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PUBLIC HEARING  
STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

Pecos Hall, 1st Floor, Wendell Chino Building  
1220 S. Saint Francis Drive  
Santa Fe, New Mexico

TRANSCRIPT OF PROCEEDINGS  
July 17, 2025

COMMISSION MEMBERS:

ALBERT CHANG, Chair  
GREGORY BLOOM, Member  
DR. WILLIAM AMPOMAH, Member

COUNSEL TO THE COMMISSION:

MR. ZACHARY SHANDLER, ESQ.

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A P P E A R A N C E S

FOR NEW MEXICO OIL CONSERVATION COMMISSION:

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I N D E X

PAGE

TRANSCRIPT OF PROCEEDINGS.....4

THE WITNESS

    JUSTIN WRINKLE

        Examination by Mr. Tremaine.....20

        Examination by Commissioner Ampomah.....22

ADMITTED EXHIBITS

    XTO Permian Operating Exhibits A, B and C....18

TRANSCRIPT CERTIFICATE.....59

1 (On the record at 9:00 a.m.)

2 TRANSCRIPT OF PROCEEDINGS

3 CHAIR CHANG: Since it's 9 o'clock, if we're  
4 all ready, I'll call the meeting to order.

5 Sheila, would you like to call the roll,  
6 please.

7 MS. APODACA: Yes, I will. Okay. We're  
8 taking roll of the Commission. I will start with  
9 Commissioner Dr. Ampomah.

10 COMMISSIONER AMPOMAH: Present.

11 MS. APODACA: Chair Chang.

12 CHAIR CHANG: Present.

13 MS. APODACA: Commissioner Bloom.

14 COMMISSIONER BLOOM: Present.

15 MS. APODACA: Okay. We're all present,  
16 accounted for.

17 CHAIR CHANG: If all the Commissioners have  
18 had a chance to review the agenda, would somebody  
19 like to make any suggestions, discuss or move to  
20 approve?

21 COMMISSIONER BLOOM: Yes, I would move to  
22 approve the agenda.

23 COMMISSIONER AMPOMAH: I second.

24 CHAIR CHANG: Thank you. Any objection?  
25 Without objection, so ordered.

1 (3-0 vote. Motion approved.)

2 CHAIR CHANG: Next, if we could go to the  
3 meeting minutes from the last hearing. Is there any  
4 amendment, discussion or proposed changes?

5 COMMISSIONER BLOOM: Mr. Chair, I've just  
6 got two typos. On Page 1, under Item 3, the original  
7 read -- or change the word "provided to provided."  
8 That should be "provide to provided."

9 And then on Page 3, under "Action," the  
10 paragraph says "Ms. Lubbock stated that the Comission  
11 had already suggested that the case been continued,"  
12 and should be "be continued."

13 That's it.

14 COMMISSIONER AMPOMAH: I do have one on  
15 Page 1. It says, "The meeting was called to order by  
16 acting Chair Razatos." I just want to confirm that.

17 CHAIR CHANG: Oh, yes.

18 Sheila, do you see that at the very top,  
19 in bold? I don't know if you have a copy in front of  
20 you.

21 MS. APODACA: Yes, I do. That is definitely  
22 a typo that I will change. I'll correct that.

23 CHAIR CHANG: If there are no further  
24 discussions or typos, I'd invite a motion to make  
25 those typographical changes and adopt as amended.

1 COMMISSIONER BLOOM: I move to make those  
2 changes and adopt as amended, Mr. Chair.

3 COMMISSIONER AMPOMAH: I second.

4 CHAIR CHANG: Without objections, so  
5 ordered.

6 (3-0 vote. Motion approved.)

7 CHAIR CHANG: Moving on to our pending cases  
8 then, I'll start in the order as listed in the  
9 agenda. So I'd like to invite the parties for Case  
10 Number 25460 to give us an update as to the status as  
11 to this -- I believe it's a de novo appeal; is that  
12 correct?

13 MS. BENNETT: Good morning, everyone. This  
14 is Deana Bennett appearing virtually on behalf of  
15 Coterra Energy Operating. And I represent the  
16 applicant in this de novo appeal.

17 CHAIR CHANG: Great.

18 MS. BENNETT: And I'm not sure if  
19 Mr. Padilla is here on behalf of North Fork.

20 CHAIR CHANG: Do we have the respondent with  
21 us, online or otherwise, in spirit?

22 Well, in that case, Ms. Bennett, why  
23 don't you proceed in the meantime and give us an  
24 update as to what you are seeking from the Commission  
25 here.

1 MS. BENNETT: Thank you very much. And good  
2 morning again, Mr. Chair, Commissioner Ampomah,  
3 Commissioner Bloom. Again, my name is Deana Bennett,  
4 of Modrall Sperling, on behalf of Coterra Energy  
5 Operating.

6 And Coterra Energy Operating, just a  
7 little bit of background for you, Coterra Energy  
8 Operating is seeking de novo review of Order R-23808,  
9 which was issued to Franklin Mountain Energy 3,  
10 May 7th, 2025. But in the interim Coterra Energy  
11 Operating has acquired all of Franklin Mountain  
12 Energy 3 assets, including the acreage that's subject  
13 to this order, which is why Coterra is the applicant  
14 for this de novo hearing.

15 And the Order R-23808 involves a well  
16 group called the "Treble Well Group," and this  
17 particular order involves a request by Franklin  
18 Mountain Energy 3 for an order pooling all  
19 uncommitted mineral interests approval to the extent  
20 necessary of an overlapping spacing unit.

21 And for the Commissioners' benefit, the  
22 rules that the Commission has adopted governing oil  
23 and gas operations do specifically allow for  
24 overlapping spacing units; that is to say, a  
25 horizontal well spacing unit can overlap with a

1 vertical well spacing unit, under the rules.

2 And that is what is at issue here, is  
3 the wells that are involved in this order overlap an  
4 existing -- are proposed to overlap an existing  
5 vertical spacing unit dedicated to a North Fork  
6 vertical well.

7 And so in the proceedings below, North  
8 Fork appeared and objected to that portion of  
9 Franklin Mountain Energy 3's application that sought  
10 approval of an overlapping spacing unit. And there  
11 was a hearing held and the division granted Franklin  
12 Mountain Energy 3's application, designated Franklin  
13 Mountain Energy 3 as operator, and pooled the  
14 uncommitted mineral interests. So everything so far  
15 is going very well in FME 3's application.

16 But what the Division did and what  
17 Coterra is seeking de novo review of, is the Division  
18 imposed a 330-foot setback from the vertical well.  
19 And the Division's and Commission's rules do not  
20 support the 330-foot setback requirement from a  
21 vertical well. In fact, the Division's rules state  
22 that there are no internal setbacks. That's  
23 primarily for horizontal wells, but there's no reason  
24 that that wouldn't apply equally to vertical wells.

25 And so that's what Coterra is seeking



1 de novo review of, is that limited finding by the  
2 Division or limited ordering paragraphs by the  
3 Division imposing a 330-foot setback between the  
4 completed lateral of the horizontal well and the  
5 existing vertical well.

6 And in my view, this is primarily a  
7 legal issue, and so my thought process had been to  
8 suggest that I prepare an initial brief to submit to  
9 the Commission regarding the Division -- the rules,  
10 the Oil and Gas Act rules, and why they do not  
11 support this 330-foot setback.

12 And, of course, then, allowing  
13 Mr. Padilla or the Division to file a response, and  
14 then a short time for Coterra to file a reply.

15 And then the Commission could hold a  
16 hearing or rule on the papers, and depending upon the  
17 ruling, then Coterra could be in a better position of  
18 determining whether an actual de novo hearing on the  
19 merits, I would call it, on the application would be  
20 something they would continue to seek or whether  
21 their plans -- for example, if the Commission were to  
22 rule in Coterra's favor, then we would not need to  
23 move forward with a de novo hearing before the  
24 Commission.

25 So that is the process that I was

1 thinking of moving forward.

2 CHAIR CHANG: That sounds reasonable to me,  
3 but can we hear from the respondents? Are there any  
4 respondents with us? Going once, going twice.

5 MS. BENNETT: Mr. Chair, I will let you know  
6 that I did serve Mr. Padilla with my application for  
7 de novo review and he did correspond with me about  
8 the application for de novo review. So he does know  
9 that it's pending. I'm not entirely sure why he's  
10 not present today.

11 CHAIR CHANG: Commissioners, any thoughts?

12 COMMISSIONER BLOOM: Mr. Chair, we don't  
13 have Mr. Padilla with us, but I think Ms. Bennett  
14 outlines a reasonable and succinct plan. We can have  
15 her submit her brief and we go from there.

16 CHAIR CHANG: Okay. Do you want to go on to  
17 the other cases and come back to this at the end of  
18 Commission meeting, in case Mr. Padilla joins us?  
19 No?

20 COMMISSIONER BLOOM: Not particularly, no.

21 CHAIR CHANG: Okay. Fair enough.

22 MS. BENNETT: Mr. Chair, if I may.

23 CHAIR CHANG: Go ahead.

24 MS. BENNETT: I did think about the briefing  
25 schedule as a proposal to offer to the Commission

1 this morning.

2 CHAIR CHANG: Please.

3 MS. BENNETT: And it's primarily based on  
4 the fact that at the current moment, I am out of the  
5 office and out of the State for a family emergency  
6 that's smoothing out, but I've been out of the office  
7 now for three weeks. So I anticipate that when I get  
8 back to the office, hopefully next week, that my  
9 schedule is going to be a bit discombobulated getting  
10 back up to speed.

11 So what my thought was, and I'm hoping  
12 that this would work for the Commission, is that my  
13 initial brief could be due -- and I know this sounds  
14 like a ways out, but, again, my schedule has just  
15 been so unpredictable lately. But my brief would be  
16 due September 2nd. And then Mr. Padilla's brief  
17 and/or OCD's, if the OCD determined or decided to  
18 brief this issue, could be due, let's say, September  
19 30th. That would give them approximately a month for  
20 their response. And then a reply could be due  
21 October 20th.

22 And then that would mean this would be  
23 ripe for the November Commission docket, which I  
24 thought made sense because of the rulemaking that's  
25 going on in October. That would give the Commission

1 and the Division some time to prepare for a docket  
2 that's after the rulemaking in October.

3 CHAIR CHANG: Would you just given me those  
4 dates again so I can write them down real quick.

5 MS. BENNETT: Yes. September 2nd for the  
6 opening brief. September 30th for any response  
7 briefs. And then October 20th for my reply. And by  
8 "my," I mean Coterra's of course.

9 CHAIR CHANG: Any thoughts, concerns about  
10 that schedule, Commissioners?

11 COMMISSIONER AMPOMAH: Not for me.

12 COMMISSIONER BLOOM: Nor for me, Mr. Chair.

13 CHAIR CHANG: Commission counsel, no issue?

14 MR. SHANDLER: No.

15 CHAIR CHANG: Well, if somebody wants to  
16 move that, we can adopt that as a scheduling order.

17 COMMISSIONER BLOOM: Yes, Mr. Chair. I  
18 would move those dates.

19 COMMISSIONER AMPOMAH: I second.

20 CHAIR CHANG: Without objection, we'll put  
21 these into a scheduling order for you. Thank you.

22 MS. BENNETT: Thank you very much. I  
23 appreciate it. Have a good rest of the day.

24 CHAIR CHANG: Thank you, you, as well.

25 (3-0 vote. Motion approved.)

1 CHAIR CHANG: Okay. Moving on to the next  
2 case, I call Case Number 25297. Are the parties  
3 ready to proceed on that?

4 MR. FELDEWERT: Yes, sir.

5 CHAIR CHANG: Great. In that case I'll turn  
6 it over to you, Mr. Feldewert.

7 MR. FELDEWERT: Thank you, Mr. Chair,  
8 Members of the Commission.

9 XTO has filed this application seeking  
10 exception to the four-string well bore requirements  
11 in Commissioner Order R-111-Q, and it's for three of  
12 their wells. R-111-Q, as you probably know, governs  
13 the drilling of wells within and known potash leasing  
14 area, and where an operator likes to run a second  
15 intermediate stream, resulting in a four-string  
16 design.

17 The order specifies certain well  
18 construction methods. And if I may share, if it's  
19 okay.

20 CHAIR CHANG: Yes, sir. Please go ahead.

21 MR. FELDEWERT: I put up on the screen  
22 Page 9 of Order R-111-Q, and this is the section  
23 that's at issue here today. And you'll see that  
24 there's -- where you're required -- or elect to have  
25 a four well bore string design, the purpose is to,

1 and I have it highlighted here, divert the flow of  
2 well bore fluids away from the salt interval in the  
3 event of sudden production casing failure.

4 And then, as you page through the  
5 remaining part of this rule, you'll see that there  
6 are four construction methods, which are depicted as  
7 Figure C, Figure D, Figure E, and then Figure F in  
8 the order.

9 Now, XTO, in 2024, was engaged in a  
10 32-well development plan in the known potash leasing  
11 area, where they utilized a four-string well bore  
12 design. And they elected to use the well bore  
13 construction method, which is depicted as Figure F in  
14 R-111-Q, which I have up here on the screen.

15 And it requires an engineer relief point  
16 that is designed so that the flow of salt in the  
17 formation would be below the salt section. That's  
18 the whole purpose of Figure F.

19 And for 29 of their wells, they were  
20 able to meet this requirement. But they encountered  
21 issues with three of the 32 wells, which resulted in  
22 an engineered weak point which may not divert the  
23 fluids into a suitable relief zone below the  
24 formation.

25 And they depicted those reasons in what

1 we've marked as Exhibit A-3, which I now have up on  
2 the screen. And just to orient you, Figure F, which  
3 is what's required by the rules, on the left-hand  
4 side, and describes the engineered weak point.

5           You'll see that for one of the wells,  
6 the James Ranch Unit 116H, the engineered weak point  
7 was essentially placed inside the Intermediate 1  
8 shoe. And then for the other two wells, there was  
9 production cement squeeze that covered up the  
10 engineered weak point.

11           So that is the problem that they face  
12 with these wells, is that they don't comply with the  
13 requirement of Figure F because it may not allow the  
14 fluids to divert below the salt section.

15           So they proposed some mitigation  
16 measures, which are laid out in our Exhibit A-5. And  
17 first, there are -- the current rule requires  
18 pressure tests before you commence hydraulic  
19 fracturing. Okay? That's what the rule requires.  
20 XTO is going to add to that requirement as part of  
21 the mitigation measures pressure test during  
22 hydraulic fracturing operations in which there had  
23 been an increase in solid body plug frequency, and  
24 conduct a pressure test every two stages, which, as I  
25 understand it, will result in about every 400 feet of

1 well bore lateral, which will then allow immediate  
2 action to reduce the volume impact of a potential  
3 flow in the unlikely event that there is a production  
4 casing failure.

5 The second thing XTO is going to do is  
6 install additional service pressure relief valves on  
7 these wells. This second pressure relief valve will  
8 be located in the second -- between the second  
9 intermediate and first intermediate casing string  
10 during operations. And that's depicted on this  
11 Exhibit 5 in the right-hand side, with the blue XTO.  
12 That's the second pressure relief valve.

13 And the relief valve depicted in black  
14 is the pressure relief valve that's required by the  
15 rule. So there will be two new paths for the flow to  
16 go to the surface. And that will then allow any  
17 buildup to flow to the surface in a controlled manner  
18 in the unlikely event that there's a production  
19 casing failure.

20 Now, XTO submitted its proposal, its  
21 plan, to BLM in November of 2024, and the BLM sent  
22 them on to the potash companies, Mosaic Potash and  
23 Intrepid Potash. And also included was not only the  
24 issue with the well bores, but also this mitigation  
25 plan that you see up here on Exhibit A-5.



1                   And as you'll see from our exhibits, BLM  
2   informed XTO that they had discussed this plan and  
3   that they had agreed with it, unless you all have  
4   concerns. The affected potash companies have  
5   expressed no concerns with this proposed mitigation  
6   measure.

7                   And I know that the OCD submitted a  
8   prehearing statement in which they noted that they've  
9   looked at this and the proposed mitigation measure  
10  will provide equal protection under these particular  
11  circumstances.

12                  So we're here to ask that you approve an  
13  exception to the four-well string design requirements  
14  for these three wells and approve these mitigation  
15  measures.

16                  What we have filed with you in our  
17  hearing package is a self-affirmed statement of Will  
18  Dacus, and he's here with us today. He's an  
19  engineer. He's their wells manager for XTO in the  
20  Delaware Permian region. And he is the one that  
21  oversaw or put together these exhibits that we put  
22  here in our package, Exhibits A-1 through A-5.

23                  Exhibit B is a self-affirmed statement  
24  of notice that was sent to all the affected parties,  
25  including additional notice to the potash companies,

1 both Intrepid and Mosaic.

2 And then, out of an abundance of  
3 caution, we also have our Exhibit C, an affidavit of  
4 publication in the local newspaper advising the  
5 public of this hearing here today. So I would like  
6 to move the admission of Exhibits A, B and C.

7 And then Mr. Dacus is available in the  
8 event that you or the Division has any questions.

9 CHAIR CHANG: Any objections to admitting?

10 MR. TREMAINE: No objection.

11 CHAIR CHANG: Without objection, so  
12 admitted.

13 (Admitted: XTO Permian Operating, LLC  
14 Exhibits A, B and C.)

15 CHAIR CHANG: Commissioners, do you want to  
16 hear from the witnesses or have any questions before  
17 we go to OCD, or should we hear from OCD first and  
18 then do questions? Preferences?

19 COMMISSIONER AMPOMAH: I will suggest we  
20 hear from OCD.

21 CHAIR CHANG: Thank you.

22 MR. TREMAINE: Good morning, Commissioners,  
23 Mr. Chair. Thank you. My name is Jesse Tremaine. I  
24 represent the Oil Conservation Division.

25 When the Division became aware of this

1 issue with the three wells in this unit, it was after  
2 the discussions had occurred with the BLM. And due  
3 to the timing and the fact that the wells had already  
4 been drilled and constructed in the manner in which  
5 they were constructed prior to any exceptions being  
6 granted by either the Division or the Commission, OCD  
7 reviewed the authority in R-111-Q and looked at the  
8 context as a reference and determined that this was  
9 an exception that should only appropriately be heard  
10 before the Commission. And the application ensued.

11 As Mr. Feldewert indicated accurately,  
12 OCD's technical team has reviewed XTO's materials,  
13 has communicated with them during this process and  
14 specifically has reviewed the corrective actions and  
15 the mitigation steps outlined by XTO.

16 OCD is satisfied that XTO's response and  
17 corrective actions are adequate in these  
18 circumstances to prevent waste and protect the KPLA.

19 Mr. Wrinkle, Justin Wrinkle, OCD's  
20 engineering bureau chief, is available if the  
21 Commission has any questions about the Division's  
22 review or participation, you know, discussions  
23 regarding this process and leading up to hearing.

24 CHAIR CHANG: Commissioners, questions for  
25 anybody, attorneys or witnesses?

1 COMMISSIONER AMPOMAH: Is it possible for  
2 OCD to just summarize their process that they went  
3 through in reviewing mitigation strategies and how  
4 they came to the conclusion that it is satisfactory?  
5 Thank you.

6 MR. TREMAINE: Mr. Wrinkle is available  
7 online. If the Commission would like to direct  
8 questions to him, I'd ask that he be called and sworn  
9 as a witness.

10 CHAIR CHANG: Do you swear to tell the  
11 truth, the whole truth and nothing but the truth?

12 THE WITNESS: I do.

13 CHAIR CHANG: Do you need him admitted as an  
14 expert?

15 MR. TREMAINE: No. Mr. Wrinkle is a fact  
16 witnesses as the engineering bureau chief. He  
17 supervises the work that was done through the  
18 technical review and the work that was done here. We  
19 have not proffered him as an expert.

20 CHAIR CHANG: Fair enough. Please proceed.

21 JUSTIN WRINKLE,  
22 having first been duly sworn, testified as follows:

23 EXAMINATION

24 BY MR. TREMAINE:

25 Q. We're a little out of -- usually I ask

1 questions first, then the Commission does.

2 So, Mr. Wrinkle, could you please just  
3 briefly state who you -- what's your position and what  
4 are the job responsibilities related to your position?

5 A. Sure. Yeah, my name Justin Wrinkle. I'm  
6 the engineering bureau chief here at the OCD.  
7 Currently, I have six groups that report to me, one of  
8 them being the admin engineering team that is  
9 responsible for reviewing these type of variances and  
10 original sundries that come in; underground injection  
11 control; all of the inspections; the compliance  
12 officers that are in the state; a new group that are  
13 Class 6 wells, while we get primacy; the special  
14 projects group that deals with all the hearings. I  
15 believe that's it.

16 Q. And, Mr. Wrinkle, are you familiar with the  
17 submission referred to by Mr. Feldewert, XTO Exhibits  
18 A through 5, in the case for which we're here today?

19 A. Yes, I am.

20 Q. And are you familiar with OCD's discussions  
21 and correspondence with XTO during this process that  
22 led up to this hearing?

23 A. Yes, I am.

24 Q. Okay. And I'm paraphrasing. Please correct  
25 me, Commissioner Ampomah, but I believe Commissioner

1 Ampomah's question was, can OCD please summarize OCD's  
2 review and process that led to OCD's conclusion that  
3 the compliance and mitigation steps proposed by XTO  
4 are adequate?

5 A. Sure. So in this particular case and others  
6 like it, we gather a team, a technical team, of  
7 course, that's composed of geologists, petroleum  
8 engineers that are on our staff. And we review them  
9 and then provide feedback to operators, like we did in  
10 this particular case.

11 The technical team was assigned to look  
12 at the mitigation plans that XTO had proposed. And  
13 their belief was that the pressure relief valves at  
14 surface did an adequate job equal to what is required  
15 in an engineering weak point below the salt that is  
16 outlined in R-111-Q.

17 CHAIR CHANG: Does that satisfy your  
18 question? Do you have a follow-up?

19 COMMISSIONER AMPOMAH: Yes, I do have a  
20 follow-up.

21 EXAMINATION  
22 BY COMMISSIONER AMPOMAH:

23 Q. So as part of the review, were there any  
24 risk -- potential risk issues that came up?

25 A. None that I'm aware of. Again, I managed

1 the technical team that did the full review. But it  
2 seemed that it was a very open-and-shut review, that  
3 they all agreed that these mitigation plans would  
4 suffice.

5 COMMISSIONER AMPOMAH: Thank you.

6 CHAIR CHANG: Commissioner.

7 COMMISSIONER BLOOM: If you'll allow me a  
8 question for OCD and perhaps Mr. Wrinkle. Let me  
9 pull up the document here.

10 MR. FELDEWERT: Do you want me to pull it  
11 up?

12 COMMISSIONER BLOOM: Yes, the OCD's  
13 prehearing statement.

14 On the first page, I can just read it,  
15 last two sentences, you say, "The OCD has reviewed  
16 XTO's proposals to address the deficiencies and finds  
17 the proposals adequate to provide protection equal to  
18 the terms of R-111-Q as applied to the specific  
19 factual circumstances of the project and  
20 application."

21 The final sentence is, and this sounds a  
22 little bit cryptic, "CD does not see XTO's proposals  
23 as necessarily acceptable and equally protective in  
24 all our future circumstances."

25 MR. TREMAINE: That's lawyer for an

1 exception in this case does not mean this is the new  
2 normal. So XTO did not ask OCD for an exception or a  
3 variance before these wells were constructed.

4 So the Division responded and said, "You  
5 have to ask the Commission and demonstrate to the  
6 Commission that this is equally protective. Yes, we  
7 will review that material."

8 But this is simply a disclaimer that --  
9 you know, these wells, for context, were drilled  
10 shortly after R-111-Q was executed. It was in short  
11 order afterwards, and XTO was a part, a very active  
12 participant in those hearings. I think the record of  
13 those hearings was that the standard in R-111-Q for  
14 the well construction was the standard, it was  
15 appropriate, it was what the parties all considered  
16 protective. And so exceptions needed to be  
17 considered exceptions.

18 This is an extenuating circumstance  
19 where the wells are already in place. And OCD felt  
20 it was absolutely necessary to guarantee that there  
21 were additional safeguards placed upon those wells.

22 But we want to be very clear that going  
23 forward, the fact that there was an exception in this  
24 case does not mean that -- I don't believe that this  
25 should be interpreted as a standing exception to



1 R-111-Q.

2 COMMISSIONER BLOOM: Thank you,  
3 Mr. Tremaine. That clarifies it. I was wondering if  
4 that was alluding to some potential other sort of  
5 drilling which could be future circumstance, which  
6 would mean that this equipment wouldn't work  
7 properly. But clearly, that's not the case, based on  
8 what you're saying.

9 MR. TREMAINE: There's no technical basis.  
10 There's a procedural and a legal basis for that  
11 statement.

12 COMMISSIONER BLOOM: All right. Thank you.

13 And I just have one question for  
14 Mr. Feldewert.

15 So, Mr. Feldewert, there were 29 wells  
16 that were correctly drilled. There were issues with  
17 these three. Were these simply issues with the  
18 construction of the wells?

19 MR. FELDEWERT: So if you'll see from --

20 COMMISSIONER BLOOM: I mean, had they been  
21 intended to be done in accordance with R-111-Q?

22 MR. FELDEWERT: Yes, yes. I understand. So  
23 first off, this was not expected. That's why there's  
24 the variance sought. This was not planned. This  
25 just happened for these three wells.

1                   And when it became evident that there  
2                   was concern that the engineered weak point would not  
3                   work as anticipated, because of the scenarios that we  
4                   see in Exhibit A-3, that's when they approached the  
5                   Division, BLM, et cetera, to get the exception,  
6                   having put in place the mitigation measures that they  
7                   intend to do.

8                   And I'll also tell you this is not  
9                   something the company took lightly. They have also  
10                  undertaken measures, as you see from our exhibit, to  
11                  ensure as best they can that this does not happen  
12                  again.

13                 COMMISSIONER BLOOM: Thank you very much.

14                 No further questions, Mr. Chair.

15                 MR. SHANDLER: Zach Shandler, Commission  
16                 counsel.

17                 What's the actual, like, verbiage for an  
18                 exception? Like, adequate, equal to? What should I  
19                 put in the order? What do they have to approve of?

20                 MR. TREMAINE: I'm going from memory here  
21                 counsel, but I think -- and I think we can pull some  
22                 examples. But I think typically in the rules,  
23                 variances are referred to as "equally protective."

24                 CHAIR CHANG: I just have one question. My  
25                 understanding is that the rules are in place to be

1 able to protect the potash resource. Correct?

2 MR. FELDEWERT: Correct.

3 CHAIR CHANG: Mosaic and Intrepid, I see in  
4 the record that you notified or at least provided  
5 notice to Mosaic and Intrepid.

6 You have represented earlier that  
7 neither of those companies had concerns. Did you  
8 actively hear back from them, or was it silence and  
9 we assume they're okay? Just asking, since they're  
10 not represented in this proceeding.

11 MR. FELDEWERT: Good clarification. They  
12 received the mitigation measures and notice of the  
13 issue from the BLM, number one.

14 And then secondly, we provided notice of  
15 this hearing and they have not expressed, filed any  
16 concerns.

17 So good clarification is the silence. I  
18 did not receive anything affirmative from either -- I  
19 did not receive anything from either company one way  
20 or the other.

21 CHAIR CHANG: Got it. Thank you. That's  
22 all the questions I have.

23 Does anybody else any further comments,  
24 concerns?

25 In that case, does somebody want to move

1 deliberations or make a motion to approve or deny?

2 COMMISSIONER BLOOM: Mr. Chair, I would do  
3 so. Would it just be a motion to approve the  
4 petition?

5 MR. SHANDLER: Application.

6 COMMISSIONER BLOOM: I move to approve the  
7 application in Case 25297.

8 COMMISSIONER AMPOMAH: Mr. Chair, I do  
9 second.

10 CHAIR CHANG: Any objections?

11 No objections, so ordered.

12 MR. FELDEWERT: Thank you for your time.

13 (3-0 vote. Motion approved.)

14 CHAIR CHANG: Now I call Case Number 25237,  
15 de novo appeal by America Energy Resources, LLC. Is  
16 the applicant with us?

17 MR. SAMANIEGO: Jonathan Samaniego,  
18 representing American Energy Resources.

19 CHAIR CHANG: Great. I'll turn it over to  
20 you to.

21 MR. HOLLIDAY: Good morning, Commissioners.  
22 This the Benjamin Holliday on behalf of Silverback  
23 Operating, the respondent in this matter.

24 CHAIR CHANG: OCD is here represented in  
25 front of us.

1                   Give us just one second here. Before we  
2 move into the case in chief, I understand Silverback  
3 has filed a motion for continuance of this hearing.  
4 It feels like that's a gateway issue to me, so I'd  
5 like to go to that first as to whether or not to  
6 continue the hearing before we dive into the merits  
7 here. So I'm going to call on Silverback Operating  
8 to speak to that motion.

9                   MR. HOLLIDAY: Yes. Thank you,  
10 Commissioners. This is Ben Holliday on behalf of  
11 Silverback Operating. We filed our motion last week  
12 to extend this to the August meeting for the OCC for  
13 two reasons. One, I'm out of town, so that's why I'm  
14 appearing remotely, so thank you for the opportunity  
15 to do that.

16                   Secondly, we received no responsive  
17 briefing from American Energy in this case. I don't  
18 think anything has been filed with the Commission.  
19 So it's not clear at this point how productive a  
20 hearing would be.

21                   That's our summarized position.

22                   CHAIR CHANG: Okay. I'll let American  
23 Energy Resources respond.

24                   MR. SAMANIEGO: American objects to  
25 Silverback's continuance. Mr. Ben Holliday has been

1 out of town since the last hearing, when we had  
2 Mr. Fox appear to continue because he was out of  
3 town. He's been out of town for over a month.

4 This is causing burden upon American,  
5 which, because of the great burden that's being  
6 caused, the continuance cannot be granted and we need  
7 to move forward with this hearing today.

8 CHAIR CHANG: Thank you.

9 OCD, do you have a position on the  
10 motion for continuance?

11 MR. TREMAINE: We take no position or  
12 opposition to the motion for a continuance. I would  
13 just note that this is -- I think there's discussions  
14 about having an evidentiary hearing, but I just note  
15 for the record that I think, my opinion, that this is  
16 an argument.

17 OCD's entered an appearance to determine  
18 if there needs to be appropriate limitations and,  
19 like, legal disclaimers and language related to the  
20 Commission's ultimate decision. We're not weighing  
21 into the title dispute.

22 And so I think there's some procedural  
23 potential lack of clarity regarding -- you know,  
24 Mr. Holliday seems to be relying on the briefing  
25 below, and I don't see briefs in the record regarding

1 those arguments from Mr. Samaniego.

2 So I'm out of my lane here because we're  
3 not taking a position on this. But I would suggest  
4 for the Commission's consideration that it may be  
5 appropriate to just consider briefing from the  
6 parties in chief rather than an evidentiary hearing.

7 CHAIR CHANG: Commission counsel.

8 MR. SHANDLER: Mr. Chair, the motion on the  
9 table is to continue, and if you feel like the  
10 parties are here, that would be the preliminary step,  
11 is to make a motion on that.

12 CHAIR CHANG: Yes, we heard from Silverback  
13 Operating that -- at least Silverback Operating  
14 raised concerns about the sufficiency of the  
15 briefing, whether it's sufficient for us to proceed  
16 to the case in chief today.

17 Do you have a position or do you have  
18 any advice for the Commission on whether there's  
19 sufficient briefing, timely briefing, et cetera, for  
20 us to be able to thoroughly and properly hear the  
21 dispute?

22 MR. SHANDLER: So, Mr. Chair, depends on how  
23 you define the word "briefing." One way to think of  
24 it is lawyers filing some types of motions. Another  
25 way to think about is whether the material as

1 required by the rule has been provided so the  
2 Commission has enough to prepare and review.

3 So the second definition of briefing, I  
4 would think, in terms of specific exhibits that have  
5 been submitted, specific witness lists, specific  
6 witness statements, in this particular fact pattern,  
7 the party asking for the appeal has not submitted a  
8 witness list, has not submitted witness statements.  
9 In terms of exhibits, his petition just says all the  
10 exhibits that were heard below.

11 That is traditionally not how a de novo  
12 hearing is done. That's how a record-review hearing  
13 is done. So one could make the argument that this  
14 case is not prepared for an evidentiary hearing.

15 That being said, this same fact pattern  
16 occurred at the Division hearing where the Division  
17 hearing officer said, "Where are your witnesses?"  
18 and continued it for another month waiting for the  
19 witnesses. And American did not provide any  
20 witnesses. At that point, the Division decided well,  
21 American must just have one witness and that's one  
22 person that's here.

23 So I think you could, you know, grant  
24 the continuance and hope that you have something  
25 different. But I think there's already been two



1 strikes. So my prediction would be that American  
2 does not have other witnesses, does not have specific  
3 documents outside of what's already been presented  
4 below. And I think you might just want to hear from  
5 American and find out whether this is a judiciable  
6 matter in front of this Commission.

7 This Commission traditionally, and the  
8 case law is, that property disputes are handled by  
9 the District Courts. And if you hear from the  
10 presentation on the oral briefing that this is a  
11 property dispute, then there may not be a need for an  
12 evidentiary hearing in terms of how you traditionally  
13 see it.

14 So let me stop. That's way more than  
15 I'm comfortable talking usually. But there's several  
16 paths forward. One of them is to say, well, we'll  
17 continue it and hope that there will be some type of  
18 legal briefing on the legal issues. Option two,  
19 we'll continue and hope that there will be legal  
20 briefing and/or witness statements. Or the third  
21 option would be let's just hear from American for  
22 15 minutes and then we'll digest whether this is a  
23 judiciable matter for this Commission.

24 CHAIR CHANG: I appreciate that.

25 MR. SAMANIEGO: I'd like to start off --

1 CHAIR CHANG: Just a second, sir.

2 Commissioners, do you have any  
3 additional questions for counsel? Is that helpful  
4 advice, or can I turn to Mr. Samaniego for a moment  
5 here?

6 Mr. Samaniego, go ahead. I'll give you  
7 a few minutes to respond, but please be brief.

8 MR. SAMANIEGO: I'd like to start off by  
9 asking, is it in the rules and the statute that a  
10 witness is mandatory in order to proceed with the  
11 de novo hearing? I don't recall seeing that in the  
12 statutes or the rules.

13 So because that's not mandatory, I'm  
14 going to say that the gentleman's statements are  
15 irrelevant and, therefore, shall be excluded from  
16 hearing, stricken from the record.

17 CHAIR CHANG: Mr. Samaniego, he's trying to  
18 help you. Because without -- right now, with a  
19 de novo review, it means you start from scratch,  
20 which means we need to have evidence of how you're  
21 going to support your position. And witnesses and/or  
22 filings are ways for you to support your claims and  
23 allegations.

24 And I think the concern, if I can  
25 paraphrase at least the way I understand counsel's

1 advice, is that we're not seeing a record here that  
2 is fully developed for you to make a fully documented  
3 case, or at least there's a concern.

4 Now, certainly we're not here to give  
5 you legal advice as to how to proceed, but that was  
6 the concern, is whether or not we have a sufficient  
7 evidentiary record in front of us to make a full and  
8 knowledgeable and well-informed decision in this  
9 case.

10 But let me turn to my Commission and see  
11 whether they agree with that or whether they have  
12 other concerns. So give us just a second here.

13 Commissioners, thoughts on you would  
14 like to proceed at the moment?

15 COMMISSIONER BLOOM: Mr. Chair, seeing that  
16 we do not have materials in front of us to have a  
17 de novo hearing today in this case, I would think  
18 only a continuance would make sense. Unless we --  
19 you simply said that we've tried to have this de novo  
20 hearing, it hasn't happened, materials haven't been  
21 properly submitted. In which case, we could  
22 potentially close this out.

23 But I do hear Mr. Holliday himself also,  
24 the other party, asking for a continuance.

25 CHAIR CHANG: I'll give you a second to

1 respond, Dr. Ampomah.

2 But is there any interest in doing a  
3 gateway hearing, as counsel suggested, on whether or  
4 not the underlying, the actual dispute is even within  
5 our jurisdiction before we continue it, we kick it?  
6 Or do you want the parties to brief that  
7 specifically? Any thoughts?

8 COMMISSIONER BLOOM: Mr. Chair, yes. I  
9 think the first thing you said there would be a good  
10 path, at least to a hearing if this is the correct  
11 venue to hear the issues at hand.

12 CHAIR CHANG: Thoughts, Dr. Ampomah?

13 COMMISSIONER AMPOMAH: Yes. So I reviewed  
14 some of materials, and I'm not sure we do have enough  
15 evidence here to really get into the case. You know,  
16 as I read, Silverback is more of a title issue, so  
17 I'm not sure there is enough evidence here for us to  
18 be able to really digest this case.

19 So I do support the suggestion that  
20 Commission counsel provided to the Commission. Thank  
21 you.

22 CHAIR CHANG: Well, then at this point, I'll  
23 entertain a motion specifying how -- or at least a  
24 proposed motion on how the Commission wishes to  
25 proceed on hearing this matter.

1 I guess we're currently still on the  
2 continuance, so let me back up. My apologies. We're  
3 still on a motion for continuance, so how does the  
4 Commission wish to dispose or handle the motion for  
5 continuance at the moment?

6 COMMISSIONER BLOOM: Mr. Chair, is it  
7 possible to set the continuance aside, table that for  
8 the time being, have a discussion about the merits of  
9 the de novo application?

10 CHAIR CHANG: Unless counsel objects, I  
11 don't see the problem with that.

12 MR. SHANDLER: No objection.

13 COMMISSIONER AMPOMAH: Commissioner Bloom,  
14 you mean we should table the de novo hearing now?

15 COMMISSIONER BLOOM: Dr. Ampomah,  
16 Commissioner Ampomah, no. That we would temporarily  
17 table the motion for a continuance and at this point  
18 have a discussion about the merits of the de novo  
19 application, see if it's the proper application.

20 MR. HOLLIDAY: This is Ben Holliday.

21 MR. SAMANIEGO: American objects and we're  
22 going to go ahead and move forward with the  
23 continuance.

24 CHAIR CHANG: Go ahead, Mr. Holliday.

25 MR. HOLLIDAY: We have no objection to

1 tabling the motion and entertaining the  
2 jurisdictional questions around this case.

3 CHAIR CHANG: Mr. Samaniego, so just for  
4 clarity, I believe the motion in front of us is to  
5 pause just for a few minutes the discussion on  
6 whether or not to continue the case and to hear from  
7 both parties now for a few minutes, at least briefly,  
8 as to what exactly is the question that you're asking  
9 this forum to decide.

10 And we need to figure out a gateway  
11 question of whether or not it's even within our  
12 jurisdiction and whether or not this is even the  
13 right forum for the issues that you are trying to  
14 raise.

15 So I'm just letting you know that that's  
16 the motion that currently in front of us.

17 With that, is there a second for that  
18 motion?

19 COMMISSIONER AMPOMAH: Yes, I second.

20 CHAIR CHANG: Any objections from  
21 Commissioners? Without objection, so ordered.

22 (3-0 vote. Motion approved.)

23 CHAIR CHANG: So in that case, I'll turn to  
24 you, Mr. Samaniego. I'll give you no more than  
25 10 minutes. Please be as brief as possible, because

1 we're trying to narrow down exactly what issue you  
2 are trying to have this Commission address for you.

3 MR. SAMANIEGO: Okay. I'd like to start out  
4 under Statute 19.15.16.15, down at, "Existing and  
5 subsequent wells," "Existing wells." If American was  
6 a holding company, a mineral owner and is disputing,  
7 therefore, the OCD could hide behind that they have  
8 jurisdiction. That's a legal issue.

9 But American is the operator. American,  
10 under 19.15.16.15.B(9)(a) and (b), we're operating on  
11 existing wells and existing leases, existing spacing  
12 units.

13 And for -- and to be allowed to be on --  
14 the unit to be infringed upon through compulsory  
15 pooling, violating the statute of existing well  
16 spacings, violates the final order, which grants an  
17 automatic termination for failing to notify affected  
18 parties.

19 Which American is an operator. We have  
20 an operator number. We operate a well in that  
21 spacing unit, and American's rights are being  
22 infringed upon during the compulsory pooling and, at  
23 best, being used sleight of hand. At best. And  
24 because American is an operator, the Division has  
25 jurisdiction because American's existing well spacing

1 is being infringed upon.

2 And under Statute 19.15.4.3, the  
3 Division is charged with the obligation and the duty  
4 to correlative rights and to prevent waste. This  
5 matter is affecting correlative rights and is  
6 creating great waste. So because the Division has  
7 jurisdiction, the matter must be heard. Thank you.

8 CHAIR CHANG: Okay. Can I turn to the other  
9 party first before we do questions?

10 Mr. Holliday.

11 MR. HOLLIDAY: Yes, thank you. So I'll try  
12 to be as succinct as I can.

13 There's two main points, from  
14 Silverback's position. The first, before we even get  
15 into the merits of American's claims to title is that  
16 this is a dispute about title.

17 This is not a dispute about correlative  
18 rights. It's not a dispute about waste. Those are  
19 the things that OCD has jurisdiction to decide. This  
20 is a title case and the proper venue for this case,  
21 in Silverback's position, are the District Courts,  
22 not the administrative law courts, with either the  
23 Commission or the Division.

24 So one, we don't believe that OCD or the  
25 OCC has jurisdiction to adjudicate the title, and



1 that's essentially what American Energy is asking for  
2 you to do.

3 MR. SAMANIEGO: No, I'm not. No, I'm not.

4 CHAIR CHANG: Let's let Mr. Holliday finish  
5 and then I'll give you a chance to respond,  
6 Mr. Samaniego.

7 MR. HOLLIDAY: So we have a jurisdictional  
8 issue. And if we were to even wade into the merits  
9 of this -- I'll just refresh for the Commission's  
10 benefit, originally back in Case 24517, Silverback  
11 applied for and was granted a compulsory pooling  
12 order. That order number is R-23045, which pooled a  
13 320-acre tract. This is South Half, South Half,  
14 Section 2, and the North Half, North Half,  
15 Section 11, in Township 19 South, Range 25 East Eddy  
16 County. And this was limited to the Yeso Formation,  
17 so it's a very shallow unit.

18 The only acreage that required pooling  
19 was a small 2.25 net mineral acre piece out of the  
20 Northeast Quarter, Northeast Quarter. There's no  
21 state, there's no federal minerals involved.

22 The reason for that is, there is a 1978  
23 operating agreement, a memorandum of which has been  
24 filed in Volume 170, Page 693 in Eddy County, that  
25 establishes Silverback's predecessor as the operator

1 of what they called the Rio Penasco Unit. And that  
2 covers the same 320-acre rectangle that is included  
3 within the Roche pooling order. Roche is the name of  
4 the unit. So JOA is in effect and gives Silverback  
5 the right to operate.

6 Now, ordinarily, with a JOA like that,  
7 we wouldn't even need to come in and seek a pooling  
8 order, but we conducted extensive title research on  
9 this tract and discovered that 2.25 net mineral  
10 acres, that wasn't subject to the JOA, which brought  
11 about the application and order. And it should be  
12 noted that this pooling was completely uncontested.

13 So in doing our title research, which  
14 is, again, outside the jurisdiction of what we're  
15 talking about, but just for your benefit, there was a  
16 2010 quiet title suit and American Energy's  
17 predecessors were completely divested of any  
18 potential interest in the leases at issue. That  
19 interest they bought -- they purported to buy later  
20 in 2018, so ten years later, it had been extinguished  
21 by a quiet title suit.

22 That quiet title suit, not only was it  
23 conducted in the District Court, it was noticed to  
24 the public. There were notice of lis pendens that  
25 were filed on June 8, 2010, and again on July 6th,

1 the same year. Both were recorded in Eddy County.  
2 So everyone in the world is on constructive notice of  
3 this quiet title suit.

4 So that alone should take care of the  
5 issue from a title perspective. However, even if the  
6 quiet title suit were somehow invalid, every  
7 instrument in the chain of title to American Energy's  
8 purported interest in this unit specifically states  
9 that the interest is subject to the 1978 JOA.

10 So one, this is a District Court matter.  
11 This is not an administrative law matter. Two,  
12 American Energy does not own an interest in these  
13 depths and in this unit. Any interest they could  
14 have possibly bought or acquired was extinguished by  
15 the quiet title suit.

16 If, for some reason, all of that failed  
17 and it did own an interest in the unit, their chain  
18 of title specifically makes their interest subject to  
19 the JOA, which would, again, obviate any need for  
20 American Energy to be noticed.

21 Now, I will bring to the Commission's  
22 attention that, when this all started, because  
23 American Energy was not in the title, we took a look  
24 around as to, you know, who are they, why are they  
25 claiming interest, you know, is it valid. And we

1 found that they are listed as the deep operator on a  
2 couple deep wells in this section.

3 I will remind the Commission that these  
4 wells are subject to multiple plugging orders. The  
5 last purported production on these wells was from,  
6 like, 1996, in that era.

7 And so we don't feel like we're dealing  
8 with a good-faith challenge to this order and we  
9 would ask that American Energy's application be  
10 denied. Thank you.

11 CHAIR CHANG: Before I turn back to any  
12 responses, I'd just like to give OCD a chance to  
13 weigh in here briefly, as well.

14 MR. TREMAINE: Mr. Chair, we agree that to  
15 the extent that there's a court order resolving  
16 title, that that is the legal question that should be  
17 reviewed, whether it's through briefing or this  
18 argument. And the Commission should make a  
19 determination as to whether or not it will hear the  
20 merits to any further extent.

21 I have not heard any argument or  
22 presentation from Mr. Samaniego to controvert the  
23 validity of that court order. So in my view, I think  
24 this is entirely legal threshold argument. And we  
25 are participating because, as Mr. Holliday indicated,

1 the wells which Mr. Samaniego has registered which he  
2 claims an interest in and are the basis for his  
3 argument that he's entitled to notice and has  
4 standing to intervene in the cases, are, in fact,  
5 subject to plugging orders.

6 And I think that's all I'll add at this  
7 point.

8 CHAIR CHANG: Thank you.

9 Commissioner, I want to give  
10 Mr. Samaniego a brief chance to respond. But did the  
11 Commissioners want to do questions first, or should I  
12 let him respond first?

13 COMMISSIONER BLOOM: Chair, I had a question  
14 that I would like, perhaps, both parties to respond  
15 and perhaps counsel, as well.

16 In essence, there's a Catch 22 here, and  
17 that is that the OCC doesn't discuss title issues.  
18 We can't have a hearing if we don't know who has  
19 standing. So I don't know if this is something that  
20 needs to be litigated in the District Courts and then  
21 perhaps come back here.

22 CHAIR CHANG: That is a good question  
23 probably for -- does any counsel want to address  
24 that?

25 MR. HOLLIDAY: Commission, Ben Holliday. We

1 do believe that the requisite to establishing  
2 standing in this case would be some sort of District  
3 Court order from the District Courts because this is  
4 a legal title question, which is subject to a lot  
5 stricter evidentiary standards than are employed in  
6 administrative law courts.

7 So our position is that in order to  
8 establish standing, Mr. Samaniego's proper venue is  
9 the District Court. And if the District Court orders  
10 he has standing, then we have a matter before the  
11 Commission.

12 CHAIR CHANG: Okay. I'll give you a chance  
13 to respond, Mr. Samaniego.

14 MR. SAMANIEGO: Mr. Holliday is claiming  
15 that Silverback owns interest in the North Quarter of  
16 American's lease. And therefore, whatever interest  
17 that Silverback may or may not own is bound to  
18 American's lease if we open up KD Number 3.  
19 Therefore, does not give him grounds to use that  
20 interest to pool because it's bound to American's  
21 lease, it's already leased.

22 Second the quiet title. Quiet title,  
23 under federal and state law, must comport with due  
24 process. To try to go back ten years to quiet title  
25 interest that a party no long owned ten years up to

1 date, to where they're trying to quiet title it,  
2 that's sleight of hand. That does not follow the  
3 comport of due process, which is state and federal  
4 law. Therefore, the quiet title issue is not a  
5 matter of District Court.

6 Mr. Ben Holliday is trying to attempt to  
7 make it a matter of District Court. The Division has  
8 jurisdiction because the quiet title does not comport  
9 with due process. And Silverback's interest they own  
10 in the Rio Penasco's lease of American's is bound to  
11 American's lease of the Rio Penasco.

12 Also, Mr. Holliday's statement of  
13 American having plugging orders, American is on -- on  
14 the 2025 inactive list, American is not on it.  
15 American is not on the inactive list. American is in  
16 good standing.

17 American has submitted work-overs on the  
18 wells and is waiting to be granted the work-over on  
19 the wells. American is working diligently and is  
20 actively in operations of the wells, has been current  
21 with all filings. And the Commission has standing  
22 and jurisdiction over the matter. And also for the  
23 record, American is over-bonded, over-bonded in all  
24 the wells.

25 So American is not in violation.

1 American is a good-standing operator, here in good  
2 faith, protecting its correlative rights allowed by  
3 state law.

4 And to be allowed -- Mr. Ben Holliday to  
5 play sleight of hand to make it a District Court  
6 matter is sleight of hand.

7 CHAIR CHANG: If I may, I just want to  
8 clarify that I heard from you that you believe the  
9 quiet title is inappropriate, right? You believe  
10 that there's a quiet title order out there that you  
11 don't believe should be appropriate or valid; is that  
12 correct?

13 MR. SAMANIEGO: It's not what I believe.  
14 It's what state law jurisdicts [sic]. And state and  
15 federal law jurisdicts that it must comport with due  
16 process.

17 CHAIR CHANG: I understand. And you're  
18 telling me that the quiet title that is applicable  
19 to, or whatever, in dispute in this matter, at least  
20 in your view, does not comport with legal -- due  
21 process and legal standard; is that correct?

22 MR. SAMANIEGO: Correct.

23 CHAIR CHANG: Okay. Commission counsel, but  
24 there is a quiet title District Court decision in  
25 this case, isn't there?



1 MR. SHANDLER: Yes. So if the allegation is  
2 the District Court did not follow due process in the  
3 quiet title, the jurisdiction is to go back to the  
4 District Court.

5 CHAIR CHANG: Or Court of Appeals or  
6 something along those lines, but certainly not here.  
7 We don't have the -- tell me if I'm wrong, counsel,  
8 but I don't think we have the authority to tell the  
9 District Court whether or not they have to -- to  
10 opine on whether or not at least the Court has erred  
11 on a quiet title action.

12 MR. SHANDLER: You are correct.

13 CHAIR CHANG: And is there a way -- I'm  
14 trying -- I'm struggling here to help Mr. Samaniego  
15 because I'm struggling to see if there is a way that  
16 he would have standing but for this dispute over  
17 title.

18 Let's hear from the Commissioners, and  
19 I'll give you a chance to respond briefly  
20 Mr. Samaniego.

21 MR. SHANDLER: Mr. Chair, in American's own  
22 words, the quiet title action failed to have due  
23 process. This Commission does not have authority to  
24 collaterally attack a District Court quiet title  
25 case.

1                   So it's not that this Commission is  
2 hostile or in favor of American. It's neutral. It  
3 would probably like to hear the case.

4                   CHAIR CHANG: Right.

5                   MR. SHANDLER: But this is the American  
6 system and the American system of -- this is not for  
7 the administrative courts. This is for the District  
8 Courts.

9                   CHAIR CHANG: No, I understand that. I'm  
10 just trying to clarify that if we take and put aside  
11 the issue over title, is there still anything left in  
12 the case outside of the quiet title dispute? I'm  
13 trying to figure out whether there are other issues  
14 that would not be ruled -- the way I'm looking at it  
15 is that it seems like the quiet title captures the  
16 entirety of the -- it's a gateway issue that captures  
17 the entirety of the complaint here. But I just want  
18 to clarify that nobody else sees something that I  
19 don't.

20                  MR. SHANDLER: Mr. Chair, I think that's an  
21 accurate summary. The property interest, whether  
22 it's characterized as a lease or an operation, all  
23 flows through whether you have that legal property  
24 rights.

25                   And Silverback has asserted that that

1 property right has been extinguished by the District  
2 Court. Therefore, all things have to go back to the  
3 District Court to solve that.

4 CHAIR CHANG: Okay. I'll give you a quick  
5 chance to respond, Mr. Samaniego.

6 MR. SAMANIEGO: The District Court in the  
7 quiet title lacked jurisdiction. Because to quiet  
8 title an interest that was not owned ten years prior  
9 and no longer owned, had already been sold off  
10 numerous times up until American, the District Court  
11 lacked jurisdiction because the parties that were  
12 being quiet titled no longer owned the interest.

13 So to go through the chain of title,  
14 through the quiet title, when the other individuals  
15 were not listed, is against federal and state law and  
16 does not follow, comport with due process. So the  
17 District Court lacked jurisdiction.

18 I think Ben Holliday has done a good job  
19 with the sleight of hand in misleading the Division  
20 and getting everybody to see that way. I mean,  
21 nobody is trying to get -- to change the District  
22 Court order, but the District Court order lacked  
23 jurisdiction ten years prior.

24 The order does not interfere with  
25 American's interest because the parties that were

1 listed in quiet title no longer owned those interests  
2 ten years prior.

3 CHAIR CHANG: All right. We hear you.

4 I'm going to turn to my Commissioners at  
5 this point and see if somebody has a proposed motion  
6 on how best -- well, let me turn back to Commission  
7 counsel.

8 We've set aside the motion. We've  
9 temporarily tabled the motion on the continuance.  
10 We're now sort of vaguely on the merits of the case,  
11 at least on the gatekeeping issue.

12 How would you advise us to proceed at  
13 this point? Dismiss without prejudice so that he can  
14 refile after resolving the District Court issue? Or  
15 how would you advise us to proceed here?

16 MR. SHANDLER: So, Mr. Chair, you always  
17 have a series of options. One option would be  
18 dismissal of the de novo appeal with prejudice that  
19 it can be refiled. That's one option.

20 Another option is maybe you've heard  
21 enough and you're like, "I'd like to hear more," and  
22 then you can grant the continuance and maybe ask for  
23 a specific, on-point briefing, a legal argument.

24 Or you could say, "We're going to grant  
25 the continuance and we will only hear this if the

1 parties provide live witnesses, real documents."

2 So those are at least three options:  
3 One, dismissal; two would be continuance, asking for  
4 specific legal briefing; three would be grant that  
5 continue, but next time, there better be live  
6 witnesses.

7 CHAIR CHANG: Well, seems like we're not  
8 sure why we're granting continuance. There's sort of  
9 two issues, right? One is whether or not we have a  
10 sufficient record for us to have an informed  
11 discussion and informed trial. That goes to the  
12 question of the continuance.

13 But the gateway issue is whether or not  
14 there's even any part of the dispute that is properly  
15 jurisdictionally before us. So I guess I don't know  
16 that the point -- we could continue it and just  
17 explore that point, too.

18 But I'll turn to my Commissioners and  
19 see how they wish to proceed.

20 COMMISSIONER AMPOMAH: This is more of a  
21 legal issue and hearing issue. But I do believe that  
22 even if we continue the discussion, I'm not sure, if  
23 that title issue is still not resolved, how are we  
24 going to discuss the merits of the case? So I'm not  
25 in favor of continuance at this point.

1 CHAIR CHANG: Thank you.

2 COMMISSIONER BLOOM: Mr. Chair, I believe  
3 we're in a moment where we have a threshold issue  
4 here, and that is, does AER, American, have standing.  
5 We don't know because we're hearing live today a  
6 dispute about who has title to this land.

7 Given that, I think I would move to  
8 dismiss with prejudice, with the understanding that  
9 American could refile once they show the OCC that  
10 they have standing.

11 CHAIR CHANG: Is that with or without  
12 prejudice?

13 MR. SHANDLER: He meant to say without.

14 CHAIR CHANG: Without.

15 There's a motion before us.  
16 Commissioner Ampomah.

17 COMMISSIONER AMPOMAH: I second.

18 CHAIR CHANG: Without objection, so ordered.

19 (3-0 vote. Motion approved.)

20 MR. SHANDLER: So just for the record, there  
21 was some motions, the motion for continuance, you can  
22 either --

23 CHAIR CHANG: Oh, yes. So I believe the  
24 motion for a continuance is now moot, since the  
25 underlying case has been dismissed.

1 MR. SHANDLER: There was also a motion to  
2 terminate the --

3 MR. SAMANIEGO: I didn't get a chance to  
4 talk.

5 CHAIR CHANG: Go head.

6 MR. SHANDLER: There also a motion on the  
7 table to terminate the Division's order and a motion  
8 to stay the Division's order. I advise those are  
9 also moot.

10 CHAIR CHANG: Since the underlying case has  
11 been dismissed for lack of jurisdiction?

12 MR. SHANDLER: Yes.

13 CHAIR CHANG: All right.

14 MR. SAMANIEGO: Can I talk?

15 CHAIR CHANG: So just to advise you,  
16 Mr. Samaniego, at this time, we are unable to find  
17 that we have jurisdiction to hear the case and the  
18 Commission has moved to dismiss the case without  
19 prejudice. Which means, if you are able to resolve  
20 the underlying title issue, you may refile and  
21 re-present, assuming that you meet other timeliness  
22 and procedural requirements.

23 But it's not ready for us to proceed.  
24 We're unable to rule on the issues because we're  
25 unable to establish that there is standing for us to

1 proceed today. So I regret to let you know that we  
2 can't hear the case any further today.

3 MR. SAMANIEGO: I think proceeding with the  
4 dismissal of the case is premature. I think because  
5 correlative rights and an operator's correlative  
6 rights are being affected. The motion for stay  
7 should be granted for the fact that the four elements  
8 have been met from the final order.

9 So I'm going to object to the dismissal  
10 and ask the Commission and the Division to proceed  
11 with caution in this matter, to set it aside, to  
12 continue it and grant the motion to stay until either  
13 District Court or the Court of Appeals hears and  
14 makes a ruling on the matter.

15 I respectfully ask for the Division and  
16 Commission to proceed with caution in this matter.

17 CHAIR CHANG: Your objections are noted.

18 I think we need to proceed on to the  
19 next matter on the agenda, which is any pending  
20 litigation. Are there any pending litigation  
21 updates?

22 MR. SHANDLER: No, Mr. Chairman.

23 CHAIR CHANG: In that case, I move on to  
24 other business. Any other business that either  
25 Commissioner wishes to raise?



1 COMMISSIONER BLOOM: No, Mr. Chair.

2 CHAIR CHANG: Okay. Any, Dr. Ampomah?

3 COMMISSIONER AMPOMAH: No. Just want to  
4 make sure that on our next meeting, we're going to  
5 discuss Empire's case.

6 CHAIR CHANG: Yeah, that's great. Let's  
7 talk about that, because I think it's ready for us,  
8 as far as I understand, because I'm joining Empire  
9 versus Goodnight Midstream here. My understanding is  
10 there has not been a date set for deliberations; is  
11 that correct?

12 MR. SHANDLER: Not yet.

13 CHAIR CHANG: Not yet. If possible, I would  
14 invite Commissioners to make a motion to set that  
15 case for deliberations so that we can get to a  
16 decision on that case.

17 COMMISSIONER AMPOMAH: Yeah, Sheila reached  
18 out. So sounds like we're leaning towards August.

19 CHAIR CHANG: I would recommend the -- I  
20 believe there are no agenda items currently set for  
21 the August 14th meeting, so that would be a good  
22 opportunity for the deliberations on Goodnight versus  
23 Empire to be on the agenda, or to be on the agenda  
24 for that meeting.

25 COMMISSIONER AMPOMAH: So should I move? I

1 do move that we table the discussion of deliberation  
2 on Empire's case, Empire Goodnight case, for the next  
3 August meeting.

4 CHAIR CHANG: If I could clarify that you  
5 want to set it for the meeting?

6 COMMISSIONER AMPOMAH: Yes, the meeting.

7 COMMISSIONER BLOOM: Mr. Chair, I second  
8 setting deliberation of Empire case on August 14th.

9 CHAIR CHANG: So moved and seconded, and  
10 without objection, so adopted.

11 (3-0 vote. Motion approved.)

12 CHAIR CHANG: And that brings us to the fact  
13 that just the notice that the next meeting will be on  
14 August 14th of '25. In that case, I will entertain a  
15 motion to adjourn.

16 COMMISSIONER BLOOM: So moved.

17 MR. SAMANIEGO: Second.

18 CHAIR CHANG: Without objection, so ordered.

19 (3-0 vote. Motion approved.)

20 CHAIR CHANG: Thank you so much, everybody.

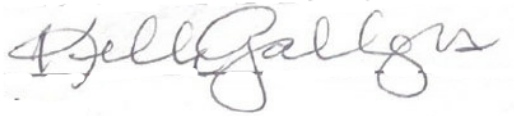
21 (Proceedings adjourned at 10:19 a.m.)  
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AFFIRMATION OF COMPLETION OF TRANSCRIPT

I, Kelli Gallegos, DO HEREBY AFFIRM that on July 17, 2025, a hearing of the New Mexico Oil Conservation Commission was taken before me.

I FURTHER AFFIRM that I did report in stenographic shorthand the proceedings as set forth herein, and the foregoing is a true and correct transcript of the proceedings to the best of my ability.

I FURTHER AFFIRM that I am neither employed by nor related to any of the parties in this matter and that I have no interest in the final disposition of this matter.



Kelli Gallegos

VERITEXT LEGAL SOLUTIONS

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Albuquerque, New Mexico 87102

[& - actively]

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|---|--|--|--|
| <b>&amp;</b>  | <b>1996</b> 44:6   | <b>30th</b> 11:19 12:6                       | <b>9:00</b> 4:1                                |
| <b>&amp;</b> 2:8  | <b>1st</b> 1:5   | <b>32</b> 14:10,21                           | <b>a</b>                                       |
| <b>1</b>  | <b>2</b>   | <b>320</b> 41:13 42:2                        | <b>a.m.</b> 4:1 58:21                          |
| <b>1</b> 2:8 5:6,15<br>15:7 17:22   | <b>2</b> 41:14   | <b>330</b> 8:18,20 9:3<br>9:11               | <b>ability</b> 59:10                           |
| <b>10</b> 38:25   | <b>2.25</b> 41:19 42:9                                       | <b>4</b>                                     | <b>able</b> 14:20 27:1<br>31:20 36:18<br>55:19 |
| <b>1000</b> 2:13  | <b>20</b> 3:6  | <b>4</b> 3:3                                 | <b>absolutely</b><br>24:20                     |
| <b>105</b> 59:17  | <b>2010</b> 42:16,25   | <b>400</b> 15:25                             | <b>abundance</b><br>18:2                       |
| <b>107</b> 2:17   | <b>2018</b> 42:20  | <b>4th</b> 2:13                              | <b>acceptable</b><br>23:23                     |
| <b>10:19</b> 58:21  | <b>2024</b> 14:9<br>16:21                                    | <b>5</b>                                     | <b>accordance</b><br>25:21                     |
| <b>11</b> 41:15   | <b>2025</b> 1:12 7:10<br>47:14 59:4                          | <b>5</b> 15:16 16:11<br>16:25 17:22<br>21:18 | <b>accounted</b> 4:16                          |
| <b>110</b> 2:8  | <b>20th</b> 11:21 12:7                                       | <b>500</b> 2:13 59:17                        | <b>accurate</b> 50:21                          |
| <b>111</b> 13:11,12,22<br>14:14 19:7<br>22:16 23:18<br>24:10,13 25:1<br>25:21 | <b>22</b> 3:7 45:16  | <b>59</b> 3:10                               | <b>accurately</b><br>19:11                     |
| <b>114</b> 2:21   | <b>23045</b> 41:12   | <b>6</b>                                     | <b>acquired</b> 7:11<br>43:14                  |
| <b>116h</b> 15:6  | <b>23808</b> 7:8,15  | <b>6</b> 21:13                               | <b>acre</b> 41:13,19<br>42:2                   |
| <b>1220</b> 1:6 2:4   | <b>24517</b> 41:10   | <b>693</b> 41:24                             | <b>acreage</b> 7:12<br>41:18                   |
| <b>14th</b> 57:21 58:8<br>58:14   | <b>25</b> 41:15 58:14  | <b>6th</b> 42:25                             | <b>acres</b> 42:10                             |
| <b>15</b> 33:22   | <b>25237</b> 28:14   | <b>7</b>                                     | <b>act</b> 9:10                                |
| <b>17</b> 1:12 59:4   | <b>25297</b> 13:2<br>28:7                                    | <b>78209</b> 2:17                            | <b>acting</b> 5:16                             |
| <b>170</b> 41:24  | <b>25460</b> 6:10  | <b>7th</b> 7:10                              | <b>action</b> 5:9 16:2<br>49:11,22             |
| <b>18</b> 3:9   | <b>28943</b> 59:15   | <b>8</b>                                     | <b>actions</b> 19:14<br>19:17                  |
| <b>19</b> 41:15   | <b>29</b> 14:19 25:15  | <b>8</b> 42:25                               | <b>active</b> 24:11                            |
| <b>19.15.16.15</b><br>39:4  | <b>2nd</b> 11:16 12:5  | <b>87102</b> 2:13<br>59:17                   | <b>actively</b> 27:8<br>47:20                  |
| <b>19.15.16.15.b</b><br>39:10   | <b>3</b>   | <b>87504-2208</b> 2:9                        |  |
| <b>19.15.4.3</b> 40:2   | <b>3</b> 5:6,9 7:9,12<br>7:18 8:13 15:1<br>26:4 46:18        | <b>87505</b> 2:4                             |  |
| <b>1978</b> 41:22<br>43:9   | <b>3's</b> 8:9,12,15   | <b>88232</b> 2:22                            |  |
|   | <b>3-0</b> 5:1 6:6<br>12:25 28:13<br>38:22 54:19<br>58:11,19 | <b>9</b>                                     |  |
|   |  | <b>9</b> 4:3 13:22<br>39:10                  |  |

[actual - application]

|   |   |  |  |
|---|---|--|--|
| <p><b>actual</b> 9:18<br/>26:17 36:4</p> <p><b>add</b> 15:20 45:6</p> <p><b>additional</b> 16:6<br/>17:25 24:21<br/>34:3</p> <p><b>address</b> 23:16<br/>39:2 45:23</p> <p><b>adequate</b> 19:17<br/>22:4,14 23:17<br/>26:18</p> <p><b>adjourn</b> 58:15</p> <p><b>adjourned</b><br/>58:21</p> <p><b>adjudicate</b><br/>40:25</p> <p><b>admin</b> 21:8</p> <p><b>administrative</b><br/>40:22 43:11<br/>46:6 50:7</p> <p><b>admission</b> 18:6</p> <p><b>admitted</b> 3:8<br/>18:12,13 20:13</p> <p><b>admitting</b> 18:9</p> <p><b>adopt</b> 5:25 6:2<br/>12:16</p> <p><b>adopted</b> 7:22<br/>58:10</p> <p><b>advice</b> 31:18<br/>34:4 35:1,5</p> <p><b>advise</b> 52:12,15<br/>55:8,15</p> <p><b>advising</b> 18:4</p> <p><b>aer</b> 54:4</p> | <p><b>affected</b> 17:4<br/>17:24 39:17<br/>56:6</p> <p><b>affecting</b> 40:5</p> <p><b>affidavit</b> 18:3</p> <p><b>affirm</b> 59:3,6<br/>59:11</p> <p><b>affirmation</b><br/>59:1</p> <p><b>affirmative</b><br/>27:18</p> <p><b>affirmed</b> 17:17<br/>17:23</p> <p><b>agenda</b> 4:18,22<br/>6:9 56:19<br/>57:20,23,23</p> <p><b>agree</b> 35:11<br/>44:14</p> <p><b>agreed</b> 17:3<br/>23:3</p> <p><b>agreement</b><br/>41:23</p> <p><b>ahead</b> 10:23<br/>13:20 34:6<br/>37:22,24</p> <p><b>albert</b> 1:18</p> <p><b>albuquerque</b><br/>2:13 59:17</p> <p><b>allegation</b> 49:1</p> <p><b>allegations</b><br/>34:23</p> <p><b>allow</b> 7:23<br/>15:13 16:1,16<br/>23:7</p> | <p><b>allowed</b> 39:13<br/>48:2,4</p> <p><b>allowing</b> 9:12</p> <p><b>alluding</b> 25:4</p> <p><b>amended</b> 5:25<br/>6:2</p> <p><b>amendment</b> 5:4</p> <p><b>america</b> 28:15</p> <p><b>american</b> 2:20<br/>28:18 29:17,22<br/>29:24 30:4<br/>32:19,21 33:1<br/>33:5,21 37:21<br/>39:5,9,9,19,24<br/>41:1 42:16<br/>43:7,12,20,23<br/>44:9 47:13,13<br/>47:14,15,15,17<br/>47:19,23,25<br/>48:1 50:2,5,6<br/>51:10 54:4,9</p> <p><b>american's</b><br/>39:21,25 40:15<br/>46:16,18,20<br/>47:10,11 49:21<br/>51:25</p> <p><b>ampomah</b> 1:20<br/>3:7 4:9,10,23<br/>5:14 6:3 7:2<br/>12:11,19 18:19<br/>20:1 21:25<br/>22:19,22 23:5<br/>28:8 36:1,12<br/>36:13 37:13,15<br/>37:16 38:19</p> | <p>53:20 54:16,17<br/>57:2,3,17,25<br/>58:6</p> <p><b>ampomah's</b><br/>22:1</p> <p><b>anticipate</b> 11:7</p> <p><b>anticipated</b><br/>26:3</p> <p><b>antonio</b> 2:17</p> <p><b>anybody</b> 19:25<br/>27:23</p> <p><b>apodaca</b> 4:7,11<br/>4:13,15 5:21</p> <p><b>apologies</b> 37:2</p> <p><b>appeal</b> 6:11,16<br/>28:15 32:7<br/>52:18</p> <p><b>appeals</b> 49:5<br/>56:13</p> <p><b>appear</b> 30:2</p> <p><b>appearance</b><br/>30:17</p> <p><b>appeared</b> 8:8</p> <p><b>appearing</b> 6:14<br/>29:14</p> <p><b>applicable</b><br/>48:18</p> <p><b>applicant</b> 6:16<br/>7:13 28:16</p> <p><b>application</b> 8:9<br/>8:12,15 9:19<br/>10:6,8 13:9<br/>19:10 23:20<br/>28:5,7 37:9,19<br/>37:19 42:11</p> |
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[application - briefing]

|   |   |   |   |
|---|---|---|---|
| 44:9<br><b>applied</b> 23:18<br>41:11<br><b>apply</b> 8:24<br><b>appreciate</b><br>12:23 33:24<br><b>approached</b><br>26:4<br><b>appropriate</b><br>24:15 30:18<br>31:5 48:11<br><b>appropriately</b><br>19:9<br><b>approval</b> 7:19<br>8:10<br><b>approve</b> 4:20<br>4:22 17:12,14<br>26:19 28:1,3,6<br><b>approved</b> 5:1<br>6:6 12:25<br>28:13 38:22<br>54:19 58:11,19<br><b>approximately</b><br>11:19<br><b>area</b> 13:14<br>14:11<br><b>argument</b><br>30:16 32:13<br>44:18,21,24<br>45:3 52:23<br><b>arguments</b><br>31:1<br><b>aside</b> 37:7<br>50:10 52:8<br>56:11 | <b>asking</b> 27:9<br>32:7 34:9<br>35:24 38:8<br>41:1 53:3<br><b>asserted</b> 50:25<br><b>assets</b> 7:12<br><b>assigned</b> 22:11<br><b>assume</b> 27:9<br><b>assuming</b> 55:21<br><b>attack</b> 49:24<br><b>attempt</b> 47:6<br><b>attention</b> 43:22<br><b>attorneys</b> 19:25<br><b>august</b> 29:12<br>57:18,21 58:3<br>58:8,14<br><b>authority</b> 19:7<br>49:8,23<br><b>automatic</b><br>39:17<br><b>available</b> 18:7<br>19:20 20:6<br><b>aware</b> 18:25<br>22:25 | <b>based</b> 11:3 25:7<br><b>basis</b> 25:9,10<br>45:2<br><b>behalf</b> 6:14,19<br>7:4 28:22<br>29:10<br><b>belief</b> 22:13<br><b>believe</b> 6:11<br>21:15,25 24:24<br>38:4 40:24<br>46:1 48:8,9,11<br>48:13 53:21<br>54:2,23 57:20<br><b>ben</b> 2:18 29:10<br>29:25 37:20<br>45:25 47:6<br>48:4 51:18<br><b>benefit</b> 7:21<br>41:10 42:15<br><b>benjamin</b> 2:18<br>28:22<br><b>bennett</b> 2:14<br>6:13,14,18,22<br>7:1,3 10:5,13<br>10:22,24 11:3<br>12:5,22<br><b>best</b> 26:11<br>39:23,23 52:6<br>59:9<br><b>better</b> 9:17<br>53:5<br><b>bit</b> 7:7 11:9<br>23:22<br><b>black</b> 16:13 | <b>blm</b> 16:21,21<br>17:1 19:2 26:5<br>27:13<br><b>bloom</b> 1:19<br>4:13,14,21 5:5<br>6:1 7:3 10:12<br>10:20 12:12,17<br>23:7,12 25:2<br>25:12,20 26:13<br>28:2,6 35:15<br>36:8 37:6,13<br>37:15 45:13<br>54:2 57:1 58:7<br>58:16<br><b>blue</b> 16:11<br><b>body</b> 15:23<br><b>bold</b> 5:19<br><b>bonded</b> 47:23<br>47:23<br><b>bore</b> 13:10,25<br>14:2,11,12<br>16:1<br><b>bores</b> 16:24<br><b>bought</b> 42:19<br>43:14<br><b>bound</b> 46:17,20<br>47:10<br><b>box</b> 2:21<br><b>brief</b> 9:8 10:15<br>11:13,15,16,18<br>12:6 34:7 36:6<br>38:25 45:10<br><b>briefing</b> 10:24<br>29:17 30:24<br>31:5,15,19,19 |
|---|---|---|---|

[briefing - chang]

|  |  |  |   |
|--|--|--|---|
| <p>31:23 32:3<br/>33:10,18,20<br/>44:17 52:23<br/>53:4<br/><b>briefly</b> 21:3<br/>38:7 44:13<br/>49:19<br/><b>briefs</b> 12:7<br/>30:25<br/><b>bring</b> 43:21<br/><b>brings</b> 58:12<br/><b>brought</b> 42:10<br/><b>building</b> 1:5<br/><b>buildup</b> 16:17<br/><b>burden</b> 30:4,5<br/><b>bureau</b> 19:20<br/>20:16 21:6<br/><b>business</b> 56:24<br/>56:24<br/><b>buy</b> 42:19</p> | <p>24:24 25:7<br/>27:25 28:7,14<br/>29:2,17 31:16<br/>32:14 33:8<br/>35:3,9,17,21<br/>36:15,18 38:2<br/>38:6,23 40:20<br/>40:20 41:10<br/>46:2 48:25<br/>49:25 50:3,12<br/>52:10 53:24<br/>54:25 55:10,17<br/>55:18 56:2,4<br/>56:23 57:5,15<br/>57:16 58:2,2,8<br/>58:14<br/><b>cases</b> 6:7 10:17<br/>45:4<br/><b>casing</b> 14:3<br/>16:4,9,19<br/><b>catch</b> 45:16<br/><b>caused</b> 30:6<br/><b>causing</b> 30:4<br/><b>caution</b> 18:3<br/>56:11,16<br/><b>cd</b> 23:22<br/><b>cement</b> 15:9<br/><b>certain</b> 13:17<br/><b>certainly</b> 35:4<br/>49:6<br/><b>certificate</b> 3:10<br/><b>cetera</b> 26:5<br/>31:19<br/><b>chain</b> 43:7,17<br/>51:13</p> | <p><b>chair</b> 1:18 4:3<br/>4:11,12,17,24<br/>5:2,5,16,17,23<br/>6:2,4,7,17,20<br/>7:2 10:2,5,11<br/>10:12,16,21,22<br/>10:23 11:2<br/>12:3,9,12,13,15<br/>12:17,20,24<br/>13:1,5,7,20<br/>18:9,11,15,21<br/>18:23 19:24<br/>20:10,13,20<br/>22:17 23:6<br/>26:14,24 27:3<br/>27:21 28:2,8<br/>28:10,14,19,24<br/>29:22 30:8<br/>31:7,8,12,22<br/>33:24 34:1,17<br/>35:15,25 36:8<br/>36:12,22 37:6<br/>37:10,24 38:3<br/>38:20,23 40:8<br/>41:4 44:11,14<br/>45:8,13,22<br/>46:12 48:7,17<br/>48:23 49:5,13<br/>49:21 50:4,9<br/>50:20 51:4<br/>52:3,16 53:7<br/>54:1,2,11,14,18<br/>54:23 55:5,10<br/>55:13,15 56:17<br/>56:23 57:1,2,6</p> | <p>57:13,19 58:4<br/>58:7,9,12,18,20<br/><b>chairman</b><br/>56:22<br/><b>challenge</b> 44:8<br/><b>chance</b> 4:18<br/>41:5 44:12<br/>45:10 46:12<br/>49:19 51:5<br/>55:3<br/><b>chang</b> 1:18 4:3<br/>4:11,12,17,24<br/>5:2,17,23 6:4,7<br/>6:17,20 10:2<br/>10:11,16,21,23<br/>11:2 12:3,9,13<br/>12:15,20,24<br/>13:1,5,20 18:9<br/>18:11,15,21<br/>19:24 20:10,13<br/>20:20 22:17<br/>23:6 26:24<br/>27:3,21 28:10<br/>28:14,19,24<br/>29:22 30:8<br/>31:7,12 33:24<br/>34:1,17 35:25<br/>36:12,22 37:10<br/>37:24 38:3,20<br/>38:23 40:8<br/>41:4 44:11<br/>45:8,22 46:12<br/>48:7,17,23<br/>49:5,13 50:4,9<br/>51:4 52:3 53:7</p> |
| <b>c</b>   |  |  |   |
| <p><b>c</b> 2:1 3:9 14:7<br/>18:3,6,14<br/><b>call</b> 4:4,5 9:19<br/>13:2 28:14<br/>29:7<br/><b>called</b> 5:15 7:16<br/>20:8 42:1<br/><b>captures</b> 50:15<br/>50:16<br/><b>care</b> 43:4<br/><b>case</b> 5:11 6:9<br/>6:22 10:18<br/>13:2,2,5 21:18<br/>22:5,10 24:1</p>   |  |  |   |

**[chang - conducted]**

|   |   |   |  |
|---|---|---|--|
| <p>54:1,11,14,18<br/>54:23 55:5,10<br/>55:13,15 56:17<br/>56:23 57:2,6<br/>57:13,19 58:4<br/>58:9,12,18,20<br/><b>change</b> 5:7,22<br/>51:21<br/><b>changes</b> 5:4,25<br/>6:2<br/><b>characterized</b><br/>50:22<br/><b>charged</b> 40:3<br/><b>chief</b> 19:20<br/>20:16 21:6<br/>29:2 31:6,16<br/><b>chino</b> 1:5<br/><b>circumstance</b><br/>24:18 25:5<br/><b>circumstances</b><br/>17:11 19:18<br/>23:19,24<br/><b>claiming</b> 43:25<br/>46:14<br/><b>claims</b> 34:22<br/>40:15 45:2<br/><b>clarification</b><br/>27:11,17<br/><b>clarifies</b> 25:3<br/><b>clarify</b> 48:8<br/>50:10,18 58:4<br/><b>clarity</b> 30:23<br/>38:4<br/><b>class</b> 21:13</p> | <p><b>clear</b> 24:22<br/>29:19<br/><b>clearly</b> 25:7<br/><b>close</b> 35:22<br/><b>collaterally</b><br/>49:24<br/><b>come</b> 10:17<br/>21:10 42:7<br/>45:21<br/><b>comfortable</b><br/>33:15<br/><b>comission</b> 5:10<br/><b>commence</b><br/>15:18<br/><b>comments</b><br/>27:23<br/><b>commission</b> 1:3<br/>1:17,21 2:2 4:8<br/>6:24 7:22 9:9<br/>9:15,21,24<br/>10:18,25 11:12<br/>11:23,25 12:13<br/>13:8 19:6,10<br/>19:21 20:7<br/>21:1 24:5,6<br/>26:15 29:18<br/>31:7,18 32:2<br/>33:6,7,23<br/>35:10 36:20,20<br/>36:24 37:4<br/>39:2 40:23<br/>44:3,18 45:25<br/>46:11 47:21<br/>48:23 49:23<br/>50:1 52:6</p> | <p>55:18 56:10,16<br/>59:5<br/><b>commission's</b><br/>8:19 30:20<br/>31:4 41:9<br/>43:21<br/><b>commissioner</b><br/>3:7 4:9,10,13<br/>4:14,21,23 5:5<br/>5:14 6:1,3 7:2<br/>7:3 10:12,20<br/>12:11,12,17,19<br/>13:11 18:19<br/>20:1 21:25,25<br/>22:19,22 23:5<br/>23:6,7,12 25:2<br/>25:12,20 26:13<br/>28:2,6,8 35:15<br/>36:8,13 37:6<br/>37:13,13,15,16<br/>38:19 45:9,13<br/>53:20 54:2,16<br/>54:17 56:25<br/>57:1,3,17,25<br/>58:6,7,16<br/><b>commissioners</b><br/>4:17 7:21<br/>10:11 12:10<br/>18:15,22 19:24<br/>28:21 29:10<br/>34:2 35:13<br/>38:21 45:11<br/>49:18 52:4<br/>53:18 57:14</p> | <p><b>communicated</b><br/>19:13<br/><b>companies</b><br/>16:22 17:4,25<br/>27:7<br/><b>company</b> 26:9<br/>27:19 39:6<br/><b>complaint</b><br/>50:17<br/><b>completed</b> 9:4<br/><b>completely</b><br/>42:12,17<br/><b>completion</b><br/>59:1<br/><b>compliance</b><br/>21:11 22:3<br/><b>comply</b> 15:12<br/><b>comport</b> 46:23<br/>47:3,8 48:15<br/>48:20 51:16<br/><b>composed</b> 22:7<br/><b>compulsory</b><br/>39:14,22 41:11<br/><b>concern</b> 26:2<br/>34:24 35:3,6<br/><b>concerns</b> 12:9<br/>17:4,5 27:7,16<br/>27:24 31:14<br/>35:12<br/><b>conclusion</b> 20:4<br/>22:2<br/><b>conduct</b> 15:24<br/><b>conducted</b> 42:8<br/>42:23</p> |
|---|---|---|--|



[confirm - depending]

|  |   |   |  |
|--|---|---|--|
| <b>confirm</b> 5:16<br><b>conservation</b><br>1:3 2:2 18:24<br>59:5<br><b>consider</b> 31:5<br><b>consideration</b><br>31:4<br><b>considered</b><br>24:15,17<br><b>constructed</b><br>19:4,5 24:3<br><b>construction</b><br>13:18 14:6,13<br>24:14 25:18<br><b>constructive</b><br>43:2<br><b>context</b> 19:8<br>24:9<br><b>continuance</b><br>29:3,25 30:6<br>30:10,12 32:24<br>35:18,24 37:2<br>37:3,5,7,17,23<br>52:9,22,25<br>53:3,8,12,25<br>54:21,24<br><b>continue</b> 9:20<br>29:6 30:2 31:9<br>33:17,19 36:5<br>38:6 53:5,16<br>53:22 56:12<br><b>continued</b> 5:11<br>5:12 32:18<br><b>control</b> 21:11 | <b>controlled</b><br>16:17<br><b>controvert</b><br>44:22<br><b>copy</b> 5:19<br><b>correct</b> 5:22<br>6:12 21:24<br>27:1,2 36:10<br>48:12,21,22<br>49:12 57:11<br>59:8<br><b>corrective</b><br>19:14,17<br><b>correctly</b> 25:16<br><b>correlative</b><br>40:4,5,17 48:2<br>56:5,5<br><b>correspond</b><br>10:7<br><b>corresponden...</b><br>21:21<br><b>coterra</b> 2:11<br>6:15 7:4,6,7,10<br>7:13 8:17,25<br>9:14,17<br><b>coterra's</b> 9:22<br>12:8<br><b>counsel</b> 1:21<br>12:13 26:16,21<br>31:7 34:3 36:3<br>36:20 37:10<br>45:15,23 48:23<br>49:7 52:7<br><b>counsel's</b> 34:25 | <b>county</b> 41:16<br>41:24 43:1<br><b>couple</b> 44:2<br><b>course</b> 9:12<br>12:8 22:7<br><b>court</b> 2:17<br>42:23 43:10<br>44:15,23 46:3<br>46:9,9 47:5,7<br>48:5,24 49:2,4<br>49:5,9,10,24<br>51:2,3,6,10,17<br>51:22,22 52:14<br>56:13,13<br><b>courts</b> 33:9<br>40:21,22 45:20<br>46:3,6 50:7,8<br><b>covered</b> 15:9<br><b>covers</b> 42:2<br><b>creating</b> 40:6<br><b>cryptic</b> 23:22<br><b>current</b> 11:4<br>15:17 47:20<br><b>currently</b> 21:7<br>37:1 38:16<br>57:20<br><b>d</b><br><b>d</b> 3:1 14:7<br><b>dacus</b> 17:18<br>18:7<br><b>date</b> 47:1 57:10<br><b>dates</b> 12:4,18<br><b>day</b> 12:23<br><b>de</b> 6:11,16 7:8<br>7:14 8:17 9:1 | 9:18,23 10:7,8<br>28:15 32:11<br>34:11,19 35:17<br>35:19 37:9,14<br>37:18 52:18<br><b>dealing</b> 44:7<br><b>deals</b> 21:14<br><b>deana</b> 2:14<br>6:14 7:3<br><b>decide</b> 38:9<br>40:19<br><b>decided</b> 11:17<br>32:20<br><b>decision</b> 30:20<br>35:8 48:24<br>57:16<br><b>dedicated</b> 8:5<br><b>deep</b> 44:1,2<br><b>deficiencies</b><br>23:16<br><b>define</b> 31:23<br><b>definitely</b> 5:21<br><b>definition</b> 32:3<br><b>delaware</b> 17:20<br><b>deliberation</b><br>58:1,8<br><b>deliberations</b><br>28:1 57:10,15<br>57:22<br><b>demonstrate</b><br>24:5<br><b>denied</b> 44:10<br><b>deny</b> 28:1<br><b>depending</b> 9:16 |
|--|---|---|--|

[depends - energy]

|  |  |  |   |
|--|--|--|---|
| <b>depends</b> 31:22<br><b>depicted</b> 14:6<br>14:13,25 16:10<br>16:13<br><b>dept</b> 2:3<br><b>depths</b> 43:13<br><b>describes</b> 15:4<br><b>design</b> 13:16,25<br>14:12 17:13<br><b>designated</b><br>8:12<br><b>designed</b> 14:16<br><b>determination</b><br>44:19<br><b>determine</b><br>30:17<br><b>determined</b><br>11:17 19:8<br><b>determining</b><br>9:18<br><b>developed</b> 35:2<br><b>development</b><br>14:10<br><b>different</b> 32:25<br><b>digest</b> 33:22<br>36:18<br><b>diligently</b> 47:19<br><b>direct</b> 20:7<br><b>disclaimer</b> 24:8<br><b>disclaimers</b><br>30:19<br><b>discombobul...</b><br>11:9<br><b>discovered</b><br>42:9 | <b>discuss</b> 4:19<br>45:17 53:24<br>57:5<br><b>discussed</b> 17:2<br><b>discussion</b> 5:4<br>37:8,18 38:5<br>53:11,22 58:1<br><b>discussions</b><br>5:24 19:2,22<br>21:20 30:13<br><b>dismiss</b> 52:13<br>54:8 55:18<br><b>dismissal</b> 52:18<br>53:3 56:4,9<br><b>dismissed</b><br>54:25 55:11<br><b>dispose</b> 37:4<br><b>disposition</b><br>59:13<br><b>dispute</b> 30:21<br>31:21 33:11<br>36:4 40:16,17<br>40:18 48:19<br>49:16 50:12<br>53:14 54:6<br><b>disputes</b> 33:8<br><b>disputing</b> 39:6<br><b>district</b> 33:9<br>40:21 42:23<br>43:10 45:20<br>46:2,3,9,9 47:5<br>47:7 48:5,24<br>49:2,4,9,24<br>50:7 51:1,3,6<br>51:10,17,21,22 | 52:14 56:13<br><b>dive</b> 29:6<br><b>divert</b> 14:1,22<br>15:14<br><b>divested</b> 42:17<br><b>division</b> 8:11<br>8:16,17 9:2,3,9<br>9:13 12:1 18:8<br>18:24,25 19:6<br>24:4 26:5<br>32:16,16,20<br>39:24 40:3,6<br>40:23 47:7<br>51:19 56:10,15<br><b>division's</b> 8:19<br>8:21 19:21<br>55:7,8<br><b>docket</b> 11:23<br>12:1<br><b>document</b> 23:9<br><b>documented</b><br>35:2<br><b>documents</b><br>33:3 53:1<br><b>doing</b> 36:2<br>42:13<br><b>dr</b> 1:20 4:9<br>36:1,12 37:15<br>57:2<br><b>drilled</b> 19:4<br>24:9 25:16<br><b>drilling</b> 13:13<br>25:5<br><b>drive</b> 1:6 2:4 | <b>due</b> 11:13,16<br>11:18,20 19:2<br>46:23 47:3,9<br>48:15,20 49:2<br>49:22 51:16<br><b>duly</b> 20:22<br><b>duty</b> 40:3 |
| <b>e</b>   |  |  |   |
| <b>e</b> 2:1,1 3:1 14:7<br><b>earlier</b> 27:6<br><b>east</b> 41:15<br><b>eddy</b> 41:15,24<br>43:1<br><b>effect</b> 42:4<br><b>either</b> 19:6<br>27:18,19 40:22<br>54:22 56:12,24<br><b>elect</b> 13:24<br><b>elected</b> 14:12<br><b>elements</b> 56:7<br><b>emergency</b><br>11:5<br><b>emnrd.nm.gov</b><br>2:5<br><b>empire</b> 57:8,23<br>58:2,8<br><b>empire's</b> 57:5<br>58:2<br><b>employed</b> 46:5<br>59:11<br><b>encountered</b><br>14:20<br><b>energy</b> 2:3,11<br>2:16,20 6:15<br>7:4,6,7,9,10,12  |  |  |   |

[energy - feldewert]

|   |   |  |  |
|---|---|--|--|
| <p>7:18 8:9,12,13<br/>28:15,18 29:17<br/>29:23 41:1<br/>43:12,20,23<br/><b>energy's</b> 42:16<br/>43:7 44:9<br/><b>energy.jrs</b> 2:23<br/><b>engaged</b> 14:9<br/><b>engineer</b> 14:15<br/>17:19<br/><b>engineered</b><br/>14:22 15:4,6<br/>15:10 26:2<br/><b>engineering</b><br/>19:20 20:16<br/>21:6,8 22:15<br/><b>engineers</b> 22:8<br/><b>ensued</b> 19:10<br/><b>ensure</b> 26:11<br/><b>entered</b> 30:17<br/><b>entertain</b> 36:23<br/>58:14<br/><b>entertaining</b><br/>38:1<br/><b>entirely</b> 10:9<br/>44:24<br/><b>entirety</b> 50:16<br/>50:17<br/><b>entitled</b> 45:3<br/><b>equal</b> 17:10<br/>22:14 23:17<br/>26:18<br/><b>equally</b> 8:24<br/>23:23 24:6<br/>26:23</p> | <p><b>equipment</b><br/>25:6<br/><b>era</b> 44:6<br/><b>erred</b> 49:10<br/><b>esq</b> 1:22<br/><b>essence</b> 45:16<br/><b>essentially</b> 15:7<br/>41:1<br/><b>establish</b> 46:8<br/>55:25<br/><b>establishes</b><br/>41:25<br/><b>establishing</b><br/>46:1<br/><b>et</b> 26:5 31:19<br/><b>event</b> 14:3 16:3<br/>16:18 18:8<br/><b>everybody</b><br/>51:20 58:20<br/><b>evidence</b> 34:20<br/>36:15,17<br/><b>evident</b> 26:1<br/><b>evidentiary</b><br/>30:14 31:6<br/>32:14 33:12<br/>35:7 46:5<br/><b>exactly</b> 38:8<br/>39:1<br/><b>examination</b><br/>3:6,7 20:23<br/>22:21<br/><b>example</b> 9:21<br/><b>examples</b> 26:22<br/><b>exception</b><br/>13:10 17:13</p> | <p>19:9 24:1,2,23<br/>24:25 26:5,18<br/><b>exceptions</b> 19:5<br/>24:16,17<br/><b>excluded</b> 34:15<br/><b>executed</b> 24:10<br/><b>exhibit</b> 15:1,16<br/>16:11,25 17:23<br/>18:3 26:4,10<br/><b>exhibits</b> 3:8,9<br/>17:1,21,22<br/>18:6,14 21:17<br/>32:4,9,10<br/><b>existing</b> 8:4,4<br/>9:5 39:4,5,11<br/>39:11,11,15,25<br/><b>expected</b> 25:23<br/><b>expert</b> 20:14,19<br/><b>explore</b> 53:17<br/><b>expressed</b> 17:5<br/>27:15<br/><b>extend</b> 29:12<br/><b>extensive</b> 42:8<br/><b>extent</b> 7:19<br/>44:15,20<br/><b>extenuating</b><br/>24:18<br/><b>extinguished</b><br/>42:20 43:14<br/>51:1</p> | <p><b>fact</b> 8:21 11:4<br/>19:3 20:15<br/>24:23 32:6,15<br/>45:4 56:7<br/>58:12<br/><b>factual</b> 23:19<br/><b>failed</b> 43:16<br/>49:22<br/><b>failing</b> 39:17<br/><b>failure</b> 14:3<br/>16:4,19<br/><b>fair</b> 10:21<br/>20:20<br/><b>faith</b> 44:8 48:2<br/><b>familiar</b> 21:16<br/>21:20<br/><b>family</b> 11:5<br/><b>far</b> 8:14 57:8<br/><b>favor</b> 9:22 50:2<br/>53:25<br/><b>fe</b> 1:7 2:4,9<br/><b>federal</b> 41:21<br/>46:23 47:3<br/>48:15 51:15<br/><b>feedback</b> 22:9<br/><b>feel</b> 31:9 44:7<br/><b>feels</b> 29:4<br/><b>feet</b> 15:25<br/><b>feldewert</b> 2:9<br/>13:4,6,7,21<br/>19:11 21:17<br/>23:10 25:14,15<br/>25:19,22 27:2<br/>27:11 28:12</p> |
|   |   | <b>f</b>   |  |
|   |   | <b>f</b> 14:7,13,18<br>15:2,13<br><b>face</b> 15:11  |  |

|  |   |   |          |  |  |  |  |  |
|--|---|---|----------|--|--|--|--|--|
| <p><b>felt</b> 24:19</p> <p><b>figure</b> 14:7,7,7<br/>14:7,13,18<br/>15:2,13 38:10<br/>50:13</p> <p><b>file</b> 9:13,14</p> <p><b>filed</b> 13:9 17:16<br/>27:15 29:3,11<br/>29:18 41:24<br/>42:25</p> <p><b>filing</b> 31:24</p> <p><b>filings</b> 34:22<br/>47:21</p> <p><b>final</b> 23:21<br/>39:16 56:8<br/>59:13</p> <p><b>find</b> 33:5 55:16</p> <p><b>finding</b> 9:1</p> <p><b>finds</b> 23:16</p> <p><b>finish</b> 41:4</p> <p><b>first</b> 15:17 16:9<br/>18:17 20:22<br/>21:1 23:14<br/>25:23 29:5<br/>36:9 40:9,14<br/>45:11,12</p> <p><b>floor</b> 1:5</p> <p><b>flow</b> 14:1,16<br/>16:3,15,17</p> <p><b>flows</b> 50:23</p> <p><b>fluids</b> 14:2,23<br/>15:14</p> <p><b>fme</b> 8:15</p> <p><b>follow</b> 22:18,20<br/>47:2 49:2</p> | <p>51:16</p> <p><b>follows</b> 20:22</p> <p><b>foot</b> 8:18,20 9:3<br/>9:11</p> <p><b>foregoing</b> 59:8</p> <p><b>fork</b> 6:19 8:5,8</p> <p><b>formation</b><br/>14:17,24 41:16</p> <p><b>forth</b> 59:7</p> <p><b>forum</b> 38:9,13</p> <p><b>forward</b> 9:23<br/>10:1 24:23<br/>30:7 33:16<br/>37:22</p> <p><b>found</b> 44:1</p> <p><b>four</b> 13:10,15<br/>13:25 14:6,11<br/>17:13 56:7</p> <p><b>fourth</b> 59:17</p> <p><b>fox</b> 30:2</p> <p><b>fracturing</b><br/>15:19,22</p> <p><b>francis</b> 1:6 2:4</p> <p><b>franklin</b> 7:9,11<br/>7:17 8:9,11,12</p> <p><b>frequency</b><br/>15:23</p> <p><b>front</b> 5:19<br/>28:25 33:6<br/>35:7,16 38:4<br/>38:16</p> <p><b>full</b> 23:1 35:7</p> <p><b>fully</b> 35:2,2</p> <p><b>further</b> 5:23<br/>26:14 27:23</p> | <p>44:20 56:2<br/>59:6,11</p> <p><b>future</b> 23:24<br/>25:5</p> <tr> <td colspan="2"><b>g</b></td><td></td></tr> <tr> <td colspan="2"> <p><b>gallegos</b> 59:3<br/>59:16</p> <p><b>gas</b> 7:23 9:10</p> <p><b>gatekeeping</b><br/>52:11</p> <p><b>gateway</b> 29:4<br/>36:3 38:10<br/>50:16 53:13</p> <p><b>gather</b> 22:6</p> <p><b>gentleman's</b><br/>34:14</p> <p><b>geologists</b> 22:7</p> <p><b>getting</b> 11:9<br/>51:20</p> <p><b>give</b> 6:10,23<br/>11:19,25 29:1<br/>34:6 35:4,12<br/>35:25 38:24<br/>41:5 44:12<br/>45:9 46:12,19<br/>49:19 51:4</p> <p><b>given</b> 12:3 54:7</p> <p><b>gives</b> 42:4</p> <p><b>gmail.com</b> 2:23</p> <p><b>go</b> 5:2 10:15,16<br/>10:23 13:20<br/>16:16 18:17<br/>29:5 34:6<br/>37:22,24 46:24<br/>49:3 51:2,13</p> </td><td> <p>55:5</p> <p><b>goes</b> 53:11</p> <p><b>going</b> 8:15 10:4<br/>10:4 11:9,25<br/>15:20 16:5<br/>24:22 26:20<br/>29:7 34:14,21<br/>37:22 52:4,24<br/>53:24 56:9<br/>57:4</p> <p><b>good</b> 6:13 7:1<br/>12:23 18:22<br/>27:11,17 28:21<br/>36:9 44:8<br/>45:22 47:16<br/>48:1,1 51:18<br/>57:21</p> <p><b>goodnight</b> 57:9<br/>57:22 58:2</p> <p><b>governing</b> 7:22</p> <p><b>governs</b> 13:12</p> <p><b>grant</b> 32:23<br/>52:22,24 53:4<br/>56:12</p> <p><b>granted</b> 8:11<br/>19:6 30:6<br/>41:11 47:18<br/>56:7</p> <p><b>granting</b> 53:8</p> <p><b>grants</b> 39:16</p> <p><b>great</b> 6:17 13:5<br/>28:19 30:5<br/>40:6 57:6</p> <p><b>gregory</b> 1:19</p> </td></tr> | <b>g</b> |  |  | <p><b>gallegos</b> 59:3<br/>59:16</p> <p><b>gas</b> 7:23 9:10</p> <p><b>gatekeeping</b><br/>52:11</p> <p><b>gateway</b> 29:4<br/>36:3 38:10<br/>50:16 53:13</p> <p><b>gather</b> 22:6</p> <p><b>gentleman's</b><br/>34:14</p> <p><b>geologists</b> 22:7</p> <p><b>getting</b> 11:9<br/>51:20</p> <p><b>give</b> 6:10,23<br/>11:19,25 29:1<br/>34:6 35:4,12<br/>35:25 38:24<br/>41:5 44:12<br/>45:9 46:12,19<br/>49:19 51:4</p> <p><b>given</b> 12:3 54:7</p> <p><b>gives</b> 42:4</p> <p><b>gmail.com</b> 2:23</p> <p><b>go</b> 5:2 10:15,16<br/>10:23 13:20<br/>16:16 18:17<br/>29:5 34:6<br/>37:22,24 46:24<br/>49:3 51:2,13</p> |  | <p>55:5</p> <p><b>goes</b> 53:11</p> <p><b>going</b> 8:15 10:4<br/>10:4 11:9,25<br/>15:20 16:5<br/>24:22 26:20<br/>29:7 34:14,21<br/>37:22 52:4,24<br/>53:24 56:9<br/>57:4</p> <p><b>good</b> 6:13 7:1<br/>12:23 18:22<br/>27:11,17 28:21<br/>36:9 44:8<br/>45:22 47:16<br/>48:1,1 51:18<br/>57:21</p> <p><b>goodnight</b> 57:9<br/>57:22 58:2</p> <p><b>governing</b> 7:22</p> <p><b>governs</b> 13:12</p> <p><b>grant</b> 32:23<br/>52:22,24 53:4<br/>56:12</p> <p><b>granted</b> 8:11<br/>19:6 30:6<br/>41:11 47:18<br/>56:7</p> <p><b>granting</b> 53:8</p> <p><b>grants</b> 39:16</p> <p><b>great</b> 6:17 13:5<br/>28:19 30:5<br/>40:6 57:6</p> <p><b>gregory</b> 1:19</p> |
| <b>g</b>   |   |   |          |  |  |  |  |  |
| <p><b>gallegos</b> 59:3<br/>59:16</p> <p><b>gas</b> 7:23 9:10</p> <p><b>gatekeeping</b><br/>52:11</p> <p><b>gateway</b> 29:4<br/>36:3 38:10<br/>50:16 53:13</p> <p><b>gather</b> 22:6</p> <p><b>gentleman's</b><br/>34:14</p> <p><b>geologists</b> 22:7</p> <p><b>getting</b> 11:9<br/>51:20</p> <p><b>give</b> 6:10,23<br/>11:19,25 29:1<br/>34:6 35:4,12<br/>35:25 38:24<br/>41:5 44:12<br/>45:9 46:12,19<br/>49:19 51:4</p> <p><b>given</b> 12:3 54:7</p> <p><b>gives</b> 42:4</p> <p><b>gmail.com</b> 2:23</p> <p><b>go</b> 5:2 10:15,16<br/>10:23 13:20<br/>16:16 18:17<br/>29:5 34:6<br/>37:22,24 46:24<br/>49:3 51:2,13</p>   |   | <p>55:5</p> <p><b>goes</b> 53:11</p> <p><b>going</b> 8:15 10:4<br/>10:4 11:9,25<br/>15:20 16:5<br/>24:22 26:20<br/>29:7 34:14,21<br/>37:22 52:4,24<br/>53:24 56:9<br/>57:4</p> <p><b>good</b> 6:13 7:1<br/>12:23 18:22<br/>27:11,17 28:21<br/>36:9 44:8<br/>45:22 47:16<br/>48:1,1 51:18<br/>57:21</p> <p><b>goodnight</b> 57:9<br/>57:22 58:2</p> <p><b>governing</b> 7:22</p> <p><b>governs</b> 13:12</p> <p><b>grant</b> 32:23<br/>52:22,24 53:4<br/>56:12</p> <p><b>granted</b> 8:11<br/>19:6 30:6<br/>41:11 47:18<br/>56:7</p> <p><b>granting</b> 53:8</p> <p><b>grants</b> 39:16</p> <p><b>great</b> 6:17 13:5<br/>28:19 30:5<br/>40:6 57:6</p> <p><b>gregory</b> 1:19</p>  |          |  |  |  |  |  |

[grounds - interpreted]

|   |  |  |  |
|---|--|--|--|
| <b>grounds</b> 46:19<br><b>group</b> 2:16<br>7:16,16 21:12<br>21:14<br><b>groups</b> 21:7<br><b>guadalupe</b> 2:8<br><b>guarantee</b><br>24:20<br><b>guess</b> 37:1<br>53:15  | <b>heard</b> 19:9<br>31:12 32:10<br>40:7 44:21<br>48:8 52:20<br><b>hearing</b> 1:1 5:3<br>7:14 8:11 9:16<br>9:18,23 17:17<br>18:5 19:23<br>21:22 27:15<br>29:3,6,20 30:1<br>30:7,14 31:6<br>32:12,12,14,16<br>32:17 33:12<br>34:11,16 35:17<br>35:20 36:3,10<br>36:25 37:14<br>45:18 53:21<br>54:5 59:4<br><b>hearings</b> 21:14<br>24:12,13<br><b>hears</b> 56:13<br><b>held</b> 8:11<br><b>help</b> 34:18<br>49:14<br><b>helpful</b> 34:3<br><b>hide</b> 39:7<br><b>highlighted</b><br>14:1<br><b>hold</b> 9:15<br><b>holding</b> 39:6<br><b>holland</b> 2:8<br><b>hollandhart.c...</b><br>2:10<br><b>holliday</b> 2:16<br>2:18 28:21,22 | 29:9,10,25<br>30:24 35:23<br>37:20,20,24,25<br>40:10,11 41:4<br>41:7 44:25<br>45:25,25 46:14<br>47:6 48:4<br>51:18<br><b>holliday's</b><br>47:12<br><b>hope</b> 32:24<br>33:17,19<br><b>hopefully</b> 11:8<br><b>hoping</b> 11:11<br><b>horizontal</b> 7:25<br>8:23 9:4<br><b>hostile</b> 50:2<br><b>hydraulic</b><br>15:18,22 | <b>individuals</b><br>51:14<br><b>informed</b> 17:2<br>35:8 53:10,11<br><b>infringed</b> 39:14<br>39:22 40:1<br><b>initial</b> 9:8<br>11:13<br><b>injection</b> 21:10<br><b>inside</b> 15:7<br><b>inspections</b><br>21:11<br><b>install</b> 16:6<br><b>instrument</b><br>43:7<br><b>intend</b> 26:7<br><b>intended</b> 25:21<br><b>interest</b> 36:2<br>42:18,19 43:8<br>43:9,12,13,17<br>43:18,25 45:2<br>46:15,16,20,25<br>47:9 50:21<br>51:8,12,25<br>59:13<br><b>interests</b> 7:19<br>8:14 52:1<br><b>interfere</b> 51:24<br><b>interim</b> 7:10<br><b>intermediate</b><br>13:15 15:7<br>16:9,9<br><b>internal</b> 8:22<br><b>interpreted</b><br>24:25 |
| <b>h</b>  |  |  |  |
| <b>hagerman</b> 2:22<br><b>half</b> 41:13,13<br>41:14,14<br><b>hall</b> 1:5<br><b>hand</b> 15:3<br>16:11 36:11<br>39:23 47:2<br>48:5,6 51:19<br><b>handle</b> 37:4<br><b>handled</b> 33:8<br><b>happen</b> 26:11<br><b>happened</b><br>25:25 35:20<br><b>hart</b> 2:8<br><b>head</b> 55:5<br><b>hear</b> 10:3 18:16<br>18:17,20 27:8<br>31:20 33:4,9<br>33:21 35:23<br>36:11 38:6<br>44:19 49:18<br>50:3 52:3,21<br>52:25 55:17<br>56:2 |  | <b>i</b>   |  |
|   |  | <b>immediate</b> 16:1<br><b>impact</b> 16:2<br><b>imposed</b> 8:18<br><b>imposing</b> 9:3<br><b>inactive</b> 47:14<br>47:15<br><b>inappropriate</b><br>48:9<br><b>included</b> 16:23<br>42:2<br><b>including</b> 7:12<br>17:25<br><b>increase</b> 15:23<br><b>indicated</b> 19:11<br>44:25                                     |  |

[interval - listed]

|                        |                         |                         |                        |
|------------------------|-------------------------|-------------------------|------------------------|
| <b>interval</b> 14:2   | <b>j</b>                | <b>k</b>                | 51:15                  |
| <b>intervene</b> 45:4  | <b>james</b> 15:6       | <b>k</b> 2:5            | <b>lawyer</b> 23:25    |
| <b>intrepid</b> 16:23  | <b>jesse</b> 2:5 18:23  | <b>katherine</b> 2:17   | <b>lawyers</b> 31:24   |
| 18:1 27:3,5            | <b>jessek.tremaine</b>  | <b>kd</b> 46:18         | <b>leading</b> 19:23   |
| <b>invalid</b> 43:6    | 2:5                     | <b>kelli</b> 59:3,16    | <b>leaning</b> 57:18   |
| <b>invite</b> 5:24 6:9 | <b>joa</b> 42:4,6,10    | <b>kick</b> 36:5        | <b>lease</b> 46:16,18  |
| 57:14                  | 43:9,19                 | <b>know</b> 5:19 10:5   | 46:21 47:10,11         |
| <b>involved</b> 8:3    | <b>job</b> 21:4 22:14   | 10:8 11:13              | 50:22                  |
| 41:21                  | 51:18                   | 13:12 17:7              | <b>leased</b> 46:21    |
| <b>involves</b> 7:15   | <b>joining</b> 57:8     | 19:22 24:9              | <b>leases</b> 39:11    |
| 7:17                   | <b>joins</b> 10:18      | 30:23 32:23             | 42:18                  |
| <b>irrelevant</b>      | <b>jonathan</b> 2:21    | 36:15 38:15             | <b>leasing</b> 13:13   |
| 34:15                  | 2:22 28:17              | 43:24,25 45:18          | 14:10                  |
| <b>issue</b> 8:2 9:7   | <b>judicial</b> 33:5    | 45:19 53:15             | <b>led</b> 21:22 22:2  |
| 11:18 12:13            | 33:23                   | 54:5 56:1               | <b>left</b> 15:3 50:11 |
| 13:23 16:24            | <b>july</b> 1:12 42:25  | <b>knowledgeable</b>    | <b>legal</b> 9:7 25:10 |
| 19:1 27:13             | 59:4                    | 35:8                    | 30:19 33:18,18         |
| 29:4 36:16             | <b>june</b> 42:25       | <b>known</b> 13:13      | 33:19 35:5             |
| 39:1,8 41:8            | <b>jurisdiction</b>     | 14:10                   | 39:8 44:16,24          |
| 42:18 43:5             | 36:5 38:12              | <b>kpla</b> 19:18       | 46:4 48:20,21          |
| 47:4 50:11,16          | 39:8,25 40:7            | <b>l</b>                | 50:23 52:23            |
| 52:11,14 53:13         | 40:19,25 42:14          | <b>lack</b> 30:23       | 53:4,21 59:16          |
| 53:21,21,23            | 47:8,22 49:3            | 55:11                   | <b>letting</b> 38:15   |
| 54:3 55:20             | 51:7,11,17,23           | <b>lacked</b> 51:7,11   | <b>lightly</b> 26:9    |
| <b>issued</b> 7:9      | 55:11,17                | 51:17,22                | <b>likes</b> 13:14     |
| <b>issues</b> 14:21    | <b>jurisdictional</b>   | <b>laid</b> 15:16       | <b>limitations</b>     |
| 22:24 25:16,17         | 38:2 41:7               | <b>land</b> 54:6        | 30:18                  |
| 33:18 36:11            | <b>jurisdictionally</b> | <b>lane</b> 31:2        | <b>limited</b> 9:1,2   |
| 38:13 45:17            | 53:15                   | <b>language</b> 30:19   | 41:16                  |
| 50:13 53:9             | <b>jurisdicts</b> 48:14 | <b>lately</b> 11:15     | <b>lines</b> 49:6      |
| 55:24                  | 48:15                   | <b>lateral</b> 9:4 16:1 | <b>lis</b> 42:24       |
| <b>item</b> 5:6        | <b>justin</b> 3:6 19:19 | <b>law</b> 2:16 33:8    | <b>list</b> 32:8 47:14 |
| <b>items</b> 57:20     | 20:21 21:5              | 40:22 43:11             | 47:15                  |
|                        |                         | 46:6,23 47:4            | <b>listed</b> 6:8 44:1 |
|                        |                         | 48:3,14,15              | 51:15 52:1             |

[lists - motions]

|   |  |  |   |
|---|--|--|---|
| <b>lists</b> 32:5<br><b>litigated</b> 45:20<br><b>litigation</b> 56:20<br>56:20<br><b>little</b> 7:7 20:25<br>23:22<br><b>live</b> 53:1,5 54:5<br><b>llc</b> 2:7 18:13<br>28:15<br><b>local</b> 18:4<br><b>located</b> 16:8<br><b>long</b> 46:25<br><b>longer</b> 51:9,12<br>52:1<br><b>look</b> 22:11<br>43:23<br><b>looked</b> 17:9<br>19:7<br><b>looking</b> 50:14<br><b>lot</b> 46:4<br><b>lubbock</b> 5:10 | <b>manager</b> 17:19<br><b>mandatory</b><br>34:10,13<br><b>manner</b> 16:17<br>19:4<br><b>marked</b> 15:1<br><b>material</b> 24:7<br>31:25<br><b>materials</b> 19:12<br>35:16,20 36:14<br><b>matter</b> 28:23<br>33:6,23 36:25<br>40:5,7 43:10<br>43:11 46:10<br>47:5,7,22 48:6<br>48:19 56:11,14<br>56:16,19 59:12<br>59:14<br><b>mean</b> 11:22<br>12:8 24:1,24<br>25:6,20 37:14<br>51:20<br><b>means</b> 34:19,20<br>55:19<br><b>meant</b> 54:13<br><b>measure</b> 17:6,9<br><b>measures</b> 15:16<br>15:21 17:15<br>26:6,10 27:12<br><b>meet</b> 14:20<br>55:21<br><b>meeting</b> 4:4 5:3<br>5:15 10:18<br>29:12 57:4,21<br>57:24 58:3,5,6 | 58:13<br><b>member</b> 1:19<br>1:20<br><b>members</b> 1:17<br>13:8<br><b>memorandum</b><br>41:23<br><b>memory</b> 26:20<br><b>merits</b> 9:19<br>29:6 37:8,18<br>40:15 41:8<br>44:20 52:10<br>53:24<br><b>met</b> 56:8<br><b>method</b> 14:13<br><b>methods</b> 13:18<br>14:6<br><b>mexico</b> 1:2,7<br>2:2,4,9,13,22<br>59:4,17<br><b>mfeldewert</b><br>2:10<br><b>michael</b> 2:9<br><b>midstream</b><br>57:9<br><b>mineral</b> 7:19<br>8:14 39:6<br>41:19 42:9<br><b>minerals</b> 2:3<br>41:21<br><b>minutes</b> 5:3<br>33:22 34:7<br>38:5,7,25<br><b>misleading</b><br>51:19 | <b>mitigation</b><br>15:15,21 16:24<br>17:5,9,14<br>19:15 20:3<br>22:3,12 23:3<br>26:6 27:12<br><b>modrall</b> 2:12<br>7:4<br><b>moment</b> 11:4<br>34:4 35:14<br>37:5 54:3<br><b>month</b> 11:19<br>30:3 32:18<br><b>moot</b> 54:24<br>55:9<br><b>morning</b> 6:13<br>7:2 11:1 18:22<br>28:21<br><b>mosaic</b> 16:22<br>18:1 27:3,5<br><b>motion</b> 5:1,24<br>6:6 12:25 28:1<br>28:3,13 29:3,8<br>29:11 30:10,12<br>31:8,11 36:23<br>36:24 37:3,4<br>37:17 38:1,4<br>38:16,18,22<br>52:5,8,9 54:15<br>54:19,21,24<br>55:1,6,7 56:6<br>56:12 57:14<br>58:11,15,19<br><b>motions</b> 31:24<br>54:21 |
| <b>m</b>  |  |  |   |
| <b>m</b> 2:14<br><b>made</b> 11:24<br><b>main</b> 40:13<br><b>make</b> 4:19 5:24<br>6:1 28:1 31:11<br>32:13 35:2,7<br>35:18 44:18<br>47:7 48:5 57:4<br>57:14<br><b>makes</b> 43:18<br>56:14<br><b>managed</b> 22:25   |  |  |   |

[mountain - operating]

|   |  |  |  |
|---|--|--|--|
| <b>mountain</b> 7:9<br>7:11,18 8:9,12<br>8:13<br><b>move</b> 4:19,21<br>6:1 9:23 12:16<br>12:18 18:6<br>27:25 28:6<br>29:2 30:7<br>37:22 54:7<br>56:23 57:25<br>58:1<br><b>moved</b> 55:18<br>58:9,16<br><b>moving</b> 6:7<br>10:1 13:1<br><b>multiple</b> 44:4   | <b>neither</b> 27:7<br>59:11<br><b>net</b> 41:19 42:9<br><b>neutral</b> 50:2<br><b>new</b> 1:2,7 2:2,4<br>2:9,13,22<br>16:15 21:12<br>24:1 59:4,17<br><b>newspaper</b><br>18:4<br><b>nm</b> 2:3<br><b>normal</b> 24:2<br><b>north</b> 2:8 6:19<br>8:5,7 41:14,14<br>46:15<br><b>northeast</b><br>41:20,20<br><b>note</b> 30:13,14<br><b>noted</b> 17:8<br>42:12 56:17<br><b>notice</b> 17:24,25<br>27:5,12,14<br>42:24 43:2<br>45:3 58:13<br><b>noticed</b> 42:23<br>43:20<br><b>notified</b> 27:4<br><b>notify</b> 39:17<br><b>november</b><br>11:23 16:21<br><b>novo</b> 6:11,16<br>7:8,14 8:17 9:1<br>9:18,23 10:7,8<br>28:15 32:11<br>34:11,19 35:17 | 35:19 37:9,14<br>37:18 52:18<br><b>number</b> 6:10<br>13:2 27:13<br>28:14 39:20<br>41:12 46:18<br><b>numerous</b><br>51:10<br><b>nw</b> 2:13 59:17   | 39:7 40:19,24<br>44:12<br><b>ocd's</b> 11:17<br>19:12,19 21:20<br>22:1,2 23:12<br>30:17<br><b>october</b> 11:21<br>11:25 12:2,7<br><b>offer</b> 10:25<br><b>office</b> 11:5,6,8<br><b>officer</b> 32:17<br><b>officers</b> 21:12<br><b>oh</b> 5:17 54:23<br><b>oil</b> 1:3 2:2 7:22<br>9:10 18:24<br>59:4<br><b>okay</b> 4:7,15<br>10:16,21 13:1<br>13:19 15:19<br>21:24 27:9<br>29:22 39:3<br>40:8 46:12<br>48:23 51:4<br>57:2<br><b>once</b> 10:4 54:9<br><b>online</b> 6:21<br>20:7<br><b>open</b> 23:2<br>46:18<br><b>opening</b> 12:6<br><b>operate</b> 39:20<br>42:5<br><b>operating</b> 2:7<br>2:11,15 3:9<br>6:15 7:5,6,8,11 |
| <b>n</b>  |  | <b>o</b>   |  |
| <b>n</b> 2:1 3:1<br><b>name</b> 7:3 18:23<br>21:5 42:3<br><b>narrow</b> 39:1<br><b>natural</b> 2:3<br><b>necessarily</b><br>23:23<br><b>necessary</b> 7:20<br>24:20<br><b>need</b> 9:22 20:13<br>30:6 33:11<br>34:20 38:10<br>42:7 43:19<br>56:18<br><b>needed</b> 24:16<br><b>needs</b> 30:18<br>45:20 |  | <b>o'clock</b> 4:3<br><b>object</b> 56:9<br><b>objected</b> 8:8<br><b>objection</b> 4:24<br>4:25 12:20<br>18:10,11 37:12<br>37:25 38:21<br>54:18 58:10,18<br><b>objections</b> 6:4<br>18:9 28:10,11<br>38:20 56:17<br><b>objects</b> 29:24<br>37:10,21<br><b>obligation</b> 40:3<br><b>obviate</b> 43:19<br><b>occ</b> 29:12 40:25<br>45:17 54:9<br><b>occurred</b> 19:2<br>32:16<br><b>ocd</b> 11:17 17:7<br>18:17,17,20<br>19:6,16 20:2<br>21:6 22:1 23:8<br>23:15 24:2,19<br>28:24 30:9 |  |



[operating - piece]

|  |   |  |   |
|--|---|--|---|
| 18:13 28:23<br>29:7,11 31:13<br>31:13 39:10<br>41:23<br><b>operation</b><br>50:22<br><b>operations</b> 7:23<br>15:22 16:10<br>47:20<br><b>operator</b> 8:13<br>13:14 39:9,19<br>39:20,24 41:25<br>44:1 48:1<br><b>operator's</b> 56:5<br><b>operators</b> 22:9<br><b>opine</b> 49:10<br><b>opinion</b> 30:15<br><b>opportunity</b><br>29:14 57:22<br><b>opposition</b><br>30:12<br><b>option</b> 33:18,21<br>52:17,19,20<br><b>options</b> 52:17<br>53:2<br><b>oral</b> 33:10<br><b>order</b> 4:4 5:15<br>6:8 7:8,13,15<br>7:17,18 8:3<br>12:16,21 13:11<br>13:17,22 14:8<br>24:11 26:19<br>34:10 39:16<br>41:12,12 42:3<br>42:8,11 44:8 | 44:15,23 46:3<br>46:7 48:10<br>51:22,22,24<br>55:7,8 56:8<br><b>ordered</b> 4:25<br>6:5 28:11<br>38:21 54:18<br>58:18<br><b>ordering</b> 9:2<br><b>orders</b> 44:4<br>45:5 46:9<br>47:13<br><b>ordinarily</b> 42:6<br><b>orient</b> 15:2<br><b>original</b> 5:6<br>21:10<br><b>originally</b><br>41:10<br><b>outlined</b> 19:15<br>22:16<br><b>outlines</b> 10:14<br><b>outside</b> 33:3<br>42:14 50:12<br><b>overlap</b> 7:25<br>8:3,4<br><b>overlapping</b><br>7:20,24 8:10<br><b>overs</b> 47:17<br><b>oversaw</b> 17:21<br><b>own</b> 43:12,17<br>46:17 47:9<br>49:21<br><b>owned</b> 46:25<br>51:8,9,12 52:1 | <b>owner</b> 39:6<br><b>owns</b> 46:15<br><b>p</b><br><b>p</b> 2:1,1<br><b>p.o.</b> 2:21<br><b>package</b> 17:17<br>17:22<br><b>padilla</b> 6:19<br>9:13 10:6,13<br>10:18<br><b>padilla's</b> 11:16<br><b>page</b> 3:2 5:6,9<br>5:15 13:22<br>14:4 23:14<br>41:24<br><b>papers</b> 9:16<br><b>paragraph</b><br>5:10<br><b>paragraphs</b> 9:2<br><b>paraphrase</b><br>34:25<br><b>paraphrasing</b><br>21:24<br><b>part</b> 14:5 15:20<br>22:23 24:11<br>53:14<br><b>participant</b><br>24:12<br><b>participating</b><br>44:25<br><b>participation</b><br>19:22<br><b>particular</b> 7:17<br>17:10 22:5,10<br>32:6 | <b>particularly</b><br>10:20<br><b>parties</b> 6:9 13:2<br>17:24 24:15<br>31:6,10 36:6<br>38:7 39:18<br>45:14 51:11,25<br>53:1 59:12<br><b>party</b> 32:7<br>35:24 40:9<br>46:25<br><b>path</b> 36:10<br><b>paths</b> 16:15<br>33:16<br><b>pattern</b> 32:6,15<br><b>pause</b> 38:5<br><b>pecos</b> 1:5<br><b>penasco</b> 42:1<br>47:11<br><b>penasco's</b><br>47:10<br><b>pendens</b> 42:24<br><b>pending</b> 6:7<br>10:9 56:19,20<br><b>permian</b> 2:7<br>3:9 17:20<br>18:13<br><b>person</b> 32:22<br><b>perspective</b><br>43:5<br><b>petition</b> 28:4<br>32:9<br><b>petroleum</b> 22:7<br><b>piece</b> 41:19 |
|--|---|--|---|

[place - proposed]

|   |  |  |   |
|---|--|--|---|
| <p><b>place</b> 24:19<br/>26:6,25</p> <p><b>placed</b> 15:7<br/>24:21</p> <p><b>plan</b> 10:14<br/>14:10 16:21,25<br/>17:2</p> <p><b>planned</b> 25:24</p> <p><b>plans</b> 9:21<br/>22:12 23:3</p> <p><b>play</b> 48:5</p> <p><b>please</b> 4:6 11:2<br/>13:20 20:20<br/>21:2,24 22:1<br/>34:7 38:25</p> <p><b>plug</b> 15:23</p> <p><b>plugging</b> 44:4<br/>45:5 47:13</p> <p><b>point</b> 14:15,22<br/>15:4,6,10<br/>22:15 26:2<br/>29:19 32:20<br/>36:22 37:17<br/>45:7 52:5,13<br/>52:23 53:16,17<br/>53:25</p> <p><b>points</b> 40:13</p> <p><b>pool</b> 46:20</p> <p><b>pooled</b> 8:13<br/>41:12</p> <p><b>pooling</b> 7:18<br/>39:15,22 41:11<br/>41:18 42:3,7<br/>42:12</p> | <p><b>portion</b> 8:8</p> <p><b>position</b> 9:17<br/>21:3,4 29:21<br/>30:9,11 31:3<br/>31:17 34:21<br/>40:14,21 46:7</p> <p><b>possible</b> 20:1<br/>37:7 38:25<br/>57:13</p> <p><b>possibly</b> 43:14</p> <p><b>potash</b> 13:13<br/>14:10 16:22,22<br/>16:23 17:4,25<br/>27:1</p> <p><b>potential</b> 16:2<br/>22:24 25:4<br/>30:23 42:18</p> <p><b>potentially</b><br/>35:22</p> <p><b>predecessor</b><br/>41:25</p> <p><b>predecessors</b><br/>42:17</p> <p><b>prediction</b> 33:1</p> <p><b>preferences</b><br/>18:18</p> <p><b>prehearing</b><br/>17:8 23:13</p> <p><b>prejudice</b><br/>52:13,18 54:8<br/>54:12 55:19</p> <p><b>preliminary</b><br/>31:10</p> <p><b>premature</b> 56:4</p> | <p><b>prepare</b> 9:8<br/>12:1 32:2</p> <p><b>prepared</b> 32:14</p> <p><b>present</b> 4:10,12<br/>4:14,15 10:10<br/>55:21</p> <p><b>presentation</b><br/>33:10 44:22</p> <p><b>presented</b> 33:3</p> <p><b>pressure</b> 15:18<br/>15:21,24 16:6<br/>16:7,12,14<br/>22:13</p> <p><b>prevent</b> 19:18<br/>40:4</p> <p><b>primacy</b> 21:13</p> <p><b>primarily</b> 8:23<br/>9:6 11:3</p> <p><b>prior</b> 19:5 51:8<br/>51:23 52:2</p> <p><b>pro</b> 2:21</p> <p><b>probably</b> 13:12<br/>45:23 50:3</p> <p><b>problem</b> 15:11<br/>37:11</p> <p><b>procedural</b><br/>25:10 30:22<br/>55:22</p> <p><b>proceed</b> 6:23<br/>13:3 20:20<br/>31:15 34:10<br/>35:5,14 36:25<br/>52:12,15 53:19<br/>55:23 56:1,10<br/>56:16,18</p> | <p><b>proceeding</b><br/>27:10 56:3</p> <p><b>proceedings</b><br/>1:11 3:3 4:2<br/>8:7 58:21 59:7<br/>59:9</p> <p><b>process</b> 9:7,25<br/>19:13,23 20:2<br/>21:21 22:2<br/>46:24 47:3,9<br/>48:16,21 49:2<br/>49:23 51:16</p> <p><b>production</b><br/>14:3 15:9 16:3<br/>16:18 44:5</p> <p><b>productive</b><br/>29:19</p> <p><b>proffered</b><br/>20:19</p> <p><b>project</b> 23:19</p> <p><b>projects</b> 21:14</p> <p><b>proper</b> 37:19<br/>40:20 46:8</p> <p><b>properly</b> 25:7<br/>31:20 35:21<br/>53:14</p> <p><b>property</b> 33:8<br/>33:11 50:21,23<br/>51:1</p> <p><b>proposal</b> 10:25<br/>16:20</p> <p><b>proposals</b><br/>23:16,17,22</p> <p><b>proposed</b> 5:4<br/>8:4 15:15 17:5</p> |
|---|--|--|---|

[proposed - requirement]

|   |  |  |   |
|---|--|--|---|
| <p>17:9 22:3,12<br/>36:24 52:5<br/><b>protect</b> 19:18<br/>27:1<br/><b>protecting</b> 48:2<br/><b>protection</b><br/>17:10 23:17<br/><b>protective</b><br/>23:23 24:6,16<br/>26:23<br/><b>provide</b> 5:8<br/>17:10 22:9<br/>23:17 32:19<br/>53:1<br/><b>provided</b> 5:7,7<br/>5:8 27:4,14<br/>32:1 36:20<br/><b>public</b> 1:1 18:5<br/>42:24<br/><b>publication</b><br/>18:4<br/><b>pull</b> 23:9,10<br/>26:21<br/><b>purported</b><br/>42:19 43:8<br/>44:5<br/><b>purpose</b> 13:25<br/>14:18<br/><b>put</b> 12:20 13:21<br/>17:21,21 26:6<br/>26:19 50:10</p> | <p><b>question</b> 22:1<br/>22:18 23:8<br/>25:13 26:24<br/>38:8,11 44:16<br/>45:13,22 46:4<br/>53:12<br/><b>questions</b> 18:8<br/>18:16,18 19:21<br/>19:24 20:8<br/>21:1 26:14<br/>27:22 34:3<br/>38:2 40:9<br/>45:11<br/><b>quick</b> 12:4 51:4<br/><b>quiet</b> 42:16,21<br/>42:22 43:3,6<br/>43:15 46:22,22<br/>46:24 47:1,4,8<br/>48:9,10,18,24<br/>49:3,11,22,24<br/>50:12,15 51:7<br/>51:7,12,14<br/>52:1</p> | <p><b>range</b> 41:15<br/><b>rather</b> 31:6<br/><b>razatos</b> 5:16<br/><b>reached</b> 57:17<br/><b>read</b> 5:7 23:14<br/>36:16<br/><b>ready</b> 4:4 13:3<br/>55:23 57:7<br/><b>real</b> 12:4 53:1<br/><b>really</b> 36:15,18<br/><b>reason</b> 8:23<br/>41:22 43:16<br/><b>reasonable</b><br/>10:2,14<br/><b>reasons</b> 14:25<br/>29:13<br/><b>recall</b> 34:11<br/><b>receive</b> 27:18<br/>27:19<br/><b>received</b> 27:12<br/>29:16<br/><b>recommend</b><br/>57:19<br/><b>record</b> 4:1<br/>24:12 27:4<br/>30:15,25 32:12<br/>34:16 35:1,7<br/>47:23 53:10<br/>54:20<br/><b>recorded</b> 43:1<br/><b>rectangle</b> 42:2<br/><b>reduce</b> 16:2<br/><b>reference</b> 19:8<br/><b>referred</b> 21:17<br/>26:23</p> | <p><b>refile</b> 52:14<br/>54:9 55:20<br/><b>refiled</b> 52:19<br/><b>refresh</b> 41:9<br/><b>regarding</b> 9:9<br/>19:23 30:23,25<br/><b>region</b> 17:20<br/><b>registered</b> 45:1<br/><b>regret</b> 56:1<br/><b>related</b> 21:4<br/>30:19 59:12<br/><b>relief</b> 14:15,23<br/>16:6,7,12,13,14<br/>22:13<br/><b>relying</b> 30:24<br/><b>remaining</b> 14:5<br/><b>remind</b> 44:3<br/><b>remotely</b> 29:14<br/><b>reply</b> 9:14<br/>11:20 12:7<br/><b>report</b> 21:7<br/>59:6<br/><b>represent</b> 6:15<br/>18:24<br/><b>represented</b><br/>27:6,10 28:24<br/><b>representing</b><br/>28:18<br/><b>request</b> 7:17<br/><b>required</b> 13:24<br/>15:3 16:14<br/>22:14 32:1<br/>41:18<br/><b>requirement</b><br/>8:20 14:20</p> |
|   | <b>r</b>   |  |   |
|   | <p><b>r</b> 2:1 7:8,15<br/>13:11,12,22<br/>14:14 19:7<br/>22:16 23:18<br/>24:10,13 25:1<br/>25:21 41:12<br/><b>raise</b> 38:14<br/>56:25<br/><b>raised</b> 31:14<br/><b>ranch</b> 15:6</p>   |  |   |
| <b>q</b>  |  |  |   |
| <p><b>quarter</b> 41:20<br/>41:20 46:15</p>   |  |  |   |

[requirement - section]

|  |  |  |   |
|--|--|--|---|
| 15:13,20<br><b>requirements</b><br>13:10 17:13<br>55:22<br><b>requires</b> 14:15<br>15:17,19<br><b>requisite</b> 46:1<br><b>research</b> 42:8<br>42:13<br><b>resolve</b> 55:19<br><b>resolved</b> 53:23<br><b>resolving</b> 44:15<br>52:14<br><b>resource</b> 27:1<br><b>resources</b> 2:3<br>2:20 28:15,18<br>29:23<br><b>respectfully</b><br>56:15<br><b>respond</b> 29:23<br>34:7 36:1 41:5<br>45:10,12,14<br>46:13 49:19<br>51:5<br><b>responded</b> 24:4<br><b>respondent</b><br>6:20 28:23<br><b>respondents</b><br>10:3,4<br><b>response</b> 9:13<br>11:20 12:6<br>19:16<br><b>responses</b><br>44:12 | <b>responsibilities</b><br>21:4<br><b>responsible</b><br>21:9<br><b>responsive</b><br>29:16<br><b>rest</b> 12:23<br><b>result</b> 15:25<br><b>resulted</b> 14:21<br><b>resulting</b> 13:15<br><b>review</b> 4:18 7:8<br>8:17 9:1 10:7,8<br>19:22 20:18<br>22:2,8,23 23:1<br>23:2 24:7 32:2<br>32:12 34:19<br><b>reviewed</b> 19:7<br>19:12,14 23:15<br>36:13 44:17<br><b>reviewing</b> 20:3<br>21:9<br><b>right</b> 16:11<br>25:12 34:18<br>38:13 42:5<br>48:9 50:4 51:1<br>52:3 53:9<br>55:13<br><b>rights</b> 39:21<br>40:4,5,18 48:2<br>50:24 56:5,6<br><b>rio</b> 42:1 47:10<br>47:11<br><b>ripe</b> 11:23<br><b>risk</b> 22:24,24 | <b>roche</b> 42:3,3<br><b>roll</b> 4:5,8<br><b>rule</b> 9:16,22<br>14:5 15:17,19<br>16:15 32:1<br>55:24<br><b>ruled</b> 50:14<br><b>rulemaking</b><br>11:24 12:2<br><b>rules</b> 7:22 8:1<br>8:19,21 9:9,10<br>15:3 26:22,25<br>34:9,12<br><b>ruling</b> 9:17<br>56:14<br><b>run</b> 13:14                             | 58:17<br><b>samaniego's</b><br>46:8<br><b>san</b> 2:17<br><b>santa</b> 1:7 2:4,9<br><b>satisfactory</b><br>20:4<br><b>satisfied</b> 19:16<br><b>satisfy</b> 22:17<br><b>saying</b> 25:8<br><b>says</b> 5:10,15<br>32:9<br><b>scenarios</b> 26:3<br><b>schedule</b> 10:25<br>11:9,14 12:10<br><b>scheduling</b><br>12:16,21<br><b>scratch</b> 34:19<br><b>screen</b> 13:21<br>14:14 15:2<br><b>se</b> 2:21<br><b>second</b> 4:23 6:3<br>12:19 13:14<br>16:5,7,8,8,12<br>28:9 29:1 32:3<br>34:1 35:12,25<br>38:17,19 46:22<br>54:17 58:7,17<br><b>seconded</b> 58:9<br><b>secondly</b> 27:14<br>29:16<br><b>section</b> 13:22<br>14:17 15:14<br>41:14,15 44:2 |
|  |  | <b>s</b>   |   |
|  |  | <b>s</b> 1:6 2:1<br><b>safeguards</b><br>24:21<br><b>saint</b> 1:6<br><b>salt</b> 14:2,16,17<br>15:14 22:15<br><b>samaniego</b> 2:21<br>2:22 28:17,17<br>29:24 31:1<br>33:25 34:4,6,8<br>34:17 37:21<br>38:3,24 39:3<br>41:3,6 44:22<br>45:1,10 46:13<br>46:14 48:13,22<br>49:14,20 51:5<br>51:6 55:3,14<br>55:16 56:3 |   |

|  |   |  |   |
|--|---|--|---|
| <p><b>see</b> 5:18 13:23<br/>14:5 15:5<br/>16:25 17:1<br/>23:22 25:19<br/>26:4,10 27:3<br/>30:25 33:13<br/>35:10 37:11,19<br/>49:15 51:20<br/>52:5 53:19<br/><b>seeing</b> 34:11<br/>35:1,15<br/><b>seek</b> 9:20 42:7<br/><b>seeking</b> 6:24<br/>7:8 8:17,25<br/>13:9<br/><b>seemed</b> 23:2<br/><b>seems</b> 30:24<br/>50:15 53:7<br/><b>sees</b> 50:18<br/><b>self</b> 17:17,23<br/><b>sense</b> 11:24<br/>35:18<br/><b>sent</b> 16:21<br/>17:24<br/><b>sentence</b> 23:21<br/><b>sentences</b> 23:15<br/><b>september</b><br/>11:16,18 12:5<br/>12:6<br/><b>series</b> 52:17<br/><b>serve</b> 10:6<br/><b>service</b> 16:6<br/><b>set</b> 37:7 52:8<br/>56:11 57:10,14<br/>57:20 58:5</p> | <p>59:7<br/><b>setback</b> 8:18,20<br/>9:3,11<br/><b>setbacks</b> 8:22<br/><b>setting</b> 58:8<br/><b>several</b> 33:15<br/><b>shallow</b> 41:17<br/><b>shandler</b> 1:22<br/>12:14 26:15,15<br/>28:5 31:8,22<br/>37:12 49:1,12<br/>49:21 50:5,20<br/>52:16 54:13,20<br/>55:1,6,12<br/>56:22 57:12<br/><b>share</b> 13:18<br/><b>sheila</b> 4:5 5:18<br/>57:17<br/><b>shoe</b> 15:8<br/><b>short</b> 9:14<br/>24:10<br/><b>shorthand</b> 59:7<br/><b>shortly</b> 24:10<br/><b>show</b> 54:9<br/><b>shut</b> 23:2<br/><b>sic</b> 48:14<br/><b>side</b> 15:4 16:11<br/><b>signature</b> 59:15<br/><b>silence</b> 27:8,17<br/><b>silverback</b> 2:15<br/>28:22 29:2,7<br/>29:11 31:12,13<br/>36:16 41:10<br/>42:4 46:15,17<br/>50:25</p> | <p><b>silverback's</b><br/>29:25 40:14,21<br/>41:25 47:9<br/><b>simply</b> 24:8<br/>25:17 35:19<br/><b>sir</b> 13:4,20 34:1<br/><b>six</b> 21:7<br/><b>sleight</b> 39:23<br/>47:2 48:5,6<br/>51:19<br/><b>small</b> 41:19<br/><b>smoothing</b> 11:6<br/><b>sold</b> 51:9<br/><b>solid</b> 15:23<br/><b>solutions</b> 59:16<br/><b>solve</b> 51:3<br/><b>somebody</b> 4:18<br/>12:15 27:25<br/>52:5<br/><b>sort</b> 25:4 46:2<br/>52:10 53:8<br/><b>sought</b> 8:9<br/>25:24<br/><b>sounds</b> 10:2<br/>11:13 23:21<br/>57:18<br/><b>south</b> 2:4 41:13<br/>41:13,15<br/><b>spacing</b> 7:20,24<br/>7:25 8:1,5,10<br/>39:11,21,25<br/><b>spacings</b> 39:16<br/><b>speak</b> 29:8<br/><b>special</b> 21:13</p> | <p><b>specific</b> 23:18<br/>32:4,5,5 33:2<br/>52:23 53:4<br/><b>specifically</b><br/>7:23 19:14<br/>36:7 43:8,18<br/><b>specifies</b> 13:17<br/><b>specifying</b><br/>36:23<br/><b>speed</b> 11:10<br/><b>sperling</b> 2:12<br/>7:4<br/><b>spirit</b> 6:21<br/><b>squeeze</b> 15:9<br/><b>st</b> 2:4,8<br/><b>staff</b> 22:8<br/><b>stages</b> 15:24<br/><b>standard</b> 24:13<br/>24:14 48:21<br/><b>standards</b> 46:5<br/><b>standing</b> 24:25<br/>45:4,19 46:2,8<br/>46:10 47:16,21<br/>48:1 49:16<br/>54:4,10 55:25<br/><b>start</b> 4:8 6:8<br/>33:25 34:8,19<br/>39:3<br/><b>started</b> 43:22<br/><b>state</b> 1:2 8:21<br/>11:5 21:3,12<br/>41:21 46:23<br/>47:3 48:3,14<br/>48:14 51:15</p> |
|--|---|--|---|

|   |   |  |  |
|---|---|--|--|
| <b>stated</b> 5:10<br><b>statement</b> 17:8<br>17:17,23 23:13<br>25:11 47:12<br><b>statements</b><br>32:6,8 33:20<br>34:14<br><b>states</b> 43:8<br><b>status</b> 6:10<br><b>statute</b> 34:9<br>39:4,15 40:2<br><b>statutes</b> 34:12<br><b>stay</b> 55:8 56:6<br>56:12<br><b>ste</b> 2:8<br><b>stenographic</b><br>59:7<br><b>step</b> 31:10<br><b>steps</b> 19:15<br>22:3<br><b>stop</b> 33:14<br><b>strategies</b> 20:3<br><b>stream</b> 13:15<br><b>street</b> 2:13<br>59:17<br><b>stricken</b> 34:16<br><b>stricter</b> 46:5<br><b>strikes</b> 33:1<br><b>string</b> 13:10,15<br>13:25 14:11<br>16:9 17:13<br><b>struggling</b><br>49:14,15<br><b>subject</b> 7:12<br>42:10 43:9,18 | 44:4 45:5 46:4<br><b>submission</b><br>21:17<br><b>submit</b> 9:8<br>10:15<br><b>submitted</b><br>16:20 17:7<br>32:5,7,8 35:21<br>47:17<br><b>subsequent</b><br>39:5<br><b>succinct</b> 10:14<br>40:12<br><b>sudden</b> 14:3<br><b>suffice</b> 23:4<br><b>sufficiency</b><br>31:14<br><b>sufficient</b> 31:15<br>31:19 35:6<br>53:10<br><b>suggest</b> 9:8<br>18:19 31:3<br><b>suggested</b> 5:11<br>36:3<br><b>suggestion</b><br>36:19<br><b>suggestions</b><br>4:19<br><b>suit</b> 42:16,21<br>42:22 43:3,6<br>43:15<br><b>suitable</b> 14:23<br><b>suite</b> 2:13<br>59:17 | <b>summarize</b><br>20:2 22:1<br><b>summarized</b><br>29:21<br><b>summary</b> 50:21<br><b>sundries</b> 21:10<br><b>supervises</b><br>20:17<br><b>support</b> 8:20<br>9:11 34:21,22<br>36:19<br><b>sure</b> 6:18 10:9<br>21:5 22:5<br>36:14,17 53:8<br>53:22 57:4<br><b>surface</b> 16:16<br>16:17 22:14<br><b>swear</b> 20:10<br><b>sworn</b> 20:8,22<br><b>system</b> 50:6,6<br><b>t</b><br><b>table</b> 31:9 37:7<br>37:14,17 55:7<br>58:1<br><b>tabled</b> 52:9<br><b>tabling</b> 38:1<br><b>take</b> 30:11 43:4<br>50:10<br><b>taken</b> 59:5<br><b>talk</b> 55:4,14<br>57:7<br><b>talking</b> 33:15<br>42:15<br><b>team</b> 19:12<br>21:8 22:6,6,11 | 23:1<br><b>technical</b> 19:12<br>20:18 22:6,11<br>23:1 25:9<br><b>tell</b> 20:10 26:8<br>49:7,8<br><b>telling</b> 48:18<br><b>temporarily</b><br>37:16 52:9<br><b>ten</b> 42:20 46:24<br>46:25 51:8,23<br>52:2<br><b>terminate</b> 55:2<br>55:7<br><b>termination</b><br>39:17<br><b>terms</b> 23:18<br>32:4,9 33:12<br><b>test</b> 15:21,24<br><b>testified</b> 20:22<br><b>tests</b> 15:18<br><b>texas</b> 2:17<br><b>thank</b> 4:24 7:1<br>12:21,22,24<br>13:7 18:21,23<br>20:5 23:5 25:2<br>25:12 26:13<br>27:21 28:12<br>29:9,14 30:8<br>36:20 40:7,11<br>44:10 45:8<br>54:1 58:20<br><b>theenergylaw...</b><br>2:18 |
|---|---|--|--|

[thing - unit]

|   |   |  |   |
|---|---|--|---|
| <b>thing</b> 16:5 36:9<br><b>things</b> 40:19<br>51:2<br><b>think</b> 10:13,24<br>24:12 26:21,21<br>26:22 29:18<br>30:13,15,22<br>31:23,25 32:4<br>32:23,25 33:4<br>34:24 35:17<br>36:9 44:23<br>45:6 49:8<br>50:20 51:18<br>54:7 56:3,4,18<br>57:7<br><b>thinking</b> 10:1<br><b>third</b> 33:20<br><b>thoroughly</b><br>31:20<br><b>thought</b> 9:7<br>11:11,24<br><b>thoughts</b> 10:11<br>12:9 35:13<br>36:7,12<br><b>three</b> 11:7<br>13:11 14:21<br>17:14 19:1<br>25:17,25 53:2<br>53:4<br><b>threshold</b><br>44:24 54:3<br><b>time</b> 9:14 12:1<br>28:12 37:8<br>53:5 55:16 | <b>timeliness</b><br>55:21<br><b>timely</b> 31:19<br><b>times</b> 51:10<br><b>timing</b> 19:3<br><b>title</b> 30:21<br>36:16 40:15,16<br>40:20,25 42:8<br>42:13,16,21,22<br>43:3,5,6,7,15<br>43:18,23 44:16<br>45:17 46:4,22<br>46:22,24 47:1<br>47:4,8 48:9,10<br>48:18,24 49:3<br>49:11,17,22,24<br>50:11,12,15<br>51:7,8,13,14<br>52:1 53:23<br>54:6 55:20<br><b>titled</b> 51:12<br><b>today</b> 10:10<br>13:23 17:18<br>18:5 21:18<br>30:7 31:16<br>35:17 54:5<br>56:1,2<br><b>together</b> 17:21<br><b>took</b> 26:9 43:23<br><b>top</b> 5:18<br><b>towards</b> 57:18<br><b>town</b> 29:13<br>30:1,3,3<br><b>township</b> 41:15 | <b>tract</b> 41:13<br>42:9<br><b>traditionally</b><br>32:11 33:7,12<br><b>transcript</b> 1:11<br>3:3,10 4:2 59:1<br>59:9<br><b>treble</b> 7:16<br><b>tremaine</b> 2:5<br>3:6 18:10,22<br>18:23 20:6,15<br>20:24 23:25<br>25:3,9 26:20<br>30:11 44:14<br><b>trial</b> 53:11<br><b>tried</b> 35:19<br><b>true</b> 59:8<br><b>truth</b> 20:11,11<br>20:11<br><b>try</b> 40:11 46:24<br><b>trying</b> 34:17<br>38:13 39:1,2<br>47:1,6 49:14<br>50:10,13 51:21<br><b>turn</b> 13:5 28:19<br>34:4 35:10<br>38:23 40:8<br>44:11 52:4,6<br>53:18<br><b>twice</b> 10:4<br><b>two</b> 5:6 15:8,24<br>16:15 23:15<br>29:13 32:25<br>33:18 40:13<br>43:11 53:3,9 | <b>type</b> 21:9 33:17<br><b>types</b> 31:24<br><b>typically</b> 26:22<br><b>typo</b> 5:22<br><b>typographical</b><br>5:25<br><b>typos</b> 5:6,24 |
| <b>u</b>  |   |  |   |
| <b>ultimate</b> 30:20<br><b>unable</b> 55:16<br>55:24,25<br><b>uncommitted</b><br>7:19 8:14<br><b>uncontested</b><br>42:12<br><b>under</b> 5:6,9 8:1<br>17:10 39:4,10<br>40:2 46:23<br><b>underground</b><br>21:10<br><b>underlying</b><br>36:4 54:25<br>55:10,20<br><b>understand</b><br>15:25 25:22<br>29:2 34:25<br>48:17 50:9<br>57:8<br><b>understanding</b><br>26:25 54:8<br>57:9<br><b>undertaken</b><br>26:10<br><b>unit</b> 7:20,25 8:1<br>8:5,10 15:6   |   |  |   |

[unit - years]

|  |   |  |   |
|--|---|--|---|
| 19:1 39:14,21<br>41:17 42:1,4<br>43:8,13,17<br><b>units</b> 7:24<br>39:12<br><b>unpredictable</b><br>11:15<br><b>update</b> 6:10,24<br><b>updates</b> 56:21<br><b>use</b> 14:12 46:19<br><b>used</b> 39:23<br><b>usually</b> 20:25<br>33:15<br><b>utilized</b> 14:11   | <b>view</b> 9:6 44:23<br>48:20<br><b>violates</b> 39:16<br><b>violating</b> 39:15<br><b>violation</b> 47:25<br><b>virtual</b> 2:14<br><b>virtually</b> 6:14<br><b>volume</b> 16:2<br>41:24<br><b>vote</b> 5:1 6:6<br>12:25 28:13<br>38:22 54:19<br>58:11,19   | <b>we've</b> 15:1<br>35:19 52:8,8<br><b>weak</b> 14:22<br>15:4,6,10<br>22:15 26:2<br><b>week</b> 11:8<br>29:11<br><b>weeks</b> 11:7<br><b>weigh</b> 44:13<br><b>weighing</b> 30:20<br><b>wells</b> 8:3,23,24<br>13:12,13 14:19<br>14:21 15:5,8<br>15:12 16:7<br>17:14,19 19:1<br>19:3 21:13<br>24:3,9,19,21<br>25:15,18,25<br>39:5,5,11 44:2<br>44:4,5 45:1<br>47:18,19,20,24<br><b>wendell</b> 1:5<br><b>went</b> 20:2<br><b>william</b> 1:20<br><b>wish</b> 37:4 53:19<br><b>wishes</b> 36:24<br>56:25<br><b>witness</b> 3:5<br>20:9,12 32:5,6<br>32:8,8,21<br>33:20 34:10<br><b>witnesses</b> 18:16<br>19:25 20:16<br>32:17,19,20<br>33:2 34:21 | 53:1,6<br><b>wondering</b><br>25:3<br><b>word</b> 5:7 31:23<br><b>words</b> 49:22<br><b>work</b> 11:12<br>20:17,18 25:6<br>26:3 47:17,18<br><b>working</b> 47:19<br><b>world</b> 43:2<br><b>wrinkle</b> 3:6<br>19:19,19 20:6<br>20:15,21 21:2<br>21:5,16 23:8<br><b>write</b> 12:4<br><b>wrong</b> 49:7 |
| <b>v</b>   | <b>w</b>  |  | <b>x</b>  |
| <b>vaguely</b> 52:10<br><b>valid</b> 43:25<br>48:11<br><b>validity</b> 44:23<br><b>valve</b> 16:7,12<br>16:13,14<br><b>valves</b> 16:6<br>22:13<br><b>variance</b> 24:3<br>25:24<br><b>variances</b> 21:9<br>26:23<br><b>venue</b> 36:11<br>40:20 46:8<br><b>verbiage</b> 26:17<br><b>veritext</b> 59:16<br><b>versus</b> 57:9,22<br><b>vertical</b> 8:1,5,6<br>8:18,21,24 9:5 | <b>wade</b> 41:8<br><b>waiting</b> 32:18<br>47:18<br><b>want</b> 5:16<br>10:16 18:15<br>23:10 24:22<br>27:25 33:4<br>36:6 45:9,11<br>45:23 48:7<br>50:17 57:3<br>58:5<br><b>wants</b> 12:15<br><b>waste</b> 19:18<br>40:4,6,18<br><b>way</b> 27:19<br>31:23,25 33:14<br>34:25 49:13,15<br>50:14 51:20<br><b>ways</b> 11:14<br>34:22 | <b>we've</b> 15:1<br>35:19 52:8,8<br><b>weak</b> 14:22<br>15:4,6,10<br>22:15 26:2<br><b>week</b> 11:8<br>29:11<br><b>weeks</b> 11:7<br><b>weigh</b> 44:13<br><b>weighing</b> 30:20<br><b>wells</b> 8:3,23,24<br>13:12,13 14:19<br>14:21 15:5,8<br>15:12 16:7<br>17:14,19 19:1<br>19:3 21:13<br>24:3,9,19,21<br>25:15,18,25<br>39:5,5,11 44:2<br>44:4,5 45:1<br>47:18,19,20,24<br><b>wendell</b> 1:5<br><b>went</b> 20:2<br><b>william</b> 1:20<br><b>wish</b> 37:4 53:19<br><b>wishes</b> 36:24<br>56:25<br><b>witness</b> 3:5<br>20:9,12 32:5,6<br>32:8,8,21<br>33:20 34:10<br><b>witnesses</b> 18:16<br>19:25 20:16<br>32:17,19,20<br>33:2 34:21 | <b>x</b> 3:1<br><b>xto</b> 2:7 3:9 13:9<br>14:9 15:20<br>16:5,11,20<br>17:2,19 18:13<br>19:15 21:17,21<br>22:3,12 24:2<br>24:11<br><b>xto's</b> 19:12,16<br>23:16,22  |
|  |   |  | <b>y</b>  |
|  |   |  | <b>yeah</b> 21:5 57:6<br>57:17<br><b>year</b> 43:1<br><b>years</b> 42:20<br>46:24,25 51:8<br>51:23 52:2   |



[yeso - zone]

|   |
|---|
| <b>yeso</b> 41:16   |
| <b>z</b>  |
| <b>zach</b> 26:15<br><b>zachary</b> 1:22<br><b>zone</b> 14:23 |