

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
2 LAND QUALITY DIVISION
3 STATE OF WYOMING

4 -----
5 RE: COAL RULE PACKAGE 1-T
6 HIGHWALL RETENTION - CHAPTER 4
7 -----

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9 TRANSCRIPT OF PROCEEDINGS
10 9:05 a.m.
11 August 26, 2004

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

16 LQD STAFF:

17 RICK A. CHANCELLOR, ADMINISTRATOR
18 CAROL BILBROUGH, PROGRAM MANAGER
19 ROBERTA HOY, PROGRAM PRINCIPAL
20 GEORGIA CASH HOENIG, PROGRAM SUPERVISOR
21 SANDRA GARCIA, SECRETARY

22 BOARD MEMBERS:

23 MARSHALL GINGERY, CHAIRMAN
24 JAMES PONTAROLO
25 CHET SKILBRED
 JAMES GAMPETRO

* * *

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1 OTHER SPEAKERS:

2 ROY LIEDTKE
3 LAUREL VICKLUND
4 BETH GOODNOUGH
5 BOB GIURGEVICH
6 GENE ROBINSON

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

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

7 MR. CHANCELLOR: Yes.

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

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

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

15 MR. GINGERY: Okay. We'll just stay with
16 2(b) until we get back there.

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

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

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

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

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

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

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

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

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

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

25 MR. GAMPETRO: The first 7 items are all

1 required, including (7.)?

2 MR. CHANCELLOR: Yes. These are all.

3 MR. GAMPETRO: So it's not --

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

6 MR. GAMPETRO: All right.

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

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

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

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

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

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

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

5 MS. HOY: Yep. Sorry.

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

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

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

25 Then the rest of the package shows some

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

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

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

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

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

1 bluff/rimrock/escarpment type topographic features.

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

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

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

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

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

1 to the postmine land use.

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

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

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

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

14 No. (6.), the same.

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

16 I guess -- any questions from the Board?

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

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

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

1 record this.

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

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

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

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

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

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

9 MR. GINGERY: Yes?

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

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

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

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

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

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

23 MR. CHANCELLOR: Yes.

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

1 your concern?

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

4 MR. GINGERY: For the life of the mine.

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

7 MR. GINGERY: Oh.

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

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

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

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

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

3 MR. GINGERY: Uh-huh.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 MR. CHANCELLOR: Right.

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

14 MR. CHANCELLOR: Correct.

15 MR. GAMPETRO: Now I understand.

16 MR. GINGERY: Yes?

17 MS. HOY: Um --

18 MS. GARCIA: Who are you?

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

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

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

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

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

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

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

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

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

2 MR. SKILBRED: One other question.

3 MR. GINGERY: Yes.

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

6 MR. CHANCELLOR: Yes. The additional
7 language?

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

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

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

21 MR. CHANCELLOR: Correct.

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

25 MR. GINGERY: Any other comment from the

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

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

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

11 MS. HOY: I'm sorry.

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

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

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

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

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

25 MR. CHANCELLOR: Go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. GINGERY: Oh, okay.

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

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

1 MS. VICKLUND: The --

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

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

8 MR. GINGERY: Oh, all right.

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

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

17 MR. GINGERY: Backfilled to --

18 MS. VICKLUND: Highwall.

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

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

24 MR. GINGERY: Did you add material to it?

25 MS. VICKLUND: No, we did not.

1 MR. GINGERY: All right.

2 MS. VICKLUND: We only backfilled.

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

6 MS. VICKLUND: No, we have not.

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

10 The rest of the Board, do you have questions?

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

17 MR. GINGERY: Yes, Chet.

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

21 MS. VICKLUND: Not at all, really.

22 MR. SKILBRED: Okay.

23 MS. VICKLUND: It's pretty competent.

24 MR. SKILBRED: Okay.

25 MS. VICKLUND: However, some of the areas

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

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

5 MS. VICKLUND: Uh-huh.

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

12 MS. VICKLUND: Right.

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

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

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

20 MS. VICKLUND: Just what hits the face.

21 MR. SKILBRED: Yeah.

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

25 MR. CHANCELLOR: Based on what Jim

1 suggested, it says: Have a static safety factor of
2 1.3 or greater and of equivalent erosive resistance.
3 So if the original highwall is erosive, the
4 replacement highwall can be erosive.

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

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

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

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

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

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

1 MR. GINGERY: Yes?

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

6 MR. SKILBRED: I agree.

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

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

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

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

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

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

1 some changes on this.

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

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

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

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

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

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

1 it would probably not be beneficial to wildlife.

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

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

12 MR. GAMPETRO: I withdraw my comment.

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

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

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

25 MR. CHANCELLOR: So the suggested language

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

3 MS. GOODNOUGH: Something of that nature.

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

8 MS. GOODNOUGH: At least on an equivalent
9 basis.

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

12 MS. GOODNOUGH: Right.

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

15 MS. GOODNOUGH: Okay.

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

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

21 MR. GINGERY: Okay.

22 MR. SKILBRED: I agree.

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

25 MR. GIURGEVICH: I can offer you some

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

4 MR. GINGERY: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 MR. GINGERY: All right.

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

1 Department on how we can take care of these
2 situations.

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

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

8 MR. CHANCELLOR: Yes, please.

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

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

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

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

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

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

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

14 MR. GINGERY: Yes, sir?

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

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

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

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

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

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

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

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

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

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

5 MR. GINGERY: Yeah.

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

7 MR. SKILBRED: It is.

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

10 MR. SKILBRED: That's right.

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

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

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

24 MR. SKILBRED: I have no problem with that.

25 MR. GINGERY: That's my feeling. Just

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

5 Jim, is that fine? James?

6 MR. PONTAROLO: That sounds fine, yes.

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

13 MR. GAMPETRO: So moved.

14 MR. PONTAROLO: Second.

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

19 MR. GAMPETRO: Aye.

20 MR. SKILBRED: Aye.

21 MR. PONTAROLO: Aye.

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

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

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August 27, 2004

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Rebecca S. Doby
Registered Professional Reporter
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