Christian C. Stephens (9068)
Marina V. Thomas (11251)
Assistant Attorneys General
Sean D. Reyes (7969)
Utah Attorney General
195 North 1950 West, Second Floor
Salt Lake City, UT 84116
Telephone: (801) 536-0290
cstephens@utah.gov
marinathomas@utah.gov
Attorneys for the Director of the Utah Division of Air Quality

BEFORE THE EXECUTIVE DIRECTOR OF THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of: Revolution Fuels, LLC Coal to Liquid Facility, Air Quality Approval Order (DAQE-AN154900001-16)	**DIRECTOR OF THE UTAH DIVISION OF AIR QUALITY'S PRE-HEARING BRIEF ON STANDARD OF REVIEW** October 28, 2016 Administrative Law Judge Bret F. Randall

Pursuant to the Administrative Law Judge's (ALJ) October 7, 2016 Stipulated Order Regarding Hearing and Briefing on the Standard of Review and Briefing on the Merits and September 23, 2016 Notice of Further Proceedings and First Pre-Hearing Order (First Pre-Hearing Order), the Director of the Utah Division of Air Quality (Director or UDAQ) submits the following Pre-Hearing Brief addressing the standard of review in the above-captioned matter.

INTRODUCTION

During the 2015 General Session, the Utah Legislature amended Section 19-1-301.5 of the Utah Code. Specifically, the legislature amended Section 301.5(14)(b) to state that: "[o]n review of a proposed dispositive action, the executive director shall uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based on the petitioner's marshaling of the evidence." Utah Code Ann. § 19-1-301.5(14)(b) (West 2016). The

amendment differs from the previous language, which required the executive director to uphold such determinations that were supported by "substantial evidence taken from the record as a whole." Utah Code Ann. § 19-1-301.5(13)(b) (West 2014).

In the First Pre-Hearing Order, this tribunal requested pre-hearing briefing on the amendments from the 2015 session, specifically on two issues: (1) the objective evidence showing the intent of the legislature in amending the statute and standard of review and (2) whether the amended standard of review substantively changes the analysis.

DISCUSSION

I. Apart from the Statute Itself, the Only Indication of Legislative Intent is Legislative Testimony.

The bill proposing the amendments (S.B. 282) was discussed in the Senate Government Operations and Political Subdivisions Standing Committee on March 3, 2015 and in the House Judiciary Standing Committee on March 10, 2015. The parties met, conferred, and stipulated to the accuracy of the transcripts of these hearings. The stipulated copies of the transcripts are attached as Exhibit A. S.B. 282 was also discussed by Representative Grover on the House floor during the vote. However, this discussion was very general and did not address in any depth the intent behind the amendment to the standard of review.[1]

Because this tribunal has asked the parties to address the objective evidence of legislative intent, UDAQ explains its conclusions in Section II below. However, as explained in Section III, if the statute is clear, this tribunal applies the statute as written. *See LPI Services v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135 (citation omitted) ("When the plain meaning of the statute can be discerned from its language, no other interpretive tools are needed."). Conversely, resort to

[1] The audio version is available at http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=18897&meta_id=552853 (last visited on October 28, 2016).

legislative history is appropriate only when the statute is ambiguous. *See C.T. ex rel. Taylor v. Johnson,* 1999 UT 35, ¶ 13, 977 P.2d 479 ("it is elementary that we do not seek guidance from legislative history and relevant policy considerations when the statute is clear and unambiguous").

II. The Objective Evidence Available is Inconclusive.

The March 3, 2015 discussion of S.B. 282 in the Senate Government Operations and Political Subdivisions Standing Committee contains a brief description of the amendments, but sheds no light on the clearly erroneous standard that is the focus of this briefing. The March 10, 2015 discussion of S.B. 282 in the House Judiciary Standing Committee is more specific, but is ultimately inconclusive. During that meeting, the following exchange took place:

> **Rep. M. Nelson:** Thank you very much. I see no other lights, so let me ask a clarifying question if I could. On lines 278, and I see again on lines 305 and 306, it looks like there's a shift in the, in the standard of review changing from substantial evidence to a clearly erroneous standard. Do you know why that is? Is the intent to make a challenge more or less difficult, or is there any intent by, by, by that change in standard of review?
>
> **UDEQ Executive Director A. Smith**: The intent in that change is to make this process consistent with the process that it was modeled after originally, which is the EPA, Environmental Protection Agency's permit decision through the Environmental Review Board. And that's because, because we do have the delegated authority. When we went to simplify the process, what we, what we're trying to remediate is that we had this hybrid process that confused many of the attorneys who practice in this area, in the appeals area in the agency, because it was somewhat following the EPA review board process, and somewhat following our old process. So this is an attempt to make those two things consistent. Again as the senator said, so that it makes it more, it makes it easier for the attorneys who practice in the area to understand what process we're using, rather than jumping between two different appeals processes.
>
> **Rep. M. Nelson**: So there is not an intent to make a different stand-, standard, but just to conform to the federal standard, is that it?
>
> **UDEQ Executive Director A. Smith**: That's correct.

House Judiciary Standing Committee Meeting (excepted transcript) (March 10, 2015), Ex. A at 3-4.[2] Executive Director Smith appears to say that the purpose of the amendment was to align Utah's adjudicatory standard of review with its federal counterpart. Although she also appears to acknowledge that there was "no intent to make a different standard," the question posed to her was contradictory. Specifically, Representative Nelson asked her to clarify if the intent was not "to make a different standard but just to conform to the federal standard." Although Executive Director Smith answered affirmatively, the question itself is nonsensical and it is unclear to what part of the question Smith responded.

If the intention was to make the standard the same, there would be no need to conform to the "federal standard" and abandon the "old process." If the intent was to conform to the federal standard, then a change was intended because conforming to a standard presupposes a lack of current application of that standard. Consequently, the legislative history is inconclusive as to what the legislature intended in amending Section 19-1-301.5.

III. Regardless of the Legislative History, the Amendment Substantively Changes the Standard of Review that Applies to this Special Adjudicative Proceeding.

Although the ALJ has asked the parties to present the objective evidence relating to the amendment, it is impossible to state what this amendment means without interpreting both standards under Utah law and determining whether they are the same or different. Upon evaluation of the legislative history and other relevant authorities, UDAQ concludes that the "clearly erroneous" standard (referred to in the legislative history as the "federal standard"), is not the Utah administrative law-based "substantial evidence" standard.

[2] The audio version is available at http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=18875&meta_id=550989# (last visited October 28, 2016).

Under Utah case law, "[a] decision is supported by substantial evidence if there is a quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *Becker v. Sunset City*, 2013 UT 51, ¶ 10, 309 P.3d 223 (internal quotation marks omitted). "Substantial evidence exists when the factual findings support 'more than a mere scintilla of evidence . . . though *something less than the weight of the evidence*.'" *Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints,* 2007 UT 42, ¶ 35, 164 P.3d 384 (citation omitted) (emphasis added). Therefore, a petitioner contesting an agency's factual finding must show that despite all the evidence in the record, the evidence is inadequate to support the finding.

By contrast, the standard of review for EAB permit reviews states that when contesting a permit, the petitioner must show that each challenge is based on "a finding of fact or conclusion of law that is clearly erroneous." 40 C.F.R. § 124.19(a)(4)(i)(A). Several EAB cases explain that to make such a factual challenge, the petitioner must show that the facts on which the petitioner relies clearly outweigh the facts relied on by the permitting agency. *See e.g. In re: Inter-Power of New York, Inc.*, 5 E.A.D. 130, *12 (March 16, 1994); *In re: Cardinal FG Company*, 12 E.A.D. 153 (March 22, 2005); *In re: Pio Pico Energy Center*, 2013 WL 4038622, *27-28 (Aug. 2, 2013); *In re: Indeck-Elwood, LLC*, 13 E.A.D. 126 n.116 (Sept. 27, 2006). As noted, the Utah Supreme Court held that substantial evidence is "something less than the weight of the evidence.'" *Martinez*, 2007 UT at ¶ 35. Thus, substantial evidence is a lower standard than the clearly erroneous standard, which in EAB cases must be shown by a clear weight of the evidence.

The EAB standard in 40 C.F.R. § 124.19(a)(4)(i)(A) is similar to Utah Rule of Civil Procedure 52(a), which and states that "[f]indings of fact, whether based on oral or other

evidence, must not be set aside unless clearly erroneous." According to Utah case law, a finding is clearly erroneous "only if the finding is without adequate evidentiary support or induced by an erroneous view of the law." *Hale v. Big H Const., Inc.*, 2012 UT App 283, ¶ 9, 288 P.3d 1046 (quoting *State v. Walker*, 743 P.2d 191, 193 (Utah 1987)). In explaining the requirements of the clearly erroneous standard under Rule 52(a), the Utah Supreme Court has stated that:

> it is simply unrealistic to expect an appellate court to conduct a review of a sufficiency of the evidence challenge without weighing evidence. The appellate court must, however, go about weighing the evidence with one eye on the scales and the other fixed firmly on its duty of deference to findings of fact. Thus, it may only disturb findings that offend the "clear weight" of the evidence.

State ex rel. Z.D., 2006 UT 54, ¶ 33, 147 P.3d 401. Accordingly, the reviewing authority must weigh the evidence deferentially, overturning a factual determination only if it is "against the clear weight of the evidence or leave[s] the appellate court with a firm and definite conviction that a mistake has been made." *Id.* at ¶ 40. Thus, the clearly erroneous standard is more demanding than the substantial evidence standard, requiring only that the petitioner show that the evidence is inadequate.

In any event, the best indicator and objective evidence of legislative intent is the language of the statute itself. *See Salt Lake Child and Family Therapy Clinic, Inc. v. Frederick*, 890 P.2d 1017, 1020 (Utah 1995) ("When language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.") (quoting *Hanchett v. Burbidge*, 202 P. 377, 379-80 (1921)). When reviewing a statute, a tribunal must "assume[ ] that each term in the statute was used advisedly; thus the statutory words are read literally, unless such a reading is unreasonably confused or inoperable." *Salt Lake Child and Family Therapy Clinic*, 890 P.2d at 1020 (quoting *Savage Indus., Inc. v. Utah State Tax Comm'n*, 811 P.2d 664, 670 (Utah 1991)) (alternation in original). The amended language of Section 301.5(14)(b) is plain and unambiguous and says nothing about deferring to EAB case law to construe the statute. Thus,

inconclusive as it is, the legislative history is ultimately irrelevant to the question of what standard applies. Both EAB and Utah state cases show that "clearly erroneous" is a specific term, applied in a specific way. "Substantial evidence" likewise is a specific statutory standard applied in a different way. Because Section 19-1-301.5(14)(b) is clear and unambiguous, no resort to legislative history is necessary, or even helpful, and this tribunal should apply the plain statutory language.

CONCLUSION

The legislative history of S.B. 282 is inconclusive, and in any event is unnecessary as an interpretive tool because Section 19-1-3015 is clear and unambiguous. Although both the substantial evidence and clearly erroneous standards of review address the sufficiency of the evidence, each requires a different showing and the two cannot be applied interchangeably. Consequently, the clearly erroneous standard is the appropriate standard of review under Section 19-1-301.5's clear and unambiguous language.

DATED this 28th day of October 2016.

SEAN D. REYES
Utah Attorney General

/s/ Christian C. Stephens
Christian C. Stephens
Marina V. Thomas
Assistant Attorneys General
Attorneys for the Director of the Utah Division of Air Quality

CERTIFICATE OF SERVICE

I certify that on this 28th day of October 2016, I filed a true and correct copy of the foregoing **DIRECTOR OF THE UTAH DIVISION OF AIR QUALITY'S PRE-HEARING BRIEF ON STANDARD OF REVIEW** via e-mail with the following recipients:

Joro Walker
Charles R. Dubuc, Jr.
Western Resource Advocates
150 South 600 East, Suite 2A
Salt Lake City, Utah 84102
jwalker@westernresources.org
rdubuc@westernresources.org

Bryce C. Bird, Director
Utah Division of Air Quality
195 North 1950 West
P.O. Box 144820
Salt Lake City, Utah 84114-4820
bbird@utah.gov

Andrea Issod
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, California 94612
andrea.issod@sierraclub.org

Administrative Proceedings
Records Officer
DEQAPRO@utah.gov

Bret F. Randall
Administrative Law Judge
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, UT 84111
brandall@djplaw.com

Michael A. Zody
Jacob A. Santini
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
mzody@parsonsbehle.com
jsantini@parsonsbehle.com

/s/ Christian C. Stephens
Christian C. Stephens

Exhibit A

SENATE GOVERNMENT OPERATIONS AND POLITICAL SUBDIVISIONS STANDING COMMITTEE

Excerpted Transcript

March 3, 2015

Members: Sen. Margaret Dayton, Chair
Sen. Lyle W. Hillyard
Sen. David P. Hinkins
Sen. Alivin B. Jackson
Sen. Daniel W. Thatcher

Members Excused: Sen. Luz Escamilla

Other speakers:
Craig Anderson, Office of the Attorney General Environmental Division, Division Chief
James Holtkamp, attorney and Chair of the Utah Manufacturers Association Air Quality Committee.
Jeff Hartley, Red Leaf Resources

COMMITTEE DISCUSSION AND VOTE RE: S.B. 282, ADMINISTRATIVE LAW AMENDMENTS (SEN. M. DAYTON)

Sen. D. Hinkins	This will be Senate Bill 282; Administrative Law Judge Amendments. Sounds complicated.
Sen. M. Dayton	Thank you committee, this is another bill dealing with DEQ, I appreciate you letting me bring again before you this bill. You might recall that three years ago, 2 or 3 years ago, we did some major changes in board construction and appeals process. This particular bill addresses the procedures governing administrative review of an order relating to a permit by the director of DEQ. I have with me today to help present, Mr. Holtkamp, who will start first. He's part of my presentation and we'll begin with him.
J. Holtkamp	Good morning, Mr. Chairman. My name is Jim Holtkamp. I am an attorney representing the Utah Manufacturers Association and Chair of their association's air committee. As Senator Dayton indicated, a few years ago, the legislature enacted some changes to the permit appeal process for environmental permits. And as part of that process, if someone appeals an environmental permit, the Department of Environmental Quality assigns the appeal to an administrative law judge. Senate Bill 282 improves that process and does a number of things; I'll cover very, very briefly.

	First of all, it makes some housekeeping changes to streamline the appeal process. We should note that this bill is a product of a joint effort by the Attorney General's Office, the Department of Environmental Quality and attorneys from the regulated community. It streamlines the process. It reduces unnecessary costs for the state but at the same time it ensures due process of law. And very briefly, this is what the changes do. First of all, it eliminates some unnecessary procedural steps that are in the current law. Secondly, it provides some deadlines for responding to various items in the, that are applicable to both the agency and to the ALJ, for example, once an appeal is filed, the bill would require that an ALJ; an administrative law judge be appointed within 30 days of the filing of the bill. It requires responses to certain motions within 45 or 60 days as the case may be. It incorporates the standard schedule for briefing on the merits. It clarifies that the person or the entity appealing the permit must show that the agency's findings are clearly erroneous and it also explicitly provides that in the appeal, what we call the petition for review in the bill that the appellant has to demonstrate that the person or the entity raise the issues during the public comment period on the, on the permit. It also clarifies that the permittee is automatically a party. Believe or not under current law, if it's your permit that's being appealed, you're not a party to the appeal unless you file a motion to intervene. And then finally it allows there to be communication with the director of DEQ, which will allow for informal resolution of some of these issues. So, Utah Manufacturers Association is supportive of this measure and we appreciate very much the ability or the opportunity to work with both the Attorney General's Office and with the Department of Environmental Quality on it. Thank you.
Sen. M. Dayton	Thank you. I appreciate his comments and I also have Mr. Craig Anderson, who is the Attorney General representing DEQ and did you want to be a part of the presentation or just respond to their questions?
C. Anderson	I'm here to respond to any questions that you may have regarding the technical issues and changes made to the bill. Adding to what Mr. Holtkamp has said, I would indicate that the proposed changes are the result of our actual experience with the hearing process under the statute as it's currently written and through this process, we have had some real experiences with hearing processes. We've had interactions with the ALJs, who represent the department during that process and we feel that the changes will adequately deal with those concerns to expedite the hearing process and furthermore to make sure that all technical issues that may come up regarding any permit reviews are handled during the public comment period where everyone is involved in the process.

Sen. M. Dayton	Okay, thank you.
	That completes my presentation. We're open for questions.
Sen. D. Hinkins	Thank you. Any questions for the committee? Seeing none. Do we have anyone from the public who would like to speak on this, if you could come forward and state your name.
J. Hartley	My name is Jeff Hartley. I'm here representing Red Leaf Resources. I appreciate the opportunity to speak on behalf of Red Leaf Resources an oil shale developer in Uintah County, with over 50,000 acres of school trust lands under lease in the Uintah Basin. We appreciate Senator Dayton bringing the original legislation forward 3 years ago to help expedite the appeal process. I think first and foremost, it should be noted that when these permits are granted through the Department of Environmental Quality, there's, there is a full, there's a full review and vetting process before the permits granted. The, the administrative law judge processes on the appeal and that's after a complete permitting process takes place and those processes are long. They are extensive. They're thorough. These divisions within DEQ know that there'll be an appeal process. They know that they'll be challenged. They go through a very thorough process to make sure that the permits are air tight before they grant them and because of that the ALJ process is helpful in expediting the appeal process because it's already been a long process by the time it gets to that point and for companies that have invested millions of dollars to get there, delaying that process even further is hard. And we want to get into development as quickly as possible and I'd just like to give you a little bit of flavor of what that means to a company. Red Leaf's revolutionary oil shale extraction technology has built more than 20 patents. It was developed here in Utah. The company is based here in Utah. The technology is from Utah. Red Leaf has an estimated 550 million barrels of recoverable oil on the 50,000 acres of trust lands, that it leases from SITLA. The SITLA royalties that Red Leaf will pay over time, scale up to 12 ½ percent, which on $50 oil and we hope that there's a settling point north of $50 oil, but on $50 oil that will, that will exceed $3 billion to SITLA over time. So as the legislature looks to solve the education funding challenges, we hope to be part of that. But that's $3 billion from one company over time if we're able to develop our resources, which requires our permits. I share the background to tell the committee that when companies, like Red Leaf face delays in permitting procedures, ___ subtle impact to the company but it's impactful to the state. Again, we appreciate Senator Dayton bringing this forward I think that Mr. Holtkamp outlined the, what the, what this bill does to help streamline the process adequately. And so, I won't go back over the details of it, but I would just like to say as a company that has been going through this process with an administrative law

	judge, we appreciate that Senator Dayton is trying now to tighten up the timelines and tighten up the process so that it can't be delayed unnecessarily. We recognize that it's important the state regulate us as a company. We recognize that it's important that we seek permits and that we have requirements upon us. We don't want to get around that process, we just want it to be done quickly and done correctly and again we appreciate the opportunity to, to have this done in a more expedited and smooth process and appreciate this bill coming forward. Thank you.
Sen. D. Hinkins	Thank you. Does anyone else would like to speak for or against this bill, if not we'll come back to the committee for action. Senator Jackson.
Sen. A. Jackson	Yeah, I would like to make a motion that we report Senate Bill 282 from this committee and to the floor for further action.
Sen. D. Hinkins	Thank you. Senator Dayton would you like to respond or to?
Sen. M. Dayton	Yes. I appreciate the motion. And I just want to reiterate again, it's so important when these permits are granted that the people understand they're not granted without having public hearings with opportunity for input from all the stakeholders those for and against and the expedited time process is a time saver for everybody who's interested in the whole issue. So I hope you will support the motion.
Sen. D. Hinkins	Okay. Back to the committee for, would you like to sum? Waive?
Man	Waive
Sen. D. Hinkins	All those in favor of passing out Senate Bill 282 with a favor of recommendation to the Senate floor, say Aye.
	Aye.
Sen. D. Hinkins	Aye. Opposed if anybody? I guess that's unanimous. Would you like this on consent?
Sen. M. Dayton	I would love it on consent.
	Senator Jackson would you like to nominate this for consent?
Sen. A. Jackson	Yeah. I would make a motion that we put it on the consent calendar, yes.
Sen. D. Hinkins	Since no opposition to this, I would propose that all those in favor say aye.

	Aye.
Sen. D. Hinkins	Oppose if any, it is unanimous and it will be on consent. Thank you.
	Thank you.

HOUSE JUDICIARY STANDING COMMITTEE MEETING

Excepted Transcript

March 10, 2015

Members: Rep. LaVar Christensen, Chair
Rep. Merrill Nelson, Vice Chair
Rep. Fred C. Cox
Rep. Bruce Cutler
Rep. Brian M. Greene
Rep. Craig Hall
Rep. Brian S. King
Rep. Curtis Oda
Rep. V. Lowry Snow
Rep. Kevin J. Stratton
Rep. Mark A. Wheatley

Other speakers:

Amanda Smith, Executive Director of the Utah Department of Environmental Quality
Jeff Hartley, Red Leaf Resources

COMMITTEE DISCUSSION AND VOTE RE: S.B. 282 ADMINISTRATIVE LAW JUDGE AMENDMENTS (SEN. M. DAYTON)

Rep. M. Nelson	That brings us to the third item on the agenda. Senator Dayton. Welcome. Senate Bill 282 Administrative Law Judge Amendments.
Sen. M. Dayton	Thank you Representative Nelson and thank you Committee. And I'm sorry we've had to reschedule a couple of times. You've had a very interesting agenda.
Rep. M. Nelson	We also apologize. We know that you, you've been patient working with us, so we're glad you could be here.
Sen. M. Dayton	We all just make adjustments.
Rep. M. Nelson	Yes.
Sen. M.	I have with me um, Amanda Smith who is director of DEQ, and we are

Dayton	addressing another DEQ bill before you. Three years ago we made some changes in appeals. Let me explain that the various boards that are under DEQ on a regular basis will grant permits. Permit granting is only allowed after publicly announced and publicly held hearings and discussions. Not everybody agrees with the decisions that are made by these boards and thus, they have to have an opportunity to make an appeal. In legislation that was changed three years ago, we made it, we intended to make it easier for those people who have appeals to have a comfortable appeals process. This bill before you today is a refinement of what we did last year in an effort to make the appeals process more convenient for those who disagree with DEQ, there's some timeframes put in place. This doesn't change anything about public hearings. There are still public hearings. They have to be posted, they have to be open. It doesn't change the people who can present. It doesn't prevent people from hearing. What it does is it more carefully defines the role and the timeframe that the ALJ has to respond to the concerns and the protests. So, that is the bill and um, if you have questions, that's why Amanda Smith is here. And that concludes my presentation.
Rep. M. Nelson	Thank you very much. Let's go to the committee for clarifying questions. Representative King.
Rep. B. King	Thank you Mr. Chair. I'm, I'm looking at lines 249 through 251, right around there. And it indicates that there'll be timeframes within which there'll be resolution by the administrative law judges. There are a final, is there a timeframe within which a decision has to be made on a particular request for action?
UDEQ Executive Director A. Smith	Do you want me to answer that?
	Please.
UDEQ Executive Director A. Smith	My name's Amanda Smith. I'm the executive director of Department of Environmental Quality. And yes there is. If you follow on down, I believe it's line 270 if I'm kind of on the fly finding it. Within 60 days after the day submitted the executive dec-, director proposed dispositive action, maybe it's a little further. So I think that that is the timeframe for the final decision on that line. It starts there and then follows onto the next page. So basically in, in practical terms that means that after the way that I'm reading that, after the ALJ has a final decision or recommendation to the executive director, a decision within 60 days. Since the process changed three years ago with Senate Bill 21 and Senate Bill 11, I think I have reviewed 3-4 decision recommendations from ALJs, and my timeframe I usually try to make a final decision within 2 or 3 weeks. So that we're trying to, uh, make sure that the record is, is put together and that the executive director is tracking along with

	the process so that there isn't un-, undue delay in those final decisions. So that, as you know, the next step is an appeal to district court, and we want to make sure that we're not delaying those actions going forward either.
Rep. B. King	Is there any sort of reporting process, I mean, in the judiciary, there's a reporting process within which the judges have to report on how long a case has been pending, how long a motion's been under advisement—that kind of thing. I mean, what's the remedy if, an ALJ just doesn't make a decision in a timely way?
UDEQ Executive Director A. Smith	That is a very good question. I'm not sure that there is a remedy at this time. And maybe that will be a further refinement.
Rep. B. King	Do, do you know how long the ALJs have had things under advisement? I mean is there a reporting mechanism to you?
UDEQ Executive Director A. Smith	There is. So, um, our assistant attorney general Craig Anderson and his staff keep a list of the pending matters, which ALJs they're before. And so we have very good records about where things are in the process. I guess the incentive for the ALJs to be timely before this or to report are that they are contract ALJs, and if they're not meeting the needs of the department, I guess our remedy would be to end the contract and find ALJs who were willing to work under that circumstance.
Rep. B. King	Okay, thank you.
Rep. M. Nelson	Thank you very much. I see no other lights, so let me ask a clarifying question if I could. On lines 278, and I see again on lines 305 and 306, it looks like there's a shift in the, in the standard of review changing from substantial evidence to a clearly erroneous standard. Do you know why that is? Is the intent to make a challenge more or less difficult, or is there any intent by, by, by that change in standard of review?
UDEQ Executive Director A. Smith	The intent in that change is to make this process consistent with the process that it was modeled after originally, which is the EPA, Environmental Protection Agency's permit decision through the Environmental Review Board. And that's because, because we do have the delegated authority. When we went to simplify the process, what we, what we're trying to remediate is that we had this hybrid process that confused many of the attorneys who practice in this area, in the appeals area in the agency, because it was somewhat following the EPA review board process, and somewhat following our old process. So this is an attempt to make those two things consistent. Again as the senator said, so that it makes it more, it makes it easier for the attorneys who practice in the area to understand what process we're using, rather than jumping between two different appeals processes.

Rep. M. Nelson	So there is not an intent to make a different stand-, standard, but just to conform to the federal standard, is that it?
UDEQ Executive Director A. Smith	That's correct.
Sen. M. Dayton	And Representative if I can respond to that as well.
Rep. M. Nelson	Sure.
Sen. M. Dayton	Um, I, I am not, I'm not sure everybody's thrilled with DEQ and what they do. But I would much rather that we have our own state DEQ than dealing with the EPA, which was our alternative. We can have our own DEQ and set our standards that conform with what EPA, the guidelines they give us. Or if we don't have our own state-driven DEQ, then we would have to work directly with Region 8 EPA in Colorado. It doesn't really meet the needs of Utah, it doesn't really work for us. And I am really grateful that DEQ will work with, within their parameters to try to make it convenient for us in the state to have a say in the issues that they address. That's another reason I felt good about bringing this bill forward. The public deserves and needs to have these hearings. And they deserve and need to have an option to protest if they don't agree with the decision. And they deserve to have a timeline on that decision-making process. And that would be the refinement that we're bringing for you today.
Rep. M. Nelson	Very good. I see no other lights. Is there anyone in the, in the public that would like to comment on Senate Bill 282? I see one hand. Would you come forward, please? Mr. Hartley. State your name for the record and who you might represent.
J. Hartley	Thank you Mr. Chairman. My name is Jeff Hartley. I'm here representing Red Leaf Resources, an oil shale extraction company. We appreciate the opportunity to speak to this committee. I spent a lot of time with the Natural Resources Committee and with other committees and don't get to spend any time with, with you all I'm talking about oil and oil shale. But I'd just like to let you know Red Leaf Resources is a Utah company. It has Utah technology, with over 20 US patents. It has several thousand school trust lands acres under lease. It has, it has several different blocks it has under lease with SITLA. It has the potential to develop several million barrels of oil on its trust lands leases. It pays royalties a scale up to 12 and-1/2% to SITLA, which on $100 oil is significant, on $50 oil is half as sig-, half as significant, but still on $50 oil, on Red Leaf's conservative estimates of the oil they have in their oil shale would equal over the life of their oil shale leases $3 billion to

	the trust lands fund—which is significant to the state of Utah. So when Red Leaf is seeking permits from DEQ, our, our permits are significant to the state of Utah. We are in the process of the ALJ review. And I won't speak specifically to that process because it is currently underway, but we appreciate Senator Dayton creating the process three years ago for DEQ. And we appreciate the opportunity to tighten that process up a little bit. It's, it is significantly better as Senator Dayton indicated than going through an EPA process, and we're lucky that we have a state DEQ that we can work with. But it's, I think most importantly for this committee, it's important to understand that this is a, this process is set up with an administrative law judge to review appeals to our permits. These are permits that are fully vetted, these are permits that have been reviewed for a significant amount of time. They are carefully gone over and carefully reviewed by the permitting agencies because they know they will be appealed. The permits are pretty airtight when they are given, and because of that, this, the appeal process doesn't need to be lengthy, it doesn't need to be burdensome and cumbersome. It just needs to be reviewed to make sure they didn't miss anything. And I think that's important to know when you're looking at the review and um, our desire, um and it seems this legislation's desire to apply brevity to the process, because there has been a thorough vetting. Red Leaf Resources has a water quality permit that it sought, even though there's no discharge water from their process. It has a discharge water permit that it really didn't need. But it sought it anyway. That went through appeal. And it was, um, that whole process has taken a couple of years. A couple of years that the company didn't really need to go through, but it went through to get that step out of the way in advance of going into production. And as with any resource development, time costs money, and they're in the process of building a $300 million commercial demonstration project, and the time cost of money is significant at that level. So, I, we, I appreciate Senator Dayton brining this forward. We would appreciate the committee's support of this bill. Thank you.
Rep. M. Nelson	So, Mr. Hartley, you're in support of the bill and its new procedures, new timelines?
J. Hartley	Correct.
Rep. M. Nelson	Good. So who's taking the appeals? I assume some third-party doesn't like that you received a permit.
J. Hartley	That's correct. It's protested by a consortium of environmental groups.
Rep. M. Nelson	Okay, good. Any further questions for this witness? Seeing none. Any further comment from the public? I see none. So we'll come back to the committee for action. Representative Stratton.

Rep. K. Stratton	Thank you Mr. Vice Chair. I move that we pass out Senate Bill 282 Administrative Law Judge Amendments with a favorable recommendation. I'd like to speak to that.
Rep. M. Nelson	Very good. Go ahe-, the motion is to pass out Senate Bill 282 with a favorable recommendation. Representative Stratton to that motion.
Sen. M. Dayton	First sub, right?
Rep. M. Nelson	Um . . .
Sen. M. Dayton	Is that what you have in front of you?
Rep. M. Nelson	I do not have a sub.
Sen. M. Dayton	I'm glad we clarified that.
Rep. M. Nelson	We need to move . . .
Rep. K. Stratton	I'll withdraw and move to adopt that if we need to do that.
Rep. M. Nelson	Did you want a sub adopted?
Sen. M. Dayton	I'm sorry. I, I thought you had that. Let me just, there is, there is no substantive change in this bill. There's an alignment of technicalities. But rather than just trying to do a huge amendment, there is no substantive change and I apologize. I thought you had the first sub in front of you.
Rep. M. Nelson	There is one on the machine.
Sen. M. Dayton	Okay.
Rep. M. Nelson	But we have . . .
Sen. M. Dayton	So we do need to make that substitute.

Rep. M. Nelson	Okay.
Sen. M. Dayton	And we have been speaking to the first substitute the whole time.
Rep. M. Nelson	Very good. And under our procedures, we wait until committee action to adopt those. And so Representative Stratton, if you'd want to withdraw your motion, and, and make another motion.
Rep. K. Stratton	Just give me, yes, I would like to withdraw my previous motion. And I would like to move that we pass out . . .
Rep. M. Nelson	First of all.
Rep. K. Stratton	I would like, thank you Mr. Chair. Vice Chair. I'd like to move that we adopt Senate Bill 282 First Substitute.
Rep. M. Nelson	Very go-, very good. So the motion is to adopt, uh, uh . . .
Rep. K. Stratton	Adminis- . . .
Rep. M. Nelson	First Substitute. Yeah.
Rep. K. Stratton	Administrative Law Judge, Ame-, Judge Amendments, thank you, sorry.
Rep. M. Nelson	First Substitute Senate Bill 282 in place of Senate Bill 282. And would you like to speak to that motion Representative Stratton?
Rep. K. Stratton	I'll waive.
Rep. M. Nelson	To the sponsor, would you like to speak to that motion to substitute?
Sen. M. Dayton	Not to substitute except to apologize that I didn't say it sooner.
Rep. M. Nelson	That's fine, thank you. Any other discussion among the committee? I see none, and so back to Representative Stratton. Any summing, any summing on this?

Rep. K. Stratton	I'll waive.
Rep. M. Nelson	Waived. And so we'll place it for a vote. All in favor of the motion to substitute, First Substitute Senate Bill 282 in place of original Senate Bill 282, please say "aye."
	Aye.
Rep. M. Nelson	Any opposed? The motion to substitute passes unanimously. And now back to Representative Stratton.
Rep. K. Stratton	Thank you. With that, I move that we pass out Senate Bill 282 First Substitute Administrative Law Judge Amendments with a favorable recommendation. I'm glad to speak to that.
Rep. M. Nelson	Very good. The motion is to pass out First Substitute Senate Bill 282 with a favorable recommendation. Representative Stratton to that motion.
Rep. K. Stratton	Thank you. I appreciate the work of the sponsor. This First Substitute strengthens the bill adding a coordination clause with the other agencies, and that's very important. I would just state as we look at our public lands and the resources are held there, but also in our privately, this is a key avenue that our, those are seeking to do and carry forth business response matter within our state have this as a tool. I do greatly appreciate the sponsor and those that have supported this work and invite us all to pass this out favorably. Thank you.
Rep. M. Nelson	Thank you. No other comment to the motion. Back to the sponsor for summation.
Sen. M. Dayton	Thank you. I appreciate you hearing this and lest I sound like I was denigrating DEQ, which I didn't mean to, because I just like them better than EPA. Let me just, okay it's getting worse. Let me try to do this better. I need to say the work of DEQ is important. But what I really want to acknowledge is the service that's given by the people on the boards, which is volunteer service. And the boards are made up of, by code, by members of local government and organized environmental groups and regulated industries. And it's very important that all these people and experts in these technical fields come and review all of these issues. And it's donated time, for which we are, as a state, all indebted. But their work, in spite of the fact that it's donated and valuable, it also needs to have the opportunity to be challenged by those who disagree. And so as I said earlier, the purpose of this is to make it more efficient for those who want to challenge whatever permits are granted. So with appreciation for your time, I would speak in support of the motion and ask you to pass the bill.

Rep. M. Nelson	Very good. Thank you. Back to Representative Stratton for summation.
Rep. K. Stratton	Government closer to the people is always better. And we're grateful for the work of our good environmental quality unit here in the state. Thank you.
Rep. M. Nelson	Very good. We'll place the motion to pass out favorably Substitute House Bill 282 with a favorable recommendation. All in favor say "aye."
	Aye.
Rep. M. Nelson	Any opposed? The motion passes unanimously.
Sen. M. Dayton	Thank you Committee.
Rep. M. Nelson	Thank you Senator.