

Recorded LQD Meeting

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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN RE: LQD MEETING

TRANSCRIPT OF RECORDED VIDEOCONFERENCE MEETING PROCEEDINGS

PURSUANT TO NOTICE duly given to all parties
in interest, this matter came on for recorded
videoconference meeting on the 12th day of December, 2019,
before the Land Quality Advisory Board, Chairman Jim
Gampetro, presiding, with Board Member Natalia Macker and
Board Member Phil Dinsmoor, all present by
videoconference.

Mr. Kyle Wendtland, Land Quality Administrator;
Mr. Craig Hults, Senior Environmental Analyst;
Mr. Muthu Kuchanur, LQD Program Manager; Mr. Matthew
VanWormer, Wyoming Attorney General's Office, were also
present by videoconference, as well as Mr. Andrew
Kuhlmann, Wyoming Attorney General's Office; Mr. Colin
McKee, DEQ Senior Policy Advisor; and Ms. Gina Thompson,
Wyoming Water Quality Division.

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

2 (Recorded meeting proceedings
3 commenced December 12, 2019.)

4 MR. WENDTLAND: So Craig and I are back in
5 the room.

6 Craig, you've got the agenda to walk us through
7 as we get back on line here?

8 MR. HULTS: Yeah. Absolutely.

9 The first thing on the agenda was the approval of
10 the -- I don't know if everybody's back in the room yet.

11 CHAIRMAN GAMPETRO: Yeah, we're back.

12 MR. HULTS: Okay. First thing on the
13 agenda was the approval of the meeting minutes of
14 August 22, 2019.

15 CHAIRMAN GAMPETRO: Actually, Craig --
16 Craig? Craig? Can you hear me? This is Gampetro.

17 MR. HULTS: Yes.

18 CHAIRMAN GAMPETRO: First thing is
19 introductions.

20 MR. HULTS: Okay. Do you want to start,
21 Jim?

22 CHAIRMAN GAMPETRO: Yeah. This is Jim
23 Gampetro, and I'm a public representative from Buffalo,
24 Wyoming.

25 So let's go around the -- around the horn here,

1 if everybody could just introduce themselves.

2 MR. HULTS: I'm Craig Hults with the Land
3 Quality Division out of Cheyenne.

4 BOARD MEMBER MACKER: Natalia Macker, board
5 member based in Teton County.

6 MR. WENDTLAND: Kyle Wendtland,
7 Administrator of Land Quality.

8 BOARD MEMBER DINSMOOR: Phil Dinsmoor,
9 board member from Devil's Tower.

10 MR. MCKEE: And in Cheyenne this is Colin
11 McKee, senior policy advisor with the Department of
12 Environmental Quality.

13 MR. KUCHANUR: Muthu Kuchanur with LQD.

14 MR. KUHLMANN: Andrew Kuhlmann with the
15 Attorney General's Office.

16 MR. VANWORMER: Matt VanWormer with the
17 Attorney General's Office representing the Land Quality
18 Division.

19 MS. THOMPSON: And Gina Thompson, Water
20 Quality Division, assisting with the rules and practice
21 procedure.

22 CHAIRMAN GAMPETRO: If that's everybody,
23 then we can move on to the approval of the minutes from the
24 August 22nd meeting. I would entertain a motion on that.

25 BOARD MEMBER MACKER: Move to approve.

1 BOARD MEMBER DINSMOOR: I will second.

2 CHAIRMAN GAMPETRO: It's been moved and
3 seconded.

4 All those who approve, signify by saying aye.

5 BOARD MEMBER MACKER: Aye.

6 BOARD MEMBER DINSMOOR: Aye.

7 CHAIRMAN GAMPETRO: If there are any that
8 do not approve, let's signify that right now.

9 And I vote aye. I guess I have to do that or we
10 don't -- if we don't have the quorum.

11 So the minutes from the August 22nd meeting are
12 approved. We now move to the discussion -- presentation of
13 the rule of practice and procedure, Chapter 3.

14 MR. MCKEE: Thank you, Mr. Chairman. This
15 is Colin McKee again. And if it's the Board's pleasure, I
16 can go through just a quick history of how these proposed
17 rules came into place, and then just open it up to a
18 conversation between us and the Board on -- on the changes
19 and seek any advice or thoughts of the Board on what we're
20 doing.

21 So if that sounds good, then I'll dive in.

22 CHAIRMAN GAMPETRO: Yeah, this is Gampetro.
23 Go ahead with that.

24 MR. MCKEE: Okay. So I'll start back --
25 the 2018 legislative session, the legislature inserted a

1 footnote in the Environmental Quality Council's budget that
2 directed the EQC and DEQ to report to two committees --
3 legislative committees. And the -- the vision of the
4 report was to look at the efficiency and adequacy of
5 staffing the Council, and whether the Council could be
6 stacked exclusively by personnel within DEQ. And the
7 report shall also include recommendations for an annual
8 budget, staffing levels and statutory revisions.

9 So with that directive from the legislature in
10 2018, DEQ selected three individuals and EQC selected three
11 individuals to be on a work group to look through those --
12 those directives from the legislature. The group met six
13 times through 2018 to discuss their findings, and they also
14 kept the Minerals Committee apprised of their work through
15 2018.

16 I don't know if you all had received a copy of
17 that report or had seen it, but if not, I -- I'll go
18 through -- there were two recommendations from DEQ and EQC
19 to the legislature that pertained to the rulemaking that
20 we're going through today. The -- the intent of the two
21 changes was to create some more efficiency in the process
22 of rulemaking between the advisory boards, the EQC and DEQ.

23 And during the review of the Environmental
24 Quality Act, EQC and DEQ agree that it should be the
25 Director who has the authority to recommend the initiation

1 of rulemaking.

2 And so the two bodies wanted to clarify the
3 Director's authority and the advisory boards' role in the
4 rulemaking process. And so the -- the two primary
5 recommendations that came out of that report were just
6 that. There was one that would recommend changing the
7 statute, the Environmental Quality Act, that specifies that
8 it is the Director who recommends rulemaking to the
9 Environmental Quality Council. And then there's another
10 section, which is more specific to what we're talking about
11 today, that recommended that the language in the
12 Environmental Quality Act change from requiring that
13 advisory boards have a positive recommendation to allow
14 rulemaking to commence, instead, requiring that the
15 Department consult with and seek the advice of advisory
16 boards through the rulemaking process.

17 So with those changes -- or, you know, those
18 recommendations from Environmental Quality Council and DEQ,
19 a report was given to the Minerals Committee in November
20 of 2018. The committee met later in that month and drafted
21 legislation which the committee met later that month and
22 drafted legislation which encapsulated many of the
23 recommendations from -- from that report, including to --
24 to change the language for the advisory boards to consult
25 and advise.

1 So the legislation was sponsored by the Minerals
2 Committee, went through the legislature in 2019 and was
3 passed into law effective immediately. And so from there
4 we set about to revise the rules of practice and procedure.
5 We read through all the chapters, and the only section that
6 was pertinent was in Chapter 3 in rulemaking.

7 And so that -- that, Mr. Chairman, is kind of the
8 history of how we got to where we are today. If there are
9 questions on that, I'm happy to answer them, or if you want
10 to dive into what we're proposing the rules be amended to,
11 we can get into that as well at your discretion.

12 CHAIRMAN GAMPETRO: Okay. This is
13 Gampetro. We discussed this in the executive session. Are
14 there any -- any other comments that anybody would like
15 to -- or questions that anybody would like to add to -- to
16 the general meeting here regarding this?

17 BOARD MEMBER MACKER: No. Thank you.

18 CHAIRMAN GAMPETRO: Okay.

19 BOARD MEMBER DINSMOOR: This is Phil
20 Dinsmoor. I have no questions on the history. I would
21 recommend we go forward with the discussion of the rule.

22 CHAIRMAN GAMPETRO: I got you on that,
23 Phil.

24 Anybody else?

25 Okay. Let's move forward.

1 MR. MCKEE: Okay. Thank you, Mr. Chairman.

2 So the proposed revisions you have in front of
3 you, the primary portions -- well, you'll see on page 1, we
4 just had a minor editorial correction of spelling out --
5 the first paragraph had WS, so we spelled that out to say
6 Wyoming Statute so folks knew what they were referencing.

7 But the primary portion of the rule changes
8 you'll find on page 3-3. It will be under Section 4(b).
9 So part (b) is where the current language in the rules
10 stipulates that the Department go through an advisory board
11 on rulemaking, and then there are three portions that kind
12 of lays out the process for an advisory board to consider
13 rules and how one of the divisions within DEQ should --
14 should proceed.

15 So, you know, the way the current language is --
16 was structured, the -- the advisory boards could require
17 one of the -- a division to continue the discussion at an
18 upcoming meeting, to extend public comment period, the
19 advisory board to remand the rule and hold back to the
20 Division for consideration, or the advisory board could
21 give a positive recommendation and allow the Division to
22 move forward.

23 With the change in statute of requiring -- or
24 changing that process of requiring recommendation from an
25 advisory board or requiring a department to consult and

1 receive the advice, we thought it best to change the
2 language the way we did. And we -- we stayed fairly close
3 with what the statutory language is. So you'll see in that
4 part (b), we -- we more or less just took the language
5 straight from statute and -- that the Department may not
6 initiate rulemaking and submit the proposed rule to the
7 Council for consideration without first consulting with and
8 receiving the advice of the affected advisory board on the
9 preliminary rule.

10 The -- the parts in -- are they Roman numerals?
11 What are they? I, II and III or 1, 2 and 3, we feel like
12 those are to have an affirmative decision on whether a rule
13 be -- you know, come back to an advisory board or comment
14 period be extended or remanded to the Agency or to proceed
15 are now within the authority of DEQ, but -- but I think in
16 large part DEQ does not see the change in rules as
17 truthfully affecting the relationship between the advisory
18 boards and DEQ. It's just where that ultimate authority
19 lies.

20 So with -- with the language that we have in part
21 (b), the Department needing to receive the consultation and
22 advice of an advisory board, we feel like gives an advisory
23 board wide latitude in being able to advise the Division on
24 their rulemaking process. And -- and we see it really
25 acting as it has through the history of DEQ and the

1 advisory boards of DEQ being responsive to the advisory
2 boards with their recommendations and advice that have been
3 provided. So we felt like we're staying consistent with
4 the law and consistent with the history between the
5 relationship with DEQ and the advisory boards.

6 So that's a discussion on (b). And quickly on
7 (c). We took out the last line, again, just acknowledging
8 where we thought the -- the ultimate authority with the way
9 the statute reads now, the formal action would occur within
10 the Department, but, again, would -- would be weighted with
11 the advice of the advisory boards.

12 So, Mr. Chairman, that's -- that's the discussion
13 of the rule changes, and I'm happy to talk through any
14 questions you may have. And just for your all's knowledge,
15 we did meet with the Water and Waste Advisory Board
16 yesterday and went through the rule. They had some
17 suggested changes that they would like to see in -- if
18 you'd like, we can go through the rule as DEQ's presented
19 it, or I can discuss the -- the proposals to the ideas that
20 the Water Board had. Again, whatever you'd like to go
21 through.

22 CHAIRMAN GAMPETRO: Okay. As I said in
23 the -- this is Gampetro again. As I said in the executive
24 meeting, I do not see a significant difference from how we
25 have operated over the last 20 years that I've been on the

1 board, at least in our Land Quality Division. I do not
2 know how the other boards -- advisory boards operate.

3 I never considered our board meeting on these
4 issues to be potentially a veto, as someone in the legal
5 area has described the nonadvisory -- if we didn't agree it
6 was some kind of a veto. I never considered that, because
7 I don't think -- and I'll stand to be corrected -- I don't
8 think we ever operated thinking that we had a veto.

9 Anybody -- other comments on that or corrections
10 or suggestions?

11 BOARD MEMBER DINSMOOR: Mr. Chairman, this
12 is Phil Dinsmoor. My -- I don't disagree with what you
13 just said, but I did have some other comments on especially
14 Section 4(b) of the proposed rule.

15 CHAIRMAN GAMPETRO: Go ahead, Phil.

16 BOARD MEMBER DINSMOOR: Okay. Two specific
17 issues. One is that I think it's very, very important that
18 the advisory board performs an important function and --
19 and part of that function is to gather public comment and
20 to also provide, as we've talked, advice. But getting that
21 advice to the people that do make the ultimate decision I
22 think is paramount to our existence, otherwise why even
23 have us as part of the process? So with that in mind, I'd
24 like to suggest that the -- the revisions of Section 4(b)
25 of the rule would include some kind of language to

1 guarantee that the -- at least the minutes from the
2 advisory board meeting, if not any notations or suggestions
3 from the advisory board be made part of the ultimate EQC
4 record before they consider the goal -- or the rulemaking.

5 Secondly --

6 CHAIRMAN GAMPETRO: Phil -- wait a minute,
7 Phil, on that one. This is Gampetro again.

8 I guess I was assuming that would be the case,
9 that our comments, suggestions, whatever, are part of the
10 record. We have a court reporter in there for our
11 meetings.

12 BOARD MEMBER DINSMOOR: I have assumed that
13 also, Mr. Chairman. But it would seem to me it would be
14 important to document that or to memorialize that in the
15 rule. If the purpose of the rulemaking today is to clarify
16 the process, let's include that in the proposed rule.

17 CHAIRMAN GAMPETRO: Okay. I got you on
18 that.

19 Go ahead with your next point.

20 BOARD MEMBER DINSMOOR: I had a second
21 point that's really a question for Mr. McKee. And that is
22 that in particular the removal of -- of Section 4(b)(I),
23 which is to choose to continue discussion. I presume that
24 removal of that provision doesn't prevent it from happening
25 if we should, as a board, decide that we want to have

1 further discussion.

2 CHAIRMAN GAMPETRO: Good point. What's the
3 answer on that?

4 MR. MCKEE: Yeah, Mr. Chairman, this is
5 Colin.

6 So to your first point, Phil, if you look down at
7 Section 5 under Promulgating Rules, these are the items
8 that the Department is required to provide to the Council
9 during the rulemaking process. And if you look down in
10 part (a) (iv), it says the records or minutes of any public
11 hearings or meetings conducted by the Department and
12 advisory board or boards. So it's already been part of the
13 process where the minutes from all Land Quality Board
14 meetings, when it involves rulemaking, those are
15 transcribed and provided to the Environmental Quality
16 Council for their consideration during -- during rulemaking
17 process.

18 So the entire conversation is encapsulated in
19 that way. One -- one request or recommendation that the
20 Water Board had yesterday was drafts adding some other type
21 of language in Section 5 that would be more of a summary of
22 the recommendations that an advisory board gave on
23 rulemaking, so that way it was more clear what their --
24 their preferences were for changes in a rule, and then it
25 would be more clear what the -- what DEQ did in response to

1 those requests.

2 So upon your first point, I think that is
3 occurring, and we can look at the rule and see if there's
4 something that's appropriate to make it more clear exactly
5 what an advisory board is requesting of the Division in
6 rulemaking.

7 To -- to your second point, again -- oh, in
8 Section B, with the new language that is added, you know,
9 receiving the advice of the affected advisory board, we
10 feel is really encompassing of the three points that are
11 below, but also with any other advice that an advisory
12 board may want to provide. And, again, we feel like -- I
13 mean, the Department has almost an obligation to be
14 responsive to the advisory board's advice, and, you know,
15 in order to make sure that rules perform the way they
16 should or are intended.

17 And so, you know, if an advisory board provides
18 recommendations to DEQ to make a rule better and DEQ just
19 blows off the advisory board's advice, well, then the
20 Director, his first step is to go to the governor and
21 request to initiate formal rulemaking. And the governor
22 will ask what were the recommendations and DEQ's response
23 to the recommendations of the advisory board? And if the
24 Director can't provide legitimate reasons for not accepting
25 the recommendation of the advisory board, it would be

1 really, really hard for the governor to want to move
2 forward with rulemaking.

3 But let's say that in some weird instance the
4 governor did move forward. Well, then, when it got to
5 Environmental Quality Council, that same hurdle would be
6 there for the Agency.

7 So I -- you know, I'm really new to the advisory
8 boards and their interaction (unintelligible). It's my
9 experience that the divisions really do seek the knowledge
10 and expertise of the members on the Board and want that
11 advice through the rulemaking process to make sure they
12 know that the rules are -- are developing the best way they
13 can.

14 So -- so I -- so I think what you're requesting
15 on your second point is encapsulated in (b), where, you
16 know, again, the functional relationship between the boards
17 and the divisions I don't see changing. So I'll leave it
18 at that.

19 MR. WENDTLAND: Mr. Chairman, this is Kyle
20 Wendtland, the administrator. And what I would say is a
21 good example is when I went through the bonding rules. I
22 don't see we run this Board any differently than we have.
23 And when we have concerns or questions and you remand
24 things back, that's good, because we typically plan to work
25 on it and refine things based on the comment we get.

1 So in particular with the Land Quality Board, I
2 do not see that we have a lot of functional changes, other
3 than there's just an awareness this is what the statute
4 requires.

5 BOARD MEMBER MACKER: Uh-huh.

6 CHAIRMAN GAMPETRO: Kyle, this is Gampetro.
7 I agree with you a hundred percent. We call this an
8 advisory board because we give advice and we advise. The
9 interpretation along the line here somewhere was -- in the
10 executive session was that we were some kind of a veto
11 power. I never considered that in all the years I've been
12 on this Board.

13 MR. WENDTLAND: No, we've always -- in my
14 time as a board member too, we've always worked with the
15 Division to basically craft something to the best of our
16 ability. And that's a goal.

17 CHAIRMAN GAMPETRO: And I also cannot
18 recall a time in all these years where we had a significant
19 issue. I can only think of two of them. And it wasn't
20 heard, listened to, and eventually actually agreed with.

21 MR. WENDTLAND: Yep.

22 CHAIRMAN GAMPETRO: So I -- at any rate,
23 that's my comments on this whole thing.

24 BOARD MEMBER DINSMOOR: Mr. Chairman, this
25 is Phil Dinsmoor. I think my question was poorly worded or

1 misunderstood. I was not questioning a -- the possibility
2 of a remand or those kinds of things. What I was
3 questioning was this -- and I'm just going to make up a
4 scenario. Let's presume that we begin a board meeting at
5 9:00 in the morning, and we've got a package of rules in
6 front of us that is voluminous and that there is a huge
7 amount of public comment. And -- or public participation,
8 and the provision was made for a one-day meeting. At the
9 end of the meeting, in this hypothetical situation, we've
10 gotten through half of the rule. I want to make sure that
11 the advisory board is not shut down or has the ability to
12 extend that public meeting and/or public comment period
13 until the next time they can get together and finish the
14 review of the rule. That's where my question was coming
15 from.

16 MR. MCKEE: So, Phil, this is -- or
17 Mr. Chairman, this is Colin again. The statute requires
18 the Department -- the Department may not initiate
19 rulemaking without receiving consultation and advice of the
20 advisory boards. So I don't think on its face, if we
21 received advice on half a rule, we can initiate rulemaking
22 on an entire rule. So I don't think that could happen.

23 BOARD MEMBER DINSMOOR: Okay.

24 CHAIRMAN GAMPETRO: Do you think we're
25 covered there, Phil?

1 BOARD MEMBER DINSMOOR: Yes. So removal of
2 (b) (i) does not prohibit the Board from --

3 MR. WENDTLAND: No.

4 BOARD MEMBER DINSMOOR: -- extending that
5 hearing or that discussion until they get through the
6 entire rule. That was where I was -- my concern was.

7 MR. MCKEE: Yeah. Mr. Chairman, this is
8 Colin. I think if you read (b), the Department may not
9 initiate rulemaking, submit a proposed rule to the Council.
10 You know, the rulemaking is the entire rule. It's not
11 reviewing, you know, one paragraph of a rule and saying the
12 Department's met its obligation. And that's tiered
13 straight from the Environmental Quality Act as well. So I
14 don't -- I don't see that being a possibility.

15 And, again, I -- I think the divisions continue
16 to seek the advice of the advisory boards as they always
17 have and wouldn't want to move forward with rulemaking
18 without seeking advise on the entire rule, especially if
19 it's something extensive and a lot of public comment. I
20 think that would put the rulemaking process on our end in
21 more jeopardy if we tried to shortchange the process in any
22 way. So not only can we not do it, I don't think it would
23 be in our interest to do something like that.

24 BOARD MEMBER DINSMOOR: Mr. Chairman.

25 CHAIRMAN GAMPETRO: Yeah. Go ahead.

1 BOARD MEMBER DINSMOOR: Mr. Chairman. And,
2 Mr. McKee, I agree totally. And in my experience on
3 several advisory boards, that has never been the case. So
4 thank you for that explanation.

5 Going back to the first question I had on --
6 where you pointed us to Section 5(a)(iv). I think I was --
7 I missed that entirely, and I thank you for pointing that
8 out. I believe that, from my perspective, the language
9 that is there is adequate, and that it is incumbent on the
10 advisory board, if we have a strong position we want to
11 take, then it's up to us to make sure that is clearly
12 enunciated in the meeting notes. And I don't want to put
13 that burden on the Agency to come back and make sure that
14 the Council understands what our intention was. That's our
15 burden, I believe. And so I'm comfortable with that
16 language as it exists, now that you pointed it out.

17 MR. HULTS: Mr. Chairman and Phil, just to
18 follow up on that a little bit. One of the things that we
19 put in our statement of reasons is a summary of comments or
20 concerns that goes to the EQC. So I generally try and
21 summarize the minutes as well, and will continue that
22 process.

23 CHAIRMAN GAMPETRO: Okay. Gampetro here
24 again. What else are we doing here?

25 Go ahead, Phil. You were going to say something.

1 BOARD MEMBER DINSMOOR: No, sir. I'm done.

2 Thank you.

3 BOARD MEMBER MACKER: I don't have any
4 questions or comments, other than I appreciate this
5 discussion, and I'm comfortable with the direction we're
6 heading.

7 CHAIRMAN GAMPETRO: Any other comments?

8 BOARD MEMBER DINSMOOR: No, sir.

9 CHAIRMAN GAMPETRO: I don't -- I don't --
10 Gampetro here again. I don't believe we need a vote on
11 this. I think this was an information session. If anybody
12 wants to correct me, go ahead.

13 MR. MCKEE: I just want to go through a
14 couple things. One, at the end of the discussion yesterday
15 with the Water Board -- and, you know, in the spirit of
16 just making -- you know, in the spirit of having the
17 relationship be the same as it always has, if the Board
18 wants to continue to vote on rules, we think that's
19 important, because it does show board members' reference on
20 whether they approve or disapprove of a rule. So I don't
21 know what your prior practice was, but I, quite honestly,
22 would appreciate if you would just continue as you had in
23 the past and do what you'd like.

24 I wanted to also just really quickly go through
25 the primary points that the Water Board brought up for our

1 consideration yesterday. They -- they -- they felt like
2 the removal of the portions in Section B went a little too
3 far and took some of the structure away from how they
4 operate. And so they -- the Water Board requested that we
5 put back in a majority of that -- of the language in there
6 to provide guidelines to the advisory board on options that
7 they can take to recommend to a division, but to change the
8 language to where they're not necessarily commands from an
9 advisory board, but they do represent the suggestions or
10 advice.

11 So we'll be looking at the -- the thoughts of the
12 Water Board, the Land Quality Board and the Air Board.
13 We'll put it all together into what we think is the most
14 functional, well-working rule. But I just want to let you
15 know, you know, largely the -- the Water Board was asking
16 for those three points in part (b) to be put back in, just
17 having minor changes in the language.

18 And then, again, they were asking that some form
19 of summary of the advice be offered to EQC in the record.
20 But as Craig mentioned today, and Gina mentioned yesterday,
21 that that's already done in the statement of reasons --
22 statement of purpose reason?

23 MS. THOMPSON: This is Gina Thompson. So
24 we -- we don't usually do ours in the statement of reasons,
25 but we usually do a line item analysis of comments received

1 from the Board. And so we state their comments and then we
2 respond to it directly. But it's -- it's -- like Colin
3 said, it's already our practice to point out those comments
4 that we do receive from the Board and then point out how we
5 have responded to those.

6 MR. MCKEE: So with that, Mr. Chairman, I
7 just wanted to cover those couple of points real quick, and
8 we appreciate your time today.

9 CHAIRMAN GAMPETRO: Gampetro here again. I
10 have no problem with that. I fully consider that we're
11 going to continue to operate and vote on rules. This,
12 however, today, it seems that you're still in the process
13 of considering what it's going to be in the final rule.
14 When you have a final rule and any changes that are made
15 relative to what the Water Board wanted or whatever, I
16 would suspect that it would come back and we would have the
17 ability to vote on that.

18 MR. MCKEE: Well, you've got me stumped.
19 Well -- so, Mr. Chairman, this -- the rule as proposed
20 is -- it makes it interesting when you have to go across
21 multiple advisory boards on where things are exactly in the
22 process.

23 CHAIRMAN GAMPETRO: Look, if it's going to
24 cause a problem, I have no problem with voting on the rule
25 as proposed today. But I was, I guess, looking at all

1 this, as being a discussion of what's going on and that it
2 was not final yet.

3 MR. MCKEE: Yeah, you kind of got me
4 stumped, Mr. Chairman. I don't know how to answer right
5 now. I think from the Agency's perspective, we do feel
6 like the rule is -- is final. It is what we're proposing
7 to be incorporated into the rule. The Water Board does
8 have some -- some suggested changes that, in my mind, don't
9 necessarily change the substance of the rule. It would
10 just add some clarification to what type of advice may be
11 offered. So there's that. And then we do also have to,
12 whenever there are members to compose a quorum of the Air
13 Board, we'll have to go in front of them. So I guess we're
14 here.

15 BOARD MEMBER MACKER: This is Natalia. If
16 we vote today, are we, in our motion, saying that we're
17 approving a revised version of Section (b) that would be
18 inserted back in, or would we just vote to approve it as
19 is, and I think what the chairman is saying when there's a
20 final version, we just get a new one and vote on that one
21 again? I've heard that we're -- I would be fine with the
22 language added back in in (b), but revised to just lay out
23 a little bit more clarity so there's consistency across
24 each of the advisory boards, so that we're operating -- if
25 I was the EQC, I would want sort of some foundational

1 operations so that I know how each board is bringing --
2 that they're bringing things to us consistently. And so I
3 guess that's the question is do we vote without having seen
4 it, but know it will be similar to what's here but revised
5 based off a statute change, or do we vote as it is, and if
6 there is a future version approved by other boards that if
7 we need to reaffirm, we do that.

8 MR. MCKEE: Yeah, so --

9 CHAIRMAN GAMPETRO: And --

10 MR. MCKEE: Sorry. Go ahead.

11 CHAIRMAN GAMPETRO: This is Gampetro. It
12 would seem the simplest thing to do would be to vote on
13 what we have today, and then if changes are accepted based
14 on recommendations of other boards and so on, that that
15 come back and we get a chance to see that and vote on that.

16 MR. WENDTLAND: Mr. Chairman, this is Kyle
17 Wendtland. I would agree with that. I think you can
18 only -- I think it's only fair for the members of the Board
19 and the public to vote on what we have in front of us
20 today.

21 BOARD MEMBER MACKER: Uh-huh.

22 MR. MCKEE: So -- Mr. Chairman, this is
23 Colin. The -- the -- again, the changes that were
24 requested from the Water Board, I don't see as deviating
25 from the language we have in the proposed language right

1 now. So to that effect, you know, effectively the rules
2 wouldn't change from what they're requesting. My concern
3 with this rule in particular, since it does have to go
4 through three advisory boards, is if we have to have a
5 final product in front of each of the advisory boards and
6 get a majority of the votes, if -- if we get your approval
7 as is right now and then make the changes and go back to a
8 Water -- Water Board and then they request a couple of
9 changes, and then we get to Air Quality and they want it to
10 read differently, it could turn into something where it
11 becomes a continual loop where we have to go to three
12 advisory boards nonstop until everyone's happy with the
13 language. And I'm not suggesting that that would go on
14 forever, but there's just a concern that it could take a
15 long time to get a rule approved that there aren't
16 substantive changes to.

17 MR. WENDTLAND: Mr. Chairman and Colin. My
18 response to that would be this Board is very receptive to a
19 teleconference call and a short vote. It's not a big deal
20 for us. We've done this in the past. So if there are
21 changes, we can kick those out and have a vote in a matter
22 of a couple of days.

23 BOARD MEMBER MACKER: I agree.

24 MR. WENDTLAND: So -- and I think when you
25 have the public engaged as you do today, with some folks

1 online and what's out there, I don't see how we can vote on
2 something that we don't have final language on. That would
3 not seem to me to not be an appropriate path.

4 MR. MCKEE: Okay. Mr. Chairman and Kyle,
5 that's a good point. And we're -- I'm not -- not hesitant
6 to come back. It's just the scenario that plays in my head
7 that scared me a little bit. There is -- there is another
8 way to approach it that once we do get an Air Quality Board
9 established and go in front of them and receive any advice
10 on changes, the Department will do its best to incorporate
11 the changes from the three advisory boards, and then we
12 could call a -- a joint meeting of all three advisory
13 boards at once and -- and just ensure that everyone's
14 comfortable with the direction the Department went, but --

15 MR. WENDTLAND: Yeah, this Board can make a
16 decision quickly, Mr. Chairman and Colin, as we have in the
17 past.

18 MR. MCKEE: Okay.

19 MR. WENDTLAND: If it's something we need
20 to call a quick meeting and conference to, it's a matter of
21 a quick public notice and a call.

22 MR. MCKEE: Okay. Well, yeah, we will --
23 in that event, Mr. Chairman, I -- you stumped me on your
24 question. It was a good one, and just had to think it out.
25 But we're obviously more than happy to bring back a final

1 product to the Board for its consideration and -- and
2 recommendation.

3 CHAIRMAN GAMPETRO: All right. This is
4 Gampetro again. I -- I think we'll just -- unless somebody
5 has a problem with it, we'll vote on what's in front of us
6 today, if someone would propose such a motion.

7 BOARD MEMBER DINSMOOR: I'll go ahead and
8 take the step. I'll move that we approve the rule as
9 proposed today with the deletions and additions and -- no
10 and. I simply make that motion.

11 BOARD MEMBER MACKER: Second.

12 CHAIRMAN GAMPETRO: Okay. It's been moved
13 and seconded as indicated by Mr. Dinsmoor. All those in
14 favor, signify by saying aye.

15 BOARD MEMBER MACKER: Aye.

16 CHAIRMAN GAMPETRO: Aye.

17 And any opposed? Seeing no opposed, the motion
18 carries.

19 Can we move on to the next item?

20 MR. WENDTLAND: I believe so, Mr. Chairman.

21 And that is -- now that we have a full board, even though
22 we don't have anybody on, here's your chance to commit
23 somebody that they don't know, so -- in a fun statement for
24 the day. But we can -- I think we're at a point where we
25 should probably elect a chairman for the next year and the

1 other officer positions.

2 MR. HULTS: The vice chair.

3 CHAIRMAN GAMPETRO: Yeah, I'm having so
4 much fun here. I don't want to stop. So it's up to you
5 guys.

6 BOARD MEMBER MACKER: Who's the vice
7 chairman now?

8 MR. HULTS: Phil.

9 MR. WENDTLAND: Phil.

10 MR. HULTS: He's the vice chair.

11 BOARD MEMBER MACKER: I nominate Jim
12 Gampetro for chair, and Phil as vice chair.

13 BOARD MEMBER DINSMOOR: I don't know if I
14 can second that or not.

15 MR. WENDTLAND: Mr. Chairman, I have one
16 comment on that. I believe that your position is up for
17 review with the Board during the course of the year next
18 year. If your intent is to reapply and maintain your
19 status with the Board -- but I can't remember if you're
20 next year or the year after.

21 MR. HULTS: Phil Dinsmoor's term expires
22 9/30/2021.

23 BOARD MEMBER MACKER: Jim is 9/30/20.

24 MR. WENDTLAND: 9/30 of '20. So Jim is up
25 this next year.

1 So, Jim, I guess if you have a desire to be
2 chairman, I have no concerns with that, but if you are
3 planning to make a change in the future, it might be good
4 to put a different person in as chairman for the year.
5 Just for consideration.

6 CHAIRMAN GAMPETRO: I wasn't -- yeah, I
7 wasn't considering that. But then, you know, every day is
8 a gift, so who knows. I'm still standing so...

9 BOARD MEMBER MACKER: We have a vice chair.

10 CHAIRMAN GAMPETRO: I'll do it.

11 MR. WENDTLAND: Okay. I just wanted to
12 make sure you were aware of that, Jim, if you were not.
13 And the rest of the Board, so I --

14 CHAIRMAN GAMPETRO: Yeah. I thought he
15 said 2021.

16 MR. HULTS: That was for Phil. I'm sorry.

17 MR. WENDTLAND: Yeah, you're up in
18 September of '20, I believe, Jim.

19 CHAIRMAN GAMPETRO: Okay.

20 BOARD MEMBER MACKER: We'll be nice to you
21 for nine months.

22 CHAIRMAN GAMPETRO: I didn't catch that.

23 BOARD MEMBER MACKER: I said we'll be nice
24 to you for nine months so you'll reapply.

25 CHAIRMAN GAMPETRO: Like I said, I'm just

1 having so much fun here.

2 And I guess I can't second those motions either,
3 because I'm in one of them, so either of you guys --

4 BOARD MEMBER DINSMOOR: Is that true,
5 Mr. Chairman, we cannot second a motion that we're a part
6 of?

7 BOARD MEMBER MACKER: I think you can
8 second it. I think since I made it, you can second it.

9 BOARD MEMBER DINSMOOR: If it's legal, I
10 can second it. If it's not legal, let's just split it into
11 two motions.

12 MR. KUHLMANN: Mr. Chair.

13 CHAIRMAN GAMPETRO: Yes. Go ahead.

14 MR. KUHLMANN: Mr. Chair, this is Andrew.
15 I think it's perfectly legal to second it. In fact, I
16 don't know that a motion of this type particularly needs a
17 second, since you're going to go ahead and vote on what the
18 result would be anyway.

19 CHAIRMAN GAMPETRO: Then all those in
20 favor, signify by saying aye.

21 BOARD MEMBER MACKER: Aye.

22 BOARD MEMBER DINSMOOR: Aye.

23 CHAIRMAN GAMPETRO: Aye.

24 There are no opposed. So that's what it is for
25 now anyway.

1 Next item on this is meeting dates.

2 MR. WENDTLAND: Mr. Chairman.

3 CHAIRMAN GAMPETRO: You have some ideas?

4 Go ahead.

5 MR. WENDTLAND: Mr. Chairman, this is Kyle
6 Wendtland. And I have proposals or thoughts for the next
7 year. We can certainly look for dates if you have specific
8 dates that are not workable. But following sessions, we
9 typically had a meeting the end of March. I believe that's
10 appropriate, in case there's changes or things we need to
11 act on through the year. So typically in that last week of
12 March, we look for a date. And then in the end of June, as
13 well, we look for a date, because that usually gets to
14 where the weather's a little better, if we need a
15 face-to-face for the Board. And then I'm open to August or
16 September meeting. And then, again, for us, this one
17 before -- in early December, in case we have legislation
18 coming. Next year's the long session. I would propose
19 between holidays, early December meeting again.

20 BOARD MEMBER MACKER: Sounds good to me.

21 BOARD MEMBER DINSMOOR: I agree.

22 CHAIRMAN GAMPETRO: This is Gampetro. Fine
23 with me.

24 MR. WENDTLAND: So we'll look for
25 Wednesday, Thursday type mid-week dates for those so

1 there's options to travel. If you -- and we'll kick out --
2 Craig and I will refine those to some specific days to kick
3 out to the Board. And if -- if we need to adjust things
4 around, we will, and we'll set some dates for next year,
5 then.

6 BOARD MEMBER MACKER: Great.

7 CHAIRMAN GAMPETRO: Sounds -- sounds good.

8 Any other comments or ideas relative to that?

9 BOARD MEMBER MACKER: No. Thank you.

10 CHAIRMAN GAMPETRO: We're down to the
11 bottom. Any other items for discussion?

12 BOARD MEMBER DINSMOOR: Mr. Chairman, this
13 is Phil Dinsmoor. I would just like to thank our visitors
14 today, Andrew and Colin McKee, for coming in and providing
15 explanation on this proposed rule. It really helps to hear
16 some discussion in addition to what we read on paper.
17 Thank you very much.

18 BOARD MEMBER MACKER: Agreed.

19 CHAIRMAN GAMPETRO: Yeah, I second that,
20 Phil.

21 MR. WENDTLAND: Mr. Chairman, the only
22 other item I had is we will probably try to do like we did
23 this last year and hold as many of these remote to keep
24 folks from having to travel. And if, you know, throughout
25 the course of the year we'll try and get to Gillette and

1 over this way for Natalia and the new member from
2 Rock Springs at least once so we try to balance that out
3 and minimize travel for everyone. So if this is working
4 well for the Board, if we need a face-to-face, we'll call
5 it, but otherwise we'll continue to work the
6 videoconference and Craig and I will be the ones to travel
7 and tie in business along the way as we're traveling, so...

8 CHAIRMAN GAMPETRO: Well, that's fine with
9 me, Kyle, unless you want to get us all snowmobiles so we
10 can come down and visit Cheyenne.

11 MR. WENDTLAND: Yeah. Yeah. You would
12 need one at my house.

13 CHAIRMAN GAMPETRO: Well, if there are no
14 other items for discussion.

15 BOARD MEMBER MACKER: Move to adjourn.

16 BOARD MEMBER DINSMOOR: Second.

17 CHAIRMAN GAMPETRO: All those in favor,
18 signify by saying aye.

19 BOARD MEMBER MACKER: Aye.

20 BOARD MEMBER DINSMOOR: Aye.

21 CHAIRMAN GAMPETRO: Aye.

22 The meeting is adjourned.

23 MR. WENDTLAND: Thank you, everyone.

24 MR. HULTS: Yeah, thank you, everyone.

25 (Recorded hearing proceedings)

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C E R T I F I C A T E

I, KATHY J. KENDRICK, a Registered Professional Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein, constituting a full, true and correct transcript.

Dated this 11th day of March, 2021.


KATHY J. KENDRICK
Registered Professional Reporter

