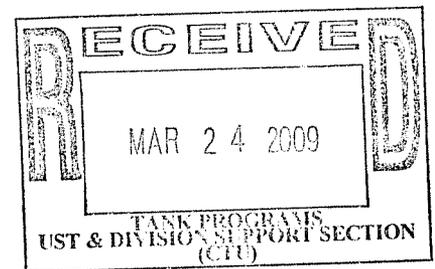


ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
February 25, 2009
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona



REPORTED BY:
Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477

WORSLEY REPORTING, INC.
Certified Reporters
P.O. Box 47666
Phoenix, AZ 85068-7666
(602) 258-2310
Fax: (602) 789-7886

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COMMITTEE MEMBERS PRESENT:

- Catherine Chaberski, Acting Chairperson
- William (Bill) Bunch
- Theresa Kalaghan
- Karen Gaylord, Esq.
- Jon Findley
- Michael Fulton
- Tamara Huddleston, Esq.

ALSO PRESENT:

- Patrick Cunningham, Esq.
Acting Director ADEQ

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

2
3 CHAIRPERSON CHABERSKI: Good morning. This is
4 the February 25th Underground Storage Tank Policy
09:07 5 Commission meeting. We'd like to start with the roll
6 call.

7 MR. FINDLEY: Jon Findley.

8 MS. KALAGHAN: Theresa Kalaghan.

9 MR. BUNCH: Bill Bunch.

10 CHAIRPERSON CHABERSKI: Cathy Chaberski.

11 MR. FULTON: Mike Fulton.

12 MS. HUDDLESTON: Tamara Huddleston.

13 MR. CUNNINGHAM: Patrick Cunningham, sitting in
14 for fun.

09:07 15 CHAIRPERSON CHABERSKI: And we've got Karen
16 Gaylord.

17 MR. CUNNINGHAM: And she's wearing very nice
18 sunglasses the record should reflect.

19 CHAIRPERSON CHABERSKI: Okay. The approval of
09:08 20 the minutes from January 28th. June, from DEQ, who is a
21 wonderful administrative person, caught a mistake, which
22 appears to be in the minutes. It's not a substantial
23 mistake. It's when Phil McNeely was getting his award,
24 and in the minutes there is a comment that says, "You're
09:08 25 new sort of, and you're a realtor that should be scratched

1 there, too."

2 So, we don't know where that came from, so today
3 we're not going to approve the minutes. We're going to
4 correct the minutes hopefully when the Court Reporter goes
09:08 5 back, and then we will bring them up for final approval at
6 the next meeting. How's that sound?

7 Okay. If you find any other issues on the
8 January 28th meetings in the interim, just e-mail Gail
9 and/or myself.

09:08 10 Just for the record, that section is at 9:05:45
11 to 9:05:51, page 4 of the minutes. Thanks.

12 Up next, and what we're going to do today is
13 usually we have public comment at the end. Mr. Cunningham
14 is here. ADEQ is going to go over the updates. I'm going
09:09 15 to ask for public comment at that time, because Mr.
16 Cunningham is leaving the meeting, not staying for the
17 whole meeting, and then at the end of the meeting we will
18 do another public comment in case there is something else
19 that you want to comment on after we're finished with the
09:09 20 meeting.

21 Mr. Cunningham and Mr. Fulton, ADEQ updates.

22 MR. CUNNINGHAM: Fabulous. Thank you very much,
23 Madam Vice-Chair. No one would have known this was your
24 first time chairing. You did a fabulous job.

09:09 25 CHAIRPERSON CHABERSKI: Thank you, sir.

1 MR. CUNNINGHAM: You even corrected the minutes
2 where most public entities, they just blow right by that,
3 so, that was good.

4 I appreciate getting on your schedule early, and
09:10 5 to talk about a very serious budget issue that's going on
6 down at the Capital. I'm going to cover the big picture
7 fund analysis. How are we doing between now and December
8 31, 2013, when the tax goes away, unless it's extended, of
9 course. And then Michael's going to cover how is the fund
09:10 10 doing this year, in other words, what are we going to have
11 on the 30th of June, and the answer is we're going to have
12 money, so I don't want you to hold your breath. But we
13 also have to talk about a problem that is in the budget
14 that is causing all of this concern.

09:10 15 So, that's kind of the big picture, and the -- I
16 think the importance of this is that our \$80 million in
17 stimulus money from the EPA for doing wastewater treatment
18 and drinking water treatment building is at risk. Our \$7
19 million, which is probably going to turn into \$3 million
09:10 20 of federal stimulus money coming to Michael in the State
21 Lead program is at risk, and the \$1.7 million that we
22 might get to do diesel truck conversions in the air
23 program is at risk, and the water program, Joan Card's
24 program at DEQ, is in line for about \$160,000 of money to
09:11 25 take care of monitoring of our lakes and streams. That

1 money is at risk because of a problem in the budget.

2 So, let me hand out a nice simple color copy.

3 This is what you guys are getting, just the way the

4 legislators are getting this, so I'll pass it out, for the

09:11 5 purposes of the record, I will pass it out to the people

6 in the audience also. There you go. You guys can hand it

7 around. I think we have enough.

8 MS. GAYLORD: Pat, we don't have enough here. We

9 need more.

09:11 10 MR. CUNNINGHAM: Michael immediately gives his

11 up.

12 If anybody didn't need one, it would be Dr. Ron.

13 He knows it backwards and forwards. Thanks for giving up

14 yours, Buddy.

09:12 15 The importance is issue number four.

16 You guys have enough in the back? Everybody on

17 board?

18 All right. This is the public record budget fact

19 sheet that I've talked about in three different hearings

09:12 20 last week in the legislature, and the importance is issue

21 number four on the front page.

22 And as you can tell from there, the problem came

23 when the legislature last summer in June reached into the

24 State revolving funds, which are the Drinking Water

09:12 25 Revolving Fund and the Clean Water Act Revolving Fund and

1 appropriated \$15.7 million of protected money. And when I
2 say protected money -- let me look at that just for a
3 moment -- the revolving funds are funds in which we get a
4 little bit of Federal money, a little bit of State money,
09:13 5 and some money from the borrowers, and we bond, and issue
6 bonds. The Water Infrastructure Finance Authority issues
7 bonds, and last year they made 37 loans for \$300 million.
8 And their total portfolio is over 300 loans for about a
9 billion-two, one billion, two hundred million in loans.

09:13 10 The big exciting ones are \$400 million to Lake
11 Havasu to do a complete sewer system. It's the largest
12 city west of the Mississippi without a sewer, so we're
13 putting one in. And then there is little small loans
14 like, for instance, Casa Grande just one for 60 million,
09:13 15 60 million with an M to build -- expand, actually, their
16 wastewater treatment plants.

17 So, you might say, "But what does this have to do
18 with me?" Okay. And the answer is, we can't let that
19 transfer take place or three bad things happen. Number
09:14 20 one, EPA will not give us the stimulus money that I just
21 listed for you from the new stimulus act that the
22 President signed last Wednesday. If we're in violation of
23 the Safe Drinking Water Act, the Clean Water Act, the
24 Federal Appropriations Act, they're not going to give us
09:14 25 any more money because we have unlawfully transferred 15.7

1 of collateral money that's backing up those bonds and
2 those loans. So that's our number one thing.

3 Number two, our bond counsel has advised us,
4 WIFA, and the State in general, and that if this transfer
09:14 5 takes place, we will have to notify the bond market. If
6 we notify the bond market starting in New York City that
7 Arizona has an AAA credit rating for its Water
8 Infrastructure Finance Authority and it has all our loans
9 and we sell our bonds at a very good rate because we have
09:14 10 a great credit rating, if we notify the bond market that
11 we have taken some of our own collateral and transferred
12 it to the general funds to balance the books, our market
13 -- our credit rating is bound to go down. Our AAA rating
14 for bonds comes, as you know, from Moody's and others, who
09:15 15 are under great pressures these days because Congress is
16 asking them why in the world did you have such great
17 ratings against these banks that are failing or why in the
18 world did you have great ratings against some of these
19 mortgage securities that have been sold and are now
09:15 20 referred to in the popular press as toxic assets.

21 So, I just think it's a bad idea to disclose to
22 the bond market that we have taken \$15.7 million in
23 collateral and unlawfully moved it to the general fund.
24 So that's the second calamity.

09:15 25 And the third calamity is kind of routine. We

1 will be referred to the Inspector General of the United
2 States of America for violating three Federal statutes,
3 three, the Federal Clean Water Act, the Federal Safe
4 Drinking Water Act, and the Federal Appropriations Act.
09:16 5 All of those acts guarantee that the money that Congress
6 sends us for the drinking water fund and the Clean Water
7 Act Fund, so-called revolving funds, that all of those
8 acts, all of those acts guarantee that that money will be
9 pledged in perpetuity, as in forever, to back up the loans
09:16 10 and the bonds that WIFA has awarded or floated.

11 Those are the adverse consequences to number four
12 on the bottom of our budget fact sheet.

13 Now, to the point of why am I here. You can
14 imagine that DEQ does not have \$15.7 million lying around
09:16 15 on the floor. Right? So we have been proposing since
16 last summer that a transfer, the legislature transfer \$5.7
17 million out of the State Assurance Fund or the UST Fund,
18 depending on how you call it, into the general fund to
19 balance the books. Okay. That was fine with the Speaker
09:17 20 of the House, the President of the Senate. It is, of
21 course, fine with the Governor's Office, the Governor's
22 Office has approved everything on this fact sheet, and it
23 was going to go into the bill two Saturdays ago where we
24 fixed the '09 general fund budget, but some people in the
09:17 25 senate had concerns about this, so they stopped that fix,

1 it came out of the budget repair bill and it will now have
2 to go into another trailer bill or into the FY 010 budget.
3 If it goes into the FY 010 budget bill, it becomes
4 immediately effective under one line in the Constitution,
09:17 5 the State Constitution. That's important because if DOA
6 transfers that 15.7, we have an SEC mandatory disclosure
7 requirement. The disclosure requirement I talked about
8 earlier. We don't want to do that.

9 So, that's why we're here today. Thanks for the
09:18 10 time. And I want to go through now the health of the fund
11 on the big view. Mike will go through the health of the
12 fund on the smaller view. I'm working off of the State
13 Assurance Fund analysis, which is dated February 16th -- I
14 think it's in your packet. Michael, hopefully I'm
09:18 15 right -- to give you an idea of the big view. And I know
16 there's members in the audience who care about this, and
17 so when we get to the public comment time, it will be a
18 perfect time to chat about this.

19 On the State Assurance Fund analysis, which
09:18 20 frankly was developed for Senator Flake, whose untimely
21 passing means he's no longer chairman of our committee,
22 but a couple of years ago he just wanted a snapshot view
23 of how the fund was doing, so he and Carolyn Allen asked
24 us to put this together, Senator Allen. We did that.

09:19 25 This is the '09 version that you are looking at. All

1 right? It's a nice simple view of the fund. It gives you
2 the approximate balance on February 1 of 2009, which as
3 you can see is \$24 million. The State Assurance Fund
4 revenues, and this is revenues all the way to December 31,
09:19 5 2013. That's the ultimate end date of the tax as you guys
6 know, or the tank fee as lawyers at the AG's office refer
7 to it. So that generates about 145 million. You see the
8 projected revenue is 169 million.

9 The legislature for years has asked us to
09:19 10 estimate as best we can what we're going to need to clean
11 up all the sites that are left, and you can see Michael
12 has inserted the latest data into there. 493 facilities
13 left. About 396 of those have soil and groundwater
14 contamination; 97 are soil only. We have a computation
09:19 15 there based on our experience about how much it takes to
16 clean these up. It's a conservative high number but,
17 nonetheless, we do it for a reason. In other words, we'll
18 need about \$108 million to clean up all of these sites.

19 Now, there is no way in the world that Mr. Kelly
09:20 20 and his colleagues sitting in the audience can do \$108
21 million worth of work in that time in our view.

22 MR. KELLY: Wait, there is a chance.

23 MR. CUNNINGHAM: That's right, but we put that in
24 there just in case they do, so that we'll have the money.

09:20 25 And last year, frankly, we moved a lot of money

1 out of the fund, and people were really working. This
2 year it doesn't appear quite as busy, but we're projecting
3 as if they would do all of this work.

09:20 4 You have the cost to administer our portion of
5 the fund there. You see that. You see transfers to the
6 UST fund. All right. The -- from the UST fund. The '09
7 transfers, that \$18 million, those -- that includes
8 transfers of the Senate Bill 1001. That's the bill that
9 passed two Saturdays ago, and it includes our proposed
09:21 10 \$15.7 million transfer to fix the WIFA problem. So that's
11 the full 18 million there. You have projected liabilities
12 versus projected revenue. We show about \$11 million being
13 in the fund when we're done.

14 As you know, we're supposed to have under the
09:21 15 statute that was passed way back in 2005, I think, 1306,
16 2004, we're supposed to have \$60 million in the fund.
17 That's what the legislature wanted to have. We're going
18 to be short if everybody does all that work for \$108
19 million.

09:21 20 The purpose of this fund analysis is to make sure
21 that you see exactly what the legislators are seeing, that
22 is, yes, the fund can transfer the 15.7, yes, you will
23 have money left, you just won't have 60 million left.
24 There are people in the legislature who are discussing
09:22 25 whether or not to extend the fee. The fee may be extended

1 by a vote of 31 in the House, 16 in the Senate, and of
2 course one in the Governor's Office. That is a
3 possibility. And I'm certainly not going to prognosticate
4 here whether that's going to happen, but that's always a
09:22 5 possibility. Remember that if you wanted to create a fee
6 in the legislature, you need a super majority. You've got
7 to have 20 votes in the Senate, 40 votes in the House, and
8 the Governor, of course.

9 So, that's the big picture. Michael, let me turn
09:22 10 to you and you can do kind of the funds status, which is
11 the shorter picture, can we make payroll and pay people
12 between now and the 1st of July. Can we, Michael?

13 MR. FULTON: We can right now. The difference
14 between this longer term analysis and this shorter term
09:22 15 analysis, I'm looking really specifically at the State
16 Assurance Fund on this handout. It's entitled the State
17 Assurance Fund Status '09, February 25, '09, looking at
18 just this fiscal year.

19 This broader view that Patrick just presented is
09:23 20 for the UST Fund in specific and for those that appreciate
21 the difference, we're talking about the State Assurance
22 Fund, which is one fund within the whole UST fund, so I'm
23 kind of taking a little snapshot of that fund, primarily
24 because that's really where most of our action is
09:23 25 budgetwise as a department.

1 I gave an update of this -- my first update, my
2 first meeting last month, so I'm going to talk a little
3 bit about the differences between last month's report and
4 this month's report for those that were here last month on
09:23 5 the board, you've seen this presentation. I want to talk
6 a little bit about the differences and why the bottom
7 lines essentially are different this month from last.

8 I'm just going to work my way straight down from
9 "Sources" to "Summary", and I've got some additional
09:23 10 footnotes from last month, so bear with me here.

11 We have, as opposed to last month in our --
12 actually what I'm going to do right now is jump right to
13 the bottom line here, which is showing a predicted ending
14 balance of \$3.4 million. That's very much different from
09:24 15 our projected balance at the end of last month where I
16 gave the update of \$169,000. I'm explaining the
17 differences right now if you go down through here.

18 Beginning balance, we adjusted our beginning
19 balance upward using better numbers that we had internally
09:24 20 as opposed to what I provided last month, which were based
21 upon details, so instead of 30 and a half million, about
22 \$34 million.

23 Our revenues have been adjusted downward. That's
24 a projection we're doing constantly. Revenues come into
09:24 25 the program monthly, and they're continuing a downward

1 trajectory in terms of it's directly related to gasoline
2 sales. And I don't know what its long-term trend is, but
3 that's why I adjusted that number down. That's a
4 projected number through the end of this year, 28.6 versus
09:25 5 30.

6 So, our total projected available funds for the
7 year is 62 at this point, versus 60.9 last month. So
8 we've projected more available funds because our beginning
9 balance is really larger than what it is we thought we had
09:25 10 last month.

11 Okay. Expenditures. Here's the biggest
12 difference on the sheet. Last month we talked about 36.8
13 million in expenditures. That's largely SAF payments.
14 And also that -- what comes out of those expenditures are
09:25 15 the State Lead work. I talked about last month we were
16 suspending our State Lead work through at least the end of
17 this year, thus, this month our expenditure projection is
18 much lower through the end of the year than it was last
19 month, 36.8. This month right around \$30 million. That
09:26 20 difference is largely our suspension of the State
21 Assurance Fund -- I'm sorry -- the State Lead work. There
22 is a big difference.

23 Transfers out have gone up just a touch because
24 last month, when I gave this report, Senate Bill 1001
09:26 25 hadn't been passed. Additional transfers came out of the

1 UST fund as a result, so those transfers now reflect 29.6
2 million versus 23.4, so in the end we have total uses of
3 right around \$59.2 million.

09:26 4 So, the summary down below reflects those
5 differences. Available funds, 62.7. Uses, 59.2 projected
6 ending balance of 3.4 million.

7 These are figures we are looking at monthly if
8 not weekly on our claims. And then revenues that come in
9 and all those factors go into a readjusting this monthly
09:27 10 status sheet. And I will keep giving these status reports
11 as long as you like. These are working documents that are
12 very helpful for us, and so for that purpose I think we're
13 -- right now we can sustain the transfers we've had put
14 before us, and as I've cautioned before, fiscal year 2010
09:27 15 is ahead of us. We don't know what's going to happen.

16 Patrick can't predict that either. Fiscal year 2009 still
17 could be readjusted as we speak, so we have to keep an eye
18 on these numbers very closely. They've impacted the
19 program but not to the point where we've had to
09:28 20 re-emphasize, we're not anticipating to have a ranked
21 claim I talked about last month, so, with an abundance of
22 caution, we're looking at that process and making sure we
23 could do that if we had to. We do not want to.

24 In order to avoid that, we've suspended our State
09:28 25 Lead work through the end of the year, and we will have to

1 re-access that strategy as we get more information. It's
2 a month-to-month or week-to-week process at this time.

3 So, that's all I had to say about the 2009
4 update.

09:28 5 MR. CUNNINGHAM: Let me say a word about why we
6 stopped work here and in WQARF. We stopped work in WQARF
7 on all of our sites, except 13 big sites where we are
8 doing active remediation, and we stopped -- and we are
9 still doing investigative work, active investigative work
09:28 10 at a handful of sites that are the hottest sites. Okay.
11 And Karen has heard that at the WQARF board also, so we
12 stopped work there because there was a transfer out of
13 WQARF by the legislature to fund human services for people
14 who had mental illness and people in developmentally
09:29 15 treatment centers. That money went to keep those centers
16 and those services open.

17 We stopped work here at SAF and contractors
18 called me within a day saying, hey, why did you do that,
19 so that we could make sure that, A, we paid claims on a
09:29 20 timely fashion. We are very proud that Michael and his
21 people have processed all the claims within 90 days last
22 month, because that's never happened before, and that we
23 have money around to make -- to actually make all that
24 good.

09:29 25 So, I think we're in good shape on that, but we

1 wanted to make sure we paid the claim and also we weren't
2 sure how much stimulus money was going to come to UST to
3 take place of the State money. We thought some was
4 coming, and indeed we think some is coming. I think
09:30 5 Michael's pledge number is 3.3 million.

6 MR. FULTON: If you'd like, I could give the
7 summary of the stimulus, unless you want to take questions
8 now.

9 The stimulus packages we've seen so far suggest
09:30 10 that the State of Arizona might receive up to about
11 \$3.3 million in stimulus money from Federal Government to
12 -- largely to implement the same sorts of activities that
13 we do implement under State Lead program, to clean up
14 orphan sites to simplify it. So we've been working with
09:30 15 EPA Region 9 providing them lists of sites that might be
16 eligible for the funding, at least under the criterion
17 which we've been presented so far. We haven't gotten a
18 lot of written formal guidance out of the UST program yet.
19 It's coming, but we've been working with them regularly to
09:31 20 identify which sites might be eligible, provide them a
21 list of those sites that might be eligible. Looks a lot
22 like our State Lead list, but we've also supplemented that
23 with some other orphan sites that we've known about that
24 might be eligible, also those that we've been managing
09:31 25 under our Municipal Tank Closure program are on that list.

1 We've given them a list of sites that are about
2 7.16 million we think in total cleanup costs that would be
3 necessary, would be incurred to clean them up. Given that
4 list to the feedback, we are getting is about 3.3.

09:31 5 So, Ron, Joe, and his group are working real hard
6 to make sure we are ready to get that money out the door
7 back into a productive use of these sites as soon as it's
8 available with a procurement, and that's the prep work
9 we're doing and giving that daily attention as well.

09:31 10 So, that's a very dynamic process right now and
11 big emphasis to me to get the money, being used
12 productively, but also very quickly so we're doing that
13 ground work right now.

14 MR. CUNNINGHAM: And the manager in Region 9 for
09:32 15 the State Assurance -- the revolving funds sent us an
16 e-mail last night, sent it to Judy Navarrete, who runs the
17 revolving funds, and he said point change -- now, this is
18 an e-mail that he sent to his boss, Alexis Strauss who
19 runs all of water, and then she in turn sent it to the
09:32 20 Regional Administrator whose name is Lori Yoshi, and I
21 spoke to her about this topic last Thursday. And Jose's
22 e-mail says in quite historic terms, Arizona is aware that
23 they will receive no stimulus money unless they repair the
24 15.7. And then he listed the stimulus money, 3.3, the
09:32 25 \$81 million for State Revolving Fund, the 1.7 in air, and

1 the paltry 160,000 in water. I say paltry in jest because
2 I'm from Kingman. Anything over 100,000 I think is real
3 money. So he said in the starkest of possible terms,
4 Arizona is aware they will receive no stimulus money
09:33 5 unless they repair this problem.

6 So, Madam Chair, thanks for letting us go first,
7 and we'd love to answer questions of the Board and, of
8 course, questions from the audience.

9 CHAIRPERSON CHABERSKI: First, questions from
09:33 10 Policy Commission Members.

11 MR. BUNCH: I have a question Mr. Cunningham.
12 The projected liability is the 108 million for SAF
13 eligible releases. When can we expect, based on our
14 deadline, to get claims before I think it's July 2010?

09:33 15 MR. CUNNINGHAM: Right.

16 MR. BUNCH: And the budget is balanced around
17 revenue through 2013. How do you deal with the
18 expenditures or liabilities being front-loaded like that
19 and the money is not coming up until fiscal years?

09:34 20 MR. CUNNINGHAM: Well, the -- first of all, we
21 don't think people can do \$108 million worth of work, but
22 if they do, in the worst case, if everybody gets their
23 stuff in -- as you know, the claims have to come in by
24 2010, the date you just stated, and we like to state that
09:34 25 over and over again, that's why we've sent a postcard to

1 the entire world saying that and put it on our web page.
2 I think Michael has it on the car door of his car. The
3 worst case is, if that money -- if we run out of money in
4 those years, we would hold up until the money is refreshed
09:34 5 each month, and it's possible we could go to ranking then
6 in 2010, 2011, if we had to.

7 MR. BUNCH: In terms of reimbursement?

8 MR. CUNNINGHAM: In terms of reimbursements. But
9 we would stop State Lead in its tracks and do
09:34 10 reimbursements. So, you are right, there is a little bit
11 of a niche there that we might run aground on money. And
12 everybody is aware of that. The Governor's Office is
13 aware of that. When I discussed this with them, they are
14 aware that we might need to extend the fund, or we might
09:35 15 need to make sure that there is money there for
16 reimbursements in that little niche problem, so...

17 MR. BUNCH: Then I wasn't sure how the MNA
18 program was going to be funded. Was that going to be
19 funded through the UST fund? I don't necessarily see any
09:35 20 liabilities.

21 MR. FULTON: The termination of the State
22 Assurance Fund, the funds remaining in that State
23 Assurance Fund are going to be put into what they call a
24 regulated substances fund, which is going to fund the MNA
09:35 25 program. That's largely the basis upon which the 60

1 million is to be spent was to -- under those programs, the
2 State might take over the monitoring of these long-term
3 groundwater sites accepted in the MNA program. That's my
4 long-term view here is making sure, if we are going to
09:36 5 keep that program around and viable, we need to have some
6 money to run it, and that's the gambit we're doing here.
7 We got to look at the short-term implications to our
8 budget, but also look at the long-term, because those
9 surpluses are supposed to roll over into the regulated
09:36 10 substances fund and pay for our obligations at that point
11 to monitor those sites through closure.

12 MR. BUNCH: Would it make sense to show that
13 liability so that the legislature doesn't think they've
14 got more than what we're showing today?

09:36 15 MR. FULTON: That's something we talked about,
16 and I fully suspect that there is going to be some more
17 analysis of that \$60 million number as we progress through
18 this discussion. The basis for which it was put together,
19 what assumptions we made, are those still valid
09:36 20 assumptions. I think that's an exercise we're redoing,
21 looking at that \$60 million number and seeing if our
22 projection in the universe has changed since the bill was
23 written before.

24 MR. CUNNINGHAM: And we thought it was pretty
09:37 25 stark. You are supposed to have 60, and we have 11, but

1 we can make it more stark.

2 MR. BUNCH: And less, maybe five or --

3 MR. CUNNINGHAM: Yeah. And the Monitored Natural
4 Attenuation portion of this, if it's not rolled into the
09:37 5 UST Tank program division somewhere, it will be rolled
6 somewhere into DEQ. Somebody will get that duty, and they
7 may get a buck and a half to do it or they may get 60
8 million to do it.

9 But, remember, the legislature enacted that not
09:37 10 seeing the worst recession in our lifetime, so we're --
11 what they were thinking, the tax would end early, in 2012,
12 because we'd have 60 million in the bank, and the statute
13 actually says if we have 60 million in the bank, the tax
14 can end early. We've projected it's going to be December
09:38 15 of 2013, because clearly we're not going to have 60
16 million, and they're going to sweep some more, friends,
17 right, the 2010 budget numbers are very bad. And that's
18 why the Governor is in the paper this morning talking
19 about our plans that she has asked us to put together, to
09:38 20 cut our budget, our '09 budget as enacted two Saturdays
21 ago, cut that in increments of 5, 10, 15 and 20 percent,
22 and SAF will be asked to give it to the bank with that one
23 way or the other.

24 CHAIRPERSON CHABERSKI: Any other questions from
09:38 25 the Commission Members?

1 MR. BUNCH: How did the WIFA issue -- I take it a
2 lot of times how does something like that happen knowing
3 that all these federal statutes and regulations were being
4 breached? Am I being naive in saying how can that happen?

09:38 5 MR. CUNNINGHAM: No, no, we're saying that, too.
6 We sent them the statutes in the Hawaii -- there's these
7 famous letters from other states, Hawaii, South Carolina.
8 -- there's a third state I can't remember. Might be
9 Kansas -- who have tried over the years to borrow money
09:39 10 from the State Revolving Funds or flat out take them for
11 school buses, to balance the budget, for a variety of
12 reasons.

13 And we have these kind of stark letters from EPA
14 laying out all the things they can do, including having
09:39 15 the Auditor General come to see us, and suspending all
16 Federal grants. They could suspend, if they chose to,
17 transportation money, so we sent all that in the middle of
18 June. But, about the 30th of June, they enacted the
19 budget. And I suspect that they needed 15.7 million to
09:39 20 make the numbers balance, and they had 31 votes in one
21 chamber and 16 in the other chamber, and they needed 15.
22 7, and they looked around and they took some of this. And
23 I think somebody at the low level staff over at JLBC or
24 OSPB, or in the House or Senate versions didn't say to
09:40 25 them, you can't have that, take something else, or, they

1 said you can't have that. And they said, yeah, we'll deal
2 with that later. We have to get out of here.

3 MR. BUNCH: Thank you.

09:40 4 MR. FINDLEY: Just sort of briefly, how does the
5 suspension of the State Lead work influence the
6 contractors and the people that are doing work, what is
7 the impact on that?

8 MR. FULTON: Well, it's obviously not a positive
9 impact to those who have had these contracts, so we're
09:40 10 working really closely with the contractors trying to
11 close those at least -- I'm calling it mothball some of
12 those sites, bring them to a stopping point that makes
13 sense. But, there is no way to eliminate a negative
14 impact on the contractors. This is one of the risks that
09:41 15 unfortunately all the state contractors play under. We
16 haven't had to exercise the provision before, but all of
17 these contracts are subject to funding availability. So,
18 it's not something we did easily or lightly. It's just
19 one of those least worst options we're working through at
20 this point.

21 Ranking claims is one of the -- would be a very
22 challenging and appeal ridden process, so we're trying to
23 just make a least worst choice here and move ahead.

24 MR. CUNNINGHAM: But they're getting paid for the
09:41 25 work they've done.

1 MR. FULTON: Oh, absolutely.

2 MR. CUNNINGHAM: In other agencies contractors
3 are not being paid for the work they've done. In human
4 services, in medical, in work for other agencies in the
09:41 5 field, they're not being paid because the money is not
6 there. So, our contractors are being paid for the work
7 that they have done.

8 You know, in managing through a bad situation,
9 Mr. Findley, I think it's been a miracle what Michael's
09:42 10 done. It really is. If I see it from the other agencies,
11 who are telling doctors and hospitals and treatment
12 centers, yeah, you saw those people in January and
13 February, there is no money to pay you, file a claim. And
14 I suspect they will file a claim.

09:42 15 MR. FULTON: To expand on that point, though, we
16 are looking hopefully towards that 3.3 million stimulus
17 money to help us get some of those who are high priority
18 projects underway again. It probably won't get all the
19 sites that we had on our list. We had a \$7.16 million
09:42 20 list, to get 3.3, you can see why we have to make some
21 choice about which ones we advance.

22 The longer term implication is if that work
23 doesn't happen before the tax runs out, that's another
24 piece in the game here. We're deferring work that should
09:43 25 be paid out of the State Assurance Fund, and if that money

1 doesn't materialize, now what happens to the State Lead
2 sites, so that's a longer term look that we have to be
3 focused on beyond this fiscal year.

4 MR. FINDLEY: Thank you.

09:43 5 CHAIRPERSON CHABERSKI: Any more other questions,
6 comments from the Commission?

7 Go to the public now. Did anyone fill out a card
8 to speak, not that that's going to preclude. We will do
9 retroactively, just make sure we make a note of that
09:43 10 formally and open it up to comments from the public.

11 Anybody?

12 MR. WALDNER: Jerry Waldner. I have a question.
13 The State Lead, you fill out an application to be in it,
14 can they get back out of it?

09:44 15 MR. FULTON: Yes.

16 MR. WALDNER: What's that process?

17 MR. FULTON: Talk to the State Lead program, but
18 those are certainly choices that some of those
19 participants in the State Lead need to make, because
09:44 20 they're looking at the fund's window coming to an end. If
21 State Lead's not taking it, do they want to pick up the
22 work themselves, hire their own contractor and complete
23 the work.

24 So, talk to State Lead. That's one of the other
09:44 25 implications of stopping the work because we're up against

1 the window of eligibility here for making those payment
2 applications. So, talk to the State Lead folks, and there
3 is nothing prohibiting anybody from leaving State Lead, or
4 otherwise.

09:44

5 One of our challenges, and I will be real open
6 about it, there is a number of people in State Lead that
7 are there for the financial hardship element of State
8 Lead. Those people are not very likely to pick up that
9 work and continue. So that's one of the other -- again,
10 the least worst choices we're looking at having to
11 resolve.

09:45

12 MR. CUNNINGHAM: But the list of sites in State
13 Lead is public. You are welcome to look at it. You
14 probably have. You seem like an informed constituent.

09:45

15 CHAIRPERSON CHABERSKI: Any other comments,
16 questions from the public at this time in this portion of
17 the meeting?

09:45

18 MR. CUNNINGHAM: I should say, Andrea and her
19 organization, Andrea Martincic, from the Petroleum
20 Marketers, Andrea, your members have been very concerned
21 about this, and we're going to have a meeting this
22 afternoon down at the Senate, and she's going to chat with
23 us and with members of the legislature about this problem.

24 So, Andrea, I appreciate your members being
25 involved in this.

1 MS. MARTINCIC: I'd like you to say that that's
2 not our meeting. It was called actually by Senate staff.
3 That should be clarified.

4 MR. CUNNINGHAM: Yes. No, you are absolutely
09:45 5 right. Senator Verschoor wanted to have that meeting and
6 wanted to chat with people.

7 And she's been very active in making sure that
8 her members were heard about this, and I appreciate that.
9 I mean, I understand -- I understand their position, so...

09:46 10 CHAIRPERSON CHABERSKI: Any other comments or
11 questions? Last call before Mr. Cunningham leaves. Yes.

12 MR. KNOEBL: Rick Knoebl with ER Systems.

13 I take it this has no extension of the June 30th
14 deadline for submitting claims, correct, things have to go
09:46 15 to ranking? That's still hard fast?

16 MR. FULTON: That deadline is set in statute.

17 MR. KNOEBL: And any extension of the tax
18 wouldn't necessarily extend that deadline date?

19 MR. FULTON: I think to be comprehensive you
09:46 20 would have to talk to about extending those deadlines
21 dates. The extension of the tax is going to make sense.
22 We have to talk about a shift of maybe all of those
23 deadlines down an equivalent time duration, but...

24 MR. CUNNINGHAM: And the Department is certainly
09:47 25 open to that. The Napolitano administration discussed on

1 several occasions whether extending the tax was the right
2 thing to do, and kicked it around, and legislators asked
3 me about it in the '08 session and the '07 session, but
4 nothing ever materialized. So, certainly if members of
09:47 5 the regulated community are interested in extending the
6 tax and extending that date, we're certainly interested in
7 talking.

8 CHAIRPERSON CHABERSKI: Anyone else? Okay.
9 Could I ask the two gentlemen who spoke to fill out a card
09:47 10 with your name so that we can get it to the Reporter for
11 formal documentation. Thank you.

12 Any last questions, comments?

13 Mr. Cunningham, thank you for coming to the
14 meeting and sharing this valuable information, it's
09:47 15 greatly appreciated.

16 MR. CUNNINGHAM: Thank you. It's always good to
17 talk money when you have some. See you guys soon.

18 CHAIRPERSON CHABERSKI: Thank you very much.
19 Okay. Back to the agenda.

09:48 20 MR. FULTON: I will move on with --

21 CHAIRPERSON CHABERSKI: I was just going to say
22 our usual business.

23 MR. FULTON: -- what used to be the core of the
24 Department report, these now look like mundane statistics.
09:48 25 These are the color graphs. We go over some of these

1 statistics regularly.

2 Just to talk about format here a little bit,
3 since I've had a chance to actually talk about these a
4 couple of times, and to the extent the trends are
09:48 5 interesting for folks to see, I'm going to talk to Joe
6 about adjusting our format just a touch so we just not
7 show the current month. I'd like to see a past month just
8 so we could get a little snapshot of what the trend might
9 like over the last couple of months.

09:48 10 But with that, I mean, the statistics are really
11 very much the same, at least in trend as the last month,
12 still about 7500 closed sites, a couple thousand open
13 sites. We're working still to close sites that are
14 eligible for closure as quickly as we can.

09:49 15 I think we had a question last month about our
16 interaction with folks who seem to close sites,
17 particularly for those that are looking to close sites in
18 the '04 portion of the rules, the groundwater -- what am I
19 going to call that, the --

09:49 20 MR. DROSENDAHL: Groundwater less case closed.

21 MR. FULTON: -- groundwater less case closed.
22 Those are sites where groundwater may exceed drinking
23 water standards and still get closed. Those are our most
24 challenging information intensive type of closures. We
09:49 25 had a comment about that last month. We are moving as

1 fast as we could. I think that's been well taken.

2 We had a bit of hiatus when Phil left, and I
3 picked things up, so it has been pretty seamless, but I've
4 been well pinned down with budget matters for the last
09:50 5 eight weeks, but we're getting our internal machine
6 re-oiled and getting those sites closed where they should
7 be and engaging in conversations with owners, operators
8 where we think we might need more information.

9 This is really important, because, as I said, the
09:50 10 window is closing. Every day another day goes by, and if
11 we don't get interaction back to the owner/operators, they
12 may not have time to turn around, do more work that's
13 eligible for reimbursement. So, Joe's folks are working
14 really hard on making sure that interaction is timely.

09:50 15 And if you are -- we fully expect to hear more
16 squeaks as we get closer, more people asking about the
17 status of their reviews, so we're trying to stay on top of
18 things currently, but if you've got a concern about the
19 timeliness of your reviews, give me or Joe a call and we
09:51 20 will see what we can do.

21 The only other -- jump to the bottom here, the
22 MTCP. That is also one portion of the program, that we've
23 temporarily suspended work projects that are funded under
24 MTCP. It doesn't mean people won't just -- cities and
09:51 25 counties may continue to apply, but we don't have any

1 intention to act on those applications right yet.

2 Just to point out again, some of those projects
3 in MTCP are -- may be thrown into our pot of stimulus
4 money to get those going again. So, that's one of the
09:51 5 real challenges in the State Lead program. We have to
6 look at projects we have obligations and contract to do,
7 finish those things under the contract or court order or
8 court agreed to conditions. We are going to continue with
9 those projects, but, again, it's not a choice we wanted to
09:52 10 make, it's just what we are having to make, temporarily
11 hoping we can work through this next fiscal year and get
12 those going again.

13 Next page, the State Assurance Fund. The claims
14 received and interim determinations made, I will go ahead
09:52 15 right now and correct an error Mr. Cunningham made since
16 he's now out of the room.

17 We've been paying claims within 90 days for a
18 long time. That was a challenge for the program. I heard
19 in folklore a while ago, we're still endeavoring and still
09:52 20 managing to pay and make determinations on claims. It
21 doesn't mean we pay 100 percent of what somebody asks for
22 in 90 days, but we make a determination whether they get
23 paid or short paid or move on into appeal, so those
24 determinations are having very timely and on an ever
09:53 25 shrinking staff basis.

1 That's one of the other things we're still
2 continuing, looking at the termination of this program,
3 trying to keep our efficiency up with reviews, but also
4 recognizing if this -- as the State Assurance Fund goes
09:53 5 away, we need to get our -- we just need to sunset the
6 program more than one way, and that may be not filling
7 vacant positions. So we're having a smaller staff. We
8 have about 78 positions filled out of 102 authorized. I
9 don't see any reasons to change that approach at this
09:53 10 point.

11 So, we have a challenge here, and we are really
12 -- the purpose of a lot of these stats is to keep an eye
13 on our work flow and see if we're being able to maintain
14 our timeliness of reviews and claims payments.

09:53 15 So, that's all I have for the stats update.

16 CHAIRPERSON CHABERSKI: Okay. Let's see. Moving
17 on. Bill Bunch, report for the Evaluation Subcommittee.

18 MR. BUNCH: We actually canceled the meeting
19 scheduled for February, and probably will defer any
09:54 20 discussion around incorporating the stop notice related
21 documents probably until May or so, knowing that the
22 Department's got other priorities.

23 MR. FULTON: Well, we -- if I may, we can help
24 work through any of those comments. I think we've made
09:54 25 our opening positions on these orders pretty clear. We

1 think they're fairly straightforward. If you would like
2 to work on those, don't worry about our work load. We can
3 do that.

09:54 4 I will jump back to item No. 5 here, which is
5 recent legislation and rules affecting the program. There
6 isn't any recent legislation that I haven't given an
7 update on, but also our rules, as the rest of the state
8 agencies, we're in a hiatus for any rule advancement.

9 What you speak of here in the stop use orders,
09:55 10 that legislation is long past. We're just implementing
11 that old legislation. So, if you'd like to, we'd like to
12 get that process formalized, so that we could use stop use
13 orders if we had to. We are currently authorized to do
14 that, but we want to have your input to how we might
09:55 15 implement the stop use orders and the termination stop use
16 orders. So, don't be shy about our time. We have -- I
17 think we're pretty well solid in what we want to do.

18 MR. BUNCH: Okay.

19 CHAIRPERSON CHABERSKI: Technical Subcommittee
09:55 20 update, Theresa and I, we haven't had meetings and neither
21 of us have received any agenda items, so nothing to report
22 there.

23 The 2008 UST Policy Commission annual report
24 status, Gail is not here. She's heading up that effort.
09:56 25 I know her goal was to get it done prior to end of fiscal

1 year. I know we have submitted information. People are
2 diligently working towards that, so I imagine at the next
3 meeting she'll give us an update on the status of the
4 annual report.

09:56 5 Summary of meeting action items. The only action
6 items, and correct me if I missed something, was we're
7 going to follow up and get the Court Reporter the
8 correction of the minutes, so we're not going to -- in the
9 March meeting we will approve those meetings, along with
09:56 10 the February meeting minutes.

11 And that's really the only action item I have so
12 far is informational meeting for the most part as opposed
13 to an action meeting.

14 I'm going to make a statement, and think that
09:57 15 it's probably a good idea to think that we're going to
16 have a March meeting if only to get an update on the
17 budget. We could see how it goes. If Mike Fulton has new
18 numbers or we have new things we want to talk about, it's
19 such a dynamic economic time that I think it's of value
09:57 20 because things seem to shift quickly, so I'm going to say
21 we --

22 MR. FULTON: I will have new numbers. I am doing
23 this every week.

24 CHAIRPERSON CHABERSKI: If only for that, and the
09:57 25 Chair will be back soon, I would say hold the March

1 meeting date to have an actual meeting if you could,
2 please. Sound good? All right. So that would be
3 March 25th at 9 o'clock in this room.

4 I asked, once again, we'd have another call.

09:57

5 Any there any other further closing comments from
6 the public at this time before we adjourn? How about the
7 Commission Members, comments?

8 Then the February 25th, 2009 UST Policy
9 Commission meeting is now adjourned. Thank you.

09:58

10 (9:58 a.m.)

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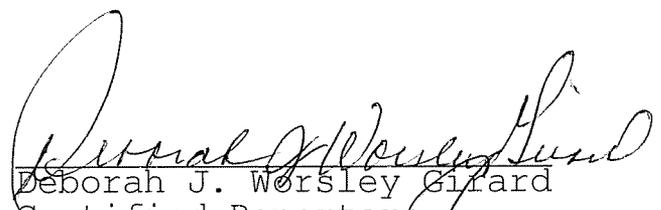
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C E R T I F I C A T E

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 38 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 25th day of February, 2009.


Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477