24:11, 31:24, 41:6, 51:7, 51:22, 52:7, 57:1, 57:5, 64:14, 66:15, 70:11</p> <p>08 - 21:21</p> <p style="text-align: center;">1</p> <p>1 [5] 5:8, 12:11, 12:24, 29:2, 65:19</p> <p>1.0 - 5:24</p> <p>1.2 - 37:20</p> <p>1.3.2 - 64:22</p> <p>1.5 [16] 5:23, 13:4, 13:14, 20:23, 23:21, 24:9, 28:1, 28:5, 42:16, 43:9, 43:13, 62:10, 62:15, 64:14, 70:11, 73:20</p> <p>10:00 - 1:17</p> <p>11 - 12:1</p> <p>11:43 - 76:19</p> <p>11th [2] 29:21, 75:17</p> <p>12 - 63:4</p> <p>1251 - 67:21</p> <p>1328 - 27:7</p> <p>1330 - 27:7</p> <p>1395 - 68:10</p> <p>1399 - 68:10</p> <p>14 [3] 57:22, 57:23, 57:24</p> <p>15.1 [11] 32:2, 32:15, 32:17, 33:4, 34:17, 35:19, 47:24, 51:5, 51:20, 62:8, 70:15</p> <p>150 - 30:10</p> <p>1520 - 31:20</p> <p>1525 - 31:20</p> <p>16 - 68:9</p> <p>17.30.632 [4] 12:22, 24:1, 26:8, 29:6</p> <p>17.30.632(7)(a) - 1:6</p> <p>1983 - 69:1</p>	<p>2 [3] 12:11, 12:24, 31:8</p> <p>20 - 66:11</p> <p>2005 - 50:14</p> <p>2011 - 50:14</p> <p>2016 [2] 47:18, 64:17</p> <p>2020 [4] 26:13, 27:6, 29:21, 42:8</p> <p>2021 [5] 23:13, 29:2, 36:8, 63:1, 63:4</p> <p>2022 [4] 1:16, 56:25, 75:17, 77:17</p> <p>2024 - 77:22</p> <p>217 - 69:2</p> <p>23 - 53:20</p> <p>25 - 3:3</p> <p>26th - 56:25</p> <p style="text-align: center;">3</p> <p>3 [3] 12:4, 31:8, 75:13</p> <p>3.1 [2] 64:12, 64:14</p> <p>304 [2] 42:18, 47:4</p> <p>304(a [6] 29:24, 31:9, 40:7, 47:2, 47:8, 47:12</p> <p>31 - 1:16</p> <p>33 - 67:21</p> <p>3rd - 77:16</p> <p style="text-align: center;">4</p> <p>4 - 62:6</p> <p>40,000 - 56:12</p> <p>41 - 18:6</p> <p>418 - 30:20</p> <p>48 [2] 56:15, 69:2</p> <p>483 - 68:11</p> <p>489 - 68:12</p> <p style="text-align: center;">5</p> <p>5 [3] 12:24, 43:8, 65:18</p> <p>50 [2] 66:9, 66:12</p> <p>51412 - 69:2</p>	<p>6 - 63:16</p> <p style="text-align: center;">7</p> <p>7 [2] 12:4, 12:24</p> <p>726 - 68:11</p> <p>73 - 31:20</p> <p>75 - 14:13</p> <p>75-5-101 - 67:7</p> <p>75-5-203 [4] 1:6, 4:19, 11:7, 31:8</p> <p>76 [2] 31:20, 77:12</p> <p>78 - 14:1</p> <p style="text-align: center;">8</p> <p>8 [12] 5:20, 6:1, 6:8, 6:12, 20:22, 35:14, 35:20, 36:12, 42:14, 66:22, 73:19, 73:20</p> <p style="text-align: center;">9</p> <p>9 - 77:22</p> <p>95 - 64:20</p> <p>9th - 27:6</p> <p style="text-align: center;">A</p> <p>a.m [2] 1:17, 76:19</p> <p>ability [2] 28:11, 77:14</p> <p>able [13] 2:20, 5:5, 15:11, 16:23, 17:14, 17:22, 18:12, 20:25, 21:5, 21:7, 59:7, 59:14, 59:20</p> <p>aboriginal - 33:17</p> <p>Absolutely - 61:9</p> <p>abundant - 48:14</p> <p>accordance [3] 27:22, 44:11, 64:3</p> <p>account [2] 31:16, 35:9</p> <p>accumulating - 49:12</p> <p>accurate [2] 2:21, 42:21</p> <p>achievability [2] 14:4, 61:25</p> <p>achievable [5] 13:24, 14:3, 14:6, 61:23, 61:23</p> <p>achieve - 23:23</p> <p>achieved - 16:10</p> <p>acknowledge - 49:3</p> <p>across [4] 7:13, 18:5, 21:1, 48:14</p> <p>Act [15] 23:15, 24:12, 29:4, 39:24, 40:1, 41:8, 43:17, 45:18, 51:25, 67:3, 67:9, 67:17, 67:21, 69:11, 75:24</p> <p>acting - 43:4</p> <p>action [2] 6:24, 23:13</p> <p>actions - 36:21</p> <p>activities - 38:6</p> <p>activity - 8:2</p> <p>actual [3] 6:5, 13:22, 76:3</p> <p>add [4] 46:18, 59:6, 59:7, 59:25</p> <p>added - 6:12</p> <p>addition [2] 24:7, 30:18</p> <p>additional [5] 4:18, 36:22, 45:12, 61:4, 61:12</p> <p>Additionally - 34:23</p> <p>address [3] 26:10, 28:9, 42:2</p> <p>addresses - 40:4</p> <p>adds - 74:2</p> <p>adequate - 18:17</p> <p>adequately [3] 27:8, 53:7, 61:6</p> <p>adhered [2] 20:1, 20:2</p> <p>adjacent - 57:16</p> <p>adjourn - 76:16</p> <p>administration - 29:4</p> <p>administrative [4] 25:12, 36:24, 36:25, 75:23</p> <p>admitted - 63:8</p> <p>admonitions - 60:11</p> <p>adopt [5] 29:3, 40:17, 43:18, 43:22, 51:4</p> <p>adopted [7] 31:3, 31:22, 32:2, 32:16, 32:20, 34:16, 48:18</p> <p>adopting - 35:19</p> <p>adoption [4] 11:24, 26:12, 27:17, 39:15</p> <p>adopts [2] 26:18, 40:2</p> <p>advised [2] 12:9, 27:8</p> <p>advocating - 48:13</p> <p>affected [2] 15:22, 52:22</p> <p>affixed - 77:16</p> <p>against [3] 21:9, 33:20, 33:21</p> <p>agency [3] 10:25, 12:9, 22:23</p> <p>agree [3] 20:4, 20:6, 52:23</p> <p>agrees [2] 12:13, 23:3</p> <p>agriculture - 54:4</p> <p>ahead [10] 18:3, 22:7, 25:4, 25:25, 39:7, 46:3, 56:5, 58:6, 61:1, 74:15</p> <p>aimed - 50:22</p> <p>Alberta - 56:16</p> <p>align - 62:18</p> <p>aligns - 63:25</p> <p>alleging - 62:20</p> <p>allow [2] 2:8, 16:16</p> <p>allowed [2] 21:8, 55:8</p> <p>allowing [2] 37:25, 43:12</p> <p>allows - 68:24</p> <p>alone [2] 6:21, 21:18</p> <p>already [5] 28:23, 38:2, 42:3, 58:6, 58:11</p> <p>Although [2] 42:14, 74:14</p> <p>Ambient - 30:7</p> <p>amend - 69:5</p> <p>America - 56:14</p> <p>American [2] 33:18, 56:8</p> <p>among - 9:4</p> <p>amongst - 49:4</p> <p>amount - 9:7</p> <p>analysis [4] 12:7, 23:16, 27:13, 63:6</p> <p>analyze - 69:12</p> <p>analyzed - 64:2</p> <p>ANDREW - 1:19</p> <p>Anglers - 56:9</p> <p>Ann - 1:6</p> <p>Annotated - 4:19</p> <p>announced - 36:11</p> <p>answers - 74:5</p> <p>anti-degradation - 23:6</p> <p>anyway - 73:21</p> <p>apologize [3] 15:1, 15:9, 33:8</p> <p>appeals - 8:7</p> <p>appear - 44:16</p> <p>appeared - 71:15</p> <p>Appendix [4] 30:4, 30:14, 30:21, 47:19</p> <p>applaud [2] 58:4, 58:12</p> <p>applicable [2] 34:22, 42:22</p> <p>applications - 28:21</p> <p>apply - 28:6</p> <p>appreciate [4]</p>				

16:19, 61:19, 69:17, 74:24 appropriate - 37:14 appropriately - 24:6 approvable - 67:15 approval [2] 13:6, 69:3 approve [3] 45:16, 68:15, 68:16 approved [6] 24:11, 44:9, 48:21, 49:7, 55:22, 67:15 approves - 24:13 approximately - 30:10 aquatic [9] 14:10, 18:12, 23:18, 23:22, 23:25, 27:25, 30:7, 49:21, 55:13 arbitrarily - 43:4 areas [3] 33:16, 33:24, 65:6 aren't [4] 3:14, 41:3, 61:6, 68:20 arguable [2] 18:18, 18:20 argue [2] 12:1, 40:6 argued [2] 27:19, 64:5 argument [2] 19:7, 27:14 ARM [4] 1:5, 12:22, 24:1, 26:8 arrive - 50:15 arrived - 36:12 arrives - 18:12 artificial - 71:19 asking - 6:20 assertion - 66:5 assume - 10:5 assured - 15:23 attack - 46:7 attempt - 43:7 attended [2]	34:11, 50:19 attention - 66:9 attorney [3] 10:21, 26:4, 61:19 audio [2] 2:14, 15:6 auditorium [2] 1:12, 2:12 authority [4] 14:23, 29:3, 65:2, 75:20 authorizing - 28:20 available [2] 44:3, 48:2 average - 63:18 averaging [2] 5:25, 63:22 avoid - 28:23 awhile - 20:21 <hr/> B <hr/> B-O-W-E-R-S - 26:3 backed - 70:15 balance - 67:3 banks - 57:14 basic - 67:5 basically [2] 16:18, 19:7 BC [4] 36:9, 56:20, 57:6, 57:8 became - 53:25 Becca [2] 55:3, 55:4 becomes [2] 72:10, 72:12 begin - 57:11 begins - 18:8 behalf [6] 19:20, 37:10, 39:11, 48:11, 50:10, 56:20 behind - 18:24 belied [2] 12:17, 12:19 beneficial [4] 44:5, 51:25, 52:8, 68:17 benefit - 49:21 Bennett [5] 19:12, 19:13, 19:17, 19:18, 20:14	BER [4] 71:8, 74:9, 74:12, 74:23 BER's - 76:14 best [6] 7:4, 12:20, 18:16, 44:3, 59:11, 77:13 bigger - 67:16 biggest - 8:11 bill [4] 56:2, 56:7, 65:23, 66:2 Billings - 10:21 binational - 44:23 bioaccumulation [9] 30:17, 31:2, 31:17, 40:15, 45:6, 47:3, 49:10, 65:7, 65:9 biologist - 37:12 bit [7] 3:9, 6:17, 53:21, 61:1, 70:20, 74:13, 74:15 blanking - 54:16 block - 59:18 BMP's - 28:25 Board [55] 1:1, 1:4, 2:6, 4:14, 8:24, 9:17, 10:25, 11:3, 11:8, 11:11, 11:13, 14:2, 14:23, 15:15, 24:7, 24:19, 26:7, 26:18, 26:21, 26:23, 26:25, 27:14, 27:17, 29:3, 29:6, 29:12, 29:21, 31:3, 31:6, 32:20, 34:3, 34:6, 36:16, 38:16, 41:11, 41:24, 42:3, 42:9, 42:9, 42:13, 42:25, 48:10, 49:2, 54:6, 55:23, 56:8, 60:2, 63:8, 66:12, 66:19, 69:15,	71:14, 75:5, 75:16, 76:5 Board's [12] 2:8, 11:14, 14:1, 26:12, 27:4, 27:8, 27:11, 27:13, 59:11, 66:9, 76:1, 76:3 bodies [4] 7:10, 43:14, 43:20, 47:21 body [3] 31:12, 32:9, 38:4 bonded - 72:16 Bonner - 53:19 Bonnors - 18:5 border [3] 18:5, 47:23, 64:13 bottom [6] 17:18, 19:15, 59:3, 72:2, 72:7, 72:19 Boundary [2] 53:21, 55:5 Bowers [3] 26:2, 26:3, 53:6 box - 38:23 Brad [4] 72:8, 72:11, 72:21, 74:9 brief [2] 39:18, 52:23 briefing - 17:2 briefly [2] 11:25, 28:9 bring - 70:20 bringing [2] 7:24, 21:5 British [5] 18:8, 18:20, 36:10, 56:10, 56:16 broadcast - 8:22 Brooke - 65:20 brought - 21:24 builds [3] 72:7, 72:10, 72:12 buildup - 72:18 bump - 38:24 Burbot [3] 35:23, 38:2,	38:7 burdens - 38:5 busy - 25:23 button [2] 17:18, 19:14 bypassed [2] 21:14, 21:23 <hr/> C <hr/> calculated [2] 34:18, 51:6 calendar - 71:19 camera - 5:3 can't [2] 14:11, 21:11 Canada [2] 7:18, 39:23 Canadian [2] 39:22, 54:24 cannot [3] 14:7, 44:11, 45:16 capriciously - 43:4 captured - 61:7 carry - 59:11 case [8] 4:23, 10:23, 11:3, 13:5, 17:2, 39:1, 68:3, 75:22 cases [3] 8:7, 28:3, 28:6 catch - 10:4 cause - 15:24 caused - 15:25 causes - 36:21 Center - 41:23 certain [2] 35:2, 43:14 certainly [2] 5:24, 18:19 certify - 77:7 challenges - 63:6 challenging - 39:23 chance [2] 39:19, 73:21 change [2] 28:25, 43:1 changed [2] 66:2, 72:22 chapter - 56:23 chapters [3] 56:11, 56:15, 56:21 chart - 6:6	chat [2] 59:2, 60:16 chemistry - 37:17 Chevron - 68:11 choose - 43:22 chose - 44:6 chronic - 35:4 Circuit [2] 68:11, 68:12 circumstance - 73:6 circumstances [7] 26:11, 35:3, 40:5, 40:10, 40:11, 40:12, 40:20 citation [3] 13:21, 46:24, 68:23 citations - 13:22 cite [3] 63:2, 65:12, 68:23 cited - 66:10 cites [2] 13:25, 65:18 clarified [2] 62:21, 65:20 clarify - 22:25 clarifying - 24:19 Clark [3] 41:23, 77:4, 77:7 clauses - 12:5 Clayton [2] 52:17, 52:20 clean [11] 18:11, 23:15, 24:12, 39:24, 41:8, 43:17, 45:18, 48:25, 51:25, 56:19, 67:21 clear [7] 5:4, 12:5, 23:2, 32:22, 49:11, 65:22, 68:20 clearly [5] 11:9, 14:21, 38:12, 51:1, 68:5 click - 17:21 close [3] 3:13, 3:15, 61:2 clothes [2] 71:5, 71:6
---	--	--	--	---	--

<p>coal [8] 1:4, 11:10, 11:12, 21:10, 21:11, 34:5, 51:17, 57:15</p> <p>Coalition - 41:23</p> <p>Code [2] 1:6, 4:19</p> <p>collaborative [3] 49:3, 50:17, 55:20</p> <p>collapses - 58:7</p> <p>collected [4] 41:1, 50:12, 51:14, 51:16</p> <p>collection [3] 44:22, 63:5, 63:9</p> <p>collective - 36:20</p> <p>Columbia [6] 18:9, 18:21, 36:10, 56:10, 56:15, 56:16</p> <p>column [43] 12:16, 12:20, 12:24, 13:7, 13:14, 23:3, 23:11, 23:17, 24:8, 24:22, 26:8, 26:13, 26:22, 27:1, 27:16, 27:20, 27:24, 28:17, 30:6, 30:12, 31:13, 31:15, 31:19, 31:21, 31:25, 32:5, 32:7, 32:9, 32:23, 33:1, 34:19, 35:2, 35:20, 41:6, 42:17, 44:7, 47:10, 51:2, 51:7, 51:22, 62:10, 62:15, 71:25</p> <p>comes [2] 69:1, 72:5</p> <p>coming [8] 2:14, 4:24, 19:11, 37:19, 38:5, 47:22, 71:14, 76:8</p> <p>comment [28]</p>	<p>2:8, 2:18, 2:24, 3:6, 3:20, 9:8, 12:4, 17:8, 20:12, 22:15, 22:18, 22:24, 26:17, 27:11, 37:9, 39:7, 39:19, 41:19, 46:19, 48:11, 50:5, 53:16, 55:7, 59:1, 66:9, 66:12, 75:2, 76:17</p> <p>commented - 24:6</p> <p>commenter - 29:16</p> <p>comments [34] 11:9, 11:18, 12:12, 12:15, 13:3, 14:1, 14:16, 15:17, 16:15, 16:17, 17:3, 23:1, 24:15, 25:1, 26:4, 27:12, 28:10, 34:1, 36:15, 36:18, 39:11, 39:17, 39:18, 46:18, 48:5, 49:23, 50:2, 52:15, 60:3, 61:7, 62:19, 64:9, 76:9, 76:16</p> <p>commercial - 8:5</p> <p>commission - 77:21</p> <p>Commissioner [3] 19:18, 19:24, 20:18</p> <p>Commissioners [7] 1:5, 6:23, 8:14, 15:16, 20:4, 34:6, 71:2</p> <p>committed [2] 57:6, 57:25</p> <p>committee [2] 56:24, 72:24</p> <p>committees [3] 6:25, 50:10, 71:10</p> <p>communities -</p>	<p>48:24</p> <p>company [5] 39:22, 45:21, 54:24, 55:8, 55:10</p> <p>comparable [5] 26:9, 26:19, 29:7, 31:6, 40:3</p> <p>compare - 69:13</p> <p>compelling - 66:6</p> <p>complete - 53:8</p> <p>completely - 40:9</p> <p>complex - 23:8</p> <p>compliance [5] 11:1, 11:5, 23:14, 24:16, 54:13</p> <p>complicate - 17:8</p> <p>complicated [2] 18:7, 70:10</p> <p>complicating - 16:21</p> <p>Complies - 60:22</p> <p>comply [2] 24:17, 24:20</p> <p>component - 66:4</p> <p>components - 62:1</p> <p>composite - 63:19</p> <p>comprehensive - 30:18</p> <p>comprised - 31:11</p> <p>computer-aided - 77:11</p> <p>concentrate - 54:3</p> <p>concentration [4] 30:25, 31:1, 51:8, 51:23</p> <p>concentrations [11] 23:24, 35:23, 37:19, 37:25, 37:25, 38:8, 38:13, 41:7, 51:2, 51:3, 51:18</p> <p>concern [2] 5:19, 15:21</p> <p>concerned [4] 8:8, 16:3,</p>	<p>19:25, 54:20</p> <p>concerns [7] 18:17, 18:18, 28:12, 28:16, 28:16, 59:9, 59:19</p> <p>conclude - 14:19</p> <p>concluded [3] 23:20, 66:19, 76:18</p> <p>conclusion - 13:12</p> <p>conclusions [3] 12:9, 27:9, 75:21</p> <p>conclusory [2] 13:17, 13:23</p> <p>conditions [2] 35:9, 51:3</p> <p>conduct - 13:11</p> <p>Confederated [3] 33:14, 45:1, 50:11</p> <p>confirm - 2:13</p> <p>confirms - 63:1</p> <p>confuse - 13:10</p> <p>confused [2] 74:7, 74:8</p> <p>confusing [3] 4:21, 10:9, 70:10</p> <p>confusion - 74:3</p> <p>Congress [2] 67:23, 68:5</p> <p>conquer - 7:14</p> <p>conservation [5] 39:11, 41:12, 48:12, 56:14, 56:17</p> <p>consider - 61:24</p> <p>consideration [2] 24:25, 69:17</p> <p>considered [4] 27:17, 28:15, 63:12, 76:4</p> <p>considering - 67:10</p> <p>consistent [2] 26:14, 34:21</p> <p>contain [2] 75:20, 77:12</p> <p>contains - 69:11</p> <p>contested -</p>	<p>75:22</p> <p>continental - 56:17</p> <p>continually - 62:16</p> <p>continue - 16:16</p> <p>continued - 48:23</p> <p>continuing - 57:5</p> <p>contrary - 67:8</p> <p>control - 74:18</p> <p>cooperative - 67:18</p> <p>corner [2] 7:15, 59:3</p> <p>corrected - 9:16</p> <p>correctly [2] 26:21, 48:19</p> <p>correlate - 21:1</p> <p>correspond [3] 30:1, 47:7, 47:13</p> <p>costs - 16:7</p> <p>count [4] 2:21, 9:22, 18:11, 18:13</p> <p>county [31] 1:4, 1:5, 5:9, 6:22, 7:17, 8:1, 8:3, 8:10, 8:14, 15:15, 15:16, 15:24, 16:3, 19:18, 19:21, 20:18, 28:14, 34:6, 34:7, 40:6, 42:23, 45:11, 52:22, 53:19, 53:21, 55:5, 67:1, 71:2, 74:18, 77:4, 77:6</p> <p>County's [4] 28:10, 28:16, 41:25, 45:14</p> <p>couple [3] 46:18, 70:9, 71:7</p> <p>Court [7] 1:23, 15:10, 53:14, 75:4, 75:8, 77:5, 77:20</p> <p>covered -</p>	<p>15:18</p> <p>created - 16:1</p> <p>Creek - 58:9</p> <p>Creeks - 58:9</p> <p>criteria [35] 13:4, 23:5, 23:9, 27:24, 28:1, 28:4, 28:8, 29:25, 31:9, 31:10, 32:3, 32:8, 32:13, 33:3, 34:16, 34:24, 35:1, 40:12, 41:14, 42:16, 42:19, 43:19, 43:23, 43:24, 43:25, 44:7, 47:2, 47:8, 47:12, 47:18, 48:18, 49:7, 50:15, 51:5, 51:13</p> <p>criterion [13] 13:8, 23:7, 23:10, 23:17, 30:5, 30:7, 30:15, 32:1, 32:5, 32:7, 32:15, 36:1, 45:3</p> <p>crook - 70:5</p> <p>cross-border - 56:22</p> <p>CRUTCHER [3] 1:22, 77:5, 77:19</p> <p>CSKT - 33:20</p> <p>Cuff [10] 4:9, 4:12, 4:22, 5:7, 5:8, 15:19, 70:2, 70:7, 74:21, 74:22</p> <p>cultural - 33:22</p> <p>culturally - 35:25</p> <p>current [13] 18:15, 19:8, 24:8, 25:12, 34:19, 37:18, 37:24, 38:12, 41:5, 47:4, 47:24, 51:8, 57:1</p> <p>currently [6] 29:24, 36:5, 47:8, 47:11, 51:20, 68:21</p>
---	--	---	---	---	---

cut - 46:1 Cziok [43] 1:19, 2:4, 2:5, 4:6, 4:10, 4:13, 4:23, 8:20, 10:17, 14:14, 14:25, 16:19, 17:11, 18:1, 19:1, 20:13, 22:4, 25:2, 25:7, 29:15, 33:5, 37:2, 37:7, 38:19, 39:6, 41:16, 45:24, 46:11, 48:6, 49:24, 52:16, 53:10, 55:2, 56:1, 56:5, 58:17, 60:20, 60:23, 61:11, 69:19, 70:4, 74:20, 74:24	dealt - 76:10 decades [2] 19:23, 19:23 December [3] 26:13, 29:21, 71:20 decided - 40:16 decides - 41:11 decision [5] 6:18, 43:3, 60:1, 71:8, 75:19 decisions [4] 7:21, 40:22, 65:23, 75:16 dedicated - 48:12 defensible [5] 30:16, 43:22, 44:13, 44:15, 45:13 definitely - 16:13 deformity - 35:6 Defremery [2] 53:15, 53:17 degree - 14:2 delay - 71:12 delete - 14:10 demanded - 65:23 demonstrated [2] 53:7, 55:12 demonstrates [5] 35:16, 45:2, 50:23, 50:24, 51:10 demonstration - 24:22 density - 57:21 deny [4] 13:12, 29:13, 41:24, 46:9 Department [9] 1:13, 30:24, 33:13, 37:12, 37:13, 38:9, 58:5, 58:13, 74:4 depends - 14:3 depicts - 38:12 DEQ [29] 6:16, 7:3, 13:9, 13:16, 13:21,	13:25, 14:8, 26:3, 27:19, 28:12, 28:15, 29:2, 29:8, 29:10, 29:20, 44:6, 44:8, 44:21, 44:25, 45:9, 51:4, 62:12, 62:18, 62:21, 64:5, 64:23, 65:18, 66:16, 71:23 DEQ's [7] 11:25, 38:15, 62:5, 64:21, 65:11, 66:5, 66:10 derive - 30:15 deriving - 30:22 describes - 47:19 describing - 74:10 designate - 25:9 designated [12] 3:22, 14:9, 14:11, 23:6, 23:19, 24:3, 24:23, 43:19, 43:25, 45:4, 68:17, 68:20 designed [3] 45:21, 64:6, 64:17 detailed [3] 7:4, 39:17, 55:17 details - 6:19 determination [6] 14:4, 26:24, 27:5, 27:15, 42:25, 43:1 determinations - 29:13 determine [4] 23:14, 51:6, 51:13, 53:3 determined [7] 24:1, 26:21, 29:22, 31:3, 42:3, 42:10, 48:20 detrimental - 55:13 develop [7] 27:24, 28:4, 35:8, 35:13, 44:6, 44:21,	47:17 developed [9] 27:22, 30:2, 42:19, 44:2, 44:10, 47:13, 47:18, 47:20, 58:2 developing - 45:8 development [5] 28:7, 28:17, 34:24, 39:15, 66:7 developments - 66:20 develops - 30:11 deviates - 40:7 died - 73:7 dietary - 31:16 difference [2] 44:19, 73:23 difficult - 54:4 direct - 66:8 directly [2] 33:3, 40:22 Director [6] 6:16, 71:23, 72:9, 72:13, 73:23, 74:4 Director's - 72:21 Directors - 56:9 disagree - 9:17 disappointed [2] 6:2, 21:4 disapprove - 68:16 discharge - 66:13 discharges [3] 28:20, 28:21, 28:23 discharging - 66:20 discussed - 75:3 discussing - 41:3 discussion [3] 43:8, 49:4, 74:13 dismissed - 28:12 disprove - 68:15 disputes - 11:16 district [3]	5:8, 5:11, 56:15 divide [2] 7:14, 16:25 divided - 9:12 dividing [2] 9:3, 9:10 division - 59:12 Doctor - 41:17 document [5] 30:9, 30:22, 62:5, 64:22, 66:11 documented - 36:2 documents - 75:19 door - 49:14 double - 38:24 doubt - 68:13 downgrade - 14:10 downgrading [2] 14:8, 61:25 downstream [11] 24:24, 40:21, 49:1, 51:15, 52:2, 52:4, 52:9, 54:7, 64:7, 64:10, 64:11 Dr - 39:9 draft - 63:1 drains - 8:3 Drew [2] 2:5, 8:24 drinking [4] 57:18, 57:25, 58:1, 58:10 driving - 7:6 drops [2] 72:5, 72:6 dry [3] 32:16, 32:18, 62:9 due - 75:17 duplicate - 60:7 Durham - 73:10 duty - 73:11	33:22, 64:7 economic [7] 8:1, 8:2, 15:24, 15:25, 16:6, 66:25, 67:11 ecosystem [3] 37:22, 38:2, 38:12 effect [2] 24:12, 58:10 effectively - 49:16 effects [2] 55:13, 64:10 effluent - 28:24 effort [4] 44:4, 44:5, 44:22, 45:15 efforts - 14:3 egg [17] 31:11, 32:1, 32:8, 32:10, 32:14, 32:17, 33:3, 35:17, 35:19, 51:18, 62:7, 62:20, 62:22, 62:25, 63:5, 63:9, 63:11 eggs - 35:24 egregious - 13:23 eight - 57:23 either [3] 7:18, 29:8, 67:14 elected [2] 8:15, 71:1 element [7] 23:3, 23:12, 24:8, 24:22, 30:5, 32:1, 32:7 elements [7] 23:10, 23:11, 23:18, 31:11, 32:6, 35:1, 35:2 Elena's - 15:6 elevated [2] 7:11, 35:22 eliminate - 67:25 Elk [9] 5:14, 38:5, 50:13, 57:12, 57:13, 57:14, 57:17, 57:21, 58:8 Ellie [2]
<hr/> D <hr/>					
D-E-F-R-E-M-E-R - 53:18 Dam [3] 5:10, 35:21, 37:22 data [36] 23:20, 30:14, 32:4, 34:20, 35:15, 36:13, 37:17, 38:7, 38:12, 41:1, 42:24, 43:2, 44:19, 44:20, 44:22, 44:23, 45:2, 45:7, 47:22, 48:2, 50:13, 51:9, 51:12, 51:13, 51:15, 51:18, 52:5, 52:7, 52:14, 62:22, 63:10, 63:11, 63:14, 63:25, 64:1, 64:2 date - 71:20 dated - 56:25 deadline [2] 71:16, 71:20					
					<hr/> E <hr/>
					E-L-L-I-O-T-T - 52:20 earlier [2] 15:2, 59:10 EarthJustice - 41:21 easier - 54:23 ecological [2]

38:20, 39:9 Elliott [4] 52:17, 52:19, 52:20, 53:11 Emily [2] 41:17, 41:21 emotions - 21:2 Emperor - 71:5 emphasize [3] 19:19, 26:6, 45:22 endangerment - 6:11 enrolled - 33:13 ensure [2] 10:25, 57:9 ensuring - 48:23 enter - 59:3 entire - 8:22 entirety - 75:11 entities - 51:16 entity [2] 40:22, 46:7 environment - 67:4 Environmental [18] 1:1, 2:6, 4:15, 22:23, 32:21, 34:3, 36:16, 37:14, 38:9, 38:17, 41:22, 49:2, 54:6, 58:5, 58:13, 60:2, 75:6, 75:16 EPA [45] 13:9, 13:10, 22:20, 23:3, 23:15, 24:1, 24:5, 24:11, 24:13, 24:18, 28:4, 29:24, 30:9, 31:9, 32:7, 34:23, 35:7, 40:12, 40:17, 42:18, 43:21, 44:7, 44:9, 44:11, 44:24, 45:16, 45:16, 47:2, 47:4, 47:12, 48:21, 48:21, 54:14,	55:22, 63:1, 63:13, 63:23, 64:17, 67:13, 68:6, 68:9, 68:16, 68:24, 69:3, 69:6 EPA's [17] 13:3, 13:6, 13:12, 23:1, 23:8, 23:13, 23:24, 24:15, 25:1, 30:6, 32:3, 42:15, 43:23, 45:8, 47:7, 47:18, 68:14 equal [4] 9:1, 59:10, 59:12, 66:14 equalling - 5:23 equally - 9:12 Erin [2] 49:25, 50:3 especially [3] 3:13, 9:15, 76:10 essentially - 41:9 established - 45:9 establishing [3] 49:5, 58:14, 68:7 evaluated - 23:13 event - 24:18 everybody [3] 10:2, 70:25, 74:7 everyone [14] 2:5, 2:16, 2:22, 9:10, 9:13, 12:13, 16:23, 39:8, 41:21, 54:10, 59:16, 60:5, 61:13, 63:23 everyone's [2] 9:24, 60:9 everything [3] 59:20, 61:13, 75:1 evidence [8] 12:20, 13:19, 13:22, 14:20, 29:11, 65:8, 66:6, 68:20 exact - 32:24 exactly [2]	47:7, 72:10 Examiner [43] 1:19, 2:4, 2:6, 4:6, 4:10, 4:13, 4:23, 8:20, 10:17, 14:14, 14:25, 16:19, 17:11, 18:1, 19:1, 20:13, 22:4, 25:2, 25:7, 29:15, 33:5, 37:2, 37:7, 38:19, 39:6, 41:16, 45:24, 46:11, 48:6, 49:24, 52:16, 53:10, 55:2, 56:1, 56:5, 58:17, 60:20, 60:23, 61:11, 69:19, 70:4, 74:20, 74:24 example [2] 13:23, 16:2 exceed [2] 35:17, 51:20 exceedence - 36:1 exceedences [3] 32:11, 47:24, 64:4 exceeding - 62:20 except - 35:2 Exhibit [2] 12:11, 65:19 exist - 43:2 existing - 54:12 exists - 66:23 expect - 5:24 expected - 5:20 expensive - 66:24 experts - 55:14 expires - 77:21 explanation [2] 65:3, 70:14 explicitly - 43:21 explore - 53:20 exposure [4] 31:16, 31:18,	31:18, 35:4 expressed - 22:11 expressly [2] 36:19, 44:7 extending - 71:16 extension - 72:24 extensive [2] 9:8, 17:2 extra [3] 59:21, 60:14, 69:16 <hr/> F <hr/> F-I-S-H - 22:22 F2d - 68:11 F3d - 68:10 facilitate [2] 2:7, 60:2 facility - 58:3 factor - 6:11 factors - 30:18 facts [2] 21:3, 21:5 failed - 72:25 fair - 67:9 falling - 72:1 Falls - 53:24 familiar [5] 2:16, 5:15, 53:22, 53:25, 54:17 family - 19:21 fastest - 56:13 fate - 41:10 favor [4] 8:11, 10:10, 13:4, 71:16 fear [2] 7:24, 8:1 feature - 58:25 February [3] 23:13, 75:17, 77:17 federal [66] 4:16, 5:20, 5:23, 7:21, 7:25, 11:6, 11:20, 12:2, 12:7, 12:14, 14:22, 18:19, 19:9, 23:15, 24:17, 24:20, 25:13, 26:10, 26:19, 27:2, 27:22,	27:23, 28:1, 28:7, 29:7, 30:1, 30:21, 31:6, 32:1, 32:13, 32:22, 32:25, 33:1, 33:2, 34:15, 34:16, 34:22, 35:19, 40:3, 42:5, 42:12, 43:6, 43:11, 43:11, 43:17, 44:12, 46:22, 47:13, 48:3, 50:25, 51:5, 51:20, 52:11, 53:2, 53:6, 62:21, 65:5, 67:19, 67:20, 68:3, 68:22, 68:25, 69:2, 69:7, 69:9, 69:10 federalism - 67:18 federally [4] 30:3, 42:19, 47:14, 64:8 feed - 17:13 feedback - 15:8 feels - 59:24 felt - 69:21 female - 63:7 Ferry - 18:5 fighter - 8:11 figuring [2] 2:25, 9:10 file - 8:4 filed - 6:24 filing - 11:18 final - 40:21 finally [3] 29:12, 46:5, 70:14 finding [8] 11:24, 12:13, 13:16, 13:18, 14:22, 61:21, 62:2, 65:8 findings [7] 26:16, 27:3, 29:9, 29:10, 31:8, 75:20, 75:21 finish [2] 46:2, 46:4 finished -	17:10 Firm - 15:14 fish [58] 6:7, 22:19, 22:21, 22:22, 23:17, 23:24, 25:3, 27:23, 30:5, 31:10, 31:14, 31:21, 32:5, 32:23, 33:2, 33:22, 34:17, 34:19, 34:20, 35:1, 35:5, 35:17, 35:24, 37:12, 37:23, 40:23, 41:4, 41:7, 47:2, 47:6, 47:8, 47:10, 47:22, 47:24, 48:4, 48:14, 49:8, 49:13, 49:17, 51:1, 51:5, 51:9, 51:14, 51:18, 51:19, 52:5, 58:7, 62:7, 62:19, 63:5, 63:7, 63:17, 63:19, 63:24, 64:6, 64:18, 70:16, 71:24 fisheries - 48:24 fishery - 38:3 fishing - 57:17 fitting - 3:24 five [4] 24:9, 63:20, 72:25, 73:1 flawed - 6:15 floor [7] 10:14, 19:14, 22:18, 25:20, 29:17, 33:9, 37:8 flows - 18:9 focus [2] 23:16, 52:25 folks [22] 2:18, 2:20, 2:24, 2:25, 3:12, 3:14, 4:4, 4:17,
---	--	--	---	---	--

8:20, 9:15, 9:21, 9:25, 16:25, 17:6, 22:10, 25:15, 25:21, 33:6, 38:21, 58:19, 60:13, 61:3 follow [3] 21:13, 40:17, 63:15 followed [4] 16:9, 16:14, 30:24, 44:8 force - 66:18 Fording - 58:8 foregoing - 77:12 foreign [5] 21:12, 45:20, 46:7, 55:8, 55:10 forgot - 25:21 Fork - 41:23 format - 14:17 former - 19:25 forth - 47:4 forum [2] 36:19, 36:25 forward [2] 16:12, 71:11 foundation - 32:2 founded - 51:22 fourth [3] 45:14, 57:16, 68:10 frame - 61:15 free - 13:1 free-flowing - 48:13 frequently - 8:7 Fresh - 30:8 Friday [2] 75:18, 75:18 frustrated - 73:3 frustrating - 73:22 full [7] 3:7, 16:6, 16:7, 16:12, 18:23, 53:13, 61:3 fully [3] 5:20, 16:6, 28:14 function [7] 2:17, 17:14, 19:3, 22:16, 25:16, 60:15, 68:14	functions - 10:24 fundamental [3] 50:24, 51:11, 67:5 fundamentally - 52:13 future [4] 24:4, 24:18, 66:6, 76:4 <hr/> G <hr/> gathering - 62:24 general - 28:22 generally - 42:21 generic - 40:7 Genny - 37:5 Geologic - 44:24 given [8] 6:20, 7:5, 9:5, 9:15, 16:4, 16:15, 43:1, 71:18 goal - 59:13 goes - 72:5 government [3] 57:6, 57:8, 68:4 governments - 35:13 Grant [2] 15:5, 15:15 graphs - 20:8 grateful - 54:5 Grave - 58:8 gravid [2] 62:25, 63:6 greater [2] 54:13, 72:11 ground - 57:20 group [9] 5:17, 8:22, 36:10, 44:23, 48:1, 48:12, 50:8, 50:20, 59:4 growing - 56:13 guidance [9] 28:3, 28:7, 30:13, 34:23, 35:7, 40:17, 47:5, 63:2, 63:4 guideline [8] 12:7, 28:5, 30:9, 30:21, 47:25, 48:3, 64:17, 65:6	guidelines [14] 18:19, 26:10, 26:20, 27:22, 29:8, 30:11, 31:6, 32:25, 40:4, 43:11, 62:21, 63:13, 69:10, 69:10 Gunderson - 73:6 guys - 7:15 <hr/> H <hr/> H-E-C-K - 39:10 H-U-D-S-O-N - 39:9 half - 70:23 Hamlett [3] 72:8, 72:21, 74:9 Hammond - 68:11 handle - 57:11 handled - 20:11 hands [11] 2:25, 9:22, 19:11, 25:14, 25:15, 25:23, 25:24, 41:10, 58:19, 59:8, 60:12 Hanlon [5] 56:2, 56:4, 56:6, 56:8, 58:18 happened [2] 6:18, 6:19 happy [2] 8:22, 9:16 Harbor - 58:9 hardship [2] 15:24, 15:25 harm - 64:16 harmful - 38:9 Hart - 10:21 hasn't [2] 8:12, 58:22 haven't [2] 6:5, 63:10 having [4] 15:5, 19:20, 58:11, 71:23 he's [2] 73:11, 74:7 health [4] 1:13, 12:3,	48:23, 49:17 healthy - 48:13 hear [12] 2:13, 10:15, 10:17, 15:12, 18:2, 37:6, 39:2, 39:4, 46:13, 54:9, 56:2, 59:15 heard [18] 1:12, 3:18, 7:2, 7:9, 9:14, 10:3, 11:8, 54:14, 55:14, 55:15, 55:19, 59:16, 62:6, 64:9, 65:3, 70:14, 74:8, 74:12 hearing [49] 1:10, 1:19, 2:4, 2:5, 4:6, 4:10, 4:13, 4:23, 8:20, 10:17, 14:14, 14:25, 16:19, 17:11, 18:1, 19:1, 20:13, 22:4, 25:2, 25:7, 26:17, 29:15, 33:5, 37:2, 37:7, 38:19, 39:6, 41:16, 45:24, 46:11, 48:6, 49:24, 52:16, 52:24, 53:10, 54:16, 55:1, 55:2, 56:1, 56:5, 58:17, 60:20, 60:23, 61:11, 69:19, 70:4, 71:23, 74:20, 74:24 hearings - 33:19 heavily - 39:13 held - 71:9 Helena - 1:15 hereby - 77:7 herein - 77:9 hereunto - 77:15 Hey [2]	74:11, 74:17 hi [4] 8:20, 8:24, 39:8, 50:3 higher [2] 65:9, 67:16 highest - 57:21 highly - 45:5 Highway - 73:10 hindered - 66:7 history - 65:13 hold - 25:22 Holland - 10:21 homeland - 33:17 hook - 70:6 hope - 20:15 horse - 54:1 horses - 54:2 hour [2] 9:2, 9:3 hours [2] 3:7, 9:4 However [2] 33:20, 40:8 Hoyle [3] 37:5, 37:6, 37:10 Hudson-heck [5] 38:21, 39:2, 39:4, 39:8, 39:9 Human - 1:14 humans [2] 54:3, 58:10 Hunters - 56:9 hurried - 6:14 hurt - 7:20 hyphen - 39:10 hypothesize - 12:16 <hr/> I <hr/> icon - 17:20 Idaho [25] 7:18, 18:10, 35:22, 36:3, 36:6, 37:11, 38:9, 38:14, 39:11, 40:23, 40:25, 41:1, 41:7, 41:12, 44:25, 48:11, 48:15, 49:1, 49:12, 49:23, 52:4,	53:19, 55:6, 64:12, 64:16 Idaho's [2] 34:2, 55:24 Idahoan - 54:5 identical - 42:8 Identify - 22:13 ignore - 13:3 ignored - 40:9 ignores [3] 13:5, 13:5, 43:11 impact [4] 8:1, 38:1, 40:23, 66:25 impacted [2] 28:17, 37:24 impacts - 67:11 impaired [3] 36:6, 38:2, 38:11 impairments - 35:6 implementation - 34:4 implementing - 34:25 implied [2] 36:20, 67:14 implies - 13:18 imply - 44:16 importance [2] 61:21, 62:24 imposed - 5:21 inaccurate - 46:8 inadequate - 12:3 inappropriate - 40:18 inaudible - 15:23 inception - 50:9 include [2] 23:5, 24:20 includes [2] 23:10, 47:6 including [12] 24:21, 28:16, 30:17, 31:11, 35:6, 39:14, 43:14, 44:24, 51:17, 64:7, 64:19, 73:16 inconsistent -
---	---	--	--	---	---

52:13 incorporate - 36:15 incorrect [2] 71:21, 71:22 incorrectly [2] 10:13, 42:5 increase - 38:1 increased - 38:4 increasing - 38:13 indeed - 15:25 independent - 36:20 indicate - 19:3 indicating - 66:3 individual [4] 47:21, 62:19, 63:19, 63:24 individuals [2] 63:21, 67:4 industrial - 28:22 industries - 21:15 industry [3] 16:2, 21:17, 66:6 information [6] 7:1, 21:23, 30:14, 36:23, 41:22, 74:7 informed - 11:22 initial [3] 11:22, 12:4, 27:6 Initially - 5:22 initiate - 41:11 initiated - 44:21 input [3] 9:19, 17:21, 21:15 instead [2] 9:3, 73:1 intend - 65:15 intended [8] 12:6, 15:17, 22:25, 28:6, 40:13, 46:6, 64:19, 68:6 intends - 41:13 intent [4] 11:17,	11:19, 12:18, 20:2 intentionally - 73:24 interested [3] 54:7, 75:13, 75:14 interesting - 65:11 Interim - 56:24 interpret - 9:1 interpretation - 9:18 interpreted - 69:4 interrupt - 45:25 interrupting - 61:16 introduce [3] 5:1, 41:18, 50:1 invalid - 64:1 invalidate - 14:24 invalidated - 69:15 invited - 75:15 involved [4] 5:16, 5:18, 20:21, 39:13 isn't - 21:22 issue [12] 11:2, 12:10, 23:7, 24:6, 39:14, 42:9, 54:1, 54:19, 56:22, 62:17, 71:24, 74:6 issues [5] 2:11, 3:8, 15:6, 73:19, 76:11 Item - 75:13 itself [5] 12:19, 12:22, 44:10, 62:18, 63:25	19:12, 19:18 job [3] 18:16, 18:17, 57:7 jobs - 16:1 John - 18:4 joint - 36:8 jointly - 35:13 Josh [2] 20:14, 20:17 Judge - 8:6 July - 29:2 justification - 51:21 justifications [3] 42:24, 43:2, 45:12	48:19, 50:7, 50:20, 51:9, 51:12, 51:19, 52:1, 52:5, 52:14, 54:8, 54:18, 57:3, 57:24, 58:15, 61:25, 62:14, 64:13, 64:15, 65:4, 65:8, 66:21, 72:2 Kooconusa's [2] 44:5, 45:4 Kootenai [40] 5:10, 18:7, 24:24, 29:23, 31:5, 31:23, 33:14, 34:2, 35:21, 35:22, 36:1, 36:5, 36:5, 36:5, 36:14, 37:11, 37:17, 37:22, 37:23, 38:3, 38:7, 38:10, 38:14, 40:25, 41:1, 41:14, 44:25, 45:1, 47:9, 48:19, 48:23, 49:9, 50:11, 51:15, 52:1, 52:6, 53:22, 53:22, 53:24, 54:11	31:22, 32:14, 32:20, 33:1, 33:16, 33:23, 34:8, 36:9, 36:17, 40:14, 41:5, 42:1, 42:15, 42:17, 43:14, 44:4, 45:4, 45:5, 46:21, 47:1, 47:9, 47:25, 48:17, 48:19, 50:7, 51:19, 52:5, 52:9, 52:14, 54:8, 54:18, 57:2, 58:14, 61:25, 62:13, 64:13, 64:15, 65:4, 65:8, 66:21, 72:2, 72:6, 72:7, 72:18, 72:19 lakes - 42:16 lands - 56:19 language [4] 12:21, 26:15, 40:9, 66:1 later [3] 8:17, 24:10, 74:9 LAURIE [3] 1:22, 77:5, 77:19 lauriecrutcher@g - 1:24 law [18] 11:2, 11:5, 13:5, 13:12, 15:14, 16:8, 16:14, 24:17, 34:14, 34:22, 37:16, 39:24, 65:16, 66:18, 68:3, 69:13, 69:14, 75:22 laws [3] 20:1, 21:13, 69:5 leads - 64:25 League [2] 39:12, 41:13 learned - 54:2 least [2] 3:18, 22:11 leave - 26:1 leaves - 49:14 legal [6] 36:20,	36:24, 36:25, 51:24, 52:3, 75:20 legislation - 12:6 legislative [8] 11:17, 11:19, 12:10, 12:18, 36:23, 65:13, 71:10, 71:22 legislator [2] 19:25, 20:1 Legislators - 71:2 Legislature [2] 12:6, 65:14 lentic - 42:22 less [6] 3:19, 20:22, 32:15, 43:9, 64:14, 66:14 Let's - 10:11 Letcher [5] 20:15, 20:17, 20:17, 22:5, 45:19 letter [4] 13:6, 63:3, 74:10, 74:10 level [7] 7:11, 53:2, 53:6, 65:4, 66:24, 67:17, 68:22 levels [7] 32:10, 57:21, 58:7, 62:10, 62:20, 66:14, 67:19 Lewis [2] 77:4, 77:6 Lexie [2] 53:12, 53:16 Libby [3] 5:9, 35:21, 37:22 life's - 67:5 lifetime - 33:11 Likewise - 75:25 liking - 44:20 limitation - 14:18 limited [4] 1:4, 28:10, 34:5, 68:6 limits [4] 28:24, 49:9, 57:10, 58:14
		K			
		Kalispell - 33:13 keeping [2] 3:11, 38:25 Kelly [4] 29:18, 29:19, 53:7, 73:17 kept - 6:20 kilogram [5] 32:16, 32:18, 33:4, 34:18, 62:9 Kirsten - 26:3 known - 38:8 knows - 8:19 Kooconusa [64] 1:7, 5:9, 7:9, 23:4, 23:19, 23:21, 24:23, 26:8, 26:13, 26:22, 27:1, 27:16, 27:20, 27:25, 28:18, 29:1, 29:23, 31:4, 31:22, 32:14, 32:20, 33:1, 33:16, 33:23, 34:9, 35:14, 35:16, 36:9, 36:13, 36:17, 37:19, 40:14, 41:5, 42:1, 42:15, 42:17, 43:15, 46:22, 47:1, 47:10, 48:1, 48:17,			
			L		
			L-E-X-I-E - 53:17 lake [70] 1:7, 5:9, 5:13, 5:25, 7:9, 14:7, 14:9, 14:11, 14:11, 23:4, 23:19, 23:21, 24:23, 26:7, 26:12, 26:22, 26:25, 27:16, 27:19, 27:25, 28:18, 28:20, 28:25, 29:22, 31:4,		

<p>Lincoln [22] 1:5, 5:9, 6:22, 6:23, 7:17, 8:10, 8:14, 15:15, 19:18, 19:20, 20:18, 28:9, 28:14, 28:15, 34:6, 41:24, 42:23, 45:11, 45:14, 52:22, 67:1, 74:18 linked - 33:3 listed [4] 36:6, 38:10, 53:12, 64:8 listening - 20:19 liter [25] 23:21, 23:23, 24:10, 24:11, 28:2, 28:5, 31:24, 37:20, 42:14, 42:16, 43:8, 43:9, 43:13, 51:6, 51:7, 51:21, 52:7, 57:2, 57:5, 57:23, 57:24, 62:11, 62:15, 66:15, 66:22 lived [3] 18:6, 19:20, 19:22 lives - 18:22 load - 66:17 lobbying - 57:8 local [3] 15:21, 35:9, 35:12 lodge [3] 57:17, 57:19, 57:20 logical - 14:8 lonely - 7:15 looking [3] 3:5, 20:7, 25:23 looks [3] 3:10, 59:16, 68:16 love [6] 4:1, 18:2, 53:20, 53:23, 60:12, 61:12 lower [4]</p>	<p>5:20, 5:21, 36:4, 42:15 lowest - 7:6 lumber - 16:1</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>main - 46:20 major [2] 6:18, 57:15 makes [3] 11:19, 40:22, 65:16 making [2] 60:1, 61:21 manage - 57:16 management - 7:21 manager - 29:19 mandatory - 69:9 manner - 8:13 March - 77:22 mark - 61:16 Marquis [25] 8:23, 10:12, 10:15, 10:19, 10:20, 14:14, 14:16, 15:1, 15:19, 16:16, 21:5, 21:24, 42:5, 52:24, 59:10, 59:19, 60:17, 60:20, 60:22, 61:9, 61:18, 61:19, 69:20, 69:21, 70:1 math - 3:4 mathematically - 20:24 matter [5] 1:4, 16:14, 34:5, 37:1, 74:13 matters - 36:22 maybe - 41:2 McGrath [2] 72:9, 73:24 meaning [3] 14:6, 14:9, 31:15 means [2] 9:12, 19:6 measured - 35:22 measurements</p>	<p>[2] 6:7, 6:7 mechanistic [2] 30:19, 31:2 meet [5] 14:7, 14:12, 66:21, 66:23, 71:19 meeting [10] 2:7, 7:9, 17:24, 21:24, 36:8, 57:7, 74:5, 76:5, 76:6, 76:17 meetings [5] 33:19, 50:20, 50:21, 71:9, 73:15 meets - 65:4 member - 33:14 members [4] 48:10, 52:22, 56:12, 71:14 mentioned [2] 44:15, 56:20 mentions - 30:9 message [2] 17:24, 59:3 met - 51:13 methods [2] 30:16, 47:19 micrograms [26] 23:21, 23:23, 24:9, 24:11, 28:2, 28:5, 31:24, 34:17, 37:20, 42:14, 42:16, 43:8, 43:9, 43:13, 51:5, 51:7, 51:21, 52:7, 57:2, 57:5, 57:22, 57:24, 62:10, 62:15, 66:15, 66:22 microphone [2] 17:18, 17:20 mid-sentence - 46:1 Mike - 5:8 mile - 5:12 miles - 5:13 milligrams [4] 32:15, 32:17, 33:4, 62:9</p>	<p>mind - 38:22 mines [3] 36:3, 50:14, 57:15 minimum - 63:20 mining [7] 5:14, 11:10, 11:12, 33:20, 33:21, 38:6, 54:24 minute - 61:16 minutes [7] 3:11, 17:4, 21:8, 37:8, 53:14, 61:4, 61:14 misrepresentatio - 43:10 miss - 22:8 missed - 25:23 misunderstanding [2] 50:25, 51:11 mix - 13:9 model - 62:23 modeling [4] 29:20, 30:19, 31:2, 47:3 moment - 9:24 Monday - 76:12 monitor - 15:7 Monitoring [3] 36:9, 48:1, 50:8 monkey - 73:25 Mont - 1:6 Montana [55] 1:2, 1:5, 1:13, 1:15, 4:19, 5:11, 7:11, 14:13, 18:6, 18:9, 21:16, 21:18, 29:4, 29:20, 32:2, 33:11, 33:12, 34:7, 34:13, 34:22, 36:9, 37:13, 38:15, 39:25, 40:2, 40:10, 40:16, 40:22, 41:10, 41:22, 44:6, 45:19,</p>	<p>48:20, 49:1, 49:15, 49:19, 49:22, 51:4, 51:24, 52:3, 52:10, 52:21, 53:4, 54:6, 55:24, 56:10, 56:21, 56:23, 57:7, 57:10, 64:12, 65:10, 75:23, 77:2, 77:7 Montana's [5] 23:10, 45:22, 46:6, 50:22, 69:11 morning [7] 2:4, 2:11, 22:21, 26:2, 29:18, 41:20, 76:12 mortality - 35:6 Mountain - 36:2 mouth - 5:13 move - 25:8 moving [2] 7:13, 38:20 MPDES - 28:19 multi-stakeholder - 44:4 multi-year - 44:3 multiple [3] 23:9, 31:11, 44:23 Murdo [2] 15:4, 15:14 Murry - 15:13 muscle [2] 31:12, 32:9 mute - 19:14 Myla [2] 29:19, 73:17</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>named - 77:9 narrow - 11:2 narrowly - 52:25 national [4] 30:6, 42:15, 42:22, 43:24 Nations - 35:12 nationwide - 64:20 native [5] 33:18,</p>	<p>35:24, 36:1, 38:3, 49:8 Natural - 33:12 nature [2] 54:15, 54:18 necessary [5] 4:20, 7:22, 7:23, 23:23, 30:15 necessities - 67:6 needlessly - 17:7 needs [2] 20:5, 69:15 negate - 66:19 negative - 8:1 negatively [2] 37:23, 38:1 neutral [3] 3:20, 9:15, 25:4 neutrally - 22:12 neutrals [2] 3:21, 3:24 newer - 18:24 newly - 38:2 nine - 61:15 Ninth - 68:12 non-regulatory - 66:18 non-rulemaking - 68:6 none [2] 4:7, 21:23 noon - 3:9 north [3] 55:6, 56:8, 56:14 Northwest - 5:9 notarial - 77:16 Notary [3] 1:23, 77:6, 77:20 note [7] 2:23, 36:7, 46:5, 57:13, 62:24, 67:2, 67:20 notes - 66:13 nothing - 55:16 notice [5] 16:4, 27:6, 34:3, 75:10, 75:14 noticed - 76:15 notion - 74:17 November - 36:8</p>
--	---	---	--	---	---

NRDC - 68:9 nullity - 65:16 numbers - 73:4 numeric - 13:3 numerous - 49:13	- 9:8 opportunity [10] 22:24, 27:10, 48:10, 52:15, 53:16, 56:7, 58:15, 58:23, 69:23, 70:8 oppose - 48:16 opposed [3] 25:10, 54:10, 54:25 opposition [4] 26:4, 50:5, 56:25, 57:4 option - 63:20 order [4] 8:24, 13:19, 44:4, 45:3 organization [3] 56:13, 56:14, 56:18 organizations - 11:9 original - 11:18 others [4] 6:9, 39:18, 62:16, 70:23 outcome - 16:9 outlined [3] 30:4, 32:25, 63:15 outside [2] 21:17, 21:18 ovaries - 31:12 ovary [17] 32:1, 32:8, 32:11, 32:15, 32:17, 33:3, 35:17, 35:20, 51:1, 51:18, 62:7, 62:20, 62:22, 62:25, 63:5, 63:9, 63:11 over-simplify - 43:7 oversight - 71:10 owner - 54:1	77:12 parameter - 30:23 participate [2] 16:6, 28:11 participated [3] 28:14, 44:22, 51:17 participation - 36:19 particular [2] 13:19, 74:6 parties [3] 9:7, 75:12, 75:14 party - 3:19 pass [2] 13:1, 20:1 passed - 66:2 passing [2] 17:5, 73:1 past [2] 3:9, 65:17 pathway - 31:17 patience [2] 69:18, 76:10 patient - 2:10 Patrol - 73:11 peer [5] 65:12, 65:15, 65:20, 65:24, 66:3 pending - 28:21 per [31] 3:11, 23:21, 23:23, 24:10, 24:11, 28:2, 28:5, 31:24, 32:16, 32:17, 33:4, 34:17, 37:20, 42:14, 42:16, 43:8, 43:9, 43:13, 51:6, 51:7, 51:21, 52:7, 57:2, 57:5, 57:22, 57:24, 62:9, 62:11, 62:15, 66:15, 66:22 percent - 64:20 perform - 30:23 perhaps [3] 7:11, 7:13, 16:11 period [2] 17:8, 46:19	permit - 28:21 permits [2] 28:19, 28:22 permitted - 44:7 persistent [2] 36:4, 37:21 personal - 57:13 personally - 57:16 pertaining [2] 1:7, 34:8 pervasive [2] 36:4, 37:21 petition [8] 26:5, 41:25, 46:9, 48:16, 50:21, 50:24, 51:10, 53:9 petitioned - 19:7 Petitioner's - 27:14 Petitioners [4] 10:22, 29:14, 31:23, 75:15 petitioning - 31:24 petitions [3] 1:4, 24:5, 34:5 Petryshen [4] 46:13, 46:14, 46:15, 48:7 Pfeiffer [2] 48:7, 48:9 pick - 61:20 placard - 15:4 placed - 75:5 plain [2] 26:15, 67:9 plan [3] 3:7, 66:17, 66:18 plans - 2:22 please [2] 22:16, 76:14 Plus - 64:17 podium [4] 5:1, 5:4, 8:18, 25:25 point [12] 4:2, 6:10, 10:6, 14:5, 28:20, 39:20, 40:21, 45:23, 46:20, 54:22, 64:7, 75:12 pointed - 40:13	points [3] 21:24, 46:18, 61:5 policies - 23:6 policy [2] 56:24, 67:22 political - 18:8 politicians - 34:11 pollutant - 66:17 pollutants - 54:24 pollution [5] 40:24, 45:23, 49:15, 54:11, 68:1 poor - 74:11 pop [2] 60:15, 61:15 populations [2] 48:14, 49:18 portion - 34:1 portions - 38:10 portray - 46:7 posed - 69:25 poses - 63:6 position [8] 16:18, 22:14, 23:1, 27:11, 53:4, 53:5, 65:14, 74:2 possible [2] 59:12, 75:7 posted - 76:15 potential - 40:15 practices - 55:12 precedent - 35:1 precisely - 35:10 prepared [3] 1:22, 14:17, 14:17 present [4] 8:17, 18:24, 39:15, 49:11 presentation - 7:3 presented [3] 8:12, 11:17, 27:5 preserve - 67:23 presuppose - 24:15 prevent [2] 54:11, 67:25	previous [4] 18:18, 23:1, 26:24, 36:15 primacy [2] 32:4, 51:2 primary [4] 31:17, 67:24, 68:4, 68:14 prior [3] 11:24, 42:25, 48:3 proactive - 49:19 probably [4] 5:23, 25:15, 60:8, 74:1 problem [4] 58:11, 72:4, 72:11, 72:14 problematic - 63:10 problems [2] 57:12, 63:9 procedures [8] 30:3, 30:12, 32:25, 42:20, 47:4, 47:15, 47:16, 75:24 proceeding - 75:23 proceedings [8] 1:10, 2:1, 23:8, 41:11, 76:18, 77:8, 77:10, 77:13 process [32] 5:17, 6:3, 6:14, 6:14, 9:17, 16:9, 16:13, 20:20, 21:14, 21:22, 25:10, 28:15, 30:22, 30:25, 34:10, 34:21, 35:10, 36:24, 50:15, 51:17, 53:2, 55:18, 55:20, 55:20, 62:7, 63:15, 70:21, 70:24, 71:7, 71:11, 73:18, 74:12 processes - 50:18 proffer -
O					
O'Connor [6] 17:15, 17:23, 18:3, 18:4, 18:4, 19:2 objection - 8:5 objective - 36:11 obligation [2] 51:24, 52:3 obviously - 60:5 occurring - 25:11 occurs - 57:9 October - 27:6 offer [7] 9:8, 16:16, 22:15, 25:4, 37:8, 39:10, 41:19 offered - 75:2 offering [5] 2:24, 3:19, 26:4, 60:7, 76:9 offers [2] 13:17, 13:21 Officer - 73:11 official - 71:1 officials - 8:15 online - 9:21 onto [3] 61:6, 69:22, 76:1 open [2] 38:2, 49:14 operates - 39:22 opinion - 25:4 opponent [9] 3:22, 4:11, 4:12, 4:13, 22:13, 22:16, 25:9, 58:22, 61:1 opponents [8] 3:18, 3:21, 8:25, 9:2, 25:8, 58:20, 60:25, 62:13 opportunities	- 9:8 opportunity [10] 22:24, 27:10, 48:10, 52:15, 53:16, 56:7, 58:15, 58:23, 69:23, 70:8 oppose - 48:16 opposed [3] 25:10, 54:10, 54:25 opposition [4] 26:4, 50:5, 56:25, 57:4 option - 63:20 order [4] 8:24, 13:19, 44:4, 45:3 organization [3] 56:13, 56:14, 56:18 organizations - 11:9 original - 11:18 others [4] 6:9, 39:18, 62:16, 70:23 outcome - 16:9 outlined [3] 30:4, 32:25, 63:15 outside [2] 21:17, 21:18 ovaries - 31:12 ovary [17] 32:1, 32:8, 32:11, 32:15, 32:17, 33:3, 35:17, 35:20, 51:1, 51:18, 62:7, 62:20, 62:22, 62:25, 63:5, 63:9, 63:11 over-simplify - 43:7 oversight - 71:10 owner - 54:1	77:12 parameter - 30:23 participate [2] 16:6, 28:11 participated [3] 28:14, 44:22, 51:17 participation - 36:19 particular [2] 13:19, 74:6 parties [3] 9:7, 75:12, 75:14 party - 3:19 pass [2] 13:1, 20:1 passed - 66:2 passing [2] 17:5, 73:1 past [2] 3:9, 65:17 pathway - 31:17 patience [2] 69:18, 76:10 patient - 2:10 Patrol - 73:11 peer [5] 65:12, 65:15, 65:20, 65:24, 66:3 pending - 28:21 per [31] 3:11, 23:21, 23:23, 24:10, 24:11, 28:2, 28:5, 31:24, 32:16, 32:17, 33:4, 34:17, 37:20, 42:14, 42:16, 43:8, 43:9, 43:13, 51:6, 51:7, 51:21, 52:7, 57:2, 57:5, 57:22, 57:24, 62:9, 62:11, 62:15, 66:15, 66:22 percent - 64:20 perform - 30:23 perhaps [3] 7:11, 7:13, 16:11 period [2] 17:8, 46:19	permit - 28:21 permits [2] 28:19, 28:22 permitted - 44:7 persistent [2] 36:4, 37:21 personal - 57:13 personally - 57:16 pertaining [2] 1:7, 34:8 pervasive [2] 36:4, 37:21 petition [8] 26:5, 41:25, 46:9, 48:16, 50:21, 50:24, 51:10, 53:9 petitioned - 19:7 Petitioner's - 27:14 Petitioners [4] 10:22, 29:14, 31:23, 75:15 petitioning - 31:24 petitions [3] 1:4, 24:5, 34:5 Petryshen [4] 46:13, 46:14, 46:15, 48:7 Pfeiffer [2] 48:7, 48:9 pick - 61:20 placard - 15:4 placed - 75:5 plain [2] 26:15, 67:9 plan [3] 3:7, 66:17, 66:18 plans - 2:22 please [2] 22:16, 76:14 Plus - 64:17 podium [4] 5:1, 5:4, 8:18, 25:25 point [12] 4:2, 6:10, 10:6, 14:5, 28:20, 39:20, 40:21, 45:23, 46:20, 54:22, 64:7, 75:12 pointed - 40:13	points [3] 21:24, 46:18, 61:5 policies - 23:6 policy [2] 56:24, 67:22 political - 18:8 politicians - 34:11 pollutant - 66:17 pollutants - 54:24 pollution [5] 40:24, 45:23, 49:15, 54:11, 68:1 poor - 74:11 pop [2] 60:15, 61:15 populations [2] 48:14, 49:18 portion - 34:1 portions - 38:10 portray - 46:7 posed - 69:25 poses - 63:6 position [8] 16:18, 22:14, 23:1, 27:11, 53:4, 53:5, 65:14, 74:2 possible [2] 59:12, 75:7 posted - 76:15 potential - 40:15 practices - 55:12 precedent - 35:1 precisely - 35:10 prepared [3] 1:22, 14:17, 14:17 present [4] 8:17, 18:24, 39:15, 49:11 presentation - 7:3 presented [3] 8:12, 11:17, 27:5 preserve - 67:23 presuppose - 24:15 prevent [2] 54:11, 67:25	previous [4] 18:18, 23:1, 26:24, 36:15 primacy [2] 32:4, 51:2 primary [4] 31:17, 67:24, 68:4, 68:14 prior [3] 11:24, 42:25, 48:3 proactive - 49:19 probably [4] 5:23, 25:15, 60:8, 74:1 problem [4] 58:11, 72:4, 72:11, 72:14 problematic - 63:10 problems [2] 57:12, 63:9 procedures [8] 30:3, 30:12, 32:25, 42:20, 47:4, 47:15, 47:16, 75:24 proceeding - 75:23 proceedings [8] 1:10, 2:1, 23:8, 41:11, 76:18, 77:8, 77:10, 77:13 process [32] 5:17, 6:3, 6:14, 6:14, 9:17, 16:9, 16:13, 20:20, 21:14, 21:22, 25:10, 28:15, 30:22, 30:25, 34:10, 34:21, 35:10, 36:24, 50:15, 51:17, 53:2, 55:18, 55:20, 55:20, 62:7, 63:15, 70:21, 70:24, 71:7, 71:11, 73:18, 74:12 processes - 50:18 proffer -
P					
P-E-T-R-Y-S-H-E-P	- 46:17 pages [5] 12:4, 12:11, 27:7, 31:20,	perhaps [3] 7:11, 7:13, 16:11 period [2] 17:8, 46:19	pointed - 40:13	proffer -	

15:18 project [3] 5:15, 8:5, 8:6 projects [2] 66:13, 66:20 promulgate [5] 64:24, 65:1, 67:10, 68:24, 69:6 promulgated [2] 24:10, 69:1 promulgation [2] 11:3, 11:14 pronouncing - 10:12 proof - 8:16 proper [7] 16:4, 16:8, 16:9, 20:3, 20:9, 20:11, 63:24 properly [5] 11:1, 11:4, 11:15, 16:7, 18:13 proponent [14] 4:1, 4:7, 4:20, 4:22, 9:20, 10:7, 17:23, 17:25, 19:4, 19:6, 19:10, 22:7, 22:13, 22:15 proponents [14] 3:17, 4:4, 4:7, 8:25, 9:2, 10:1, 10:10, 20:10, 43:7, 44:16, 54:20, 55:16, 60:25, 65:22 proposal - 72:23 proposed [10] 11:19, 24:7, 36:11, 42:17, 46:25, 47:9, 75:15, 75:19, 75:20, 75:21 protect [20] 8:9, 12:3, 23:22, 32:10, 33:21, 34:19, 41:14, 43:19, 44:4, 45:4, 45:21,	46:6, 51:25, 52:4, 55:11, 55:24, 64:6, 64:18, 64:20, 67:24 protected [3] 24:2, 68:21, 68:22 protecting [4] 18:16, 18:17, 41:4, 54:7 protection [4] 22:23, 45:18, 67:3, 67:4 protective [10] 12:8, 23:18, 27:25, 28:2, 43:13, 43:25, 48:3, 49:8, 52:8, 55:22 protects [2] 24:23, 68:17 protocols [3] 44:8, 44:11, 45:8 prove - 8:10 proven - 55:21 provide [8] 27:12, 36:22, 42:23, 43:2, 45:11, 46:23, 48:10, 52:15 provided - 44:8 provides [6] 28:3, 30:14, 30:22, 35:18, 43:21, 74:6 providing [2] 57:18, 58:1 Province - 36:10 provincial - 35:12 provision - 14:12 provisions - 29:5 public [28] 1:10, 1:13, 1:23, 2:7, 2:24, 11:21, 12:3, 12:8, 12:9, 16:4, 20:11, 22:15, 22:18, 26:17,	26:17, 27:5, 27:8, 27:10, 27:12, 46:19, 48:11, 56:18, 67:9, 74:5, 75:2, 76:17, 77:6, 77:20 publication - 11:23 publicly - 48:2 published - 11:24 pull - 70:5 purpose - 52:24 purposes [2] 24:13, 67:2 pursuant [3] 1:6, 13:11, 62:3 pursue [2] 14:8, 67:5 push - 71:18 putting [2] 41:9, 57:10 <hr/> Q Qiu - 41:17 quality [33] 23:4, 23:5, 27:21, 27:21, 29:4, 29:19, 30:7, 32:19, 37:14, 38:10, 39:16, 40:1, 40:2, 40:23, 41:4, 43:12, 43:18, 47:1, 49:20, 50:13, 50:22, 58:5, 58:13, 61:22, 67:3, 67:8, 67:17, 68:5, 68:7, 69:11, 70:18, 70:18, 73:19 queue - 33:7 Qui [3] 41:20, 41:21, 46:3 quick [2] 3:1, 3:4 quite [2] 20:21, 53:21 quote [14] 13:8, 30:13, 30:19, 42:11, 42:13,	46:23, 47:16, 64:21, 65:21, 65:25, 67:22, 68:1, 69:5, 69:6 quotes - 68:9 <hr/> R R-O-D-A-C-K - 55:5 raise [11] 2:19, 2:23, 17:14, 19:3, 22:7, 22:16, 25:5, 36:21, 58:24, 58:25, 60:15 raised [9] 9:22, 15:3, 20:14, 37:4, 38:23, 42:8, 46:12, 58:19, 59:10 raising [3] 2:17, 17:13, 60:17 ran [2] 45:25, 58:18 range - 49:4 rate - 7:24 rather [4] 6:8, 29:2, 31:18, 71:18 rationale - 24:2 reached [2] 37:15, 57:22 reaches - 18:9 reactive - 49:20 reads - 15:4 ready - 70:5 real [3] 5:17, 8:9, 15:21 reality - 61:24 really [8] 12:17, 12:18, 16:21, 16:24, 39:21, 39:21, 58:12, 59:12 reason - 58:25 reasoned - 43:3 reasons [3] 29:25, 32:22, 42:2 received - 11:8	recently [2] 7:3, 48:18 recognize [2] 16:11, 67:23 recognized - 28:1 recommendations - 35:8 recommended [13] 13:7, 13:13, 23:9, 23:24, 29:24, 30:3, 40:12, 42:18, 42:20, 43:24, 47:8, 47:12, 47:14 recommends - 35:7 record [23] 4:17, 13:16, 13:21, 13:22, 25:12, 27:7, 28:14, 29:11, 30:20, 31:20, 46:24, 52:20, 53:13, 59:21, 60:2, 60:8, 61:6, 65:8, 66:10, 69:22, 73:13, 76:3, 77:13 recorded - 62:8 recording - 15:11 recovery - 38:3 reduce - 67:25 reduction - 66:17 refer - 12:3 referred - 73:23 refers - 62:19 reflected - 5:6 refuge - 53:23 regard - 12:10 regarding [5] 13:15, 27:9, 33:25, 36:16, 36:23 regardless - 9:14 Register - 69:2 regulate - 21:11	regulated - 21:16 regulation [2] 4:15, 12:2 regulations [5] 2:9, 26:10, 26:20, 29:8, 40:4 regulatory - 23:15 reiterate - 15:20 reject [2] 38:17, 49:6 rejected - 64:2 relatively - 9:6 release - 54:24 relevant [3] 13:5, 36:7, 36:25 relief [2] 24:4, 29:14 rely [3] 48:25, 49:22, 68:19 relying - 63:23 remainder [2] 16:17, 17:4 remaining - 64:2 remains - 24:12 remarks - 17:10 remind - 59:25 renowned - 34:12 rental - 57:17 replaced - 24:9 reply - 62:5 reported [2] 63:18, 77:10 Reporter [7] 1:23, 15:10, 53:14, 75:4, 75:8, 77:5, 77:20 represent [6] 5:8, 10:22, 15:15, 16:18, 41:22, 56:10 Representative [4] 72:4, 72:8, 73:6, 73:10 representatives [2] 6:22, 73:5 represented -
---	---	--	--	--	---

63:18 representing [2] 22:23, 52:21 reproductive [2] 32:4, 35:5 request [4] 38:18, 46:8, 59:11, 74:14 requested [5] 24:5, 29:14, 70:24, 71:10, 71:12 requests - 38:16 require - 65:15 required [7] 4:19, 12:14, 13:15, 27:2, 29:10, 31:7, 62:2 requirement - 26:15 requirements [5] 23:16, 24:21, 27:18, 48:21, 65:21 requires [5] 11:23, 40:1, 41:8, 45:18, 63:22 requiring - 63:20 research [5] 36:9, 48:1, 49:3, 50:8, 50:12 reservoir [8] 34:21, 35:14, 36:13, 37:20, 51:9, 51:12, 51:14, 52:1 resident [3] 33:11, 53:20, 55:5 resist - 53:8 resort - 69:6 Resource - 33:12 resources - 33:23 respectful - 60:6 respectfully [2] 38:16, 46:8 respond - 11:25 response [16] 4:5, 12:1, 14:1, 25:6, 60:19, 62:4,	62:5, 62:5, 62:18, 63:2, 65:11, 65:19, 66:8, 66:9, 66:11, 66:12 responses [2] 34:2, 67:12 responsibilities - 67:24 restrictive [3] 70:11, 70:16, 70:17 result [2] 35:5, 58:7 results [2] 34:21, 63:17 return - 59:9 reverse [2] 26:23, 29:12 revert - 49:13 review [52] 1:1, 1:5, 1:7, 2:6, 2:8, 3:23, 4:14, 4:15, 4:18, 4:25, 10:11, 13:11, 16:8, 16:12, 19:5, 19:7, 21:20, 25:10, 32:21, 33:25, 34:4, 34:7, 36:16, 38:17, 38:18, 40:1, 40:8, 40:19, 41:25, 46:9, 48:17, 49:2, 49:6, 50:5, 52:12, 53:7, 54:6, 54:11, 54:20, 54:23, 55:17, 57:1, 57:4, 58:22, 60:3, 62:3, 65:20, 66:4, 71:11, 75:11, 75:16, 76:3 Review's [2] 34:3, 75:6 reviewed [6] 31:25, 42:7, 65:12, 65:15, 65:24, 66:3 reviewing - 42:24 revise [2] 29:8, 41:12 revised [2] 36:11, 67:14 revisiting -	45:13 Rich - 33:11 Richard - 25:18 right-hand - 59:3 rights [3] 36:21, 67:5, 67:24 rigorous - 37:15 ripe - 62:25 risk [2] 38:4, 38:12 river [42] 5:10, 5:12, 5:14, 18:7, 18:11, 18:22, 18:23, 24:24, 29:23, 31:5, 31:23, 35:21, 36:5, 36:6, 37:11, 37:22, 37:23, 38:3, 38:5, 38:7, 38:10, 40:25, 41:10, 41:14, 47:9, 48:19, 48:25, 49:12, 50:13, 50:13, 51:15, 52:1, 52:6, 52:9, 53:22, 53:23, 54:11, 57:14, 57:17, 58:8, 64:11, 72:5 river's - 49:17 rivers [3] 40:23, 48:12, 48:13 road [2] 7:16, 7:19 robust - 50:18 Rodack [3] 55:3, 55:4, 55:4 role [3] 68:4, 68:7, 68:14 Ronan - 33:12 room [12] 2:20, 3:3, 3:14, 3:25, 4:4, 4:8, 15:11, 25:21, 25:24, 29:16, 33:6,	69:24 roughly - 71:8 RPR [3] 1:22, 77:5, 77:19 RR000001-2 - 46:25 RR002118 - 66:10 RR002544 - 47:17 rule [50] 1:7, 11:4, 11:15, 11:22, 11:24, 12:19, 12:21, 12:23, 12:25, 14:24, 24:10, 26:18, 27:6, 27:17, 29:1, 29:9, 30:20, 31:19, 34:7, 42:1, 42:4, 42:6, 42:11, 43:3, 43:5, 44:2, 44:9, 44:10, 44:14, 44:18, 44:21, 45:13, 45:15, 45:17, 45:20, 45:21, 46:5, 47:6, 50:6, 62:18, 63:15, 63:16, 63:22, 63:25, 64:3, 65:16, 66:7, 68:24, 68:25, 69:13 rulemaking [10] 11:1, 24:4, 24:18, 27:7, 28:11, 28:13, 28:15, 40:14, 46:24, 46:24 rules - 29:3 running [2] 17:24, 74:16 S S-E-X-T-O-N - 50:4 safety - 6:11 Salish [4] 33:14, 36:14, 45:1,	50:11 sample [3] 63:9, 63:17, 63:19 sampled - 63:7 samples [5] 49:13, 62:25, 63:5, 63:19, 63:24 saying [11] 6:6, 8:15, 14:19, 20:15, 21:22, 65:14, 70:19, 71:2, 73:24, 74:11, 75:3 says [7] 21:20, 44:20, 63:17, 65:6, 66:16, 69:3, 69:5 schedule - 34:4 science [12] 6:4, 6:5, 6:19, 7:6, 20:8, 21:20, 21:22, 22:2, 37:15, 44:3, 44:17, 49:6 science-based - 45:12 scientific [4] 24:2, 35:18, 50:23, 65:24 scientifically [7] 30:16, 43:22, 44:13, 44:15, 45:13, 50:17, 51:22 scientist - 50:12 scientists - 34:12 screen [6] 17:19, 19:4, 19:15, 25:17, 25:23, 72:20 seal - 77:16 searches - 13:18 secondly - 16:8 section [5] 1:6, 9:21, 29:20, 64:22, 67:21 sediment - 72:17	seeing [6] 2:25, 4:7, 25:14, 41:6, 58:6, 76:15 seek - 41:13 seeking [2] 41:25, 46:9 seems [3] 57:20, 60:25, 66:17 selenium [89] 1:7, 2:9, 7:12, 11:4, 11:15, 12:23, 12:25, 14:24, 19:8, 23:7, 23:10, 29:1, 29:22, 30:5, 30:8, 30:12, 31:1, 31:4, 31:9, 31:14, 31:18, 34:8, 34:13, 34:20, 34:24, 35:5, 35:13, 35:18, 35:23, 36:3, 36:6, 36:11, 36:17, 37:18, 37:21, 37:24, 38:5, 38:11, 38:13, 40:15, 41:7, 41:13, 42:1, 42:4, 42:6, 42:10, 43:3, 43:5, 44:2, 44:9, 44:10, 44:14, 44:18, 44:21, 45:3, 45:5, 45:15, 45:20, 45:21, 45:23, 46:5, 47:18, 47:20, 48:17, 48:18, 48:22, 49:7, 49:11, 49:15, 50:6, 50:9, 50:20, 50:25, 52:5, 52:10, 54:1, 54:2, 57:2, 57:11, 57:21, 58:7, 58:14, 69:9, 69:10, 69:13, 72:1,
---	---	--	---	--	---

72:15, 72:19, 75:11 Senate - 5:8 Senator [12] 4:9, 4:12, 4:22, 5:7, 5:8, 15:18, 65:20, 69:24, 70:2, 70:7, 74:21, 74:22 sense [3] 20:23, 64:11, 64:15 sensitive [2] 64:6, 64:18 sentiment - 16:20 served - 50:7 Services - 1:14 setting [2] 49:20, 68:4 several [2] 35:16, 51:16 Sexton [3] 49:25, 50:3, 50:4 shall - 63:17 shift [2] 22:5, 22:10 short [2] 9:6, 57:17 shorthand - 77:10 shove - 71:18 showing [5] 21:6, 21:9, 37:18, 38:7, 41:2 shows - 44:10 sides - 64:12 sign - 15:8 significant - 15:25 similar [2] 69:20, 75:21 similarly - 25:3 single - 63:18 sit - 56:8 site [36] 7:8, 24:21, 28:4, 28:7, 30:3, 30:5, 30:10, 30:11, 30:15, 30:23, 32:13, 32:24, 34:24, 35:8, 36:12, 40:17, 42:20, 43:12, 43:22,	43:24, 44:6, 45:3, 45:8, 45:9, 46:21, 47:2, 47:3, 47:14, 47:19, 51:3, 51:8, 51:11, 52:6, 52:13, 64:24, 65:4 situation [2] 18:8, 74:11 six [7] 34:10, 35:11, 50:16, 51:12, 55:19, 71:15, 73:1 slash - 17:20 slow [2] 6:15, 70:24 slowly - 40:24 slows - 72:6 smoke - 72:20 snippet - 65:13 soils - 54:3 sole [2] 29:3, 68:14 solely - 39:22 solves - 54:19 somebody [3] 2:12, 17:24, 18:22 someone [3] 4:24, 15:4, 53:11 somewhere - 3:23 sorry [5] 4:21, 10:9, 10:12, 15:5, 54:16 sort - 13:9 sounds [2] 4:24, 15:7 source - 28:20 sources - 44:24 south - 57:15 space - 3:10 speak [25] 2:22, 4:1, 4:25, 9:7, 9:13, 9:25, 10:6, 15:6, 16:23, 16:24, 17:4, 17:22, 19:4, 22:6, 22:12, 25:25, 56:7, 58:16, 58:21, 58:23, 59:14, 59:17, 60:6,	60:14, 73:7 speaker - 3:11 speakers - 9:4 speaking [6] 10:10, 48:11, 56:20, 58:19, 61:4, 76:9 special [2] 58:1, 63:6 species [9] 35:16, 35:25, 48:4, 49:8, 51:19, 63:21, 64:8, 64:18, 64:20 specific [39] 7:8, 24:21, 28:4, 28:8, 30:3, 30:6, 30:10, 30:11, 30:15, 30:23, 32:13, 32:24, 34:24, 35:8, 36:12, 40:17, 42:20, 43:12, 43:23, 43:25, 44:6, 45:3, 45:8, 45:9, 46:21, 47:2, 47:3, 47:14, 47:20, 51:3, 51:8, 51:11, 52:6, 52:13, 62:4, 62:4, 64:24, 65:5, 67:12 specifically [7] 11:5, 12:11, 12:23, 34:25, 38:11, 42:10, 62:25 spelled - 46:16 spirit - 55:9 Spokane - 7:19 spoken [3] 38:22, 60:25, 61:3 SS - 77:3 staff - 26:3 stakeholders - 49:5 stand - 6:23 standard	[102] 1:7, 5:21, 6:8, 7:6, 7:12, 7:25, 8:9, 11:19, 12:16, 12:17, 12:21, 12:21, 12:25, 12:25, 13:14, 13:24, 14:2, 14:6, 14:7, 14:12, 14:20, 16:12, 19:8, 19:9, 20:5, 20:9, 20:22, 21:12, 21:17, 21:25, 22:3, 23:4, 24:16, 25:12, 25:13, 26:8, 26:13, 26:22, 27:1, 27:16, 27:20, 27:21, 27:21, 27:24, 28:18, 31:25, 32:13, 32:17, 32:23, 32:24, 33:1, 34:13, 34:15, 34:17, 35:14, 35:19, 36:17, 37:14, 38:15, 40:2, 40:18, 41:6, 42:5, 42:12, 42:14, 42:17, 43:6, 43:11, 43:12, 43:16, 43:17, 44:12, 45:10, 46:21, 46:23, 47:1, 48:17, 49:6, 49:14, 50:25, 51:20, 52:11, 52:12, 53:1, 53:5, 54:12, 54:14,	55:15, 62:9, 62:15, 64:5, 64:11, 64:13, 64:15, 64:24, 65:1, 66:14, 66:22, 67:10, 67:14, 69:3, 69:9 standards [42] 4:16, 18:15, 18:16, 18:24, 23:5, 29:20, 29:22, 30:2, 31:4, 31:14, 31:16, 31:22, 32:9, 32:19, 32:22, 34:8, 39:16, 40:7, 41:2, 41:12, 45:9, 47:7, 47:10, 47:13, 47:20, 48:22, 49:20, 50:23, 55:11, 55:21, 55:23, 57:2, 57:7, 61:22, 65:5, 68:5, 68:7, 68:15, 68:16, 68:25, 69:7, 70:18 standing [3] 6:21, 39:23, 70:22 start [14] 4:2, 9:25, 10:7, 10:11, 15:10, 17:5, 22:2, 25:16, 25:19, 39:7, 48:8, 50:2, 61:14, 70:5 started [3] 5:18, 20:19, 20:20 starting [2] 33:8, 58:9 state [25] 1:2, 6:22, 7:14, 7:16, 8:15, 11:2, 11:5, 13:11, 19:25, 23:20, 24:13, 24:19, 28:23,	32:16, 35:11, 48:14, 49:19, 53:13, 62:6, 67:18, 69:14, 71:2, 72:3, 77:2, 77:7 state's [2] 23:14, 69:4 stated [4] 19:20, 30:13, 33:18, 42:13 statement [7] 13:6, 13:25, 22:25, 56:24, 62:17, 66:1, 71:22 statements [6] 13:10, 13:17, 13:23, 60:7, 71:21, 72:22 states [18] 8:25, 14:2, 28:3, 34:25, 35:7, 42:6, 43:18, 43:21, 45:19, 51:1, 56:15, 62:12, 67:22, 67:25, 68:3, 68:8, 68:13, 68:25 stating [3] 43:8, 65:21, 68:3 statute [19] 11:6, 11:21, 12:15, 12:18, 13:2, 14:13, 16:5, 24:17, 26:14, 26:17, 27:3, 29:10, 40:10, 40:19, 62:3, 64:25, 69:12, 69:14, 76:4 statutes - 67:6 statutory - 26:15 stay - 75:8 step [6] 14:8, 30:22, 30:24, 34:10, 61:24, 70:8
---	--	---	--	--	--

<p>Steven - 48:7 stood - 6:25 stopping - 33:8 storm - 28:22 strict [2] 57:10, 58:14 stringency [40] 1:6, 2:8, 4:25, 10:11, 11:21, 11:22, 13:1, 13:11, 16:5, 24:16, 25:10, 26:5, 26:14, 26:16, 27:3, 27:4, 27:9, 27:11, 27:13, 27:15, 27:18, 29:5, 29:9, 29:13, 33:25, 34:7, 40:1, 40:8, 40:19, 41:25, 42:6, 42:9, 46:9, 50:5, 52:12, 58:22, 62:2, 66:4, 69:14 stringent [38] 4:16, 4:18, 11:6, 11:20, 12:14, 13:7, 13:13, 14:21, 19:9, 20:22, 21:25, 25:13, 26:9, 26:19, 26:23, 27:1, 29:7, 29:24, 31:5, 32:12, 32:21, 34:14, 40:3, 41:3, 41:13, 42:4, 42:11, 42:18, 43:6, 43:16, 44:12, 46:22, 47:11, 48:20, 52:11, 53:1, 53:5, 55:15 strongly - 48:16 structure - 32:3 studies [6] 21:6, 65:12, 65:15, 65:24, 66:3, 72:17 studying -</p>	<p>20:20 Sturgeon [3] 35:24, 38:4, 64:19 Sub - 31:8 Sub(7 - 26:9 Sub(a - 26:9 Subcommittee [2] 50:9, 50:21 subject [3] 11:20, 28:24, 29:5 submission [5] 23:14, 24:14, 24:19, 36:15, 36:18 submit [2] 33:25, 75:15 submitted [5] 17:1, 39:16, 46:17, 56:23, 61:8 Subparagraph [2] 63:16, 67:22 Subparagraphs - 12:23 substantive - 59:25 succeeded - 54:13 success - 49:17 sufficiently - 12:8 suggest [2] 24:9, 57:24 suggestion - 62:13 summarily - 38:17 summary [4] 32:19, 38:14, 52:10, 75:1 superseding - 69:4 supplemental - 36:22 support [12] 4:1, 4:25, 14:20, 18:12, 18:23, 54:10, 57:1, 57:3, 57:4, 62:13, 64:21, 65:13 supported [2] 28:13, 45:16 supporting [2] 36:23, 44:17 supports [3] 11:11,</p>	<p>11:12, 38:15 surprised - 6:1 surrounding [2] 33:16, 33:23 Survey - 44:24 susceptible - 45:5 system [7] 8:3, 23:25, 48:25, 49:12, 58:2, 73:4, 73:25</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T-O-N-Y-A - 22:22 taken [4] 2:2, 62:16, 63:11, 77:8 takes [2] 8:4, 8:6 taking - 53:14 tally - 3:1 target - 45:20 targeting - 21:17 technical [4] 50:9, 50:21, 63:1, 64:21 technological - 76:11 technology [2] 28:24, 66:23 Teck [21] 1:4, 10:22, 11:10, 11:11, 18:20, 21:9, 21:11, 34:5, 34:11, 40:6, 41:24, 42:8, 42:23, 45:11, 45:14, 51:17, 55:16, 57:18, 57:25, 61:20, 62:16 Teck's [4] 11:17, 12:4, 14:3, 38:17 ten [6] 35:15, 61:4, 61:14, 70:1, 70:1, 71:13 tentative - 27:4 term - 57:17 terms [2] 16:1, 54:17 Territory -</p>	<p>56:16 test - 58:3 testified - 6:25 testify - 73:12 testimony - 2:2 thank [65] 2:10, 5:7, 8:16, 9:18, 10:15, 10:19, 10:20, 14:24, 14:25, 17:9, 17:11, 19:2, 19:17, 20:12, 20:13, 22:3, 22:4, 22:21, 22:24, 24:25, 25:2, 29:14, 33:4, 33:10, 37:1, 37:2, 37:9, 37:10, 38:18, 38:19, 41:15, 41:16, 41:20, 46:10, 46:11, 46:14, 48:6, 48:9, 48:9, 49:23, 49:24, 52:14, 52:16, 52:19, 53:9, 53:10, 53:15, 55:1, 55:2, 56:1, 56:6, 57:9, 58:15, 58:17, 61:10, 61:18, 69:16, 69:19, 70:7, 73:21, 74:19, 74:20, 76:8, 76:13, 76:15 thanks [4] 48:5, 53:15, 55:25, 69:17 there's [11] 12:1, 22:13, 59:23, 60:10, 65:7, 65:7, 68:13, 68:19, 69:8, 70:17, 72:18 therefore [6] 24:5, 31:7,</p>	<p>32:12, 40:18, 42:21, 47:9 they'd - 61:13 they're [5] 3:12, 3:19, 9:14, 22:12, 63:23 they've [2] 7:4, 15:23 thing [3] 20:25, 39:20, 39:25 thinking - 70:12 Third - 44:14 threat - 49:9 threatened - 64:8 threshold - 35:17 throughout [3] 36:4, 62:7, 68:2 thumbs - 2:15 tie - 72:23 tied - 73:8 timber - 8:5 timer [3] 25:19, 26:1, 39:7 timing - 62:24 tissue [33] 6:7, 23:17, 23:24, 27:23, 30:5, 31:1, 31:10, 31:14, 32:4, 32:5, 32:24, 33:2, 34:17, 34:20, 35:1, 35:24, 36:13, 38:8, 47:2, 47:6, 47:8, 47:10, 47:22, 47:24, 49:13, 51:5, 51:9, 51:14, 52:5, 62:9, 63:17, 70:16, 71:25 titled - 30:4 to-wit - 2:2 today [33] 2:18, 2:23, 3:6, 3:9, 4:20, 9:13, 10:3, 16:23, 22:6, 22:24, 39:10, 42:2, 52:21, 53:14, 54:10, 54:14, 55:14, 56:7,</p>	<p>56:11, 56:21, 59:17, 61:14, 64:9, 69:8, 69:22, 70:22, 71:1, 73:11, 73:17, 75:2, 75:10, 75:14, 76:9 today's [2] 52:24, 76:16 Tonya [3] 22:19, 22:20, 22:22 top - 25:17 total - 9:1 toxic - 54:2 toxicity - 35:17 track [2] 38:25, 60:24 tracks - 74:16 trading - 16:22 traditional - 30:17 tragic - 73:5 train - 74:16 transcribed [2] 75:4, 77:11 transcript [2] 1:10, 75:5 transcription [2] 75:8, 77:11 translated [3] 32:8, 32:23, 33:2 translating - 30:25 translation [4] 27:23, 30:4, 30:12, 30:24 transparent - 50:17 travels - 72:16 treatment - 66:24 Tribal [3] 35:12, 37:11, 37:17 Tribe [6] 34:2, 36:1, 37:11, 38:14, 41:1, 44:25 tribes [9] 28:3, 33:15, 33:17, 33:18, 35:8, 35:22, 36:14, 45:1, 50:11</p>
---	--	---	---	--	--

<p>trickling - 40:25 tried - 73:25 triggered [2] 26:18, 40:19 triggers - 40:8 Trout [2] 52:21, 53:4 true [4] 72:4, 72:13, 72:15, 77:12 truly [4] 8:9, 20:5, 21:20, 56:17 truth [2] 71:4, 74:1 truthfully - 73:13 tuned - 75:9 turn - 18:2 twelve - 3:9</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately - 32:10 unable - 73:11 uncertain - 63:12 uncheck [2] 9:23, 38:23 unclear - 39:21 unclick - 3:2 under-protected - 62:14 undermine - 45:15 understand [9] 6:17, 7:8, 17:1, 17:7, 70:15, 70:25, 71:3, 72:25, 73:18 understandable - 73:9 understanding - 71:17 Understood - 17:9 undertaken - 35:11 United - 48:12 unless - 24:13 Unlimited - 52:21 Unlimited's - 53:4 unmute [14] 10:13, 17:17, 17:21, 19:13, 20:16,</p>	<p>22:20, 25:19, 33:9, 41:18, 48:8, 50:1, 52:18, 53:12, 60:21 upcoming - 76:6 updates - 76:14 upholds - 8:7 Upon - 27:17 Upper - 33:13 upstream - 18:14 urge - 53:8 US/Canada - 47:23 USC - 67:21 uses [13] 14:9, 23:6, 23:19, 24:23, 24:24, 43:19, 44:5, 45:4, 51:25, 52:8, 61:25, 68:18, 68:20 USGS [2] 62:23, 63:13 using [9] 2:12, 19:3, 30:2, 31:2, 32:24, 42:19, 47:14, 58:24, 77:11</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid - 62:22 validated - 68:2 Valley [5] 53:23, 57:12, 57:14, 57:22, 58:8 value [3] 30:6, 33:4, 63:18 values - 62:8 vehemently - 54:25 venues - 33:19 versus - 68:9 Vicki [4] 8:23, 10:20, 21:4, 61:19 video - 17:13 violate - 34:13 violated - 69:14 vital - 48:22 voice - 56:18</p>	<p>voiced - 73:13 void - 24:8 Volume - 69:2 vote [5] 71:16, 72:22, 72:23, 73:1, 73:2</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waiting - 49:16 waive - 36:20 wanted [4] 59:17, 59:20, 59:23, 69:22 wants [2] 25:4, 58:21 Warhank [6] 15:9, 15:13, 15:14, 17:9, 17:12, 19:19 waste - 9:9 wasting - 60:8 waters [10] 45:19, 45:22, 46:6, 49:15, 52:4, 54:7, 54:12, 54:19, 55:12, 55:24 watershed [2] 41:14, 48:24 watersheds - 49:9 waterway - 49:22 waterways - 54:25 wave - 17:16 we'd [2] 18:2, 57:9 we'll [7] 3:15, 4:2, 4:3, 5:3, 10:4, 10:7, 70:5 we're [25] 2:12, 3:1, 3:8, 3:15, 3:17, 7:13, 7:19, 7:24, 9:20, 9:20, 9:24, 15:5, 15:7, 16:21, 21:8, 41:2, 41:6, 41:9, 56:13, 58:9, 61:1, 70:21, 71:24, 74:11, 76:6 we've [14] 3:2, 3:10, 7:2, 7:20, 15:3, 19:22,</p>	<p>55:14, 55:19, 59:16, 59:21, 62:6, 64:9, 65:3, 73:15 weakening - 50:22 weaker [3] 43:3, 45:17, 49:14 website [3] 48:2, 75:6, 76:1 websites - 76:14 week - 7:4 weighed - 16:7 weighs - 13:19 weight [3] 32:16, 32:18, 62:9 what's [4] 7:12, 8:16, 25:17, 65:2 whatever [2] 66:16, 71:20 whenever - 15:8 whereas - 12:5 whereby - 32:3 WHEREOF - 77:15 WHEREUPON - 2:1 whether [15] 4:15, 11:3, 11:11, 11:12, 11:14, 12:7, 13:15, 13:24, 23:17, 26:7, 52:25, 62:22, 64:13, 66:23, 68:17 Whitefish - 36:2 who's - 9:13 whole [3] 19:21, 31:12, 32:9 whose - 15:4 wide [4] 30:22, 30:25, 34:10, 49:4 wild - 56:18 wildlife [4] 33:22, 37:12,</p>	<p>53:23, 56:19 Wildsight - 46:16 window [2] 19:16, 59:2 within - 21:16 WITNESS - 77:15 won't [3] 67:15, 67:15, 70:2 worse [2] 72:12, 72:12 wouldn't - 68:21 written [13] 9:8, 11:23, 14:22, 17:3, 26:16, 27:3, 31:7, 39:17, 46:17, 56:23, 60:3, 61:7, 62:1 wrong [4] 9:16, 15:1, 27:16, 74:6 wrote [2] 74:9, 74:10 Wyatt [2] 46:12, 46:15</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yesterday - 73:7 yet [5] 3:2, 6:4, 7:2, 21:8, 58:23 you'd [3] 17:3, 19:13, 52:17 you'll [5] 5:5, 5:5, 17:18, 65:19, 75:9 yours - 70:6 yourself [8] 5:2, 5:5, 19:13, 20:16, 22:20, 41:18, 50:1, 52:18 Yukon - 56:16</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero [2] 57:20, 57:23 zipping - 70:12 Zoom [5] 2:19, 3:13, 4:3, 19:16, 33:7</p>
---	---	---	--	---