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STATE OF NEW MEXICO  
ENERGY, MINERAL AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

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IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:

Case Nos. 21361, 21362, 21363,  
21364, 21489, 21490, 21491,  
21393, 21394, 22947, 22845,  
23318, 23319, 23320, 23321,  
23020, 23021, 23022, 23023,  
23024, 23025, 23677, 23678,  
21568, 21572, 22653, 23738,  
23739, 23762, 23763, 23765,  
23766, 23767, 23664, 23665,  
23666, 23667, 23668, 23669,  
23698, 23699, 23700, 23701,  
23702, 23703, 23704, 23705,  
22917, 23670, 23671, 22700,  
23248, 23249, 23250, 23251,  
23252, 23253, 23475, 23477,  
23365, 23366, 23688, 23689,  
23690, 23691

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VIDEOCONFERENCE HEARING

DATE: Thursday, September 21, 2023  
TIME: 8:15 a.m.  
BEFORE: Hearing Examiner Gregory Chakalian  
LOCATION: Remote Proceeding  
Santa Fe, NM 87501  
REPORTED BY: Dana Fulton, Notary Public  
JOB NO.: 5528939

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)  
  
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A P P E A R A N C E S (Cont'd)

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Leonard Lowe, Technical Examiner (by  
videoconference)

Marlene Salvidrez, Host (by videoconference)

Sheila Apodaca, OCD Law Clerk (by  
videoconference)

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I N D E X

PAGE

VOIR DIRE of Adriana Salgado

By Mr. Beck 108

VOIR DIRE of Jason Asmus

By Mr. Bruce 210

OPENING STATEMENT By Mr. Bruce 77

OPENING STATEMENT By Mr. Beck 79

WITNESS(ES):

DX CX RDX RCX

ADRIANA SALGADO

By Mr. Bruce 98 132

By Mr. Beck 117

JORDAN CARRELL

By Mr. Bruce 135 153

By Mr. Beck 146 157

By Mr. Bruce 164

By Mr. Beck 168

AMANDA REDFEARN

By Mr. Beck 173 204

By Mr. Bruce 189

JASON ASMUS

By Mr. Beck 205 246

By Mr. Bruce 235

Page 10

1  
2  
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4  
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I N D E X (Cont'd)

| WITNESS(ES) (Cont'd): | DX  | CX  | RDX | RCX |
|-----------------------|-----|-----|-----|-----|
| NICHOLAS GOREE        |     |     |     |     |
| By Mr. Beck           | 249 |     |     |     |
| By Mr. Bruce          |     | 259 |     |     |
| NICK STOWERS          |     |     |     |     |
| By Mr. Bruce          | 272 |     | 294 |     |
| By Mr. Beck           |     | 281 |     | 296 |

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E X H I B I T S

| NO.                                   | DESCRIPTION                          | ID/EVD |
|---------------------------------------|--------------------------------------|--------|
| Case 23665:                           |                                      |        |
| Exhibit A3                            | Tracked Ownership and Pooled Parties | 58/59  |
| Exhibit C                             | Notice Information                   | 58/59  |
|                                       |                                      |        |
| NO.                                   | DESCRIPTION                          | ID/EVD |
| Case 23689:                           |                                      |        |
| Exhibit 1                             | Application and Proposed Notice      | 69/    |
| Exhibit 2                             | Landman's Affidavit                  | 69/    |
| Exhibit 2C                            | List of Interest Owners              | 69/    |
| Exhibit 3                             | Geologist and Plats and Affidavit    | 69/    |
| Exhibit 5                             | Certified Notice Spreadsheet         | 69/    |
| Exhibit 6                             | Affidavit of Publication             | 69/    |
| Exhibit 7                             | Pooling Checklist                    | 69/    |
|                                       |                                      |        |
| NO.                                   | DESCRIPTION                          | ID/EVD |
| Cases 23475, 23477, 23365, and 23366: |                                      |        |
| Exhibit 1                             | Unidentified                         | 84/86  |
| Exhibit 2                             | Unidentified                         | 84/86  |
| Exhibit 2-2                           | Tract Ownership List                 | 84/86  |
| Exhibit 3                             | Unidentified                         | 84/86  |

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E X H I B I T S (Cont'd)

| NO.  | DESCRIPTION  | ID/EVD |
|--|--|--------|
| Cases 23475, 23477, 23365, and 23366 (Cont'd): |  |        |
| Exhibit 4                                      | Unidentified                                       | 84/86  |
| Exhibit 5                                      | Unidentified                                       | 84/86  |
| Exhibit 6                                      | Unidentified                                       | 84/86  |
| Exhibit 7                                      | Unidentified                                       | 84/86  |
| Exhibit 8                                      | Unidentified                                       | 84/86  |
| Exhibit 9                                      | Unidentified                                       | 84/86  |
|  |  |        |
| NO.  | DESCRIPTION  | ID/EVD |
| Exhibit A                                      | Unidentified                                       | 90/91  |
| Exhibit A1                                     | Unidentified                                       | 90/91  |
| Exhibit A2                                     | Unidentified                                       | 90/91  |
| Exhibit A3                                     | Unidentified                                       | 90/91  |
| Exhibit A4                                     | Unidentified                                       | 90/91  |
| Exhibit A5                                     | Unidentified                                       | 90/91  |
| Exhibit A6                                     | Approved Pad Location                              | 90/91  |
| Exhibit B                                      | Testimony of Geologist                             | 91/92  |
| Exhibit B1                                     | Location Map                                       | 91/92  |
| Exhibit B2                                     | Structure on top of First<br>Bone Spring Sandstone | 91/92  |
| Exhibit B3                                     | Top of Second Bone Spring<br>Sand                  | 91/92  |

|    |                          |                              |         |
|----|--------------------------|------------------------------|---------|
| 1  | E X H I B I T S (Cont'd) |                              |         |
| 2  | NO.                      | DESCRIPTION                  | ID/EVD  |
| 3  | Exhibit B4               | Cross Section from A to A    |         |
| 4  |                          | Prime                        | 91/92   |
| 5  | Exhibit B5               | Wine Rack Display            | 91/92   |
| 6  | Exhibit B6               | Depiction of Overall         |         |
| 7  |                          | Production Coming from Upper |         |
| 8  |                          | and Lower Set North Wilson   |         |
| 9  |                          | Deep Unit Wells              | 222/243 |
| 10 | Exhibit B7               | Proposed Mewbourne           |         |
| 11 |                          | Development Plan for 18 7    |         |
| 12 |                          | Section Wells                | 222/243 |
| 13 | Exhibit B8               | Offset Second Bone Spring    |         |
| 14 |                          | Well Performance             | 224/243 |
| 15 | Exhibit B9               | Basin Well Proposed Example  |         |
| 16 |                          | One                          | 226/243 |
| 17 | Exhibit B10              | Spacing Well Performance     |         |
| 18 |                          | Exhibit 2                    | 228/243 |
| 19 | Exhibit C                | Amended Testimony of         |         |
| 20 |                          | Mr. Goree                    | 89/93   |
| 21 | Exhibit C1               | Unidentified                 | 89/93   |
| 22 | Exhibit C2               | Offset Drilling Data         | 89/93   |
| 23 | Exhibit C3               | AFE Comparison Drilling      |         |
| 24 |                          | Intangibles and Tangibles    | 89/93   |
| 25 | Exhibit C4               | Evaluation of AFE            | 89/93   |

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E X H I B I T S (Cont'd)

| NO.           | DESCRIPTION   | ID/EVD  |
|---------------|---|---------|
| Exhibit D     | Affirmation of Notice,<br>Matthew Beck                | 93/94   |
| Exhibit D1    | Notice Letters  | 93/94   |
| Exhibit D2    | Mailing List Receipts                                 | 93/94   |
| Exhibit D3    | Affidavit of Publication                              | 93/94   |
| Exhibit D4    | Supplemental Letters and<br>Affidavits of Publication | 93/94   |
| NO.           | DESCRIPTION   | ID/EVD  |
| Mewbourne:    |   |         |
| Exhibit 10    | 12/1/20 Letter  | 107/    |
| Exhibit 11    | Unidentified  | 269/272 |
| Earthstone's: |   |         |
| Exhibit E     | Email from Ms. Redfearn and<br>Earthstone             | 182/182 |
| NO.           | DESCRIPTION   | ID/EVD  |
| Exhibit 12    | First Bone Spring Sand<br>Formatting                  | 156/170 |

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I N D E X (Cont'd)

D O C U M E N T S R E Q U E S T E D

| NO. | DESCRIPTION                                  | PAGE |
|-----|--|------|
| 1   | Exhibit 11 with paragraphs<br>7 - 10 omitted | 271  |
| 2   | Revised Exhibit 11A                          | 298  |

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P R O C E E D I N G S

THE HEARING EXAMINER: -- 21st, 2023.

These are the hearings of the Oil Conservation  
Division. Do we have our court reporter present?

THE REPORTER: I'm here -- I'm here.

THE HEARING EXAMINER: Okay. Are you  
ready to start?

THE REPORTER: I'm ready.

THE HEARING EXAMINER: Okay. Let's  
call the first couple of cases, 21361, 21362, 21363,  
21364.

MS. HARDY: Good morning, Mr. Examiner.  
Dana Hardy on behalf of Mewbourne Oil Company.

THE HEARING EXAMINER: Thank you,  
Ms. Hardy.

And do we have the other interested  
parties or parties that have filed entries of  
appearance in this case -- these cases?

MS. BENNETT: Good morning,  
Mr. Examiner. Deanna Bennett on behalf of Apache.

THE HEARING EXAMINER: Good morning.

MR. SAVAGE: Good morning, Mr. Hearing  
Examiner. Darin Savage on behalf of Matador  
Production Company, who is the successor in interest  
to Ascent Energy.

1 THE HEARING EXAMINER: Thank you. Good  
2 morning.

3 MS. SHAHEEN: Good morning,  
4 Mr. Examiner, everyone. Sharon Shaheen, Montgomery &  
5 Andrews, on behalf of Colgate.

6 THE HEARING EXAMINER: Good morning.

7 Ms. Hardy, we're here for a status  
8 conference on these four cases. How are we  
9 proceeding?

10 MS. HARDY: Mr. Examiner, that's  
11 correct. And these cases are actually consolidated  
12 for hearing with the next several cases on the docket.

13 THE HEARING EXAMINER: Okay.

14 MS. HARDY: I believe it's cases 1  
15 through 9. There are --

16 THE HEARING EXAMINER: Okay.

17 MS. HARDY: -- applications by Apache  
18 and Ascent with Matador as the successor in interest.

19 THE HEARING EXAMINER: Before you  
20 continue, let me just announce those then, because I  
21 wasn't sure they were all connected.

22 So we're also hearing right now 21489,  
23 21490, 21491, 21393, and 21394. And are there any  
24 other entries of appearance before we continue?

25 MS. KESSLER: Good morning,

1 MR. Chakalian, this is Jordan Kessler. I'm with EOG  
2 Resources. I believe that Mr. Padilla, Ernie [ph]  
3 Padilla, had entered an appearance for us, but since I  
4 haven't heard his name, I'll enter mine, as well.  
5 Jordan Kessler with EOG. Thank you.

6 THE HEARING EXAMINER: Good morning,  
7 Ms. Kessler. By these numbers, it indicates to me  
8 that these cases are almost three years old.

9 Ms. Hardy?

10 MS. HARDY: That's correct,  
11 Mr. Examiner. The parties have been negotiating a  
12 number of trades, and I think due to the acreage  
13 involved and the number of parties, that's taken quite  
14 a while.

15 But it's my understanding that  
16 significant progress has been made, and the parties  
17 have discussed setting another status conference on  
18 November 16th if that's acceptable to the division.

19 And I believe we're optimistic that  
20 these matters could be completed by then.

21 THE HEARING EXAMINER: Okay.  
22 Ms. Bennett, let me hear from you?

23 MS. BENNETT: Thank you. Apache is  
24 agreeable to another status conference on November  
25 16th.

1 THE HEARING EXAMINER: Okay. What I  
2 was also looking for from you is the progress of  
3 negotiations. It has been almost three years since  
4 these cases have been filed, and I'm not sure that the  
5 division is the proper place for these cases to stay  
6 on hold.

7 So, Ms. Bennett, would you inform me  
8 why these cases should not be dismissed without  
9 prejudice, so that the parties can refile when they  
10 have finished their negotiations?

11 MS. BENNETT: Sure. And just to give a  
12 bit of background on -- I mean, I agree with  
13 everything that Ms. Hardy said. But part of the delay  
14 here was also due to COVID and a emergency -- like, a  
15 storm that happened in Houston.

16 So we have been working towards going  
17 to hearing on these cases in fits and spurts, but due  
18 to circumstances beyond our control the cases have  
19 been delayed a number of times.

20 And so that -- I did -- I'm not saying  
21 that's an excuse for why they're still on the docket,  
22 but that certainly has hampered or has caused some of  
23 the delay in moving the cases forward.

24 But we -- the parties are in  
25 discussions, and I do think that keeping the cases on

1 the docket for now, anyway, does provide some touch  
2 points for us to come back before the division.

3 But of course if it's the division's  
4 preference to dismiss the cases without prejudice,  
5 then, you know, that's understandable too, given the  
6 length of the time of the cases being on the docket.

7 One thing I would note is in the past  
8 when cases have been on the docket for, say, two or  
9 three years, the division has given the parties an  
10 opportunity to confer with their clients and then  
11 present a more formal status to the division.

12 And rather than, you know, dismissing  
13 the cases outright today, perhaps that's a process  
14 that the division could follow here, which is ordering  
15 the parties to prepare a more formal status update for  
16 the division and for the division's review, and then  
17 the division could make a decision at that point.

18 THE HEARING EXAMINER: So before I go  
19 to the other parties, when you say, "A more formal  
20 status," what does that mean?

21 MS. BENNETT: We have actually had to  
22 file something with the division that shows the status  
23 of the discussions between the parties.

24 And it wasn't something that said, you  
25 know, "On June 25th there was a call between the

1 parties," but it was a more formal filing that the  
2 division required, given the circumstances.

3 THE HEARING EXAMINER: Okay. All  
4 right. Thank you.

5 Ms. Hardy, I'll come back to you in a  
6 moment.

7 Mr. Savage?

8 MR. SAVAGE: Yes. Thank you.

9 Mr. Hearing Examiner, if you look at the file, you'll  
10 note that there's quite a number of pleadings on these  
11 cases, and they're rather complicated.

12 In fact, the status of them is that  
13 they are actually part of a de novo proceeding at the  
14 commission level. And they're really not -- the part  
15 that is to be reviewed at the division level is part  
16 of that de novo hearing at the OCC.

17 So it's rather, you know, complicated  
18 to just dismiss it at this point at the division  
19 level, given the direction of the commission.

20 But the recent acquisition by Matador  
21 of Ascent's interest, that was fairly recently, and  
22 that kind of opened up some new doors for some  
23 possibilities, and negotiation, and trade, and I think  
24 it would be useful to provide that a little bit more  
25 time to see if some fruition can come of that.

1                   But these are -- you know, there was a  
2                   lot of debate about how these should proceed, whether  
3                   they even should be at the division and what should be  
4                   at the division level.

5                   So, you know, the division, I think,  
6                   should take that into account when they make a  
7                   decision.

8                   THE HEARING EXAMINER: Mr. Savage, can  
9                   you be more specific, since I'm new here? I'm not  
10                  familiar with the commission case. Do you have a  
11                  number, or a date, or something for me to refer to?

12                  MR. SAVAGE: No. I can't remember the  
13                  number off the top of my head. It seems like it was  
14                  24177, something along those --

15                  THE HEARING EXAMINER: All right.  
16                  Well, let me come back to you then. When you have the  
17                  specific information on the commission case, I'd like  
18                  to get it from you.

19                  MR. SAVAGE: Yes. I will look for that  
20                  real quick and provide that for you. Thank you.

21                  THE HEARING EXAMINER: Thank you.

22                  Let me hear from Ms. Shaheen.

23                  MS. SHAHEEN: Thank you, Mr. Examiner.  
24                  Colgate is simply monitoring this in order to protect  
25                  its interest and preserve its right to seek de novo

1 review. And at this time it has no objections to the  
2 way in which the applicants are proceeding.

3 THE HEARING EXAMINER: Okay. Thank  
4 you, Ms. Shaheen.

5 Ms. Kessler?

6 MS. KESSLER: Thank you, Mr. Chakalian.  
7 Like Ms. Shaheen -- virtual connectivity  
8 interruption -- monitoring this case -- virtual  
9 connectivity interruption -- to the division.

10 THE HEARING EXAMINER: Okay.  
11 Ms. Kessler, you were very broken up. What I  
12 understood is that, like Ms. Shaheen, your client is  
13 just monitoring this.

14 MS. KESSLER: That's -- Mr. Examiner.  
15 I'm finishing -- drop off, so I'll -- virtual  
16 connectivity interruption --

17 THE HEARING EXAMINER: Not sure the  
18 court reporter is going to be able to get everything  
19 you said, Ms. Kessler, but I understand.

20 Ms. Hardy, I didn't ask you for your  
21 position on this.

22 MS. HARDY: Mr. Examiner, I agree with  
23 Ms. Bennett and Mr. Savage. I think that the status  
24 of these cases, really, to give you a little bit of a  
25 summary, is that there were hearings held on a sent

1 application. There was a de novo appeal to the  
2 commission.

3 The Mewbourne file competing  
4 applications, and so did Apache. We sought to  
5 consolidate those new applications with the cases that  
6 were being heard in the commission.

7 The commission, instead of doing that,  
8 stayed the commission cases and asked the division to  
9 hear these other cases, and then they would be  
10 consolidated, the commission -- so it's been a long  
11 and complicated proceeding, and that's part of the  
12 reason for the delay.

13 And so the parties have been working  
14 over the past couple of years, really -- and this was  
15 impacted by COVID significantly -- to resolve all of  
16 the cases and come up with a comprehensive solution.

17 So that's what's going on. And I think  
18 it would be -- would conserve resources of the  
19 parties, really, and ultimately the division to just  
20 continue these cases for another status conference.

21 And we would be happy to provide  
22 another -- a formal response to explain the status of  
23 the negotiations, if that would be helpful.

24 THE HEARING EXAMINER: So, Ms. Hardy,  
25 that was very helpful, what you told me. When was

1 this hearing that was appealed?

2 MS. HARDY: The initial hearing at the  
3 division level on Ascent's applications, I believe,  
4 was in 2018.

5 THE HEARING EXAMINER: When you -- are  
6 you speaking of the two cases, 21393 and 21394?

7 MS. HARDY: No. It's the cases that  
8 are now on appeal for de novo hearing with the  
9 commission. And those are the case numbers that I'm  
10 hoping Mr. Savage can provide.

11 THE HEARING EXAMINER: Mr. Savage?

12 MR. SAVAGE: Yes. So to show you how  
13 convoluted this is, the original Ascent cases that  
14 were awarded operatorship were case numbers 16481 and  
15 16482. Those were the cases that were appealed.

16 And I believe that was around 2018, as  
17 Ms. Hardy points out. The OCC -- the commission case  
18 numbers for those were assigned 21277 and 21278. And  
19 then Apache's commission, they -- Apache was the  
20 original opposing party in this matter. Mewbourne was  
21 not involved as a competing application.

22 And their OCC cases were assigned 21279  
23 and 21280. Then a dispute arose between Ascent and  
24 Mewbourne. And so Mewbourne got involved and filed  
25 four cases. After the de novo hearing was accepted,

1 they filed four cases, and it became an issue of where  
2 those cases would fit.

3 And those cases are 21361 through  
4 21364. And part of those cases covered the lands of  
5 the de novo hearing, and part of the cases cover lands  
6 outside the de novo hearing, and so Ascent, in order  
7 to cover the lands outside filed 21393 and 21394.

8 And then the division decided that  
9 everything should go back to the division -- be  
10 remanded back to the division for hearing at that  
11 level.

12 So the -- I mean, so we -- the de novo  
13 hearing and cases are still active. So, you know, the  
14 division dismisses these cases. They're still in the  
15 system, and they would have to be addressed in some  
16 matter, in some capacity.

17 THE HEARING EXAMINER: Okay. I  
18 understand. So, Mr. Savage, you mentioned commission  
19 cases 21277, 21278, 21279, and 21280. Are all four of  
20 those cases stayed?

21 MR. SAVAGE: Yes. All the commission  
22 cases are stayed.

23 THE HEARING EXAMINER: Waiting for the  
24 division to make a decision on all of these nine  
25 cases?

1 MR. SAVAGE: I believe that that is  
2 correct. I'm looking at the caption. I'm looking at  
3 the earlier captions on the pleadings, and that's all  
4 the cases that have been listed.

5 I can give you also orders -- there's  
6 orders of the commission that have been issued, and  
7 those fall into the range of R-21454. And then  
8 there's various orders, A, B, C, et cetera, addressing  
9 various --

10 THE HEARING EXAMINER: And, Mr. Savage,  
11 without getting into details, what are the parties --  
12 what are the issues that the -- what are the actual  
13 issues here?

14 MR. SAVAGE: Well, there's a number of  
15 issues, but you -- the parties were much more  
16 intransigent with Ascent as the competing party. But  
17 with Matador coming in, I think I opened up the door  
18 for a lot more opportunity.

19 Matador is a much larger company, and  
20 there's some more opportunity on the table to resolve  
21 this. Ascent was a smaller company.

22 So I really think we're kind of in our  
23 last leg of this. And it is -- because procedurally  
24 it is very burdensome on the division.

25 But yeah. There's a number of issues

1     that would be, you know, a laundry list to go through,  
2     but, you know, I wouldn't have -- I wouldn't know  
3     where to start at this point to --

4                   THE HEARING EXAMINER:   Okay.   Well,  
5     Mr. Savage, what I'm asking you is do you feel as  
6     though the parties will be able to negotiate all of  
7     the issues, so that a hearing won't be necessary on  
8     these competing compulsory pooling applications or are  
9     you thinking that there still will be some need for a  
10    hearing?

11                  MR. SAVAGE:   I am hopeful and I believe  
12    that these can be resolved.   And I think it would be a  
13    matter of just finding the right solution with parties  
14    involved.   And I think that would relieve a lot of  
15    headache for everybody involved, if that can come to  
16    fruition and be realized.

17                  You know, that's all I know at this  
18    point, because I'm not involved directly in those  
19    negotiations between those.

20                  THE HEARING EXAMINER:   I see.   Okay.  
21    All right.   Well, here's what I'm going to do.   I'm  
22    going to order the parties to brief the issue on  
23    dismissal, whether I have the authority to dismiss  
24    them.   I believe I do.

25                  But if that's wrong, then I'd like to

1 know why that's wrong. And I would like those briefs  
2 within two weeks. So I'm going to set a deadline for  
3 two weeks from today for any party that wishes to  
4 brief the issue to submit a brief to me.

5 And if you want to include a formal  
6 status, as recommended by Ms. Bennett, then I am --  
7 you know, that will be part of the record, of course,  
8 the formal status, but I'm not willing to set this for  
9 another status conference in November until I give it  
10 some serious thought.

11 I'm happy to help parties resolve the  
12 issue. I just don't feel the division is a receptacle  
13 for old cases. I understand that there was an issue  
14 with COVID. We all dealt with that, but life went on.

15 So is there anything left on these nine  
16 cases before we move on?

17 MR. PADILLA: Mr. Examiner, I'm Earnest  
18 L. [ph] Padilla appearing for EOG Resources. I had  
19 connectivity problems at the beginning of the hearing,  
20 but --

21 THE HEARING EXAMINER: Yes,  
22 Mr. Padilla.

23 MR. PADILLA: We're just monitoring  
24 these cases.

25 THE HEARING EXAMINER: Thank you,

1 Mr. Padilla.

2 I don't hear anything else from any  
3 parties, so Marlene, do you have a date two weeks from  
4 today, so I can put it in my notes?

5 MS. SALVIDREZ: It should be October  
6 5th.

7 THE HEARING EXAMINER: I think you said  
8 October 6th.

9 MS. SALVIDREZ: October 5th.

10 THE HEARING EXAMINER: October 5th.  
11 Okay. And, Marlene, would those briefs or formal  
12 status reports, would they come in through the portal?

13 MS. SALVIDREZ: Yes, they will need to  
14 come in through the portal for all nine cases.

15 THE HEARING EXAMINER: Fantastic.

16 Okay. We're going to move on. So I'm  
17 now calling 22947 and 22845. I believe those are --  
18 I'm not sure if those are together, so let me just  
19 call 22947.

20 MR. FELDEWERT: Good morning,  
21 Mr. Chakalian. Michael Feldewert with the Santa Fe  
22 Office of Holland & Hart. I'm appearing on behalf of  
23 EOG Resources, Inc. And you are correct that the next  
24 case, 22845, is related to the current matter.

25 THE HEARING EXAMINER: Thank you.

1                   Are there any other parties here for  
2                   those two cases?

3                   MR. RODRIGUEZ:   Good morning.   Michael  
4                   Rodriguez with the applicant Tap Rock Operating, LLC  
5                   in case number 22845.   And also we entered an  
6                   appearance on 22947, which is a competing --

7                   THE HEARING EXAMINER:   Good morning.

8                   MS. BENNETT:   Good morning, everyone.  
9                   Deanna Bennett from Modrall Sperling on behalf of  
10                  Marathon Oil Permian in both cases.

11                  THE HEARING EXAMINER:   Good morning.

12                  Mr. Bruce, are you involved in this  
13                  case, as well?

14                  MR. BRUCE:   Yes, sir, Mr. Examiner.  
15                  I'm representing MRC Permian Company, both cases.

16                  THE HEARING EXAMINER:   Okay.  
17                  Mr. Rodriguez, these are -- well, one of these is your  
18                  case.   Is that correct?

19                  MR. RODRIGUEZ:   That's correct.   It is  
20                  case number 22845.

21                  THE HEARING EXAMINER:   Okay.   Well,  
22                  let's just talk about that case for the moment.   I  
23                  know they're related, but this -- we're here for a  
24                  status conference.   What's the status of this case?

25                  MR. RODRIGUEZ:   So Tap Rock and EOG

1 have been in production ongoing discussions. There  
2 have been several trade concepts that have been  
3 exchanged between the parties.

4 And believe Tap Rock and EOG are closer  
5 to striking a mutually-agreeable deal. Tap Rock is  
6 hopeful that the parties can resolve their differences  
7 in the near future and potentially avoid contestant  
8 hearing.

9 And as such, Tap Rock believes -- would  
10 request a status conference be set sometime in  
11 December.

12 THE HEARING EXAMINER: In December?

13 MR. RODRIGUEZ: Yes. I think that  
14 would be -- from Tap Rock's perspective, that should  
15 allow sufficient time to finalize the deal and  
16 hopefully either move forward with the uncontested  
17 hearing or dismiss these applications.

18 THE HEARING EXAMINER: And is 22947 and  
19 22845, are they competing pooling applications?

20 MR. RODRIGUEZ: Yeah.

21 THE HEARING EXAMINER: They are  
22 competing?

23 So let's hear from -- Mr. Feldewert,  
24 are you representing the other application?

25 MR. FELDEWERT: Yes. I would be. I'm

1 representing EOG Resources in case 22947. And I agree  
2 with what Mr. Rodriguez has stated.

3 I also note that there has been a new  
4 party in the -- entered as appearance in the matter.  
5 That would be Civitas Permian [ph] Operating, which I  
6 think is going to have an influence on the ultimate  
7 outcome with these matters.

8 So to get things sorted out with  
9 respect to the new Civitas [ph] entry and how that  
10 impacts his, we agreed at a status conference on  
11 December 7th, makes sense.

12 THE HEARING EXAMINER: Okay.

13 Marlene, do we know of that entry of  
14 appearance from Civitas [ph]?

15 MS. SALVIDREZ: I would need to look in  
16 the file.

17 MR. FELDEWERT: I just looked, Marlene.  
18 It was -- it's in the file for both cases.

19 THE HEARING EXAMINER: Thank you,  
20 Mr. Feldewert.

21 Okay. Marlene, do we have room on  
22 December 7th for another status conference on these  
23 two cases?

24 MS. SALVIDREZ: We do. And they can  
25 just file continuances, and just state on that

1     continuance that they would like another status  
2     conference.

3                   THE HEARING EXAMINER:    So,  
4     Mr. Rodriguez, and Mr. Feldewert, we're not issuing  
5     scheduling orders.

6                   And let me let everyone know that for  
7     things like this, we're not going to issue scheduling  
8     orders.  We're going to issue prehearing orders, but  
9     not scheduling orders, so everyone is on notice.

10                  MR. FELDEWERT:  So let me just inquire,  
11     Mr. Chakalian, if I may.  It sounds like all we need  
12     to do here and all of it is -- all we need to do is  
13     file our continuance for status conference.  The  
14     division is not going to do anything other than put  
15     the case on a December 7th docket, I believe.

16                  THE HEARING EXAMINER:  That sounds  
17     correct.

18                  Marlene, is that correct?

19                  MS. SALVIDREZ:  You are correct.  You  
20     just need to file continuances via the portal, and  
21     just state that you would like another status  
22     conference on December 7th.

23                  THE HEARING EXAMINER:  Mr. Rodriguez,  
24     when was this case filed?

25                  MR. RODRIGUEZ:  I believe the Tap Rock

1 case was filed in May of 2022. Yeah. And the EOG  
2 case in July or August of 2022.

3 THE HEARING EXAMINER: Thank you, sir.  
4 My preference is to keep cases moving along.

5 I understand that previous hearing  
6 examiners have different philosophies on older cases.  
7 I'm not saying a case that's been around for a year is  
8 an older case, but that is my preference, is to move  
9 these cases along.

10 So thank you for your input. I guess  
11 we will continue. If there's nothing else on these  
12 two cases, we can continue with the docket.

13 MR. RODRIGUEZ: Thank you.

14 THE HEARING EXAMINER: Thank you.

15 We're calling now 23677 and it looks  
16 like 23678.

17 MS. BENNETT: Good morning, Mr. Hearing  
18 Examiner. Deanna Bennett from Modrall Sperling on  
19 behalf of Avant Operating, the applicant in these two  
20 cases.

21 THE HEARING EXAMINER: Thank you.

22 Do we have any other parties present?

23 MR. FELDEWERT: Good morning,  
24 Mr. Chakalian. It's Michael Feldewert with Santa Fe  
25 Office of Holland & Hart appearing on behalf of XTO

1 Energy, Inc.

2 THE HEARING EXAMINER: Good morning to  
3 both of you. How are we doing with these two cases?

4 MR. FELDEWERT: We're still --

5 MS. BENNETT: -- I think there's one  
6 more entry of appearance.

7 MS. KESSLER:: Mr. Chakalian, if I may,  
8 Jordan Kessler on behalf of EOG Resources. Thank you.

9 THE HEARING EXAMINER: Thank you. I  
10 didn't see your entry. Thank you. And good morning.

11 So, Mr. Bennett, can you give me a  
12 status update on these cases?

13 MS. BENNETT: Yes. So Avant Operating  
14 filed these applications in June, and has been ready,  
15 and desires to go to hearing on these cases.

16 We were ready to go, and XTO filed a  
17 notice of objection to the cases proceeding by  
18 affidavit. And so that brings us to the status  
19 conference today.

20 And Avant wants to take these cases to  
21 hearing, wants to -- has some timing issues. These  
22 are on Avant's development plan in the near term.

23 And so Avant is interested in talking  
24 through today the possibility of how we can -- and I  
25 think this is consistent with what you were just

1 saying, Mr. Hearing Examiner -- how we can thread the  
2 needle, so to speak, to allow the parties some time to  
3 continue to engage in negotiations, because Avant is  
4 hopeful that it can work out any issues with XTO.

5 But at the same time, we don't want  
6 this lingering and having to come back before the  
7 division in a month, only to find that the next  
8 available contested hearing date is two months or  
9 three months out.

10 And so I have kind of an unusual  
11 proposal for the division to consider, but I think I  
12 should wait maybe to make that proposal until after we  
13 hear from Mr. Feldewert on his views on whether -- on  
14 XTO's position and how, you know, if they think they  
15 can reach agreement with Avant in the near term, which  
16 might eliminate my need to come up with this  
17 interesting proposal.

18 THE HEARING EXAMINER: Thank you,  
19 Ms. Bennett.

20 Mr. Feldewert?

21 MR. FELDEWERT: Well, I'm very  
22 interested in her interesting proposal. But, I mean,  
23 all I know that there have been discussions about  
24 reaching an agreement.

25 I suggest they might want to -- if

1 they're confident that an agreement could be reached  
2 if they might want to drop XTO as a full party, but at  
3 this point there has not been an agreement.

4 So, you know, their choice is they  
5 either -- we either reach an agreement or they proceed  
6 to hearing. So that's kind of where things stand.

7 THE HEARING EXAMINER: So,  
8 Mr. Feldewert, you filed an objection. What was the  
9 objection based on?

10 MR. FELDEWERT: The objection was based  
11 on the fact that the parties have not reached an  
12 agreement. I know that there's some discussions about  
13 potential agreement. I'm not privy to those  
14 discussions.

15 But in a circumstance where a party has  
16 not agreed to be pooled by affidavit, you file your  
17 objection, and then the division can set the matter  
18 for hearing if necessary.

19 THE HEARING EXAMINER: All right.

20 Ms. Kessler?

21 MS. KESSLER: Thank you, Mr. Hearing  
22 Examination. EOG is just monitoring this case, like  
23 the last one. So we don't have an opinion. Here to  
24 do whatever the division decides. Thank you.

25 THE HEARING EXAMINER: All right.

1 Thank you.

2 So back to you, Ms. Bennett. What is  
3 the creative suggestion?

4 MS. BENNETT: What I would like to  
5 suggest is another status conference on October 5th,  
6 which would allow Avant and XTO a couple more weeks to  
7 try to figure out how to resolve XTO's concerns.

8 And if those concerns are resolved by  
9 October 5th, then Avant would be able to proceed by  
10 affidavit.

11 But going back to my concern that on  
12 October 5th if we were to come to the division, the  
13 next available contested hearing may be in December or  
14 January.

15 I would like to ask the division's  
16 thoughts on tentatively also scheduling these cases  
17 for a contested hearing on November 16th, so that we  
18 don't find ourselves on this sort of unending trailing  
19 docket, so to speak.

20 THE HEARING EXAMINER: Okay. That  
21 makes sense.

22 MS. BENNETT: And I know that's an  
23 unusual request, but I think it does make sense.

24 THE HEARING EXAMINER: Makes sense to  
25 me too unless Marlene doesn't like the idea.

1 Marlene, how do you feel about  
2 reserving time on November 16th for a contested  
3 hearing, and setting this for an October 5th status  
4 conference?

5 MS. SALVIDREZ: So if we will set it  
6 for an October 5th status conference, those  
7 continuances will need to be filed today, so I can get  
8 the docket out. And November 16th sounds fine for a  
9 contested hearing.

10 THE HEARING EXAMINER: Okay. So it  
11 sounds like, Ms. Bennett, we're able to do that. But  
12 it sounds like you also have to file for a  
13 continuance, it sounded like.

14 MS. BENNETT: Yes. And we're prepared  
15 to do that today.

16 THE HEARING EXAMINER: Okay. So,  
17 Ms. Bennett, sounds like you got what you needed. We  
18 have an October 5th status conference and a November  
19 16 contested hearing.

20 So if, at the October 5th status  
21 conference, you've not reached a deal, there won't be  
22 any more continuances. We will have the contested  
23 hearing on November 16th.

24 MS. BENNETT: Sounds great to me.

25 THE HEARING EXAMINER: Okay.

1                   Mr. Feldewert, is there anything else  
2     on this case?

3                   MR. FELDEWERT: No, sir. Thank you.

4                   MS. BENNETT: Thanks very much.

5                   THE HEARING EXAMINER: Thank you.

6                   All right. Okay. So we're going down  
7     to -- looks like we have a hearing in 23664, 23665,  
8     BTA Oil Producers, in the Capitan Formation.

9     Mr. Feldewert, are you ready to proceed?

10                  MR. FELDEWERT: I am, except I'm  
11     wondering -- I think we were on the docket -- at least  
12     on the docket sheet, the next case would involve MRC.  
13     Case number 14. Or are we skipping around?

14                  MS. SALVIDREZ: We should be on 14 and  
15     15, cases 23738 and 23739.

16                  THE HEARING EXAMINER: Okay. I see,  
17     Marlene. Okay. 23738. We're continued from  
18     September 7th. Oh, I see. Thank you.

19                  So I'm calling 23738 and 39. MRC  
20     Permian.

21                  MR. FELDEWERT: Good morning,  
22     Mr. Chakalian. Michael Feldewert with the applicant,  
23     MRC Permian.

24                  THE HEARING EXAMINER: Wonderful. So  
25     where are we in this hearing?

1 MR. FELDEWERT: Mr. Chakalian, if you  
2 recall back at your first hearing, I believe, had a  
3 discussion about this case -- these two cases. The  
4 problem MRC had was that newspaper publication -- not  
5 get into the paper until a day later than it needed to  
6 to be timely for the -- September 7th hearing.

7 So we continued the matter to allow  
8 that notice of publication to run and meet the  
9 deadline for the timeframe. And that was Exhibit F,  
10 as in Frank, to our original hearing package. That  
11 has now been accomplished, so notice -- has been  
12 perfected.

13 The other nice discussion we had with  
14 Mr. McClure was the pool that was involved for this  
15 matter. And you recall --

16 THE HEARING EXAMINER: Mr. Feldewert,  
17 hold on one second. Let me just look at my notes on  
18 this case. 23738 and 39. "Application filed.  
19 Continue to nine twenty-one. Secure notice and to  
20 amend checklist to pool." Okay. I'm with you now.

21 MR. FELDEWERT: So I'm on the second  
22 part of that now. And --

23 THE HEARING EXAMINER: Yes.

24 MR. FELDEWERT: -- the checklist to  
25 amend the pool. So what you'll see in the file for

1 each case is that on Tuesday we filed an amended  
2 compulsory pooling checklist, along with a cover  
3 pleading for that.

4 And that amended checklist now  
5 identifies the new pool that the division identified  
6 for us, and provided the vertical extent of that pool,  
7 which was also provided by the division.

8 So with those filings, I believe we've  
9 done everything that was requested by the division,  
10 and all outstanding matters have been addressed. And  
11 so we would ask that these two cases be taken under  
12 advisement.

13 THE HEARING EXAMINER: Before I go to  
14 the technical examiner, I'm going to look on the  
15 imaging to see. 23738. Okay. Let me see what you  
16 filed here. So I have a filing here on the 19th. I  
17 have two filings, it looks like. Notice of Amended  
18 Co-Pooling Checklist. Okay.

19 And I do see page 3 of 5, 4 of 5, and 5  
20 of 5, just a checklist. And then we have also here --  
21 that's not it. Okay. How does this filing satisfy  
22 the notice of hearing?

23 MR. FELDEWERT: It does not. The  
24 Exhibit F with the original filing, the original  
25 hearing package, as the affidavit of publication by

1 the newspaper. So with the date of that publication  
2 reflected therein, the timeframe for that notice by  
3 newspaper to occur has now been complied with.

4 THE HEARING EXAMINER: Okay. I  
5 understand.

6 Do we have our technical examiner with  
7 us?

8 MR. LOWE: Yes, sir. This is Leonard  
9 Lowe.

10 THE HEARING EXAMINER: Good morning,  
11 Mr. Lowe. Did you happen to take a look at the filing  
12 in this case correcting the checklist?

13 MR. LOWE: It appears that everything  
14 that was done, as far as naming of the pooling goes,  
15 is in accordance with what I see so far.

16 But I don't know the in-depth details  
17 of what Mr. McClure was looking into, as far as the  
18 notice issue was concerned. Haven't gotten that far  
19 yet. But the full indication seems to be updated.

20 But I got one question for you,  
21 Mr. Feldewert. The pool referenced in this situation  
22 here, was that brought up on OCD's end or was it a  
23 correction? Was it just a current name change to the  
24 pool name? Is that what happened here?

25 MR. FELDEWERT: Well, it was very

1 interesting, Mr. Lowe. My understanding is that the  
2 division was apprised of the -- I'm sorry -- MRC was  
3 initially apprised of the pool that was involved.

4 Then the -- my understanding is that  
5 the division has now changed the pool for this  
6 particular area, and have identified a pool now that  
7 runs from the top of the first Bone Spring sand to the  
8 base of the second Bone Spring sand.

9 And so they provided us then --  
10 Mr. McClure by email provided that information to me,  
11 both the name of the new pool, which you'll see on the  
12 compulsory pooling checklist, and then asked that we  
13 include the vertical extent covered by this pool in  
14 the compulsory pooling checklist on page 1.

15 MR. LOWE: Okay. And basically it was  
16 on OCD's side updating the pool references here.

17 MR. FELDEWERT: Yes. This all came  
18 from the OCD. Correct.

19 MR. LOWE: Okay. And I just need  
20 clarification on that. From what I see, it looks  
21 okay. I have yet to, like I said, go in depth on the  
22 notice issue.

23 Oh. So the notice issue portion, was  
24 that just a last catch-all for noticing in the  
25 newspaper to catch all the other interested parties

1 that pertain to this case?

2 MR. FELDEWERT: Yeah. I can't  
3 remember. There was very few. I think it was only  
4 one or two, but therefore published by name in the  
5 newspaper.

6 But on September 7th, because of the  
7 Labor Day Holiday, a newspaper had not published the  
8 notice in time, so we had to continue the case for two  
9 weeks to allow that notice of publication to run the  
10 full period of time.

11 MR. LOWE: Okay. And in that notice,  
12 it is basically referenced if there's any inquiries on  
13 our -- any interested parties that want to partake in  
14 these cases to come to the OCD?

15 MR. FELDEWERT: Correct.

16 MR. LOWE: Okay.

17 MR. FELDEWERT: Provided all the usual  
18 information to give them the notice and the  
19 opportunity to be heard.

20 MR. LOWE: Okay. Those are the only  
21 questions I have pertaining to this issue. Thank you,  
22 sir.

23 THE HEARING EXAMINER: Okay. Thank  
24 you, Mr. Lowe.

25 Is there any objection to taking these

1 under advisement at this point?

2 MS. BENNETT: Thank you.

3 THE HEARING EXAMINER: Mr. Lowe?

4 MR. LOWE: As far as I can see, it  
5 looks okay. I have to -- like I said, look into  
6 in-depth detail upon this. But I guess it would be  
7 okay to take it under advisement in the meantime.

8 And if we see any other issues or  
9 flaws, or if we -- once we look at it with  
10 Mr. McClure, then we can decide otherwise at that  
11 time.

12 But I think according to what  
13 Mr. Feldewert submitted, it looks okay to me so far.

14 THE HEARING EXAMINER: Okay. Thank  
15 you, Mr. Lowe.

16 So, Mr. Feldewert, we will take these  
17 cases under advisement at this point.

18 MR. FELDEWERT: Thank you, sir.

19 THE HEARING EXAMINER: Okay. We're  
20 going to move onto 23762, and 63, and 6 -- let's stop  
21 there.

22 Do we have Mr. Bruce?

23 MR. BRUCE: Yes, Mr. Examiner,  
24 representing Mewbourne.

25 THE HEARING EXAMINER: We continued

1 these from September 7th for issues with the -- let me  
2 look at my notes. But I remember we had issues on  
3 these, as well. 23762 and 63. Okay -- yes.

4 But also, sir, it wasn't just to  
5 perfect the constructed notice, but also we were  
6 waiting for Exhibits 5 and 7 on both of these.

7 MR. BRUCE: And they've been filed.  
8 Yeah, they were filed, I think, over that following  
9 weekend.

10 THE HEARING EXAMINER: Oh, okay. Good.  
11 And that's what the deadline was, was that following  
12 Monday, close of business.

13 Marlene, do you have what you need  
14 filed now, so that we can take these under advisement?

15 MS. SALVIDREZ: So I don't keep track  
16 of what's been filed as far as exhibits. That's -- a  
17 technical examiner would need to --

18 THE HEARING EXAMINER: Oh, okay.

19 MS. SALVIDREZ: -- case file.

20 THE HEARING EXAMINER: Okay. Thank  
21 you.

22 Mr. Lowe, would you take a look at  
23 23762 and 63, and see if you have now the exhibits you  
24 need?

25 MR. LOWE: Just, Mr. Bruce, the issues

1 here were basically you need to get a checklist in;  
2 correct?

3 MR. BRUCE: Yeah. I got the pooling  
4 checklist in. Filed -- like I said, I think I filed  
5 it on the weekend, either on Sunday or Monday  
6 following the hearing.

7 And then it was -- needed to let the  
8 publication notice period run, because it was not  
9 timely published. And that has been -- two weeks.

10 MR. LOWE: So there was two concerns  
11 here with a spreadsheet, and indicated affected  
12 interest owners.

13 MR. BRUCE: Yes.

14 MR. LOWE: And the pooling checklist  
15 for how many cases here? For all --

16 MR. BRUCE: Two.

17 MR. LOWE: Two --

18 MR. BRUCE: Oh. Well, two -- these  
19 two, and then the subsequent three cases, Mr. Lowe.

20 MR. LOWE: Okay. According to the last  
21 submittal, it looks like those two items were  
22 submitted. As far as comparing in detail to what was  
23 initially submitted and all the, you know, effective  
24 interested parties and so forth, I have yet to go into  
25 depth of that yet.

1                   But according to what I see, those --  
2                   that information is provided.

3                   THE HEARING EXAMINER:   Okay.   So,  
4                   Mr. Lowe, do you have any objection if we take these  
5                   two cases, 23 -- well, let me go back to my other  
6                   spreadsheet. I have too many open at a time. 23762  
7                   and 23763. I had that we needed Exhibits 5 and 7. It  
8                   looks like Mr. Bruce filed Exhibits 6 and 7.

9                   Mr. Bruce, why are they not labeled  
10                  Exhibits 5 and 7? Instead you listed 6 and 7.

11                  MR. BRUCE:   One sec. Simple reason,  
12                  typo.

13                  THE HEARING EXAMINER:   I see. So it  
14                  really is Exhibits 5 and 7 you filed -- you mislabeled  
15                  5 and 6.

16                  MR. BRUCE:   Correct.

17                  THE HEARING EXAMINER:   Okay. Mr. Lowe,  
18                  I hope that helps you --

19                  MR. LOWE:   It -- yeah.

20                  THE HEARING EXAMINER:   Mr. Lowe?

21                  MR. LOWE:   Yes, sir?

22                  THE HEARING EXAMINER:   Does that help  
23                  you?

24                  MR. LOWE:   Yeah. I didn't -- all I  
25                  know -- I'm looking at -- I see what Dean was looking

1 for, as far as the checklist and no spreadsheet. And  
2 as far as, you know, that information or that -- those  
3 details, I do have -- we do have. So looks good so  
4 far.

5 THE HEARING EXAMINER: Okay. So,  
6 Mr. Lowe, according to my notes, they were missing  
7 Exhibits 5 and 7, plus the notice needed to be cured.  
8 The notice has been cured. And they filed Exhibits 5  
9 and 7, but they called 5 Exhibit 6.

10 MR. LOWE: Yes.

11 THE HEARING EXAMINER: So is there  
12 anything preventing us from taking this under  
13 advisement at this point?

14 MR. LOWE: I don't think so, unless  
15 Dean has any concerns or issues here after hearing,  
16 you know, specific naming of them.

17 But as far as what the detailed  
18 information that we're requesting, it appears was  
19 provided.

20 THE HEARING EXAMINER: Okay. Then  
21 we're going to take these two cases under advisement,  
22 Mr. Bruce.

23 And we're going to move onto 23765, 6,  
24 and 7. And I believe these were the same problems.  
25 They were all of the same problems. Is that correct?

1 MR. BRUCE: That is correct. There's  
2 two things -- yeah. The certified notice spreadsheet  
3 and the pooling checklists were all filed over the  
4 weekend.

5 And then I also submitted a  
6 recently-received certified green card. And if you  
7 would look at the certified notice spreadsheet, the  
8 only party that had not returned a green card was BP  
9 America Production Company.

10 And that actually arrived at my P.O.  
11 box late last night. So I was -- I am going to file  
12 that. It pertains to all three cases. And so the  
13 certified notice was accurate, and we no longer need  
14 the publication notice to be cured.

15 THE HEARING EXAMINER: I see.

16 I see Mr. Rankin turned his camera on.  
17 Mr. Rankin?

18 MR. RANKIN: Good morning,  
19 Mr. Examiner. Adam Rankin appearing in these cases on  
20 behalf of MRC Permian Company and Forhan [ph] Oil  
21 Company. No objections to the admission of the  
22 exhibits or the cases being taken under advisement.

23 THE HEARING EXAMINER: Okay. So very  
24 good. Thank you.

25 Mr. Bruce, I'm just looking at what you

1 filed for our last hearing. On the 11th we have  
2 Exhibit 4A, a recently-received certified green card.  
3 Exhibit 5, a certified notice spreadsheet. And  
4 Exhibit 7, a pooling checklist.

5 And that's for 23765. I haven't looked  
6 at 66 and 67 yet.

7 MR. BRUCE: Okay. They were filed for  
8 all three.

9 THE HEARING EXAMINER: Are you saying  
10 you filed the same document for all three?

11 MR. BRUCE: Yes, sir. Well --

12 THE HEARING EXAMINER: Okay. All  
13 right.

14 MR. BRUCE: Obviously the pooling  
15 checklist were different for each case.

16 THE HEARING EXAMINER: Okay. And is  
17 this the green card you were just talking about or you  
18 have yet another green card?

19 MR. BRUCE: No -- green card I received  
20 about two weeks ago, but after -- right after the  
21 hearing. And just last night when I went to the post  
22 office I got the final green card.

23 And if you look at the spreadsheet, the  
24 only green card I had not gotten back was from BP  
25 America. And I've got that green card in my grimy

1 little meat hooks here, and I'm going to file it with  
2 the division just to show that certified notice.

3 THE HEARING EXAMINER: Okay. Mr. Lowe,  
4 do you have any questions from Mr. Bruce on these  
5 three consolidated cases?

6 MR. LOWE: Yeah.

7 I have a -- one question for you,  
8 Mr. Bruce. You just -- out on a recently-submitted  
9 checklist -- not checklist, but the spreadsheet.  
10 Which -- which green card did you get the last green  
11 card?

12 MR. BRUCE: BP America Production  
13 Company.

14 MR. LOWE: BP America Production  
15 Company. Would they be referenced in your latest list  
16 of interest owners?

17 MR. BRUCE: Yeah. That was -- they  
18 were in the list of interest owners for the -- in the  
19 landman's exhibit, Exhibit 2, which was submitted two  
20 weeks ago.

21 MR. LOWE: Okay. I have no more  
22 issues. I don't know questions within. Thank you.

23 THE HEARING EXAMINER: Okay.  
24 Mr. Bruce, we're going to take these three cases under  
25 advisement and expect you to file the copy of the

1 green card you just received last night.

2 MR. BRUCE: Thank you.

3 THE HEARING EXAMINER: And that green  
4 card is from BP.

5 MR. BRUCE: Yes, sir.

6 THE HEARING EXAMINER: Very good. Is  
7 there anything else on those three cases?

8 MR. BRUCE: No, sir.

9 THE HEARING EXAMINER: Okay. We're  
10 going to move onto 23664, 23665, back to  
11 Mr. Feldewert.

12 Sir, are you ready to proceed with the  
13 hearing?

14 MR. FELDEWERT: Actually, I am  
15 appearing for another party other than the  
16 applicant -- Ms. Hardy is here for the applicant in  
17 these two matters.

18 MS. HARDY: That's correct,  
19 Mr. Examiner.

20 Dana Hardy with Hinkle Shanor on behalf  
21 of BTA Oil Producers, LLC.

22 THE HEARING EXAMINER: Thank you. And  
23 are you ready to proceed?

24 MS. HARDY: Yes, I am.

25 MR. FELDEWERT: And, Mr. Chakalian,

1 just -- I'm sorry. Just for the record, I'm appearing  
2 on behalf of Greyhound [ph] Resources Company.

3 THE HEARING EXAMINER: Thank you. And  
4 are you objecting to proceeding by affidavit?

5 MR. FELDEWERT: No, sir.

6 THE HEARING EXAMINER: Okay. Very  
7 good.

8 So, Ms. Hardy?

9 MS. HARDY: Thank you. In case number  
10 23664, BTA seeks an order pooling all and committed  
11 interest in the Pennsylvanian Shale formation  
12 underlying a 320-acre, more or less, standard  
13 horizontal space standard horizontal spacing unit  
14 comprised of the west half of sections 27 and 22,  
15 Township 16 South, Range 36 east in Lea County.

16 That spacing unit will be dedicated to  
17 the Capitan 22301, 27-22 State Com 19H well.

18 In case number 23665, BTA seeks an  
19 order pooling interest also in the Pennsylvanian Shale  
20 underlying a 320-acre standard horizontal spacing unit  
21 comprised of the west half -- I'm sorry -- the east  
22 half of the west half of sections 22 and 27, Township  
23 16 South, Range 36 east.

24 That spacing unit will be dedicated to  
25 the Capitan 22301 27-22 State Com number 20 well.

1           Our exhibits include the affidavits of  
2     landman Adam Davenport and geologist David Childers.  
3     Mr. Davenport provides the standard land exhibits.  
4     The tracked ownership and pooled parties are shown in  
5     Exhibit A3.

6           And as you can see from that exhibit,  
7     BTA controls about an 85 percent interest in the unit,  
8     and we are only pooling the interest of two working  
9     interest parties and one overriding royalty interest.

10          Mr. Childers provides the standard  
11     geology exhibits, including a location map, structure  
12     map, gross isopach map, and cross section.

13          The notice information is included in  
14     Exhibit C and its associated attachments. We received  
15     certified mail receipts from all but one party, and we  
16     did timely publish notice.

17          And with that, unless there are  
18     questions, I request that the exhibits be accepted  
19     into the record and that these two cases be taken  
20     under advisement. Thank you.

21                 (Exhibit A3 and Exhibit C marked for  
22                 identification.)

23                 THE HEARING EXAMINER: Any objections,  
24     Mr. Feldewert?

25                 MR. FELDEWERT: No, sir.

1 THE HEARING EXAMINER: Then these  
2 exhibits are admitted into evidence.

3 (Exhibit A3 and Exhibit C were received  
4 into evidence.)

5 Mr. Lowe, any questions on these two  
6 cases?

7 MR. LOWE: I have a question,  
8 Ms. Hardy. Good morning.

9 MS. HARDY: Good morning.

10 MR. LOWE: You just -- you're  
11 consolidating 23664 and 23665. Is that what's going  
12 on here?

13 MS. HARDY: That's correct.

14 MR. LOWE: Okay. And then which well  
15 is for 23664?

16 MS. HARDY: 23664 is the -- should be  
17 the 19H -- let me look at my -- yes. 23664 is the 19H  
18 well.

19 MR. LOWE: Okay. The 23665 is the 20  
20 well.

21 MS. HARDY: Correct.

22 MR. LOWE: Okay. I just got confused  
23 on what you verbalized earlier. I just heard a "20."  
24 I -- I didn't understand which case was for which --  
25 and as far as the -- this is a compulsory -- a

1 compulsory pooling case. They all basically hover  
2 over the same horizontal spacing unit; correct?

3 MS. HARDY: Collectively, the two  
4 applications pool the west half of these sections. So  
5 one is pooling the west half west half, and one is  
6 pulling the east half west half.

7 MR. LOWE: Okay. And then as far as  
8 the forced pooling portions of -- okay. They're  
9 almost the same or are they the same?

10 MS. HARDY: Well, there's a separate  
11 spacing unit for each well, but when you put the two  
12 applications together they pool the west half. But  
13 one of the wells is west half west half, and one is  
14 east half west half.

15 MR. LOWE: Okay. So I'm still looking  
16 through your exhibits for the 19 well right now. I  
17 think those are all -- the only questions I have.  
18 Thank you, ma'am.

19 MS. HARDY: Thank you.

20 THE HEARING EXAMINER: Okay. So,  
21 Ms. Hardy, since there are no other questions and  
22 there's no objections, these cases will be taken under  
23 advisement by the division.

24 MS. HARDY: Thank you very much.

25 THE HEARING EXAMINER: Thank you.

1                   Let's move onto 23670 and I think  
2                   23671. I think they are today.

3                   MS. VANCE: Good morning, Mr. Hearing  
4                   Examiner. Paula Vance with the Santa Fe Office of  
5                   Holland & Hart on behalf of MRC Permian. And you are  
6                   correct. Both of those cases go together. So yeah.

7                   THE HEARING EXAMINER: Thank you,  
8                   Ms. Vance. Good morning.

9                   Do we also have -- do we have any other  
10                  interested parties or other entries of appearance on  
11                  these two cases? Okay.

12                  MS. SHAHEEN: Good morning again,  
13                  Mr. Examiner. Good morning again. This is Sharoon  
14                  Shaheen, Montgomery & Andrews, on behalf of S.K.  
15                  Warren Resources.

16                  THE HEARING EXAMINER: Good morning  
17                  again. Any objection to proceeding by affidavit?

18                  MS. VANCE: Mr. Hearing Examiner --  
19                  I'll go ahead and start.

20                  I think Sharon and I were probably  
21                  going to explain the same thing. She and I spoke this  
22                  morning, and we'd actually like to request to continue  
23                  these cases to the October 19th hearing date.

24                  There's still some additional  
25                  negotiation and paperwork, I believe, that needs to be

1 completed between Matador and S.K. Warren.

2 And also, we were going to ask to  
3 present today, but we do have some additional notice  
4 that needs to be perfected and additional overrides  
5 that we are -- need to notice for pooling purposes.

6 So again, we would ask that we can  
7 continue these cases to the October 19th hearing date,  
8 and we will file that continuance today after the  
9 hearing.

10 THE HEARING EXAMINER: Marlene?

11 MS. SALVIDREZ: That sounds perfect.

12 THE HEARING EXAMINER: Was that  
13 Marlene? I'm not sure.

14 MS. SALVIDREZ: Can you not hear me?

15 THE HEARING EXAMINER: I hear you now.  
16 I just wasn't sure who was speaking.

17 MS. SALVIDREZ: So this is Marlene.  
18 And that sounds perfect.

19 THE HEARING EXAMINER: Okay. Great.

20 Ms. Shaheen, is there anything else  
21 from you?

22 MS. SHAHEEN: No. S.K. Warren has no  
23 objection to moving forward as Ms. Vance proposes.

24 THE HEARING EXAMINER: Okay. So,  
25 Ms. Vance, let me take some notes here, so I remember.

1 So we're going to continue this hearing -- we're going  
2 to set it for a hearing October 19th, so that you can  
3 perfect notice and continue negotiations.

4 MS. VANCE: That's correct. And I  
5 believe that we will have all of our -- those items  
6 taken care of by that point.

7 THE HEARING EXAMINER: You're also  
8 going to file and pay for a continuance later.

9 MS. VANCE: That's correct. We will  
10 file a motion to continue to the October 19th hearing  
11 date after the hearing this morning.

12 THE HEARING EXAMINER: So you're filing  
13 a motion to continue that?

14 MS. VANCE: That's correct. So we're  
15 requesting. Hopefully it's okay and the division  
16 concurs and provides approval of that at the hearing  
17 today.

18 THE HEARING EXAMINER: I have no  
19 problem with that. Marlene has no problem.

20 Mr. Lowe, do you have a problem with  
21 granting a continuance on these two cases?

22 MR. LOWE: Well, no.

23 THE HEARING EXAMINER: I didn't think  
24 so.

25 Okay. So the continuance is granted

1 once you file and pay for the continuance. And on  
2 October 19, are you proceeding with the hearing by  
3 affidavit or will you need a hearing at all if you  
4 work out the negotiations?

5 MS. VANCE: We should be moving forward  
6 by affidavit --

7 THE HEARING EXAMINER: As opposed to  
8 contested?

9 MS. VANCE: That's correct.

10 THE HEARING EXAMINER: I understand,  
11 Ms. Vance. I understand now. Okay. Anything else on  
12 these two cases?

13 MS. VANCE: I don't have anything.

14 THE HEARING EXAMINER: Thanks,  
15 Ms. Vance.

16 We're going to move onto 23689, and it  
17 looks like 23690, and 91.

18 And, Mr. Bruce, are you with us?

19 MR. BRUCE: Yes, sir.

20 THE HEARING EXAMINER: Okay. And do we  
21 have any other counsel? I see some other cameras  
22 going on, so let's get entries of appearance from the  
23 other parties.

24 MR. RANKIN: Good morning,  
25 Mr. Examiner. Adam Rankin with the Santa Fe Office of

1 Holland & Hart appearing on behalf of Colgate  
2 Production, Colgate Operating Permian Resources  
3 Operating.

4 THE HEARING EXAMINER: Okay. And  
5 before I go to the next counsel, do you have any  
6 objection on a proceeding by affidavit?

7 MR. RANKIN: We do not at this time.

8 THE HEARING EXAMINER: At this time.  
9 Okay. All right.

10 Ms. Kessler?

11 MS. KESSLER: Good morning again,  
12 Mr. Hearing Examiner. Jordan Kessler with EOG  
13 Resources. On behalf of EOG, we don't have any  
14 objections to continuing by affidavit with this case.  
15 We're simply here to monitor.

16 THE HEARING EXAMINER: Perfect. Thank  
17 you, Ms. Kessler.

18 And, Mr. Savage?

19 MR. SAVAGE: Good morning. Darin  
20 Savage with Abadie & Schill on behalf of Coterra [ph]  
21 Energy and Cimarex [ph] Energy Company, et al. And we  
22 have no objections to going forward by affidavit.

23 THE HEARING EXAMINER: Perfect.

24 Mr. Bruce, I want to look at the  
25 filings in these three cases, so let me pull this up,

1 23689. Are the filings complete?

2 MR. BRUCE: Yes.

3 THE HEARING EXAMINER: They are  
4 complete. Okay. Excellent. Let me get to it, and  
5 let me look at it.

6 Mr. Lowe, 23689 --

7 MR. BRUCE: And, Mr. Examiner, just for  
8 ease of filing, I -- or for my computer filing, the  
9 PDF packages, in each case there are parts one and two  
10 of the exhibits.

11 THE HEARING EXAMINER: Okay. No  
12 worries. Let me get there. The system is a bit slow.  
13 We have here different documents, so let me look first  
14 at this document filed on 9/18. Okay. I see part one  
15 of two. It's a 31-page document. I see.

16 So you have Exhibits 1 through 3 on  
17 this document and 4 through 7 on the other document.

18 MR. BRUCE: Correct. And that's the  
19 same --

20 THE HEARING EXAMINER: Okay. And -- go  
21 ahead.

22 MR. BRUCE: Really nothing. I said the  
23 parts one and two of each of the other two cases are  
24 split up the same way, the two exhibit packages.

25 THE HEARING EXAMINER: Okay. Mr. Lowe,

1 do you see the documents in this case?

2 MR. LOWE: Yes, sir, I do.

3 THE HEARING EXAMINER: Okay.

4 Wonderful. Let's start with 23689. Do you have any -  
5 -

6 Well, Mr. Bruce, do you want to  
7 present a brief presentation?

8 MR. BRUCE: Yeah. I'll present -- I'll  
9 do it briefly on the first case, 689, and then just  
10 mention a couple of things very briefly on the other  
11 two cases.

12 THE HEARING EXAMINER: Okay. Please.

13 MR. BRUCE: You know, the exhibit  
14 packages completed, Exhibit 1 is the application and  
15 proposed notice. Exhibit 2 is the landman's affidavit  
16 containing the usual plats and working interest,  
17 ownership, et cetera.

18 You will notice Exhibit 2C -- got to  
19 find it here -- a lot of people were notified. If you  
20 look at Exhibit 2C, there is a long list of interest  
21 owners. Many of them have very small interest. They  
22 are -- I notified more people than this, but these are  
23 the ones who now need to be pooled.

24 And one thing, the third page of  
25 Exhibit 2C shows that records -- certain record title

1 owners of the federal leases were also forced -- are  
2 also being force pooled, because sometimes it's  
3 difficult to get a signature out of a record title  
4 owner, which is necessary for communitization  
5 purposes.

6 And both the BLM and the State Land  
7 Office accept a pooling order as a substitute for a  
8 signature on the com agreement. So that's why that is  
9 done. I just want to point that out. It contains all  
10 the other necessary information, the AFEs, et cetera.

11 Exhibit 3 is the geologist and plats  
12 and affidavit with the usual plats showing that the  
13 geologic formation testified that third Bone Spring  
14 sand, but -- and the entire Bone Spring is being  
15 pooled and shows that it's continuous.

16 The second package, the affidavit of  
17 notice showing all of the notice letters sent out,  
18 plus all the white cards and green cards.

19 Exhibit 5 is the certified notice  
20 spreadsheet. Exhibit 6 is the affidavit of  
21 publication. There were a number of people who did  
22 not return green cards. Affidavit was timely  
23 published.

24 And Exhibit 7 is the pooling checklist.  
25 All of these exhibit packages are the same. In the

1 first case, the lands involved are the south half,  
2 north half of section 3 and south half, north half of  
3 section 4 of 20 South 29 East.

4 As to the next case, it's the north  
5 half, south half of those two sections. Same township  
6 and range. And then in case 691, it's the south half,  
7 south half of those two sections, all the same  
8 township and range.

9 I believe the exhibit packages are  
10 complete. And I'd move the admission of Exhibits 1  
11 through 7 in each case, and ask that being taken under  
12 advisement.

13 (Exhibit 1, Exhibit 2, Exhibit 2C,  
14 Exhibit 3, Exhibit 5, Exhibit 6, and  
15 Exhibit 7 were marked for  
16 identification.)

17 THE HEARING EXAMINER: Mr. Lowe.

18 MR. LOWE: Good morning again,  
19 Mr. Bruce.

20 MR. BRUCE: Good morning.

21 MR. LOWE: Case 23689 -- actually, each  
22 of these cases, are they separate wells?

23 MR. BRUCE: They're -- spacing --  
24 different wells, different spacing units. All the --  
25 the Bone Spring is being force pooled in every case.

1 And in this case, all of the wells are -- they're Bone  
2 Spring sand wells.

3 But yeah, they're separate spacing  
4 units with three separate -- with a well on each  
5 spacing unit.

6 MR. LOWE: Okay. I think it would help  
7 OCD out, as far as for everybody, if you all placed  
8 your checklist up front of all your -- of your  
9 exhibits that you submit -- that -- that you are  
10 presenting for these cases. It just --

11 MR. BRUCE: -- I will do that -- that  
12 was a hard -- always put it as the last exhibit.

13 MR. LOWE: Yeah. Because that's -- I  
14 know you all want your hearing orders done quickly.  
15 To help us out, to help you out, you know, to put a  
16 little ease on that if you put the checklist up front.

17 MR. BRUCE: Okay.

18 MR. LOWE: And as far as kind of  
19 from -- okay. It's the computer. I thought I had to  
20 get Michael McMillian [ph] on you there. And as far  
21 as all the affected parties, they were all notified,  
22 and they were all verified, and basically promptly  
23 noticed; right?

24 MR. BRUCE: Yeah. They were notified  
25 by -- as I said, Exhibit 5, the certified notice

1 spreadsheet shows that there were a lot of parties --  
2 a number of them, anyway, a lot -- I did receive a  
3 bunch of green cards back.

4 But there are a number of parties who I  
5 did not receive these green cards back from. But that  
6 was cured by the affidavit of publication marked  
7 Exhibit 6.

8 MR. LOWE: Okay. And as far as  
9 exhibits goes for -- for each of these three cases,  
10 they're all pretty much about the same in general  
11 then.

12 MR. BRUCE: Yeah. And it's pretty  
13 uniform. Yes.

14 MR. LOWE: Okay. I think those are the  
15 only questions I got, Mr. Bruce.

16 THE HEARING EXAMINER: Okay, Mr. Lowe.  
17 I'm just looking through -- I wanted to make sure  
18 they're all complete before I move on. So our imaging  
19 website is a little slow. So I've already checked  
20 23689, and I do see that is complete. Here we go.

21 23690 is also complete. Okay. Let me  
22 check the -- yeah. And the last one, 91. Okay. Here  
23 we have yellow pages. All right. Mr. Bruce, I am  
24 finding all the exhibits as expected in 23689, 23690,  
25 and 23691.

1                   So unless there's an objection to  
2     taking this under advisement from anyone -- and I  
3     haven't heard anything -- and Mr. Lowe is finished  
4     with his questions, we will take these three  
5     applications under advisement.

6                   Okay. And now we're moving on to  
7     23475, 77, 23365, 23366. Here we have a contested  
8     hearing or hearings. We're consolidating these. It  
9     looks like we have -- let's just have people introduce  
10    themselves.

11                  Let's start out with the counsel for  
12    Earthstone.

13                  MR. BECK: Good morning, Mr. Hearing  
14    Examiner. Matt Beck on behalf of the applicant for  
15    Earthstone Operating, LLC.

16                  THE HEARING EXAMINER: Mr. Beck. Okay.  
17    Then, Mr. Beck, I think you filed a motion to strike.  
18    Is that correct?

19                  MR. BECK: Yes, Mr. Hearing Examiner.

20                  THE HEARING EXAMINER: We'll continue.  
21    Let's have other entries of appearance, please.

22                  MR. BRUCE: Mr. Examiner, Jim Bruce  
23    representing Mewbourne Oil Company in all cases.

24                  THE HEARING EXAMINER: Okay. Thank  
25    you, sir.

1 MR. JONES: Good morning, Mr. Hearing  
2 Examiner. Blake Jones with Steptoe & Johnson  
3 monitoring the cases on behalf of Northern Oil and Gas  
4 for all cases.

5 THE HEARING EXAMINER: Thank you, sir.

6 MS. RYAN: Good morning, Mr. Examiner.  
7 Beth Ryan on behalf of Conoco Phillips and COG  
8 Operating.

9 THE HEARING EXAMINER: Okay. Thank  
10 you. Good morning.

11 MR. FELDEWERT: Good morning,  
12 Mr. Chakalian. Michael Feldewert with Santa Fe Office  
13 of Holland & Hart appearing on behalf of Devon Energy  
14 Production Company and on behalf of MRC Permian.

15 THE HEARING EXAMINER: Okay. Thank  
16 you.

17 Do we have any other entries of  
18 appearance on these four cases? Not hearing any. Do  
19 we have any interested parties? Also not hearing any.  
20 Okay. So let's deal with the motion to strike first.

21 So, Mr. Beck, I read your motion. I  
22 did not get a response from anyone. I didn't feel  
23 like we needed a response. I'm denying the motion on  
24 the following grounds.

25 I understand that you were objecting

1 to the delay in the rebuttal witness and any possible  
2 rebuttal exhibits. I'm denying the motion, because  
3 the way I view -- let me grab the rule here.

4 The way I view this rule in my  
5 authority is as follows. And I'm citing to nineteen  
6 fifteen four. And here we have prehearing statements.  
7 And it says, "But in no even later than 5 p.m.  
8 Mountain Time on Thursday proceeding the scheduled  
9 hearing date."

10 So this was filed one day later. So I  
11 understand your objection. However, in subpart 14 of  
12 the rule, under A, it talks about testimony. And it  
13 says, "Hearing before the commission or the division  
14 examiner shall be conducted without breach of  
15 formality." So I take that into consideration.

16 I also go to part 17 of the rule,  
17 "Rules of Evidence and Exhibits, A, presentation of  
18 evidence. Subject to other provisions, the  
19 commissioner, examiner shall afford a full opportunity  
20 to the parties and the judicatory hearing."

21 Okay. So I look at those parts of the  
22 rule. There isn't a lot -- there isn't a lot in this  
23 rule otherwise that controls how I rule on this  
24 motion.

25 However, as a trial attorney, when I --

1 and I was a prosecutor for six years -- when I had a  
2 rebuttal witness, that rebuttal witness did not need  
3 to be listed on my witness list, but the judge  
4 construed the need for a rebuttal witness or rebuttal  
5 exhibits very strictly.

6 So what I'm going to do, Mr. Beck, is I  
7 leave it to you to make an objection. If you want to  
8 object to a rebuttal witness if one is called or  
9 rebuttal evidence in the form of a document or an  
10 exhibit, you are free to make the argument that this  
11 witness should have been listed on the original  
12 witness list that was filed timely in this matter.

13 And if you can make that argument, then  
14 I will exclude that witness or the exhibits. But  
15 until you make that, I'm going to deny your motion.

16 So are we ready to proceed with the  
17 hearing?

18 MR. BRUCE: Yes. I am, Mr. Examiner.  
19 I would point out one thing. I never saw this motion  
20 to strike, so that's why --

21 THE HEARING EXAMINER: Okay.

22 Mr. Beck?

23 Okay, Mr. Bruce.

24 Mr. Beck?

25 MR. BECK: Mr. Hearing Examiner, I'll

1 take a quick look, but I know that as soon as it was  
2 filed, I think Monday morning, it was sent out to all  
3 the parties who had appeared, including Mr. Bruce, via  
4 email. So let me make sure that's correct.

5 It also appeared on the docket at 10:47  
6 a.m. on Monday morning, on the OCD docket, so --

7 THE HEARING EXAMINER: Well, Mr. Bruce,  
8 I'm looking at the certificate of service, page 12 of  
9 the document. He does state that he served it on you.  
10 Whether you received it or not, I can't, obviously --  
11 but it is denied anyway, so I don't think that we  
12 should waste time on this any longer.

13 MR. BRUCE: Correct.

14 THE HEARING EXAMINER: So, Mr. Bruce,  
15 are you presenting the case?

16 MR. BRUCE: Yes.

17 THE HEARING EXAMINER: Okay. Please  
18 proceed.

19 MR. BRUCE: Okay. I don't know if you  
20 want any opening statements or not, or just dive into  
21 the case, Mr. Examiner.

22 THE HEARING EXAMINER: You know, is it  
23 your pleasure -- Mr. Bruce, you have the burden of  
24 persuasion, of course. So if you want to give a  
25 succinct opening statement, please feel free.

1 MR. BRUCE: Okay. I will be brief, but  
2 normally I am.

3 Mr. Beck, in his prehearing statement,  
4 set forth an order, R 21834, stating factors involved  
5 when we had competing pooling situations like this.

6 There is another older case, the  
7 commission order, R 10731-B. And the main -- the  
8 commission set forth the main issues to look at,  
9 number one, the geology. Number two, good faith  
10 negotiations.

11 Number three, AFEs, although that's a  
12 minor consideration, and then working ownership or  
13 control. I think both parties will get into that in  
14 the hearing.

15 I would just point out that there's a  
16 couple of key factors here. Mewbourne has been  
17 working on this project for several years now, and I  
18 believe it's been diligent in the good faith  
19 negotiations.

20 Furthermore, in these particular well  
21 units, working ownership or control is a key factor,  
22 because Mewbourne's cases are supported by about 75  
23 percent of the working interest owners, which is a  
24 substantial factor involved.

25 And finally, we believe that the

1 geology, the zones Mewbourne refers to be tested, are  
2 the better zones to test.

3 And with that, the only other issue, I  
4 think, that you want to look at is under division  
5 regulations, when you're dealing with unitized lands,  
6 like Mewbourne's are, in section 7, a party who wants  
7 to drill has to get the approval of the state land  
8 commissioner to drill those lands.

9 Mewbourne has that approval and  
10 Earthstone does not. And therefore, we think  
11 Mewbourne has the superior position in this -- in  
12 these cases. Thank you.

13 THE HEARING EXAMINER: Okay.  
14 Mr. Bruce, before you continue, who is the technical  
15 examiner on this case today?

16 MR. LOWE: I believe it's still me,  
17 Mr. --

18 THE HEARING EXAMINER: Okay. I wasn't  
19 sure if we were going to have a different one for  
20 compulsory pooling competing applications or not. So  
21 it is still you, Mr. Lowe?

22 MR. LOWE: As far as I know. Nobody  
23 else told me otherwise, but --

24 THE HEARING EXAMINER: Okay. All  
25 right. Sounds good. This is my first contested

1 hearing.

2 And what I want to ask the parties is  
3 does Mr. Bruce have the burden of persuasion for all  
4 four cases or does he only have it for 23365 and 66,  
5 whereas Earthstone would have the burden of persuasion  
6 in 75 and 77? Can anyone advise me on that?

7 MR. BRUCE: I guess I've never really  
8 put it that way, Mr. Examiner, but -- the examiners  
9 have generally looked at these and decided who has the  
10 better argument.

11 So I guess -- I guess it's probably  
12 proper what you're saying. Mr. Beck has the burden of  
13 persuasion on his cases, and I have the burden of  
14 persuasion on mine.

15 THE HEARING EXAMINER: Okay. All  
16 right.

17 Mr. Beck, how do you feel about that?

18 MR. BECK: I agree with Mr. Bruce.

19 THE HEARING EXAMINER: Wonderful. So,  
20 Mr. Beck, do you have a brief opening statement?

21 MR. BECK: Yes, Mr. Hearing Examiner.  
22 Earthstone is filing competing applications with  
23 Mewbourne in these matters. As Mewbourne points out,  
24 previously Mewbourne had looked to extend the North  
25 Wilson Deep Unit in the September -- or excuse me --

1 in 2020.

2 In December of 2020, it agreed with  
3 Earthstone's predecessor in interest, Chisholm, to  
4 remove the sections from the expansion of the North  
5 Wilson Deep Unit that it now seeks to drill.

6 And it did that because of Chisholm's  
7 opposition to including these areas in that expansion  
8 of the North Wilson Deep Unit.

9 Chisholm opposed that expansion for the  
10 exact reason that Earthstone has submitted competing  
11 applications for these wells.

12 And that is because Earthstone owns  
13 interest in both the east half, east half section 18  
14 and the west half, east half of section 18. Mewbourne  
15 does not own working interests in those sections.

16 So when the division looks at the  
17 working interest ownership for these competing  
18 applications, that's a key factor.

19 Also looking at the good faith  
20 negotiations, which is a factor in both of the cases  
21 that Mr. Bruce listed for you, Chisholm's opposition  
22 and Mewbourne's agreement for that opposition factor  
23 into those good faith negotiations.

24 Also, when the division is looking at  
25 the protection of correlative rights, waste, the

1 factors that it looks at in all applications, should  
2 be notable to the division.

3 When you're looking at the geology of  
4 the two competing applications and development plans  
5 that Earthstone, unlike Mewbourne, is applying for  
6 four wells in the spacing units, whereas Mewbourne is  
7 applying for two wells in the spacing units.

8 Mewbourne is targeting only the second  
9 Bone Spring sand formation. Earthstone, on the other  
10 hand, is targeting both the first and second sand  
11 formations within the Bone Spring.

12 The final factor to that is that for  
13 the second sand formation, the Bone Spring,  
14 Earthstone's application is providing for what's  
15 referred to as a wine rack formation for the drilling  
16 sections and the testing.

17 And that's a more modern approach to  
18 ensure that the spacing between the wells is further  
19 apart, which allows for a more efficient and  
20 eventually more economical production from these  
21 wells.

22 And so Earthstone will be asking the  
23 division and will show today that its development plan  
24 is superior to that of Mewbourne's.

25 THE HEARING EXAMINER: Okay. Thank

1     you, Mr. Beck.

2                     Mr. Bruce, do you want to -- your case  
3     in chief?

4                     MR. BRUCE: Yes. What I planned on  
5     doing was running through the -- well, first I'll go  
6     exhibit by exhibit -- I mean, excuse me -- witness by  
7     witness. And I'd like to get the pertinent witness  
8     sworn in as a -- geologist, engineer, or whatever.

9                     And then I would run briefly through  
10    the exhibits and ask some follow-up questions if that  
11    procedure is acceptable to you.

12                    THE HEARING EXAMINER: Let me -- before  
13    we get -- I think I'd like to get all the witnesses  
14    sworn in at one time by the court reporter. But  
15    before we do that, let's talk about the exhibits for a  
16    moment.

17                    Each party has multiple exhibits. Let  
18    me take a look first. Do I have an exhibit list from  
19    you? Let's see. This here is a prehearing statement.

20                    Give me a moment here. What is this?  
21    This is Earthstone's exhibits list. Let's go back  
22    now. Earthstone's amended prehearing statement.  
23    Okay. This is still Earthstone.

24                    Mr. Bruce, I'm looking for your exhibit  
25    list. I'm sure I'll find it. We have an amended

1 prehearing. Mr. Bruce, on what date did you file your  
2 exhibit list?

3 MR. BRUCE: Last Thursday,  
4 mid-afternoon.

5 THE HEARING EXAMINER: What was the  
6 date, sir?

7 MR. BRUCE: What is that? The 14th.

8 THE HEARING EXAMINER: Okay. I'm  
9 looking. I have all the documents open here. I have  
10 a prehearing statement from you. I don't see your  
11 exhibit list. Can you point it out to me?

12 MR. BRUCE: Hold on. I got to get to  
13 my computer, sir.

14 THE HEARING EXAMINER: Let's take a  
15 five-minute break. It's 9:45. We're going to come  
16 back on the record at 9:50 this morning. Thank you.

17 (Off the record.)

18 THE HEARING EXAMINER: September 21st.  
19 We are continuing the contested hearing in 23475,  
20 23477, 23365, and 23366.

21 Mr. Bruce, I think I found your  
22 exhibits. I think I found your exhibits. So I have a  
23 green cover sheet with Exhibits 1 through 9. Is that  
24 correct? Mr. Bruce, are you with us?

25 //

1 (Exhibit 1 through Exhibit 9 were  
2 marked for identification.)

3 MR. BRUCE: Yes, I am. Sorry. Muted  
4 myself. Yes. The green package is the main exhibit  
5 list. And then --

6 THE HEARING EXAMINER: And then I see  
7 additional exhibits filed on the 19th. It looks like  
8 Exhibit 10. Then there's a self-affirming statement  
9 by Nick Stowers, but it doesn't have an exhibit number  
10 next to it. And then I have Exhibit 12.

11 MR. BRUCE: Yeah. The affidavit should  
12 be Exhibit 11. It's marked in the package.

13 THE HEARING EXAMINER: I see. So you  
14 are, what, amending Exhibits 10, 11, and 12 through  
15 this filing?

16 MR. BRUCE: No. Exhibits 10 and 12 are  
17 new exhibits. And then Exhibit 11, the Nick Stowers  
18 affidavit, that's the rebuttal witness.

19 THE HEARING EXAMINER: I see. That's  
20 your rebuttal witness. Okay. And then we have  
21 another -- filing -- hold on a second. Then we have  
22 another filing on the 20th, which was yesterday, with  
23 the yellow cover page.

24 MR. BRUCE: Yeah --

25 THE HEARING EXAMINER: -- the colors

1 are actually helpful. And it looks to me like you are  
2 revising Exhibit 2-2.

3 MR. BRUCE: Yes. Two in each case,  
4 because there was -- we discovered some mistakes in  
5 the original filing, and so we wanted to correct what  
6 was in there --

7 THE HEARING EXAMINER: Okay. Well,  
8 let's go to -- I understand. Let's go to Mr. Beck.

9 Mr. Beck, are any of -- do you object  
10 to the admission of any of these exhibits into  
11 evidence?

12 MR. BECK: Yes, Mr. Hearing Examiner,  
13 as I think you're probably anticipating from the  
14 motion to strike and exclude.

15 We do object to the exhibits that were  
16 filed on Tuesday, the 19th, about 4 in the afternoon,  
17 as well as the testimony by Mr. Stowers, the purported  
18 rebuttal witness whose testimony was disclosed two  
19 days before. And it's not rebuttal testimony, but  
20 testimony that should've been set forth originally.

21 We -- don't object to the -- let me --  
22 I don't want to cut you off. Just to complete it for  
23 you, we don't object to the admit to 2-2, because I  
24 think that that's probably a closer representation of  
25 the working interests, and is certainly something that

1 we would've anticipated originally being corrected,  
2 whether now or at a later date.

3 THE HEARING EXAMINER: Okay. So let me  
4 very clear and specific. Which exhibits are you not  
5 objecting to or are you stipulating to?

6 MR. BECK: Sure. And let me make sure  
7 I've got it in front of me, as well. It's Exhibits 1  
8 through 9, which were timely filed under the Court's  
9 pre-hearing order and under the rules applicable to  
10 these proceedings.

11 And we object to Exhibit 10, what I  
12 think is Exhibit 11, but let me check -- yes. Exhibit  
13 11, and Exhibit 11A and B, and Exhibit 12.

14 THE HEARING EXAMINER: Okay. And then  
15 you're not objecting to the revised Exhibits 2-2. Is  
16 that correct?

17 MR. BECK: That's correct.

18 THE HEARING EXAMINER: All right. Let  
19 me make notes of this. Revised 2-2. Okay. So  
20 Exhibits 1, 2, revised 2-2, 3, 4, 5, 6, 7, 8, and 9  
21 are hereby admitted into evidence by stipulation.

22 (Exhibit 1, Exhibit 2, Exhibit 2-2,  
23 Exhibit 3, Exhibit 4, Exhibit 5,  
24 Exhibit 6, Exhibit 7, Exhibit 8, and  
25 Exhibit 9 were received into evidence.)

1                   And Exhibits 10, 11, and 12 are not  
2                   admitted into evidence at this time. Mr. Bruce can  
3                   attempt to lay a foundation and make arguments, but  
4                   that's for the future.

5                   So, Mr. Bruce, do you understand that?

6                   MR. BRUCE: Yes, sir, Mr. Examiner.  
7                   And I did want to point out one thing. There's  
8                   actually been three pre-hearing statements I filed.  
9                   One was filed in February of this year when we thought  
10                  we were going to hearing. I amended that, and that  
11                  one was filed.

12                  And we filed September 14th in the  
13                  mid-afternoon. And then the next morning when my  
14                  witnesses saw Earthstone's exhibits, that I filed for  
15                  an amended statement to say that we may file rebuttal  
16                  exhibits and -- witness Mr. Stowers. I just wanted to  
17                  get that timeline down straight.

18                  THE HEARING EXAMINER: Okay. I  
19                  understand that. So are you -- okay. Well, what I'm  
20                  doing here now is I'm looking for the parties -- I'm  
21                  looking toward the parties for stipulations on each  
22                  other's exhibits.

23                  So some have been stipulated to,  
24                  Mr. Bruce, and some have been objected to.

25                  MR. BRUCE: Okay.

1 THE HEARING EXAMINER: I've admitted  
2 some into evidence. Some have not been admitted into  
3 evidence at this time. So now, Mr. Bruce, I'm going  
4 to turn to you for the same question.

5 Mr. Beck, let me get your exhibit list.  
6 I have a table of contents on page 2 of 150. We have  
7 how many -- let me ask you. It looks as though you  
8 have Exhibits A, B, C, D, and subparts Number 2. Is  
9 that correct?

10 MR. BECK: That's correct.

11 THE HEARING EXAMINER: Okay.  
12 Mr. Bruce, do you have the filing that I'm referring  
13 to? It was filed on September 14th.

14 MR. BRUCE: Yes, I do.

15 THE HEARING EXAMINER: Okay.  
16 Wonderful. Now before I ask you a question,  
17 Mr. Bruce, Mr. Beck, are there any amendments, or  
18 changes to these exhibits, or did you add any?

19 MR. BECK: There was an amendment filed  
20 the next morning, Exhibit -- amended Exhibit C. And  
21 what it added was the resume or CV of Mr. Nicholas  
22 Goree, which is Exhibit C. It just included his  
23 resume after his direct testimony.

24 THE HEARING EXAMINER: Okay. And  
25 you're marking that as Exhibit C, but I already showed

1 that you have, in tab number 4, Exhibit C, C1, C2, C3,  
2 C4. So you already have an Exhibit C. So I'm  
3 confused.

4 (Exhibit C and Exhibit C1 through C4  
5 were marked for identification.)

6 MR. BECK: Yeah. So I apologize for  
7 that. I probably could've made it more clear for you.  
8 Exhibit C is an eight-paragraph direct testimony from  
9 Nicholas Goree.

10 THE HEARING EXAMINER: Okay.

11 MR. BECK: And then paragraph 4 in  
12 that says -- in the, I guess, the penultimate  
13 sentence, "My resume is attached for the division's  
14 review and consideration."

15 I omitted his resume when I filed it --  
16 for 14. And so the amended Exhibit C, which I filed  
17 in the morning of the 15th, just includes his resume.

18 THE HEARING EXAMINER: I see. So  
19 you --

20 MR. BECK: Otherwise it's the same.

21 THE HEARING EXAMINER: Okay. All  
22 right. I understand now what happened. So you're  
23 amending -- but you didn't mark it -- you didn't mark  
24 Exhibit C as "Amended Exhibit C," which is what's  
25 confusing here.

1 MR. BECK: Yeah. I apologize for that.  
2 It had a cover page on it.

3 THE HEARING EXAMINER: I see.

4 MR. BECK: And I should've been more --

5 THE HEARING EXAMINER: I see it now.  
6 So Exhibit C is actually an amended Exhibit C on the  
7 filing from the 15th of September. Okay.

8 So, Mr. Bruce, I don't know -- do you  
9 have all those documents there?

10 MR. BRUCE: Yes, I do, sir.

11 THE HEARING EXAMINER: Okay. Very  
12 good. So let's start with Exhibit A, A1, 2, 3, 4, 5,  
13 and 6. Do you stipulate to any of those?

14 (Exhibit A and Exhibit A1 through  
15 Exhibit A6 were marked for  
16 identification.)

17 MR. BRUCE: I have no objection to  
18 Exhibit A and its attachments. And I have no --

19 THE HEARING EXAMINER: Okay. Hold on,  
20 Mr. Bruce. Just let's go one step at a time, because  
21 I'll get confused if we don't.

22 MR. BRUCE: Okay.

23 THE HEARING EXAMINER: Okay. So A --  
24 and then we have 1 through 6. They're admitted into  
25 evidence through stipulation.

1 (Exhibit A and Exhibit A1 through  
2 Exhibit A6 were received into  
3 evidence.)

4 Okay. Let's go to Exhibit B.

5 MR. BRUCE: Okay.

6 THE HEARING EXAMINER: Mr. Bruce?

7 MR. BRUCE: Yes. I -- this is the  
8 testimony of the geologist. And in particular, I  
9 object to the admission of Exhibits B6 through B10,  
10 because they pertain to reservoir engineering, not --

11 THE HEARING EXAMINER: Okay.

12 MR. BRUCE: And I --

13 THE HEARING EXAMINER: You don't have  
14 to explain to me, Mr. Bruce. I just want to hear what  
15 you're going to stipulate to and what you're not going  
16 to. So back to B.

17 MR. BRUCE: Okay.

18 THE HEARING EXAMINER: It sounds like  
19 you're stipulating 1 through 5. Is that correct?

20 MR. BRUCE: Yeah. Exhibit B, and then  
21 B1 through B5.

22 (Exhibit B and Exhibit B1 through B5  
23 were marked for identification.)

24 THE HEARING EXAMINER: Perfect. All  
25 right. Good.

1                   So they are admitted now into evidence  
2     by stipulation.

3                   (Exhibit B and Exhibit B1 through B5  
4                   were received into evidence.)

5                   But we are objecting to 6 through 10  
6     based on the foundation.

7                   MR. BRUCE:   Correct.

8                   THE HEARING EXAMINER:   So we have a  
9     lack of foundation.

10                  Okay.   So, Mr. Beck, you know what the  
11     objection is.

12                  Now let's go to C and its subparts,  
13     including the amended C, the amended direct testimony  
14     of Nicholas Goree.

15                  Are those stipulated to, Mr. Bruce, or  
16     not?

17                  MR. BRUCE:   Yeah.   Mr. Goree's  
18     testimony and exhibits I have no objection to.

19                  THE HEARING EXAMINER:   All right.   Let  
20     me make notes.

21                  MR. BRUCE:   And that would be the  
22     amended stuff filed on Friday, I believe.

23                  THE HEARING EXAMINER:   Plus 1 through  
24     4.

25                  MR. BRUCE:   Correct.

1 THE HEARING EXAMINER: All right. So  
2 they are now admitted into evidence by stipulation.

3 (Exhibit C and Exhibit C1 through C4  
4 were received into evidence.)

5 Now we're going to go to D, and then  
6 its subparts, 1 through 4.

7 (Exhibit D and Exhibit D1 through  
8 Exhibit D4 were marked for  
9 identification.)

10 Mr. Bruce.

11 MR. BRUCE: Which other exhibits now?

12 The --

13 THE HEARING EXAMINER: D as in David.

14 MR. BRUCE: I'm sorry. I don't have  
15 the -- what are they? I don't have the exact list  
16 right in front of me --

17 THE HEARING EXAMINER: Okay. Sure. It  
18 says here, "Exhibit D, affirmation of notice, Matthew  
19 Beck." D, notice -- well, let's just wait till the  
20 end -- notice letters, D1. Mailing list receipts, D2.  
21 Affidavit of publication, D3, and supplemental letters  
22 and affidavits of publication D4.

23 MR. BRUCE: No objection.

24 THE HEARING EXAMINER: Okay. Very  
25 good.

1                   So Exhibits D and D1 through 4 are  
2 admitted into evidence by stipulation.

3                   (Exhibit D and Exhibit D1 through  
4 Exhibit D4 were received into  
5 evidence.)

6                   Okay. So, Mr. Bruce, do you have all  
7 your witnesses here?

8                   MR. BRUCE: Yes, I do.

9                   THE HEARING EXAMINER: Okay. Very  
10 good. How many do you have?

11                  MR. BRUCE: I have three witnesses,  
12 Adriana Salgado, landman, Jordan Carrell,  
13 C-A-R-R-E-L-L, geologist, and then Nick Stowers,  
14 engineer.

15                  THE HEARING EXAMINER: Okay. And Nick  
16 Stowers is the rebuttal witness. Is that correct?

17                  MR. BRUCE: Yes.

18                  THE HEARING EXAMINER: Okay. Well,  
19 we're going to get them all sworn in.

20                  So I need everyone to turn their  
21 cameras on. So far I have one person with their  
22 camera on.

23                  In the meantime, Mr. Beck -- there, we  
24 have another -- there we have all three. Very good.

25                  And, Mr. Beck --

1                   Hold on. Hello. One moment.

2                   Mr. Beck, do you have your witnesses  
3 available?

4                   MR. BECK: Yes, Mr. Hearing Examiner.  
5 We have Amanda Redfearn, who is the landman, Jason  
6 Asmus, who is the geologist, and Nicholas Goree, who  
7 is the petroleum engineer. They should be -- their  
8 cameras here.

9                   THE HEARING EXAMINER: Okay.  
10 Wonderful. I'm sorry. What did you say about their  
11 cameras?

12                  MR. BECK: They should be activating  
13 their cameras now --

14                  THE HEARING EXAMINER: I see --

15                  MR. BECK: Yeah.

16                  THE HEARING EXAMINER: Okay. I know --

17                  MR. BECK: Ms. Redfearn is --

18                  THE HEARING EXAMINER: I think we're  
19 missing one; right?

20                  MR. BECK: Yeah. Mr. Goree should be  
21 coming on just momentarily here.

22                  MR. GOREE: I know. I'm sorry. There  
23 you go.

24                  THE HEARING EXAMINER: There we go.  
25 Thank you, sir.

1                   Okay. Let's have everyone raise their  
2 right hand.

3 WHEREUPON,

4                   ADRIANA SALGADO,  
5 called as a witness and having been first duly sworn  
6 to tell the truth, the whole truth, and nothing but  
7 the truth, was examined and testified as follows:

8 WHEREUPON,

9                   JORDAN CARRELL,  
10 called as a witness and having been first duly sworn  
11 to tell the truth, the whole truth, and nothing but  
12 the truth, was examined and testified as follows:

13 WHEREUPON,

14                   NICK STOWERS,  
15 called as a witness and having been first duly sworn  
16 to tell the truth, the whole truth, and nothing but  
17 the truth, was examined and testified as follows:

18 WHEREUPON,

19                   AMANDA REDFEARN,  
20 called as a witness and having been first duly sworn  
21 to tell the truth, the whole truth, and nothing but  
22 the truth, was examined and testified as follows:

23 WHEREUPON,

24                   JASON ASMUS,  
25 called as a witness and having been first duly sworn

1 to tell the truth, the whole truth, and nothing but  
2 the truth, was examined and testified as follows:

3 THE HEARING EXAMINER: All right. The  
4 only person I'm not sure I heard from was Mr. Goree.

5 Did you affirm?

6 WHEREUPON,

7 NICHOLAS GOREE,  
8 called as a witness and having been first duly sworn  
9 to tell the truth, the whole truth, and nothing but  
10 the truth, was examined and testified as follows:

11 THE HEARING EXAMINER: You do. Okay.  
12 Wonderful.

13 May the record reflect that all the  
14 witnesses have affirmed to tell the truth and are  
15 under oath at this point.

16 So, Mr. Bruce, you're putting on your  
17 case first, your case in chief first. And then, of  
18 course, it'll turn to Mr. Beck for his case in chief.

19 So, Mr. Bruce, please proceed.

20 MR. BRUCE: Okay. Mr. Examiner, first  
21 I would go to the landman, Adriana Salgado. She's  
22 been sworn in. Her exhibit with number 2 states her  
23 experience. And I would ask that she be admitted as  
24 an expert -- be qualified as an expert petroleum  
25 landman.

1 THE HEARING EXAMINER: Okay.

2 And, Mr. Beck, I know you didn't object  
3 to the exhibit, but do you object to her being  
4 qualified as a expert?

5 MR. BECK: No.

6 THE HEARING EXAMINER: Okay. Very  
7 good.

8 Mr. Bruce, please proceed. She is  
9 admitted as an expert.

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q Okay. Ms. Salgado, the section 7 lands here  
13 today in all four cases are in the North Wilson Deep  
14 Unit. Is that correct?

15 A I'm sorry. I couldn't hear you. Could you  
16 repeat, please?

17 Q Yeah. The section 7 lands that all four  
18 cases are involved in today, those are lands within  
19 the North Wilson Deep Unit. Is that correct?

20 A Yes, sir.

21 Q And that is -- virtual connectivity  
22 interruption --

23 THE HEARING EXAMINER: Mr. Bruce, your  
24 connection is not good. And if we're going to proceed  
25 with the case in chief, we have to have a clear

1 connection.

2 MR. BRUCE: Can you hear me better now?

3 THE HEARING EXAMINER: Yes, I can.

4 Yes. But -- we couldn't before, and your witness  
5 couldn't understand you, and I'm sure the court  
6 reporter couldn't either.

7 MR. BRUCE: Okay. Well, I was hearing  
8 some interference on the line, and that wasn't here,  
9 because this room is pretty silent. So anyway, let me  
10 move forward.

11 THE HEARING EXAMINER: Please.

12 BY MR. BRUCE:

13 Q Ms. Salgado, the Deep Unit, or the unit,  
14 I'll just call it, that's 100 percent State of New  
15 Mexico land; correct?

16 A Correct.

17 Q And when did you start trying to put  
18 together the unit, and when did we get unit approval?

19 A I began working on the North Wilson Deep  
20 State Unit expansion in 2020. We filed an application  
21 in 2020, and we received final approval in the middle  
22 of 2021.

23 Q And then did shortly after that Mewbourne  
24 commence the process of getting wells drilled within  
25 the unit?

1           A     Yes, sir. We have so far drilled four unit  
2 wells to date.

3           Q     And did all of those well units have to be  
4 force pooled, because of uncommitted mineral interest  
5 within the unit area boundary?

6           A     Yes, sir, they did.

7           Q     Okay. Now under the unit agreement, what is  
8 the drilling obligations that the state land office --  
9 go ahead.

10          A     -- the drilling commitment of 14 wells in  
11 the first five years, and the unit will contract to  
12 producing drill blocks after 10 years. Therefore, we  
13 need to drill.

14          Q     Okay. And Mewbourne has sole right to  
15 operate within the exterior boundaries of the unit.  
16 Does it not?

17          A     Yes, sir. Mewbourne is the designated unit  
18 operator.

19          Q     Okay. And section 18 clearly is not in the  
20 unit.

21          A     Correct.

22          Q     And we'll get into some other things with  
23 the other witnesses, but this land formed by  
24 Earthstone, section 18, they own a large interest in  
25 section 18 that's set forth in your land exhibits.

1           A     Yes, sir. That's correct.

2           Q     Who originally -- who was the original  
3 interest owner?

4           A     Chisholm -- Energy -- Chisholm Energy  
5 Operating.

6           Q     And at one time, could Earthstone have  
7 drilled from section 18 south into section 19 if it  
8 wanted 2-mile lateral?

9           A     Correct. When we negotiated or when I  
10 negotiated with Chisholm to remove the east half of  
11 that section 18 from the proposed unit, they asked us  
12 to do that. We agreed to it.

13                     They simply did not want to spread their  
14 interest throughout the entire unit, because they had  
15 a larger working interest in that tract, in the east  
16 half of section 18.

17                     At the time that we negotiated, section 19  
18 to the south of section 18 had not been drilled upon  
19 yet.

20                     Since then, things have changed in that  
21 area, so it's kind of boxed Earthstone and other  
22 parties into that section 18. So they could have  
23 possibly drilled there, like, a year ago, but never  
24 attempted to do that.

25           Q     Okay. And now if they want to drill 2-mile

1 laterals in the east half of section, including the  
2 east half of section 18, they would have to go north  
3 into the unit area; correct?

4 A Correct.

5 MR. BRUCE: Okay. Mr. Examiner, there  
6 is --

7 THE HEARING EXAMINER: I'm waiting for  
8 you, Mr. Bruce.

9 MR. BRUCE: Yes. I know, sir. I just  
10 wanted to get the correct rule. NMAC 19.15.16.15.B6.

11 THE HEARING EXAMINER: Okay. Hold on.

12 MR. BRUCE: Yes, sir.

13 THE HEARING EXAMINER: Hold on. I  
14 wasn't prepared to have to look up a rule, so give me  
15 a minute. I'm not familiar with every rule yet. One  
16 moment, please.

17 MR. BRUCE: Sure.

18 THE HEARING EXAMINER: Okay. And what  
19 are you relying on this rule for?

20 MR. BRUCE: Mr. Examiner, in part it  
21 says that no horizontal spacing unit may be designated  
22 that lies partly within and partly outside of a state  
23 exploratory unit, which is what the North Wilson Deep  
24 Unit is, or the federal exploratory unit if the  
25 horizontal spacing unit includes state trust lands

1 without the written consent of the commissioner of  
2 public lands.

3 BY MR. BRUCE:

4 Q Ms. Salgado, does Mewbourne have that  
5 support from the state land office?

6 A Yes.

7 THE HEARING EXAMINER: We couldn't hear  
8 you, ma'am --

9 THE WITNESS: Yes, sir. We do.

10 THE HEARING EXAMINER: Good. Please  
11 speak up, Ms. --

12 BY MR. BRUCE:

13 Q And is that marked Exhibit 4 in the exhibit  
14 package?

15 A Yes, sir.

16 Q Okay. To the best of your knowledge, does  
17 Earthstone have a similar approval from the state land  
18 office?

19 A To the best of my knowledge, they do not.

20 Q Okay. Just a couple more questions,  
21 Ms. Salgado. Another thing regarding your revised  
22 tract ownership list, they show that Mewbourne has  
23 about 28 1/2 percent interest in each well unit. Does  
24 it have support via a joint operating agreement from  
25 other interest owners?

1           A       Yes, sir, we do. Currently, with -- sorry.  
2       Go ahead.

3           Q       Go ahead.

4           A       I was just going to state currently with the  
5       letter of support from Devon Energy, we have a total  
6       of about 72 percent approval of working interest  
7       owners to drill these wells.

8           Q       Okay. And --

9                   THE HEARING EXAMINER: Mr. Bruce.

10                  MR. BRUCE: Yes?

11                  THE HEARING EXAMINER: Mr. Bruce, I'm  
12       confused about Exhibit 4. I thought Exhibit 4 was the  
13       state land office support.

14                  MR. BRUCE: Oh, I'm sorry, sir. I was  
15       moving forward after that. Yeah. You'll see at the  
16       bottom of the letter -- or not the bottom -- toward  
17       the end of the email where Mr. Dawson, who is a  
18       longtime employee not only of the state land office,  
19       but the oil conservation division, he does give  
20       approval for Mewbourne to drill.

21                  THE HEARING EXAMINER: Okay. I  
22       understand. That's Exhibit 3, though. That's why I  
23       was confused.

24                  MR. BRUCE: Oh, Exhibit 3. I am sorry,  
25       sir. I'm looking at -- I was looking at letter 4,

1 which is the letter of support from Devon.

2 THE HEARING EXAMINER: Yes, I know. I  
3 understand. Okay. I'm clear now. I understand.  
4 Please proceed with your examination of this witness.

5 MR. BRUCE: Okay.

6 BY MR. BRUCE:

7 Q Now your Exhibit 2-2 is the tract ownership  
8 list. They list all the working interest owners in  
9 these two wells. Do they not?

10 A Yes, sir.

11 Q And then the asterisk by certain companies,  
12 those are the parties who need to be pooled.

13 A Correct.

14 Q Now there's Earthstone, Oxy USA, MRC  
15 Permian, and Oxy USA WTP. There is also Devon Energy  
16 needs to be pooled. And so this is the correct thing.  
17 The letter of support from Devon supporting  
18 Mewbourne's proposal over Earthstone's is marked  
19 Exhibit 4. Is it not?

20 A That's correct.

21 Q Now tell me a little bit about Devon, that  
22 they own interest inside the unit area, but I don't  
23 know if all or most of them are uncommitted. They own  
24 various mineral interests or working interests in  
25 various tracts. Is that a fair statement?

1           A     Yes, sir. Devon has participated in our  
2 first four wells. We have pooling order. Their  
3 preference is just to be pooled into elect under a  
4 pooling order. So yes, sir, they -- they do own  
5 their --

6           Q     So even though they haven't signed a JOA,  
7 they are supporting Mewbourne in its application.

8           A     That is correct. They have stated that they  
9 would prefer to drill 2-mile laterals instead of being  
10 confined to 1 mile.

11          Q     They have a pretty large interest in section  
12 18. Is that where their interest ownership arises?

13          A     Yes, sir. That is correct.

14          Q     Okay. One thing that came up in  
15 Earthstone's testimony was the surface use. Does  
16 Mewbourne have a surface use agreement with the  
17 surface owner?

18          A     Yes, sir. We do. There are no surface  
19 issues affecting Mewbourne.

20          Q     And again, what was that rough interest with  
21 Devon's approval? How much support do you have for  
22 drilling your wells, percentage-worth -- support?

23          A     That's approximately 72 percent.

24          Q     And then one -- matter is -- I've marked it  
25 Exhibit 10. It's a letter between Mewbourne and

1 Chisholm. What does that -- it's dated December 1,  
2 2020. What does that letter state?

3 (Mewbourne Exhibit 10 was marked for  
4 identification.)

5 THE HEARING EXAMINER: Hold on. That  
6 letter is not in evidence, so you're going to need to  
7 present a foundation for that letter to come in, and  
8 we're going to let Mr. Beck object and make an  
9 argument. So let's slow down here on Exhibit 10.  
10 Please proceed.

11 BY MR. BRUCE:

12 Q First of all I'll just ask, Ms. Salgado, who  
13 is this letter agreement between?

14 A This letter agreement is between Chisholm  
15 Energy Operating, LLC, Chisholm Energy Holdings, LLC,  
16 and Mewbourne Oil Company.

17 Q And were you responsible for negotiating  
18 this letter agreement?

19 A Yes, sir.

20 Q And so did you essentially draft this  
21 letter?

22 A Yes, sir.

23 Q And I think you just said it had agreed to  
24 exclude certain tracts from the North Wilson Deep  
25 Unit. Does it say any -- are there any other

1 agreements in this letter other than those specific  
2 excluding the tracts?

3 A Chisholm agreed to commit to participate in  
4 the expansion of the North Wilson Deep State Unit once  
5 those tracts were removed. That's all.

6 Q Okay. The interests that did commit to the  
7 unit, are they fairly small interests compared to its  
8 roughly 50 percent interest in section 18?

9 A That is correct.

10 Q And because they had a large interest in  
11 section 18, did they want to keep that excluded from  
12 the unit?

13 A That is correct. They didn't want to dilute  
14 their interest.

15 MR. BRUCE: Okay. Mr. Examiner, I move  
16 the admission of Exhibit 10 -- Mewbourne Exhibit 10.

17 THE HEARING EXAMINER: Mr. Beck?

18 MR. BECK: Yeah. May I voir dire the  
19 witness for just a minute on a couple of these issues?

20 THE HEARING EXAMINER: Please do.

21 MR. BECK: Thank you.

22 EXAMINATION

23 BY MR. BECK:

24 Q Ms. Salgado, did you ever read Mewbourne's  
25 motion to dismiss Earthstone's applications in these

1 proceedings?

2 THE HEARING EXAMINER: We can't hear  
3 you, Ms. Salgado. Can you speak louder?

4 THE WITNESS: Yes, sir.

5 BY MR. BECK:

6 Q Do you need me to ask the question again,  
7 Ms. Salgado?

8 A No, sir.

9 Q Did you ever --

10 A I -- I responded with a "Yes, sir."

11 Q You did read that. Did you read  
12 Earthstone's response to the motion to dismiss in  
13 April of this year?

14 A I -- I did, sir. I can't tell you if I have  
15 that -- if I remember everything that it said, but  
16 yes, sir.

17 Q Do you remember that it talked a lot about  
18 the agreement between Chisholm and Mewbourne regarding  
19 exclusion of section 18 from the expansion of the  
20 North Wilson Deep Unit?

21 A Yes, sir.

22 Q And when did you sign this letter from  
23 Mewbourne that's marked Exhibit 10?

24 A Sorry. Could you --

25 Q Yeah. I assume that -- you said you drafted

1       this letter that's Exhibit 10; right?

2                       THE HEARING EXAMINER:   Ms. Salgado, we  
3       can't hear you and neither can the court reporter.

4                       THE WITNESS:   Yes, sir.

5       BY MR. BECK:

6               Q       So when did you find this document that's  
7       Exhibit 10 to be marked for this hearing?

8               A       When did I sign it or find it?   I can't hear  
9       you.   I'm sorry.

10              Q       Find, F-I-N-D.

11              A       It's been in our file, sir.   I don't  
12       remember the exact date.

13              Q       You think it was in your files in April or  
14       May of this year?

15              A       Yes, sir.

16              Q       But you didn't provide it to the Court when  
17       it was deciding the motion to dismiss that was going  
18       to dismiss these applications for Earthstone.  You  
19       didn't provide it to the hearing officer or the  
20       division then, did you?

21              A       Correct.

22              Q       Why not?  Did you answer that?  You must've  
23       cut out.

24              A       I said I don't know how to answer that.

25              Q       And according to you, in exchange for

1 signing this letter, Chisholm agreed to participate in  
2 the North Wilson Deep Unit expansion that was in front  
3 of the division in December 2020; right?

4 A That's correct.

5 Q And that interest of Chisholm you know is  
6 now with Earthstone; right, as the successor in  
7 interest of Chisholm's interest in the North Wilson  
8 Deep Unit?

9 A That is correct.

10 Q But Mewbourne did not provide this signed  
11 letter purporting to be signed by Chisholm in this  
12 matter until two days ago; right?

13 A That is correct.

14 Q And do you know sitting here today that  
15 Earthstone's only ability to file any kind of response  
16 to this letter under the rules of the division, as  
17 stated in the prehearing order, would've been a week  
18 ago today?

19 A That is correct, sir.

20 Q Did you -- so you knew that our only  
21 chance -- Earthstone's only chance to respond to this  
22 in writing would've been a week ago today; right?  
23 Your sound is cutting out. I saw your lips move, but  
24 I don't know the court reporter would be able to read  
25 lips as well as mine.

1           A       I'm sorry.  Yes.

2                       MR. BECK:  That's all I have,  
3   Mr. Hearing Examiner.  Thank you.

4                       THE HEARING EXAMINER:  Mr. Beck, I  
5   appreciate that the voir dire is finished.  But do you  
6   maintain your objection?  Do you want to make an  
7   argument about it?  What do you want to do?

8                       MR. BECK:  Yes, Your Honor.  Yeah.  
9   Earthstone maintains its objection.  I understand your  
10  position as the hearing officer.  This letter is news  
11  to Earthstone.

12                      It apparently -- I would expect it's  
13  news to the division, considering that the division  
14  directly addressed this issue on the motion to  
15  dismiss.

16                      And it was not as if -- I mean,  
17  everything in those briefings -- granted, I did not  
18  argue it.  I didn't draft those briefings.  But  
19  everything in those briefs was directed at this  
20  agreement.

21                      And then not only was it not filed what  
22  is now over four months ago or three months ago before  
23  the division issued the order, not only was it not  
24  timely filed last Thursday -- and perhaps we could've  
25  done something about it, but it wasn't filed until two

1 days ago.

2 So I think it should be excluded.  
3 Earthstone has not had the opportunity to talk to  
4 anyone who is a signatory to this. We didn't know who  
5 prepared it until a few moments ago.

6 And so that's the reason Earthstone  
7 believes it should be excluded from this hearing and  
8 from the division's consideration.

9 THE HEARING EXAMINER: Thank you,  
10 Mr. Beck.

11 Mr. Bruce?

12 MR. BRUCE: Mr. Examiner, she has  
13 testified to its authenticity. And there's two  
14 things. That in the letter there's nothing agreeing  
15 not to pool certain acres.

16 The other thing, it's been stated on  
17 the order -- or in the order approving the expansion  
18 of the unit area, which was issued two years ago, and  
19 it was in the testimony that Chisholm asked Mewbourne  
20 to exclude the acreage described in Exhibit 10 from  
21 the unit, and Mewbourne said, "Yes." Period.

22 That's all that was ever said at the  
23 commission hearing -- or at the division hearing. I  
24 don't know what there is. I mean, that's -- and I  
25 thought this was a dead issue, and I didn't know

1 anything about it until I saw their pre-hearing  
2 statements late Thursday night.

3 So I think it's perfectly acceptable.  
4 And going along with the idea that you should let in  
5 all relevant evidence.

6 And the thing that I find amazing is  
7 what they're saying is that there's an agreement that  
8 Mewbourne cannot drill into section 18, but they're  
9 saying that they can drill into Mewbourne's operated  
10 acreage in section 7. That simply doesn't make sense.

11 THE HEARING EXAMINER: Mr. Bruce, we're  
12 getting off the subject here. Mr. Beck is arguing  
13 that this letter should have been produced -- this  
14 exhibit should've been produced timely. And he's  
15 arguing that it was not produced timely.

16 I'm not quite sure what your argument  
17 is. I do see what the -- I do see that this was dated  
18 December 1, 2020. Your witness stated she drafted  
19 this letter.

20 So I'm not understanding why this  
21 wasn't produced in a timely fashion. Can you directly  
22 answer that question?

23 MR. BRUCE: I didn't -- all I know is  
24 when the unit area was formed, I was the attorney for  
25 Mewbourne in that case, and I never saw the letter. I

1 just was told that Mewbourne agreed to exclude this  
2 acreage. I had to go amend the application --  
3 actually, dismiss one application and file another.

4 And I think there was another entity  
5 who asked for some acreage to be deleted. And that  
6 was done. That's all I knew about it.

7 And it really just mirrors what was  
8 known to Chisholm years ago. And Earthstone is the  
9 one who bought Chisholm. They ought to know about it.  
10 I don't see the big issue.

11 THE HEARING EXAMINER: But, Mr. Bruce,  
12 the rules here are very specific about exhibits and  
13 when they need to be filed. This is late filed. And  
14 unless you have a good reason, I'm going to sustain  
15 the objection and not admit Exhibit 10.

16 MR. BRUCE: Well, I think you said at  
17 the beginning that, you know, that these hearings  
18 are -- the evidentiary part of the hearing is formal.  
19 And I would just rely on that.

20 But Ms. Salgado -- I can ask their  
21 witness about it, but I would just say it's been  
22 common practice just to file exhibits as you get them,  
23 and -- but I'll agree with whatever you say,  
24 Mr. Examiner.

25 THE HEARING EXAMINER: Okay. Thank

1 you, sir. I'm not aware of what common practice was  
2 before I got here, but as a trial attorney and as  
3 someone who can read these rules and interpret the  
4 rules, you though there's such a thing as fair play  
5 and not, you know, unnecessarily surprising your  
6 opponent.

7 And I feel like this exhibit was not  
8 timely filed, and there's no good reason to let it in  
9 at this point.

10 So Exhibit 10 is excluded from evidence  
11 at this point.

12 So, Mr. Beck, you voir dired this  
13 witness. Now I believe this is your opportunity for  
14 cross-examination of this witness.

15 MR. BECK: Yeah. I don't know if  
16 Mr. Bruce has more with her, Mr. Hearing Examiner. I  
17 don't know that he was finished. And so I'll  
18 reserve --

19 MR. BRUCE: Just one follow-up  
20 question. Thank you, Mr. Beck.

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

23 Q Ms. Salgado, do you know or are you aware of  
24 any agreement with either Chisholm or Earthstone,  
25 verbal or written, never to pool the east half of

1 section 18?

2 A I am not.

3 MR. BRUCE: Thank you.

4 THE HEARING EXAMINER: Mr. Beck?

5 MR. BECK: Thank you, Mr. Hearing  
6 Officer.

7 CROSS-EXAMINATION

8 BY MR. BECK:

9 Q Ms. Salgado, I want to talk to you and make,  
10 first of all, clear, when you said that all of the  
11 acreage in Mewbourne's applications here is part of  
12 the Northwest Deep Unit, that's not accurate, is it?

13 A The east half of section 18 is not part of  
14 the unit.

15 Q And that east half of section 18 is included  
16 in the application for the division; correct?

17 A Correct.

18 Q Right?

19 A Correct.

20 Q I want to direct your attention to Exhibit 3  
21 in Mewbourne's application exhibits, which is the  
22 letter you were referring to earlier -- excuse me --  
23 the email you referred to earlier from the state land  
24 office. Do you have that in front of you?

25 A Yes.

1                   MR. BECK: And I don't know if it's  
2 showing up on your computer, but I brought it up in  
3 front of mine. Are you seeing that, Mr. Hearing  
4 Officer?

5                   THE HEARING EXAMINER: I am.

6 BY MR. BECK:

7           Q     It looks to me like, Ms. Salgado, this is an  
8 email from Scott Dawson to you. Is that right?

9           A     Yes.

10          Q     Now this says -- the subject line is "EXT RE  
11 North Wilson Deep Unit"; right?

12          A     Right.

13          Q     So this was an email from Mr. Dawson in  
14 response to something that you provided.

15          A     Yes.

16          Q     Do you still have a copy of whatever you  
17 provided him?

18          A     Not -- I don't have it in front of me.

19          Q     Well, since we don't have that, maybe we can  
20 just look at this a little bit more closely.

21                   It looks like in the first paragraph there,  
22 the second sentence, he's providing you his  
23 understanding, which says that Earthstone is not a  
24 part of the unit agreement; therefore, they cannot  
25 drill into or beneath the North Wilson Deep Unit."

1           Is that what -- that's what that says right  
2       there in Exhibit 3; right?

3           A       Yes.

4           Q       But that's not correct.

5           A       No.

6           Q       Correct is that Earthstone actually is a  
7       part of the North Wilson Deep Unit; right?

8           A       That is correct. And I have spoken to him  
9       since then. He understands that.

10          Q       Okay. And in this letter, further down he  
11       says that "We," meaning the state land office,  
12       "Discourages from drilling across unit boundaries, but  
13       understand and agree to Mewbourne's request for doing  
14       so in this case." That's what he said; right?

15          A       Correct.

16          Q       So even though they generally discourage it,  
17       because they thought at that time, at least, that  
18       Earthstone was part of the unit agreement, that they  
19       were approving your request?

20          A       I'm -- I don't understand your statement or  
21       your question.

22          Q       So even though we agreed the state land  
23       office generally discourages drilling across unit  
24       boundaries, but they approved your request here to  
25       drill across the North Wilson Deep Unit boundary based

1 on their understanding that Earthstone wasn't part of  
2 that agreement; right?

3 A I -- I cannot speak on behalf of the state,  
4 sir.

5 Q Now I'm showing you what's marked as --  
6 let's see here. This is Exhibit 1. And what we  
7 talked to earlier about -- this is Earthstone's  
8 response to Mewbourne's motion to dismiss these  
9 applications. Do you see that email in front of you?

10 A I see it.

11 Q And this is an email from Amanda Redfearn.  
12 You know who Amanda Redfearn is; right?

13 A Yes -- yes.

14 Q She's the landman for Earthstone in these  
15 applications; right? And this is an email from her to  
16 Scott Dawson at the state land office; right? Can you  
17 say that one more time?

18 A Yes.

19 Q Okay. And you've seen this before, because  
20 when Ms. Redfearn wrote this email to the state land  
21 office, she carbon-copied it to you; right?

22 A Yes.

23 Q You didn't include Amanda Redfearn or anyone  
24 from Earthstone on your correspondence with the state  
25 land office. Did you?

1           A       No.

2           Q       And in this email that you were copied on,  
3       Ms. Redfearn asked the state land office to hold back  
4       on its approval of your application for this or  
5       Earthstone's application if it's granted these pooling  
6       orders to approve of either of those for drilling  
7       these wells in front of the division today; right?

8           A       It's really small, sir. I can't read it.

9           Q       See if I can fix it up for you. I don't  
10       know if I can.

11                   I'm reading the last paragraph, the last  
12       sentence -- or excuse me -- the penultimate paragraph,  
13       the last sentence there, that says, "We respectfully  
14       ask that you and the SLO reserve judgment with halting  
15       a position in this controversy until the parties have  
16       had the opportunity to present their positions to the  
17       OCD." Is that right?

18          A       That -- that's what it says.

19          Q       Okay. And to your knowledge has the state  
20       land office told Earthstone that it won't approve  
21       their application with the division, grant speed  
22       applications today?

23          A       Sir, I can't speak on behalf of the state.

24          Q       I'm not asking you to. I'm asking you to  
25       testify whether the state land office has told you

1     that it will take a position on whether it will grant  
2     Earthstone the ability to drill these wells if the  
3     division grants its application today.

4           A     All I have is the letter that they sent me  
5     or the email that they sent me. That's what I have.

6           Q     Meaning what we just looked at as Exhibit 3  
7     in Mewbourne's application, that email.

8           A     Yes, sir.

9           Q     You have no other communications from the  
10    state land office about Earthstone's applications  
11    today other than that email that's Exhibit 3?

12          A     No.

13                   MR. BECK: I'm now showing you what's  
14    exhibit -- this is the original Exhibit 2-2. I just  
15    want to point out -- well, hold on. This is going to  
16    confuse everybody, since we haven't updated 2.2. Give  
17    me one second here.

18                   THE HEARING EXAMINER: Mr. Beck, do you  
19    want to take a five-minute break?

20                  MR. BECK: We can, but I'm pulling it  
21    up right now, if we don't need to. So I'm fine  
22    just --

23                   THE HEARING EXAMINER: Okay.

24                  MR. BECK: All right. I don't want to  
25    slow you down, but I can pull it up.

1 BY MR. BECK:

2 Q Showing you a notice of filing additional  
3 exhibits that was filed last night. This is Exhibit  
4 2-2. I was correct. But let's look at this.

5 When I look at the updated revised Exhibit  
6 2-2 here, and it's providing a leasehold percentage  
7 interest in tract ownership for the North Wilson Deep  
8 Unit 8H. Do you see that in front of you?

9 A Yes.

10 Q And this exhibit was prepared by you, I  
11 assume. Is that right?

12 A Yes.

13 Q Then I'm looking at what's the third page in  
14 this exhibit. It's labeled as page 1 for the -- I  
15 guess this is for the North Wilson Deep Unit, number  
16 9H. Do you see that in front of you?

17 A Yes.

18 Q You prepared this, as well?

19 A Yes.

20 Q Now I want to show you Exhibit A2 from  
21 Earthstone's application.

22 And if we look at the working interest  
23 owners on page 2 of Exhibit A1 -- or excuse me --  
24 Exhibit A2 for tract ownership, it reflects that there  
25 are uncommitted working interest owners Devon, Timothy

1 R. MacDonald, Maverick Oil and Gas Corporation  
2 highlighted in green. Do you see that?

3 A Yes.

4 Q I did not see anywhere in Mewbourne's  
5 application that Mewbourne reflected Timothy R.  
6 MacDonald or Maverick Oil and Gas Corporation as  
7 working interest owners in the lands to be pooled  
8 here. Is that right?

9 A That's correct. That has since been  
10 corrected, and we have proposed to those parties.

11 Q And where would I find that in Mewbourne's  
12 exhibits pre-hearing packet here today?

13 A It's not submitted.

14 Q Okay. And nowhere in Mewbourne's exhibits  
15 or pre-hearing packet does it reflect that any notice  
16 of these applications was presented to those two  
17 parties, Timothy R. MacDonald or Maverick Oil and Gas  
18 Corporation; right?

19 A Right.

20 Q But I guess it's your position today that  
21 they were provided notice.

22 A They've been proposed.

23 Q When did that happen?

24 A -- virtual connectivity interruption --

25 Q I couldn't hear you.

1           A     This week.

2           Q     This week that happened?

3           A     Yes, sir.

4           Q     And was that -- let me ask, did Mewbourne  
5 provide those parties notice based on seeing  
6 Earthstone's preapplication or pre-hearing packet that  
7 included them as working interest owners?

8           A     Based on a review of the internal takeoff.

9           Q     The internal takeoff to Mewbourne?

10          A     [No audible response.]

11          Q     I saw you nod, but for some reason we're  
12 having trouble picking you up.

13          A     Yes -- yes, sir.

14          Q     And when was that takeoff?

15          A     It's been an ongoing takeoff, sir, that we  
16 review.

17          Q     And so sometime this week during this  
18 ongoing kickoff you saw that Timothy R. MacDonald and  
19 Maverick Oil and Gas Corporation were working interest  
20 owners, and you then provided them notice sometime  
21 this week. Is that right?

22          A     Yes, sir.

23          Q     And so do you agree with me when we're  
24 looking at the second page of Earthstone's Exhibit A2,  
25 which reflects Timothy R. MacDonald and Maverick Oil

1 and Gas Corporation as working interest owners, that  
2 is more accurate than what we see on the first page as  
3 Exhibit 2-2 to the North Wilson Deep Unit, which does  
4 not reflect them as owners. You agree with me?

5 A Yes.

6 Q And also here on the first page of Exhibit  
7 2-2 in the application for the North Wilson Deep Unit  
8 H, it reflects that Mewbourne Oil Company is a working  
9 interest owner for the west half, east half of section  
10 18. That's not accurate, is it?

11 A Those are blended numbers, sir.

12 Q What does that mean?

13 A I'm sorry. I can't -- you're talking about  
14 Exhibit 2-2, the new one, or the one you're looking  
15 at?

16 Q The one I'm looking at. The new one does  
17 not have this first page, the section plat; right?

18 A Right.

19 Q I don't know if you knew that. And so when  
20 I'm looking at the section plat from the original  
21 exhibits and it says that Mewbourne Oil Company has a  
22 working interest in the west half, east half of  
23 section 18, that's not accurate?

24 A That's not accurate.

25 Q When you testified on direct examination a

1 minute ago that with Devon Energy you have  
2 approximately 72 percent of support of the approval to  
3 drill wells or something along those lines, that  
4 calculation didn't include Timothy MacDonald and  
5 Maverick Oil and Gas's interests, did it?

6 A Yes. Their -- their percentages are so  
7 small, we just carry them.

8 Q So I guess that's a different answer than  
9 the question that I asked. The question I asked is  
10 when you calculated that 72 percent number, did that  
11 include --

12 A Yes -- yes, sir.

13 Q -- Timothy MacDonald's and Maverick Oil and  
14 Gas's interests? I didn't catch your answer.

15 A Yes, sir.

16 Q Okay. Have they agreed to participate in  
17 the wells or are they being force pooled by Mewbourne  
18 here?

19 A They have not agreed yet.

20 Q You talked about the surface use for  
21 Mewbourne and its application proposal. Do you  
22 remember that?

23 A Yes.

24 Q Let me ask if Earthstone -- or excuse me --  
25 if Mewbourne is successful in these applications,

1 Mewbourne will have to traverse off the path and  
2 across different sections in the land, for example,  
3 section 17, to reach these wells. Is that true?

4 A I'm going to defer those questions to my  
5 geologist or engineer.

6 Q Okay. So if I asked you whether physical  
7 disturbance would be made to the land if these  
8 applications are granted, you wouldn't know the answer  
9 to that?

10 A Yeah. I'm going to defer those questions to  
11 the geologist or engineer.

12 MR. BECK: Okay. That's all the  
13 questions that I have for you, Ms. Salgado. Thank you  
14 for your time.

15 MR. BRUCE: Mr. Examiner?

16 THE HEARING EXAMINER: Mr. Lowe, do you  
17 have any questions for this witness?

18 MR. LOWE: Yes. Good morning. I just  
19 have a few questions.

20 Good morning, Ms. Salgado.

21 THE WITNESS: Good morning.

22 MR. LOWE: I just need to reassure that  
23 I even heard it correctly. You were sworn in as a  
24 landman for the company. Is that correct?

25 THE WITNESS: Yes, sir.

1                   MR. LOWE:   Okay.   Just want to reassure  
2   that on my side.

3                   From what was stated -- well, what was  
4   presented to far, as I understand it, there were two  
5   parties that were not initially noticed, but later on  
6   in the process of what you all were doing, you  
7   realized that, and you noticed those individuals this  
8   week.   Is that correct?

9                   THE WITNESS:   Yes, sir.   We -- yes,  
10   sir.   That's correct.

11                  MR. LOWE:   Okay.   And those two  
12   parties, I guess from what I've been hearing, is  
13   Timothy MacDonald and Maverick Oil and Gas.   Is that  
14   right?

15                  THE WITNESS:   Yes, sir.

16                  MR. LOWE:   So as that came about, you  
17   did provide that, I guess, exhibit to the OCD, as  
18   well, or are you going to?

19                  THE WITNESS:   I can.   It was not  
20   included, but I can send that.

21                  MR. LOWE:   Okay.   And I think I heard  
22   you say that these two parties were a small  
23   percentage.   Do you happen to have the -- do you know  
24   the amount --

25                  THE WITNESS:   Sure.   The percentage

1     that we show in each well for Maverick Oil and Gas is  
2     0.010417 percent, and the percentage we show for Tim  
3     MacDonald in each well proposed was 0.03125.

4                   THE HEARING EXAMINER: Ms. Salgado, are  
5     you taking this information from an exhibit?

6                   THE WITNESS: I'm taking it from --  
7     yes, sir, my personal --

8                   THE HEARING EXAMINER: I'm asking are  
9     you taking this information from any --

10                  THE WITNESS: Oh, I'm sorry -- sorry.  
11     No, sir. We did not submit this in an exhibit.

12                  THE HEARING EXAMINER: Okay. I'm going  
13     to give --

14                  Mr. Lowe, when you're done, I'm going  
15     to give Mr. Beck a chance to cross-examine her on that  
16     point.

17                  MR. LOWE: Okay.

18                  Also, in reference to the subject  
19     matter pertaining to the state land office, that email  
20     that was presented by Mr. -- I forgot your name,  
21     sir --

22                  MR. BECK: Beck. That's all right.

23                  MR. LOWE: Mr. Beck. Was that an  
24     exhibit in any of the cases here, as well?

25                  THE WITNESS: Yes, sir.

1 MR. LOWE: Okay. And that whole  
2 subject pertained to the unit and exclusion are the  
3 subject matter pertaining to the east half of section  
4 18; right? But that was resolved. Is that what I  
5 heard of the subject matter?

6 THE WITNESS: No, sir.

7 MR. LOWE: I couldn't hear what you  
8 stated.

9 THE WITNESS: No, sir. That -- that  
10 was not what that was.

11 MR. LOWE: Okay. Well, let's see here.  
12 I think those are the questions I have for now.

13 THE HEARING EXAMINER: Okay. Thank  
14 you, Mr. Lowe.

15 Mr. Beck, did you want to cross-examine  
16 on that point or not? I'm not sure if you're muted,  
17 sir.

18 MR. BECK: Thank you, Mr. Hearing  
19 Officer.

20 BY MR. BECK:

21 Q Ms. Salgado, the document that you're  
22 looking at to get the working interest calculations  
23 for Maverick and Tim MacDonald, have you compared that  
24 with what's in Exhibits -- or excuse me -- what's in  
25 Exhibit A2 in Earthstone's application?

1           A     No.

2           Q     And so you wouldn't know whether what's  
3 reflected in Earthstone's application is the same  
4 percentage interest as you're calculating on behalf of  
5 Mewbourne?

6           A     No.

7           Q     If you know, how did you find that  
8 percentage interest that Mewbourne calculated for  
9 Maverick and Tim MacDonald?

10          A     Are you asking for a formula?

11          Q     I'm asking if you know --

12          A     No, sir. I don't --

13          Q     -- Mewbourne calculated --

14          A     I don't have those notes in front of me.

15                   MR. BECK: All right. That's all the  
16 questions I have, Mr. Hearing Examiner. Thank you.

17                   THE HEARING EXAMINER: Okay.

18                   Mr. Bruce, do you have redirect on the  
19 cross-examination questions?

20                   MR. BRUCE: Yeah. Just a couple  
21 questions. Thank you, Mr. Examiner.

22                   REDIRECT EXAMINATION

23 BY MR. BRUCE:

24           Q     Ms. Salgado, I jotted the numbers down, but  
25 I didn't quite get them accurate. But if you're

1 looking at the MacDonald and the Maverick numbers that  
2 you gave a verbal answer to, that totals up to about  
3 maybe a little more than 0.04 percent interest in each  
4 well unit?

5 A That's correct.

6 Q And if you can look at Exhibit A2, second  
7 page, I'll represent to you that the combined  
8 MacDonald and Maverick working interest that  
9 Earthstone sets out comes to a little about 0.03  
10 percent interest.

11 So the numbers are not significant. Are  
12 they?

13 A No.

14 Q And whatever number is used, yours or  
15 theirs, with Devon's support, you still have 72  
16 percent approval of Mewbourne's proposals. Is that a  
17 fair statement?

18 A Yes, sir. That's approximate. Yes.

19 MR. BRUCE: Okay. Let me just check  
20 for a second here, Mr. Examiner. Believe I'm done.  
21 One final question.

22 BY MR. BRUCE:

23 Q You were asked about Earthstone's email to  
24 Scott Dawson at the land office. After that, did the  
25 land office ever retract Mewbourne's approval, which

1 is Mewbourne's Exhibit 3?

2 A No.

3 MR. BRUCE: Thank you.

4 That's all I have, Mr. Examiner.

5 THE HEARING EXAMINER: Okay. Mr. Beck,  
6 is there any cross-examination on the redirect?

7 MR. BECK: No. Thank you.

8 THE HEARING EXAMINER: Okay.

9 Let's take a break. Let's take a --  
10 it's 11:04. Let's take a break to 11:10, and we'll  
11 come back with your next witness, Mr. Bruce.

12 MR. BRUCE: Thank you.

13 THE HEARING EXAMINER: Thank you.

14 (Off the record.)

15 THE HEARING EXAMINER: On the record.

16 Mr. Bruce, do you want to call your  
17 second witness?

18 MR. BRUCE: I will, Mr. Examiner. Let  
19 me grab my exhibits. Okay. I call Jordan Carrell.  
20 And his affidavit is -- or self-affirm statement is  
21 Exhibit 5. And he's previously testified numerous  
22 times before the division.

23 I would submit him as a qualified  
24 expert petroleum geologist without objection.

25 THE HEARING EXAMINER: Okay.

1 Mr. Beck?

2 MR. BECK: I seem to be having some  
3 trouble with my camera. I might stop it for a second.  
4 I'm still here audibly, and I don't have any  
5 objections.

6 THE HEARING EXAMINER: Very good.

7 Mr. Carrell, you are admitted as an  
8 expert. Please proceed. You're under oath.

9 DIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q You've submitted the usual exhibits,  
12 structure map, and a cross section. I'd ask you to  
13 look at your Exhibit 5A for just a little while, which  
14 is the structure map.

15 A Okay, sir. Yes, I have it.

16 Q Yeah. One thing about surface use out here,  
17 you obviously -- the other unit wells are located  
18 immediately to the east of the lands that we're here  
19 for today. And those wells, in which direction were  
20 they drilled?

21 A Those wells were drilled south from the --  
22 the center of section 17.

23 Q Okay. But were they drilled from the north  
24 to the south?

25 A Yes, sir. They were drilled from the north

1 to the south.

2 Q Okay. So as a result, Mewbourne's surface  
3 facilities are up in the south half of section 17. Is  
4 that true?

5 A Yes, sir.

6 Q And so they're nearby. In what direction  
7 are you proposing to drill your two wells --

8 A We're proposing --

9 Q -- in these cases?

10 A I'm sorry. In this case we're proposing to  
11 drill our wells from the south to the north from  
12 surface in section 18 up into section 7.

13 Q Okay. So your existing surface facilities  
14 will be nearby, including stuff, like, pipeline  
15 connections, et cetera?

16 A Yes, sir.

17 Q Now looking at Exhibit 5B as in boy, you  
18 have a cross section of the second Bone Spring sand.

19 A Yes, sir.

20 Q What part of the second Bone Spring sand are  
21 you going to -- do you desire to complete the well in?

22 A Yeah. Our plans for the North Wilson Deep  
23 Unit State Com numbers 8H and 9H are both to target  
24 the lower second Bone Spring sand, which I have a red  
25 arrow pointing towards on this cross section, A to A

1 prime.

2 We think that that lower second sand looks  
3 consistent, and thick, and forest. We drilled several  
4 wells in the area in that same zone, and that is our  
5 plan for the east half of 18 --

6 Q So the lower second Bone Spring, in your  
7 opinion, is more consistent, number one. Is it also  
8 thicker than the upper Bone Spring zone?

9 A Yes, sir. I believe so.

10 Q Now, is there a well nearby that was  
11 drilled -- and I don't know if it was drilled by you  
12 or not -- that was drilled in the upper sand in Bone  
13 Spring?

14 A Yes, sir. One reason that we decided not to  
15 target the upper second sand here, like Earthstone has  
16 proposed, is in section 13, Matador has drilled their  
17 Bruce Keplinger well. And they targeted the upper  
18 second sand.

19 Q Okay. Hold on a minute. You said section  
20 13. Is that over to the west of the wells we're here  
21 for today?

22 A Yes. One section immediately to the west of  
23 18.

24 Q Okay. Then go ahead.

25 A That well targeted the upper second sand.

1 It's unobjectively a -- it's a poor well. And we have  
2 it for the first 12 months of cumulative production at  
3 about 11 barrels of oil per foot, which is nearly half  
4 of some of our -- our lower second sand wells in the  
5 area to the south, the Dolly Varden wells.

6 Also, based on this -- this cross section  
7 here, A to A prime, the reason we wanted to target the  
8 lower second sand was the -- the upper second sand  
9 seems to be not as uniformly thick.

10 In certain areas, such as the east half,  
11 east half of section 18, there's a well where the  
12 upper second sand looks half as thick as it does in  
13 some of this other areas.

14 We saw that there was more risk in trying  
15 to -- to wine rack lower second sand and upper second  
16 sand. We think that the -- the better targets here  
17 are two lower second sand wells.

18 Q Earthstone, also in their presentation, said  
19 they want to -- they proposed also drilling first Bone  
20 Spring wells. Does Mewbourne object to drill first  
21 Bone Spring wells?

22 A No, sir. We'd actually -- we would like to  
23 drill first Bone Spring sand wells here, as well, and  
24 we plan to if we're able to become an operator of  
25 this -- this -- these units.

1           The problem is we've drilled first Bone  
2   Spring sand in the area, we have a well just to the  
3   north in section 6 called the La Trucha [ph] well. It  
4   has had high H2S. The last time we tested it was in  
5   August. It had 6,000 parts per million of H2S.

6           And so for the last couple years we've been  
7   working with a third party to build infrastructure  
8   here for sour takeaway. And we -- we plan to have  
9   that infrastructure construction constructed, or  
10  hopefully they'll be able to take that next year.

11           So we would like to come back at a later  
12  date and drill first Bone Spring sand here.

13           Q     Okay. And approving an order with just a  
14  second Bone Spring sand well doesn't preclude  
15  Mewbourne from using that order to subsequently drill  
16  a first Bone Spring well. Does it?

17                     MR. BECK: Object to foundation.

18                     THE HEARING EXAMINER: Hold on,  
19  Mr. Bruce.

20                     MR. BRUCE: Okay.

21                     THE HEARING EXAMINER: Mr. Beck, you're  
22  objecting to the foundation --

23                     MR. BECK: Yeah. I don't know if the  
24  witness knows the answer to this question. If he  
25  does, he can answer it, but I think he should be asked

1 a preliminary question first.

2 MR. BRUCE: Mr. Carrell, you've been --

3 THE HEARING EXAMINER: Mr. Bruce,  
4 what's your response?

5 MR. BRUCE: Could I lay a foundation  
6 then?

7 THE HEARING EXAMINER: Of course. Then  
8 I'm going to sustain the objection, and so you can  
9 rephrase your question.

10 BY MR. BRUCE:

11 Q And, Mr. Carrell, you've been involved in --  
12 have you been involved in quite a number of forced  
13 pooling hearings on behalf of Mewbourne?

14 A Yes, sir.

15 Q And so you've done the geology. You've also  
16 reviewed a number of these pooling orders, because you  
17 have to know what the division land -- was at. Is  
18 that a fair statement?

19 A Yes, sir.

20 Q And often times people do what Earthstone is  
21 doing, proposal of a unit with one, two, or even three  
22 Bone Spring wells in the well unit. Do you agree?

23 A Yes, sir.

24 Q But if you only propose one, based on your  
25 experience, can you still propose additional, if you

1 want to call them, in-field wells in another Bone  
2 Spring zone?

3 A Yes, sir.

4 Q So just because you're only seeking at this  
5 time to get approval for a second Bone Spring well,  
6 that pooling order will cover subsequent wells?

7 A Yes, sir. Correct.

8 Q Thank you. Let me see. Oh, another thing.  
9 You mentioned that Keplinger well, that Matador well.  
10 You said that's a very -- you said it's a very poor  
11 well, words to that effect.

12 A Correct.

13 Q Was there a large frack put on that well?

14 A Yeah. It's similar to what our companies  
15 are -- Earthstone and Mewbourne are proposing here. I  
16 believe it was about 2,000 gallons per foot and close  
17 to 2,700 pounds of sand per -- per foot.

18 Q And that really didn't help? Well, of  
19 course it helped, but the results in the end, were  
20 they good?

21 A It doesn't -- no. I would say no. But I  
22 would say I think the geology of that upper second  
23 south Bone Spring sand is -- it's just too variable.

24 You have to look at it on a -- a proration  
25 unit basis, and even though, yeah, you can -- you can

1 drill and put a modern frack on it, it doesn't mean  
2 you're going to make a good well.

3 You have to look at the geology, I think,  
4 the ferocity, the thickness. And in this case, we  
5 don't think that the upper second sand looks as good  
6 as the lower second sand, especially in the east half,  
7 east half where Earthstone proposes to drill a well  
8 there.

9 Q Before Mewbourne started drilling in the --  
10 area -- virtual connectivity interruption -- any or  
11 very much development over the past number of years,  
12 Bone Spring development, in this general area?

13 A No, sir. This area was -- as far as  
14 horizontal drilling, was very slow until we started to  
15 put together this unit in the area for 2135.

16 Q And that kind of spurred other people to  
17 jump on the bandwagon. Would that be fair?

18 A Seems like yes, we had spurred on more  
19 activity in this area.

20 Q And you keep a good eye on not only what  
21 Mewbourne is doing as part of your job, but do you  
22 also keep an eye on offsetting wells, offsetting  
23 operators, offsetting production?

24 A Yes, sir.

25 Q In your opinion, is it better to drill

1 2-mile wells or even 2-mile plus wells than 1-mile  
2 wells in this area?

3 A I believe it's much better to drill 2-mile  
4 laterals or extended laterals.

5 Q And keeping an eye on development, at one  
6 point could Chisholm -- and actually, for fairly long  
7 period of time, could they have drilled 2-mile  
8 laterals in sections 18 and 19?

9 A Yeah. They -- they could've worked out  
10 something with Matador in 19, and potentially have  
11 drilled 2-mile laterals in 18 and 19 going south.

12 Q But they never took advantage of that, and  
13 they only responded when Mewbourne proposed its wells.

14 A Correct.

15 Q Does it seem that they do not want to drill  
16 1-mile laterals?

17 A I would say based off of them trying to pool  
18 2-mile laterals, it's evident that they don't want to  
19 drill 1-mile lateral.

20 Q Mr. Carrell, could I refer you to what's  
21 been marked Mewbourne Exhibit 12? And I'll just have  
22 you just briefly -- at this point. Just identify what  
23 it is.

24 A Exhibit 12 is a cross section B to B prime  
25 showing first Bone Spring and second Bone Spring from

1 east to west across the proration units.

2 Q And was this prepared by you?

3 A Yes, sir.

4 Q Does this show why -- another example of why  
5 Mewbourne wants to drill the lower second Bone Spring?

6 A Yes, sir. It shows that that middle well,  
7 18A, which is in the east half, east half of the  
8 proration unit --

9 MR. BECK: Objection. Mr. Hearing  
10 Officer, this is one of these exhibits that was  
11 untimely disclosed, and we've objected to. So I'm  
12 objecting to any testimony about this exhibit.

13 THE HEARING EXAMINER: Okay.  
14 Mr. Bruce?

15 MR. BRUCE: Mr. Examiner, take a step  
16 back with Mr. Carrell.

17 BY MR. BRUCE:

18 Q Mr. Carrell, did you review Earthstone's  
19 cross sections?

20 A I did. Yes, sir.

21 Q Do you think that they were adequately  
22 represented the status of the second Bone Spring in  
23 sections -- in the east half of sections 18 and 7?

24 A I do not. As you'll see through their  
25 exhibits, their cross sections, most of the wells that

1 they show on the line of the cross section are in the  
2 east half of 7 and 18 -- or sorry -- excuse me -- the  
3 west half of 7 and 18.

4 And they specifically left out the well in  
5 lot 18A, which was the -- the Packer [ph] 18 State 1,  
6 which is on my cross section A to A prime attachment  
7 5B. It's the third well.

8 And you can see in that -- that well, that  
9 upper second sand there is, from my account,  
10 approximately 36 feet of sand versus the other three  
11 wells on the -- on the cross section show  
12 approximately 60 feet of -- of sand.

13 So -- and those -- those other three wells  
14 are all in the west half of the east half. We -- we  
15 believe that -- that to be a riskier target.

16 Q And until you got to review Earthstone's --  
17 exhibits, you were not aware that they had not  
18 included that well in their cross section?

19 A Correct.

20 THE HEARING EXAMINER: Mr. Bruce,  
21 what's your argument?

22 MR. BRUCE: My argument is that this is  
23 a rebuttal exhibit to theirs to show that the upper  
24 second Bone Spring is not as good as the third Bone  
25 Spring. It was prepared and submitted. The geology

1 out here is something that I don't think Earthstone's  
2 geologist is surprised by.

3 So I don't think there's the -- there  
4 is not -- there is no unfairness in presenting them,  
5 because their geologist can talk about it too. It's  
6 different than the Exhibit 10 that you disallowed.

7 THE HEARING EXAMINER: Okay.

8 Mr. Bruce, the argument --

9 Mr. Beck, the argument is that this is  
10 a rebuttal exhibit, and that they could not have  
11 prepared this until they saw Earthstone's exhibits.  
12 Your response?

13 MR. BECK: Well, obviously I'm  
14 hamstrung, since I just got this. But let me ask a  
15 couple questions of Mr. Carrell, if I may, Mr. Hearing  
16 Officer.

17 THE HEARING EXAMINER: Go ahead.

18 CROSS-EXAMINATION

19 BY MR. BECK:

20 Q Mr. Carrell, and forgive me for my ignorance  
21 here, but it looks like what you're referring to here  
22 in Exhibit 12, 18A is a cross section of the Nearburg  
23 [ph] Producing Packer [ph] 18 State 1. Is that right?

24 A Yes, sir.

25 Q Okay. And when was that well drilled?

1           A     Don't know.

2           Q     Okay. How did you get this cross section?

3           A     TriX [ph] mapping software.

4           Q     Yeah. Okay. And could you have gotten this  
5 cross section from the graphics mapping software  
6 you're talking about two weeks ago, September 7th?

7           A     Yes, sir.

8           Q     And you got this because it shows a well in  
9 the east half of section 18; right?

10          A     Yes, sir. This well -- I mean, my cross  
11 section A to A prime does too, so we could go off of  
12 the other.

13          Q     And the cross section A to A prime that we  
14 can go off of either, I assume that's what you're  
15 referring to is represented in Exhibit 5B.

16          A     Yes, sir.

17                   THE HEARING EXAMINER: Hold on,  
18 Mr. Beck. Let me get to Exhibit 5. Five B. It's on  
19 its side, so it's hard to see it. So, Mr. Beck, back  
20 to Exhibit 5B. Excuse me.

21                   Mr. Carrell, you're saying -- what are  
22 you saying in relation to Exhibit 5B and Exhibit 12?

23                   THE WITNESS: Yeah. It sounded like  
24 Mr. Beck was saying that that well in lot 18A -- or he  
25 was bringing up -- I -- I was just pointing out that

1     that well is on both cross sections. So I could refer  
2     to it on the rebuttal cross section or the original  
3     submitted cross section.

4                     THE HEARING EXAMINER: Mr. Beck --

5                     MR. BECK: So every -- sure. Thank  
6     you, Mr. Hearing Officer.

7     BY MR. BECK:

8             Q     So, Mr. Carrell, everything that you're  
9     talking about in 18A, the Packer [ph] that you were  
10    just discussing with Mr. Bruce, that's reflected in  
11    Exhibit 5B and the same 18A Packer [ph] 18 State 1;  
12    right?

13            A     Say that again.

14            Q     Everything that you discussed with Mr. Bruce  
15    about Exhibit -- or excuse me -- in Exhibit 12 for the  
16    Packer [ph] 18 State 1 was also reflected in Exhibit  
17    5B, the Packer [ph] 18 State 1 there in 18A?

18            A     That well is in both exhibits. Yes.

19            Q     Okay. So I guess why do we need Exhibit 12?

20            A     Exhibit 12 makes it a little bit clearer in  
21    breaking out the upper second sand and the lower  
22    second sand. So I have those highlighted in green and  
23    in brown on Exhibit 12.

24                   And it also shows the first Bone Spring sand  
25    and the -- the vertical separation between the first

1 Bone Spring sand and in the lower second sand with an  
2 approximate vertical separation of 750 feet, which  
3 shows that we don't believe that these need to be  
4 codeveloped.

5 It's not going to hurt production to come  
6 back later and drill the first Bone Spring sand.

7 Q So other than the highlighting and zooming  
8 in, is there anything in Exhibit 12 that you think  
9 Exhibit 12 adds that's not reflected in Exhibit 5B?

10 A Yes, sir. The first Bone Spring sand, the  
11 vertical separation there between our lower second  
12 sand, and then highlighting showing just how that one  
13 particular well in the east half, east half of the  
14 proration unit is thinner than surrounding.

15 Exhibit 5B shows the same thing. It's just  
16 not highlighted, so it's harder to see.

17 Q And everything -- let me ask this question.  
18 When was the first time that you read Earthstone's  
19 applications in case numbers 23475 and 23477?

20 A I can't remember the exact date. It was  
21 earlier -- earlier this week.

22 Q Earlier this week was the first time you  
23 read those?

24 A Could find out. I could look at my email  
25 and see when I was given those.

1           Q     No. That's all right. It was sometime  
2 earlier this week, meaning Monday, the 18th, Tuesday,  
3 the 19th, something like that?

4           A     It could've been -- it could've been Friday.  
5 I'd have to look to see exactly when I got those.

6           Q     Okay. And so when you got those  
7 applications or the case numbers Friday, the 15th, at  
8 the earliest or Monday, the 18th, or Tuesday, the  
9 19th, that's the first time that you knew that  
10 Earthstone was targeting the upper first or the -- or  
11 the -- or excuse me, the first Bone Spring or the  
12 upper second Bone Spring?

13          A     No, sir. I believe they sent us well  
14 proposals before that.

15          Q     And did you see those well proposals?

16          A     I did. Yes.

17          Q     Okay. And when you saw those well proposals  
18 could you have looked at those well proposals and  
19 created what we see in Exhibit 12?

20                   THE HEARING EXAMINER: I didn't hear  
21 the answer.

22                   THE WITNESS: Oh, sorry.

23                   I -- I could've made -- he -- I believe  
24 you asked if I could have made -- this cross  
25 section --

1 THE HEARING EXAMINER: I know what the  
2 question was, Mr. Carrell. I know what the question  
3 was. I just didn't hear the answer.

4 THE WITNESS: Yes. The answer was yes.

5 THE HEARING EXAMINER: Okay. Thank  
6 you, sir.

7 MR. BECK: And that's all I have,  
8 Mr. Hearing Examiner.

9 Just an example of the fact that I --  
10 probably my ignorance shows the prejudice that  
11 Earthstone is under in not knowing what this exhibit  
12 reflects, and the fact that this exhibit could've been  
13 created not only over a week ago had he been shown the  
14 application, but could've been created -- and again,  
15 I'm not the one who sent out the applications, but my  
16 recollection is that it was sometime in the spring of  
17 this year, March, which would've been six months ago.

18 And obviously I wouldn't expect we  
19 would've created those by then, but I would've  
20 expected that Mewbourne would have created these  
21 exhibits in compliance with the prehearing order and  
22 submitted them by September 14th.

23 THE HEARING EXAMINER: Mr. Beck -- what  
24 I understand from --

25 Hold on, Mr. Bruce.

1                   Mr. Beck, what I understand from  
2 Mr. Bruce is that this Exhibit 12 -- that the  
3 information on Exhibit 12 is already encompassed by  
4 Exhibit 5B. The difference here is the highlighting.  
5 Did I understand that correctly?

6                   MR. BECK: I think that that's part of  
7 it. I think another part of it -- and again, I'm  
8 learning this just a few minutes ago, the same as you  
9 are, Mr. Hearing Examiner, for this very reason. I  
10 understand that Exhibit 12 also shows the first Bone  
11 Spring sand formatting, which is not shown on Exhibit  
12 5-B.

13                  THE HEARING EXAMINER: Mr. Carrell, is  
14 that correct?

15                  THE WITNESS: That is correct.

16                  THE HEARING EXAMINER: Okay. And why  
17 did you add that?

18                  THE WITNESS: To show the -- the  
19 vertical separation of the first Bone Spring sand and  
20 the second Bone Spring sand, the lower, where we plan  
21 to target as 750 feet.

22                  The reason to show it was because we  
23 think that's a sufficient enough separation where  
24 we -- these zones don't need to be codeveloped. We  
25 can come back at a later date, drill the first Bone

1 Spring sand, and not worry about any type of depletion  
2 issues there.

3 THE HEARING EXAMINER: Mr. Bruce?

4 REDIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q Mr. Carrell, just one follow-up question.  
7 You never saw anything about the need to codevelop or  
8 depletion from one sand to the other. Did you know  
9 anything about that until you saw their exhibits?

10 A No.

11 Q So the newest part of this -- or the only  
12 real new part is it just shows the 750 feet of  
13 vertical segregation. And so there's no need to  
14 develop the first at the same time as the second.

15 A Correct.

16 THE HEARING EXAMINER: Mr. Beck --  
17 Mr. Bruce, please don't keep asking questions  
18 eliciting testimony from this witness on an exhibit  
19 that hasn't been admitted yet, or else I'll have to  
20 strike it.

21 Mr. Beck, ultimately what Mr. Bruce and  
22 his witness are testifying to is they didn't realize  
23 the need to show that separation until they saw your  
24 exhibits.

25 MR. BECK: And I'm sure that that's one

1 way to look at it when you're being led through that  
2 testimony.

3 But the applications both identify --  
4 meaning both Mewbourne's applications -- identify that  
5 Mewbourne was targeting the first Bone Spring and the  
6 second Bone Spring, and that it was targeting the  
7 upper second and the lower second in the wine rack  
8 formation.

9 So this testimony could have been there  
10 in the first place. As far as what separates the  
11 testimony from what's reflected in Exhibit 12, I think  
12 that the testimony that we had there at the end, that  
13 you pointed out went a little bit too far, is fine.

14 I think that that Mr. Carrell was  
15 competent to testify to. I think a foundation has  
16 been developed that he can testify to that.

17 And I don't think that Earthstone has a  
18 solid basis to object to that testimony coming in, as  
19 opposed to Exhibit 12, which could have been developed  
20 and could've been presented timely by September 14th.

21 That's what I think -- that's what I  
22 think is improper, and they were on notice that this  
23 needed to be filed beforehand.

24 THE HEARING EXAMINER: Mr. Bruce, the  
25 argument is that you and your client should not have

1     been surprised, and that this Exhibit 12 is not  
2     timely, because had you and your client reviewed the  
3     applications, you would have seen this development.  
4     What is your answer to that?

5                   MR. BRUCE:   Well, Mewbourne certainly  
6     knew that they were proposing the first Bone Spring  
7     well, but they didn't see anything about this need to  
8     immediately codevelop, because there are new  
9     allegations not in their application that you have to  
10    codevelop them promptly to avoid any type of reservoir  
11    drainage from, say, the second to the first or first  
12    to the second, whatever you're looking at.

13                  THE HEARING EXAMINER:   Okay.   All  
14    right.   So it's the co-development, Mr. Beck, that  
15    prompted their submission of Exhibit 12.   What do you  
16    say to that?

17                  MR. BECK:   I say that, again, this is  
18    showing my ignorance, because I'm just being presented  
19    with this.   I don't know if that's what Mr. Asmus, our  
20    geologist, would say.   And that's showing that I am  
21    not the expert here, and he is, which is why he's  
22    testifying to this sort of stuff.

23                  So I guess what I'd say is that if that  
24    is accurate, Mr. Asmus can probably tell us what it  
25    is.   I ask that -- I'd ask the hearing officer just

1     reserve admitting Exhibit 12 until we hear from  
2     Mr. Asmus, because, again, I just -- I'm not prepared  
3     to answer that question right now.

4                   THE HEARING EXAMINER:   Okay.   That's  
5     fair.   I'm not going to make a ruling on Exhibit 12 at  
6     this moment, Mr. Bruce.   You have a good argument.  
7     And if that argument withstands the exhibits, then I  
8     will let it in.

9                   I'm also going to give Mr. Beck and his  
10    client opportunity to, you know, examine exhibits, so  
11    that they don't feel as though they're surprised by  
12    this late submission.

13                   So why don't you continue with your  
14    direct examination of this witness?   You can discuss  
15    Exhibit 12, but I haven't admitted it yet.

16                   (Exhibit 12 was marked for  
17    identification.)

18                   MR. BRUCE:   Okay.   Don't think that I  
19    have too much more from this witness before I turn him  
20    over.   Let me just check my notes, please, sir.

21                   THE HEARING EXAMINER:   Of course.

22                   MR. BRUCE:   That's all I have at this  
23    time, Mr. Examiner.

24                   THE HEARING EXAMINER:   Okay.   Thank  
25    you, Mr. Bruce.

1                   Mr. Beck, any cross-examination for  
2     this witness?

3                   MR. BECK:   Yes, Mr. Hearing Examiner.  
4     Thank you.

5                   RECROSS EXAMINATION

6     BY MR. BECK:

7           Q     Mr. Carrell, I'm going to ask you about  
8     Exhibit 5A and 5B.   And bear with me just a little  
9     bit.

10                  Your testimony is that one reason -- or I  
11     guess the reason that Mewbourne isn't targeting --  
12     isn't doing a wine rack formation of these wells is  
13     because it believes that the upper second Bone Spring  
14     sand formation is too inconsistent.   Is that right?

15           A     Yes, sir.   In the east half of the unit.

16           Q     And that's where both of Mewbourne's wells  
17     are being proposed and all four of Earthstone's wells  
18     are being proposed, right, that you saw?

19           A     Sorry.   I meant the -- the east half of the  
20     east half, but yes.

21           Q     And some of that -- let me ask.   That  
22     conclusion that the upper second is inconsistent is  
23     based off of these cross sections of existing wells  
24     that you have in Exhibit 5B.   Is that right?

25           A     Yes, sir.

1           Q     But none of these cross sections that you  
2     have in Exhibit 5B give the cross section of where  
3     Earthstone's proposed -- make sure I'm asking this  
4     correctly -- proposed outland 187214H is proposed to  
5     be drilled. Is that right?

6           A     My logs go through the outland -- units. Is  
7     that what you're asking?

8           Q     Right.

9           A     That is correct.

10          Q     So with the inconsistency, you don't know  
11     and we don't know for certain what kind of production  
12     we could get from that proposed outland 187214H well;  
13     right?

14          A     Are you referring to the -- the west half of  
15     the sections?

16          Q     The east half.

17          A     I apologize. All of my wells go through the  
18     east half of the section. I apologize. I thought you  
19     were referring to the west half for some reason,  
20     because it shows in the inset map and on attachment  
21     5A, the map, my line of cross section.

22          Q     So these reflect the portion of the upper  
23     second Bone Spring that Earthstone is proposing to  
24     drill through. Is that what you're saying?

25          A     Yeah. The third well on the lateral is

1 directly where they -- where that upper second sand is  
2 the skinniest.

3 Q And you talked about Earthstone drilling  
4 2-mile wells versus 1-mile wells with Mr. Bruce;  
5 right?

6 A Yeah.

7 Q And you know that in both of its  
8 applications, Earthstone is proposing 2-mile wells;  
9 right?

10 A Correct. Yes, sir.

11 Q And you said that Earthstone could've worked  
12 out something with Matador beforehand to drill into  
13 section 19?

14 A Seems like that could've been an option,  
15 yeah, prior to Matador drilling wells in section 19.

16 Q Do you know if Earthstone and Matador are in  
17 negotiations about that? Whatever you said didn't  
18 come through, or at least I didn't hear it, so --

19 A I'm sorry. I said no. I don't know if they  
20 ever had negotiations.

21 Q All right. And what about Chisholm and  
22 Matador? Do you know if they ever had negotiations?

23 A I do not know that.

24 Q Okay. So you don't know one way or the  
25 other whether Chisholm or Earthstone actually agreed

1 or tried to agree with Matador about drilling into the  
2 section 18?

3 A Section 19 or 18? I -- I don't know that.  
4 No.

5 MR. BECK: That's all I have. Thanks,  
6 Mr. Carrell.

7 THE HEARING EXAMINER: Mr. Lowe?

8 MR. LOWE: Yes, sir. Are you giving me  
9 the opportunity to ask questions?

10 THE HEARING EXAMINER: Yes, sir.

11 MR. LOWE: Okay.

12 Good afternoon, Mr. -- what's your name  
13 here -- Carrell. Mr. Carrell. Sorry. Jordan  
14 Carrell. You were a sworn witness, and you were sworn  
15 in as a geological witness.

16 THE WITNESS: Yes, sir.

17 MR. LOWE: Okay. I just want to  
18 reassure where I'm at on all this. I just had a  
19 few -- a brief question for you. I think it was  
20 stated up front that the wells of interest here --  
21 that I think you stated that the first Bone Spring  
22 sands will be eventually drilled in this location.

23 When do you intend to do that? And  
24 does that pertain to the outcome of this case?

25 THE WITNESS: We intend to get

1 infrastructure built in the area that can take H2S.  
2 So the first Bone Spring sand here is known to have  
3 high H2S in it.

4 And we'd also -- yeah. We would like  
5 to drill more first sand wells here, so we're in  
6 negotiations with a third party to put infrastructure  
7 in here for sour takeaway, which should come to  
8 fruition next year.

9 And so at that point we would be -- you  
10 know, if this rules in our favor, we would be able to  
11 drill first Bone Spring sand in these locations.

12 MR. LOWE: Okay. And I think I wanted  
13 to reassure where that determination came from. I  
14 think I heard you verbalize that you were going off of  
15 evidence adjacent to this section to the west, I think  
16 it was, from the wells located there. Is that what I  
17 understood?

18 THE WITNESS: Our first Bone Spring  
19 sand well that has had H2S in it is directly north in  
20 section 6 on -- on Exhibit 5 -- or attachment 5A. Is  
21 that what you're referring to?

22 MR. LOWE: I'm trying to get my -- my  
23 exhibits up here. I don't know what map I was  
24 referring to or looking at under the multiple exhibits  
25 here that I'm trying to look through.

1                   But I thought that's what I heard, that  
2     you all are wanting to go for the first -- or you  
3     didn't -- I think -- I don't recall if it's -- the  
4     reason why you didn't want to go with the first Bone  
5     Spring. And I think the term -- it was stated because  
6     it was the high H2S and basically what you stated just  
7     now.

8                   I think that's kind of where we're  
9     going at. Also, another question, I'm not too sure  
10    about the titles of these cases that are having been  
11    presented.

12                  Earthstone is coming forward with a  
13    nonstandard spacing unit request as well too. Is that  
14    what I -- is that still going on?

15                  THE WITNESS: Is that a question for  
16    me? Sorry.

17                  MR. LOWE: Yes.

18                  THE WITNESS: Oh. I -- I believe so,  
19    if that's what the -- the title says. I don't -- I  
20    don't have their -- their stuff in front of me.

21                  MR. LOWE: And it's kind of hard for me  
22    to look at all these exhibits with the slow computer  
23    on my side. But I'm trying to find out the C102s  
24    pertaining to all these -- well, the subject matter  
25    for both operators here.

1 I guess from what I'm seeing Earthstone  
2 and Mewbourne are trying to get the east half of these  
3 two sections; correct?

4 THE WITNESS: Correct.

5 MR. LOWE: And in that sense, I guess  
6 the question is posed to Earthstone, what portion of  
7 those -- is that nonstandard spacing unit request  
8 pertaining to?

9 THE HEARING EXAMINER: Mr. Lowe, I'm  
10 confused. Are you asking Mewbourne's witness a  
11 question that is directed to Earthstone?

12 MR. LOWE: No. It's just my question.  
13 Well, you know what? I could wait until the end. Let  
14 me --

15 THE HEARING EXAMINER: I'm not --

16 MR. LOWE: Yeah.

17 THE HEARING EXAMINER: Mr. Lowe, I'm  
18 not suggesting when you ask your question, but I  
19 didn't -- by what you said, it didn't sound like that  
20 question was meant for this witness.

21 MR. LOWE: Okay. Well, it could be  
22 made for the landman maybe then. But --

23 MR. BECK: Yeah. I think Earthstone's  
24 landman, Ms. Redfearn, can answer those questions,  
25 Mr. Lowe. And I can try to make it a point to ask

1 her. But it's my understanding, and I think she'll  
2 confirm this, is that Earthstone is not requesting  
3 nonstandard spacing unit.

4 MR. LOWE: Okay. If that's the case,  
5 then --

6 THE HEARING EXAMINER: Mr. Lowe, this  
7 is not a witness. The attorney is not a witness. So  
8 if you want to consider evidence later, and I have to  
9 consider evidence later, please direct that question  
10 to the proper witness.

11 MR. LOWE: Okay. Can do that then.  
12 Those are the only questions I have.

13 THE HEARING EXAMINER: Okay.

14 MR. LOWE: Thank you.

15 THE HEARING EXAMINER: Thank you,  
16 Mr. Lowe.

17 Mr. Bruce, are there any redirect  
18 questions for this witness? Mr. Bruce, are you still  
19 here?

20 MR. BRUCE: Forgot to unmute myself,  
21 Mr. Examiner.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q The depths in Mewbourne's wells from what's  
25 in your exhibits, the AFEs and the pooling checklist,

1 is somewhere -- what is the vertical depth?

2 A For our -- our wells?

3 Q Yes.

4 A Got to be approximately -- let's see --  
5 right around 10,000 feet, close to.

6 Q And I'm looking at this -- of course this is  
7 a new exhibit, but the landman's affidavit contains,  
8 as Exhibit 24, the AFEs for the wells. And those  
9 exhibits show something like -- somewhere in the 9850  
10 range. Does that seem familiar?

11 A Yes. I have their -- oh, okay. Yeah.

12 Q Okay. Now if you can dig it out, I would  
13 like for you to look at Earthstone Exhibit A-3. Let  
14 me know when you've found it.

15 A I have it here in front of me.

16 Q Okay. That's a proposal letter that all the  
17 operators -- of the type that every operator sends  
18 out, and you've seen those before. Haven't you?

19 A Yes, sir.

20 Q If you go back about six pages, they have  
21 their AFEs attached.

22 MR. BECK: Mr. Hearing Examiner, this  
23 is definitely outside the scope of my  
24 cross-examination, and I think it's outside the scope  
25 of what Mr. Lowe asked.

1 MR. BRUCE: Well --

2 THE HEARING EXAMINER: Mr. Bruce?

3 MR. BRUCE: Well, it goes to a key  
4 point, and I can bring it up later when the decision  
5 is made on Exhibit 12, or I can get it out of the way  
6 now.

7 THE HEARING EXAMINER: Okay. So this  
8 has to do with whether or not Exhibit 12 was a  
9 surprise and it is a true rebuttal exhibit?

10 MR. BRUCE: Yes.

11 THE HEARING EXAMINER: Okay.

12 And, Mr. Beck, why is that outside the  
13 scope?

14 MR. BECK: Well, I didn't know where  
15 this was coming from. I didn't ask about Exhibit 12  
16 for the reason that I don't think it should be  
17 admitted.

18 But I certainly think that it makes  
19 sense to get this out of the way now to see if my  
20 understanding is incorrect or if there's something new  
21 that I wasn't aware of, so I'm --

22 THE HEARING EXAMINER: Mr. Bruce, I  
23 didn't know where you were going with this either, but  
24 now that you've clarified, I'll override the  
25 objection.

1                   But please let's get to the point  
2                   quickly, because we're going to take lunch after this.

3                   MR. BRUCE:    Okay.

4                   BY MR. BRUCE:

5                   Q       Mr. Carrell, there's four AFEs.  Forget  
6                   about the first Bone Spring.  But the final two AFEs  
7                   are for their proposed second Bone Spring wells.  Is  
8                   that correct?

9                   A       Yes, sir.

10                  Q       And over in the upper right hand, there's a  
11                  a little paragraph talking about the wells.  What do  
12                  both of their second Bone Spring sand AFEs state the  
13                  approximate completion total vertical depth is?

14                  A       They both say the same depth, 10,400  
15                  vertical feet, which would be approximately in the  
16                  lower second sand.

17                  Q       And it's not where they're proposing right  
18                  now?

19                  A       No.  So yeah.  The -- the first time I  
20                  would've realized that they were targeting the upper  
21                  second sand was when they filed their -- their  
22                  prehearing exhibits.

23                         MR. BRUCE:    Okay.  That's where I'm  
24                         going with that, Mr. Examiner.

25                         THE HEARING EXAMINER:   Okay.  Thank

1     you, Mr. Bruce.

2                     Mr. Beck, did you have anything to --  
3     did you have any questions for this witness or any  
4     argument further?

5                     MR. BECK: Yeah. I guess -- I think I  
6     can make this brief, because I know you want to take  
7     lunch.

8                     FURTHER RECROSS EXAMINATION

9     BY MR. BECK:

10            Q     Mr. Carrell, does Exhibit B -- I'll get to  
11     it. Does Exhibit 5B include the upper second Bone  
12     Spring sand formation?

13            A     Exhibit 5B, is that my cross section?  
14     Sorry. Yeah. Right here. It does include the upper  
15     second Bone Spring sand in it.

16            Q     Okay. So even though that the AFE that you  
17     may or may not have reviewed does not include that  
18     upper second Bone Spring formation, that would include  
19     and is included in Exhibit 5B; right?

20            A     The information about Earthstone's target is  
21     not included in 5B.

22            Q     That's not the question I asked. I asked --  
23     you've talked with Mr. Bruce about how the two second  
24     Bone Spring AFE proposals of Earthstone both target  
25     the lower second; right?

1           A     It appears so.  Yes.

2           Q     And what changed was targeting the upper  
3 second.  Yes?

4           A     It seems like that has changed.  Yeah.

5           Q     Okay.  But both the upper second and lower  
6 second Bone Spring formation are captured on Exhibit  
7 5B?

8           A     Yes, sir.

9                     MR. BECK:  Okay.  That's all I got.

10                    THE HEARING EXAMINER:  You know,  
11 Mr. Beck, I understand the point you're trying to  
12 make, but I'm going to let Exhibit 12 in.  I'm letting  
13 it in, because I can see the confusion.  I can see why  
14 it's been submitted.

15                    I don't think it's so surprising that  
16 you can't deal with it.  I'll give you the time you  
17 need to deal with it.  We'll take a lunch break now.  
18 And if your witness needs additional time to consider  
19 Exhibit 12, you let me know and we'll add that time in  
20 here, Mr. Bruce.

21                    So I am admitting Exhibit 12 into  
22 evidence.  I am not admitting 10 and 11 at this time.

23                    Mr. Bruce, how many more witnesses do  
24 you have?

25            //

1 (Exhibit 12 was received into  
2 evidence.)

3 MR. BRUCE: I have one.

4 THE HEARING EXAMINER: You have one.  
5 How -- long will that direct examination take?

6 MR. BRUCE: That direct examination --  
7 get them admitted and ask about half a dozen -- five  
8 or six questions. So --

9 THE HEARING EXAMINER: Okay.  
10 Mr. Bruce, is this your rebuttal witness?

11 MR. BRUCE: Yes.

12 THE HEARING EXAMINER: Well, I've never  
13 heard of calling a rebuttal witness in your case in  
14 chief.

15 MR. BRUCE: Well, I can leave it until  
16 the end, and that's fine.

17 THE HEARING EXAMINER: I think that's  
18 what we're going to do here.

19 MR. BRUCE: Okay.

20 THE HEARING EXAMINER: So do you have  
21 any other evidence to admit in your case in chief?

22 MR. BRUCE: That's it. Yeah. I  
23 believe you admitted original Exhibits 1 through 9,  
24 and Exhibit 12, and Exhibit 11 is -- until the end.  
25 So I -- nothing further at this time, Mr. Examiner.

1 THE HEARING EXAMINER: Okay. So you're  
2 resting your case then?

3 MR. BRUCE: Correct.

4 THE HEARING EXAMINER: Okay. Very  
5 good.

6 So, Mr. Beck, we will come back after  
7 lunch for your case.

8 How much time do the parties -- I mean,  
9 I don't need a full hour for lunch. I don't know how  
10 the parties feel. Is it okay to come back at one  
11 o'clock and pick this up?

12 MR. BECK: I think it should be,  
13 Mr. Hearing Examiner, with the exception of if I need  
14 some more time -- Exhibit 12 -- whatever we may  
15 have --

16 THE HEARING EXAMINER: Sure. We've  
17 already -- yeah. I've already said that. So you have  
18 that in your back pocket if necessary.

19 MR. BECK: One sounds reasonable.

20 THE HEARING EXAMINER: Okay. Very  
21 good. So we have -- we're taking about a 52-minute  
22 lunch, and we will reconvene at one o'clock today for  
23 Mr. Beck's case in chief. Thank you.

24 MR. BECK: Thanks.

25 (Off the record.)

1 THE HEARING EXAMINER: On September  
2 21st, we are in the middle of a contested hearing.  
3 Mewbourne has put on its case in chief. We are now  
4 waiting for Earthstone to put on its case in chief.

5 Its witnesses have been sworn in. But  
6 before a witness begins testimony, please state your  
7 name and spell it for the record. It'll make it a lot  
8 easier for the court reporter later.

9 Mr. Beck?

10 MR. BECK: Yeah.

11 THE HEARING EXAMINER: The forum is  
12 yours.

13 MR. BECK: Thank you, Mr. Hearing  
14 Examiner. Earthstone calls the landman, Amanda  
15 Redfearn.

16 THE WITNESS: Hello. Mr. Hearing  
17 Examiner, as you requested, my name is Amanda  
18 Redfearn, spelled A-M-A-N-D-A. Last name Redfearn,  
19 R-E-D-F-E-A-R-N.

20 MR. BECK: Mr. Hearing Examiner,  
21 Ms. Redfearn's experience is outlined in paragraph 3  
22 of her direct testimony, and she's previously been  
23 accepted as a petroleum landman expert by the  
24 division, and Earthstone tenders her as a petroleum  
25 landman expert for these matters today.

1 THE HEARING EXAMINER: Mr. Bruce, any  
2 objection?

3 MR. BRUCE: No, sir.

4 THE HEARING EXAMINER: She is accepted  
5 as a expert. Please proceed.

6 DIRECT EXAMINATION

7 BY MR. BECK:

8 Q Ms. Redfearn, I know that a lot of what  
9 you've prepared for this hearing is in your packet,  
10 and I'm not going to talk with you about a lot of  
11 those.

12 What I want to highlight is what you found  
13 first when you were preparing this application -- this  
14 competing application in terms of the negotiations  
15 between Chisholm and Mewbourne coming before the  
16 division.

17 What's your understanding -- or I guess not  
18 your understanding. How did Earthstone come to be a  
19 mineral interest owner in the sections proposed to be  
20 drilled in these applications?

21 A Sure. Yes. So we came to our interest by  
22 the acquisition of Chisholm in 2022, and succeeded in  
23 their interest.

24 Q And how long after that did Earthstone  
25 decide to proceed with its development plan in these

1 two applications?

2 A We -- shortly thereafter I didn't -- these  
3 areas were identified prior to diligence or during  
4 diligence.

5 And then, you know, when we started doing  
6 our applications for this and negotiations will  
7 receive Mewbourne's plans, that's when I started  
8 digging in a little bit deeper into the records that  
9 we received from Chisholm.

10 And the case number was written on the  
11 operating agreement for the expansion in North Wilson  
12 Deep Unit, which then I did some research and to our  
13 internal records received from Chisholm, and then the  
14 OCD case files, which brought to light that Chisholm,  
15 a predecessor, expressed their thoughts to exclude the  
16 east half of section 18, and wanted to remain operator  
17 of that.

18 Q I'm going to show you what's been admitted  
19 as Earthstone's Exhibit A2, which shows the tracks for  
20 first the wells proposed as outland Exhibit -- or  
21 excuse me -- outland 18-7 State Com 114H and outland  
22 18-7 State Com 214H.

23 And it shows that it's proposed on the east  
24 half, east half of section 18 and the east half, east  
25 half of section 7. Is that right?

1           A       Correct.

2           Q       Did you prepare what's been admitted as  
3 Exhibit A2?

4           A       Yes, I did.

5           Q       And it lists the working interest owners on  
6 tract 1, tract 2, and tract 3, and then the working  
7 interest pool and the overriding royalty interest --  
8 or excuse me -- overriding royalty parties to pool.  
9 How did you come up with the parties listed on Exhibit  
10 A2?

11          A       A combination of things. I had a broker  
12 that went out and updated the title out in the  
13 courthouses, and also look into the state land office  
14 records. Once he fully prepared all those run sheets,  
15 I forward that onto our title attorney.

16                 Our title attorney examined all those  
17 materials and prepared a DOTO for the subject spacing  
18 units. And that is where I direct to those interest  
19 figures for each tract, the spacing unit, et cetera,  
20 on my ownership exhibits.

21          Q       All right. We heard during Mewbourne's  
22 testimony earlier today about the state land office  
23 and its communications about the -- before the  
24 division in these matters. I understand that you had  
25 an email exchange with the state land office. Is that

1 accurate?

2 A Yes, that is true.

3 Q I'll show you what I showed Ms. Salgado  
4 earlier, and that's what was marked as Exhibit 1 to  
5 Earthstone's response to Mewbourne's motion to dismiss  
6 these applications. Is that a copy of an email that  
7 you sent to Scott Dawson at the state land office?

8 A Yes.

9 Q What prompted you to send that exhibit?

10 A I had received a bunch of phone calls from  
11 Scott Dawson. And when I talked to him prior to  
12 sending that email, he had let me know Mewbourne had  
13 contacted him, and he wanted to give the courtesy to  
14 let me know that he was not going to allow us to drill  
15 into the unit, et cetera, et cetera.

16 During those conversations, it came to light  
17 that the SLO and Scott Dawson was not aware of our  
18 competing applications, that Mewbourne did not notify  
19 them that they would actually be drilling from section  
20 18 into the unit.

21 And so long story short, he was not fully  
22 apprised of the situation and the matters at hand. So  
23 I went ahead and I included all parties, so there was  
24 complete, full transparency between Earthstone, the  
25 state land office, and Mewbourne, and Mewbourne's

1 counsel.

2 The matters at hand, you know, respectfully  
3 requesting the state land office to reserve judgment  
4 on awarding operatorship and/or denying any potential  
5 APD permits until the OCD has had the opportunity to  
6 listen and hear both of our cases.

7 Q Now you saw earlier what was marked Exhibit  
8 3 in Mewbourne's application the email from Mr. Dawson  
9 to Ms. Salgado?

10 A Yes.

11 Q Did you have any knowledge about Mewbourne's  
12 communication with the state land office at that time?

13 A Mewbourne asserted that they had  
14 conversations, but would not give me any of those  
15 details or forward me any of that information. It  
16 wasn't till Scott Dawson himself forward me a little  
17 bit of those communications when he was trying to  
18 contact me prior to sending that email to all parties.

19 Q And then when you talked with Scott Dawson,  
20 and as reflected in Exhibit 1 to the response, the  
21 state land office was under the impression that  
22 Earthstone was not a party to the North Wilson Deep  
23 Unit agreement; right?

24 A Correct. And I -- I had to let Mr. Dawson  
25 know that we succeeded in Chisholm's interest and it

1 just doesn't appear to be reflected in the state land  
2 office records that Earthstone is now the successor in  
3 interest to Chisholm.

4 Q And the state land office also didn't know  
5 that Mewbourne intended to drill from section 18 into  
6 section 7; right?

7 A Correct.

8 Q And has the state land office ever told you  
9 or anyone at Mewbourne that it will not consider or  
10 even approve an application if you're granted these  
11 compulsory pooling orders?

12 A No.

13 THE HEARING EXAMINER: Mr. Beck, is  
14 this a good opportunity for me to ask you where is  
15 Exhibit 1 that you showed your witness a little while  
16 ago?

17 MR. BECK: That's Exhibit 1 attached to  
18 the Earthstone's response to Mewbourne's motion to  
19 dismiss. It was filed by the division on April 28,  
20 2023, at 4:02 p.m. It's page 18 of 20 of that  
21 pleading in the case file.

22 THE HEARING EXAMINER: So just to be  
23 clear, are you asking for it to be admitted into  
24 evidence in this case or are you just referring to it?

25 MR. BECK: You know, I hadn't really

1 thought about it. I think the testimony is clear.  
2 But since you're prompting me, I guess I'd move at  
3 this time to include it in the exhibits that the  
4 division will look at as it takes these under  
5 advisement.

6 THE HEARING EXAMINER: Mr. Bruce?

7 MR. BRUCE: I would object.

8 THE HEARING EXAMINER: Can you give me  
9 a basis for the objection?

10 MR. BRUCE: Well, they knew they had  
11 it, and they haven't submitted it in their exhibit  
12 packages.

13 THE HEARING EXAMINER: So the objection  
14 is --

15 MR. BRUCE: Lack of timely -- yeah.

16 THE HEARING EXAMINER: Okay. Mr. Beck?

17 MR. BECK: The reason that I -- the  
18 reason that Earthstone didn't submit any is it's -- my  
19 understanding is it's part of the record in this  
20 matter, and that's why I said I haven't thought of  
21 admitting it as an exhibit.

22 I think that in the corollary to  
23 whatever is taking judicial notice is the files in the  
24 record, I think, that the division can.

25 But as I said, I think it makes since,

1 since we've been discussing it, just to include it as  
2 an additional exhibit for the hearing.

3 THE HEARING EXAMINER: And the purpose  
4 of it coming into evidence is what?

5 MR. BECK: That we discussed it, that  
6 it's relevant to, I think, the argument that Mewbourne  
7 has made, although not come out and said it, that the  
8 state land office somehow has put its finger on the  
9 scales in this. And it's -- as I said, it's obvious  
10 that it -- that is has.

11 And I think it also goes to probably  
12 the credibility of the witnesses in the good faith  
13 negotiation, which obviously is a consideration for  
14 the division here.

15 And the fact that you've got an exhibit  
16 from Mewbourne in Exhibit 3 of their exhibits, that  
17 that does not include the original email sent to the  
18 state land office that prompted the reply Ms. Salgado  
19 said she received.

20 Whereas on the other hand, you've got  
21 an email from Ms. Redfearn and Earthstone that was  
22 sent to the state land office in which Mewbourne was  
23 copied.

24 THE HEARING EXAMINER: Mr. Bruce, do  
25 you want to voir dire the witness on that exhibit?

1 MR. BRUCE: No, Mr. Examiner. I mean,  
2 it exists. That email exists. I'll -- questions for  
3 her, but not really for voir dire. Okay?

4 THE HEARING EXAMINER: Okay. All  
5 right. So I do find that the credibility of a witness  
6 is crucial at any point in a proceeding, such as this,  
7 where we're trying to get at the truth.

8 So I am going to admit that as an  
9 exhibit, but I'm going to ask Mr. Beck to mark it  
10 appropriately and submit it, so that it's part of your  
11 exhibit list here.

12 What do you propose marking it?

13 MR. BECK: I'll do that as soon as we  
14 finish here. And I propose that it be admitted as  
15 Exhibit E.

16 THE HEARING EXAMINER: I'm sorry.  
17 What? E as in echo?

18 MR. BECK: E as in echo. Yes.

19 THE HEARING EXAMINER: E as in echo.  
20 Okay.

21 Exhibit E -- Earthstone's Exhibit E is  
22 admitted into evidence for the purpose of the  
23 credibility of the former witness. And that's why  
24 it's being admitted. It's not being admitted for any  
25 other purpose. So we're letting it in for that one

1 purpose. And I'm taking notes.

2 Okay. And we'll expect you to mark it  
3 as Exhibit E and submit it through the portal,  
4 Mr. Beck.

5 (Earthstone's Exhibit E was marked for  
6 identification.)

7 (Earthstone's Exhibit E was received  
8 into evidence.)

9 MR. BRUCE: Yes, Mr. --

10 THE HEARING EXAMINER: Okay. So please  
11 continue with this witness.

12 BY MR. BECK:

13 Q Ms. Redfearn, have you had the opportunity  
14 to examine Mewbourne's Exhibit 2, which is the  
15 verified statement of Adriana Salgado for this --

16 A Yeah. I have.

17 Q Brought that up in front of you. And in  
18 terms of Exhibit 2-2, the section plat for 8H -- for  
19 the North Wilson Deep Unit 8H where it says, "Tract  
20 3," that Mewbourne Oil Company's minimal interest  
21 owners, is that accurate as far as your records  
22 reflect?

23 A No. That is inaccurate. And in fact,  
24 Mewbourne has admitted that they do not have any  
25 interest in the east half of section 18, specifically

1       that lease referenced there in Exhibit 2-2.

2           Q       And then I'm going to take you to revised  
3       Exhibit 2-2, which reflects the leasehold interest for  
4       the well 8H and the proposed well 9H. Are those  
5       interests reflected there -- do you agree based on the  
6       records you reviewed those are accurate or do you  
7       think those are inaccurate?

8           A       Those are inaccurate for more than one  
9       reason. One main reason being Timothy MacDonald and  
10      Maverick are not credited and listed there yet. Their  
11      exhibit still totals to 100 percent.

12                 Secondly, as I mentioned before, in my  
13      ownership that Earthstone pooled together, we got a  
14      full-blown DOTO done on it. And I believe Mewbourne  
15      was saying they just had a leasehold takeoff. So with  
16      that said, this is firstly inaccurate.

17                 Although, this revised exhibit is a little  
18      bit closer to the numbers than that they had  
19      originally stated in their original exhibits. But  
20      it's just still not quite accurate.

21                 Devon has a larger percent of interest in  
22      that, and I'm not quite sure of how their accounting  
23      or where they're putting Timothy MacDonald and  
24      Maverick's interest in here into play.

25           Q       And this is -- again, this is probably

1 showing how ignorant I am, but it'll probably help out  
2 me and some others listening in. What is a DOTO that  
3 you're referring to that was done?

4 A Sure. It's a division order title opinion.

5 Q And who does that for Earthstone and who --  
6 let me ask a better question. Who did that for  
7 Earthstone for these applications?

8 A Our title attorney that we used, KMD.

9 Q Want to talk to you about Exhibit A6 in  
10 Earthstone's prehearing exhibit packet. Are you  
11 familiar with this exhibit?

12 A Yes, I am.

13 Q What does this show?

14 A This here is showing the pad location that  
15 we got approved from the surface center that we staked  
16 on March 27th.

17 And then the two additional pads over on the  
18 west half that we recently got pooling orders on that  
19 we would -- are hoping to codevelop together if we  
20 were able to be awarded operatorship here on this east  
21 half of 18 and 7.

22 Q You referenced the compulsory pooling order  
23 that you were just awarded in the well that will --  
24 this will out of that -- or is being developed out of  
25 that. What's the status off those wells?

1           A     Those wells have already been permitted. We  
2 already have API numbers. And I have proposed them  
3 already to the parties that were under order.

4           Q     How did the facilities for those wells play  
5 into the development plan here for the proposed  
6 outland 18-7 wells in these two cases?

7           A     Well, due to the proximity, and the existing  
8 infrastructure, and everything else like that, it --  
9 it's just -- it's codeveloping the east jointly  
10 together. It's just more efficient. It's cost  
11 effective.

12                     There's already existing roads and other  
13 infrastructure there that we would not have to  
14 traverse any other lands outside of the spacing units,  
15 much less traverse into the North Wilson Deep Unit.

16           Q     Did you compare the surface impacts for  
17 Earthstone's applications in these cases with the  
18 surface impacts from Mewbourne's applications and the  
19 cases competing with it today?

20           A     I did.

21           Q     And what conclusions about the differing  
22 surface impacts did you reach in those comparisons?

23           A     To me, in my opinion, it looks like there  
24 would be a lot more surface disturbance.

25                     There would also be -- you know, it's hard

1 to tell exactly, but with those two batteries that  
2 they reference in the sections, they would have to,  
3 you know, traverse off these pad locations across  
4 state land trusts, and although right away is not  
5 required there, it -- it's also the physical  
6 disturbance crossing over those lands, in addition to  
7 flow line paths and not knowing that, you know,  
8 they -- they could have to potentially bury under  
9 Highway 176 to reach their existing facilities and  
10 batteries that they referenced.

11 MR. BECK: May I have a minute,  
12 Mr. Hearing Examiner?

13 BY MR. BECK:

14 Q Ms. Redfearn, I'm showing you what's been  
15 admitted as Mewbourne's Exhibit 4 for these cases. Do  
16 you see that in front of you?

17 A Yes, I do.

18 Q This is a letter of support dated July 18,  
19 2023, from Devon Energy Production Company to  
20 Mewbourne Oil Company. Is that right?

21 A Yeah.

22 Q And is the support in this letter supporting  
23 the applications of Mewbourne different than what  
24 you've heard Mewbourne talk about as its development  
25 plan today at the hearing?

1           A     Yes, in the sense that today is the first  
2     time I'm hearing, and then also with the addition of  
3     those -- believe it was Exhibit 12 where they were  
4     speaking upon targeting the first Bone Spring  
5     formation at a later date.

6                     It kind of signals a little bit different to  
7     me in the sense that Devon's letter of support here is  
8     supporting these specific wells and these specific  
9     applications, and supporting a two-well development in  
10    the Bone Spring only.  And --

11           Q     And that's what --

12           A     I'm sorry.  Go --

13           Q     -- the case number 23365 seeks authorization  
14    to drill and complete a producing total of one Bone  
15    Spring well in a proposed spacing unit, and then same  
16    thing in the next sentence for case number 23366, they  
17    produced a total of one Bone Spring well; right?

18           A     Correct.

19           Q     And then as far as your reading of this  
20    letter, nowhere does it say Devon would support the  
21    drilling of additional Bone Spring wells on these  
22    units; right?

23           A     No.  If you could please scroll down to the  
24    second page, I think it expressly states in there  
25    "Devon urges -- the commission approved Mewbourne's

1 request for authorization to drill and complete a  
2 producing total of two Bone Spring wells within the  
3 east half of section 7 and east half of 18."

4 So only a total of two does that letter  
5 support. And it doesn't support any additional  
6 targets in the Bone Spring that has now come to light  
7 that Mewbourne is interested in targeting at a future  
8 date.

9 Q Did Earthstone ever talk with Devon about  
10 the application for -- two applications with a total  
11 of four wells versus only drilling two wells into the  
12 spacing unit?

13 A Yes.

14 Q What were those discussions?

15 A The discussions they had is that they were  
16 more in favor of a two-well development versus the  
17 four-well development. But there was also some other  
18 business reasons, and -- as to why they were looking  
19 to support that.

20 MR. BECK: That's all that I have for  
21 the direct of Ms. Redfearn.

22 THE HEARING EXAMINER: Okay. Before I  
23 turn this over to Mr. Bruce, I do want to remind you,  
24 Mr. Beck, that Exhibits B and B1 through 5 are  
25 admitted, and I don't think this witness is dealing

1 with B. But 6 through 10 are objected to.

2 MR. BECK: B6 through 10.

3 THE HEARING EXAMINER: Yes. Exactly.

4 MR. BECK: Yeah. Thank you. Yeah.

5 She's not testifying about the exhibits marked B. I  
6 appreciate that.

7 THE HEARING EXAMINER: I understand.  
8 Just wanted to make that very clear to all the  
9 parties.

10 MR. BECK: Thank you.

11 THE HEARING EXAMINER: Okay.

12 Mr. Bruce, cross-examination, please.

13 MR. BRUCE: Thank you, Mr. Examiner.

14 CROSS-EXAMINATION

15 BY MR. BRUCE:

16 Q Well, let's start with the last thing you  
17 said that you've spoken -- or you looked at the letter  
18 of support from Devon to Mewbourne. Mewbourne at this  
19 time is only proposing two wells; correct?

20 A Correct. Yes.

21 Q And so that letter supporting two wells is  
22 perfectly accurate; correct?

23 A Yes. In the sense that it's -- it's  
24 supporting a two-well development only in the Bone  
25 Spring. I -- latter -- latter paragraph of that

1 letter.

2 Q And under a pooling order, Mewbourne gets a  
3 pooling under. Under the order, under the OCD's  
4 statewide rules, additional wells can be proposed to  
5 the working interest owners who are being pooled. Is  
6 that correct?

7 A That is correct.

8 Q Okay. And you cannot predict what Devon may  
9 do in that case.

10 A I -- I cannot. I cannot speak for Devon.

11 Q Okay. And now in your affidavit you state  
12 in your -- a couple of places, but in paragraph 8,  
13 Chisholm -- toward the bottom you talked about  
14 Chisholm didn't want to have some of its lands in the  
15 state unit, you know, impede development plans of the  
16 acreage for those who choose to commit to the  
17 expansion.

18 Now both Chisholm and Earthstone could've  
19 developed this acreage, their section 18 acreage, with  
20 section 19 to the south. Couldn't they? Prior to  
21 that.

22 A Yes, sir. They could've. But to my  
23 understanding, those wells were drilled shortly after  
24 Mewbourne got their order to expand their unit. And  
25 there's -- those conversations that were held between

1 the operator down to the south in section 19 in  
2 Chisholm I'm not privy to.

3 They could've had those conversations and  
4 try to develop, but I do know that Chisholm, our --  
5 our predecessor, and now Earthstone does not have any  
6 interest in section 19. So it just wouldn't make  
7 sense for us to try to develop that when we have no  
8 ownership in section 19 down to the south.

9 Q Well, isn't that the purpose of pooling? I  
10 mean, after all, you obviously don't want to drill  
11 1-mile laterals in section 18. Is that correct?

12 A That is correct. It's more economical to --

13 Q Okay. So impeding development -- by  
14 Mewbourne proposing 2-mile wells, they're not impeding  
15 development. They're doing exactly what you want to  
16 do.

17 A Yes. But -- I'm sorry. Go ahead.

18 Q No. Go ahead.

19 A No. As you pointed out in my paragraph 8 of  
20 where it's been made a matter of record, but, you  
21 know, it was grave concerns that Mewbourne would use  
22 its designation as a unit operator to the state unit  
23 to challenge and impede the development plans of other  
24 working interest owners.

25 And to me, exactly what Mewbourne is doing

1 here is challenging, impeding our ability and our  
2 development plans for our leasehold acreage in section  
3 east half of 18 that we have a working interest in  
4 that Mewbourne does not.

5 Earthstone also has a working interest in  
6 the east half of 7. So we have interest in both  
7 proposed spacing units in these cases.

8 Q And section 7 is in the unit area operated  
9 by Mewbourne; correct?

10 A That is correct.

11 Q And so what you're seeking to do is impair  
12 their development of the unit by not allowing them to  
13 operate.

14 A No. I think what we're seeking here is just  
15 a fair and equal opportunity to have our cases heard  
16 of who has the superior development plan to develop  
17 the acreage prudently.

18 Q And Mewbourne could've simply proposed  
19 2-mile wells to the north starting in section 7  
20 heading to the north. And where would Earthstone be  
21 at this point?

22 A I don't think they could've, because of  
23 the -- there's current wells already located to the  
24 north of 7.

25 And then also I'm very familiar with the

1 surface use agreement and the location that it --  
2 the -- you have to have permission from the surface  
3 owner 14 days in advance to even enter the property,  
4 and then you need to advise them of all your locations  
5 and plans. And they have to agree upon that.

6 And I know speaking with the surface owner  
7 of 7, it's just not feasible for that kind of  
8 developed -- for that. And then also to the sure fact  
9 that there's already development north of 7 that would  
10 make it almost impossible for development to occur  
11 there.

12 Q Well, let me ask you. I think if you look  
13 at the exhibits, yeah. In one part of section 6 there  
14 is an existing well, but I don't know if Earthstone  
15 has done it.

16 But you obviously -- pay attention to the  
17 OCD's docket, and there are many units being drilled  
18 where there are existing wells where you just apply  
19 for approval of overlapping well units. Isn't that  
20 correct?

21 A That is correct, but we just didn't feel the  
22 need that --

23 Q So what I'm getting at, you answered, is  
24 that Mewbourne is not impaired from drilling from  
25 section 7 into section 6. They can go ahead and

1 propose that, and drill unit acreage, and what would  
2 be the recourse of Earthstone if they decided -- if  
3 they had decided some months ago to do that?

4 A Well, if they were staying wholly in unit --

5 MR. BECK: I'm going to object to that  
6 as compound. I think there was three questions in  
7 there, and I don't know Ms. Redfearn knows which one  
8 she's being asked to answer --

9 THE HEARING EXAMINER: Mr. Bruce, could  
10 you reformulate the question?

11 MR. BRUCE: Yeah. And I can't even  
12 remember if I remember it, but --

13 THE HEARING EXAMINER: Well, we have a  
14 court reporter, Mr. Bruce. We have a court reporter  
15 who could read it back to us -- and you could split it  
16 up if you like.

17 MR. BRUCE: I think I can remember --

18 BY MR. BRUCE:

19 Q First of all, you admitted you have well  
20 units with overlapping well units. Secondly,  
21 Mewbourne could drill 2-mile laterals to the north  
22 from section 7 into section 6. Is that correct?

23 A If Mewbourne wished to do that, yes. It  
24 seems like that could be a potential that they could  
25 work out.

1           Q     And if Mewbourne had decided to do that --  
2     this case was originally scheduled to be heard in  
3     February. I can't remember when I filed the  
4     application. Would Earthstone be better or worse off  
5     only having section 18 to develop?

6           A     You -- I -- I don't -- not sure how to  
7     answer that one, as far as being better off. I think  
8     in that case they would be wholly within unit and  
9     within their bounds.

10                  And I think, you know, our position here is  
11     that the east half of 18 was meant to be excluded from  
12     the unit, being Mewbourne is an operator to it. And  
13     therefore --

14           Q     Can you point to me any -- okay. Can you  
15     point to any explicit written agreement between  
16     Chisholm and Mewbourne or Mewbourne and Earthstone  
17     that says that Mewbourne cannot propose a well unit,  
18     including east half section 18 acreage?

19           A     I do not see an agreement for that, but I  
20     think that is implied in part of this -- all of the  
21     case proceedings in the expansion of the unit, and why  
22     that was specifically excluded is because Chisholm,  
23     our predecessor and other operators wanted to have the  
24     ability to operate their leasehold.

25           Q     Okay. Well, you know, there's no guarantees

1     that an operator or that a company will get to operate  
2     a well.

3           A     I understand that.  And that's why we're  
4     here today, Mr. Bruce.

5           Q     And let me move onto a couple of other  
6     things.  Okay.  The land exhibits.  Mewbourne filed an  
7     additional -- a revised Exhibit 2-2, which you looked  
8     at.  First off, you'll admit that Mr. MacDonald and  
9     Maverick own quite small interests.  Do you not?

10          A     They do.  Working interests, nonetheless.

11          Q     Oh, sure.  But if you look at Mewbourne's  
12     exhibits and who has -- who is the parties who are not  
13     being pooled -- in other words, they signed JOAs and  
14     then the letter of support for Devon -- you still get  
15     up to about 72 percent approval from working interest  
16     owners in the proposed well units who approved of  
17     Mewbourne's plans.  Is that correct?

18          A     Yes, sir.  It seems to be that way.  But  
19     again, like I said, these interest figures are not  
20     accurate, so I -- I can't say for certain that you  
21     guys are representing the most accurate interest to  
22     being pooled.

23                     And although there is a letter of support, 7  
24     has not signed a JOA, so I'm not sure if you could  
25     really count that as being committed at this time,

1 'cause there's still -- it's evident that you guys are  
2 still seeking to compulsory pool them the same way  
3 Earthstone is --

4 Q Well, and you heard Ms. Salgado say that's  
5 because Devon in these situations has not been signing  
6 a JOA. They elect under the pooling order, and  
7 they've elected to join in all of Mewbourne's wells.

8 A Correct. And I -- you know, I will point  
9 out in my exhibit, you know, we do have a letter  
10 agreement from Conoco and COG. But I didn't go ahead  
11 and count them as being committed there either.

12 A lot of these parties wanted to wait  
13 until -- to see how this hearing played out and who is  
14 awarded operatorship.

15 And that's why it's in my statement that,  
16 you know, if we were referring to an awarded  
17 operatorship, that if we were to come to voluntary  
18 agreement with other parties, we would sign a JOA with  
19 them and not take everyone under pooling.

20 Q So what you're saying is no other working  
21 interest owner has committed its interest to  
22 Earthstone's wells.

23 A Well, if you want to -- I guess you could  
24 say yes, by virtue of a letter agreement. Also if you  
25 wanted to count Timothy MacDonald, who has already

1     elected to participate in these proposed wells, as you  
2     guys have noticed.

3             And I've also noticed the guy didn't list  
4     any overriding royalty interest owners on your Exhibit  
5     2-2. So again, I'm -- I'm just -- it just kind of  
6     makes me extremely doubt the interest figures that are  
7     being purported here on this exhibit.

8             Q     Well, the main purpose of pooling is to get  
9     working interest owners committed to share the well  
10    cost. Would that be an appropriate statement?

11            A     Yes. All -- all working interest owners,  
12    but two of which were missed on -- on your exhibits  
13    and proper notice.

14            Q     Was about a 0.03 percent --

15            A     Small interest or not -- yes. In small  
16    interest or not, they're still a working interest  
17    owner that was entitled and due notification and their  
18    opportunity to elect or eject.

19                   And as I mentioned, we properly noticed  
20    Maverick and MacDonald, and Maverick has already  
21    elected to participate in all four of our wells.

22            Q     And absent a JOA or a pooling order, those  
23    election notices carry no legal weight. Do they?

24            A     No. But we're currently working with  
25    Maverick to get a JOA signed. As I mentioned before,

1     our co-development to the orders that we got on the  
2     west half, working through -- we just got those  
3     proposals out and working through getting JOAs and  
4     everything signed.

5             And we're hoping to codevelop these  
6     together. And when that occurs, we will get those  
7     parties under JOA based upon the -- the negotiations  
8     that I've had with all of the parties.

9             Q     And let's assume -- I don't know. The  
10    bigger the fight, the longer it takes to get a pooling  
11    order out. Are these proposed wells on Earthstone's  
12    drilling schedule?

13            A     Yes, they are.

14            Q     For when?

15            A     The dovetail wells are scheduled for early  
16    2024, and depending on how the -- this hearing shakes  
17    out today, they would be codeveloped there and  
18    codesigned together.

19            Q     Will Earthstone be the operator of those  
20    wells or will another company be?

21            A     Earthstone will be the operator.

22            Q     Earthstone will still be an independent  
23    company in early 2024?

24            A     To my understanding, yes, sir.

25            Q     Finally, let's go back to the state land

1 office approval, the email you wrote to Scott Dawson  
2 last spring, I think. Did he ever give an explicit  
3 response stating that they would hold their approval  
4 in advance pending the outcome of this hearing?

5 A Not in a written statement or written reply.  
6 We spoke over the phone.

7 Q Do you know of any email or anything  
8 revoking Mewbourne's state land office approval?

9 A I am not aware. In that conversation that I  
10 had with Scott, he said that he respected my email and  
11 he's going to reserve and withhold judgment until  
12 these cases have been heard and the OCD has made their  
13 decision.

14 MR. BRUCE: That's all I have at this  
15 time, Mr. Examiner.

16 THE HEARING EXAMINER: Thank you.  
17 Mr. Lowe?

18 MR. LOWE: Good afternoon.

19 THE WITNESS: Hello.

20 MR. LOWE: I've just got just a quick  
21 question. In all your exhibits that have been  
22 presented here, is there any one of the exhibits that  
23 has the unit map for the unit in question?

24 THE WITNESS: The spacing unit?

25 MR. LOWE: Entire referenced unit that

1     you guys are referring to for Scott Dawson.

2                   THE WITNESS:   The North Wilson Deep  
3     Unit?

4                   MR. LOWE:    Yes.

5                   THE WITNESS:   No.   That's a 12,000 some  
6     odd acre unit, so it's quite large and didn't fully  
7     pertain to these cases.   Only the east half of section  
8     7 is encompassed in that North Wilson Deep   Unit.

9                   MR. LOWE:    Okay.   And that's kind of --  
10    I was trying to focus in on in reference to that Scott  
11    Dawson subject, and units, and then what we're looking  
12    at here.   But yeah.   I can understand it being quite  
13    large.

14                   The other question too -- in the  
15    beginning of your presentation, I thought I heard you  
16    talking about when Earthstone took over this location  
17    from the other company -- what was the other company?

18                   THE WITNESS:   Chisholm?

19                   MR. LOWE:    Chisholm, yes.   At that  
20    time, did I understand -- did I hear correctly that  
21    that's when you all found out that this location was  
22    under -- had a case number at the time?   Is that what  
23    I understood and what I heard?

24                   THE WITNESS:   Yes.   When I took over  
25    this area and started working it, and working with

1     Adriana and the negotiations, that's when I discovered  
2     the -- the case at hand that led to a lot of this  
3     evidence and history.

4                     MR. LOWE:   Okay.   And from when you  
5     found that out at that moment was there any changes to  
6     the case when you all took it there afterwards or did  
7     it pretty much stay the same as how the case was  
8     being -- how the case was, I guess, noted at that  
9     time?

10                    THE WITNESS:   Which case are you  
11     referring to?

12                    MR. LOWE:   I guess the case in --  
13     pending at the time when you took over the other  
14     company.   Was there a list -- I'm assuming all of  
15     them.   Is that what -- they were all under that  
16     scenario?

17                    THE WITNESS:   I'm not quite  
18     understanding.   I think -- are you talking about the  
19     case that expanded the North Wilson Deep Unit or are  
20     you talking about these specific cases that we're  
21     speaking about today?

22                    MR. LOWE:   The one that we're speaking  
23     about today.

24                    THE WITNESS:   Did anything change to  
25     that?

1 MR. LOWE: Yeah. 'Cause that's -- I  
2 guess that's what I'm trying to understand. From what  
3 I heard is when you all -- when Chisholm took over the  
4 other company -- not Chisholm -- Earthstone took over  
5 Chisholm, at that time you found that these -- this  
6 scenario, this location was under these cases.

7 Is that what I -- I guess that's what I  
8 need to clarify on my side. Was that the scenario at  
9 the time?

10 THE WITNESS: It wasn't at the  
11 immediate time that we took over Chisholm, but it was  
12 sometime between then and the time that we received  
13 Mewbourne's proposals.

14 MR. LOWE: Okay. And that's all I  
15 wanted to find out for sure. Okay. Well, thank you  
16 for clarifying that for me.

17 Those are the only questions I got.  
18 Any other questions I have are going to be from the  
19 exhibits that I'm still going through on my side. But  
20 thank you much for your presentation, and I appreciate  
21 it. And that's all I have.

22 THE WITNESS: All right. Thank you.

23 THE HEARING EXAMINER: Thank you,  
24 Mr. Lowe.

25 Any redirect?

1 MR. BECK: Ms. Redfearn, I think it's  
2 short.

3 REDIRECT EXAMINATION

4 BY MR. BECK:

5 Q The conversation you had with the state land  
6 office over the phone, the state land office confirmed  
7 that it would reserve and withhold judgment on  
8 approval of either Earthstone or Mewbourne until this  
9 division made its decision in these competing  
10 applications. Is that right?

11 A Correct.

12 MR. BECK: That's all I had. Thank  
13 you.

14 THE HEARING EXAMINER: Okay. Your next  
15 witness, sir?

16 MR. BECK: The next witness is  
17 geologist Jason Asmus.

18 THE HEARING EXAMINER: Would you state  
19 and spell your name, please?

20 THE WITNESS: Yes, sir. First name is  
21 Jason, J-A-S-O-N. Last name Asmus, A-S-M as in  
22 Michael, U-S.

23 THE HEARING EXAMINER: Okay. And your  
24 voice is coming through broken up, and I don't know if  
25 the court reporter can hear you clearly. Let's see

Page 204

1     what happened -- we may need to switch to a -- now I'm  
2     hearing an echo, so.

3                     THE WITNESS: All right. Let me try  
4     this now. Can you hear me?

5                     THE HEARING EXAMINER: Yes.

6                     MR. BECK: Yeah. I can hear you a lot  
7     better.

8                     THE WITNESS: My name is Jason,  
9     J-A-S-O-N. Last name Asmus, A-S-M-U-S.

10                    DIRECT EXAMINATION

11     BY MR. BECK:

12             Q     Mr. Asmus, I'm looking at your direct  
13     testimony, and sort of your background is provided in  
14     paragraph 3. And your credentials of petroleum  
15     geologist have been accepted by the division before.  
16     Is that right?

17             A     That is correct.

18             Q     Attached to your direct testimony there are  
19     a number of exhibits, Exhibit B1 through Exhibit B10.  
20     Is that right?

21             A     That is correct.

22             Q     And did you prepare and participate in the  
23     preparation of all of the Exhibits B1 through B10?

24             A     Yes, sir.

25             Q     Who else besides yourself at Earthstone

1       helped in the preparation of B1 through B10?

2           A       That'll be our reservoir engineer, Juan  
3       Mata.

4           Q       Did you discuss all the contents of your  
5       direct testimony, statement, and Exhibits B1 through  
6       B10 with Juan -- what was his last name? I'm sorry.

7           A       Mata, M-A-T-A.

8           Q       M-A-T-A. Did you discuss all your direct  
9       testimony and the exhibits with Mr. Mata?

10          A       Yes, sir.

11          Q       All right. And did you understand and feel  
12       comfortable with everything that is written in  
13       Exhibits B1 through B10 in your testimony and your  
14       direct statement?

15          A       Yes, sir.

16          Q       You have -- how long have you been working  
17       in the oil and gas industry in the Delaware Basin  
18       specifically?

19          A       Twelve years of my career, and I would say  
20       about 11 of those in primarily the Delaware Basin.  
21       Going on 12 years.

22          Q       And in those 12 years, have you had the  
23       opportunity to analyze and compare proppant intensity  
24       of wells and the effect on production?

25          A       Yes, sir.

1           Q     Have you had the opportunity to compare the  
2     distance between adult and children wells, and how  
3     that may affect production from those child and adult  
4     wells?

5           A     Yes, sir.

6           Q     What is a child versus an adult well?

7           A     Typically how we define it -- and I'm sure  
8     you can come across many variations of definition of  
9     parent versus child.

10                But we typically look at a child well as one  
11     that comes in within a similar formation target bench,  
12     typically with production being six to nine months  
13     after the initial production of the original parent  
14     well.

15           Q     And is that the definition that you use in  
16     Exhibits B9 and B10 when you talk about child versus  
17     parent wells?

18           A     Yes, sir.

19                MR. BECK:   At this time, Mr. Hearing  
20     Officer, Earthstone tenders Mr. Asmus as an expert  
21     petroleum geologist, and moves into evidence B6  
22     through B10. I think those are the exhibits that have  
23     not yet been admitted.

24                THE HEARING EXAMINER:   That's correct.

25                Mr. Bruce?

1 MR. BRUCE: Mr. Examiner, I -- no  
2 development -- no problem with Mr. Asmus testifying as  
3 a petroleum geologist. But he is not a reservoir  
4 engineer. And Exhibits B6 through B10 are clearly  
5 marked "Reservoir Engineer."

6 And primary data -- Earthstone's  
7 reservoir engineer, who I will not have any chance to  
8 cross-examine.

9 So I don't think there's a -- virtual  
10 connectivity interruption -- and I do not -- I will  
11 not have the right to cross-examine the person who  
12 really formed these exhibits and therefore I object to  
13 them being admitted into the record.

14 THE HEARING EXAMINER: Mr. Beck?

15 MR. BECK: Sure. Mr. Hearing Examiner,  
16 as Mr. Asmus testified, he's the one who developed  
17 these exhibits. He's the one who wrote the  
18 information in these exhibits. He feels confident to  
19 testify to the information in these exhibits.

20 He has made these comparisons for ten  
21 years in the Delaware Basin specifically, so he's  
22 competent to testify about all these exhibits. He's  
23 laid the foundation to how they come about. They're  
24 admissible. They're set forth.

25 Frankly, you know -- and I don't have

1 the experience that others do, but what I've seen in  
2 these contested hearings is that rather than being  
3 here for days and days on end and having multiple  
4 witnesses come in and out, the witness testimony is  
5 developed from those who have both education and  
6 experience in the field in which they're testifying  
7 about are confident to testify.

8 And that's the reason that the rules  
9 for the division allow for, as you pointed out earlier  
10 as we kicked off today, a more lenient standard for  
11 the rules of evidence.

12 And so hearsay can come in. And so to  
13 the extent that Mr. Bruce believes that there's  
14 evidence he won't be able to explore, I guess he can  
15 try to develop that now and voir dire Mr. Asmus, but  
16 otherwise they're admissible and they should be  
17 admitted.

18 THE HEARING EXAMINER: Mr. Beck, what  
19 page number does B6 begin?

20 MR. BECK: If you're talking about the  
21 PDF, the 150, I think it's page -- let me find the  
22 right -- sorry. I've got a new edition of Adobe  
23 that's not helpful, and looking at the web pages wrong  
24 here. So let me see if I can find it. Page 78.

25 THE HEARING EXAMINER: Okay. Give me a

1 minute to look at these.

2 Mr. Bruce, while I'm looking at these  
3 exhibits, do you want to voir dire this witness as to  
4 your concern?

5 EXAMINATION

6 BY MR. BRUCE:

7 Q Well, Mr. Asmus, do you have any degrees in  
8 engineering -- petroleum engineering?

9 A No, sir.

10 Q Have you ever taken a reservoir engineering  
11 class?

12 A Not particularly named "Reservoir  
13 Engineering," but related through my masters work.

14 Q Have you ever testified as a reservoir  
15 engineer before?

16 A No, sir, I have not.

17 MR. BRUCE: Well, again, Mr. Examiner,  
18 I'd object to his testimony. And his testimony in  
19 paragraphs 10 to 13, as well as Exhibit -- B10.

20 THE HEARING EXAMINER: It's hard to  
21 hear you, Mr. Bruce, but I'm still looking at these  
22 exhibits, so --

23 MR. BRUCE: I'm sorry. I'll wait until  
24 you're done.

25 THE HEARING EXAMINER: Thank you.

Page 210

1                   So, Mr. Beck, now it's my  
2 understanding -- let me ask the witness a few  
3 questions if I may.

4                   The objection is to B6 through B10.  
5 And I'm not sure I understand, how were these exhibits  
6 created by you?

7                   THE WITNESS: Well, they were prepared  
8 in tandem with myself and our reservoir engineer using  
9 multiple softwares, Microsoft Kingdom, which is a  
10 geologic mapping software, and Spotfire, which is more  
11 of a data analytics software. A lot of reservoir  
12 engineers use this.

13                  THE HEARING EXAMINER: So what was your  
14 role and what was your reservoir engineer's role in --  
15 for example, let's be specific --

16                  THE WITNESS: Yes, sir. So my role in  
17 vetting these exhibits was identifying the correct  
18 well data that were brought in to the analysis  
19 overall. So the gun barrel plot or the wine rack in  
20 B6, B7, using those exact carryovers from the Exhibit  
21 B5, which was geologic testimony.

22                  And then the additional vetting of data  
23 that were used in the evaluation of Exhibit B8, B9,  
24 and B10. So the actual wells themselves that were  
25 brought in to the evaluation of prop and size

1 production, dates of production, dates of completion,  
2 and well spacing.

3 THE HEARING EXAMINER: What was the  
4 reservoir engineer's involvement in these five  
5 exhibits?

6 THE WITNESS: Actually putting together  
7 the physical exhibits themselves in slides B8, B9,  
8 B10, and adding commentary to Exhibits B6 and B7.

9 THE HEARING EXAMINER: Commentary in  
10 the box?

11 THE WITNESS: Yes, sir. In the text  
12 boxes that are in addition white with black text. So  
13 a lot of the work that has been done has been done in  
14 tandem.

15 Their primary role was really involved  
16 in looking at production analysis and whether there  
17 was degradation from parent to child from the  
18 production differences, as well as looking at the  
19 proppant -- the completion design, the proppant  
20 intensity from parent and child wells.

21 THE HEARING EXAMINER: So really I  
22 think what we have here is whether this testimony,  
23 evidence is within the scope of this expert's opinion.  
24 I think that's really where we are here.

25 I don't know that it has anything to do

1 with hearsay, because, of course, the rules of  
2 evidence don't strictly apply in these hearings. I  
3 can use them for guidance if I want to.

4 But I think ultimately what this comes  
5 down to is if this witness is going to give his expert  
6 opinion about something that is outside of his field  
7 of expertise, then I think that's improper.

8 If it's within, then I think it's  
9 proper. That's the issue I'm having right now,  
10 Mr. Beck.

11 So with that said, what is your  
12 argument that this data in these exhibits, B6 through  
13 B10, is within this expert's scope and field of  
14 knowledge?

15 MR. BECK: Mr. Hearing Examiner, this  
16 is -- I mean, as the witness just explained, this is  
17 stuff that he does in his role as a geologist for  
18 Earthstone and the other oil and gas companies that  
19 he's worked for.

20 And so for the last ten years on a  
21 day-to-day basis he has looked at production of wells,  
22 production of anticipated wells, production of  
23 adjacent wells, and how the development of child wells  
24 off of those adult wells and the spacing, the  
25 proximity, and the proppant produced in those wells

1 affects the production of those wells.

2 Compared those to decide, in his role  
3 as a geologist in the companies he's worked for, how  
4 to space the wells and what wells would be drilled and  
5 produced going forward.

6 And so that's exactly what the  
7 information -- and he may think differently than me,  
8 and I'll ask him to speak up, but that's exactly what  
9 information he has contained here in Exhibit B6  
10 through B10, and whatever paragraphs refer those, 10  
11 through 13.

12 THE HEARING EXAMINER: So, Mr. Beck,  
13 what you're saying is this is within the scope of this  
14 witness' expertise, because it's regarding production  
15 data.

16 MR. BECK: Exactly. And comparing the  
17 production data from existing wells to anticipate --  
18 comparing that with the geology, the known geology of  
19 the gun barrel and the cross section to be done  
20 anticipate what the production will be, based on the  
21 development spacing of the wells at issue in this  
22 case.

23 THE HEARING EXAMINER: Okay. I can  
24 understand that. Why did he not create these exhibits  
25 himself? Why did someone else work in tandem with him

1 to create these exhibits?

2 MR. BECK: Because that's -- my  
3 understanding -- and he can correct me if I'm wrong.

4 My understanding is that's the way that  
5 this is done in the field, that when you're looking at  
6 developing -- you're putting together a development  
7 plan, like Earthstone did here, you would compare do  
8 you want to do side-by-side wells adjacent on the  
9 same -- you know, at the same -- I was thinking  
10 altitude -- depth -- at the same depth through other  
11 when it's offset in a wine rack.

12 And so just like you would do in a  
13 business where the geologist, and reservoir engineers,  
14 and petroleum engineers work together in a room to  
15 create these development plans, that's how they came  
16 up to here.

17 And also on a realistic level, I  
18 thought it would be -- I didn't think we would waste  
19 our time on this. My understanding is that's how this  
20 is done.

21 And so at a baseline, I tried to  
22 streamline and Earthstone has tried to streamline the  
23 testimony, so we wouldn't have to call in five or six  
24 witnesses to testify.

25 And again, I think -- the answer is, is

1 that if there's something outside of his expertise  
2 that he's going to testify to, that should be brought  
3 out on cross-examination, on voir dire. I mean,  
4 that's the whole purpose of it.

5 I haven't heard anything about any area  
6 he's not competent to testify to he plans on  
7 testifying to today. I'm sure -- well, I'm not sure,  
8 because Jason is a particularly smart guy in my  
9 experience.

10 But I would expect that there are areas  
11 of reservoir engineering that he is not competent to  
12 testify to. He is not testifying to anything in that  
13 area today.

14 Everything in his statement, as he just  
15 told the division under oath -- everything in his  
16 statement is an area that he has explored before, he  
17 has done before in his work, and he is competent to  
18 testify to today.

19 THE HEARING EXAMINER: Mr. Bruce?

20 MR. BRUCE: Well, a couple of things  
21 that he's going to testify about is estimate ultimate  
22 recovery of wells. He's going to testify about the  
23 drainage area. And if you look at Exhibit B6 and B7,  
24 and other matters like that -- virtual connectivity  
25 interruption -- reservoir engineering.

1                   And again, I cannot engineer -- virtual  
2                   connectivity interruption --

3                   THE HEARING EXAMINER:   It's very  
4                   difficult to hear you, Mr. Bruce.   But I understand  
5                   that you're maintaining your objection, because you  
6                   feel like this witness is outside the scope of his  
7                   expertise.

8                   What I'll do is this in this -- for  
9                   these exhibits.   I'm going to wait until after the  
10                  testimony is over to decide whether to admit them into  
11                  evidence or not.

12                  I will give you a lot of latitude to  
13                  cross-examine this witness to show me that this data  
14                  is not reliable for some reason.

15                  But if I feel like it is reliable, then  
16                  I am going to admit it, because basically the rules of  
17                  evidence are greatly relaxed in these administrative  
18                  hearings.   And I understand that there's an overlap of  
19                  this witness' scope of expertise in the creation of  
20                  these exhibits.

21                  I just don't know how much of an  
22                  overlap there is, and I don't know how reliable these  
23                  exhibits are until you deal with cross-examination on  
24                  them.

25                  So I'm going to reserve my judgment on

1 this, but please, Mr. Beck, why don't you continue.

2 BY MR. BECK:

3 Q Mr. Asmus, I'm going to walk you through  
4 some of the -- I'm sorry. I hit the wrong button  
5 here. I'm going to walk you through some of the  
6 exhibits that you prepared in anticipation of today's  
7 hearing.

8 I'm showing you what's been admitted as  
9 Exhibit B1. Will you explain to us what's depicted in  
10 Exhibit B1?

11 A Yes. B1 is a location map of regional and  
12 local of where the proposed well locations are planned  
13 to -- to be drilled from south -- 18 into 7, as well  
14 as showing all the vertical, whether producing or not,  
15 well border control that we have in the area, as well  
16 as corresponding first and second Bone Spring sand  
17 horizontal wells that are pertinent to the proposed  
18 wells proposed by Earthstone Energy.

19 Q And the pertinent wells that are producing  
20 from the first and second, those are delineated by  
21 yellow -- blue respectively.

22 A That is correct.

23 Q Showing you what's admitted as Exhibit B2.  
24 What is this exhibit showing?

25 A B2 is showing the structure on top of the

1 first Bone Spring sandstone in contoured intervals of  
2 25 feet, as well as a cross section in A to A prime  
3 that'll be shown in Exhibit B5 and the proposed  
4 generic kind of well location stakes as the dashed  
5 orange lines.

6 Q Were you involved in the application for any  
7 adjacent wells in front of the division for  
8 Earthstone?

9 A No, sir.

10 Q So were you not involved in the Earthstone  
11 wells for the west half of section 18?

12 A Oh, I'm sorry. Yes, sir.

13 Q So Earthstone previously applied to the  
14 division and was granted compulsory pooling orders for  
15 wells adjacent to these proposed wells. Is that  
16 right?

17 A Correct.

18 Q And where are those wells located, for  
19 example, if we're just looking at Exhibit B-2?

20 A The west half of the east half.

21 Q And so that would be the half that is  
22 directly adjacent to the left of this red rectangle.  
23 Is that right?

24 A Correct. Right.

25 Q And you were the geologist who provided

1 testimony to the division in support of those wells  
2 that were eventually granted compulsory pooling  
3 orders; right?

4 A Correct.

5 Q Now we're looking at Exhibit B-3. What are  
6 we seeing in Exhibit B-3?

7 A Essentially the exact same thing. Only  
8 looking at the top of the second Bone Spring sand. So  
9 it's the same structure, just different formation, in  
10 25 contour intervals.

11 Q Now I'm showing you what's been admitted as  
12 Exhibit B4. What is this exhibit?

13 A This is the cross section from A to A prime  
14 that was shown on both the structure maps, as we  
15 previously discussed, showing all three of the  
16 intended horizontal drilling targets.

17 We have first all the way at the top the  
18 first Bone Spring sandstone target with an average of  
19 about 75-foot thickness from southwest to the east,  
20 which is the orientation of this cross section.

21 Going down further, you have the upper  
22 second Bone Spring sandstone target, which again on  
23 average, is roughly 60 feet.

24 And then below that and lastly, you have the  
25 lower second Bone Spring sandstone target, which

1 again, on average, how we pick it, is roughly 60 feet.

2 Q Showing you Exhibit B5. What is shown in  
3 Exhibit B5, Mr. Asmus?

4 A B5 is a gun barrel representation of how  
5 we -- or wine rack display has been previously used in  
6 this hearing -- of how we intend to develop and drill  
7 all four horizontal wells.

8 Again, starting at the top you have the 113,  
9 114, 1,320-foot spacing in the first Bone Spring sand,  
10 550 feet approximately. Below that you have the upper  
11 second Bone Spring sand horizontal proposed well, the  
12 214H.

13 And then below that, again, approximately  
14 220 feet. You have the 223H, which is the -- the  
15 lower second sand.

16 Again, in the -- in -- also what you see  
17 here are the North Wilson Deep Unit wells that are  
18 offset and located directly off to the east, the 3H,  
19 and then the 4H was in -- which is in the upper second  
20 and lower second targets respectively.

21 Q Okay. I'm showing you -- well, let me ask  
22 this question first.

23 A Yes, sir.

24 Q In preparing for the hearing today and  
25 preparing for your testimony today, did you have the

1 opportunity to consider the competing applications  
2 from Mewbourne?

3 A Yes, sir.

4 Q And in your consideration and comparison of  
5 Mewbourne's development plan did you create exhibits  
6 with Juan Mata at Earthstone that depict why  
7 Earthstone believes its development plan is superior  
8 to that of Mewbourne's?

9 A Yes, sir.

10 Q All right. I'm going to show you now what's  
11 been marked as Exhibit B6. What's depicted in this  
12 Exhibit B6?

13 (Exhibit B6 was marked for  
14 identification.)

15 A B6 is essentially a depiction of the overall  
16 production coming from the upper and lower set North  
17 Wilson Deep Unit wells. And an overall representation  
18 of what we -- Earthstone being "we" -- determine to be  
19 a drainage radius drawn around the North Wilson Deep  
20 Unit 3H wellbore location.

21 Q I'm showing you Exhibit B7. What's depicted  
22 in Exhibit B7?

23 (Exhibit B7 was marked for  
24 identification.)

25 A B7 is the proposed Mewbourne development

1 plan for the -- the 18 7 section wells and how they  
2 are getting within a consideration distance and  
3 increasing risk by keeping their 9H well within close  
4 proximity to the offset inherent North Wilson Deep  
5 Unit 3H horizontal second sand well.

6 Q You talked about risk. What's the risk that  
7 Earthstone believes its application avoids better than  
8 Mewbourne's application?

9 A Increase in that hypotenuse distance and  
10 direct offset horizontal distance from the existing  
11 inherent 3H well by targeting the upper second sand.

12 Q And that's depicted here on B6 where we see  
13 that there's 1,445 feet between the North Wilson Deep  
14 Unit 3H and the proposed 214H; right?

15 A That is correct.

16 Q Compared with 940 feet between the proposed  
17 Northwest Deep Unit 9H and the existing 3H.

18 A That is -- correct -- correct.

19 Q And so basically what's depicted and  
20 explained here is that having those wells closer  
21 together on this -- at the same depth produces more of  
22 a risk that the production will be depleted. Is that  
23 accurate?

24 A That is accurate.

25 Q Okay. This also talks about proppant

1 intensity. What is that? Explain that to me.

2 A So proppant intensity is just the amount of  
3 overall sand and fluid per foot that is proposed in  
4 their completion design for the proposed wells.

5 And so just looking and comparing at, you  
6 know, our -- our development plans and revised to  
7 theirs, typically when you increase this proppant per  
8 foot, your enhanced ultimate oil recovery increases.  
9 So it's just a comparison of the two different  
10 completion designs.

11 Q All right. I'm showing you Exhibit B8, the  
12 offset second Bone Spring well performance. What's  
13 depicted in Exhibit B8?

14 (Exhibit B8 was marked for  
15 identification.)

16 A Eight is essentially showing the exact same  
17 thing, just by looking at a case study of -- of  
18 further outside of the scope of just the proposed  
19 Mewbourne wells, but looking up we look at a 5 mile  
20 proximity to the proposed 18 7 section development,  
21 showing essentially the same thing; right?

22 Over time, as you increase proppant  
23 intensity in a barrel per foot from a fluid  
24 standpoint, your EUR and oil UR increase  
25 exponentially.

1           Q     So it's showing that as you have a higher  
2     proppant rate, all things sort of being equal here,  
3     you have a larger estimated ultimate recovery, or EUR.  
4     Is that right?

5           A     That is correct. And also showing, you  
6     know, within that same scope, was it within a certain  
7     proximity from parent to child well standpoint? If  
8     you're too close, having that increased proppant  
9     intensity could become detrimental to both either the  
10    parent and/or child wells.

11          Q     So in the 5-mile proximity that you looked  
12    at for these proposed outland 18-7 units, what you  
13    found was if children are located closer to the  
14    parents, it results in a lower production rate for  
15    the --

16          A     There is a --

17          Q     -- over time for those wells.

18          A     Yes, sir. There seems to be a detrimental  
19    impact to an extent. Yes, sir.

20          Q     And why did you choose a 5-mile proximity as  
21    opposed to statewide, or a larger radius, or a smaller  
22    radius?

23          A     Yeah. You know, so really that depends on,  
24    you know, geologic scope; right? Where do you sit in  
25    terms of the basin and how these formations are being

1 deposited.

2           You know, as you step east, west, north, or  
3 south from any particular distance -- and again, this  
4 is going very area in the basin -- your geology and  
5 the geological parameters that need to be considered  
6 here greatly can vary; right?

7           So there's typically a safe distance, and  
8 that, again, can vary by company to company or  
9 department from department internal to a company about  
10 how far out you feel is safe to -- to pull analog data  
11 from as a direct comparison; right?

12           Q     I'm showing you Exhibit B9, which is the  
13 basin well proposed example one. What's this showing?

14                     (Exhibit B9 was marked for  
15 identification.)

16           A     Again, these are very similar cases to  
17 exactly what we've been discussing here in the past  
18 exhibits showing both how spacing can be detrimentally  
19 affected any wells drilled in the same bench within a  
20 certain spacing distance from parent to child wells.

21           Q     And is that --

22           A     -- study examples that are directly offset  
23 to the southwest of section 18 and 7.

24           Q     Okay. So these are directly southwest from  
25 the proposed spacing units in these applications. Is

1     that right?

2           A     That is correct.

3           Q     And is this showing that the Dolly Varden  
4     B2ED1H is what you've been referring to and what's  
5     referred to as an adult well?

6           A     Correct.

7           Q     And then the two offset on either side of  
8     that, the Dolly Varden B2SC1H and the N11H, those are  
9     the children wells. Is that right?

10          A     That's correct. And so looking at this --  
11     offset spacing known as the Dolly Varden 1H, you can  
12     see that it has been impacted from an overall EUR  
13     barrel per foot standpoint.

14                 You have the child or the parent initial  
15     well, which I think most people understand is probably  
16     going to be ultimately your best well.

17                 And as you step offset to that in either  
18     direction, east versus west, within a certain distance  
19     it's going to be detrimentally impacted, especially at  
20     the same vertical target bench. So second sand, all  
21     three wells in the same bench, for instance.

22          Q     Now I'm showing you Exhibit B10, the spacing  
23     well performance Exhibit 2. What's this example  
24     showing?

25     //

1 (Exhibit B10 was marked for  
2 identification.)

3 A Again, showing the exact same thing, wells  
4 that are roughly 1,300 space really. Again, from the  
5 Lychee 1H to the Lychee 503H you have roughly 300 foot  
6 to 250 foot vertical separation between the wells.

7 But it's again showing that detriment only  
8 from a horizontal spacing standpoint from a parent to  
9 a child well.

10 Q And is that how you reached your conclusion  
11 that the spacing for Earthstone's proposed wells on  
12 the east half, east half of section 18 would result in  
13 a better expected production than will Mewbourne's  
14 proposed well?

15 A We are at least decreasing the risk. Yes,  
16 sir.

17 Q Now you were on here when Mr. Carrell  
18 testified for Mewbourne; right?

19 A Yes, sir.

20 Q I want to talk with you a little bit about  
21 some of his testimony. He testified a lot about some  
22 problems he saw with Earthstone's plan to drill into  
23 the upper second Bone Spring. Do you remember that?

24 A I do. Yes, sir.

25 Q Now we've got in front of the division here

1 today -- although the cases are consolidated, we've  
2 got two different cases for Earthstone. Is that  
3 right?

4 A Yes, sir.

5 Q And that's case number 23475. That's the  
6 State Com 114H and the State Com 214H; right?

7 A Yes, sir.

8 Q And then case 23477 we've got the outland 18  
9 7 State Com 113H and 223H; right?

10 A That is correct.

11 Q All right. Now Mr. Carrell's testimony  
12 about the problem with targeting, in his opinion, the  
13 upper second Bone Spring, does that relate to both of  
14 those cases and both those applications or just one?

15 A Primarily the way that I see it, just one.  
16 And that is the east half, east half.

17 Q And his testimony about comparing what he  
18 saw as reduced ability to produce hydrocarbons, that  
19 was in the east half, east half of section 18; right?

20 A That is correct.

21 Q When we're talking about that, is that the  
22 entire 2-mile lateral that he's criticizing or is it  
23 the portion of that 2-mile lateral for just that one  
24 case?

25 A In my opinion, that's just for a portion of

1       that one case.

2           Q       And so as far as you got from Mr. Carrell's  
3       testimony, he's not raising concerns about the west  
4       half, east half application of Earthstone; right?

5           A       No, sir.

6           Q       Okay. Now I want to talk with you about --  
7       let's see if I've got it here. Give me one second.  
8       I'm trying to find the email from Tuesday with the  
9       extra exhibits.

10                  I'm showing you what I think has been  
11       admitted as Exhibit 12 now. This is what we were  
12       discussing with Mr. Carrell, his depiction of, I  
13       guess, the cross section of the upper second Bone  
14       Spring. Is that right?

15           A       Yes, sir. That is correct.

16           Q       And it says in this middle textbook in the  
17       middle that it shows approximately 36 feet of sand in  
18       the upper second Bone Spring. See that?

19           A       Based on how they interpret the top and base  
20       of that target, yes, sir. I see that.

21           Q       And you say, "Based on how they interpret  
22       that." Do you disagree with what's depicted there in  
23       Exhibit 12?

24           A       I do. Yes, sir.

25           Q       Tell me about that.

1           A       Yeah. So really, you know, I think this  
2 comes from the standpoint of geologic interpretation.  
3 And I doubt that Mr. Carrell would argue with me on  
4 this from the standpoint of you put five geologists in  
5 a room, ask them to interpret the same cross section,  
6 you'll get five different interpretations.

7                   And really also it's how each company has  
8 determined their target bench, what criteria was used  
9 to pick the top and the base of that target bench.

10                  Mewbourne may have a different set of  
11 criteria than Earthstone, and how they pick that top  
12 and base of good reservoir is going to vary.

13                  So in his case and his argument that the  
14 east half, east half is -- for the upper second sand  
15 is exaggerated a little bit thin than how we compare  
16 it -- looked at that well, and it is 66 feet on how we  
17 determine the top and base of it.

18                  So it averages right around that same 60  
19 feet that you see in the Exhibit B4. That has been  
20 consistent.

21                  Whether you're taking it from west to east  
22 across the section, as Mr. Carrell did for -- for  
23 their exhibits or you go from a south to north  
24 orientation in the area, it is consistently present  
25 and it is consistently present across the entire -- of

1 the proposed wellbore that we intend to target that  
2 bench for.

3 Q So I'm showing you Exhibit B4, which I think  
4 you just referred to.

5 A Yes, sir.

6 Q And I think what you were saying was that  
7 your determination for the entire second Bone Spring  
8 where Earthstone's drill is proposed averages 60 feet  
9 thick as opposed to his 36 feet representation; right?

10 A That's correct. And again, I also say,  
11 "Average." So do you have variation above and below  
12 that? Yes. But for the most part, 60 feet seems to  
13 be a fairly consistent number that we get to when  
14 looking at that upper second sand target.

15 Q And did you look at that --

16 A The Packer [ph] well?

17 Q The sand when -- yeah. Did you look at that  
18 when you were considering replacement of Earthstone's  
19 well in the upper second sand?

20 A Yes, sir. There have been quite a bit of --  
21 I mean, and calculations that go into determining  
22 where we exactly want to drill a horizontal target,  
23 because the amounts of millions of dollars that are,  
24 you know, having to put forth in drilling one of these  
25 wells is not something that we take lightly.

1           So yes, we've looked at every well in the  
2       offset area.

3           Q     When looking at drilling in the upper second  
4       Bone Spring, taking into consideration what  
5       Mr. Carrell says versus what you analyzed and the  
6       relatively close proximity of Mewbourne's proposed  
7       well at the same depth, which in your opinion has a  
8       better chance of producing more -- for lack of a  
9       better -- oil out of the ground?

10          A     Really it's going to depend on offset  
11       spacing to a parent well. You know, we really like  
12       the lower second sand. It is thick -- just as thick.  
13       It is consistent. And that seems to be where a  
14       majority of the offset wells are located.

15                However, with the spacing considerations and  
16       the development plan that we would like to put forth,  
17       we feel like we would be coming too close to that  
18       initial parent well, that North Wilson Deep Unit, to  
19       feel as if we would get just as much, if not more  
20       production drilling in that lower second sand.

21                We feel that would be detrimental to the  
22       overall production of this unit and a waste from  
23       overall development standpoint. So we decided to bump  
24       it up to that upper target, which we feel is just as  
25       consistent and productive, and also maintain a

1 reduced risk from that offset parent well.

2 Q I think what I got from you is that all  
3 things being equal, maybe you agree that the lower  
4 second is a better target, but when you balance that  
5 close proximity to the northwestern deep 3H with the  
6 offset proximity in the upper second, Earthstone feels  
7 like it's going to get a better return on its  
8 investment from the plan that it's proposing in its  
9 applications today. Is that right?

10 A Correct. But what I can tell you about that  
11 upper sand target is that there are quite a few --  
12 there is only a couple wells immediately offset to  
13 this area that are in that upper target in comparison  
14 to the lower.

15 So to say one is exponentially better than  
16 the other, I feel like would not be a fully valid  
17 comment.

18 Q In addition to targeting the lower Bone  
19 Spring formation -- or excuse me -- the second Bone  
20 Spring formation, Earthstone's development plan  
21 proposes two wells in the first Bone Spring sand  
22 formation; right?

23 A That is correct.

24 Q And those are proposed in these  
25 applications. If a compulsory pooling order is

1 granted, those wells will be drilled.

2 A Absolutely.

3 Q Compare that with Mewbourne, which in its  
4 applications before the division today proposes only  
5 one well in each application and only in the second  
6 Bone Spring formation. Is that right?

7 A That is what I've heard. Yes, sir.

8 MR. BECK: That's all I have for this  
9 witness, right now, Mr. Hearing Officer. Thank you.

10 THE HEARING EXAMINER: Mr. Bruce, are  
11 you ready?

12 MR. BRUCE: Sure. Let me get my  
13 reading glasses out.

14 CROSS-EXAMINATION

15 BY MR. BRUCE:

16 Q Let's go to your Exhibits B6 and B7.

17 A Yes, sir.

18 Q You're talking about potential effects from  
19 the unit 3H well.

20 A That is correct.

21 Q And your little area of drainage, the green  
22 area -- virtual connectivity interruption -- ultimate  
23 recovery?

24 A I'm sorry. You broke up a little bit there,  
25 Mr. Bruce. Can you repeat that question, please?

1 Q Can you hear me better now?

2 A Yes, I can.

3 Q Okay. Sorry about that.

4 A It's okay.

5 Q The green area of drainage, is that based on  
6 what has been produced -- virtual connectivity  
7 interruption -- ultimate recovery?

8 A So what that green area is representative of  
9 is based on parent and child effect analogs that we've  
10 looked at from offset area lows. All right.

11 So where we see that reduction in  
12 ultimate -- in our oil UR per foot that we proposed in  
13 the other exhibits, we've kind of come to a conclusion  
14 that that is a representative raise based on the  
15 variation in offset spacing within the same zones.

16 So we've kind of looked at a smattering of  
17 development plans that have been developed and have  
18 production data, had representative parent and child  
19 wells, and kind of come to that conclusion that that  
20 is an overall -- kind of where your -- your drainage  
21 rate is and your impacts really start to appear from  
22 one parent well to another well in the same zone.

23 Q And you say, "We." Who are you talking  
24 about when you say, "We"?

25 A It would be a collaborative effort between

1 myself and the reservoir engineers, as, you know, I'm  
2 sure if you ask Mr. Carrell, we work tandemly day to  
3 day very closely when we come to evaluate different  
4 well offset production results and spacing, because it  
5 impacts both disciplines and how we want to develop a  
6 certain area.

7 Q And in fact if you're looking at with this  
8 depleted reservoir region, once again, is this today,  
9 or is it a year and a half, or two years, or five  
10 years down the road?

11 A Yes. So when we say, "Approximately 25 cume  
12 oil barrels per foot," that is accumulative  
13 production. So that is a to-date production number.  
14 And I believe that was last pulled on September 1st.

15 Q Well, I guess what I'm getting at -- well,  
16 let me ask a question. When you're looking at the  
17 depleted reservoir, what you call it, what factors are  
18 you --

19 A So there's a lot of factors that we have to  
20 take into account here. Really we have to look at  
21 vertical section, so the entire lateral portion of the  
22 wellbore that's been treated, their completion design  
23 overall within that treated lateral length, so how  
24 much proppant per foot, what sand type was used, what  
25 fluid was used, if we know how fast or how hard they

1       were pumping fluid into the reservoir first stage, oil  
2       stage lengths -- orientation if you have it.

3               I mean, and a lot of this is information you  
4       don't have for offset competitor data, unless it was a  
5       well you were able to participate in or trade for.

6           Q     Well, do you have to use volumetrics,  
7       recovery factors, things like that?

8           A     Yes, sir.

9           Q     And do you have to set a drainage tape and  
10      height if you're going to get to this -- the egg --  
11      the green egg?

12          A     You will get it based on what you know about  
13      horizontal and offset vertical and horizontal spacing,  
14      is based on where you interpret the wellbores to be  
15      located. I don't know -- answers your question or  
16      not.

17          Q     It still looks like -- and looking at  
18      Exhibit B7 -- one I drew on, you're showing the entire  
19      east half of section 18, that red outline is that  
20      correct?

21          A     The red outline? Is that what you said?

22          Q     Yes, sir.

23          A     Yes, sir.

24          Q     So there's no effect on the west half, east  
25      half --

1           A     That seems to be the -- seems to be the east  
2     half, east half, which is right about where the 9H is  
3     proposed.

4           Q     Say that again.

5           A     Well, I was answering your question. You  
6     asked if there was no impact on the west half of the  
7     east half. Is that correct?

8           Q     Yeah.

9           A     That would be correct.

10          Q     And you don't show east half of section 7,  
11     so obviously there's no effect there.

12          A     This is a 2D representation, so it says  
13     right above that red rectangle that you're looking at,  
14     outland 18 7 east half, this is looking at purely a  
15     cross sectional 2D view. So this is interpreted to be  
16     representative all the way from 18 into 7.

17                 It looks to be exact same way the -- showed  
18     just in section 7 or versus just in section 18, as the  
19     wellbores will cross both sections.

20          Q     And let me see. And so what you're -- first  
21     of all, you're looking at wells that are 940 feet  
22     away, based on your map.

23          A     Yes, sir.

24          Q     And under division statewide rules, those  
25     wells could be placed 660 feet apart.

1           A     Could be placed at any spacing the operator  
2     wants to drill them at. 660, yes.

3           Q     And I'm just saying, the division's  
4     statewide rules allow these two wells or any of these  
5     wells out here to be 660 feet away from each other  
6     east to west.

7           A     Okay. I'm waiting for your question.  
8     Sorry.

9           Q     Well, isn't your problem more with division  
10    rules than with Mewbourne, who's proposing what they  
11    think is the best zone to produce out here?

12          A     I don't have any problem with division  
13    rules. I can see that Mewbourne, if they wanted to  
14    prevent risk, could propose their wells in the upper  
15    second sand or space their child wells a little bit  
16    closer together to help mitigate that offset footage  
17    risk from the parent -- or from the parent well.

18          Q     Well, if there's any potential for the  
19    pressure depletion or drainage, isn't the typical  
20    remedy to drill an offset well to prevent that  
21    drainage?

22          A     Say that one more time. You did break up a  
23    little bit, but I'm not sure I understand your  
24    question.

25          Q     Well, I go up there and drill a well next to

1 you, and you're afraid that -- and it's a totally  
2 orthodox location. And you own the offset acreage,  
3 and you're afraid of my well draining in your acreage.  
4 Isn't the remedy for you to go -- drill a well to  
5 prevent drainage?

6 A Sir, I'm not sure I want to speak to  
7 hypotheticals here, because it could vary by any  
8 operator, so not sure if I can answer that question to  
9 how you would prefer.

10 Q And both your second Bone Spring wells are  
11 proposed as upper Bone Spring wells.

12 A No, sir.

13 Q No?

14 A That is correct. If you were to look at  
15 Exhibit B5, which is the gun barrel development of  
16 proposal, you can see that we have the 223H, which is  
17 a lower second sand, and 214H, which is an upper  
18 second Bone Spring sand.

19 Q Okay. Well, I'm just looking at the second  
20 Bone Spring wells.

21 A Right. I believe I answered your question.

22 Q Okay. But did you ever look at the upper  
23 second Bone Spring thickness in the Nearburg [ph] well  
24 in the northeast quarter of section 18?

25 A You're referring to the one that Mr. Beck

1 and myself were discussing earlier, the -- the Packer  
2 [ph] 18 State Number 1?

3 Q Correct.

4 A Yes, sir. And I -- I commented that I -- I  
5 had in fact looked at that well. And that was when I  
6 got into the explanation of every geologist picks a  
7 target differently, and we interpret that to be of  
8 different thickness than what Mewbourne does.

9 Q I guess my one final question is even if  
10 there is some pressure depletion, I mean, the effect,  
11 looking at the east half of section 18 would be  
12 something like 20 -- acreage pressure deplete.

13 It looks like a very small area of pressure  
14 depletion -- potential pressure depletion in the east  
15 half, east half of section -- virtual connectivity  
16 interruption -- have you calculated that area that's  
17 drawn in there?

18 A So we calculated, and what we show in  
19 Exhibit 6 and 7 is exactly that. Based on offset  
20 analogs, not a hypothetical number that we determined  
21 to be small or large.

22 MR. BRUCE: Well, Mr. Examiner, I think  
23 that's all I have for Mr. Asmus. But I'd still  
24 request that Exhibits B6 through B10, which are based  
25 on a lot of engineering factors, and I'm not able to

1 cross-examine the reservoir engineer, used by  
2 Earthstone, it's putting Mewbourne at a disadvantage.

3 And those exhibits and the related  
4 testimony should be stricken. Thank you.

5 THE WITNESS: Believe you're muted --

6 MR. BRUCE: Mr. Hearing Officer, you're  
7 on mute.

8 THE HEARING EXAMINER: Thank you.  
9 Appreciate it. Mr. Bruce, before you began  
10 questioning this witness, I stated that I was giving  
11 you wide latitude to try to determine whether there  
12 were questions that you had that this witness could  
13 not testify to.

14 I haven't heard any. And you're  
15 finished with your cross-examination, and the reason  
16 that I would have ruled in your favor and took these  
17 exhibits out is if this witness was unable to testify  
18 to your question, but he has in every situation.

19 And so I'm going to overrule the  
20 objection. These exhibits are admitted into evidence.

21 And I want to know whether or not  
22 Mr. Lowe has any questions for this witness.

23 (Exhibit B6 through Exhibit B10 were  
24 received into evidence.)

25 MR. LOWE: Yes, sir, I have a few

1 clarification questions.

2 THE HEARING EXAMINER: Please.

3 MR. LOWE: Good afternoon, Jason Asmus.

4 THE WITNESS: Good afternoon, sir.

5 MR. LOWE: Just a quick thing on what  
6 you presented to us here.

7 THE WITNESS: Yes, sir.

8 MR. LOWE: Exhibit B5, I just want to  
9 get a -- I think you might've stated it, but the wells  
10 on the right-hand side of the page, the ones in red,  
11 are those the parent wells? Is that what you're here?

12 THE WITNESS: I'm calling those out as  
13 offset producing wells within the North Wilson Deep  
14 Unit, the 3H and the 4H. Those are existing producers  
15 that are directly offset to the east that drill from  
16 north to south.

17 MR. LOWE: Okay. And those wells right  
18 now, who owns those wells?

19 THE WITNESS: Well, that would be  
20 Mewbourne.

21 MR. LOWE: And then Exhibit B8, B as in  
22 boy, can you just run through really quick on the oil  
23 ERO per foot hypotenuse bin chart here?

24 THE WITNESS: The EUR per foot?

25 MR. LOWE: Yeah. Yes, sir.

1 THE WITNESS: Yes. So that's an  
2 estimated ultimate recovery factor that we are  
3 calculating. And that is based on -- so if you look  
4 at the map in the top left, you can see our selected  
5 wells are in the -- the main color of blue.

6 Everything else is kind of in a -- a  
7 transparent coloration. So we pool from approximately  
8 10-mile radius and look at the estimated ultimate  
9 recovery factor for all those wells -- analog second  
10 Bone Spring sand producing wells.

11 MR. LOWE: Okay.

12 THE WITNESS: -- we're just looking at  
13 how proppant intensity and how completion variation  
14 impacts performance on an EUR basis. So basically  
15 getting that -- the more -- the larger the completion  
16 design, but on some of these wells, at least based on  
17 local offset -- wells, the better the ultimate EUR  
18 recovery in production that you get.

19 MR. LOWE: All right. Well, thank you  
20 for that. And those are the only things that I have.  
21 Thank you, sir.

22 THE WITNESS: Thank you.

23 Believe you're muted again, sir.

24 THE HEARING EXAMINER: I've been muting  
25 myself to keep out the -- so that we've seem to have

1 developed -- were you and Mr. Lowe discussing Exhibit  
2 B8?

3 THE WITNESS: That is what he had asked  
4 about. Yes, sir.

5 THE HEARING EXAMINER: That's what I  
6 thought. Okay. I just wanted to be clear, because no  
7 one mentioned an exhibit number.

8 THE WITNESS: Yes, sir.

9 THE HEARING EXAMINER: Okay. Mr. Beck,  
10 is there any redirect for this witness?

11 MR. BECK: Briefly.

12 REDIRECT EXAMINATION

13 BY MR. BECK:

14 Q Mr. Asmus, going in reverse order there, you  
15 were talking about the mor -- in Exhibit B8, the  
16 greater proppant producing larger EUR recovery. Is  
17 that right?

18 A Yes. It's a general observation that we --  
19 that we, my reservoir engineering counterpart and  
20 myself observed that with improved EUR was an effect  
21 of increasing your stimulation design or increasing  
22 your completion design.

23 Q And how does that relate to Earthstone's  
24 application versus Mewbourne's application?

25 A I believe there was a difference in your

1 proppant intensity, 2,500 pounds per foot versus 1,900  
2 pounds per foot.

3 Q Earthstone is proposing 2,500 --

4 A Earthstone is proposing 2,500. Yes, sir.

5 Q Which would, under this analysis, result in  
6 a greater expected EUR?

7 A Yes, sir.

8 Q The other question I had is Mr. Bruce asked  
9 you about what he said was a small area pressure  
10 depletion under your analysis. Do you remember that?

11 A I remember him just mentioning that, yes.

12 Q And my understanding is that when Earthstone  
13 developed its application and decided to target the  
14 upper second Bone Spring formation, it took into  
15 consideration the depletion as expected from what  
16 Mr. Bruce referred to as that small area of pressure  
17 depletion; right?

18 A Now I can't really speak to what Mr. Bruce  
19 was referring to as -- in regards to small versus  
20 large. So that I'm not going to speak to.

21 But when you talk about depletion effects,  
22 that is exactly what went into our decision in  
23 increasing the vertical separation between the offset  
24 3H and our upper second Bone Spring sand well, the  
25 214.

1 MR. BECK: That answers my questions.  
2 Thank you, Mr. Asmus.

3 Mr. Hearing Officer, that's all I have.

4 THE WITNESS: Thank you.

5 THE HEARING EXAMINER: You want to call  
6 your third and final witness?

7 MR. BECK: I do, but I would really  
8 like to take a five-minute break or if the reporter  
9 needs longer than that, longer. But I could use a  
10 break really quickly.

11 THE HEARING EXAMINER: Okay. Let's  
12 break until 3 p.m. It's 2:53 right now. Thank you.

13 MR. BECK: Thank you.

14 (Off the record.)

15 THE HEARING EXAMINER: Have a third  
16 witness for Earthstone.

17 Would you state and spell your name,  
18 please?

19 THE WITNESS: Yes, sir. My name is  
20 Nicholas Goree, N-I-C-H-O-L-A-S, last name Goree,  
21 G-O-R-E-E.

22 THE HEARING EXAMINER: Okay. You're  
23 under oath. Please proceed.

24 //

25 //

DIRECT EXAMINATION

BY MR. BECK:

Q Mr. Goree, I'm looking at what's been admitted as amended Exhibit C. And it talks about your experience as a petroleum engineer in paragraph 4 and attaches your resume. For how long have you been working as a petroleum engineer?

A For 13 years, sir.

Q And what's your current position?

A Vice president of drilling for Earthstone Energy.

Q How long have you been the vice president of drilling for Earthstone Energy?

A I've been the vice president for a little bit over a year and a half now, and then inside the drilling department for -- since my employment for six years now.

MR. BECK: All right.

Mr. Hearing Examiner, Earthstone offers Mr. Nicholas Goree as an expert in petroleum engineering.

MR. BRUCE: No objection, Mr. Examiner.

THE HEARING EXAMINER: Thank you, Mr. Bruce.

So admitted.

1 BY MR. BECK:

2 Q Mr. Goree, when did Earthstone Energy enter  
3 New Mexico?

4 A We closed on our acquisition of Chisholm in  
5 late 2022, and we've been in it since then, sir.

6 Q I'm going to show you what's been admitted  
7 as Exhibit C1. And the first line here in the  
8 exhibits shows the Chisholm acquisition. And how many  
9 wells did Earthstone acquire in the acquisition of  
10 Chisholm?

11 A Fully drilled 78. Those were actual  
12 horizontal wells that we've counted as drilled. There  
13 was multiple wells beyond that that -- that were  
14 vertical wells, et cetera, offset production.

15 But I'm -- in this display here, I'm only  
16 counting actually drilled horizontal wells, sir.

17 Q All right. And so in 2022, Earthstone  
18 acquired 78 horizontal wells that were fully drilled  
19 from Chisholm?

20 A Yes, sir.

21 Q Is Earthstone still the operator of those 78  
22 wells?

23 A To my recollection, yes. I can't speak to  
24 where its trades or anything along those lines, sir,  
25 but yes.

1 Q And the next acquisition you talk about, it  
2 ties New Mexico into that.

3 A That happened as well in 2022. They had  
4 drilled 51 horizontal wells that we acquired in that  
5 acquisition. And to my best recollection, they are  
6 still underneath operatorship by Earthstone Energy.

7 Q And then what's the next line, reflect  
8 Earthstone operating wells.

9 A Since entering in and taking over acreage by  
10 Chisholm and with acreage over with Titus [ph], we  
11 have gone into that said acreage and have drilled over  
12 seventy -- 74 well -- horizontal wells since taking  
13 over that acreage in 2022, sir.

14 Q All right. You also talk about the Texas  
15 Midland Basin and that you have -- you currently -- I  
16 assume that reflects that you currently operate an  
17 additional 136 wells in that Texas Midland Basin.

18 A That is operationally drilled 136 wells.  
19 The real numbers that are actually underneath  
20 operatorship are much higher.

21 Q Okay. And Earthstone operates additional  
22 wells and drills additional wells outside of just New  
23 Mexico and Texas Midland Basin; right?

24 A Yes, sir. We have operatorships in South  
25 Texas, as well, sir.

1           Q     I'm going to show you what's been admitted  
2     as Exhibit C2. Do you see that on the computer  
3     screen?

4           A     Yes, sir.

5           Q     What's reflected in this exhibit?

6           A     This is showing offset drilling data from  
7     where our -- let me back up. The red lines are our  
8     proposed wells if we were to get -- our proposed east  
9     half wells. We also see the proposed wells there on  
10    the west half that we will drill either way.

11                   Our east half wells there -- our proposed  
12    wells are in red. And what you see there as far --  
13    marked by the purple Allen's [ph] date, those are  
14    wells that have been recently been drilled by us in  
15    the last three months.

16                   And below there you'll see a DVD plot  
17    showing our well performance, and it's a little bit  
18    easier read, as far as overall -- rerelease there, as  
19    named, showing our drilling performance that we've  
20    been able to recently perform at.

21           Q     And you may have mentioned this and it  
22    passed me, but I'm not familiar with -- what does RR  
23    stand for?

24           A     That would be rig release from -- actually  
25    from Spinning [ph] -- well to rig releasing and moving

1 onto the next well on a said pad, we have obtained  
2 these days.

3 Q And that's 21.4 for the 11H, 10.2 for the  
4 12H, and 15.2 for the 13H. Is that right?

5 A Yes, sir. That's correct.

6 Q In preparing for the hearing today, did you  
7 compare the AFEs of Mewbourne and the AFEs of  
8 Earthstone for these two competing applications?

9 A I did, sir.

10 Q All right. And let me show you -- do you  
11 want to give us -- why don't you give us sort of your  
12 10,000-foot view of what that comparison shows before  
13 we go into the two details, if you would.

14 A Yes, sir. No. So overall it was found that  
15 Earthstone was going to be, based off of the AFEs, the  
16 more economical operator, as far as money expected to  
17 be spent on the wells.

18 That's the 50,000 viewpoint. And if we want  
19 to get into the actual specifics on -- discuss more of  
20 a breakdown between the drilling intangibles and  
21 tangibles side, as you can see here. What's notated  
22 in yellow is what I really wanted to bring up, as far  
23 as the --

24 Q Let me stop you for one second, Mr. Goree.

25 A Sorry.

1           Q     That's all right.  When you see, "See here,"  
2     I'm now showing you what's been admitted as Exhibit  
3     C3, AFE comparison drilling intangibles and tangibles;  
4     right?

5           A     Yes, sir.

6           Q     All right.  Go ahead and tell us about what  
7     this exhibit shows.

8           A     This exhibit here is depicting our apples to  
9     apples comparison from what AFEs that Mewbourne  
10    proposed that last -- was -- was given to me for an  
11    analysis, with yellow being notated as our larger  
12    differentials that are seen.

13                As far as overall total drilling difference,  
14    we are expected to come in at roughly \$388,000 cheaper  
15    than what Mewbourne is proposing.  A majority of that  
16    can be seen, as far as the day work -- drilling of  
17    736,000.

18                As notated by the AFEs that were given to  
19    me, that equates to about a 9-day drilling difference  
20    on expectations of timeliness as far as executing this  
21    well.  And this is in reference to a second Bone  
22    Spring well, since that is what they were only  
23    proposing to drill in the area.

24                Other things that are notable are the --  
25    rentals, and then one was the closed loop system

1 cutting to this claim.

2 As I discuss here, do not see anything as  
3 far as closed loop or a cutoff following -- it is  
4 majority -- I haven't seen or heard of anyone out  
5 there building pits.

6 So -- and you have to usually haul off in  
7 the state. Of course, this is not federal land, so  
8 with it being state, you could do a pit, but it is a  
9 very long, lengthy process, and it is very rarely  
10 granted.

11 So I was kind of surprised not to see some  
12 sort of cost in there for a loss in cutting  
13 disposables inside the AFE that was presented to me.

14 And on the -- on the tangible side, as far  
15 as casing, anything that's actually in the wellbore  
16 itself, they had put their long string production over  
17 on the completion side. As you can see, I have a  
18 notation for the original completion side.

19 So to make these as more -- as apples to  
20 apples as I possibly could, I didn't move that over  
21 from Mewbourne's side to represent what you would see  
22 here, as far as the long string casing that we do have  
23 as 882,000 that is being added on, since they are  
24 running a liner hanger, which is represented by the  
25 horizontal completion tools.

1           Q     And so here in Exhibit C3, this is basically  
2     the line item by the line item breakdown, and it shows  
3     that for the two competing applications, Earthstone's  
4     proposed applications to drill the four wells result  
5     in a less amount of \$388,300 for drilling tangibles  
6     and intangibles. Is that right?

7           A     That is correct, sir.

8           Q     I'm going to show you what's been admitted  
9     as Exhibit C4, which you've prepared to us. Why don't  
10    you go ahead and tell us what's depicted on Exhibit  
11    C4.

12          A     C4 is an evaluation of said AFE again of the  
13    completion facility intangibles and tangibles for both  
14    sides. As you can see, on the intangible cost side,  
15    Mewbourne and Earthstone are very similar in cost.

16                However, I will say on that, on a  
17    stimulation side, even only being a \$3,260 difference,  
18    we are pumping a vast -- we are pumping a larger  
19    completions job and pumping more sand.

20                So this would show that we have a greater  
21    price concession and/or a better operatorship of being  
22    able to pump away jobs quicker that would result in a  
23    lower cost to have the equal difference being of only  
24    \$3,000.

25                As we move over to our tangible cost side,

1 as you can see, the difference there is in Mewbourne's  
2 favor of 155,700, resulting in a total completion  
3 difference of 152,440 -- I'm sorry -- it's in  
4 Earthstone's favor of 155,700.

5 It was on the difference that we were more  
6 expensive on the intangibles. I apologize. So we  
7 have a total completion difference of 152,440, which  
8 is in favor of Earthstone. What's notated in yellow  
9 there is the subsurface equipment and artificial lift.

10 We have a very much higher number than that  
11 of Mewbourne, and that's due to the fact that in these  
12 wells we are prepared to run ESPs. This will help us  
13 get a much larger volume of lift and production rates  
14 that will be able to get these wells online in a more  
15 economic manner for us.

16 Q And even with those uplifts and the  
17 substantial up front cost that will result in some  
18 costings down the road, Earthstone's tangible costs  
19 are still \$155,700 less than Mewbourne's proposals.  
20 Is that right?

21 A That's correct.

22 Q For these, when you looked at the two  
23 comparisons, if you can remember, make that  
24 comparison -- I'm showing you probably your face and  
25 mine -- sorry. Let me get to the right screen here.

1 I'm showing you what's been admitted as  
2 Exhibit 2-4 from Mewbourne, which is a AFE dated  
3 November of 2022. Is that the AFE that you used for  
4 Mewbourne?

5 A Yes, sir.

6 Q And then I'm going to show you -- look away  
7 for a second while I go through these very quickly.  
8 I'm showing you AFEs for Earthstone dated -- I don't  
9 know if I see the date on here -- that are part of a  
10 packet dated March 30, 2023. Are those the AFEs that  
11 you used for Earthstone's comparison?

12 A Yes, sir.

13 Q And for the record, that's part of Exhibit  
14 A3 for Earthstone. In terms of the AFEs and  
15 Earthstone's drilling plan, does Earthstone's drilling  
16 plan include -- does it include the consideration that  
17 the first Bone Spring formation may include sour gas  
18 or high levels of -- what is it -- hydrogen sulfide?

19 A H2S. Yes, sir. So we are in the same  
20 understanding that Mewbourne is that we will expect  
21 that we will have high H2s, but that is not begetting  
22 the fact that we want to produce these wells now.

23 We have found that it is better and more  
24 economic for us to drill all wells at the same time  
25 instead of coming back into a location later on where

1 most likely you will have to then go ahead and  
2 temporarily abandon and plug your wells to allow for  
3 safe production and drilling of your laterals that  
4 you're going to drill later on.

5 And or if you do not do that, you're going  
6 to have to do a pad extension, which will cause more  
7 surface damage that we'll have to reclaim at a later  
8 date --

9 Q -- the expenses of -- sorry. Go ahead,  
10 Mr. Goree. Go ahead.

11 A Oh, no. I -- you're fine.

12 Q Meaning that the expenses of -- meaning that  
13 Earthstone expects that it will be less expensive  
14 overall to go ahead and drill all the wells now as  
15 opposed to drilling only the second Bone Spring, and  
16 then later on coming back and drilling the first Bone  
17 Spring.

18 A Yes, sir.

19 MR. BECK: Thank you, Mr. Goree.  
20 That's all I have for you at this time.

21 THE HEARING EXAMINER: Mr. Bruce?

22 MR. BRUCE: Just a couple.

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q First, now AFEs are always just estimates.

1 Aren't they?

2 A It's the best estimate that we can give at  
3 the time, since that's what our partners would be --

4 Q Yeah. And you would like to understand the  
5 AFE. Isn't that common?

6 A I -- well, it depends on the operatorship.  
7 You try to come in at AFE, but it would -- you would  
8 like to come underneath it. Yes, sir.

9 Q Now have drilling costs come down in the  
10 past year?

11 A That's a broad basis question, sir. I mean,  
12 it would depend on your area of operations, et cetera.  
13 I can't answer that specifically without more of a  
14 specific --

15 Q I'm trying --

16 A Also offshore costs are -- offshore costs,  
17 onshore costs. I mean, I -- I need a little bit more  
18 specifics than that, sir, I'm sorry.

19 Q I mean, I'm not talking about Eddy County.  
20 I'm just saying here in this area of Lea County,  
21 drilling -- you said you've drilled wells in this  
22 area. Have they come down in the last year?

23 A As far as costs?

24 Q Yeah.

25 A I mean, I can speak to our -- our costs.

1     Operationally more effectively, we're drilling faster  
2     than other operators. So yes, our costs have come  
3     down.

4           Q     Okay. And then you said -- really this is  
5     just off the cuff. I just want to make sure. You  
6     said you operate 136 wells in the middle of the basin.  
7     Those are all in Texas. Aren't they?

8           A     Yes, sir. That's Texas wells. Yes, sir.  
9     Those are all -- and we operate vastly -- I would say  
10    that an answer to that, sir, is those are wells that  
11    we have drilled. We operate vastly a larger number  
12    than that.

13          Q     Okay. Wait a minute. Let me go through a  
14    couple others. And so in your opinion, Earthstone is  
15    a prudent operator.

16          A     Yes, sir.

17          Q     And do you think Mewbourne is a prudent  
18    operator?

19          A     I can't speak on behalf of another operator,  
20    as far as opinions. That's just an opinion.

21                   MR. BRUCE: That's all I have,  
22    Mr. Examiner.

23                   THE HEARING EXAMINER: Mr. Lowe?

24                   MR. LOWE: Good afternoon. I don't  
25    have any questions. Mr. Bruce took care of most of

1       them, so thank you.

2                       THE WITNESS:   Thank you.

3                       THE HEARING EXAMINER:   Thank you,  
4       Mr. Lowe.

5                       Mr. Beck, is there any redirect?

6                       MR. BECK:   No, Mr. Hearing Examiner.  
7       Mr. Goree may be excused.

8                       THE WITNESS:   Thank you.

9                       THE HEARING EXAMINER:   Does that  
10       conclude your case in chief?

11                      MR. BECK:   Yes, Mr. Hearing Examiner.  
12       That concludes our case in chief.

13                      THE HEARING EXAMINER:   Okay.   Now,  
14       Mr. Bruce, it's my understanding that you'd like to  
15       put on a rebuttal case.

16                      MR. BRUCE:   That is correct.

17                      THE HEARING EXAMINER:   Okay.   What are  
18       you rebutting?

19                      MR. BRUCE:   Well, I think a couple of  
20       things that just came up.   But first off, the  
21       exhibits -- the affidavit of Mr. Stowers marked -- he  
22       talks about the gun barrel diagrams, which Earthstone  
23       raised with its filing of exhibits, and also the  
24       completion intensity factors, which Mewbourne really  
25       saw no need to address, and I would address that with

1 Mr. Stowers.

2 Couple other things that just came up,  
3 Mewbourne has been operating in this state since 1975,  
4 Mr. Examiner. I couldn't get the other side to admit  
5 that Mewbourne is a prudent operator. So I would like  
6 to address that.

7 And then since I couldn't get the  
8 reservoir engineering exhibits dismissed, I would like  
9 to ask Mr. Stowers just a few brief -- couple of brief  
10 questions on the reservoir engineering.

11 THE HEARING EXAMINER: So before I go  
12 to Mr. Beck for his response, I want to make sure I  
13 understand what you're rebutting, because your  
14 connection goes in and out. So just give me a quick  
15 list here.

16 MR. BRUCE: Okay. Just came up is  
17 Mewbourne a prudent operator, number one. Number two,  
18 address some of the drainage issues raised by the  
19 geologist for Earthstone.

20 And then what is contained in paragraph  
21 5 of Mr. Stowers' -- and his two exhibits, 11A and  
22 11B, regarding the -- the proppant and laterals for  
23 the fluid and proppant intensity, and then the gun  
24 barrel diagrams, which --

25 THE HEARING EXAMINER: Okay. Hold on a

1 second. Let's go back. I understood what you said  
2 when you talked about additional drainage issues on  
3 the diagrams that came in over your objection. What  
4 came next I didn't hear again. What is it?

5 MR. BRUCE: What I was bringing -- what  
6 I was going to bring up -- and this is in Mr. -- to a  
7 certain extent in Mr. Stowers' affidavit, Earthstone  
8 would not admit that Mewbourne is a prudent operator,  
9 and I would like to say something very briefly about  
10 that. That's item two.

11 And then item three is the gun barrel  
12 issue that Earthstone is pushing. And then the  
13 completion proppant intensity, which was brought up in  
14 their exhibits filed Thursday. So that's what I would  
15 like to bring up.

16 THE HEARING EXAMINER: Okay.

17 Mr. Beck?

18 MR. BECK: Let me address these in a  
19 different order. In terms of Mewbourne being a -- I  
20 guess what you said is a prudent operator, certainly  
21 that's not rebuttal testimony.

22 The division's order makes clear that  
23 the applicants, you know, put forth their ability to  
24 have a superior development plan that -- to protect  
25 relative rights to not waste.

1                   And it's clear that both parties are on  
2     notice when they're submitting competing applications,  
3     that the division will take into consideration a  
4     comparison to each other, so that Mr. Goree and  
5     Ms. Redfearn in her testimony testified both about  
6     Earthstone's operation does not mean that it's  
7     rebuttal testimony that Mewbourne decided not to put  
8     that forth in their case in chief.

9                   And that Mr. Goree testified that the  
10    company for which he's worked for -- I don't have his  
11    resume in front of me, but somewhere in the range of  
12    ten years as a prudent operator in a company for which  
13    he's never worked for which he does not have  
14    experience and said he can't testify about, doesn't  
15    mean that that opened a door -- when it was not asked  
16    by me in direct opened a door to putting forth  
17    evidence that obviously should've been put forth at  
18    the front end.

19                  In terms of the rebuttal testimony for  
20    spacing and proppant, in terms of the spacing, I --  
21    and I assume that I'm probably not the only one in the  
22    room, but I just don't know enough about this issue to  
23    say that Mewbourne should have been put on notice on  
24    the front.

25                  I'm still -- so I still think that it's

1     improper under the Court's pre-hearing order, but I  
2     certainly can see where the Court -- excuse me -- the  
3     division's pre-hearing order. But I certainly can see  
4     where there's more room for that testimony to be  
5     admitted.

6                     And in terms of the proppant, I don't  
7     know, again, that issue well enough to know whether  
8     Mewbourne would've been put under notice outside of  
9     what was filed in our exhibits.

10                    And so let me say that obviously, you  
11    know, we're all here together every other week for  
12    years and years.

13                    And so if that's the case and those two  
14    areas, the distance of the wells, for lack of a better  
15    word, and the proppant intensity are something that  
16    Mewbourne would not have known about before exhibits  
17    are, then Earthstone thinks it's proper and that that  
18    be rebuttal testimony.

19                    But in terms of going into Mewbourne's  
20    operations and whether it's a prudent operator,  
21    Earthstone still stands on that objection.

22                    THE HEARING EXAMINER: And then there  
23    were two other issues, Mr. Beck. One is the  
24    additional drainage issues on the diagram. I wasn't  
25    sure which diagram Mr. Bruce was talking about. Do

1     you know?

2                     MR. BECK:   My expectation is that he's  
3     talking about the Exhibits B6 and B7 or B8 and B9 that  
4     we talked about.

5                     And so long as Mr. Stowers' testimony  
6     is counted to those issues, as I read it in Exhibit  
7     11, 11A and 11B, another set, if they weren't on  
8     notice until it -- assuming that's the case, and I  
9     have no reason to question whether it is, then that  
10    seems to be rebuttal testimony that I think is --

11                    THE HEARING EXAMINER:   And finally we  
12    have the gun barrel issue.

13                    MR. BECK:   I think that falls in line  
14    with the same thing.   My understanding is that that  
15    goes in line with what is found in Exhibits 11, 11A,  
16    11B, which I understand from Mr. Bruce and from  
17    Mewbourne that they were not on notice of in any way,  
18    shape, or form until we filed our exhibits.   And I  
19    think that's proper rebuttal testimony.

20                    THE HEARING EXAMINER:   Okay.  
21    Mr. Bruce, I am going to allow rebuttal testimony on  
22    the issues that were raised by these exhibits starting  
23    with B6 through B10.   Please confine your questions  
24    and your witnesses' answers to those issues.

25                    I'm not sure, because I don't know

1 Exhibit 11 well enough to know whether that Exhibit 11  
2 is confined to those issues. So I'm not going to  
3 admit Exhibit 11 at this point. Let's deal with these  
4 issues that you've raised. Are you ready?

5 MR. BRUCE: Sure, Mr. --

6 THE HEARING EXAMINER: And is your  
7 witness available on the screen?

8 MR. BRUCE: I don't know if he's on the  
9 screen, but he's here.

10 THE HEARING EXAMINER: He's here.

11 MR. BRUCE: In virtual --

12 THE HEARING EXAMINER: Has he been  
13 sworn in?

14 THE WITNESS: I have.

15 MR. BRUCE: Yeah, he was sworn in.

16 THE HEARING EXAMINER: You have? Would  
17 you state your name and spell it for the record,  
18 please?

19 THE WITNESS: Yes, sir. It is Nick  
20 Stowers. That's N-I-C-K S-T-O-W-E-R-S.

21 THE HEARING EXAMINER: Okay.  
22 Mr. Bruce, proceed.

23 MR. BRUCE: Mr. Examiner, Mr. Stowers'  
24 affidavit shows that he's an engineer for Mewbourne.  
25 He has not previously testified before the division.

1 Paragraph 3 of the affidavit is educational or  
2 employment background. And he has worked both as a  
3 reservoir engineer and an operations engineer.

4 And I would tender him as an expert  
5 petroleum engineer.

6 THE HEARING EXAMINER: Okay. Hold on.  
7 Let me find your exhibit. Give me a minute here. I  
8 think it must be pink in color.

9 MR. BRUCE: Pink. Yeah.

10 THE HEARING EXAMINER: I see it. So  
11 self-affirming statement of Nick Stowers, an engineer  
12 for Mewbourne. Hold on a second. Let me just review  
13 it. So that's Exhibit 10. This is 11,  
14 self-affirming --

15 Mr. Beck, have you reviewed Exhibit 11  
16 yet?

17 (Mewbourne Exhibit 11 was marked for  
18 identification.)

19 MR. BECK: Yes, briefly.

20 THE HEARING EXAMINER: Briefly. All  
21 right. Why don't we take -- let's take five minutes  
22 and just review -- it's only two pages. Let's take  
23 five minutes, just review this Exhibit 11 and see if  
24 Mr. Beck has any objections to this exhibit coming  
25 into evidence.

1                   So I'm not going to stop my video. I'm  
2 just going to read this exhibit.

3                   (Off the record.)

4                   THE HEARING EXAMINER: Okay. Mr. Beck,  
5 is there anything in Exhibit 11 that you would argue  
6 is outside rebuttal testimony?

7                   MR. BECK: Yes. That would be  
8 paragraphs 7 through 10.

9                   THE HEARING EXAMINER: Okay.  
10 Mr. Bruce, if we admit Exhibit 11 -- I'm wondering how  
11 best to do that. We admit Exhibit 11 in part. I  
12 wonder if it would be too confusing and that maybe you  
13 should resubmit Exhibit 11.

14                  MR. BRUCE: I have no problem doing  
15 that. My comment is that, you know, my landman and  
16 geologist did testify as to Exhibit 7 and 8.

17                  I think paragraph 9 should be in there,  
18 because they made a big point of showing their  
19 experience in New Mexico. And Mewbourne has been  
20 around a long time, drilled a lot of wells, and has a  
21 pretty good record with the division.

22                  Paragraph 10, can either take it or  
23 leave it. But I think paragraph 9 is proper. But if  
24 you want me to resubmit it, excise a couple of  
25 paragraphs, I'd be willing to do so, Mr. Examiner.

1 THE HEARING EXAMINER: Okay. Let's do  
2 that. Let's keep this simple. So the objection by  
3 Mr. Beck was to which paragraph, sir?

4 MR. BECK: Seven through ten. So 7, 8,  
5 9, and 10.

6 THE HEARING EXAMINER: Okay.

7 Mr. Bruce, how long would it take for  
8 you to -- after this hearing concludes -- hopefully  
9 soon -- how long would it take for you to submit a  
10 amended Exhibit 11?

11 MR. BRUCE: Tomorrow morning.

12 THE HEARING EXAMINER: Okay. Perfect.  
13 Done. Okay, Mr. Bruce. I'm going to admit Exhibit  
14 11 -- Mewbourne's Exhibit 11 into evidence with the  
15 caveat that you are going to resubmit it and omit  
16 paragraphs 7 through 10.

17 So why don't you go ahead and put on  
18 your rebuttal witness now, and ask him questions in  
19 regards to the exhibits that were admitted over your  
20 objection. And I think those were B6 through B10.

21 And if your witness could please refer  
22 to the exhibit that he is testifying about when he  
23 answers a question, it would be appreciated. Thank  
24 you.

25 //

1                   (Mewbourne Exhibit 11 was received into  
2                   evidence.)

3                   MR. BRUCE:   Okay.

4                   DIRECT EXAMINATION

5       BY MR. BRUCE:

6           Q       Well, first, Mr. Stowers, I need to get the  
7       geologist affidavit here for Mr. Asmus.  And I think  
8       if we just went to, oh, say, his Exhibit B7.  And he  
9       talked about this, the little green egg in the lower  
10      right corner, as representative of a depleted  
11      reservoir region.

12                   Now when you're looking at this from an  
13      engineering standpoint -- when you're looking at area  
14      of drainage or pressure depletion, what factors do you  
15      look at?  I mean, estimated ultimate recovery.  Any  
16      others?

17           A       Other factors that would be considered would  
18      be volumetric factors of the reservoir, such as  
19      porosity, water saturation, height and width of the  
20      reservoir, and then the recovery factor for the  
21      reservoir, as in how much of the oil in place you  
22      estimate to be recovered, 'cause that influences  
23      how -- how big or small the drainage area would be,  
24      and depending on whether or not you're using an  
25      estimated ultimate recovery or a recovery to date.

1           Those would be some other factors that would  
2 go into that analysis.

3           Q     Would it also depend on the geology of  
4 characteristics, like porosity or thickness across the  
5 study area?

6           A     Yes, sir. Those would greatly influence the  
7 study. Those would be the volumetric influences that  
8 I spoke of earlier.

9           Q     Okay. So viewing that, we don't really know  
10 what factored in to, say, Exhibits BC and B7.

11          A     That is correct. We do not have the  
12 underlying data that would have went into B7 or B6  
13 that would show us what assumptions were made to  
14 create those drainage bubbles. That is not stated,  
15 nor was it stated in the direct testimony.

16          Q     And I think the ultimate recovery number --  
17 I never got a firm answer on whether he was using  
18 production to date or estimated ultimate recovery.  
19 That would be a big factor. Wouldn't it?

20          A     Yes, sir. That would be a -- a factor that  
21 would drastically change the size of that bubble.

22          Q     And even if you look at that bubble, and of  
23 course, you know, he's picking out an area, many,  
24 many, many years ago when people would talk about  
25 drainage radius they'd have a circle.

1           This is more of an oval. Even then, there's  
2   only a very small area in the south half, south half  
3   of -- or actually in the southeast quarter, southeast  
4   quarter of section 18 that's affected. Is that fair  
5   to say?

6           A     Yes, sir. That is correct. When you're  
7   looking at this diagram, it is as if you were staring  
8   down the wellbore.

9           And I believe what you're referring to is  
10   the fact that this offset well, the North Wilson Deep  
11   Unit number 3H, only offset the affected lands for 1/2  
12   mile. And that would be the southernmost portion of  
13   section 18, the -- the south half of section 18.

14          The North Wilson Deep Unit 3H was drilled  
15   from the center of section 17 south 2 miles.

16          Q     And this is only -- this is kind of  
17   speculative at this point. Wouldn't you agree?

18          A     Yes, sir. I -- I would agree without  
19   knowing the -- the numbers that went in to this  
20   analysis.

21          Q     And based on Mr. Carrell's testimony,  
22   wouldn't you agree that the best thing to do is to  
23   drill the lower second Bone Spring?

24          A     Yes, sir. Our analysis of the log  
25   characteristics in the immediate area is what drove

1     our decision to place the -- the well in the lower  
2     second Bone Spring sand.

3             That coupled with our analysis of some  
4     offset producers in the -- the upper second Bone  
5     Spring sand and accompanying offset producers in the  
6     lower second Bone Spring sand.

7             Q     And well, when you look at log  
8     characteristics, the one well log in Mr. Carrell's  
9     Exhibit 12 was in the northeast quarter, northeast  
10    quarter of 18, I believe.

11            And I think Earthstone's geologist said,  
12    "Well, it only affects -- that's only localized to the  
13    east half, east half well." That's not what that  
14    cross section shows, is it?

15            Because the other wells in that Exhibit 12,  
16    they're about a mile and a half away from the  
17    northeast quarter of section 18. Is that fair to say?

18            A     The other wells in the cross section in  
19    Exhibit 12 were a mile and a half away. I believe  
20    I'm referring to the well in 13B and the well in 20C.

21            Q     And, I mean, would it be -- you get a -- I  
22    mean, there is -- well, there's two things. You've  
23    already said that the geology can be variable, and  
24    that affects certain things.

25            But would you expect to drill a well in the

1 northeast, northeast of 18 and have that thin  
2 reservoir only affect a very small distance away from  
3 that wellbore?

4 A We can only make assumptions off of the data  
5 that we have. And we take that into account. That  
6 being the closest data point to the proposed wellbore  
7 led us to make the decision to go into the second --  
8 the lower second sand.

9 Q Okay. But again, any pressure draw down on  
10 the proposed 9H well is speculative at this point,  
11 and -- would you agree with that?

12 A I would say that the amount of impact from  
13 offset depletion is speculative at this point.

14 Q Okay. And to prevent any, isn't it best to  
15 drill, rather than move the well -- to drill now and  
16 offset any potential drainage?

17 A To protect the rights of the owners within  
18 our unit, that is correct.

19 Q Okay. Well, let's move onto your Exhibits  
20 11A and 11B. And I'm not going to get involved in  
21 paragraphs 5 and 6 of your self-affirmed statement.  
22 Could you describe what those exhibits are and what  
23 they show?

24 A Yes, sir. I'll start with --

25 Q And what --

1           A       I'll -- start with exhibit -- go ahead.

2           Q       No. Go ahead. You go ahead --  
3 interruptions.

4           A       Okay. I'll start with Exhibit 11A. As I've  
5 stated, this is a gun barrel diagram of Mewbourne's  
6 inland 26 23, and also our -- the western most well of  
7 our Dolly Varden 25 24 development. This is just  
8 showing the -- this is another diagram looking -- as  
9 if you were looking down the wellbore of these wells.

10                   And it shows their lateral distance from  
11 each other east and west, and it also shows where they  
12 are relative to each other in a sub C sense.

13                   And then there is a box associated with each  
14 well that gets the well main, the 12-month cumulative  
15 oil production per lateral foot, the completion size,  
16 and the first production date.

17                   And the purpose of this exhibit was just to  
18 draw attention to the fact that there is quite a bit  
19 of variability in this area within this reservoir with  
20 respect to productivity, and that it is not as simple  
21 as "Space your wells much farther apart and increase  
22 your proppant intensity."

23                   I showed that our Dolly Varden 25 24 was  
24 a -- a parent well. It was offset by our inland 26 23  
25 B2PI. They were roughly 1,000 foot apart. The inland

1 had a roughly 2,500 pound per foot completion. Its  
2 12-month oil cumulative production was 25 barrels of  
3 oil per foot.

4 And then I compared that with the inland  
5 2623 B2NK. On the other side it was spaced farther  
6 apart, roughly 1320 from its offset, and it also had  
7 2,500 pounds per foot, yet it achieved a very similar  
8 12-month cumulative oil production per foot, being 23  
9 barrels of oil.

10 Q So there is really no firm correlation is  
11 what you're saying.

12 A Yes, sir.

13 Q And then Exhibit 11B.

14 A Yes, sir. Exhibit 11B, the upper portion of  
15 the page is a map, area of second Bone Spring sand  
16 producers around the subject lands. And those are the  
17 blue stakes on the map. The subject lands are  
18 outlined in a dashed red line.

19 And then beneath that is a graph of proppant  
20 intensity on the X axis versus 12-month oil cumulative  
21 per lateral food on the Y axis.

22 I created this as a -- as a rebuttal  
23 exhibit, because of the assertion that proppant  
24 intensity is directly correlated with oil EUR.

25 I think that that is a much safer assertion

1 when you're discussing 500 pounds of proppant per foot  
2 versus 2,000. But in these particular hearings, we  
3 are looking at 2,000 pounds per foot versus 2,500  
4 pounds per foot.

5 So I -- I took the -- the data of wells in  
6 this area that were completed with greater than 1,900  
7 pounds per foot and plotted it versus cumulative oil  
8 production.

9 And then I did a -- a best fit linear trend  
10 line. And the entire point of this is that there is  
11 no discernible correlation in this data set that would  
12 say, "Increasing your proppant intensity from 2,000 to  
13 2,500 yields greater oil productivity."

14 And that's evidenced by the fact that our  
15 squared value, which is quote, unquote your goodness  
16 of fit, is very low. I -- I also --

17 Q And so --

18 A Oh, one more thing, Bruce. Sorry. I also  
19 noted we've referenced this well several times  
20 throughout the proceedings today. The -- the upper  
21 second sand well in section 13 that Mr. Carrell  
22 referenced, I highlighted it on the map with an arrow,  
23 and then a box.

24 And it is also represented by that yellow  
25 dot in the -- in the graph on the bottom. So despite

1     it having 2,600 pounds per foot and no offset wells,  
2     it's still one of the lowest wells on the graph, as  
3     far as 12-month cumulative oil per lateral foot.

4           Q     Okay. So there's -- in other words,  
5     Mewbourne's proposed completion procedure is perfectly  
6     normal.

7           A     I would -- I would say so.

8                     MR. BRUCE: I think that's all I have,  
9     Mr. Examiner.

10                    THE HEARING EXAMINER: Okay.

11                    Mr. Beck? Mr. Beck, if you need a few  
12     minutes to prepare questions, I understand that this  
13     witness came out of left field, and we can take a  
14     few-minute break.

15                    MR. BECK: Thank you. I'll take --

16                    THE HEARING EXAMINER: Sorry, sir. I  
17     didn't hear you.

18                    THE WITNESS: Think you're muted.

19                    MR. BECK: I was muted. No. I'll give  
20     it a go.

21                    THE HEARING EXAMINER: Okay. Please.

22                    MR. BECK: Mr. --

23                    THE HEARING EXAMINER: You're cutting  
24     in and out. We can't hear you. We cannot hear you.

25                    MR. BECK: I don't know why I got

1 muted. Can you hear me now?

2 THE HEARING EXAMINER: Yes.

3 THE WITNESS: I can hear you now.

4 CROSS-EXAMINATION

5 BY MR. BECK:

6 Q All right. I'm looking at 11B in front of  
7 me. And I think it's probably in front of you too;  
8 right?

9 A That is correct, sir.

10 Q Okay. I think you were critical of Exhibits  
11 B6 and B7 because they didn't have the underlying data  
12 shown. Is that what you said?

13 A I was critical of the drainage bubble. Yes,  
14 sir.

15 Q Okay. And so if we look at the drainage  
16 bubble here on Exhibit B7, what's your criticism about  
17 underlying data not shown?

18 A Mr. Bruce and I already discussed this. All  
19 the assumptions that go into calculating a drainage  
20 area, such as recovery factors, volumetric  
21 assumptions, porosity, fluid composition of the  
22 reservoir, height and width of the drainage area are  
23 not disclosed.

24 This does show a cumulative barrel of oil  
25 per foot, which is one thing that you would need to

1 calculate a drainage area, but not the rest of the  
2 data. And that data was not discussed.

3 Q Okay. And where would you get that data if  
4 you want to know that data for the North Wilson Deep  
5 Unit 3H?

6 A If I wanted to do that, I'd perform that  
7 analysis.

8 Q Okay. Do you know whether --

9 A -- that --

10 Q Do you know whether Mr. Asmus performed that  
11 analysis with the data?

12 A I believe he stated that this was a  
13 representation created. He did not state whether it  
14 was him or the -- the reservoir team, but stated that  
15 it was created off of offset analogs.

16 And to be honest, I -- I don't know if  
17 that's analogs in Lea county, in the Delaware Basin,  
18 in Permian. So judged off -- based off of what I  
19 heard, I do not know.

20 Q Okay. You didn't know that underlying data  
21 when you read this for the first time, what, Friday;  
22 right?

23 A That is correct.

24 Q Okay. And now if I look back at Exhibit 11,  
25 which was disclosed on Tuesday, nowhere in here does

1     it criticize not having the underlying data or not  
2     knowing where these analogs are located; right?

3           A     We did not put that in this statement you  
4     are referring to. That is correct.

5           Q     So the criticisms you just went through for  
6     B6 and B7, the underlying data, the porosity, the  
7     water saturation, recovery factor, the height and  
8     width, the first time that any of us heard about those  
9     criticisms you had with those exhibits was just a few  
10    minutes ago in your direct testimony here, not in any  
11    kind of written statement; right?

12          A     That is correct.

13          Q     Okay. Do you think that if you would've  
14    written on Tuesday these criticisms that Earthstone  
15    would've provided you answers today to where that data  
16    came from, where those analogs are located?

17          A     That is a hypothetical that I do not feel  
18    comfortable answering.

19          Q     That's fair.

20                   THE HEARING EXAMINER: Mr. Beck?

21    Mr. Beck, can you hear me?

22                   MR. BECK: Yeah. I can hear -- all  
23    right.

24                   THE HEARING EXAMINER: Okay. Mr. Beck,  
25    I realize that this information is coming as a

1 surprise to you. So if you want to bring back your  
2 witness as a rebuttal witness to this testimony, I  
3 will allow you that narrow focus.

4 MR. BECK: Thank you. Noted.

5 BY MR. BECK:

6 Q Getting back to Exhibit 11 --

7 A Yes, sir.

8 Q Are these dots on the lower left-hand  
9 portion -- I guess what those are showing is that  
10 there's -- these are the lowered propensity around  
11 2,000 pounds per foot. And it's showing what with  
12 those?

13 A So that is a graph of proppant intensity  
14 versus cumulative 12-month oil production per lateral  
15 foot. I use that number as a -- as a metric to gauge  
16 productivity.

17 I -- I try to stay away from EURs and things  
18 like this, because that's a subjective number, much  
19 like a geologist interpretation -- can give five  
20 different reservoir engineers and EUR number or tell  
21 them to put an EUR and you'd get five different  
22 numbers. One-year cume does not lie.

23 So I use that as a stand-in for  
24 productivity. And this just shows and -- and refutes  
25 the assertion that there is a correlation that would

1 yield increased productivity when increasing your  
2 completion intensity from 2,000 pounds to 2,500 pounds  
3 per foot, which are the two different scenarios we are  
4 talking about today.

5 Q Should these dots on the left-hand side --  
6 is this 12 months cumulative from 0 to 45 -- is that  
7 the first 12 months for each one of these or what 12  
8 months is that?

9 A Yes, the first 12 months.

10 Q Okay. And which one of these are parent  
11 wells versus child wells?

12 A I didn't break those out within these. So  
13 this is all wells. So it will be a mixture of parent  
14 wells and child wells.

15 Q Okay. And based on Exhibit 11A, you'd agree  
16 with me that the child wells are less productive than  
17 the parent wells in the first 12 months; right?

18 A Looking at the wells that are just  
19 represented in 11A, parent wells in 11A were more  
20 productive than child wells.

21 Q Okay. And so would you expect that in 11B  
22 parent wells would be less -- or would be more  
23 productive than the child wells, regardless --

24 A I think that -- go ahead. Sorry.

25 Q Yeah. If they had the same proppant -- the

1 same propensity, would you expect that parent wells  
2 would be more productive than child wells?

3 A I would say that many factors would go into  
4 that, and I -- I couldn't make that assertion. For  
5 instance, that -- that Bruce Keplinger well that we  
6 referenced earlier, the yellow dot is a standalone  
7 well, the "parent."

8 And I could not say without a deeper dive  
9 into the data whether or not there are instances of  
10 child wells in this dataset outperforming their  
11 parents, quote, unquote.

12 I can say that I have seen that in my time  
13 analyzing data in New Mexico. But with this specific  
14 dataset, I couldn't speak to that.

15 Q Well, I mean, we see that in 11A; right?  
16 Because what we see is that the inland one in the  
17 middle, 2623B20J 12-month cumulative, that was 31,  
18 whereas the two children next to it were 23 and 25,  
19 which is -- well, it's 7 of the 31.

20 That's almost 25, 30 percent less  
21 productive, right, for the children versus the parent?

22 A I have stated in this specific example that  
23 it could be said that the parents are more productive  
24 than the children.

25 Q Okay. And so it's possible, you'd agree

1 with me, on 11B that by including the children and the  
2 parents here, we lose some data that we might compare  
3 as to whether proppant intensity has any correlation  
4 to production in that first 12 months.

5 A I -- I don't believe I understand your  
6 question. Could you rephrase it, please?

7 Q Yeah. Let me break it down for you. Eleven  
8 A we said that at least eleven A reflects that parents  
9 are more productive than children; right?

10 A In that specific instance, yes, sir.

11 Q Okay. And this looks at five different  
12 wells. And what we see is that the parents have less  
13 proppant intensity than the children.

14 A That is not true.

15 Q Which one is it not true for?

16 A I believe if you look at -- if you look  
17 at -- oh, excuse me. These are codeveloped. I  
18 misspoke. That is -- that is the case with respect to  
19 the B2PI, the B2ED, and the B2NK has a higher proppant  
20 intensity.

21 Q Okay. So the children have a higher  
22 proppant intensity than the parents in 11A; right?

23 A In this specific one, yes, sir.

24 Q And notwithstanding that, the children have  
25 a lower production than the parents?

1           A     That is correct.

2           Q     Okay. And then if we look at 11B, which you  
3 say shows that there is no correlation between  
4 proppant intensity and production, we can't tell which  
5 of these low production and which of these high  
6 production are parent versus child; right?

7           A     That data set is not broken out in this  
8 exhibit. Yes, sir.

9           Q     The only one we do know, because you focused  
10 your attention in on this one, is this MTDR Bruce  
11 Keplinger; right? We know that there is no other  
12 parent or child. It's just the standalone.

13          A     That is correct.

14          Q     Okay. And did you hear the testimony today  
15 from Earthstone's witnesses that said they agreed, all  
16 things being equal, they would like to target the  
17 lower half of the second Bone Spring than the upper?

18          A     I believe I heard them say they preferred  
19 that target. Yes, sir.

20          Q     All right. But they didn't go with their  
21 preference. Did they?

22          A     As evidenced by their proposals, no.

23          Q     Okay. And did you hear the testimony today  
24 that they didn't do that, because their analysis, the  
25 proppant intensity and the analysis of the possible

1 depletion from putting the well on that lower second  
2 Bone Spring?

3 A I heard the evidence that they testified to

4 Q And you heard them say what I just asked  
5 you?

6 A Yes. I heard their arguments.

7 Q Let's take you back to Exhibit 11A here.  
8 And I guess this is showing that roughly the same  
9 depth, even when you have spacing of 1,320 feet and  
10 1,480 feet between parent and child, you're still  
11 seeing a decreased production rate for those children;  
12 right?

13 A I -- I don't believe you're accurate with  
14 your statement of 1,480. I would refer to those wells  
15 as co-completed. The B2PI and the B2OJ came online at  
16 the same time. So that would not be a -- a  
17 parent/child pair.

18 Q Okay. And so if I'm looking at that, what  
19 that's showing is that -- it's showing that when you  
20 have two wells coming on at the same time, for some  
21 reason there's a lower production rate from the inland  
22 B2PI than there is from the inland B2OJ; right?

23 A That is correct.

24 Q Okay. And when we're looking, the B2OJ that  
25 came on the same time has higher output, has a lower

1 proppant intensity; right?

2 A That is correct.

3 Q Okay. And that's 1,480 feet from the inland  
4 B2PI; right?

5 A That is correct.

6 Q Okay. And then when we look at the B2PI  
7 that's only 1,000 feet from the Dolly Varden, we see  
8 that even though it has about 500 more pounds per feet  
9 of proppant, it's less productive; right?

10 A That is correct. I believe we already  
11 covered this.

12 Q Okay. And you can't get from this that  
13 closer spacing between an already producing well and  
14 one to be drilled reduces the expected production from  
15 that later produced well at the same depth?

16 A Based on this specific exhibit, I -- I would  
17 not say that, as evidenced by the fact that the B2NK,  
18 which is 1,320 feet from its "parent," the B20J,  
19 cumulatively produced 23 barrels of oil per foot,  
20 whereas the inland B2PI, which is 1,000 feet away,  
21 produced 25.

22 So that -- that would kind of fly in the  
23 face of that statement.

24 Q Well, I mean --

25 A Which was the -- the point of the exhibit.

1           Q     -- the B20J was in production, what, nine  
2 months before the B2NK; right?

3           A     That -- that looks -- that looks right.

4           Q     Okay. And then so we have one that's in  
5 production first and another one that's in production  
6 second. And this one is over 1,000 feet, as you point  
7 out, 1,320 feet from it. And it's producing -- again,  
8 it's about 25 percent less oil; right?

9           A     I'm -- I'm speaking comparing the -- the  
10 B2NK and the B2PI, the -- the children wells. The two  
11 child wells in this exhibit, the one that was spaced  
12 farther from its parent produced less than the one  
13 that was spaced closer to its parent with respect to  
14 the B2PI when compared to the B2NK.

15          Q     Okay. And we can't get from this, I  
16 assume -- and you couldn't tell me, right, if that  
17 inland B2NK you're talking about was less than 1,000  
18 feet, as Mewbourne's proposing, whether that 23 would  
19 be less, because it was closer. You can't give me  
20 that answer.

21          A     I could not.

22          Q     Okay. But at least we know that same depth  
23 a well drilled after the well next you have that same  
24 depth, from this we can see that it lost -- at least  
25 talking about that B2NK and the B20J, it lost about 25

1     percent of what was being produced from that B20J;  
2     right?

3           A     I -- I haven't calculated the -- the math,  
4     but I'll -- I'll trust you on it.

5           Q     Okay. Is it possible that that could be  
6     because they're close enough that there's this  
7     depleted reservoir issue between those two?

8           A     Which two are you referring to, sir?

9           Q     The two we just talked about. I'm sorry.  
10    It's craning my neck, but it's the B2NK and the B20J.

11          A     And what's your question about those?

12          Q     My question is, is that that lesser  
13    production from the B2NK compared to the B20J could be  
14    because they're at the same depth and were running  
15    into this depleted reservoir issue.

16          A     It could be. It could be a number of -- any  
17    one of a number of factors.

18                   MR. BECK: That's all I've got,  
19    Mr. Hearing Examiner. Thank you.

20                   THE HEARING EXAMINER: Mr. Lowe?

21                   MR. LOWE: Good afternoon. Can you  
22    guys hear me?

23                   THE HEARING EXAMINER: Yes, sir. We  
24    can hear you.

25                   THE WITNESS: Yes.

1 MR. LOWE: Just to get, I guess, a  
2 cumulative response on the data shown in Exhibit B,  
3 the graph --

4 THE WITNESS: Eleven B? Is that what  
5 you said, sir?

6 MR. LOWE: Eleven B. Yes.

7 THE WITNESS: Yes, sir.

8 MR. LOWE: The blue dots, those are  
9 basically -- are they all your wells or are they just  
10 wells in the vicinity?

11 THE WITNESS: They are all the wells  
12 that are on this map represented by a blue wellbore.  
13 And those are -- there's a combination of many  
14 operators in the area, Mewbourne, Permian Resources,  
15 Earthstone, one in the same, Matador.

16 MR. LOWE: Okay. And they're all  
17 basically in a second sand Bone Springs?

18 THE WITNESS: All of the wells that are  
19 represented on this map are in the second Bone Spring  
20 sands.

21 MR. LOWE: Okay. And then the yellow  
22 dot is basically the Bruce Keplinger well, and that's  
23 what you have there.

24 THE WITNESS: Yes, sir. It's the well  
25 that is shown by that little fall out box with the

1 arrow. It's the 1-mile well in section 13, 21 south,  
2 34 east.

3 MR. LOWE: Okay. And then on the  
4 access of the chart on 11B where it says, "Sand per  
5 foot pound" --

6 THE WITNESS: Yes, sir.

7 MR. LOWE: -- is that correct?

8 THE WITNESS: That is -- yes, sir.  
9 That is represented of the pounds of proppant pumps  
10 per lateral foot.

11 MR. LOWE: Okay. All right.

12 THE WITNESS: Also referred to as  
13 proppant intensity.

14 MR. LOWE: Okay. All right. Let's see  
15 here. Okay. Those are the only questions I got.  
16 Thank you for clarifying. Thank you.

17 THE WITNESS: Yes, sir.

18 THE HEARING EXAMINER: Mr. Bruce, is  
19 there any follow up to those cross-examination  
20 questions?

21 MR. BRUCE: Just a couple,  
22 Mr. Examiner.

23 REDIRECT EXAMINATION

24 BY MR. BRUCE:

25 Q Mr. Stowers, look at your Exhibit 11A.

1           A     Yes, sir.

2           Q     And starting on the left-hand side, the  
3 first two wells are completed in the same month.  
4 Aren't they?

5           A     That is correct.

6           Q     And there's a variability there a little  
7 bit.

8           A     That is correct.

9           Q     And then the next two wells, they were  
10 completed both in March of 2021. So they've been --  
11 they were completed more or less simultaneously.

12          A     That is correct.

13          Q     And there's still a little variability  
14 there.

15          A     Yes, sir.

16          Q     And so can't that go into other reservoir  
17 quality, reservoir thickness, things like that?

18          A     Yes, sir. I would say that there are many  
19 factors that could play into the -- into the  
20 variability and production results seen throughout the  
21 area.

22          Q     And I don't know, and therefore, being a  
23 good attorney, I make sure to not ask these questions,  
24 but are these good wells? Are these good productive  
25 wells?

1           A       We are pleased with the results we have seen  
2 out of this particular development. Yes, sir.

3                   MR. BRUCE: Thank you.

4                   MR. BECK: Mr. Hearing Officer, since  
5 I -- you'll indulge me with one or two more questions.

6                   THE HEARING EXAMINER: Mr. Beck, based  
7 on the redirect?

8                   MR. BECK: Sure.

9                   RE CROSS EXAMINATION

10           BY MR. BECK:

11               Q       Mr. Stowers, comparing the two left inland  
12 wells that were drilled at the same time, I think you  
13 recognize that they were drilled at the same time, but  
14 they have different levels of cumulative output;  
15 right?

16               A       That is correct.

17               Q       And they also have different levels of  
18 proppant, right, with the lower producing well having  
19 a lower proppant amount than the higher producing  
20 well?

21               A       That is correct by what's evidenced on this  
22 exhibit. Now that you have drawn my attention to  
23 that, that may be a typo. Those numbers may need to  
24 be flipped, but I couldn't say for certain, so that --  
25 that could be an -- error on -- on my part.

1           Q     You can't say whether the proppant values in  
2 this exhibit is accurate?

3           A     With respect to that specific inland,  
4 2623B2ML, that is correct.

5           Q     Okay. Who prepared this exhibit?

6           A     I did.

7           Q     Exhibit 11B, there's been a lot about the  
8 Keplinger well. Do you remember talking about that a  
9 lot today and hearing Mr. Carrell talk about that a  
10 lot today?

11          A     That is correct.

12          Q     Are you aware that that -- what you've all  
13 been referring to as a low producing well is a 1-mile  
14 lateral well?

15          A     Yes, sir. That's why in all of my  
16 production numbers that we have been referencing, they  
17 are based on cumulative oil production per lateral  
18 foot to normalize between 1 mile, 1 1/2, and 2-mile  
19 wells.

20          Q     Okay. Do we know which of these wells on  
21 Exhibit 11B are 1-mile wells versus 2-mile wells?

22          A     No, sir. We do not.

23                   MR. BECK: That's all I have,  
24 Mr. Hearing Examiner. Thank you.

25                   THE HEARING EXAMINER: Okay.

1                   Mr. Bruce, it's come to my attention  
2     that Exhibit 11A may have inaccurate information.  
3     What are you going to do to correct it? Mr. Bruce,  
4     are you there?

5                   MR. BRUCE: Yes. Sorry. Yes. I -- I  
6     can get together with Mr. Stowers and have him look at  
7     the data, and have him verify it. That may take more  
8     than the one day I'm going to use to correct the  
9     other -- the affidavit itself, as you asked me to do.

10                  THE WITNESS: I can get it to him by  
11     tomorrow morning most certainly.

12                  THE HEARING EXAMINER: All right. So I  
13     am expecting two things from you, Mr. Bruce. Number  
14     one, you are going to resubmit Exhibit 11 to omit  
15     paragraphs number 7 through 10, and you are going to  
16     revise 11A to correct any incorrect data.

17                  And, Mr. Stowers, would you please mark  
18     any changes in the data in a different color ink, so  
19     that it's really obvious?

20                  THE WITNESS: Yes, sir. I can do that.

21                  THE HEARING EXAMINER: Okay.  
22     Wonderful.

23                  And, Mr. Bruce, would you please mark  
24     Exhibit 11 as Amended Exhibit 11 and Exhibit 11A as  
25     Amended Exhibit 11A?

1 MR. BRUCE: Oh, absolutely. I will --  
2 I usually do that. Thank you.

3 THE HEARING EXAMINER: All right.  
4 Excellent. Mr. Bruce, are you done with your rebuttal  
5 case?

6 MR. BRUCE: Yes, I am. And the only  
7 thing I was going to ask is how you wish to proceed.  
8 We've had a nice darn long -- and that's not a word I  
9 use often -- hearing and a lot of stuff to digest.  
10 And I was going to -- and I haven't had a chance to  
11 speak with Mr. Beck about this, so I'll let him have  
12 his input.

13 If you would like a written closing  
14 argument, it's getting late, and it may make more  
15 sense to get the affidavit, and these revised  
16 exhibits, and do a written closing at your  
17 convenience, and you can limit the length of them as  
18 you see fit. I'm usually pretty concise in what I  
19 write.

20 THE HEARING EXAMINER: Okay.  
21 Mr. Bruce, thank you for bringing that up. However, I  
22 haven't closed the evidentiary record yet. I'm still  
23 looking to Mr. Beck to find out whether he is going to  
24 present a rebuttal case or not.

25 MR. BRUCE: Okay. I forgot. Sorry.

1 MR. BECK: Thank you, Mr. Hearing  
2 Examiner. I'm going to disagree with Mr. Bruce on the  
3 procedure, but I'm going to agree with him on the fact  
4 that it is late in the day and we're -- Earthstone  
5 doesn't have any rebuttal.

6 THE HEARING EXAMINER: Okay.  
7 Wonderful. All right. So the evidentiary record is  
8 closed, except for these amended exhibits from  
9 Mr. Bruce.

10 Now let's talk about the post-hearing  
11 procedure. This is the first contested hearing that  
12 I've conducted for the OCD. In my previous position  
13 parties had an opportunity -- they had a certain  
14 number of days to produce post-hearing submissions.

15 Post-hearing submissions included  
16 closing argument. It also included proposed findings  
17 of fact and proposed conclusions of law. So,  
18 Mr. Bruce, you didn't mention part of what I just  
19 mentioned. Is that not common in these hearings?

20 MR. BRUCE: Oh, no. Yeah. It is  
21 common, Mr. Examiner. I guess I kind of join them  
22 together at times, because I put them --

23 THE HEARING EXAMINER: Okay. I  
24 understand. So then the parties are going to submit  
25 closing arguments and proposed findings of fact and

1 proposed conclusions of law. Is that correct?

2 MR. BRUCE: That's what I would like to  
3 do --

4 MR. BECK: Yeah. That's my  
5 understanding.

6 THE HEARING EXAMINER: Okay. I saw  
7 once before that Ms. Orth [ph], who was a contract  
8 hearing officer, she gave the parties two weeks for  
9 that. Does that seem fair?

10 MR. BRUCE: It is, Mr. Examiner. I  
11 suppose the other thing is often times Ms. Orth [ph]  
12 and Mr. Brinkard [ph], the prior hearing examiner,  
13 would give, like, two weeks from the time that the  
14 hearing transcript was -- and Marlene would --

15 THE HEARING EXAMINER: That makes  
16 sense.

17 MR. BRUCE: -- Marlene would inform  
18 Mr. Beck and I and the other people of when -- filed.

19 THE HEARING EXAMINER: That's fair.  
20 Yeah. That's fair. Sounds good. So I don't remember  
21 the court reporter's name.

22 Would you please tell me what your name  
23 is?

24 THE REPORTER: Dana.

25 THE HEARING EXAMINER: Dana, when do

1     you anticipate a verbatim transcript?

2                   THE REPORTER:   It typically takes seven  
3     days, but if you guys want to expedite, I can do it,  
4     as well.

5                   THE HEARING EXAMINER:   All right.  Who  
6     pays -- at the OCD, who pays for verbatim transcripts?  
7     Does anyone know?

8                   MR. BRUCE:   Mr. Examiner, Jim Bruce.  
9     Generally it's the division.  Somebody wants a  
10    verbatim one, they'd ask and offer to pay the court  
11    reporter for that.  A week or ten days, that is fine  
12    with me or two weeks.  Whatever the court reporter can  
13    do from my --

14                   THE HEARING EXAMINER:   Okay.  
15    Mr. Bruce, I didn't understand your answer to the  
16    question.  So let me say it again or let me repeat  
17    what I think I heard.  You said the division normally  
18    pays for the court reporter's verbatim transcript.  Is  
19    that correct?

20                   MR. BRUCE:   Yes.  They have a -- the  
21    division has a contract with the court reporter or the  
22    court reporting services.

23                   THE HEARING EXAMINER:   But then is that  
24    proprietary to the division and it's not shared with  
25    the parties?  Is that what you're saying?

1 MR. BRUCE: No, I'm not, because of  
2 course that is filed online with the division, and  
3 it's available to everyone. But in the past,  
4 Mr. Examiner, a party who wanted an expedited  
5 transcript --

6 THE HEARING EXAMINER: Oh, I get it. I  
7 understand now. Okay. All right.

8 Well, Mr. Beck, do you have a need for  
9 an expedited transcript?

10 MR. BECK: No. Seven days is fine.  
11 Thank you.

12 THE HEARING EXAMINER: Okay.

13 Dana, if it's going to be longer than  
14 seven days, would you send an email to Marlene, so she  
15 knows how much longer than seven days it'll be?

16 THE REPORTER: Yes.

17 THE HEARING EXAMINER: Okay.  
18 Wonderful. Okay.

19 Then once the transcript is posted  
20 online, we'll give the parties two weeks from that  
21 date to submit their post-hearing submissions. The  
22 way it's been done in the past is if you don't make an  
23 argument in the closing argument, then it's waived.

24 And, Mr. Bruce, I don't know, how long  
25 does it normally take the hearing officer and the

1 division to produce an order from the post-hearing  
2 submissions?

3 MR. BRUCE: Boy, that's beyond my  
4 knowledge. It's always been at the pleasure of the  
5 division. And I think Mr. -- can agree with that.  
6 It's whatever time you need to take care of it.

7 Of course operators always like a quick  
8 decision, but when there's a lot to consider, I know  
9 it takes time to -- well, for instance, in this case  
10 there was a motion to dismiss that was argued, and it  
11 took the division about -- just the motion to dismiss  
12 took over two months to decide, so.

13 THE HEARING EXAMINER: Okay. I  
14 understand. Okay. Then we will take whatever time we  
15 need. Okay. I can't think of anything else. Is  
16 there anything else from the parties before we end  
17 this?

18 MR. BECK: -- my experience. You just  
19 assume that Mr. Bruce has more?

20 THE HEARING EXAMINER: I did. My  
21 fault. My apologies.

22 MR. BECK: That's all right. My  
23 experience -- with yours, so I appreciate you not  
24 singling me out.

25 THE HEARING EXAMINER: Oh, you're just

1       razzing me, huh?   Okay.   Thank you, Mr. --

2                       MR. BRUCE:   My only request,  
3       Mr. Examiner, can I go have a beer now?   That's all.

4                       THE HEARING EXAMINER:   Please.   Can you  
5       go ahead and what?

6                       MR. BRUCE:   Anyway, well, thank you for  
7       your time, Mr. Examiner and Mr. Lowe, very much.

8                       THE HEARING EXAMINER:   Okay.   Thank --  
9       you.

10                      MR. LOWE:   Thank you, Mr. Bruce.

11                      THE HEARING EXAMINER:   All right.  
12       Enjoy the rest of the day.   Thank you.

13                      MR. BRUCE:   All right.   Bye.

14                      (Whereupon, at 5:27 p.m., the  
15       proceeding was concluded.)

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CERTIFICATE OF DEPOSITION OFFICER

I, DANA FULTON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



DANA FULTON  
Notary Public in and for the  
State of Missouri

CERTIFICATE OF TRANSCRIBER

I, CHRISTINE BROWN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in dark ink, appearing to read "Christine Brown", with a stylized, cursive script.

CHRISTINE BROWN

|                           |                        |                       |                       |
|---------------------------|------------------------|-----------------------|-----------------------|
| <b>&amp;</b>              | 178:17 191:11          | <b>10,400</b> 167:14  | <b>11a</b> 16:6 86:13 |
| <b>&amp;</b> 3:15,22 4:18 | 242:2 294:1            | <b>10.2</b> 253:3     | 263:21 267:7          |
| 5:17 6:4,14               | 297:13,18,18           | <b>100</b> 99:14      | 267:15 276:20         |
| 8:11 9:4 18:4             | 297:21                 | 183:11                | 277:4 285:15          |
| 31:22 36:25               | <b>1,000</b> 277:25    | <b>1000</b> 4:19 8:12 | 285:19,19             |
| 61:5,14 65:1,20           | 290:7,20 291:6         | <b>1048</b> 7:21      | 286:15 287:22         |
| 73:2,13                   | 291:17                 | <b>1056</b> 3:9 5:5   | 289:7 294:25          |
| <b>0</b>                  | <b>1,300</b> 228:4     | <b>107</b> 15:13      | 298:2,16,24,25        |
| <b>0</b> 285:6            | <b>1,320</b> 221:9     | <b>10731</b> 77:7     | <b>11b</b> 263:22     |
| <b>0.010417</b> 130:2     | 289:9 290:18           | <b>108</b> 10:4       | 267:7,16              |
| <b>0.03</b> 133:9         | 291:7                  | <b>11</b> 15:14 16:4  | 276:20 278:13         |
| 198:14                    | <b>1,445</b> 223:13    | 84:12,14,17           | 278:14 281:6          |
| <b>0.03125.</b> 130:3     | <b>1,480</b> 289:10,14 | 86:12,13 87:1         | 285:21 287:1          |
| <b>0.04</b> 133:3         | 290:3                  | 138:3 169:22          | 288:2 294:4           |
| <b>0268</b> 3:5 8:6       | <b>1,900</b> 247:1     | 170:24 206:20         | 297:7,21              |
| <b>1</b>                  | 279:6                  | 267:7,15 268:1        | <b>11h</b> 253:3      |
| <b>1</b> 4:13 5:12 6:9    | <b>1/2</b> 103:23      | 268:1,3 269:13        | <b>11th</b> 54:1      |
| 6:21 7:15 8:18            | 274:11 297:18          | 269:15,17,23          | <b>12</b> 15:21 76:8  |
| 12:10,22 16:4             | <b>10</b> 15:13 16:5   | 270:5,10,11,13        | 84:10,14,16           |
| 18:14 46:14               | 84:8,14,16             | 271:10,14,14          | 86:13 87:1            |
| 66:16 67:14               | 86:11 87:1             | 272:1 282:24          | 138:2 143:21          |
| 69:10,13 83:23            | 92:5 100:12            | 284:6 298:14          | 143:24 146:22         |
| 84:1 86:7,20,22           | 106:25 107:3,9         | 298:24,24             | 147:22 148:15         |
| 90:24 91:19               | 108:16,16              | <b>110</b> 4:13 5:12  | 148:19,20,23          |
| 92:23 93:6                | 109:23 110:1,7         | 6:9,21 7:15           | 149:8,9 150:19        |
| 106:10 107:1              | 113:20 115:15          | 8:18                  | 152:2,3,10            |
| 114:18 120:6              | 116:10 146:6           | <b>113</b> 221:8      | 154:11,19             |
| 123:14 143:1              | 169:22 189:1,2         | <b>113h</b> 229:9     | 155:1,15 156:1        |
| 143:16,19                 | 210:19 214:10          | <b>114</b> 221:9      | 156:5,15,16           |
| 145:5 146:23              | 245:8 269:13           | <b>114h</b> 174:21    | 166:5,8,15            |
| 148:11,16,17              | 270:8,22 271:5         | 229:6                 | 169:12,19,21          |
| 159:4 170:23              | 271:16 298:15          | <b>117</b> 10:13      | 170:1,24              |
| 175:6 176:4               | <b>10,000</b> 165:5    | <b>11:04</b> 134:10   | 171:14 187:3          |
| 177:20 178:15             | 253:12                 | <b>11:10</b> 134:10   | 206:21,22             |
|                           |                        |                       | 230:11,23             |

|  |   |  |   |
|--|---|--|---|
| 275:9,15,19<br>277:14 278:2,8<br>278:20 280:3<br>284:14 285:6,7<br>285:7,9,17<br>286:17 287:4<br><b>12,000</b> 201:5<br><b>12/1/20</b> 15:13<br><b>125</b> 7:9<br><b>12h</b> 253:4<br><b>13</b> 137:16,20<br>210:19 214:11<br>249:8 279:21<br>294:1<br><b>132</b> 10:12<br><b>1320</b> 278:6<br><b>135</b> 10:15<br><b>136</b> 251:17,18<br>261:6<br><b>13b</b> 275:20<br><b>13h</b> 253:4<br><b>14</b> 42:13,14<br>74:11 89:16<br>100:10 193:3<br><b>146</b> 10:16<br><b>14th</b> 83:7 87:12<br>88:13 151:22<br>154:20<br><b>15</b> 42:15<br><b>15.2</b> 253:4<br><b>150</b> 88:6 209:21<br><b>1512</b> 7:5<br><b>152,440</b> 257:3,7<br><b>153</b> 10:15 | <b>155,700</b> 257:2,4<br>257:19<br><b>156/170</b> 15:22<br><b>157</b> 10:16<br><b>15th</b> 89:17 90:7<br>150:7<br><b>16</b> 41:19 57:15<br>57:23<br><b>164</b> 10:17<br><b>16481</b> 26:14<br><b>16482</b> 26:15<br><b>168</b> 10:18<br><b>16th</b> 19:18,25<br>40:17 41:2,8,23<br><b>17</b> 74:16 128:3<br>135:22 136:3<br>274:15<br><b>173</b> 10:20<br><b>176</b> 186:9<br><b>1780</b> 9:5<br><b>18</b> 14:11 80:13<br>80:14 100:19<br>100:24,25<br>101:7,11,16,18<br>101:22 102:2<br>106:12 108:8<br>108:11 109:19<br>114:8 117:1,13<br>117:15 126:10<br>126:23 131:4<br>136:12 137:5<br>137:23 138:11<br>143:8,11<br>144:23 145:2,3<br>145:5 146:23 | 147:9 148:11<br>148:16,17<br>160:2,3 174:16<br>174:24 176:20<br>178:5,20<br>182:25 184:21<br>186:18 188:3<br>190:19 191:11<br>192:3 195:5,11<br>195:18 218:13<br>219:11 223:1<br>224:20 226:23<br>228:12 229:8<br>229:19 238:19<br>239:14,16,18<br>241:24 242:2<br>242:11 274:4<br>274:13,13<br>275:10,17<br>276:1<br><b>18-7</b> 174:21,22<br>185:6 225:12<br><b>182/182</b> 15:18<br><b>187214h</b> 158:4<br>158:12<br><b>189</b> 10:21<br><b>18a</b> 144:7 145:5<br>146:22 147:24<br>148:9,11,17<br><b>18th</b> 150:2,8<br><b>19</b> 60:16 64:2<br>101:7,17 143:8<br>143:10,11<br>159:13,15<br>160:3 190:20 | 191:1,6,8<br><b>19.15.16.15....</b><br>102:10<br><b>1975</b> 263:3<br><b>19h</b> 57:17<br>59:17,17<br><b>19th</b> 44:16<br>61:23 62:7<br>63:2,10 84:7<br>85:16 150:3,9<br><b>1h</b> 227:11<br>228:5<br><b>1st</b> 237:14  |
|  |   |  | <b>2</b>  |
|  |   |  | <b>2</b> 12:12,23<br>14:18 16:6<br>55:19 67:15<br>69:13 86:20,22<br>88:6,8 90:12<br>97:22 101:8,25<br>106:9 123:23<br>143:1,1,3,7,11<br>143:18 159:4,8<br>175:6 182:14<br>191:14 192:19<br>194:21 219:19<br>227:23 229:22<br>229:23 274:15<br>297:18,21<br><b>2,000</b> 141:16<br>279:2,3,12<br>284:11 285:2<br><b>2,500</b> 247:1,3,4<br>278:1,7 279:3<br>279:13 285:2 |

|                       |                        |                        |                        |
|-----------------------|------------------------|------------------------|------------------------|
| <b>2,600</b> 280:1    | <b>21.4</b> 253:3      | 229:6 241:17           | <b>23248</b> 1:22      |
| <b>2,700</b> 141:17   | <b>210</b> 10:6        | <b>21568</b> 1:15      | <b>23249</b> 1:22      |
| <b>2-2</b> 12:24 85:2 | <b>21277</b> 26:18     | <b>21572</b> 1:15      | <b>23250</b> 1:22      |
| 85:23 86:15,19        | 27:19                  | <b>21834</b> 77:4      | <b>23251</b> 1:22      |
| 86:20,22 105:7        | <b>21278</b> 26:18     | <b>21st</b> 17:2 83:18 | <b>23252</b> 1:23      |
| 122:14 123:4,6        | 27:19                  | 172:2                  | <b>23253</b> 1:23      |
| 126:3,7,14            | <b>21279</b> 26:22     | <b>22</b> 57:14,22     | <b>23318</b> 1:12      |
| 182:18 183:1,3        | 27:19                  | <b>220</b> 221:14      | <b>23319</b> 1:12      |
| 196:7 198:5           | <b>21280</b> 26:23     | <b>222/243</b> 14:9,12 | <b>23320</b> 1:12      |
| <b>2-4</b> 258:2      | 27:19                  | <b>22301</b> 57:17,25  | <b>23321</b> 1:12      |
| <b>2.2.</b> 122:16    | <b>213</b> 7:9         | <b>223h</b> 221:14     | <b>23365</b> 1:24      |
| <b>20</b> 57:25 59:19 | <b>2135</b> 142:15     | 229:9 241:16           | 12:21 13:3             |
| 59:23 69:3            | <b>21361</b> 1:9 17:10 | <b>224/243</b> 14:14   | 72:7 79:4              |
| 178:20 242:12         | 27:3                   | <b>226/243</b> 14:16   | 83:20 187:13           |
| <b>2018</b> 26:4,16   | <b>21362</b> 1:9 17:10 | <b>22653</b> 1:15      | <b>23366</b> 1:24      |
| <b>2020</b> 80:1,2    | <b>21363</b> 1:9 17:10 | <b>22700</b> 1:21      | 12:21 13:3             |
| 99:20,21 107:2        | <b>21364</b> 1:10      | <b>228/243</b> 14:18   | 72:7 83:20             |
| 111:3 114:18          | 17:11 27:4             | <b>22845</b> 1:11      | 187:16                 |
| <b>2021</b> 99:22     | <b>21393</b> 1:11      | 31:17,24 32:5          | <b>23475</b> 1:23      |
| 295:10                | 18:23 26:6             | 32:20 33:19            | 12:21 13:3             |
| <b>2022</b> 36:1,2    | 27:7                   | <b>22917</b> 1:21      | 72:7 83:19             |
| 173:22 250:5          | <b>21394</b> 1:11      | <b>22947</b> 1:11      | 149:19 229:5           |
| 250:17 251:3          | 18:23 26:6             | 31:17,19 32:6          | <b>23477</b> 1:23      |
| 251:13 258:3          | 27:7                   | 33:18 34:1             | 12:21 13:3             |
| <b>2023</b> 2:3 17:2  | <b>214</b> 3:16,23     | <b>23</b> 51:5 277:6   | 83:20 149:19           |
| 178:20 186:19         | 247:25                 | 277:24 278:8           | 229:8                  |
| 258:10                | <b>21454</b> 28:7      | 286:18 290:19          | <b>235</b> 10:24       |
| <b>2024</b> 199:16,23 | <b>21489</b> 1:10      | 291:18                 | <b>23664</b> 1:17 42:7 |
| <b>203-5730</b> 9:8   | 18:22                  | <b>23020</b> 1:13      | 56:10 57:10            |
| <b>204</b> 10:20      | <b>21490</b> 1:10      | <b>23021</b> 1:13      | 59:11,15,16,17         |
| <b>205</b> 10:23      | 18:23                  | <b>23022</b> 1:13      | <b>23665</b> 1:17 12:3 |
| <b>20c</b> 275:20     | <b>21491</b> 1:10      | <b>23023</b> 1:13      | 42:7 56:10             |
| <b>20th</b> 84:22     | 18:23                  | <b>23024</b> 1:14      | 57:18 59:11,19         |
| <b>21</b> 2:3 294:1   | <b>214h</b> 174:22     | <b>23025</b> 1:14      | <b>23666</b> 1:18      |
|                       | 221:12 223:14          |                        |                        |

|                        |                        |                        |                       |
|------------------------|------------------------|------------------------|-----------------------|
| <b>23667</b> 1:18      | <b>23763</b> 1:16 51:7 | <b>28</b> 103:23       | <b>34</b> 294:2       |
| <b>23668</b> 1:18      | <b>23765</b> 1:16      | 178:19                 | <b>36</b> 57:15,23    |
| <b>23669</b> 1:18      | 52:23 54:5             | <b>281</b> 9:8 11:8    | 145:10 230:17         |
| <b>23670</b> 1:21 61:1 | <b>23766</b> 1:17      | <b>28158</b> 307:17    | 232:9                 |
| <b>23671</b> 1:21 61:2 | <b>23767</b> 1:17      | <b>29</b> 69:3         | <b>388,000</b> 254:14 |
| <b>23677</b> 1:14      | <b>24</b> 165:8 277:7  | <b>294</b> 11:7        | <b>388,300</b> 256:5  |
| 36:15                  | 277:23                 | <b>296</b> 11:8        | <b>39</b> 42:19 43:18 |
| <b>23678</b> 1:14      | <b>24177</b> 23:14     | <b>298</b> 16:6        | <b>3h</b> 221:18      |
| 36:16                  | <b>245-2606</b> 4:8    | <b>2:53</b> 248:12     | 222:20 223:5          |
| <b>23688</b> 1:24      | <b>246</b> 10:23       | <b>2c</b> 12:13 67:18  | 223:11,14,17          |
| <b>23689</b> 1:24 12:9 | <b>249</b> 11:4        | 67:20,25 69:13         | 234:5 235:19          |
| 64:16 66:1,6           | <b>25</b> 219:2 220:10 | <b>2d</b> 239:12,15    | 244:14 247:24         |
| 67:4 69:21             | 237:11 277:7           | <b>3</b>               | 274:11,14             |
| 71:20,24               | 277:23 278:2           | <b>3</b> 12:14,25      | 282:5                 |
| <b>23690</b> 1:25      | 286:18,20              | 44:19 66:16            | <b>4</b>              |
| 64:17 71:21,24         | 290:21 291:8           | 68:11 69:2,14          | <b>4</b> 13:4 44:19   |
| <b>23691</b> 1:25      | 291:25                 | 86:20,23 90:12         | 66:17 69:3            |
| 71:25                  | <b>250</b> 228:6       | 104:22,24              | 85:16 86:20,23        |
| <b>23698</b> 1:19      | <b>25245</b> 6:15      | 117:20 119:2           | 89:1,11 90:12         |
| <b>23699</b> 1:19      | <b>259</b> 11:5        | 122:6,11 134:1         | 92:24 93:6            |
| <b>23700</b> 1:19      | <b>25th</b> 21:25      | 165:13 172:21          | 94:1 103:13           |
| <b>23701</b> 1:19      | <b>26</b> 277:6,24     | 175:6 177:8            | 104:12,12,25          |
| <b>23702</b> 1:20      | <b>2623</b> 278:5      | 180:16 182:20          | 105:19 186:15         |
| <b>23703</b> 1:20      | <b>2623b2ml</b>        | 205:14 220:5,6         | 249:5                 |
| <b>23704</b> 1:20      | 297:4                  | 248:12 269:1           | <b>432</b> 7:12       |
| <b>23705</b> 1:20      | <b>2623b2oj</b>        | <b>3,000</b> 256:24    | <b>45</b> 285:6       |
| <b>23738</b> 1:15      | 286:17                 | <b>3,260</b> 256:17    | <b>488-6108</b> 7:12  |
| 42:15,17,19            | <b>26522</b> 306:20    | <b>30</b> 258:10       | <b>4:02</b> 178:20    |
| 43:18 44:15            | <b>269/272</b> 15:14   | 286:20                 | <b>4a</b> 54:2        |
| <b>23739</b> 1:16      | <b>27</b> 57:14,22     | <b>300</b> 228:5       | <b>4h</b> 221:19      |
| 42:15                  | <b>27-22</b> 57:17,25  | <b>31</b> 66:15 286:17 | 244:14                |
| <b>23762</b> 1:16      | <b>271</b> 16:5        | 286:19                 | <b>4th</b> 4:19 8:12  |
| 48:20 49:3,23          | <b>272</b> 11:7        | <b>320</b> 57:12,20    |                       |
| 51:6                   | <b>27th</b> 184:16     | <b>325</b> 5:18 6:5    |                       |

| 5   | 168:11,13,19<br>168:21 169:7<br>5th 31:6,9,10<br>40:5,9,12 41:3<br>41:6,18,20  | 7  | 77 10:7 72:7<br>79:6<br>77380 9:6<br>78 209:24<br>250:11,18,21<br>780-8000 7:24<br>79 10:8<br>7th 34:11,22<br>35:15,22 42:18<br>43:6 47:6 49:1<br>147:6   |
|---|--|--|---|
| 5 12:16 13:5<br>44:19,19,19,20<br>49:6 51:7,10,14<br>51:15 52:7,8,9<br>54:3 68:19<br>69:14 70:25<br>74:7 86:20,23<br>90:12 91:19<br>134:21 147:18<br>152:12 161:20<br>188:24 224:19<br>225:11,20<br>263:21 276:21<br>50 108:8<br>50,000 253:18<br>500 4:19 8:12<br>279:1 290:8<br>503h 228:5<br>505 7:24<br>51 251:4<br>52 171:21<br>523 4:5<br>550 221:10<br>5528939 2:9<br>58/59 12:5,6<br>5:27 305:14<br>5a 135:13 157:8<br>158:21 161:20<br>5b 136:17<br>145:7 147:15<br>147:20,22<br>148:11,17<br>149:9,15 152:4<br>157:8,24 158:2 | 6<br>6 12:17 13:6<br>48:20 51:8,10<br>51:15 52:9,23<br>68:20 69:14<br>71:7 86:20,24<br>90:13,24 92:5<br>139:3 161:20<br>189:1 193:13<br>193:25 194:22<br>242:19 276:21<br>6,000 139:5<br>60 145:12<br>220:23 221:1<br>231:18 232:8<br>232:12<br>63 48:20 49:3<br>49:23<br>66 54:6 79:4<br>231:16<br>660 239:25<br>240:2,5<br>67 54:6<br>689 67:9<br>69 12:11,12,13<br>12:15,16,17,18<br>691 69:6<br>6th 31:8 | 7 12:18 13:7<br>14:11 16:5<br>49:6 51:7,8,10<br>51:10,14 52:7,9<br>52:24 54:4<br>66:17 68:24<br>69:11,15 78:6<br>86:20,24 98:12<br>98:17 114:10<br>136:12 144:23<br>145:2,3 174:25<br>178:6 184:21<br>188:3 192:6,8<br>192:19,24<br>193:7,9,25<br>194:22 196:23<br>201:8 218:13<br>223:1 224:20<br>226:23 229:9<br>239:10,14,16<br>239:18 242:19<br>270:8,16 271:4<br>271:16 286:19<br>298:15<br>72 104:6 106:23<br>127:2,10<br>133:15 196:15<br>720 4:8<br>736,000 254:17<br>74 251:12<br>75 77:22 79:6<br>220:19<br>750 9:5 149:2<br>152:21 153:12 | 8<br>8 13:8 86:20,24<br>190:12 191:19<br>270:16 271:4<br>80401 4:6<br>84/86 12:22,23<br>12:24,25 13:4,5<br>13:6,7,8,9<br>85 58:7<br>87102 4:20 8:13<br>87125-5245<br>6:16<br>87501 2:7 3:17<br>3:24 4:14 5:13<br>5:19 6:6,10,22<br>7:10,16,22 8:19<br>87504 3:6,10<br>5:6 8:7<br>87505 7:6<br>882,000 255:23<br>89/93 14:20,21<br>14:22,24,25<br>8:15 2:4 |

**[8h - actually]**

|  |   |  |  |
|--|---|--|--|
| <b>8h</b> 123:8<br>136:23 182:18<br>182:19 183:4   | <b>a2</b> 13:14 123:20<br>123:24 125:24<br>131:25 133:6<br>174:19 175:3<br>175:10   | <b>acceptable</b><br>19:18 82:11<br>114:3  | <b>acquisition</b><br>22:20 173:22<br>250:4,8,9 251:1<br>251:5   |
| <b>9</b>   | <b>a3</b> 12:4 13:15<br>58:5,21 59:3<br>258:14  | <b>accepted</b> 26:25<br>58:18 172:23<br>173:4 205:15  | <b>acre</b> 57:12,20<br>201:6  |
| <b>9</b> 13:9 18:15<br>83:23 84:1<br>86:8,20,25<br>170:23 254:19<br>270:17,23<br>271:5<br><b>9/18</b> 66:14<br><b>90/91</b> 13:12,13<br>13:14,15,16,17<br>13:18<br><b>91</b> 64:17 71:22<br><b>91/92</b> 13:19,20<br>13:22,24 14:4,5<br><b>93/94</b> 15:4,5,6,7<br>15:9<br><b>940</b> 223:16<br>239:21<br><b>98</b> 10:12<br><b>9850</b> 165:9<br><b>9:45</b> 83:15<br><b>9:50</b> 83:16<br><b>9h</b> 123:16<br>136:23 183:4<br>223:3,17 239:2<br>276:10 | <b>a4</b> 13:16<br><b>a5</b> 13:17<br><b>a6</b> 13:18 90:15<br>91:2 184:9<br><b>abadie</b> 3:15,22<br>65:20<br><b>abandon</b> 259:2<br><b>ability</b> 111:15<br>122:2 192:1<br>195:24 229:18<br>264:23 306:10<br>307:7<br><b>able</b> 24:18 29:6<br>40:9 41:11<br>111:24 138:24<br>139:10 161:10<br>184:20 209:14<br>238:5 242:25<br>252:20 256:22<br>257:14<br><b>above</b> 232:11<br>239:13<br><b>absent</b> 198:22<br><b>absolutely</b><br>235:2 299:1<br><b>accept</b> 68:7 | <b>access</b> 294:4<br><b>accompanying</b><br>275:5<br><b>accomplished</b><br>43:11<br><b>accordance</b><br>45:15<br><b>account</b> 23:6<br>145:9 237:20<br>276:5<br><b>accounting</b><br>183:22<br><b>accumulative</b><br>237:12<br><b>accurate</b> 53:13<br>117:12 126:2<br>126:10,23,24<br>132:25 155:24<br>176:1 182:21<br>183:6,20<br>189:22 196:20<br>196:21 223:23<br>223:24 289:13<br>297:2 306:9<br>307:5<br><b>achieved</b> 278:7<br><b>acquire</b> 250:9<br><b>acquired</b><br>250:18 251:4 | <b>action</b> 306:12<br>306:16 307:8<br>307:12<br><b>activating</b><br>95:12<br><b>active</b> 27:13<br><b>activity</b> 142:19<br><b>actual</b> 28:12<br>211:24 250:11<br>253:19<br><b>actually</b> 18:11<br>21:21 22:13<br>53:10 56:14<br>61:22 69:21<br>85:1 87:8 90:6<br>115:3 119:6<br>138:22 143:6<br>159:25 176:19<br>212:6 250:16<br>251:19 252:24 |
| <b>a</b>   |   |  |  |
| <b>a.m.</b> 2:4 76:6<br><b>a1</b> 13:13 90:12<br>90:14 91:1<br>123:23  |   |  |  |

[actually - affirmation]

|  |   |  |  |
|--|---|--|--|
| <p>255:15 274:3<br/> <b>adam</b> 5:10 6:7<br/> 53:19 58:2<br/> 64:25<br/> <b>add</b> 88:18<br/> 152:17 169:19<br/> <b>added</b> 88:21<br/> 255:23<br/> <b>adding</b> 212:8<br/> <b>addition</b> 186:6<br/> 187:2 212:12<br/> 234:18<br/> <b>additional</b><br/> 61:24 62:3,4<br/> 84:7 123:2<br/> 140:25 169:18<br/> 180:2 184:17<br/> 187:21 188:5<br/> 190:4 196:7<br/> 211:22 251:17<br/> 251:21,22<br/> 264:2 266:24<br/> <b>address</b> 262:25<br/> 262:25 263:6<br/> 263:18 264:18<br/> <b>addressed</b><br/> 27:15 44:10<br/> 112:14<br/> <b>addressing</b><br/> 28:8<br/> <b>adds</b> 149:9<br/> <b>adequately</b><br/> 144:21<br/> <b>adjacent</b><br/> 161:15 213:23</p> | <p>215:8 219:7,15<br/> 219:22<br/> <b>administrative</b><br/> 217:17<br/> <b>admissible</b><br/> 208:24 209:16<br/> <b>admission</b><br/> 53:21 69:10<br/> 85:10 91:9<br/> 108:16<br/> <b>admit</b> 85:23<br/> 115:15 170:21<br/> 181:8 196:8<br/> 217:10,16<br/> 263:4 264:8<br/> 268:3 270:10<br/> 270:11 271:13<br/> <b>admitted</b> 59:2<br/> 86:21 87:2<br/> 88:1,2 90:24<br/> 92:1 93:2 94:2<br/> 97:23 98:9<br/> 135:7 153:19<br/> 156:15 166:17<br/> 170:7,23<br/> 174:18 175:2<br/> 178:23 181:14<br/> 181:22,24,24<br/> 182:24 186:15<br/> 188:25 194:19<br/> 207:23 208:13<br/> 209:17 218:8<br/> 218:23 220:11<br/> 230:11 243:20<br/> 249:4,25 250:6</p> | <p>252:1 254:2<br/> 256:8 258:1<br/> 266:5 271:19<br/> <b>admitting</b><br/> 156:1 169:21<br/> 169:22 179:21<br/> <b>adobe</b> 209:22<br/> <b>adriana</b> 10:3<br/> 10:11 94:12<br/> 96:4 97:21<br/> 182:15 202:1<br/> <b>adult</b> 207:2,3,6<br/> 213:24 227:5<br/> <b>advance</b> 193:3<br/> 200:4<br/> <b>advantage</b><br/> 143:12<br/> <b>advise</b> 79:6<br/> 193:4<br/> <b>advisement</b><br/> 44:12 48:1,7,17<br/> 49:14 52:13,21<br/> 53:22 55:25<br/> 58:20 60:23<br/> 69:12 72:2,5<br/> 179:5<br/> <b>afe</b> 14:23,25<br/> 168:16,24<br/> 254:3 255:13<br/> 256:12 258:2,3<br/> 260:5,7<br/> <b>afes</b> 68:10<br/> 77:11 164:25<br/> 165:8,21 167:5<br/> 167:6,12 253:7</p> | <p>253:7,15 254:9<br/> 254:18 258:8<br/> 258:10,14<br/> 259:25<br/> <b>affect</b> 207:3<br/> 276:2<br/> <b>affected</b> 50:11<br/> 70:21 226:19<br/> 274:4,11<br/> <b>affecting</b><br/> 106:19<br/> <b>affects</b> 214:1<br/> 275:12,24<br/> <b>affidavit</b> 12:12<br/> 12:15,17 15:7<br/> 37:18 39:16<br/> 40:10 44:25<br/> 57:4 61:17<br/> 64:3,6 65:6,14<br/> 65:22 67:15<br/> 68:12,16,20,22<br/> 71:6 84:11,18<br/> 93:21 134:20<br/> 165:7 190:11<br/> 262:21 264:7<br/> 268:24 269:1<br/> 272:7 298:9<br/> 299:15<br/> <b>affidavits</b> 15:9<br/> 58:1 93:22<br/> <b>affirm</b> 97:5<br/> 134:20<br/> <b>affirmation</b><br/> 15:3 93:18</p> |
|--|---|--|--|

[affirmed - answer]

|   |  |  |   |
|---|--|--|---|
| <p><b>affirmed</b> 97:14<br/>276:21</p> <p><b>affirming</b> 84:8<br/>269:11,14</p> <p><b>afford</b> 74:19</p> <p><b>afraid</b> 241:1,3</p> <p><b>afternoon</b> 83:4<br/>85:16 87:13<br/>160:12 200:18<br/>244:3,4 261:24<br/>292:21</p> <p><b>ago</b> 54:20 55:20<br/>101:23 111:12<br/>111:18,22<br/>112:22,22<br/>113:1,5,18<br/>115:8 127:1<br/>147:6 151:13<br/>151:17 152:8<br/>178:16 194:3<br/>273:24 283:10</p> <p><b>agree</b> 20:12<br/>24:22 34:1<br/>79:18 115:23<br/>119:13 125:23<br/>126:4 140:22<br/>160:1 183:5<br/>193:5 234:3<br/>274:17,18,22<br/>276:11 285:15<br/>286:25 300:3<br/>304:5</p> <p><b>agreeable</b><br/>19:24 33:5</p> | <p><b>agreed</b> 34:10<br/>39:16 80:2<br/>101:12 107:23<br/>108:3 111:1<br/>115:1 119:22<br/>127:16,19<br/>159:25 288:15</p> <p><b>agreeing</b><br/>113:14</p> <p><b>agreement</b><br/>38:15,24 39:1,3<br/>39:5,12,13 68:8<br/>80:22 100:7<br/>103:24 106:16<br/>107:13,14,18<br/>109:18 112:20<br/>114:7 116:24<br/>118:24 119:18<br/>120:2 174:11<br/>177:23 193:1<br/>195:15,19<br/>197:10,18,24</p> <p><b>agreements</b><br/>108:1</p> <p><b>ahead</b> 61:19<br/>66:21 100:9<br/>104:2,3 137:24<br/>146:17 176:23<br/>191:17,18<br/>193:25 197:10<br/>254:6 256:10<br/>259:1,9,10,14<br/>271:17 277:1,2<br/>277:2 285:24<br/>305:5</p> | <p><b>al</b> 65:21</p> <p><b>albuquerque</b><br/>4:20 6:16 8:13</p> <p><b>allegations</b><br/>155:9</p> <p><b>allen's</b> 252:13</p> <p><b>allow</b> 33:15<br/>38:2 40:6 43:7<br/>47:9 176:14<br/>209:9 240:4<br/>259:2 267:21<br/>284:3</p> <p><b>allowing</b><br/>192:12</p> <p><b>allows</b> 81:19</p> <p><b>altitude</b> 215:10</p> <p><b>amanda</b> 10:19<br/>95:5 96:19<br/>120:11,12,23<br/>172:14,17</p> <p><b>amazing</b> 114:6</p> <p><b>amend</b> 43:20<br/>43:25 115:2</p> <p><b>amended</b> 14:19<br/>44:1,4,17 82:22<br/>82:25 87:10,15<br/>88:20 89:16,24<br/>90:6 92:13,13<br/>92:22 249:4<br/>271:10 298:24<br/>298:25 300:8</p> <p><b>amending</b><br/>84:14 89:23</p> <p><b>amendment</b><br/>88:19</p> | <p><b>amendments</b><br/>88:17</p> <p><b>america</b> 53:9<br/>54:25 55:12,14</p> <p><b>amount</b> 129:24<br/>224:2 256:5<br/>276:12 296:19</p> <p><b>amounts</b><br/>232:23</p> <p><b>analog</b> 226:10<br/>245:9</p> <p><b>analogues</b> 236:9<br/>242:20 282:15<br/>282:17 283:2<br/>283:16</p> <p><b>analysis</b> 211:18<br/>212:16 247:5<br/>247:10 254:11<br/>273:2 274:20<br/>274:24 275:3<br/>282:7,11<br/>288:24,25</p> <p><b>analytics</b><br/>211:11</p> <p><b>analyze</b> 206:23</p> <p><b>analyzed</b> 233:5</p> <p><b>analyzing</b><br/>286:13</p> <p><b>andrews</b> 5:17<br/>6:4 18:5 61:14</p> <p><b>announce</b><br/>18:20</p> <p><b>answer</b> 110:22<br/>110:24 114:22<br/>127:8,14 128:8</p> |
|---|--|--|---|

**[answer - appropriate]**

|   |   |   |   |
|---|---|---|---|
| 133:2 139:24<br>139:25 150:21<br>151:3,4 155:4<br>156:3 163:24<br>194:8 195:7<br>215:25 241:8<br>260:13 261:10<br>273:17 291:20<br>302:15<br><b>answered</b><br>193:23 241:21<br><b>answering</b><br>239:5 283:18<br><b>answers</b> 238:15<br>248:1 267:24<br>271:23 283:15<br><b>anticipate</b><br>214:17,20<br>302:1<br><b>anticipated</b><br>86:1 213:22<br><b>anticipating</b><br>85:13<br><b>anticipation</b><br>218:6<br><b>anyway</b> 21:1<br>71:2 76:11<br>99:9 305:6<br><b>aol.com</b> 3:11<br>5:7<br><b>apache</b> 4:16<br>17:20 18:17<br>19:23 25:4<br>26:19 | <b>apache's</b> 26:19<br><b>apart</b> 81:19<br>239:25 277:21<br>277:25 278:6<br><b>apd</b> 177:5<br><b>api</b> 185:2<br><b>apodaca</b> 9:14<br><b>apologies</b><br>304:21<br><b>apologize</b> 89:6<br>90:1 158:17,18<br>257:6<br><b>apparently</b><br>112:12<br><b>appeal</b> 25:1<br>26:8<br><b>appealed</b> 26:1<br>26:15<br><b>appear</b> 178:1<br>236:21<br><b>appearance</b><br>17:18 18:24<br>19:3 32:6 34:4<br>34:14 37:6<br>61:10 64:22<br>72:21 73:18<br><b>appeared</b> 76:3<br>76:5<br><b>appearing</b><br>30:18 31:22<br>36:25 53:19<br>56:15 57:1<br>65:1 73:13<br><b>appears</b> 45:13<br>52:18 169:1 | <b>apples</b> 254:8,9<br>255:19,20<br><b>applicable</b> 86:9<br><b>applicant</b> 6:12<br>32:4 36:19<br>42:22 56:16,16<br>72:14<br><b>applicants</b> 24:2<br>264:23<br><b>application</b><br>12:10 25:1<br>26:21 33:24<br>43:18 67:14<br>81:14 99:20<br>106:7 115:2,3<br>117:16,21<br>121:4,5,21<br>122:3,7 123:21<br>124:5 126:7<br>127:21 131:25<br>132:3 151:14<br>155:9 173:13<br>173:14 177:8<br>178:10 188:10<br>195:4 219:6<br>223:7,8 230:4<br>235:5 246:24<br>246:24 247:13<br><b>applications</b><br>18:17 25:4,5<br>26:3 29:8<br>33:17,19 37:14<br>60:4,12 72:5<br>78:20 79:22<br>80:11,18 81:1,4 | 108:25 110:18<br>117:11 120:9<br>120:15 121:22<br>122:10 124:16<br>127:25 128:8<br>149:19 150:7<br>151:15 154:3,4<br>155:3 159:8<br>173:20 174:1,6<br>176:6,18 184:7<br>185:17,18<br>186:23 187:9<br>188:10 204:10<br>222:1 226:25<br>229:14 234:9<br>234:25 235:4<br>253:8 256:3,4<br>265:2<br><b>applied</b> 219:13<br><b>apply</b> 193:18<br>213:2<br><b>applying</b> 81:5,7<br><b>appreciate</b><br>112:5 189:6<br>203:20 243:9<br>304:23<br><b>appreciated</b><br>271:23<br><b>apprised</b> 46:2,3<br>176:22<br><b>approach</b><br>81:17<br><b>appropriate</b><br>198:10 |
|---|---|---|---|

**[appropriately - attached]**

|  |   |   |   |
|--|---|---|---|
| <b>appropriately</b><br>181:10   | 114:24 137:4<br>138:5 139:2   | 114:16 145:21<br>145:22 146:8,9   | 153:17 158:3,7<br>163:10 178:23   |
| <b>approval</b> 63:16<br>78:7,9 99:18,21<br>103:17 104:6<br>104:20 106:21<br>121:4 127:2<br>133:16,25<br>141:5 193:19<br>196:15 200:1,3<br>200:8 204:8 | 142:10,12,13<br>142:15,19<br>143:2 161:1<br>192:8 201:25<br>216:5,13,16,23<br>218:15 226:4<br>231:24 233:2<br>234:13 235:21<br>235:22 236:5,8<br>236:10 237:6<br>242:13,16<br>247:9,16<br>254:23 260:12<br>260:20,22<br>272:13,23<br>273:5,23 274:2<br>274:25 277:19<br>278:15 279:6<br>281:20,22<br>282:1 293:14<br>295:21 | 154:25 156:6,7<br>168:4 180:6<br>213:12 231:13<br>299:14 300:16<br>303:23,23<br><b>arguments</b> 87:3<br>289:6 300:25<br><b>arises</b> 106:12<br><b>arose</b> 26:23<br><b>arrived</b> 53:10<br><b>arrow</b> 136:25<br>279:22 294:1<br><b>artificial</b> 257:9<br><b>ascent</b> 17:25<br>18:18 26:13,23<br>27:6 28:16,21<br><b>ascent's</b> 22:21<br>26:3<br><b>asked</b> 25:8<br>46:12 101:11<br>113:19 115:5<br>121:3 127:9,9<br>128:6 133:23<br>139:25 150:24<br>165:25 168:22<br>168:22 194:8<br>239:6 246:3<br>247:8 265:15<br>289:4 298:9<br><b>asking</b> 29:5<br>81:22 121:24<br>121:24 130:8<br>132:10,11 | <b>asmus</b> 10:5,22<br>95:6 96:24<br>155:19,24<br>156:2 204:17<br>204:21 205:9<br>205:12 207:20<br>208:2,16<br>209:15 210:7<br>218:3 221:3<br>242:23 244:3<br>246:14 248:2<br>272:7 282:10<br><b>asserted</b> 177:13<br><b>assertion</b><br>278:23,25<br>284:25 286:4<br><b>assigned</b> 26:18<br>26:22<br><b>associated</b><br>58:14 277:13<br><b>assume</b> 109:25<br>123:11 147:14<br>199:9 251:16<br>265:21 291:16<br>304:19<br><b>assuming</b><br>202:14 267:8<br><b>assumptions</b><br>273:13 276:4<br>281:19,21<br><b>asterisk</b> 105:11<br><b>attached</b> 89:13<br>165:21 178:17 |
| <b>approve</b> 121:6<br>121:20 178:10  |   |   |   |
| <b>approved</b><br>13:18 119:24<br>184:15 187:25<br>196:16   |   |   |   |
| <b>approving</b><br>113:17 119:19<br>139:13  |   |   |   |
| <b>approximate</b><br>133:18 149:2<br>167:13   |   |   |   |
| <b>approximately</b><br>106:23 127:2<br>145:10,12<br>165:4 167:15<br>221:10,13<br>230:17 237:11<br>245:7   | <b>areas</b> 80:7<br>138:10,13<br>174:3 216:10<br>266:14<br><b>argue</b> 112:18<br>231:3 270:5<br><b>argued</b> 304:10<br><b>arguing</b> 114:12<br>114:15<br><b>argument</b><br>75:10,13 79:10<br>107:9 112:7   |   |   |
| <b>april</b> 109:13<br>110:13 178:19   |   |   |   |
| <b>area</b> 46:6 100:5<br>101:21 102:3<br>105:22 113:18  |   |   |   |

|   |  |  |  |
|---|--|--|--|
| <p>205:18<br/> <b>attaches</b> 249:6<br/> <b>attachment</b><br/> 145:6 158:20<br/> 161:20<br/> <b>attachments</b><br/> 58:14 90:18<br/> <b>attempt</b> 87:3<br/> <b>attempted</b><br/> 101:24<br/> <b>attention</b><br/> 117:20 193:16<br/> 277:18 288:10<br/> 296:22 298:1<br/> <b>attorney</b> 3:8<br/> 5:4 74:25<br/> 114:24 116:2<br/> 164:7 175:15<br/> 175:16 184:8<br/> 295:23 306:14<br/> 307:10<br/> <b>audible</b> 125:10<br/> <b>audibly</b> 135:4<br/> <b>audio</b> 306:8<br/> 307:3<br/> <b>august</b> 36:2<br/> 139:5<br/> <b>authenticity</b><br/> 113:13<br/> <b>authority</b> 29:23<br/> 74:5<br/> <b>authorization</b><br/> 187:13 188:1<br/> <b>available</b> 38:8<br/> 40:13 95:3</p> | <p>268:7 303:3<br/> <b>avant</b> 4:16<br/> 36:19 37:13,20<br/> 37:23 38:3,15<br/> 40:6,9<br/> <b>avant's</b> 37:22<br/> <b>avenue</b> 7:9<br/> <b>average</b> 220:18<br/> 220:23 221:1<br/> 232:11<br/> <b>averages</b><br/> 231:18 232:8<br/> <b>avoid</b> 33:7<br/> 155:10<br/> <b>avoids</b> 223:7<br/> <b>awarded</b> 26:14<br/> 184:20,23<br/> 197:14,16<br/> <b>awarding</b><br/> 177:4<br/> <b>aware</b> 116:1,23<br/> 145:17 166:21<br/> 176:17 200:9<br/> 297:12<br/> <b>axis</b> 278:20,21</p> | <p>220:5,6 244:21<br/> 293:2,4,6<br/> <b>b1</b> 13:20 91:21<br/> 91:22 92:3<br/> 188:24 205:19<br/> 205:23 206:1,5<br/> 206:13 218:9<br/> 218:10,11<br/> <b>b10</b> 14:17 91:9<br/> 205:19,23<br/> 206:1,6,13<br/> 207:16,22<br/> 208:4 210:19<br/> 211:4,24 212:8<br/> 213:13 214:10<br/> 227:22 228:1<br/> 242:24 243:23<br/> 267:23 271:20<br/> <b>b2</b> 13:21<br/> 218:23,25<br/> <b>b2ed</b> 287:19<br/> <b>b2ed1h</b> 227:4<br/> <b>b2nk</b> 278:5<br/> 287:19 290:17<br/> 291:2,10,14,17<br/> 291:25 292:10<br/> 292:13<br/> <b>b2oj</b> 289:15,22<br/> 289:24 290:18<br/> 291:1,25 292:1<br/> 292:10,13<br/> <b>b2pi</b> 277:25<br/> 287:19 289:15<br/> 289:22 290:4,6<br/> 290:20 291:10</p> | <p>291:14<br/> <b>b2sc1h</b> 227:8<br/> <b>b3</b> 13:23<br/> <b>b4</b> 14:3 220:12<br/> 231:19 232:3<br/> <b>b5</b> 14:5 91:21<br/> 91:22 92:3<br/> 211:21 219:3<br/> 221:2,3,4<br/> 241:15 244:8<br/> <b>b6</b> 14:6 91:9<br/> 189:2 207:21<br/> 208:4 209:19<br/> 211:4,20 212:8<br/> 213:12 214:9<br/> 216:23 222:11<br/> 222:12,13,15<br/> 223:12 235:16<br/> 242:24 243:23<br/> 267:3,23<br/> 271:20 273:12<br/> 281:11 283:6<br/> <b>b7</b> 14:10<br/> 211:20 212:8<br/> 216:23 222:21<br/> 222:22,23,25<br/> 235:16 238:18<br/> 267:3 272:8<br/> 273:10,12<br/> 281:11,16<br/> 283:6<br/> <b>b8</b> 14:13<br/> 211:23 212:7<br/> 224:11,13,14<br/> 244:21 246:2</p> |
|   | <p><b>b</b></p>  |  |  |
|   | <p><b>b</b> 12:1 13:1,19<br/> 14:1 15:1 28:8<br/> 77:7 86:13<br/> 88:8 91:4,16,20<br/> 91:22 92:3<br/> 143:24,24<br/> 147:18 152:12<br/> 168:10 188:24<br/> 189:1,5 219:19</p>   |  |  |

[b8 - beck]

|  |   |   |  |
|--|---|---|--|
| 246:15 267:3<br><b>b9</b> 14:15<br>207:16 211:23<br>212:7 226:12<br>226:14 267:3<br><b>back</b> 21:2 22:5<br>23:16 27:9,10<br>38:6 40:2,11<br>43:2 51:5<br>54:24 56:10<br>71:3,5 82:21<br>83:16 91:16<br>121:3 134:11<br>139:11 144:16<br>147:19 149:6<br>152:25 165:20<br>171:6,10,18<br>194:15 199:25<br>252:7 258:25<br>259:16 264:1<br>282:24 284:1,6<br>289:7<br><b>background</b><br>20:12 205:13<br>269:2<br><b>baker</b> 6:14<br><b>balance</b> 234:4<br><b>bandwagon</b><br>142:17<br><b>barrel</b> 211:19<br>214:19 221:4<br>224:23 227:13<br>241:15 262:22<br>263:24 264:11<br>267:12 277:5 | 281:24<br><b>barrels</b> 138:3<br>237:12 278:2,9<br>290:19<br><b>base</b> 46:8<br>230:19 231:9<br>231:12,17<br><b>based</b> 39:9,10<br>92:6 119:25<br>125:5,8 138:6<br>140:24 143:17<br>157:23 183:5<br>199:7 214:20<br>230:19,21<br>236:5,9,14<br>238:12,14<br>239:22 242:19<br>242:24 245:3<br>245:16 253:15<br>274:21 282:18<br>285:15 290:16<br>296:6 297:17<br><b>baseline</b> 215:21<br><b>basically</b> 46:15<br>47:12 50:1<br>60:1 70:22<br>162:6 217:16<br>223:19 245:14<br>256:1 293:9,17<br>293:22<br><b>basin</b> 14:15<br>206:17,20<br>208:21 225:25<br>226:4,13<br>251:15,17,23 | 261:6 282:17<br><b>basis</b> 141:25<br>154:18 179:9<br>213:21 245:14<br>260:11<br><b>batteries</b> 186:1<br>186:10<br><b>bc</b> 273:10<br><b>bear</b> 157:8<br><b>beck</b> 6:13 10:4<br>10:8,13,16,18<br>10:20,23 11:4,8<br>15:4 72:13,14<br>72:16,17,19<br>73:21 75:6,22<br>75:24,25 77:3<br>79:12,17,18,20<br>79:21 82:1<br>85:8,9,12 86:6<br>86:17 88:5,10<br>88:17,19 89:6<br>89:11,20 90:1,4<br>92:10 93:19<br>94:23,25 95:2,4<br>95:12,15,17,20<br>97:18 98:2,5<br>107:8 108:17<br>108:18,21,23<br>109:5 110:5<br>112:2,4,8<br>113:10 114:12<br>116:12,15,20<br>117:4,5,8 118:1<br>118:6 122:13<br>122:18,20,24 | 123:1 128:12<br>130:15,22,22<br>130:23 131:15<br>131:18,20<br>132:15 134:5,7<br>135:1,2 139:17<br>139:21,23<br>144:9 146:9,13<br>146:19 147:18<br>147:19,24<br>148:4,5,7 151:7<br>151:23 152:1,6<br>153:16,21,25<br>155:14,17<br>156:9 157:1,3,6<br>160:5 163:23<br>165:22 166:12<br>166:14 168:2,5<br>168:9 169:9,11<br>171:6,12,19,24<br>172:9,10,13,20<br>173:7 178:13<br>178:17,25<br>179:16,17<br>180:5 181:9,13<br>181:18 182:4<br>182:12 186:11<br>186:13 188:20<br>188:24 189:2,4<br>189:10 194:5<br>204:1,4,12,16<br>205:6,11<br>207:19 208:14<br>208:15 209:18<br>209:20 211:1 |
|--|---|---|--|

[beck - blown]

|                      |                      |                       |                        |
|----------------------|----------------------|-----------------------|------------------------|
| 213:10,15            | <b>begins</b> 172:6  | 274:9 275:10          | 138:16 142:25          |
| 214:12,16            | <b>behalf</b> 3:2,13 | 275:19 282:12         | 143:3 184:6            |
| 215:2 218:1,2        | 3:19 4:2,10,16       | 287:5,16              | 195:4,7 205:7          |
| 235:8 241:25         | 5:2,15 6:2,12        | 288:18 289:13         | 223:7 228:13           |
| 246:9,11,13          | 6:18 7:2,18 8:2      | 290:10                | 233:8,9 234:4,7        |
| 248:1,7,13           | 8:9,15 9:2           | <b>believes</b> 33:9  | 234:15 236:1           |
| 249:2,18 250:1       | 17:13,20,23          | 113:7 157:13          | 245:17 256:21          |
| 259:19 262:5,6       | 18:5 31:22           | 209:13 222:7          | 258:23 266:14          |
| 262:11 263:12        | 32:9 36:19,25        | 223:7                 | <b>beyond</b> 20:18    |
| 264:17,18            | 37:8 53:20           | <b>bench</b> 207:11   | 250:13 304:3           |
| 266:23 267:2         | 56:20 57:2           | 226:19 227:20         | <b>big</b> 115:10      |
| 267:13 269:15        | 61:5,14 65:1,13      | 227:21 231:8,9        | 270:18 272:23          |
| 269:19,24            | 65:20 72:14          | 232:2                 | 273:19                 |
| 270:4,7 271:3,4      | 73:3,7,13,14         | <b>beneath</b> 118:25 | <b>bigger</b> 199:10   |
| 280:11,11,15         | 120:3 121:23         | 278:19                | <b>bin</b> 244:23      |
| 280:19,22,25         | 132:4 140:13         | <b>bennett</b> 4:17   | <b>bit</b> 20:12 22:24 |
| 281:5 283:20         | 261:19               | 8:10 17:19,20         | 24:24 66:12            |
| 283:21,22,24         | <b>believe</b> 18:14 | 19:22,23 20:7         | 105:21 118:20          |
| 284:4,5 292:18       | 19:2,19 26:3,16      | 20:11 21:21           | 148:20 154:13          |
| 296:4,6,8,10         | 28:1 29:11,24        | 24:23 30:6            | 157:9 174:8            |
| 297:23 299:11        | 31:17 33:4           | 32:8,9 36:17,18       | 177:17 183:18          |
| 299:23 300:1         | 35:15,25 43:2        | 37:5,11,13            | 187:6 228:20           |
| 301:4,18 303:8       | 44:8 52:24           | 38:19 40:2,4,22       | 231:15 232:20          |
| 303:10 304:18        | 61:25 63:5           | 41:11,14,17,24        | 235:24 240:15          |
| 304:22               | 69:9 77:18,25        | 42:4 48:2             | 240:23 249:15          |
| <b>beck's</b> 171:23 | 78:16 92:22          | <b>best</b> 103:16,19 | 252:17 260:17          |
| <b>beer</b> 305:3    | 116:13 133:20        | 227:16 240:11         | 277:18 295:7           |
| <b>began</b> 99:19   | 137:9 141:16         | 251:5 260:2           | <b>black</b> 212:12    |
| 243:9                | 143:3 145:15         | 270:11 274:22         | <b>blake</b> 9:3 73:2  |
| <b>begetting</b>     | 149:3 150:13         | 276:14 279:9          | <b>blake.jones</b> 9:7 |
| 258:21               | 150:23 162:18        | 306:9 307:6           | <b>blended</b> 126:11  |
| <b>beginning</b>     | 170:23 183:14        | <b>beth</b> 73:7      | <b>blm</b> 68:6        |
| 30:19 115:17         | 187:3 237:14         | <b>beth.ryan</b> 7:23 | <b>blocks</b> 100:12   |
| 201:15               | 241:21 243:5         | <b>better</b> 78:2    | <b>blown</b> 183:14    |
|                      | 245:23 246:25        | 79:10 99:2            |                        |

[blue - bruce]

|   |  |  |  |
|---|--|--|--|
| <b>blue</b> 218:21<br>245:5 278:17<br>293:8,12<br><b>bone</b> 13:22,23<br>14:13 15:21<br>46:7,8 68:13,14<br>69:25 70:1<br>81:9,11,13<br>136:18,20,24<br>137:6,8,12<br>138:19,21,23<br>139:1,12,14,16<br>140:22 141:1,5<br>141:23 142:12<br>143:25,25<br>144:5,22<br>145:24,24<br>148:24 149:1,6<br>149:10 150:11<br>150:12 152:10<br>152:19,20,25<br>154:5,6 155:6<br>157:13 158:23<br>160:21 161:2<br>161:11,18<br>162:4 167:6,7<br>167:12 168:11<br>168:15,18,24<br>169:6 187:4,10<br>187:14,17,21<br>188:2,6 189:24<br>218:16 219:1<br>220:8,18,22,25<br>221:9,11<br>224:12 228:23 | 229:13 230:13<br>230:18 232:7<br>233:4 234:18<br>234:19,21<br>235:6 241:10<br>241:11,18,20<br>241:23 245:10<br>247:14,24<br>254:21 258:17<br>259:15,16<br>274:23 275:2,4<br>275:6 278:15<br>288:17 289:2<br>293:17,19<br><b>border</b> 218:15<br><b>bottom</b> 104:16<br>104:16 190:13<br>279:25<br><b>bought</b> 115:9<br><b>boulevard</b> 9:5<br><b>boundaries</b><br>100:15 119:12<br>119:24<br><b>boundary</b><br>100:5 119:25<br><b>bounds</b> 195:9<br><b>box</b> 3:5,9 5:5<br>6:15 8:6 53:11<br>212:10 277:13<br>279:23 293:25<br><b>boxed</b> 101:21<br><b>boxes</b> 212:12<br><b>boy</b> 136:17<br>244:22 304:3 | <b>bp</b> 53:8 54:24<br>55:12,14 56:4<br><b>breach</b> 74:14<br><b>break</b> 83:15<br>122:19 134:9<br>134:10 169:17<br>240:22 248:8<br>248:10,12<br>280:14 285:12<br>287:7<br><b>breakdown</b><br>253:20 256:2<br><b>breaking</b><br>148:21<br><b>brief</b> 29:22<br>30:4,4 67:7<br>77:1 79:20<br>160:19 168:6<br>263:9,9<br><b>briefings</b><br>112:17,18<br><b>briefly</b> 67:9,10<br>82:9 143:22<br>246:11 264:9<br>269:19,20<br><b>briefs</b> 30:1<br>31:11 112:19<br><b>bring</b> 166:4<br>253:22 264:6<br>264:15 284:1<br><b>bringing</b><br>147:25 264:5<br>299:21<br><b>brings</b> 37:18 | <b>brinkard</b><br>301:12<br><b>broad</b> 260:11<br><b>broke</b> 235:24<br><b>broken</b> 24:11<br>204:24 288:7<br><b>broker</b> 175:11<br><b>brought</b> 45:22<br>118:2 174:14<br>182:17 211:18<br>211:25 216:2<br>264:13<br><b>brown</b> 148:23<br>307:2,18<br><b>bruce</b> 3:7,8 5:3<br>5:4 10:6,7,12<br>10:15,17,21,24<br>11:5,7 32:12,14<br>48:22,23 49:7<br>49:25 50:3,13<br>50:16,18 51:8,9<br>51:11,16 52:22<br>53:1,25 54:7,11<br>54:14,19 55:4,8<br>55:12,17,24<br>56:2,5,8 64:18<br>64:19 65:24<br>66:2,7,18,22<br>67:6,8,13 69:19<br>69:20,23 70:11<br>70:17,24 71:12<br>71:15,23 72:22<br>72:22 75:18,23<br>76:3,7,13,14,16<br>76:19,23 77:1 |
|---|--|--|--|

[bruce - calculated]

|  |   |   |   |
|--|---|---|---|
| 78:14 79:3,7,18<br>80:21 82:2,4,24<br>83:1,3,7,12,21<br>83:24 84:3,11<br>84:16,24 85:3<br>87:2,5,6,24,25<br>88:3,12,14,17<br>90:8,10,17,20<br>90:22 91:5,6,7<br>91:12,14,17,20<br>92:7,15,17,21<br>92:25 93:10,11<br>93:14,23 94:6,8<br>94:11,17 97:16<br>97:19,20 98:8<br>98:11,23 99:2,7<br>99:12 102:5,8,9<br>102:12,17,20<br>103:3,12 104:9<br>104:10,11,14<br>104:24 105:5,6<br>107:11 108:15<br>113:11,12<br>114:11,23<br>115:11,16<br>116:16,19,22<br>117:3 128:15<br>132:18,20,23<br>133:19,22<br>134:3,11,12,16<br>134:18 135:10<br>137:17 139:19<br>139:20 140:2,3<br>140:5,10<br>144:14,15,17 | 145:20,22<br>146:8 148:10<br>148:14 151:25<br>152:2 153:3,5<br>153:17,21<br>154:24 155:5<br>156:6,18,22,25<br>159:4 164:17<br>164:18,20,23<br>166:1,2,3,10,22<br>167:3,4,23<br>168:1,23<br>169:20,23<br>170:3,6,10,11<br>170:15,19,22<br>171:3 173:1,3<br>179:6,7,10,15<br>180:24 181:1<br>182:9 188:23<br>189:12,13,15<br>194:9,11,14,17<br>194:18 196:4<br>200:14 207:25<br>208:1 209:13<br>210:2,6,17,21<br>210:23 216:19<br>216:20 217:4<br>235:10,12,15<br>235:25 242:22<br>243:6,9 247:8<br>247:16,18<br>249:22,24<br>259:21,22,24<br>261:21,25<br>262:14,16,19 | 263:16 264:5<br>266:25 267:16<br>267:21 268:5,8<br>268:11,15,22<br>268:23 269:9<br>270:10,14<br>271:7,11,13<br>272:3,5 279:18<br>280:8 281:18<br>286:5 288:10<br>293:22 294:18<br>294:21,24<br>296:3 298:1,3,5<br>298:13,23<br>299:1,4,6,21,25<br>300:2,9,18,20<br>301:2,10,17<br>302:8,8,15,20<br>303:1,24 304:3<br>304:19 305:2,6<br>305:10,13<br><b>bta</b> 8:2 42:8<br>56:21 57:10,18<br>58:7<br><b>bubble</b> 273:21<br>273:22 281:13<br>281:16<br><b>bubbles</b> 273:14<br><b>build</b> 139:7<br><b>building</b> 255:5<br><b>built</b> 161:1<br><b>bump</b> 233:23<br><b>bunch</b> 71:3<br>176:10 | <b>burden</b> 76:23<br>79:3,5,12,13<br><b>burdensome</b><br>28:24<br><b>bury</b> 186:8<br><b>business</b> 49:12<br>188:18 215:13<br><b>button</b> 218:4<br><b>bye</b> 305:13  |
|  |   |   | <b>c</b>  |
|  |   |   | <b>c</b> 3:1 4:1 5:1 6:1<br>7:1 8:1 9:1<br>12:6 14:19<br>16:2 17:1 28:8<br>58:14,21 59:3<br>88:8,20,22,25<br>89:1,2,4,8,16<br>89:24,24 90:6,6<br>92:12,13 93:3<br>94:13 248:20<br>249:4 268:20<br>277:12<br><b>c1</b> 14:21 89:1,4<br>93:3 250:7<br><b>c1o2s</b> 162:23<br><b>c2</b> 14:22 89:1<br>252:2<br><b>c3</b> 14:23 89:1<br>254:3 256:1<br><b>c4</b> 14:25 89:2,4<br>93:3 256:9,11<br>256:12<br><b>calculate</b> 282:1<br><b>calculated</b><br>127:10 132:8 |

[calculated - cases]

|  |   |   |  |
|--|---|---|--|
| 132:13 242:16<br>242:18 292:3<br><b>calculating</b><br>132:4 245:3<br>281:19<br><b>calculation</b><br>127:4<br><b>calculations</b><br>131:22 232:21<br><b>call</b> 17:10 21:25<br>31:19 99:14<br>134:16,19<br>141:1 215:23<br>237:17 248:5<br><b>called</b> 1:6 52:9<br>75:8 96:5,10,15<br>96:20,25 97:8<br>139:3<br><b>calling</b> 31:17<br>36:15 42:19<br>170:13 244:12<br><b>calls</b> 172:14<br>176:10<br><b>camera</b> 53:16<br>94:22 135:3<br><b>cameras</b> 64:21<br>94:21 95:8,11<br>95:13<br><b>capacity</b> 27:16<br><b>capitan</b> 42:8<br>57:17,25<br><b>caption</b> 28:2<br><b>captions</b> 28:3<br><b>captured</b> 169:6 | <b>carbon</b> 120:21<br><b>card</b> 53:6,8<br>54:2,17,18,19<br>54:22,24,25<br>55:10,11 56:1,4<br><b>cards</b> 68:18,18<br>68:22 71:3,5<br><b>care</b> 63:6<br>261:25 304:6<br><b>career</b> 206:19<br><b>carrell</b> 10:14<br>94:12 96:9<br>134:19 135:7<br>140:2,11<br>143:20 144:16<br>144:18 146:15<br>146:20 147:21<br>148:8 151:2<br>152:13 153:6<br>154:14 157:7<br>160:6,13,13,14<br>167:5 168:10<br>228:17 230:12<br>231:3,22 233:5<br>237:2 279:21<br>297:9<br><b>carrell's</b> 229:11<br>230:2 274:21<br>275:8<br><b>carry</b> 127:7<br>198:23<br><b>carryovers</b><br>211:20<br><b>case</b> 1:9 12:3,9<br>17:18 23:10,17 | 24:8 26:9,14,17<br>31:24 32:5,13<br>32:18,20,22,24<br>34:1 35:15,24<br>36:1,2,7,8<br>39:22 42:2,12<br>42:13 43:3,18<br>44:1 45:12<br>47:1,8 49:19<br>54:15 57:9,18<br>59:24 60:1<br>65:14 66:9<br>67:1,9 69:1,4,6<br>69:11,21,25<br>70:1 76:15,21<br>77:6 78:15<br>82:2 85:3<br>97:17,17,18<br>98:25 114:25<br>119:14 136:10<br>142:4 149:19<br>150:7 160:24<br>164:4 170:13<br>170:21 171:2,7<br>171:23 172:3,4<br>174:10,14<br>178:21,24<br>187:13,16<br>190:9 195:2,8<br>195:21 201:22<br>202:2,6,7,8,10<br>202:12,19<br>214:22 224:17<br>229:5,8,24<br>230:1 231:13 | 262:10,12,15<br>265:8 266:13<br>267:8 287:18<br>299:5,24 304:9<br><b>cases</b> 12:21<br>13:3 17:10,18<br>18:8,11,12,14<br>19:8 20:4,5,8<br>20:17,18,23,25<br>21:4,6,8,13<br>22:11 24:24<br>25:5,8,9,16,20<br>26:6,7,13,15,22<br>26:25 27:1,2,3<br>27:4,5,13,14,19<br>27:20,22,25<br>28:4 30:13,16<br>30:24 31:14<br>32:2,10,15<br>34:18,23 36:4,6<br>36:9,12,20 37:3<br>37:12,15,17,20<br>40:16 42:15<br>43:3 44:11<br>47:14 48:17<br>50:15,19 51:5<br>52:21 53:12,19<br>53:22 55:5,24<br>56:7 58:19<br>59:6 60:22<br>61:6,11,23 62:7<br>63:21 64:12<br>65:25 66:23<br>67:11 69:22<br>70:10 71:9 |
|--|---|---|--|

[cases - choose]

|   |  |   |   |
|---|--|---|---|
| 72:23 73:3,4,18<br>77:22 78:12<br>79:4,13 80:20<br>98:13,18<br>130:24 136:9<br>162:10 177:6<br>185:6,17,19<br>186:15 192:7<br>192:15 200:12<br>201:7 202:20<br>203:6 226:16<br>229:1,2,14<br><b>casing</b> 255:15<br>255:22<br><b>catch</b> 46:24,25<br>127:14<br><b>cause</b> 197:1<br>203:1 259:6<br>272:22<br><b>caused</b> 20:22<br><b>caveat</b> 271:15<br><b>center</b> 135:22<br>184:15 274:15<br><b>certain</b> 67:25<br>105:11 107:24<br>113:15 138:10<br>158:11 196:20<br>225:6 226:20<br>227:18 237:6<br>264:7 275:24<br>296:24 300:13<br><b>certainly</b> 20:22<br>85:25 155:5<br>166:18 264:20<br>266:2,3 298:11 | <b>certificate</b> 76:8<br>306:1 307:1<br><b>certified</b> 12:16<br>53:2,6,7,13<br>54:2,3 55:2<br>58:15 68:19<br>70:25<br><b>certify</b> 306:3<br>307:2<br><b>cetera</b> 28:8<br>67:17 68:10<br>136:15 175:19<br>176:15,15<br>250:14 260:12<br><b>chakalian</b> 2:5<br>19:1 24:6<br>31:21 35:11<br>36:24 37:7<br>42:22 43:1<br>56:25 73:12<br><b>challenge</b><br>191:23<br><b>challenging</b><br>192:1<br><b>chance</b> 111:21<br>111:21 130:15<br>208:7 233:8<br>299:10<br><b>change</b> 45:23<br>202:24 273:21<br><b>changed</b> 46:5<br>101:20 169:2,4<br><b>changes</b> 88:18<br>202:5 298:18 | <b>characteristics</b><br>273:4 274:25<br>275:8<br><b>chart</b> 244:23<br>294:4<br><b>cheaper</b> 254:14<br><b>check</b> 71:22<br>86:12 133:19<br>156:20<br><b>checked</b> 71:19<br><b>checklist</b> 12:18<br>43:20,24 44:2,4<br>44:18,20 45:12<br>46:12,14 50:1,4<br>50:14 52:1<br>54:4,15 55:9,9<br>68:24 70:8,16<br>164:25<br><b>checklists</b> 53:3<br><b>chief</b> 82:3<br>97:17,18 98:25<br>170:14,21<br>171:23 172:3,4<br>262:10,12<br>265:8<br><b>child</b> 207:3,6,9<br>207:10,16<br>212:17,20<br>213:23 225:7<br>225:10 226:20<br>227:14 228:9<br>236:9,18<br>240:15 285:11<br>285:14,16,20<br>285:23 286:2 | 286:10 288:6<br>288:12 289:10<br>289:17 291:11<br><b>childers</b> 58:2<br>58:10<br><b>children</b> 207:2<br>225:13 227:9<br>286:18,21,24<br>287:1,9,13,21<br>287:24 289:11<br>291:10<br><b>chisholm</b> 80:3<br>80:9 101:4,4,10<br>107:1,14,15<br>108:3 109:18<br>111:1,5,11<br>113:19 115:8,9<br>116:24 143:6<br>159:21,25<br>173:15,22<br>174:9,13,14<br>178:3 190:13<br>190:14,18<br>191:2,4 195:16<br>195:22 201:18<br>201:19 203:3,4<br>203:5,11 250:4<br>250:8,10,19<br>251:10<br><b>chisholm's</b> 80:6<br>80:21 111:7<br>177:25<br><b>choice</b> 39:4<br><b>choose</b> 190:16<br>225:20 |
|---|--|---|---|

|   |  |   |  |
|---|--|---|--|
| <b>christine</b> 307:2<br>307:18<br><b>cimarex</b> 3:19<br>65:21<br><b>circle</b> 273:25<br><b>circumstance</b><br>39:15<br><b>circumstances</b><br>20:18 22:2<br><b>citing</b> 74:5<br><b>civitas</b> 34:5,9<br>34:14<br><b>claim</b> 255:1<br><b>clarification</b><br>46:20 244:1<br><b>clarified</b> 166:24<br><b>clarify</b> 203:8<br><b>clarifying</b><br>203:16 294:16<br><b>class</b> 210:11<br><b>clear</b> 86:4 89:7<br>98:25 105:3<br>117:10 178:23<br>179:1 189:8<br>246:6 264:22<br>265:1<br><b>clearer</b> 148:20<br><b>clearly</b> 100:19<br>204:25 208:4<br><b>clerk</b> 9:14<br><b>client</b> 24:12<br>154:25 155:2<br>156:10<br><b>clients</b> 21:10 | <b>close</b> 49:12<br>141:16 165:5<br>223:3 225:8<br>233:6,17 234:5<br>292:6<br><b>closed</b> 250:4<br>254:25 255:3<br>299:22 300:8<br><b>closely</b> 118:20<br>237:3<br><b>closer</b> 33:4<br>85:24 183:18<br>223:20 225:13<br>240:16 290:13<br>291:13,19<br><b>closest</b> 276:6<br><b>closing</b> 299:13<br>299:16 300:16<br>300:25 303:23<br><b>codesigned</b><br>199:18<br><b>codevelop</b><br>153:7 155:8,10<br>184:19 199:5<br><b>codeveloped</b><br>149:4 152:24<br>199:17 287:17<br><b>codeveloping</b><br>185:9<br><b>cog</b> 7:18 73:7<br>197:10<br><b>colgate</b> 6:2 18:5<br>23:24 65:1,2<br><b>collaborative</b><br>236:25 | <b>collectively</b><br>60:3<br><b>color</b> 245:5<br>269:8 298:18<br><b>coloration</b><br>245:7<br><b>colors</b> 84:25<br><b>com</b> 57:17,25<br>68:8 136:23<br>174:21,22<br>229:6,6,9<br><b>combination</b><br>175:11 293:13<br><b>combined</b><br>133:7<br><b>come</b> 21:2 22:5<br>22:25 23:16<br>25:16 29:15<br>31:12,14 38:6<br>38:16 40:12<br>47:14 83:15<br>107:7 134:11<br>139:11 149:5<br>152:25 159:18<br>161:7 171:6,10<br>173:18 175:9<br>180:7 188:6<br>197:17 207:8<br>208:23 209:4<br>209:12 236:13<br>236:19 237:3<br>254:14 260:7,8<br>260:9,22 261:2<br>298:1 | <b>comes</b> 133:9<br>207:11 213:4<br>231:2<br><b>comfortable</b><br>206:12 283:18<br><b>coming</b> 14:7<br>28:17 95:21<br>154:18 162:12<br>166:15 173:15<br>180:4 204:24<br>222:16 233:17<br>258:25 259:16<br>269:24 283:25<br>289:20<br><b>commence</b><br>99:24<br><b>comment</b><br>234:17 270:15<br><b>commentary</b><br>212:8,9<br><b>commented</b><br>242:4<br><b>commission</b><br>22:14,19 23:10<br>23:17 25:2,6,7<br>25:8,10 26:9,17<br>26:19 27:18,21<br>28:6 74:13<br>77:7,8 113:23<br>187:25<br><b>commissioner</b><br>74:19 78:8<br>103:1<br><b>commit</b> 108:3,6<br>190:16 |
|---|--|---|--|

[commitment - conclude]

|  |   |   |   |
|--|---|---|---|
| <b>commitment</b><br>100:10  | 231:7 265:10<br>265:12  | 78:20 79:22<br>80:10,17 81:4  | <b>complicated</b><br>22:11,17 25:11  |
| <b>committed</b><br>57:10 196:25<br>197:11,21<br>198:9   | <b>company's</b><br>182:20  | 173:14 176:18<br>185:19 204:9   | <b>complied</b> 45:3  |
| <b>common</b><br>115:22 116:1<br>260:5 300:19<br>300:21  | <b>compare</b><br>185:16 206:23<br>207:1 215:7<br>231:15 235:3<br>253:7 287:2                       | 222:1 253:8<br>256:3 265:2  | <b>composition</b><br>281:21  |
| <b>communication</b><br>177:12   | <b>compared</b><br>108:7 131:23<br>214:2 223:16<br>278:4 291:14<br>292:13                           | <b>competitor</b><br>238:4  | <b>compound</b><br>194:6  |
| <b>communicati...</b><br>122:9 175:23<br>177:17  | <b>comparing</b><br>50:22 214:16<br>214:18 224:5<br>229:17 291:9<br>296:11                          | <b>complete</b> 66:1<br>66:4 69:10<br>71:18,20,21<br>85:22 136:21<br>176:24 187:14<br>188:1   | <b>comprehensive</b><br>25:16   |
| <b>communitiza...</b><br>68:4  | <b>comparison</b><br>14:23 222:4<br>224:9 226:11<br>234:13 253:12<br>254:3,9 257:24<br>258:11 265:4 | <b>completed</b><br>19:20 62:1<br>67:14 279:6<br>289:15 295:3<br>295:10,11  | <b>comprised</b><br>57:14,21  |
| <b>companies</b><br>105:11 141:14<br>213:18 214:3  | <b>comparisons</b><br>185:22 208:20<br>257:23   | <b>completion</b><br>167:13 212:1<br>212:19 224:4<br>224:10 237:22<br>245:13,15<br>246:22 255:17<br>255:18,25<br>256:13 257:2,7<br>262:24 264:13<br>277:15 278:1<br>280:5 285:2 | <b>compulsory</b><br>29:8 44:2<br>46:12,14 59:25<br>60:1 78:20<br>178:11 184:22<br>197:2 219:14<br>220:2 234:25 |
| <b>company</b> 3:2<br>3:13,20 4:10,16<br>5:2 6:18 17:13<br>17:24 28:19,21<br>32:15 53:9,20<br>53:21 55:13,15<br>57:2 65:21<br>72:23 73:14<br>107:16 126:8<br>126:21 128:24<br>186:19,20<br>196:1 199:20<br>199:23 201:17<br>201:17 202:14<br>203:4 226:8,8,9 | <b>competent</b><br>154:15 208:22<br>216:6,11,17  | <b>completions</b><br>256:19  | <b>computer</b> 66:8<br>70:19 83:13<br>118:2 162:22<br>252:2  |
|  | <b>competing</b> 25:3<br>26:21 28:16<br>29:8 32:6<br>33:19,22 77:5                                  | <b>compliance</b><br>151:21   | <b>concepts</b> 33:2<br><b>concern</b> 40:11<br>210:4   |
|  |   |   | <b>concerned</b><br>45:18   |
|  |   |   | <b>concerns</b> 40:7,8<br>50:10 52:15<br>191:21 230:3   |
|  |   |   | <b>concession</b><br>256:21   |
|  |   |   | <b>concise</b> 299:18   |
|  |   |   | <b>conclude</b><br>262:10   |

[concluded - continued]

|  |   |  |   |
|--|---|--|---|
| <b>concluded</b><br>305:15<br><b>concludes</b><br>262:12 271:8<br><b>conclusion</b><br>157:22 228:10<br>236:13,19<br><b>conclusions</b><br>185:21 300:17<br>301:1<br><b>concurs</b> 63:16<br><b>conducted</b><br>74:14 300:12<br><b>confer</b> 21:10<br><b>conference</b><br>18:8 19:17,24<br>25:20 30:9<br>32:24 33:10<br>34:10,22 35:2<br>35:13,22 37:19<br>40:5 41:4,6,18<br>41:21<br><b>confident</b> 39:1<br>208:18 209:7<br><b>confine</b> 267:23<br><b>confined</b><br>106:10 268:2<br><b>confirm</b> 164:2<br><b>confirmed</b><br>204:6<br><b>confuse</b> 122:16<br><b>confused</b> 59:22<br>89:3 90:21<br>104:12,23<br>163:10 | <b>confusing</b><br>89:25 270:12<br><b>confusion</b><br>169:13<br><b>connected</b><br>18:21<br><b>connection</b><br>98:24 99:1<br>263:14<br><b>connections</b><br>136:15<br><b>connectivity</b><br>24:7,9,16 30:19<br>98:21 124:24<br>142:10 208:10<br>216:24 217:2<br>235:22 236:6<br>242:15<br><b>conoco</b> 7:18<br>73:7 197:10<br><b>conocophillips</b><br>7:20<br><b>conocophilli...</b><br>7:23<br><b>consent</b> 103:1<br><b>conservation</b><br>1:3,6 17:3<br>104:19<br><b>conserve</b> 25:18<br><b>consider</b> 38:11<br>164:8,9 169:18<br>178:9 222:1<br>304:8<br><b>consideration</b><br>74:15 77:12 | 89:14 113:8<br>180:13 222:4<br>223:2 233:4<br>247:15 258:16<br>265:3<br><b>considerations</b><br>233:15<br><b>considered</b><br>226:5 272:17<br><b>considering</b> 1:8<br>112:13 232:18<br><b>consistent</b><br>37:25 137:3,7<br>231:20 232:13<br>233:13,25<br><b>consistently</b><br>231:24,25<br><b>consolidate</b><br>25:5<br><b>consolidated</b><br>18:11 25:10<br>55:5 229:1<br><b>consolidating</b><br>59:11 72:8<br><b>constructed</b><br>49:5 139:9<br><b>construction</b><br>139:9<br><b>construed</b> 75:4<br><b>cont'd</b> 4:1 5:1<br>6:1 7:1 8:1 9:1<br>11:1,2 13:1,3<br>14:1 15:1 16:1<br><b>contact</b> 177:18 | <b>contacted</b><br>176:13<br><b>contained</b><br>214:9 263:20<br><b>containing</b><br>67:16<br><b>contains</b> 68:9<br>165:7<br><b>contents</b> 88:6<br>206:4<br><b>contestant</b> 33:7<br><b>contested</b> 38:8<br>40:13,17 41:2,9<br>41:19,22 64:8<br>72:7 78:25<br>83:19 172:2<br>209:2 300:11<br><b>continuance</b><br>35:1,13 41:13<br>62:8 63:8,21,25<br>64:1<br><b>continuances</b><br>34:25 35:20<br>41:7,22<br><b>continue</b> 18:20<br>18:24 25:20<br>36:11,12 38:3<br>43:19 47:8<br>61:22 62:7<br>63:1,3,10,13<br>72:20 78:14<br>156:13 182:11<br>218:1<br><b>continued</b><br>42:17 43:7 |
|--|---|--|---|

[continued - could've]

|  |  |   |  |
|--|--|---|--|
| 48:25<br><b>continuing</b><br>65:14 83:19<br><b>continuous</b><br>68:15<br><b>contour</b> 220:10<br><b>contoured</b><br>219:1<br><b>contract</b> 100:11<br>301:7 302:21<br><b>control</b> 20:18<br>77:13,21<br>218:15<br><b>controls</b> 58:7<br>74:23<br><b>controversy</b><br>121:15<br><b>convenience</b><br>299:17<br><b>conversation</b><br>200:9 204:5<br><b>conversations</b><br>176:16 177:14<br>190:25 191:3<br><b>convoluted</b><br>26:13<br><b>copied</b> 120:21<br>121:2 180:23<br><b>copy</b> 55:25<br>118:16 176:6<br><b>corner</b> 272:10<br><b>corollary</b><br>179:22<br><b>corporation</b><br>124:1,6,18 | 125:19 126:1<br><b>correct</b> 18:11<br>19:10 28:2<br>31:23 32:18,19<br>35:17,18,19<br>46:18 47:15<br>50:2 51:16<br>52:25 53:1<br>56:18 59:13,21<br>60:2 61:6 63:4<br>63:9,14 64:9<br>66:18 72:18<br>76:4,13 83:24<br>85:5 86:16,17<br>88:9,10 91:19<br>92:7,25 94:16<br>98:14,19 99:15<br>99:16 100:21<br>101:1,9 102:3,4<br>102:10 105:13<br>105:16,20<br>106:8,13 108:9<br>108:13 110:21<br>111:4,9,13,19<br>117:16,17,19<br>119:4,6,8,15<br>123:4 124:9<br>128:24 129:8<br>129:10 133:5<br>141:7,12<br>143:14 145:19<br>152:14,15<br>153:15 158:9<br>159:10 163:3,4<br>167:8 171:3 | 175:1 177:24<br>178:7 187:18<br>189:19,20,22<br>190:6,7 191:11<br>191:12 192:9<br>192:10 193:20<br>193:21 194:22<br>196:17 197:8<br>204:11 205:17<br>205:21 207:24<br>211:17 215:3<br>218:22 219:17<br>219:24 220:4<br>223:15,18,18<br>225:5 227:2,6<br>227:10 229:10<br>229:20 230:15<br>232:10 234:10<br>234:23 235:20<br>238:20 239:7,9<br>241:14 242:3<br>253:5 256:7<br>257:21 262:16<br>273:11 274:6<br>276:18 281:9<br>282:23 283:4<br>283:12 288:1<br>288:13 289:23<br>290:2,5,10<br>294:7 295:5,8<br>295:12 296:16<br>296:21 297:4<br>297:11 298:3,8<br>298:16 301:1<br>302:19 | <b>corrected</b> 86:1<br>124:10<br><b>correcting</b><br>45:12<br><b>correction</b><br>45:23<br><b>correctly</b><br>128:23 152:5<br>158:4 201:20<br><b>correlated</b><br>278:24<br><b>correlation</b><br>278:10 279:11<br>284:25 287:3<br>288:3<br><b>correlative</b><br>80:25<br><b>corresponden...</b><br>120:24<br><b>corresponding</b><br>218:16<br><b>cost</b> 185:10<br>198:10 255:12<br>256:14,15,23<br>256:25 257:17<br><b>costings</b> 257:18<br><b>costs</b> 257:18<br>260:9,16,16,17<br>260:23,25<br>261:2<br><b>coterra</b> 3:19<br>65:20<br><b>could've</b> 89:7<br>112:24 143:9<br>150:4,4,23 |
|--|--|---|--|

[could've - currently]

|   |  |   |   |
|---|--|---|---|
| 151:12,14<br>154:20 159:11<br>159:14 190:18<br>190:22 191:3<br>192:18,22<br><b>counsel</b> 64:21<br>65:5 72:11<br>177:1 306:10<br>306:13 307:7<br>307:10<br><b>count</b> 196:25<br>197:11,25<br><b>counted</b> 250:12<br>267:6<br><b>counterpart</b><br>246:19<br><b>counting</b><br>250:16<br><b>county</b> 57:15<br>260:19,20<br>282:17<br><b>couple</b> 17:10<br>25:14 40:6<br>67:10 77:16<br>103:20 108:19<br>132:20 139:6<br>146:15 190:12<br>196:5 216:20<br>234:12 259:22<br>261:14 262:19<br>263:2,9 270:24<br>294:21<br><b>coupled</b> 275:3<br><b>course</b> 21:3<br>30:7 76:24 | 97:18 140:7<br>141:19 156:21<br>165:6 213:1<br>255:7 273:23<br>303:2 304:7<br><b>court</b> 17:4<br>24:18 82:14<br>99:5 110:3,16<br>111:24 172:8<br>194:14,14<br>204:25 266:2<br>301:21 302:10<br>302:12,18,21<br>302:22<br><b>court's</b> 86:8<br>266:1<br><b>courtesy</b><br>176:13<br><b>courthouses</b><br>175:13<br><b>cover</b> 27:5,7<br>44:2 83:23<br>84:23 90:2<br>141:6<br><b>covered</b> 27:4<br>46:13 290:11<br><b>covid</b> 20:14<br>25:15 30:14<br><b>craning</b> 292:10<br><b>create</b> 214:24<br>215:1,15 222:5<br>273:14<br><b>created</b> 150:19<br>151:13,14,19<br>151:20 211:6 | 278:22 282:13<br>282:15<br><b>creation</b> 217:19<br><b>creative</b> 40:3<br><b>credentials</b><br>205:14<br><b>credibility</b><br>180:12 181:5<br>181:23<br><b>credited</b> 183:10<br><b>criteria</b> 231:8<br>231:11<br><b>critical</b> 281:10<br>281:13<br><b>criticism</b><br>281:16<br><b>criticisms</b><br>283:5,9,14<br><b>criticize</b> 283:1<br><b>criticizing</b><br>229:22<br><b>cross</b> 14:3<br>58:12 116:14<br>117:7 130:15<br>131:15 132:19<br>134:6 135:12<br>136:18,25<br>138:6 143:24<br>144:19,25<br>145:1,6,11,18<br>146:18,22<br>147:2,5,10,13<br>148:1,2,3<br>150:24 157:1<br>157:23 158:1,2 | 158:21 165:24<br>168:13 189:12<br>189:14 208:8<br>208:11 214:19<br>216:3 217:13<br>217:23 219:2<br>220:13,20<br>230:13 231:5<br>235:14 239:15<br>239:19 243:1<br>243:15 259:23<br>275:14,18<br>281:4 294:19<br><b>crossing</b> 186:6<br><b>crucial</b> 181:6<br><b>cuff</b> 261:5<br><b>cume</b> 237:11<br>284:22<br><b>cumulative</b><br>138:2 277:14<br>278:2,8,20<br>279:7 280:3<br>281:24 284:14<br>285:6 286:17<br>293:2 296:14<br>297:17<br><b>cumulatively</b><br>290:19<br><b>cured</b> 52:7,8<br>53:14 71:6<br><b>current</b> 31:24<br>45:23 192:23<br>249:9<br><b>currently</b> 104:1<br>104:4 198:24 |
|---|--|---|---|

**[currently - decreasing]**

|  |   |  |  |
|--|---|--|--|
| 251:15,16<br><b>cut</b> 85:22<br>110:23<br><b>cutoff</b> 255:3<br><b>cutting</b> 111:23<br>255:1,12<br>280:23<br><b>cv</b> 88:21<br><b>cx</b> 10:10 11:2 | 211:18,22<br>213:12 214:15<br>214:17 217:13<br>226:10 236:18<br>238:4 252:6<br>273:12 276:4,6<br>279:5,11<br>281:11,17<br>282:2,2,3,4,11<br>282:20 283:1,6<br>283:15 286:9<br>286:13 287:2<br>288:7 293:2<br>298:7,16,18<br><b>dataset</b> 286:10<br>286:14<br><b>date</b> 2:3 23:11<br>31:3 38:8 45:1<br>61:23 62:7<br>63:11 74:9<br>83:1,6 86:2<br>100:2 110:12<br>139:12 149:20<br>152:25 187:5<br>188:8 237:13<br>252:13 258:9<br>259:8 272:25<br>273:18 277:16<br>303:21<br><b>dated</b> 107:1<br>114:17 186:18<br>258:2,8,10<br><b>dates</b> 212:1,1<br><b>davenport</b> 58:2<br>58:3 | <b>david</b> 58:2<br>93:13<br><b>dawson</b> 104:17<br>118:8,13<br>120:16 133:24<br>176:7,11,17<br>177:8,16,19,24<br>200:1 201:1,11<br><b>day</b> 43:5 47:7<br>74:10 213:21<br>213:21 237:2,3<br>254:16,19<br>298:8 300:4<br>305:12<br><b>days</b> 85:19<br>111:12 113:1<br>193:3 209:3,3<br>253:2 300:14<br>302:3,11<br>303:10,14,15<br><b>de</b> 5:18 6:5<br>7:21 22:13,16<br>23:25 25:1<br>26:8,25 27:5,6<br>27:12<br><b>dead</b> 113:25<br><b>deadline</b> 30:2<br>43:9 49:11<br><b>deal</b> 33:5,15<br>41:21 73:20<br>169:16,17<br>217:23 268:3<br><b>dealing</b> 78:5<br>188:25 | <b>dealt</b> 30:14<br><b>dean</b> 51:25<br>52:15<br><b>deanna</b> 4:17<br>8:10 17:20<br>32:9 36:18<br><b>debate</b> 23:2<br><b>december</b><br>33:11,12 34:11<br>34:22 35:15,22<br>40:13 80:2<br>107:1 111:3<br>114:18<br><b>decide</b> 48:10<br>173:25 214:2<br>217:10 304:12<br><b>decided</b> 27:8<br>79:9 137:14<br>194:2,3 195:1<br>233:23 247:13<br>265:7<br><b>decides</b> 39:24<br><b>deciding</b><br>110:17<br><b>decision</b> 21:17<br>23:7 27:24<br>166:4 200:13<br>204:9 247:22<br>275:1 276:7<br>304:8<br><b>decreased</b><br>289:11<br><b>decreasing</b><br>228:15 |
|--|---|--|--|

[dedicated - developing]

|  |  |  |  |
|--|--|--|--|
| <b>dedicated</b><br>57:16,24<br><b>deep</b> 14:9 79:25<br>80:5,8 98:13,19<br>99:13,19<br>102:23 107:24<br>108:4 109:20<br>111:2,8 117:12<br>118:11,25<br>119:7,25 123:7<br>123:15 126:3,7<br>136:22 174:12<br>177:22 182:19<br>185:15 201:2,8<br>202:19 221:17<br>222:17,19<br>223:4,13,17<br>233:18 234:5<br>244:13 274:10<br>274:14 282:4<br><b>deeper</b> 174:8<br>286:8<br><b>defer</b> 128:4,10<br><b>define</b> 207:7<br><b>definitely</b><br>165:23<br><b>definition</b><br>207:8,15<br><b>degradation</b><br>212:17<br><b>degrees</b> 210:7<br><b>delaware</b><br>206:17,20<br>208:21 282:17 | <b>delay</b> 20:13,23<br>25:12 74:1<br><b>delayed</b> 20:19<br><b>deleted</b> 115:5<br><b>delineated</b><br>218:20<br><b>denied</b> 76:11<br><b>deny</b> 75:15<br><b>denying</b> 73:23<br>74:2 177:4<br><b>department</b> 1:2<br>226:9,9 249:16<br><b>depend</b> 233:10<br>260:12 273:3<br><b>depending</b><br>199:16 272:24<br><b>depends</b> 225:23<br>260:6<br><b>depict</b> 222:6<br><b>depicted</b> 218:9<br>222:11,21<br>223:12,19<br>224:13 230:22<br>256:10<br><b>depicting</b> 254:8<br><b>depiction</b> 14:6<br>222:15 230:12<br><b>deplete</b> 242:12<br><b>depleted</b><br>223:22 237:8<br>237:17 272:10<br>292:7,15<br><b>depletion</b> 153:1<br>153:8 240:19<br>242:10,14,14 | 247:10,15,17<br>247:21 272:14<br>276:13 289:1<br><b>deposited</b> 226:1<br><b>deposition</b><br>306:1<br><b>depth</b> 45:16<br>46:21 48:6<br>50:25 165:1<br>167:13,14<br>215:10,10<br>223:21 233:7<br>289:9 290:15<br>291:22,24<br>292:14<br><b>depths</b> 164:24<br><b>describe</b> 276:22<br><b>described</b><br>113:20<br><b>description</b><br>12:2,8,20 13:2<br>13:11 14:2<br>15:2,11,20 16:3<br><b>design</b> 212:19<br>224:4 237:22<br>245:16 246:21<br>246:22<br><b>designated</b><br>100:17 102:21<br><b>designation</b><br>191:22<br><b>designs</b> 224:10<br><b>desire</b> 136:21<br><b>desires</b> 37:15 | <b>despite</b> 279:25<br><b>detail</b> 48:6<br>50:22<br><b>detailed</b> 52:17<br><b>details</b> 28:11<br>45:16 52:3<br>177:15 253:13<br><b>determination</b><br>161:13 232:7<br><b>determine</b><br>222:18 231:17<br>243:11<br><b>determined</b><br>231:8 242:20<br><b>determining</b><br>232:21<br><b>detriment</b><br>228:7<br><b>detrimental</b><br>225:9,18<br>233:21<br><b>detrimentally</b><br>226:18 227:19<br><b>develop</b> 153:14<br>191:4,7 192:16<br>195:5 209:15<br>221:6 237:5<br><b>developed</b><br>154:16,19<br>184:24 190:19<br>193:8 208:16<br>209:5 236:17<br>246:1 247:13<br><b>developing</b><br>215:6 |
|--|--|--|--|

[development - discussing]

|   |   |  |   |
|---|---|--|---|
| <b>development</b><br>14:11 37:22<br>81:4,23 142:11<br>142:12 143:5<br>155:3,14<br>173:25 185:5<br>186:24 187:9<br>188:16,17<br>189:24 190:15<br>191:13,15,23<br>192:2,12,16<br>193:9,10 199:1<br>208:2 213:23<br>214:21 215:6<br>215:15 222:5,7<br>222:25 224:6<br>224:20 233:16<br>233:23 234:20<br>236:17 241:15<br>264:24 277:7<br>296:2<br><b>devon</b> 4:10<br>73:13 104:5<br>105:1,15,17,21<br>106:1 123:25<br>127:1 183:21<br>186:19 187:20<br>187:25 188:9<br>189:18 190:8<br>190:10 196:14<br>197:5<br><b>devon's</b> 106:21<br>133:15 187:7<br><b>diagram</b><br>266:24,25 | 274:7 277:5,8<br><b>diagrams</b><br>262:22 263:24<br>264:3<br><b>difference</b><br>152:4 246:25<br>254:13,19<br>256:17,23<br>257:1,3,5,7<br><b>differences</b><br>33:6 212:18<br><b>different</b> 36:6<br>54:15 66:13<br>69:24,24 78:19<br>127:8 128:2<br>146:6 186:23<br>187:6 220:9<br>224:9 229:2<br>231:6,10 237:3<br>242:8 264:19<br>284:20,21<br>285:3 287:11<br>296:14,17<br>298:18<br><b>differentials</b><br>254:12<br><b>differently</b><br>214:7 242:7<br><b>differing</b><br>185:21<br><b>difficult</b> 68:3<br>217:4<br><b>dig</b> 165:12<br><b>digest</b> 299:9 | <b>digging</b> 174:8<br><b>digital</b> 306:8<br>307:3<br><b>diligence</b> 174:3<br>174:4<br><b>diligent</b> 77:18<br><b>dilute</b> 108:13<br><b>dire</b> 10:3,5<br>108:18 112:5<br>180:25 181:3<br>209:15 210:3<br>216:3<br><b>direct</b> 88:23<br>89:8 92:13<br>98:10 116:21<br>117:20 126:25<br>135:9 156:14<br>164:9 170:5,6<br>172:22 173:6<br>175:18 188:21<br>205:10,12,18<br>206:5,8,14<br>223:10 226:11<br>249:1 265:16<br>272:4 273:15<br>283:10<br><b>directed</b> 112:19<br>163:11<br><b>direction</b> 22:19<br>135:19 136:6<br>227:18<br><b>directly</b> 29:18<br>112:14 114:21<br>159:1 161:19<br>219:22 221:18 | 226:22,24<br>244:15 278:24<br><b>dired</b> 116:12<br><b>disadvantage</b><br>243:2<br><b>disagree</b> 230:22<br>300:2<br><b>disallowed</b><br>146:6<br><b>discernible</b><br>279:11<br><b>disciplines</b><br>237:5<br><b>disclosed</b> 85:18<br>144:11 281:23<br>282:25<br><b>discourage</b><br>119:16<br><b>discourages</b><br>119:12,23<br><b>discovered</b> 85:4<br>202:1<br><b>discuss</b> 156:14<br>206:4,8 253:19<br>255:2<br><b>discussed</b> 19:17<br>148:14 180:5<br>220:15 281:18<br>282:2<br><b>discussing</b><br>148:10 180:1<br>226:17 230:12<br>242:1 246:1<br>279:1 |
|---|---|--|---|

|  |  |  |   |
|--|--|--|---|
| <p><b>discussion</b> 43:3<br/>43:13</p> <p><b>discussions</b><br/>20:25 21:23<br/>33:1 38:23<br/>39:12,14<br/>188:14,15</p> <p><b>dismiss</b> 21:4<br/>22:18 29:23<br/>33:17 108:25<br/>109:12 110:17<br/>110:18 112:15<br/>115:3 120:8<br/>176:5 178:19<br/>304:10,11</p> <p><b>dismissal</b> 29:23</p> <p><b>dismissed</b> 20:8<br/>263:8</p> <p><b>dismisses</b> 27:14</p> <p><b>dismissing</b><br/>21:12</p> <p><b>display</b> 14:5<br/>221:5 250:15</p> <p><b>disposables</b><br/>255:13</p> <p><b>dispute</b> 26:23</p> <p><b>distance</b> 207:2<br/>223:2,9,10<br/>226:3,7,20<br/>227:18 266:14<br/>276:2 277:10</p> <p><b>disturbance</b><br/>128:7 185:24<br/>186:6</p> | <p><b>dive</b> 76:20<br/>286:8</p> <p><b>division</b> 1:3,7<br/>17:4 19:18<br/>20:5 21:2,9,11<br/>21:14,16,17,22<br/>22:2,15,18 23:3<br/>23:4,5 24:9<br/>25:8,19 26:3<br/>27:8,9,10,14,24<br/>28:24 30:12<br/>35:14 38:7,11<br/>39:17,24 40:12<br/>44:5,7,9 46:2,5<br/>55:2 60:23<br/>63:15 74:13<br/>78:4 80:16,24<br/>81:2,23 104:19<br/>110:20 111:3<br/>111:16 112:13<br/>112:13,23<br/>113:23 117:16<br/>121:7,21 122:3<br/>134:22 140:17<br/>172:24 173:16<br/>175:24 178:19<br/>179:4,24<br/>180:14 184:4<br/>204:9 205:15<br/>209:9 216:15<br/>219:7,14 220:1<br/>228:25 235:4<br/>239:24 240:9<br/>240:12 265:3<br/>268:25 270:21</p> | <p>302:9,17,21,24<br/>303:2 304:1,5<br/>304:11</p> <p><b>division's</b> 21:3<br/>21:16 40:15<br/>89:13 113:8<br/>240:3 264:22<br/>266:3</p> <p><b>docket</b> 18:12<br/>20:21 21:1,6,8<br/>35:15 36:12<br/>40:19 41:8<br/>42:11,12 76:5,6<br/>193:17</p> <p><b>document</b><br/>54:10 66:14,15<br/>66:17,17 75:9<br/>76:9 110:6<br/>131:21</p> <p><b>documents</b><br/>66:13 67:1<br/>83:9 90:9</p> <p><b>doing</b> 25:7 37:3<br/>82:5 87:20<br/>119:13 129:6<br/>140:21 142:21<br/>157:12 174:5<br/>191:15,25<br/>270:14</p> <p><b>dollars</b> 232:23</p> <p><b>dolly</b> 138:5<br/>227:3,8,11<br/>277:7,23 290:7</p> <p><b>door</b> 28:17<br/>265:15,16</p> | <p><b>doors</b> 22:22</p> <p><b>dot</b> 279:25<br/>286:6 293:22</p> <p><b>doto</b> 175:17<br/>183:14 184:2</p> <p><b>dots</b> 284:8<br/>285:5 293:8</p> <p><b>doubt</b> 198:6<br/>231:3</p> <p><b>dovetail</b> 199:15</p> <p><b>dozen</b> 170:7</p> <p><b>draft</b> 107:20<br/>112:18</p> <p><b>drafted</b> 109:25<br/>114:18</p> <p><b>drainage</b><br/>155:11 216:23<br/>222:19 235:21<br/>236:5,20 238:9<br/>240:19,21<br/>241:5 263:18<br/>264:2 266:24<br/>272:14,23<br/>273:14,25<br/>276:16 281:13<br/>281:15,19,22<br/>282:1</p> <p><b>draining</b> 241:3</p> <p><b>drastically</b><br/>273:21</p> <p><b>draw</b> 276:9<br/>277:18</p> <p><b>drawn</b> 222:19<br/>242:17 296:22</p> |
|--|--|--|---|

[drew - earthstone]

|  |  |  |  |
|--|--|--|--|
| <b>drew</b> 238:18<br><b>drill</b> 78:7,8<br>80:5 100:12,13<br>101:25 104:7<br>104:20 106:9<br>114:8,9 118:25<br>119:25 122:2<br>127:3 136:7,11<br>138:20,23<br>139:12,15<br>142:1,7,25<br>143:3,15,19<br>144:5 149:6<br>152:25 158:24<br>159:12 161:5<br>161:11 176:14<br>178:5 187:14<br>188:1 191:10<br>194:1,21 221:6<br>228:22 232:8<br>232:22 240:2<br>240:20,25<br>241:4 244:15<br>252:10 254:23<br>256:4 258:24<br>259:4,14<br>274:23 275:25<br>276:15,15<br><b>drilled</b> 99:24<br>100:1 101:7,18<br>101:23 135:20<br>135:21,23,25<br>137:3,11,11,12<br>137:16 139:1<br>143:7,11 | 146:25 158:5<br>160:22 173:20<br>190:23 193:17<br>214:4 218:13<br>226:19 235:1<br>250:11,12,16<br>250:18 251:4<br>251:11,18<br>252:14 260:21<br>261:11 270:20<br>274:14 290:14<br>291:23 296:12<br>296:13<br><b>drilling</b> 14:22<br>14:23 81:15<br>100:8,10<br>106:22 119:12<br>119:23 121:6<br>138:19 142:9<br>142:14 159:3<br>159:15 160:1<br>176:19 187:21<br>188:11 193:24<br>199:12 220:16<br>232:24 233:3<br>233:20 249:10<br>249:13,16<br>252:6,19<br>253:20 254:3<br>254:13,16,19<br>256:5 258:15<br>258:15 259:3<br>259:15,16<br>260:9,21 261:1 | <b>drills</b> 251:22<br><b>drive</b> 4:5 7:5<br><b>drop</b> 24:15<br>39:2<br><b>drove</b> 274:25<br><b>due</b> 19:12<br>20:14,17 185:7<br>198:17 257:11<br><b>duly</b> 96:5,10,15<br>96:20,25 97:8<br>306:5<br><b>dvd</b> 252:16<br><b>dx</b> 10:10 11:2<br><br><b>e</b><br><br><b>e</b> 3:1,1 4:1,1 5:1<br>5:1 6:1,1 7:1,1<br>8:1,1 9:1,1<br>10:1 11:1 12:1<br>13:1 14:1 15:1<br>15:17 16:1,2,2<br>16:2,2 17:1,1<br>94:13 172:19<br>172:19 181:15<br>181:17,18,19<br>181:21,21<br>182:3,5,7<br>248:21,21<br>268:20<br><b>earlier</b> 28:3<br>59:23 117:22<br>117:23 120:7<br>149:21,21,22<br>150:2 175:22<br>176:4 177:7<br>209:9 242:1 | 273:8 286:6<br><b>earliest</b> 150:8<br><b>early</b> 199:15,23<br><b>earnest</b> 7:3<br>30:17<br><b>earthstone</b> 6:12<br>8:2 15:18<br>72:12,15 78:10<br>79:5,22 80:10<br>80:12 81:5,9,22<br>82:23 100:24<br>101:6,21<br>103:17 105:14<br>110:18 111:6<br>112:9,11 113:3<br>113:6 115:8<br>116:24 118:23<br>119:6,18 120:1<br>120:14,24<br>121:20 122:2<br>127:24 133:9<br>137:15 138:18<br>140:20 141:15<br>142:7 150:10<br>151:11 154:17<br>158:23 159:3,8<br>159:11,16,25<br>162:12 163:1,6<br>163:11 164:2<br>165:13 168:24<br>172:4,14,24<br>173:18,24<br>176:24 177:22<br>178:2 179:18<br>180:21 183:13 |
|--|--|--|--|

[earthstone - elect]

|   |  |   |  |
|---|--|---|--|
| 184:5,7 188:9<br>190:18 191:5<br>192:5,20<br>193:14 194:2<br>195:4,16 197:3<br>199:19,21,22<br>201:16 203:4<br>204:8 205:25<br>207:20 213:18<br>215:7,22<br>218:18 219:8<br>219:10,13<br>222:6,7,18<br>223:7 229:2<br>230:4 231:11<br>234:6 243:2<br>247:3,4,12<br>248:16 249:10<br>249:13,19<br>250:2,9,17,21<br>251:6,8,21<br>253:8,15<br>256:15 257:8<br>258:8,14<br>259:13 261:14<br>262:22 263:19<br>264:7,12<br>266:17,21<br>283:14 293:15<br>300:4<br><b>earthstone's</b><br>15:16 80:3<br>81:14 82:21,22<br>87:14 105:18<br>106:15 108:25 | 109:12 111:15<br>111:21 120:7<br>121:5 122:10<br>123:21 125:6<br>125:24 131:25<br>132:3 133:23<br>144:18 145:16<br>146:1,11<br>149:18 157:17<br>158:3 163:23<br>168:20 174:19<br>176:5 178:18<br>181:21 182:5,7<br>184:10 185:17<br>197:22 199:11<br>208:6 228:11<br>228:22 232:8<br>232:18 234:20<br>246:23 256:3<br>257:4,18<br>258:11,15,15<br>265:6 275:11<br>288:15<br><b>ease</b> 66:8 70:16<br><b>easier</b> 172:8<br>252:18<br><b>east</b> 57:15,21<br>57:23 60:6,14<br>69:3 80:13,13<br>80:14 101:10<br>101:15 102:1,2<br>116:25 117:13<br>117:15 126:9<br>126:22 131:3<br>135:18 137:5 | 138:10,11<br>142:6,7 144:1,7<br>144:7,23 145:2<br>145:14 147:9<br>149:13,13<br>157:15,19,20<br>158:16,18<br>163:2 174:16<br>174:23,24,24<br>174:24 182:25<br>184:20 185:9<br>188:3,3 192:3,6<br>195:11,18<br>201:7 219:20<br>220:19 221:18<br>226:2 227:18<br>228:12,12<br>229:16,16,19<br>229:19 230:4<br>231:14,14,21<br>238:19,24<br>239:1,2,7,10,14<br>240:6 242:11<br>242:14,15<br>244:15 252:8<br>252:11 275:13<br>275:13 277:11<br>294:2<br><b>echo</b> 181:17,18<br>181:19 205:2<br><b>economic</b><br>257:15 258:24<br><b>economical</b><br>81:20 191:12<br>253:16 | <b>eddy</b> 260:19<br><b>edition</b> 209:22<br><b>education</b><br>209:5<br><b>educational</b><br>269:1<br><b>effect</b> 141:11<br>206:24 236:9<br>238:24 239:11<br>242:10 246:20<br><b>effective</b> 50:23<br>185:11<br><b>effectively</b><br>261:1<br><b>effects</b> 235:18<br>247:21<br><b>efficient</b> 81:19<br>185:10<br><b>effort</b> 236:25<br><b>egg</b> 238:10,11<br>272:9<br><b>eight</b> 89:8<br>224:16<br><b>either</b> 33:16<br>39:5,5 50:5<br>99:6 116:24<br>121:6 147:14<br>166:23 197:11<br>204:8 225:9<br>227:7,17<br>252:10 270:22<br><b>eject</b> 198:18<br><b>elect</b> 106:3<br>197:6 198:18 |
|---|--|---|--|

|  |  |  |   |
|--|--|--|---|
| <p><b>elected</b> 197:7<br/>198:1,21<br/><b>election</b> 198:23<br/><b>eleven</b> 287:7,8<br/>293:4,6<br/><b>eliciting</b> 153:18<br/><b>eliminate</b> 38:16<br/><b>elizabeth</b> 7:19<br/><b>email</b> 15:17<br/>46:10 76:4<br/>104:17 117:23<br/>118:8,13 120:9<br/>120:11,15,20<br/>121:2 122:5,7<br/>122:11 130:19<br/>133:23 149:24<br/>175:25 176:6<br/>176:12 177:8<br/>177:18 180:17<br/>180:21 181:2<br/>200:1,7,10<br/>230:8 303:14<br/><b>emergency</b><br/>20:14<br/><b>employed</b><br/>306:11,14<br/>307:8,11<br/><b>employee</b><br/>104:18 306:13<br/>307:10<br/><b>employment</b><br/>249:16 269:2<br/><b>encompassed</b><br/>152:3 201:8</p> | <p><b>energy</b> 1:2 3:19<br/>3:20 4:10 8:15<br/>17:25 37:1<br/>65:21,21 73:13<br/>101:4,4 104:5<br/>105:15 107:15<br/>107:15 127:1<br/>186:19 218:18<br/>249:11,13<br/>250:2 251:6<br/><b>engage</b> 38:3<br/><b>engineer</b> 82:8<br/>94:14 95:7<br/>128:5,11 206:2<br/>208:4,5,7<br/>210:15 211:8<br/>217:1 243:1<br/>249:5,7 268:24<br/>269:3,3,5,11<br/><b>engineer's</b><br/>211:14 212:4<br/><b>engineering</b><br/>91:10 210:8,8<br/>210:10,13<br/>216:11,25<br/>242:25 246:19<br/>249:21 263:8<br/>263:10 272:13<br/><b>engineers</b><br/>211:12 215:13<br/>215:14 237:1<br/>284:20<br/><b>enhanced</b><br/>224:8</p> | <p><b>enjoy</b> 305:12<br/><b>ensure</b> 81:18<br/><b>enter</b> 19:4<br/>193:3 250:2<br/><b>entered</b> 19:3<br/>32:5 34:4<br/><b>entering</b> 251:9<br/><b>entire</b> 68:14<br/>101:14 200:25<br/>229:22 231:25<br/>232:7 237:21<br/>238:18 279:10<br/><b>entitled</b> 198:17<br/><b>entity</b> 115:4<br/><b>entries</b> 17:17<br/>18:24 61:10<br/>64:22 72:21<br/>73:17<br/><b>entry</b> 34:9,13<br/>37:6,10<br/><b>eog</b> 7:2 19:1,5<br/>30:18 31:23<br/>32:25 33:4<br/>34:1 36:1 37:8<br/>39:22 65:12,13<br/><b>eogresources...</b><br/>7:11<br/><b>equal</b> 192:15<br/>225:2 234:3<br/>256:23 288:16<br/><b>equates</b> 254:19<br/><b>equipment</b><br/>257:9<br/><b>ernie</b> 19:2</p> | <p><b>ero</b> 244:23<br/><b>error</b> 296:25<br/><b>es</b> 10:10 11:2<br/>306:4<br/><b>especially</b><br/>142:6 227:19<br/><b>esps</b> 257:12<br/><b>esquire</b> 3:3,7<br/>3:14,21 4:3,11<br/>4:17 5:3,8,9,10<br/>5:16 6:3,7,13<br/>6:19 7:3,7,13<br/>7:19 8:4,10,16<br/>9:3<br/><b>essentially</b><br/>107:20 220:7<br/>222:15 224:16<br/>224:21<br/><b>estimate</b> 216:21<br/>260:2 272:22<br/><b>estimated</b><br/>225:3 245:2,8<br/>272:15,25<br/>273:18<br/><b>estimates</b><br/>259:25<br/><b>et</b> 28:8 65:21<br/>67:17 68:10<br/>136:15 175:19<br/>176:15,15<br/>250:14 260:12<br/><b>eur</b> 224:24<br/>225:3 227:12<br/>244:24 245:14<br/>245:17 246:16</p> |
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|   |   |   |  |
|---|---|---|--|
| 246:20 247:6<br>278:24 284:20<br>284:21<br><b>eurs</b> 284:17<br><b>evaluate</b> 237:3<br><b>evaluation</b><br>14:25 211:23<br>211:25 256:12<br><b>evd</b> 12:2,8,20<br>13:2,11 14:2<br>15:2,11,20<br><b>eventually</b><br>81:20 160:22<br>220:2<br><b>everybody</b><br>29:15 70:7<br>122:16<br><b>evidence</b> 59:2,4<br>74:17,18 75:9<br>85:11 86:21,25<br>87:2 88:2,3<br>90:25 91:3<br>92:1,4 93:2,4<br>94:2,5 107:6<br>114:5 116:10<br>161:15 164:8,9<br>169:22 170:2<br>170:21 178:24<br>180:4 181:22<br>182:8 202:3<br>207:21 209:11<br>209:14 212:23<br>213:2 217:11<br>217:17 243:20<br>243:24 265:17 | 269:25 271:14<br>272:2 289:3<br><b>evidenced</b><br>279:14 288:22<br>290:17 296:21<br><b>evident</b> 143:18<br>197:1<br><b>evidentiary</b><br>115:18 299:22<br>300:7<br><b>exact</b> 80:10<br>93:15 110:12<br>149:20 211:20<br>220:7 224:16<br>228:3 239:17<br><b>exactly</b> 150:5<br>186:1 189:3<br>191:15,25<br>214:6,8,16<br>226:17 232:22<br>242:19 247:22<br><b>exaggerated</b><br>231:15<br><b>examination</b><br>39:22 98:10<br>105:4 108:22<br>116:14,21<br>117:7 126:25<br>132:19,22<br>134:6 135:9<br>146:18 153:4<br>156:14 157:1,5<br>164:22 165:24<br>168:8 170:5,6<br>173:6 189:12 | 189:14 204:3<br>205:10 210:5<br>216:3 217:23<br>235:14 243:15<br>246:12 249:1<br>259:23 272:4<br>281:4 294:19<br>294:23 296:9<br><b>examine</b> 130:15<br>131:15 156:10<br>182:14 208:8<br>208:11 217:13<br>243:1<br><b>examined</b> 96:7<br>96:12,17,22<br>97:2,10 175:16<br><b>examiner</b> 2:5<br>9:11 17:2,6,9<br>17:12,14,20,21<br>17:23 18:1,4,6<br>18:10,13,16,19<br>19:6,11,21 20:1<br>21:18 22:3,9<br>23:8,15,21,23<br>24:3,10,14,17<br>24:22 25:24<br>26:5,11 27:17<br>27:23 28:10<br>29:4,20 30:17<br>30:21,25 31:7<br>31:10,15,25<br>32:7,11,14,16<br>32:21 33:12,18<br>33:21 34:12,19<br>35:3,16,23 36:3 | 36:14,18,21<br>37:2,9 38:1,18<br>39:7,19,25<br>40:20,24 41:10<br>41:16,25 42:5<br>42:16,24 43:16<br>43:23 44:13,14<br>45:4,6,10 47:23<br>48:3,14,19,23<br>48:25 49:10,17<br>49:18,20 51:3<br>51:13,17,20,22<br>52:5,11,20<br>53:15,19,23<br>54:9,12,16 55:3<br>55:23 56:3,6,9<br>56:19,22 57:3,6<br>58:23 59:1<br>60:20,25 61:4,7<br>61:13,16,18<br>62:10,12,15,19<br>62:24 63:7,12<br>63:18,23 64:7<br>64:10,14,20,25<br>65:4,8,12,16,23<br>66:3,7,11,20,25<br>67:3,12 69:17<br>71:16 72:14,16<br>72:19,20,22,24<br>73:2,5,6,9,15<br>74:14,19 75:18<br>75:21,25 76:7<br>76:14,17,21,22<br>78:13,15,18,24<br>79:8,15,19,21 |
|---|---|---|--|

**[examiner - exclusion]**

|                 |                |                |                       |
|-----------------|----------------|----------------|-----------------------|
| 81:25 82:12     | 139:18,21      | 208:1,14,15    | 302:5,8,14,23         |
| 83:5,8,14,18    | 140:3,7 144:13 | 209:18,25      | 303:4,6,12,17         |
| 84:6,13,19,25   | 144:15 145:20  | 210:17,20,25   | 304:13,20,25          |
| 85:7,12 86:3,14 | 146:7,17       | 211:13 212:3,9 | 305:3,4,7,8,11        |
| 86:18 87:6,18   | 147:17 148:4   | 212:21 213:15  | <b>examiners</b> 36:6 |
| 88:1,11,15,24   | 150:20 151:1,5 | 214:12,23      | 79:8                  |
| 89:10,18,21     | 151:8,23 152:9 | 216:19 217:3   | <b>example</b> 14:15  |
| 90:3,5,11,19,23 | 152:13,16      | 235:10 242:22  | 128:2 144:4           |
| 91:6,11,13,18   | 153:3,16       | 243:8 244:2    | 151:9 211:15          |
| 91:24 92:8,19   | 154:24 155:13  | 245:24 246:5,9 | 219:19 226:13         |
| 92:23 93:1,13   | 156:4,21,23,24 | 248:5,11,15,22 | 227:23 286:22         |
| 93:17,24 94:9   | 157:3 160:7,10 | 249:19,22,23   | <b>examples</b>       |
| 94:15,18 95:4,9 | 163:9,15,17    | 259:21 261:22  | 226:22                |
| 95:14,16,18,24  | 164:6,13,15,21 | 261:23 262:3,6 | <b>excellent</b> 66:4 |
| 97:3,11,20 98:1 | 165:22 166:2,7 | 262:9,11,13,17 | 299:4                 |
| 98:6,23 99:3,11 | 166:11,22      | 263:4,11,25    | <b>except</b> 42:10   |
| 102:5,7,11,13   | 167:24,25      | 264:16 266:22  | 300:8                 |
| 102:18,20       | 169:10 170:4,9 | 267:11,20      | <b>exception</b>      |
| 103:7,10 104:9  | 170:12,17,20   | 268:6,10,12,16 | 171:13                |
| 104:11,21       | 170:25 171:1,4 | 268:21,23      | <b>exchange</b>       |
| 105:2 107:5     | 171:13,16,20   | 269:6,10,20    | 110:25 175:25         |
| 108:15,17,20    | 172:1,11,14,17 | 270:4,9,25     | <b>exchanged</b> 33:3 |
| 109:2 110:2     | 172:20 173:1,4 | 271:1,6,12     | <b>excise</b> 270:24  |
| 112:3,4 113:9   | 178:13,22      | 280:9,10,16,21 | <b>exclude</b> 75:14  |
| 113:12 114:11   | 179:6,8,13,16  | 280:23 281:2   | 85:14 107:24          |
| 115:11,24,25    | 180:3,24 181:1 | 283:20,24      | 113:20 115:1          |
| 116:16 117:4    | 181:4,16,19    | 292:19,20,23   | 174:15                |
| 118:5 122:18    | 182:10 186:12  | 294:18,22      | <b>excluded</b>       |
| 122:23 128:15   | 188:22 189:3,7 | 296:6 297:24   | 108:11 113:2,7        |
| 128:16 130:4,8  | 189:11,13      | 297:25 298:12  | 116:10 195:11         |
| 130:12 131:13   | 194:9,13       | 298:21 299:3   | 195:22                |
| 132:16,17,21    | 200:15,16      | 299:20 300:2,6 | <b>excluding</b>      |
| 133:20 134:4,5  | 203:23 204:14  | 300:21,23      | 108:2                 |
| 134:8,13,15,18  | 204:18,23      | 301:6,10,12,15 | <b>exclusion</b>      |
| 134:25 135:6    | 205:5 207:24   | 301:19,25      | 109:19 131:2          |

[excuse - exhibit]

|                       |                 |                |                 |
|-----------------------|-----------------|----------------|-----------------|
| <b>excuse</b> 20:21   | 69:14,15 70:12  | 130:5,11,24    | 181:9,11,15,21  |
| 79:25 82:6            | 70:25 71:7      | 131:25 133:6   | 181:21 182:3,5  |
| 117:22 121:12         | 75:10 82:6,6,18 | 134:1,21       | 182:7,14,18     |
| 123:23 127:24         | 82:24 83:2,11   | 135:13 136:17  | 183:1,3,11,17   |
| 131:24 145:2          | 84:1,1,4,8,9,10 | 143:21,24      | 184:9,10,11     |
| 147:20 148:15         | 84:12,17 85:2   | 144:12 145:23  | 186:15 187:3    |
| 150:11 174:21         | 86:11,12,12,13  | 146:6,10,22    | 196:7 197:9     |
| 175:8 234:19          | 86:13,22,22,22  | 147:15,18,20   | 198:4,7 205:19  |
| 266:2 287:17          | 86:23,23,23,24  | 147:22,22      | 205:19 210:19   |
| <b>excused</b> 262:7  | 86:24,24,25     | 148:11,15,15   | 211:20,23       |
| <b>executing</b>      | 88:5,20,20,22   | 148:16,19,20   | 214:9 216:23    |
| 254:20                | 88:25 89:1,2,4  | 148:23 149:8,9 | 218:9,10,23,24  |
| <b>exhibit</b> 12:4,6 | 89:4,8,16,24,24 | 149:9,15       | 219:3,19 220:5  |
| 12:10,12,13,14        | 90:6,6,12,14,14 | 150:19 151:11  | 220:6,12,12     |
| 12:16,17,18,22        | 90:15,18 91:1,1 | 151:12 152:2,3 | 221:2,3 222:11  |
| 12:23,24,25           | 91:2,4,20,22,22 | 152:4,10,11    | 222:12,13,21    |
| 13:4,5,6,7,8,9        | 92:3,3 93:3,3,7 | 153:18 154:11  | 222:22,23       |
| 13:12,13,14,15        | 93:7,8,18 94:3  | 154:19 155:1   | 224:11,13,14    |
| 13:16,17,18,19        | 94:3,4 97:22    | 155:15 156:1,5 | 226:12,14       |
| 13:20,21,23           | 98:3 103:13,13  | 156:15,16      | 227:22,23       |
| 14:3,5,6,10,13        | 104:12,12,22    | 157:8,24 158:2 | 228:1 230:11    |
| 14:15,17,18,19        | 104:24 105:7    | 161:20 165:7,8 | 230:23 231:19   |
| 14:21,22,23,25        | 105:19 106:25   | 165:13 166:5,8 | 232:3 238:18    |
| 15:3,5,6,7,8,13       | 107:3,9 108:16  | 166:9,15       | 241:15 242:19   |
| 15:14,17,21           | 108:16 109:23   | 168:10,11,13   | 243:23,23       |
| 16:4,6 43:9           | 110:1,7 113:20  | 168:19 169:6   | 244:8,21 246:1  |
| 44:24 52:9            | 114:14 115:15   | 169:12,19,21   | 246:7,15 249:4  |
| 54:2,3,4 55:19        | 116:7,10        | 170:1,24,24    | 250:7 252:2,5   |
| 55:19 58:5,6,14       | 117:20 119:2    | 171:14 174:19  | 254:2,7,8 256:1 |
| 58:21,21 59:3,3       | 120:6 122:6,11  | 174:20 175:3,9 | 256:9,10 258:2  |
| 66:24 67:13,14        | 122:14,14       | 176:4,9 177:7  | 258:13 267:6    |
| 67:15,18,20,25        | 123:3,5,10,14   | 177:20 178:15  | 268:1,1,3 269:7 |
| 68:11,19,20,24        | 123:20,23,24    | 178:17 179:11  | 269:13,15,17    |
| 68:25 69:9,13         | 125:24 126:3,6  | 179:21 180:2   | 269:23,24       |
| 69:13,13,14,14        | 126:14 129:17   | 180:15,16,25   | 270:2,5,10,11   |

**[exhibit - explained]**

|                      |                |                        |                        |
|----------------------|----------------|------------------------|------------------------|
| 270:13,16            | 124:12,14      | 263:21 264:14          | 253:16 254:14          |
| 271:10,13,14         | 126:21 131:24  | 266:9,16 267:3         | 290:14                 |
| 271:22 272:1,8       | 134:19 135:11  | 267:15,18,22           | <b>expecting</b>       |
| 275:9,15,19          | 144:10,25      | 271:19 273:10          | 298:13                 |
| 277:1,4,17           | 145:17 146:11  | 276:19,22              | <b>expects</b> 259:13  |
| 278:13,14,23         | 148:18 151:21  | 281:10 283:9           | <b>expedite</b> 302:3  |
| 281:16 282:24        | 153:9,24 156:7 | 299:16 300:8           | <b>expedited</b>       |
| 284:6 285:15         | 156:10 161:23  | <b>existing</b> 136:13 | 303:4,9                |
| 288:8 289:7          | 161:24 162:22  | 157:23 185:7           | <b>expenses</b> 259:9  |
| 290:16,25            | 164:25 165:9   | 185:12 186:9           | 259:12                 |
| 291:11 293:2         | 167:22 170:23  | 193:14,18              | <b>expensive</b>       |
| 294:25 296:22        | 175:20 179:3   | 214:17 223:10          | 257:6 259:13           |
| 297:2,5,7,21         | 180:16 183:19  | 223:17 244:14          | <b>experience</b>      |
| 298:2,14,24,24       | 188:24 189:5   | <b>exists</b> 181:2,2  | 97:23 140:25           |
| 298:24,25            | 193:13 196:6   | <b>expand</b> 190:24   | 172:21 209:1,6         |
| <b>exhibits</b> 49:6 | 196:12 198:12  | <b>expanded</b>        | 216:9 249:5            |
| 49:16,23 51:7,8      | 200:21,22      | 202:19                 | 265:14 270:19          |
| 51:10,14 52:7,8      | 203:19 205:19  | <b>expansion</b> 80:4  | 304:18,23              |
| 53:22 58:1,3,11      | 205:23 206:5,9 | 80:7,9 99:20           | <b>expert</b> 97:24,24 |
| 58:18 59:2           | 206:13 207:16  | 108:4 109:19           | 98:4,9 134:24          |
| 60:16 66:10,16       | 207:22 208:4   | 111:2 113:17           | 135:8 155:21           |
| 69:10 70:9           | 208:12,17,18   | 174:11 190:17          | 172:23,25              |
| 71:9,24 74:2,17      | 208:19,22      | 195:21                 | 173:5 207:20           |
| 75:5,14 82:10        | 210:3,22 211:5 | <b>expect</b> 55:25    | 213:5 249:20           |
| 82:15,17,21          | 211:17 212:5,7 | 112:12 151:18          | 269:4                  |
| 83:22,22,23          | 212:8 213:12   | 182:2 216:10           | <b>expert's</b> 212:23 |
| 84:7,14,16,17        | 214:24 215:1   | 258:20 275:25          | 213:13                 |
| 85:10,15 86:4,7      | 217:9,20,23    | 285:21 286:1           | <b>expertise</b> 213:7 |
| 86:15,20 87:1        | 218:6 222:5    | <b>expectation</b>     | 214:14 216:1           |
| 87:14,16,22          | 226:18 230:9   | 267:2                  | 217:7,19               |
| 88:8,18 91:9         | 231:23 235:16  | <b>expectations</b>    | <b>explain</b> 25:22   |
| 92:18 93:11          | 236:13 242:24  | 254:20                 | 61:21 91:14            |
| 94:1 100:25          | 243:3,17,20    | <b>expected</b> 71:24  | 218:9 224:1            |
| 115:12,22            | 250:8 262:21   | 151:20 228:13          | <b>explained</b>       |
| 117:21 123:3         | 262:23 263:8   | 247:6,15               | 213:16 223:20          |

[explanation - feet]

|   |  |  |  |
|---|--|--|--|
| <b>explanation</b><br>242:6<br><b>explicit</b> 195:15<br>200:2<br><b>exploratory</b><br>102:23,24<br><b>explore</b> 209:14<br><b>explored</b><br>216:16<br><b>exponentially</b><br>224:25 234:15<br><b>expressed</b><br>174:15<br><b>expressly</b><br>187:24<br><b>ext</b> 118:10<br><b>extend</b> 79:24<br><b>extended</b> 143:4<br><b>extension</b> 259:6<br><b>extent</b> 44:6<br>46:13 209:13<br>225:19 264:7<br><b>exterior</b> 100:15<br><b>extra</b> 230:9<br><b>extremely</b><br>198:6<br><b>eye</b> 142:20,22<br>143:5 | 186:9<br><b>facility</b> 256:13<br><b>fact</b> 22:12<br>39:11 151:9,12<br>180:15 182:23<br>193:8 237:7<br>242:5 257:11<br>258:22 274:10<br>277:18 279:14<br>290:17 300:3<br>300:17,25<br><b>factor</b> 77:21,24<br>80:18,20,22<br>81:12 245:2,9<br>272:20 273:19<br>273:20 283:7<br><b>factored</b> 273:10<br><b>factors</b> 77:4,16<br>81:1 237:17,19<br>238:7 242:25<br>262:24 272:14<br>272:17,18<br>273:1 281:20<br>286:3 292:17<br>295:19<br><b>fair</b> 105:25<br>116:4 133:17<br>140:18 142:17<br>156:5 192:15<br>274:4 275:17<br>283:19 301:9<br>301:19,20<br><b>fairly</b> 22:21<br>108:7 143:6<br>232:13 | <b>faith</b> 77:9,18<br>80:19,23<br>180:12<br><b>fall</b> 28:7 293:25<br><b>falls</b> 267:13<br><b>familiar</b> 23:10<br>102:15 165:10<br>184:11 192:25<br>252:22<br><b>fantastic</b> 31:15<br><b>far</b> 45:14,15,17<br>45:18 48:4,13<br>49:16 50:22<br>52:1,2,4,17<br>59:25 60:7<br>70:7,18,20 71:8<br>78:22 94:21<br>100:1 129:4<br>142:13 154:10<br>154:13 182:21<br>187:19 195:7<br>226:10 230:2<br>252:12,18<br>253:16,22<br>254:13,16,20<br>255:3,14,22<br>260:23 261:20<br>280:3<br><b>farther</b> 277:21<br>278:5 291:12<br><b>fashion</b> 114:21<br><b>fast</b> 237:25<br><b>faster</b> 261:1<br><b>fault</b> 304:21 | <b>favor</b> 161:10<br>188:16 243:16<br>257:2,4,8<br><b>fe</b> 2:7 3:6,10,17<br>3:24 4:14 5:6<br>5:13,19 6:6,10<br>6:22 7:6,10,16<br>7:22 8:7,19<br>31:21 36:24<br>61:4 64:25<br>73:12<br><b>feasible</b> 193:7<br><b>february</b> 87:9<br>195:3<br><b>federal</b> 68:1<br>102:24 255:7<br><b>feel</b> 29:5 30:12<br>41:1 73:22<br>76:25 79:17<br>116:7 156:11<br>171:10 193:21<br>206:11 217:6<br>217:15 226:10<br>233:17,19,21<br>233:24 234:16<br>283:17<br><b>feels</b> 208:18<br>234:6<br><b>feet</b> 145:10,12<br>149:2 152:21<br>153:12 165:5<br>167:15 219:2<br>220:23 221:1<br>221:10,14<br>223:13,16 |
| <b>f</b>  |  |  |  |
| <b>f</b> 43:9 44:24<br>110:10 172:19<br><b>face</b> 257:24<br>290:23<br><b>facilities</b> 136:3<br>136:13 185:4   |  |  |  |

[feet - first]

|  |   |   |  |
|--|---|---|--|
| 230:17 231:16<br>231:19 232:8,9<br>232:12 239:21<br>239:25 240:5<br>289:9,10 290:3<br>290:7,8,18,20<br>291:6,7,18<br><b>feldewert</b> 4:11<br>5:8 6:19 7:13<br>8:16 31:20,21<br>33:23,25 34:17<br>34:20 35:4,10<br>36:23,24 37:4<br>38:13,20,21<br>39:8,10 42:1,3<br>42:9,10,21,22<br>43:1,16,21,24<br>44:23 45:21,25<br>46:17 47:2,15<br>47:17 48:13,16<br>48:18 56:11,14<br>56:25 57:5<br>58:24,25 73:11<br>73:12<br><b>ferocity</b> 142:4<br><b>field</b> 141:1<br>209:6 213:6,13<br>215:5 280:13<br><b>fifteen</b> 74:6<br><b>fight</b> 199:10<br><b>figure</b> 40:7<br><b>figures</b> 175:19<br>196:19 198:6<br><b>file</b> 21:22 22:9<br>25:3 34:16,18 | 34:25 35:13,20<br>39:16 41:12<br>43:25 49:19<br>53:11 55:1,25<br>62:8 63:8,10<br>64:1 83:1<br>87:15 110:11<br>111:15 115:3<br>115:22 178:21<br><b>filed</b> 17:17 20:4<br>26:24 27:1,7<br>35:24 36:1<br>37:14,16 39:8<br>41:7 43:18<br>44:1,16 49:7,8<br>49:14,16 50:4,4<br>51:8,14 52:8<br>53:3 54:1,7,10<br>66:14 72:17<br>74:10 75:12<br>76:2 84:7<br>85:16 86:8<br>87:8,9,11,12,14<br>88:13,19 89:15<br>89:16 92:22<br>99:20 112:21<br>112:24,25<br>115:13,13<br>116:8 123:3<br>154:23 167:21<br>178:19 195:3<br>196:6 264:14<br>266:9 267:18<br>301:18 303:2 | <b>files</b> 110:13<br>174:14 179:23<br><b>filing</b> 22:1<br>44:16,21,24<br>45:11 63:12<br>66:8,8 79:22<br>84:15,21,22<br>85:5 88:12<br>90:7 123:2<br>262:23<br><b>filings</b> 44:8,17<br>65:25 66:1<br><b>final</b> 54:22<br>81:12 99:21<br>133:21 167:6<br>242:9 248:6<br><b>finalize</b> 33:15<br><b>finally</b> 77:25<br>199:25 267:11<br><b>financially</b><br>306:15 307:11<br><b>find</b> 38:7 40:18<br>67:19 82:25<br>110:6,8,10<br>114:6 124:11<br>132:7 149:24<br>162:23 181:5<br>203:15 209:21<br>209:24 230:8<br>269:7 299:23<br><b>finding</b> 29:13<br>71:24<br><b>findings</b> 300:16<br>300:25 | <b>fine</b> 41:8<br>122:21 154:13<br>170:16 259:11<br>302:11 303:10<br><b>finger</b> 180:8<br><b>finish</b> 181:14<br><b>finished</b> 20:10<br>72:3 112:5<br>116:17 243:15<br><b>finishing</b> 24:15<br><b>firm</b> 5:17 6:4<br>7:4 273:17<br>278:10<br><b>first</b> 13:21<br>15:21 17:10<br>43:2 46:7<br>66:13 67:9<br>69:1 73:20<br>78:25 81:10<br>82:5,18 96:5,10<br>96:15,20,25<br>97:8,17,17,20<br>100:11 106:2<br>107:12 117:10<br>118:21 126:2,6<br>126:17 138:2<br>138:19,20,23<br>139:1,12,16<br>140:1 143:25<br>148:24,25<br>149:6,10,18,22<br>150:9,10,11<br>152:10,19,25<br>153:14 154:5<br>154:10 155:6 |
|--|---|---|--|

**[first - four]**

|   |  |   |  |
|---|--|---|--|
| 155:11,11<br>160:21 161:2,5<br>161:11,18<br>162:2,4 167:6<br>167:19 173:13<br>174:20 187:1,4<br>194:19 196:8<br>204:20 218:16<br>218:20 219:1<br>220:17,18<br>221:9,22<br>234:21 238:1<br>239:20 250:7<br>258:17 259:16<br>259:25 262:20<br>272:6 277:16<br>282:21 283:8<br>285:7,9,17<br>287:4 291:5<br>295:3 300:11<br><b>firstly</b> 183:16<br><b>fit</b> 27:2 279:9<br>279:16 299:18<br><b>fits</b> 20:17<br><b>five</b> 83:15<br>100:11 122:19<br>147:18 170:7<br>212:4 215:23<br>231:4,6 237:9<br>248:8 269:21<br>269:23 284:19<br>284:21 287:11<br><b>fix</b> 121:9<br><b>flaws</b> 48:9 | <b>flipped</b> 296:24<br><b>flow</b> 186:7<br><b>fluid</b> 224:3,23<br>237:25 238:1<br>263:23 281:21<br><b>fly</b> 290:22<br><b>focus</b> 201:10<br>284:3<br><b>focused</b> 288:9<br><b>follow</b> 21:14<br>82:10 116:19<br>153:6 294:19<br><b>following</b> 49:8<br>49:11 50:6<br>73:24 255:3<br><b>follows</b> 74:5<br>96:7,12,17,22<br>97:2,10<br><b>food</b> 278:21<br><b>foot</b> 138:3<br>141:16,17<br>220:19 221:9<br>224:3,8,23<br>227:13 228:5,6<br>236:12 237:12<br>237:24 244:23<br>244:24 247:1,2<br>253:12 277:15<br>277:25 278:1,3<br>278:7,8 279:1,3<br>279:4,7 280:1,3<br>281:25 284:11<br>284:15 285:3<br>290:19 294:5<br>294:10 297:18 | <b>footage</b> 240:16<br><b>force</b> 68:2<br>69:25 100:4<br>127:17<br><b>forced</b> 60:8<br>68:1 140:12<br><b>foregoing</b> 306:3<br>306:4 307:4<br><b>forest</b> 137:3<br><b>forget</b> 167:5<br><b>forgive</b> 146:20<br><b>forgot</b> 130:20<br>164:20 299:25<br><b>forhan</b> 53:20<br><b>form</b> 75:9<br>267:18<br><b>formal</b> 21:11<br>21:15,19 22:1<br>25:22 30:5,8<br>31:11 115:18<br><b>formality</b> 74:15<br><b>formation</b> 42:8<br>57:11 68:13<br>81:9,13,15<br>154:8 157:12<br>157:14 168:12<br>168:18 169:6<br>187:5 207:11<br>220:9 234:19<br>234:20,22<br>235:6 247:14<br>258:17<br><b>formations</b><br>81:11 225:25 | <b>formatting</b><br>15:22 152:11<br><b>formed</b> 100:23<br>114:24 208:12<br><b>former</b> 181:23<br><b>formula</b> 132:10<br><b>forth</b> 50:24<br>77:4,8 85:20<br>100:25 208:24<br>232:24 233:16<br>264:23 265:8<br>265:16,17<br><b>forum</b> 172:11<br><b>forward</b> 20:23<br>33:16 62:23<br>64:5 65:22<br>99:10 104:15<br>162:12 175:15<br>177:15,16<br>214:5<br><b>found</b> 83:21,22<br>165:14 173:12<br>201:21 202:5<br>203:5 225:13<br>253:14 258:23<br>267:15<br><b>foundation</b><br>87:3 92:6,9<br>107:7 139:17<br>139:22 140:5<br>154:15 208:23<br><b>four</b> 18:8 26:25<br>27:1,19 73:18<br>74:6 79:4 81:6<br>98:13,17 100:1 |
|---|--|---|--|

|  |   |   |   |
|--|---|---|---|
| <p>106:2 112:22<br/>157:17 167:5<br/>188:11,17<br/>198:21 221:7<br/>256:4<br/><b>frack</b> 141:13<br/>142:1<br/><b>francis</b> 7:5<br/><b>frank</b> 43:10<br/><b>frankly</b> 208:25<br/><b>free</b> 75:10<br/>76:25<br/><b>friday</b> 92:22<br/>150:4,7 282:21<br/><b>front</b> 70:8,16<br/>86:7 93:16<br/>111:2 117:24<br/>118:3,18 120:9<br/>121:7 123:8,16<br/>132:14 160:20<br/>162:20 165:15<br/>182:17 186:16<br/>219:7 228:25<br/>257:17 265:11<br/>265:18,24<br/>281:6,7<br/><b>fruition</b> 22:25<br/>29:16 161:8<br/><b>full</b> 39:2 45:19<br/>47:10 74:19<br/>171:9 176:24<br/>183:14<br/><b>fully</b> 175:14<br/>176:21 201:6<br/>234:16 250:11</p> | <p>250:18<br/><b>fulton</b> 2:8<br/>306:2,21<br/><b>further</b> 81:18<br/>119:10 164:22<br/>168:4,8 170:25<br/>220:21 224:18<br/>306:12 307:9<br/><b>furthermore</b><br/>77:20<br/><b>future</b> 33:7<br/>87:4 188:7</p>  | <p><b>geologist</b> 12:14<br/>13:19 58:2<br/>68:11 82:8<br/>91:8 94:13<br/>95:6 128:5,11<br/>134:24 146:2,5<br/>155:20 204:17<br/>205:15 207:21<br/>208:3 213:17<br/>214:3 215:13<br/>219:25 242:6<br/>263:19 270:16<br/>272:7 275:11<br/>284:19<br/><b>geologists</b><br/>231:4<br/><b>geology</b> 58:11<br/>77:9 78:1 81:3<br/>140:15 141:22<br/>142:3 145:25<br/>214:18,18<br/>226:4 273:3<br/>275:23<br/><b>getting</b> 28:11<br/>99:24 114:12<br/>193:23 199:3<br/>223:2 237:15<br/>245:15 284:6<br/>299:14<br/><b>give</b> 20:11<br/>24:24 28:5<br/>30:9 37:11<br/>47:18 76:24<br/>82:20 102:14<br/>104:19 122:16</p> | <p>130:13,15<br/>156:9 158:2<br/>169:16 176:13<br/>177:14 179:8<br/>200:2 209:25<br/>213:5 217:12<br/>230:7 253:11<br/>253:11 260:2<br/>263:14 269:7<br/>280:19 284:19<br/>291:19 301:13<br/>303:20<br/><b>given</b> 21:5,9<br/>22:2,19 149:25<br/>254:10,18<br/><b>giving</b> 160:8<br/>243:10<br/><b>glasses</b> 235:13<br/><b>go</b> 21:18 27:9<br/>29:1 37:15,16<br/>44:13 46:21<br/>50:24 51:5<br/>61:6,19 65:5<br/>66:20 71:20<br/>74:16 82:5,21<br/>85:8,8 90:20<br/>91:4 92:12<br/>93:5 95:23,24<br/>97:21 100:9<br/>102:2 104:2,3<br/>115:2 137:24<br/>146:17 147:11<br/>147:14 158:6<br/>158:17 162:2,4<br/>165:20 187:12</p> |
|  | <p><b>g</b></p> <p><b>g</b> 17:1 248:21<br/><b>gallons</b> 141:16<br/><b>gas</b> 9:2 73:3<br/>124:1,6,17<br/>125:19 126:1<br/>129:13 130:1<br/>206:17 213:18<br/>258:17<br/><b>gas's</b> 127:5,14<br/><b>gauge</b> 284:15<br/><b>general</b> 71:10<br/>142:12 246:18<br/><b>generally</b> 79:9<br/>119:16,23<br/>302:9<br/><b>generic</b> 219:4<br/><b>geologic</b> 68:13<br/>211:10,21<br/>225:24 231:2<br/><b>geological</b><br/>160:15 226:5</p> |   |   |

[go - great]

|   |  |  |  |
|---|--|--|--|
| 191:17,18<br>193:25 197:10<br>199:25 231:23<br>232:21 235:16<br>240:25 241:4<br>253:13 254:6<br>256:10 258:7<br>259:1,9,10,14<br>261:13 263:11<br>264:1 271:17<br>273:2 276:7<br>277:1,2,2<br>280:20 281:19<br>285:24 286:3<br>288:20 295:16<br>305:3,5<br><b>goes</b> 45:14 71:9<br>166:3 180:11<br>263:14 267:15<br><b>going</b> 20:16<br>24:18 25:17<br>29:21,22 30:2<br>31:16 34:6<br>35:7,8,14 40:11<br>42:6 44:14<br>48:20 52:21,23<br>53:11 55:1,24<br>56:10 59:11<br>61:21 62:2<br>63:1,1,8 64:16<br>64:22 65:22<br>75:6,15 78:19<br>83:15 87:10<br>88:3 91:15,15<br>93:5 94:19 | 98:24 104:4<br>107:6,8 110:17<br>114:4 115:14<br>122:15 128:4<br>128:10 129:18<br>130:12,14<br>136:21 140:8<br>142:2 143:11<br>149:5 156:5,9<br>157:7 161:14<br>162:9,14<br>166:23 167:2<br>167:24 169:12<br>170:18 173:10<br>174:18 176:14<br>181:8,9 183:2<br>194:5 200:11<br>203:18,19<br>206:21 213:5<br>214:5 216:2,21<br>216:22 217:9<br>217:16,25<br>218:3,5 220:21<br>222:10 226:4<br>227:16,19<br>231:12 233:10<br>234:7 238:10<br>243:19 246:14<br>247:20 250:6<br>252:1 253:15<br>256:8 258:6<br>259:4,5 264:6<br>266:19 267:21<br>268:2 270:1,2<br>271:13,15 | 276:20 298:3,8<br>298:14,15<br>299:7,10,23<br>300:2,3,24<br>303:13<br><b>golden</b> 4:6<br><b>good</b> 17:12,19<br>17:21,22 18:1,3<br>18:6,25 19:6<br>31:20 32:3,7,8<br>32:11 36:17,23<br>37:2,10 42:21<br>45:10 49:10<br>52:3 53:18,24<br>56:6 57:7 59:8<br>59:9 61:3,8,12<br>61:13,16 64:24<br>65:11,19 69:18<br>69:20 72:13<br>73:1,6,10,11<br>77:9,18 78:25<br>80:19,23 90:12<br>91:25 93:25<br>94:10,24 98:7<br>98:24 103:10<br>115:14 116:8<br>128:18,20,21<br>135:6 141:20<br>142:2,5,20<br>145:24 156:6<br>160:12 171:5<br>171:21 178:14<br>180:12 200:18<br>231:12 244:3,4<br>261:24 270:21 | 292:21 295:23<br>295:24,24<br>301:20<br><b>goodness</b><br>279:15<br><b>goree</b> 11:3<br>14:20 88:22<br>89:9 92:14<br>95:6,20,22 97:4<br>97:7 248:20,20<br>249:3,20 250:2<br>253:24 259:10<br>259:19 262:7<br>265:4,9<br><b>goree's</b> 92:17<br><b>gotten</b> 45:18<br>54:24 147:4<br><b>grab</b> 74:3<br>134:19<br><b>grant</b> 121:21<br>122:1<br><b>granted</b> 63:25<br>112:17 121:5<br>128:8 178:10<br>219:14 220:2<br>235:1 255:10<br><b>granting</b> 63:21<br><b>grants</b> 122:3<br><b>graph</b> 278:19<br>279:25 280:2<br>284:13 293:3<br><b>graphics</b> 147:5<br><b>grave</b> 191:21<br><b>great</b> 41:24<br>62:19 |
|---|--|--|--|

[greater - hardy]

|  |   |  |  |
|--|---|--|--|
| <p><b>greater</b> 246:16<br/>247:6 256:20<br/>279:6,13<br/><b>greatly</b> 217:17<br/>226:6 273:6<br/><b>green</b> 53:6,8<br/>54:2,17,18,19<br/>54:22,24,25<br/>55:10,10 56:1,3<br/>68:18,22 71:3,5<br/>83:23 84:4<br/>124:2 148:22<br/>235:21 236:5,8<br/>238:11 272:9<br/><b>gregory</b> 2:5<br/><b>greyhound</b><br/>6:18 57:2<br/><b>grimy</b> 54:25<br/><b>gross</b> 58:12<br/><b>ground</b> 233:9<br/><b>grounds</b> 73:24<br/><b>guadalupe</b> 4:13<br/>5:12 6:9,21<br/>7:15 8:18<br/><b>guarantees</b><br/>195:25<br/><b>guess</b> 36:10<br/>48:6 79:7,11,11<br/>89:12 123:15<br/>124:20 127:8<br/>129:12,17<br/>148:19 155:23<br/>157:11 163:1,5<br/>168:5 173:17<br/>179:2 197:23</p> | <p>202:8,12 203:2<br/>203:7 209:14<br/>230:13 237:15<br/>242:9 264:20<br/>284:9 289:8<br/>293:1 300:21<br/><b>guidance</b> 213:3<br/><b>gun</b> 211:19<br/>214:19 221:4<br/>241:15 262:22<br/>263:23 264:11<br/>267:12 277:5<br/><b>guy</b> 198:3<br/>216:8<br/><b>guys</b> 196:21<br/>197:1 198:2<br/>201:1 292:22<br/>302:3</p> | <p>117:13,15<br/>126:9,9,22,22<br/>131:3 136:3<br/>137:5 138:3,10<br/>138:11,12<br/>142:6,7 144:7,7<br/>144:23 145:2,3<br/>145:14,14<br/>147:9 149:13<br/>149:13 157:15<br/>157:19,20<br/>158:14,16,18<br/>158:19 163:2<br/>170:7 174:16<br/>174:24,24,24<br/>174:25 182:25<br/>184:18,21<br/>188:3,3 192:3,6<br/>195:11,18<br/>199:2 201:7<br/>219:11,20,20<br/>219:21 228:12<br/>228:12 229:16<br/>229:16,19,19<br/>230:4,4 231:14<br/>231:14 237:9<br/>238:19,24,25<br/>239:2,2,6,7,10<br/>239:14 242:11<br/>242:15,15<br/>249:15 252:9<br/>252:10,11<br/>274:2,2,13<br/>275:13,13,16<br/>275:19 288:17</p> | <p><b>halting</b> 121:14<br/><b>hampered</b><br/>20:22<br/><b>hamstrung</b><br/>146:14<br/><b>hand</b> 81:10<br/>96:2 167:10<br/>176:22 177:2<br/>180:20 202:2<br/>244:10 284:8<br/>285:5 295:2<br/><b>hanger</b> 255:24<br/><b>hanson</b> 6:14<br/><b>happen</b> 45:11<br/>124:23 129:23<br/><b>happened</b><br/>20:15 45:24<br/>89:22 125:2<br/>205:1 251:3<br/><b>happy</b> 25:21<br/>30:11<br/><b>hard</b> 70:12<br/>147:19 162:21<br/>185:25 210:20<br/>237:25<br/><b>harder</b> 149:16<br/><b>hardy</b> 3:3 8:4<br/>17:12,13,15<br/>18:7,10,14,17<br/>19:9,10 20:13<br/>22:5 24:20,22<br/>25:24 26:2,7,17<br/>56:16,18,20,24<br/>57:8,9 59:8,9<br/>59:13,16,21</p> |
|  | <p><b>h</b></p>   |  |  |
|  | <p><b>h</b> 12:1 13:1<br/>14:1 15:1<br/>126:8 248:20<br/><b>h2s</b> 139:4,5<br/>161:1,3,19<br/>162:6 258:19<br/>258:21<br/><b>half</b> 57:14,21<br/>57:22,22 60:4,5<br/>60:5,6,6,12,13<br/>60:13,14,14<br/>69:1,2,2,2,5,5,6<br/>69:7 80:13,13<br/>80:14,14<br/>101:10,16<br/>102:1,2 116:25</p>                                   |  |  |

[hardy - hearing]

|  |  |   |  |
|--|--|---|--|
| 60:3,10,19,21<br>60:24<br><b>harris</b> 4:18<br>8:11<br><b>hart</b> 4:12 5:11<br>6:8,20 7:14<br>8:17 31:22<br>36:25 61:5<br>65:1 73:13<br><b>haul</b> 255:6<br><b>head</b> 23:13<br><b>headache</b> 29:15<br><b>heading</b> 192:20<br><b>hear</b> 19:22<br>23:22 25:9<br>31:2 33:23<br>38:13 62:14,15<br>91:14 98:15<br>99:2 103:7<br>109:2 110:3,8<br>124:25 131:7<br>150:20 151:3<br>156:1 159:18<br>177:6 201:20<br>204:25 205:4,6<br>210:21 217:4<br>236:1 264:4<br>280:17,24,24<br>281:1,3 283:21<br>283:22 288:14<br>288:23 292:22<br>292:24<br><b>heard</b> 19:4 25:6<br>47:19 59:23<br>72:3 97:4 | 128:23 129:21<br>131:5 161:14<br>162:1 170:13<br>175:21 186:24<br>192:15 195:2<br>197:4 200:12<br>201:15,23<br>203:3 216:5<br>235:7 243:14<br>255:4 282:19<br>283:8 288:18<br>289:3,4,6<br>302:17<br><b>hearing</b> 1:5 2:2<br>2:5 17:2,6,9,14<br>17:21,22 18:1,6<br>18:12,13,16,19<br>18:22 19:6,21<br>20:1,17 21:18<br>22:3,9,16 23:8<br>23:15,21 24:3<br>24:10,17 25:24<br>26:1,2,5,8,11<br>26:25 27:5,6,10<br>27:13,17,23<br>28:10 29:4,7,10<br>29:20 30:19,21<br>30:25 31:7,10<br>31:15,25 32:7<br>32:11,16,21<br>33:8,12,17,18<br>33:21 34:12,19<br>35:3,16,23 36:3<br>36:5,14,17,21<br>37:2,9,15,21 | 38:1,8,18 39:6<br>39:7,18,19,21<br>39:25 40:13,17<br>40:20,24 41:3,9<br>41:10,16,19,23<br>41:25 42:5,7,16<br>42:24,25 43:2,6<br>43:10,16,23<br>44:13,22,25<br>45:4,10 47:23<br>48:3,14,19,25<br>49:10,18,20<br>50:6 51:3,13,17<br>51:20,22 52:5<br>52:11,15,20<br>53:15,23 54:1,9<br>54:12,16,21<br>55:3,23 56:3,6<br>56:9,13,22 57:3<br>57:6 58:23<br>59:1 60:20,25<br>61:3,7,16,18,23<br>62:7,9,10,12,15<br>62:19,24 63:1,2<br>63:7,10,11,12<br>63:16,18,23<br>64:2,3,7,10,14<br>64:20 65:4,8,12<br>65:16,23 66:3<br>66:11,20,25<br>67:3,12 69:17<br>70:14 71:16<br>72:8,13,16,19<br>72:20,24 73:1,5<br>73:9,15,18,19 | 74:9,13,20<br>75:17,21,25<br>76:7,14,17,22<br>77:14 78:13,18<br>78:24 79:1,15<br>79:19,21 81:25<br>82:12 83:5,8,14<br>83:18,19 84:6<br>84:13,19,25<br>85:7,12 86:3,9<br>86:14,18 87:8<br>87:10,18 88:1<br>88:11,15,24<br>89:10,18,21<br>90:3,5,11,19,23<br>91:6,11,13,18<br>91:24 92:8,19<br>92:23 93:1,13<br>93:17,24 94:9<br>94:15,18 95:4,9<br>95:14,16,18,24<br>97:3,11 98:1,6<br>98:23 99:3,7,11<br>102:7,11,13,18<br>103:7,10 104:9<br>104:11,21<br>105:2 107:5<br>108:17,20<br>109:2 110:2,7<br>110:19 112:3,4<br>112:10 113:7,9<br>113:23,23<br>114:1,11<br>115:11,18,25<br>116:16 117:4,5 |
|--|--|---|--|

[hearing - hold]

|  |  |  |  |
|--|--|--|--|
| 118:3,5 122:18<br>122:23 124:12<br>124:15 125:6<br>128:16 129:12<br>130:4,8,12<br>131:13,18<br>132:16,17<br>134:5,8,13,15<br>134:25 135:6<br>139:18,21<br>140:3,7 144:9<br>144:13 145:20<br>146:7,15,17<br>147:17 148:4,6<br>150:20 151:1,5<br>151:8,23 152:9<br>152:13,16<br>153:3,16<br>154:24 155:13<br>155:25 156:4<br>156:21,24<br>157:3 160:7,10<br>163:9,15,17<br>164:6,13,15<br>165:22 166:2,7<br>166:11,22<br>167:25 169:10<br>170:4,9,12,17<br>170:20 171:1,4<br>171:13,16,20<br>172:1,2,11,13<br>172:16,20<br>173:1,4,9<br>178:13,22<br>179:6,8,13,16 | 180:2,3,24<br>181:4,16,19<br>182:10 186:12<br>186:25 187:2<br>188:22 189:3,7<br>189:11 194:9<br>194:13 197:13<br>199:16 200:4<br>200:16 203:23<br>204:14,18,23<br>205:2,5 207:19<br>207:24 208:14<br>208:15 209:18<br>209:25 210:20<br>210:25 211:13<br>212:3,9,21<br>213:15 214:12<br>214:23 216:19<br>217:3 218:7<br>221:6,24 235:9<br>235:10 243:6,8<br>244:2 245:24<br>246:5,9 248:3,5<br>248:11,15,22<br>249:19,23<br>253:6 259:21<br>261:23 262:3,6<br>262:9,11,13,17<br>263:11,25<br>264:16 266:1,3<br>266:22 267:11<br>267:20 268:6<br>268:10,12,16<br>268:21 269:6<br>269:10,20 | 270:4,9 271:1,6<br>271:8,12<br>280:10,16,21<br>280:23 281:2<br>283:20,24<br>292:19,20,23<br>294:18 296:4,6<br>297:9,24,25<br>298:12,21<br>299:3,9,20<br>300:1,6,10,11<br>300:14,15,23<br>301:6,8,12,14<br>301:15,19,25<br>302:5,14,23<br>303:6,12,17,21<br>303:25 304:1<br>304:13,20,25<br>305:4,8,11<br><b>hearings</b> 17:3<br>24:25 72:8<br>115:17 140:13<br>209:2 213:2<br>217:18 279:2<br>300:19<br><b>hearsay</b> 209:12<br>213:1<br><b>height</b> 238:10<br>272:19 281:22<br>283:7<br><b>held</b> 24:25<br>190:25<br><b>hello</b> 95:1<br>172:16 200:19 | <b>help</b> 30:11<br>51:22 70:6,15<br>70:15 141:18<br>184:1 240:16<br>257:12<br><b>helped</b> 141:19<br>206:1<br><b>helpful</b> 25:23<br>25:25 85:1<br>209:23<br><b>helps</b> 51:18<br><b>hereto</b> 306:14<br>307:11<br><b>high</b> 139:4<br>161:3 162:6<br>258:18,21<br>288:5<br><b>higher</b> 225:1<br>251:20 257:10<br>287:19,21<br>289:25 296:19<br><b>highlight</b><br>173:12<br><b>highlighted</b><br>124:2 148:22<br>149:16 279:22<br><b>highlighting</b><br>149:7,12 152:4<br><b>highway</b> 186:9<br><b>hinkle</b> 3:4 8:5<br>56:20<br><b>history</b> 202:3<br><b>hit</b> 218:4<br><b>hold</b> 20:6 43:17<br>83:12 84:21 |
|--|--|--|--|

[hold - inconsistency]

|   |   |  |   |
|---|---|--|---|
| <p>90:19 95:1<br/>102:11,13<br/>107:5 121:3<br/>122:15 137:19<br/>139:18 147:17<br/>151:25 200:3<br/>263:25 269:6<br/>269:12<br/><b>holdings</b><br/>107:15<br/><b>holiday</b> 47:7<br/><b>holland</b> 4:12<br/>5:11 6:8,20<br/>7:14 8:17<br/>31:22 36:25<br/>61:5 65:1<br/>73:13<br/><b>honest</b> 282:16<br/><b>honor</b> 112:8<br/><b>hooks</b> 55:1<br/><b>hope</b> 51:18<br/><b>hopeful</b> 29:11<br/>33:6 38:4<br/><b>hopefully</b> 33:16<br/>63:15 139:10<br/>271:8<br/><b>hoping</b> 26:10<br/>184:19 199:5<br/><b>horizontal</b><br/>57:13,13,20<br/>60:2 102:21,25<br/>142:14 218:17<br/>220:16 221:7<br/>221:11 223:5<br/>223:10 228:8</p> | <p>232:22 238:13<br/>238:13 250:12<br/>250:16,18<br/>251:4,12<br/>255:25<br/><b>host</b> 9:13<br/><b>hour</b> 171:9<br/><b>houston</b> 20:15<br/><b>hover</b> 60:1<br/><b>hughes</b> 9:5<br/><b>huh</b> 305:1<br/><b>hurt</b> 149:5<br/><b>hydrocarbons</b><br/>229:18<br/><b>hydrogen</b><br/>258:18<br/><b>hypotenuse</b><br/>223:9 244:23<br/><b>hypothetical</b><br/>242:20 283:17<br/><b>hypotheticals</b><br/>241:7</p> | <p><b>identified</b> 44:5<br/>46:6 174:3<br/><b>identifies</b> 44:5<br/><b>identify</b> 143:22<br/>154:3,4<br/><b>identifying</b><br/>211:17<br/><b>ignorance</b><br/>146:20 151:10<br/>155:18<br/><b>ignorant</b> 184:1<br/><b>imaging</b> 44:15<br/>71:18<br/><b>immediate</b><br/>203:11 274:25<br/><b>immediately</b><br/>135:18 137:22<br/>155:8 234:12<br/><b>impact</b> 225:19<br/>239:6 276:12<br/><b>impacted</b> 25:15<br/>227:12,19<br/><b>impacts</b> 34:10<br/>185:16,18,22<br/>236:21 237:5<br/>245:14<br/><b>impair</b> 192:11<br/><b>impaired</b><br/>193:24<br/><b>impede</b> 190:15<br/>191:23<br/><b>impeding</b><br/>191:13,14<br/>192:1</p> | <p><b>implied</b> 195:20<br/><b>impossible</b><br/>193:10<br/><b>impression</b><br/>177:21<br/><b>improper</b><br/>154:22 213:7<br/>266:1<br/><b>improved</b><br/>246:20<br/><b>inaccurate</b><br/>182:23 183:7,8<br/>183:16 298:2<br/><b>include</b> 30:5<br/>46:13 58:1<br/>120:23 127:4<br/>127:11 168:11<br/>168:14,17,18<br/>179:3 180:1,17<br/>258:16,16,17<br/><b>included</b> 58:13<br/>88:22 117:15<br/>125:7 129:20<br/>145:18 168:19<br/>168:21 176:23<br/>300:15,16<br/><b>includes</b> 89:17<br/>102:25<br/><b>including</b> 58:11<br/>76:3 80:7<br/>92:13 102:1<br/>136:14 195:18<br/>287:1<br/><b>inconsistency</b><br/>158:10</p> |
|   | <p><b>i</b></p>   |  |   |
|   | <p><b>idea</b> 40:25<br/>114:4<br/><b>identification</b><br/>58:22 69:16<br/>84:2 89:5<br/>90:16 91:23<br/>93:9 107:4<br/>156:17 182:6<br/>222:14,24<br/>224:15 226:15<br/>228:2 269:18</p>   |  |   |

**[inconsistent - interests]**

|  |  |  |  |
|--|--|--|--|
| <b>inconsistent</b><br>157:14,22                                   | 58:13 68:10<br>130:5,9 152:3   | <b>intangible</b><br>256:14  | 104:6 105:8,22<br>106:11,12,20   |
| <b>incorrect</b><br>166:20 298:16                                  | 168:20 177:15<br>208:18,19   | <b>intangibles</b><br>14:24 253:20   | 108:8,10,14<br>111:5,7,7 123:7   |
| <b>increase</b> 223:9<br>224:7,22,24<br>277:21                     | 214:7,9 238:3<br>283:25 298:2  | 254:3 256:6,13<br>257:6  | 123:22,25<br>124:7 125:7,19  |
| <b>increased</b> 225:8<br>285:1                                    | <b>infrastructure</b><br>139:7,9 161:1,6<br>185:8,13   | <b>intend</b> 160:23<br>160:25 221:6<br>232:1  | 126:1,9,22<br>131:22 132:4,8<br>133:3,8,10   |
| <b>increases</b> 224:8   | <b>inherent</b> 223:4<br>223:11  | <b>intended</b> 178:5<br>220:16  | 160:20 173:19<br>173:21,23   |
| <b>increasing</b><br>223:3 246:21<br>246:21 247:23<br>279:12 285:1 | <b>initial</b> 26:2<br>207:13 227:14<br>233:18   | <b>intensity</b><br>206:23 212:20<br>224:1,2,23<br>225:9 245:13<br>247:1 262:24<br>263:23 264:13<br>266:15 277:22<br>278:20,24<br>279:12 284:13<br>285:2 287:3,13<br>287:20,22<br>288:4,25 290:1<br>294:13 | 175:5,7,7,18<br>177:25 178:3<br>182:20,25<br>183:3,21,24<br>190:5 191:6,24<br>192:3,5,6<br>196:15,19,21<br>197:21,21<br>198:4,6,9,11,15<br>198:16,16 |
| <b>independent</b><br>199:22                                       | <b>initially</b> 46:3<br>50:23 129:5   | <b>interest</b> 12:13<br>17:24 18:18<br>22:21 23:25<br>50:12 55:16,18<br>57:11,19 58:7,8<br>58:9,9 67:16,20<br>67:21 77:23<br>80:3,13,17<br>100:4,24 101:3<br>101:14,15<br>103:23,25                       | <b>interested</b><br>17:16 37:23<br>38:22 46:25<br>47:13 50:24<br>61:10 73:19<br>188:7 306:15<br>307:12  |
| <b>indicated</b> 50:11   | <b>ink</b> 298:18  |  | <b>interesting</b><br>38:17,22 46:1  |
| <b>indicates</b> 19:7  | <b>inland</b> 277:6,24<br>277:25 278:4<br>286:16 289:21<br>289:22 290:3<br>290:20 291:17<br>296:11 297:3 |  | <b>interests</b> 80:15<br>85:25 105:24<br>105:24 108:6,7<br>127:5,14 183:5<br>196:9,10   |
| <b>indication</b><br>45:19   | <b>input</b> 36:10<br>299:12   |  |  |
| <b>individuals</b><br>129:7  | <b>inquire</b> 35:10   |  |  |
| <b>indulge</b> 296:5   | <b>inquiries</b> 47:12   |  |  |
| <b>industry</b><br>206:17  | <b>inset</b> 158:20  |  |  |
| <b>influence</b> 34:6<br>273:6                                     | <b>inside</b> 105:22<br>249:15 255:13  |  |  |
| <b>influences</b><br>272:22 273:7                                  | <b>instance</b> 227:21<br>286:5 287:10<br>304:9  |  |  |
| <b>inform</b> 20:7<br>301:17                                       | <b>instances</b> 286:9   |  |  |
| <b>information</b><br>12:6 23:17<br>46:10 47:18<br>51:2 52:2,18    |  |  |  |

[interference - keplinger]

|  |  |   |  |
|--|--|---|--|
| <b>interference</b><br>99:8<br><b>internal</b> 125:8<br>125:9 174:13<br>226:9<br><b>interpret</b> 116:3<br>230:19,21<br>231:5 238:14<br>242:7<br><b>interpretation</b><br>231:2 284:19<br><b>interpretations</b><br>231:6<br><b>interpreted</b><br>239:15<br><b>interruption</b><br>24:8,9,16 98:22<br>124:24 142:10<br>208:10 216:25<br>217:2 235:22<br>236:7 242:16<br><b>interruptions</b><br>277:3<br><b>intervals</b> 219:1<br>220:10<br><b>intransigent</b><br>28:16<br><b>introduce</b> 72:9<br><b>investment</b><br>234:8<br><b>involve</b> 42:12<br><b>involved</b> 19:13<br>26:21,24 29:14<br>29:15,18 32:12<br>43:14 46:3 | 69:1 77:4,24<br>98:18 140:11<br>140:12 212:15<br>219:6,10<br>276:20<br><b>involvement</b><br>212:4<br><b>isopach</b> 58:12<br><b>issue</b> 27:1<br>29:22 30:4,12<br>30:13 35:7,8<br>45:18 46:22,23<br>47:21 78:3<br>112:14 113:25<br>115:10 213:9<br>214:21 264:12<br>265:22 266:7<br>267:12 292:7<br>292:15<br><b>issued</b> 28:6<br>112:23 113:18<br><b>issues</b> 28:12,13<br>28:15,25 29:7<br>37:21 38:4<br>48:8 49:1,2,25<br>52:15 55:22<br>77:8 106:19<br>108:19 153:2<br>263:18 264:2<br>266:23,24<br>267:6,22,24<br>268:2,4<br><b>issuing</b> 35:4<br><b>it'll</b> 97:18 172:7<br>184:1 303:15 | <b>item</b> 256:2,2<br>264:10,11<br><b>items</b> 50:21<br>63:5<br><br><b>j</b><br><br><b>j</b> 204:21 205:9<br><b>james</b> 3:8 5:4<br><b>jamesbruc</b> 3:11<br>5:7<br><b>january</b> 40:14<br><b>jason</b> 10:5,22<br>95:5 96:24<br>204:17,21<br>205:8 216:8<br>244:3<br><b>jim</b> 3:7 5:3<br>72:22 302:8<br><b>joa</b> 106:6<br>196:24 197:6<br>197:18 198:22<br>198:25 199:7<br><b>joas</b> 196:13<br>199:3<br><b>job</b> 2:9 142:21<br>256:19<br><b>jobs</b> 256:22<br><b>johnson</b> 9:4<br>73:2<br><b>johnson.com</b><br>9:7<br><b>join</b> 197:7<br>300:21<br><b>joint</b> 103:24<br><b>jointly</b> 185:9 | <b>jones</b> 9:3 73:1,2<br><b>jordan</b> 7:7,8,11<br>10:14 19:1,5<br>37:8 65:12<br>94:12 96:9<br>134:19 160:13<br><b>jotted</b> 132:24<br><b>juan</b> 206:2,6<br>222:6<br><b>judge</b> 75:3<br><b>judged</b> 282:18<br><b>judgment</b><br>121:14 177:3<br>200:11 204:7<br>217:25<br><b>judicatory</b><br>74:20<br><b>judicial</b> 179:23<br><b>july</b> 36:2<br>186:18<br><b>jump</b> 142:17<br><b>june</b> 21:25<br>37:14<br><br><b>k</b><br><br><b>k</b> 268:20<br><b>keep</b> 36:4 49:15<br>108:11 142:20<br>142:22 153:17<br>245:25 271:2<br><b>keeping</b> 20:25<br>143:5 223:3<br><b>keplinger</b><br>137:17 141:9<br>286:5 288:11<br>293:22 297:8 |
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[kessler - land]

|  |  |   |   |
|--|--|---|---|
| <b>kessler</b> 7:7,8,11<br>18:25 19:1,5,7<br>24:5,6,11,14,19<br>37:7,8 39:20,21<br>65:10,11,12,17<br><b>key</b> 77:16,21<br>80:18 166:3<br><b>kicked</b> 209:10<br><b>kickoff</b> 125:18<br><b>kind</b> 22:22<br>28:22 38:10<br>39:6 70:18<br>101:21 111:15<br>142:16 158:11<br>162:8,21 187:6<br>193:7 198:5<br>201:9 219:4<br>236:13,16,19<br>236:20 245:6<br>255:11 274:16<br>283:11 290:22<br>300:21<br><b>kingdom</b> 211:9<br><b>kmd</b> 184:8<br><b>knew</b> 111:20<br>115:6 126:19<br>150:9 155:6<br>179:10<br><b>know</b> 21:5,12<br>21:25 22:17<br>23:1,5 27:13<br>29:1,2,2,17,17<br>30:1,7 32:23<br>34:13 35:6<br>38:14,23 39:4 | 39:12 40:22<br>45:16 50:23<br>51:25 52:2,16<br>55:22 67:13<br>70:14,15 76:1<br>76:19,22 78:22<br>90:8 92:10<br>95:16,22 98:2<br>102:9 105:2,23<br>110:24 111:5<br>111:14,24<br>113:4,24,25<br>114:23 115:9<br>115:17 116:5<br>116:15,17,23<br>118:1 120:12<br>121:10 126:19<br>128:8 129:23<br>132:2,7,11<br>137:11 139:23<br>140:17 147:1<br>151:1,2 153:8<br>155:19 156:10<br>158:10,11<br>159:7,16,19,22<br>159:23,24<br>160:3 161:10<br>161:23 163:13<br>165:14 166:14<br>166:23 168:6<br>169:10,19<br>171:9 173:8<br>174:5 176:12<br>176:14 177:2<br>177:25 178:4 | 178:25 185:25<br>186:3,7 190:15<br>191:4,21 193:6<br>193:14 194:7<br>195:10,25<br>197:8,9,16<br>199:9 200:7<br>204:24 208:25<br>212:25 215:9<br>217:21,22<br>224:6 225:6,23<br>225:24 226:2<br>231:1 232:24<br>233:11 237:1<br>237:25 238:12<br>238:15 243:21<br>258:9 264:23<br>265:22 266:7,7<br>266:11 267:1<br>267:25 268:1,8<br>270:15 273:9<br>273:23 280:25<br>282:4,8,10,16<br>282:19,20<br>288:9,11<br>291:22 295:22<br>297:20 302:7<br>303:24 304:8<br><b>knowing</b><br>151:11 186:7<br>274:19 283:2<br><b>knowledge</b><br>103:16,19<br>121:19 177:11<br>213:14 304:4 | 306:9 307:6<br><b>known</b> 115:8<br>161:2 214:18<br>227:11 266:16<br><b>knows</b> 139:24<br>194:7 303:15 |
| <b>I</b>   |  |   |   |
| <b>I</b> 7:3,8 30:18<br>94:13,13<br>248:20<br><b>la</b> 139:3<br><b>labeled</b> 51:9<br>123:14<br><b>labor</b> 47:7<br><b>lack</b> 92:9<br>179:15 233:8<br>266:14<br><b>laid</b> 208:23<br><b>land</b> 58:3 68:6<br>78:7 99:15<br>100:8,23,25<br>103:5,17<br>104:13,18<br>117:23 119:11<br>119:22 120:16<br>120:20,25<br>121:3,20,25<br>122:10 128:2,7<br>130:19 133:24<br>133:25 140:17<br>175:13,22,25<br>176:7,25 177:3<br>177:12,21<br>178:1,4,8 180:8<br>180:18,22  |  |   |   |

**[land - lips]**

|  |  |  |   |
|--|--|--|---|
| 186:4 196:6<br>199:25 200:8<br>204:5,6 255:7<br><b>landing</b> 9:5<br><b>landman</b> 58:2<br>94:12 95:5<br>97:21,25<br>120:14 128:24<br>163:22,24<br>172:14,23,25<br>270:15<br><b>landman's</b><br>12:12 55:19<br>67:15 165:7<br><b>lands</b> 27:4,5,7<br>69:1 78:5,8<br>98:12,17,18<br>102:25 103:2<br>124:7 135:18<br>185:14 186:6<br>190:14 274:11<br>278:16,17<br><b>large</b> 100:24<br>106:11 108:10<br>141:13 201:6<br>201:13 242:21<br>247:20<br><b>larger</b> 28:19<br>101:15 183:21<br>225:3,21<br>245:15 246:16<br>254:11 256:18<br>257:13 261:11<br><b>lastly</b> 220:24 | <b>late</b> 53:11<br>114:2 115:13<br>156:12 250:5<br>299:14 300:4<br><b>lateral</b> 101:8<br>143:19 158:25<br>229:22,23<br>237:21,23<br>277:10,15<br>278:21 280:3<br>284:14 294:10<br>297:14,17<br><b>laterals</b> 102:1<br>106:9 143:4,4,8<br>143:11,16,18<br>191:11 194:21<br>259:3 263:22<br><b>latest</b> 55:15<br><b>latitude</b> 217:12<br>243:11<br><b>laundry</b> 29:1<br><b>law</b> 3:8 5:4,17<br>6:4 7:4 9:14<br>300:17 301:1<br><b>lay</b> 87:3 140:5<br><b>lea</b> 57:15<br>260:20 282:17<br><b>learning</b> 152:8<br><b>lease</b> 183:1<br><b>leasehold</b> 123:6<br>183:3,15 192:2<br>195:24<br><b>leases</b> 68:1<br><b>leave</b> 75:7<br>170:15 270:23 | <b>led</b> 154:1 202:2<br>276:7<br><b>left</b> 30:15 145:4<br>219:22 245:4<br>280:13 284:8<br>285:5 295:2<br>296:11<br><b>leg</b> 28:23<br><b>legal</b> 198:23<br><b>length</b> 21:6<br>237:23 299:17<br><b>lengths</b> 238:2<br><b>lengthy</b> 255:9<br><b>lenient</b> 209:10<br><b>leonard</b> 9:11<br>45:8<br><b>lesser</b> 292:12<br><b>letter</b> 15:13<br>104:5,16,25<br>105:1,17<br>106:25 107:2,6<br>107:7,13,14,18<br>107:21 108:1<br>109:22 110:1<br>111:1,11,16<br>112:10 113:14<br>114:13,19,25<br>117:22 119:10<br>122:4 165:16<br>186:18,22<br>187:7,20 188:4<br>189:17,21<br>190:1 196:14<br>196:23 197:9<br>197:24 | <b>letters</b> 15:5,8<br>68:17 93:20,21<br><b>letting</b> 169:12<br>181:25<br><b>level</b> 22:14,15<br>22:19 23:4<br>26:3 27:11<br>215:17<br><b>levels</b> 258:18<br>296:14,17<br><b>lie</b> 284:22<br><b>lies</b> 102:22<br><b>life</b> 30:14<br><b>lift</b> 257:9,13<br><b>light</b> 174:14<br>176:16 188:6<br><b>lightly</b> 232:25<br><b>likely</b> 259:1<br><b>limit</b> 299:17<br><b>lincoln</b> 7:9<br><b>line</b> 99:8<br>118:10 145:1<br>158:21 186:7<br>250:7 251:7<br>256:2,2 267:13<br>267:15 278:18<br>279:10<br><b>linear</b> 279:9<br><b>liner</b> 255:24<br><b>lines</b> 127:3<br>219:5 250:24<br>252:7<br><b>lingering</b> 38:6<br><b>lips</b> 111:23,25 |
|--|--|--|---|

**[list - looking]**

|  |   |  |  |
|--|---|--|--|
| <b>list</b> 12:13,24<br>15:6 29:1<br>55:15,18 67:20<br>75:3,12 82:18<br>82:21,25 83:2<br>83:11 84:5<br>88:5 93:15,20<br>103:22 105:8,8<br>181:11 198:3<br>202:14 263:15<br><b>listed</b> 28:4<br>51:10 75:3,11<br>80:21 175:9<br>183:10<br><b>listen</b> 177:6<br><b>listening</b> 184:2<br><b>lists</b> 175:5<br><b>little</b> 22:24<br>24:24 55:1<br>70:16 71:19<br>105:21 118:20<br>133:3,9 135:13<br>148:20 154:13<br>157:8 167:11<br>174:8 177:16<br>178:15 183:17<br>187:6 228:20<br>231:15 235:21<br>235:24 240:15<br>240:23 249:14<br>252:17 260:17<br>272:9 293:25<br>295:6,13<br><b>llc</b> 6:12 8:2,9<br>32:4 56:21 | 72:15 107:15<br>107:15<br><b>llp</b> 3:4 8:5<br><b>local</b> 218:12<br>245:17<br><b>localized</b><br>275:12<br><b>located</b> 135:17<br>161:16 192:23<br>219:18 221:18<br>225:13 233:14<br>238:15 283:2<br>283:16<br><b>location</b> 2:6<br>13:18,20 58:11<br>160:22 184:14<br>193:1 201:16<br>201:21 203:6<br>218:11 219:4<br>222:20 241:2<br>258:25<br><b>locations</b><br>161:11 186:3<br>193:4 218:12<br><b>log</b> 274:24<br>275:7,8<br><b>logs</b> 158:6<br><b>long</b> 25:10<br>67:20 143:6<br>170:5 173:24<br>176:21 206:16<br>249:6,12 255:9<br>255:16,22<br>267:5 270:20<br>271:7,9 299:8 | 303:24<br><b>longer</b> 53:13<br>76:12 199:10<br>248:9,9 303:13<br>303:15<br><b>longtime</b><br>104:18<br><b>look</b> 22:9 23:19<br>34:15 43:17<br>44:14 45:11<br>48:5,9 49:2,22<br>53:7 54:23<br>59:17 65:24<br>66:5,13 67:20<br>74:21 76:1<br>77:8 78:4<br>82:18 102:14<br>118:20 123:4,5<br>123:22 133:6<br>135:13 141:24<br>142:3 149:24<br>150:5 154:1<br>161:25 162:22<br>165:13 175:13<br>179:4 193:12<br>196:11 207:10<br>210:1 216:23<br>224:19 232:15<br>232:17 237:20<br>241:14,22<br>245:3,8 258:6<br>272:15 273:22<br>275:7 281:15<br>282:24 287:16<br>287:16 288:2 | 290:6 294:25<br>298:6<br><b>looked</b> 34:17<br>54:5 79:9,24<br>122:6 150:18<br>189:17 196:7<br>213:21 225:11<br>231:16 233:1<br>236:10,16<br>242:5 257:22<br><b>looking</b> 20:2<br>28:2,2 45:17<br>51:25,25 53:25<br>60:15 71:17<br>76:8 80:19,24<br>81:3 82:24<br>83:9 87:20,21<br>104:25,25<br>123:13 125:24<br>126:14,16,20<br>131:22 133:1<br>136:17 155:12<br>161:24 165:6<br>188:18 201:11<br>205:12 209:23<br>210:2,21<br>212:16,18<br>215:5 219:19<br>220:5,8 224:5<br>224:17,19<br>227:10 232:14<br>233:3 237:7,16<br>238:17 239:13<br>239:14,21<br>241:19 242:11 |
|--|---|--|--|

[looking - mailing]

|   |   |  |   |
|---|---|--|---|
| 245:12 249:3<br>272:12,13<br>274:7 277:8,9<br>279:3 281:6<br>285:18 289:18<br>289:24 299:23<br><b>looks</b> 36:15<br>42:7 44:17<br>46:20 48:5,13<br>50:21 51:8<br>52:3 64:17<br>72:9 80:16<br>81:1 84:7 85:1<br>88:7 118:7,21<br>137:2 138:12<br>142:5 146:21<br>185:23 238:17<br>239:17 242:13<br>287:11 291:3,3<br><b>loop</b> 254:25<br>255:3<br><b>lose</b> 287:2<br><b>loss</b> 255:12<br><b>lost</b> 291:24,25<br><b>lot</b> 23:2 28:18<br>29:14 67:19<br>71:1,2 74:22,22<br>109:17 145:5<br>147:24 172:7<br>173:8,10<br>185:24 197:12<br>202:2 205:6<br>211:11 212:13<br>217:12 228:21<br>237:19 238:3 | 242:25 270:20<br>297:7,9,10<br>299:9 304:8<br><b>louder</b> 109:3<br><b>low</b> 279:16<br>288:5 297:13<br><b>lowe</b> 9:11 45:8<br>45:9,11,13 46:1<br>46:15,19 47:11<br>47:16,20,24<br>48:3,4,15 49:22<br>49:25 50:10,14<br>50:17,19,20<br>51:4,17,19,20<br>51:21,24 52:6<br>52:10,14 55:3,6<br>55:14,21 59:5,7<br>59:10,14,19,22<br>60:7,15 63:20<br>63:22 66:6,25<br>67:2 69:17,18<br>69:21 70:6,13<br>70:18 71:8,14<br>71:16 72:3<br>78:16,21,22<br>128:16,18,22<br>129:1,11,16,21<br>130:14,17,23<br>131:1,7,11,14<br>160:7,8,11,17<br>161:12,22<br>162:17,21<br>163:5,9,12,16<br>163:17,21,25<br>164:4,6,11,14 | 164:16 165:25<br>200:17,18,20<br>200:25 201:4,9<br>201:19 202:4<br>202:12,22<br>203:1,14,24<br>243:22,25<br>244:3,5,8,17,21<br>244:25 245:11<br>245:19 246:1<br>261:23,24<br>262:4 292:20<br>292:21 293:1,6<br>293:8,16,21<br>294:3,7,11,14<br>305:7,10<br><b>lower</b> 14:8<br>136:24 137:2,6<br>138:4,8,15,17<br>142:6 144:5<br>148:21 149:1<br>149:11 152:20<br>154:7 167:16<br>168:25 169:5<br>220:25 221:15<br>221:20 222:16<br>225:14 233:12<br>233:20 234:3<br>234:14,18<br>241:17 256:23<br>272:9 274:23<br>275:1,6 276:8<br>284:8 287:25<br>288:17 289:1<br>289:21,25 | 296:18,19<br><b>lowered</b> 284:10<br><b>lowest</b> 280:2<br><b>lows</b> 236:10<br><b>lunch</b> 167:2<br>168:7 169:17<br>171:7,9,22<br><b>lychee</b> 228:5,5<br><b>m</b><br><b>m</b> 16:2 172:18<br>204:21 205:9<br>206:7,8<br><b>ma'am</b> 60:18<br>103:8<br><b>macdonald</b><br>124:1,6,17<br>125:18,25<br>127:4 129:13<br>130:3 131:23<br>132:9 133:1,8<br>183:9,23 196:8<br>197:25 198:20<br><b>macdonald's</b><br>127:13<br><b>made</b> 19:16<br>89:7 128:7<br>150:23,24<br>163:22 166:5<br>180:7 191:20<br>200:12 204:9<br>208:20 270:18<br>273:13<br><b>mail</b> 58:15<br><b>mailing</b> 15:6<br>93:20 |
|---|---|--|---|

[main - mean]

|  |   |  |   |
|--|---|--|---|
| <b>main</b> 77:7,8<br>84:4 183:9<br>198:8 245:5<br>277:14<br><b>maintain</b> 112:6<br>233:25<br><b>maintaining</b><br>217:5<br><b>maintains</b><br>112:9<br><b>majority</b><br>233:14 254:15<br>255:4<br><b>make</b> 21:17<br>23:6 27:24<br>38:12 40:23<br>71:17 75:7,10<br>75:13,15 76:4<br>86:6,19 87:3<br>92:20 107:8<br>112:6 114:10<br>117:9 142:2<br>156:5 158:3<br>163:25 168:6<br>169:12 172:7<br>189:8 191:6<br>193:10 255:19<br>257:23 261:5<br>263:12 276:4,7<br>286:4 295:23<br>299:14 303:22<br><b>makes</b> 34:11<br>40:21,24<br>148:20 166:18<br>179:25 198:6 | 264:22 301:15<br><b>manner</b> 257:15<br><b>map</b> 13:20<br>58:11,12,12<br>135:12,14<br>158:20,21<br>161:23 200:23<br>218:11 239:22<br>245:4 278:15<br>278:17 279:22<br>293:12,19<br><b>mapping</b> 147:3<br>147:5 211:10<br><b>maps</b> 220:14<br><b>marathon</b> 8:9<br>32:10<br><b>march</b> 151:17<br>184:16 258:10<br>295:10<br><b>mark</b> 89:23,23<br>181:9 182:2<br>298:17,23<br><b>marked</b> 58:21<br>69:15 71:6<br>84:2,12 89:5<br>90:15 91:23<br>93:8 103:13<br>105:18 106:24<br>107:3 109:23<br>110:7 120:5<br>143:21 156:16<br>176:4 177:7<br>182:5 189:5<br>208:5 222:11<br>222:13,23 | 224:14 226:14<br>228:1 252:13<br>262:21 269:17<br><b>marking</b> 88:25<br>181:12<br><b>marlene</b> 9:13<br>31:3,11 34:13<br>34:17,21 35:18<br>40:25 41:1<br>42:17 49:13<br>62:10,13,17<br>63:19 301:14<br>301:17 303:14<br><b>masters</b> 210:13<br><b>mata</b> 206:3,7,9<br>222:6<br><b>matador</b> 3:13<br>17:23 18:18<br>22:20 28:17,19<br>62:1 137:16<br>141:9 143:10<br>159:12,15,16<br>159:22 160:1<br>293:15<br><b>materials</b><br>175:17<br><b>math</b> 292:3<br><b>matt</b> 72:14<br><b>matter</b> 1:5<br>26:20 27:16<br>29:13 31:24<br>34:4 39:17<br>43:7,15 75:12<br>106:24 111:12<br>130:19 131:3,5 | 162:24 179:20<br>191:20<br><b>matters</b> 19:20<br>34:7 44:10<br>56:17 79:23<br>172:25 175:24<br>176:22 177:2<br>216:24<br><b>matthew</b> 6:13<br>15:4 93:18<br><b>maverick</b> 124:1<br>124:6,17<br>125:19,25<br>127:5,13<br>129:13 130:1<br>131:23 132:9<br>133:1,8 183:10<br>196:9 198:20<br>198:20,25<br><b>maverick's</b><br>183:24<br><b>mcclure</b> 43:14<br>45:17 46:10<br>48:10<br><b>mckenzie</b> 3:16<br>3:23<br><b>mcmillian</b><br>70:20<br><b>mdrodriguez</b><br>4:7<br><b>mean</b> 20:12<br>21:20 27:12<br>38:22 82:6<br>112:16 113:24<br>126:12 142:1 |
|--|---|--|---|

[mean - mile]

|                      |                |                    |                        |
|----------------------|----------------|--------------------|------------------------|
| 147:10 171:8         | 79:23,24 80:14 | 193:24 194:21      | 177:11 178:18          |
| 181:1 191:10         | 81:5,6,8 99:23 | 194:23 195:1       | 182:14 185:18          |
| 213:16 216:3         | 100:14,17      | 195:12,16,16       | 186:15 187:25          |
| 232:21 238:3         | 103:4,22       | 195:17 196:6       | 196:11,17              |
| 242:10 260:11        | 104:20 106:7   | 204:8 222:2,25     | 197:7 200:8            |
| 260:17,19,25         | 106:16,19,25   | 224:19 228:18      | 203:13 222:5,8         |
| 265:6,15             | 107:3,16       | 231:10 235:3       | 223:8 228:13           |
| 272:15 275:21        | 108:16 109:18  | 240:10,13          | 233:6 246:24           |
| 275:22 286:15        | 109:23 111:10  | 242:8 243:2        | 255:21 257:1           |
| 290:24               | 113:19,21      | 244:20 253:7       | 257:19 266:19          |
| <b>meaning</b>       | 114:8,25 115:1 | 254:9,15           | 271:14 277:5           |
| 119:11 122:6         | 124:5 125:4,9  | 256:15 257:11      | 280:5 291:18           |
| 150:2 154:4          | 126:8,21       | 258:2,4,20         | <b>mexico</b> 1:1 7:10 |
| 259:12,12            | 127:17,21,25   | 261:17 262:24      | 7:22 99:15             |
| <b>meant</b> 157:19  | 128:1 132:5,8  | 263:3,5,17         | 250:3 251:2,23         |
| 163:20 195:11        | 132:13 138:20  | 264:8,19 265:7     | 270:19 286:13          |
| <b>meat</b> 55:1     | 139:15 140:13  | 265:23 266:8       | <b>michael</b> 4:3,4   |
| <b>meet</b> 43:8     | 141:15 142:9   | 266:16 267:17      | 4:11 5:8 6:19          |
| <b>mention</b> 67:10 | 142:21 143:13  | 268:24 269:12      | 7:13 8:16              |
| 300:18               | 143:21 144:5   | 269:17 270:19      | 31:21 32:3             |
| <b>mentioned</b>     | 151:20 154:5   | 272:1 293:14       | 36:24 42:22            |
| 27:18 141:9          | 155:5 157:11   | <b>mewbourne's</b> | 70:20 73:12            |
| 183:12 198:19        | 163:2 172:3    | 77:22 78:6         | 204:22                 |
| 198:25 246:7         | 173:15 176:12  | 80:22 81:24        | <b>microsoft</b> 211:9 |
| 252:21 300:19        | 176:18,25      | 105:18 108:24      | <b>mid</b> 83:4 87:13  |
| <b>mentioning</b>    | 177:13 178:5,9 | 114:9 117:11       | <b>middle</b> 99:21    |
| 247:11               | 180:6,16,22    | 117:21 119:13      | 144:6 172:2            |
| <b>metric</b> 284:15 | 182:20,24      | 120:8 122:7        | 230:16,17              |
| <b>mewbourne</b>     | 183:14 186:20  | 124:4,11,14        | 261:6 286:17           |
| 3:2 14:10            | 186:23,24      | 133:16,25          | <b>midland</b> 251:15  |
| 15:12 17:13          | 188:7 189:18   | 134:1 136:2        | 251:17,23              |
| 25:3 26:20,24        | 189:18 190:2   | 154:4 157:16       | <b>might've</b> 244:9  |
| 26:24 48:24          | 190:24 191:14  | 163:10 164:24      | <b>mile</b> 101:8,25   |
| 72:23 77:16          | 191:21,25      | 174:7 175:21       | 106:9,10 143:1         |
| 78:1,9,11 79:23      | 192:4,9,18     | 176:5,25 177:8     | 143:1,1,3,7,11         |

[mile - multiple]

|   |   |  |  |
|---|---|--|--|
| 143:16,18,19<br>159:4,4,8<br>191:11,14<br>192:19 194:21<br>224:19 225:11<br>225:20 229:22<br>229:23 245:8<br>274:12 275:16<br>275:19 294:1<br>297:13,18,18<br>297:21,21<br><b>miles</b> 274:15<br><b>million</b> 139:5<br><b>millions</b> 232:23<br><b>mine</b> 19:4<br>79:14 111:25<br>118:3 257:25<br><b>mineral</b> 1:2<br>100:4 105:24<br>173:19<br><b>minimal</b> 182:20<br><b>minor</b> 77:12<br><b>minute</b> 83:15<br>102:15 108:19<br>122:19 127:1<br>137:19 171:21<br>186:11 210:1<br>248:8 261:13<br>269:7 280:14<br><b>minutes</b> 152:8<br>269:21,23<br>280:12 283:10<br><b>mirrors</b> 115:7<br><b>misabeled</b><br>51:14 | <b>missed</b> 198:12<br><b>missing</b> 52:6<br>95:19<br><b>missouri</b><br>306:23<br><b>misspoke</b><br>287:18<br><b>mistakes</b> 85:4<br><b>mitigate</b> 240:16<br><b>mixture</b> 285:13<br><b>modern</b> 81:17<br>142:1<br><b>modrall</b> 4:18<br>8:11 32:9<br>36:18<br><b>moment</b> 22:6<br>32:22 82:16,20<br>95:1 102:16<br>156:6 202:5<br><b>momentarily</b><br>95:21<br><b>moments</b> 113:5<br><b>monday</b> 49:12<br>50:5 76:2,6<br>150:2,8<br><b>money</b> 253:16<br><b>monitor</b> 65:15<br><b>monitoring</b><br>23:24 24:8,13<br>30:23 39:22<br>73:3<br><b>montgomery</b><br>5:17 6:4 18:4<br>61:14 | <b>month</b> 38:7<br>277:14 278:2,8<br>278:20 280:3<br>284:14 286:17<br>295:3<br><b>months</b> 38:8,9<br>112:22,22<br>138:2 151:17<br>194:3 207:12<br>252:15 285:6,7<br>285:8,9,17<br>287:4 291:2<br>304:12<br><b>mor</b> 246:15<br><b>morning</b> 17:12<br>17:19,21,22<br>18:2,3,6,25<br>19:6 31:20<br>32:3,7,8,11<br>36:17,23 37:2<br>37:10 42:21<br>45:10 53:18<br>59:8,9 61:3,8<br>61:12,13,16,22<br>63:11 64:24<br>65:11,19 69:18<br>69:20 72:13<br>73:1,6,10,11<br>76:2,6 83:16<br>87:13 88:20<br>89:17 128:18<br>128:20,21<br>271:11 298:11<br><b>motion</b> 63:10<br>63:13 72:17 | 73:20,21,23<br>74:2,24 75:15<br>75:19 85:14<br>108:25 109:12<br>110:17 112:14<br>120:8 176:5<br>178:18 304:10<br>304:11<br><b>mountain</b> 74:8<br><b>move</b> 30:16<br>31:16 33:16<br>36:8 48:20<br>52:23 56:10<br>61:1 64:16<br>69:10 71:18<br>99:10 108:15<br>111:23 179:2<br>196:5 255:20<br>256:25 276:15<br>276:19<br><b>moves</b> 207:21<br><b>moving</b> 20:23<br>36:4 62:23<br>64:5 72:6<br>104:15 252:25<br><b>mrc</b> 5:2 32:15<br>42:12,19,23<br>43:4 46:2<br>53:20 61:5<br>73:14 105:14<br><b>mtdr</b> 288:10<br><b>mullins</b> 6:14<br><b>multiple</b> 82:17<br>161:24 209:3<br>211:9 250:13 |
|---|---|--|--|

[must've - nine]

|   |  |   |  |
|---|--|---|--|
| <b>must've</b> 110:22<br><b>mute</b> 243:7<br><b>muted</b> 84:3<br>131:16 243:5<br>245:23 280:18<br>280:19 281:1<br><b>muting</b> 245:24<br><b>mutually</b> 33:5  | <b>near</b> 33:7 37:22<br>38:15<br><b>nearburg</b><br>146:22 241:23<br><b>nearby</b> 136:6<br>136:14 137:10<br><b>nearly</b> 138:3<br><b>necessary</b> 29:7<br>39:18 68:4,10<br>171:18<br><b>neck</b> 292:10<br><b>need</b> 29:9 31:13<br>34:15 35:11,12<br>35:20 38:16<br>41:7 46:19<br>49:13,17,24<br>50:1 53:13<br>62:5 64:3<br>67:23 75:2,4<br>94:20 100:13<br>105:12 107:6<br>109:6 115:13<br>122:21 128:22<br>148:19 149:3<br>152:24 153:7<br>153:13,23<br>155:7 169:17<br>171:9,13 193:4<br>193:22 203:8<br>205:1 226:5<br>260:17 262:25<br>272:6 280:11<br>281:25 296:23<br>303:8 304:6,15 | <b>needed</b> 41:17<br>43:5 50:7 51:7<br>52:7 73:23<br>154:23<br><b>needle</b> 38:2<br><b>needs</b> 61:25<br>62:4 105:16<br>169:18 248:9<br><b>negotiate</b> 29:6<br><b>negotiated</b><br>101:9,10,17<br><b>negotiating</b><br>19:11 107:17<br><b>negotiation</b><br>22:23 61:25<br>180:13<br><b>negotiations</b><br>20:3,10 25:23<br>29:19 38:3<br>63:3 64:4<br>77:10,19 80:20<br>80:23 159:17<br>159:20,22<br>161:6 173:14<br>174:6 199:7<br>202:1<br><b>neither</b> 110:3<br>306:10 307:7<br><b>never</b> 75:19<br>79:7 101:23<br>114:25 116:25<br>143:12 153:7<br>170:12 265:13<br>273:17 | <b>new</b> 1:1 7:10,22<br>22:22 23:9<br>25:5 34:3,9<br>44:5 46:11<br>84:17 99:14<br>126:14,16<br>153:12 155:8<br>165:7 166:20<br>209:22 250:3<br>251:2,22<br>270:19 286:13<br><b>newest</b> 153:11<br><b>news</b> 112:10,13<br><b>newspaper</b><br>43:4 45:1,3<br>46:25 47:5,7<br><b>nice</b> 43:13<br>299:8<br><b>nicholas</b> 11:3<br>88:21 89:9<br>92:14 95:6<br>97:7 248:20<br>249:20<br><b>nick</b> 11:6 84:9<br>84:17 94:13,15<br>96:14 268:19<br>269:11<br><b>night</b> 53:11<br>54:21 56:1<br>114:2 123:3<br><b>nine</b> 27:24<br>30:15 31:14<br>43:19 207:12<br>291:1 |
| <b>n</b>  |  |   |  |
| <b>n</b> 3:1 4:1 5:1<br>6:1 7:1 8:1 9:1<br>10:1 11:1 16:1<br>16:2 17:1<br>110:10 172:18<br>172:19 204:21<br>205:9 248:20<br>268:20<br><b>n11h</b> 227:8<br><b>name</b> 19:4<br>45:23,24 46:11<br>47:4 130:20<br>160:12 172:7<br>172:17,18<br>204:19,20,21<br>205:8,9 206:6<br>248:17,19,20<br>268:17 301:21<br>301:22<br><b>named</b> 210:12<br>252:19<br><b>naming</b> 45:14<br>52:16<br><b>narrow</b> 284:3<br><b>natural</b> 1:2 |  |   |  |

[nineteen - numbers]

|  |   |  |  |
|--|---|--|--|
| <p><b>nineteen</b> 74:5</p> <p><b>nm</b> 2:7 3:6,10<br/>3:17,24 4:14,20<br/>5:6,13,19 6:6<br/>6:10,16,22 7:6<br/>7:16 8:7,13,19</p> <p><b>nmac</b> 102:10</p> <p><b>nod</b> 125:11</p> <p><b>nonstandard</b><br/>162:13 163:7<br/>164:3</p> <p><b>normal</b> 280:6</p> <p><b>normalize</b><br/>297:18</p> <p><b>normally</b> 77:2<br/>302:17 303:25</p> <p><b>north</b> 4:13 5:12<br/>6:9,21 7:15<br/>8:18 14:8 69:2<br/>69:2,4 79:24<br/>80:4,8 98:13,19<br/>99:19 102:2,23<br/>107:24 108:4<br/>109:20 111:2,7<br/>118:11,25<br/>119:7,25 123:7<br/>123:15 126:3,7<br/>135:23,25<br/>136:11,22<br/>139:3 161:19<br/>174:11 177:22<br/>182:19 185:15<br/>192:19,20,24<br/>193:9 194:21<br/>201:2,8 202:19</p> | <p>221:17 222:16<br/>222:19 223:4<br/>223:13 226:2<br/>231:23 233:18<br/>244:13,16<br/>274:10,14<br/>282:4</p> <p><b>northeast</b><br/>241:24 275:9,9<br/>275:17 276:1,1</p> <p><b>northern</b> 9:2<br/>73:3</p> <p><b>northwest</b><br/>117:12 223:17</p> <p><b>northwestern</b><br/>234:5</p> <p><b>nos</b> 1:9</p> <p><b>notable</b> 81:2<br/>254:24</p> <p><b>notary</b> 2:8<br/>306:22</p> <p><b>notated</b> 253:21<br/>254:11,18<br/>257:8</p> <p><b>notation</b> 255:18</p> <p><b>note</b> 21:7 22:10<br/>34:3</p> <p><b>noted</b> 202:8<br/>279:19 284:4</p> <p><b>notes</b> 31:4<br/>43:17 49:2<br/>52:6 62:25<br/>86:19 92:20<br/>132:14 156:20<br/>182:1</p> | <p><b>notice</b> 12:6,11<br/>12:16 15:3,5<br/>35:9 37:17<br/>43:8,11,19<br/>44:17,22 45:2<br/>45:18 46:22,23<br/>47:8,9,11,18<br/>49:5 50:8 52:7<br/>52:8 53:2,7,13<br/>53:14 54:3<br/>55:2 58:13,16<br/>62:3,5 63:3<br/>67:15,18 68:17<br/>68:17,19 70:25<br/>93:18,19,20<br/>123:2 124:15<br/>124:21 125:5<br/>125:20 154:22<br/>179:23 198:13<br/>265:2,23 266:8<br/>267:8,17</p> <p><b>noticed</b> 70:23<br/>129:5,7 198:2,3<br/>198:19</p> <p><b>notices</b> 198:23</p> <p><b>noticing</b> 46:24</p> <p><b>notification</b><br/>198:17</p> <p><b>notified</b> 67:19<br/>67:22 70:21,24</p> <p><b>notify</b> 176:18</p> <p><b>notwithstandi...</b><br/>287:24</p> <p><b>november</b><br/>19:18,24 30:9</p> | <p>40:17 41:2,8,18<br/>41:23 258:3</p> <p><b>novo</b> 22:13,16<br/>23:25 25:1<br/>26:8,25 27:5,6<br/>27:12</p> <p><b>number</b> 19:12<br/>19:13 20:19<br/>22:10 23:11,13<br/>28:14,25 32:5<br/>32:20 42:13<br/>57:9,18,25<br/>68:21 71:2,4<br/>77:9,9,11 84:9<br/>88:8 89:1<br/>97:22 123:15<br/>127:10 133:14<br/>137:7 140:12<br/>140:16 142:11<br/>174:10 187:13<br/>187:16 201:22<br/>205:19 209:19<br/>229:5 232:13<br/>237:13 242:2<br/>242:20 246:7<br/>257:10 261:11<br/>263:17,17<br/>273:16 274:11<br/>284:15,18,20<br/>292:16,17<br/>298:13,15<br/>300:14</p> <p><b>numbers</b> 19:7<br/>26:9,14,18<br/>126:11 132:24</p> |
|--|---|--|--|

**[numbers - offsetting]**

|   |  |   |  |
|---|--|---|--|
| 133:1,11<br>136:23 149:19<br>150:7 183:18<br>185:2 251:19<br>274:19 284:22<br>296:23 297:16<br><b>numerous</b><br>134:21<br><b>nw</b> 4:19 8:12   | 47:25 51:4<br>61:17 62:23<br>65:6 72:1<br>74:11 75:7<br>90:17 92:11,18<br>93:23 112:6,9<br>115:15 134:24<br>140:8 144:9<br>166:25 173:2<br>179:9,13 211:4<br>217:5 243:20<br>249:22 264:3<br>266:21 271:2<br>271:20<br><b>objections</b> 24:1<br>53:21 58:23<br>60:22 65:14,22<br>135:5 269:24<br><b>obligations</b><br>100:8<br><b>observation</b><br>246:18<br><b>observed</b><br>246:20<br><b>obtained</b> 253:1<br><b>obvious</b> 180:9<br>298:19<br><b>obviously</b> 54:14<br>76:10 135:17<br>146:13 151:18<br>180:13 191:10<br>193:16 239:11<br>265:17 266:10<br><b>occ</b> 22:16 26:17<br>26:22 | <b>occur</b> 45:3<br>193:10<br><b>occurs</b> 199:6<br><b>ocd</b> 9:14 46:18<br>47:14 70:7<br>76:6 121:17<br>129:17 174:14<br>177:5 200:12<br>300:12 302:6<br><b>ocd's</b> 45:22<br>46:16 190:3<br>193:17<br><b>october</b> 31:5,8<br>31:9,10 40:5,9<br>40:12 41:3,6,18<br>41:20 61:23<br>62:7 63:2,10<br>64:2<br><b>odd</b> 201:6<br><b>offer</b> 302:10<br><b>offers</b> 249:19<br><b>office</b> 31:22<br>36:25 54:22<br>61:4 64:25<br>68:7 73:12<br>100:8 103:5,18<br>104:13,18<br>117:24 119:11<br>119:23 120:16<br>120:21,25<br>121:3,20,25<br>122:10 130:19<br>133:24,25<br>175:13,22,25<br>176:7,25 177:3 | 177:12,21<br>178:2,4,8 180:8<br>180:18,22<br>200:1,8 204:6,6<br><b>officer</b> 110:19<br>112:10 117:6<br>118:4 131:19<br>144:10 146:16<br>148:6 155:25<br>207:20 235:9<br>243:6 248:3<br>296:4 301:8<br>303:25 306:1,2<br><b>offset</b> 14:13,22<br>215:11 221:18<br>223:4,10<br>224:12 226:22<br>227:7,11,17<br>233:2,10,14<br>234:1,6,12<br>236:10,15<br>237:4 238:4,13<br>240:16,20<br>241:2 242:19<br>244:13,15<br>245:17 247:23<br>250:14 252:6<br>274:10,11<br>275:4,5 276:13<br>276:16 277:24<br>278:6 280:1<br>282:15<br><b>offsetting</b><br>142:22,22,23 |
| <b>o</b>  |  |   |  |
| <b>o</b> 16:2 17:1<br>204:21 205:9<br>248:20,21<br>268:20<br><b>o'clock</b> 171:11<br>171:22<br><b>oath</b> 97:15<br>135:8 216:15<br>248:23<br><b>object</b> 75:8<br>85:9,15,21,23<br>86:11 91:9<br>98:2,3 107:8<br>138:20 139:17<br>154:18 179:7<br>194:5 208:12<br>210:18<br><b>objected</b> 87:24<br>144:11 189:1<br><b>objecting</b> 57:4<br>73:25 86:5,15<br>92:5 139:22<br>144:12<br><b>objection</b> 37:17<br>39:8,9,10,17 |  |   |  |

[offshore - okay]

|  |   |   |   |
|--|---|---|---|
| <b>offshore</b> 260:16<br>260:16<br><b>oh</b> 42:18 46:23<br>49:10,18 50:18<br>104:14,24<br>130:10 141:8<br>150:22 162:18<br>165:11 196:11<br>219:12 259:11<br>272:8 279:18<br>287:17 299:1<br>300:20 303:6<br>304:25<br><b>oil</b> 1:3,6 3:2 8:2<br>8:9 9:2 17:3,13<br>32:10 42:8<br>53:20 56:21<br>72:23 73:3<br>104:19 107:16<br>124:1,6,17<br>125:19,25<br>126:8,21 127:5<br>127:13 129:13<br>130:1 138:3<br>182:20 186:20<br>206:17 213:18<br>224:8,24 233:9<br>236:12 237:12<br>238:1 244:22<br>272:21 277:15<br>278:2,3,8,9,20<br>278:24 279:7<br>279:13 280:3<br>281:24 284:14<br>290:19 291:8 | 297:17<br><b>okay</b> 17:6,9<br>18:13,16 19:21<br>20:1 22:3 24:3<br>24:10 27:17<br>29:4,20 31:11<br>31:16 32:16,21<br>34:12,21 40:20<br>41:10,16,25<br>42:6,16,17<br>43:20 44:15,18<br>44:21 45:4<br>46:15,19,21<br>47:11,16,20,23<br>48:5,7,13,14,19<br>49:3,10,18,20<br>50:20 51:3,17<br>52:5,20 53:23<br>54:7,12,16 55:3<br>55:21,23 56:9<br>57:6 59:14,19<br>59:22 60:7,8,15<br>60:20 61:11<br>62:19,24 63:15<br>63:25 64:11,20<br>65:4,9 66:4,11<br>66:14,20,25<br>67:3,12 70:6,17<br>70:19 71:8,14<br>71:16,21,22<br>72:6,16,24 73:9<br>73:15,20 74:21<br>75:21,23 76:17<br>76:19 77:1<br>78:13,18,24 | 79:15 81:25<br>82:23 83:8<br>84:20 85:7<br>86:3,14,19<br>87:18,19,25<br>88:11,15,24<br>89:10,21 90:7<br>90:11,19,22,23<br>91:4,5,11,17<br>92:10 93:17,24<br>94:6,9,15,18<br>95:9,16 96:1<br>97:11,20 98:1,6<br>98:12 99:7<br>100:7,14,19<br>101:25 102:5<br>102:11,18<br>103:16,20<br>104:8,21 105:3<br>105:5 106:14<br>108:6,15<br>115:25 119:10<br>120:19 121:19<br>122:23 124:14<br>127:16 128:6<br>128:12 129:1<br>129:11,21<br>130:12,17<br>131:1,11,13<br>132:17 133:19<br>134:5,8,19,25<br>135:15,23<br>136:2,13<br>137:19,24<br>139:13,20 | 144:13 146:7<br>146:25 147:2,4<br>148:19 150:6<br>150:17 151:5<br>152:16 155:13<br>156:4,18,24<br>159:24 160:11<br>160:17 161:12<br>163:21 164:4<br>164:11,13<br>165:11,12,16<br>166:7,11 167:3<br>167:23,25<br>168:16 169:5,9<br>170:9,19 171:1<br>171:4,10,20<br>179:16 181:3,4<br>181:20 182:2<br>182:10 188:22<br>189:11 190:8<br>190:11 191:13<br>195:14,25<br>196:6 201:9<br>202:4 203:14<br>203:15 204:14<br>204:23 209:25<br>214:23 221:21<br>223:25 226:24<br>230:6 236:3,4<br>240:7 241:19<br>241:22 244:17<br>245:11 246:6,9<br>248:11,22<br>251:21 261:4<br>261:13 262:13 |
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[okay - order]

|   |  |   |  |
|---|--|---|--|
| 262:17 263:16<br>263:25 264:16<br>267:20 268:21<br>269:6 270:4,9<br>271:1,6,12,13<br>272:3 273:9<br>276:9,14,19<br>277:4 280:4,10<br>280:21 281:10<br>281:15 282:3,8<br>282:20,24<br>283:13,24<br>285:10,15,21<br>286:25 287:11<br>287:21 288:2<br>288:14,23<br>289:18,24<br>290:3,6,12<br>291:4,15,22<br>292:5 293:16<br>293:21 294:3<br>294:11,14,15<br>297:5,20,25<br>298:21 299:20<br>299:25 300:6<br>300:23 301:6<br>302:14 303:7<br>303:12,17,18<br>304:13,14,15<br>305:1,8<br><b>old</b> 19:8 30:13<br><b>older</b> 36:6,8<br>77:6<br><b>omit</b> 271:15<br>298:14 | <b>omitted</b> 16:5<br>89:15<br><b>once</b> 48:9 64:1<br>108:4 175:14<br>237:8 301:7<br>303:19<br><b>ones</b> 67:23<br>244:10<br><b>ongoing</b> 33:1<br>125:15,18<br><b>online</b> 257:14<br>289:15 303:2<br>303:20<br><b>onshore</b> 260:17<br><b>open</b> 51:6 83:9<br><b>opened</b> 22:22<br>28:17 265:15<br>265:16<br><b>opening</b> 10:7,8<br>76:20,25 79:20<br><b>operate</b> 100:15<br>192:13 195:24<br>196:1 251:16<br>261:6,9,11<br><b>operated</b> 114:9<br>192:8<br><b>operates</b><br>251:21<br><b>operating</b> 4:2<br>4:16 6:2,12<br>7:18 8:3 32:4<br>34:5 36:19<br>37:13 65:2,3<br>72:15 73:8<br>101:5 103:24 | 107:15 174:11<br>251:8 263:3<br><b>operation</b><br>265:6<br><b>operationally</b><br>251:18 261:1<br><b>operations</b><br>260:12 266:20<br>269:3<br><b>operator</b><br>100:18 138:24<br>165:17 174:16<br>191:1,22<br>195:12 196:1<br>199:19,21<br>240:1 241:8<br>250:21 253:16<br>261:15,18,19<br>263:5,17 264:8<br>264:20 265:12<br>266:20<br><b>operators</b><br>142:23 162:25<br>165:17 195:23<br>261:2 293:14<br>304:7<br><b>operatorship</b><br>26:14 177:4<br>184:20 197:14<br>197:17 251:6<br>251:20 256:21<br>260:6<br><b>operatorships</b><br>251:24 | <b>opinion</b> 39:23<br>137:7 142:25<br>184:4 185:23<br>212:23 213:6<br>229:12,25<br>233:7 261:14<br>261:20<br><b>opinions</b><br>261:20<br><b>opponent</b> 116:6<br><b>opportunity</b><br>21:10 28:18,20<br>47:19 74:19<br>113:3 116:13<br>121:16 156:10<br>160:9 177:5<br>178:14 182:13<br>192:15 198:18<br>206:23 207:1<br>222:1 300:13<br><b>opposed</b> 64:7<br>80:9 154:19<br>225:21 232:9<br>259:15<br><b>opposing</b> 26:20<br><b>opposition</b> 80:7<br>80:21,22<br><b>optimistic</b><br>19:19<br><b>option</b> 159:14<br><b>orange</b> 219:5<br><b>order</b> 23:24<br>27:6 29:22<br>57:10,19 68:7<br>77:4,7 86:9 |
|---|--|---|--|

**[order - packer]**

|   |   |  |  |
|---|---|--|--|
| 106:2,4 111:17<br>112:23 113:17<br>113:17 139:13<br>139:15 141:6<br>151:21 184:4<br>184:22 185:3<br>190:2,3,24<br>197:6 198:22<br>199:11 234:25<br>246:14 264:19<br>264:22 266:1,3<br>304:1<br><b>ordering</b> 21:14<br><b>orders</b> 28:5,6,8<br>35:5,8,8,9<br>70:14 121:6<br>140:16 178:11<br>184:18 199:1<br>219:14 220:3<br><b>orientation</b><br>220:20 231:24<br>238:2<br><b>original</b> 26:13<br>26:20 43:10<br>44:24,24 75:11<br>85:5 101:2<br>122:14 126:20<br>148:2 170:23<br>180:17 183:19<br>207:13 255:18<br><b>originally</b><br>85:20 86:1<br>101:2 183:19<br>195:2 | <b>orth</b> 301:7,11<br><b>orthodox</b> 241:2<br><b>ought</b> 115:9<br><b>outcome</b> 34:7<br>160:24 200:4<br>306:15 307:12<br><b>outland</b> 158:4,6<br>158:12 174:20<br>174:21,21<br>185:6 225:12<br>229:8 239:14<br><b>outline</b> 238:19<br>238:21<br><b>outlined</b> 172:21<br>278:18<br><b>outperforming</b><br>286:10<br><b>output</b> 289:25<br>296:14<br><b>outright</b> 21:13<br><b>outside</b> 27:6,7<br>102:22 165:23<br>165:24 166:12<br>185:14 213:6<br>216:1 217:6<br>224:18 251:22<br>266:8 270:6<br><b>outstanding</b><br>44:10<br><b>oval</b> 274:1<br><b>overall</b> 14:6<br>211:19 222:15<br>222:17 224:3<br>227:12 233:22<br>233:23 236:20 | 237:23 252:18<br>253:14 254:13<br>259:14<br><b>overlap</b> 217:18<br>217:22<br><b>overlapping</b><br>193:19 194:20<br><b>override</b><br>166:24<br><b>overrides</b> 62:4<br><b>overriding</b> 58:9<br>175:7,8 198:4<br><b>overrule</b><br>243:19<br><b>own</b> 80:15<br>100:24 105:22<br>105:23 106:4<br>196:9 241:2<br><b>owner</b> 68:4<br>101:3 106:17<br>126:9 173:19<br>193:3,6 197:21<br>198:17<br><b>owners</b> 12:13<br>50:12 55:16,18<br>67:21 68:1<br>77:23 103:25<br>104:7 105:8<br>123:23,25<br>124:7 125:7,20<br>126:1,4 175:5<br>182:21 190:5<br>191:24 196:16<br>198:4,9,11<br>276:17 | <b>ownership</b> 12:4<br>12:24 58:4<br>67:17 77:12,21<br>80:17 103:22<br>105:7 106:12<br>123:7,24<br>175:20 183:13<br>191:8<br><b>owns</b> 80:12<br>244:18<br><b>oxy</b> 105:14,15<br><b>p</b><br><b>p</b> 3:1,1 4:1,1<br>5:1,1 6:1,1 7:1<br>7:1 8:1,1 9:1,1<br>17:1<br><b>p.a.</b> 6:14 7:4<br><b>p.m.</b> 74:7<br>178:20 248:12<br>305:14<br><b>p.o.</b> 3:5,9 5:5<br>6:15 8:6 53:10<br><b>pa</b> 4:18 8:11<br><b>package</b> 43:10<br>44:25 68:16<br>84:4,12 103:14<br><b>packages</b> 66:9<br>66:24 67:14<br>68:25 69:9<br>179:12<br><b>packer</b> 145:5<br>146:23 148:9<br>148:11,16,17<br>232:16 242:1 |
|---|---|--|--|

**[packet - party]**

|  |  |   |  |
|--|--|---|--|
| <b>packet</b> 124:12<br>124:15 125:6<br>173:9 184:10<br>258:10<br><b>pad</b> 13:18<br>184:14 186:3<br>253:1 259:6<br><b>padilla</b> 7:3,4<br>19:2,3 30:17,18<br>30:22,23 31:1<br><b>pads</b> 184:17<br><b>page</b> 10:2 16:3<br>44:19 46:14<br>66:15 67:24<br>76:8 84:23<br>88:6 90:2<br>123:13,14,23<br>125:24 126:2,6<br>126:17 133:7<br>178:20 187:24<br>209:19,21,24<br>244:10 278:15<br><b>pages</b> 71:23<br>165:20 209:23<br>269:22<br><b>pair</b> 289:17<br><b>paper</b> 43:5<br><b>paperwork</b><br>61:25<br><b>paragraph</b><br>89:8,11 118:21<br>121:11,12<br>167:11 172:21<br>189:25 190:12<br>191:19 205:14 | 249:5 263:20<br>269:1 270:17<br>270:22,23<br>271:3<br><b>paragraphs</b><br>16:4 210:19<br>214:10 270:8<br>270:25 271:16<br>276:21 298:15<br><b>parameters</b><br>226:5<br><b>parent</b> 207:9<br>207:13,17<br>212:17,20<br>225:7,10<br>226:20 227:14<br>228:8 233:11<br>233:18 234:1<br>236:9,18,22<br>240:17,17<br>244:11 277:24<br>285:10,13,17<br>285:19,22<br>286:1,7,21<br>288:6,12<br>289:10,17<br>290:18 291:12<br>291:13<br><b>parents</b> 225:14<br>286:11,23<br>287:2,8,12,22<br>287:25<br><b>park</b> 4:5<br><b>part</b> 20:13<br>22:13,14,15 | 25:11 27:4,5<br>30:7 43:22<br>66:14 74:16<br>102:20 115:18<br>117:11,13<br>118:24 119:7<br>119:18 120:1<br>136:20 142:21<br>152:6,7 153:11<br>153:12 179:19<br>181:10 193:13<br>195:20 232:12<br>258:9,13<br>270:11 296:25<br>300:18<br><b>partake</b> 47:13<br><b>participate</b><br>108:3 111:1<br>127:16 198:1<br>198:21 205:22<br>238:5<br><b>participated</b><br>106:1<br><b>particular</b> 46:6<br>77:20 91:8<br>149:13 226:3<br>279:2 296:2<br><b>particularly</b><br>210:12 216:8<br><b>parties</b> 12:5<br>17:17,17 19:11<br>19:13,16 20:9<br>20:24 21:9,15<br>21:19,23 22:1<br>25:13,19 28:11 | 28:15 29:6,13<br>29:22 30:11<br>31:3 32:1 33:3<br>33:6 36:22<br>38:2 39:11<br>46:25 47:13<br>50:24 58:4,9<br>61:10 64:23<br>70:21 71:1,4<br>73:19 74:20<br>76:3 77:13<br>79:2 87:20,21<br>101:22 105:12<br>121:15 124:10<br>124:17 125:5<br>129:5,12,22<br>171:8,10 175:8<br>175:9 176:23<br>177:18 185:3<br>189:9 196:12<br>197:12,18<br>199:7,8 265:1<br>300:13,24<br>301:8 302:25<br>303:20 304:16<br>306:11,14<br>307:8,11<br><b>partly</b> 102:22<br>102:22<br><b>partners</b> 260:3<br><b>parts</b> 66:9,23<br>74:21 139:5<br><b>party</b> 26:20<br>28:16 30:3<br>34:4 39:2,15 |
|--|--|---|--|

**[party - place]**

|  |   |  |  |
|--|---|--|--|
| 53:8 56:15<br>58:15 78:6<br>82:17 139:7<br>161:6 177:22<br>303:4<br><b>paseo</b> 5:18 6:5<br>7:21<br><b>passed</b> 252:22<br><b>past</b> 21:7 25:14<br>142:11 226:17<br>260:10 303:3<br>303:22<br><b>path</b> 128:1<br><b>paths</b> 186:7<br><b>paula</b> 5:9 61:4<br><b>pay</b> 63:8 64:1<br>193:16 302:10<br><b>pays</b> 302:6,6,18<br><b>pdf</b> 66:9 209:21<br><b>peifer</b> 6:14<br><b>pending</b> 200:4<br>202:13<br><b>pennsylvanian</b><br>57:11,19<br><b>penultimate</b><br>89:12 121:12<br><b>people</b> 67:19,22<br>68:21 72:9<br>140:20 142:16<br>227:15 273:24<br>301:18<br><b>peralta</b> 5:18<br>6:5 7:21<br><b>percent</b> 58:7<br>77:23 99:14 | 103:23 104:6<br>106:23 108:8<br>127:2,10 130:2<br>133:3,10,16<br>183:11,21<br>196:15 198:14<br>286:20 291:8<br>292:1<br><b>percentage</b><br>106:22 123:6<br>129:23,25<br>130:2 132:4,8<br><b>percentages</b><br>127:6<br><b>perfect</b> 49:5<br>62:11,18 63:3<br>65:16,23 91:24<br>271:12<br><b>perfected</b> 43:12<br>62:4<br><b>perfectly</b> 114:3<br>189:22 280:5<br><b>perform</b> 252:20<br>282:6<br><b>performance</b><br>14:14,17<br>224:12 227:23<br>245:14 252:17<br>252:19<br><b>performed</b><br>282:10<br><b>period</b> 47:10<br>50:8 113:21<br>143:7 | <b>permian</b> 5:2<br>8:9 32:10,15<br>34:5 42:20,23<br>53:20 61:5<br>65:2 73:14<br>105:15 282:18<br>293:14<br><b>permission</b><br>193:2<br><b>permits</b> 177:5<br><b>permitted</b><br>185:1<br><b>person</b> 94:21<br>97:4 208:11<br><b>personal</b> 130:7<br><b>perspective</b><br>33:14<br><b>persuasion</b><br>76:24 79:3,5,13<br>79:14<br><b>pertain</b> 47:1<br>91:10 160:24<br>201:7<br><b>pertained</b><br>131:2<br><b>pertaining</b><br>47:21 130:19<br>131:3 162:24<br>163:8<br><b>pertains</b> 53:12<br><b>pertinent</b> 82:7<br>218:17,19<br><b>petroleum</b> 95:7<br>97:24 134:24<br>172:23,24 | 205:14 207:21<br>208:3 210:8<br>215:14 249:5,7<br>249:20 269:5<br><b>ph</b> 3:19,19 6:18<br>19:2 30:18<br>34:5,9,14 53:20<br>57:2 65:20,21<br>70:20 139:3<br>145:5 146:23<br>146:23 147:3<br>148:9,11,16,17<br>232:16 241:23<br>242:2 251:10<br>252:13,25<br>301:7,11,12<br><b>phillips</b> 7:18<br>73:7<br><b>philosophies</b><br>36:6<br><b>phone</b> 176:10<br>200:6 204:6<br><b>physical</b> 128:6<br>186:5 212:7<br><b>pick</b> 171:11<br>221:1 231:9,11<br><b>picking</b> 125:12<br>273:23<br><b>picks</b> 242:6<br><b>pink</b> 269:8,9<br><b>pipeline</b> 136:14<br><b>pit</b> 255:8<br><b>pits</b> 255:5<br><b>place</b> 20:5<br>154:10 272:21 |
|--|---|--|--|

[place - portion]

|  |   |  |  |
|--|---|--|--|
| <p>275:1<br/> <b>placed</b> 70:7<br/> 239:25 240:1<br/> <b>places</b> 190:12<br/> <b>plan</b> 14:11<br/> 37:22 81:23<br/> 137:5 138:24<br/> 139:8 152:20<br/> 173:25 185:5<br/> 186:25 192:16<br/> 215:7 222:5,7<br/> 223:1 228:22<br/> 233:16 234:8<br/> 234:20 258:15<br/> 258:16 264:24<br/> <b>planned</b> 82:4<br/> 218:12<br/> <b>plans</b> 81:4<br/> 136:22 174:7<br/> 190:15 191:23<br/> 192:2 193:5<br/> 196:17 215:15<br/> 216:6 224:6<br/> 236:17<br/> <b>plat</b> 126:17,20<br/> 182:18<br/> <b>plats</b> 12:14<br/> 67:16 68:11,12<br/> <b>play</b> 116:4<br/> 183:24 185:4<br/> 295:19<br/> <b>played</b> 197:13<br/> <b>pleading</b> 44:3<br/> 178:21</p> | <p><b>pleadings</b> 22:10<br/> 28:3<br/> <b>please</b> 67:12<br/> 72:21 76:17,25<br/> 97:19 98:8,16<br/> 99:11 102:16<br/> 103:10 105:4<br/> 107:10 108:20<br/> 135:8 153:17<br/> 156:20 164:9<br/> 167:1 172:6<br/> 173:5 182:10<br/> 187:23 189:12<br/> 204:19 218:1<br/> 235:25 244:2<br/> 248:18,23<br/> 267:23 268:18<br/> 271:21 280:21<br/> 287:6 298:17<br/> 298:23 301:22<br/> 305:4<br/> <b>pleased</b> 296:1<br/> <b>pleasure</b> 76:23<br/> 304:4<br/> <b>pllc</b> 9:4<br/> <b>plot</b> 211:19<br/> 252:16<br/> <b>plotted</b> 279:7<br/> <b>plug</b> 259:2<br/> <b>plus</b> 52:7 68:18<br/> 92:23 143:1<br/> <b>pocket</b> 171:18<br/> <b>point</b> 4:5 21:17<br/> 22:18 29:3,18<br/> 39:3 48:1,17</p> | <p>52:13 63:6<br/> 68:9 75:19<br/> 77:15 83:11<br/> 87:7 97:15<br/> 116:9,11<br/> 122:15 130:16<br/> 131:16 143:6<br/> 143:22 161:9<br/> 163:25 166:4<br/> 167:1 169:11<br/> 181:6 192:21<br/> 195:14,15<br/> 197:8 268:3<br/> 270:18 274:17<br/> 276:6,10,13<br/> 279:10 290:25<br/> 291:6<br/> <b>pointed</b> 154:13<br/> 191:19 209:9<br/> <b>pointing</b> 136:25<br/> 147:25<br/> <b>points</b> 21:2<br/> 26:17 79:23<br/> <b>pool</b> 43:14,20<br/> 43:25 44:5,6<br/> 45:21,24 46:3,5<br/> 46:6,11,13,16<br/> 60:4,12 113:15<br/> 116:25 143:17<br/> 175:7,8 197:2<br/> 245:7<br/> <b>pooled</b> 12:4<br/> 39:16 58:4<br/> 67:23 68:2,15<br/> 69:25 100:4</p> | <p>105:12,16<br/> 106:3 124:7<br/> 127:17 183:13<br/> 190:5 196:13<br/> 196:22<br/> <b>pooling</b> 12:18<br/> 29:8 33:19<br/> 44:2,18 45:14<br/> 46:12,14 50:3<br/> 50:14 53:3<br/> 54:4,14 57:10<br/> 57:19 58:8<br/> 60:1,5,8 62:5<br/> 68:7,24 77:5<br/> 78:20 106:2,4<br/> 121:5 140:13<br/> 140:16 141:6<br/> 164:25 178:11<br/> 184:18,22<br/> 190:2,3 191:9<br/> 197:6,19 198:8<br/> 198:22 199:10<br/> 219:14 220:2<br/> 234:25<br/> <b>poor</b> 138:1<br/> 141:10<br/> <b>porosity</b> 272:19<br/> 273:4 281:21<br/> 283:6<br/> <b>portal</b> 31:12,14<br/> 35:20 182:3<br/> <b>portion</b> 46:23<br/> 158:22 163:6<br/> 229:23,25<br/> 237:21 274:12</p> |
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**[portion - prime]**

|   |  |  |   |
|---|--|--|---|
| <p>278:14 284:9</p> <p><b>portions</b> 60:8</p> <p><b>posed</b> 163:6</p> <p><b>position</b> 24:21<br/>38:14 78:11<br/>112:10 121:15<br/>122:1 124:20<br/>195:10 249:9<br/>300:12</p> <p><b>positions</b><br/>121:16</p> <p><b>possibilities</b><br/>22:23</p> <p><b>possibility</b><br/>37:24</p> <p><b>possible</b> 74:1<br/>286:25 288:25<br/>292:5</p> <p><b>possibly</b> 101:23<br/>255:20</p> <p><b>post</b> 54:21<br/>300:10,14,15<br/>303:21 304:1</p> <p><b>posted</b> 303:19</p> <p><b>potential</b> 39:13<br/>177:4 194:24<br/>235:18 240:18<br/>242:14 276:16</p> <p><b>potentially</b> 33:7<br/>143:10 186:8</p> <p><b>pound</b> 278:1<br/>294:5</p> <p><b>pounds</b> 141:17<br/>247:1,2 278:7<br/>279:1,3,4,7</p> | <p>280:1 284:11<br/>285:2,2 290:8<br/>294:9</p> <p><b>practice</b> 115:22<br/>116:1</p> <p><b>pre</b> 86:9 87:8<br/>114:1 124:12<br/>124:15 125:6<br/>266:1,3</p> <p><b>preapplication</b><br/>125:6</p> <p><b>preclude</b><br/>139:14</p> <p><b>predecessor</b><br/>80:3 174:15<br/>191:5 195:23</p> <p><b>predict</b> 190:8</p> <p><b>prefer</b> 106:9<br/>241:9</p> <p><b>preference</b> 21:4<br/>36:4,8 106:3<br/>288:21</p> <p><b>preferred</b><br/>288:18</p> <p><b>prehearing</b><br/>35:8 74:6 77:3<br/>82:19,22 83:1<br/>83:10 111:17<br/>151:21 167:22<br/>184:10</p> <p><b>prejudice</b> 20:9<br/>21:4 151:10</p> <p><b>preliminary</b><br/>140:1</p> | <p><b>preparation</b><br/>205:23 206:1</p> <p><b>prepare</b> 21:15<br/>175:2 205:22<br/>280:12</p> <p><b>prepared</b> 41:14<br/>102:14 113:5<br/>123:10,18<br/>144:2 145:25<br/>146:11 156:2<br/>173:9 175:14<br/>175:17 211:7<br/>218:6 256:9<br/>257:12 297:5<br/>307:3</p> <p><b>preparing</b><br/>173:13 221:24<br/>221:25 253:6</p> <p><b>present</b> 9:10<br/>17:4 21:11<br/>36:22 62:3<br/>67:7,8 107:7<br/>121:16 231:24<br/>231:25 299:24</p> <p><b>presentation</b><br/>67:7 74:17<br/>138:18 201:15<br/>203:20</p> <p><b>presented</b><br/>124:16 129:4<br/>130:20 154:20<br/>155:18 162:11<br/>200:22 244:6<br/>255:13</p> | <p><b>presenting</b><br/>70:10 76:15<br/>146:4</p> <p><b>preserve</b> 23:25</p> <p><b>president</b><br/>249:10,12,14</p> <p><b>pressure</b><br/>240:19 242:10<br/>242:12,13,14<br/>247:9,16<br/>272:14 276:9</p> <p><b>pretty</b> 71:10,12<br/>99:9 106:11<br/>202:7 270:21<br/>299:18</p> <p><b>prevent</b> 240:14<br/>240:20 241:5<br/>276:14</p> <p><b>preventing</b><br/>52:12</p> <p><b>previous</b> 36:5<br/>300:12</p> <p><b>previously</b><br/>79:24 134:21<br/>172:22 219:13<br/>220:15 221:5<br/>268:25</p> <p><b>price</b> 256:21</p> <p><b>primarily</b><br/>206:20 229:15</p> <p><b>primary</b> 208:6<br/>212:15</p> <p><b>prime</b> 14:4<br/>137:1 138:7<br/>143:24 145:6</p> |
|---|--|--|---|

**[prime - properly]**

|  |   |   |  |
|--|---|---|--|
| <p>147:11,13<br/>219:2 220:13<br/><b>prior</b> 159:15<br/>174:3 176:11<br/>177:18 190:20<br/>301:12 306:5<br/><b>privy</b> 39:13<br/>191:2<br/><b>probably</b> 61:20<br/>79:11 85:13,24<br/>89:7 151:10<br/>155:24 180:11<br/>183:25 184:1<br/>227:15 257:24<br/>265:21 281:7<br/><b>problem</b> 43:4<br/>63:19,19,20<br/>139:1 208:2<br/>229:12 240:9<br/>240:12 270:14<br/><b>problems</b> 30:19<br/>52:24,25<br/>228:22<br/><b>procedurally</b><br/>28:23<br/><b>procedure</b><br/>82:11 280:5<br/>300:3,11<br/><b>proceed</b> 23:2<br/>39:5 40:9 42:9<br/>56:12,23 75:16<br/>76:18 97:19<br/>98:8,24 105:4<br/>107:10 135:8<br/>173:5,25</p> | <p>248:23 268:22<br/>299:7<br/><b>proceeding</b> 2:6<br/>18:9 22:13<br/>24:2 25:11<br/>37:17 57:4<br/>61:17 64:2<br/>65:6 74:8<br/>181:6 305:15<br/>307:4<br/><b>proceedings</b><br/>86:10 109:1<br/>195:21 279:20<br/>306:3,4,6,8<br/>307:6<br/><b>process</b> 21:13<br/>99:24 129:6<br/>255:9<br/><b>produce</b> 229:18<br/>240:11 258:22<br/>300:14 304:1<br/><b>produced</b><br/>114:13,14,15<br/>114:21 187:17<br/>213:25 214:5<br/>236:6 290:15<br/>290:19,21<br/>291:12 292:1<br/><b>producers</b> 8:2<br/>42:8 56:21<br/>244:14 275:4,5<br/>278:16<br/><b>produces</b><br/>223:21</p> | <p><b>producing</b><br/>100:12 146:23<br/>187:14 188:2<br/>218:14,19<br/>233:8 244:13<br/>245:10 246:16<br/>290:13 291:7<br/>296:18,19<br/>297:13<br/><b>production</b><br/>3:13 4:10 14:7<br/>17:24 33:1<br/>53:9 55:12,14<br/>65:2 73:14<br/>81:20 138:2<br/>142:23 149:5<br/>158:11 186:19<br/>206:24 207:3<br/>207:12,13<br/>212:1,1,16,18<br/>213:21,22,22<br/>214:1,14,17,20<br/>222:16 223:22<br/>225:14 228:13<br/>233:20,22<br/>236:18 237:4<br/>237:13,13<br/>245:18 250:14<br/>255:16 257:13<br/>259:3 273:18<br/>277:15,16<br/>278:2,8 279:8<br/>284:14 287:4<br/>287:25 288:4,5<br/>288:6 289:11</p> | <p>289:21 290:14<br/>291:1,5,5<br/>292:13 295:20<br/>297:16,17<br/><b>productive</b><br/>233:25 285:16<br/>285:20,23<br/>286:2,21,23<br/>287:9 290:9<br/>295:24<br/><b>productivity</b><br/>277:20 279:13<br/>284:16,24<br/>285:1<br/><b>progress</b> 19:16<br/>20:2<br/><b>project</b> 77:17<br/><b>prompted</b><br/>155:15 176:9<br/>180:18<br/><b>prompting</b><br/>179:2<br/><b>promptly</b> 70:22<br/>155:10<br/><b>prop</b> 211:25<br/><b>propensity</b><br/>284:10 286:1<br/><b>proper</b> 20:5<br/>79:12 164:10<br/>198:13 213:9<br/>266:17 267:19<br/>270:23<br/><b>properly</b><br/>198:19</p> |
|--|---|---|--|

**[property - pumping]**

|                       |                       |                      |                       |
|-----------------------|-----------------------|----------------------|-----------------------|
| <b>property</b> 193:3 | 225:12 226:13         | 279:12 284:13        | 123:6                 |
| <b>proposal</b> 38:11 | 226:25 228:11         | 285:25 287:3         | <b>provisions</b>     |
| 38:12,17,22           | 228:14 232:1,8        | 287:13,19,22         | 74:18                 |
| 105:18 127:21         | 233:6 234:24          | 288:4,25 290:1       | <b>proximity</b>      |
| 140:21 165:16         | 236:12 239:3          | 290:9 294:9,13       | 185:7 213:25          |
| 241:16                | 241:11 252:8,8        | 296:18,19            | 223:4 224:20          |
| <b>proposals</b>      | 252:9,11              | 297:1                | 225:7,11,20           |
| 133:16 150:14         | 254:10 256:4          | <b>proprietary</b>   | 233:6 234:5,6         |
| 150:15,17,18          | 276:6,10 280:5        | 302:24               | <b>prudent</b> 261:15 |
| 168:24 199:3          | 300:16,17,25          | <b>proration</b>     | 261:17 263:5          |
| 203:13 257:19         | 301:1                 | 141:24 144:1,8       | 263:17 264:8          |
| 288:22                | <b>proposes</b> 62:23 | 149:14               | 264:20 265:12         |
| <b>propose</b> 140:24 | 142:7 234:21          | <b>prosecutor</b>    | 266:20                |
| 140:25 181:12         | 235:4                 | 75:1                 | <b>prudently</b>      |
| 181:14 194:1          | <b>proposing</b>      | <b>protect</b> 23:24 | 192:17                |
| 195:17 240:14         | 136:7,8,10            | 264:24 276:17        | <b>public</b> 2:8     |
| <b>proposed</b> 12:10 | 141:15 155:6          | <b>protection</b>    | 103:2 306:22          |
| 14:10,15 67:15        | 158:23 159:8          | 80:25                | <b>publication</b>    |
| 101:11 124:10         | 167:17 189:19         | <b>provide</b> 21:1  | 12:17 15:7,9          |
| 124:22 130:3          | 191:14 234:8          | 22:24 23:20          | 43:4,8 44:25          |
| 137:16 138:19         | 240:10 247:3,4        | 25:21 26:10          | 45:1 47:9 50:8        |
| 143:13 157:17         | 254:15,23             | 110:16,19            | 53:14 68:21           |
| 157:18 158:3,4        | 291:18                | 111:10 125:5         | 71:6 93:21,22         |
| 158:4,12 167:7        | <b>proppant</b>       | 129:17               | <b>publish</b> 58:16  |
| 173:19 174:20         | 206:23 212:19         | <b>provided</b> 44:6 | <b>published</b> 47:4 |
| 174:23 183:4          | 212:19 213:25         | 44:7 46:9,10         | 47:7 50:9             |
| 185:2,5 187:15        | 223:25 224:2,7        | 47:17 51:2           | 68:23                 |
| 190:4 192:7,18        | 224:22 225:2,8        | 52:19 118:14         | <b>pull</b> 65:25     |
| 196:16 198:1          | 237:24 245:13         | 118:17 124:21        | 122:25 226:10         |
| 199:11 218:12         | 246:16 247:1          | 125:20 205:13        | <b>pulled</b> 237:14  |
| 218:17,18             | 263:22,23             | 219:25 283:15        | <b>pulling</b> 60:6   |
| 219:3,15              | 264:13 265:20         | <b>provides</b> 58:3 | 122:20                |
| 221:11 222:25         | 266:6,15              | 58:10 63:16          | <b>pump</b> 256:22    |
| 223:14,16             | 277:22 278:19         | <b>providing</b>     | <b>pumping</b> 238:1  |
| 224:3,4,18,20         | 278:23 279:1          | 81:14 118:22         | 256:18,18,19          |

[pumps - rate]

|   |   |  |   |
|---|---|--|---|
| <p><b>pumps</b> 294:9<br/> <b>purely</b> 239:14<br/> <b>purple</b> 252:13<br/> <b>purported</b><br/> 85:17 198:7<br/> <b>purporting</b><br/> 111:11<br/> <b>purpose</b> 1:7<br/> 180:3 181:22<br/> 181:25 182:1<br/> 191:9 198:8<br/> 216:4 277:17<br/> <b>purposes</b> 62:5<br/> 68:5<br/> <b>pushing</b> 264:12<br/> <b>put</b> 31:4 35:14<br/> 60:11 70:12,15<br/> 70:16 79:8<br/> 99:17 141:13<br/> 142:1,15 161:6<br/> 172:3,4 180:8<br/> 231:4 232:24<br/> 233:16 255:16<br/> 262:15 264:23<br/> 265:7,17,23<br/> 266:8 271:17<br/> 283:3 284:21<br/> 300:22<br/> <b>putting</b> 97:16<br/> 183:23 212:6<br/> 215:6 243:2<br/> 265:16 289:1</p> | <p><b>q</b></p> <p><b>qualified</b> 97:24<br/> 98:4 134:23<br/> 306:7<br/> <b>quality</b> 295:17<br/> <b>quarter</b> 241:24<br/> 274:3,4 275:9<br/> 275:10,17<br/> <b>question</b> 45:20<br/> 55:7 59:7 88:4<br/> 88:16 109:6<br/> 114:22 116:20<br/> 119:21 127:9,9<br/> 133:21 139:24<br/> 140:1,9 149:17<br/> 151:2,2 153:6<br/> 156:3 160:19<br/> 162:9,15 163:6<br/> 163:11,12,18<br/> 163:20 164:9<br/> 168:22 184:6<br/> 194:10 200:21<br/> 200:23 201:14<br/> 221:22 235:25<br/> 237:16 238:15<br/> 239:5 240:7,24<br/> 241:8,21 242:9<br/> 243:18 247:8<br/> 260:11 267:9<br/> 271:23 287:6<br/> 292:11,12<br/> 302:16<br/> <b>questioning</b><br/> 243:10</p> | <p><b>questions</b> 47:21<br/> 55:4,22 58:18<br/> 59:5 60:17,21<br/> 71:15 72:4<br/> 82:10 103:20<br/> 128:4,10,13,17<br/> 128:19 131:12<br/> 132:16,19,21<br/> 146:15 153:17<br/> 160:9 163:24<br/> 164:12,18<br/> 168:3 170:8<br/> 181:2 194:6<br/> 203:17,18<br/> 211:3 243:12<br/> 243:22 244:1<br/> 248:1 261:25<br/> 263:10 267:23<br/> 271:18 280:12<br/> 294:15,20<br/> 295:23 296:5<br/> <b>quick</b> 23:20<br/> 76:1 200:20<br/> 244:5,22<br/> 263:14 304:7<br/> <b>quicker</b> 256:22<br/> <b>quickly</b> 70:14<br/> 167:2 248:10<br/> 258:7<br/> <b>quite</b> 19:13<br/> 22:10 114:16<br/> 132:25 140:12<br/> 183:20,22<br/> 196:9 201:6,12<br/> 202:17 232:20</p> | <p>234:11 277:18<br/> <b>quote</b> 279:15<br/> 286:11</p>   |
|   |   | <p><b>r</b></p>  | <p><b>r</b> 3:1 4:1 5:1 6:1<br/> 7:1 8:1 9:1<br/> 16:2 17:1 28:7<br/> 77:4,7 94:13,13<br/> 124:1,5,17<br/> 125:18,25<br/> 172:19,19<br/> 248:21 268:20<br/> <b>rack</b> 14:5 81:15<br/> 138:15 154:7<br/> 157:12 211:19<br/> 215:11 221:5<br/> <b>radius</b> 222:19<br/> 225:21,22<br/> 245:8 273:25<br/> <b>raise</b> 96:1<br/> 236:14<br/> <b>raised</b> 262:23<br/> 263:18 267:22<br/> 268:4<br/> <b>raising</b> 230:3<br/> <b>range</b> 28:7<br/> 57:15,23 69:6,8<br/> 165:10 265:11<br/> <b>rankin</b> 5:10 6:7<br/> 53:16,17,18,19<br/> 64:24,25 65:7<br/> <b>rarely</b> 255:9<br/> <b>rate</b> 225:2,14<br/> 236:21 289:11<br/> 289:21</p> |
|   |   |  |   |

[rates - records]

|   |   |   |   |
|---|---|---|---|
| <b>rates</b> 257:13<br><b>rather</b> 21:12<br>22:11,17 209:2<br>276:15<br><b>razzing</b> 305:1<br><b>rcx</b> 10:10 11:2<br><b>rdx</b> 10:10 11:2<br><b>reach</b> 38:15<br>39:5 128:3<br>185:22 186:9<br><b>reached</b> 39:1<br>39:11 41:21<br>228:10<br><b>reaching</b> 38:24<br><b>read</b> 73:21<br>108:24 109:11<br>109:11 111:24<br>116:3 121:8<br>149:18,23<br>194:15 252:18<br>267:6 270:2<br>282:21<br><b>reading</b> 121:11<br>187:19 235:13<br><b>ready</b> 17:7,8<br>37:14,16 42:9<br>56:12,23 75:16<br>235:11 268:4<br><b>real</b> 23:20<br>153:12 251:19<br><b>realistic</b> 215:17<br><b>realize</b> 153:22<br>283:25<br><b>realized</b> 29:16<br>129:7 167:20 | <b>really</b> 22:14<br>24:24 25:14,19<br>28:22 51:14<br>66:22 79:7<br>115:7 121:8<br>141:18 178:25<br>181:3 196:25<br>208:12 212:15<br>212:21,24<br>225:23 228:4<br>231:1,7 233:10<br>233:11 236:21<br>237:20 244:22<br>247:18 248:7<br>248:10 253:22<br>261:4 262:24<br>273:9 278:10<br>298:19<br><b>reason</b> 25:12<br>51:11 80:10<br>113:6 115:14<br>116:8 125:11<br>137:14 138:7<br>152:9,22<br>157:10,11<br>158:19 162:4<br>166:16 179:17<br>179:18 183:9,9<br>209:8 217:14<br>243:15 267:9<br>289:21<br><b>reasonable</b><br>171:19<br><b>reasons</b> 188:18 | <b>reassure</b><br>128:22 129:1<br>160:18 161:13<br><b>rebuttal</b> 74:1,2<br>75:2,2,4,4,8,9<br>84:18,20 85:18<br>85:19 87:15<br>94:16 145:23<br>146:10 148:2<br>166:9 170:10<br>170:13 262:15<br>264:21 265:7<br>265:19 266:18<br>267:10,19,21<br>270:6 271:18<br>278:22 284:2<br>299:4,24 300:5<br><b>rebutting</b><br>262:18 263:13<br><b>recall</b> 43:2,15<br>162:3<br><b>receipts</b> 15:6<br>58:15 93:20<br><b>receive</b> 71:2,5<br>174:7<br><b>received</b> 53:6<br>54:2,19 56:1<br>58:14 59:3<br>76:10 86:25<br>91:2 92:4 93:4<br>94:4 99:21<br>170:1 174:9,13<br>176:10 180:19<br>182:7 203:12<br>243:24 272:1 | <b>recent</b> 22:20<br><b>recently</b> 22:21<br>53:6 54:2 55:8<br>184:18 252:14<br>252:20<br><b>receptacle</b><br>30:12<br><b>reclaim</b> 259:7<br><b>recognize</b><br>296:13<br><b>recollection</b><br>151:16 250:23<br>251:5<br><b>recommended</b><br>30:6<br><b>reconvene</b><br>171:22<br><b>record</b> 30:7<br>57:1 58:19<br>67:25 68:3<br>83:16,17 97:13<br>134:14,15<br>171:25 172:7<br>179:19,24<br>191:20 208:13<br>248:14 258:13<br>268:17 270:3<br>270:21 299:22<br>300:7 306:9<br>307:5<br><b>recorded</b> 306:6<br><b>recording</b><br>306:8 307:4<br><b>records</b> 67:25<br>174:8,13 |
|---|---|---|---|

[records - remember]

|  |   |  |  |
|--|---|--|--|
| 175:14 178:2<br>182:21 183:6<br><b>recourse</b> 194:2<br><b>recovered</b><br>272:22<br><b>recovery</b><br>216:22 224:8<br>225:3 235:23<br>236:7 238:7<br>245:2,9,18<br>246:16 272:15<br>272:20,25,25<br>273:16,18<br>281:20 283:7<br><b>recross</b> 157:5<br>168:8 296:9<br><b>rectangle</b><br>219:22 239:13<br><b>red</b> 136:24<br>219:22 238:19<br>238:21 239:13<br>244:10 252:7<br>252:12 278:18<br><b>redfearn</b> 10:19<br>15:17 95:5,17<br>96:19 120:11<br>120:12,20,23<br>121:3 163:24<br>172:15,18,18<br>173:8 180:21<br>182:13 186:14<br>188:21 194:7<br>204:1 265:5<br><b>redfearn's</b><br>172:21 | <b>redirect</b> 132:18<br>132:22 134:6<br>153:4 164:17<br>164:22 203:25<br>204:3 246:10<br>246:12 262:5<br>294:23 296:7<br><b>reduced</b> 229:18<br>234:1 306:6<br><b>reduces</b> 290:14<br><b>reduction</b><br>236:11<br><b>refer</b> 23:11<br>143:20 148:1<br>214:10 271:21<br>289:14<br><b>reference</b><br>130:18 186:2<br>201:10 254:21<br><b>referenced</b><br>45:21 47:12<br>55:15 183:1<br>184:22 186:10<br>200:25 279:19<br>279:22 286:6<br><b>references</b><br>46:16<br><b>referencing</b><br>297:16<br><b>referred</b> 81:15<br>117:23 227:5<br>232:4 247:16<br>294:12<br><b>referring</b> 88:12<br>117:22 146:21 | 147:15 158:14<br>158:19 161:21<br>161:24 178:24<br>184:3 197:16<br>201:1 202:11<br>227:4 241:25<br>247:19 274:9<br>275:20 283:4<br>292:8 297:13<br><b>refers</b> 78:1<br><b>refile</b> 20:9<br><b>reflect</b> 97:13<br>124:15 126:4<br>158:22 182:22<br>251:7<br><b>reflected</b> 45:2<br>124:5 132:3<br>148:10,16<br>149:9 154:11<br>177:20 178:1<br>183:5 252:5<br><b>reflects</b> 123:24<br>125:25 126:8<br>151:12 183:3<br>251:16 287:8<br><b>reformulate</b><br>194:10<br><b>refutes</b> 284:24<br><b>regarding</b><br>103:21 109:18<br>214:14 263:22<br><b>regardless</b><br>285:23<br><b>regards</b> 247:19<br>271:19 | <b>region</b> 237:8<br>272:11<br><b>regional</b> 218:11<br><b>regulations</b><br>78:5<br><b>relate</b> 229:13<br>246:23<br><b>related</b> 31:24<br>32:23 210:13<br>243:3 306:11<br>307:7<br><b>relation</b> 147:22<br><b>relative</b> 264:25<br>277:12 306:13<br>307:10<br><b>relatively</b> 233:6<br><b>relaxed</b> 217:17<br><b>release</b> 252:24<br><b>releasing</b><br>252:25<br><b>relevant</b> 114:5<br>180:6<br><b>reliable</b> 217:14<br>217:15,22<br><b>relieve</b> 29:14<br><b>rely</b> 115:19<br><b>relying</b> 102:19<br><b>remain</b> 174:16<br><b>remanded</b><br>27:10<br><b>remedy</b> 240:20<br>241:4<br><b>remember</b><br>23:12 47:3<br>49:2 62:25 |
|--|---|--|--|

[remember - result]

|   |   |  |   |
|---|---|--|---|
| 109:15,17<br>110:12 127:22<br>149:20 194:12<br>194:12,17<br>195:3 228:23<br>247:10,11<br>257:23 297:8<br>301:20<br><b>remind</b> 188:23<br><b>remote</b> 2:6<br><b>remove</b> 80:4<br>101:10<br><b>removed</b> 108:5<br><b>rentals</b> 254:25<br><b>repeat</b> 98:16<br>235:25 302:16<br><b>rephrase</b> 140:9<br>287:6<br><b>replacement</b><br>232:18<br><b>reply</b> 180:18<br>200:5<br><b>reported</b> 2:8<br><b>reporter</b> 17:4,5<br>17:8 24:18<br>82:14 99:6<br>110:3 111:24<br>172:8 194:14<br>194:14 204:25<br>248:8 301:24<br>302:2,11,12,21<br>303:16<br><b>reporter's</b><br>301:21 302:18 | <b>reporting</b><br>302:22<br><b>reports</b> 31:12<br><b>represent</b> 133:7<br>255:21<br><b>representation</b><br>85:24 221:4<br>222:17 232:9<br>239:12 282:13<br><b>representative</b><br>236:8,14,18<br>239:16 272:10<br><b>represented</b><br>144:22 147:15<br>255:24 279:24<br>285:19 293:12<br>293:19 294:9<br><b>representing</b><br>32:15 33:24<br>34:1 48:24<br>72:23 196:21<br><b>request</b> 33:10<br>40:23 58:18<br>61:22 119:13<br>119:19,24<br>162:13 163:7<br>188:1 242:24<br>305:2<br><b>requested</b> 44:9<br>172:17<br><b>requesting</b><br>52:18 63:15<br>164:2 177:3<br><b>required</b> 22:2<br>186:5 | <b>rerelease</b><br>252:18<br><b>research</b><br>174:12<br><b>reserve</b> 116:18<br>121:14 156:1<br>177:3 200:11<br>204:7 217:25<br><b>reserving</b> 41:2<br><b>reservoir</b> 91:10<br>155:10 206:2<br>208:3,5,7<br>210:10,12,14<br>211:8,11,14<br>212:4 215:13<br>216:11,25<br>231:12 237:1,8<br>237:17 238:1<br>243:1 246:19<br>263:8,10 269:3<br>272:11,18,20<br>272:21 276:2<br>277:19 281:22<br>282:14 284:20<br>292:7,15<br>295:16,17<br><b>resolve</b> 25:15<br>28:20 30:11<br>33:6 40:7<br><b>resolved</b> 29:12<br>40:8 131:4<br><b>resources</b> 1:2<br>5:15 6:18 7:2<br>19:2 25:18<br>30:18 31:23 | 34:1 37:8 57:2<br>61:15 65:2,13<br>293:14<br><b>respect</b> 34:9<br>277:20 287:18<br>291:13 297:3<br><b>respected</b><br>200:10<br><b>respectfully</b><br>121:13 177:2<br><b>respectively</b><br>218:21 221:20<br><b>respond</b> 111:21<br><b>responded</b><br>109:10 143:13<br><b>response</b> 25:22<br>73:22,23<br>109:12 111:15<br>118:14 120:8<br>125:10 140:4<br>146:12 176:5<br>177:20 178:18<br>200:3 263:12<br>293:2<br><b>responsible</b><br>107:17<br><b>rest</b> 282:1<br>305:12<br><b>resting</b> 171:2<br><b>resubmit</b><br>270:13,24<br>271:15 298:14<br><b>result</b> 136:2<br>228:12 247:5<br>256:4,22 |
|---|---|--|---|

[result - room]

|                        |                |                |                        |
|------------------------|----------------|----------------|------------------------|
| 257:17                 | 39:25 42:6     | 187:17,22      | 290:1,4,9 291:2        |
| <b>resulting</b> 257:2 | 54:13,20 60:16 | 203:22 204:10  | 291:3,8,16             |
| <b>results</b> 141:19  | 65:9 70:23     | 205:3,16,20    | 292:2 294:11           |
| 225:14 237:4           | 71:23 78:25    | 206:11 208:11  | 294:14 296:15          |
| 295:20 296:1           | 79:16 86:18    | 209:22 213:9   | 296:18 298:12          |
| <b>resume</b> 88:21    | 89:22 91:25    | 219:16,23,24   | 299:3 300:7            |
| 88:23 89:13,15         | 92:19 93:1,16  | 220:3 222:10   | 302:5 303:7            |
| 89:17 249:6            | 95:19 96:2     | 223:14 224:11  | 304:22 305:11          |
| 265:11                 | 97:3 100:14    | 224:21 225:4   | 305:13                 |
| <b>retract</b> 133:25  | 110:1 111:3,6  | 225:24 226:6   | <b>rights</b> 80:25    |
| <b>return</b> 68:22    | 111:12,22      | 226:11 227:1,9 | 264:25 276:17          |
| 234:7                  | 117:18 118:8   | 228:18 229:3,6 | <b>risk</b> 138:14     |
| <b>returned</b> 53:8   | 118:11,12      | 229:9,11,19    | 223:3,6,6,22           |
| <b>reverse</b> 246:14  | 119:1,2,7,14   | 230:4,14       | 228:15 234:1           |
| <b>review</b> 21:16    | 120:2,12,15,16 | 231:18 232:9   | 240:14,17              |
| 24:1 89:14             | 120:21 121:7   | 234:9,22 235:6 | <b>riskier</b> 145:15  |
| 125:8,16               | 121:17 122:21  | 235:9 236:10   | <b>road</b> 237:10     |
| 144:18 145:16          | 122:24 123:11  | 239:2,13       | 257:18                 |
| 269:12,22,23           | 124:8,18,19    | 241:21 244:10  | <b>roads</b> 185:12    |
| <b>reviewed</b> 22:15  | 125:21 126:17  | 244:17 245:19  | <b>rock</b> 4:2 32:4   |
| 140:16 155:2           | 126:18 129:14  | 246:17 247:17  | 32:25 33:4,5,9         |
| 168:17 183:6           | 130:22 131:4   | 248:12 249:18  | 35:25                  |
| 269:15                 | 132:15 146:23  | 250:17 251:14  | <b>rock's</b> 33:14    |
| <b>revise</b> 298:16   | 147:9 148:12   | 251:23 253:4   | <b>rodriguez</b> 4:3,4 |
| <b>revised</b> 16:6    | 150:1 155:14   | 253:10 254:1,4 | 32:3,4,17,19,25        |
| 86:15,19,20            | 156:3 157:14   | 254:6 256:6    | 33:13,20 34:2          |
| 103:21 123:5           | 157:18,24      | 257:20,25      | 35:4,23,25             |
| 183:2,17 196:7         | 158:5,8,13     | 269:21 272:10  | 36:13                  |
| 224:6 299:15           | 159:5,9,21     | 281:6,8 282:22 | <b>roehl</b> 4:18 8:11 |
| <b>revising</b> 85:2   | 165:5 167:10   | 283:2,11,23    | <b>role</b> 211:14,14  |
| <b>revoking</b> 200:8  | 167:17 168:14  | 285:17 286:15  | 211:16 212:15          |
| <b>rig</b> 252:24,25   | 168:19,25      | 286:21 287:9   | 213:17 214:2           |
| <b>right</b> 18:22     | 174:25 175:21  | 287:22 288:6   | <b>room</b> 34:21      |
| 22:4 23:15,25          | 177:23 178:6   | 288:11,20      | 99:9 215:14            |
| 29:13,21 39:19         | 181:5 186:4,20 | 289:12,22      | 231:5 265:22           |

|  |  |  |  |
|--|--|--|--|
| 266:4<br><b>rough</b> 106:20<br><b>roughly</b> 108:8<br>220:23 221:1<br>228:4,5 254:14<br>277:25 278:1,6<br>289:8<br><b>royalty</b> 58:9<br>175:7,8 198:4<br><b>rr</b> 252:22<br><b>rule</b> 74:3,4,12<br>74:16,22,23,23<br>102:10,14,15<br>102:19<br><b>ruled</b> 243:16<br><b>rules</b> 74:17<br>86:9 111:16<br>115:12 116:3,4<br>161:10 190:4<br>209:8,11 213:1<br>217:16 239:24<br>240:4,10,13<br><b>ruling</b> 156:5<br><b>run</b> 43:8 47:9<br>50:8 82:9<br>175:14 244:22<br>257:12<br><b>running</b> 82:5<br>255:24 292:14<br><b>runs</b> 46:7<br><b>ryan</b> 7:19 73:6<br>73:7 | <b>s</b><br><b>s</b> 3:1 4:1 5:1 6:1<br>7:1 8:1 9:1<br>12:1 13:1 14:1<br>15:1 16:2,2<br>17:1 204:21,21<br>204:22 205:9,9<br>205:9 248:20<br>268:20,20<br><b>s.k.</b> 5:15 61:14<br>62:1,22<br><b>safe</b> 226:7,10<br>259:3<br><b>safer</b> 278:25<br><b>salgado</b> 10:3,11<br>94:12 96:4<br>97:21 98:12<br>99:13 103:4,21<br>107:12 108:24<br>109:3,7 110:2<br>115:20 116:23<br>117:9 118:7<br>128:13,20<br>130:4 131:21<br>132:24 176:3<br>177:9 180:18<br>182:15 197:4<br><b>salvidrez</b> 9:13<br>31:5,9,13 34:15<br>34:24 35:19<br>41:5 42:14<br>49:15,19 62:11<br>62:14,17<br><b>sand</b> 13:24<br>15:21 46:7,8 | 68:14 70:2<br>81:9,10,13<br>136:18,20,24<br>137:2,12,15,18<br>137:25 138:4,8<br>138:8,12,15,16<br>138:17,23<br>139:2,12,14<br>141:17,23<br>142:5,6 145:9<br>145:10,12<br>148:21,22,24<br>149:1,1,6,10,12<br>152:11,19,20<br>153:1,8 157:14<br>159:1 161:2,5<br>161:11,19<br>167:12,16,21<br>168:12,15<br>218:16 220:8<br>221:9,11,15<br>223:5,11 224:3<br>227:20 230:17<br>231:14 232:14<br>232:17,19<br>233:12,20<br>234:11,21<br>237:24 240:15<br>241:17,18<br>245:10 247:24<br>256:19 275:2,5<br>275:6 276:8<br>278:15 279:21<br>293:17 294:4 | <b>sands</b> 160:22<br>293:20<br><b>sandstone</b><br>13:22 219:1<br>220:18,22,25<br><b>santa</b> 2:7 3:6<br>3:10,17,24 4:14<br>5:6,13,19 6:6<br>6:10,22 7:6,10<br>7:16,22 8:7,19<br>31:21 36:24<br>61:4 64:25<br>73:12<br><b>satisfy</b> 44:21<br><b>saturation</b><br>272:19 283:7<br><b>savage</b> 3:14,21<br>17:22,23 22:7,8<br>23:8,12,19<br>24:23 26:10,11<br>26:12 27:18,21<br>28:1,10,14 29:5<br>29:11 65:18,19<br>65:20<br><b>saw</b> 75:19<br>87:14 111:23<br>114:1,25<br>125:11,18<br>138:14 146:11<br>150:17 153:7,9<br>153:23 157:18<br>177:7 228:22<br>229:18 262:25<br>301:6 |
|--|--|--|--|

[saying - section]

|  |  |   |   |
|--|--|---|---|
| <p><b>saying</b> 20:20<br/> 36:7 38:1 54:9<br/> 79:12 114:7,9<br/> 147:21,22,24<br/> 158:24 183:15<br/> 197:20 214:13<br/> 232:6 240:3<br/> 260:20 278:11<br/> 302:25<br/> <b>says</b> 74:7,13<br/> 89:12 93:18<br/> 102:21 118:10<br/> 118:23 119:1<br/> 119:11 121:13<br/> 121:18 126:21<br/> 162:19 182:19<br/> 195:17 230:16<br/> 233:5 239:12<br/> 294:4<br/> <b>scales</b> 180:9<br/> <b>scenario</b> 202:16<br/> 203:6,8<br/> <b>scenarios</b> 285:3<br/> <b>schedule</b><br/> 199:12<br/> <b>scheduled</b> 74:8<br/> 195:2 199:15<br/> <b>scheduling</b> 35:5<br/> 35:7,9 40:16<br/> <b>schill</b> 3:15,22<br/> 65:20<br/> <b>scope</b> 165:23<br/> 165:24 166:13<br/> 212:23 213:13<br/> 214:13 217:6</p> | <p>217:19 224:18<br/> 225:6,24<br/> <b>scott</b> 118:8<br/> 120:16 133:24<br/> 176:7,11,17<br/> 177:16,19<br/> 200:1,10 201:1<br/> 201:10<br/> <b>screen</b> 252:3<br/> 257:25 268:7,9<br/> <b>scroll</b> 187:23<br/> <b>sec</b> 51:11<br/> <b>second</b> 13:23<br/> 14:13 43:17,21<br/> 46:8 68:16<br/> 81:8,10,13<br/> 84:21 118:22<br/> 122:17 125:24<br/> 133:6,20<br/> 134:17 135:3<br/> 136:18,20,24<br/> 137:2,6,15,18<br/> 137:25 138:4,8<br/> 138:8,12,15,15<br/> 138:17 139:14<br/> 141:5,22 142:5<br/> 142:6 143:25<br/> 144:5,22 145:9<br/> 145:24 148:21<br/> 148:22 149:1<br/> 149:11 150:12<br/> 152:20 153:14<br/> 154:6,7,7<br/> 155:11,12<br/> 157:13,22</p> | <p>158:23 159:1<br/> 167:7,12,16,21<br/> 168:11,15,18<br/> 168:23,25<br/> 169:3,5,6<br/> 187:24 218:16<br/> 218:20 220:8<br/> 220:22,25<br/> 221:11,15,19<br/> 221:20 223:5<br/> 223:11 224:12<br/> 227:20 228:23<br/> 229:13 230:7<br/> 230:13,18<br/> 231:14 232:7<br/> 232:14,19<br/> 233:3,12,20<br/> 234:4,6,19<br/> 235:5 240:15<br/> 241:10,17,18<br/> 241:19,23<br/> 245:9 247:14<br/> 247:24 253:24<br/> 254:21 258:7<br/> 259:15 264:1<br/> 269:12 274:23<br/> 275:2,4,6 276:7<br/> 276:8 278:15<br/> 279:21 288:17<br/> 289:1 291:6<br/> 293:17,19<br/> <b>secondly</b><br/> 183:12 194:20<br/> <b>section</b> 14:3,12<br/> 58:12 69:2,3</p> | <p>78:6 80:13,14<br/> 98:12,17<br/> 100:19,24,25<br/> 101:7,7,11,16<br/> 101:17,18,22<br/> 102:1,2 106:11<br/> 108:8,11<br/> 109:19 114:8<br/> 114:10 117:1<br/> 117:13,15<br/> 126:9,17,20,23<br/> 128:3 131:3<br/> 135:12,22<br/> 136:3,12,12,18<br/> 136:25 137:16<br/> 137:19,22<br/> 138:6,11 139:3<br/> 143:24 145:1,6<br/> 145:11,18<br/> 146:22 147:2,5<br/> 147:9,11,13<br/> 148:2,3 150:25<br/> 158:2,18,21<br/> 159:13,15<br/> 160:2,3 161:15<br/> 161:20 168:13<br/> 174:16,24,25<br/> 176:19 178:5,6<br/> 182:18,25<br/> 188:3 190:19<br/> 190:20 191:1,6<br/> 191:8,11 192:2<br/> 192:8,19<br/> 193:13,25,25<br/> 194:22,22</p> |
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[section - september]

|   |   |   |   |
|---|---|---|---|
| 195:5,18 201:7<br>214:19 219:2<br>219:11 220:13<br>220:20 223:1<br>224:20 226:23<br>228:12 229:19<br>230:13 231:5<br>231:22 237:21<br>238:19 239:10<br>239:18,18<br>241:24 242:11<br>242:15 274:4<br>274:13,13,15<br>275:14,17,18<br>279:21 294:1<br><b>sectional</b><br>239:15<br><b>sections</b> 57:14<br>57:22 60:4<br>69:5,7 80:4,15<br>81:16 128:2<br>143:8 144:19<br>144:23,23,25<br>148:1 157:23<br>158:1,15 163:3<br>173:19 186:2<br>239:19<br><b>secure</b> 43:19<br><b>see</b> 22:25 29:20<br>37:10 42:16,18<br>43:25 44:15,15<br>44:19 45:15<br>46:11,20 48:4,8<br>49:23 51:1,13<br>51:25 53:15,16 | 58:6 64:21<br>66:14,15 67:1<br>71:20 82:19<br>83:10 84:6,13<br>84:19 89:18<br>90:3,5 95:14<br>104:15 114:17<br>114:17 115:10<br>120:6,9,10<br>121:9 123:8,16<br>124:2,4 126:2<br>131:11 141:8<br>144:24 145:8<br>147:19 149:16<br>149:25 150:5<br>150:15,19<br>155:7 165:4<br>166:19 169:13<br>169:13 186:16<br>195:19 197:13<br>204:25 209:24<br>221:16 223:12<br>227:12 229:15<br>230:7,18,20<br>231:19 236:11<br>239:20 240:13<br>241:16 245:4<br>252:2,9,12,16<br>253:21 254:1,1<br>255:2,11,17,21<br>256:14 257:1<br>258:9 266:2,3<br>269:10,23<br>286:15,16<br>287:12 290:7 | 291:24 294:14<br>299:18<br><b>seeing</b> 118:3<br>125:5 163:1<br>220:6 289:11<br><b>seek</b> 23:25<br><b>seeking</b> 141:4<br>192:11,14<br>197:2<br><b>seeks</b> 57:10,18<br>80:5 187:13<br><b>seem</b> 135:2<br>143:15 165:10<br>245:25 301:9<br><b>seems</b> 23:13<br>45:19 138:9<br>142:18 159:14<br>169:4 194:24<br>196:18 225:18<br>232:12 233:13<br>239:1,1 267:10<br><b>seen</b> 120:19<br>155:3 165:18<br>209:1 254:12<br>254:16 255:4<br>286:12 295:20<br>296:1<br><b>segregation</b><br>153:13<br><b>selected</b> 245:4<br><b>self</b> 84:8 134:20<br>269:11,14<br>276:21<br><b>send</b> 129:20<br>176:9 303:14 | <b>sending</b> 176:12<br>177:18<br><b>sends</b> 165:17<br><b>sense</b> 34:11<br>40:21,23,24<br>114:10 163:5<br>166:19 187:1,7<br>189:23 191:7<br>277:12 299:15<br>301:16<br><b>sent</b> 24:25<br>68:17 76:2<br>122:4,5 150:13<br>151:15 176:7<br>180:17,22<br><b>sentence</b> 89:13<br>118:22 121:12<br>121:13 187:16<br><b>separate</b> 60:10<br>69:22 70:3,4<br><b>separates</b><br>154:10<br><b>separation</b><br>148:25 149:2<br>149:11 152:19<br>152:23 153:23<br>228:6 247:23<br><b>september</b> 2:3<br>42:18 43:6<br>47:6 49:1<br>79:25 83:18<br>87:12 88:13<br>90:7 147:6<br>151:22 154:20<br>172:1 237:14 |
|---|---|---|---|

**[serious - silent]**

|  |  |  |   |
|--|--|--|---|
| <b>serious</b> 30:10<br><b>served</b> 76:9<br><b>service</b> 76:8<br><b>services</b> 302:22<br><b>set</b> 14:8 30:2,8<br>33:10 39:17<br>41:5 63:2 77:4<br>77:8 85:20<br>100:25 208:24<br>222:16 231:10<br>238:9 267:7<br>279:11 288:7<br><b>sets</b> 133:9<br><b>setting</b> 19:17<br>41:3<br><b>seven</b> 271:4<br>302:2 303:10<br>303:14,15<br><b>seventy</b> 251:12<br><b>several</b> 18:12<br>33:2 77:17<br>137:3 279:19<br><b>shaheen</b> 5:16<br>6:3 18:3,4<br>23:22,23 24:4,7<br>24:12 61:12,14<br>62:20,22<br><b>shakes</b> 199:16<br><b>shale</b> 57:11,19<br><b>shanor</b> 3:4 8:5<br>56:20<br><b>shape</b> 267:18<br><b>share</b> 198:9<br><b>shared</b> 302:24 | <b>sharon</b> 5:16 6:3<br>18:4 61:20<br><b>sharoon</b> 61:13<br><b>she'll</b> 164:1<br><b>sheet</b> 42:12<br>83:23<br><b>sheets</b> 175:14<br><b>sheila</b> 9:14<br><b>short</b> 176:21<br>204:2<br><b>shortly</b> 99:23<br>174:2 190:23<br><b>should've</b> 85:20<br>90:4 114:14<br>265:17<br><b>show</b> 26:12<br>55:2 81:23<br>103:22 123:20<br>130:1,2 144:4<br>145:1,11,23<br>152:18,22<br>153:23 165:9<br>174:18 176:3<br>184:13 217:13<br>222:10 239:10<br>242:18 250:6<br>252:1 253:10<br>256:8,20 258:6<br>273:13 276:23<br>281:24<br><b>showed</b> 88:25<br>176:3 178:15<br>239:17 277:23<br><b>showing</b> 68:12<br>68:17 118:2 | 120:5 122:13<br>123:2 143:25<br>149:12 155:18<br>155:20 184:1<br>184:14 186:14<br>218:8,14,23,24<br>218:25 220:11<br>220:15 221:2<br>221:21 222:21<br>224:11,16,21<br>225:1,5 226:12<br>226:13,18<br>227:3,22,24<br>228:3,7 230:10<br>232:3 238:18<br>252:6,17,19<br>254:2 257:24<br>258:1,8 270:18<br>277:8 284:9,11<br>289:8,19,19<br><b>shown</b> 58:4<br>151:13 152:11<br>219:3 220:14<br>221:2 281:12<br>281:17 293:2<br>293:25<br><b>shows</b> 21:22<br>67:25 68:15<br>71:1 144:6<br>147:8 148:24<br>149:3,15<br>151:10 152:10<br>153:12 158:20<br>174:19,23<br>230:17 250:8 | 253:12 254:7<br>256:2 268:24<br>275:14 277:10<br>277:11 284:24<br>288:3<br><b>side</b> 46:16<br>129:2 147:19<br>162:23 203:8<br>203:19 215:8,8<br>227:7 244:10<br>253:21 255:14<br>255:17,18,21<br>256:14,17,25<br>263:4 278:5<br>285:5 295:2<br><b>sides</b> 256:14<br><b>sign</b> 109:22<br>110:8 197:18<br><b>signals</b> 187:6<br><b>signatory</b> 113:4<br><b>signature</b> 68:3<br>68:8 306:20<br>307:17<br><b>signed</b> 106:6<br>111:10,11<br>196:13,24<br>198:25 199:4<br><b>significant</b><br>19:16 133:11<br><b>significantly</b><br>25:15<br><b>signing</b> 111:1<br>197:5<br><b>silent</b> 99:9 |
|--|--|--|---|

[similar - smaller]

|  |  |  |  |
|--|--|--|--|
| <b>similar</b> 103:17<br>141:14 207:11<br>226:16 256:15<br>278:7<br><b>simple</b> 51:11<br>271:2 277:20<br><b>simply</b> 23:24<br>65:15 101:13<br>114:10 192:18<br><b>simultaneously</b><br>295:11<br><b>singling</b> 304:24<br><b>sir</b> 32:14 36:3<br>42:3 45:8<br>47:22 48:18<br>49:4 51:21<br>54:11 56:5,8,12<br>57:5 58:25<br>64:19 67:2<br>72:25 73:5<br>83:6,13 87:6<br>90:10 95:25<br>98:20 100:1,6<br>100:17 101:1<br>102:9,12 103:9<br>103:15 104:1<br>104:14,25<br>105:10 106:1,4<br>106:13,18<br>107:19,22<br>109:4,8,10,14<br>109:16,21<br>110:4,11,15<br>111:19 116:1<br>120:4 121:8,23 | 122:8 125:3,13<br>125:15,22<br>126:11 127:12<br>127:15 128:25<br>129:9,10,15<br>130:7,11,21,25<br>131:6,9,17<br>132:12 133:18<br>135:15,25<br>136:5,16,19<br>137:9,14<br>138:22 140:14<br>140:19,23<br>141:3,7 142:13<br>142:24 144:3,6<br>144:20 146:24<br>147:7,10,16<br>149:10 150:13<br>151:6 156:20<br>157:15,25<br>159:10 160:8<br>160:10,16<br>165:19 167:9<br>169:8 173:3<br>190:22 196:18<br>199:24 204:15<br>204:20 205:24<br>206:10,15,25<br>207:5,18 210:9<br>210:16 211:16<br>212:11 219:9<br>219:12 221:23<br>222:3,9 225:18<br>225:19 228:16<br>228:19,24 | 229:4,7 230:5<br>230:15,20,24<br>232:5,20 235:7<br>235:17 238:8<br>238:22,23<br>239:23 241:6<br>241:12 242:4<br>243:25 244:4,7<br>244:25 245:21<br>245:23 246:4,8<br>247:4,7 248:19<br>249:8 250:5,16<br>250:20,24<br>251:13,24,25<br>252:4 253:5,9<br>253:14 254:5<br>256:7 258:5,12<br>258:19 259:18<br>260:8,11,18<br>261:8,8,10,16<br>268:19 271:3<br>273:6,20 274:6<br>274:18,24<br>276:24 278:12<br>278:14 280:16<br>281:9,14 284:7<br>287:10,23<br>288:8,19 292:8<br>292:23 293:5,7<br>293:24 294:6,8<br>294:17 295:1<br>295:15,18<br>296:2 297:15<br>297:22 298:20 | <b>sisk</b> 4:18 8:11<br><b>sit</b> 225:24<br><b>sitting</b> 111:14<br><b>situation</b> 45:21<br>176:22 243:18<br><b>situations</b> 77:5<br>197:5<br><b>six</b> 75:1 151:17<br>165:20 170:8<br>207:12 215:23<br>249:16<br><b>size</b> 211:25<br>273:21 277:15<br><b>skills</b> 306:10<br>307:6<br><b>skinniest</b> 159:2<br><b>skipping</b> 42:13<br><b>slides</b> 212:7<br><b>slo</b> 121:14<br>176:17<br><b>slow</b> 66:12<br>71:19 107:9<br>122:25 142:14<br>162:22<br><b>small</b> 67:21<br>108:7 121:8<br>127:7 129:22<br>196:9 198:15<br>198:15 242:13<br>242:21 247:9<br>247:16,19<br>272:23 274:2<br>276:2<br><b>smaller</b> 28:21<br>225:21 |
|--|--|--|--|

[smart - spent]

|                        |                        |                        |                         |
|------------------------|------------------------|------------------------|-------------------------|
| <b>smart</b> 216:8     | 280:16 285:24          | <b>southeast</b> 274:3 | 109:3 120:3             |
| <b>smattering</b>      | 292:9 298:5            | 274:3                  | 121:23 190:10           |
| 236:16                 | 299:25                 | <b>southernmost</b>    | 214:8 241:6             |
| <b>software</b> 147:3  | <b>sort</b> 40:18      | 274:12                 | 247:18,20               |
| 147:5 211:10           | 155:22 205:13          | <b>southwest</b>       | 250:23 260:25           |
| 211:11                 | 225:2 253:11           | 220:19 226:23          | 261:19 286:14           |
| <b>softwares</b> 211:9 | 255:12                 | 226:24                 | 299:11                  |
| <b>sole</b> 100:14     | <b>sorted</b> 34:8     | <b>space</b> 57:13     | <b>speaking</b> 26:6    |
| <b>solid</b> 154:18    | <b>sought</b> 25:4     | 214:4 228:4            | 62:16 187:4             |
| <b>solution</b> 25:16  | <b>sound</b> 111:23    | 240:15 277:21          | 193:6 202:21            |
| 29:13                  | 163:19                 | <b>spaced</b> 278:5    | 202:22 291:9            |
| <b>somebody</b>        | <b>sounded</b> 41:13   | 291:11,13              | <b>specific</b> 23:9,17 |
| 302:9                  | 147:23                 | <b>spacing</b> 14:17   | 52:16 86:4              |
| <b>soon</b> 76:1       | <b>sounds</b> 35:11    | 57:13,16,20,24         | 108:1 115:12            |
| 181:13 271:9           | 35:16 41:8,11          | 60:2,11 69:23          | 187:8,8 202:20          |
| <b>sorry</b> 46:2 57:1 | 41:12,17,24            | 69:24 70:3,5           | 211:15 260:14           |
| 57:21 84:3             | 62:11,18 78:25         | 81:6,7,18              | 286:13,22               |
| 93:14 95:10,22         | 91:18 171:19           | 102:21,25              | 287:10,23               |
| 98:15 104:1,14         | 301:20                 | 162:13 163:7           | 290:16 297:3            |
| 104:24 109:24          | <b>sour</b> 139:8      | 164:3 175:17           | <b>specifically</b>     |
| 110:9 112:1            | 161:7 258:17           | 175:19 185:14          | 145:4 182:25            |
| 126:13 130:10          | <b>south</b> 7:5 57:15 | 187:15 188:12          | 195:22 206:18           |
| 130:10 136:10          | 57:23 69:1,2,3         | 192:7 200:24           | 208:21 260:13           |
| 145:2 150:22           | 69:5,6,7 101:7         | 212:2 213:24           | <b>specifics</b> 253:19 |
| 157:19 159:19          | 101:18 135:21          | 214:21 221:9           | 260:18                  |
| 160:13 162:16          | 135:24 136:1,3         | 226:18,20,25           | <b>speculative</b>      |
| 168:14 181:16          | 136:11 138:5           | 227:11,22              | 274:17 276:10           |
| 187:12 191:17          | 141:23 143:11          | 228:8,11               | 276:13                  |
| 206:6 209:22           | 190:20 191:1,8         | 233:11,15              | <b>speed</b> 121:21     |
| 210:23 218:4           | 218:13 226:3           | 236:15 237:4           | <b>spell</b> 172:7      |
| 219:12 235:24          | 231:23 244:16          | 238:13 240:1           | 204:19 248:17           |
| 236:3 240:8            | 251:24 274:2,2         | 265:20,20              | 268:17                  |
| 253:25 257:3           | 274:13,15              | 289:9 290:13           | <b>spelled</b> 172:18   |
| 257:25 259:9           | 294:1                  | <b>speak</b> 38:2      | <b>spent</b> 253:17     |
| 260:18 279:18          |                        | 40:19 103:11           |                         |

[sperling - stated]

|   |  |   |  |
|---|--|---|--|
| <p><b>sperling</b> 4:18<br/>8:11 32:9<br/>36:18<br/><b>split</b> 66:24<br/>194:15<br/><b>spoke</b> 61:21<br/>200:6 273:8<br/><b>spoken</b> 119:8<br/>189:17<br/><b>spotfire</b> 211:10<br/><b>spread</b> 101:13<br/><b>spreadsheet</b><br/>12:16 50:11<br/>51:6 52:1 53:2<br/>53:7 54:3,23<br/>55:9 68:20<br/>71:1<br/><b>spring</b> 13:22,23<br/>14:13 15:21<br/>46:7,8 68:13,14<br/>69:25 70:2<br/>81:9,11,13<br/>136:18,20,24<br/>137:6,8,13<br/>138:20,21,23<br/>139:2,12,14,16<br/>140:22 141:2,5<br/>141:23 142:12<br/>143:25,25<br/>144:5,22<br/>145:24,25<br/>148:24 149:1,6<br/>149:10 150:11<br/>150:12 151:16<br/>152:11,19,20</p> | <p>153:1 154:5,6<br/>155:6 157:13<br/>158:23 160:21<br/>161:2,11,18<br/>162:5 167:6,7<br/>167:12 168:12<br/>168:15,18,24<br/>169:6 187:4,10<br/>187:15,17,21<br/>188:2,6 189:25<br/>200:2 218:16<br/>219:1 220:8,18<br/>220:22,25<br/>221:9,11<br/>224:12 228:23<br/>229:13 230:14<br/>230:18 232:7<br/>233:4 234:19<br/>234:20,21<br/>235:6 241:10<br/>241:11,18,20<br/>241:23 245:10<br/>247:14,24<br/>254:22 258:17<br/>259:15,17<br/>274:23 275:2,5<br/>275:6 278:15<br/>288:17 289:2<br/>293:19<br/><b>springs</b> 293:17<br/><b>spunning</b><br/>252:25<br/><b>spurred</b> 142:16<br/>142:18</p> | <p><b>spurts</b> 20:17<br/><b>squared</b> 279:15<br/><b>st</b> 7:5<br/><b>stage</b> 238:1,2<br/><b>staked</b> 184:15<br/><b>stakes</b> 219:4<br/>278:17<br/><b>stand</b> 39:6<br/>252:23 284:23<br/><b>standalone</b><br/>286:6 288:12<br/><b>standard</b> 57:12<br/>57:13,20 58:3<br/>58:10 209:10<br/><b>standpoint</b><br/>224:24 225:7<br/>227:13 228:8<br/>231:2,4 233:23<br/>272:13<br/><b>stands</b> 266:21<br/><b>staring</b> 274:7<br/><b>start</b> 17:7 29:3<br/>61:19 67:4<br/>72:11 90:12<br/>99:17 189:16<br/>236:21 276:24<br/>277:1,4<br/><b>started</b> 142:9<br/>142:14 174:5,7<br/>201:25<br/><b>starting</b> 192:19<br/>221:8 267:22<br/>295:2<br/><b>state</b> 1:1 34:25<br/>35:21 57:17,25</p> | <p>68:6 76:9 78:7<br/>99:14,20 100:8<br/>102:22,25<br/>103:5,17 104:4<br/>104:13,18<br/>107:2 108:4<br/>117:23 119:11<br/>119:22 120:3<br/>120:16,20,24<br/>121:3,19,23,25<br/>122:10 130:19<br/>136:23 145:5<br/>146:23 148:11<br/>148:16,17<br/>167:12 172:6<br/>174:21,22<br/>175:13,22,25<br/>176:7,25 177:3<br/>177:12,21<br/>178:1,4,8 180:8<br/>180:18,22<br/>186:4 190:11<br/>190:15 191:22<br/>199:25 200:8<br/>204:5,6,18<br/>229:6,6,9 242:2<br/>248:17 255:7,8<br/>263:3 268:17<br/>282:13 306:23<br/><b>stated</b> 34:2<br/>106:8 111:17<br/>113:16 114:18<br/>129:3 131:8<br/>160:20,21<br/>162:5,6 183:19</p> |
|---|--|---|--|

**[stated - subsequently]**

|   |   |   |   |
|---|---|---|---|
| 243:10 244:9<br>273:14,15<br>277:5 282:12<br>282:14 286:22<br><b>statement</b> 10:7<br>10:8 76:25<br>77:3 79:20<br>82:19,22 83:10<br>84:8 87:15<br>105:25 119:20<br>133:17 134:20<br>140:18 182:15<br>197:15 198:10<br>200:5 206:5,14<br>216:14,16<br>269:11 276:21<br>283:3,11<br>289:14 290:23<br><b>statements</b> 74:6<br>76:20 87:8<br>114:2<br><b>states</b> 97:22<br>187:24<br><b>statewide</b> 190:4<br>225:21 239:24<br>240:4<br><b>stating</b> 77:4<br>200:3<br><b>status</b> 18:7<br>19:17,24 21:11<br>21:15,20,22<br>22:12 24:23<br>25:20,22 30:6,8<br>30:9 31:12<br>32:24,24 33:10 | 34:10,22 35:1<br>35:13,21 37:12<br>37:18 40:5<br>41:3,6,18,20<br>144:22 184:25<br><b>stay</b> 20:5 202:7<br>284:17<br><b>stayed</b> 25:8<br>27:20,22<br><b>staying</b> 194:4<br><b>step</b> 90:20<br>144:15 226:2<br>227:17<br><b>steptoe</b> 9:4,7<br>73:2<br><b>stimulation</b><br>246:21 256:17<br><b>stipulate</b> 90:13<br>91:15<br><b>stipulated</b><br>87:23 92:15<br><b>stipulating</b> 86:5<br>91:19<br><b>stipulation</b><br>86:21 90:25<br>92:2 93:2 94:2<br><b>stipulations</b><br>87:21<br><b>stop</b> 48:20<br>135:3 253:24<br>270:1<br><b>storm</b> 20:15<br><b>story</b> 176:21<br><b>stowers</b> 11:6<br>84:9,17 85:17 | 87:16 94:13,16<br>96:14 262:21<br>263:1,9,21<br>264:7 267:5<br>268:20,23<br>269:11 272:6<br>294:25 296:11<br>298:6,17<br><b>straight</b> 87:17<br><b>streamline</b><br>215:22,22<br><b>street</b> 3:16,23<br>4:19 8:12<br><b>stricken</b> 243:4<br><b>strictly</b> 75:5<br>213:2<br><b>strike</b> 72:17<br>73:20 75:20<br>85:14 153:20<br><b>striking</b> 33:5<br><b>string</b> 255:16<br>255:22<br><b>structure</b> 13:21<br>58:11 135:12<br>135:14 218:25<br>220:9,14<br><b>study</b> 224:17<br>226:22 273:5,7<br><b>stuff</b> 92:22<br>136:14 155:22<br>162:20 213:17<br>299:9<br><b>sub</b> 277:12<br><b>subject</b> 74:18<br>114:12 118:10 | 130:18 131:2,3<br>131:5 162:24<br>175:17 201:11<br>278:16,17<br><b>subjective</b><br>284:18<br><b>submission</b><br>155:15 156:12<br><b>submissions</b><br>300:14,15<br>303:21 304:2<br><b>submit</b> 30:4<br>70:9 130:11<br>134:23 179:18<br>181:10 182:3<br>271:9 300:24<br>303:21<br><b>submittal</b> 50:21<br><b>submitted</b><br>48:13 50:22,23<br>53:5 55:8,19<br>80:10 124:13<br>135:11 145:25<br>148:3 151:22<br>169:14 179:11<br><b>submitting</b><br>265:2<br><b>subpart</b> 74:11<br><b>subparts</b> 88:8<br>92:12 93:6<br><b>subsequent</b><br>50:19 141:6<br><b>subsequently</b><br>139:15 |
|---|---|---|---|

[substantial - takeoff]

|                                    |                                   |  |   |
|------------------------------------|-----------------------------------|--|---|
| <b>substantial</b><br>77:24 257:17 | 105:17 106:21<br>106:22 127:2     | 263:12 266:25<br>267:25 268:5                            | <b>tab</b> 89:1                         |
| <b>substitute</b> 68:7             | 133:15 186:18                     | 295:23 296:8   | <b>table</b> 28:20<br>88:6              |
| <b>subsurface</b><br>257:9         | 186:22 187:7                      | <b>surface</b> 106:15                                    | <b>take</b> 23:6 37:20<br>45:11 48:7,16 |
| <b>succeeded</b><br>173:22 177:25  | 187:20 188:5,5<br>188:19 189:18   | 106:16,17,18<br>127:20 135:16                            | 49:14,22 51:4<br>52:21 55:24            |
| <b>successful</b><br>127:25        | 196:14,23<br>220:1                | 136:2,12,13<br>184:15 185:16                             | 62:25 72:4<br>74:15 76:1                |
| <b>successor</b> 17:24             | <b>supported</b><br>77:22         | 185:18,22,24<br>193:1,2,6 259:7                          | 82:18 83:14<br>122:1,19 134:9           |
| 18:18 111:6                        | <b>supporting</b><br>105:17 106:7 | <b>surprise</b> 166:9<br>284:1                           | 134:9,10<br>139:10 144:15               |
| 178:2                              | 186:22 187:8,9                    | <b>surprised</b> 146:2<br>155:1 156:11                   | 161:1 167:2<br>168:6 169:17             |
| <b>succinct</b> 76:25              | 189:21,24                         | 255:11   | 170:5 183:2<br>197:19 232:25            |
| <b>sufficient</b> 33:15            | <b>suppose</b> 301:11             | <b>surprising</b><br>116:5 169:15                        | 237:20 248:8<br>265:3 269:21            |
| 152:23                             | <b>sure</b> 18:21 20:4            | <b>surrounding</b><br>149:14                             | 269:21,22<br>270:22 271:7,9             |
| <b>suggest</b> 38:25               | 20:11 24:17                       | <b>sustain</b> 115:14<br>140:8                           | 276:5 280:13<br>280:15 289:7            |
| 40:5                               | 31:18 62:13,16                    | <b>switch</b> 205:1                                      | 298:7 303:25<br>304:6,14                |
| <b>suggesting</b><br>163:18        | 71:17 76:4                        | <b>sworn</b> 82:8,14                                     | <b>takeaway</b><br>139:8 161:7          |
| <b>suggestion</b> 40:3             | 78:19 82:25                       | 94:19 96:5,10  | <b>taken</b> 19:13<br>44:11 53:22       |
| <b>suite</b> 4:13,19               | 86:6,6 93:17                      | 96:15,20,25  | 58:19 60:22<br>63:6 69:11               |
| 5:12 6:9,21 7:9                    | 97:4 99:5                         | 97:8,22 128:23   | 210:10 306:3<br>306:12 307:9            |
| 7:15 8:12,18                       | 102:17 114:16                     | 160:14,14  | <b>takeoff</b> 125:8,9<br>125:14,15     |
| 9:5                                | 129:25 131:16                     | 172:5 268:13   |   |
| <b>sulfide</b> 258:18              | 148:5 153:25                      | 268:15 306:5   |   |
| <b>summary</b> 24:25               | 158:3 162:9                       | <b>system</b> 27:15<br>66:12 254:25                      |   |
| <b>sunday</b> 50:5                 | 171:16 173:21                     | <b>t</b>   |   |
| <b>superior</b> 78:11              | 183:22 184:4                      | <b>t</b> 12:1 13:1 14:1<br>15:1 16:2,2<br>206:7,8 268:20 |   |
| 81:24 192:16                       | 193:8 195:6                       |  |   |
| 222:7 264:24                       | 196:11,24                         |  |   |
| <b>supplemental</b><br>15:8 93:21  | 203:15 207:7                      |  |   |
| <b>support</b> 103:5               | 208:15 211:5                      |  |   |
| 103:24 104:5                       | 216:7,7 235:12                    |  |   |
| 104:13 105:1                       | 237:2 240:23                      |  |   |
|                                    | 241:6,8 261:5                     |  |   |

[takeoff - testimony]

|  |   |  |  |
|--|---|--|--|
| 183:15<br><b>takes</b> 179:4<br>199:10 302:2<br>304:9<br><b>talk</b> 32:22<br>82:15 113:3<br>117:9 146:5<br>173:10 184:9<br>186:24 188:9<br>207:16 228:20<br>230:6 247:21<br>251:1,14<br>273:24 297:9<br>300:10<br><b>talked</b> 109:17<br>120:7 127:20<br>159:3 168:23<br>176:11 177:19<br>190:13 223:6<br>264:2 267:4<br>272:9 292:9<br><b>talking</b> 37:23<br>54:17 126:13<br>147:6 148:9<br>167:11 201:16<br>202:18,20<br>209:20 229:21<br>235:18 236:23<br>246:15 260:19<br>266:25 267:3<br>285:4 291:17<br>291:25 297:8<br><b>talks</b> 74:12<br>223:25 249:4<br>262:22 | <b>tandem</b> 211:8<br>212:14 214:25<br><b>tandemly</b> 237:2<br><b>tangible</b> 255:14<br>256:25 257:18<br><b>tangibles</b> 14:24<br>253:21 254:3<br>256:5,13<br><b>tap</b> 4:2 32:4,25<br>33:4,5,9,14<br>35:25<br><b>tape</b> 238:9<br><b>taprk.com</b> 4:7<br><b>target</b> 136:23<br>137:15 138:7<br>145:15 152:21<br>168:20,24<br>207:11 220:18<br>220:22,25<br>227:20 230:20<br>231:8,9 232:1<br>232:14,22<br>233:24 234:4<br>234:11,13<br>242:7 247:13<br>288:16,19<br><b>targeted</b> 137:17<br>137:25<br><b>targeting</b> 81:8<br>81:10 150:10<br>154:5,6 157:11<br>167:20 169:2<br>187:4 188:7<br>223:11 229:12<br>234:18 | <b>targets</b> 138:16<br>188:6 220:16<br>221:20<br><b>team</b> 282:14<br><b>technical</b> 9:11<br>44:14 45:6<br>49:17 78:14<br><b>tell</b> 96:6,11,16<br>96:21 97:1,9,14<br>105:21 109:14<br>155:24 186:1<br>230:25 234:10<br>254:6 256:10<br>284:20 288:4<br>291:16 301:22<br><b>temporarily</b><br>259:2<br><b>ten</b> 208:20<br>213:20 265:12<br>271:4 302:11<br><b>tender</b> 269:4<br><b>tenders</b> 172:24<br>207:20<br><b>tentatively</b><br>40:16<br><b>term</b> 37:22<br>38:15 162:5<br><b>terms</b> 173:14<br>182:18 225:25<br>258:14 264:19<br>265:19,20<br>266:6,19<br><b>test</b> 78:2<br><b>tested</b> 78:1<br>139:4 | <b>testified</b> 68:13<br>96:7,12,17,22<br>97:2,10 113:13<br>126:25 134:21<br>208:16 210:14<br>228:18,21<br>265:5,9 268:25<br>289:3<br><b>testify</b> 121:25<br>154:15,16<br>208:19,22<br>209:7 215:24<br>216:2,6,12,18<br>216:21,22<br>243:13,17<br>265:14 270:16<br><b>testifying</b><br>153:22 155:22<br>189:5 208:2<br>209:6 216:7,12<br>271:22 306:5<br><b>testimony</b><br>13:19 14:19<br>74:12 85:17,18<br>85:19,20 88:23<br>89:8 91:8<br>92:13,18<br>106:15 113:19<br>144:12 153:18<br>154:2,9,11,12<br>154:18 157:10<br>172:6,22<br>175:22 179:1<br>205:13,18<br>206:5,9,13 |
|--|---|--|--|

[testimony - think]

|  |  |  |   |
|--|--|--|---|
| 209:4 210:18<br>210:18 211:21<br>212:22 215:23<br>217:10 220:1<br>221:25 228:21<br>229:11,17<br>230:3 243:4<br>264:21 265:5,7<br>265:19 266:4<br>266:18 267:5<br>267:10,19,21<br>270:6 273:15<br>274:21 283:10<br>284:2 288:14<br>288:23<br><b>testing</b> 81:16<br><b>texas</b> 251:14,17<br>251:23,25<br>261:7,8<br><b>text</b> 212:11,12<br><b>textbook</b><br>230:16<br><b>thank</b> 17:14<br>18:1 19:5,23<br>22:4,8 23:20,21<br>23:23 24:3,6<br>30:25 31:25<br>34:19 36:3,10<br>36:13,14,21<br>37:8,9,10 38:18<br>39:21,24 40:1<br>42:3,5,18 47:21<br>47:23 48:2,14<br>48:18 49:20<br>53:24 55:22 | 56:2,22 57:3,9<br>58:20 60:18,19<br>60:24,25 61:7<br>65:16 72:24<br>73:5,9,15 78:12<br>81:25 83:16<br>95:25 108:21<br>112:3 113:9<br>115:25 116:20<br>117:3,5 128:13<br>131:13,18<br>132:16,21<br>134:3,7,12,13<br>141:8 148:5<br>151:5 156:24<br>157:4 164:14<br>164:15 167:25<br>171:23 172:13<br>189:4,10,13<br>200:16 203:15<br>203:20,22,23<br>204:12 210:25<br>235:9 243:4,8<br>245:19,21,22<br>248:2,4,12,13<br>249:23 259:19<br>262:1,2,3,8<br>271:23 280:15<br>284:4 292:19<br>294:16,16<br>296:3 297:24<br>299:2,21 300:1<br>303:11 305:1,6<br>305:8,10,12 | <b>thanks</b> 42:4<br>64:14 160:5<br>171:24<br><b>theirs</b> 133:15<br>145:23 224:7<br><b>thick</b> 137:3<br>138:9,12 232:9<br>233:12,12<br><b>thicker</b> 137:8<br><b>thickness</b> 142:4<br>220:19 241:23<br>242:8 273:4<br>295:17<br><b>thin</b> 231:15<br>276:1<br><b>thing</b> 21:7<br>61:21 67:24<br>75:19 87:7<br>103:21 105:16<br>106:14 113:16<br>114:6 116:4<br>135:16 141:8<br>149:15 187:16<br>189:16 220:7<br>224:17,21<br>228:3 244:5<br>267:14 274:22<br>279:18 281:25<br>299:7 301:11<br><b>things</b> 34:8<br>35:7 39:6 53:2<br>67:10 100:22<br>101:20 113:14<br>175:11 196:6<br>216:20 225:2 | 234:3 238:7<br>245:20 254:24<br>262:20 263:2<br>275:22,24<br>284:17 288:16<br>295:17 298:13<br><b>think</b> 19:12<br>20:25 22:23<br>23:5 24:23<br>25:17 28:17,22<br>29:12,14 31:7<br>33:13 34:6<br>37:5,25 38:11<br>38:14 40:23<br>42:11 47:3<br>48:12 49:8<br>50:4 52:14<br>60:17 61:1,2,20<br>63:23 70:6<br>71:14 72:17<br>76:2,11 77:13<br>78:4,10 82:13<br>83:21,22 85:13<br>85:24 86:12<br>95:18 107:23<br>110:13 113:2<br>114:3 115:4,16<br>129:21 131:12<br>137:2 138:16<br>139:25 141:22<br>142:3,5 144:21<br>146:1,3 149:8<br>152:6,7,23<br>154:11,14,15<br>154:17,21,22 |
|--|--|--|---|

**[think - title]**

|  |  |   |  |
|--|--|---|--|
| 156:18 160:19<br>160:21 161:12<br>161:14,15<br>162:3,5,8<br>163:23 164:1<br>165:24 166:16<br>166:18 168:5<br>169:15 170:17<br>171:12 179:1<br>179:22,24,25<br>180:6,11 183:7<br>187:24 188:25<br>192:14,22<br>193:12 194:6<br>194:17 195:7<br>195:10,20<br>200:2 202:18<br>204:1 207:22<br>208:9 209:21<br>212:22,24<br>213:4,7,8 214:7<br>215:18,25<br>227:15 230:10<br>231:1 232:3,6<br>234:2 240:11<br>242:22 244:9<br>261:17 262:19<br>265:25 267:10<br>267:13,19<br>269:8 270:17<br>270:23 271:20<br>272:7 273:16<br>275:11 278:25<br>280:8,18 281:7<br>281:10 283:13 | 285:24 296:12<br>302:17 304:5<br>304:15<br><b>thinking</b> 29:9<br>215:9<br><b>thinks</b> 266:17<br><b>thinner</b> 149:14<br><b>third</b> 67:24<br>68:13 123:13<br>139:7 145:7,24<br>158:25 161:6<br>248:6,15<br><b>thought</b> 30:10<br>70:19 87:9<br>104:12 113:25<br>119:17 158:18<br>162:1 179:1,20<br>201:15 215:18<br>246:6<br><b>thoughts</b> 40:16<br>174:15<br><b>thread</b> 38:1<br><b>three</b> 19:8 20:3<br>21:9 38:9<br>50:19 53:12<br>54:8,10 55:5,24<br>56:7 65:25<br>70:4 71:9 72:4<br>77:11 87:8<br>94:11,24<br>112:22 140:21<br>145:10,13<br>194:6 220:15<br>227:21 252:15<br>264:11 | <b>thursday</b> 2:3<br>74:8 83:3<br>112:24 114:2<br>264:14<br><b>ties</b> 251:2<br><b>till</b> 93:19<br>177:16<br><b>tim</b> 130:2<br>131:23 132:9<br><b>time</b> 2:4 21:6<br>22:25 24:1<br>33:15 38:2,5<br>41:2 47:8,10<br>48:11 51:6<br>65:7,8 74:8<br>76:12 82:14<br>87:2 88:3<br>90:20 101:6,17<br>119:17 120:17<br>128:14 139:4<br>141:5 143:7<br>149:18,22<br>150:9 153:14<br>156:23 167:19<br>169:16,18,19<br>169:22 170:25<br>171:8,14<br>177:12 179:3<br>187:2 189:19<br>196:25 200:15<br>201:20,22<br>202:9,13 203:5<br>203:9,11,12<br>207:19 215:19<br>224:22 225:17 | 240:22 258:24<br>259:20 260:3<br>270:20 282:21<br>283:8 286:12<br>289:16,20,25<br>296:12,13<br>301:13 304:6,9<br>304:14 305:7<br><b>timeframe</b> 43:9<br>45:2<br><b>timeline</b> 87:17<br><b>timeliness</b><br>254:20<br><b>timely</b> 43:6<br>50:9 58:16<br>68:22 75:12<br>86:8 112:24<br>114:14,15,21<br>116:8 154:20<br>155:2 179:15<br><b>times</b> 20:19<br>134:22 140:20<br>279:19 300:22<br>301:11<br><b>timing</b> 37:21<br><b>timothy</b> 123:25<br>124:5,17<br>125:18,25<br>127:4,13<br>129:13 183:9<br>183:23 197:25<br><b>title</b> 67:25 68:3<br>162:19 175:12<br>175:15,16<br>184:4,8 |
|--|--|---|--|

[titles - trying]

|                       |                      |                         |                        |
|-----------------------|----------------------|-------------------------|------------------------|
| <b>titles</b> 162:10  | 223:21 240:16        | <b>towards</b> 20:16    | <b>traverse</b> 128:1  |
| <b>titus</b> 251:10   | 266:11 298:6         | 136:25                  | 185:14,15              |
| <b>today</b> 21:13    | 300:22               | <b>township</b> 57:15   | 186:3                  |
| 30:3 31:4             | <b>told</b> 25:25    | 57:22 69:5,8            | <b>treated</b> 237:22  |
| 37:19,24 41:7         | 78:23 115:1          | <b>track</b> 49:15      | 237:23                 |
| 41:15 61:2            | 121:20,25            | <b>tracked</b> 12:4     | <b>trend</b> 279:9     |
| 62:3,8 63:17          | 178:8 216:15         | 58:4                    | <b>trial</b> 74:25     |
| 78:15 81:23           | <b>tomorrow</b>      | <b>tracks</b> 174:19    | 116:2                  |
| 98:13,18              | 271:11 298:11        | <b>tract</b> 12:24      | <b>tried</b> 160:1     |
| 111:14,18,22          | <b>took</b> 143:12   | 101:15 103:22           | 215:21,22              |
| 121:7,22 122:3        | 201:16,24            | 105:7 123:7,24          | <b>trix</b> 147:3      |
| 122:11 124:12         | 202:6,13 203:3       | 175:6,6,6,19            | <b>trouble</b> 125:12  |
| 124:20 135:19         | 203:4,11             | 182:19                  | 135:3                  |
| 137:21 171:22         | 243:16 247:14        | <b>tracts</b> 105:25    | <b>trucha</b> 139:3    |
| 172:25 175:22         | 261:25 279:5         | 107:24 108:2,5          | <b>true</b> 128:3      |
| 185:19 186:25         | 304:11,12            | <b>trade</b> 22:23      | 136:4 166:9            |
| 187:1 196:4           | <b>tools</b> 255:25  | 33:2 238:5              | 176:2 287:14           |
| 199:17 202:21         | <b>top</b> 13:21,23  | <b>trades</b> 19:12     | 287:15 306:9           |
| 202:23 209:10         | 23:13 46:7           | 250:24                  | 307:5                  |
| 216:7,13,18           | 218:25 220:8         | <b>trailing</b> 40:18   | <b>trust</b> 102:25    |
| 221:24,25             | 220:17 221:8         | <b>transcriber</b>      | 292:4                  |
| 229:1 234:9           | 230:19 231:9         | 307:1                   | <b>trusts</b> 186:4    |
| 235:4 237:8           | 231:11,17            | <b>transcript</b>       | <b>truth</b> 96:6,6,7  |
| 253:6 279:20          | 245:4                | 301:14 302:1            | 96:11,11,12,16         |
| 283:15 285:4          | <b>total</b> 104:5   | 302:18 303:5,9          | 96:16,17,21,21         |
| 288:14,23             | 167:13 187:14        | 303:19 307:3,5          | 96:22 97:1,1,2         |
| 297:9,10              | 187:17 188:2,4       | <b>transcriptionist</b> | 97:9,9,10,14           |
| <b>today's</b> 218:6  | 188:10 254:13        | 306:7                   | 181:7                  |
| <b>together</b> 31:18 | 257:2,7              | <b>transcripts</b>      | <b>try</b> 40:7 163:25 |
| 60:12 61:6            | <b>totally</b> 241:1 | 302:6                   | 191:4,7 205:3          |
| 99:18 142:15          | <b>totals</b> 133:2  | <b>transparency</b>     | 209:15 243:11          |
| 183:13 184:19         | 183:11               | 176:24                  | 260:7 284:17           |
| 185:10 199:6          | <b>touch</b> 21:1    | <b>transparent</b>      | <b>trying</b> 99:17    |
| 199:18 212:6          | <b>toward</b> 87:21  | 245:7                   | 138:14 143:17          |
| 215:6,14              | 104:16 190:13        |                         | 161:22,25              |

[trying - understand]

|   |  |  |   |
|---|--|--|---|
| 162:23 163:2<br>169:11 177:17<br>181:7 201:10<br>203:2 230:8<br>260:15<br><b>tuesday</b> 44:1<br>85:16 150:2,8<br>230:8 282:25<br>283:14<br><b>turn</b> 88:4 94:20<br>97:18 156:19<br>188:23<br><b>turned</b> 53:16<br><b>twelve</b> 206:19<br><b>twenty</b> 43:19<br><b>two</b> 21:8 26:6<br>30:2,3 31:3<br>32:2 34:23<br>36:12,19 37:3<br>38:8 43:3<br>44:11,17 47:4,8<br>50:9,10,16,17<br>50:18,19,21<br>51:5 52:21<br>53:2 54:20<br>55:19 56:17<br>58:8,19 59:5<br>60:3,11 61:11<br>63:21 64:12<br>66:9,15,23,23<br>66:24 67:11<br>69:5,7 77:9<br>81:4,7 85:3,18<br>105:9 111:12<br>112:25 113:13 | 113:18 124:16<br>129:4,11,22<br>136:7 138:17<br>140:21 147:6<br>163:3 167:6<br>168:23 174:1<br>184:17 185:6<br>186:1 187:9<br>188:2,4,10,11<br>188:16 189:19<br>189:21,24<br>198:12 224:9<br>227:7 229:2<br>234:21 237:9<br>240:4 253:8,13<br>256:3 257:22<br>263:17,21<br>264:10 266:13<br>266:23 269:22<br>275:22 285:3<br>286:18 289:20<br>291:10 292:7,8<br>292:9 295:3,9<br>296:5,11<br>298:13 301:8<br>301:13 302:12<br>303:20 304:12<br><b>tx</b> 9:6<br><b>type</b> 153:1<br>155:10 165:17<br>237:24<br><b>typewriting</b><br>306:7<br><b>typical</b> 240:19 | <b>typically</b> 207:7<br>207:10,12<br>224:7 226:7<br>302:2<br><b>typo</b> 51:12<br>296:23<br><b>u</b><br><b>u</b> 16:2,2 204:22<br>205:9<br><b>ultimate</b> 34:6<br>216:21 224:8<br>225:3 235:22<br>236:7,12 245:2<br>245:8,17<br>272:15,25<br>273:16,18<br><b>ultimately</b><br>25:19 153:21<br>213:4 227:16<br><b>unable</b> 243:17<br><b>uncommitted</b><br>100:4 105:23<br>123:25<br><b>uncontested</b><br>33:16<br><b>under</b> 44:11<br>48:1,7,17 49:14<br>52:12,21 53:22<br>55:24 58:20<br>60:22 69:11<br>72:2,5 74:12<br>78:4 86:8,9<br>97:15 100:7<br>106:3 111:16<br>135:8 151:11 | 161:24 177:21<br>179:4 185:3<br>186:8 190:2,3,3<br>190:3 197:6,19<br>199:7 201:22<br>202:15 203:6<br>216:15 239:24<br>247:5,10<br>248:23 266:1,8<br><b>underlying</b><br>57:12,20<br>273:12 281:11<br>281:17 282:20<br>283:1,6<br><b>underneath</b><br>251:6,19 260:8<br><b>understand</b><br>24:19 27:18<br>30:13 36:5<br>45:5 59:24<br>64:10,11 73:25<br>74:11 85:8<br>87:5,19 89:22<br>99:5 104:22<br>105:3,3 112:9<br>119:13,20<br>129:4 151:24<br>152:1,5,10<br>169:11 175:24<br>189:7 196:3<br>201:12,20<br>203:2 206:11<br>211:5 214:24<br>217:4,18<br>227:15 240:23 |
|---|--|--|---|

[understand - upper]

|  |   |  |  |
|--|---|--|--|
| 260:4 263:13<br>267:16 280:12<br>287:5 300:24<br>302:15 303:7<br>304:14<br><b>understandable</b><br>21:5<br><b>understanding</b><br>19:15 46:1,4<br>114:20 118:23<br>120:1 164:1<br>166:20 173:17<br>173:18 179:19<br>190:23 199:24<br>202:18 211:2<br>215:3,4,19<br>247:12 258:20<br>262:14 267:14<br>301:5<br><b>understands</b><br>119:9<br><b>understood</b><br>24:12 161:17<br>201:23 264:1<br><b>unending</b> 40:18<br><b>unfairness</b><br>146:4<br><b>unidentified</b><br>12:22,23,25<br>13:4,5,6,7,8,9<br>13:12,13,14,15<br>13:16,17 14:21<br>15:14<br><b>uniform</b> 71:13 | <b>uniformly</b><br>138:9<br><b>unit</b> 14:9 57:13<br>57:16,20,24<br>58:7 60:2,11<br>70:5 79:25<br>80:5,8 98:14,19<br>99:13,13,18,18<br>99:20,25 100:1<br>100:5,7,11,15<br>100:17,20<br>101:11,14<br>102:3,21,23,24<br>102:24,25<br>103:23 105:22<br>107:25 108:4,7<br>108:12 109:20<br>111:2,8 113:18<br>113:21 114:24<br>117:12,14<br>118:11,24,25<br>119:7,12,18,23<br>119:25 123:8<br>123:15 126:3,7<br>131:2 133:4<br>135:17 136:23<br>140:21,22<br>141:25 142:15<br>144:8 149:14<br>157:15 162:13<br>163:7 164:3<br>174:12 175:19<br>176:15,20<br>177:23 182:19<br>185:15 187:15 | 188:12 190:15<br>190:24 191:22<br>191:22 192:8<br>192:12 194:1,4<br>195:8,12,17,21<br>200:23,23,24<br>200:25 201:3,6<br>201:8 202:19<br>221:17 222:17<br>222:20 223:5<br>223:14,17<br>233:18,22<br>235:19 244:14<br>274:11,14<br>276:18 282:5<br><b>unitized</b> 78:5<br><b>units</b> 69:24<br>70:4 77:21<br>81:6,7 100:3<br>138:25 144:1<br>158:6 175:18<br>185:14 187:22<br>192:7 193:17<br>193:19 194:20<br>194:20 196:16<br>201:11 225:12<br>226:25<br><b>unmute</b> 164:20<br><b>unnecessarily</b><br>116:5<br><b>unobjectively</b><br>138:1<br><b>unquote</b> 279:15<br>286:11 | <b>untimely</b><br>144:11<br><b>unusual</b> 38:10<br>40:23<br><b>update</b> 21:15<br>37:12<br><b>updated</b> 45:19<br>122:16 123:5<br>175:12<br><b>updating</b> 46:16<br><b>uplifts</b> 257:16<br><b>upper</b> 14:7<br>137:8,12,15,17<br>137:25 138:8<br>138:12,15<br>141:22 142:5<br>145:9,23<br>148:21 150:10<br>150:12 154:7<br>157:13,22<br>158:22 159:1<br>167:10,20<br>168:11,14,18<br>169:2,5 220:21<br>221:10,19<br>222:16 223:11<br>228:23 229:13<br>230:13,18<br>231:14 232:14<br>232:19 233:3<br>233:24 234:6<br>234:11,13<br>240:14 241:11<br>241:17,22<br>247:14,24 |
|--|---|--|--|

[upper - walk]

|  |  |   |   |
|--|--|---|---|
| <p>275:4 278:14<br/>279:20 288:17<br/><b>ur</b> 224:24<br/>236:12<br/><b>urges</b> 187:25<br/><b>usa</b> 105:14,15<br/><b>use</b> 106:15,16<br/>127:20 135:16<br/>191:21 193:1<br/>207:15 211:12<br/>213:3 238:6<br/>248:9 284:15<br/>284:23 298:8<br/>299:9<br/><b>used</b> 133:14<br/>184:8 211:23<br/>221:5 231:8<br/>237:24,25<br/>243:1 258:3,11<br/><b>useful</b> 22:24<br/><b>using</b> 139:15<br/>211:8,20<br/>272:24 273:17<br/><b>usual</b> 47:17<br/>67:16 68:12<br/>135:11<br/><b>usually</b> 255:6<br/>299:2,18</p> | <p>64:5,9,11,13,15<br/><b>varden</b> 138:5<br/>227:3,8,11<br/>277:7,23 290:7<br/><b>variability</b><br/>277:19 295:6<br/>295:13,20<br/><b>variable</b> 141:23<br/>275:23<br/><b>variation</b><br/>232:11 236:15<br/>245:13<br/><b>variations</b><br/>207:8<br/><b>various</b> 28:8,9<br/>105:24,25<br/><b>vary</b> 226:6,8<br/>231:12 241:7<br/><b>vast</b> 256:18<br/><b>vastly</b> 261:9,11<br/><b>verbal</b> 116:25<br/>133:2<br/><b>verbalize</b><br/>161:14<br/><b>verbalized</b><br/>59:23<br/><b>verbatim</b> 302:1<br/>302:6,10,18<br/><b>verified</b> 70:22<br/>182:15<br/><b>verify</b> 298:7<br/><b>versus</b> 145:10<br/>159:4 188:11<br/>188:16 207:6,9<br/>207:16 227:18</p> | <p>233:5 239:18<br/>246:24 247:1<br/>247:19 278:20<br/>279:2,3,7<br/>284:14 285:11<br/>286:21 288:6<br/>297:21<br/><b>vertical</b> 44:6<br/>46:13 148:25<br/>149:2,11<br/>152:19 153:13<br/>165:1 167:13<br/>167:15 218:14<br/>227:20 228:6<br/>237:21 238:13<br/>247:23 250:14<br/><b>vetting</b> 211:17<br/>211:22<br/><b>vice</b> 249:10,12<br/>249:14<br/><b>vicinity</b> 293:10<br/><b>video</b> 270:1<br/><b>videoconfere...</b><br/>2:2 3:3,7,14,21<br/>4:3,11,17 5:3,8<br/>5:9,10,16 6:3,7<br/>6:13,19 7:3,7<br/>7:13,19 8:4,10<br/>8:16 9:3,12,13<br/>9:15<br/><b>view</b> 74:3,4<br/>239:15 253:12<br/><b>viewing</b> 273:9<br/><b>viewpoint</b><br/>253:18</p> | <p><b>views</b> 38:13<br/><b>virtual</b> 24:7,8<br/>24:15 98:21<br/>124:24 142:10<br/>208:9 216:24<br/>217:1 235:22<br/>236:6 242:15<br/>268:11<br/><b>virtue</b> 197:24<br/><b>voice</b> 204:24<br/><b>voir</b> 10:3,5<br/>108:18 112:5<br/>116:12 180:25<br/>181:3 209:15<br/>210:3 216:3<br/><b>volume</b> 257:13<br/><b>volumetric</b><br/>272:18 273:7<br/>281:20<br/><b>volumetrics</b><br/>238:6<br/><b>voluntary</b><br/>197:17</p> |
| <b>w</b>   |  |   |   |
| <p><b>w</b> 268:20<br/><b>wait</b> 38:12<br/>93:19 163:13<br/>197:12 210:23<br/>217:9 261:13<br/><b>waiting</b> 27:23<br/>49:6 102:7<br/>172:4 240:7<br/><b>waived</b> 303:23<br/><b>walk</b> 218:3,5</p>  |  |   |   |

[want - wells]

|   |   |   |   |
|---|---|---|---|
| <b>want</b> 30:5 38:5<br>38:25 39:2<br>47:13 65:24<br>67:6 68:9<br>70:14 75:7<br>76:20,24 78:4<br>79:2 82:2<br>85:22 87:7<br>91:14 101:13<br>101:25 108:11<br>108:13 112:6,7<br>117:9,20<br>122:15,19,24<br>123:20 129:1<br>131:15 134:16<br>138:19 141:1<br>143:15,18<br>160:17 162:4<br>164:8 168:6<br>173:12 180:25<br>184:9 188:23<br>190:14 191:10<br>191:15 197:23<br>210:3 213:3<br>215:8 228:20<br>230:6 232:22<br>237:5 241:6<br>243:21 244:8<br>248:5 253:11<br>253:18 258:22<br>261:5 263:12<br>270:24 282:4<br>284:1 302:3<br><b>wanted</b> 71:17<br>85:5 87:16 | 101:8 102:10<br>138:7 161:12<br>174:16 176:13<br>189:8 195:23<br>197:12,25<br>203:15 240:13<br>246:6 253:22<br>282:6 303:4<br><b>wanting</b> 162:2<br><b>wants</b> 37:20,21<br>78:6 144:5<br>240:2 302:9<br><b>warren</b> 5:15<br>61:15 62:1,22<br><b>waste</b> 76:12<br>80:25 215:18<br>233:22 264:25<br><b>water</b> 272:19<br>283:7<br><b>way</b> 24:2 66:24<br>74:3,4 79:8<br>154:1 159:24<br>166:5,19<br>196:18 197:2<br>215:4 220:17<br>229:15 239:16<br>239:17 252:10<br>267:17 303:22<br><b>we've</b> 44:8<br>139:1,6 144:11<br>171:16 180:1<br>226:17 228:25<br>229:1,8 233:1<br>236:9,13,16<br>245:25 250:5 | 250:12 252:19<br>279:19 299:8<br><b>web</b> 209:23<br><b>website</b> 71:19<br><b>week</b> 111:17,22<br>125:1,2,17,21<br>129:8 149:21<br>149:22 150:2<br>151:13 266:11<br>302:11<br><b>weekend</b> 49:9<br>50:5 53:4<br><b>weeks</b> 30:2,3<br>31:3 40:6 47:9<br>50:9 54:20<br>55:20 147:6<br>301:8,13<br>302:12 303:20<br><b>weight</b> 198:23<br><b>wellbore</b><br>222:20 232:1<br>237:22 255:15<br>274:8 276:3,6<br>277:9 293:12<br><b>wellbores</b><br>238:14 239:19<br><b>wells</b> 14:9,12<br>60:13 69:22,24<br>70:1,2 80:11<br>81:6,7,18,21<br>99:24 100:2,10<br>104:7 105:9<br>106:2,22 121:7<br>122:2 127:3,17<br>128:3 135:17 | 135:19,21<br>136:7,11 137:4<br>137:20 138:4,5<br>138:17,20,21<br>138:23 140:22<br>141:1,6 142:22<br>143:1,1,2,13<br>144:25 145:11<br>145:13 157:12<br>157:16,17,23<br>158:17 159:4,4<br>159:8,15<br>160:20 161:5<br>161:16 164:24<br>165:2,8 167:7<br>167:11 174:20<br>184:25 185:1,4<br>185:6 187:8,21<br>188:2,11,11<br>189:19,21<br>190:4,23<br>191:14 192:19<br>192:23 193:18<br>197:7,22 198:1<br>198:21 199:11<br>199:15,20<br>206:24 207:2,4<br>207:17 211:24<br>212:20 213:21<br>213:22,23,23<br>213:24,25<br>214:1,4,4,17,21<br>215:8 216:22<br>218:17,18,19<br>219:7,11,15,15 |
|---|---|---|---|

[wells - witness]

|   |   |   |  |
|---|---|---|--|
| 219:18 220:1<br>221:7,17<br>222:17 223:1<br>223:20 224:4<br>224:19 225:10<br>225:17 226:19<br>226:20 227:9<br>227:21 228:3,6<br>228:11 232:25<br>233:14 234:12<br>234:21 235:1<br>236:19 239:21<br>239:25 240:4,5<br>240:14,15<br>241:10,11,20<br>244:9,11,13,17<br>244:18 245:5,9<br>245:10,16,17<br>250:9,12,13,14<br>250:16,18,22<br>251:4,8,12,17<br>251:18,22,22<br>252:8,9,9,11,12<br>252:14 253:17<br>256:4 257:12<br>257:14 258:22<br>258:24 259:2<br>259:14 260:21<br>261:6,8,10<br>266:14 270:20<br>275:15,18<br>277:9,21 279:5<br>280:1,2 285:11<br>285:11,13,14<br>285:14,16,17 | 285:18,19,20<br>285:22,23<br>286:1,2,10<br>287:12 289:14<br>289:20 291:10<br>291:11 293:9<br>293:10,11,18<br>295:3,9,24,25<br>296:12 297:19<br>297:20,21,21<br><b>went</b> 30:14<br>54:21 154:13<br>175:12 176:23<br>247:22 272:8<br>273:12 274:19<br>283:5<br><b>west</b> 57:14,21<br>57:22 60:4,5,5<br>60:6,12,13,13<br>60:14 80:14<br>126:9,22<br>137:20,22<br>144:1 145:3,14<br>158:14,19<br>161:15 184:18<br>199:2 219:11<br>219:20 226:2<br>227:18 230:3<br>231:21 238:24<br>239:6 240:6<br>252:10 277:11<br><b>western</b> 277:6<br><b>white</b> 68:18<br>212:12 | <b>wholly</b> 194:4<br>195:8<br><b>wide</b> 243:11<br><b>width</b> 272:19<br>281:22 283:8<br><b>willing</b> 30:8<br>270:25<br><b>wilson</b> 14:8<br>79:25 80:5,8<br>98:13,19 99:19<br>102:23 107:24<br>108:4 109:20<br>111:2,7 118:11<br>118:25 119:7<br>119:25 123:7<br>123:15 126:3,7<br>136:22 174:11<br>177:22 182:19<br>185:15 201:2,8<br>202:19 221:17<br>222:17,19<br>223:4,13<br>233:18 244:13<br>274:10,14<br>282:4<br><b>wine</b> 14:5 81:15<br>138:15 154:7<br>157:12 211:19<br>215:11 221:5<br><b>wish</b> 299:7<br><b>wished</b> 194:23<br><b>wishes</b> 30:3<br><b>withhold</b><br>200:11 204:7 | <b>withstands</b><br>156:7<br><b>witness</b> 10:10<br>11:2 74:1 75:2<br>75:2,3,4,8,11<br>75:12,14 82:6,7<br>82:7 84:18,20<br>85:18 87:16<br>94:16 96:5,10<br>96:15,20,25<br>97:8 99:4<br>103:9 105:4<br>108:19 109:4<br>110:4 114:18<br>115:21 116:13<br>116:14 128:17<br>128:21,25<br>129:9,15,19,25<br>130:6,10,25<br>131:6,9 134:11<br>134:17 139:24<br>147:23 150:22<br>151:4 152:15<br>152:18 153:18<br>153:22 156:14<br>156:19 157:2<br>160:14,15,16<br>160:25 161:18<br>162:15,18<br>163:4,10,20<br>164:7,7,10,18<br>168:3 169:18<br>170:10,13<br>172:6,16<br>178:15 180:25 |
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[witness - yeah]

|   |   |  |   |
|---|---|--|---|
| 181:5,23<br>182:11 188:25<br>200:19,24<br>201:2,5,18,24<br>202:10,17,24<br>203:10,22<br>204:15,16,20<br>205:3,8 209:4<br>210:3 211:2,7<br>211:16 212:6<br>212:11 213:5<br>213:16 214:14<br>217:6,13,19<br>235:9 243:5,10<br>243:12,17,22<br>244:4,7,12,19<br>244:24 245:1<br>245:12,22<br>246:3,8,10<br>248:4,6,16,19<br>262:2,8 268:7<br>268:14,19<br>271:18,21<br>280:13,18<br>281:3 284:2,2<br>292:25 293:4,7<br>293:11,18,24<br>294:6,8,12,17<br>298:10,20<br>306:4<br><b>witnesses</b> 82:13<br>87:14 94:7,11<br>95:2 97:14<br>100:23 169:23<br>172:5 180:12 | 209:4 215:24<br>267:24 288:15<br><b>wonder</b> 270:12<br><b>wonderful</b><br>42:24 67:4<br>79:19 88:16<br>95:10 97:12<br>298:22 300:7<br>303:18<br><b>wondering</b><br>42:11 270:10<br><b>woodlands</b> 9:6<br><b>word</b> 266:15<br>299:8<br><b>words</b> 141:11<br>196:13 280:4<br><b>work</b> 38:4 64:4<br>194:25 210:13<br>212:13 214:25<br>215:14 216:17<br>237:2 254:16<br><b>worked</b> 143:9<br>159:11 213:19<br>214:3 265:10<br>265:13 269:2<br><b>working</b> 20:16<br>25:13 58:8<br>67:16 77:12,17<br>77:21,23 80:15<br>80:17 85:25<br>99:19 101:15<br>104:6 105:8,24<br>123:22,25<br>124:7 125:7,19<br>126:1,8,22 | 131:22 133:8<br>139:7 175:5,6<br>190:5 191:24<br>192:3,5 196:10<br>196:15 197:20<br>198:9,11,16,24<br>199:2,3 201:25<br>201:25 206:16<br>249:7<br><b>worries</b> 66:12<br><b>worry</b> 153:1<br><b>worse</b> 195:4<br><b>worth</b> 106:22<br><b>would've</b> 86:1<br>111:17,22<br>151:17,19,19<br>167:20 266:8<br>283:13,15<br><b>write</b> 299:19<br><b>writing</b> 111:22<br><b>written</b> 103:1<br>116:25 174:10<br>195:15 200:5,5<br>206:12 283:11<br>283:14 299:13<br>299:16<br><b>wrong</b> 29:25<br>30:1 209:23<br>215:3 218:4<br><b>wrote</b> 120:20<br>200:1 208:17<br><b>wtp</b> 105:15 | <b>x</b><br><b>x</b> 10:1 11:1<br>12:1 13:1 14:1<br>15:1 16:1<br>278:20<br><b>xto</b> 8:15 36:25<br>37:16 38:4<br>39:2 40:6<br><b>xto's</b> 38:14 40:7<br><b>y</b><br><b>y</b> 278:21<br><b>yeah</b> 28:25<br>33:20 36:1<br>47:2 49:8 50:3<br>51:19,24 53:2<br>55:6,17 61:6<br>67:8 70:3,13,24<br>71:12,22 84:11<br>84:24 89:6<br>90:1 91:20<br>92:17 95:15,20<br>98:17 104:15<br>108:18 109:25<br>112:8 116:15<br>128:10 132:20<br>135:16 136:22<br>139:23 141:14<br>141:25 143:9<br>147:4,23<br>158:25 159:6<br>159:15 161:4<br>163:16,23<br>165:11 167:19<br>168:5,14 169:4<br>170:22 171:17 |
|---|---|--|---|

**[yeah - zooming]**

|                        |                      |
|------------------------|----------------------|
| 172:10 179:15          | 257:8 279:24         |
| 182:16 186:21          | 286:6 293:21         |
| 189:4,4 193:13         | <b>yesterday</b>     |
| 194:11 201:12          | 84:22                |
| 203:1 205:6            | <b>yield</b> 285:1   |
| 225:23 231:1           | <b>yields</b> 279:13 |
| 232:17 239:8           | <b>z</b>             |
| 244:25 260:4           | <b>zone</b> 137:4,8  |
| 260:24 268:15          | 141:2 236:22         |
| 269:9 283:22           | 240:11               |
| 285:25 287:7           | <b>zones</b> 78:1,2  |
| 300:20 301:4           | 152:24 236:15        |
| 301:20                 | <b>zooming</b> 149:7 |
| <b>year</b> 36:7 87:9  |                      |
| 101:23 109:13          |                      |
| 110:14 139:10          |                      |
| 151:17 161:8           |                      |
| 237:9 249:15           |                      |
| 260:10,22              |                      |
| 284:22                 |                      |
| <b>years</b> 19:8 20:3 |                      |
| 21:9 25:14             |                      |
| 75:1 77:17             |                      |
| 100:11,12              |                      |
| 113:18 115:8           |                      |
| 139:6 142:11           |                      |
| 206:19,21,22           |                      |
| 208:21 213:20          |                      |
| 237:9,10 249:8         |                      |
| 249:17 265:12          |                      |
| 266:12,12              |                      |
| 273:24                 |                      |
| <b>yellow</b> 71:23    |                      |
| 84:23 218:21           |                      |
| 253:22 254:11          |                      |