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BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LAND QUALITY DIVISION

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DEQ LAND QUALITY DIVISION ADVISORY BOARD MEETING  
SPECIFICALLY REGARDING NON COAL RULE PACKAGE 1V  
REVEGETATION SUCCESS PERFORMANCE STANDARDS

CHAPTER 3

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TRANSCRIPT OF PROCEEDINGS

10:35 A.M.

MARCH 17, 2004

PURSUANT TO PUBLIC NOTICE given to all parties in interest, this matter came on for hearing in the War Bonnet Room of the Best Western Inn, 260 Grandview Drive, Lander, Wyoming.

LQD STAFF IN ATTENDANCE:

- RICHARD A. CHANCELLOR, ADMINISTRATOR
- JOHN ERICKSON, LANDER FIELD OFFICE
- BOB GIURGEVICH, DISTRICT III ASSISTANT SUPERVISOR
- CAROL BILBROUGH, CHEYENNE OFFICE
- MARK MOXLEY, LANDER FIELD OFFICE
- MARIT SAWYER, LANDER FIELD OFFICE

BOARD MEMBERS IN ATTENDANCE:

- MARSHALL GINGERY, CHAIRMAN
- ALAN LINFORD
- JAMES PONTAROLO
- CHET SKILBRED

\* \* \*

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

2 \* \* \*

3 CHAIRMAN GINGERY: I'm Marshall Gingery,  
4 and I'll officially open the Land Quality Advisory  
5 Board meeting for March 17th

6 And I believe all of you have agendas. If  
7 not, we have a couple of administrative things to do  
8 today. And that's the election of officers and  
9 approval of the meetings (sic) and then we're going to  
10 -- the fourth item today will be the presentation on  
11 bentonite, a little overview by industry on that. And  
12 then the main reason we're here today is the Non Coal  
13 Rule Package. That's No. 1V. And maybe I can get you  
14 on the road before 12:30, 1:00, and get home before it  
15 snows.

16 So at this time, we'll start with the Board.  
17 And I'm Marshall Gingery. I'm the -- presently the  
18 chair. And I live in Jackson Hole, Wyoming. And I've  
19 been on this Board a long time, I think. Or at least  
20 I'm starting to think that.

21 And I will start down here with James, and he  
22 will introduce himself and tell you where he's from.  
23 And our new member, Alan, will. And then Chet.

24 So if you'd like to start, James.

25 MR. PONTAROLO: My name is James Pontarolo

1 and I'm from the agricultural community. I live 9  
2 miles south of Fort Laramie. We raise wheat and  
3 cattle.

4 MR. LINFORD: My name is Alan Linford. I  
5 was just newly appointed -- in December, I think.  
6 And I'm a rancher in Afton, in the Star Valley area,  
7 and a county commissioner. I think that's why I was  
8 appointed to represent the political aspect of it.  
9 Glad to be here.

10 MR. SKILBRED: My name is Chet Skilbred and  
11 I'm with industry from Glenrock. Work at Glenrock  
12 Coal Company. And I have also on the Board a long  
13 time.

14 MR. CHANCELLOR: I'm Rick Chancellor, the  
15 Administrative of the Land Quality Division.

16 CHAIRMAN GINGERY: We'll just start with  
17 you, then.

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

20 MR. BUCHER: Lyndon Bucher, with American  
21 Colloid.

22 MR. MOXLEY: I'm Mark Moxley, the Lander  
23 Supervisor for the Land Quality Division.

24 MS. BILBROUGH: Carol Bilbrough, with the  
25 Land Quality Division in Cheyenne.

1           MR. ERICKSON: John Erickson. I'm in  
2 Lander -- DEQ, Lander.

3           MS. SAWYER: Marit Sawyer, with Land Quality  
4 in Lander.

5           MR. GIURGEVICH: Bob Giurgevich, Land  
6 Quality, Sheridan.

7           MR. SCHIERMAN: Scott Schierman, Umetco.

8           MR. TALLY: Marty Tally. Bentonite  
9 Performance Minerals, Lovell.

10          MR. SCHEETZ: John Scheetz, Bentonite  
11 Performance Minerals.

12          MR. NUTTALL: Dale Nuttall, Wyo-Ben, out of  
13 Greybull.

14          MR. CALL: Matt Call, Wyo-Ben, Greybull.

15          MR. HINCKLEY: Mart Hinkley, M-I SWACO,  
16 Greybull.

17          MR. CLOSE: Dan Close, M-I SWACO, Greybull.

18          CHAIRMAN GINGERY: I guess we got everyone.  
19 Well, thank you for coming. And again, we'll work on  
20 getting you out of here so you can get home before it  
21 starts snowing too hard.

22                 Over the past, if you are new -- and I  
23 recognize most of the faces out there -- but we'll keep  
24 today's meeting quite informal. And if you have -- as  
25 we go through the non coal rules today if you have a

1 question just raise your hand. It really does help if  
2 you give your name each time, so they can keep a record  
3 of who is speaking. That will help today. So we will  
4 keep it informal.

5 At this time, we are going to call on our  
6 Administrator to conduct elections for this board. And  
7 today we do have one member not here today -- or at  
8 least late. Maybe that's it.

9 And so would you mind conducting, Rick, the  
10 official -- on electing officers of this Board?

11 MR. CHANCELLOR: Okay. Right now Marshall  
12 is the Chairman and Chet is the Vice Chairman.

13 And each year we elect officers. And it can  
14 be a new person or the same person or whatever the  
15 Board desires. So the Board can make nominations and  
16 we'll vote on this.

17 MR. PONTAROLO: I would make a motion that  
18 we have Marshall again as Chairman.

19 MR. LINFORD: I would second that motion.

20 MR. SKILBRED: I agree.

21 MR. CHANCELLOR: So I guess the question  
22 is: Marshall, do you want to serve another year as  
23 Chairman?

24 CHAIRMAN GINGERY: Yeah, I'll serve another  
25 year, I guess. I think I was railroaded ten minutes

1 before this meeting.

2 MR. SKILBRED: I already talked to him.

3 MR. CHANCELLOR: Okay. So now we'll take  
4 nominations for Vice Chairman.

5 CHAIRMAN GINGERY: I would nominate Chet as  
6 our Vice Chairman again. And can I get a second?

7 MR. PONTAROLO: I'll second it.

8 MR. CHANCELLOR: All those in favor?  
9 Opposed?

10 Hearing none, Chet will be Vice Chairman for  
11 the next year. Thank you.

12 CHAIRMAN GINGERY: Thank you for conducting  
13 those.

14 You guys are going to have to step up to this  
15 by next year. Okay. We took care of that issue.

16 There is minutes from the May 10, '04 and  
17 August 26. I note for Alan it's probably unfair to ask  
18 him to comment on those. But I think there's three of  
19 us that we could go ahead and get these minutes  
20 approved or review them here.

21 MR. SKILBRED: Can we approve them both or  
22 one at a time?

23 MR. CHANCELLOR: Whatever you desire.

24 MR. SKILBRED: I -- I've read through the  
25 minutes, Marshall, so I would move that we approve

1    them as written, both sets of them.  And I'm not sure  
2    what the dates were.

3                   CHAIRMAN GINGERY:  May 10th --

4                   MR. SKILBRED:  And August 26th.  Approve  
5    the minutes as they are written.

6                   CHAIRMAN GINGERY:  Do I have a second?

7                   MR. PONTAROLO:  I'll second that.

8                   CHAIRMAN GINGERY:  Okay.  Motion has been  
9    made and seconded.  Any additional discussion,  
10   changes, or deletions?

11                   Hearing none, all in favor of the motion  
12   signify by saying aye.  Those opposed, same sign.

13                   Motion carries.  Thank you.

14                   At this time we are going to take a few  
15   moments here and have a -- you're presenting, correct?

16                   MR. BUCHER:  Yes.

17                   CHAIRMAN GINGERY:  A little bit on  
18   bentonite.  Some of you sitting out there -- I think  
19   we kind of feel -- or I certainly do -- that each  
20   time we meet there should be some opportunity from  
21   industry to present.  And the best is going right out  
22   in the field.  We were able to have this discussion  
23   with bentonite mines, and it was an eye opener to me  
24   and a -- a great industry of our state.  And we have  
25   had numerous trips to the coal mining and appreciate

1 that, and also to the soda ash. And if this Board  
2 agrees, we will continue trying to take the  
3 opportunity and arranging to visit the actual sites  
4 or the processing centers on those different  
5 industries.

6 So at this time, we will turn it over to you,  
7 so we can find out a little bit more about bentonite.

8 MR. BUCHER: Okay.

9 CHAIRMAN GINGERY: Do we need to separate  
10 the tables?

11 MR. CHANCELLOR: We should probably move  
12 back, so we can see.

13 CHAIRMAN GINGERY: All right.

14 MR. BUCHER: I hope this works. I had to  
15 scramble at the last minute. My computer -- this  
16 might now work. We'll see if it works or not. I'm  
17 not familiar with this computer, so --

18 (Whereupon, there was a discussion off  
19 the record.)

20 MR. BUCHER: I just want to thank you for  
21 the opportunity to show you a little bit about what  
22 bentonite's about in Wyoming. And bentonite's been  
23 commercially mined in Wyoming since 1923.

24 What I find a lot in Wyoming is that not very  
25 many people, even though it's been around a long time,

1 really know a lot about bentonite mining. So I thought  
2 I'd just start off. And I'll go -- I'm going to try to  
3 go fairly quickly, just so we can get through this. So  
4 if anybody has any questions, if they want me to stop  
5 at a particular slide, just let me know.

6           There is the definition of what bentonite  
7 really is. A lot of clay that people refer to as  
8 bentonite. But in actuality, technically that's the  
9 technical description of bentonite. Montmorillonite  
10 seems to make up the biggest share of the clay.  
11 Volcanic ash is another important part of it. That's  
12 what -- really, it's a modified ash. It's been  
13 modified by the seas overlaying bentonite. After the  
14 volcanos spewed the ash, the ash settled and then the  
15 seas covered it up. Created the -- in a lot of cases,  
16 that's where you get the sodium bentonite from, salt  
17 water from the seas. And the seas receded and that's  
18 what we ended up with.

19           Montmorillonite. This is what makes  
20 bentonite fairly -- mostly unique. And that's the  
21 electrical charges that (inaudible) small platelets,  
22 the (inaudible) and sodium bentonite, which is what  
23 Wyoming is probably most famous for, has the ability to  
24 swell in water. And that's because of the molecules,  
25 the sodium molecules will trap the water molecules in

1 between those platelets, which -- you can envision a  
2 deck of cards. That water is absorbed and that  
3 bentonite expands.

4           A little bit about how bentonite is -- how  
5 you gain mineral rights to bentonite. It is considered  
6 locatable mineral, and so in that regard it falls under  
7 the same federal regulations as the 3809 rules and  
8 regulations, which is like hard rock; gold, silver,  
9 some of those things. Since it's subject to the 1872  
10 Mining Act, if you discover a bentonite deposit, a  
11 private individual is able to go out and stake a  
12 20-acre claim on federal mineral and obtain the mineral  
13 rights to that clay.

14           There is five major producers in Wyoming, and  
15 those five producers supply over 95 percent of the  
16 nation's demand for bentonite. And over -- about 40  
17 percent of that is -- supplies the entire world.

18           These are the general areas of where  
19 bentonite companies are located. The Colony area,  
20 right in here. And then Big Horn Basin. And then  
21 Black Hills Bentonite down in this area; Kaycee and  
22 around Casper.

23           Hopefully -- maybe you're wondering where all  
24 this mud gets shipped, all this mud coming out of  
25 Wyoming. So I thought I'd go through a little bit and

1 just touch on the basic industries. If you have ever  
2 used a cast iron skillet, chances are that Wyoming  
3 bentonite was used in producing that cast iron skillet,  
4 in the foundries.

5           Some of the major customers are General  
6 Motors, Ford Motor Company, Caterpillar, John Deere.

7           Just a manifold off an engine or manhole  
8 cutters, whatever needs to be cast. Bentonite is used  
9 to provide sand molds the molten metal is poured into.  
10 It is -- one most people know about the drilling mud,  
11 not only for oil and gas, but also water wells.

12           Pet litter. That's probably one of the  
13 newest. Probably this market didn't exist ten or  
14 fifteen years ago, so this is one of the newest uses  
15 for bentonite.

16           Taconite is a low-grade iron ore. And in  
17 order to mine it and utilize it, it needs to be ground  
18 to a real fine powder. And once it gets into that  
19 powder form, it's very difficult to ship and use in the  
20 steel mills. And so they use bentonite to pelletize  
21 it. You can see it's -- they spray a water and  
22 bentonite mixture on there and make little pellets,  
23 about the size of a marble or so, maybe a little  
24 smaller.

25           This is a steel -- it's a rail, railroad

1 rail.

2           Some of the other uses. Agriculture, it's  
3 used in feeds and fertilizer. Civil engineering,  
4 building materials for waterproofing. It's used in  
5 cosmetics and pharmaceuticals. One of the newest uses,  
6 there's a lot of research going on right now in  
7 composites for use in plastics and automobile interiors  
8 and plastics for the food industry, plastic bottles,  
9 things like Saran wrap.

10           UNIDENTIFIED MEMBER OF AUDIENCE: So there is  
11 bentonite in the plastic bottles?

12           MR. BUCHER: I don't know that there is  
13 yet, but it's one of the areas they're researching.  
14 I think if we ever eventually see beer come out in  
15 plastic bottles, there will probably be some  
16 bentonite in them. It extends the shelf life of a  
17 lot of products because it's -- you get more of an  
18 air barrier than you would.

19           These are some of the other uses. Industrial  
20 treatment of waste -- or treatment of industrial waste  
21 waters. Land clarification and edible oils. Ceramics.  
22 Paper.

23           This is a drill, a typical exploration drill.  
24 It's just mounted on the back of a four-wheel drive  
25 truck. Drills about a 4-inch auger hole. Usually

1 maximum depth about 50 feet. When they hit the  
2 bentonite, the bentonite sticks to the augers, they  
3 pull it up and then they'll take the samples off, put  
4 them in a bag, and carry them back to the lab.

5           Drill hole locations are surveyed in and then  
6 the reserves are located on the topo map. This map  
7 happens to be 1 mile square per section. So -- and  
8 this is fairly typical of the way bentonite lays. This  
9 is a -- kind of a -- in a linear formation. Very  
10 rarely do you see it cover the expanse of an entire  
11 section.

12           There are some of the lab equipment that's  
13 used to test the bentonite. Because of all the  
14 different industries that use bentonite, there is many  
15 different qualities, physical and chemical qualities,  
16 to the bentonite, that make it useful for those  
17 different industries. These are just probably -- that  
18 might make up about -- oh, maybe half of the laboratory  
19 tests that they do, to determine what grade the  
20 bentonite actually gets graded out to and what industry  
21 it will be shipped to.

22           Permitting. All the disciplines that you  
23 might expect that go into permitting. Pretty  
24 straightforward. I think everybody is pretty much  
25 familiar with all those things.

1           This is typical mine plan. In fact, it's one  
2 on the (inaudible).

3           This is the new mine plan. These areas have  
4 been mined before. And the green strictly indicates  
5 that they have been seeded and reclaimed. You can kind  
6 of see how there is a lot of undisturbed areas in  
7 between the different mine series. In this case, the  
8 overburden comes out of the hole, it's stockpiled  
9 there, and then the overburden from this next pit is  
10 just back cast to the first one and so on.

11           And then in this particular series, this  
12 overburden just goes back into the pit here.

13           This is a -- it's broken up into three  
14 different pits series. These are relatively short pit  
15 series compared to what we try to utilize in much  
16 longer series to get the most efficient use of mining.

17           This would be -- just to give you a little  
18 bit of an idea of what a cross-section might look like.  
19 The topsoil can vary anywhere from 0 to maybe 4 feet in  
20 a really good situation. If it's not bentonite,  
21 obviously it's -- your topsoil is 0. But probably more  
22 typical might be 12 inches of topsoil and 12 inches of  
23 subsoil. Overburden, 50 feet is about the maximum when  
24 they're mining for it. And bentonite -- usually about  
25 2 feet is -- maybe a foot and a half is about the limit

1 of what we could consider economical to mine. You get  
2 much under a foot, by the time you get it cleaned and  
3 everything it's pretty difficult to get much volume out  
4 of it, if it's less than a foot and a half.

5           This is a picture of stripping off the  
6 topsoil first. The topsoil and subsoil are stripped  
7 independently and stockpiled separately, so that when  
8 it goes back down the subsoil goes first and then  
9 topsoil.

10           This is down into the -- after -- during the  
11 overburden removal. Pretty typical. Most of the  
12 overburden is usually marine-type shales. Very saline.  
13 And sometimes hard.

14           They got down to the top of the bentonite  
15 here and they are just cleaning it off. There is a  
16 certain amount that gets wasted, because they -- you  
17 need to get it totally clean. So the last material to  
18 come off usually gets -- is a mixture of bentonite and  
19 overburden.

20           After the pit is opened up and cleaned, they  
21 go back in with a drill. And they will probe the  
22 bentonite and take those samples back to the lab again.  
23 The reason they use a probe is because when they auger  
24 the sample during exploration, sometimes the shooting  
25 action of the auger can actually change the physical

1 chemical characteristics of the bentonite. So to get a  
2 real true representation of what that clay is, it's  
3 best to just use a probe.

4 After the grade is defined they will either  
5 haul it to the plant or they'll stockpile it out on the  
6 site. Oftentimes you may have more than one grade in a  
7 single pit. Sometimes the color of the bentonite will  
8 identify different grades. Not always, though. In  
9 this case, you can see there is a -- kind of a  
10 yellowish green color to it in one pile and a gray  
11 color to it in the other pile. That's not ACC's fault,  
12 so I'm not sure what that -- I don't know what quality  
13 that is.

14 Do you know, Mark?

15 MR. MOXLEY: You've got a (inaudible) there,  
16 depending on -- I'm not really sure where that's at.  
17 So your -- your lower grade supposedly would be the  
18 gray stuff. And the higher grade or oil field stuff  
19 would be the green.

20 MR. BUCHER: But when they dry it on the  
21 stockpile they usually work the top 6 to 8 inches or  
22 so and let the sun and the wind evaporate the  
23 moisture as much as possible. Then once that  
24 material dries off, they'll push it aside or pick it  
25 up with a scraper and kind of work it again with the

1 disc and let the next (inaudible) and work on down  
2 through the pile.

3           Typically, over-the-road trucks will haul  
4 bentonite to the plant. 60 miles is probably extremely  
5 unusual. It has been done. But probably more average  
6 is 25 miles. I was talking to Rick a little bit last  
7 night about the expanse of bentonite permit areas, and  
8 I -- I actually went and made a slide this morning,  
9 Rick, to show that. Unfortunately, it's on my dead  
10 laptop.

11           But at least as far as -- one of Colloid's  
12 permits in the Colony area stretches for about 35  
13 miles, from the Montana state line to the South Dakota  
14 state line. One of the permits in the Big Horn Basin  
15 stretches out for about 38 miles, I believe. So it's  
16 really spread out.

17           There's a picture of MI's processing plant in  
18 Greybull. Primarily they are drying, crushing, and  
19 sizing that. It's really over simplified, but that's  
20 the basis of it. The plants will package it according  
21 to where it's going, whether it's in bulk or overseas  
22 shipments. Bagged, going to the oil field sometimes.

23           This customer is ready for the cat litter or  
24 -- this is a GCL in process in Lovell, where the  
25 bentonite is actually sandwiched between two liners.

1           Reclamation. Scrapers are used again to  
2 replace the overburden, bring it up to -- up to pretty  
3 close to final grade. And once they get it to grade,  
4 they replace the topsoil and subsoil. You can see one  
5 of the topsoil piles in the background.

6           If we get a long enough pit series, the best  
7 way to do our topsoil replacement is by live spread or  
8 direct fall. Once you get your series going, you pick  
9 up the soil from your next pit, you just put it  
10 directly back down behind you where you already  
11 backfilled, and that gives you the best chance for  
12 reclamation to occur quickly.

13           Revegetation establishment. This is what we  
14 use in the Colony area to seed our range mix.  
15 Basically just a chisel plow with a seed box mounted on  
16 the back. In this case, it's got a seed box that goes  
17 clear across the full width where the grasses are  
18 placed. Then this seed box contains a nurse crop of  
19 winter wheat, so that what you end up with is a windrow  
20 effect. You will see that here in a little bit.  
21 Leaves it pretty rough when you're done. That  
22 roughness helps to minimize both water and wind  
23 erosion.

24           This, you can see the effects of that winter  
25 wheat seed box only going partway across. So what you

1 end up with is your grasses in strips -- well, grass  
2 goes all the way through. But you end up with stubble  
3 in the strips. And that stubble then will catch the  
4 snow the following winter. And usually by that you get  
5 very little volunteer back to the wheat. So by the  
6 second year, the wheat is pretty much gone.

7           This kind of also shows you how reclamation  
8 occurs concurrently with mining. The active mine is up  
9 here. And this is started back here and it's just  
10 progressed up to this point. So at any one point in  
11 time in a pit series you have got one open pit.

12           I guess the other thing I kind of wanted to  
13 point out on this slide was, again, the linear nature  
14 of the bentonite mine and the fact that you've got  
15 close proximity of native lands to the reclaimed land.  
16 And that gives you a better opportunity for the native  
17 species to reinvade back into your reclamation.

18           This is an area just outside Belle Fourche,  
19 actually. Not all of our native lands look like that,  
20 but a lot of it does. It's not uncommon at all to see  
21 that. And that's because of the high clay content in  
22 the soils. That's one of the challenges that we have  
23 in bentonite reclamation, is high clay content in the  
24 soils and limited topsoil to begin with. But then also  
25 very high sodium levels in the soils. But by breaking

1 up that soil, it gives you an opportunity to -- for  
2 moisture to penetrate, and you can end up with that  
3 when you're done.

4 UNIDENTIFIED MEMBER OF AUDIENCE: With good  
5 moisture.

6 MR. BUCHER: With good moisture.  
7 Unfortunately, it does require moisture. There is no  
8 doubt about it. And when you get moisture, it's not  
9 hard to get something like that in three years. It's  
10 really not difficult at all. In the Colony area.

11 This is a little more like what you might see  
12 in the Big Horn Basin. This is undisturbed, actually,  
13 and then this is mostly (inaudible) reclaimed community  
14 out here. Unfortunately, that was taken in 2000. I  
15 hope it still looks like that after the drought we've  
16 had.

17 This just shows that this was a road. It  
18 shows where the sagebrush naturally reinvaded into that  
19 roadway there. Big Horn Basin, we have a lot of places  
20 we have a lot of rock cover that you can kind of see in  
21 that.

22 Occasionally, the last pit in the mine  
23 series, we'll reclaim that for a water impoundment.  
24 Ranchers like to see that, a lot of times.

25 One thing we have started doing, too, is

1 putting solar pumps in those empoundments, fencing out  
2 the empoundment and putting a solar pump and pumping  
3 water to a tank outside the pond, so that the wildlife  
4 gets the benefit of the vegetation around the pond and  
5 the cattle won't trample it down, but the cattle still  
6 get the advantage of having the water.

7           Grazing is probably the number one post  
8 mining land use for the areas that we mine.

9           And that's what we are looking for. That's  
10 it.

11           CHAIRMAN GINGERY: Thank you.

12           MR. BUCHER: Thanks again for the chance to  
13 show you.

14           MR. GIURGEVICH: You said Wyoming still  
15 supplies 40 percent of the world?

16           MR. BUCHER: Last year it was about 43  
17 percent of the entire world.

18           MR. GIURGEVICH: But I understand that  
19 there is a lot of pressure being exerted and those  
20 numbers will probably change? More competition, I  
21 guess is what I'm saying.

22           MR. BUCHER: Oh, from overseas?

23           MR. GIURGEVICH: Yes.

24           MR. BUCHER: Some.

25           UNIDENTIFIED MEMBER OF AUDIENCE: Lower

1 grade, cheaper price, right?

2 MR. BUCHER: I think most of those will  
3 find it hard to compete with Wyoming sodium  
4 (inaudible).

5 That's it.

6 CHAIRMAN GINGERY: Well, we certainly  
7 appreciate you taking the time and putting this  
8 together for the industry. And find it interesting  
9 and certainly appreciate it.

10 MR. BUCHER: Sure.

11 CHAIRMAN GINGERY: We'll look forward to  
12 someone else possibly the next meeting -- or at least  
13 a field trip, which is good, too.

14 Let me get organized here a little bit.

15 (Whereupon, there was a brief pause in  
16 the proceedings.)

17 CHAIRMAN GINGERY: The main concern that --  
18 and I believe most of you probably have the paperwork  
19 in front of you -- is we had left off primarily  
20 because of some issues with revegetation on the non  
21 coal rule package. And I believe today, if I  
22 understand it, is try to bring that to some sort of  
23 conclusion so we can do our work and pass this on to  
24 the council. And hopefully, this will wrap up the --  
25 this particular section of the non coal chapter.

1           And so I think to expedite a little bit, and  
2     since we have one new Board member that wasn't here for  
3     the last meeting, Rick will -- I'll ask Rick to bring  
4     us up to date and the direction that is set for today,  
5     please.

6           MR. CHANCELLOR: As you mentioned, we went  
7     through most of the rule package at the last meeting.  
8     The one area that we did not fully resolve is the --  
9     how many years of sampling was required to show the  
10    reclamation was successful. We discussed many  
11    possibilities, from just having one year of sampling  
12    to having two out of three years of sampling to even  
13    having the bond release period longer for the arid  
14    parts of the state than the wetter parts of the  
15    state. And that's basically how we left it at the  
16    meeting, that we were inclined to still go with the  
17    two out of three years, but we felt that -- the Board  
18    felt there was room for more discussion on the number  
19    of years of sampling required.

20           And so we're back today to try to have that  
21    additional discussion and make a recommendation to go  
22    to the council. Mark Moxley has developed some  
23    additional alternative language that I think will  
24    address the concerns of the non coal industry as far as  
25    having to sample two years to achieve success and our

1 concerns that, since the bond clock is only five years,  
2 it may not be representative if one year is taken. And  
3 Mark had come to maybe a compromise that we feel would  
4 work that addresses our concerns with the weedy species  
5 issues but still gets down to one year of sampling. So  
6 I'll let Mark Moxley present that.

7 MR. MOXLEY: I'm Mark Moxley, the District  
8 Supervisor for the Lander Quality Division.

9 After our last meeting we went back and  
10 discussed, amongst the staff and some of the industry  
11 folks, some potential changes to make this regulation  
12 work for everybody. The big point of contention of  
13 course was our requirement for two years of sampling to  
14 determine whether the reclamation was successful. And  
15 that is what our current regulation requires; two years  
16 of sampling.

17 Our proposal at the last meeting was to make  
18 it two out of three. In other words, if you sample the  
19 first year and it was acceptable, you sample the second  
20 year and it did not pass, you could sample the third  
21 year and get two out of three years. The industry was  
22 not happy with that. They feel like one year of  
23 sampling to show that the reclamation is successful  
24 would be adequate.

25 I was the chief proponent for our position.

1 Our concerns basically are we want to see -- in  
2 reclamation I think we want to see a well-established  
3 perennially dominated community. In other words, we  
4 don't want to see a bunch of annual weeds out there.  
5 And typically in reclamation the first years are  
6 dominated by weeds. And those being Russian thistle,  
7 halogeton, cheat grass, annual mustards -- there's a  
8 whole bunch of annual weeds that come into this ground.

9           And our concern is that if the standard -- if  
10 the primary standard for the success of reclamation is  
11 total vegetative cover, you are going to measure all  
12 those weeds and you are going to count them towards  
13 achievement of that standard.

14           And so we went back and looked at that  
15 standard and we decided that what we really want is the  
16 perennial species. So why are we counting all these  
17 annuals? So that's the primary element of our  
18 compromise proposal, which we'll show you here today,  
19 is if really what we are interested in is those  
20 perennial species, why don't we just count the  
21 perennial species and make that our standard? And so  
22 that's what we are proposing.

23           The other part of our proposal is that you  
24 would not sample your reclamation until year five.  
25 Basically, that comes out of the statute. The statute

1 says that we should hold that bond for at least five  
2 years, to make sure that the reclamation is successful.  
3 And so our proposal today is that you would sample in  
4 the fifth growing season or later. No earlier than the  
5 fifth year, to determine whether your reclamation is  
6 successful.

7 With that introductory discussion, I think  
8 we'll pass out our proposal. Just pass these down.

9 (Whereupon, there was a brief pause in  
10 the proceedings.)

11 MR. MOXLEY: Basically, what we're saying  
12 in our proposal here is that, in lieu of sampling for  
13 two years, we could accept one year of sampling, if  
14 we change the standard from total vegetative cover to  
15 total perennial cover and we sample in year five or  
16 later.

17 So to go back through and recap, our current  
18 regulation on the books has basically seven elements.  
19 The first is that the reclamation species be  
20 self-renewing. That the vegetative cover be equal or  
21 higher than the native. That the total ground cover be  
22 equal or higher than the native. That the productivity  
23 be equal or higher than the native. That you have  
24 suitable species composition for the post mining land  
25 use. And that the reclamation be able to withstand

1 grazing pressure. And that -- again, our current  
2 regulation requires two years of sampling.

3           So our new proposal: We would eliminate the  
4 measurement of total ground cover. We would eliminate  
5 the measurement of productivity. We would eliminate  
6 the requirement that the land be able to withstand  
7 grazing pressure. And basically, we are eliminating  
8 that because we don't know how to measure it.

9           So what we are left with is, one, that the  
10 vegetation will be self-renewing. Number two, we would  
11 propose that you measure the cover of the perennial  
12 species in the native and in the reclamation and  
13 compare those. And we would -- our primary standard  
14 would be that the cover of perennial species on the  
15 reclamation would be equal or higher than the native.  
16 We would also retain the requirement for suitable  
17 species composition suitable for the post mining land  
18 use. And we would propose that this -- these  
19 measurements be conducted in the fifth growing season  
20 or later.

21           So that's basically what you have in front of  
22 you. At this time I would invite any questions or  
23 discussion on that proposal.

24           CHAIRMAN GINGERY: I guess what we need to  
25 jump into -- first of all, does any of the Board

1 members have any questions at this time, or would you  
2 rather wait and see what industry -- their reaction  
3 to this is?

4 MR. PONTAROLO: The only comment I have,  
5 from being a farmer, I fully agree with what you say,  
6 especially the five years. We found in our area that  
7 grassland, when it's been re-established, the first  
8 three years about all you have is weeds. You have a  
9 lot to contend with. After the fourth and fifth and  
10 sixth years, your grasses show forth and do really  
11 well.

12 And another thing that I might intercede with  
13 is that we found that by grazing some of this stuff,  
14 when you have a grass that reseeds itself, cattle or  
15 sheep a lot of times will help establish this with  
16 their foot. Especially if you have some wet years and  
17 you can turn cattle in -- or sheep -- just for a short  
18 while, it helps tremendously.

19 MR. MOXLEY: If I could just elaborate on  
20 those points, our current regulations -- in a  
21 different section -- actually require that grazing be  
22 controlled for two years, to prevent the livestock  
23 from basically ruining the reclamation.

24 Another point that you raised about how long  
25 it takes to establish this perennial vegetation is a

1 primary concern to us. And the staff discussed the  
2 possibility of creating a different standard for --  
3 basically for western Wyoming, which is much dryer.  
4 And we decided against that. And while it is true  
5 that generally it takes longer to establish reclamation  
6 in western Wyoming because of the dry conditions, if  
7 you have good moisture years you can do it in four or  
8 five years. And so rather than rule it out, in the  
9 coal industry we require ten years of growth before we  
10 release the bond. And really, that's a long time. It  
11 may take ten years. Certainly in the drought cycle we  
12 are in now it's going to take ten years, or more. But  
13 we don't want to preclude the possibility of getting  
14 good moisture years and you get good reclamation. We'd  
15 like to be able to release it in year five. And so  
16 rather than create a standard in western Wyoming that  
17 requires ten years, we feel it's better just to keep it  
18 the same. Just keep it five years everywhere,  
19 realizing that -- you know, a company may have to wait  
20 six, seven, or eight years -- or ten years -- to  
21 establish the reclamation. But that they have the  
22 opportunity, if the weather is conducive, to get  
23 release in year five. So we propose to retain that.

24 MR. CHANCELLOR: Mr. Chairman?

25 CHAIRMAN GINGERY: Yes.

1           MR. CHANCELLOR: One thing also, the  
2 grazing, if we delete that from being a bond release  
3 standard, we still encourage that grazing be allowed  
4 once it gets established. So we don't say you cannot  
5 do any grazing at all. We just say that we won't  
6 hold your bond up for a demonstration of how the  
7 grazing happened just because (inaudible). But we  
8 still encourage grazing for that purpose that was  
9 mentioned.

10           CHAIRMAN GINGERY: Alan, do you have any  
11 question at this time?

12           MR. LINFORD: Not at this point.

13           CHAIRMAN GINGERY: Chet?

14           MR. SKILBRED: I'd like to wait to see what  
15 the bentonite folks have to say first.

16           CHAIRMAN GINGERY: I am of the same  
17 thought, too. So let's -- at this time would  
18 somebody from the bentonite industry like to respond  
19 on this?

20           MR. GRANT: Do you want me to stand up?

21           CHAIRMAN GINGERY: No, you can sit.

22           MR. GRANT: As long as everyone can hear  
23 you.

24           MR. GRANT: I'm Matt Grant from Wyoming  
25 Mining Association. And the mining association, as a

1 whole, supports these changes for the bond release  
2 requirements on non coal lands. We think it's  
3 wonderful that -- you know, the perennial cover has  
4 got to be equal or greater to the mined area before  
5 mining occurred. The land use has to meet the post  
6 mining species diversity and composition that is  
7 required. And we support using a fifth year of  
8 sampling. And I think it's great that -- this is a  
9 demonstration of how great industry and government  
10 can work together. It's been a public, open process.  
11 Nothing's been hidden. And we've come to an  
12 agreement and I think it's wonderful. And I think  
13 it's a step in the right direction.

14 CHAIRMAN GINGERY: Well, we certainly  
15 appreciate the cooperation.

16 Would anyone from the companies like to  
17 comment any further on this?

18 MR. BUCHER: Lyndon Bucher, American  
19 Colloid.

20 I guess I'd like to say that American  
21 Colloid -- and I believe the Bentonite Producers  
22 Association -- are in support of the proposed wording.  
23 I think it's a good compromise.

24 I will say that there was some concern about  
25 eliminating two perennial species. And I think we may

1 have some discussion about that a little bit later.  
2 But in the overall scheme of things, I don't think it's  
3 a large issue.

4 I guess I do have a question on the rules --  
5 and it doesn't really relate to the perennial issue or  
6 the one year of sampling issue at all. I don't know if  
7 this is the time to bring it up or not. But I guess in  
8 general, I guess American Colloid would go on record as  
9 supporting this rule.

10 CHAIRMAN GINGERY: All right.

11 MR. BUCHER: I do have a question about one  
12 other change in the wording that I had.

13 CHAIRMAN GINGERY: Okay. As we go down  
14 that, remember to bring that up --

15 MR. BUCHER: Okay.

16 CHAIRMAN GINGERY: -- please.

17 MR. BUCHER: Okay.

18 CHAIRMAN GINGERY: Is there anyone else in  
19 the audience that would like to comment on any  
20 aspect?

21 If not, Rick, what do you suggest that we --  
22 are we going to go down line by line, or is this  
23 actually all the Board needs to approve at this time?

24 MR. CHANCELLOR: I guess -- you know, the  
25 first question is Lyndon mentioned that there was

1 some small concern about limiting it to just  
2 perennial species. And this may be a good time to  
3 air that out, to see what those are.

4 CHAIRMAN GINGERY: Okay.

5 MR. CHANCELLOR: And what we can do about  
6 it.

7 CHAIRMAN GINGERY: Go ahead, then.

8 MR. SKILBRED: Excuse me. Mr. Chairman,  
9 just before we start, I would like to ask Mark a  
10 question.

11 I agree with the verbiage and the proposal,  
12 but this is just for my own information. Have you  
13 folks received data that -- I mean, does the bentonite  
14 folks provide data on an annual basis? Do they provide  
15 you guys data on an annual basis?

16 MR. MOXLEY: No.

17 MR. SKILBRED: When do you get to see your  
18 first set of data?

19 MR. MOXLEY: We typically don't see the  
20 data until they actually apply for the bond release.

21 MR. SKILBRED: Okay. Based on -- I'm  
22 assuming past experience or data you have received --  
23 does that -- does this stand true, that five years or  
24 six or seven years, depending on the location, is  
25 about when these communities start to develop

1 perennial --

2 MR. MOXLEY: The only qualifier I would put  
3 on that -- and of course it all depends on moisture.

4 MR. SKILBRED: I agree.

5 MR. MOXLEY: Assuming you get reasonably  
6 average moisture, yes, I think it's very possible to  
7 achieve a good stand of perennial grasses in the  
8 four- to five-year time frame. The shrubs take a  
9 little longer. You know, they just don't grow as  
10 fast or vigorously as the grasses. So you don't see  
11 full expression on the shrub species until -- it  
12 generally takes five, six, seven, or eight years to  
13 see those guys. But I think they are there. And I  
14 am satisfied that in five years, with good moisture,  
15 you can get good reclamation.

16 MR. SKILBRED: That's all I was asking. I  
17 don't have a feel for the bentonite industry, not  
18 having been on you guys' mine before, to know how  
19 fast your communities develop. I was just curious as  
20 to when they -- you know, pretty typical for the  
21 weedy component to be there for three years -- at  
22 least in the coal industry -- and if that mirrors in  
23 the bentonite industry. It probably would be  
24 similar.

25 So okay. Thank you. That's all I have.

1           MR. MOXLEY: I might just add another point  
2 of clarification. We've been talking a lot about  
3 bentonite. But this regulation applies to all non  
4 coal minerals. The other big ones would be uranium,  
5 sand and gravel, the trona industry -- you know, any  
6 non coal industry, this is going to be their  
7 standard.

8           MR. CHANCELLOR: One thing that we had  
9 talked about a little bit was that -- whether or not  
10 to include a requirement that the Land Quality  
11 Division visually look at the area before the  
12 operator does his bond release sampling. And I think  
13 we felt that may be helpful, but maybe not necessary.

14           CHAIRMAN GINGERY: Uh-huh. I'm glad you  
15 brought that up, because that was kind of my  
16 question, is: Getting back to some of the other  
17 areas, such as sand and gravel -- do we have anyone  
18 from that industry here today? A few years ago we  
19 did have a number that showed up, concerned about  
20 some aspects of that. But did we hear anything  
21 from -- other than from bentonite corporations on  
22 this concern?

23           MR. MOXLEY: We have one gentleman here  
24 from the uranium industry.

25           Scott, do you have any concerns or comments?

1           MR. SCHIERMAN: Right now, Mark, what we're  
2 in the process of doing is we're looking at the  
3 present vegetation status that we do have as far as  
4 the West Gas Hills. We're in the process of studying  
5 that; establishing what we do or what we don't have,  
6 as far as whether it's perennial or whether it's a  
7 renewable.

8           So at this point in time, what we are in the  
9 process of doing is we are just -- we've got some  
10 vegetation studies ongoing that -- we are presently  
11 addressing what we have, where our present status is.

12           And the way this looks like now, I don't see  
13 where it's going to cause us a huge problem.

14           CHAIRMAN GINGERY: So the five years is --  
15 seems to be quite within line with you?

16           MR. SCHIERMAN: That's typically what the  
17 present regulations are. That's really not much of a  
18 change. I think before you could start -- where you  
19 had two consecutive years you could start in your  
20 fourth growing season with your first veg study and  
21 then the fifth -- your second consecutive season  
22 could be in the fifth year.

23           So I don't see where this is ...

24           CHAIRMAN GINGERY: My other question was  
25 that, once the DEQ receives the information on the

1 vegetation, by say that fifth year, what is the  
2 length of your review to the time you get back to --  
3 I mean, in the process of releasing that bond?

4 MR. MOXLEY: Generally, we try to turn  
5 these things around in about 90 days.

6 CHAIRMAN GINGERY: About 90 days?

7 MR. MOXLEY: It gets a little more  
8 complicated when you have federal ownership, BLM,  
9 primarily.

10 CHAIRMAN GINGERY: Uh-huh.

11 MR. MOXLEY: You know they have to concur  
12 in this decision. So it may take a little longer.

13 CHAIRMAN GINGERY: So six months -- could  
14 it go up to six months, then?

15 MR. MOXLEY: Yeah.

16 MR. GIURGEVICH: Mr. Chairman, I would  
17 offer some additional insight to your two questions  
18 for the northeast corridor of the state.

19 On your first question, other operators  
20 besides bentonite are generally aware of this proposed  
21 change. But none have had any more that just  
22 inquiries. I have no information that anybody has any  
23 concern with this in other industries for the  
24 northeast corridor, sand and gravel or uranium  
25 operators that exist there. So again, they are aware

1 of it in general, but no particular questions.

2           And the second thing I would emphasize is  
3 concurrence with Mark's answers on your second  
4 question. There is no statutorily defined amount of  
5 time for us to respond. But generally, we certainly  
6 want to go look at those lands if we have not seen them  
7 before. So that adds some incremental time, to get  
8 there at the right time of year. But in almost all  
9 cases we settle these issues within -- we'll call it  
10 one growing season, one cycle. It doesn't continue  
11 over to another year, another calendar year or  
12 anything.

13           And most of that is successful. Because the  
14 bentonite producers -- we have worked with them long  
15 enough that they generally will identify ahead of time  
16 that they do want to move for final reveg evaluation.  
17 So we know that's going to happen, and we can schedule  
18 appropriately and thereby keep that time frame shorter.

19           CHAIRMAN GINGERY: Thank you for  
20 enlightening me on that question.

21           Yes?

22           MR. GRANT: Some of our uranium members  
23 also commented. And they had some concerns about  
24 this, but they -- Bob Green of Kennecott -- I believe  
25 he talked -- did he talk to you, Lyndon? Or he

1 talked to somebody.

2 MR. MOXLEY: I have spoken with Bob.

3 MR. GRANT: And he is the -- Kennecott is  
4 okay with these rules.

5 Power Resources, the other active mine there,  
6 they are not here today. I talked a little bit with  
7 them and they had no major concerns, either.

8 And then the trona people -- that would be  
9 more on final reclamation, that they would do that.  
10 Becuase most of the mining is underground. But it  
11 would be the site location, correct, and (inaudible)  
12 ponds and stuff.

13 CHAIRMAN GINGERY: Well, I appreciate  
14 everyone commenting. I think the reason -- we always  
15 just want to make sure that we have communicated with  
16 everyone if we're going to move forward on this.

17 Rick, what is the next procedure? What would  
18 you recommend at this time?

19 MR. CHANCELLOR: It goes back to maybe the  
20 question on the perennial issue. Is there anything  
21 remaining out there? If that's done with, we can go  
22 forward, if you want to vote or --

23 MR. ERICKSON: I'm John Erickson. And my  
24 question is more of a "what if" question, I guess,  
25 which I hate.

1           If there are husbandry practices, does that  
2 reset the clock? In other words, if you were to go in  
3 and reseed a small area -- or maybe a larger area --  
4 does that reset the five-year clock back? I don't know  
5 if that needs to be spelled out, but it comes up in the  
6 coal industry.

7           MR. CHANCELLOR: I don't think it's really  
8 been discussed a lot in the non coal area, so I don't  
9 know if it's an issue out there or not. I haven't.  
10 heard of any concerns whether husbandry practices would  
11 restart the clock. Usually if it's bad reclamation  
12 they reseed everything. And that would restart the  
13 clock. We don't have that issue, I don't think.

14          MR. ERICKSON: It may very well be  
15 something that can be worked through annual contact  
16 or more frequent contact.

17          MR. CHANCELLOR: But it hasn't been an  
18 issue, to my knowledge.

19          MR. ERICKSON: Okay.

20          CHAIRMAN GINGERY: Thanks, John.

21          MR. BUCHER: One thing maybe to kind of  
22 come back around to what Rick was alluding to a  
23 little earlier about some of the concern about the  
24 perennial species.

25                 It was brought up that if there were --

1 particularly with sage grouse becoming more and more  
2 high profile and if the company wanted to do some  
3 reclamation work that would enhance sage grouse  
4 habitat, which would involve maybe some annual forbs.

5           It's kind of a two-pronged question. But if  
6 there were beneficial forbs, annual species in  
7 reclamation, how might that be addressed, whether they  
8 were there from planting or naturally reinvaded? And  
9 then the other part of that is, particularly if you are  
10 working on doing something for habitat enhancement,  
11 where you are actually planting a forb in your approved  
12 seed mix.

13           We -- I mentioned this a little bit to Mark  
14 and we didn't really go very far with it. But how  
15 might that be handled, whether it -- you know, whether  
16 it be -- you know, a nitrogen fixer, for instance in  
17 Colony we put -- that's not an annual, I guess. But --  
18 and then yellow sweet clover is a biannual. How might  
19 some of those situations be addressed, if you have  
20 beneficial forbs?

21           MR. MOXLEY: If I could respond to that.

22           CHAIRMAN GINGERY: Yes.

23           MR. MOXLEY: We considered putting in some  
24 language about that. I think clearly if we approve a  
25 seed mix that includes an annual species or a

1 biannual species -- a common example might be yellow  
2 sweet clover. It's a biannual species, it's a  
3 legume. And it certainly has been used in  
4 reclamation. If we approve the use of an annual or a  
5 biannual in the seed mix, then obviously it would  
6 count. We would have to count it towards the  
7 achievement of the standard. We considered putting  
8 that language in here. But in the interest of  
9 keeping it simple, we didn't.

10 I guess I would propose that we could put  
11 that in a guideline, to clarify that point.

12 But that's the way we see it, is if we  
13 approve a seed mix, then clearly those species would  
14 have to be counted in reclamation.

15 CHAIRMAN GINGERY: Does that help you, in  
16 dealing with the future here?

17 MR. BUCHER: It does. And it sounds  
18 logical.

19 I guess the question might be, somewhere down  
20 the road, in a broader sense: Does an approved  
21 reclamation plan or mine plan supercede rules and  
22 regulations?

23 MR. CHANCELLOR: I think the issue is also  
24 if -- if the rules are black and white, it says  
25 perennial species, and the guideline says it's

1 perennial species and approved seed mix, is that  
2 legal?

3           Likewise, if the approved seed mix in the  
4 permit includes other things than the rules require --  
5 yeah, I think the permit can include other things than  
6 what the rules require. But at the end of reclamation  
7 it would go back to what the rule said, black and  
8 white.

9           So my feeling, if we are inclined to accept  
10 seeded species, it probably should be in the rule that  
11 we will accept those that have been approved in the  
12 seed mix. So basically, when it says perennial  
13 species, it would be perennial species and those  
14 species approved in the seed mix.

15           CHAIRMAN GINGERY: I see a lot of shaking  
16 of heads. I don't know if that means you're in  
17 agreement or --

18           MR. BUCHER: If that's an easy way to  
19 incorporate that, Mark, it sounds -- without getting  
20 too wordy -- like that would work.

21           CHAIRMAN GINGERY: Maybe I'll see if I'm on  
22 the right -- the same track with most of you.

23           That the Land Quality, more from  
24 an administrative standpoint, clarifies this discussion  
25 even though I -- we have to stick to the rule. But

1 maybe it's something, since it is a more technical  
2 question, that the Land Quality would get an  
3 administrative memo out to you. Would that help?

4 MR. SKILBRED: Mr. Chairman, I think what  
5 they're suggesting is that they will include that in  
6 the verbiage of the rule. Perennial species  
7 and/or --

8 CHAIRMAN GINGERY: Okay.

9 MR. SKILBRED: -- the approved seed  
10 mixture.

11 CHAIRMAN GINGERY: Okay.

12 MR. SKILBRED: Right in this rule.

13 CHAIRMAN GINGERY: Okay. There wouldn't be  
14 a need then, for any more clarification.

15 MR. SKILBRED: No. I think that would  
16 clarify it. I think Mark would write in something  
17 there.

18 MR. MOXLEY: We had considered including  
19 it. But in the interest of simplicity, we left it  
20 out. It's easy enough to put that language in there.

21 CHAIRMAN GINGERY: Well, if no one else has  
22 anything on that particular area there maybe we can  
23 move on to the next aspect, if that has been  
24 clarified well enough for everyone.

25 So do you feel at this time that we could go

1 ahead and -- oh, excuse me. Yes?

2 MS. SAWYER: I'm Marit Sawyer, with Land  
3 Quality Division.

4 So did we decide that we would add that  
5 clause or phrase?

6 CHAIRMAN GINGERY: Yes.

7 MR. CHANCELLOR: Assuming their motion to  
8 approve includes that.

9 CHAIRMAN GINGERY: I guess what I'm looking  
10 for now is: Are we to the stage that we can go ahead  
11 and have a motion?

12 MR. CHANCELLOR: Mr. Chairman?

13 CHAIRMAN GINGERY: Yes.

14 MR. CHANCELLOR: I think you asked Lyndon  
15 to table a question about the rules.

16 MR. BUCHER: And at a later point --

17 CHAIRMAN GINGERY: Yes.

18 MR. BUCHER: -- as a question.

19 CHAIRMAN GINGERY: Yeah. Let's go ahead --

20 MR. BUCHER: Okay.

21 CHAIRMAN GINGERY: -- with that, then.

22 MR. BUCHER: Down in the last sentence of  
23 the first paragraph there has been a change. And the  
24 original rule read -- I guess it's the striking of  
25 the words "where applicable" and the word "and"

1 inserted. The original rule read: Administrator  
2 shall specify quantitative methods and procedures for  
3 determining whether equal cover and productivity has  
4 been established, including, where applicable,  
5 procedures for evaluating post mining species  
6 diversity and composition.

7 My question is if anyone knows why those --  
8 why those two words, "where applicable", were in the  
9 original rule and then therefore now it's being taken  
10 out.

11 MR. GIURGEVICH: Mr. Chairman, I'll try and  
12 answer part of Lyndon's question, because I'm the one  
13 who constructed that first version.

14 Lyndon, in answer to your question of whether  
15 I saw anything why "where applicable" was there, I've  
16 seen nothing. It appeared at a certain point in time.  
17 Why it appeared is unknown to me. And there was no  
18 record that I could find of why those two words might  
19 have appeared.

20 The second part of your question, though, I  
21 would answer in this way: We have never yet clearly  
22 defined the procedure for evaluating diversity and  
23 composition which support the land use. My intent was  
24 to make it clear that that would force the  
25 administrator to do that once and for all. I'll be

1 blunt. And of course he would turn around and force  
2 his staff to do it.

3 (Whereupon, there was a brief pause in  
4 the proceedings.)

5 MR. GIURGEVICH: But to get that point  
6 clarified once and for all, how will it be evaluated?  
7 Because secondly and thirdly, in my opinion diversity  
8 and composition are always applicable. They remain  
9 as a measure of revegetation success. So the  
10 qualifier to define the means to do that evaluation  
11 always seems applicable to me.

12 MR. BUCHER: Okay.

13 MR. GIURGEVICH: So I struck the two words.

14 CHAIRMAN GINGERY: Have we resolved that,  
15 then?

16 MR. BUCHER: I think so.

17 CHAIRMAN GINGERY: You got some sort of an  
18 answer, I think. It's a good question. Glad you  
19 brought it up. My curiosity was the same. Why would  
20 you put that in there?

21 Rick, did you have any comment on where we  
22 are on that?

23 MR. CHANCELLOR: Thank you, Bob.

24 If I understand right -- and the staff can  
25 jump in here -- we currently require some discussion of

1 species diversity from the operators. And it's not  
2 standardized anyplace in the regulations or the  
3 guidelines saying, what's the standard method that  
4 everybody can apply? I think that's the intent of  
5 Bob's forcing the issue, is saying the division ought  
6 to lay out in black and white what we're doing now and  
7 apply it to all the operators instead of ten different  
8 ways of it being done out there. I don't think we have  
9 any pre-conceived notion of what that should be, as far  
10 as changing what it is currently; just more or less  
11 outlining for once and all what's going on.

12 Is that correct, Mr. Giurgevich?

13 MR. GIURGEVICH: Yes, sir.

14 CHAIRMAN GINGERY: I enjoyed that answer.

15 Before we move on for a motion, is there any  
16 additional discussion among the Board?

17 MR. LINFORD: Just one question. As you're  
18 establishing your vegetation, is there any weed  
19 control part of this?

20 MR. MOXLEY: Yes. There is a separate  
21 regulation that requires the control of noxious  
22 weeds.

23 MR. LINFORD: Very good.

24 MR. MOXLEY: It's not a part of this.

25 MR. LINFORD: Thank you.

1           CHAIRMAN GINGERY: Okay. Rick, if you  
2 could help me a little here. Are we looking at  
3 this -- everything that's on this page that --

4           MR. CHANCELLOR: Previously the Board had  
5 voted on the overall rule package.

6           CHAIRMAN GINGERY: Correct.

7           MR. CHANCELLOR: We brought this one  
8 section back to you. So I imagine --

9           CHAIRMAN GINGERY: That's one vote, then?  
10 Or one motion?

11          MR. CHANCELLOR: Yes. I think it would  
12 probably take one motion to incorporate the suggested  
13 changes that Mark came up with with the one change to  
14 add another species approved in the sewed mix, some  
15 language like that, and incorporate that --

16          CHAIRMAN GINGERY: Okay.

17          MR. CHANCELLOR: -- where appropriate here.

18          CHAIRMAN GINGERY: Okay.

19          MR. CHANCELLOR: So I think one motion to  
20 add these changes to the rule package as presented  
21 here and change it per the discussion would be  
22 sufficient for us to go forward to the council.

23          CHAIRMAN GINGERY: And then a separate  
24 motion -- this would be the only motion we need for  
25 today?



1 that the cover of perennial species plus any species  
2 approved in the seed mix --

3 CHAIRMAN GINGERY: Uh-huh.

4 MR. MOXLEY: -- would be at least equal to  
5 the cover of perennial species on the area before  
6 mining. Does that make sense?

7 CHAIRMAN GINGERY: I hope so. Is that  
8 clear enough for you?

9 MR. LINFORD: Yes, it is.

10 CHAIRMAN GINGERY: Okay. Let's move on and  
11 entertain a motion at this time.

12 MR. PONTAROLO: I still --

13 CHAIRMAN GINGERY: Oh.

14 MR. PONTAROLO: I will make the motion.

15 CHAIRMAN GINGERY: James has made the  
16 motion.

17 MR. SKILBRED: I second the motion as Mark  
18 has explained to us how he's going to add in the  
19 extra seed mixture information into it, into this  
20 under Section 2(d).

21 CHAIRMAN GINGERY: Motion made and  
22 seconded. Any additional discussion from the Board?

23 Hearing none, all in favor of the motion  
24 signify by saying aye. Those opposed, same sign.

25 Motion carries. Four approvals.

1 MR. SKILBRED: Mr. Chairman?

2 CHAIRMAN GINGERY: Yes.

3 MR. SKILBRED: Other question. Rick, do we  
4 now have to make another motion to put this into the  
5 original package, or will it go in?

6 MR. CHANCELLOR: It's my understanding the  
7 motion you just voted on --

8 MR. SKILBRED: Includes --

9 MR. CHANCELLOR: Yes.

10 MR. SKILBRED: Okay.

11 CHAIRMAN GINGERY: Because I think we left  
12 it that way last time.

13 So this really brings this to a conclusion  
14 after two or three meetings. And I really appreciate  
15 the people -- all of you that have worked on it, and  
16 especially the individuals who provided comments. And  
17 certainly we are really appreciative of how much the  
18 industry showed up. Makes us feel like we're doing  
19 something. I know the staff has to be here, so I --  
20 but I appreciate their hard work on it. And I think  
21 all of you realize that all of us come from different  
22 viewpoints or -- Chet's probably the only one who  
23 readily understands a lot of this. But appreciate you  
24 educating us and -- so we can move forward. That's  
25 always helpful.

1           MR. GIURGEVICH: Mr. Chairman, I have a  
2 question just to understand how the procedure will go  
3 from here. And maybe Rick will answer it best.

4           But we now have a proposal that you, the  
5 Board, is passing on to the council. Do I understand,  
6 you don't have to come back and vote on that again?  
7 Whatever is formulated goes straight to the council?

8           CHAIRMAN GINGERY: That is my  
9 understanding. But Rick can --

10          MR. CHANCELLOR: Yes.

11          CHAIRMAN GINGERY: -- add to that.

12          MR. GIURGEVICH: And is there any time  
13 frame associated with --

14          MR. CHANCELLOR: No.

15          MR. GIURGEVICH: -- the Board's action to  
16 get it to the council?

17          MR. CHANCELLOR: There is no time limits on  
18 how long it will take to take to the council. We'll  
19 need to revise the statement of reasons to reflect  
20 the discussion today, we'll need to revise the rule  
21 package to incorporate the new language. But as soon  
22 as that's completed we'll do the necessary steps to  
23 take it to the council.

24          MR. GIURGEVICH: No additional Board  
25 meeting?

1           MR. CHANCELLOR: No additional Board  
2 action.

3           MR. GIURGEVICH: Okay.

4           MR. CHANCELLOR: There's some stuff -- the  
5 A.G.'s office, like that. But we'll try to move as  
6 quickly as possible to get this on their agenda.  
7 It's probably too late to really impact this field  
8 season, but hopefully it will be passed in time that  
9 the next field season that occurs next spring, that  
10 these rules will be in place.

11           CHAIRMAN GINGERY: My experience on that, I  
12 have seen about the earliest every six months. And  
13 usually as much as a year.

14                    Is that overstating it?

15           MR. CHANCELLOR: Yeah, that's probably been  
16 the norm for the last couple years.

17           CHAIRMAN GINGERY: Uh-huh.

18           MR. CHANCELLOR: I think both the council  
19 and DEQ have been talking about how to speed up the  
20 rule process.

21           CHAIRMAN GINGERY: Okay. That on our  
22 agenda today was what was indicated that this Board  
23 would discuss today.

24                    But is there any other items of discussion?  
25 First I'll ask the Board. Do you have any?

1 MR. PONTAROLO: No.

2 MR. SKILBRED: No.

3 MR. LINFORD: No.

4 CHAIRMAN GINGERY: I do want to get into  
5 the record that we certainly appreciate Alan joining  
6 us from nearby Lincoln County. And we'll try to make  
7 your job as painful as possible.

8 (Whereupon, there was a brief pause in  
9 the proceedings.)

10 CHAIRMAN GINGERY: But actually, it's a  
11 great Board to serve on. And I'm glad, really  
12 appreciate that you accepted the Governor's offer to  
13 be part of this Board.

14 MR. LINFORD: Thank you.

15 CHAIRMAN GINGERY: Thank you. So is there  
16 any issues from -- yes, Rick.

17 MR. CHANCELLOR: Just an update on the  
18 legislature, what they did that impacts the Division.

19 The Joint Appropriations Committee asked the  
20 Department to put together a plan to move the whole  
21 Department to electronic permitting and such things.  
22 And so we've developed a plan. And they funded the  
23 first phase of that plan to basically hire a consultant  
24 to look at business operations and devise a plan that  
25 would move the Department to doing electronic

1 permitting, posting more things electronically and all  
2 of that. And so they funded -- I don't remember the  
3 amount -- it's over a million dollars, like 1.7 or 1.3  
4 million dollars for that first phase. And it's a  
5 pretty ambitious plan. And we'll go back next time  
6 with the results of that plan, the recommendations for  
7 further action. But hopefully we'll be better equipped  
8 to do things electronically, do more things with DIS  
9 systems and move us forward into the 21st Century.

10 CHAIRMAN GINGERY: If I may ask,  
11 Mr. Administrator, what is on the agenda say for our  
12 meeting within a few months?

13 MR. CHANCELLOR: One thing we're working on  
14 right now, we're getting close to revising our coal  
15 self bond rules. We've worked with the Mining  
16 Association on some concepts and we're close to the  
17 end of that and we may be able to have that to the  
18 Board at our next meeting. So that's -- that would  
19 be the primary thing on the agenda.

20 Our large coal revegetation package that  
21 we've been working on for the past couple years --  
22 we're on a schedule. We're starting to write those  
23 rules now. And we anticipate bringing those to the  
24 Board probably the last quarter of this year. That's  
25 been a long process, there is a lot of rules to be

1 changed. But we're in the rule writing stage of that.

2 And so at the next meeting we'll probably  
3 work on having that small self bond rule package ready.

4 CHAIRMAN GINGERY: All right. I have not  
5 talked to my colleague sitting to my right here about  
6 this, but since (inaudible) dealing with the  
7 reclamation that you have taking place on your former  
8 coal mine -- Rick, I was wondering if we could meet  
9 in Casper or Glenrock, so it -- would the Department  
10 think it was appropriate at that time to maybe do a  
11 visitation to this vegetation area?

12 MR. CHANCELLOR: I agree.

13 CHAIRMAN GINGERY: Do you mind me putting  
14 you in that situation?

15 MR. SKILBRED: Not at all.

16 CHAIRMAN GINGERY: Okay. The other two  
17 members, do you feel that would be a good field trip?

18 MR. PONTAROLO: Yes.

19 MR. LINFORD: Yes.

20 CHAIRMAN GINGERY: Vegetation seems to be  
21 taking up a lot of our time and I think us getting  
22 out and getting more experience between the staff and  
23 industry is certainly a real opportunity.

24 So is there any other areas of discussion  
25 that someone would like to bring up? You got any

1 frustrations to throw at us? If not --

2 MR. GRANT: I was just going to say, the  
3 Mining Association would help in that tour.

4 CHAIRMAN GINGERY: Oh, very good.

5 MR. GRANT: Whatever you need -- I know  
6 it's where Chet works, so I'm sure he will do the  
7 majority of the work. But we would help in any way  
8 we can.

9 CHAIRMAN GINGERY: Okay. Thank you. And  
10 all of our trips, we've always coordinated that  
11 through Rick. So we'll leave it to that.

12 Before maybe we discuss a location and time,  
13 this is -- let's see, this is March. Is June a good  
14 time to be out there?

15 MR. SKILBRED: The height of the tick  
16 season. It's the perfect time.

17 CHAIRMAN GINGERY: Well, we'll bring our  
18 spray, I guess.

19 (Whereupon, there was a brief pause in  
20 the proceedings.)

21 CHAIRMAN GINGERY: I gather your company  
22 provides the spray.

23 MR. SKILBRED: Yeah.

24 CHAIRMAN GINGERY: If it would -- we'll  
25 have a motion. But I would suggest -- is there -- in

1 Glenrock? Or is Casper a better place for us to  
2 meet?

3 MR. CHANCELLOR: I think we can find a  
4 place in Glenrock, with Chet's assistance.

5 CHAIRMAN GINGERY: If I have consensus --  
6 we can vote on it. But if I have consensus we'll ask  
7 Rick to get a time, date, and location out of  
8 Glenrock for this meeting.

9 And also, all of -- you're coming further  
10 than I am now, I believe. And Jim.

11 MR. PONTAROLO: It's closer for me.

12 CHAIRMAN GINGERY: We usually have a  
13 meeting in the morning and then a field trip. Is  
14 that still the best way to do that?

15 MR. CHANCELLOR: Probably still the best  
16 way. We may also be able to -- for those driving  
17 far, there is a possibility of flying a state plane  
18 to pick them up, to cut down on travel time.

19 CHAIRMAN GINGERY: That would be excellent.

20 MR. CHANCELLOR: That might be a  
21 possibility.

22 MR. SKILBRED: You can land right on the  
23 old (inaudible).

24 CHAIRMAN GINGERY: Do I have a consensus  
25 that our next meeting will be in the Glenrock area

1 and with the field trip to the mine reclamation area?

2 Okay. Took care of that issue.

3           So -- and June is -- what they usually do,  
4 Alan, is that they will call and try to find dates of  
5 all five of us that's fairly convenient for us to be  
6 there. And so we'll just leave it in that frame, if  
7 that's all right with everybody.

8           Okay. I'm going to get you out of here and  
9 maybe you can beat the snow storm back. I don't know  
10 which part of the state's supposed to get the most  
11 snow, but we'll certainly find out. I guess all of us  
12 are looking forward to some moisture.

13           Is there anything else from the audience at  
14 this time?

15           Okay. I would accept a motion to adjourn  
16 this meeting.

17           MR. PONTAROLO: So moved.

18           MR. LINFORD: Second.

19           CHAIRMAN GINGERY: Motion has been made and  
20 seconded. All in favor, say aye. Meeting closed.  
21 Thank you for all coming.

22                           (Whereupon, the proceedings were  
23 concluded, at 12:05 p.m.)

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REPORTER'S CERTIFICATE

April 4, 2005

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

Rebecca S. Doby  
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