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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
DECEMBER 11, 2020)

TRANSCRIPT OF PROCEEDINGS - VIA ZOOM

December 11, 2020
9:00 a.m.

BEFORE CHAIR CHRIS DEVENY,
BOARD MEMBERS JOHN DEARMENT,
CHRIS TWEETEN, DEXTER BUSBY, JEREMIAH LYNCH
and DAVID LEHNHERR

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC
lauriecrutcher@gmail.com

1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 * * * * *

4 CHAIR DEVENY: I'm going to go ahead and
5 get started. Welcome, everybody. And I'm getting
6 some feedback, so I'd please ask people to please
7 mute, especially their phones, if people are on
8 phones. Thank you.

9 I'm Chris Deveny. I'm Chair of the
10 Board of Environmental Review, and I'll call this
11 meeting to order. Due to the COVID-19 Pandemic,
12 we are holding this meeting virtually using the
13 Zoom meeting platform. And with that, I'll turn
14 it over to Joyce to do the roll call, please.

15 And again, we're getting horrible
16 feedback and noise. If people could please mute
17 phones and your Zoom. Go ahead, Joyce.

18 MS. WITTENBERG: Chairperson Deveny.

19 CHAIR DEVENY: Present.

20 MS. WITTENBERG: Dexter Busby.

21 BOARD MEMBER BUSBY: Here.

22 MS. WITTENBERG: Hillary Hanson.

23 (No response)

24 MS. WITTENBERG: We expect her to be
25 absent today. John DeArment.

1 BOARD MEMBER DeARMENT: Here.

2 MS. WITTENBERG: Chris Tweeten.

3 BOARD MEMBER TWEETEN: Present.

4 MS. WITTENBERG: Jerry Lynch.

5 BOARD MEMBER LYNCH: Here.

6 MS. WITTENBERG: And David, I apologize
7 if I mess up your last name. David Lehnherr.

8 BOARD MEMBER LEHNHERR: That's fine.
9 Here.

10 MS. WITTENBERG: Okay. So we have six.
11 We have a quorum.

12 CHAIR DEVENY: Okay. Great. Thank you,
13 Joyce. I'd like to introduce Joyce Wittenberg who
14 is helping us out with all the technology today,
15 and doing a lot of the meetings, administrative
16 preparation for us, and thank you, Joyce.

17 So with that, let's go ahead and have a
18 roll call or introduction from DEQ; and then after
19 that, I'm going to ask Joyce to go through all of
20 the public members who have indicated that they're
21 on line and probably wish to speak later. So go
22 ahead with DEQ.

23 Again, there's somebody who hasn't
24 muted, and if they could do that, I would really
25 appreciate it. I don't know if anyone else is

1 getting that feedback, but it's pretty
2 distractive.

3 MS. CLERGET: If you're not speaking or
4 not a Board member, could you please turn off your
5 video, because that will help everybody's feed.
6 It takes a lot of bandwidth when everybody leaves
7 their video on. Thank you.

8 MS. WITTENBERG: And for those that are
9 on a phone, it's my understanding if you press
10 star six, it will mute you.

11 MR. MATHIEUS: So Madam Chair, for ease
12 sake, we just thought that I'd go through the list
13 of DEQ employees are on. I've got a list sitting
14 right here, if you're okay with that.

15 CHAIR DEVENY: Okay. And just so that,
16 because we are on Zoom and on the phone, please
17 everybody introduce yourself before you speak. So
18 that was George Mathieus with DEQ speaking up, so
19 go ahead, George. Thank you.

20 MR. MATHIEUS: Great, Madam Chair.
21 Again, George Mathieus, DEQ Deputy Director. So
22 from the Water Quality Division we have Tim Davis,
23 Galen Steffen, Jon Kenning, Myla Kelly, Lauren
24 Sullivan, Mike Suplee, Director McGrath.

25 From the Air Quality Bureau, we have Liz

1 Ulrich, Julie Merkel, Troy Burrows, Dave Klemp.

2 From our Coal and Opencut Program, I see
3 we have Ed Coleman. And our attorney staff that
4 are present, Kirsten Bowers, Ed Hayes, Norm
5 Mullen, Mark Lucas, Sarah Christopherson, Kurt
6 Moser, Angie Colamaria. I think that's everybody,
7 Madam Chair.

8 CHAIR DEVENY: Okay. Great. And we
9 also have our Board attorney Sarah Clerget with us
10 today. Thank you, Sarah. So Joyce, go ahead, and
11 I'll turn it over to you to have the public
12 introductions.

13 BOARD MEMBER LYNCH: This is Board
14 Member Lynch. I'm still getting a lot of
15 feedback.

16 CHAIR DEVENY: Yes. I am, too. I don't
17 know what to do about it other than to ask people
18 to be polite with their technology.

19 MR. MATHIEUS: Madam Chair, this is
20 George Mathieus. It looks like the feedback is
21 coming from a phone that ends in 770.

22 CHAIR DEVENY: That's helpful.

23 MR. MATHIEUS: There it goes. Thank
24 you.

25 CHAIR DEVENY: Thank you. Go ahead,

1 Joyce.

2 MS. WITTENBERG: So I'm going to call on
3 the phone numbers. When I call out the last three
4 digits of your phone number, please identify
5 yourself, who you're affiliated with, if you plan
6 to comment on anything today, and what it is, and
7 whether you're a proponent or opponent. 770.

8 (No response)

9 MS. WITTENBERG: Of course you'll have
10 to unmute yourself to talk.

11 (No response)

12 MS. WITTENBERG: 770.

13 (No response)

14 CHAIR DEVENY: Why don't you go ahead,
15 Joyce. We'll come back to that at the end then.

16 MS. WITTENBERG: Okay. 408.

17 (No response)

18 MS. WITTENBERG: Phone number ending in
19 408, could you identify yourself, please.

20 (No response)

21 MS. WITTENBERG: How about phone number
22 ending in 941, could you identify yourself.

23 MR. DOLPHAY: Matthew Dolphay, Holland
24 and Hart. I don't plan on making any comment.

25 MS. WITTENBERG: One more time, phone

1 number ending in 408.

2 (No response)

3 MS. WITTENBERG: Phone number ending in
4 770.

5 (No response)

6 MS. WITTENBERG: Phone number ending in
7 517.

8 BOARD MEMBER BUSBY: This is Dexter.

9 MS. WITTENBERG: Okay.

10 CHAIR DEVENY: I think go ahead on and
11 move to the chat, I think, Joyce.

12 MS. WITTENBERG: Do you want them called
13 out from the chat?

14 CHAIR DEVENY: Yes. I believe that's
15 the procedure that you guys talked about doing; is
16 that correct, Sarah and George?

17 MS. WITTENBERG: So let me get up here.
18 We have Christopher Servheen. Do you need me to
19 tell you if he's going to talk or all that?

20 MR. SERVHEEN: Yes. This is Christopher
21 Servheen. I'm with the Montana Wildlife
22 Federation, and I wish to testify. I'm a
23 proponent of the regulations.

24 MS. WITTENBERG: Joyce, we don't have to
25 have everybody speak for themselves. You can just

1 read it off of the chat list, and then at the end
2 we'll ask if you've missed anybody.

3 CHAIR DEVENY: Somebody needs to mute,
4 please.

5 MS. WITTENBERG: William Geer, he will
6 be making a statement as a proponent.

7 MR. GEER: Yes, I will.

8 MS. WITTENBERG: John Kilpatrick with
9 the USGS, he would like to make a comment on the
10 selenium rulemaking on behalf of the US Geological
11 Survey, neither proponent or opponent.

12 Gregory Hoffman would like to make a
13 comment as a proponent. Genny Hoyle would like to
14 make a comment on the selenium rulemaking on
15 behalf of the Kootenai Tribe of Idaho as a
16 proponent. Scott Spaulding, USFS, no public
17 comment. Michael Jamison, National Parks
18 Conservation Association. Jim Vashro from
19 Kalispell. Gary Aitken, Jr., Chairman of the
20 Kootenai Tribe of Idaho, proponent, and would like
21 to speak. Jim, Flathead Wildlife, Inc. David --

22 MS. CLERGET: Could we get a last name?
23 Sorry to interrupt, Joyce. Jim, what is your last
24 name?

25 MR. VASHRO: Sorry. I got the chat a

1 little wrong. It's Jim Vashro with Flathead
2 Wildlife in Kalispell, and I'm a proponent.

3 MS. CLERGET: Thank you.

4 MS. WITTENBERG: Dave Hadden, a
5 proponent of the rule. He represents Headwaters
6 Montana, a regional conservation organization.
7 Colby Blair would like to comment on the selenium
8 rule on behalf of the Last Resort Outfitters as a
9 proponent. I think this is Jim again, so we'll
10 skip that.

11 Rodney Lance Veolia, Great Falls, no
12 comment. William Geer, speaking as a proponent
13 from Montana Wildlife Federation, and Hellgate
14 Hunters and Anglers. David Kassarah (phonetic),
15 environmental engineer, Westmoreland Resources, no
16 comments. Gregory Hoffman, US Army Corps of
17 Engineers, Koocanusa standard, proponent.
18 Opportunity to comment appreciated.

19 Trevor Selch, Montana FWP, would like to
20 make comment in favor of adopting site specific
21 criteria for Lake Koocanusa and the Kootenai
22 River. Shelly Fyant, Chairwoman, Confederated
23 Salish and Kootenai Tribes, comment as proponent.

24 Chris Servheen, Montana Wildlife
25 Federation, would like to comment as a proponent

10

1 for the selenium regulations. Ayn Schmit, US
2 Environmental Protection Agency would like to
3 comment in support of the proposed selenium
4 criteria. Michael Jamison, National Parks
5 Conservation Association, would like to comment as
6 a proponent of the rule.

7 Lars Sander-Green, WildSight, would like
8 to comment as a proponent for the selenium rule.
9 Garrett Visser, Idaho Wildlife Federation, he
10 would like to comment as proponent on proposed
11 selenium rule. Eddie Petroschen (phonetic) would
12 like to comment as a proponent of the selenium
13 rule.

14 Vicki Marquis with Holland and Hart
15 representing Teck as an opponent to the proposed
16 selenium rule, and will be offering comment on
17 that agenda item. Anne Fairbrother, Exponent,
18 Inc. would like to comment on the selenium rule as
19 an opponent. Sue Ireland, Fish Wildlife
20 Department Director, Kootenai Tribe of Idaho,
21 would like to make comment on the selenium rule on
22 behalf of the Kootenai Tribe of Idaho as a
23 proponent.

24 David Blackburn, Kootenai Angler,
25 proponent, would like to comment. Michael Ryan

1 Aylward, British Columbia Environment, observing
2 only. Lars Sander-Green is also aware of a few
3 others who will be joining to make a comment as
4 proponents of the selenium rule, but they're not
5 here yet. I believe we will ask again before we
6 take comment on that item.

7 Jill Weitz, proponent, representing
8 Salmon Beyond Borders, from Juneau, Alaska would
9 like to comment. Jim Vashro, that's Jim again.
10 Dr. Rachel Malison, Researcher and Program Manager
11 of Monitoring Montana Waters at Flathead Lake
12 Biological Station, proponent, would like to
13 comment.

14 Brad Smith, Idaho Conservation League,
15 would like to comment as a proponent of the
16 selenium rules. Alec Underwood, Montana Wildlife
17 Federation, proponent, no public comment. Duncan
18 Stewart, Embassy of Canada, no comments. David
19 Brooks, Montana Trout Unlimited, proponent, and
20 would like to comment.

21 Bob Steed, Idaho DEQ, Quarterly and
22 Regional Office, no testimony, but can answer any
23 questions related to Idaho criteria. Clayton
24 Elliott, Montana Trout Unlimited, proponent for
25 proposed site specific selenium standard rule

1 final adoption.

2 Vicki Marquis with Holland and Hart,
3 this time representing the City of Great Falls,
4 will be available to answer questions and comment
5 on the stipulation for consideration by the Board
6 as an action item III(C)(1) on the agenda today.

7 Erin Sexton would like to make comment
8 as a proponent on the selenium standard. Lars
9 Sander-Green who commented he's aware of others
10 who want to comment as proponents on the selenium
11 rule and has listed them. Do you want me to call
12 out those names? They're not here yet.

13 CHAIR DEVENY: Let's do that later.

14 MS. WITTENBERG: Peggy Trank, Treasure
15 State Resources Association, no comments. Clayton
16 Elliott, skip that. Randal McNair, WildSight,
17 would also like to comment as a proponent for the
18 selenium criteria. Chairwoman Shelly Fyant on
19 behalf of Confederated Salish and Kootenai Tribes
20 will make comments; and Stu Levit will make
21 comments on behalf of the Tribes as well, both as
22 proponents.

23 Randal McNair, Fernie, British Columbia,
24 WildSight Conservation coordinator for the Elk
25 Valley, proponent of the proposed selenium

1 standard. Ellie Hudson Heck, Idaho Conservation
2 League, will not be commenting.

3 Dave Hadden would like to make comment.
4 Tonya Fish, EPA, no comment. Travis Meyers, CDM
5 Smith, here for Great Falls permit appeal, no
6 public comment. Kristen Boyd, Wildlife Biologist,
7 member of public, proponent of regulations, no
8 comment. And she said that privately. I'm going
9 to copy that and put that in there, everyone, so
10 that we have that on the record. And that is it.

11 CHAIR DEVENY: Okay. Thank you, Joyce.
12 And I appreciate everyone's patience with doing
13 this. I know that the Zoom technology enables us
14 to move forward, but it is a little bit awkward,
15 isn't it? Okay.

16 With that, we're going to move on to the
17 administrative items on our agenda today. We have
18 four sets of minutes to review and decide if we
19 approve with, so we'll take those one at a time.
20 First of all, the October 9th, 2020 meeting
21 minutes. Board members, do you have any comments
22 or corrections to that?

23 (No response)

24 CHAIR DEVENY: Hearing and seeing none,
25 is there any public comment on those meeting

1 minutes?

2 (No response)

3 CHAIR DEVENY: Hearing and seeing none,
4 is there a motion on those minutes?

5 BOARD MEMBER LYNCH: This is Board
6 Member Lynch. I'll move to approve those minutes.

7 CHAIR DEVENY: It's moved. I'll second
8 it. Thank you. All those Board members in favor,
9 please signify by saying aye.

10 (Response)

11 CHAIR DEVENY: Any opposed?

12 (No response)

13 CHAIR DEVENY: Hearing none, the October
14 9th meeting minutes are approved.

15 Let's move on to the August 7th meeting
16 minutes. We had asked those to be revised a
17 little bit, and they have been. Are there any
18 additions or corrections to the August 7th
19 minutes?

20 (No response)

21 CHAIR DEVENY: Any public comments on
22 the August 7th minutes?

23 (No response)

24 CHAIR DEVENY: I will move that we
25 approve the August 7th minutes. Is there a

1 second?

2 BOARD MEMBER DeARMENT: This is John.
3 I'll second it.

4 CHAIR DEVENY: Seconded by John
5 DeArment. All those in favor of the motion to
6 approve the August 7th minutes, please signify by
7 saying aye.

8 (Response)

9 CHAIR DEVENY: Any opposed?

10 (No response)

11 CHAIR DEVENY: Hearing none, the August
12 7th minutes are approved.

13 We have minutes from the special meeting
14 that we held on September 24th. Are there any
15 additions or corrections to those minutes by Board
16 members?

17 (No response)

18 CHAIR DEVENY: Hearing none, any from
19 DEQ or the public?

20 (No response)

21 CHAIR DEVENY: Hearing none, would
22 someone make a motion on those.

23 BOARD MEMBER LYNCH: Board Member Lynch
24 again. I'll move to approve those minutes.

25 CHAIR DEVENY: All right. And I'll

16
1 second those. All those in favor, signify by
2 saying aye.

3 (Response)

4 CHAIR DEVENY: Any opposed?

5 (No response)

6 CHAIR DEVENY: Hearing none, the
7 September 24th meeting minutes are approved.

8 And the last set is from our special
9 meeting on October 29th. Any Board members have
10 additions or corrections to those minutes?

11 (No response)

12 CHAIR DEVENY: Seeing none, is there any
13 public comment or DEQ corrections or additions?

14 (No response)

15 CHAIR DEVENY: Hearing and seeing none,
16 I would move to approve the October 29th minutes.
17 Could I have a second.

18 BOARD MEMBER LEHNHERR: Madam Chair,
19 this is David Lehnherr. I'll second those.

20 CHAIR DEVENY: It's been moved and
21 seconded. All those in favor, please signify by
22 saying aye.

23 (Response)

24 CHAIR DEVENY: Any opposed?

25 (No response)

1 CHAIR DEVENY: Hearing none, those
2 meeting minutes are also approved. Okay.

3 So the next is a little housekeeping
4 thing for next year. Usually in December the
5 Board of Environmental Review sets the meeting
6 schedule for the following year, and those are
7 based on certain requirements for meeting
8 schedules with Secretary of State filing, and
9 those dates are before you as February 12th, April
10 16th, June 11th, August 13th, October 8th, and
11 December 10th. Generally they're the second, I
12 believe the second Friday of the month. It varies
13 a little bit.

14 Is there any Board discussion on these
15 dates or a motion to use those dates as our
16 schedule?

17 BOARD MEMBER LYNCH: This is Board
18 Member Lynch. I'll move to approve the dates.

19 CHAIR DEVENY: It's been moved. Is
20 there a second?

21 BOARD MEMBER DeARMENT: This is John
22 DeArment. I'll second that.

23 CHAIR DEVENY: It's been moved and
24 seconded that the dates set forth in our Board
25 packet will be set for the schedule for the BER

1 meetings for 2021. Is there any public comment on
2 that?

3 (No response)

4 CHAIR DEVENY: Hearing none, all those
5 in favor, signify by saying aye.

6 (Response)

7 CHAIR DEVENY: Any opposed?

8 (No response)

9 CHAIR DEVENY: Hearing none, the
10 schedule is set.

11 Let's move on then to the briefing
12 items, and we'll turn to Sarah Clerget, our Board
13 attorney, to walk us through those cases.

14 MS. CLERGET: Sure. Starting with your
15 agenda item II(A)(1)(a), this is Copper Ridge, and
16 this one, as you guys know, has been outstanding
17 for awhile. This is my delinquency on getting
18 this decision done.

19 Currently pending before me are motions
20 for summary judgment, a motion to take judicial
21 notice, and a motion to strike, and they are all
22 fully briefed, and have been for a bit, and I will
23 get a decision out on them as soon as possible,
24 certainly before the next meeting.

25 And there is a District Court case piece

1 of this as well, which was in Amy Christensen's
2 memo, outside Counsel, in your Board packet. And
3 Chris, I understand you're going to update that as
4 Amy is not here.

5 CHAIR DEVENY: Yes. I didn't think it
6 was necessary for Amy to come since she was able
7 to very concisely describe what's going on there.

8 But basically BER filed a motion to
9 dismiss on the grounds that we should not have
10 been named in the petition, and that motion has
11 been fully briefed, and was argued on October 7th,
12 and is awaiting a decision in District Court now.

13 MS. CLERGET: Okay. And then moving on,
14 this is (b), Duane Murry. I've issued a
15 scheduling order on that case on October 6th of
16 2020. They're proceeding according to the
17 scheduling order with discovery closing in March
18 of 2021.

19 Moving on to 2(a), this is Alpine
20 Pacific Utilities. You guys took action on this,
21 granted the stipulation and request for retention
22 of Board jurisdiction. Alpine is to provide DEQ
23 confirmation that the ambient groundwater
24 monitoring has been installed no later than April
25 20th of 2021. And I just wanted to let you guys

1 know, per Chris's request, that we will -- "we"
2 meaning me and Aleisha, the Hearing Examiner --
3 will keep track that has been done and update the
4 Board when that happens.

5 (b) is Absaloka Mine. There is a joint
6 motion for remand and suspension of proceedings
7 that you granted on October 9th, and then the
8 final order was signed on November 16th. The
9 parties will file a joint status update to the
10 Board no later than June 30th, 2021, so you guys
11 will see that again at the meeting. It will
12 continue to be on the agenda, but you'll see that
13 update after it comes in.

14 (c) is Montanore Minerals. We had a
15 hearing on this one. It got stayed as a parallel
16 case went up to the Supreme Court. The Supreme
17 Court made the decision on that case, which was
18 issued November 17th. The parties have until
19 December 17th to file a joint status report,
20 indicating how or if they wish to proceed with the
21 contested case, given the Supreme Court's
22 decision, which was to vacate the permit and
23 remand it back to DEQ.

24 (d) is Spring Creek Coal. And there's
25 an amended scheduling order that was issued May

1 12th of 2020. The parties are proceeding
2 according to that, the discovery closing in
3 January of 2021. They've also filed an amended
4 notice in that case, so it's chugging along.

5 (e) is Signal Peak Energy. There was a
6 District Court case on this that went up to the
7 Supreme Court, and came back down, and was
8 remanded back. So the contested case proceeding
9 has been going along while that Supreme Court
10 appeal was pending, so we've just continued
11 through.

12 We did a hearing that was a four day
13 trial on that. Proposed findings of fact and
14 conclusions of law from the parties are due on
15 December 18th, with responses to those FOFCOLS due
16 on February 5th of 2021. Once those responses are
17 in, then it's in front of me, and I will issue
18 proposed findings of fact and conclusions of law
19 to the Board.

20 (f) is Rippling Woods. This is a
21 consolidated, I think there are fourteen different
22 cases brought by homeowners in the Rippling Woods
23 Subdivision.

24 DEQ filed a partial motion for summary
25 judgment in this case. There was a response and

1 reply on November 4th. We've set oral argument
2 for that partial motion for summary judgment in
3 January of 2021, at which point it will be ripe
4 for a decision from me.

5 (g) is Western Energy, which we refer to
6 as Western Energy Area F. There were substantial
7 motions in that case. Westmoreland, who is the
8 equivalent to -- Western Energy is the title of
9 the case, but Westmoreland has taken over Western
10 Energy's position, so when I say Westmoreland in
11 the description, they are essentially the
12 Intervenor, the mine.

13 So they filed a partial motion for
14 summary judgment, DEQ filed a partial motion for
15 summary judgment, and the Conservation Groups
16 filed a partial motion for summary judgment.
17 Westmoreland also filed a motion to dismiss.

18 I issued a decision on all of those
19 motions on November 24th. I denied Westmoreland's
20 motion to dismiss. I denied the Conservation
21 Groups' motion for partial summary judgment, and I
22 granted Westmoreland and DEQ's motions for partial
23 summary judgment, which means that out of the six
24 original issues, only one issue remains for a
25 hearing.

1 I had a status conference with the
2 parties on December 4th, and they could not agree
3 to bring that decision before the Board. And as
4 you all know, my position has been unless the
5 parties agree to bring it in front of you
6 essentially as an interlocutory, for lack of a
7 better term, and if they don't agree, then it
8 doesn't come. So this case will continue to a
9 hearing on the one remaining issue, and then it
10 will be before the Board in its entirety.

11 (h) is the AM3 appeal. That comes from
12 the outside Counsel memo, Chris.

13 CHAIR DEVENY: Okay. So again, this was
14 another case that we had assigned to Amy
15 Christensen.

16 BER filed a petition for writ of
17 supervisory control with the Supreme Court in May,
18 and it was denied. The matter was remanded to the
19 District Court for briefing. The petition was
20 fully briefed, and oral argument is currently
21 scheduled for December 16th.

22 However, at the end of October the other
23 Respondents in the case filed a joint motion to
24 strike the exhibits that were attached to the
25 Petitioner's reply brief, and they've asked the

1 Court to rule on that motion to strike before
2 proceeding to the petition itself, and to convert
3 that December 16th oral argument meeting to
4 arguments on the motion to strike, but the Court
5 has not yet ruled on this request, so we'll be
6 hearing more of that later on at a future meeting.
7 Go ahead, Sarah.

8 MS. CLERGET: Great. (i) is the Savko
9 matter. On November 25th, 2020, the parties
10 requested a 60 day stay. They're working on
11 settlement. I granted that on November 30th. And
12 by January 25th, they will either file their
13 stipulation for dismissal or a proposed schedule.

14 (j) is Signal Peak. We refer to this as
15 the water rights permit to distinguish it from the
16 other Signal Peak cases. They're working on
17 settlement on this one, so it's stayed. On
18 November 20th, I stayed it, and they will provide
19 an update, either a stipulation for dismissal or a
20 schedule on February 25th of 2021.

21 (k) is the matter of Woodrock. They're
22 also working on settling this one. It was an
23 unopposed motion to stay on November 30th, which I
24 granted, and they will have until January 29th,
25 2021 to file either that stipulation or a proposed

1 schedule.

2 And I think that's all from me. The
3 last one is for DEQ.

4 CHAIR DEVENY: Okay. And can we call on
5 Kirsten Bowers then to give us an update on the
6 Western Energy Rosebud Mine case.

7 MS. BOWERS: Yes. Good morning, Madam
8 Chair, members of the Board. As you know, that
9 case has been before the Board for awhile, and has
10 been stayed pending judicial review of the MPDES
11 permit.

12 And that case has gone to the Montana
13 Supreme Court. The Montana Supreme Court reversed
14 the First Judicial District Court on decisions of
15 law, and found that DEQ properly interpreted its
16 rule, which we call the ephemeral rule. It allows
17 DEQ some flexibility to exempt ephemeral waters
18 from the water quality standards that apply to
19 Class C-3 waters without the Board reclassifying
20 those waters.

21 And the Court also determined that DEQ
22 lawfully permitted representative sampling of
23 outfalls under Western Energy Company's MPDES
24 permit.

25 The Montana Supreme Court remanded the

1 case back to the District Court for further
2 proceedings to determine certain issues of
3 material fact, specifically whether DEQ acted
4 properly in regard to a stretch of Eastfork
5 Armells Creek that is potentially impaired and
6 intermittent, and whether it's necessary for DEQ
7 to adopt the TMDL for the impaired segment; and
8 also whether the representative monitoring
9 selected by DEQ is factually supported in the
10 record.

11 And then more recently, jurisdiction of
12 the case was assumed by Judge Abbott, and DEQ and
13 Westmoreland renewed a joint motion to stay the
14 litigation until the earlier of DEQ's issuance of
15 a renewal of the MPDES permit, which DEQ and
16 Westmoreland believe will moot the litigation, or
17 until June 1st, 2021. And that motion to stay is
18 opposed by the Plaintiffs. The motion is fully
19 briefed and awaiting decision by Judge Abbott.

20 CHAIR DEVENY: Okay. Thank you, Ms.
21 Bowers. Next we're moving on to action items, and
22 we have a couple rules before us. The first one
23 is the proposed amendments to the air quality
24 operation fees for registered sources, and I'll
25 turn this over to DEQ to give us some background,

1 then we'll have some public comment for
2 discussion.

3 MR. MATHIEUS: Madam Chair, this is
4 George Mathieus again. Liz Ulrich from the Air
5 Quality Bureau will be presenting to the Board
6 today.

7 CHAIR DEVENY: Go ahead, Ms. Ulrich.

8 MS. ULRICH: Good morning, Madam Chair,
9 members of the Board. My name is Liz Ulrich, and
10 I'm the supervisor of the Analysis and Planning
11 Section of the Department's Air Quality Bureau.

12 I'm here today to request that Board
13 adopt the proposed amendments of the
14 Administrative Rules of Montana 17.8.501, 504,
15 505, and 510 pertaining to air quality operation
16 fees for registered sand and gravel, asphalt, and
17 concrete facilities.

18 The Department requested the Board
19 initiate rulemaking at their August 7th meeting,
20 and provided comment in support of the proposed
21 rule at the public hearing on September 25th,
22 2020. No additional comments were received.

23 If approved by the Board, this fee
24 structure will be used to calculate the
25 operational fees for registered sand and gravel,

1 asphalt, and concrete facilities. This will allow
2 the Department to collect sufficient revenue to
3 support the appropriate implementation of this air
4 quality program.

5 As is the case with other fee
6 assessments, the Department will annually evaluate
7 whether the fee rates for this registration
8 program are adequate to fund the required work,
9 will actively engage stakeholders in the process,
10 and will return to the Board if necessary to
11 adjust the fees to cover the costs of the program.

12 I've submitted a copy of this testimony
13 to the Board secretary Joyce Wittenberg and the
14 Court Reporter Laurie Crutcher. Thank you. Are
15 there any questions?

16 CHAIR DEVENY: Are there any questions
17 from Board members of Ms. Ulrich?

18 (No response)

19 CHAIR DEVENY: Seeing none, there was no
20 public comment at the hearing, but is there any
21 public comment today regarding whether the Board
22 should or should not adopt this proposed rule?

23 (No response)

24 CHAIR DEVENY: Is there any public
25 comment?

1 (No response)

2 CHAIR DEVENY: Hearing none, is there
3 any Board discussion?

4 (No response)

5 CHAIR DEVENY: Recommendations?
6 Motions?

7 BOARD MEMBER DeARMENT: Madam Chair,
8 this is John DeArment. I propose that we adopt
9 the new rule as advanced by DEQ.

10 CHAIR DEVENY: John, could I ask you to,
11 before that's seconded, could I ask you to also
12 include in that motion the approval of the House
13 Bill 521 and 311 analyses for stringency and
14 takings with your motion.

15 BOARD MEMBER DeARMENT: Absolutely. I
16 will happily revise it with that language. Thank
17 you, Madam Chair.

18 CHAIR DEVENY: And I would second the
19 motion before us. Is there any discussion by
20 Board members?

21 BOARD MEMBER BUSBY: This is Dexter.
22 I've got one question.

23 CHAIR DEVENY: Go ahead, Dexter.

24 BOARD MEMBER BUSBY: And this is for Air
25 Quality. Is this the first time you've set fees

1 for these particular items?

2 MS. ULRICH: Madam Chair, Mr. Busby,
3 this is the first time. This is the first time
4 this structure has been initiated, and hopefully
5 approved, because this is a new program. The
6 Board adopted these new rules back in 2019 to
7 develop the registration program for these
8 sources, rather than a case-by-case permitting.

9 BOARD MEMBER BUSBY: Okay. So there's
10 no history of collection on this, so the numbers
11 that you've put out may or may not be adequate or
12 too much, so this is just your shot for the first
13 go around?

14 MS. ULRICH: Madam Chair, Mr. Busby. We
15 have done analysis based on previous collections
16 through our permitting process. They were
17 previously permitted sources. So we have done the
18 analysis of what the revenue was prior when they
19 were permitted, compared to what will we need to
20 collect as registered sources, and looked at their
21 tonnage, their production information.

22 So we have done an analysis, and we
23 think this is a really good start for us, but
24 again, we will come back if we have miscalculated
25 or we need to adjust those rates.

1 BOARD MEMBER BUSBY: Okay. Thank you.

2 CHAIR DEVENY: Is there any other
3 further Board discussion?

4 (No response)

5 CHAIR DEVENY: Hearing none, there's a
6 motion and it's been seconded before the Board.
7 I'd like to have a vote on that. All those in
8 favor of the motion to adopt the proposed
9 amendments and House Bill 521 and 311 analyses,
10 please signify by saying aye.

11 (Response)

12 CHAIR DEVENY: Are there any opposed?

13 (No response)

14 CHAIR DEVENY: Hearing none, the
15 proposed amendments and rule changes are adopted.
16 Thank you.

17 Next we're going to move on to the
18 matter of the final adoption of the proposed
19 amendments of Administrative Rules of Montana
20 17.30.602, and the proposed New Rule I pertaining
21 to selenium standards for Lake Koocanusa and the
22 Kootenai River.

23 And with that, I would like to first --
24 There's a lot of interest here, so I kind of want
25 to set the parameters for how we're going to

1 handle this. There's a lot of people obviously
2 interested in this, and that want to speak today.

3 The first thing I want to say is I want
4 to be clear to everybody that this is not the
5 public hearing on this matter. That public
6 hearing has already been held, and the hearing
7 record has been established, and has been before
8 the Board members and others. So I just want to
9 be really clear about that.

10 So we won't be able to allow any
11 additional new testimony today. Something that
12 hasn't been already included in the hearing record
13 cannot be allowed, and there's no need to repeat
14 information that was in the hearing record. It's
15 all there, and people have had a chance to look at
16 it. That's the record that the Board will be
17 considering when making their decision on this
18 today.

19 So with that, the procedure that we'll
20 be using today is first giving the Department
21 approximately 15 minutes to give an overview of
22 the proposed rule, and then we're going to open it
23 up for brief comments from, statements from
24 proponents, and then we will get statements from
25 opponents, and then we will take statements from

1 anybody else that wants to be heard.

2 And we will try to do our best to make
3 sure that everybody has a chance to speak, but
4 because of the number of people that have
5 identified that they want to speak, I'm going to
6 ask that you limit your oral statements to one
7 minute, but recognize that Board members may have
8 questions of you as we deliberate this after we
9 hear the public comment.

10 And I'm going to ask Board members also
11 to hold their questions until we have our
12 discussion period, if they're comfortable doing
13 that.

14 So Joyce and Sarah, I believe, are going
15 coordinate the order in which people are going to
16 be called to speak, based on how they identified
17 themselves at the beginning of the meeting. So as
18 Laurie suggested, when your name is called, if you
19 can turn on your video, make sure you turn off
20 your mute, and then you'll have your chance to
21 speak. So we think this is probably going to be
22 the best way to handle this Zoom meeting, and we
23 hope everybody is comfortable with that.

24 So with that, I'm going to ask DEQ to
25 give their approximately 15 minute presentation,

1 and I believe they have some slides to put up, so
2 we'll give them a second to get that ready.

3 MR. MATHIEUS: Madam Chair, this is
4 George Mathieus. Today Director McGrath would
5 like to make some opening comments, and then the
6 presentation that you should be seeing will be led
7 by Myla Kelly and Lauren Sullivan.

8 CHAIR DEVENY: Okay. Great. So
9 Director Shaun McGrath, go ahead.

10 DIRECTOR McGRATH: Thank you, Madam
11 Chair, and members of the Board. So I'm the
12 Director of DEQ, and the Department is here today
13 before the Board asking you to adopt the proposed
14 rule that would set site specific standards for
15 selenium for Lake Koocanusa and the main stem of
16 the Kootenai River.

17 As George said, the Department's
18 presentation of the proposed rule will be made by
19 two of our lead scientists on this effort, Myla
20 Kelly, who is Water Quality Standards and Modeling
21 Manager, and Lauren Sullivan, who is a water
22 quality scientist in the Water Quality Division.

23 Additionally, Tim Davis is here. Tim is
24 the Water Quality Division Administrator, who has
25 also served as the co-chair of the Lake Koocanusa

1 Working Group, with his counterpart from British
2 Columbia's Ministry of Environment.

3 I will kick off the presentation by
4 making a few introductory remarks, and first, I
5 just want to say I really acknowledge the
6 tremendous amount of work that's gone into this
7 effort.

8 This proposed rule is the culmination of
9 years of work by many, many people representing
10 various interests, and coming at it from different
11 roles, and I want to thank all of you for
12 contributing so thoughtfully, and helping the
13 Department develop this proposal for us.

14 And thanks also to the members of the
15 public that participated in what has been a very
16 robust conversation around this proposal, as is
17 evidenced by the many comments in the packet.
18 This work and this broad participation really has
19 helped to shape the rule, the proposed rule, and
20 given us the confidence in the end result that we
21 bring today to the Board.

22 So a couple of things that I want to
23 speak to real quickly. First is there have been
24 some comments that suggested that this has been a
25 rushed process, or that there were political

1 motivations behind it. That is not the case.

2 This started back in 2012 when the
3 Department listed Lake Koocanusa as threatened by
4 selenium on the 303(d) list, selenium being a
5 toxic pollutant. And under the Federal Clean
6 Water Act, Montana is required to establish
7 standards for pollutants to ensure that uses in a
8 water body are protected.

9 We started that effort then in 2014,
10 this effort that has culminated into this rule;
11 and in fact back in 2014, the 2020 time frame, the
12 end of 2020 to finalize the rule, was identified
13 at that point.

14 Beyond that, I went in 18 months ago to
15 meet with the Governor's office with the Governor
16 to discuss the priorities for the Department in
17 the remainder of our Administration. And this was
18 something that we discussed, and the Governor
19 again affirmed that we needed to stick with that
20 time frame of the end of 2020 to finalize this
21 rule. And we then communicated that to the
22 Legislature, to the EQC, back in September of last
23 year. So it's hardly been political, it's hardly
24 been rushed.

25 And in addition to that, we've also been

1 quite transparent, and certainly followed MAPA in
2 the process in the development of the rule. In
3 fact, we've had nine public meetings and hearings
4 just since August of this year. On top of that,
5 we went and met with the Environmental Quality
6 Council and with the Water Policy Interim
7 Committee.

8 And Board member Tweeten, you raised
9 back in September, you admonished us to make sure
10 that we also were reaching out to the local
11 elected officials that were raising concerns and
12 questions, and we took you up on that.

13 We held a special meeting for Lincoln
14 County, the local elected officials there. In
15 addition a number of private conversations were
16 held. I made a number of calls, as did others in
17 the Department.

18 The second issue that I want to respond
19 to is there's been a suggestion of, you know,
20 what's the urgency around this, that the
21 Department hasn't shown any mass fish kills, or
22 any two headed fish. But first off, that's just
23 simply not how the Clean Water Act works.

24 The Clean Water Act requires us to set
25 standards that will be protective of designated

1 uses. It is intended to be proactive, not
2 reactive. If we are being reactive here, and
3 waiting for those kinds of impacts, that's what
4 really leads to Endangered Species Act
5 designations, or Superfund designations.

6 But that said, I do want to say that I
7 agree. There is really some urgency around this.
8 Just in October, Idaho, the State of Idaho, listed
9 Kootenai River as impaired. What that means is
10 Montana will be getting a waste load allocation,
11 which would require us to make sure that the water
12 coming into Idaho meets their standards, which
13 means we will have to reduce selenium that's
14 actually traveling through the state out of
15 Canada, out of British Columbia.

16 Montana has also found, like Idaho,
17 levels of selenium in fish tissue above EPA's
18 recommended criteria. This isn't a hypothetical,
19 this is a reality that we have impacts already.
20 And levels of selenium in the Elk River up in
21 British Columbia are at the point where even
22 Teck's scientist has acknowledged that it's
23 contributed to diminished fisheries there in Elk
24 River. And indeed, the Canadian federal
25 government is investigating Teck for die-offs of

1 cutthroat trout in the Elk.

2 Beyond that, that is, given the amount
3 of coal mining that is already occurring, but
4 there are additional mines that are proposed,
5 expansion of existing mines that are proposed, so
6 this challenge will only increase.

7 Neither Montana or British Columbia has
8 a protective standard today. No one has argued
9 that the current level of five that Montana has is
10 protective. So it is time for this state to
11 revise this standard to ensure that it's
12 protective, and by doing so, also keep the
13 pressure on our counterparts in British Columbia
14 to do the same on their side of the border.

15 I come to you with great confidence
16 today in the science that stands behind, that has
17 informed this proposed rule; I have confidence in
18 the public participation and engagement that is
19 taking place, the process that has been taking
20 place; that this rule includes standards that are
21 protective and appropriate for Lake Koocanusa and
22 the Kootenai River, and I commend them to you
23 today for your adoption.

24 With that, let me now turn it to Myla
25 and Lauren.

1 MS. KELLY: Thank you, Director McGrath.
2 Good morning, Madam Chair, members of the Board.
3 Is the volume okay? Can everybody hear okay?
4 Great.

5 Again, my name is Myla Kelly. I'm the
6 manager of Montana DEQ's Water Quality Standards
7 and Modeling Section. And today myself and our
8 technical project lead, Lauren Sullivan, will be
9 providing you with a presentation to support our
10 request to the Board today to adopt the proposed
11 rules for selenium water quality standards for
12 Lake Koocanusa and Kootenai River.

13 The proposed rules that we request your
14 consideration for adoption are as follows: The
15 standards are comprised of fish tissue values.
16 These are the same for Lake Koocanusa and the
17 Kootenai River, and they mirror EPA's national
18 recommended criteria; and a water column value,
19 which for Lake Koocanusa is based on site specific
20 data, and for which the Kootenai is based again on
21 EPA's national recommended criteria for flowing
22 waters.

23 And in alignment and following State
24 statute, the proposed Lake Koocanusa water column
25 standard is no more stringent than the recommended

1 EPA 304(a) criteria, because it was developed
2 using 304(a) site specific procedures. Therefore,
3 it is a more accurate criteria than the generally
4 applicable national lentic or lake number of 1.5
5 micrograms per liter. Next slide, please.

6 When the Board initiated rulemaking for
7 these proposed rules, Lauren Sullivan and myself
8 provided a comprehensive presentation to provide
9 some background of the process of how we've
10 arrived here, as well as the technical and
11 scientific aspects of the standards we proposed.

12 This morning, rather than reiterating
13 the material that we presented in September, we're
14 going to present you with a summary and an
15 explanation of the major comments we have received
16 during this public comment process.

17 And before we begin with the substance
18 of the comments, I would first like to take a
19 moment to thank the Board, our Federal, State,
20 Tribal partners, and the many, many stakeholders
21 that have participated in this public comment
22 period.

23 The comments we received were
24 thoughtful, impassioned, detailed, and they
25 underscored a true, deep caring of the Koocanusa

1 and Kootenai watersheds. It was care for the
2 human communities within, as well as the water
3 quality, the fisheries, and the aquatic life.

4 And we understand that providing that
5 public input, whether it's verbally, through a
6 hearing, or through written text, requires time
7 and thought, and we greatly appreciate that, and
8 we have heard and received that feedback, and we
9 have in turn responded with thought and
10 consideration.

11 The majority of our comments, over 180
12 individual comments, were in support of the
13 proposed standards, and in that support they noted
14 the rigorous scientific process, the strong and
15 lengthy collaborative effort, reasons not to
16 delay, and consideration for the downstream water
17 quality and endangered species.

18 We also heard that more time was needed
19 to understand the science, that there was no
20 crisis to act, and of fear of impacts to the local
21 economy. We heard that more data and an
22 implementation strategy were needed, and questions
23 pertaining to the need for consensus among the
24 scientific experts.

25 We will address these major themes this

1 morning. I'm going to summarize the comments and
2 responses pertaining to water quality standards,
3 and the process that we've completed, and Lauren
4 will then summarize the more technical comments on
5 components of the water column value, the model
6 and background data, as well as changes that we're
7 proposing to the rule language in response to
8 those comments.

9 The foundational concept of water
10 quality standards is a bit dry, but it's always a
11 necessary starting point for our standards
12 rulemaking, and I have explained these concepts in
13 our past presentations, but there does remain a
14 misunderstanding which we have seen in some
15 comments.

16 Montana has been delegated authority
17 under the Clean Water Act to establish water
18 quality standards, and of course, Montana's Board
19 of Environmental Review has the authority to adopt
20 those standards. And we have standards for
21 multitudes of pollutants. Selenium is one of over
22 300 pollutants for which we have established
23 standards in Montana.

24 And these provide a measure for how
25 clean we want our water. They're established to

1 protect the beneficial uses of our water bodies,
2 uses such as the propagation of aquatic life,
3 recreation, swimming, sometimes drinking,
4 agriculture, or industrial purposes. These are
5 Montana's beneficial or designated uses.

6 And the standard reflects the level that
7 the pollutant, of that pollutant below which that
8 beneficial use is protected. And to make that
9 determination, we heavily rely on science supplied
10 at a national level from EPA's research branch --
11 that's typically toxicological search -- and
12 sometimes we rely on our own State driven science.

13 And selenium and the standards that
14 we're discussing today is really a combination of
15 both. It's national driven EPA guidance, and it's
16 State level driven science.

17 So many commenters asked why now. Many
18 pointed out that the lake is not at a crisis
19 point, and some asked why we aren't using data
20 from treatment plans, or questioned the threatened
21 impairment listing.

22 And the proposed selenium standards are
23 being set to protect our aquatic life, again, that
24 beneficial use, and they must be, as required
25 under the Clean Water Act, they must and are based

1 on sound science and rationale.

2 As Director McGrath was saying, it's
3 important to remember that standards are
4 established to prevent harm, not cure it. And
5 this is consistent with how all of our water
6 quality standards for both aquatic life and human
7 health are established. For example, the
8 Department does not wait for human population to
9 show neurological harm to establish lead standards
10 to protect human health.

11 I would note, however, that one need for
12 immediate action stems from the fact that
13 egg/ovary guidelines for fish tissue samples in
14 Lake Koochanusa are already exceeded beyond the
15 threshold deemed safe by EPA.

16 Similarly, water quality standards are
17 not established based on the water body's
18 threatened or impaired status -- they're
19 established based on the needs of the beneficial
20 use -- nor is treatment technology data used in
21 establishing a standard. That data is, of course,
22 important, but it's used in implementing a
23 standard, not in establishing one.

24 We had comments asking why a site
25 specific standard was necessary, and expressed

1 concern about whether that standard would be
2 applied across the state. Selenium, as we
3 discussed back in September, is a pollutant in
4 which the toxicity to aquatic life is highly
5 dependent upon site conditions, things like
6 hydrology, water chemistry, and the species that
7 inhabit that ecosystem.

8 So following the methodology outlined in
9 EPA's 304(a) guidance, the Department utilized
10 that site level data to derive a water column
11 value protective of the aquatic life in Lake
12 Koocanusa, and the data used to drive the
13 Koocanusa water column is exactly that. It is
14 site specific, and it would not be applicable to
15 other water bodies.

16 Many commenters expressed concern for
17 the downstream Kootenai River protection which
18 spans Montana and Idaho, as well as the Idaho 2020
19 listing of the Kootenai River as impaired for
20 selenium.

21 Federal regulations require that we as a
22 state consider and ensure the attainment of
23 downstream, both intra and interstate water
24 quality standards, and the proposed standards are
25 protective of downstream uses, including the

1 protection of downstream species listed under the
2 Endangered Species Act.

3 And as a result of Idaho's October 2020
4 selenium impairment, a selenium load allocation
5 could be assigned to the State of Montana in order
6 to reduce the load of selenium from Montana to
7 Idaho.

8 Commenters requested clarification on
9 economic impacts and concern about effects to the
10 local economy, and we want to be very clear that
11 there are no public or private entities
12 discharging to the Kootenai River or Lake
13 Koocanusa with MPDES permit effluent limits for
14 selenium. Therefore, no permittee will be
15 required to incur additional costs to treat
16 wastewater for selenium.

17 It's also important to reiterate that
18 the proposed standards are applicable to Lake
19 Koocanusa and the Kootenai main stem only. The
20 existing standards of five micrograms per liter
21 remains the applicable selenium standard on all
22 other State waters.

23 The Department completed a small
24 business impact analysis, finding no impacts to
25 small business, and also assessed the cost of

1 wastewater treatment that may be passed on to
2 small businesses. And while there are multiple
3 communities with public wastewater treatment
4 systems in the watershed, none discharge selenium,
5 and so would not be required to treat for
6 selenium.

7 Regarding large businesses, the only
8 large mine in the watershed on the US side of the
9 border is Montanore Mine, and in their most recent
10 permit application of the mine, Montanore Minerals
11 corporation stated they do not believe selenium is
12 present at the mine.

13 And finally, we understand the concerns
14 that a potential impairment listing could impact
15 real estate or construction values. However,
16 there is no evidence that real estate values have
17 been or will be impacted by a threatened or an
18 impaired status of Lake Koocanusa.

19 In fact, we have over 1,000 impaired
20 water body segments in Montana, and I would point
21 to the Bitterroot River, Flathead Lake, the Clark
22 Fork River, as examples where impairment status
23 does not correlate to real estate values.

24 My final slide is our comments that
25 pertain to the process that we have undertaken

1 thus far. And many commenters applauded the
2 establishment, the composition, and the
3 transparency of the Lake Koocanusa Monitoring and
4 Research Working Group, and the Selenium Technical
5 Subcommittee.

6 And these proposed standards are derived
7 from truly an unprecedented and multi-year
8 analysis that involved, among many others, British
9 Columbia Ministry of Environment and Climate
10 Change, US Geological Survey, the US EPA, Montana
11 Fish, Wildlife and Parks, US Fish and Wildlife
12 Service, multiple Tribal and First Nations,
13 university scientists, and researchers.

14 And the six year timeline for this
15 process was agreed to by all parties at the
16 outset, and remains on schedule for the completion
17 for the close of 2020.

18 The public process. Public outreach has
19 been extensive, more extensive than any we've
20 undertaken with any standards setting process, and
21 beginning in 2015, this included seven large
22 format panel discussions, public meetings, held in
23 northwest Montana, many smaller format meetings
24 with local officials in the area, and just in the
25 past year -- as Director McGrath reminded us

1 earlier -- many, many public meetings, as well as
2 additional outreach opportunities occurred.

3 These public meetings were in addition
4 to engaged participation with this working group,
5 and an extensive public website which houses all
6 the materials for our project. As with all water
7 quality standards numbering in the hundreds, this
8 rulemaking has followed the MAPA process, which
9 has included WPCAC, public notices through the MAR
10 newspapers, BER, and a robust public comment
11 period.

12 Commenters questioned whether we
13 provided adequate updates to the legislative
14 committees, and the Department is always
15 responsive to the Montana Legislature with any
16 information they request. And we have briefed the
17 Environmental Quality Council about the selenium
18 rulemaking in 2019, presenting them with a
19 timeline which we continue to follow today.

20 We also briefed the Water Policy Interim
21 Committee in October, provided them a summary of
22 the proposed selenium rule, and an update on the
23 rulemaking process and schedule. And at that
24 meeting, WPIC discussed the selenium proposal,
25 they heard comment from the public, they

1 entertained a motion to lodge an informal
2 objection to the proposed rule, they held
3 discussion on the motion, and they voted not to
4 object to the proposed selenium standards.

5 Finally, implementation and compliance.
6 This standard is comprised of fish tissue and
7 water column values, and the Department will
8 undertake development of a fish tissue assessment
9 method, and will do so in collaboration with the
10 State of Idaho, Federal partners, and
11 stakeholders, utilizing our fish tissue standard
12 operating procedure that we developed in 2016.

13 And with respect to compliance, I think
14 that answer is simple, but complicated. Simply
15 put, a water quality -- a Clean Water Act approved
16 standard provides the foundation for transboundary
17 clean water commitments. So just as Idaho, with
18 the standard in place, can look upstream to
19 Montana to ensure they receive clean water, this
20 can be done on an international transboundary
21 basis as well.

22 And an established protective standard
23 allows Canadian industry and Canadian regulators
24 the certainty to plan for and apply treatment
25 technologies in permit conditions to ensure that

1 that standard is met.

2 And once the appropriate standard is in
3 place, if there are exceedences of that standard,
4 there's many, many different scenarios that could
5 occur, and I can't predict what those would be.
6 It could be conversations with British Columbia;
7 it could be State department involvement; it could
8 be a TMDL load allocation. The key point is that
9 the bottom line is setting the standard is the
10 first and the most important step in removing any
11 of those scenarios forward.

12 And because of the significant past,
13 present, and planned future mining actions in the
14 Elk Valley, and because of the extremely engaged
15 Tribal nations and stakeholders, this watershed
16 has and is receiving substantial attention from
17 the US State Department, the current Trump Federal
18 Administration, our Montana Federal elected
19 officials, and Canadian and federal provincial
20 agencies.

21 And significant US Federal fiscal
22 appropriations and staff allocation underscore
23 that importance. And we've built the foundation
24 of that critical cross-boundary collaboration,
25 monitoring, and research, however that unfolds in

1 the future. Lauren.

2 CHAIR DEVENY: Ms. Sullivan, before you
3 start. This is Board Chair Chris Deveny. I
4 clearly was misinformed on the length of DEQ's
5 presentation, so do you think you can give your
6 presentation in ten minutes? I just want to get a
7 handle on time here. I don't want to cut you
8 short. This is really good information. Is that
9 appropriate?

10 MS. SULLIVAN: This is Lauren. Madam
11 Chair, I will make sure that I keep my portion to
12 ten minutes.

13 CHAIR DEVENY: Okay. Thank you.

14 MS. SULLIVAN: So thank you, Madam
15 Chair, and members of the Board. I'll continue
16 with addressing comments received pertaining to
17 impacts on current water column and fish tissue
18 levels. Commenters stated both, "Don't delay. We
19 already see impacts," while other commenters
20 stated, "There are no impacts. Current
21 concentrations are stable, and not exceeding any
22 current standard."

23 So first whether or not Lake Koocanusa
24 has a stable water concentration in compliance
25 with the current Montana standard of five, or

1 EPA's 1.5, does not determine the protectiveness
2 of the standard. This is particularly important
3 in this case where the Department has determined
4 those standards are not protective of the
5 beneficial use for Lake Koocanusa.

6 And as Myla previously mentioned, water
7 quality standards are set to protect the
8 beneficial use. The Department does not wait
9 until impacts occur to set a standard, and that is
10 applicable to all water quality standards.

11 Second, at current water column
12 concentrations around one microgram per liter,
13 there have been nine individual fish found with
14 egg/ovary selenium levels at or above 15.1. Those
15 are shown on this figure, and span across three
16 species. These levels are concerning, and suggest
17 reproductive impairment may be occurring in Lake
18 Koocanusa.

19 Water quality standards must protect
20 downstream use, and the Kootenai River has
21 recently been listed by Idaho DEQ as impaired for
22 selenium due to high levels of selenium found in
23 fish tissue. These results in Lake Koocanusa and
24 downstream are evidence that current conditions
25 around one microgram per liter are not protecting

1 the beneficial use in Lake Koocanusa or the
2 Kootenai River.

3 Comments received about background data.
4 DEQ collected 149 samples from 44 streams and
5 seven lakes from 2003 through 2018. The
6 Department reviewed those samples, along with
7 recent USGS Kootenai River tributary data,
8 sampling of two Montana streams in 2018 and 2019.

9 Of all of those samples, only one single
10 sample was detected -- that was in 2018 -- was
11 detected with the lab using a very low detection
12 limit, following a modern protocol. The sample
13 was reported as 0.081 micrograms per liter, which
14 is much lower than the proposed standard.
15 Collectively these data suggest that the selenium
16 contribution from tributaries to Lake Koocanusa
17 and the main stem Kootenai River are very low.

18 Addressing comments on sediment selenium
19 for Lake Koocanusa. Comments were received
20 stating long term data sets are showing no
21 settling is occurring. The Department is unaware
22 of any study that characterizes long term
23 concentration changes of selenium in Lake
24 Koocanusa sediments.

25 The only study, to the knowledge of the

1 Department, was done by DEQ in 2013. In that
2 study, sediments were collect in a single sampling
3 year, and showed statistically higher
4 concentrations in reservoir sediment than
5 shoreline soils, and showed statistically higher
6 concentrations at the forebay near the dam,
7 suggesting accumulation may be occurring.

8 And whether or not the bottom of Lake
9 Koocanusa has accumulated selenium over the years
10 is not the primary issue at hand. It is important
11 to remember that the process described in the
12 ecosystem scale model has little to do with the
13 direct selenium buildup in bottom sediment, and
14 more to do with the amount of selenium in the
15 water column, and how readily it enriches the
16 suspended particulate matter, which is then
17 transferred through the food chain.

18 Moving right along to address comments
19 on consensus of the Selenium Technical
20 Subcommittee. Comments were received stating the
21 0.8 is within the range recommended by the
22 majority of the technical subcommittee members,
23 while other comments stated there was no
24 consensus.

25 DEQ and the British Columbia Ministry of

1 Environment communicated the process for receiving
2 Selenium Technical Subcommittee recommendations at
3 the November 2019 in-person meeting. There was
4 clear communication to clarify consensus was not
5 being sought, and that all final decisions were to
6 be made by DEQ and British Columbia.

7 There was an opportunity to discuss this
8 at the meeting, where an estimated 50 people were
9 in attendance. And on the right shows the make-up
10 of the Selenium Technical Subcommittee. And while
11 the committee has been discussing the modeling for
12 years, a half day Zoom teleconference was held,
13 with 100 percent attendance and participation by
14 the Technical Subcommittee.

15 There were robust discussions,
16 recommendations on model inputs provided, and
17 discussed in detail. Additional written and
18 verbal recommendations were provided by some
19 members of the Selenium Technical Subcommittee.

20 The Department worked collaboratively
21 with the British Columbia Ministry of Environment
22 in reviewing all verbal and written
23 recommendations. Those recommendations guided the
24 decisions made by the Department on model inputs
25 and selecting a protective standard.

1 Addressing comments on the model. The
2 ecosystem scale model is peer reviewed in the
3 literature, and widely accepted as the state of
4 the science for selenium biodynamic modeling. The
5 ecosystem scale model is recommended for use in
6 EPA's guidance document, and it is the model used
7 to develop the nationally recommended criteria.

8 The peer review ecosystem scale model
9 was tailored to the Lake Koocanusa ecosystem,
10 using site specific data. The structure of the
11 model was retained. Only model inputs were
12 altered.

13 For criteria determination, the EPA
14 guidance document indicates the greatest reduction
15 in uncertainty when translating a selenium fish
16 tissue concentration to a water column
17 concentration is achieved by collecting temporally
18 and spatially coincident site specific
19 partitioning data, or Kd data.

20 This was done in Lake Koocanusa in the
21 model development, using multiple years of data.
22 You can see this parameter labeled in the bottom
23 right of the equation. And just to remind the
24 group, the Kd is the environmental partitioning
25 between dissolved and particulate selenium, and is

1 the base of the food web, and environment
2 specific.

3 Literature trophic transfer factors were
4 used. These were all well documented and tested
5 both in the lab and the field, and they were
6 tailored to the Lake Koocanusa site conditions
7 using a 60 percent bioavailability factor. The
8 numerator is the tissue criterion element or
9 threshold for which the fish tissue must not
10 exceed.

11 Addressing comments on the derivation of
12 the site specific 0.8 micrograms per liter for
13 Lake Koocanusa. As previously stated, the goal of
14 this work was to develop an aligned site specific
15 water column standard for Lake Koocanusa. A
16 challenge of that work has been the differing
17 protection goals between British Columbia and
18 Montana.

19 To address this challenge, the
20 Department followed two routes, one that worked
21 collaboratively with British Columbia to make a
22 more stringent regulatory requirement than BC; and
23 second route that considered the EPA recommended
24 whole body selenium threshold of 8.5 to remain in
25 step with our US process.

1 The Department considered the Selenium
2 Technical Subcommittee recommendations, both oral
3 and written, to develop the scenarios with model
4 inputs displayed on this slide.

5 Route one comprised three scenarios
6 developed in collaboration with British Columbia,
7 and among those three, the Department selected
8 scenario three, which included a whole body tissue
9 threshold of 5.6, a value aligned with British
10 Columbia's guidelines and protection goals.

11 The trophic fish model or piscivorous
12 model was selected, assuming forage fish have a
13 diet of 100 percent aquatic insects; a 45 percent
14 bioavailability factor applied, which while less
15 conservative than the 60 percent proposed by the
16 USGS, this was deemed appropriate to consider when
17 applying the 5.6 whole body threshold. And the
18 median Kd percentile was selected, again
19 determined appropriate if a lower 5.6 whole body
20 value was applied. This resulted in 0.8
21 micrograms per liter.

22 For the second route, the Department
23 considered the EPA recommended whole body tissue
24 threshold of 8.5 with the same trophic fish model
25 at 100 percent aquatic insects, retained the USGS

1 proposed 60 percent bioavailability, and selected
2 the 75th percentile of the Kd distribution
3 determined appropriate when applying the 8.5 whole
4 body value.

5 Both of these different approaches
6 arrived at a protective selenium water column
7 criterion of 0.8 micrograms per liter, which meets
8 the protection goals previously defined by the
9 technical subcommittee. It ensures protection of
10 the beneficial use, and the protection of
11 downstream Kootenai River.

12 Addressing comments on the 0.8 versus
13 1.5 micrograms per liter for Lake Koocanusa. EPA
14 has recommended the 1.5 micrograms per liter for
15 lentic water bodies. That value may be over or
16 under protective for some sites in the United
17 States due to the local environmental factors
18 affecting selenium bioaccumulation.

19 EPA acknowledges this, which is why they
20 provided guidance for developing a site specific
21 criteria. This is what was done for Lake
22 Koocanusa, in part because of the strong
23 partnerships. It was the ability to undergo this
24 large effort, and also because egg/ovary fish
25 tissue levels were showing values higher than

1 15.1, and water column concentrations of one,
2 suggesting 1.5 is not protective.

3 Based on selective model inputs, 85
4 percent of the results are below 1.5. You can see
5 that on this graph. Below the lines means not
6 protective. The majority of the orange dots fall
7 below the line, and shows us that 1.5 is clearly
8 not the protective standard for Lake Koocanusa.

9 Through this modeling effort, it was the
10 objective to consider ecologically significant
11 species, and the long term protection for fish in
12 all parts of the reservoir, including those with
13 the most sensitive food webs. The 1.5 does not
14 meet the protection goals for Lake Koocanusa. The
15 0.8 micrograms per liter meets these objectives,
16 and protects the beneficial use.

17 Some minor points of clarification were
18 updated in the rule based on comments received.
19 First, the Department has clarified the frequency
20 and duration for fish tissue samples, stating fish
21 tissue standards will be instantaneous
22 measurements not to be exceeded.

23 Fish tissue sample results shall be
24 reported as a single value representing an average
25 of individual fish samples, or a composite sample,

1 each option requiring a minimum number of five
2 individuals from the same species.

3 Second, language was included to clarify
4 the hierarchy of the fish tissue sampling, stating
5 when fish egg/ovary samples are unavailable, and
6 the aquatic ecosystem is in steady state, fish
7 muscle or whole body standards supersede the water
8 column standards.

9 And Myla, I'll turn it back to you.

10 MS. KELLY: In conclusion, we request
11 that the Board adopt the proposed water quality
12 standards as referenced, and it's been a pleasure
13 sharing those comment summaries with you. We are
14 ready to take your questions, and apologize that
15 went a little longer than expected.

16 CHAIR DEVENY: Thank you, Myla and
17 Lauren. Out of respect for our Court Reporter,
18 who has been working very hard all morning with
19 us, we're going to take a ten minute break, and so
20 we'll reconvene in ten minutes. So if everybody
21 could please be back in time, that would be great.

22 (Recess taken)

23 CHAIR DEVENY: We're going to reconvene.
24 Joyce, could you please take roll call.

25 MS. WITTENBERG: Chair Deveny.

1 CHAIR DEVENY: Here.

2 MS. WITTENBERG: David Lehnherr.

3 BOARD MEMBER LEHNHERR: Here.

4 CHAIR DEVENY: Dexter Busby.

5 BOARD MEMBER BUSBY: Here.

6 MS. WITTENBERG: John Dearment.

7 BOARD MEMBER DeARMENT: Here.

8 MS. WITTENBERG: Chris Tweeten.

9 BOARD MEMBER TWEETEN: Here.

10 CHAIR DEVENY: Jerry Lynch.

11 BOARD MEMBER LYNCH: Here.

12 MS. WITTENBERG: The Board is present.

13 CHAIR DEVENY: All right. Great. Thank
14 you. I wanted to thank DEQ for that presentation.
15 I think that there was a lot of clarity there.

16 And unless the Board members have any
17 real burning questions of DEQ at this time, I'd
18 really like to move into the next phase, and
19 listen to the statements by the proponents. Are
20 Board members all right with that? Okay. Good.

21 So with that, I'd like to move to the
22 statements of proponents, and I've asked Joyce and
23 Sarah to help facilitate that, because there are a
24 lot of people that want to talk.

25 And I'm asking you to please limit the

1 time that you speak to just one minute, and I know
2 that might be not enough for some, but hopefully
3 it is. Again, this is not a hearing. It's a
4 public comment period to provide input to the
5 Board as to whether or not we should adopt these
6 proposed rules.

7 So with that, I'm going to ask Joyce and
8 Sarah to please facilitate the testimony from the
9 proponents.

10 MS. CLERGET: Chris, do you want to do
11 the ex parte clarification now, or do you want to
12 wait for that?

13 CHAIR DEVENY: Let's go ahead and do
14 that, now that you brought it up. Thank you.

15 MS. CLERGET: Great. So I just wanted
16 to clarify for the record. In the Board packet
17 materials there are some emails that were included
18 that were sent from a member of the public to the
19 Board, Mr. Hadden to the Board, and that
20 constitutes ex parte contact.

21 It is very much not allowed under MAPA,
22 under the Montana Administrative Procedures Act,
23 and under the ethical rules. We included those
24 materials as a show of transparency, so that
25 everybody knew that the Board members had received

1 them, but the Board members also understand, and I
2 have advised them and am publicly advising them
3 now, that they cannot consider those emails as
4 they were not submitted within the appropriate
5 comment period on the rules as contemplated by
6 MAPA, and they do constitute ex parte contact.

7 So both the emails, and I believe there
8 was a fact sheet attached to it, will not be and
9 should not be considered by the Board. And that
10 general statement is to everyone to remind them ex
11 parte contact is not permitted, and please don't
12 do that.

13 And then Chris, I just wanted to clarify
14 again, as we had talked about, that this public
15 comment period is not part of the record for
16 rulemaking. It is part of the record for this
17 Board hearing, but the record, just like the
18 record on a contested case, is the record that
19 occurred during the proceeding. The record in
20 this case that you're making your decision on is
21 that contained within the rulemaking hearing,
22 comments, responses to comments.

23 So Chris, does that cover everything you
24 wanted me to do by way of intro?

25 CHAIR DEVENY: Yes, thank you.

1 MS. CLERGET: Then I'm going to go
2 through. I've got my list of proponents. A
3 reminder that it's one minute. I will cut you off
4 at one minute. I've got my timer. I'm going to
5 run through my list, and then George I know is
6 keeping track as well.

7 If at the end of my list, George, you
8 have any that I've missed, please speak up. And
9 then I'll also ask if there's anybody else who is
10 not on my list to speak up at that time.
11 Hopefully I've got everyone who put their name
12 forward as wanting to speak.

13 So starting with the proponents, our
14 first proponent will be William Geer. Please
15 unmute yourself, state your name, your
16 affiliation, and one minute.

17 MR. GEER: Can you hear me okay?

18 MS. CLERGET: Yes.

19 MR. GEER: Okay. Thank you. I'm
20 William Geer. I'm speaking on behalf of the
21 Montana Wildlife Federation as Past President, and
22 also as a board member of Hellgate Hunters and
23 Anglers in Missoula. And your thoughtful
24 presentation so far has allowed me to scratch off
25 most of my comments, to the benefit of everybody.

1 But we strongly support the proposed
2 standards, the site specific standards for
3 selenium on the Kootenai River and Lake Koocanusa.
4 And you have shown that selenium is indeed a
5 serious threat to Montana waters, and you have
6 approached it on a professional level with
7 expertise, and we appreciate it.

8 Both the Montana Wildlife Federation and
9 Hellgate Hunters and Anglers support the proposed
10 standards. We commend the Department of
11 Environmental Quality for providing a
12 collaborative and transparent process in setting
13 the standards, especially the adequate public
14 participation in the last several years.

15 Adopting these standards now will help
16 protect our water quality, aquatic life, and local
17 communities from the adverse impacts of mining
18 pollution originating in British Columbia. I will
19 cut it right there. Thank you.

20 MS. CLERGET: Thank you. Next
21 Christopher Servheen, please. You have one minute.

22 MR. SERVHEEN: My name is Chris
23 Servheen, and I'm the Vice President for issues
24 for the Montana Wildlife Federation representing
25 5,000 members in Montana.

1 The federation supports DEQ's
2 recommended standards for selenium levels in Lake
3 Koocanusa and the Kootenai River because these
4 standards are science based, and help preserve
5 healthy fisheries and aquatic habitat in the
6 Kootenai watershed.

7 If there is any uncertainty about the
8 most appropriate levels for selenium in the
9 Kootenai River, this uncertainty argues for a more
10 protective standard rather than a weak standard or
11 delay. The selenium standard for the Lake
12 Koocanusa and Kootenai River should be set in 2020
13 and not delayed.

14 The Montana Wildlife Federation supports
15 DEQ's selenium standards, and we congratulate DEQ
16 on developing these standards through a science
17 based collaborative process. Thank you for this
18 opportunity to comment.

19 MS. CLERGET: Thank you. Now, Gregory
20 Hoffman.

21 MR. HOFFMAN: Thank you. My name is
22 Greg Hoffman. I'm a fishery biologist for the US
23 Army Corps of Engineers at Libby Dam. I'm
24 speaking as a 25 year resident and biologist in
25 the Kootenai. I've been involved with species

1 recovery efforts since the get-go, trying to
2 provide ecosystem function and a regulated system
3 at Libby Dam.

4 I would just like to state that the
5 efforts that have gone into the river since I've
6 been on the ground are tremendous. I won't speak
7 longer than that about that, and you're going to
8 hear more about that later.

9 But I think failure to adopt this
10 standard is going to be a huge irreversible step
11 backwards in terms of ecosystem recovery and
12 functionality in the river and reservoir, and
13 adoption of it is going to be a giant step
14 forward, and I appreciate the efforts to say that.
15 Thank you.

16 MS. CLERGET: Genny Hoyle.

17 MS. HOYLE: Thank you, Madam Chair,
18 members of the Board. My name is Genny Hoyle.
19 I'm a biologist speaking on behalf of the Kootenai
20 Tribe of Idaho. As a member of the Lake Koocanusa
21 Monitoring and Research Committee, and a member of
22 the Selenium Technical Subcommittee, the Kootenai
23 Tribe of Idaho supports Montana DEQ site specific
24 criteria process that was supported by sound,
25 rigorous, and defensible science.

1 And we also support the selection of 0.8
2 micrograms per liter of selenium as the site
3 specific criterion. Water chemistry and fish
4 tissue data being collected by the Kootenai Tribe
5 of Idaho in the Kootenai River below Libby Dam is
6 showing that the selenium from the Elk River
7 mining is reaching the lower Kootenai River all
8 the way into Kootenay Lake in BC.

9 The selenium from the Elk River mining
10 projects is pervasive and persistent. Mountain
11 whitefish egg tissue in the Kootenai River in
12 Idaho is showing exceedences of the US EPA
13 selenium criteria of 15.1, with some values double
14 the criteria.

15 Fresh water mussels, mountain whitefish,
16 Kootenai River white sturgeon, and burbot tissue
17 samples have concentrations of selenium that are
18 concerning. Burbot egg tissue samples from this
19 year have elevated selenium, with some values
20 approaching the US EPA criteria.

21 MS. CLERGET: Your one minute is up.
22 Please finish your sentence.

23 MS. HOYLE: The Kootenai Tribe
24 respectfully requests no delay in Montana DEQ's
25 request for adoption of the site specific

1 criteria. Thank you.

2 MS. CLERGET: Thank you. Mr. Hadden,
3 Dave Hadden.

4 MR. HADDEN: Thank you. Thank you,
5 Madam Chair, and Board members, and thanks for
6 this opportunity.

7 Regretfully I think this issue has
8 become controversial. Really it seems to come
9 down to whether one trusts the independence and
10 professionalism of our own people and scientists.
11 As you know, the consensus range of selenium
12 values among our independent scientists was six,
13 point six, point nine parts per billion for the
14 reservoir, and this range included values
15 recommended by BC's own scientists; whereas Teck
16 on the other hand has offered a value of 1.5 parts
17 per billion.

18 Personally, I think it may come down to
19 whether we trust the recommended standards, and
20 want to protect the beneficial uses for Montana.
21 Will we trust our own people, or will we rely on
22 the information from Teck.

23 You may hear from the opponents that you
24 should postpone adoption of this rule, or that you
25 should increase the standard to 1.5 for Kootenai

1 as a compromise. Please adopt DEQ's proposed
2 value. 1.5 is a clean win for Teck, and a very
3 big loss to all the Montanans and others who have
4 worked in good faith over the past six years to
5 bring you this scientifically defensible rule.
6 Thank you.

7 MS. CLERGET: Thank you. Colby Blair.

8 MR. BLAIR: Thank you. Good morning. I
9 want to just say thank you for the attention
10 that's been given to this issue. My name is Colby
11 Blair. I'm an outfitter and guide on the Kootenai
12 River in Idaho. I represent eight employees in
13 Idaho.

14 Several of the rivers in Idaho suffer
15 from unchecked mining pasts. These rivers still
16 can't be safely fished or recreated in, and we
17 have signs that are posted on their banks warning
18 people to not play in the sand and dirt due to
19 contaminants like lead and selenium. These rivers
20 are no longer a part of the state's recreation or
21 economic use, and rob many of our other industries
22 of use beyond our lifetimes.

23 So in Idaho we fully support adopting
24 the new standards. We place trust not only in the
25 upstream science, but our own experiences in

1 Idaho. Water pollution is not just a thorn that
2 degrades our natural resources, but it's an
3 occupational hazard for us here. So we appreciate
4 the seriousness that you're giving these
5 standards. That's it for me.

6 MS. CLERGET: Thank you. Jim Vashro.

7 MR. VASHRO: I'm Jim Vashro, President
8 of Flathead Wildlife in Kalispell, Montana.

9 Lake Koocanusa and the Kootenai River
10 are some of the most popular fishing waters
11 Montana. We see that status as threatened by
12 increasing selenium levels. The gerrard rainbow
13 and native burbot fisheries are struggling. Lake
14 Koocanusa holds Montana's largest population of
15 threatened bull trout, and in recent years that
16 fishery has been reduced to catch and release due
17 to declining population levels.

18 Fishing is a vital part of Lincoln
19 County's economy, and clean water is important to
20 maintaining property values. Flathead Wildlife
21 strongly endorses the proposed standards to
22 protect Montana's water quality and aquatic life.
23 Thank you.

24 MS. CLERGET: Thank you. Trevor Selch.

25 MR. SELCH: Hi. Trevor Selch. I'm a

1 fishery pollution biologist with Montana Fish,
2 Wildlife and Parks. I'm also the fisheries
3 representative and Chair of WPCAC. And I am in
4 favor of the Board adopting the site specific
5 criteria as proposed for Lake Koocanusa and the
6 Kootenai River, and I'm fully supportive of the
7 comments made today by Director McGrath, Myla
8 Kelly, and Lauren Sullivan.

9 I've been monitoring selenium
10 concentrations in fish in Lake Koocanusa since
11 2008, and have been involved in the monitoring and
12 research working group since its inception in
13 2015, as we worked towards site specific criteria.
14 This effort included multiple state, Federal,
15 provincial agencies, and selenium experts from
16 across North America.

17 This has not been a rushed process, but
18 rather a carefully developed, scientific based
19 process to determine protective numbers needed for
20 the lake. It's absolutely imperative that Montana
21 adopt the proposed selenium criteria for Lake
22 Koocanusa and the Kootenai River now, as the
23 current criteria of five micrograms per liter is
24 not protective of aquatic life. Thank you.

25 MS. CLERGET: Thank you. Shelly Fyant.

1 MS. FYANT: Good morning, Madam Chair,
2 members of the Board. My name is Shelly Fyant.
3 And I wanted to thank you for this opportunity to
4 speak on behalf of the 8,000 Salish and Kootenai
5 Tribal members I represent.

6 Water is the life blood of our planet.
7 As native peoples, according to our creation
8 stories, we were given the responsibility to speak
9 for those who can't, and that includes the
10 animals, birds, fish, plant life, air, and water.

11 Just a reminder that we all live
12 downstream, and sadly we can't trust those living
13 upstream to be considerate of our waters. Our
14 people primarily live a subsistence lifestyle,
15 depending on those fish and wildlife to eat.
16 Those plants are our food and medicines.

17 That is why this decision is critical to
18 the 8,000 people that I represent, as well as my
19 grandchildren and those yet unborn. We strongly
20 support the site specific selenium standards on
21 behalf of the Salish and Kootenai people.

22 MS. CLERGET: Thank you. And is Stu
23 Levit going to speak as well? I had you guys on
24 the same chat. Stu Levit, if you'd like to speak,
25 now is the time.

1 MR. LEVIT: Thank you. I appreciate
2 that. My name is Stu Levit. I'm an attorney with
3 the Confederated Salish and Kootenai Tribes. The
4 Tribes have worked with the State of Montana, US
5 EPA, as part of what has been a robust public
6 process.

7 Importantly that process has also
8 included robust science, including foremost
9 experts in selenium, fish, and water, and included
10 important tribal data and input relevant to fish
11 and fish uses.

12 Like many water bodies in the Tribe's
13 aboriginal territory and on the Flathead
14 Reservation, Tribal uses of water resources
15 include common fishing and hunting, but also
16 subsistence and cultural uses that may be uncommon
17 to many people. These depend on clean water to
18 supply healthy and safe fisheries.

19 The egg/ovary and other selenium studies
20 showing significant and troublesome contamination
21 of fish is of particular concern to the Tribe. We
22 thank the DEQ for its process, and urge the Board
23 to adopt the criteria to begin what will be a long
24 process necessary to reverse ongoing
25 contamination. Thank you.

1 MS. CLERGET: Ayn Schmit.

2 MS. SCHMIT: Thank you, Madam Chair,
3 Board members. My name is Ayn Schmit, and I'm
4 water policy advisor for EPA.

5 Under the Clean Water Act, states must
6 submit new water quality standards to EPA for
7 review and action. Our regulation requires the
8 state to demonstrate that revised criteria protect
9 the designated uses and are based on sound
10 science.

11 EPA's national selenium guidance
12 includes recommended methods for developing site
13 specific standards. Montana used the mechanistic
14 model approach recommended by EPA to derive the
15 Lake Koocanusa draft standard.

16 A protective standard for transboundary
17 Lake Koocanusa is also an important element in the
18 US Government's engagement with our Canadian
19 partners, and will help to aid compliance with
20 international obligations. While EPA does not
21 prejudge revised standards prior to the State's
22 submission, we commend DEQ for the collaborative
23 and inclusive process to develop a site specific
24 selenium standard for Lake Koocanusa. Thank you.

25 MS. CLERGET: Thank you. Michael

1 Jamison.

2 MR. JAMISON: Thanks to the Board for
3 having us today. You all have heard from me
4 before, and I'm sure you'll hear from others
5 today, about our strong support for the 0.8
6 selenium standard and for the long term scientific
7 analysis that arrived at that limit.

8 You'll also hear, I'm sure, about why it
9 doesn't make a lot of sense to allow a foreign
10 corporation to influence Montana regulatory
11 processes, especially when that company is one of
12 North America's heaviest polluters, and is under
13 Federal investigation for water quality violation.

14 You'll also hear about how all the
15 stakeholders except that company have recommended
16 a selenium standard between 0.6 and 0.9. What I'd
17 like to address is the scope of the scale of the
18 question before you today.

19 In terms of scope, this is a site
20 specific water quality standard. It by definition
21 does not have any effect whatsoever on other
22 Montana waters, and cannot be applied to any other
23 waters. This is a very narrow scope of reference.

24 In terms of scale, the question is
25 likewise narrow, and concerns only the selenium

1 limit beyond which these fish and these waters
2 cannot survive. That level is knowable, and that
3 level has been definitely determined by multiple
4 agencies over multiple years, and all other
5 considerations frankly are just noise, and do not
6 seem relevant to the question at hand.

7 MS. CLERGET: Your minute is up.

8 MR. JAMISON: Thank you very much.

9 MS. CLERGET: Thank you. Lars
10 Sander-Green.

11 MR. SANDER-GREEN: Thank you. I'm Lars
12 Sander-Green. I'm with WildSight, a conservation
13 organization north of the border. I want to use
14 my minute to briefly address a couple comments
15 that we have heard repeatedly from Teck in the
16 media against this rule.

17 One is that the experts on the selenium
18 technical subcommittee did not come to a
19 consensus, where the fact of the matter is that
20 all of the experts who made recommendations
21 recommended levels between .6 and .9 micrograms
22 per liter, except one scientist, and that one
23 scientist it turns out is a consultant for Teck,
24 who was being paid by them to represent them.

25 And secondly, I want to address the

1 claim that the average selenium levels in Lake
2 Koocanusa have been stabilized since 2014. This
3 is absolutely cherry picking of data. The fact of
4 the matter is that selenium varies from year to
5 year significantly, based on weather conditions.

6 And so what we've done is we've looked
7 at the upstream data coming into Lake Koocanusa
8 and Elk River, and the downstream data again in
9 Canada in the Kootenai River at Creston. And in
10 both those cases, we see a clear upward trend that
11 has continued through 2014. In fact, in both
12 cases we've seen higher selenium levels since 2014
13 than we've ever seen before then. Thank you.

14 MS. CLERGET: Thank you. Garrett
15 Visser.

16 MR. VISSER: Good morning. Thank you
17 for the opportunity to comment. My name is
18 Garrett Visser. I represent the Idaho Wildlife
19 Federation. IWF is Idaho's oldest and largest
20 coalition of hunting and fishing groups. Many of
21 our members recreate on Idaho's Kootenai River,
22 and some rely on this water body as outfitters and
23 guides.

24 Despite no significant source of
25 selenium on the US side of the drainage, we have

1 Kootenai River reaches in Idaho that are impaired
2 due to selenium pollution. We believe these
3 proposed standards, developed thanks to the years
4 of collaborative efforts, are crucial for the
5 strength and future of both Montana and Idaho's
6 Kootenai River fishery.

7 IWF fully supports adoption of these
8 standards to further protect the water quality and
9 the designated beneficial use in both Montana and
10 Idaho from mine pollution. Thanks to our
11 neighbors in Montana for their commitment to a
12 scientifically driven and collaborative process,
13 and we support the adoption of these standards.

14 MS. CLERGET: Thank you. Eddie
15 Petroschen.

16 MR. PETROSCHEN: Hello. Eddie
17 Petroschen. I'm a conservation specialist with
18 WildSight. We've heard a lot about how there are
19 no two-headed fish. No one believes there should
20 be any two-headed fish anywhere, because that's
21 not how any of this works.

22 Selenium is a dangerous pollutant. It
23 acts in very small concentrations, building up in
24 the reproductive organs of fish. With lower
25 concentrations, we don't notice effects, but if

1 selenium in fish ovaries increases, the danger
2 silently increases.

3 Concentrations can reach a point where
4 reproductive failures start to happen. That's the
5 point we're at with fish in Koocanusa, according
6 to the data that's been collected to set this
7 limit. With these selenium concentrations, eggs
8 don't hatch, or the fry don't survive long enough
9 to get to deformities.

10 And the curve for reproductive effects
11 with selenium is very steep. As selenium
12 increases, we can go from 90 percent survival to
13 zero percent survival. And we're already seeing
14 selenium near twice that level seasonally near the
15 border.

16 It's critical for Montana to act now,
17 rather than allowing selenium to continue to rise.
18 Thank you.

19 MS. CLERGET: Thank you. Sue Ireland.

20 MS. IRELAND: Thank you. Good morning,
21 Madam Chair, Board members. My name is Sue
22 Ireland, and I've had the honor of working for the
23 Kootenai Tribe for the past two-and-a-half
24 decades.

25 The Tribe is taking a leadership role

1 along with many partners in implementing action
2 aimed at restoring the river's habitat, and the
3 special creatures that inhabit this place,
4 including the endangered Kootenai River white
5 sturgeon, and the lower Kootenai River burbot.

6 We've made many strides forward in
7 improving habitat, stabilizing endangered
8 populations, bringing back the nearly extinct
9 burbot population in the lower Kootenai to the
10 point of being able to provide a subsistence
11 fishery to the Tribal citizens, and sport fishing
12 for the local public.

13 We are very, very alarmed by the trend
14 we're now observing in selenium levels in the
15 water and in fish tissues, especially since
16 selenium is known to cause reproductive harm. It
17 is so extremely disheartening, especially after
18 having provided all this care and love to the
19 Kootenai River and to the native fishes that
20 inhabit it, to have all these actions now
21 threatened by the very water that is supposed to
22 sustain the life in the Kootenai.

23 We need criteria that's protective.
24 There's already been impairment. Please adopt the
25 proposed rules for selenium standards for Lake

1 Koocanusa and Kootenai River. We support the
2 criteria, and there's no reason to delay this
3 decision. Thank you.

4 MS. CLERGET: Thank you. Dave
5 Blackburn.

6 (No response)

7 MS. CLERGET: Dave Blackburn.

8 (No response)

9 MS. CLERGET: We'll move on. Jill
10 Weitz.

11 MS. WEITZ: Thank you, Madam Chair,
12 members of the Board. My name is Jill Weitz, and
13 I'm a former compliance and enforcement officer
14 with the Alaska Department of Environmental
15 Conservation, where I was tasked with inspecting
16 mines through the state.

17 I currently serve as the Director of
18 Salmon Beyond Borders, which is a transboundary
19 rivers campaign, and I am based out of Juneau,
20 Alaska.

21 Since 2013, we have been working
22 alongside sporting, commercial fishermen, business
23 owners, tour operators, and tribes in the region
24 to defend and sustain our wild salmon rivers, that
25 have more than twelve large scale open pit mines

1 in various stages near their headwaters in British
2 Columbia, including the notorious Tulsequah Chief
3 Mine, which was abandoned by Teck, formerly Teck
4 Cominco, in 1957, and has been leaching acid mine
5 drainage, and pissing off commercial fishermen in
6 the Tulsequah River watershed ever since.

7 Teck is driving full speed ahead to
8 develop the Shaft Creek and Galore Creek
9 mega-mines, each within the Stikine River
10 watershed, which is one of the largest salmon
11 producing rivers in the region, only second to
12 that of the Taku.

13 You may recall that in 2016, Teck's Red
14 Dog Mine in Alaska officially released 756 pounds
15 of toxic chemicals, making it America's most toxic
16 releasing facility that year.

17 MS. CLERGET: Time is up.

18 MS. WEITZ: Please adopt the proposed .8
19 standard with no delay. Thank you.

20 MS. CLERGET: Thank you. Dr. Rachel
21 Malison.

22 MS. MALISON: The Federal Clean Water
23 Act and Montana Water Quality Act require that we
24 protect the designated uses for all users in
25 Montana. It is time to set protective standards

1 for aquatic life.

2 The proposed standard is backed by
3 comprehensive and sound scientific data, and years
4 of effort. I support the adoption of the new
5 selenium criteria, and there's no reason to delay
6 this decision. Thank you for the opportunity to
7 comment.

8 MS. CLERGET: Thank you. Brad Smith.

9 MR. SMITH: Thank you, Madam Chair, and
10 members of the Board. My name is Brad Smith. I'm
11 with the Idaho Conservation League.

12 I want to emphasize the importance of
13 the 0.8 micrograms per liter standard for Lake
14 Koocanusa. Anything weaker than that just simply
15 won't do.

16 As you know, the current average
17 concentration of selenium in the water column of
18 Lake Koocanusa is one microgram per liter, and at
19 that level we're already seeing impairment, not
20 just in fish in Lake Koocanusa, but downstream
21 here in Idaho.

22 Samples of fish taken from the Kootenai
23 River are already at least one and a half times
24 the EPA recommended threshold, so we really need
25 to have a standard that is stronger than one.

1 Thank you.

2 MS. CLERGET: Thank you. David Brooks.

3 MR. BROOKS: Hi. David Brooks

4 representing Montana Trout Unlimited.

5 The selenium standard the BER has the
6 opportunity to establish today not only represents
7 a fair and sound protection for some of Montana's
8 most wild and valuable waters, and not only
9 ensures the sustainability of a growing outdoor
10 rec economy and industry in the area, and not only
11 protects from potentially life threatening harm to
12 all manner of sport fish, wild fish, native fish,
13 endangered fish, birds, wildlife, and future
14 generations of Lincoln County residents and
15 visitors.

16 It not only is based on the best
17 possible science, but it also represents the best
18 version of the public process in taking care of
19 our natural resources in Montana. Thank you to
20 DEQ staff and Director McGrath for once again
21 making these facts abundantly clear today.

22 It would be detrimental to Montana if
23 disinformation went out over the open, fair,
24 patient, proactive and legal process that has led
25 to this legitimate and much needed standard that

1 the BER has the power to establish today in the
2 name of doing right by Montana for Montanans.

3 For those reasons, Montana DU and its
4 5,000 members and supporters thank the BER for
5 your consideration of adopting this proposal.

6 MS. CLERGET: Thank you. Clayton
7 Elliott.

8 MR. ELLIOTT: Thank you, Madam Chair,
9 members of the Board of Environmental Review. I
10 will be brief. Clayton Elliott. I represent
11 Montana Trout Unlimited as well, and suffice it to
12 say I will defer to my boss who just spoke for our
13 official comments, and also the comment in the
14 record.

15 I just wanted to reiterate our deep
16 appreciation and thanks for the staff of the
17 Department of Environmental Quality, the Board of
18 Environmental Review, for thorough, transparent,
19 collaborative process grounded in science. It has
20 been a long time coming, and we just wanted to be
21 on record officially supporting and being
22 appreciative of that process, so thank you for
23 your service, and thank you for your opportunity
24 to comment today.

25 MS. CLERGET: Thank you. Erin Sexton.

1 MS. SEXTON: Erin Sexton. Thanks. So
2 my name is Erin. I'm a researcher at the
3 University of Montana Flathead Lake Biological
4 Station. I've studied the Elk River and Koocanusa
5 since 2000 when I first collected water quality
6 downstream of the mine, and over that time, I've
7 participated in many processes related to those
8 mines.

9 Over the last twenty years, the mines
10 have expanded, and the contaminants are increased
11 in the Elk River, Koocanusa Reservoir, and the
12 Kootenai River downstream.

13 I'm also a member of the Koocanusa and
14 Selenium Technical Committees, and have
15 represented the Confederated Salish Tribes at both
16 of those tables since day one in 2014.

17 Based on the years of objective
18 collaborative science and expertise that have
19 brought us to this point, there is absolutely no
20 scientific justification for not adopting the
21 selenium standard today. In fact, it could be
22 reasonably argued that we are late in getting to
23 this decision.

24 Regardless, I want to commend DEQ for
25 leading this effort in collaboration with the

1 province of BC. This is a good news story, where
2 defensible science, a fair and transparent
3 process, and a collaborative effort, have lead to
4 a sound recommendation for a protective selenium
5 standard. I am here to express my unequivocal
6 support for the Board approval of a site specific
7 selenium standard of 0.8 for the Koocanusa
8 Reservoir, and 3.1 for the Kootenai River. Thank
9 you.

10 MS. CLERGET: Randal McNair.

11 MR. McNAIR: Thank you Chair. Thank you
12 Board. My name is Randal McNair. I'm the Elk
13 Valley Conservation coordinator for the Elk
14 Valley.

15 When I first heard about the growing
16 selenium crisis in the Elk River, my wife was
17 pregnant with our first child. This year she
18 graduates from university. When I first heard
19 about it, it was 1998, and the Elk Valley Selenium
20 Task Force was formed to address this crisis.

21 Teck sat on that task force. They've
22 been operating coal mines in the Elk Valley since
23 1991, and are fully aware and have been fully
24 aware of this crisis for years.

25 I spent fifteen years as Mayor and

1 Counselor for the city of Fernie, and during that
2 entire time, selenium was an issue in our
3 community, as it continues to be more than six
4 years later. We've continually relied on industry
5 rather than government to ensure the safety of our
6 waters and our rivers. This has not worked for
7 over two decades. It's time for government to
8 begin to take hold. Thank you very much.

9 MS. CLERGET: Thank you. John
10 Bergefske.

11 (No response)

12 MS. CLERGET: John Bergefske.

13 MR. BERGEFSKE: Thanks for the
14 opportunity to speak with you today. I wanted to
15 make one particular point that I don't think has
16 been brought up thus far in the presentations.

17 And that is the extreme importance of
18 moving quickly to adopt this scientifically
19 rigorous standard, and that is the fact that here
20 in British Columbia, we are faced with mine
21 expansions, both a major mine expansion by Teck,
22 which would continue mining right up until 2070;
23 and there are at least three other coal mines
24 being developed, and they're going to go into an
25 environmental assessment process starting in the

1 new year.

2 We expect at least two of those
3 processes in the near future. And it's very
4 important I think that for the water quality, both
5 for British Columbia, and Montanans, Idahoans,
6 that we have a standard that is being recognized,
7 and when these environmental assessments take
8 place, that this needs to be incorporated.

9 Without such a standard, if we have a
10 lower standard, or go forward without a standard,
11 it's going to make it much more difficult to
12 control the future of selenium pollution in the
13 Kootenai River system. Thanks for the opportunity
14 to speak with you this morning.

15 MS. CLERGET: All right. Thank you.
16 Camille LeBlanc.

17 MS. LeBLANC: Hi. My name is Camille
18 LeBlanc, as she said. I'm representing Friends of
19 Kootenay Lake Stewardship Society based in Nelson,
20 BC. We are a local small non-profit with concerns
21 about the selenium levels in the Kootenay Lake
22 water system, so in that way we support the DEQ
23 supposed selenium standard.

24 Our concern lies in the risk that
25 selenium poses to the reproductive health of

1 Kootenay Lake fish species that already experience
2 reproductive challenges in Kootenay Lake, most to
3 notably the white sturgeon, as has been mentioned
4 in previous comments.

5 Montana and BC have worked well together
6 to address ecosystem concerns on the shared water
7 body, and we hope that we will continue to work
8 together to not only meet healthy water quality
9 standards, but exceed them.

10 Friends of Kootenay Lake will work with
11 local stewardship agencies to support the
12 monitoring of selenium levels in Kootenay Lake and
13 along the Kootenai River. Thank you so much for
14 your time.

15 MS. CLERGET: Thank you. Kendra
16 Norwood.

17 MS. NORWOOD: Good morning, Madam Chair,
18 and members of the Board. Kendra Norwood speaking
19 for the West Kootenay EcoSociety in British
20 Columbia, a proponent of proposed selenium
21 standards.

22 Repeating what others have said,
23 selenium is known to cause reproductive problems
24 in fish species. The white sturgeon, which lives
25 and travels throughout the Kootenai River and BC,

1 Montana, and Idaho, are listed as endangered in
2 the US and Canada, largely due to their
3 reproductive problems. Selenium could put already
4 endangered sturgeon populations further at risk.

5 It's concerning that current levels in
6 Lake Koocanusa could rise with new mining
7 projects, and therefore lead to higher levels that
8 are already seen downstream in Kootenay Lake.

9 We need strong regulations based on
10 strong science now to protect the health of our
11 people, fish, and wildlife, by ensuring the health
12 of our water. Thank you.

13 MS. CLERGET: Thank you. John Avery.

14 (No response)

15 MS. CLERGET: John Avery.

16 (No response)

17 MS. CLERGET: Bill Hanlon.

18 MR. HANLON: Thank you. Good morning,
19 and thanks for the opportunity to provide comment
20 to the Board of Environmental Review. My name is
21 Bill Hanlon. I presently sit on the North
22 American Board of Directors for Back Country
23 Hunters and Anglers.

24 Back Country Hunters and Anglers is a
25 continental conservation organization and the

1 voice for our wild public lands, clean water, and
2 wildlife, and we support the implementation of
3 site specific selenium standards for Lake
4 Koocanusa.

5 On a personal level, I have lived in Elk
6 Valley for 32 years on acreage north of Sparwood
7 along the Elk River, downstream of three coal
8 mines, and adjacent to Teck's Lion Creek
9 operations.

10 I manage a fishing lodge called the Elk
11 River Lodge that borders the Elk River. Our
12 drinking water is tested quarterly for selenium
13 and other mine constituents by Teck, and the
14 selenium levels in the drinking water have been
15 found to be the highest in the Elk Valley, and
16 surpass British Columbia drinking water
17 guidelines. Teck now provides potable water to
18 our lodge, but our water source is still
19 contaminated.

20 One last quick observation I'd like to
21 mention. During the process of trying to reduce
22 selenium and other mining contaminants, and the
23 development and implementation of the Elk Valley
24 Water Quality Management Plan, there has been no
25 decrease in the production of coal.

1 As a matter of fact, production has
2 continued to increase, and will continue to
3 increase in the foreseeable future with the
4 proposed Teck Castle Mountain expansion, Jameson
5 Crown Mountain proposal, and North Coal Michel
6 Coal Mine proposal.

7 MS. CLERGET: Your time is up.

8 MR. HANLON: I encourage Montana to set
9 strong selenium -- as a proactive way of complying
10 assurance downstream. Thank you for the
11 opportunity to speak.

12 MS. CLERGET: Thank you. Ryland Nelson.

13 (No response)

14 MS. CLERGET: Ryland Nelson.

15 (No response)

16 MS. CLERGET: John Bergenske again?

17 (No response)

18 MR. BERGENSKE: I've already spoken, so
19 thank you.

20 MS. CLERGET: Thank you. Sorry. I have
21 you on my list twice. Tim Lenihan.

22 MR. LENIHAN: Thanks. Can you hear me?

23 MS. CLERGET: Yes.

24 MR. LENIHAN: Thank you very much. This
25 is Tim Lenihan. I'm an outfitter, flyfishing

1 outfitter on the Kootenai River, and also speaking
2 for the Kootenai Valley Trout Unlimited Club. And
3 just wanted to thank everyone for the
4 participation, and appreciate everybody who has
5 been involved.

6 Totally support the 0.8 standard, and
7 very much hope that we set the standard today.
8 The science is exhaustive. It's peer reviewed.
9 There's no measurable effects on the Montanore
10 Mine locally. There's no measurable effects on
11 the other permits here in Montana. No effect on
12 real estate. Doesn't seem that there's any down
13 side to this at all.

14 The 0.8 standard will protect native
15 fish, it will protect the resource. I hate to be
16 grim, folks, but the Kootenai has cancer. This is
17 an opportunity -- to reflect Director McGrath's
18 opening statements -- this is an opportunity to be
19 very much proactive. We can treat the cancer now.

20 Again, not to be grim. That's a
21 horrible, horrible analogy, but that's the way it
22 feels from where I sit. This is how I make my
23 living. We can treat this now, and be proactive,
24 and not be reactive down the road. So let's adopt
25 the standard. Thank you very much. And I

1 appreciate everybody who has been involved in this
2 process. Thank you.

3 MS. CLERGET: Thank you. Ryland Nelson.

4 MR. NELSON: Hi. My name is Ryland
5 Nelson. I'm from Fernie, long time local, owner
6 of a large accommodation provider.

7 I am a strong proponent of getting this
8 standard set at the recommended, science
9 recommended level. I've been involved in this
10 issue for twenty years, and not a lot has changed
11 in these years. But what is needed to protect the
12 aquatic life in these watersheds, the only thing
13 that has changed is that the selenium levels have
14 continued to go up, and Teck and the mining
15 proponents have continued to delay, delay, delay.

16 So now is time for action, and
17 Canadians, and Elk Valley and Elk River users are
18 strong proponents of this recommended --
19 (inaudible) --

20 MS. CLERGET: Okay. Thank you. Let's
21 remind everybody to please mute and turn off their
22 cameras if you're done speaking. That's all I
23 have for proponents. George, did I miss anybody
24 on your list?

25 MR. MATHIEUS: Did you get Kendra

1 Norwood?

2 MS. CLERGET: I think so. Yes.

3 MR. MATHIEUS: No, I think that's all
4 the proponents on my list.

5 MS. CLERGET: Is there anyone else that
6 wishes to speak that has not spoken yet as a
7 proponent?

8 MR. AITKEN: Yes. Gary Aitken, Jr.,
9 Kootenai Tribe of Idaho, please.

10 MS. CLERGET: Thank you. You have a
11 minute.

12 MR. AITKEN: Thank you Sarah, thank you
13 Madam Chair, and the Board. I'm Gary Aitkin, Jr.,
14 Kootenai Tribe of Idaho Chairman.

15 Kootenai Tribe of Idaho is a member of
16 Chanaka (phonetic) Nation, a nation that's been in
17 this territory since time immemorial. Our story
18 tells us that when we were put here, the Creator
19 told us that as long as we took care of this land,
20 it would take care of us forever, so it's very
21 important to care of this land. The Kootenai
22 River is a cultural resource to us, and it needs
23 to be protected.

24 The Kootenai Tribe of Idaho works really
25 hard on restoration of habitat, of fisheries, and

1 we need to take care of the resource. We love to
2 take care of the resource for the benefit of
3 Chanaka and non-Chanaka alike.

4 Water quality is getting worse because
5 of the coal mining in BC and its failure to
6 address. And it's not just the Kootenai Tribe of
7 Idaho. Every US Senator has also -- from Montana,
8 Idaho, Washington, and Alaska, have signed a
9 letter to BC stating that enough is enough.

10 So we are in support of the site
11 specific criteria of 0.8, and hoping you'll hold
12 their feet to the fire, and cleaning up this river
13 and doing what we can to hold our covenant to our
14 people, and to take care of everything that we are
15 granted to by the Creator. I appreciate the time.
16 Thank you.

17 MS. CLERGET: Thank you. Anyone else
18 who wishes to speak as a proponent?

19 (No response)

20 MS. CLERGET: Hearing none, Madam Chair,
21 I think we're ready to move to opponents.

22 CHAIR DEVENY: Let's hear the opponents
23 to those proposed rules. Go ahead, Sarah. Thank
24 you for coordinating this.

25 MS. CLERGET: First we have Vicki

1 Marquis.

2 MS. MARQUIS: Thank you, Madam Chair,
3 members of the Board. I'm Vicki Marquis
4 representing Teck.

5 Teck does not believe that an additional
6 public comment is appropriate prior to the Board's
7 vote, since the public comment period has already
8 ended. To ensure that we do not waive any
9 arguments, we note that there are several
10 inaccuracies presented today in the Board packet.

11 We stand by our written comments and
12 previous oral testimony, and we reserve the right
13 to object to any and all statements made today and
14 in the Board packet, specifically in the responses
15 to comments, including, but not limited to,
16 statements indicating that the Water Policy
17 Interim Committee did not object to this
18 rulemaking, but which failed to note that a
19 majority of the WPIC members submitted a letter to
20 this Board specifically asking that the rule not
21 be finalized at this time. That's in your Board
22 packet at pages 343 to 344.

23 I have a lot more to say. I do not have
24 enough time. But Teck respectfully urges you to
25 not finalize this proposed rule at this time.

1 Thank you.

2 MS. CLERGET: Thank you. Anne
3 Fairbrother.

4 MS. FAIRBROTHER: Yes. Good morning,
5 Madam Chair, and members of the Board. I'm Dr.
6 Anne Fairbrother, principal scientist with
7 Exponent out of the Bellevue, Washington office.

8 I have several very serious technical
9 concerns with the modeling effort that was done,
10 most of which I've put into my written comments
11 that are in your Board packet, but there are two
12 that DEQ has not addressed that I want to raise to
13 your attention.

14 This is a definition of what is meant by
15 steady state; and also a determination of which
16 species need to be used for monitoring.

17 For steady state, we need to know how
18 long concentrations must be stable, and how much
19 natural variability is allowed in the definition.
20 Also DEQ includes changing loadings in their
21 definition of steady state, which also seems to
22 include decreasing concentrations.

23 When the system is not in a steady
24 state, but concentrations are decreasing,
25 impairment should not be based on water values as

1 the accumulation will be decreasing, and the
2 trophic transfer factors use to calculate the
3 water values will be too high.

4 And the second point about which these
5 seem to be used for --

6 MS. CLERGET: Your time is up, so please
7 make it very short.

8 MS. FAIRBROTHER: Some fish just have
9 really high concentrations naturally, and are not
10 good sentinels for determining impaired versus
11 unimpaired systems. The mountain whitefish, which
12 was used by Idaho, is one of these. Thank you
13 very much, and we appreciate your attention.

14 MS. CLERGET: Thank you. That's all I
15 have for opponents. Would anybody else like to
16 speak as an opponent?

17 (No response)

18 MS. CLERGET: Hearing none, may I move
19 on to neutral, Madam Chair?

20 CHAIR DEVENY: Yes, go ahead.

21 MS. CLERGET: John Kilpatrick from USGS.

22 MR. KILPATRICK: Thanks, Madam Chair and
23 Board members, for the chance to comment. My name
24 is John Kilpatrick. I'm Director of the US
25 Geological Surveys and Water Science Center in

1 Montana.

2 USGS is a federal science agency that
3 exists to provide unbiased natural resources
4 information. More than a decade ago, the USGS
5 developed an ecosystem scale selenium accumulation
6 model. It was later used by EPA to develop the
7 national selenium standards to protect aquatic
8 life.

9 The model was derived from patterns
10 broadly observed in ecosystems around the world,
11 is widely accepted by scientists and academia,
12 industry, and government, and is the basis for the
13 specific model developed for Lake Koocanusa.

14 The USGS took this widely accepted
15 model, and enhanced it with site specific data.
16 The model was subject to fundamental science
17 practices of the USGS to ensure it was unbiased,
18 objective, and impartial. The result is the best
19 available science for the prediction of the state
20 selenium concentrations in Lake Koocanusa.

21 The Lake Koocanusa model meets the
22 USGS's high standards for science quality, and
23 Montana DEQ's implementation of the model is
24 consistent with the model's intended use. Thank
25 you.

1 MS. CLERGET: Thank you. Is there
2 anyone else who wishes to speak?

3 (No response)

4 MS. CLERGET: Hearing none, Madam Chair,
5 I believe that concludes the public comment.

6 CHAIR DEVENY: Thank you, Sarah, and
7 thank you everybody for keeping your comments to
8 one minute, and for your very thoughtful input.

9 With that, I would like to go back to
10 Board members, and open this up for discussion and
11 questions by Board members of DEQ and/or of any
12 the presenters who spoke in favor or opposition to
13 the rule.

14 BOARD MEMBER TWEETEN: Madam Chair, this
15 is Chris. I have a couple questions, and then a
16 small handful of observations.

17 The first question goes to something
18 that was touched on at our last meeting but not
19 mentioned today, and I think maybe one of the
20 scientists might be appropriate to address this.
21 George, I don't know who on your staff is the
22 right person for this question, but perhaps you
23 can direct it where it needs to go.

24 At our last meeting, when we were
25 discussing the question of whether we should

1 initiate rulemaking, the point was made, I believe
2 -- I think I recall this correctly --- that the
3 geology that exists on the Montana side of the
4 border makes it highly unlikely, I guess, that
5 activity, commercial activity on this side of the
6 border would trigger releases that would drive the
7 selenium values in the lake and the lower part of
8 river in Montana above the standards. Do I have
9 this right?

10 CHAIR DEVENY: George, go ahead.

11 MR. MATHIEUS: Madam Chair, this is
12 George Mathieus. I'll pass that question to Myla
13 Kelly.

14 MS. KELLY: Board Member Tweeten, that
15 is correct. There is substantially different
16 geology in the Elk Valley than in Lincoln County
17 or in Montana.

18 BOARD MEMBER TWEETEN: Okay. Thank you.
19 My second question I think maybe Director McGrath
20 or Tim Davis might be the appropriate person to
21 speak to this.

22 If you could remind us how the adoption
23 of a standard like this on this side of the border
24 can affect commercial mining activity in British
25 Columbia. They are upstream. We have no

1 sovereign jurisdiction to control what they do in
2 British Columbia.

3 I'm just curious, because Teck operates
4 in BC. I don't believe they mine in the drainage
5 that's involved in this matter in Montana. So I'm
6 just curious as to how this standard in Montana
7 affects what Teck is able to do in BC.

8 DIRECTOR McGRATH: Madam Chair and Board
9 Member Tweeten, I'll take a shot at answering
10 that, and then may also defer to Tim Davis if he
11 wants to weigh in.

12 Two things that I would say, Board
13 Member Tweeten. First off is that this issue has
14 come up a number of times over the last couple
15 months, you know, how does this impact enforcement
16 over in British Columbia, and you're right. DEQ
17 cannot enforce our standard on Teck Coal.

18 But as Ayn Schmit from EPA spoke to in
19 her brief comments here today, and has said also,
20 Montana standard does empower our Federal
21 government to work with Canada to make sure that
22 water that's coming out of Canada into Montana
23 meets our standards. So without a standard in
24 place, that conversation is not going to happen.
25 That's the first thing.

1 The second thing is we have been
2 coordinating with British Columbia with our
3 counterparts in the Administrative Environment
4 Climate Change, to try to align our standards, and
5 ideally what we want to get to is that British
6 Columbia and Montana have aligned standards, which
7 then puts British Columbia in the place of being
8 able to enforce their standard, which by way of
9 having an aligned standard would also be
10 protective for Montana.

11 By us adopting this standard today, what
12 that does is continue to put the pressure on
13 British Columbia to indeed adopt their own
14 standard that is aligned with us.

15 Tim, anything else that I missed that
16 you might add?

17 MR. DAVIS: No, Madam Chair, members of
18 the Board. No, I think you hit on the two main
19 things that I would have brought up, Director.

20 CHAIR DEVENY: Chris, does that answer
21 your questions?

22 BOARD MEMBER TWEETEN: It does. And
23 Madam Chair, just a couple of observations, I
24 guess.

25 One, the question of whether it's

1 premature to be addressing this standard question
2 when there doesn't appear to be any sort of
3 environment calamity going on in the lake with
4 respect to fish species -- we don't have massive
5 fish kills or anything like this.

6 I'm reminded of something that the
7 Montana Supreme Court said many years ago in
8 discussing the constitutional provision in our
9 Constitution regarding the right of every citizen
10 to a clean and healthful environment, and the
11 Court observed that it's not necessary for us to
12 wait until all of the fish in the river are dead,
13 or all of the birds have died, or all the wildlife
14 habitat has been destroyed before we take action,
15 that the clean healthful environment imperative in
16 the Montana Constitution is very much forward
17 looking and proactive.

18 So I believe consistent with what the
19 Court has observed, that taking steps before
20 widespread environmental damage has happened on
21 the Montana side of the border can be entirely
22 appropriate.

23 And second, with respect to the
24 suggestion that it would be more appropriate to
25 put this matter off, the unspoken, if not spoken,

1 assumption with respect to that suggestion rests
2 in part I think on the fact that we've had an
3 election, a new Administration is coming in in
4 January, and perhaps the views of that
5 Administration's Department of Environmental
6 Quality ought to take precedence over that which
7 has been expressed by DEQ under the present
8 Administration.

9 And we only have one Administration at a
10 time under our Constitution, and I think the
11 question is not so much where the political chips
12 are going to fall in January. The question is
13 whether the matter has been rigorously reviewed,
14 whether a sufficient period of time has been taken
15 to conduct the scientific reviews that need to be
16 done, and whether we as a board are persuaded that
17 the scientific work that's been done in fact
18 supports DEQ's recommendation.

19 If we think under those considerations
20 that this matter is ripe for us to address today,
21 I see no reason why we ought to delay, and in my
22 estimation, I think I'm impressed by the
23 scientific work that has been done; and by the
24 fact that with the exception of the industry
25 representatives, scientists are in agreement with

1 respect to the range in which this standard ought
2 to lie; the fact that the principal objector Teck
3 is not even subject to this standard, which in my
4 mind undercuts the weight of their objections
5 considerably.

6 And all those together I think lead me
7 to the conclusion that I think it's entirely
8 appropriate for us to go forward at this meeting.
9 There's no compelling reason to delay. So I think
10 as I said, it's entirely appropriate for us to go
11 ahead and consider this rule and decide what we
12 want to do without any further delay.

13 BOARD MEMBER LYNCH: This is Jerry
14 Lynch.

15 CHAIR DEVENY: Board Member Lynch. I
16 appreciate your input, questions, comments.

17 BOARD MEMBER LYNCH: I agree with the
18 statements made by Board Member Tweeten. To me,
19 time is of the essence. I think that's
20 particularly true from the viewpoint of the burbot
21 and the white sturgeon.

22 I do want to make a statement in
23 response to the suggestion by the Teck
24 representative, with due respect. I want to make
25 clear that I do not take into consideration in

1 making my decision the comments that were made
2 today.

3 I do that to avoid any suggestion that
4 my decision is based upon information that goes
5 beyond the administrative record. I understand
6 the purpose of this -- not a hearing -- but this
7 opportunity for people to comment, but I want to
8 make absolutely clear my decision is based upon
9 the administrative record as developed.

10 I do for my own edification, however,
11 have one basic question, and I think probably
12 directed to either Ms. Kelly or Mr. McGrath, and
13 it is this:

14 We know that the proposed standard is of
15 0.8. We've heard talk about the British Columbia
16 standards. I just want to make clear that the
17 Montana standard is -- I think Mr. McGrath used
18 the term "aligned with the standards of British
19 Columbia," so that Montana's not some sort of
20 outlier in this process.

21 And the same question with regard to the
22 standards in Idaho, that the proposed site
23 specific standard we're discussing here today is
24 in fact aligned with or in other words consistent
25 with both the upstream standards and the

1 downstream standards.

2 DIRECTOR McGRATH: I can take a shot at
3 that, Madam Chair and Board Member Lynch, but
4 Myla, please jump in.

5 So first with Idaho, they've adopted the
6 3.1, which is for the Kootenai River, and that is
7 consistent with our standard that's proposed here
8 for the main stem of the Kootenai.

9 With regard to British Columbia, so
10 their process got delayed. They had a snap
11 election back I think it was September or so, and
12 it took them a couple of months to get their new
13 government stood up.

14 And so they have not formally proposed
15 their, what they call objective -- it's not a
16 standard. They call it an objective. That hasn't
17 been done yet, so we don't know what they're going
18 to ultimately propose or adopt at this point.

19 At the same time, having gone through
20 this process with them over the last number of
21 years, and developing that scientific base, we
22 know that what they ultimately will pursue will be
23 based on that same body of information. Of
24 course, they'll go out and potentially gather
25 additional information, so I don't want to suggest

1 that they're going -- what they might adopt, but
2 certainly at this point, the process has been
3 aligned.

4 BOARD MEMBER LYNCH: Does Canada itself
5 have a national standard or criterion similar to
6 the United States EPA?

7 DIRECTOR McGRATH: Myla, do you know the
8 answer to that?

9 MS. KELLY: Yes, I do know the answer to
10 that. They have a water column objective of two
11 micrograms per liter, and they also have fish
12 tissue objectives that are more stringent than
13 ours. It's eleven micrograms per liter for
14 egg/ovary, and four for muscle and whole body.

15 The only thing I would add is that our
16 fish tissue standards for the Kootenai River will
17 also be aligned to Idaho's fish tissue standards,
18 so both the water column and the fish tissue.

19 BOARD MEMBER LYNCH: So the Idaho
20 standard -- because we did hear statements about
21 the, quote, "load" coming from Montana into Idaho,
22 so Idaho standards are aligned with or the same as
23 the proposed standard?

24 MS. KELLY: That's correct.

25 BOARD MEMBER LYNCH: All right. Thank

1 you. The final comment I have, Madam Chair, is
2 that I also want to agree with Board Member
3 Tweeten's comment that the objections here made by
4 Teck, they're not operating in Montana. So really
5 the quality of water that we want in Montana, Teck
6 in my opinion has no say in the issue. Thank you.

7 CHAIR DEVENY: Thank you, Board Member
8 Lynch. To other Board members -- I see John
9 DeArment has his hand up, and then Dexter, I think
10 you're going to want to make some comments, too.
11 But we'll go ahead with John.

12 BOARD MEMBER DeARMENT: Thank you, Madam
13 Chair. I agree with Board Members Tweeten and
14 Lynch. I think there's ample evidence in the
15 administrative record to demonstrate that the
16 proposed site specific standards are very much
17 needed at this time, that the process that
18 developed was conclusive, transparent, and of
19 sufficient length, and that the science behind the
20 standard is robust and world class.

21 I see no legitimate reason for further
22 delay, and when you think the time is right, I'm
23 very much prepared to introduce a motion that the
24 Board adopt the site specific standards for both
25 the lake and the river. Thank you.

1 CHAIR DEVENY: Thank you, Board Member
2 DeArment. Dexter Busby, did you have some
3 comments?

4 BOARD MEMBER BUSBY: I had a couple of
5 questions, but I could not understand what John
6 was saying.

7 CHAIR DEVENY: We had some problems with
8 John's information, but I think -- Laurie, did you
9 get John's testimony? Maybe you could read that
10 back real quick.

11 (Whereupon, Board Member DeArment's
12 comment was read back)

13 CHAIR DEVENY: So Dexter, with that, did
14 you have some questions then of --

15 BOARD MEMBER BUSBY: I did. I spent the
16 last three nights reading all the comments that
17 came back. There was some interesting things that
18 came out.

19 Essentially there's quite of bit of
20 conflict between what the State's data was and
21 what several others supplied in the comments, and
22 the State did not, in my view, adequately answer
23 those questions in their response to comments.
24 That being said, is the Director still on,
25 Director McGrath?

1 DIRECTOR McGRATH: Yes, I am on.

2 BOARD MEMBER BUSBY: One of the comments
3 that was made by one of the legislators on the
4 WPIC committee thought that you had misled the
5 committee in your discussion of the sediments in
6 the bottom of Lake Kooacanusa. Would you address
7 that.

8 DIRECTOR McGRATH: Of course. And thank
9 you for the question. Madam Chair.

10 So the question that was raised, first I
11 mean it's probably worth noting that it was a
12 fairly complicated question with five or six
13 different topics raised at once. What I responded
14 to were two things: One, the question of does the
15 dam, Libby Dam, have an impact; and then secondly,
16 if we don't adopt a standard, this standard, will
17 there be a continued accumulation of selenium,
18 increased accumulation.

19 What I said was yes, the dam does have
20 an impact, and that is why we have the two
21 different standards -- 1.8 for the dam, because in
22 waters that aren't moving, the uptake is different
23 than in a river system where the water is flowing,
24 where the proposal is 3.1.

25 Secondly, by pointing out the addition

1 of new mines and expanded mines in the Elk River,
2 that we could anticipate that there could be
3 additional accumulation going forward if we don't
4 adopt a more protective standard.

5 Now, where there seems to be some debate
6 around what I said is with regard to
7 sedimentation. And there was a study -- and all
8 of this is laid out in our response to comments --
9 but there was a study in 2013 that did show that
10 there was some increase of sedimentation at the
11 dam, and not in other areas on the banks or closer
12 to where the water comes in over the border, which
13 would suggest that there might be additional
14 sedimentation.

15 That was not conclusive, however, and I
16 want to make sure that I'm clear in saying that.
17 I mean that was the one study, and we haven't done
18 more to really be able to definitively say will
19 there be increased sedimentation. But I don't
20 think anyone doubts that there will be an increase
21 in accumulation.

22 And the uptake from selenium in the
23 water column is really what is very important
24 here, what we've seen. That's where particularly
25 in fish species that uptake occurs.

1 CHAIR DEVENY: Dexter, does that answer
2 your question?

3 BOARD MEMBER BUSBY: Yeah, I don't think
4 it answers it completely, but I think that's the
5 best you can do at the time, so I'm not going to
6 quibble with the answer at all.

7 The second thing is I, too, am very
8 concerned about Montana passing a standard that
9 has only effect on Montana, and Montana
10 businesses, and any activities around the river or
11 the lake, but practically has no effect on the
12 actual admitters in Canada.

13 We can talk all we want, but they're an
14 independent nation, and BC is an independent
15 province of that nation, and these guys do what
16 they want to do, not what we tell them what to do.
17 And we can make all sorts of promises, but the
18 fact of the matter is they do what they do, and we
19 do what we do, but we're not going to have any
20 effect on what they do.

21 The second thing is I saw no comments
22 from DEQ, but I saw several comments on the
23 potential economic impacts, and I'd like DEQ to
24 talk about what potential costs they see to the
25 state, and to businesses, and anybody wanting a

1 water permit that this might have, a water
2 discharge permit, that this might have on those
3 folks.

4 CHAIR DEVENY: I believe there was an
5 economic analysis that was performed, and I'll ask
6 somebody from DEQ to please address Mr. Busby's
7 question.

8 DIRECTOR McGRATH: Madam Chair, if I
9 might, I'd like to defer that to Tim Davis.

10 MR. DAVIS: Madam Chair, members of the
11 Board, Board Member Busby. There was a small --
12 We did conduct, as required by law, a small
13 business impact assessment. That assessment did
14 look at the --

15 CHAIR DEVENY: Tim, you're breaking up.
16 Can you start over.

17 MR. DAVIS: Madam Chair, Board members,
18 Board Member Busby, this is Tim Davis, Water
19 Quality Division Administrator at DEQ.

20 So the Department did a conduct a small
21 business impact analysis, and that is included
22 with the Board packet. That analysis, we looked
23 at not only individual dischargers, but also
24 public wastewater systems that could potentially
25 be affected by the new standard.

1 We found that none of those systems have
2 a reasonable potential to exceed the selenium
3 standard as proposed. Therefore they would not
4 have new or additional treatment costs as a result
5 of the adoption of the standard. They would not
6 have selenium effluent limits applied to their
7 permits going forward.

8 We also, as an example, and one of the
9 reasons for that is, as we've talked about, the
10 difference in geology. And the Montanore Mine is
11 a good example of the lack of impact on the
12 economy inside Montana for two reasons:

13 "A," even if they had selenium in their
14 ore -- which they have not found selenium to be in
15 their ore -- they are not on the main stem of the
16 Kootenai River, nor are they on Lake Koocanusa, so
17 the standard, the new standards would not apply to
18 them; but even if they were, they do not have
19 selenium in their ore.

20 And we -- as Lauren also pointed out, in
21 the response to comments points out -- we do not
22 have detection levels of selenium coming in,
23 except in one instance from tributaries in
24 Montana. So that backs up the finding that
25 there's unlikely to be an impact, an economic

1 impact in Montana as a result of the adoption of
2 the new standard, if you should choose to go
3 forward.

4 BOARD MEMBER BUSBY: Thank you, Tim.
5 The one other comment -- I think my other comments
6 were addressed by Mr. Tweeten and Mr. Lynch -- but
7 my only other comment is we had written comments
8 from the County Commission and other legislators
9 in the area, and they were all negative to this.
10 I was wondering if you had any thoughts on that,
11 Tim. For Tim Davis. Excuse me. I'm sorry.

12 CHAIR DEVENY: Tim, go ahead.

13 MR. DAVIS: Madam Chair, Board Member
14 Busby. We have had three different meetings with
15 local stakeholders and local officials to address
16 their concerns and comments. I think you'll note
17 that in the response to comments, there are very
18 specific responses to the individual comments that
19 were raised by local officials, and I believe that
20 from our perspective, they address their specific
21 comments related to process, as well as the
22 science.

23 But we did have, since August, we've had
24 three different meetings with local stakeholders
25 and officials to make sure that they understood

1 what was in the science, to answer their
2 questions, and to address their concerns.

3 BOARD MEMBER BUSBY: Thank you, Tim.
4 Just a quick comment that I want the Board to know
5 I'm very sensitive to legislator comments and
6 County Commission comments, so I pay very, very
7 close attention to what these folks have to say.
8 That's all I have. Thank you.

9 CHAIR DEVENY: Thank you, Dexter. Does
10 Board Member David Lehnherr have any questions or
11 comments?

12 BOARD MEMBER LEHNHERR: Thanks, Madam
13 Chair. I appreciate and concur with many of the
14 comments made previously by other Board members.
15 I would like to make some comments, but I think I
16 would like to save them for a discussion after a
17 motion has been made.

18 CHAIR DEVENY: Okay. All right.

19 BOARD MEMBER LYNCH: Madam Chair, this
20 is Board Member Lynch. I appreciate Dexter's
21 comments. I do think that the enforcement is an
22 issue, Montana versus British Columbia.

23 However, I just think we don't want to
24 sink to the lowest common denominator. I think we
25 want to maintain as best we can the pristine

1 nature of the waters in this system, and at the
2 end of the day, I think that may prove to be more
3 economically viable than allowing a higher
4 selenium standard. Thank you.

5 BOARD MEMBER TWEETEN: Madam Chair.

6 CHAIR DEVENY: Yes. Board Member
7 Tweeten.

8 BOARD MEMBER TWEETEN: If I might. Like
9 Dexter, I'm sensitive to the interest in this
10 process that is expressed by the local elected
11 officials.

12 But my concern -- if you recall, at last
13 meeting, I expressed a concern that the DEQ make
14 sure that it had touched base with all of the
15 local government officials that expressed an
16 interest in this process.

17 My concern was process driven. Nothing
18 derails a proceeding of any kind faster than a
19 suggestion that someone wasn't given the
20 opportunity to give input, and I don't believe
21 that the local officials now can make that claim.
22 I think they can certainly complain that their
23 suggestions weren't taken, but I don't think they
24 can any longer claim that they weren't listened
25 to.

1 And for me, you either believe the
2 science or you don't. I will be making my
3 decision based on the science that's been
4 explained by DEQ, and not on any other factors.
5 So for me, I think we've satisfied our obligation
6 to meet the needs of local officials to provide
7 input into this decision.

8 And as I say for me, as a voting member
9 of the Board, my decision is going to be based on
10 where the facts are, and it's going to be science
11 driven.

12 CHAIR DEVENY: Thank you, Board Member
13 Tweeten.

14 I just want to comment on behalf of
15 myself. I waded through the very extensive
16 hearing record, and was very much persuaded by the
17 fact that Lake Koocanusa and the Kootenai River
18 need a very site specific selenium standard
19 because currently the current standard is not
20 protective of aquatic life, and we have evidence
21 that there is reproductive harm occurring.

22 Also I was very much impressed by the
23 very, very solid science that was used using peer
24 reviewed methods and EPA approved methods, and
25 that DEQ I believe did some outstanding

1 stakeholder and public outreach for the rulemaking
2 process.

3 It was extensive in its use of a very
4 technical committee that was made up of top
5 selenium experts, and the rulemaking effort that
6 they followed met the requirements of MAPA, State
7 and Federal Clean Water statutes, and frankly went
8 beyond that.

9 Also something that hasn't been
10 mentioned today, or if it was I missed it, but
11 there is a three year review period in place for
12 all of our water quality rules, including this
13 one, so if we're running into issues that this
14 isn't going the right way, there is that review
15 process that occurs every three years.

16 And lastly, I believe that the rule
17 adoption places Montana in a very proactive and
18 protective position with respect to our neighbors
19 in Idaho and in Canada, and I am going to be in
20 full support of the adoption of this rule.

21 With that, do any Board members have any
22 further questions or comments before we proceed
23 with any motion action?

24 Dexter, is your phone on? Are you
25 trying to say something?

1 BOARD MEMBER BUSBY: No. My phone is
2 on. I do have one small comment to make, though.

3 CHAIR DEVENY: Go ahead.

4 BOARD MEMBER BUSBY: I think I probably
5 will support the elected officials from the area,
6 because I'm not sure their questions and their
7 concerns have been waylaid in any way by the data
8 that's been presented. So personally I'm going to
9 support that, along with the idea it can't be
10 enforced. I spoke last time that I don't like
11 regulations that are for regulation only, and
12 can't be enforced, so I'm probably not going to
13 support this.

14 CHAIR DEVENY: Duly noted, Dexter.
15 Thank you.

16 BOARD MEMBER LYNCH: Madam Chair, Board
17 Member Lynch. I don't want to step out of bounds.
18 I would think given the nature of this vote we're
19 about to take, it may be appropriate, if you will,
20 to ask each member individually how they wish to
21 vote, rather than a yea or nay, if you're in
22 agreement with that.

23 CHAIR DEVENY: I think that's a good
24 idea. We will take a voice vote when we're ready.

25 David Lehnherr, did you have a question?

1 I could finally see you. You weren't on my screen
2 before, so I hope I didn't miss times when you
3 wanted to speak up. I think you're muted, David.

4 BOARD MEMBER LEHNHERR: There we go.
5 Thank you. I do think it would be appropriate to
6 have a motion before we -- I mean in general it's
7 a good idea to have a motion, so we know what
8 we're discussing. It might be a good idea to get
9 a motion at this point, and then I will add a few
10 comments.

11 CHAIR DEVENY: Okay. I think you're
12 right. I think we're getting ready for one. I
13 know that John DeArment had indicated that he was
14 ready to make a motion.

15 BOARD MEMBER TWEETEN: Madam Chair.

16 CHAIR DEVENY: But Chris, did you
17 have --

18 BOARD MEMBER TWEETEN: I will defer to
19 John.

20 CHAIR DEVENY: John, before you make the
21 motion, just so we don't have to clean it up. I
22 just want to mention that the takings, the
23 stringency and the takings language was provided
24 in the Board packet a little late, but it is on
25 there, and when you do make the motion one way or

1 another, if you could also address whether or not
2 that includes adopting the House Bill 521
3 stringency and 311 takings analysis.

4 BOARD MEMBER DeARMENT: Okay. Madam
5 Chair, can you hear me well enough this time for
6 me to do this?

7 CHAIR DEVENY: Yes. That's much better.

8 BOARD MEMBER DeARMENT: Before I
9 introduce the motion, I do want to do one more
10 thing, which is acknowledge the hard work that the
11 Department did for this. I have been involved
12 with DEQ for probably the better part of twenty
13 years, and it seems to me these rules and the
14 process that created them is the Department at its
15 very best.

16 So thanks everybody who worked on this
17 within the Department. Your work really matters,
18 and I think you have a lot to be proud of today.

19 So I'm happy to introduce a motion for
20 the Board to adopt the site specific selenium
21 rules for Lake Koocanusa and the Kootenai River,
22 along with the stringency and takings measures
23 from House Bills 521 and 311.

24 CHAIR DEVENY: There's a motion before
25 us, and I'd be happy to second that. With that,

1 is there further Board discussion? Chris Tweeten.

2 BOARD MEMBER TWEETEN: Thank you. Just
3 to clarify. I believe the Department, based on
4 public comment, has suggested some I think
5 relatively small amendments to the rules that were
6 originally proposed; am I correct about that?

7 CHAIR DEVENY: Yes, the recommendation
8 does include amendments to ARM 17.30.602.

9 BOARD MEMBER TWEETEN: And John, I'm
10 just clarifying that your motion is to adopt the
11 proposed rules as amended following the rulemaking
12 hearing.

13 BOARD MEMBER DeARMENT: Madam Chair,
14 Board Member Tweeten. Yes. Thank you for the
15 clarification and the assistance. I appreciate
16 it. That is my intention indeed.

17 CHAIR DEVENY: Thank you, Chris, for
18 pointing that out. David, did I see you had
19 something to say?

20 BOARD MEMBER LEHNHERR: Yes. Can you
21 hear me?

22 CHAIR DEVENY: Yes.

23 BOARD MEMBER LEHNHERR: Thank you, Madam
24 Chair. I just wanted to make a few comments.

25 I do think the DEQ did a great job.

1 There have been comments about possible economic
2 impacts, and the economic impacts can have
3 multiple facets.

4 I think it's important to remember the
5 economic benefit of people that are using the
6 rivers and the lake in Canada, and Montana, and
7 Idaho, and the benefits to tourism and recreation
8 is when you have unimpaired waterways. And local
9 elected officials have been mentioned, but we've
10 also heard from many local unelected residents who
11 demonstrated great concern for the waterways, and
12 the lake.

13 I think we ignore the consensus of
14 dozens of highly qualified scientists at our
15 peril. There have been comments regarding why we
16 are, quote, "rushing," unquote, to have the
17 standards put in place, when the other side of the
18 coin may be -- and this has been brought up before
19 -- why wasn't this done sooner?

20 As a medical professional, I can tell
21 you that an ounce of prevention is truly worth a
22 pound of cure, and certainly we've seen the
23 consequences around the state of not being
24 proactive, and ending up with impaired waterways
25 and impaired landscapes.

1 And I think what has been done by the
2 DEQ with this proposal is to take reasonable,
3 scientifically sound proactive steps to keep
4 impairment from occurring. Thank you.

5 CHAIR DEVENY: Thank you, David. Are
6 there any other comments that Board members would
7 like before we take a vote on this question?

8 (No response)

9 CHAIR DEVENY: Hearing none, let's have
10 a role call vote on this, and if it's not
11 inappropriate I'll just do the roll call given the
12 nature of this. So Board Member John DeArment,
13 signify if you're in favor or opposed to the
14 proposed motion.

15 BOARD MEMBER DeARMENT: Madam Chair, I
16 am in favor.

17 CHAIR DEVENY: Board Member Dexter
18 Busby, please signify whether you're in favor or
19 opposed to the proposed motion.

20 BOARD MEMBER BUSBY: I oppose the
21 motion.

22 CHAIR DEVENY: I'm Board Member Chris
23 Deveny. I am in favor of this motion and approve
24 it. Board Member David Lehnherr.

25 BOARD MEMBER LEHNHERR: I am in favor.

1 CHAIR DEVENY: Board Member Jerry Lynch.

2 BOARD MEMBER LYNCH: I am in favor.

3 CHAIR DEVENY: Board Member Chris

4 Tweeten.

5 BOARD MEMBER TWEETEN: I'm in favor.

6 CHAIR DEVENY: The motion carries five
7 to one. I wish to thank DEQ and everybody who
8 attended today. And Board members, please do not
9 leave because we still have more work on our
10 agenda today.

11 So with that, it concludes this action
12 item. Sarah, is there anything else that needs to
13 be done with regards to this?

14 MS. CLERGET: No. I think Laurie might
15 need a break, though.

16 CHAIR DEVENY: So it's ten after noon.
17 We have a few items on the agenda. I don't think
18 they will take a long period of time. Would
19 people be willing to work through the lunch hour
20 if we take a ten minute break now? Board members,
21 are you amenable to working through the lunch
22 hour? I'm thinking maybe a half hour or less.
23 Sarah, do you have a --

24 MS. CLERGET: I think that's right.

25 BOARD MEMBER DEARMENT: Fine with me,

1 Madam Chair.

2 BOARD MEMBER TWEETEN: Me, too.

3 BOARD MEMBER LYNCH: Fine with me.

4 BOARD MEMBER BUSBY: I'm okay.

5 CHAIR DEVENY: Okay. Great. Well,
6 let's take a ten minute break. It's about twelve
7 after. Let's come back in ten minutes and then
8 we'll wrap up our meeting.

9 (Recess taken)

10 CHAIR DEVENY: Would you take roll call,
11 please, Joyce.

12 MS. WITTENBERG: Yes. Chair Deveny.

13 CHAIR DEVENY: Present.

14 MS. WITTENBERG: John DeArment.

15 BOARD MEMBER DeARMENT: Here.

16 MS. WITTENBERG: Dexter Busby.

17 BOARD MEMBER BUSBY: Here.

18 MS. WITTENBERG: David Lehnherr.

19 BOARD MEMBER LEHNHERR: Here.

20 MS. WITTENBERG: Jerry Lynch.

21 BOARD MEMBER LYNCH: Here.

22 MS. WITTENBERG: Chris Tweeten.

23 BOARD MEMBER TWEETEN: Here.

24 MS. WITTENBERG: We have a quorum.

25 CHAIR DEVENY: Okay. The Board is all

1 back with a quorum, and let's move into new
2 contested cases. Sarah, would you like to do the
3 introductions.

4 MS. CLERGET: You have your standard
5 menu of options here. You can retain all
6 jurisdiction; you can assign jurisdiction to a
7 Hearing Examiner for procedural purposes only,
8 which means that if there are, for example,
9 motions for summary judgment or other dispositive
10 motions, you will have those, and then the final
11 hearing you'll hear yourself; or you can assign it
12 to a Hearing Examiner for all purposes, in which
13 case it will not come back to you until final
14 disposition. So those are your three options you
15 have.

16 The first case is Western Sugar
17 Cooperative. The material is in your packet. You
18 have to decide what your pleasure is with regard
19 to that new case.

20 CHAIR DEVENY: Okay. Thank you, Sarah.
21 So on Western Sugar Cooperative, I would make a
22 motion to assign the case to Agency Legal
23 Services' attorneys for all procedural and
24 substantive matters.

25 BOARD MEMBER LEHNHERR: I will second

1 that motion.

2 CHAIR DEVENY: It's been moved and
3 seconded. Is there any discussion?

4 (No response)

5 CHAIR DEVENY: Board members all in
6 favor of the motion, please signify by saying aye.

7 (Response)

8 CHAIR DEVENY: Any opposed?

9 (No response)

10 CHAIR DEVENY: Hearing none, the motion
11 passes, and we'll move on to the next case.

12 MS. CLERGET: The next one is the same
13 menu of options, and this one is by Westmoreland
14 regarding a notice of violation.

15 CHAIR DEVENY: I will go ahead and just
16 make the motion to assign the case to the Agency
17 Legal Services' attorneys for all procedural and
18 substantive matters, and is there a second?

19 BOARD MEMBER TWEETEN: This is Chris.
20 I'll second.

21 CHAIR DEVENY: It's been seconded by
22 Chris Tweeten. Any discussion?

23 (No response)

24 CHAIR DEVENY: All those in favor,
25 please signify by saying aye.

1 (Response)

2 CHAIR DEVENY: Any opposed?

3 (No response)

4 CHAIR DEVENY: Hearing none, that motion
5 passes. Moving on now to action on contested
6 cases. This is in regards to the City of Great
7 Falls MPDES permit. Sarah, go ahead.

8 MS. CLERGET: Yes. On this, it's
9 another stipulation like you've had. You've had a
10 few of these now in front of you. This is
11 essentially a settlement that the parties have
12 reached, and this has been a lot of work on their
13 part, and I think they should be commended for
14 getting to this point. There was a lot of
15 different moving pieces.

16 So this order that is a proposed order
17 that's in front of you represents a stipulation of
18 all the parties that this is the appropriate
19 resolution for this case, and they're asking for
20 you to approve it. And that is in your materials.
21 I apologize. I don't have the page numbers right
22 in front of me.

23 So that is your decision. You can adopt
24 it, you can modify it, you can reject it. I know
25 the parties are here. Well, you can't modify it.

1 You can reject it or adopt it. I apologize. If
2 you want to modify it, you have to send it back to
3 the parties and see if they can all agree. The
4 parties are here if you have any questions.

5 CHAIR DEVENY: Do Board members have any
6 questions of the parties? Chris.

7 (No response)

8 BOARD MEMBER TWEETEN: If I recall
9 correctly, I think Vicki Marquis said she might
10 have some comment to make with respect to this
11 matter. I don't know if that is accurate, or
12 she's just here to answer questions, but I'd like
13 to find out if she has anything to say about this.

14 CHAIR DEVENY: Ms. Marquis, would you
15 like to say anything about this case?

16 MS. MARQUIS: Thank you, Madam Chair,
17 Board Member Tweeten. Yes, I'm mostly here to
18 answer questions, but I will offer that the City
19 of Great Falls and DEQ have been working a lot on
20 resolving their issues. That's reflected in the
21 stipulation.

22 There is one issue outstanding which
23 we're currently working to resolve, and we feel
24 we'll be able to reach resolution on that as well.
25 But to capture the settlement, we wanted to put

1 this in front of the Board, and get the issues
2 resolved that we have agreement on today. So
3 thank you for your time and attention on this. I
4 appreciate it.

5 CHAIR DEVENY: Thank you. And does DEQ
6 have any comments to make?

7 MR. MOSER: Madam Chair, members of the
8 Board. We don't have any specific comments to
9 make, other than we would say that this
10 stipulation would resolve most of the issues, and
11 obviously we have reached an agreement with the
12 City of Great Falls on that.

13 And there is one issue that is
14 outstanding, and we'd have to, based on the terms
15 of this, we would have to submit a joint status
16 report to the Hearing Examiner by January 6th to
17 continue discussions about that.

18 BOARD MEMBER LYNCH: Madam Chair, this
19 is Board Member Lynch. Just for my own
20 edification, what is the outstanding issue?

21 MR. MOSER: It involves around effluent
22 limits for diethylhexylphthalate or DEHP.

23 BOARD MEMBER LYNCH: Okay. Is that a
24 principal issue in the dispute or minor issue?

25 MR. MOSER: I guess it was -- I mean it

1 was one of the five appeal issues noted in the
2 Notice of Appeal, so I guess it would be
3 considered a principal issue.

4 BOARD MEMBER LYNCH: All right. Thank
5 you.

6 CHAIR DEVENY: Are there any other
7 questions or comments from Board members?

8 BOARD MEMBER BUSBY: This is Dexter, and
9 actually it's for Sarah. If we approve this now,
10 doesn't it make the next one null and void, or
11 what's the status of that if we approve that now?

12 MS. CLERGET: It's exactly like -- You
13 did this in another case -- and I apologize. I
14 can't remember which one. I think it might have
15 been CHS. Vicki probably remembers better than me
16 -- where we resolved a piece of the case, and then
17 the parties continued to work, and in that case
18 were successful and came back a second time with
19 the second piece resolved; or we can -- if they
20 can't reach a settlement on that second piece,
21 then we can go on with a hearing on just that one
22 remaining piece. But no, it does not make the
23 rest of it void. It just relates to these issues
24 in the Notice of Appeal.

25 BOARD MEMBER BUSBY: Okay. So four out

1 of five will be settled with this?

2 MS. CLERGET: Yes.

3 BOARD MEMBER BUSBY: Okay. Thank you.

4 CHAIR DEVENY: So any further questions
5 or discussion before we move on? Would anybody
6 like to make a motion to approve or reject the
7 stipulation.

8 BOARD MEMBER TWEETEN: Madam Chair, it's
9 Chris. I will move to approve the stipulation.

10 BOARD MEMBER LYNCH: Madam Chair, I'll
11 second. This is Board Member Lynch.

12 CHAIR DEVENY: It's been moved and
13 seconded. Is there any further discussion on the
14 motion?

15 (No response)

16 CHAIR DEVENY: Hearing none, all those
17 in favor of the motion to approve the stipulation
18 for the final agency decision regarding the permit
19 for the City of Great Falls, please signify by
20 saying aye.

21 (Response)

22 CHAIR DEVENY: Any opposed?

23 (No response)

24 CHAIR DEVENY: Hearing none, the motion
25 passes. Thank you, everyone. With that, Sarah do

1 you have a Board Counsel update for us?

2 MS. CLERGET: I do not.

3 CHAIR DEVENY: Moving right along, we
4 have an opportunity for general public comment on
5 any matters that have not been on the agenda for
6 the meeting. Is there any comment from any
7 members of the public?

8 (No response)

9 CHAIR DEVENY: Hearing none, before we
10 adjourn, I'd just like to mention that there will
11 be a change, likely a change in Board membership
12 in 2021, as four of our current Board positions
13 expire at the end of December.

14 Just a reminder that these positions
15 remain active until they are replaced with
16 appointees, so if the replacements are not made
17 before the scheduled February meeting, all the
18 members will be expected to continue to carry on
19 their work of this Board.

20 Anticipating that there are going to be
21 new replacements, I'd like to really take this
22 time to wholeheartedly thank all of you Board
23 members for your diligence and good work over the
24 years, and it's been a real pleasure to serve with
25 you.

1 BOARD MEMBER LYNCH: May I make a
2 statement or ask Chris a question?

3 CHAIR DEVENY: Yes. Go ahead.

4 BOARD MEMBER LYNCH: Chris, I know
5 you're familiar with this, but I was appointed
6 interim, as you know. And then I received a
7 letter from the Governor-Elect and his staff that
8 interim position, my interim position, was going
9 to be reopened, and suggesting that I need send a
10 new application to the Governor-Elect and his
11 staff.

12 And maybe you're familiar with this, but
13 it's raised a bit of a legal issue in terms of
14 past practice, that if the Governor appoints
15 interim people, then it's a matter for the Senate
16 to address and not a renomination. And I just
17 want to make everybody on the Board aware of that.

18 It's come to a head on the -- I'm on the
19 Board of Public Education. It's come to a head,
20 so to speak, on the Board of Public Education
21 because myself and one other individual were
22 interim appointments. And it appears a bit of a
23 purge. But what's your history with that, Chris?

24 CHAIR DEVENY: My history -- and I'll
25 probably ask Chris Tweeten, because he has a much

1 longer history than I do -- but was that previous
2 Board members continued to serve until they were
3 replaced.

4 BOARD MEMBER TWEETEN: Madam Chair.

5 BOARD MEMBER LYNCH: The question to --
6 Well, Chris, go ahead. I'm talking about my
7 appointment was until 2023, but it appears that
8 may not happen. But that would have to be a
9 matter, my understanding based upon what I've
10 learned from discussions with the Board of
11 Education issue, is that that's a matter for the
12 Senate to deal with.

13 CHAIR DEVENY: That's right. Senate
14 confirmation occurs when the Legislature meets,
15 and so my experience is that the Board members
16 serve until the Senate either approved or rejected
17 them.

18 BOARD MEMBER LYNCH: Chris Tweeten.

19 BOARD MEMBER TWEETEN: Madam Chair, if I
20 might. My understanding of the law in this area
21 is that if a person is appointed to a position
22 with a specific term as opposed to an open ended
23 appointment, that that person serves until that
24 specific term ends, and that absent good cause,
25 the Governor does not have the authority to remove

1 that person from the position.

2 Jerry, I don't know if that's consistent
3 with your understanding as well, but --

4 BOARD MEMBER LYNCH: Chris, that's
5 consistent with my understanding, and it's
6 consistent with the Board of Public Education's
7 attorney Catherine Orr, who you're familiar with.
8 The Governor doesn't seem to be taking that
9 approach. He's requiring that we resubmit an
10 application, and a resume, etc.

11 So I do understand -- It's my view that
12 he doesn't have the authority to do that, but then
13 as a pragmatist, I understand that the Senate can
14 simply not move you forward.

15 BOARD MEMBER TWEETEN: So if you're not
16 confirmed, then the incoming Administration will
17 make another interim appointment to fill the
18 remainder of that term, and --

19 BOARD MEMBER LYNCH: Well, the
20 disturbing thing is it seems, from everybody I've
21 talked to, is inconsistent with past practice
22 forever. But all things change, right?

23 BOARD MEMBER TWEETEN: They certainly
24 do.

25 Madam Chair, if I might be allowed a

1 point of personal privilege. I just want to echo
2 your comments regarding my service on the Board.
3 My term ends at the end of this month. I've
4 informed the Governor's Office that I don't intend
5 to apply for reappointment to a position on the
6 Board, so my service will end when my successor is
7 appointed and qualified.

8 So this may very well be my last
9 meeting. I don't know how fast they're going to
10 get around to making those appointments, but I
11 wouldn't be surprised if I'm not around for the
12 February meeting.

13 In any event, it's been a pleasure to
14 work with the Board members that I've worked with,
15 and certainly the members of the staff at DEQ, who
16 I think have done remarkable work in support of
17 what the Board has been doing.

18 I also want to throw out a thank you to
19 the private parties who have appeared before us.
20 I think in most cases their presentations have
21 been well thought out, and carefully prepared, and
22 very helpful, even in those situations when we
23 haven't necessarily gone along with what the
24 private parties have asked us to do, so I want to
25 thank them for their good work as well. And I

1 want to wish you all a Merry Christmas and Happy
2 New Year.

3 BOARD MEMBER LYNCH: Likewise.

4 CHAIR DEVENY: Thank you. I'd also like
5 to thank Sarah for her good work in support of the
6 Board over the years. I know she's been very
7 patient with me as the Chair in the most effective
8 way that I could be. And also thanks to DEQ
9 staff, and all of you. Dr. Lehnherr. David.

10 BOARD MEMBER LEHNHERR: Yes, Madam
11 Chair. I just wanted to say that I don't know who
12 will be here at the next meeting, but I certainly
13 am appreciative of all of the Board members, the
14 BER staff, the DEQ staff, and I've learned an
15 incredible amount. But I think what I've seen
16 speaks very highly of a process in Montana, and
17 very highly of many citizens in Montana. It's
18 heartening. Thank you.

19 BOARD MEMBER LYNCH: A final comment
20 from me, too. I want to thank Sarah. You do
21 excellent work. You seem to be overburdened, but
22 you do an excellent job. And I've only been with
23 you folks a short period of time, but your
24 dedication is admirable.

25 And I cannot as a former scientist

1 express enough thanks to the Department of
2 Environmental Quality. I think they do an
3 absolutely excellent job. Thanks.

4 CHAIR DEVENY: Any other comments from
5 Board members?

6 BOARD MEMBER BUSBY: Yes, I think that
7 leaves me, and I've worked with you, Chris, for I
8 think the last three years, if I remember
9 correctly.

10 CHAIR DEVENY: Yes, I believe it's four.

11 BOARD MEMBER BUSBY: I would like to
12 thank you for indulging me as much as you have.

13 And Chris, we go back a long ways in a
14 different world, so it's good to work with you
15 again, and too bad you aren't planning on coming
16 back. I suspect I won't be coming back because my
17 term is also up at the end of month theoretically.

18 Anyway, DEQ, and Sarah particularly, has
19 been just yeoman work continuously, and I'd just
20 like to thank you all for that. Thank you. And
21 Merry Christmas.

22 BOARD MEMBER DeARMENT: I think actually
23 that leaves me, Madam Chair, so I'll just say same
24 here. It's been a real pleasure to serve with you
25 all. Madam Chair, I appreciate your leadership as

1 Chair, and great work to the Department, and just
2 it's been a great experience. Thanks, everybody.

3 CHAIR DEVENY: Thank you all. It looks
4 like I'm seeing a wave here. George.

5 MR. MATHIEUS: Thank you, Madam Chair.
6 Just thanks for the compliments. There was a
7 question on who is going to be here at the next
8 meeting. I will be. But great working with
9 everyone. Thanks. I appreciate it. And have a
10 Merry Christmas.

11 CHAIR DEVENY: Thanks, George, and thank
12 you, Laurie. With that, I would move to adjourn
13 this meeting of the BER.

14 BOARD MEMBER BUSBY: I'd second that.

15 CHAIR DEVENY: It's been moved and
16 seconded. Any further discussion?

17 (No response)

18 CHAIR DEVENY: Hearing none, all those
19 in favor of adjournment, please signify by saying
20 aye.

21 (Response)

22 CHAIR DEVENY: Any opposed?

23 (No response)

24 CHAIR DEVENY: Meeting is adjourned.

25 (The proceedings were concluded at 12:39 p.m.)

C E R T I F I C A T E

STATE OF MONTANA

)

: SS.

COUNTY OF LEWIS & CLARK

)

I, LAURIE CRUTCHER, RPR, Court Reporter,
Notary Public in and for the County of Lewis &
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 150 - pages contain a
true record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 15th day of
December, 2020.

LAURIE CRUTCHER, RPR

Court Reporter - Notary Public

My commission expires

March 9, 2024.

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