

1           BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
2                           LAND QUALITY DIVISION

3 -----  
4 HEARING OF DRAFT PROPOSED RULES AND STATEMENT OF REASONS,  
5 NONCOAL RULES AND REGULATIONS, CHAPTER 8, 9 AND 10,  
6 EXPLORATION BY DRILLING, SMALL MINES AND LIMITED MINING  
7 OPERATIONS  
8 -----

9                           TRANSCRIPT OF HEARING PROCEEDINGS

10           Transcript of Hearing Proceedings in the above-  
11 entitled matter before the Department of Environmental  
12 Quality, Land Quality Division, commencing on the 26th  
13 day of March, 2012 at 9:00 a.m. at the Oil and Gas  
14 Conservation Commission Hearing Room, 2211 King  
15 Boulevard, Casper, Wyoming, Mr. Jim Gampetro presiding,  
16 with Board Members Mr. Robert Green, Mr. Jim Skeen,  
17 Mr. Jay Collins and Mr. Gene Smith in attendance.

18           Also in attendance were Ms. Nancy Nuttbrock,  
19 Administrator of the LQD, Mr. Craig Hults of the LQD,  
20 Mr. Mark Moxley of the LQD, Mr. Mark Rogaczewski of the  
21 LQD, Mr. Mark Taylor of the LQD, Mr. Lowell Spackman of  
22 the LQD, Mr. Luke Esch of the Wyoming Attorney's  
23 General's Office. In attendance from the public were  
24 Mr. Tom Foertsch, Mr. Mark Wardell, Mr. Colton Clark,  
25 Mr. Marion Loomis, Mr. Scott Benson, Mr. Mike Thomas,  
Mr. Steve Hatten, and Mr. Bill Kearney.

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

2 (Hearing proceedings commenced

3 9:00 a.m., March 26, 2012.)

4 CHAIRMAN GAMPETRO: The meeting is  
5 officially opened. And before we do anything else, Nancy  
6 would like to -- we'll do the introductions first, and  
7 then Nancy's got some things to review. Let's start down  
8 here. If we could do what we did in the conference call  
9 the other day, and who we are, where we're from, a little  
10 bit of background.

11 MR. SKEEN: My name is Jim Skeen. And I'm  
12 from Orin, Wyoming, which is just outside of Douglas. My  
13 wife and I both grew up in western Nebraska, and we moved  
14 up here about fifteen years ago. And we own a truck stop  
15 down there which we operate.

16 MR. GREEN: I'm Bob Green. I'm the  
17 industry representative on the board. I've been in  
18 Wyoming for about 30 years. I've got experience working  
19 in the bentonite industry. I was with DEQ Land Quality  
20 Division for a while. And I currently work with Cloud  
21 Peak Energy, a coal mining company.

22 MR. COLLINS: My name is Jay Collins. I'm  
23 from Glendo, Wyoming, born and raised in Glendo,  
24 graduated from the University of Wyoming. I'm on the  
25 family farm and ranch. My grandfather and great-

1 grandfather homesteaded there in 1908, and so I continue  
2 running that with my mom. We have limestone quarry and a  
3 gravel pit, also. So, appreciate the chance to be on  
4 this board.

5 CHAIRMAN GAMPETRO: I'm Jim Gampetro. I'm  
6 from Buffalo, Wyoming. We've had a couple of different  
7 businesses there, a motel/campground and presently a  
8 Radio Shack franchise and appliance store. I'm a public  
9 representative to the board, have some previous  
10 experience in environmental and safety issues and large  
11 corporation and background in engineering and business.

12 MR. SMITH: I'm Gene Smith. I'm from  
13 Green River, Wyoming. I am originally from Pine Bluffs,  
14 went to elementary school there and then high school in  
15 Rock Springs and then got an engineering degree at the  
16 University of Wyoming, and after some time in the Air  
17 Force, went to work for FMC in Green River, moved over to  
18 Green River. I worked at FMC for 32 years. I managed  
19 the utility department and ran the coal-fired boilers and  
20 turbine generators for FMC. I retired after 32 years and  
21 am currently a member of the Green River City Council.  
22 And I'm on this board as an elected official  
23 representative. Like you guys, glad to have the  
24 opportunity to sit here.

25 CHAIRMAN GAMPETRO: Thank you.

1 MS. NUTTBROCK: Well, I'd like to start  
2 with some introductions from this table from the LQD  
3 staff.

4 Craig, would you like to start?

5 MR. HULTS: Sure. Craig Hults with Land  
6 Quality Division in Cheyenne. And my biggest role, I  
7 guess, that relates to this is ushering through the rule  
8 packages, through the administrative law procedures and  
9 getting them through and approved.

10 MR. SPACKMAN: Lowell Spackman, Wyoming  
11 DEQ Land Quality Division in Cheyenne, District 1  
12 supervisor.

13 MR. MOXLEY: Mark Moxley. I'm the Lander  
14 district supervisor for the Land Quality Division.

15 MR. ROGACZEWSKI: Mark Rogaczewski,  
16 District 3 supervisor out of Sheridan.

17 MR. TAYLOR: Mark Taylor. I'm a geologist  
18 from the Sheridan Land Quality Division, District 3  
19 office.

20 MR. ESCH: My name is Luke Esch. I work  
21 at the Attorney General's Office and represent Land  
22 Quality Division.

23 MS. NUTTBROCK: And I'm Nancy Nuttbrock,  
24 the administrator of Land Quality Division.

25 CHAIRMAN GAMPETRO: Could we go through

1 the audience and just know who you are and what  
2 organizations you may represent?

3 MR. FOERTSCH: I'm Tom Foertsch. I'm with  
4 the Bureau of Land Management Casper field office.

5 MR. WARDELL: Mark Wardell, American  
6 Colloid, drilling and exploration manager.

7 MR. CLARK: Colton Clark, Bentonite  
8 Performance Minerals-Halliburton, mine specialist.

9 MR. LOOMIS: I'm Marion Loomis, Wyoming  
10 Mining Association.

11 MR. KEARNEY: Bill Kearney with Uranium  
12 One.

13 MR. THOMAS: Mike Thomas, Uranerz Energy.

14 MR. HATTEN: Steve Hatten, Uranerz.

15 MR. BENSON: Scott Benson, Habitat  
16 Management.

17 CHAIRMAN GAMPETRO: Thank you. We're  
18 going to begin. Nancy has some comments and things she  
19 wants to go over.

20 MS. NUTTBROCK: Sure. I'll talk to  
21 everybody here.

22 I wanted to let you know about some work that  
23 Land Quality staff has been engaging in with industry  
24 through the Wyoming Mining Association, and in  
25 particular, the uranium industry. If you recall, those

1 of you who were at the November board meeting, we have  
2 three chapters that we had queued up, Chapters 8, 9 and  
3 10. And at the eleventh hour, I had pulled Chapter 8  
4 from consideration. And that was in an effort to begin  
5 working with the work group through Marion and the WMA.  
6 We had identified six or seven Land Quality staff paired  
7 with six or seven uranium industry representatives.

8           There was a lot of technical interest in  
9 Chapter 8 as it pertained directly to the uranium  
10 industry and the bentonite industry, so we felt that by  
11 utilizing that work group platform to work through some  
12 of the technical issues contained in Chapter 8, it would  
13 be well worth the time spent in doing so prior to just  
14 presenting you with what we think, what the Land Quality  
15 Division thinks is appropriate.

16           So we engaged in not only one group, work  
17 group -- some of the folks that were in attendance are  
18 here today. But over the course of two meetings,  
19 day-long meetings, we worked through line by line, word  
20 by word, quite literally, of Chapter 8. So Chapter 8 is  
21 being presented to you for the first time, while Chapters  
22 9 and 10, those of you who were here in November had  
23 already seen before. So you're seeing that for the  
24 second time.

25           But I wanted to express my thanks to the

1 industry and those involved in the work group. And I  
2 really think this has set a stage for how I'd like to do  
3 business with industry prior to rule packages being  
4 presented to you. I'd like to go through every effort to  
5 gain consensus on what we're trying to achieve, then  
6 present them to you, knowing that there are going to be  
7 some issues that we may not agree on. And that's where  
8 we'll need your assistance.

9           But there has been considerable effort and some  
10 success realized in the first -- I think we've met with  
11 the uranium work group now four or five times. And we've  
12 got -- we'll be meeting with them the second Wednesday  
13 out of every month. We've got items queued up for  
14 discussion throughout the course of 2012. And I suspect  
15 that that work group will continue. I hope to see it  
16 continue. We're really making some headway.

17           Along those same lines, we are working through  
18 Marion and the WMA to establish a similar work group with  
19 the coal industry. So we hope to use that group to get a  
20 lot of the work done prior to it being presented in this  
21 format.

22           Thank you.

23           CHAIRMAN GAMPETRO: Nancy, we had -- in  
24 our little conference call, we had discussed whether we  
25 wanted to have a session up front like this, as opposed

1 to a conference call. Is that pretty much where we ended  
2 up?

3 MS. NUTTBROCK: Right. I think so. What  
4 I had proposed was -- because this is very much a new  
5 group. We have two brand-new board members, Mr. Smith  
6 and Mr. Collins. This is their very first meeting.  
7 Mr. Skeen, his first meeting was in November, which was  
8 my first meeting, as well. Mr. Gampetro and Mr. Green  
9 have been with the board now for six or seven years. It  
10 has been my understanding that these board meetings have  
11 not been regularly scheduled or regularly occurring over  
12 the past few years. So we now have meetings scheduled on  
13 a quarterly basis for the entire 2012 calendar year, and  
14 we are going to be looking at calendaring for 2013.

15 But my discussion on Friday in the form of a  
16 conference call with these gentlemen was to throw out the  
17 idea that maybe we have a pre-meeting conference call so  
18 I can discuss with them the work that we've been doing in  
19 these various work groups. Well, it was decided that it  
20 would be better if we could have these discussions queued  
21 up in the front of the agenda, take maybe 15 or 20  
22 minutes so that I could update the board and the public  
23 with what's going on in this work group, as opposed to  
24 doing a conference call. So, yes, that is what we agreed  
25 to.

1           And just by way of note, the meetings that are  
2           scheduled on a quarterly basis, they've been established,  
3           like I said already, for 2012. They are scheduled for  
4           this building, this room, and will be starting at 10:00  
5           from this point forward and not at 9:00.

6           And our meetings dates are posted on our  
7           website, Craig, I believe.

8           MR. HULTS: Maybe. I'm not sure. It's  
9           May 21st, August 20th and --

10          MS. NUTTBROCK: November 19th.

11          MR. HULTS: -- November 19th.

12          MS. NUTTBROCK: So those are the three  
13          scheduled meetings for calendar year 2012.

14          CHAIRMAN GAMPETRO: Just two other issues  
15          we discussed that I'd just like to bring out here. One  
16          was, are you going to have your after-meeting, if you  
17          want to tell people what that's about?

18          MS. NUTTBROCK: Sure. I had an idea to  
19          do -- to try to get as much mileage out of these advisory  
20          board meetings and the fact that you all are traveling  
21          from around the state to meet with us here for this  
22          meeting. And business for the advisory board, maybe it  
23          takes two hours. Maybe it takes four hours. But I would  
24          still like to take the opportunity that Land Quality has  
25          with industry and whoever might be present in the public

1 to roll out anything that we may be working on.

2 So, upon adjournment of these meetings and the  
3 court reporter leaves, whoever else wants to stick  
4 around, we may be rolling out work that the process  
5 improvement team has developed, new guidelines that we've  
6 developed. Maybe we want to give you an update on any IT  
7 initiatives. The e-permitting is of interest to  
8 everybody. So, even though we've got to be out of this  
9 room at 4:00 -- which I later found out. We have to be  
10 out of this room by 4:00 -- I would like to take the  
11 opportunity, even if it's just an hour or so, to engage  
12 our industry partners. And maybe it's a question-and-  
13 answer session. But I think having that option available  
14 to us, I know I would benefit from that, from being able  
15 to have some open dialogue as long as you're all here.

16 CHAIRMAN GAMPETRO: And the only other  
17 issue was on the changing of housekeeping-type language  
18 that we discussed and whether or not that comes back to  
19 the board. I think we need to talk about that a little  
20 bit.

21 MS. NUTTBROCK: Now? Or would you  
22 rather -- well, that's going to be presented, also. I  
23 think Craig had worked up a draft motion. And it has  
24 some language in it that suggests that -- for example,  
25 when I -- on the drive up, reading Rule 8, the

1       introductory paragraph, I was reading those again and  
2       thought, boy, that could be arranged and it could read  
3       much better without changing the intent of what we were  
4       trying to say in the introductory paragraphs in Chapter  
5       8. But it could read better. And I would like to have  
6       the flexibility with my staff to make those sort of  
7       grammatical, editorial, administrative sort of changes  
8       and also make the changes that we agreed to as part of  
9       the discussion in our meetings without having to  
10      perpetually bring those back to the advisory board to  
11      cross every T and dot every I and be able to take those  
12      to the EQC hearings on a timely basis at the next  
13      opportunity that we would have and then inform you by way  
14      of previous meeting minutes or a final version as they go  
15      forward.

16                 Obviously any substantive changes, anything  
17      that's going to change the intent of what we were trying  
18      to accomplish, those sorts of issues would, rightly so,  
19      come back.

20                         CHAIRMAN GAMPETRO: I'd just throw that  
21      out to the board. Any comments, questions, problems,  
22      motions, whatever?

23                         MR. GREEN: Mr. Chairman, if I might, I'll  
24      be interested in language as far as distinguishing the  
25      substantive, versus administrative. I'm sure that we can

1 work that through. But that will be critical.

2 MS. NUTTBROCK: And I think that -- again,  
3 from what I understand from the few meetings that were  
4 occurring over the past few years, that's kind of the way  
5 it's been handled. But I just want to make sure that  
6 everybody is clear that that's how I see this running  
7 most efficiently. Craig will talk later on in the  
8 afternoon about the rule packages that we have queued up.  
9 And they're coming. And they're scheduled with regular  
10 frequency. So, if we can -- if we can develop a  
11 mechanism that you're comfortable with, incorporates the  
12 public's concerns, I think we'll be able to move through  
13 these pretty readily.

14 CHAIRMAN GAMPETRO: Whatever mechanism we  
15 devise, what I would like to avoid is an aha experience  
16 when somebody is reading the final product and goes,  
17 "Aha, I don't recall that." We need to, I think, avoid  
18 that. The definition of what is material and so on would  
19 be very important, I think.

20 MR. HULTS: Mr. Chairman, if I could, one  
21 mechanism that's kind of in place already is, when we  
22 move forward to the EQC hearings, those rule packages  
23 contain a section that describes any changes that were  
24 made since the advisory board meeting. So that will be  
25 available prior to the EQC hearing, which will give you

1 some kind of guidance on any changes that were made.

2 CHAIRMAN GAMPETRO: Do we need to put that  
3 into any kind of a motion as to -- with specific language  
4 as to what you can change and what the definition is,  
5 like perhaps what Craig just described?

6 MR. HULTS: We do have -- it might work  
7 better if we get down towards the end when we're -- after  
8 we've discussed the rule language, we can hash out that  
9 motion and make sure everybody is okay with it and go  
10 forward.

11 CHAIRMAN GAMPETRO: Everybody happy with  
12 that?

13 Okay. We can proceed. The next thing on the  
14 agenda here is approval of the minutes from November 14th  
15 meeting. And, Nancy, you had those in your hand for us  
16 to sign up here. I would entertain a motion to do that,  
17 to approve those minutes, if everybody has seen them.  
18 Any questions, comments or problems?

19 MR. GREEN: I would so move.

20 CHAIRMAN GAMPETRO: It's been moved. We  
21 need a second.

22 MR. SMITH: I'll second.

23 CHAIRMAN GAMPETRO: It's been moved and  
24 seconded. All those in favor of approving these minutes  
25 from the last meeting.

1 (All members vote aye.)

2 CHAIRMAN GAMPETRO: Opposed?

3 (No response.)

4 CHAIRMAN GAMPETRO: They're approved.

5 Okay. We're down to the proposed revisions.

6 Craig, are you going to walk us through that?

7 MR. HULTS: Yes, sir.

8 So, today I thought -- we have two new members,  
9 a recent addition, so I thought it would be opportunity  
10 again to just describe the rule-making process. And I'm  
11 sorry, Jim and Bob, if you'll bear with me to go through  
12 it again. This will be from kind of start to finish on  
13 how we take rules from the inception or ideas to finally  
14 filed with the Secretary of State.

15 So, in our rule-making process, the  
16 Environmental Quality Act is the source of authority for  
17 us to revise new rules. The Environmental Quality Act  
18 details the different roles of the departmental divisions  
19 of the advisory board and Environmental Quality Council.  
20 The rule-making process is also shaped by statute and  
21 some rules. The Administrative Procedures Act, that  
22 would follow more of the formal rule-making, which is the  
23 EQC level.

24 The Secretary of State has rules on rules,  
25 which I always find kind of amusing. But that describes

1 some of the formatting, some other issues on when to  
2 file, where to file, what we need to file. And also the  
3 DEQ, through EQC, their rules of practice and procedure,  
4 and they have some of their meeting issues that are  
5 spelled out in the practice and procedure rules.

6 So what we start out with is we'll take a  
7 proposed rule. It may be coming from suggestions from  
8 industry or things that we feel are kind of unworkable or  
9 need clarification. So we'll have that seed and try and  
10 get moving on some drafts. A proposed rule package,  
11 which we'll be presenting today, is developed. And we  
12 come to the advisory board meeting. The discussion takes  
13 place. If necessary, we may come back through again for  
14 a further round, for further revisions, clarifications,  
15 whatever is necessary.

16 From there, we go to an EQC hearing. There  
17 again, similar process. It could be multiple meetings,  
18 if necessary. Generally, it hasn't been in the recent  
19 past, anyway.

20 Once the EQC signs off on that, we will submit  
21 it to the Attorney General's Office. And they will usher  
22 it along to the governor's office for his review. And  
23 what we're hoping for is ultimately the governor signs  
24 off on those rules, and they will be filed with the  
25 Secretary of State.

1                   And that's kind of it in a nutshell. There's a  
2 lot of little pieces along the way. But that gives you a  
3 good framework, anyway.

4                   MS. NUTTBROCK: Craig, can I interrupt for  
5 just a second?

6                   MR. HULTS: Sure.

7                   MS. NUTTBROCK: The box that says advisory  
8 board meeting and then going to the EQC hearing, it's  
9 interesting to know the many pieces that you've  
10 mentioned. If, for example, today, if we agree that  
11 Chapters 8, 9 and 10 in this particular rule package are  
12 ready to go to the EQC hearing, there is still 60 days'  
13 worth of things that you need to do in order to prepare  
14 it for the EQC hearing?

15                   MR. HULTS: Correct.

16                   MS. NUTTBROCK: So the earliest that we  
17 could go before an EQC hearing with this rule package is  
18 still 60 days from now, with public notices and things  
19 that have to happen, filing things with the  
20 appropriate -- the Secretary of State's office, things  
21 like that. So, after today's meeting, should everything  
22 go well, we would be looking at a July 12th or 13th EQC  
23 hearing, which is after the 60 days that we need, and  
24 then their next available opportunity. So it's a long  
25 process.

1                   MR. HULTS:  So this will be a little more  
2 detailed in discussion here.  So a proposed rule package  
3 is drafted to address whatever issues we need to.  And  
4 those may be in response to, like I described a little  
5 bit, statutory changes.  If the Environmental Quality Act  
6 is revised, we may need to update our rules.

7                   Another source is the federal rule changes,  
8 especially for coal packages.  If the Office of Surface  
9 Mining changes their regulations, we would have to draft  
10 something to make sure we're at least as effective as or  
11 as stringent as the federal rules.  It's possible that  
12 EPA would be another one that we may be changing rules in  
13 response to.  Another area is changes in technology.  As  
14 time goes by, there are better methods of doing things  
15 and better ways, and so we may need to include those as a  
16 rule.  Another thing is the perceived problems that we  
17 may have in administering.  If we're getting a lot of  
18 complaints about it, there's confusion on what people  
19 need to be doing, we may need to do a rewrite there.  
20 Changes in policy.

21                   And the last thing would be administrative  
22 decision, the court rulings, EQC hearings that may impact  
23 our rules.

24                   As we go through our rule packages, we'll do an  
25 internal review circulated through many of the people

1 that are here today and look at our sources of expertise  
2 internally. So we'll have a final draft that we bring to  
3 the advisory board. At the advisory board, the rules are  
4 discussed. We respond to comments, if we had written  
5 comments, and just kind of hash out whatever we need to.

6 The advisory board's role is to make a  
7 recommendation regarding the rules. And the basic  
8 possible outcomes are we need further meetings or further  
9 discussions. We may need to go back and revise things  
10 and bring them back. Or they're recommended to go  
11 forward to the EQC with or without revision. It's  
12 possible also, I guess, that they could recommend that  
13 those rules just be entirely scrapped and start over  
14 again. Haven't had that happen yet. Hopefully, it  
15 won't.

16 Once we get all of our comments here at the  
17 advisory board, we'll go back and include those into a  
18 final draft that we'll be preparing for the EQC. That  
19 will begin our formal rule-making process. Here is part  
20 of what Nancy was discussing. For the EQC, there's a  
21 45-day minimum comment period that we have to have open  
22 for the public. The EQC is also allowing us  
23 approximately two weeks to respond to comments and have  
24 those prepared prior to meetings. So that's where we get  
25 our roughly 60 days. The EQC will then hold a hearing.

1 Under the Environmental Quality Act and the  
2 Administrative Procedures rules, there isn't a  
3 requirement that a hearing be held unless requested by  
4 various parties. Our practice is to always have that  
5 hearing. Just seems to make sense. I don't know that we  
6 would want to go forward without that.

7 We revise the rules as necessary based on  
8 whatever EQC comments are made or whatever public  
9 comments we receive during that public comment period.  
10 And hopefully we'll have those prepared in advance of the  
11 meeting so that, by the end of the meeting, whatever we  
12 have is hopefully the final product, that the EQC can  
13 sign off on them, and we can go through the final steps.

14 Once we have that final rule package put  
15 together and the EQC has signed off on it, it's submitted  
16 to the governor for review and signature. A kind of  
17 unique feature that the governor has is he has line-item  
18 veto authority. So, if there's some passage in there  
19 that he just wants to strike out, that can happen along  
20 the way. The governor has 75 days -- his office has 75  
21 days to review the rules and forward them to the  
22 Secretary of State. And once they are signed, if he  
23 believes we should move forward with those, they're then  
24 sent over to the Secretary of State and filed with them,  
25 and that becomes the effective date of the rules unless

1 we specified a future date while we were getting our  
2 program in line and doing anything we needed to to get  
3 those rules ready. But generally, it's the filing date  
4 when they're filed with the Secretary of State.

5           Once that happens, the final rules are prepared  
6 and published. When I say "prepared," on our end,  
7 generally that means adding section headers to the tops  
8 of the pages so you know where you are within the  
9 chapter, perhaps adding some footers to describe when the  
10 rules were last promulgated. We do that finally because,  
11 with the Secretary of State's office, they have very  
12 specific rules, like I mentioned, about what we file with  
13 them, and part of that is that they don't allow for those  
14 headers and footers. So we end up creating a more public  
15 file, I guess, which has those additional features to it.

16           They may be submitted to federal agencies,  
17 those final rules, for a formal review. Most often for  
18 us, that's the Office of Surface Mining. They will  
19 review those rules to see whether we are as stringent as  
20 or as effective as the federal rule. Their final review  
21 is, for example, we had self-bonding rules that the OSM  
22 did not approve of which we will have to go back and fix.  
23 They're, at the national level, not part of our accepted  
24 program, but we still have them on the books, so we need  
25 to go back through and revise those to take out the

1 language that wasn't approved by OSM.

2 Following that, once the final rules are  
3 prepared, interested parties are notified of the new  
4 rules, where to find them. And there's other various  
5 administrative tasks that need to be done, sending copies  
6 over to the state library, posting things on the website,  
7 things like that.

8 And this will bring us into the discussion of  
9 the rules and --

10 MS. NUTTBROCK: Can I ask one question --

11 MR. HULTS: Absolutely.

12 MS. NUTTBROCK: -- before we jump in here?

13 MR. HULTS: Sure.

14 MS. NUTTBROCK: Just to clarify the whole  
15 process, in terms of a time frame, from the point we  
16 present a rule package to the advisory board to the point  
17 where it's promulgated and official, what time frame are  
18 we talking about there?

19 MR. HULTS: Typically about six months.  
20 With the 30 days of notice for this meeting, and we have  
21 45 for the EQC, drafting, scheduling, it runs roughly  
22 about six months, yeah. That would be a best-case  
23 scenario.

24 MS. NUTTBROCK: Best case. Okay. So  
25 we're going back to the EQC or back to the advisory board

1 multiple, multiple times. So it's a minimum of six  
2 months, I would say.

3 MR. HULTS: Right. For the state process,  
4 yeah.

5 As me and Nancy were discussing how to present  
6 these, we thought it was best to just kind of go through  
7 the slides but also jump into the rule language. So I'll  
8 have these broken down by sections. And hopefully we can  
9 discuss the actual rule language as we're going along in  
10 a somewhat segmented fashion. That way it won't be too  
11 overwhelming towards the end to just dive into them all.

12 So today we're looking at Chapters 8, 9 and 10.  
13 Chapter 8 is the exploration by drilling. Chapter 9 is  
14 our small mine regulations. And Chapter 10 is the  
15 limited mining operations.

16 And what I'll be working from is our statement  
17 of reasons as far as the rule language that we have  
18 presented. I do have other files that are just the whole  
19 chapters if we need to see those. I think 8 and 9 are  
20 actually the full chapters within the statement of  
21 reason. So we probably won't need to delve into the full  
22 chapters for Chapter 10. There are some small revisions  
23 there.

24 So for Chapter 8, Section 1, which is on page 1  
25 of the statement of reasons, we codify the requirement

1 that drilling notifications must be submitted prior to  
2 conducting exploration outside of a permitted area. We  
3 clarify that requirements for plugging and abandonment  
4 apply within the permitted area, and also made a  
5 reference to Section 7, which authorizes monitor wells  
6 outside of the permit area.

7 MS. NUTTBROCK: Chairman Gampetro and  
8 board, can I just clarify that the folks you have sitting  
9 in front of you from the Land Quality staff are certainly  
10 the technical experts here for any of the technical  
11 questions and discussions that we have.

12 So I'll be looking towards you gentlemen for  
13 some assistance there.

14 Craig, his expertise is the rules and how to  
15 get them promulgated. So technical questions will go  
16 over here, just to make that distinction.

17 CHAIRMAN GAMPETRO: Nancy, could you use  
18 the mic?

19 MS. NUTTBROCK: I can. Are you hearing  
20 Craig okay?

21 CHAIRMAN GAMPETRO: Craig, I can hear.

22 MS. NUTTBROCK: I need to be louder, then.

23 CHAIRMAN GAMPETRO: Can everybody else  
24 hear Craig?

25 MR. GREEN: Yeah.

1                   MR. HULTS: And so I've pulled up on the  
2 screen Section 1 for Chapter 8, which provides the  
3 proposed revisions we have. And so it's those first  
4 three sections, A, B and C. And I don't know how we want  
5 to handle discussion as we go along if there's questions  
6 about the actual section.

7                   CHAIRMAN GAMPETRO: If anybody has a  
8 question, holler out, and we'll deal with it.

9                   MS. NUTTBROCK: If not, I'd propose that,  
10 as opposed to going line by line or paragraph by  
11 paragraph, go section by section within each rule and  
12 have discussions in that fashion.

13                   CHAIRMAN GAMPETRO: That would be fine.

14                   MR. HULTS: Not hearing any discussion on  
15 that one, I'll move to Section 2.

16                   Section 2 is where a lot of the meat and where  
17 I will probably be relying on our technical experts here.  
18 This section was the drill hole abandonment procedures.  
19 It was substantially revised to cover all of the  
20 abandonment procedures that we have in place or proposed  
21 in place. It's updated to reflect the industry standards  
22 and eliminates some of the conflicting requirements  
23 between the Land Quality Division, the Water Quality  
24 Division and the State Engineer's Office.

25                   It eliminated a reference to drilling mud as an

1 acceptable material for sealant as part of the  
2 abandonment procedures. It also requires a drill hole to  
3 be completely filled from bottom to -- the bottom of the  
4 well to the ground surface. And it also defines the  
5 acceptable grouts and sealing materials that we have in  
6 place.

7 We'll move to the actual rule language. This  
8 one may warrant some further discussion. That begins on  
9 page 1 in the statement of reasons and continues on for a  
10 while.

11 MS. NUTTBROCK: Chairman Gampetro and  
12 board, this is where a good amount of our discussion with  
13 our industry work group focussed, on these seven  
14 different recipes, if you will, that were -- that are now  
15 referred to as the acceptable -- or, approved grout  
16 materials. So there was a good amount of discussion  
17 about these seven recipes that are acceptable.

18 MR. HULTS: And as part of Section 2, I  
19 don't know if we want to have Mark describe these slides.  
20 You have handouts that discuss the various settings.  
21 That may make a little more sense in some of the language  
22 in Section 2 then.

23 MR. TAYLOR: What's illustrated on this is  
24 just various drill hole settings. This is just a very  
25 typical, if you will, type of situation. They're site-

1 specific, obviously, but just kind of give you an idea  
2 visually of how abandonment will occur on various  
3 situations.

4           And starting there on the right of this  
5 diagram, it shows a hole that's penetrating an unconfined  
6 aquifer. And it shows there in the yellow where we would  
7 want the entire aquifer to be sealed with a sealant and  
8 then coming 50 feet above that water level. That would  
9 prevent -- you know, as the water table fluctuates from  
10 year to year, that it would still be sealed in any given  
11 fluctuation. And then the remainder of the hole could be  
12 filed with earthen materials, sealants or cuttings. And  
13 if you chose to use a surface cap, you would put in a  
14 surface cap, which is normally a precast concrete plug,  
15 conical plug. You tap it in the hole, and then you put  
16 topsoil on top of that.

17           Moving to the center illustration there, this  
18 is a situation where we're encountering multiple  
19 aquifers. And in that situation, because there could be  
20 some artesian flow, perhaps, even in there and cross  
21 communication, we're advocating that they use a cement-  
22 based grout, slurry or a sealant, and again, bring it in  
23 at 50 feet above the water table. And then the remainder  
24 of the hole, again, can be filled with earthen materials  
25 or cuttings or sealant, or it's just at the option of the

1 operator.

2 And then the hole illustrated there to the  
3 left, that shows truly an artesian situation where we  
4 actually are seeing flow at the surface. And in that  
5 situation, it's required that you go in with a cement  
6 grout to seal off that for a mechanical and hydrologic  
7 seal.

8 Any questions on those illustrations there?

9 (No response.)

10 MR. TAYLOR: The next slide, again, a very  
11 simple schematic showing the two basic situations we'll  
12 run into if it's a wet hole or a dry hole. Starting  
13 again there on the right, the wet-hole situation, as  
14 we've seen in the earlier slides, the intent is to seal  
15 any groundwater. So a column in the aquifer where  
16 there's water, you seal that interval and go 50 feet  
17 above the saturated groundwater interval.

18 Then the illustration there on the left, the  
19 dry drill hole, this is to show if you had an outcrop.  
20 For instance, it's a limestone quarry, just a limestone  
21 outcrop. This is a bentonite hole. It's in an area  
22 where there is no groundwater. It's kind of a  
23 no-brainer. It's a glorified fence posthole. You just  
24 fill those with some type of material to fill the void.

25 Some of the reasons we wanted to get the hole

1 completely filled, we've seen burrowing animals, storm  
2 events or something. Every once in a while, if we just  
3 put a lid or a surface cap, there's water or fluid  
4 bypassing that, and eventually it would fall open. And  
5 historically, we've even seen stock washed down these  
6 holes. Even though they're not really a threat that much  
7 environmentally, there's a physical threat there. So  
8 we've seen problems with that. So that's where we're  
9 advocating filling the entire void to take care of that  
10 physical hazard for all time.

11 And the last situation here on the drilling  
12 through multiple water tables, we oftentimes will have  
13 perched or multiple water tables. These are zones that  
14 are totally isolated. They're not in communication with  
15 each other. And in that situation, we don't want water  
16 of different qualities commingling and degrading maybe a  
17 superior water quality by a lesser water quality. So, in  
18 those situations, the entire hole should be filled with a  
19 sealant, and then again, the shallowest aquifer comes 50  
20 feet above that, filling the remainder of the hole with  
21 an earthen material, again, so the entire hole filled.  
22 But the primary thing where we have multiple or stacked  
23 aquifers is sealing across all the aquifers.

24 Any questions?

25 (No response.)

1 MS. NUTTBROCK: Chairman Gampetro, would  
2 it be appropriate for me to raise just a couple of  
3 discussion points, if you will? Just a couple of  
4 discussion points. As I was again rereading these on the  
5 drive up here -- well, Luke was driving. I was reading.  
6 And this is probably something that Land Quality can  
7 answer for me. The use of the term "discoverer," that's  
8 not something that -- it looks like it's language that's  
9 been in the statute -- or, in rule already.

10 And, Craig, maybe if you can help me out here.  
11 Is that a term that's defined elsewhere, or is it a term  
12 that we've used regularly? Can someone help me out with  
13 that term?

14 MR. MOXLEY: Yeah. The term "discoverer,"  
15 it's a little bit awkward, but it comes from the statute.  
16 And that's an example where we really can't change the  
17 statute in our rules. We have to live with some awkward  
18 terminology occasionally. But that is an example where  
19 we retain that statutory language. 35-11-404 talks about  
20 drill hole plugging. And that's where the term  
21 "discoverer" comes from.

22 CHAIRMAN GAMPETRO: I have one just kind  
23 of general question. How does this compare, the same as,  
24 different from, apply to in situ uranium mines when  
25 they're done and the holes are plugged? Would this same

1 thing apply to them, or is it different in that case?

2 MR. TAYLOR: Everything is site-specific.  
3 But generally, these rules or regs apply to all minerals,  
4 and given the environmental hydrologic situation, will  
5 dictate how they would abandon each hole.

6 CHAIRMAN GAMPETRO: Thank you.

7 MR. ESCH: Mr. Chairman, if I might weigh  
8 in on this issue of "discoverer," whenever I was reading  
9 these rules, I understand that "discoverer" has been in  
10 there for quite some time. But my concern is that it  
11 might be confused with -- or, somebody might say, "I'm  
12 not subject to those because I've never found anything."  
13 And in order to be discovered, one must think you have to  
14 discover something. And while the statute does refer to  
15 "discoverer," it also defines a person. And I think a  
16 person would be a more broad definition to include in  
17 these regulations to cover all bases.

18 But that's just my two cents. Thank you.

19 CHAIRMAN GAMPETRO: Comments on that?

20 MR. GREEN: Mr. Chairman, if I might. And  
21 so, if the rules were to read "person" and not use the  
22 same terminology as 35-11-404, would that create an  
23 issue, or are the rules open enough to be able to utilize  
24 a different term?

25 MR. ESCH: Well, Mr. Chairman, Mr. Green,

1 the statute references "discoverer" almost as a secondary  
2 thing. They say, "All drill holes sunk in the  
3 exploration for locatable or leasable minerals on all  
4 lands within the state of Wyoming shall be capped, sealed  
5 or plugged in the manner described hereinafter by or on  
6 behalf of the discoverer, locator or owner who drilled  
7 the hole."

8 It also goes on to define "person," which it  
9 doesn't use "person" in that sentence, that previous  
10 sentence, but as a person meaning any person, firm,  
11 association or corporation who drills or is responsible  
12 for drilling holes for the purpose of exploration. So I  
13 think that -- I don't think it would remove the  
14 authority -- I don't think it would change anything.

15 CHAIRMAN GAMPETRO: So you would phrase  
16 that how, then?

17 MR. ESCH: The regulation?

18 CHAIRMAN GAMPETRO: No. Instead of  
19 "discoverer," you would use the term "person"?

20 MR. ESCH: Any person conducting  
21 exploration by drilling within this state shall do so in  
22 strict compliance with all provisions of 35-11-404 and  
23 this chapter.

24 MR. MOXLEY: Mr. Chairman, the term  
25 "discoverer" is actually defined in our rules in Chapter

1       1. It reads just like Luke said. Discoverer means any  
2       person conducting or intending to conduct any exploration  
3       by drilling. This includes locator, owner or agent  
4       thereof who will drill or who has drilled a hole.

5                   MR. ESCH: Mr. Chairman, yeah. I wasn't  
6       aware it was defined and was just reviewing these rules.  
7       That jumped out to me. But if it's defined in Chapters 1  
8       or 2, that's fine. I think bases are covered.

9                   CHAIRMAN GAMPETRO: Are we good?

10                  MR. FOERTSCH: Is seismic exploration  
11       drill holes covered by this?

12                  MR. TAYLOR: No. Seismic is by the Oil  
13       and Gas Commission. And if it was a non oil and gas type  
14       of thing, Land Quality does not regulate seismic of any  
15       type.

16                  CHAIRMAN GAMPETRO: There was another hand  
17       up.

18                  MR. BENSON: I agree that the  
19       "discoverer" -- using the term "discoverer" makes the  
20       rules confusing, because it doesn't come up anywhere  
21       else. It comes up in the Act.

22                  But another question I have going through it,  
23       it's not clear who's responsible for plugging, sealing  
24       the wells. Is it a person, the company that's doing the  
25       exploration, or is it the driller? In my opinion, the



1 in Chapter 8, where it says any discoverer conducting  
2 exploration by drilling shall do so in strict compliance  
3 with these provisions, and then the definition in Chapter  
4 1, that this defines a discoverer meaning any person,  
5 locator, owner or agent who has drilled, I think that  
6 question is pretty well -- pretty well answered.

7 CHAIRMAN GAMPETRO: Sounds like it to me.  
8 Everybody happy?

9 I have one housekeeping thing here. When that  
10 thing is blowing up there, I can't hear much from the  
11 back. And it's even hard to hear some of you up here  
12 when the fans start going up here. Normally it's okay.  
13 But I'm just wondering if we need to have a microphone  
14 available for anybody that has a comment back there, as  
15 well. If the fans aren't blowing, it seems to be okay.

16 MS. NUTTBROCK: We can have this one  
17 available to pass around.

18 CHAIRMAN GAMPETRO: Can we move on, then?

19 MR. HULTS: That would take us to Section  
20 3. In Section 3, this describes the reclamation of the  
21 drill sites and affected lands as part of the exploration  
22 activities. The reclamation requirements were split up  
23 as a separate section for clarity. And it requires the  
24 restoration of the surface to original conditions prior  
25 to disturbance as closely as possible, I believe is the

1 actual language.

2 And that was really the changes that were made.  
3 I thought there was more. Sorry.

4 CHAIRMAN GAMPETRO: Question?

5 MR. BENSON: Yeah, Mr. Chairman. I had a  
6 question on 3(a). Some of the other rules would add the  
7 statement behind reclamation consistent with landowner  
8 agreements. And then following through with subsection  
9 (c), (d) and (e), it's confusing to me whether the rules  
10 are saying, for instance, that you have to strip topsoil  
11 and you have to reseed. I've done quite a bit of work in  
12 the CBM industry, and I think best management practices  
13 for even CBM wells now are not to strip topsoil, not to  
14 reseed, but to minimize disturbance. And I'm just --  
15 it's confusing to me whether these rules are requiring  
16 salvaging topsoil and coming back and reseeding.

17 CHAIRMAN GAMPETRO: And your question is  
18 relevant to landowner use and what they would like to  
19 have done?

20 MR. BENSON: Yeah, I think so. You know,  
21 the drilling notification, I think some people might  
22 argue that -- I mean, you're not really -- at this point  
23 it's not a mining operation. You've got a company that's  
24 got an agreement with a landowner, whether it's BLM or  
25 Forest Service, private landowner or the State, to go in

1 and explore for minerals. And I'm just questioning if  
2 LQD, just what kind of role they need to have at this  
3 point in requiring reclamation and reviewing the  
4 reclamation. Or is it simply an agreement with the  
5 landowner, and you'll reclaim the land, whatever  
6 agreement you've worked out with them?

7 MR. MOXLEY: Our intent certainly is not  
8 to contradict the landowner. I think we've left this  
9 language a little bit general to accommodate some  
10 flexibility in how these drill sites are developed, how  
11 roads are developed and reclaimed. I would note that we  
12 do say in there that topsoil removal and stockpiling  
13 shall precede any excavation within the drill site and  
14 associated light-use roads. So, in other words, if  
15 you're not going to do any excavation like for a mud pit  
16 or to level a pad or to actually construct a road, then  
17 we're not saying you have to remove topsoil in those  
18 cases.

19 In the case of like bentonite exploration  
20 drilling, they use an auger rig. They don't mix drilling  
21 mud or drilling fluids. So all they do is back up to the  
22 site and auger a hole. They don't strip any topsoil, nor  
23 are we requiring that in these regulations. So I think  
24 we've built in some flexibility there in how we deal with  
25 it.

1                   Now, roads -- roads are often a matter of a  
2                   landowner's preference. If he wants to leave a road, we  
3                   are certainly -- I think we are -- these mics don't work  
4                   very well.

5                   In the case of a road, we're certainly willing  
6                   to listen to a landowner, whoever the landowner might be,  
7                   if it's a private landowner or BLM, even. If the  
8                   landowner wants to leave a road, I think we're --

9                   CHAIRMAN GAMPETRO: That was my question.

10                  MR. MOXLEY: -- we're good with that.

11                  CHAIRMAN GAMPETRO: Is that clear here,  
12                  that if the landowner, be it the BLM, the State or  
13                  whoever, would like to have that road left there -- and I  
14                  know we ran into a problem with the OSM on this once  
15                  before, where they didn't really care what the landowner  
16                  wanted. It had to be remediated in the case of high  
17                  walls and ponds and such. So where are we on this? Can  
18                  we -- first of all, is it clear in the language that if  
19                  the landowner wants that road to be left, that it can be  
20                  left? And secondly, are we afoul of the OSM on that?

21                  MR. MOXLEY: The language on leaving  
22                  roads, I believe it's in Chapter 2. See if I can find  
23                  that here. I'm not coming up with that right away. Let  
24                  me see if it's in Chapter 3.

25                  MS. NUTTBROCK: We referenced Chapter 3,

1 Section 2(c) here.

2 MR. MOXLEY: Yeah. This is in Chapter 3,  
3 Section 2(i). It says, if approval is obtained from a  
4 surface landowner to leave any road unreclaimed, an  
5 operator may request in writing to the Land Quality  
6 Division that a road be permitted to remain unreclaimed.  
7 The operator may furnish proof of a landowner's -- the  
8 operator must furnish proof of the landowner's approval.  
9 Final decision of road reclamation will be made by the  
10 Land Quality administrator.

11 So I think it's embodied in our regulations.  
12 It's not in this Chapter 8. But certainly that's the way  
13 we deal with roads.

14 MR. GREEN: Mr. Chairman, if I might,  
15 would it be problematic to simply add (i) to subparts (d)  
16 and (e) in referencing Chapter 3, Section 2? So it would  
17 read Section 2(b) and (i), Section 2(d) and (i)?

18 CHAIRMAN GAMPETRO: To refer back --

19 MR. GREEN: Which would refer back to that  
20 provision.

21 CHAIRMAN GAMPETRO: Does that work for  
22 everybody? I still have my question about the OSM.

23 MR. GREEN: Mr. Chairman, if I might, this  
24 is -- these are noncoal rules, so OSM doesn't apply.

25 CHAIRMAN GAMPETRO: They wouldn't have

1 anything to say about it?

2 MR. GREEN: Which is good.

3 CHAIRMAN GAMPETRO: We're safe?

4 Everybody happy?

5 MS. NUTTBROCK: Chairman Gampetro, I don't

6 see any issue with incorporating those two references.

7 We would double-check, read them to make sure that they

8 flow nicely. But I think that would clarify what our

9 intent was.

10 CHAIRMAN GAMPETRO: Is everybody okay on

11 that, then?

12 MR. HULTS: And that's subsections (d) and

13 (e) in Chapter 8?

14 MR. GREEN: That's correct, yeah. Because

15 that would address the topsoil and the revegetation.

16 MR. HULTS: Are we ready to head to

17 Section 4, then?

18 CHAIRMAN GAMPETRO: One more question. Is

19 there any body, federal body, that can overrule us, even

20 though this is noncoal, that we have to be as stringent

21 as?

22 MR. ESCH: Mr. Chairman, there's no

23 federal laws governing the extraction of noncoal. The

24 State gets to set its own program with regard to these

25 types of matters.

1                   CHAIRMAN GAMPETRO: Thank you.

2                   Are you ready to go forward?

3                   MR. HULTS: Sure.

4                   Moving on to Section 4, Section 4 covers the  
5 bond requirements for exploration by drilling. We  
6 eliminated the flat \$10,000 bond requirement. It also  
7 allows for bond reduction after drill hole abandonment  
8 and finally allows for the bond release following  
9 successful revegetation. And that's again, Section 4.  
10 I'll pull up that language. And that's on page 7 of the  
11 statement of reasons.

12                   CHAIRMAN GAMPETRO: Comments, questions,  
13 problems?

14                   MR. SMITH: One question. Who computes  
15 the bond amount? This says it's done by using current  
16 engineering practice. But who does it?

17                   MS. NUTTBROCK: We have guidelines that  
18 assist with establishment of bond calculations. But that  
19 is a calculation that's initially calculated by the  
20 discoverer and then submitted to the permit coordinator  
21 or our office for review and approval.

22                   MR. SMITH: And then your office would  
23 have latitude to change that amount?

24                   MS. NUTTBROCK: We would. We would have  
25 latitude to have discussions saying, "We don't feel this

1 is appropriate. Why did you consider this?" or initiate  
2 conversations at that point, certainly.

3 MR. SMITH: Thank you.

4 CHAIRMAN GAMPETRO: Question in the back?

5 MR. CLARK: As far as the bentonite  
6 industry is concerned, there's -- currently we bond drill  
7 holes at \$10 a hole. And in the wording here, it says by  
8 engineering practices, current engineering practices.  
9 We're wondering if we can get it put in there that we can  
10 continue to bond at that, or is there going to be  
11 required calculation on how a bond is calculated?

12 MS. NUTTBROCK: Can I get some input from  
13 the table?

14 MR. MOXLEY: I'll address that question.  
15 It has been historical practice, as the gentleman said,  
16 for us to bond bentonite drill holes, which are the  
17 shallow auger-type holes that we've been discussing, at a  
18 pretty low rate. And basically, what we're looking for  
19 for abandonment of those holes is essentially just to  
20 shovel the cuttings back in the hole. So I think a  
21 \$10-a-hole bond requirement is probably fairly  
22 reasonable. You know, I think you could calculate it in  
23 terms of time and wages, et cetera. For the sake of  
24 simplicity, though, we've been using a \$10-a-hole fee.

25 The thing about these costs, though, is they do

1 change over time. The cost of fuels is a big factor in  
2 any reclamation cost. And so, even in the case of a  
3 bentonite drill hole, you still have to drive out there.  
4 And so I think there needs to be some flexibility in how  
5 you calculate reclamation costs. It's certainly not our  
6 intent to bond for amounts in excess of what it would  
7 actually cost. And that's what we're trying to arrive  
8 at, is what would it cost us to go out there and reclaim  
9 these holes? I don't think we would support a flat  
10 number. I mean, we struck the flat \$10,000 because  
11 that's not adequate. So I think putting a number in the  
12 regulations would not be something we'd want to do.

13 CHAIRMAN GAMPETRO: It would depend on how  
14 far out you got to drive to get to the hole. You can buy  
15 a cup of coffee for \$10 if you go to the right coffee  
16 place.

17 MR. FOERTSCH: I have a question for you,  
18 Mark. How do you envision plugging wet bentonite holes,  
19 as per this procedure here, or shovel cuttings and coal?

20 MR. MOXLEY: If you have a wet hole and  
21 you've encountered groundwater, then you have to abandon  
22 the hole with one of the approved sealing materials. So  
23 it would not be a matter of just shoveling cuttings in  
24 the hole.

25 MS. NUTTBROCK: And certainly we tried to

1 illustrate that here. Drill dry hole -- a dry drill  
2 hole, versus a wet drill hole, indicates that proper  
3 sealants would be used.

4 CHAIRMAN GAMPETRO: Can we move on?

5 MR. HULTS: Sure.

6 That would take us to Section 5 in Chapter 8,  
7 which is on page 8 of the statement of reason. Section 5  
8 was revised to now cover the termination -- it was a  
9 previous section, previous Section 4. It now covers  
10 termination and report of operations, includes the option  
11 of requiring additional reclamation of holes, rather than  
12 just the bond release or forfeiture. And a  
13 confidentiality provision was added to be consistent with  
14 35-11-404(e).

15 MR. GREEN: Mr. Chairman, if I might.

16 CHAIRMAN GAMPETRO: Bob.

17 MR. GREEN: I just have one question with  
18 the very last line, about the ability for the person who  
19 filed the report to request extensions of an additional  
20 five-year period. How would that work in the case of an  
21 interest that would be transferred? Would that -- would  
22 that right transfer to the new entity?

23 MS. NUTTBROCK: Chairman Gampetro and  
24 Mr. Green, this language is exactly verbatim out of the  
25 statute, so know that it's consistent in that regard.

1 But as to your question about how that would affect a  
2 transfer, in my mind, it would go that five years to --  
3 whatever remaining time would go to the transferee, and  
4 then subsequent five-year periods could be requested by  
5 the person filing the report. Has that been in practice  
6 the way it's gone?

7 MR. TAYLOR: Actually, I don't know that  
8 it's ever happened.

9 MS. NUTTBROCK: Really?

10 MR. GREEN: It was just for information.  
11 Thanks. Appreciate it.

12 CHAIRMAN GAMPETRO: Anything else on that  
13 section?

14 (No response.)

15 CHAIRMAN GAMPETRO: Move on.

16 MR. HULTS: Moving on to Section 6,  
17 Section 6 is the exceptions to the rule previously  
18 covered in Section 5. It was revised to clarify the  
19 drill hole abandonment. And reclamation requirements do  
20 not apply to development drilling in advance of an  
21 open-pit mine. And an exclusion clause regarding the oil  
22 and gas exploration still is in place in that section.

23 CHAIRMAN GAMPETRO: Questions or comments  
24 on this? If I try to move this on too fast -- it seems  
25 like we're going very slow -- just stop me. But I would

1 move on, Craig.

2 MR. HULTS: Section 7 is a new section.  
3 It's the installation of wells for collection of baseline  
4 information. And this is found on page 9 of the  
5 statement of reasons. It was added to provide a  
6 framework for authorization of the installation of  
7 baseline groundwater monitoring and testing wells outside  
8 of the permit area. And it includes the construction  
9 standards that relate back to our current Chapter 11  
10 standards. And finally, the plugging and sealing  
11 requirements would still apply, as discussed in the  
12 previous sections.

13 CHAIRMAN GAMPETRO: No comments,  
14 questions?

15 MR. BENSON: Would it be appropriate in  
16 the statement of reasons -- I mean, SEO has jurisdiction  
17 over permitting water wells. Are these regulations  
18 redundant with what the SEO has responsibility? I mean,  
19 I get confused reading through these rules. When you're  
20 putting in a water well, do you have to have a permit  
21 from SEO, or do you have a permit from Land Quality? And  
22 if you've got two sets of rules and they read the same  
23 thing, when one agency changes it, then which one do you  
24 have to be in compliance with?

25 And then in Section 7(b), it says the

1 administrator has 30 days to review the plans for the  
2 wells. And Section 1(b) for the exploration holes, it  
3 says that the administrator has 60 days. Just wondered  
4 why they can do water wells faster than the exploration  
5 holes.

6 MS. NUTTBROCK: Okay. There's a few  
7 questions embedded in your comment, so let's take them  
8 one by one.

9 The first portion of your comment had to do  
10 with overlapping or duplicating efforts in obtaining  
11 necessary approvals from the State Engineer's Office and  
12 how they may overlap or commingle with ours.

13 Technical staff, can you help me answer the  
14 overlapping discussions with SEO?

15 MR. MOXLEY: Yeah. We have said in  
16 Section 7(c) that wells should be permitted in accordance  
17 with requirements of the State Engineer's Office.  
18 Recently the state engineer has made a decision that they  
19 are not permitting monitoring wells less than four inches  
20 in diameter. So, if that was the case, then a person  
21 would not have to permit such a monitor well with the  
22 State Engineer's Office. You know, I think we recognize  
23 that the different agencies have different requirements.  
24 And we're not saying here that you have to get a permit  
25 from the state engineer. You just have to do it in

1 accordance with their requirements. If they don't have a  
2 requirement, then you don't have to do it. It's not our  
3 intent to be contradictory.

4 I don't know how to address that other than  
5 just to say that if the state engineer requires a permit,  
6 well, then you need to talk to the state engineer. Our  
7 permission, or authorization does not replace the state  
8 engineer's authorization.

9 As to the review time, the 60-day review time  
10 was in association with the submittal of a drilling  
11 notification. The 30-day review time here for water  
12 wells is essentially assuming that you already have a  
13 drilling notification and you're out there drilling on  
14 the ground. Oftentimes it happens that you'll drill an  
15 exploratory hole and make a decision in the field that  
16 you want to complete it as a water well. So we need to  
17 be a little bit more timely with that, with that  
18 decision.

19 We've also stated in Item 7(b) there that the  
20 discoverer is encouraged but not required to submit a  
21 plan that describes the location and completion details  
22 for the well. So that is in recognition of what I just  
23 said, is that sometimes it's a very spontaneous decision.  
24 Hey, this will be a good location for a well. We're not  
25 saying that we have to approve that beforehand.

1                   If an operator wants to install a network of  
2                   monitoring wells perhaps completed in different aquifers,  
3                   I would think that it would be in the operator's best  
4                   interest and the agency's best interest to have some  
5                   consultation before that monitoring network was  
6                   installed. And so that's what we're trying to get to  
7                   here, is that it would be best if an operator would  
8                   discuss these types of things with us before installing a  
9                   whole bunch of monitor wells. Again, we're trying to be  
10                  flexible there.

11                   CHAIRMAN GAMPETRO: Answer your question?

12                   MR. BENSON: It did, yeah. It clarified.  
13                   I'm not sure the rules are clear, though.

14                   MS. NUTTBROCK: Is there some language  
15                   that we could add to clarify what we've just stated?  
16                   Open to suggestions for language, folks.

17                   MR. BENSON: Mr. Chairman, I think the big  
18                   thing that Mr. Moxley said was that the SEO doesn't  
19                   require a permit for wells under four inches. Since all  
20                   the preceding sections from Section 1 said these plugging  
21                   and abandonment rules also apply to monitor wells at a  
22                   mine, maybe if -- what I'm hearing is what they're saying  
23                   that only if the wells are less than four inches in  
24                   diameter, these rules apply, and if not, then the SEO  
25                   rules apply.

1                   MR. MOXLEY: I think we're saying that the  
2 rules of both agencies apply. What we're trying to say  
3 here is that an operator or discoverer needs to comply  
4 with the state engineer's requirements, whatever they may  
5 be.

6                   CHAIRMAN GAMPETRO: And they may change  
7 from time to time.

8                   MR. MOXLEY: That is certainly true.

9                   CHAIRMAN GAMPETRO: The SEO's requirements  
10 may change. I don't know how you can predict that.

11                  MR. MOXLEY: A lot of what we're trying to  
12 do here in Chapter 8 is to conform to the state  
13 engineer's requirements so that we don't have a conflict,  
14 particularly in the arena of plugging-and-abandonment  
15 requirements. These grout materials that we've listed  
16 come right out of the state engineer regulations. So  
17 we've tried to be as consistent as possible. But you're  
18 absolutely right, Mr. Chairman, that regulations do  
19 change.

20                  CHAIRMAN GAMPETRO: I'm not sure how you  
21 could put that into language without writing a speech.

22                  MS. NUTTBROCK: And also, I'd like to  
23 clarify a point that Mr. Moxley just made, that when we  
24 first started working with Chapter 8, we started with  
25 language that was exactly found with the State Engineer's

1 Office. We've tweaked it some in working with our  
2 industry work group, so it's a little different than that  
3 now in that we've added a seventh recipe. We've added a  
4 few things. So to say that they match exactly is not the  
5 case in terms of the approved grout mixtures.

6 MR. MOXLEY: That is correct. We did add  
7 an acceptable grout that the state engineer does not  
8 list. I'll go back to -- let's see. It's on page 3, the  
9 middle of page 3. We added a definition for abandonment  
10 gel, which is the seventh approved grout material. And  
11 that was in consultation with the uranium industry and  
12 representatives of, actually, the bentonite industry,  
13 also, to come up with a specific recipe for an  
14 abandonment gel that would meet our requirements. So  
15 that is correct. That specific recipe is not in the  
16 state engineer's regulations.

17 CHAIRMAN GAMPETRO: If anybody does not  
18 have a problem, I think we can move on.

19 MS. NUTTBROCK: Before we move on to  
20 Chapter 9, can I just ask one final question? And I  
21 think it has to do with just a term of art that industry  
22 has developed over the course of the years. And we go to  
23 some effort to define the difference -- to define what  
24 grout is. And we talk about grout also known as sealant  
25 materials. And I want to make sure that that -- we go on

1 to say that the following are approved grout materials.  
2 So we use somewhat interchangeably sealant materials and  
3 grout throughout Chapter 8. And for you folks seeing  
4 this for first time, I wanted to make sure that that was  
5 clear, because now is the time to clarify it further if  
6 it's not.

7 MR. ESCH: Mr. Chairman, I thought it was  
8 a little unclear, the difference between grout and  
9 sealant materials. It seems like grout is included as a  
10 sealant material. But we've used them interchangeably  
11 throughout the regulations. And I thought it would be --  
12 or, I wanted to ask the rest of the staff if it would be  
13 appropriate to remove grout and just use the reference to  
14 sealant materials when speaking to it in general terms,  
15 or conversation.

16 CHAIRMAN GAMPETRO: What do the wordsmiths  
17 have to say?

18 MR. TAYLOR: So you'd still need grout in  
19 the recipes?

20 MR. ESCH: In the recipes themselves, yes.  
21 But whenever referring to the more general term of  
22 "grout," it would be just sealant materials. It seems  
23 like sealant materials could be more broad than just  
24 grout.

25 MS. NUTTBROCK: Because a sealant material

1       could be earthen backfill.

2                   MR. TAYLOR:  Dry bentonite chips.

3                   MS. NUTTBROCK:  Right.  So, again, I think  
4       we've grown accustomed to using the term "grout," but --

5                   CHAIRMAN GAMPETRO:  It seems you have your  
6       recipes for these things.  How much more specific could  
7       you get?

8                   MR. BENSON:  Mr. Chairman, because I  
9       haven't been around the rules, it was confusing to me,  
10      too.  And if I'm right, I mean, the way I read the rules  
11      on page 2, where they mention the first material, as I  
12      read them, that's a plug.  So, if it's got cement in it,  
13      it's a plug.  So, from (i) to (iv), those are all plugs,  
14      the way I read it.  And then the next two that are just  
15      bentonite slurries, those are sealants.  And then  
16      backfill material is a plug or a sealant.

17                   MS. NUTTBROCK:  So, if that would clarify,  
18      I think when we're using the general term in the sense  
19      that we're using any one of those seven approved recipes,  
20      if you will, if we could replace grout with a sealant  
21      material, I think that would -- that might help the  
22      readability of this Section 2.

23                   CHAIRMAN GAMPETRO:  So replace grout with  
24      sealant material, but leave grout in the recipes of some  
25      of those sealant materials?

1 MS. NUTTBROCK: Right.

2 CHAIRMAN GAMPETRO: Does that help?

3 MR. MOXLEY: Mr. Chairman, the term  
4 "grout" and the approved grout materials, again, comes  
5 right out of the state engineer regulations. They use  
6 both terms. In fact, the section in the state engineer  
7 regulations is entitled "well sealing grouting." So they  
8 are somewhat interchangeable. Our statute in 404 does  
9 not use the term "grout." It uses the words "plugging  
10 and sealing." So, if there is confusion, perhaps we  
11 should just go with sealant materials. But the word  
12 "grout" came from state engineer regs.

13 CHAIRMAN GAMPETRO: So where does this  
14 leave us?

15 MR. KEARNEY: Bill Kearney with Uranium  
16 One. I think this is a very perceptive thing you're  
17 talking about here. But I would just like to remind the  
18 board again that the state engineer does not regulate  
19 drill holes. They have no -- nothing in their statute to  
20 regulate drill holes. The sealant grout they're talking  
21 about is for wells. So that's very important. Because  
22 we have two things in these regulations. We have drill  
23 holes, which is the title of the regulation, and then we  
24 also have wells, which they've added to facilitate  
25 getting baseline data and things like that, which is

1 good, and the industry supports it. But it can be very  
2 confusing. Drill holes is a hole that has no casing in  
3 it. A well has casing in it. Everybody and their  
4 brother regulates wells. The only people that regulate  
5 drill holes is Land Quality. So just wanted to refresh  
6 you on that.

7 CHAIRMAN GAMPETRO: Thank you. Any  
8 changes needed?

9 MS. NUTTBROCK: Chairman Gampetro, if  
10 you're okay with us proceeding with the change from grout  
11 to sealant material when it's used in that general  
12 context, I would like to proceed with that.

13 CHAIRMAN GAMPETRO: I've got nods all the  
14 way down the line here.

15 MR. ESCH: Before proceeding,  
16 Mr. Chairman, before proceeding with Chapter 9, does the  
17 board -- would the board like a break, a short break?

18 CHAIRMAN GAMPETRO: Would be okay with me  
19 if we take a ten-minute break. Be back by 20 minutes to  
20 the hour.

21 (Hearing proceedings recessed

22 10:34 a.m. to 10:51 a.m.)

23 CHAIRMAN GAMPETRO: Okay. If we could get  
24 started again, please.

25 Craig, if you're ready.

1 MR. HULTS: I believe so.

2 Now we'll be moving into Chapter 9, which is  
3 our regulations for small mining operations. Last  
4 meeting we had a draft of this that -- our original  
5 intent was to clear up a lot of the statutory references  
6 that were made and just make it a little more readable.  
7 During that meeting, we received comments that perhaps we  
8 should expand the scope of our revision and address some  
9 of the organization and clarify some of the issues that  
10 related to permitting applications and some of the  
11 standards.

12 So this draft here today, Chapter 9, was  
13 rewritten, reorganized and hopefully addresses any issues  
14 that we had and more clearly defines what's required of  
15 small mining operations as far as permitting and  
16 reclamation.

17 In Chapter 9, Section 1, the revisions there  
18 were that we included the general application  
19 requirements for the small mine operations. We also  
20 clarified the applications of standards that are  
21 contained throughout the chapter and other chapters, as  
22 well, actually, Chapter 2 and Chapter 3, and which  
23 standards apply to a small mining operations.

24 And finally, I said refine the definition of  
25 overburden. I probably should clarify, this was in

1 response to -- in Section 103 there's a court case in the  
2 footnotes to the Environmental Quality Act that defines  
3 what overburden is in order to become consistent with  
4 that court case.

5 MR. GREEN: Mr. Chairman, if I might, just  
6 one brief question. As far as the description of the  
7 small mine operations, should that be "or" or "and," as  
8 far as the 10,000 cubic yards of overburden, topsoil and  
9 subsoil and disturbance of no more than ten acres? I  
10 think that in the definition, it's "or." And here --  
11 and, in fact, that definition is used in a later chapter,  
12 as well. Just something you might want to take a look  
13 at.

14 MR. MOXLEY: Mr. Chairman, I could address  
15 that question. Wyoming Statute 35-11-401(j) is the  
16 enabling legislation for a small mine operation. And it  
17 does -- it does use the word "and." It says surface  
18 mining operations involving not more than 10,000 yards of  
19 overburden and ten acres of affected land in any one  
20 year.

21 MR. GREEN: Very good.

22 MR. MOXLEY: So it's not "or." It's  
23 "and."

24 MR. GREEN: Then I'll come back at a later  
25 part of our review where it does say "or." Thanks.

1                   CHAIRMAN GAMPETRO: Anything else on the  
2 Section 1?

3                   MR. BENSON: Mr. Chairman, 1(c) says the  
4 administrator will not accept small mine permit  
5 applications for coal mines, uranium mines, underground  
6 mines. Is that the intent, or is it for coal mining? I  
7 mean, for instance, could a coal mine submit a noncoal  
8 permit for, say, a scoria pit adjacent to the operation?

9                   MS. NUTTBROCK: Chairman Gampetro, I think  
10 that's worthy of discussion. I don't think that it was  
11 our intent to preclude such a circumstance.

12                   Mr. Moxley, can you help us with the  
13 understanding of (c) here?

14                   MR. MOXLEY: I thought my -- haven't  
15 figured out these microphones yet. Mr. Chairman, the  
16 intent was to -- and this is long-standing policy. Small  
17 mines have not been authorized for coal mines, uranium  
18 mines, underground mines or ISL mines. Certainly if a  
19 coal mine operator wanted to develop a scoria pit, for  
20 instance, that was not within the coal mining permit  
21 boundary, then he could do that. But we're not going to  
22 authorize a coal mine under a small mine permit. Does  
23 that answer the question?

24                   MR. BENSON: Yeah, it answers the  
25 question. I think it could be clarified, then, just by

1 changing from mines to mining.

2 MR. ESCH: Mr. Chairman, I might suggest  
3 we just remove the reference to coal mine, since anything  
4 coal related wouldn't be dealt with underneath the  
5 noncoal regulations.

6 CHAIRMAN GAMPETRO: I thought this was  
7 pretty clear, other than the differentiation between  
8 mining and mine, that someone not apply for a small mine  
9 permit to mine coal. Even though we're not in the coal  
10 regulations, that question could come up. Just an  
11 opinion.

12 MR. ROGACZEWSKI: Mr. Chairman, this is  
13 Mark Rogaczewski. That very question has come up several  
14 times in Sheridan, where we've been asked, can we use the  
15 small mine application, also, the LMO application to  
16 initiate a coal mine operation? And we've turned them  
17 in.

18 CHAIRMAN GAMPETRO: That's why I figured  
19 it was there. Now, I'm still -- I'm not -- I guess I  
20 don't understand so much the difference between mine and  
21 mining that you're bringing up.

22 MR. BENSON: Well, again, I think they've  
23 clarified the answer is yes, a coal mine could get a  
24 small -- noncoal small mine permit under these rules.  
25 And likewise, a uranium mine could get a small mine

1 permit application.

2 CHAIRMAN GAMPETRO: They can. That's what  
3 this says.

4 MR. BENSON: I think they said that they  
5 could.

6 CHAIRMAN GAMPETRO: People have applied.  
7 But I believe this says shall not accept or approve a  
8 small mine permit application for a coal mine, uranium  
9 mine or underground mines or in situ mines. You can make  
10 the application. They're going to reject it. It says  
11 right here. I mean, that's the way I'm understanding it.

12 MR. ROGACZEWSKI: Yes. Mark Rogaczewski  
13 again from District 3. I would state that's not a coal  
14 mine that would be doing the scoria. It would be the  
15 company, such as Cloud Peak Enterprises or Arch Coal,  
16 that would apply for the scoria or gravel pit. And they  
17 may then use that for their own operations, build their  
18 roads, et cetera, at their coal mine.

19 CHAIRMAN GAMPETRO: You're not excluding a  
20 company that mines coal from applying for a small mine  
21 permit for a gravel pit?

22 MR. ROGACZEWSKI: Exactly.

23 CHAIRMAN GAMPETRO: I think it's fairly  
24 clear to most people. Let's move on.

25 MR. HULTS: That will take us to Section 2

1 in Chapter 9. This is the adjudication information  
2 that's provided as part of the application. An  
3 additional requirement for a statement regarding  
4 compliance with local zoning and planning was added.  
5 Much of this language was here the last time around.  
6 It's just better organized, I think, and broken down a  
7 little more closely to the way we actually permit these  
8 operations and the steps that go along with that.

9 I would say, also, it looks like there's a lot  
10 of new language there. Much of this was statutory  
11 language that we were just restating so that we're  
12 avoiding flipping back and forth all the time between the  
13 two books, regulations and the statute.

14 CHAIRMAN GAMPETRO: Waiting until everyone  
15 looks up and is reading, Mr. Loomis. I don't want to  
16 push on unless everybody is ready.

17 Okay. I don't see anybody jumping up.

18 MR. HULTS: Section 3 in Chapter 9  
19 contains our environmental baseline information that we  
20 provided as part of the application process. It also  
21 includes a clarification regarding consultations and  
22 recommendations from our wildlife agencies and the U.S.  
23 Fish and Wildlife endangered species that are involved.

24 CHAIRMAN GAMPETRO: I do have a question.  
25 Under 3(ii), ecological response units, I just would like

1 to know what that is.

2 MR. MOXLEY: Mr. Chairman, the term "range  
3 site" is an outdated term that was formerly used by the  
4 Soil Conservation Service. The term "ecological response  
5 unit" is the new term that is utilized by the agency that  
6 replaced the Soil Conservation Service, called the NRCS,  
7 Natural Resource Conservation Service. So they use that  
8 term "ecological response units." As a range person, I  
9 think they are more or less synonymous. But that is the  
10 new terminology that's used today. But if you look at an  
11 old soil survey, they'll use the term "range sites."

12 CHAIRMAN GAMPETRO: Okay. Got to update  
13 my thinking here.

14 MR. LOOMIS: Mr. Chairman?

15 CHAIRMAN GAMPETRO: Mr. Loomis.

16 MR. LOOMIS: Marion Loomis with the  
17 Wyoming Mining Association. Really doesn't impact mine  
18 members. As you've already stated, everybody I  
19 represent's already excluded from this chapter.

20 But on the environmental baseline information  
21 on Section 3 and Number 6, it says the applicant shall  
22 consult with both Wyoming Game and Fish Department and  
23 U.S. Fish and Wildlife Service and shall incorporate  
24 their recommendations relative to wildlife surveys,  
25 monitoring and mitigation. I'm not aware of anything in

1 the statute that requires that. And I don't think it's  
2 appropriate unless it is someplace in the statute. I  
3 think they need to consult, and then the administrator  
4 may require incorporation of those items into their  
5 permit. But I don't think that we should give the Game  
6 and Fish and the U.S. Fish and Wildlife Service that kind  
7 of clout to mandate whatever they want in a permit  
8 application and force that upon the small mining  
9 companies. I would -- unless there's some reason that it  
10 says "shall," I would suggest that you change that to  
11 "may incorporate."

12 CHAIRMAN GAMPETRO: I guess I didn't read  
13 it that way, Mr. Loomis, that by incorporating them, by  
14 "shall incorporate them," that it meant you had to go  
15 along with everything they recommended. And maybe the  
16 wording does need to be changed, though, if you're  
17 interpreting it that way.

18 MR. LOOMIS: Well, it says --  
19 Mr. Chairman, it says shall incorporate their  
20 recommendations relative to wildlife surveys, monitoring  
21 and mitigation in the mine permit application. That, to  
22 me, says that they shall do it.

23 CHAIRMAN GAMPETRO: That means to you that  
24 you have to do it?

25 MR. ESCH: Mr. Chairman, the Environmental

1 Quality Act at 406(m)(3) says that the director shall not  
2 deny the permit -- can you hear me?

3 CHAIRMAN GAMPETRO: Barely.

4 MR. ESCH: -- that the director shall not  
5 deny a permit unless one of the following reasons is  
6 found. And one of those factors is any part of the  
7 operation would be contrary to the law or policy of the  
8 United States or Wyoming. Many times there's -- well,  
9 there's instances where wildlife are impacted, and  
10 consultation with the Fish and Wildlife Service would be  
11 necessary for Endangered Species Act -- where endangered  
12 species were present.

13 That said, I agree with Mr. Loomis regarding  
14 some modification of this provision. I think that there  
15 needs to be some language in there saying perhaps to the  
16 extent necessary or to the extent required by applicable  
17 law. It doesn't require every instance.

18 CHAIRMAN GAMPETRO: I guess the way that I  
19 was reading it is you want to know what those  
20 recommendations are, and those recommendations need to be  
21 incorporated. But that doesn't mean that they have to go  
22 along with them unless you say so. I guess that's kind  
23 of the way I was interpreting it.

24 MR. MOXLEY: Mr. Chairman, we have  
25 addressed that question in the last sentence of that

1 paragraph. We say that the administrator shall also  
2 consult with the wildlife agencies to ensure that their  
3 recommendations are addressed to the extent that they are  
4 within the scope of this Act. So that was our intent, to  
5 try to say that there may be recommendations that are  
6 outside the scope of the Act. I can't think of a good  
7 example right offhand.

8 CHAIRMAN GAMPETRO: So the bottom line is  
9 your intent is not that they would have to accommodate  
10 all of the recommendations made, but it's within your  
11 purview -- your department's purview as to whether or not  
12 they have to.

13 MR. MOXLEY: I guess an example would be,  
14 you know, when we deal with a mining permit, we deal with  
15 a defined permit area. We don't really exert  
16 jurisdiction outside of that mine permit area. So a  
17 hypothetical recommendation might be something that dealt  
18 with an issue that was outside the permit area, like an  
19 access road or employees driving to the mine, that the  
20 Game and Fish might recommend a speed limit. Well,  
21 that's outside of our jurisdiction if it's outside of the  
22 mine boundary, so we wouldn't impose that type of a  
23 restriction.

24 CHAIRMAN GAMPETRO: Let me ask it as a  
25 question. Is the intent that whatever recommendations

1 are made by Wyoming and U.S. Fish and Wildlife be adhered  
2 to, satisfied?

3 MR. MOXLEY: So much as possible, we try  
4 to do that. The governor's executive order on sage  
5 grouse is an example of something that we are trying to  
6 address as much as possible in these mine permit  
7 applications. Again, though, there are elements of that  
8 that extend out far beyond the mine permit boundary that  
9 are probably somewhat questionable. So it is an issue  
10 that we have to deal with.

11 As Mr. Esch said, we are obligated under the  
12 statute to comply with state law, state and federal law.  
13 And so it's kind of a fine line. And I'm not sure we can  
14 put a sharp edge on it.

15 CHAIRMAN GAMPETRO: Perhaps wording to  
16 that effect at the end of that last sentence to the  
17 extent would such recommendations need to be satisfied to  
18 stay within the scope of the law?

19 MS. NUTTBROCK: Chairman Gampetro, I'd  
20 like to comment on this paragraph as a whole. And as I  
21 listen to the discussion from Mr. Loomis and from our  
22 staff and you, I wonder if, given the statutory language  
23 that we have here that governs that an applicant will  
24 adhere by all of the other laws, and given the language  
25 here that is admittedly somewhat contradictory -- we're

1 using the words "shall incorporate a recommendation."

2 The two feel like they're on opposite ends of the  
3 spectrum.

4 But when you think about our intent of this  
5 paragraph, the intent was to say that, applicant, you  
6 need to consult with Game and Fish and U.S. Wildlife  
7 Service, period. And maybe that's the end of our  
8 jurisdiction in this rule. And we leave it up to  
9 executive orders, or we leave it up to other statutes to  
10 govern the cases in which those recommendations are  
11 employed, or they are recommendations, and for whatever  
12 reason, an applicant chooses not to incorporate the  
13 recommendations. But our intent here is to encourage the  
14 consultation.

15 MR. GREEN: Mr. Chairman, if I might also  
16 follow up, I agree with that recommendation, because I  
17 was trying to envision what an application would look  
18 like. If an applicant consulted with Game and Fish --  
19 let's say Game and Fish recommends monthly big game  
20 monitoring surveys and the applicant doesn't agree with  
21 that. How is he going to incorporate that into his  
22 application, other than to say, "Well, this is what they  
23 said, but I don't agree with it"? That certainly isn't  
24 going to help anything.

25 And since the final part of this has LQD

1 talking with the very same agency, as well, that's going  
2 to receive the very same recommendations, as well, I  
3 would think that simply having the applicant consult with  
4 the agency first, weighing what he thinks he can and  
5 cannot do against those recommendations should be  
6 sufficient for the application. Then it's incumbent upon  
7 the agency to determine whether or not the statutory  
8 requirements have been met by the final version of the  
9 application.

10 CHAIRMAN GAMPETRO: I would go along with  
11 what you're saying, Bob, but I would still like to see at  
12 the end of this not only within the scope of the Act and  
13 also to the degree which is required by law if it's an  
14 endangered species or whatever that we're talking about.  
15 My concern, I wasn't thinking the way you were. I was  
16 thinking about the sage grouse. And they might want you  
17 counting sage grouse or something like that.

18 MR. BENSON: Mr. Chairman, if they're  
19 going to revise this paragraph, you might want to take  
20 out the relative to wildlife studies or wildlife surveys.  
21 The Fish and Wildlife Service also has jurisdiction over  
22 threatened and endangered plants.

23 MR. GREEN: Mr. Chairman, if I might,  
24 toward that end, as I understood -- the prior  
25 recommendation was that that first sentence should end at

1 "application." Is that correct? And so all of that  
2 terminology would be removed.

3 CHAIRMAN GAMPETRO: It goes away.

4 MR. GREEN: Right.

5 MR. ROGACZEWSKI: Mr. Chairman, I'd like  
6 to give you one example that we've dealt with in the past  
7 years. We had a gravel pit operator up in District 3.  
8 And we had them -- we tried to get them to consultate  
9 with the Wyoming Game and Fish and U.S. Fish and Wildlife  
10 Service and gave them several, I would say, notices that  
11 we do not have this information. And the recommendation  
12 from the U.S. Fish and Wildlife Service was this is an  
13 area that has lots of roosts for migratory birds such as  
14 eagles, golden eagles and ferruginous hawks. And the  
15 company said that those are strictly recommendations. "I  
16 do not have to do them." And they basically wanted to  
17 take the risk of, if they would mine this area, remove  
18 the trees, they would never do a survey. They would  
19 never know that there was ever a roost, a nest. They  
20 would destroy it before there ever was anybody that found  
21 it.

22 So this is, for me, as a district supervisor,  
23 trying to close one of those loopholes where a company  
24 would say that it is strictly only a recommendation and I  
25 do not have to do this, and I can then, thus, commence

1 mining. It's not an endangered species because --

2 CHAIRMAN GAMPETRO: I see that as a  
3 separate issue. Now what I'm understanding you to say is  
4 that you want them to obtain that survey of the area.  
5 And I guess I thought, by reading the end of this, that  
6 you would consult with Wyoming Game and Fish or whomever,  
7 U.S. Wildlife, to determine that. But you're saying that  
8 unless they request the survey, you're not going to have  
9 that information.

10 MR. ROGACZEWSKI: Right. At this time we  
11 do not have any wildlife personnel on staff. We don't  
12 have the specialists. The companies either have them on  
13 their own staff or they hire a consultant to go do that.  
14 And in months the Fish and Wildlife Service would review  
15 that information. And let's say there is some type of  
16 bird there --

17 CHAIRMAN GAMPETRO: I understand.

18 MR. ROGACZEWSKI: There are buffer zones,  
19 by federal law, that says you cannot do these types of  
20 operations, these activities, within a certain buffer  
21 zone.

22 CHAIRMAN GAMPETRO: I understand.

23 MR. ROGACZEWSKI: And if we don't ever  
24 have those surveys, we don't ever know that the bird even  
25 exists in that area. We don't know that anything could

1 be occurring.

2 CHAIRMAN GAMPETRO: Could be a problem.

3 MR. GREEN: Mr. Chairman, could I follow  
4 up on that?

5 Mr. Rogaczewski, would you not make that part  
6 of your requirements for permit approval?

7 MR. ROGACZEWSKI: If those recommendations  
8 are for a federal law buffer, et cetera, that's where we  
9 want to have a little bit more meat to make this go  
10 through.

11 MR. GREEN: We may be talking at cross  
12 purposes here. But again, the language -- the issue with  
13 the language is that, as it reads now, you're requiring  
14 the applicant to put those recommendations into their  
15 permit application whether they agree with them or not.  
16 You, the agency, are going to be consulting with the very  
17 same agencies yourself. And if, indeed, there are eagle  
18 roost surveys that are recommended by the agency, are you  
19 not going to make that part of a stipulation to permit  
20 approval?

21 MR. ROGACZEWSKI: I believe we would at  
22 this time.

23 MR. GREEN: Then would it not be covered  
24 that way?

25 MR. ROGACZEWSKI: Yeah.

1                   MR. GREEN: So I still don't see why this  
2 language, as it reads now, requiring the applicant to  
3 take those recommendations and put them into the  
4 application, regardless, is not going to be addressed. I  
5 mean, it will be addressed one way or the other.

6                   MR. MOXLEY: Mr. Chairman, if I could, I  
7 think it's always best to get the applicant and the  
8 appropriate agency together early in the process. We're  
9 saying here, prior to the submission of the permit  
10 application, we would like the applicant to talk to the  
11 wildlife agencies. I agree and I share your concern  
12 about incorporating all of their recommendations.  
13 Sometimes they're pretty off the wall. And we could  
14 possibly change that language.

15                   But the intent here is to get them talking  
16 early in the process to identify potential conflicts, or  
17 likewise, there may be no conflicts, and the wildlife  
18 agencies might say, well, yeah, you're out in the middle  
19 of the sagebrush, and there's no concerns. That happens,  
20 too. So I think that interaction early in the process is  
21 a valuable thing. We don't want to shut that off. So I  
22 guess I would propose adding language to say that the  
23 applicant shall incorporate recommendations that he feels  
24 are appropriate or reasonable. Does that -- I mean,  
25 that's going to be the discussion.

1                   MR. GREEN:  If I might respond,  
2   Mr. Moxley, if, indeed, that first sentence simply reads  
3   the applicant shall consult with both agencies prior to  
4   submission of the permit application, period, does that  
5   not meet that requirement?

6                   CHAIRMAN GAMPETRO:  My question on that  
7   would be what's going to generate -- what's going to  
8   cause a survey to be done?  How are we going to know that  
9   it needs to be done for that area?  Is that something  
10  that will happen as a result of activities at Land  
11  Quality talking with the -- not that you would do the  
12  survey -- but talking with the Game and Fish?  Or once  
13  the consultation is done with Game and Fish and they say  
14  we need a survey, I would think you would want to know  
15  about that.

16                   Now, whether or not the recommendations of  
17  counting whatever are implemented in the application, you  
18  know, that's another issue.  But how do we first generate  
19  the fact that we need a survey to check on eagle roosts  
20  or whatever?  What's going to stimulate that if we take  
21  that language out, Bob?

22                   MR. GREEN:  The stimulation will be from  
23  the last part of this provision.

24                   CHAIRMAN GAMPETRO:  And they're going to  
25  stimulate.

1                   MR. GREEN: Exactly. Those agencies will  
2 tell LQD the very same thing. If they tell the applicant  
3 you need to do roost surveys and it's not in the permit,  
4 and the LQD is talking with the same agencies, as well,  
5 hearing that, and they're making their call about whether  
6 or not that fits into the statutory provisions.

7                   CHAIRMAN GAMPETRO: But then you're down  
8 the line time-wise, as opposed to having it done up  
9 front, and it's delaying this permitting process.

10                  MR. GREEN: That's up to the applicant  
11 then, I would say.

12                  MR. BENSON: Mr. Chairman, I had the same  
13 concern reading this. You know, (a)(i), for land use,  
14 says you've got to do a description. Then you jump to  
15 vegetation in (2), and you don't got to do a description.  
16 You just got to do a map. And it jumps to surface water,  
17 and there's a description but not a map. Then the soils,  
18 just a map. And then we jump to wildlife, and it doesn't  
19 say we have to do a map or a description. We've just got  
20 to consult. And then we jump to wetlands, and I'm not  
21 sure what it says. But it seems like there could be some  
22 consistency. What does the applicant have to do, a  
23 description and a map, or is it just a description?

24                  MR. MOXLEY: Mr. Chairman, you know, there  
25 may not be any wildlife concerns on a particular piece of

1 property. And so I think it's premature for us to tell  
2 an applicant that he has to give us a map while there may  
3 be no need for a map. So I go back -- I think it's  
4 important that the applicant talk to the Game and Fish  
5 and Fish and Wildlife early on in the process and arrive  
6 at what are appropriate mitigation strategies, monitoring  
7 studies, et cetera, before Land Quality even gets  
8 involved in the process.

9           If an applicant is concerned about the time  
10 frame, he may be very willing to commit to all kinds of  
11 things. He may put it in his application, and it might  
12 just sail through. If we get involved and we go back to  
13 the wildlife agencies and we have this discussion and it  
14 turns out that the applicant chose not to include certain  
15 things, we're going to have to have a meeting and sort it  
16 all out, figure out what's reasonable, how the operation  
17 might be modified, what mitigation strategies might be  
18 appropriate. So that might slow down the process.

19           I'm very willing to put that change in there  
20 about reasonable recommendations. I mean, that's really  
21 what we're looking for. But I think that you should at  
22 least tell the applicant that that's what we're looking  
23 for, is for him to incorporate appropriate  
24 recommendations into his application before we even see  
25 it.



1 put it. How they intend to proceed with each one. But  
2 at that point of it, I don't want to require them to  
3 simply accommodate every single recommendation. I agree  
4 with Mr. Moxley. You should hear what those are. But  
5 all that's required by the second sentence. You'll get a  
6 copy of all the recommendations in that documentation.  
7 I'd be open to how you would word a requirement that an  
8 applicant tell you what they want to do with each of  
9 those recommendations.

10 MR. GREEN: Mr. Chairman, if I might take  
11 a stab at it, if we were to -- if we were to -- after the  
12 term "Fish and Wildlife Service prior to submission of  
13 the permit application," say, "and consider in the  
14 application aspects of addressing recommendations," would  
15 that work?

16 CHAIRMAN GAMPETRO: I would like to see  
17 the word "list," list the recommendations.

18 MR. GREEN: Well, you'll have those in the  
19 copies of the correspondence, I believe. Those should  
20 entail the recommendations. But, yeah.

21 CHAIRMAN GAMPETRO: And not the word  
22 "incorporate." So now you know what the recommendations  
23 are. I'd still like to see them say which ones they feel  
24 are reasonable to incorporate, using your word,  
25 "reasonable."

1                   MR. MOXLEY: Mr. Chairman, often these  
2 discussions are sort of an iterative process, little  
3 horse trading that goes on, typically. And an operator  
4 might decide, you know, it would be really a lot easier,  
5 a lot simpler if we would just avoid that corner of the  
6 property over there by that eagle nest. And so he'll  
7 just cut off his mining, and all the problems will go  
8 away. No more issues with the eagle nest.

9                   CHAIRMAN GAMPETRO: That would be easily  
10 addressed, then, in the application, because he would say  
11 it was recommended that we do a monitoring of eagles  
12 landing here. And so we've cut that off, and we're not  
13 going to do that. We cut that corner off, and we're not  
14 going to do that.

15                   MR. MOXLEY: I guess I would say I still  
16 think there's value in eliminating the middleman, which  
17 is me, and getting the two parties together to discuss it  
18 and work it out before they come to me.

19                   MR. SMITH: I agree with you. That would  
20 be ideal. And that's the best way to do it. I just  
21 don't want to force that applicant to do everything that  
22 they can think of to recommend.

23                   MR. MOXLEY: I certainly agree. And  
24 oftentimes we get fairly generic letters from these  
25 agencies that often include things that you know are not

1 relevant to that site.

2 CHAIRMAN GAMPETRO: I would feel  
3 comfortable if the result of this is that you know what  
4 the Fish and Wildlife's recommendations are and that, at  
5 the same time, they are not required to incorporate all  
6 of their recommendations. And that's something that then  
7 you could sit down with them and deal with.

8 MR. FOERTSCH: Tom Foertsch with the BLM.  
9 Let me just explain the BLM's process on this, because I  
10 see certain parallels here.

11 When somebody proposes something, generally a  
12 knowledgeable operator will perform a wildlife survey of  
13 the area on his own and submit that. BLM will hire a  
14 third-party contractor to do that. BLM has its own  
15 biologists. We also have our own -- each field office  
16 has its own resource management plan that specifies  
17 offset distances for raptors, sage grouse, crucial winter  
18 range. And we look at the wildlife survey, see what the  
19 affected resources are and apply those planning goals  
20 from a resource management plan to the information from  
21 the wildlife survey.

22 Only in certain instances do we consult with  
23 Fish and Wildlife Service or Game and Fish. An example  
24 would be there's a thing called Platte River depletions,  
25 where, if an operator proposes to use more than a tenth

1 of an acre-foot out of the North Platte River that's  
2 heading to Nebraska for some endangered species, that  
3 could trigger some consultation with the Fish and  
4 Wildlife Service. But that's our process. But it  
5 generally begins with a wildlife survey submitted by the  
6 applicant.

7 CHAIRMAN GAMPETRO: Nancy, where are we?

8 MS. NUTTBROCK: Well, I heard some  
9 language suggested by Mr. Green that seemed to capture  
10 the first piece -- the first piece of the language here.  
11 The applicant shall consult Wyoming Game and Fish  
12 Department and the Wildlife Service prior to submission  
13 of the permit application. And then we had some  
14 follow-up language -- or, we could add some follow-up  
15 language that addresses Mr. Moxley and Mr. Rogaczewski's  
16 concern that we get to see these -- we get to see the  
17 recommendations.

18 So we could add some language. As a second  
19 sentence, the applicant shall submit copies of these  
20 consultations to the LQD. And we could -- we want to  
21 avoid language that talks about an applicant  
22 incorporating reasonable recommendations. But we've  
23 gotten the intent of the consultation happening early in  
24 the process. We've been copied on said results of the  
25 consultation. And it is then up to the applicant to make

1 a determination as to whether the employment of those  
2 recommendations meets all of the other laws that he's  
3 abided to be lawful of.

4 So I see this paragraph being down to two  
5 sentences with two intents. The first intent is early  
6 consultation. The second intent is for us to be notified  
7 of the recommendations. I'm still unclear where we need  
8 to be with regard to Mr. Rogaczewski's example of the  
9 survey. If we're notified that the survey was  
10 recommended from Game and Fish to the applicant and they  
11 choose not to do a survey, where does that leave us? And  
12 are we -- have we, with that language, corrected the  
13 problem that we've encountered in the field numerous  
14 times now?

15 Mark, can you chime in on that?

16 MR. ROGACZEWSKI: Well, if we don't make  
17 them do the survey, we don't get the information, which  
18 then the U.S. Fish and Wildlife Service or the Game and  
19 Fish would say, by such law, there has to be a half-mile,  
20 quarter-mile buffer for such nests. And so I would  
21 appreciate or I would hope that the Fish and Wildlife  
22 Service or Game and Fish says you shall do a survey for  
23 crucial winter habitat, endangered species, migratory  
24 birds, that we have the authority to make them do that.  
25 They have to do that. Right now we do not have that in

1 here in our current rules and regs. And we did -- we  
2 went out and said we will approve your small mine  
3 operation. However, you put a condition on the permit  
4 that says you shall do these surveys per this letter.  
5 Well, there were three of them. And if you find birds,  
6 you are then going to change your mining rec plan.

7 We don't want to condition every permit.  
8 That's how it worked in this instance. But we would like  
9 to have them understand that they will follow a  
10 recommendation for a survey of migratory birds,  
11 endangered species, such as there could be other birds or  
12 vegetation out there. But they have to do that before it  
13 ever comes to us, because all we're going to do is say,  
14 oh, by the way, you never did this survey, and you have  
15 to go do that. And if it is for birds and migratory  
16 habitat, there's only maybe two or three months out of  
17 the entire year that they can do that. The birds are  
18 gone. The same thing with sage grouse and leks and their  
19 activity. It's basically eight weeks.

20 Vegetation, if they don't have the flowers and  
21 the identifying fauna of that, they're going to be  
22 delayed an entire year. I mean, that's the intent of  
23 this. They need to understand that they have to do this  
24 up front because there are federal laws that state you  
25 can't destroy the nests. You can't destroy the habitat

1 of such a piece of vegetation or animal.

2 So I would like this to state that they have to  
3 do the surveys beforehand. If they're not, they're going  
4 to be told to go do it, anyway, which then they're going  
5 to be out the entire work season and lose several  
6 contracts. That's what we're trying to get to get around  
7 that.

8 CHAIRMAN GAMPETRO: So you'd leave the  
9 language alone?

10 MR. ROGACZEWSKI: I think we just need to  
11 be smart. If somebody says the Game and Fish says  
12 there's something a mile away and that's the road and  
13 this corridor is where their people are going to be  
14 driving and they have to have a speed limit of 50 miles  
15 an hour -- or, currently is 50, and they want to -- due  
16 to increased traffic, they want to move it down to 25,  
17 that's not us. I think you got to count on us to be  
18 smart enough to understand that we're not going to make a  
19 company do that. You go to the county sheriff and you  
20 get that road monitored or patrolled by the police, the  
21 county sheriff, et cetera. That's not something we deal  
22 with. We don't do that near the cities.

23 MR. GREEN: Mr. Chairman, might I respond?  
24 The crux of the issue is the term "recommendation." The  
25 term "recommendation" does not say that, by law, you must

1 do X. The term "recommendation" says this is what I  
2 recommend that you should do. There's a big difference  
3 there. If you can modify the language to address that  
4 difference, I don't think there's an issue. With the  
5 term "recommendation" in there, there is an issue,  
6 especially if it's tied to the term "shall." That's the  
7 crux of it.

8 MR. ROGACZEWSKI: I'm not saying that this  
9 language has to stay the same. What I'm saying is, if  
10 it's their recommendation by their federal law, they have  
11 to do it. The company has to do this up front. And  
12 that's the kind of recommendation I want this to  
13 represent. I don't know how we write that here, though.  
14 I do not have suggested language to change this to make  
15 that more clear. But I do understand that it's not clear  
16 right now.

17 MR. HULTS: Mr. Chairman, if I might, I  
18 think it would just require a small change after the  
19 words, prior to submission of the permit application and  
20 shall describe their recommendations relative to wildlife  
21 surveys, monitoring mitigation in the permit application.  
22 We get the letters, and then it's up to us to determine  
23 compliance and move forward.

24 MS. NUTTBROCK: Mr. Chairman, I appreciate  
25 Mr. Green's note of the word "recommendation." So, as a

1 result of that consultation and understanding that that  
2 consultation often happens as the course of an iterative  
3 process, conversations over months, and if we're in  
4 receipt of written correspondence of that -- or, written  
5 documentation of that consultation, is it clear sometimes  
6 what within that consultation is not a recommendation?  
7 So is there a distinction between, this is what you will  
8 do by law, and this is what we recommend you do, and  
9 anything above the line, you will do, and anything below  
10 the line is up to you to be a good steward and we highly  
11 suggest it?

12 So is that the difference that we're really  
13 getting to here? Because if we can be -- if we can be  
14 notified of requirement, versus recommendation, if that's  
15 discernible.

16 MR. BENSON: Mr. Chairman, I do this for a  
17 living. And it does get very confusing. When you're  
18 dealing with the Migratory Bird Treaty Act or the Bald  
19 Eagle -- Golden Eagle and Bald Eagle Protection Act, both  
20 of those acts say you can't take one of these birds. And  
21 "take" is defined. Fish and Wildlife Service, when you  
22 do consultation with them on a permit like this, they  
23 send a letter back to the applicant doing the  
24 consultation. They CC the Land Quality Division on it  
25 and say here are our recommendations. So those

1 recommendations will say, for instance, with a raptor  
2 nest, we recommend that you don't have any activity  
3 within this buffer around the nest. There's no law that  
4 says you can't have activity around the nest. And you've  
5 got all kinds of options.

6 The Fish and Wildlife Service would never  
7 recommend you go out and cut the tree down. But going  
8 out and cutting the tree down is legal. By not having  
9 the tree there, you're no longer going to have a nesting  
10 raptor. So they are just recommendations that the Fish  
11 and Wildlife Service gives. They are not requirements.  
12 Their only requirement is that you don't take.

13 CHAIRMAN GAMPETRO: Does Craig's wording  
14 change, fix the problem or not?

15 MS. NUTTBROCK: Craig, can you say again  
16 what you suggest?

17 MR. HULTS: Yeah. So it would read, the  
18 applicant shall consult with both the Wyoming Game and  
19 Fish Department and the U.S. Fish and Wildlife Service  
20 prior to submission of the permit application and shall  
21 describe their recommendations relative to wildlife  
22 surveys, monitoring and mitigation in the mine permit  
23 application.

24 And then the rest would remain what it is right  
25 now. So you'd have the copies of all the correspondence

1 to and from the agencies shall be included in the permit  
2 application, and then it's the administrator shall also  
3 consult with both wildlife agencies during the review of  
4 the permit application to ensure that their  
5 recommendations are addressed to the extent that they are  
6 within the scope of the Act.

7 I guess what -- the description allows, then,  
8 for not necessarily incorporating those recommendations  
9 in there, but it gives us the heads-up as to what those  
10 are and allows us to have our normal discussion as we  
11 would.

12 MR. ESCH: Mr. Chairman, it seems like the  
13 discussion's focussing on what recommendations are  
14 required to meet federal and state law and what  
15 recommendations are strictly recommendations.

16 And I think, Mark, that's kind of what we're  
17 focussed on. Right?

18 MR. ROGACZEWSKI: Yeah.

19 MR. ESCH: So, if it's possible, I would  
20 maybe suggesting leaving that first sentence complete,  
21 and shall incorporate -- shall incorporate their  
22 recommendations relative to wildlife surveys, monitoring  
23 and mitigation in the mine permit area to the extent  
24 necessary to comply with federal or state law.

25 MS. NUTTBROCK: And does your proposal,

1       then, also consider deleting the last sentence that talks  
2       about the administrator shall consult with both wildlife  
3       agencies during the review of the mine permit to discuss  
4       their recommendations? Because it seems like if we're  
5       requiring them to consult and they are -- it's incumbent  
6       upon the applicant, then, to consider employee  
7       recommendations to the extent of federal and state law,  
8       period. That last sentence seems to put Land Quality  
9       again in the predicament of determining for the applicant  
10      what is required by state and federal law. And I heard  
11      some discussion earlier about us being in somewhat of a  
12      cumbersome middleman position.

13                   CHAIRMAN GAMPETRO: I would think that  
14      Land Quality, irrespective of state and federal law,  
15      might have something to say about all this. It might not  
16      be illegal to cut down that tree that the eagles are  
17      using for a roost, but you might not want to let them do  
18      that as an environmental issue.

19                   MS. NUTTBROCK: Right. But we would be  
20      informed of that. We're going to be informed by way of  
21      the second sentence there. Copies of all the  
22      correspondence shall be included in the permit  
23      application. And as part of our permit application  
24      review, then we're able to make that determination. I  
25      think by having that last sentence in there, it almost

1 releases the applicant of that duty, and that duty then  
2 falls on our staff. That's what it seems like to me. So  
3 I'm not sure where we're at here. The language that you  
4 had proposed --

5 CHAIRMAN GAMPETRO: A question there?

6 MR. KEARNEY: Mr. Chairman, this might be  
7 directed towards -- Bill Kearney with Uranium One. The  
8 small mining permits don't involve our company, because  
9 we have a regular mine permit. But this procedure that  
10 you're talking about seems more onerous than what we're  
11 required to do on a regular permit. You know, because we  
12 don't put this stuff in a mine permit. We get a letter  
13 from Game and Fish or Fish and Wildlife Service that  
14 strictly says here's our recommendations. And that's  
15 their only authority, is recommendations.

16 So it seems -- I'm a little confused. This is  
17 a small mining permit we're talking about. And it's more  
18 onerous than what is typically done on a regular mine  
19 permit.

20 MR. MOXLEY: Mr. Chairman, actually, the  
21 source of this language is in Chapter 2. It's not  
22 exactly the same. We rewrote it a little bit. But, in  
23 fact, the same process is outlined in Chapter 2 for  
24 regular mine permits.

25 Bottom line here is we're trying to prevent or

1 ensure that the applicant does not do anything that is  
2 contrary to the law of the land. It's not our duty to  
3 enforce the federal laws concerning endangered species,  
4 but it is our duty as -- we like to think of ourselves as  
5 the lead agency that regulates mining. And in that  
6 context, it is our duty to inform the applicant and try  
7 to ensure that he doesn't get crosswise with these other  
8 agencies.

9           There's always going to be some judgment  
10 involved in what is appropriate mitigation. And often  
11 these are couched in terms of recommendations. And we do  
12 not have wildlife expertise, hence our reluctance to get  
13 in the middle of those discussions. We often do, though.  
14 That's just the way it goes. And I would say that we  
15 often do that, get in the middle of these discussions, to  
16 try to arrive at reasonable mitigation strategies, et  
17 cetera.

18           I'm not sure I -- I understand Mr. Green's  
19 concern about making the applicant incorporate all of  
20 these recommendations. But sometimes applicants choose  
21 to do that. And so I'm not going to sit there and tell  
22 him he shouldn't do that. But you're right. It's not  
23 our duty to make him commit to all of these  
24 recommendations. So that's really the struggle we have  
25 here, is how far do we go, and what is our role?

1           I think Craig's suggestion about describing  
2           their recommendations is just sort of dancing around the  
3           issue. We really want them to address the  
4           recommendations in some fashion. If they want to say no,  
5           we're not going to do that, but we will do this, that's  
6           great, because that moves the ball down the road. But I  
7           don't think we want to ignore the recommendations, nor do  
8           we want to say you have to incorporate all these  
9           recommendations. So it's got to be some middle ground.  
10          And that's really what we're searching for.

11                   CHAIRMAN GAMPETRO: I like your word,  
12           "address," shall address their recommendations.

13                   Craig, what do you think?

14                   MR. HULTS: That would work, absolutely.  
15           And shall address the recommendations. That way they're  
16           kind of giving an indication, or I would envision they  
17           would give some kind of indication whether they thought  
18           those recommendations were valid or not.

19                   MR. GREEN: Mr. Chairman, if I might  
20           suggest that Mr. Esch's suggested language at the end  
21           also helped to clarify the point about what's required,  
22           versus what is recommended. If that could be added, as  
23           well, I think that that would, indeed, define the point,  
24           that the State is requiring the applicant to address  
25           those points that are actually required by state or

1 federal law.

2 CHAIRMAN GAMPETRO: Does that throw it  
3 back in Land Quality's lap, really, or does that throw it  
4 into the applicant's lap to find out what he can do and  
5 where he's going to get crosswise with the law?

6 MS. NUTTBROCK: It does initially. And  
7 then by way of the permit review, we have that  
8 opportunity to act as that lead agency and guide them to  
9 make sure that their recommendations are not going to  
10 lend them in a crosswise position. But they've done the  
11 initial work by way of consultation, addressing, and then  
12 as required by all state and federal laws. And it's all  
13 included in their permit application. I believe that  
14 covers the intent of what we were trying to achieve in  
15 this paragraph. So should we work on some language  
16 that --

17 CHAIRMAN GAMPETRO: I think you got it.  
18 Craig's probably got it typed up already.

19 MR. ESCH: Mr. Chairman, Mr. Green, with  
20 regard to adding that provision as required by state and  
21 federal law -- and this might be something to address to  
22 the Land Quality folks with, too. So, envisioning that,  
23 they would include in their permit application basically  
24 a section where they address the Fish and Wildlife  
25 Service's recommendations. It doesn't have to be

1 automatically incorporated, but just an area. Or would  
2 it be addressing those recommendations -- only those  
3 recommendations which are required by state and federal  
4 law?

5 MR. GREEN: Mr. Chairman, if I might, this  
6 language would basically be the requirement that DEQ is  
7 requiring the applicant to address just those that are  
8 required by state or federal law, which I believe was the  
9 point -- that's exactly the point that we're at. And  
10 then that way what I call the nice two recommendations  
11 are still up to the applicant can do as he or she wants  
12 to. But the State is not requiring a response to those.

13 MR. ESCH: Thank you. I just wanted to  
14 clarify.

15 CHAIRMAN GAMPETRO: And it gives Land  
16 Quality the opportunity to second-guess that if they  
17 want. If the applicant says, "I'm not addressing this.  
18 I don't think it's required," you can say, "Oh, yes, it  
19 is." So you still have your input. Or, likewise, you  
20 could say, "I don't think it is. You don't have to  
21 address that."

22 MR. HULTS: I did put up, I think, what  
23 captures what we were discussing up on the screen.

24 CHAIRMAN GAMPETRO: Mr. Loomis, you  
25 started this.

1 MR. LOOMIS: I'm sorry, Mr. Chairman.  
2 What was your question? Do I like it? I think you've  
3 made a significant change for the better with this. And  
4 I think it's important that the DEQ has the authority to  
5 say what stipulations and conditions are put on the  
6 permit, not any other agency. And to the extent that  
7 it's required by federal or state law is certainly  
8 appropriate and fine.

9 CHAIRMAN GAMPETRO: Thank you, Mr. Loomis.  
10 We move on.

11 MR. ROGACZEWSKI: Mr. Chairman and  
12 Mr. Green, can you read that? Does this language --

13 MR. GREEN: Yeah. And it looks great.  
14 Thank you.

15 MR. BENSON: Mr. Chairman, if we're moving  
16 on to the last section, which is wetlands, I think it  
17 needs some wordsmithing, as well. It starts by saying  
18 check the appropriate National Wetlands Inventory Map.  
19 The National Wetlands Inventory Map is produced by the  
20 Fish and Wildlife Service. They have no jurisdiction  
21 over wetlands. There's no federal law there. The  
22 federal law is Section 404 of the Clean Water Act, which  
23 is administered by the Corps of Engineers and EPA.

24 So the NWI map really has nothing at all to do  
25 with whether wetland is jurisdictional and comes under

1 the jurisdiction of the Clean Water Act, which then gets  
2 you to the second sentence, that if there's potential  
3 wetlands, then Land Quality is saying you have to do a  
4 wetland delineation. Again, the Corps of Engineers  
5 doesn't require that. The Corps of Engineers says before  
6 you dredge and fill a jurisdictional wetland, you have to  
7 have a permit. But Land Quality it appears is directing  
8 each applicant. If there's Fish and Wildlife Service  
9 wetlands, which are completely different than Corps of  
10 Engineers jurisdictional wetlands, then you have to  
11 conduct a survey. And the Corps does not require that.  
12 The Corps just says if you're going to dredge or fill  
13 them, you have to have a permit.

14 So you might have a permit area that very well  
15 has Fish and Wildlife Service wetlands. You may have a  
16 permit area that has jurisdictional wetlands. But if you  
17 aren't going to impact them, you don't have to have a  
18 permit from the Fish and Wildlife Service -- or, excuse  
19 me -- from the Corps of Engineers. And they don't  
20 require a wetland delineation. These rules are now  
21 requiring the applicant. And the way I read it, they're  
22 requiring the applicant to conduct a wetland delineation.

23 MR. MOXLEY: Mr. Chairman, if I could  
24 address that issue, the Corps actually does use that  
25 National Wetlands Inventory Map as a first cut, if you

1 will, to determine if there are potential wetlands that  
2 might be affected by the operation. Our second sentence  
3 here says, if potential wetlands exist that will be  
4 disturbed or impacted by the mine-related activity, then  
5 the applicant shall perform a wetland delineation. If  
6 they're not going to impact the wetlands, then they don't  
7 have to do the delineation.

8           So we feel like it is clear. We're going to  
9 use that National Wetlands Inventory Map as a tool to  
10 determine if there are potential wetlands in the  
11 immediate area. And we ask the applicant to show his  
12 permit boundary and his disturbance on there, on the map.  
13 And if he's going to impact the wetlands, then he has to  
14 do a delineation. And I think that is consistent with  
15 what the Corps of Engineers requires.

16           CHAIRMAN GAMPETRO: Where are we?

17           MR. HULTS: If that addresses the  
18 concerns, I could move to Section 4. Section 4 is our  
19 mine operations plan section. And it details what would  
20 be included in the application, as well.

21           CHAIRMAN GAMPETRO: Comments, suggestions?  
22 Is everybody done reading that?

23           (No response.)

24           CHAIRMAN GAMPETRO: Okay. Section 5.

25           MR. HULTS: Section 5 is the reclamation

1 plan requirements for small mine operations.

2 MR. ROGACZEWSKI: Mr. Chairman, I think  
3 there's one editorial in Section 5(a) triple I. Second  
4 sentence says, "The administrator to may waive this  
5 requirement." It should state, "The administrator may  
6 waive this requirement if requested by the operator."

7 CHAIRMAN GAMPETRO: Where are you? I  
8 didn't hear you.

9 MR. ROGACZEWSKI: Page 17, Section 5,  
10 reclamation plan, Section 5(a) triple (i), second  
11 sentence of that paragraph. I think it's just a simple  
12 editorial.

13 CHAIRMAN GAMPETRO: "The reclamation plan  
14 shall include the following"? Is that where you're at?  
15 Section 5(a), small (a)?

16 MR. ROGACZEWSKI: Small (a) triple --

17 CHAIRMAN GAMPETRO: Small (a)(iii)?

18 MR. ROGACZEWSKI: Yeah, (iii).

19 CHAIRMAN GAMPETRO: Second sentence. I  
20 got it.

21 MS. NUTTBROCK: Also in that same  
22 sentence, it seems throughout the document we refer to  
23 the applicant. And we jump to a request by the operator.  
24 I'm wondering if it's appropriate to replace "operator"  
25 with the "applicant" in that sentence.

1                   MR. BENSON: Mr. Chairman, on page 18,  
2           Item Roman Numeral 8, it says, "Method of disposal for  
3           all buildings." A lot of these small mines, I believe  
4           the landowners like to keep some of those buildings  
5           around and use them for post-mine land use. If that's  
6           the intent or if LQD allows that, should that change to  
7           plans for disposal or reuse?

8                   MR. MOXLEY: Mr. Chairman, I think we  
9           would be okay with that clarification, because we  
10          certainly allow a landowner if he wants to utilize a  
11          building -- Mr. Chairman, I'm sorry. The normal policy  
12          is just like with roads. If the landowner wants to  
13          retain a building for post-mine land use, we're good with  
14          that. So I think we could clarify that.

15                  MR. HULTS: Mr. Chairman, I think that  
16          section, we're also caught a little bit by what the  
17          language was in the statute that we were replacing.  
18          Section (b) (iv) that was referenced there reads that very  
19          same way. It's method of disposal of buildings and  
20          structures erected during the operation.

21                  MR. BENSON: Mr. Chairman, just to respond  
22          to that, I believe that's what LQD went over at the very  
23          first of this meeting, is that the intent of rules is to  
24          clarify the statute and to provide further guidance on  
25          how one can be in compliance with that.

1                   MR. GREEN: Mr. Chairman, if I might, I  
2 don't believe that the suggested revision would preclude  
3 compliance with the statute. It would simply build on  
4 that.

5                   MR. HULTS: Yeah. I was just indicating  
6 what the source of -- where that language came from  
7 exactly.

8                   MR. ESCH: Mr. Chairman, I believe the  
9 Land Quality Division is fine with the modification to  
10 include reuse. One question I might have is, are we --  
11 do we want to specify that it's reuse by a landowner, or  
12 is that just already implied?

13                   MR. MOXLEY: As with roads, I think we  
14 would want a written statement from the landowner  
15 explaining that he wanted to retain a structure for the  
16 post-mine land use. Often the applicant or the operator  
17 is different from the landowner, so you would want a  
18 written statement from the landowner.

19                   CHAIRMAN GAMPETRO: (A)(i) says a  
20 statement of the proposed uses of land after reclamation.  
21 It doesn't say who it's supposed to be done by. Perhaps  
22 you should indicate that there.

23                   MS. NUTTBROCK: We could simply add a  
24 statement of the proposed uses by the landowner of the  
25 land after reclamation.

1                   CHAIRMAN GAMPETRO: What else are we going  
2 to do in this section?

3                   MR. SMITH: Question. In (a) double (i),  
4 at the very end of that paragraph, it states "a plan to  
5 reestablish the original surface drainage." Is it  
6 possible that the proposed usage of the bond on the land  
7 afterwards would be so different from what it was before  
8 that you would not want the original drainage? I'm  
9 throwing that out as a question. I don't really know.

10                  MR. MOXLEY: Sorry. Where was that?

11                  MR. SMITH: In paragraph (a) double (i).

12                  MR. MOXLEY: I think you're absolutely  
13 correct, sir. I would say we should say "a plan to  
14 reestablish surface drainage" and just strike "the  
15 original."

16                  MR. SMITH: Okay.

17                  MR. HULTS: Mr. Chairman, if I might, in  
18 subsection (iii), did we come to a conclusion on dropping  
19 the "to"? Obviously I'm assuming we want to do that.

20                  CHAIRMAN GAMPETRO: Conclusion on what?

21                  MR. HULTS: In subsection (iii), below  
22 that one we were just talking about, we had what appears  
23 to either be a typo, where it says, "The administrator to  
24 may." I just want to catch these while we're still in  
25 this section. And I didn't hear the conclusion that we

1 came to.

2 MS. NUTTBROCK: I believe we decided to  
3 drop the "to." It's an editorial correction.

4 MR. HULTS: And also related to that  
5 section, were we dropping the "operator" and replacing  
6 that with "applicant"?

7 MS. NUTTBROCK: "Applicant."

8 CHAIRMAN GAMPETRO: Any other changes in  
9 this section?

10 (No response.)

11 CHAIRMAN GAMPETRO: Next.

12 MR. HULTS: All right. Chapter 9, Section  
13 6 specifies the standards and methods for evaluating  
14 reclamation success.

15 MR. MOXLEY: Mr. Chairman, if I could make  
16 one clarification, this was as a direct result of input  
17 that we received from Mr. Bob Giurgevich, that wanted us  
18 to explain how we were going to evaluate reclamation.  
19 And the standards are the same standards that are in  
20 Chapter 3 for regular mine permits, but we are going to  
21 utilize a qualitative method and not require a full-blown  
22 vegetative survey with statistics and all that. So it's  
23 a qualitative evaluation.

24 MR. BENSON: Mr. Chairman, given that, how  
25 would a person meet Item 2 under there, that total veg

1 cover of perennial species is at least equal to the  
2 vegetative cover? I question how, qualitatively, one can  
3 make that argument, and qualitatively, how LQD could  
4 review that.

5 MR. MOXLEY: You know, I think there are  
6 certainly qualitative methods that have been used  
7 historically, Soil Conservation Service and other methods  
8 that do not involve taking direct measurements and  
9 applying statistics. I think Land Quality Division has  
10 staff that are capable of doing this. In fact, we do  
11 this on ten-acre exemptions, limited mine operations  
12 quite routinely.

13 So I don't think it's rocket science. In my  
14 experience -- and I tell my staff that aren't versed in  
15 vegetation, it's usually fairly apparent. It's either  
16 good or it's bad. And often there's not too many of  
17 those areas that are in between. So I think it can be  
18 done. I think it is being done. And our intent is to  
19 not make the applicant go out and hire a consultant to  
20 tell him whether or not he's getting a piece of  
21 reclamation.

22 So we are going to do a qualitative evaluation.  
23 And like I said, in my mind, usually it's fairly apparent  
24 whether it's good or not. And we would bring the  
25 landowner into that discussion, too, to determine whether

1 it's suitable. But I think we're capable of doing that.

2 CHAIRMAN GAMPETRO: I don't see it in here  
3 where the landowner is going to be brought into that  
4 discussion. Does it say that somewhere?

5 MR. MOXLEY: It does not. We could add  
6 that.

7 CHAIRMAN GAMPETRO: And also, it says  
8 noxious weeds are excluded. If I recall, cheatgrass is  
9 not considered a noxious weed in Wyoming. Are you going  
10 to let them put cheatgrass on this stuff?

11 MR. BENSON: Mr. Chairman, right now the  
12 way it reads, perennial species. Cheatgrass is an  
13 annual.

14 CHAIRMAN GAMPETRO: I didn't catch that.

15 MR. BENSON: Right now the way it reads,  
16 it just says you have to restore -- or, not restore, but  
17 you evaluate the perennial species. And cheatgrass is an  
18 annual species. I think to get what Mark was getting at,  
19 I mean, I agree exactly with what he said. Perhaps the  
20 way to do it is drop 1 and 2 under there and just change  
21 3 and say that plant cover diversity and composition are  
22 suitable for the approved post-mining land use. And then  
23 you haven't -- you haven't added all of the specificity  
24 that I believe Mr. Moxley said they don't require and  
25 they don't evaluate currently.

1                   CHAIRMAN GAMPETRO: I read Number 1 as  
2 saying established vegetation species are self-renewing.  
3 Cheatgrass is definitely self-renewing, unfortunately.

4                   MR. BENSON: That specific requirement  
5 came from the coal rules. And there's a lot of  
6 vegetation people that said that's impossible to evaluate  
7 within five years. We're planning perennial species that  
8 you can't evaluate in five years whether it's self-  
9 renewing if the definition of self-renewing means it's  
10 setting seed and then it's regenerating itself. We're  
11 using revegetation species that a lot of times may come  
12 from Nevada or somewhere else. We could get them to  
13 grow, but we don't know if they're self-renewing in five  
14 years.

15                  CHAIRMAN GAMPETRO: We know cheatgrass is.  
16 I don't know. I just personally think this is getting  
17 pretty weak. We're going to do it. We're not going to  
18 use quantitative methods. We're going to use qualitative  
19 methods.

20                  MR. GREEN: Mr. Chairman, if I might,  
21 perhaps qualitative also includes semiquantitative.  
22 There are semiquantitative methods out there, such as  
23 releve or other methods, that would allow you to make  
24 some numeric comparisons without going through  
25 statistical adequacy. I've utilized that particular

1 method myself thousands of times. And I agree with  
2 Mr. Moxley's assessment that using those types of  
3 methods, you can compare areas on these criteria.

4 CHAIRMAN GAMPETRO: I don't disagree with  
5 that. I see gravel mines, for instance. It's not only  
6 an issue of the landowner. It's the neighbors. We've  
7 got some pretty big ones around where I live. And the  
8 people that are upset in many cases when it's all said  
9 and done aren't the owners. It's the neighbors. Because  
10 they have a tendency to be closer to occupied areas and  
11 such. Just my opinion. But I think this is getting a  
12 little bit weak for ensuring that we don't have eyesores  
13 and stuff like that. An opinion.

14 MR. ROGACZEWSKI: Mr. Chairman, if I could  
15 address your cheatgrass question, that is, cheatgrass is  
16 not a self-sustaining perennial species. And if we walk  
17 out there as a staff and see that as the dominant  
18 vegetation, the bond is not released. The site is not  
19 released. We have worked with operators to reseed the  
20 area, do some type of cultivation. But we do not release  
21 the bond with cheatgrass as a dominant.

22 CHAIRMAN GAMPETRO: You're obviously using  
23 a biological definition of renewing, as opposed to -- I  
24 understand what you're saying. Cheatgrass renews itself  
25 pretty darn good, though.

1 MR. ROGACZEWSKI: But that's the stand out  
2 there. It's disqualified because it's --

3 CHAIRMAN GAMPETRO: Disqualified?

4 MR. ROGACZEWSKI: Yeah. It's an annual  
5 species. It doesn't work. And our staff is very well  
6 versed on what that little grass looks like.

7 CHAIRMAN GAMPETRO: Everybody's happy?

8 MR. ROGACZEWSKI: If the chairman's happy.

9 CHAIRMAN GAMPETRO: I don't get to vote.  
10 We'll move on to the next section.

11 MR. HULTS: So there were no proposed  
12 revisions to that section?

13 CHAIRMAN GAMPETRO: I think there was one  
14 to add "owner," "landowner."

15 MR. MOXLEY: Yes. Mr. Chairman, I would  
16 propose to add a statement that the landowner consent  
17 will be required.

18 MS. NUTTBROCK: How about adding -- if I  
19 might make a suggestion, right in front of the word  
20 "revegetation," could we say, "In consultation with the  
21 landowner, revegetation shall be deemed successful when"?  
22 That brings them into the loop. I'm sorry, Craig. On  
23 the second sentence that starts with, "revegetation shall  
24 be deemed successful when."

25 CHAIRMAN GAMPETRO: Section 7.

1 MR. HULTS: Section 7 is the conversion of  
2 a small mine permit to a regular mine permit.

3 MR. GREEN: Mr. Chairman, if I might.

4 Mr. Moxley, this is what I had mentioned  
5 earlier. The definition here seems to be a bit different  
6 than earlier, in that "or" is in that subsection (a)  
7 regarding the 10,000 cubic yards of overburden per year  
8 or affect more than ten acres of land.

9 MR. ROGACZEWSKI: What we're talking about  
10 is taking the small mine operation, and what the operator  
11 wants to do is expand it to include.

12 MR. GREEN: So either one would kick them  
13 over?

14 MR. ROGACZEWSKI: Either one would connect  
15 it to the next.

16 CHAIRMAN GAMPETRO: So you do want a  
17 different definition?

18 MR. ROGACZEWSKI: Yes, we do.

19 MR. GREEN: Thanks for the clarification  
20 on that.

21 CHAIRMAN GAMPETRO: Any changes,  
22 suggestions, recommendations?

23 (No response.)

24 CHAIRMAN GAMPETRO: Okay. Chapter 10.

25 MR. HULTS: And Chapter 10, we didn't make

1 any changes since the last meeting that we had. And what  
2 was done there was the elimination of the ambiguous  
3 language suggesting that multiple contractors can operate  
4 under a single LMO and also codified the six-mile  
5 restriction. And so nothing was changed as it was  
6 presented the last time we were here.

7 CHAIRMAN GAMPETRO: This was to preclude  
8 the owner from hiring another operator and him not having  
9 the new operator not having to comply?

10 MR. HULTS: Right.

11 CHAIRMAN GAMPETRO: Changes, exceptions?

12 MR. HULTS: And as we've discussed  
13 earlier, I did throw together a draft motion, and I'm  
14 certainly not completely attached to -- we have Luke  
15 here. And any other discussion that we may have --

16 CHAIRMAN GAMPETRO: Well, if there are no  
17 other changes or suggestions, then we would entertain a  
18 motion to approve this package.

19 MR. SMITH: I do have one question. Just  
20 for clarification in my own mind, this prevents a single  
21 operator from having two operations within six miles. It  
22 does not prevent two different operators from having  
23 operations that close together, or does it?

24 MR. MOXLEY: Mr. Chairman, that's a  
25 correct interpretation. The only way an operator can

1 have two is if one is reclaimed and we're just waiting  
2 for the grass to grow.

3 CHAIRMAN GAMPETRO: And the intent there,  
4 if I understand it, was to avoid somebody -- avoid going  
5 to a large operation by having two small ones.

6 MR. SMITH: Agreed. Understood. But it  
7 doesn't prevent Company A from having an operation and  
8 three miles away Company B?

9 MR. MOXLEY: Right.

10 MR. SMITH: Thank you. Now I'm good.

11 MR. GREEN: Mr. Chairman, I would move  
12 that we approve the revised rules as subsequently revised  
13 during discussions today.

14 MR. SKEEN: Mr. Chairman, I will second  
15 that move.

16 CHAIRMAN GAMPETRO: We have a motion and a  
17 second. All those in favor signify by saying aye.

18 (All members vote aye.)

19 CHAIRMAN GAMPETRO: Opposed, same sign.

20 (No response.)

21 CHAIRMAN GAMPETRO: Done.

22 Next item.

23 MR. HULTS: We also wanted to just give  
24 you a status quickly of some of the rule-making efforts  
25 that have been going on and are upcoming. These two that

1 I have listed up here were rules packages related to coal  
2 mining. The bee's knee was we're still just waiting on  
3 Federal Register posting on that. And that will discuss  
4 the issues that they had. And there were some issues.

5 The ownership and control, same thing, except  
6 we have withdrawn that from official consideration to the  
7 OSM until we can address their concerns that they had.  
8 There was a feeling that if we submit it, these Federal  
9 Registers are getting too large, and the discussion --  
10 there were too many errors in it. I will say much of it  
11 is pretty easily addressed. But we will have a rule  
12 package coming up next that will address any of the  
13 issues that they had. And they went to the level of  
14 detail of pointing out typos, so it was a pretty thorough  
15 review. So that will be coming.

16 But in order to facilitate that without having  
17 them to have that just sitting there and waiting for us  
18 to resubmit another package, we withdrew it from the  
19 OSM's consideration at this time until we can make those  
20 other changes. And what we will do then is include the  
21 rule changes that were originally approved through the  
22 process and submitted with the Secretary of State in  
23 addition to the second round that addresses whatever  
24 issues they had pointed out. So that will be coming as  
25 our next package. So that was the coal rules.

1                    Obviously today Chapters 8, 9 and 10, we're  
2                    looking at going for July 12th or 13th for EQC hearing.  
3                    Again, the coal rules that will be our next advisory  
4                    board package is May 21st. We're hoping to address  
5                    variable topsoil depth, which our rules currently don't  
6                    really allow for, but the federal rules do. So we're  
7                    installing that. We would be correcting the self-bonding  
8                    rules to reflect what was disapproved and go back to our  
9                    original rules that were approved in the past and then  
10                    address any of these OSM concerns from the previous two  
11                    packages. They did review the most recent ones, the  
12                    ownership and control, so we have an indication at least  
13                    of what was problematic.

14                    Our August 2012 advisory board meeting, we're  
15                    going to be looking at Chapter 11, noncoal, which relates  
16                    to in situ mining. And the November one, I wasn't sure  
17                    that we had one teed up completely.

18                    MS. NUTTBROCK: You know, I think that,  
19                    looking at the August 2012 advisory board meeting date  
20                    and knowing that Chapter 11 is going to be fairly  
21                    involved, I had envisioned that may be our November time.

22                    MR. HULTS: Our November one? Okay.

23                    MS. NUTTBROCK: So we'll have to keep you  
24                    informed as to how those progress. Because I think we  
25                    may need some more time for that August, to put that in

1 November.

2 MR. HULTS: Yeah. Okay. That was all I  
3 had.

4 CHAIRMAN GAMPETRO: Other items for  
5 discussion?

6 MR. GREEN: Mr. Chairman, if I might, I  
7 think we gave you short shrift as far as the proposal  
8 that you had up on the screen a moment ago as far as the  
9 minor changes.

10 MR. HULTS: Oh, for the motion itself?

11 MR. GREEN: Correct. Mr. Chairman, can we  
12 revisit that? Oh, okay. I was hoping that you had the  
13 one that we were talking about as far as proposed  
14 language to make changes.

15 CHAIRMAN GAMPETRO: No. I haven't seen  
16 that yet.

17 MS. NUTTBROCK: I think this is it.

18 MR. HULTS: Yeah. I guess the fact that  
19 I'm making a list.

20 MR. GREEN: Oh, okay. So you're willing  
21 to limit that to simply formatting or typographical  
22 errors at this point?

23 MS. NUTTBROCK: That allows me the  
24 flexibility to take into consideration what we've heard  
25 today. In some instances, we've gone through and made

1 the changes and had agreed on the language. In other  
2 instances, I captured some notes as to what the intended  
3 change might be, whether it be changing "operator" to  
4 "applicant" or whatever the case is. I feel comfortable  
5 that that's required to address formatting or  
6 typographical errors which do not make substantive  
7 changes to the rules.

8 Now, throughout that process, if we see, for  
9 example, that we want to make a change and we discover a  
10 week from now that it has some unintended ripple effect  
11 that we're not aware of as we sit here at this table  
12 today, then that might constitute a substantive change,  
13 in which case I would make that judgment, and it may or  
14 may not come back to you. In all cases, the final  
15 language that is forwarded through all the steps leading  
16 up to the EQC hearing in July, you'd be made aware of  
17 that final document. By what means? Through the  
18 interest -- how is that documented?

19 MR. HULTS: Yeah. Certainly interested  
20 parties typically will send out that package to you guys,  
21 as well. And like I said, it will include a section that  
22 documents whatever changes have been made since the  
23 advisory board. And typically what I will do is also  
24 include page numbers to the minutes where that discussion  
25 was held. So it's pretty easy to check up to make sure

1 that we have made that change as intended.

2 CHAIRMAN GAMPETRO: So any changes made  
3 subsequent to us voting on what we're doing here, we  
4 would see them prior to final approval?

5 MR. HULTS: Absolutely.

6 CHAIRMAN GAMPETRO: And underline any  
7 changes, as you normally do, so we could tell what was  
8 changed from what to what?

9 MR. HULTS: Yeah. When I create the EQC's  
10 rule package, it has in the introduction an additional  
11 section that describes any changes that were made since  
12 the advisory board meeting. And it may be that it's the  
13 ones that were agreed to. Certainly those will be  
14 discussed at length. But it will also be things like  
15 typos. If something was missed, those would be included,  
16 as well, and indicated where the change was made. So you  
17 would see them, yes.

18 MS. NUTTBROCK: And also, that version  
19 would include any comment that we received through the  
20 two-week public comment period.

21 MR. HULTS: Advisory board comments? This  
22 is to get it ready to go to the EQC. So whatever we  
23 decide is the package that's going forward to the EQC  
24 would have that road map that I described.

25 CHAIRMAN GAMPETRO: Two things I would ask

1 is that we say that there, just one more line that says  
2 any subsequent change such as above, or whatever  
3 wordsmith, that we would be copied on it before it goes  
4 to the final committee for approval, as part of a motion.

5 MR. HULTS: Sure.

6 CHAIRMAN GAMPETRO: And I guess your  
7 description of what we're going to get, I would like to  
8 see some differentiation between the changes that we made  
9 here and that we voted on and the changes that you made  
10 that were typos, language, whatever that you felt was not  
11 substantive.

12 MR. HULTS: And I think that would  
13 indicated because I wouldn't be able to give a page  
14 number for where that discussion took place in the  
15 meeting minutes. But I could make it more clear than  
16 that.

17 CHAIRMAN GAMPETRO: Make it clear these  
18 are the things that you changed after the meeting.

19 MR. HULTS: Sure.

20 CHAIRMAN GAMPETRO: And then we can take a  
21 look, and hopefully we'd have time, then, if we  
22 disagreed, to get back. I would add one word to that.  
23 Any such changes, as opposed to any old changes.

24 MR. HULTS: Gotcha.

25 CHAIRMAN GAMPETRO: Comments, discussion

1 regarding this motion before we go forward? Of course,  
2 it hasn't been made yet. Everyone's comfortable with  
3 this? Well, then we would entertain such a motion.

4 MR. GREEN: I would move that we adopt  
5 this motion as currently worded.

6 MR. SMITH: I'll second.

7 CHAIRMAN GAMPETRO: We have a motion and a  
8 second. All those in favor signify by saying aye.

9 (All members vote aye.)

10 CHAIRMAN GAMPETRO: Seeing none opposed,  
11 motion carries.

12 Other items for discussion?

13 MR. LOOMIS: Mr. Chairman, Marion Loomis  
14 with Wyoming Mining Association again.

15 I'd just like to tell you and commend Nancy  
16 Nuttbrock for her efforts to pull the uranium industry  
17 together and address a bunch of -- a number of fairly  
18 controversial issues. And I think she's done an  
19 admirable job in pulling it all together and getting  
20 people to sit down at the table and work out the  
21 differences. And it's worked very, very well, I think.  
22 And with the effort now, we will do something similar to  
23 start talking about coal and bond-release criteria, and  
24 hopefully that will go along smoothly, as well.

25 A couple comments on Chapter 8. I felt fairly

1 strongly that the statute dictated what the industry was  
2 required to do and that they could leave a column of  
3 drilling fluid in the holes, the exploration holes. And  
4 that's not what we ended up with in rule. And I think  
5 it's appropriate that what we have in rule is the right  
6 thing to do. But I do think that it goes beyond what is  
7 the words of the statute. The statute was written years  
8 ago and probably needs to be updated and changed. So, at  
9 some point that may happen. If that portion of the  
10 statute is ever opened up again, I think we should  
11 consider language that would bring it more into  
12 conformance with the proposed rules that you adopted  
13 today.

14 One other item. We were just discussing on the  
15 grout. And it was -- we're not quite sure exactly what  
16 you're going to propose, Mark or Nancy. Are you going to  
17 eliminate the words "grout" and use "sealant," or will it  
18 be a combination of the two efforts? I see you shaking  
19 your heads on both questions. We'd like a little bit of  
20 clarification on what we might see coming forward.

21 MS. NUTTBROCK: Thank you for the nice  
22 words, Marion. I appreciate that.

23 For the -- to try to clarify the grout, versus  
24 sealant material, what I had envisioned was to use  
25 sealant material when we're not specifically referring to

1 one of the approved types. Because they're all sealant  
2 materials in themselves, whether they be bentonite chips  
3 or whether it's a nonslurry bentonite. But I would  
4 suggest that to clarify the reading of pages 2 and 3, for  
5 the most part, that we use sealant material and describe  
6 it as a stable, low permeability with minimal shrinkage  
7 properties. But then when we talk about specifically the  
8 seven, we just use them by name. We say that we can use  
9 these cements. We can use sand cement, a concrete  
10 slurry, a bentonite slurry, and just not use that word  
11 "grout," but use the specific recipe name.

12 CHAIRMAN GAMPETRO: Mr. Loomis?

13 MR. LOOMIS: Okay.

14 MR. ROGACZEWSKI: Marion, if I could add,  
15 on the bottom of that paragraph on Section (d)(3), where  
16 it says, "The following are approved grout materials," I  
17 think we would just -- one of the changes would be, "The  
18 following are approved sealant materials," and then it  
19 goes into those.

20 MR. LOOMIS: Okay.

21 CHAIRMAN GAMPETRO: Thank you, Mr. Loomis.

22 Other items for discussion?

23 (No response.)

24 CHAIRMAN GAMPETRO: Nancy, are you  
25 planning on having your after-meeting meeting?

1 MS. NUTTBROCK: I'd like to. But I'd like  
2 to have some lunch first. But that's my intent, is to  
3 kind of make this a regular thing so people can  
4 understand that there's an opportunity, whether it be for  
5 questions and answers with our staff, or we may have  
6 specific things that we'd like to throw out to industry.  
7 Like I said, we have a few opportunities where we have a  
8 number of industry members or interested parties in the  
9 room. So I'd like to start taking advantage of this  
10 opportunity.

11 So, given that there's a few folks left, does  
12 anybody have an interest in doing so after lunch? I  
13 think we have a couple. We have the Guideline 24 and the  
14 preapplication process. We have a PowerPoint for that.  
15 And we would take this opportunity to just visit with you  
16 and take questions at that time. So I'd suggest that  
17 after a lunch break, that we could convene back here and  
18 just see who is interested and occupy the room until  
19 4:00. They'll ask us to leave at that point.

20 CHAIRMAN GAMPETRO: Okay. Seeing no other  
21 business, we would entertain a motion to adjourn.

22 MR. GREEN: I'll so move.

23 MR. COLLINS: I'll second.

24 CHAIRMAN GAMPETRO: All those in favor?

25 (All members vote aye.)

1                   CHAIRMAN GAMPETRO: Seeing no opposed, the  
2 meeting is adjourned.

3                   (Hearing proceedings concluded  
4 12:48 p.m., March 26, 2012.)

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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 12th day of April, 2012.

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RANDY A. HATLESTAD  
Registered Merit Reporter