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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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LAND QUALITY DIVISION

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HEARING ON OWNERSHIP AND CONTROL RULE PACKAGE

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TRANSCRIPT OF HEARING PROCEEDINGS

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Transcript of Hearing Proceedings in the above-

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entitled matter before the Department of Environmental

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Quality, Land Quality Division, commencing on the 25th

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day of August, 2010 at 9:00 a.m. at the Oil and Gas

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Conservation Commission Hearing Room, 2211 King

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Boulevard, Casper, Wyoming, Mr. Jim Gampetro presiding,

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with Board Members Robert Green and Joe Slattery in

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attendance. Also in attendance were Ms. Carol Bilbrough

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and Mr. Craig Hults of the Land Quality Division, Mr.

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Harv Gloe and Mr. Jeff Fleischman of OSM, Ms. Laura

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Ackerman of Buckskin Mining, and Ms. Lynn Welker of WMA.

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P R O C E E D I N G S

(Hearing proceedings commenced 9:00
a.m., August 25th, 2010.)

CHAIRMAN GAMPETRO: We'd like to welcome everyone this morning. I'd like to start off by just a little bit of ground rule that I haven't mentioned in a while. If you have a question, just raise your hand. I've asked everyone. They do not mind if we interrupt. Raise your hand. But when you speak, please identify yourself for the record to make it a little bit easier so that we'll have on the record who was speaking.

Other than that, we could probably start off by everyone going around the room and just telling us who you are and what organization you're with. And where should we start? Start with Carol.

MS. BILBROUGH: I'm Carol Bilbrough, the program manager with the Land Quality Division, sitting in for Don McKenzie.

MR. SLATTERY: I'm Joe Slattery. I'm from Pine Haven, Wyoming. Agriculture and sanitation.

CHAIRMAN GAMPETRO: I'm Jim Gampetro, and I'm a public member of the board. And I'm from Buffalo, Wyoming and have a small business there.

MR. GREEN: I'm Bob Green. I'm from Gillette, Wyoming. I'm the industry representative on

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1 the board. And I work for Cloud Peak Energy.

2 MS. WELKER: I'm Lynn Welker with the
3 Wyoming Mining Association.

4 MS. ACKERMAN: Laura Ackerman, Buckskin
5 Coal, Gillette.

6 MR. FLEISCHMAN: Jeff Fleischman, field
7 office director for OSM Casper.

8 MR. GLOE: Harv Gloe. I'm at OSM here in
9 Casper, also.

10 MR. HULTS: And Craig Hults. I'm with the
11 Land Quality Division in Cheyenne.

12 CHAIRMAN GAMPETRO: I would only ask one
13 other thing. Since we don't have any microphones or
14 anything and I can't hear, and Joe has told me he's not
15 that great at that, either, if everyone could just speak
16 up. Other than that, let's look at the agenda here and
17 what's next. Okay. I would welcome a motion to approve
18 the meetings -- minutes from the November 17th meeting.

19 MR. GREEN: I so move.

20 MR. SLATTERY: I'll second.

21 CHAIRMAN GAMPETRO: It's been moved and
22 seconded. All those in favor please signify by saying
23 aye.

24 MR. GREEN: Aye.

25 MR. SLATTERY: Aye.

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1 CHAIRMAN GAMPETRO: Any opposed?

2 (No response.)

3 CHAIRMAN GAMPETRO: The minutes of the
4 previous November 17th meeting are approved.

5 Okay. Now we get into the ownership and
6 control rule package. Who's going to do the
7 presentation? Craig?

8 MR. HULTS: Yeah. Craig Hults again with
9 Land Quality.

10 I've just put together a brief PowerPoint just
11 to get everybody kind of up to speed on some of these
12 rules. We won't be talking about the specific rule
13 language at this point. I think we could do that after
14 this. Just a brief introduction. And feel free if
15 anybody has questions along the way.

16 The first thing I wanted to do is give you a
17 status of some of our proposed rules. You just did an
18 approval of the meeting minutes. And that involves this
19 first section here. We had two packages that have gone
20 through the advisory board level and haven't gone down to
21 the formal rule-making stage for the EQC. What I've done
22 is taken both of those -- we have the 1-B and the 1-Z.
23 One was valid existing rights and individual civil
24 penalties. That was the 1-Z package. And the 1-B was
25 the noncoal mine waste. What I've done is combined those

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1 into one. I'm trying to limit the number of times that
2 we get before the EQC and can do this a little quicker.
3 Because these are issues that we have with the OSM, we're
4 trying to get rid of these deficiencies. So those two
5 have been combined into one package.

6 Currently we've sent them out to the governor
7 and to the attorney general for review. Didn't receive
8 comments from the governor. So we're good to go with the
9 formal rule-making. And when I get back, we'll get our
10 memos out and request our hearing date. So that should
11 be coming hopefully by the end of the year, if not
12 beginning. I'm not sure of the EQC's schedule. But that
13 will be our next step on those.

14 We had formally submitted the vegetation
15 package to the OSM. They responded with five areas of
16 concern, fairly minor tweaks that we have to do. One of
17 the areas of concern we believe we have addressed, and
18 that related to the siltation structures. We have added
19 a new design precipitation event. And the concern was
20 that we didn't have the same type of language dealing
21 with control of the flow. When I reviewed the two
22 sections, it appeared that they couldn't operate
23 independently. So the one that they had concern with
24 looks to be okay because these will be referred back to
25 that second section. So that one will be okay.

1 Another one they had in there was fish and
2 wildlife enhancement measures. Got some clarification.
3 And that's one of the things that actually will be in
4 this package today. We also had some typos and some
5 smaller issues, and we'll go through those today as we
6 get to them.

7 We also had gone through -- and I want to say
8 this was 2006 -- with a blasting package. And that was
9 1-W. In the interim, they had some federal legislation
10 that dealt with many of the issues that we had in there.
11 And in talking with our blasting coordinator, he feels
12 like the administration of that program makes that
13 rule-making unnecessary at this point. It was a state
14 initiative. It was something that we were doing to get
15 some of the information that we didn't feel we were
16 getting. But it appears to have worked itself out. So
17 we'll be formally withdrawing that from consideration.
18 So it won't go to the EQC. So that one will disappear
19 for now.

20 We had a self-bonding package go through and be
21 formally submitted. There were some big disapprovals
22 there. About all that passed as part of that package was
23 our alternative rating organizations. Our plan at this
24 point, after reading the Federal Register about that, it
25 looks like we'll probably install those numbers as they

1 were before the disapproval. One of the things, we had
2 jumped the level up to 35 percent of an operator's worth.
3 We'll have to go back down to that federal level of the
4 25 percent. We'll also be pulling out the use of foreign
5 assets in calculating the self-bonding. We don't have a
6 package started at this point on that. But basically
7 what it will be is going back to our rules that we had in
8 place before the disapproval from the OSM.

9 And this package today is ownership and
10 control. We had historically seventeen deficiencies that
11 we were trying to address. There were three separate
12 rule-makings that forms the basis of this package by OSM.
13 There's also in this package those four areas of concern
14 that they had with the vegetation package. So that
15 hopefully -- we did go through a review, and I'll get to
16 it in the next slide. But the seventeen deficiencies, I
17 don't know that that number is currently accurate after
18 the review of the three different rule-makings. We never
19 came up with a specific new number. This is kind of a
20 historic one that we had in the past. It is quite a few,
21 and it will be a good thing to get off the books.

22 Some of the history on the ownership and
23 control, like I said, there are three rule-makings, but
24 the initial one that started the process was in 1988, I
25 believe. 22 years ago is when they first developed any

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1 kind of ownership and control rules. Following that
2 rule-making by the federal government, we entered into an
3 MOU on the applicator violator -- or the applicant
4 violator system. And what that involves is it's a
5 federal program of data entry that keeps tabs on the
6 ownership and control of certain operations or all
7 operations, coal operations, and some of the ownership
8 levels, whether violations have occurred. And it's that
9 database that was the basis of this MOU.

10 Part of the rule-making today is an effort to
11 make that MOU go away. A lot of the things that were
12 contained in that memorandum of understanding is a
13 federal effort to get these into the state's programs and
14 provide a little more consistency. So a lot of the
15 language that was in this MOU actually kind of comes into
16 this rule package.

17 I'd mentioned before, there are three rule-
18 makings by the federal government, one in 1994, another
19 one in 2000 and a third one in 2007, that forms the basis
20 of this rule package. Problem being, at the time that
21 these were promulgated, there were several lawsuits that
22 went on challenging the rules. Those have since been
23 cleared up. And in 2008 we were informed that it was
24 time to go ahead, and we would be getting a 732 review
25 from the federal government, which is a comparison of our

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1 rules against those three sets of rules. We were
2 informed of that in 2008.

3 In 2009 I sat down with these two gentlemen
4 here, Jeff and Harv, and we pretty much went line by line
5 through the federal regulations and did a comparison side
6 by side with our regulations to see what was still
7 deficient. And that's why I said the seventeen may not
8 be accurate, how many deficiencies we're tackling today.
9 It's a lot, but I'm not sure it's necessarily seventeen.
10 We created a side-by-side table, saw where we needed to
11 make changes. And that forms the basis of this package.
12 And in 2010 we got that drafted. So that brings us to
13 today.

14 This section -- or these CFR sections I have
15 here are the rule sections of the federal government that
16 we're trying to address. Just briefly, it's 701, which
17 is some definitions. 773 deals with the requirements for
18 permits and permit processing. That would be the
19 application process. 774 is revisions, renewals,
20 transfers, assignments or sales. That comes into play in
21 the ownership and control issues. 778 is, again, the
22 permit applications and the minimum requirements for some
23 of the information we'll be providing, the legal,
24 financial and compliance histories for the operation and
25 applicant. 840 is some of the enforcement authority.

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1 And 843 is a specific part of that, which would be
2 cessation orders, a brief reference for anybody who likes
3 that kind of information.

4 I thought we'd go into the summary of the
5 proposed changes. We have several new definitions in
6 Chapter 1, first one being the applicant violator system.
7 Again, that one was contained in the MOU. There's
8 control or controller. That relates to who's running the
9 business entity, basically, and who has the decision-
10 making power. Notice of violation, this one I know is a
11 specific deficiency that we had. We've always used the
12 term, but it was never defined in our regulations
13 anywhere. And kind of the meat and potatoes of this is
14 own, owner or ownership.

15 Another thing we were doing in the definition
16 section is we've replaced the definition for surface coal
17 mining and reclamation operations, was one of the
18 concerns that was pointed out during promulgation of the
19 veg package, and rather -- we talked to them a little
20 bit. It seemed like our definitions of coal mining
21 operations and surface coal mining operations and
22 reclamation, we thought we had that covered in statute
23 and regulations, but the problem was that then we would
24 end up with some terms in our regulations that weren't
25 defined. And rather than create new definitions for

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1 those terms and try to find all the locations that that
2 was, we decided it was probably easier just to put this
3 term back in and put the word "surface" back in.

4 And that's the third bullet there. Wherever we
5 had removed it, we thought we were removing some
6 redundancy of the surface and underground and thought we
7 were adding clarity, but apparently not. So what we've
8 done is just put that back into the definitions
9 throughout the chapters that we had done during the
10 vegetation rule-making.

11 In Chapter 2, this is where we get into some of
12 the more involved things here. A second concern that
13 we're addressing was that we had removed a minimum map
14 scale during the vegetation rule-making. We basically
15 just put in that minimum again.

16 Next part here is Section 2. And here we get
17 into some bigger things. And we'll go through -- when we
18 go through the actual rule package, this will become a
19 little clearer. But we expanded and classified the
20 identification of interests. That will be the owners,
21 the applicants, the operators. We've added requirements.
22 Again, this one I know is a specific deficiency. We were
23 lacking the taxpayer IDs for the applicant and operator.

24 We've also added a means for updating the
25 information into AVS. And this is for the operators, so

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1 that if an operator or applicant has previously put an
2 application in, much of that information should be in
3 this applicant violator system. It gives you alternative
4 methods for updating. And if things are current, you'll
5 just provide an affidavit. If there are new updates
6 where much of the information is the same, it will be a
7 smaller process. And then the third is if you're doing
8 this from square one, you'll have to provide all of the
9 information.

10 Section 2, again, we added that "surface" back
11 in where we had removed it. In Section 5, this is the
12 third concern that we'll be addressing from the
13 revegetation package. And it deals with the wildlife
14 enhancement features. We were lacking a requirement for
15 a statement from the applicant that if they didn't
16 provide for a plan in the mine plan of how measures for
17 wildlife enhancement were going to be done, that they had
18 to provide an affirmative statement that it wasn't
19 practicable to do those things.

20 A second part of the deficiency that we had,
21 our language starts out with talking about revegetation.
22 We thought, in our rules, that there were enough
23 indications that it wasn't limited to revegetation
24 efforts when doing enhancement for wildlife. But there's
25 a brief addition that just adds the fact that it's not

1 limited to revegetation efforts when working with
2 wildlife.

3 Chapter 4, this is the fourth concern that the
4 OSM had. And this one here, again, we're adding the
5 "surface" back into Chapter 4 where we had pulled it out.
6 And the OSM had pointed out we had some inaccurate
7 chapter references in the husbandry practices. We just
8 corrected those to the appropriate section.

9 In Chapter 12, that deals with permitting
10 procedures. And here again, that will be the LQD's
11 procedures for compliance and -- AVS compliance and
12 review. It adds a new subject on how we will do our
13 final compliance review at the LQD, adds some of the
14 description on what data and how that data will get into
15 the AVS system. And it added several sections on the
16 permit eligibility determinations and final updates that
17 are required to AVS before permits are issued and the
18 requirement for a final report, compliance report, from
19 the AVS system before a permit would be issued.

20 Continuing in Chapter 12, we have some new
21 subsections dealing with the procedures for making a
22 challenge to a finding of ownership and control. This
23 would be the applicant or operator and parts of that tree
24 from the applicant or operator. We've also added a new
25 subsection regarding improvidently issued permits. And

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1 what that involves would be if, at some point during --
2 after a permit was issued, it was discovered that the LQD
3 shouldn't have issued that permit in the first place,
4 based on having a violation history that would have made
5 it to the point where we shouldn't have issued that, or
6 some other things with ownership and control, at that
7 point we'll be talking about some of the issues related
8 to that and what the response from the LQD is and how we
9 would untangle that.

10 And finally, there are some updates to the
11 section headers to reflect some of the new chapter
12 sections that we had put in.

13 And finally, in Chapter 16, this is our
14 enforcement and AVS. We added a clarifier in Section 8
15 for the procedures for cessation orders and the
16 requirements for updating AVS. And finally, the new
17 subsection (j) which we added, this would be if and when
18 the LQD would be discovering an unabated or uncorrected
19 violation. It's possible if that hadn't been subject to
20 enforcement already, it could be. And it also gives the
21 requirements on us that we need to enter those things if
22 we discover them at a later date to update AVS as
23 appropriate.

24 And finally, this slide here is kind of
25 self-explanatory, but I like it because some of the

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1 rule-making that we do, I look at this language all the
2 time. And to me, it may look perfectly correct. But
3 it's amazing what you can read through and not notice any
4 problems with the language. I just want to point that
5 out. And feel free to jump in at any time with anything
6 I may have missed along the way.

7 And that's it on the PowerPoint. And I thought
8 we could just jump into the rule package itself.

9 And, Mr. Chairman, I don't know if you want to
10 go through any introductory materials or just go right
11 into the rule language.

12 CHAIRMAN GAMPETRO: Go right ahead.

13 MR. HULTS: Our first section I have are
14 definitions again in Chapter 1 revisions. Our first
15 definition that we're adding is the applicator violator
16 system, or AVS. And again, that's the automated
17 information on the applicant, permittee, operator and
18 violation information. The OSM actually maintains this,
19 and we enter data as appropriate.

20 The next one, again -- and I've added in the
21 statement of reasons, before I go on, just that the
22 section headers will be updated as these definitions are
23 going through. I didn't want to put in each word that we
24 were updating. But the way these laid out, we have quite
25 a few definitions. And so there's going to be a lot of

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1 section headers that will be updated to go along with
2 these changes.

3 In "coal exploration," we added the term
4 "surface" back in. One point of clarification on that.
5 If you look at the definition for surface coal mining and
6 reclamation operations, in the statutory definition of
7 the surface mining, that includes any surface impacts
8 related to underground operations. So many of these
9 definitions will apply. It's just that was part of our
10 effort initially. We wanted to make it clear that most
11 of these regulations apply to underground operations,
12 other than how it's specifically laid out in Chapter 7, I
13 believe it is, that deals with underground mines
14 specifically. So a lot of these definitions, when it
15 does say surface coal mining and reclamation operation,
16 it's LQD's intent that that would involve surface impacts
17 related to underground, so like for roads, for instance,
18 and things like that.

19 Here we have a new definition of control or
20 controller. And I don't know if it's visible on your
21 screens, but there is a little bit of red text there.
22 And this will be different than what I have proposed to
23 you in the copies that you have originally. In my final
24 review of this, I noticed I left out the term "surface"
25 from a new definition, and rather than creating an issue

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1 again, I've added that in there with the intent that
2 would apply to the underground surface impacts, as well.
3 And there's going to be a couple more instances as we go
4 through.

5 Yes?

6 CHAIRMAN GAMPETRO: Craig, Jim Gampetro.
7 "Any person who has the ability to determine the manner
8 in which a coal mining operation is conducted," isn't
9 that kind of nondeterminant, all-encompassing?

10 MR. HULTS: Yes. I would agree with that.
11 What it does is, these are things that will be put onto
12 an application as far as when you're identifying those
13 people who are able to make determinations within that
14 corporate structure or that actual business entity. And
15 that's why this is limited to the Chapters 1, 2 and 12
16 and 16. And that's where we get into these ownership and
17 control issues for the permit applications, for
18 enforcement actions or for some of these procedures.

19 And what I've tried to do is, honestly, I've
20 taken the federal definition almost verbatim where I can.
21 That would be -- I will admit, I think -- in application,
22 I think it will be one section that isn't used as much.

23 Our next definition that changed was the
24 existing structure. Again, we're adding the term
25 "surface" back in. We had removed that during the 1-S

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1 rule-making. The same for "farm." And the next one was
2 "imminent danger to the public." Again, we're adding the
3 term "surface." Same for "joint agency approval," "land
4 use," "materially damage the quantity or quality of
5 water." Same thing with the word "surface."

6 Our next one here is a notice of violation.
7 Basically, it's just the written notification from us or
8 the OSM. This was related to a deficiency we had. We
9 had the term "violation," and we had "notice," but we
10 didn't have the term defined anywhere, so we had to put
11 that definition in.

12 Next definition is "own, owner or ownership."
13 And again, this is limited to Chapters 1, 2 and 12 and
14 16. And let's read through that one. It's excluding the
15 context of real property ownership. And it means being a
16 sole proprietor or owning of record in excess of 50
17 percent of the voting securities or other instruments of
18 ownership of an entity. And again, that's where I was
19 saying where you're dealing with some of the control
20 issues. This is spelled out a little bit more clearly
21 and gives a little more clarification.

22 Again, some of the -- we're adding the term
23 "surface" again. "Probable hydrologic consequences,"
24 "property to be mined," "roads." And here was the
25 definition in subsection (fb) that we had removed during

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1 the revegetation rule-making, was "surface coal mining
2 and reclamation operations." And we took the language
3 that was approved during the last rule-making and was
4 part of our program and plugged it back in.

5 And finally, "trade secret," we added the term
6 "surface" back into the definition. And one section on
7 the applicability, we added the term "surface" in a
8 couple of spots there. And that was it for Chapter 1. I
9 don't know if we have any questions on those.

10 Seeing none, I'll continue.

11 We're going into Chapter 2 now. And here the
12 first section, what we did was add the term "surface"
13 that we removed during the rule-making. The second
14 subsection there is subsection (c). This is where we had
15 removed the minimum map scale. The federal requirements
16 are the one to 24,000. We've added that back in. We
17 didn't -- there were some other changes to the reveg
18 rule-making. However, that was acceptable to the OSM at
19 that point. So all we've done is added in this minimum
20 requirement for the map size.

21 And Section 2 is the adjudication requirements.
22 This is where we get into the ownership and control
23 issues. In subsection (a) we added in the term "surface"
24 again. The first subsection that we're dealing with here
25 is (B). We've expanded and kind of clarified the -- when

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1 we need the names, address and telephone numbers from the
2 applicant. We've added "officers, members, directors or
3 person performing a function similar to a director and
4 person who owns of record ten percent or more of the
5 entity." What this does is allow us to bring in,
6 speaking of business entities other than partnerships,
7 corporations. Just expands the way people identify their
8 members of their boards and their officers. Again, this
9 is similar to the way the federal legislation is. The
10 federal regulations, I should say.

11 MR. GREEN: Mr. Chairman, could I ask a
12 question at this point? Just for a bit of
13 clarification -- this is Bob Green. A bit of
14 clarification on this person who owns of record ten
15 percent or more of the entity. That's getting at the
16 principal shareholders. And in this day and age, you
17 oftentimes have companies that are trading for several
18 individuals. What type of information is LQD viewing as
19 necessary to meet this requirement in those cases? Are
20 you looking to have 100,000 names?

21 MR. HULTS: It may be possible. And the
22 reason I didn't use -- we do have a definition for the
23 principal shareholder. The definition we have relates to
24 corporations. However, this is an actual federal
25 requirement. And in this instance, it's the name,

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1 address and telephone numbers of the -- those principal
2 shareholders.

3 MR. GREEN: If I might, my point of
4 clarification, let's just say that General Investments,
5 Inc., just to come up with a name, basically holds ten
6 percent of the stock, but there are 100,000 shareholders
7 of General Investments, Inc.

8 MR. HULTS: Right.

9 MR. GREEN: As an applicant, are we simply
10 going to be seeing in LQD's records the General
11 Investments, Inc., or are you going to be looking for the
12 100,000 investors that are part of General Investments,
13 Inc.?

14 MR. HULTS: My belief would be that it
15 would just be that General Investments, Inc. And another
16 thing, too, as this information gets entered, that will
17 be in AVS. And that's what I was describing earlier.
18 Some of these updates will make it a little bit easier as
19 new applications come in, the opportunity to just update
20 that information and not provide a whole new set of this
21 for each application. But yeah, it would be the actual
22 ten percent owner, not the individual pieces of that.

23 MR. GREEN: Thank you.

24 MR. HULTS: Sure.

25 Second subsection -- or third is requirement

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1 for the taxpayer ID numbers for the applicant and
2 operator.

3 CHAIRMAN GAMPETRO: Craig, can I interrupt
4 you for one second?

5 MR. HULTS: Sure.

6 CHAIRMAN GAMPETRO: Just thinking about
7 that, what Bob just said -- Jim Gampetro. If General
8 Investments, Inc., is owned 90 percent by one individual,
9 you do not want the name of that individual?

10 MR. HULTS: In that case, yeah. The
11 threshold is that ten percent. So now if General
12 Investments, Inc., was held by ten people equally, those
13 ten would have to be in there, yes. Yeah.

14 MR. GREEN: Thanks for the clarification
15 on that.

16 CHAIRMAN GAMPETRO: I'm sorry. Go ahead.

17 MR. HULTS: No. That's fine.

18 Subsection (D) is, again, names, addresses and
19 telephone number for each business entity in the
20 applicant's or operator's organizational structure, up to
21 and including the ultimate parent entity. And again,
22 we'll be providing the name, address and telephone number
23 for the president, CEO, director or other persons
24 performing those roles within those business entities
25 that are identified. And again, that's the owner of

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1 record of ten percent or more.

2 Subsection (E) is a new requirement that
3 provides the name, address and telephone number, the
4 position, title and relationship to the applicant and
5 operator, including the percentage of ownership and the
6 location within the organizational structure and date the
7 person began functioning in that position for every
8 officer, partner, member, director or those performing a
9 similar function and for the person who owns ten percent
10 or more of the business entity again.

11 MR. GREEN: And, Mr. Chairman, if I might
12 ask a clarification. Back to the folks that own ten
13 percent, since they are not -- or some of them may not be
14 working for the company, then the specific information on
15 the date the person began functioning in that position is
16 null and void for those people, or are you looking to
17 have that date of when they became ten percent owners?

18 MR. HULTS: Yeah. It would be then -- if
19 they're not actually functioning -- and again, here I
20 would say that when they began that position or -- and
21 maybe that's what it should say, or the person who owns.
22 Because like I said, it would be that date when they
23 became that percent of an owner. And when they're
24 actually in a position of either an officer, partner or a
25 member, you are functioning within that entity. So I

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1 would be open to adding the term "or" there instead.

2 CHAIRMAN GAMPETRO: Jim Gampetro. I'm
3 confused myself here.

4 MR. HULTS: Sure.

5 CHAIRMAN GAMPETRO: Are we looking for
6 only if they have ten percent? What about a limited
7 partnership that has 700 members?

8 MR. HULTS: In that case, then you're
9 talking about an actual partner.

10 CHAIRMAN GAMPETRO: In every case, you're
11 going to want the name of those partners?

12 MR. HULTS: Yeah. When you're talking
13 about the percentage of ownership, that's the cutoff
14 point that the federal government had made on the
15 distinguishing member. But yeah, if it was a different
16 type of ownership like that, I believe every acting
17 member within there would have to be --

18 CHAIRMAN GAMPETRO: And that's a federal
19 law?

20 MR. HULTS: Yeah. Pretty much follows the
21 federal regulations.

22 MR. FLEISCHMAN: I'm not quite sure --
23 this is Jeff Fleischman. I'm not quite sure where the
24 ten percent came from. I know the intent is to prevent
25 people from, you know, using corporate structure to

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1 isolate themselves out of a decision-making process. So
2 the intent is just to get to the person that's
3 controlling or owning that entity. But I'll have to go
4 back and look if you're interested where that ten percent
5 came from, because it would be in the preamble and
6 reasons in the federal rule-making.

7 CHAIRMAN GAMPETRO: I guess I was more
8 concerned with, I've seen limited partnerships that have
9 hundreds of members. And that could be very tough on a
10 company. The ten percent, I would understand that
11 immediately. Companies can be controlled with as little
12 as five or ten percent.

13 MR. FLEISCHMAN: Right. I'm curious as to
14 where it came from, so I think we'll research that. I'll
15 get back with Craig on where that came from, just out of
16 curiosity.

17 MR. GREEN: That would be great.

18 MR. HULTS: Scroll back down. Lost my
19 place again.

20 Subsection (F), we've updated that to include,
21 again, the term "surface." Also adds -- this is
22 statement and identification of the current, pending or
23 previous surface mining applications. Adds the operator
24 and the operator's partners, the principal
25 shareholders -- we were able to use that term here

1 because of the corporate structure -- who operate or
2 previously operated a surface coal mining operation. And
3 again, we've added, "For any surface coal mining
4 operation that the applicant or the operator owned and
5 controlled -- that goes back to the new definition --
6 "within the five-year period preceding the application
7 submission date."

8 We go through what the requirements for that
9 are. It will be the permittee's and operator's name and
10 address, the permittee's and operator's taxpayer ID
11 numbers, federal or state permit numbers and the
12 corresponding MSHA number, mine safety number, the
13 regulatory authority with jurisdiction over the permits,
14 and the permittee's or operator's relationship to the
15 operation, and again, including the percentage of
16 ownership and the location within that structure.

17 Subsection (G) is in the case that the
18 applicant has previously applied for a permit. This
19 information, I think the first times through, it will be
20 a somewhat lengthy process identifying a lot of these
21 interests. However, once that is into the AVS -- and
22 much of this may already be in AVS and may just require
23 some of the updates. But this is how things will be
24 updated if those permits are already out there.

25 So the first one is if all or part of the

1 information is already in AVS and it's accurate and
2 complete, the applicant will just provide an affidavit
3 that the information is accurate and complete. And so
4 there won't be a new going through that and identifying
5 all that.

6 If part of the information is missing or
7 incorrect, then the applicant will submit the necessary
8 information and also provide the affidavit that the
9 information as submitted is accurate and complete. And
10 finally, if the applicant can neither certify the data in
11 AVS is accurate and complete, nor make corrections, then
12 the subsections (B) through (F) would apply. It would be
13 like performing a new permit application at that point.

14 Subsections (H) and (I) were updated to reflect
15 a new organization, the newly proposed subsections above.
16 Subsection (2), this was related to a deficiency that I
17 know we had historically had on our books. We had always
18 just said the operator. And the way the new regs read,
19 it's the operator, the applicant and subsidiaries. And
20 this will be the status of the interests here. And so
21 that addition has been made. The operator has been added
22 in in the subsidiary.

23 MR. GREEN: Mr. Chairman, if I might,
24 just another point of clarification. It's not just
25 related to this one, but pretty much for this whole

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1 section.

2 MR. HULTS: Sure.

3 MR. GREEN: But I'll just use this as a
4 point. Many permits have overstrip areas with adjoining
5 permits.

6 MR. HULTS: Okay.

7 MR. GREEN: And those permits are owned --
8 are basically part of another company.

9 MR. HULTS: Okay.

10 MR. GREEN: So for those overstrip areas,
11 if a company has an overstrip area in a permit
12 application or renewal or revision, is LQD going to be
13 looking for this -- this equivalent corporate information
14 for that other company because of the ownership and
15 control over that overstrip area that's held by both
16 companies?

17 MR. HULTS: If the applicant and operator
18 for that permit were that way, yes, I believe so.

19 MR. GREEN: That might seem a bit
20 problematic, one would think --

21 MR. HULTS: I guess I would look at --

22 MR. GREEN: -- to have competitors asking
23 another company for this type of information.

24 MR. HULTS: Now, would they be considered
25 the operator, then, of --

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1 MR. GREEN: And that's what I'm trying --
2 that's the question I'm trying to get at, is at times,
3 each of them is going to be an operator in that overstrip
4 area --

5 MR. HULTS: Okay.

6 MR. GREEN: -- at different times, but --

7 MR. HULTS: Now, would they be identified
8 in your application as such for that permit?

9 MR. GREEN: It would be identified in the
10 permit as part of the mine actions to be taken.

11 MR. HULTS: Okay.

12 MR. GREEN: And it would be identified in
13 both of those permits that there will be mining actions
14 conducted in that overstrip area by companies that have
15 separate ownership and control.

16 MR. HULTS: Okay. I guess if we follow
17 this through here, what we're talking about is the
18 compliance information, whether those permits have been
19 revoked. And I would think, as the applicant, as you
20 bring these people in, yeah, I would say we'd have to
21 have that information. If you're bringing in different
22 operators throughout the organizational structure of that
23 larger permit, that those particular operators, we would
24 want to know whether they're a mining permit -- and they
25 wouldn't be holding the mining permit. Like what we're

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1 talking about here, the description and status of the
2 entities owned and controlled or under common control of
3 the applicant or the operator. And then we go into, "Had
4 any federal, state or coal mining permits" -- I guess my
5 question then back would be, do these overstrip
6 operations have a permit, per se?

7 MR. GREEN: The overstrip area is part of
8 two permits. I mean, you basically have adjoining
9 permits.

10 MR. HULTS: Okay.

11 MR. GREEN: And that's a frequent
12 occurrence in the Powder River Basin. And so those coal
13 leases abut.

14 MR. HULTS: Right.

15 MR. GREEN: And in order to maximize
16 recovery, you have to overstrip this way, and you have to
17 overstrip this way. So at different times, these two
18 operators are going to be active in that overstrip area.
19 So they're going to be mining in that overstrip area.
20 That same strip of land is going to be in both those
21 permits. But what I'm asking is that, with that being
22 the case, I would hope that this operator would not have
23 to go to this operator and get all of this ownership and
24 control information because this strip is in their
25 permit.

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1 MR. HULTS: No. But the applicant would
2 for a permit application.

3 MS. BILBROUGH: I believe that -- this is
4 Carol Bilbrough I believe that that overlapping area is
5 two permits. So the actual permit boundaries are
6 overlapping.

7 MR. GREEN: Correct.

8 MS. BILBROUGH: And the other applicant or
9 the other permit, all of their ownership and control
10 information is in their permit already.

11 MR. GREEN: And can this -- can this
12 applicant simply suggest that LQD reference this -- the
13 file on this operator?

14 MS. BILBROUGH: I would think so. And I
15 would also think that since you're still inside your
16 permit area, even though you are overlapping, that you
17 would not have to actually tap into that other permit.

18 MR. GREEN: Very good.

19 MS. BILBROUGH: That's just my thought,
20 though. We'd need to figure that out. It just seems as
21 though if you were actually moving into another permit
22 without also being included in your own permit boundary,
23 that would be more of an issue.

24 MR. GREEN: That would be a different
25 story.

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1 MS. BILBROUGH: It would be a different
2 story. But since the overstripping area is inside your
3 permit, I don't think we need to bring in the
4 complication of the second permit boundary.

5 MR. GREEN: Good. That's what I was
6 hoping to hear, but I wanted to hear your interpretation.

7 MR. HULTS: I agree. That helps,
8 definitely. Because each permit, like she said, that
9 applicant and that operator on that permit within there,
10 that's what you're dealing with. So yeah, you'd be
11 talking about within that permit for each instance.

12 MR. GREEN: Thanks for that clarification.
13 I just didn't want to see a lot of information-gathering
14 for no reason.

15 MS. BILBROUGH: Harv and Jeff, are you --

16 MR. FLEISCHMAN: I was thinking, yeah, the
17 information would be in there -- if you're talking about
18 two permits, all that information is in there already.
19 So that's all you're dealing with. It's a very unique
20 situation. That's interesting.

21 MS. BILBROUGH: It's very common in the
22 Powder River Basin.

23 MR. GREEN: It's very common in the PRB.
24 So it's an important interpretation. So I appreciate
25 that. Thank you.

1 MR. HULTS: Something that's changed since
2 this was published on the 26th, I noticed that I had
3 missed the removal of the word "or" in subsection (1) to
4 reflect the addition of a third subsection. So that was
5 struck out and added to subsection (2). Just moved it
6 down to account for the addition of subsection (3).

7 In subsection (3), this details the requirement
8 for a brief statement of facts for suspensions,
9 revocations and forfeitures identified above in
10 subsections (1) and (2) and asks for the reasons for the
11 action, the current status and any identifying
12 information and judicial and administrative proceedings
13 that may be going on associated with those actions.

14 In subsection (B), we have the listing of --
15 this is part of the adjudication requirements again --
16 listing of the notices of violation. And we've added the
17 identity of the associated permits and the mine safety
18 numbers, the number -- or the name of the person to whom
19 the violation was issued. And we've added that if the
20 abatement period has not expired a certification that the
21 violation is being abated or corrected to the
22 satisfaction of either the LQD or OSM.

23 We have also added that this includes
24 notices -- and before, we just previously had the
25 applicant. Again, we've added "operator." We've also --

1 when these ownership and controls rules came out, "owned
2 and controlled" was considered one definition. They
3 split it into two. And I believe the remnants of that
4 was that we just had "controlled" in there. So now we
5 have "owned or controlled." And again, we've added the
6 "operator" clarifier.

7 Subsection (4), we added the term "surface."
8 Same with subsection (2), (3). This subsection, Section
9 4(a)(xvii), one of the things that OSM had pointed out
10 during their concern letter was that we had some
11 incorrect citations throughout. One of the ones I
12 noticed was that we had added an extra zero to the Public
13 Records Act. So the number shouldn't have read 2001
14 through 2005. It should have been 201 through 205. Just
15 made that correction.

16 Section 5 deals with the mine plan. And this
17 was, again, dealing with one of the OSM concerns from the
18 revegetation package. As I discussed earlier, the
19 deficiency that we had stated that you needed to have an
20 affirmative statement why -- if a plan did not include
21 enhancement features for wildlife or fisheries, that you
22 had to state why it wasn't practicable to do that.
23 Subsection (A) installs that requirement.

24 Subsection (B) below that was, again, where we
25 had stated -- or that OSM had stated that it was

1 limited -- or wasn't limited to solely revegetation.
2 Since this rule package was published, the copy you're
3 looking at, I do have one word I'd like to add to that
4 that I thought would make it even clearer. When I had
5 originally done this, I had the language "and other
6 measures." I thought a further clarifier might be
7 important here. And I've added the term "enhancement" so
8 that it reads in subsection (A), "and other enhancement
9 measures," just so that we're clear that's what we're
10 talking about. I thought with just "other measures," it
11 could be kind of vague.

12 And that will hopefully deal with the OSM part
13 of the concern letter.

14 Now, if we move into Chapter 4, this is a
15 fairly small fix in Chapter 4. We added the term back
16 into the chapter heading. And we also, related to
17 husbandry practices, corrected two incorrect or
18 inaccurate references that we had made within Chapter 4
19 related to bare root trees or shrub stock. And those
20 were updated. When I went back and looked at it, they
21 referred to the previous subsections before the updates
22 were made. And so these have been corrected to reflect
23 the new subsections and where they're found.

24 This brings us to Chapter 12. This is
25 permitting procedures. This clarifies some of the things

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1 that the LQD and operators and applicants will be doing
2 as part of the permitting procedure. The first one we
3 have is in subsection (8). And this is a final
4 compliance review. And here, after an application is
5 suitable for publication -- that's public notice -- but
6 prior to the issuance, the regulatory authority shall
7 reconsider its approval based on a review of the
8 information submitted as part of the AVS.

9 In the second subsection, (B), regarding the
10 applicant permit history and AVS information, again,
11 related to that permit history. There's also a new
12 requirement that the LQD or OSM would determine whether
13 the applicant and operator have previous mining
14 experience, and if not, additional ownership and control
15 investigations will be done. And there's one correction.
16 There's a typo in there. Review was spelled R-E-V-I-W.
17 That's been corrected to how it should be spelled.

18 MR. GREEN: Second-to-the-last line of
19 that same paragraph, you want to change that to "previous
20 mining experience"?

21 CHAIRMAN GAMPETRO: As opposed to
22 "pervious."

23 MR. HULTS: I may have actually corrected
24 that. The second-to-the-last line?

25 MR. GREEN: Yeah.

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1 CHAIRMAN GAMPETRO: Under (B).

2 MR. GREEN: In the middle. You had
3 "previous" in the third-to-the-last line, but "pervious"
4 in the second-to-the-last line.

5 MR. HULTS: I have "previous" in mine.

6 MR. GREEN: It's "pervious" here on the
7 screen.

8 MR. HULTS: I'm not seeing --

9 MR. GREEN: The very second-to-the-last
10 line.

11 MR. FLEISCHMAN: Right there.

12 MR. HULTS: Sure enough. Got it. Didn't
13 see that one. And apparently it's a word, because it's
14 not showing up as -- there we go. Thank you.

15 MR. GREEN: Certainly.

16 MR. HULTS: Subsection (C) is the
17 information the applicant submitted re compliance history
18 and a review of those compliance histories under the EQA
19 and the regulations related to air and water quality.

20 Subsection (9) deals with what the LQD is
21 entering into the applicant violator system. First thing
22 is information submitted in the application regarding the
23 business type, tax IDs, name, address and phone numbers
24 that were provided, the resident agent and operators if
25 different from the applicant, and the applicant and

1 operator's business structure.

2 Second thing is the information pertaining to
3 violations which are unabated or uncorrected after the
4 abatement or correction period has expired. This will be
5 updated upon verification of any additional information
6 that may be submitted at a later date or discovered by
7 the LQD in further review of the application.

8 For the purposes of future permit eligibility,
9 determinations and enforcement actions, all permit
10 records within 30 days after a permit is issued will be
11 provided or updated, all unabated and uncorrected
12 violations within 30 days after the abatement or
13 correction period has expired, all changes to information
14 initially required to be provided by the application --
15 or, applicant as part of the application process -- and
16 this would be after we received notice that the
17 information has changed -- and all changes in violation
18 status within 30 days after the abatement period or
19 correction or termination of a violation or decisions
20 related to enforcement actions from either administrative
21 or judicial proceedings.

22 Subsection (10), we added in addition to the
23 statutory requirements that the LQD must find. And based
24 on the reviews above, the LQD will determine whether the
25 permit applicant is eligible for a coal mining permit.

1 If not, then an applicant won't be eligible for a permit
2 under three instances here, whether the applicant
3 directly owns or controls an unabated or uncorrected
4 violation, whether the applicant or his operator
5 indirectly control -- who the operator indirectly
6 controls has an unabated or uncorrected violation and
7 control is established after 1988. And this date is part
8 of the federal regulations.

9 In subsection (C), it's the applicant or his
10 operator controls or has controlled mining operation with
11 a demonstrated pattern of willful violations as outlined
12 in the Environmental Quality Act.

13 In subsection (11), we're dealing here with,
14 after the director's approval of a permit, but prior to
15 the issuance, the applicant will provide an update to any
16 information that may have changed. And this is for,
17 again, the officers, partners and the person's name,
18 address, telephone number, their location within the
19 business structure and relationship to the applicant or
20 operator and the date the person began functioning. So
21 this will be just an update prior to the issuance.

22 In subsection 12, after the above requirements
23 are completed, there will be a compliance history report.
24 This was, again, a deficiency that I remember.
25 Historically, we didn't have the term the actual report

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1 requirement in our rules. And this happens no more than
2 five business days before a permit is issued. Again,
3 these are pretty close, as much as we can, to federal
4 requirements as far as their language.

5 MS. ACKERMAN: I have a question. This is
6 Laura Ackerman. Can we go back to Section 11, Section
7 11, Part B. The person's position, title and
8 relationship to you, shouldn't that say relationship to
9 applicant?

10 MR. HULTS: "Following the director's
11 approval" --

12 MS. ACKERMAN: In subsection B.

13 MR. HULTS: Yeah. I was just reading the
14 lead-in into that. Yes, it should. I think I had took
15 the federal language too verbatim at that point. It
16 probably should be applicant, yes. And I'll make that
17 change if the board agrees.

18 MS. ACKERMAN: And then, likewise, in
19 Section 12, third line down, "that affect your permit
20 eligibility" can say "that affect the applicant's permit
21 eligibility."

22 MR. HULTS: Okay. Yeah. The federal
23 language does use generic language in many instances.
24 And I believe I copied that same there, too.

25 MS. BILBROUGH: This is Carol Bilbrough.

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1 Craig, also on page 20 at the top, A and B, it
2 should be "the applicant directly owns or controls."

3 CHAIRMAN GAMPETRO: Carol, I can't hear
4 you.

5 MS. BILBROUGH: I think that A and B on
6 the top of page 20 should be "mines that the applicant
7 directly owns or controls," instead of "directly own or
8 control." But I'm not sure, now that I read it. So
9 maybe not.

10 MR. HULTS: Part of the definitions use
11 the term "own or control," so I think it works for me.

12 MS. BILBROUGH: Okay.

13 MR. HULTS: Proceeding on, this is
14 subsection 13. And this identifies who may challenge a
15 listing or finding of ownership or control. In
16 subsection A to 13, it's listed in a permit application
17 or in AVS as the owner or controller of an entire surface
18 coal mining or any portion or aspect thereof. I think
19 reading that, maybe it should be "coal mining operation"
20 in subsection A.

21 Subsection B, an applicant or permittee
22 affected by an ownership or control listing or finding.
23 Subsection 14 details the procedures related to the
24 challenging of an ownership and control listing. If the
25 challenge concerns a pending permit application, there

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1 will be a written explanation submitted to the regulatory
2 authority. And if the challenge concerns an ownership or
3 control issue who's not currently seeking a permit, then
4 a written explanation will be submitted to the regulatory
5 authority with jurisdiction over the surface mining
6 operation.

7 Subsection --

8 MR. FLEISCHMAN: This is Jeff Fleischman.
9 You got to change "your ownership and control" to be
10 "applicant's."

11 MR. HULTS: In subsection 14?

12 MR. FLEISCHMAN: Yeah. Third line from
13 the bottom, third word in. Yeah, the federal regulations
14 are being written in that context lately. I don't know
15 why.

16 MR. HULTS: Subsection C, one of the
17 comments in the attorney general's initial review, I have
18 it highlighted in red. Apparently the LQD is not able,
19 in the last sentence, to put deadlines on federal
20 agencies. And this was after a request is made to the
21 AVS office, we had put a fourteen-day deadline in there.
22 Again, that was one of those copying too much out of the
23 federal regulations. So that would be removed. But know
24 that that would be out there in the federal regulations.
25 So the fourteen days would still be applicable, just not

1 from our end.

2 Subsection D is when a challenge is made to
3 listing of ownership and control. This gives the
4 preponderance-of-the-evidence standard and either that
5 they do not own or control the entire operation or the
6 relevant portion or aspect thereof and that they did not
7 own the entire operation during the relevant time period.

8 Subsection E details the burden of proof a
9 little bit more. There was one correction in subsection
10 I, or 1, in subsection E. "Duties" was misspelled. That
11 correction has been made. In subsection F, this gives
12 the time frames for review. It also gives the surface
13 requirements as far as notice back to the decision
14 regarding a challenge. And this will follow the
15 Wyoming -- should be Rules, capitalized, of Civil
16 Procedure in the fourth-to-the-last line.

17 And there was one other correction I made
18 there. It said was consistent with the rules governing
19 service of the Wyoming Rules of Civil Procedure. I've
20 changed that to "under the Wyoming Rules of Civil
21 Procedure" for a clarifier.

22 Subsection G is the improvidently issued coal
23 permits. This deals with if the DEQ had reason to
24 believe that a permit was issued improvidently, a
25 review's conducted of the circumstances of how that

1 permit was issued. The DEQ is required then to make a
2 preliminary finding that it was issued improvidently
3 under the eligibility requirements in effect when that
4 permit was issued and whether it shouldn't have been
5 issued because the applicant or operator owned or
6 controlled the operation with the unabated or uncorrected
7 violations.

8 The DEQ, in subsection 2, makes those findings
9 only if the three circumstances there, one, whether they
10 continue to own or control the operation with the
11 unabated or uncorrected violation, the violation remains
12 unabated or uncorrected, and the violation would cause a
13 permittee to be ineligible under the permit eligibility
14 criteria under the current rules and regulations. And
15 that deals with historical permits, something that was
16 issued in the past. And those would no longer allow them
17 to.

18 In subsection 2, I did make one correction. It
19 said the DEQ will make a finding under subsection -- and
20 I had Romanette (i). I've corrected it to read Roman
21 Numeral I.

22 Subsection 3, this deals with the written
23 notice on the preliminary finding. It's 30 days of
24 notice that the permittee has to challenge that
25 preliminary finding after notice is received. I did make

1 one correction. Actually, two corrections. Where it
2 says challenges under subsection 1 and 2, it should read
3 Roman Numeral II, subsection (1), instead of -- I believe
4 it read (1)(a). Or subsection (2)(a). I'm sorry. So
5 currently the way I have it up there is how it should
6 read, which is subsection (1) and subsection Roman
7 Numeral II(1).

8 And John Burbridge from the AG's office was
9 polite enough to point out that I hadn't filled in some
10 question marks. It's using the procedures outlined in
11 subsections D through F above, and I added the term
12 "above" in addition to filling in those blanks.

13 Roman Numeral IV is a written notice of
14 proposed suspension or rescission will be served on the
15 permittee. That gives evidence or statement of the
16 reasons for the proposed suspension or rescission and any
17 evidence that was submitted under subsection Roman
18 Numeral III above if it was believed that a permit was
19 issued improvidently. If a permit suspension is
20 proposed, there is a 60-day notice window. And if permit
21 rescission is proposed, it's a 120-day notice is
22 provided. Those, again, are federal numbers.

23 Subsection Roman Numeral V, this deals with
24 appeals. And they'd be under the Environmental Quality
25 Act, the Rules of Practice and Procedure and the

1 Administrative Procedure Act, and finally, in Chapter 12,
2 because this deals with some of the enforcement actions.
3 There's a reference to Chapter 12 there. The time
4 specified in subsection 4 above apply unless the EQC has
5 granted a stay of temporary relief.

6 In Roman Numeral VI, the DEQ will suspend or
7 rescind the permit upon expiration of the notice periods,
8 provided that the permittee has not submitted any
9 evidence and the DEQ would find that the violation has
10 been abated or corrected.

11 In subsection 2, there was a typo there that
12 John Burbridge again pointed out. He was pretty thorough
13 in his review. The term was "won" as I had drafted it
14 originally, W-O-N. Should say "own." I made that
15 correction in this version. And that was whether the
16 permittee or operator no longer own or control the
17 relevant operation.

18 In subsection 3, the DEQ's finding for a
19 suspension or rescission was in error. 4, whether that
20 violation was a subject of a good-faith administrative or
21 judicial appeal and unless that initial judicial decision
22 affirming that violation and decision remain in force.
23 In subsection 5, the violation is subject of an abatement
24 plan or payment schedule that is being met to the
25 satisfaction of the agency with jurisdiction.

1 Subsection 6 is whether the permittee is
2 pursuing a good-faith challenge or administrative appeal
3 again of the relevant ownership or control listing or
4 finding, and again, whether there's -- whether that
5 initial judicial decision has been affirmed.

6 In Roman Numeral VII, if an administrative
7 review is requested of a notice of proposed suspension,
8 the DEQ will not suspend or rescind that permit until the
9 finding is affirmed that that permit was improvidently
10 issued. When a permit is suspended -- and this is Roman
11 Numeral VIII. When a permit is suspended or rescinded
12 under this section, the DEQ issues a written notice that
13 the permittee and operator shall cease all surface coal
14 mining operations under that permit. And this gets
15 posted in the district's office closest to the permit
16 area. And that would be our DEQ's permit district.

17 In subsection Roman Numeral IX, appeals again
18 regarding these decisions are the EQA, the DEQ's Rules of
19 Practice and Procedure, the Wyoming Administrative
20 Procedure Act and Chapter 12 of the coal rules and
21 regulations.

22 From there, I believe it's just section headers
23 that changed. And I added onto my copy -- just in
24 preparation of moving forward with this, I added -- I
25 believe it will be page 26 of yours -- just that there

1 were no changes proposed for the rest of the chapter,
2 just to close out this section.

3 Finally in Chapter 16, which is our enforcement
4 chapter, here again, to meet with the federal
5 requirements, we added under the enforcement section that
6 within 60 days after issuing a cessation order, the DEQ
7 will notify in writing the permittee, the operator and
8 any person who has been listed or identified by the
9 applicant, permittee or OSM as an owner and controller of
10 the operation as defined in Chapter 1. And again, these
11 are federal requirements.

12 And a second requirement we added was within 30
13 days after the issuance of a cessation order, the
14 permittee must provide or update all the information
15 required under Chapter 2 related to ownership and
16 control. Information does not need to be provided if
17 granted a stay of the cessation order and that stay
18 remains in effect.

19 And finally in subsection (j), this requirement
20 was added. If the DEQ discovers that a person owns or
21 controls an operation with an unabated or uncorrected
22 violation, the LQD will determine whether enforcement
23 action is appropriate under this chapter. Also, the
24 requirement that the results of enforcement actions,
25 including the administrative hearings or judicial

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1 decisions, must be entered into that applicant violator
2 system.

3 And finally, a subsection header was updated
4 to -- or several of them were updated to reflect the
5 addition of the new subsection. And that brings us to
6 the end of the proposed rules.

7 CHAIRMAN GAMPETRO: I would like to call
8 an intermission for ten minutes if that would be okay
9 with everyone.

10 (Hearing proceedings recessed
11 10:43 a.m. to 10:55 a.m.)

12 CHAIRMAN GAMPETRO: Well, if everybody is
13 ready, we're going to reconvene the meeting. I'd like to
14 just start off by thanking Craig for an excellent
15 presentation.

16 MR. HULTS: Thank you.

17 CHAIRMAN GAMPETRO: And we would entertain
18 a motion here to approve the rules package.

19 MR. GREEN: I would move to approve the
20 rules package with the changes and interpretations as we
21 discussed today.

22 MR. SLATTERY: I'll second that.

23 MR. HULTS: Mr. Chairman, can I make one
24 note? Something that may change between now and getting
25 down to the EQC, this particular rule package, the one

0050

1 that's going down to the EQC is also a lot of Chapter 1.
2 And what I would propose is, at this point I know there
3 are some definition citations in other chapters that I
4 haven't accounted for. Specifically, I can think of one
5 example right now. In Appendix 4A, we make a reference
6 to eligible lands definition. I haven't gone through and
7 made all those changes because I know I'm going to have
8 one following right behind the other. This last package,
9 I'm hoping once the one prior to it goes through the EQC,
10 it will set in stone what the section headers will become
11 for this one as far as the definitions.

12 I just wanted to -- I will be making those
13 changes as the chapters in front of it will be changing a
14 little bit, some of the section headers and citations.
15 It will be organizational only.

16 CHAIRMAN GAMPETRO: So your section
17 headers, numbers and letters?

18 MR. HULTS: Yeah. It will be different
19 than what's presented here because there are definition
20 changes in the one that's preceding it. So just wanted
21 to make that clear.

22 CHAIRMAN GAMPETRO: Does anybody have a
23 problem with that?

24 MR. SLATTERY: No.

25 MR. GREEN: No, not at all.

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1 CHAIRMAN GAMPETRO: We have a motion and a
2 second. I guess it's been moved and seconded. Are there
3 any objections?

4 (No response.)

5 CHAIRMAN GAMPETRO: Then I would assume
6 that we can consider that motion passed.

7 Other items for discussion.

8 MS. BILBROUGH: I was going to do a little
9 sage grouse presentation, but I thought, Bob, you had
10 something you wanted to bring up, too.

11 MR. GREEN: No. Actually, I had been
12 looking for the clarifications.

13 CHAIRMAN GAMPETRO: So Carol is going to
14 give us a little presentation on sage grouse.

15 MS. BILBROUGH: I literally have just a
16 couple of slides that I think you'll find what went on
17 with the sage grouse to be interesting. Craig and I are
18 going to trade out computers. I'm going to ask the
19 advisory board members to move down here so they can see
20 Craig's screen.

21 (Pause in proceedings.)

22 MS. BILBROUGH: So the governor's
23 executive order just came out this past Wednesday. And
24 all of that information is on the Game and Fish web page,
25 the Wyoming Game and Fish web page. So you go to that

1 web page. You can download a PDF of this map. You can
2 download the shade files so that you can actually pull it
3 into your computer, and you can download the governor's
4 executive order.

5 And the governor's executive order consists of
6 seventeen statements that he makes, talking about his
7 view of how they will be implemented. And then there
8 are -- there's an attachment that has Attachment B that
9 talks about permitting process and stipulations that
10 dealt with the sage grouse. But I'll give you just a
11 quick primer.

12 There was a sage grouse implementation team
13 that was convened by the governor. And last -- in this
14 last round, the sage grouse implementation team in the
15 first executive order was issued in August of 2008.
16 After they got a lot more data, they realized that they
17 sort of left mining out and that mining was really
18 impacted by this, particularly uranium, bentonite and
19 other noncoal operations.

20 They reconvened the sage grouse implementation
21 team and added LQD and mine operators to the team. So I
22 was there as the Land Quality person. We gave our
23 recommendations to the governor, which was pretty much in
24 the form of these stipulations and the map, July 1st.
25 And then he issued the order just this past Wednesday.

1 And the blue areas are what are being called sage grouse
2 core areas. And in these core areas, 80 percent of the
3 sage grouse population, at least currently, is accounted
4 for inside these core areas, maybe 83 percent.

5 And one thing to note is Fish and Wildlife
6 Service partook in the sage grouse implementation team.
7 The finding they made in January was that it was
8 warranted to be listed but precluded at this time. So as
9 long as it remains that status, it will be reviewed every
10 year. So it was crucial to have the Fish and Wildlife
11 Service on this team concurring that, yes, the
12 protections that you already put in place will protect
13 the bird. Otherwise, the next time it comes around, if
14 we haven't achieved that, then we will get it listed,
15 which is what we're trying to avoid, because then the
16 entire state of Wyoming turns blue.

17 So within these core areas, the blue dots both
18 inside and outside are lek locations. And leks are where
19 the males display to attract females during mating
20 season. Within a four-mile radius around that lek area,
21 80 percent of the birds that participate in that lek will
22 nest in that area. So the presumption is that within a
23 four-mile radius around those leks, you can capture most
24 of the birds that are involved in mating reproduction
25 there.

1 And so these core areas were drawn based on
2 these big four-mile radii that were drawn around each
3 level. And if -- and this is really affecting how Land
4 Quality will operate. If we get a new permit application
5 in, they are -- supposedly, they've already consulted
6 with Game and Fish. If they have not, if it's a new
7 permit, if it's an amendment, anything that adds lands --
8 anything that adds lands, the first thing we do is we
9 open up our GIS, and we go to township, range, section
10 and look at the map description and determine, is it
11 inside or outside of the core area? If it's inside a
12 core area and it's adding new lands, a new permit, a new
13 drilling notification, a new limited mine operation, a
14 little ten-acre ET, we have to consult with Game and
15 Fish. And we either do it in conjunction with the
16 operator or the applicant or we tell the applicant to do
17 it. And then Game and Fish does an analysis, and then
18 they come back to us with recommendations. They are not
19 a regulatory agency, so it's up to us to implement what
20 they recommend. But given the listing status, we will be
21 implementing their recommendations.

22 Outside of the core area, if an operator's
23 within a quarter of a mile of a lek, then we cannot
24 permit that disturbance to occur. So within a quarter of
25 a mile of a lek, it's termed no surface occupancy. So

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1 you couldn't build a road through there, but you could
2 put a well in. You could do something outside the season
3 where mating and nesting is occurring that would not be
4 an ongoing disturbance that would disturb the birds.

5 And there are a whole series of de minimus
6 activities primarily associated with agriculture. So
7 while I'm telling you these things, I'm thinking mining
8 only. There are a lot of activities associated with
9 agriculture that are not subject to any kind of
10 stipulations.

11 So this is my second slide. This is -- the
12 purple right here, that's coal. The coal permit
13 boundaries down here, down here, the mine over by Hanna
14 was carved out of this. And over in the Kemmerer mine
15 and the Jim Bridger mine and Lucite Hills, all the coal
16 mines are currently out of core area. However, they're
17 going to start amending into core area. So we will be
18 dealing with that.

19 This darker green color is bentonite. And
20 there also should be some bentonite up in here.
21 Bentonite and uranium -- these are uranium -- I don't
22 know if you can see this pale turquoise color. There are
23 a lot of uranium -- uranium proposed in situ leach mines
24 in this core area. And there are in situ leach mines
25 here and in situ leach mines here. But it's this group

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1 here and here in the Gas Hills that are affected by these
2 core areas.

3 And what happens is the Game and Fish does
4 basically a project implementation. They look at a
5 project, and they evaluate if it's going to disturb more
6 than five percent of an area in proximity to leks and
7 things like that, and then they come back saying you're
8 approved. There are seasonal stipulations, so you can't
9 initiate disturbance from March 14th to July 1st. So you
10 can strip after July 1st, because the idea is that you
11 won't disturb -- you won't run over any nests with your
12 loader kind of thing.

13 So there's a series of stipulations that apply
14 to many activities. And then there's a series that
15 pertain specifically to mining. And a couple of them are
16 dealing with exploration disturbance, when you -- and I
17 think the model there is uranium, where you have very
18 extensive drilling. And in that case, the disturbance
19 footprint is just the road and the well and mud pit. And
20 you have other places where they're doing more intensive
21 delineation. And in that case, sometimes the wells are
22 on 100-centers, in which case the whole area is
23 disturbance.

24 So they look at the disturbance footprint, not
25 the permit area. And I can actually show you what they

1 do if you want me to show you what a project evaluation
2 is. But they basically are looking to ensure that no
3 more than five percent of any average of 640 acres is
4 disturbed. And then they look to see if there's one --
5 more than one disturbance per square mile on an average,
6 so you can have multiple disturbances within a square
7 mile if there's other disturbances -- other square miles
8 that don't have any disturbance.

9 And they limit their assessment to what is
10 considered to be sage grouse habitat in the core areas.
11 So if you're in a core area but you're outside the sage
12 grouse habitat, a lot of the restrictions come off. And
13 one of the big things that we had to do to satisfy the
14 Fish and Wildlife Service, one of the things they thought
15 was that we didn't have the regulatory authority or
16 power, strength to actually protect the bird. So these
17 stipulations contain a stop clause. So if a mine
18 operation, through the course of their activity they're
19 monitoring annually, if, within a five-year window, a
20 decline is detected over the course of two or three
21 years -- I guess three years of data is what they said --
22 then they have three years to bring the numbers back up
23 or we have -- we have to tell them they have to stop
24 operating.

25 There's a lot of caveats to that. The operator

1 may be able to show that they are not the cause of the
2 decline, what somebody is doing next door. But Fish and
3 Wildlife Service needed to hear that, yes, we can tell
4 somebody to cease their activity if it's being shown that
5 they are damaging sage grouse populations.

6 And that's kind of a biggie. And basically,
7 for mining, we have to monitor, but everyone monitors
8 already. And they wanted a clause in there that said if
9 we have to do some kind of emergency activity, like drill
10 a hole from the surface into an underground mine, we can
11 do that.

12 And then at the ninth hour, after the
13 recommendations were submitted to the governor of a
14 stipulation specific to coal saying that we could -- we
15 would continue to operate under SMCRA and the permits
16 that were issued under SMCRA and commissions that were
17 issued under SMCRA, and I sent the clarification question
18 back, saying what does this mean? Because we already
19 quote with Game and Fish and the Fish and Wildlife
20 Service through SMCRA. So is this really different than
21 the other process, and if so, how is it different?

22 CHAIRMAN GAMPETRO: I would just like to
23 ask if anyone would like to see the rest of the slides.
24 That's fine with me. It's totally up to you guys if you
25 think it would be valuable.

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1 MS. BILBROUGH: There's no way I can
2 verbally explain to you what they do. So I have to pull
3 up another --

4 CHAIRMAN GAMPETRO: One of the issues that
5 I've seen personally on a friend's ranch along the Powder
6 River, where they're drilling for coal bed methane, and
7 we're talking a 40,000 acre area, that I can't tell from
8 that map without walking right up to it to see if they're
9 in the core area or not.

10 But what we have seen is, other than weather,
11 which does impact the birds a lot, favorable or
12 unfavorable weather at various times, is raptors. I have
13 seen -- the raptors in that particular area are thick. I
14 can't even name all the different kinds of hawks. And,
15 of course, there's a season the bald eagles come in and
16 then the golden eagles, which live there permanently.
17 They'll shut down a drilling operation, and there'll be
18 sage grouse nesting and doing their thing around the
19 drill with nothing to bother them. They're very tame,
20 actually. And when they shut down the operation, raptors
21 come in and sit down on the ridge and get the sage
22 grouse.

23 I don't know. Does Fish and Game take into
24 account -- I mean, all the raptors are protected. I
25 understand that. And the coyotes get their share, too.

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1 But we can at least control the coyotes. But the raptors
2 are totally protected, and they're the ones that, other
3 than weather, the largest impact that I have seen on sage
4 grouse is raptors.

5 MS. BILBROUGH: Another one is ravens,
6 which you also cannot --

7 CHAIRMAN GAMPETRO: I didn't catch that.

8 MS. BILBROUGH: Another one is ravens.
9 But the tame part is part of the sage grouse biology.
10 They have a tremendous amount of habitat going. So you
11 do find them coming back to nest really near a facility
12 because they've been nesting there for many years. What
13 you find is that the juveniles from that female relocate.
14 They don't stay there. And the birds live ten to fifteen
15 years. So it can take a long time for you to observe a
16 response, because they'll pretty much come nest on a well
17 pad if that's where they've been nesting for five years.

18 So tameness isn't really -- I don't know if
19 it's not really -- it's part of it.

20 MR. FLEISCHMAN: Can I just ask a
21 question? When you talk about disturbance, five percent,
22 was it, of the section?

23 MS. BILBROUGH: Yeah.

24 MR. FLEISCHMAN: Obviously a surface
25 mining operation is going to disturb a heck of a lot more

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1 than five percent. How is that dealt with? Not
2 necessarily every surface mining operation, but typically
3 they're going to disturb that surface. Is that going to
4 prevent the permit from going through, or is there a
5 workaroud there or mitigation?

6 MS. BILBROUGH: The way it's written, what
7 you would have to do is do -- basically, you have to do
8 contemporaneous reclamation and have your reclamation
9 keeping up with your disturbance. But I can't find --
10 the presentation, I thought, had one title, but --

11 CHAIRMAN GAMPETRO: It certainly has
12 stopped wells from being drilled. No question.

13 MR. SLATTERY: Yeah. Our ranch is right
14 there in the corner of Crook County, Weston County and
15 Campbell County. And there's been drilling there since
16 in the '50s. And the numbers stay almost the same on the
17 place there with sage grouse. Every spring they move in.
18 They nest. And some of them will stay. They'll come
19 over to the ranch in the dryer part of the summer if the
20 hayfield's where water's at. So we always have them
21 around the place. But fox is one thing that, when they
22 moved in, they really wiped them out.

23 MS. BILBROUGH: To answer your question,
24 Jeff, the calculation they used is project implementation
25 assessment area. And it's so huge, the five percent -- I

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1 had a uranium example. That's what I was looking for --
2 that it's five percent of hundreds of square miles. And
3 so unless you have the coal mines, you have so much
4 disturbance already there, you could be pushing up
5 against that five percent limit.

6 But this is an oil and gas example that the BLM
7 used. So they were looking at this proposed project,
8 which was a bunch of different wells, and they were
9 asking what do we -- how do we figure out what that
10 disturbance factor is for the five percent? These are --
11 I believe these are leks, but we'll just continue with
12 the slides. So in this case, they're just trying to
13 figure out how to calculate what the disturbance area is.

14 But then you step back. This faint hashed line
15 is a core area. So this project is inside a core area.
16 Each one of these dots with a circle is a four-mile
17 radius around a lek. So they're looking to see what are
18 the areas around each lek, and how much does this project
19 area impact this lek? And this is when -- so then the
20 next question they take is, if you draw four miles around
21 this area, the idea being, okay, we have -- what is the
22 influence if you could say that the birds are within
23 four -- you know, four miles of this disturbance area and
24 you're saying that's the sort of zone's influence of that
25 area? So here is the project area. Here's a four-mile

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1 perimeter drawn around that polygon. Four-mile radius,
2 there's 50 square miles.

3 The next step is to say, okay, how many leks do
4 we have already that -- how many leks are we influencing?
5 And from there, that's what identifies the leks that are
6 influenced. In other words, they're within this
7 four-mile boundary. And then -- so that's just
8 identifying the leks. Then they draw a four-mile
9 circumference, radius, around each lek that's being
10 influenced to see what else is impacting that lek. So
11 you have -- now have a huge area associated with this
12 project boundary.

13 And they will also then take into account the
14 existing disturbance. Here's a road. These are existing
15 gas wells. They've clipped the project area back to the
16 core area and looked at how big that area is, identified
17 existing disturbance and looked at the total area -- let
18 me just cruise through this. Basically, they come up
19 with a disturbance of .6 percent. The take-home message
20 that you want to get -- let me go back to the picture --
21 that you need to get for these mines is, when we looked
22 at some of these in situ permits, they were looking at
23 180 square miles of disturbance as their PIAA area. And
24 so the five percent calculation is five percent of that
25 180 square miles, plus existing surface, including

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1 existing disturbance. But still, that's an awful lot of
2 land to get five percent.

3 Jim?

4 CHAIRMAN GAMPETRO: Once they have
5 determined that a given point or area is a sage grouse
6 area, is that forever? Or if they don't see any there
7 for the next five years, is it no longer -- they moved
8 out or whatever, or does it just last forever?

9 MS. BILBROUGH: The recommendation is that
10 it not be revised for five years and then reexamined
11 where, what's going on with that?

12 MR. SLATTERY: So, then, if they moved
13 out, then the operator has to prove that he wasn't the
14 cause of it?

15 MS. BILBROUGH: That would be an authority
16 question that we'll have to deal with. And I don't know
17 how it would be dealt with.

18 CHAIRMAN GAMPETRO: I was thinking more
19 along the lines if there's nothing going on there, five
20 years later they're not there anymore because they all
21 got eaten by raptors or something, is it still considered
22 an area? But you're saying after five years, if there
23 are none seen there, it's no longer an area.

24 MS. BILBROUGH: They're continually
25 collecting data. They do lek surveys all the time.

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1 They've identified some areas where they haven't been
2 able to get to leks for a long time. Some of the remote
3 areas, it's hard to get there short of helicopter. And
4 so they're doing them all the time. Between the first
5 and second sage grouse team, they found a couple of leks
6 that had 150 birds on them that they didn't know about.
7 So that's changing a lot.

8 And then things like a -- the permitted oil and
9 gas leases, they were carved out even though they were
10 great sage grouse territory. A lot of those now are
11 already leased. They let it go through at certain
12 stages. An existing disturbance within a permit is good
13 to go. But when you want to add new lands, you have to
14 jump through these hoops.

15 CHAIRMAN GAMPETRO: I guess the other
16 thing that goes on is, as water is pumped out in these
17 coal bed methane situations, it actually makes a better
18 environment. So in some cases, you're getting more
19 birds. And so then do they take that into account for
20 positive impact?

21 MS. BILBROUGH: They do, but that
22 particular example isn't so good, because with PIAA,
23 they're particularly vulnerable to West Nile. And so
24 they've actually seen a decline around coal bed methane
25 due to West Nile.

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1 CHAIRMAN GAMPETRO: I'm thinking more
2 running water than standing water.

3 MS. BILBROUGH: Yeah. Because they lack
4 riparian areas in the summertime.

5 MS. ACKERMAN: So if you're a coal mine
6 and all coal mines are currently carved out so you're not
7 in a core area, but there are leks nearby that have been
8 declared inactive from years of annual monitoring that
9 we're already required to do, but you want to expand into
10 that area where those inactive leks are, what is the
11 process for DEQ then?

12 MS. BILBROUGH: I think you would have to
13 show us that it's inactive.

14 MS. ACKERMAN: But you already have that
15 information from past reports.

16 MS. BILBROUGH: You have to tell us where
17 to go find it. We'd have to see -- we would have to go
18 back and look at that data, or you would have to present
19 us with -- you know, in these reports, we found these
20 leks. The leks that are on this map, they're not --
21 they're active or -- I can't remember the other term.
22 But they've been occupied within the last ten years. So
23 if you have a lek that's been occupied within the last
24 ten years, then Game and Fish will consider it to be an
25 occupied lek.

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1 MS. ACKERMAN: So how does that mesh with
2 your five-year period of considering a new look at it
3 after five years?

4 MS. BILBROUGH: That will also be, you
5 know, bird distribution, sagebrush habitat. And maybe
6 you have an occupied lek that's been classified as
7 occupied for the last ten years, but it was only occupied
8 ten years ago. It will come off that list.

9 MS. ACKERMAN: So in the application
10 process for an applicant with, say, an amendment, do you
11 foresee that as a preemptive strike before you submit
12 this whole application as a separate submittal for proof
13 that you haven't caused decline?

14 MS. BILBROUGH: Yeah. And the uranium
15 guys have gone straight to Game and Fish, done their own
16 analysis and worked things out with Game and Fish. And I
17 think you come and talk to us, in the end, if you are
18 going to affect leks that Game and Fish thinks are
19 occupied or classified as occupied. You have to show
20 them that it's not. With that coal stipulation, the new
21 coal stipulation in place, I still don't -- I don't know
22 what that means in terms of a Game and Fish consultation.
23 So it could be that all bets are off for coal. I don't
24 know.

25 MS. ACKERMAN: So if we chose to take the

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1 proactive action to consult the Game and Fish before an
2 amendment submittal, will the DEQ accept --

3 MS. BILBROUGH: Oh, yes.

4 MS. ACKERMAN: -- a finding by Game and
5 Fish without being involved in that finding?

6 MS. BILBROUGH: Yes. My first suggestion
7 is that you look and see if your leks are classified by
8 Game and Fish as occupied. And if they're not, I'd still
9 make sure you keep track and monitor that.

10 I have one last thing. Don and I especially
11 want to thank Jim for attending -- Jim Gampetro for
12 attending the EQC hearing on the 1S vegetation package.
13 It was really important that you stood up and testified.
14 And we really appreciated it.

15 CHAIRMAN GAMPETRO: You're very welcome.

16 MS. BILBROUGH: And I wanted to get that
17 on the record. So I'm done with my stuff unless you have
18 questions.

19 CHAIRMAN GAMPETRO: Unless anybody else
20 has anything. Is there anything I forgot? I guess I
21 would entertain a motion to adjourn the meeting.

22 MR. GREEN: So moved.

23 MR. SLATTERY: Second.

24 CHAIRMAN GAMPETRO: Since the mover and
25 the seconder are the only two voters, the meeting is

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1 adjourned.

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(Hearing proceedings concluded

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11:35 a.m., August 25, 2010.)

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C E R T I F I C A T E

I, RANDY A. HATLESTAD, a Registered Merit Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein constituting a full, true and correct transcript.

Dated this 13th day of September, 2010.

RANDY A. HATLESTAD
Registered Merit Reporter