

LQD Meeting

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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN RE: LQD MEETING

TRANSCRIPT OF VIDEOCONFERENCE MEETING PROCEEDINGS

PURSUANT TO NOTICE duly given to all parties in interest, this matter came on for telephonic meeting on the 28th day of March, 2018, at the hour of 10:00 a.m., at Gillette College, 300 W. Sinclair Street, Room 120, Gillette, Wyoming, before the Land Quality Advisory Board, Ms. Natalia Macker, presiding by videoconference; with Mr. Phil Dinsmoor, Mr. Micky Shober, Mr. John Hines; and Chairman Jim Gampetro present telephonically.

Mr. Kyle Wendtland, Land Quality Administrator; and Mr. Craig Hults, Senior Environmental Analyst and Ms. Carol Bilbrough, LQD Program Manager, also in attendance by videoconference; and Mr. Mark Rogaczewski, District 3 Supervisor, also present.

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

2 (Meeting proceedings commenced
3 10:00 a.m., March 28, 2018.)

4 MR. HULTS: I guess we're going to have
5 Jim call the meeting to order, and he was going to turn it
6 over to Natalia.

7 MR. WENDTLAND: Do we have Jim on the line,
8 Craig?

9 MR. HULTS: We do.

10 Natalia, if you want to take it away.

11 BOARD MEMBER MACKER: Sure. Good morning.
12 I will call to order the March 28, 2018 Land Quality
13 Division Advisory Board meeting. And the record can
14 reflect that all board members are present in one location
15 or another, except perhaps we might have lost Chairman
16 Gampetro momentarily, and we'll expect to get him back.

17 I can ask if everyone had a chance to review the
18 meeting minutes from December 27, 2017, and if so, we would
19 like to have a motion to approve those minutes.

20 BOARD MEMBER SHOBER: So moved.

21 BOARD MEMBER DINSMOOR: I'll second.

22 BOARD MEMBER MACKER: Moved by Board Member
23 Shober, seconded by Board Member Dinsmoor. All those in
24 favor, please say aye.

25 BOARD MEMBER SHOBER: Aye.

1 BOARD MEMBER DINSMOOR: Aye.

2 BOARD MEMBER HINES: Aye.

3 CHAIRMAN GAMPETRO: Aye.

4 BOARD MEMBER MACKER: Aye.

5 All opposed?

6 Minutes are approved.

7 Our next order of business is the presentation
8 and discussion of the proposed revision to the financial
9 assurance regulation in Coal Chapters 11 and 20 and Noncoal
10 Chapters 6 and 12.

11 And I believe Craig is leading that presentation.

12 MR. HULTS: Good morning. Initially
13 Carol's going to do an introduction through a PowerPoint.

14 But I did want to ask, Kyle, any introductory
15 comments?

16 MR. WENDTLAND: Craig, I think the only
17 introductory comments -- and I would -- and, Chairman, is
18 that we'll -- the plan right now for the meeting is to go
19 through this initial PowerPoint and just kind of summarize
20 overarching items.

21 Craig, have you walk through the Statements of
22 Reasons, or SOR, and then I will walk through the -- an
23 outline of the letters and correspondence we received in
24 comments. And I believe that then we'll turn the meeting
25 back over to the chairman to decide to open it to the

1 public at that point.

2 MR. HULTS: That sounds good. I guess I
3 will turn it over to Carol. I'm going to pop open the
4 PowerPoint presentation, so it might just take a sec.

5 All right. You should be seeing the PowerPoint
6 presentation.

7 MR. WENDTLAND: Craig, I think the board
8 members up here may want to turn around or move down to the
9 chairs so they can look back at the screen.

10 MR. HULTS: Okay. Let me know when you're
11 ready.

12 MR. WENDTLAND: All right. I believe we're
13 about ready to go, Craig. Your show.

14 MR. HULTS: Okay.

15 MS. BILBROUGH: Okay. So as we've already
16 discussed, these are our proposed Land Quality Division
17 bonding rule changes to the Coal rules, Chapters 11 and 20,
18 and the Noncoal rules, Chapters 6 and 12.

19 Next slide, please.

20 Just as an overview what these proposed revisions
21 entail. We've collected all the rules on financial
22 assurance into a single chapter, entitled it Financial
23 Assurance; self-bonding and letters of credit are in
24 the rule chapter. We made major revisions to the
25 self-bonding --

1 MR. WENDTLAND: Carol. Carol.

2 MS. BILBROUGH: -- program.

3 MR. WENDTLAND: Sorry to interrupt --

4 MS. BILBROUGH: Yes.

5 MR. WENDTLAND: -- but we need to have

6 Craig expand his slide show. We're only seeing the first

7 slide, please.

8 MR. HULTS: That's as big as I can make it.

9 MR. WENDTLAND: Okay.

10 MR. HULTS: We tried it, and it's actually

11 an add-on in PowerPoint that needs to be downloaded

12 apparently.

13 MR. WENDTLAND: Can you move to your next

14 slide, though? You're stuck on one.

15 MR. HULTS: That's the issue. I'm not

16 there.

17 UNIDENTIFIED MALE: There it worked.

18 MR. WENDTLAND: There you go. Then it went

19 back.

20 MR. HULTS: Okay. I won't touch it.

21 MR. WENDTLAND: So click down again.

22 MR. HULTS: Click down again?

23 MR. WENDTLAND: Yeah. Click to your next

24 slide. Your next slide. Slide 2. There you go. Thank

25 you.

1 There you go, Carol.

2 MS. BILBROUGH: Okay. So we've combined
3 everything into a single chapter and titled it Financial
4 Assurance. So from now on all regulations regarding
5 bonding will -- financial assurance will go into a single
6 chapter. We've made major revisions to the self-bonding
7 program. And I'll open -- go over those in a minute.

8 Minor revision to Letters of Credit. We added a
9 real property collateral bond instrument, and we moved the
10 personal property collateral bond instrument, and then we
11 made a clarification on the requirements for securities
12 bonds.

13 Next slide, please.

14 MR. HULTS: Did that change for you guys?

15 MR. WENDTLAND: Move your mouse over and
16 click on slide 3, please. There you go.

17 MS. BILBROUGH: Okay. So for the
18 self-bonding rules, you know, our objectives are to --
19 these changes -- with these changes is to safeguard the
20 reclamation liability interest of the state. So we're
21 ensuring the State will have sufficient notice to require
22 an alternative bond instrument in the event of declining
23 financial status when we're in a situation with a self-
24 bond. And at the same time, though, we want to allow
25 financially healthy companies to continue to use self-bonds

1 as a component of their reclamation liability bond.

2 Next slide, please.

3 MR. HULTS: I think it should be there.

4 MR. WENDTLAND: Yeah. You're good.

5 MS. BILBROUGH: Okay. So the -- so now
6 I'll just review the changes. The first one is that only
7 the ultimate parent entity may act as bonder. In the past
8 the current rules allowed for a subsidiary, and now we have
9 revised it to say that only the ultimate parent entity may
10 act as a bonder.

11 The current rules state that self-bond can be a
12 hundred percent of the total required bond amount. That's
13 been reduced to a maximum of 75 percent. This accomplishes
14 several things. We achieved diversification of the
15 financial assurance instruments.

16 It indicates self-bond, it can take time to
17 collect on a forfeited self-bond. And in the meantime, we
18 need immediate funds to protect the physical assets and to
19 initiate reclamation and to complete maintenance that's
20 necessary to keep the mine operation going.

21 Next slide, please.

22 Audited financial statements and ratios will no
23 longer be used to qualify for a self-bond. Instead the
24 bonder must qualify using credit ratings issued by a
25 nationally recognized third-party credit rating service,

1 such as Moody's.

2 These credit ratings provide a real-time
3 assessment of a company's financial condition. The current
4 rules require an audited financial statement, which can be
5 months out of date.

6 Credit ratings have the additional advantage of
7 being issued by an independent third party.

8 Audited financial statements and quarterly
9 financial statements are an incomplete picture of the
10 financial status of the company. So off-balance sheet
11 liabilities are not included in the payments. That was one
12 of the big reasons why we wanted to shift away from those
13 into credit ratings.

14 DEQ review showed that inclusion of these
15 off-balance sheet liabilities would preclude Wyoming mining
16 companies from qualifying for self-bonding.

17 Next slide.

18 We will no longer accept collateralized
19 self-bonds. The current rules allow for an operator to
20 provide a collateral for a self-bond when they do not
21 immediately qualify for the self-bond instrument. They can
22 provide a collateral to support that self-bond. We removed
23 that from the rules. We now have real property as a
24 separate financial instrument and have removed personal
25 property as a possible bond instrument. Our experience has

1 shown that the annual cost of appraisal and title filings
2 is greater than the benefit that is received from using
3 personal property.

4 Securities has always -- have -- are now an
5 accepted financial instrument, and they continue to be
6 accepted financial instrument. And those are the three
7 types of collateral that we were -- that the current rules
8 accept as a self-bond.

9 We've added a requirement of a minimum 10-year
10 life of mine in order to qualify for a self-bond. We have
11 found that as a mining operation reaches the end of the
12 mineral reserves, it becomes increasingly more difficult to
13 obtain an alternative financial instrument.

14 The recent bankruptcies have shown that surety
15 companies are hesitant to provide financial assurance if an
16 operation has less than 10 years of mineral reserve. So
17 the transition to an alternative form, assurance is -- is
18 prudent before this time period occurs. So we need to have
19 time to shift to an alternative bond instrument before we
20 get to that 10-year life of mine.

21 For collateral bond rules, the Wyoming 2018
22 legislature approved new statute language providing for the
23 Land Quality Division to promulgate rules on real property
24 collateral financial instruments. The main provisions of
25 the statutes and rules are that the property is located in

1 Wyoming, the Wyoming Department of Environmental Quality
2 holds a perfected first lien interest, and if the real
3 property collateral is inside a permit boundary, it may not
4 be disturbed by mining while pledged as collateral.

5 And we have a few additional changes. As I said
6 before, all acceptable financial instrument types are
7 covered by this chapter. The letter of credit rules are
8 revised to specify only irrevocable letters of credit are
9 acceptable. This is already specified in the statute. And
10 standby letters of credit will no longer be accepted.

11 The security financial assurance rule just
12 clarifies that the United States or state government
13 securities are acceptable bond instruments, and this is
14 consistent with statutes. And we added the requirements
15 that security be unencumbered and be insured by the FDIC.

16 And that is a very rapid and brief summary of the
17 changes that we are proposing in this rule package. With
18 this, we'll shift to Craig going through the rules chapter
19 by chapter.

20 MR. HULTS: All right. What I'm going to
21 do is I will be pulling up the strike and underline version
22 of the Coal chapter. I'm going to go through that just to
23 give you kind of the lay of the land, explain some of the
24 changes. I know we've had some revisions to that set of
25 rules since the December advisory board.

1 So give me a moment and I will pull up Chapter 11
2 part of the Coal rules.

3 MR. WENDTLAND: Madam Chair, while we're
4 waiting for those to come up, I would recommend -- are
5 there any questions that the board members have regarding
6 the overarching presentation by Carol?

7 BOARD MEMBER MACKER: I have one question,
8 and then I'll get off and then I'll see if perhaps you can
9 help with questions that are in the room there in Gillette.

10 The one question I have is in relation to the
11 public comments that we received from the Western Fuels
12 Association, and I just wanted to understand if these rules
13 treat cooperative differently from other Wyoming
14 operations.

15 MR. WENDTLAND: Madam Chair, they do not.
16 We have viewed it as all industry being treated fairly and
17 equally under the provisions of the rules.

18 BOARD MEMBER MACKER: Great. Thank you.

19 Are there other board members in Gillette with
20 questions?

21 BOARD MEMBER SHOBER: Yes. This is Micky,
22 Natalia.

23 A couple of questions. The first one, when the
24 10-year life on the mine, that's with the current lease
25 reserves or does it deal with any potential for the --

1 MR. WENDTLAND: Madam Chair and Board
2 Member Shober. It would be on current reserves. And if
3 those reserves are amended and extend that, it would go to
4 the amendment once -- once there's certification of
5 ownership of the mineral.

6 BOARD MEMBER SHOBER: Second question is,
7 this letter of credit, you know, sometimes in the past
8 there was some letter of credits issued from some banks,
9 banks failed, FDIC refused to honor the letter of credit.
10 Have you made some kind of provision in this or is this
11 type of letter credit exempt from that?

12 MR. WENDTLAND: Madam Chair. Board Member
13 Shober, the banks have to meet the FDIC requirements. So
14 they may syndicate that letter in order to do that. But --
15 and our forms actually address that particular issue, not
16 in the rules.

17 BOARD MEMBER SHOBER: Okay. Thank you.

18 BOARD MEMBER DINSMOOR: Madam Chair, this
19 is Phil Dinsmoor. I have a question for clarification.
20 Probably Carol or Administrator Wendtland.

21 The provision on collateral, that it not be
22 disturbed, am I to understand that a piece of ground that
23 has not been disturbed in the permit area is -- can be used
24 as collateral, and a piece of ground that has been
25 disturbed and reclaimed and gone through bond release can

1 be used as collateral. But anything in between those two
2 pieces cannot.

3 MR. WENDTLAND: Madam Chair. That is --
4 Board Member Dinsmoor's understanding is correct.

5 BOARD MEMBER DINSMOOR: Thank you.

6 BOARD MEMBER HINES: Madam Chair. I had a
7 question on the security. Where it says the U.S.
8 government or state government, does that mean any state
9 government or just Wyoming?

10 MR. WENDTLAND: Madam Chair. That would be
11 any government security, Board Member Hines.

12 BOARD MEMBER HINES: Thank you.

13 MR. WENDTLAND: Madam Chair, I believe
14 those are the questions from Gillette.

15 BOARD MEMBER MACKER: Great. Thank you.

16 Jim, if you are on the line, do you have any
17 questions?

18 CHAIRMAN GAMPETRO: Not at this point.
19 Thank you.

20 BOARD MEMBER MACKER: Thank you. I will
21 hand it back to you, Craig.

22 MR. HULTS: All right. You should be
23 seeing Chapter 11. I'm just going to step through this.
24 Hopefully I won't make you too seasick. I'll try to
25 capture as big a portion of the screen as I can while

1 talking.

2 For Chapter 11, we have -- now we have Section 1,
3 Definitions. First thing we did was reordered them to make
4 them alphabetical again. The first change we have is the
5 collateral definition. This was revised to remove
6 securities and personal property as collateral. And we
7 also clarified that the -- the real property requirements
8 within that definition.

9 The next change is we removed several financial
10 terms. These were removed because of the financial ratio
11 calculations to determine self-bonding eligibility won't be
12 used in the proposed rules.

13 The next stage would be definition for
14 "irrelevant revocable letter of credit." And "net worth"
15 was changed to -- revised to include the off-balance sheet.
16 The parent corporation, that definition was deleted and
17 will be replaced with a later definition for "ultimate
18 parent entity."

19 We added a definition for "real property," and
20 this follows the statutory definitions.

21 We changed the "self-bond" definition to include
22 this new term "ultimate parent entity" instead of a
23 "nonparent guarantor."

24 And, finally, in the definition section, we have
25 the "ultimate parent entity," and this means an entity

1 that's not controlled by any other entity, and is the top-
2 most responsible entity, which owns or controls. And that
3 was in the self-bonding section.

4 Moving into Section 2. This is a new section.
5 And basically what this does is lists the types of bond
6 instruments that will be accepted by the Division. The
7 first section that we deal with, one of the bond
8 instruments is irrevocable letters of credit. This is from
9 Chapter 20. And what we did is the current Chapter 20 was
10 pulled into this chapter to consolidate all the financial
11 assurance information in one location.

12 There were some changes once it was pulled in,
13 but I think you will see they've been indicated where
14 changes were made. The first big change within there is
15 that Section (a)(i) was deleted, and that was because it
16 was inconsistent with the requirement that letters of
17 credit are irrevocable.

18 And on to the next page. Section (a)(iii) was
19 inserted, and that was to clarify that standby letters of
20 credit will not be accepted as financial assurances.

21 Section 4. This was revised to be consistent
22 with the statutory language of 402 that's referenced.

23 And going down to Section 5(b). This is a new
24 section. It was added to clarify that letters of credit
25 may be canceled with the director's written consent and

1 fulfillment of the requirements of the bond or
2 substitution.

3 Moving into Section (b). Basically this section
4 was just reorganized to fit the flow of this chapter.
5 There weren't any revisions within that section as
6 Chapter 20 language.

7 The next section is the self-bond section. And
8 this section was -- we pulled together all the kind of
9 different steps that apply to self-bonding into one
10 section. So Section (a) is now our application
11 requirements. Section (a)(i), this added the requirement
12 that existing operations have a 10-year life of mine
13 remaining. Sections (a)(i)(A)(I) and (II), these describe
14 application info that's required, depending on the type of
15 entity. So in (I), it's corporations. And (II) is any
16 other business entity type.

17 In subsection (B), this is where we've added the
18 self-bond limit to 75 percent of the total reclamation bond
19 amount.

20 Subsection (C) and (D), these are part of the
21 current Chapter 11 and they've been retained.

22 Moving to subsection 6. This entire subsection
23 was deleted. That was because the audited financial
24 statements will no longer be considered in the application
25 to self-bond. Instead, we'll be using the credit ratings

1 so it was information -- we were able to delete that.

2 Subsection (F), this is where we use the new term
3 "ultimate parent entity." And this gives us -- the
4 subsection of (F) is the required qualifications for
5 bonding.

6 In subsection (I), we've changed the rating
7 services to include the fixed ratings, and we also removed
8 the language that allowed us to accept other rating
9 organizations over time. And then, finally, this is,
10 again, the 75 percent limitation.

11 In subsection (II), we have -- this one, again,
12 is the limits on self-bonding. And it's based on the
13 credit rating. Within (II) they would be limited to
14 70 percent. (III), they would be limited to 50 percent.
15 And finally in (IV), this is a case where if the credit
16 ratings were split for that operator or ultimate parent
17 entity, the administrator has discretion to determine which
18 rating would be accepted and applied to calculate (I), (II)
19 or (III) of both.

20 Again, we have some more deletions. Again, these
21 are tied to the ratio calculations that we were using.

22 Subsection (G), the current language and details
23 of required information for registered to offices and
24 agents. I don't believe there is any revisions in those.

25 Subsection (H), this was revised to reflect the

1 changes to the internal chapter citations. Since we
2 restructured this chapter so heavily, a lot of citations
3 needed to be changed.

4 In subsection (II), this details when the
5 guarantee can be and how long it has to be in effect or the
6 notice of cancellation language. The one change there was
7 we went from 90 days to 120, and uses that ultimate parent
8 entity term again.

9 In subsection (I), we removed a bunch of
10 redundant language. And the section also requires the
11 operator to submit a rating information as required by (F).
12 Both the ultimate parent and operator will be submitting
13 that information on the credit ratings.

14 In subsection (J), this is a secondary limit on
15 the amount of self-bond. And this limits the outstanding
16 bonds of the operator to 25 percent of the operator's
17 tangible net worth in the U.S. And that same limitation
18 would apply to the ultimate parent as well. And this is
19 the outstanding self-bond, the guarantees, and they would
20 be limited to 25 percent of the net worth in the U.S.

21 Subsection (b), this one deals with the approval
22 or denial of a self-bond application. This section was
23 retained from Chapter 11, Section 3, and, for the most
24 part, wasn't revised except for the addition of the
25 ultimate parent entity language. We've inserted that where

1 it's appropriate. And it also removes the consideration of
2 uncol -- uncollateralized self-bonds.

3 And proposed section (B) details self-bond
4 application review times and requirements for indemnity
5 agreements.

6 CHAIRMAN GAMPETRO: Craig?

7 MR. HULTS: Yes.

8 CHAIRMAN GAMPETRO: This is Jim.

9 MR. HULTS: Yes, Jim.

10 CHAIRMAN GAMPETRO: I noted that in the
11 collateralized bonding, it indicated that none of the -- if
12 it was real property, could be presently encumbered or --
13 or under mining operations. Those things change, and how
14 would you separate out real property that today is not
15 being mined or disturbed from tomorrow, possibly it
16 wouldn't.

17 MR. HULTS: I'll answer this, but feel
18 free, Kyle or Carol, to supplement my answer.

19 To me that would be left up to the operators.
20 They would have the option, if they decide to move into
21 that area, they would either have to substitute some other
22 type of bonding instrument or some other real property that
23 potentially wasn't going to be disturbed.

24 MR. WENDTLAND: Madam Chair. That answer
25 is correct.

1 CHAIRMAN GAMPETRO: Thank you.

2 MR. HULTS: Sure. The next section is the
3 self-bond renewals. In subsection (i)(A), the amount of
4 the bond is based on the reclamation cost estimate and the
5 amount proposed for self-bonding.

6 In subsection (B), this requests the financial
7 info to show that the guarantor still meets financial
8 criteria. And it includes a full report from the credit
9 rating agency and allows that for additional information to
10 be requested in the event that a split reading occurs.

11 Subsections 4(a)(iii) and (iv) and (v), these
12 were deleted because, again, they discuss the
13 collateralized self-bonds, which we would no longer be
14 accepting. And it also removes the discussion of the use
15 of personal property as collateral.

16 Sections 4(b) and 4(c), these were deleted
17 because they ended up being redundant with the info
18 required in proposed sections (ii) and (iii).

19 Subsection (ii) is a new section. And this
20 details the rights of renewal. And that's provided the
21 requirements are met and there is a 10-year life of mine
22 remaining.

23 Subsection (iii), this details requirements to
24 maintain the self-bonds that were approved prior to the
25 effective date of -- it details requirements to maintain

1 those self-bonds that were approved prior to the effective
2 date of these proposed rules, and gives a -- a time frame
3 of 18 months to come into compliance.

4 Subsection (d) is the sub -- substitution of a
5 self-bond. Subsection (i), this was revised to allow for
6 all types of financial assurances as detailed in section
7 (ii), and allows for a full or a partial substitution of a
8 self-bond.

9 And, finally, a statutory reference was
10 corrected. Subsection (ii) was revised to remove the
11 reference to the acceptable types of bond instruments,
12 which is covered in the proposed section (ii). And also
13 retains the requirement for the administer to suspend or
14 revoke a license until a suitable substitution is received.

15 Subsection (iii), this one was revised to update
16 the statutory citations. And adds the general statement to
17 substitute with good and sufficient bond.

18 And, finally, the current Chapter 11,
19 Sections 5(c)(i) and (ii), these sections were deleted
20 because that was addressed previously within the chapter.

21 And the final section within the self-bonds is
22 the reporting requirements. The first one in (i) is -- it
23 adds a requirement to notify the administrator within
24 30 days when any devaluation of a credit rating occurs, and
25 supply a copy of that credit rating.

1 And subsection (ii), this requires a statement
2 regarding notices of proceedings issued by the SEC against
3 the operator or ultimate parent entity within 30 days.
4 This was also revised to clarify what proceedings we were
5 talking about. Initially that language was pretty vague in
6 the first sentence.

7 That moves us into a new --

8 BOARD MEMBER HINES: Question, Madam chair.

9 MR. WENDTLAND: Madam Chair. We have a
10 question.

11 BOARD MEMBER HINES: I have a question on
12 the renewal of a self-bond, and it's where it says it still
13 is a minimum 10-year life of the mine. After this had gone
14 on for two or three years, how does that work when the
15 remaining life may not be a full 10 years?

16 MR. WENDTLAND: Madam Chair. Board Member
17 Hines, that would be when the State would ask for
18 substitution of a self-bond. Because when you get under
19 the 10-year life of mine, that's when we've seen some
20 hesitation by alternate bonding mechanisms to take that
21 liability. So we want to make that transition before we
22 get to that point. That is that reason for that 10-year
23 requirement.

24 BOARD MEMBER HINES: Thank you.

25 MR. WENDTLAND: Craig.

1 MR. HULTS: We okay to proceed?

2 MR. WENDTLAND: Yes, Craig.

3 MR. HULTS: All right. This new financial
4 assurance, the collateral bonds, it's comprised of some
5 previous rule language from the current Chapter 11, and it
6 includes revisions that reflect other changes we've made
7 throughout the chapter, and to make clear that collateral
8 bonds are a separate type of bonding instrument.

9 Subsection (a), this was revised to remove a
10 reference in the support of a self-bond. Subsection
11 (a)(i), this was revised to clarify it's real property
12 collateral and detailed evaluation process using an
13 appraiser, and also includes a requirement that the
14 property must be appraised every three years.

15 Subsection (ii), this requires a description of
16 the property. And in subsection (A) below that, this
17 describes what circumstances of the real property within
18 the permit area may be used as collateral.

19 Section (a)(iii), this was revised to state that
20 evidence of ownership shall be in the form of a clear and
21 unencumbered title.

22 Subsection (a)(iv), this was revised to clarify
23 the mortgage requirements for real property accepted as
24 collateral.

25 Subsection (v), this was revised to clarify the

1 requirements on using security agreements to secure the
2 real property collateral.

3 Subsection (vi), this describes how an operator
4 may substitute other real property for collateral.

5 And subsection (vii), this requires the operator
6 to notify any parties with the claims subordinate to the
7 Department to be notified of all actions affecting the
8 collateral.

9 You may have noticed I scrolled past a bunch of
10 language that was deleted. I just wanted to address that
11 in one kind of statement. Those former sections reference
12 personal property and were deleted in order to be
13 consistent with the new statute and the OSM's prohibition
14 against using personal property as collateral. That takes
15 us to Section (vi).

16 BOARD MEMBER SHOBER: I have a question.

17 MR. HULTS: Go ahead.

18 BOARD MEMBER SHOBER: Micky Shober.

19 So to me personal property means buildings and
20 equipment. So real estate that is -- has those buildings
21 on is going to be exempt from collateral?

22 MR. WENDTLAND: Board Member -- or Madam
23 Chair and Board Member Shober. There is discretion in the
24 language for the administrator to review the proposed real
25 property, if those buildings and structures are assets.

1 Probably the example for me would be if it's a ranch and
2 you have a ranch house, that would be part of the real
3 property. What the personal property is in particular and
4 where that definition really falls is more with the lines
5 of the equipment and personal assets.

6 BOARD MEMBER SHOBER: Okay. Thanks.

7 MR. HULTS: Go ahead?

8 MR. WENDTLAND: Yes, Craig.

9 MR. HULTS: Okay. Section 6 is a new
10 section on securities. This consolidates some of the
11 current rule language that was in -- it consolidates it
12 into one section and, again, clarifies that securities are
13 a separate bonding instrument.

14 Subsection (a), this was revised to remove the
15 reference to -- the Section 1 definition, which we've
16 deleted that portion. It also clarifies that government
17 securities shall be unencumbered and -- hello?

18 MR. WENDTLAND: You're good, Craig.

19 MR. HULTS: Sorry. And also adds a
20 requirement that the certificate -- a certificate of
21 deposit has to be insured by the FDIC.

22 Subsection (b), this was edited basically to fit
23 the section better contextually.

24 Subsection (c), this one details requirements for
25 acceptable securities and was revised to remove language

1 that didn't fit the security section. There was a bit of
2 blending in some of our current Chapter 11 language, so we
3 tried to clean that up as best as possible.

4 Section 7, this takes us to requirements for
5 forfeiture and release. This section was renumbered,
6 basically, to reflect the revised organization of a
7 chapter. Subsection (a) was revised to remove the rule
8 language dealing with mortgages.

9 Subsection (b), this was revised to require
10 retention of full value of the real property until release
11 or substitution. And this removes the possibility that the
12 Department could become the fractional owner of the
13 property.

14 The existing -- or former Section 7, this section
15 was deleted in its entirety. The existing operations were
16 dealt with earlier in the chapter in proposed Section 4.

17 That gets us through the changes for the Coal
18 rules.

19 BOARD MEMBER DINSMOOR: Madam Chair, I have
20 a question. This is Phil Dinsmoor.

21 Craig, going back to your Section 6. Can you
22 explain that again about the fractional ownership of the
23 real property.

24 MR. HULTS: Yeah. Just scrolling back
25 here. Which section, Phil?

1 BOARD MEMBER DINSMOOR: Actually, I believe
2 it was Section 7. Sorry.

3 MR. HULTS: Oh. So in Section (b) we were
4 saying the Department shall retain the full value of the
5 real property until the bond liability is equal to the
6 value --

7 MR. WENDTLAND: Craig, hold on. You're
8 going to -- Craig, slow down and back up. We lost your
9 feed there for a second, please.

10 MR. HULTS: Okay. So in section -- in
11 proposed Section 7, in subsection (b), we're seeing that
12 the Department retains the full value of the real property
13 until bond liability equal to the value of real property is
14 released or substituted. And the language that I was
15 quoting -- stating about the fractional values, I believe
16 that also ties back to declaring notice of any subordinate
17 actions that affect the property that would be below us.

18 BOARD MEMBER DINSMOOR: So if I'm not
19 mistaken, what you're saying is that you're trying to avoid
20 any fractional ownership. It's an all or nothing
21 proposition.

22 MR. HULTS: That's correct. Yeah.

23 BOARD MEMBER DINSMOOR: Good. Thank you.

24 MR. HULTS: Based on that perfected first
25 lien.

1 BOARD MEMBER DINSMOOR: Okay.

2 BOARD MEMBER MACKER: Any other questions?

3 I have one. Throughout there are references to
4 administrator decision in different ways, and I'm just
5 wondering if or what type there is for those decisions?

6 MR. WENDTLAND: Madam Chair.

7 MR. HULTS: Kyle, I think that --

8 MR. WENDTLAND: Madam Chair, could you --
9 could you maybe rephrase that a little bit? I guess I'm
10 not sure I quite understood your question.

11 BOARD MEMBER MACKER: If the administrator
12 makes a decision and the applicant or company disagreed
13 with it, is there an appeal process or are the
14 administrator decisions final?

15 MR. WENDTLAND: Madam Chair, that would be
16 appealable, and it would be appealable up to the director.
17 They could appeal my decision as administrator, and then it
18 could possibly move to the council, depending on --

19 BOARD MEMBER MACKER: Okay. Great.

20 MR. WENDTLAND: -- how far it wanted to be
21 carried.

22 BOARD MEMBER MACKER: Thank you.

23 MR. HULTS: Any further questions before I
24 move on? I'm not hearing anything.

25 Let me pull down this file.

1 All right. You should be seeing Chapter 6 now,
2 which is a Noncoal chapter. What I tried to do here,
3 instead of blowing through the whole chapter, the purpose
4 was for me to maintain consistency between the Coal and
5 Noncoal rules when we drafted the Noncoal rules. There are
6 some instances where there are differences that have been
7 maintained.

8 One thing to note under the Coal rules, we would
9 be subject to OSM review, and our rules would need to be to
10 be as stringent as the federal regulations or as effective
11 as those federal regulations. The Noncoal rules would not
12 be under that type of review, so there may be instances
13 where things have been kept in that wouldn't have fit in
14 the Coal rules or would have been inconsistent with the
15 Coal rules. So what I thought I would do is just go
16 through the changes between the two versions.

17 In the first one is in our definition of
18 self-bond. This section was -- was different in the
19 current Noncoal regulations. So the part that was struck
20 was different from our resulting coal definition. So we
21 struck that to make it consistent with the Coal rules.

22 And then, finally, the final sentence there
23 that -- the indemnity agreement, that section was added to
24 this definition because it wasn't in the current Noncoal
25 rules. So we've added that to be consistent with the Coal

1 rules.

2 The next one is down a bit. I apologize for the
3 scrolling. This is in subsection -- in the self-bonding
4 section, application to self-bond in subsection (E). This
5 was made consistent, again, with the Coal regulations. And
6 that final sentence that was -- is indicated as underlined,
7 that language wasn't in the current Noncoal rules in
8 Chapter 6, so we've added that for consistency.

9 The next one in (xi), so, again, I apologize for
10 the scrolling. This is in subsection (H). And what was
11 previously -- or in the current Chapter 6, 2(a)(xi).
12 Again, this was revised to be more consistent with the Coal
13 rules, so we've removed the foreign nonparent language, for
14 example, and we've replaced that with our new term, the
15 "ultimate parent entity."

16 The next one is in subsection (xii), we've struck
17 that language completely. There was no coal counterpart to
18 compare it to, and this was -- in the previous Noncoal
19 rules, we allowed for the inclusion of assets outside of
20 the United States in the tangible net worth. That will no
21 longer be the case.

22 In -- let's see. So the next section here is the
23 (I) -- I guess the letter in this case -- the letter (I)
24 and (J) below it, these two differ from the Coal language.
25 But they also were retained within the chapter. In (J),

1 the difference being that in an operator -- cannot exceed
2 50 percent of the operator's tangible net worth in the
3 U.S. That distinction was maintained between the Coal
4 rules, which limit it at 25 percent. That 25 percent
5 figure is a number in the OSM's regulations. So we left
6 the 50 percent with Noncoal, because we won't be subject to
7 that review. And that seemed to work pretty good in the
8 past.

9 Then, finally -- let's see. The other difference
10 here, again, this Section 3(c) that's up on the screen now,
11 that section was struck from the rules. It wasn't an issue
12 so much as being inconsistent. It was just a mix of
13 self-bond and collateral language. We feel it's been
14 addressed elsewhere, and so the whole section was just
15 struck. But there isn't a counterpart to it in the Coal
16 rules.

17 And that actually is -- the only difference that
18 I've noted in the chapters. There may be others that I'm
19 just not aware of, but I think those are the main ones.

20 BOARD MEMBER DINSMOOR: Question, Madam
21 Chair. This is Phil Dinsmoor.

22 BOARD MEMBER MACKER: Please.

23 BOARD MEMBER DINSMOOR: Craig, if you'd
24 back up to -- I'm not even sure where to take you. You
25 just had a conversation about subsection (I) and (J).

1 MR. HULTS: Was that (I) and (J)?

2 BOARD MEMBER DINSMOOR: Correct.

3 MR. HULTS: Okay.

4 BOARD MEMBER DINSMOOR: And when I read
5 those subsections, I notice that the -- the header above
6 used to be (xii) is taken out, and now I'm not sure that
7 the rule flows from the previous subsection.

8 MR. HULTS: Phil, the language --
9 the indicators that are struck, where it says
10 Section 2(a)(xiii), that is the location of that language
11 within the current Chapter 6, if I'm understanding your
12 question.

13 BOARD MEMBER DINSMOOR: Where is it that
14 subsections (I) and (J) -- where do they go to? I'm not --
15 I don't see where they come from, I guess, is --

16 MR. HULTS: They haven't gone anywhere.
17 They're in the chapter. We just had to redesignate them to
18 fit the flow of subsection --

19 BOARD MEMBER DINSMOOR: Oh, I -- let me
20 withdraw the question, Craig. I see what you're saying
21 now. I understand.

22 MR. HULTS: Okay.

23 BOARD MEMBER DINSMOOR: Thank you.

24 MR. HULTS: The reason, Phil, that language
25 oftentimes -- it's more just a check to see that I've

1 included the language from the original chapter. This way
2 I can look at that Section 2(a)(xi) and see that, okay,
3 yes, we removed that and it's accounted for.

4 BOARD MEMBER DINSMOOR: I understand.
5 Thank you.

6 MR. HULTS: And that was all I had on my
7 end, if there aren't further questions.

8 BOARD MEMBER MACKER: Questions? Jim, did
9 you have any questions?

10 CHAIRMAN GAMPETRO: I'm good for right now.
11 I have an overriding question I'm going to ask before we
12 vote on anything or do anything.

13 BOARD MEMBER MACKER: Okay. Thank you.
14 Any other questions in the room in Gillette?

15 MR. WENDTLAND: No, Madam Chair.

16 BOARD MEMBER MACKER: Great. Is that the
17 full position of the presentation.

18 MR. HULTS: It is, yes. On my end, anyway.
19 I think Kyle wanted to step through comments next.

20 MR. WENDTLAND: Madam Chair, that's
21 correct.

22 And board members here in Gillette, if you want
23 to sit there or sit up here, you're fine. It does not
24 matter. It will be just a second here.

25 Madam Chair, I'm going to bring this a little

1 bit, because I want to make sure and set the stage as to
2 kind of where we are with the comments and walk through
3 those.

4 What we've done with this rule package is we've
5 been working on this for some time. And, more formally, to
6 develop the final proposal started in June of 2017, we had
7 met with interested parties. In the summer of '17, the
8 IMCC, or Interstate Mining Compact Commission, completed
9 their report and review of the financial assurance items.

10 We certainly took that as a document that we
11 reviewed, completed our internal review, and then in the
12 fall published a draft and a primer for this board, and at
13 that time asked for guidance -- if interested parties had
14 guidance to offer -- and then from that is how we developed
15 the final proposal that you have before the board today.

16 With that, in keying in on a little bit of the
17 guidance we received since the December meeting, couple of
18 items that came up. We certainly had some letters of
19 support for the rule package, and we certainly had some
20 items that were wanting clarification or potential
21 modification. One of those was is there's been a request
22 in the guidance that we go to 100 percent -- or retain the
23 100 percent self-bonding. The Land Quality Division and
24 DEQ have recited that does not fit with the process of
25 revising these rules moving forward because the

1 25 percent -- or 75 percent maximum, 25 percent
2 alternative, accomplishes two items. First, it supplies
3 some immediate cash needs in the event of a forfeiture; a
4 Chapter 7, not a Chapter 11. And, second, it also
5 diversifies the portfolio and spreads that risk. And what
6 we were trying to accomplish there was ing lowering the
7 overall risk to the State while still providing all of
8 these financial instruments.

9 So what we did do as a result of those comments,
10 and some comments received from industry, was we did create
11 a third upper tier, and we went from 70 percent to
12 75 percent. So now there's a 75-25, a 70-30 and a 50-50
13 tier. And we also lowered the rating in the bottom tier to
14 the Baa2 Moody's equivalent, because once you fall below
15 that item, you fall into a subpar credit rating, and we
16 decided that was where the cutoff line would be. So we did
17 take those comments from industry to heart on that.

18 The other item that came up and has been a
19 question is is that this 75-25 split, moving away from the
20 100 percent, would somehow add additional cost to certain
21 industry entities. We don't see that in our review. And
22 the reason we don't is we know that many of these companies
23 in industry hold reclamation accrual accounts. Those
24 accrual accounts are typically held in some type of
25 government security trust or cash money market or

1 certificate of deposit type item. And we believe that
2 those items could be used to cover that 25 or 30 percent
3 split, if necessary. So I guess it's -- our understanding
4 is it's -- we're not understanding how that would be a
5 pass-through cost to a consumer, because those -- those
6 funds exist. It's just whether they -- those funds are
7 chosen. If they're the reclamation accrual account, we
8 believe those should be able to be dedicated to the State.
9 And that would avoid that issue of pass-through cost.

10 And then there was also a request to retain or
11 some guidance to retain the financial ratios. And where we
12 had gotten with that in our review of that is the only way
13 we believe that could be accomplished is if the off-balance
14 sheet liabilities were included. And the reason for that
15 is in our experience in reviewing energy sector
16 bankruptcies, what we saw was in the 24-hour time period
17 prior to the Chapter 11 filing, we saw companies pull on
18 these revolvers. And some of them were rather large
19 revolving accounts the day prior to the filing. And when
20 that was done, and that cash was put into subsidiary and
21 then the parent in some cases took that cash out of the
22 subsidiary.

23 Wyoming wants to be in the secured credit rating.
24 And what that resulted in, when that happened, is Wyoming
25 found itself in a gray area between secured and unsecured

1 because those cash assets had been moved. And they had
2 been moved and dedicated to another item of collateral
3 somewhere in the company chain. Wyoming wants to be first
4 priority on those funds. If they're reclamation funds,
5 Wyoming wants to be at the secured table. So we believe
6 the only way to accomplish that is to move to the credit
7 ratings and move away from the ratios, because as Craig
8 indicated in the ratio review, what we found was that if we
9 included those off-balance sheet revolvers in particular,
10 no industry would qualify in the state of Wyoming.

11 So we did review that. We did look at that on
12 the guidance we received. Again, we lowered the Moody's
13 Baa2 and the equivalent on the bottom tier, but we just do
14 not feel that in order to be in that more secured position
15 and actually lower that risk bar, that the ratios can
16 provide for that unless the off-balance sheet data is
17 included.

18 So that's where we got to. Those are the reasons
19 we made some of those changes between the December meeting
20 and today's meeting. And with that, I'm going to just walk
21 through the -- the letters we received and the comments and
22 try to address some of these. If I get them wrong, those
23 parties that are here today, please correct me when you
24 have your opportunity to speak, and we'll try to get to
25 that answer or a corrected answer for you.

1 I also want to make sure that I clarify some
2 items in the letters we received. We received an original
3 letter from Evelyn Griffin on the 20th of March. And they
4 are in support of the rules.

5 There is a comment in there, and this comment
6 comes up throughout a number of these individual letters.
7 I won't respond to each one of them, but -- in the sake of
8 time. But it's a comment that a company's too big to fail.
9 I think, for clarification purposes, we didn't see a
10 failure. We saw a reorganization here in the Chapter 11
11 filings. So there is a distinction between a Chapter 11
12 and a Chapter 7 filing, and I think that is important to
13 make that clear.

14 We had a similar comment from a Miss Tellez. And
15 if I get your last name wrong, I apologize for that. I
16 will do my very best here.

17 THE REPORTER: Can you just spell that?

18 MR. WENDTLAND: It is T-E-L-L-E-Z.

19 Again, that letter was in support, and, you know,
20 they're looking for, again, the same items there. One
21 comment that was in this letter -- and, again, I think it
22 warrants clarification, is there is a reference to
23 loopholes. And I don't believe that any of the companies
24 have exploited any loopholes. The current rules and the
25 current provisions, the companies that qualify, qualified

1 under those rules. There weren't loopholes in those rules.
2 They qualified based on the requirements. So just want to
3 make sure that we're clear with that one.

4 We had a Karl, K-A-R-L, Schneider -- and that is
5 S-C-H-N-E-I-D-E-R -- again, in support of the rule change.
6 And, again, here there was a comment that -- and this comes
7 up in some other places here as well that it looks like
8 there's been failures or the State has already been left
9 holding liability on coal properties. That is not correct.
10 There has been a number of self-bonded companies in the --
11 in Wyoming, in the mining industry. There may be in other
12 industries. But in mining industry and coal, we have not
13 had a Chapter 7 forfeiture filing post SMCRA in the history
14 of the state.

15 And, in fact, counter to that, Dave Johnston,
16 there's also operations down in Hanna that have not only
17 been self-bonded from the get-go, but they also completed
18 their reclamation per schedule and will receive termination
19 of jurisdiction on those properties. So Wyoming does have
20 a long history of working with the self-bonding.

21 So I felt, again, that deserved some
22 clarification. If I've gotten that wrong, I hope the
23 individual is here to correct me.

24 We have a Lucky G. Lambdin, L-A-M-B-D-I-N. That
25 one, again, is in support of the rules.

1 We have a Marcia, M-A-R-C-I-A, Westkott,
2 W-E-S-T-K-O-T-T. Again, it's in support of the rules. And
3 this individual had wanted stronger regulation of the
4 securities. And I believe the proposal you have in front
5 of you obtains that requirement.

6 We had a Nancy Schaffer, S-C-H-A-F-F-E-R, again,
7 supports the rules. We have a Nancy Sorenson,
8 S-O-R-E-N-S-O-N, again, in support of the rules. And had
9 some clarification again regarding the forfeiture and
10 what's actually happened in Coal post SMCRA. My previous
11 comments remain on that one.

12 We have a Stefani S-T-E-F-A-N-I, Smith. Supports
13 the regulation.

14 We have Edith Hayward -- and this one comes from
15 the Sheridan County Conservation District -- supports the
16 new rules. That's how the letter was titled.

17 We have a Karin, and that's K-A-R-I-N, Ebetz,
18 E-B-E-T-Z, supports stronger regulation and revisions to
19 the rules.

20 And then we have a Larry Madsen from Black Hills
21 Bentonite, and they support portions of the rules. A
22 couple of questions they had. First one is is a Noncoal.
23 On federal surface, they don't -- the BLM in particular
24 does not allow or provide for self-bonding, so we hold
25 joint custody receipts that are some other type of

1 financial instrument. And the question is do those joint
2 custody receipts count towards the self-bond total, and,
3 yes, they do. In our view, we're looking at the total
4 values. And if it's a 75-25 split or a 70-30 split, those
5 joint custodies would count towards the 25 or 30 percent of
6 the split. So hopefully that clarifies that for
7 Mr. Madsen.

8 Let's see here. The other one is are there any
9 other financial instruments that can accomplish the same
10 objective and be more flexible with the self-bond. We
11 believe that the proposal that you have in front of you
12 reflects the current market status, and -- and placement of
13 where those credit ratings would be and feel that that is
14 the best option on the table today based on the information
15 we have.

16 Mr. Madsen also references in his letter that
17 Cloud Peak Energy elected to move away from self-bonds to
18 sureties. Our response to that is is that is a business
19 decision, and we're not going to get into what's good or
20 was bad for any individual business. That is particular --
21 particularly their decision.

22 There also was some questions -- and this comment
23 comes up again in another item on self-bonds related to
24 uranium. With the uranium licensees and the stand up of
25 the uranium program, the NRC licenses require

1 nonself-bonds. So hopefully that answers that question.

2 Then we had a email from -- correspondence from
3 Beth Goodnough, and that's G-O-O-D-N-O-U-G-H, from Western
4 Fuels that related to some questions around real property.
5 And I believe we've addressed those through the walk-
6 through with Craig and the questions by Board Member
7 Dinsmoor that what that area of qualification within or
8 without the permit boundary and if it's disturbed or not
9 disturbed is meaning. So I think we've addressed that
10 question prior.

11 Then we have a Pam Marks, M-A-R-K-S. That letter
12 supports stronger regulation.

13 A Norman Lutter, L-U-T-T-E-R, that letter
14 supports stronger rules, the strengthening of the rules.

15 Then Travis Deti of the Wyoming Mining
16 Association had several comments. One is is removing the
17 financial ratio options, leaving only credit rating
18 requirement as a path for self-bonding. I believe I talked
19 about this prior, that the only way that we believe the
20 ratios can be retained is if the off-balance sheet
21 liabilities were included. In creating self-bond levels on
22 credit ratings with a maximum reduction from 100 percent
23 down to 75 percent, when we go back and look at the goals
24 and objectives of the rule rewrite, it is to lower the risk
25 bar to the State moving forward in self-bonding.

1 100 percent self-bonding is not an option that we believe
2 meets that requirement or that mandate.

3 And so when we set out to do this rewrite and we
4 looked at not only Wyoming -- like with IMCC, the other
5 26-member states and those experiences, we believe that a
6 diversification of that portfolio and moving away from the
7 100 percent bonding -- self-bonding is important.

8 The 10-year life of mine, it was based on our
9 research and information we received from IMCC that -- what
10 we found is that from our experience is that when you get
11 to that 10-year limit, that's when it gets difficult to
12 start substituting alternative financial instruments with
13 self-bond. So that is the number that we chose for that
14 answer.

15 Restricting self-bond to the applicant of the
16 parent company. We strongly believe that we need to go
17 back to the ultimate parent entity here. And that language
18 is out there so that we do not have a parent that reaches
19 in and removes capital cash from a subsidiary in the event
20 of a forfeiture.

21 Removing personal property as a component of the
22 self-bond guarantee is the next item. SMCRA -- on the
23 SMCRA side, it just doesn't allow for personal property.
24 On the Noncoal side, with our experience with personal
25 property, is when you have to do annual appraisals of the

1 equipment, not only for condition and valuation, and you
2 also have to do all the title work for all the equipment
3 and do your perfected liens, the cost of doing that has
4 exceeded the benefit of those personal property values. So
5 personal property is just a -- it comes down to a cost
6 benefit analysis, and the benefit was not there.

7 Again, the life of mine question comes up. I
8 believe we've addressed that. One other one that was
9 brought up through the Mining Association, but also appears
10 later in a PacifiCorp comment, is if you have a reclamation
11 trust account, for example, could a portion of that cash be
12 pledged to make up the percentage that is not in self-bond?
13 The answer to that is if it's a money market account, so
14 it's not in a mutual fund where it floats or we may have a
15 value that goes below that percentage requirement. If it's
16 in a stable money market-type account and the State can be
17 added onto the bank account, to the account card, the
18 answer would be yes to that question. So hopefully that
19 answers a question for WMA and PacifiCorp both.

20 We had a set of comments from a Peter Morgan,
21 staff attorney for the Sierra Club. They support the
22 rules, and -- basically for the reasons that have already
23 been outlined.

24 We have a letter from a Gillian, G-I-L-L-I-A-N,
25 Malone, supports the new rules.

1 We have a letter from Tudur, T-U-D-U-R, Marks,
2 supports the new rules.

3 We have letters from the Powder River Basin
4 Resource Council and their attorney, Shannon Anderson. And
5 they support the new rules. They support the limiting on
6 the portion of the self-bond. Removing personal property
7 is supported. Preventing standby letters of credit was
8 supported.

9 I'm trying to look through, make sure things
10 we've already looked at here. I think with the other items
11 we've looked at pretty much walks through most of those
12 items.

13 Shannon, I know you're here, and if I missed one
14 or didn't get to one, please let me know and if you choose
15 to speak later.

16 We also received another letter from Western
17 Fuels from Beth Goodnough, that the cooperatives are
18 different. I believe we answered that early in the
19 discussion where we don't see that as the cooperatives
20 being different. They are another mining entity just like
21 anyone else within the state.

22 And then we received letters from -- a letter
23 from Dana Ralston from PacifiCorp. The big questions there
24 were the trust accounts that we just addressed. Again, the
25 10-year life of mine, they believe that's a little too

1 restrictive. And seeking clarification on the financial
2 instruments, again, relating to the reclamation trust
3 account.

4 And then the final letter we had was from a Kemal
5 Williamson -- that's K-E-M-A-L W-I-L-L-I-A-M-S-O-N -- from
6 Peabody Energy Corp. And they were in support of the
7 Mining Association comments. They believe that in their
8 letter that the life of mine item is -- 10-year limitation
9 is out there. They also made a comment regarding that
10 if -- in their proposal and the WMA proposal, where they
11 used a blended mix of credit rating and financial ratios,
12 that there would have been a precursor or a time period
13 prior to a Chapter 11 filing in this case that the State
14 would have known, and, therefore the eligibility of
15 100 percent bonding should be retained. And that stepdown
16 over time would be there or two years in advance. And the
17 State's response to that is that if that were the case and
18 that had occurred, we would question why the substitutions
19 and self-existing self-bond scenarios weren't made prior,
20 and we would ask for clarification on that from industry.

21 And then they also indicated that the off-balance
22 sheet liabilities included in the ratios is inappropriate.
23 That that penalizes the company. We would choose to
24 disagree with that statement at this time, unless we have
25 better data that is put forward, because of what we saw in

1 those Chapter 11 filings where those revolvers were
2 withdrawn the day prior to the company entering into
3 bankruptcy.

4 So with that, I think that pretty much outlines
5 the majority of the guidance. Most of the key comments
6 that we've received. I know the board members have also
7 seen the letters. And, Madam Chair, I would return the
8 meeting back to you.

9 BOARD MEMBER MACKER: Okay. Thank you.

10 CHAIRMAN GAMPETRO: Madam Chair. Madam
11 Chairman.

12 BOARD MEMBER MACKER: Please.

13 CHAIRMAN GAMPETRO: Jim Gampetro here.

14 BOARD MEMBER MACKER: Yes.

15 CHAIRMAN GAMPETRO: I would -- while I've
16 got Kyle on a microphone where I can actually understand
17 him, I have two questions of him about -- people come to me
18 and ask me things. And I would say that these two
19 questions are the overriding concerns that have been
20 brought to me.

21 Number one, historically, has there ever been a
22 situation where the bonding has resulted in costs falling
23 back on the State -- and if so, how much -- ever. And,
24 number two, in the future are there any overriding
25 concerns, things that would cause us concern about

1 potential failures in the future? Those two questions,
2 Kyle.

3 MR. WENDTLAND: Madam Chair and Board
4 Member Gampetro. And I said this earlier in the history of
5 coal in particular, post SMCRA, the State has not incurred
6 any liability that we've had to cover or pay for. There
7 are liabilities in the state that existed prior to the 1977
8 federal action, and those have been covered under the
9 Abandoned Mine Lands fund.

10 In Noncoal we've seen some smaller forfeitures.
11 And in the uranium industry, that was a little bit
12 different scenario because it was regulated by the NRC and
13 not the state. So there were some liabilities, and the
14 majority of those liabilities have also been covered by
15 either the forfeiture of the financial instruments of those
16 companies and/or AML funds that have been diverted to
17 that -- or directed to those -- reclamation of those
18 facilities.

19 In the future, I'm not here to protect the future
20 of any given market or in any way propose anything that
21 would be leading or -- or in any way financial related.
22 Every company has -- has a business decision they to make
23 and these rules provide for financial instruments to cover
24 these reclamation liabilities, and it's up to the companies
25 then to decide how -- how they choose to run their

1 businesses, Board Member Gampetro.

2 Really at this point Land Quality believes what
3 we put in front of the board is the best product we could
4 bring to the table at this point in time, given the
5 information that we have. And we certainly respect the
6 board and their view and are neutral as to how the actions
7 of the board move forward.

8 CHAIRMAN GAMPETRO: Kyle, Jim again. I'm
9 not asking for predictions here. I'm asking you if there's
10 anything hanging out there right now, a sword of Damocles,
11 which would give you some concern.

12 MR. WENDTLAND: Madam Chair and Board
13 Member Gampetro. No, I believe we have the best bonding in
14 place that we can possibly have given this point in time
15 for the state.

16 CHAIRMAN GAMPETRO: Thank you.

17 BOARD MEMBER DINSMOOR: Madam Chair --

18 BOARD MEMBER MACKER: If there are no other
19 questions.

20 BOARD MEMBER DINSMOOR: Madam Chair, I have
21 a question. This is Phil Dinsmoor. My question is for
22 Administrator Wendtland.

23 There's a potential for some unintended
24 consequences, I think, from a couple of the proposals, and
25 I'd like to see if I can understand this a little bit

1 better.

2 First, let's go to the 10-year life requirement
3 that's received a lot of discussion. Throughout the
4 industry there are opportunities for reserves to run low
5 outside the control of the applicant. Let me make up an
6 example that has probably happened, actually. And that
7 would be where a company -- whether it be coal or bentonite
8 or some other industry that requires claims from the
9 federal government or leases from the federal government --
10 they apply in a timely fashion to extend their leases or
11 their claims or to get new leases or claims. And the
12 federal government, which is notorious for not following
13 time frames, takes much more time than anticipated. And at
14 some point, the life of the -- of the property, as
15 reflected in the permit with the Land Quality Division, is
16 less than 10 years, through no fault of the companies, but
17 all the sudden now under this rule they're required to
18 completely substitute self-bonding, whatever level they
19 might have had, with some other form of bonding.

20 And so in order to avoid that consequence, this
21 rule is now putting the companies in the position saying we
22 can no longer plan on a 10-year horizon. We need to look
23 at a 20-year horizon or a 15-year horizon, and that horizon
24 costs a huge sum of money because I'm investing today in a
25 resource that I probably will not extract from the ground

1 for 15 or 20 years. There aren't very many places in the
2 United States -- very many industries in the United States
3 that require that kind of upfront investment.

4 I'm wondering if you thought that -- that's a
5 long question, Kyle. Have you thought that through in
6 this --

7 MR. WENDTLAND: Madam Chair and Board
8 Member Dinsmoor. That is a very good question. Thank you
9 for asking.

10 We have thought that through. We went through
11 the permits on the shelf, and we do not currently have a
12 permit with less than a 10-year projected mine plan on the
13 shelf. That said, the goal of that requirement is to
14 ensure that we have adequate time for replacement when
15 we've seen that the substitution of the self-bond becomes
16 difficult.

17 I know that one of the letters from industry
18 outlined a potential support for a five-year limit on that.
19 We certainly are not opposed to that adjustment.

20 BOARD MEMBER DINSMOOR: Okay.

21 BOARD MEMBER MACKER: Any other questions
22 in Gillette?

23 BOARD MEMBER DINSMOOR: Yeah. If you
24 wouldn't mind -- I'm trying to read my writing. I think
25 I've got another one. Oh, yes. The question -- it

1 actually goes back, I think, to the conversation that
2 Craig Hults conducted when he was going through the review,
3 and he was talking with the substitution language. And if
4 I remember correctly -- and I could be very wrong -- in the
5 December advisory board meeting you indicated that the
6 substitution time frame needed to be extended. And I
7 thought it was extended beyond the current 90 days, but I
8 read in the proposed rule that it's still 90 days. Am I
9 mistaken or has there been a change of heart on that?

10 MR. WENDTLAND: Madam Chair. Board Member
11 Dinsmoor, that was extended to 120. That 90 went to 120.
12 I believe Craig did hit that point.

13 BOARD MEMBER DINSMOOR: Okay. I missed
14 that. Thank you.

15 MR. HULTS: Kyle, if I might. Excuse me.

16 MR. WENDTLAND: Yes, Craig.

17 MR. HULTS: The 120 figure comes in when
18 it's related to cancellation. The 90 days, I believe it is
19 a SMCRA requirement for the substitution. So in the coal
20 realm, I think we would have to stay there. Noncoal, I
21 guess that would give us some options.

22 BOARD MEMBER DINSMOOR: Okay. Thank you.

23 BOARD MEMBER MACKER: Additional questions?

24 Seeing none, perhaps we could take a five-minute
25 break. And when we return we will proceed with public

1 comments.

2 MR. WENDTLAND: Agreed in Gillette, Madam
3 Chair.

4 (Hearing proceedings recessed
5 11:35 a.m. to 11:43 a.m.)

6 BOARD MEMBER MACKER: And we do not have
7 any comments in Teton County.

8 Is there any public comment in Cheyenne?

9 MS. BILBROUGH: Yes.

10 MR. HULTS: We do.

11 BOARD MEMBER MACKER: Can we start with
12 public comment in Cheyenne, and then we'll move to public
13 comment in Gillette.

14 MS. FLANDERKA: Sure. My name is Mary
15 Flanderka, and I am with the Wyoming Outdoor Council, and I
16 am a policy advocate. We participated early, but not in
17 the official commenting period. And we apologize for that
18 oversight. However, we do support these rules. We do feel
19 that the credit rating is justified, and we're very
20 concerned about any tendency to go back to audited
21 financial statements.

22 We appreciate everything that this board has done
23 and the DEQ staff. And I'll just leave it there, that we
24 do support these proposed regulations.

25 BOARD MEMBER MACKER: Thank you. And I did

1 forget to say for public comment, as you did, please state
2 your full name and where you're from when you come forward.

3 Anyone else in Cheyenne?

4 MS. FLANDERKA: There's several.

5 Do you want to --

6 MR. TAYLOR: Good morning. My name is
7 Shawn Taylor. I'm the executive director of the Wyoming
8 Rural Electric Association. We did submit comments on
9 February 20th. I don't know if that was at the deadline.
10 And I'll leave a copy of this here for the record.

11 I would say that that we support the rules, but I
12 would state that the comment that -- the comments -- or the
13 cooperative comments are -- or that the cooperative should
14 be treated the same as everybody else, I would adamantly
15 disagree with. The fact that we are a not-for-profit --
16 all the other coal mining companies are for-profit --
17 actually, we should be, I think, treated differently in
18 that regard and should be allowed to do as close to
19 self-bonding as possible. We don't have the same -- we're
20 not open to the same pressures of the commodities costs
21 that for-profit companies are. One mine, the Dry Fork
22 Mine, it strictly exists to mine coal for our cooperative
23 power plants. So I would just ask the board maybe
24 reexamine that the coops are different and treat us as
25 such.

1 Thank you. I'll leave these comments here for
2 the record.

3 BOARD MEMBER MACKER: Further public
4 comment?

5 MS. SMITH: My name is
6 Morgan Smith with Tri-State Generation. I'll be reading
7 comments --

8 MR. WENDTLAND: I'm sorry. But you need to
9 please slow down.

10 THE REPORTER: And Natalia needs to mute.

11 MR. WENDTLAND: Natalia, can you turn your
12 mic off, please?

13 MS. SMITH: Is this better?

14 MR. WENDTLAND: Much better. Thank you.

15 MS. SMITH: My name is Morgan Smith with
16 Tri-State Generation and Transmission Association, and I'll
17 be reading comments on behalf of Pat Bridges, Tri-State's
18 chief financial officer.

19 Tri-State Generation --

20 THE REPORTER: She's going to have to slow
21 down.

22 MR. WENDTLAND: Excuse me. Excuse me. You
23 need to slow down, please, so the court reporter can cover
24 your comments.

25 MR. SMITH: I apologize. I'll also submit

1 them to Craig here in person as well.

2 All right. Tri-State Generation and Transmission
3 Association is a not-for-profit association of 43 rural
4 electric cooperatives and public power districts that
5 provide wholesale electric power to more than 1 million
6 owners in Wyoming, Colorado, Nebraska and New Mexico. For
7 the past 66 years, Tri-State's mission has been to deliver
8 affordable and reliable cost-based electricity to the rural
9 communities of Wyoming and Intermountain West.

10 Tri-State holds an interest in the dedicated
11 reserves at the Dry Fork Mine and as a part-owner of the
12 Laramie River Station. Tri-State -- Tri-State provides
13 financial support for the operation of the Dry Fork Mine
14 through coal supply agreements that include covering the
15 cost of reclamation at the mine. Tri-State, in conjunction
16 with Basin Electric, has historically provided financial
17 assurance in the form of self-bonding for the reclamation
18 costs at the Dry Fork Mine in an effort to reduce the cost
19 of the coal supplied to the Laramie River Station and, in
20 turn, to our individual member owners. Self-bonding is one
21 important way Tri-State is able to keep the costs
22 affordable for our member cooperatives and rural
23 communities they power.

24 Tri-State supports the overall effort of the
25 agency to ensure appropriate protections are in place to

1 protect the citizens of Wyoming from having to pay for the
2 cost of reclamation due to bond forfeiture. We appreciate
3 the process that the Land Quality Division went through to
4 engage the public in the development of the proposed rule
5 to revise the financial assurance requirements for
6 Chapter 11 for self-bonding. Tri-State participated in the
7 rule revision process by submitting comments to highlight
8 the fact that electric cooperatives function under a
9 different business model than traditional commodity coal
10 mining operations and should be assessed from a different
11 perspective. As a not-for-profit association, Tri-State is
12 not subjected to the impacts of commodity market price
13 swings that have been the recent impetus, in part, for
14 revisiting the financial assurance requirements for the
15 extractive industries in Wyoming like coal mining. In
16 fact, coal mining only represents about 7 percent of
17 Tri-State's overall business structure.

18 Tri-State's investment grade Class A rating from
19 Standard & Poor's makes it very capable of providing
20 financial assurance in the form of self-bonding for
21 reclamation costs for the Dry Fork Mine in Wyoming.
22 Tri-State has held this Class A rating for the past
23 20 years without interruption. We have been able to
24 maintain our strong financial health due to the long-term
25 contracts we have with our member systems that are designed

1 to cover all of our costs; our diverse membership, both in
2 terms of geographic and business mix; and our strong
3 financial performance year after year.

4 Also, our recent research on obtaining separate
5 surety bonds from third-party insurers shows that many
6 providers have the same or even lower credit rating than
7 Tri-State. Under the current proposal the Dry Fork Mine
8 could end up with surety bonds from insurance providers
9 with a lower credit rating than Tri-State.

10 The fact that the cooperative business model is
11 different than for-profit entities has led to many
12 situations in United States where cooperatives are carved
13 out separately from for-profit entities and have a
14 different standard. Examples of this include: One,
15 national financial credit rating agencies recognize
16 cooperatives operate under a different business model and
17 provide different rating structures than those for
18 investor-owned utilities, other businesses or commodity
19 market companies; two, in many states, including nearby
20 Colorado and New Mexico, cooperatives have a lower
21 renewable energy portfolio standard than for-profit
22 investor-owned utilities; and, three, in Texas, where they
23 implement retail wheeling, cooperatives and the regions
24 they serve are exempted from this type of approach to
25 provide electric service to their members.

1 Tri-State appreciates the opportunity to provide
2 these comments to the Land Quality Division Advisory Board
3 today and would appreciate the opportunity to further
4 discuss the stability of our financial structure and other
5 options for the proposed rules to consider cooperatives.
6 Please contact our staff should you have any questions.
7 Thank you.

8 BOARD MEMBER MACKER: Additional public
9 comment in Cheyenne?

10 MR. HULTS: That is it on our end.

11 BOARD MEMBER MACKER: Thank you. We will
12 move to public comment in Gillette. And as a reminder,
13 please just state your name and where you are from and to
14 speak slowly for our recorder.

15 MR. WENDTLAND: Is there folks from
16 Gillette here that would like to speak? If so, please come
17 up so we can catch the mic.

18 MS. OKSANEN: I'm Karla Oksanen. I'm a
19 next door neighbor to the Eagle Butte Mine. I am
20 thankful --

21 MR. WENDTLAND: Come right up here, Karla,
22 please. There you go.

23 MS. OKSANEN: I'm thankful that you guys
24 are thinking about the welfare of our state. That's very
25 important to me. One of the guys in the questions had

1 asked if there was reason to believe that there is
2 possibility of -- excuse me -- that things wouldn't go the
3 way that they're supposed to. And it brings to mind that
4 the Eagle Butte Mine itself has been owned by five
5 different companies. At least five. I'm getting older.
6 My memory isn't that great. But at least five people --
7 five mines have owned them in 23 years. That's a different
8 mine every three and a half to four years, and that should
9 be a concern in itself.

10 I know Peabody had two different mines. I don't
11 know beyond that, but that would be a concern. It's like a
12 revolving door, and should that -- should that work -- I
13 mean, you were talking about the mine of the life -- life
14 of the mine versus -- I think it should be the life of the
15 company that owns them. And I'm glad that you're going
16 with the parent company program rather than the mine itself
17 and -- and having a bonding.

18 I think that's about it. I appreciate you
19 working on things and taking care of our state.

20 BOARD MEMBER SHOBER: Thank you.

21 MR. WENDTLAND: Thank you, Karla.

22 We have more -- we have quite a bit of comment up
23 here, Madam Chair, so we'll let you know when we get
24 towards the end.

25 MR. LERESCHE: Morning, gentlemen. I'm Bob

1 LeResche. I'm from Sheridan County. I'm a retired
2 commissioner of national resources from the state of
3 Alaska, CEO of an energy authority and hydroelectric --
4 hydropower organization and an investment banker. So I've
5 been involved in this kind of issue for a long, long time.
6 My wife and I now currently ranch and farm at a place about
7 halfway between here and Sheridan.

8 I'm a board member of Powder River Basin Resource
9 Council and of the Western Organization and Resource
10 Council. And as such, I followed the Powder River Basin
11 coal industry for a long time, through its peak, its
12 decline and its recovery now.

13 I believe that the reclamation requirements and
14 the financial assurances that make it more -- are the heart
15 and soul of SMCRA. These reclamation requirements not only
16 return the land to its previous productivity, but also
17 create jobs. Significant jobs.

18 Unconventional oil & gas production and a
19 plunging cost of renewal energy have not helped the thermal
20 coal industry. And in the past few years, there has been a
21 blood bath in the bankruptcy courts, from which the
22 industry is still healing, and which I'm glad to see DEQ
23 has taken strong notice of. I've reviewed these draft
24 rules in detail from the point of view of a Wyoming
25 landowner, a Wyoming taxpayer and citizen, electricity

1 user, ratepayer and a coop member, and as a former
2 investment banker who understands bankruptcy rules and
3 credit principles.

4 I believe DEQ's learned well from the financial
5 carnage of Alpha, Arch and Peabody, and has produced a
6 thoughtful set of rules that will protect the taxpayer and
7 allow the industry to operate with a minimum of
8 uncertainty.

9 I want to briefly draw an analogy that
10 underscores the vital importance of the rule's treatment of
11 self-bonding in the coal industry. And this example
12 certainly does not constitute a sword of Damocles, but it
13 is a little red flag on the horizon.

14 You'll recall that recently a completely unknown
15 and unproven company called Black Jewel, LLC bought two of
16 Wyoming's oldest and big -- or biggest coal mines. More
17 particularly, they were given the mines in exchange for
18 assuming the reclamation risks and for some hypothetical
19 future royalties. They acquired Eagle Butte and Belle Ayr
20 mines near here from another new and unproven company
21 called Contura Energy, spawned just last year when Alpha
22 went through bankruptcy and spun off what it's called its
23 crown jewel Wyoming assets to its creditors.

24 Two things about this web of transactions should
25 raise a hair on the neck of any investment banker. First,

1 the sales price of these huge mines was virtually zero.
2 Contura had simply unloaded the liability they considered
3 to be very large, and maybe just as large as the mine's
4 earning potential.

5 Second, Black Jewel, LLC is another step downward
6 in terms of creditworthiness and operational experience.
7 Contura was created by Alpha's creditors to harvest what
8 they could from its bankruptcy. And Black Jewel was put
9 together from Eastern coal interests that when we checked,
10 had between 44 and 70, depending on the date checked,
11 listed violations both conditional and outstanding in their
12 smaller mines in Tennessee, West Virginia, Virginia and
13 Kentucky.

14 Not only is the weakening of coal markets, but
15 also the decrease in the credit worthiness of the mines'
16 owners, put reclamation funding in peril and require very
17 strong assurance -- assurance, not just self-bonds.

18 And what this reminds me of, and the analogy I
19 want to draw, has to do with another sector of Wyoming's
20 energy industry. Coal-bed methane. Since 2009, our state
21 has been forced to assume responsibility for plugging and
22 reclaiming 5681 CBM wells. How did this happen? Sounds
23 familiar. The methane market softened, highly capitalized
24 and experienced operators sold out to well endowed and less
25 experienced operators and opportunists. And then third,

1 many of these even resold wells to aggregators. They
2 resold them even without ever operating or maintaining
3 them.

4 The State was left with 1300 unplugged wells
5 aggregated by an outfit called High Plains, LLC. We were
6 left with another thousand that had been collected by an
7 outfit called Storm Cat and many others. Total of 5,681,
8 and that total's still growing.

9 Now, of course, as you all know, these were not
10 self-bonded, but they may as well have been given the
11 blanket bond structure for CBM wells. But I'm happy to see
12 that DEQ has taken this lesson to heart in its treatment of
13 self-bonds in these proposed rules in front of you. They
14 limit self-bond in three ways. First, they require at
15 least 25 percent of the regulated bond may not be a
16 self-bond. As Kyle has explained eloquently, this will
17 provide ready cash if a, worst-case, liquidation ever comes
18 to pass.

19 Second, the company's credit rating, a third-
20 party metric, not done by their accountants, will be used
21 to determine the maximum percent of the bond that may be a
22 self-bond.

23 And, third, the remaining life of mine must be at
24 least 10 years for a company to use self-bonding at all.
25 As the end nears, it's obvious to everyone a self-bond's

1 value clearly disintegrates.

2 And I might point out the way this regulation was
3 written, it doesn't require anybody to extend their
4 reserves and put cash up front a long time ahead. It just
5 requires them to replace self-bonds with sureties. And
6 that doesn't seem to be a problem right now, anyway. The
7 last time we pulled the list there were 78 bonds in
8 Wyoming. Most of them were sureties, and there were
9 22 separate surety companies selling these instruments.

10 Now, in allowing self-bonds at all, DEQ honors
11 the industry and puts more risk than they need to on the
12 rest of us. Montana, after all, allows no self-bonds and
13 still has a viable coal industry. But the way this rule is
14 drafted seems to me to be a fair compromise.

15 We have more specific comments from Powder River
16 Basin Resource Council, which you'll hear now. Thank you.

17 MS. MORRISON: Good morning, almost
18 afternoon. Thank you. My name is Jill Morrison. I do
19 work with Powder River Basin Resource Council.

20 I want to commend the board -- the advisory board
21 for your time and effort and the DEQ especially for trying
22 to work on tightening up bonding. The State, as a whole,
23 has put a lot of effort in recent years in trying to
24 protect the state's position without accepting too much
25 liability from our industries. The oil & gas industry was

1 a big lesson, just recently mentioned, on the coal-bed
2 methane blanket bonding and the amount of orphan wells that
3 we're still trying to plug and reclaim.

4 The State has also recently stepped up to deal
5 with additional bonding for commercial oil field waste
6 disposal facilities that were unbonded, injection wells
7 that were unbonded the State was left holding the bag for.

8 It seems only right that when we have these
9 industries that are commodities and when that commodity
10 goes down or the demand goes down and industries want to
11 shed those liabilities, they often shed those declining
12 assets to less financially viable operations. We've
13 experienced it. We know what happens is someone is left
14 holding the bags. Sometimes the State -- often the State
15 has a portion of it. Sometimes industry has a portion.
16 The landowners can often also have quite a liability that
17 they also either as adjacent or direct an impacted party.
18 And, well, some of our adjacent states on coal mining don't
19 allow self-bonding. Montana doesn't, as was mentioned.
20 Colorado does not. Wyoming is still going to allow some
21 portion of it. We endorse tightening up these rules and
22 removing that liability on the State, on the taxpayer, on
23 adjacent landowners.

24 And also it -- it really is a win-win for Wyoming
25 if we can guarantee reclamation into the future. It's

1 going to protect the taxpayer, the landowners. It does
2 create jobs. And it ensures a productive landscape for our
3 communities and our state into the future.

4 I think we need to keep these rules as strong as
5 possible and not weaken them. Potentially strengthen them.
6 And I appreciate your time. Thank you.

7 BOARD MEMBER SHOBER: Thank you.

8 MS. ANDERSON: Good morning. Hi. Shannon
9 Anderson from Powder River Basin Resource Council. And I
10 just want to go through some of our comments. I hope you
11 received them in enough time. We try to at least give you
12 at least a day to look at them and think about the proposed
13 changes that we have to the rules.

14 I've spent personally a lot of the last two years
15 looking at these rules, the current set of rules,
16 understanding how they work in a bankruptcy, how they don't
17 work, and how they need to be fixed. So that's the
18 perspective that we bring to you as an organization that
19 actually intervened in bankruptcy proceedings to make sure
20 that our reclamation work would get done here in the state.
21 And so we come with that perspective, and we hope you'll
22 take our comments into consideration.

23 So we have a few things that I'd like to
24 highlight with you. The first being the discretion of the
25 regulator to accept a self-bond. It's really important

1 that our statute uses the word "may" as opposed to "shall."
2 And this allows the regulator, in its discretion, to decide
3 that rules aside, it just doesn't make sense to accept this
4 self-bond. And we want to assure that the regulations
5 afford that same discretion.

6 So we're concerned in a couple of places in the
7 proposed rules. One in Section 2, that it specifically
8 uses the word "shall be accepted," and we want to make sure
9 that it should be "may accepted." That's consistent with
10 the statute and consistent with the discretion of the
11 regulator.

12 Likewise, on page 10, the successive renewal
13 option for self-bonding is very concerning to us because of
14 the -- because, again, there is a discretionary ability on
15 the part of the regulator and if all the sudden you start
16 seeing, you know, these shall be renewed, that takes away
17 that discretion and actually violates the statute, because,
18 again, the statute affords that discretion to the
19 administrator. So we just wanted to highlight that and
20 make sure you consider that as you look through these
21 rules.

22 As was mentioned, we do support the guarantee
23 required from the ultimate parent entity. Again, living
24 through particularly the Arch and Peabody bankruptcies,
25 this will clean that up, and I think make it a little bit

1 clearer going forward, that when we think of financial
2 health of a company, we think of that top entity. That's
3 the entity that matters when it comes to financial health.

4 So it makes sense to consider them there. On
5 demonstrated financial solvency, we do support the change
6 to using the credit ratings. We think that's a more
7 forward-looking approach. It's more realistic appraisal of
8 a company's financial health. But we are concerned at this
9 latest round of the rules that allows this kind of new
10 category up to 50 percent, and we would recommend that you
11 just get rid of that altogether and make sure that only
12 companies with really strong financial health are allowed
13 to self-bond.

14 We also have a concern about the split ratings
15 issue. So one credit rating says this, another credit
16 rating says this, we think that it's important to just take
17 the lowest rating. And then that will just clear things up
18 for DEQ and it will make it a little bit easier to know
19 what's happening and the treatment of that company when
20 they apply for a self-bond.

21 And then on the real property bonds. The main
22 concern we have here is that the DEQ's efforts to make sure
23 that there's at least something available in the case of a
24 forfeiture for reclamation work to start immediately is an
25 important thing. And so limiting the self-bonding, we

1 agree with. But, similarly, you should limit a real
2 property bond. So the current rules would allow a hundred
3 percent real property bonds, and that could be a concern in
4 the case of a company going through forfeiture and all the
5 sudden the State has to collect on those real property
6 bonds, often meaning selling property, which can take years
7 in some cases. So we think it's important to limit real
8 property bonds to no more than 75 percent of the total
9 bond.

10 And then also with that to make sure that 25
11 percent that's left over from the self-bond isn't covered
12 through real property bond. We think that's a cleaner way
13 to do it and will ensure that that 25 percent is always
14 available to the regulator.

15 Those are our main concerns. We had a couple of
16 other, you know, cleanup ideas, just noting that in some
17 cases it uses the word "director," some cases
18 "administrator." So kind of just cleaning up some of that
19 language. But other than that, those are our main
20 comments, and I'd be happy to answer any questions you have
21 today.

22 Okay. Thanks.

23 BOARD MEMBER SHOBER: Thank you.

24 MR. TICHENOR: Hi. Good afternoon. Now
25 it's afternoon. Madam Chair and fellow board members. My

1 name is Jim Tichenor. I'm vice president and treasurer for
2 Peabody. Thank you for having me here and allowing me to
3 speak for a few minutes. I'll just take a few minutes of
4 your time to kind of reinforce some of our positions on
5 these proposed regulations.

6 We did file comments February 26 and March 27th.
7 And we are supportive of the WMA's February and March
8 proposals. Peabody has always maintained excellent safety
9 and reclamation record that we're very proud of, both here
10 in Wyoming and globally, where we operate in the U.S. and
11 in Australia.

12 As currently written, Peabody is not supportive
13 of the proposed regulations, and I'll walk through a few of
14 our arguments there.

15 MR. WENDTLAND: Jim, can you speak up just
16 a little bit, please.

17 MR. TICHENOR: Sure. Is this the speaker
18 right here?

19 MR. WENDTLAND: Yeah.

20 MR. TICHENOR: I think it's undisputable
21 that the Land Quality Division's proposed regulations will
22 essentially eliminate self-bonding for coal companies in
23 Wyoming. We've looked at the ratings, requirements and all
24 the companies that bond in Wyoming in coal and beyond coal,
25 and it's going to be a very, very limited subset of

1 companies that would be allowed.

2 Peabody, in fact, would never have qualified for
3 any self-bonding and probably never would qualify for any
4 self-bonding under the proposed regulations. The ratings
5 requirements, as outlined in the proposed regulations, are
6 simply too high for mining companies to obtain any
7 self-bonding. We think it's very important for the mining
8 industry to have many bonding options, including
9 self-bonding, so they can maintain a cost competitive
10 position and continue employ people and pay taxes in the
11 state of Wyoming. In fact, the effective banning of
12 self-bonding as proposed in the regulations would cost the
13 industry tens of millions of dollars. It's not an
14 immaterial sum.

15 We believe that the ratio calculations should be
16 maintained and that this can be done at the same time while
17 mitigating risks to the state in three important ways.
18 Number one, we agree that the calculations should be done
19 at the parent company level. In this case, that eliminates
20 a lot of the off-balance sheet issues and things that
21 people raised in the past.

22 Number two, we believe the ratios can and should
23 be monitored on a quarterly basis for any public companies that file
24 10-Qs and 10-Ks each quarter, and there's no reason why the
25 ongoing updates shouldn't be used as realtime information.

1 And number three, and probably most importantly,
2 we would also introduce a ratings matrix in line with what
3 the WMA has proposed that would add a third leg to the
4 calculations. So you go through the ratios first, then you
5 go through ratings matrix that would be adjusted based on
6 the credit ratings of the company.

7 And the important thing about this is that that
8 matrix would also be a sublimator in terms of how much
9 self-bonding is allowed and it's self-adjusting. The
10 rating agencies make a change whenever they think a change
11 is warranted. The rating agencies take into account the
12 total risk of the company, including any off-balance sheet
13 liabilities. And it's realtime, so I think this addresses
14 the concerns that the Land Quality division has raised.

15 Each of those changes I just outlined will make
16 self-bonding more restrictive, but yet still attainable by
17 the stronger companies in the industry. And we think that
18 will accomplish the Department's stated objectives better
19 than the proposed regulations.

20 We are opposed to the 10-year life of mine that
21 was discussed earlier. I think it should be five years or
22 less or graduated so that people aren't bouncing in and out
23 of that requirement.

24 And, importantly, if the outlined proposal from
25 the WMA and the different metrics that we talked about were

1 incorporated, and that was in place in the past, we think
2 that self-bonding would have been gradually reduced and/or
3 eliminated for the coal companies that went through
4 restructurings well in advance of the restructurings,
5 again, accomplishing the Department's objectives in terms
6 of reducing risks to the state.

7 I think it was pointed out earlier that we're not
8 aware of any losses that the state has suffered as a result
9 of coal conditions going through restructuring, and we
10 continue to support self-bonding.

11 With that, we would recommend the board not
12 approve the proposed changes and have the Department rework
13 them to make them more balanced for the industry and
14 incorporate some of the thoughts from the WMA.

15 Thank you for your time.

16 BOARD MEMBER SHOBER: Thank you.

17 MR. WENDTLAND: Thank you.

18 BOARD MEMBER DINSMOOR: Madam Chair, can we
19 question the public?

20 BOARD MEMBER MACKER: Sure. But let's keep
21 the back and forth to a minimum.

22 BOARD MEMBER DINSMOOR: Okay.

23 Mr. Tichenor, the one statement you made was if the Wyoming
24 Mining Association proposal, which is a multi-step
25 proposal, had been in place long before the bankruptcies,

1 that self-bonding would have been gradually decreased over
2 time. And if I understood you correctly, there would have
3 been no self-bonding, at least for Peabody, at the time
4 they went into bankruptcy. And one of the comments that --
5 one of the statements that was made earlier was that the
6 off-balance sheet issues, which appeared just prior to
7 bankruptcy, would those have been a concern if there was no
8 self-bond in place by the time bankruptcy occurred?

9 MR. TICHENOR: No, I don't know why they
10 would be a concern in that situation. And, yes, your
11 statement's correct, that self-bonding would have been
12 reduced gradually over time, as the credit ratings of the
13 company deteriorated, to the point where there would be no
14 self-bonding allowed. And looking back in time, that would
15 have been a year or two years prior to any restructuring
16 activities. So by the time it got to that point the State
17 would have totally mitigated risks with respect to
18 self-bonding.

19 BOARD MEMBER DINSMOOR: Would that exist in
20 the DEQ proposed rule -- that that opportunity existed in
21 the DEQ proposed rule, as well as the Wyoming Mining
22 Association proposed rule? Can you answer that? I mean --

23 MR. TICHENOR: No.

24 BOARD MEMBER DINSMOOR: -- maybe that's
25 not --

1 MR. TICHENOR: Yeah, I'm not clear what the
2 question is.

3 BOARD MEMBER DINSMOOR: Both of them
4 include a credit rating component. Is it the credit
5 ratings that dropped that self-bonding opportunity over
6 time?

7 MR. TICHENOR: WMA's proposal, yes, that
8 would have been the gradual reductions over time.

9 BOARD MEMBER DINSMOOR: Thank you.

10 MR. TICHENOR: Uh-huh.

11 Any other questions from the board?

12 BOARD MEMBER SHOBER: Thanks.

13 MR. TICHENOR: Thank you for your time.

14 BOARD MEMBER SHOBER: You bet.

15 MS. JOYCE: Good morning.

16 BOARD MEMBER SHOBER: Good morning.

17 MS. JOYCE: Chairman Macker and members of
18 the board. I am Pat Joyce. I'm the assistant director for
19 the Wyoming Mining Association.

20 Wyoming Mining Association represents 26 mines
21 that produce bentonite, uranium, trona and coal in Wyoming.
22 And our membership includes over 120 service and supply
23 companies, one railroad, an electricity coop and over
24 200 individual members. Bonding is a requirement for all
25 of our mining members and financial instruments used in

1 bonding are, therefore, of great interest to my membership.

2 Wyoming Mining Association has submitted two
3 letters addressing this rulemaking. One was submitted on
4 February 22nd, and the other again on March 22nd, which you
5 have in your possession. Both letters address the LQD
6 proposed changes to Chapter 11 Coal rules and the Chapter 6
7 Noncoal rules.

8 I'll not reiterate the full set of comments
9 today, but just summarize a couple of key points for your
10 consideration.

11 DEQ has one objective, that was to protect the
12 public interest by reducing risk to the state associated
13 with bonding, which we've discussed.

14 They have a second objective, that it is to keep
15 self-bonding as a viable tool for the mining industry.
16 Wyoming WA -- WMA, excuse me, does not believe the proposed
17 proposal does accomplish both goals. Unfortunately, WMA
18 finds the LQD proposal will remove self-bonding as an
19 option to all but a very few companies in Wyoming.

20 Wyoming -- or WMA believes the tool can be
21 modified and remain available, at least in part, to the
22 majority of the industry. The modifications must be
23 directed to the areas where risks can be more closely
24 managed without eliminating reasonable options for each of
25 the important mining sectors in Wyoming.

1 WMA asserts the better program will be a mix of
2 the existing rule and the Land Quality proposed rules that
3 draws the best elements from each program. In our letter
4 of March 22nd, WMA describes how this can be accomplished.
5 And this was just described by Mr. Tichenor of Peabody.
6 I'll refer back to his comments.

7 We would recommend that you return this proposal
8 back to the LQD to rework the language with the WMA
9 proposal in mind. By doing this LQD can achieve a much
10 more robust and balanced approach to the State's ability to
11 manage risk and maintain self-bonding as a viable tool for
12 the mining industry.

13 WMA recognizes some changes to reclamation
14 performance bonding are appropriate. At the same time, a
15 process that is proven effective for several decades should
16 not be completely eliminated if there are redeeming
17 provisions.

18 The vast majority of operators in Wyoming that
19 have used the self-bonding programs have been stable and
20 productive. The self-bond programs have allowed them to be
21 cost-effective. The result has been a world class
22 performance in meeting reclamation obligations and arguably
23 the strongest mining industry in any of the 50 U.S. states.

24 Keep in mind self-bonding has not failed the
25 state of Wyoming, as we've referenced earlier. The facts

1 will show the recent bankruptcies did not cost the state of
2 Wyoming a dime. All reclamation obligations were and
3 continue to be fully managed by the mining companies. We
4 believe this performance supports the idea that while
5 adjustments and improvements may be necessary, wholesale
6 replacements of the self-bond program is unwarranted and
7 unwise. I cannot state this clearly enough. Our members
8 do not want to lose this as a viable tool. We respectfully
9 ask the advisory board to return the LQD proposal to the
10 Division and ask that they revise their language to reflect
11 the guidelines presented in our two comment letters
12 referenced earlier, which is an agreement with the comments
13 collected from our mine members.

14 I thank you for your attention, of your
15 consideration of our input here today. This is a very
16 critical issue for our industry. And, again -- I cannot
17 state it clearly enough -- we'd request that you return
18 this proposal to LQD for revision to enable them to
19 maintain the integrity of a highly crucial financial tool
20 that the mining industry relies on. Thank you, Madam
21 Chairman and members of the board.

22 BOARD MEMBER SHOBER: Thank you.

23 BOARD MEMBER HINES: Madam Chairman, I have
24 a question if I may.

25 Yes. Did I understand you to say that bonding

1 was required by your members?

2 MS. JOYCE: No. Through the LQD, not as a
3 membership requirement.

4 BOARD MEMBER HINES: I misunderstood you.

5 MS. JOYCE: Okay.

6 BOARD MEMBER HINES: Thank you.

7 MS. JOYCE: You bet.

8 MS. GOODNOUGH: Good morning, Madam
9 Chair -- or Chairwoman and members of the board.

10 BOARD MEMBER SHOBER: Good morning.

11 MS. GOODNOUGH. My name is Beth Goodnough,
12 and I'm presenting on behalf of Basic Electric Power
13 Cooperative. And the comments that I'm bringing in are
14 actually a reiteration of the comments they made on
15 February 7th on the draft proposal, but they're still
16 relevant to what's being -- being considered here today.

17 First, thank you for allowing us the opportunity
18 to comment on the proposed draft rules at Chapter 11.
19 While there are certain provisions -- portions of the
20 proposed rules that Basin Electric agrees with, there are
21 portions that we believe should be modified.

22 Our primary objection stems from the fact that
23 one rule does not fit all. Thus we think the administrator
24 should be given the flexibility to assess the
25 creditworthiness of each entity. The proposed rules as

1 written will force the administrator to force the rule on
2 all entities without regard to their individual attributes.

3 Many entities that mine coal or other valuable
4 minerals in the state of Wyoming are selling at a
5 commodity -- selling a commodity in a global market. While
6 those entities may have some control over the costs they
7 incur, they have little or no control over the selling
8 price of their product. They are, unfortunately, subject
9 to the market price of a particular commodity that often
10 changes from day-to-day.

11 As a generation and transmission cooperative,
12 while we diligently work to control our costs, we also have
13 provisions in our contracts with our wholesale Class A
14 customers that allow us to set the rate for the electricity
15 we sell. Those contracts which currently run through
16 either 2050 or 2075 contain provisions that state that each
17 Class A member is required to pay us for capacity and
18 energy furnished over its wholesale power contract in
19 accordance with our established rates.

20 The wholesale power contracts with our Class A
21 members provide that our board of directors will establish
22 rates to provide revenue sufficient, but only sufficient,
23 together with all our other revenue to pay the cost of
24 operation and maintenance of all of our generation,
25 transmission and related facilities, to pay the cost of

1 capacity and energy purchased by us for resale, to pay the
2 cost of transmission services, the cost of lease payments,
3 interest expense and depreciation expense or principal
4 payments, and to provide for the establishment of a
5 reasonable financial reserves.

6 Historically, our board has set rates to our
7 Class A members at a level intended to achieve a margin
8 of at least 3 percent of gross revenue while maintaining
9 45 days of cash on hand. Those same wholesale power
10 contracts require our board to review our rates at least
11 annually, and to revise such rates as necessary to produce
12 the revenue to be derived as described in the preceding
13 paragraph.

14 We provide all Class A members with no less than
15 30 days, nor more than 45 days written notice of any rate
16 change. It is also important to note that our board is --
17 that our board is our regulator and our rates are generally
18 not subject to regulation by any federal, state or
19 governmental agencies. This background information is
20 provided to clearly delineate that we are not your typical
21 mining company, as we truly have the means available to
22 control our revenue stream and ultimately our financial
23 strength and stability. Thus we request why entities such
24 as Western Fuels Association, which provides coal to G&T
25 cooperatives, who, in turn, provide electricity to nearly

1 4 million rural electric customers, shouldn't be allowed to
2 continue to provide a hundred percent self-bonding for
3 reclamation purposes.

4 Basin Electric's financial strength has been
5 acknowledged by the independent rating agencies with AR
6 higher ratings for 15-plus years. Basin Electric currently
7 carries long-term senior secured ratings of A3a and A by
8 Moody's, A&P and Fitch rating respectively. These ratings
9 denote that an obligator's capacity to meet its financial
10 commission -- commitment on an obligation is strong.

11 Again, since each entity that potentially -- that
12 will potentially seek self-bonding will be unlike any
13 entity from a financial perspective, we support Western
14 Fuels via the status setting and credit rating at no more
15 than 70 percent or 75 percent, as it was repropoed. That
16 a tier structure, that can be higher, basically, for
17 cooperatives is more appropriate.

18 In closing, Basin Electric recognizes the need
19 for you and your role as administrator of the Wyoming
20 Department of Environmental Quality, Land Quality Division
21 to protect the residents of Wyoming from the adverse
22 consequence of reclamation bond forfeiture. However, we
23 believe you can still do so by recognizing that the
24 cooperative G&Ts, guaranteeing the obligations of an entity
25 such as Western Fuels Association, presents less risk to

1 the citizens of Wyoming.

2 Thank you for the opportunity to comment. And I
3 have copies of this available. Thank you.

4 MR. WENDTLAND: Do we have further public
5 comment?

6 We have one more, Madam Chair, it appears.

7 MR. COHN: Good afternoon. Can you hear me
8 on the phone?

9 MR. HULTS: Yes.

10 MS. BILBROUGH: Yes.

11 MR. COHN: Great. My name is Dan Cohn.
12 I'm with the Western Organization of Resource Councils. I
13 am based in Billings, Montana, but for the past four or so
14 years I've been following the issues around self-bonding
15 and bankruptcy very carefully.

16 Today I appreciate the time to offer some
17 comments and would like to share some additional
18 information that I believe is relevant to the board's
19 decision regarding the rules proposed by DEQ today. And as
20 you've already heard from our folks, we would urge you to
21 advance these rules as proposed.

22 So as you've heard and read, the rules update the
23 eligibility requirements for who can access self-bonding.
24 And the point there, of course, is to ensure that
25 financially shaky companies cannot self-bond and put the

1 State in any -- in a risky situation.

2 Now, if there is any apprehension among the board
3 that the financial -- that these changes would undermine
4 the financial health of the coal operators, some of who
5 have spoken today, I'd like to share why the rules will not
6 have that impact. That primary reason behind this is that
7 surety bonds appear to be available to coal operators at
8 affordable rates today. I have a couple examples to
9 illustrate that point.

10 Between the years 2016 and 2017, the four largest
11 coal operators in this state replaced a total of roughly
12 2 and a half billion dollars of self-bonds with surety
13 bonds. In that same year, as you may have read in the
14 papers, those same companies posted their best financial
15 performances in many years. Two specific examples where
16 public statements from coal operators themselves have
17 confirmed this, that surety bonds are available to the
18 industry at affordable -- on affordable terms.

19 First, with respect to Mr. Tichenor's company,
20 Peabody Energy Corporation, in that company's bankruptcy
21 there was a filing on March 9th of last year where -- I'll
22 sort of paraphrase here -- a financial adviser to the
23 company authored an affidavit to the court saying that with
24 respect to that company's decision as to whether to replace
25 self-bonds, there had been interest from surety bond

1 providers that have come in after a certain point that
2 would have allowed the company to post less cash collateral
3 than the company had anticipated. And the same was true
4 for these -- the annual costs of procuring the surety
5 bonds. That came in lower than expected by management. So
6 that says to me that Peabody was surprised to learn that
7 surety bonds were cheaper than they had anticipated.

8 The same situation is in some ways mirrored by
9 the case of Cloud Peak Energy. As folks will remember,
10 Cloud Peak did not go through bankruptcy, or has not yet,
11 but last year it did replace its self-bonds with surety
12 bonds of its own volition. The company has publicly
13 disclosed to investors that the amount of cash collateral
14 they are required to post with their surety bond providers
15 has actually decreased over time, providing Cloud Peak with
16 a financial benefit.

17 There's a -- a range of -- of numbers that might
18 be a little too in the weeds to get into, but Cloud Peak
19 initially moved into surety bonds at about 15 percent cash
20 collateral. That's on the face of the -- face value of the
21 bond. They announced to their investors in October of last
22 year that they had been able to decrease that amount to
23 5 percent, which is not very -- from my understanding, a
24 very high collateralization level among the industry.

25 So this further suggests that surety bonds are

1 available to the coal industry on affordable terms, and I'd
2 be happy to share those citations to those announcements to
3 those statements with the board.

4 I would like to share another piece of
5 information, if I may. Under the proposed rules, as we've
6 heard and discussed today, self-bonding would be restricted
7 to no more than 75 percent of a mine's total bond. That
8 suggests that a few companies that currently are still
9 self-bonded in the state of Wyoming would need to replace a
10 portion of their self-bonds.

11 I just laid out some evidence on how surety bonds
12 appear to be affordable to the coal industry, available at
13 affordable rates. And the same appears to hold true with
14 currently self-bonded companies. Anyone is able to check
15 up on the credit ratings for -- for companies as provided
16 by Moody's. It's a free online account. When you do so,
17 you find that in general the companies that are currently
18 self-bonded actually have higher credit ratings than the
19 nonself-bonded companies I just mentioned.

20 Now, if surety bonds are available to the coal
21 industry on affordable terms for companies with lower
22 credit ratings, it stands to reason that they might be also
23 available on affordable terms to companies that have higher
24 credit ratings.

25 If I may, I'd like to address the comment by

1 Board Member Gampetro regarding the sword of Damocles.
2 I've already spoken a bit -- I don't know anyone else who
3 would like to speak, but Madam Chair, if I may, I'd
4 continue with addressing his comment.

5 MR. WENDTLAND: Go ahead.

6 MR. COHN: Okay. I'm going to go ahead.

7 I think the question about the sword of Damocles,
8 I see it a little bit differently, in looking at the coal
9 industry. I think it boils down to the fact that the
10 demand for coal from the state of Wyoming, as the state of
11 Montana and other states that ship their coal out of state,
12 the choices that are being made regarding how much demand
13 for coal there is are being made by utility -- by the
14 utility industry.

15 And by and large, the utility industry across the
16 Midwest, where most Powder River Basin coal is shipped, is
17 choosing to move to build new gas-fired power plants, new
18 wind installations, new solar installations instead of
19 coal. Folks may be familiar with the refrain that there is
20 no utility company planning to build a new coal-fired power
21 plant in this country. There are plenty of utilities,
22 however, that are choosing to close those plants. There
23 has been an impact, in particular, of certain plant --
24 recent plant closures on Powder River Basin mines and
25 companies.

1 And if I may pick on Mr. Tichenor's company
2 again. At the Rawhide Mine, we heard from Vistra Energy in
3 Texas back in, I believe, November of last year, that they
4 plan to close two of their power plants that buy a lot of
5 coal from Rawhide, the Montecello plant and Big Brown.

6 Now, this was back only about five months ago,
7 and three months following on from that announcement was
8 the expected retirement dates for those plants. So in the
9 span of 90 days, two plants that bought approximately
10 50 percent of all the coal produced at Rawhide in the year
11 2017 were shut. That is more of the rule than the
12 exception, I would submit.

13 We also heard from Mr. Tichenor's company that
14 coal purchases from PRB mines are very sensitive to the
15 price of natural gas. We saw that beginning of 2016 when
16 there was this giant plunge in natural gas prices and --
17 and also in coal production. Folks may remember that led
18 to the layoff of roughly 500 people from the largest mines
19 in the state. And what Peabody Energy has said is that a
20 20 percent change in natural gas prices will raise or
21 decrease the amount of Powder River Basin coal demand by
22 25 million tons.

23 So the point of -- that I'm trying to make here
24 is that sort of coal mines in the state of Wyoming that are
25 focused on providing coal to domestic coal-fired power

1 plants are very vulnerable to sudden drops in natural gas
2 prices, and the sort of big build-out of new natural gas-
3 fired power plants allows utilities to switch between coal
4 and gas easily. So I would submit that, as I said before,
5 the sword of Damocles here is that the utility industry is
6 moving away from coal or retiring coal-fired power plants.
7 And as you heard from my colleagues already, now would be
8 the perfect time to advance rules that tighten up the
9 eligibility for self-bonding and to make sure that the
10 state and taxpayers of the state are not subjected to any
11 risks from any bond forfeitures, that although they may not
12 have happened yet, may certainly be in the offing in the
13 future.

14 I'm happy to take any questions, and appreciate
15 y'all's time.

16 BOARD MEMBER HINES: Madam Chairman. I
17 have one question. Do you have any dollar figures on what
18 bonding costs? That you spoke a lot about being available
19 and favorable, but like for a big mine, do you have any
20 idea of what bonding costs would cost?

21 MR. COHN: Sure. Madam Chair. Board
22 Member Hines, I have the vague idea that is available to
23 most members of the public. It's my understanding that the
24 surety bond industry requires some amount of collateral to
25 be held from coal companies in terms of cash or letters of

1 credit. And that's determined as a percentage of the face
2 value of the bonds. If you have a hundred-million-dollar
3 bond, a company such as Cloud Peak that has said they only
4 have to put up 5 percent cash collateral might have to only
5 put up \$5 million.

6 Now, there's also annual premiums that are paid,
7 which I understand to be in the range of half a percentage
8 to 3 percent on the face value of the bonds. So that's --
9 you can extrapolate to the bond values at any of the mines.
10 Of course that information is available from DEQ.

11 So I don't know if that answers your question,
12 but that's what I know on that score.

13 BOARD MEMBER HINES: Thank you.

14 MR. COHN: You're welcome.

15 Okay. Thank you for your time.

16 BOARD MEMBER DINSMOOR: Thank you.

17 BOARD MEMBER MACKER: Any further public
18 comment?

19 MR. WENDTLAND: Going once, going twice.

20 BOARD MEMBER MACKER: Go ahead.

21 MR. WENDTLAND: Madam Chair, I believe that
22 closes the public comment from the Gillette venue.

23 BOARD MEMBER MACKER: Thank you.

24 So we will close the floor to public comment.
25 And move into discussion for the board or any additional

1 questions for staff.

2 The goal today, we have a few choices of what we
3 can do. We can approve the revised rules as presented. We
4 can remand them back to LQD staff. And if we were to do
5 that, we would need to give specific direction about
6 changes that we would want to see.

7 So I would open the floor first to other
8 questions for staff based on anything we heard in public
9 comment.

10 BOARD MEMBER HINES: Madam Chairman, I have
11 one. And it may be a series of questions to the staff.

12 Can you explain, so I understand it, what the
13 current practice is and what would change with this
14 regulation proposal on when a new company purchased a
15 bond -- I mean, purchased a mine from an old company.
16 What's the procedure? What happens at that point when --

17 MR. WENDTLAND: Madam Chair. Board Member
18 Hines, I'll see if I can surmise that for you.

19 Currently, if you have a five-year history, you
20 can apply provided you have financial status. And that
21 financial condition or status is based on your year-end
22 audited financials. So right now, currently, Land Quality
23 gets those typically in March, April of a given year.

24 And then those financials are evaluated off of
25 the on-balance sheet net worth to see whether they can

1 qualify for a ratio that would pass the rules and regs to
2 allow them to self-bond, or, as was indicated by the
3 Western Fuels organization, you can apply for a credit
4 rating. And you can go under your credit rating, provided
5 you have that five-year history of operations. So that's
6 how the current rules work.

7 The proposed rules go strictly to the credit
8 rating and move away from the ratios. And the reason for
9 that was, as I -- as I tried to extrapolate earlier, was in
10 our review and in review from IMCC and looking at a number
11 of energy sector Chapter 11 filings, that we saw revolvers
12 pull the off-balance sheet, which they don't show until
13 they're drawn on the on-balance sheet. So those are drawn
14 prior to the Chapter 11 filing. Immediately before.

15 So in order to avoid that -- and that left the
16 State in a situation where we're kind of in the gray area,
17 secured, unsecured, because those revolvers and the cash
18 wasn't dedicated to the reclamation fund for the state. So
19 the proposed rules go strictly to the credit ratings,
20 similar to what the cooperatives are, Western Fuels are
21 using now, and eliminates those ratios.

22 And you still want to have that five-year
23 operational, but we can see or demand the credit rating any
24 time anybody applies. They just have to come in with that
25 credit rating. And we've used any one of the three most

1 common third-party credit ratings services that are out
2 there.

3 BOARD MEMBER HINES: Madam Chairman. Then
4 if Company A sells their mine to another company, a new
5 group that's forming a new company, will the mine
6 supposedly be shut down until the State goes through this
7 process, or --

8 MR. WENDTLAND: Madam Chair. The way that
9 works is the State has -- it's kind of a two-tier process,
10 Board Member Hines. The first part of that process is --
11 and we can use the most current filing that has taken place
12 with Contura and Black Jewel. Contura elected to sell
13 those operations, and Black Jewel made a decision to
14 acquire those operations. And Contura still holds the
15 bonding liability until such time the permit is
16 transferred. But what they do is they apply for a license
17 to mine. So they can continue to operate under the license
18 to mine for the day-to-day operations, while the liability
19 is still held by the selling company in this case.

20 Once the new company qualifies and/or puts their
21 bonding instruments or financial assurance instruments in
22 place and they meet the requirements of the State, then
23 they apply for a permit transfer, and then the permit would
24 actually transfer to that company. That way you have that
25 seamless movement of the company from one entity to another

1 without an interruption in production or operations at the
2 mine.

3 BOARD MEMBER HINES: Madam Chairman. I
4 guess I'm a little more familiar with the -- some of the
5 procedures in oil & gas, that, as I understand that
6 procedure, when a -- a permit and a license, whatever you
7 want to call it, is sold and the -- the federal government
8 and state government have the option of whether they will
9 release the bond. The -- the new business can go on, but
10 the coal company -- but the mining business don't have that
11 option?

12 MR. WENDTLAND: Madam Chair. Board Member
13 Hines, the selling company holds the bond until such
14 time -- the State holds that until such time the new entity
15 can qualify or substitute or replace. They cannot obtain
16 their permit to mine until that time. They do -- we do
17 allow them to get a license to mine, to simply operate the
18 day-to-day operations while that -- while we're working out
19 those bonds. Because it takes some time. You can't simply
20 replace a 50 to \$100 million bond in, you know, five
21 business days. The wet signatures alone take considerably
22 longer than that.

23 So we wanted to make sure, the way that system
24 was structured, those companies can continue to operate
25 while that process is taking place.

1 BOARD MEMBER HINES: Thank you.

2 BOARD MEMBER MACKER: Other questions?

3 CHAIRMAN GAMPETRO: Madam Chairman,
4 question for Kyle.

5 Could you please comment on the comment that was
6 made regarding the ratings on some of the cooperatives
7 being higher than some of the bonding sources that we might
8 be going to for surety bonds. And could you also comment
9 on the concept that coal is going out of style because of
10 its costs relative to gas, and what the cyclical nature of that
11 is. Being in this boom and bust state that we are in, we
12 we've seen this kind of thing before, and it would seem at
13 some point it will cycle back, but who knows when. If you
14 could comment on those two things for me. Thank you.

15 MR. WENDTLAND: Madam Chair and Board
16 Member Gampetro. What I would -- let me answer the first
17 one of those to -- with regard to the cooperatives and
18 other self-bonding entities, that statement is accurate.
19 In some cases the -- there are entities out there that
20 might rate as equal or potentially higher in their
21 rankings.

22 However, the State, and Land Quality, in our
23 division, and through DEQ, we don't have the opportunity to
24 regulate sureties. That's regulated under a totally
25 different set of requirements that we don't have authority

1 under. So, you know, those ratings, they have to meet
2 certain requirements of the state insurance requirements.
3 And provided they can make those ratings and meet those
4 requirements, they are eligible to issue those bonding
5 instruments in the state of Wyoming.

6 Secondly, with that -- with the electric
7 cooperatives and other entities out there, because you
8 specifically asked about it, I want to make clear here --
9 and it's important that sureties are not the only
10 alternative here to replace this 25 percent, 30 percent or
11 50 percent. Sureties are one instrument in that. It is --
12 there are companies within the state that have reclamation
13 accrual accounts that can be consisted of government
14 securities, trust accounts, CD cash accounts, provided
15 those accounts are out there and -- and they can meet their
16 requirements for the State to be added to those accounts on
17 the face, those accounts could be pledged in lieu of using
18 a surety bond or letter of credit or an item like that. So
19 there's a wide range of those instruments that are
20 available and not all cases would it require surety bonding
21 to be the only replacement instrument.

22 Second portion to your -- or your second
23 question, with all due respect, Board Member Gampetro, I'm
24 not going to speculate on the future of those markets for
25 industries. What my role here today was is to put the

1 rules as proposed out there. And, again, I believe we put
2 the best proposal together based on the information we've
3 got for the board at this time. But I will decline to
4 comment on future or potential markets.

5 CHAIRMAN GAMPETRO: Kyle, what about our
6 abilities to tap into the foreign coal market? I've seen
7 information that some of the Asian markets -- China and
8 India -- are not decreasing, but increasing their coal
9 consumption. I know we've had some problems in terms of
10 getting it to a court. Do you have any information as to
11 where that stands right now?

12 MR. WENDTLAND: Madam Chair and Board
13 Member Gampetro. I do not have any information, nor would
14 I choose to comment on that. Again, those are business
15 decisions by these individual companies, and I would
16 decline from making any comment on that.

17 CHAIRMAN GAMPETRO: Thank you.

18 BOARD MEMBER DINSMOOR: Madam Chair, I have
19 a question, I believe, for Administrator Wendtland. And
20 it --

21 BOARD MEMBER MACKER: Please.

22 BOARD MEMBER DINSMOOR: It tails in off of
23 the comment that Board Member Gampetro just made with
24 regard to the credit ratings, I think, or it may be a
25 different question.

1 And the question goes something like this. We
2 have this credit rating bureau or agency, and they rate all
3 sorts of companies, whether they be mining companies or
4 banks or utilities or cooperatives or whatever else is out
5 there. And there's one rating scale. And I don't
6 understand enough of these ratings to know whether the
7 consequence of assigning a rating to companies in different
8 sectors, different industries, whether the consequence is
9 the same. So, for example, when a -- a mining company gets
10 a rating of B, does that mean the same within the mining
11 community as a financial institution that gets a rating of
12 B?

13 MR. WENDTLAND: Madam Chair. Board Member
14 Dinsmoor, you would have to defer that question, by
15 commodity, to the rating agency and how they conduct their
16 internal calculations.

17 What I can speak to on this is that these rating
18 agencies act as a third-party function, and they take into
19 account the assets and liabilities of these companies, and
20 then they assign a rating to that company. And on the
21 ratings scale that we proposed in these rules and
22 regulations, when you get below a Baa2 Moody's or
23 equivalent rating, you then enter into a marketplace that
24 is highly speculative and high risk. And that is the
25 reason that Wyoming chose in this case to use that cutoff

1 line on the bottom end of the ratings.

2 BOARD MEMBER DINSMOOR: The reason I ask
3 the question -- and I don't know if this will change your
4 answer or not -- but it seems to me that to -- to use that
5 rating scale as an evaluation of mining companies -- and it
6 doesn't matter whether we're talking trona or bentonite or
7 coal or uranium or any other kind of mining commodity --
8 that -- let me see if I can create an analogy -- kind of an
9 everyday analogy.

10 So if we're going to arrange everybody in this
11 room on the basis of their physical fitness by how many
12 sit-ups they can do, and the rating scale that we choose is
13 a rating scale that just happens to be a scale that's used
14 to assess Olympic body builders. And so we rate everybody
15 in this room on the number of sit-ups they can do, and we
16 compare it to the scale and we find out that nobody would
17 even qualify to go to the Olympics. Nobody would even be
18 thought of as a potential candidate for the Olympics. And
19 yet there's a lot of people in this room that are in pretty
20 good shape. And so I'm wondering whether the rating scale
21 for financial institutions, which is what I understand
22 Moody's is all about -- or what I believe they're all
23 about -- I'm wondering if that's the appropriate rating
24 scale to be used for mining companies or, maybe said
25 another way, whether the band of appropriate rating levels

1 needs to be adjusted to more properly reflect what's
2 considered healthy in the mining world as opposed to what's
3 considered healthy in the financial world. Am I making any
4 sense?

5 MR. WENDTLAND: Madam Chairman and Board
6 Member Hines -- or Board Member Dinsmoor, I'm flattered you
7 think Board Member Hines and I could make the Olympics.

8 BOARD MEMBER DINSMOOR: I left names out of
9 it.

10 BOARD MEMBER SHOBER: Notice he left me out
11 of it.

12 MR. WENDTLAND: And I do not want to
13 compete with Board Member Macker, so...

14 But in the answer to your question is is I
15 believe these rating agencies -- and based on my
16 understanding and the research that we've done -- is that
17 they're looking at your financial solvency and wherewithal,
18 and that really doesn't matter whether you're a financial
19 company or a mining company. What matters is is what your
20 balance sheet looks like, and what your assets and
21 liabilities debt, how much debt a company chooses to carry,
22 you know. And how hard they decide to leverage those debt
23 options, that's -- that's what these companies -- rating
24 companies are looking at.

25 And Land Quality and DEQ is not in the business

1 of telling a company, nor would we, how to run your
2 business. But each company has to decide what things are
3 important to them. And if self-bonding's important to
4 them, having that company run in a fashion that it makes
5 those rating requirements would seem to be reasonable. And
6 if it's not that important, it would seem that those --
7 there are other options that are available.

8 BOARD MEMBER DINSMOOR: Madam Chair.

9 BOARD MEMBER MACKER: Other questions?

10 BOARD MEMBER DINSMOOR: Madam Chair. Kyle,
11 as a follow-on to that, when the Land Quality Division is
12 going to make their assessment of risk to the State of
13 Wyoming associated with any particular company, it seems to
14 me then there are two major components in the self-bonding
15 piece with which they can -- which they can use to balance
16 that risk. They can choose to define a program which
17 lowers the amount of self-bond they -- as a percentage of
18 their total bond that they're allowed to make, or they can
19 choose to adjust the banding of acceptable levels for which
20 a company may qualify for self-bonding. But what I'm
21 getting at is that we heard some testimony earlier that --
22 that self-bonding is all but eliminated for a majority of
23 the mining companies in Wyoming by this proposal.

24 Now, if that's true, it seems to me there are
25 still some ways that the Land Quality Division could adjust

1 the credit rating proposal without increasing risk to the
2 state of Wyoming, but making self-bonding in smaller bites
3 more available to a wider percentage of the industry. And
4 the value of that, of course, is that while certainly many
5 of the companies maybe can't afford surety bonds or letters
6 of credit cash or other forms of bonding, the more tools we
7 keep in the toolbox, the more diversity there is first --
8 first of all, amongst all the mining sectors, but also when
9 things happen out there in the marketplace that affect one
10 or more of those tools, there are other fallback positions.

11 And those are my words in an effort to explain
12 what I believe I heard from the Land Quality Division in
13 our December meeting that one thing we wanted to do is keep
14 self-bonding, along with many others things, on the
15 table as a viable tool. And so limiting it to -- pick a
16 number -- less than 10 percent of the mining industry, I
17 wouldn't call that leaving it on the table for the Wyoming
18 industry, but making smaller bites available to a wider
19 range of people might be. I don't know if that draws a
20 response or not.

21 MR. WENDTLAND: Board -- or Chair -- excuse
22 me. Madam Chair and Board Member Dinsmoor. Let me -- let
23 me try and answer that and follow that thought --

24 BOARD MEMBER DINSMOOR: Okay.

25 MR. WENDTLAND: -- the best I can.

1 Couple of things with that. One is as -- the
2 reason we chose -- and I'll go back to that -- the bottom
3 rating we did on the 50-50 split, is because when you go
4 below that Baa2 Moody's or equivalent, you now move into a
5 speculative classification or a high-risk classification.
6 The goal here was to lower the risk bar to the State. The
7 diversification of that portfolio assists that, but it also
8 provides for immediate cash needs in the event of a
9 forfeiture to protect the real assets that may be
10 physically on the ground. It serves both functions
11 equally.

12 So we don't -- we don't believe, in our analysis,
13 that we have eliminated self-bonding. What we believe in
14 our review, and based on the data we have, is that what
15 we've done is hold true more to the line of self-bonding as
16 a privilege. And it's a privilege for those companies that
17 can operate at a solvency level that can meet a minimum
18 rating within the investment credit board.

19 And in our experience, the fall from a sub Ba2 --
20 Baa2 or equivalent to a Chapter 11 filing, not just looking
21 at the mining sector exclusively, but the energy sector as
22 a whole, can be very quick. And that's the rationale --

23 BOARD MEMBER MACKER: Thank you.

24 MR. WENDTLAND: Yeah. That's the rationale
25 from where those limits were chosen.

1 BOARD MEMBER DINSMOOR: Thank you.

2 BOARD MEMBER SHOBER: Madam Chair. Kyle,
3 the -- if we -- let me give you an example. Take Colstrip
4 mine -- or Colstrip power plant, and if it was in Wyoming,
5 associated mine that relates it to that power plant is in
6 Wyoming, there's an announcement in the news that within
7 10 years that plant's going to -- that power plant's going
8 to close down. Make the assumption that the mine is
9 permitted for projected life capacity of that power plant,
10 then will you -- if that was -- all of those assumptions
11 were the case, would you look at that mine and say there's
12 less than 10 years capacity -- or life left in that mine
13 and we're going to change the bonding requirement, or do
14 you look at that and have to look at it and say it's
15 permitted longer than that. We will allow them to see if
16 they can identify and find other markets for their coal?
17 Or how would you treat that situation?

18 MR. WENDTLAND: Madam Chair and Board
19 Member Shober. We would treat that as the latter. We look
20 at the permit, what the life of mine is, what the average
21 mineral reserve is, what their average mining rate is, is
22 there another market, could there be another market? We
23 would base that on the mine itself, not on the plant.

24 BOARD MEMBER SHOBER: Not on the customer.

25 MR. WENDTLAND: No.

1 BOARD MEMBER SHOBER: Okay.

2 MR. WENDTLAND: It's what's on file in the
3 permit. That's why when we went back and looked, we don't
4 have a permit with less than a 10-year projected mine plan
5 on the shelf right now.

6 BOARD MEMBER SHOBER: Okay.

7 BOARD MEMBER MACKER: Other final
8 questions?

9 Seeing none, perhaps one option for us to proceed
10 is if any board members wanted to propose any changes to
11 the new rules as presented.

12 MR. WENDTLAND: Madam Chair, if I may.
13 Just so that all the board members are on the same page
14 with us, is -- there's a couple of -- a few options on the
15 table for the board. The rules can be passed as is. They
16 can be passed with specified minor amendments, possibly.
17 They can be remanded back to Land Quality. You could
18 potentially pass either Coal or Noncoal and send Coal or
19 Noncoal, the alternate one, back to the agency for further
20 work. So there are a number of options that are available
21 to the board.

22 BOARD MEMBER DINSMOOR: Madam Chair, I
23 propose to make a motion.

24 BOARD MEMBER MACKER: Excellent.

25 BOARD MEMBER DINSMOOR: Bear with me on

1 this. I think I would like to propose that we return the
2 rules to the Land Quality Division. And part of the --
3 well, we should return the rules to the Land Quality
4 Division to rework several portions of the rules. I
5 believe that we've heard testimony and comment today from a
6 number of different sources that suggest that we've -- that
7 the agency has done a -- has made a good move in revising
8 the rules, but it can be made even better.

9 The -- certainly the industry perspective right
10 now is there's multiple-step approaches out there and there
11 are templates that the Land Quality Division can use to
12 look at other options to what has been proposed. Those
13 templates are contained in some of the comment letters that
14 have been proposed.

15 We've heard public comment today also of things
16 about whether or not the language regarding the
17 administrator's discretion with regard to self-bond is
18 consistent between the rules and the statute, "mays" versus
19 "shalls." And I think that was a valuable comment, that
20 the discretion that was afforded in the previous rule, it
21 was something that should be retained, in my opinion. So I
22 would ask that be one of the things the Land Quality
23 Division consider.

24 I think that also goes to the provision in the
25 proposed rule that goes to a right of renewal. I'm not

1 sure that a -- that a "shall" -- pardon me -- that a
2 "shall" requirement and right of renewal are internally
3 consistent. So there's, I think, some investigation that
4 needs to go on in that regard.

5 The 10-year life has been a topic that has been
6 discussed by many. I firmly believe that 10 years is going
7 to be problematic, even though it may not be today, but is
8 going to be problematic because the loose cannon is the
9 federal government and their leasing and claims issuing
10 processes. We can't depend -- and we know that they're in
11 a period of upheaval right now. We can't depend on that.

12 We've heard some suggestions that maybe 5 years
13 is a better number than 10. That zero may be an extreme
14 and unacceptable. But I would ask the Land Quality
15 Division relook at that -- at that issue too.

16 I think I'm going to end the motion and suggest
17 that with those potential revisions, Land Quality should
18 consider reworking the rules and then bring it back to the
19 board on the basis of those comments.

20 BOARD MEMBER MACKER: Thank you.

21 Two points of clarification. Number one, would
22 you have that be for both Coal and Noncoal?

23 BOARD MEMBER DINSMOOR: Yes, ma'am.

24 BOARD MEMBER MACKER: Great. And then
25 perhaps before we make it a very formal motion, are there

1 other areas other board members would like to see looked at
2 again or other suggested changes outside of Mr. Dinsmoor's
3 list?

4 BOARD MEMBER SHOBER: Madam Chair, you
5 know, maybe mine is more of a question than -- have you had
6 time to -- or adequate time to look at the public comments
7 and address or accommodate or -- in the proposed rules? Or
8 am I hearing some of these comments just came in in pretty
9 short order?

10 MR. WENDTLAND: Madam Chairman and Board
11 Member Shoher. If you'll remember, we published a
12 preliminary draft in a primer back in November of 2017. We
13 received zero comment during the open period for that. And
14 we had very minimal attendance at our meeting in December.
15 At that time, I openly said my door is open, come talk to
16 me.

17 We received guidance then from industry, from
18 third-party interests, from effective public. We
19 incorporated that guidance into this final proposal. Those
20 were the reasons we expanded to the upper tier, to this
21 75-25 split and created that tier, and lowered the 50-50
22 split to the Baa2 credit requirement.

23 As stated earlier, we were going through the
24 letters, if the board chooses to go to a five year on the
25 life of mine and move forward with the rules, we don't have

1 an objection to that. We're neutral to that. We chose
2 10 because we looked at the permits on the shelf and said
3 we don't have a permit that's less than 10.

4 And then with regard to the "may" and "shall"
5 issue, that's something that could be investigated and made
6 so that it's in compliance as a requirement before the
7 rules went to the council, because that is the next step,
8 is once they pass this board, then they would move to the
9 Environmental Quality Council. There's another public
10 period, another public hearing. If it passes there, then
11 it would go on to the governor's desk, and he has 75 days
12 to choose to pass or deny or modify.

13 So this is not, by any means, the only bite at
14 the apple.

15 BOARD MEMBER SHOBER: We're not the final
16 say.

17 MR. WENDTLAND: And you're not the final
18 say.

19 BOARD MEMBER SHOBER: My question, as
20 commissioner, when we do this and we have public hearing,
21 public comments, like we've had today and listen to those,
22 then we take those under advisement, and then typically
23 make a decision at a later date. And I guess I hadn't
24 quite realized that -- I guess we're an advisory board is
25 really what we are, aren't we, then?

1 MR. WENDTLAND: Right.

2 BOARD MEMBER SHOBER: We're not the final
3 say-so in the process, like I am as county commissioner.

4 MR. WENDTLAND: That is correct.

5 BOARD MEMBER SHOBER: That helps me
6 understand this a little better.

7 CHAIRMAN GAMPETRO: Madam Chairman. Jim
8 Gampetro here. We've had a motion that hasn't been
9 seconded, and I'm not sure what that motion is because it
10 was literally a page long. Is there a motion on the floor?

11 BOARD MEMBER MACKER: So I believe, if we
12 want to take the high level, the motion is remand it back
13 to the staff to incorporate some additional changes or to
14 provide our board with some additional options in a few
15 areas, and then we can list those areas. And I was trying
16 to get a comprehensive list of what those areas were in
17 case other board members besides Phil had things that
18 should be looked at, and then to see if the majority of the
19 board felt like we should remand it back.

20 So I guess I would ask you, did you have anything
21 that you wanted to see changed after hearing the testimony
22 today?

23 CHAIRMAN GAMPETRO: Not at this time.

24 Thank you.

25 BOARD MEMBER MACKER: Thank you.

1 So I propose we could attempt -- and maybe, Kyle,
2 you can help -- I took some notes about the areas that I
3 heard one board member wanting to discuss were the life of
4 the mine, whether that's 10 years -- stays at 10 years or
5 goes down to five years.

6 You, Kyle, discussed briefly the use of "shall"
7 and "may," and I believe the determination there was that
8 was something staff could look at to make consistent
9 throughout them. And then the first item that was
10 referenced was the template for other options.

11 And Phil, am I correct, when you're talking about
12 the template for other options, other options meaning what
13 the various proposals were in terms of percentages, and
14 would you be looking to see a few options or for LQD to
15 just select something different than what they've selected
16 thus far?

17 BOARD MEMBER DINSMOOR: Well, there's one
18 option in particular that was submitted by the Wyoming
19 Mining Association. But I would strongly recommend that
20 they consider -- as -- as was described today, that option
21 is a consult or a combination of the existing rule ratio
22 calculations and the Land Quality Division proposal credit
23 ratings with an adjustment in the credit rating bands that
24 are found acceptable.

25 BOARD MEMBER MACKER: Okay. Great. Thank

1 you.

2 So then I would say that that change would be to
3 have staff incorporate the combination of ratios and credit
4 ratings, not just credit rating. Is that simplified --

5 MR. WENDTLAND: Madam Chair, I would ask is
6 that incorporation or is that a discussion and
7 clarification of those options?

8 BOARD MEMBER MACKER: I think that can be a
9 discussion, if other -- do other board members want to see
10 that or not?

11 BOARD MEMBER SHOBER: I guess I'm going to
12 say I'd like to see this maybe as more of a discussion of
13 possible incorporation rather than an absolute in its --
14 you know, I guess I kind of have an understanding of
15 bonding and bond ratings, but as far as -- you know, I
16 don't understand it well enough to know how far down the
17 list you can go and still have acceptable bonds. So
18 that's -- that's part of -- you know, and I don't know --
19 and I assume that when you make your recommendations, you
20 receive some counsel from some financial advisers or
21 somebody somewhere that told you what was adequate and what
22 wasn't. And, you know, I -- I don't know well enough to be
23 able to make a decision of which one is which.

24 BOARD MEMBER DINSMOOR: Madam Chair, I can
25 clarify that my original intent in the motion was to say

1 incorporate not discuss. But I'm certainly open to that
2 option if other board members would prefer.

3 BOARD MEMBER SHOBER: Kyle, is there --
4 well, I'm sure there's a time frame, but what -- what if
5 there was -- take Dinsmoor's motion, whatever. What if it
6 would -- would 30 days be enough time in a -- would 30 days
7 be enough time? And then would we need to see that again?
8 What kind of -- because I assume there was a -- somewhere
9 there's a time frame on this to try to get it completed.

10 MR. WENDTLAND: Madam Chair. Board Member
11 Shober, we would prefer to take the time necessary to get
12 this right. It's a complex subject. If the board would
13 like to see a more thorough discussion on the bond -- or
14 the credit bond issuance ratings and how that works, we
15 would bring in a chief economist to have that discussion
16 with you at the next meeting. And what we would do is
17 re-publish the proposal for the 30 days. We would have it
18 at our next quarterly meeting. And we certainly could then
19 decide whether we needed to look at them further again or
20 further adjustment, or if we need to go ahead and ask them
21 or what that decision would be at that time.

22 CHAIRMAN GAMPETRO: Madam Chair. Jim
23 Gampetro here. I think I would like to see pretty much
24 what Kyle just said. I would like to see what we have
25 right now and then what changes we are making to what we

1 have right now, what has been proposed today, what changes
2 will be made to that, to simplify it a little bit, as
3 opposed to -- to the -- that we have today of all the
4 changes to all of the Coal and Noncoal, just the changes to
5 what we have right now proposed.

6 BOARD MEMBER MACKER: Okay. So just to
7 clarify. What I heard is that if we're going to make any
8 further changes, we're going to want to look at that again
9 before we move to vote on it, which I would agree with. I
10 think to help Kyle and LQD -- because there were a few
11 things proposed by Phil -- do we want to take an informal
12 vote on, yes, we want to see a change from 10 years to
13 5 years? I know the credit rating and ratio issue sounds
14 like we want further presentation and greater understanding
15 of that before we are ready to incorporate and recommend a
16 change.

17 And so at the next meeting, Kyle can perhaps
18 arrange to do what he just proposed with an economist and
19 understanding that piece of it, but the other item, the
20 "shall" versus "may," we could perhaps request the LQD just
21 review that through the proposed changes and make sure
22 there is consistency and if there are questions that arise
23 from that, those could be presented to the board.

24 And then could we have some discussion with the
25 10 years versus 5 years right now so staff could get

1 direction on that from us about what, if any, changes to
2 make there?

3 CHAIRMAN GAMPETRO: I would try to make it
4 fairly simple, that -- my motion would be to remand it to
5 the environmental -- environmental council [sic] to make
6 changes based on the discussion today. And then as long as
7 they -- that's my -- that's my motion. It's very short.

8 Then as long as they point out specifically what
9 things -- because we've discussed these things and
10 discussed them -- what things they are changing from the
11 present proposals so that we can track what we have today
12 proposed versus what they come back with for the next
13 meeting.

14 BOARD MEMBER SHOBER: Madam Chairman.

15 BOARD MEMBER MACKER: I think -- yes.

16 BOARD MEMBER SHOBER: Dinsmoor has offered
17 or made a motion. It's either -- he either needs to
18 withdraw it or it needs to be subject to a second before we
19 can have another motion. And so it's your discretion what
20 you would like here.

21 BOARD MEMBER MACKER: Sure. I agree. I
22 think to ask Mr. Dinsmoor to make -- it was a long motion.
23 So I could attempt to repeat back what I heard in that
24 motion and see if there is a second. So that -- I would
25 say that what we heard was to remand it back to the LQD to

1 provide further input on continuing to include ratios along
2 with credit ratings, to offer alternatives that are less
3 than 10 years for the life of mine, for the time frame, and
4 to do an analysis of the use of "shall" versus "may" in
5 terms of the administrator's discretion.

6 CHAIRMAN GAMPETRO: Just a point of order.
7 That motion was never really defined as you just have.
8 Thank you. And that motion was never seconded. So if
9 you --

10 BOARD MEMBER MACKER: I was going to ask
11 for a second. I just wanted to make sure we were all
12 talking about the same motion, so there's no longer
13 discussion.

14 CHAIRMAN GAMPETRO: Fine. Go ahead.

15 BOARD MEMBER MACKER: Is there a second?

16 BOARD MEMBER HINES: I would second the
17 motion.

18 CHAIRMAN GAMPETRO: Discussion? Can we
19 discuss that -- it's been moved and seconded. Can we
20 discuss it?

21 BOARD MEMBER MACKER: Yes.

22 CHAIRMAN GAMPETRO: Okay. Here's my
23 discussion. I think it only hits a few of the points that
24 could possibly be addressed, and, therefore, I am not
25 excited about it.

1 BOARD MEMBER MACKER: To clarify, does that
2 mean you have other areas that you would like to see
3 changes in?

4 CHAIRMAN GAMPETRO: What I would like to
5 see is that it be remanded to the council, and that the sum
6 of the issues that have been brought up that the council
7 feels need to be addressed are addressed, and addressed in
8 such a way that we can track them when we discuss it, as I
9 did in my illegal motion, which was to remand it and bring
10 it back for discussion point by point on what they changed
11 relative to what the proposal is today. That allows them
12 to not only consider Phil's changes, but any other changes
13 they feel are worthy of consideration and would cover many
14 of the comments from the public. That's the way I'd like
15 to go, as opposed to just picking out three or four areas
16 and possibly not hitting all the ones that we should.
17 Thank you.

18 BOARD MEMBER MACKER: Additional
19 discussion?

20 BOARD MEMBER DINSMOOR: Madam Chair, let
21 me -- may I ask a question about procedure here?

22 BOARD MEMBER MACKER: Sure.

23 BOARD MEMBER DINSMOOR: Based upon what
24 Board Member Gampetro just said, can I withdraw my motion
25 and rephrase it? Is that -- is that an allowable action?

1 BOARD MEMBER SHOBER: You can accept a
2 friendly amendment. And I think you can withdraw your
3 motion, if the second concurs with your -- of that, then we
4 can accept a whole 'nother motion. So that's one way to do
5 it.

6 BOARD MEMBER DINSMOOR: Is there another
7 way to do it?

8 BOARD MEMBER SHOBER: Yeah. I think you
9 can --

10 BOARD MEMBER MACKER: We can also vote and
11 the motion can fail, and we can then make a new motion.

12 BOARD MEMBER SHOBER: Yes. Or you can
13 accept amendment if somebody's willing to make an
14 amendment.

15 CHAIRMAN GAMPETRO: That's the way to do
16 it. Vote.

17 BOARD MEMBER DINSMOOR: Okay. I would like
18 to withdraw my motion, Madam Chair.

19 BOARD MEMBER MACKER: And I will accept
20 that.

21 BOARD MEMBER HINES: I will withdraw the
22 second.

23 BOARD MEMBER MACKER: Is that okay with the
24 second?

25 BOARD MEMBER HINES: I will withdraw it.

1 BOARD MEMBER MACKER: Excellent. Is there
2 a new motion coming?

3 CHAIRMAN GAMPETRO: Yeah. I already made
4 it. I would like -- this is Gampetro. I would like to
5 remand it to the council and have them consider the issues
6 discussed today, both from the board and from the public,
7 and then come back, line by line, indicate what changes
8 they are making to the proposal that we have today, and
9 that should take care of it.

10 BOARD MEMBER MACKER: Just to clarify. By
11 "council," do we mean the LQD staff, or did you want to
12 send it to the Environmental Quality Council?

13 CHAIRMAN GAMPETRO: No, no, no. The staff.
14 I'm sorry.

15 BOARD MEMBER MACKER: Okay. Great. Is
16 there a second to that?

17 BOARD MEMBER SHOBER: Second.

18 BOARD MEMBER MACKER: Any other discussion?

19 BOARD MEMBER SHOBER: Yes.

20 BOARD MEMBER DINSMOOR: Yes.

21 BOARD MEMBER SHOBER: Madam Chair. Kyle,
22 do you have enough direction now to this motion? Do you
23 understand what you need -- or what's wanted?

24 MR. WENDTLAND: Madam Chair and Board
25 Member Shoher. I believe we can follow the transcript

1 through the discussion, and any changes to the current
2 proposal could be detailed as well as provide -- and we
3 would probably elect to, with the permission of the board,
4 to bring in our chief economist for discussion on the
5 ratings.

6 BOARD MEMBER SHOBER: Okay. Thank you.

7 BOARD MEMBER DINSMOOR: Madam Chair.

8 MR. HULTS: Kyle, if I might. One of the
9 components of that -- this is Craig Hults. One of the
10 components of that could be a more formal response to
11 comments document.

12 MR. WENDTLAND: Yep. I concur, Craig. I
13 believe that would be part of that, how we would get to
14 that summary.

15 MR. HULTS: If --

16 BOARD MEMBER DINSMOOR: Madam Chair.

17 MR. HULTS: If --

18 BOARD MEMBER MACKER: Mr. Dinsmoor.

19 BOARD MEMBER DINSMOOR: Madam Chair. If
20 it's a change to the motion that's on the table, I would
21 like to make the change. If it's not, I would just like
22 to -- to repeat what Board Member Shober just said, and
23 that is let's get your chief chemist from the Land Quality
24 Division -- let's have a presentation to the board and
25 allow further discussion on the issue of credit ratings and

1 ratio calculations together, as represented in the Wyoming
2 Mining Association comments.

3 And I would also say if there's not any reason to
4 wait for the next quarterly meeting, if we could do it in
5 30 days or sometime sooner, I would be in favor of that.

6 MR. WENDTLAND: Madam Chair. Board Member
7 Dinsmoor, I believe that will be difficult because our
8 chief economist has a number of Industrial Siting
9 applications on her desk, so --

10 BOARD MEMBER DINSMOOR: Your choice.

11 MR. WENDTLAND: -- I would have to schedule
12 around her availability.

13 BOARD MEMBER DINSMOOR: Thank you.

14 BOARD MEMBER HINES: Madam Chair.

15 BOARD MEMBER MACKER: Great. I believe
16 that request is contained within the discussion that we
17 had. So I think staff has that, and we can keep the motion
18 as is.

19 Any other discussions?

20 BOARD MEMBER HINES: Madam Chairman. The
21 staff stated that they would look at the minutes of this
22 meeting. And what I'd like to point out, my concern is the
23 10-year life. I wanted to look at that area. And also in
24 the bonding area where -- where we can see if there's some
25 options where companies that have -- have used the

1 self-bonding with no problems and see if there's some
2 options where more of them probably could qualify, at least
3 for a higher percentage than no bonding at all -- I mean,
4 no self-bonding at all.

5 BOARD MEMBER MACKER: Thank you.

6 If there is no further discussion, I will call
7 for a vote on the motion on the floor. All those in favor,
8 signify by saying aye.

9 BOARD MEMBER SHOBER: Aye.

10 BOARD MEMBER DINSMOOR: Aye.

11 BOARD MEMBER HINES: Aye.

12 CHAIRMAN GAMPETRO: Aye.

13 BOARD MEMBER MACKER: Aye.

14 All opposed?

15 Motion carries unanimously.

16 Are there any other items for discussion?

17 Excellent.

18 So I -- Kyle and Craig, we will look to hear from
19 you in terms of scheduling for the next meeting around
20 this.

21 MR. WENDTLAND: Madam Chair, that would be
22 very helpful. Give us a little bit to take a look at
23 scheduling and scheduling of the other parties that will
24 need to attend.

25 BOARD MEMBER MACKER: Thank you.

1 And can I get a motion to adjourn?

2 CHAIRMAN GAMPETRO: So moved.

3 BOARD MEMBER SHOBER: Second.

4 BOARD MEMBER MACKER: All those in favor,
5 signify by saying aye.

6 BOARD MEMBER SHOBER: Aye.

7 BOARD MEMBER DINSMOOR: Aye.

8 BOARD MEMBER HINES: Aye.

9 CHAIRMAN GAMPETRO: Aye.

10 BOARD MEMBER MACKER: Aye.

11 The meeting is adjourned. Thank you.

12 (Meeting proceedings concluded

13 1:32 p.m., March 28, 2018.)

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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 April, 2018.


KATHY J. KENDRICK
Registered Professional Reporter

