LAND QUALITY ADVISORY BOARD MEETING
2nd Quarter Meeting Minutes

June 24, 2002
Sheridan County Fulmer Public Library
Inner Circle Meeting Room
Sheridan, Wyoming

BOARD MEMBERS PRESENT:

Marshall Gingery - Chairman
Chet Skilbred - Vice-Chairman
Rodney Proffitt
Larry Munn
Jim Gampetro

DEQ STAFF PRESENT:

Rick Chancellor
Roberta Hoy
Don McKenzie
Paige Smith
Sandra Garcia
Mark Moxley

MINUTES APPROVED BY LQD BOARD: _____ **DATE:** May 10, 2004

LQD Chairman - Marshall Gingery

APPROVAL OF MEETING MINUTES:
August 23, 2001
September 19, 2001
November 14, 2001 (Joint WQD & LQD meeting)
November 14, 2001 (LQD meeting)

Chet Skilbred made a motion to approve the August 23, 2001 meeting minutes.

Rod Proffitt made a minor change to the September 19, 2001 minutes. On page 19, "in a lose" should be "in a loose". Rod Proffitt made a motion to accept the September 19, 2001 minutes with the minor change and also to accept all the other minutes as is. Larry Munn made a second. All members were in favor. Motion passes.

COAL RULES: PACKAGE 1R - HIGHWALL RETENTION AND EXPLORATION

PAIGE SMITH, LQD: We did get a written comment from Scott Benson which pertains to the first section. We did have a staff comment as well that pertains to the first section. So if it's alright, after I describe why we're proposing to repeal these rules, we can get into the two comments. We did not receive any written comments on the remainder of the package but there could be comments that come up verbally.

For starters, this package is a coal only package. Most of it is in response to disapprovals that we received from the Office of Surface Mining. The majority of the package deals with coal exploration but this first section, Sections 1.A and 1.B deal primarily with soft rock mining as it pertains to highwall retention. We have not received a formal disapproval from OSM to remove these rules, however, I had received several phone calls regarding it and I believe Rick has too, that OSM has said, "Why is this still in your rules?" It's just one of those hold overs from when the coal rules and

the noncoal rules were in one package, when we did the separation, these rules came over. They really are inappropriate to be in the coal rules simply because that last section, subsection (D) on the top of page 3 says *highwall retention may be considered on a case by case basis*. At this point, we cannot have that in our rules simply because we went long rounds with OSM about a decade ago on highwall retention of trying to get those kind of rules into our program. Well, we did some rules in the program and since then have had to withdraw them from the program. The rule was still in place and it was just overlooked by LQD and OSM. We're proposing to take out all of the rules regarding soft rock mining starting with Chapter 1, Section 2(ce), removing that definition because coal rules are simply for coal mining even though coal is a soft rock, there's no reason to have all the other laundry list of minerals that are listed as soft rock in our coal rules. The remainder of these areas to be withdrawn are rules which are covered elsewhere in the coal rule package and in the case of subsection (C), which starts on the bottom of page 2, there are some items in there which we can't even allow which is if you have an impoundment allowing part of the highwall extending above the water line, that's not even allowable under the coal program. That again, is a throw back from the noncoal program that we brought forward. Some of the rules that are in our current program that would preclude that kind of a highwall retention being above the high water line are found in Chapter 4, Section 2(g)(iv)(b). With that, unless there are some questions regarding this proposed repeal, I'd like to get into the comment that we received on this section.

The first comment we received was from Mark Moxley. He was concerned that some of the language being proposed for repeal probably should be maintained. We went through and looked where the counterpart language is and as I said, parts of this language came into being in the non coal program because it's not allowed by the OSM to leave a highwall sticking out from an impoundment. Impoundments can certainly be left and the highwall has to be below the low water line and that's in Chapter 4. If you look in subsection (A), most of that language is provided in Chapter 2, Section 2(b)(iv)(A) and I apologize that we're not projecting today because I was ready to show you the counterpart language but with the set-up of this room, I don't know that there would be a way to project this so the members of the board could see it. If it's alright, we can pull out the coal rules to look at physically if we need to but I won't be able to project it to show you.

Subsection (B) regarding terraces or benches is almost verbatim in Chapter 2, Section 2(b)(iv)(B)(II). Parts of subsection (C) are currently provided in Chapter 4, Section 2(g)(iv). We felt that the requirements being proposed for repeal here are found elsewhere in the coal rules. That was to answer Mark's comment. Mark, did you have any further comments?

MARK MOXLEY, LQD: Mr. Chairman, I feel like subsection (A) has three elements which I'm concerned about repealing. One, is the slope measurements. The second item is preservation of drainage or providing for approved substitutes. The third item is the fact that no depressions are permitted unless approved in the reclamation plan. I don't feel like those three specific elements are duplicated anywhere else in the regulations. So, I have a concern about deleting (A).

PAIGE SMITH, LQD: What I e-mailed back to Mark was that on the subject of slopes, there is a provision in Chapter 2, Section 2(B)(IV) in the middle of the page of the coal rules on page 2-14 which says, *Maps and descriptions necessary to demonstrate that the slopes of the reclaimed land surface do not exceed the approximate premining slopes*. In discussions Rick and I had, it was felt that in order for an operator to provide that kind of information they would have to provide the individual slope measurement, locations of measurement, and the average measurement in order to determine that the average approximate premining slopes were actually being proposed. That is in

the center part of subsection (A) that's proposed for repeal that Mark is referring to. The feeling was that what is being required to be in a mine permit provided under the subparagraph (IV), we would get that same information because that's the only way somebody could provide both demonstrations that do not exceed the approximate premining slopes.

BOARD MEMBER GAMPETRO: If you had a 90º highwall and you had a flat spot next to it that was perfectly horizontal, would that not give you an average slope of 45º? Is that what you really want?

RICK CHANCELLOR, LQD: I think what most mines do is they use a computer program to generate the slope analysis that breakdown the zero to a certain percent that it's this many slopes. It's randomly picking it's points, the grid system. We feel that would actually pick up those deviations. There may be a case where you may have a steep slope next to a flatter slope that may get averaged out but if you take that over the whole permit area, we don't feel we should have the same problem to date where those things come out about. One thing on the real steep slopes, the mines can use that for approximate original contours but if they mine through a bluff or cliff they can document that and put that back as a approximate original contour type feature.

BOARD MEMBER GAMPETRO: I noticed Scott's comment said to *enhance and restore important wildlife habitat* and I thought that was good thinking. Are we going to be allowed to do that? We're not going to be allowed to do that?

RICK CHANCELLOR, LQD: Well, we are if it's a replacement feature. If they mine through that feature, they have to put that feature back but SMCRA, the national law, prohibits leaving those highwalls. Years back we tried to do a rule package to allow some highwalls to improve wildlife diversity and they were concerned on the national level that if we allow Wyoming to do that then other states will do it and we'd have problems with highwalls again because highwalls have been a problem of coal mines for decades. If the mine can document, premine, if there was a highwall there or a natural bluff, they mine through it, they can put that same feature back.

BOARD MEMBER GINGERY: Do we have some good examples at some of our mines?

RICK CHANCELLOR, LQD: I think Bridger has documented several places where they have some highwall features that they plan to put back.

NORM HARGIS, BRIDGER COAL CO.: It's in the permit to do that but we haven't done any construction yet.

RICK CHANCELLOR, LQD: Rosebud has a couple. In the Powder River Basin where they don't really have tall bluff features but along the stream channels they do have some rough breaks that they can document. I've told mines to document this stuff in the permit and you can put back some of these features in the post mine landscape, revise some of that habitat. SMCRA does not allow you to leave a highwall because you want to create wildlife habitat.

BOARD MEMBER GINGERY: So, it hasn't been an overwhelming problem to the mining industry. Yes, Bob?

BOB GREEN, KENNECOTT ENERGY CO.: It has not been an overwhelming problem to the mining industry but we do feel that we're losing opportunities to enhance wildlife habitat out there with our reclamation. As Paige had mentioned, it's been a decade since the last time that we tried to see if OSM would be open to the idea of putting bluffs out there not as replacement features. So I guess I would say it's not a problem but we would certainly be very interested in trying again to see if OSM would be open to the wildlife enhancement aspect.

BOARD MEMBER GINGERY: Yes Scott?

SCOTT BENSON, TRITON COAL COMPANY: As far as Mark's comment, it comes in a definition which is already contained in the rules under the first section and that is restoring to approximate original contour. The State of Wyoming has struggled with defining exactly what the approximate original contour is. Other states have guidance documents and OSM has produced guidance documents that define approximate original contour as the general surface configuration, your blending in with the adjacent topography and you're reestablishing drainages. OSM has specifically ruled in several court cases that approximate original contour does not mean the exact premining elevation. It doesn't mean premining slopes that exist in one spot have to be replaced in that same spot. I think that's a key to the rules that industry would like to see is that approximate original contour is not an exact premining elevation or exact premining slope that we're trying to reclaim land uses.

BOARD MEMBER GINGERY: So Rick, at the present time, following where we are, if you had the permission in the premining aspect you could go ahead but if time goes by and you saw an opportunity following with what Paige is saying here, that's out?

RICK CHANCELLOR, LQD: Right now, what we've been told by OSM and their denial of our rule package in the past was that to leave highwalls as nonreplacement features as a bluff habitat feature is not allowed under the national law.

BOARD MEMBER GINGERY: Okay. Yes Scott?

SCOTT BENSON, TRITON COAL COMPANY: I did submit with my comments what the state of New Mexico has written into their coal program. The state of New Mexico is also ruled under the same western/OSM coal region we are and OSM has approved it in New Mexico regulations. The state of Montana has not written it into their regulations, they're doing it by guideline. It is allowable under OSM regulations. The proposed language I used is almost identical to regulate the language the state of New Mexico has used to approve it.

RICK CHANCELLOR, LQD: New Mexico's documentation for justifying that language is they have a lot of mesas so they have an abundance of topography that have those features and they provided justification to OSM and OSM did approve their language for the program. I do not feel, especially in the Powder River Basin, that we can show that we've got mesas out there that are in the coal mining areas.

BOARD MEMBER GAMPETRO: In the Powder River Breaks, there are god-made highwalls there that would be far greater than anything these guys do. I mean, serious highwalls that are natural. I just don't understand. I know in Ohio some of the best wildlife areas are old highwall areas. Back before the rules were changed and they had to fix them. It would seem to me that there should be areas where we could do this.

RICK CHANCELLOR, LQD: There are more opportunities in the southwest part of the state because the terrain is more rugged. The coal mining area in the Powder River Basin is generally fairly rolling type topography without those rough breaks, although some stream channels may have some small ones. We supported the rule change back in the 1980's or 1990's when we did it but we lost that battle in Washington, D.C. and until we get some indication from OSM in Washington that they're willing to try it again, I feel it would be a waste of our time. We're not opposed to open that discussion but to do rule making without that discussion up front is going to be wasting everybody's time.

PAIGE SMITH, LQD: If they were to mine through some of that Powder River Breaks, they would have a reason to leave some because it would.....

BOARD MEMBER GAMPETRO: They don't have any mines fairly close to that?

PAIGE SMITH: To my knowledge nobody's mining through that.

WENDY HUTCHINSON, THUNDER BASIN COAL CO.: We have some vertical areas not so much down where I mine but up where Scott is at. There's some rough country up there and vertical slopes and rough breaks.

RICK CHANCELLOR, LQD: Like I said before, you can always put back replacement features so if we mine through those features there's not a problem saying this was here before mining and I can put it back after mining. The issue here is creating new habitat from the highwall features and that's where we've been told that we can't go there.

BOARD MEMBER GINGERY: It looks like what we're being requested to do is clean this up and follow the procedures but if that is an area that Wyoming wanted to pursue with industry, we certainly could still do that, correct?

RICK CHANCELLOR, LQD: I'm not opposed to discussing it with industry, environmental groups, and OSM to see if it's worthwhile to try to do something again on this issue to create some unique habitat for wildlife. It has to be conducted with some controls on it because SMCRA is developed in some part because the highwall issue back east where all highwalls are left so we'd have to have some control. We're not opposed to looking at that again but we want to make sure that we have some type of indication from OSM that it's worth trying under these criteria to do that.

BOARD MEMBER GINGERY: My feeling is we take corrective action or clean it up but maybe we should leave the indication with Rick and others that maybe we should pursue this. Larry, what do you think about it?

BOARD MEMBER MUNN: I guess I'd be interested to see what the history of this has been in New Mexico and Montana but I think there may be opportunities to enhance. Again, you'd have to see how extensively this was used or desired to be used but there may be opportunities to enhance what's there. It's a fairly drastic disturbance as you mine through an area and there are opportunities to enhance as you go and I think we should pursue the discussion. Again, I would want Game & Fish to participate in the planning or approval of how much of this kind of habitat you would want in addition but there may be opportunities that would be beneficial for the industry and for the wildlife habitat and why not take them.

PAIGE SMITH, LQD: If I could just add something. That's exactly the route that went on ten years ago and the wildlife people started withdrawing their support because of the implication on the national level that if Wyoming was allowed to leave some highwalls where there was not that feature premine, it would open up a flood gate on the national level.

RICK CHANCELLOR, LQD: We had a lot of support from this area in the west from environmental groups, wildlife people, the mines and us, but once it got on the national level, the national wildlife organization said, "We're not sure this is a good idea because it may open flood gates." Once that support was gone, then everybody go spooky and it got chopped.

BOARD MEMBER MUNN: It just seems like we sometimes go to the least common denominator to avoid issues or having to think or having to justify why we have a different situation than they do. We do have a different situation than they do.

RICK CHANCELLOR, LQD: One thing I've been trying to encourage the mines to take advantage of are those areas that they do have, it may not be very high, they may only have a twenty-foot little bluff along a stream channel to document that and use that to put back a twenty-foot remnant highwall as a replacement feature. Those opportunities are there to take advantage of so document before you mine through them that you have these things out there. Certain things can be done.

BOARD MEMBER GINGERY: I believe you were next.

JILL MORRISON, PRBRC: I think it's important for the state to proceed in making these changes. There's been a lot of controversy over the years about retaining highwalls but I think the state is correct in saying if there's a feature there that was there that we can justify and try to duplicate, then it's fine. I think the concern is if it were abused. There's a lot of wildlife habitat enhancement that can be done with some of the reclamation in terms of shrub density but the mines are always complaining about that. I think they're looking at the bottom line - if we can leave a highwall, it's gonna save us a lot of money in terms of reclamation and maybe it's not really for wildlife enhancement - the true intent of it. I think we need to be careful and comply with the strip mine act and still be reasonable which I think the state is being and if that type of a feature exists then they can go ahead and reclaim for that type of a feature.

BOARD MEMBER GINGERY: Yes Scott?

SCOTT BENSON, TRITON COAL COMPANY: The proposal I had written referred the state saying that it can be done if you can document premining and a bunch of other stuff. There's nowhere I've seen in the regulations now where we're revising this section and taking it out that would permit that. I think industry wants to write that into the regulations for us to discuss with the Advisory Board under what situations can you leave them? I haven't proposed a sentence that just says they can be left. I put specific criteria about how you can leave them. Things that Mr. Chancellor said.....that's the things they consider to leave so what's wrong with writing it into the regs, if that's what the State of Wyoming wants to do and how they're going to do it? Let's write it into the regulations.

BOARD MEMBER GINGERY: I believe Bob has a question.

BOB GREEN, KENNECOTT ENERGY CO.: Thank you. I have two comments. Right now it seems that the regulatory agencies are willing to divide the country up into western and eastern regions. The western alkaline alternative sediment control methods is one of the more recent ones. I would

ask that if there would be a possibility to ask LQD to begin this course with OSM to see if they would be willing to view bluffs on a western versus eastern perspective.

The second comment is regarding the cost savings with a bluff out there. To do the job right and we would have to do that obviously and we would want to, to do the job right with bluffs for wildlife enhancement is a fairly costly undertaking to get it right especially if you're talking small areas of bluffs - 400 meter in segments - so we really are looking at a wildlife enhancement perspective.

NORM HARGIS, BRIDGER COAL COMPANY: In the case of Bridger Coal Company one of the concerns was what would bluffs do to the slope analysis and like all mines we had to compare premine to postreclamation slopes and then we did a second comparison of premine slopes to reclamation with nine bluffs included in the landscape and the average slope did not exceed the premine slopes out there which was done under an AOC assumption so that's one point. It'll still pass slope analysis under AOC.

The second is that with nine bluffs permitted the backfilled yardage savings....there is a backfilled yardage savings but it's not huge by any means and then by the time the bluffs are constructed correctly as it's already been said it is wildlife enhancement feature. It's not a huge costs savings.

BOARD MEMBER GINGERY: Rodney?

BOARD MEMBER PROFFITT: I think we have representatives here from OSM and from the Game & Fish. I'd like something on the record from both of them if possible. I guess my only comment was for Paige, if in fact we were to adopt something like Scott has proposed here, would it be more appropriate that those provisions be in some other section of the coal rules rather than here?

PAIGE SMITH, LQD: I think Chapter 4 might still be appropriate as a performance standard but Chapter 2 may need to be beefed up just a little bit to acknowledge that the rec. plan would have to be developed so it might need a little bit of reformatting.

VERN STELTER, GAME & FISH: I'd like to just address this in general. I agree with Rick, this thing has been batted around for a long time in great detail and it's a national issue. I think until the point of time where OSM is somehow able to and willing to divide the country up into different regions and address this thing more specifically, something that makes sense here that wouldn't make sense in Appalachia or whatever.... I think that probably going ahead and finishing this the way it's proposed today would be the best thing and we can address it later if we want to seek an exception to that in the future. I think that from a wildlife habitat standpoint, highwalls can be a good thing assuming that it's an enhancement over the premining land use. There's a stability and safety issue, of course, that has to be addressed. Also, wildlife is one postmining land use. Livestock is another. If a highwall is somehow more detrimental to the livestock than it is for wildlife of course that would have to be considered. There are benefits to highwalls, certainly, and particularly to places like the Basin here where that would be a very good habitat to have something that wasn't there premining it would certainly be a value added in reclamation. But realistically, I know this thing went clear to OSM, Kathy Karpan, it was fought and lost. I think the key here is that it's going to have to be solved at the national level before we're really going to be like Rick says in any kind of successful at looking for an exception.

BOARD MEMBER GINGERY: Chet, did you leave any highwalls south of us here?

BOARD MEMBER SKILBRED: No, but I was very involved with the original package that we put together a number of years ago. It's been a long time now but we had a consensus amongst a lot of groups in the State of Wyoming with that package and it took a long time to put together, it went before the Environmental Quality Council, went into our regulations and didn't last probably a month or two before they remanded it. It has to be solved somewhere besides Wyoming. We can take the ball and go with it once it's been resolved with the people in Washington but until that point in time Rick is absolutely right, it'd be an exercise where we'd waste a lot of peoples time. However, if we remove or strike all this language, Paige, is there no verbiage at all about retention of existing bluffs or anything like Scott has mentioned, none whatsoever?

PAIGE SMITH, LQD: None, there will be none. The only thing that it will be eluded to is.....

BOARD MEMBER SKILBRED: In AOC.

PAIGE SMITH, LQD: AOC complementing the drainage pattern and where we talk about the slopes in Chapter 2 averaging not being more.....

BOARD MEMBER SKILBRED: I think from my perspective, I agree with Scott, I'd be a lot more comfortable if there was some verbiage in the rules that as Rick and you have eluded to and most of us here that you take for granted that specifies that if it's an existing feature or whether you have 20' or 30' edges along channels or whatever that you may end up wanting to put back that if you can document it you can put it back in there. So, I think Scott is on the right track here that maybe that verbiage should be in the rules somewhere and perhaps in Chapter 4 as part of the standard.

MARK HUMPHREY, OSM: From OSM's perspective, nothing's changed on highwall retention. As far as things being looked at on a regional basis it was originally done in SMCRA and that's evident in the alluvial valley floor. That's applicable only to the west. Mountain top removal, as you notice, there's no mountain top removal I believe in the Wyoming rules because it's not an issue. That's not saying that Congress identified all the uniqueness's but right now in the east, mountain top removal is a very controversial issue and that is in SMCRA. It's quite a heated discussion. I heard it at the mining conference last week in Jackson. It was brought up as a significant issue to the mining industry as well as the environmental perspective. Right now as far as highwalls, I think what you have as replacement features is really what you can get right now at this moment. It doesn't mean it won't change in the future. Like Rick said, from our perspective, I think it's going to be a waste of LQD's time and our time because when it gets back to Washington unless somebody knows something else in Washington that we don't, you're going to be putting a lot of work into something that's just going to be denied again.

RICK CHANCELLOR, LQD: Maybe a way to address this issue is to get back to some of Scott's comments and the audience comments on what is allowable under AOC. Maybe what we can do is put in the future rule package a section discussing AOC that's not necessarily the same elevation.....we believe that too.....that AOC does not mean the same elevation. AOC does not mean that the elevation is the same or the hill is in the same location. Perhaps we can put in the rules some of that stuff that OSM and LQD have already agreed to clarify to everybody up front what AOC is or how to go about doing things under AOC because it's not well defined in the statute or the rules what all that entails. I don't think OSM has rules on it themselves so there's a chance that it may get struck down but I think based on our past experience talking to OSM it's allowable and we probably could do some rules discussing AOC as to what's allowed and what's not and try to clarify some of these concerns.

BOARD MEMBER GINGERY: So it seems like there's a lot of sympathy from all parties on this issue but today we'd go ahead with what Paige recommended here and then follow-up with what you're saying. Anyone want to comment? Yes Bob?

BOB GREEN, KENNECOTT ENERGY CO.: I'm here representing the Wyoming Mining Association as well as Kennecott Energy. Marion Loomis had a conflict and apologizes for not being here but he is faxing a letter to you today. If I can read that to you to enter it into the comments.

BOARD MEMBER GINGERY: Go ahead.

BOB GREEN, KENNECOTT ENERGY CO.: "The Wyoming Mining Association has reviewed the comments recently submitted by Scott Benson to the LQD regarding coal rule package 1R - Highwall Retention and Exploration. WMA supports the points raised in Mr. Benson's comments.

Several related procedural issues have been ongoing for quite some time: the need for provisions for highwall retention facilitate wildlife habitat enhancement, flexibility in establishment of micro topographic depressions and similar features to enhance habitat and species diversity, among others. A comprehensive set of rules changes is needed for Chapter 4, Section 2, to address these and other issues regarding post mining land use features, enhancement of postmine land use, and interpretations of requirements for Approximate Original Contours and Postmine Topography elevations. The suggested additional rules changes in Mr. Benson's comments help to address those issues."

I just wanted to enter that into the comments since it does seem that you're about to make a decision about possible future rule making as well. Thank you.

BOARD MEMBER GINGERY: Thank you. Chet?

BOARD MEMBER SKILBRED: I agree with Rick and I'm assuming Paige will take the lead on this and at some point if indeed we strike these rules then the opinion is that we would address AOC in some additional rule making?

PAIGE SMITH, LQD: Let me just interject that there was another effort done with the Land Quality Division, I don't know when those two binders came about, maybe the early 1990's but there's been considerable discussion about AOC in-house with industry. Again, no rules were recommended to be changed at that time either so my point is that it'll take some research to find a way to put something in our rules that doesn't send OSM reeling. I think you need to be careful because once you put something in rules, you may loose some flexibility that you currently had through some of the interpretation of AOC because what I'm hearing is that at Bridger they were able to leave some highwall remnant under our current rules. So, my point is that this will take quite a bit of time to research something that's workable but that doesn't send you in a corner.

BOARD MEMBER SKILBRED: If that happens we'll still operate, I'm assuming, under the same procedures that we're running under right now if we remand these or strike these?

RICK CHANCELLOR, LQD: Right. If we remand these rules as we propose, our thought process on how we address AOC will not change.

BOARD MEMBER SKILBRED: Okay.

WENDY HUTCHINSON, THUNDER BASIN COAL CO.: I guess my curiosity here is, Mr. Benson has made a proposal on some appropriate language to keep the wording concerning highwall retention and yet there was some criteria that it sounds like is what we're doing in practice, currently. I don't understand what the harm is in putting that language into the rules currently instead of waiting a couple of years for an AOC package.

RICK CHANCELLOR, LQD: When I read Mr. Benson's proposal, I have the understanding that it's not under AOC, it's under wildlife enhancement that he's doing this and therefore it would not necessarily be a replacement feature. That's what needs to be tied into it. That's the issue we face here.

SCOTT BENSON, TRITON COAL COMPANY: I have another comment that hasn't been addressed that I'd like discussed. The OSM's regulations allow small depressions to be left. The Wyoming regulations don't say it in those exact words and that's under subsection 4(a) and I made a proposal again to basically repeat the federal regulations to allow small depressions. That's also another area that industry has fought for ten years in the state to allow those type of features to be left.

PAIGE SMITH, LQD: Could we finish up with Mark Moxley's other two points before we move onto Scott's other issues?

BOARD MEMBER GINGERY: Yes, we'll come back and respond to Scott. We're still on this slope discussion, correct?

PAIGE SMITH, LQD: Right.

BOARD MEMBER GINGERY: Why don't you start us out on that again Paige.

PAIGE SMITH, LQD: We kind of began with three points that Mark made that he felt weren't necessarily covered with the repeal of this language. The first one had to do with what got us on the highwall retention was the slope measurement. We felt that was in the section in Chapter 2.....*maps and descriptions necessarily demonstrate that the slopes of the premine surface do not exceed the approximate premine slopes.* We felt that that proposed repeal language about making comparisons and showing that measurements were made would have to be submitted in order to meet this Chapter 2 requirement.

The second point that Mark made was on preserving original drainage and providing for approved substitutes. We felt that the definition for approximate original contour which is in our Chapter 1 definitions covers the premining drainage and let me just read that definition. It is, I believe, identical to the federal definition: *Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed land surface closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain.* So again, we felt that some of that repealed language was picked up by the definition of approximate original contour which comes into play in this Section 2 of Chapter 4.

I believe the last one was no depressions being left to mimic the federal rule. Our rules say, this is in Chapter 4 subsection (iv), that *all spoils shall be transported, backfilled, compacted (where necessary to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions, except that:* and then there is an exception language which we'll get into with Scott's comment.

But what I'm not sure of Mark, is if you felt that there was a piece missing with those other two issues I just brought up?

MARK MOXLEY, LQD: Where was that in Chapter 4?

PAIGE SMITH, LQD: Chapter 4, subsection (b)(iv).

MARK MOXLEY, LQD: Well it is talking about spoil I guess and perhaps that's a little bit more restricted than the other language.

PAIGE SMITH, LQD: The other language in the federal rule or in our rule?

MARK MOXLEY, LQD: In our rule that we're proposing to delete. I guess my overall concern is that the language in (A) there...the three points I've mentioned, are addressed in a general way elsewhere but I think we're losing some specificity in what it says there about individual slope measurements, preserving original drainage and the no depressions thing unless permitted. Yeah, there's some other language that addresses those topics but I don't think it's this specific.

PAIGE SMITH, LQD: One point is that most of our language regarding AOC, the elimination of high wall, spoil piles and depressions are pretty much mimicked in the federal rules. So, what we did have here under soft rock mining was additional language that I think had been part of the Wyoming program for years and then just was brought over into the coal program when we did our separation. So, in some ways I agree with Mark, that it does sort of augment the requirements or let's say it elaborates a little bit more of the requirements that the Office of Surface Mining is getting at. In general, to maintain some of that, we have to pick and choose in some ways, it might not be harmful to our program but we'd have to make sure that we just are having to put that language in the right place within the rules which would require a little bit of reconfiguration to maintain it at this point. We could keep a subsection (x) and retitle it. We wouldn't want to call it soft rock mining.

BOARD MEMBER GINGERY: This last point that Mark had brought up....is this to make a reference to that or are we trying to reference from one rule to the other rule?

PAIGE SMITH, LQD: I think it would probably be a reference from Chapter 2 into Chapter 4 under Performance Standards because these right now are performance standards and I think they can stay there. It's just if we were to maintain some of this language, we'd have to work on reconfiguring the Chapters a little bit to make sure it flows.

BOARD MEMBER GINGERY: Mark, would that answer your question then if we reference it at this point to the other rule or where is this in the rules?

PAIGE SMITH, LQD: Right now it's in Chapter 4 and I think it can stay in Chapter 4 under Performance Standards although there are some pieces like individual slope measurement, locations of the measurements and the average measurement, probably belong more in Chapter 2 which is the permit so it would take a little bit of thinking where things would have to be in the permit document where as in Chapter 4 the Performance Standards for bond release. So we're kind of mixing apples and oranges and having it all in Chapter 4...it might need to be moved.

BOARD MEMBER GINGERY: Is this more administrative or does it really have content that it's necessary to be in it?

MARK MOXLEY, LQD: My feeling is, and Paige is right, this is a very old regulation. I think it dates from 1975 so it predates SMCRA. I think it's really good language and I hate to see it go because I do think it is a bit more specific than these other references that Paige has given us. I don't think it's huge issues or anything like that but I do think we're losing some specificity and we're going to more general language with what Paige has sited.

BOARD MEMBER GINGERY: This doesn't confuse the issue of the Office of Surface Mining asking us to clean it up and then we're coming back and.....

MARK MOXLEY, LQD: My impression is that the overall goal here is to eliminate the high wall stuff. Section (A) has nothing to do with high walls so I guess the bottom line for me is that I think it could be retained.

PAIGE SMITH, LQD: And I agree with Mark. To me that first sentence might be slightly offensive based on what else is in Chapter 4 on permit impoundments but the remaining sentences in that subsection (A) probably could be retained without causing much problem but again I'd have to do just a little bit more research in the federal language to double check that. I think that first sentence is already taken care of in Chapter 4. Later in Chapter 4 there is a whole section on permanent post-mining impoundments but the other language does augment a little bit the general requirements that are already in Chapter 2 and 4.

BOARD MEMBER GINGERY: Are my other four colleagues.....I gather you're following this and I'm the only one that's confused up here?

BOARD MEMBER MUNN: What is the current status of the reconstruction of playas that were occurring naturally on the landscape premining? Are they allowed to be replaced?

PAIGE SMITH, LQD: Yes.

SCOTT BENSON, TRITON COAL COMPANY: I'd like to comment on that. I just went for a Phase I bond release application request last year and there were some very small, less than the size of the room you're sitting in (lower part of the room), that I had to go back and regrade and eliminate before I could get bond release. Again, industry has found problems with creating and enhancing fish and wildlife habitat. In fact, that's why we're proposing that we just write it into the rules and the regs. so that it's clear to people as to what can be done depending on what district you're at and what inspector.....it may or may not be permanent. It just seems that by writing it into the regulations we'd make it clear.

PAIGE SMITH, LQD: Well you do have the right to leave a depression if it's permanent. That's what this is saying and that's what the federal rules say. In this instance, were those depressions not permitted and that is why you had to regrade them?

SCOTT BENSON, TRITON COAL COMPANY: What I was trying to right was to follow the federal regulations about small depressions and they've got guidance on small depressions and they're different than permitted depressions. Just the general settling of spoils. If you're mining a 200 foot coal seam and putting it back, you're going to have some of those. I think industry would like it written into the regulations that come bond release or some time prior to that, that it's in the regulations and that it's okay that it can happen. Most of the mines in the Powder River Basin as you're aware as well as southwest Wyoming had numerous playas and depressions out there. Again, just trying to clarify in the regulations....right now the state of Wyoming's regulations stop short of

that of other states and the federal regulations to some extent that allow wildlife features like that to exist postmine.

BOARD MEMBER GINGERY: Rick, how do we put this back on track here?

RICK CHANCELLOR, LQD: I think Scott has a good point that sometimes it comes down to the interpretation of the inspector. We feel that small depressions are allowed but they are small, generally a half acre foot. We feel that premine depressions can be put back. Sometimes they are required to be put back because of what value they hold. I think the issues here are those that just show up on the landscape that are unplanned. Part of the discussion this afternoon after this meeting is going to be discussion of what's allowable to do in the field versus what's in the permit as far as construction of post mine topography. The purpose of this discussion is to try to clarify to both industry and the public and to our staff as to what is allowable we feel under the regulations and how far can the mines go to make microtopographic changes without going through the permitting action. So, yes, it does depend on the inspectors. Some inspectors may be a lot tighter as far as through drainage. Through drainage has been an important part of our concept of reclaimed landscape but also the rules allow for small microtopographic depressions that hold water for vegetation of wildlife use. It may be a question of what is small in our eyes, the mines' eyes and the publics eyes. It may appear a lot different to all of us.

BOARD MEMBER GINGERY: For the board members, do we want to try to resolve this or go through all the pages and then come back and see how it all fits together? Which works best for you Paige?

PAIGE SMITH, LQD: The one thing to consider is that the rest of this package is a completely different topic associated with the coal exploration. So, it might be better to take care of this now and then move into this whole different realm rather than have to rethink what we were talking about at the beginning.

BOARD MEMBER GINGERY: So, what you've presented to us, is there any modification especially since you've heard all these comments? Do you want to make any modifications before we move forward?

PAIGE SMITH, LQD: Probably the only thing I might recommend based on Mark's concern that some of the details, the augmentation of further instructions that are within subsection (A), and I believe subsection (A) is the one you're zeroing in on Mark?

MARK MOXLEY, LQD: Yes.

PAIGE SMITH, LQD: That maybe pieces of that should be maintained rather than repealed at this time but I would have to reconfigure that language appropriately either in Chapter 4 or Chapter 2 depending on the board's pleasure, that would be possible for me to do.

BOARD MEMBER GINGERY: Jim, do you think we're ready to move forward on this segment?

BOARD MEMBER GAMPETRO: I have no problem with what Paige just said of going forward and saying that we'll retain those parts that Mark had a problem with. I guess I have a big question.....I understand that we can't do the wildlife enhancement things until something changes somewhere in the federal government. Just as an open question, how does that occur, if ever?

MARK HUMPHREY, OSM: I guess the way that'd have to occur is through Congress if the agency interprets the Act different but it's kind of hard to interpret that you will not leave high walls and the Act says that and it's pretty much going to be "an Act of Congress".

BOARD MEMBER GINGERY: Scott?

SCOTT BENSON, TRITON COAL COMPANY: I would repeat, it's my understanding, this battle has been fought and it has been decided that the state of New Mexico permitted it, it is in the state of New Mexico's regulations, OSM has reviewed it and it has been approved. Wyoming lost ten years ago. New Mexico won five years ago.

BOARD MEMBER GINGERY: Rodney, do you want to move forward on this particular phase?

BOARD MEMBER PROFFITT: Yeah, it doesn't appear to me that this is going to be appropriate language for this area anyway so we could probably take this out and allow them to work on it. I think we all agree that it should be somewhere else and that we can put it somewhere else based on the New Mexico action that was taken. I don't know if we can instruct staff to act on that or not whether we have that kind of authority or not.

BOARD MEMBER GINGERY: We have in the past. I don't think we have the authority but we have in the past.

BOARD MEMBER PROFFITT: Maybe use strong language as encourage! I think we've got enough information to make a decision on this.

PAIGE SMITH, LQD: Can I just ask for a quick point of clarification on this? Are you referring to the whole idea of some type of topographic feature being left.....

BOARD MEMBER PROFFITT: Yes.

PAIGE SMITH, LQD: .....that's a high wall remnant or this language in section (A)? Are you talking more the general...like a paradigm shift on the rules would deal with high walls for the future?

BOARD MEMBER PROFFITT: Yes.

BOARD MEMBER GINGERY: What type of confusion are we sending you there Rick?

RICK CHANCELLOR, LQD: My feeling of what I hear from the Advisory Board is that some of the language in (A) may be appropriate to keep in other locations of the rules or this location based on earlier discussions that is appropriate for the staff to work on further clarification on AOC issues to put it in the rules to clarify to the public, the mines, and our staff as to what is allowable and what is not allowable under AOC that you're giving us instruction to....even though you may move forward in this rule package you're telling us to work on these other issues in the future to clarify them to address the concerns you've heard today.

BOARD MEMBER GINGERY: Is everyone in consensus of that summary?

BOARD MEMBERS: Yes.

BOARD MEMBER GINGERY: Okay. Yes, Paige?

PAIGE SMITH, LQD: I just had a thought that depending on how the remainder of this package proceeds which is very much a one topic issue that we may want to consider pulling this number one out of this package and let it go on as coal exploration only and let us take any rule changes that we're talking about now and putting it into our next package.

BOARD MEMBER GINGERY: Do you think you could have that ready in three months?

PAIGE SMITH, LQD: Yes, but it depends on what package we do next and again I haven't discussed this with Rick but I'm just thinking because depending on the changes we make we may or may not need to come back in front of you on this number one issue. Again, we won't be doing bluffs etc. but just this wording reconfiguration of moving some stuff into Chapter 2.

RICK CHANCELLOR, LQD: I would think if we do anything we would probably come back to the Board.

PAIGE SMITH, LQD: So it might be better just to take this out of this package altogether and bring it up again, reconfigure, and adopt some of Mark's concerns in a future package but let's withhold that until we see what might happen with the rest of the package. If the rest of this package needs to come back in front of you for some reason, we may as well keep it together.

RICK CHANCELLOR, LQD: So the options we have are to move forward with the whole package or split out this first part and not pass it.

BOARD MEMBER GINGERY: Chet?

BOARD MEMBER SKILBRED: I was going to ask Paige how we were going to leave parts of this or what was going to happen to her proposal here if we jerk out part of it and say we're gonna put it somewhere else and remand some of this language and not because it doesn't seem like it was going to work well that way.

PAIGE SMITH, LQD: It just would take some more work.

RICK CHANCELLOR, LQD: I think the only two options you have is to approve our changes with instructions to work on the other issues or not approve the changes and have us work on it and bring it back to you. Paige suggested to wait and see what you do with the exploration and decide if you want to split that out separately and move forward and keep this on the table.

BOARD MEMBER GINGERY: So what you're really saying to me, so we can get moving forward, is kind of terminate this discussion, look at the total package and at the end we'll come back and see if it fits in and select one of those options that Rick has made to either incorporate it or select it out but before we leave that Paige I do think we had a general consensus here that we do want to look into this a little bit more. I don't know how far we can go with all the different aspects of Office of Surface Mining but I do think you've got a consensus here from the board that we do want to look into the possibility as to where it could go.

BOARD MEMBER MUNN: Marshall, would it make any sense to just say (B), (C), and (D) are gone now and (A) can sit where it is pending proposal to move that material to another section?

PAIGE SMITH, LQD: Right now?

BOARD MEMBER MUNN: Yeah. I mean the high walls have to go right? So you could say (B), (C), and (D) are gone.

PAIGE SMITH, LQD: That's a possibility. I hadn't thought of that.

BOARD MEMBER MUNN: And paragraph (A) can sit there until you can find another place to move it.

BOARD MEMBER GINGERY: I guess you could certainly make a motion to leave section (A) in and remove (B), (C) and (D) so if you'd like to proceed with that Larry.

BOARD MEMBER MUNN: I'd move that, we, at this time eliminate paragraphs (B), (C), and (D) and leave paragraph (A) as is.

BOARD MEMBER GINGERY: Do I have a second on that?

BOARD MEMBER PROFFITT: Can I ask a question on that? Paige, wasn't there something in the first part of (A) that you thought should come out?

PAIGE SMITH, LQD: I don't think it's harmful to leave it in there at this point but that first sentence is somewhat of a redundancy to talk about the permanent water impoundment; the final pit area shall be backfilled, graded, compacted.....only because Chapter 4 has a section that deals specifically with postmine permanent impoundments. So, it's not harmful.....

BOARD MEMBER PROFFITT: But you could live with it?

PAIGE SMITH, LQD: Yes.

BOARD MEMBER PROFFITT: Then I'll second the motion.

BOARD MEMBER GINGERY: We have a motion which has been seconded. Do I have additional discussion? Hearing none, all in favor of the motion signify by aye.

BOARD MEMBERS: Aye.

BOARD MEMBER GINGERY: Those opposed same sign. Motions carries. Now, Paige, let's move onto a new area here.

PAIGE SMITH, LQD: We're now on page 4 and as I said before I think the remainder of this proposed rule package deals with Chapter 10 which is coal exploration. This has been driven by various disapprovals we received from the Office of Surface Mining (OSM) from about 1990, 1991, and 1992.

Let me just start out at the beginning. Our first part of this chapter, section 1 deals with exploration operations that are going to be removing 250 tons of coal or less during that operation. The first part under 2.A, we've just proposed to change the title of it to make it clear that it's 250 tons or less so

that it encompasses the 250 tons because the next type of exploration is greater than 250 tons so we want that to match the federal approach.

In 2.B, where we propose adding language asking for a narrative describing the proposed exploration area and a map at a scale of 1:24, 000 or greater, showing the proposed area of exploration, etc., this is coming from the counterpart federal rule regarding 250 tons or less. The OSM revised their rules regarding coal exploration on December 29, 1988. We then received a letter from them dated February 21, 1990 explaining that Wyoming's approved program allows for the use of a map without a narrative description, the state's rule must be amended to ask specific minimum content requirements no less effective than the federal rule which is why we have added the underlined language to allow for a narrative describing the area and a map with some very specific requirements on that map. Now we are doing something over and above what the federal rules do, we're saying "and" rather than "or" with in-house discussions....the operators have currently already submitted a map and a narrative which is very helpful to have both pieces of information when you're trying to decide what that operator is proposing to do. Rather than adopt the "or" as provided in the federal rules, we would like to have "and" and still continue to get both those types of information on these permits for 250 tons or less. Just as another point of information, those are the permitting operations we get the most of, 250 tons or less, correct?

RICK CHANCELLOR, LQD:: Yes.

PAIGE SMITH, LQD: Because it primarily is done through drilling and we have yet to figure out how many drill holes it would take to have more than 250 tons of coal but it'd be quite a few. These are called a Notice of Intent to Explore under our program. So that's our first proposed change to Chapter 10. We did not receive any comments on this and I don't know if anyone in the audience has any?

BOARD MEMBER GINGERY: Does anyone have comments on this? Okay, let's move on then.

PAIGE SMITH, LQD: We're now into Section 2 which is the realm of....let's see.....we need a refresher.....this is called a.....we have a Notice of Intent which is 250 tons or less and this is called a Coal Exploration License. This license pertains to somebody wanting to explore for greater than 250 tons and has quite a few more requirements associated with the application. Again, the federal rules were changed in 1988 and we received a 732 letter from OSM telling us under Section 3.B on your page 6.....let me back up....Section 3.B is more of an editorial change that we wanted to do. This entire section is being presented here, this entire Section 3... simply because when I pulled up the side-by-side format of the federal rule and the state rule, I found that our state rules did not have all of the same requirements that the federal program did. Even though we weren't necessarily asked by the OSM to adopt them, it's been my experience that if we send something to the OSM that doesn't have the counterpart and we don't have a good reason why we don't have the counterpart, we're usually told to get the counterpart. So, in this case, we have adopted a lot of the same language. Some of it was already in our program like in Section 3.B that proposed rule repeal and adoption....we had been relying on a cross-reference to Section 1.(b) which is the 250 tons or less. That's no longer appropriate upon seeing what the federal government requires. We really need to list those specific requirements because 1.(b) was only a very partial piece of what needed to be put in and it wasn't even necessarily correct associated with greater than 250 tons which is why you now see the side-by-side approach and the proposal for some language such as in 3.F, we did not have

a requirement for an estimated time table for conducting and completing each phase of exploration and reclamation and we're proposing to adopt that now.

If you continue onto page 7, when you get to 3.L, we were asked by the Office of Surface Mining to adopt this.....it was a codified disapproval given to us in 1991 that we needed to include in our rules regarding greater than 250 tons. This shall also include other information regarding archeological and natural sites on the National Register of Historic Places. We had to add the language *this shall also include any other information which the Administrator may require regarding known or unknown historic or archeological resources.* So we are adopting that in response to an OSM disapproval.

Still on page 7, 3.N is again a place where we're proposing to adopt the federal counterpart simply because we did not have that in our program.

The remainder of the changes in this Section 3 are simply to do some renumbering with the insertion of some new rules towards the beginning of this section....it required that we do some renumbering to make this section flow.

BOARD MEMBER GINGERY: Do we have any comments from the audience? Board members? Paige, do you want us to do this piece meal or just go on?

PAIGE SMITH, LQD: As long as there are no comments, I'd say let's move on. Oh, and I was calling that Section 3. I'm sorry, it was Section 2. Now, we're in Section 3, Chapter 10. This last text box on the left hand side was a codified disapproval given to us on July 25, 1990 from the Office of Surface Mining.

?: What page are you on?

PAIGE SMITH, LQD: Oh, I'm sorry, I'm on page 10. The OSM had a problem with the fact that our rules said that *if the Administrator provides notice that he intends to approve the application,* people may comment. Well, the federal rule says *any person having an interest which is or may be adversely affected by a decision*.....it's either a positive decision or a negative decision. So we need to fix our program and make it a positive or negative decision....anyone can comment. So that's why you see the language struck there and the new section (b) would read, *Any person having an interest which is or may be adversely affected by the decision of the Administrator*. So again, it would apply to both negative or positive. So we feel that that would take care of the disapproval given to us in 1990.

BOARD MEMBER GAMPETRO: Can I ask a question about that one? How does the judicial....it says such persons shall have the opportunity for administrative and judicial review as outlined in W.S. § 35-11-406(k). How does that compare to, I'm reading the federal side of it now, to any person having an interest which is or may be adversely affected by a decision of the regulatatory authority pursuant to paragraph (e)(1) of this section shall have the opportunity for this review as set forth in Part 775 of this Chapter? My question is, the procedure of how a person that wants to investigate this or complain about it, in their 775 versus our Wyoming statute?

PAIGE SMITH, LQD: They're relatively comparable. I can look up 775 but that's a part of our program that's been approved for quite a while and that's because our statute that's crossed

referenced here allows for....how does it read.....*a hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedures Act and right of judicial review shall be afforded as provided in that Act.* Our Administrative Procedures Act has been approved by the OSM so luckily we're going down an approved path.

BOARD MEMBER GAMPETRO: Thank you.

PAIGE SMITH, LQD: Any questions on number 4, Section 3?

Now we're on page 11. This one is kind of interesting. It's more than just administrative even though it's sort of becoming administrative. We were asked by the Office of Surface Mining through another codified disapproval that was given to us in 1996 regarding how we were dealing with wildlife habitat during coal exploration. At the time our existing rule allowed that important habitat could be disturbed during exploration after consultation with the Wyoming Game & Fish. The federal rule says *habitats of unique or unusually high value for fish, wildlife*, etc. *shall not be disturbed during coal exploration.* They had a prohibition on it completely. Well, we sent a letter to the OSM trying to get some clarification on that because it felt to us that to have a wholesale prohibition on any type of exploration activity on important or crucial habitat seemed a little like it might be going further than it needed to be.

We actually got an answer from the OSM after another phone call which essentially said and I'm reading from page 12, they came out and said that drilling is considered substantial disturbance in their interpretation of their federal law so that you couldn't disturb on a habitat of unusual value under the federal program. However, they did come back and say to us, "we would like to suggest an alternative." For coal exploration on important habitat the State may wish to consider a proposed amendment that requires the same consultation process with State and Federal agencies responsible for fish and wildlife as those required by the permanent regulatory program's 30 CFR 780.16. They would consider this alternative to be consistent and no less effective in meeting the intent of SMCRA.

So what we did, if you go back on page 11, is we're proposing that anyone who comes in for a coal exploration permit and in this case it will be associated with someone coming in and wanting to do 250 tons or less or greater than 250 tons, they will have to show that they have gone to the Game & Fish and talked about what kind of habitat is existing in those areas they want to explore. They will also have to provide us with written evidence of consultation with the Wyoming Game & Fish and any resulting recommendations must be submitted as part of that license or notice of intent to explore. We did this because this is how we do it with a coal permit. The Game & Fish reviews that proposed permit and then they come in with their recommendations. Those recommendations that are within our statutory purview are then put into that permit and must be followed.

We had discussions with the Game & Fish that they felt.....let's say that in this case we have allowed that crucial habitat can be explored as well as what we call important habitat because if there's something crucial that may be the season of the year then that is for an exploration operation would be told do not go in there for these months which is done all the time in Wyoming. So, we're proposing this alternative as recommended by the Office of Surface Mining but one piece we have maintained is that any critical habitat as defined by the Secretary of Interior will not be available for exploration. We both decided that we will maintain that just to try to keep it simple and to be in compliance with the counterpart federal rule which has said that critical habitats of threatened or endangered species shall not be disturbed. We thought we'd be safer not trying to go into that realm and leave it with those things that are dictated by our state Game & Fish.

BOARD MEMBER GINGERY: And you've consulted with our state Game & Fish?

PAIGE SMITH, LQD: To tell you the truth, they received a copy of this and we didn't receive any comments to my knowledge, correct Vern?

VERN STELTER, GAME & FISH DEPT.: Correct. Just one or two quick items here. In support of this, I think this is a good idea. This gives more flexibility to the operators and to DEQ rather than the blanket federal statement where you're eliminated from doing anything out there. It also makes it a more of a local call which is of course something we're all in favor of.

I think that OSM's intent on preventing substantial disturbance here is good but from the exploration activities that have happened so far I think that this is going to happen very rarely that there will be a substantial disturbance and you'd have to be right on top of something in exactly the wrong year before it would raise any red flags for anyone. So the state Game & Fish has no problems whatsoever with this.

One point I could make on the critical habitat thing, right now that seems to be a blanket "no you can't go in there" type thing. That's probably an overstatement of how critical habitat works by Fish and Wildlife interpretation. Critical habitat does not automatically leave you with no options as far as land use management. There would be a Section 7 consultation for anybody who would want to go into a critical habitat and the Fish & Wildlife Service would have to determine that there is a significant impact on that critical habitat before anything could be precluded in the way of land uses. The way this is written right now, if it states the way I think Paige said that critical habitat is an automatic blanket "no" for exploration, that's probably not true.

PAIGE SMITH, LQD: So do you think it would be helpful to add "unless approved by the U.S. Fish & Wildlife Service and provided in the permit?"

VERN STELTER, GAME & FISH DEPT.: I would give that flexibility because to assume that you can't do anything in critical habitat is an error. Something there can be changed. I 'm not sure exactly how they would want the wording that would be up to them but I'm sure there would be a consultation process to address whether or how that disturbance could take place but by no means eliminates it.

PAIGE SMITH, LQD: But to my knowledge the Fish & Wildlife Service received a copy of this but we didn't hear any comment. I know they're on our mailing list. I think what you're saying makes sense Vern.

BOARD MEMBER GINGERY: Either Fish & Wildlife Service or yourself could follow-up with them on that wording if that's the direction we go.

PAIGE SMITH, LQD: Right. That's what I'd like to suggest is that I would contact them and just check to see unless approved by them, if they needed more of special administrative language to coincide with their approval.

BOARD MEMBER GINGERY: I think that's a valid point that we should always be careful about. Larry, are we still on track on this?

BOARD MEMBER MUNN: Yeah, I'm just looking at the federal rule there saying that habitats of unique or unusually high value for fish, wildlife, and other related environmental values....shall not be disturbed during coal exploration. Now that sounds like a pretty blanket statement to me. Is that really what's intended and is that how that's interpreted?

RICK CHANCELLOR, LQD: I think the difference is if you go back to the response to our question on page 12 under the coal permitting provisions, we would consult with the Fish and Wildlife Service and the Game & Fish as to disturbance in those areas. Normally, under exploration, that consultation process is not there. They're telling us in this response that if you go through the same process you go to consult under a permit and do it under a license then if those agencies okay it, then you can because you're doing the same thing that would be allowed under the permit. So, on this section of the license to explore we're raising up the level of protection to be just like the permit. They'd have to consult with those agencies to get approval. So we're saying to consult with them they're okay with it otherwise exploration does not have consultation and you can't do it because you don't consult.

PAIGE SMITH, LQD: That was my initial reaction was that maybe we should leave well enough alone but I think given what they responded with what Rick just said we just need to provide documentation that the U.S. Fish & Wildlife Service agreed with us to go with that change and then we'll see what OSM says.

BOARD MEMBER GINGERY: Are we pretty well satisfied up here? I think we can move on then Paige.

PAIGE SMITH, LQD: So now we're on page 13.

BOARD MEMBER GINGERY: May I interrupt you for a minute? It's noon now, do we want to take an hour break now or continue on? I gather this is going to take more than an hour, Paige?

PAIGE SMITH, LQD: I don't think so.

BOARD MEMBER GINGERY: Okay, so let's continue.

PAIGE SMITH, LQD: Unless there are comments that I'm not anticipating. I don't see too much problem with this last section.

Proposed rule amendment/adoption 6 is actually proposing to adopt an entire new section entitled Section 8 within Chapter 10. The first part of this rule listed as 6.A on page 13 is proposing to repeal the language of the last sentence to subsection (i) of the definition for coal exploration and that is that if this activity results in the extraction of coal, the coal shall not be offered for commercial sale. This is all coming about because OSM changed their rules on December 29, 1988 and told us in a 732 letter dated 1990 that our rules currently restrict commercial sale but not commercial use of coal extracted during exploration. There are no provisions for documenting the necessity of testing coal being extracted by exploration. So, in other words, the only part of our program that dealt with what's happening with that coal being extracted is in this one sentence in the definition. We clearly did not have any of the same requirements that were adopted in the federal rules in 1988 so therefore we found it was best to simply get rid of that statement in the definition and simply have our definition mimic the federal one and then adopt Section 8 which mimics the federal subsection

772.14 regarding commercial use or sale. I also want to make it clear that when we titled Section 8, we're making it clear that this is commercial use or sale of coal extracted under a coal exploration license and a license pertains only to operations taking out more than 250 tons. Again, there probably won't be many operations in the state that will have to do this kind of verification of what they're doing with their coal. It's not necessary for the ones that are 250 tons or less.

In almost every case it's verbatim from the federal rule with one exception. If you look at rule amendment 6.C on page 13, the one difference between our program and the federal program, if you look at the counterpart federal language there in that lowest right-hand box, it reads, *Except as provided under Sections 772.14 (b) and 700.11 (a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the regulatory authority under Parts 773 through 785 of this chapter*. Hold on a minute.....I think I just read the wrong thing. What I want to get at is the fact that an exception is provided in the beginning of 772.14 and that is at 700. 11(a)(5), that exception in the federal program is that the feds. only deal with coal exploration on lands that are not publicly owned.....public like BLM coal. The state of Wyoming, through our three statutory requirements that are found on page 17, we have been asked or been required to deal with coal exploration on all the coal in the state not just that publicly owned. That's the one difference between our program and the federal program. We oversee exploration on all coal in the state not just that covered by BLM. That's the only difference of what we have adopted in Section 8 and what you find in the counterpart federal program.

BOARD MEMBER GINGERY: The exception you brought out is what's spelled there on 17 with those Wyoming statutes?

PAIGE SMITH, LQD: Right.

BOARD MEMBER GINGERY: Any comments from the audience? The board? I believe you can move on then Paige.

PAIGE SMITH, LQD: We're done. That's the last proposal and what you find from 18 to the end is simply strike and underline of the Chapter 10 as it's being proposed.

BOARD MEMBER GINGERY: Do we have comments on what Paige is referring to from page 18 up to 23? Any comments from the audience on any of that? How about from the board? Most of that was just renumbering or a good sum of it was right?

RICK CHANCELLOR, LQD: Page 18 is just a consolidated listing of the proposed rules strike and cap without the statement of reasons that would interrupt your flow of reading. It just restates what we just went through.

BOARD MEMBER GINGERY: What I was referring to Rick is on certain pages there were some roman numeral changes for clarification. An example is on page 19.

PAIGE SMITH, LQD: Are you talking about little header that's in the middle of the page?

BOARD MEMBER GINGERY: Yeah.

PAIGE SMITH, LQD: That should've been at the top of the page to help us get through the chapter but unfortunately when we go from Word Perfect to PDF, it doesn't always do what it's supposed to, so ignore that.

BOARD MEMBER GINGERY: Oh, I see. When is the time period that this will be sent back to the Office of Surface Mining for their review?

PAIGE SMITH, LQD: It goes to the EQC after we clean it up and that can take up to six months to get an EQC hearing.

RICK CHANCELLOR, LQD: Probably six to nine months.

BOARD MEMBER GINGERY: It kind of just depends on whether when it goes to the EQC if something comes up that we might have to redo and then have to take it back and then go back to public notice. Sometimes those things happen.

BOARD MEMBER GAMPETRO: Paige, the comment you just made about our rules applying to private land as well as public got me thinking here back to the subject we were talking about if you want to leave a highwall or whatever. If a person owns the land and asks the miners to do this or that to it, they still can't do it if it's precluded, if I want a pond or a highwall or whatever?

PAIGE SMITH, LQD: A pond would be easier to leave in a lot of cases but if they want to leave a highwall that wasn't there before, no, because the federal program still prevails.

BOARD MEMBER GINGERY: Rodney? Larry? Chet? Well then, I would entertain a motion to cover the remaining part that Paige just went over with us.

PAIGE SMITH, LQD: And the change to 5.....the one having to do with the critical habitat. You're in agreement that we can go back and do some tweaking if we get approval from US Fish & Wildlife Service that they're in agreement.

BOARD MEMBER GINGERY: Correct. Do you want those separate or can we put it all together?

PAIGE SMITH, LQD: Put it all together.

BOARD MEMBER GINGERY: Okay, then I would entertain a motion on that then.

BOARD MEMBER GAMPETRO: So moved.

BOARD MEMBER GINGERY: Does everyone understand the motion?

BOARD MEMBER GAMPETRO: We're leaving one out, right?

RICK CHANCELLOR, LQD: We're leaving (A) out.

BOARD MEMBER GINGERY: And that will come back to us.

RICK CHANCELLOR, LQD: Right.

BOARD MEMBER GINGERY: Rick, have we clarified this well enough?

RICK CHANCELLOR, LQD: Yes.

BOARD MEMBER GINGERY: Okay. I'd accept a second then.

BOARD MEMBER MUNN: Second.

BOARD MEMBER GINGERY: Okay. Any further discussion? All in favor of the motion as stated signify by saying aye.

BOARD MEMBERS: Aye.

BOARD MEMBER GINGERY: Those opposed same sign. Motion carries. Will there be a little bit of a follow-up on section (A) for the board?

RICK CHANCELLOR, LQD: Maybe, maybe not. In regards to the next meeting, we're still hopeful to get the in situ rules to you and if that occurs, that will be the sole topic of that meeting.

LOCATION/DATE OF NEXT BOARD MEETING

RICK CHANCELLOR, LQD: We'd like to hold the in situ rules in Casper since that's where most of the history is on that. If we do get that package prepared in enough time we will probably meet the afternoon of one day and continue onto the next day because the rules are very lengthy and they'll probably be a lot of discussion on that.

BOARD MEMBER GINGERY: Maybe to give you enough time we'd look at a meeting like the last week or September or the first week of October.

RICK CHANCELLOR, LQD: How about Wednesday the 25th and Thursday the 26th of September in Casper?

BOARD MEMBER GINGERY: Yes. Does that work for everyone?

BOARD MEMBERS: Yes.

BOARD MEMBER GINGERY: Before we close, are there any comments from the audience? From the staff? Rick, any closing comments?

RICK CHANCELLOR, LQD: We are going to have a public meeting after lunch to discuss issues of concern between the mining industry and LQD on construction of postmine topography of how much flexibility they have in the field. It's a public meeting that will be held here at 1:30.

BOARD MEMBER GINGERY: This meeting is now adjourned.