



LAND QUALITY ADVISORY BOARD MEETING  
2nd Quarter Meeting Minutes



August 23, 2001  
1<sup>st</sup> Interstate Bank  
Heritage Room  
Gillette, Wyoming

**MEMBERS PRESENT:** Marshall Gingery - Chairman  
Chet Skilbred - Vice-Chairman  
Rodney Proffitt  
Larry Munn  
Jim Gampetro

**STAFF PRESENT:** Rick Chancellor                      Paige Smith  
Roberta Hoy                                      Sandra Garcia  
Georgia Cash                                      Don McKenzie  
Bob Giurgevich

**MINUTES APPROVED BY:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**APPROVAL OF APRIL 12, 2001 MEETING MINUTES**

Motion made by Rod Proffitt to approve minutes. Second made by Larry Munn. All members in favor. Motion passes.

**EXCELLENCE IN SURFACE MINING AWARD RECIPIENTS**

**RICK CHANCELLOR, LQD:** In June, we handed out the awards for Excellence in Surface Mining. We gave two coal awards and two noncoal awards.

Bentonite Performance Minerals in the Colony area, northeast part of the state, received an honorable mention for their reclamation under one of their permits. Typically in that part of the state, the bentonite operations, the overburden right above the clay is pretty poor quality material. As you get closer to the surface the better quality it becomes. Instead of just rolling the whole pit upside down, back behind, they do it in tiers where they special handle the top layer of overburden, the middle layer burden and the bottom layer of overburden. They stockpile the top two layers, put the bottom layer back on the bottom and work their way up. It takes longer to reclaim that way but results in better reclamation. They received an Honorable Mention for their reclamation efforts.

The top award for noncoal was given to Kennecott Uranium Company. In the Great Divide Basin, they have the Sweetwater Pit. The pit, upon reclamation was supposed to be an impoundment for wildlife and livestock. The water quality was not suitable for that so they undertook a bio-remediation effort and treated a 1.2 billion gallons of water to knock out the selenium and uranium. They did some small scale testing and some bench testing but it was a massive effort to treat that much water but it was very

successful. The water quality dramatically improved and as far as I know that's the first time it's been used in that large of scale, the bioremediation.

For the coal companies, the Jacobs Ranch Mine was selected to receive an Honorable Mention for what they call enhancing reclamation through grazing management. They use a holistic approach to grazing the reclaimed lands. It's very intense, short duration, very heavily managed and monitored and the goal of their effort is to increase the health of the vegetation community. They received an Honorable Mention.

The top award went to Glenrock Coal Company. Their application was for general reclamation of the mine site. They did an excellent job of contouring to blend with the surrounding terrain. They had very good standing grasses, lots of shrubs, planted some trees that they didn't have to plant around some rock piles. They reestablished the sage grouse lek that the grouse had come back to use. They received to top award for the state in that. With that they go onto the national competition which will be announced.....Chet, can you tell them what happened?

**BOARD MEMBER SKILBRED:** It has been already. LQD sent our application onto OSM to their national awards for reclamation and Glenrock was selected as one of the best of the best reclamation awards this year. It will be presented September 14<sup>th</sup> which was announced officially with a letter to the company. We then get to go to the National Mining Association's Board of Director's meeting and the Secretary of Interior and representatives from Wyoming are supposed to be there for us to present Glenrock with this award.

**RICK CHANCELLOR, LQD:** Well done. Typically the awards are due to our office in the January/February time frame. Give it some thought and if you have something good to show off, put something together.

**BOARD MEMBER GINGERY:** Thank you. Congratulations on the awards. Before I move onto Paige here on the noncoal packages, do any board members have any announcements before we really get into the meeting. Hearing none, we'll move on.

I believe what I'll do is....Bob had a couple of things that he wanted to insert into the record and then we'll come back to you Paige to get us through this.

**BOB GREEN, KENNECOTT ENERGY CO.:** I appreciate that. In fact, I brought copies of the entire package. As I mentioned, what I'd like to do is just read the cover letter from Marion Loomis dated August 23<sup>rd</sup> addressed to the members of the Land Quality Advisory Board, if I might, and then discuss the comments as each of the segments comes up in these rule discussions.

The Wyoming Mining Association (WMA) has reviewed the rule changes proposed by Land Quality Division and designated as Packages 1J, 1P and 1Q. We have prepared several comments and requests related to these packages, and respectively request their consideration during deliberations on the proposals at the August 23<sup>rd</sup> meeting of the Board. Copies of those comments and requests are attached.

The Land Quality Division did not make these proposed rules available for review until early in August, allowing very few working days to prepare comments for the Board meeting less than three weeks after release of the proposals. This brief time frame does not allow appropriate focus on such important matters, and hopefully this will not be a practice often repeated by the Division.

During our review, we noted the continuing theme of verbatim adoption of some federal rules. We realize that this is principally driven by the backlog of deficiency letters the Division has received from OSM, and we have taken this into consideration in several of our comments, working within the context of satisfying the federal concerns. We trust, however, that the urgency in responding to the backlog of deficiencies will not jeopardize considerations of operational flexibility in this or future rulemaking actions.

In other instances, the proposed rules exceed the standards set by the federal rules. We hope the Board would allow operational flexibility and support rules that recognize the unique circumstances that occur in Wyoming operations, without being more stringent than the federal rules.

To assist the Division in addressing the federal deficiency letters, and in efforts to avoid brief review periods allocated for any future rulemaking packages, the WMA would like to review the entire set of deficiencies to help establish potential responses. This would also assist us in preparing for the entire set of deficiencies, rather than receive them in a piece-meal fashion of rules package releases. We respectfully ask the Board's support in these efforts.

Thank you for your time and considerations on these matters.

**BOARD MEMBER GINGERY:** Thank you.

**BOB GREEN, KENNECOTT ENERGY CO.:** As I mentioned, we have comments for Packages 1Q, 1P, and 1J. If you don't mind, I'll insert those as we go along.

**BOARD MEMBER GINGERY:** That'll be fine.

**BOB GREEN, KENNECOTT ENERGY CO.:** I appreciate that.

**BOARD MEMBER GINGERY:** Any other comments before we start with the rule packages? If not, Paige, it's your show.

**PAIGE SMITH, LQD:** This package has been enlarged. It will not necessarily follow the hard copy that you have in front of you. I'll turn this over to Rick.

### **NONCOAL RULES: PACKAGE 1Q - INTERIM MINE STABILIZATION**

**RICK CHANCELLOR, LQD:** In 1983 the Environmental Quality Act (EQA) was amended to require the Division to consider Interim Mine Stabilization particularly for those mines who do market conditions....it's more economical to mine the mineral and to allow a time frame to wait to see if the market rebounds before they continue mining again. We do not require reclamation right away after they stop mining temporarily. The Division went through and promulgated rules through the Environmental Quality Council (EQC) and it's a very cumbersome process that we developed and it's pretty unusual because we required mainly the decision will be made by the Council and not at the Division or Department level. There's times in the existing rules where you go through public notice and even if there's no comment, you still had to have a hearing. This seems to be a lot of wasted time by all parties. Basically, the provisions that will be made here are to delete those requirements that requires going to the Council for approval. It's very similar like we do for revisions, that we'll process the revisions, we'll go through public notice, if

there's no comment, we'll act on the application. If there is a comment or an objection to the request, then we go to the EQC for a resolution.

The big benefit to this is that it mirrors the process that we follow under revisions, it's less cumbersome, more streamlined. We feel it's a benefit to all parties.

With that I'll go through the changes. In the first change, Chapter 3, Section 2(k)(ii), we added a sentence there to clarify that a request or a renewal for a request of a interim mine stabilization will be handled like a revision requirement and public notice. It refers back to that Chapter in the noncoal rules that discusses revisions and the public notice requirements.

That first change basically says these things require public notice in accordance with the revision chapter.

Under (A) of this rule, we just clarified that the renewal is also covered here saying that the Administrator has the authority to approve or disapprove those requests. In the past, any renewal had to go through the Council. We're deleting that and specifying that the rules are done at the division level.

The next change is down on page 2 of your copy, (D) which is where we delete the requirement to go to the EQC and also to clarify that public notice requirements of Chapter 7 have been met before we take action.

The next several deletions is where we go into the initial requests, a second request and a subsequent requests....each time you offer to renew your interim mine stabilization the process got a little more cumbersome, a little more involved. We're deleting all those requirements. Any questions?

**BOARD MEMBER GINGERY:** Any board members any questions for Rick?

**BOARD MEMBER PROFFITT:** Rick, on the first page where your inserting into 2(A), where it says, *or a renewal of*, is that a renewal of the five years?

**RICK CHANCELLOR, LQD:** Right. We do it in five year blocks. They can request for a five year term.....

**BOARD MEMBER PROFFITT:** So it's not a maximum of five years renewing to a maximum of five years. It's a five year block.

**RICK CHANCELLOR, LQD:** It's a five year block every time. With this request, at the end of five years they can ask for renewal of it for another five years.

**BOARD MEMBER PROFFITT:** There's no cap on that?

**RICK CHANCELLOR, LQD:** There's no cap. In reality, what we've experienced about after the third time, is that it is no longer reasonable to expect the market to rebound.

**BOARD MEMBER GINGERY:** Any comments from the audience on this particular item?

**BOB GREEN, KENNECOTT ENERGY CO.:** Mr. Chairman, on behalf of WMA, I'd like to fully support these proposed changes as they will streamline the timing and mechanism of the process.

**BOARD MEMBER GINGERY:** Thank you. Rick, do we want to approve this on each individual section or wait until the end?

**RICK CHANCELLOR, LQD:** I think each package.....

**BOARD MEMBER GINGERY:** Package?.....okay.

**RICK CHANCELLOR, LQD:** Since this is a noncoal package it should be handled separately from the rest of the rules.

**BOARD MEMBER GINGERY:** Any other discussion from the audience? Hearing none, does the board have comments or questions? If not, I would suggest we get a motion on this.

**BOARD MEMBER SKILBRED:** I would make a motion that we approve the 1Q Package on Interim Mine Stabilization for the noncoal rules as presented.

**BOARD MEMBER GAMPETRO:** I'll second that.

**BOARD MEMBER GINGERY:** The motion has been made and seconded. Any additional discussion? Hearing none, all in favor of the motion signify by saying aye.

**ALL BOARD MEMBERS:** Aye.

**BOARD MEMBER GINGERY:** Those opposed? The motion carries. Let's move on now to coal rule Package 1P. We'll start with you Paige. Bob Green, if you have any comments, how do we want to do Bob's comments?

**RICK CHANCELLOR, LQD:** First of all, we'd like to swap the two coal packages. We'd like to do 1J first before 1P. Bob Giurgevich has done a lot work with the bond release efforts so far. He's co-chairman of the working group of WMA to develop what's involved with bond release. He's out on an inspection right now but will be in later. We'd like to flip-flop the two to give him time to get here.

**BOARD MEMBER GINGERY:** Okay, so you'd rather go ahead with 1J.

**RICK CHANCELLOR, LQD:** It's probably best as we come along to one of Bob's comments that we'll explain our rationality and Bob can give his comments and we can discuss that way as we go through it.

**PKG. 1J - ROADS, MINE FACILITIES, EXCESS SPOIL AND THREATENED AND ENDANGERED PLANT SPECIES**

**PAIGE SMITH, LQD:** I realize that this is a really long package but let me just describe what's in it to maybe take away some of the concern about it's length. There's two attachments at the back. One shows

the rules if they were adopted. It shows a clean version which is Attachment II. Attachment I is simply the chapters with the strike and underlines so you can actually read them in continuous fashion rather than with all the verbiage in between. That's why this package is particularly long. A request to have us do that came from the EQC at our last EQC hearing because they found it was hard for them to get the continuity of a rule without being able to look at what came before and what comes after. We can refer to that if we need to during our discussions.

The first 44 pages of this package are essentially the same rules regarding roads that were brought to the Advisory Board back on August 1, 2000. There's only been some minor changes to the rules from that meeting and I'll explain what those are. They've been approved by the Board as they were presented and then we had a hearing date set with the EQC, but in the meantime, the Cyprus Shoshone Coal Company went to the EQC asking that their rail loop and spurs not be considered part of their permit area. So it would be considered outside the permit area for someone else's jurisdiction, essentially. I don't even remember when that hearing was in front of the EQC but EQC took several months to deliberate and then they came back saying, "No, that rail spur and loop should stay in as part of the permit area." The problem that we had with the package that we had brought on August 1, 2000 was that we had attempted to make it clear in the definition section for mine facilities that rail loops and rail spurs were indeed considered a mine facility and would be considered part of the permit. When this decision came about, it confirmed that change that we were going to do, however, we also found out that there was a good chance that this decision made by the EQC was going to go to court. Consequently, we did not want to go forward with the change we had made to make it clear that rail loops and rail spurs were part of mine facilities because if it went to court, we would then have to change our rules if they were to make a decision that was counter to what the EQC had said. We did have go back in and I'll point that out as we go through it. We kept the existing language regarding rail loops and rail spurs that are in the current rules. We simply removed them out of the roads section because the way our current rules are set up, the roads and the mine facilities rules are all intermeshed. The point of this roads package was to get roads in their own set of rules and have mine facilities have their own set of rules. Consequently, that one little statement regarding rail spurs, I'll show you because I can't remember it off the top of my head verbatim, we moved that into Chapter 2 which simply talks about how an operator needs to show the plans for mine facilities and their removal. The language is still intact. It's just been moved into a different part of our rules for clarity. With that in mind, the hope is that when this does eventually go to court which could be several years for all we know, if the decision goes that rail loops and spurs are not part of the mine facility, mine permit area, we would have to change that rule. If the decision goes that they agree with EQC, our rules would be fine as is. We were trying to construct something that minimize any future problems.

The roads part of this package is in response to OSM disapprovals that we received in 1990. Page 44-48 is new. These are new rules that you haven't seen before. They are regarding excess spoil. I might turn to Rick for a better explanation than I might be able to give. This came up as a result of an OSM inspection of one of the coal mines here in the Powder River Basin. There was some confusion as to which rules applied to a temporary spoil pile. Rick, can you finish where I left off?

**RICK CHANCELLOR, LQD:** Many years ago, the coal rules and the noncoal rules were in the same rule book. In that version of the rules there are extra requirements for permanent excess spoil piles that are left permanently after mining. Temporary spoil piles have less requirements. Through the years we split the coal and noncoal rules into two separate rule books because it was just too confusing. When we did that we consolidated some of the rules because the way the joint rules were constructed and in doing that we put all spoil pile rules into one section. If you read through it now, all those extra requirements for excess spoil piles could be interpreted to apply to all temporary spoil piles. They require specific engineering designs, a P.E. to design it, a P.E. to certify during construction and after construction. The attempt here is to go back and create a separate section for the excess spoil piles so they would stand alone.

The basic purpose is to separate those two different types of piles into their own sections to avoid confusion.

**BOARD MEMBER GINGERY:** Any questions for Rick on this? Go on Paige.

**PAIGE SMITH, LQD:** With that, even though you've seen this before, should I still go through it? Maybe we won't have to dwell on things quite as much as I did in August of 2000. I was just trying to read ahead in the comments that you submitted Bob and I see there's one on ephemeral stream approach.

**BOB GREEN, KENNECOTT ENERGY CO.:** Yes.

**PAIGE SMITH, LQD:** There's several rules embedded in the roads rules regarding how streams are dealt with in terms of fording a stream or building a road in a stream, etc.. The federal rule clearly talks about perennial and intermittent streams. They don't bring up ephemeral in these particular rules which will come up.

In Wyoming, we've been concerned because even though streams may be ephemeral, they are often times known to carry large quantities of water in response to a precipitation event. So we have added an additional part to that ephemeral stream definition which says, *A native, undisturbed ephemeral stream will be considered by the Administrator to be "prominent" if it is shown on a USGS 7.5 minute series quad map. A reconstructed ephemeral stream built to an approved permitted design (consisting of a cross-section and profile) will also be considered "prominent" by the Administrator.* This actually came up in our Advisory Board meeting because there was some discussion from the audience as to what exactly would constitute "prominent" because that could be open to subjectivity. This was the clarification that it had to show up on a USGS map and if it were a reconstructed ephemeral channel it would have to meet this criteria consisting of a cross-section and profile. This comes up several times in recurring rules where we have added ephemeral stream and we have also made it clear in the Statement of Reasons that we realize that this is more stringent than the federal rules simply because the federal rule only recognizes perennial and intermittent. We felt for Wyoming's conditions and where roads may be located, it may be important to distinguish that there could be certain ephemeral streams that should also be considered when designing a road ford or a road design but we didn't want it to be all ephemeral streams because of the comment that those that would constitute prominent should be considered in a design.

I noticed that there is a comment regarding that, which is item 10 in the WMA package.

**BOARD MEMBER GINGERY:** Bob, do you want to respond to some of that?

**BOB GREEN, KENNECOTT ENERGY CO.:** If I could please, thank you. WMA feels that the federal regulations establish provisions only for ephemeral streams without a counterpart for the prominent category. As such, this is a more stringent regulation that's being proposed than the federal regulations. I believe there was legislation passed in the state recently that prohibits regulations that are more stringent.

**PAIGE SMITH, LQD:** I'm not aware of that.

**RICK CHANCELLOR, LQD:** I don't think it prohibits. I could be wrong.

**BOB GREEN, KENNECOTT ENERGY CO.:** I don't have a copy with me but that was my understanding of what the intent of that legislation was, that indeed, regulations in the state cannot be any more stringent than the federal.

**PAIGE SMITH, LQD:** I wasn't aware of that legislation. Do you know what set of statutes it pertained to? It's not in the Environmental Act but would it have been part of the Administrative Procedures Act?

**BOB GREEN, KENNECOTT ENERGY CO.:** Unfortunately it's been a bit too much time since I followed it but I will go back through and I'll send you a copy of what there was. Regardless of whether or not that applies, we still are concerned as far as this being a more stringent regulation. We would request that this term "prominent ephemeral stream" be withdrawn from all parts of the proposal for that reason.

**BOARD MEMBER GINGERY:** Alright. Anyone additional comments from the audience at this time?

**RICK CHANCELLOR, LQD:** I have a question for Paige. I'm trying to get my mind straight on the process we follow. Has the AG's office seen these rules yet or do they wait until they go to the Council?

**PAIGE SMITH, LQD:** John Burbridge has reviewed these.

**RICK CHANCELLOR, LQD:** Okay. He's aware that this is more stringent.

**PAIGE SMITH, LQD:** Yes.

**BOARD MEMBER GINGERY:** Any comments from the Board members on this particular area here or do you want to move on and come back and discuss it more as we hear more of these aspects of this particular package?

**BOARD MEMBER MUNN:** Marshall may I ask a question? I guess my interpretation, when I read this, was that the attempt was to release concern on non-prominent ephemeral streams. If you're going to consider all ephemeral streams in the same category and require the same attention be given to them then I would think that would increase your degree of attention that would be required. If you're concerned if you have to deal with a possibility of flash flooding causing problems on an ephemeral stream, you're going to have to look at all of them instead of just the identified prominent ones.

**PAIGE SMITH, LQD:** By doing what Bob has asked in his letter it would remove the term "prominent ephemeral" from those rules having to do with stream fords. What it would do, in essence, is those streams would never be considered. The consequence of a stream having a large flow, based on our rules, we would only be considering intermittent or perennial because that's what the federal rules have. There would be no consideration of ephemeral streams period.

**BOB GREEN, KENNECOTT ENERGY CO.:** Which would be equivalent to the federal protections right now.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** My concern would be under reconstructed streams. It says that they're built to an approved permitted design consisting of a cross-section and a profile. Our permit has a generic cross-section and profile for everything we build. That means that everything we have out there, even though they're just flat areas that seldom carry water, would be prominent streams according to this definition which I don't think is what we want to do.

**RICK CHANCELLOR, LQD:** Mr. Chairman, I think the intent here is those ephemeral stream channels that we feel are large enough to require their own design, not a generic that covers all swells but their own particular design because of the size. If the permit review indicates that this is going to be a sizable channel or drainage area that's going to have a sizable flow, we require more specific designs. Just because you have a general profile and your permit covers dozens of small ephemeral channels, the intent is not to have those but those that have a particular design for their own channel.

**BOARD MEMBER GINGERY:** Let me ask you something. In our present operations, are we having difficulty in all the parties understanding what's going on? Has there been a problem or are we just trying to better define our regulation? Are we trying to correct something or simply trying to define it better?

**RICK CHANCELLOR, LQD:** I think we've experienced some, particularly in the southern part of the Powder River Basin, some very large storm events that have carried a lot of water. Our concern is that if those things aren't designed properly then they'll be problems because we realized that in Wyoming ephemeral drainages can have a whole lot of water come down in a thunder storm. Without some consideration of what a drainage area is holding, we feel there could be wash outs.

**BOARD MEMBER GINGERY:** Are all of our 7 ½ minute quads in the area that we're primarily dealing with pretty much up to date?

**RICK CHANCELLOR, LQD:** I don't know the dates on the quads. I couldn't answer that.

**BOARD MEMBER GINGERY:** I was a little concerned if that is a good criteria to use depending on the date of the mapping and some events that could've taken place there, I don't know for sure. I got to thinking if that was a good bench mark to use if the quads are not up to date.

**LARRY KLEINMAN, BLACK BUTTE COAL:** Mr. Chairman, Larry KLEINMAN from Black Butte Coal. Most of the U.S.G.S. quads are 60's vintage.

**BOARD MEMBER GINGERY:** I would be a little concerned.....

**BOARD MEMBER PROFFITT:** Mr. Chairman, I don't necessarily have any problem with the quads. I think natural contours are natural contours and they're probably gonna be in place whether it's in the 60's or the 90's but I was a little concerned about Rick's comment in relationship to his response to this gentleman over here. I thought we were talking about two different instances that were building on one another with these two sentences that are being added and then in Rick's comment I got the impression that we were actually talking about two separate situations. Is it an "and" or is it an "or" between these two sentences or what's the tie between the two?

**RICK CHANCELLOR, LQD:** The first sentence relates more to the pre-mine environment where the stream is already out there so that's one set of circumstances at the permitting stage before we start developing the mine and rec. plan.

The second one...when the mines reclaim landscapes, it depends on if they're a thick overburden mine or a thin overburden mine or whatever. The stream drainages may shift somewhat so instead of having an x number of ephemeral drainages, you may have more or less. If you have less, you may combine several into one larger one. So when they plan for a new one on the reclaimed landscape it may be not showing on a U.S.G.S. quad map because things change. So, this second sentence is more toward the reclamation of the landscape where they build an ephemeral drainage that is pretty large.

**BOARD MEMBER PROFFITT:** Okay.

**BOARD MEMBER GINGERY:** Yes Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** I would follow-up on a line of questions you had. I don't believe there has been any significant environmental degradation on any of these ephemeral draws that have received the intense runoff events. I would question as well, as to whether or not this is a refinement of definition or if there truly is a need to address any environmental concerns.

**PAIGE SMITH, LQD:** If there's one thing I might suggest, I've just been going through here and circling where it shows up in the remainder of the rules and it's probably on at least six pages in various parts of Chapter 2 and 4. I was just wondering if it might not be helpful to keep this discussion in the back of our minds and then see how it would apply when we actually come to a rule where we have proposed to incorporate prominent and ephemeral streams and then maybe see what the true effect of it would be under that context of the ford or not building in a stream or those sorts of things if that would be helpful.

**BOARD MEMBER GINGERY:** I believe that would be helpful so we'll see in what context it's really getting to.

**PAIGE SMITH, LQD:** With that, would you like me to continue?

**BOARD MEMBER GINGERY:** Yes, let's continue and we'll make a note that we need to come back to this particular change.

**PAIGE SMITH, LQD:** I'll make it a point to point it out when we do get to that. We're on hard copy page 4. This is where we're proposing to adopt the federal definition for public road. There was some discussion in the letter that we received from the Office of Surface Mining (OSM) as to what exactly constituted a public road in Wyoming. They really didn't have a problem with the rule per se but we felt that since we were adopting so much of their roads rules that it would be a lot more direct if we just adopted the federal approach to public roads so there would be no question as to how Wyoming interprets it. That's what we've done there. There's no discussion?

**BOARD MEMBER GINGERY:** There's no discussion from the audience? Rick, any follow-up?  
Let's move on then.

**PAIGE SMITH, LQD:** If you turn to page 5 we're still in Chapter 1 definitions. This is the LQD's definition for roads. We again have almost verbatim adopted the federal definition for roads but I just want to scroll down to the next page where you can see that we are proposing to delete or repeal almost all of the existing LQD road definitions having to do with the different types of roads because as we'll see further in this package we're adopting the OSM's two-tiered approach to road design and performance standards and that's a primary road/ancillary road. With that future proposed adoption in this package we no longer need the haul road/access road definitions. At our last advisory board meeting, Scott Benson noted that the term, *right-of-way*, when looked up in the dictionary means to cross someone else's land. Most of these coal companies in the state own the land within their permit areas so it became apparent that the use of the term *right-of-way* would then negate...those roads would not be considered a road by definition. We did a little research into that and we have instead put in *corridor of affected land associated with travel by land vehicles used in surface coal mining and reclamation operations or coal exploration*. This then goes on to mimic, pretty much, the federal approach. The thing we did do, which again came up, I think Bob Green brought it up at our last advisory board meeting, was which roads really counted. Which roads were going to come under the rules we proposed to adopt. Again, the federal rule says this *term does not include ramps or routes of travel within the immediate mining area*. We also said the term does *not include ramps or routes of travel within the immediate mining area* and then we went on and kept *within spoil or coal mine waste disposal areas*. We went on to clarify what immediate mining would be because there was some question about that at our last meeting so we propose that immediate mining area refers to *areas subject to frequent surface changes. This includes areas where topsoil and overburden are being moved and areas undergoing active reclamation*. That terminology came out of the preamble associated with OSM adopting this rule. It's not paraphrased but it's similar to what they had considered to be immediate mining area. We thought it would be better to incorporate it into the rule so there would be no question in the future as to how LQD would interpret that term, immediate mining area.

**BOARD MEMBER GINGERY:** Go ahead.

**BOB GREEN, KENNECOTT ENERGY CO.:** WMA greatly appreciates the positive response to our previous concerns that were very supportive of this definition.

**BOARD MEMBER GINGERY:** Any one else? How about the board? If not, let's move on.

**PAIGE SMITH, LQD:** So we then turn to hard copy page 7. We're now into Chapter 2. What we propose here is to remove the discussion of *location, construction and maintenance of mine facilities*. We propose to take that out of the subsection in Chapter 2 regarding *cross-sections, and/or maps and plans of the area to be mined during the term of the permit, unless required for the permit area by the Administrator or as specified below, certified by a registered professional engineer or professional geologist, showing:.....*this language shown as struck ~~(V) The location, construction and maintenance of mine facilities~~, we have moved to subsection (E) which follows at the top of your page 8. We're still in Chapter 2 and what we've chosen to do there is adopt language similar to the federal rule regarding support facilities. In the federal rule they use the term *support facilities*. In Wyoming we use the term *mine facilities* but they're synonymous. Just a difference in terminology. The preamble to this section (E) is: *In addition to that information required by W.S. § 35-11-406(b), each application for a surface coal mining permit shall contain: A complete operations plan proposed to be conducted during the life of the mine including:* and then we would re-propose this new subsection (E) that says that the *description, plans, and drawings for each mine facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with section 2(n) of Chapter 4 for each facility.* This language is similar to the federal counterpart rule. What this does, is it takes the facilities, that we want a P.E. signature on their design. We kept those facilities as needing a P.E. signature and there was some discussion by one of the EQC members at the time saying, "Why would you need a P.E. signature on that design"? The federal rules don't require it either. We have more appropriately moved that *mine facilities* into what actually does need to be submitted more in accordance with the federal approach. We also are trying to maintain separate rules dealing with mine facilities so we hope in the future it makes it easier rather than this cross pollination that we have currently in the rules between roads and mine facilities. If you look at subsection (F), which is a new addition, the language here has not been underlined simply because this language has been moved from Chapter 4, Section 2(j)(i)(A). This is the language I was referring to in the beginning of our discussion. This is language, verbatim, taken out of Chapter 4 which was intermeshed with the roads rules. It says: *Railroad spurs shall be included within the permit area from that point that they provide exclusive service and shall be covered by a reclamation bond.* Again, that is a subsection to the lead in...a complete operations plan proposed to be conducted during the life of the mine including railroad spurs. I'm not sure I got my grammar right there. My intent was to keep the language identical. I didn't want to change for fear that it might gum up the works somewhere along the line. Now that I read it and say it aloud, maybe it doesn't read so good. During the life of the mine including railroad spurs shall be included.....yeah....that doesn't sound so good. I can work on the language.

**BOARD MEMBER PROFFITT:** "They" doesn't look like the right word in there and *from the point that "it" provides exclusive service....*I'm a little concerned about *exclusive service?* What the heck is *exclusive service?*

**RICK CHANCELLOR, LQD:** That was much discussed at the EQC hearing on this whole issue. It was discussed very heavily. Once a the case does go to court and is settled, we'll know how to fix this. We want to maybe work on that but right now because of the court case pending we don't know which way to jump.

**BOARD MEMBER PROFFITT:** Exclusive service is not a defined term?

**RICK CHANCELLOR, LQD:** No.

**BOARD MEMBER PROFFITT:** Okay.

**PAIGE SMITH, LQD:** I was going to take out the *they* but we have it plural here. To make it follow the lead in, I'll probably have to do some rearranging beyond just changing the plural to singular. I could try to work on that at one point when I'm not talking. I'll leave this here to jog my memory to come back and take a look at that. My apologies for not taking a thorough look and seeing how it continued.

**BOARD MEMBER GINGERY:** I had a question on this. They follow this procedure but if they want to come back to modify, if they had a change, what rule do you go to then?

**PAIGE SMITH, LQD:** Do you mean after the court case?

**BOARD MEMBER GINGERY:** No, let's say it's not related to a court case. Simply that they presented this plan and it was approved or it's inclusive and then they come back and want to make a change to the spur or something.

**RICK CHANCELLOR, LQD:** Under the chapter on term revisions they can request a revision to the permit. Can they request a change to delete that spur from their permit?

**BOARD MEMBER GINGERY:** Didn't this come up a few years ago...one of the mines was making a.....

**RICK CHANCELLOR, LQD:** It's still going on.

**BOARD MEMBER GINGERY:** Oh....okay. I see. I was just plugging into it. I just remembered this but it sounds like it's still going on.

**RICK CHANCELLOR, LQD:** Right. Now a mine can request a postmining land use change to let the railroad take control of their loop for their own railroad services. They provide information showing that's reasonable and we could probably take it out on that case under the current rules. It's still going on and we don't know which way it will be resolved.

**BOARD MEMBER GINGERY:** Is this a singular issue or has this shown up time and time again?

**RICK CHANCELLOR, LQD:** We've had a couple.

**BOARD MEMBER GINGERY:** Okay. Anyone else? The board? Any comment from the audience before we move on? We'll let you work on that Paige. Do you want to move us along now?

**PAIGE SMITH, LQD:** Yes. If you turn to page 9, we are still in Chapter 2. We are proposing the entire repeal of Chapter 2, Section 2(b)(iv)(G) which says: *A classification and description, including maps and cross-sections, if appropriate, of all roads (except exempted roads), .....The classification shall designate the road as either a haul road, access road, or light use road.* These rules are no longer needed with the adoption of what will be upcoming proposed subsections 2(b)(xix) and 2(b)(i)(E) for roads and mine facilities, respectively. Again, we no longer will have this sub-definition of roads ...access and light use roads....so that's no longer appropriate. Again, we're rearranging things so there won't have to be discussion of transportation facilities in conjunction with roads. We're separating those things out. You're still on page 9 and it's the rule noted as 5.b.

**BOARD MEMBER GINGERY:** I think Bob had a comment.

**BOB GREEN, KENNECOTT ENERGY CO.:** I was just going to mention that we don't have a comment on this particular section but we will later on as far as one of the artifacts that remove the light-use roads.

**PAIGE SMITH, LQD:** We propose to maintain this rule regarding legal ownership but just put it in a new order in the chapter and it would be Chapter 2, Section 2(a)(i)(E). That's proposed to be moved that way because we thought it was more appropriate for this requirement regarding legal ownership to be under subsection (a) rather than (b) in Chapter 2 because subsection (a)(i) refers to information pertaining to the identification of interests, whereas, subsection (b) requests information pertaining to the mine and reclamation plans specifically. It just seemed to make more sense to put it in the legal interests section.

If you go down to 5.c on the bottom of page 9 we are proposing to repeal this rule which says: *All information necessary to show compliance with the requirements of Chapter 4, Section 2(j)*. There is no federal counter rule to this and it is no longer needed with the adoption of the other federal counterpart language. It's more just a throw back from the way our rules were constructed for roads.

If you go to the top of page 10, proposed rule 5.d....this is simply a clean-up. We want to be consistent throughout the rules and instead of referring to *buildings and structures* we'd like to refer to *mine facilities* which would incorporate buildings and structures and this is the plan for disposal of mine facilities, erected, used or modified by the applicant.

**BOARD MEMBER GINGERY:** Any comments from the audience up to where we are now? The board members? Let's move on then Paige.

**PAIGE SMITH, LQD:** We are now on page 11, still in Chapter 2. This is a pretty clear proposed adoption of federal language as you can see by the side-by-side and this continues for 2 1/4 pages. This has to do with road systems. I will also point out where the *prominent* shows up. On this first one, we just want to make it clear that: *each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area*. This mimics the language in the federal rule especially the *constructed, used, or maintained*. That was an issue for OSM in 1990 letter that we were not always consistent whether the road was constructed by the operator but used by the operator, it became part of the permit.

**BOB GREEN, KENNECOTT ENERGY CO.:** Each mention of *prominent*, I'll reiterate that this does not have a federal equivalent and without a problem that exists we don't feel that it's necessary to have it in rule.

**BOARD MEMBER GINGERY:** Just on the word *prominent*?

**BOB GREEN, KENNECOTT ENERGY CO.:** Just on the word *prominent ephemeral*.

**BOARD MEMBER MUNN:** Marshall, can I ask for a clarification of what would be a prominent ephemeral stream? I've never seen water in Fish Creek north of Wheatland. Is that a prominent ephemeral stream? Is that the kind of stream we're talking about....a drainage that apparently I just haven't caught it right...that you could drown in it very easily?

**RICK CHANCELLOR, LQD:** That's the concept. I'm not familiar with Fish Creek area.

**BOARD MEMBER MUNN:** Well, it's a nice gravel bed that a bridge crosses on the interstate but I've never seen water in it and I think it's someone's idea of a joke. The Cheyenne River is dry quite a bit of the

time but if you mine through the Cheyenne River, would you have to reconstruct a channel to handle the water flows that do occur? Is that the intent of this?

**RICK CHANCELLOR, LQD:** Yeah, I think Fish Creek is a good example where obviously this carries some flows because of the sand and gravel bed that probably a lot of flows could keep vegetation off of it as opposed to other ephemeral channels which have a grassy bottom that only occasionally carry small amounts of water. It's the larger ones we're concerned with.

**BOARD MEMBER GAMPETRO:** Powder River would probably qualify in this area. There's nothing in it right now that you could drown in.

**BOARD MEMBER GINGERY:** Any other questions? The intent here is very hard to really understand. Let me ask Rick a question. As we go into this process, how have you been defining it up to now? You haven't been covering certain channels?

**RICK CHANCELLOR, LQD:** I wouldn't say we haven't been but they're probably erratic. I think it depends on the reviewer. If the reviewer feels that a pretty good size draw is being crossed by a road or something, they'll make sure it's environmentally safe as to how they do it. The rules here only talk about ephemeral, current rules, talk about perennial and intermittent streams have a lot more restrictions on them. I guess we're trying to clarify and be more consistent. We have more concerns about the big ones than just the little grassy swells. With the severe thunderstorms events here in Wyoming that we see at the mine sites, we do have concerns. Back east, I'm not sure if they really have that concern.

**BOARD MEMBER GAMPETRO:** How would the people at the mine that are doing the work determine if this was a prominent ephemeral stream when they get to it and it's time to decide to either do the work or not do the work?

**RICK CHANCELLOR, LQD:** Our proposal was to use the U.S.G.S. quad map because we struggled with that at our board meeting years ago so it's not subjective totally. That's where the U.S.G.S. quad map came in being that if it shows a dash or blue line.....

**BOARD MEMBER GAMPETRO:** Blue line on the map.

**ROY LIETKE, JACOBS RANCH COAL CO.:** I just keep going back to our existing situation that the definition.....the native streams to me is defined but the reclaimed ones where you have a specific design or a cross-section.....again, we have a drainage at our mine that drains a small area of reclamation and it's 200 acres and we mined through an old county road that was abandoned before we got there and we have a commitment in our permit to put back the roads in that area however, it will not be a public road. It's just going to be a ranch road. That stream channel, that ephemeral stream, that we're building and crossing on right now has a design in the permit saying it's a parabolic channel and it's so wide and it has side slopes so there's a design in the permit for that stream channel yet there's...I'm mean....we've had big storms in the last couple years and there's been very little water go down it. We don't have cross-sections in the design drawing. We designed it to handle a flood event but we don't have all this stuff in the permit that's going to be required by the new rules. The new rules are going to be very burdensome in areas like that. The definition of just having a cross-section in the permit does not make it a prominent stream I don't believe.

**BOARD MEMBER GINGERY:** Yes, sir?

**LARRY KLEINMAN, BLACK BUTTE COAL:** Mr. Chairman, I'd like to ask Rick a question. Black Butte is in kind of a different situation where the topography is much steeper and the relief is much greater. A U.S.G.S. quad generally has 20 foot contours, is this not correct? And if on a 20 foot contour you see a channel on a U.S.G.S. quad and it then would be defined as a prominent ephemeral stream. Practically, every small channel we have in the hills in the south end of the state have, from the top of the ridge line down to the bottom of the channel are greater than 20 feet. So, every ephemeral stream that we have then becomes a prominent ephemeral stream even though it carries much less water than say one of the more flat ones up here in the Basin. Would we then be under the same restrictions at every small ephemeral stream that we have in the southern part of the state?

**RICK CHANCELLOR, LQD:** At the end of the proposed rules....based on the blue dash line on the U.S.G.S. quad map.....in the proposed rules that's how we decide.

**BOARD MEMBER GAMPETRO:** So unless that channel was indicated on the map....can I ask one other question on this? I guess the problem I have is I don't know how much the topography around here changes. I haven't lived here long enough. I've only lived here 6 years. Where I used to live, I had the unfortunate circumstance of working on a sewer project that had 25 year old topos. I can tell you that if we had followed the original plan....we were laying sewer about 3 feet above ground in some places, because of the changes in the topography over a 25 year period. I know somebody had brought that up previously. Is that an issue that we need to be concerned with here?

**RICK CHANCELLOR, LQD:** I think there are some inaccuracies in the older U.S.G.S. quad maps but I don't think they're to the degree you're talking about or because of man-made efforts, things change rapidly. Sometimes the streams are not exactly in the same spot or there may not be a stream there but they're close.

**BOARD MEMBER GINGERY:** We have another question. Go 'head sir.

**PETE SALL, BLACK BUTTE COAL CO.:** How we handle streams in our permit is we basically state that we do not design first order channels. First order channels are basically the initial channel shown on a U.S.G.S. quad map before it joins a second and then a secular channel. We do have these general ? (someone coughed) design in there to stabilize first order channels if need be. I've never been able to find how U.S.G.S. determines the first order of channel, what they use and how they decide to put it on a map. I haven't found anybody else who knows.

With this restriction of having a requirement or basically having to design every single channel, at least in southwest Wyoming, puts a great burden and at least from what I've seen we do have some erosional instability problems, we have a requirement in our permit to take care of it. So, just burdensome of this type of requirement design...what I'm gonna say is who interprets some of that prominent drainage....you know...to me it sounds like it's almost stated on the relation to the quad but almost left open door to the inspector of the state to decide what they want as a prominent ephemeral channel.

**BOARD MEMBER GINGERY:** I think you, if I may add to your comment, that's what's concerning me about the U.S.G.S. quads. I have a little bit of experience and some of it is their procedure and I know a lot of times that we would accept the...most counties have soil maps and they seem to be more prominent on this particular subject and we'd accept that as a basis report. My problem that I really have is coming back and if some of these are forty years old, they do a lot better job now actually going back out and observe from the early prints and really make a better determination. It may or may not be a problem in Wyoming, I don't know. I can tell you in the northwest part of the state it really made a difference on all stream

classifications in their recent 7 ½ minute quads they did up around Cody and the Yellowstone area anyway. I'm a little worried of these older quads but maybe Rick's statement earlier that not much has changed since forty or fifty years or whatever those quads are. I think basically what I'm trying to determine in my mind hasn't been a prominent problem but what is a prominent problem is how do we work in correcting that issue? Down in your area, have you felt that has been a problem or are you trying to correct it when it gets to the secondary stream?

**PETE SALL, BLACK BUTTE COAL CO.:** Well, especially associated with the haul roads. Every single haul road or road that we put in that crosses any single drainage, at least our district down in Lander requires us to...is it 24-hour, 100 year event to design a culvert size for that area.

**BOARD MEMBER GINGERY:** So every draw, if you use that term, you're putting in the adequate culvert.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Yep, but it's not....the designs, the drainage areas and the flow specs and that....we're required to put in the permit area already.

**BOARD MEMBER GINGERY:** Okay. Any other questions?

**BOARD MEMBER SKILBRED:** I have a question for Rick. Isn't the department, right now, during the permitting process looking at those drainages during the permitting process? Is it not that the mining companies are working with you on designs for those?

**RICK CHANCELLOR, LQD:** I think as Pete mentioned, Lander for sure does it and I think in the Hanna area in District 1 I believe where the draws are crossed we require culverts. Some of those old roads are pre-law and have some smaller culverts and make it probably necessary but I think we do generally require that.

**BOARD MEMBER SKILBRED:** That's what I was wondering if we weren't really addressing the problem through the permitting process more so than through....I mean....this encompasses everybody. Really it ought to be more site specific in some senses like in the western part of the state and whatnot.

**BOARD MEMBER PROFFITT:** Mr. Chairman, I think I'm going to have to change my position I took earlier. I still would give the benefit to the U.S.G.S. but I think you've raised some valid issues and maybe that's not the objective criteria we ought to be using to adopt a concern here that I think is real. I look back at the Wyoming Mining Association's letter that was read earlier and they talk about "recognize the unique circumstances that occur in Wyoming" and I'd have to say that flash floods are a unique circumstance to Wyoming and probably the western states as well, a good part of it. I don't see anything in your comments that offer any proactive alternative to the proposed rules. Either an objective criteria or a different standard from prominent. I'm a little concerned about that where the Wyoming Mining Association is coming in with a negative saying you can't make anything stronger than the federal law and then not proposing any alternative to the rule. In giving us something to look at, if you have a criticism of an existing criteria than certainly give us something available to look at that would be acceptable to the Wyoming Mining Association. That's my comment.

**BOARD MEMBER GINGERY:** Bob, go 'head.

**BOB GREEN, KENNECOTT ENERGY CO.:** The Wyoming Mining Association's position is that the federal rules and regulations are adequate and that SMCRA....they interpret SMCRA which is basically the Act that regulates mining throughout the country. That is our alternative and that is it be at the federal

regulations. We feel, as Chet had mentioned earlier, we feel that realistically when we are encountering a large ephemeral draw that is one of concern, we're already addressing that through the permitting process or voluntarily putting in culverts. Our concern is that we don't want an overly broad term put into the regulations that could be interpreted many different ways. Especially one that goes beyond the federal regulations.

**RICK CHANCELLOR, LQD:** One point of clarification. So if I understand you correctly Bob, the Mining Association is not objecting to a site-by-site evaluation of the need for certain designs for crossing ephemeral drainages based on the site conditions. You're not really opposed to that...

**BOB GREEN, KENNECOTT ENERGY CO.:** That's correct.

**RICK CHANCELLOR, LQD:** What you're opposed to is having a specified rule that may be more broader than what you think is necessary.

**BOB GREEN, KENNECOTT ENERGY CO.:** That's correct.

**GUY PADGETT, OSM:** Mr. Chairman, just for clarification purposes, the Wyoming Mining Association proposed to eliminate *ephemeral* in total or simply the *prominent*? I'm unclear on this.

**BOB GREEN, KENNECOTT ENERGY CO.:** If I may....it's the *prominent ephemeral* that we're concerned about because *prominent ephemeral* included in this regulation...we feel that ephemeral draws should be regulated just as the federal regulations are so we're asking that *ephemeral* not be added to any DEQ regulations and particularly not *ephemeral* in this regard.

**GUY PADGETT, OSM:** Mr. Chairman, again I'm a little confused if I look at 6.b which says the *intermittent, perennial or prominent ephemeral*. If we eliminate the term *prominent ephemeral* then we're back to *low-water crossings on an intermittent, perennial* which would mimic the federal regulations. There certainly is nothing wrong with that, however, I will point out that the original rules in Wyoming were approved in fact for a more stringent or a broader interpretation recognizing the fact that there's this other category of streams in Wyoming called ephemeral. It was approved on the basis of that overall view and if we were to eliminate in the Wyoming regulations ephemeral from the currently approved rules and go back to simply a two-part designation - intermittent and perennial - then it would have to be re-looked and reinterpreted in its entirety. It's not necessarily as effective then if we simply look at intermittent and perennial and just leave out ephemeral and I just bring that up as a point.

**BOARD MEMBER GINGERY:** Go 'head Jim and then I hope Paige can bring this all together.

**BOARD MEMBER GAMPETRO:** Would it be possible to still cover ephemeral, get rid of the word prominent, and simply define what we're talking about in such language that said something to the effect of *such ephemeral streams that are deemed during the permitting process to be a potential problem with flooding or that we later experience such flooding with....*I'm not good at the words but just say what we mean instead of saying prominent and ephemeral and defining it by the dotted blue line. Is it possible to do that? Would that make you happy?

**BOB GREEN, KENNECOTT ENERGY CO.:** I think that would be workable.

**BOARD MEMBER GAMPETRO:** Is that possible?

**RICK CHANCELLOR, LQD:** It's possible, yes.

**BOARD MEMBER GINGERY:** Paige, now you've heard all of this, can you pull this all together and make everyone happy!?

**PAIGE SMITH, LQD:** I'm glad Mr. Padgett spoke up before I did because he kind of got the point that I was going to bring up. What he had said is that the current rules don't make a distinction on the type of channel, they simply talk about drainage ways...channels so it has been sort of open to going through all three tiers of streams. With our proposed adoption of the federal rules we were very clearly saying perennial or intermittent in which case I was responding to Rick's comment that the staff would still be able to look at ephemeral but I'm afraid with the adoption of these rules and the very distinct allocation of perennial intermittent that the staff would not be able to bring up issues on an ephemeral stream because they were not mentioned. That's what I was going to ask Rick. Don't we have the problem that the staff loses the flexibility to say...I think you may have a problem on this ephemeral stream...no, it's not in the rule but we think you need to fix it. Where is our authority to make them fix it and that's sort of the double edged sword of taking on the federal rules verbatim. Currently, we're more general. Now we're getting specific and we felt in discussions with staff that we do have a very specific situation that can occur in Wyoming and that's those ephemeral channels that can carry a lot of water. What I think we should do now is see where this is being brought up so you can see the environmental effect....I should say the environmental protection that is trying to be taken care of through the design of certain types of road construction.

**GREG JONES, PEABODY ENERGY:** I can't speak for all the mines but we have maps in our current permit today that depict most drainages within our permit area. These are developed from areal photography flights that are a lot more accurate than U.S.G.S. and I just wonder if that's an option that...if I could find those streams that way....if that would work?

**BOARD MEMBER GINGERY:** I'm certainly glad you brought that up because I was kind of leaning towards that too. I've been concerned with the quads being adequate. Let me ask you a question, in the permitting process, were the streams defined before the permit was given or did you come back and work that out later?

**GREG JONES, PEABODY ENERGY:** In most cases, it's native topography that we flew before mining even started. You can define an ephemeral stream from the head cut to like they were talking earlier, you know, the first order streams. There might be a blue line on the U.S.G.S. topo that starts at the first head cut or drops off into a whatever you want to call it. It's pretty broad with a blue line on a U.S.G.S. map whereas there's discontinuous blue lines a U.S.G.S. map. They'll be a blue line and then it just stops and then it picks up again somewhere else.

**BOARD MEMBER GINGERY:** I think you bring up a good point. Thank you. Let's see where we are here. The problem that was the first aspect of the ephemeral stream was that there was some question using just prominent. Secondly, it seemed like there was in some districts a different relationship than maybe in others where they worked it out locally. Thirdly, it does seem like there is a concern or we wouldn't be discussing it and fourthly I'm coming to the....opinion is that no one really minds doing this, they just want the definition of what we're doing. Then, we finally got into two different approaches from what the federal interpretation or information was. I think the latest, if I understand it is that in Wyoming the agreement is more restrictive than being less restrictive. I don't know if it corrects the problem if you just dropped *prominent*. I'm trying to get some feed back. That seemed like the first challenge that came to us. How do we feel about that?

**BOARD MEMBER GAMPETRO:** I would think you would need to put some definition in there. If you take *prominent* away, you need to define which ephemeral streams we're gonna deal with otherwise you broadened the problem of the Mining Association.

**BOARD MEMBER GINGERY:** Okay, you brought that up before. That's good. Any of the other board members have comments. Let me ask the participants out in the audience a question. First of all, I think from the boards stand point we don't really correct it by just dropping the word prominent but going with what Jim has proposed here....really defining that....how does that sound to the Association and the individual mines out there?

**BOB GREEN, KENNECOTT ENERGY CO.:** I'll take first crack at that if that's alright. Our initial feeling is that again that the state regulations should not be any more stringent than the federal regulations as a principal. On a practicable application, I can speak for most of the operations I think, I don't think they have a problem with addressing actual site specific concerns about ephemeral draws but to have a general description within these proposed regulations is not necessarily going to make that site specific so as far as the suggestion that very specific language can be developed to address problematic drainages, I think that's something that could be acceptable but if it's a general description of ephemeral draws then we're right back in the same principal concern that it is much more stringent.

**BOARD MEMBER GINGERY:** Any other comments? Okay, why don't we come back to you Paige and see what you can do with this.

**PAIGE SMITH, LQD:** Well, I went through and I hi-lighted the three phrases that are of concern so that we can see them. This is a new subsection....which consists of some of the original language in our Chapter 2, Section 2(b)(xix) but we've reconfigured things to more closely mimic the federal rule which included having to adopt some new rules because our current rules didn't cover all the bases. So again, we had a new section entitled Road Systems and then under there subsection (a) which says - *Each applicant shall submit plans and drawings for each road as defined in Chapter 1 to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall: include a map, appropriate cross-sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures and low-water crossing....*let me just point out, that all of this matches, we just had to do some slight grammatical changes to match the federal rule. They just say *low-water crossings* period. There's no distinction of perennial or intermittent. For some reason, we said, *low-water crossings on an intermittent, perennial or prominent ephemeral stream channel*. Now, in this case, we could just truncate this rule right here and leave it at *low-water crossings* which would then be discretionary as to which low-water crossings require the appropriate cross-sections, design drawings and we would be doing a much closer match to the federal rule. I'll just put that out there and let me scroll down to the next one.

We proposed to remove this current state rule because the same issue is brought up later in Chapter 4. So now we're in subsection 2 and the lead-in again was....the plans and drawings shall contain the drawings and specifications of each proposed road that is located in the channel of an intermittent, perennial or prominent ephemeral stream, as necessary for approval of the road by the Administrator in accordance with Chapter 4. Again, the federal rule says it does make the clarification of intermittent or perennial. Again, we felt if we didn't put ephemeral there that would limit our authority for these kinds of drawings specifications to an intermittent, perennial stream and that could be a problem for environmental degradation perhaps. The same thing down here (Chapter 2, Section 2(b)(xix)(A)(III)) contain the drawings and specifications for each proposed ford of intermittent, perennial or prominent ephemeral streams that is used for a temporary route, as necessary for approval of the ford by the Administrator in accordance with Chapter 4. That again mimics the federal rule.

I feel like we're sort of in a corner here. We're in a situation where if we don't adopt perennial or intermittent and we only say stream, that broadens it in terms of which streams need to be considered for these things but we run into the fact of why didn't we do the perennial or intermittent. So we have two choices it seems like.

**RICK CHANCELLOR, LQD:** Mr. Chairman, if we do not adopt the phrase perennial intermittent and prominent ephemeral, we're pretty much back to our current rules because we do say streams in all these rules.

**PAIGE SMITH, LQD:** Right. The current rules refer to things as...what was it....drainage channels....let me find one of our old rules.

**RICK CHANCELLOR, LQD:** Like 6.f which says natural drainage way.

**PAIGE SMITH, LQD:** As Mr. Padgett pointed out, we were not specific as to which level of stream were we going to apply our jurisdiction. It's always a two-edged sword with adopting federal rules. Sometimes it's convenient and sometimes it's not.

**BOARD MEMBER GINGERY:** I believe the lady in the back has a question.

**ROBERTA HOY, LQD:** Based on an earlier suggestion...just trying to look through our existing rules to find a way to define ephemeral....actually there is definition of *ephemeral* in the existing rules and it doesn't say blue line on a map. If you start from the hydrology end of it, the work on identifying the stream channels because in the baseline requirements they must submit a map and description that includes ephemeral, intermittent and perennial, again, going back to the existing definition of ephemeral. Then, when you get to something like the hydrologic consequences where it says that you define....look at things like flood flows and that sort of thing. We may be able to work towards a definition of....I'll use the term prominent ephemeral for now but from the hydrology angle rather than from the more the facilities using what we already have.

**BOARD MEMBER GINGERY:** My question - what is the definition?

**ROBERTA HOY, LQD:** Of ephemeral?

**BOARD MEMBER GINGERY:** Yes, maybe that'll help all of us to look at that.

**PAIGE SMITH, LQD:** It's on the top of page 3 of the proposed rule. It's the language that's not underlined.

**BOARD MEMBER GINGERY:** Paige, since we did define it back in Chapter 1 and prominent is more...it seems like we're having a little trouble with what that word really means in this case but since we defined it and we didn't say they were prominent or any other place, what if we just took that word out since we already have a definition of it and people can go and look at that and it leaves it....

**PAIGE SMITH, LQD:** You're suggesting not touching the definition or simply remove....are you suggesting.....

**BOARD MEMBER GINGERY:** Keep the definition and just remove the word prominent.

**PAIGE SMITH, LQD:** I see. My only misgiving would be, and I'd have to look at it, maybe Robbie can answer the question, if you start attaching these extra tiers to ephemeral, there may be other places in the rules....see, we did the prominent simply because prominent ephemeral's only showing up in the roads rules. They're no where else in the rules. We were keeping that part of the definition confined to roads whereas if you now add two more phases to ephemeral stream would that make it tougher to do the baseline that you were describing for hydrology?

**ROBERTA HOY, LQD:** No, because to some extent you need to understand the range when you're looking at your hydrologic consequences. You have to understand the contribution, the area contributing to a particular drainage. If it's only five acres or something then the chances of it becoming prominent ephemeral are reduced which I think addresses other concerns. You still don't have a bright line there but you have the information developed elsewhere for your permit that can lead you to being able to submit something that says that these three ephemeral drainages are the three that will have the flows that are such based on what the analysis that we have to do somewhere else in the permit that are the ones that are of concern and would need protection in terms of the roads. You're really just trying to integrate the engineering and the hydrologists if you will and get to it that way. Again, there is no bright line. It doesn't say it's the blue line on the map or whatever but we do have the information that they already can submit and have the site specific concerns addressed. You would be adding that they specifically say these are the streams for which we need to add the road design. Then there is negotiation with the reviewer and with the division. You could go on and on about a particular stream crossing whether or not they agree but you'd have the information from the hydrology section.

**BOARD MEMBER GINGERY:** I appreciate that. Bob, you have a comment?

**BOB GREEN, KENNECOTT ENERGY CO.:** Along those same lines, if I could go back to Paige's earlier suggestion on the wording in 6.b. If you were indeed to take out ephemeral stream from the description in 6.b in the new proposed regs., it would indeed be exactly the same as the federal regulations. In 6.b if you dropped off everything except *and low-water crossings* that would indeed allow a generic application of the need for specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches all related to any ephemeral stream that the division feels is one of concern. That would allow the review to occur, that would allow 6.d to be changed to take ephemeral out of there to make it equivalent to the federal regulations and still allow the information that you're asking for in the permitting.

**PAIGE SMITH, LQD:** You're suggesting that just for this b. Have you looked further on or are you just suggesting that for this particular rule?

**BOB GREEN, KENNECOTT ENERGY CO.:** I'm suggesting that for 6.b and 6.d and we can take a look as we go through the rest of them as well if we generalize, 6.b would indeed apply to any other use of prominent.

**BOARD MEMBER GINGERY:** Rick, where do you think we're going on this right now?

**RICK CHANCELLOR, LQD:** I don't think on 6.b there's a problem putting a period after low-water crossing as has been suggested. I don't see a problem with doing that. I do have concerns on 6.d that if you specifically limit to perennial and intermittent streams that there would be no discretion on our part for the ephemeral drainage that would need it under 6.d.

**BOB GREEN, KENNECOTT ENERGY CO.:** But my point is that you're getting the same information that 6.d is requiring up in 6.b.

**RICK CHANCELLOR, LQD:** I see what you're saying.

**PAIGE SMITH, LQD:** It just reiterates....

**RICK CHANCELLOR, LQD:** Yeah.

**PAIGE SMITH, LQD:** Contain the drawings and specifications of each proposed road that is located in the channel of.....(6.d).....Bob Green is suggesting that we leave it at intermittent and perennial. I don't know.

**GUY PADGETT, OSM:** Mr. Chairman, does 6.b refer to crossings?

**PAIGE SMITH, LQD:** Yes.

**GUY PADGETT, OSM:** Where 6.d refers to within the channels as well?

**PAIGE SMITH, LQD:** Right. I still think it's two different things because this one is specifically talking about *in the channel of* not all the upper things of the road fill and etc. - it wants some specific information on that road that's going up the channel of a stream which makes sense. If you're going up the channel of a stream you better have some pretty good designs. So, again, our concern is if we drop off any reference to ephemeral then there is no flexibility for the division to ask for this design information for a road that's going up an ephemeral channel that has been known to carry a lot of water.

**BOARD MEMBER GINGERY:** Let me poll the board members. Jim, you had the longest suggestion so I'll start with you. Where do you think we're going on this and what can we do with it?

**BOARD MEMBER GAMPETRO:** I think there's two issues. The first is whether or not we want to agree that we can't ever be more stringent than the federal regulations and I think there was a good comment made that everyone seems to agree that there are different situations here in the western states and in Wyoming than there are necessarily to be covered in federal rules.

The second issue then if you buy into the first issue that we do have to at least consider the differences here in Wyoming than the rest of the world, then the second issue becomes, how do you keep the prominent, ephemeral in there. I guess the way I would go is not necessarily even getting rid of the prominent - just redefining it. I'm uncomfortable with the forty year old maps. Where we always go on these things seems to be...we're going to have to use some judgement. I don't know how comfortable everybody would be but those structures and those drainages would be considered prominent ephemeral that I think using the hydrology and the process that was described, I think is the way you could maybe resolve this. Doing that you're going away from the concept that things are different in Wyoming. You're accepting that concept that we might in some cases have to have a little more stringent rules than the federal unless that's against the law. If it's indeed against the law then you've got another problem.

**PAIGE SMITH, LQD:** I was just wondering if maybe I should try to call John Burbridge to confirm this because I'm not aware, Bob, of this legislation.

**RICK CHANCELLOR, LQD:** Yeah, maybe at break we can do that.

**PAIGE SMITH, LQD:** Can I just throw one thing out.....our rules were approved by OSM in general. They didn't like little specific things which are taken care of now but we again used the generic term stream channel. We could conceivably just adopt the term *stream channel* and then let it be during permitting depending on the channel that's out there. It would sort of put it where it is now that it would be up to the reviewers and looking at baseline and looking at the mine plan and where the road is intended to be to determine whether this rule would indeed take an effect or is it.....I mean, what have they been doing now? If it's a dry swale, they obviously don't call it a stream channel or drainage way.

**BOARD MEMBER GAMPETRO:** It's a potential drainage. Many of these are potential drainages.

**PAIGE SMITH, LQD:** But we used the term stream channel and drainage way...natural drainage way in our current terminology.

**BOARD MEMBER GINGERY:** Rodney, what thoughts do you have?

**BOARD MEMBER PROFFITT:** I'd say Jim's comments were extremely astute. I'd have to go along with that. I thought that the 7 ½ minute maps would probably be very good but since then I've changed my mind and I started listening to some of the classifications like first tier, the hydrology, we have some options to look at what we really need is the most objective criteria, the most current, and the most reliable. So far, I don't think we've been able to determine which one of those criteria is going to be best for our purposes here.

First of all, I'm not convinced that this is more stringent than the federal rule. It may be more specific but not more stringent.

Second of all, I'm not convinced that if we can't be more stringent than we shouldn't be more lenient and if we can't be either one of those what are we doing here? I'm thinking we've got to have some flexibility in that ability to make these rules pertinent to our state rather than to the feds. and that's my comment.

**BOARD MEMBER GINGERY:** Larry?

**BOARD MEMBER MUNN:** I agree with those comments as well and with Jim's comments at some point we could just adopt the federal rule, ask the EPA to take care of water quality in the state and a lot of people could go home. I don't think we want to do that. I think we can do a better job and that was the intent of having state regulations that simply did not mimic the federal regulations for those. I suspect the 7 ½ minute quad. was thought up by someone who worked in the north part of the state where it probably gives you a fairly good definition of significant channels that will carry water during thunder storms and in the southern part of the state there's a lot of channels shown on those maps that you can reconstruct without having them be a problem so I don't like that definition. I guess I can see a problem with that definition. I think Jim's suggestion of just saying that such ephemeral channels as are identified as being problematic is probably the best way to go although it certainly requires human judgement which you have to have some faith in.

**BOARD MEMBER GINGERY:** Chet, you've had some experience with this so help us a little bit with this.

**BOARD MEMBER SKILBRED:** I think a lot of the issues right now are being dealt with indirectly I guess or one way or the other through the permitting process. These channels are being identified during the baseline study and a lot of the work is being done. Obviously, the department is doing it under the disguise of all the other regulations that are out there, not specific ones like this. I agree, I think there are ephemeral streams out there that require additional attention. The word *prominent ephemeral* probably can be defined by the baseline data by the hydrological data during the permitting process. If we're going to stick a term out there like *prominent ephemeral*, it's gotta relate to something that happened or that we've defined somewhere. We can't just stick it out there. Whether it be during the baseline hydrologic analysis when you look at it and you define an ephemeral there and you want to tag it as prominent - use that data to do it with it. Somehow we've got to tie this to something out there that we're doing right now or else you're going to have to generate a new definition for prominent or one or the other.....other than the quad which I don't think uniformly we can apply that to the state from one end to the other.

**RICK CHANCELLOR, LQD:** I see possible directions to go. One is to redefine prominent or use a different word that leaves more subjectivity and the evaluation of those channels or like Paige suggested go back to our current language saying streams or drainage ways and do what we do now where our reviewers will look at the situation and determine based on the baseline information what needs to be done in that particular area. I've seen OSM accept streams before, you'd think they'd accept streams now.

**PAIGE SMITH, LQD:** That's what I was just looking at....some of the disapprovals that came along with these proposed changes. They do talk about how *780.37 (a) and 784.24 (a) contain separate specific requirements for stream fords used as temporary construction routes and roads relocated in the channels of.....*which would be 6.d..... would be a reference there. They go on to say *to be located in the channels of intermittent and perennial streams. This information is necessary to assess the impacts of the temporary stream fords and roads located in the channels of intermittent and perennial streams on a hydrologic balance and ensure compliance with the performance standards therefore to be no less effective than federal regulations, Wyoming must specifically require specifications and drawings for stream fords to be used as temporary construction routes and roads to be located in the channels of intermittent and perennial streams.* So, I don't know that it necessarily means that we have to have the term intermittent and perennial but we would have to in our letter to OSM that we send when we're through the whole process. I think we would have to clarify, and correct me Guy if I'm wrong, but we would have to clarify that if we used drainage way or used stream, a generic term, that that always includes perennial and intermittent and used that term because there are some ephemeral drainages that we'd be concerned about and we wanted to leave it open and not confine ourselves to just the two. Is that.....do you get what I'm saying?

**GUY PADGETT, OSM:** Mr. Chairman, I don't see any problem with that at all. I tried to elude to that earlier to the extent that we've accepted this in the past. We've accepted it on the basis of an understanding on how the state intends to proceed with it. I see no problem with that at all from a procedural point of view.

**BOARD MEMBER GINGERY:** Jim?

**BOARD MEMBER GAMPETRO:** Would it be possible to define what ever words we use, perennial, prominent ephemeral, water ways, is there a way to define based on the hydrology the amount of surface area that a draw would drain to make a more objective definition than just to leave it extremely subjective?

**RICK CHANCELLOR, LQD:** I would probably say maybe not because a drainage area in the northern part of the Basin would probably have different flows than in the southwest part of the state.

**ROBERTA HOY, LQD:** It isn't just the drainage area, it's the precipitation in the area. It's the surface of the ground, soil type, etc.. To try to pick a number that is greater than x or whatever and you have to use so and so's formula to come up with this flow....I'd have to double check the guidelines....there's some discussion about how you calculate flows and this type of thing. We already do some of that but to try to define an actual number above x is below that....I think that may be somewhat more difficult.

**BOARD MEMBER GINGERY:** I have a suggestion to the board here and maybe then we'll take a break. Maybe Paige can take what you've heard from the audience and especially what we've all built on Jim's idea there and see if we can put something together and come back in 10 minutes. We'll take a break and let the staff look at this and see if we can make some modifications here that all of us can agree to.

**BREAK**

**PAIGE SMITH, LQD:** We went on a wild goose chase and didn't find anything out.

**BOARD MEMBER GINGERY:** You didn't find anything out. Okay. Yes, Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** Mr. Chairman, if I could make a point of clarification, I over simplified my interpretation of Senator's ? legislation. I was hoping to have a copy but I got a better interpretation of mine and that is that indeed there cannot be any state regulations more stringent than federal regulations without a very specific explanation. So I presume that the Statement of Reasons here would meet that. I would like to take a look at that legislation sometime in the future and maybe come back with the same comment if at all possible.

**PAIGE SMITH, LQD:** In the meantime, we'll try to find a copy of it too because I wasn't aware of it.

**RICK CHANCELLOR, LQD:** Mr. Chairman, maybe we can discuss some proposed language that we came up with during the break.

**BOARD MEMBER GINGERY:** Yes, let's start with that. What's the proposed language?

**RICK CHANCELLOR, LQD:** After the words intermittent, perennial.....

**BOARD MEMBER GINGERY:** Where are you?

**RICK CHANCELLOR, LQD:** In 6.b or it could probably apply to any of those but let's do 6.b just for an example.....*and low-water crossings on intermittent, perennial and those ephemeral streams that have potential for substantial flow in response to precipitation events.* It's still pretty subjective but sort of indicates that we're worried about the flow in that channel as opposed to any other type criteria.

**PAIGE SMITH, LQD:** Are you proposing that that go with the Chapter 1 definition or go in every one of.....

**RICK CHANCELLOR, LQD:** I don't think we need it in Chapter 1.

**PAIGE SMITH, LQD:** You would just put that into every one of the rules here.

**BOARD MEMBER GINGERY:** Did everyone hear that proposal? Comments?

?: So we strike the word *prominent*?

**RICK CHANCELLOR, LQD:** Strike the word *prominent*.

**BOB GREEN, KENNECOTT ENERGY CO.:** And this phrase would basically substitute where ever prominent ephemeral stream is mentioned in the proposal?

**RICK CHANCELLOR, LQD:** Right.

?: For clarification in Chapter 1 then that would come out?

**RICK CHANCELLOR, LQD:** The proposed language in Chapter 1 would be removed and keep the same definition we have now for ephemeral streams.

**BOARD MEMBER GINGERY:** Bob, does that satisfy you?

**BOB GREEN, KENNECOTT ENERGY CO.:** Mr. Chairman, in response to your question, I believe that would be preferable to the current proposal.

**BOARD MEMBER GINGERY:** Paige, did you get all that?

**PAIGE SMITH, LQD:** I didn't get the language but I understand the intent. Let's pull one of those up. With what you had said Rick, the term ephemeral wouldn't even be in there? It would just be the language you said?

**RICK CHANCELLOR, LQD:** It stays there. We said those streams....

**BOARD MEMBER GINGERY:** The only thing that's prominent is this group!

**BOARD MEMBER PROFFITT:** Actually, you left out channel and channel is in this? Did you mean to do that?

**RICK CHANCELLOR, LQD:** I did leave out channel. I think, to me, it's not much difference so I think it's covered. I feel okay with it.

**BOARD MEMBER GINGERY:** Does the board want to wait until Paige puts that into the system or do you understand it and we could move on it?

**BOARD MEMBER ?:** Uh huh.

**BOARD MEMBER GINGERY:** Okay, I take it that your uh huh means you understand it?

**BOARD MEMBER ?:** Yes.

**BOARD MEMBER GINGERY:** I'll ask one more time....anyone in the audience have any problems with this? Okay, then I would accept a motion for this particular change. Can you tell us what areas we're changing?

**PAIGE SMITH, LQD:** It will be obvious right now because I hi-lighted everything. We've only gotten this far to 6.d so what we would have is channel of an intermittent, perennial.....and you go ahead and read what you had said Rick.

**RICK CHANCELLOR, LQD:** .....and those ephemeral streams that have potential for substantial flow in response to precipitation events.

**BOARD MEMBER GINGERY:** And this is all in 6 and it won't show up any place else in the other chapters will it?

**PAIGE SMITH, LQD:** It will show up in Chapter 4 so we can see how it looks.

**BOARD MEMBER GINGERY:** Okay. So whoever makes the motion needs to know all the spots it will show up.

**PAIGE SMITH, LQD:** I'll just refer to it as their place in the rules package. So it would be 6.b and then.....

**RICK CHANCELLOR, LQD:** I also included 6.b.

**PAIGE SMITH, LQD:** Oh, you just didn't want to stop at low-water crossings.....you want to keep it in?

**RICK CHANCELLOR, LQD:** We could do that. We could stop at low-water crossings or include this language or....

**BOARD MEMBER PROFFITT:** No, let's stay consistent.

**BOARD MEMBER GINGERY:** I think it's better that we stay consistent. I agree with Rod.

**PAIGE SMITH, LQD:** Alright, so we'll keep it.....get rid of that and it'll still be like that as shown there. So 6.b and then d and then we need to go onto a new rule which is e.

**BOB GREEN, KENNECOTT ENERGY CO.:** Sorry to interrupt but will these changes also be taken into account back in Chapter 1 with that definition of ephemeral?

**PAIGE SMITH, LQD:** What I would do is completely strike any of the underlined language in Chapter 1 and leave the Chapter 1 definition as is.

**BOB GREEN, KENNECOTT ENERGY CO.:** Thanks for the clarification.

**BOARD MEMBER GINGERY:** Jim, do you want to make the motion here.

**BOARD MEMBER GAMPETRO:** So moved!

**BOARD MEMBER GINGERY:** How about a second?

**BOARD MEMBER MUNN:** Second.

**BOARD MEMBER GINGERY:** Okay, I have a motion and a second. All in favor of the motion signify by saying aye.

**BOARD MEMBERS:** Aye.

**BOARD MEMBER GINGERY:** Those opposed same sign. Motion carries. Let's move on.

**PAIGE SMITH, LQD:** So, in this case (6.e) we're just again adopting counterpart federal language having to do with fords....*proposed ford of intermittent, perennial or* again replacing that language. This is simply a renumbering. We're adding some language again to be similar to the counterpart federal rule.

See....here's one (6.g)....the federal rule says natural stream channel. We had said *natural drainage way*. We're now proposing *stream channel*. Now let's see what the effect of it is. *Contain a description of measures to be taken to obtain approval from the Administrator for alteration or relocation of a natural stream channel under Chapter 4.* I cannot say why in this case OSM left it *natural stream channel* and did not confine it to perennial or intermittent. There was nothing enlightening for me in the preamble when they adopted the rule that I can remember. In this case, we proposed to use the same noun, stream channel.

**BOARD MEMBER GAMPETRO:** Maybe it's because it sounds to me like it's pretty much a judgement call on the part of the Administrator.

**PAIGE SMITH, LQD:** Could be.

**BOARD MEMBER GINGERY:** Are there any questions for 6.f? I believe that's where we are. No one objects that we take drainage ways out? Then let's move on.

**PAIGE SMITH, LQD:** And we'll leave it at *stream channel*? Okay. On 6.g....*contain the drawings and specifications for each low-water crossing of intermittent, perennial or.....we'll use that language.....so that the Administrator can maximize the protection of the stream in accordance with....and* again that's very similar to the federal language.

On 6.h.....*Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.* That was a specific disapproval that we got from the OSM which means that we did not have specific road reclamation rules. We had places where reclamation was discussed but not as directly as they had wanted.

We are proposing to remove this rule (6.i) simply because it has no federal counterpart and just doesn't just seem to be germane any longer with all the other language we've been inserting.

6.j - bottom of your page 12. We're now under subsection (B).....*The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this Chapter and current, prudent engineering practices.* This is where the tiered affect for OSM's primary roads do have to have a P.E. certification. All other roads which are considered ancillary, do not. That's where, as we get into Chapter 4, you'll see that there's a tiered affect to how much goes into the siting and design of a primary road and then ancillary road. This is sort of the first hint you have of that tiered approach. If you look at the federal language, it allows the opportunity for land surveyors to certify the design of a primary road. We did not adopt that because in Wyoming land surveyors are not permitted to do that.

If we move onto 6.k on the top of page 13, no rule change is being proposed because this rule is addressed by the rule as proposed above in 6.j. That's the design of engineering standards associated with the rule. It says it *may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3.* I believe it's in Chapter 4, we do talk about the 1.3 static safety factor so we did not propose to adopt this rule. We're going to leave it as P.E. certification with the standard design practices. Rick, is that correct, what I've just said since I'm not an engineer?

**RICK CHANCELLOR, LQD:** I'm sorry....I was reading something.

**PAIGE SMITH, LQD:** That we didn't feel that we needed to go this extra step of establishing an engineering design standard for primary roads through the state program approval process. We're gonna stick with the.....

**RICK CHANCELLOR, LQD:** Prudent engineering practices.

**PAIGE SMITH, LQD:** That have been used in the past.

**BOARD MEMBER GINGERY:** So, when this comes out, there will not be a 6.k?

**PAIGE SMITH, LQD:** 6.k is just my enumeration for each rule. 6.k has nothing to do with the chapter. What I wanted to do is because we're doing so much side-by-side, I didn't want to not bring up a federal rule...like we were ignoring it. I wanted it to be obvious in the Statement of Reasons that we did look at all the federal rules and here's our justification for not taking this one on.

**BOARD MEMBER GINGERY:** Okay, so this is just for clarification.

**PAIGE SMITH, LQD:** Right.

**BOARD MEMBER GINGERY:** Thank you. Before we go to....are you about ready to go to Chapter 4?

**PAIGE SMITH, LQD:** Yes.

**BOARD MEMBER GINGERY:** Let me poll the board. Do you want to vote on Chapter 1 and 2 before we move or do you want to wait and vote on the whole thing?

**PAIGE SMITH, LQD:** Can I just make one point? There are some minor changes to Chapter 2 that come at the end of this. They aren't a side-by-side so if you were to vote on Chapter 2 you might be premature based on some minor changes that come up on page 40.

**BOARD MEMBER GINGERY:** Okay, we'll just hold off then.

**PAIGE SMITH, LQD:** We're now on page 16 of the hard copy. We have moved on to Chapter 4. The first introduction here, and all of these rules will be under the subsection of 2(j) which is where roads currently lie in our current rules but we're just doing a lot of reconfiguring.

We have proposed to strike ~~and other transportation facilities~~ (in the opening title) because we're now going to treat roads as roads. Any other transportation facility will be a mine facility and that will come under the mine facility rules.

This is where the road classification system would be contained in our rules. It's not in the definitions like you would expect. I couldn't figure out exactly how to do that so I decided to leave it in Chapter 4 and sort of treat it the same way the federal rules treat it where they simply say *Road Classification System* and then here is the system - *Each road as defined in Chapter 1, shall be classified as either a primary road or an ancillary road. A primary road is any road which is used for transporting mineral or spoil.....* I want to point out that we said mineral instead of coal. The reason we did that is because of the fact that on coal mines they mine scoria and we wanted to make it clear that the transporting of that scoria within that permit area would also be considered a road for Wyoming's purposes. *A primary road is any road which is frequently used for access or other purpose for a period in excess of six months or any road which is to be retained for an approved postmining land use.* I can get into a discussion of that one later on. I have to remember where it is on my Statement of Reasons.....it might be now that we need discussion on it...yep. Any other road if it's not a primary road it becomes an ancillary road and that is why we no longer have the light-use roads, haul roads, and access roads, etc.. We have proposed to remove that term light-use roads because they would then be an ancillary road which is any road not classified as a primary road.

Bob, is this where you wanted to comment?

**BOB GREEN, KENNECOTT ENERGY CO.:** Actually, it is later on as far as the topsoil removal.

**BOARD MEMBER PROFFITT:** Paige, can I ask a brief question? Under (II) it says in excess of six months. Is that six months annually, cumulatively? What does that relate to?

**PAIGE SMITH, LQD:** The longer a road exists the greater potential for slips or grade failures as well as other impacts previously mentioned. I would deduce from OSM's interpretation is that it's a six months total. Guy, can you help me here?

**GUY PADGETT, OSM:** Mr. Chairman, I believe our interpretation is from the time it's built to the time that it's intended to be reclaimed. So, if it's going to be in existence for six months then it....

**BOARD MEMBER GINGERY:** So you're talking about the duration....the life of the road?

**GUY PADGETT, OSM:** Yes sir.

**PAIGE SMITH, LQD:** So it would be a calendar six months from January to June.

**GUY PADGETT, OSM:** Yeah, from whatever....if you intend to have a light-use road for a short period of time and the permit says it will be reclaimed in three months, you're going in there for exploration....not a problem but if it's intended to be there for longer than six months then it would fall under review.

**BOARD MEMBER GINGERY:** Yes sir?

**LARRY KLEINMAN, BLACK BUTTE COAL:** The question then and it gets into what you were going to....a topsoil road where you're laying down topsoil and you're transporting the topsoil from an existing stockpile to an area to be topsoiled, reclaimed and reseeded and you're not going to use up that stockpile so that little road there that you're using to transport the topsoil - would that be a primary road then?

**PAIGE SMITH, LQD:** Can I just bring up one point? Coming back from our definition for road may cover some of this and it may not. We are proposing to add that it does not include the immediate mining area which is the area which is subject frequent surface changes. This includes areas where topsoil and overburden are being moved and areas under going active reclamation. So I don't know if you have some instances where that road would actually be within your active reclamation in which case it would not be considered a road. I'm sure there's the alternate situation where maybe it's not part of active reclamation (someone coughed).....concern?

**BOB GREEN, KENNECOTT ENERGY CO.:** But what about the provision where topsoil is being moved? Something like that would apply to stockpile activities.

**RICK CHANCELLOR, LQD:** I think that the question is that if you have a topsoil stockpile moved away from the pit area so you have a road going to it and after you put a stockpile there for many years and then you come back later and take half of it out and use it maybe two or three weeks and then after that you come back in and you take the rest of it out. Since that is more than six months would that be considered a primary road then?

**GUY PADGETT, OSM:** Mr. Chairman, from our perspective, OSM's perspective, that certainly is not the intent of the law but I would make this comment: to the extent that the road is constructed, it is a road. To the extent that it's not constructed, it's not even a road. In my experience most of these recoveries don't involve construction. That would be no more than a two-lane path or a trail that is not constructed. So I feel that the federal law would, from our perspective, would not treat any kind of activity of that nature unless it requires some kind of constructed stream crossing or a constructed road as a road that even rises to the level of intermittent use or ancillary.

**BOARD MEMBER GINGERY:** You had a question?

**PETE SALL, BLACK BUTTE COAL CO.:** Then can terminology be put in like under a primary road as being a constructed road for primary use of transporting mineral spoils?

**PAIGE SMITH, LQD:** If I might add to that....I would have to do a little research because anytime, again, you always hear me being a little paranoid at these meetings. Anytime you insert a word like that, I know the word constructed has been a problem for our current rules. I would not suggest that you put that in there. I think that would really raise a red flag for the OSM folks just as caution on my part.

**GUY PADGETT, OSM:** If I can add to that Mr. Chairman, I believe the definition as it stands does pretty well do that. It's very clear. The definition that we're talking about is something that's constructed. When we say a road that consists...road bed, shoulders, so on and so on, I think the intention is quite clear and I would say that perhaps it's better not to beard the mirror that it's there.

**BOARD MEMBER GINGERY:** Let me go back to this gentlemen's question. He asked about moving topsoil and the time elements of it. Am I getting the feeling is that since that's kind of a...is that kind of a non-road issue?

**RICK CHANCELLOR, LQD:** In most cases it could be. There are probably a few cases where it may be involved more than just a route to the stockpile. It may be so far away that they have to build a road but in most cases it probably would not be.

**BOARD MEMBER GINGERY:** So is it best to just leave that alone at this time then or try to answer his question in more definite terms.

**RICK CHANCELLOR, LQD:** I think we answered his question. It depends on what they use to get access to the topsoil pile. If they construct, fill, and culverts and all that stuff to get to it then that'd be a road. But in most cases on short term access to a stockpile probably just salvage topsoil if there's anything there than ?(couldn't hear what was said)? overburden.

**BOARD MEMBER GINGERY:** Chet, have you had some experience on this?

**BOARD MEMBER SKILBRED:** Most of our....as is a lot of the operations when you go in to respread topsoil on an area out of a pile that may have 800,000 yards in it you're probably not going to use it all up. In our experience, what we do is we just blade a path through the grass to it. We don't strip the topsoil off of it or anything. We just run over it like that and then we just blade it back in and reseed it is all we do. That's the way we do it. That's been our policy, however, there are occasions when you will go down a haul road to get to where you've been regrading. Then you're on a design road that has culverts and shoulders and the whole schmear. I have never run into a problem at any time on what is a design road and what is just a trail or simply a pass to a topsoil pile out there and never had any concern about designing....and we go across drainages with them. Usually we just go across them with a scraper or whatever we're hauling at the point....ephemeral in these cases.

**BOARD MEMBER GINGERY:** Yes Paige?

**PAIGE SMITH, LQD:** In the Statement of Reasons we've put in quite a bit of the preamble language associated with OSM's adoption of these rules and in fact there's one particular section here that I think might be helpful towards this. Let me read it to you. "Ancillary roads are all roads not designated as primary. Ancillary roads are subject to relatively infrequent use by smaller, lighter weight vehicles. Consequently, the potential severity and risk of harm from use by such vehicles is smaller. OSMRE had not identified specific types of roads in the rule as ancillary because it would not be possible to make an all-inclusive list. Examples

of ancillary roads are those which provide access to air shafts, sediment ponds, and locations for hydrologic sampling, monitoring, or other similar uses.” Then in response to a comment that they got they said, “Under the final rule, infrequently used access roads that will be in existence for an extended period of time will be considered ancillary roads.” I think that would probably take care of the example that Larry had brought up.

**BOARD MEMBER GINGERY:** Larry, do you have your answer now?

**LARRY KLEINMAN, BLACK BUTTE COAL:** I think so.

**BOARD MEMBER GINGERY:** Any comments from the other coal mine companies? The staff? Has this really been a big problem or does it usually work out.

?: It works out.

**BOARD MEMBER GINGERY:** Well, let’s move on then if everyone is fairly satisfied with that.

**PAIGE SMITH, LQD:** Should I move onto the next rule and bypass all this verbiage in between?

**BOARD MEMBER GINGERY:** Yes.

**PAIGE SMITH, LQD:** But I might add that...and I’ve probably said this again and I sound like a broken record but these packages are obviously very fat and lots of verbiage in there and the purpose of that, especially in this case, because roads was such an issue that brought up so many different comments by people especially at our EQC meeting that we felt that it was really important that this document will serve as a permanent record from the day it’s adopted forward and serve as the federal preamble so that if there’s ever any question what the interpretation is, this document is intended to answer that question because every rule can’t be written in such depth that it takes care of every what if. So we’d just like people to hang on to it when it’s finalized because it could be very instructive but in this case we really have just taken the federal interpretations and have taken those as our own but we’ve made it clear that we adopt these interpretations. When all of us are long gone hopefully this record will stay for people to look at.

**BOARD MEMBER GINGERY:** I don’t know Paige if this is the....I thought I marked it but I don’t see it...in your Statement of Reasons, is this road.....does it have an annual review? It said something annual review of surface disturbance or something.

**PAIGE SMITH, LQD:** You know, nothing’s coming to mind.

**RICK CHANCELLOR, LQD:** Perhaps it dealt with the certification of roads?

**BOB GIURGEVICH, LQD:** There is a requirement, I can’t site where it is, to do a professional engineer certification of roads on an annual basis. I don’t know what category of roads we’re talking about now but there is....that maybe what you’re....

**BOARD MEMBER GINGERY:** Okay, I’ll hold off. Go ‘head but don’t forget my question.

**PAIGE SMITH, LQD:** Well, if it doesn’t come up then we’ll think about it. Nothing has coming to mind for me right now and it could be because I’m thinking of a hydrology package that we just got through that did have a lot of annual reviews so I’m getting my packages mixed up. Let’s see if we come across it and if not we’ll try to back track and see if it was in Chapter 2 that we’ve already gone over.

With our proposed adoption of the federal rules, we are proposing to delete this language but if you remember *railroad spurs shall be included within the permit area* ....that's that language that was brought forward into Chapter 2 that I need to rework a little bit so it sounds better. So, it's really not being completely repealed, it's just being repositioned but we wanted to get anything about railroads out of the roads rules.

We are now on page 21 of the hard copy. We're now in 2(j) with a new subsection (ii), *General performance standards for all roads. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to....*this makes it clear that the performance standards that are about to follow pertain to all roads whether they're primary or ancillary. I'd like you to keep that in mind as we go through it. That's how the federal rules are set up. Again, we're just adopting verbatim *siltation and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces*. This was a direct disapproval by OSM that we did not have a specific rule regarding dust and in association with roads. So, we are just proposing to adopt the counterpart federal language. Again, it would apply to primary and ancillary roads.

*Control or prevent damage to fish, wildlife, or their habitat and related environmental values....*we have terminology similar to that which will show up later but it wasn't clearly associated only with roads.

*Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area.....*again, a direct federal counterpart we're proposing to adopt.

We go on....*Neither cause or contribute to directly or indirectly, the violation of State of Federal water quality standards.....*which again is a direct adoption. We maintained some of the existing language that we currently had in a subsection (⊕)....*the normal flow of water in streambeds and drainage channels shall not be significantly altered*. We substituted the word *seriously* for *significantly* and moved the sentence *Damage to public or private property shall be prevented or controlled* which falls after the word *altered* and it will actually go down in (F) which is in the same order that the federal rules are presented. We're just trying to make is a more logical progression. The federal rules in this case seem relatively logical.

In 9.h - *Use nonacid- and nontoxic- forming substances in road surfacing*. We essentially had some similar language but we just rearranged it's identical with the federal counterpart.

That's it for 9. We'll move onto proposed rule 10 which puts you at page 24 of the hard copy. We're now in another subsection of (j) and it has to do with the design and construction limits and establishment of design criteria.....again it will apply to all roads. We took some of our existing language which is further up on the page which we chose to delete all together because it was too hard to try to reconfigure it into this federal counterpart so we just propose to adopt the federal counterpart regarding design and construction limits and establishment of design criteria for all roads. We added the *all roads*. That is something we put in because we wanted to make it clear that it was for all roads and not have someone feel as though it was a primary road only. Any questions?

We're still in Chapter 4, section (j), subsection (iv) and it's entitled Location of all roads. Again, we added the all roads again for clarification purposes. Our rules did intend that to be for all roads. As you can see we're striking several current provisions in our rules simply because a lot of that information is provided in the federal rule and we just chose to pick up the federal rule and do a direct counterpart rather than try to reconfigure these rules.

Okay....here we go with the prominent ephemeral. *No part of any road shall be located in the channel of an intermittent, perennial or.....*add Rick's language....unless specifically approved by the Administrator in accordance with subsection's....the laundry list. This was another OSM disapproval and it is that our current rules did not have the same extent of cross-referencing the federal rules did. This is simply because

of the way LQD's rules are configured. We don't have a nice clean....41 to 43 but these are the coinciding state rules to go with the federal rules. In the Statement of Reasons, on page 26, is a list that shows which ones compare. This list will be important to the OSM. I don't know if it's that important or necessary to the readers in the room here but we'll have to have all that lined out to convince OSM that we have all the proper cross-referencing in existence. Nobody sees a problem with changing the language...prominent ephemeral to the redefined language.

**BOARD MEMBER GINGERY:** I believe we've all agreed to that.

**PAIGE SMITH, LQD:** Okay. The next section...."Roads shall be located to minimize downstream sedimentation and flooding." Again, the counterpart federal rule, we have proposed to remove the existing state language simply because the information is still being provided by the federal rule and we would like to just do away with it and avoid confusion. In this case in this 2(j)(i)...the second one that is shown as deleted....there is no federal counterpart having to do with drainage pipes, concrete, and riprap. I have a note to myself more less....both of these rules proposed for repeal are now addressed in proposed Chapter 4, Section 2(j)(iii) which is behind us so the essence is already in the rules. This rule is also proposed for repeal. It has no federal counterpart and we have chosen to take it out because we have other rules that cover trees and vegetation being cleared. Any questions on 11?

We are now on page 27, still in Chapter 4. We now have a new subparagraph (v) on Maintenance of all roads. We again, have added all roads for clarification purposes. We no longer need *access, haul roads and drainage structures shall be routinely maintained*. This is now covered by the adoption of the federal rule....*a road shall be maintained to meet the performance standards of this Chapter*. The federal rule says *and any additional criteria specified by the regulatory authority*. We did not adopt any additional criteria at this time and didn't propose to. Now, if something should come up in the future that we need to adopt, it will be through rule making that we would do that. It's just that OSM was allowing the regulatory authorities across the state to have some room for flexibility should it be necessary for their particular situation.

We are getting rid of the old language on 12.b and want to simply replace it with *a road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred*. Our damaged rule hadn't gone far enough so we just adopted the federal rule.

**GUY PADGETT, OSM:** Mr. Chairman, may I ask a question? The way that it's written Rick, would that preclude the ability of the regulatory authority through condition in the permit to impose some additional criteria for a particular road for a particular situation?

**RICK CHANCELLOR, LQD:** I don't think it would. I think what it's trying to point is that there's not a standard additional list of items but I think we still have the authority to condition particular situations to require for that particular road something extra but there's no standard list that we have developed through rule making.

**GUY PADGETT, OSM:** If I could Mr. Chairman, I would suggest, Paige, that you may want in your Statement of Reasons to clarify that just so that we don't have any....that would facilitate the approval by OSM.

**PAIGE SMITH, LQD:** That would be good. So clarify that the Administrator would still have the capability of requiring additional things even though the rule did not do it.

So we'll move onto proposed rule 13 which is on page 28. Again, another subparagraph intended to apply to all roads. Again, we just chose to repeal the existing state language in lieu of the federal language for simplicity. *All roads not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include.....*and then we have subparagraphs on that. Those again, mimic the federal rule. Almost all the way through they are just a direct adoption of the federal language.

**BOARD MEMBER GINGERY:** I think Bob has a question.

**BOB GREEN, KENNECOTT ENERGY CO.:** This is for Kennecott Energy, not WMA. It relates to 13.c and the language outlines *removing all bridges and culverts unless approved as part of the postmining land use*. I would request some additional flexibility here for culverts. Reason being that many times culverts may be in roads as deep as 60 feet. To excavate those culverts out would indeed disturb a great deal of land which has to be reclaimed again. I would ask that we be able to bury those in place as long as we can demonstrate that they are (someone blew their nose) that would take splitting out culverts and bridges at this point. I do have some suggested language.

**BOARD MEMBER GINGERY:** Why don't you go ahead with your suggested language.

**BOB GREEN, KENNECOTT ENERGY CO.:** Thank you. I would suggest that this read.....removing all bridges unless approved as part of the postmining land use. Removing all culverts unless approved as part of the postmining land use or unless approved for burial in places.

**BOARD MEMBER GINGERY:** Rick?

**RICK CHANCELLOR, LQD:** It would probably work. There may be a case where you have a great, big huge culvert that may raise concerns for subsidence that we'd have to address.

**BOB GREEN, KENNECOTT ENERGY CO.:** Hopefully we could demonstrate to you that if we filled them with say with grout or something else that would show stability over the long-term. That's what I would have in mind.

**BOARD MEMBER GAMPETRO:** Isn't that already covered? He has the ability to approve it for postmining land use by burying it. Do you have to specifically say that?

**BOB GREEN, KENNECOTT ENERGY CO.:** I'm interpreting postmining land use here to mean that the road is for postmining land use.

**RICK CHANCELLOR, LQD:** That's my interpretation too.

**BOARD MEMBER GAMPETRO:** Okay.

**BOARD MEMBER GINGERY:** Is there any additional discussion from the board on this proposed language? The audience? Rick, are you.....

**BOARD MEMBER MUNN:** A logical question might be what OSM would think of that.

**GUY PADGETT, OSM:** Mr. Chairman, I don't see any potential problem with the proposal. I would point out, however, and I haven't thought this through, but I would point out to the extent that it's approved as part of the postmining land use it may require criteria - engineering and design criteria - which were not applied when it was built depending upon what the postmining land use is. I would like to be clear from OSM's perspective that if the postmining land use, and I'm going to exaggerate, is an interstate then obviously the design criteria would not be for a temporary use road for exploration like vehicles, wouldn't apply. I would say to the extent that everyone understands that which I would hope would be not particularly controversial. I don't see there's any issue.

**BOARD MEMBER GINGERY:** So what Bob has suggested, I believe Rick thought was within the parameters that we could possibly accept and then maybe Paige you'll have to explain another one to OSM that this is the route that we felt was compatible in this case. Is that right Rick?

**RICK CHANCELLOR, LQD:** Right.

**BOARD MEMBER GINGERY:** Yes Sandra?

**SANDRA GARCIA, LQD:** Bob, can you repeat the suggested language again please?

**BOB GREEN, KENNECOTT ENERGY CO.:** I sure can. It would read, removing all bridges unless approved as part of the postmining land use. Removing all culverts unless approved as part of the postmining land use or unless approved for burial in place. That's presuming that the road is being reclaimed. It's just that we're burying the culvert.

**SANDRA GARCIA, LQD:** Thank you.

**BOARD MEMBER GINGERY:** Is that acceptable?

**RICK CHANCELLOR, LQD:** I think with the understanding that we'd look at the subsidence issue and possibly require something be done with the culverts inside to prevent some type of subsidence.

**BOARD MEMBER GINGERY:** Okay, let's move on.

**PAIGE SMITH, LQD:** I think I got through the end of 13 or did I? I think I had. So, we're now on page 30. We're in this subsection (j) we now have a subparagraph (vii) which now everything you see following applies to primary roads. That was one thing in our current rules....some of that wasn't clear. What design certification etc. should apply to which roads. I think at one point...I can't remember off the top of my head, but I think we may have made it appear that you needed a P.E. signature for more roads than maybe haul and access roads but I don't remember. The nice thing about this two-tiered approach is it's very clear what's required. This is the section on certification that a primary road does need to be certified and reported to the Administrator etc.. Again, we did not adopt the provision for land surveyors because Wyoming doesn't allow land surveyors (someone coughed). The other difference we have is *the report shall be available for review at the mine site within 30 days following the completion of construction of each primary road.* This is different than the federal which says the report shall indicate that the primary road has been.....oh, wait a minute....maybe I'm in another place.

**RICK CHANCELLOR, LQD:** It is different.

**PAIGE SMITH, LQD:** It is different? What does the feds say that it has to be submitted to the state R. A.?

**RICK CHANCELLOR, LQD:** They have no time line.

**PAIGE SMITH, LQD:** Okay....I'm reading this but I'm not seeing it.

**BOARD MEMBER GAMPETRO:** It says a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction or primary roads, a qualified registered professional land surveyor with experience in the design and construction of roads. You must of left that out because that does not counter.

**PAIGE SMITH, LQD:** Right, I left that out and this is the part.... *shall be certified in a report to the regulatory authority.* OSM wanted that report submitted to the regulatory authority and with quite a bit of in-house discussion it was decided that we don't really have room for all those reports on our shelves and we felt, and this is what the inspectors do now, that they review that report on the mine site. This is then clarifying that that report shall be available for review at the mine site within 30 days following the completion of construction of each primary road. Is that your recollection too Rick, why it's different?

**RICK CHANCELLOR, LQD:** Yes.

**PAIGE SMITH, LQD:** So, we will hope that OSM accepts it in the fact that it is going to be available we just didn't feel we needed it housed in Cheyenne.

**BOARD MEMBER SKILBRED:** Mr. Chairman?

**BOARD MEMBER GINGERY:** Yes?

**BOARD MEMBER SKILBRED:** Just a comment. Probably the policy on many of the mines is that there's another factor that enters in construction of primary roads that probably most miners out here realize, we could prep them to meet MSHA standards too which often is a lot different than what a certified engineer might certify em' at. They have to have a certain slope given their height for us to run our haul trucks on them to be MSHA approved.

**PAIGE SMITH, LQD:** And are they still P.E. certified?

**BOARD MEMBER SKILBRED:** Yes. Often the construction design is a lot....to meet MSHA....requires a lot more engineering.....than what these are.

**PAIGE SMITH, LQD:** So it's double coverage in that case.

**BOARD MEMBER SKILBRED:** It definitely is if you got a 60 foot high haul road up there, you either have to have berms on it or it's gonna have to have 5 to 1 slopes on it or you're not going to run a haul truck.

**BOARD MEMBER GINGERY:** Any other questions on this particular area? Let's move on then.

**PAIGE SMITH, LQD:** We're going on and there was some existing state language but we've modified it to more closely mimic the federal. *Each primary road embankment shall have a minimum static safety factor of 1.3 or meet the requirements established under Chapter 2, Section 2(b)(xix)(B).* That is one we did earlier today and they sort of cross-reference each other. I believe that's the one where we just went with the current engineering standards. As you scroll down again to location of primary roads...*to minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.* We just adopted the federal rule.

On 14.g....here is a situation where we have the prominent ephemeral stream....let me just hi-light that so I can find it later. *Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Administrator as temporary routes during periods of road construction.* Again, that was language that was currently in our rules. We just modified it slightly to more closely mimic the federal rule.

Drainage control for primary roads (14.h & 14.i) in accordance with the approved plan. Each primary road shall be constructed, or reconstructed etc. so again we had some existing language in our state rule but we modified it slightly so it's more closely akin to the federal program. OSM also required changes to the Administrator had too much flexibility in determining greater different storm duration. OSM wanted it to say clearly 10-year, 6-hour precipitation event, or greater event as specified by the Administrator. It had said from a 10-year, 6-hour precipitation event, or greater storm duration having.....uh.....anyway.....do you get what I mean!? Anyway, the way ours read made it sound like we could go less than 10-years, 6-hours. OSM wanted to make sure we knew that you couldn't go less than but you can go greater than. That's what that's all about.

We're now on 14.j having to do with drainage pipes and culverts shall be installed as designed....again we picked up language similar to the federal language...(someone coughed)....language that was in our state rules that didn't coincide.

Same thing with drainage ditches (14.k).....*shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.* That was one thing about OSM and the disapprovals they didn't like about our rules. A lot of times those terms, *constructed and maintained*, they were real sticklers on it. They wanted to see those terms in there. You can see in this case we only had design, we didn't have constructed and maintained so those were some of the things we had to fix. We chose to take out the trash racks and debris basins simply because it's not in the federal rule and I think those things will be taken care of in terms of environmental protection.

On 14.l...we're simply adopting federal language....*installed and maintained.* Again, we didn't have *installed.* We had designed and constructed. Maybe installed isn't the same as constructed, I don't know. Rather than argue about it, we just chose to adopt the federal terms.

As you move down the page to 14.m, natural stream channel shall not be altered or relocated without the prior approval of the Administrator. Again, we're mimicking the natural stream channels terms that are in the federal rules. This is one of those places where the federal rule did not specifically say perennial or intermittent and we chose to use their language simply so it couldn't be construed that we were trying to interpret it differently. Again, we had to do a lot of cross-referencing similar to what the federal rule had. We did not have that part previously.

Again, we're still on primary roads and we're getting near the end on 14. We're on 14.n. *Structures for intermittent, perennial or ephemeral streams channel crossings shall be made using bridges, culverts, low-water crossings or other structures designed.* We are adding in, *The Administrator shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure* etc. simply because that is in the federal rule and we did not have that and we were required by OSM to have that.

Surfacing for primary roads (14.o)...we simply adopted the federal counterpart language.

Alright, the last one (14.p). ....we are just proposing to delete this language here because it has no federal counterpart and those things are already covered by the other performance standards.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** I'm a little bit confused. When you go back to the definition, is this stuff 'only true' for primary roads? If you go back to the definition, I think Paige, you might have heard us talk about this one, but it says a primary road is any road retained for postmining land use. When you read through the Statement of Reasons that refers to a two-track road so all these primary road things about not crossing streams and having culverts apply to two-track roads, then I don't know how they're going to apply them.....

**RICK CHANCELLOR, LQD:** When you leave a road for a postmining land use, you may have to redo the road to make it conform to the approved postmining land use where during mining nothing may apply to it but if you're going to use it for postmining land use you have to look at the road again and basically have a P.E. certification design say that that road is suitable for the postmining land use as far as design, construction and stuff like that. You may have to go back in and change part of that road to fit that if you leave it as a postmining feature.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** I don't know how many P.E.'s and engineers are in the room but how does an engineer and P.E. certify a two-track road?

**RICK CHANCELLOR, LQD:** I think, help me out Paige, for primary roads if you leave it postmining the primary road standards apply. So he'd look at what you have constructed in the field against what the design standards are for a primary road and see if anything needs to be changed. Take into consideration the postmining land use of that road.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** So if you have a postmining land use of checking your livestock and you're going to your water well and there's a two-track road that's been there for twenty years and that's the postmining land use, then it's a primary road but all these other things do not apply.

**RICK CHANCELLOR, LQD:** Basically you still need a P.E. signature on it saying it's been reviewed and.....

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** What does he review?

**PAIGE SMITH, LQD:** Typical cross-sections.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** What's a cross-section on a two-track road?

**PAIGE SMITH, LQD:** If you look on page 18 of the Statement of Reasons there's.....

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Yeah, I read that and I don't understand that. What's a cross-section of a two-track road? Can you draw one?

**?:** Just a surface and two dips!

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Can we get a P.E. to certify that?

**RICK CHANCELLOR, LQD:** Unless OSM has a different take on the primary road for postmining land use.

**PAIGE SMITH, LQD:** And showing that the road is designed for the traffic anticipated.....

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** There's no design for a two-track road.

**PAIGE SMITH, LQD:** Well, somewhere along the line....and this is directly from OSM.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** I realize that but I'm still not sure what we do at bond release time to certify this two-track road.

**GUY PADGETT, OSM:** Mr. Chairman, if I can interject from OSM's perspective and hope that I don't trot unduly on DEQ's coxns on this one. It's obvious that there are some situations where it's ludicrous. What's the cross-sections of a two-track road? Our interpretation, where we would be the regulatory authority, I think would be this.....to the extent that's it's a primary road left to facilitate whatever the postmining land use is, it does have to be certified. If it's a two-track access, it's not a road. That would be the way that I, as a regulator at OSM using our regulations would move on these things. I think what's being described to me from a regulatory practical perspective is not a road. Why are we doing this? Again, I hope I have not stepped on DEQ's toes on that one but that would be the way we would handle that kind of situation.

**BOARD MEMBER GINGERY:** How have we been handling that Rick?

**RICK CHANCELLOR, LQD:** Well, the current rules don't have anything that addresses the issue at all.

**GUY PADGETT, OSM:** Mr. Chairman, it's being handled as we handle it. Currently it's being handled exactly as we handle it. The fear I think that I hear is are you going to change that view? I think what I'm trying to say is you would be foolish to change that view. We certainly would not expect a certification of a two-track access route....so let's not call it a road. This law was intended to apply to those areas that are going to be used by the public for without 4-wheel drives, with Voyagers, and station wagons or whatever and that's what this was intended to do. It was not intended to encumber an operator with doing some absurd busy work.

**BOARD MEMBER GINGERY:** Does that help you any on that?

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Yes, it does Mr. Chairman. I just request that the Statement of Reasons be revised to take out the discussion of two-track roads and certifying two-track roads.

**BOARD MEMBER GINGERY:** Rick, how does that fit with the.....

**RICK CHANCELLOR, LQD:** Yeah, we can quote Mr. Padgett!

**GUY PADGETT, OSM:** Have at it!

**PAIGE SMITH, LQD:** Out of the preamble for the adoption of these rules again, somebody said, "What is the deal with the postmining roads having to be primary and certified?" OSM responded. OSM did not accept the commenters arguments that they should not have to be primary roads and be certified. OSM continues to believe that roads which are to be retained from an approved postmining land use should be considered primary roads and be subject to associated performance standards. OSM bases this belief on the fact that after final bond release, protection from the future environmental consequences of road use and maintenance under the Act ceases. The operator has no responsibility for subsequent adverse environmental impacts related to the road's use and maintenance. In order to provide a reasonable assurance of environmental protection after the site has been reclaimed, and in the absence of an operator, OSM believes that postmining roads must be designed and constructed in compliance with a more stringent primary road standard. That is again assuming that we have been treating it as a road during mining. Again, we should probably wait until we get to the end of Chapter 4 to see if we have that latitude to not consider it a road?

I feel like, the way that this is defined, is they're using that road to go check on cattle, how do we not call it an ancillary road if it's being used for part of their permitting actions? I'm just throwing that out because I'll be the one trying to reconstruct this and I want to make sure I can understand how you can have it one way and the other way too because again, we've said that roads going to a topsoil pile would not have to be a primary road, it would be ancillary. Then, if you wanted to leave that road post mine, couldn't a P.E. just certify that the two-track meets the intended postmine land use of a ranch road because as it gets into here....this will ensure, as far as possible, that the location, design, construction and maintenance of the road during mining operations will have minimum adverse impacts after reclamation. Concerning changes in the classification of a road, OSM believes that the regulatory authority must approve such changes based on the road's compliance with all standards applicable to the road.

**RICK CHANCELLOR, LQD:** If I hear Mr. Padgett correctly he's saying a two-track that develops over time by driving on the reclaimed surface or on natural surface for a short duration if it comes out to be a two-track, he would not consider that to be a road from the very beginning.

**PAIGE SMITH, LQD:** So you would not apply performance standards to that...let's say they go across a drainage.....

**GUY PADGETT, OSM:** Mr. Chairman, again, I firmly believe that once that land is released and the rancher gets out there and drives over that land however and where ever and for us to require a certification, is I think, over-kill. It's an expense that can be avoided and it makes no sense. I'm confident that that approach would prevail. So, my view is, if you don't have to construct a crossing and you don't have to construct a road, don't call it a road and you don't have to deal with these criteria. The concept.....if you do have to construct a crossing, it's a different story. Now you do need to.....

**PAIGE SMITH, LQD:** So it's degrees of.....

**GUY PADGETT, OSM:** If a road is in a postmining land use to access, for example, a recreation area that was placed there by the operator in a postmining land use....here's a road going out to the picnic tables....yes, that is a primary road and yes, I think that it's prudent to insist that these criteria apply but if it's not constructed, it's not a road.

**BOARD MEMBER GINGERY:** Okay, how's everybody feel now? Paige, what changes did we make Paige?

**PAIGE SMITH, LQD:** I don't know!

**RICK CHANCELLOR, LQD:** I think in the Statement of Reasons is where the discussion needs to be changed.

**PAIGE SMITH, LQD:** Right. I may have to talk to Guy a little bit more so I can construct that.

**BOARD MEMBER GINGERY:** So, a little word smithing needs to go on?

**PAIGE SMITH, LQD:** Yes.

**RICK CHANCELLOR, LQD:** So, there's no change to the rules at this point. We're just going to change the Statement of Reasons.

**PAIGE SMITH, LQD:** Other than.....did I hi-light anything....yeah, we'll just have to change that prominent. Let me just put that on our list for approval purposes....let's see....14.n.

## **TAPE 2**

**BOARD MEMBER GAMPETRO:**.....a road when you get all done, as what it's going to be used for. Why don't you just say that in the Statement of Reasons? In other words, if it's going to be used as a two-track to cross to go check on your wells that's different. That use does not qualify it as a road.

**RICK CHANCELLOR, LQD:** I think it's more on a construction aspect as opposed to use because you may have to construct a road to your well if the conditions warrant. Sometimes you just drive over the surface. What OSM is saying is if that you have to construct something it's a road no matter what the use is.

**PAIGE SMITH, LQD:** Can I just bring up one point which has to do with the definition of a road. The federal definition is....road means a surface corridor of affected land associated with travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. I'm only bringing up the fact that it only says the word *used*. It doesn't say you have to construct it and that's been the driving issue as to why we had to change our roads rules is because our rules did make some distinction that they had to have constructed it for it to be a road in the permit. The federal rule is much more broad and says if you use it, it is your road for permitting.

**RICK CHANCELLOR, LQD:** That comes back to existing roads. If a company uses existing roads that are there premine they start using it, then that becomes their road.

**PAIGE SMITH, LQD:** Right. Then what's the distinction with the situation you're talking about now?

**RICK CHANCELLOR, LQD:** Maybe it goes back to your definition where it says disturbed.

**PAIGE SMITH, LQD:** The definition of?

**RICK CHANCELLOR, LQD:** The federal definition of roads....I think it mentioned disturbed.

**PAIGE SMITH, LQD:** It says, corridor of affected land.

**RICK CHANCELLOR, LQD:** Affected land. I think what Guy is saying is just drive across it because you're not really affecting the land.

**GUY PADGETT, OSM:** Read the next phrase there.

**PAIGE SMITH, LQD:** Are you talking about the definition?

**GUY PADGETT, OSM:** Yes and there may be a distinction there.

**PAIGE SMITH, LQD:** *A road consists of the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.*

**GUY PADGETT, OSM:** No, I mean where it says for mine use and mine vehicles.

**PAIGE SMITH, LQD:** Use in surface coal mining and reclamation operations or coal exploration.

**RICK CHANCELLOR, LQD:** That's pretty broad.

?: So two-tracks on a postmine land use would be primarily for recreation or ranching?

**RICK CHANCELLOR, LQD:** Well, I think the distinction is that if it's a two-track according to OSM's thinking is not a road. Yet if you construct something then it's a road. If you use an existing road, it's your road.

**GUY PADGETT, OSM:** Again, I feel confident that this is something that is acceptable to the Office of Surface Mining. Where I would have trouble making it acceptable to the OSM is if we start to elaborate within the Statement of Reasons. On this particular issue, it's better to remain silent. I think the point is if you're going to put some line on a map of your postmining land use and you're going to construct something from this point to this point for whatever reason, now you're moving into the area of "well, what are you going to make and did you make it that way?" But to the extent that you're not putting lines on the road or specifying things, it's not a road. Now I don't know why a two-track road would go on a map.....on the post mining land use. You're not disturbing the surface...it's not any different than the approved postmining land surface. I guess that's my perspective.

**RICK CHANCELLOR, LQD:** If the two-track developed erosional features and problems like that then we would require a road be constructed.

**GUY PADGETT, OSM:** And under those circumstances Rick, it would be the performance standard triggering it. You would say you're using this in such a way that more comprehensive design is needed and it's going to be there in the postmining and you're responsible for it, let's do it right. I think reason prevails under those circumstances and I feel pretty confident that it meets the objective of no less effective than the federal regulations and you can get it through.

## **LUNCH BREAK**

**BOARD MEMBER GINGERY:** I believe we left off on page 35, proposed rule amendment 15, correct Paige?

**PAIGE SMITH, LQD:** I believe so. Just as a follow-up, Bob Green went back to his office and did pick up that legislation and it was in effect March 1, 2001. What it does, it's to the Administrative Procedures Act and it includes now, where it says we have to give at least 45 days notice of it's intended action before our EQC hearings that we have to include in there that the notice shall include a statement whether the proposed rule change meets minimum substantive state statutory requirements or whether the proposed rule change exceeds minimum substantive state statutory....oh, it's the state statutory requirements.

**BOB GREEN, KENNECOTT ENERGY CO.:** And you're right, it was the state rather than feds.

**PAIGE SMITH, LQD:** If the rule change exceeds.....well that's interesting because I was under the impression that if it exceeds your state statutes you can't adopt the rule but it's now just saying if you are exceeding your statutory authority you have to say so. That's very interesting. Thanks for getting that Bob. That answers that question.

**RICK CHANCELLOR, LQD:** While Paige is trying to get the light-box to work again, I'll talk about the Statement of Reasons. Paige and I discussed the two-track road issue and felt we could remove that language from the Statement of Reasons that discusses two-track roads being converted to a primary road during reclamation and that way we will not be boxed in a corner by potential OSM staff saying you gotta do

it this way because OSM's preamble did not have that in their rules. So, we just dropped their language and we did not include additional language and we should be okay with the intention that two-track roads would not require a P.E. certification if they're converted to a postmine use.

**BOB GREEN, KENNECOTT ENERGY CO.:** Rick, would that also then apply when we get to amendment #20 and the Statement of Reasons talks about non-constructed ancillary roads. Is that also going to be ? (lots of paper shuffling).

**RICK CHANCELLOR, LQD:** Let's talk about it when we get there.

**PAIGE SMITH, LQD:** Which one did you say.....20?

**BOB GREEN, KENNECOTT ENERGY CO.:** Yes....20.

**RICK CHANCELLOR, LQD:** Very possible.

**PAIGE SMITH, LQD:** Okay, the machine is back up. We're on page 35, Chapter 4, subsection (viii). We're not proposing to change any language, just relocate an existing rule for under the existing title *Exemptions concerning roads*. This would pertain to all roads. In (B)...*In the event that the surface landowner a city or town, or another agency of the State of Wyoming.....the road not be reclaimed, no bond shall be required of the applicant for the reclamation or the road* etc. So we want to maintain that language but just rearrange it in our scheme of things in this Chapter 4. Any questions?

We're now on proposed rule 16 on page 36. This is where we've taken an existing rule in Section 2(m) and we've simply changed the reference of *buildings and structures* to *mine facilities*, again, to be in accordance with trying to have roads and having mine facilities. It says, All *mine facilities* constructed, used or improved by the operator must be removed or dismantled *and shall be reclaimed in accordance with the requirements of this Chapter* has been added in. It's not a direct counterpart in the federal rules there, it's just more on contemporaneous reclamation. That's about the most direct counterpart that seemed applicable.

Subsection (ii) again is existing language where we've just changed the language from *buildings* to *mine facilities* in two places here just for consistency purposes.

In proposed rule amendment/peal 17, again, we're dealing with mine facilities. Here is where we were adopting the federal counterpart language about their support facilities and what needs to take place with those. We're proposing to just adopt the counterpart language so we have a very clear indication of what has to happen with mine facilities that they *be operated in accordance with the permit issued for the mine or coal preparation operation to which it is incident or from which its operation results* is the lead in. *In addition to the other provisions of this Chapter, mine facilities shall be located, maintained, and used in a manner that...*here's where we get into the list coming from federal rules....*prevents or controls erosion*....etc. We had comparable rules in part so we have maintained some existing language but we needed to do some reconfiguration to more closely mimic the federal language and that's what we've done here. That goes all the way until 17.h. Any questions?

On page 39, proposed rule 18, we proposed to repeal a rule in 2(j)(iv) regarding railroad loops etc. We're doing that because again we want to get all that information out of the roads rules sections. We're proposing to take an existing rule, listed as 2(x), and delete it but adopt language that's comparable to the federal rules regarding utility installations. The way the LQD rules were worded, it didn't really make a distinction about how the operator was supposed to manage utility installations that they had nothing to do with like a power

line crossing their permit but did not provide power to them so it wasn't their structure. The federal rules are very clear about what to do with those sorts of utility installations. We were not, so we thought it would be better to adopt the federal language regarding those utility installations.

We're now out of the side-by-side realm for roads and getting into the odds and ends of other rules (page 40) that needed to be revised mostly out of the consequence of our stopping the use of multiple terms.....now I can't remember.....where we used buildings, structures.....we want to have everything be consistent to mine facilities and I've hi-lighted it here just so you can see it. In this case we put in the term mine facilities and in this case we get rid of mine-associated structures and use a consistent term and that is the gist of these changes. These continue through page 41. Again, they're all changes just to have consistent wording.

Now we're back in Chapter 4, Section 2(c), page 42 which again is some clean-up. Bob, I think this is the one you had a comment on.

We had an existing rule regarding exceptions to topsoil having to be removed for certain sorts of disturbances and what we've done here is modify some of the language to mimic the federal rules. The Administrator may authorize topsoil to remain on areas where minor disturbance will occur at the site of small structures such as roads....excuse me.....signs, power poles, or fence line, which again is what the federal rules have, provided that the minor disturbance will not destroy the protective vegetative cover and will not increase erosion.

**BOARD MEMBER GINGERY:** Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** Thank you, and if you want to add roads, I'm real happy! Our concern is with the new category revision of roads of primary and ancillary and doing away with light-use roads with these proposals, we're still dealing with those two-tracks that we use to access monitoring wells and other ancillary types of structures. We still feel that driving a pick-up over those roads once every week or month is a lot less destructive to the soil resource than it would be to strip it all out, build a road to just access that little pick-up. What we're asking for is that the wording of this be amended to give the Administrator the option to be able to do that. What I'd like is to propose that Section 2(c) that an additional sentence be added at the end that would read, "The LQD Administrator will consider similar authorizations for non-constructed ancillary roads that can demonstrate the same environmental protections. Those protections would be the same environmental protections as outlined for the signs, power poles and the fence line." That would require us to request that of the Administrator to demonstrate that indeed we're going to have those protections in place. Without that, even though the Statement of Reasons outlines that LQD understands these features are out there, there's nothing in the regulations that will allow, as I see it, the Administrator to make that exception.

**RICK CHANCELLOR, LQD:** We don't intend to change how we conduct business on those two-tracks, whatever you want to call them, that we feel it appropriate not to strip topsoil where it's just real light traffic occasionally used. If you go back to what Mr. Padgett said earlier about maybe those shouldn't be considered roads...if earlier on we deleted that discussion of them being roads just not to raise a red flag to everybody, if we delete it here, I assume you still have concerns about stripping topsoil on roads. My concern is if you put it in the rule you may get a black and white answer. The answer could be roads must be constructed and all that stuff. I think reasonable people here in the state feel that that's not how it should be done but by the time you go back to D.C. you may get some other type of opinion that may...because of red flags say disapproved.

**BOB GREEN, KENNECOTT ENERGY CO.:** Based on the discussions here, would it be possible to amend the definition of roads to exclude two-tracks? If we were able to do that, there would be no concerns ? (cough).

**RICK CHANCELLOR, LQD:** Again you may be raising a red flag. That's my only concern is what you want to do is at some point there's a red flag out there that someone's going to take a shot at. I understand that you want that preserved, we want that preserved so how can we preserve that for the future staff, mines in the future when we're gone?

**PAIGE SMITH, LQD:** You had read the quote from the federal register that's on the top of page 43? Because OSM does recognize that there may be situations where you don't want to strip topsoil because it's more damaging...the situation you had described. The federal rules already have recognized that latitude.

**BOB GREEN, KENNECOTT ENERGY CO.:** Could that latitude be used to defend refining the definition of roads to say that in those cases there's not a road that needs to have the topsoil stripped.

**RICK CHANCELLOR, LQD:** It goes back to the issue, does OSM consider those things roads or just light-traffic areas that aren't really a disturbance?

**BOB GREEN, KENNECOTT ENERGY CO.:** Can we add a definition of light-traffic then?

**RICK CHANCELLOR, LQD:** I suppose what we could do is maybe to satisfy your concern and still be within the range of what OSM has put down in black and white...use that term light-traffic in this rule as one of the examples. That way, OSM can't come back and say well you can't do it because their own preamble says they consider this as one of those areas.

**BOB GREEN, KENNECOTT ENERGY CO.:** That'd be great. You'd be willing to pull that into (c) here (proposed rule 20) to add light-traffic areas?

**RICK CHANCELLOR, LQD:** I would say like power poles, fence lines or light-traffic areas.

**BOB GREEN, KENNECOTT ENERGY CO.:** That'd be great.

**PAIGE SMITH, LQD:** OSM has deliberately not included the phrase light-traffic in their rule.

**RICK CHANCELLOR, LQD:** Right, but they did put it in their preamble.

**PAIGE SMITH, LQD:** Right, but their final rule includes the term *minor disturbances* rather than the phrase *light-traffic*. "The language change is coupled with two disjunctive tests: either that the minor disturbance must occur at the site of small structures or that the minor disturbance will not destroy the existing vegetation and will not cause erosion. Although some topsoil could be lost at the site of small structures, the amount would be minimal." I just throw out a caution to put in a term that they themselves chose not to adopt.

**RICK CHANCELLOR, LQD:** Right but the two-prong test is still in our rule that it will not destroy the protective vegetative cover and not increase erosion.

**PAIGE SMITH, LQD:** Right. Again, it just might be a red flag to use the very term that they chose not to.

**BOARD MEMBER GINGERY:** So it's my understanding in their preamble they did use light-traffic?

**PAIGE SMITH, LQD:** To clarify OSM's intent that the provision could be applied to activities such as the movement of equipment over frozen ground, or to small areas such as the construction sites of power poles, signs and fence lines, the final rule includes the term "minor disturbances" rather than the phrase "light-traffic."

**RICK CHANCELLOR, LQD:** I think what they could be getting at is they want to expand it just beyond light-traffic areas to other disturbances that are not related to traffic. They want to broaden it to include more than just light-traffic areas. I'm willing to take the chance.

**PAIGE SMITH, LQD:** Okay.

**BOARD MEMBER GINGERY:** How does the board feel about this? Leave it out or take a chance?

**BOARD MEMBER GINGERY:** I think we're picking at the proverbial fly droppings. I'd leave it out.

**BOARD MEMBER MUNN:** I guess I'd put it in that it's perceived to be a clarification as an example and they do use it. You can always send another letter of protest I guess.

**GUY PADGETT, OSM:** Mr. Chairman, if I could interject. I think from our perspective, at least from mine, it would be a mistake to mess with the definition of roads. That would be in error.

In regards to this area of topsoil, subsoil, overburden and refuse, I think the intent was clear that minor.....simply walking on topsoil isn't something which rises to the threshold of being permitted. The issue really is whether or not there's loss of topsoil, erosion or some impact on the performance standard. My sense of it is, as long as that's clear, that it's minor disturbances or no disturbances at all, and it doesn't destroy the protective vegetative cover that the state would certainly well within their rights to say incidental use, occasional light-traffic as long as it's clear that the intent it's not going to disturb the surface if it is makes the industry more comfortable to know that incidental use, light-traffic is included in that, I don't think that OSM would have any difficulty at all. The intent would still be met.

**BOARD MEMBER GINGERY:** Okay, thank you. Back to the board here. Chet?

**BOARD MEMBER SKILBRED:** I agree with Larry. I don't have any problems with including it in there.

**BOARD MEMBER PROFFITT:** I think I'm going to go with Chet on that. I'd just assume leave it in.

**BOARD MEMBER GINGERY:** Okay, from the standpoint of the board, we'll test the waters by leaving it in. Paige just looks at me and I can tell I'm going down the wrong road!

**PAIGE SMITH, LQD:** Mostly, I just wanted to point out that we had defined light-use road, which would now take it out of here, it was part of the road definition and it's gone. I'm just concerned that if you now put in light-traffic, they're gonna say what's light-traffic? That there may be some question on OSM's part or even an inspectors part, just what is light-traffic. Which then of course I hope you would intuitively say, "where there's a minor disturbance then you're not destroying the vegetative cover."

**GUY PADGETT, OSM:** Mr. Chairman, that is exactly the way that I would suggest that we would respond. We would say, "light-traffic is that which does not disturb the protective vegetative cover." Under those guidelines or fence posts there should be no issue.

**BOARD MEMBER GINGERY:** Okay.

**PAIGE SMITH, LQD:** Do you feel it's appropriate to make that clear in the Statement of Reasons or do you feel that anything will come up when they review our rules?

**GUY PADGETT, OSM:** It's unnecessary. If it comes up we'll take care of it.

**RICK CHANCELLOR, LQD:** I also suggest to take out that first paragraph under the Statement of Reasons where it talks about light-use roads. I think that will just complicate life.

**PAIGE SMITH, LQD:** And you're proposing to add to the list....signs, power poles, *light-traffic*, or fence lines?

**RICK CHANCELLOR, LQD:** Yes.

**BOARD MEMBER GINGERY:** Bob, does that satisfy industry's outlook?

**BOB GREEN, KENNECOTT ENERGY CO.:** Absolutely. That's greatly appreciated.

**BOARD MEMBER GINGERY:** We have a question.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Earlier we were talking about the prominent ephemeral streams and you asked what someone here actually did and he said a lot of times when we're moving topsoil....you know like smooth the area and blade the vegetation off and run on it and then just seed it afterwards. We've had occasions where we move topsoil piles out of old reclaimed areas or we build sediment ponds and you have a small amount of topsoil to move and I think it was the old rules allowed less than two weeks....there's a provision in there that you could not strip topsoil or whatever if it's a short period. Do the new rules allow anything like that if there's less environmental degradation by just running on top of the topsoil or it's gonna destroy the vegetation but you're going to run on top of the topsoil, can you come back and rip it to relieve compaction and reseed it. In fact, several times, we don't reseed it, we just rip it and the plant roots are still there, they grow back and a year later you don't even see it. Will that still be possible?

**RICK CHANCELLOR, LQD:** These rules here recognize that there are times when topsoil should not be salvaged because it can cause more harm. That's a case-by-case judgement call based on how much traffic you're actually gonna have and how much beating will be done to it. Obviously, there's cases that what you're saying would be okay. There's other cases where it goes on and on and on that we say you're beating it to death. So, the rules allow for that discretion.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Can Paige find out where that is at...where the discretion is?

**RICK CHANCELLOR, LQD:** Right here in this rule.

**PAIGE SMITH, LQD:** Well, if you read at the top of page 43.....

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** But scrapers are not light-traffic I don't think....are they?

**RICK CHANCELLOR, LQD:** What's the bearing pressure of a scraper tire compared to a pick-up tire? It comes down to how much of that is going to be into the ground.

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** Sure a loaded scraper is considerably more...if again, you're willing to look at that on a case-by-case basis, that'd be fine.

**BOARD MEMBER GINGERY:** Well, let's move on Paige.

**PAIGE SMITH, LQD:** We're on page 43, proposed rule 21 and it is clarification where a rule used the term

*access roads or haulage roads* and we're just substituting the term *primary roads* there to coincide with the OSM classification system.

Moving to page 44, proposed rule 22 a, b, and c are simply getting rid of terminology in the current rules that really don't have any place any more and changing public highways to public roads because it's now defined as such. It always has been. You always wonder where these little terms come from but highways would go in lieu of roads. Structures would go in lieu of mine facilities. This is Chapter 18 with in situ mining and again, it's just a clean-up so that consistent terms are used throughout the rules.

That concludes the roads rules.

We then proceed at the bottom of page 44 with number 23 which encompasses the proposed changes to Chapter 4, Section 2(c)(xi) regarding spoil piles.

**BOARD MEMBER GINGERY:** We have a question.

**LARRY KLEINMAN, BLACK BUTTE COAL:** Mr. Chairman, I'm sorry, I completely missed this one when we were going through it before but back on page 39, Chapter 4, Section 2(x). We're talking about mine facilities, are these pre-SMCRA facilities because I realize that is still in question as to whether pre-SMCRA facilities are held to SMCRA standards?

**RICK CHANCELLOR, LQD:** It does make a difference. They come under SMCRA jurisdiction because if you use a facility after it passes SMCRA, it comes under the jurisdiction of SMCRA. So it's more appropriate to say jurisdiction as opposed to specific standards. Obviously if you have a facility there that was never stripped of topsoil and you come back to reclaim it, there's no topsoil to put back on there. There may not be or you may have to use a substitute or something else.

**LARRY KLEINMAN, BLACK BUTTE COAL:** I realize that but the question I guess is has that ever been set down in rule or just a statement of the Administrator?

**PAIGE SMITH, LQD:** It's in the 5-categories document. It's all spelled out.

**LARRY KLEINMAN, BLACK BUTTE COAL:** I realize it's in a guideline document but not in a rule document. I'm wondering....

**RICK CHANCELLOR, LQD:** There's someplace, I don't know where in the rules it talks about existing structures have to meet the performance standards, not the design standards.

**GUY PADGETT, OSM:** Mr. Chairman, that is in the federal regulations. That is pre-existing structures, I believe is what they call it, recognized that there is a difference that pre-existing structures need not meet the design criteria but must meet the performance standards. So the standard is performance standards rather than the actual construction standards. I don't recall if it's in LQD's regs.

**RICK CHANCELLOR, LQD:** I wanna say it's there someplace, but I can't remember.

**LARRY KLEINMAN, BLACK BUTTE COAL:** I didn't think it had been formally gone through rule making yet. It's in the guideline but....

**BOARD MEMBER GINGERY:** Is this still a pretty substantial issue out in the field?

**RICK CHANCELLOR, LQD:** There are some mines that have pre-existing structures, yes. Pre-SMCRA structures is what we call them.

**LARRY KLEINMAN, BLACK BUTTE COAL:** In relation to the number of mines in the state, there's not very many but there are some, yes.

**RICK CHANCELLOR, LQD:** I would suggest we take a look at that and if we're missing that language that SMCRA has in it that we do a rule to take care of it. I think it's in there but I just don't remember where.

**BOARD MEMBER GINGERY:** Are you suggesting that possibly at our next meeting that we'd come back to that or do we insert it now?

**RICK CHANCELLOR, LQD:** Maybe a future rule package if we're missing it to insert it.

**LARRY KLEINMAN, BLACK BUTTE COAL:** This would make that formal.

**BOARD MEMBER GINGERY:** Okay. As I understand it, we'll look at that and consider it under a future rule package. If any of you have comments, I would get them in on that.

**GUY PADGETT, OSM:** Mr. Chairman, it does include overburden stockpiles.

**BOARD MEMBER GINGERY:** Oh, it does?

**GUY PADGETT, OSM:** I don't want to say that there is a large number of these pre-existing facilities but there is a fair number of both the building type stuff and pre-existing stockpiles, out-of-pit stockpiles. It's not insignificant.

**BOARD MEMBER GINGERY:** Okay, that's what I was trying to determine. By the next meeting we could possibly have a review or rule relating to that?

**RICK CHANCELLOR, LQD:** We'll at least have an answer for you whether or not we have that rule in our program right now. I can't promise that we'll have a rule package to take care of it if it's not but we'll see what the next package is that comes forward.

**LARRY KLEINMAN, BLACK BUTTE COAL:** Thank you Mr. Chairman for allowing me to go back.

**BOARD MEMBER GINGERY:** That's a good point. I don't think many of us had thought about it. I certainly hadn't. Now, do you want to continue Paige?

**PAIGE SMITH, LQD:** We are on the bottom of page 44. Rick explained at the beginning of our meeting why this has been brought up as a proposed rule change. Again, it's because of the way the rules were configured when coal and noncoal were in one set of rules. When they were pulled apart some things weren't necessarily put in the right context so we're hoping to clean that up and clarify it.

The first thing we realized we needed to do was to kind of embellish the title of (c) to add *spoil, excess spoil, coal mine waste, acid-forming materials, toxic materials and other wastes* only because those things do come after in (c), they just weren't noted in the title. So, it's just a little bit of clarification there.

When you get into subsection (xi) we needed to put in *excess spoil* as a separate entry because there are now separate rules for excess spoil. There are no changes until you get to the center of page 45, proposed (F) and (G).

**RICK CHANCELLOR, LQD:** There's a comment.

**BOB GREEN, KENNECOTT ENERGY CO.:** Just a minor request. With (F) putting a restriction on temporary stockpiles being placed on areas with slopes that exceed 20 degrees, we understand the issue there but we would ask that it be made a little more flexible so that if those stockpiles can be shown to have a safety factor of 1.5 or better through engineering features, that that still be allowed as long as each one gets proposed and demonstrated to the Administrator.

To do that, I would propose adding at the end after 20 degrees, *unless the LQD Administrator authorizes such placement based upon demonstrations that the pile will have a safety factor of 1.5 or better, and/or other precautionary design factors are provided to mitigate the steepness of the slope.* The reason that I'm asking for that is because there may be cases where there are box-cuts where a pit is started out....you may not have a choice....you may be mining on the floor of the valley, you may have very steep slopes around you and that's where you're going to need to put the temporary out of pit spoil piles to start with.

**RICK CHANCELLOR, LQD:** Just some background information for the board members. Item (F) was added here because of concerns by some of our staff that in some cases temporary spoil piles need to also have some protection because they sometimes are very large and could pose a danger. So, this is a state initiative here. There's no counterpart federal rule for temporary spoil piles. I have no objection to the additional language as presented.

**BOARD MEMBER GINGERY:** What you're just asking is that there are situations that....

**BOB GREEN, KENNECOTT ENERGY CO.:** What I'm saying is you may not have a choice in some cases. You may have steep slopes all around you and that's where you need to place your temporary overburden. As long as an operator is willing to go the extra mile putting engineering features that will make that stable to the next slope. I'm asking that we'd be able to demonstrate that to the Administrator and to have that provision.

**BOARD MEMBER GINGERY:** Paige did you get that change? Yes, it's in their typed comments that were handed out at the beginning of the meeting.

**BOARD MEMBER GINGERY:** Yes?

**GUY PADGETT, OSM:** I'd like to apologize for taking up so much of your time but I'd like to make two points.

The federal regulations do not distinguish between temporary versus permanent. A spoil pile is a spoil pile. They don't make that distinction. I just wanted to raise that issue because it was not envisioned when they were written that there would be spoil piles that were "temporary." That just wasn't something that was considered. The regulations are written about stability of spoil piles in general that are placed outside of the mined area.

The second point I'd like to make is it's been my observation through the years that many of the temporary spoil piles become permanent. That has been disquieting to us in our view of what's going on in Wyoming. I would point out that to the extent that we make distinctions between temporary and permanent spoil piles and then we start out with a temporary one and it ends up permanent later on, that would add to our concern of what's going on. I'm making no judgement in regard to whether I considered approval...I really don't know. I haven't looked at this.

**BOARD MEMBER GINGERY:** Rick, where does your office stand on that since your staff had a concern?

**RICK CHANCELLOR, LQD:** The concern was for the stability of the temporary spoil piles. There was also concern expressed by the staff that temporary spoil piles sometimes...operators come back later and say we want it to be permanent and if that's the case then often times the design of that spoil pile is not in accordance with the permanent spoil pile. I would somewhat disagree with what Mr. Padgett has said that when you construct a temporary spoil pile inside a mining area, it is constructed just like backfill so in that case where it does start out as temporary then it's converted to a permanent, the construction methodology is used same as we do the backfill as if it was approved in the first place. The difference here is when you have excess spoil piles that are placed outside the pit, permanently, obviously if you're not an excess spoil type mine, a thick-overburden mine, you are not allowed to put spoil outside the mined out area permanently. That is against the law. Thin-overburden mines have to put all stuff back in the pit. AOC type mines can leave some outside of pit limits to blend but those two type mines cannot leave a temporary spoil pile outside a mined out area and then call it permanent. They're just as clear cut as saying no you can't do that. You have to be a thick-overburden mine. There's no thick-overburden mines in the Powder River Basin (PRB). There's some in other parts of the state that are thick-overburden but none in the PRB because the coal is too thick. At least they could mine probably to the west and they may not like it that way but it'd be a long, long time before they meet that criteria for a excess spoil mine.

**BOARD MEMBER GINGERY:** Any comments?

**BOARD MEMBER GAMPETRO:** Do we have a definition of temporary?

**RICK CHANCELLOR, LQD:** No definition. It's just one of those that is moved later on to the backfill. The problem is that some mines build temporary spoil piles in the backfill itself and then they're not considered excess spoil. We have been, I think, stung a little bit on a couple of occasions by that and so we have developed some in-house criteria on how to judge that based on the height of the pile etc. whether or not we can convert it to a permanent later on. If it's in the mined out area.

**BOARD MEMBER GAMPETRO:** Should we have a definition of temporary?

**RICK CHANCELLOR, LQD:** I would say no. I think the Webster's definition of temporary would fit pretty good.

**BOARD MEMBER GINGERY:** Well, how do you all feel about temporary? Since we're using the word temporary what Jim is suggesting is that six months, a year, five years?

?: You know, temporary could normally be a lot of times the life of the pit. So it could be 20 years that you have a temporary spoil pile.

**BOARD MEMBER GAMPETRO:** Basically, temporary is defined by the fact that when you're done you'll.....

?: It goes back into the pit.

**RICK CHANCELLOR, LQD:** There is a real concern that sometimes they want to change it to a permanent. That is a concern.

**BOARD MEMBER GINGERY:** They all have to go back to being a permanent at some time.

**RICK CHANCELLOR, LQD:** For thin-overburden and AOC mines if it's outside of the pit limits there's no discretion, it has to go back into the pit. It's those that are inside the pit limits when they move this pile

of dirt here later to this hole five years from now but three years from now they may want to leave it permanently because we don't want to have the cost of moving it. That's what happens and causes some concern. The thin overburden mines in the PRB don't have enough dirt to fill the hole anyway so to build a big pile in the middle of the pit doesn't make a lot of sense.

**BOARD MEMBER GINGERY:** Okay. Do we just want to leave it then as it stands?

**RICK CHANCELLOR, LQD:** As far as?

**BOARD MEMBER GINGERY:** Temporary.

**RICK CHANCELLOR, LQD:** I think leave it as it stands as temporary but I have no problem with the demonstration that it's going to be safe.

**BOARD MEMBER GINGERY:** Yes, thank you. I think you can move on then.

**PAIGE SMITH, LQD:** There's a new rule being proposed as (G), proposed rule amendment # 23, page 45 which also serves as the introduction to all the other rules that will follow for the next page and a half or so that deal specifically with excess spoil. Excess spoil is defined in our Chapter 1. What we propose here is: In addition to the requirements provided in subsections (xi)(A) through (xi)(D) above with the exception subsection (B)(I) and it specifically says for temporary stockpiles, material should be replaced in pits as soon as possible.....we're saying that (A), (B), not (I), (C), and (D) also apply to excess spoil piles. We're specifically exempting the (I) since it talks about temporary. I'm wondering about (E). Rick what was it about (E) which says *all overburden and spoil material that is determined to be toxic, acid-forming or will prevent adequate reestablishment of vegetation on the reclaimed land surface, unless such materials occur naturally on the land surface, must be properly disposed of during the mining operation.* This is one of these hang overs from our re-configuration from the regulation separation. That's referring to any spoil, right? Not necessarily a temporary pile or a.....

**RICK CHANCELLOR, LQD:** I think over on page 47 they talk about toxic acid-forming materials.

**PAIGE SMITH, LQD:** Okay, on item #6 on the bottom of page 47. So that's why we did not encompass (E) in our cross-reference?

**RICK CHANCELLOR, LQD:** Right.

**PAIGE SMITH, LQD:** Okay, thank you. So then we go into the rules that follow here under (G)(I), we're simply taking the existing rules and we're just reconfiguring them to make more sense. We have subsections that dealt with particular topics like location requirements, *all excess spoil shall be placed in approved excess spoil disposal sites located within the permit area. They shall be....*and then we go on to say....*located on moderately sloping and naturally stable areas* etc. and each of these rules are not new rules, we're just taking existing language and reformatting it.

Then we have a new subparagraph titled *Design Standards* and we've added an intro. that says all excess spoil shall be...and again we're using the existing language and just have added some intro. so it reads better. That takes us all the way down to subparagraph (III) which is Construction Standards and again, we've simply reconfigured existing language to make it a little easier to read.

Then the last proposed subsection, if I'm remembering correctly, is *Inspection of excess spoil piles* on the bottom of page 47. Again, this had all been just one paragraph in the existing rules and we just broke it down for readability. We added a lead in and just broke that paragraph up so it's a little easier to get through.

**RICK CHANCELLOR, LQD:** This language was previously approved by OSM.

**PAIGE SMITH, LQD:** That puts us to the end of that section.

**BOARD MEMBER GINGERY:** Okay. There wasn't anything in the Appendix.....

**PAIGE SMITH, LQD:** Right....just one last small rule.

**BOARD MEMBER GINGERY:** Is there any additional discussion? I would ask the board to make a motion to approve the changes that have been discussed the last few hours and then we'll go back to P1. I would accept a motion to accept.....oh....we are on P1. Oh....we have a question.

**GREG JONES, PEABODY ENERGY:** Are we going to talk about Appendix A?

**PAIGE SMITH, LQD:** Yes, and we do have one last rule...Appendix A rule.

**BOARD MEMBER GINGERY:** Oh, I'm sorry. Let's discuss that first.

**PAIGE SMITH, LQD:** It wasn't too long ago that we changed Appendix A which was done in a package that was recently approved in April by the Governor. What we've had to do here is because it's in our rules...the plants that are listed by the Fish and Wildlife Service (FWS) as having a particular designation. It had changed and I didn't realize it at the time we were doing our last rule change and I wasn't able to get it fixed at that point so I'd like to bring it up now.

We're not adding new plants, we're just changing the designation. Gaura neomexicana which is Colorado butterfly weed is now a threatened species rather than candidate so it's been bumped up a notch.

Yermo xanthocephalus which is a species that grows only I believe outside of Lander. And that's the only population of it that anybody's aware of in the world. It's gone from a candidate to a proposed threatened. That's where it stands now.

I talked to somebody from the FWS and asked them what exactly was proposed threatened. They said it means that we have to do more research and get more input because right now because of the change in leadership in Washington everything is sort of on hold. This is how it was listed in the latest federal register. I felt it was important to get the classifications that are currently provided by the FWS accurately provided there in Appendix A.

**BOARD MEMBER GINGERY:** Any questions from the audience? Yes?

**GREG JONES, PEABODY ENERGY:** Paige, this is clerical but should it be for listing as proposed threatened?

**PAIGE SMITH, LQD:** Where are you?

**GREG JONES, PEABODY ENERGY:** The second sentence. You have *proposed for listing as Threatened* but show PT.

**PAIGE SMITH, LQD:** Yeah, I think you're right Greg.

**BOARD MEMBER GINGERY:** Any other changes or comments? Board, do you have any comments on this? If not, I believe we've brought this chapter to a close. Will someone please make a motion of acceptance on quite a few of proposed changes.

**BOARD MEMBER MUNN:** I move that accept the proposed changes including Bob's amendment.

**BOARD MEMBER SKILBRED:** I second that.

**BOARD MEMBER GINGERY:** Any additional discussion or comments? Hearing none, all in favor of the motion signify by saying aye.

**BOARD MEMBERS:** Aye.

**BOARD MEMBER GINGERY:** Those opposed same sign. Motion carries. Thank you.

**PAIGE SMITH, LQD:** Can I ask one thing? I know you've already voted but there was that rule in the very beginning that I brought up that the way the wording was on the rule doesn't match the preamble to the rule. Remember that one? The one where I said I couldn't think of how to fix it at the moment. It begins on page 7 and goes into page 8. Page 7 is the preamble under subsection (i) and then 4.c is the rule that I was just taking existing language and bringing it into Chapter 2. Robbie had an idea. I had an idea but it's probably not the most brilliant idea by any means but it would say, *the inclusion of railroad spurs including the incorporation of railroad spurs within the permit area from that point that they provide exclusive service. These spurs shall be covered by a reclamation bond.* I don't know if you need to re.....

**BOARD MEMBER GINGERY:** Well, we did give you instructions that it was more clerical instead than substance.

**PAIGE SMITH, LQD:** Is that alright if I change the wording and keep the substance of the rule?

**BOARD MEMBER GINGERY:** Who made the motion on that? Larry? Do you find that suitable?

**BOARD MEMBER MUNN:** That's fine.

**BOARD MEMBER GINGERY:** Okay. Now let's move on.

## **PKG. 1P - RELEASE OF BONDS OR DEPOSITS FOR SURFACE COAL MINING OPERATIONS**

**PAIGE SMITH, LQD:** Now we're moving onto Rule package 1P.

**BOARD MEMBER GINGERY:** Paige, before you start, we certainly received WMA's information. Was there anyone else in the audience with comments on 1P?

**SCOTT BENSON, TRITON COAL CO.:** I submitted some.

**BOARD MEMBER GINGERY:** Okay, go ahead Paige.

**PAIGE SMITH, LQD:** This rule package is not coming from any broad range OSM disapproval, although, there is one disapproval in this package that has been brought to our attention recently. The reason that we're proposing to redo Chapter 15 has primarily to do with the administrative time line that's currently in our Chapter 15. Rick, I may turn to you....I'm blanking out a little bit. But right now the state is giving fifteen days to declare a bond release package complete. After the fifteen days.....

**RICK CHANCELLOR, LQD:** Then they publish and within sixty days after declaring it complete we'll do an inspection. It's an evaluation of the mining and reclamation work involved.

**PAIGE SMITH, LQD:** That 4-week notice happens at the fifteen day position. What's been found is it's very hard to meet the fifteen days to review these applications. The purpose here was to realign Chapter 15 to be more in keeping with the same public notice and review process that's associated with any application that would come into the LQD office which incorporates a 2-week notice when it's declared complete and then after the staff had looked at it for technical adequacy and gone in the field, there would be a 4-week notice to the public letting them know that the Administrator had approved the release of this parcel of land. This is as you read in the comments this approach is different than the federal approach. The federal rules require that when a operator comes in to ask for bond release, that immediately triggers the 4-week public notice. That's without any review by staff etc. and then the OSM staff has sixty days to review that package and then in that amount of time they're supposed to go in the field and often times you can't get in the field because that package may be submitted to you in February and obviously you're not going to in the field to look at vegetation prior to March. The federal rules say that the regulatory authority can dictate when that application gets submitted to take into account the fact that there's only a short window season to go out and look at vegetation. The other thing we have done here is that we have not dictated that there's only a window of opportunity to submit your application. The application can be submitted at any time, however, the field visit can only happen at a short window of opportunity and that application for bond release will not be ready for it's final 4-week public notice or it's declaration of being okay or not until after the field visit is done. I agree with Scott Benson's comment, the time line that's being proposed in Chapter 15 is very different than the time line that the OSM does. One thing that we're trying to improve upon in the federal system is that the public is being given a 4-week notice that somebody's come in to apply for bond release. There's never any other word as to whether that bond release was given to the public. That's all they hear is that somebody's asking for bond release to be given. We were trying to do an approach where there would be a 2-week notice to let the public know that an application has been filed with our office followed by the 4-week notice saying yes, we're about to approve bond release so that the public would actually know what the final decision had been. That was the reason we were trying to reconfigure the timing on this. That's sort of the broad view. Now, given the extent of the comments from Scott Benson and I haven't had time to look at WMA's comments but would it be most beneficial to do like I do with all the packages, just start with the language we're proposing and then see where the comments lie?

**BOARD MEMBER GINGERY:** Correct.

**PAIGE SMITH, LQD:** We still are maintaining Section 1 within Chapter 15 and in this case we are proposing to remove the word ~~Request~~ and turn it to *Application* because applications are what we get. Request isn't something our system normally has. Scott Benson correctly pointed out that in our statutes the term request is used in 35-11-423 regarding bond release but it's sort of an open-ended term that we just thought it would be better off changing to application and as we get through here the federal rules also use the term application.

We have added a subsection (b) that requires that *the application shall follow the format and procedures established by the Administrator and at a minimum contain the following* and this is information that is currently being required. We tried to make a little easier - *the number of acres for which release is being requested*. This is new language here. We have added some additional requirements of items that we feel need to be in a package but haven't been clearly presented in the rules. We've always said you need a map

but now we're putting an appropriate scale simply because if you get a map that's not appropriate scale, there might not be much to review. *Describing the location and acreage of each kind of bond release* and we're changing it to *kind* from ~~type~~ because type is used in terms of is it CD, is it cash. Type refers to the instrument of bond. We're trying to get away from using the term type when we're talking about is it partial bond release, is it area bond release, is it final bond release. So when we say kind we mean what is the increment of release you're asking for.

Let me back up a minute.....just a little background information.....we haven't talked about this at any of our meetings that I can recall but there are three different kinds of bond release that you can have. The first is called Area bond release. That is when you move your dirt and it's in its recontoured position. That's where most of the money lies is in all that dirt work being done. There are three levels of release that go beyond that.

The next one is called.....OSM calls it Phase 2, we call it Phase 1 incremental and that is when it's been topsoiled. Primarily, the topsoil has been replaced.

Then there's a third tier here....an operator can come in and ask for a partial release and it's a revegetation increment. If they have seeded the area and the seed is coming up, they can come in and say, "We have what we feel like is an adequate vegetation amount established to hold the site in place." It's up to no more than 75% of the bond being held so they'd get the next increment.

**RICK CHANCELLOR, LQD:** I don't think 75% is in there. I think it's up to no more than the amount necessary to.....

**BOB GIURGEVICH, LQD:** That's correct. It doesn't say 75%.

**PAIGE SMITH, LQD:** But isn't the 75 in statute?

**RICK CHANCELLOR, LQD:** That's for noncoal.

**LARRY KLEINMAN, BLACK BUTTE COAL CO.:** Essentially, that's what Rick was saying.

**RICK CHANCELLOR, LQD:** Right. You can't release any more at that point than necessary to reseed the area to reestablish vegetation.

The last bond is the final bond release of the area saying that everything's done for that area, the shrub components and everything is up to standard and no more bonds are held for that land. That's the final release.

**SCOTT BENSON, TRITON COAL CO.:** I think the Act does say you can't for our Phase 2, you have to keep 25% of it.

**RICK CHANCELLOR, LQD:** The Act says that for coal mining operations, the Council can promulgate rules to comply with OSM requirements. We interpret that saying that the statutory language concerning bond release does not apply to coal because the Council did promulgate rules that address how coal bond release are handled. We feel that language there does not apply to coal mines because they're a separate chapter specifically designed as a rare case where the statute gives authority to the Council to do something.

**BOARD MEMBER GINGERY:** Paige, do you want to go the rest of the way down the page or do we want to stop and take some questions? Which would you prefer?

**PAIGE SMITH, LQD:** Questions are fine.

**BOARD MEMBER GINGERY:** Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** For this part (b), I've got four points. Do you want to finish going through it or shall I make my points now?

**PAIGE SMITH, LQD:** If it's about all the points in (b), maybe I should present them all?

**BOARD MEMBER GINGERY:** Go ahead and present them all and then we'll come back.

**PAIGE SMITH, LQD:** What got us into this was the discussion between kind and type. Now, when we say kind we mean the different, one of four increments for all increments. That's what we're referring to there. *The location of all sampling locations, as applicable* (v). So, what we're asking for here is if it's the kind of bond release where you have a sampling location such as vegetation where you're doing you're last two years of vegetation sampling, we need a map of appropriate scale that shows those vegetation points. The same could be true if you're doing ground water monitoring.....some clear indication of what is the well you've been monitoring. That's why it says, *as applicable*, because there might be instances in an area bond where you don't have a sampling point you just show your as-built contours.

In addition, we've added the language regarding (vi) *the kind, appropriate dates and complete history of reclamation work performed including but not limited to the dates of rough backfilling, the dates of topsoil replacement and replacement depths, and the dates of seeding (as applicable)*. We've added *as applicable* simply because depending on which kind of bond release you're coming in for, all of these things may not be necessary because you haven't seeded it yet.

Our next new rule that is being proposed is (vii) *a description of the results achieved including a clear presentation of all data collected, sampling methodology, analysis conducted and results of analysis as they relate to the reclamation and performance standards specified in these regulations and the approved permit*. That language is coming primarily from the federal rules although it is not verbatim but it was a statement that we did not currently have.

Let me continue because this is going to come up as a comment so I'll pull out the federal rule for when we get there. This is the one ((viii)) disapproval we do have from OSM in our Chapter 15 and that is that we do not have a requirement for *a notarized statement which certifies that all applicable reclamation requirements have been accomplished in accordance with the Act, the regulations, and the approved permit. Such certification shall be submitted for each bond release application*. That is a term that the OSM adopted in their own rules I believe in 1997. So it's pretty recently. We did receive a letter pointing out to us that the federal rules have been modified and that we need to adopt the requirement for this notarized statement. That's the end of this particular section.

**BOARD MEMBER GINGERY:** Okay, we'll open it up for questions. Do you want to start us off Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** I appreciate that. Thank you. In (b) itself where we're directed to *follow the format and procedures established by the Administrator*. It's not clear to us.....what follows is that the limit of what that format and procedures are or are there formatted procedures yet to be developed that ? this that we have yet to be able to review?

**RICK CHANCELLOR, LQD:** May I respond?

**BOARD MEMBER GINGERY:** Yes.

**RICK CHANCELLOR, LQD:** The format that we've been using, I guess we have learned, maybe for the boards clarification that, there have not been a large number of bond release applications in coal. We have in the last several years received a lot more. Through that process, that's where we've learned that the time lines are almost unworkable. Almost every time the mines have had to request additional time for us to finish the review. The main purpose of this rule making is to fix the time line but we also realize that we're trying to standardize what goes into a bond release, what has to be considered. There's a working group co-chaired by Bob Giurgevich of our office and Laurel Vicklund of Bell Ayr mine that work with the Mining Association to work out the different categories of laws and what's really required to be done. We've used that information that's come out of the working group so far as the format for those mines that are coming in right now. Rosebud Mine has done several bond release requests. Each time we do one of those we learn more and we'll probably continue to learn more and refine that format. We do have a format based on the work done by that working group and WMA. We have copies of what we currently have available to those who are interested in that format. It may not be well defined but it's there. It's based on work the Mining Association has done with us. If that helps answer your question.

**BOB GREEN, KENNECOTT ENERGY CO.:** Sort of. I'm involved in that group as well but the main point that I'm bringing up is that if that is indeed going to be a requirement, that guideline that we're developing together, if that's going to be a requirement under these rules then if it's ? ? ? of these rules it shouldn't be included in the package. If it can't be then I guess I would request that this part or this reference be delayed until the entire document package is ready to go.

**RICK CHANCELLOR, LQD:** In response to that, there are other places that talk about permit applications that are supposed to be provided in a format dictated by the division. That format is not part of our rule either. So it's not uncommon to have...when you present something to us we won't accept garbage. Some are good and some are bad but supposedly they're all presented in the same general format so that it still states in the review to make sure everything is covered. It's not uncommon to have that type of language when you present something to us present something that we can handle. The format that we feel is acceptable.

**BOB GREEN, KENNECOTT ENERGY CO.:** It's not uncommon to try to establish that line between regulation rule and guideline. That's part of what my comments about and that is if what is listed below (b) is the extent of the format and the procedures then we have no problem with that but if it's inclined that there's something else out there in the future that is going to be as a regulatory tool then we are asking that that is able to be reviewed as a package.

**RICK CHANCELLOR, LQD:** We do plan on doing a future rule making package once the working group finishes their work. My goal is to go through Chapter 4, 5 and Appendix A and another chapter and consolidate what we feel all the items that go into getting your bond back and put that all in Chapter 15 so it's there consolidated, in one place. We feel we need to wait until your working group gets done so we have a better idea of what everybody has come to agree on. We do plan to expand this chapter quite a bit and bring those other rules in here and also those items that you guys agree to as far as the over all package.

**BOB GREEN, KENNECOTT ENERGY CO.:** Those are going to be separate actions though. Am I presuming correctly that right now what's being considered today is right here on page 2, that this is the formatted procedures to have reviewed and a recommendation on today and that any future additional procedures and format will also go through the same process?

**RICK CHANCELLOR, LQD:** If you were to come to me today and said you wanted to do a bond release on your lands, I would give you the format we've developed so far because we can't stand still and that format is expanded based on what's here on page 2. That format is a lot larger than just these items. Look at the rule on the appropriate dates of the complete history, there's discussion of description of results

achieved. That's open to a lot of discussion as to how much detail goes in there. Hopefully by the time the working group gets done, we'll outline those details a lot more and perhaps change this rule or beef it up some based on that list that comes out of your working group. Right now, the format that we have, we feel justified based on this rule here.

**BOARD MEMBER GINGERY:** We have a question in the back.

**SCOTT BENSON, TRITON COAL CO.:** I'm on the working group as well and I think currently the guideline we're working on is 150 pages long...is that right Bob? Oh, it's not quite that long but it's as long as the rules and regulations. One reason is it is so long is because of sentences like this about format and procedures established by the Administrator. We've struggled for two years meeting in this committee trying to write up what is required for bond release. We keep stumbling across Instruction Memorandum 41, another written policy about sediment control release, what the word commensurate means. There's another guideline that's in existence about bond release. There's a whole slug of written and unwritten administrators policies about what's necessary to secure bond release. Now we're adding that to this. It's clear to me that the intent of the federal regulations, the whole intent of the bond, I've talked Banks, I've talked to surety companies, what's the purpose of a reclamation bond and how do you get that reclamation bond back? The state of Wyoming, appears to believe, at least LQD right now appears to believe that it's a self-evaluation process that the company has to come out, evaluate their own reclamation work, prepare reports, prepare justifications and give it to the person holding the bond to decide if we've complied with bond release. SMCRA just doesn't say that. The OSM rules and regulations do not say that. They say you submit a request, you've complied with the reclamation requirements. We have a monthly inspection. We have annual reports. So, all along, there's all these checks and balances saying we're doing what we're supposed to be doing. It's my belief, that when you submit a request for bond release, that's all you're doing. You've finished and you just need your bond back. It should be a relatively easy process. It's a process that should not take a lot of time. The State keeps saying the time's not adequate. We need more time to do it. I'll present a scenario: for a final bond release package under the current rules and regulations as well as SMCRA's rules and regulations, the company or somebody does have to submit some vegetation data. That vegetation data has to include production sampling. A coal company typically doesn't have vegetation people. We don't go out and do our own vegetation sampling so we hire a consultant to come in, lay transects out, collect vegetation data and to do production sampling that can't be done until probably late July, early August at the earliest because you've got to wait until vegetation is done growing so you can sample it and weigh it. You've also got to dry the vegetation. Then the consultant takes this data back, they're typically pretty busy people, and the earliest I think anybody could reasonably expect a coal company to get a report back from the consultant with all the required vegetation data would be early fall. That again is assuming that the consultant isn't going to another site to collect veg. data which they usually do in the summer but you're talking early fall where you're going to get a vegetation report. So then, we get the report and compile all that information with everything else that's required into a bond release request, submit it to the agency with their current time line, it's going to take them 150 days now or something like that until they come out to inspect the site. Now, they're saying you can't inspect the site in the winter. I agree so what does that mean? They're going to have vegetation data for one growing season. Now, because we're extending the time line out, they can't come out and inspect that vegetation until the following growing season. Well, there's also rules and regulations and SMCRA as well that says you have to conduct that vegetation data the last two years of bond release. So, assuming you're on your ten year bond release period, you would collect the vegetation data in year 9 and year 10. Well under the current time lines, we're extending things out to, they wouldn't be verifying that vegetation data until year 11. How are they going to verify it? It's a whole different growing season. If anything, the time lines need shortened or we need to go back to the SMCRA mandated time lines that again, puts the burden on the agency. We request the bond back, the agency comes out, looks at it on the ground, decides if...I mean, they've been looking every month, so they decide if we meet bond release requirements.

**BOARD MEMBER GINGERY:** Okay. Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** I have three more comments.

**BOARD MEMBER GINGERY:** Any more comments on the application request?

?: Paige, this is a real small one. You're trying to get away from *request* and in (ii) you still use *request*. Would that be better *applied for* or something?

**PAIGE SMITH, LQD:** Okay. I see.

**BOARD MEMBER GINGERY:** Before we move down the page, I believe you have a question?

**ROY LIEDTKE, JACOBS RANCH COAL CO.:** This is probably down the page a bit more but following up on Scott Benson's comments, I've been active on that working group also between WMA and LQD. We're going on three years now and it may be 100 and some pages but I've got 3 3-ring binders on my shelf that I've used to document all this as we've gone through it and the many reiterations.

It just seems like we're creating a monster and I think we need to keep in mind that when the rules were written, when I look at the Environmental Quality Act (EQA), and DEQ talks about these time lines and the changes on these rules here they mention how they are consistent with permit applications. The EQA has 10 ½ pages in here on permit applications. There's ½ a page in here that describes how to get released of a bond. That ½ page mentions the fact that the Administrator goes out and makes an evaluation of that work and makes a recommendation to the director of DEQ whether the bond should be released. It also mentions the Council can promulgate rules. When you go to the rules and regulations, you've got 24 pages that tell you how to get a permit application and we've got 5 pages on the release of bonds. So again, bond release should be simple. We've had it out there at least ten years and people can see what's going on and when the inspectors come out, we do detailed annual reports every year, we do lots of monitoring and when it comes time for bond release, again, I agree with Scott Benson, it should be a request that we get bond release and it shouldn't be something that takes a year plus to do. It should be a simple process. That was the intent of the original regulations and the ACT and I'm just afraid that we're veering away from this the way these proposed rule changes are going.

**BOARD MEMBER GINGERY:** Okay. I think what I'll do is, Bob, do you want to follow-up with your comments and then we'll come back to Paige unless somebody else has a another comment.

**BOB GREEN, KENNECOTT ENERGY CO.:** Thank you. Roy touched on one already and that is that strict reading of the statutes 35-11-423c states that *when the operator has completed successfully all surface mining and reclamation activities, he may request release of the retained bond. Upon receipt of the notification and request and within sixty (60) days, the administrator shall inspect and evaluate the reclamation work and report his findings.* Our interpretation of that is that it is incumbent of the Administrator and LQD to gather this information. If that is not the interpretation of these new rules, then I would ask for some considerations on (vi) and (vii). The data that's under the proposal required to be submitted. Much of that's already submitted in the annual reports and other vehicles. I would ask that the wording be slightly revised to allow a summary description of the kind, appropriate dates and complete history of reclamation work supported by appropriate attachments and references.

The same thing on (vii) or it can be a summary of the description of the results with attachments so that we're not indeed building an entire encyclopedia to send to LQD to duplicate what they already have on the shelf in many cases.

The last point deals with (viii) and I'm taking exception with the term *requirements. A notarized statement which certifies that all applicable reclamation requirements have been accomplished.* The federal counterpart says *activities.....all applicable reclamation activities.* It's a small point but it's a big one in

that if I'm having to certify whether or not all reclamation requirements have been met out there, that's pretty subjective. There could be an inspector that comes out and says I don't think that slope is stable but I will. I might think it's stable but he won't. So does that mean that my certification is false or not? If I'm certifying that the activities have been completed which is what the federal rule requires, I'm certainly going to be glad to certify that we backfilled it, we put topsoil down, reseeded it, we've done all the activities that are required. It's going to be very difficult for me to approach someone and ask them to certify that all the requirements have been met. I would ask that that wording be changed.

**BOARD MEMBER GINGERY:** Any other comments from the audience?

**SCOTT BENSON, TRITON COAL CO.:** On that last subsection (viii) it would also be nice if they would tell us who's supposed to do that certification.

**BOARD MEMBER GINGERY:** Okay. Let's give Paige a chance to respond and then the board can think some of these over.

**PAIGE SMITH, LQD:** I may not necessarily be the one to respond simply because it might be more appropriate for the Administrator. I would like to add that we did talk about the notarized statement and who would be appropriate. Now, the OSM does not declare who can sign that notarized statement but Rick and I talked it and thought perhaps the same people who sign the Form 1 would be certainly acceptable. We then wondered if the mine manager would be appropriate because the mine manager may not sign the Form 1 in every instance. That is a point of clarification that could be added here to the Statement of Reasons if that's the appropriate place to put it that clarifies who should sign that notarized statement. Something tells me that when OSM put this in there must've been some understood thing of who is notarizable. I don't know.

**GUY PADGETT, OSM:** Mr. Chairman, I don't know that the Office of Surface Mining specifies who signs an application for a permit or who signs the bond. I think the intention here was that it be notarized to indicate that it was done in the presence of someone and carries some legality in that regard and beyond that certainly from our perspective it isn't our place to say who within a corporate structure commits the corporation. The intent is that an applicant or a requester and I would take this opportunity to interject my feeling that it matters little whether it's a request or an application. The issue here is whether it's been accomplished in accordance with the ACT, the regulations and the approved permit. That's the real guts of it. The intent is that when an operator comes forward that it's not a Kellogg's box top. He needs to come forward with a commitment saying we have accomplished what our permit, our contract says is to be accomplished. I'm not in a position to say who can commit the company to make that statement. The company is in the position to do that.

**BOARD MEMBER GAMPETRO:** Why shouldn't we though say the companies legal representative? They can determine who that is but we should at least say that.

**GUY PADGETT, OSM:** Mr. Chairman, that's fine. I guess what I'm trying to say is that that's not an issue from my perspective.

**BOARD MEMBER GAMPETRO:** Somebody who legally represents the company.

**GUY PADGETT, OSM:** Somebody who's able to commit the company and the notarization was intended to say that hey this is not some forgery....it's a document.

**BOARD MEMBER GINGERY:** Verification. Alright, Paige do you want to put all this together and make it look good?

**RICK CHANCELLOR, LQD:** Maybe I can start out. I disagree very, very strongly that it's our responsibility to prove that the mine has met the reclamation requirements in the rules. If they want us to do that, then triple our staff so we can go out and do those studies and verify that cover production in the last few years have met this that there's no degradation of stream quality of water and all that stuff. We do not feel that it's our job to do independent studies. Our job is to take information provided by the operator and determine, yes, this shows they have met the requirements of the regulations. There's a lot of regulations, both in regulations and in Appendix A, which is also a rule that discusses the performance standards. If the mine has not met performance standards, I can't release their bond. Now, there is a lot of stuff we can do a better job of tracking through time that yes, they've met AOC requirements or their post mine topography, that yes we have verified that the topsoil depths are adequate. We need to develop a system to allow them to reference that material or reference those approvals. We have found with the bond release activities we have done so far, sometimes that's not as easy as it sounds because it may be referenced in the annual report or it may be referencing some other study that was approved. You may have three or four documents that are being referenced out there that you have to pull from to find out what the reference...is that really covering the ground that they're asking for. Sometimes it covers more area. Sometimes less area. So, unfortunately, it is a complex process because these mines are big and it lasts for several years. Yes, I'd like to keep it as simple as much as possible but at some point we gotta all say you have done what you're permit said you had to do. I guess that's the big disagreement is how was that done? They say we should do that every month. We go out and check if they stripped topsoil. We check if they built their sedimentation ponds. Every month we don't go out there and say, "Okay the vegetation is this species, that species and that species." We don't do that type of inspection every month or even once a year on vegetation. I don't know how to get over the hump there. Our feeling is that it's their responsibility to prove to us they've met the performance standards. It's not our responsibility to go out there and say, "Yes you're met your performance standards." You prove it to me and I'll say, "Okay, yeah."

**BOARD MEMBER GINGERY:** Paige?

**PAIGE SMITH, LQD:** Probably the only thing I would add is that the proposed language that Bob Green submitted for the WMA that talked about *a summary description of the results achieved including a clear summary presentation of all data collected* which is roman numeral (vii)...supported by appropriate data attachments and/or references. I would just say that, I think, probably part of the intent of the LQD staff is that an operator does not have to recopy everything that's been decided on that particular piece of land that is cross-referencing to an existing document is probably perfectly acceptable as long as that document is indeed present in the permit or one of the binders on the permit. So it seems as though that is not asking too much to make it clear that they don't have to reiterate and submit something that fat for every bond release that comes in. I think the thing that complicates bond release is that you have an area bond which is could be a very large acreage. You could have your partial release which might be half of that acreage one year and the other half another year. As they reclaim on that area, then you end up with lots of different pieces of areas that have been seeded which they have been doing a really good job from what I've looked at in the annual reports of keeping track of that parcel of land when it was seeded, when it was topsoiled, etc. so we do have that information that can be cross-referenced when it comes to, I think it's roman number (vi), *the kind, appropriate dates and complete history of reclamation work performed*. That we will have on file but we'll need to know that if you started out with this big area bond, that is one bond release, we've done these two chunks for topsoil, we now want to do this chunk, and I'm just throwing this out as an idea as to what can happen, we now have this piece we want to do for final bond release and this piece we want to do for final bond release. I think it's important that when we say *appropriate dates and complete history*, that we have a good idea of where on the map they're talking about doing bond release and has this changed over time. Does that make sense? Maybe somebody from the mines can help me in the fact that things get put into smaller and smaller pieces and then they may get reconfigured into a bigger piece if you do another feeding of sorts.

**BOB GREEN, KENNECOTT ENERGY CO.:** But that's all tracked in the reclamation summary table that's in the annual report. As those parcels get smaller and smaller and are treated in different ways then you end up with individual parcels or designations. That's what you'd be able to reference in that package.

**PAIGE SMITH, LQD:** I apologize but I haven't looked at the whole scheme of things....when you're down to that piece is there a place that says we got the area bond for this back in 1992 or 1989? Is that all kept track of too in that so it's an easily referenced piece of information for that piece?

**BOB GREEN, KENNECOTT ENERGY CO.:** It should be, yes....in the history of reclamation.

**BOARD MEMBER GINGERY:** I believe there is a comment in the back of the room?

**SCOTT BENSON, TRITON COAL CO.:** The reason mines aren't going for bond release and have not gone for bond release in Wyoming, it gets right back to Rick's discussion of why we need to do this. In his discussion he used the word proved four or five times. Bond release.....there's nothing and there's no way that anybody can prove anything with bond release. Bond release is a totally subjective analysis. The Environmental Quality Act (EQA) says *for bond release you have to conduct reclamation*. They define reclamation. It says *the process of reclaiming an area of land affected by mining to use for grazing, agricultural, recreational, wildlife purposes, or any other purpose of equal or greater value*. That's what the ACT says. That's what we have to do according to the ACT to get bond release. There's no way to prove that. That's just a subjective evaluation. Somebody has to go out in the field and subjectively say....you invite the landowner along and if the Powder River Basin Resource Council wants come along. You have the G&F come along if you're saying you got wildlife habitat out there and these people that are holding the bond subjectively evaluate if you've met that subjective criteria. You can get into the performance standards, the rules and regulations which say you have to have successful vegetation. Successful vegetation is defined as effectively sustains the approved postmining land uses and has cover which compares to pre-mining values. There's nothing to prove there. There's a subjective evaluation. Do you meet post-mining land uses? A veg. report isn't going to answer that. Topsoil depth, verification data isn't going to answer that. That's subjective. The other performance standards that...right at the first of land use when it talks about bond release....have you restored the land to a condition equal to or greater than the highest previous use? There's no data we can collect to answer that question. The second one is restores wildlife habitat in a matter commensurate with or superior to pre-mining habitat conditions. What kind of data can I as a mine collect, to prove I've done either one of those? I can't. You're just gonna have to come out and look at it and decide you think cattle can eat it. If you think wildlife can use it? If you can, and 90% of the companies in this room....that's our postmining land uses....wildlife habitat and grazing. What proof do we need? We just need somebody to look at it.

**BOARD MEMBER GAMPETRO:** Don't you set baselines when you start this whole process in terms of soil depth, vegetation, density, vegetation per acre? Aren't there any baselines? I hear you saying it's supposed to be restored to the pre-mining....

**SCOTT BENSON, TRITON COAL CO.:** That's correct, there is baseline data. The purpose of baseline data is to get a permit to mine so the baseline data on soils tells you here's the soils you got, here's what you have to pick up, here's what you have to put back. That's a monthly inspection. That's where they come out and look at it. Have you complied with your permit?

**BOARD MEMBER GAMPETRO:** That's objective though. If there was 1' of topsoil and now there's only 3" or if there's 1 1/2', that's pretty objective. I don't see it as being totally subjective.

**SCOTT BENSON, TRITON COAL CO.:** But it doesn't answer the question you need for bond release and that is.....there's no where in the regs. that say you've got to have....if we follow your logic and there

was 1' of topsoil pre-mining and there's 3" post-mining, that doesn't tell you whether you can get your bond back or not because there's no requirement in the ACT or the regs. that say you've gotta have 12" of topsoil post-mining to get your bond back.

**BOARD MEMBER GAMPETRO:** Didn't you just read the thing that said it's supposed to be established back to what it was before you started? Isn't that what it says in the ACT?

**SCOTT BENSON, TRITON COAL CO.:** The land uses. It says *equal or greater value*.

**BOARD MEMBER GAMPETRO:** Doesn't that say you better have about the same amount of topsoil?

**SCOTT BENSON, TRITON COAL CO.:** Yes, that's a requirement and they inspect that monthly.

**GUY PADGETT, OSM:** It's spelled out in the permit what topsoil will be and that's what the operator follows.

**BOARD MEMBER GAMPETRO:** All I'm saying is that's fairly objective in my opinion.

**GUY PADGETT, OSM:** Yeah, I think that the intent is that if you do this, that will return it to here. The whole idea behind the performance standards and the agreement that's reached in the permit is if these are done then the end land use will be accomplished. That is in some ways modified by if you have crop lands and so on by yields where you can actually take the yields of wheat and so on and measure density and vegetation and things of this nature. The scheme is intended to be exactly that. If we at our best judgment do this then the result will be acceptable.

**BOARD MEMBER GINGERY:** I think sometimes it's which side of the fence you're on out there but this deal about proof...I think proof is probably the word that is possibly over used but it seems like the industry has an obligation and the government has an obligation. I think where it's thrown to one side or the other side that we say, "well, we don't look at anything until you bring all this data to us." The other side is it's probably ridiculous to think that the small staff that the State of Wyoming has that they're gonna be out looking at every square foot so there's some trust there. I really feel that that's where we are is that both parties do have obligations and then they're gonna have to come together there because we can't have one hundred DEQ people out there trying to see every foot and that's what I'm hearing on one end. On the other hand, I think maybe the word proof is interesting but as far as I know there's certain requirements to provide certain data. I think your argument is how does that data get to the Administrator to make a decision of have you met those criterias. My feeling is and I think all of us are in some ways bureaucrat....sometimes throw that damn book away and think of what makes sense! We have a lot of mining companies. We have one DEQ office and I think maybe that committee can get a little bit closer than 150 pages.

**SCOTT BENSON, TRITON COAL CO.:** It's 70 pages....we just counted.

**BOARD MEMBER GINGERY:** Oh good, somebody threw half of it away! What I have enjoyed about seeing this that the industry and a few other incidents such as this meeting have come forward with many of the good suggestions and majority are either accepted or modified in some way. I think what we've hit on this bonding thing is that we do have to find some acceptable criteria and I'm still amazed that it's still 75 pages. That's a burden on both parties. I'd really try to bring that to some resolution in the next few months. I don't know where we're going to go with this Chapter 15 today but if I'm reading the tea leaves right, one, we do have a process that we're already in agreement in. There may be some modifications when this committee does make a report...a process anyway coming in. I think there were two or three suggestions on how to get the report in but I really have difficulty that one party says the whole burden is on them. Follow the procedure and they'll get into the Administrator and they'll take action. I think the important thing that I saw today was that to do a better job is where we started out is this time period that 15 days and I forget

how many other days were talked about. I would think that would almost be beneficial to the industry that you get a square shot at whatever you submitted that's being reviewed properly so whatever the outcome, i.e., 1) it's approved and you do get your money back, 2) if it is not approved, you'll know exactly why you didn't get it back. I would think the time element may be to the benefit of the industry so you do get a square shot at this instead of putting the bureaucrat under some gun that something has to take place. Those are my own personal aspects and I'm sure the rest of the board has greater, more in depth understanding of that. So maybe if we want to is to start back up at the top if you wouldn't mind Paige and we'll see what those changes are. I think where we are, and the rest of the board can certainly speak up, is that overall direction that we're going to have to come back and I would gather that we're gonna have to make some new rules on that bonding as Rick said but today is to accept what we have on this page and make the changes that all the parties can have some input on today and the board can agree upon. Is that acceptable to the board?

**BOARD MEMBERS:** Yes.

**BOARD MEMBER GINGERY:** Okay. So let's start there again Paige and find those changes that are in our parameter to either change or keep them as they are.

**PAIGE SMITH, LQD:** I probably would turn to the ones that Bob Green turned in for...well...it looks like you have asked for 1.(b) to either not be changed at all and in lieu of it if we do proceed with the proposed changes to 1.(b) and I don't want to put words in your mouth but.....

**BOARD MEMBER GAMPETRO:** Bob, what if we said....your concern was that in 1.(b) there's more coming.

**BOB GREEN, KENNECOTT ENERGY CO.:** Correct.

**BOARD MEMBER GAMPETRO:** What if we said in there Rick, this isn't is but you'll get to review what comes.....this is the minimum requirement for now and then....he's basically said that to you. I don't know if you can put that into 1.(b) as such and later on when we're gonna make rules, they'll be reviewed and the process will be ?.

**BOB GREEN, KENNECOTT ENERGY CO.:** That would be great. Actually, if it could read that the applicant shall follow the following format and procedures, I think that one term in there would clarify that what's on this page is currently what's going to be required and then when the new package comes in then that language can be modified.

**BOARD MEMBER GAMPETRO:** I think if you said that though, then you can't have anything else. That's why you said minimum.

**RICK CHANCELLOR, LQD:** Would you say keep the wording *at a minimum*?

**BOARD MEMBER GAMPETRO:** I think that's the word he's trying to get rid of.

**SCOTT BENSON, TRITON COAL CO.:** I would suggest we use OSM's words straight out of the OSM rules and regulations. That's been the approach these past several rule packages have taken.

**PAIGE SMITH, LQD:** Which particular language are you referring to Scott?

**SCOTT BENSON, TRITON COAL CO.:** The whole Chapter.

**PAIGE SMITH, LQD:** You mean the whole approach that OSM has? Is that what you're suggesting or are we referring to a specific word?

**SCOTT BENSON, TRITON COAL CO.:** These proposed regulations.....I believe every section, are more stringent than the federal requirements. The State of Wyoming does not have to pass regulations more stringent than the federal requirements. They have to pass regulations as stringent as the federal requirement. I don't understand, why, in bond release the State of Wyoming feels they have to be more stringent for bond release. The State of Wyoming has proven reclamation that in my humble opinion is as good as anywhere in the country. OSM and other states are enforcing the regulations as written in SMCRA and OSM requirements on these Mom and Pop operations back east that in a lot of cases they don't have real technical specialists. The State of Wyoming does. We're the largest coal mines in the country. We've got very successful reclamation. I don't understand why we're talking about making our requirements more stringent than the federal requirements.

**BOARD MEMBER GINGERY:** Do we have any other comments from the audience? Yes?

**GUY PADGETT, OSM:** I like to use the word no less effective than rather than stringent because that is the actual legal term. The proposed rules that I see here on Chapter 15 really don't, in my view, substantially change what has already been approved. There are some changes in clean-up but the real meat of it is that (viii) where the notarized statement is placed in because that's the one area where deficiency exists in the existing rules from OSM's perspective. If that helps in any of your considerations, I hope it does.

Secondly, it may, to the extent that what is written here in my opinion would be certainly acceptable to the agency. Changes that have been talked about on item (vii) for example would allow, Paige you mentioned Bob's language, I think would certainly be acceptable to the agency. It's no less effective than our regulations. Every state regulatory authority and OSM, where we are the regulatory authority on large indian lands mines as well as Mom and Pop operations does have some kind of other understanding procedures and so on on how one goes about implementing what is here. I would say that to the extent that you leave this regulation the way it is, is eminently passable and if you want to develop other procedures and policies to follow internally, better not to include it in the regulation because then you've got to go back every time to OSM to change it. I think that's cumbersome. I just say these in general terms making no judgements in regard to the other very good comments that were made by Scott and Bob and others.

**BOARD MEMBER GINGERY:** I appreciate that. Bob, you have a comment again?

**BOB GREEN, KENNECOTT ENERGY CO.:** I was just trying to get back to Rick's question. The preference would be if that were stricken from there then whoever applying for bond release would have a clear path to follow as new information say from the guideline that those new packages that you got in the future...those then can be added to this in that change package.

**RICK CHANCELLOR, LQD:** You are aware that item (vii) would expand that....because what I hear you saying is that these few items is all that you feel is going to be required. If you look at (vii), it is pretty broad. As long as you understand that (vii) is open to interpretation right now because there is no detail there and it is very broad.

**BOB GREEN, KENNECOTT ENERGY CO.:** I presume it can be broadened by adding in a statement or take it out!

**RICK CHANCELLOR, LQD:** Okay, yeah, that's what I'm saying. Even if it's taken out, (vii) opens the door saying you gotta describe this stuff to us.

**BOB GREEN, KENNECOTT ENERGY CO.:** So you're willing to pull (vii) too?!

**RICK CHANCELLOR, LQD:** No!

**PAIGE SMITH, LQD:** Would it be helpful if we took out the word format? It would then read, "the application shall follow the procedures established by the Administrator and shall contain at a minimum the following information."

**BOB GREEN, KENNECOTT ENERGY CO.:** It's still the same question as to are these the procedures or those forthcoming?

**RICK CHANCELLOR, LQD:** Yeah. I think, to me, the procedures are probably more vague than the format.....I mean the procedures is spelled out in the rule really. You submit it, in the proposed rule you do a publication to alert people, you go through a technical review, once that's done you go through a final publication and let the public comment on it. To me, that's procedure so I don't have a problem taking procedures out. The format....yeah, if you take it out I'll still get the same format as if it were left in. If we can't understand your format, it'd probably be denied instead of approved. If that's okay with you, I'm fine with it.

**BOARD MEMBER GINGERY:** Let me ask a question and it's dealing with the future. I would gather that this committee that you're working on, the main thing you're working on is the format, correct?

**BOB GREEN, KENNECOTT ENERGY CO.:** And procedures as well.

**RICK CHANCELLOR, LQD:** I think it talks about the detail or what items have to be covered. Maybe Bob Giurgevich, in the back, is our representative on that. He's co-chairman.

**BOARD MEMBER GINGERY:** Okay. Bob, bring us up to date on that.

**BOB GIURGEVICH, LQD:** Mr. Chairman, I don't know if I can bring you up to date but I will try to answer a couple of questions. The document that this joint group is seeking to develop includes both format and content. I have to say we have not agreed on complete content but we have tried to itemize major elements and major suggestions on how to present that information or that data. I want to emphasize that's one reason why the document is as long as it is because we are not only stating format, we're suggesting content, how to present it, and in some cases how those data and information will be evaluated. The other thing that makes it so long is because we're trying to make some stand alone sections. If you're doing one of the four bond release processes, you take out one section, you may read some information up front but you go to an attachment, pull that out and that's all you really need to do for format and content. So there's some duplication which would make it long. That may be a partial answer to your question but I also want to reiterate the pieces of the most recent conversation of Rick Chancellor and Bob Green. I see item # (vii) as being a major change from what's there now. It only opens the door to the work that this joint committee is doing and we will still fight lots of philosophical battles because I truly believe many things these rules and regs. are asking the board to do at this point, and they're not asking you directly, but to answer some philosophical questions that you probably get some sense of now but I feel there's some way we have to answer those philosophical questions first. For example, what elements really....it's been beaten back and forth here all day....what elements really have to be evaluated in any one bond release stage? By elements I mean is it a permit commitment? Is it a performance standard as stated in the rules and regs. or is it some other rule and reg. that doesn't say performance standard but it says something that you shall do. Those elements and how they are to be addressed in bond release is what I call a philosophical question and I felt drawn and quartered many times in this working group not because it's a negative sense but there are ten people going in ten different directions because we don't agree on the philosophical question and answer and

we're trying to shoe-horn those answers into things in the rules and regulations. So, somehow, you as a board may have to be presented more directly these philosophical questions.

**BOARD MEMBER GAMPETRO:** Have you, as part of your process, taken a look at maybe some other states that are heavily extractive industry type states and what kind of process they use for bond release?

**BOB GIURGEVICH, LQD:** I believe that most people on the committee have some knowledge of other states. We have not set down and chosen any other state to use its specific process but I think all of the people on the committee, at least the survivors at this point, there's been some....and not to be negative about those folks that have kind of faded into the wood work but I feel that everybody who's kind of survived at this point is well aware of other procedures and other states and in some cases have been involved in using those but we have not tried to choose any one particular other state format.

**BOARD MEMBER GAMPETRO:** I didn't mean that. I guess I would be concerned if you were using states that extractive industries are small to them compared to Wyoming where it's our major industry.

**BOB GIURGEVICH, LQD:** And I would answer another part of the question that may be in yours is that there are some states equivalent to Wyoming that have a simpler process and a simpler outline. There are some that have much more detail because they've chosen different pieces to focus on.

**BOARD MEMBER GINGERY:** Bob, I have a question. This first page that we're dealing with in Chapter 15, it kind of opened up this whole question and what we're working on today and what you're hearing, is the committee working within those parameters or were you asking for the board to set some type of parameters? I'm trying to get a better definition of what you were saying.

**BOB GIURGEVICH, LQD:** No, Mr. Chairman, I wasn't suggesting that you should do that detail. I think you have amazing stamina from what I can see now. If we ask you to go into that detail, I think you'd fade into the wood work really quickly too!

**BOARD MEMBER GINGERY:** I was a little worried about that statement!

**BOB GIURGEVICH, LQD:** But I would answer....I think there was another element of your question. The items that are listed now in 1(b)(i) through (vii) are essentially the kinds of things that we are taking and trying to break out by type of bond release and saying these elements apply to this type, these elements apply to this type and then once we've reached some agreement on those elements we are plugging in how to address those elements. The bulk of what we're working with is right here now but roman number (vii) is the one where....I mean...that's a big catch all. There's a whole lot of stuff thrown into that one.

**BOARD MEMBER GINGERY:** Let me ask you and I know you can't answer for the committee but if that number (vii) as it stands as we see it today, say we just go ahead because we don't know exactly when you're reports going to take place, if (vii) as it stands right now and we have a company that came in tomorrow asking for a bond release, where will it go? Do we have enough meat on the bones here to make sure that process takes place even though we don't have the details that the committee is working on?

**BOB GIURGEVICH, LQD:** Mr. Chairman, I would answer your question this way. Item (vii) in particular, all of that is brand new wording. That gives the working group a lot more black and white language to substantiate some of the stuff that we put in there. I want to qualify though, some of the major differences within the committee revolve about the language that is essentially written here though. Do you have to address performance standards, if so, which ones, and when, by what process? Do you have to address permit commitments? If so, by what process? When and who evaluates those? But this gives us something more to work with now than we have. It's not a single solution.

**RICK CHANCELLOR, LQD:** Mr. Chairman, to answer your question, if someone came in today, a new company and said they wanted to do a bond release, we would go to what they have agreed upon to date and say here's a format, here's the different elements that go into it and say this is where we're at. As Rosebud can probably attest, it's still evolving that we're still fine tuning stuff. Some things we ask for less of and some things we ask more of as we learn through this process as to what works and what doesn't work on a bond release. So I don't mind changing (b) itself if (vii) is kept with added language that Bob had that referenced different material because that's probably the crutch of the information is that (b) does recognize that there's different elements out there that we have not put into detail into the rule yet. My goal is to try to capture not 70 pages into the rules but at least capture the major headings that these are things that need to be checked off on. Some of these may have been checked off years ago but still we need to say it's been done.

**BOARD MEMBER GINGERY:** Well, let me ask Bob of WMA what Rick says there would the Association find that compatible as this time?

**BOB GREEN, KENNECOTT ENERGY CO.:** Yes, that should work. That would be a good compromise in that it would define what's essentially required today along with additional information that the Administrator's discretion also applies to but it would indeed define that with the provision for additional requirements later on.

**BOARD MEMBER GINGERY:** Board members, how do you feel about this? Do you think that maybe we've reached an area that we could go ahead and approve?

**BOARD MEMBER PROFFITT:** Yeah, I was almost to the mind that we were putting the cart before the horse during some of this discussion. I think maybe by this compromise in language we can go forward with what we've got and still input what is yet to come at a later date.

**BOARD MEMBER GAMPETRO:** The only thing I would add is this last number (viii) if we're that far, I would have a problem with just activities as was proposed by Bob. All activities means is that you went out and did something. It doesn't mean that you accomplished anything. Maybe we could, again, find an in between ground...this notarized statement of reclamation standards, perhaps, instead of requirements have been met as opposed to activities....activities, you know, doesn't mean anything happened or was accomplished. It just means it was attempted.

**BOB GREEN, KENNECOTT ENERGY CO.:** Activities though does mean that you backfilled to the void that you put topsoil on. It could be to x depths that you met your requirement there but that is an activity.....

**BOARD MEMBER GAMPETRO:** See, you just used the words met requirements.

**BOB GREEN, KENNECOTT ENERGY CO.:** Yeah, I know and I tried to avoid that!

**BOARD MEMBER GAMPETRO:** It means you didn't backfill it half-way when you say that you've met the requirements. You could've planted grass that didn't grow. Some kind of meeting of standards or something other than just activities. That's all I would ask for.

**BOB GREEN, KENNECOTT ENERGY CO.:** I guess I would reiterate that that is the federal phrase. That they had activities in there for certification rather than.....

**BOARD MEMBER GAMPETRO:** They're not always right either though!

**RICK CHANCELLOR, LQD:** It could be that with (vii) and (viii) combined.....(viii) saying that we've done the work, you've done these activities and then (vii) says the work is acceptable. Maybe that's the way to look at it.

**BOARD MEMBER GAMPETRO:** All you really need is (vii).

**RICK CHANCELLOR, LQD:** Well, (viii) is required by the feds.!

**GUY PADGETT, OSM:** Mr. Chairman, again, from my perspective and OSM's, it doesn't make any difference whether it's activities or requirements. I don't care what word you use and I'm sure it's passable either way because the key here is that the operator has to affirm and certify that all the applicable requirements or activities, insert either word, have been accomplished. The key is in accordance with the Act, the regulations, and the approved permit. If you want to call it an activity, okay, I backfilled it and I backfilled it as my permit required. I put soil down and I did it as my permit required. I don't care if you call it requirement or you call it activity. It doesn't make a bit of difference to me because the key is that is was done in accordance with the Act, the regulations, and the permit.

**BOARD MEMBER GINGERY:** So, from your statement, if they completed the activities that would be within the framework?

**GUY PADGETT, OSM:** Mr. Chairman, that's fine with me because they've done the activities and then it's really the phrase that follows and as Rick pointed out, number (vii) above which really says, "what is this activity?" Well it's what the permit required. So, yes, I think that the intent is very well laid out here regardless of what word is used and that's why it doesn't bother me.

**BOARD MEMBER GINGERY:** Bob?

**BOB GIURGEVICH, LQD:** Mr. Chairman, I might suggest that reclamation is defined in the Act and it's a long laundry list of things so perhaps just consider the language that says, *certifies that reclamation has been accomplished in accordance with.....*because reclamation is defined in the Act. I think that would work as it gets away from whether it's one practice, two practice, an event or anything, it just says reclamation in the Act.

**BOARD MEMBER GINGERY:** Rick, do we stand pretty strong on that then?

**RICK CHANCELLOR, LQD:** It sounds okay.

**SCOTT BENSON, TRITON COAL CO.:** This notarized statement is required for all phases of bond release I'm assuming except for area bond release. I don't know if that's the case or not. At least for incremental bond release requests, all of this will be required so if you're doing Phase 1 incremental bond release request which is just topsoil placement you can't certify you complied with just the Act. That's when we get into trouble even with this notarized statement and just what the word is whether it's requirements or activities. Most of the mines out here....nobody has final bond release....borrowing what Rosebud just got, nobody's got final bond release....they've been in existence for 20 years. Some other mines 30 years. We've gone....assuming a general manager and officer of the company has to certify this, our company has been sold four times in the last 4 years. So, somebody's going to be responsible for certifying something that happened 30 years previous? Are they going to certify that everything that was required 30 years ago happened? How can they make that statement?

**BOARD MEMBER GINGERY:** I'd like to comment on that statement. I've just been through that. When you accept your position, you take over a company, you inherit all the employees and all the liabilities. That's my laymans view point. As a manager, I have to tell you that's very true. You accepted it, you inherit the past.

**GUY PADGETT, OSM:** Mr. Chairman, there's adequate regulations in Wyoming that have to do with the transfer of permits where the new entity is made very painfully aware that they are indeed inheriting all of this and it comes with the package.

**BOARD MEMBER GAMPETRO:** You can't get around it by buying the assets and not the corporation.

**BOARD MEMBER GINGERY:** Okay, let's see if we can put some of this together. Do you have some of the suggestions that were made? Maybe we can start at the top and move down this and get everyone to some kind of agreement.

**PAIGE SMITH, LQD:** Let me scroll up here just to get us back on track to (b). I sort of lost track of different wording that was bounced around about the application shall follow the format and procedures established by the Administrator. Was there some agreed upon language associated with that?

**RICK CHANCELLOR, LQD:** I think what I was agreeing to was that the application shall contain the following information but keep item (vii) with the language that references other material and industry just has to realize that that is a big door.

**PAIGE SMITH, LQD:** Are you suggesting that *at a minimum* be removed as well?

**RICK CHANCELLOR, LQD:** Yes. As long as I get (vii), I have the door open.

**PAIGE SMITH, LQD:** It seems like we then jumped down to....was it (vi)?

**BOB GREEN, KENNECOTT ENERGY CO.:** (vi) and (vii).

**PAIGE SMITH, LQD:** For number (vi) the WMA has proposed....*a summary description of the kind, appropriate dates and complete history*....which that description should be in each annual report right now and that they would end the sentence with *supported by appropriate attachments and/or references*. We would propose to adopt that language for (vi).

On (vii) is a similar approach where it would say *a summary description of the results achieved including a clear summary presentation of all data collected*. Now if I can interject one comment I'd like to make, Mr. Chairman, is it alright to do so?

**BOARD MEMBER GINGERY:** Yes.

**PAIGE SMITH, LQD:** As I read this of course with my background being vegetation, I had a little bit of concern about....the summary description up here doesn't bother me in the least but to include a clear summary presentation of all data collected, I would have a small problem with that if all I got was the average cover. I would want to see the raw data associated with the vegetation data for the two final years of bond release.

**SCOTT BENSON, TRITON COAL CO.:** That's a requirement for annual reports though Paige. You have to submit all vegetation monitoring data in the annual report. So you have the whole vegetation report in the annual report already.

**PAIGE SMITH, LQD:** You're saying that your first years data is in the annual report, consistently? Is that a requirement?

**RICK CHANCELLOR, LQD:** I'm not aware of that. I think what you're talking about Scott is the interim veg. monitoring report. That is different than the bond release vegetation studies.

**SCOTT BENSON, TRITON COAL CO.:** I don't think my permit is different than other permits but my permit says and I thought it was required by the regulations that all monitoring data goes into the annual report.

**RICK CHANCELLOR, LQD:** Monitoring data. The monitoring data is different than the final vegetation studies. There's a difference between intern-vegetation monitoring that the regulations require to report in the annual report and the final two years of the vegetation studies.

**BOARD MEMBER GINGERY:** Bob?

**BOB GREEN, KENNECOTT ENERGY CO.:** Thank you Mr. Chairman. This is in response to Paige's concern. That's the reason for the addition at the end is supported by appropriate attachments and/or references so that way if it is in the annual reports it will be referenced. If not, then that data will be attached.

**PAIGE SMITH, LQD:** Okay, that's what you're intent is?

**BOB GREEN, KENNECOTT ENERGY CO.:** That's correct. You'll be getting everything, it's just a matter of the report is going to be a summary with the attached data to back up that summary.

**PAIGE SMITH, LQD:** To me that sounds very reasonable but I'm just wondering if we need a clarification to that effect in the Statement of Reasons. Was that the intent here? Again, I again am only thinking of vegetation data because that's all that I'm really familiar with. As a hydrologists, would you be looking for the actual data to be in the report or.....

**ROBERTA HOY, LQD:** Yes, but this is where you get into the....if you simply cross-reference an annual report and it's been changing over the years but that evaluation over time you had a baseline, you've changed things from baseline, it's come back to point x of how does that point relate to baseline and could you live with the difference between baseline and whatever point x is? Sometimes in annual reports you only get that years data. If you don't have that evaluation and they say well we're just cross-referencing the last twenty years of annual reports, then you wind up with if they haven't done in their annual report, and again, more and more people are doing this in realization that you have to do it really for the PHC and for the bond release evaluation but you could wind up with a cross-reference of twenty years of annual reports which there's no graph over time.

**BOB GREEN, KENNECOTT ENERGY CO.:** But that's the summary though that's being requested. You'll be getting the summary and then if the year-by-year data is referenced that still gives you the bases of what that summary's about but that summary would be the trend.

**ROBERTA HOY, LQD:** I would hope so but unfortunately sometimes summary doesn't include the trend. It gets very narrowed down to something less than that so that's why I would just be careful in terms of referencing that we don't substitute that for actually constructing a viable summary.

**PAIGE SMITH, LQD:** And I was wondering if maybe a statement should be in the Statement of Reasons to clarify that the addition of this language at the end here, *supported by appropriate attachments and/or*

*references is intended to provide the type of detailed data collected as required by the Administrator.* Well, something to that effect because again I'm afraid as the years go by and the people in this room aren't here that someone else can interpret *supported by appropriate attachments and/or references* as being here is my summary, my one years information for hydrology. That it would not necessarily give the reviewer the authority to say, "I'd like to see your raw data from your cover production". I'm just afraid that that will be misconstrued to not mean something that detailed.

**BOARD MEMBER GINGERY:** We may have a suggestion.

**LARRY KLEINMAN, BLACK BUTTE COAL CO.:** In all of the packages that Rosebud Coal has submitted, we have provided the raw data. In the last case we said that this raw data is found in a couple of other places. Now let me say that there were four parts to the raw data. There was a baseline of the disturbed area. There was the baseline of the concurrence or control area, whatever you want to call it. There was the current evaluation of the control area and also a current evaluation of the reclamation. So there's four sections to that raw data. When you consider that there were up to 60 individual samples or individual raw data sheets for each one of those four....or from 15 to 60....it's substantial the number of pages of raw data that can be submitted so keep in mind how much paper work we're trying to do. I have no problem with submitting it because it's certainly there and available but it does make, like Paige said a while ago, a volume that thick to submit.

**PAIGE SMITH, LQD:** Although, didn't you reference your permit for the baseline? Wasn't it already in your permit?

**LARRY KLEINMAN, BLACK BUTTE COAL CO.:** I did this last time and we'll see what the comments come back as.

**PAIGE SMITH, LQD:** It's already there and again, and I'm just bringing up because what I'm afraid of is by the continued use of the term summary that maybe we'd be better off if we said supported by appropriate attachments and a reference as like appropriate detailed attachments or references because it's probably not veg. that's the only issue, it's just that's the only one I can relate to.

**BOB GREEN, KENNECOTT ENERGY CO.:** Do you want data attachments?

**PAIGE SMITH, LQD:** Maybe that's a better term, data attachments, because that's what we'd be looking for.

**LARRY KLEINMAN, BLACK BUTTE COAL CO.:** That would work.

**PAIGE SMITH, LQD:** So it would be *supported by appropriate data attachments and/or references.*

**BOARD MEMBER GINGERY:** Okay.

**PAIGE SMITH, LQD:** Again, the references would work towards saying the data is in the D8 of our baseline and they wouldn't have to resubmit it. Would you like me to read that again?

**BOARD MEMBER GINGERY:** Yes, please.

**PAIGE SMITH, LQD:** So it would start out with....again, we're on....(vii) which would say A summary description of the results achieved including a clear summary presentation of all data collected, sampling methodology, analysis conducted and results of analysis as they relate to the reclamation and performance standards specified in these regulations and the approved permit, supported by appropriate data attachments and/or references.

**BOARD MEMBER GINGERY:** Okay. Are you ready to tackle the next one?

**PAIGE SMITH, LQD:** I have to say that I am not sure why the term *requirements* is in here as opposed to activities. It may have just been a typographic error on my part and I apologize for that.

**RICK CHANCELLOR, LQD:** My recommendation is to use OSM's language.

**PAIGE SMITH, LQD:** I think that would be an easy way to do it.

**BOARD MEMBER GINGERY:** Does that wrap up number (viii) then?

**BOARD MEMBER GAMPETRO:** Were we going to put *by the company's authorized representative* or something like that?

**PAIGE SMITH, LQD:** Oh, we didn't get into that. A notarized statement by the company's authorized representative which certifies that.....Rick is that a term we use for Form 1?

**BOARD MEMBER PROFFITT:** Do you want to use company or operator?

**PAIGE SMITH, LQD:** Or applicant?

**GROUP:** Applicant.

**BOARD MEMBER GINGERY:** We have a question.

?: This is kind of for Rick. It's back to (vi)....are we with the new CARF (coal annual report format), we're submitting that reclamation volume. Is that being updated with new annual report information as it comes in?

**RICK CHANCELLOR, LQD:** It's supposed to.

?: I heard a disturbing rumor that it wasn't.

**RICK CHANCELLOR, LQD:** I think we found a case or several cases where it wasn't and so we re-stressed that activity.

?: That's going to be crucial to number (vi) is that it get updated.

**RICK CHANCELLOR, LQD:** Yeah, that gives a good summary. Ideally if we were really good and had more people and money we'd do a GIS system for each mine that would incorporate all this information on that map so that we could say okay, you want this area released, then we click on it and find out what's all been done on that.

?: You're just going to hire someone to do that right?!

**RICK CHANCELLOR, LQD:** Go talk to your friendly legislators and give me a position or two to do that! I think that'd be the best way to do this is with a GIS system that we could always input into every time we approve something or when we go out on a monthly inspection and say, yes, I've checked this topsoil depth and it's okay.

?: It's kind of off the subject but this AML project that's been funded for reclamation management tool would do a lot of what you're talking about.

**SCOTT BENSON, TRITON COAL CO.:** When I was rambling, I brought up the point about area bond release. Are these requirements?

**RICK CHANCELLOR, LQD:** The area bond release that goes through Chapter 15 would be a requirement for this.

**SCOTT BENSON, TRITON COAL CO.:** But if it was part of your annual report?

**RICK CHANCELLOR, LQD:** If it's the annual report type of area bond roll over, it would not.

**BOARD MEMBER GINGERY:** Let me ask the board, do you want to just hold that and then we can go through the rest of this and we'll do a motion or do you just want to make a motion on Section 1.

**BOARD MEMBER PROFFITT:** Yeah, let's do it and then as it all is amended.

**BOARD MEMBER GINGERY:** Then why don't you make a motion for us.

**BOARD MEMBER PROFFITT:** So moved.

**BOARD MEMBER GAMPETRO:** Second.

**BOARD MEMBER GINGERY:** The motion has been made and seconded. Any additional discussion? Hearing none, all in favor of the motion signify by saying aye.

**BOARD MEMBERS:** Aye.

**BOARD MEMBER GINGERY:** Those opposed same sign? Motion carries. Let's move to Section 2.

**PAIGE SMITH, LQD:** Section 2 is on page 5. This is a new section being proposed entitled First Publication and Subsequent Processing Requirements. What we're proposing is to have two publications associated with bond release as opposed to the one currently required and the one that's in the federal rules.

Essentially what we're saying is that within 15 days of filing an application, the applicant shall publish a notice of the filing once a week for two consecutive weeks in a local newspaper and that affidavit becomes part of the application. That is essentially what we do with any permit application at this time. In this case, the applicant is not waiting for any sort of decision being made by the Administrator. They just need to file it within 15 days of submitting the application. It gives the public notification that a bond release request has come in.

Then we have a new subsection (b) called Complete and technically adequate application. This is taking some existing language but reconfiguring it to get away from 15 days instead of going to 60 days. So essentially this says *within 60 days of receipt of the application, the Administrator shall determine if the application is complete and technically adequate, i.e., does it contain all information required by Section 1 immediately above.* This language was added, *the application will not be deemed complete and technically adequate until the times or seasons are appropriate for the inspection of the reclaimed area as required by Section 3 of this Chapter.* That of course gets into a concern that Scott Benson has about timing and he's certainly correct. If it comes in in November and obviously you can't go look at vegetation in November, it would take until early summer to be able to go out and look. So yes, that application would be held up pending the field visit. Under this subsection it says *if the application is not complete and technically adequate, the Administrator will promptly notify the operator in writing of any deficiencies.* On the other hand, *if the application is complete and technically adequate, the Administrator will promptly notify the operator in writing of that fact.* With that, I know there's comment.

**RICK CHANCELLOR, LQD:** Before we listen to the comment on this, I'd like to point out some clarification. The reason for the first change we thought about doing is to send the application to publication based on its completeness, we felt it was a disservice to anybody who was interested in it because the application may be totally technically deficient and what's there to look at? They may have submitted those sections but it may be garbage. So, we felt it would be more appropriate to wait until we had a chance to review it and say, "Yes, you have provided all the information and yes, it's good information". So we said okay, let's wait until we review it and determine if it's adequate before it goes to public notice. The concern was raised that according to the OSM rules, they send to publication right away without a review. To try to be consistent with that part of the OSM rules we said we'd go ahead and do that as a notification that's in-house being reviewed before we do the final technical review and technical publication. That's how we got to two public notices.

**BOARD MEMBER GINGERY:** Bob, I believe you had a comment?

**BOB GREEN, KENNECOTT ENERGY CO.:** Thank you. The first one that I will address is the new term technically adequate. That is something that does not have a federal counterpart. It's indeed expanding on the process and procedures for bonding. It does seem to start to bring bond release into the same type of review format that we have to go through for submitting right now. Technical reviews can take up to 150 days under that format and we're a bit concerned that this format is going to lengthen the process rather than shorten it. We would ask that technically adequate be handled as it had been in the past as part of the completeness consideration.

**RICK CHANCELLOR, LQD:** The word completeness, we have historically interpreted that to mean, you could provide those sections and not based on a review of that section. That was our concern in the first place was that we may have to be required to deem it complete just because they have a paragraph on that section that's required in part 1. That's why we said it doesn't really help us to just say it's complete. If you want to say *technically complete* or something like that it'd be different.

**BOB GREEN, KENNECOTT ENERGY CO.:** In combination with your new Section 7, I would assume that as long as that information is there and complete, that you would be deeming it technically adequate at the same time.

**RICK CHANCELLOR, LQD:** The language used in here is that it's complete. We deem a new permit application complete but it doesn't mean it's technically adequate at all. On revisions, we skip that completeness step and go straight to a technical review. In the bond release for OSM they just talk about being complete. I don't know if they interpret the word complete different than what we have been doing here. Maybe they interpret it as being technically adequate. Paige says no.

**PAIGE SMITH, LQD:** They don't even use that term. They just say, you submit your application, go to public notice, we tell you yes or no you can have your bond back.

**RICK CHANCELLOR, LQD:** So, if it's not technically supportive, it's denied.

**PAIGE SMITH, LQD:** Right. Although that's not spoken here. They don't give their reasons for denial. They just say it will either be accepted or denied. The operator will find that out in writing. As you said, we have been trying to have this adhere to the way that we do our reviews. I was just going to follow up on something. Rick is correct with that definition of complete. It's in the statutes, in the LQD section under WS § 35-11-103 (xxii) which says a complete application under W.S. 35-11-406(e) means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter. So that is essentially how we've always looked at it. You've got a chunk to review but you haven't checked to see if all the numbers add up.

**BOARD MEMBER GINGERY:** Paige, are you saying we just leave *technical* out because *complete* is inclusive?

**RICK CHANCELLOR, LQD:** No, it's not.

**PAIGE SMITH, LQD:** It would not be inclusive. It is a very preliminary decision that we make that the papers there but we don't know what the words say on the paper.

**BOARD MEMBER GAMPETRO:** Why don't you use the words in the statute?

**PAIGE SMITH, LQD:** So you're suggesting that instead of using the word technically adequate that we use wording that says that the application is acceptable for further review for substance and compliance with the provisions of this Chapter.

**BOARD MEMBER GAMPETRO:** Or meets what that is. That's what this says. Technically adequate means it meets the requirements for substance and whatever you said.

**PAIGE SMITH, LQD:** This says it's ready for review if I'm understanding your question. Completeness just says the elements are there to be reviewed and then we do what we call technical review and I can't remember if that's what it's referred to in here and that's what triggers the public comment period is once it's been deemed technically adequate by the staff.

**BOB GREEN, KENNECOTT ENERGY CO.:** That 406(e) applies to mining permit applications not bond release applications.

**PAIGE SMITH, LQD:** It says application.

**SCOTT BENSON, TRITON COAL CO.:** It's in reference to applying for a permit not requesting bond release.

**RICK CHANCELLOR, LQD:** If you look at the time lines presented in the OSM rules and our current regulations, if we follow that strictly, we'd be denying almost every application we get just because at the end of 60 days we cannot verify that they have met those requirements. So, we'd say, "We don't know. Time's up". We're trying to build in a mechanism that if we have comments, the operator has a chance to come back and say here's what I really mean and to clarify the comments. Then we can say it's ready to go.

**BOB GREEN, KENNECOTT ENERGY CO.:** So, technical adequacy is not going to add any more to this process?

**RICK CHANCELLOR, LQD:** I can only relate to an experience we've had primarily with Rosebud. We have gone beyond the 60 days after being deemed complete to address those comments that we have on the package. So, does it go beyond 60 days? Yeah. If we change this language we go beyond 60 days, yes, but we already go beyond 60 days....we sort of finesse things but it's sort of awkward to have to finesse it like that. It works when we just come out and say what we're doing.

**SCOTT BENSON, TRITON COAL CO.:** Industries concern with the whole technical adequacy approach again just gets back to the bond release issue. If you say you've gone through Rosebud and it took more than 60 days to address whether an application was technically adequate.

Larry, what did you have to do? Did you have to go out and rip it up and reclaim it? Something was wrong. If it took more than 60 days, there was something wrong with your reclamation that you had to go out and fix to get bond release.

**RICK CHANCELLOR, LQD:** No, I didn't say that Scott.

**SCOTT BENSON, TRITON COAL CO.:** That's what I'm saying. That's not happening. That's what needs to be looked at. If you're going to review.....

**RICK CHANCELLOR, LQD:** But Scott, I can't go out there and just eye ball it. To me, that would be totally inappropriate for me just to eye ball the reclamation and say, "It looks fine to me so here's your bond back". That's what I think I hear you saying.

**SCOTT BENSON, TRITON COAL CO.:** That is the purpose of bond release. That is what reclamation is. Reclamation is subjective. Does it meet the post mining land use? Can cows graze it? Is it wild life habitat? If those are your post mining land uses. That's the question at bond release that needs answered. The thickness of the topsoil, the species you planted. Those are performance standards that you have to comply with on a monthly basis because they're requirements of your permit. Those aren't requirements for bond release.

**RICK CHANCELLOR, LQD:** How do you know if livestock can graze it? If one cow is out there or two thousand?

**SCOTT BENSON, TRITON COAL CO.:** Well, I've suggested it before and I don't mean to be factious but you can invite my 7 year old daughter along and she can tell you whether cows can eat it or not.

**GUY PADGETT, OSM:** Mr. Chairman, if I could interject with a point of clarification. On final bond release is also a liability release. It is also a time when jurisdiction ends in regard to the regulatory authority. So that does entail some kind of clear statement on the part by the regulatory agency that we're done, our jurisdiction is over. So, that final bond release is a little different than all of the other bond releases before it.

**BOARD MEMBER PROFFITT:** It seemed like that language that I saw in Scott's letter on the 60 day requirement only requires the Administrator to evaluate the reclamation work and record his findings. If his findings are incomplete at that point, I think he just submits that as part of his report and goes from there. It's only if he notifies the operator and releases the final bond. If he makes any other findings then it's either a conditional approval or he's gonna kick it back as a denial. It looks to me like it's 60 days and if he says, Well, I need another 90 days to go out and look at the vegetation because it's spring time, then so be it. That's part of his report. I think it's incorporated in there. I think we're fighting smoke in mirrors here.

**BOARD MEMBER GAMPETRO:** On this one I would just have the question, what happens later then if somebody says, "Well, look at your own definition of complete. It was complete. We addressed that. Maybe it was just two sentences, but we addressed it". Where are you then?

**RICK CHANCELLOR, LQD:** We have interpreted complete as just being those two sentences there.

**BOARD MEMBER PROFFITT:** Yes, it's subject to review. Complete only means that he's met the threshold requirements. In other words, they've got criteria in there on vegetation. They're got the area. They've got the notarized statement. Those types of deals. Then you get to go through and review those. It's not an evaluation.

**BOARD MEMBER GAMPETRO:** That's what I'm saying.

**BOARD MEMBER GINGERY:** The requirements on number two, we're talking about what is submitted and not again the process that the Administrator has to go through. I'm trying to separate the two things. The request shows up and these are the procedures of receiving it and communicating but this could linger quite a period of time if the Administrator does not find everything quite right at the beginning of the process. Is that correct?

**RICK CHANCELLOR, LQD:** That's our feeling. I think the concern of industry is that that opens the door to having a long, long period of time before a final answer.

**BOARD MEMBER GINGERY:** But, to kind of look into the future, if this committee is working on that, what has to be submitted? Does that help to get the process through? If everybody agrees is it the right day that you have to put it in. Wouldn't that speed up the process and bring closure on the bond?

**BOB GREEN, KENNECOTT ENERGY CO.:** It might but a lot can depend too as Rick has mentioned that he has limited staff members and these bond release packages can linger for quite some time if indeed they're not going to be high priority issues. That's one of the concerns that we've been talking around here but there has to be some defined period of time that Rick has to make a determination and perhaps the suggestion that was made a bit earlier about that response coming back even if it's conditional, have some time line condition with that would be very helpful. Right now it's very open ended.

**RICK CHANCELLOR, LQD:** Would it help...we talk about 60 days which we can probably get a review out in 60 days, that subsequent review is also due within 60 days. If that was added to this language to say, "Our review cycle in-house would be 60 days".

**BOB GREEN, KENNECOTT ENERGY CO.:** That'd be very helpful. And it would be very consistent with the federal counter part.

**BOARD MEMBER GINGERY:** Bob, in the industry, have we had any problems with closure on the bonding?

**BOB GREEN, KENNECOTT ENERGY CO.:** With bond release?

**BOARD MEMBER GINGERY:** Yes.

**BOB GREEN, KENNECOTT ENERGY CO.:** I'll be quite honest. It's been a moving target. We have not.....

**RICK CHANCELLOR, LQD:** That's why the working group got together to try to define that thing so people could move forward with confidence that they knew what was expected and what was required.

**GUY PADGETT, OSM:** Mr. Chairman, I would like to qualify that. I believe the area bond just goes slicker than grease lightening. That area bond is constantly revised so that is not the issue. We're really talking about the other later phase bonds and I would further remind the board that that area bond is, in my estimation, 80% or more of the total dollar amount involved. So what we're doing is expending 90% of our effort on little last increment. Aside from the issue that at some juncture this regulatory agency has to in some way release jurisdiction, one wonders.

**BOARD MEMBER GAMPETRO:** Is that a possible solution then to separate the final bond release from the release from liability?

**GUY PADGETT, OSM:** Some states choose to do it that way. I don't want to get involved in how the State of Wyoming chooses to do it but to say that it's a moving target is fair with regard to these later phase bonds but it's not fair with regard to area bond.

**BOARD MEMBER GINGERY:** I appreciate you educating us on that because that's what I was worrying about is you want something efficient and if 80% of the problem is fairly well taken care of and we're working on the last 20% or whatever that percentage was. Yes Scott?

**SCOTT BENSON, TRITON COAL CO.:** Guy is exactly right, 80% of it is area bond but for the Buckskin Mine we're still talking about \$50 million dollars. It increases by \$10 million dollars every year.

**BOARD MEMBER GAMPETRO:** How would you feel then if you got your money back but you were not released from liability....in other words....getting everything in line, all the data and all of that before you were released from liability but in the meantime you got your money.

**SCOTT BENSON, TRITON COAL CO.:** A big concern with this working group we talked about with industry in there is that, as Guy said you're getting 80%.....(tape being changed). Right now we're gonna spend more money to collect consultants reports to get the last few dollars back so there's no incentive for mines to go after anything beside area bond release, just let it ride. Then we've got situations like Big Horn the other day ready for a bond release application and a fire comes through and burns up your reclamation. I don't think that's where the State of Wyoming wants to go. The State of Wyoming's goal should be to release these bonds.

**BOARD MEMBER GAMPETRO:** I thought you said you had \$50 million dollars? That'd be incentive for me to get a report or whatever.

**SCOTT BENSON, TRITON COAL CO.:** You could ask everybody else in industry, it's industry's opinion to go for these final phases of bond release, you're going to spend more money than you're going to get back.

**GUY PADGETT, OSM:** Mr. Chairman, I think that \$50 million does include the current area bond. On that \$50 million I certainly don't know what percentage really covers.....but my guess is if it's consistent with everything else I'd say about 80% of that is dirt moving and 20% of that is all the rest.

**BOARD MEMBER GAMPETRO:** I'm looking at this as a business. Maybe that's wrong but if it was my business, I would be more willing to give them their money back but not release them from liability until I'm sure that my interests are covered. We're dealing mostly with very large companies that will be here tomorrow and you can always go after them.

**GUY PADGETT, OSM:** Mr. Chairman, essentially that's what's happening now. We essentially are giving the operators credit for the vast majority of their exposure by releasing the area bond when it's released and the amount of money that's left on the table with regard, well \$50 million is not insignificant, the amount of money that's left on the table in regard to these last phases is relatively small and in most instances Rick, I believe their self bonded.

**?:** That's what I was bring that up because there's really no incentive for us as a company because as I understand it, Rick can correct me if I'm wrong, any bond release we get today, we have to subtract from our self bond until basically that's zero before we start subtracting it from our sureties.

**RICK CHANCELLOR, LQD:** Uh.....

?: The sureties is what we pay for. The self bonds are basically internal assets.

**RICK CHANCELLOR, LQD:** I'm not sure that requirement's on there. I'd have to check on that. What you're saying is that the bond release has to come first out of your self bond before you reduce the surety.

?: Right. So if we're out spending money to get bond release which is taking away from the free stuff we have and we're not reducing the sureties we're paying for.

**RICK CHANCELLOR, LQD:** I'm not sure that's true but I could be wrong.

?: So each mining company is different but there's some truth to what Scott's saying that you have to weigh the cost you're spending to get bond release versus what you're achieving.

**RICK CHANCELLOR, LQD:** It's probably more efficient to do larger areas for bond release than just small areas.

**BOARD MEMBER GINGERY:** It's approaching 4:30 p.m so let's try to put this Chapter 2 together.

**RICK CHANCELLOR, LQD:** So what Bob Green and I were talking about is adding language to 2(b)(i) to specify a subsequent review time to review responses which would be also done in the 60 day time period.

**BOARD MEMBER PROFFITT:** You're trying to cap the overall time?

**RICK CHANCELLOR, LQD:** Well to show that we will be diligent in returning our response around. We say 60 days for the first one but he's saying the subsequent review should also be 60 days. Realize, the mine may take two years....

**BOB GREEN, KENNECOTT ENERGY CO.:** We'll probably be under three years! Could I add one more item? It's a small item but it's on (ii) right below that and that sentence currently ends in *deficiencies*. Could we ask for the specific corrected actions necessary to secure the requested bond release so that we know what those deficiencies are? What they specifically are and what we have to do meet them so they don't have to come back say we're deficient.

**GUY PADGETT, OSM:** Mr. Chairman, I have one comment on that. The one danger from our perspective, the regulatory authority must remain a regulatory authority and not an operator. When the regulatory authority starts to dictate what needs to be done then we're going to have a problem but to the extent that it says, "Here's the deficiency, you're the operator, figure out how to handle it." That's fine.

**RICK CHANCELLOR, LQD:** Our definition of deficiencies is that we would say, "You have not provided such and such or this is wrong." We would not just say, "It's deficient and guess what it is."

**LARRY KLEINMAN, BLACK BUTTE COAL CO.:** In number (i) of the last sentence seems to be simply forgotten. *The application will not be deemed complete and technically adequate until the times or seasons are appropriate for the inspection of the reclaimed area.....*this is new. In the old rule the inspection could be done at any time after the receipt of or the time when it was deemed complete. In other words, after that first 15 days. The main problem with this is that what happens when there are five or six applications that come in at the same time and they all have to review and do the inspection in the narrow window of time for the inspection which would say be June through August or September.

**RICK CHANCELLOR, LQD:** I think the reason we're trying to address it this way is because the OSM regulations say that we can prevent you from submitting an application until the season is right. So we would possibly get everybody's application the same day because we say, "You can't submit a release application this year until June 1<sup>st</sup> or whatever." What we're trying to do here is say that you can submit this application anytime, we'll go through our technical review and even though all our technical comments are responded to, we won't take that last step and say, "Okay, go to final public notice" until that season is right, be it June 1<sup>st</sup> or whatever for the inspection to occur. We're trying to allow more flexibility when you submit it but still comply with the OSM requirement that we can restrict the processing of applications based on seasonal requirements. Now some bond releases like area bond or partial bond for topsoil replacement, the season is not a big deal so we would not hold it up but especially for vegetation requirements, it is a big deal and it would be postponed until the next appropriate inspection.

?: Going along with that though, jumping ahead to Section 3 real quick under item (a), you're stating that prior to declaring completeness and technical review you require a field inspection. We seem to have a conflict on those two, right?

**PAIGE SMITH, LQD:** Those say the same thing.....*the application will not be deemed complete technically until the times or seasons are appropriate for the inspection* which is intended to mean you have to do the inspection before you can say it's complete because we're assuming that when you go to your 4-week notice, it's because we've said you're going to get your bond back.

**RICK CHANCELLOR, LQD:** We could do it either way, we could do the publication first, then do the inspection or do the inspection and then the publication.

**PAIGE SMITH, LQD:** But then you may deny the bond and the public wouldn't know it.

**GUY PADGETT, OSM:** Rick, you could declare it complete. The issue is that you're not in a position to say that it's technically adequate and you won't say it's technically adequate until you've done the inspection. I'm not sure I understand why it says in here *will not be deemed complete and technically*....it can be deemed complete but it can't be deemed technically adequate until you've done your inspection.

**PETE SALL, BLACK BUTTE COAL CO.:** Well, we go through the process at Rosebud and we have been told we cannot get an inspection until we get technical completeness. Right Rick?

**RICK CHANCELLOR, LQD:** Right.

**PETE SALL, BLACK BUTTE COAL CO.:** Right now, even with Rosebud we have two different requirement ? at least if we try to follow this here.

**BOARD MEMBER GAMPETRO:** I guess I understood *technically adequate* to refer to the report and the data, not to the inspection.

**PETE SALL, BLACK BUTTE COAL CO.:** Right.

**GUY PADGETT, OSM:** The whole issue on this if I may, is that if you don't have some kind of a mechanism that's trying to be built in here, then it would seem to me that the State would have to deny a request that happened to come in in December where you can't evaluate the vegetative cover. Whether that's considered to be part of the technical adequacy or what, I don't know, but it's only going to happen after you go out and do a field verification, I know that. I know that OSM will say, "Hey, you're going to have to go out there and measure and document that the cover is as demonstrated." That takes doing it at the right time and going in the field.

**SCOTT BENSON, TRITON COAL CO.:** I would agree with OSM's comment there. It gets back to who is it that has to evaluate these regulations? It's the coal mine. The coal mine collects the data. The coal mine evaluates whether it's met reclamation success. It needs to be the regulator that goes out and evaluates it. So extending the time line and requiring all this technical adequacy reviewing our reports, is simply going to delay for a whole year them coming out and looking at the vegetation.

**PAIGE SMITH, LQD:** But if I was reviewing your application and I need to make sure the cover production are equal to the premine which is a rule that has to be met, it's a federal rule. I am arguing with you because I can't understand how you collected the data, let's say, or I don't understand your statistics. I wouldn't want to go into the field if I didn't feel like your statistics are telling me, yes, cover production have been met because I can't release your bond until I can assure that you have equal cover and equal production through the premine condition. That would be one instance where I wouldn't want to go out until I know what I'm looking at is worthy of going out to see based on that technical piece that is associated with final bond release. We do have very specific vegetation requirements for bond release as a final stage regarding vegetation. My point is, if the statistics aren't working, if I can't say yes, your statistics meet the requirements, there's no point in me going out. I'm going to deny it.

**GREG JONES, PEABODY ENERGY:** Paige, wouldn't it make more sense to be in the field when they're doing their sampling?

**PAIGE SMITH, LQD:** That'd be great if we had enough people.

**GREG JONES, PEABODY ENERGY:** Well, you don't have to stay there for the entire sampling regime but it would seem to me that you would want to be out there looking at the day that they're collecting that their going to report on rather than go out and as discussed previously, going out the following year where who knows what's going to happen.

**PAIGE SMITH, LQD:** But again, if your data says to me your cover isn't equal, I won't be able to give you your bond back even if I thought the field report.....

**GREG JONES, PEABODY ENERGY:** Well, regardless of what the data says....

**PAIGE SMITH, LQD:** To me, that would be kind of the pre-bond release tour which is another thing that has come up that we have recommended that the operator not start their vegetation sampling until a LQD vegetation person says it looks ready. You've had your ten years, you've had twenty year, why don't you come in for bond release on this. So, we recommended that so I'm saying that could be where we come out and say it does look ready but again, if their statistics tell me no, they haven't met equal cover production, even if I think it's the most beautiful looking reclamation in the world, I can't release it.

**GREG JONES, PEABODY ENERGY:** But Paige, an operator is not going come in with a bond release if his data does not show he meets the requirements.

**PAIGE SMITH, LQD:** Well, you wouldn't know that until your first year. You're right, you could with hold your first years data. You could say, "We were gonna come in and we're not going to ramble off a few more years, is what you're saying but I also may question your methodology or your statistics. I may not agree with how your numbers came out. I may rerun it and it may come out negative.

**GREG JONES, PEABODY ENERGY:** We should know those things right up front, shouldn't we? Like what the methodologies are?

**PAIGE SMITH, LQD:** I hope so.

**BOARD MEMBER GINGERY:** We're going to have to make some decisions here among the board. The room is reserved until 5:00 p.m. and it is currently 4:35 p.m.. There is a lot of work on the agenda to try to get through in the next 25 minutes. Rick, what are your thoughts?

**RICK CHANCELLOR, LQD:** I think we should table the action on these rules until the next meeting. Prior to the next meeting, we can take comments from the industry and think about how we can address their concerns.

**BOARD MEMBER PROFFITT:** You know, we did make one amendment which I think should be incorporated into a revised proposal to us. Maybe a IP update kind of thing. I'd table it with the amendment so we don't have to start this whole process over again so at least we'll incorporate some of the progress we've made here.

**RICK CHANCELLOR, LQD:** So Section 1.....

**BOARD MEMBER GAMPETRO:** i through vii.

**RICK CHANCELLOR, LQD:** Yeah.

**BOARD MEMBER GINGERY:** I'm going to end our little session here and as I do that, I really appreciate Paige putting this all together. I really appreciate the industry comments and getting the information in writing really helps. Thank you. I'm looking forward to the committee's report on this process. I think you've tackled a tough situation but it sounds like progress is being made. For agenda item #5 on Package 1P, maybe we should make a motion that this particular item will be continued at the next board meeting. So, if someone will make that motion.

**BOARD MEMBER PROFFITT:** Do you want to continue it or table it?

**BOARD MEMBER GINGERY:** I believe continued in this case.

**BOARD MEMBER PROFFITT:** So moved.

**BOARD MEMBER GINGERY:** It's been moved and seconded. All in favor say aye.

**BOARD MEMBERS:** Aye.

**BOARD MEMBER GINGERY:** Those opposed? The motion carries. Let's select our next location and date. Maybe we can get through some of the small items on the agenda.

### **FUTURE RULE PACKAGES**

**PAIGE SMITH, LQD:** An upcoming package would be in situ for noncoal.

**RICK CHANCELLOR, LQD:** That'd probably be the first quarter of 2002.

### **COAL BED METHANE ISSUE**

**RICK CHANCELLOR, LQD:** I sent out a draft to the board members which is real brief and gives general thoughts that we have right now on how to handle coal bed methane. There's a lot more work to be done on the details that at some point we probably need to get a group together to start talking more on the details of that and how to do it. This gives a direction I think we ought to go in.

## LQD/BLM MARCH 30, 2001 LETTER UPDATE

**RICK CHANCELLOR, LQD:** This created a stir among the coal operators about notifying BLM of changes. I believe the board members were provided a memorandum from Dennis Hemmer to the Governor's office explaining the process that under the cooperative lands agreement that we have with OSM, we are required to take into consideration comments on changes from the federal Forest Service or BLM. We are required to consider their comment because it's in our cooperative agreement. We don't have much discretion to say, "We're not going to do that" because in order to have the cooperative program, to be a cooperative agreement state, we have to do that.

**GREG JONES, PEABODY ENERGY:** Is that just on BLM surface or forest?

**RICK CHANCELLOR, LQD:** It's forest surface, BLM surface, and also BLM mineral. It's the federal lands program. Any federal land. That includes surface and mineral. Don McKenzie of our office has been talking frequently to the BLM office and it's worked fairly well. I don't think it was as big of an issue as people thought it might be.

**BOARD MEMBER PROFFITT:** Rick, do you see this as the end of our involvement with that letter?

**RICK CHANCELLOR, LQD:** I do.

## OTHER ITEMS FOR DISCUSSION

**RICK CHANCELLOR, LQD:** Chet, your term expires fairly soon.

**BOARD MEMBER SKILBRED:** At the end of September.

**RICK CHANCELLOR, LQD:** I'd appreciate it if you would request to serve an additional term.

**BOARD MEMBER SKILBRED:** I can do that. Do I just have to write something to you?

**RICK CHANCELLOR, LQD:** To me or the Governor's office, either one.

Also, it's time to elect a new Chairman and Vice-Chairman. That will be on the agenda for the next meeting so give some thought to that. Marshall has served as Chairman since 1998. Chet has been Vice-Chairman since August of 2000.

There's also opportunity for board members to get a corporate VISA card. If you want to charge your room or a commercial flight, then the State will pay that bill directly. If you're interested in something like that, let us know and we'll get information to you. It's a new thing they provide to employees and board members.

**BOARD MEMBER GINGERY:** Any other items for discussion?

**GUY PADGETT, OSM:** Mr. Chairman, I recently saw a letter written by our Denver office commending Wyoming on the excellence of the most recent state program amendment that was submitted. I know that Rick was copied on that but I wanted to bring it to your attention because that was an extraordinary letter which I've never seen one of those in ten years here but it really reflects well on the staff.

**LOCATION/DATE OF NEXT BOARD MEETING**

**BOARD MEMBER GINGERY:** I would like one of the board members to recommend a location. This is August so do we want to meet in October?

**RICK CHANCELLOR, LQD:** Anytime in the 3<sup>rd</sup> quarter.

**BOARD MEMBER PROFFITT:** Let's do it in September. As close to the middle of September as possible.

**PAIGE SMITH, LQD:** If you would assume this September meeting would only be this Chapter 15, as long as we had time to just get those revisions out. The revisions to Section 1 and then replace that on the web page. We were criticized that the WMA members didn't get their package until three weeks ago which we apologize for that. It went out a month ago.

**GREG JONES, PEABODY ENERGY:** Just to clarify, the EQC meeting is in Jackson the 17<sup>th</sup> and 18<sup>th</sup> of September.

**BOARD MEMBER GINGERY:** A lot of these people are going to be in Jackson. What do you think of that Rick, if we'd meet.....

**RICK CHANCELLOR, LQD:** On the Wednesday, September 19<sup>th</sup> in Jackson? Sure.

**BOARD MEMBER GINGERY:** Okay, Wednesday, September 19<sup>th</sup> in Jackson, Wyoming. Can one of the board members give a motion so we can adjourn?

**BOARD MEMBER SKILBRED:** I motion that we adjourn.

**BOARD MEMBER PROFFITT:** I second that.

**BOARD MEMBER GINGERY:** The motion has been made and seconded. All in favor say aye.

**BOARD MEMBERS:** Aye.