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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BUREAU OF WATER

CAPITAL RESOURCES DEVELOPMENT COMPANY, L.L.C.
NORTH CANTON MINE
401 WATER QUALITY CERTIFICATION
PUBLIC HEARING

TUESDAY, DECEMBER 6, 2011
7:30 P.M.
DONALDSON CENTER
250 SOUTH AVENUE D
CANTON, ILLINOIS

PATKES REPORTING SERVICE
(217) 787-9314

REPORTER: LAUREL A. PATKES, CSR #084-001340

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PANEL MEMBERS:

DEAN STUDER, Hearing Officer

ROBERT MOSHER
Manager
Water Quality Standards Section

THADDEUS FAUGHT
Permit Section

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1 HEARING OFFICER STUDER: At the
2 beginning, I'd like to see show of hands of those
3 that were not here at the NPDES permit hearing. Is
4 there anyone that's just been here? Okay. We've
5 got one person. Okay. That's what I wanted to
6 know.

7 I appreciate your patience,
8 and I know for some of you out there it's been a
9 long evening, and I appreciate your patience. I
10 just wanted to say that at the start of this.

11 Good evening. My name is Dean
12 Studer, and I am the hearing officer for the
13 Illinois Environmental Protection Agency.

14 On behalf of Interim Director
15 John Kim and Bureau of Water Chief Marcia Willhite,
16 I welcome you to this hearing. Illinois EPA
17 believes that public hearings and the overall public
18 comment process play a crucial role in the
19 certification review process.

20 As hearing officer, my primary
21 purpose tonight is to ensure that this proceeding is
22 run properly and in accordance with established
23 rules and in an orderly but efficient manner.
24 Therefore, it is not part of my role to respond to

1 individual issues regarding the certification
2 process or the proposed certification but will defer
3 these issues to the two technical staff with me up
4 front this evening. However, I will assist those
5 members of the public wishing to comment at this
6 hearing to stay focused on relevant issues.

7 I point out that we have a
8 limited amount of time for this hearing, and the
9 hearing panel will respond to issues when
10 clarification is necessary. We are primarily here
11 to listen to your comments regarding the 401 water
12 quality certification process.

13 This informational hearing is
14 being held by the Illinois Environmental Protection
15 Agency Bureau of Water under the provisions of 35
16 Illinois Administrative Code 164 entitled Procedures
17 for the Informational and Quasi-Legislative Public
18 Hearings and 35 Illinois Administrative Code 395,
19 Procedures and Criteria For Certification of
20 Applications For Federal Permits Or Licenses For
21 Discharges Into Waters of the State. Copies of
22 these regulations are available at the website for
23 the Illinois Pollution Control Board at
24 www.ipcb.state.il.us, or, if you do not have easy

1 access to the web, they are available from me upon
2 request.

3 The purpose of this hearing is
4 to provide an opportunity for the public to present
5 information to the Illinois EPA regarding the review
6 of the Section 401 water quality certification
7 application associated with Capital Resource
8 Development Company, North Canton Mine.

9 I note that the Illinois EPA
10 conducted a hearing regarding the National Pollutant
11 Discharge Elimination System (NPDES) permit for this
12 facility a little bit earlier this evening. If
13 issues are raised during this hearing regarding the
14 NPDES permit, I will ask that you submit your
15 concerns to the Illinois EPA in writing and specify
16 Capital Resources Development Company NPDES in your
17 submittal.

18 I point out that written
19 comments will continue to be accepted on the NPDES
20 permit action as well as on the 401 water quality
21 certification through January 5, 2012.

22 Additionally, comment forms
23 for both the NPDES proceeding and this 401
24 proceeding are available at the registration desk.

1 Please be sure that you submit your comments on the
2 form appropriate to the proper proceeding.

3 The process for this hearing
4 regarding the 401 Water Quality Certification will
5 be as follows. I will finish reading this opening
6 statement into the record. After that, the panel
7 from Illinois EPA will introduce themselves giving
8 brief overviews of the 401 water quality
9 certification process and their role in the agency
10 review of the proposed project.

11 This will be followed by
12 comments from citizens, organized groups and
13 associations. People will be called upon one at a
14 time to come forward and make comments on the
15 record. This hearing is the only opportunity that
16 the public will have to make oral comments on this
17 401 proceeding.

18 After the hearing is
19 adjourned, comments must be submitted in writing to
20 be included in the record. Comments may be
21 submitted in hard copy by regular mail or by e-mail.
22 E-mail comments should be directed to
23 epa.publichearingcom@illinois.gov. E-mail comments
24 will be accepted if received by midnight January 5,

1 2012. Comments received at the stroke of midnight
2 as the date is changing to January 5, 2012 will not
3 be considered timely filed. EPA comments must
4 specify Capital Resources Development Company 401 in
5 the subject line to be included in this proceeding.
6 E-mails at epa.publichearing.com are automatically
7 sorted and distributed so it is critical that the
8 e-mails contain the words "Capital Resources
9 Development Company 401" in the subject line exactly
10 as indicated on the hearing notice to ensure that
11 they make it into the record and are considered.
12 And I point out that capital is spelled
13 C-a-p-i-t-a-l.

14 When your e-mail arrives, the
15 system should send you an automated reply if the
16 e-mail is received before the comment period ends
17 and the e-mail has been properly sorted and
18 distributed. I know that the server can become
19 quite busy in the minutes before the record closes
20 so you may want to take this into account when
21 submitting your comments so your comments can be
22 considered timely filed.

23 Comments sent by regular mail
24 must be postmarked no later than January 5, 2012.

1 hearing.

2 After the record closes in
3 this matter, the Illinois EPA will develop a
4 responsiveness summary. The responsiveness summary
5 will address the significant issues raised during
6 the hearing or submitted in writing prior to the
7 close of the public comment period. The hearing
8 transcript and subsequent responsiveness summary
9 will be posted on the Illinois EPA's website. The
10 agency will make every effort to post a hearing
11 transcript on our website in approximately two and a
12 half weeks. However, the actual date is going to
13 depend on when I get the transcript from the court
14 reporter.

15 Illinois EPA has made a
16 tentative determination to issue the Section 401
17 Water Quality Certification in accordance with the
18 provisions of 35 Illinois Administrative Code
19 Part 395. However, any comments made as part of
20 this hearing and the public comment process may
21 cause the agency to request the applicant to revise
22 the project to address the issues raised.

23 This hearing is for the
24 Section 401 Water Quality Certification. Issues

1 that are relevant in this hearing are those arising
2 from the application for the 401 water quality
3 certification and the antidegradation assessment
4 specific to the 401 certification that was included
5 in the public notice/fact sheet for this 401
6 certification project. Relevant issues include the
7 mitigation of wetland and stream impacts as they
8 relate to the 401 certification, impacts due to the
9 discharge of dredge and fill into surface waters or
10 wetlands.

11 Any person who wishes to
12 comment tonight may do so as long as the comments
13 are related to the issues that I have just listed or
14 to the water quality certification in some way and
15 time allows.

16 If you filled out a
17 registration card at the door, you were asked to
18 indicate if you wished to speak at this hearing.
19 Those that commented at the earlier NPDES hearing
20 should have been asked if they also wish to comment
21 at this hearing, and, if so, their registration
22 cards should have been so marked.

23 Persons will be called forward
24 to make comments one at a time. If you are limited

1 on the time that you have, you can make written
2 comments on one of the comment forms available at
3 the registration table, and I will include it as an
4 exhibit in the hearing record.

5 Again, please make sure that
6 your comments are on the correct form. If anyone
7 has exhibits that they want to present into the
8 record during this hearing, you should give me a
9 copy, and when you give your testimony, I will have
10 them included in the record as an exhibit.

11 For the purpose of allowing
12 everyone to have a chance to comment and to ensure
13 an efficient hearing process, I will give everyone
14 two minutes to comment. If you have lengthy
15 comments, I am requesting that you submit them to me
16 in writing before the close of the comment period,
17 and I will make sure that they are included in the
18 hearing record as an exhibit. When it is your turn
19 to comment, if someone else has said what you
20 intended to say, you may pass when your name is
21 called.

22 Persons coming forward to
23 testify should first clearly state their name and,
24 if applicable, identify any governmental body or

1 organization they represent. You should also spell
2 your last name so it can be accurately reflected in
3 the record. If there are alternate spellings for
4 your first name, you may also spell your first name.
5 If you are representing yourself, you can state that
6 you are an interested citizen.

7 When you spell your name, I
8 will start timing you. I will attempt to indicate
9 when you have 30 seconds left so that you can finish
10 within the time period. At the end of that time
11 period, I will bring the next person forward to make
12 comments, and this way we should be able to keep
13 this hearing moving and adjourn at an appropriate
14 hour.

15 Comments should be: 1)
16 relevant to the proceeding as I previously
17 indicated, and 2) not repetitious. Please
18 understand that making the same point many times
19 does not carry any more weight in the record than
20 the first time it is made. Arguing or prolonged
21 dialogue between agency panel members or the public
22 will not be permitted. On a similar note, I will
23 not allow anyone other than the person who has been
24 given the floor to speak at that time.

1 Because a verbatim record of
2 this hearing is being made for the administrative
3 record in this matter, I ask that you keep your
4 conversation and noise levels to a minimum so that
5 our court reporter can hear and transcribe
6 everything that is being said. Comments are to be
7 addressed to the hearing panel.

8 If you have a cell phone or
9 pager on you, I ask that you silence it at this
10 time.

11 As hearing officer, I intend
12 to treat everyone here tonight in a fair,
13 professional manner and with respect. I ask that
14 the same respect be shown to those raising relevant
15 issues.

16 While the issues discussed
17 tonight may indeed be heartfelt concerns to many of
18 us in attendance, this is a public hearing and
19 everyone has the right to comment on issues relevant
20 to the water quality certification process.

21 However, I intend to conduct
22 an orderly hearing, and I will monitor what is said
23 to ensure that the rules that I have outlined are
24 followed.

1 If conduct of the persons
2 attending this hearing should become unruly, I am
3 authorized to adjourn this hearing should the
4 actions warrant. In such a case, the Illinois EPA
5 would accept written comments through the time
6 indicated on the hearing notice which is January 5,
7 2012.

8 Are there any questions on how
9 we will proceed with the hearing this evening?

10 Let the record indicate that
11 no one raised their hand.

12 For the record, I have entered
13 the following exhibits into the record:

14 Exhibit 1 is a notice of
15 public hearing.

16 Exhibit 2 is a public
17 notice/fact sheet.

18 Exhibits 3 through 65 are
19 letters from various organizations, citizens and
20 local residents commenting on this 401 proceeding.

21 Exhibit 66 is a group exhibit
22 consisting of e-mails received since November 15,
23 2011, and all those e-mails have the same text in
24 them.

1 I will now allow our agency
2 panel members to introduce themselves and briefly
3 describe their role in the review of the 401
4 certification process.

5 This will be followed by
6 Thaddeus Faught making a brief statement regarding
7 401 certification process in this application.

8 Following this, I will allow
9 the public to come forward as their name is called
10 and to make statements.

11 Following this hearing if time
12 allows, I will reopen the record for NPDES comments
13 to those that have indicated their desire to speak
14 on the registration card but have not yet been
15 afforded that opportunity.

16 MR. MOSHER: Good evening. My name
17 is Bob Mosher. I work for Illinois EPA Bureau of
18 Water in the Water Quality Standards Section. I
19 supervise the staff in the Water Quality Standards
20 Section that did the antidegradation review for the
21 401 certification, and I would like to point out an
22 error in that that's worth mentioning tonight.

23 This comes under the heading
24 in that antidegradation review write-up that is

1 included in the fact sheet of the 401 draft
2 certification.

3 Under the heading Assessments
4 of Alternatives for Less Increase in Loading or a
5 Minimal Environmental Degradation, the second
6 sentence under that heading reads, "Erosion control
7 measures will be implemented to prevent additional
8 impacts to the remaining streams and wetland areas."
9 The words "and wetland areas" are an error because
10 there are no wetland areas on the site, so I'm sorry
11 for that mistake, and those three words should be
12 deleted.

13 HEARING OFFICER STUDER: Thad, if
14 you'd like to introduce yourself describe your role
15 and proceed with your opening statement.

16 MR. FAUGHT: I'm Thaddeus Faught.
17 I work in the Permit Section of the Bureau of Water
18 which part of my job is 401 certifications.

19 Projects that include the
20 discharge of dredged or fill material into waters of
21 the United States are required to be covered by a
22 permit issued by the U.S. Army Corps of Engineers
23 under Section 404 of the Clean Water Act. The
24 Illinois EPA issues water quality certifications

1 pursuant to Section 401 of the Clean Water Act to
2 the Corps for the Section 404 Corps permit.
3 Issuance of the 401 certification does not have any
4 effect or bearing on what is required of Capital
5 Resources Development by any other federal, state or
6 local regulations.

7 If issued, the water quality
8 certification is not an approval of any discharge
9 resulting from the completed mine facilities nor an
10 approval of the design of the mine facility. The
11 project must also meet other applicable permit
12 requirements of the Illinois Pollution Control
13 Board. The 401 review is focused on potential
14 impacts to water quality due to the proposed
15 construction activity.

16 The Illinois EPA received an
17 application on July 14, 2006 from Capital Resources
18 Development for 401 water quality certification for
19 the discharge of dredged or fill materials
20 associated with surface mining activities. The
21 project site is approximately 1,058 acres in size.
22 The project site is proposed to be mined by surface
23 mining methods to extract bituminous coal. Mining
24 activities would result in the discharge of dredged

1 or fill material in approximately 9,000 linear feet
2 of streams. The waters include unnamed tributaries
3 to the West Branch of Copperas Creek.

4 Mitigation for stream impacts
5 would include the establishment of approximately
6 6,500 linear feet of streams and preservation of
7 approximately 1,700 linear feet of riparian woody
8 vegetation approximately 175 feet wide.

9 The Illinois EPA has reviewed
10 the certification application with regard to the
11 Illinois water quality standards and certification
12 regulations. Based on that review, the Illinois EPA
13 issued a public notice including the antidegradation
14 assessment fact sheet on July 22, 2011 to seek
15 public comments on the project.

16 HEARING OFFICER STUDER: Thank you,
17 Thad.

18 Okay. We're now at the point
19 where we're going to go ahead and start receiving
20 comments from the public. When I call your name
21 please come forward.

22 It is a fairly large hearing
23 room so I'm going to ask that you pick up the
24 microphone that is on the left hand side of the

1 podium and speak into the microphone so that your
2 comments can be heard by all in attendance this
3 evening.

4 James Malone is the first
5 person.

6 As Mr. Malone is coming
7 forward, he'll be followed by William Dodds.

8 MR. DODDS: Mr. Malone is not here.

9 HEARING OFFICER STUDER: Also, when
10 I call your name, either come forward to the podium
11 to be the next person or if you do not desire to
12 speak at this hearing, just speak in a loud enough
13 voice "pass" so that I can hear you and I'll move
14 forward.

15 MR. DODDS: I'm not going to take
16 time and read through the same statement but I am
17 going to submit that document into the record. I do
18 have a --

19 HEARING OFFICER STUDER: Is the
20 mike on there?

21 MR. DODDS: I'm not going to read
22 my prepared statement from the Fulton County
23 Citizens for Growth. I'll just submit the document
24 into the record along with the petition of 2,500

1 signatures supporting this project.

2 I would like to make the
3 statement that I believe the City of Canton, the
4 mayor, the councilman and some of his staff back
5 there have done a good job in planning for a water
6 system for the growth of Fulton County and the
7 surrounding communities. They have developed a
8 secondary water source. Whether you call it a
9 primary or a secondary, it's large enough to take
10 care of the growth of Canton. They spent 20 some
11 million dollars doing it, so it was well planned,
12 and it will be in place and in line for the mine to
13 start. So that I think needs to be a part of the
14 record.

15 Earlier I heard something
16 about the lake being the only source of water, and
17 if something were to happen, it would be devastating
18 that we'd all be out of water.

19 There is a secondary water
20 source that would meet the capacity of Canton, brand
21 new water source.

22 One other question I'd like to
23 have for the IEPA.

24 I've been involved in

1 self-monitoring and self-reporting program related
2 to air. Is the IEPA and mine, under this permit, is
3 it self-monitoring and self-reporting?

4 HEARING OFFICER STUDER: This is
5 actually the 401 certification process.

6 Thad, can you answer his
7 question?

8 MR. FAUGHT: Well, sort of.

9 The only monitoring that would
10 be involved with the 401 would be for the
11 mitigation, which, basically, when they put the
12 streams back, they monitor the conditions of the
13 streams. So they do that. That is self-monitoring,
14 and they send in the reports to us.

15 That's about as much as we
16 monitor for that.

17 MR. DODDS: So any time, and I
18 guess this is the other thing, any time that there's
19 an issue that they feel they're out of compliance
20 that's been agreed to, the mine reports that to the
21 agency, monitors it and reports it, and if that's
22 the case then, you know, 300 times I've heard
23 earlier there is monitoring, that's not something
24 that would find itself. That's someone monitoring

1 it and reporting it, right?

2 MR. FAUGHT: I think that's more
3 related to the NPDES permit.

4 MR. DODDS: All right. We'll just
5 then let that go.

6 I'd like to thank you, and
7 I'll submit my comments.

8 HEARING OFFICER STUDER: Okay.
9 Thank you.

10 Susan Payne will be the next
11 person.

12 MS. PAYNE: I only had the one
13 letter that I was going to comment on.

14 HEARING OFFICER STUDER: All right.
15 Mary Medus?

16 MS. MEDUS: No.

17 HEARING OFFICER STUDER: Kevin
18 Williams?

19 MR. WILLIAMS: I have my comments
20 here to submit also in writing for an exhibit.

21 HEARING OFFICER STUDER: Okay.

22 MR. WILLIAMS: I'm Kevin Williams.
23 I'm going to read through what I've put in writing,
24 and I'll submit the whole thing.

1 in Copperas Creek is not due to soil loss from farm
2 fields but rather from stream bank erosion. This
3 happens when we receive a large amount of rainfall,
4 one inch or more in 24 hours or less. This will
5 cause the creek to go from shallow water levels to
6 over 14 feet in depth almost overnight and, believe
7 me, because I have seen all the branches of the
8 Copperas Creek above me just a couple hundred yards,
9 I see a lake that goes by.

10 Simply said, this is what
11 causes the stream banks to erode and puts thousands
12 of tons of silt in the Illinois River. This has
13 been documented. The Corps of Engineers and other
14 people also have the facts on this if you folks
15 would like to get the information.

16 The only known way to fix this
17 erosion for landowners is to have large holding
18 areas for water and then release it slowly. Please
19 don't take this that we have to have this always.
20 If we were in a drought for the next 20 years,
21 obviously we would not do that, but based upon
22 history, it says that we need some way to hold this
23 water because the farm fields release it too
24 quickly.

1 I spent my entire adult life
2 living around coal mines and watersheds. I have
3 complete confidence in Capital Resources Development
4 Company and their ability to build and maintain
5 large conservation-minded water retention areas. If
6 anyone truly cares about Canton Lake and the
7 Copperas Creek watershed, they need to work as hard
8 as they can and promote and partner with this coal
9 mine and its governing agencies. This coal mine
10 will do more in controlling soil erosion for both
11 the short-term, which would be during the mining
12 process, and the long-term after the coal mine is
13 closed than anyone else could ever dream to do.

14 Lots of people live in the
15 woods and never see an individual tree. Hundreds of
16 people live in this watershed and see this creek
17 rise and fall and never really truly have an
18 understanding of what they're actually seeing. I
19 hope that since I can see, I can help those others
20 that cannot.

21 Finally, those who do not
22 trust this government agency to work with this coal
23 mine to protect our watersheds, then understand
24 this. You should stop driving over bridges because

1 some government agency is also in charge of them.

2 I, Kevin Williams, give my
3 full support to Capital Resources Development
4 Company in their mining endeavors, and I have great
5 confidence in all of the government agencies working
6 with this mining company to improve the Copperas
7 Creek Watershed, and I thank you.

8 HEARING OFFICER STUDER: Thank you,
9 and I'll enter that as an exhibit.

10 The next person is Nells
11 Henry?

12 Okay. We'll move on. Robert
13 Marlette, and that will be followed by Robert
14 Lascelles.

15 MR. MARLETTE: I was a little quick
16 on my last time up here. What I did for the United
17 States Army, I was a water purification specialist.
18 I've been in the desert. I've seen the EPA. In the
19 desert, we had the EPA. If we dropped oil, we had
20 to dig it up even though we were taking it back
21 home. They do a very good job of making sure that
22 what we put into the ground is what we're
23 responsible for. In this day and age, if we can't
24 be responsible enough to progress in America, we've

1 had conflict over everything from tobacco to cotton
2 to cattle in this nation, we have to use our
3 resources to move ahead, and we have to trust those
4 who we put in power who we have to govern us that
5 they'll look after us and let us move forward and be
6 accountable.

7 Our lake is very important.
8 Our water is one of the best, in fact, it's the best
9 I've ever tasted, and I'm a water purifier. I love
10 my town. I don't want to see anything happen to it,
11 but we have to go somewhere. We have to use this
12 resource so that we can get to that next resource.
13 Hopefully that's what we use it for. We're not
14 burning Christmas lights like I said. We're
15 building it for something better.

16 I trust that the EPA and the
17 coal mine, because, trust me, I don't think that
18 they really want people breathing down their necks,
19 I sure wouldn't, but I trust that they'll do the
20 their jobs and make sure that we as a community can
21 still thrive in this area.

22 Thank you.

23 HEARING OFFICER STUDER: Thank you
24 Mr. Marlette.

1 Robert Lascelles.

2 MR. LASCELLES: I'm not going to
3 speak. I'll just submit mine.

4 HEARING OFFICER STUDER: Okay.
5 Thank you, and I will enter that as an exhibit.

6 Traci Barkley, and that will
7 be followed by Tom Snowman.

8 MS. BARKLEY: My name is Traci
9 Barkley, T-r-a-c-i B-a-r-k-l-e-y. I'm a water
10 resource scientist for the Prairie River Networks.
11 We're a nonprofit organization that works to protect
12 clean water in Illinois.

13 I don't have any prepared
14 statements on the 401 certification, but I did have
15 some questions and a comment; actually, this is a
16 question.

17 Why weren't 401 materials
18 provided at the hearing for those folks that are
19 becoming familiar with this for the first time?

20 At most hearings you have a
21 fact sheet, an antidegradation assessment so that
22 people coming to this issue for the first time have
23 something to refer to, and I didn't see anything
24 that allowed people to become familiar with this

1 issue tonight?

2 Those that have questions
3 about just the basic premise of this hearing, I
4 mean, I hope you'll be patient with their questions,
5 and can you direct them to maybe a website where
6 they could find the 401 materials?

7 MR. FAUGHT: Our hearing notice did
8 point to the website with the antidegradation
9 assessment and all the materials we would have
10 brought today.

11 I apologize. I wasn't told to
12 prepare any material, but it was on the website, and
13 that website was on our notice.

14 MS. BARKLEY: Okay. Thank you.

15 For future reference, I think some
16 folks are here tonight because they read an article
17 in the newspaper or were told by a friend that there
18 was an opportunity to protect the clean water
19 tonight, and for them coming to this for the first
20 time without having an opportunity to go to the web,
21 it would be good for them to have a one-page primer
22 that they could read quickly.

23 Then in the economic section
24 of the antidegradation assessment that deals with

1 the economic benefits of this mine, it mentions that
2 coal sold in Illinois will provide taxes within the
3 State of Illinois, but I don't think that anywhere
4 in the materials that have been provided to the
5 Agency that it has been said who the buyer of the
6 coal from this mine would be, so I'm curious where
7 the coal is planned to be burned because I don't
8 think that we can count that as an economic benefit
9 and a reason to accept additional pollution or
10 destruction of our streams in this area if that coal
11 is not, in fact, going to be burned in Illinois
12 giving us some tax revenue.

13 Do you have any indication of
14 where it might be burned?

15 MR. MOSHER: I'll read what the
16 antidegradation review says.

17 Local and state taxes will
18 increase as a result of the mine. Property taxes
19 supporting many facets of local government will
20 increase over that now collected from the existing
21 farmland.

22 So I don't know that we meant
23 to imply that it was just the taxes on the sale of
24 coal, but in the responsiveness summary, we can look

1 and see exactly what the mine provided in the
2 antidegradation assessment. We'll put that in a
3 responsiveness summary.

4 MS. BARKLEY: All right. Thank
5 you.

6 I just argue that if that's
7 going to be counted as an economic benefit for
8 residents in this community that it be flushed out a
9 little bit more and actually shown in detail how
10 those taxes will actually be income to the community
11 and benefit folks in this area.

12 Then I'd like to ask for the
13 six and now seven impoundments that are proposed and
14 are the subject matter of this 401 certification,
15 are these going to be permanent impoundments? Will
16 they be left in place after the mining is complete?

17 MR. MOSHER: Traci, that's more of
18 an NPDES question, and I think we can accommodate
19 that in the responsiveness summary. Larry Crislip
20 isn't here to answer it so we'll do it in writing
21 for you.

22 MS. BARKLEY: I think the 401
23 project that's proposed that the 401 certification
24 refers to specifically addresses the damming of

1 these streams and creation of impoundments. That is
2 the issue we're here to talk about tonight is the
3 401 certification, so I'm asking, you know, I
4 understand that there's mitigation measures that are
5 proposed because of the damage that will come to
6 those streams that are then going to be impounded
7 and flooded, but I'm asking is that a permanent
8 condition or is it a temporary condition?

9 HEARING OFFICER STUDER: Do you
10 know?

11 MR. FAUGHT: I think some of the
12 impoundments we'll have to give a more detailed
13 response in the responsiveness summary.

14 HEARING OFFICER STUDER: We've got
15 time for one more question.

16 MS-. BARKLEY: Okay. Then I guess
17 the other question, and this really ties -- tell me
18 if this is NPDES and I'll stop, but I know that the
19 groundwater monitoring that has been done has shown
20 that there are high levels of certain pollutants
21 including total dissolved solids in the existing
22 groundwater as well as exceedances of irons,
23 suspended solids, chloride to some surface
24 monitoring sites.

1 So I wondered for these seven
2 streams that are going to be dammed and impounded,
3 can you show that water quality standards will be
4 met in those impoundments once those streams and
5 groundwater contributions that already have high
6 level pollutants are dammed and held in place? Can
7 you assure that the water quality standards will be
8 met in those impoundments?

9 MR. MOSHER: The impoundments are
10 treatment works once they're created, and treatment
11 works aren't subject to water quality standards.

12 MS. BARKLEY: Are treatment works
13 allowed under the Illinois Environmental Protection
14 Act in waters of the state?

15 MR. MOSHER: I think you're raising
16 a point that would require a very long detailed
17 answer that we'll give you in the responsiveness
18 summary.

19 MS. BARKLEY: Okay. Prairie Rivers
20 Network and Illinois chapter of Sierra Club maintain
21 that treatment works are not allowed in waters of
22 the state per our state regulations. Thank you.

23 HEARING OFFICER STUDER: Thank you,
24 Ms. Barkley.

1 Tom Snowman, did you want to
2 make comments in the 401?

3 MR. SNOWMAN: Just briefly.

4 HEARING OFFICER STUDER: That will
5 be followed by Carolyn Markley.

6 MR. SNOWMAN: Thank you again for
7 giving me the opportunity to speak here.

8 I have great concern about
9 that West Branch of Copperas Creek because I bought
10 that property about 25 years ago, my sons and I, and
11 my whole goal was to have that stream through there
12 so my grandkids could play in that, walk in it,
13 enjoy that. It's 103 acres of forestry. We've
14 invested a lot of time and investment in this. It's
15 the estate plan, and I'm concerned that we've got
16 turkeys, we've got all kinds of wildlife, I want my
17 grandchildren to be able to go and enjoy that, and
18 this is a very important part to me.

19 I mean, I didn't buy that to
20 sell it, make money. I can make good money. That's
21 not my purpose. I bought it for family, and that's
22 the most important thing to me is family.

23 And as far as it goes, I want
24 my grandchildren, my great grandchildren to be able

1 HEARING OFFICER STUDER: All right.
2 And I have that up here so it will be entered as an
3 exhibit.

4 Shawn Snowman and Betty Ann
5 Manock will follow Mr. Snowman.

6 MR. SNOWMAN: My name is Shawn
7 Snowman, S-h-a-w-n S-n-o-w-m-a-n. I own property
8 that borders the mine, proposed mine on the east
9 side. I also live approximately two miles south of
10 the mine, proposed mine, and that will be across
11 flat farm fields. It's going to be right there.

12 The proposed mine plan will
13 hold water and ponds to keep the lake from being
14 contaminated from the mining operation, but the
15 amount of water that can come from the watershed of
16 Canton Lake I do not want to gamble with the chance
17 of the plan working.

18 I have three pictures to show
19 the volume of water that can go into the lake after
20 it rains. If their plan does not work, it will
21 pollute Canton Lake. If the lake is not low and we
22 get this water, it will go over the dam and cause
23 more pollution all the way to the Illinois River and
24 beyond.

1 I also have two pictures that
2 show the amount of water that can come over the lake
3 that I want to give you and these will cause major
4 problems if an accident happens at the wrong time in
5 the watershed of Canton Lake.

6 My major concern then with
7 water quality is that most of the water from this
8 plant is supposed to eventually be rerouted to the
9 Middle Branch of Copperas Creek. This creek is not
10 impaired at this time, and I feel that this proposal
11 will eventually pollute the water.

12 My family and friends use this
13 water for a source of water for livestock,
14 recreational wading and rock hunting, hunting of
15 upland game that drink from the creek, hunting of
16 waterfowl that live or rest on the creek, and
17 trapping of animals that live in or use the creek.

18 My farm will be the first land
19 passed through by this water, and the proposed plan
20 uses the creek to try and clean the water before it
21 reaches the Illinois River. That means that it will
22 be most polluted going through my property. So my
23 question is how long is the mixing zone and will all
24 its contaminants be at a safe level by the time it

1 reaches my property?

2 And a simple question, what
3 happens when the beavers dam that creek three to
4 five feet high as it has in the past and hold back
5 that water? What will happen with the contaminants?
6 They're going to settle out and be on my property in
7 high concentrations.

8 I'm also concerned about the
9 water quality of Canton Lake with the West Branch,
10 and if it's held back and diverted, that's going to
11 also decrease the amount of freshwater into the
12 lake. This can cause problems for bottom feeding
13 fish and the people eating them.

14 On any given day, the lake is
15 being used for recreation by people that have
16 investments in property, boats, fishing equipment,
17 etc. If the water is low because of being held back
18 or not safe to use to be in this lake, how are all
19 these people going to be compensated if their plan
20 does not work? What will be the cost of the
21 approximately 20,000 people that rely on the lake
22 for water.

23 These are a few of my concerns
24 and why I oppose this plan and permit being given.

1 Thank you.

2 HEARING OFFICER STUDER: Thank you.

3 I do want to point out that
4 the mixing zone and some other issues that were
5 raised are NPDES issues, and we'll be putting those
6 in the NPDES response summary.

7 I will enter these as an
8 exhibit into the record.

9 Betty Manock, if you will come
10 forward, and following her will be Brenda Dilts.

11 MS. MANOCK: My name is Betty Ann
12 Manock, M-a-n-o-c-k. There is no "k" or "c" in the
13 center of my last name.

14 My husband and I own lakefront
15 property and built our home on the lakeshore of
16 Canton lake 51 years ago. Destroying the area that
17 we live in and the water activities that we enjoy is
18 unacceptable to us. We demand that you do not issue
19 a 401 water quality certification to this coal mine.
20 They are not a good steward of the elements that we
21 need to survive in this world which are air, land
22 and water.

23 We are especially interested
24 in the water because our property borders the lake,

1 and we do not want it polluted, and this company is
2 known to be an habitual polluter of the land, air
3 and water. They are criminally negligent, and we do
4 not believe that they will do what they are saying
5 they will do. It would be ludicrous for you to
6 issue a permit to a company that is a repeat
7 violator of the Clean Water Act and has been for
8 years. They still are not in compliance with their
9 water pollution permit in the place that I can't
10 mention. Giving them a permit to pollute good
11 drinking water is utterly wrong by any standards.

12 There are a number of negative
13 social and economic impacts that allowing a mine to
14 locate in the northeast corner of Canton, partially
15 in Canton Township and partially in Orion Township,
16 will have on our communities. These negative
17 impacts are not reflected in the mine's
18 antidegradation assessment. Both of these townships
19 and the county will be deprived of the taxes that
20 are collected on the land as well as lose tax money
21 on the value of all the homes that surround the mine
22 property and the Canton Lake area.

23 The farmer purchases
24 equipment, seed, fertilizer, gas, oil and a

1 multitude of other supplies and equipment on which
2 he pays taxes. These will cease when the land is
3 not being farmed.

4 We are not at all in favor of
5 this mine being our neighbor, and giving them a
6 permit is unacceptable to us, and the proposed
7 degradation of water quality in Canton Lake and
8 Copperas Creek will not be worth the one time
9 economic benefit.

10 The habitat destruction is
11 particularly disturbing to us as we enjoy the
12 animals and birds that we see on a daily basis.
13 When you destroy their habitat, they will either die
14 or relocate and they may not relocate near us. The
15 destruction of the miles of streams that will be
16 destroyed that feeds Copperas Creek can never be put
17 back. They will never again flow as they had
18 previously.

19 Mine reclamation is not the
20 answer since they cannot replace layers of ground as
21 they once were nor can they replace the magnificent
22 trees that are hundreds of years old. The
23 tributaries cannot be put back so the families that
24 have wells will still have water coming to their

1 wells. They cannot put the habitat back for the
2 animals. Most families that depend on those streams
3 for their water may be deprived of water supply. No
4 longer having access to water would be a huge
5 hardship to any family.

6 Millions of gallons of water
7 will be held back by this mine. That is millions of
8 gallons of water that would have flowed into Canton
9 Lake by gravity. If this water is held back and we
10 have a shortage of rain which causes the lake to
11 become very level and if the aquifer is then
12 operational, which last I knew it was not
13 operational, the water for the city water users will
14 have to come from the aquifer, and the users will
15 then have to pay the cost of pumping the water from
16 Banner, and that is only if everything gets finished
17 so the water can be pumped from the aquifer.

18 If the mine pollutes Canton
19 Lake so it is no longer usable for drinking water
20 and the aquifer is not yet operational, this leaves
21 the possibility of the Canton city water users
22 having to do without water so a mine can use the
23 water that should have come into the lake by
24 gravity, and they are getting it free while we, the

1 users, have to foot the bill to pump it from the
2 aquifer in Banner or do without water if there is no
3 other source.

4 This is not acceptable to us,
5 and we direct you not to issue a permit to them to
6 mine in the watershed of Canton Lake.

7 The number of employees that
8 it has been said that this mine will have is grossly
9 inflated. Mr. Arnett told us at a meeting of our
10 organization that he attended that there would be 30
11 employees. Since then, the number has increased
12 dramatically.

13 HEARING OFFICER STUDER: You have
14 30 seconds left.

15 MS. MANOCK: Okay.

16 He also said the operator
17 would not be himself but would come from another
18 area that would bring experienced and laid off
19 miners with him. There are hundreds of laid off
20 miners in southern Illinois who have mining
21 experience.

22 The amount of money brought
23 into the area is grossly inflated unless we would be
24 the only town in the country to prosper from a coal

1 mine being in the area. Most coal towns that I've
2 been through or read about are poor. The only
3 people that would benefit are the owners/investors,
4 and they do not live here.

5 When you weigh a few local
6 people getting a job against thousands of people
7 being subjected to many hardships, water unusable or
8 gone, loss of value in their homes, hundreds of
9 trucks lumbering through our streets night and day
10 every day, the peace and tranquility that they moved
11 to the country to enjoy, the loss of farm ground and
12 a beautiful wooded area that will take hundreds of
13 years to replace, it is easy to make the correct
14 decision.

15 We would strongly object to
16 you issuing a permit for this coal mine to open in
17 this location. It is my belief that the IEPA agency
18 was designed to protect the people of the State of
19 Illinois. We are asking you to do exactly that,
20 take a look at the history of the water contaminants
21 that this company has had, and if you are honest,
22 you will agree with me, my husband, family and the
23 majority of the residents in Orion Township -- NO
24 MINE HERE.

1 Thank you.

2 HEARING OFFICER STUDER: Thank you.

3 Brenda Dilts will be next, and
4 she'll be followed by Kurt Skender.

5 MS. DILTS: My name is Brenda Dilts
6 (D-i-l-t-s). I am a resident of Canton and chairman
7 of the Canton Area Citizens For Environmental
8 Issues, Canton Lake and its Watershed.

9 In the permit notice for
10 401-C, it states that the current projected life of
11 the mine is ten years and the total coal extracted
12 is estimated at 6.8 million tons. In July of 2009,
13 a CRDC spokesperson stated in the Mining Top News
14 that the site is projected to yield 4.25 million
15 tons of coal over ten years or so depending on
16 demand.

17 Residents in Canton have been
18 lead to believe that there was a demand for coal but
19 no buyer miner has been secured that we've been told
20 of.

21 At various speaking
22 engagements and in print, the company spokesman has
23 stated that the coal would be crushed and
24 transported dirty. In the fact sheet in applying

1 for the 401 permit, it states that the coal would be
2 removed during excavation of the area, processed and
3 sold.

4 By processing, what does the
5 IEPA understand that to mean?

6 HEARING OFFICER STUDER: We'll be
7 responding to these in the responsiveness summary
8 because of the time, but it's my understanding that
9 there is not going to be any processing that's
10 occurring on site.

11 MS. DILTS: Okay. Thank you.

12 Underground mines are numerous
13 in the area of North Canton Mine. I have attached
14 three deeds and a map showing underground mines
15 within the vicinity of the mine site. Mining within
16 the area of underground mines could cause subsidence
17 within the areas of the homes.

18 The filling of approximately
19 4,110 linear feet of an unnamed tributary on the
20 mine site will change the amount of water that will
21 flow to the lake area during and after mining. By
22 using ravines for impoundments, the natural beauty
23 of the ravines will be changed forever. People's
24 lives and occupations are in jeopardy from this

1 change in the use of this agricultural setting.

2 Taxes are not always required
3 on the sale of coal. Municipal buyers and out of
4 state buyers do not pay sales tax. If you have seen
5 the Village of Industry or any other mine town, you
6 will note they are not getting rich from the mining
7 within their area.

8 Investing in a coal mine is a
9 risk but the people living within that area and the
10 people in Canton also have big investments. They
11 have built lives, homes, hunted for food (deer and
12 turkey), paid taxes for the past year to over 50
13 years, and it is morally wrong to destroy the lives
14 of people, the beauty of nature, and the water
15 resource of 20,000 people causing them to go to a
16 more expensive water resource or, in the case of
17 wells, a less desirable water source.

18 One of the things on the
19 water, the secondary water source is not complete.
20 It still has to be tested, and it has not been tried
21 or used long enough to know if it will work. We
22 must depend on the Canton Lake until the secondary
23 water source is in place.

24 In closing, I'd like to read

1 from the Orion Township Board of Trustees
2 proclamation:

3 The purpose of the Orion
4 Township Board of Trustees is to serve the best
5 interest of the residents of Orion Township. Some
6 of the duties and responsibilities are very
7 objective with written procedures and processes
8 while other decisions are made through discussion
9 and input of the voting residents within the
10 township. The proposed coal mine known as North
11 Canton Mine has generated much discussion and
12 concern among residents and this concern has been
13 brought before the board on several occasions by
14 various residents.

15 While the latest mining
16 methods and technologies as well as the best
17 intentions are promised, all too often things seem
18 to slip into complex gray areas that take very long
19 to get resolved and usually move into a litigation
20 phase. It is difficult these days to believe
21 companies have anything but profitability and
22 margins in their goals and strategy. Unfortunately,
23 there are many examples closeby in Fulton County
24 that provide good reasons for residents to feel

1 Thank you.

2 HEARING OFFICER STUDER: Thank you.

3 The next person will be Kurt
4 Skender, and that will be followed by Brian Perbix.

5 Mr. Skender is not here, so,
6 Brian, if you come forward.

7 And Brian will be followed by
8 Terrence Ingram. Is Mr. Ingram here? Okay. You'll
9 be after Mr. Perbix.

10 MR. PERBIX: Good evening again.
11 My name is Brian (B-r-i-a-n) Perbix (P-e-r-b-i-x).
12 Again, I'm here on behalf of the Prairie Rivers
13 Network and Illinois Chapter of the Sierra Club. I
14 also have not prepared a formal statement for this
15 proceeding. Instead I'm going to use my time to ask
16 a couple of questions.

17 Dr. Cindy Skrukrud is here,
18 and she'll be representing our formal concerns.

19 First I'd just like to ask a
20 question, and I'm having trouble formulating this so
21 if it comes out a little clouded, I'm going to blame
22 it on the migraine that I've got.

23 But within the limits of
24 mining and above the impoundments that are proposed

1 to be created, are there any wetlands or streams
2 that will be avoided?

3 MR. FAUGHT: I know there's no
4 wetlands on site. You'll probably get that from the
5 responsiveness summary as far as what streams are
6 there.

7 MR. PERBIX: It seems that just
8 about every seemingly perennial and ephemeral stream
9 through the site is slated to be impacted by either
10 mining or the construction of these impoundments.

11 MR. FAUGHT: We'll look into that
12 in the response.

13 MR. PERBIX: I raise these as part
14 of the 401 process. It's my understanding that
15 applicants are intended to demonstrate that they
16 have avoided impacts to streams and wetlands where
17 possible.

18 MR. FAUGHT: Our antidegradation
19 assessment, review, and alternatives analysis, it
20 should have been looked at there.

21 MR. PERBIX: And that leads to my
22 next question.

23 Have they done a cost analysis
24 of what it would cost to avoid any of these impacts

1 to streams on site?

2 MR. MOSHER: The mine would have,
3 and we'll again have to look and see what they
4 provided us, but strip mines do mine through streams
5 that are on site, and then they have to submit a
6 mitigation plan to tell us how they're going to
7 re-create those during reclamation, and we did
8 summarize that in the antidegradation review, but
9 we'll do that again for you in the responsiveness
10 summary.

11 MR. PERBIX: And it's my
12 understanding that they have not priced out how much
13 it would actually cost to avoid those impacts on
14 streams.

15 And then secondly, in terms of
16 mitigating the loss of those streams, a number of
17 folks have brought up concerns about wildlife, that
18 they use it for both recreational viewing, hunting,
19 trapping, fishing. I'm concerned that the proposed
20 mitigation because it does not fully mitigate the
21 lost stream functions on site will not adequately
22 replace what is lost in terms of providing those
23 existing uses or protecting it.

24 HEARING OFFICER STUDER: Thank you.

1 Mr. Ingram will be followed by
2 Charles Luthy.

3 MR. INGRAM: Terrence Ingram,
4 President and Executive Director of the Eagle Nature
5 Foundation from Apple River, Illinois.

6 We've been fighting for the
7 bald eagle for 50 years now. The bald eagle doesn't
8 know what a 401 is. It just looks for good food to
9 eat, and that's what's one of the requirements for
10 the eagle is to have good quality food, and the
11 environment has to be right.

12 I'm also on the board, was the
13 chairman of the Restoration Advisory Board for the
14 Savannah Army Depot up in northwest Illinois. Some
15 of you may know about. We closed that army depot in
16 '96. We've got eagles there too. We also have
17 about a mile of the Mississippi backwater that's
18 fenced off, and we do not allow any hunting or
19 fishing within that area because the fish aren't
20 safe to eat for people, but we still allow the
21 eagles to come in and feed. Like I say, they don't
22 know what the 401 is.

23 But anyway, having an area
24 like this may become very important in the future.

1 I was up in Minnesota last Friday taking pictures of
2 the footprint of six eagle nests within a footprint
3 of a wind farm, and the stream going through that
4 wind farm was about the size of Copperas Creek, and
5 yet it supported six eagle nests with that farm,
6 with that stream.

7 As the eagles come back, you
8 may have that opportunity here in this area if the
9 eagles can find the right food to come back and nest
10 in here too.

11 So we're not asking you to
12 deny it/approve it. I'm asking you to follow the
13 rules. That's the only time we get involved, if the
14 rules aren't followed. If the rules are written,
15 just follow them to the T and we'll be all right.
16 Okay?

17 Thank you.

18 HEARING OFFICER STUDER: Thank you.

19 Charles Luthy, are you here?

20 Okay. Cindy Skrukrud is next.

21 And Cindy Skrukrud will be
22 followed by Kim Knowles.

23 MS. SKRUKRUD: Good evening again.

24 My name is Cindy Skrukrud spelled C-i-n-d-y

1 S-k-r-u-k-r-u-d. I'm the Clean Water Advocate for
2 the Illinois Chapter of the Sierra Club. I along
3 with Sierra Club members and many Canton area
4 citizens you see here tonight are concerned about
5 the impacts the proposed North Canton Mine will have
6 on the existing uses in the Copperas Creek watershed
7 including impacts to aquatic life in both the west
8 and middle branches of the creek.

9 I thank you for holding this
10 hearing so the IEPA and everyone here can learn
11 about one another's concerns about this project.

12 If built, the mine will
13 destroy tributary streams to both the west and
14 middle branches of the creek. After mining, the
15 tributary streams are not proposed to be fully
16 restored. Instead, the antidegradation assessment
17 states that drainage channel creation or stream
18 restoration, riparian buffer creation and riparian
19 preservation will count as mitigation for the stream
20 functions that will be lost.

21 Sierra Club and Prairie Rivers
22 Network object to the plan proposed by the mine in
23 that it, 1) does not avoid impacts to tributary
24 streams on the mine site; 2) does not protect

1 existing uses, and 3) inadequately compensates for
2 the mine's impact.

3 We request that the IEPA deny
4 the 401 certification. Specifically, we object to
5 the proposal by the mine to use natural waters of
6 the state as treatment works. They propose to dam
7 the streams to use them as sedimentation ponds.
8 Such use is strictly prohibited by 35 Illinois
9 Administrative Code 301.440. The mitigation plan
10 only considers impacts to two tributaries on the
11 site while six tributaries are impacted.

12 No study has been made of the
13 impacted streams on the mine site except when Canton
14 area citizens, Sierra Club and Prairie Rivers
15 Network were allowed to visit the site in October
16 2010. We looked for and found macroinvertebrates in
17 the three of the six tributaries we had time to
18 explore. We also were looking to sample for fish
19 but we just saw fish in two tributaries.

20 The mining company has not
21 fulfilled antidegradation regulations which require
22 the applicant to fully evaluate the economical and
23 technical feasibility of alternatives which avoid
24 impact to streams including performing an

1 affordability analysis in accordance with the
2 USEPA's interim economic guidance for water quality
3 standards.

4 For example, in the March 12,
5 2010 alternatives analysis provided by Rapps
6 Engineering, they state, quote, "It would be very
7 difficult to redesign stormwater treatment at the
8 mine to exclude sediment ponds No. 3 and 6, the berm
9 and new drainage ditch."

10 Then later on they say, quote,
11 "The more complicated logistics of redesigning the
12 mine would be unduly burdensome."

13 And then later they say,
14 quote, "Finally, altering the mine construction
15 design plan will be a substantial burden to the
16 mining company."

17 These are not sufficient
18 reasons to not fully evaluate the economic and
19 technical feasibility of alternatives which reduce
20 adverse impacts. Actual cost, not just claims that
21 it will be burdensome, must be presented.

22 With sedimentation ponds
23 proposed to remain on site permanently, the riparian
24 connection between the reconstructed tributaries

1 upstream of ponds 3 and 6 and the West Branch of
2 Copperas Creek will be forever interrupted. Thus,
3 the proposed mitigation will not replace the vital
4 functions that these headwater streams have provided
5 to Copperas Creek watershed.

6 A buffer around a pond does
7 not mitigate for lost riparian functions. As the
8 USEPA stated in their March 21, 2008 to the Rock
9 Island District of the Army Corps of Engineers on
10 this project, quote, "The proposed ponds will not
11 adequately mitigate for the streams they will
12 replace. Ecologically, the applicant attempts to
13 draw a close relationship between open water ponds
14 and natural streams by comparing surface water areas
15 and shoreline lengths. However, this comparison is
16 between apples and oranges. The streams that will
17 be impacted support a riparian corridor with
18 different plants, wildlife and habitats than that of
19 open water ponds."

20 Then I had seven questions.
21 Can I just read those into the record?

22 HEARING OFFICER STUDER: Yeah.
23 I'll let you go ahead and read those. We're
24 approaching the time limit but please go ahead.

1 MS. SKRUKRUD: Okay. Question one,
2 which is in two parts, what information did the
3 Agency rely on to determine that 9,045 feet of
4 stream (that's nearly two miles of stream) will be
5 impacted by the mine?

6 Am I correct in using the
7 Illinois Stream Method, those 9,045 feet of stream
8 were entered into the adverse impact worksheet to
9 assign a point value to the impacted streams and the
10 amount of mitigation needed?

11 In the Wetlands Delineation
12 Report by Greenleaf Consulting, they also describe
13 three to four other impacted streams on the mine
14 site. Why aren't those streams included in the
15 adverse impact worksheet?

16 Question 3. In the adverse
17 impact worksheet, streams can be classified as
18 perennial, intermittent with ponds or
19 intermittent/ephemeral. How did Agency staff make
20 sure that the streams are classified correctly? Did
21 you inspect the streams on site?

22 Question 4. Why can't
23 sedimentations basins be placed offline of the
24 stream so that more of the streams and their

1 riparian corridors can be retained? The record must
2 demonstrate why the ponds can't be placed elsewhere.

3 Oh, I lied. I forgot a number
4 5.

5 5. How are the sediment ponds
6 number 3 and 6 and their buffers being counted in
7 the mitigation plan? That's not very clear to me in
8 either the Agency's antidegradation assessment or in
9 the materials provided by the mining consultants.

10 6. Please describe the
11 riparian preservation component of the mitigation
12 plan. If I understand this correctly, the mining
13 company will get to count the fact that they are not
14 impacting the west branch of Copperas Creek as part
15 of their mitigation plans for the tributaries that
16 they do plan to destroy. How does that compensate
17 for the stream functions lost due to the destruction
18 of the tributary streams?

19 And then last, how did the
20 Agency factor the IDNR's designation of the West
21 Branch as a strategic subwatershed, one where
22 they've said they want to protect better quality
23 habitat first. How did the Agency factor that into
24 its analysis and recommendations on the proposed

1 mine?

2 Thank you.

3 HEARING OFFICER STUDER: Thank you,
4 Cindy.

5 Kim Knowles, and that will be
6 followed by Joyce Blumenshine.

7 MS. KNOWLES: Kim Knowles
8 (K-n-o-w-l-e-s) staff attorney for Prairie Rivers
9 Network.

10 My first question is can you
11 tell us what materials will be used to construct the
12 sedimentation ponds?

13 Should I just wait for a
14 response?

15 HEARING OFFICER STUDER: We'll put
16 that in the responsiveness summary because we're
17 starting to get into some areas that may not be he
18 401 related, but go ahead.

19 MS. KNOWLES: Secondly, both
20 Prairie Rivers and Sierra Club believe that the
21 proposed mitigation is insufficient to compensate
22 for stream impacts. We understand that the Illinois
23 Stream Mitigation Method was used to ultimately
24 determine what mitigation would be required on site.

1 That method, part of that method looks at various
2 factors in ultimately determining how many credits
3 are required and therefore what kind of mitigation
4 will be required.

5 Two of those factors are of a
6 particular concern to us tonight, and those two
7 factors are 1) a priority that is assigned to the
8 impact on streams; and 2) the existing condition
9 that is assigned to the impacted streams.

10 In terms of priority, we note
11 that these streams are all listed as tertiary
12 priority which is the lowest level of priority that
13 can be assigned to a stream.

14 So our question for the
15 Agency -- well, before I get into this, actually, I
16 wanted to ask a different question which is who in
17 the Agency reviewed the application of the Illinois
18 Stream Mitigation Method to this project?

19 MR. MOSHER: His name is Mark
20 Books.

21 MS. KNOWLES: Thank you.

22 Back to priority, again, the
23 lowest level of priority was assigned to these
24 streams, so the question is, the request is, would

1 you fully explain in the record what factors and
2 information were considered in assigning that
3 priority?

4 The second factor that we're
5 concerned with as I said before is the existing
6 condition assignment, and the existing condition
7 that was assigned to these streams is "functionally
8 impaired," and again, that is the lowest level, that
9 is the poorest condition that can be assigned to a
10 stream.

11 So the question for the Agency
12 is please provide us with the data used and the
13 analysis performed in support of making this
14 existing condition determination.

15 In our review of the Illinois
16 Stream Mitigation Method, we discovered that there
17 are specific factors that must be examined when
18 you're destroying the existing condition of a
19 stream. Those factors for intermittent and
20 perennial stream, which I believe all of these are,
21 include examination of water quality and examination
22 of geomorphic conditions. So, again, please provide
23 us with that data analysis that show that those
24 factors were considered.

1 Ultimately, the assignment and
2 the priority of the existing condition ultimately
3 determine, as I said before, how many credits are
4 required and, in the end, how much mitigation is
5 required.

6 When we read the mitigation
7 method, examined the factors and applied those to
8 what we know about the streams onsite, we believe
9 that the existing condition is actually fully
10 functional which is the highest level of priority,
11 thereby requiring additional mitigation than that
12 proposed by the applicant.

13 I'm done. Thank you.

14 HEARING OFFICER STUDER: Thanks.

15 Joyce Blumenshine, and she'll
16 be followed by Joseph Cooper if Mr. Cooper is here.

17 MR. NEIBERGALL: Mr. Cooper went in
18 here.

19 HEARING OFFICER STUDER: Okay. Go
20 ahead, Ms. Blumenshine.

21 MS. BLUMENSHINE: Thank you. My
22 name is Joyce Blumenshine B-l-u-m-e-n-s-h-i-n-e.

23 I want to thank IEPA for
24 keeping their 401 credentialing. Other states have

1 chosen not to, and this is really essential. I
2 commend IEPA for reviewing this process.

3 People may not know this in
4 this room but the North Canton Mine Army Corps of
5 Engineers permanent approval was done on the first
6 ever Nationwide 21 permit ever issued by the Rock
7 Island District Army Corps. The Nationwide 21
8 permit is kind of a de facto approval where the Army
9 Corps decides they don't need to do a full review
10 from my understanding, and it kind of issues it and
11 says, okay, the state is going to take care of it.

12 We find that was completely
13 inadequate at the time, particularly based on the
14 information that was supplied by the mine which put
15 in their mine application that the Canton Lake was
16 recreational use only among other questionable
17 things. So it is essential that IEPA really look
18 closely at this 401 because I really think the Army
19 Corps has failed us in their review.

20 I would like to point out that
21 as was mentioned before, the streams that would be
22 destroyed are not going to be restored completely,
23 and I had the privilege of being on the mine site
24 for two days where I walked several of the streams,

1 and in seeing those healthy stream banks with
2 complete tree canopies of mature over hundred year
3 old burr oaks or other strong oaks and hardwood
4 trees, moss covered banks, silt, or not silt, I'm
5 sorry, clay or the type of rock that is used right
6 now, it's gone out of my head but the type of thing
7 people put on their roofs...

8 AUDIENCE: Slate.

9 MS. BLUMENSHINE: ...slate type
10 covered streams, it was very impressive to see the
11 quality of those streams because they were intact
12 ecosystems.

13 While they may not have been
14 like complete wetlands that we saw, we certainly saw
15 grassy soggy banks that when you stepped on them,
16 they went into the spring and that would go back
17 away from the stream.

18 So what we're talking about on
19 these small unnamed tributaries are completely
20 functional and very vital parts of this watershed
21 that feeds Canton Lake. Upstream and some of the
22 agriculture areas, yes, they are definitely impacted
23 by having the trees gone, and that's what I think
24 the Army Corps looked at because that's what they

1 quoted to me on the phone.

2 But back to the permit in 401,
3 as a volunteer and a member of Sierra Club and the
4 State Conservation, I am concerned that we've got to
5 protect these streams. I urge that IEPA deny this
6 401 certification. The economic and negative social
7 impacts of this project are multitude. Cost factors
8 to the people of Canton and those many communities
9 that rely on Canton water will be huge if water has
10 to be pumped from the river, and that's electric
11 pumping, uphill for nine miles.

12 From information from the City
13 of Canton, if the Canton Lake water supply is
14 reduced, let's say the mine holds back certain,
15 maybe it's 20 percent of water, if the Canton Lake
16 supply is down, Canton's supply will be down 20
17 percent, but also all the water percentages for the
18 outlying communities that rely on Canton water will
19 be down that same percentage.

20 So what, in essence, approval
21 of this mine permit will do is taking a great risk
22 of reducing the water supply for the area
23 communities, their quality of life, and raising cost
24 to every citizen in this area and to the businesses

1 because of having to deal with water pumping just
2 from other areas.

3 And just in closing, I really
4 do wonder how does this mine plan mitigate for water
5 that is withheld and diverted from the West Branch
6 Copperas Creek. These ponds will be left, the
7 streams will be destroyed. The specific gravel
8 layer, sand layers of ancient ages that built this
9 plateau will be ruined from strip mining. This area
10 will never function the same again. Please deny
11 this permit.

12 Thank you.

13 HEARING OFFICER STUDER: Thank you,
14 Ms. Blumenshine.

15 Joseph Cooper was not here.
16 Oh, he's inside the room. Okay. We'll come back to
17 him.

18 MR. NEIBERGALL: He already gave in
19 the auxiliary room.

20 HEARING OFFICER STUDER: William
21 Ripper.

22 MR. RIPPER: I'm really not
23 prepared for an encore but I'll do this.

24 I was born in 1926.

1 HEARING OFFICER STUDER: For the
2 record, it's R-i-p-p-e-r.

3 MR. RIPPER: I was born in 1926
4 about the time strip mines started here in Fulton
5 County, so you might say I've been around them all
6 my life. They left us around 1975 leaving us with
7 thousands of acres of torn up land, unclaimed
8 potholes and lakes with no means for drainage but to
9 let gravity take the runoff to the nearest stream or
10 lake. Thus, we have documented proof of pollution
11 and toxic drainage from these mines.

12 Now it is 2011 and they are
13 proposing a new strip mine and watershed of Canton
14 Lake. There's no way they can honestly guarantee
15 that no runoff from the mine will ever reach the
16 lake. On a long-term basis, that is impossible, and
17 pollution in the lake would be an irrevocable
18 tragedy.

19 These mine officials tell us
20 what they will do, but the integrity of the strip
21 mines in Fulton County is next to none. Their track
22 record speaks for itself. We were fooled before by
23 doing nothing and letting the strip mine come in and
24 rape our land and confiscate our country life, take

1 our roads and ruin our rural economy by lowering our
2 tax base.

3 We have been robbed of a lot
4 of things and now they want to endanger our water.
5 If necessary, we will fight until the end.

6 Thank you.

7 HEARING OFFICER STUDER: Thank you.

8 Terry Beam, are you here?

9 Terry Beam?

10 AUDIENCE: Gone.

11 HEARING OFFICER STUDER: Carla

12 Murray?

13 MS. MURRAY: My name is Carla
14 Murray (M-u-r-r-a-y). I am a volunteer with the
15 Illinois EPA Volunteer Lake Monitoring Program. I'm
16 also secretary of the CACEI Organization.

17 I volunteer as a monitor at
18 the lake because I understand the lake is
19 classified, and I have other concerns that deal with
20 that as well.

21 I have been volunteering with
22 them for three years now. The company that's
23 proposing the North Canton Mine has an operational
24 history at a mine I cannot mention that is fraught

1 with violations. Why would we think that that would
2 not happen here?

3 The City of Canton is moving
4 forward with projects to promote Canton Lake as a
5 recreational site to draw more people and tourism
6 dollars to the area. Tourism would be a longer term
7 economic boost than the proposed seven to ten years
8 of the mine.

9 This mine project has the
10 potential to greatly negatively impact the long-term
11 tourism potential of Canton Lake. Who would want to
12 fish, ski or camp at a lake that has excessive
13 levels of chemical discharge due to poor management
14 practices of a nearby coal mine or any discharge
15 from a coal mine for that matter.

16 Canton Lake and Copperas
17 Creek, both the West Branch and the Middle Branch,
18 are used by residents for recreational
19 opportunities. I myself have enjoyed canoeing on
20 the West Branch. I have collected invertebrates in
21 the Middle Branch. Copperas Creek is used by many
22 people for things such as wading, educational
23 macroinvertebrate sampling by students and groups
24 such as 4-H clubs, swimming holes, canoeing, tubing,

1 and many other activities. I myself have collected
2 samples during my graduate studies, and I have also
3 recently collected, as I said, in the Middle Branch,
4 or, excuse me, the West Branch.

5 The mine activities will have
6 a negative effect on the water quality and water
7 quantity thereby affecting the quality of life of
8 people who enjoy utilizing both branches of the
9 creek.

10 The City of Canton has gone on
11 record stating that Canton Lake will remain the
12 primary water source for approximately 20,000
13 people. Placing a coal mine in the lake's drainage
14 basin in just over a mile away from the lake will
15 affect the quality and possibly the quantity of our
16 drinking water.

17 Water is life. I could go on
18 and on about this issue. Many of the things I would
19 like to state have already been stated by other
20 people but suffice it to say that I do encourage you
21 to deny this 401 permit.

22 Thank you.

23 HEARING OFFICER STUDER: Thank you.

24 Joseph Hedges? Joseph Hedges?

1 Okay. Gwen, it looks like
2 Mayhue or Mayham?

3 Barbara Luthy?

4 AUDIENCE: She's gone too.

5 HEARING OFFICER STUDER: Joe Davis?

6 MR. DAVIS: Joe Davis is my name;
7 D-a-v-i-s. I'm an Orion Township resident, Canton
8 business owner, former coal miner, and have
9 employees here. Some of the mine owners that I
10 worked for at the Rapatee Mine, which is up at
11 Middle Grove, were here earlier, so it kind of does
12 away with the statements that some of them said
13 while the owners, they leave the area. That mine
14 has been shut down since 1976 and all four owners
15 were still here.

16 The mine was a good
17 opportunity for me. I raised my family off it. It
18 gave me the ability to start my own business which
19 we've been in business now 28 years, and I look
20 forward to being in the area for the rest of my
21 life.

22 I live in Orion Township. I
23 drink water from Canton Lake, and I stand in support
24 of the mine. We have a trucking business, and it's

1 been stated that the trucks run through town dirty.
2 I venture to say there may be some but the ones that
3 I run around here are cleaned daily and especially
4 if they're dirty for some special reason.

5 And the question was brung up
6 where they're going to sell this coal at. They
7 can't sell coal without having a permit from you
8 guys and the other agencies involved to market that
9 coal, so I don't know where they would expect to
10 sell the product that they can't even take out of
11 the ground yet.

12 Lakeland Park out here was a
13 mine many years ago owned by Consolidated Coal
14 Company, and there's fishing that goes on out there
15 every day. That was turned over and given to the
16 city by the mines and is now part of our park
17 system, and it's closer to Canton than this mine is.

18 I do sympathize with the
19 people that are property owners that live closeby
20 that may not want it, but I stand in support of the
21 permit being issued.

22 Thank you.

23 HEARING OFFICER STUDER: Thank you.

24 Is Mark Smith here? He's

1 gone. Okay.

2 And Joseph Cooper was making
3 comments in the auxiliary room. Okay.

4 Let's go off the record for a
5 moment here.

6 (Discussion held off the record.)

7 HEARING OFFICER STUDER: That
8 concludes the 401 cards that I've gone through, so
9 I'm going to ask, is there anyone here at the 401
10 hearing that has not spoken that would like to make
11 comments on the record for the 401?

12 Let the record indicate we've
13 gone through the 401 cards. I've asked if there was
14 anyone that wanted to make additional comments, and
15 there are not, so, therefore, I'm going to
16 officially indicate that the 401 record is going to
17 be open for written comments through the 5th of
18 January 2012, and the 401 hearing is officially
19 adjourned.

20 (Ending time: 9:16 p.m.)

21

22

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24

1 STATE OF ILLINOIS)
2)SS.
3 COUNTY OF SANGAMON)

4 CERTIFICATE

5 I, Laurel A. Patkes, Certified Shorthand
6 Reporter in and for said County and State, do hereby
7 certify that I reported in shorthand the foregoing
8 proceedings and that the foregoing is a true and
9 correct transcript of my shorthand notes so taken as
10 aforesaid.

11 Dated December 13, 2011.

12
13
14 _____
15 Certified Shorthand Reporter
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