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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:
Case Nos. 26206, 25610, 24683.

HEARING
DATE: Thursday, August 13, 2026
TIME: 9:01 a.m.
BEFORE: Hearing Examiner Felicia Orth
LOCATION: Wendell Chino Building
1220 South Saint Francis Drive
Pecos Hall
Santa Fe, NM 87505
REPORTED BY: Ryan Auten
JOB NO.: 8370007

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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)

ALSO PRESENT:

Felicia Orth, Hearing Officer - EMNRD (by
videoconference)

Dr. William Ampomah, Commissioner - EMNRD

Greg Bloom, Commissioner - State Land Office

Sheila Apodaca, Commission Clerk

Elvis Leunguen, EMNRD (by videoconference)

Carl Chavez, EMNRD (by videoconference)

Gregory Chakalian, EMNRD (by videoconference)

Amanda Trujillo, Attendee (by videoconference)

Andrea Felix, Attendee (by videoconference)

Robert Mathes, Attendee (by videoconference)

Tiffany A. Wallace, Attendee (by videoconference)

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E X H I B I T S

NO.

DESCRIPTION

PAGE

(None marked.)

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

2 MR. CHANG: Good morning. This is
3 Albert Chang, chair of the New Mexico Oil Conservation
4 Commission. It is just after nine o'clock on August
5 13th of 2026. Welcome to a meeting of the commission,
6 our regular meeting for August 13th of 2026.

7 Madam Clerk, may I please have the
8 roll?

9 MS. APODACA: Yes. Good morning.
10 Commissioner Ampomah?

11 DR. AMPOMAH: Present.

12 MS. APODACA: Commissioner Chang?

13 MR. CHANG: Present.

14 MS. APODACA: Commissioner Bloom?

15 MR. BLOOM: Present.

16 MS. APODACA: Okay. We have a whole
17 quorum.

18 MR. CHANG: Thank you very much. We're
19 all present and accounted for. So may I please
20 have -- or have commissioners had a chance to review
21 the agenda, and is there a motion to approve?

22 MR. BLOOM: Mr. Chair? Yes, I would
23 move to approve the agenda.

24 DR. AMPOMAH: Mr. Chang, I will second
25 it.

1 MR. CHANG: Moved and seconded. Is
2 there any objection from commissioners? Hearing no
3 objection, the agenda is adopted.

4 Next item on the agenda is the approval
5 of the minutes. I understand that some commissioners
6 may not have received them, and so if -- I'm happy to
7 entertain a motion to postpone.

8 MR. BLOOM: Mr. Chair, I would move to
9 postpone, please.

10 DR. AMPOMAH: I second it.

11 MR. CHANG: Any objections? Without
12 objections from any commissioners, it's so ordered.

13 Then, we move on to pending cases.
14 I'll call case number 26206, application of Marathon
15 Oil Company for De Novo hearing.

16 MS. VANCE: Good morning. Paula Vance,
17 with the Santa Fe office of Holland & Hart on behalf
18 of Marathon Oil Company.

19 MR. HOLLIDAY: Good morning, Mr.
20 Commissioners, Ben Holliday, appearing on behalf of
21 Powderhorn Operating.

22 MR. CHANG: Okay. I think last we left
23 off, the parties we're going to discuss what your
24 needs are, and we're going to try to schedule a
25 hearing sooner rather than later if possible. I'm

1 happy to let you guys advise as to where you are on
2 status and what your needs are for hearing.

3 MS. VANCE: I'll go ahead, Ben, if you
4 don't mind.

5 So we have conferred, and I think we're
6 pretty much there on presenting, putting together a
7 draft pre-hearing order that will be similar to what
8 the commission saw with the Coterra and Permian case.
9 Is it this year? Sorry, I can't remember when we did
10 that, but a similar pre-hearing quarter.

11 That being said, the only point of --
12 that we haven't been able to agree on is the timing.
13 We, Marathon, will have three witnesses and we've --
14 as far as when they will be available, the soonest
15 availability that all three of our witnesses will able
16 to be at the hearing would be October 19th through
17 October 20th. And we do anticipate that being a -- a
18 two-day hearing for this. And I'll let Mr. Hollidays
19 take it from there.

20 MR. CHANG: Okay.

21 Mr. Holliday?

22 MR. HOLLIDAY: Yes. I agree that we
23 were there on the -- on the pre-hearing order. I just
24 want to provide a little context for, you know,
25 Powderhorn's perspective on my -- why that date is not

1 optimal for us.

2 This case was originally filed in
3 September of last year. And so if we push this out to
4 mid-October, we're looking at well over a year from
5 the date the case was filed and it's going to be close
6 to 170 days from the date the original order was
7 issued. Right? And so from Powderhorn's perspective,
8 Marathon's stated that this is a priority and they
9 needed to have a stay that prevents from drilling
10 because they intend to go develop.

11 And we don't think it's either fair or
12 reasonable for a company of that size to only have two
13 or three witnesses that could participate. That then
14 forces us to kick this down the road another 60 days.

15 So Powderhorn would ask that we set
16 that hearing in -- sometime in September, but believe
17 that's the commission's discretion.

18 MR. CHANG: I appreciate that. Let me
19 back up for a second and ask both parties. Do either
20 one of you anticipate any sort of pretrial motions
21 practice, partial summary judgment, summary judgment
22 motions? Do either one of you anticipate any of that?

23 MS. VANCE: From Marathon's
24 perspective, not -- no.

25 MR. CHANG: Okay.

1 MR. HOLLIDAY: Same for Powderhorn.

2 No, sir. Do not anticipate.

3 MR. CHANG: Okay. I guess it -- I
4 mean, it comes down to witness availability; right?
5 So --

6 MS. VANCE: Right. And I'm happy to
7 respond to Mr. Holliday's presentation there. You
8 know, this case was actually filed at the end of May.
9 So this de novo application, I think Mr. Holliday is
10 referring to the division application.

11 MR. CHANGE: I get that, yeah.

12 MS. VANCE: But this particular
13 application was filed only recently. And although,
14 you know, obvious -- I mean to -- Marathon is a big
15 company, but we want to have our witnesses available
16 who are familiar with these lands, with this
17 development. And these are the available dates that
18 we have, the soonest available dates. And we want to
19 be able to have our witnesses here and in-person to be
20 able to answer questions of the commission.

21 This is an important development
22 project for Marathon. And so I would just ask that we
23 be able to set a -- a hearing date that allows us to
24 have all of our witnesses at the hearing.

25 MR. CHANG: And these three witnesses

1 are all employees of Marathon?

2 MS. VANCE: That's correct.

3 MR. CHANG: Okay. And how many
4 witnesses are you presenting, Mr. Holliday? Also
5 three?

6 MR. HOLLIDAY: Yes, sir. We'll have
7 the -- anticipate having the same three as in the
8 underlying hearing.

9 MR. CHANG: Okay. I certainly
10 appreciate the desire to have witnesses here
11 in-person, but we've had witnesses participate via the
12 platform before, so if that assists Marathon in any
13 way, that certainly is not the end of the world. We
14 are still able to ask witnesses questions.

15 Part of this will also come down to
16 commissioner availability. So I will have to see when
17 the commissioners are available. But what I'm hearing
18 is, Mr. Holliday, you've asked for September hearing
19 dates and Marathon has asked for October hearing
20 dates?

21 MS. VANCE: October hearing dates. And
22 I would just say that is the first available dates
23 where all of our witnesses are available at the same
24 time. All of our witnesses, other -- up to that point
25 have prior obligations and commitments, and so will

1 not be available prior to that.

2 So again, I just would push that we set
3 something that will allow us to have all of our -- to
4 Mr. Holliday's point, he wants to have his three
5 witnesses from the underlying case that was heard at
6 the division level, and similarly, Marathon would like
7 to have its witnesses, all three witnesses that
8 participated at the division level available for the
9 de novo hearing.

10 MR. CHANG: I understand, but given
11 that they're all of of Marathon's own employees, I'll
12 ask that Marathon try to reorganize their workload and
13 schedule to the extent necessary to also accommodate.
14 Because we've got -- I mean, yes, we will try to do
15 our best to accommodate your witnesses, but we also
16 need to accommodate commissioner's schedules and
17 obviously Mr. Holliday's witnesses. I'm sure they
18 also have other obligations to schedule around.

19 So I'll ask Marathon to try to be
20 somewhat flexible. And same to Powderhorn. I will --
21 we'll do our best to -- we'll look at September and
22 October, and we'll make sure that we try to schedule
23 sometime within those two months, given that
24 commissioner availability is also limited. So we'll
25 do our best on our end.

1 Speaking of, commissioners, did you
2 want to discuss your calendars right this very minute
3 or would it be more effective for us to coordinate
4 through the commission clerk and issue -- and give
5 them a decision on dates at a later time?

6 DR. AMPOMAH: Mr. Chang? So I just
7 want to point out that the last two weeks of October
8 I'm not available. So 19th, the week of the 19th of
9 October, the week of the 26th of October I'm not
10 available. But I'm available in September and also in
11 November.

12 MR. CHANG: I'm pulling up my calendar
13 now too.

14 Commissioner Bloom, any thoughts on
15 your availability?

16 MR. BLOOM: Let me look here. If we go
17 September 21st, Monday September 21st works. Second
18 week in October -- well, no we're getting into
19 November. Early November's fine.

20 MR. CHANG: Remind me what dates you
21 wanted, Mr. Holliday? Just anytime in September, or
22 did -- would -- did you say something more specific?

23 MR. HOLLIDAY: No, sir. Anytime. I
24 mean, anytime in September would be good for
25 Powderhorn. And if we were to hold it to that 14th

1 through, you know, 30th timeframe, that gives
2 everybody, you know, 30 days from now to prepare. But
3 certainly anytime in September.

4 MR. CHANG: I'm not available the week
5 of the 14th.

6 MR. BLOOM: Me either.

7 DR. AMPOMAH: Me either.

8 MR. CHANG: My first availability, and
9 this is just for me, I don't know about the other two
10 commissioners, but my first availability for two solid
11 days would be Thursday and -- so the 24th and 25th of
12 September. And then, looking into early --

13 Go ahead, Commissioner.

14 MR. BLOOM: Yeah. Yes. 24th, 25th
15 would work for me in September.

16 DR. AMPOMAH: That would be best for me
17 as well.

18 MR. CHANG: October 8th or 9th, or -- I
19 could've made the October 15th and 16th work as well.
20 So October 15th, we already have an OCC meeting.

21 MR. BLOOM: Those dates will work for
22 me as well, 15th, 16th.

23 DR. AMPOMAH: 15th, 16th will work for
24 me too.

25 MR. CHANG: Okay.

1 MR. HOLLIDAY: I -- I'll just weigh in.
2 I know we're pushing for early dates, and whatever
3 dates work for you we will accept and be flexible as
4 well. I'm scheduled to be somewhere on the 15th and
5 16th, so we would prefer that earlier September slot,
6 but if it ends up being the 15th, 16th, we can make
7 that work as well.

8 MR. CHANG: Okay. And your current
9 witness availability was what dates again, for
10 Marathon?

11 MS. VANCE: It was October 19th and
12 20th. And I -- I do not believe that the September
13 date will work.

14 MR. CHANG: I'm sorry. October 19th
15 and 20th?

16 MS. VANCE: Yes. That's correct.

17 MR. BLOOM: Dr. Ampomah is out.

18 MR. CHANG: I'm -- yeah, Dr. Ampomah is
19 out and I'm out.

20 MS. VANCE: Are there November dates
21 that would work?

22 MR. CHANG: Well, we did assure
23 Powderhorn when we issued the stay that we try to be
24 speedy on this, so I want to try to respect their
25 needs as much as I can. I think instead of having us

1 do this all here live, I'll ask the commission clerk
2 to put together proposed dates, and then give both
3 parties an opportunity to confer with witnesses to
4 figure out what you can -- what your respective
5 witnesses can do and what would be the least
6 disruptive to their workflows and also counsel
7 availability.

8 MS. VANCE: That -- that works for us.
9 Thank you, Chair.

10 MR. CHANG: Okay. Well, we'll do our
11 best to try to accommodate everybody's needs, or
12 probably compromise to nobody's full satisfaction, but
13 we'll do our best here. And we'll have commission,
14 our commission clerk reach out to both parties shortly
15 with available dates.

16 MS. VANCE: Thank you, Mr. Chair.

17 MR. CHANG: Does that work, Mr.
18 Holliday?

19 MR. HOLLIDAY: Yes, sir. Thank you,
20 Commissioners.

21 MR. CHANG: Awesome. Thank you.
22 Appreciate it.

23 Is there anything else on this
24 particular case for today that you guys need to bring
25 up or want to discuss or need?

1 MS. VANCE: I don't have anything. I,
2 you know, separately, I think Mr. Holliday and I will
3 work on the pre-hearing order and submit that to the
4 commission when it's ready. But I'm assuming we'll
5 submit that after we've agreed on some dates for
6 the -- the hearing.

7 MR. CHANG: Okay.

8 MS. VANCE: Thank you.

9 MR. CHANG: Cool. Thank you.

10 MR. HOLLIDAY: Nothing further for
11 Powderhorn.

12 MR. CHANG: Awesome. Thank you.
13 Appreciate it. Thank you all very much.

14 In that case, I will move on to case
15 number 24683, which are the -- for commission
16 consideration of the motions for rehearing. We've all
17 gotten written briefings from all the parties, and
18 thank you all for working on a very, very tight
19 turnaround. The commission appreciates that, and we
20 apologize that we are constrained by the ten-day
21 calendar to -- if we were to take action.

22 So, Commissioners, I'll ask for your
23 opinion. Do you need oral summations from the
24 respective parties at this point or are you ready to
25 jump in with questions? What is more effective?

1 DR. AMPOMAH: I'm hoping to listen and
2 then ask questions afterwards. Thank you.

3 MR. BLOOM: I'd be fine with that, Mr.
4 Chair, and I have -- have some statements on Land
5 Office. Thank you.

6 MR. CHANG: Okay. Five minutes
7 sufficient from all sides? Ten? What's your
8 pleasure?

9 DR. AMPOMAH: I'm flexible.

10 MR. CHANG: Okay.

11 MR. BLOOM: Five minutes each side?

12 MR. CHANG: That would be fine by me.
13 If I could ask parties to just -- so all -- well, I'll
14 just speak for myself, but I know that I've certainly
15 read all the written submissions and have reviewed
16 them. So -- but I'll, at the commission's request, if
17 each party wants to give a brief summary of their
18 positions on these applications for rehearing, we'll
19 give you five minutes each.

20 Commissioner, I'm sorry?

21 DR. AMPOMAH: So we combine both NMOGA
22 and IPANM all together?

23 MR. CHANG: Oh, I think so. I mean,
24 unless you want to have arguments on them separately,
25 but they seem to be closely related, and they are

1 joined at least on one of those motions.

2 DR. AMPOMAH: Yeah. I just wanted to
3 clarify. So yeah, thank you.

4 MR. CHANG: Okay. I will invite -- Mr.
5 Suazo and Ms. Tripp, you're welcome to flip a coin as
6 to who wants to start.

7 MR. SUAZO: Ladies first, if that's
8 good with you, Ann, but I'm also glad if you would
9 like for me to start.

10 I would actually just like to say, you
11 know, IPANM did join in NMOGA's motion, but we did
12 file them separately for a reason, so I'm not sure
13 that it is appropriate to combine them, you know, for
14 these purposes. But I defer to -- to the commission.
15 I'm sure we can make that work.

16 MR. CHANG: Would you -- we -- yes.
17 That's fine. For clarity's sake, if you would like to
18 take them up one at a time, we can certainly do that.
19 Do you -- do parties counsels have a preference on
20 which matter we take first if we were to take them
21 separately?

22 MS. TRIPP: No preference, Chair.

23 MR. CHANG: Okay. Well, since IPANM's
24 was filed first, why don't we start with that.

25 MS. TRIPP: All right. Well, thank

1 you, Chair. This is Ann Tripp, with me is Drew
2 Cloutier, we're here on behalf of Independent
3 Petroleum Association of New Mexico. If I could
4 have -- I -- I just made a few slides to summarize
5 here. So I'm going to attempt to share.

6 So you should be seeing, this is -- so
7 IPANM has applied for rehearing pursuant to Section
8 70-2-25(a). It is our position as outlined in the
9 reply that pursuing application for rehearing is a --
10 a separate standalone request for relief from Section
11 70-2-12.2 allowing for appeal over rulemaking to the
12 New Mexico Court of Appeals.

13 IPANM has -- has requested rehearing
14 on -- on some discreet grounds. They are somewhat
15 more general concerns that were raised in --
16 throughout the rulemaking process and -- and
17 deliberations as opposed to the more discreet,
18 technical, or typographical issues that we've
19 addressed earlier.

20 Those three concerns arise from the
21 fact that the purpose of a statement of reasons is to
22 provide a concise, explanatory statement, which then
23 affords, you know, reviewing court the ability to
24 review the commission's independent judgment and
25 analysis. That winnowing and sifting of evidence, of

1 witness testimony, and -- and of policy decisions,
2 frankly.

3 And so in order to afford that
4 meaningful judicial review, especially where there's
5 been a stark departure from prior policy, or
6 interpretation, or application of a statute or
7 regulation, that reasoning becomes all the more
8 important.

9 And so IPANM's application for a
10 hearing there is -- is really based and -- and rooted
11 in that fundamental -- fundamental requirement for a
12 statement of reasons. Here, the rulemaking order has
13 adopted applicant's findings and arguments and one
14 conclusion with the exception of those five identified
15 paragraphs.

16 And with that, there is a whole, you
17 know, laundry list or maybe, you know, laundry bucket
18 of -- of findings that may not be relevant or
19 pertinent to the changes that were adopted. It's --
20 the -- the form of the rulemaking order is -- is
21 somewhat distinct from prior decisions from the
22 commission. I think at one point the comment was
23 made, we did take advantage of the opportunity to file
24 75 pages of findings, but the commission was left with
25 the option to either adopt one or write its own.

1 And I think -- I think here that
2 confuses the issue and really overlooks, you know, why
3 this change is needed or explaining at least to the
4 public and to the reviewing board why the change is
5 needed, and -- and why -- why adopting increased
6 financial assurance in addition to the other changes
7 is going to diminish orphan wells when all those
8 orphan wells had bonds at the time that they were
9 working.

10 A second ground that we've passed for
11 application for rehearing is the contradictory
12 position expressed on prevention of waste. Here
13 within the rulemaking order and -- and as we heard
14 in -- in questioning and testimony, the premature
15 plugging of wells creates waste, especially with TA
16 wells or -- or really low producing well. And so if
17 plugging one well creates waste, then plugging other
18 wells also creates waste.

19 So there's some contradictory logic or
20 reasoning there that we think requires review by the
21 commission.

22 Additionally, you know, putting waste
23 in context, we heard back applicants have relied on
24 leaking methane from wells, you know, using the
25 evidence that's in the record regards with the EPA

1 study and the Legislative Finance Committee report.

2 To put that waste in context and in
3 scale, the leaking methane averages, you know, using
4 the highest averages and the greatest rates of leak,
5 is 2000th of 1 percent of the waste -- or in volume
6 compared to, you know, current 2025, 2024 production
7 for gas and -- and oil wells.

8 And so here, in addition to the -- some
9 of the concerns with procedural irregularities, either
10 a fundamental issue is whether this rule addresses
11 just legacy -- legacy abandonment and reclamation
12 remediation issues and putting secondary and tertiary
13 recovery, sacrificing that on the altar of -- of
14 solving a problem now, rather than looking for it.
15 Because it's established, it's undisputed, and
16 secondary and tertiary recovery can account for 60 to
17 70 percent of recovery of hydrocarbons in the
18 reservoir.

19 And so to the extent that you plug a
20 viable access to those reservoirs now, that -- that
21 affects operators, and you've heard from Oxy's
22 witnesses as -- as well as IPANM's and NMOGA's, you
23 know, that affects how operators move from this great
24 boom and primary production with, you know, shale
25 fracking onto those secondary and tertiary phase of

1 this in the next ten to twenty years.

2 Finally, additional grounds that we
3 raised in our application with respect to the
4 procedure, from our perspective observing
5 deliberations, it appeared that because IPANM did not
6 repurpose the original rule, that that was not
7 considered as an alternative. And under the
8 rulemaking regulations for the -- for the commission,
9 there's -- there's an the opportunity to adopt,
10 reject, or amend.

11 And so it was our perspective that
12 it -- it appeared when -- when the commission moved
13 through each of the -- the changes, there wasn't a --
14 there wasn't necessarily a pause or explained on the
15 record why -- why the commission was moving forward
16 with that change rather than just rejecting changes
17 and -- and continuing the sample.

18 One final point, I'm most likely over
19 my five minutes, but I think throughout this entire --
20 entire rulemaking, which we had met in three weeks of
21 hearing, 32 witnesses, 5,000 pages of transcript
22 alone. And we understand that that is a huge amount
23 of information to process.

24 However, one piece of information that
25 has not been communicated to the commission, which I

1 think is important, is what is the ultimate price tag
2 of these pool changes? We've not heard that the
3 surety industry or the market can support it. We've
4 not heard a final price tag of what -- how much more
5 financial assurance will be -- will need to be
6 obtained. And we've not heard, you know what -- we've
7 not -- we've not seen an economic analysis like you
8 would see with legislation, which considers the man
9 hours and the administrative burden that the rules
10 will create.

11 And so for those reasons, we
12 respectfully request the commission adopt or grant our
13 application for rehearing in addition to reopening the
14 record for limited economic testimony. Thank you.

15 MR. CHANG: Mr. Suazo, would you like
16 to comment on IPANM'S application?

17 MR. SUAZO: I don't have any comment on
18 IPANM's application, but I'm glad to kind of go over a
19 few of the points that I think might be further
20 developed based upon NMOGA's application for
21 rehearing, if you'd like for me to proceed with that.

22 MR. CHANG: I think we heard from Ms.
23 Tripp that we prefer to take these separately one at a
24 time. So if you don't have -- Yeah, I'll invite you
25 to comment at this time on IPANM'S application for

1 rehearing. But, if you don't have any, that's fine as
2 well.

3 MR. SUAZO: Sure. I mean, the only
4 comment would be that we're generally supportive of
5 IPANM's positions in their -- in their request for
6 rehearing.

7 MR. CHANG: Okay. Thank you. I'll
8 turn to WELC, then.

9 MR. TISDEL: Thank you, Commission. I
10 realize I'm in the room, and a nod towards efficiency,
11 we filed joint responses with the division for both
12 IPANM and NMOGA's motions. And, Mr. Nykiel, who
13 should be on the platform will offer our response for
14 IPANM.

15 MR. CHANG: Thank you.

16 Mr. Nykiel?

17 MR. NYKIEL: Good morning, Chair, and
18 Commissioners. Thank you. My name's Matt Nykiel.
19 I'm an attorney with the Western Environmental Law
20 Center here on behalf of applicants. I'll just say
21 briefly that the commission clearly was impartial and
22 exercised its independent judgment in issuing its
23 rulemaking order.

24 The commission heard overwhelming
25 technical evidence brought forward by applicants that

1 supports the rules the commission adopted. The
2 commission also heard fulsome technical and practical
3 evidence from OCD's witnesses based on their years of
4 regulatory experience and OCD collected industry data.

5 In this case, industry would like a
6 different outcome, but they by and large failed to
7 offer hard data supporting their positions, failed to
8 dispute applicant's data, and failed to offer policy
9 proposals to address the orphan well crisis, which is
10 the reason why these rules are needed and the reason
11 that the commission clearly addressed in its reasons
12 supporting the adopted rules.

13 Despite IPANM's claims in their
14 application for rehearing, the commission is not
15 required to respond to all concerns raised during the
16 rulemaking hearing, particularly when they're not
17 grounded in data. The reasons the commission provided
18 supporting its rulemaking order show the adopted rules
19 are supported by substantial evidence and are
20 sufficient to support its decision. The commission
21 should deny IPANM's application for rehearing and
22 respectfully request the commission do so. Thank you.

23 MR. CHANG: Thank you.

24 OCD?

25 MR. HALL: Yes. Michael Hall here on

1 behalf of OCD. I -- I would -- I would join in those
2 statements. And just sort of to piggyback off
3 evidence or lack thereof, any evidence that's not in
4 the record was because the party chose not to put it
5 in the record, to now after all this time of
6 negotiating and presenting the party's respective
7 cases in the rulemaking to now want to reopen this
8 matter after all that time, all that effort is, in our
9 opinion, just a delay tactic. Thank you.

10 MR. CHANG: Oxy?

11 MS. VANCE: Oxy's not taking a
12 position, we're just monitoring at this point. Thank
13 you.

14 MR. CHANG: State Land Office or any
15 other party? EOG? Anybody else?

16 Okay. In that case, I'll turn to
17 commissioner for questions on IPANM's application.

18 MR. BLOOM: Mr. Chair, if you'll allow
19 me, not so much of a question, but I would like to go
20 through some of the -- of what I saw in IPANM's
21 petition or motion to rehear.

22 I found that essentially all the major
23 issues that were -- that we dealt with during the
24 hearing were brought up in a way that made it sound as
25 if, or it was colored as if we had not addressed those

1 things. So I'd like to go through and -- and address
2 a number of these things one by one if you'll indulge
3 me.

4 MR. CHANG: Sure.

5 MR. BLOOM: Thank you. At the outset,
6 I'd like to note that before addressing IPANM, we did
7 hear from -- we did look at the applicant's motion to
8 rehear last week and it was largely related to
9 clerical errors, we dealt with those a week ago today.
10 The applicant's wanted to add one new sentence to the
11 rule to underscore an aspect of bonding, but the
12 commission elected not to take that up, believing that
13 the rules as it stands was sufficient.

14 So looking at IPANM's motion to rehear,
15 we see that IPANM cautions the commission, page 3 of
16 its motion that "New Mexico's courts consistently
17 disfavor and caution against wholesale adoption of one
18 party's findings and conclusions where statutes
19 mandate that an agency or commission exercise its own
20 independent judgment."

21 Well, this commission did not do that.
22 There was not wholesale adoption as I'll outline in a
23 moment. IPANM goes on to list its five reasons why
24 there should be a rehearing. Numbers 1 and 4 were
25 "The commission's refusal to consider and reject

1 contrary evidence and party positions to include
2 public comment," and 4 "Rejection of proffered
3 economic evidence."

4 I reply to these assertions that the
5 OCC clearly considered and judged all sides' testimony
6 and positions including IPANM's economic evidence.
7 Had we not done so, the commission would not have
8 rejected parts of the applicant's proposal and created
9 protections for industry in line with requests and the
10 positions of IPANM, NMOGA, and Oxy.

11 Further, the OCC absolutely did not
12 wholesale adopt the applicant's positions. And this
13 is in large part due what we heard from IPANM, NMOGA,
14 and Oxy.

15 To refresh everyone's memories as to
16 some of the times that the OCC differed or broke with
17 the applicants in OCD's positions. Number one, the
18 OCC took particular care to make sure that a well
19 would not be bonded multiple times, i.e., we wanted to
20 prevent staffing of bonds. This appears in 19.15.8.9,
21 that was important to industry.

22 The OCC is not requiring bonding of
23 wells and approved TA wells -- for approved TA wells
24 during the first two years since 19.15.8.9(f). Dr.
25 Ampomah flagged this pretty early in the evidentiary

1 hearing and I would say that he fought for that, and
2 by the end, all three of the commissioners agreed with
3 him on that.

4 The OCC created a variance process for
5 when wells must be bonded due to inactivity with the
6 variance being related to physical impediment to
7 production. Things like transportation line being
8 gone for natural gas safety issues. It's
9 19.15.8.9(d)3.

10 Furthermore, number 4, the OCC is not
11 requiring as the applicant's requested newspaper
12 publication for extension of temporary abandonment
13 status at 19.15.25.13(c), I believe Oxy pushed for
14 that. And then Oxy also pushed for more restrictive
15 language with respect to who can participate in the
16 process for extension of temporary abandonment status.
17 The applicants wanted a interested person, but the OCC
18 adopted on the split vote that it could be -- it had
19 to be a person with standing.

20 So those are just a few examples of
21 there was not wholesale adoption of one side's
22 positions here.

23 I believe -- I'll note it again, during
24 the evidentiary hearing that IPANM and NMOGA did not
25 offer alternatives to the applicant's proposals, I

1 said this early in the hearing and more than once.
2 Instead, IPANM and NMOGA's case were focused really on
3 opposing the applicant's positions.

4 And once we were convinced apparently
5 of the applicant's position that action needed to be
6 taken on bonding and change of operator, there were
7 not alternatives really from NMOGA and IPANM to look
8 at.

9 I believe myself, and I believe my
10 fellow commissioners as well were convinced by the
11 applicants. Clearly, that's where we came down, who
12 cited many measures, statistics and data showing the
13 threat to the state from unplugged wells. We were --
14 we saw the Center for Applied Research Study of lands
15 in New Mexico.

16 This -- that points out that there were
17 about \$200 million in bonds to cover liabilities would
18 be -- you know, today I think that was \$8 billion,
19 probably \$10 billion now, so roughly 2 percent. This
20 is the equivalent of allowing somebody to put a
21 million dollars of liability on land and ensuring with
22 a 20,000 bond.

23 There were some -- on page 5, IPANM
24 states that in addition -- "In addition, neither
25 during the hearing nor in deliberations did the

1 commission consider at any time the ability of the Oil
2 Conservation Division to actually implement the rule
3 changes or the projected cost in man hours or
4 full-time positions that the new rules will impose on
5 OCD personnel. That these two practical
6 considerations are commonly performed with legislative
7 changes."

8 I'll -- I'll note again, as I said a
9 number of times throughout the case, that this, we --
10 we're not, the legislative body, were not the LFC.
11 This case, it's case 2468324, means this case began in
12 2024. There were two legislative sessions with the
13 legislature could have spoken on this issue of bonding
14 and change of operator. It passed a law to prevent
15 any of it. It did not. Public, the applicants of
16 course have the right petition the OCC.

17 The OCD -- the OCD was a party to this
18 proceeding, and it is supportive of the applicant's
19 position, and Mr. Tremaine addressed this in his
20 August 11th reply to NMOGA's application to rehear.

21 Regarding IPANM's other -- other three
22 criticisms, we see "The commission's acceptance that
23 premature plugging creates waste, yet finding that
24 adoption of the applicant's proposed rules reports of
25 the commission's statutory mandates of the Oil and Gas

1 Act."

2 I do not recall the commission
3 accepting "That premature plugging creates waste."
4 Again, we spent a lot of time on this during the
5 hearing. I'll run over -- go over some of my previous
6 statements.

7 That's that the OCC has the legal
8 authority and the duty to make rules to prevent waste
9 to protect public health in the environment. We did
10 that in the -- in this case. The rulemaking falls
11 within the statutory jurisdiction of the OCC. We
12 heard that older wells in particular orphan wells leak
13 methane, which is a waste of the resource and a threat
14 to human health and the environment.

15 OCD'S closing statement notes that
16 "Over 60 percent of the orphan wells plugged by OCD
17 cause waste by leaking natural gas, even in wells and
18 approved TA that have met mechanical integrity testing
19 requirements and OCC rules can nonetheless emit and
20 leak natural gas because equipment can fail over
21 time."

22 The applicant's closing argument notes
23 on page 17 that "The U.S. Environmental Protection
24 Agency estimates that an average low or non-producing
25 oil well leaks 1.8 tons of methane in the atmosphere

1 each year."

2 Mr. Powell, of the OCD reminded us on
3 page 16 of the OCD'S closing, that the legislature
4 also gave the OCD jurisdiction over reclamation. "It
5 is also the OCD's job to manage the Reclamation Fund
6 and to use available fund to plug orphaned wells."

7 He goes on to say "OCD also has the
8 obligation to regulate and require the remediation of
9 releases and environmental contamination."
10 Legislature and law have clearly given the OCC
11 authority over bonding.

12 The applicant's closing arguments,
13 pages 16 to 20. There are five pages that go on about
14 prevention of waste. I don't want to read all of
15 that, but on page 1 of the paragraphs is "Applicant's
16 FA proposals," financial assurance proposals, "which
17 increase bonding for high-risk wells and high-risk
18 portfolios, nowhere require an operator to plug a
19 well. Increasing bonding for these wells better
20 reflects the actual costs to OCD, to P&A and it's
21 necessary to stem the tide of orphan wells. If an
22 operator's financially unable to internalize
23 legitimate costs of doing business, the operator can
24 transfer the well to a viable operator who can."

25 The applicant's wanted to remind us

1 that wells are not routine. The wells are routinely
2 plugged in order to be plugged with hydrocarbon still
3 in the ground. It's not economical, even realistic to
4 produce every molecule of hydrocarbon that a well can
5 access. This is discussed in the applicant's closing
6 statement on page 17.

7 We saw the reminder that an IPANM
8 witness admitted as much, it was Mr. Ezzell, I
9 believe. We should put any waste arguments in context
10 as well, which the applicant's witness Mr. Purvis
11 does. In the closing arguments from the applicant's,
12 page 17, he said "He modeled the extent to which wells
13 in New Mexico would be categorized as low producing
14 wells subject to a single financial assurance. He
15 found 3,900 wells will qualify representing 6.6
16 percent of the statewide well population, and only
17 0.048 percent of total statewide production."

18 Again, that's 6.6 of wells not even
19 producing five one hundredths of 1 percent of oil in
20 the state, so that's really stunning.

21 Finally, on this point regarding waste,
22 I note the applicant's proposal does not require P&A
23 of wells, but rather the class of well be bonded,
24 operators can decide when it makes sense to P&A versus
25 continuing to eke out low production and maintain a

1 bond.

2 I asked Mr. Purvis about, page 739 of
3 the applicant's prehearing statement, about concerns
4 from NMOGA and IPANM, about companies being driven out
5 of business by these proposed rules. And I asked him
6 for his conclusions from two 2019 studies; Boomhower,
7 and Lange, and Redlinger that looked at impacts on
8 production from increased regulation.

9 Mr. Purvis -- studies concluded that
10 there were only "Minor impacts on land produced for
11 oil and gas, but environmental violations go down."

12 Both IPANM and NMOGA bring up HB 80.
13 We addressed this extensively during the hearing, and
14 the hearing officer asked us about that as well.

15 But again, with HVA, we find money is
16 not held in an untouchable, irrevocable trust, or
17 permanent fund. I note that -- I think I expressed
18 this earlier, that given the dependence of the state's
19 budget on oil and gas, somewhere between the third and
20 a half of the budget comes from oil and gas.

21 The need to sweep funds from a fund
22 like the Reclamation Fund will happen when the state's
23 struggling. Because the oil and gas industry is
24 struggling, so at a time -- during a time in the oil
25 and gas industry at least be able to plug wells, the

1 state would be struggling to potentially sweep those
2 funds. And I think we remember a day when the
3 legislature was sweeping \$10,000 sums a few years ago,
4 and a decade ago we had furloughed employees.

5 Again, there was a talk, an IPANM and
6 NMOGA's motions for rehearing, applications for
7 rehearing. Looking at -- talking about 70-2-14 NMSA,
8 saying that forbids new category of bonds.

9 Again, the legislature had at least two
10 sessions during versus case was underway to have
11 addressed that very thing and did not choose to act.

12 Wrapping up here, IPANM goes on to
13 state in this application for a hearing that in the
14 process there is, I think this is their -- a failure
15 to afford temporarily abandoned wells require
16 protection. The record will speak for itself on this,
17 but the rule does not run scant of 70-2-14. This is
18 addressed in the applicant's closing and in their
19 OCD's replies to IPANM and NMOGA's application and
20 motions to rehear.

21 Finally, IPANM asked for your
22 hearing -- for a rehearing because its fifth reason
23 was "Confusion and procedural irregularities and
24 deliberations which constrain or prevents meaningful
25 judicial review."

1 And with respect to confusion, this is
2 a -- this was a complex multi-party rulemaking. There
3 were over 200 documents. I believe IPANM had 16
4 witnesses alone. At one point, I believe there were
5 8,000 pages of material, it might be over 10,000 pages
6 now. There was a lot to administer here.

7 Then, after an evidentiary hearing, the
8 parties got together and presented us, the OCC, with
9 new language, was what -- which was what we largely
10 adopted, minus the OCC examples that I cited earlier.

11 As we explained that IPANM's request
12 during deliberations, we refer to the document, the
13 language that came out of negotiations between the
14 parties as the "Joint stipulation." You know, for
15 convenience sake, we then, and this is important,
16 looked at the document in the time consuming side by
17 side comparison -- comparison with IPANM's suggested
18 language, and NMOGA's suggested language, and Oxy's
19 final suggested language.

20 IPANM was heard, NMOGA was heard, Oxy
21 was heard. This was represented in the many instances
22 where we broke with the applicant's suggestions and --
23 and rulemaking cases. So there -- this was clear,
24 there was discussion, there was debate on the record,
25 and a court could make a meaningful judicial review.

1 That is it. Thank you, Mr. Chair, for
2 indulging me.

3 MR. CHANG: Commissioner Ampomah?

4 DR. AMPOMAH: Thank you, Commissioner
5 Bloom. That was a very comprehensive presentation
6 right there. And I'll concur with you on almost what
7 you said, and I'm not sure if I can add any -- if I
8 have any additional information to add.

9 But one thing that I'll point out is,
10 you know, if I look at the number 4 issue that IPANM
11 is raising here, a rejection of preferred economic
12 evidence on matter of public importance constitutes
13 a -- a sufficient reasoning to grant rehearing.

14 Now, as I read through that, you know,
15 they are making a case here that the commission more
16 or less adapted the OCD cost and not really taking
17 into account the industry cost. And even they went
18 ahead to talk about the fact that OCD did not really
19 consider the 95 percent, that wells that the industry
20 has blocked, and the cost associated with that.

21 Now, as I read through all of that, I
22 will say that if you compare the evidence that the
23 applicant and OCD presented with clear evidence, you
24 know, showing us that the -- the conditions of the
25 well doesn't really matter in here.

1 As a petroleum engineer, when I was
2 reviewing through the -- those applications, and even
3 through the hearing, I had that same thought, like the
4 depth of the well has to matter. You know, how the
5 well was complete, and the age of the well needs to
6 matter. But evidence was really presented here to
7 convince me here as an engineer to really understand
8 that we have to go with what OCD was presented.

9 So I felt like it was really thorough.
10 And Commissioner Bloom pointed out, I fought really
11 hard when it comes to some of the positions that I
12 felt like we need to really consider this. And he
13 pointed all of that out.

14 So with four -- four days of
15 deliberation, I feel like we did a really great job.
16 And I do not -- I mean, when I read through it, I do
17 not see anything that stands out to me.

18 So I'll concur with Commissioner
19 Bloom's presentation, and that is the only thing that
20 I will add to that. Thank you.

21 MR. CHANG: I'm going to take a
22 slightly more limited -- well, we'll see.

23 So I do regret that IPANM feels that
24 the commission refused or otherwise failed to
25 sufficiently consider contrary evidence and other

1 party positions. It certainly was not my intent to --
2 well, I don't think we -- I certainly did consider,
3 and I'm sorry if that was not sufficiently
4 communicated to all the parties so that they felt
5 heard and they felt considered.

6 Of course, understanding that we, the
7 commission as a whole, landed on a decision that was
8 convert or that was different than the one urged by
9 IPANM and NMOGA, and to a certain extent of -- well,
10 primarily adverse to the positions advocated by IPANM
11 and NMOGA.

12 I certainly tried my best throughout
13 the deliberations and the hearings to signal and to
14 make the -- make all parties, including IPANM and
15 NMOGA feel heard. And the commission understands its
16 legal role, and we have a difference of opinion with
17 the -- with some parties as to what constitutes waste,
18 and how waste is defined, and how we have to handle
19 that, and how the duty to prevent waste intrasects
20 with the rule here.

21 Certainly I think the parties amongst
22 themselves disagree as to whether or not the rule here
23 functions to prevent waste or not. The commission had
24 to make a decision, and I understand that the
25 commission took a position that was not favorable to

1 IPANM, or at least not a position that was urged by
2 IPANM or NMOGA.

3 But certainly we considered -- I'll
4 speak just for myself. I certainly did consider and
5 read through all of the materials as hefty as the
6 record was. We certainly did our very best to go
7 through the record. I know that I insisted on going
8 through, during deliberations, going through section
9 by section and of course had commissioners felt like
10 any sections should rest on the no change alternative,
11 as IPANM noted here.

12 It's certainly my understanding that
13 that was always an option. It wasn't an option that
14 was urged very frequently by fellow commissioners, but
15 it certainly -- I'll speaking for only myself, I
16 certainly understood that that was an option.

17 In terms of whether the rules comport
18 with the statute, again, that was briefed and argued
19 multiple times. There was plenty of opportunities on
20 House Bill 80 and whether or not to -- we did reopen
21 the record and took administrative notice of the
22 passage of HB 80, what it did contain and what it
23 didn't contain, what language was amended and what
24 language wasn't amended. We did go through that.

25 As to the decision not to reopen for

1 additional witness testimony, I also recall, and I
2 think the record will reflect, that I asked for a
3 proffer of the evidence on multiple -- I believe I
4 asked for -- I tried to clarify what the proffer was
5 at least three times. So it was based on the decision
6 on whether or not to reopen that record -- to reopen
7 for the purposes of additional witness testimony was
8 based on what the parties were able to present as part
9 of that proffer.

10 As to procedural, as to allegations of
11 procedural irregularity, I certainly hope not, I
12 certainly hope that we -- I certainly concede that I
13 am human and fallible. However, we did try to go out
14 of our way to consult with commission counsel when
15 there was questions as to the sufficiency of the -- of
16 any of the documents in front of us.

17 So we certainly -- speaking -- let me
18 speak only for myself. I certainly tried to be as
19 clear on what processes and to be as deliberate and
20 thoughtful on the procedures that we followed for this
21 hearing.

22 And most importantly, I think the most
23 important question is when we're -- at this point,
24 we're merely deciding, not necessarily on the merits
25 of the arguments that are being presented by IPANM,

1 but the question of whether or not to reopen the
2 hearing, or to reopen or rehear anything at all.
3 Right? And to me the most important concern here is
4 whether or not the hearing was conducted in a way that
5 allows for meaningful judicial review.

6 Because I understand of course that
7 this is a highly contentious policy rulemaking that
8 has significant impacts and where there are
9 stakeholders with strong concerns as well as
10 stakeholders who are strongly in favor. And these,
11 the legal issues raised, I think reasonable people do,
12 can, and did disagree on how best to interpret the
13 statutes here. The commission was called on to make a
14 decision, and certainly we want to make sure that we
15 did so in a way that allows for meaningful judicial
16 review.

17 The record that we laid out, the
18 briefings from all of the parties, the oral arguments,
19 the transcript of the deliberations I think have
20 allowed all of the parties to make the record where
21 they disagreed with each other, and of course where
22 they disagreed with the commission's ultimate decision
23 as to the scope of the Oil and Gas Act.

24 So I don't -- I'm not sure that I see
25 what else we could do or how a rehearing here would

1 actually add to meaningful judicial review. I think
2 that we have done -- certainly I have -- I'll just say
3 again, acknowledging that we are all human and
4 fallible, we've certainly tried our best, and we've
5 certainly all in good faith tried to build as
6 meaningful of a record as possible.

7 Now certainly, I can -- commission
8 counsel, you're welcome to weigh in if you feel like
9 there are issues as to procedural issues or anything
10 that might prevent meaningful judicial review that we
11 should reconsider. I'll let you -- I'll turn to
12 commission counsel, if you would like to weigh in.
13 I'm seeing the commission counsel does not wish to
14 weigh in.

15 You know, at the end of the day, I
16 think I -- the parties disagree with certain -- the
17 commission had to make decisions. Right? And the
18 parties are not all in agreement here. And the
19 commission did our best to document why and how we
20 made the decisions that we made. Looking at the
21 record that was here, it seems to me that there is
22 plenty for fulsome judicial review should any party
23 wish to exercise that right.

24 So I am not inclined at this point to
25 take up, oh, the rehearing application from IPANM.

1 Is there any further debate? Yeah, any
2 further debate?

3 MR. BLOOM: Not on my end, Mr. Chair.
4 Unless Dr. Ampomah has something to add, I would move
5 to reject or deny IPANM'S motion to rehear.

6 DR. AMPOMAH: [inaudible] second.

7 MR. CHANG: Moved and seconded. Any
8 objection from commissioners? Hearing no objection,
9 the motion passes.

10 I will turn to NMOGA for NMOGA's
11 application.

12 MR. SUAZO: Hi, good morning, Mr.
13 Chair, Commissioners, Madam Hearing Officer, and the
14 rest of the parties. My name is Miguel Suazo, I
15 represent NMOGA, I'm with the law firm Beatty &
16 Wozniak. I'd like to kind of build based upon the
17 commissioner's comments in response to IPANM's request
18 for rehearing.

19 You know, I think NMOGA certainly
20 respects the limited time and resources that everybody
21 has, particularly the commission. And this has been
22 quite a significant undertaking. And I think, you
23 know, industry certainly appreciates the time and
24 effort that has gone into this. And our application
25 for rehearing hopefully has received as nothing more

1 than an effort for us to be as clear as possible in a
2 complex rulemaking that we already know is going to
3 require numerous guidance types of documents on a
4 going forward basis just to understand, you know, what
5 these rules actually demand of the parties required to
6 abide by them.

7 Now, as someone who traffics in the
8 dark arts of OCD rules and regulations daily, you
9 know, I can tell you it's challenging even when the --
10 the black letter law is clear as, you know, our
11 forebearers made it. And it's pretty often that I go
12 back to look at old orders and try and decide what
13 they mean under the circumstances.

14 And so, you know, Commissioner Bloom, I
15 appreciate your comments just now in response to
16 IPANM, and I think you hit on a lot of the issues, and
17 I think for me that really focuses what the ask here
18 is.

19 NMOGA's not arguing that the commission
20 can never incorporate a party's proposed findings or
21 reasoning. I think that the problem is what happens
22 when the commission incorporates, you know,
23 applicants' filings and then materially changes
24 applicants' proposed results. And there's just a
25 reference to those things that, you know, is somewhat

1 clear, but you know, I hate to go back and look at
2 this order three years from now when it's an issue for
3 whatever reason and not have those clearly laid out in
4 the order itself, and then have to go back to the
5 docket and find, you know, the section of -- of the
6 applicant's closing documents when this actually
7 applies.

8 And just to call your attention to, you
9 know, the code, 19.15,3.13(c), NMAC requires the
10 commission's order to include the reasons for the
11 action taken. And so WELC and applicants point to
12 anti-stacking and say that order explains that
13 modification and that this is just one example that
14 NMOGA's reasoning and argument lacks merit.

15 You know, we actually agree with that
16 example. We agree that the order explains
17 anti-stacking, but that's not actually one of the
18 reasoning gaps we identified. You know, just to give
19 another example, the existence of reasoning for one
20 modification does not answer the absence of
21 explanation on, for example, Section 72-14, which are
22 the factors which I can get into subsequently.

23 But I wanted to start here. So I might
24 be a little discombobulated compared to, you know,
25 what I intended. But I do think that in the context

1 of what you guys have raised for us today, kind of
2 jumping around a little bit matters.

3 So it doesn't answer the absence or
4 explanation of, you know, the surety market capacity,
5 implementation, feasibility. Were those in the
6 record? Yes. But it's not apparent from the reasons
7 of the order necessarily. And as long as we've been,
8 you know, pursuing this rulemaking over two years, as
9 Commissioner Bloom pointed out, since 2024, I prefer
10 to measure twice and cut once and make sure that the
11 final order is -- is as robust and the reason is -- is
12 as -- as clear and comprehensive as it can be.

13 And so, you know, we did find some
14 examples, if the commission wants examples of
15 conflicts created through incorporation.

16 One example is applicant supported
17 different treatment of TA wells than the treatment
18 ultimately adopted by the commission. The commission
19 adopted a broader variance concept than applicants had
20 originally supported.

21 Another example is the commission
22 accepted industry anti-stacking principles that are
23 inconsistent with portions of the incorporated
24 rationale, and applicant's treated transfer as an
25 unavailable solution to financial insurance burdens

1 while the final transfer rules authorize OCD to deny
2 transfers based on the predicted financial risk --
3 risk.

4 So just to sum up that piece of it is,
5 our point is not that incorporation is forbidden, our
6 point is that when the incorporated reasoning and the
7 commission's final decision diverged, the order should
8 tell the regulated parties which reasoning governs.
9 Because that's helpful in terms of interpreting what
10 is meant within the context of the rule or the subtext
11 of the rule.

12 So NMOGA proposes that a revised order
13 identify material incorporated propositions superseded
14 by the commission's modifications, state the
15 commission's governing rationale on dispute provisions
16 and address principle -- principle contrary evidence
17 and alternatives.

18 So I think I've touched on, you know,
19 what I sense the commission might have taken a bit of
20 umbrage over, and understandably. You know, you guys
21 put in a lot of work and time here and so did we. And
22 so I respect the commission sticking to its position,
23 but I'm here to advocate for my client, and I think
24 that their position has some things that are worth
25 considering as well.

1 You know, as a threshold issue,
2 applicants and OCD alleged that some of our
3 allegations are moot because they were previously
4 litigated. And you know, NMOGA's arguments were
5 raised in the joint motion to dismiss, in our opposing
6 brief, and other prior submissions. And so they
7 characterize those rehearing re-arguments as matters
8 already rejected and ultimately called NMOGA's request
9 unright or moot.

10 The fact that an issue was previously
11 raised is not a reason that it is moot, especially in
12 this -- in this circumstance. It is why the issue is
13 properly preserved and now properly presented to the
14 commission on rehearing. NMOGA is not contending that
15 the commission never heard these arguments. In fact,
16 quite the opposite. We documented their preservation,
17 the motion to dismiss, the closing briefs, the record
18 that was supplemented, and the record itself.

19 But for the commission today, the
20 relevant question is actually, did the commission
21 resolve those issues in the final order and final rule
22 package? And does the order adequately explain that
23 resolution? And it's our position the commission's
24 final action was not identical to the proposal that
25 existed when the motion to dismiss was denied.

1 And we think that because after that
2 ruling, the parties engaged in 16 posterior
3 negotiations, which for better or worse are not really
4 documented outside of the direct stipulation.
5 Applicant's filed exhibits 89 and 90, the commission
6 adopted some of industries counter proposals, it
7 rejected others, it modified applicant's rule change,
8 it incorporated applicant's reasoning subject to the
9 modification.

10 So, you know, I raise all those things
11 because we -- because saying we previously rejected
12 that argument doesn't necessarily answer how the
13 argument applies to the final rule that emerged months
14 later.

15 So prior litigation establishes
16 preservation, but it does not -- does not make an
17 adverse final ruling moot. So on this point, the
18 relief of the NMOGA request is to consider the issues
19 on the merits, which I know in certain instances the
20 commission feels it does. And we also ask not to
21 reject the application simply because the legal
22 theories originated earlier in this -- in this
23 proceeding.

24 I would like to touch just a little bit
25 on 70-2-14. And I think the most straightforward

1 statutory question in -- in NMOGA's application
2 concerns the legislature's instructions. The statute
3 does not really say that plugging cost is generally
4 relevant. It actually directs consideration of
5 specific factors, including the depth of the well
6 involved, the length of time, the cost of plugging
7 similar wells, and other relevant factors. And
8 Commissioner Ampomah did a good job of raising that in
9 terms of what he took away from what was presented
10 during the hearing.

11 But in this instance, NMOGA's question
12 is, I think pretty simple and straightforward. Is
13 where within the findings and the final order does the
14 commission explain how those factors support the same
15 \$150,000 amount across the materially different well
16 populations that are now governing that amount. You
17 know, WELC and OCD said that those factors were
18 considered, and we know that 150,000 is linked to
19 OCD's cost to plug.

20 I guess in taking a step back from
21 that, I think that restates the conclusion but doesn't
22 answer the specific statutory -- statutory question.
23 An aggregate OCD plugging cost figure does not in and
24 of itself or alone explain how the depth was
25 considered, how production history was considered,

1 what constitutes a similar well, why a shallow
2 productive well and the materially different inactive
3 or TA well receive the same amount, or why the same
4 amount applies to a productive well swept into the
5 portfolio provision because of the status of other
6 wells.

7 So I think that's an important
8 distinction because NMOGA's position is that the
9 statute requires a factor-based determination that is
10 tied to characteristics of the well involved and
11 comparable wells. But argues that the orders is not
12 show how the commission moved from those mandatory
13 factors to a single uniform statewide number for these
14 materially different categories.

15 And I -- this is again jumping around,
16 and apologies, but we just raised in your -- in your
17 comments that 150,000 is less than OCD's average cost.
18 NMOGA's response to that is that may explain why the
19 150,000 was selected as a policy number, but it
20 doesn't answer the statutory question of how the
21 commission considered the factors, the depth, times
22 this production and so on and so forth.

23 And I think the most important thing
24 here, and this is where, to Mr. -- to Commissioner
25 Chang's point, you know, reasonable -- reasonable

1 minds can -- can agree to disagree. It's our position
2 that the legislature specify those factors. And NMOGA
3 is asking the commission to explain how they informed
4 that 150,000 number. We know it's in the record, but
5 in its statement of reasons and in its final order,
6 because I think that matters for those of us who are
7 going to have to advise on how to comply with these
8 rules on a going forward basis.

9 MR. CHANG: Thank you.

10 Ms. Tripp, would you like to weigh in
11 on Mr. Suazo's application?

12 MS. TRIPP: Thank you, Chair. Just a
13 duty for the record that IPANM has joined in NMOGA's
14 application for a rehearing and -- and supports those
15 reasons, but I don't need to elaborate. Thank you.

16 MR. CHANG: Thank you.

17 WELC?

18 MR. TISDEL: Again, we filed jointly
19 with the division in our responses and -- and if it's
20 okay with him, I defer to Mr. Hall to start with this.

21 MR. CHANG: Mr. Hall?

22 MR. HALL: Thank you, Mr. Chair.

23 Generally, we've had a lot of hearings here, it's a
24 voluminous record. The record makes abundantly clear
25 that y'all were, if anything, above and beyond in your

1 consideration and explanations of the positions the
2 commission took in the order.

3 The order itself is very clear on the
4 basis for -- for the findings in the order. It -- it
5 adopts the applicant's rules and analysis in many
6 ways, but it doesn't in -- in every case.

7 And -- and, Commissioner Bloom, I
8 thought very eloquently went through very specifically
9 many examples where that wasn't the case. The order
10 itself clearly indicates where -- where the
11 applicant's suggestions were modified. Where they
12 were modified, and how they were modified, and why.
13 The -- the reasons are stated in the order itself.

14 I -- I noticed NMOGA kind of
15 specifically talking about the -- the statutory
16 factors for -- for -- well, considering the statutory
17 factors and -- and indicating that the commission
18 didn't do that.

19 The commission did. The commission
20 cites to the applicant's closing statement, which I --
21 I would direct the commission to page 8 of that,
22 wherein, and I'm just going to quote WELC here.
23 "NMOGA misses the mark again. Applicants produce
24 substantial evidence of the 150,000 oil and well FA
25 amount is based on statutory factors including OCD's

1 cost to plug," which I'll -- I don't have a citation
2 here, but I believe both Mr. Sporich and Mr. -- Mr.
3 Ezzell agreed that that's what it should and that's
4 what the clear statutory language said it should be
5 based on.

6 It's not industry costs, because
7 bonding really has no nexus to industry costs. It's
8 when the taxpayers and OCD ends up holding the bag
9 and -- and being required to -- to plug a well.
10 That's -- that's what bonding -- that's the logical
11 nexus to that.

12 So -- and I recall Mr. Powell saying
13 "Yes, depth is considered in this, but it's not the
14 factor that" -- "that is most important and most
15 indicative of where bonding should be, and that's the
16 actual cost to OCD."

17 So I -- I thought all -- all three of
18 y'all commissioners in response to IPANM's application
19 to -- for rehearing eloquently stated the reasons for
20 the order, why you believe IPANM, and -- and we would
21 urge the, the same analysis for NMOGA, why -- why
22 their application should be denied. And I think -- I
23 think y'all -- y'all's effort and -- effort and -- and
24 thoroughness in providing not only your adoption of
25 the rules, but the reasons for that are clear, both --

1 both in the evidentiary -- or both in the -- the
2 reporter's record and the order itself.

3 And -- and thank you all for -- for
4 your additional consideration here today.

5 MR. CHANG: Thank you. Oxy?

6 MS. VANCE: Oxy is keeping a neutral
7 position and just monitoring. Thank you.

8 MR. CHANG: Oh. WELC? Sorry. I
9 did -- okay.

10 MR. TISDEL: Just wanted to let Mr.
11 Nykiel weigh in if he had anything..

12 MR. CHANG: Sure.

13 Mr. Nykiel?

14 MR. NYKIEL: Yeah. Thank you. Yes.
15 Matt Nykiel here on behalf of applicants. And I'll be
16 very brief. We just support OCD'S summary there, and
17 also just only say that to the point the Chair made
18 earlier, it's -- it's not clear to us exactly what are
19 we hearing -- how are we hearing would add further
20 clarity to the existing clarity that exists in the --
21 the commission's order and reasons for that order.

22 Again, NMOGA raises many of the same
23 arguments that they brought up throughout the hearing,
24 and in their application for rehearing don't provide
25 compelling reasons for how the -- the commission's

1 final rulemaking order should change the ultimate
2 outcome of those legal determinations that the
3 commission made.

4 So again, I would -- we support the
5 OCD's response here, and would again request that the
6 commission deny NMOGA's application for rehearing.
7 Thank you.

8 MR. CHANG: Any other parties? EOG,
9 New Energy Economy? Anyone? Going once, going twice.

10 Okay. I'll start with -- I'll move to
11 commissioner questions then before I -- there might be
12 some statements, but I'll start with any questions.

13 Do you have any questions?

14 DR. AMPOMAH: -- Commissioner Bloom?

15 MR. CHANG: I think he has statements,
16 not questions.

17 DR. AMPOMAH: Oh, then --

18 MR. CHANG: I have questions.

19 DR. AMPOMAH: Oh, yeah. I did have
20 one, but you can -- no, I do have one quick question.

21 MR. CHANG: Okay. Go for it.

22 DR. AMPOMAH: So a quick question for
23 NMOGA, is you raising the concern about surety
24 capacity. I just wanted to elaborate on this a little
25 bit. I mean, was this something that was really

1 discussed extensively during the hearing?

2 MR. SUAZO: So it was raised during the
3 hearing, and my recollection across the various
4 witnesses, including the letter that was struck by the
5 commission, was essentially that changing the market
6 to these heightened bonding requirements would cause
7 that market to dry up.

8 We identified that there is a small
9 group of surety companies available generally, and the
10 New Mexico market is already relatively unattractive
11 compared to other market type of environment. So I
12 think the concern is that the financial assurance
13 requirements would be heightened, and that would
14 create more demand for the product, and there would be
15 less market participants able and willing to serve
16 that market if these rules aren't carefully
17 calibrated.

18 Does that answer your question, Dr.
19 Ampomah?

20 DR. AMPOMAH: Yes. Now, another
21 question is, so throughout the whole hearing, you saw
22 the evidence from the applicant showing -- you know,
23 they analyze almost all the wells that are in OCD'S
24 database proving to the commission that in their
25 analysis, they considered the age of the well, the

1 depth of the well, all the -- all the categories that
2 was in the, let's say, that -- the commission needed
3 to consider. And they were able to touch on each of
4 them.

5 I mean, I went back and forth with
6 them, because I mean, as an engineer, that is what I
7 want to see. Now, they went through their thorough
8 analysis and still got to the point that they believe
9 that it has to be 150,000 considering the cost that
10 OCD will more or less need to plug the wells,
11 considering all those factors.

12 Now, did you believe that NMOGA really
13 did a good job countering that? You know, even NMOGA
14 presenting evidence to the commission about how --
15 that, how those parameters contributed to even any
16 amount that NMOGA was proposing?

17 MR. SUAZO: So I guess I -- I take
18 exception to the characterization of what we did and
19 didn't provide. You know, if you recall, we had two
20 expert witnesses, both of them petroleum engineers
21 with significant plugging and abandonment experience,
22 and they presented all the various factors going into
23 assessing, you know, what a plugging circumstance
24 warrants.

25 To a degree, Dr. Ampomah, I kind of

1 think that's beside the point a little bit here. You
2 know, the real issue is, you know, the statutory is
3 the ultimate authority. Right? The legislature
4 spoke, and that's when they directed the commission to
5 follow. \$150,000 was originated from, you know, the
6 LFC report and OCD's average cost to plug. So this is
7 a policy decision here, and now it's fixed, and it
8 escalates.

9 But that still doesn't answer the
10 statutory mandate or question of how the commission,
11 this commission in this proceeding considered depth,
12 times since production, and cost of plugging similar
13 wells. And to be clear, I need to make very clear, is
14 that in the record? Yes. Is that apparent based upon
15 what's in the order? I think it could be clearer, and
16 I think it should be. Because the legislature itself
17 specified those factors, and all NMOGA is asking is
18 that the commission explain how they inform themselves
19 of that number in the statement of reasons and in the
20 order itself.

21 If you guys think it's clear -- it's
22 clear, which you might, you know, then I guess that's
23 what you think. We disagree. We think there should
24 be more substantive information there. And I think
25 that'll just make this rulemaking in the record that

1 we've spent two years, you know, working on, and now
2 we're the -- about to exhaust the administration of,
3 of this rulemaking today, theoretically.

4 You know, we're -- we just want this to
5 be as easy to abide by as people who have to deal with
6 these rules, you know, day in, day out. You know,
7 WELC's going to walk away from this and they're going
8 to be glad these rules are passed, and we're -- we're
9 the ones that are stuck with them figuring out what
10 they mean and don't mean for, you know, as long as we
11 can see down the road.

12 MR. CHANG: Thank you. Let me weigh in
13 with a couple of questions and I want to walk through.
14 You may find this helpful to pull up page 25 of your
15 application with the specific reliefs that you're
16 asking for, Mr. Suazo. Or at least your client is
17 asking for.

18 I'm trying to see if, you know -- I'm
19 not sure that the commission is -- well, I haven't
20 weighed -- heard from the other commissioners, but I'm
21 willing to consider limited. So I'm trying to walk
22 through your various requests here, A through N, and
23 try to figure out what parts of this we can grant you
24 relief on. Or what parts of it would actually be
25 effective to grant relief on through a rehearing if

1 any.

2 I think we heard from commission
3 counsel last time, and commission counsel's welcome to
4 weigh in again, that any -- that clerical errors can
5 be resolved without granting a rehearing. Scribner's
6 errors.

7 So if I, and this might be a question
8 for commission counsel and commission clerk as well,
9 but it looks like request for relief B here is the
10 same request that we discussed last time that IPANM, I
11 believe raised in their response to WELC's application
12 for rehearing; right? Where there was a line or a
13 clause n mistakenly left in, and that didn't comport
14 between the proposed final rules and the order.

15 I believe we resolved that, because
16 commission counsel went back and reviewed the tapes,
17 looked through the transcript, and resolved that one
18 of them was clerical error.

19 Can I confirm that with you?

20 MR. SHANDLER: Correct.

21 MR. CHANG: Okay. So I think at the
22 very minimum we've -- the relief that you're asking
23 for is B, we -- you'll be able to obtain whether or
24 not we actually go all the way to a full hearing. Or
25 a rehearing, limited or otherwise. Okay.

1 I am -- I want to double check. Has
2 the cross reference -- has the -- so let me go back up
3 to A. Was that a cross-reference error that was
4 otherwise also identified and also that the commission
5 also discussed during the WELC -- during the
6 consideration of WELC's application for rehearing?

7 MR. SUAZO: No. I don't think that
8 issue on A has yet been resolved. But, if I might
9 phone a friend here, if Ms. Tripp has that more
10 readily available and has a view on that, I would
11 appreciate some insight there as well, just in case
12 I'm missing something. But, it's my understanding
13 that's still something that needs correction.

14 MR. CHANG: Okay. We can certainly
15 look into any -- and resolving any clerical errors if
16 they're truly clerical, and we can -- we're happy to
17 review any transcripts and records to make sure that
18 whatever is captured is accurate, and that there are
19 no -- and that we resolve any remaining clerical or
20 Scribner's errors. So I'll put a question mark on A,
21 come back to it.

22 Ms. Tripp, take your time. But if you
23 can advise we're certainly -- yeah.

24 Okay. On C, in my view, and I'll take
25 the views of my fellow commissioners, but that is the

1 crux of the rulemaking where the commission was called
2 on to make a determination. And I think Commissioner
3 Ampomah's question that -- or the dialogue we just had
4 with Commissioner Ampomah, is that the -- at least
5 Commissioner Ampomah felt that the mandatory factors
6 were inherently considered as part of the way that the
7 applicants in OCD arrived at \$150,000.

8 Of course, whether that is sufficient
9 to -- whether that is sufficient consideration as part
10 of the mandate from the Oil and Gas Act, I think the
11 parties have disagreed, and the commission has had to
12 take a position on that.

13 I'm not sure that rehashing that here
14 at this forum is going to be -- is going to lead to
15 any further clarity for reviewing court who's -- who
16 ultimately would be looking at our homework on that.

17 And then, so let me move on to -- so D,
18 same, it's a legal interpretation question, and I'm
19 not sure how a rehearing -- I mean, I understand
20 obviously a rehearing would allow the parties to make
21 the arguments again, but it feels like we've, at least
22 to me, that that was -- I'll just say that it has been
23 discussed, and the parties have fought about it, and
24 the commission has been asked to make a decision on
25 it.

1 E reconsidering -- so again, legal
2 interpretation question that the parties fought over,
3 that the parties briefed, and the commission already
4 weighed. I'm not sure other than if rehashing at this
5 forum, whether that would only muddle the record for a
6 review in court or whether that actually would clarify
7 and facilitate more effective judicial review.

8 As to the joint stipulation waiver, I
9 think the party's joint stipulation speaks for itself.
10 The parties were clear in their filings as to what the
11 stipulation does and doesn't do. And certainly, I
12 don't think the commission would -- it -- the
13 commission would -- I'm not sure a rehearing would
14 change what the joint stipulation does or doesn't do.

15 The joint stipulation speaks for itself
16 and to the extent that any of us up here on the dais
17 misstated the effect of the joint stipulation, I think
18 WELC's filing points out that we tried to clarify the
19 record and clarify any misstatements and try to
20 recognize that we've understood that the joint
21 stipulation speaks for itself and that it stands for
22 what it does stand for.

23 G, again, is -- calls for a legal -- I
24 mean, it's a legal dispute again as to the scope and
25 the breadth of what we're authorized to do. And

1 we've, the commission has again taken briefing on
2 that, taken commission counsel advice on that, heard
3 from all the interested or at least given every single
4 interested party an opportunity to weigh in on those
5 things. And we've had to take a position and make a
6 decision.

7 Which again, I'm not sure if rehashing
8 that is going to -- whether it's merely going to muddy
9 the waters and muddy the record for the reviewing
10 court, whether it would actually grant the relief here
11 of trying to make things clearer for reviewing
12 authority.

13 H, similarly, I mean surely the
14 constitutional due process and regulatory -- and due
15 process concerns and federalism issues apply and
16 would -- and anything the commission does would be
17 within those boundaries as to where -- to the extent
18 that reasonable minds disagree with the boundaries of
19 those concerns.

20 Again, it seems to me that that is a
21 question that the commission trying to rehash is going
22 to be less effective than letting the record speak for
23 itself on judicial review.

24 As for the surety letter, again, we
25 relied on both. If I recall correctly, that wasn't

1 just -- we relied on both commission counsel's advice
2 on that as well as our hearing officer's advice on
3 that. The granting of the hearing, I'm not -- I don't
4 know that we would be able to change. I don't know
5 that we're in a position to change our decision on
6 that particular item of evidence.

7 J and K, these I'll turn to commission
8 counsel. I remember we had an -- and L. So the three
9 items, J, K, and L asking for a more detailed order
10 laying out the commission's reasonings, and its
11 thinking. I remember commission counsel and I had a
12 conversation about the sufficiency of using some, as,
13 Mr. Suazo has acknowledged that sometimes adopting
14 parts of proposed language from parties is reasonable
15 and effective.

16 So I guess I'll turn to commission
17 counsel and see if he has any advice on whether he
18 feels the order as drafted is insufficient to address
19 the issues raised in J, K, and L.

20 MR. SHANDLER: Mr. Chair, my job is to
21 provide options, and one option is you feel like it's
22 sufficient and the other option is you feel like it's
23 insufficient.

24 MR. CHANG: Okay. I will turn to
25 our -- my fellow commissioners then. I will note that

1 in going through the proposed order with the -- that
2 we did specifically, I did ask my fellow commissioners
3 to specifically consider it paragraph by paragraph.
4 And we did specifically exclude paragraphs that are no
5 longer applicable because the commission went in a
6 different direction than what the applicants had
7 urged, which by the close of the hearing, the
8 applicant's proposals had also already changed by
9 incorporating certain changes from the negotiations
10 that happened, including input from Oxy.

11 So let me turn to my fellow
12 commissioners, and ask about J, K, and L, and how they
13 feel about those three requested relief items.

14 MR. BLOOM: Mr. Chair, I believe that
15 our order does cover these areas identified by J, K,
16 and L. Just to refresh people's memory, the order the
17 commission issued states "The commission adopts and
18 incorporates applicant's notice of filing, closing
19 argument, proposed statement of reasons as its own
20 findings of fact and conclusions of law and its own
21 reasons for the action taken." That's where the end
22 quote would be.

23 And as you mentioned, we went through
24 those paragraph by paragraph. I believe we -- you had
25 a break in the deliberations, maybe a night to go back

1 and -- and see where we had made some changes and
2 would've parted from the applicant's closing
3 arguments, and statements, or reasons. So your memory
4 is correct there. And that was tailored specifically
5 to take those changes into account.

6 You know, I've been, I guess this is my
7 eighth or ninth year, seventh year on the -- on the
8 commission. There's another term back in the 2012,
9 2013, 2014, I was doing this as well. And -- and
10 there are times when the commission will write out its
11 own findings of facts and conclusions of law and --
12 and draft them and not base them on what one party has
13 done.

14 But in this case, the -- the OCCS
15 commissioners, we came down, we found that the
16 applicants, the OCD's case largely prevailed. You
17 know, had it been IPANM or NMOGA prevailing, then we
18 would've, you know, so heavily we would've used their
19 statements of reasoning reasons as our statements of
20 facts and inclusion of laws.

21 So, you know, I think we -- we did
22 cover these areas sufficiently.

23 DR. AMPOMAH: Mr. Chair, I do support
24 the submission of Commissioner Bloom on this. I do
25 believe that we did try our best to incorporate even

1 materials from other parties. You know, not
2 necessarily adapting 100 percent of the applicant's
3 reasons. So I'm not sure if we are to reopening the
4 case here how much we can really add to.

5 MR. BLOOM: Okay. Mr. Chair, if I
6 might. Just on -- I --

7 MR. CHANG: Please.

8 MR. BLOOM: Where we had a letter
9 arrive too late to be included in the evidentiary
10 portion of the proceeding. I believe that it came in
11 after we had closed the evidentiary hearing. And, you
12 know, we actually spent a significant amount of time
13 discussing that with the hearing officer and asking
14 Mr. Chandler for -- for his views on that.

15 And, you know, really we're giving
16 it -- it seems like we're giving it extra weight that
17 the letter -- you know, that it was a letter. But,
18 you know, had it been any person that showed up when
19 we were gone that they would not have been able to
20 give their testimony.

21 I think this is -- I don't even know,
22 in a sense, you know, if we excluded this -- this
23 letter from becoming part of the evidentiary hearing
24 more than we, you know, excluded the, you know, anyone
25 that showed up after we'd left the building. So I

1 think -- I don't think that that really bears our
2 needs -- it would be a basis for a rehearing or that
3 it deserves much consideration at all. Thank you.

4 MR. CHANG: Did you -- thank you. I
5 appreciate that. Commissioner Bloom, did you have
6 other -- I know you had other thoughts and questions
7 and -- or I know you had thoughts, so I want to make
8 sure I turn to you and if you have any further
9 thoughts.

10 MR. BLOOM: Mr. Chair, did you -- were
11 you able to finish your review?

12 MR. CHANG: I -- well just -- I think M
13 is moot at this point, because we didn't dispose of it
14 at the August 6th special meeting, because today is
15 the what? The 13th, right? So M is functionally
16 already granted one way or the other. So -- but -- so
17 I don't really have anything else that's -- I've
18 reached the end of the list here at this point.

19 MR. BLOOM: Thank you, Mr. Chair.

20 MR. SUAZO: Mr. Chair, could we go back
21 to A? Because I think we've pinned down what the
22 issues are.

23 MR. CHANG: Sure.

24 MR. SUAZO: So -- and Mr. -- feel free
25 to jump in as -- I understand it, the cross-reference

1 in part 25 needs to be updated to show that TA wells
2 from zero to two years still receive active well
3 bonding versus those over two years get inactive well
4 bonding

5 MS. TRIPP: Mr. Chair, and -- and,
6 Counsel, I -- answer on behalf of IPANM. That's
7 correct. So the -- the site is 19.15.25.14(e) in the
8 proposed rule amendments, and it's located on page 16
9 of 17. And the specific cross-reference for
10 requesting, I can share my screen if easier.

11 MR. CHANG: If you wouldn't mind, Ms.
12 Tripp, I think if you would share your screen, that
13 would be helpful.

14 MS. TRIPP: Okay. So I've highlighted
15 subsection D here under Part E. I'll scroll up a
16 little bit -- you -- for variance there.

17 And so there -- the request for the
18 correction to the proposed rule would be to insert
19 subsection D is now subsection F, but there should
20 also be reference to subsection C to incorporate the
21 temporary abandoned status wells in years 032 that
22 still remain eligible under the active -- active will
23 either single or blanket bonding.

24 So the request would be that the -- the
25 sentence reads "The division shall not approve a

1 permit for approved temporary abandonment until the
2 operator provides financial assurance for the well
3 that complies with subsection C or F of 19.15.8.9
4 NMAC.

5 MR. BLOOM: Looking that, Mr. Chair,
6 and -- I believe D would be guys -- did you say low
7 producing wells, Ms. Tripp? Is that -- that's where
8 it's pointing to now? As written.

9 MS. TRIPP: Commissioner Bloom, I
10 believe that's correct, because I think subsection D
11 in the current rules prior to amendment references
12 temporary abandoned wells.

13 MR. CHANG: I am not able to determine
14 if that was a substantive oversight or whether that is
15 a clerical error at this point. Whether or not
16 that -- I will let the parties -- the other parties,
17 do we wish to weigh in on whether a very short
18 rehearing, very short, very limited rehearing on this
19 particular issue is warranted so that we all have time
20 to figure out whether this is a substantive error that
21 needs to be corrected on the record, or whether this
22 is merely clerical?

23 MR. TISDEL: Commission Chair, my sense
24 is that a rehearing on this is probably not necessary.
25 That if the record is clear on the commission's intent

1 and the evidence around this and that if a correction
2 is indeed needed, that that would just simply be a
3 clerical correction that -- that we would be
4 comfortable with.

5 MR. CHANG: Okay.

6 MR. SUAZO: I guess if you're asking
7 positions of the parties, I mean, I think the
8 nomenclature of whether it's per clerical or
9 substantive, you know, is kind of immaterial as long
10 as it's, you know, accurate as the final result. So,
11 you know, if that warrants limited rehearing for that
12 purpose, I think nomenclature is less material than
13 accuracy.

14 But I do think that this needs to be
15 addressed, however the commission deems best to
16 address it.

17 MR. CHANG: Sure. I've -- fair enough.
18 I'm just trying to figure out whether a limited
19 rehearing might be the vehicle for us to get there, or
20 whether or not this fits with it. Because if it's a
21 substantive oversight and we want to lay -- and we
22 need to lay out some additional record for whatever
23 changes, then I want to make sure we do that so we
24 don't have any procedural irregularities, and that we
25 have the maximum clarity.

1 But I will leave it to -- I'll let
2 commissioners, other commissioners weigh in.

3 MR. SUAZO: Mr. Chair, might I suggest
4 a short recess and then if we can point to a place in
5 the record where you guys address this that would make
6 it a clerical type of error fix. Would that help you
7 all out?

8 MR. CHANG: I'm more than happy to do
9 that if parties are willing to guide us and give us
10 room to do that. Sure.

11 MR. SUAZO: Okay. Sure. Well, then if
12 you guys, you know, would like to take a recess, we're
13 glad to try and find that in the record and we can
14 reconvene in ten or fifteen minutes I suppose.

15 MR. CHANG: Okay.

16 Commissioner Bloom, did you want to go
17 through any of your further comments at this time or
18 would you be okay with a recess now?

19 MR. BLOOM: I think we could recess now
20 and perhaps we come back at eleven. Or 15 minutes.

21 MR. CHANG: Yeah. Does eleven o'clock
22 work for everybody? Okay.

23 MR. BLOOM: Yes.

24 MR. CHANG: Hearing no objection, we're
25 in recess until eleven. Thank you all so much.

1 (Off the record.)

2 MR. CHANG: Good morning. The time is
3 just after eleven o'clock, so I will call the meeting
4 back to order. We were discussing NMOGA's requests
5 for relief A.

6 Mr. Suazo?

7 MR. SUAZO: Yes. Ms. Tripp and our
8 associate, Kyrie Buffa, were able to track down where
9 in the order and in the record this was referenced.
10 And I think Ms. Tripp has the document ready to share
11 on the screen, and then we can walk you through that.

12 MR. CHANG: Ms. Tripp, go ahead.

13 MS. TRIPP: Thank you, Chair. Yes.
14 Let me pull it up for everyone to see.

15 All right. So I'm actually going to
16 start at the existing rule so that you have a quick
17 reference for the language. This is at -- currently
18 it's identified at 19.15.25.13. And you can see
19 subsection E there. "The division shall not approve
20 permit for" -- or "approve temporary abandonment to
21 the operator plans financial assurance with the well
22 that complies with subsection D of 19.15.8.9."

23 Looking now to the proposed rule
24 amendment -- sorry, here we go. That language appears
25 identical in the proposed rules, which is page 16 of

1 17 at now, 19.20.15.25.14 part E here. And the -- the
2 reasons that IPANM and NMOGA would argue that this is
3 a clerical correction and -- and as acknowledged by
4 the commissioners in the last hearing, which was
5 corrected. This was the disparity between the rules
6 or the rulemaking order and statement of reasons that
7 this is part B subsection 4. It's located at page 5
8 of the rulemaking order.

9 And I've highlighted the -- the grounds
10 that would support the commission's decision in
11 striking -- striking that last sentence, which was
12 inadvertently included in the -- the rule amendment
13 language. But the reasoning being where they pointed
14 to Commissioner Ampomah's concerns regarding the risk
15 for operators seeking to place wells of approved
16 temporary advantages for a short period of time. That
17 is that part B4 subsection 3 of the rule making order.

18 And that's confirmed at the very top of
19 page 6 here, that the commission's selection of a one
20 time two year period for TA wells, you know, between
21 TA zero, year zero and TA year two being referenced in
22 section 70-2-14 of the Oil and Gas Act.

23 And so it would be our -- our position
24 going back to the current proposed rule language here
25 that subsection D is a -- is a holdover referencing

1 the prior rule, and so it should be updated to read
2 subsection C or F. And I can go up to those parts as
3 well. Part 19.15.8.9, this is at page 7 of the
4 proposed rule amendments, which covers the financial
5 assurance for well plugging, C being active wells and
6 F being right now wells that are an approved temporary
7 abandoned status, inactive wells, and wells that are
8 expired temporarily abandoned status.

9 MR. CHANG: Other parties wish to weigh
10 in? Or Mr. Suazo?

11 MR. SUAZO: I would just like to point
12 out that the transcript site for this is from the
13 October 25, 2025, transcript, pages 502 through 504.
14 And I don't know if we have access, ready access to
15 that and I'm not sure it matters, but that is where
16 Dr. Ampomah indicated support for NMOGA and IPANM's
17 already the TA wells in approved status need to remain
18 eligible for active well length of bonding for the
19 first two years.

20 MR. CHANG: Thank you.

21 Did other parties wish to weigh in?

22 MR. TISDEL: Yeah. This is Kyle Tisdell
23 on behalf of applicants. And apologies to the
24 commission, we're sort of working through this on the
25 fly right now.

1 MR. CHANG: We are too.

2 MR. TISDEL: Based on our quick read, I
3 think NMOGA's suggestion here in part A of their
4 request for relief is sort of -- and I think the fix
5 is over broad perhaps to what the commission intended.
6 So looking to the language again of 19.15.25.14(e),
7 that is intended to just ensure that the financial
8 assurance is in place when the division grants or were
9 to grant a well to be in a TA status; right?

10 And so D, if you go to then
11 19.15.8.9(d), that is for low producing wells, and --
12 and there's a lot of testimony on that front. Now, I
13 think the question becomes, there is an exception that
14 the commission granted; right? For wells that are
15 moving and -- and, Chair Chang, you know, you went
16 through the effort of identifying in -- in your --
17 your demonstrative exhibit there, this sort of
18 subsection of category that would apply for that TA
19 exception and that as wells that were active moving
20 into -- directly from active moving into TA status.
21 Correct?

22 And so, I think the response here is
23 not to get rid of D in the language, because that
24 still applies to most of the wells in TA status.
25 Those are wells that are inactive or have been

1 inactive and moving into TA status. Those would still
2 be required to have that enhanced 150 single well
3 blanket bond.

4 But, I think the answer is that to --
5 to NMOGA's point and to Ms. Tripp's point, would be to
6 maybe add subsection A to that language so that it's A
7 and D rather than just D. I think that is my best
8 reading of what's going on here.

9 MR. CHANG: I'm seeing on the screen
10 here that Ms. Tripp does not quite agree. But before
11 I go back to you, Ms. Tripp, can I just ask if other
12 parties want to weigh in on this one?

13 MR. HALL: Sort of. I -- I think this
14 is a helpful discussion on the substance of it. I
15 wanted to clarify that A, in NMOGA's application,
16 which has some language, it references part 4B, which
17 caused the commission's order arbitrary and
18 capricious. I just want to be sure we're not
19 discussing it in that framework.

20 It's sort of multifarious and has --
21 has many sub parts. I think what the rule should say
22 is -- is certainly a good conversation. I just want
23 to be sure the commissioner's not agreeing with them,
24 NMOGA's position, that's arbitrary and capricious. Or
25 that \$250,000 to the extent it is saying \$250,000

1 blanket bond is somehow a cap on -- on the rules
2 ability to require single well bonding.

3 So a little zoom out sort of concerns
4 from OCD then. Thank you.

5 MR. TISDEL: And -- and I want to
6 apologize. I think I misspoke when I said A and D.
7 What I should have said was C and D. C is the
8 provision for active wells, and D is the provision for
9 low producing wells. So I -- I think I said A,
10 because that was what NMOGA's request for relief was,
11 but I think the actual language would be the insertion
12 of C, the availability of active well bonding for
13 that. Just that subset caught by the exception, the
14 TA exception that the commission carved out.

15 MR. CHANG: Okay. Ms. Tripp, I'm
16 seeing you being slightly less concerned now that
17 we're no longer talking about sub part 8. Or A, yeah.

18 MS. TRIPP: Thank you, Chair. And, --
19 and I'm -- I think I can speak very briefly to Mr.
20 Hall's point there. When I referenced part B4, that
21 was part B subsection 4, subsections 1, 3, and 4 of
22 the rulemaking order not of NMOGA's application for
23 rehearing.

24 I would agree that subsection A
25 generally covers applicability. I think the fix here,

1 that the applicant's suggestion that the -- the fix is
2 subsection C or D was rejected last week when you
3 addressed this specific issue on wells in temporary
4 abandoned status from zero to two years.

5 And the problem, I think that just
6 procedurally, when you're operating under 19.15.25.14,
7 that is when an operator is applying for approved
8 temporary abandoned status. And so at that point, if
9 a well had not been in, obviously the well's not in TA
10 status from zero to 2, D may or may not apply, but
11 most certainly C is an active well prior to that.

12 And so one -- one option would be to
13 strike the subsection reference from 19.15.25.14 and
14 just make it that the well complies with the financial
15 assurance required under 19.15.8.9. And that
16 leaves -- leaves it more -- more open to application
17 because as -- as the -- the charts have established
18 and -- and the procedures about whether, you know,
19 avoiding stacking, a well could be in any kind of
20 combination of conditions, which might create a
21 different financial assurance requirement.

22 MR. CHANG: Thank you. At this point,
23 it seems to me that at the very minimum, whether or
24 not it was a clerical error, the parties at least are
25 not quite of uniform mind as to what the best fix is.

1 So I'm leaning towards granting a very limited
2 rehearing on this, on just this particular subsection.
3 But just for --

4 Go ahead.

5 MR. TISDEL: I think actually in --
6 would be welcome to hear from OCD on this front as
7 well. I think Ms. Tripp's suggestion is actually
8 maybe the correct one. Is that if we just eliminate
9 the -- with subsection D language in that provision,
10 it just -- it references all of 19.15.8.9 to just make
11 sure the appropriate financial assurance is in place
12 upon that TA application. I think that actually
13 covers it, and I think we would be comfortable with --
14 with that change.

15 MR. CHANGE: Mr. Hall?

16 MR. HALL: I concur. I think that
17 would -- that would allow the entire rule to be
18 analyzed in -- in each particular factual pattern to
19 determine the proper financial assurance on -- on a
20 fact specific basis. So I -- I share -- I think we
21 would also agree with Ms. Tripp's suggestion to just
22 make the entire rule applicable as opposed to that
23 subsection and that part.

24 MR. CHANG: Okay. I mean, if there's
25 unanimous consent, there's a lot of power in unanimous

1 consent. Right? So I'll welcome other parties to
2 weigh in. But, Ms. Tripp, just so that the record is
3 clear, would you mind pulling up the section again and
4 highlighting the language that -- so that we're all on
5 the same page and there's a visual record on forever
6 on YouTube of precisely the change that we're
7 talking -- that the, I guess we're calling it a
8 clerical edit here, if all parties are amenable to
9 that.

10 MS. TRIPP: Yes, Chair. So you should
11 see -- you should be seeing page 16 of 17 of the
12 proposed final rule amendments. And that was entered
13 by the commission on July 16, 2026. At part
14 19.15.25.14(e), I believe the suggestion and the
15 agreement of the parties would be to strike -- so
16 the -- the sentence would read "The division shall not
17 approve a permit for approved temporary abandonment
18 until the operator provides financial assurance for
19 the well that complies with 19.15.8.9, striking the
20 words with subsection D and of from the existing
21 proposed rule amendment."

22 MR. CHANG: I will pause for a moment
23 to let all the parties review that and digest that.

24 MR. TISDEL: I -- I think "with"
25 probably needs to stay in the language, but

1 "subsection D of," if that were eliminated, I think
2 that is what Ms. Tripp is maybe suggesting. And --
3 and what applicants would be comfortable with.

4 MR. HALL: OCD concurs with WELC's
5 statement.

6 MR. CHANG: So the way it looks now on
7 the screen, just for the -- for clarity of record,
8 we're striking the words "subsection D of"; right?
9 Okay.

10 Mr. Suazo?

11 MR. SUAZO: Yes. That's acceptable to
12 NMOGA.

13 MR. CHANG: Oxy?

14 MR. RANKIN: Can you give me a moment?

15 MR. CHANG: Please. Take your time.

16 In the meantime, I'll also invite other -- all the
17 other parties to review this.

18 Ms. Tripp, do you mind highlight -- I
19 know you already struck it through, but since there's
20 so many strikethroughs, do you mind just highlighting
21 that in a -- in some sort of bright, bold, or exciting
22 color?

23 MS. TRIPP: Yes.

24 MR. CHANG: Thank you. If any other
25 parties are with us and on the line; EOG, or?

1 MR. BLOOM: Land Office.

2 MR. CHANG: Land -- yeah, State Land
3 Office, New Energy Economy. If anybody would like to
4 weigh in, you're welcome to do so as well.

5 Ms. Vance, are you waiting for your
6 client, or?

7 MS. TRIPP: Yes. Oxy, no issue from
8 Oxy.

9 MR. CHANG: Well, if that's the case,
10 then everybody agrees that this is a -- this is the
11 clerical change as reflected on the screen here in
12 front of us, I don't -- any objections from
13 commissioners if we were to make that change or
14 correction?

15 DR. AMPOMAH: No.

16 MR. BLOOM: I think that was
17 appropriate, Mr. Chair. Thank you.

18 MR. CHANG: Okay. Okay. Did you have
19 other comments on whether or not to open for rehearing
20 more broadly? Commissioner Bloom?

21 MR. BLOOM: Yes. I did want to address
22 some of the comments that NMOGA made in its
23 application to rehear. I have seen that there is a
24 request for clarity for -- for reasons, or request for
25 reasons to be given for our actions. So I do want to

1 take a little bit of time. I have less comments than
2 I did with respect to IPANM's motion for hearing.

3 Of course, some of the issues that the
4 may addressed are also addressed by IPANM, and I'm not
5 going to repeat all of that, but NMOGA begins by
6 asking quote, saying "Rehearing is warranted because
7 the proposed final rules contain clerical errors."

8 We got through some of those last week
9 and we got through one just now. So I appreciate
10 NMOGA having flagged that, and we could all work
11 through these items successfully. NMOGA goes on to
12 request or say that "Rehearing is warranted because
13 the proposed final rules impose financial assurance
14 obligations on active wells outside the statutory
15 blanket bond framework."

16 This was addressed multiple times
17 throughout the hearing; in the applicant's closings
18 and [inaudible]. I know I looked at it at one point
19 at an MSA 70-2-14, we did not see limiting language
20 regarding the creation of other bonding categories.
21 So that statute says that "The Oil Conservation
22 Division shall establish categories of financial
23 assurances after notice and hearing."

24 It doesn't say establish only through
25 categories of financial assurance. There's multiple

1 opportunities in that -- in that statute where that
2 kind of language could have been inserted and it had
3 not been, was not. So I believe this rulemaking is
4 on -- on solid footing there.

5 Next, NMOGA brings up again, is the
6 commission on solid ground when adopting a -- a new
7 financial assurance amount of \$150,000 without
8 addressing the mandatory statutory factors. Dr.
9 Ampomah talked about that earlier today. We've gone
10 on quite a bit there as well.

11 You know, number 4, again, NMOGA is
12 asking we rehear this based on the insertion of low
13 producing wells and high-risk portfolio financial
14 assurance categories stating they're not authorized by
15 the Oil and Gas Act.

16 And once again, I would look at that
17 statute, MSA 72 -- 70-2-14, and see that there's
18 nothing that would prevent us from creating those
19 categories in which the applicants put in front of us.
20 I believe again, the OCC is on solid ground there.

21 NMOGA's fifth statement is that
22 "Rehearing is warranted because the proposed final
23 rules use change of operator provisions to regulate or
24 condition private transactions about clear or
25 statutory authority."

1 We gave that a significant discussion
2 during the hearing, during deliberations. The
3 legislature clearly gave the OCD the power to regulate
4 well transfer. It does so currently, it says nothing
5 about the private transactions. It simply says "well,
6 the OCD," or "how will the OCD approve while transfer
7 in the future going forward." Mr. Powell spoke to this
8 as well during the -- during the hearing.

9 NMOGA then goes on to restate some of
10 the hearing examiner report questions to us, which the
11 so-called major questions. And these were along the
12 lines of, does the passage of HB 80 following the
13 hearing require the recalibration of the reasonably
14 paid standard under the Oil and Gas Act? And we said
15 no. That we went into that at some length as well.

16 I guess I don't think I'll repeat that
17 here, but we were firmly on record going through those
18 questions that the hearing examiner put in front of
19 us.

20 And wrapping up, again, we see NMOGA
21 asking "The commission adopted some of applicant's
22 reasoning, modified portions of proposed rules except
23 accepted certain industry counter proposals, rejected
24 others, committed others." It goes on, again, there
25 was a strong record created.

1 I spoke to that a little bit earlier
2 here today. We said that "The commission adopts and
3 incorporates the applicant's notice of filing, closing
4 argument and post statement of reasons, its own
5 findings of fact, inclusion of law and its own reasons
6 for the action taken."

7 So I think we went through that as
8 well. We addressed the letter that arrived late from
9 the SFAA, and it got here after the end of the
10 evidentiary hearing, so it was not admissible. The
11 same as if somebody had come up to the door and we'd
12 concluded and gone home.

13 So for those reasons, I'd be ready to
14 offer a motion to deny rehearing.

15 MR. CHANG: Any further discussions?

16 DR. AMPOMAH: No.

17 MR. BLOOM: And so, Mr. Chair, I move
18 to deny NMOGA's application for rehearing.

19 DR. AMPOMAH: Second.

20 MR. CHANG: Okay. Moved and seconded.
21 Is there any contrary votes from the -- or any
22 objections from commissioners? Without objection from
23 the commissioners, the motion passes.

24 Thank you all for participating today.
25 And those, to the extent that in -- that there've been

1 any clerical errors identified throughout any of the
2 three motions for rehearing, the -- the commission
3 clerk will make sure that we are -- that we address
4 the corrections.

5 Thank you all very much. I will move
6 on to other business at this time. I'm not aware of
7 any other business other than going into -- well,
8 yeah, other than what's not already on the agenda.

9 I think there is a note to let
10 everybody know that the next meeting is the OCC
11 regular meeting on September 10th of 2026. It was
12 in -- it may have been inadvertently advertised as a
13 special meeting on a preliminary agenda, but it is the
14 regular meeting on September 10th.

15 And then, the last item on our agenda,
16 we're functionally going to adjourn for everybody else
17 and go into a closed session to get some litigation
18 updates with our commission counsel.

19 MR. BLOOM: Do you need a motion, a
20 second, and a roll call?

21 MR. CHANG: Go ahead.

22 MR. BLOOM: Mr. Chair, I move to go
23 into closed session to get a litigation status update.

24 DR. AMPOMAH: Seconded.

25 MR. CHANG: Any votes to the contrary?

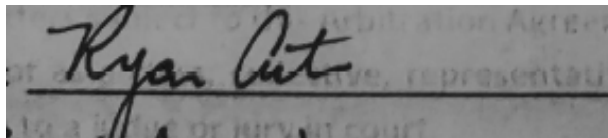
1 Without objection, we're heading into closed session
2 to discuss litigation involving the OCC. Thank you
3 all.

4 MR. BLOOM: Thank you all.

5 (Whereupon, at 11:27 a.m., the
6 proceeding was concluded.)
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CERTIFICATE OF DEPOSITION OFFICER

I, RYAN AUTEN, 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.

A handwritten signature of Ryan Auten in black ink, written over a horizontal line. The signature is cursive and appears to be 'Ryan Auten'.

RYAN AUTEN

Notary Public in and for the
State of New Mexico

CERTIFICATE OF TRANSCRIBER

I, ALICIA DE OLIVEIRA, 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 cursive script that reads "Alicia De Oliveira".

ALICIA DE OLIVEIRA

[& - 5,000]

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& 2:4 3:17 4:21 5:14 6:12 10:17 50:15	15th 17:19,20 17:22,23 18:4 18:6	2 35:19 88:10 20 38:13 20,000 35:22 200 35:17 42:3 2000th 26:5 2012 75:8 2013 75:9 2014 75:9 2019 40:6 2024 26:6 36:12 53:9 2025 26:6 84:13 2026 1:12 9:5,6 90:13 97:11 208 2:17 20th 11:17 18:12,15 210 5:9 21st 16:17,17 2208 4:22 224 3:9 24683 1:9 20:15 2468324 36:11 247 3:9 24th 17:11,14 25 67:14 78:1 84:13 250,000 86:25 86:25	25th 17:11,14 26206 1:9 10:14 26th 16:9 270-9049 6:25 295-8369 2:8
0	16 38:3,13 42:3 56:2 78:8 82:25 90:11,13		3
0.048 39:17 032 78:21	16th 17:19,22 17:23 18:5,6		3 32:15 34:9 83:17 87:21 3,900 39:15 30 17:2 303 2:8 30th 17:1 32 27:21 3200 2:5 33138 100:18 34885 99:20
1	17 37:23 39:6 39:12 78:9 83:1 90:11		4
1 26:5 32:24 38:15 39:19 87:21 1.8 37:25 10 4:6,13 35:19 10,000 41:3 42:5 100 76:2 107 5:6 10th 97:11,14 11:27 98:5 11th 36:20 1220 1:16 6:6 6:14 13 1:12 13th 9:5,6 77:15 14th 16:25 17:5 15 81:20 150 86:2 150,000 57:15 57:18 58:17,19 59:4 60:24 65:9 66:5 70:7	170 12:6 17th 2:5 19.15,3.13 52:9 19.15.25.13 34:13 19.15.25.13. 82:18 19.15.25.14 78:7 85:6 88:6 88:13 90:14 19.15.8.9 33:20 33:24 34:9 79:3 84:3 85:11 89:10 90:19 19.15.8.9. 82:22 88:15 19.20.15.25.14 83:1 19th 11:16 16:8 16:8 18:11,14		4 32:24 33:2 34:10 43:10 83:7 87:21,21 94:11 408 6:22 469-3197 5:9 479-1137 6:17 490-1828 6:9 4b 86:16
			5
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[500 - active]

500 3:18 5:15	778-1902 3:12	abandoned	accepted 53:22
502 84:13	78209 5:7	41:15 78:21	95:23
504 84:13	8	79:12 84:7,8	accepting 37:3
505 3:21 4:25	8 35:18 60:21	88:4,8	access 26:20
5:18 6:9,17	87:17	abandonment	39:5 84:14,14
520 6:25	8,000 42:5	26:11 34:12,16	accommodate
555 2:5	80 40:12 46:20	65:21 79:1	15:13,15,16
573 2:20	46:22 95:12	82:20 90:17	19:11
575 4:9,16	80202 2:6	abide 51:6 67:5	account 26:16
6	81201 3:10	ability 23:23	43:17 75:5
6 83:19	8370007 1:20	36:1 87:2	accounted 9:19
6.6 39:15,18	87501 6:23	99:10 100:7	accuracy 80:13
60 12:14 26:16	87504 4:23	able 11:12,15	accurate 69:18
37:16	87505 1:18	13:19,20,23	80:10 99:9
602 2:17	3:19 5:16 6:7	14:14 40:25	100:5
613-8050 2:20	6:15	47:8 64:15	acknowledged
622-6510 4:9	87571 2:18	65:3 68:23	73:13 83:3
4:16	88202 4:7,14	73:4 76:19	acknowledging
6th 77:14	89 56:5	77:11 79:13	49:3
7	8th 17:18	82:8	acloutier 4:15
7 84:3	9	above 59:25	act 37:1 41:11
70 26:17	90 56:5	absence 52:20	48:23 70:10
70-2-12.2 23:11	946-2090 3:21	53:3	83:22 94:15
70-2-14 41:7,17	5:18	absolutely	95:14
56:25 83:22	95 43:19	33:11	action 20:21
93:19 94:17	988-4421 4:25	abtucker 2:7	35:5 52:11
70-2-25 23:8	9:01 1:13	abundantly	55:24 74:21
72 94:17	9th 17:18	59:24	96:6 99:12,16
72-14 52:21	a	accept 18:3	100:8,12
720 3:12	a.m. 1:13 98:5	acceptable	actions 92:25
739 40:2	aaron 2:3	91:11	active 78:2,22
75 24:24		acceptance	78:22 84:5,18
		36:22	85:19,20 87:8
			87:12 88:11

[active - amanda]

93:14 actual 38:20 61:16 87:11 actually 13:8 22:10 36:2 49:1 51:5 52:6 52:15,17 55:20 57:4 67:24 68:24 71:6 72:10 76:12 82:15 89:5,7 89:12 adapted 43:16 adapting 76:2 add 32:10 43:7 43:8 44:20 49:1 50:4 62:19 76:4 86:6 addition 25:6 26:8 28:13 35:24,24 additional 27:2 43:8 47:1,7 62:4 80:22 additionally 25:22 address 30:9 32:1 54:16 73:18 80:16 81:5 92:21 97:3 addressed 23:19 30:11	31:25 36:19 40:13 41:11,18 80:15 88:3 93:4,4,16 96:8 addresses 26:10 addressing 32:6 94:8 adequately 55:22 adjourn 97:16 administer 42:6 administration 67:2 administrative 28:9 46:21 admissible 96:10 admitted 39:8 adopt 24:25 27:9 28:12 33:12 adopted 10:3 24:13,19 30:1 30:12,18 34:18 42:10 53:18,19 56:6 95:21 adopting 25:5 73:13 94:6 adoption 32:17 32:22 34:21 36:24 61:24	adopts 60:5 74:17 96:2 advantage 24:23 advantages 83:16 adverse 45:10 56:17 advertised 97:12 advice 72:2 73:1,2,17 advise 11:1 59:7 69:23 advocate 54:23 advocated 45:10 affects 26:21,23 afford 24:3 41:15 affords 23:23 age 44:5 64:25 agency 32:19 37:24 agenda 9:21,23 10:3,4 97:8,13 97:15 aggregate 57:23 ago 32:9 41:3,4 agree 11:12,22 52:15,16 59:1 86:10 87:24 89:21	agreed 20:5 34:2 61:3 agreeing 86:23 agreement 49:18 90:15 agrees 92:10 ahead 11:3 17:13 43:18 82:12 89:4 97:21 albert 6:3 9:3 alch461 6:8 alicia 100:2,19 allegations 47:10 55:3 alleged 55:2 alliance 2:14 3:6 allow 15:3 31:18 70:20 89:17 allowed 48:20 allowing 23:11 35:20 allows 13:23 48:5,15 altar 26:13 alternative 27:7 46:10 alternatives 34:25 35:7 54:17 amanda 7:11
--	--	--	--

[amenable - applying]

amenable 90:8	65:8	appeals 23:12	53:19 55:2
amend 27:10	analyze 64:23	appeared 27:5	60:23 62:15
amended 46:23	analyzed 89:18	27:12	70:7 74:6
46:24	andrea 7:12	appearing	75:16 84:23
amendment	andrew 4:11	10:20	91:3 94:19
79:11 82:24	ann 4:4 22:8	appears 33:20	application
83:12 90:21	23:1	82:24	10:14 13:9,10
amendments	answer 13:20	applicability	13:13 23:9
78:8 84:4	52:20 53:3	87:25	24:6,9 25:11
90:12	56:12 57:22	applicable 74:5	27:3 28:13,16
amount 27:22	58:20 64:18	89:22	28:18,20,25
57:15,16 58:3	66:9 78:6 86:4	applicant 43:23	30:14,21 31:17
58:4 60:25	anti 52:12,17	53:16 64:22	36:20 41:13,19
65:16 76:12	53:22	applicant's	49:25 50:11,24
94:7	anticipate	24:13 30:8	56:21 57:1
ampomah 7:5	11:17 12:20,22	32:7,10 33:8	59:11,14 61:18
9:10,11,24	13:2 14:7	33:12 34:11,25	61:22 62:24
10:10 16:6	antonio 5:7	35:3,5 36:18	63:6 67:15
17:7,16,23	anybody 31:15	36:24 37:22	68:11 69:6
18:17,18 21:1	92:3	38:12,15,25	86:15 87:22
21:9,21 22:2	anytime 16:21	39:5,10,11,22	88:16 89:12
33:25 43:3,4	16:23,24 17:3	40:3 41:18	92:23 96:18
50:4,6 57:8	apodaca 7:7	42:22 52:6	applications
63:14,17,19,22	9:9,12,14,16	53:24 56:5,7,8	21:18 41:6
64:19,20 65:25	apologies 58:16	60:5,11,20	44:2
70:4,5 75:23	84:23	74:8,18 75:2	applied 23:7
84:16 92:15	apologize 20:20	76:2 88:1	35:14
94:9 96:16,19	87:6	93:17 95:21	applies 52:7
97:24	apparent 53:6	96:3	56:13 58:4
ampomah's	66:14	applicants	85:24
70:3 83:14	apparently	25:23 29:20,25	apply 72:15
analysis 23:25	35:4	33:17 34:17	85:18 88:10
28:7 60:5	appeal 23:11	35:11 36:15	applying 88:7
61:21 64:25		51:23,24 52:11	

[appreciate - bag]

appreciate 12:18 14:10 19:22 20:13 51:15 69:11 77:5 93:9 appreciates 20:19 50:23 appropriate 22:13 89:11 92:17 approval 10:4 approve 9:21 9:23 78:25 82:19,20 90:17 95:6 approved 33:23,23 37:18 79:1 83:15 84:6,17 88:7 90:17 arbitrary 86:17 86:24 areas 74:15 75:22 argue 83:2 argued 46:18 argues 58:11 arguing 51:19 argument 37:22 52:14 56:12,13 74:19 96:4 arguments 21:24 24:13	38:12 39:9,11 47:25 48:18 55:4,7,15 62:23 70:21 75:3 arrive 76:9 arrived 70:7 96:8 arts 51:8 asked 14:18,19 40:2,5,14 41:21 47:2,4 70:24 asking 59:3 66:17 67:16,17 68:22 73:9 76:13 80:6 93:6 94:12 95:21 aspect 32:11 assertions 33:4 assessing 65:23 assists 14:12 associate 82:8 associated 43:20 association 3:15 4:3 5:12 23:3 assuming 20:4 assurance 25:6 28:5 38:16 39:14 64:12 79:2 82:21	84:5 85:8 88:15,21 89:11 89:19 90:18 93:13,25 94:7 94:14 assurances 93:23 assure 18:22 atmosphere 37:25 atripp 4:8 attempt 23:5 attendee 7:11 7:12,13,14 attention 52:8 attorney 29:19 99:14 100:10 audio 99:8 100:4 august 1:12 9:4 9:6 36:20 77:14 auten 1:19 99:2 99:21 authority 37:8 38:11 66:3 72:12 94:25 authorize 54:1 authorized 71:25 94:14 availability 11:15 13:4 14:16 15:24 16:15 17:8,10	18:9 19:7 87:12 available 11:14 13:15,17,18 14:17,22,23 15:1,8 16:8,10 16:10 17:4 19:15 38:6 64:9 69:10 avenue 3:18 5:15 average 37:24 58:17 66:6 averages 26:3,4 avoiding 88:19 aware 97:6 awesome 19:21 20:12
b			
b 2:3 5:3 8:1 68:9,23 83:7 87:21 b4 83:17 87:20 back 12:19 25:23 51:12 52:1,4 57:20 65:5 68:16 69:2,21 74:25 75:8 77:20 81:20 82:4 83:24 86:11 bag 61:8			

[base - build]

base 75:12	believing 32:12	44:10 50:3	boulevard 3:9
based 24:10	ben 5:8 10:20	51:14 53:9	boundaries
28:20 30:3	11:3	60:7 63:14	72:17,18
47:5,8 50:16	benjamin 5:3	74:14 75:24	box 4:6,13,22
54:2 58:9	best 15:15,21	76:5,8 77:5,10	breadth 71:25
60:25 61:5	15:25 17:16	77:19 79:5,9	break 74:25
66:14 85:2	19:11,13 45:12	81:16,19,23	brief 21:17
94:12	46:6 48:12	92:1,16,20,21	55:6 62:16
basis 51:4 59:8	49:4,19 75:25	96:17 97:19,22	briefed 46:18
60:4 77:2	80:15 86:7	98:4	71:3
89:20	88:25 99:9	bloom's 44:19	briefing 72:1
bears 77:1	100:6	board 25:4	briefings 20:17
beatty 3:17	better 38:19	body 36:10	48:18
5:14 50:15	56:3	bold 91:21	briefly 29:21
becoming	beyond 59:25	bond 35:22	87:19
76:23	big 13:14	40:1 86:3 87:1	briefs 55:17
began 36:11	bill 46:20	93:15	bright 91:21
begins 93:5	billion 35:18,19	bonded 33:19	bring 19:24
behalf 2:2,10	bit 53:2 54:19	34:5 39:23	40:12
3:2,14 4:2,18	56:24 63:25	bonding 32:11	brings 94:5
5:2,11 6:2,19	66:1 78:16	33:22 35:6	broad 85:5
10:17,20 23:2	93:1 94:10	36:13 38:11,17	broader 53:19
29:20 31:1	96:1	38:19 61:7,10	broadly 92:20
62:15 78:6	black 51:10	61:15 64:6	broke 33:16
84:23	blanket 78:23	78:3,4,23	42:22
believe 12:16	86:3 87:1	84:18 87:2,12	brought 29:25
18:12 34:13,23	93:15	93:20	31:24 62:23
35:9,9 39:9	blocked 43:20	bonds 25:8	bucket 24:17
42:3,4 47:3	bloom 7:6 9:14	33:20 35:17	budget 40:19
61:2,20 65:8	9:15,22 10:8	41:8	40:20
65:12 68:11,15	16:14,16 17:6	boom 26:24	buffa 5:13 82:8
74:14,24 75:25	17:14,21 18:17	boomhower	build 49:5
76:10 79:6,10	21:3,11 31:18	40:6	50:16
90:14 94:3,20	32:5 43:5		

[building - chang]

building 1:15 76:25 burden 28:9 burdens 53:25 business 38:23 40:5 97:6,7 bwenergylaw... 3:20 5:17	capricious 86:18,24 captured 69:18 care 33:18 carefully 64:16 caring 2:11 3:3 carl 7:9 carved 87:14 case 1:9 10:14 11:8 12:2,5 13:8 15:5 19:24 20:14,14 30:5 31:16 35:2 36:9,11 36:11,11 37:10 41:10 43:15 60:6,9 69:11 75:14,16 76:4 92:9 cases 10:13 31:7 42:23 categories 58:14 65:1 93:20,22,25 94:14,19 categorized 39:13 category 41:8 85:18 caught 87:13 cause 37:17 64:6 caused 86:17	caution 32:17 cautions 32:15 center 2:11,16 3:3,8 29:20 35:14 certain 45:9 49:16 56:19 74:9 95:23 certainly 14:9 14:13 17:3 21:14 22:18 45:1,2,12,21 46:3,4,6,12,15 46:16 47:11,12 47:12,17,18 48:14 49:2,4,5 49:7 50:19,23 69:14,23 71:11 86:22 88:11 certificate 99:1 100:1 certify 99:3 100:2 chair 9:3,22 10:8 19:9,16 21:4 22:22 23:1 29:17 31:18 43:1 50:3,13 59:12 59:22 62:17 73:20 74:14 75:23 76:5 77:10,19,20 78:5 79:5,23	81:3 82:13 85:15 87:18 90:10 92:17 96:17 97:22 chakalian 7:10 challenging 51:9 chance 9:20 chandler 76:14 chang 6:3 9:2,3 9:12,13,18,24 10:1,11,22 11:20 12:18,25 13:3,25 14:3,9 15:10 16:6,12 16:20 17:4,8 17:18,25 18:8 18:14,18,22 19:10,17,21 20:7,9,12 21:6 21:10,12,23 22:4,16,23 28:15,22 29:7 29:15 30:23 31:10,14 32:4 43:3 44:21 50:7 59:9,16 59:21 62:5,8 62:12 63:8,15 63:18,21 67:12 68:21 69:14 73:24 76:7 77:4,12,23 78:11 79:13
c			
c 2:1 3:1 4:1 5:1 6:1 7:1 9:1 34:13 52:9 69:24 78:20 79:3 84:2,5 87:7,7,12 88:2 88:11 c.a.r.e. 2:12 3:4 c.s. 6:3 calendar 16:12 20:21 calendars 16:2 calibrated 64:17 call 10:14 52:8 82:3 97:20 called 1:6 48:13 55:8 70:1 95:11 calling 90:7 calls 71:23 cap 87:1 capacity 53:4 63:24			

[chang - commission]

80:5,17 81:8 81:15,21,24 82:2,12 84:9 84:20 85:1,15 86:9 87:15 88:22 89:24 90:22 91:6,13 91:15,24 92:2 92:9,18 96:15 96:20 97:21,25 chang's 58:25 change 13:11 25:3,4 27:16 35:6 36:14 46:10 56:7 63:1 71:14 73:4,5 89:14 89:15 90:6 92:11,13 94:23 changed 74:8 changes 24:19 25:6 27:13,16 28:2 36:3,7 51:23 74:9 75:1,5 80:23 changing 64:5 characteristics 58:10 characterizati... 65:18 characterize 55:7 charts 88:17	chavez 7:9 check 69:1 chino 1:15 choose 41:11 chose 31:4 circumstance 55:12 65:23 circumstances 51:13 citation 61:1 cited 35:12 42:10 cites 60:20 citizens 2:11,14 3:3,6 claims 30:13 clarify 22:3 47:4 71:6,18 71:19 86:15 clarity 62:20,20 70:15 80:25 91:7 92:24 clarity's 22:17 class 39:23 clause 68:13 clear 42:23 43:23 47:19 51:1,10 52:1 53:12 59:24 60:3 61:4,25 62:18 66:13,13 66:21,22 71:10 79:25 90:3 94:24	clearer 66:15 72:11 clearly 29:21 30:11 33:5 35:11 38:10 52:3 60:10 95:3 clerical 32:9 68:4,18 69:15 69:16,19 79:15 79:22 80:3,8 81:6 83:3 88:24 90:8 92:11 93:7 97:1 clerk 7:7 9:7 16:4 19:1,14 68:8 97:3 client 54:23 67:16 92:6 close 12:5 74:7 closed 76:11 97:17,23 98:1 closely 21:25 closing 37:15 37:22 38:3,12 39:5,11 41:18 52:6 55:17 60:20 74:18 75:2 96:3 closings 93:17 cloutier 4:11 23:2	club 2:14 3:6 code 52:9 coin 22:5 collected 30:4 color 91:22 colored 31:25 combination 88:20 combine 21:21 22:13 come 14:15 69:21 81:20 96:11 comes 13:4 40:20 44:11 comfortable 80:4 89:13 91:3 comment 24:22 28:16,17,25 29:4 33:2 comments 50:17 51:15 58:17 81:17 92:19,22 93:1 commission 6:19 7:7 9:4,5 11:8 13:20 16:4 19:1,13 19:14 20:4,15 20:19 22:14 24:22,24 25:21 27:8,12,15,25 28:12 29:9,21
--	--	---	---

[commission - conditions]

29:24 30:1,2 30:11,14,17,20 30:22 32:12,15 32:19,21 33:7 36:1 37:2 43:15 44:24 45:7,15,23,25 47:14 48:13 49:7,12,13,17 49:19 50:21 51:19,22 53:14 53:18,18,21 54:19,22 55:14 55:15,19,20 56:5,20 57:14 58:12,21 59:3 60:2,17,19,19 60:21 63:3,6 64:5,24 65:2 65:14 66:4,10 66:11,18 67:19 68:2,3,8,8,16 69:4 70:1,11 70:24 71:3,12 71:13 72:1,2 72:16,21 73:1 73:7,11,16 74:5,17,17 75:8,10 79:23 80:15 84:24 85:5,14 87:14 90:13 94:6 95:21 96:2 97:2,18	commission's 12:17 21:16 23:24 32:25 36:22,25 48:22 52:10 54:7,14 54:15 55:23 62:21,25 73:10 79:25 83:10,19 86:17 commissioner 7:5,6 9:10,12 9:14 14:16 15:24 16:14 17:13 21:20 31:17 43:3,4 44:10,18 51:14 53:9 57:8 58:24 60:7 63:11,14 70:2 70:4,5 75:24 77:5 79:9 81:16 83:14 92:20 commissioner's 15:16 50:17 86:23 commissioners 9:20 10:2,5,12 10:20 14:17 16:1 17:10 19:20 20:22 29:18 34:2 35:10 46:9,14 50:8,13 61:18	67:20 69:25 73:25 74:2,12 75:15 81:2,2 83:4 92:13 96:22,23 commitments 14:25 committed 95:24 committee 26:1 commonly 36:6 communicated 27:25 45:4 companies 40:4 64:9 company 4:19 10:15,18 12:12 13:15 comparable 58:11 compare 43:22 compared 26:6 52:24 64:11 comparison 42:17,17 compelling 62:25 complete 44:5 complex 42:2 51:2 complies 79:3 82:22 88:14 90:19	comply 59:7 comport 46:17 68:13 comprehensive 43:5 53:12 compromise 19:12 concede 47:12 concept 53:19 concern 48:3 63:23 64:12 concerned 87:16 concerns 23:15 23:20 26:9 30:15 40:3 48:9 57:2 72:15,19 83:14 87:3 concise 23:22 concluded 40:9 96:12 98:6 conclusion 24:14 57:21 conclusions 32:18 40:6 74:20 75:11 concur 43:6 44:18 89:16 concurs 91:4 condition 94:24 conditions 43:24 88:20
--	--	--	--

[conducted - cover]

conducted 48:4 confer 19:3 conferred 11:5 confirm 68:19 confirmed 83:18 conflicts 53:15 confuses 25:2 confusion 41:23 42:1 consent 89:25 90:1 conservation 1:3,6 2:11 3:3 6:2,19 9:3 36:2 93:21 consider 32:25 36:1 43:19 44:12,25 45:2 46:4 56:18 65:3 67:21 74:3 consideration 20:16 57:4 60:1 62:4 69:6 70:9 77:3 considerations 36:6 considered 27:7 33:5 45:5 46:3 57:18,25 57:25 58:21 61:13 64:25 66:11 70:6	considering 1:8 54:25 60:16 65:9,11 considers 28:8 consistently 32:16 constitutes 43:12 45:17 58:1 constitutional 72:14 constrain 41:24 constrained 20:20 consult 47:14 consuming 42:16 cont'd 3:1 4:1 5:1 6:1 7:1 contain 46:22 46:23 93:7 contamination 38:9 contending 55:14 contentious 48:7 context 11:24 25:23 26:2 39:9 52:25 54:10 continuing 27:17 39:25	contradictory 25:11,19 contrary 33:1 44:25 54:16 96:21 97:25 contributed 65:15 convenience 42:15 conversation 73:12 86:22 convert 45:8 convince 44:7 convinced 35:4 35:10 cool 20:9 coordinate 16:3 correct 14:2 18:16 68:20 75:4 78:7 79:10 85:21 89:8 corrected 79:21 83:5 correction 69:13 78:18 80:1,3 83:3 92:14 corrections 97:4 correctly 72:25 cost 36:3 43:16 43:17,20 57:3	57:6,19,23 58:17 61:1,16 65:9 66:6,12 costs 38:20,23 61:6,7 coterra 11:8 could've 17:19 counsel 19:6 47:14 49:8,12 49:13 68:3,8 68:16 72:2 73:8,11,17 78:6 97:18 99:10,13 100:7 100:10 counsel's 68:3 73:1 counsels 22:19 counter 56:6 95:23 countering 65:13 couple 67:13 course 36:16 45:6 46:9 48:6 48:21 70:8 93:3 court 5:6 23:12 23:23 42:25 70:15 71:6 72:10 courts 32:16 cover 35:17 74:15 75:22
--	---	---	--

[covers - different]

covers 84:4 87:25 89:13 cox 4:4 create 28:10 64:14 88:20 created 33:8 34:4 53:15 95:25 creates 25:15 25:17,18 36:23 37:3 creating 94:18 creation 93:20 crisis 30:9 criticisms 36:22 cross 69:2,3 77:25 78:9 crux 70:1 current 18:8 26:6 79:11 83:24 currently 82:17 95:4 cut 53:10	90:20 91:1,8 daily 51:8 dais 71:16 dark 51:8 data 30:4,7,8 30:17 35:12 database 64:24 date 1:12 11:25 12:5,6 13:23 18:13 dates 13:17,18 14:19,20,21,22 16:5,20 17:21 18:2,3,9,20 19:2,15 20:5 day 11:18 20:20 41:2 49:15 67:6,6 days 12:6,14 17:2,11 44:14 de 10:15 13:9 15:9 100:2,19 deal 67:5 dealt 31:23 32:9 debate 42:24 50:1,2 decade 41:4 decide 39:24 51:12 deciding 47:24 decision 16:5 30:20 45:7,24 46:25 47:5	48:14,22 54:7 66:7 70:24 72:6 73:5 83:10 decisions 24:1 24:21 49:17,20 deems 80:15 defendant 6:2 6:19 defer 22:14 59:20 defined 45:18 degree 65:25 del 2:17 delay 31:9 deliberate 47:19 deliberation 44:15 deliberations 23:17 27:5 35:25 41:24 42:12 45:13 46:8 48:19 74:25 95:2 demand 51:5 64:14 demonstrative 85:17 denied 55:25 61:22 denver 2:6 deny 30:21 50:5 54:1 63:6	96:14,18 department 1:2 6:5,13,21 departure 24:5 dependence 40:18 deposition 99:1 depth 44:4 57:5 57:24 58:21 61:13 65:1 66:11 description 8:2 deserves 77:3 desire 14:10 despite 30:13 detailed 73:9 determination 58:9 70:2 determinations 63:2 determine 79:13 89:19 develop 12:10 developed 28:20 development 13:17,21 dialogue 70:3 differed 33:16 difference 45:16 different 30:6 45:8 53:17 57:15 58:2,14
d			
d 9:1 34:9 70:17 78:15,19 79:6,10 82:22 83:25 85:10,11 85:23 86:7,7 87:6,7,8 88:2 88:10 89:9			

[different - efficiency]

74:6 88:21 digest 90:23 digital 99:8 100:3 diminish 25:7 dine 2:12 3:4 direct 56:4 60:21 directed 66:4 direction 74:6 directly 85:20 directs 57:4 disagree 45:22 48:12 49:16 59:1 66:23 72:18 disagreed 48:21,22 70:11 discombobul... 52:24 discreet 23:14 23:17 discretion 12:17 discuss 10:23 16:2 19:25 98:2 discussed 39:5 64:1 68:10 69:5 70:23 discussing 76:13 82:4 86:19	discussion 42:24 86:14 95:1 discussions 96:15 disfavor 32:17 dismiss 55:5,17 55:25 disparity 83:5 dispose 77:13 dispute 30:8 54:15 71:24 disruptive 19:6 distinct 24:21 distinction 58:8 diverged 54:7 division 1:3,7 6:2 13:10 15:6 15:8 29:11 36:2 59:19 78:25 82:19 85:8 90:16 93:22 docket 52:5 document 42:12,16 49:19 82:10 documented 55:16 56:4 documents 42:3 47:16 51:3 52:6 doing 38:23 75:9	dollars 35:21 don 3:18 5:15 door 96:11 double 69:1 dr 7:5 9:11,24 10:10 16:6 17:7,16,23 18:17,18 21:1 21:9,21 22:2 33:24 43:4 50:4,6 63:14 63:17,19,22 64:18,20 65:25 75:23 84:16 92:15 94:8 96:16,19 97:24 draft 11:7 75:12 drafted 73:18 drew 23:1 drilling 12:9 drive 1:16 6:6 6:14 driven 40:4 dry 64:7 due 33:13 34:5 72:14,14 duly 99:5 duty 37:8 45:19 59:13	6:1,1 7:1,1 8:1 9:1,1 71:1 78:7 78:15 82:19 83:1 85:6 90:14 earlier 18:5 23:19 40:18 42:10 56:22 62:18 94:9 96:1 early 16:19 17:12 18:2 33:25 35:1 earthworks 2:13 3:5 easier 78:10 easy 67:5 economic 28:7 28:14 33:3,6 43:11 economical 39:3 economy 63:9 92:3 edit 90:8 education 2:12 3:4 effect 71:17 effective 16:3 20:25 67:25 71:7 72:22 73:15 efficiency 29:10
		e	
		e 2:1,1 3:1,1 4:1 4:1 5:1,1,13	

[effort - existing]

effort 31:8 50:24 51:1 61:23,23 85:16 eighth 75:7 either 12:11,19 12:22 17:6,7 24:25 26:9 78:23 eke 39:25 elaborate 59:15 63:24 elected 32:12 eleven 81:20,21 81:25 82:3 eligible 78:22 84:18 eliminate 89:8 eliminated 91:1 eloquently 60:8 61:19 elvis 7:8 emerged 56:13 emit 37:19 emnrd 7:3,5,8 7:9,10 emnrd.nm.gov 6:16 employed 99:11,14 100:8 100:11 employee 99:13 100:10 employees 14:1 15:11 41:4	ends 18:6 61:8 energy 1:2 5:5 6:4,12 63:9 92:3 engaged 56:2 engineer 44:1,7 65:6 engineers 65:20 enhanced 86:2 ensure 85:7 ensuring 35:21 entered 90:12 entertain 10:7 entire 27:19,20 89:17,22 environment 37:9,14 64:11 environmental 2:10,16 3:2,8 29:19 37:23 38:9 40:11 eog 31:15 63:8 91:25 epa 25:25 equipment 37:20 equivalent 35:20 error 68:18 69:3 79:15,20 81:6 88:24 errors 32:9 68:4,6 69:15	69:20 93:7 97:1 es 99:4 escalates 66:8 especially 24:4 25:15 55:11 esquire 2:3,15 3:7,16 4:4,11 4:20 5:3,13 6:3 6:11,20 essentially 31:22 64:5 establish 93:22 93:24 established 26:15 88:17 establishes 56:15 estimates 37:24 everybody 17:2 50:20 81:22 92:10 97:10,16 everybody's 19:11 everyone's 33:15 evidence 23:25 25:25 29:25 30:3,19 31:3,3 33:1,3,6 43:12 43:22,23 44:6 44:25 47:3 54:16 60:24 64:22 65:14	73:6 80:1 evidentiary 33:25 34:24 42:7 62:1 76:9 76:11,23 96:10 exactly 62:18 examiner 1:14 95:10,18 example 52:13 52:16,19,21 53:16,21 examples 34:20 42:10 53:14,14 60:9 except 95:22 exception 24:14 65:18 85:13,19 87:13 87:14 exciting 91:21 exclude 74:4 excluded 76:22 76:24 exercise 32:19 49:23 exercised 29:22 exhaust 67:2 exhibit 85:17 exhibits 56:5 existed 55:25 existence 52:19 existing 62:20 82:16 90:20
---	--	---	--

[exists - finding]

exists 62:20	f	favorable	filing 71:18
experience 30:4	f 33:24 78:19	45:25	74:18 96:3
65:21	79:3 84:2,6	fe 1:18 3:19	filings 51:23
expert 65:20	fa 38:16 60:24	4:23 5:16 6:7	71:10
expired 84:8	facilitate 71:7	6:15,23 10:17	final 27:18 28:4
explain 55:22	fact 23:21	feasibility 53:5	42:19 53:11
57:14,24 58:18	43:18 55:10,15	federalism	54:1,7 55:21
59:3 66:18	74:20 89:20	72:15	55:21,24 56:13
explained	96:5	feel 44:15 45:15	56:17 57:13
27:14 42:11	factor 58:9	49:8 73:21,22	59:5 63:1
explaining 25:3	61:14	74:13 77:24	68:14 80:10
explains 52:12	factors 52:22	feels 44:23	90:12 93:7,13
52:16	57:5,7,14,17	56:20 70:21	94:22
explanation	58:13,21 59:2	73:18	finally 27:2
52:21 53:4	60:16,17,25	felicia 1:14 7:3	39:21 41:21
explanations	65:11,22 66:17	felix 7:12	finance 26:1
60:1	70:5 94:8	fellow 35:10	financial 25:6
explanatory	facts 75:11,20	46:14 69:25	28:5 38:16
23:22	factual 89:18	73:25 74:2,11	39:14 53:25
expressed	fail 37:20	felt 44:9,12	54:2 64:12
25:12 40:17	failed 30:6,7,8	45:4,5 46:9	79:2 82:21
extension 34:12	44:24	70:5	84:4 85:7
34:16	failure 41:14	fifteen 81:14	88:14,21 89:11
extensively	fair 12:11	fifth 41:22	89:19 90:18
40:13 64:1	80:17	94:21	93:13,22,25
extent 15:13	faith 49:5	figure 19:4	94:7,13
26:19 39:12	fallible 47:13	57:23 67:23	financially
45:9 71:16	49:4	79:20 80:18	38:22 99:15
72:17 86:25	falls 37:10	figuring 67:9	100:11
96:25	familiar 13:16	file 22:12 24:23	find 40:15 52:5
extra 76:16	far 11:14	filed 12:2,5	53:13 67:14
ezzell 39:8 61:3	favor 48:10	13:8,13 22:24	81:13
		29:11 56:5	finding 36:23
		59:18	

[findings - go]

findings 24:13 24:18,24 32:18 51:20 57:13 60:4 74:20 75:11 96:5 fine 16:19 21:3 21:12 22:17 29:1 finish 77:11 firm 50:15 firmly 95:17 first 14:22 17:8 17:10 22:7,20 22:24 33:24 84:19 fits 80:20 five 21:6,11,19 24:14 27:19 32:23 38:13 39:19 fix 81:6 85:4 87:25 88:1,25 fixed 66:7 flagged 33:25 93:10 flexible 15:20 18:3 21:9 flip 22:5 fly 84:25 focused 35:2 focuses 51:17 follow 66:5 followed 47:20	following 95:12 footing 94:4 forbidden 54:5 forbids 41:8 forces 12:14 forebearers 51:11 foregoing 99:3 99:4 100:4 forever 90:5 form 24:20 forth 58:22 65:5 forum 70:14 71:5 forward 27:15 29:25 51:4 59:8 95:7 fought 34:1 44:10 70:23 71:2 found 31:22 39:15 75:15 four 44:14,14 fracking 26:25 framework 86:19 93:15 francis 1:16 6:6 6:14 frankly 24:2 free 77:24 frequently 46:14	friend 69:9 front 47:16 85:12 89:6 92:12 94:19 95:18 full 19:12 36:4 68:24 fulsome 30:2 49:22 functionally 77:15 97:16 functions 45:23 fund 2:12 3:4 38:5,6 40:17 40:21,22 fundamental 24:11,11 26:10 funds 40:21 41:2 furloughed 41:4 further 20:10 28:19 33:11 50:1,2 62:19 70:15 77:8 81:17 96:15 99:12 100:9 furthermore 34:10 future 2:11 3:3 95:7	g g 9:1 71:23 galisteo 6:22 gaps 52:18 gas 3:14 5:11 26:7 34:8 36:25 37:17,20 40:11,19,20,23 40:25 48:23 70:10 83:22 94:15 95:14 gaspar 3:18 5:15 general 23:15 generally 29:4 57:3 59:23 64:9 87:25 getting 16:18 give 16:4 19:2 21:17,19 52:18 76:20 81:9 91:14 given 15:10,23 38:10 40:18 72:3 92:25 gives 17:1 giving 76:15,16 glad 22:8 28:18 67:8 81:13 gmail.com 6:8 go 11:3 12:10 16:16 17:13 28:18 31:19
---	--	--	---

[go - heightened]

32:1 37:5 38:13 40:11 44:8 46:6,24 47:13 51:11 52:1,4 63:21 68:24 69:2 74:25 77:20 81:16 82:12,24 84:2 85:10 86:11 89:4 97:17,21,22 goes 32:23 38:7 41:12 93:11 95:9,24 going 10:23,24 12:5 23:5 25:7 44:21 46:7,8 51:2,4 59:7,8 60:22 63:9,9 65:22 67:7,7 70:14,14 72:8 72:8,21 74:1 82:15 83:24 86:8 93:5 95:7 95:17 97:7,16 good 9:2,9 10:16,19 16:24 22:8 29:17 49:5 50:12 57:8 65:13 82:2 86:22 gotten 20:17 governing 54:15 57:16	governs 54:8 grant 28:12 43:13 67:23,25 72:10 85:9 granted 77:16 85:14 granting 68:5 73:3 89:1 grants 85:8 great 26:23 44:15 greatest 26:4 greg 7:6 gregory 7:10 ground 25:10 39:3 94:6,20 grounded 30:17 grounds 23:14 27:2 83:9 group 5:5 64:9 guess 13:3 57:20 65:17 66:22 73:16 75:6 80:6 90:7 95:16 guidance 51:3 guide 81:9 guys 11:1 19:24 53:1 54:20 66:21 79:6 81:5,12	h h 8:1 72:13 half 40:20 hall 1:17 6:11 30:25,25 59:20 59:21,22 86:13 89:15,16 91:4 hall's 87:20 handle 45:18 happen 40:22 happened 74:10 happens 51:21 happy 10:6 11:1 13:6 69:16 81:8 hard 30:7 44:11 hart 2:4 4:21 10:17 hate 52:1 hb 40:12 46:22 95:12 heading 98:1 health 37:9,14 hear 32:7 89:6 heard 15:5 25:13,23 26:21 28:2,4,6,22 29:24 30:2 33:13 37:12 42:20,20,21 45:5,15 55:15	67:20 68:2 72:2 hearing 1:5,11 1:14 7:3 10:2 10:15,25 11:2 11:7,10,16,18 11:23 12:16 13:23,24 14:8 14:17,18,19,21 15:9 20:3,6 24:10 27:21 30:16 31:24 34:1,24 35:1 35:25 37:5 40:13,14 41:13 41:22 42:7 44:3 47:21 48:2,4 50:8,13 57:10 62:19,19 62:23 64:1,3 64:21 68:24 73:2,3 74:7 76:11,13,23 81:24 83:4 93:2,17,23 95:2,8,10,13,18 96:10 hearings 45:13 59:23 heavily 75:18 hefty 46:5 heightened 64:6,13
---	---	--	---

[held - increasing]

held 40:16	11:22 13:1,9	74:15 82:18	inaudible 50:6
helg.law 5:8	14:4,6,18	97:1	93:18
help 81:6	16:21,23 18:1	identify 54:13	inclined 49:24
helpful 54:9	19:18,19 20:2	identifying	include 33:1
67:14 78:13	20:10	85:16	52:10
86:14	holliday's 13:7	immaterial	included 76:9
hereto 99:14	15:4,17	80:9	83:12
100:11	holidays 11:18	impacts 40:7	including 33:6
hi 50:12	home 96:12	40:10 48:8	45:14 57:5
high 38:17,17	homework	impartial 29:21	60:25 64:4
94:13	70:16	impediment	74:10
highest 26:4	hope 47:11,12	34:6	inclusion 75:20
highlight 91:18	hopefully 50:25	implement 36:2	96:5
highlighted	hoping 21:1	implementati...	inconsistent
78:14 83:9	hours 28:9 36:3	53:5	53:23
highlighting	house 46:20	importance	incorporate
90:4 91:20	huge 27:22	43:12	51:20 75:25
highly 48:7	human 37:14	important	78:20
hinkle 4:5,12	47:13 49:3	13:21 24:8	incorporated
hinklelaw.com	hundredths	28:1 33:21	53:23 54:6,13
4:15	39:19	42:15 47:23	56:8
hinklelawfir...	hva 40:15	48:3 58:7,23	incorporates
4:8	hydrocarbon	61:14	51:22 74:18
history 57:25	39:2,4	importantly	96:3
hit 51:16	hydrocarbons	47:22	incorporating
hold 16:25	26:17	impose 36:4	74:9
holding 61:8	i	93:13	incorporation
holdover 83:25	i.e. 33:19	inactive 58:2	53:15 54:5
holland 2:4	identical 55:24	78:3 84:7	increase 38:17
4:21 10:17	82:25	85:25 86:1	increased 25:5
hollandhart.c...	identified	inactivity 34:5	40:8
2:7 4:24	24:14 52:18	inadvertently	increasing
holliday 5:3,5	64:8 69:4	83:12 97:12	38:19
10:19,20 11:21			

[independent - juan]

independent 4:2 23:2,24 29:22 32:20 indicated 84:16 indicates 60:10 indicating 60:17 indicative 61:15 indulge 32:2 indulging 43:2 industries 56:6 industry 28:3 30:4,5 33:9,21 40:23,25 43:17 43:19 50:23 53:22 61:6,7 95:23 inform 66:18 information 27:23,24 43:8 66:24 informed 59:3 inherently 70:6 input 74:10 insert 78:18 inserted 94:2 insertion 87:11 94:12 insight 69:11 insisted 46:7 instance 57:11 instances 42:21 56:19	instructions 57:2 insufficient 73:18,23 insurance 53:25 integrity 37:18 intend 12:10 intended 52:25 85:5,7 intent 45:1 79:25 interested 34:17 72:3,4 99:15 100:12 interfaith 2:13 3:5 internalize 38:22 interpret 48:12 interpretation 24:6 70:18 71:2 interpreting 54:9 intrasects 45:19 invite 22:4 28:24 91:16 involved 57:6 58:10 involving 98:2 ipanm 21:22 22:11 23:7,13	27:5 29:12,14 32:6,15,23 33:10,13 34:24 35:2,7,23 39:7 40:4,12 41:5 41:12,19,21 42:3,20 43:10 44:23 45:9,10 45:14 46:1,2 46:11 47:25 49:25 51:16 59:13 61:20 68:10 75:17 78:6 83:2 93:4 ipanm's 22:23 24:9 26:22 28:16,18,25 29:5 30:13,21 31:17,20 32:14 33:6 36:21 42:11,17 50:5 50:17 61:18 84:16 93:2 irregularities 26:9 41:23 80:24 irregularity 47:11 irrevocable 40:16 issue 16:4 25:2 26:10 36:13 43:10 52:2 55:1,10,12	66:2 69:8 79:19 88:3 92:7 issued 12:7 18:23 74:17 issues 23:18 26:12 31:23 34:8 48:11 49:9,9 51:16 55:21 56:18 72:15 73:19 77:22 93:3 issuing 29:22 item 10:4 73:6 97:15 items 73:9 74:13 93:11
j			
j 73:7,9,19 74:12,15 job 1:20 38:5 44:15 57:8 65:13 73:20 join 22:11 31:1 joined 22:1 59:13 joint 29:11 42:14 55:5 71:8,9,14,15,17 71:20 jointly 59:18 juan 2:14 3:6			

[judged - legislature's]

judged 33:5 judgment 12:21,21 23:24 29:22 32:20 judicial 24:4 41:25 42:25 48:5,15 49:1 49:10,22 71:7 72:23 july 90:13 jump 20:25 77:25 jumping 53:2 58:15 jurisdiction 37:11 38:4 justice 6:21	23:23 24:17,17 25:2,22,24 26:3,6,23,24 28:6 35:18 42:14 43:10,14 43:24 44:4 46:7 49:15 50:19,23 51:2 51:4,9,10,14,22 51:25 52:1,5,9 52:15,18,24 53:4,8,13 54:18,20 55:1 55:4 56:10,19 57:17,18 58:25 59:4 64:22 65:13,19,23 66:2,2,5,22 67:1,4,6,6,10 67:18 73:4,4 75:6,17,18,21 76:1,12,15,17 76:18,21,22,24 76:24 77:6,7 80:9,10,11 81:12 83:20 84:14 85:15 88:18 91:19 93:18 94:11 97:10 knowledge 99:9 100:6 kyle 2:15 84:22	kyrie 82:8	36:14 38:10 50:15 51:10 74:20 75:11 96:5
		l l 73:8,9,19 74:12,16 lack 31:3 lacks 52:14 ladies 22:7 laid 48:17 52:3 land 7:6 21:4 31:14 35:21 40:10 92:1,2,2 landed 45:7 lands 13:16 35:14 lange 40:7 language 34:15 42:9,13,18,18 42:19 46:23,24 61:4 73:14 82:17,24 83:13 83:24 85:6,23 86:6,16 87:11 89:9 90:4,25 93:19 94:2 large 30:6 33:13 largely 32:8 42:9 75:16 late 76:9 96:8 laundry 24:17 24:17 law 2:10,16 3:2 3:8 5:5 29:19	laws 75:20 lay 80:21,22 laying 73:10 lead 70:14 leak 26:4 37:12 37:20 leaking 25:24 26:3 37:17 leaks 37:25 leaning 89:1 leave 81:1 leaves 88:16,16 left 10:22 24:24 68:13 76:25 legacy 26:11,11 legal 37:7 45:16 48:11 56:21 63:2 70:18 71:1,23 71:24 legislation 28:8 legislative 26:1 36:6,10,12 legislature 36:13 38:3,10 41:3,9 59:2 66:3,16 95:3 legislature's 57:2
k			
k 73:7,9,19 74:12,15 katherine 5:6 kbuffa 5:17 keeping 62:6 kick 12:14 kind 28:18 50:16 53:1 60:14 65:25 80:9 88:19 94:2 know 11:24 13:8,14 17:1,2 17:9 18:2 20:2 21:14 22:11,13			

[legitimate - materials]

legitimate 38:23	56:24 63:24 66:1 78:16 87:3 93:1 96:1	89:25 low 25:16 37:24 39:13,25 79:6 85:11 87:9 94:12	makes 39:24 59:24
length 57:6 84:18 95:15	live 19:1		making 43:15 83:17
letter 51:10 64:4 72:24 76:8,17,17,23 96:8	llc 5:2 llp 2:4 4:5,12 4:21	m	man 28:8 36:3
letting 72:22	located 78:8 83:7	m 4:20 77:12 77:15	manage 38:5
leunguen 7:8	location 1:15	madam 9:7 50:13	mandate 32:19 66:10 70:10
level 15:6,8	logic 25:19	made 17:19 23:4 24:23 31:24 49:20,20 51:11 62:17 63:3 75:1 92:22	mandates 36:25
lfc 36:10 66:6	logical 61:10		mandatory 58:12 70:5 94:8
liabilities 35:17	long 53:7 67:10 80:9	maintain 39:25	marathon 4:18 10:14,18 11:13 13:14,22 14:1 14:12,19 15:6 15:12,19 18:10
liability 35:21	longer 74:5 87:17	major 31:22 95:11	marathon's 12:8,23 15:11
light 2:14 3:6	look 15:21 16:16 32:7 35:7 43:10 51:12 52:1 69:15 94:16	make 15:22 18:6 22:15 33:18 37:8 42:25 45:14,14 45:24 48:13,14 48:20 49:17 53:10 56:16 66:13,25 69:17 70:2,20,24 72:5,11 77:7 80:23 81:5 88:14 89:10,22 92:13 97:3	mark 60:23 69:20
limited 15:24 28:14 44:22 50:20 67:21 68:25 79:18 80:11,18 89:1	looked 40:7 42:16 68:17 93:18		marked 8:3
limiting 93:19	looking 12:4 17:12 26:14 32:14 41:7 49:20 70:16 79:5 82:23 85:6		market 28:3 53:4 64:5,7,10 64:11,15,16
line 33:9 34:7 68:12 91:25	looks 68:9 91:6		material 42:5 54:13 80:12
lines 95:12	lot 37:4 42:6 51:16 54:21 59:23 85:12		materially 51:23 57:15 58:2,14
linked 57:18			materials 46:5 76:1
list 24:17 32:23 77:18			
listen 21:1			
litigated 55:4			
litigation 56:15 97:17,23 98:2			
little 11:24 52:24 53:2			

[mathes - moving]

mathes 7:13 matt 3:7 29:18 62:15 matter 1:5 22:20 31:8 43:12,25 44:4 44:6 matters 53:2 55:7 59:6 84:15 maximum 80:25 mean 13:4,14 15:14 16:24 21:23 29:3 44:16 51:13 63:25 65:5,6 67:10,10 70:19 71:24 72:13 80:7 89:24 meaningful 24:4 41:24 42:25 48:5,15 49:1,6,10 means 36:11 meant 54:10 measure 53:10 measures 35:12 mechanical 37:18 meeting 9:5,6 17:20 77:14 82:3 97:10,11 97:13,14	memories 33:15 memory 74:16 75:3 mentioned 74:23 merely 47:24 72:8 79:22 merit 52:14 merits 47:24 56:19 met 27:20 37:18 methane 25:24 26:3 37:13,25 mexico 1:1 2:12 2:13 3:4,5,14 4:3 5:11 6:4,12 6:21 9:3 23:3 23:12 35:15 39:13 64:10 99:23 mexico's 32:16 michael 6:11 30:25 michael.hall 6:16 mid 12:4 miguel 3:16 50:14 million 35:17 35:21 mind 11:4 78:11 88:25	90:3 91:18,20 minds 59:1 72:18 minerals 1:2 6:4,12 minimum 68:22 88:23 minor 40:10 minus 42:10 minute 16:2 minutes 10:5 21:6,11,19 27:19 81:14,20 misses 60:23 missing 69:12 misspoke 87:6 misstated 71:17 misstatements 71:19 mistakenly 68:13 modeled 39:12 modification 52:13,20 56:9 modifications 54:14 modified 56:7 60:11,12,12 95:22 molecule 39:4 moment 32:23 90:22 91:14	monday 16:17 money 40:15 monitoring 31:12 62:7 months 15:23 56:13 moot 55:3,9,11 56:17 77:13 morning 9:2,9 10:16,19 29:17 50:12 82:2 motion 9:21 10:7 22:11 31:21 32:7,14 32:16 50:5,9 55:5,17,25 93:2 96:14,23 97:19 motions 12:20 12:22 20:16 22:1 29:12 41:6,20 97:2 move 9:23 10:8 10:13 20:14 26:23 50:4 63:10 70:17 96:17 97:5,22 moved 10:1 27:12 50:7 58:12 96:20 moving 27:15 85:15,19,20 86:1
--	---	--	--

[msa - number]

msa 93:19 94:17 msuazo 3:20 muddle 71:5 muddy 72:8,9 multi 42:2 multifarious 86:20 multiple 33:19 46:19 47:3 93:16,25	80:22 84:17 97:19 needed 12:9 25:3,5 30:10 35:5 65:2 80:2 needs 10:24 11:2 18:25 19:11 44:5 69:13 77:2 78:1 79:21 80:14 90:25	night 74:25 nine 9:4 ninth 75:7 nm 1:18 2:18 3:19 4:7,14,23 5:16 6:7,15,23 nmac 52:9 79:4 nm DOJ.gov 6:24 nmoga 21:21 33:10,13 34:24 35:7 40:4,12 42:20 45:9,11 45:15 46:2 50:10,15,19 54:12 55:14 56:18 59:2 60:14,23 61:21 62:22 63:23 65:12,13,16 66:17 75:17 83:2 84:16 91:12 92:22 93:5,10,11 94:5,11 95:9 95:20 nmoga's 22:11 26:22 28:20 29:12 35:2 36:20 41:6,19 42:18 50:10 51:19 52:14 55:4,8 57:1,11 58:8,18 59:13 63:6 82:4 85:3	86:5,15,24 87:10,22 94:21 96:18 nmsa 41:7 nobody's 19:12 nod 29:10 nomenclature 80:8,12 non 37:24 nos 1:9 notary 99:22 note 32:6 34:23 36:8 39:22 40:17 73:25 97:9 noted 46:11 notes 37:15,22 notice 46:21 74:18 93:23 96:3 noticed 60:14 november 16:11,19 18:20 november's 16:19 novo 10:15 13:9 15:9 number 10:14 20:15 32:2 33:17 34:10 36:9 43:10 58:13,19 59:4 66:19 94:11
n	negotiating 31:6 negotiations 42:13 56:3 74:9 neither 35:24 99:10 100:7 neutral 62:6 never 51:20 55:15 new 1:1 2:12,13 3:4,5,14 4:3 5:11 6:4,12,21 9:3 23:3,12 32:10,16 35:15 36:4 39:13 41:8 42:9 63:9 64:10 92:3 94:6 99:23 newspaper 34:11 nexus 61:7,11		
n 2:1 3:1 4:1 5:1 6:1 7:1 9:1 67:22 68:13 naeva 2:13 3:5 name 50:14 name's 29:18 natural 1:2 6:4 6:12 34:8 37:17,20 necessarily 27:14 47:24 53:7 56:12 76:2 necessary 15:13 38:21 79:24 need 15:16 19:24,25 20:23 28:5 40:21 44:12 59:15 65:10 66:13			

[numbers - option]

numbers 32:24 numerous 51:3 nykiel 3:7,11 29:12,16,17,18 62:11,13,14,15 o o 9:1 o'clock 9:4 81:21 82:3 objection 10:2 10:3 50:8,8 81:24 96:22 98:1 objections 10:11,12 92:12 96:22 obligation 38:8 obligations 14:25 15:18 93:14 observing 27:4 obtain 68:23 obtained 28:6 obvious 13:14 obviously 15:17 70:20 88:9 occ 17:20 33:5 33:11,16,18,22 34:4,10,17 36:16 37:7,11 37:19 38:10 42:8,10 94:20	97:10 98:2 occs 75:14 ocd 30:4,24 31:1 36:5,17 36:17 37:16 38:2,4,7,20 43:16,18,23 44:8 51:8 54:1 55:2 57:17,23 61:8,16 65:10 70:7 87:4 89:6 91:4 95:3,6,6 ocd's 30:3 33:17 37:15 38:3,5 41:19 57:19 58:17 60:25 62:16 63:5 64:23 66:6 75:16 october 11:16 11:17 12:4 14:19,21 15:22 16:7,9,9,18 17:18,19,20 18:11,14 84:13 offer 29:13 30:7,8 34:25 96:14 office 7:6 10:17 21:5 31:14 92:1,3 officer 7:3 40:14 50:13 76:13 99:1,2	officer's 73:2 oh 21:23 49:25 62:8 63:17,19 oil 1:3,6 3:14 4:18 5:11 6:2 6:19 9:3 10:15 10:18 26:7 36:1,25 37:25 39:19 40:11,19 40:20,23,24 48:23 60:24 70:10 83:22 93:21 94:15 95:14 okay 9:16 10:22 11:20 12:25 13:3 14:3,9 17:25 18:8 19:10 20:7 21:6,10 22:4,23 29:7 31:16 59:20 62:9 63:10,21 68:21,25 69:14 69:24 73:24 76:5 78:14 80:5 81:11,15 81:18,22 87:15 89:24 91:9 92:18,18 96:20 old 51:12 older 37:12 oliveira 100:2 100:19	once 35:1,4 53:10 63:9 94:16 ones 67:9 open 88:16 92:19 operating 5:2 10:21 88:6 operator 35:6 36:14 38:18,23 38:24 79:2 82:21 88:7 90:18 94:23 operator's 38:22 operators 26:21,23 39:24 83:15 opinion 20:23 31:9 45:16 opportunities 46:19 94:1 opportunity 19:3 24:23 27:9 72:4 opposed 23:17 89:22 opposing 35:3 55:5 opposite 55:16 optimal 12:1 option 24:25 46:13,13,16 73:21,22 88:12
--	--	---	---

[options - parts]

options 73:21 oral 20:23 48:18 order 11:7,23 12:6 20:3 24:3 24:12,20 25:13 29:23 30:18 39:2 52:2,4,10 52:12,16 53:7 53:11 54:7,12 55:21,22 57:13 59:5 60:2,3,4,9 60:13 61:20 62:2,21,21 63:1 66:15,20 68:14 73:9,18 74:1,15,16 82:4,9 83:6,8 83:17 86:17 87:22 ordered 10:12 orders 51:12 58:11 original 12:6 27:6 originally 12:2 53:20 originated 56:22 66:5 orphan 25:7,8 30:9 37:12,16 38:21 orphaned 38:6	orth 1:14 7:3 outcome 30:6 63:2 99:15 100:12 outline 32:22 outlined 23:8 outset 32:5 outside 56:4 93:14 overlooks 25:2 oversight 79:14 80:21 overwhelming 29:24 own 15:11 24:25 32:19 74:19,20 75:11 96:4,5 oxy 2:2 4:18 31:10 33:10,14 34:13,14 42:20 62:5,6 74:10 91:13 92:7,8 oxy's 26:21 31:11 42:18	p.o. 4:6,13,22 package 55:22 page 8:2 32:15 35:23 37:23 38:3,15 39:6 39:12 40:2 60:21 67:14 78:8 82:25 83:7,19 84:3 90:5,11 pages 24:24 27:21 38:13,13 42:5,5 84:13 paid 95:14 paragraph 74:3,3,24,24 paragraphs 24:15 38:15 74:4 parameters 65:15 part 14:15 33:13 47:8 70:6,9 76:23 78:1,15 83:1,7 83:17 84:3 85:3 86:16 87:17,20,21 89:23 90:13 parted 75:2 partial 12:21 participants 64:15	participate 12:13 14:11 34:15 participated 15:8 participating 96:24 particular 13:12 19:24 33:18 37:12 73:6 79:19 89:2,18 particularly 30:16 50:21 parties 10:23 12:19 19:3,14 20:17,24 21:13 22:19 42:8,14 45:4,14,17,21 47:8 48:18,20 49:16,18 50:14 51:5 54:8 56:2 63:8 70:11,20 70:23 71:2,3 71:10 73:14 76:1 79:16,16 80:7 81:9 84:9 84:21 86:12 88:24 90:1,8 90:15,23 91:17 91:25 99:11,14 100:8,11 parts 33:8 67:23,24 73:14
	p p 2:1,1 3:1,1 4:1,1 5:1,1 6:1 6:1 7:1,1 9:1 p&a 38:20 39:22,24 p.c. 3:17 5:14		

[parts - positions]

84:2 86:21 party 21:17 31:4,15 33:1 36:17 42:2 45:1 49:22 72:4 75:12 party's 31:6 32:18 51:20 71:9 paseo 2:17 passage 46:22 95:12 passed 25:10 36:14 67:8 passes 50:9 96:23 pattern 89:18 paula 4:20 10:16 pause 27:14 90:22 pc 5:5 pecos 1:17 pending 10:13 people 48:11 67:5 people's 74:16 percent 26:5,17 35:19 37:16 39:16,17,19 43:19 76:2 performed 36:6 period 83:16,20	permanent 40:17 permian 11:8 permit 79:1 82:20 90:17 person 13:19 14:11 34:17,19 76:18 personnel 36:5 perspective 11:25 12:7,24 27:4,11 pertinent 24:19 petition 31:21 36:16 petroleum 4:2 23:3 44:1 65:20 phase 26:25 phone 69:9 physical 34:6 piece 27:24 54:4 piggyback 31:2 pinned 77:21 place 81:4 83:15 85:8 89:11 plaintiff 2:2 3:14 4:2 5:2,11 plaintiffs 2:10 3:2 4:18 plans 82:21	platform 14:12 29:13 please 9:7,19 10:9 76:7 91:15 pleasure 21:8 plenty 46:19 49:22 plug 26:19 38:6 38:18 40:25 57:19 61:1,9 65:10 66:6 plugged 37:16 39:2,2 plugging 25:15 25:17,17 36:23 37:3 57:3,6,23 65:21,23 66:12 84:5 pmvance 4:24 point 11:11 14:24 15:4 16:7 20:24 24:22 27:18 31:12 39:21 42:4 43:9 47:23 49:24 52:11 54:5,6 56:17 58:25 62:17 65:8 66:1 77:13,18 79:15 81:4 84:11 86:5,5 87:20 88:8,22	93:18 pointed 44:10 44:13 53:9 83:13 pointing 79:8 points 28:19 35:16 71:18 policy 24:1,5 30:8 48:7 58:19 66:7 pool 28:2 population 39:16 populations 57:16 portfolio 58:5 94:13 portfolios 38:18 portion 76:10 portions 53:23 95:22 position 23:8 25:12 31:12 35:5 36:19 45:25 46:1 54:22,24 55:23 58:8 59:1 62:7 70:12 72:5 73:5 83:23 86:24 positions 21:18 29:5 30:7 33:1 33:6,10,12,17
--	--	--	---

[positions - production]

34:22 35:3 36:4 44:11 45:1,10 60:1 80:7 possible 10:25 49:6 51:1 post 96:4 posterior 56:2 postpone 10:7 10:9 potentially 41:1 powderhorn 5:2 10:21 12:15 13:1 15:20 16:25 18:23 20:11 powderhorn's 11:25 12:7 powell 38:2 61:12 95:7 power 2:13 3:5 89:25 95:3 practical 30:2 36:5 practice 12:21 pre 11:7,10,23 20:3 precisely 90:6 predicted 54:2 prefer 18:5 28:23 53:9 preference 22:19,22	preferred 43:11 prehearing 40:3 preliminary 97:13 premature 25:14 36:23 37:3 prepare 17:2 prepared 100:3 present 7:2 9:11,13,15,19 47:8 presentation 13:7 43:5 44:19 presented 42:8 43:23 44:6,8 47:25 55:13 57:9 65:22 presenting 11:6 14:4 31:6 65:14 preservation 55:16 56:16 preserved 55:13 pretrial 12:20 pretty 11:6 33:25 51:11 57:12 prevailed 75:16	prevailing 75:17 prevent 33:20 36:14 37:8 45:19,23 49:10 94:18 prevention 25:12 38:14 prevents 12:9 41:24 previous 37:5 previously 55:3 55:10 56:11 price 28:1,4 primarily 45:10 primary 26:24 principle 54:16 54:16 principles 53:22 prior 14:25 15:1 24:5,21 55:6 56:15 79:11 84:1 88:11 99:5 priority 12:8 private 94:24 95:5 probably 19:12 35:19 79:24 90:25 problem 26:14 51:21 88:5	procedural 26:9 41:23 47:10,11 49:9 80:24 procedurally 88:6 procedure 27:4 procedures 47:20 88:18 proceed 28:21 proceeding 36:18 56:23 66:11 76:10 98:6 100:4 proceedings 99:3,4,6,8 100:6 process 23:16 27:23 34:4,16 41:14 72:14,15 processes 47:19 produce 39:4 60:23 produced 40:10 producing 25:16 37:24 39:13,19 79:7 85:11 87:9 94:13 product 64:14 production 26:6,24 34:7 39:17,25 40:8
---	--	---	---

[production - rationale]

57:25 58:22 66:12 productive 58:2,4 proffer 47:3,4 47:9 proffered 33:2 project 13:22 projected 36:3 proper 89:19 properly 55:13 55:13 proposal 33:8 39:22 55:24 proposals 30:9 34:25 38:16,16 56:6 74:8 95:23 proposed 19:2 36:24 40:5 51:20,24 68:14 73:14 74:1,19 78:8,18 82:23 82:25 83:24 84:4 90:12,21 93:7,13 94:22 95:22 proposes 54:12 proposing 65:16 propositions 54:13 protect 37:9	protection 37:23 41:16 protections 33:9 provide 11:24 23:22 62:24 65:19 73:21 provided 30:17 provides 79:2 90:18 providing 61:24 proving 64:24 provision 58:5 87:8,8 89:9 provisions 54:15 94:23 public 25:4 33:2 36:15 37:9 43:12 99:22 publication 34:12 pueblo 2:17 pull 67:14 82:14 pulling 16:12 90:3 purpose 1:7 23:21 80:12 purposes 22:14 47:7 pursuant 23:7	pursuing 23:9 53:8 purvis 39:10 40:2,9 push 12:3 15:2 pushed 34:13 34:14 pushing 18:2 put 19:2 26:2 31:4 35:20 39:9 54:21 69:20 94:19 95:18 putting 11:6 25:22 26:12 q qualified 99:7 qualify 39:15 quarter 11:10 question 31:19 47:23 48:1 55:20 57:1,11 57:22 58:20 63:20,22 64:18 64:21 66:10 68:7 69:20 70:3,18 71:2 72:21 85:13 questioning 25:14 questions 13:20 14:14 20:25 21:2 31:17	47:15 63:11,12 63:13,16,18 67:13 77:6 95:10,11,18 quick 63:20,22 82:16 85:2 quite 50:22 55:16 86:10 88:25 94:10 quorum 9:17 quote 60:22 74:22 93:6 r r 2:1 3:1 4:1 5:1 6:1 7:1 9:1 rainbow 3:9 raise 56:10 raised 23:15 27:3 30:15 48:11 53:1 55:5,11 58:16 64:2 68:11 73:19 raises 62:22 raising 43:11 57:8 63:23 rankin 91:14 rates 26:4 rather 10:25 26:14 27:16 39:23 86:7 rationale 53:24 54:15
--	---	---	---

[reach - regulate]

reach 19:14 reached 77:18 read 21:15 38:14 43:14,21 44:16 46:5 84:1 85:2 90:16 readily 69:10 reading 86:8 reads 78:25 ready 20:4,24 82:10 84:14 96:13 real 66:2 realistic 39:3 realize 29:10 really 24:10 25:2,16 35:2,7 39:20 43:16,18 43:25 44:6,7,9 44:10,12,15 51:17 56:3 57:3 61:7 63:25 65:12 76:4,15 77:1 77:17 reason 22:12 30:10,10 41:22 52:3 53:11 55:11 reasonable 12:12 48:11 58:25,25 72:18 73:14	reasonably 95:13 reasoning 24:7 25:20 43:13 51:21 52:14,18 52:19 54:6,8 56:8 75:19 83:13 95:22 reasonings 73:10 reasons 23:21 24:12 28:11 30:11,17 32:23 52:10 53:6 59:5,15 60:13 61:19,25 62:21 62:25 66:19 74:19,21 75:3 75:19 76:3 83:2,6 92:24 92:25 96:4,5 96:13 recalibration 95:13 recall 37:2 47:1 61:12 65:19 72:25 receive 58:3 78:2 received 10:6 50:25 recently 13:13 recess 81:4,12 81:18,19,25	reclamation 26:11 38:4,5 40:22 recognize 71:20 recollection 64:3 reconsider 49:11 reconsidering 71:1 reconvene 81:14 record 25:25 27:15 28:14 31:4,5 41:16 42:24 46:6,7 46:21 47:2,6 48:17,20 49:6 49:21 53:6 55:17,18 59:4 59:13,24,24 62:2 66:14,25 71:5,19 72:9 72:22 79:21,25 80:22 81:5,13 82:1,9 90:2,5 91:7 95:17,25 99:9 100:5 recorded 99:6 recording 99:8 100:4 records 69:17	recovery 26:13 26:16,17 redlinger 40:7 reduced 99:6 refer 42:12 reference 51:25 69:2,3 77:25 78:9,20 82:17 88:13 referenced 82:9 83:21 87:20 references 79:11 86:16 89:10 referencing 83:25 referring 13:10 reflect 47:2 reflected 92:11 reflects 38:20 refresh 33:15 74:16 refusal 32:25 refused 44:24 regarding 36:21 39:21 83:14 93:20 regards 25:25 regret 44:23 regular 9:6 97:11,14 regulate 38:8 94:23 95:3
---	---	---	--

[regulated - resolution]

regulated 54:8	93:6,12 94:22	remember 11:9	55:8 56:18
regulation 24:7	96:14,18 97:2	41:2 73:8,11	63:5 68:9,10
40:8	reject 27:10	remind 16:20	78:17,24 85:4
regulations	32:25 50:5	38:25	87:10 92:24,24
27:8 51:8	56:21	reminded 38:2	93:12
regulatory 30:4	rejected 33:8	reminder 39:7	requested
72:14	55:8 56:7,11	reopen 31:7	23:13 34:11
rehash 72:21	88:2 95:23	46:20,25 47:6	74:13
rehashing	rejecting 27:16	47:6 48:1,2	requesting
70:13 71:4	rejection 33:2	reopening	78:10
72:7	43:11	28:13 76:3	requests 33:9
rehear 31:21	related 21:25	reorganize	67:22 82:4
32:8,14 36:20	32:8 34:6	15:12	require 38:8,18
41:20 48:2	99:11 100:7	repeat 93:5	39:22 41:15
50:5 92:23	relative 99:13	95:16	51:3 87:2
94:12	100:10	replies 41:19	95:13
rehearing	relatively 64:10	reply 23:9 33:4	required 30:15
20:16 21:18	releases 38:9	36:20	51:5 61:9 86:2
23:7,9,13	relevant 24:18	report 26:1	88:15
25:11 28:13,21	55:20 57:4,7	66:6 95:10	requirement
29:1,6 30:14	relied 25:23	reported 1:19	24:11 88:21
30:21 32:24	72:25 73:1	reporter's 62:2	requirements
41:6,7,22	relief 23:10	reports 36:24	37:19 64:6,13
43:13 48:25	56:18 67:24,25	represent	requires 25:20
49:25 50:18,25	68:9,22 72:10	50:15	52:9 58:9
55:7,14 59:14	74:13 82:5	represented	requiring
61:19 62:24	85:4 87:10	42:21	33:22 34:11
63:6 67:25	reliefs 67:15	representing	research 35:14
68:5,12,25	remain 78:22	39:15	reservoir 26:18
69:6 70:19,20	84:17	repurpose 27:6	reservoirs
71:13 77:2	remaining	request 21:16	26:20
79:18,18,24	69:19	23:10 28:12	resolution
80:11,19 87:23	remediation	29:5 30:22	55:23
89:2 92:19	26:12 38:8	42:11 50:17	

[resolve - saw]

resolve 55:21 69:19 resolved 68:5 68:15,17 69:8 resolving 69:15 resource 37:13 resources 1:2 6:4,12 50:20 respect 18:24 27:3 34:15 42:1 54:22 93:2 respectfully 28:12 30:22 respective 19:4 20:24 31:6 respects 50:20 respond 13:7 30:15 response 29:13 50:17 51:15 58:18 61:18 63:5 68:11 85:22 responses 29:11 59:19 rest 46:10 50:14 restate 95:9 restates 57:21 restrictive 34:14 result 80:10	results 51:24 review 9:20 23:24 24:4 25:20 41:25 42:25 48:5,16 49:1,10,22 69:17 71:6,7 72:23 77:11 90:23 91:17 reviewed 21:15 68:16 reviewing 23:23 25:4 44:2 70:15 72:9,11 revised 54:12 rid 85:23 right 12:7 13:4 13:6 16:2 22:25 36:16 43:6 48:3 49:17,23 66:3 68:12 77:15 82:15 84:6,25 85:9,14 90:1 91:8 risk 38:17,17 54:2,3 83:14 94:13 road 12:14 67:11 robert 7:13 robust 53:11	role 45:16 roll 9:8 97:20 room 29:10 81:10 rooted 24:10 roswell 4:7,14 roughly 35:19 routine 39:1 routinely 39:1 rule 26:10 27:6 32:11 36:2 41:17 45:20,22 54:10,11 55:21 56:7,13 78:8 78:18 82:16,23 83:12,17,24 84:1,4 86:21 89:17,22 90:12 90:21 rulemaking 23:11,16 24:12 24:20 25:13 27:8,20 29:23 30:16,18 31:7 37:10 42:2,23 48:7 51:2 53:8 63:1 66:25 67:3 70:1 83:6 83:8 87:22 94:3 rules 28:9 30:1 30:10,12,18 32:13 36:4,24 37:8,19 40:5	46:17 51:5,8 54:1 59:8 60:5 61:25 64:16 67:6,8 68:14 79:11 82:25 83:5 87:1 93:7 93:13 94:23 95:22 ruling 56:2,17 run 37:5 41:17 ryan 1:19 99:2 99:21
			s
			s 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 sacrificing 26:13 safety 34:8 saint 1:16 6:6 sake 22:17 42:15 salida 3:10 sample 27:17 san 2:14 3:6 5:7 santa 1:18 3:19 4:23 5:16 6:7 6:15,23 10:17 satisfaction 19:12 saw 11:8 31:20 35:14 39:7 64:21

[saying - solid]

saying 41:8 56:11 61:12 86:25 93:6 says 93:21 95:4 95:5 scale 26:3 scant 41:17 schedule 10:24 15:13,18,22 scheduled 18:4 schedules 15:16 scope 48:23 71:24 screen 78:10,12 82:11 86:9 91:7 92:11 scribner's 68:5 69:20 scroll 78:15 second 9:24 10:10 12:19 16:17 25:10 50:6 96:19 97:20 secondary 26:12,16,25 seconded 10:1 50:7 96:20 97:24 section 23:7,10 46:8,9 52:5,21 83:22 90:3	sections 46:10 see 14:16 28:8 32:15 36:22 44:17,22 48:24 65:7 67:11,18 73:17 75:1 82:14,18 90:11 93:19 94:17 95:20 seeing 23:6 49:13 86:9 87:16 90:11 seeking 83:15 seem 21:25 seems 49:21 72:20 76:16 88:23 seen 28:7 92:23 selected 58:19 selection 83:19 sense 39:24 54:19 76:22 79:23 sentence 32:10 78:25 83:11 90:16 separate 23:10 separately 20:2 21:24 22:12,21 28:23 september 12:3 12:16 14:18 15:21 16:10,17 16:17,21,24	17:3,12,15 18:5,12 97:11 97:14 serve 64:15 session 97:17 97:23 98:1 sessions 36:12 41:10 set 12:15 13:23 15:2 seventh 75:7 sfaa 96:9 shale 26:24 shallow 58:1 shandler 6:20 68:20 73:20 shanor 4:5,12 share 23:5 78:10,12 82:10 89:20 sheila 7:7 short 79:17,18 81:4 83:16 shortly 19:14 show 30:18 58:12 78:1 showed 76:18 76:25 showing 35:12 43:24 64:22 side 21:11 42:16,17 side's 34:21	sides 21:7 33:5 sierra 2:14 3:6 sifting 23:25 signal 45:13 signature 99:20 100:18 significant 48:8 50:22 65:21 76:12 95:1 similar 11:7,10 57:7 58:1 66:12 similarly 15:6 72:13 simple 57:12 simply 56:21 80:2 95:5 single 39:14 58:13 72:3 78:23 86:2 87:2 sir 13:2 14:6 16:23 19:19 site 78:7 84:12 size 12:12 skills 99:10 100:6 slides 23:4 slightly 44:22 87:16 slot 18:5 small 64:8 solid 17:10 94:4,6,20
---	---	--	---

[solution - struck]

solution 53:25 solving 26:14 somebody 35:20 96:11 somewhat 15:20 23:14 24:21 51:25 sooner 10:25 soonest 11:14 13:18 sorry 11:9 18:14 21:20 45:3 62:8 82:24 sort 12:20 31:2 84:24 85:4,17 86:13,20 87:3 91:21 sound 31:24 south 1:16 6:6 6:14 speak 21:14 41:16 46:4 47:18 72:22 87:19 speaking 16:1 46:15 47:17 speaks 71:9,15 71:21 special 77:14 97:13 specific 16:22 57:5,22 67:15 78:9 88:3	89:20 specifically 60:8,15 74:2,3 74:4 75:4 specified 66:17 specify 59:2 speedy 18:24 spent 37:4 67:1 76:12 split 34:18 spoke 66:4 95:7 96:1 spoken 36:13 sporich 61:2 st 6:14 stacking 52:12 52:17 53:22 88:19 staffing 33:20 stakeholders 48:9,10 stand 71:22 standalone 23:10 standard 95:14 standing 34:19 stands 32:13 44:17 71:21 stark 24:5 start 22:6,9,24 52:23 59:20 63:10,12 82:16 state 1:1 7:6 31:14 35:13	39:20 41:1,13 54:14 92:2 99:23 state's 40:18,22 stated 12:8 60:13 61:19 statement 23:21,22 24:12 37:15 39:6 40:3 59:5 60:20 66:19 74:19 83:6 91:5 94:21 96:4 statements 21:4 31:2 37:6 63:12,15 75:3 75:19,19 states 35:24 74:17 statewide 39:16 39:17 58:13 stating 94:14 statistics 35:12 status 11:2 34:13,16 58:5 78:21 84:7,8 84:17 85:9,20 85:24 86:1 88:4,8,10 97:23 statute 24:6 46:18 57:2 58:9 93:21	94:1,17 statutes 32:18 48:13 statutory 36:25 37:11 57:1,22 57:22 58:20 60:15,16,25 61:4 66:2,10 93:14 94:8,25 stay 12:9 18:23 90:25 stem 38:21 step 57:20 sticking 54:22 stipulation 42:14 56:4 71:8,9,11,14,15 71:17,21 straightforward 56:25 57:12 street 2:5 6:22 strike 88:13 90:15 striketroughs 91:20 striking 83:11 83:11 90:19 91:8 strong 48:9 95:25 strongly 48:10 struck 64:4 91:19
---	---	---	---

[struggling - tailored]

struggling 40:23,24 41:1 stuck 67:9 studies 40:6,9 study 26:1 35:14 stunning 39:20 suazo 3:16 22:5 22:7 28:15,17 29:3 50:12,14 64:2 65:17 67:16 69:7 73:13 77:20,24 80:6 81:3,11 82:6,7 84:10 84:11 91:10,11 suazo's 59:11 sub 86:21 87:17 subject 39:14 56:8 submission 75:24 submissions 21:15 55:6 submit 20:3,5 subsection 78:15,19,19,20 79:3,10 82:19 82:22 83:7,17 83:25 84:2 85:18 86:6 87:21,24 88:2 88:13 89:2,9	89:23 90:20 91:1,8 subsections 87:21 subsequently 52:22 subset 87:13 substance 86:14 substantial 30:19 60:24 substantive 66:24 79:14,20 80:9,21 subtext 54:10 successfully 93:11 sufficiency 47:15 73:12 sufficient 21:7 30:20 32:13 43:13 70:8,9 73:22 sufficiently 44:25 45:3 75:22 suggest 81:3 suggested 42:17,18,19 suggesting 91:2 suggestion 85:3 88:1 89:7,21 90:14	suggestions 42:22 60:11 suite 2:5 sum 54:4 summarize 23:4 summary 12:21 12:21 21:17 62:16 summations 20:23 sums 41:3 superseded 54:13 supplemented 55:18 support 28:3 30:20 57:14 62:16 63:4 75:23 83:10 84:16 supported 30:19 53:16,20 supporting 30:7,12,18 supportive 29:4 36:18 supports 30:1 59:14 suppose 81:14 sur 2:17 sure 15:17,22 22:12,15 29:3 32:4 33:18	43:7 48:14,24 53:10 62:12 67:19 69:17 70:13,19 71:4 71:13 72:7 76:3 77:8,23 80:17,23 81:10 81:11 84:15 86:18,23 89:11 97:3 surely 72:13 surety 28:3 53:4 63:23 64:9 72:24 sweep 40:21 41:1 sweeping 41:3 swept 58:4 sworn 99:5
t			
t 8:1 ta 25:15 33:23 33:23 37:18 53:17 58:3 78:1 83:20,21 83:21 84:17 85:9,18,20,24 86:1 87:14 88:9 89:12 tactic 31:9 tag 28:1,4 tailored 75:4			

[take - thursday]

take 11:19 20:21 22:18,20 22:20 24:23 28:23 32:12 44:21 49:25 65:17 69:22,24 70:12 72:5 75:5 81:12 91:15 93:1	term 75:8 terms 46:17 54:9 57:9 tertiary 26:12 26:16,25 testifying 99:5 testimony 24:1 25:14 28:14 33:5 47:1,7 76:20 85:12	thing 41:11 43:9 44:19 58:23 things 32:1,2 34:7 51:25 54:24 56:10 72:5,11 think 10:22 11:5 12:11 13:9 18:25 20:2 21:23 24:22 25:1,1 25:20 27:19 28:1,19,22 35:18 40:17 41:2,14 45:2 45:21 47:2,22 48:11,19 49:1 49:16 50:19,22 51:16,17,21 52:25 54:18,23 56:1,25 57:12 57:21 58:7,23 59:6 61:22,23 63:15 64:12 66:1,15,16,21 66:23,23,24 68:2,21 69:7 70:2,10 71:9 71:12,17 75:21 76:21 77:1,1 77:12,21 78:12 79:10 80:7,12 80:14 81:19	82:10 85:3,4 85:13,22 86:4 86:7,13,21 87:6,9,11,19,25 88:5 89:5,7,12 89:13,16,20 90:24 91:1 92:16 95:16 96:7 97:9 thinking 73:11 third 40:19 thorough 44:9 65:7 thoroughness 61:24 thought 44:3 60:8 61:17 thoughtful 47:20 thoughts 16:14 77:6,7,9 threat 35:13 37:13 three 11:13,15 12:13 13:25 14:5,7 15:4,7 23:20 27:20 34:2 36:21 47:5 52:2 61:17 73:8 74:13 97:2 threshold 55:1 thursday 1:12 17:11
taken 35:6 52:11 54:19 72:1,2 74:21 96:6 99:3,12 100:9 talk 41:5 43:18 talked 94:9 talking 41:7 60:15 87:17 90:7 taos 2:18 tapes 68:16 taxpayers 61:8 technical 23:18 29:25 30:2 tell 51:9 54:8 temporarily 41:15 84:8 temporary 34:12,16 78:21 79:1,12 82:20 83:16 84:6 88:3,8 90:17 ten 20:20 21:7 27:1 81:14	testing 37:18 thank 9:18 19:9 19:16,19,21 20:8,9,12,13,18 21:2,5 22:3,25 28:14 29:7,9 29:15,18 30:22 30:23 31:9,12 32:5 43:1,4 44:20 59:9,12 59:15,16,22 62:3,5,7,14 63:7 67:12 77:3,4,19 81:25 82:13 84:20 87:4,18 88:22 91:24 92:17 96:24 97:5 98:2,4 theoretically 67:3 theories 56:22 thereof 31:3		

[tide - ultimately]

tide 38:21 tied 58:10 tiffany 7:14 tight 20:18 time 1:13 14:24 16:5 22:18 25:8 28:24,25 31:5,8 36:1,4 37:4,21 40:24 40:24 42:16 50:20,23 54:21 57:6 68:3,10 69:22 76:12 79:19 81:17 82:2 83:16,20 91:15 93:1 97:6 timeframe 17:1 times 33:16,19 36:9 46:19 47:5 58:21 66:12 75:10 93:16 timing 11:12 tisdell 2:15,19 29:9 59:18 62:10 79:23 84:22,22 85:2 87:5 89:5 90:24 today 19:24 32:9 35:18 53:1 55:19 62:4 67:3	77:14 94:9 96:2,24 together 11:6 19:2 21:22 42:8 tons 37:25 took 33:18 45:25 46:21 57:9 60:2 top 83:18 total 39:17 touch 56:24 65:3 touched 54:18 towards 29:10 89:1 track 82:8 traffics 51:7 transactions 94:24 95:5 transcriber 100:1 transcript 27:21 48:19 68:17 84:12,13 100:3,5 transcriptionist 99:7 transcripts 69:17 transfer 38:24 53:24 54:1 95:4,6	transfers 54:2 transportation 34:7 treated 53:24 treatment 53:17,17 tremaine 36:19 tried 45:12 47:4,18 49:4,5 71:18 tripp 4:4 22:5 22:22,25 23:1 28:23 59:10,12 69:9,22 78:5 78:12,14 79:7 79:9 82:7,10 82:12,13 86:10 86:11 87:15,18 90:2,10 91:2 91:18,23 92:7 tripp's 86:5 89:7,21 true 99:9 100:5 trujillo 7:11 truly 69:16 trust 40:16 try 10:24 15:12 15:14,19,22 18:23,24 19:11 47:13 51:12 67:23 71:19 75:25 81:13 trying 67:18,21 72:11,21 80:18	tucker 2:3 turn 29:8 31:16 49:11 50:10 73:7,16,24 74:11 77:8 turnaround 20:19 twenty 27:1 twice 53:10 63:9 two 11:18 12:12 15:23 16:7 17:9,10 33:24 36:5,12 40:6 41:9 53:8 65:19 67:1 78:2,3 83:20 83:21 84:19 88:4 tx 5:7 type 64:11 81:6 types 51:3 typewriting 99:7 typographical 23:18
u			
u.s. 37:23 ultimate 28:1 48:22 63:1 66:3 ultimately 53:18 55:8			

[ultimately - waters]

70:16 umbrage 54:20 unable 38:22 unanimous 89:25,25 unattractive 64:10 unavailable 53:25 under 27:7 51:13 78:15,22 88:6,15 95:14 underlying 14:8 15:5 underscore 32:11 understand 10:5 15:10 27:22 44:7 45:24 48:6 51:4 70:19 77:25 understandably 54:20 understanding 45:6 46:12 69:12 understands 45:15 understood 46:16 71:20 undertaking 50:22	underway 41:10 undisputed 26:15 uniform 58:13 88:25 unplugged 35:13 unright 55:9 untouchable 40:16 update 97:23 updated 78:1 84:1 updates 97:18 urge 61:21 urged 45:8 46:1 46:14 74:7 usa 2:2 4:18 use 38:6 94:23 used 75:18 using 25:24 26:3 73:12	variance 34:4,6 53:19 78:16 various 64:3 65:22 67:22 vehicle 80:19 versus 39:24 41:10 78:3 viable 26:20 38:24 videoconfere... 2:3 3:7,16 4:4 4:11 5:4,13 7:4 7:8,9,10,11,12 7:13,14 view 69:10,24 views 69:25 76:14 violations 40:11 visual 90:5 volume 26:5 voluminous 59:24 vote 34:18 voters 2:12 3:4 votes 96:21 97:25	wallace 7:14 want 11:24 13:15,18 16:2 16:7 18:24 19:25 21:24 31:7 38:14 48:14 65:7 67:4,13 69:1 77:7 80:21,23 81:16 86:12,18 86:22 87:5 92:21,25 wanted 16:21 22:2 32:10 33:19 34:17 38:25 52:23 62:10 63:24 86:15 wants 15:4 21:17 22:6 53:14 warranted 79:19 93:6,12 94:22 warrants 65:24 80:11 waste 25:12,15 25:17,18,22 26:2,5 36:23 37:3,8,13,17 38:14 39:9,21 45:17,18,19,23 waters 72:9
	v		
	valkyrie 5:13 vance 4:20 10:16,16 11:3 12:23 13:6,12 14:2,21 18:11 18:16,20 19:8 19:16 20:1,8 31:11 62:6 92:5	w	
		waiting 92:5 waiver 71:8 walk 67:7,13 67:21 82:11	

[way - y'all]

way 14:13 31:24 47:14 48:4,15 68:24 70:6 77:16 91:6 ways 60:6 we've 11:13 14:11 15:14 20:5,16 23:18 25:10 28:2,3,6 28:6,7 49:4,4 53:7 59:23 67:1 68:22 70:21 71:20 72:1,5 77:21 94:9 week 16:8,9,18 17:4 32:8,9 88:2 93:8 weeks 16:7 27:20 weigh 18:1 49:8,12,14 59:10 62:11 67:12 68:4 72:4 79:17 81:2 84:9,21 86:12 90:2 92:4 weighed 67:20 71:4 weight 76:16 welc 29:8 52:11 57:17 59:17	60:22 62:8 69:5 welc's 67:7 68:11 69:6 71:18 91:4 welcome 9:5 22:5 49:8 68:3 89:6 90:1 92:4 well's 88:9 wells 25:7,8,15 25:16,18,24 26:7 33:23,23 33:23 34:5 35:13 37:12,12 37:16,17 38:6 38:17,19,21 39:1,1,12,14,15 39:18,23 40:25 41:15 43:19 53:17 57:7 58:6,11 64:23 65:10 66:13 78:1,21 79:7 79:12 83:15,20 84:5,6,7,7,17 85:11,14,19,24 85:25 87:8,9 88:3 93:14 94:13 wendell 1:15 went 43:17 60:8 65:5,7 68:16 74:5,23 85:15 95:15	96:7 west 3:9 western 2:10 2:16 3:2,8 29:19 westernlaw.org 2:19 3:11 wholesale 32:17,22 33:12 34:21 william 7:5 willing 64:15 67:21 81:9 winnowing 23:25 wish 49:13,23 79:17 84:9,21 witness 13:4 18:9 24:1 39:8 39:10 47:1,7 99:4 witnesses 11:13 11:15 12:13 13:15,19,24,25 14:4,10,11,14 14:23,24 15:5 15:7,7,15,17 19:3,5 26:22 27:21 30:3 42:4 64:4 65:20 words 90:20 91:8	work 17:15,19 17:21,23 18:3 18:7,13,21 19:17 20:3 22:15 54:21 81:22 93:10 workflows 19:6 working 20:18 25:9 67:1 84:24 workload 15:12 works 16:17 19:8 world 14:13 worse 56:3 worth 54:24 would've 75:2 75:18,18 wozniak 3:17 5:14 50:16 wrapping 41:12 95:20 write 24:25 75:10 written 20:17 21:15 79:8 x x 8:1 y y'all 59:25 61:18,23
---	---	--	---

[y'all's - zshandler]

y'all's 61:23
yeah 13:11
17:14 18:18
22:2,3 28:24
50:1 62:14
63:19 69:23
81:21 84:22
87:17 92:2
97:8
year 11:9 12:3
12:4 38:1 75:7
75:7 83:20,21
83:21
years 27:1 30:3
33:24 41:3
52:2 53:8 67:1
78:2,3,21
84:19 88:4
youtube 90:6
z
zachary 6:20
zero 78:2 83:21
83:21 88:4,10
zoom 87:3
zshandler 6:24