BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
STATE OF WYOMING

RE: COAL RULE PACKAGE 1-T
HIGHWALL RETENTION - CHAPTER 4

TRANSCRIPT OF PROCEEDINGS
9:05 a.m.
August 26, 2004

PURSUANT TO PUBLIC NOTICE given to all parties in interest, this matter came on for hearing at 1st Interstate Bank, 222 South Gillette Avenue, Gillette, Wyoming.

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P R O C E E D I N G S

MR. GINGERY: We can just go right on over to Chapter 4. And today, Rick, did we just want to go down each section and have someone explain that to us, what's been taken out, as we have in the past?

MR. CHANCELLOR: Yes.

MR. GINGERY: Okay. Does everyone in the audience have a copy of the rule package, Chapter 4, Section 2? So let's start down Section 2(b).

And Rick, are you going to lead us through the changes, or someone else?

MR. CHANCELLOR: Yes, I'll try to lead that discussion.

MR. GINGERY: Okay. We'll just stay with 2(b) until we get back there.

MR. CHANCELLOR: Actually, starting with Chapter 4, Section 2(b)(iv)(C), we're adding additional language to state: The retention of selected portions of a highwall may be approved by the Administrator to remain as replacement for natural features that were eliminated by mining if the operator demonstrates that the retained highwall will -- and we list those issues that have to meet to get approval.

We put it in this part of the rule package because right above that it talks about elimination of highwalls. Incomplete elimination of highwalls may be authorized under Chapter 5, Section 7, which talks about remining issues, which is a different situation than we're talking about here. But we thought it best to put the rule here with the other part where it allows leaving some highwalls. So that's where the organizational structure comes from.

One of the first criteria is that the premining feature must be mined out by the operator. Just because there is premined features in the area but not mined out then you don't qualify for leaving a highwall. So it must be mined out by the mine to be eligible.

Item (2.) is that safety factor that we talked about. That comes from our other rules, OSM rules, that a safety factor of 1.3 or greater is required.

Item (3.), does not pose a hazard to people using the area. I think some states talk about pose a hazard to wildlife or people. When we talk about the comments later on, Scott Benson had a comment where he suggested different language. And we'll discuss that later.

Item No. (4.) talks about covering the uppermost minable coal seam to a minimum depth of 4 feet. That's a national requirement, that the coal seams be covered up reclamation.

No. (5.) is probably very important to OSM, that the feature that is reclaimed cannot be higher or longer than the feature that was mined through. And that's a very important part for OSM's approval.

No. (6.), be contoured into the surrounding terrain. Remember that photograph we had of the Rosebud Mine? At the end the sides were blended into the other reclamation. So it's not just a -- try to make it more natural.

No. (7.), to enhance or restore important wildlife habitat or hydrologic conditions.

There on the next page -- I'm going from the version that has the Statement of Reasons underlined. We struck out the language that the council had put in because we're basically taking care of that. Under this new section we have expanded it, so we feel we can take out that language they put in there. There you have page 2, the discussion of the Statement of Reasons that talks about the regulatory considerations, and why we feel those portions are important. Jim?

MR. GAMPETRO: The first 7 items are all

required, including (7.)?

MR. CHANCELLOR: Yes. These are all.

MR. GAMPETRO: So it's not --

MR. CHANCELLOR: It's not or, or just partial. It's all.

MR. GAMPETRO: All right.

MR. CHANCELLOR: It's important -- since these are exceptions to a very important national provision of SMCRA, it's important that the Administrator himself or herself approve leaving the highwalls. So it will be a specific finding we make in our permanent findings document that a portion will be left under this provision.

Again, the safety factor, there it goes -- it states where that requirement came from; the federal regulations. I'm on page 3.

The hazard elimination is found also in OSM regulations and also here in both New Mexico and Utah regulations that were approved by OSM.

The Item No. (4.), the cover depth, again is a federal regulation requirement with the quote here. And we also have that in our guideline for -- Guideline No. (1.).

Item No. (5.), contouring of the surrounding terrain. I think if you blend with the other

reclamation next door to it, there's probably less chance of erosion, and it just looks more natural.

Item No. (5.) I guess would be (6.), I believe. That's a typo.

MS. HOY: Yep. Sorry.

MR. CHANCELLOR: Then the bottom of page 3, that last one should be large (C), small -- I mean large (C), Item (6.), not (5.).

There again, it quotes the -- or references the feeral regulation where it talks about enhancing wildlife habitat. And it also quotes the federal regulation for the premined capacity for ground-water.

The rest of the discussion on page 4 is generally just a discussion by the -- what we have in our state. If you compare the Powder Basin to Utah conditions or New Mexico conditions, they have probably rougher topography. But still, we do have some escarpments that are mined through. So we're trying to show that even small ones in the Powder Basin we can replace. And most of the Powder Basin has either scoria bluffs or stream channel side banks. In the southwest part of the state we have a lot higher, larger highwall natural features that have been mined through.

Then the rest of the package shows some

photographs of some natural and reclaimed features to show that -- what we are currently doing in the state. And the purpose of these rules is to continue to allow the same effort that we're allowing now.

We had -- also, here in the back of the rule package, we have a copy of the New Mexico Regulations for your consideration, if you have any questions on those, and Utah Regulations.

We received two written comments, which you should have a copy of. One is the Wyoming Game & Fish Department. And generally, they're in support of leaving some highwall for wildlife habitat; they have value. They do understanded that there is a -- is a national issue. So they understand the restrictions we have, but they also support that we do all we can do to leave some habitat.

Scott Benson is not here today, but he did send in written comments. Some of his comments are identical -- or some of his suggestions are identical to ours. I'll go back through his comments and discuss our thoughts on his comments.

If you go to our rule package, back at the start again, in large (C) on page 1 we talk about retention of select portions of highwall. He suggests that it be changed to reclamation of

bluff/rimrock/escarpment type topographic features.

We feel it's best to keep the word highwall, to make it clear that these are exceptions to the national law that requires elimination of the highwall provision. We think it's clearer that -- to make that statement. I don't think it changes the ability to reclaim bluffs, to reclaim escarpments. We're just saying that the feature that you are leaving is a portion of a highwall.

Item No. (1.), pretty much the same except for that he says promote resemblance to the general premine surface configuration.

And we clarify that it has to be the feature that was mined out. The difference there is that you could have features that are surrounding the mined out area but are not mined out by the mine. It could be interpreted, under his language, that as long as there's premined configuration around where you are mining, you could leave a highwall. We're saying that -- we're clarifying, have been mined out by the operator. So we feel that's an important concept to capture in the rule.

Item No. (2.) between his and ours is the same.

Item No. (3.), he says do not pose a hazard

to the postmine land use.

You know, we specify not pose a hazard to people using the area. We feel it's a little more specific to our concern of the public, as opposed to whether land use could be -- land use could change.

Item No. (4.) is pretty much the same. No comment there.

Item No. (5.), the difference there is the -- he again calls it a premined bluff/rimrock/escarpment lengths and heights.

We clarify that it's the replacement feature. You tie that height and length back to the feature you are replacing.

No. (6.), the same.

And No. (7.), about the same.

I guess -- any questions from the Board?

MR. GINGERY: You want to go ahead and just comment on Game & Fish comments at the same time?

MR. CHANCELLOR: Really not many comments. They didn't have any specific changes; just general support of having the concept in the rules.

MR. GINGERY: Any questions from the Board members at this time? Any questions or comments from the audience today? Okay. I think it would be easier, if you don't mind, coming forward here, to

record this.

MR. LIEDTKE: Well, my name is Roy Liedtke, with Cordero Rajo Mining Company.

And I would like to recommend to the Board that we use the language recommended by Triton Coal for Item (C)(1.), the one that says: Promote resemblance to the general premine surface configuration.

I think that Item (C) says that it's a replacement feature. So it's already clear that we are -- it's a replacement feature. We cannot put back a highwall unless it is a replacement.

The current language proposed by the Department of Environmental Quality that says it has to be similar to the premined feature that was mined out would mean that you would have to mine through the area.

During mining operations, it may be typical in your mine plan you have an area where you intend to mine through a feature, but if it's at the very end of the life of the mine then you are limited until the end of the life of the mine to put that back, because it will not be mined out until that time. And there might be situations earlier in the life of the mine where you have the type of material with the stability that you can put back a replacement feature. So I would think

if it's within the mine plan and it's going to be mined out any time within the life of the mine, you should be able to put it back without having to wait until it's been physically removed. Again, it would be a replacement feature, because it will be replacing a feature that's going to be mined out. It's just a timing issue. I think by using the language that Triton recommends, it will allow that flexibility.

MR. GINGERY: Yes?

MR. GAMPETRO: Why would you want to replace a feature that you are going to later mine out and then have to replace again? Or did I not understand?

MR. LIEDTKE: Because you may be mining through a highwall or a bluff in the last years of the mine. And it may be such that you may not be able to replace it at that time because of the physical conditions of the material that you are mining. So you may not be able to replace it in the last years of the mine. But you may have an area prior to that where you hit very competent material. Because a lot of places you cannot put these features back, because the material won't reach the safety static factor. So it would still be a replacement feature. It would just give you flexibility as to

when you want replace it or build it into your reclamation.

MR. GINGERY: I see a lot of nodding of heads yes out there, so I gather we better comment on this.

MR. CHANCELLOR: I understand the concern of the timing because you may not -- as Roy pointed out, the opportunity, the best opportunity to leave a feature may not coincide with when you mine that feature. I think there would be a concern that, since the life of the mine is 20 years or 30 years or more, that if the feature being mined out was at the very end of the life of the mine you can reclaim it early, then later on decide not to mine that, but you go back and reclaim it. So maybe if you say you mined out during that term it would give us some time frame so we're not banking too far in the future where things change too much. Maybe that's a way to help the timing issue.

MR. GINGERY: Would this -- let me see. The mining company, in their permit, does a mining plan, correct?

MR. CHANCELLOR: Yes.

MR. GINGERY: Could that be covered at that time, the mining plan? Or that still doesn't cover

your concern?

MR. CHANCELLOR: Well, the mining plan is for the life of the mine.

MR. GINGERY: For the life of the mine.

MR. CHANCELLOR: My only concern there is that the mine plan changes quite often.

MR. GINGERY: Oh.

MR. CHANCELLOR: As long as you mine what you said you were going to mine we would be okay. But the concern would be that at this very -- 20 years in the future the certainty of that being mined is not as sure as closer to current present.

MR. GINGERY: So what you have here on paper really does cover that, then.

MR. CHANCELLOR: Well, the way it's worded it says that it was mined through. It's past tense. So replacing a feature that you have already mined through. And what Roy is saying, he may say, I want to main through this feature in the future but I have opportunity now to reclaim a similar feature. And so he's sort of banking for the future. And I don't have a problem with that, except for 30 years from now is a long time to bank.

MR. LIEDTKE: These mines are very long-term. And if we limit it to what Rick

suggested, to a term or permit which is five years, it would be very limiting.

MR. GINGERY: Uh-huh.

MR. LIEDTKE: Because that's a short time in the life of one of these mines.

The other thing we have to remember is the Department of Environmental Quality reviews our reclamation bond on an annual basis. And if at any time we change our mine plan, to say we are not going to mine that feature in the future, they can always require us to add money into our reclamation bond to reclaim that, to doze it down and put it back to a flatter topography.

MR. CHANCELLOR: Maybe a way to address that, Roy, would be that we cannot release the bond on that feature, the bond for full reclamation of that feature, until such time as you mine through the feature that you are replacing.

MR. LIEDTKE: I would recommend that we bond for it at time we change our mine plan to say that we're not going to go through there. I mean, in all honesty, it's pretty rare -- and I'm talking primarily the Powder River Basin here -- but we're not not mining areas. We're acquiring new leases all the time, trying to mine more and more. And the odds

of us not mining an area is very slim. And to carry that bond for another 30, 40 years is a burden on the company we should not have to have. If, at the time we change our mine plan, and we are not going to mine an area, the DEQ has very many opportunities. A mine plan of that type would go to public notice, it would be -- you know, it's a major revision. And at that time they could make us put the money in our bond. And that would be the sensible time to do it, not carry it for 30, 40 years.

MR. CHANCELLOR: I think the issue would be that the mine could apply for full bond release from that old area before they mine the feature they're replacing. And we cannot approve that bond release because they're not mining the feature. So somehow that has to be recognized or addressed, that that area cannot be released from bond until you mine through that.

MR. GINGERY: You think -- is this subject, what the mining people are saying, is that going to come up quite often? Or is this kind of that 1 percent we're dealing with out there?

MR. CHANCELLOR: As Roy pointed out, most of the time they mine their full lease. We have had a couple occasions where the mine did not mine the

full lease. So it does happen. It's not common, but it does happen.

MR. GINGERY: Roy, go over with me again as you are talking about the timetable there, the five years and -- I think I missed some of your point there.

MR. LIEDTKE: The -- we develop a mine plan for the life of the mine, that for many of these mines goes out 20 or 30 years. And depending on the topography of the area, we may be mining an area, for example, in the year 2030 that is -- currently the topography is very rough and would be the area that would be our -- that we are going to replace. But the way the current rule is written, we could not replace that until it has been mined out. So we could not put back a feature like that until 2030. And when you mine an area out, because of the mining operation and the reclamation that takes place behind you, you would not put the feature back in the same location; it would be some other location. And there is many areas where we do not have the type of material where we can leave a bluff feature because of the stability of it. So the best place to put back the bluff feature is probably sometime between now and 2030, sometime earlier. Because we may not

have the ability to put it back in those last couple years. And again, this is just assuming that the case may be where that -- that premined feature is right at the end of the life of the mine. If the premined feature happens to be something that we mine out tomorrow, it's not an issue. But it does limit us considerably.

MR. GAMPETRO: So we're talking about an ability to replace features in a different place --

MR. CHANCELLOR: Right.

MR. GAMPETRO: -- than where they were originally, as long as we blend in and meet all the criteria.

MR. CHANCELLOR: Correct.

MR. GAMPETRO: Now I understand.

MR. GINGERY: Yes?

MS. HOY: Um --

MS. GARCIA: Who are you?

MS. HOY: Roberta Hoy. Some language to address Roy's concern, to say something like: The premined feature that was mined out or is planned to be mined out by the operator. We could say something like under the current mine plan, if you wanted to add that to it. That would address the timing issue. It doesn't get to the term issue, but you could put

in the language something like: Mined out by the operator under the current mine plan. So changing --

MR. GINGERY: You are making some changes there. So Rick, to get back to this, this is primarily dealing with their bonding, their concern about it.

MR. CHANCELLOR: Yeah. I understand. I agree with Roy's concern that the feature -- replacement feature could be in the future and the most opportune time to build it is now. And that's a valid concern and I agree with that and I think this language will help address that.

I do still believe that we cannot release bond on it until that feature is mined out, because the mine may have to go back and replace it if they don't mine that feature. It's more of a technicality. I don't know if it needs to be in the rule.

MR. GINGERY: So if they have a five-year plan and they do not get to that feature, what happens at the end of the five-year plan, is what I was trying to get at.

MR. CHANCELLOR: Well, I am willing to drop the five-year plan. Because I think the bonding question takes care of that concern.

MR. GINGERY: Oh. Okay. That's what I was

trying to clear up. Then that takes care of that.

MR. SKILBRED: One other question.

MR. GINGERY: Yes.

MR. SKILBRED: Are we considering this -- this language as written now?

MR. CHANCELLOR: Yes. The additional language?

MR. SKILBRED: Yeah. Roy, doesn't that address some of your concern there, too?

MR. LIEDTKE: Yes, that would address the concern.

MR. SKILBRED: I believe it does. I believe -- Because there it also would provide the Department with some comfort, because it does say under the current mine plan now if the mine plan was to change -- which they do -- and that existing feature wasn't going to be mined out then you could come back and address that -- that bluff at that point in time and say, hey, you didn't mine it out, so you can't leave it now.

MR. CHANCELLOR: Correct.

MR. SKILBRED: So I believe it gives everybody the flexibility that -- that they require to deal with that issue right now, as written.

MR. GINGERY: Any other comment from the

industry, or anyone else? If not, Roy, appreciate you bringing that to our attention. And don't get too far away. Any other comments from up here at this time?

Okay. We'll let (C)(1.) stand now as we move down this list go on to (2.), the safety factor. Any comments from the audience today on that? Okay. The Board, do you have any comments?

Moving on to Item (3.), not -- I can't read it from here.

MS. HOY: I'm sorry.

MR. GINGERY: I have to look on my list here. Item (3) there, I believe the point was that there was someone that had mentioned the land and this one has people using the area.

Is everyone comfortable with use of people, as the staff has recommended? I don't see anyone jumping up and down, so we'll leave (3.).

On (4.), to be backfilled to cover the uppermost minable coal seam to the minimum 4 feet deep.

I think that's standard. No one has any problem with that.

No. (5) -- or Rick, would you rather go down these?

MR. CHANCELLOR: Go ahead.

MR. GINGERY: Oh, okay. No. (5.), I didn't -- we cannot exceed the length and height. So I -- I believe everyone is happy with that.

And (6.), be contoured to the surrounding terrain. I believe we worked on that issue before. So I think that's fine.

And the enhancement of the wildlife. Does anyone have any comments on that, or experience on that? Okay. We'll leave (7.) there.

So it's just (1.) that there was, I believe, some wording. Yes?

MR. CHANCELLOR: The staff had a concern that we consider the durability of the material being left, that it will not be highly erosive. It may still meet the static safety factor but may not be durable and competent to -- it may be erosive, as opposed to just sluffing. It may not sluff, but may be highly erosive or weathering. So we may discuss if durability is an issue to be or not.

We've looked at one of the other states -- they don't use the term "durability" but they say -- under the Utah regulations they use the term "composition". I'm not sure that's the best word to use, either, because it talks about resemble composition. We may have different composition that's

just as durable. So maybe for your discussion or the audience's discussion of those, have something on durability there.

MR. GINGERY: Does somebody have some experience dealing with these retaining walls on the durability that -- or would anyone like to comment on that? Yes. Please come forward. I think we need some input on this.

MS. VICKLUND: Laurel Vicklund, Belle Ayr Mine. We did some scarp replacement features at Belle Ayr Mine. And we had 62,000 linear feet of scarp features premine. So the postmining replacement wasn't a problem. And we won't be replacing all of them.

But the section that we ran into in our north pit area had specific material that was similar to some of the premined scarp features; more sandstone type material, more competent material. And also adjoined an area where we were going to be reclaiming a creek channel. And so we saw the opportunity to mimic a premine feature, and took that opportunity to put back scarps in that area. And a lot of it had to do with the competency of the material. And also the location. And so we identified that material that would work. We have some other areas of highwall up in

that area, but we chose not to use them as replacement because of -- because the material we didn't feel was competent.

MR. GINGERY: Have you had -- if I may ask, have you had any experience of placing heavier material on some of our lighter materials, where the -- there could be an effect onto those lighter materials holding heavier materials above? We aren't trying to do things like that, are we?

MS. VICKLUND: We're not. Because this is actually a remnant of highwall that we're replacing and contouring to mimic a scarp. So we're not placing material, we're leaving existing material.

MR. GINGERY: Okay. So your replacements were at the original sites, not at new sites.

MS. VICKLUND: No, they were not at the original sites.

MR. GINGERY: Oh, okay.

MS. VICKLUND: But they will mimic the original sites. Because we're constructing the stream channel -- we're reconstructing the stream channel in that area. But it's not reconstructed in the exact original area.

MR. GINGERY: How many years have they been in -- functioning, you have completed?

MS. VICKLUND: The --

MR. GINGERY: The ones that you have completed, how long have they been there?

MS. VICKLUND: We just recently, this year, received approval of leaving them. And we're in the process of contouring them in and -- and getting the final work done on them now.

MR. GINGERY: Oh, all right.

MS. VICKLUND: They are not final at this minute, but we are working on them. They are a work in progress.

The highwall in that area has been standing probably ten years. It was part of a temporary cessation of operations that we had. And as our pit swung around and as we came back through and mined through that area we backfilled up to that.

MR. GINGERY: Backfilled to --

MS. VICKLUND: Highwall.

MR. GINGERY: So we still have the original highwall?

MS. VICKLUND: Yes. A remnant of that, that is of the height and length that mimics some of our premined through.

MR. GINGERY: Did you add material to it?

MS. VICKLUND: No, we did not.

MR. GINGERY: All right.

MS. VICKLUND: We only backfilled.

MR. GINGERY: Have you done any yet in this new process that you actually placed new materials to attain this feature?

MS. VICKLUND: No, we have not.

MR. GINGERY: You have not. Has anyone else in the basin had that opportunity? I gather not, so we're dealing with a new feature.

The rest of the Board, do you have questions?

MR. GAMPETRO: I have a suggestion on the language. Why not say: Of equivalent erosive resistance, as opposed to same materials? Because we know they're not necessarily going to be the same composition. But what we're trying to accomplish is similar erosive resistance.

MR. GINGERY: Yes, Chet.

MR. SKILBRED: I have a question. How long -- that highwall that was standing for ten years, how bad did it sluff or erode?

MS. VICKLUND: Not at all, really.

MR. SKILBRED: Okay.

MS. VICKLUND: It's pretty competent.

MR. SKILBRED: Okay.

MS. VICKLUND: However, some of the areas

down by Caballo Creek native areas exist that are of much less competent material.

MR. SKILBRED: Because I was thinking of some of the -- is it sandstone?

MS. VICKLUND: Uh-huh.

MR. SKILBRED: Yeah. Some of the sandstones associated with Glenrock, some of those highwalls have been there a long time. And in particular areas, some of them may erode significantly and in other areas they don't erode very much.

MS. VICKLUND: Right.

MR. SKILBRED: I mean, typical with what native would erode around there.

MS. VICKLUND: This also has a very small drainage area behind it, so there is not opportunity for it to receive a lot of run-off.

MR. SKILBRED: The highest part, is there run-off coming down off of them?

MS. VICKLUND: Just what hits the face.

MR. SKILBRED: Yeah.

MR. GINGERY: Any other comments? So what's the new language there? I have a glare there. What's the last sentence?

MR. CHANCELLOR: Based on what Jim

suggested, it says: Have a static safety factor of 1.3 or greater and of equivalent erosive resistance. So if the original highwall is erosive, the replacement highwall can be erosive.

MR. GINGERY: Any comments? Yes, go ahead, please.

MR. LIEDTKE: I would recommend that we leave the language as it was originally written here. A safety static factor of 1.3 or greater is an engineered number that you can determine very easily. I'm not sure how you determine what equivalent erosive resistance is. And to me, that's something that would just create a lot of confusion. I'm not sure how you measure it.

MR. GINGERY: I don't, either. That's why I've been asking.

Would we have to develop a definition for that, then?

MR. CHANCELLOR: It would probably be more of a subjective type evaluation; look at the native feature and say, generally is it erosive now? If it is, then the premined feature could be erosive.

It's not a big deal, but one that the staff brought up as a concern that the statement static safety factor may not catch that erosiveness.

MR. GINGERY: Yes?

MS. HOY: Instead of saying equivalent, if we put similar then it takes away some of the -- you know, 2.2 equals 2.2, and gets into the realm of, well, it's sandstone that will not just fall apart.

MR. SKILBRED: I agree.

MR. GINGERY: Why don't we get that on the record.

MR. SKILBRED: Yes, I agree with that, the language as it's written now. It allows some flexibility on the part of the company and the Department to determine what is similar and erosive nature of the pre and postmining features.

MR. GINGERY: Does this work fairly well out in the field, you think, using that terminology? Similar? Because you would be using the same materials that you're working with.

MR. LIEDTKE: That's better than the prior language. I guess I'd still recommend just leaving it off, but this is better than the equivalent.

MR. GINGERY: Okay. I believe I'm getting nods from the Board here. We'll just leave it at this stage.

So of these seven items here this morning we made two changes. Any others? Opportunity to make

some changes on this.

MR. GAMPETRO: I had asked the question about whether the No. (7.) was required or if they were all required. And Rick said yes.

I guess I could envision situations where that would not be the case, where it would not be advantageous to enhance or restore wildlife habitat or Hydrologic conditions; have absolutely no effect on them.

But I guess I see it as a substantial benefit, No. (7.), if it occurs. But I don't see why we would have it as a necessity, as it just might not be an area where that applies.

MR. GINGERY: Rick, can you give us some background on that, please?

MR. CHANCELLOR: Probably two comments. Under our current AOC provisions we do not do Item (7.). Under the AOC provisions, if it was there premining, it would be there postmining, with no evaluation.

Game & Fish has a comment here that sort of indicates that highwalls are beneficial to wildlife. So it would probably be hard to have one that's not beneficial. I suppose you could. If it was really orientated the wrong way, everything was bad about it,

it would probably not be beneficial to wildlife.

I think the other two states that got approval from OSM -- let me check here -- they both talk about wildlife in their rules. So we patterned our rules after them.

Whether or not OSM would consider approving the rule without wildlife discussion -- that I don't know. Mark Humphry from OSM may or may not be able to give some insight on that. I'm just saying that those two states that were approved by OSM had mentioned wildlife.

MR. GAMPETRO: I withdraw my comment.

MR. GINGERY: Okay. Does anyone have any other comments on any of the seven items this morning?

MS. GOODNOUGH: I have a comment about Item No. (3.), not posing a hazard to people using the area.

I think it should be changed to not posing a hazard any different than the hazard that was posed by the replacement feature itself. Because -- you know, you could be walking on flat land and there is a hazard. So I think it's pretty subjective, the way it's worded now.

MR. CHANCELLOR: So the suggested language

is: Not pose an additional hazard to people using the area.

MS. GOODNOUGH: Something of that nature.

MR. CHANCELLOR: Because you are right, if a natural bluff was there, that could be a hazard to people. And putting back the bluff is going to be a hazard. So --

MS. GOODNOUGH: At least on an equivalent basis.

MR. CHANCELLOR: Right. Not make an additional hazard than what was premined.

MS. GOODNOUGH: Right.

MR. CHANCELLOR: If we want to, we can put language in saying to mention premined hazard.

MS. GOODNOUGH: Okay.

MR. GINGERY: Do we want to put premined in or just leave it?

MR. CHANCELLOR: I think it's clearer if we specify that the hazard we're looking at is a premined hazard of that feature it's replacing.

MR. GINGERY: Okay.

MR. SKILBRED: I agree.

MR. GINGERY: Anyone in the audience want to add any additional comment? Yes?

MR. GIURGEVICH: I can offer you some

additional insight -- and Mr. Gampetro, if you wish -- on your question about stability of the material. If you wish.

MR. GINGERY: Yes.

MR. GIURGEVICH: Bob Giurgevich. I'm with Land Quality Division out of the Sheridan office.

And I would direct your attention to your booklet, under the Statement of Reasons tab on page 5. There are two photographs there from a mine in northern Sheridan County. And I'm familiar with this, I have been there pretty much over the entire life of this operation. And I would direct your attention to the bottom photograph, which is a postmining bluff feature. That structure pretty much as is has been there for the better part of 25 years. There was a slight amount of backfill when this site was reclaimed, a slight amount of backfill that was pushed up against the toe of that. But for the better part of time, if you look along that face -- and admittedly, this is a long-distance photograph -- but you -- and I can vouch, I've walked that many times -- there is very little debris that has come off of that face in 25 plus years.

And I have also walked through several other situations in the Powder River Basin -- and in fact, the one that you have also shown in Rosebud -- and

there is always some amount of material that does sluff off, whatever you wish to call it. But I have not seen any dramatic slope failures, nothing that would -- no large blocks of any sort that have come off any of the features. And there's been a variety of materials that have been restructured in these situations.

So I think it is an important concern. And I suggest that the language that apparently we agree on does help address the issue. But in general there have not been -- to me, my observations -- any serious issues with the stability of these features.

MR. GINGERY: If I may ask you, with the language that we have tentatively put up here on the board -- and we're primarily today talking about Powder River, even though it's all of Wyoming -- from a geology standpoint, talking about the stability, does this pretty well take care of say the coal mining operations in the southwest or other parts of the state?

MR. GIURGEVICH: Mr. Chairman, I -- in a general statement, I would say yes. I have not seen a lot of the features that might fall under this new proposed rule in the southwest. But from what I have seen premining there, I think the language gives my agency enough consideration to deal with these in

site-by-site cases. I would not suggest going too much further. Because, again, we always create then the potential for head butting. And we don't need that.

MR. GINGERY: Okay. Thank you. Any other comments on these seven items? Yes?

MR. LIEDTKE: If you go back to Item (1.), I agree with the language as we have proposed it. I just would like to clarify the discussion about the bonding.

Again, my belief is that if we intend to mine out a highwall, or if we have a feature that we intend to mine out in the future, and we replace it earlier, as the language would now allow, and when that feature is -- the reclamation of that feature is complete and if we want to get bond release on that, we should be allowed to do that. It's no different than if we mine through a tree and we don't put that tree back right away. We can get bond release on that acre of land because we look at the entire mining and reclamation plan.

Again, if we change the mining plan to not mine through that feature in the future, then that's the time that the bond should be increased to account for that.

MR. GINGERY: Would you like to comment on that?

MR. CHANCELLOR: If we release the bond, the final bond release on that area that has a highwall that's left, and then later on they decide to not mine through that feature in the future, once we release final bond we can't go back in there and say, you are back on the hook. So we have to keep the area under bond.

Now, whether or not we bond for a dollar amount to remove it or not is an additional question. But we definitely could not release the area from a full bond release until that item was mined through the feature. We could say that we won't hold a dollar amount for reclamation. But we cannot release that area from a full bond. It has to stay under our jurisdiction until that site is removed.

The illustration of the tree is sort of backward. Because if you mine through a tree and don't put it back on that site, you have a lot of opportunity in the future to put back that tree. Here, you have already constructed that site, but you may not have a justification in the future to do that if you don't mine that premined feature. To me it's a different issue than these rules. It's more of a bonding

question that probably should be worked out in a different area.

But I think looking at Mark Humphrey, I do not think OSM will allow us to release -- do a full bond release on that area if that site -- if that future site has not been mined through.

MR. LIEDTKE: I'm agreeable with the fact that we cannot have full bond release on the area until we mine through the premining feature. I just want to be certain that we do not have to carry money in the bond for dozing down that highwall for the years that it takes to get to that point.

MR. CHANCELLOR: I think we can have discussions on that, give it some more thought. Maybe I'll do that. I'll have to give it some thought.

MR. GINGERY: Okay. The bonding is covered under --

MR. CHANCELLOR: I do not think there will be any rule necessarily to address it. Be more probably our guideline on bond costs.

MR. GINGERY: All right.

MR. CHANCELLOR: How do you address this situation? I don't think we need particular rules on it. More just a discussion within the industry and

Department on how we can take care of these situations.

MR. GINGERY: Okay. We pretty much came to discussion of these seven areas here.

Rick, your plan was that we would -- the Board would recommend -- vote on it and recommend it to the council? Is that our plan today?

MR. CHANCELLOR: Yes, please.

MR. GINGERY: Okay. First of all, is there any other comments from the audience? Any of the staff have comments? Yes, sir. Please come forward.

MR. ROBINSON: Gene Robinson, with the Office of Surface Mining, Casper, Wyoming.

I just would like to make a comment on Item (3.), where it notes, not pose a hazard to people using the area.

I think one thing that the Agency would look at was that if the Department is allowing an operator to construct a feature that poses a threat to the public, that's an issue that you should take serious consideration on. Because the Office of Surface Mining and the Department have an obligation to protect the public from the impact of mining.

MR. GINGERY: The language we presently have up there, the proposed language, were you

suggesting that -- some additional language there, or --

MR. ROBINSON: I'm just saying that you need to consider what you propose there. If you propose to allow an operator to construct a feature in his postmining landscape that poses a threat to the public, that needs to have some serious consideration, irregardless of whether that threat was there prior to mining. Because those were created by nature. What you are doing or what the Department would be doing would be signing off on a plan to allow an operator to construct something that poses a threat to the public.

MR. GINGERY: Yes, sir?

MR. CHANCELLOR: Mr. Chairman, the concern I have with taking that statement too literally is that I think any bluff or escarpment feature, where you have a dropoff of even 5, 10, 20 feet is a -- could be deemed by some people as a hazard to the public walking that ground. And maybe -- I'm not sure how to get around this issue -- we don't want to wave a red flag to OSM to cause reason to disapprove. So I am thinking how best to address that. Because in a strict sense, anything is a hazard that has a dropoff. We could ensure that -- well, I'm not sure

how you protect every idiot walking across the landscape from walking off a bluff that's there naturally.

So I'm not sure how to -- I understand Gene's concern, that we cannot purposely create a hazard. And that's not our intention here. But just the fact that you have a bluff -- I don't see how to get around that potential hazard issue.

MR. GINGERY: If we use the previous language -- I believe I'm getting -- it doesn't -- it just says: Not pose a hazard to the people using the area, was it? I think that was the original. Then we don't get into judgment of it. You know. I guess OSM never read Hiking Without Handrails. But that's a different story. I don't know. I'm almost to the point to go back to it. Because the more words you add to it, the more judgment you are making to it.

MR. CHANCELLOR: It's definitely not the intent of the Division, by having that language, saying, not pose a hazard to people using the area, to take it so literally that we say you can't have any bluffs because there's always a hazard. We would view it as a natural type of condition. Maybe being silent about it is a better approach than putting something in there that may draw attention.

MR. GINGERY: Yeah. I don't know. How does the rest of the group feel about it? I think the more we add to it, the greater interpretation people can make. I think just generally that we're not out there creating hazards that's beyond the normal.

MS. GOODNOUGH: I think that's the key, beyond the normal. Because if you walk across native ground where there's sagebrush -- I could trip over sagebrush, a horse could trip over sagebrush and lose a rider. They're making us put in rock pile features. Should we take those away because they pose a hazard? How is this any different? Unless you're gonna make us make golf courses out there. There is always hazards. That's the nature of the ground that we work on and live in, in this area. That's what rangeland is. So maybe link it back to what the land use is.

MR. GINGERY: Comments, people that's dealt with -- Chet, you have dealt with this issue.

MR. SKILBRED: We usually relate it to our land use, not to pose a hazard to the postmining land uses is the way we relate our surface features. And as far as what we -- you know, the way we look at it, I guess. Is it going to be a -- is anything we build

going to be a hazard to what the postmining land use is going to be on that area? And for us, I think that addresses all the -- at least in our mining plan, all our concerns.

MR. GINGERY: Yeah.

MR. GAMPETRO: It's even broader in a way.

MR. SKILBRED: It is.

MR. GAMPETRO: A cow could walk off of that, too.

MR. SKILBRED: That's right.

MR. CHANCELLOR: To point out, in the New Mexico rules, they do talk about a hazard to people and wildlife. In the Utah rules it is silent. I don't see that in there.

MS. HOY: Actually, it cross-references back to another section of the Utah rules that basically says not to impose a hazard. Sorry, I don't have that print-out here. But it's another broad statement about not posing a hazard.

MR. CHANCELLOR: I guess my recommendation is just leave the original language as is. And it seemed to work with those other two states; I think we can make it work here.

MR. SKILBRED: I have no problem with that.

MR. GINGERY: That's my feeling. Just

leave it right where we started. I think this has been a good discussion, but it just leads us down a path we can't get out of. We would be putting up handrails.

Jim, is that fine? James?

MR. PONTAROLO: That sounds fine, yes.

MR. GINGERY: Okay. Was there any other comments? I think I will bring this back up here to the Board. Unless there is some additional technical information, I will entertain a motion to accept the changes we have made and what the staff has presented to us this morning.

MR. GAMPETRO: So moved.

MR. PONTAROLO: Second.

MR. GINGERY: Motion made and seconded. Any additional discussion with the Board? Any additional discussion with the public? Not hearing any, all in favor of the motion signify by aye.

MR. GAMPETRO: Aye.

MR. SKILBRED: Aye.

MR. PONTAROLO: Aye.

MR. GINGERY: Those opposed? The motion carries, four to zero.

(Whereupon, the proceedings to be reported were concluded, at 9:55 a.m.)

REPORTER'S CERTIFICATE

August 27, 2004

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me, and that this is a correct transcript of the same.

Rebecca S. Doby
Registered Professional Reporter
Notary Public

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