

1 ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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3

MEETING OF THE

4

UNDERGROUND STORAGE TANK POLICY COMMISSION

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Phoenix, Arizona

8

December 17, 2003

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9:00 a.m.

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Location: Carnegie Public Library,

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Basement Conference Room

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1101 West Washington

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Phoenix, Arizona

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20 Reported by:

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1 COMMITTEE MEMBERS PRESENT:

2 Michael O'Hara, Chairman

3 Hal Gill, Vice Chairman

4 Roger Beal

5 Mitchell Klein, Alternate

6 Shannon Davis

7 Andrea Martincic

8 Gail Clement

9 George Tsiolis

10 Theresa Foster

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

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3 CHAIRMAN O'HARA: Call this meeting to order.

4 Sorry, Al.

5 Welcome to the December meeting of the UST
6 Policy Commission. Thank you all for being here.

7 I would like to start with Item No. 1, which is
8 the call to order beginning on my left.

9 MS. FOSTER: Theresa Foster.

10 MR. TSIOLIS: George Tsiolis.

11 MS. MARTINCIC: Andrea Martincic.

12 MS. DAVIS: Shannon Davis.

13 CHAIRMAN O'HARA: Mike O'Hara.

14 MR. GILL: Hal Gill.

15 MR. KLEIN: Mitchell Klein.

16 MR. BEAL: Roger Beal.

17 CHAIRMAN O'HARA: Thank you.

18 Item 2 on the agenda, approval of minutes from
19 November 2003.

20 Has everyone had the opportunity to receive and
21 review those minutes before this meeting?

22 It sounds like not everyone has gotten them, but
23 without objection, I will postpone that to the next
24 meeting. Is that okay?

25 MR. JOHNSON: I would, Mike, like to say that we

1 have a new court reporter. Her name is Debbie Worsley of
2 Worsley Reporting, Inc., and I would appreciate it, I'm
3 sure she would too, we tend to talk in our jargon and
4 acronyms, so for her benefit, if we could try and spell
5 what some of the acronyms are, I know she would appreciate
6 it.

7 MR. TSIOLIS: If that's heat blasting out of it,
8 not only is it loud, but it will get warm really fast in
9 here, if we could do something about that.

10 MR. JOHNSON: I will go and talk to somebody.

11 CHAIRMAN O'HARA: Debbie, feel free to interrupt
12 if you don't hear something. Okay?

13 I'm going to postpone Item No. 3 and move to Item
14 4, without objection, to the next meeting, ADEQ updates.
15 No. 4 is ADEQ updates.

16 MS. DAVIS: Just for clarification, are we
17 approving -- are we approving these minutes or are we
18 approving -- where is Al?

19 CHAIRMAN O'HARA: Did we have a court reporter
20 last meeting?

21 A VOICE: Are those the minutes we are being
22 asked to approve?

23 CHAIRMAN O'HARA: I would imagine we went to a
24 court reporter, so that's going to be our standard.

25 MR. JOHNSON: What you have in the packet is just

1 the excerpted minutes of DEQ's for benefit of the
2 Commission. The court reporter's -- I don't. I think the
3 one that we got from the court reporter who was here last
4 time went out to everybody, and hopefully everybody has
5 got a copy. I don't know. It is Christmastime. Whether
6 everybody got them today, I do not know, but you're
7 approving the full-blown recorded minutes.

8 CHAIRMAN O'HARA: We will do that next meeting --
9 that's fine -- for everybody to have an opportunity.

10 Updates, Item A is SAF Monthly Report by Judy
11 Navarette.

12 MS. NAVARETTE: I'm Judy Navarette, and does
13 everybody have their packet of the report from the State
14 Assurance Fund?

15 We received 55 applications in the month of
16 November and made determinations on 71 applications. Our
17 numbers went up about 25 or 30, but I can guarantee we are
18 taking care of that this month.

19 Okay. We had an increase of about 25 or 30
20 applications from the numbers from last month, and we're
21 taking care of that this month, so the numbers will be
22 much better for December.

23 And on the informal appeals, we're getting a lot
24 of those out the door, getting those settled, getting the
25 information in so that we can send out the determination

1 letters on those.

2 MR. GILL: Judy, you said you had 25, you got 25
3 more applications in? Or what was the 25 more -- I can't
4 -- on your numbers?

5 MS. NAVARETTE: 25 more, total number of
6 applications in-house.

7 MR. GILL: I think it was 185 last month, 220
8 this month. I'm looking at in regard to the bar graph.
9 That doesn't -- that's not what you are talking about? It
10 actually went down.

11 MS. NAVARETTE: All right. I'm talking about the
12 total number of applications in-house.

13 CHAIRMAN O'HARA: Not received this month.

14 MR. GILL: The bar graph was received for the
15 month of November. Okay.

16 MS. MARTINCIC: Judy, are these all going to be
17 from Maricopa, then, since you guys are working on an in
18 and out with non-Maricopa?

19 MS. NAVARETTE: No. This report shows all the
20 applications that are in-house that are going through the
21 process of technical review and cost review.

22 MS. MARTINCIC: So there will be some on here?

23 MS. NAVARETTE: Yes. Yes. That includes
24 Maricopa and non-Maricopa applications.

25 And the second page of the report shows you where

1 they're at in the process.

2 MR. GILL: Does it look like around 200, a total
3 number of applications around 200 and something? That's
4 kind of where it was last time.

5 MS. NAVARETTE: I'm hoping to take that number
6 down a great deal this month, so the report next month,
7 I'm predicting that that number will be down.

8 CHAIRMAN O'HARA: Judy, you always have two to
9 three months' worth of applications in the house. It will
10 always be three times your monthly. You can't get an
11 application done quicker than a couple of months?

12 MS. NAVARETTE: Right. There is just a certain
13 amount that will always be in-house --

14 CHAIRMAN O'HARA: It's a work in progress.

15 MS. NAVARETTE: -- as we turn them out.

16 CHAIRMAN O'HARA: Let the record reflect that
17 Gail Clement is here.

18 MR. TSIOLIS: Are we asking questions? Are you
19 done with your presentation or waiting to then ask
20 questions? I don't understand the format.

21 CHAIRMAN O'HARA: The presentation has already
22 been given to you in the form of an in/out.

23 MR. TSIOLIS: I have a question. Is there any
24 way for you to state just off the top of your head,
25 without having to do a big research, roughly, plus or

1 minus 10 percent, what percentage of the applications you
2 received in 2003 are for releases that are reported after
3 2001?

4 MS. NAVARETTE: Roughly?

5 MR. TSIOLIS: Roughly.

6 MS. NAVARETTE: After 2001?

7 MR. TSIOLIS: That were reported after 2001.

8 MS. NAVARETTE: George, I don't think we have a
9 great deal of applications with releases recorded after
10 2001, and I can't give you a 10 percent number, but I can
11 say it would be very low.

12 MR. TSIOLIS: So most of these releases are for
13 older LUSTs?

14 CHAIRMAN O'HARA: Mostly applications, you mean?

15 MR. TSIOLIS: Yeah, I was wondering to what
16 extent. The thrust of my question, even though there was
17 supposed to be an upgrade by '98 to all those tanks,
18 reimbursement for less, then are postdating that update?

19 CHAIRMAN O'HARA: We can probably get information
20 from the LUST list and see how many LUSTs have been issued
21 after that date you are looking for.

22 MR. TSIOLIS: If it's not much, that answers my
23 question.

24 MS. NAVARETTE: We're not receiving applications.
25 I'm not saying that I can't answer for the program side

1 whether they have received -- whether they have opened
2 LUSTs or not.

3 MR. TSIOLIS: That's Item C, I think. I just
4 wanted to know from applications, from that standpoint.
5 Thanks.

6 MS. NAVARETTE: You are welcome.

7 CHAIRMAN O'HARA: Any other questions for Judy?
8 Thank you, Judy.

9 MS. NAVARETTE: Thank you.

10 CHAIRMAN O'HARA: Judy, there was a secondary
11 item I don't know if you are aware of. It says, "Amount
12 of SAF co-pay credit denied volunteers for application
13 preparation." Did we ever get an update on that number?

14 MS. NAVARETTE: I can give you an update from
15 1999. That's when they started using the worksheet, and
16 we have the D-33 denial from them, and that number is:
17 There's been \$101,417 denied for D-33 since 1999, but
18 overall, over that whole program there have been 1238
19 volunteer applications, 113 of those were zero pays for
20 one reason or another, and there's been 1125 total that
21 have been issued determinations, if that number helps you.

22 CHAIRMAN O'HARA: Thank you.

23 MS. MARTINCIC: So since 1999, 4017 have been
24 denied for the co-pay credit is what you are saying?

25 MS. NAVARETTE: No. \$101,417. That's a lot.

1 MS. MARTINCIC: I was like what?

2 CHAIRMAN O'HARA: Thank you, Judy.

3 MS. NAVARATTE: You're welcome.

4 CHAIRMAN O'HARA: Moving on, UST Corrective
5 Action Workload Status Report. Joe.

6 MR. DROSENDAHL: My name is Joe Drosendahl,
7 Acting Section Manager for the Corrective Action Section.

8 And in your packet is our Monthly Report , and
9 currently we have four closure requests that have now been
10 reviewed. There are 18 SCRs that currently are in-house
11 and haven't been reviewed, but that's because this last
12 month we received twelve new ones.

13 And we have eight CAPs that have not been
14 reviewed so far. And at the bottom of the page shows how
15 many appeals that we're currently dealing with for this
16 last month. We only received one informal appeal and we
17 have three informal appeals in process. We did not
18 receive any formal appeals and we have one formal appeal
19 in process.

20 In regards to the monthly numbers, I'm in the
21 process of developing some graphs that show the trends, so
22 hopefully in future meetings I will have some graphs that
23 show the trend of the Corrective Action Section.

24 CHAIRMAN O'HARA: Thank you. Comments or
25 questions for Joe?

1 MR. GILL: Joe, when you say the trends, you are
2 -- for instance, on the CAP status report, on NODs, or
3 notice of deficiencies, trend is going to show the trends
4 of deficiencies?

5 MR. DROSENDAHL: I'm trying to develop numerous
6 graphs showing all the different trends, so I'm not done
7 creating them, so, you know, getting them approved, so --

8 MR. GILL: If I remember right, that's kind of
9 what we wanted to see, we kind of wanted to see what are
10 those deficiencies. Is there some way that we can get the
11 word out, Joe?

12 MR. DROSENDAHL: That kind of goes into the
13 second part of the agenda, the Common Deficiencies of
14 Corrective Action Plans. I asked my staff to compile a
15 list of all the -- what they thought were the common
16 deficiencies of not only that, but also Site
17 Characterization Reports and LUST case closures.

18 We're in the process of combining all those to
19 come up with the final top ten for each major report. So
20 we're in the process of, you know, collating all that and
21 getting it approved, so we will have that soon.

22 MR. GILL: Could I ask, when you look at the top
23 ten, rather than put down a statute or rule reference,
24 could you look into it a little deeper and see what is the
25 -- why it was denied rather than -- a lot of times it

1 comes out with a statute.

2 MR. DROSENDAHL: No. These are all SER, if not,
3 contain a site ap, or things like that.

4 MR. GILL: That's perfect. Thank you.

5 MS. FOSTER: Mr. Chairman, now that DEQ's been
6 staffed up on risk assessment, I thought I might see an
7 improvement of risk numbers that have been closed. What
8 I'm saying is, it is growing in numbers. Can you tell us
9 about what next is going to be done in the next six months
10 in terms of trying to close more sites for risk
11 assessments?

12 MR. DROSENDAHL: I'm not sure I can answer that
13 seeing that the risk people are not my section.

14 MS. DAVIS: Shannon Davis. Ren Willis-Francis is
15 with us today. She's going to be the supervisor of risk
16 assessment, so she has the misfortune of being here to
17 answer your questions.

18 MS. WILLIS-FRANCIS: Ren Willis-Francis, Risk
19 Assessor.

20 Thank you for the question.

21 MS. DAVIS: And we expect with her help to be
22 able to get that list down.

23 MS. WILLIS-FRANCIS: In addition, in order to
24 make sure that the list doesn't grow so big again, we're
25 working on contracting for some software that will help

1 users prepare the tier two risk assessment, hopefully
2 having them all in the same format. The way the software
3 will develop them will make it a much quicker review for
4 us.

5 MS. FOSTER: And that cost for the software will
6 then be given back to the consultant to purchase or for
7 DEQ, no charge?

8 MS. WILLIS-FRANCIS: We happen to make it
9 available at no charge.

10 MS. FOSTER: Thank you.

11 CHAIRMAN O'HARA: Any comments or questions for
12 Joe?

13 Thank you, Joe.

14 C, Number of New Releases from Upgraded Tanks and
15 Types of Tanks.

16 Ron, do you have some information on those?

17 MR. KERN: Ron Kern with DEQ, and actually I do
18 not at this time. This was a query that -- or request
19 that came out of the Commission the last meeting, and we
20 are querying our database right now, and I'm just about
21 ready to give it, but I'm not ready today to give that
22 information, so I think I should be ready to give it at
23 the next meeting.

24 CHAIRMAN O'HARA: Thank you.

25 Update on the DEUR Fee Rule, Jim Lawless.

1 MR. LAWLESS: Jim Lawless, DEUR. Just to recap,
2 the DEUR statutes, to put in context, if you recall, the
3 statute basically addresses controls, institutional
4 controls and engineering controls. The typical
5 institutional control would be re-admitting property to
6 non-residential use, and engineering control would be like
7 a CAP or a berm.

8 In any event, the statute sort of clarifies or
9 helps assure that property owners can elect to use one of
10 these controls as a tool to help clean up or remediate
11 property. And it's a provision that applies to all the
12 waste programs as well as to the aquifer protection term
13 program and the quality issue, so it's kind of wide
14 ranging.

15 If an owner elects to use that as a tool to help
16 them clean up the property, then what the statute provides
17 is that in return for that they have to record a DEUR,
18 Declaration of Environmental Use Restriction, which is
19 restrictive covenants, basically. It serves as notice of
20 whatever the contamination situation was on the property,
21 and it's also an undertaking by the owner to maintain
22 whatever that control is, to assure that it's only used
23 for residential purposes or whatever. And it does run
24 with the land, so, the property is sold and the subsequent
25 owner is still obligated to maintain control.

1 The statute actually provides for rules to
2 implement all of the provisions, but the agency management
3 decided pretty much from the beginning that the statute
4 was sufficiently prescriptive, that it spoke for itself,
5 it really didn't need any other implementing rules. The
6 one exception was, it called for a rule to establish a
7 fee, and the idea for the fee was, it's a one-time
8 up-front fee and it's supposed to cover the estimated
9 costs to the agency of administering over the time of the
10 DEUR. So we've been engaged in working on the DEUR fee
11 rule.

12 The statute also calls for basically two
13 generations of rules; the interim rule, which is what
14 we've been working on, and then that will be followed
15 eventually by a permit rule. We've had a proposed interim
16 DEUR fee rule that has been the subject of a public
17 comment period and public hearing. We've now received the
18 public comments. We're going to be -- we're about in the
19 process of reviewing those and will be reviewing them with
20 the agency management, including the director, and make a
21 determination as to what the final interim rules should
22 look like.

23 The interim rules are exempt, so they do not go
24 through. Permanent rules, however, are not exempt so they
25 go -- I'm sorry -- go through the normal rulemaking

1 process.

2 MR. TSIOLIS: Mr. Chairman, are those rules going
3 to be renewed for certification by the AG's office? Is
4 that how it's going to work?

5 MR. LAWLESS: No, they're not exempt through the
6 AG's offices. They have their own provisions.

7 MR. TSIOLIS: Other than the DEQ, is there any
8 other final version of the body that incorporates the
9 comments review?

10 MR. LAWLESS: The Director of ADEQ.

11 MR. TSIOLIS: Is there any other outside body?

12 MR. LAWLESS: Not for the interim.

13 MR. TSIOLIS: That's how the statute is written;
14 right?

15 MS. CLEMENT: Does the statute require you to do
16 the final rule within a certain period of time?

17 MR. LAWLESS: It requires us to start on the
18 permanent rule, and I believe it's 120 days after the
19 interim rule takes effect.

20 MS. FOSTER: Mr. Chairman, do the interim rules
21 have any language at all in them relating to notification
22 of the cities involved of when a DEUR is placed on the
23 deed? I know the information is available on the
24 Internet, but it's real hard when you have such a large
25 quantity of property to keep an eye on that.

1 MR. LAWLESS: The fee rule does not. The statute
2 does. The statute requires us to provide a courtesy copy
3 of DEURs once they are approved by the agency and accorded
4 to whatever the jurisdiction is that has zoning authority,
5 which in most cases around the state are the various
6 cities.

7 You're with the City of Phoenix?

8 MS. FOSTER: Phoenix.

9 MR. LAWLESS: Don Stoles was the person we send
10 that information to. And the obvious idea there is,
11 obviously if you are dealing with use restrictions, like
12 limiting it to nonresidential use, those are the sorts of
13 zoning kinds of issues, so it's to make sure that the
14 people who are involved in those kinds of decisions at the
15 city or county level are aware of this restriction; and,
16 in fact, we ask them to let us know if they become aware
17 of anything going on.

18 MS. MARTINCIC: I was going to ask, in the
19 future, as a permanent rule comes forward, I would request
20 for the Commission members -- I think this would be a good
21 forum to announce public hearings, comment periods. There
22 was some confusion among some of the stakeholders when the
23 actual public hearing was on the interim rule and when the
24 public comments were. I think by having a public
25 announcement with UST regulating a meeting like this, I

1 think it would be appropriate.

2 MR. LAWLESS: That sounds appropriate. Maybe we
3 can work with Al to make sure we get that.

4 CHAIRMAN O'HARA: Thank you.

5 MS. CLEMENT: Mr. Chairman, Jim, what does the
6 current final draft say regarding the amount that UST
7 program will contribute to the DEUR? I know there is
8 different fee schedules, what the fee for the UST sites
9 is.

10 MR. LAWLESS: The UST sites -- first of all, I
11 guess I should sort of summarize some of the information
12 and projections we got from the programs.

13 Again, there are a range of programs involved.
14 The projections are for about 20 DEURs a year from all of
15 the programs. About half of those will be from UST. At
16 the same time, UST sites are projected by the programs to
17 be pretty much the simplest sites among all the different
18 program sites. So they would follow --

19 The rule sets out three levels of fees based on
20 complexity, and the program is anticipating that virtually
21 all of the UST sites would fall in the simplest category.
22 And in the proposed rule, the different fee components for
23 that would add up to something in the range of between 4
24 to \$5,000.

25 Now, it could be that a particular UST site would

1 have -- could be very unusual, but if it involved
2 groundwater, or something like that, it might be more
3 expensive. And this is, by the way, something that's done
4 as part of the closure of the site.

5 MS. CLEMENT: So the fee is calculated on an
6 individual basis for each site depending on the level it
7 occupies?

8 MR. LAWLESS: That's right. And the main
9 variable is the number of sites. It is a one-time fee but
10 it's covering costs over a period of years. The main
11 variable within each of the three categories is the number
12 of the years.

13 MS. CLEMENT: How do you estimate the number of
14 years?

15 MR. LAWLESS: The project manager makes the
16 determination on a case-by-case basis based on what
17 they're looking at, but the UST program has told us that
18 they envision -- that the nature of the UST sites, they
19 anticipate they're often going to experience natural
20 attenuation, and they're not sure that they need to
21 project beyond about ten years; whereas, the rule allows a
22 fee projection of up to 30 days, then just sets a CAP, and
23 not projecting beyond 30 years.

24 MS. CLEMENT: Thank you.

25 CHAIRMAN O'HARA: Thank you.

1 MR. TSIOLIS: Mr. Chairman, I just have two
2 questions. One, is there a counsel, like an AG reviewing
3 or helping you guys or advising you guys on the fee rule?

4 MR. LAWLESS: We've worked --

5 MR. TSIOLIS: Is there one currently assigned by
6 the AG's office?

7 MR. LAWLESS: Ward Parker is also the main person
8 and also Tom Kern.

9 MR. TSIOLIS: Under the statute or practice or is
10 DEQ going to public responses, to comments?

11 MR. LAWLESS: Yes. We are required, even though
12 it's an exempt rule, we still have to follow the APA
13 process of format as to response.

14 MR. TSIOLIS: And those will be published in the
15 final rule?

16 MR. LAWLESS: Yes.

17 MS. DAVIS: Jim, thank you very much. Jim's
18 worked for months and has worked going on years now on
19 this and he knows it very well.

20 I want to weigh in from an agency and from a
21 policy consideration, that I want to use the word
22 skeptical, but almost, about what we're required to do in
23 terms of closures, in terms of DEURs, in terms of monitory
24 natural attenuation, in terms of engineering controls, and
25 I realize that engineering and institutional controls have

1 been used in the past, but this is really a very new field
2 for the environmental remediation agency to take on.

3 I mean, we're being asked to consider things that
4 we don't have a lot of science on yet, and it also puts us
5 in the financial business, which is not our business. We
6 spent hours of staff time. We hired outside people to
7 help us come up with insurance mechanism, surety bonds,
8 then the whole market turns on its head right in the
9 middle of this whole process.

10 And no way am I throwing stones. We've been
11 fortunate to have you on staff. I want to put a marker on
12 the table that the most important thing that we do,
13 whether it is the UST community or the remediation
14 built-in mechanisms for review, whether those are
15 financial reviews, whether those are working use
16 restrictions within cities and towns. Cities and towns
17 have had huge reservations about having restricted parcels
18 of land within their urban re-development zones, and I can
19 understand that.

20 And then the other issue is how do we pick ten
21 years out of the sky to say this is one of what we need.
22 There's a statute number, but we need to make sure we
23 review that policy review level and staff will bring that
24 up. So, once this is done, it's not done, it's just the
25 beginning, and we will need to come back and evaluate how

1 all the components are working 'cause it is just going to
2 be with us for a long time.

3 MR. TSIOLIS: Mr. Chairman, I would like to
4 support what Shannon is saying. The one thing that brings
5 to mind is those are pretty substantive issues. They are
6 really important issues. They are determinant issues, and
7 what they point to, that there exist points, to my belief
8 at least, that the statutes are not self-executing, that
9 there are gaps in the statutes on these substantive issues
10 and there is room for rule-making, so the substantive
11 issues are the applicable way of going forward.

12 MR. LAWLESS: Okay. Well, we may run into some
13 issues that need rulemaking but --

14 MR. TSIOLIS: At a minimum, the ones that Shannon
15 was talking about.

16 MR. LAWLESS: We have been -- by the way, the
17 programs have been processing the simple nonresidential
18 DEURs all along, just so sites have their closures.

19 As far as the proportion of DEUR sites versus
20 non-DEUR sites, the UST program is projecting something in
21 the range of about 10 percent that they envision will be
22 DEUR sites. The other programs are projecting more in the
23 range of 25 percent.

24 All of this I think we will have to review and
25 adjust in these hearings. And in addition to Andrea's

1 request to be notified of future rulemaking, just to let
2 you know that we will continue to work with the UST
3 program and others to offer information, training and
4 assistance on how fees are calculated or any other kinds
5 of questions that come up.

6 CHAIRMAN O'HARA: Thank you, Jim.

7 Any questions for Jim?

8 Thank you very much.

9 Moving on to Item E, Update on the Contractual
10 Conditions of the UST Groundwater Study. Kathy Dougherty.

11 MS. DOUGHERTY: I'm Kathy Dougherty, ADEQ. The
12 contract was developed on behalf of the Policy Commission
13 by DEQ. The contract was bid out through the RFP process
14 and awarded to ASU. ASU has the contract. Over the
15 course of the RFP negotiations negotiated a change to a
16 normal condition where we own all reports and data, and
17 that is very common with the university community because
18 of their arrangements with their professors, that their
19 professors can have some data and reports. So, the
20 contract specifically jointly vests in both DEQ and ASU
21 all reports and data. So there is not a provision in the
22 contract that says that we control what happens to the
23 data and the reports.

24 The other point to be clear upon is that the
25 scope of work specifically says that there will be -- that

1 the final report will not contain any conclusions and
2 recommendations.

3 MS. CLEMENT: Mr. Chairman, there is also a
4 provision, as I understand it, in the contract that
5 required the Policy Commission to submit comments within
6 30 days.

7 MS. DOUGHERTY: That's correct.

8 MS. CLEMENT: Is that a common contract provision
9 and why was that included in this contract?

10 MS. DOUGHERTY: It was included in this contract
11 so that the contractor could finalize the report. They
12 had a further duty under the contract to consider those
13 final -- those comments from the Policy Commission and
14 then finalize the report, so it's very common that we need
15 to put a requirement on us so that we should provide that
16 within a certain amount of time so that they can
17 reasonably complete their work.

18 MS. CLEMENT: My follow-up question, and I do not
19 recall ever being told as a Policy Commission member that
20 we had a limited time frame to submit comments on that
21 report. And I'm asking, was anyone told of that? If this
22 is a contract provision that we're stuck with, why wasn't
23 the Policy Commission, at least myself, informed of this
24 provision?

25 CHAIRMAN O'HARA: I think Myron was kind of our

1 delegate to head up the study, and unfortunately he's not
2 here today. I wasn't part of it specifically.

3 MS. CLEMENT: I think we found out within the
4 last month of that contract provision as the materials
5 that were forwarded through the State Assurance Fund, half
6 a million dollars have been trodded out in national forums
7 and other forums, and it was a bit disconcerting to find
8 out that we had an obligation with the time frame on it,
9 that we were not informed about it.

10 Under the contract and under our obligations as a
11 policy commission, do we still have the opportunity to
12 provide comments and to get responses? I mean, where are
13 we in this process, because I certainly have some comments
14 on the document?

15 CHAIRMAN O'HARA: Contractually, I think we have
16 no more. Our obligation's been fulfilled.

17 MS. DOUGHERTY: We did not fulfill that
18 obligation in a timely or even what could be considered a
19 reasonable time. My understanding, that report was
20 provided a year ago, roughly, and that this provision was
21 in the scope of work that was approved by the subcommittee
22 that put together -- that the Policy Commission had, was
23 going to work for the RFP.

24 Basically we would have to go back and negotiate
25 because the contract's kind of broken on that point,

1 because we did not, you know, within a reasonable amount
2 of time provide comment.

3 MS. CLEMENT: Could we clarify the date in which
4 we received the first presentation on? It was the summer
5 sometime?

6 CHAIRMAN O'HARA: No, it wasn't this October. It
7 was more --

8 Are you talking about the presentation by Paul
9 Johnson?

10 MS. MARTINCIC: It was over in the --

11 CHAIRMAN O'HARA: Maybe close to a year.

12 MS. MARTINCIC: It wasn't this year.

13 CHAIRMAN O'HARA: Why don't we -- if you don't
14 mind, if there is any more questions for Kathleen, feel
15 freely; if not, we will talk to Myron and get -- fill this
16 out when he's here.

17 MS. CLEMENT: As a Commission member, I want to
18 understand, do we have any opportunity to get
19 clarification on some of the reports, facts and findings?
20 Because even though the contract said that there was not
21 supposed to be recommendations and conclusions, clearly
22 recommendations and conclusions have been presented to us.
23 They've been presented nationally, and they've been
24 presented to the legislature, and I'm really uncomfortable
25 at this point because we have not done our duty in

1 responding to that report and clarifying any conditions or
2 questions that we have, and I just want to get direction
3 from you, Mr. Chairman, on how we can best do that as a
4 Commission.

5 CHAIRMAN O'HARA: I would prefer, absent Myron, I
6 would like to have him here to at least explain the
7 subcommittee's roles and what their intentions were in
8 terms of getting their comments in full dimension.

9 I don't think we've even been asked.

10 MS. MARTINCIC: Isn't the study looking -- if we
11 were to submit comments, we're sort of like in the process
12 of trying to do that, but yet if there was this time
13 frame, I don't think anyone knew that.

14 MR. GILL: Actually, as the chairman of the
15 subcommittee, I was never told, and I'm sure none of us
16 ever heard that there was a 30-day time limit for comment
17 on the report. What the subcommittee was working towards
18 was getting the final recommendations together for the
19 legislature, which was the next step.

20 MS. CLEMENT: Right.

21 MR. GILL: We didn't fully realize there was a
22 step in between where we had to respond to the report.

23 MS. CLEMENT: If I have substantive questions
24 regarding the report, Mr. Chairman and Mr. Vice-Chairman,
25 should I be submitting those in writing or should we

1 discuss those through the subcommittee? What is the best
2 way to process our comments at this point in time to be
3 the most constructive and to expedite this?

4 MR. GILL: I think what we were trying to do was
5 bring up all comments and questions, concerns in the
6 subcommittee. What we had been waiting for was DEQ's
7 response. At the time where we left it before, we went to
8 getting language from DEQ. At that point even they had
9 not finished review of the report yet, so we were waiting
10 for them to get back with us on their comments on it.

11 But I think the best way to respond to or to get
12 comments, questions from the Commission members is in a
13 subcommittee, and we can make sure that ASU is at the
14 table to answer the questions, because that's ultimately
15 what we wanted to do was we wanted to get all responses,
16 all issues on the table so we could come up with a
17 consensus on the recommendations, bring them back to the
18 Policy Commission, then send them to the legislature.

19 MS. CLEMENT: Thank you.

20 CHAIRMAN O'HARA: Should we have this topic on
21 the next subcommittee, address this?

22 MR. GILL: I will get to -- we're at that point
23 where we've finally gotten some language back, now we can
24 start addressing individual issues.

25 CHAIRMAN O'HARA: All right. Did you have a

1 comment?

2 MS. DAVIS: I just want to go on the record that
3 I think we have three issues to look at as a Commission
4 with this report. The first is to circle back on the
5 contractual issues, and I know Myron will be our point
6 person on that because he chaired that subcommittee, in 30
7 days, and if we miss that, then what are our options.

8 The second would be the technical pieces of that,
9 and I know that Joe and I during our one-on-ones have
10 talked about that he's working with the division's
11 technical leader, Phillip McNeely, just to respond point
12 by point to the effectual considerations.

13 The third piece is probably not quite so pleasant
14 from my point of view, and that is Dr. Johnson, in my
15 opinion, undermined our entire program through what he's
16 going out with to the public. And I happened to see that
17 in a presentation at the state legislature, I believe it
18 was November 25th, where he presented to the subcommittee
19 on the policy, on the tank program, and he got up with his
20 slides.

21 And I'm not sure if it's the right forum, but I
22 feel very strongly about going on record about what I see
23 as, at best, very unhelpful and, at worst, inappropriate
24 use of data or, shall we say, not qualified data.

25 He was asked to not give recommendations in his

1 report and that was specific because of what had happened
2 with the Lawrence Livermore study, that recommendations
3 had come out of a study, that the legislature polishes
4 those recommendations up and made law that wasn't good for
5 the program.

6 Dr. Johnson was asked not to give
7 recommendations. He was paid a half a million dollars to
8 perform this study. There are a lot of questions about
9 the data. I'm not saying it's bad data. I'm saying there
10 is a lot of unanswered questions about the data that he
11 used, and I think some of those questions that this Policy
12 Commission needs to get its arms around is whether or not
13 the data supports what he's saying in his recommendations.

14 He stood up at the very beginning of his
15 presentation and he says, I'm not here to tell the
16 department how to do its business, and then his last four
17 slides were all about the agency needs to do its business.

18 And the other piece, which is, I think, a huge
19 disservice to the work that all of us have done in the
20 last year or two around this table at the agency, the
21 hours that people have put in volunteering on technical
22 and financial subcommittees is within his slides. It
23 almost made a mockery of what we're doing, and there were
24 cartoons about, are we supposed to take this seriously or
25 not.

1 So, it's just very unhelpful from one state
2 agency to another to have that sort of thing in front of a
3 Legislative Subcommittee. I think the best news is that I
4 bored them to death for two hours with my presentation,
5 and I'm not sure how much they listened to what he had to
6 say, but I think it is serious. I think that we need to
7 take this on. I think we need to look at what he's saying
8 and where we already met those markers. Some of those I
9 think raise really good points, but to have this in a
10 national forum down in front of our legislators is
11 potentially quite damning.

12 So we need to address the contractual, the
13 technical, and then just how that data has been used with
14 or without verification. And I feel really strongly about
15 this point because we both, ASU and ADEQ, work for the
16 governor, we need to be on the same page, not in a
17 national forum or in front of legislators undermining the
18 work of one another.

19 So I want that on the record.

20 MR. TSIOLIS: Mr. Chairman, I have a question.

21 Shannon, when you said that DEQ asked him not to
22 share it and then paid -- how much was it -- a half a
23 million dollars --

24 MS. DAVIS: It was a commission study.

25 MR. TSIOLIS: That predates me on the Commission.

1 Was there a contract that governed who owned the
2 information that he generated?

3 CHAIRMAN O'HARA: She just said co-owned.

4 MS. DAVIS: The reports and data and such are
5 jointly vested in ADEQ and ASU.

6 MR. TSIOLIS: That's under the terms of the
7 agreement between the two agencies?

8 MS. DAVIS: Actually it is a UST Policy
9 Commission and ASU.

10 MR. TSIOLIS: I don't know, when I hear
11 agreement, I think an enforceable agreement. I'm just
12 wondering why somebody is violating the terms of the
13 agreement.

14 MS. DAVIS: They aren't violating the terms of
15 the agreement. In my opinion, since they have access,
16 since they have title to the data, the reports, if they
17 choose to take their -- you know, their -- that
18 information and draw their conclusions, they have that
19 right.

20 MR. TSIOLIS: So there wasn't anything in the
21 agreement that actually said thou shall keep this between
22 us and the governor?

23 MS. DAVIS: That's correct.

24 MR. TSIOLIS: It was more of an informal
25 understanding?

1 MS. DAVIS: No. It was formal. I would be glad
2 to provide for you the specifics.

3 MR. TSIOLIS: I don't want to get into the
4 details. I just was curious. This is, from what I am
5 hearing, an issue that is not yet settled. The validity
6 of the findings are not agreed upon by DEQ. And for ASU
7 to be sharing those with the legislature in a manner that
8 undermines the department on issues that have not yet been
9 really worked out between the two agencies is troubling to
10 me.

11 MS. DAVIS: Well, I can understand what you are
12 saying about the troubling part. From a contractual
13 standpoint, it is not contractually troubling.

14 CHAIRMAN O'HARA: Kathleen, does the provision
15 not provide the recommendations, as your interpretation
16 only applied to the report itself, and not making
17 presentations on that report?

18 MS. DOUGHERTY: Let me be clear. It says that
19 the Policy Commission Study, now, reports and conclusions,
20 so that's clear on that.

21 Now, since everything that ran up to it, all the
22 data collecting is jointly vested. If they should choose
23 to make a report and conclusions on their own volition,
24 then either as a person or as ASU, then they do have that
25 right.

1 MR. GILL: There is one other thing, the Policy
2 Commission asked him for conclusions and recommendations
3 separate from authority of the board.

4 CHAIRMAN O'HARA: Roger.

5 MR. BEAL: We were presented the groundwater
6 study 3-26 of '03 first time it was done, again in the
7 conference in the summer. I feel that we may be talking
8 about the study here, and it's not on the agenda. I think
9 that it's a topic that could be put on the agenda.

10 CHAIRMAN O'HARA: I think loosely we are talking
11 about contractual conditions. We're now getting into the
12 essence of the study itself.

13 MR. BEAL: I guess, then, I would like to say
14 that I think it should be an agenda item that we can
15 discuss with some detail.

16 CHAIRMAN O'HARA: The study itself?

17 MR. BEAL: The study and everything to do with it

18 --

19 CHAIRMAN O'HARA: Okay.

20 MR. BEAL: -- if we have questions so we can make
21 comment and have it be responded to.

22 CHAIRMAN O'HARA: I'd also like the first
23 recommendation be made to the subcommittee and maybe have
24 Dr. Johnson to respond to some of our comments and get his
25 interpretation.

1 Go ahead, Gail.

2 MS. CLEMENT: I agree with that, and I also think
3 that Dr. Johnson, or if he has a representative, needs to
4 be available according to our schedule. It's been very
5 difficult to get to some of these meetings because they
6 are so busy that we have had to move our schedule around
7 them and, frankly, for half a million dollars, they should
8 be able to answer our questions on our time frame and with
9 our already established schedules.

10 The other thing that I would say on this, and I
11 am concerned about it because it is not constructive,
12 that's the main point I want to make right now, the
13 agency's making great strides in moving this program
14 forward, working with all of the stakeholders in a variety
15 of ways, so it's not constructive to have someone with
16 that kind of prestige and credibility not part of the
17 process by taking potshots on the outside.

18 In the future, if we have any unusual contractual
19 terms that the Policy Commission is involved in, we need
20 to be told up front, and if we're going to be negotiating
21 unusual contractual terms, we need to approve those terms,
22 because I'm a contractor, I know what language is usually
23 in these contracts; and, frankly, I wouldn't have agreed
24 to that language if I had been informed about it ahead of
25 time.

1 MR. TSIOLIS: Which language is that?

2 MS. CLEMENT: The data, Policy Commission,
3 period.

4 MR. TSIOLIS: Mr. Chairman, and there is also
5 something called rules of construction. The term in the
6 contract that says there's supposed to be no conclusions
7 or recommendations is a material term of the contract.

8 Now, as an attorney, I'm telling you this, and I
9 know Mr. Klein might want to speak to it, if you then take
10 the position that every single item leading up to that
11 report is a free-for-all, it eviscerates that material
12 term in the contract, and that violates the rules of
13 construction, that you're supposed to get meaning to every
14 term. That makes that material term that no conclusions
15 on recommendations be made surplus, and you can't have a
16 construction of a contract that makes a material term
17 surplus.

18 The only way to read the term in the contract, it
19 says no conclusions or recommendations, is that every
20 datum leading up to the report is also not subject to a
21 presentation on conclusions and recommendations.

22 MR. KLEIN: I'm not sure this is the appropriate
23 forum for debating the legality of this contract and
24 whether or not there was a material breach of that
25 contract. I can say that they would certainly appear to

1 have a valid defense to any action by stating that the
2 terms of the condition related to the work that they were
3 performing, and that the work that they performed was not
4 to include this particular item and we wouldn't pay them
5 for it, and the 500,000 was not to go to it, I'm sure
6 their response will be, and we didn't do that and we
7 didn't spend one nickel of your money on these opinions or
8 conclusions, we simply did that on our own and therefore
9 we didn't break any deal.

10 Now, whether that was the understanding and
11 whether or not that was really an appropriate thing for
12 them to do is an entirely different matter, and it's
13 certainly something for this Commission to discuss when it
14 wishes to do so.

15 CHAIRMAN O'HARA: This Commission, though itself
16 probably didn't adequately foresee all the potential
17 pitfalls in that contract, we're kind of stuck with that
18 contract, but I would like to ask --

19 MR. TSIOLIS: I really disagree with that
20 statement. The Committee did have an understanding. It
21 didn't foresee a pitfall because it had an understanding
22 there would be no conclusions or recommendations, period.

23 CHAIRMAN O'HARA: I would like to talk to Myron
24 because I think he was head of that subcommittee, and if
25 that was his intention, I would like to study this issue

1 in subcommittee and at least have Dr. Johnson's response,
2 and if we feel it is appropriate to make some kind of a
3 recommendation to the legislature to say what happened was
4 inappropriate in our eyes, that's entirely possible.

5 MR. BEAL: We have the ability to make our
6 position on the study alone and we've never approved,
7 disapproved, validated it in our own minds.

8 CHAIRMAN O'HARA: I think that's undergoing what
9 we are doing.

10 MR. BEAL: We've looked at language but we've not
11 discussed some of the issues that have come out, and then
12 those of you who can remember when we were presented this
13 study, we were asked at that time if you wanted any
14 investigations that Dr. Johnson made, and that was
15 affirmed. He did give them to us, and it's been part of
16 the presentation ever since.

17 CHAIRMAN O'HARA: With that objection, we will
18 defer this to the subcommittee.

19 Theresa?

20 MS. FOSTER: Mr. Chairman, I've worked with a lot
21 of state contracts over the years, and it sounds like ASU
22 fulfilled the requirements of the contract by not
23 including any recommendation in the report. We as
24 citizens have the right to go back to that public
25 information because the contract produced a report based

1 on information that's publicly available. We too could
2 take all that time and energy and come up with our own
3 recommendations, so I don't really think there is a
4 contractual fault involved here. They have met the
5 requirement. They got paid. They're not paid after this
6 date.

7 For us to keep inviting them back there at their
8 own will, whether they want to make that meeting or not,
9 we need to think about that. But any of us could do the
10 same thing in terms of any of that data that was produced
11 in the report, we could be down there at the state
12 legislature creating our own opinion. I think it's more
13 of an issue of ASU and DEQ's relationship and maybe
14 management needs to talk to management.

15 CHAIRMAN O'HARA: Any comments on this issue?

16 Thank you, Kathleen.

17 MS. DOUGHERTY: You are welcome.

18 CHAIRMAN O'HARA: Item D -- excuse me, 5,
19 Technical Subcommittee Update by Chairman Hal Gill.

20 MR. GILL: Okay. Well, the first thing on the
21 agenda was the DEQ draft language, and what we had been
22 trying to do is we -- initially when Myron -- and even
23 though it was in the Technical Subcommittee because Myron
24 was the head of the committee that was overseeing the
25 study, he was basically, I guess, co-chairing, whatever

1 you want to call it, the Technical Subcommittee, and he
2 had asked ASU to provide recommendations so we could get
3 into the meat of the venue, and that's where the
4 recommendations came from.

5 Initially what he did with them after that, I
6 have no idea or no control, obviously, but that's where
7 the initial recommendations came from.

8 So, the first thing we did is we looked at the
9 findings of fact in the report. We had one and a half
10 meetings on the findings of fact, and then, seeing the
11 findings of facts overlapped with the conclusions and
12 recommendations that Myron asked for, then we went into
13 those individually. That's where we kind of slowed down
14 because we needed to get responses from DEQ on the
15 individual points, too.

16 And just this last subcommittee, Joe Drosendahl
17 and his staff came up with some preliminary language
18 addressing the A through I issues on the groundwater
19 study. And because they were just handed out, we didn't
20 have any specific discussion on those issues.

21 And I also -- Al, I don't know if we wanted to --
22 we probably need to get the draft language to the
23 Commission members in case any of them want to come to the
24 next subcommittee meeting because we need to look at that
25 language and come up with our concerns, questions,

1 additions and be prepared for discussion of the issues at
2 the next subcommittee.

3 And that's basically what happened is, we think
4 that we just got the language, we put off the in-depth
5 discussions of the individual items to the next
6 subcommittee meeting, which should be the second Wednesday
7 in January, so, that's as far as we've got in the
8 subcommittee meeting on the groundwater studies.

9 Although Item No. 2, Agenda Item No. 2 on the
10 Technical Subcommittee agenda was discussion of issues
11 that had come forth from the round table or stakeholder
12 group, or whatever that was ultimately called, and there
13 were three issues that the Policy Commission recommended
14 that subcommittee take up, discussion on 2-A was MNA,
15 monitor natural attenuation, and, two, MTBE and natural
16 attenuation overlapped with some of the subject items in
17 the groundwater study, so we had a little bit of overlap
18 there in our discussion.

19 We had a long discussion on MTBE. We didn't get
20 specifically to the Commission. The consultation,
21 although, as you can see if you come to any of these
22 subcommittee meetings, everything inner-relates and
23 overlaps and you can be discussing one issue and
24 monitoring attenuation is going to sneak in.

25 So, we basically were discussing MTBE and natural

1 attenuation, MNA.

2 Under MTBE, the two issues that we were looking
3 at was investigative requirements and remediation
4 requirements. We primarily stayed with investigative
5 requirements. We determined that the current guidance
6 problems in the rules was pretty clear on the
7 investigation requirements as far as levels that you
8 investigate to. And it was the investigative level for
9 MTBE 10 to 20 PPB, and the office clean up level, which I
10 believe is a health-based level developed by the Health
11 Department, was 94 or 97 PPB. I can never remember which
12 one 94 -- this is 94. Those are established in guidance,
13 and we believe that there wasn't anything further needed
14 to be done with that. We thought that there possibly
15 could be some more language added to the guidance document
16 on the differences in investigative techniques for MTBE
17 because it is different from B, text investigation, just
18 in the way that it reacts in the environment, and there is
19 no guidance in the guidance document specific to
20 investigation of MTBE.

21 We didn't move to the remediation requirements
22 and, as I said, we just barely touched on natural
23 attenuation, and basically some of the overlap in the
24 investigation, investigative requirements for MNA and we
25 realized that, and that is one of the things that was on

1 the groundwater study issues was MNA as well, and that's
2 something that we need to go into in detail in the next
3 meeting.

4 And so basically that's where we left in the
5 meeting. The next meeting we will start out with, I
6 guess, finalizing anything that we want to do for MTBE,
7 then going into the attenuation; and there is a number of
8 bullet points on monitoring attenuation that needed to be
9 addressed. So what we asked for the next meeting is that
10 everybody review the draft language that DEQ provided, and
11 also to look in the current guidance document.

12 Once again, this was asked the last time as well,
13 but look in the current guidance on language on monitoring
14 attenuation and see if there is any additions or
15 corrections or concerns with the language as it is, and
16 that was as far as we got.

17 MS. CLEMENT: Mr. Chairman, there was one other
18 point that was made, and that is, there had been a
19 decision regarding ongoing groundwater monitoring that
20 went through the Technical Subcommittee and into the
21 Policy Commission but has not yet been implemented by DEQ,
22 and that was the point in time where you're not in any
23 program requirement, what should you do about groundwater
24 monitoring. And there was a lengthy discussion and there
25 was a joint decision made by DEQ in the Technical

1 Subcommittee, but that hasn't been implemented yet, and
2 that came up in our discussions both in terms of the SA
3 Funding for those interim monitoring samples and the fact
4 that it didn't seem like it had gotten down to staff
5 level.

6 MR. GILL: You are absolutely right, there were
7 two points that I wanted to make and you are confused in
8 one point.

9 There actually is, I believe, Joe, you and Judy,
10 you reminded me, we did put on the bulletin the matrix
11 that we have because -- so we don't confuse the issues,
12 there is a matrix for groundwater sampling and analysis
13 and water level measurements. The Matrix tells you,
14 depending on where you are in your program, whether you
15 need to do quarterly or semi-annually, or whatever, but
16 the issue that you are talking about was, basically there
17 was two issues. And I did ask the DEQ to respond because
18 we've been waiting for a response for a while, and one
19 issue was, as far as State Assurance Fund or SAF, we asked
20 the SAF to come up with their requirements for interim
21 applications, I guess; in other words, if you are doing
22 work with a site groundwater sampling, or whatever, but
23 you have not reached the point where you've completed your
24 site characterization, so you have not completed site
25 characterization, your report of work has not been turned

1 in, and the way the SAF works, if there is no report of
2 work, they can't pay for a request on an application.

3 And the problem is, is that in most cases, if not
4 all cases, primarily the smaller operators and consultants
5 can't wait the full year, or however many months it takes
6 for the site characterization to be done to turn in
7 applications. And in the past, the way the process was is
8 that every \$20,000, every quarter or the end of a phase,
9 and a phase typically would be a quarterly sampling event,
10 and this has gone on for a number of years where we were
11 having problems with how do we get reimbursed for work
12 that's been done while we're waiting for the final report
13 to be done. So what we asked, what are your requirements
14 for interim, an interim report, or -- well, we don't call
15 it report because that creates problems, too, but what
16 kind of data do you require at a minimum to be turned in
17 with an application so you can approve that application.

18 MS. NAVARETTE: Can I address that just a little
19 bit? The problem we have in SAF with approving these
20 things, before approving the work that you've done without
21 the Site Characterization Report is that if we approve it,
22 then when you turn in your Site Characterization Report,
23 and the case manager's going over that and he does not
24 like the Site Characterization Report or it is deficient
25 in ways, then we go to the problem of, well, SAF said it

1 was reasonable and necessary and cost effective.

2 So, there are two things pushing against one
3 another here, and I don't know if we can solve this
4 problem. We are looking at it. We're trying to study it,
5 but that's definitely a problem. If we approve it and we
6 pay for it, and then when you turn in your Site
7 Characterization Report it is deficient or it's not
8 acceptable, then you've got the argument, well, SAF paid
9 for it, they said it was reasonable and necessary and cost
10 effective.

11 MS. CLEMENT: Could I ask a question, Mr.
12 Chairman and Judy? This is the situation where basically
13 you're getting materials that are not being reviewed by
14 the Corrective Action Section because they are not
15 complete and they don't have them as a priority because of
16 their other workload. Is that the nut of it? Is that
17 correct?

18 MR. DROSENDAHL: Right. Yeah, you are correct.

19 MS. NAVARETTE: It is not in the LUST file.

20 MS. CLEMENT: So, if somebody sent those, you
21 wouldn't look at those, you would just put them aside and
22 wait until you got the Site Characterization Report; is
23 that correct?

24 MR. DROSENDAHL: Right.

25 MS. CLEMENT: So, in other words, these are not

1 looking at these terms that you are looking at. That
2 seems to be the issues.

3 CHAIRMAN O'HARA: Like she said, I don't think
4 there is, with the current rule, there is no easy rule.

5 The rules state it has to be reasonably cost
6 effective, which I'm going to bring up on Item 10 and
7 rewrite the SAF rules. Those rules go back to '92, and
8 the program is completely changed and we're kind of stuck
9 with those old rules.

10 MS. CLEMENT: Obviously nobody is following those
11 SAF rules, are they? I mean, the process is not reflected
12 in the rules; right? Or I am I wrong? I mean, I'm not
13 using the SAF rules, so it may be an ignorant question,
14 but SAF rules are a package that nobody really looks at
15 anymore. You got a process that's not reflected in the
16 rules. Is that wrong or right? It's wrong. Okay.

17 MS. NAVARETTE: I think it's wrong.

18 MS. CLEMENT: So right now the rules that are in
19 place are the process that you're using; is that correct?

20 MS. NAVARETTE: Uh-huh.

21 MS. CLEMENT: Because that's what people tell me
22 is not correct. I don't know.

23 MR. GILL: I guess my question is why would there
24 be -- if you have technical competent people reviewing the
25 data, why can't they stand behind their review? I mean,

1 why at the end of the time when it is turned in, and I
2 guess I remember during the discussions the issue quite
3 accurately that the DEQ was bringing, and SAF was, well,
4 we need a rationale of why they're doing this.

5 And if a rationale is not being provided that is
6 clear enough, then that's a good argument for SAF. But if
7 a rationale is provided, that same rationale should be
8 able to be used at the end of the report as well. I mean
9 -- so I guess I just don't understand why -- I understand
10 what you are saying, but I don't understand why it would
11 be a problem if the rationale worked when you were putting
12 in these wells or doing this sampling or doing whatever
13 activity you are doing, why would that not make sense at
14 the end of the project because you are characterizing the
15 release --

16 CHAIRMAN O'HARA: Different groups are reviewing
17 it?

18 MS. NAVARETTE: Yes.

19 MR. GILL: -- if these are technically competent
20 people?

21 CHAIRMAN O'HARA: Different goals.

22 MR. GILL: No, it is characterizing a site.

23 MS. NAVARETTE: We need all the information
24 together to characterize the site.

25 MR. GILL: It worked well for years and years.

1 We got paid for a quarterly sampling. We got paid for
2 installing wells. We got paid for a number of things when
3 Phil was the manager.

4 MR. TSIOLIS: If I could speak to that, I think
5 it was bad that that was happening with the other
6 department.

7 MR. GILL: People are not going to sit on their
8 hands and not get paid.

9 MR. TSIOLIS: I'm not finished. Without having a
10 complete picture, I think it's unwise and possibly can
11 lead to unwise handling of the taxpayer dollars of the SAF
12 funds to have the department boring log by boring log
13 when it doesn't see the context when the boring log is
14 positioned in the overall remediation. I just think it's
15 not a good idea.

16 MR. GILL: That's what the rationale does, it
17 tells you what context it is in; in other words, why was
18 this well put in or why was this bore put in. That is
19 what the rationale has to tell the reviewer.

20 CHAIRMAN O'HARA: I think there is a need for
21 having a forum before that report is done, but it's not
22 really the forum here. Yes, the rules don't really allow
23 for interim funding, something we need to address, which
24 we really need to get going, so I'm going to bring that
25 up. It is too much in-depth.

1 MS. FOSTER: We talk so much about rules. Isn't
2 SAF really governed by the guidelines and the rules are
3 very simple, and the guidelines implement how DEQ is going
4 to implement them?

5 I don't think a lot of the stuff we're talking
6 about is in the rules. It's in the guidance documents.

7 MR. TSIOLIS: If you want to make that argument
8 that rules don't need to reflect the program these days,
9 that's a different --

10 CHAIRMAN O'HARA: The paradox they are having, is
11 it technically reasonable, and if they make that
12 assessment before we even review the report, it becomes
13 stuck. The report is reasonable before it is reviewed,
14 so, it is an interim issue.

15 MR. TSIOLIS: The statute isn't allowing for --

16 MS. CLEMENT: The other side of that coin is when
17 you delay payment over a year or multiple years to a small
18 business or to consultants, then your costs for that work,
19 and one of the reasons the costs are so high in this
20 program, because they have to float that money.

21 CHAIRMAN O'HARA: Sure.

22 MS. CLEMENT: And if I don't think I'm going to
23 get paid for two years, my pricing is going to be
24 different than if I am going to get paid within 30 or 60
25 days. That's the reality of doing business, so that's

1 where this rule comes in.

2 I understand on the other side what that results
3 in, costs that are too high --

4 CHAIRMAN O'HARA: Right.

5 MS. CLEMENT: -- for what that type of work is
6 normally paid, so...

7 CHAIRMAN O'HARA: That's a problem we need to
8 address.

9 MS. CLEMENT: I don't know what the answer is.

10 MR. DROSENDAHL: I will definitely be working
11 with Judy to see if there is any possible way we can come
12 to some, you know, answer to this, so I will definitely
13 work with Judy to see what we can do.

14 MR. TSIOLIS: Within the four corners of the
15 statute that Mr. Chairman was saying.

16 MR. KLEIN: Please.

17 MR. TSIOLIS: If I can just speak generally back
18 to the level of the Technical Subcommittee, is there any
19 way for the Technical Subcommittee to push back all
20 groundwater studies at this point and get together with
21 Phil McNeely and come up with a list of questions that
22 need to be challenged and what needs to be agreed with in
23 the study before it deals with other issues? Just get
24 that task done.

25 MR. GILL: That's always the first thing on the

1 agenda.

2 MR. TSIOLIS: Can it be the only thing on the
3 agenda until it's done?

4 MR. GILL: We've been waiting for however many
5 Mondays -- when did you say we first started this?

6 MR. BEAL: It was in the third -- March.

7 MR. GILL: And so it's approaching a year. We
8 were waiting all this time for a response so we could
9 start discussing the language.

10 MR. TSIOLIS: A response from whom?

11 MR. GILL: Well, we needed DEQ to finish their
12 review of the report, which at the time DEQ was saying
13 they hadn't finished reviews, they weren't ready. Then
14 when Joe took over, the first thing he did was come up
15 with some language form that we could start discussing, so
16 that's something we are definitely doing, and we always
17 start with a report. We try to get as far as we can with
18 it, but we've been waiting for information. I think now
19 we have the data that we can actually develop into it and
20 start dealing with language.

21 MR. DROSENDAHL: What DEQ submitted was not
22 review of the report. What we were asked for was, you
23 know, a response to Paul Johnson's findings, you know. So
24 to me there is two different things, there is responses to
25 his findings and responses to the report. So what we

1 submitted was just a response to the findings. So, there
2 is a difference.

3 MR. TSIOLIS: And is there a way to get that
4 response finalized for discussion at the Commission levels
5 or at least between the committee, the subcommittee and
6 ASU?

7 MR. GILL: Now that we have a response, we can.

8 MR. TSIOLIS: I think those issues need to be
9 resolved as quickly as possible.

10 MR. DROSENDAHL: But DEQ is in the process of
11 responding to comments on the report itself.

12 MR. TSIOLIS: Okay.

13 MR. GILL: And that's what he said several
14 meetings ago.

15 MR. DROSENDAHL: But also, any Commission member,
16 stakeholder could also submit their comments on the report
17 also. It's just not DEQ's opinion, it's stakeholder
18 community's opinion on the report.

19 MR. TSIOLIS: From what I'm understanding, from
20 what I'm hearing from what I recall, when I think Johnson
21 came and spoke to us and the slides -- had the slide show
22 in the other building, it was a long time ago, earlier in
23 the part of the year -- it calls to question some of the
24 approaches taken by DEQ, and I think it would be in DEQ's
25 interest to quickly address those issues. And, you know,

1 next time Johnson gets up to the legislature, DEQ is ready
2 to say, this is our point on it.

3 MR. GILL: That's why we couldn't move forward
4 because the subcommittee and Commission couldn't move
5 forward and come up with recommendations without DEQ being
6 involved in it, and that's why we were waiting for that
7 response.

8 MR. TSIOLIS: Thank you.

9 MS. CLEMENT: Just one follow-up question. You
10 are reviewing the report now. Are you going to have
11 comments on the report that will be submitted to the
12 Technical Subcommittee or is this an independent exercise
13 that you are doing? I'm not clear.

14 MR. DROSENDAHL: I imagine we would submit them
15 to the Policy Commission, and Policy Commission, you know,
16 would use those and any other comments from all the other
17 stakeholders.

18 MR. GILL: So, again, Joe, what was the language
19 that you presented?

20 MR. DROSENDAHL: It was just the draft language
21 and response to his findings of the report. You know,
22 like you said --

23 MR. GILL: The finding of facts and the issues
24 that were enumerated?

25 MR. DROSENDAHL: Right.

1 CHAIRMAN O'HARA: Thank you, Joe. We will have
2 about a 10-minute break if you don't mind, actually 15
3 minutes; a quarter until eleven.

4 (A recess.)

5 CHAIRMAN O'HARA: We will go ahead and call this
6 meeting back to order and move on to item No. 6, which is
7 a Financial Subcommittee Update, of which I am current
8 Chair.

9 I have sent around to everyone, everyone
10 hopefully received it, a summary of our Financial
11 Subcommittee meeting that we had on December 5th. The
12 topic during that meeting, as most of you are aware, was
13 the phasing out of eligibility for the State Assurance
14 Fund. And we spent a bulk of that meeting discussing the
15 viability of insurance if we were to phase out eligibility
16 and transfer that responsibility to private insurance, and
17 it was more of a -- we didn't really get into the -- ask
18 questions and come up with the issues that are going to be
19 most important and identified areas that we need to do
20 further research on.

21 Just for the benefit of the Commission members
22 and the public, I came up with during that meeting about
23 six areas of insurance that we need to gather more
24 information on, and one of those was availability of
25 insurance to ensure that there was plenty of carriers to

1 provide better insurance; two, that insurance would be
2 affordable; three, wanted to know what type of eligibility
3 requirements there would be in the insurance company and
4 who will not be covered and what type of tanks would be
5 covered; fourth, the coverage, whether or not coverage for
6 new chemicals of concern, MTBE, would be included; fifth,
7 is the coverage determined by the release occurrence or
8 the discovery, because it would be very important to
9 determine that, because if we set an eligibility phase-out
10 date to transfer insurance and then there was a lease that
11 was not covered by either one, we need to take it into
12 account.

13 Finally, what exclusions there might be in the
14 policy, and our action plan is really to prepare a
15 questionnaire, of which I've done just a draft, and I want
16 to let those subcommittee members know this is a draft or
17 are there any other questions that we need to add to this
18 questionnaire, please do that now, and we wanted to send
19 this questionnaire both to insurance companies and
20 carriers but we also want to look at other states.

21 There are three other states that have phased out
22 eligibility of their insurance funds for greater than two
23 or three years, Florida, Texas and Michigan, and what we
24 want to do is see how that phaseout is proceeding, whether
25 insurance in those states is viable, and answer some of

1 the questions that are going to be of concern in our state
2 if we phase it out.

3 So, this is going to be an ongoing study, an
4 ongoing process. I don't think we're going to get quick
5 answers. We need to do a lot of research, but I just
6 wanted to keep you updated as we go forward on the report.

7 These are draft documents we need to gather,
8 please forward them to me and I will put them on the
9 questionnaire. Any questions?

10 MS. FOSTER: George brought up an interesting
11 comment to me during the break, and that's one thing we
12 really haven't looked at. Judy, earlier in the meeting,
13 had a question posed to her in regards to the number of
14 new SAF applications submitted to you after they -- from
15 releases after 1998, or not. We could spend a lot of
16 time, I know. I want to phase out a program for new
17 releases. We could spend a lot of time investigating the
18 insurance carriers and that kind of thing, but there -- is
19 there really a problem? The number of releases are down
20 to two, and the number of releases is dropping, and, if
21 those releases aren't producing SAF applications, in a
22 way, they're phasing themselves out without us having to
23 worry about setting up a phase-out date. I think we need
24 to keep that in perspective.

25 CHAIRMAN O'HARA: Sure. What we will do at the

1 next meeting is gather statistics, how many releases have
2 occurred since. Obviously, bear in mind, they are going
3 to get older, so this issue may not be a problem now in
4 terms of the number of releases, but five years from now,
5 just due to age.

6 MS. FOSTER: I don't think you are going to see
7 that if it takes -- if you do have a release, it's going
8 to be pretty minor unless you neglected it, and it's not
9 going to be the hundred thousand gallon release or
10 whatever the volume is from back in the '60s, '70s and
11 '80s.

12 CHAIRMAN O'HARA: Good point. We will take a
13 look at that, and we made comments before. I think the
14 trend in number of applications, if you look at the
15 information that Judy provided, it just shows that
16 applications are just dropping. So maybe, as you say, the
17 program is phasing itself out.

18 MS. MARTINCIC: In my experience, I just looked
19 at Florida with the '98 requirements, phased their fund
20 out. That's not the case at all and they're having lots
21 of problems, so...

22 CHAIRMAN O'HARA: Okay. That will be an ongoing
23 subcommittee. I intend to have a meeting in January prior
24 to the next Policy Commission meeting and welcome everyone
25 to attend. It is a very important issue.

1 Okay. Moving on to Item 7, Summary of UST
2 Stakeholder Meetings, Shannon is not here, but, Ron, I can
3 probably turn to you. Ron, you are probably the best. I
4 want to know the status. I know we had a draft
5 recommendation. What's the status of that?

6 MR. KERN: Ron Kern from DEQ. And just to kind
7 of reiterate where we are with this whole thing, the
8 director had implemented this UST program stakeholder
9 process back in September and had invited in some
10 Commission members and some folks who represent the full
11 range of the stakeholders involved in the UST program.
12 And we had several working meetings in October and early
13 November, then wrapped it up in mid November with a set of
14 recommendations to about eight or nine main areas of
15 concern across the programs, so, eight or nine main
16 discussions across the program.

17 We are currently in the process of finalizing the
18 report on that, and we've also looked at some of the
19 recommendations that came out of that from the
20 stakeholders, and they included items such as, for the
21 issues that were technical in nature, to put those through
22 the Policy Commission to the Technical Subcommittee, and
23 we already made that recommendation. And I think that the
24 Commission more or less said yes in the last Policy
25 Commission meeting last month.

1 We also have looked at the issue of volunteer
2 issues. There are several volunteer issues that came up
3 during the course of those meetings, and we recognized
4 maybe we didn't have the full range of stakeholders
5 involved in that who we needed, so we decided let's -- as
6 a group, the group decided to extend that process, to
7 extend this whole stakeholder process, address volunteer
8 issues, and we've included some people who have -- in the
9 stakeholder community who have distinct volunteer type
10 issues.

11 We're going to have the first meeting this
12 afternoon over at DEQ. It's at 1:30 in afternoon, and it
13 is not a meeting, it's basically -- we've got a list of
14 stakeholders, we've got these issues, and we hope to come
15 up and discuss the issues and come with resolutions
16 hopefully in January after we get through with that
17 process. We hope to finalize the report and get that off
18 to the stakeholders who are involved in that process for
19 their comment, then put out the final report.

20 So, that's pretty much where we are at this
21 point, and if there are questions, I will try to deal with
22 them.

23 CHAIRMAN O'HARA: Any questions of Ron?

24 Thank you, Ron, for your update.

25 Moving on to Item 8 is an Update on Federal and

1 State Legislation Regarding UST's. I know that has my
2 name on it but I'm not aware of any. Hopefully someone
3 else will have an update on it.

4 MS. MARTINCIC: I would ask that the agency at
5 its next meeting address their legislative agenda. I was
6 in a directors' business round, and they went over their
7 agenda, and there is two issues affecting the UST program
8 that I think should be brought forth to the Commission.

9 CHAIRMAN O'HARA: Okay. So we will have the
10 department bring forth their legislative agenda.

11 Are there any other bills related to UST?

12 MR. ROCHA. Bob Rocha. There is no legislation
13 that I'm aware. We do have two budget issues that are not
14 legislation.

15 MS. MARTINCIC: They are budget issues that
16 affect the UST. You are talking about asking for more for
17 the UST program, so I think they should be addressed.

18 Whether you call it budget or UST, it affects us.

19 MR. ROCHA: I agree, it will affect the
20 organization. And the two issues we are talking about
21 was, one was the database that has been brought before
22 this group as an issue of, do we need a database to
23 collect the information that is needed. And we talked
24 about this several meetings ago, and most of you have said
25 yes, let's go forward, so we went forward for that budget

1 issue.

2 The other one is the issue of financing Ron's
3 group, and that has already been talked about in the
4 Commission, and that is also a budget issue, so those are
5 the two that have been brought up before, but we can bring
6 them again, and the numbers have not changed and the facts
7 have not changed.

8 CHAIRMAN O'HARA: There was some fire
9 legislation.

10 MS. MARTINCIC: Just the energy bill, but that's
11 on hold.

12 CHAIRMAN O'HARA: It's on hold.

13 Any other comments, questions? Thank you.

14 Update on Representative Joe Hart's Legislative
15 Subcommittee. I thought there was a person. I don't see
16 him. Fred Merrill, he's not here.

17 Does anyone know what's going on in that
18 committee?

19 Dan, do you have anything on that committee?

20 MR. KELLY: Dan Kelly. I'm not on the committee.

21 CHAIRMAN O'HARA: We will table that issue, then,
22 to next meeting.

23 Go Back to Item No. 3, Appointment of New Policy
24 Commission Chairman, Vice-Chairman, and Subcommittee
25 Chairs. In keeping with the tradition, I'm the first

1 chairman established for two-year terms. I've sent a
2 notice to everyone that I will be stepping down at the
3 conclusion of this meeting as Policy Commission Chairman,
4 and I'd first like to open that topic up to volunteers, if
5 there are any. It will be a quick formality.

6 Secondly, I've discussed with Gail Clement, I
7 don't know if she's willing.

8 MR. TSIOLIS: I'm willing to nominate her.
9 Looking for a motion to start a vote for Chair?

10 CHAIRMAN O'HARA: Want to make sure.

11 MS. CLEMENT: Point of clarification, Mr.
12 Chairman, when you say two-year commitment, this is not a
13 two-year commitment, is it?

14 CHAIRMAN O'HARA: Don't think you are obligated.
15 I just kept with the tradition that was first established
16 by that committee. You are not bound.

17 MS. FOSTER: There are no time restraints in
18 anything legally, and I would second the nomination and
19 state that based on her expertise of knowing the
20 regulatory process in state, one of the UST program, also
21 being a third party in which I don't think her clientele
22 are based in the UST or LUST program, she would give us
23 more of a third-party opinion and be able to navigate us
24 through the treacherous waters.

25 CHAIRMAN O'HARA: I completely concur with your

1 comment.

2 MS. CLEMENT: Mr. Chairman, does anyone else have
3 a desire to participate in that function?

4 CHAIRMAN O'HARA: There are a lot of people who
5 aren't here today.

6 MR. TSIOLIS: We desire you to participate.

7 MS. NAVARETTE: We have desires.

8 CHAIRMAN O'HARA: I appreciate your volunteering,
9 so we have a second?

10 MR. TSIOLIS: There is a second there on that.

11 CHAIRMAN O'HARA: All those in favor of
12 nominating her, having Gail as our Policy Commission
13 Chair, say aye.

14 (Chorus of ayes.)

15 CHAIRMAN O'HARA: All those opposed, say no.

16 (No response.)

17 CHAIRMAN O'HARA: Thank you very much.

18 MS. CLEMENT: Thanks.

19 (Applause.)

20 CHAIRMAN O'HARA: I did speak with Hal on the
21 Vice-Chairman position, and he has been very gracious and
22 offered to remain the Vice-Chairman unless there is
23 someone who would like that role.

24 Thank you very much, Hal.

25 (Applause.)

1 CHAIRMAN O'HARA: Finally, the Subcommittee
2 Chairs, of which Hal's been there since inception and will
3 continue to be, another big thank you for that, Hal.

4 I've spoken to Andrea, but let me open it for
5 volunteers.

6 MS. CLEMENT: I really appreciate all Hal has
7 made to that Technical Subcommittee. He puts a tremendous
8 effort into it, which has moved things forward. I want to
9 thank him.

10 CHAIRMAN O'HARA: That Technical Subcommittee is
11 so much more involved, and historically it is a full-time
12 job, so, thank you, Hal.

13 Then finally, on the Financial Subcommittee, I
14 know we are looking to phase out and I intend to follow
15 through and be on that subcommittee. I know Andrea has
16 been involved with some arm twisting to become the
17 Financial Subcommittee Chair. I would like to nominate
18 her.

19 MS. CLEMENT: Second that nomination.

20 CHAIRMAN O'HARA: All those in favor of having
21 Andrea as our Financial Committee Chair, please say aye.

22 (Chorus of ayes.)

23 CHAIRMAN O'HARA: All those opposed, say nay.

24 (No response.)

25 MS. MARTINCIC: You all have to come to the

1 meeting as my first action.

2 CHAIRMAN O'HARA: Thank you very much.

3 (Applause)

4 CHAIRMAN O'HARA: Moving on.

5 MS. CLEMENT: Before you move on, I think it's --
6 all of us would say you've done a super job. We really
7 appreciate your efforts.

8 CHAIRMAN O'HARA: Thank you very much. It has
9 been a pleasure to serve.

10 (Applause)

11 CHAIRMAN O'HARA: Moving on to Item 10, which is
12 Discussion of Agenda Items for Next Commission Meeting,
13 and I would just like -- the one I previously mentioned
14 was to get an update from the department on their
15 intentions or timetable or schedule for updating the State
16 Assurance Fund rules. I know we talked about this several
17 times in the past, and I think one of the stumbling blocks
18 was getting a rule rider. I don't know what the status of
19 that is, but I would like to get an update on it at the
20 next meeting and maybe get those rule processes started.

21 MS. MARTINCIC: Didn't they have money for it the
22 last time?

23 MR. ROCHA: Our rule.

24 CHAIRMAN O'HARA: I thought we were going to
25 borrow.

1 MR. ROCHA: Not from the SAF.

2 MR. TSIOLIS: The way it worked was I was
3 volunteering my time; John was going to go back to the '98
4 draft and update it to include recent legislation. I on
5 my own time, and I know the poor guy's been really busy,
6 so I'm just waiting for him to do it, I really believe
7 that he will get a first.

8 CHAIRMAN O'HARA: I don't want to get too much
9 in-depth.

10 MR. ROCHA: I think we need to get back to you
11 with kind of a schedule as to what we're going to do.

12 CHAIRMAN O'HARA: Any other agenda items that
13 Commission Members will deem appropriate for the next
14 meeting?

15 MR. GILL: Judy, was the cost ceilings going to
16 be coming to the cost commission soon?

17 CHAIRMAN O'HARA: They did.

18 MS. NAVARETTE: They're on the web and available
19 at the front desk right now.

20 MS. MARTINCIC: Wasn't that announced at the
21 Financial Subcommittee meeting?

22 MS. NAVARETTE: Yes, I did.

23 CHAIRMAN O'HARA: On my summary.

24 MS. NAVARETTE: But they are available at the
25 front desk. You can pick up a copy today. Lots of

1 copies.

2 CHAIRMAN O'HARA: Any other items? Thank you.

3 MR. GILL: I would again like to announce that
4 the second -- Technical Subcommittee is typically the
5 second Wednesday of the month, so please put that on your
6 calendar. And seeings how we are going to be looking at
7 specific language this time, I will contact ASU and see if
8 we can get Paul to come to the meeting.

9 CHAIRMAN O'HARA: All right. Any other agenda
10 items?

11 Okay. Moving on to Item 11, the General Call to
12 the Public to comment, if anyone wants to.

13 MR. KELLY: Dan Kelly. Thank you, I will defer
14 it until we have discussion on the SAF rule.

15 CHAIRMAN O'HARA: When you're not limited by the
16 internal call, you are not limited by the agenda items,
17 otherwise you can postpone.

18 Any Other general comments from the public?

19 Thank you very much for coming, and next meeting
20 will be January 28th at DEQ, Room 250.

21 Without objection, this meeting is adjourned.

22 Thank you.

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 68 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability

DATED at Phoenix, Arizona, this 17th day of December, 2003.

Deborah J. Worsley Girard
Certified Court Reporter
Certificate No. 50477

