

STATE OF WYOMING
ENVIRONMENTAL QUALITY COUNCIL

*Rec'd
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PUBLIC HEARING

Taken at: 117 South Fourth Street
Basin Wyoming
November 2, 2006 - 6:15 a.m.

MARK GORDON - Chairman

DENNIS BOAL - Council

JOHN MORRIS - DEQ

BILL DIRIENZO - DEQ

JOEGIRARDIN- Paralegal

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1 Reported by David E. Hix, Professional Freelance Court
2 Reporter and Notary Public for the States of Idaho and
3 Montana, residing in Missoula, Montana.
4

5 A P P E A R A N C E S
6

7 NICOL THOMPSON KRAMER, ESQ., Attorney at Law, of the
8 law firm of Williams, Porter, Day and Neville, P.C.,
9 159 North Wolcott, Suite 400, Casper, Wyoming 82602,
10 appearing for and on behalf of Devon Energy.

11 ISAAC N. SUTPHIN, ESQ., Attorney at Law, of the law
12 firm of Sundahl, Powers, Kapp & Martin, L.L.C., 1725
13 Carey Avenue, Cheyenne, Wyoming 82003-0328.

14 Appearing for and on behalf of Merritt.

15 SPEAKERS:

16 DOUG McMULLEN
17 JILL MORRISON
18 NICOL KRAMER, ESQ.
19 STEVE JONES
20 MARVIN BLAKESLY
21 KEITH HAMILTON
22 LEE CAMPBELL
23 LORRAINE CORBERG
24 ISAAC SUTPHIN, ESQ.
25

Certificate of Court Reporter

54

1 Thursday November 2, 2006

2 MR. GORDON: Thank you all for coming out
3 this evening. A little over a year ago I guess the
4 Governor's tour came through and Basin had this
5 wonderful facility, and it seemed like a great place to
6 hold this meeting tonight.

7 My name is Mark Gordon. I'm the chairman of
8 the Environmental Quality Council. You can see we have
9 a video system set up so that other Council members can
10 participate. We have various forums on tonight:
11 Dennis Boal in Evanston, Rick Moore in Laramie, I
12 think. John Morris is in Cheyenne. I think Bill
13 DiRienzo is there. Bill DiRienzo is with the
14 Department of Environmental Quality. Sarah Flitner,
15 John Brady and Wendy Hutchinson, who are also members
16 of the Council are not available tonight, but will be
17 listening to a recording of the meeting. Joe Girardin
18 is here. He is the Council's paralegal and technical
19 wiz.

20 For the purposes of the recording that we are
21 making, I will state that it is about 6:15 on November
22 2, 2006. I'm in Basin, Wyoming, to hold a listening
23 session for the Environmental Quality Council. My
24 special thanks go to the technical people with TCT West
25 a terrific company in Wyoming. Thank you very much for

1 your help and for all the work of getting the Council
2 on line.

3 I also want to thank Mark Hillman who is
4 around here somewhere, whose wife gave him permission
5 to use this theater tonight. Mark is the guy making
6 sure the lights work and the heat is on and all of that
7 sort of thing.

8 We will keep a recording of the meeting in
9 our permanent files in Cheyenne. If anyone wants a
10 copy, I will at the end of this meeting give you a
11 phone number and we can send you one.

12 For the past several months -- just kind of
13 the reason why I wanted to come here -- for the past
14 several months people in the Basin have contacted a few
15 Council members. Friends of mine have asked questions
16 and stated some concerns they have about how produced
17 water is being used in the Basin and what its future
18 might be.

19 This past summer John Cora and his staff came
20 to Worland, I think, to hold a meeting on a new
21 agricultural protection policy, which has gone through
22 the advisory board meeting, and they're trying to get
23 in front of the Environmental Quality Council.

24 There has also been concerns expressed from
25 time to time about a petition for rule making that is

1 pending before the Council. I looked at the Casper
2 paper today and couldn't help but notice that there was
3 an article about it. Funny enough, I picked up a book
4 that says How To Make People Think You Are Normal. The
5 reason why I wanted to come here tonight was because I
6 really want to hear from you all, what your concerns
7 are that are pertinent to the Council, and I wanted to
8 have a chance to listen to you in a very informal,
9 general session. So thank you for coming, again,
10 tonight.

11 The Council has not yet moved forward on the
12 rule making for the petition, but we have heard -- have
13 heard comment in places like Cheyenne and Casper.
14 Consequently, this seemed like a good time for me to
15 come to the Basin to hear your comments on produced
16 water discharges and management.

17 The Council wants to make sure we understand
18 your concerns. And for sort of the purposes of
19 conducting this meeting, which I, again, would hope
20 would be as informal as possible, I would like to --
21 I'm going to go to the speaker's podium and get the
22 list of sign ups. If anyone has come in late and they
23 want to sign up, now is the time to do it, and then
24 we'll go through that. At the end of that, I will ask
25 if any further questions are in front of us.

1 And I guess the last thing, you'll notice, on
2 the left we have a fellow named David Hix, who is here
3 doing a hearing -- he's a court reporter. He's here
4 for an attorney not associated with the Environmental
5 Qaulity Council. I guess you should probably speak to
6 him if you have any thoughts or concerns on this.

7 So without further ado, thank you again, and
8 let me see who we have. Also, if I can keep the folks
9 from Powell late because Buffalo plays them tomorrow.
10 All right. First, I have Deb Thomas.

11 MS. THOMAS: I have no comments.

12 MR. GORDON: No comments, okay. Doug
13 McMullen.

14 MR. McMULLEN: My name is Doug McMullen. I
15 live in Deaver. We've been -- we purchased 300 acres
16 in October of '05. In November of '05 -- we have two
17 oil wells on our place; there was a rupture. At that
18 time we called the DEQ, and they sent a representative
19 from Lander.

20 We had the water tested, because we had so
21 much oil running down our drains. We never received
22 any test results other than a verbal that the polluted
23 water was 1,200 times the legal limit. It was
24 disgusting.

25 They couldn't verify it because DEQ never got

1 back to us with their lab result because they couldn't
2 get their act together, I guess. They just never got
3 back to us. That was a big concern right there, was
4 dealing with Lander at that distance to get someone one
5 up there and the follow up.

6 There was no -- they did not address the
7 actual spill in the fields, as far as the soil. And
8 three years later I still got probably four acres
9 covered with oil where the weeds won't even grow. It's
10 still there, and no one can make them clean it up.

11 And then September of this year same thing,
12 had another oil spill. We did not notify the DEQ,
13 because we didn't have satisfactory results from the
14 first time. They couldn't get their lab results to
15 confirm what they were saying. So there, again, we've
16 got contaminated fields again, and it's still there.

17 They now dump the water from the well into
18 our irrigation ditches, and I can't get stock to drink
19 out of them. It's a milky color, it stinks and they
20 won't touch it. As far as I know these original tests
21 would have clarified whether that was potable water or
22 whether the stock would drink it or whatever, but it
23 was never clarified and it was never forced -- and
24 we've had no feedback from anybody, so we are kind of
25 alone out there.

1 And then I didn't realize until we got into
2 this oil and gas situation that there were different --
3 DEQ takes care of air, water and soil. And all we ever
4 addressed -- because of our knowledge this the area was
5 so limited -- all we addressed was the water.

6 I have fences that are rotting. I now know
7 to come and go to the DEQ about the soil condition,
8 because they're deplorable; it's disgusting. We didn't
9 get any feedback from DEQ, and we gave up because we
10 didn't -- we just gave up because we never got any
11 response from them.

12 And we'd like to hear from someone. We'd
13 like someone to be concerned about it, and we'd like to
14 have some follow-up. Just tell us what your test
15 results are. If they're good or bad or indifferent, it
16 would be nice to know whether that's poison going in
17 for my stock. And if there is a spill and DEQ is
18 concerned about soil quality, why do I have oil three
19 years later in my fields? Why didn't someone come back
20 and say, look, clean this up, and clean it up
21 properly. Because all they're doing now is taking the
22 contaminated soil, what they do clean up, and dumping
23 it right next to their pits. It's still my surface,
24 but it's there, and now it's four feet deep. Okay.
25 Thank you.

1 MR. GORDON: Thank you. Thank you for your
2 time. I also have Jeanie McMullen.

3 MS. McMULLEN: I think he said what needed to
4 be said.

5 MR. GORDON: Okay. Thank you. Bernadette
6 Barlow.

7 MS. BARLOW: No comments.

8 MR. GORDON: Okay. Jill Morrison.

9 MS. MORRISON: The only thing I wanted to do
10 was make sure the Council had a copy of a letter we had
11 sent around to all the folks who commented in the first
12 hearing with their concerns about the applicability of
13 this rule to oil field produced water. And we sent
14 this letter out last week just explaining that the rule
15 had been revised to apply only to coal bed methane
16 discharges, not to the oil field produced water; that
17 we've essentially heard the concerns.

18 And so I wanted to submit a copy of the
19 letter we had sent, for the record. And we did receive
20 an e-mail back -- a copy of an e-mail back from the Hot
21 Springs County planner in response to our letter
22 basically saying that they felt it had resolved their
23 concerns. So if I could submit those for the record.

24 MR. GORDON: Jill, it's not really -- we're
25 not technically holding a hearing for the record. I'm

1 glad that you advised us about that. I guess, you
2 know, with that in mind, I guess as we go forward with
3 this, we'll have language. That language will be
4 published, then there will be a period of time, and
5 then there's a formal comment and that letter can be
6 submitted at that time, if that makes sense.

7 MS. MORRISON: Okay. I wanted to make sure
8 that the Council was aware --

9 MR. GORDON: Okay.

10 MS. MORRISON: -- and that we were trying to
11 address the concerns of folks in the Big Horn Basin.

12 MR. GORDON: Are there any questions from
13 anyone? Thank you, Jill. I have -- is it Nicol
14 Kramer?

15 MS. KRAMER: Yes.

16 MR. GORDON: Thank you, Nicol.

17 MS. KRAMER: My name is Nicol Kramer I'm with
18 William, Porter, Day and Neville in Casper. I'm a
19 lawyer. I represent Devon Energy Company, and I'm the
20 attorney who asked the court reporter to be here. Our
21 only concern is that we wanted to express a concern --
22 and other industry people wanted us to express a
23 concern that this notice was called -- or this meeting
24 was called with very little notice, and we wanted the
25 opportunity to have better representation here so that

1 we can hear landowner concerns as well. Because we are
2 concerned about the petition. And in the future, we
3 would like to ask that you give us a little bit more
4 notice so that we can make sure to have better
5 attendance at the meetings.

6 MR. GORDON: Sure, duly noted.

7 MS. KRAMER: And the transcript is so that
8 we'll all know what goes on.

9 MR. GORDON: Do you have any thoughts or are
10 you just listening as well?

11 MS. KRAMER: I'm here pretty much to listen.
12 I think I have a client on the way who may also express
13 thoughts, but that's why I'm here.

14 MR. GORDON: Thanks. I'm sorry it wasn't --
15 I didn't get to this sooner, but, Nicol, I share your
16 concerns. My whole point is it's nice to have the
17 conversation.

18 MS. KRAMER: It is.

19 MR. GORDON: Thanks. Kevin D. Jones.

20 MR. JONES: No comment.

21 MR. GORDON: Thank you, Kevin. Jeff Sviga.

22 MR. SVIGA: No comment.

23 MR. GORDON: Okay, thanks. Bob Georges.

24 MR. GEORGES: No comment.

25 MR. GORDON: No comment. Okay, thank you.

1 Steve Jones.

2 MR. JONES: Thank you. For the record, I do
3 represent the Meeteetse Conservation District, which is
4 local government, five elected, unpaid officials who
5 are charged through statute for looking after the
6 economic viability of the agricultural community
7 through management of water, soil and other natural
8 resources.

9 I would like to remind the Council of some of
10 the statutory language in Title 35, Public Health and
11 Safety 11-32 the Administrator's Authority to Recognize
12 Standards Rules and Regulations or Permits. And
13 getting into it a little bit, subsection (6), in
14 recommending any standards, rules, regulations or
15 permit, the administrator and the advisory board shall
16 consider all of the facts and circumstances bearing
17 upon the reasonableness of the pollution involved
18 including the character and degree of injury to or
19 interference with the health and well-being of the
20 people, animals, wildlife, aquatic life and plant life
21 affected; B, the social and economic value of the
22 source of pollution; C, the priority of location in the
23 area involved; D, the technical practicability and
24 economic reasonableness of reducing or eliminating the
25 source of the pollution; and E, the effect upon the

1 environment.

2 We all are concerned about the environment
3 and the effects of this water. But it seems somewhat
4 inconceivable that water from a coal bed methane well
5 over here should be treated different than the water
6 from an oil gas production facility. Water is water.
7 The effects on the environment will be the same if the
8 composition of the water is the same. The language in
9 Appendix I, that would be --

10 MR. GORDON: Actually, I don't mean to take
11 you off track. I'm not -- I just kind of wanted to
12 sort of understand, generally, the practices and
13 efforts that have gone on. We don't really have
14 specific language published yet to comment on, so --

15 MR. JONES: I'll get there then.

16 MR. GORDON: Okay.

17 MR. JONES: Because the produced waters do
18 not cause contamination where alteration of the
19 physical, chemical and biological properties of any
20 waters of the state including change in temperature,
21 taste, color, turbidity or odor.

22 Well, that rules out even the ability to
23 improve water quality, according to what's going on in
24 this rule. It would make it required for realtime
25 monitoring of the body of water that the produced water

1 is going into to make sure there's no change in
2 existence. I think that's technically impossible.

3 MR. GORDON: I understand this. Let me just
4 mention, again, that we don't have specific language in
5 front of us. When that language is crafted, it will be
6 published, and that language will then go to a hearing
7 where your comments would be appropriate and part of
8 the formal record.

9 MR. JONES: I'd like to go back to Title 35
10 11-302, the technical practicabilities and economic
11 reasonableness, reducing or eliminating the source of
12 pollution need to be considered. And we are as a
13 conservation district, first and foremost, empowered to
14 work to assist our ranchers and farmers and the rest of
15 the agricultural community through the management of
16 water and resources -- excuse me the water, soil and
17 natural resources.

18 And to trying to take a statewide policy,
19 that this appears to be, that needs to be so site
20 specific because of the interactions of soil and water,
21 we do not feel that a statewide, one-size-fits-all
22 approach is really practicable considering the economic
23 requirement not only on the agricultural community, but
24 also on the producers themselves.

25 We are concerned -- in the Big Horn Basin --

1 and the Meeteetse Conservation District lies on the
2 south side of Park County -- we have really an
3 incredibly good relationship with our oil and gas
4 producers and the agricultural community.

5 The DEQ visited on site the Pitch Fork Field
6 and North Sunshine Field discharges, and it was pointed
7 out that in that desert that was the only water
8 around. It's been pointed out in other public forums
9 that perhaps -- high sulfates, for example, might cause
10 some kind of problem with -- I think it was in front of
11 the Park County Commissioners --- bovine -- a bovine
12 disease, what was it? -- Bovine polio.

13 Our agricultural producers are used to having
14 things that go wrong with their cattle. And bovine
15 polio is nowhere near the list here in the desert where
16 things like good old Wyoming hollow belly and
17 dehydration are important things.

18 Our high altitude producers routinely have
19 problems with cattle brisket disease, which are
20 pulmonary artery problems, but we handle that as an
21 industry. We don't need a statewide policy dealing
22 with water discharge to handle this nonproblem.

23 On that, I think I'd just like to close with
24 saying the agricultural community needs the water.

25 This policy does not, for example, appear to give us

1 options to utilize water in the future that may really
2 provide benefit -- we may be able to get beneficial use
3 out of, and we have no concerns about this statewide
4 policy that may not fit us.

5 MR. GORDON: And I appreciate it. Actually,
6 I think, you know, oil and gas produced water and
7 agriculture have coexisted for a long time, and it's a
8 very important part of our agriculture. That's why I'm
9 so impressed that you're able to come here as a
10 conservation district and kind of talk a little bit
11 about the kinds of programs that you have done.

12 Could you -- I'm not even a little bit
13 familiar with Meeteetse. But can you tell me a little
14 bit more about the kinds of -- is it drinking water or
15 are there irrigation things that are going on? Are
16 there other kinds of programs that can be, you know,
17 that are of value?

18 I guess to me, coming from the Powder River
19 Basin coming over to the Big Horn Basin, it looks to me
20 like there's been a very, very long and good
21 relationship in a lot of ways between the producers and
22 the agriculture people, and that water is very
23 important to those agricultural operations. I think
24 that's what you were saying.

25 MR. JONES: That is what I was saying. We

1 recognize that there are real problems over in the
2 Powder River Basin with the interactions of bad water
3 and bad soils and good water and bad soils and all
4 things in between.

5 I think it would be fair to say that local
6 situations need to be taken care of on a local basis
7 not statewide. We have different soils than Powder
8 River Basin. And the simplistic look at SAR and TDS
9 that is, for example, in the Section 20, Chapter 1,
10 which is similar to what's going on in this petition,
11 the thing that's too complex and needs to be hammered
12 out on a local basis.

13 The Department of Agriculture, for example,
14 has a mediation process that's mainly used for federal
15 problems. Perhaps that state program could be fine
16 tuned to work with solving situations that are
17 happening on a local basis between state entities and
18 production companies and ranchers and farmers.

19 But getting back to your comment. The water
20 we use is used for both agriculture and livestock.
21 Indirectly, I suppose it could be considered to be
22 drinking water. We do have coal underlying part of our
23 area. We are expecting that there will be coal bed
24 methane production sometime in the future.

25 We also know that as the price of a commodity

1 changes, new wells in the old fields may come on line
2 or may be shut in, plugged or abandoned or whatever.
3 Things change, and we are concerned that minor changes
4 in water chemistry might cost our partners, if you will
5 -- the oil and gas industry -- incredible amounts of
6 time, money and possibly even result in the water being
7 just put in a pipeline and injected somewhere where we
8 get no benefit from it.

9 We do not know what the future holds. We do
10 know that it will change. We do know that in our
11 desert, water is probably to us as valuable as the oil
12 and gas and methane production. I think that's the
13 note I'd like to leave you with.

14 The sage grouse benefit from it, the DEQ tour
15 showed what the discharge waters provided to our
16 community, and I think -- I felt very comfortable with
17 the dialogue that occurred with John Cora and Bill
18 DiRienzo and the rest of the group as we had that
19 tour. I thought it was an excellent tour. I think a
20 lot of common ground was found, and I think it started
21 things. It really improved the situation on the rule
22 making.

23 But this thing is --

24 MR. GORDON: Again, I want to thank you very
25 much for the sort of general comments. I don't mean to

1 shut you off on those other things, but it's not the
2 right time. I really don't have anything to comment
3 specifically on; although, I do register what your
4 concerns are.

5 MR. JONES: Our desert needs water. Thank
6 you.

7 MR. GORDON: Thank you. I have Marvin
8 Blakesly. I met you out in the lobby.

9 MR. BLAKESLY: First of all, Mark, I'd like
10 to thank you for coming here to the Big Horn Basin and
11 hearing the concerns the ranchers and the operators and
12 the county government has here. We appreciate you
13 coming here to listen to us.

14 I wish we had had a little more time, because
15 there are a lot of people that are very concerned about
16 the loss of water here in the Big Horn Basin. I think
17 that was very evident at the meeting in Worland. There
18 was well over 100 people there. There was a lot of
19 concern expressed both with the ag protection policy
20 and the petition. I think the message came out loud
21 and clear that we need the produced water here in the
22 Big Horn Basin. Agriculture and wildlife very heavily
23 depend on the water.

24 I guess there's been some confusion as to
25 exactly what is moving forward with the rule making. I

1 was at the hearing in Casper when the motion to dismiss
2 was denied. I left that meeting and I was very unclear
3 as to what was moving forward with rule making, whether
4 it was the original petition, whether it was the
5 amended petition, whether it was the status report. I
6 think there was a lot of confusion as to just exactly
7 what was moving forward.

8 I guess what I have noted in your public
9 notice and with what Jill has said, that what is moving
10 forward for rule making is the amended petition; is
11 that correct, with the pending coal bed methane? Or,
12 is everything still on the table, I guess is my
13 question?

14 MR. GORDON: On November 13th in Buffalo,
15 we're going to have a working session to precisely
16 craft the language. There were a series of resolutions
17 which were passed, which as you say are confusing. And
18 so the point was to put it all in one place at one
19 time.

20 It's important that under public meeting
21 rules and so on and so forth that that be done in a
22 Council meeting with a quorum and all of that. I would
23 recommend that you come to that meeting.

24 We're not really taking testimony. It is to
25 put the language specifically together. That language

1 will then be published with the Secretary of State, and
2 that is the language we'll move forward for a hearing
3 on. Does that make sense?

4 MR. BLAKESLY: It does. I would just further
5 like to say that I'm a native of Thermopolis. I was
6 born and raised in Thermopolis, so I had the pleasure
7 to grow up here in the Basin and live around the oil
8 fields and discharge water.

9 You know, I'm a very avid outdoorsman. I
10 hunt along the discharge water, because that's where
11 the wildlife is at. The wildlife is very dependent on
12 the water here in the Basin, as is agriculture. And
13 the irrigation that comes from the produced water here
14 in the Big Horn Basin is also very important to the
15 wildlife and sage grouse, particularly on the
16 Cottonwood and the Gooseberry. It provides some very
17 critical habitat for the sage grouse populations here
18 in the Basin.

19 We're opposed to the petition. But I would
20 like to say we are pleased with some of the language
21 that has come forth in the amended petition and wanted
22 to recognize that.

23 We live in a very arid area here. We're in
24 the midst of a ten-year drought. And I think it became
25 even more apparent when the DEQ came here, for their

1 tours, just how important the produced water is here
2 for the folks in the Big Horn Basin.

3 You know, I think had we had more time there
4 would be a lot more people here, certainly, to express
5 their opinions on this. I just want to point out the
6 fact that if the water goes away from the Big Horn
7 Basin, I don't see any winners for this.

8 Wildlife and agriculture are the extreme
9 stream big losers. It also hurts the industry. I just
10 don't see any good thing to come of it. Agriculture
11 and wildlife and industry have lived in a very good
12 relationship here in the Big Horn Basin for 100 years
13 almost in some cases.

14 I respect your comments, and I would tell you
15 that's the first negatives comments that I've heard
16 about produced water here in the Big Horn Basin. I
17 appreciate your comments. If we ever hear comments,
18 it's where is our water, and, geez, could we have more.

19 If for whatever reason the wells go down and
20 the water is gone for a day or two, people are knocking
21 at our door saying, where's the water? Where's the
22 water? We really need it.

23 So I just hope that you'll take this away.
24 Please consider any negative impacts that would result
25 in the loss of the water here in the Big Horn Basin.

1 Again, we appreciate you being here.

2 MR. GORDON: Thank you. I apologize for the
3 short notice, again. What happened is, I didn't
4 realize DEQ was having their thing. I got that notice
5 actually from a cell phone call after it had happened.
6 I wish I had been able to attend. Then Norma Lee
7 Sanford, who probably you know --

8 MR. BLAKESLY: I do.

9 MR. GORDON: -- Norma Lee said, you've got to
10 get up there and listen to those guys because it's a
11 big issue.

12 MR. BLAKESLY: There was standing room only
13 in Worland. People were very concerned both with the
14 ag policy and the petition. You know, is it going to
15 take away the water that we've got now, and how much --
16 you know, we certainly see an impact to the future
17 opportunities to develop water, additional water
18 sources here in Basin.

19 I mean here in the Big Horn Basin and the use
20 of this produced water, it goes on all over Wyoming.
21 That was one of the original reasons that the
22 beneficial use was carved out in the Clean Water Act in
23 the first place, with Wyoming in particular in a desert
24 environment, and the beneficial uses of that water went
25 on for many, many decades, and we certainly want to see

1 that continue.

2 MR. GORDON: Thank you.

3 MR. BLAKESLY: Thank you.

4 MR. GORDON: Thank you very much. I have
5 Keith Hamilton.

6 MR. HAMILTON: What I was going to talk about
7 tonight is the same thing you guys have already heard.
8 I'm the Northwest District Director of the Wyoming Farm
9 Bureau. I represent the Big Horn Basin. The comments
10 that I have tonight have been submitted. It has to do
11 whether you guys actually have the authority to
12 regulate the quantity of water.

13 So if you've already -- if this is an
14 inappropriate time to present these again, why then
15 maybe I should wait until we can deal with it in
16 Buffalo. That's why I posed the question. You know, I
17 can read these. I can present them again.

18 MR. GORDON: Are those the same comments that
19 Ken Hamilton presented?

20 MR. HAMILTON: Right.

21 MR. GORDON: I mean, duly noted. And in
22 response, I would say that that is absolutely part of
23 what we're wrestling with. They're very good points.

24 MR. HAMILTON: So what you've said just
25 lately is that you will be putting this stuff together

1 and presenting it again in Buffalo or at the Buffalo
2 meeting, so that we'll -- maybe we should wait until
3 then and proceed after that. You're aware of what our
4 concerns are as far as this at this point in time?

5 MR. GORDON: Right. And in response, I
6 guess, you know, one of the things that is concerning
7 to me, I think the Council has tried very hard to move
8 in a very deliberate fashion here. And there have been
9 -- we've had a lot of help and all of that's been
10 good.

11 I guess I hope nobody thinks that the Council
12 is anxious to jump any claims, because we certainly are
13 not. Our authority is very prescribed. And so I
14 appreciate those comments, and they're very, very
15 valuable.

16 MR. HAMILTON: I work with Marvin a lot, the
17 speaker before me, as it relates to sage grouse in this
18 area. We both serve on the sage grouse committee.
19 We're very cognizant of the fact that if it wasn't for
20 the methane water, our sage grouse -- particularly in
21 the year 2006 as it related to the drought in the Big
22 Horn Basin -- would be in desperate need.

23 We in agriculture are very supportive of what
24 the oil business has done for us, in particular over in
25 the western side of the Big Horn Basin. A lot of

1 irrigation takes place, and a lot of wildlife need that
2 water. A lot of livestock drink it, so we're just
3 again reiterating the fact that we don't want the same
4 rules that apply here to apply to the Powder River
5 Basin. With that, I thank you for the opportunity to
6 be here and even with short notice.

7 MR. GORDON: Thank you very, very much. I
8 have Susie Naker.

9 MS. NAKER: That's okay, we'll save our
10 comments for the hearing on the petition.

11 MR. GORDON: Okay, all right.

12 MS. NAKER: That's what I thought you were
13 doing tonight.

14 MR. GORDON: I wanted -- I really wanted to
15 have the opportunity just to sort of get a sense of how
16 practices are being conducted in the Basin, so, thank
17 you. I have Barry Adolf.

18 MR. ADOLF: No comment.

19 MR. GORDON: How about Lee Campbell.

20 MR. CAMPBELL: Brief comments, Mr. Chairman.

21 MR. GORDON: Thank you.

22 MR. CAMPBELL: Hot Springs County submitted
23 extensive comments back in early February on this
24 matter. And so we're in a position that we're one of
25 the parties that helped formulate this compromise that

1 we have today. And there's an old saying: Be careful
2 what you ask for, because that's what you might get.
3 So I'd like to read one sentence out of our letter from
4 February.

5 "It is a recommendation of Hot Springs
6 County that coal bed methane surface water discharge
7 standards be adopted specifically from the CBM industry
8 which do not impact the other industries and counties
9 in Wyoming." And so that's what we have today, a
10 separation of Appendix H and Appendix I. And I guess
11 you might as well say we were instrumental in getting
12 that, so we support it.

13 I just wanted to talk to you about what it
14 really represents. It's kind of like a first trial
15 bloom or a first compromise that's brought to the
16 Environmental Quality Council. I think the Powder
17 River Basin Resource Council stepped way back from
18 their initial position that they had in December. And
19 ourselves and them were kind of the ones that brought
20 this out.

21 Some of the questions you have to ask
22 yourself is, okay, we have this first compromise
23 brought forward by the people that participated early.
24 Are there other suggestions that come out second or
25 third that are better? I haven't heard a second or

1 third one myself, maybe you have.

2 I guess the only thing that we'll know is the
3 test of time and go through the hearings and
4 everything. We're kind of the ones that got us to
5 where we're at today. We certainly support where we're
6 at. And we'll just have to see if it stands up. We
7 recognize you may have to modify and add some things
8 into like Appendix I and stuff like that. We're pretty
9 happy with where we're at today.

10 MR. GORDON: I want to remind you, I'm not
11 talking about the petition specifically here. I did
12 want to ask you a little bit about, with Hot Springs,
13 how produced water is used. If you're a planner, do
14 you have any direct experience with any of that?

15 MR. CAMPBELL: Yes, the irrigators use it
16 extensively. Our economy is extremely fragile. You
17 know, we've got more verification on use. On August
18 23rd, when John Cora and John Wagner and Bill DiRienzo
19 came out, they -- I missed that tour. There were quite
20 a few other people that went. They verified all of
21 that.

22 Actually it was a pretty good experience.
23 They verified that the grouse were migrating in there.
24 They verified the usage of the water. I heard there
25 was one comment that the water had been entirely used.

1 In this drought situation, we've just been totally
2 dependent on it. We would have had bankruptcies with
3 our ranchers. And our grouse certainly would not be in
4 the position they are today.

5 Our grouse have actually increased their
6 population during a six out of seven year drought. You
7 just say, how can grouse increase during a severe
8 drought? It's that prime habitat that's been provided
9 down there.

10 It isn't just the grouse. It's had the same
11 benefit to the other wildlife and ranchers too. I'm on
12 the sage grouse working group. I was just totally
13 impressed. I'm sure Mr. Cora and Mr. Wagner and
14 Mr. DiRienzo can comment on that. It was almost like a
15 verification trip of everything that we suspected was
16 going on.

17 MR. GORDON: Sure. I guess that was really
18 -- that trip was really in response to the Ag
19 Protection Policy and concerns about that.

20 MR. CAMPBELL: Yes, it was a two-day trip and
21 then they had the Worland Hearing after they did the
22 field work. They did a lot of work in the Basin here
23 they looked at a lot of land. They talked to ranchers,
24 looked at properties and everything, a full, busy two
25 days.

1 MR. GORDON: Good. Lee, I'm envious. I wish
2 we had had a chance. Thank you. I have Lorraine
3 Corberg.

4 MS. CORBERG: Thank you, Mr. Chairman. I am
5 Lorraine Corberg. I am the Executive Director for the
6 Thermoplis/Hot Springs County Economic Development
7 Company. I'm also a State Representative representing
8 House District 28, which is all of Hot Springs County
9 and South Big Horn County.

10 And I guess I'd like to thank you for the
11 opportunity to be here this evening. I, again, share
12 the concerns that you've already heard about the short
13 time frame. And I really -- in listening to the
14 comments being made tonight -- I have more questions, I
15 guess, than I do comments about really what you're
16 expecting from us tonight. That's becoming clearer as
17 this proceeds, but I really don't think that the notice
18 was quite clear about what you expected from us tonight
19 and what we could expect from you in return.

20 One of my questions -- and I'd like you to
21 perhaps when we're done with our comments is just to
22 give this group an overview. Many of us here are not
23 up to speed on the petition and where that's at. I
24 understand there's more than one petition. And so I'd
25 like -- I guess I would just like a clarification for

1 all of us here when you talk about the November meeting
2 what petition we're talking about. So, if you could
3 give us a little history when we're done, I know we
4 would all appreciate that. Just kind of educate us.

5 You did leave the door open when you brought
6 up the Ag Use Protection Policy, which, of course, is
7 kind of for a lot of us over here in the Basin, it
8 started the whole process for us. So I guess one of
9 the things I would like to share with you is a lot of
10 us believe that as you start to deal with the petition
11 -- the Powder River Basin Resource Petition -- that
12 that may very well affect the Ag Use Protection Policy.

13 So I'm going to reiterate our request to you
14 that you not take any further action on Section 20
15 until you're done, if you're going to start with the
16 Powder River, because it just seems like kind of almost
17 a waste of time if you move forward with both and then
18 you end up having to go back and -- go back through the
19 entire basically rule making process to fix the Ag Use
20 Protection Policy.

21 Now, it's a very comprehensive policy, and I
22 felt a lot of our comments were not acted on by the
23 Advisory Board. Quite, truthfully, I was even a little
24 bit more dismayed to find out that several meetings
25 prior to our final meeting with the Wastewater and

1 Advisory Board that they had actually recommended going
2 forward with Chapter 1 without the Ag Use Protection
3 Policy. For some reason their recommendation was
4 overlooked and the policy continued to move forward.

5 I would just, once again, make a request to
6 you that that policy stay on the table if you're going
7 to, in fact, move forward on the Powder River Basin.

8 I'd also like to -- obviously, as you've
9 become well aware, water is huge to ag and to the
10 agriculture industry over here in the Big Horn Basin.
11 We work very well with the mineral industry. And I'll
12 probably have to disagree with our state planner
13 because I find it very hard to believe that you're
14 going to be able to go through the rule making process
15 and apply different standards to conventional discharge
16 versus coal bed methane.

17 And I'm also concerned that if you do adopt
18 standards for coal bed methane -- if coal bed methane
19 actually starts to be developed in the Basin, then
20 we're going to be right in the same boat as people in
21 the Powder River Basin, and we're not going to be able
22 to make use of that water.

23 So these are some of my concerns. I have
24 also one other major concern, which Keith Hamilton
25 brought up. Obviously, I'm going to follow very close

1 your statutory authority on whether or not you can
2 actually do what you are doing.

3 I also sit on the select water and I'm very
4 concerned about this as you move through this process.
5 Thank you for being here to day. We all do appreciate
6 it.

7 MR. GORDON: I'll be glad to.

8 MS. CORBERG: Thank you, Mr. Chairman.

9 MR. GORDON: DeLloyd Corberg.

10 MR. CORBERG: I'm DeLloyd Corberg I hate to
11 follow my wife, because she always ups me. I'm a
12 little confused, a little bit, on what you want to hear
13 from us. I'm with the Hot Springs Conservation
14 District. I'm the chairman of that group. And the
15 Agriculture Protection Act is the one thing that my
16 primary concern is protection in keeping it intact, if
17 we can.

18 The conversation district -- and you're
19 asking the other people from down there in Thermopolis
20 what are you doing? We just finished writing a
21 watershed plan for Owl Creek. We are in the process of
22 phase 1 that's going on right now for Grass Creek and
23 Cottonwood Creek, and we're looking at forming -- of
24 the possibility of forming -- we just had a meeting on
25 it just the other night -- this week of forming a

1 watershed improve district.

2 And in that process then we, of course, we
3 will identify projects and things that we can do to
4 improve the streams and the water and all of those
5 things. All of that kind of ties in right now. But
6 you're asking what are you doing before we're getting
7 it all done. We are still in the process and so that
8 is going on right now.

9 It's been brought up about the -- in fact, I
10 used to have a ranch on Owl Creek and was always
11 envious of the guys over on Cottonwood Creek because
12 they had water and I didn't. The discharge water from
13 the Hamilton Dome Oil Field particularly has been
14 extremely beneficial to those folks over there and the
15 wildlife.

16 That's something from the conservation
17 district side that's a part of -- the other
18 conservation district guy, from the teaching point of
19 that, part of our responsibility is to conserve our
20 natural resources, but at the same time working with a
21 multiple use concept. We're not just one entity or
22 industry, so that they all can benefit from those and
23 at the same time protecting the customs and cultural
24 and socioeconomic base of our community. So all of
25 those things come into play, and then, obviously,

1 water.

2 I also in my other occupation of real estate
3 appraiser, I look at land values. And if you look at
4 sage brush and barron land at 1, 2, \$300 an acre. You
5 put water on it so that it can produce something and
6 you're at 2, 3, \$4,000 an acre. So the quality of our
7 communities is in our water, and we want to see that
8 continue.

9 I think part of what -- I don't fully know
10 what all your petition is, but I know it's going to
11 affect the ag policy. We, no matter what you do and
12 what plan doesn't fit all but in that process,
13 somewhere there needs to be some flexibility so that
14 you don't try to make one size fit all. It's kind of
15 like, if you've got a problem, and it needs a Band-Aid
16 then put a Band-Aid on it. Don't use the mummy
17 approach and wrap the whole body, which it looks like
18 is trying to be done to the state.

19 So from that concept we want you to keep
20 whatever you do, consider that flexibility that needs
21 to be there for different areas and different things.
22 Any discharge water, whether it be what's going on
23 right now, conventionally, in the -- from the oil
24 fields, or whether it's coal bed methane or whether
25 it's coming down the road in the future, I think

1 somewhere in that whole process there needs to be a
2 place for agriculture, particularly, be able -- should
3 be given the opportunity to use that water, to put it
4 to beneficial use and they should have that choice.

5 If the contaminant or whatever is above the
6 standard that we're looking that, that certainly should
7 be in place as it is now so that they can take that
8 responsibility and use that beneficially. And,
9 certainly, along with that should be the notice of
10 water -- some of the severe side effects of this water
11 so they know fully well what they're getting themselves
12 into. I think that needs to be disclosed as well.

13 Whether it's produced in the future, that still needs
14 to be there, not just shut it off and they can still
15 use it.

16 MR. GORDON: Thank you. That is terrific.
17 Those are exactly what I was hoping to hear.

18 MR. CORBERG: Thank you very much. Thanks
19 for listening and having this meeting.

20 MR. GORDON: Thank you. That's the last
21 person I have. Is there anyone else?

22 MR. SUTPHIN: I came in late, may I?

23 MR. GORDON: You bet. And I guess because
24 everybody else had a name --

25 MR. SUTPHIN: Isaac Sutphin, S-u-t-p-h-i-n.

1 I'm with the law firm of the Sundahl, Powers, Kapp &
2 Martin in Cheyenne, Wyoming. We represent Merritt
3 Energy. I apologize for being late. I didn't get out
4 of Cheyenne as early as I wanted to.

5 But Merritt Energy is the operator of the
6 Hamilton Dome. We are in the somewhat unique position
7 of having a significant traditional oil and gas
8 production facility. But we also have some discharges
9 in the Powder River Basin and have an interest in the
10 coal bed methane side of things as well.

11 I, like most people, here was somewhat
12 confused about the nature of the meeting. That's fine,
13 we understand that, and we still appreciate the
14 opportunity to be here.

15 Mostly, what I wanted to reiterate today is
16 the tremendous impact that produced water from Hamilton
17 Dome has on agriculture, wildlife and, basically, on
18 life in general in Hot Springs County. And Merrit has
19 undertaken some significant economic analyses about
20 their water. They're happy with the partnership that
21 they have with the area ranchers. This was extremely
22 evident on the tour that has been mentioned tonight
23 when DEQ came and gave our facilities a visit.

24 But the fact remains that if any of these
25 proposed rules, which seem to purport to impose some

1 more stringent standards on the water quality, if these
2 are adopted, Merritt is going to be put in a very
3 difficult position of considering whether to attempt to
4 treat the water, possibly reinject the water. And the
5 answer is, based on the analyses that have been done
6 and comments that have actually been submitted to this
7 effect, it's not economically viable. Plain and
8 simple, those wells are going to be shut in and the
9 water isn't going to be there anymore.

10 We have serious concerns with the various
11 petitions that have been put forth by the Powder River
12 Basin Resource Council. I understand you're not here
13 tonight to discuss those petitions. But I did want
14 to mention Merritt's concerns.

15 Merritt is very concerned that any attempt to
16 separate traditional oil and gas produced water from
17 coal bed methane could not be a legally enforceable
18 distinction for a number of reasons that don't need to
19 be explained in detail at this forum.

20 Basically, what we're faced with at this
21 point, the DEQ as it exists at the moment and the
22 powers that it has are very clear. The definition of
23 pollution is broad, but the DEQ has the ability through
24 exceptions to dictate when and where and under what
25 circumstances water can be discharged in this state.

1 It's a system that has worked well. It's
2 protected the environment. It's resulted in a net
3 environmental gain as evidenced by the discharges at
4 Hamilton Dome and along the Cottonwood Creek. And we
5 have serious concerns about the proposed changes.

6 I suppose it's it's not possible to make the
7 request -- I mean, you don't seem to be giving any
8 indication tonight what sort of petition, what sort of
9 language will be set forth in the rule making. I take
10 it you can't do that for us.

11 MR. GORDON: I can't do that tonight because
12 that's the whole point of November 13th, the day of
13 November 13th.

14 MR. SUTPHIN: We do appreciate you being
15 here. We'll certainly be making efforts to be in
16 attendance at the meeting in Buffalo. And thank you
17 for you time, your concern.

18 MR. GORDON: Thank you. Thank you. To honor
19 Lorraine's -- is there anyone else that has any other
20 comments to make?

21 MR. BLAKESLY: Can we talk twice?

22 MR. GORDON: Sure, what the heck.

23 MR. BLAKESLY: I guess one of the things you
24 wanted to hear tonight is how this water is used in the
25 Big Horn Basin for the ag and ranchers. It's used

1 extensively for irrigation, particularly in the
2 Cottonwood drainage. Many other drainages use it for
3 irrigation. We grow some wonderful alfalfa crops,
4 totally with 100 percent produced water.

5 Extremely important to wildlife. The
6 McCulloch Peaks wild horse herd uses the water produced
7 from the Oregon Basin Field and discharged down Dry
8 Creek. That is for 30 or 40 miles across the north end
9 of the Big Horn Basin that is for most of the year the
10 only water source present out there. Whole ecosystems
11 have evolved around these produced water discharges.

12 I can say that the petition, as originally
13 proposed, would cause Marathon to lose 100 percent of
14 the discharges that we have today and probably, I'm
15 guessing, well over 80 to 90 percent of the
16 conventional oil discharges across Wyoming would go
17 away as the original petition was presented.

18 Marathon's water, in itself, provides
19 hundreds of acres of wetlands. Loc Katrine (ph) in the
20 Oregon Basin is very dependent up the produced water
21 from Oregon Basin Field. It provides an additional 3
22 to 500 acres of additional wetlands, and the BLM has
23 verified that this, in itself, produces, you know,
24 another 500 to 1,000 water fowl and shore birds.

25 That produced water is the only water keeping

1 Loc Katrina alive today in the drought that we've got.
2 So there are hundreds of miles of riparian zones and
3 habitat. The water foul use it. The deer and antelope
4 -- it was very evident on the tours that we did when
5 DEQ was here. We didn't see a living creature outside
6 of a half mile to a mile from where the produced water
7 was used in irrigatation down the Cottonwood drainage.

8 And as we went down the Cottonwood drainage
9 where the water was, there was deer, antelope and sage
10 grouse and just a myriad of wildlife out there as well
11 as productive ranches there. And it was very evident
12 of folks that have water rights and the ones that
13 didn't as you went down the drainage.

14 The folks that have water rights on the
15 Cottonwood -- the discharge from Hamilton Dome, down
16 the Cottonwood Field they have wonderful alfalfa fields
17 and cattle and horses in their pastures. And those
18 ranches that didn't were dust and desolate. It was a
19 very good example of what you have and what you don't
20 have with and without the water.

21 Just to reiterate how that water is used in
22 the Big Horn Basin, in may ways with the wild horses,
23 the wildlife, the agriculture all utilize the water
24 very significantly.

25 MR. GORDON: Thank you. That's exactly what

1 I wanted to hear.

2 MR. JONES: In light of wanting to have some
3 dialog on how the water is used, I'd like to have a
4 second shot too.

5 MR. GORDON: You bet, knock yourself out,
6 that would be great.

7 MR. JONES: Now that we know what we're here
8 for.

9 MR. GORDON: Let me take just a second. The
10 reason why I wanted to do this is because of the
11 dialog. I grew up in KC. You know, there were all
12 those times when people had black and white solutions
13 to things. Usually, it was in the coffee shops that
14 problems got solved, because not everything is all one
15 way or the other. So that was the reason why I wanted
16 to have this kind of a meeting.

17 MR. JONES: This is great that we can get our
18 second shots and really talk about the situation.
19 There's been an incredible display of riveted -- the
20 attention of these people behind you. It's been quite
21 a show. We appreciate that they're on overtime or
22 something. I have to recover, myself, from that.

23 We do use the water for countless uses.
24 Coming up Highway 120 from Thermopolis, Cottonwood
25 Creek was the only drainage that had significant water

1 this summer, and that was because of the discharge from
2 Hamilton Dome. Owl Creek was dry. Grass Creek was
3 dry. Gooseberry Creek was dry. The Greybull River had
4 some storage, so it flowed. Those are the drainages
5 that I have personal knowledge of.

6 There's an awful lot of agricultural
7 operation in the drainages in those watersheds. They
8 rely on every bit of water that they can get. We
9 recycle the water. The water from the irrigation goes
10 into the gravels and becomes our economic water. The
11 water from Hamilton Dome has an approximately 2,500
12 part TDS. That will not pass your proposed, as
13 written, rule if it were coal bed methane water.

14 That is water that has incredible economic
15 effect on folks in that watershed. Marvin Blakesly, by
16 virtue of his being affiliated with an oil company,
17 maybe he doesn't have some credibility when he talks
18 about the problems of wildlife.

19 I have a ranch in Hot Springs County on Owl
20 Creek. I have as senior water rights as I can get and
21 I had no water this year. Fortunately, we irrigated
22 well last year, and the ground water held up and our
23 domestic wells were fine.

24 We don't see a lot of problems with flooding
25 our fields with our irrigation water and everything,

1 potable water. Most places where the TDS is higher,
2 the hardness is higher, we have the technology to put
3 RO and have wonderful drinking water and still water a
4 patch of grass that we can call a lawn and kind of kick
5 our feet around in.

6 And in my position, if I could raise an 80
7 percent crop instead of a 100 percent, based the salt
8 sensitivity, I would be tickled to death by having 80
9 percent instead of the desert field. We rely on the
10 water. We see water coming in the future. I think
11 most of the agriculture was really hoping there's going
12 to be some coal bed methane development in the area.

13 First of all, we can use the natural gas.
14 That's good. But the water to us is probably more
15 important than that natural gas. We have towns that
16 would love to have good quality water. And not all
17 coal bed methane water is really bad.

18 We want to encourage and stipulate the
19 development of our resources within proper bounds. We
20 don't want to put a blanket rule out that is going to
21 restrict our economic development.

22 While you're saying you're not taking
23 testimony on the petition, it's obvious that this
24 discussion we're having is important to you in
25 evaluating the petition, so we have to kind of direct

1 -- I feel I need to direct my comments to you in light
2 of what might come to be in the future. And I want to
3 come back to agriculture, wildlife.

4 And everybody in the community recycles the
5 water, uses the water. It turns over several times in
6 our water sheds just the same way an economic dollar
7 turns over several times in our community. You can't
8 separate the two even.

9 It is the water that makes our community
10 good, and if you look at the water quality in Big
11 Spring, it could never pass your CBM rules, but it sure
12 provides a heck of a lot of benefit to our community.
13 And it's all natural. What's the distinction, natural
14 coming out of a pipe in an oil field? It's not how it
15 comes to be. It's how we can develop the uses for it
16 and keep the damage down.

17 And we ask you not to try to make the Powder
18 River Basin Rule when there are real problems that are
19 different than elsewhere in the state fit our area if
20 it can't. I'm going to have to say that based on what
21 I've seen in your draft documents, you can't. I'd like
22 to leave that with you.

23 MR. GORDON: Okay. All right. Well, anyone
24 else? I'll try to honor Lorraine's comments. Let me
25 start out with back before the turn of the century,

1 coal bed methane started out and there was an issue
2 that showed up about whether the state engineer would
3 recognize the production of water for coal bed methane
4 as a beneficial use. That was term that was used in
5 Wyoming statutes, and I think it was Jeff Facet at the
6 time who decided that was a beneficial use.

7 Within our context, which is the
8 Environmental Quality Act, there was a slightly
9 different issue. I liken it to productive use. It did
10 really have the same standing as beneficial use. And
11 so our issue -- and some of you that have been using
12 produced water for a long time might remember that
13 there were statements that would be signed as to how
14 will you put this water to beneficial use.

15 When Chapter 2 was revised -- excuse me
16 Chapter -- Chapter 2 was revised, there were a number
17 of different rules packages that were rolled in as
18 appendices. One of those was this Appendix H. At the
19 time, language was considered that basically blessed
20 that water for the Environmental Quality Act.

21 So really you didn't have a statute -- there
22 was nothing to do with the state engineer. It really
23 had to do with -- the land owners no longer had the
24 opportunity to sign that statement. And so that issue
25 seems to be one of the things that's confused people

" 1 around the state for a long time.

2 When we use the term "beneficial for water,"
3 are we talking about the state statute or are we
4 talking about this productive use standard in the
5 Environmental Quality Act? And I think it's been so
6 helpful to have the Attorney General and others really
7 carefully consider how you sparse the distinction.

8 Because it is clear that each agency has its
9 responsibility. We have absolutely no authority to
10 jump anyone's claim. We can only deal with the
11 Environmental Quality Act.

12 Now, as a citizen of Wyoming, and you know
13 this, it's difficult to have a problem. There are
14 places in the state that have problems, other places
15 that don't. Some places where it's a great boom. We
16 all know that there are cases where things can be
17 better.

18 As a citizen with a problem, if you go to one
19 agency and they say, it's not our jurisdiction, so then
20 you go to another agency and they say, that's not our
21 jurisdiction, and you go to another agency and they say
22 it's not our jurisdiction, that citizen gets pretty
23 frustrated.

24 That's what is so great about having a task
25 force, which is meeting in Douglas tonight, because

1 they can look at the statutory issues that really the
2 legislature needs to deal with that particular kind of
3 difficulty. Our role and one reason why I wanted to
4 talk about this, is because coal bed methane, with its
5 abundance of water in the Powder River Basin, has
6 brought into some reference some areas that have had
7 problems, and they have not been dealt with very
8 successfully since 2000, since 1999, probably since
9 1998.

10 I served on an advisory board way back when,
11 and there's been advisory board after advisory board.
12 And it always comes down to this one difficult thing:
13 Who's got jurisdiction. So it's great what that task
14 force is doing.

15 What I wanted to do, since the Powder River
16 had those issues, and we've heard about terrific cases
17 and poor cases. And then when John Cora said, you
18 know, we're going to have a meeting up there. I was
19 unable to get up here for that meeting. I had very
20 short notice.

21 Then Norma Lee and other people in the Basin
22 -- I think think Sarah Flitner, one of my colleagues,
23 also got some calls and people started say, look,
24 you've got to understand what's going on in the Basin,
25 so that was the reason why I wanted to have this

1 meeting.

2 I didn't -- I wanted to have more in the
3 sense of a conversation, largely because we need to
4 understand the scope of these issues as they pertain to
5 the Basin. They do influence how we proceed. So the
6 problem we have is that we took two votes. Let me kind
7 of go through that time line a little bit.

8 In February, I believe it was, the
9 Environmental Quality Council decided to proceed on the
10 citizen's petition that was presented by the Powder
11 River Basin Resource Council, largely, because there
12 was a quantity of water that was unregulated, and the
13 perception was maybe there was something that should be
14 done about that. Whether we had jurisdiction or not
15 was not really being considered at that point. That is
16 why the governor requested of the Attorney General Pat
17 Frank that he issue an opinion, which he did.

18 And that then occasioned an adjustment in the
19 citizen's petition and also a motion for dismissal,
20 which came in the spring. And we voted down the motion
21 for dismissal. It was a little bit nongermane, but the
22 intent was clear.

23 And it's because we believe that that
24 petition still had some scope to go forward within the
25 context of our jurisdiction. But because there was so

1 many different pieces of language, at first, I thought,
2 well, let's publish something that we can go through
3 all of our various minutes and try to come up with the
4 proper fully-worded language. Because we knew what it
5 did and the trail of all of the meetings and motions
6 that passed the amendments and so on and so forth.

7 Then it became clear there could be a lot of
8 confusion, as many of you have said tonight. So it
9 seemed very important to have the November 13th meeting
10 to sit down to make sure everybody understood what the
11 language was, then proceed to publish it with the state
12 -- secretary of state -- that then goes to the normal
13 45 day period. And then we'll have a hearing on that,
14 and we'll judge whether that rule has legs at that
15 point or not, as it's proposed. Does that kind of
16 cover most --

17 And then the other part of that is the Ag
18 Protection Policy which hasn't come to us. Some of you
19 may know, and some of you may not, but the
20 Environmental Quality Council gets rules from the
21 Department of Environmental Quality.

22 The Environmental Quality Council is a
23 separate agency, and we are charged with that rule
24 making capacity. So as the Ag Protection Policy
25 bubbles it's way through the Water and Waste Advisory

1 Board and through the Department of Environmental
2 Quality -- I'm hoping Bill is going to correct me if I
3 misstep here -- they will then present that to the
4 Environmental Quality Council with a suitable
5 notification, too, and that will then go to hearing in
6 front of the Environmental Quality Council.

7 So those -- they are very similar in what
8 they try to discuss. But I guess from my perspective,
9 nobody has been in the Basin. There have been some
10 people from the Basin who have addressed the Council,
11 but nobody has been in the Basin to say: How is it
12 working up here? You obviously have a slightly
13 different thing from what's going on over there.
14 That's why we had this meeting tonight. Thank you.

15 MS. CORBERG: Thank you.

16 MR. GORDON: Thank you.

17 MS. KRAMER: So at the November 13th meeting
18 are you going to choose which language to use or is it
19 possible that you're going to come up with language not
20 in those proposals?

21 MR. GORDON: We're going to make sure the
22 language logically and consistently holds together, but
23 it's not going to be different from what we've done.
24 It's just if there's a "they" in some place where that
25 article doesn't refer to the right saying, something

1 like that, that's what we're going to do, draft that
2 language. And it's not going to publication. It's
3 still very much open. Does that make sense?

4 MS. KRAMER: I think so. I was at the July
5 hearing and heard some of the Council members say that
6 they were really concerned about the language in the
7 last version of the petition.

8 I'm just wondering if that's where you're
9 starting from, or are you going to come up with
10 something that you're trying to pinpoint the issue more
11 or are you going to use the last petition?

12 MR. GORDON: I think we'll start from the
13 last petition, but I think we're going to try to
14 pinpoint it more precisely, make sure the language
15 actually does what it says it's supposed to do.

16 MS. KRAMER: Thanks.

17 MR. GORDON: Thank you. Dog McMullen, I just
18 took note of what you said. I'll try to pass that
19 along. We're not formally related to the Department of
20 Environmental Quality. We don't serve as a quality
21 control or anything like that.

22 MR. McMULLEN: I had no issue with the
23 water. I think the water coming out of the well is
24 great. It needs to be put to use. All I'm saying, if
25 there's an issue with it, you need the teeth to make

1 them clean it up.

2 MR. GORDON: Okay. Thank you all. Thank you
3 for your comments, and please stay involved in the
4 process, and we will give you ample warning,
5 (Thereupon, the public hearing concluded at 7:45 p.m.)
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C E R T I F I C A T E

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STATE OF MONTANA)
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County of Missoula)

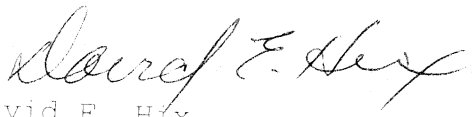
I, David E. Hix, Freelance Court Reporter and
Notary Public for the States of Idaho and Montana,
residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in this cause;

That the foregoing pages of this deposition
constitute a true and accurate transcription of my
stenotype notes.

I further certify that I am not an attorney nor
counsel of any of the parties; nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal on this the 9th day of November, 2006.



David E. Hix
Freelance Court Reporter,
Notary Public, States of Idaho and Montana
Residing in Missoula, Montana.
My Commission expires: January 8, 2008

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