BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN RE: LQD MEETING

TRANSCRIPT OF TELEPHONIC MEETING PROCEEDINGS

PURSUANT TO NOTICE duly given to all parties in interest, this matter came on for telephonic meeting on the 19th day of September, 2018, at the hour of 10:00 a.m., at the Oil & Gas Commission, 2211 King Boulevard, Casper, Wyoming, before the Land Quality Advisory Board, Board Member Phil Dinsmoor presiding with Board Member Micky Shober; Board Member John Hines; and Chairman Jim Gampetro and Board Member Natalia Macker, present telephonically.

Mr. Kyle Wendtland, Land Quality Administrator; Mr. Craig Hults, Senior Environmental Analyst; and Ms. Kimber Wichmann, DEQ Chief Economist were also present. Various audience members were also in attendance.

P R O C E E D I N G S

(Meeting proceedings commenced
10:00 a.m., September 19, 2018.)

CHAIRMAN GAMPETRO: I'm going to now turn the meeting over to Phil.

You ready, Phil?

BOARD MEMBER DINSMOOR: As ready as I'll ever be, Jim. Thank you.

I will -- I am Phil Dinsmoor, member of the Land Quality Advisory Board. I'll call this meeting to order on September 19, 10:00 in the morning here in Casper. I don't have -- I was not prepared for this. Do we have things you want to follow?

MR. WENDTLAND: Board Member Dinsmoor, I have a summary of meetings and kind of how we got to where we are today and the history.

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: And I would be happy to walk everyone through that as just a primer, I guess, to get everyone where we are currently today for this process.

BOARD MEMBER DINSMOOR: Before we do that, let's -- there's a sign-up sheet in the front, I believe, and I think if we have any public comment we want to be on that sign-up sheet. So anybody that is interested in commenting, please sign up.

CHAIRMAN GAMPETRO: Phil, this is Jim. I'm having a hard time with understanding you. Kyle's coming through fine. Craig was coming okay, but you are coming and going.

BOARD MEMBER DINSMOOR: Okay. I'll see what I can do to improve that. Is this any better?

CHAIRMAN GAMPETRO: That was better. Where is --

MR. WENDTLAND: He's going to try to lift that up closer here, Phil. You're just soft-spoken.

BOARD MEMBER DINSMOOR: I guess I am.

So with that, we've got -- we've got sign-up sheets. Is there any other preliminary information we need to share?

MR. HULTS: Phil, I have the agenda up there. So we have the meeting minutes.

BOARD MEMBER DINSMOOR: Okay. Agenda's off here to our left for everybody's purposes. So let's go ahead and let's start.

MR. WENDTLAND: Probably want to go approval of minutes first.

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: And then I can go into that history, Board Member Dinsmoor.

BOARD MEMBER DINSMOOR: Okay. We've got --

we did have the minutes distributed of the previous meeting. Has everybody had a chance to review and are there comments or discussions regarding those minutes?

There apparently being none, do I have any motions?

BOARD MEMBER SHOBER: Mr. Chairman, I move we approve minutes of the last meeting, which would be March 28, 2018.

BOARD MEMBER DINSMOOR: Okay. Thank you.

Second?

BOARD MEMBER HINES: Second.

BOARD MEMBER DINSMOOR: All right. It's been moved and seconded to approve the board minutes from the March 28th meeting. All in favor, please say aye.

BOARD MEMBER SHOBER: Aye.

BOARD MEMBER HINES: Aye.

BOARD MEMBER MACKER: Aye.

CHAIRMAN GAMPETRO: Aye.

BOARD MEMBER DINSMOOR: Opposed?

There being none, the minutes are approved.

And we'll now walk into the presentation and discussion regarding proposed revisions to the financial assurance rules.

MR. WENDTLAND: Board Member Dinsmoor, thank you. And I'm going to walk through some history here and some of the follow-up questions from the March meeting.

We did have a scheduling meeting in June, but there was no action taken. So there's no minutes from that meeting. Just so that's clear for the record.

With the history here -- we'll walk through the timeline of this rule development. And in the first quarter of 2017, Land Quality began an assessment of the current regulations that were established in the early 1980s relating to financial assurance. That encompassed all the instruments from self-bonding all the way through the letters of credit and cash.

In June of 2017, Land Quality met with the public industry and the public stakeholders and outlined the need to revise the rules and kind of some of the general direction we were going and receive some feedback. Then in the third quarter of 2017, we conducted an internal review of the financial assurance rules and regulations, compiled the information we received from our outreach in June, and then we also reviewed a report that had been compiled by the Interstate Mining Compact Commission member states, which is a compact that is -- involves 26 member states that are mining states, both coal and noncoal throughout the country.

Then in the fourth quarter of 2017, at the advisory board meeting, Land Quality provided a primer to the board and invited industry and the public to provide input to the draft rule development. Land Quality received the majority of the comments in late February and prior to the March 28, '18 meeting.

At that point in time, we proposed a final version of the rules with all of that input. And the proposed rules were discussed and remanded back to Land Quality for some further review. We'll get into those questions that were raised a little later in this presentation, but that brings us to today's -- or in the second quarter of 2018.

We had a scheduling call to schedule today's meeting, and then also make sure we brought our chief economist here. So in summary to date, just for the board members and those here today, Land Quality's taken 15 months to develop and publish the final rule package that is before the board today. Along those lines, Land Quality has taken the time to review the comments made at the March 28 Land Quality Advisory Board meeting and have accepted and rejected some of those suggestions made.

The Land Quality also added a section relating to the government securities that are issued on the digital-based exchange, and we'll allow Ms. Wichmann, our chief economist, to address that more specifically a little later on.

I will be reviewing the overarching changes to the rules and regulations, then comments from the prior board meeting first, then new comments received prior to this board meeting, which we received the majority of those yesterday.

Following this review, I will ask the board for questions for the chief economist, if there are additional ones that we have in attendance, and I'll turn the meeting back over to Board Member Dinsmoor.

So with that, I have one additional comment to make before we get into the overarching changes. And that is -- in looking at this rule package, it probably should be noted that in the onset of the proposed rules and regulations, updates represent an effort to modernize the financial assurance requirements here in Wyoming. These rules have essentially remained untouched since 1982. A lot has changed in the industry, the marketplace and the financial assurance market space since that time.

The rules originally drafted were largely the result of a limited market space for sureties in the early 1980s and were established for those companies with the financial health to support self-bonding. The proposed rules and regulations that are in front of you today have been drafted with the original premise to ensure reclamation at the closure of an operation in mine. So just please bear that in mind as we walk through these.

And then moving on to the overarching or larger changes in the rule package. The rules and regulations for financial assurance are now more risk-based proposal. The self-bonding changes have four principal components to them. A move away from balance sheet ratios to third-party independent credit ratings. A maximum cap. There are three tiers in the cap on self-bonding eligibility to ensure cash on hand in the event of a forfeiture to prevent deterioration of on-site physical assets while the site is in a forfeiture proceeding. The elimination of subsidiary level bond -- self-bonding and a move to the ultimate parent entity.

And, four, the eligibility for self-bonds ends when the site has a five-year life of mine left, thus a transition or move to liquid instrument when the site is no longer generating revenue. This was a change from March that was a 10-year to a 5-year change.

The rule package also has the addition of real property. This required both the 2018 legislative and statutory change and allows for the agency to accept real property collateral. Not personal property. We're talking about real property.

A revision was also made to remove the personal property, as the agency has found practical application of this instrument is expensive with the appraisal process and requires a high level of oversight, both the operator and the state.

In summary, for the same expenditure of resources, it's been found that better financial assurance options are likely available. The removal of standby letters of credit was also put in this rule package. And the addition of a trust option for government securities -- and we'll get into this a little more detail here as we move through -- but this allows a method for the agency to accept government securities that are issued on the digital exchange, as this modern practice does not allow a method for the State to be placed on the face of the security instrument. So this is a move to -- or a change to accomplish a vehicle or a pathway to accept those securities. That still puts the State in a first position on the security if it needs to be drawn on.

And the rule incorporates an 18-month transition period for compliance. That was also a question from the March meeting was was there a transition period.

In the 2018 meeting we had several comments. We have summarized those in general here. I'll walk through them. The Outdoor Council, generally support for the rules. Does not support return to using audited financials for assessing risks.

Shawn Taylor, Wyoming Rural Electric Association -- sorry. I'll back up. Mary Flanderka from the Outdoor Council made that first comment.

Shawn Taylor, Wyoming Rural Electric Association, commented that cooperatives should be treated differently and rules should account for their nonprofit status.

Morgan Smith of Tri-State Generation and Transmission, another cooperative comment. Written comments were read on the record. Not-for-profit organizations differ and operate under a different rating structure.

Ms. Karla Oksanen, private citizen, concerned about the turnover rates of companies owning the mines.

Bob LeResche, PRBRC board member, and WORC believes the rules as drafted were a fair compromise.

Ms. Jill Morrison, PRBRC, endorses the DEQ's efforts to tighten up the rules. Could be stronger, but did not offer any suggestions as to how to make those stronger at this point.

Ms. Anderson, from the PRBRC, main concerns are use of "shall" instead of "may" in Section 2 on page 10, renewal and elsewhere where it occurs. Two, was to support ultimate parent entity language. Three, support use of credit ratings, but suggests getting rid of the 50 percent category. Four, suggests that the split ratings, DEQ uses the lower of the two. Five, suggests real property bonds should be limited to 75 percent required bond and 75 percent of required bond is self-bonded, the remaining 25 is not real property. And, six, reviews of -- review of use of "administrator" versus "director" language.

Eight was a Mr. Tichenor from Peabody supports WMA's February and March proposal. Does not support the rules as written. Believes very few would qualify for self-bonding because rating requirements are too high. Believes ratio calculations should be used. In regard to using calculations, agreed should be at the ultimate parent entity level, but ratio should be monitored quarterly.

In addition to ratio calculations, supports WMA proposal to use a ratings matrix that would be adjusted based on credit ratings. Oppose the 10-year life of mine. Should be 5 years or graduated.

Pat Joyce, WMA, restates the written comment from February 22nd and March 22nd are still WMA's position. Believes it will remove self-bonding from all but a few. Wants to blend the -- recommends that a blend of current rules and WMA proposal should be moved forward. Must maintain self-bonding as a viable tool.

Beth Goodnough, Basin Power & Electric Cooperative, reiterates comments made on February 7 proposed rules, one size doesn't fit all. States that because of wholesale contracts and control of rates, cooperative should still be allowed to self-bond at 100 percent because of financial strength of coop. Wants tier structure for cooperatives that allows higher levels of self-bonding.

Dan Cohn of WORC states that surety bonds are available to coal operators at reasonable rates. Utility companies moving away from coal to natural gas, and, therefore, timing is right to tighten the regulations.

And that's a summary of those comments from the 2018 meeting.

We also had some discussion from the advisory board and some questions thereof, and I'll do my best to answer a few of these, and I may have to ask our chief economist to also respond to a few of these.

Board Member Dinsmoor question was one rating scale for all sorts of industries. For example, does a B rating for a mine mean the same thing as a B rating for other industries?

And, Ms. Wichmann, I'm going to ask you to address that comment, if you could.

MS. WICHMANN: Sure. I'm happy to. Kimber Wichmann, DEQ Chief Economist. And I'll scoot closer so you can hear me. Lean over for my materials.

I understand the question from Chairman [sic]

Dinsmoor was when a company gets a rating, is that rating equivalent across industries. And I will say the answer is yes. It is based on risk factor. And I have some information from Standard & Poor's, which is one of the major rating agencies in corporate America. And I have, which I thought would be helpful for the board, if you agree, Chairman Dinsmoor, the rating grades. And it explains where the separation takes place between investment grade and speculative grade and what each of these mean. So I'd be happy to hand those out to the board.

MR. WENDTLAND: Kimber, go ahead.

MS. WICHMANN: Okay. And we can go over these. As you see, an investment grade runs from -- it's at the top of this table. And these are all available online on the Standard & Poor's website under Issuer Credit Ratings, if anybody would want to see this. And the board is looking at the long-term issuer credit ratings.

It starts with AAA, and it goes all the way down to BBB. And at the very bottom of this table it also mentions that it could have a plus or minus sign assigned to any of these. So there's actually three ratings for each one of these. For example, AAA would have a AAA plus, it would have a AAA, and it would have a AAA minus grade. But these are giving you the broad categories of what those represent.

They also mention why there's a distinction between when you get down to BBB, and then going into just BB. And that is where the Division is between investment grade and speculative grade bonds. And that is a key difference in the financial world and in corporate America.

When you are investment grade, that is the level that banks are allowed to invest in as well. They cannot go to a speculative grade, according to their regulations. And that is something that in this proposal has been considered quite extensively, and we feel that's -- I think Administrator Wendtland feels that was the best fit with the state, to fit with that investment grade level of risk.

MR. WENDTLAND: That is correct. And that's based on our review not only internally, but with the IMCC data. We spent considerable time and took the hard look on this one.

MS. WICHMANN: So I would think that the natural question I saw from the questions I was proposed was, well, what is the difference between investment grade and speculative grade. So investment grade is BB minus or higher or Baa3 or higher in Moody's. Generally, they are bonds that are judged by the rating agency as likely enough to meet the payment obligations that banks are allowed to invest in, as I mentioned.

Now, if the company or bond is rated BB or lower, it's known as a junk grade, in which the probability that the company will repay its issued debt is deemed to be speculative. It's just a different category.

CHAIRMAN GAMPETRO: Can I ask a question? This is Jim Gampetro.

BOARD MEMBER DINSMOOR: Yes. Go ahead, Jim.

CHAIRMAN GAMPETRO: Hello?

BOARD MEMBER DINSMOOR: Yes. Go ahead.

CHAIRMAN GAMPETRO: Why -- why can't we look at these things in a more statistical manner? AA, AAA, BBB, whatever. What is the percentage of default in each of these categories? That, to me, is the pertinent question. And if -- if one speaks of this in a more statistical manner rather than A, B, AAA, A plus, A minus, I think it has more meaning for me. But then I'm an engineer, so -- I apologize.

MR. WENDTLAND: Just a second, Jim. We're working through that for an answer here for you.

Jim, I think --

CHAIRMAN GAMPETRO: Yes.

MR. WENDTLAND: -- the direct answer to your question, conferring here with Kimber to make sure we get up the best answer possible, so bear with us if we take a little time.

The lower the rating --

CHAIRMAN GAMPETRO: No.

MR. WENDTLAND: The ratings actually represent that, because the lower the rating the higher the risk of default. That's why the rating. So statistically speaking --

CHAIRMAN GAMPETRO: I understand that. I understand that. I was in banking for seven years. I understand that. But it might represent the probability of default, but I would much prefer knowing what the historical statistical actual observation of default is under each of those scenarios. That has more meaning in my book.

MR. WENDTLAND: Well, I think we can research that out, but it's going to take some time. And that's part of why we were relying on the ratings, Board Member Gampetro, is that's taken into that statistical analysis. And, you know, when you look at a company that is in a junk bond status rating, it's saying that their access to credit, their access to capital, everything they do is -- is more difficult if not more marginalized, that, therefore, they become a much more higher risk of default.

Now the ratings also -- hold on, hold on -- the ratings also take into account the fact that -- and Kimber may be able to help me with this a little bit -- is that they are marketplace specific and they are industry specific. In fact, when you look at the ratings for S&P, they have specific reasons for that rating.

And I'm going to let Kimber finish answering that question, Jim, before you jump in, please.

MS. WICHMANN: So let me get into how they get into the ratings. So the first part was just to answer the question of how is the rating consistent across industries. Now, the second piece is there's a group of analysts specific to every industry we have in corporate America. And they have a team of analysts that do these ratings for those specific industries. And usually there's two analysts assigned to every rating that's issued. And that rating takes into account the country risk, the business risk and the industry risk. And they also -- they have a team on every issued rating, but they also have a team over the whole industry to which they belong as well. So there are a lot of people focused on industry-specific, entity-specific dynamics to come up with the rating when you pay for a rating through these agencies.

The other thing they do is these rating are surveilled credit ratings. And why that's different is because a surveilled credit rating means when that rating is issued, it's not just that point in time, looking backwards. It's actually that point in time moving forward until the next rating is issued, and that's huge. And that's huge when we're looking at reclamation risk and things like that as well. That is a benefit that this particular system has that our current system does not.

MR. WENDTLAND: And --

CHAIRMAN GAMPETRO: Looking forward -- looking forward as a projection, and if it's a -- if it's -- my understanding of how that would work would be you're simply looking at a timeline and saying here's what has happened in the past and then running that forward into the future. And that's all well and good.

The fact of the matter is you can assign a probability of default to each one of these various ratings and that could be -- that could be based on historical facts. And it could differ by industry, by country, by variety of variables, but --

MS. WICHMANN: And it does.

CHAIRMAN GAMPETRO: -- probability and percentages, I still say, have more meaning. And if these -- if you can tell me that the number of AAA minus or BBB, the percent of failures that have been experienced in the past is X and for AAA it's Y. To me, that has a tremendous -- more meaning than the rating itself.

MS. WICHMANN: And the only thing I can

offer from our experience in Wyoming is that those that were using the rating through the -- through the market downturn time did not go into bankruptcy proceedings for the coal piece. That was our experience with the 2014-2015.

CHAIRMAN GAMPETRO: And that's -- that's a tremendous point. And it's one that I get asked all the time as a member of this board. You know, have we ever defaulted and have we ever had to pay because of one of our -- our mines defaulted. And that -- that's very --

MR. WENDTLAND: And Board Member Gampetro -- Board Member Dinsmoor, sorry I missed you the first time -- it should be noted too that post SMCRA, we've not had a coal forfeiture. But these rules are you have to bear in mind are addressing both coal and noncoal. And we have had noncoal forfeiture.

Does that answer your question, Board Member Gampetro?

CHAIRMAN GAMPETRO: It did.

MR. WENDTLAND: Okay.

CHAIRMAN GAMPETRO: And I thank you.

MR. WENDTLAND: Okay. We'll move to the next question that we had. And this one is a question, did Land Quality look at the WMA proposal to incorporate the grid ratings?

Land Quality reviewed this comment in detail. We took the hard look. We could only support a move back to ratio-driven calculations if both on and off-balance sheet financials and third-party company financial health evaluations were made in order to avoid the same circumstances that occurred in the 2014-15 bankruptcy scenarios that we went through.

So I guess with that, I would ask if there's a more specific question around that one that we might be able to answer for board members.

BOARD MEMBER DINSMOOR: Questions from any of the board members?

I do have a more specific question. And it goes -- my question goes to particularly to the difference between ratio calculation -- ratio calculations as a measure of financial health versus credit ratings as a measure of financial health looking backwards.

The company that I work for, Peabody, submitted a comment that showed that if we looked backward to 2012, and if certain changes had already -- to the rules had already been in effect, what would -- what capabilities would that have given to the Land Quality Division that they didn't have under the current rule? And, in particular, we were looking at what if the parent corporation definition had been in effect in 2012, the new proposed rule? What if the credit rating proposal had been in effect at some level that was more accessible to more of the mining industry back in 2012?

And we actually supplied a graph that showed what would have happened or what -- what would have been the trend in the credit ratings, and the trend in the financial ratio calculations, and what information would have been available to Land Quality Division. And what we found was that under both scenarios, there would have been a two-to-three-year advance warning that financial health of the company, of Peabody, was beginning to deteriorate. And with two or three years advance warning, that's the time at which the Land Quality Division, in theory, would say -- I'm sure in practice, actually -- would say it's time to begin substituting some other form of bonding for self-bonding.

And when you look at that history, the one common denominator in that history is the parent organization. That rule change, in and of itself, made everything happen -- or provided advance notice -- would have provided advance notice to Land Quality of two to three years before any Chapter 11 filing ever occurred.

So it leaves me to question whether the financial -- the credit ratings option is truly a measure of financial health or if it's a measure of what the market thinks of that particular organization or industry sector and whether the financial ratios aren't, in fact, a better measure of financial health.

MR. WENDTLAND: Board Member Dinsmoor, we're going to answer that in two parts --

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: -- that question.

The first part is, in going back to the information that Peabody has graciously supplied us, it indicates -- and you are correct, that there was a two-to-three-year lag time between what happened in the bankruptcy and what was known. Part of the current rule issue is is because the way the rules are currently written, we can only go off the audited balance sheet on the annual basis for that decision. So there's a lag time there.

The other thing I would say is -- that as a parent is, when we look at that history -- and not just Peabody, looking across energy sector bankruptcy as a whole -- is if the company now that their financial condition was deteriorating, why didn't they approach the State and suggest a substitution when they had a better credit rating and could have negotiated a better rate on an alternative instrument? In all cases, not a single company came forward to the State of Wyoming and proposed a substitution in advance of their failure.

And with that, I'm going to allow Kimber to answer maybe the more specific technical question on the health and credit rating issue.

MS. WICHMANN: And the market issue is definitely understood, what you're saying. And what the State is proposing is that the company is still healthy enough at a time that they can get competitive rates and other instruments before they're already in a dire situation or going into a dire situation, because it's only going to get more expensive for the company once you start ratcheting them down, as it suggests in the letter that was presented to us.

And so anything you do at that point, or when you're trying to substitute, it's only going to get more and more expensive to a company at a time when cash is very, very tight for them. So by making sure the State is ahead of that curve of when that gets to that dire situation, you make sure the company's getting the best rate they possibly can on the other instruments available.

So it is something we really did look at and we really did dive into and say does this make sense? Would it work? And we repeatedly saw it would not work because of the constraints the company's in at that point.

BOARD MEMBER DINSMOOR: I think I

understand your answer with regard to the credit ratings. What I don't understand is why that same answer is not applicable to the financial ratio calculations, since if you did those calc -- I'm sorry. Because if you did those calculations at the parent level, with the other proposed changes in place back then, you would have had that same advance warning. Actions could have been taken. And by the time a Chapter 11 filing occurred, we could have been completely out of the self-bond market.

And so all I'm suggesting is there may be another alternative that requires less change to the rules, but different changes to the rules. Parent organization being one of them, for example.

CHAIRMAN GAMPETRO: Can I butt in here for a second? This is Jim again.

BOARD MEMBER DINSMOOR: Please do, Jim.

CHAIRMAN GAMPETRO: Yeah, Phil, I understand what you're saying 100 percent.

And, Kyle, if you're -- I was in the industry for 35 years. If you're waiting for a company to warn you that they -- they may -- I mean, on their own, without doing what Phil's talking about, you're going to wait a long time and you're waiting for them to say we think we're going to go belly up in two or three years, it ain't going to happen.

MR. WENDTLAND: Board Member Dinsmoor. Board Member Gampetro, that is why we have proposed the rule package we have, is that very issue.

CHAIRMAN GAMPETRO: I think what Phil's saying, though, is that you can determine that without them having to voluntarily come forward. And you got to understand the company's standpoint too. To come forward and say we're going to have a big problem here, it also helps that problem to occur. That's all I'm saying. And if you could look at their financials that Phil's talking about, the parent company, ahead of time as opposed to trying to think they're going to just voluntarily -- and even with the company, there are probably people that would argue that's not going to happen. You know, and others that would argue that it is. If you get what I'm saying.

MR. WENDTLAND: Jim, we're working on an answer here for you.

It's kind of a two-tiered answer here, Board Member Gampetro, and Board Member Dinsmoor also. You have to remember that we were only able to look at the on-balance sheet liabilities in the ratio during the calculation. And what happened in every one of these bankruptcies that we went through is the day before the Chapter 11 filing, rather large revolvers were drawn. In some cases in several hundred million dollars. And they were drawn, and that cash was consumed, and Wyoming was left in a position where we accepted a stipulation order in order to work through the Chapter 11 proceedings.

So when we look at the ratio calculations, even at the parent level, we believe the only way that we can do that and have some confidence in the calculation, if we were to use ratios, is to use both on- and off-balance sheet and include the revolvers capacities in that calculation. And in the event we do that, we pretty much eliminate self-bonding completely, because very few would qualify if that revolving debt is included in the ratio calculation.

CHAIRMAN GAMPETRO: Gotcha. Very good point.

BOARD MEMBER DINSMOOR: This is Phil Dinsmoor.

Kyle, I'm not sure that I understand entirely -- it's been explained to me that on- and off-balance -- or off-balance sheet calculations in -- in particular the revolving accounts that are being discussed -- have two sides on the ledger sheets. And one of those sides, of course, is the yesterday, or the cash, and the other side -- and the other side is the debit or the -- the debt, I guess, associated with it.

So if you don't have any -- if you've not drawn on the revolver, then you've got no debt, but you don't have any cash. And when you draw on the revolver, you gain cash, but you also incur debt. And those things are roughly equal, I would presume.

But even before that, the issue that you're trying to resolve, I believe -- and I think that the proposal is one way to resolve this -- is to get away from the self-bonding, and, therefore, the revolver issue, before we ever reach that day prior to filing for bankruptcy. And the proposal that Land Quality Division has put forward is one way to do that.

The problem that -- that I'm seeing with this proposal is that the credit ratings at -- which we've chosen -- you've chosen to make that proposal are such that the tool is off limits to most of the mining industry. So you've managed the risk to the State, and you've managed it by taking the tool away from the vast majority of the population of mining companies in Wyoming. And so if we can adjust the ratio -- the credit rating levels to something that is more typical or a better example of the mining industry, I think that you've got a very workable resolution. But failing that -- an adjustment of the credit rating levels, we know, from looking backwards, that with some of the other changes that you have proposed, including the -- going to the parent organization and talking about the on- and off-balance sheet things, if you implement those and do the financial ratio calculations, you can achieve the same end.

MS. WICHMANN: Chairman Dinsmoor, I understand what you're saying, but we were tasked with protecting the state's interest and ensuring reclamation happens and establishing what those standards would be to protect the state's interest. And we've done that. We've shown where the bar would need to be to protect the state's interest.

I understand that you're saying that bar may be too high for some companies, and that is why there are other instruments available in the toolbox to use for reclamation obligation. But we were tasked with what is the state's comfortable level of risk and to what amount and just the pure size of the mines in Wyoming made was look at this in the way we have.

MR. WENDTLAND: And with that, that's where we opened up the land collateral option. We put the trust account for the government securities. We've created avenues -- we're not saying you can't operate or you can't bond. We're just saying at certain risk levels there are a variety of instruments that are available to any given company.

And to your comment of -- of how it eliminates self-bonding, I guess I would respectfully disagree. We have a number of companies that do qualify with coal and noncoal, and have continued to qualify based on credit rating.

So I guess I would say that that's -- based on that perspective, it is somewhat a company choice of what instrument fits your company best and still protects the State and puts the State in a position where if you are self-bonded, our likelihood of recovery of funds is high.

BOARD MEMBER DINSMOOR: Thank you.

CHAIRMAN GAMPETRO: I have a question. This is Jim Gampetro. I have a question, Kyle.

How often would we either check or be informed if a parent company did get involved in a revolver such as you've described, which gives them some significant cash and -- and then that cash gets dissipated as the company goes down? What's the time situation there? Do they have to inform us or -- or do we check -- what's the procedure?

MR. WENDTLAND: Board Member Gampetro, they do not have to inform us. But what we did do in this rule package is we wrote in if your credit rating changes, you have 30 days to notify us. So in this proposal and moving to the credit ratings, we have somewhat addressed that by saying there is a notification process now.

But as far as -- as far as the internal workings of a company, we don't -- we don't get into that level of their business. And their revolvers and cash flow and day-to-day operations are theirs to run.

BOARD MEMBER SHOBER: Mr. Chairman.

CHAIRMAN GAMPETRO: I understand what you're saying. But with a 30-day notice period on change in credit rating, how quickly would their credit rating change itself?

MR. WENDTLAND: You want -- go ahead.

I'm going to have Ms. Wichmann answer that question, Jim.

MS. WICHMANN: The credit ratings are fairly stable, meaning they don't look at one single issuance. They look at all of the debt and the assets of the company as a whole for a period of time that usually goes between 12 and 15 months. If there is a market change or something significantly happening in that industry or that particular company, they can change it to a watch rating at which we're alerted immediately. And they can do a new rating within four weeks.

And they'll usually let you know what that outlook is like, if the outlook is positive or if the outlook is negative and the reasons that are triggering that watch list or the accelerated rating schedule. But it's pretty quick, and the company is definitely alerted to that happening.

CHAIRMAN GAMPETRO: So you're looking at two months. A month if they're put on a watch list and then another month before we would be informed.

MS. WICHMANN: Correct. Versus --

CHAIRMAN GAMPETRO: How do you feel about that, Kyle?

MR. WENDTLAND: I'm comfortable with that --

CHAIRMAN GAMPETRO: Two months.

MR. WENDTLAND: Board Member Gampetro, I'm comfortable with that because, as Ms. Wichmann indicated earlier, these are surveillance ratings, so they're looking a year out. And then also prior, with the annual audited financials, we were looking at almost a year of lag time. So this is a significant improvement for us.

CHAIRMAN GAMPETRO: Thank you.

BOARD MEMBER DINSMOOR: We have a question from Board Members Hines.

BOARD MEMBER HINES: Mr. Chairman. My question on that, if I'm following you correctly on the 30 days or that develops into maybe two months. If it's an extremely large financial event with the company, that could easily affect their grading, isn't Wyoming too far behind already? How -- if they've already spent the money and then they notified -- you know, just like you owed me money and when you notified me, you're already broke. And so what -- what would be the state's opportunity at that point?

MS. WICHMANN: Chairman Dinsmoor. Board Member, you are absolutely correct. And the thing is companies in the higher ratings, which we have in that investment grade, that outstanding option of credit would be part of their review. If it was drawed upon completely, if it was drawed upon partial, that would be part of the review. Where year-end financials, it's not considered at all until the date it's actually taken out and it would not show up until the year-end financials.

MR. WENDTLAND: Board -- Chair -- Chairman Dinsmoor. Board Member Hines, one additional follow-up to that is that's why that cutoff line in the ratings that we chose is so important, because when you fall below that investment grade, that's when your fall to Chapter 11 can go very, very quickly once you go below that investment grade rating, because you're now at junk status. That's why that cutoff line was chosen.

BOARD MEMBER HINES: Mr. Chairman. Then my next question along that line would be is there any way that it could be required that this type of a -- a -- I don't know what you would call it -- a financial move, would they have to be notified -- the State would have to be notified before it could happen, if they're -- if it was going to affect the rating and --

MR. WENDTLAND: Chairman Dinsmoor. Board Member Hines, I don't believe so, because you would be treading -- especially with a publicly traded company you would be treading very closely to the insider trading or notification issues. I'm not sure you could do that.

BOARD MEMBER HINES: Thank you.

BOARD MEMBER DINSMOOR: Any other questions from the board?

I just have one follow-up. Your response to Board Member Hines' -- to his second to last question, doesn't that -- haven't we gone full circle now back to Board Member Gampetro's question regarding the probability of default at those various levels?

I mean, very early in the process, Mr. Wendtland, you indicated that we would never be able to take the state's risk to zero, but we needed to get as close as we reasonably could. And -- and you're exactly right. I think it will never go quite to zero. But are we talking about large differences in the probability of default between these various credit rating levels, or are they rather minute differences? And maybe -- maybe Board Member Gampetro's original question deserves a little bit more attention. I'm not sure.

MR. WENDTLAND: Chairman Dinsmoor, I'm going to respond to that initially here, and then if Ms. Wichmann has a follow-up...

It comes back to the original statement I made that that's why the credit ratings are there. They take into account that surveillance rating, what that looks like moving forward. Rather than a reverse projection, we're looking forward. And when you go below that BBB rating and you move into junk status, as we just discussed, your risk of default accelerates considerably, and that is why those rating grades were chosen. It wasn't some arbitrary choice. It was based on what the rating agencies and the statistical probabilities of default look like as you move lower into those ratings.

And then further, as Ms. Wichmann indicated, as you fall in those ratings, the fall from the junk status rating to Chapter 11 can be very quick. And it also can very negatively impact a company's ability to have cash flow to go out and secure substitution alternatives.

CHAIRMAN GAMPETRO: Kyle, this is Jim again. Just give me one number. What percent of BBB-rated bonds default?

MS. WICHMANN: I can go make a call.

MR. WENDTLAND: Chairman Gampetro, what I would suggest is that we have -- or, excuse me, Chairman Dinsmoor. Board Member Gampetro, we don't have that data readily available, but I would recommend that we take a break and we will make a phone call and have that answer for you.

CHAIRMAN GAMPETRO: Thank you.

BOARD MEMBER DINSMOOR: Okay. Let's take 10 minutes. It is 10 minutes until 11:00 now, and we'll get an answer by then.

(Meeting proceedings recessed 10:53 a.m. to 11:01 a.m.)

BOARD MEMBER DINSMOOR: Okay. We're ready to reconvene.

Administrator Wendtland, what have you found out?

MR. WENDTLAND: Chairman Dinsmoor, what we would like to do, we have a call into our folks to get this answered for Board Member Gampetro. What I would suggest is that we move on through the other questions that we have out there that we need to address. We'll come back to this one as soon as that call comes back.

BOARD MEMBER DINSMOOR: Unless there's objection, I concur with that.

CHAIRMAN GAMPETRO: No problem.

BOARD MEMBER DINSMOOR: We'll move on, then. We'll come back to -- I believe that's going to be question 2A.

MR. WENDTLAND: Yeah, that's 2A is the one that we're still on. We'll come back to.

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: Now we're moving to address the "may" or "shall." A lot of these comments came from public interest. And Land Quality took a hard look at this since March. We did make several changes related to the director and administrator where there is discretionary choices. Those now fall to the director.

And then the "may" and "shall" items we walked through and reviewed with the Attorney General's Office and our representation. We believe that rule package, as presented for this meeting, represents consistency with the statutory language. So we have taken a hard look at those items that were asked.

The next item was on the 10-year life of mine. We looked at that. That was a suggestion that came from the industry. And we had made that change and moved it to the 5 years, as recommended by the industry level.

BOARD MEMBER DINSMOOR: Can I interrupt you for one second here?

MR. WENDTLAND: Yeah.

BOARD MEMBER DINSMOOR: Let me take you back to 2B. You took the hard look. Were any changes --

did that result in changes to --

MR. WENDTLAND: There were several. There were several that we proved up, and they are in the strike and underline version that Craig has supplied to you for this meeting, yes --

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: -- Board Member -- or Chairman.

BOARD MEMBER DINSMOOR: Thank you.

MR. WENDTLAND: The last one was we brought our economist along today to help out.

And we appreciate you being here, Ms. Wichmann.

Then we have a couple other additional that came in. And one of the questions was did we -- did the Land Quality have adequate time to review public comments that were received in advance of the March board meeting. I would say yes, we did. But I would state in that that we went out with the primer in November of '17. We had almost four months. And we did only start receiving comments prior to that board meeting in February and prior to March meeting. And the bulk of those came in middle to late February. Just for a timeline there.

And with the comments today -- we received some comments. We'll get to those here that came in very late yesterday at the last hour, and we'll walk through some of those as well.

Board Member Shober, you asked the question about understanding the bond credit ratings enough to know how far down the credit rating list before the self-bond risk becomes unacceptable. Have we answered that question with the discussion of credit ratings for you?

BOARD MEMBER SHOBER: I believe so. In this handout here, it's -- once I started reading the explanations of these, there's a point in there where --

MR. WENDTLAND: Okay.

BOARD MEMBER SHOBER: -- it indicates they aren't any good anymore.

MR. WENDTLAND: We had a few other items that were questions that came up. You know, how are the credit ratings developed? I believe we've addressed that.

Is there other questions on that board?

BOARD MEMBER DINSMOOR: I have one, Kyle. The -- included in some of the comments you got for this meeting today was an article from the Moody's Investors Service that implies -- normally it doesn't imply, it states -- that credit ratings are in the -- in the thermal coal industry in the United States are less related to the financial health of the companies and more related to outside influences in the market sector. And I'm wondering if that throws a -- any kind of a wrench into the proposal that was made or how you might respond to that.

MR. WENDTLAND: Chairman Dinsmoor, I'm going to have our chief economist, Ms. Wichmann, answer that question.

MS. WICHMANN: Chairman Dinsmoor, thanks for your question. No, that's the reality in which corporate business works in. And we saw that especially in Wyoming with the Clean Power Plan and the things that happened to our energy industry as a result of policy and not necessarily of the financial -- or traditional financial sheets we would go by. It is a heavy influence, and one that needs to be considered as part of our review. And that's one of the things we definitely saw missing.

BOARD MEMBER DINSMOOR: So then financial health -- or the ability for a company to engage in self-bonding under the current proposal is really outside the hands of the company, if there's -- if it's an industry-based influence.

MR. WENDTLAND: Chairman Dinsmoor, I'm going to try to add some clarity to that. That's why the surveillance credit rating is so important, because it's taking into account all of those factors, not isolating one factor or prioritizing it over another. It's taking a look at industry-specific market risks. And what we're talking about is ensuring for the State that in the event of a forfeiture of a self-bond, we have recovery of the assets to complete the reclamation.

MS. WICHMANN: I would add one piece of the puzzle that DEQ is very aware and looking at wasn't just the self-bond piece, but how costly all these instruments become. So we're looking at the total package, the total toolbox of what an operator company has before them. And we're trying to balance the self-bonding piece so it's still competitive. It's not a point where you can no longer substitute or it's so expensive it's not possible and cash is your only option. So we really were looking at all the tools together and how they function together, if that helps.

And it became very apparent how policy or other influences can change that dynamic for what a company is able to get as far as other options in the financial markets.

BOARD MEMBER DINSMOOR: Did you find that those other influences affected other forms of bonding besides just the credit rating piece?

MS. WICHMANN: Yes, Chairman Dinsmoor, we did.

BOARD MEMBER DINSMOOR: Thank you.

MR. WENDTLAND: Chairman, are you ready to move forward?

BOARD MEMBER DINSMOOR: Yeah.

Any other questions from the board?

MR. WENDTLAND: The next question we had is were there alternatives that were considered before arriving at the conclusions that credit ratings were the appropriate index, why is that the best alternative? The answer to that is, yes, we did take a hard look at several elements of the events that transpired in the recent bankruptcy actions in the energy sector.

The credit rating serves several purposes. One, provides a more real-time picture of a company's financial health, especially with that surveillance credit rating.

Two, it serves as a third-party independent review of the company sales that is market sector and energy sector specific.

Three, it is an unbiased assessment based on a company's financial and market-based health.

If there's further questions on that, we'd be happy to answer them.

BOARD MEMBER DINSMOOR: Board members, any questions? Okay.

MR. WENDTLAND: The next question we had was the basis for choosing the rating levels that were chosen, and how does this correlate to financial risk for the State of Wyoming? Or perhaps the question should be reverted to ask how does this correlate to the risk of financial failure in the marketplace? The tiers were chosen on a risk-based assessment. Simply the higher the risk and exposure a company has, the less self-bond you're eligible for -- the company would be eligible for.

When a company falls below the investment grade or BBB credit rating risk, the alternative financial rating instrument must then be utilized and should be available, because as we already discussed, the company should be in a position before its financial situation is such it can't afford or becomes difficult for a company to qualify for an alternative.

Rules as proposed do not prohibit a company from operating, they just require that a certain financial health and risk level alternative be used. And, further, the rules as proposed now offer a land collateral option, and as well as the trust option for government securities that were not previously available. So we expanded those components in this rule package.

BOARD MEMBER DINSMOOR: Questions from the board?

BOARD MEMBER SHOBER: Yes.

Kyle, in this -- this land collateral option, I guess there must be some kind of an equity or assignment to the State in real properties that --

MR. WENDTLAND: We're first right on the mortgage. First lien on the mortgage, Board Member Shober.

BOARD MEMBER SHOBER: That is in substitution or in place of the -- of the -- may take the place of some of the bonding requirement or additional assurance?

MR. WENDTLAND: Chairman Dinsmoor, Board Member Shober, the land can be put up -- we have a land collateral option now that is being utilized by the company for roughly $26 million, where we are the first mortgagee on the mortgage. We're actually on the mortgages, personally. And if they were to go into default, we would collect the range on those assets.

BOARD MEMBER SHOBER: Okay.

CHAIRMAN GAMPETRO: Just a little point of order here. I'm really -- this is Jim Gampetro. I'm having a hard time hearing/understanding Micky's responses.

BOARD MEMBER DINSMOOR: Okay. We'll see if we can --

BOARD MEMBER SHOBER: I'll talk up a little bit louder, then.

MR. WENDTLAND: Chairman Dinsmoor. Board Member Gampetro, that was a question regarding the land collateral option. And if I understand Board Member Shober's question correctly, it was really making sure that if that option is used, can it be used as part of the bond. And if it is, is Wyoming in a protected position we're able to collect on the mortgage or the asset at the time of the --

CHAIRMAN GAMPETRO: I pretty much figured that based on your response, and so I'm good.

MR. WENDTLAND: Okay.

BOARD MEMBER DINSMOOR: Does Jim and Natalia have this document? Okay.

MR. WENDTLAND: Chairman?

BOARD MEMBER DINSMOOR: That's -- let's finish up on -- I think we have one left, then we can go --

MR. WENDTLAND: Then we can go back to 2A and go to the question summary.

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: Question was how does the State of Wyoming choose where it invest its monies and do they invest at risk levels --

THE REPORTER: I'm sorry. Can you slow down.

MR. WENDTLAND: Okay. Sorry.

How does the State of Wyoming choose where to invest its monies, and do they invest at risk levels comparable to the levels proposed in the rule for reclamation bonding?

Chairman Dinsmoor, in my response to the -- this is an apples and kiwi fruit comparison, not just an apples and oranges comparison. What we're talking about with this rule package is a situation where you have a known liability in the ground and we're addressing that liability risk.

I cannot speak to the investment goals and risks of the treasurer's office. That would be a question for the treasurer.

BOARD MEMBER DINSMOOR: Is there not some equivalency in those activities that you might be willing to invest in a company that doesn't qualify for self-bonding, for example? I mean, just -- is there inconsistency in that thought?

MR. WENDTLAND: Chairman Dinsmoor, that is, like I said, an apple and kiwi fruit comparison. We're talking about known liabilities, and we're talking about ensuring that funds are available for reclamation. Land Quality is not a bank, not an investment bank. We're holding those funds and making sure those funds are available in order to fulfill the reclamation obligation in the event of a forfeiture. That's a very different goal than investing for profit.

So, again, my -- my response to that is you would have to ask Treasurer Gordon what his risk tolerance and financial investment goals are. And I cannot speak to that.

BOARD MEMBER DINSMOOR: Okay. Good. Thank you.

CHAIRMAN GAMPETRO: This is Jim Gampetro. I'd like to butt in if I can again. I think Mark Gordon's got some rules that he has to go by. But having dealt with this kind of an issue in the banking world, you're going to have a portfolio which will have a variety of levels of risk. Obviously, the higher the risk, the more the return. And so -- and there's almost no way to then compare that if you're talking about a bond to the risk that is inherent in stocks.

And so it is -- it's a very difficult question, and I would agree with Kyle. You'd have to check with Mark. And I'm sure -- he's told me in the past that there are definitely some rules that he has to go by.

BOARD MEMBER DINSMOOR: Seems to me, more importantly, that the answer doesn't pertain to the proposal we've got in front of us. And that's the probably most important part of that.

MR. WENDTLAND: Chairman Dinsmoor, that's correct.

BOARD MEMBER HINES: Mr. Chairman.

BOARD MEMBER DINSMOOR: Yes, sir.

BOARD MEMBER HINES: One question. Then does the DEQ hold their funds separate and it's not going into the fund that the treasurer invests and that big pool of funds?

MS. WICHMANN: Correct. Correct. The cash we receive for reclamation bonds is actually held in a petty cash fund as if you had gone in and paid cash. And every year it's turned back to the agency, I guess you'd say, and it's redone into the petty cash fund. It's not an investment fund.

BOARD MEMBER HINES: Okay.

MR. WENDTLAND: Ms. Wichmann, do we have an answer?

MS. WICHMANN: Oh, yes.

MR. WENDTLAND: Yes? Okay.

MS. WICHMANN: Yes.

MR. WENDTLAND: Chairman Dinsmoor, Board Member Gampetro, we're back to 2A to try to get that answer, and we'll walk through the new comments.

MS. WICHMANN: Yes. And I had a call in to Michael Gavin. He's with S&P Global Ratings. He's out of Colorado. And he was on the road, but he was kind enough to give an off-the-cuff answer on this. He said he would follow up with an email as well. But he basically said the BBB default rating, roughly over the last 30 years, looking at bonds matured, was an average of about 1.4 percent.

CHAIRMAN GAMPETRO: I am actually shocked. I would have thought it would have been higher than that.

MR. WENDTLAND: And then the next rating down, did we have an answer with that?

MS. WICHMANN: No, he didn't. That's the only one he could give me during this time frame.

MR. WENDTLAND: Okay.

BOARD MEMBER HINES: Excuse me. That was BBB?

MS. WICHMANN: Yeah, BBB ratings. And he did say that does include the BBB minus.

CHAIRMAN GAMPETRO: I'm going to buy some junk bonds.

MS. WICHMANN: Yeah. There's definitely a market.

BOARD MEMBER DINSMOOR: So we don't -- we don't know how that changes between levels, but we know what one number is, anyway.

MS. WICHMANN: Right. The question was what was the default rate for BBB, and that's what I had proposed to S&P.

BOARD MEMBER DINSMOOR: Okay.

CHAIRMAN GAMPETRO: And thank you -- thank you, by the way.

MS. WICHMANN: Uh-huh.

BOARD MEMBER HINES: Mr. Chairman.

BOARD MEMBER DINSMOOR: Yes.

BOARD MEMBER HINES: My question, then, it would be reasonable to assume, as we went up, it would be a lower percentage in the As or AAA's or what --

MS. WICHMANN: Chairman Dinsmoor. Board Member, yes, I think that would be a fair assumption.

BOARD MEMBER HINES: Thank you.

BOARD MEMBER DINSMOOR: Would the opposite also be true? Do we know, as you go down in the -- in the rankings, that the percentages increase, and do they increase substantially or --

MS. WICHMANN: I think that's where you get -- Chairman Dinsmoor, I think that's where you get opinion in there. I would say the numbers do increase. To qualify that as significant or not significant I think is a matter of opinion. But, no, I would expect to see that number go up considerably.

BOARD MEMBER DINSMOOR: But somewhere in there is the balance point that we're all trying to achieve, and that balance point is how much risk are we willing to accept here versus how that -- that level of risk may impact the mining industry and their competitiveness elsewhere because of their choices that may be available to them for bonding. I mean, it's a -- it's a risk.

MR. WENDTLAND: Chairman Dinsmoor, I'm trying to balance that. My response to that is you have to consider the physical size of the operations in Wyoming, and particularly coal. Nowhere else in the country are they talking about 250 or $350 million liabilities. So that brings with it an inherent level of risk tolerance that we're also trying to balance. And that's where this cutoff line was chosen.

BOARD MEMBER DINSMOOR: Okay.

CHAIRMAN GAMPETRO: But, Chairman Dinsmoor, also if you're in the -- if your bond or your risk or your liability is in that 1.3 percent, and as Kyle points out, it's so large relative to your total economy, that makes a huge difference.

BOARD MEMBER DINSMOOR: Yes, I understand that. Thank you.

BOARD MEMBER SHOBER: Mr. Chairman. This risk or this percentage, on bond ratings does it apply all across the industry or is this specific to categories? And my guess -- part of my question is government entities are rated for bonding capacity. Are they included in this percentage or is it -- or is this a category that's specific to mining?

MS. WICHMANN: Chairman Dinsmoor. Board Member, I did not specify my request, so it would be everything in corporate America this would be the average for. It wasn't specific to mining. It wasn't specific to any industry. It wasn't specific to energy. It was just in general what is your BBB default rating for bonds over the last 30 years.

BOARD MEMBER SHOBER: So we're assuming, then, it's all across the -- all across the board of all categories, then?

MS. WICHMANN: Yes.

BOARD MEMBER SHOBER: Okay. Thank you.

BOARD MEMBER DINSMOOR: And --

CHAIRMAN GAMPETRO: I'm assuming -- this is Jim again. I'm assuming that we're talking about number of defaults, not number of dollars -- what percent of dollars defaulted. Is that a correct assumption?

MS. WICHMANN: Correct. It is a default rate.

BOARD MEMBER DINSMOOR: Any other questions from the board? I think that touches all of your questions.

MR. WENDTLAND: Chairman, I believe we answered the questions. Now we're going to walk through our summary of the new correspondence we've received as of yesterday, close of business, with regard to the new questions, if that suits your agenda.

BOARD MEMBER DINSMOOR: It does.

MR. WENDTLAND: So we broke these out. We went through and tried to group -- we didn't have a lot of time, but we did our best to group these with the different commenters we had.

The first is the subject matter on the requirement for the ultimate guarantor. And the comment was will further reduce those who qualify. This came from WMA and PacifiCorp. And this definition was proposed in the original actual primer in November of '17, and also in the March board meeting. And this is a financial definition.

I'm going to ask Ms. Wichmann if there's any additional comment on that, but this -- this -- this definition comes straight from the financial books.

MS. WICHMANN: Correct. It's the most basic definition for an ultimate parent entity. It means the person at the highest point in the corporate structure that controls all the decisions.

BOARD MEMBER DINSMOOR: Any questions on that?

I would ask one question. Is it appropriate to define the entity or is it more appropriate to define the characteristics or -- not characteristics. The factors that you want -- that you need to have available to you in order to make your decision. Chairman Dinsmoor, in this case, in a financial review, it's important that it be the absolute top corporate structure, because that is the board that controls everything below it. And those are the financials that would include leveraging any of the assets of the subsidiaries below it or promising any of the assets of the subsidiaries below it in their financial statements and disclosures. Any other entity would not show you that picture.

MR. WENDTLAND: Chairman Dinsmoor, I think the other component to consider here is this is something we learned as we worked through the Chapter 11 filings that we've seen, is the parents reached into the subsidiaries and took those assets and then everyone was bankrupt in the Chapter 11 filing. We have asked the question in the subsidiary level bonding, can you fence off and protect Wyoming share, and the answer was, no, that is not something that can actually legally or structurally be done.

So that leads us, again, to that parent entity that's making the decisions, that ultimate --

BOARD MEMBER DINSMOOR: So it really doesn't matter what factors you want to consider. What's more important is who has the ultimate influence on it.

MR. WENDTLAND: Correct.

The second question or comment from WMA and PacifiCorp was a retention of the 100 percent self-bonding. And the response to that is we want -- in the event of a forfeiture, we made the discussion in the March meeting as well, where the State is looking to have liquid cash available to protect the physical assets of the site and move into the reengineering, design, closure option plans while we're waiting for the forfeiture funds so we don't have a time value loss of money during erosion of capital during that period. That is why there's a -- the three tiers, and that's why there's a cash portion thereof.

The third item -- or third comment from WMA and PacifiCorp was no need to rush through the rules. Our response to that is we've been working on this for about three years now. And as we summarized in the opening, the actual physical rulemaking proposal has been on the table for about 15 months now. So we haven't been rushing this item.

And then WMA and PacifiCorp referenced back to the comments made in March of 2018. I believe we've addressed most of those in our discussions here. If there are more, we'll let those folks come forward during the public section.

And then we move to the -- we received several comments from the PRBRC. There was a comment made on elimination of self-bonding petition for rulemaking. That was rejected by the director because we are in this current rulemaking process of that petition.

The second comment was more specific. The following bond instruments -- this is in Section 2. They're referencing specific portions. The following bond instruments are B -- are accepted by the Division, and the proposal was a maybe substitution.

We looked at the federal reg here in 30 CFR 800.12. The regulatory authorities shall prescribe the form of the performance bond. So we believe our language is compliant with the SMCRA provisions for the Chapter 11s on this.

Then we had on Section 4(c)(ii), should not follow for -- should not allow for successive renewal in that section. Written as may be renewed if it meets the threshold in five years of mine life. Again, we went through -- I'm going to just shorten this a little bit for the sake of time here. And if the PRBRC representatives are here and want to specifically call any of these out, we'll be happy to go through those.

But, again, we took the hard look on these may/shalls. We took a hard look on the assignment of director versus administrator. We believe that -- and based on our counsel's advice from the AG -- that we are compliant with the SMCRA and the federal CFR provisions with the language as proposed.

BOARD MEMBER DINSMOOR: May I ask a question?

MR. WENDTLAND: Yes.

BOARD MEMBER DINSMOOR: This proposed rule, I presume, has not yet been reviewed with the federal agency, the Office of Surface Mining.

MR. WENDTLAND: Chairman Dinsmoor, that process is it has to pass our rulemaking before we can file the programmatic amendment to OSM and SMCRA compliance for capability.

BOARD MEMBER DINSMOOR: So we're at this point in time assuming they would also pass on it if we pass it within the state?

MR. WENDTLAND: That's correct. We believe it meets the requirements of the primacy cooperative agreement. And, again, I will -- I think it would be in -- the essence of time here, not trying to rush, but if there are some specifics that the PRBRC representatives would like to bring up, we received their comments very late in the day yesterday. And I believe that we can address those individually, but I think the bulk of what we had has been addressed by our comments with addressing the may/shall, our discretionary authority items and our review with the AG.

That brings us to the comments from Peabody Coal. And one of the comments was adjusting the proposed credit rating levels. We believe that we've discussed that -- I would say my response to that is I think we've discussed that pretty thoroughly today. And at this point in time, Land Quality is very comfortable with the credit ratings and the splits where we are and how they are petitioned. And I believe we have the background and history in our review to support those.

The second comment we had was retain ratio contemplations and remove credit rating proposals. Again, I think we've discussed that prior here where the only way we can do that would be to include the off-balance sheet. And when we do that, we really do eliminate the options across the board because of the credit revolver issues we've already discussed.

Allowing evergreen letters of credit. I think -- Ms. Wichmann, could you address how we deal with the renewals on letters of credit, please?

MS. WICHMANN: Sure. Our letters of credit require the usage of our form and our language, which makes them irrevocable letters of credit. So although the bank may have an expiration date, that expiration date is not something recognized by the State. And by the use of our language in our letter of credit form, an expiration date does not exist. That does not mean the bank doesn't look over those things at certain points in time, and the bank may be uncomfortable with continuing that letter of credit. If that happens, it's on them to then work with the operator to substitute something else or have the operators substitute a different instrument before we can then release the letter of credit we have for reclamation.

BOARD MEMBER DINSMOOR: I assume that means that the obligation continues until the substitution is submitted and approved by the Land Quality Division and the Attorney General and --

MS. WICHMANN: Chairman Dinsmoor, that is correct.

MR. WENDTLAND: The last comment we had from Peabody was allow standby letters of credit. I'm going to again defer this to our expert, Ms. Wichmann.

So you can give us response to that one.

MS. WICHMANN: Sure. Chairman Dinsmoor. I'll give a little explanation of the difference between a standby letter of credit and a full bona fide letter of credit. Basically, under our Wyoming statutes it says that cash in lieu of bond, one of those options is a letter of credit. And it specifically says "letter of credit" in the statute.

A letter of credit, when that amount is determined and the form is drafted, it actually goes on the bank's books as a liability, and so they must maintain certain reserves to that amount of credit they've disbursed.

A standby letter of credit does not have that same level of reserves required. And that's what then shifts the risk to the State, to make sure those are in place when it's needed. If you have just the letter of credit, which by statute we accept, then the risk is on the bank and the operator, as it was intended, and the State does not have to monitor that further.

BOARD MEMBER DINSMOOR: Questions on that letter of credit?

Thank you.

MR. WENDTLAND: Chairman Dinsmoor, that brings me to the last comments we received late yesterday. And these were, it looks like, a solicited series of emails from PRBRC that were consolidated and then sent to us via the electronics -- or our -- sorry.

MR. HULTS: The electronic comment portal.

MR. WENDTLAND: Mr. Hults, thank you.

Through the correct portal process. And in summarizing those, we had three comments to end self-bonding and nine in support of the rule change.

With that, Chairman Dinsmoor, I believe that concludes my comments and summary and gets us to where I think we are today.

BOARD MEMBER DINSMOOR: Okay. Let me take a moment to thank Ms. Wichmann. It would be nice if we could spend all afternoon and learn more, but we know that's not reasonable. But it's been instructive for me to hear what you've got to say. So I'm sure the other board members feel the same way. So thank you very much for attending.

BOARD MEMBER SHOBER: Thank you.

BOARD MEMBER DINSMOOR: Kyle, thank you, same thing on leading us up to date here.

Okay. We now have an opportunity -- I think we should go to public comment. I believe that's what --

MR. WENDTLAND: I think that's where you might be on the agenda, unless there are additional board member comments.

BOARD MEMBER DINSMOOR: So what do you think? Any discussion, comments or questions from the board that have not been addressed in this previous discussions?

MR. WENDTLAND: Chairman Dinsmoor, we have one more final comment or -- yeah. You want to -- yeah, from our expert.

BOARD MEMBER DINSMOOR: Please.

MS. WICHMANN: Chairman Dinsmoor, I apologize. When we went through the questions, this was one that came up from the board and I didn't address it when I had first taken it. And it's a big question, so I think it's important for the board to consider. And it was how much do the ratings cost? Because I think that's a key factor in this. People want to know that.

BOARD MEMBER DINSMOOR: Okay.

MS. WICHMANN: And what I'll say is for the larger operations, it's much cheaper because it's just a fixed cost. But to just give you an idea, if you were -- a $50 million issuance or something like that you needed, it's going to be well under 1 percent. And that 1 percent, for anything above that, stays pretty static. Where it gets more expensive are for the smaller operations. But looking at those, I think it went maybe as high as 3 percent. But generally it stayed in the 1 to 2 percent range for most of the operations we saw that were not co-related. And I wanted to make sure the board had that information.

BOARD MEMBER DINSMOOR: Is that a one-time payment or is it an annual payment? How does that work?

MS. WICHMANN: It's both. There's a fixed payment on -- up front. That's one time. And then there's an annual payment that's significantly less. That does happen on the anniversary date of whenever you start the rating process.

BOARD MEMBER DINSMOOR: So it's possible there are companies that are unrated today that have -- had no reason for or been unwilling to pay the fee.

MS. WICHMANN: Correct.

And thank you for indulging me. I'm sorry I forgot to give you that information.

MR. WENDTLAND: My apologies. I missed that, Mr. Chairman.

BOARD MEMBER DINSMOOR: No issues there.

Jim, Natalia, anything you want to discuss further or comment about?

CHAIRMAN GAMPETRO: No. Thank you, Phil. I think you did an excellent job. I think that the board was very forthcoming and did an excellent job. And our expert. It was all done very well. And, of course, Kyle and Craig and all of the people that put time into this, I thank you all very much.

BOARD MEMBER DINSMOOR: Natalia, anything you need to say?

BOARD MEMBER MACKER: I do not have any

further comments.

BOARD MEMBER DINSMOOR: Okay. Thank you.

Micky, John, anything?

BOARD MEMBER SHOBER: I'm good for now.

BOARD MEMBER DINSMOOR: You good?

Okay. Let's go to the public comment. How do we normally do this? Do we have a list to call them up or do we just ask them?

MR. WENDTLAND: Chairman, we generally just ask if there's comment from the public.

We would like you to come up, though, and stand right here so that our conferenced-in board members can hear you, please.

BOARD MEMBER DINSMOOR: Okay. So if there are members of the public that wish to address the board, please come up one at a time and --

MR. WENDTLAND: Or just if there's a raise of hands.

BOARD MEMBER DINSMOOR: We can start there. Are there people interested in making presentations?

Shannon?

MS. ANDERSON: Sure.

BOARD MEMBER DINSMOOR: Please.

MS. ANDERSON: Thank you, Mr. Chairman. Members of the board. Shannon Anderson on behalf of Powder

River Basin Resource Council. We support the rule package. We think the staff's done a good job answering the questions, wrestling with these really complex and tough issues, and has crafted a solution that will protect the State and taxpayers going into the future.

You have a really important opportunity today to pass this through and send it to the Environmental Quality Council. There's, of course, another public comment period there, so there's other opportunities to weigh in and make improvements and amendments. So we think that this is -- this has had due deliberation before you and we hope you pass it through. Thanks.

BOARD MEMBER DINSMOOR: Thank you.

BOARD MEMBER SHOBER: Thank you.

BOARD MEMBER DINSMOOR: Anybody else that wishes to make comment?

Yes, ma'am.

MR. WENDTLAND: Please state your name who you represent.

MS. WILBERT: Mr. Chairman and members of the board, this is a little unusual to be right in front of you like this. But thank you very much. My name is Connie Wilbert, and I am with Sierra Club, Wyoming Chapter.

As you know, we have long advocated for a complete end to self-bonding, and we still believe that

that's actually the best way to reduce risk to Wyoming taxpayers and to achieve the appropriate reclamation.

However, I want to say we very much appreciate the in-depth review and very comprehensive work that's gone into developing this proposed rule package that you're considering, and we support the package as a very solid step in the right direction that will reduce risk to the State of Wyoming and Wyoming citizens and taxpayers and help us achieve the reclamation that is the goal of this program. So we hope that you will accept this proposed rule package and we can move forward.

I'll just finish by saying that we see this as we're at a moment where we have a real opportunity to improve the rules that we've been operating under. As Mr. Wendtland noted, the current rules were developed almost 40 years ago, and they need to be updated to reflect current conditions. So we believe that this package you're considering today is a good step in the right direction and we hope that you will support it. Thank you very much.

BOARD MEMBER DINSMOOR: Thank you.

BOARD MEMBER SHOBER: Thank you.

MR. WENDTLAND: Just as a reminder to those making public comment. Please state your name and who you represent before your comment.

MR. MACKENZIE: Yes. My name is Jim

Mackenzie. That's M-A-C-K-E-N-Z-I-E. And I'm with 350.org.

Mr. Chair, board members, I'm here largely to support the Sierra Club's position on the new proposed rules. Just had a couple of comments. First of all, my background is pertinent here. I am a retired member of the IBEW, an electrician, a master electrician, and I've been working for the past five years as a volunteer for 350.org, which is a national -- international organization largely focused on climate issues.

I am very excited to be here today to listen to how Wyoming is proposing to move these rules into the 21st Century and the importance of protecting the taxpayers of Wyoming from the enormous possible downsides to unsecured bankruptcy and mine abandonment that requires immediate -- the restoration remediation.

Until I looked into this issue, I had no idea about the amounts of money we're talking about. We're talking about, of course, hundreds of millions of dollars for just a single mine. If you look at the 150 or so thousand families in Wyoming, and you're talking about hundreds of millions of dollars in exposure, that's a lot for each and every one of us. So I am very glad that this is moving along, and I -- we urge that the board vote today to bring this to conclusion. Thank you.

BOARD MEMBER DINSMOOR: Thank you.

MS. JOYCE: Good morning. I'm Pat Joyce, J-O-Y-C-E, from the Wyoming Mining Association.

And I appreciate especially your comments this morning, Kimber, of the education you've kind of enlightened us all with. And we've got a lot -- I'm still going ahead with my comments, but I think you've enlightened us a lot this morning. So I appreciate that, and that's all going to weigh in on the factors for the board, I'm sure.

We do appreciate the opportunity to relay our comments this morning from our members. We recognize that there's been a significant progress made since your last meeting in March on these revisions, and we'd like to let you know of our appreciation for the thoughtful work that has been completed.

We recognize the reduced mine life provision that was originally 10 years and has been reduced to 5 years, making it a much more workable and realistic proposal.

Additionally, we appreciate the ability to now use collateral as a bonding instrument, as provided by the legislature during the last session.

The response of the State is to manage their assets in such a way as to minimize financial risks. And the responsibility of the mines is to do no harm to the state while doing business in Wyoming, while at the same time operating an environmentally responsible and profitable business.

Both sides will benefit from the thoughtful and measured decision making in this process. Which brings me to the point that I want to make today.

During our last visit -- do you want me to wait?

(Crosstalk on the telephone.)

MR. WENDTLAND: Hang on. Hang on.

BOARD MEMBER DINSMOOR: Natalia.

MR. WENDTLAND: No, that's Jim.

BOARD MEMBER DINSMOOR: Jim, can we ask that you mute your phone, please?

MS. JOYCE: That worked.

MR. WENDTLAND: Okay.

BOARD MEMBER DINSMOOR: Thank you.

MS. JOYCE: I just hate competition.

BOARD MEMBER DINSMOOR: Sorry for the interruption.

MS. JOYCE: Anyway, I'll start over. During our last visit, the March advisory board, we asked for additional information regarding the levels of credit ratings and how they are applied to mining companies and how to determine how they compare the use of credit ratings for your business and personal use. And I think you've had a good input on that today.

I'm glad to see that you have received this information today, and I'll give you more background for the decision you're about to make regarding the rules changes for coal and noncoal mines in Wyoming. I know you take this responsibility seriously, as do all of us that are commenting here today.

If you'll recall, in our letter last March, it was determined that most mining companies, by way of organization, do not likely ever reach the rating levels cited by LQD to be acceptable levels of risk. We continue to assert that for a mine to not reach those levels of ratings does not accurately determine their lack of suitability for self-bonding. And as we have noted in our recent submittal, we have learned that the third-party credit rating agencies use a different set of criteria. And I don't know as that actually lines up with what you were referring to today, but I think we -- there's room for discussion on that.

By maintaining the level cited by LQD, the State put self-bonding out of the reach of several of the mines who currently use some portion of self-bonding today. By not reconstructing the credit rating levels to concur with the standard mine ratings, the State would effectively render them unqualified for self-bonding and negatively affect their competitiveness.

The business of credit at any level is complicated. You all have asked to make a recommendation to the EQC that is not only complicated, but critical for both state and mining industry. The goal for all of us is to maintain the viable use of self-bonding as an option for the mining industry while providing the State of Wyoming with tools to responsibly manage their financial risk for its citizens.

The critical key for this rulemaking is to retain the opportunity for big business to continue to do business in Wyoming, thus continuing to produce a strong state revenue while responsibly maintaining their accountability related to any risk to the State. To do that, WMA maintains that a reconstructed rating grid be considered based on credit ratings that reflect levels common to or typical of various mining sectors.

The objective is to establish a simple rating system that will give the State of Wyoming the ability to manage their financial risk while keeping self-bonding as a viable financial instrument.

WMA would like to see a level of credit ratings reflect how third-party credit rating agencies review healthy mining companies.

Secondly, it's very important that the State define a reliable definition of parent company that allows the State access to the telling financial data required to manage their financial risk. I think you've referred to that today.

WMA believes that we are almost there, but not quite. And we would ask that the advisory board take one more deep dive into this right -- to get this right for the sake of all those involved. I think you're very close. We'd just like one last review.

We believe it would be much easier to take a bit more time now to get this rule written accurately and in a way that would be executed efficiently going forward than it would to be -- to have it come back in one or two years and have to fix it again. Meanwhile, the real business will be affected -- meanwhile real businesses, pardon me, will be affected negatively if they are unable to use this source of bonding. And that's, again, with the other types of banding that we have available to them.

The mining companies of Wyoming are world class, and they extract a world class resource for the benefit of Wyoming and the world. We would ask you continue to work with us to get this right. It may not be sexy, but it's a critical rule change for the State of Wyoming and the mines who operate here, and we are willing to help you in any way we can.

Appreciate it. Thank you.

BOARD MEMBER DINSMOOR: Thank you.

BOARD MEMBER SHOBER: Thank you.

BOARD MEMBER DINSMOOR: Any other public comments?

Okay. We've got nobody else on the phone other than the board members; is that correct?

MR. WENDTLAND: That is correct, Chairman.

BOARD MEMBER DINSMOOR: Then let's consider the public comment period closed. And I believe that takes us to the point of discussion amongst the board members.

Is there any further discussion or questions or comments about the rule proposal in front of us today?

BOARD MEMBER HINES: Mr. Chairman.

BOARD MEMBER DINSMOOR: Yes.

BOARD MEMBER HINES: My one concern is, as I understand in the whole process is that by reducing the self-bonding, we're penalizing the companies that have used it for years and have good -- you know, the ones that have no abuses. And also I think in this field with the nonprofits, they didn't come forward at this time before there was concern about their losing the self-bonding. And I just wondered if there's any way that it can be written where -- with strict -- where -- that the history of it, a company would go into if they've done business for years and years in Wyoming, their finances and everything else meets the qualifications, that we could have a class that could be self-bonding.

BOARD MEMBER DINSMOOR: You want to address that or --

MR. WENDTLAND: I can give it a shot, Chairman Dinsmoor.

Board Member Hines, thank you for your question. You know, the way we looked at this was looking at protecting the state from a reclamation liability. And even though we have companies that have that history, there's no guarantee in the forthcoming years that that history is going to make certain that those companies are financially solvent and in a condition to self-bond. That's kind of what we saw with the bankruptcies in 2014 and '15.

And we're not saying that you can't bond, and we're not saying that you can't self-bond. What we believe this rule package does is it provides that broad range of instruments to find the best fit for this financial status of the business today and moving forward.

CHAIRMAN GAMPETRO: This is Jim Gampetro. Administrator Wendtland and Board Member Hines, I -- my question is is the risk with the publicly owned and controlled utilities actually less than with the standard organizational structure?

MR. WENDTLAND: Chairman Dinsmoor, Board Member Gampetro and Board Member Hines, we believe we took that into an account by using the different tiers rather than one only self-bond limit. It basically -- we broadened that spectrum and said if you are at that upper tier, then you can get to 75 percent and we're going to retain 25 percent for liquidity to protect the physical assets of the site in the event of forfeiture. Then you move to 70 and then you move to 50-50. So we believe we've addressed that, where we have companies that may be slightly differently structured that other companies.

But at the end of the day, it really doesn't matter whether you're a utility, an IOU or a peer, maybe, or traditional coal company or a construction company that is in the coal business. We have a liability that is physically defined on-the-ground surface at the time that we're trying to ensure that we can recover assets to guarantee that we have the funds available to complete that reclamation in the event of a forfeiture.

CHAIRMAN GAMPETRO: Do we have any historical evidence that the publicly owned utilities have been a lesser risk than others?

MR. WENDTLAND: Chairman Dinsmoor. Board Member Gampetro, I'm going to have Kimber help us with this one.

MS. WICHMANN: I can tell you that the utilities are A-rated companies, and they continue through the A rating even in the downturn in the market, if that helps you.

CHAIRMAN GAMPETRO: It does. It does. Thank you.

BOARD MEMBER DINSMOOR: Any other comments?

BOARD MEMBER SHOBER: Yes. Yes. Mr. Chairman.

Kyle, this is all set up for the purpose of when there's a default on the reclamation, what -- what in the life of a mine -- what triggers the default or is there a -- what if a company just does -- is there a minimal amount of work that they can do just to stay there and everything stays there stagnant? What triggers the State to step in and take over?

MR. WENDTLAND: Chairman Dinsmoor. Board Member Shober, it's a little different between coal and noncoal. But, really, it's when we see a Chapter 7 filing, is really the cutoff. And that's when we move through the process of bankruptcy which requires a notification to the council and working with the AG to then move through the collection of funds. So...

BOARD MEMBER SHOBER: Chapter 7.

MR. WENDTLAND: Chapter 7.

BOARD MEMBER SHOBER: Chapter 7 is the bankruptcy that says we're done.

MR. WENDTLAND: We're done.

BOARD MEMBER SHOBER: Not reorganization.

MR. WENDTLAND: Chapter 11 is reorganization. Chapter 7 is true forfeiture.

BOARD MEMBER SHOBER: That's what triggers?

MR. WENDTLAND: Correct.

BOARD MEMBER SHOBER: Okay.

BOARD MEMBER DINSMOOR: I have a question, and I don't -- I don't know that there's an easy answer for it, but I'm still stuck with the idea that you haven't told a company that they can't self-bond. Since the Land Quality -- I don't mean to be accusatory here. Since the Land Quality Division has chosen the levels at which self-bonding may or may not be allowed, and in the face of some evidence that we were able to come up, anyway -- my company -- regarding a statement from Moody's Investors Service, they indicated the thermal coal industry, through no fault of their own, would never reach the levels or close to the levels that have been established or proposed by the Land Quality Division. I feel like we have taken it off the table as a tool for some of the companies in Wyoming.

And there is -- in the grand scheme of things, it's probably not going to make or break any of the companies -- and it's my opinion, anyway -- but it's significant because it can affect our competitiveness. Self-bond is one of the many tools of bonding. It has certain risks associated with it. It also has certain costs or noncosts associated with it, as do all the bonding tools. And without that tool available, we won't be as competitive as we might have otherwise been.

So there's -- I referred earlier to trying to find a balance point. The balance point is when are we affecting a competitiveness of the mines by trying to ratchet that risk down to almost zero. And where does that risk really exist? I'm still -- I'll still struggling with that one.

Like I said, I don't think there's a question to ask. I'm not sure there's an answer to give, but I'm struggling with it.

MR. WENDTLAND: Chairman Dinsmoor, no offense taken. Hopefully my answer is not an offense given, because I'm going to be pretty direct in this answer. If a company can't make those minimum levels on a fairly substantial reclamation liability in the hundreds of millions of dollars, Wyoming is not a bank. We're not in the business of bankrolling reclamation. So if you cannot make that minimum, self-bonding just isn't the right choice for the company. And there are several alternatives in the market space that can be used.

So we're not saying that you cannot -- a company cannot bond or do business in the state and be competitive in that business. We're allowing that business or company structure to choose based on their ability, financial ability, the best instrument available for their company to move forward that protects the State and guarantees that we can complete the reclamation in the event of a Chapter 7 forfeiture.

BOARD MEMBER DINSMOOR: I understand that. And I don't take issue with that, except that because of the levels chosen -- as I said, self-bonding is off the table for some companies. Even at a time -- and I'll just speak to the company that I work for -- even during the time that we are as healthy as we have been, but we still do not -- for reasons perhaps outside of our control, we still will not reach those minimum levels. So it's a -- it's a conundrum I can't wrap my mind around this stuff. Just accepting it.

CHAIRMAN GAMPETRO: Again.

BOARD MEMBER DINSMOOR: Go ahead, Jim.

CHAIRMAN GAMPETRO: This is Jim. I guess I would ask competitive with whom? Is it going to change our competitiveness with natural gas? Unlikely, in my opinion. Is it going to change our competitiveness with other states with whom we compete to sell coal? I guess I would ask that, did we look at that? Have we looked at that?

MR. WENDTLAND: Chairman Dinsmoor. Board Member Gampetro, I can't say that we've specifically looked just at that isolated question, but what I would say is is Wyoming is still largest thermal coal producer because of strip ratio and cost, and that is unlikely to change.

CHAIRMAN GAMPETRO: And quality of coal, I would also add.

BOARD MEMBER DINSMOOR: Other comments from board members?

Okay. We have a proposal in front of us.

BOARD MEMBER SHOBER: Do we --

Mr. Chairman, we're ready now for a -- Kyle, what is your -- do we need a motion for approval of changes as stated, or how --

BOARD MEMBER DINSMOOR: We need a motion on the proposal in front of us.

MR. WENDTLAND: Chairman Dinsmoor, Mr. Hults may be able to help us with a little bit of a motion here.

MR. HULTS: Yeah. Due to recent changes in the practice and procedure rules that went through, there's basically three options. You vote to move it forward, you vote to move it forward with changes that were discussed or changes that may have occurred during the meeting, or you may table it altogether and ask that we revisit it again.

BOARD MEMBER DINSMOOR: Does that clarify your question?

BOARD MEMBER SHOBER: Yes. So I'm going to have an attempt at this, and so if I don't get it right, we can fix it.

My motion is to move the rule changes forward to the next step in the process.

BOARD MEMBER MACKER: Second.

MR. WENDTLAND: Chairman Dinsmoor. Board Member Shober, I might try to refine your motion just a little.

BOARD MEMBER SHOBER: Okay.

MR. WENDTLAND: That this board passes the rule package, as presented today, and moves it forward for review by the Environmental Quality Council.

Mr. Hults, any additions to that?

MR. HULTS: I would concur with that. That's -- we can no longer move forward to the Environmental Quality Council with a recommendation by this board that they move to that formal rulemaking.

BOARD MEMBER DINSMOOR: Okay.

BOARD MEMBER SHOBER: Okay. That was my assumption, what we were -- we're one step in the process and it's got to go to the next step.

MR. WENDTLAND: Right.

BOARD MEMBER SHOBER: So my motion was an attempt to state that we move and accept this and move it to the --

MR. WENDTLAND: So, Chairman Dinsmoor, you may need to accept Board Member Shober's motion or reject it or amend it to what we just discussed so that it's clear.

BOARD MEMBER DINSMOOR: Okay. So we got a motion to -- that was perhaps not worded properly. We've got a proposed re-wording of that motion.

Board Member Hines.

BOARD MEMBER HINES: Mr. Chairman, my only question is the next step doesn't make amendments. They either accept or reject it. And then it goes to the governor? Am I following this correctly?

MR. WENDTLAND: Chairman Dinsmoor. Board Member Hines, the Environmental Quality Council will public notice the rule package. They will hear it. They have options, then, to -- Mr. Hults, can you clarify those options? Please speak up too.

MR. HULTS: Certainly. Chairman Dinsmoor.

Board Member Hines, the Environmental Quality Council is a separate agency. They are a hearing board on the rules. So there will be a public comment period. They're able to make the revisions to the rules based on whatever the comments may be, the comments amongst the board or the Council. So there can be changes from what you're seeing.

BOARD MEMBER DINSMOOR: Is it fair to say they have the same choices that we have?

MR. HULTS: At that point, I would say it's a little bit different, only in the fact that their options are a little bit more limited. They have the ability to table it again or send it back down. I think the big difference is they're the final arbiter. They could even kick it back to the advisory board if necessary. If they didn't believe that discussions were fully deliberated, that they could actually move it back towards the advisory board. So I would say they have expanded options than the board does, actually.

BOARD MEMBER DINSMOOR: Okay.

MR. WENDTLAND: Mr. Chairman. Board Member Hines, for theoretical purposes, if the Council, Environmental Quality Council, would hear and approve the rule package, then the governor has 75 days to choose to sign or not sign it into --

BOARD MEMBER DINSMOOR: I guess --

CHAIRMAN GAMPETRO: Do we have a motion? This is Jim Gampetro. Do we have a motion yet?

BOARD MEMBER DINSMOOR: We've got a motion, Jim. And -- and a suggestion that maybe the wording needs to change. So we're still in the discussion stage. Hold on just a --

CHAIRMAN GAMPETRO: You need to either withdraw the motion and make a new motion. I don't know about changing the language of a motion.

BOARD MEMBER DINSMOOR: You're probably right there, but...

MR. WENDTLAND: Yeah. Natalia had seconded. So she needs to withdraw -- or withdraw the motion or vote and vote it down and make the new motion.

BOARD MEMBER DINSMOOR: Right. But before we go there, I've got -- the conversation's going as to what the Council can and cannot do.

Are you satisfied? Did your question get answered?

BOARD MEMBER HINES: Mr. Chairman, I'm -- I've gone through many of these, but it was at the legislative branch where the one that went to the Council, they didn't change -- couldn't change, I didn't think. But any member of the legislature could object to the governor and make their appeal that way. And I suppose this would work the same way. Any Board Member, if they felt so inclined, could -- if the -- if the environmental council approved it before the governor's signature, well, we can object to the governor that way.

BOARD MEMBER DINSMOOR: Any member of --

BOARD MEMBER HINES: Any member of the --

BOARD MEMBER DINSMOOR: -- the Environmental Quality Council?

BOARD MEMBER HINES: Yeah. I'm not sure --

MR. HULTS: Mr. Chairman. Board Member Hines, that would be an appealable decision, because it's final agency action,, so those court proceedings would be available, if necessary.

BOARD MEMBER DINSMOOR: I just have one last question in regards to -- about taking it up to the governor. Does the governor have a -- simply a sign/no sign option, or is it -- for lack of a better term, does he or she have a line-item veto opportunity?

MR. HULTS: Mr. Chairman, that is correct. He does have line item veto powers. I've never seen it in practice since I've been with the LQD, so I don't think it gets used very often.

BOARD MEMBER DINSMOOR: Just thought we ought to vet that entirely. So I appreciate that.

Okay. So we've got a motion. We've got a second. The discussion has been that the motion needs to be re-worded. We need to have the second withdrawn.

Natalia.

BOARD MEMBER MACKER: The second has withdrawn.

BOARD MEMBER DINSMOOR: Okay. Appreciate that. And now we don't -- we don't revise the language of a motion. Do we have a new motion? And perhaps we want to ask for Craig's help in --

MR. WENDTLAND: Micky needs to withdraw his original motion.

BOARD MEMBER DINSMOOR: Okay.

BOARD MEMBER SHOBER: Yes, I will. I will withdraw.

BOARD MEMBER DINSMOOR: Okay. So can we go back to the language you were proposing, Craig?

MR. HULTS: Sure. Mr. Chairman, the option that I think you're pointing to is that the board would recommend that the rules proceed to Environmental Quality Council for formal rulemaking as presented today.

BOARD MEMBER DINSMOOR: Okay.

CHAIRMAN GAMPETRO: Could somebody -- this is Jim. Could somebody repeat that so that I can understand it?

MR. WENDTLAND: Yeah. We'll have Craig get close to the phone here.

BOARD MEMBER DINSMOOR: Hold on, Jim.

MR. HULTS: What I had proposed, Jim, was that the advisory board would recommend that the rules proceed to Environmental Quality Council for formal rulemaking as they were presented today.

CHAIRMAN GAMPETRO: Thank you.

MR. HULTS: Thank you.

BOARD MEMBER DINSMOOR: I want to ask Micky, is that the -- does that represent what you had intended?

BOARD MEMBER SHOBER: That represents what I intended to say, and I -- I would move that motion.

BOARD MEMBER DINSMOOR: Okay. So we now have a motion to move these proposed rules on to the Environmental Quality Council. Do I hear a second?

CHAIRMAN GAMPETRO: I will second it. This is Jim.

BOARD MEMBER DINSMOOR: Okay. Jim has seconded the motion. Is there any further discussion amongst the board members? There being none, I'll call for a vote. All in favor of the motion, please signify by saying aye.

BOARD MEMBER SHOBER: Aye.

BOARD MEMBER MACKER: Aye.

CHAIRMAN GAMPETRO: Aye.

BOARD MEMBER HINES: Aye.

MR. WENDTLAND: Mr. Chairman, you might go through --

BOARD MEMBER DINSMOOR: One by one?

MR. WENDTLAND: Just so we have them, because we have them on the call.

BOARD MEMBER DINSMOOR: We appear to have four ayes.

All those opposed, nay.

I will vote nay. And I would like to explain that associated with my vote is not a disagreement with where the Land Quality Division is trying to move this, only the mechanism with which we're trying to move it at this point in time.

So the motion --

CHAIRMAN GAMPETRO: I don't -- I don't think we even need your vote, because you're -- you're running the meeting. You're the chairman today. You don't get to vote.

BOARD MEMBER DINSMOOR: I wanted to go on record, though, Jim.

Okay. So the motion carries 4 to 1.

I have a question, I guess, of Mr. Hults. How do we -- I would like to make sure that the effort that this board has extended with the help of the Land Quality Division in reviewing all of this goes forward with the rule package to the Council. I think this needs to be part of their -- their administrative record, if you would. Is that automatic or is there some action that we needed to --

MR. HULTS: Mr. Chairman, as part of the rule package that we forward on to the Environmental Quality Council, they will get the meeting minutes from each of our meetings that we've had on this and any supporting documents that we relied on to get to that point.

BOARD MEMBER DINSMOOR: Okay. Good. Thank you for that.

Okay. So that issue is closed. Are there any other items for discussion amongst the board? Or any other items we need -- I don't know if we need public input for that.

MR. WENDTLAND: To this point, it's your meeting.

BOARD MEMBER DINSMOOR: Okay. Any other board issues?

Jim? Natalia? Anything you want to bring up?

BOARD MEMBER MACKER: No. Thank you.

CHAIRMAN GAMPETRO: I'm good. No, thank you. I'm good here.

BOARD MEMBER DINSMOOR: All right. If there's nothing else, then I will entertain a motion to adjourn.

BOARD MEMBER MACKER: Move to adjourn.

BOARD MEMBER DINSMOOR: I have a motion.

BOARD MEMBER SHOBER: Second.

BOARD MEMBER DINSMOOR: Seconded. All in favor say aye.

BOARD MEMBER SHOBER: Aye.

BOARD MEMBER MACKER: Aye.

CHAIRMAN GAMPETRO: Aye.

BOARD MEMBER HINES: Aye.

BOARD MEMBER DINSMOOR: Thank you. We are adjourned.

(Meeting proceedings concluded 12:18 p.m., September 19, 2018.)

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 8th day of October, 2018.

____
KATHY J. KENDRICK
Registered Professional Reporter