

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

IN RE: PRBC CITIZEN RULE-MAKING PETITION

WATER QUALITY CHAPTER 2
APPENDIX H
EC DOCKET NBR. 05-3102

July 17, 2006
Casper, Wyoming USA

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310 South Main Street
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In USA 1-800-435-2468 Worldwide 001-307-334-2423
Worldwide Telefax 001-307-334-2433
E-mail: BUNNORLDWIDE@aol.com

1 APPEARANCES:
COUNCIL MEMBERS:
2
3 MARK GORDON, Chair
4
5 TERRI LORENZON
6 Director/Attorney
7 Environmental Quality Council
8 122 West 25th Street
9 Herschler Building
10 Room 1714
11 Cheyenne, Wyoming 82002
12 PH: 307-777-7170
13 FX: 307-777-6134
14
15 JOE F. GIRARDIN, Paralegal
16 Director/Attorney
17 Environmental Quality Council
18 122 West 25th Street
19 Herschler Building
20 Room 1714
21 Cheyenne, Wyoming 82002
22 PH: 307-777-7170
23 FX: 307-777-6134
24
25 KIM MCGEE, Executive Assistant
26 Director/Attorney
27 Environmental Quality Council
28 122 West 25th Street
29 Herschler Building
30 Room 1714
31 Cheyenne, Wyoming 82002
32 PH: 307-777-7170
33 FX: 307-777-6134
34
35 JON BRADY, Vice-Chair
36
37 WENDY HUTCHINSON
38
39 RICHARD C. MOORE, Secretary
40
41 SARA M. FLITNER
42
43 DENNIS M. BOAL

1 APPEARANCES (Continued):
COUNCIL MEMBERS (Continued):
2 JOHN N. MORRIS
3 ALSO PRESENT:
4 KATE FOX, Attorney
5 Powder River Basin Resource Council
6 KEITH BURRON
Consortium
7 BRIDGET HILL, Attorney
8 Office of the Attorney General
State of Wyoming
9 JOHN CORRA
10 Coalbed Methane Task Force
11 PUBLIC COMMENT:
12 STEVE JONES
Wyoming Outdoor Council
13 KEN HAMILTON
14 Wyoming Farm Bureau Federation
15 JOANNE TWEEDY
16 CAROLIN HAMILTON
17 LEE EISENBERGER
18 BOB BACHE, Chairman
Powder River Basin Resource Council
19 MONA MITZEL
20
21
22
23

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1 BEFORE THE
2 ENVIRONMENTAL QUALITY COUNCIL
3 IN RE: PRBRC CITIZEN RULE-MAKING PETITION
4 WATER QUALITY CHAPTER 2
5 APPENDIX H

6 EC DOCKET NBR. 05-3102

7 Discussion on Motion and Status Report
8 was held pursuant to Notice at the Oil and Gas
9 Conservation Commission Building, 2211 King
10 Boulevard, Casper, Wyoming, USA, commencing on the
11 17th day of July, 2006, at 2:53 p.m. MT and
12 concluded at 5:38 p.m. MT.

13 Present: Mark Gordon, Chair; Terri
14 Lorenzon, Director; Jon Brady, Wendy Hutchinson,
15 Richard C. Moore, Sara M. Flitner, Dennis M. Boal,
16 John N. Morris.

17 TRANSCRIPT OF PROCEEDINGS

18 THE CHAIR: Let me, let me call us back.
19 Thank you very much for your patience.

15:13:05 20 And thank you for getting the computer
21 running, sir.

22 We're going to take up old business at
23 this point. And I think it's appropriate for me to

1 pass to my colleague, Sara Flitner, so I will do
2 that, who can conduct this.

3 MS. FLITNER: Thank you. Good
4 afternoon, and welcome to all of you.

15:13:29 5 We are going to take up the old
6 business, the Petition many of you were with us for
7 beginning in February, I believe. We're going to
8 have Terri Lorenzon, our counsel, walk through a
9 five-minute how-we-came-to-be-here-today history.

15:13:46 10 Many of you have versions yourselves,
11 I'm sure. That's just going to sort of get us all
12 on the same page and oriented to the discussions
13 for this afternoon.

14 We'll then, as a council, discuss
15:14:03 15 whether or not, or, to make a decision on the
16 initial Petition, or to discuss the, the new
17 substance that has been filed since. I don't
18 remember the dates, but our discussion was in
19 February.

15:14:19 20 I know that many of you signed in. I
21 would like to get an idea of how many of you wish
22 to make public comment today.

23 Obviously we expect to hear from Kate

1 and from Keith. If there are others of you, would
2 you just raise your hands?

3 (Whereupon, a response was had).

4 MS. FLITNER: Okay. You will be given
15:14:42 5 that opportunity.

6 And I will just say a couple of things
7 up front. Obviously we appreciate your attendance
8 and we welcome your active participation today.

9 I would appreciate it on behalf of
15:14:53 10 audience members and myself, and fellow Council
11 members, if you focus your comments on, on new
12 information, on information that we have not had
13 the opportunity to hear. In other words, testimony
14 that was made in February -- And was it April? --

15:15:15 15 does not need to be repeated today.

16 We, we do have Transcripts. We have the
17 Petitions, and we have your comments.

18 So, again, we welcome your
19 participation. I've -- I won't use the gavel too
15:15:31 20 often, so say what you came here to say, but we
21 would appreciate it if you would concentrate on, on
22 what is new.

23 With that, I'll turn it over to Terri,

1 who will give us our context, and we'll go from
2 there.

3 MR. LORENZON: Thank you, Sara.

4 Looking at the Record on this case, the
15:15:53 5 Docket, so you can hear, this case started in
6 December. I looked up; it was December seventh.

7 The PRBRC filed this Petition for
8 citizens under the Wyoming Administrative
9 Procedures Act to initiate ruling in this council.

15:16:11 10 We started from there.

11 We scheduled a day of discussion to help
12 the Council decide whether it should accept the
13 Petition and move forward with formal ruling, and
14 they did that on February seventeenth, 2006. At
15:16:27 15 that point there ensued a discussion of
16 jurisdiction, which I don't know that was
17 unexpected by anyone, given the, the history of
18 the, of the conversations about the discharge of
19 the produced water-free coalbed methane.

15:16:41 20 But in any event, we received an Opinion
21 from the Attorney General's Office. At that point
22 we received a Joint Motion to Deny and Terminate
23 the Petition that Council had agreed to take to

1 rulemaking.

2 That Petition is still before the
3 Council without a Decision. Then the Petitioners,
4 on the original Petition, Powder River Basin
15:17:07 5 Resource Council, through their attorney, Kate Fox,
6 filed what they called their First Status Report on
7 May eighteenth.

8 And in that Status Report they
9 recommended that the Council should go forward, not
15:17:19 10 deny and terminate, but instead, move forward, and
11 repropose additional or new language for Appendix
12 H. That matter, the new language, the request to
13 move forward on the newly proposed Appendix H is
14 still before the Council.

15:17:37 15 And then there was a Response
16 Petitioners filed, also, on the eighteenth of May,
17 Response to the Motion to Deny. So, what we have
18 before us is the original Petition that was filed
19 in December.

15:17:51 20 That is still on our Docket for ruling.
21 We have the Motion to Terminate and Deny, and we
22 have the Petitioner's Proposal.

23 They call it their Status Report, but

1 they have proposed that the Council move forward
2 with rulemaking, but on amended or substitute
3 language. We have discussed whether it is to amend
4 the Petition, to deny, accept the Petition, the,
15:18:17 5 the new language.

6 I think those are procedural decisions.
7 What we have is a proposed substitute language, and
8 that is before the Council.

9 We have received responses to the Status
15:18:30 10 Report, and so the, there have, has been the
11 comment received. All of this has been distributed
12 to the Council and to any interested parties.

13 So, those, that's the status of the
14 documents. Did you want to review the documents?

15:18:52 15 MS. FLITNER: Does anyone wish to review
16 documents?

17 (Whereupon, no response was had.)

18 MS. FLITNER: Thank you.

19 MR. LORENZON: So, I think the first,
15:18:58 20 the oldest item is the original Petition that is on
21 the Docket.

22 MS. FLITNER: At this point, for the
23 Council's consideration, we may wish to decide on

1 the matter of the original Petition now, and
2 proceed with discussions, or we may proceed with
3 discussions on the Joint Motion and the new amended
4 language, or Amendment to the existing Petition,
15:19:35 5 rather. So, we can make a decision now, or we can
6 hear further discussion and make all of the
7 decisions we need to make at the end.

8 THE CHAIR: Plan B.

9 MS. FLITNER: Is that okay with
15:19:54 10 everyone?

11 (Whereupon, a response was had.)

12 MS. FLITNER: In that case, I think,
13 Kate, we'll invite you to make your comments,
14 followed by Keith, and then I will grab the sheet
15:20:05 15 of paper from the back of the room and see who else
16 is on the list.

17 If you, if you wish to comment, and
18 haven't seen the list, please do so.

19 THE CHAIR: Kate, we have both mics.
15:20:22 20 One's a recorder, and one's to amplify your voices.

21 STATEMENT ON BEHALF OF POWDER RIVER RESOURCE

22 COUNCIL:

23 MS. FOX: Okay. Thank you very much.

1 I appreciate the Council's accommodating
2 my schedule and waiting, and I appreciate your
3 continued patience and attention to this very
4 important matter. I know that some of our
15:20:41 5 Petitioners may choose to comment.

6 As a preliminary matter, I'd like to
7 have all of the Petitioners, landowners, and
8 members of the Powder River Basin stand up, just so
9 you know that they're here and who they are.

15:20:55 10 (Whereupon, a response was had.)

11 MS. FOX: They've been, as you know, --

12 Thank you.

13 -- to all the Hearings on this matter,
14 and sometimes at great distances and bad weather.

15:21:06 15 And, and it's because this is a very important
16 matter for all of them, and other landowners.

17 Now, I wanted to add one thing to
18 Terri's presentation of the background, and that is
19 that there was a June sixteenth deadline for
15:21:29 20 industry comments in response to our, our Status
21 Report, and then a June 26 filing by us, which was
22 our response to the industry comments. So, there's
23 that final submission that we made, which is

1 another thing that we hope you'll look at.

2 Now, I'm going to do my best to heed
3 your, your advice not to repeat any old ground, and
4 some of it, though, is going to be going back a

15:22:24 5 little bit just so that we can review the important

6 information. The things I'm going to discuss are

7 --

8 Oh, thank you. Now what?

9 The current Petition H is contrary to

15:22:42 10 Wyoming and federal law, and DEQ in practice fails

11 to regulate water quantity when it has an

12 unacceptable effect on water quality. That's the

13 language that's taken from the AG's Opinion.

14 The Environmental Quality Council has

15:23:01 15 the authority and the obligation to correct this

16 regulatory failure. And finally, this matter

17 should be set for a rule-making Hearing.

18 I think the Council made a unanimous

19 decision to do that back in February. There have

15:23:15 20 been subsequent events, and I urge the Council to

21 do the same today.

22 I remind you that what we are doing

23 still is prehearing hearings, and the objective is

1 still to set this matter for a rule-making Hearing.
2 Now, first, the current Appendix H is contrary to
3 Wyoming and federal law.

4 It is, in fact, a beneficial-use
15:23:47 5 determination. And it's even worse than the
6 beneficial-use determination that's made by the
7 State Engineer, because it doesn't have any of the
8 procedural or proof requirements that are required
9 under Wyoming law.

15:24:00 10 All it is is an assumption. To
11 understand that, we'll go quickly through some of
12 the history.

13 Here is a quote from the Federal
14 Register, 1976, in which the, the Draft, which is
15:24:15 15 the precursor of all this language that has caused
16 our heartburn, was to determine beneficial use
17 shall mean that the produced water is of good
18 enough quality to be used for livestock watering or
19 other ag uses, and is being put to such use.

15:24:36 20 That's the language of the current Appendix H.

21 And it originates from this definition
22 back in 1976 of "beneficial use." Then they
23 decided, in response to comments in 1979, they

1 said, "Oh, we can't call it that.

2 "We'll change its name. We won't call
3 it 'beneficial use.'

4 "We'll call it 'agricultural use.'" But
15:24:57 5 you know what?

6 It doesn't matter what the label is.
7 That's still what it is, and it's still the
8 determination that the DEQ is making with Appendix
9 H.

15:25:07 10 Now, if you look at the language, and
11 this is in at least a couple of the submissions
12 that we have made to the EQC, at the bottom, where
13 it's highlighted, it says it is intended as a
14 relative restrictive subcategorization based on
15:25:23 15 unique factors of prior use, knowledge in the
16 region, arid conditions, and the existence of
17 low-slip deportable water.

18 So, the point is: They had this
19 exclusion. And the reason for the exclusion was
15:25:36 20 because, as a number of people in the Basin have
21 testified, they could use that water.

22 But, guess what? It's no longer
23 applicable, and it is not applicable when you're

1 talking about 75,000-acre-feet of CBM water in the
2 Powder River Basin.

3 Now, this is a part of Exhibit Number 15
4 to Powder River Basin's original Petition. This is
15:26:04 5 attached to a letter from John Corra to the EPA in
6 April of 2005, in which he explains the DEQ's
7 regulation of water, CBM water.

8 And what this document says -- It's in
9 your exhibits. -- is this is, this provides the
15:26:23 10 basis for the technology-based effluent limits that
11 have been incorporated into the WHIP, the effluence
12 permits for coalbed natural gas.

13 And what it explains is, on the second
14 line there, it says it was assumed that in the arid
15:26:42 15 West region, the produced water would be used for
16 ag and wildlife propagation. That's the
17 beneficial-use assumption.

18 And that's the thing that all the
19 Protestants to our Petition told you back in
15:26:55 20 February the DEQ can't do. The DEQ can't make
21 beneficial-use determinations.

22 But what it does here is make this
23 beneficial-use assumption. That's the keystone of

1 its water quality Regulations.

2 Now, that same document goes on to say
3 that for a time, -- And I think Mark Gordon asked
4 about this back in February. -- for a time, part
15:27:22 5 of the permitting process was to get these
6 beneficial-use letters from landowners, who said,
7 "Yes, we, our cows drink it," or whatever. "We
8 have some use for it."

9 And that was the way it was done for a
15:27:37 10 number of years, until that was abandoned with the
11 new Appendix H, Chapter 2 promulgation. The reason
12 is because I think a lot of those beneficial-use
13 letters were hard to obtain.

14 So, what DEQ did was that they gave up
15:27:55 15 the requirement of a beneficial-use letter from
16 landowners, and they promulgated a revised Chapter
17 2 with the Appendix H, which is, goes even further,
18 the beneficial-use assumption. Now, here is
19 another exhibit of ours.

15:28:12 20 I think it's Number 27. Yeah, attached
21 to one of our submissions.

22 This is a typical response of the DEQ to
23 comments from landowners objecting to Permits.

1 Landowners say Part 45 requires a Statement of
2 Beneficial Use.

3 And the response now from DEQ, under the
4 current Appendix H, is: "No, we don't have to make
15:28:40 5 a showing of beneficial use anymore because
6 Appendix H takes care of that. Appendix H
7 formalizes beneficial use assumption right there.

8 "As long as the quality standards were
9 met, it will be assumed that it's consumed by, in
15:29:02 10 some ag or wildlife use, and that's all you need to
11 know. That is the beneficial-use assumption."

12 That is illegal under Wyoming law, as
13 many of the Protestants have explained, as well as
14 under federal law, because the Clean Water Act
15:29:21 15 requires that there will be no discharge where
16 practical, and that's certainly not what's
17 happening. Now, in practice, DEQ fails to regulate
18 water quantity, whether or not it has an
19 unacceptable effect on water quality.

15:29:41 20 We have examples of that as well.
21 There's a letter written by Dr. Larry Munn and Dr.
22 Ginger Paige of University of Wyoming December
23 fifth, 2005, in which they say here on the first

1 line, and it's hard to see, but in the first
2 paragraph they say, "While we have pointed these
3 mistakes out to a number of DEQ staff, the mistakes
4 persist."

15:30:07 5 One of those mistakes addressed in the
6 letter that is especially relevant to this Petition
7 is the first issue, a question of measurement.
8 Where are you going to measure the EC?

9 This is for alfalfa, which isn't a
15:30:25 10 run-on point for Appendix H, but it does illustrate
11 a very poor point for Appendix H, which is this:
12 While they measure, and it's generally accepted
13 that alfalfa can concentrate ECs around, up to
14 2,000, so DEQ was permitting water at the point of
15:30:47 15 discharge with ECs of 2,000, when it was very
16 clear, as set forth in this letter, that the
17 relationship of EC water to EC soil should be 1.5.

18 So, instead of allowing effluent limits
19 at 2,000 at end of pipe for alfalfa tolerance, it
15:31:11 20 should be 1,200. That's the kind of something that
21 is not revolutionary science.

22 And for those of you who participated in
23 the Schwartz Hearing three years ago, that was the

1 testimony at that Hearing. And even then it was
2 well-established science.

3 This is the kind of thing that the DEQ
4 continues to do, in spite of having the mistake
15:31:30 5 pointed out. Here's another example of the
6 end-of-pipe issue which is a huge problem, and it's
7 exactly a problem that's been pointed out by the AG
8 that is within the EQC and the DEQ's jurisdiction,
9 and that is when quantity affects quality.

15:31:47 10 This is an exhibit. This has been
11 submitted with our materials, Exhibit 25, an
12 e-mail.

13 And, and you'll have to look at the
14 whole thing. I just put, for purposes of this
15:31:59 15 slide, the last reply from the DEQ Enforcement guy.

16 What happened was in Essay (phonetic)
17 Creek they were getting readings of more than
18 75,000 limits of EC, which is more than effluent
19 limits even in Appendix H for wildlife limits.

15:32:18 20 Those were reported to the DEQ.

21 They were checked out, and the response
22 was: "You know, it's what we would expect from
23 low-flow conditions. We've checked at the end of

1 pipe for all these discharges, and they are within
2 the effluent limits of the Permit, and so what's in
3 the creek isn't a violation."

4 That is exactly the effect of water
15:32:45 5 quantity on water quality, and the DEQ refuses to
6 regulate. There's Essay Creek in the spring of
7 '06, with CBM water.

8 But DEQ doesn't want to know its quality
9 as long as the effluent limits at end of pipe are
15:33:01 10 met. Now, this is back to the December letter from
11 the UW people, expressing another concern, which is
12 also important to the quality/quantity interchange,
13 and that is what happens when ephemeral streams are
14 changed into perennial streams.

15:33:22 15 Streams that flowed up there in the
16 Powder River Basin a couple of times of the year
17 now are running almost constantly. That's, some
18 people would say, including the DEQ, purely a
19 quantity issue.

15:33:37 20 But the UW scientists point out, and
21 this is at the bottom of the slide, the question is
22 a slowing of infiltration rates with time as
23 CBMG-produced water is applied. And because these

1 kinds of soils tend to have naturally slow
2 subsurface drainage, that has an effect on the
3 quality of the soils and on crop production.

4 That's -- And that can happen if the
15:34:05 5 streams are converted to perennial flow. This is a
6 quantity issue, and it's a quality issue.

7 And DEQ, it won't consider it. Here's
8 just an example of Wildcat Creek, not the one in,
9 in Campbell County that we've talked about before.

15:34:23 10 I think this is Johnson County. But
11 when you see that kind of flooding, you know that
12 the subsurface water table is going to have some
13 impacts as well.

14 This is Wild Horse Creek. Same kind of
15:34:37 15 effects.

16 Wild Horse Creek again. This is the
17 kind of thing that DEQ might have you believe is
18 purely a quantity issue, but when you consider the
19 water table alone, it becomes a quantity issue.

15:34:55 20 Another issue pointed out by the UW
21 folks, at the top of this slide. The real evidence
22 of problems related to application of high-sodium
23 waters will only come after product water

1 application ceases, and water on the site reverts
2 to native precipitation and runoff.

3 This water, and that is the natural
4 water, is typically very low in salinity. And as
15:35:21 5 salts in soil are initially mobilized to lower
6 depth, the soil surface was, will be dominated by
7 volcanic conditions.

8 Again, that's quality they're talking
9 about, but it is caused by quantity. And it's a
15:35:36 10 quantity issue that DEQ has, to date, failed to
11 regulate.

12 Here's Burger Draw. If you look at
13 Exhibit 7 of our original Petition, there was a
14 report about Burger Draw that, in 2001, that raised
15:35:49 15 serious concerns about water quality and its
16 impacts on vegetation.

17 And that's what it looked like last
18 fall. Now, on the end-of-pipe issue, here's an
19 interesting thing.

15:36:05 20 When end-of-pipe can be measured at a
21 different place, sometimes it is. And in this case
22 it was in favor of industry.

23 These slides demonstrate a concern that

1 Williams had on a well of theirs, where, at the
2 normal place, at the end of a pathway, which was
3 the normal place to measure SAR, there was an
4 exceedance. And you'll see here it says the EOP
15:36:30 5 reading is put, puts it out of compliance, okay?

6 Well, don't worry, because Joe Olson is
7 going to follow up with Todd Parfitt now, and it's
8 taken care of. They're going to measure it
9 somewhere else.

15:36:46 10 If they measure it halfway down the
11 path, the SAR, at 260, is actually above permit
12 limits, but I believe within DEQ error limits. So,
13 it was approved to make the measurements in a
14 different location.

15:37:02 15 Now, these issues need to be addressed.
16 And I don't think that any of the testimony that
17 you have heard and found compelling back in
18 February has changed or been refuted by any of the
19 subsequent submissions by industry or the Attorney
15:37:18 20 General.

21 All that they have attempted to tell you
22 is that you can't take action about this serious
23 problem. And I don't think that's right.

1 I think that you can take action. I
2 think the DEQ has the authority and the obligation
3 to take, I mean, the EQC has the authority and the
4 obligation to take action, and the DEQ has the
15:37:37 5 authority and the obligation to regulate; not just
6 effluent limits at end of pipe, but down the
7 channel to where it matters.

8 Oh, by the way, I have to show you
9 something (demonstrating). These are grown on
15:37:59 10 Clear Creek.

11 That's one of the places -- This is one
12 of our Petitioners, and Clear Creek is one of the
13 places where CBM discharge water threatens to
14 impact the kind of water that grows these beautiful
15:38:16 15 crops.

16 Now, I want to go back briefly, because
17 I know we talked about this before, to the powers
18 and duties of the Council. Industry has suggested
19 to you that you don't have the authority to
15:38:30 20 promulgate Rules from a citizens' Petition, and
21 that's just wrong.

22 For one thing, your historic practice
23 has been to receive and do rulemaking on citizens'

1 Petitions. For another thing, the Environmental
2 Quality Act and the Wyoming Administrative
3 Procedures Act authorize you to do that.

4 Under CI, you have the authority to
15:38:56 5 approve, disapprove, repeal, modify, or suspend any
6 Rule. That is what we urge, urge you to do, or to
7 set a Hearing to do as soon as you can find the
8 time.

9 Also, industry has suggested that you
15:39:16 10 can't do this without first going through the
11 Advisory Board, and review and recommendation from
12 the Director and Administrator. I would remind you
13 that Chapter 2, Appendix H -- well, the entire
14 Chapter 2, actually, was promulgated not so long
15:39:34 15 ago, after quite a long time in the Advisory Board.

16 There is no purpose to send it back,
17 other than to delay. And there is no statutory
18 requirement to send it back.

19 The Wyoming Administrative Procedures
15:39:51 20 Act governs all rulemaking, and it specifically
21 provides the, at 16-3103, for citizens' Petitions,
22 for rulemaking. One, one brief point.

23 There has been a little bit of new

1 discussion about the effluent limits. Since your
2 Petition in February, and, and hearing on that
3 Petition, DEQ has sought more scientific data to
4 support the effluent limits contained in Appendix
15:40:24 5 H.

6 And I think it was in Marathon's Brief,
7 they suggest that nothing should be done until that
8 data is available. Well, it's not going to be
9 available for a couple of years.

15:40:35 10 And it's very clear from the Proposal
11 that's attached to Marathon's Brief, the UW
12 Proposal: As for this scientific side of effluent
13 limits, they clearly say this science is uncertain,
14 and further study is needed. Marathon proposes
15:40:54 15 that we keep those effluent limits.

16 That's until we know better, but that's
17 not good science and not good rulemaking. If we're
18 uncertain about the science, which apparently we
19 are, then those limits must be set at the most
15:41:07 20 conservative level, because you can't go back.

21 And I think there's enough science to
22 establish that the, -- And, and, in fact, UW's own
23 report. -- to establish that the current limits

1 are not something very reliable.

2 So, I urge the Council to set this for
3 rule-making hearing as soon as possible. If, if
4 there is confusion about what you're setting for a
15:41:37 5 hearing, I think that that's up to you.

6 I don't think, by the way, in spite of
7 what some of the industry objectors say, that
8 because this Petition has been amended, it should
9 be thrown out. What will be the point of that?

15:41:51 10 There's nothing that, saying you can't
11 amend the Petition and improve upon, hopefully up
12 to the point that it's public notice. Now, when
13 you, when you issue your Public Notice, then you
14 are limited by the APA to a Decision that's within
15:42:06 15 what you've noticed.

16 But there isn't enough authority at all,
17 or any common sense at all, that says you can't
18 change the Proposed Rule up until that point of
19 public notice. And I, I submit to you that
15:42:18 20 although it's been hard work, I think that getting
21 comments from industry and the Attorney General has
22 helped to hone onto something that really makes
23 sense and would work.

1 And it would be silly to say, "Throw it
2 all out because they've modified it," or they've
3 withdrawn it by their changes. Why?

4 Because then we file a new Petition and
15:42:43 5 start over. It -- What would be the point of doing
6 that?

7 I think that what I propose is, and I
8 think this is up to the Council, there's what I
9 call the AG Rule, which is using the language of
15:42:54 10 the AG Opinion. And there's the Appendix H and
11 Appendix I submission, which I think was attached
12 to my March 2 letter to Terri Lorenzon in which we
13 proposed to split out the traditional oil-and-gas
14 water from the CBM water.

15:43:16 15 That's what I think the Council should
16 go for with regard to the Hearing. I also think
17 that what you should notice is the option of
18 suspending Appendix H, because you know what?

19 If we haven't proposed a solution that
15:43:30 20 is really adequate and accept-, acceptable, -- I
21 think it is, but if we haven't, the current
22 Appendix H is illegal and should be suspended. And
23 I think that should be part of the Notice, that it

1 should be a modification or a suspension.

2 The modification would be our Proposed
3 Appendix H, and I attached it to my March 2 letter.
4 That's all I have, unless you have some questions.

15:43:58 5 MS. FLITNER: Thank you.

6 Questions from the Council?

7 (Whereupon, no response was had.)

8 MS. FLITNER: Thank you.

9 THE CHAIR: Thank you very much.

15:44:12 10 MR. MOORE: One question. What is in
11 the box?

12 MS. FLITNER: On the table?

13 MR. MOORE: Oh, I'm sorry. Let me --

14 MS. MITZEL: These are some tomatoes I
15:44:24 15 grew in my greenhouse. And I have a salad pack
16 here that's got red onions, tomatoes, lettuce,
17 radishes.

18 Then you have a couple of bags of
19 spinach. And then I have a saute kit here that's
15:44:38 20 got zucchini in it.

21 MR. MOORE: Thank you.

22 MS. FOX: And I'm hoping this is how
23 they pay me.

1 THE CHAIR: I'm sorry. That's part of
2 the evidence.

3 MR. MOORE: Mark that as Exhibit 1.

4 MS. FLITNER: Thank you.

15:45:07 5 While we invite Keith to come forward
6 and make his remarks, may those of you -- I think
7 there were about five of you in the back who were
8 going to speak at some point. Will you raise your
9 hands again, please?

15:45:23 10 So, I'm going to have Joe pass around a
11 different sheet, because I have about 20 names on
12 this one, and we're just going to do that in an
13 effort to keep this moving quickly so that we can
14 call you up right after Keith goes. Is anyone

15:45:42 15 prepared to speak longer than a couple of minutes?

16 (Whereupon, no response was had.)

17 MS. FLITNER: Perfect.

18 Okay, we'll get to you next. Thanks.

19 Welcome. Thank you.

15:45:53 20 Go ahead.

21 STATEMENT ON BEHALF OF THE CONSORTIUM:

22 MR. BURRON: Thank you, Madam Chair.

23 Members of the Council.

1 For the Record, I'm Keith Burron. And
2 I'm appearing today on, as sort of a spokesperson
3 on behalf of the Consortium.

4 Some oil-and-gas players, too, who have
15:46:07 5 signed onto the opposition to this request for
6 rulemaking. I'm going to address today the Motions
7 to Dismiss, or Motion to Terminate that's been
8 filed, and also, to an extent, address some of the
9 new information in the Status Report, or Third
15:46:29 10 Petition that's been filed.

11 And listening to Kate this morning, I
12 didn't hear a lot about what is actually requested
13 in the Petitions. What I heard is a, almost a, I
14 guess, an argument that DEQ is not adequately
15:46:50 15 addressing effluent limits for impacts to
16 agricultural use in permitting CBM discharges.

17 And I think we need to be very careful,
18 because that's not what these Petitions are asking
19 for. What the Petitions are asking for is,
15:47:03 20 regardless of whether you look at the initial
21 Petition or the second Petition, try to separate
22 out CBM water, or the Third Petition, which is a,
23 pollutions.

1 And the objective of those Petitions is
2 to stop the discharge of CBM water, not to regulate
3 the constituents in CBM water, which is what we've
4 heard about today. So, every iteration of the
15:47:25 5 Petition says the objective was trying to limit or
6 shut down water production, surface discharge of
7 water production from CBM water, and that is a, an
8 agenda that is being put forth by a vocal minority
9 of landowners, and by the Powder River Basin
15:47:45 10 Resource Council.

11 And I would submit to you the vast
12 majority of landowners do not agree with that
13 position that CBM discharges ought to be shut down
14 and ought to be limited in the fashion that PRBC is
15:47:59 15 asking for. In addition, PRBC is asking the DEQ to
16 revoke the policy that's been longstanding in this
17 area of the state for 120 years, and that is
18 encouraging the maximum general efficient use, use
19 of the waters throughout the state, and also
15:48:17 20 maximum use of drainages to carry that water,
21 especially where that water meets effluent limits
22 set by the DEQ, and Permit limits within these
23 Permits.

1 If what the Petitioners were asking for
2 goes forward, we are going to see very, a very
3 adverse effect on CBM production. We're also going
4 to see a greater incrustation to those landowners
15:48:43 5 who are using CBM water to a great extent.

6 As the Council's well-aware, the
7 information that we submitted agrees with the
8 information that the Attorney General put forward
9 in the AG's Opinion that was issued in this matter,
15:49:00 10 which essentially indicates that quantity
11 regulation of CBM water is not something that's
12 within the Council's jurisdiction.

13 That's what the AG concluded. And the
14 AG also concluded that water quantity can only be
15:49:15 15 regulated where it directly relates to water
16 quality.

17 And that occurs in the context of
18 pollutant loading and some other capacity. Does
19 not occur where the desire is just to limit the
15:49:26 20 amount of water that's flowing down the drainage.

21 That Decision is in accordance with the
22 law, and it's in accordance with the DEQ's
23 longstanding interpretation of its own Regulations,

1 which have been in practice for over 30 years. And
2 I think in the Status Report, Petitioners have
3 argued that DEQ needs to revert back to the course
4 it deviated from 30 years ago, and stop allowing
15:49:49 5 discharges from oil and gas operations.

6 I would submit to you that that is not a
7 de-, was no deviation 30 years ago. That's what
8 was performed.

9 That's what the policy of the state was
15:50:01 10 as policy of the effluent guideline, as well to
11 allow beneficial use of this water in arid
12 environments where it can be used. And that's
13 what's occurring.

14 It's been what's been occurring for 30
15:50:14 15 years under the current DEQ machine. Focusing on,
16 on a couple of particulars within the Petition,
17 various Petitions, and especially the Status
18 Report, it appears that what the Petitioners are
19 looking for is to regulate the quantity of water as
15:50:34 20 pollution, the quantity itself, as opposed to the
21 constituents within the water discharge.

22 Water quantity is not a pollutant. And
23 if water meets standards and limitations, it can be

1 discharged.

2 The fact that -- What PRBRC is seeking
3 is that if water meets effluent limits and
4 standards, PRBRC would still have the EQC require
15:51:00 5 still an additional test and additional requirement
6 that only a very limited amount of water could be
7 discharged. And I believe a fair reading of
8 PRBRC's response to our latest filing and the
9 Wyoming Outdoor Council's position would be that
15:51:14 10 only that water that's been permitted for
11 beneficial use by the State Engineer can be
12 discharged, and all other water has to be dealt
13 with in some other fashion.

14 Petitioners have argued today that DEQ
15:51:28 15 is violating the Clean Water Act by not limiting
16 the quantity of water. And it's important to note
17 in that context, number one, that the AG clearly
18 disagrees with that, and the DEQ clearly disagrees
19 with that.

15:51:40 20 But furthermore, not a single Federal
21 Court has ever held that a State is violating the
22 Clean Water Act by not regulating the quantity of
23 water discharge. Clearly this does not violate the

1 Clean Water Act, and there's nothing illegal about
2 the existing Appendix.

3 This is a program that EPA has delegated
4 to DEQ, and DEQ's in compliance with the program.

15:52:06 5 So, DEQ cannot regulate quantity just for
6 quantity's sake alone.

7 And getting back to this issue of the
8 State Engineer, whether the State Engineer's issued
9 a Permit or not, I think the thrust of what PRBRC
15:52:21 10 has argued is that if the State Engineer is not
11 regulating the water that's discharged in CBM
12 operations, then the DEQ must jump in and regulate
13 the quantity of that water. And that is clearly
14 not the case.

15:52:33 15 That's clearly not supportable under the
16 law. And it's never been the policy of the state.

17 That position ignores the fact that
18 there is no affirmative authority under the DEQ
19 Statutes and the Environmental Quality Act to allow
15:52:46 20 the DEQ to regulate water quantity. An
21 administrative agency is limited to those powers
22 that are vested in it by the Legislature.

23 And the AG concluded that there is no

1 express or implied authority in the Environmental
2 Quality Act to regulate water quantity in the
3 absence of a direct tie to water quality. The
4 position that only that amount of water should be
15:53:07 5 discharged as is permitted by the State Engineer's
6 Office also ignores the constitutional positions
7 under Article 8 of the Constitution that provide a
8 State Engineer and Board of Control have general
9 supervision over waters of the state, and the State
15:53:21 10 Engineer is the agency charged with making those
11 determinations on what is a beneficial use.

12 And it also ignores the reality that
13 many beneficial uses of water in this state are
14 made without a State Engineer Permit. Several
15:53:36 15 which will bear mentioning specifically would be
16 most of the in-stream uses that are made when it's
17 for fisheries; whether it's for in-stream stock
18 use, whether it's for wildlife enhancement are made
19 without the benefit of a State Engineer Permit.

15:53:51 20 We don't have a Permit for every
21 in-stream flow to allow fishing to occur. That
22 doesn't mean fishing is not a beneficial use.

23 So, this idea that if the State Engineer

1 is not limiting it, the DEQ needs to limit it, is
2 simply -- there is no support for it under the law.
3 In addition to flow, that type of argument would
4 interfere with the State Engineer's regulation of
15:54:14 5 water quantity, because the State Engineer controls
6 the withdrawal of groundwater incident to CBM.

7 And the Bylaws address that water, once
8 it's been discharged and it becomes to the extent
9 it's, that it's been found as a beneficial thing in
15:54:31 10 State of Wyoming, not a detriment. Furthermore, if
11 someone were to want to appropriate that water,
12 they certainly would be able to.

13 And if, if the Agency were constrained
14 from allowing that discharge, that certainly would,
15:54:43 15 or allowing that appropriation, that certainly
16 would interfere with the duties of the State
17 Engineer's Office. Having unappropriated water and
18 a source of supply has always been viewed as a
19 benefit, not a detriment, in the state of Wyoming,
15:54:57 20 and I think we heard that from Harry Labonte
21 (phonetic) when he presented in February on this
22 Petition.

23 And I want to address now the reality of

1 what PRBRC is seeking to do. They are seeking a
2 change to the policy, a longstanding policy of this
3 State.

4 And it's a change that, to policy that
15:55:14 5 the DEQ is not authorized to make. And that change
6 is they are asking the Council to disallow the
7 longstanding practice of using natural drainages
8 and waterways and water courses to convey water,
9 even foreign water in the development of a state as
15:55:31 10 agriculture and mineral resources.

11 That has never been the policy of the
12 state. Waterways and drainages have always been
13 available for mineral and agricultural development
14 since statehood.

15:55:41 15 And in this case, discharge water that
16 meets effluent limits and standards is no
17 different, and should be treated no differently.
18 And just by way of example is this policy has stood
19 so long in the state that nearly every irrigation
15:56:00 20 district in the State of Wyoming diverts water from
21 one source and returns it to another source, either
22 through return free or other obligations.

23 We have a lot of situations where water

1 is diverted from one tributary to another, one
2 tributary that may have a good water source, into
3 a, another tributary that may not, for the benefits
4 of wildlife or for the benefit of agriculture, for
15:56:19 5 the benefit of municipal sources. All of those
6 change the hydrography of those drainages, change
7 the hydrology; add water to the drainages that have
8 historically been dried.

9 And all of that has been deemed
15:56:34 10 beneficial to economic development. This is no
11 different in this situation.

12 If we were to go down this road, I think
13 we need to take a look at what would the potential
14 impacts on agriculture be? Does that mean if you
15:56:48 15 import water into a drainage, that somehow we're
16 going to consider that quantity of water now as, as
17 a pollutant, and we're going regulate that
18 drainage, and the DEQ is going to have the ability
19 to say, "You can't bring water into this drainage"?

15:57:01 20 Is that going to affect Stage II
21 projects where we're depriving Little Snake
22 irrigators of the, or Little Snake water, users of
23 water that would also come to them because we're

1 bringing it over the hill and into the North Platte
2 drainage? Lots of implications along the lines of
3 what is being suggested by PRBRC.

4 Construction of reservoirs is another
15:57:24 5 longstanding alteration of a natural hydrology that
6 adds water to systems during times that they
7 typically would be dry or would not have the same
8 water flow. So, there are -- The point being,
9 there are many examples of where natural hydrology
15:57:41 10 is modified by activities: agriculture, mineral
11 development, municipal development.

12 And all of those are accepted as
13 acceptable policies because of the longstanding use
14 of the natural drainages to do that. Now PRBRC
15:57:58 15 wants to change this policy, essentially by saying
16 a minority of landowners don't want to see
17 increased flow within these drainages, that these
18 discharges should be prohibited altogether, or
19 somehow there ought to be a veto authority by
15:58:15 20 landowners to say, "No, we don't want water here
21 because it may change the character of ephemeral or
22 intermittent drainage by addition of water that may
23 not be otherwise there or maybe at different times

1 of the year.

2 To make a decision on that basis, it's
3 landowners against other landowners within the same
4 drainage. And we've seen it within a drain, where
15:58:40 5 you have one who doesn't want it and several who
6 do.

7 If we say, "No," we deprive the
8 landowners who want the water. If we say, "Yes,"
9 we're injuring the landowner who may not want that
15:58:52 10 water.

11 And we submit the answer is, "No," under
12 the policies of the State with respect to the use
13 of natural drainages. Simply put, the EC does not
14 have the authority to affect the policy change that
15:59:05 15 the PRBRC is seeking.

16 The AG's opinion made that clear. But
17 in addition, the policy of the State is preserved
18 beyond the reach of the DEQ by two other principles
19 of law, both of which have been recently reaffirmed
15:59:19 20 in the Maycock litigation.

21 Number one, there is an easement to flow
22 water within natural water courses of the State of
23 Wyoming. And if the DEQ were to limit the amount

1 of water, limit the quantity of discharge that
2 could be discharged into natural water courses of
3 the state, that would be impairing that easement,
4 which is a, which is vested in the, in the
15:59:45 5 Constitution.

6 So, limiting quantity for quantity sake
7 would reduce the scope of that easement which
8 exists under the Constitution of the United States.
9 Second, there is a right of condemnation to allow
15:59:57 10 the use of natural drainages to flow water for
11 mineral production.

12 And so, again, were the DEQ to limit the
13 amount of water that could be discharged would
14 deprive mineral development; if you take it in the
16:00:14 15 agricultural context, agricultural development.

16 But, it would limit the rights of industry to
17 exercise condemnation rights to allow for ways for
18 water to be discharged into drainages.

19 And essentially, by seeking to limit
16:00:34 20 these rights, those, PRBRC is running afoul of
21 longstanding policy, reconfirmed very recently in
22 judicial Decisions, under settled principles of
23 constitutional law, and existing statutory

1 authorities. So, we would urge that the Council
2 not accept the invitation to limit the quantity of
3 water and discharge, limit the quantity of
4 discharge water without regard to the quality of
16:01:09 5 water.

6 Finally, if the EQC proceeds to
7 rulemaking on this industry hazard, we believe
8 correctly that the EQC must receive the
9 recommendation of the DEQ on any proposed Rule.
16:01:27 10 And the fact that this is a Citizens' Petition, --
11 Citizens are certainly allowed to bring a Petition
12 forward.

13 The fact that this is a Citizens'
14 Petition does not negate the requirement under the
16:01:38 15 Environmental Quality Act that the EQC receive the
16 advice of the Advisory Board, the Administrator,
17 and the DEQ Director before proceeding to rule
18 making. And in this context, the DEQ is already on
19 record with basically agreeing that it did not have
16:01:56 20 the authority to proceed to regulate the quantity
21 of water.

22 And, it has taken a position that the
23 Agency lacks that authority. That position is but

1 addressed by the Attorney General's, which is an
2 area within the DEQ's own interpretation of its own
3 Rules.

4 And, in fact, on June thirtieth, the DEQ
16:02:17 5 reaffirmed its interpretation in response to
6 comments received on the Agricultural Use
7 Protection Policy to implement Chapter 11, Section
8 20, of the Water Quality Regulations. As the
9 Council's aware, that's the section that deals with
16:02:31 10 protecting agricultural use and setting effluent
11 limits.

12 And PRBRC made essentially the same
13 comment that they are urging the Council to adopt
14 into a Rule here, that the DEQ has the authority to
16:02:45 15 regulate water quantity and should regulate water,
16 water quantity in implementing Section 20. And the
17 DEQ response to comments on June thirtieth
18 indicated that the DEQ's response was, "We believe
19 the Agricultural Use Policy properly interprets
16:03:02 20 both the Statutory and Chapter 1 Regulations.

21 It is true that water quantities and
22 quality are related, and also true that the
23 statutory definition of "pollution," "pollution" is

1 broad, very broad; so broad, in fact, as to
2 preclude every human activity. However, the
3 definition of "pollution" oversight with respect to
4 water quantity, it refers to it, but says nothing
16:03:25 5 of an alteration of the quantity or flow.

6 The act of irrigation itself alters the
7 flow of streams by diverting the water from the
8 stream channel. Certainly this could be construed
9 as detrimental or injurious to the water quality.

16:03:40 10 And, however, the DEQ has not attempted
11 to regulate the quantity because a "lack of,"
12 parenthetical, "or excess of," close parenthetical, is
13 not defined as "pollution." In fact, the Wyoming
14 Constitution and Wyoming Statutes clearly identify
16:03:53 15 the Wyoming State Engineer as being responsible for
16 the management of water quantity.

17 So, the DEQ's position, as expressed in
18 February to the Council, to this very Petition, has
19 been reaffirmed in, on June thirtieth. That's
16:04:08 20 supported by what the Attorney General's Office has
21 already said.

22 So, PRBRC doesn't agree with that
23 interpretation from the administering agency,

1 doesn't agree with the Attorney General's Opinion,
2 and is asking the Council to ignore both. And we
3 are urging the Council not to accept that
4 invitation, because it would ignore the Agency's
16:04:31 5 only interpretation and the State's legal advisor
6 for the State's legal opinion.

7 So, we think you should decline that,
8 and consider the Petitions, and terminate this
9 procedure. On a final note, if, if the DEQ decides
16:04:46 10 to continue down this road, and adopt one of the
11 proposals that's been recommended, we would
12 certainly urge that whatever proceeds be clearly
13 identified so that as the matter proceeds, all
14 parties know exactly what proposal is being put
16:05:05 15 under, under, under discussion for ruling.

16 So, if there are questions, I'd be happy
17 to address them. Otherwise, that's the --

18 MS. FLITNER: Thank you.

19 MR. BURRON: Thank you.

16:05:18 20 MS. FLITNER: Questions?

21 (Whereupon, no response was had.)

22 THE CHAIR: Actually, I have, I have
23 one.

1 Keith, thank you. That was really good.

2 Thanks a lot. I'm struggling with this
3 idea that the only, the only way that you can deal
4 with Regulations is have the Government fix them

16:05:42 5 for you.

6 This seems anti-Constitutional to me.
7 Somehow it seems the power is vested in the people,
8 and, and there should be provisions somehow in, in,
9 in our government and in our state's Constitution.

16:05:57 10 And the way we conduct our affairs is
11 for citizens to be able to bring Petitions whatever
12 way. And I just wanted some clarification on that.

13 If I heard you correctly, the only thing
14 that can bring forth any kind of remedy is, is the

16:06:14 15 Agency itself.

16 MR. BURRON: Here's the -- I appreciate
17 the question. I think it's -- I understand what
18 you're suggesting.

19 The, the Administrative Procedures Act
16:06:25 20 clearly provides a right on the part of a citizen
21 to request rulemaking, to bring the Petition for
22 rulemaking. That position exists within the EPA.

23 However, within the Environmental

1 Quality Act, the rule-making provisions are also
2 very clear that before the Environmental Quality
3 Council adopts a Rule, they must receive the
4 recommendation of the Department. And there is not
16:06:51 5 an exception in the Act that I can read, or even
6 that would appear implied in there, that the
7 Council could proceed without that recommendation
8 from the Director.

9 And clearly under the, under the
16:07:02 10 regulatory scheme that's set up under the water
11 quality provisions and under the provisions dealing
12 with the Environmental Quality Council, it is
13 contemplated that the Advisory Board will consider
14 that, the Administrator will consider that, the
16:07:17 15 Director will consider that, and a recommendation
16 will be made to the Council.

17 In this case, the recommendation has
18 been fairly strongly telegraphed automatically,
19 though. In this procedure, we would certainly urge
16:07:31 20 the Council to give it to the Department and let
21 them do their analysis.

22 In addition, I think under the, the new
23 Council Rules for Procedure that were discussed

1 this morning, I think there's a provision in those
2 Rules that also suggests that prior to rule-making,
3 or in the context of a citizen Petition, there will
4 be a request for, for the DEQ to do an analysis of
16:07:52 5 the citizen proposal before that.

6 So, I think that's, that's at least how
7 we would read the Statute.

8 THE CHAIR: Okay. And I had another one
9 that was kind of more technical.

16:08:04 10 I looked up "black water," and I'm not
11 sure I can -- I just wanted -- If I understand this
12 is correct, it's 41-3-903, "By-product water;
13 definition.

14 By-product water is water which has not
15 been put to prior beneficial use[,], and which
16 is a by-product of some nonwater-related economic
17 activity and has been developed only as a result of
18 such activity [period]. By-product water includes
19 [,], but is not limited to [,], water
20 resulting from the operation of oil well separator
21 systems or mining activities such as dewatering of
22 mines."

23 I'm trying to figure out where this

1 "byproduct" definition fits in the CBM testimony we
2 have.

3 MR. BURRON: The, the State Engineer
4 currently -- As you probably know from information
16:09:00 5 that's been submitted, the State Engineer currently
6 permits CBM wells and the extractions of water
7 incident to that as a beneficial use. That is a
8 prior beneficial, which would, I suppose, calls
9 into question whether it's like byproduct, unless
16:09:19 10 it is within the context of water which has been
11 extracted under a dewater process, and in some
12 cases has a subsequent beneficial use either in a
13 reservoir or irrigation.

14 But when it doesn't, it is
16:09:36 15 unappropriated water. Unappropriated water, under
16 Code to State Engineer's Statutes, is water that's
17 subject or available for appropriation for
18 agricultural use.

19 THE CHAIR: Okay. Thank you.

16:09:49 20 MS. FLITNER: Other questions?

21 (Whereupon, no response was had.)

22 MS. FLITNER: No?

23 Okay, thank you.

1 At this time I would like to, to work
2 through our testimony, public comment. It's ten
3 after 4:00.

4 And I'm going to reemphasize my point to
16:10:06 5 encourage you to tread new ground. We are going to
6 push toward making a decision today, so we'll,
7 we'll be here as long as that takes and as long as
8 we can make progress.

9 But that's the goal. So, that being
16:10:19 10 said, Steve Jones, you are listed first, with, with
11 Ken, Ken Hamilton to follow.

12 MR. JONES: Thank you, Madam Chair.
13 I -- My name's Steve Jones, and I'm representing
14 Wyoming Outdoor Council.

16:10:42 15 And I'll try to be brief. We submitted
16 for your consideration what we titled "Response of
17 Wyoming Outdoor Council to Attorney General Opinion
18 2006 dash-01."

19 And I guess I've decided to focus on
16:10:57 20 that in particular, the AG Opinion, because I
21 didn't agree with it and I thought it was a very
22 important matter for this Council to address and
23 look at carefully. Now, I, I think Powder River

1 has basically used some language from the AG and
2 said, "Well, can you go forward with this anyway?"

3 Because the Attorney General says,
4 "Well, any time you have water quantity that would,
16:11:24 5 that would have impacts, unacceptable impacts on
6 water quality, DEQ can regulate that." We would go
7 further and simply assert, look, let's look at what
8 the purpose of the Environmental Quality Act is.

9 It's to prevent, reduce, and eliminate
16:11:41 10 pollution. So, anything that DEQ's doing that is
11 in that arena, preventing, reducing, or eliminating
12 pollution, DEQ has plenty of authority to regulate
13 within that arena, not only water quality, but
14 water quantity issues.

16:11:58 15 And I discussed several different
16 examples of how they already regulate water
17 quantity substantially right now. And so, you
18 know, mixing the zones, for instance, is, is a
19 water quantity situation.

16:12:15 20 Assimilative capacity, the whole notion
21 of assimilative capacity deals with water quantity.
22 What is the capacity of a stream to assimilate
23 pollution into that stream?

1 Well, to figure that out, you've got to
2 know what the volume of your discharge is and what
3 the volume of the receiving stream is. So, those
4 are all water quantity considerations.

16:12:38 5 What Burron says, that -- What the AG
6 Opinion states is in accordance of law, but you'll
7 note that he doesn't cite any particular provision
8 of the Environmental Quality Act that says that the
9 Water Quality Division cannot regulate the water
16:12:54 10 quantity. It doesn't say that anywhere in the Act.

11 What it does say is, under 35-11-1104,
12 nothing in the Act shall interfere with the
13 jurisdiction of the State Engineer's Office. So,
14 if you're delving a little deeper into what, what
16:13:13 15 DEQ can do and what it can't do in this regard,
16 that would be the thing to look at, is whether or
17 not anything, anything that's been proposed here
18 would interfere with the jurisdiction of the State
19 Engineer's Office.

16:13:24 20 And I hope you'll take the time to read
21 at some point what we submitted, because we went
22 through how the State Engineer is approaching this
23 CBM-produced water. And you'll note that they are

1 very careful, very careful to say this is not to
2 infer any water rights whatsoever.

3 The reason they are allowing the
4 withdrawal of this CBM pond water from the coal
16:13:47 5 seam is simply for the development of the coalbed
6 methane, not for anything that might be going on
7 downstream in terms of using that, that water for
8 ag-, agricultural purposes or anything. They're
9 staying completely away from it.

16:14:01 10 So, so clearly, really, this proposal
11 really has nothing that would interfere with the
12 jurisdiction of the State Engineer's Office. So,
13 there's nothing preventing you from going ahead
14 with this proposal.

16:14:14 15 The other thing I find a little
16 irritating -- We didn't address this in, in our
17 Brief, but the whole idea that somehow the
18 Administrative Procedures Act doesn't apply to the
19 Wyoming Environmental Quality Council is just
16:14:29 20 nonsense. What, what Mr. Burron is saying is
21 repeal by implication, and, and those are
22 disfavored.

23 You -- If you had something in the

1 Administrative Procedures Act that says, and he
2 says he can Petition any agency except the
3 Environmental Quality Council, then I'd agree with
4 him. But the APA doesn't say that.

16:14:54 5 And I think you have to read both the,
6 the Environmental Quality Act and the
7 Administrative Procedures Act in tandem. And
8 obviously citizens have a right to come before this
9 Council by virtue of the APA and petition the

16:15:07 10 Council for a change of rules.

11 I guess I just wanted to say one other
12 thing about what is going on as sort of a bottom
13 line, why this Petition is here before the Council.
14 What's really going on is the quantity of pollution

16:15:21 15 that's coming out of these pipes is causing
16 substantial problems in terms of being able to grow
17 crops like alfalfa, you know, through irrigation,
18 as well as grassland and bottomland.

19 And the effort here is to try to get
16:15:39 20 some sort of handle on this pollution. And really
21 that's a quarrel within the jurisdiction of DEQ,
22 and squarely within the authority of the
23 Environmental Quality Council to do something

1 about.

2 And I'd urge the Council to move this
3 forward to, to a hearing before the public. Thank
4 you very much.

16:15:57 5 MS. FLITNER: Thank you, Steve.

6 Ken Hamilton, and Joanne, I believe it's
7 Tweakly, Tweedy, after Ken.

8 Thank you. Just giving you warning.

9 MR. HAMILTON: Thank you, Madam

16:16:13 10 Chairman. My name's Ken Hamilton.

11 I work for the Wyoming Farm Bureau
12 Federation. There's two items here that I'm going
13 to try to address, and hopefully do so briefly.

14 One of them is whether, the issue of
16:16:24 15 whether the Environmental Quality Act allows the
16 Environmental Quality Council to address water
17 quantity issues. In our previous arguments, and I
18 won't reiterate those, we argued they did not.

19 We would urge you to review our
16:16:39 20 arguments. And I think that those are, are very,
21 in my opinion, persuasive as to why not.

22 The second issue that I would like to
23 address deals with the May eighth, I guess,

1 Petition that the Powder River Basin Resource
2 Council submitted. I'm not quite aware of where
3 we're at in this process.

4 However, based on this latest
16:17:02 5 submission, Appendix I, I'm not altogether sure
6 that you haven't, if you were to go forward with
7 this and adopt it, you wouldn't set your regulatory
8 agency up for a classic Catch-22 situation. And by
9 that, I'm saying that before anybody can apply for
16:17:19 10 produced water, they must comply with Sections
11 A-iii, and three little Is, none of which, in my
12 opinion, would allow for any discharge of water to
13 occur.

14 Now, why is that something of interest
16:17:34 15 to the agricultural community? I've heard a lot of
16 folks talk about the agricultural community here
17 today.

18 Number one, initially our concerns were
19 with the impact this proposed Rule would have on
16:17:46 20 agricultural users other than perhaps just coalbed
21 methane. And I understand the Petitioners have
22 narrowed that down to just dealing strictly with
23 coalbed methane.

1 But looking at the Proposal that they
2 have submitted, I would argue that anyone who
3 currently uses coalbed methane water and the
4 Petition, or their Permit, that if that is to be
16:18:10 5 renewed, in order to comply with these, if they're
6 adopted, it would virtually eliminate the ability
7 to use that. So, I think that that's an important
8 thing to consider, is how much, how far down this
9 path we want to go.

16:18:23 10 Again, I think the Environmental Quality
11 Council has a tremendous burden here to try and
12 decide about this, but we would argue that water
13 quantity issues were not given to the Environmental
14 Quality Council, or the Environmental Quality Act
16:18:41 15 give that to this Council to regulate.

16 Unless there is any questions, that's
17 all I have.

18 MS. FLITNER: Thank you.

19 Joanne, followed by Carolyn Hamilton, or
16:18:58 20 Caroline Hamilton, and Lee Eisenberger (phonetic)
21 after that.

22 MS. TWEEDY: Good afternoon, Ladies and
23 Gentlemen. Thank you for allowing me to speak to

1 you today.

2 I am here with high hopes that you will
3 listen to me. We are against this Petition in
4 many, many ways.

16:19:23 5 We are not organized, as the Powder
6 River Resource Council is, but I would like to
7 speak for myself as a rancher, and, and with, with
8 methane operation on our place for five and six
9 years. And I would like to speak for some people
16:19:39 10 back here that will not speak again in the interest
11 of time, and for many of my friends and neighbors.

12 They would have come. We thought we
13 weren't going to be able to testify, and so they
14 did not come.

16:19:54 15 I can get many, many more here to, to
16 speak to you if that becomes necessary. I
17 understand the Petitioners have about 19 Petitions,
18 and I know one of the, one of the development
19 companies on our ranch alone has 500 people that,
16:20:13 20 that, that they work with.

21 I would say 19 against ten, 500, or
22 2,000 ranchers certainly doesn't make for wanting
23 to change the Rules. Under this Petition, the, the

1 landowner water users have to be, be, be
2 predetermined, and the quantities have to be
3 permitted by the Wyoming DEQ.

4 This would eliminate the current
16:20:40 5 flexibility of utilizing stock tanks, managed
6 irrigations, and in-stream livestock watering,
7 unless each one is identified by the Applicant up
8 front, and the quantities are defined in the NPDES
9 PERT before any water occurs. This would require
16:20:59 10 additional regulatory approval for every stock tank
11 and for every in-stream use by our livestock.

12 The -- I use the water -- We use the
13 water development on our ranch for cattle and
14 livestock operation. We do not irrigate.

16:21:16 15 Without this water during the drought
16 since 1999, our whole ranching operation would have
17 had, had to have been utilized differently. We did
18 use this water.

19 We had it in different areas of our
16:21:29 20 pastures, and our livestock used it to benefit them
21 and the benefit of cash, because they weighed more
22 because they had water, and less, less places to go
23 to get it, or more places to go to get it, they

1 didn't have to go so far. The Petition the Council
2 is hearing would mean that my water would go away,
3 and that my ranch and my neighbors' ranch would
4 suffer.

16:21:56 5 We would be jeopardized. I rely on that
6 water.

7 And I agree with, with the companies as
8 I work with them on what we need to do with it. It
9 is not right for people who are not part of this
16:22:09 10 agreement, and have no stake, and I know some did
11 have stake, but many do not, to come in now and
12 tell me I can't use it.

13 The way I read the Petition, -- I'm not
14 an attorney. I've read it.

16:22:21 15 It is difficult to understand in, in,
16 in, in, in depth. The folks who propose this seem
17 to think that the DEQ should be able to tell how
18 much a cow or a deer or an antelope would drink
19 down to the last drop.

16:22:35 20 That's impossible. On top of that, it
21 isn't how many animals utilize water anyway.

22 If the water's there, they'll drink it.
23 If it's there off and on, they may not even come to

1 look for it until they know it's there again.

2 The water has to be available, and it
3 has to be consistent. I've heard people who
4 brought this Petition tell landowners not to worry
16:23:01 5 about it, because this proposal will not have an
6 effect to their stock watering.

7 That's not true. What their papers say,
8 although it's hard to understand, at least the way
9 I read through it, all the different things that
16:23:14 10 they've filed, that is all water has to be
11 beneficially used, and State Engineer makes the
12 call on whether something is beneficial use or not.

13 Well, the State Engineer doesn't make
14 that decision on our ranch where the water is
16:23:29 15 moving in a stream, so the, the water our cattle
16 drink that flows will no longer be available, if
17 they get what they want. As far as my stock tanks
18 go, the State Engineer doesn't make beneficial use
19 on them either.

16:23:44 20 My ability to water our cattle would be
21 severely impacted if this proposal goes into
22 effect. You should think about that before you
23 make a decision that is going to affect thousands

1 of ranchers in the Basin.

2 The way I understand it, I have a right.

3 I understand and respect other people's right.

4 I have spent a lot of time working with
16:24:11 5 companies on my place. We don't always agree, and
6 everything isn't always going my way.

7 But we can usually get to a solution
8 that everybody's happy with. If the folks who
9 brought this Petition can't or don't want to,
16:24:26 10 that's their business.

11 I'm not going tell them how to run their
12 operation. I would appreciate the same
13 consideration, and not have them change a system
14 that has worked for a long time, and make our
16:24:41 15 agreements with our companies and on our place null
16 and void.

17 That also goes for my neighbor in, in
18 our surrounding area. The, the water on our place
19 is probably different from water in many other
16:24:58 20 places in the Basin.

21 Certainly that must be true. Maybe
22 there are places where we can't irrigate, or, or we
23 can't discharge the water into reservoirs or into

1 tanks.

2 Wherever the water is, the operators
3 must meet water standard, no matter what they do.
4 They have to believe -- This -- They -- It has to

16:25:19 5 -- Even though it's different, it is not a
6 one-size-fits-all.

7 The overwhelming majority of the
8 landowners, in the, in, in the thousands, once
9 again I would like to, to explain and reiterate,
16:25:35 10 want and need this water. I can bring you a
11 Petition if you choose, but we didn't have, we
12 don't have as many people.

13 I am speaking for two back here. If we
14 were to petition the landowners who are in favor of
16:25:51 15 benefit from CBM water, we would certainly have
16 more than 19.

17 If the science is uncertain, don't
18 change the Rules and harm those of us using the
19 water. Let's wait.

16:26:04 20 Let's make sure the science is correct.
21 And once it is correct, let's go forward.

22 I can tell you personally that I have
23 seen my friends and neighbors who have coalbed

1 methane. The lines from their face have been gone,
2 and things have gone well for the last five or six
3 years, due to coalbed methane.

4 Water is a part of that. Yes, there are
16:26:29 5 issues.

6 I understand that. But please, please,
7 think really hard before you change Rules, and
8 change for, for Petitions that, that, to change
9 everybody's Rules then.

16:26:45 10 Thank you.

11 THE CHAIR: May I ask you a question?

12 MS. TWEEDY: Yes.

13 THE CHAIR: Thank you. In 2002, the
14 ranch that I'm on signed an Agreement with the
16:26:58 15 company to use the water.

16 We, we basically said we would be glad
17 to take that water, and we benefit from that water.
18 Appendix H means this: They don't have to come
19 and, and, to me and say, "Will you use that water?"

16:27:13 20 It seems to me a property rights issue
21 is at stake, and I didn't -- I just wanted to ask
22 your advice on whether a person having a signature
23 saying you'll agree to put this water to use on my

1 place, in stock tanks, in reservoirs, in stream
2 channels, with managed irrigation, whatever that
3 is, is that a problem, do you see?

4 MS. TWEEDY: No. As I understand you're
16:27:42 5 asking it, we were asked: Did we want the water?

6 THE CHAIR: Um-hum.

7 MS. TWEEDY: And could we use it for
8 cattle, livestock, whatever we wanted to use it
9 for? And, yes, we did sign.

16:27:52 10 And, no, I don't see that as an issue,
11 or as a problem. Excuse me.

12 We took one of our neighbors' water
13 because they were concerned about it at that time
14 because it was new. And our water in our area is
16:28:05 15 excellent water, better than I drank all my life.

16 And, and after it was discharged and
17 the, and the pipes had gone in to our ranch, in to
18 our reservoirs, they changed their mind and, and
19 wanted the water. But by that time, the
16:28:21 20 infrastructure was already in and we, and we took
21 their water.

22 But if I'm understanding you correctly,
23 no, I don't see that as a problem.

1 THE CHAIR: Okay.

2 MS. TWEEDY: No.

3 THE CHAIR: Thank you.

4 MS. TWEEDY: Questions?

16:28:36 5 MS. FLITNER: Thank you.

6 Is it Carolyn?

7 MS. HAMILTON: Caroline.

8 MS. FLITNER: Caroline, welcome.

9 Lee Eisenberger after that, followed by

16:28:48 10 Bob Bache. And feel free to correct my --

11 MS. HAMILTON: Thank you for letting me

12 speak. I'll agree with the previous two speakers.

13 We, ourselves, have coalbed development

14 on our property, and discharge of the water has

16:29:04 15 enhanced the grass and pasture land on our property

16 that they, we own on Lower Prairie Dog in northern

17 Sheridan. Irrigators and support personnel have

18 been more than agreeable in continuing with a

19 win-win solution, and increase in resources and

16:29:20 20 production, and assistance with, with our

21 grassland.

22 So, many of our neighbors in the area

23 are just waiting and waiting for the development,

1 because, especially in this dry year, grass, grass
2 and pastureland could be enhanced with, with water
3 that they don't have now. And the fires, as you
4 know, in, in, the fires in, in Montana are just
16:29:44 5 increasing as we speak.

6 So, I oppose any changes in Rules and
7 rule-making. Thank you.

8 MS. FLITNER: Thank you.

9 Questions?

16:29:52 10 (Whereupon, no response was had.)

11 MS. FLITNER: Thank you, Caroline.

12 Lee Eisenberger.

13 MR. EISENBERGER: Thank you, Ladies and
14 Gentlemen of the Commission. We own a ranch on
16:30:08 15 Campbell/Converse County Line.

16 We're in the south end of the Powder
17 River Basin. Our water there is a lot different
18 than the water that's north, and we all know that.

19 They know that. And one thing that I
16:30:20 20 can see that we need to do here is have
21 site-specific on water, because you can't have a
22 blanket policy to cover all the water, because the
23 water's different from one ranch to the other.

1 We've got a well at our house that we
2 can't bring the water out of. I can go to the
3 methane water that's pumped into my corrals, and
4 drink it and be completely fine.

16:30:40 5 But the water that we have right there
6 at our house, can't drink. It's that -- I mean,
7 and the wells are within 300 yards of each other.

8 And so you can't have one blanket policy
9 cover all the water in, in the Powder River Basin.

16:30:53 10 It's not going to work.

11 You need to have more site-specific.
12 Some of the things that we've used, we've used it
13 for stock water.

14 We've planted fish. We use -- The
16:31:08 15 wildlife has utilized the water probably more,
16 even, than our livestock have.

17 The wildlife is more plentiful. We have
18 more species out there now than we ever have
19 before.

16:31:22 20 We've got ducks and geese that nest
21 year-round on us that are there that have never
22 been there before, before we had the methane water,
23 which also enhances the sportsman's, you know,

1 being able to come out and duck hunt or goose hunt
2 or whatever they wanted to. We also use it for
3 irrigation on our trees around our house, and we've
4 had no problem with the water.

16:31:43 5 We have had no problem killing of any of
6 the trees. We have red cedars, Colorado blue
7 spruce, elm, caragana, Russian olive, and lilacs,
8 and we haven't killed anything yet with the water
9 that we have there.

16:31:58 10 So, the water quality is one thing we
11 need to work on. And one other thing is, as they
12 were talking a little bit about the erosion and the
13 soil damage.

14 And we have not had any of that with
16:32:17 15 methane water, because most of the channels at our
16 place have been fairly well grassed over for the
17 last five years, or six years, because we haven't
18 had any runoff water to take that grass out. So,
19 we've had no erosion problems and we've had no soil
16:32:32 20 damage from salinity in the water.

21 That's all I have. Thank you.

22 THE CHAIR: Thank you.

23 MS. FLITNER: Thank you.

1 Any questions?

2 (Whereupon, no response was had.)

3 MS. FLITNER: Thanks.

4 Bob Bache. Is that right, Bache?

16:32:46 5 Bob, say your last name.

6 MR. BACHE: Yes, ma'am, I will. Thanks,

7 Madam Chairman.

8 I'm Bob Bache. I have a ranch in Clear

9 Creek, the Fall Valley.

16:32:56 10 I'm chairman of the Powder River Basin

11 Resource Council, and I am one of the Petitioners.

12 Now, if I believed that Keith had characterized our

13 Petition correctly and honestly, I'd be ashamed to

14 admit that I'm one of the Petitioners.

16:33:14 15 That was the darndest convoluted bunch

16 of red herrings and circular logic I've ever heard.

17 But I'm not going spend your time tearing into him.

18 I just have a couple of philosophical

19 points which I wish you'd consider. First of all,

16:33:32 20 you've, you've all heard the adage that if you've

21 got a good case, argue facts, and if you don't,

22 argue the law.

23 We've heard a lot of talks about, today

1 about how many AG Opinions can dance on the head of
2 a pin, and whether or not you have to ask John
3 Owens' permission to change this Regulation.

4 It's a narrow, parsed, neat little
16:33:59 5 questions, which bring me to my second
6 philosophical comment. I think it was a David
7 Halverstan book in the '70s, when the first energy
8 crisis, when Congress passed the first fumigant
9 standard for motor vehicles.

16:34:16 10 David Halverstan pointed out that the
11 American auto industry hired a thousand attorneys,
12 the Japanese hired a thousand engineers, and we
13 know what happened. I'm here to say that what
14 we're looking for as an organization, what we're
16:34:32 15 looking for as Petitioners is a practical solution
16 to problems that nobody in this room really doesn't
17 believe exists.

18 And the only way to get at those
19 solutions is for you to consider our Petition
16:34:50 20 favorably, and to, DEQ to regulate these
21 potentially huge problems in an intelligent and
22 scientifically-based way. And I thank you for, for
23 hearing us today.

1 THE CHAIR: Thank you.

2 Questions?

3 (Whereupon, no response was had.)

4 MS. FLITNER: Thank you.

16:35:08 5 And the final commenter today will be
6 Mona Mitzel.

7 MS. MITZEL: Yeah. I'm the one who
8 brought those vegetables over there.

9 I live on Lower Clear, Clear Creek. My
16:35:24 10 husband and I own a farm and ranch there.

11 We have a cow/calf operation, and I have
12 a vegetable operation. Seems to me so often the
13 decisions that are made that affect us directly are
14 made in rooms and places where we don't have time

16:35:40 15 to be.

16 And I want to speak today for us, and
17 for other people who are so busy haying and
18 irrigating and doing what we have to do just to
19 survive. It seems to me common sense that if there
16:35:54 20 are large amounts of water poured in drainages that
21 are going to empty into Clear Creek, and the water,
22 the coalbed methane water that I've seen the
23 readings of is poor water, poor-quality water,

1 seems to me that that water will deteriorate the
2 quality of the water in Clear Creek.

3 And we rely on that water to irrigate
4 our crops. I rely on it to irrigate my vegetables.

16:36:22 5 It's a life-long dream. It's something
6 that I cherish; a thing I love to do.

7 The irrigation water that comes down our
8 creek is beautiful water that comes straight out of
9 the mountains. Sometimes the EC's about 88.

16:36:37 10 And right now there's EC water that
11 comes to our place that's about in the 600s through
12 the irrigation. Coalbed methane water is not of
13 that water quality in any way, shape, or form.

14 So I'm just, I would just like to urge
16:36:53 15 you, speaking for those farmers and ranchers who
16 can't be here today and who are busy, please go
17 forward with the Petition to protect those people
18 who need your protection and need your intervention
19 to protect our land and our way of living.

16:37:12 20 MS. FLITNER: Questions?

21 (Whereupon, no response was had.)

22 MS. FLITNER: Thank you.

23 Did I miss anyone wishing to comment?

1 (Whereupon, no response was had.)

2 MS. FLITNER: Okay. Thanks.

3 And thanks to all of you who made an
4 effort to be here today. The, I believe the next

16:37:27 5 ten will -- Do we close the Hearing and then go
6 into discussion as a regular meeting, or does it
7 matter?

8 MR. LORENZON: There isn't a Hearing, so
9 just close your discussion and, and go on to it.

16:37:40 10 MS. FLITNER: Close the discussion?

11 Um-hum.

12 You get the gavel.

13 MS. FLITNER: How's everybody doing? A
14 little break in order here maybe?

16:38:05 15 Okay, let's take a, take a five- to a
16 ten-minute -- A little more break?

17 (Whereupon, at 4:38 p.m. MT, those
18 present took a brief recess and returned at 4:54
19 p.m. MT, after which the following occurred:)

16:38:13 20 DISCUSSION:

21 THE CHAIR: Thank you all for your
22 patience. I guess we're at the, the fun part of
23 the meeting.

1 I want to recognize all the work that
2 everyone has done, and, in bringing this issue
3 forward and discussing it so openly. I think it's
4 in the spirit of our state and our state part of
16:54:53 5 the citizen dialogue that we should have.

6 So, I, I commend you all. And I have to
7 say, I personally have appreciated everybody's
8 efforts and everyone's comments.

9 So, having said that, I guess I will
16:55:07 10 open it to the Council to say where we go next.

11 Does anybody want to take a, a jump off the, off
12 the first cliff?

13 MR. MOORE: Mr. Chairman?

14 THE CHAIR: Thank you. Mr. Moore.

16:55:24 15 MR. MOORE: Back in February, this
16 Council did make a decision to initiate rulemaking
17 under the Petition request. We've been through
18 some convolutions since then.

19 I really haven't seen anything, or heard
16:55:39 20 anything that changes my mind on the need to at
21 least go into that formal rulemaking, initiate the
22 process, and, and do formally what we've been doing
23 informally for a while so we can actually get a

1 decision made on whether the Rules are, are
2 appropriate and necessary. I don't know if we need
3 a Motion or not, but I looked at Ms. Fox's last
4 slide and it says, "Set for rule-making hearing,
16:56:09 5 promulgate Appendix H and Appendix ICPM."

6 That's what I suggested back in
7 February, to separate the two out. So, I'm
8 apparently comfortable with that.

9 And I think that's what we ought to do,
16:56:25 10 is go ahead and set for rule-making hearing what we
11 decided we were going to do in February. And if we
12 feel we need a Motion to do that, so I would move.

13 THE CHAIR: Is that a Motion?

14 MOTION:

16:56:39 15 MR. MOORE: I will move that we can go
16 ahead and set the rulemaking according to the March
17 second, 2006, letter we received from Ms. Fox.

18 THE CHAIR: That Motion has been made.
19 Is there a second?

16:56:54 20 A MEMBER: I'll second it.

21 THE CHAIR: It's been --

22 MS. HUTCHINSON: Question. Question.
23 Clarification. So, you want to move

1 forward with rulemaking on the Rule that's the
2 Petition, essentially?

3 MR. MOORE: Correct.

4 THE CHAIR: Further discussion?

16:57:17 5 MR. BOAL: Mr. Chairman, it's not often
6 that I disagree with this guy over here, but I
7 disagree. And I, I'm going to speak against the
8 Motion.

9 I want to say a couple of things. First
16:57:36 10 of all, there are good people on both sides of this
11 issue, and, and it breaks my heart to, to see the
12 community that we have out there in the Powder
13 River Basin be divided by that issue, but that's
14 life.

16:57:48 15 The second thing I want to say is, you
16 know, Steve, I enjoyed your analysis, and Ms. Fox,
17 I enjoyed your analysis as why the AG's Decision
18 might be wrong, but as a practical matter, you're
19 just asking too much to ignore the ruling by the
16:58:14 20 Attorney General. And the other thing that was
21 brought home was: We need practical conclusion to
22 a known problem.

23 And when I look at what we have in front

1 of us, is Appendix 4, which the Attorney General
2 has told us we don't have authority to promulgate.
3 We have Appendix I, which, again, the AG has said
4 we don't have the authority to regulate that.

16:58:40 5 And then we have the AG's language which
6 was drafted into some sort of proposed rule in the
7 last one. And I find that language to be too
8 amorphous, too unworkable to, too too.

9 It doesn't meet your standard at all to
16:58:56 10 practical solutions to known problems. So, I want
11 to start over.

12 I want to start over with a set of Rules
13 that does what you suggested. And so I'm going to
14 vote against this Motion, because I think we need
16:59:11 15 to terminate this rule-making proceeding and start
16 again.

17 We have the time, and we've learned a
18 lot through this process. But in my view, what we
19 have in this proceeding now is kind of a cobbled
16:59:26 20 mess.

21 And I live with those all the time. I
22 understand that's part of the territory, but we
23 don't have to have one in this proceeding.

1 So, I think it's time to say we've
2 learned some good things. Put this episode behind
3 us.

4 So, I'm going to vote against this
16:59:43 5 Motion. And that's, and I just wanted the Council
6 to understand why I'm doing that.

7 I guess I wanted the folks out there to
8 understand, as well.

9 THE CHAIR: You getting ready to speak?

17:00:00 10 MS. HUTCHINSON: I wanted to ask them
11 some questions.

12 MR. BOAL: You're asking me questions?

13 MS. HUTCHINSON: Yeah. I want to ask
14 you questions, Dennis.

17:00:09 15 And I'm understanding that I'm going to
16 be a little bit of a Devil's advocate here for a
17 moment. I, I agree with everything you've said.

18 I have -- I, what I, I agree with your
19 end goal. I'm, I'm not sure I agree with how we

17:00:26 20 get there in here, and that's why I want to ask you
21 a couple of questions.

22 And that is: I think what you're asking
23 for is, or what you're stating, and this -- I guess

1 I should state this for myself. -- but, but that,
2 that there were issues out there that still need to
3 be resolved; that the way that the issues have been
4 handed to us as far as in an actual form of Rule,
17:00:52 5 it is unworkable.

6 MR. BOAL: Right. I think we need to
7 start from a better point.

8 MS. HUTCHINSON: So my -- Let me go for
9 a second. So, my question is: Is it really better
17:01:05 10 to say, "Let's bag this thing and come in with a
11 better Rule"?

12 Or, is it better to set and think
13 through the rule-making and, through the
14 rule-making process; try, work towards some
17:01:19 15 consensus of a Rule that's workable, or what we're
16 starting from is too far away?

17 MR. BOAL: This is what I think. This
18 is too far away from that.

19 And you know we won't get any meaningful
17:01:31 20 input from the mineral industry. They'll just say,
21 "Don't do it, don't do it."

22 We don't get much meaningful input from
23 DEQ. So, I think we need to start with a better

1 Rule.

2 And, and that's why I wanted to
3 terminate this proceeding.

4 MS. HUTCHINSON: And how, how will we
17:01:48 5 start with a better Rule?

6 MR. BOAL: Well, hopefully, -- The
7 theory is that Petitioners have heard the comments.
8 They've learned as much as we have in this
9 proceeding, and they'll come back with us with a
17:01:59 10 better Rule that will address these concerns.

11 That's the theory of the system. And,
12 and I guess I'm going to hope that that comes to
13 play.

14 MS. HUTCHINSON: And so what suggestions
17:02:12 15 would you give the Petitioners to make a better
16 Rule?

17 MR. BOAL: Well, some of the things that
18 were talked about today made sense to me, like:
19 Where are we measuring this effluent?

17:02:27 20 That made sense to me. Stuff like that.

21 Looking at some of the points that were
22 made by the professors from the University of
23 Wyoming made sense to me. But, you know, I'm

1 supposed to be the reviewer, not the instigator of
2 all of this.

3 MS. HUTCHINSON: Um-hum.

4 MR. BOAL: And so I just, I, I just
17:02:52 5 think there needs to be more work done on that end
6 of it. And, and everybody sharpened their
7 arguments.

8 The arguments at this Hearing, as
9 compared to the previous Hearing, were much better,
17:03:04 10 in my, of course, opinion. And, and so we're
11 learning a lot.

12 But I, I don't like this, "Okay, how
13 about this Rule then?" And that's kind of what we
14 did with the, with the AG's Opinion.

17:03:18 15 We've jumped on their language and
16 acclimated it to a proposed Rule. And I didn't
17 think it was very workable.

18 That's my opinion. So that's why I'm
19 going to vote against it.

17:03:29 20 I think that we've learned a lot. And
21 those could be wrapped into a better starting
22 place.

23 And a better starting place would mean a

1 better product from this Council. So, I'm going to
2 make that vote, you know, with a heavy heart, but
3 that's how I'm going to vote.

4 MR. MOORE: Mr. Chairman?

17:03:48 5 THE CHAIR: Yes, Mr. Moore.

6 MR. MOORE: I certainly respect Mr.
7 Boal's opinion. I've trusted his advice many times
8 in the past.

9 I guess my concern, or my perspective
17:04:00 10 is, is this: I think we all agree there's a
11 problem that the current Rule doesn't address.

12 And I'm trying, like to try to find a
13 way to, to find a solution to what that problem is,
14 without adversely affecting other interests. And I
17:04:17 15 think we can do that from this starting point,
16 given this.

17 The idea of a rule-making process is to
18 take public input to try to find the best solution
19 to a problem. That's, that's why you go out and
17:04:34 20 get public comment to try to sharpen the Rule.

21 So, I don't think we're at an
22 irrevocably bad starting point at this point. I
23 think the problems have been identified, and a

1 potential solution has been identified.

2 And if Council decides to go forward, I
3 would encourage all the people who have talked to
4 us about their perspective, to try to look at ways
17:04:56 5 that the Rule can be changed to meet all the end
6 goals that everybody has talked about.

7 (Whereupon, at 5:04 p.m. MT, members of
8 the Council conferred, out of the hearing of
9 others, after which the following occurred:)

17:05:16 10 MS. FLITNER: If I may, Mr. Chairman?

11 THE CHAIR: Yes.

12 MS. FLITNER: In an effort to keep up
13 with my Council members at the far end, eliminate,
14 do you not see the ability to address the things
17:05:32 15 that made sense to do today, Dennis? For instance,
16 in discussions around the current Appendix H, if,
17 if we were to proceed with those discussions, which
18 of your concerns could not be encompassed?

19 I mean, I -- And I should -- I'll give
17:05:56 20 you a second. I absolutely agree with you that,
21 that the square-peg-in-a-round-hole solution is
22 never optimal.

23 And I am, I am divided, as all of you

1 were, by the, you know, this, the original Petition
2 filed. It will be, you know, coming up on a year,
3 and I, I, I just hesitate to start all over again,
4 and wonder if that's in the best interest of, of
17:06:26 5 anyone.

6 So, there are better people than us to
7 write the Rules; that's for sure. But I'm trying
8 to figure out if there's a way to salvage some of
9 the process.

17:06:40 10 And I need you to, to put my mind at
11 ease that there is no way, or there is a way.

12 MR. BOAL: See, I don't, I don't think
13 anybody will be addressing those things, see. As I
14 pointed out, the mineral industry won't be
17:06:59 15 suggesting anything.

16 DEQ won't be suggesting anything. And
17 the Proposal is, is that we adopt the AG's
18 language.

19 And, and I think that's what, that would
17:07:11 20 be the Rules that we'll be asked to adopt. And,
21 and we'll hear about the unworkability of that
22 approach.

23 And, and I don't, and I don't see

1 anybody coming forward with those kinds of
2 proposals.

3 MS. FLITNER: They're knocking. It's
4 the Attorney General now.

17:07:40 5 Who locked that door? The, the --

6 MR. BOAL: That, that's -- I, I think we
7 need more ideas on this, and we don't have the
8 capacity on the Council to generate the ideas.
9 They have to come from either the regulated

17:08:02 10 industry or the regulators, or the citizens.

11 And that's my concern.

12 THE CHAIR: I would like to ask the
13 Council's indulgence to permit me to sort of see if
14 John Corra would come forward so he would talk to

17:08:23 15 us on how this might proceed.

16 Is this something the Council would
17 agree with?

18 MS. FLITNER: Yes, certainly.

19 THE CHAIR: I'll take that on a
17:08:35 20 consensus. Thank you.

21 Hopefully this takes care of any
22 procedural gaps. If that's okay.

23 Would you do that?

1 MR. CORRA: I'll try, Mr. Chairman.

2 THE CHAIR: Thanks, John. John, today,
3 you know, we've, we've had a couple of
4 conversations revolving around this kind of moment.

17:09:00 5 And, and so I guess I wanted to ask of
6 you what you foresaw. And that's you, speaking off
7 the top of your head.

8 And I know that's uncomfortable, and I
9 apologize for that. But where would this -- Where
17:09:20 10 would we go?

11 MR. CORRA: Well, Mis-, Mis-, Mr.
12 Chairman, I'd like to maybe, I'd like to build a
13 little bit on what Mr. Boal commented on. And this
14 just kind of comes from my, my natural, you know,
17:09:40 15 just my, my, my, my answer is to try to define the
16 problem and then home in on that.

17 I don't know whether the Council can, or
18 you can see where I might be able to bring the
19 parties together in some form or fashion to go at
17:09:59 20 this in a different way, where you define problems
21 and then see where you can go from there. There's
22 two things that are in my mind that, that follow on
23 that.

1 The one is that at one point we had a
2 rulemaking on the uranium Rules a while, while
3 back. And there was quite a bit of, of contention
4 between the EPA and the industry.

17:10:24 5 And the Council actually directed us to
6 try to find a way to, to find some common ground,
7 because basically what we had done for you was
8 present you with a dilemma. And that turned out
9 okay.

17:10:36 10 So, that process, I don't know whether
11 it's doable or not, but that's one thing. The
12 other thing is that I want to tell you a little bit
13 about the Coalbed Methane Task Force that was
14 authorized by the Legislature this past session.

17:10:50 15 That -- And I'm on that Task Force.
16 That Task Force, one of its tasks is to review the
17 existing Rules, Regulations, and Statutes
18 concerning the coalbed methane water, and its
19 discharges and use, and so on.

17:11:07 20 That group is required to provide a
21 report to, the Leg-, Preliminary Report to the
22 Legislature on December first, I think, of this
23 year. And that Committee has on it 15 members

1 altogether, four of whom are legislators.

2 And so in some ways, some of these
3 questions are being worked by another body that
4 might provide a little more clarity on statutory,
17:11:28 5 on the, on the statutory side. And so one option
6 is to, is to wait until you see what that team
7 comes up with.

8 So, I've, I'll stop there for the
9 moment.

17:11:42 10 THE CHAIR: Okay. Well, John, I guess
11 what I was thinking is I didn't know -- You know, I
12 -- Looking at these Rules, they were finally signed
13 by Governor Freudenthal in 2004.

14 I remember working on these Rules. I
17:12:01 15 remember the discussions we had and passed.

16 And there's a lot that's done in these
17 Rules. There are a -- We have strung a number of
18 chapters into a more workable one.

19 There was lots of flaws. I remember at
17:12:17 20 the time we worked on that.

21 To re-do that process, seems to me that
22 took an enormous amount of effort on the part of
23 your staff. And it seems to me this is the one

1 area, and I say it's the one area that continually
2 seems to show up from time to time.

3 And this issue is the same in 2000 as it
4 was in 2006, because, as you well know, I mean,
17:12:40 5 many of the same categories, of the same
6 characters. The Task Force has the same cast of
7 characters as before.

8 And I think it's beholden on somebody to
9 make some Motion on this. And there's good work to
17:12:58 10 do, and I want to do that.

11 As far as waiting, I'm not sure what's
12 to be gained from waiting and waiting and waiting.
13 I think we want to do the right thing.

14 I'm not saying we want to act outright,
17:13:10 15 but I do think that we can, if, if we go to
16 rulemaking, then it goes, I presume, to the
17 Department of Environmental Quality to ask for your
18 advice on how to proceed.

19 MR. CORRA: Well, Mr. Chairman, let me
17:13:28 20 go back to something you said earlier, and then to
21 the last point, because I, I mean, the reminder of
22 all that went, the Department went through when it
23 did Chapter 2. And at the, at the Hearing in

1 February, I, I brought that up to the Council in
2 terms of taking a look at an AG's Opinion before we
3 launched, because we didn't want to do a lot of
4 work for, you know, for naught.

17:13:54 5 And, and I just want to make a comment
6 that if we were to take the existing packages the
7 way they are, -- And I'm not sure, sure that
8 Appendix I has had full, the modifications of
9 issues has had a full look. We're starting with
17:14:10 10 something and trying to make it into something
11 that's workable, that probably would be a, more
12 work, labor-intensive than trying to hone in,
13 narrow down, and find the problem.

14 But I just want to make that comment,
17:14:26 15 because these things are very, very contentious
16 matters. Currently we were real, doing the policy
17 on bottomland water, at least part of our Advisory
18 Board.

19 Extremely contentious. It's going to
17:14:40 20 take -- It will take a long time, anyway.

21 To the other comment about, about our
22 role in this matter, the, I, I really, I'm a little
23 reluctant to say what that role is, without

1 thinking about it some more. You know, I, I, I
2 came today really not prepared, other than to see
3 that you all were going to decide, and then go from
4 there.

17:15:06 5 The -- Obviously I've said off the
6 Record, and I'll say it on the Record, you know,
7 we're, we're available to help in all cases to
8 advance this policy and to, to do the right thing.
9 But I can't help you much with that last question,
17:15:23 10 at least at this time.

11 THE CHAIR: Okay. That's fine. That's
12 fine.

13 Well, is there further discussion?

14 John?

17:15:43 15 MR. MOORE: Mr. Chairman, just one other
16 point; that, in moving forward on rulemaking, I
17 will hope to hear more discussion. And we didn't
18 hear hardly any, or didn't, argument today on the
19 proposed changes to the effluent limits.

17:15:59 20 And I think that's important to advise
21 people, that when we do go into rulemaking, I, for
22 one, would like to hear some more statements for or
23 against the proposed effluent limits, other limits

1 that should be proposed, because there's a fairly
2 drastic change in the sulfates and dissolved solid,
3 and barium is proposed as a new effluent.

4 I certainly think that that's something
17:16:27 5 that we can look at and get some feedback on as to
6 what's achievable and what's acceptable quantities
7 there of a discharge, whether the current
8 Regulations are adequate or not. Does that make --

9 (Whereupon, at 5:16 p.m. MT, members of
17:16:48 10 the Council conferred, out of the hearing of
11 others, after which the following occurred:)

12 THE CHAIR: Okay. Well, is there any
13 further discussion?

14 It seems to be quiet.

17:17:01 15 MS. HUTCHINSON: Yeah, if I could keep
16 my mouth shut. I guess I'm still struggling with
17 this.

18 I've struggled with the original
19 Petition, not because I didn't like the way the
17:17:17 20 Rule was written, but I also felt that the, --

21 (Whereupon, at 5:17 p.m. MT, Ms.
22 Lorenzon and the Chair conferred, out of the
23 hearing of others, after which the following

1 occurred:)

2 MS. HUTCHINSON: -- the, everybody needs
3 to move forward, essentially, because I've been
4 sitting in Campbell County quite a few years now,
17:17:31 5 and the, the, the complaints have gotten a lot
6 quieter, but the fact that they still exist bothers
7 me.

8 So, I'll still say I don't like the
9 revised Rule either. I think that somehow we,
17:17:47 10 we've got a lot of people here that are mainly
11 concerned with their private-property rights.

12 They want the right to develop the water
13 and use it. And there's people that want the right
14 to refuse the water on their property.

17:17:59 15 To me, that's the crux of the issue.
16 And I don't know necessarily how we can write an
17 environmental Rule that's going to apply statewide
18 that's going to respect that private property
19 right.

17:18:12 20 I do struggle with that. On the other
21 hand, I think we need to be open to solutions and
22 processes.

23 And at this point in time, in my mind,

1 this is the process that's going to move things
2 forward. But understand, at the end of the process
3 we may decide not to change the Rule at all.

4 So, you know, I don't want anybody going
17:18:32 5 into this, that, thinking that definitely the Rule
6 is going to change, because when all's said, if
7 nothing comes up that's workable, then it may not
8 change. So, anyway, with that being said, I'll
9 just say I'm still struggling, and I'm not sure
17:18:49 10 there is a workable solution.

11 THE CHAIR: Okay. All right.

12 Well, is there any further discussion?
13 Any further comments?

14 Yes.

17:19:02 15 MS. HILL: I'd just add that,
16 representing the Attorney General, that he's
17 offered his Opinion, and we believe that Opinion to
18 be, to hold. But whether the Petition could be
19 fixed to comply with what people view as the law, I
17:19:17 20 really couldn't say.

21 But you have that in front of you. And
22 that's a positive matter for you to decide how you
23 want to go.

1 THE CHAIR: That is a good comment.

2 Appreciate it.

3 I have one question in that regard.

4 Were we out of order in passing this initially?

17:19:35 5 MS. HILL: I don't know. I'm certainly
6 not going to say.

7 THE CHAIR: Okay.

8 MR. BOAL: It's on the Record you don't
9 know.

17:19:44 10 MS. HILL: Yes. If testimony --

11 MS. FLITNER: I'm interested in Ms.
12 Hill's comments. And obviously they relate back to
13 something one of you said.

14 I believe it was you, Kate, that, that
17:19:57 15 we may have flexibility with this Petition to amend
16 it, to change it, to modify. And I'm interested to
17 know if, if, you know, if -- Can you comment on
18 that, Bridget, now?

19 Can -- Again, I'll just look for ways
17:20:12 20 that we can exploit the agreement that we're
21 hearing right now, but stay procedurally intact.
22 So, everybody agrees that we're, we're sort of
23 struggling with it, square peg in a round hole, if

1 there's such thing as a square peg.

2 If there is, I think we've found it

3 today. But do we, can we further change?

4 Can we further change the existing

17:20:39 5 Petition? We, we wouldn't, obviously, but --

6 MS. HUTCHINSON: No, we wouldn't.

7 MS. FLITNER: Well, we wouldn't, would

8 we? They would, based on what they've heard today

9 if --

17:20:52 10 MS. HILL: Well, --

11 MS. FLITNER: -- we're --

12 MS. HILL: You know, you're in a

13 rule-making process. We offered advice on that.

14 Your options were, you know, to do

17:21:02 15 whatever it is that you generally do in a

16 rule-making process. And I think that applies to

17 this.

18 The regular options you have in a

19 rule-making process, because that's what you're --

17:21:16 20 MR. MOORE: Based on past experiences,

21 when we go into rulemaking, we could wind up with

22 an elephant when we thought we were ending up with

23 a donkey, except --

1 MR. LORENZON: Except let me say
2 something. Thank you.

3 You were -- We are also limited by the
4 parameters of the Notice that we issue. So, if,
17:21:43 5 say, for argument, you go into public hearing,
6 another public hearing with the Attorney General's
7 language that PRBRC has proposed as an alternative,
8 you can work within a certain boundary.

9 Of course, it's undefined, but we've
17:21:58 10 seen it in many of our rulemakings. And you can
11 modify it.

12 If you get too far afield, then you're
13 outside the bounds of the Notice of the meeting to
14 the public. Now, what happens then is that we
17:22:14 15 would issue another Public Notice, you know.

16 If you see, if you see language signed,
17 well, it's not quite the language there, but it's
18 over here, then the process goes on. And, in fact,
19 you have to start over with a new Notice so that
17:22:27 20 people who want to come in on that specific
21 language -- So it's not a drop-dead, but it is, you
22 do have walls, and it's Public Notice.

23 MS. HILL: That's right.

1 THE CHAIR: Well, and I wanted, want to
2 make sure this Council understood that we aren't on
3 a fishing expedition.

4 MS. HUTCHINSON: I have got one more
17:22:50 5 question for the Attorney General.

6 THE CHAIR: Yes.

7 MS. HUTCHINSON: So, Bridget, is it your
8 opinion that the current Petition as written would
9 not be, as it's written today, would not be
17:23:05 10 acceptable to the AG's Office?

11 MS. HILL: If I'm understanding, like,
12 the initial Petition, we said no.

13 MS. HUTCHINSON: Umm. Um-hum.

14 MS. HILL: And so, no, that doesn't
17:23:14 15 apply.

16 MS. HUTCHINSON: And have you assessed
17 the revised Petition?

18 MS. HILL: I think we've said no to that
19 one, too. We looked at that one, and then last one
17:23:25 20 that incorporated, we haven't offered some opinion
21 on that.

22 If you wanted us to do that, we would be
23 happy to. That's why I was saying I really

1 couldn't say whether it would hold or not.

2 MS. HUTCHINSON: So now I'm sitting here
3 struggling with the way that the Motion's been
4 proposed. And, you know, we're walking into
17:23:46 5 something that, not that we can't change it during
6 the process, but we're walking into the Petition
7 knowing that the AG's stated this does not comply
8 with his interpretation of the law.

9 MR. BOAL: As I said, we have Appendix
17:24:05 10 H, and I, which we know we don't have authority.
11 And then we have this latest rendition of the AG's
12 language, which I think is too amorphous to be
13 useful.

14 And I think we need to start with a
17:24:17 15 better starting place. But I'm ready to vote.

16 THE CHAIR: John, I'm going to break my
17 protocol again, please.

18 MR. CORRA: Thank you very much, Mr.
19 Chairman. I'll state here this, I'm not clear on
17:24:34 20 the third alternative.

21 I'm familiar with the Appendix H
22 rendition and I'm familiar with the Appendix I, but
23 you all are talking about a third alternative here

1 that some of us, we're not sure we understand what
2 that is. Has there been a third set of Rules
3 drafted for the Council to review by the Attorney
4 General?

17:24:57 5 MS. HILL: We did not review that last.
6 And I think everybody's received the last set as
7 what came in the Status -- The language as it was
8 in the Status Report that they filed is what we're,
9 was what I am referring to when I say that.

17:25:17 10 MR. MOORE: Me, too.

11 THE CHAIR: Is everyone clear on where
12 we are?

13 MR. BOAL: I am.

14 THE CHAIR: Okay.

17:26:11 15 (Whereupon, at 5:26 p.m. MT, members of
16 the Council conferred, out of the hearing of
17 others, after which the following occurred:)

18 THE CHAIR: John Corra, one more, one
19 more question.

17:26:32 20 MR. CORRA: Yes.

21 THE CHAIR: If, if we go to
22 rulemaking -- This is just an "if" question. If we
23 go to rulemaking and it does go to you, it would go

1 through the Advisory Board and through that
2 process? Are you fairly confident of that?

3 That's sort of asking the same questions
4 I asked before, I know, but I thought I'd ask it in
17:26:52 5 a less contentious way.

6 MR. CORRA: Well, the -- Our process of
7 the rulemaking has a number of steps in it, and we
8 can get some details on that for you later. Or, if
9 one of my staff members is still here, he could
17:27:09 10 probably cite it.

11 But we, when we choose to initiate
12 rulemaking, we write a letter to the Governor that
13 basically informs the Governor about what we're
14 thinking before doing, and asks for his
17:27:24 15 acquiescence for letting us go forward with
16 rulemaking. And that's -- In addition to that,
17 there's an Application to go to LSO, as well as
18 the, I think it may go to Secretary of State.

19 So, there's a lot of notification from
17:27:40 20 putting everybody on notice that we're thinking
21 about rulemaking. After that, we go to work
22 developing the Rule, or we have already some of
23 work at developing the Rule.

1 Essentially, we, we start at
2 understanding what we're writing the Rules to, to
3 fix. And we always start with a statutory
4 question.

17:27:59 5 You know: Do we have the authority to
6 do this or not? And so we could do that if the
7 Council directs us to go back and, and start, but
8 we would -- I, I would hesitate to start with the
9 existing work products.

17:28:14 10 I, I think I would still convene a, a
11 meeting, myself, to try to get at the problem, and,
12 and, and, and, and, and narrow it down so that I
13 understood what the solutions could be, as well as
14 what the, where my authorities lie.

17:28:27 15 THE CHAIR: Right. Well, I understand
16 that, I guess.

17 MR. CORRA: Yeah, okay.

18 THE CHAIR: The only thing I reflect on
19 is that we did pass the Rule initially. Presumably
17:28:37 20 what you give, you can take away, but in this case
21 it seems like the horse has left the barn and we're
22 being prevented in some ways of going out and
23 gathering it out of the pasture.

1 And I know that's not what anybody
2 intends. We're trying to do the right thing here.

3 And my big concern is that we make sure
4 we proceed to a good, equitable solution, which
17:29:02 5 serves, to the best of our ability, the private
6 property rights and the opportunity for industry to
7 flourish and thrive, and good things happen in
8 Wyoming that ends where we are.

9 MR. CORRA: Yeah. And, Mr. Chairman, I
17:29:15 10 might also add, I, I, I, I mean, I, I share your
11 concerns.

12 I mean, there are problems out there
13 that I believe somehow or another we need to find
14 solutions to. The -- One of the things we were
17:29:27 15 trying to do is set up some informal
16 problem-solving sessions with some representatives
17 from industry and some representatives from the,
18 the agricultural industry.

19 And we have had a single meeting where
17:29:39 20 we kicked around some things, but that, that
21 process was, was kind of on hold for the time being
22 until everyone heard where the Council was going to
23 come out on the current Petition. I, I, I still

1 believe that somehow or another, bringing people
2 together is the right way to do this, because you
3 can, you can decide what it is you can do, and you
4 can decide what it is you can't do relative to the
17:30:07 5 Statute.

6 THE CHAIR: Wouldn't that be the
7 purview -- I mean, wouldn't that be what happens in
8 the rule-making process?

9 MR. CORRA: Yes. Well, I think in the
17:30:18 10 rule-making process everybody is arguing on what's
11 already been written.

12 And I think that's the problem you have.
13 And I think, if I heard Mr. Molick (phonetic), I
14 think all of this thing has been framed in the
17:30:31 15 context of what's been written and presented.

16 That's why I'm, I'm, I've kind of said
17 earlier that I think the Council needs to decide on
18 what's before it, and then, then, then discuss what
19 might be logical next steps. What I'd also add on
17:30:50 20 the time, and I apologize, like, so you know, like,
21 continuing one here, but I don't know how that Task
22 Force, how it's going to succeed.

23 But I did know it has a report due

1 December 1, and any kind of rulemaking that DEQ is
2 going to launch is going to be, we won't even be
3 out of the chute by December 1. And one of the
4 tasks of that Task Force is full evaluation of the
17:31:16 5 Rules.

6 And the next meeting in Rawlins is in
7 early August. And so I guess I'm just saying
8 there, there are other things that are involved in,
9 that are in the works that might inform you all
17:31:30 10 and, and inform us a little better, too.

11 THE CHAIR: Okay. Thank you.

12 (Whereupon, at 5:31 p.m. MT, members of
13 the Council conferred, out of the hearing of
14 others, after which the following occurred:)

17:31:53 15 THE CHAIR: Okay. What, what is the
16 pleasure of the Council at this point?

17 I guess having heard -- Is there any
18 further discussion?

19 MS. HUTCHINSON: I could ask a question
17:32:05 20 for -- So, exactly which Petition are you thinking
21 of working with?

22 MR. MOORE: That's a very good question,
23 Ms. Hutchinson. I was just trying to decide

1 whether I wanted to try to amend my Motion or not
2 because my Motion was in the letter of May second,
3 which simply split the two chapters.

4 I'm sitting here trying to decide if I
17:32:28 5 wanted to request an amendment to my Motion to
6 consider Exhibit 24, the attachment to the first,
7 Petitioner's Status Report, as a starting point,
8 rather than the original one. But I haven't
9 decided.

17:32:46 10 So, if one wants to amend my Motion, --
11 My, my problem comes from it would, it would be my
12 understanding that if we started with your, the May
13 second letter, then we take that after the Hearing.

14 If your discussion about the differences
17:33:07 15 between the Appendix I as proposed in the March
16 second letter, and the Appendix I, the opposed,
17 attached to the Petitioner's first Status Report,
18 if, if we decided we would rather go with the
19 latter rather than the former, that we could go
17:33:25 20 ahead and see, amend the rulemaking to do that?

21 But now I'm not sure whether that's the
22 best approach. We would -- I think we probably
23 could start with Exhibit 24 as the starting point.

1 So, if my Second would accept as a
2 friendly amendment, I would propose that. So,
3 well, go -- So we'll go with Appendix H from the
4 May second letter, and Appendix I from the first
17:33:59 5 response first as the report.

6 Totally confused now?

7 MR. BOAL: Well, I'd say his fifth
8 Amendment to his Motion is my Exhibit A.

9 THE CHAIR: Okay, so you have made a
17:34:21 10 Motion to amend your Motion?

11 MR. MOORE: No, my Second has accepted
12 my friendly amendment.

13 THE CHAIR: Oh, he -- So that's the way
14 it stands. Okay.

17:34:31 15 Any further discussion?

16 MS. FLITNER: I, I concur with your
17 Exhibit A, Counselor. However, I -- You know, I
18 want to remind us about what we have heard to, to
19 this point, as well.

17:34:46 20 And my concern, having not the benefit
21 of a solidly legal education, is that, that we
22 recognized a gap. We recognized a problem that
23 nobody seemed to know what to do with and no one

1 knew how to solve.

2 We recognized that there were people
3 benefitting from, if, this new use. So, six years
4 ago, some, some people's lives started to improve
17:35:17 5 at the very same moment others' were negatively
6 impacted.

7 And that, that is, makes very uneasy how
8 I balance -- You know, I, I want the beneficial use
9 to continue for those who are benefitting from it,
17:35:32 10 and, and I absolutely want the same power to be
11 vested in those who are negatively impacted, and
12 don't want otherwise, you know, their, their life
13 changed in a different way.

14 So, you know, I'm sort of back to: We,
17:35:50 15 we have lots of convoluted arguments, Exhibit A
16 being one, but there are still people out there on
17 the ground who don't know where to go. Now, I
18 would love to start over with it, but you've got to
19 help me get, you've got to help me get to something
17:36:08 20 other than, "I haven't heard the answer here
21 today."

22 So enough said. I want -- My final
23 point: I don't think it's in anyone's best

1 interest for us to begin down a road disagreeing
2 with an Attorney General's, Attorney, an AG's
3 Opinion that will likely just add months and years
4 to the process, only to be overturned.

17:36:37 5 I mean, I, I really want the people who
6 are benefitting from the water to keep benefitting,
7 and the people who aren't, to have some power to
8 say, "We don't want it."

9 MS. HUTCHINSON: Can you write that up
17:36:57 10 as an Order?

11 THE CHAIR: Yeah. Okay.

12 Well, are there any new brilliant ideas
13 that come out of this discussion, or are we stuck
14 with Appendix H -- Is it from March second? Is
17:37:10 15 that correct?

16 MR. MOORE: Correct.

17 THE CHAIR: -- and Appendix I from the
18 first response, which is May 11?

19 MR. MOORE: Correct.

17:37:19 20 THE CHAIR: Okay. So, that is the form
21 of the Motion.

22 Is there any further discussion?

23 (Whereupon, no response was had.)

1 THE CHAIR: I'm going to take a
2 roll-call vote. I hate to do that.

3 I'm going to start down that direction,
4 because those guys all know what they're going to
17:37:31 5 do.

6 Mr. Brady?

7 MR. BRADY: I'll vote yes.

8 THE CHAIR: Mr. Moore?

9 MR. MOORE: Yes.

17:37:38 10 THE CHAIR: Mr. Boal.

11 MR. BOAL: No.

12 THE CHAIR: Ms. Hutchinson?

13 MS. HUTCHINSON: As much as it pains me,
14 I think it needs to be heard, so yes.

17:37:52 15 THE CHAIR: Ms. Flitner?

16 MS. FLITNER: Yes.

17 THE CHAIR: That is, by my count, four
18 to one.

19 MS. HUTCHINSON: You still have to vote
17:38:04 20 on it.

21 THE CHAIR: I will vote in favor. It
22 pains me, too, but the reason I do is because I do
23 believe private-property rights are at stake, and

1 they are sacred, not Appendix H.

2 Appendix H is a vehicle that was flawed,

3 and I think that the, I think we can craft out of

4 the rule-making process something that we need when

17:38:32 5 the Attorney General has pointed our objective, and

6 at the same time not interfere with

7 private-property rights or other State's rights.

8 So, that's why I'm voting.

9 So, I guess if that's the case, the

17:38:45 10 Motion carries.

11 Is there any further business?

12 (Whereupon, at 5:38 p.m. MT, the above

13 Hearing was concluded.)

14 I certify the foregoing to be a

15 true transcript from my notes.

16 e-signature: D. I. BUNN

17 _____

18 CSR CP RPR

19 CERTIFICATION

20 I, D. I. Bunn, a Registered Professional

21 Reporter, Certified Conference Reporter, and Notary

22 Public, do hereby certify that the foregoing

23 testimony was duly taken and reduced to writing

1 before me at the place and time therein mentioned.
2 I further certify that I am neither related to any
3 of the parties by blood or marriage, nor do I have
4 any interest in the outcome of the above matter.

5 In witness whereof, I have hereunto set
6 my hand and affixed my official seal, at Lusk,
7 Wyoming, USA, this 5th day of August, 2006.

8

E-signature: D. I. BUNN

9

Notary Public

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11 My Commission expires January 5, 2007.

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