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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

HEARING OF RULE PACKAGE 1-S, PROPOSED REVISIONS TO THE
VEGETATION STANDARDS APPLICABLE TO COAL MINES

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings in the above-
entitled matter before the Department of Environmental
Quality, Land Quality Division, commencing on the 7th day
of January, 2008 at 9:00 a.m. at the Parkway Plaza
Wyoming Room, 123 West E Street, Casper, Wyoming,
Mr. Jim Gampetro presiding, with Board Members Alan
Linford, Don McKenzie, Robert Green and Carl Demshar in
attendance.

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

2 (Hearing proceedings commenced 9:00
3 a.m., January 7, 2008.)

4 CHAIRMAN GAMPETRO: My name is Jim
5 Gampetro. I'm the chairman, and I'm the public
6 representative from Buffalo, Wyoming. And what I would
7 like to do is start off by going around the room and
8 everyone introduce themselves. I'd like to welcome
9 everyone. I hope you had a better trip in than I did.
10 It was 80 miles of -- well, there's only about 45 miles
11 of really bad road, and then there was another 40 of
12 moderately bad. And as soon as we came over this bridge
13 out here, it was like we were in Florida or something.

14 So if we could go around the room, and I guess
15 we can start this way.

16 MR. MCKENZIE: I'm Don McKenzie. And I'm
17 the Land Quality administrator.

18 MR. GREEN: I'm Bob Green with Rio Tinto
19 Energy America. I'm the industry representative.

20 MR. DEMSHAR: Carl Demshar from Rock
21 Springs. I'm not sure what representative I am.

22 MR. BELDEN: I'm Scott Belden with Powder
23 River Coal, LLC.

24 MR. CHANCELLOR: Rick Chancellor with the
25 Abandoned Mine Lands Division.

1 MR. HULTS: Craig Hults, Land Quality
2 Division.

3 MS. BILBROUGH: Carol Bilbrough, Land
4 Quality Division.

5 MR. MOXLEY: Mark Moxley, Land Quality
6 Division.

7 MS. PAGE: Stacy Page, Land Quality
8 Division. And the roads were dry yesterday afternoon.
9 I'm very fortunate. I mean, perfectly dry from Sheridan.

10 CHAIRMAN GAMPETRO: The weather forecast
11 said it wasn't supposed to snow.

12 MR. BLAKO: Chris Blako, Powder River
13 Coal.

14 MR. LIEDTKE: Roy Liedtke, Cordero Rojo
15 Mine.

16 MR. BONINE: Richard Bonine, Habitat
17 Management.

18 MR. GRANT: Matt Grant, Wyoming Mining
19 Association.

20 MR. JONES: Robin Jones, DEQ.

21 MR. POSTLE: Bob Postle of the Office of
22 Surface Mining, Denver, Colorado.

23 MR. GLOE: Harv Gloe, Office of Surface
24 Mining, Casper.

25 MR. FLEISCHMAN: I'm Jeff Fleischman,

1 Casper field office director of OSM.

2 MR. STOWE: Bob Stowe, Thunder Basin,
3 Black Thunder Mine.

4 MR. FRACASSO: Mike Fracasso, Forest
5 Service, Douglas.

6 MR. LINFORD: Alan Linford, political
7 representative of the elected officials.

8 CHAIRMAN GAMPETRO: And you're from?

9 MR. LINFORD: Star Valley.

10 MR. STELTER: Vern Stelter.

11 CHAIRMAN GAMPETRO: This is a fairly large
12 room. And I would just ask everyone not to be
13 embarrassed to speak loudly.

14 We need to approve the minutes from the
15 December 11th meeting. Has everybody reviewed them? Are
16 there any questions or changes? From the last meeting,
17 what I have here is, I was here. Alan Linford was here.
18 Carl Demshar was here, Robert Green. And James Hunter, I
19 guess, is no longer with us. The DEQ staff.

20 So does anybody have any changes or additions
21 or corrections to the minutes? Entertain a motion to
22 approve these.

23 MR. GREEN: I would move that we approve
24 the minutes.

25 CHAIRMAN GAMPETRO: Do we have a second?

1 MR. MCKENZIE: Second.

2 CHAIRMAN GAMPETRO: All those in favor?

3 (All members vote aye.)

4 CHAIRMAN GAMPETRO: Any opposed? They are
5 approved.

6 Okay. We'll start with Rule Package 1-S.
7 Major item of discussion will be proposed revisions to
8 the vegetation standards applicable to coal mines. These
9 revisions are intended to clarify the LQD's vegetation
10 regulations that are applicable to coal mining
11 applications. Proposed rule language was made available
12 November 9th, 2007 on the LQD website. The advisory
13 board will be voting on whether the proposed rules should
14 proceed to Environmental Quality Council at this meeting.
15 I also received a letter.

16 How would you guys like to proceed in terms of
17 discussing this?

18 MR. CHANCELLOR: Mr. Chairman, what we
19 envision is to go through a brief introduction, because
20 this process started long ago, when most of the board
21 members were not board members. And we'll just give a
22 little bit of background. And then I'll turn it over to
23 Carol Bilbrough to go through changes themselves.

24 The question for the board is, we propose to go
25 through the statement of reasons version of the rules

1 that sort of gives the rule change and statement of
2 reasons and then go through by page and just ask if
3 there's any questions from the council -- or the board or
4 the public on that page of rules. If there's no
5 questions, then we just skim over those rules and move
6 forward to try to get through these rules in the day and
7 a half that we have scheduled. That's our
8 recommendations to the board.

9 CHAIRMAN GAMPETRO: So as we go through
10 those issues that were brought up in the letter that I
11 received, we'll address them as we go through them?

12 MR. CHANCELLOR: Yes. As those rules come
13 up, if there are questions from the public or the
14 industry or from the board themselves, we can stop there
15 and have more full discussion on that particular rule or
16 that section of rules.

17 CHAIRMAN GAMPETRO: Let's proceed.

18 MR. CHANCELLOR: I'll do the introduction
19 to the veg rules, a little bit of background and history
20 of these rules. This process started back in 2003.
21 Actually, it started before that time. We had been
22 discussing with industry the need to look at Appendix A
23 of the vegetation rules, because the history of Appendix
24 A was originally a guideline. Because of the federal
25 rules that mandate that that type of information had to

1 be a force of rule, back in the early days of the
2 program, that guideline was attached to our rules as an
3 attachment and was not really reformatted to be a regular
4 rule.

5 And so we started discussing that back in --
6 oh, before 2003. And it took a long time to get to that
7 point where we were working on a set of rules. The
8 mining industry also, I think through impatience with our
9 slowness, started working with their own version of the
10 rules. And it came to the board meeting there in
11 August 2003. And the board at that time said, stop
12 there. You two get together and work out your
13 differences, then bring something to the board that's
14 more -- we can understand the two packages and move
15 forward.

16 So we did that. And it didn't work out too
17 good to start. We had two version of the rules, my
18 version and your version, and my version is better than
19 your version. And we did not make very good headway at
20 all for almost a year. And finally, with the help of
21 John Corra, the director, we stepped back and said, okay,
22 let's start from scratch. Let's go through Appendix A
23 and start that process.

24 At these meetings, we had people from the Land
25 Quality Division, obviously, the mining association.

1 Forest Service people were there for some of the
2 meetings. Wyoming Game and Fish, because they have
3 interest in our rules. Consultants that do work for the
4 mines were there to add their expertise, and people from
5 OSM, because we were trying to make sure we satisfied our
6 federal overlords as far as our rules being as stringent
7 as their rules. And that group met a total of eleven
8 times.

9 What we decided to do when we started over was
10 to look at Appendix A, go through it page by page and
11 sometimes line by line, and decide what part could be
12 just thrown away, that we didn't need it, and what part
13 needed to go into the rules themselves, that we needed to
14 have a rule to address that issue, and what portions
15 could be moved into a guideline that could be truly a
16 guideline and not have the force of rule.

17 We agreed not to touch the shrub standard of
18 that Appendix A. The shrub standard was a contentious
19 issue back in the early '90s that a different group,
20 sometimes the same people, met over a year's time and
21 hammered out what we call the shrub rule. And we did not
22 want to open up that can of worms, because that was a
23 very hard, contentious fight, and didn't want to redo
24 that one. So we agreed not to open up the shrub
25 standards.

1 We said that, besides Appendix A, we're not
2 going to the existing chapters in our rules and change
3 those unless both parties agree to that. So we tried to
4 keep it narrowly focussed as we could, because there was
5 already a large effort.

6 The exception to that was, we had several OSM
7 disapprovals that related to vegetation, bond release
8 issues that we said we do need and do want to address
9 those in this rule package to where OSM has already
10 agreed to -- or notified us that we have problems with
11 the rules. We would address those rules and change them
12 with this effort.

13 So our goals were to bring the methods that are
14 in the current Appendix A, bring them up to date, because
15 they have been around for a long time and not been really
16 updated for several decades. We wanted to fix the
17 language in Appendix A where it talks about the -- when
18 you write a guideline, the language is different than if
19 you write a rule. A guideline has words like, "You could
20 do this," "You may do that," where rules basically say,
21 "You shall do this." And it's more explicit. So we had
22 to fix that language.

23 Also wanted to improve clarity. Because when
24 we go through the guidelines, sometimes things weren't
25 very clear. And we do want to improve the clarity of the

1 rules and also, as I said before, address OSM
2 disapprovals.

3 As the process wore on and got down to getting
4 ready to have to write the rules after a lot of
5 discussion, it was agreed that Land Quality Division
6 would actually write the rule. And since that large
7 review team was a large group, we decided to appoint a
8 smaller review team to review the written rules to make
9 sure that the writers had captured the agreements that
10 the larger group had discussed. Also, that small group
11 would identify disagreements that industry had from the
12 Division. And after the draft rules were finished, we
13 would go back to the large group and say, here's the
14 work. Look at it again to make sure that we stay true to
15 the agreements that we had in the past.

16 On this team, we had two members of the mining
17 association, Bob Green and Rena Piper, two members from
18 LQD, Bob Giurgevich and Mark Moxley. After this effort
19 was done, Bob retired right at the end. Bob Giurgevich
20 did. Also had one representative of the Game and Fish,
21 Vern Stelter. And this team met eleven times to work on
22 the draft of the rules for almost a year's time. A lot
23 of work went into this effort.

24 Chapter 1, which is mostly definitions, was
25 mostly done by Stacy Page and Craig Hults. Chapter 2 is

1 mostly the permit application information. I did that
2 with the help of Stacy Page. Chapter 4, mostly Carol
3 Bilbrough, but Bob Green and Bob Giurgevich, as part of
4 the small review team -- the review team actually did a
5 lot of work revising language and actually wrote part of
6 the chapter. And it just developed that way and worked
7 out pretty good. And Appendix 4-1, Bob Giurgevich did
8 that work.

9 So the rules in front of you have numerous
10 people working on them, been reviewed numerous times by a
11 lot of people. So we think it's a good package to do
12 this effort.

13 This flow chart sort of lays out how the
14 process worked. We wrote the rules. It went to the
15 review team. They identified differences. They kicked
16 back questions to the rule writers and did that loop a
17 couple times, sometimes four times or more, and fined
18 that down to a rule package. And we then have industry,
19 they provide alternative language to address their
20 concerns. And now we come to the advisory board for your
21 review and your advice whether or not to go forward
22 through the Council for rule-making.

23 This shows that, by 2006 and spring of 2007,
24 those chapters were complete. But they had a curve ball
25 in here. OSM started working on some changes to their

1 rules during this process. And they completed their
2 process before we got done. So we had to look at their
3 changes and see how that impacted our rules, and we made
4 some changes based on that. We want to make sure we stay
5 consistent with their rules. So it just took a little
6 more time to work that out.

7 The OSM rules, they were published in August of
8 2006. The big change was that, in the past, the
9 requirements for the standards of success in sampling
10 techniques had to be in rule. They changed their rule to
11 say they don't have to be a rule anymore. They can just
12 be in a document published by the administrator or the
13 regulatory authority saying these are the accepted
14 methods. The idea behind that was to allow greater
15 flexibility as things change, that the regulatory
16 agencies respond a lot faster than going through a
17 rule-making process that often takes years to go through
18 the state process and then go to OSM and have them review
19 it and approve it. So years go by before you can
20 implement a new effort that everybody wants to do.

21 So the impact of these rules were that we have
22 this whole section on methods that we're ready to put
23 into a rule. We now decide to put that into a separate
24 document that the administrator would publish, saying
25 these are the accepted methods to use. So they're not

1 the past with the annual report is the -- if the staff or
2 the mining association has some neutral ideas that it
3 wants to be tried, we would talk to them or anybody else
4 that has new ideas, and we discuss that. And then the
5 administrator would make a decision, saying, I like it or
6 I don't like it. If he doesn't like it, it wouldn't be
7 done. If he does like it, you republish that document,
8 saying, you know, here's some revisions to that document
9 to allow this new method, whatever came up, be included.
10 So we'd be open to taking comments from the public,
11 sessions from the public or industry, and then we discuss
12 it and decide.

13 CHAIRMAN GAMPETRO: Time period?

14 MR. CHANCELLOR: It could be -- if
15 everybody was supportive, I suppose it could be done in a
16 matter of a couple minutes, as opposed to a couple years.
17 And that's why OSM did not want them to be put in the
18 rule, because they felt the rule process for all the
19 states was so cumbersome, including OSM's process, that
20 it would be years before a method that everybody wanted
21 could be used. They said let's not do that. Let's put
22 it in this other document.

23 CHAIRMAN GAMPETRO: On the long side if it
24 went to public comment?

25 MR. CHANCELLOR: The way the OSM rules are

1 written, that it's available to the public. So I assume
2 the public could -- if they didn't like it, they could
3 give us comments on it. We could see if we wanted to
4 change it based on the comment. But I imagine we'd let
5 people know we want to consider changes to it, whatever
6 change there's been to it. There would be sort of an
7 informal process, not a board, council, OSM process. But
8 it's very open right now to how that would work. And
9 it's up to the administrator to decide if we want to go
10 that way.

11 Impact of the new rules. We end up taking
12 three sections from Chapter 4. These are the sampling
13 methods for success. Appendix 4-3, sample adequacy
14 calculations and statistical procedures for revegetation
15 success evaluation, those were incorporated into this new
16 document which we haven't done yet. We need to work on
17 that.

18 With that, we'll go into the actual rule
19 package itself and turn it over to Carol unless you have
20 more questions. I will say it was a very long, winding
21 road. It was hard sometimes. Some real tough
22 discussions went on sometimes. But I think at the end,
23 we were able to narrow down the differences to just a
24 very few. And I do think we ended up with a very good
25 rule package.

1 MR. GREEN: Mr. Chairman, if I might,
2 along those lines, there's a bit of a difference, in that
3 the rule package outlines two differences, and WMA's
4 letter outlines three differences. So if you'd make sure
5 to touch on that third difference as you go along, as
6 well, please.

7 MS. BILBROUGH: I just wanted to say a
8 little bit about the order of presentation that we'll
9 follow. Chapter 1, which you would think would come
10 first because it's Chapter 1, are the definitions. And
11 so we figured what we needed to do is do the rules with
12 content first and then go back and do the definitions.
13 So we're going to start with Chapter 2 and then go to
14 Chapter 4 and then the appendices, and then we'll go back
15 to Chapter 1.

16 MR. GREEN: Before you start, if I might
17 just interrupt one more time. Just as a point of order,
18 since you have seen my name up there a couple of times --
19 in fact, I've been helping to write drafts of part of the
20 rules -- I just wanted to revisit the points of the last
21 two public meetings, where I outline that I felt that my
22 part in it was distance enough to allow me to still make
23 an objective decision at this point. And at the last
24 meeting, that was agreed upon by the board. I just
25 wanted to revisit that and make sure that was still the

1 case.

2 CHAIRMAN GAMPETRO: Unless somebody has a
3 problem with that -- didn't last time.

4 MR. GREEN: Thanks.

5 MS. BILBROUGH: So starting with Chapter
6 2, Chapter 2 initially, as everybody knows, had two
7 sections. And we expanded it to include six sections.
8 Most of those sections are essentially the same. The two
9 that are really changed are Sections 3 and 6, the
10 vegetation baseline requirements and the reclamation
11 plan. And a lot of the information that was brought into
12 there is actually from Appendix A. There are some new
13 things, but a lot of it is from Appendix A.

14 I know you guys saw this before, but I want to
15 refresh your memory as we go. So I'm going to insert
16 some of the initial slides that we have, kind of
17 introductory slides.

18 One of the parameters that we measure in
19 vegetation is cover. And we're basically defining cover
20 in this case as the percent of ground surface which is
21 covered by the vertical projection of objects on or above
22 the ground surface. And we are sticking to vegetation
23 cover. So we are really only looking at, in this case,
24 the shrub that's right here for vegetation cover.

25 And a second parameter that we measure is

1 production, which is basically just an estimate of the
2 herbaceous matter that's produced during that growing
3 season. And then, finally, we look at shrub density,
4 which is the number of shrubs per unit area. And it's
5 typically reported as the number of shrubs per square
6 meter. And we measure it by measuring 100-meter-square
7 or a 50-meter-square quadrat.

8 The elements of the baseline vegetation study,
9 you have a study plan, a map of the vegetation community.
10 You measure percent cover by species for each plant
11 community, annual herbaceous production. You identify a
12 reference area location. And a reference area is an area
13 where you -- that you are using that is a native area
14 that you're using to compare your reclamation once it's
15 complete to this reference area. And it's identified at
16 the beginning. And then you do shrub density sampling,
17 tree counts and locations and plant species inventory and
18 plant community descriptions. The yellow identifies
19 areas where we've done -- actually, where we've revised
20 the baseline study requirements.

21 So the changes to the baseline requirements are
22 that we have reduced some of these requirements in
23 situations where the plant community is already well
24 described. So when the administrator determines there's
25 sufficient plant community baseline data from previous

1 studies, then there's reduced sampling for cover with the
2 sample size based on the area that's being sampled and no
3 requirements for sample adequacy. Production sampling is
4 not required unless there will be a technical standard.
5 If the operator is using this data to be a technical
6 standard, then they have to sample fully to sample
7 adequacy, and they have to sample production.

8 In addition, if the operator commits to the
9 maximum shrub replacement, shrub establishment post-mine,
10 then there's no need to do pre-mine shrub density
11 measurements to sample adequacy.

12 The reclamation plan requirements are basically
13 moved from Appendix A, rearranged from Chapter 2 and
14 spruced up a little bit in some cases. So there isn't
15 really much change there. It's mostly an organizational
16 change and bringing Appendix A into Chapter 2. And I
17 believe that's the last Chapter 2 slide. So if we want
18 to go through Chapter 2 at this point, that way -- what
19 we were planning on doing is going chapter by chapter.
20 So we should revert to Chapter 2.

21 MR. CHANCELLOR: What we'll work from is
22 what we call the "statement of reason" versions of the
23 rules that you should have in your binder. That will
24 show the striked, underlined portions, plus the
25 italicized language that discusses why we're making that

1 change. It should be page 45 of 142 at the start of
2 Chapter 2. And I'll just go real briefly through some of
3 these if you all have that. Should be in your big binder
4 for the board members.

5 I'll go real quickly through some of these
6 pages unless somebody yells, "Stop. I have a question."

7 MR. LINFORD: Which page is it?

8 MR. CHANCELLOR: Page 45 of 142. I struck
9 out "For Surface Coal Mining Operations." That's left
10 over from when we had the coal rules and non-coal rules
11 combined. We don't need that. The whole book is now
12 coal rules. We also struck out the size of the maps.
13 We're flexible on that based on what it is. That's
14 basically a change to that one page.

15 We did add into our rules there toward the top
16 of page 46, Item Number Romanette (v), "The five
17 regulatory periods as defined in Chapter 1, Section 2
18 (dn)." Through the life of the program and mining in
19 Wyoming, we had different statutes that come into play,
20 different rules that come into play. And what this
21 refers to is those major categories that we have
22 identified from being pre-law. We had a 1969 law that
23 the State had. In '73 we had the Environmental Quality
24 Act. We had rules in '75. This map comes along later
25 on. So we have these different categories of time frames

1 that, on a single mine, all five of these categories
2 could be on that mine. And so we have this document that
3 we've now put into rule. And this just references that
4 document.

5 Go on to the next page. No changes there. At
6 the bottom, it talks about -- at the very bottom of page
7 47, struck out "surface coal mining." One thing with the
8 federal law that also applies here is the -- it's called
9 the Surface Mining Control and Reclamation Act. It also
10 applies to underground mining. It's really a coal mining
11 act. And most of the things that apply to surface coal
12 mining also applies to underground mining. Underground
13 mining has some additional things you've got to do
14 because they're mining underground. So to try to avoid
15 the confusion that these rules only apply to surface coal
16 mines and not to underground mines, we struck out the
17 word "surface." It applies to coal mines.

18 No changes on page 48. On page 49, Section 3,
19 vegetation baseline requirements, here's where you start
20 to see some changes. We are requiring a plan to how the
21 operator is going to do baseline sampling to be submitted
22 in advance. We're trying to make sure that before the
23 operators go out and sample the vegetation, he'll satisfy
24 our needs, our requirements to the rules. And so we want
25 to make sure that he doesn't waste his effort and require

1 a plan in advance to make sure how they're going to do it
2 to meet our rules, what they're going to do to meet our
3 rules.

4 Now, sometimes the operator, in several of
5 these over the past several years, we know what they're
6 going to do and reference that with the plan. And so we
7 have some discretion by the administrator, saying,
8 because you've done this the past several years in a row,
9 if you follow that same method, you'll be okay. But for
10 a brand-new operator that comes in that we have no
11 experience with, we're saying, you know, give us a plan
12 and make sure we know what you know is going to be right
13 and don't waste your time.

14 Part (b), we've had occasions where several
15 things happened. An area was studied, but it was never
16 really permitted as a mine. But we have data, some old
17 sampling data. We also have where a mine has sampled
18 adjacent to the mine, but another mine came and permitted
19 on top of that. So sometimes we have sampling that
20 occurred prior to that. And this Section (b) gives some
21 discretion as to, the Division may accept that old
22 sampling data, or they may reject it based on some
23 criteria. And this section lays out that criteria that
24 the Division would use to decide, is the data okay, or is
25 it too old, or have things changed? Do we have to reject

1 it and do sampling over?

2 On page 50, then on to 51, it talks about the
3 mapping that occurs when you do the sampling. And note
4 there that communities larger than two acres shall be
5 mapped. Because sometimes you have a large vegetation
6 community, but interspersed you have small pockets of
7 things that are different than the general community.
8 And we're just trying to note those, like when you start
9 mapping those separately.

10 Unless there's any questions on that, I'll move
11 on.

12 On page 51, small (d), it goes into the cover.
13 And as Carol pointed out, when you talk here -- look on
14 Romanette (i), quantitative methods, and then Romanette
15 (ii), semi-quantitative. What the group decided upon
16 that were doing these rules, that quantitative methods
17 means that you use statistics in your evaluation, or how
18 you do it. Semi-quantitative, that you take
19 measurements, but there are really not statistics applied
20 to those numbers. And so when you see those terminology,
21 "quantitative" and "semi-quantitative," that's what they
22 mean. We at one time were talking the same thing but
23 using different words. We settled on these terms to keep
24 everybody straight.

25 And, again, where the operator does not want to

1 use a technical standard as their basis for evaluating
2 bond release, that they can use semi-quantitative methods
3 when doing this.

4 A technical standard -- and I'll stop there a
5 little bit. Normally, when people do bond release, they
6 look at the reclamation. They sample that, then sample a
7 native area. And they do all these statistics that say
8 you meet the standard. For a technical standard, we look
9 at several years of data, five years, at least, over a
10 large area and say, okay, based on this, here's a cover
11 number, here's a production number, and then they do
12 their sampling for the reclamation. They compare it
13 directly to those numbers. They don't do additional
14 sampling of the native because of the technical standard.

15 So when we see this technical standard through
16 here, that's what that's talking about, something that's
17 done in advance of reclamation that we both agree upon.
18 Here's the standard you got to meet.

19 MR. HULTS: Mr. Chairman, there's a few
20 spots throughout here that are minor revisions that were
21 just noticed along the way. And particularly, like this
22 one, Number 2, Romanette (ii), there's an "and" there
23 that's struck out. This was all new language, so that
24 shouldn't be in there at all. It was something, as we
25 were revising them, we took that and struck it out as we

1 made revisions. And it's kind of a remnant from that.

2 It shouldn't be in there at all.

3 MR. CHANCELLOR: The "and" shouldn't be?

4 MR. HULTS: Yeah. Since it's all new
5 language. And I'd like to make those changes as we go
6 along, if that's possible.

7 MR. CHANCELLOR: On page 52, you see
8 several large (A), large (B), trying to decide how many
9 samples to do when you do the semi-quantitative methods.
10 And these are numbers that, through discussions between
11 the staff and WMA, came up with these. So many acres,
12 you do three samples; five to fifty, you do five; and
13 above fifty, you do ten.

14 MR. BELDEN: Mr. Chairman, Scott Belden.
15 I'll be speaking for Wyoming Mining Association today.
16 And this is just a minor editorial change we'd recommend
17 here. Because the numbers are the same there, it's a
18 little bit confusing to have two tables. And I would
19 just ask that you would consider the mine goes all under
20 one table, since the numbers are the same.

21 MR. CHANCELLOR: I'm trying to think. I
22 think we had this discussion in the meeting one time,
23 whether or not to combine them or to keep them separate.
24 Anybody have memories of that?

25 MS. BILBROUGH: You know, Scott, when you

1 sent us that table, it was sort of at the ninth hour.
2 And we decided we couldn't do that revision at that time.
3 But I don't actually recall that we objected.

4 MR. BELDEN: Only to clarify, is why we're
5 suggesting it. We don't have any trouble with the
6 numbers. Just thought having two tables may be a source
7 of confusion.

8 MR. HULTS: It looks as though the second
9 sentence in (A) is the same, except that the reference
10 area's mentioned first. I think if we just pulled (B)
11 out of there completely, it's all covered.

12 MR. BELDEN: And we would agree with that
13 change.

14 MR. CHANCELLOR: Is everyone okay with
15 that change?

16 Let's go down to (g). Important point there.
17 During this discussion, WMA brought out that oftentimes
18 you look at a land to be permitted and look at shrub
19 density because there's a criteria that when you have
20 more than a certain amount of shrubs, you have to put
21 back X amount. And sometimes just by looking at it, you
22 can say, I'm going to put that maximum amount of shrubs
23 back in there.

24 So WMA brought up that if we commit to putting
25 back the maximum amount of shrubs and have a break on

1 doing the in-depth sampling of that pre-mine shrub
2 community, yeah, it makes sense. Because why sample
3 something that you already know is going to be older
4 criteria? And if you commit to doing the maximum
5 replacement, then why waste time and money doing
6 additional sampling? So (g) captures that concept.
7 You've got the mine in advance commencing to doing the
8 maximum replacement.

9 Go on to page 53. We used to have a discussion
10 on the trees, the height and diameters. And it doesn't
11 make a difference how tall the tree is or what thickness
12 or the diameter is, but the tree's a tree. And that's
13 important. So we dropped that requirement. Part (i),
14 Romanette (i), we had a lot of discussion on inventory,
15 what that meant. I think we have that captured here,
16 what we agreed upon.

17 The next page, page 54, large (D), we have
18 clarified what's native, native to North America, as
19 opposed to just native to Wyoming.

20 MR. LIEDTKE: Mr. Chairman, Roy Liedtke,
21 Cordero Rojo Mine. Just a very minor issue on page 53.
22 Part (i), I believe, was supposed to be (h).

23 MR. CHANCELLOR: Craig, is the -- the tree
24 thing, is that supposed to be (h)? That word fell out.

25 MR. HULTS: Trees is (h). That's here.

1 And then (h)(i) --

2 MR. CHANCELLOR: Look under the tree
3 discussion, where it's struck out the Section 2(a)
4 (vi)(C)(I). There's (h) there.

5 MR. LIEDTKE: Okay. Thank you.

6 MR. HULTS: And what I'll do in the future
7 as this goes forward, I'm going to flip those that have
8 the new designation in front of, and then the struck-out
9 will be following it. And as I was going through that,
10 it -- one of the things is that we had different writers
11 working on them, one that was in front. And this works
12 out better if it's behind, I think, this struck-out
13 language.

14 MR. CHANCELLOR: On to page 54. Talks
15 about the inventory. One thing we came through in this
16 rule package, how we handle weeds has always been an
17 issue. And on this part for baseline collecting, we talk
18 about designating noxious weeds or prohibited noxious
19 weeds identified by the State of Wyoming. Some counties
20 will identify a different list of weeds and decide not to
21 go down to that level because different parts of the
22 state would have different criteria. So we stay with
23 this state designation.

24 On page 55, more discussion of inventory, more
25 discussion of weeds. Down at the bottom of 55, Romanette

1 (ii), we had discussion as to, when you have a large weed
2 patch, how to address that and baseline. So (ii) down at
3 the bottom of the page is where we came up with an
4 agreement on how big of a patch of weeds you have to have
5 before you treat it differently than what you would just
6 a weed out there. So that was a discussion and agreement
7 between WMA and Land Quality.

8 MR. HULTS: One minor correction. Up
9 above -- below Number Romanette (viii), we have (iv),
10 which should be (ix). I have it marked up there.

11 MR. CHANCELLOR: That would be an
12 editorial correction to the rule package in front of the
13 board. Change the (iv) to (ix).

14 Then on page 56, cropland is -- I guess you
15 would call it a unique land use. A lot of the vegetation
16 stuff we do sampling for really doesn't apply to
17 cropland. It's treated differently. And we have this
18 rule in here just to clarify so there's no
19 misunderstanding.

20 Then go to Section 4, other baseline
21 requirements. When I did Chapter 2, because so much
22 changed in the vegetation portion, that's why we separate
23 the vegetation baseline from the other baseline
24 requirements. And on page 57 you see where I took some
25 of the vegetation, struck that from this section and

1 moved it to a different part of Chapter 2 that we just
2 talked about.

3 So you go through 58 and 59 and 60, on
4 through -- let's go to page 64. Really no changes in
5 those pages except for the citation. And then Section 5
6 took all the discussions throughout the old Chapter 2
7 that talked about the mine plan and put them in one
8 section. And so there on page 64, the changes there are
9 just a change to the citation. I did strike out on page
10 65 a discussion there. It was moved to different parts
11 of the chapter. So it was struck out.

12 Then page 66 through 73, again, those are
13 mostly just a change to citation and no change to the
14 rule, really. On page 73 is the start of Section 6,
15 reclamation plan. That change at the bottom of the page
16 is really just editorial just to make the flow better.
17 The same thing on the top of page 74. The rest of 74 is
18 just citation changes.

19 One thing we did change on -- for the top of
20 page 75, there toward the -- it's large (A) under
21 Romanette (iii). We struck out "or," where it talks
22 about mulching, to "and." Basically, we're saying that
23 mulching has to be done unless you have some other
24 provision that is approved. We felt that was for
25 clarification purposes.

1 We did change the discussion on the Game and
2 Fish involvement. It was just one large paragraph. It
3 was changed into two to try to clarify better what's
4 going on there.

5 On page 76, we struck out the reference to
6 consulting to Wyoming Department of Agriculture. We
7 really don't do that. I don't think anybody does that.
8 So it's not needed. Probably left over from the rules
9 back in the early '70s.

10 There in large (D), talking about tree species,
11 this is in response to -- we did an earlier rule package
12 that addressed the trees. And this is sort of a
13 follow-up from that. Then below that is a section that
14 was taken from Appendix A. We struck out some language
15 and distilled it down to requirement that separate seed
16 mixes shall be developed for each approved post-mining
17 land use.

18 One discussion we had in this effort was, are
19 we talking about land uses, or are we talking about
20 vegetation communities? And the rules talk about that
21 you've got to reclaim to certain land uses. And those
22 land uses may have certain vegetation communities that
23 comprise that land use. So they are intertwined. But
24 land use is more in line with, I think, the statutes and
25 the regulations. We're trying to put back a specified

1 land use that the operator has to identify. But you also
2 need to have seed mixes that support that land use. So
3 there's a lot of discussion that came out, I think, okay.

4 Nothing else, really, on the rest of page 76.
5 In the center of page 77, the previous language says
6 "naturalized, introduced species." And we struck the
7 "naturalized" through several of those rules there. I
8 think the question was, what was naturalized?

9 CHAIRMAN GAMPETRO: Rick, just a quick
10 question. As you put all this together, when you look at
11 land use and you look at weeds and you look at all these
12 different variables, how do you take into account game
13 and fish erosion? If it's noxious weeds, are they to be
14 replaced by what?

15 MR. CHANCELLOR: If native has noxious
16 weeds? Weeds have been -- a lot of discussion on how to
17 deal with weeds. Because they're in the native. They're
18 in the reclamation. Obviously, if there's a large --
19 acres and acres of weeds in pre-mine, we don't want to
20 put that in the post-mine. So we want to approve the
21 post-mine but realize that when you have a weed patch
22 right across the fence from reclamation, you'll end up
23 with weeds in your reclamation.

24 So we tried to -- and in the discussion of
25 cheatgrass, we'll have a disagreement here that we'll

1 discuss further. But it is a hard issue to address,
2 because we want to limit that, but we know we can't
3 prohibit it, because it's going to happen. So we're
4 trying to find a way to minimize the impact of weeds on
5 the reclamation but realize it's going to be there. So
6 the question is how you deal with that. And that was a
7 tough, tough, tough issue that we discussed.

8 CHAIRMAN GAMPETRO: But something goes
9 bad. Because of the wildlife and the erosion situations,
10 something -- you're not going to leave bare ground.

11 MR. CHANCELLOR: There are occasions where
12 bare ground will be in reclamation. Recognize that it's
13 going to happen. So not every square inch of reclamation
14 will have vegetation on it.

15 CHAIRMAN GAMPETRO: No. I'm not saying
16 that. I'm saying if you had a weed patch, it was keeping
17 the soil from washing away, and it was providing cover
18 for some forms of wildlife. Better than nothing.

19 MR. CHANCELLOR: If you have pre-mining --
20 pre-mine, you have a weed patch or just an area that's
21 just been hammered and eroded and degraded, you know, the
22 statute envisions putting back uses equal to or above.
23 And that's a case where we say, okay, we'll improve that
24 pre-mine condition to something better. They actually
25 don't plant the weeds. They plant something and get

1 something going back to control erosion. So we did
2 improve the pre-mine in those cases. But we also realize
3 that some weeds will be there, and some bare spots will
4 be in reclamation. And in Chapter 4, you'll see more of
5 that discussion.

6 There at the bottom on page 77, Number 3, I
7 think we clarified some language there concerning
8 cropland and pastureland. Again, those are special land
9 uses that we realize are different than the native
10 grazing land.

11 Going on to page 78, at the top of the page, we
12 took out "Naturalized or nonindigenous native plant
13 species," just because I don't think it's needed. There
14 at the center of the page, large Roman Numeral VIII, we
15 had the Forest Service with us in these rule discussions.
16 And this was put in there at their request, that for
17 federally owned surface, they may have special
18 requirements that they want to recognize they have.
19 Since they manage that federal surface, they have that
20 opportunity to have input into the plan. And this
21 recognizes that input, that the operator will consult
22 with the federal land managing agency to determine what
23 their desires are.

24 And, again, the bottom of page 78, a weed
25 control plan, you know, if it is federal lands, that that

1 agency may have a plan that they want implemented on the
2 mine site or their land. And we recognize that.

3 MR. GREEN: Mr. Chairman, if I might, just
4 a quick question. If the federal management agency, if
5 their requirements differ considerably from the
6 requirements in this rule, what's the avenue for
7 resolution of that?

8 MR. CHANCELLOR: I think we'd probably
9 have a meeting with the operator and federal land
10 managing agency to discuss the differences and try to
11 resolve them to avoid a black-and-white conflict. I do
12 think that our rules are flexible enough to be able to
13 say almost all cases satisfy those differences. Because
14 we recognize that they have certain requirements they
15 have to meet. The federal law, SMCRA, also has certain
16 requirements. But I think we can come to terms to get
17 both of those satisfied. So it would be a meeting of
18 minds.

19 There on page 79, down toward the bottom of the
20 page, it talks about revegetation success, that a plan
21 needs to be put into the permit as how you plan to
22 measure that success. You can use a reference area or
23 different methods. You still have a plan. Now, it's
24 true that as the mine goes on and they get close to bond
25 release, they may have an option to change that plan to

1 measure success based on what resulted in the
2 reclamation. But, still, we feel it necessary to have a
3 plan to start with so you know where it's going, how it's
4 going to be measured. When you finally get there, you
5 say, well, maybe we better do it a different way. If
6 it's allowed in the rules, they should be allowed to
7 change that plan. But you need to have a plan to start
8 with.

9 MR. BELDEN: Mr. Chairman, just a minor
10 editorial suggestion here. Back on page 79, (J), in the
11 middle of the page, there's a reference to Chapter 4,
12 Section 2(d)(xi). I believe that needs to be corrected.
13 And it's a reference simply to Chapter 4.

14 MR. CHANCELLOR: So I guess we'll check
15 that and report back to the board after a break or
16 something, as to, is Chapter 4 okay, or do you want to
17 get down to the section? It's been done both ways.

18 MR. BELDEN: Just so long as it's correct.

19 MR. CHANCELLOR: On page 80, it goes
20 into -- the following page, 79 and 80, it goes into the
21 plan, how you're going to measure success. There at the
22 bottom of page 80, again, some of the language was
23 dropped because it really applies to Chapter 4, as
24 opposed to Chapter 2. It was moved to that chapter.
25 Page 81, no rule changes except for citations, same with

1 82, and to the end of the chapter.

2 So that's it for Chapter 2.

3 CHAIRMAN GAMPETRO: Any questions or
4 comments or needs?

5 MR. CHANCELLOR: Went through it fairly
6 fast, but I think pretty much everyone was in agreement
7 with a lot of that stuff.

8 MR. HULTS: One way to fix this would be
9 just to make it 2(d). It's not as specific, but that
10 would fix the problem.

11 MR. CHANCELLOR: Is that agreeable to the
12 board, just to strike out the --

13 CHAIRMAN GAMPETRO: I don't see anybody
14 with a problem.

15 MR. CHANCELLOR: Now we go to Chapter 4.

16 MS. BILBROUGH: Do you want to move on, or
17 do you want a break?

18 MR. CHANCELLOR: Move on, I guess.

19 MS. BILBROUGH: So originally we had just
20 one section, Section 2(d), on revegetation, general
21 performance standards. And we've divided it into two
22 sections now. Section 1 is general performance standards
23 still stand there. And then Section 2(d)(ii) is
24 revegetation success standards.

25 And one of the reasons we did this big change

1 and that this is a pretty substantial change is because
2 we have a lot of different kinds of land uses. And I
3 believe we have A through I land uses. And so they were
4 all kind of mixed together in this single section. And,
5 also, in many cases, they were not explicitly described.
6 What are the performance standards for certain kinds of
7 land uses? So we created this second section and
8 identified individual land uses and specified what their
9 performance standards were for each land use.

10 And then we also have a new species diversity
11 standard that is treated as an appendix to Chapter 4.
12 And we have the shrub density standard, which was moved
13 from Appendix A to the second appendix to Chapter 4,
14 Appendix 4-2.

15 So I'm going to give you a little bit of
16 background before I go into the general performance
17 standards section. Again, we have cover -- these are the
18 standards that we require the operator meet in order to
19 achieve reclamation success. Cover, vegetation cover,
20 biomass production, shrub density, tree replacement and
21 species diversity and composition. These all have to be
22 satisfied in order to consider successful revegetation.

23 So as Rick mentioned, we have a couple of
24 different ways of evaluating success. One is, we can
25 compare to a native reference area. And that's typically

1 defined at the time that we do baseline, but sometimes
2 it's defined later. But the important point is that
3 you're comparing reclamation on the ground to a reference
4 area on the ground. So you're taking measurements in
5 both areas, and you're comparing them directly.

6 Another way to do an evaluation is using a
7 technical standard. And in the case of cover and
8 production, as Rick mentioned, the operator can take
9 measurements for five years using some pretty rigorous
10 sampling to achieve sample adequacy and calculate a
11 technical standard that the operator then has to meet.
12 And instead of having a series of measurements in a
13 native area, it's just a single number that they're
14 comparing. So for cover, it might be 50 percent or
15 something like that.

16 Shrub density is a set value with some
17 influence of the pre-mine shrub density. So if there was
18 a shrub density greater than one shrub per meter squared,
19 the mine is required to reclaim back to one shrub per
20 meter squared. If it's less than one shrub per meter
21 squared, a lesser value may be appropriate. And then
22 species diversity and composition are values that are
23 based on native and reclaimed plant community
24 information.

25 So as a summary table, we have the parameter,

1 cover, production, diversity, shrub density and trees.
2 And Rick also talked about, is it quantitative or semi-
3 quantitative? And as a reminder, quantitative means that
4 the numbers are sampled and a statistical test is used to
5 evaluate the comparison between the technical standard or
6 a reference area.

7 The only one that doesn't have a reference --
8 well, cover and production allow for both a technical
9 standard and a reference area. And they also require two
10 years of sampling. Species, diversity and composition is
11 semi-quantitative, so there's no statistical comparison
12 there. It only has a technical standard, and it also
13 requires two years of sampling. So these first three are
14 sampled for two years.

15 Shrub density is quantitative. In other words,
16 the standard is one, but it's a statistical test to
17 compare your measurements to that standard. And then
18 there is no reference area sampling. And that is only
19 required for one year instead of two. And that's through
20 OSM. That reflects OSM rules. Trees are semi-
21 quantitative. You have ten trees post-mine, you put ten
22 trees back. There's no statistics involved. And because
23 it is based on a count pre-mine, it's a technical
24 standard and, again, only sampled for one year.

25 So into the general performance standard

1 section. And what I thought I'd do is just do general
2 performance standards, and then we can stop and go
3 through that section, because Chapter 4 is pretty big and
4 involved.

5 So for the most part, Chapter 4, Section 2(d)
6 (i) is the same as the current chapter, Section 2(d),
7 with a few minor revisions. It contains all the
8 performance standards that were in there before. We have
9 a couple of new -- we have a revision to the tree
10 replacement standard, and we added a very large section
11 on normal husbandry practices. This was a requirement by
12 OSM to specify what husbandry practices we would consider
13 to be normal that would not require the bond clock to be
14 reset. So this specifies the practices the operators can
15 use to manage the reclamation without restarting the
16 ten-year bond clock.

17 And this was a pretty important section to get
18 in there, because it's been an outstanding disapproval
19 from OSM. And we really needed to specify what we were
20 going to allow operators to do and what the parameters
21 were around that.

22 In addition, we specified routine land
23 management practices, putting up fence and things like
24 that that also don't qualify, really, as normal husbandry
25 practices but also don't reset the bond clock.

1 The revision to the tree replacement standard
2 is, we added a requirement -- and this, again, was in
3 response to OSM rules -- that all planted trees must have
4 been in place at least two growing seasons. And
5 basically, what we're not -- what we're saying is that
6 you don't have to go out at the end of the bond year
7 clock and count all your trees and verify that Tree A was
8 there two years ago. All you have to do is demonstrate
9 through recordkeeping that you haven't planted any trees
10 for the last two years. And any tree that's out there
11 will count. So it's sort of a recordkeeping issue, not a
12 going out there and marking every single tree and
13 identifying whether it was planted two years ago or not
14 when you go out there to verify.

15 Normal husbandry practices are management
16 practices used after seeding and establishment that do
17 not reset the ten-year bond clock. And some of the
18 examples we can use are grazing, weed control and
19 interseeding. Some of these practices need to have
20 constraints put around them so that you can ensure that
21 you can do this practice without resetting the bond
22 clock.

23 An example is interseeding. If you have to
24 interseed a 500-acre area because the reclamation isn't
25 very well established, that suggests that you've moved

1 into resetting the bond clock kind of scenario, that you
2 have less than -- that you're moving towards failed
3 reclamation.

4 So we put limits on time periods. I guess we
5 didn't put a limit on area for this one, did we? So I
6 spoke in error. I'm not sure. But you can't interseed
7 within six years of the end of the bond period. If you
8 do interseed, you have to give the reclamation time to
9 establish itself. You can't interseed and then three
10 years later go for bond release. And, again, the purpose
11 of this was to address an OSM programmatic disapproval.

12 So with your permission, we'll stop here and go
13 through that section. So I'll just go through page by
14 page the way Rick did. If you have a clarification
15 question, please feel free to chime in. I'll see what I
16 can do.

17 Basically, I think what you'll see in the first
18 few pages is that on page 84, it's just explaining the
19 restructuring, and 85 is simply change in making some
20 minor revisions and renumbering rules that were already
21 in place in Section 2(d). And the same is true for page
22 86, until you get down to the lower part of page 86. And
23 part of that was moved to Chapter 2, and part was moved
24 to later in the chapter.

25 Are there any questions?

1 MR. BELDEN: Mr. Chairman, Scott Belden
2 again. Just a minor editorial suggestion here. The word
3 "continued" in letter (F), I didn't think that needed to
4 be in there. I think it was carryover.

5 MR. HULTS: The "continued" is -- because
6 it was split up, those sections that were there, it was
7 an indication that this was previously Section 5. And
8 that "continued" is merely an indication from above. You
9 can see it was partly up here. It's partly down here. I
10 just wanted to indicate that. If it's confusing, it can
11 be removed. It doesn't have any true value to the rules.
12 And it may look -- as it's underlined, it may look like
13 it's textual and probably shouldn't be there. I would
14 agree with that.

15 CHAIRMAN GAMPETRO: Are we taking it out?
16 Anybody have a problem with that? That's fine.

17 MS. BILBROUGH: So do you also want to
18 strike out below, that "continued" to be removed, as
19 well?

20 Page 87, again, most of the rules have been
21 moved to Chapter 2 or moved to later in this chapter.
22 Any comments on Item (G)? This is part of where we
23 identified specific land use practices that were then
24 moved to the next section. And so I think from here,
25 page 88 and 89 and 90, that's all been moved to Section 2

1 (d), Romanette (ii).

2 CHAIRMAN GAMPETRO: If you're going to be
3 consistent, on 88, you have another one of those
4 "continued."

5 MS. BILBROUGH: And then at the bottom of
6 page 90 is the section where we added the language on
7 trees that says that trees must have been in place for at
8 least two growing seasons. And so in total, the planted
9 trees have to -- at least 80 percent of them have to have
10 been planted for at least eight years. And in addition,
11 none of them could have been planted the last two growing
12 seasons. And this is to conform with OSM rules. And
13 it's not a go-out-and-count-the-trees thing. It's more
14 of a bookkeeping issue.

15 Page 91 is just statement of reasons for that
16 rule change. 92, again move to Section 2 (d)(ii), as
17 part of the land use standard section.

18 Comments on page 93?

19 We're back to the general performance
20 standards, which include things like monitoring
21 vegetation, protecting new growth from livestock grazing
22 and things like that, which were already in the
23 regulations.

24 MR. HULTS: On page 93, we have that
25 (x)(J). I've got it up on the screen right now. It's

1 got a strike-through and underline. It should be
2 strike-through only.

3 MS. BILBROUGH: Page 94 is where we get to
4 the normal husbandry practices. And above the normal
5 husbandry practices, we did revise the requirements for
6 noxious weeds. We said that the operator must control
7 the introduction and/or spread of noxious weeds on all
8 affected lands. So we weren't -- we added that you have
9 to control spreading noxious weeds, as well as their
10 introduction. And we specified that it has to be on all
11 affected lands. And we also specified that it's the
12 entire bond responsibility period that weeds must be
13 controlled. So until you get bond release, the weeds
14 have to be controlled.

15 And then (M) is the normal husbandry practice
16 section. And it includes -- I haven't actually done a
17 count lately -- but quite a few normal husbandry
18 practices. And in order to satisfy OSM, it requires a
19 fairly lengthy statement of reasons, because we have to
20 document that these practices would occur on native lands
21 in Wyoming or similar lands in Wyoming.

22 So when we say it's a normal husbandry
23 practice, for example, grazing, what we're saying is that
24 it would be happening on adjacent lands that were never
25 affected by mining. Or if we were irrigating, for

1 example, pastureland, that's a normal practice that we
2 would use in pasturelands that have access to irrigation
3 water that are not disturbed through mining.

4 And it's more illustrative in situations where
5 you're planting shrubs and things like that that we have
6 to demonstrate that, yes, people do plant shrubs,
7 seedlings as part of management practice in Wyoming. So
8 it has to be specific to Wyoming, and it has to be a
9 practice that happens outside the arena of mining as a
10 normal management tool on that type of land use.

11 So one of the things that we had to distinguish
12 between is interseeding, where you're going in and
13 seeding already-established reclamation to enhance it,
14 and reseeding, or augmenting seeding, where you have a
15 failed reclamation situation, and you're going back in
16 and seeding everything all over again. And because those
17 two are very closely related, you know, where do you draw
18 the line? That was one place where we had to be really
19 careful in how we described that practice.

20 And, again, with planting tree and shrub
21 stocks, we had to be careful to ensure that we were
22 describing something that I think in this case was
23 approved by Wyoming Game and Fish as a standard husbandry
24 practice in Wyoming.

25 I think we can all agree that grazing of

1 grazing lands is a normal husbandry practice.

2 So I'm on page 99. We also had specific
3 practices that were allowed for shelterbelts that were
4 not allowed for grazing land in general. In particular,
5 irrigation and fertilization were not allowed for
6 standard grazing land, but they are allowed for
7 shelterbelts. And so we included the ability to
8 fertilize and irrigate in shelterbelts. And then we also
9 specified beyond establishment, where you might use
10 fertilization and irrigation for cropland and
11 pastureland. And that's Roman 5 page 99.

12 On page 100, we were looking at, what kind of
13 mechanical practices can we do and not reset the bond
14 clock? And so in this case, it's basically a shopping
15 list of things you can do without getting in trouble and
16 that we documented through various agencies in the state.

17 And, again, some of this was just making sure
18 that everything is in clarity. Because, obviously, if
19 you're tilling cropland, that seems obvious. But we
20 wanted to put the obvious in there so that we could be
21 sure that we were clear of what would be okay and what
22 wouldn't be okay.

23 And then under Roman 8, the weed and pest
24 control techniques, because of the -- as Rick was saying,
25 if you have too large an area that is full of a noxious

1 weed, you might have to just start all over again. So
2 this is one place where we did put a size limit. You can
3 only do this on this kind of extreme measure on five
4 acres and not reset the bond clock for that area. So we
5 did put some size constraints in there.

6 And then Romanette 9 -- or Roman Numeral 9 is
7 allowing for the use of controlled burning and allowing
8 for interseeding following controlled burning. And,
9 again, we put a size limit with the thought that, again,
10 we have to decide where the line is for interseeding,
11 versus reseeding. And we drew that line at five acres.

12 Roman Numeral 10, subsidence, settling and
13 erosional features, we're basically saying -- again, we
14 stuck with five acres as our size limit. And we're
15 saying that any kind of feature that's five acres or
16 less, you can repair that and not reset the bond clock.
17 That's a pretty big erosion rule. So we set that bar
18 pretty low.

19 In 11, Roman Numeral 11 --

20 MR. LIEDTKE: Roy Liedtke, Cordero Rojo
21 Mine. On 10, I think there needs to be a correction made
22 to the statement of reasons. The second sentence talks
23 about interseeding less than five acres, and I believe
24 that should be reseeding less than five acres.

25 MR. CHANCELLOR: I think interseeding is

1 correct, I think, because generally you have five acres
2 as the split.

3 MR. LIEDTKE: Well, right now the
4 statement of reasons is not consistent.

5 MS. BILBROUGH: Right. I agree.

6 MR. CHANCELLOR: The words "interseeding"
7 and "reseeding" are so important to understanding when
8 the bond clock restarts, the choice of words is probably
9 worth thinking about.

10 MR. GREEN: Basically, I think that's a
11 matter of context here. As far as the reclamation panel
12 goes, reclamation area goes, you would be virtually
13 interseeding. But as far as that five acres that you
14 have affected, that would be reseeding on those five
15 acres. So if that's something that could be possibly
16 incorporated into the statement of reasons.

17 MR. POSTLE: Bob Postle with the Office of
18 Surface Mining. And I am going to have to agree with
19 Bob. I don't think this is a problem. I think you can
20 use reseed here because you're talking about an area
21 where you may have totally torn it up. It's no longer
22 just an interseed. You're really actually reseeding this
23 area because you drastically disturbed it. But it's such
24 a small area, we're considering it a normal husbandry
25 practice. I think that would be acceptable. The

1 language as it's written in the rules is acceptable, I
2 guess, is what I'm saying.

3 MR. CHANCELLOR: Change the language in
4 the statement of reasons to reflect reseeding to be
5 consistent with the rule language.

6 MS. BILBROUGH: Again, Roman Numeral 11,
7 it's sort of the same story. It's a normal husbandry
8 practice to remove pipelines and culverts and things like
9 that, small sediment control measures. And, again, we've
10 put the five-acre limit on there in saying anything
11 bigger than that, we need to be resetting the bond clock.

12 And then we have a provision in there that the
13 structures are reclaimed at least two years prior to the
14 end of the bond responsibility period. So if you do tear
15 up a pipeline or reclaim a pond, it needs to be done and
16 seeded in time for the vegetation to have demonstrated
17 it's at least starting to establish before we'll release
18 it.

19 And then we also added, as I mentioned, a
20 section on practices that the administrator has
21 identified as routine land management practices, and that
22 implementing these practices will not restart the bond
23 clock, you know, installation and removal of power lines,
24 fences, monitoring equipment, installation and removal of
25 monitoring equipment, establishment and/or reclamation of

1 two-track trails and emplacement and removal of
2 aboveground pipelines.

3 So with that, we are done with Section 2
4 (d)(ii) unless anybody has a comment.

5 CHAIRMAN GAMPETRO: At this point, if
6 there are no further comments, I would like to call a
7 quick five-minute break.

8 (Hearing proceedings recessed

9 10:37 a.m. to 10:55 a.m.)

10 CHAIRMAN GAMPETRO: We're going to
11 reconvene if you're all ready.

12 MS. BILBROUGH: We're moving into the
13 second section of Chapter 4, revegetation success
14 standards. And as I mentioned before, these are -- this
15 section is separated out by land use. And we have
16 grazing land, pastureland, cropland, forestry, post-
17 mining wetlands, industrial, commercial and residential,
18 developed water resource, recreational, fish and wildlife
19 habitat and special success standards.

20 The ones that I've highlighted in yellow are
21 new land uses. Because grazing land and pastureland are
22 so similar, we grouped them into one section and then
23 specified which rules applied to grazing land only.

24 So from grazing land and pastureland, again,
25 remember we were talking about success standards and what

1 parameters we require for success standards. Grazing
2 land and pastureland both have cover, production, species
3 diversity and composition and shrub density for grazing
4 land. And in the case of pastureland, where shrub
5 density is greater than one shrub per meter squared, the
6 shrub density standard also applies to pastureland. So
7 the standard is there, but it's limited to pastureland
8 that has a lot of shrubs pre-mine.

9 I'm going to take it slow. I'm going to kind
10 of slow down a little bit here, because there's actually
11 a fair amount of changes. And this is also where we're
12 going to run into all of our disagreements that the WMA
13 has with this rule package.

14 The cover definition for grazing land and
15 pastureland used to include two different types of cover.
16 One was vegetative cover, and the second one was total
17 ground cover. And that included rocks, litter,
18 practically anything that wasn't bare ground, lichens.
19 And because that doesn't really apply to revegetation
20 success, we removed that from our rules, and we now only
21 have vegetation cover. And we don't have total ground
22 cover anymore.

23 We also in this section established the
24 quantitative and semi-quantitative categories, where we
25 define which of the standards are quantitative, requiring

1 statistics, and semi-quantitative, requiring a straight-
2 across numeric comparison without any statistical
3 application.

4 And in addition, as Rick mentioned in his
5 presentation, the OSM changed their rules as we were
6 changing our rules. We pulled methods and statistics out
7 of our rule package. And so this is the location where
8 we make reference to using methods and statistical
9 analyses published by the administrator.

10 And in addition, one of our program
11 disapprovals was that we did not state directly that a
12 90 percent confidence interval was applied to our
13 statistical analyses. So we have added that these two,
14 like a standard and a reclamation, are compared with
15 90 percent confidence. So that is added in. And we also
16 make reference to the species diversity standard in
17 Appendix 4-1, which is entirely new.

18 CHAIRMAN GAMPETRO: Question, please. How
19 do you have a 90 percent confidence interval if, in some
20 of your areas, your sample sizes are, say, less than 30,
21 which is the minimum to have a confidence interval?

22 MS. BILBROUGH: Well, I think a lot of
23 people -- I would not necessarily agree that you have to
24 have a sample size of 30 to apply a confidence interval.

25 CHAIRMAN GAMPETRO: Talk to a

1 statistician. I guarantee you, without a sample size of
2 30, it has no meaning to have a confidence interval.
3 That's a student's key statistic, which approximates a
4 normal distribution.

5 MS. BILBROUGH: Right. And a lot of times
6 they'll say that, ideally, you have a sample size of 30,
7 but those tests are applied all the time with a lower
8 sample size than that. And we wrote our statistical
9 package with West, Incorporated, which is a statistical
10 group in Laramie. So I don't think that it's -- I guess
11 I'm politely trying to disagree.

12 CHAIRMAN GAMPETRO: You're allowed to do
13 that. You don't even have to be polite about it. I have
14 a lot of statistics, though, and I've never heard of it
15 being considered.

16 MS. BILBROUGH: I have, too. And I agree
17 with you. You want to have a high sample size if you
18 can.

19 CHAIRMAN GAMPETRO: 30 isn't high. High
20 is in the hundreds. And that's impossible.

21 MS. BILBROUGH: As a plant ecologist, five
22 is high in some cases. So it just depends on your
23 perspective, I think. But statistically speaking, what
24 statisticians will sometimes say is that the T test in
25 particular is a very robust test. You need a sample size

1 of 30 in order to verify that it's a normal distribution.
2 But you can also do an analysis with a sample size of 10
3 or 20 and have it tell you if it's consistent with a
4 normal distribution. And even lower than 10, actually,
5 you can put into a test, and it will tell you yea or nay.
6 But you're right. The smaller the number, the less sense
7 it makes. But I think it's routinely applied with lower
8 than 30 sample size.

9 CHAIRMAN GAMPETRO: Well, I won't carry
10 this on any further. But I've seen statistics routinely
11 misapplied for years.

12 MS. BILBROUGH: Yes, that's true, too.

13 MR. CHANCELLOR: Carol, it would be
14 helpful just to state that, in our statistics that we are
15 going to do, that you have different options of which
16 test to use. And the option is based on, how robust is
17 your sample to start with? I'm not a statistician, so I
18 may not get this right. But the better the data you
19 have, the simpler the test you apply, and the less
20 quality data you have, it's a harder test to apply and to
21 pass. And so we have that option, saying that if you
22 have this, you need these tests. If you have this, you
23 just use this test only. And maybe that helps get around
24 the issue you're talking about. If no, I'll shut up.

25 CHAIRMAN GAMPETRO: The higher the number,

1 the more likely it is to be representative of what's out
2 there. Also, the sampling techniques have something to
3 do with that, that you truly sample properly and don't
4 just mix certain areas to sample in and misrepresent
5 what's going on. But you start to get random error when
6 you don't have a large enough sample size.

7 MS. BILBROUGH: I agree. I agree. One of
8 the premises of the sample adequacy calculation is that
9 you're using the variance of the samples that you've
10 collected to assess how well you're estimating the mean.
11 And so when you do the sample adequacy calculation and it
12 will come back and tell you -- for example, if you're
13 sampling a grassland that has a few shrubs and you're
14 measuring shrubs, your sample size will be wacky and will
15 come back with a minimum sample size of 100. You're
16 going to have to sample the whole place in order to
17 establish what the shrub density is.

18 But in an area where you have fairly uniform
19 vegetation cover and your cover measurements come back to
20 be fairly similar and you have a lower variance, then
21 your sample size, your minimum sample size that you use,
22 that you determine using sample adequacy calculation, can
23 be much lower.

24 And so we'll often, especially in reclamation,
25 which has a high dominance of cool season grasses and a

1 fairly high cover, you'll end up with the variance
2 suggesting that you've adequately sampled after ten or
3 fifteen samples. If you have a high variance, then you
4 haven't really honed in on the mean yet. And that's what
5 that sample adequacy calculation is doing.

6 CHAIRMAN GAMPETRO: How do you manage the
7 situation, aside from the statistics? Who actually does
8 the sampling? Some of this appears as if the mines are
9 doing the sampling. And how is that overseen?

10 MS. BILBROUGH: Typically, the mines hire
11 consultants. A few mines do their own sampling. They
12 submit the raw data. So we don't get just the outcome of
13 the calculations and the tests. We get the raw data, and
14 we also get the calculations for the test itself. So
15 we'll see the sample adequacy calculation, and we'll also
16 see the T test.

17 CHAIRMAN GAMPETRO: Who oversees the
18 actual sampling?

19 MS. BILBROUGH: The consultants and the
20 mines.

21 MR. CHANCELLOR: Don't we also meet with
22 the operating consultant before the sampling --

23 MS. BILBROUGH: Yeah.

24 MR. CHANCELLOR: -- to talk about how
25 they're going to go about it so we have some input before

1 they actually sample to try to look at what they're going
2 to do?

3 MS. BILBROUGH: We approve the sampling
4 plan.

5 MS. PAGE: And a lot of times we may even
6 go out and observe. We're allowed to do that.

7 CHAIRMAN GAMPETRO: That's what I was
8 hoping to hear at some point. I have no more questions.

9 MS. BILBROUGH: We rely heavily on the
10 sample adequacy calculation to support that the sample
11 size is big enough to give us a good estimate of the
12 mean, especially in situations where the reclamation mean
13 is lower than the reference area mean, which can happen.
14 And with that 90 percent confidence interval, you could
15 still pass.

16 In the first paragraph, I suspect, of Section 2
17 (d)(ii), we will encounter all of our official WMA
18 disagreements. Or very soon after we get started, we'll
19 start -- we'll have our conversations.

20 So this is what I explained earlier. The cover
21 standards are that vegetation cover is self-renewing,
22 that vegetation cover and total ground cover are at least
23 equal to pre-mine cover or a technical standard that is
24 calculated based on pre-mine cover. And as I mentioned
25 earlier, we removed total ground cover from the rule, so

1 it's now only vegetation cover.

2 CHAIRMAN GAMPETRO: Sorry to do this
3 again. But if there was an area, rocky area, and you're
4 no longer considering the rocks that may have covered the
5 area, maybe prevented some of the erosion, and those are
6 gone, do you require those to be replaced by vegetation,
7 then?

8 MS. BILBROUGH: Pre-mine, it was rocky?
9 We would probably -- Rick wants to answer that question,
10 though.

11 MR. CHANCELLOR: I think we had this
12 discussion during our meeting, and we resolved that. We
13 do have standards on erosional areas. And so even though
14 using this new method that the post-mine vegetation would
15 equal pre-mine vegetation, but now they have no rocks to
16 cover it, in order to get the erosional stability,
17 they'll probably have a lot more vegetation cover to do
18 that. So it's sort of separate, but you have to
19 interrelate.

20 CHAIRMAN GAMPETRO: Thank you.

21 MS. BILBROUGH: For the shrub, we have two
22 kinds of shrub establishment requirements. The earlier
23 requirement, which applies from 1978 through August 6 of
24 '96, is a shrub goal. And the goal is that the mines
25 would have one shrub per meter squared on 10 percent of

1 the post-mine landscape. One thing to note, the
2 difference between the goal and the standard that applies
3 after '96 is that it's a goal. It's not a requirement.
4 So while this is in the rules, it is in the rules as a
5 goal and not as a requirement.

6 For lands affected after August 6th, 1996, the
7 shrub standard applies. And the shrub standard is one
8 shrub per meter squared on at least 20 percent of the
9 post-mining landscape unless a lesser density is
10 justified by pre-mine shrub density.

11 Now, this standard only applies to certain
12 types of land uses. It doesn't apply universally to all
13 land uses. And there's some specification of species
14 composition. And the shrub density standard is a
15 requirement for bond release. The specifics of the
16 standards itself are in Appendix 4-2. But the standard
17 is stated in Section 2 (d)(ii) of the rules. So it's
18 kind of -- it's not duplicative. Different components
19 are covered in different places. As I mentioned, it only
20 applies to eligible land. So it's limited in what land
21 uses it applies to.

22 So there are no changes to the actual shrub
23 goal or standard. The specification -- we specified --
24 we have this thing called banking. So if you have more
25 shrubs in your goal lands than you are required to have,

1 you can stash those for your standard lands, or you can
2 stash them for another goal land somewhere else. And
3 this was a policy that we had within Land Quality, that
4 we allowed a high level amount of shrubs in one area that
5 exceeded the goal to be applied elsewhere. And so we
6 basically just specified what the shrub banking
7 requirements were or what we would allow for shrub
8 banking, rather than -- so we put policy into rule,
9 basically.

10 We needed to address some OSM disapprovals,
11 again, enter the 90 percent confidence interval. And the
12 80/60 rule, which is an OSM requirement that 80 percent
13 of the shrubs be in place for 60 percent of the time
14 period -- is that correct? -- and that all planted shrubs
15 be in place two years prior to bond release. And this is
16 straight out of OSM rules. So 80 percent of the shrubs
17 are planted 60 percent of the bond release period, which
18 would be before Year 6 if you're counting a ten-year bond
19 period.

20 And we also clarify some of the performance
21 standards that apply to shrub mosaics, specifically that
22 these areas, the 20 percent area that must be planted to
23 one shrub per meter squared or achieve a density of one
24 shrub per meter squared, what other standards apply to
25 those shrub mosaic areas? And we specified that cover

1 and species diversity do apply but that shrub mosaics
2 would not be required to meet production standards.

3 And then we also added a rule that allowed
4 operators to change their shrub standards. There's four
5 options in the shrub standard. They could change their
6 option if they -- if their pre-mine data supports
7 changing to that option, then they would be allowed to
8 revise that shrub option. It's typically a permit
9 commitment at baseline, but it can be changed later on as
10 long as one of the options is met.

11 So the rest of the land uses. For cropland,
12 the only thing you have to do is show that your cropland
13 was as productive as some sort of comparison, either a
14 nearby reference area or county production data or
15 something like that.

16 Fish and wildlife habitat is a new land use.
17 And it's important to note that standards are specific to
18 the habitat type, and therefore, standards for fish and
19 wildlife habitat are permit-specific.

20 MR. CHANCELLOR: Point of clarification.
21 Some of these land uses are not new to the program. But
22 the rules really didn't address them. So a lot of this
23 stuff is new to the rules. They were part of the program
24 in the past.

25 MS. BILBROUGH: So, for example, if you

1 had winter range for elk, versus plover habitat, you
2 would have bare ground for the plovers, and you would
3 have shrubs for the elk. So depending on what your
4 habitat is really determines what kind of standards you
5 would have. But you need to specify -- if you have a
6 cover standard, you need to specify it, shrubs and trees,
7 species diversity and what type of comparison you're
8 going to do.

9 So you need to say, if you have a cover, what
10 it is, if you have a shrub or tree stocking requirements,
11 what that requirement is. And then you have to say what
12 kind of comparison you're going to use. And this will
13 all be in the permit.

14 Post-mining wetlands, again, as Rick said, this
15 isn't new, but it's more explicitly discussed in the
16 rules. Mitigation wetlands are to mitigate Army Corps --
17 through the Army Corps of Engineers for wetlands. And
18 the success is determined by the Corps. And if the area
19 has already been determined successful by the Corps at
20 the time that the bond release -- the successful
21 verification occurs for land quality, then basically the
22 operator provides us with a letter, and we just include
23 that wetland into the surrounding vegetation for
24 sampling.

25 Enhancement wetlands are wetlands that are

1 created above and beyond what is required for mitigation
2 wetlands. And the success standards, again, are permit-
3 specific because it's considered fish and wildlife
4 habitat. And the standards would be approved by Game and
5 Fish and Land Quality Division and incorporated into the
6 plan.

7 Industrial, commercial and residential.
8 Basically, it can be released from bond as soon as it's
9 ready for the approved post-mine land use. And in the
10 interim, it needs to be stabilized to control erosion
11 with vegetation unless it's developed immediately.

12 Developed water resource. We don't have any
13 standards.

14 MR. CHANCELLOR: No vegetation standards.

15 MS. BILBROUGH: No vegetation standards.

16 Sorry.

17 Recreational. Again, this is new and, again,
18 permit-specific performance standards with approval by
19 the Land Quality Division and the appropriate agency. So
20 if you were to make a golf course, you would have a
21 certain set of standards you'd have to meet. We have a
22 non-coal mine that turned into a motocross area. Those
23 standards would be very different from the golf course or
24 a park. So those are permit-specific.

25 Forestry. The standards for reforestation are

1 established with approval from the forest management
2 agencies. You have to specify the quality and quantity
3 of trees, and you have to specify that understory cover
4 will achieve post-mining land use.

5 Special success standards. We have two
6 different kinds of special success standards. One is
7 areas previously disturbed and reclaimed and then
8 disturbed again. And the second is an area that was
9 disturbed before SMCRA and continues to be in use. So
10 the first is a situation where an area was mined, it was
11 reclaimed, and then for some reason, for example, it's
12 remined. And in that case, it has to be revegetated to
13 cover productivity that existed before redisturbance, and
14 it has to be adequate to control erosion.

15 And then in the second case, these are lands
16 that are typically facilities, railroads, roads, things
17 like that. They're reclaimed to the performance
18 standards that were in effect at the time of the initial
19 disturbance and again at a minimum to control erosion.

20 So we're starting on page 105, Romanette (ii),
21 Romanette 2, revegetation success standards with the
22 statement of reasons. And then the first discussion is
23 (A), grazing land and pastureland. Roman Numeral 1 is
24 where we removed ground cover, clarified production,
25 changing it from productivity to annual herbaceous

1 production. And then towards the bottom of that
2 paragraph is where we specify quantitative methods and
3 statistical analyses using a 90 percent confidence
4 interval and brought in the species diversity and
5 composition standard.

6 So that was that first part that I mentioned.

7 MR. BELDEN: Mr. Chairman, I think without
8 going any further, we can probably touch on all of these
9 areas of disagreement the board will find in that
10 December letter that was written. There's three items.
11 The first is species lacking creditable value. The
12 second one was revegetation success. And the third was
13 species diversity and composition.

14 I think that one -- I might be able to just go
15 ahead and discuss species lacking creditable value first.
16 What WMA would propose here is, in Roman Numeral 1, under
17 Number 2, which deals with the annual herbaceous
18 production, we would like to add the words -- we propose
19 adding the words "excluding species lacking creditable
20 value." Now, what I would suggest at this point is that
21 we cheat a little bit and look at Chapter 1 for the
22 definition of that term, because I don't think we can
23 have a discussion about that going forward if we don't
24 understand what that means. So if we could --

25 CHAIRMAN GAMPETRO: What page would it be

1 on?

2 MR. BELDEN: It would be on page 36. I'll
3 just give you a moment to read through that definition.
4 And you'll see the LQD version there about the middle of
5 the page and then the proposed WMA definition below.

6 This concept was agreed upon in principle
7 pertaining to the parameter of species diversity and
8 composition by both LQD and WMA. However, WMA feels that
9 it should not be included for the parameter of cover.
10 The species that are out there that are lacking
11 creditable value, which are primarily these cheatgrass
12 species, they're listed here. They do have a cover --
13 they do perform a cover function, and they do protect
14 from erosion.

15 So we feel like they should not be excluded
16 from any cover evaluation. We talked quite a bit about
17 whether they should be excluded from production. And WMA
18 was willing to agree that they could be excluded from the
19 production evaluation. We are taking the position that
20 we would like to include all species for total vegetative
21 cover.

22 CHAIRMAN GAMPETRO: Not that you would
23 plant the noxious weeds, but if they're there --

24 MR. BELDEN: Absolutely correct. We're
25 still required to control noxious weeds. But there are

1 many, many annuals out there, some grasses, quite a few
2 forbs, that do provide an important cover function.

3 CHAIRMAN GAMPETRO: Rick?

4 MR. CHANCELLOR: I guess I'd ask the staff
5 to respond to that.

6 Carol and Mark?

7 MR. MOXLEY: We have a presentation on
8 species lacking creditable value. Okay. The term --
9 it's kind of a long term, species lacking creditable
10 value. And, unfortunately, the gentleman that coined
11 that phrase is not here today to defend himself. We
12 could just say weeds. These are specific weeds that we
13 agreed were detrimental to the reclaimed land and which
14 it would not be counted. And it's documented that these
15 would not be counted for cover, production or species
16 diversity. This is what was agreed to in the small
17 group. The species lacking creditable value include
18 noxious weeds listed under the state Weed and Pest
19 Control Act and six common introduced annual weeds.

20 Our focus in reclamation is on establishing
21 perennial species that will support the post-mine land
22 use. As it was observed earlier, we don't plant
23 cheatgrass. We're not trying to establish cheatgrass.
24 So we feel that these species, especially cheatgrass,
25 negatively affect the reclamation and the ability of that

1 land to support post-mining land uses.

2 We acknowledge that these weeds are going to be
3 there. They're in the native communities. They're going
4 to be in the reclamation. We do feel that there are
5 management practices that do exist and that these species
6 can be controlled and managed to minimize their impact.

7 This is the state list of noxious weeds. And I
8 would point out that these are perennial agronomic weeds.
9 These are not annual weeds. These are perennial weeds.
10 There was one added last year. Russian olive is the new
11 one on that list. But these are all perennials.

12 CHAIRMAN GAMPETRO: Is whitetop in there,
13 what's commonly known as whitetop?

14 MR. MOXLEY: I believe it is.

15 CHAIRMAN GAMPETRO: Leafy spurge?

16 MR. MOXLEY: Yeah.

17 CHAIRMAN GAMPETRO: These are two big
18 enemies where I live.

19 MR. MOXLEY: Right. But, again, these are
20 perennials. These have to be controlled by state law.
21 And in our regulations, the operator is required to
22 control these weeds. So I think it's logical to assume
23 that we would not count them in evaluation of reclamation
24 success.

25 We've defined six introduced annual weeds that

1 we would not -- we would propose not to count in the
2 evaluation of reclamation success. First one is kochia.
3 It's fairly common. It comes in on most reclamation.
4 It's fairly temporary in general. If you have good
5 seeding success with your perennial grasses, usually
6 they'll out-compete the kochia, and the kochia will
7 disappear.

8 Same is true with Russian thistle. It's a
9 common invader on reclaimed sites and generally will be
10 out-competed if you have good success with your seeding.
11 Halogeton, similar deal. It occurs more commonly, I
12 think, in western Wyoming. It's more of a desert type of
13 a plant. Again, it typically invades into reclamation
14 but is out-competed by the perennial species. So we've
15 got those three forb species.

16 Now, with the next slide, we'll start into the
17 really bad actors here. These are the annual grasses.
18 Medusahead is an introduced annual. It's extremely
19 competitive. And when it gets established, it will crowd
20 out everything else that is there.

21 Japanese brome is similar. It really has very
22 little value. It's injurious to cattle, and perhaps its
23 biggest threat is that it burns very readily.

24 And here's the really worrisome species for us,
25 is cheatgrass. Cheatgrass has taken over millions of

1 acres in the western part of the United States. If you
2 drive west into Utah, southern Idaho, Nevada, you see
3 huge landscapes just dominated by cheatgrass. We have it
4 in Wyoming, but it doesn't dominate millions of acres
5 like it does in western areas. We definitely don't want
6 to do anything that will encourage this stuff to get
7 established.

8 I've thrown in some information here. These
9 slides are from the Nature Conservancy website, just
10 describing some of the ecology of cheatgrass. It's a
11 native to Eurasia. It was introduced into this country
12 in the late 1800s. By 1930, it was widely distributed.
13 Presently, as I said, it covers huge areas in the western
14 United States.

15 Cheatgrass is widely adapted, and it's really
16 something that I think we're struggling with how to
17 control. It has a flexible lifestyle -- or life cycle, I
18 should say. It germinates in the fall. In warmer
19 climates, it will continue to grow through the winter.
20 It has a rapid growth. It flowers very rapidly. It
21 comes up -- it's already established in the fall, so it
22 comes on very quickly in the spring, and it germinates
23 seeds very quickly. It gets a big jump -- basically a
24 big jump on other species that are out there. It
25 produces huge amounts of seed.

1 This is a picture of -- if you've ever gone
2 walking in a field of cheatgrass, you know what it does.
3 It goes to seed, and it's dried out by mid June often,
4 way ahead of most other species. It produces a
5 tremendous amount of litter that is very flammable. A
6 lot of the fires, the range fires that we see in western
7 U.S., are as a result of cheatgrass.

8 Cheatgrass is a -- has a fire ecology much like
9 some of your lodge pole pine type of species. It really
10 does well in a fire-type situation. And it promotes
11 fire. The cheatgrass will burn. And when it burns,
12 everything else will burn, also. The sagebrush
13 particularly is very susceptible to fire. And so when
14 you have a big fire in cheatgrass, it virtually
15 eliminates everything else. It will burn periodically
16 every few years until everything else is gone and all
17 you've got left is cheatgrass. So cheatgrass, the fire
18 hazard is really one of the biggest problems with
19 cheatgrass.

20 There is some chemicals being developed that
21 can control cheatgrass. This is a picture on a mine site
22 where an herbicide called Plateau was used. It's one of
23 the chemicals that does show some promise in controlling
24 cheatgrass. We do feel that cheatgrass, once it gets
25 established in an area like that, it is a problem. You

1 know, it really needs an integrated approach to control.

2 The best approach to controlling cheatgrass is
3 to out-compete it, to use best technology in reclamation
4 to establish the species that you want, to conduct timely
5 seeding and reseeding to eliminate bare ground and
6 prevent weed infestation. One of the more important
7 things, I think, here is to have the in-house capability
8 to conduct tillage, seeding, spraying and mowing
9 operations when they're needed. A lot of companies rely
10 on contractors to do these sorts of things. And that is
11 often not timely. I think that the timely application of
12 these techniques is really what's needed.

13 Another thing that we need to see more of is
14 close monitoring to provide early detection of weed
15 infestations. And, of course, grazing management and
16 fire prevention are also tools that can be used to
17 control weeds.

18 We feel that reclamation success is predicated
19 on the establishment of perennial species that will
20 support the post-mine land use. Reclamation success is
21 achieved when the cover and production of desirable
22 species equals or exceeds the cover and production of the
23 desirable perennial species on the native reference area.
24 Non-coal rules adopted in early 2006 established cover of
25 perennial species as the sole quantitative criteria for

1 evaluation of revegetation success. In other words, in
2 the non-coal program, we don't even look at annuals. We
3 just look at perennial species.

4 As I said before, noxious weeds must be
5 controlled. So there really is no debate on that.
6 Noxious weeds and annuals have historically been excluded
7 from production sampling.

8 So the contentious issue right now is, how do
9 we account for these annual weeds in our evaluation of
10 cover? This is what it really boils down to. We
11 acknowledge that these weeds will occur on the
12 reclamation. And we're not proposing any restriction or
13 penalty for their presence. We feel, however, that by
14 allowing these weeds to be counted, you're essentially
15 saying that they have a value. And we don't feel they
16 have a value. This is what it really boils down to. We
17 feel that these weeds are detrimental to the post-mining
18 land use.

19 The review team took a neutral approach.
20 Basically, we said we're not going to count them, but
21 we're not going to penalize you, either. The noxious
22 weeds have to be controlled by state law. But these six
23 annuals, we acknowledge they're going to be there. We're
24 okay with that. But we're not going to credit you for
25 growing cheatgrass, is really what it boils down to.

1 We feel that vegetative cover will be adequate
2 for bond release if the cover of desirable species on the
3 reclamation meets or exceeds the cover of desirable
4 species on the native reference area. Comparing apples
5 and apples. As I said, in the non-coal arena, that's all
6 we look at, is perennial species.

7 I'll close with a slide of Rosebud Coal Mine.
8 This is bond-released land. And there's a fair amount of
9 cheatgrass out there. But you've also got a real good
10 cover of shrubs and perennial grasses. So what we're
11 saying is that your reclamation will be judged successful
12 if you establish perennial species out there in equal
13 amounts to what was in the native reference area.

14 Any questions?

15 MR. GREEN: I do have one question, Mark.
16 You mentioned that these species would not be counted in
17 the reference area or in the reclaimed area. Is there a
18 similar comparison of erosion?

19 MR. MOXLEY: Similar comparison of
20 erosion?

21 MR. GREEN: Yes.

22 MR. MOXLEY: The erosion evaluation is
23 done under -- well, sediment control release is the
24 process that we call it. And the evaluation of sediment
25 control release is based on total ground cover. So you

1 would count the cover of those species, yes. But for
2 revegetation evaluation, you would not.

3 MR. LIEDTKE: Roy Liedtke. Just one
4 question for Mark. You mentioned several -- or a couple
5 times about non-coal looking at only perennial species
6 covered. Not being familiar with non-coal, are there any
7 requirements? And what are they for production and for
8 shrubs?

9 MR. MOXLEY: There's no requirement in
10 non-coal for shrubs or for production. So cover is our
11 sole quantitative criteria in non-coal.

12 CHAIRMAN GAMPETRO: I have a question.
13 This is specific now to grazing and pastures, or is this
14 also the same for other uses?

15 MR. MOXLEY: Yeah. Wherever there's a
16 cover requirement, we would propose to not count these --
17 basically, these six annuals that I've talked about.

18 CHAIRMAN GAMPETRO: I would propose that
19 we address this a point at a time. We have this point to
20 deal with. Any other discussion or questions? And then
21 I think we should vote on it.

22 MR. STELTER: Vern Stelter with Game and
23 Fish. And we need to weigh in on this one because of the
24 value of native habitat, versus the value of something
25 like a cheatgrass. And I think that, really, we need to

1 keep the intent and the objectives of the overall
2 direction of reclamation in mind here, and that's post-
3 mining land use.

4 Cover is one measured component of that. But
5 to separate that from the rest of the components that
6 make up that post-mining land use is probably a mistake.
7 Something like a cheatgrass does provide a physical cover
8 for the land, but it's not desirable to have that species
9 out there. And because it's not, it really should be
10 considered something that needs to be replaced with
11 something that's better.

12 So to use cover as one item by itself that
13 could credit a species like cheatgrass would be to
14 probably detract from the post-mining land use that you
15 would get from the other vegetation that would be better,
16 that would provide cover, as well as species diversity,
17 as well as habitat use, as well as livestock use and so
18 on.

19 So the Game and Fish's standpoint on this would
20 be to not credit any of these detrimental species,
21 really, for anything and thus encourage either their
22 remaining there or their lack of removal.

23 MR. BELDEN: Mr. Chairman, lest there be
24 any misunderstanding, WMA is not promoting only
25 cheatgrass or these other annuals. In fact, companies,

1 at great expense, are trying to control, in particular,
2 the cheatgrasses. And it's a difficult process, as Mark
3 elaborated. Out-competing is the best approach, where
4 Mother Nature wins there in terms of moisture and so
5 forth. It's a difficult, very opportunistic plant,
6 speaking specifically about cheatgrass. And even in
7 well-established reclamation, it can show up with the
8 right conditions.

9 While we don't want to be rewarded for presence
10 of cheatgrass, we don't want to be penalized for it,
11 either. If it's present across the fence in the native
12 areas, it's most likely going to be present in the
13 reclamation to some degree. And, yes, the mines are
14 charged with trying to control that as much as possible.
15 It boils down to the final number comparison. And cover
16 cannot be achieved in a certain year with certain
17 ecological conditions. Because these plants aren't
18 included, these species lacking creditable value, we feel
19 like that is penalizing the mines for circumstances,
20 really, beyond their control.

21 So I really think we're all in agreement that
22 we don't want these species out there. And WMA has
23 agreed that we won't count them in the production or the
24 species diversity parameter evaluations.

25 MR. BONINE: Richard Bonine, Habitat

1 Management. I guess one of my concerns, you alluded
2 earlier to statistical distributions. And I guess one of
3 my concerns is, from a practical standpoint, as one
4 that's out there collecting this data, if I observed
5 this, if I have a laser light that lands on cheatgrass,
6 what do I do with it? I've got to -- you know, as part
7 of the process in the field, I'm going to record that it
8 was there. Then when I take all that data and I go back
9 to the office and start running through it and subtract
10 it out, I may no longer have an adequate sample.

11 And I guess I'm -- there's some lack of clarity
12 here as to exactly the process of, do we go ahead and
13 calculate sample adequacy and then we back it out and
14 do -- if we're doing statistical comparisons, then we've
15 skewed some distributions. And I guess I have some
16 concern about that that I think is worthy of
17 consideration.

18 CHAIRMAN GAMPETRO: Would you like to
19 respond to that, in terms of the sampling technique?

20 MS. BILBROUGH: The non-coal mines have
21 been doing it successfully. I think there's -- I'm not
22 exactly sure how they've been doing it, because I haven't
23 specifically examined what they've been doing. But they
24 expressed the same concern and worked out a method that
25 works for them. So I don't see a methodological issue as

1 being an obstruction to proceeding, because we've been
2 doing it in the non-coal arena.

3 MR. JONES: Robin Jones, DEQ. It's still
4 a comparison of perennial vegetation to perennial
5 vegetation. So I'm not sure if removing something like
6 that -- you're removing it from both sides of the fence,
7 so to speak. And like in your sampling, Richard, you're
8 taking several points and combining them as one. The
9 data is still there. But it's just still a comparison of
10 perennial and perennial and the same number of points.
11 So I'm not sure if you're skewing the entire distribution
12 that way by actually not looking at the annual. We'd
13 have to run through lots and lots of data sets to
14 actually prove it.

15 MR. BONINE: I'm not saying one way or the
16 other, necessarily. It's just a concern I have. And it
17 sure seems to me that the situation I don't want to get
18 into is, I don't want to -- I don't want to have it be
19 this time of year when I'm cranking all this stuff out
20 and figure out, oh, my, I don't have an adequate sample
21 here.

22 MS. BILBROUGH: I have looked at the
23 non-coal. And not every non-coal package has passed.
24 And not all the reclamation is great. But the packages
25 that I did look at where they took out the cheatgrass

1 from both sides and they just compared the perennials to
2 perennials, the number of samples was almost the same.
3 It may have required one or two more samples to meet
4 adequacy, excluding cheatgrass. I ran the statistics on
5 it, and they met adequacy.

6 MR. LIEDTKE: I'm a little bit concerned
7 about the comparison to non-coal, because if we're only
8 looking at perennial grasses or perennial cover, then
9 cheatgrass could be less of a concern. But with a shrub
10 requirement like we have with coal, the generally
11 accepted best technology for establishing shrubs is to
12 plant very little grasses for those shrubs to avoid the
13 composition. And what you do is you create a very
14 opportune situation for cheatgrass. So we kind of get
15 caught between a rock and a hard spot.

16 I think that the DEQ presentation was very
17 good. We all agree that these are bad actors. And as
18 Scott Belden mentioned, none of the mines are promoting
19 these species. We try to control them. The noxious
20 weeds, especially, we are required to control. However,
21 to say that we're -- if they're on one side of the fence
22 and they're on the reclaimed area and on the native area
23 it's the same, it's not fair, because reclamation at the
24 most -- at the youngest, the bond-release time is ten
25 years old. So we're comparing a ten-year-old area to an

1 area that's been there for centuries, forever. And in
2 ecological sense, that doesn't work.

3 I think we also have to remember that, what is
4 a weed? Like we talked earlier, a weed is just a plant
5 out of place. A cornstalk is a weed in a wheat field.
6 Kochia is one of these species that lacks creditable
7 value. But I'll tell you, I grew up on a small farm and
8 ranch in South Dakota in 1976. My dad wouldn't have been
9 ranching if he couldn't put up kochia for hay, if we
10 hadn't grazed kochia. We fed kochia to the pigs. And
11 that's the only thing we survived on that year.

12 There is documented studies, Journal of Ranch
13 Management from 1994, Preferences of Mule Deer for
14 Sixteen Grasses Found in Intermountain Ranges. The most
15 preferred species in the spring is cheatgrass. Now,
16 again, it's not the ideal species, but it is utilized. I
17 was reading a Rangeland magazine from the December 2007
18 issue the other day. There's an article here that talks
19 about cheatgrass on the Nevada range and discusses the
20 concern about cheatgrass. And it's all issues we've
21 talked about today. It's an annual report for the Nevada
22 Research Station at the University of Nevada in Reno.
23 But this annual report's from 1945. And as the
24 presentation brought out, cheatgrass has been around for
25 years. I mean, it was a concern 60 years ago. It's

1 going to be a concern 60 years from now. And we
2 shouldn't be penalized if it shows up under reclamation
3 because climatic conditions are such that it's very
4 prevalent that year.

5 I just think that it's a -- this is a very big
6 and drastic, significant step from what the current rules
7 and regulations are and from the federal rule, which does
8 not look at -- cover is not species-specific. It's
9 cover. And if we start taking out certain species, it's
10 a big change from what we've had in the past.

11 CHAIRMAN GAMPETRO: Thank you. Any other
12 comments?

13 MS. VICKLUND: Laurel Vicklund, Foundation
14 Coal. I just wanted to touch back briefly on a comment
15 that was made earlier about erosion control. And when we
16 do our sediment control release and look at vegetation
17 and cover on that portion of bond release, we don't look
18 at species composition. And that was one thing we kind
19 of keyed in on. We don't like these plants. We're not
20 proposing that they have value. But they do,
21 unfortunately, serve a short-term temporary purpose in
22 some cases to deter erosion and to stabilize the ground.
23 And to acknowledge that in one portion of our reclamation
24 and bond release and then to ignore it in another, it
25 seems to be a problem.

1 MS. PAGE: Stacy Page. I looked at a bond
2 release package that District 3 up in Sheridan received.
3 And as industry's proposing, that just looking at
4 cheatgrass or taking it out of production, it's possible
5 for a reclaimed area to pass bond release having
6 53 percent relative cover cheatgrass.

7 CHAIRMAN GAMPETRO: What percent?

8 MS. PAGE: 53 percent. 53 percent of the
9 vegetation out there could be cheatgrass and still pass.
10 And that would be 32.9 percent absolute cover. So I just
11 wanted -- this is a possibility.

12 MR. BELDEN: Just a question to follow up
13 with Stacy. Was species diversity evaluated in that
14 case?

15 MS. PAGE: No. But we're not -- our
16 species diversity doesn't address this issue.

17 MR. BELDEN: Well, they're excluded.

18 MR. PAGE: But when we get to that, I
19 mean, how -- not in composition.

20 MR. LIEDTKE: I would say species
21 diversity, as proposed in this appendix, addresses that
22 you have to have a certain amount of the perennial
23 grasses and shrubs and forbs. And I would think you
24 would not meet that if you had 53 percent cover from
25 annuals.

1 MS. BILBROUGH: You know, the species
2 diversity standard, you're just looking -- you have a
3 piece of land that's a hundred square meters in size, and
4 you're just counting one individual grass, one individual
5 perennial grass, and you've got that count for that
6 quadrat. So it in no way addresses issues of abundance
7 of cheatgrass.

8 And I'd like to respond to a couple of other
9 things, too. Yes, cheatgrass is a good forage for a
10 couple of weeks, typically. It doesn't last much longer
11 than that as a forage. And I think we have to keep
12 coming back to that we're not trying to penalize. And
13 I'm not sure that I'm there yet, agreeing with you that
14 you are being penalized. And the reason is that if you
15 have good conditions in the reclamation for cheatgrass,
16 you're going to have good conditions in the reference
17 area for cheatgrass.

18 And it's such an egregious problem that we have
19 to address it somehow. You know, when you talk about
20 Nevada, they have whole deer herds that have completely
21 crashed because of the loss of winter habitat. It's
22 having profound effects across the west. And when you --
23 if we just allow it to continue to be counted -- because
24 production, you can get high production values with cool
25 season grasses that will outweigh the native area. And

1 cheatgrass is kind of a march towards dominance. And
2 then you have a really sterile situation where you only
3 have an annual grass. All the nutrients are lost from
4 the soil. And you can get a fire cycle going. And it's
5 a pretty severe impact. And we don't want to go there if
6 we can help it.

7 MR. LIEDTKE: If we get to that situation
8 where the soil becomes sterile and we've lost the fire
9 cycle, don't you believe we would not meet the production
10 standard for bond release?

11 MS. BILBROUGH: But I think that -- I
12 think that would happen. Our rules require that we
13 create a post-mine land use that's persistent and
14 resilient. So you might meet bond release. But five
15 years later or ten years later, it might not be a
16 persistent and resilient plant community that will still
17 be there.

18 MR. LIEDTKE: I just briefly would
19 reiterate from earlier, to say that we're not being
20 penalized is assuming the native area and the reclaimed
21 area are equal. And, again, the reclamation area that's
22 only ten years old is not similar ecologically to a
23 native area.

24 CHAIRMAN GAMPETRO: Any more?

25 MR. BOVINE: A question to Stacy about the

1 numbers recorded there. You said that was 32 percent?

2 MS. PAGE: Absolute.

3 MR. BOVINE: Absolute cover. And was
4 that -- what was the method detection on that? Was there
5 50 points taken, or was there 100 points taken?

6 MS. PAGE: 100 points.

7 MR. BOVINE: So it was 1 percent. Because
8 I've seen data like that, where if only 50 points are
9 taken, if you were to compare the -- there's a problem
10 with the point intercept method in annual species in that
11 they can be overestimated if you were to compare with a
12 line intercept, a continuous line intercept, which is
13 really what we -- really evaluates ground cover.

14 CHAIRMAN GAMPETRO: Anything else? I
15 guess the issue, then, becomes, do we approve by voting
16 yes or disapprove by voting no -- we have three voting --
17 one, two, three -- the change in language proposed by the
18 Wyoming Mining Association? So all those in favor of
19 changing the language to that proposed by the Wyoming
20 Mining Association signify by saying aye or raising your
21 hand.

22 MR. GREEN: Aye.

23 CHAIRMAN GAMPETRO: Those opposed?

24 (Board Members Linford and Demshar
25 raise hands.)

1 CHAIRMAN GAMPETRO: So the language does
2 not get changed.

3 Let's go on to the next point.

4 MS. BILBROUGH: Scott, do you just want to
5 launch into your next --

6 MR. BELDEN: Well, my feelings are hurt,
7 so -- yeah. Let me think here for a moment.

8 MS. BILBROUGH: Just to clarify, in this
9 paragraph, I think we have all of the disagreements,
10 don't we?

11 MR. BELDEN: We can get at them, yes.

12 CHAIRMAN GAMPETRO: Go forward.

13 MR. BELDEN: The second disagreement that
14 the Wyoming Mining Association had brought forth in a
15 letter has to do with the revegetation success standard
16 and that it can be considered achieved when 90 percent of
17 the standard has been achieved. And the reason this was
18 brought forward is because that's how OSM language reads.
19 And it's also how the language reads for shrub density.
20 And we felt it would be consistent to include that same
21 type of language in this paragraph here for the
22 parameters of cover and production.

23 CHAIRMAN GAMPETRO: Pros and cons?

24 MS. BILBROUGH: I'll address the
25 90 percent discrepancy here in a minute. When we started

1 looking into this, we just kind of started asking, what
2 are the pros and cons? And this rule that we're talking
3 about has been in place since 1975. It was part of the
4 Wyoming rules before SMCRA was even passed. And we've
5 had a lot of successful bond releases during those
6 30-plus years that it's been in place, both coal and
7 non-coal. And our feeling is, why change it now? It's
8 been working. It's successful. Why do we want to change
9 it now?

10 And one of the things that we agreed on as a
11 group when we were talking about revising these rules is
12 that whatever rule changes we did, they had to meet the
13 criteria to being good for Wyoming. And just because our
14 rule is more stringent than OSM, is that sufficient to
15 revise the rule? And we would argue that it's not a
16 sufficient cause to lower the bar for reclamation simply
17 because that's what the OSM rule says. It's also
18 necessary to evaluate the impacts of best kind of rule
19 change on the quality of reclamation, and by extension,
20 the State of Wyoming.

21 And the statute states that reclamation is a
22 process of reclaiming an area affected by mining to a use
23 of equal or greater value. It doesn't say 90 percent of
24 the value. It says to a use of equal or greater value.
25 So we question even if this rule change can go forward,

1 given what the statute specifies. And we oppose the
2 rule, and we argue that it's not in the interest of
3 Wyoming.

4 So I just want to review real quick what we're
5 talking about here with the proposed rule change. The
6 current standard is that vegetation cover or total
7 herbaceous production is at least equal to the reference
8 area or a technical standard, so you have an equivalence,
9 reclamation mean, equals reference area mean. And you
10 can substitute technical standard in here. But just for
11 the sake of brevity, I'll just stick with reference area
12 mean.

13 The proposed standard that is proposed by the
14 Wyoming Mining Association is that the total vegetation
15 cover or production is 90 percent of a reference area or
16 a technical standard. So what we're saying is that
17 reclamation mean equals 90 percent of the reference area
18 mean.

19 But as I went over our rule changes earlier,
20 OSM requires us to specify a 90 percent confidence
21 interval. So we have the current rule saying reclamation
22 mean equals reference area mean with 90 percent
23 confidence, which means that the reclamation mean equals
24 the reference area mean plus or minus 10 percent. In
25 other words, the standard is already 90 percent of the

1 reference area.

2 CHAIRMAN GAMPETRO: Just to be fair, it's
3 someplace between 90 and 110 percent?

4 MS. BILBROUGH: True. The low end of the
5 standard is 90 percent. It goes up to 110.

6 CHAIRMAN GAMPETRO: Thank you.

7 MS. BILBROUGH: So with the proposed --
8 the rule proposed by the Wyoming Mining Association --
9 and for the sake of honesty, if it's 110 percent, we're
10 pretty happy with that. So I'm focussing on the lower
11 end of the bar here. 90 percent of the mean with a
12 90 percent confidence interval means that we're talking
13 about 81 percent of the mean. So that's the low bar that
14 we're setting for reclamation success. And that's where
15 our concern lies.

16 And what we're saying is that the proposed rule
17 would accept reclamation if cover or production as low as
18 81 percent of the reference area was present. And I went
19 through the Soil Conservation Service range site notebook
20 and looked at some of the typical cover values for the
21 range sites. And then I looked at baseline data for
22 central Wyoming, western Wyoming and Powder River Basin
23 Mines. And employing this would drop us below what the
24 SCS describes as the typical range site cover values in
25 every case that I looked at.

1 And my point here is that I was trying to find
2 some kind of objective evaluation. For us to just stand
3 up here and say, well, 81 percent of the mean is bad, I
4 was trying to find some sort of objective way to put it
5 into context. And that was kind of where I found that,
6 was looking at the SCS range site information.

7 So just to summarize, we've been achieving
8 successful bond release already. We've been doing
9 verifications, vegetation verifications, both the coal
10 and the non-coal program, with the current rules. And I
11 want to make the point that sometimes reclamation isn't
12 successful. And maybe that's because it's not good
13 reclamation. And then lowering the bar from 90 to
14 81 percent, we think, doesn't support achieving the
15 post-mining land use. And that's through looking at some
16 of the SCS information and looking at baseline and
17 reference area information on coal mine bond release
18 verifications.

19 MR. LIEDTKE: Roy Liedtke. Just a few
20 comments. The presentation, again, which was very good,
21 mentioned, you know, why change it now that we've had
22 several bond release packages approved? I guess I would
23 ask the question, why we do -- why did we do this rule
24 package? I was under the impression at one point that
25 there was concern about the lack of bond release in the

1 state of Wyoming. And the reason for that lack of bond
2 release was confusion over what it took to do bond
3 release, and therefore, we implemented this big process
4 to do a new rule package.

5 Rick or maybe the OSM folks can give us a
6 better feeling than I have on the amount of bond release
7 in Wyoming compared to other states. But I think,
8 considering the amount of reclamation we have, we have a
9 fairly small amount of land with bond release on it. And
10 I honestly have to say that I disagree with the last
11 statement on that presentation, to say that lowering the
12 bar from 90 to 81 percent would not support post-mining
13 land use. That is, I guess, basically saying that
14 Colorado and other states around here that mimic the
15 federal regulation or any land that's on the Indian
16 reservation that is strictly under federal regulation
17 does not meet their post-mining land use. And I think
18 that is not correct.

19 MR. CHANCELLOR: A couple points. Part of
20 the process that we went through was to clarify our
21 regulations on bond release. And that was one of the
22 reasons to do this rule package, to change Appendix A,
23 put in rules to clarify that process. Because that was a
24 complaint by the operators, that it wasn't clear how to
25 do it.

1 I don't think this rule, changing it from our
2 current rule to the WMA proposed rule, is really a
3 clarification issue. It's really just lowering the bar,
4 the standard, to a little lower standard. So it's not a
5 clarification that I can see. In part, it was that when
6 we started this rule effort, it was to -- if you want to
7 change the rule in Appendix A, you had to justify why it
8 was good to do so. And John Corra said, you know, to say
9 just because OSM rule is that way wasn't good enough.
10 And I haven't heard anything yet to say, why is this
11 necessary? What's driving this besides OSM will allow it
12 because their rule allows it? What beyond that is -- why
13 should we do this? Why is it good to do so for Wyoming?
14 I haven't heard a reason yet.

15 MR. BELDEN: We can exclude OSM for the
16 purpose of this discussion for what I'm about to say.
17 But when you look at the shrub density standard, it does
18 talk about 90 percent of the value, and there's a
19 90 percent confidence interval.

20 CHAIRMAN GAMPETRO: Can you speak louder?

21 MR. BELDEN: For the shrub density
22 regulations, it talks about 90 percent of the standard
23 with a 90 percent confidence interval. So if that's a
24 mistake, I guess I don't know how that needs to be
25 addressed. But WMA interpreted that as adequate for

1 shrub density. And I realize it gets a lot more complex
2 because of the statistics that are being employed. But
3 we don't want to do bad things for Wyoming. That's not
4 what we're trying to do.

5 CHAIRMAN GAMPETRO: I saw a hand go up
6 over here.

7 MS. BILBROUGH: I saw Rick open his mouth.

8 MR. CHANCELLOR: The shrub standard, you
9 know, some people here partook in that discussion, and a
10 lot of people here did not. But that was a very, I would
11 say, contentious issue. It was hard-fought. And I was
12 there for part of it. And it ended up being a compromise
13 on both sides. And so I don't know exactly why at that
14 point we said 90 percent of the standard confidence
15 interval was okay. I don't remember that discussion as
16 to how we got to that point, except there was a lot of
17 hard discussions that went into that. And I can only
18 guess that that was part of the give-and-take that went
19 on there. Because it was a hot issue that no one wants
20 to revisit.

21 CHAIRMAN GAMPETRO: Perhaps had they known
22 it would be used to try to get the same thing elsewhere,
23 they wouldn't have given in.

24 MR. CHANCELLOR: Could be.

25 CHAIRMAN GAMPETRO: Comments?

1 MS. BILBROUGH: In response to the other
2 areas that are employing 90 percent of the standard at
3 90 percent confidence interval, I keep hearkening back to
4 our -- and I believe OSM requirements are persistent,
5 resilient plant community that can support the post-
6 mining land use. And, you know, New Mexico and Colorado
7 have these. But we have to come back to that our
8 evaluation is based on our assessment of what is good for
9 Wyoming. And we didn't see that this was supporting
10 post-mine land use, and in particular, not supporting of
11 resilient and persistent plant community, necessarily.

12 Those are the things that you can't really -- I
13 mean, I don't know how often people have gone back to New
14 Mexico and seen how the reclamation looks later on or how
15 often in Colorado. But I agree that these other states
16 do have those standards. But I'm not -- we made our
17 decision that we were going to stick with what we thought
18 was appropriate for Wyoming.

19 MR. STOWE: Bob Stowe, Thunder Basin Coal.
20 I'm looking at this from a geological perspective.
21 That's my training. And over long, long periods of time,
22 the geological processes occur that you cannot see
23 happening on a day-to-day basis. Drifts, mountains form.
24 What we are looking at here is the expectation, after ten
25 years, meet a standard for an ecology that is developed

1 over literally hundreds of years out there. And are we
2 expected to meet 90 percent of that native situation
3 after ten years, or are we saying that, after ten years,
4 that this is going to have that opportunity to go ahead
5 and achieve the stability expectation after that period
6 of time and reclamation?

7 So I think, in my opinion, that's what we're
8 looking at. Are we allowing ourselves that opportunity
9 to meet success, meet the succession after a period of
10 time, after ten years, or are we to be at succession
11 after ten years? And geologically, it's not going to
12 happen. Same with the vegetation. I don't know that we
13 can actually meet that standard, either, after ten years.
14 Succession in a native situation didn't occur in ten
15 years. Can you do it in reclamation? And I expect it to
16 be equal to a reference area.

17 CHAIRMAN GAMPETRO: The only problem is,
18 if you look at it geologically, this area will probably
19 have eight to ten feet of volcanic ash on it again in the
20 geologic future, as it did in the geologic past. I think
21 more pertinent would be the close-term, near-term weather
22 cycles that can affect it tremendously, seven years of no
23 rain or seven years of lots of rain, which seems to
24 happen around here on a level of a twelve-year cycle or
25 something.

1 MR. GREEN: The persistent and resilient,
2 is there a definition for that currently existing for
3 Wyoming?

4 MS. BILBROUGH: A definition for
5 persistence?

6 MR. GREEN: Persistent and resilient.

7 MS. BILBROUGH: Only what you would find
8 in the Oxford.

9 MR. GREEN: Is that basically up to
10 individual determination?

11 MS. BILBROUGH: I don't think we have
12 defined persistent and resilient other than what you
13 would find in the dictionary for a definition.

14 MR. CHANCELLOR: Mr. Chairman, I'd maybe
15 go away from that discussion a little bit and go back to,
16 you know, again, I'd have more -- probably more agreement
17 if we had numerous bond-release packages that have been
18 denied because they failed to meet the standard. And
19 while it's true that the coal mines have not been really
20 active in pursuing bond release as perhaps they should
21 have. But I think so far we have not seen a problem that
22 they want to address with this rule change. If there was
23 a problem that saw consistently it could not meet this
24 standard, then maybe we should go back to the OSM rule
25 and drop the bar. But we have not seen a problem yet

1 that they're trying to fix. So it, again, comes back to
2 saying, why is this good for Wyoming? What are you
3 trying to fix with this? It will be easy for us to do it
4 in the future.

5 CHAIRMAN GAMPETRO: Rick, can you give us
6 any numbers, comparison numbers, bond releases
7 historically, versus other states or just internally?

8 MR. CHANCELLOR: No, I couldn't. We could
9 probably contact other states and see what they're doing
10 there. I have heard that Colorado has done numerous bond
11 releases, probably more so than we have. Why is that? I
12 don't know the reason for that totally. So I don't have
13 numbers. I just know, in Wyoming, there's been a few
14 that we've denied. But most of them, we have approved.

15 CHAIRMAN GAMPETRO: Percentage?

16 MS. BILBROUGH: In terms of?

17 MR. CHANCELLOR: Wyoming bond release for
18 coal.

19 MS. BILBROUGH: In terms of percentage of?

20 MR. CHANCELLOR: Denial.

21 MS. BILBROUGH: I only know of two
22 denials. And neither one of them were because of this
23 issue.

24 MR. LIEDTKE: How many approvals in that
25 same time frame or some time frame?

1 MS. BILBROUGH: I was looking at
2 verifications, as opposed to bond releases, and didn't do
3 a count. It would have been wise if I had. But I would
4 say that I was looking at 20 different verifications that
5 have been approved.

6 MR. LIEDTKE: Vegetation verifications?

7 MS. BILBROUGH: Yes.

8 MR. LIEDTKE: Over what time frame?

9 MS. BILBROUGH: Probably the last four or
10 five years is what I was looking at.

11 MR. CHANCELLOR: I think it's fair to say
12 that we have not had a large number. But, again, we can
13 say that there have been very few that we have denied.
14 So we don't see a problem. And I think that's what's
15 crucial to us right here, saying if there was a problem,
16 we tried to fix it. But we don't see a problem yet
17 demonstrated to say let's lower the standard because we
18 got a problem here. I'm saying I don't see a problem
19 yet. So I think that's where we're coming from.

20 MS. BILBROUGH: I don't know that -- I
21 don't think that this is influencing the number of
22 submittals that we're receiving. I might be wrong. But
23 it certainly isn't the cause of any denial that we've
24 had. And until a year ago, non-coal mines had to do
25 cover and production. They didn't have the shrub issue.

1 And we've had hundreds of those bond releases. And so we
2 just haven't -- I'm reiterating and supporting what Rick
3 said.

4 MR. LIEDTKE: I would just like to remind
5 the board, just recently, a few minutes ago you made a
6 change that all of a sudden made us much more restrictive
7 than any state in the entire nation by not counting
8 species lacking creditable value. That may have an
9 effect as we go forward in the future. I don't know. I
10 don't think anybody knows.

11 But I agree with Rick. We're not trying to fix
12 the problem. But there's very, very few bond release
13 packages, I think, that have been submitted in the last
14 several years, considering the amount of reclamation in
15 the state. And I don't know. We're just much more
16 stringent than any state in the nation. I don't think
17 it's bad for Wyoming if we go to 90 percent, because,
18 again, it's a succession thing. We're trying to put this
19 land in ten years where other land has been for
20 centuries.

21 MR. STELTER: Vern Stelter with Game and
22 Fish. The current requirements, as Carol said, have been
23 around since the mid '70s. The shrub standard comparison
24 probably needs to be addressed a little more. That
25 standard's now only about ten years old. And that came,

1 as Rick said, at the end of a long and contentious battle
2 to figure out what that was. And what you're seeing
3 there is kind of a committee decision on the 90 percent
4 of 90 percent.

5 The shrub standard itself, the success standard
6 for that was not addressed in this rule package. If it
7 had been, it would probably have went the same way if my
8 agency's recommendation would have been considered. It
9 would have gone the same way as what DEQ is trying to do
10 here. Because the industry as a whole has indicated the
11 difficulty of shrub reclamation is not that great. I
12 have a letter from them a year ago stating that.

13 So I wouldn't use that as a comparison for not
14 doing what DEQ is trying to do here, because it isn't
15 part of the package. And if it was, it would probably be
16 done similarly.

17 MR. DEMSHAR: Carl Demshar. Listening to
18 the discussion that's taken place -- I'm relatively the
19 new kid on the block, or the new old kid on the block,
20 when it comes to this effort here. And maybe that's
21 good, because I can step back, not having been involved
22 with it for a long period of time.

23 But I heard a comment earlier in the discussion
24 that this whole effort was oriented toward -- or one of
25 the issues or one of the things we were trying to do with

1 this effort was to clarify bond release, how we're going
2 to do that, et cetera. And I guess when I look at this
3 issue that we're discussing here, I guess, in my mind, as
4 I try to weigh the pros and cons, I don't see it as a
5 clarification. I think Rick may have alluded to this
6 earlier. It appears to be more, to me, anyway, to fall
7 into a relaxation category, as opposed to a clarification
8 category. And in listening to the discussion that's
9 taken place, I don't get the sense that we're having a
10 lot of problem in the state right now with bond releases,
11 whether this be the 90 of 90 or where we are presently.

12 So I guess I haven't seen anything, in my mind,
13 anyway, to make me sit here and say I think we need to
14 change it. I just wanted to offer that as my opinion,
15 trying to be as objective as I can about this in looking
16 at this situation. I guess I also don't see a problem.
17 And if it's worked for 30 years, I guess I'm struggling
18 with why we should make the change now.

19 MR. BELDEN: Mr. Chairman, I appreciate
20 everyone's comments on this issue. And this is not a
21 sword we are willing to fall on at WMA, this issue. We
22 were just simply trying to clarify and make it
23 consistent. And please understand that we are not trying
24 to lower a standard. That's not what we were trying to
25 do. We're just trying to understand that 90 percent of

1 the standard was acceptable.

2 So with those comments, WMA is willing to pull
3 our disagreement here, remove our disagreement on this
4 issue. I don't think there's any more discussion here
5 that's going to add to this, to the resolution of this.

6 CHAIRMAN GAMPETRO: So be it. Next.

7 MR. BELDEN: Number 3 in the letter -- and
8 they're not numbered. But it's the species diversity and
9 composition issue there. And what WMA is proposing there
10 is that they would -- we would like to reserve some
11 language as shown on page 108. We would like to propose
12 that language that allows for alternative methods as
13 approved by the administrator for the purposes of species
14 diversity and composition evaluation. And the reason is
15 that this is a whole new way of looking at species
16 diversity.

17 CHAIRMAN GAMPETRO: Where are we on 108?

18 MR. BELDEN: Bottom right, WMA rule
19 language. And that language, we simply added that text,
20 "using other alternative methods as approved by the
21 administrator." We just wanted to leave an open door
22 there for operators, since this is a new methodology, to
23 be able to still use what they have in their permits now
24 if that would be more appropriate. It's an untested
25 methodology, also. So we wanted to keep some language in

1 there that allows for options.

2 MR. CHANCELLOR: This is -- I'll call it
3 my issue, because I was being stubborn on this one. What
4 we're trying to do with species diversity is, currently
5 there's all kinds of methods -- it's an open right now.
6 It's wide open, how you do it. You define the permit,
7 how you're going to do it.

8 So we have numerous ways to evaluate species
9 diversity. And some may be good, some may be bad, and
10 some may be hard to even do. So we tried, with this
11 rule, to narrow it down and get more consistency
12 throughout the mines, saying, okay, how do you measure
13 species diversity, and what's a good measure of -- what
14 is good diversity? And it's hard to define. And there's
15 no scientific study that says, well, if we're reclaiming
16 lands, you need to have this type of diversity to be
17 resilient and all those good words.

18 And so we developed this method to try to edge
19 ourselves towards more consistency with all the mines,
20 something that we felt would meet the minimum value. And
21 I was trying to also get away from having a subjective
22 evaluation. There are other methods out there that are
23 more subjective than what we have proposed here. But I
24 was really trying to stay away from those subjective
25 methods.

1 We're open to having alternate numerical
2 methods to show that if we get another method than what
3 we describe here that has some numbers attached to it,
4 we're open to that, and we're willing to add language to
5 have that option. The way it's written here, it would be
6 also open to subjective methods. And I'm not sure I want
7 to go there. I guess it's not something I want to don my
8 sword about. It's not -- we don't know yet how that
9 would work.

10 CHAIRMAN GAMPETRO: How would you define
11 the difference between subjective and non-quantitative
12 that are still numerical?

13 MR. CHANCELLOR: Well, yeah,
14 non-quantitative is subjective. I'm willing to consider
15 semi-quantitative methods, other methods than what we
16 have described here.

17 CHAIRMAN GAMPETRO: So if this said, which
18 does not require statistical analysis or using other
19 semi-qualitative alternative --

20 MR. CHANCELLOR: Yeah, that would be fine.

21 CHAIRMAN GAMPETRO: You would like that?

22 MR. CHANCELLOR: Yeah. I'm okay with
23 that. And, again, going to what they have here, it's not
24 a huge, huge issue. I was just trying to get away from
25 being subjective. Mine inspector goes out there, says it

1 looks horrible, and the mine says, looks great to me.
2 Well, I get this result if I do this. And how do you
3 measure that? Eye of the beholder type of thing. I was
4 trying to get away from that. I know Bob could probably
5 talk more about this, because he has some ideas on
6 subjective methods, non-quantitative.

7 CHAIRMAN GAMPETRO: Semi-quantitative?

8 MR. CHANCELLOR: Semi-quantitative.

9 MR. GREEN: I'd be glad to. There are
10 methods out there that have been utilized for a number of
11 decades, actually. And one that I'm perfectly familiar
12 with is the one that's been utilized in Europe quite a
13 bit. It's utilized in the United States periodically.
14 But, basically, it's a matter of doing a walk-through
15 that's very intensive so that, in essence -- the way I
16 describe it, it's like walking through a Doblmeier frame
17 out there for cover, where you're basically taking out a
18 large-scale view of what the cover species diversity are
19 up there and basically bringing that into a grouping.
20 And that's something that is semi-quantitative, in that
21 you are keeping some relative figures. Basically, you're
22 making a visual estimate of the cover, similar to what
23 you would do with the Doblmeier frame, only a much larger
24 scale. But that's not -- but you basically describe the
25 whole areas. You have the sample size of one so you

1 can't use statistics compared to Area B, for example.

2 CHAIRMAN GAMPETRO: If we went to that,
3 would everyone be happy?

4 MR. CHANCELLOR: The question for Bob
5 would be, would you describe that as a subjective or a
6 semi-quantitative method?

7 MR. GREEN: That's the example that I used
8 for semi-quantitative during the discussions. Because
9 you are, indeed -- you're basically saying that you feel
10 that Species X falls within this range of cover, that it
11 has a certain social value as far as its distribution
12 throughout the area, that sort of thing.

13 MR. CHANCELLOR: I would view that as a
14 semi-quantitative method. And, again, I think Land
15 Quality -- my thinking was that other semi-quantitative
16 methods would be -- we evaluate that and say okay. I was
17 just trying to stay away from the subjective methods that
18 possibly could be on there.

19 MR. LINFORD: Mr. Chairman, on 108, if I'm
20 reading this right, they only want to change this last
21 little bit?

22 CHAIRMAN GAMPETRO: Well, they're changing
23 the word from "and" to "which does not require
24 statistical analysis."

25 MR. LINFORD: But the catchall is that it

1 has to be approved by the administrator. If he isn't
2 comfortable with it, he just says no.

3 CHAIRMAN GAMPETRO: That's correct.

4 MR. LINFORD: And if somebody like Bob can
5 sit down and twist Don's arm and say, you know, that this
6 really will work, I don't see a problem with it. Or if
7 he just digs in his heels and says, "I really don't like
8 that," then I think we're covered. I don't see a
9 problem.

10 MR. LIEDTKE: I agree with that comment.
11 There are existing mines out there that have or require
12 that the species diversity is met through subjective
13 measures. Again, remember that the current rule, all it
14 says is that the species diversity and composition must
15 support the post-mining land use. So sometimes that is
16 demonstrated by looking at grazing, livestock use, those
17 types of things. And you can possibly, if you manipulate
18 them, call them semi-quantitative. But I don't know that
19 you can always do that. But I think there are very good
20 subjective ways to do this and to meet the post-mining
21 land use to show it's happening.

22 CHAIRMAN GAMPETRO: If it's totally
23 subjective, then you're at the whim of somebody digging
24 their heels in or somebody not digging their heels in,
25 whereas if you make it at least semi-quantitative, it's

1 less to the whim of the people involved, I would think.

2 MR. LIEDTKE: My concern is that species
3 diversity is one of those things, again, that we're
4 making a very drastic step to make it much, much, more
5 stringent now than the federal regulation, which just
6 says support the post-mining land use. We're making it
7 much, much more stringent than it has been for the last
8 30 years. We're changing something -- not to use an old
9 argument, but I guess we're going to change something
10 that's not broke. This does not stop bond release in the
11 past. But, also, we're going to make it a lot more
12 stringent.

13 My concern is that we're taking a tool out of
14 the toolbox. And if the administrator has to approve it
15 and if we have a good method -- one of the requirements
16 in one permit I'm familiar with says that you do
17 literature research because these species support
18 wildlife use for varied types of wildlife. And there's
19 no numbers associated with that. Again, I feel if the
20 administrator approves it, we're just leaving a tool in
21 the toolbox and we're not being limited.

22 MR. CHANCELLOR: Mr. Chairman, my concern
23 with the subjective method is that, with the example
24 given, that you could demonstrate by grazing and say,
25 okay, I grazed it. I seen wildlife out there. It must

1 be diverse. To me, that does not get to the long-term
2 viability of that plant community. Because you could
3 have a monoculture of one type of plant out there, and
4 yeah, livestock will use it and wildlife will use it.
5 But is it really promoting diversity of that community
6 that would sustain droughts and overgrazing in the
7 future? And I think that's our goal.

8 So I'm agreeable to semi-quantitative other
9 methods to be evaluated by the administrator. I just
10 don't feel comfortable with subjective at all.

11 MR. STELTER: Vern Stelter, Game and Fish.
12 The semi-quantitative definition back in Chapter 1
13 indicates it's nonstatistical assessment of numerical
14 data. But we're not doing away, as I understand it, with
15 numerical data. It's not just somebody going out and
16 saying yea or nay. There is still a basis for comparison
17 and a basis for continuity among mines and so on. It's
18 just that it wouldn't be statistically assessed. Is that
19 what I'm hearing?

20 CHAIRMAN GAMPETRO: That's my
21 understanding.

22 MR. GREEN: Mr. Chairman, if I might, just
23 to echo an earlier point, and that is, there are many
24 points in the regulations that allow for alternative
25 methods to be discussed with the Land Quality

1 administrator, with the ultimate decision being made by
2 the administrator. This is not unique, regardless of
3 whether or not it includes semi-quantitative or not in
4 the language. It still is ultimately up to the Land
5 Quality administrator to say, "I feel comfortable with
6 that," or, "I don't." And in the grazing example, it
7 would be up to the administrator to say, "I don't feel
8 comfortable with that," end of discussion.

9 MR. CHANCELLOR: I think our experience is
10 that -- to that, I guess, is that our decisions can be
11 appealed. If there's no side boards on how it came about
12 to our decision, then the appeal process opens up a huge
13 variety of outcomes. We're going to have different
14 options. Just put some side boards on it saying anything
15 between there is a goal. We may disapprove on those, be
16 appealed and be overturned. But I guess that's my
17 thought on that. But I'm no longer administrator, so my
18 thought doesn't count.

19 MR. MCKENZIE: Even with side boards, that
20 doesn't prohibit anyone from submitting it to the
21 Council. And I don't know what those outcomes will
22 always be.

23 CHAIRMAN GAMPETRO: Are we ready to take a
24 vote? All of those -- how should we put this? Should we
25 put it in the semi-quantitative as an alternative, or do

1 you want to vote on the specific language that you
2 proposed, which does not say semi-quantitative?

3 MR. BELDEN: No. That still requires the
4 administrator approval. I think that's what we would
5 suggest.

6 CHAIRMAN GAMPETRO: So we're voting on
7 whether or not we want to adopt the Wyoming Mining
8 Association's language which allows alternative methods
9 to be approved by the administrator. No mention of
10 semi-quantitative.

11 All those in favor, please signify by raising
12 your hand or saying aye.

13 (All members vote aye.)

14 CHAIRMAN GAMPETRO: I'd say that's
15 unanimous.

16 MR. CHANCELLOR: Mr. Chairman, it's a
17 quarter of 1:00. Do you want to --

18 MR. BELDEN: Before that, one small
19 editorial change, if I could, Mr. Chairman. Back to page
20 106, Roman Numeral 1, Number 2, at the very end of that
21 sentence, the words "before mining" appear. It was
22 struck from Number 1 above. I believe those need to be
23 struck, the two words "before mining."

24 CHAIRMAN GAMPETRO: You'd like to do what,
25 now?

1 MR. BELDEN: The words "before mining" at
2 the end of that sentence, Item Number 2, they need to be
3 struck.

4 MR. LINFORD: Down at Number 2.

5 CHAIRMAN GAMPETRO: Oh, okay. I was
6 looking at Number 1. Sorry.

7 MR. POSTLE: Bob Postle with the Office of
8 Surface Mining. And we could do this after lunch. But I
9 have a question for the State as to why the use of the
10 90 percent confidence interval is only discussed under
11 grazing and pastureland, when it's applicable to all
12 post-mining land uses under the federal regulations? And
13 this could result in a required amendment for the State
14 of Wyoming, which we would encourage you not to -- to
15 solve now and not have us solve it.

16 MR. CHANCELLOR: Can we answer that after
17 lunch?

18 MR. POSTLE: Yeah.

19 MS. BILBROUGH: Every time we don't have
20 it in there, just point it out.

21 MR. POSTLE: Okay. I can do it however
22 you want to do it, Mr. Chairman. Trying to avoid any
23 problems down the line.

24 CHAIRMAN GAMPETRO: So we're striking the
25 "before mining" in Number 2 under Roman Numeral 1. Any

1 problems with that, anyone? And then we're going to,
2 after lunch, put in the 90 percent confidence interval,
3 even though the sample sizes are inadequate. I had to
4 get that in there.

5 MR. CHANCELLOR: I suggest breaking for
6 lunch.

7 (Hearing proceedings recessed
8 12:44 p.m. to 2:14 p.m.)

9 CHAIRMAN GAMPETRO: If we could reconvene
10 now, Don would like to have a few words with you all
11 before we get started.

12 MR. MCKENZIE: Mr. Chairman and the board,
13 I'd like to present the 2007 Excellence in Mining awards
14 for Wyoming. This won't take very long. The first one
15 goes to Powder River Coal for Caballo Mine. And the
16 second award goes to Foundation Coal West with Belle Ayr
17 Mine. Thank you, Mr. Chairman.

18 CHAIRMAN GAMPETRO: Well, congratulations.
19 We are ready to proceed.

20 MS. BILBROUGH: I think we're on page 109.
21 Having dealt with the species diversity, it looks like
22 we're down to Item Number 1. And 1 and 2 just deal with
23 using -- what type of reference area you will use. And a
24 lot of the rule language that was deleted in the first
25 section, Section (d)(i), some of that was moved to here.

1 And a lot of it was moved to the definitions. So control
2 areas and the different kinds of reference areas are now
3 in the definition section. And this just specifies when
4 you can use a control area, when you have to use a
5 reference area.

6 And then the next one simply talks about
7 developing technical standards. And there's not really
8 any new rule change there.

9 The next rule change really is on the next
10 page, page 111. And Item Number 1 at the top of the page
11 is the shrub standard rule that I was describing. I
12 mean, the shrub goal rule, lands affected between May
13 of '78 and August of 1996. And then the new language
14 below that is what I was describing, the shrub banking
15 specifications there for shrub goal. And then there is
16 no new language. Other than specifying how people can go
17 about banking their shrubs, there's nothing new on that
18 page.

19 Page 112 is where we address an OSM disapproval
20 and inserted the 90 percent confidence interval
21 requirement and a timing of sampling. Again, OSM
22 requires that shrubs be assessed the last year of the
23 bond period.

24 And then at the bottom of the page is where we
25 specify what other standards apply to a shrub mosaic. So

1 that's where we talk about the shrub mosaic must meet the
2 cover and species diversity and composition standards,
3 but they are exempt from production.

4 Too fast? Too slow? Questions? Next page,
5 Item D is a revision for clarification only. I don't
6 think we actually changed the content there. We were
7 just trying to make the rule a little bit more clear. So
8 that's it for grazing land and pastureland.

9 The next land use is cropland. And originally
10 cropland and residential and industrial, commercial were
11 grouped together. So we split those out, because they're
12 so different, and added some language for cropland,
13 specifying what kind of areas you can use, page 114, what
14 kind of areas you can use or how you can evaluate
15 cropland to assess productivity if you use a reference
16 area or if you use published data and how you would go
17 about applying that to the standard. And then some more
18 specifics on how you can select and use a reference area
19 is at the bottom of the page.

20 MR. POSTLE: Bob Postle with the Office
21 of Surface Mining. This is one of those points where you
22 need to data again for production. Because it's a
23 quantitative measure, we need to reference the 90 percent
24 statistical confidence at this point. Just as a point,
25 rather than doing that repetitively for each land use,

1 you could theoretically just, in front of all the land
2 uses, include a statement that for all quantitative
3 measures of cover, production or shrub density, you must
4 demonstrate revegetated success by using the 90 percent
5 interval confidence. That would eliminate having to
6 repeat it over and over and over again.

7 MS. BILBROUGH: Bob, what about -- I think
8 that's a good idea. What about for cropland? We have a
9 situation where you're comparing the whole field value.

10 MR. POSTLE: In that case, no. The only
11 exception would be a whole field. It's the whole
12 population. So there is no statistical test.

13 CHAIRMAN GAMPETRO: Is that okay with the
14 board? Why don't we just do that, then?

15 MR. POSTLE: So you would put that right
16 after the revegetation success standards.

17 MS. BILBROUGH: Do you need to know where
18 we put it, or are you just happy to know that we put it
19 somewhere?

20 MR. LINFORD: That it's there.

21 MS. BILBROUGH: So you'll trust us to put
22 it somewhere?

23 MR. POSTLE: The standards -- under
24 grazing land, under (A)(I), it says, the standards for
25 cover and production are quantitative standards which

1 must be demonstrated using methods and statistical
2 analyses approved and published by the administrator.
3 Statistical analyses must use a 90 percent statistical
4 confidence interval. If you move that statement up to
5 the beginning and then just identify under each land use
6 which are the quantitative standards you're going to use.
7 Do you follow me?

8 CHAIRMAN GAMPETRO: I do.

9 MR. CHANCELLOR: So, Bob, would that be on
10 like page 105?

11 MR. POSTLE: Yes, I would put it on 105 or
12 in front of (A). Or it could be (A) and start with (B).
13 I don't know. However you want to.

14 MR. CHANCELLOR: (II) on page 105?

15 MR. POSTLE: Yes. As a general statement,
16 you know, the following are, based on land use, or
17 something to the effect that you've reached land use,
18 whether the standard is -- the quantitative standards of
19 cover, production and stocking or shrub density must be
20 evaluated using --

21 CHAIRMAN GAMPETRO: Since those items for
22 which quantitative standards are required are already
23 indicated, if you just made a statement for all items
24 where quantitative standards are required, that a
25 90 percent confidence interval --

1

2 MR. POSTLE: Right. But that will
3 simplify your process, and it will also make sure you've
4 addressed one of our major concerns.

5 MR. MCKENZIE: Mr. Chairman, we'll make
6 that happen.

7 MS. BILBROUGH: So the next wildlife -- I
8 mean, the next land use is fish and wildlife habitat.
9 And, again, as I described earlier, the requirements are
10 that the Wyoming Game and Fish shall work with the
11 operator to develop permit-specific requirements. And
12 the commitments for what the standards are and how those
13 standards will be assessed will be included. And this on
14 is on page 115.

15 The next land use is post-mining wetlands on
16 page 116. And the rules there specify that the Army
17 Corps of Engineers shall review and approve mitigation
18 wetlands. And we -- because it's hard to tell that your
19 wetlands will all be successful, we've allowed -- we've
20 specified in the rules that the operator can create up to
21 25 percent more mitigation wetlands, acreages than they
22 are committed to replace.

23 And then the Item Number 2 on the next page is
24 talking about the bond responsibility period. Because
25 the Corps allows you to declare mitigation successful

1 after five years. But OSM and our rules are ten years.
2 So you can get a successful mitigation after five years,
3 but you still have to wait ten years before you can move
4 forward with verification and bond release.

5 MR. LIEDTKE: Mr. Chairman, just a
6 question for DEQ. And I apologize for not looking at
7 this months ago. But just out of curiosity, why is the
8 extra limited at 25 percent? I mean, if we put back more
9 wetlands --

10 MS. BILBROUGH: It was sort of written and
11 then agreed upon. And, actually, it could be more.

12 MR. GREEN: Mr. Chairman, if I might,
13 since I was a member of the small working group. That
14 was principally a compromise figure where you simply came
15 up with 25 percent. We felt that would be reasonable for
16 industry. That would be something that Game and Fish
17 could live with, as well, so that it wouldn't be
18 100 percent more or whatever. So it was simply a
19 compromise.

20 MR. LIEDTKE: But a compromise with a --
21 who would not want 50 percent more?

22 MR. CHANCELLOR: Maybe a point of
23 clarification. Isn't the 25 percent only applied to
24 mitigated wetlands?

25 MR. GREEN: Correct.

1 MR. CHANCELLOR: There's two categories of
2 wetlands, mitigation and extra. And mitigation is what
3 the Corps requires and additional 25 percent. Those
4 would fall under the Corps' approval process. Beyond
5 that would be separate. Would be wildlife, game and
6 fish. Does that make sense?

7 MR. LIEDTKE: Yeah. I still don't
8 understand why it's limited to 25, though.

9 MR. CHANCELLOR: I don't know, either.

10 MS. BILBROUGH: I think it got pulled out
11 of a hat, and then we just kind of stuck to it.

12 MR. HULTS: Our statement of reason says
13 it's an arbitrary figure.

14 MS. BILBROUGH: Are you proposing an
15 alternative?

16 MR. LIEDTKE: I would propose striking it.

17 MS. BILBROUGH: Striking what?

18 MR. LIEDTKE: That it's limited to
19 25 percent.

20 CHAIRMAN GAMPETRO: Would there be an
21 instance in which you wouldn't want more than 25 percent?

22 MR. CHANCELLOR: It probably comes down to
23 which standards apply. Because there are differences in
24 standards between the Corps' mitigation wetlands and then
25 the Game and Fish additional wetlands. So it's probably

1 a, where do you stick it, which ones you apply to? Other
2 than that, I don't know that it makes a whole lot of
3 difference.

4 Vern, do you have any thoughts?

5 MR. STELTER: No. I agree with you.

6 MR. MCKENZIE: Mr. Chairman, it does seem
7 to go back to the definitions of mitigation wetlands,
8 versus enhancement wetlands. That seems to be the only
9 tie, is which definition you're following.

10 CHAIRMAN GAMPETRO: What about the
11 25 percent? Let me pose the question this way. Is there
12 any benefit to you?

13 MR. LIEDTKE: Very small benefit,
14 possibly. What I could see is that some mines, with the
15 current Corps of Engineers rules as they are, we may have
16 situations where there's a very small number of
17 mitigation wetlands, and yet we put back more. We get
18 Corps approval, and yet we exceed that limit. So we have
19 wetlands that are approved by the Corps but have to go
20 back and get bond release and go through the fish and
21 wildlife part of it because we exceeded our 25 percent,
22 which I would think it would pass. It's just extra
23 paperwork and processing to go through. And that's not
24 going to be a very common situation. I'll readily admit
25 that.

1 CHAIRMAN GAMPETRO: If it were approved by
2 the administrator?

3 MR. CHANCELLOR: I think what's probably
4 important here is that when the permitting is done,
5 permitting process, that the applicant identifies which
6 is going to be mitigation wetlands, versus which is going
7 to be game and fish habitat wetlands, so we know in
8 advance what standards will apply to those areas, instead
9 of waiting until the very end and saying, well, I want
10 them all this, or vice versa. So as long as it's
11 identified in advance, I don't know if we have any issue.
12 Does the Corps have an issue, maybe the question is? I
13 doubt it.

14 MS. BILBROUGH: They were fine with having
15 25 percent.

16 CHAIRMAN GAMPETRO: Make a proposal?

17 MR. CHANCELLOR: You could take out the --
18 if you take out 25 percent here, then somehow in Chapter
19 2, you'd have to go back and clarify the applicant
20 identifies which wetlands will be mitigation wetlands,
21 which is not mitigation wetlands. That would be the only
22 issue, only concern I'd have. If you take it out here,
23 you may have to put it back someplace else. They have to
24 identify in advance which ones they want for mitigation.

25 MR. LIEDTKE: It's the successful ones we

1 want for mitigation. It's not a big issue with me.

2 MR. CHANCELLOR: I don't have a big issue
3 with it. Just trying to fix it.

4 CHAIRMAN GAMPETRO: Since no one has a big
5 issue, can we just move on?

6 MS. BILBROUGH: So I believe we're on page
7 117, maybe. And we're talking about Item Number 2, which
8 specifies this kind of confusing double period where the
9 Army Corps of Engineers allows for mitigation at the end
10 of five years, and the DEQ rules, Land Quality rules,
11 require a ten-year period, is basically how we'll deal
12 with that situation, which is that the Corps will write
13 their letter when they're ready. An operator will give
14 it to us. And then we'll just kind of wrap that area
15 into the surrounding area for vegetation verification.

16 For enhancement wetlands, the permit
17 commitments are -- the reclamation commitments are
18 permit-specific, and they are developed with Wyoming Game
19 and Fish. And, again, you have a ten-year bond release
20 period or ten-year bond responsibility period and submit
21 your information to the Game and Fish and Land Quality.

22 And then the next land use is industrial,
23 commercial and residential, which simply states that, for
24 this land use, you need to stabilize it until you develop
25 it. And anytime you're ready to develop it, you can get

1 your bond back. There's no ten-year bond responsibility
2 period.

3 Number (F), the letter (F), developed water
4 resource, there aren't any reveg standards. I guess we
5 had some questions about that, so we just wanted to
6 clarify that, for those situations, there aren't any
7 revegetation standards.

8 And then recreational, (G), the operator shall
9 gain approval from the administrator and appropriate
10 agency. And, again, these are permit-specific
11 commitments. And going back to Bob, I suppose under some
12 circumstances, this would be quantitative, requiring a
13 90 percent, and in other circumstances, it could just be
14 qualitative or semi-qualitative. Under that
15 circumstance, there would be no --

16 MR. POSTLE: I assume that's true, yes.

17 MS. BILBROUGH: And the letter (H) is
18 forestry. And, again, tree replacement is specified in
19 the permit. And cover -- understory cover is required,
20 minimum understory cover. And, again, you have the 80/60
21 rule in the trees. At least 80 percent of the trees
22 shall have been planted for at least 60 percent of the
23 last ten years of the bond responsibility period. And
24 all planted trees shall have been in place for at least
25 two years.

1 And then we're down to special success
2 standards. The first special success standard is where
3 lands are previously disturbed and not reclaimed to the
4 requirements of these regulations. And that is a
5 standing rule which was just moved there. The second
6 part, Roman 2, for lands and facilities that were
7 affected prior and continuously used as a new rule where
8 we've specified that the land would be reclaimed to the
9 standards in place when it was initially disturbed, or at
10 a minimum, revegetated to control erosion.

11 And that is the end of the main part of Chapter
12 4.

13 CHAIRMAN GAMPETRO: So now what?

14 MS. BILBROUGH: 4-1.

15 MR. CHANCELLOR: Page 122.

16 CHAIRMAN GAMPETRO: Appendices.

17 MS. BILBROUGH: The WMA pointed out a
18 couple of problems with 4-1 or just errors that we need
19 to resolve that we can do as we go through the test.

20 The standard is that species diversity and
21 composition are suitable for the approved post-mining
22 land use. And this is just an illustration of a diverse
23 pre-mine, made-up shrub community, probably pre-mine.
24 And right now the standards are permit-specific. And
25 what we tried to do is develop a species diversity

1 standard that would be applied uniformly across all the
2 coal mines, because the permit-specific criteria are
3 quite variable.

4 I guess first I need to start out by describing
5 what a belt transect is. The surface of your table could
6 be considered to be a belt transect. It's an area where,
7 in this case, you're counting the number of individual
8 species that you see and counting growth forms that you
9 see present in that area.

10 So the new standard is average number of
11 species per belt transect, the minimum frequency for
12 growth form across all belt transects. So if you
13 considered every table in this room to be a belt
14 transect, and those five over there all had, say, a
15 warm-season grass, these five over here did not, then you
16 would say you had a 50 percent frequency of warm-season
17 grasses in your plan, in your reclamation. It's a very
18 simple, straightforward calculation. If you found shrubs
19 in all of your belt transects, then you would have
20 100 percent frequency. You'd be happy, probably, too, if
21 you did.

22 And then numeric standards are set by the
23 administrator by land use type. So the numeric standard
24 is the average number of species that you need to
25 encounter per belt transect. And that would be all

1 species of all growth forms, but not -- you're not
2 counting, say, all of the plants in these belt transects.
3 You're just counting -- if you count one species, one
4 sagebrush, you're done. You don't count any more
5 sagebrush. You count one warm-season grass species, and
6 you're done. So you're just doing a count of how many
7 species are present in your belt transect. And that
8 number is set by the administrator by land use type.

9 It applies to grazing land, pastureland and
10 shrub goal or standard areas, so shrub mosaics. And the
11 numeric comparison is without statistics, so it's semi-
12 quantitative. If this is twelve species per belt
13 transect, then you have to get twelve species per belt
14 transect. There's no 90 percent confidence interval
15 assigned to it.

16 And the standard is optional for lands
17 disturbed before the rules were passed and required for
18 lands disturbed after the rules are passed, which may or
19 may not contradict with the rule change that we agreed
20 to, that we might want to think about that.

21 MR. CHANCELLOR: I don't think --
22 contradict -- the rule will not contradict. The rule
23 allows options. So the rule applies that going
24 forward -- if they want to use their old method going
25 forward, they have to ask the administrator to do that.

1 So I think it's still okay.

2 MS. BILBROUGH: So this is just
3 illustrating what I already illustrated with the
4 tabletops. You have -- if each color represents a
5 different growth form, you have four different growth
6 forms and sixteen different species, because each point
7 represents an individual species. And so you take your
8 belt transect and you count the number of growth forms
9 present, and you count the number of species present.
10 And then you do this for a number of belt transects
11 across your reclamation unit. And you calculate the
12 frequency of different growth forms and then the average
13 number of species or the species density, which in this
14 case is ten.

15 So this has some variance around it, because
16 you're calculating the average. But the frequency uses
17 all of the numbers, which doesn't really matter, since
18 it's a numeric comparison without statistics. But just
19 as an aside.

20 So the first section of the appendix discusses
21 applicability. And for lands disturbed before the rule
22 is passed is A. And for lands disturbed after the rule
23 is passed is B. So A is allowing the operator
24 flexibility. And then B is committing the -- for lands
25 disturbed after the standard is approved, the operator

1 shall meet the standards in this appendix. And this is
2 the statement that I wonder if it conflicts with our
3 "unless otherwise approved by the administrator" comment.

4 MR. CHANCELLOR: I suppose the rule could
5 state "unless alternatives approved by the administrator"
6 to clarify that option is there, that the alternatives
7 are approved by the administrator and this appendix
8 wouldn't come into place. So it's probably best to add
9 some clarifying language.

10 MR. GREEN: I would say that you could
11 probably add that direct and suggested language right
12 after the language for B.

13 MS. BILBROUGH: Yep.

14 So Roman Numeral 2 is one of the places where
15 the WMA pointed out a mistake. And it currently says
16 sampling unit with the grazing land and/or fish and
17 wildlife habitat uses are required. That should read
18 "sample units." But the issue is that the fish and
19 wildlife habitat land use, as I pointed out, has a
20 permit-specific commitment for species diversity. And
21 this really -- I think what we were targeting is the
22 shrub mosaics that are associated with grazing land.

23 And so I think what we're proposing is to say
24 sample units with the grazing -- with grazing land,
25 including shrub mosaics, land uses. That doesn't make

1 sense. Instead of fish and wildlife habitat, we want to
2 insert grazing land, shrub mosaic -- we want to insert
3 shrub mosaics. Because the shrub mosaics are part of
4 grazing land, but they are also sort of a fish and
5 wildlife habitat. So we felt like we needed to specify
6 that the shrub mosaics are part of this diversity
7 standard, that this diversity standard applies to the
8 shrub mosaics.

9 CHAIRMAN GAMPETRO: Got nods of approval
10 from the mining people.

11 Where are you, Rick?

12 MR. CHANCELLOR: I'm okay.

13 MR. BELDEN: Mr. Chairman, can we put that
14 language up there?

15 MR. MOXLEY: Can I suggest some language?

16 MS. BILBROUGH: Yes, please.

17 MR. MOXLEY: I would just say grazing
18 land, including shrub mosaics. At the very beginning,
19 I'd just strike "sample units" with -- to start with
20 "grazing land." "Grazing land, including shrub mosaics."
21 Strike "and/or fish and wildlife habitat land uses."
22 Strike "are" and then put "is required." Does that work?

23 MR. BELDEN: Mr. Chairman, we're satisfied
24 with that. It speaks the intent of --

25 MS. BILBROUGH: Are we good to go?

1 MR. BELDEN: Maybe we would also want to
2 remove "sampling units" in the next sentence, too, just
3 to be consistent with how it's worded.

4 MS. BILBROUGH: So delete "sample units."

5 Roman Numeral 3 specifies that the standard is
6 semi-quantitative. So it's nonstatistical. It's just a
7 straight-across numbers comparison. Roman Numeral 4,
8 again, we need to substitute shrub mosaics for fish and
9 wildlife habitat.

10 MR. HULTS: For grazing land and shrub
11 mosaics and/or fish and wildlife habitats?

12 MS. BILBROUGH: No. Fish and wildlife
13 habitats.

14 And then Item A is just the average number of
15 species per belt transect. And B was a slip-up. It says
16 the average frequency for life forms, but it should just
17 be the frequency, because you can't really have an
18 average frequency. So that was a mistake. So the
19 frequency of the following life forms.

20 And then the next page, 124, specifies the life
21 forms that are -- the growth forms that are counted. And
22 they include cool-season graminoids, warm-season
23 graminoids, full shrubs, subshrubs, annual, biennial and
24 perennial forbs, including all species native to North
25 America, except as species lacking creditable value.

1 And then Roman Numeral 5 are the vegetation
2 parameters for species diversity and composition for
3 pastureland. And then there, it just says -- and, again,
4 we have average frequency under B, which needs to be
5 removed. But the requirement for the average number of
6 species shall be determined by the administrator, and the
7 frequency of growth forms will be determined by the
8 administrator.

9 MR. GREEN: Mr. Chairman, another minor
10 point. On 5B, you put average frequency again there?

11 MS. BILBROUGH: Yeah.

12 And then the species that are allowed are
13 cool-season graminoids and annual, biennial and perennial
14 forbs except for species lacking creditable value. So we
15 narrowed down the diversity requirement, growth form
16 component of pastureland in recognition of its different
17 land use.

18 And 6 basically says if you did everything that
19 we told you to do and you still haven't met your
20 standard, you can go hunting for belt transects that will
21 allow you to meet your standard. So if you randomly
22 locate belt transects based on your cover measurements,
23 which is how we sort of plan on doing it, if you don't
24 meet the diversity standard, you can walk the area, find
25 diverse places and take measurements there to support the

1 argument that you've met diversity.

2 CHAIRMAN GAMPETRO: I would assume they
3 can't be overlapping?

4 MS. BILBROUGH: Yes, I agree. I'm not
5 sure it says that, though.

6 MR. CHANCELLOR: It doesn't. But you're
7 right. Would that be better in a rule or statement of
8 reasons, describing that or outline?

9 CHAIRMAN GAMPETRO: You just can't allow
10 them to overlap.

11 MS. BILBROUGH: So would you put it under
12 6? I think. We would just add a sentence.

13 MR. HULTS: What I did was added this word
14 right there.

15 MS. BILBROUGH: And then frequency is
16 defined as the percentage of 100 square meter belt
17 transects in which an individual life form is present.
18 And then the average number of species per belt transect
19 and each of the life forms, frequency values will be
20 evaluated separately, and each evaluation shall carry
21 equal weight.

22 So what that's saying is that you have to have
23 the following growth forms present. And in order to
24 pass, they all have to meet the frequency requirements.
25 You can't miss on one. So it's not an "or" condition.

1 It's an "and" condition.

2 And then the last provision, Roman 9, is that a
3 species list will be submitted but not compared.

4 MR. CHANCELLOR: Mr. Chairman, a point of
5 clarification. Since this is a new procedure, a new
6 standard, you want to call it, for species diversity and
7 composition, we propose that the actual numbers that the
8 administrator selects be put in the guideline, because we
9 don't know yet what is reasonable, rational to expect
10 using this method. And after -- it's anticipated after
11 several years with experience, we may put those in rule.
12 But right now it would be guideline.

13 So if they had five warm-season grasses, or
14 whatever, but came up with three all the time, we'd still
15 allow them to pass because the numbers are in the
16 guideline itself. So it gives some flexibility to
17 administer this new method of measuring until getting a
18 bit more experienced.

19 CHAIRMAN GAMPETRO: Can you get any input
20 from Fish and Wildlife or anybody like that as to what
21 might be helpful numbers to have?

22 MR. CHANCELLOR: We had discussions in our
23 meetings, Game and Fish in presence there, and talked
24 about the different numbers that could go into this
25 guideline. And so we've had that discussion with

1 everybody involved. And we'll just pick numbers and
2 publish that and see how it works.

3 MR. MCKENZIE: Mr. Chairman, I have a
4 question for Mr. Chancellor. Was there discussion on the
5 time frame for this publication? I know it hinted at --

6 MR. CHANCELLOR: There's actually two
7 publications, two documents. One is the methodology that
8 OSM has put into a document. This would be in a true
9 guideline that is -- common language says the operator
10 may -- it's not rule. And so it would be real good to
11 have both of those at least drafted up before the council
12 meeting, before the rules actually flow to EQC.

13 MR. LIEDTKE: Maybe I missed something
14 here. I'm sorry. But this standard, I mean, it can be
15 used sooner. Right? But it's not really going into
16 effect --

17 MR. CHANCELLOR: Doesn't go into effect
18 until the rules are passed.

19 MR. LIEDTKE: For lands procured after the
20 date --

21 MR. CHANCELLOR: Of the rule.

22 MS. BILBROUGH: I think that first
23 position says you can use it now.

24 MR. CHANCELLOR: They can. It's optional
25 for -- once the rules are passed, an operator may say,

1 "This is a wonderful idea. I want to apply it to all my
2 lands and not just future lands." They may say, "I want
3 to use my old terrible method and go forward."

4 MR. LIEDTKE: I would just like to also
5 state for the record that, as Rick mentioned, we did, in
6 our earlier large group, look at various numbers. And
7 there was quite a discrepancy, not surprisingly, between
8 what we had proposed, what WMA and what Land Quality
9 proposed. And as a result of not really ever coming to a
10 decision on that and realizing we needed more data,
11 probably, we decided that it would make sense to put it
12 into a guideline, like Rick mentioned.

13 And I just recently was looking at some of our
14 baseline data for new recent year proposals, and we have
15 native areas that do not meet the LQD's proposed
16 standards. So those types of things concern us,
17 obviously, and we need to have some input as we go
18 forward.

19 MR. CHANCELLOR: That's why I want to do a
20 guideline, so we can change it as new information comes
21 in, more experienced data, and you can really change
22 those numbers to something that's realistic and workable.

23 MS. BILBROUGH: That's it for the species
24 diversity standard.

25 So for the shrub density standard, the only

1 revision is the first sentence, and everything else is
2 moved into Appendix 4-2 as it stood in Appendix A.

3 So the change that we saw, the one sentence
4 basically talks about the concept of eligible lands,
5 which is defined in Chapter 1. The previous rule listed
6 wetlands are not eligible for the shrub standard. The
7 proposed rule lists land uses that are eligible for the
8 shrub standard. So previously, cropland, pastureland and
9 treated grazing land were not eligible. And now grazing
10 land and pastureland with full shrub density greater than
11 one shrub per meter squared are eligible. And I just
12 wanted to say the revision was initiated by the Wyoming
13 Game and Fish.

14 I think that's the only slide. So I don't plan
15 on going all the way through the shrub density standard
16 unless somebody has something other than that first
17 sentence that we just talked about, where the exclusion
18 is struck and just eligible lands are specified.

19 CHAIRMAN GAMPETRO: Anything on that?

20 MS. BILBROUGH: Last chapter. So I just
21 kind of assembled a general story of the big changes that
22 we have in Chapter 1. We added definitions related to
23 normal husbandry practices, augmented seeding,
24 interseeding, what's an establishment practice. We
25 pulled in definitions from Appendix A. We revised or

1 added the definition of eligible land specific to what
2 the shrub density standard is. We revised the
3 pastureland definition in reference to the shrub density
4 standard.

5 And in past rules, we had a whole compendium of
6 different types of reference areas. We had a reference
7 area, a control area, an extended reference area, a
8 comparison area. And it was all very confusing. And we
9 kind of painted ourselves into a corner where we didn't
10 have any single term that could kind of refer in a more
11 general sense to the concept. And so we took all of
12 these terms and lumped them underneath reference area so
13 that you actually had a generic term you could use to
14 describe the overall concept.

15 And then as Rick will explain and did explain a
16 little bit, because of the changes in laws and rules
17 through time, we actually have different standards that
18 apply to reclamation through time. So we actually had a
19 policy document that talked about these regulatory
20 categories known as the Magic Kingdom's document. And it
21 was based on the different laws that were -- or rules
22 that were in place during different time frames. So we
23 went ahead and added that to the actual definitions and
24 codified the policy document.

25 So we've already been through this one. I was

1 just identifying a disagreement that the WMA have with
2 species lacking creditable value and the definition that
3 was in there.

4 So that's all I had to say as a primer for
5 Chapter 1. I don't really care to narrate definition by
6 definition. But do we want to just go through it page by
7 page and see if people have comments?

8 MR. LIEDTKE: I'd just like to make a
9 general comment on the previous slide there. As was
10 brought up more than once this morning, it was agreed
11 that as part of this rule package, we would not touch the
12 shrub density standard. But at Game and Fish's
13 recommendation, we did agree to broaden it to include
14 some of the pastureland areas. And WMA agreed to that.

15 MR. CHANCELLOR: Point of clarification
16 for the board members. SMCRA gives the State Game and
17 Fish agencies veto power over what they call stocking
18 rates for their habitat, which include shrubs. And so
19 that's why Game and Fish is very much a part of any
20 rule-making that deals with shrubs or habitat, because
21 SMCRA gives them that actual veto authority over that.
22 And so when Roy was talking about Game and Fish initiated
23 that rule-making, they have that right to do so, because
24 they have concerns over how things are progressing and
25 want to make some changes. So they initiated it, and

1 they came to an agreement, and so it became part of the
2 package.

3 CHAIRMAN GAMPETRO: How do you want to
4 proceed on Chapter 1?

5 MR. CHANCELLOR: What we could do is go
6 through a page and say, "Are there any questions on the
7 changes to the definitions on that page?" as opposed to
8 discussing each and every change that we made, to see if
9 there's any questions or clarifications the board or the
10 audience may require.

11 CHAIRMAN GAMPETRO: Proceed.

12 MR. CHANCELLOR: Page 10, one change on
13 that page. Page 11, several changes.

14 CHAIRMAN GAMPETRO: Yes, sir?

15 MR. BONINE: Got an issue with the
16 definition of belt transect. The way this is defined,
17 the transect has to be 100 meters long. And that's
18 typically not what happens in practice in the field.
19 They're usually only 50 meters long.

20 MR. CHANCELLOR: I think we have that in
21 the rule. It says at least 100 square meters and to be
22 offsetting one half meter each side or one meter each
23 side. So it could be 50 meters long and two meters wide.
24 It's in the rule.

25 MR. BONINE: The definition doesn't match

1 the rule, is what you're saying?

2 MS. BILBROUGH: Actually, it says by
3 consistently offsetting one meter from one side of the
4 base transect. If that's the case, then the transect is
5 always 100 meters long. And last I checked, we allowed
6 50 meter transects.

7 MR. CHANCELLOR: So the last sentence
8 should say "each side," as opposed to "one side."

9 MR. HULTS: "From either side"? Change
10 "one" to "either"?

11 MR. CHANCELLOR: Yeah.

12 MR. BONINE: I guess I would propose that
13 you just make it so that a belt transect is 100 square
14 meters and don't get -- don't be as descriptive about how
15 it's -- how it's done.

16 CHAIRMAN GAMPETRO: Would that make any
17 difference?

18 MS. BILBROUGH: That would allow it to be
19 a ten-meter-by-ten-meter.

20 MR. MOXLEY: Just say it has to be 100
21 square meters. But it could be either 50 meters long or
22 100 meters long.

23 CHAIRMAN GAMPETRO: If it was a pie, a
24 round thing, would it make -- I mean, does it have a
25 practical difference?

1 MS. BILBROUGH: The practical difference
2 is that they're typically in association with a cover
3 line transect. And I think that it -- I would have to
4 think about it. The way we kind of look at sampling and
5 approved sampling methods, we approve a sample size in a
6 random sample point, and they're assuming that the belt
7 transect in conjunction with the cover line transect is
8 helpful. And if it strays very far from that kind of
9 distribution, I'm not sure. I'd have to sit down and
10 punch out some numbers.

11 MR. STELTER: Vern Stelter, Game and Fish.
12 If we wanted to leave this like it is, only fix it, we
13 could put in the last line "or by consistently offsetting
14 one meter from both sides of the base transect," unless
15 you want to explore different shapes or something.

16 CHAIRMAN GAMPETRO: How about either or
17 both?

18 MS. BILBROUGH: Or one or both.

19 MR. STELTER: Yeah. It could be 100 with
20 from one side or 50 with both, and you'd have both areas.

21 MS. BILBROUGH: I think we want to stick
22 with the belt transect being associated with the line
23 transect.

24 CHAIRMAN GAMPETRO: But does that cause
25 you a problem?

1 MS. BILBROUGH: No. I think that is fine.

2 MR. CHANCELLOR: I don't know if that
3 language would work. It should be just from both sides.
4 One meter from one side --

5 MS. BILBROUGH: It was me. Sorry.

6 MR. HULTS: Is the concern that we always
7 want it to be 50 meters, at least, in length?

8 MR. BONINE: In my mind, we would want to
9 allow it to be 50 meters.

10 MR. HULTS: But no smaller.

11 MR. BONINE: I don't ever see it going
12 shorter than 50 meters.

13 MR. HULTS: So up here where it says it
14 should be at least 100 square meters and a minimum of 50
15 meters in length, you have to do the offset?

16 CHAIRMAN GAMPETRO: That would be a
17 simpler way of saying it.

18 MR. CHANCELLOR: Any questions on page 12?

19 MR. LIEDTKE: I believe there's a typo in
20 the item above that, baseline vegetation inventory. The
21 word "will" should not be struck in the very beginning of
22 what's struck.

23 MR. CHANCELLOR: Okay. Page 12 again.

24 CHAIRMAN GAMPETRO: Comments on page 12?

25 MR. CHANCELLOR: Page 13?

1 fourth line down, you have "cryptograms" instead of
2 "cryptogams." Subsection or Romanette (v), we have
3 periods, and (v) and (vi) should be semicolons. And
4 (vii) should have a semicolon, plus the word "and."

5 MR. CHANCELLOR: Anything else on page 15?
6 Page 16?

7 MR. HULTS: In letter (ab), I would
8 suggest we put quotes around "stubble crop."

9 CHAIRMAN GAMPETRO: Anybody have a problem
10 with that? Let it be done.

11 MR. CHANCELLOR: Page 17?

12 MR. HULTS: In "eligible land," on this
13 definition there, was the term "affected" in there
14 originally, where it says, "Eligible land means all
15 affected land," or was that an edit prior to or during
16 this revision process? I have it marked as it probably
17 shouldn't be there. And I'm just wondering if that
18 was -- in the context of this particular rule, we have a
19 lot of things that are struck out above. We have some
20 that are underlined. And then we have this equal to or
21 greater than in the middle where it's struck out. And I
22 wonder if this is just all new language.

23 MR. CHANCELLOR: The original rule on
24 eligible land had the word "affected" in the first line.

25 MR. HULTS: And then this "equal to or

1 greater than" that we added, this final sentence here,
2 that should probably be removed. I think that's just one
3 of our edits, as opposed to language that was there at
4 one time.

5 MR. CHANCELLOR: It was not in the
6 original definition.

7 CHAIRMAN GAMPETRO: How could you have
8 less than one full shrub?

9 MR. CHANCELLOR: You have like less than
10 one per square meter. You have one every two square
11 meters.

12 Anything else on page 17? Page 18?

13 MR. HULTS: Just as a matter of
14 consistency, between "endangered species" on the previous
15 page and "enhancement wetland," we say "Federal Clean
16 Water Act," all capitals, and up above we say "federal"
17 that's not capitalized.

18 MR. CHANCELLOR: Ask the federal guys.

19 UNIDENTIFIED SPEAKER: "Federal" is always
20 capital, as the overlords.

21 MR. CHANCELLOR: A question on
22 "enhancement wetland." Do we need to make mention of the
23 25 percent here, also? Should we talk about someplace
24 else?

25 MS. BILBROUGH: Not under "enhancement

1 wetland."

2 MR. CHANCELLOR: Page 19?

3 MR. BELDEN: Mr. Chairman, I have a
4 question for Land Quality. And it's on frequency. We
5 have a definition here, but we also have it defined in
6 Appendix 4-1 a little bit different. Just have one?

7 MR. CHANCELLOR: Should have one.

8 MR. BELDEN: On page 1-25, Appendix 4-1,
9 specific to the belt transects, this is a little more
10 general definition in Chapter 1.

11 CHAIRMAN GAMPETRO: What page?

12 MR. BELDEN: 1-25.

13 CHAIRMAN GAMPETRO: Never heard of the
14 "frequency" as a ratio before.

15 MR. CHANCELLOR: Do we know if "frequency"
16 is used anyplace else besides Appendix 4?

17 MS. BILBROUGH: I don't know. I don't
18 think so. I think before we pulled part of the rules,
19 I'm sure it was.

20 CHAIRMAN GAMPETRO: When you put your
21 drawing up there, you used "frequency" as an individual
22 count of how many times something occurred within each.
23 And here it's using "frequency" as a ratio.

24 MS. BILBROUGH: But we were defining
25 "frequency" as the number of belt transects in which a

1 specific growth form occurred. So it would be 50 percent
2 of the belt transects contained a warm-season grass. And
3 that would be the reason to leave them different. I
4 don't know if there would be anything besides veg rules
5 where it would be used.

6 MR. MCKENZIE: Can you do a word search?

7 MR. HULTS: Yes.

8 MR. MCKENZIE: I'm not saying now.

9 MS. BILBROUGH: But the decision is that
10 we would have one definition unless it's used elsewhere.

11 MR. CHANCELLOR: Previously it may be used
12 in Chapter 6.

13 MS. BILBROUGH: It would have a pretty
14 different meaning.

15 MR. CHANCELLOR: So my suggestion is, with
16 the board's approval, that we'll check on that and remove
17 it from Chapter 1 and just use the definition in Appendix
18 4-1.

19 CHAIRMAN GAMPETRO: Actually, the
20 definition in Chapter 1 is more general. It says the
21 same thing as on page 1-25, but in general terms, as
22 opposed to the 100 square meters.

23 MR. CHANCELLOR: But I think the word
24 "frequency" used in Chapter 6 on blasting, that's not
25 related to how it's used here in Chapter 1.

1 MR. GREEN: Mr. Chairman, would it be
2 possible to take the definition in Chapter 1 and replace
3 it with the definition in Appendix 4-1?

4 MR. CHANCELLOR: If that's better for
5 people.

6 MR. LIEDTKE: I don't believe that the --
7 the definition in Chapter 1 does not really work for
8 Appendix 4-1, because in Chapter 1, "frequency" is the
9 ratio between the number of sample units. And we've
10 defined sample unit -- a sample unit is a permanently
11 reclaimed land unit established by mutual agreement
12 between the permittee and the administrator. And in 4-1
13 we're talking about individual belt transects.

14 MS. BILBROUGH: So if we substitute "belt
15 transect" for "sample unit" --

16 MS. PAGE: That really won't work.

17 MR. BELDEN: Do we really need to even
18 have "frequency" in Chapter 1? I would say we have it
19 specifically defined for the purpose of species diversity
20 in Appendix 4-1 already.

21 MR. LIEDTKE: Also, "frequency" was not
22 defined in the current rules and regulations, and the
23 definition is new as part of this package. So I'm
24 assuming it only applies to vegetation. So I agree that
25 it would make sense to only have it in 4-1.

1 CHAIRMAN GAMPETRO: So just strike it from
2 here?

3 MR. CHANCELLOR: Anything else on page 19?
4 Page 20? Page 21? If I go too slow, holler. If I go
5 too fast, I mean. Page 22?

6 MR. HULTS: In the definition of
7 pastureland, the final -- the final full line in that
8 definition where it says "land use is still pastureland
9 but the land is," would it be better to have the term
10 "also eligible land"?

11 MS. BILBROUGH: Sounds like this part of
12 the room is in agreement.

13 MR. CHANCELLOR: I'm okay with it. Add
14 the word "also." Page 23? Page 24? 25?

15 MR. HULTS: "Mitigation wetland" in (ch),
16 we have Federal Clean Water Act that is uncapitalized.

17 CHAIRMAN GAMPETRO: Better take care of
18 that.

19 MR. CHANCELLOR: Keep those overlords
20 happy. Page 26?

21 MR. HULTS: "Plotless sampling," (cu),
22 just as a matter of consistency, just capitalizing the
23 first letter in the defined term. So it would be
24 "plotless sampling" uncapitalized.

25 MR. CHANCELLOR: Okay. Page 27?

1 MR. HULTS: For (cy), "primary shrub
2 species," we don't have that underlined. I'm assuming
3 that's a new term. I think as a matter of consistency,
4 we still -- like, say, for "point intercept," we still
5 underline that because it's new to the chapter. Just
6 consistency.

7 MR. LIEDTKE: "Primary shrub species" is
8 defined in the current Appendix A.

9 MR. HULTS: As was "point intercept." I'm
10 saying, as a matter of indicating to you, like the
11 Secretary of State, we need to show this new language as
12 part of the chapter.

13 MR. CHANCELLOR: That it's been moved?

14 MR. HULTS: Yeah. So even though it was
15 in a previous chapter, it's new to Chapter 1.

16 MR. CHANCELLOR: Page 28?

17 CHAIRMAN GAMPETRO: Is (dg) supposed to be
18 "quadrant" or "quadrat"?

19 MS. BILBROUGH: "Quadrat."

20 CHAIRMAN GAMPETRO: Okay. I believe you.

21 MR. CHANCELLOR: Page 29?

22 MR. GREEN: Mr. Chairman, just a minor
23 point. Probably want the term "area" to have a small A
24 to agree with your consistency point throughout the text
25 of it.

1 MR. LIEDTKE: Or you need to capitalize it
2 to be consistent with "comparison," "control," "limit
3 reference," et cetera.

4 MR. GREEN: Yeah. I'm just going along
5 with what we were talking about earlier, that only the
6 first word has to be.

7 MR. HULTS: Is that a fix that can be made
8 at a later date? I'm seeing an awful lot of them in
9 there.

10 MS. PAGE: Of course, that would mean
11 "extended reference area," "limited reference area" would
12 have small letters.

13 MR. HULTS: And realistically, they should
14 all be in quotes, as we're using them as terms.

15 MR. CHANCELLOR: So ask the board to allow
16 Craig, at a later date, to go through and fix the terms
17 in this paragraph to put in quotes and small letters.

18 CHAIRMAN GAMPETRO: I don't see any
19 objection to that, as long as it's done later.

20 MR. CHANCELLOR: Page 30, same issue. The
21 word "area" is capitalized. So same issue applies to
22 (i), (ii), all the way through Romanette 3 and Romanette
23 4.

24 MR. HULTS: Questioning "comparison area,"
25 we say, "A qualitative determination is used to evaluate

1 if the proposed comparison" -- should it be "shall be
2 used"? And along that same lines, we have, "Comparison
3 areas must be approved." Should that be "shall be
4 approved"?

5 MR. CHANCELLOR: "Must" means about the
6 same thing.

7 MR. HULTS: Yeah, sometimes. Not always.

8 MS. BILBROUGH: So you're proposing "shall
9 be used"?

10 MR. HULTS: For, "A qualitative
11 determination shall be used to evaluate," the "is used,"
12 that sounds like it's generally used and accepted that
13 way and it's a commonly accepted practice. But it sounds
14 more descriptive than rule language.

15 MR. CHANCELLOR: "Shall be" is better.
16 Change "must" to "shall"?

17 MR. HULTZ: Yeah.

18 MR. CHANCELLOR: The board okay with that?
19 Page 31?

20 MR. HULTS: On "extended reference area,"
21 we have a confidence level of 80 percent, comma. Our
22 symbology didn't transfer over, I don't think, for that
23 next symbol. It looks like an upside-down A-minus.

24 MS. BILBROUGH: That should be an alpha.

25 MR. HULTS: Yes.

1 MR. CHANCELLOR: Page 32?

2 MR. HULTS: Just in Category 3 and
3 Category 4, we say "the Division's." Could we say "Land
4 Quality Division"? I don't know that it's too important,
5 but --

6 MR. CHANCELLOR: I don't have a preference
7 either way. Preference of the board? Division or LQD?

8 CHAIRMAN GAMPETRO: Whatever makes you
9 feel good, I guess.

10 MR. GREEN: Administrator's discretion.

11 MR. MCKENZIE: The rules say land quality
12 rules and regulations. That's on the cover.

13 MR. CHANCELLOR: So it should
14 automatically be LQD already. Whatever the administrator
15 wants.

16 MR. HULTS: We'll leave it.

17 MR. CHANCELLOR: Page 33?

18 MR. GREEN: Mr. Chairman, I'm sorry to
19 interrupt, but if I might, just taking a look at our
20 pace, it almost seems like we may be done by the end of
21 today and be able to vote on this. Just from an
22 administrative perspective, some of us have hotel
23 reservations that we might be able to cancel here in the
24 next five or ten minutes.

25 CHAIRMAN GAMPETRO: Is that when we have

1 to cancel it?

2 MR. GREEN: Usually it's before 4:00.

3 Would there be a chance to take a five-, ten-minute break
4 at this point?

5 CHAIRMAN GAMPETRO: Sure.

6 (Hearing proceedings recessed
7 3:46 p.m. to 3:57 p.m.)

8 MR. CHANCELLOR: We're on page 33 of
9 Chapter 1. Any questions, comments on page 33? Page 34?
10 Page 35?

11 MR. BONINE: I've got a comment about page
12 35. I realize this probably is something we haven't
13 talked about. But under "soil horizons," there's no old
14 horizon listed there, which you'd typically find in a
15 wetland. I don't know if that's something this group can
16 deal with or how important it is. But I'd just point
17 that out.

18 UNIDENTIFIED SPEAKER: Yeah, it could be
19 important.

20 MR. CHANCELLOR: My recommendation would
21 be that, since this group was done by vegetation people,
22 that we can take that comment to the soils group and let
23 them work with that, would be my recommendation, that we
24 make a note of it to future rule package, give that to
25 the soils people to work on a definition.

1 MR. MCKENZIE: Is there currently a
2 definition for soil horizons elsewhere?

3 MR. CHANCELLOR: Besides Chapter 1, no, I
4 don't believe so. Now, in the -- I don't know if the
5 Corps wetland manual has definitions in there.

6 MR. BONINE: Yes, I think they do.

7 MR. CHANCELLOR: So what was the decision?

8 CHAIRMAN GAMPETRO: To take it to the
9 soils.

10 MR. CHANCELLOR: Page 36, just a note. I
11 believe when we talked about -- you'll notice here we
12 have both the Land Quality proposed language and the WMA
13 proposed language. I think when we worked out our
14 procedure, that once we went past the board and to the
15 council, we only had what the board had approved, and the
16 alternative language would not be in the rule package.
17 Just for your information, that would drop out, the
18 alternative language in the two rules.

19 Page 37, statement of reasons, that will also
20 drop out because of the board's actions.

21 CHAIRMAN GAMPETRO: When you say it drops
22 out, it doesn't go to the council. But is it saved, or
23 is it thrown away?

24 MR. CHANCELLOR: WMA can save it. But as
25 far as what we send to the council, it will not be part

1 of that document.

2 Go to page 39. Page 40?

3 MR. BONINE: Shouldn't your definition of
4 "succulent" have some reference to cactus?

5 MS. BILBROUGH: A forb could be succulent.

6 CHAIRMAN GAMPETRO: We call it sub-
7 irrigated bottomland.

8 MR. LIEDTKE: The root of a cattail is
9 somewhat fleshy and juicy, I would think.

10 CHAIRMAN GAMPETRO: Do we need to make any
11 change here?

12 MR. MOXLEY: Under the definition of
13 cactus, we say that members of the Cactaceae family are
14 in the life form category of succulents. And then here
15 we define succulent means a plant species. Shouldn't we
16 say succulent is a life form?

17 MR. CHANCELLOR: So it should be changed.
18 Succulent means a life form with one or more
19 morphological parts exhibiting fleshy or juicy
20 characteristics.

21 CHAIRMAN GAMPETRO: Works for some
22 cactuses.

23 MS. PAGE: Consisting of species that
24 contain --

25 MR. CHANCELLOR: Life form consisting of

1 species with one or more. Does that work?

2 CHAIRMAN GAMPETRO: It's consistent with
3 what you say before.

4 MR. CHANCELLOR: Anything else on page 40?
5 Page 41?

6 MR. GREEN: Mr. Chairman, if I might, I
7 think that the word "with" needs to be "which."

8 MR. HULTS: For threatened species?

9 MR. GREEN: "Which is likely to become," I
10 believe.

11 MR. CHANCELLOR: Correct. Anything else
12 on page 41? Page 42? Page 43? 44? And we are done.

13 MS. BILBROUGH: We have proposed language
14 for Chapter 4, Section 2(d)(ii) that addresses the
15 90 percent confidence interval stuff.

16 MR. CHANCELLOR: Page 105?

17 MS. BILBROUGH: It's right here. We
18 propose to make it a new A. This language was suggested
19 by Bob Postle, who is the one that you could give a
20 disapproval if you don't like it.

21 CHAIRMAN GAMPETRO: He just denied it.

22 MR. CHANCELLOR: So if this language is
23 acceptable, we'll make that change and make a
24 corresponding change to the citations in the rest of the
25 section. If a question comes in where we do have that

1 language, strike it as there?

2 MS. BILBROUGH: I don't believe we'll see
3 it in very many places.

4 MR. CHANCELLOR: If that's agreeable with
5 the board, to leave that one place and strike it other
6 places. I think we're done.

7 CHAIRMAN GAMPETRO: Other items for
8 discussion?

9 MR. CHANCELLOR: I would ask that the
10 board make a motion and vote on approval to take this
11 rule package as amended to the Environmental Quality
12 Council.

13 CHAIRMAN GAMPETRO: We will entertain such
14 a motion.

15 MR. GREEN: I would so move.

16 MR. LINFORD: I would second that.

17 CHAIRMAN GAMPETRO: It's been moved and
18 seconded. All those who approve, please signify by
19 raising your hand.

20 (Board Members Linford, Green and
21 Demshar raise hands.)

22 CHAIRMAN GAMPETRO: Opposed? It was
23 passed unanimously.

24 MR. GREEN: Mr. Chairman, if I might, just
25 having been involved with this process from the

1 inception, I would just like to go on record as saying
2 that I believe that this is the product of significant
3 cooperation between all agencies involved and the
4 industry.

5 CHAIRMAN GAMPETRO: It definitely is a
6 product of significant work. Just by the volume here, it
7 must have been a tremendous thing to go through. And you
8 all look like you had such fun doing it.

9 MR. CHANCELLOR: It wasn't fun at the
10 start. It did get better. And I think everybody's glad
11 it's over. A lot of time went into it, which, by the
12 small number of comments to this rule package, reflects
13 the amount of time that went into working on the
14 language, getting it right so everybody could live with
15 it. We felt it was good. So in that regard, it was
16 good. But it's necessary to be done. Hopefully, the
17 council will go through it as easily and quickly as the
18 board did. Appreciate your help.

19 CHAIRMAN GAMPETRO: Thank you all very
20 much. Other items?

21 MR. BONINE: I guess I'd like to -- what's
22 the status of this guideline as far as statistics and all
23 of that, the time frame for that?

24 MS. BILBROUGH: We should probably set
25 one.

1 there was a 90-day window for -- it was an extra 45 days,
2 I guess, that they wanted to receive documents?

3 MR. GIRARDIN: Yeah. The council is
4 attempting to solicit the comments before they go to
5 hearing, the majority of their written comments.
6 Receiving comments at the eleventh hour is difficult on
7 them, especially that Chapter 1, water quality. So that
8 was what started all this.

9 MR. CHANCELLOR: Joe, do you believe
10 there's any chance that the director asks the council to
11 prioritize this rule package? Is there any room to jump
12 up higher? Is the schedule already filled up for the
13 next six months?

14 MR. GIRARDIN: I believe it's filled up
15 every month until June right now. But it is possible.

16 MR. MCKENZIE: I don't know if that helps.

17 MR. CHANCELLOR: I think it would be good
18 if those other two documents were at least in draft form
19 before it went to the council so we can see how it all
20 fits together. If it's July or June, then --

21 MR. LIEDTKE: I would comment, as
22 mentioned earlier, with the differences we saw earlier
23 with the numbers of species diversity, I think the mining
24 association would request we be involved in the
25 formulation of those numbers as they move forward.

1 CHAIRMAN GAMPETRO: Next meeting?

2 MR. CHANCELLOR: Next meeting, future rule
3 packages.

4 MR. HULTS: I have the small deficiencies
5 package, the little one, that's pretty much ready to
6 roll, I think.

7 MR. CHANCELLOR: Probably first part of
8 second quarter?

9 MR. HULTS: Yeah, that's doable, very
10 doable.

11 MR. MCKENZIE: First week of April?

12 MR. CHANCELLOR: And that rule package is
13 fairly small, so it shouldn't be a long meeting. That
14 could be done three-quarters of a day, half a day,
15 depending if there's more issues on the agenda.

16 CHAIRMAN GAMPETRO: Is there any other
17 business that we need to discuss or transact? I would
18 entertain a motion to adjourn.

19 MR. LINFORD: So moved.

20 MR. GREEN: I second.

21 CHAIRMAN GAMPETRO: Moved and seconded.
22 We will adjourn.

23 (Hearing proceedings concluded
24 4:18 p.m., January 7, 2008.)

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C E R T I F I C A T E

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

Dated this ____ day of _____, 2008.

RANDY A. HATLESTAD
Registered Merit Reporter