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WYOMING ENVIRONMENTAL QUALITY COUNCIL

Citizen Petition for PRBRC

Docket No. 05-3802

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings in the
above-entitled matter before the Wyoming Environmental
Quality Council, commencing on the 13th day of November,
2006 at 10:10 a.m. at the Bozeman Conference Center, 655
Hart Street, Buffalo, Wyoming.

1 P R O C E E D I N G S

2 (Hearing proceedings commenced
3 10:10 a.m., November 13, 2006.)

4 CHAIRMAN GORDON: I'd like to call this
5 meeting to order. I'm Mark Gordon, chair of the
6 Environmental Quality Council.

7 By my clock it's 10:15. And again, I apologize
8 for the belated start on this morning.

9 I guess I'd like to introduce my colleagues. On
10 the far left is Rick Moore, Dennis Boal, John Morris,
11 Wendy Hutchinson, Sara Flitner, Jon Brady. To my immediate
12 left is Terri Lorenzon, actually, director of the Council,
13 Bridget Hill, counsel from the AG's office, and -- so
14 Joe is still trying to get speakerphones to work and
15 Internet access, apparently. So we'll do the best we can
16 and get started.

17 * * * * *

18 (Proceedings reconvened 11:13 a.m.,
19 November 13, 2006.)

20 CHAIRMAN GORDON: Okay. I spoke briefly
21 with Mr. Wagner during the break. He is still working on
22 the Pinnacle Gas Resources NOV, so we are set to go into
23 our Item 5, Citizen Petition for PRBRC, Docket Number
24 05-3802.

25 I'd like to sort of start this and make an

1 introduction.

2 There's a story about World War I where in the
3 trenches the soldiers said, Send reinforcements, we're
4 going to advance; and by the time it got back to
5 headquarters, it was, Send refreshments, we're going to a
6 dance.

7 This sort of talks a lot about this particular
8 issue. I think all the members of the Council are
9 incredibly aware of the playpen that we deal in. We don't
10 deal in state law, generally. We deal with the
11 Environmental Quality Act and the Wyoming Administrative
12 Procedures Act in specific.

13 So we have been extremely deliberate and
14 meticulous in proceeding through this. I know it's been a
15 long time. I do apologize, but anything that's good to do
16 takes time to do.

17 So with that, I would like to pass this over to
18 Sara, whose case this is; and we can see how this goes.

19 MS. FLITNER: Thank you.

20 Can you hear me all right?

21 I just want to take a brief moment to walk
22 through the history, though I think all of you are
23 painfully aware of the fact that this is, I believe, our
24 fourth meeting.

25 The petition was filed in February -- or we met

1 about the petition in February. What we hope to do --
2 well, I'll finish my thought.

3 We met in February. We met again in May. At
4 that point we were getting -- we decided to wait until our
5 July meeting where we could hopefully utilize the opinion
6 and -- the opinion of the AG.

7 We did receive some guidance that you all are
8 aware of. We met again last month and had set this hearing
9 to hopefully finalize language for the public notice.

10 I know that there was a lot of confusion, some on
11 our behalf as well. Again, I think Mike alludes to our
12 desire to try to do this correctly, and we are working in
13 an environment where the regulatory framework for this
14 coalbed methane water was conceived before coalbed methane,
15 as an industry, was developed.

16 You will all recall that the original petition
17 concentrated on potential changes for Appendix H. What we
18 will be considering with our public notice language is how
19 we may modify Appendix H. That decision, I believe, was
20 made in February.

21 We also made the decision to consider -- and I
22 believe this decision came in at the July meeting -- a new
23 appendix that would more specifically address coalbed
24 methane. The changes to Appendix H as were conceived
25 earlier on in the discussions -- February and again in

1 May -- were -- were attempting to get at the need to look
2 at traditional oil and gas development in a different light
3 than coalbed methane for reasons that you all know as -- at
4 least as well, if not better, than I do.

5 I would like to underscore our chairman's remarks
6 about the difficulties that all of you have faced traveling
7 to these numerous meetings and dealing with your -- your
8 daily lives, your land management, your production
9 management, while we grapple with something that is
10 complex.

11 So we are going to start this discussion; and,
12 again, it is our hope that we will work towards specific
13 language and actually make a decision about specific
14 language for the public notice, which will allow us to
15 begin formal rule-making on Appendix H and I.

16 Are there additions from Council?

17 And I believe, appropriately, are there questions
18 or clarification from anyone with us today about the
19 process that we're about to undertake?

20 Okay. With that being said, I think we can turn
21 to -- it looks -- do you want to handle Appendix I first,
22 it looks like?

23 Let's start with H because that's easier, and
24 we're going to set a good tone here, if I may.

25 Thank you.

1 Does everyone have the --

2 CHAIRMAN GORDON: Can everyone see the
3 language? Is it a little out of focus?

4 MS. FLITNER: Come on up. I'm not sure
5 what we can do about the size.

6 You're all welcome to get as close to the screen
7 as is necessary so you can follow along.

8 MS. LORENZON: This version we're working
9 from is just the language as proposed without all the
10 strike-out of the previous versions, so this is the
11 proposal.

12 MS. FLITNER: So the first change being
13 suggested is the addition of the word "traditional," again,
14 getting it "traditional oil and gas production facilities."
15 And specifically, we -- adding the language "excluding
16 coalbed natural gas, coalbed methane gas CBM."

17 Questions or comments?

18 UNIDENTIFIED MAN: You're replacing
19 "traditional" with the parentheses statement; is that
20 correct?

21 MS. FLITNER: We're adding the words that
22 you see in blue, suggesting the addition of the words in
23 blue --

24 MS. LORENZON: In this sentence you can see
25 on the side -- this will show the language, "Specific to

1 oil and natural gas other than coalbed natural gas
2 production facilities." That was deleted in the proposal.

3 So this is the proposed language is to have
4 additional permits, conditions and limitations.

5 MS. HUTCHINSON: I just want to clarify,
6 again. This is the strike and cap against the currently
7 approved chapter --

8 MS. LORENZON: This is the proposal.

9 MS. HUTCHINSON: But strike and cap against
10 -- what have you deleted?

11 MS. LORENZON: That language that's in the
12 box.

13 MR. MOORE: That's from the current
14 chapter, right?

15 MS. LORENZON: Okay. Coming down --
16 there's some more. Okay.

17 On the last page of the proposal -- this, of
18 course, gets a little longer as you look, so let's -- an
19 entire section -- subsection D has been deleted in the
20 proposal. That's the very last section.

21 And here's the language that was deleted
22 (indicating). This is the section: Additional Permits,
23 Conditions and Limitations Specific to Coalbed Natural Gas
24 Production Facilities.

25 And that's all the changes in H.

1 MS. FLITNER: Comments from the Council?

2 And again, I want to reemphasize the obvious, though. I
3 had to remind myself.

4 We are working on the proposed changes, so this
5 will be what is deliberated in a formal rule-making process
6 as we proceed.

7 I'm reemphasizing that we are not adopting this
8 language today.

9 MS. HUTCHINSON: We're also not modifying
10 this language today.

11 There was some confusion about what was the -- in
12 the meeting in Casper -- what was the exact rules that we
13 were going to be starting with, and that's what this is.

14 MS. LORENZON: I'm sorry about the width of
15 the screen and the width of my screen being somewhat
16 different. It's because I increased the font so we can see
17 it.

18 But this is language all pertinent to coalbed
19 production -- coalbed methane production.

20 MS. FLITNER: Comments from Council?

21 I would like, since you have all sat through this
22 laboriously, if you have feelings about the specific
23 language -- I am getting input that's conflicted.

24 So I want to know, Bridget and Terri, if we can
25 procedurally allow comment.

1 What I want to get to at the end of the day --

2 MS. HUTCHINSON: No.

3 MS. FLITNER: We cannot?

4 MS. HUTCHINSON: It's not a public hearing.

5 CHAIRMAN GORDON: No. No. I'm talking
6 about clarifications to the language.

7 MS. FLITNER: Humor me for a moment.

8 Part of what I want to avoid -- when we go into
9 formal rule-making, I want us to be working with the best
10 possible language that we can.

11 So as we all know, we have -- we have started
12 from lots of different places, and that has made this
13 conversation -- the productivity of this conversation
14 problematic. So, you know, I'm trying to do the best we
15 can with that situation and value your presence here by
16 giving you that opportunity.

17 We cannot reopen the hearing, but I am interested
18 in your perspective if there's anything with regard to the
19 specific language that you think needs attention.

20 Yes?

21 UNIDENTIFIED MAN: Just a quick question.

22 When you make all the changes in the fine print,
23 will that then become a new -- you're not -- will that be
24 another appendix?

25 Is that kind of how you're looking at it?

1 So this isn't modifying H, it's taking H, doing
2 some edits --

3 MS. FLITNER: Right. So the meat of the --
4 the hard conversation is called I.

5 MS. LORENZON: It splits out the coalbed
6 methane.

7 MR. MOORE: Right now we are talking about
8 amending H, but all we're doing is taking out reference to
9 coalbed methane in H.

10 MS. FLITNER: Right.

11 MR. MOORE: And then "I" will be specific
12 to coalbed methane.

13 MS. FLITNER: Yeah.

14 CHAIRMAN GORDON: And for my perspective,
15 is there any question on H before we move on to I?

16 Does everybody understand the language? Is it
17 clear?

18 We have -- we can get you copies of the striking
19 cap; but, of course, it will be published through the
20 Secretary of State's office.

21 Is there any questions about H?

22 Okay. Thank you.

23 MS. LORENZON: Thank you.

24 MS. FLITNER: Appendix I is virtually a new
25 chapter -- or a new appendix, pardon me.

1 And I would like the Council to take just a
2 minute or two to review the document and give folks out
3 there a chance to read.

4 Terri, can we scroll through?

5 I think it's better if we all have an
6 understanding of the entire appendix and its intention,
7 rather than trying to read line-by-line before you have
8 read through it in its entirety.

9 MS. LORENZON: I'm not showing any of the
10 deletions here.

11 MR. GIRARDIN: There are none. It's all
12 new.

13 MS. LORENZON: What, I guess, I'm pointing
14 at is this, unlike the last chapter, doesn't show the
15 deletions.

16 MS. HUTCHINSON: There are no deletions
17 because Appendix I never existed.

18 MS. LORENZON: Okay. Let me explain here.

19 In splitting out the chapters, this chapter isn't
20 just -- the sections like the first Chapter A on
21 Applications For Produced Water Discharges is a little
22 different from the one in H, and substantively different;
23 and so all this is new language. Okay?

24 All of this is new language in the first section.

25 MS. FOX: Madam Chairman, can I just make a

1 clarification about this language?

2 It's all new because Appendix I is brand-new;
3 however, a great deal of the language in it is taken from
4 Appendix H.

5 MS. FLITNER: Correct.

6 MS. FOX: So it's not completely all new.

7 MS. FLITNER: Right. Thank you.

8 MS. FOX: And I'm not sure -- I understand
9 why this is all underlined, because it is all new language;
10 but I wonder if it would be helpful to use the draft -- the
11 version that we attached to our status report, because it
12 only underlines the language that's actually different from
13 the existing Appendix H.

14 MS. HUTCHINSON: I think that would
15 probably be useful.

16 But I want to clarify.

17 Is that -- the version that you provided us as
18 Appendix I is actually a striking cap against the original
19 H?

20 MS. FOX: Right.

21 MS. HUTCHINSON: Right.

22 MS. FOX: And that, if you have it -- I
23 don't know if you do -- is Exhibit 24 attached to our
24 status report?

25 MS. LORENZON: Now, this is the one -- this

1 is the document that shows the deletion. It just shows the
2 deletions in the box.

3 Hang on. I think I have --

4 MS. HUTCHINSON: I think that was it.

5 MS. LORENZON: Hang on. I thought I had a
6 different version also.

7 This will work because this does show the
8 language on the right where it says "deleted."

9 Now we're going to lose the box.

10 The green underline is petitioner's language,
11 language which would have been -- which was deleted when
12 she modified Section H. It says, "Application requirements
13 specific to all produced water discharges from coalbed
14 methane gas production facilities must provide the
15 following information..."

16 And she took that out and rewrote it to say what
17 it says in green there.

18 MS. FLITNER: So, Terri, let's continue to
19 walk through -- since there are a variety of versions -- or
20 formats, actually. The versions are the same. The
21 substance is not different, the formats are different.

22 And you see the struggle of that.

23 MS. LORENZON: Okay.

24 MS. FLITNER: But let's just continue
25 walking through the document, at least, so everyone here

1 can get on the same page with the discussion.

2 MS. LORENZON: Okay. In the first
3 subparagraph, small letter i, you can see that she changed
4 it from "the produced water discharged" to "that the
5 produced water discharged."

6 I was just -- okay. The next section says,
7 Quality of produced water shall not cause -- excuse me --
8 "Quantity of produced water shall not cause or have
9 potential to cause an unacceptable water quality."

10 And from that subsection, ii down, is all new
11 language, which, I believe, comes from the statute. And
12 all the little boxes on the right just show you what was
13 done -- are all formatting instructions.

14 Coming down to subsection B --

15 CHAIRMAN GORDON: Are you all having a
16 chance to keep up with this?

17 ALL: No.

18 CHAIRMAN GORDON: Would you like to go
19 back?

20 And I apologize for this. I mean, I'll tell you
21 one of the difficulties is because of open-meeting laws and
22 everything else, we want to make sure that we do this in a
23 public fashion.

24 So I know it's a little bit like making sausage;
25 but nonetheless, this is the best way that everybody will

1 be aware of what's going on.

2 MS. FLITNER: Would it be helpful to
3 Council and practitioners if we do actually read the
4 language out loud?

5 All right.

6 So let's start with little i, the addition that
7 Terri just referenced --

8 MR. MOORE: And if we could take just a
9 minute, what we did was converted the original strike and
10 cap out, passed the version to a PDF file so Terri can open
11 it. And then --

12 MS. FLITNER: Wait.

13 MR. MOORE: I have the PDF file here.

14 MS. FLITNER: Is that going to disappear?

15 Can I get in a few sentences while you're -- I'm
16 just -- yes, Mr. Corra?

17 MR. CORRA: It sounds like you might have a
18 solution. I was wondering how -- if you were going to plan
19 on a number of hours on this today if it would be helpful
20 to get this printed and distribute it to the audience.

21 We really cannot read the changes, and we can
22 barely hear you when you talk.

23 And we haven't seen -- when you look at changes
24 without seeing the context, we really are -- I'm speaking
25 for myself -- I'm not following you.

1 MS. FLITNER: I agree, and I appreciate
2 that.

3 And we are going to adjourn and tell you -- I'm
4 going to make -- I'm going to adjourn my overseeing of this
5 hearing -- or of this discussion. The Chairman gets to
6 decide what to do with the meeting.

7 We will, Mr. Chairman, walk through this
8 discussion again when we all have an opportunity to
9 participate and follow.

10 I will talk with Joe and find out what that
11 entails in terms of getting copies made.

12 CHAIRMAN GORDON: And a preference would be
13 to have the Appendix I version from the status report; is
14 that correct?

15 MS. HUTCHINSON: Correct.

16 CHAIRMAN GORDON: Does the audience like
17 that?

18 MS. COLGAN: Just to clarify, is that the
19 Appendix I version as proposed by the petitioners?

20 CHAIRMAN GORDON: Yes, that's correct.
21 Let's break for an hour and a half and have
22 lunch.

23 How many copies do we need?

24 MS. FLITNER: 50.

25 (Recess taken 11:37 a.m. to 1:13 p.m.)

1 CHAIRMAN GORDON: Okay. We're a little
2 ahead of schedule.

3 I have placed on the end of the table there both
4 Appendix H with the suggested changes and strike and cap
5 and then also the Appendix I.

6 So if any of you want that, it's up there. Both
7 of those are up there on the end of that table.

8 Joe, do you want to turn that back on?

9 MS. FLITNER: We are -- we did promise to
10 reconvene at 1:20, and we tried to dispense with another
11 matter. We are still a little early.

12 To your knowledge, are you missing anyone
13 important who will be offended if we proceed; because we're
14 never early, and I want to take full advantage of this.

15 I am certain that we will waste at least four
16 minutes getting started here.

17 As Mark said, there are copies of the new strike
18 and change Appendix H and I on the table.

19 We will -- we will proceed by walking through the
20 Appendix I, and we'll just take it from the top.

21 Let me reiterate that at the end of today we all
22 want to be clear that we have considered all of the
23 important issues and that the public notice has the
24 flexibility to -- and the direction -- to consider all
25 that -- that is important in this new rule -- this new

1 appendix.

2 I am not suggesting that we have public comment
3 beyond the hearings that you've already participated in or
4 the public comment previous to this; and, of course, we
5 will be having a full hearing going forward.

6 All right. That being said, you will listen to
7 the Council deliberate the language and work through it.
8 You will hear the petitioner and DEQ weigh in, I believe,
9 on the language, since they are the parties. They may have
10 no changes. They may have some.

11 I obviously intend to manage this as carefully as
12 possible. I also want you to understand that my interest
13 in your participation is not in wordsmithing, it is simply
14 providing us with the best opportunity we can going
15 forward -- we can have going forward to succeed.

16 So I don't want to do what we've done before,
17 which is get to the hearing and say, Oh, I sure wish we'd
18 thought of that a month or two ago; and then we're -- we've
19 got to consider the rule-piece field again while we public
20 notice something else. So that's the situation we're
21 trying to avoid.

22 I'm confident in my Council members' ability to
23 fully flesh out ways that we can ensure that that doesn't
24 happen. If we stumble, then I'm certain that hands will
25 wave and you'll help us get back on track. I don't expect

1 that to be the case; but I'm just, for the record, stating
2 that I'm open to making this the most workable outcome
3 today and not necessarily the prettiest to watch in action.

4 Okay. So that being said, we're starting with
5 Appendix I at the letter A. I believe we were at little
6 i -- or little ii.

7 The proposed additional language states that,
8 "The quantity of produced water shall not cause or have the
9 potential to cause unacceptable water quality."

10 Going down the list -- and this is what I wanted
11 to avoid, because I'll bore you to sleep right after lunch;
12 but we're going to read it -- this is what my first grader
13 is doing right at this very minute -- "That the produced
14 water shall not cause contamination or other alteration of
15 the physical, chemical or biological properties of any
16 waters of the state, including change in temperature,
17 taste, colors, turbidity or odor of the water or shall not
18 cause a discharge of any acid or toxic material, chemical
19 or chemical compound, whether it be liquid, gaseous, solid,
20 radioactive or other substance, including waste, into any
21 waters of the state which creates a nuisance or renders any
22 waters harmful, detrimental or injurious to public health,
23 safety or welfare, to domestic, commercial, industrial,
24 agricultural, recreational or other legitimate beneficial
25 uses or to livestock, wildlife or aquatic life or degrades

1 the water for its intended use or adversely affects the
2 environment."

3 That is, as you all know, suggested new language.

4 Moving down, the next strike and change -- okay.
5 So this language you have seen before, other than -- I'm on
6 capital E -- are you moving down -- page 3, capital letter
7 E, barium. You will recall that discussion of adding a
8 barium regulation.

9 "The barium content of any produced water
10 discharge shall not exceed .2 mg/l in any single property
11 preserved, grab sample, except in those cases where a
12 modification is granted in accordance with paragraph C of
13 this appendix."

14 That may be it for new, new language, correct?

15 MS. FOX: There are actually some changes
16 above that to --

17 MS. FLITNER: You're right.

18 MS. FOX: TDS and also to sulfates.

19 MS. FLITNER: Thank you.

20 I missed capital B, which -- is that on page 3?

21 CHAIRMAN GORDON: It is on page 3.

22 MS. FLITNER: Page 3, capital letter B, we
23 are looking at a change, Not to exceed 500 mg/l rather than
24 3,000.

25 The next capital letter C, we are looking at a

1 change from 5,000 to 2,000 mg/l.

2 MR. MOORE: I have a question on that one
3 as it relates to the relationship between the milligrams
4 per liter for total dissolved solids or 7500 micromhos per
5 centimeter per specific conductance.

6 If we're changing the 5,000 per TDS, then the
7 specific conductance should be reduced proportionately.

8 MS. FLITNER: Okay.

9 MR. MOORE: I'm not sure what the right
10 number is right off the top of my head. I was trying to
11 calculate it.

12 MS. FLITNER: Okay. I believe that, at
13 least, gets us all on the same page with regard to proposed
14 language changes of both appendices.

15 So at this point, I would like to entertain
16 discussion from the Council about the proposed language,
17 unless you would prefer to hear from DEQ and the
18 petitioners prior to your discussion.

19 MR. MOORE: I did -- the micromhos should
20 be 3,000 to correlate with the reduction from 5,000 to
21 2,000 per TDS.

22 MS. LORENZON: Do you want me to indicate
23 that change on the --

24 MR. MOORE: Yes, I would prefer that.

25 MS. FLITNER: You should so everyone is

1 looking at the same -- well, with that change, would you
2 like to proceed with specific questions for the petitioner
3 and DEQ or not?

4 MS. HUTCHINSON: I have a minor
5 typographical statement.

6 MS. FLITNER: Yeah.

7 But do I have an answer to that so I can get it
8 off the table?

9 I get to decide?

10 Go ahead, Wendy, with your change.

11 MS. HUTCHINSON: Just a suggestion type
12 of -- on barium, the rules have it ".2." I suggest we put
13 "0.2" so it's more clear that it's a .2 and not a 2.

14 MR. MORRIS: Good suggestion.

15 MS. FLITNER: I -- does DEQ have any
16 comments about the proposed language?

17 And I believe, Kate, the petitioners have one
18 other than what we have.

19 Do you have input?

20 You don't. Okay.

21 MR. WAGNER: Madam Chairman, I suggest,
22 just for the sake of simplicity, that the easy stuff to
23 deal with is the stuff that regards sulfates, total
24 dissolved solids and barium. And let me just give you our
25 input on that.

1 The Water Quality Division has hired the
2 University of Wyoming to do a study to determine what those
3 appropriate numbers ought to be for dissolved solids,
4 sulfates, barium, and a wide range of other constituents
5 as suitability for stock and wildlife.

6 I think it would be premature to make a decision
7 until their work is done. They're scheduled to be done on
8 July the 1st of 2007, so -- it's a big -- it's a big
9 contract. It's a \$180,000 contract with Dr. Rezabek at the
10 University of Wyoming.

11 They're doing a very intense amount of work
12 looking at the literature and trying to come up with, okay,
13 what are the appropriate numbers?

14 The numbers that we have are 30 years old.
15 They've been around a long time, and they need to be
16 reassessed.

17 But I think to just kind of -- to make those
18 changes now without the benefit of that study, I think,
19 would be premature.

20 MR. MORRIS: Could we live with these
21 numbers until we see what that result is, and if it's
22 different, then we could change it?

23 MR. WAGNER: When you say "live with these
24 numbers," which numbers are you --

25 MR. MORRIS: The one's you're proposing.

1 MR. WAGNER: I think that would be a
2 problem.

3 I would suggest we leave the numbers the way they
4 currently are in the regulations, then look at the study in
5 July of 2007 and then make a decision as to whether or not
6 they need to be changed.

7 I think if you adopted these numbers now, it
8 would -- especially the dissolved solids and the
9 conductivity number -- I think that could be problematic
10 for some of the dischargers -- the CBM dischargers.

11 I don't think they have -- I don't think CBM
12 dischargers would -- as a rule, I don't think they'd have
13 too much trouble meeting the sulfate of 500. I don't know
14 about the barium, to be honest with you; but the TDS and
15 the specific conductance could be problematic.

16 CHAIRMAN GORDON: John, can I ask you a
17 question on this with regard to that?

18 This rule package that we're currently looking
19 at, Chapter 2, was rewritten in 2004 -- actually, 2003,
20 2004 -- probably started in 2002.

21 MR. WAGNER: That's correct.

22 CHAIRMAN GORDON: And it would be scheduled
23 to be reviewed at what time?

24 MR. WAGNER: Chapter 2 is not under any
25 kind of scheduled review at all, but what I would propose

1 is that if the -- if Mr. Rezabek's -- or Dr. Rezabek's
2 report indicates that we ought to make some changes, that
3 we would come to you with a proposed rule change reflecting
4 their recommendations.

5 CHAIRMAN GORDON: Okay. So if there were
6 adjustments that needed to be made, it wouldn't necessarily
7 be in the citizen's court or the industry's court to be
8 able to sort of go back and review these things, you'd do
9 that?

10 MR. WAGNER: Yes. It was our intent to get
11 updated information. And if it looked like we needed to
12 make some changes, we would come to you with those changes.

13 CHAIRMAN GORDON: Okay. And then I have a
14 question on pH.

15 It strikes me that as part of this rule package
16 we changed the pH level.

17 Did we -- didn't we go from 8.5 or something like
18 that to 9 on the pH parameters as part of this rule package
19 or maybe that's --

20 MR. WAGNER: I don't remember.

21 CHAIRMAN GORDON: It strikes me that 9 is
22 getting awfully close to the livestock problems.

23 MR. WAGNER: You could be correct.

24 And pH is a parameter that they're going to be
25 looking at.

1 CHAIRMAN GORDON: Okay.

2 MS. HUTCHINSON: I have questions regarding
3 Dr. Rezabek's background.

4 What exactly are you making -- I'm being nose
5 about this study.

6 How is he making judgments about this criteria,
7 from our wildlife, agriculture or from an industry or from
8 an ag producer of irrigation-type water or what kinds of
9 things is he looking at for this study?

10 MR. WAGNER: His primary focus is to look
11 at the suitability of a wide range of chemical
12 constituents, suitability for stock and wildlife water.

13 His work group has a representative from the Game
14 and Fish Department on it.

15 MS. HUTCHINSON: It's not irrigation?

16 MR. WAGNER: It is not irrigation, no.

17 And these criteria that are in this particular
18 section of the rule has nothing to do with irrigation.
19 It's strictly stock and wildlife water.

20 MS. FLITNER: Other questions for John?

21 No? Okay. Thank you.

22 That's it? Is that it?

23 I mean, that's my question to you. Is that it?

24 Ms. Fox?

25 MS. FOX: Thank you, Madam Chair.

1 On the question of the TDS sulfates and
2 barium -- I think that the argument that was just made by
3 Mr. Wagner is more appropriately an argument at the hearing
4 on the rule, and he can certainly make whatever argument he
5 wants to about the state of the science and anything at
6 that time.

7 If I understand correctly, what you're asking for
8 is refinements to the language; and then if you want to
9 shoot it down later, that's your chance.

10 MS. FLITNER: You're right.

11 MS. FOX: And so if you're in agreement
12 with me, I don't really have anything to say except let's
13 go forward with this; and then we can discuss at the
14 hearing what the science justifies or doesn't justify.

15 MS. FLITNER: Thank you.

16 Consideration from the Council?

17 MR. MOORE: You're looking at me, Sara.

18 MS. FLITNER: Well, that's because somebody
19 keeps talking down here, and it's very distracting. And
20 it's Mr. Troublemaker here.

21 MR. MOORE: Madam Chair, Hearing
22 Examiner --

23 MS. FLITNER: Yes?

24 MR. MOORE: I've been troubled ever since
25 we started on this petition with the fact that the current

1 rules -- and we were just discussing it -- say something to
2 the effect that the following effluent limitations are
3 protected for stock and wildlife consumption.

4 Yet after having sat through two hearings, we
5 know that the -- one of the big issues out there is
6 protection of irrigation and soils and vegetation with
7 irrigation.

8 So it strikes me that we are missing one of the
9 major issues if we don't include it in our proposed
10 rule-making; values for those parameters that are important
11 and of concern to irrigated agriculture, whether it's
12 natural labor or artificially irrigated.

13 And I believe that the two values that -- two
14 parameters that are most critical are -- and we've
15 discussed it -- the EC, electrical conductivity, and the
16 sodium adsorption ratio or SAR.

17 So I'm thinking that if we're going to do this
18 and do it right, our notice of rule-making probably should
19 include some language that talks about requirements for
20 irrigation consideration and addresses the proposed
21 effluent limits when irrigation is present for those
22 constituents that are of concern.

23 And I'm not sure what the best way to do that is,
24 and I think Mr. Wagner is going to come tell me what the
25 best way be.

1 So, John, do you have some words of wisdom for
2 me?

3 MR. WAGNER: Madam Chair, Mr. Moore, the
4 protection of irrigation is handled through a different
5 regulation. It's handled through Section 20 of Chapter 1
6 of the rules.

7 Section 20 of Chapter 1 says that we shall not
8 allow a discharge which would cause a substantial decrease
9 in agricultural production. And so that is the mechanism,
10 the way we get to setting the limitations for irrigation,
11 SAR, EC on coalbed methane discharges. And it is the whole
12 focus of the ag use policy, which I'm sure you've all heard
13 about.

14 The agricultural use policy is attached to
15 Section 20 of Chapter 1, which will be coming before you in
16 the very near future, because the advisory board just took
17 action on Chapter 1.

18 It is somewhat confusing, because Chapter 2, the
19 rule that you're looking at here -- it's focus is on --
20 it's on protection of stock and wildlife watering.

21 And it's kind of a convoluted story; but back in
22 the 1970s when we were setting limitations for produced
23 water discharges, we set those limits based on what was
24 suitable for stock and wildlife water. Irrigation was not
25 even a consideration.

1 So irrigation is protected through Section 20,
2 Chapter 1. Livestock -- livestock and wildlife watering is
3 protected through this mechanism.

4 MR. MOORE: Could those contradict each
5 other?

6 MR. WAGNER: Yes, they could contradict --
7 very easily contradict each other, in which case you take
8 the more stringent of the two.

9 For example, if you had a discharge which was
10 being used both for irrigation and stock and wildlife
11 watering, the more stringent of the two is what we would
12 use to write the permit.

13 MR. MOORE: Thank you for that
14 clarification, Mr. Wagner.

15 But as I understand that -- and then my concern,
16 quite frankly, is that members of your staff who are
17 sitting at the table in front of us want, in time, to
18 discuss setting effluent limitations and discharge permits,
19 which is what Chapter 2 addresses.

20 And saying that even though they recognize that
21 the limits that they -- were in the permit questioning were
22 wrong, they were constrained by the policy on what they
23 could do.

24 MR. WAGNER: That's not right.

25 MR. MOORE: That's the testimony that we

1 heard.

2 MR. WAGNER: Well, let me clarify, then.

3 For example, there's absolutely nothing in these
4 rules for limitations on mercury to protect fish; but when
5 our permit writer writes a discharge permit, he goes to
6 Chapter 1 and looks up what the criteria for mercury is to
7 protect fish life and writes a discharge permit based on
8 the instream water quality standards for mercury that's in
9 Chapter 1.

10 It's exactly what we're doing to protect
11 irrigation. It's exactly the same mechanism. There's a --
12 if you look at Chapter 1, there's list after list of
13 parameters in there for protection of various uses, most
14 primarily fish and wildlife, but also public health and so
15 on and so forth.

16 So the fact that you don't have a limit in
17 here -- mercury, copper, lead, all those various
18 parameters -- doesn't mean that it's ignored when we write
19 the discharge permit.

20 MR. MOORE: I don't want to argue with you,
21 John; but it doesn't seem to make sense to me that in the
22 discharge permit regulations you include specific values
23 for protecting stock and wildlife when you just turn right
24 around and say, But for fish, that's in Chapter 1.

25 If we're writing permits, the language rules, for

1 what the effluent limitations ought to be, shouldn't it be
2 in the section of the rules that deals with effluent
3 limitations?

4 And then the other question is -- to me, is
5 there's a significant difference between a policy, which is
6 what you're talking about -- an ag protection policy -- and
7 rules.

8 And it's -- what we're looking at is a rule, but
9 it seems to me that the policy is almost becoming a de
10 facto rule that once you set that policy that that's what
11 the department is bound to do; but you're not going through
12 a rule-making procedure to get there.

13 MR. WAGNER: I understand where you're
14 coming from, and I think you could make a very valid
15 argument that the numbers that are in Chapter 2 should be
16 moved into Chapter 1. That's probably the way they should
17 be.

18 The reason that they're separate is because back
19 in the 1970s we were trying to -- trying to deal with EPA
20 and show EPA that produced water discharges in the arid
21 West actually had beneficial use, and we had to set some
22 criteria by which we would make some cutoffs that if the
23 water was below these certain levels then it would be
24 assumed that they were adequate for stock and wildlife
25 water and therefore could be discharged.

1 And that's why there's -- I will agree with you.
2 It's somewhat confusing that these numbers are in Chapter 2
3 rather than Chapter 1, and I certainly don't have a problem
4 if we want to move them into Chapter 1.

5 MS. FLITNER: Mr. Corra?

6 MR. CORRA: This may be taking us back a
7 step, but I wonder if it's clear in this rule-making what
8 the Council's purpose is.

9 You know, I -- this started out with aiming to do
10 something with coalbed methane discharges and not do
11 anything with all kinds of other discharges. And when I
12 look at the language -- and I'm going back to A, Romanette
13 iii -- a lot of that language is also in the Act itself.

14 And so there are some -- it might be helpful for
15 the Council -- because we're having this discussion about
16 should it -- where should the 7500 EC be?

17 Well, in the grand scheme of things, I'm not sure
18 that that's important for this Council to have to decide
19 that.

20 As John mentioned, the reason it got into Chapter
21 2 -- it goes all the way back to where it's a nexus with
22 the federal law of allowing oil-produced water from oil and
23 gas operations, which have now been excluded from -- and I
24 guess -- and I -- and, John, I think, is just simply saying
25 that we have studies underway to take a look at what those

1 numbers ought to be.

2 And those numbers could more appropriately be
3 put -- once that is determined, those could certainly be
4 put into Chapter 1 and then just referred to in the
5 permitting process itself. And that might just clear
6 things up.

7 But the -- it just is -- you're looking at this
8 saying that if you put a bunch of these things in and say
9 they only apply to coalbed methane production facilities, I
10 wonder what other kinds of questions are going to come up
11 later about how and why the Council has taken the Act and
12 applied it only to coalbed methane and exempted everything
13 else.

14 And so I just think that it might be good for you
15 to think about what your original purpose is and then come
16 back and say, Okay, does each one of these changes fulfill
17 that purpose or is there a better vehicle to pursue these
18 changes?

19 MS. FLITNER: You certainly have identified
20 some observations that many of us made in reading the
21 language.

22 So I guess -- I'm not sure where that leaves us,
23 and I would be interested in comments from any of you.

24 We are on the brink of either revisiting the same
25 mistakes we made 30 years ago, which is not all that

1 optimistic.

2 I am concerned that the language as proposed that
3 is taken from the Act does not result in the kind of
4 guidance and clarification that brought us to this table in
5 the first place.

6 So, you know, we started out talking about
7 beneficial use, and we -- because of our purview, of
8 course, we're talking now about pollution and quality,
9 which is appropriate for this particular body.

10 I guess that at the end of the day, if we're
11 going to continue to invest time and effort in trying to
12 improve the rule or improve the situation for those who
13 live in the landscape where the rule is regulated, I -- I
14 would be looking for more -- more specificity. And perhaps
15 that's the wrong word.

16 I don't know how this would guide a producer or a
17 landowner any more than what we have right now, because
18 that's already in the Act.

19 So I guess I'm concurring, and I'm throwing that
20 out there for all who might be thinking about ways to
21 improve the situation going forward. And, you know, I
22 don't -- I don't know what we do about Chapter 1 and
23 Chapter 2, but I will also say -- and then stop my
24 commentary -- that I don't want to consider solutions to
25 those problems on a piecemeal basis.

1 I think it creates problems for everyone in this
2 room, and so I would love to get into a conversation where
3 we can avoid that. This conversation has not been an
4 example of how to avoid it, but an example of all the
5 reasons why it would be much less of a headache if we did
6 it.

7 So that being said, are there other comments?

8 CHAIRMAN GORDON: John, I wanted to follow
9 up on -- and since the topic of Chapter 1 is -- it's not
10 really before us on this particular thing, but in my
11 understanding that what you were suggesting is that the
12 limits that are proposed here might be more appropriate in
13 Chapter 1 and that that Chapter 1 discussion might be more
14 appropriate as a way of regulating.

15 MR. WAGNER: Yes. If you make the
16 assumption that, let's say, 500 sulfates is the appropriate
17 number to protect stock and wildlife watering in the stream
18 where they'll be drinking the water, then that is -- the
19 appropriate place to put that is in Chapter 1 rather than
20 Chapter 2.

21 The reason is that Chapter 2 is all historic; and
22 we've recognized for a long time that it was a little bit
23 of an oddity, if you will.

24 CHAIRMAN GORDON: Well, and then, I guess,
25 the question that I have on that is Chapter 1, if I

1 understood you correctly, also talks very specifically
2 about irrigated ground; is that correct?

3 MR. WAGNER: Section 20 of Chapter 1 says
4 basically that water quality will be protected to protect
5 the existing agricultural uses. And so when we issue a
6 discharge permit, we have to ensure that the permit meets
7 that criteria.

8 How we get there -- the devil is in the details,
9 and how we get there is the tough part. And that's why we
10 had to come up with an ag use policy; because the CBM
11 dischargers are so problematic as to figuring out, okay,
12 what's irrigated agriculture? Is it bottomlands, not
13 bottomlands? What crop is being protected?

14 So that's why we had to go to that complicated
15 approach to applying Section 20 of Chapter 1.

16 CHAIRMAN GORDON: And the one problem I've
17 had with that -- and this goes way back to probably 1998 or
18 1999 -- one of the concerns that I've had is when you are
19 specific to irrigated lands -- and I guess I think that
20 probably is dealt with through the definitions part of
21 Chapter 1 -- one of the concerns I have is all those upland
22 areas that might be affected by that kind of thing are
23 not -- they're not governed by anything at this point.

24 Is that probably correct or --

25 MR. WAGNER: I don't believe Chapter 1 even

1 defines what irrigated land is. And so what we've done in
2 the ag use policy is we've tried to get a handle on that.

3 Originally we thought, Well, for it to be
4 irrigated, there had to be a physical structure like a dam
5 or some kind of a device to put the water onto the land.

6 We've since come off of that point because a lot
7 of people, I think, accurately pointed out, Hey, there's a
8 lot of bottomlands out there that are naturally irrigated.
9 It's really important to protect that.

10 So we have included those in our ag use policy as
11 it currently stands and will be brought before you.

12 CHAIRMAN GORDON: Well, and I guess -- and
13 I don't want to get too far off hilt, but I just want to
14 get a sense of that relative to this.

15 If you have a situation -- let's say you're using
16 misters and it's not really clearly a defined agricultural
17 use area, i.e., irrigated area. Is that an area that we
18 can regulate within the context of anything that we've
19 done?

20 MR. WAGNER: Yes, they -- for one thing,
21 they have to get a permit to construct those systems.

22 CHAIRMAN GORDON: Okay.

23 MR. WAGNER: As a way -- so it has to be
24 permitted by our staff to ensure there won't be drift off
25 of the site, so on and so forth.

1 CHAIRMAN GORDON: If you did have drift off
2 that site and it did result in any kind of reduction, is
3 there any way to redress that as a landowner?

4 MR. WAGNER: Yeah, because the permit to
5 construct that system would have said in there -- they
6 would have to come into the permit application and say,
7 Okay, we're going to put misters on two acres. If they
8 have drift that goes on three or four acres, that's going
9 to be a violation of the permit.

10 CHAIRMAN GORDON: Okay. All right.

11 MR. MOORE: John, I'm still struggling with
12 this distinction between Chapter 1 and Chapter 2.

13 I appreciate John Corra's comments about not
14 being specific to one little niche type of thing and
15 therefore be better in Chapter 1 because it's global rather
16 than specific.

17 But when you look at Chapter 2, you've got a
18 whole slew of appendices that deal with specific industries
19 and have specific effluent discharge parameters; for
20 example, public owned treatment plants, you know, 30 mg/l
21 of BOD5 and still suspended -- you know, specific
22 requirements for animal feeding and coal mining, et cetera.

23 And my understanding is that these effluent
24 limits, in part, are based on what the best available
25 technology is to apply to that industry.

1 MR. WAGNER: That's exactly correct, and
2 that's why this is a little odd.

3 All of the others are technology-based limits.
4 This is one that is not a technology-based limit. It was
5 based historically on what was protective of stock and
6 wildlife watering. And that's why it's a little bit of an
7 oddity and a bit out of place.

8 MR. MOORE: So all the others are best
9 available technology based on an assessment of what that
10 particular industry can do?

11 MR. WAGNER: That's correct. And they
12 would be required to do better than that, if necessary, to
13 meet an instream water quality standard, which is in
14 Chapter 1.

15 MR. MOORE: Okay. Have you done any
16 effluent DAT analysis for coalbed methane to say what's the
17 best economically achievable technology for discharges?

18 MR. WAGNER: No, we haven't. The reason we
19 haven't is those numbers almost always come out of EPA.
20 EPA does not establish DAT for coalbed methane or produced
21 water discharge.

22 Well, I take that back. They have for produced
23 water discharges -- what it says is is that the oil and
24 grease can't be less than 35. It can't be greater than
25 35 milligrams per liter, but that's all they say about it.

1 to us sometime in the not-too-distant future?

2 MR. WAGNER: The advisory board just passed
3 Chapter 1, and we asked the Council to start thinking about
4 when we can bring it forward to you.

5 MR. MOORE: But as part of a rule, the ag
6 protection policy would not be part of the package?

7 MR. WAGNER: The ag protection policy is
8 how we are going to explain to you that we are going to
9 implement Section 20 of Chapter 1.

10 If you don't like the ag use policy and you
11 think, Oh, you're completely off base, you ought to do it
12 in a different way, then that's -- you either change
13 Section 20 of Chapter 1 or you tell us to change the ag use
14 policy, one of the two.

15 MR. MOORE: To me, again, that doesn't
16 address my concern -- is that -- is it true policy to
17 establish a rule that hasn't been subject to the public
18 comment and discussion to the rule would be --

19 MR. CORRA: We -- with regard to your
20 remarks on -- with regard to your remarks on policy, if the
21 Council wishes the department to have a conversation with
22 the Council on how we do policies and that, we'd be glad to
23 do that.

24 I would suggest that in this particular
25 conversation -- in Chapter 1 there is a narrative standard,

1 and the regulated community as well as the -- well, in
2 fact -- the citizens, have a right to know how we are going
3 to implement that narrative standard.

4 I mean, that standard got there because you
5 promulgated it upon our recommendation, you know, at
6 this -- that came through.

7 Now, in our policy, we will inform you as to how
8 we're going to implement -- how we are proposing to
9 implement that narrative standard.

10 And John's correct. If you disagree with that
11 policy or would like us to go back and take another look at
12 it, we will; but I would suggest to you that we are only
13 informing you that that is our policy. And if the
14 narrative standard does not set well with you and you wish
15 us to go back and create a numeric standard or do something
16 different, that is certainly within your purview to do,
17 and, of course, we would do.

18 Your concern about the policy being a de facto
19 rule, in a way -- in a way, some people could interpret
20 that as such; but when we administer that policy via a
21 permit written under Chapter 2, that permit can be appealed
22 before this Council.

23 And so the fact that there's a policy there is
24 not taking anybody out of the equation nor is it robbing
25 anybody of their rights to appeal or due process.

1 MR. MOORE: John, I don't like the policy.

2 What can you expect to -- if policies are not --

3 MR. CORRA: Well, I -- Madam Chair, I

4 appreciate your position on that.

5 I would say that the -- we have different kinds
6 of policies in our department ranging from very minor to
7 very major. This one in particular that we're talking
8 about is very major; and when that occurs, it gets -- and I
9 can assure you it gets total vetting before the public.

10 This particular policy has been before the
11 advisory board five times and has had five rewrites over a
12 period of two years. So when it gets to you, it's going --
13 and you'll have an adequate and thorough discussion of it
14 as well.

15 So I appreciate your concern, and we don't take
16 that latitude that we have lightly.

17 MS. FLITNER: I think just to try to focus
18 our conversation on the business at hand -- I appreciate
19 that we may need to look at the policy versus the
20 rule-making more in depth.

21 And I think for our discussions today, what would
22 be helpful is any input about how we -- we might be able to
23 inform the particular language that will result in defining
24 the rule-making conversation. Okay?

25 So we're going to -- whether that means in this

1 specific case that there's information in Chapter 2 that is
2 undecided or not formal regulation that concerns some of
3 you -- you know, my concern, again, at the end of today, is
4 that I want all of those things to be delineated so that we
5 can have the full conversation by all of the impacted
6 communities during the rule-making period.

7 Do you have a suggestion about the proposed
8 language, Rick?

9 And I know that you are standing.

10 Does that mean you have a comment as well?

11 MS. FOX: Yes.

12 MS. FLITNER: Okay.

13 Rick, will you hold my question to you for a
14 moment and let Kate weigh in?

15 MR. MOORE: Certainly.

16 MS. FOX: I'd like to go back to
17 Mr. Moore's original question, which is perhaps it would be
18 appropriate to have SAR and EC limits in this Appendix I.
19 And I understand what the DEQ is saying, Well, that's
20 really under the ag use policy in Chapter 1.

21 But the reality is, as I think is your point,
22 right now Chapter 1, Section 20 is the narrative standard.
23 It has proven, I think, in cases that you have seen, not to
24 be protective on many occasions. There may or may not be a
25 policy that's protective. We don't know any of that now.

1 And even if there is a protective policy, that doesn't have
2 force and effect of law.

3 So I would suggest that we proceed with the world
4 as we know it today. And I think that Mr. Moore's
5 suggestion to put an EC and SAR standard in here would be a
6 good one; because the truth is that right now we have
7 discharges on this presumption if it's good enough for
8 wildlife and livestock consumption that it's being
9 consumed. That's why these livestock and wildlife
10 consumption standards exist in the current Appendix H.

11 However, the truth is, as we know -- as we heard
12 today in discussion about Maycock, that there are a lot of
13 other impacts that can and should be regulated because of
14 their EC and SAR content.

15 So maybe when Chapter 1 grows up and becomes more
16 protective you could relax those standards in Chapter 2;
17 but for now, in order to get the job done, which is what
18 we're here to do, they ought to be -- belong in Appendix I.

19 You know, and I don't want to talk too much about
20 Chapter 1 or the ag use policy, except to say right now all
21 of that is up in the air. So we should just go with what
22 we know, and that is that Section 20, the no measurable
23 increase in proper livestock production is a pretty mushy
24 standard and has not proven to be protective for many of
25 the people you've heard from in this rule-making process.

1 MS. FLITNER: Rick, I'll revisit my
2 question to you.

3 MR. MOORE: Madam Chair, I appreciate you
4 coming back to me.

5 I'm still grappling with what I've heard and how
6 best to try to address it. I'm still troubled in Chapter 1
7 for a number of parameters.

8 We do have specific values and not narrative
9 standards, and it seems to me that the ag use protection
10 policy goes a long way towards defining what values should
11 be.

12 But I think at a minimum that we should include a
13 paragraph in our new Appendix I that says something to the
14 effect that if the water is used for irrigation or could
15 affect irrigated lands, that the appropriate EC and SAR
16 values shall be included as effluent limits and that -- you
17 know, that at least says that if the plan downstream from
18 the discharge is irrigated that there will be appropriate
19 values assigned to those constituents.

20 That's where I was earlier today, and I've gone
21 back and forth and -- whether we should try to put in
22 specific values or not or where they should go -- after the
23 discussion after lunch about whether it goes in Section
24 1 -- or Chapter 1 and Chapter 2 or what have you and --

25 MS. FLITNER: Yes?

1 Oh, I'm sorry.

2 Rick, are you finished?

3 MR. MOORE: Yes, I guess I am. I'm
4 throwing that out for a discussion for the Council as
5 possible consideration.

6 I don't know if we're doing this by motion now
7 or --

8 MS. FLITNER: Chairman Gordon has a
9 comment, and then we'll --

10 CHAIRMAN GORDON: Well, I wanted to just
11 follow up on that.

12 If you remember in our private session with the
13 attorney general, the correspondence of which is now
14 available on the website, Attorney General Crank did
15 address a couple of those issues.

16 Have you -- do you have a thought of how they
17 square with your proposal?

18 I guess specifically what he was suggesting is
19 that there -- is that we can regulate pollution for water
20 and for land, but not necessarily how water affects land,
21 if I read his letter correctly.

22 MR. MOORE: I think it squares -- it lines
23 up perfectly with what he was saying our authority is.

24 If you're discharging something that is
25 pollutant, it adversely affects the land, then you can

1 regulate that.

2 CHAIRMAN GORDON: Okay.

3 MS. FLITNER: We are all commenting on the
4 different interpretations we have of his interpretation of
5 our authority.

6 CHAIRMAN GORDON: Which, for anybody, it
7 makes good reading. I highly recommend at the hearing that
8 you take the opportunity to read that.

9 I had another question -- not to take that off
10 subject. I'd like to come back to that, but I want to
11 think about it.

12 In the final part of this on the last page, we
13 talk in additional permit conditions and limitations. And
14 little iii, we talked about the Oil and Gas Conservation
15 Commission and the Bureau of Land Management regulations.

16 It seems to me to me since there's a lot of
17 concern about us maybe impinging on the state engineer's
18 authority -- certainly it's not something we want to do --
19 it seems to me only appropriate that we also talk about --
20 because it does seem to me the state engineer also deals
21 with pits -- or am I misreading it?

22 MR. CORRA: Misreading it.

23 John, correct me if I'm wrong.

24 This deals with those mud pits from the drilling
25 operations only, and so it's generally taking care of the

1 water that's added to drilling operation and then the mud
2 and all that stuff that comes back.

3 The -- and the Oil and Gas Commission regulates
4 that with oversight from EPA under the Oil Pollution
5 Control Act; so my assessment is that it's pretty recently
6 regulated to date, and EPA does -- actually does a flyover
7 every year in the state and photographs all these mud
8 pits -- maybe not all of them, but a majority of them.

9 But that, I think, was the intent of that
10 language was just to take those mud pits out of the -- out
11 of our purview.

12 MR. MOORE: Are those mud pits common with
13 coalbed methane wells or is that just oil and gas?

14 MR. CORRA: I think it's mostly oil and
15 gas.

16 MR. MOORE: Okay. So maybe it'd be best to
17 just strike it from the -- this proposed Appendix I
18 entirely.

19 MS. HUTCHINSON: I don't know about that.
20 I mean, as we continue to drill deeper and deeper, there
21 may be need for these pits; and I think that leaving the
22 language alone is probably most appropriate.

23 MR. WAGNER: I think our recommendation
24 would be to leave it alone, because the off-channel pits
25 for coalbed methane -- those are regulated by the Oil and

1 Gas Commission, and they consult with us on the location of
2 those. But they are the primary regulatory authority
3 there. I suggest leaving it alone.

4 CHAIRMAN GORDON: Does the state engineer
5 deal with those at all, John?

6 MR. WAGNER: Yeah, the state engineer --
7 well, not these disposal pits, no.

8 CHAIRMAN GORDON: But the off-channel
9 containment pits?

10 MR. WAGNER: I don't think so. The
11 on-channel stuff, absolutely, but not the off-channel.

12 MR. CORRA: Only if it becomes a safety of
13 dams issue, I think, is my understanding of the state
14 engineer's role.

15 As long as those things are dug from the surface
16 down and they don't have -- there's a limit as to the berm
17 they can leave; and the state engineer, I think, stays away
18 from that.

19 MS. FLITNER: Mr. Olson, did you have a
20 clarification?

21 MR. OLSON: I was just going to say if you
22 were going to attach a stock water beneficial use to a pit,
23 that can be done through the landowner, not necessarily
24 through the company. Basically there's a water estate,
25 which is the water we produce, going into the pit that can

1 be used for stock watering and that can be permitted by a
2 landowner as the beneficial use.

3 So they can get involved in that off-channel pit
4 in that way.

5 MS. FLITNER: Thank you.

6 Wendy, I believe, was next in line for comments.
7 Do you remember what your comments were?

8 MS. HUTCHINSON: Yes.

9 Mr. Corra, you made a comment earlier on Appendix
10 I that -- under A, the three little iii's there. You said
11 that was essentially a restatement of what was in the
12 statute.

13 I guess maybe Kate can comment on this as well.

14 I guess, in my opinion, if we're going to be --
15 if this language already appears in the statute, I don't
16 think we want it to be regurgitated in the rules.

17 MS. COLGAN: Madam Chair, this is
18 Vicci Colgan. I'm not quite sure where in the statute this
19 language actually appears. It looks to me like it's sort
20 of a mush of several statutes. I think that's kind of
21 dangerous.

22 MS. LORENZON: It's the definition of
23 pollution under the water quality section of Section 103.

24 MS. COLGAN: It's the definition of
25 pollution, but it says, Shall not cause contamination,

1 which is not in the definition of pollution.

2 And as a matter of fact, the only reason you have
3 a discharge permit is so that you can allow the discharge
4 of pollutants.

5 And so I'm -- I'm thinking that this doesn't help
6 the cause of clarity.

7 MS. HUTCHINSON: I agree. That's where I
8 would be a little bit concerned.

9 And maybe Kate can comment on that herself, but
10 to me -- and I didn't look -- but Terri, you say this is
11 the definition of pollutant?

12 MS. LORENZON: Yeah, in the statute --

13 MS. HUTCHINSON: Obviously the whole
14 purpose of permitting is to deter pollution, so I'm a
15 little bit concerned about what the purpose of this
16 language is or why it needs to be in the rule. I don't
17 know what your logic is.

18 MS. FOX: Well, I took the language of the
19 AG's opinion thinking that must be the gold standard.

20 MS. HUTCHINSON: Okay.

21 MS. FOX: However, I have since seen that
22 it is not.

23 MS. HUTCHINSON: Okay.

24 MS. FOX: A couple of things; one, I do
25 agree -- this is the language of the AG's opinion, which is

1 taken from the Environmental Quality Act. The A(3) is the
2 definition of pollution, and I do understand that it is --
3 covers so much as to perhaps not be -- so I have a
4 suggestion, which is simply to go right to B so that it
5 would read under A(3), "that the produced water shall not
6 render" -- are you with me -- "or have a potential to
7 render..."

8 I think we should use that language, because
9 that, again, is the AG's language; and then go on with
10 what's there, "water's harmful, detrimental," et cetera.

11 MS. FLITNER: I guess my observation would
12 be to revisit my earlier logic in that that's in the Act as
13 well. And though there are varying opinions of the Council
14 about -- you know, I really don't care that much if it's
15 redundant, but those brilliant legal minds can argue that
16 out.

17 What I care about is at the end of the day we
18 want this rule to provide meaningful and practical guidance
19 to -- to coalbed methane production on these lands and with
20 regard to higher quality.

21 So I'm looking for ways -- and I'm clear that we
22 may not -- we're probably overstepping today's charge if we
23 get into specific language much more than we are right now,
24 but that's what I will be looking for going forward. And I
25 think others will too.

1 Do we really want there to be more transparency,
2 more predictability for all involved? And we're not there
3 yet. If it were easy, I suppose we wouldn't be here in the
4 first place.

5 So I would like to think coming out of this that
6 we're going to have more clarity and guidance than we
7 started with.

8 MS. COLGAN: Madam Chair, I suggest --
9 though an opinion is different than rules and
10 regulations -- and I'm sure there were quotation marks
11 there at some point -- but I don't think that it's a good
12 idea, generally, in rule-making to include any of the
13 statutory language. Statutory language is already there.

14 And so my suggestion will be that all of this
15 came out that has to do with anything supposedly taken from
16 the statute.

17 CHAIRMAN GORDON: Well, just so I
18 understand what Kate's suggestion was, you're suggesting
19 strike from "cause contamination" down to "renders"?

20 MS. FOX: Yes.

21 And also, Madam Chair, I think that this language
22 modification addresses your concern, which is the thought
23 to add value from what we have in the statute in a couple
24 of ways.

25 First of all, don't forget that in A we're

1 requiring the applicant to provide credible data supporting
2 this, which I think puts a higher burden on the applicant,
3 DEQ, to really scrutinize these representations.

4 And also at the -- what I'd like to say is if you
5 go from, That the produced water shall not cause or have
6 the potential -- wait -- "shall not render or have the
7 potential to render any waters harmful, detrimental," et
8 cetera, and then go on and also incorporate C, "or degrade
9 water for its intended uses," and add at the end there "at
10 any point from the point of discharge to the main stem."

11 Because I think this is what has come out of our
12 long and painful rule-making process is that what seems to
13 be important -- and especially since we've shifted our
14 approach somewhat in a response -- is not just the quality
15 at the end of pipe, but the quality from end of pipe down
16 to Mr. Maycock's forage land or wherever you might be
17 looking at it.

18 And that the real -- some of the significant
19 failures and regulations that we have seen have had to do
20 with the fact that DEQ doesn't typically regulate beyond
21 the end of pipe.

22 And so if you take this language and you talk
23 about impacts down the stream -- and it's all about water
24 quality to satisfy the attorney general -- that those
25 standards are applicable at any point that the water would

1 be applied, then you would have a huge improvement and
2 refinement over the mere statutory language.

3 MS. FLITNER: Mr. Corra?

4 MR. CORRA: Madam Chair, again, I come back
5 to what is the purpose of the Council's work?

6 And, you know, maybe that's where -- that is what
7 should be put here as opposed to trying to take language
8 out of the statute and edit it, so to speak. If you
9 wordsmith so that it makes what exists here somewhat
10 palatable, I -- you had the suggestion that you just strike
11 it completely, which you can do and it's not going to harm
12 anything.

13 Remember the purpose of the appendix is to
14 describe how permits will be issued relative to coalbed
15 methane. And I'm being a little presumptuous here, but I
16 think that's the intent of the Council to get into that and
17 do something about that. And that's different than what
18 exists today.

19 And perhaps the Council ought to craft the
20 statement that goes underneath -- in this particular
21 section first.

22 MS. FLITNER: Right. Thank you.

23 CHAIRMAN GORDON: That's going to happen
24 today, John.

25 MR. CORRA: Okay.

1 MS. FLITNER: And no one can leave until
2 we're done.

3 MS. HUTCHINSON: Just to wrap up this as we
4 go philosophically -- I find it dangerous to restate the
5 statute in the rules; because as time goes on, someone
6 might forget what was in the statute and somebody
7 wordsmiths it in another rule-making, and the next thing we
8 know you've got a chunk of rule that doesn't say the same
9 thing the statute says.

10 I think it's better that -- to -- if this is the
11 part of the statute that we're concerned about, then we
12 should just state -- in my mind, the purpose of the rule is
13 to say, How are you going to do what it says we're supposed
14 to do in the statute?

15 So instead of regurgitating the statute, we
16 should say, Okay, we're really concerned about this part
17 here, the "renders harmful." Instead, we should just write
18 a rule that says what we're going to keep from rendering
19 the water harmful.

20 So just -- I'm not sure what that fixes. I'm
21 just saying philosophically --

22 MR. MOORE: I'll give you a fix. Let's
23 take this paragraph out and put in my paragraph about EC
24 and SAR.

25 Just speaking on this one, I really do concur

1 that if all it's doing is preparing the statutory language,
2 it's dangerous.

3 Another situation that could occur is that the
4 legislature changes the statute, and then the regulations
5 conflict with the statute. So I'd just as soon expand on
6 statutory language where clarification is needed, but not
7 just read it verbatim, so to speak.

8 So I suggest we delete paragraph A(iii) from the
9 proposed rule-making.

10 MS. FLITNER: Great. And now looking,
11 there is additional language from the statute further down
12 in this added language; and we just -- I believe we're
13 checking -- so let's just make sure that we're applying
14 that decision to -- or applying that option.

15 MR. MOORE: I think that's the only place.

16 MS. FLITNER: No, I'm talking about past
17 little iii, the records --

18 CHAIRMAN GORDON: You're talking about A,
19 B, C, D, the provisional --

20 MS. FLITNER: -- detrimental or injurious
21 as in the statute, whereas -- so let's check that.

22 MR. MOORE: So to delete paragraph iii --
23 paragraph A(iii) and all the subparagraphs, you get rid of
24 all the statutory regurgitation.

25 MS. FLITNER: I believe all of that

1 language; is that correct?

2 MR. MOORE: From Ms. Fox' perspective, it
3 was the AG's language; but it's the statutory language.

4 MS. FLITNER: Right.

5 And for purposes of being accurate, I think
6 what's on the table -- and we might want to double check
7 this after today's meeting -- but our intention here -- if
8 there is a motion and it passes -- is to remove redundant
9 statutory language.

10 CHAIRMAN GORDON: I'll second that.

11 I guess my feeling would be if we do a straw vote
12 on that, we can avoid this conversation. I think by
13 removing this statute language --

14 MS. FLITNER: Okay. Certainly. Fine.
15 Yeah, absolutely. Fine.

16 MS. HUTCHINSON: Can I make a comment about
17 what this red language iii is really saying?

18 Basically the way it's written right now,
19 essentially you can say the same thing; and instead, just a
20 few sentences said that reduced water shall not cause
21 pollution, which is a little bit broader than what we're
22 intending to do. So that's why I think that could be
23 eliminated.

24 MR. MOORE: As you stated earlier, the
25 permit is a permit to discharge of pollution, so you can't

1 have a regulation that says you can't have pollution, then
2 have a discharge permit that's allowable.

3 MS. HUTCHINSON: Let's delete.

4 CHAIRMAN GORDON: Anybody want to keep it?

5 MS. FLITNER: Dennis is uneasy.

6 MR. BOAL: Here's the problem and what I
7 see, Mr. Chairman: The train left the station in the last
8 meeting.

9 I mean, there was a motion to proceed in the
10 rule-making. I had my legal assistant put this all
11 together, To proceed in the rule-making on Appendix I dated
12 May 11, 2006 and then Appendix H dated March 30, 2006. The
13 motion was made, it passed; and I voted against it.

14 And that's what -- and so I thought all we were
15 doing here today was nailing down what those two appendixes
16 were. We've done that. We've done that.

17 Now, I gotta tell the Powder River Basin folks I
18 don't see much good in this; but that's what we should set
19 up for hearing. We should have the hearing on it and go
20 from there. But, you know, I'd ask you to come to the
21 hearing and be ready to tell what good this is going to do
22 in this, because I don't see it.

23 I can change my mind, but the train's out of the
24 station, folks. We had a motion to dismiss. It was
25 denied, and then there was a motion to go to rule-making on

1 these two things.

2 So -- and I thought today all we were doing was
3 nailing down Appendix H and Appendix I that we had passed.

4 And now we're doing more than that.

5 MS. FLITNER: Great. That's helpful.

6 I think that we have varying interpretations
7 about what "nailing down" is, and you have wisely counseled
8 us that -- and I agree with you that we are weighing into
9 discussions that are more appropriate to the hearing.

10 I hope that this conversation has been helpful
11 for those of you who actually have to prepare for the jury.
12 And that's what --

13 MR. BOAL: We now have Appendix H and
14 Appendix I that we can hand out to people to respond.

15 CHAIRMAN GORDON: Mr. Boal, for the sake of
16 argument, we haven't published those yet, that is true.
17 The language needed to be published. And I understand your
18 point. I think it's a very good one, and I actually
19 subscribe to it.

20 But the problem I have is that there are fixes
21 that can be made to this language that if we do that in
22 hearing, yet again, we will then go back to rule-making and
23 we'll make no further progress on this unless we just
24 pass --

25 MR. BOAL: We can do those fixes -- these

1 fixes that you're discussing now can be done in the
2 rule-making area, which is where I think they should be
3 done.

4 CHAIRMAN GORDON: I don't believe that we
5 can talk about setting standards if that's not within the
6 scope of our notes.

7 MR. BOAL: You might be right on that, but
8 I haven't heard any suggested language here -- see, I guess
9 the Powder River now thinks that we ought to be setting
10 standards. They should be amending their petition, and
11 they should be suggesting some standards.

12 And we heard for the first time today that they
13 do think that it's a good idea. I think that might be a
14 good idea. There's a process -- and, you know, I'm not a
15 great process guy -- but I do know that if we have a
16 process, we have a better chance of making a good decision.

17 If you have a lousy process, there's a chance
18 you're going to miss something and you're going to screw
19 something up.

20 And that's why I say I think the train's out of
21 the station. We need to follow it through, and what
22 happens, happens.

23 MR. MORRIS: The way we're going, this will
24 turn into a hearing.

25 CHAIRMAN GORDON: So for clarification,

1 again, Mr. Boal, would you then not want to change the
2 first language that was recommended by Mr. Moore about the
3 EC specific conductivity level? That would have to be
4 amended as part of the hearing?

5 Is that your view?

6 MR. BOAL: Right.

7 CHAIRMAN GORDON: I support that.

8 MR. MOORE: Just the numerical value that
9 was a correction of what was in the language, not putting
10 SAR and EC values in?

11 You're just talking about --

12 CHAIRMAN GORDON: I'm talking about 3,000
13 micromhos --

14 MR. MOORE: EC corresponds with CES.

15 MS. FLITNER: Right.

16 MR. MOORE: See, I would say that's a
17 ministerial-type correction that we just overlooked in the
18 drafters and drafting this language. And we should go to
19 the rule-making with numbers that relate to each other
20 that -- 2,000 TDS is not related to 7500 micromhos of EC.

21 MS. HUTCHINSON: Can I make a comment?

22 MS. FLITNER: Yes, and I want to ask a
23 couple of questions of Bridget as well.

24 MS. HUTCHINSON: Well, I think Dennis put
25 us in our place, and quite properly. And I guess I think I

1 would view all the potential changes and discussions that
2 we had today as putting the parties on notice about what
3 we're thinking.

4 And I would be inclined not to change -- I
5 understand your argument, as well, Rick -- but not to
6 change the specific conductance in case someone has some
7 arguments about that. I would leave -- this was the
8 language we adopted at the meeting in Casper, so I would
9 suggest that we make no changes, except, of course, mine of
10 the 0.2, because that's a typographical issue.

11 MR. BOAL: The 0.2 and the tabulations for
12 whatever the --

13 MR. MOORE: Micromhos.

14 MR. BOAL: Right. Those were truly
15 stylistic and editorial-type things. Everything else,
16 we're really changing the merits of what we approved; and
17 we should be doing those in hearings and stuff like that.

18 CHAIRMAN GORDON: My last question to you,
19 Mr. Boal, really refers to that -- what Mr. Olson pointed
20 out that the state engineer may need to be included in
21 this. But that probably could be part of that hearing.

22 MR. BOAL: I would think.

23 CHAIRMAN GORDON: I just want to make sure
24 that everybody understands that we respect the state
25 engineer.

1 MS. FLITNER: Speak for yourself.

2 I'm kidding.

3 MR. MOORE: May I ask Mr. Boal a question,
4 Madam Hearing Examiner?

5 MS. FLITNER: Yeah, and then I would
6 like -- I'm just teeing you up, Bridget.

7 I would like --

8 MR. MOORE: My question perhaps will
9 provide some more things for Bridget to elucidate on.

10 But it seems to me that when we made that
11 decision in our previous meeting to go forward with the
12 rules, it was in a meeting for Council.

13 And according to rules of order, we should be
14 able to reconsider the previous decision.

15 MR. BOAL: It seems to me like we would
16 have had to notice that out for some sort of notice of
17 reconsideration.

18 MR. MOORE: Okay.

19 MR. BOAL: We haven't done that, as far as
20 I know.

21 MR. MOORE: What did we notice for this
22 meeting?

23 MR. BOAL: I think it was to decide on what
24 Appendix H and I, you know, we're going forward with.

25 MR. MOORE: It says, Discussion of

1 scheduling and procedures.

2 MR. BOAL: There we go.

3 MR. MOORE: So it's not about what it
4 contains.

5 MS. HUTCHINSON: Right.

6 MS. FLITNER: Yeah. I think that we would
7 like to hear from you, Bridget, with regard to where this
8 conversation has gone the last five or ten minutes.

9 I am -- I hope, but do not expect, you're about
10 to pull some rabbit out of the hat; because Mr. Boal is
11 right that -- which is why he voted against this -- that we
12 were dealing with a process -- we were chasing the train
13 already in Casper.

14 Many of us felt strongly that all of you and
15 some -- you especially and the Council, as well -- had
16 invested time in this conversation. And many of us, myself
17 included, were reluctant to start over. Some of us
18 worried, as you'll recall, that starting over may mean
19 delaying any sort of solution by a period of a year or two
20 or more. In hindsight, I am not as striking about my
21 decision today as I was in the August for these reasons.

22 I am wondering if we are either, you know,
23 solutions in search of a problem or we're still looking at
24 the same problem and we are not -- you know, we're chasing
25 it.

1 That being said, I'm wondering, Bridget, if you
2 see anything that we do not see with regard to -- now, here
3 we are, and we are constrained by what is in the -- defined
4 in the current -- with this proposed language of Appendix H
5 and I.

6 And you are as familiar with the list of issues
7 that we are trying to address.

8 I'm hearing Dennis against -- in his very
9 respectful way saying, I'm really concerned that we are
10 going to get to the end of this process and we will have
11 provided no value.

12 And as much as I don't want to say that, I'm
13 concerned about that, too. So I'm going to name the
14 elephant in the room and see what, if any, options we have.

15 I just -- you know, I want it to be stated that
16 we see this problem. We see that we could be sitting at
17 the end of this discussion, if we go forward, and have not
18 made an impact. And that really troubles me.

19 MS. HILL: So the question to me was --

20 MS. FLITNER: Where's the rabbit?

21 I guess are you -- I'm not putting words into
22 Dennis's mouth, but I think he's saying, We've gotta
23 deal -- this is -- what we're fixing now is it's not going
24 to have the impact that we hoped for, that we are now in a
25 different conversation.

1 And I'm wondering if you concur with that from
2 the AG's office; and if so, let's talk candidly about how
3 we're going to proceed, because we still have issues that
4 need addressed.

5 MS. HILL: Well, let me go at it a couple
6 different ways. The first thing being, you know, I do
7 agree with what Dennis has said. If you read the APA on
8 citizens' petitions, it says you decide whether you accept
9 or deny it. Once you accept it, you initiate rule-making
10 on what the citizen has presented you with.

11 And so where you are now is to the point of
12 initiating rule-making, and that's where you are.

13 So what you can do is initiate your rule-making
14 and then go through all the things that rule-making goes
15 through. There's the public process where everybody gets
16 to put in their input.

17 Now, there's the potential that through that
18 process, perhaps you come up with a rule that does provide
19 some of these things that you would do. It's going to take
20 a while, probably; but that process could conceivably get
21 you there through hearings, notices, amendings, responding
22 to comments, all that sort of thing -- could maybe get
23 you what I hear you say you were envisioning --

24 MS. FLITNER: Absolutely.

25 MS. HILL: -- something helpful.

1 But yeah, you move forward with rule-making on
2 the petition.

3 Let me say, second, at that meeting in Casper,
4 there was some question whether we had considered Appendix
5 I how it sits today and offered our opinion on whether that
6 was in your statute authority. We had not done that.

7 Chairman Gordon put me on notice that perhaps
8 after this meeting you would send it with me to take back
9 to Casper -- or Cheyenne, open the books, read it, think it
10 through; because it's important and somewhat complicated
11 that we just want a little bit of time to think it over and
12 then let you know.

13 And we're still certainly willing to do that, and
14 then you could proceed with your rule-making process from
15 there.

16 Is that what you're looking for?

17 MS. FLITNER: That helps.

18 CHAIRMAN GORDON: So as I see it, we have
19 Appendix H. Everybody's familiar with that. We've seen
20 it.

21 We have Appendix I with two stylistic changes.
22 One is to put at zero in front of the ".2," and the other
23 one maybe is a little bit more controversial; but that is
24 to take the 750 micromhos per centimeter and turn that to
25 3,000 to comport with the 2,000 milligrams per liter.

1 Those would be the only changes.

2 And I guess the point I would ask is taking the
3 0.2 -- I don't think that's of substance, but the other
4 one -- is that something that we want to change or is that
5 something we address as we go on?

6 MR. BOAL: Well, I thought it was just a
7 conversion thing. And assuming that Mr. Moore's conversion
8 is correct --

9 MR. MOORE: The value as presented is TDS
10 or specific conductance, and they should be relatively the
11 same to the values.

12 Do you know what I'm trying to say?

13 If you're going to change one, you should the
14 other. If you're saying this standard is more accurate,
15 total dissolved solids -- but in lieu of ruining a
16 complicated procedure and do total dissolved solids, you'd
17 stick an electrode in and get electrical conductivity.

18 So it should be the equivalent, rather than a
19 nonequivalent before we go forward with rule-making.

20 CHAIRMAN GORDON: I think we should have
21 testimony on that, so I would just say we're going with the
22 0.2.

23 I don't know how everybody else feels about that,
24 but that's --

25 MR. BOAL: That would be the more safe

1 approach.

2 CHAIRMAN GORDON: Okay. So is that --
3 that's what we're doing?

4 I don't think it requires any motion.

5 Is there any question, I guess, from anyone?

6 MR. GIRARDIN: Your Honor, the notice -- if
7 I may, the draft notice that was attached for noticing this
8 up, that looked fine to me. I don't know if we need to
9 take any action on that, but the notice that we're going to
10 publish in the newspaper --

11 CHAIRMAN GORDON: Okay.

12 MR. GIRARDIN: -- it looks fine to me.

13 UNIDENTIFIED MAN: Are you taking any
14 questions from the public today?

15 MS. FLITNER: Sorry?

16 UNIDENTIFIED MAN: Are you taking any
17 questions?

18 MS. FLITNER: I will, at least, take some
19 comments; but let me consult with Terri and find out when.

20 I think this is fine, but I'm the nonlawyer, and
21 I'm always getting into trouble.

22 Is now fine?

23 MS. LORENZON: I think once you finish the
24 order of change, then you'll have your part done; and then
25 he can comment at that point.

1 MS. FLITNER: Thank you.

2 MR. GIRARDIN: Mr. Chairman, the only
3 glitch in that notice is when we're going to hold the
4 rule-making hearing and where.

5 MS. FLITNER: Do we need a motion to
6 approve the public notice language?

7 That will be at our January meeting in Cheyenne.

8 Joe, do you have -- was it the 17th and 18th of
9 January -- our next meeting dates?

10 MR. GIRARDIN: Yes.

11 MS. FLITNER: Oh, wait. I've got it, 17th
12 and 18th.

13 So I -- I think it was decided at the last
14 meeting that the dates were January 17th and 18th in
15 Cheyenne.

16 MR. GIRARDIN: The location wasn't decided,
17 but it was the 17th and 18th; and Cheyenne was proposed.

18 CHAIRMAN GORDON: Bridget, do you think
19 that the review that your office would do would be able to
20 get through that to be able to meet that timeline?

21 MS. HILL: Yes, we'll do our best.

22 Now, wait, let me make sure I'm understanding.

23 Do you want to have your hearing after your
24 45 days' notice of intent in January and that --

25 MS. LORENZON: Do you know what that means?

1 It means that it all has to be done and to the
2 papers by December 1st, because we count it back for
3 another reason. So it really -- that's the window. And
4 the next week is a holiday, so it's a tight window,
5 actually. 45 days just squeaks in there around December
6 1st.

7 And then it takes about a week to get into the
8 paper to do all that written work, and then there's all the
9 paperwork on it and the rule-making; and it --

10 MS. HILL: We'll give it a --

11 MS. FLITNER: We'll proceed with that as a
12 goal, and you will let Terri know and she'll let us know if
13 there's a problem.

14 I think we have dates scheduled for February as
15 well, don't we?

16 CHAIRMAN GORDON: No.

17 MS. FLITNER: We don't?

18 So those are the dates and places if you need a
19 motion.

20 MR. GIRARDIN: And that gives us enough
21 time to do a publication?

22 CHAIRMAN GORDON: If everything works.

23 MS. FLITNER: If we can get all the
24 preliminary work done. We're going to have to work hard.

25 MR. BOAL: I would make that motion.

1 MS. FLITNER: I'll second.

2 CHAIRMAN GORDON: Moved and seconded.

3 All in favor?

4 ALL: Aye.

5 CHAIRMAN GORDON: Nays?

6 UNIDENTIFIED MAN: Madam Chair.

7 MS. FLITNER: Yes.

8 UNIDENTIFIED MAN: Don't you have another
9 motion on the floor made by Mr. Moore and seconded by
10 Mr. Gordon that you never voted upon back when you was
11 talking about these rules here on this --

12 CHAIRMAN GORDON: I suggested it was a
13 straw -- my point was just to move on with -- beyond the
14 discussion, and then Dennis put that to rest without us
15 having to go through it.

16 MS. FLITNER: Thank you.

17 MR. MOORE: Just to clarify things for
18 purpose of the record, as the second concurs, I withdraw my
19 vote based upon sound legal advise.

20 MS. FLITNER: I'm sorry.

21 Would you remind me your name and go ahead with
22 your comment?

23 MR. APPLGATE: My name is Dave Applegate.
24 My question just goes to the notice question for the notice
25 extension.

1 I wonder if you'd talk a little bit about the
2 next few days, but could you talk about what's going to be
3 done at the next meeting and the process that you're going
4 to take with the rule-making and how you expect that to go
5 out for the next year, perhaps, or maybe it's done at the
6 next meeting?

7 But I don't quite understand the process.

8 MS. LORENZON: Let me try to answer that.

9 The rule-making process is fairly informal in
10 style. We will get a public notice out announcing the time
11 and date which they were just discussing. Then on the
12 17th -- I anticipate we'll probably start on that date --
13 we'll indicate in a public notice which date we start and
14 the approximate time.

15 The Council will convene and take comments from
16 the public. You'll be able to submit comments in writing
17 or make a verbal comment at the meeting, and then the
18 Council, at the conclusion of taking all the public
19 comments -- they make a decision or may not. It just
20 depends on how the hearing goes at that point.

21 If they decide to go ahead and they're ready to
22 make a decision on the proposed regulation s, they'll close
23 the hearing and the comments and convene the meeting and
24 then work as they have here through a motion and regular
25 tools of a meeting.

1 If they decide that they aren't ready to make the
2 decision at that point, they may decide to extend the
3 comment period. They may go ahead and close the record
4 either way, but they will delay the decision until a later
5 meeting to give themselves more time to consider the
6 comment.

7 There are some other procedural issues in there
8 all through there; but really they don't concern the public
9 so much as just the staff and the Council, the work that
10 needs to be done.

11 But for the public, you can come to that meeting.
12 The notice will tell you where to send comments, if you
13 want to send a written comment, and where the meeting will
14 be. And you can do one, the other, oral, written or both;
15 and then listen to the entire hearing.

16 MR. APPLGATE: Thank you.

17 MS. LORENZON: You're welcome. And there
18 will be a phone number and contact information on that
19 note; so if you have further questions, you can call.

20 CHAIRMAN GORDON: Is there any further
21 business?

22 MR. GIRARDIN: I was going to say
23 scheduling, but --

24 CHAIRMAN GORDON: Right. Okay.

25 MS. HUTCHINSON: Just to clarify the

1 schedule for this, it is 9:00 a.m., January 17th.

2 What city are we in?

3 MS. FLITNER: Cheyenne.

4 CHAIRMAN GORDON: We're in Cheyenne.

5 Will that work?

6 What other scheduling matters do we have to take
7 up?

8 CHAIRMAN GORDON: Let's take a five-minute
9 break, then.

10 (Proceedings concluded 3:30 p.m.,
11 November 13, 2006.)

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C E R T I F I C A T E

I, ASHLEY DAVIS, Registered Professional Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein, constituting a full, true and correct transcript.

Dated this _____ day of _____, 200__.

ASHLEY DAVIS
Registered Professional Reporter