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

APPLICATIONS OF FRANKLIN
MOUNTAIN ENERGY 3, LLC FOR
COMPULSORY POOLING AND NOTICE OF Case Nos.
OVERLAPPING SPACING UNIT, LEA 23833-23840
COUNTY, NEW MEXICO

APPLICATIONS OF MRC PERMIAN
COMPANY FOR COMPULSORY POOLING Case Nos.
LEA COUNTY, NEW MEXICO 24142-24145

APPLICATIONS OF MRC PERMIAN
COMPANY FOR APPROVAL OF AN
OVERLAPPING HORIZONTAL WELL Case No.
SPACING UNIT AND COMPULSORY 23961-23964
POOLING, LEA COUNTY, NEW MEXICO

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HEARING

DATE: Thursday, February 8, 2024
TIME: 8:59 a.m.
BEFORE: Hearing Examiner Gregory A. Chakalian
LOCATION: New Mexico Energy, Minerals and Natural
Resources Department
Wendell Chino Building, Pecos Hall
1220 South St. Francis Drive, 1st Floor
Santa Fe, NM 87505
REPORTED BY: James Cogswell
JOB NO.: 6385283

A P P E A R A N C E S

List of Attendees:

Sheila Apodaca, Law Clerk - Oil Conservation Division

Deana M. Bennett, Modrall Sperling for Franklin

Mountain Energy

Gregory A. Chakalian, Hearing Examiner - Oil

Conservation Division

Earl E. DeBrine, Jr. - Modrall Sperling for Franklin

Mountain Energy

Michael H. Feldewert, Holland & Hart LLP for MRC

Permian

John Garcia, Technical Examiner - Oil Conservation

Division (by videoconference)

Ben Kessel, Geologist - Franklin Mountain Energy

Cory McCoy, Reservoir Engineer - Franklin Mountain

Energy

Jaclyn M. McLean, Hinkle Shanor LLP for Armstrong

Energy Corporation and Slash

Elizabeth Ryan, ConocoPhillips for COG Operating, LLC

(by videoconference)

Tanner Schulz, Petroleum Engineer - MRC Permian (by

videoconference)

Lee Zink, Landman - Franklin Mountain Energy

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I N D E X

OPENING STATEMENT By Mr. Feldewert					9
OPENING STATEMENT By Ms. Bennett					16
WITNESS(ES):	DX	CX	RDX	RCX	
LEE ZINK					
By Ms. Bennett	45		116		
By Mr. Feldewert		56		124	
By Mr. Garcia		112			
BEN KESSEL					
By Ms. Bennett	128		143		
By Mr. Feldewert		130			
CORY MCCOY					
By Ms. Bennett	146		168		
By Mr. Feldewert		155		170	
By Mr. Garcia		165			
TANNER SCHULZ					
By Mr. Feldewert	174				
By Mr. DeBrine		198			
By Mr. Garcia		211			

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Franklin Mountain Energy:		
Exhibit A	Compulsory Pooling Checklists	39/ 39
Exhibit B	Affidavit of Lee Zink	41/ 41
Exhibit C	Affidavit of Ben Kessel	42/ 42
Exhibit D	Affidavit of Cory McCoy	43/ 43
Exhibit E	Self-Affirmed Declaration of Deana Bennett	44/ 44

NO.	DESCRIPTION	ID/EVD
MRC Permian:		
Exhibit C-1	Application for Permit to Drill	184/184
Exhibit C-2	Field Development Overview	184/184
Exhibit C	Self-Affirmed Statement of Tanner Schulz	195/195

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P R O C E E D I N G S

THE HEARING EXAMINER: It is 8:59 a.m. on February the 8th. Let's go on the record in case numbers 23833, '35, '38, '39; 24110, '111, '112, '115; and case numbers 23961 through '64; 24142 through 24145. I am intentionally calling cases that were dismissed Monday to clarify the record in those cases.

But first, I want to do a sound check with our technical examiner, who's in Aztec, John Garcia. Mr. Garcia, can you hear me?

MR. GARCIA: I can hear you perfectly.

THE HEARING EXAMINER: Okay, great. I can hear you perfectly as well.

Okay. Mr. Court Reporter, are you ready?

THE REPORTER: Yes.

THE HEARING EXAMINER: Okay, sounds good.

Sheila, are you ready?

MS. APODACA: Yes, ready.

THE HEARING EXAMINER: Let's begin with this notice of dismissal. I have a notice of dismissal filed on February 5th at 5 p.m.

Mr. Feldewert, are you representing MRC this morning?

1 MR. FELDEWERT: Yes, sir.

2 THE HEARING EXAMINER: Okay, thanks.

3 Do you have any pro counsel with you?

4 MR. FELDEWERT: I do not.

5 THE HEARING EXAMINER: Okay.

6 All right. And Ms. Bennett, are you
7 representing Franklin Mountain?

8 MS. BENNETT: -- I am from the Modrall
9 Sperling office as well.

10 THE HEARING EXAMINER: Good morning.

11 MR. FELDEWERT: Good morning.

12 MS. MCLEAN: Good morning,

13 Mr. Examiner. Jaclyn McLean on behalf of Armstrong
14 and Slash, and I don't anticipate that we'll have any
15 questions today.

16 THE HEARING EXAMINER: Thank you.
17 Morning.

18 Mr. Feldewert, I was looking at your
19 pre-hearing statement filed on Friday, where you
20 discuss your competing applications, that you will be
21 dismissing the Wolfcamp competing applications, but
22 that the Bone Spring competing applications would move
23 forward, and then you dismissed the Bone Spring
24 competing applications. Would you like to explain
25 why?

Page 7

1 MR. FELDEWERT: Yes, I can. It's going
2 to be part of my opening statement.

3 THE HEARING EXAMINER: Oh, you have an
4 opening statement?

5 MR. FELDEWERT: I do, yeah, to help
6 explain all this.

7 THE HEARING EXAMINER: Okay, very good.
8 Ms. Bennett, we'd start with your opening statement,
9 but because Mr. Feldewert needs to clarify to me why
10 there were these late-minute changes, and how that
11 might affect your cases, I'm going to start with his
12 opening statement; okay?

13 So Mr. Feldewert, would you
14 begin -- oh, wait. I'm sorry, hold on a second. It
15 looks like we have Ms. Ryan.

16 MS. RYAN: Thank you. Yes. Can y'all
17 hear me?

18 THE HEARING EXAMINER: Perfectly.

19 MS. RYAN: Okay, thank you. Yes. I'm
20 just needing to make an entry of appearance for COG
21 Operating.

22 THE HEARING EXAMINER: Okay, wonderful.
23 Now, Sheila, I can't see Ms. Ryan. Is there a reason
24 why?

25 MR. FELDEWERT: She shows up on our

1 screen.

2 THE HEARING EXAMINER: She is?

3 MR. FELDEWERT: Yeah. At least on
4 mine.

5 MR. GARCIA: It might be a setting on
6 your personal screen. I have mine on the layout, as
7 stack, and so whoever's talking shows up as they're
8 talking.

9 THE HEARING EXAMINER: Thank you,
10 Mr. Garcia. I think Sheila is trying to set the
11 layout, because that's the screen I'm looking at. So
12 anyway, I'll let Sheila do that while we hear from
13 Mr. Feldewert. Sorry for the interruption.

14 MR. FELDEWERT: No problem.

15 So, explanation is that the
16 recent -- so when we filed the pre-hearing statement,
17 we didn't have their filings yet; okay? Call that.
18 And with those filings, they demonstrated that
19 Franklin Mountain had actually increased its working
20 interest in the proposed units, to the point where it
21 justified dismissal of MRC's competing pooling cases,
22 which is what we did early this week.

23 Because MRC agrees with Franklin
24 Mountain that, under precedent established by the
25 Division and the Commission, unless you've got

1 compelling evidence that one development plan is
2 better than the other; okay? Working interest in the
3 disputed acreage is a controlling factor in awarding
4 operations.

5 And here, Franklin Mountain clearly has
6 the most interest in these spacing units. And there's
7 really no dispute between the well spacing, the target
8 intervals, or similar technical evidence. The only
9 issue, the only issue is what we recently discovered;
10 okay? And that is that it appears that they intend to
11 overlap their cross-state units going south with their
12 360-acreage units for satellite wells going north.

13 And that overlap is going to occur
14 along the entirety of the north half, the north half
15 of section 36. Which raises concerns about the impact
16 on the correlative rights of MRC and other working
17 interest owners, that they seek to pool into these
18 cross-state units.

19 Because by statute, Mr. Examiner,
20 production from wells in pooled spacing units must be
21 shared on a straight-acreage basis, meaning that if
22 you pool eight 40-acre tracts to create a 320-acre
23 horizontal well-spacing unit, the production from
24 wells within that spacing unit is allocated one-eighth
25 to each of those 40-acre tracts. That's how it's

1 required to be done under the pooling statute.

2 That's why, for example, operators come
3 in, and they always show that each tract in the
4 proposed spacing unit will contribute proportionately
5 to the well bore. That's why they do it. In this
6 case, the proposed overlap here and its impact on
7 correlative rights remains a mystery to me; okay? And
8 let me show you why, if I may share.

9 So when I first learned this overlap, I
10 reviewed the division's files for the satellite wells,
11 because they had gotten pooling orders. And they were
12 under cases 23829 through 23832. And the case files
13 are basically the same, so I just pulled up case file
14 23829; okay? That's what you have up here in front of
15 you.

16 And when you go to page 23 of the PDF
17 that they filed in the case, you'll see that the
18 satellite wells seek to essentially target the same
19 intervals that they seek to target with the
20 cross-state wells. In this case, being a Wolfcamp
21 spacing unit, the Wolfcamp A and the Wolfcamp B.
22 That's the starting point -- same interval, same
23 reservoir.

24 Then you go to their PDF page 17, and
25 you see what they filed, and indicated to the division

1 in that case. Of course, MRC was not a party, nor
2 were the other working interest owners in the
3 cross-state units.

4 And they indicated in that hearing that
5 they intend to overlap their satellite spacing units
6 going north, with their cross-state spacing units
7 going south, in the north half of the north half of
8 section 36. That's this area right here.

9 And this indicates, according to their
10 diagram -- and I know it's just a diagram -- indicates
11 that -- well, that satellite wells are going to go
12 about halfway into each 40-acre tracts, in the north
13 half of the north half. And the cross-state wells are
14 going to go about halfway into that tract in the north
15 half of the north half.

16 It was a little confusing, because then
17 when I went to their PDF page 18 -- this is their
18 Wolfcamp spacing units. The way they have it drawn,
19 it doesn't show them going into the north half of the
20 north half. Now, I'm assuming that was a mistake, but
21 it does raise some confusion.

22 So, I said, "Well, let's take a look at
23 the C-102s for the satellite wells that they filed in
24 that case"; okay?

25 MS. BENNETT: Mr. Examiner, I feel like

1 this is going a little bit beyond an opening
2 statement. And none of these -- well, these exhibits
3 were submitted to the Division. We did not have any
4 indication that Mr. Feldewert was going to be delving
5 into the satellite cases in such detail.

6 I'm happy to answer, and our witnesses
7 are happy to answer, any questions about these
8 exhibits, because it's very straightforward and
9 there's really no dispute about it. But I would just
10 like to raise an objection for the record.

11 MR. FELDEWERT: All I'm doing is just
12 explaining why we're confused.

13 THE HEARING EXAMINER: I understand.
14 I'm going to sustain the objection. This is not in
15 evidence. Let's just keep your opening statement a
16 little bit more general. This isn't helping me
17 either, seeing this -- it's not helping your point
18 right now.

19 So can you just keep your opening
20 statement very general, and tell me why did you
21 withdraw, why did you dismiss, all of your cases that
22 were going to hearing today, and what you intend to
23 either show, or -- because I -- are you presenting any
24 evidence today?

25 MR. FELDEWERT: Yes.

1 THE HEARING EXAMINER: Good. Okay. Do
2 you have any witnesses today?

3 MR. FELDEWERT: Yes.

4 THE HEARING EXAMINER: You do? Are
5 your witnesses here today?

6 MR. FELDEWERT: No; he's going to
7 appear by video.

8 THE HEARING EXAMINER: That's fine.
9 And Ms. Bennett, your witnesses are
10 here today?

11 MS. BENNETT: Yes.

12 THE HEARING EXAMINER: Okay. All
13 right. We're here at an administrative hearing. The
14 standard of evidence is preponderance of evidence.
15 What do you propose to show?

16 MR. FELDEWERT: Your pooling
17 statute -- or pooling applications, as I understand
18 it -- and I was going to tell you why I'm confused,
19 and remain confused, but we can deal with that another
20 time; okay? My point is, as I read their pooling
21 applications, they cannot meet the standard under the
22 statute.

23 THE HEARING EXAMINER: Okay.

24 MR. FELDEWERT: 70-2-17, which I can
25 talk about, if you'd like. Or we can wait.

1 THE HEARING EXAMINER: Very simply, in
2 plain English, why can they not meet their burden of
3 persuasion?

4 MR. FELDEWERT: Because under their
5 plan, the tracts in the north half of the north half
6 of section 36 will not contribute proportionately to
7 the wells that they intend to drill in their
8 cross-state spacing units. Either because they're not
9 going to have any perforations in the cross-state
10 wells into the north half of the north half of 36, or
11 the north half of the north half of 36 is going to
12 have both satellite unit wells and cross-state unit
13 wells in the spacing unit, thereby having two straws
14 in the same reservoir.

15 And what's important here, and realize
16 this -- this is why I got the diagram; okay? And
17 actually, this one we did have in evidence; okay?

18 THE HEARING EXAMINER: I'm sorry. What
19 did you say about evidence?

20 MR. FELDEWERT: This one is -- this is
21 our Exhibit C-1.

22 THE HEARING EXAMINER: This is your
23 Exhibit C-1?

24 MR. FELDEWERT: Yeah, this is our
25 Exhibit C-1. So it's not like I'm going into

1 everything that we didn't have, but I was trying to
2 explain -- but anyway.

3 The owners in the cross-state units
4 down here in the south don't share in the production
5 from the satellite wells. They don't. It's not part
6 of their spacing unit. So whatever the satellite
7 wells are going to suck out of the north half of the
8 north half of 36 go directly to the benefit of the
9 satellite owners, to the detriment to the correlative
10 rights -- detriment of the owners in section one, and
11 the owners in the south half of 36.

12 And the pooling statute does not let
13 you do that. That's my point, and I could explain it
14 further later.

15 THE HEARING EXAMINER: Okay. I
16 understand the point.

17 MR. FELDEWERT: Thank you.

18 THE HEARING EXAMINER: Thank you.

19 Ms. Bennett?

20 MS. BENNETT: Good morning, and thank
21 you, Mr. Examiner.

22 Mr. Feldewert agrees that, under the
23 Division's -- well, let me start fresh. The Division
24 has seven factors, more or less, to determine how to
25 evaluate competing proposals, competing applications,

1 and contested cases.

2 And all things being equal, one of the
3 factors is working interest control. And the Division
4 has said, when everything else is equal, working
5 interest control is the compelling -- the most
6 controlling factor.

7 THE HEARING EXAMINER: But let me stop
8 you there for just a moment. We don't have competing
9 applications anymore.

10 MS. BENNETT: No, we don't. No, we
11 don't.

12 THE HEARING EXAMINER: So one of the
13 things I'd like you to address in your opening
14 statement is, how does the dismissal of the competing
15 applications affect your case, if at all? So please
16 keep that in mind as you're giving me your opening
17 statement. Want to take a moment?

18 MS. BENNETT: No, thank you. So in
19 fact, the dismissal does not affect our case
20 whatsoever.

21 THE HEARING EXAMINER: Okay.

22 MS. BENNETT: We would have filed
23 different exhibits, obviously, that didn't compare and
24 contrast Franklin Mountain Energy's plan with MRC's
25 plan, had we known. It's a little unfortunate, I'd

1 say, or prejudicial, that MRC waited until the
2 eleventh hour to dismiss its applications, after we'd
3 already filed, and the parties had spent a good amount
4 of time preparing the exhibits.

5 So our exhibits would have looked
6 different, because it would have been, essentially, a
7 non-contested case, except for, apparently, this issue
8 about the overlap in section 36. And with all due
9 respect to Mr. Feldewert, he is not a reservoir
10 engineer. He does not have any experience on whether
11 codeveloping these four sections will negatively
12 impact correlative rights.

13 That's a fact issue that we'll be
14 talking about today, and we have witnesses here who
15 will be addressing that, and who will demonstrate that
16 this is not going to negatively impact the correlative
17 rights of the section 1 or section 36 owners, because
18 the cross wells and the satellite wells will be
19 accessing reserves that neither of those wells could
20 ordinarily access, due to setbacks and drilling
21 curves. And so our witnesses will be testifying to
22 that.

23 But I did want to just reiterate,
24 though, that Franklin Mountain Energy 3 does have the
25 majority working interest here. MRC has three

1 percent, approximately, in the Wolfcamp, and
2 like -- let's say -- I don't have it memorized, but 12
3 percent in the Wolfcamp. I may have that
4 backwards -- 12 percent in the Bone Spring; 3 percent
5 in the Wolfcamp.

6 And so, you know, their complaint about
7 the overlap sort of falls on deaf ears, because of the
8 low amount of working interest they have. Certainly,
9 the statute is designed to protect working interest
10 owners, no matter what percentage they have.

11 But Franklin Mountain Energy 3, as
12 you've seen or will see from the testimony today, has
13 been working diligently with third-party non-operators
14 in this area, and has been explaining its development
15 plan, has been getting those folks committed, and has
16 been working to develop this acreage as it intends to.
17 And so that's Franklin Mountain Energy 3's plan, is to
18 codevelop these four sections, using a single set of
19 surface facilities which will allow Franklin Mountain
20 Energy 3 to access more reserves, while at the same
21 time minimizing surface impacts and costs, which is
22 beneficial to everyone, including MRC.

23 THE HEARING EXAMINER: Ms. Bennett?

24 MS. BENNETT: Yes?

25 THE HEARING EXAMINER: Cases 23833,

1 '35, '38, and '39 deal with the cross-state wells,
2 which Mr. Feldewert is objecting to. But I wonder, do
3 you understand if there is an objection to 24110,
4 '111, '112, and '115?

5 MS. BENNETT: That's my understanding,
6 based on the notice of dismissal that Mr. Feldewert
7 filed in the Bone Spring cases. That it's the same
8 basis of an objection as the Wolfcamp cases.

9 THE HEARING EXAMINER: Okay. So do you
10 want to give me a roadmap to the evidence that you're
11 going to present today?

12 MS. BENNETT: Yes, thank you. Our
13 first witness will be Lee Zink, who's a
14 landman -- Director of Land, actually, at Franklin
15 Mountain Energy 3. And our intent had been to go
16 through some of the basic land questions, but we may
17 just want to skip to the chase.

18 But he is going to give some
19 information about the spacing units, the ownership in
20 the spacing units, as well as some information about
21 the overlapping units, and the work that Franklin
22 Mountain Energy has done to date to develop this
23 acreage.

24 THE HEARING EXAMINER: I'm going to
25 interrupt you for a moment. To keep this hearing

1 efficient for everyone, it seems to me that we have a
2 very discrete issue here today that Mr. Feldewert is
3 raising. So I'm going to ask him to put that discrete
4 issue on the record.

5 And if there are witnesses and evidence
6 that he is not objecting to, then we'll get them
7 admitted through stipulation. But I need to clarify
8 with him -- so when you're done, I'm going to ask him
9 to clarify his issue, and what he is objecting to in
10 your evidence. So please continue.

11 MS. BENNETT: Thank you. The next
12 witness we'll be calling is Ben Kessel. He's a
13 geologist with Franklin Mountain Energy 3, and he's
14 previously testified before the Division. And his
15 credentials have been accepted as a matter of record,
16 and I believe his testimony is likely undisputed. But
17 he will be testifying about the geologic formations in
18 the Wolfcamp and Bone Spring here.

19 THE HEARING EXAMINER: How do you
20 have -- is there an index to your exhibits? I don't
21 have one in this book you gave me. Is there one
22 online I would find?

23 MS. BENNETT: No, Mr. Chakalian -- or
24 Mr. Hearing Examiner, I apologize. Our table of
25 contents was inadvertently omitted, but his exhibits

1 are behind tab C in the notebook.

2 THE HEARING EXAMINER: So I have
3 Mr. Zink behind tab B?

4 MS. BENNETT: Yes.

5 THE HEARING EXAMINER: Then I have tab
6 A?

7 MS. BENNETT: Yes.

8 THE HEARING EXAMINER: Okay. And
9 what's behind tab A?

10 MS. BENNETT: Tab A is the compulsory
11 pooling checklists.

12 THE HEARING EXAMINER: What's behind
13 tab C?

14 MS. BENNETT: Mr. Kessel's geology
15 studies.

16 THE HEARING EXAMINER: Fantastic. D?

17 MS. BENNETT: D is Mr. Cory McCoy's
18 reservoir engineer studies.

19 THE HEARING EXAMINER: And it looks
20 like the last tab I have is C --

21 MS. BENNETT: E.

22 THE HEARING EXAMINER: But it says C.
23 That's supposed to be an E?

24 MS. BENNETT: E, yeah.

25 THE HEARING EXAMINER: Hold on a

1 second.

2 MS. BENNETT: Sorry about that.

3 THE HEARING EXAMINER: And what's
4 behind door number E?

5 MS. BENNETT: E is our notice
6 materials. That's my declarations and the proof of
7 notice.

8 THE HEARING EXAMINER: Are all of your
9 witnesses -- have they all been previously qualified
10 as experts here?

11 MS. BENNETT: No, Mr. Hearing Examiner.
12 Mr. McCoy has not previously testified before the
13 Division, but he did include a copy of his resume with
14 his testimony. But Mr. Zink and Mr. Kessel have both
15 been qualified by the Division in their respective
16 fields.

17 THE HEARING EXAMINER: So Mr. McCoy is
18 which tab?

19 MS. BENNETT: D.

20 THE HEARING EXAMINER: D? Okay. Are
21 you done with your roadmap?

22 MS. BENNETT: Well -- yes.

23 THE HEARING EXAMINER: Okay. What do
24 you believe this evidence will show the Division?

25 MS. BENNETT: The evidence from

1 Mr. Zink and Mr. McCoy will show the Division, with
2 respect to the limited question that Mr. Feldewert is
3 raising, that FME 3's development plan is not going to
4 lead to the dilution or diminution of correlative
5 rights that Mr. Feldewert is suggesting; that in fact,
6 this is a thoughtful approach to codeveloping four
7 sections that will actually benefit all of the owners.

8 THE HEARING EXAMINER: And I'll get to
9 Mr. Feldewert in a minute, but do you understand that
10 he is -- that MRC is proposing an alternative
11 development? Or is he just objecting to your
12 development?

13 MS. BENNETT: It's my understanding
14 that MRC is only objecting to our -- excuse me. To
15 Franklin Mountain Energy 3's development, and is not
16 proposing an alternative.

17 THE HEARING EXAMINER: But he was. He
18 was proposing an alternative.

19 MS. BENNETT: MRC was proposing an
20 alternative.

21 THE HEARING EXAMINER: And in your
22 understanding, why is he not?

23 MS. BENNETT: Because of the majority
24 working interest control factor. It would be futile,
25 basically. I'm sort of putting words in

1 Mr. Feldewert's mouth, but --

2 THE HEARING EXAMINER: I am asking for
3 your understanding.

4 MS. BENNETT: That would be my
5 understanding. And that's based on his representation
6 earlier today, that MRC has seen the amount of the
7 working interest control that Franklin Mountain Energy
8 3 has amassed in these units, and that justified
9 dismissal. And he noted that under precedent, unless
10 there's compelling other arguments, which we would
11 argue would also weigh in favor of Franklin Mountain
12 Energy 3, working interest is controlling.

13 THE HEARING EXAMINER: So
14 Mr. Feldewert -- are you finished?

15 MS. BENNETT: I am; thank you.

16 THE HEARING EXAMINER: Okay.

17 So Mr. Feldewert, in your prehearing
18 statement, on page four -- no. In your prehearing
19 statement, on page six, you end with the following
20 sentence: "MRC contends that the applications filed
21 by Franklin Mountain under cases" -- the ones we're
22 here today -- "seeking to pool the Wolfcamp formation
23 for the proposed cross-state wells must likely be
24 dismissed."

25 Now, by my understanding of today's

1 cases, we also have the cases for the well named
2 Butter Cup. Why did you not include --

3 MR. FELDEWERT: No, not Butter Cup.
4 Cross-state, but it'd be the Bone Spring.

5 THE HEARING EXAMINER: Well, I'm going
6 by the docket that was published.

7 MR. FELDEWERT: Oh. Yeah, I think the
8 docket had a mistake. Well, it's their cases; right?
9 I think they said Butter Cup instead of cross-state;
10 is that right? Or is it vice versa?

11 THE HEARING EXAMINER: So during this
12 entire hearing today, so please just address me, and
13 then I'll find out from Ms. Bennett what's going on.
14 But are you saying, then, that your statement here,
15 "The proposed cross-state wells must likely be
16 dismissed," applies to all eight of today's cases that
17 we're hearing?

18 MR. FELDEWERT: Yes, because what we
19 learned after that prehearing statement was filed,
20 based on what they filed, is that they also intend to
21 overlap the Bone Spring spacing units, in a fashion
22 either identical or similar to what they were doing
23 for the Wolfcamp cases. We didn't know that until
24 after they filed their materials.

25 THE HEARING EXAMINER: So then your

1 assertion is that all of the cases we're hearing today
2 should be dismissed by the division because of the
3 fundamental error that you're pointing out?

4 MR. FELDEWERT: Yes. Yes.

5 THE HEARING EXAMINER: Okay. All
6 right. Now, I asked Ms. Bennett to verbalize her
7 understanding of the issue that you're raising here
8 today, and I would like to hear it from you.

9 MR. FELDEWERT: Okay. All right. So
10 the MRC, and the other working interest owners they
11 seek to pool; okay? They have not agreed to any
12 proposed overlap. They didn't know anything about it,
13 had not been informed until these materials were filed
14 that they intend to overlap their Wolfcamp spacing
15 units and their cross-state spacing units with the
16 satellite spacing units; okay?

17 There's no information available in
18 their applications, in the public notice, or anything
19 else, to inform about the nature of this proposed
20 overlap, even after it was recently discovered. If
21 they were seeking to pool the cross-state spacing
22 units, and develop them with standard setbacks that
23 fully develop all the included tracks, we wouldn't be
24 here today.

25 But because -- and that's because they

1 own most of the interests, and there was no real
2 dispute over the development needs -- spacing unit,
3 target intervals, et cetera. But because they
4 apparently have previously undisclosed plans to
5 overlap these cross-state units going south with the
6 satellite units going north, and those satellite units
7 will be draining from the staying target zone as
8 cross-state units, that impacts correlative rights
9 negatively, for MRC and the working interest owners in
10 the other tracts that they seek to include: the south
11 half of section 36 and section 31.

12 And under the pooling statute, all
13 orders -- and I have it --

14 THE HEARING EXAMINER: Can you make
15 that bigger, so I can see it?

16 MR. FELDEWERT: Yeah. Thank you. I
17 ought to be able to make it bigger.

18 THE HEARING EXAMINER: Are you wanting
19 me to read the yellow highlighted parts?

20 MR. FELDEWERT: Yes. Yeah.

21 THE HEARING EXAMINER: Okay. Can you
22 go to the top of this for a moment, so I can see the
23 top?

24 MR. FELDEWERT: Sure.

25 THE HEARING EXAMINER: Okay. Give me a

1 moment.

2 MR. FELDEWERT: Certainly. Want me to
3 scroll down?

4 THE HEARING EXAMINER: Not yet. It's
5 fine where it is.

6 And Ms. Bennett, I'll give you a chance
7 to argue, because this is sort of a legal argument
8 we're dealing with now, not an evidentiary argument.

9 Okay. Would you scroll down to the
10 highlighted areas now?

11 MR. FELDEWERT: And I figured out how
12 to blow it up, if you need me to. Want me to blow it
13 up?

14 THE HEARING EXAMINER: No, that's okay.
15 And Mr. Feldewert, you filed a motion regarding the
16 alleged defective notice in this case; right?

17 MR. FELDEWERT: Filed a motion to
18 continue the case so that we could uncover a little
19 bit more about this, yes. On the grounds that we
20 didn't know -- and I still don't know -- what they
21 intend to do here. I was going to show you why I
22 don't know.

23 THE HEARING EXAMINER: Okay. So you
24 highlighted this first section here. Why did you
25 highlight this first section?

1 MR. FELDEWERT: So the first section is
2 the correlative rights; okay? Which basically says
3 that, whatever pooling orders you issue, you have to
4 ensure that they are upon such terms and conditions as
5 are just and reasonable, and will afford to the owner
6 or owners of each tract or interest in the unit the
7 opportunity to recover or receive without unnecessary
8 expense his just and fair share of the oil and gas.
9 That's the correlative rights issue. The second
10 highlighting --

11 THE HEARING EXAMINER: But I'm asking
12 you, why did you highlight -- what point are you
13 making by highlighting this part of seven?

14 MR. FELDEWERT: The point I'm making is
15 that under this -- if this is what they're doing, if
16 they're doing a spacing unit where they're going to
17 have part of the cross-state wells in the north half
18 of the north half of 36, and part of the satellite
19 wells in the north half of the north half of 36,
20 draining the same reservoir, that 40-acre tract is not
21 going to contribute proportionately to the production
22 from the cross-state wells. It's going to contribute
23 less, because it's not going to be -- the cross-state
24 wells aren't going to develop that 40-acre tract.

25 Unlike all the other tracts, which are

1 going to be fully developed with perforated intervals,
2 apparently the cross-state wells going into the north
3 half of the north half are only going to perforate
4 maybe, according to this diagram, half of that 40-acre
5 tract. So it's not going to contribute
6 proportionately to the production from the well bores.

7 Yet, under the statute, the production
8 from that well bore is allocated proportionately on a
9 straight-acreage basis: one-eighth to each 40-acre
10 tract. Which means that the owners in those lower
11 tracts are getting -- their production's getting taken
12 away from them; okay?

13 They're not getting their just and
14 equitable share of the production, because one-eighth
15 of that production is going to a 40-acre tract that's
16 not proportionately contributing to the well bore.
17 That is the infringement on correlative rights. I
18 highlighted the second --

19 THE HEARING EXAMINER: I haven't read
20 the second. Okay.

21 MR. FELDEWERT: That's the provision
22 that requires under pooling orders to be shared on a
23 straight-acreage basis. So if I got eight 40-acre
24 tracts, making a 320-acre spacing unit, one-eighth of
25 the production is allocated to each 40-acre tract.

1 That's why they all have to proportionately contribute
2 to the well bore.

3 THE HEARING EXAMINER: Okay. So for
4 the record, your issues here today, in your own words,
5 are what?

6 MR. FELDEWERT: Is that first off, it
7 is unclear to the owners, including MRC; okay? What
8 they intend to do here with their overlap. It's not
9 clear. Secondly, if they are proposing to pool into
10 the cross-state unit a 40-acre tract that will be
11 subject to drainage by the satellite wells, then that
12 40-acre tract is not going to contribute
13 proportionately to the production from the well bores.

14 THE HEARING EXAMINER: And who owns the
15 satellite wells?

16 MR. FELDEWERT: Good question. Don't
17 know. We're not in that spacing unit. It's someone
18 else, but it's not any of the owners in the -- or not
19 all of the owners, certainly, in the south half of
20 section 36, or in section one. It's the owners in
21 sections 24, 25, and the north half of the north half
22 of 36. That's their spacing unit for the satellite
23 wells.

24 THE HEARING EXAMINER: I have one and
25 two. Is there a three? Your points.

1 MR. FELDEWERT: Yeah. My point being,
2 again, I don't know what they're doing; okay? But if
3 they're not putting any perforations in that 40-acre
4 tract; okay? That they seek to include in its
5 cross-state unit, then it certainly cannot contribute
6 proportionately to the production from the well bores.

7 THE HEARING EXAMINER: Okay. Is there
8 a number four?

9 MR. FELDEWERT: That's it.

10 THE HEARING EXAMINER: Numbered one
11 through three?

12 MR. FELDEWERT: I think that's it,
13 yeah.

14 THE HEARING EXAMINER: Very good.

15 All right, Ms. Bennett. You have your
16 work cut out for you, but you do understand the three
17 issues that they are raising here. Are there any
18 preliminary matters we need to deal with before we
19 start?

20 MS. BENNETT: Would you like me to
21 respond briefly to --

22 THE HEARING EXAMINER: No.

23 MS. BENNETT: Okay. And the
24 only -- well, I did think you were going to give me an
25 opportunity to respond to the statutory text argument.

1 THE HEARING EXAMINER: I'm not asked to
2 make a ruling based on that argument, so no, you don't
3 need to respond to it. That's just for my
4 informational purposes, to understand what the issues
5 that are in contention today. Because if they're not
6 in contention, we don't need to make this difficult.

7 MS. BENNETT: I would like to make one
8 clarifying point, though.

9 THE HEARING EXAMINER: Go ahead.

10 MS. BENNETT: About the statute, which
11 is that nowhere does it say that each tract has to
12 contribute proportionately. And also, where it does
13 say each owner is entitled to his or her fair
14 share -- and I'm paraphrasing here -- it's important,
15 I think, to recall that MRC does not have any
16 ownership interest in section 36 at all.

17 THE HEARING EXAMINER: Okay.

18 MS. BENNETT: And so MRC's fair share
19 will be pooled from section one, and there's no
20 dispute about that.

21 THE HEARING EXAMINER: Okay. And there
22 was the allegation that cases 24110, '11, '12, '15 are
23 mislabeled as Butter Cup?

24 MS. BENNETT: That is -- we submitted
25 those cases as cross-applications. The wells in those

1 cases -- excuse me. There are existing Bone Spring
2 wells called Butter Cup, and I think that's where the
3 confusion came from.

4 Our applications are actually seeking
5 to dedicate a spacing unit to cross wells. I think --

6 THE HEARING EXAMINER: Cross-state, or
7 cross wells?

8 MS. BENNETT: Cross-state, yeah.
9 Cross-state.

10 THE HEARING EXAMINER: So these should
11 all have been listed as cross-state, you're saying?

12 MS. BENNETT: That's correct.

13 THE HEARING EXAMINER: Okay. That's
14 important for me. Okay. And do you know who owns
15 these satellite wells?

16 MS. BENNETT: Yes.

17 THE HEARING EXAMINER: Oh. Who?

18 MS. BENNETT: Well, it's Franklin
19 Mountain Energy 3 and its partners. And Franklin
20 Mountain Energy 3 has done a similar amount of work in
21 the satellite units to acquire voluntary joinder. And
22 so it has worked diligently with the owners in the
23 satellite wells to get voluntary joinder in those
24 wells.

25 THE HEARING EXAMINER: So then you're

1 saying that you have a working interest in the
2 satellite wells, or you are the owner of the satellite
3 wells?

4 MS. BENNETT: Well, they're the
5 operator of -- Franklin Mountain Energy 3 is the
6 operator of the satellite wells, which I assume makes
7 them the owner. But everyone contributes to the cost
8 of the well.

9 THE HEARING EXAMINER: Okay. Let's
10 begin with your case-in-chief, if there are no other
11 preliminary matters -- but it looks like there is.

12 MR. FELDEWERT: Sure. Mr. Examiner, my
13 whole purpose here was to try to make this hearing
14 short; okay? That's why I did what I did this week.
15 We don't have any objection to their evidence or their
16 witnesses; okay?

17 I've seen what they filed in their
18 case-in-chief. So my intent is to focus my
19 examination on the issue that I have raised, along
20 with what I would consider issues relevant to that.

21 THE HEARING EXAMINER: Perfect. Thank
22 you, sir.

23 So why don't we start with admitting
24 your exhibits into evidence? Go right ahead.

25 MS. BENNETT: Thank you. So

1 Mr. Examiner, Franklin Mountain Energy filed exhibits
2 on last Thursday, and our exhibit packet did end up a
3 little bit out of order, unfortunately, and I
4 apologize for that. And so what we would like to do
5 is admit the exhibits today, and then I can submit a
6 non-substantive revision, or packet, that corrects the
7 order.

8 THE HEARING EXAMINER: And has an
9 index?

10 MS. BENNETT: And has an index, yes.

11 THE HEARING EXAMINER: Okay. Go right
12 ahead.

13 MS. BENNETT: And so it's tab A, which
14 is the second tab --

15 THE HEARING EXAMINER: I see it.

16 MS. BENNETT: -- compulsory pooling
17 checklists. Tab B is the --

18 THE HEARING EXAMINER: Wait. Hold on.
19 Since we don't have an index, basically what is
20 contained in tab A?

21 MS. BENNETT: Tab A are the compulsory
22 pooling checklists for each case. So when we do a
23 pooling case, we have to submit a compulsory pooling
24 checklist.

25 THE HEARING EXAMINER: So there are

1 eight checklists in here, in A?

2 MS. BENNETT: There are.

3 THE HEARING EXAMINER: Okay, very good.

4 MS. BENNETT: Tab B is the affidavit --

5 THE HEARING EXAMINER: Well, can we do
6 them one at a time?

7 MS. BENNETT: Certainly, yes. I
8 apologize.

9 THE HEARING EXAMINER: So are you
10 asking to admit what is in tab A, which are eight
11 compulsory pooling checklists?

12 MS. BENNETT: Yes, in all of the cases.

13 THE HEARING EXAMINER: Okay, good.

14 And Mr. Feldewert, is there an
15 objection to tab A?

16 MR. FELDEWERT: Checklists? I mean,
17 it's not really evidence.

18 THE HEARING EXAMINER: Oh, it's not?

19 MR. FELDEWERT: They're forms that the
20 Division requires. It's like the applications. So I
21 wouldn't be able to object to them anyway.

22 THE HEARING EXAMINER: Didn't know
23 that, but thank you for that explanation. So they're
24 admitted -- tab A is admitted into evidence.

25 //

1 (Exhibit A was marked for
2 identification and received into
3 evidence.)

4 MS. BENNETT: Thank you. Tab B is the
5 affidavit of Lee Zink, the director of land. And
6 behind his affidavit are about -- I don't know, 30, 35
7 exhibits, which relate to -- the first set of his
8 exhibits are overview exhibits that relate to all
9 cases. And then the next set of his exhibits are
10 separate exhibits for each case.

11 So the Division has us, you know, as we
12 do compulsory pooling cases, we submit the
13 application, the lease tract map, parties to be
14 pooled, proposal letter and AFEs, summary of contacts.
15 So that's in the materials for each case.

16 I will note that we -- in the
17 intervening days between when we submitted our packet
18 and today, Franklin Mountain Energy 3 has actually
19 acquired more interests in this acreage. And so we
20 would need to file amended pooled party lists, because
21 we need to remove unleased mineral interests or
22 working interest owners, I can't remember which one it
23 is, from the pooled party lists, because they have
24 entered into an agreement since we filed our
25 materials.

1 So I guess when I said non-substantive,
2 there will be some minor substantive changes, because
3 of the changes to the pooled parties.

4 THE HEARING EXAMINER: Okay.

5 Mr. Feldewert?

6 MR. FELDEWERT: Oh, I have no objection
7 to what they filed.

8 THE HEARING EXAMINER: Okay, to what
9 they filed. But you are reserving objection to what
10 they may amend?

11 MR. FELDEWERT: I haven't seen it yet,
12 so I would have to, yes.

13 THE HEARING EXAMINER: Okay. I'm not
14 sure how we will do that. Let me think.

15 When would you be able to file the
16 amended exhibit?

17 MS. BENNETT: I think we can file them
18 by Monday at the latest, maybe even tomorrow. But I
19 like to give myself just a little time.

20 THE HEARING EXAMINER: Monday at the
21 latest? All right. So we would need to leave the
22 evidentiary record open?

23 MS. BENNETT: Yes. And we could
24 consult with Mr. Feldewert in advance of submitting
25 the exhibits, to make sure they're not objected to.

1 THE HEARING EXAMINER: Okay. Then I
2 will make the decision now to leave the evidentiary
3 record open until the close of business on Monday. If
4 there's no objection, I would like you to file an
5 amended packet with the amended information in tab B
6 that we are now admitting into evidence, with the
7 index and any other changes we discuss today. But so
8 far, there's no objection to tab B, so tab B is
9 admitted into evidence. Go ahead.

10 (Exhibit B was marked for
11 identification and received into
12 evidence.)

13 MS. BENNETT: Thank you. Tab C is the
14 affidavit of Ben Kessel, the geologist. And behind
15 his affidavit are the usual suite of geology exhibits:
16 locator map, regional stress orientation, and then a
17 geology study for the Bone Spring and for the
18 Wolfcamp.

19 THE HEARING EXAMINER: Okay.
20 Mr. Feldewert?

21 MR. FELDEWERT: No objection.

22 THE HEARING EXAMINER: They're admitted
23 into evidence. D?

24 //

25 //

1 (Exhibit C was marked for
2 identification and received into
3 evidence.)

4 MS. BENNETT: D is the affidavit of
5 Cory McCoy.

6 THE HEARING EXAMINER: Who?

7 MS. BENNETT: Cory McCoy, M-C-C-O-Y.

8 THE HEARING EXAMINER: Okay.

9 MS. BENNETT: And Mr. McCoy has not
10 previously testified before the Division, but we've
11 included his resume as an exhibit. And his resume
12 shows over 10 or 15 years of experience in drilling,
13 reservoir engineering. He has worked in the Delaware
14 and Permian basins. He's --

15 THE HEARING EXAMINER: Why don't you
16 let me review the CV, and we can see if there's an
17 objection to admitting him as an expert after I look
18 at it? So you're seeking to qualify him as an expert
19 in what?

20 MS. BENNETT: In petroleum and
21 production engineering.

22 THE HEARING EXAMINER: As a petroleum
23 engineer; right?

24 MS. BENNETT: Yes, and production
25 engineering.

1 THE HEARING EXAMINER: And production
2 engineering.

3 Okay. Mr. Feldewert, is there any
4 objection to admitting him as an expert?

5 MR. FELDEWERT: In petroleum and
6 production engineering?

7 THE HEARING EXAMINER: Specifically.

8 MR. FELDEWERT: No.

9 THE HEARING EXAMINER: Okay. Mr. McCoy
10 is recognized as such.

11 So, you were talking about tab D?

12 MS. BENNETT: Mm-hmm. Tab D is his
13 affidavit, and then behind his affidavit is his resume
14 comparison between -- based on MRC's offsetting
15 acreage, the exhibits showing the FME development
16 plan, and a comparison of the AFEs -- the costs under
17 the AFEs.

18 THE HEARING EXAMINER: Okay. Is there
19 any objection to admitting the evidence in tab D?

20 MR. FELDEWERT: No.

21 THE HEARING EXAMINER: Okay. Tab D is
22 admitted into evidence.

23 (Exhibit D was marked for
24 identification and received into
25 evidence.)

1 Let's proceed to E.

2 MS. BENNETT: Tab E is the
3 self-affirmed declaration of myself, several of them,
4 where I affirm that I -- we provided notice to the
5 working interest owners and overriding royalty
6 interest owners that we're seeking to pool, and we
7 also provide a notice of the overlap. And so that's
8 in the -- there's, I think, 150 pages of notice.

9 THE HEARING EXAMINER: Okay.

10 Mr. Feldewert?

11 MR. FELDEWERT: Do I object to the
12 entry of the exhibits? No. Characterization, yes.
13 My point being, I don't think you provided anybody
14 notice of the overlap.

15 THE HEARING EXAMINER: I know that.
16 But do you object to the admission into evidence of
17 tab E?

18 MR. FELDEWERT: No, sir.

19 THE HEARING EXAMINER: Okay. Tab E is
20 admitted into evidence.

21 (Exhibit E was marked for
22 identification and received into
23 evidence.)

24 Are there any other exhibits that we
25 need to deal with? Okay. Let's begin with your

1 case-in-chief.

2 MS. BENNETT: Thank you very much. At
3 this time, I'd like to call my first witness, Mr. Lee
4 Zink. Mr. Zink is here in person.

5 THE HEARING EXAMINER: And Mr. Zink,
6 I'll ask the court reporter to swear you in. And then
7 you want to turn on your microphone; it's the button
8 on the right, and if it's green, it means it's good.

9 THE REPORTER: Please raise your right
10 hand.

11 WHEREUPON,

12 LEE ZINK,
13 called as a witness and having been first duly sworn
14 to tell the truth, the whole truth, and nothing but
15 the truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BENNETT:

18 Q Good morning, Mr. Zink.

19 A Morning.

20 Q Thanks for being here. Would you please
21 state your name for the record?

22 A Lee Zink.

23 Q And for whom do you work?

24 A I work for Franklin Mountain Energy.

25 Q And in what capacity?

Page 45

1 A I'm the director of land.

2 Q And how long have you worked for Franklin
3 Mountain Energy 3?

4 A Two years. Just over two years.

5 Q Thank you. And you previously testified
6 before the Division, and your credentials have been
7 accepted as a matter of record?

8 A Yes.

9 Q You're familiar with the status of the lands
10 that are the subject of these cases; right?

11 A Yes.

12 Q And are you familiar with the applications
13 that FME 3 filed in these cases?

14 A Yes.

15 Q You submitted an affidavit for your direct
16 testimony; right?

17 A Correct.

18 Q And you prepared exhibits as well?

19 A Correct.

20 Q Do you have any changes to your exhibits
21 other than what we've discussed today, which are the
22 pooled party lists, the C-102s, and the organizational
23 issues?

24 A Nope. Those are the three issues.

25 Q At this time, I would ask that you adopt

1 your testimony and exhibits.

2 A Yes.

3 Q As you've heard today, the only issue that
4 is contested in these cases is whether Franklin
5 Mountain Energy 3's overlap or co-development of these
6 four sections will negatively impact the owners, MRC
7 Permian. Could you briefly state for the examiners
8 why Franklin Mountain Energy 3's co-development will
9 not negatively impact the other interest owners in the
10 cross-units?

11 A Yes. So we've kind of thoughtfully and
12 efficiently kind of developed these units, these four
13 sections being, you know, stand-up sections above each
14 other, using the acreage that we own, the offset
15 acreage that we have in the area. And since
16 acquisition -- initial acquisition back in 2022 to
17 now, we have thought about a kind of holistic approach
18 to development of this area, and with having these
19 two -- these stacked units right next to each other.

20 And to effectively develop the resource,
21 creating an overlapping unit, to reduce the setbacks
22 of those wells, to efficiently drain the resource
23 across those 40-acre laterals that each well bore
24 contributes to.

25 Q And we have this exhibit, which is Exhibit

1 B-6. Does this show what you were talking about, the
2 holistic approach that Franklin Mountain Energy 3 is
3 taking?

4 A That's correct.

5 Q And so is it your understanding that what
6 we're talking about here today are the cross-units?

7 A The cross-unit, yes. Correct.

8 Q And the satellite wells that are being
9 proposed, or that will codevelop with the cross, are
10 immediately to the north?

11 A Immediately to the north. Correct.

12 Q Does this slide depict where the cross, or
13 the satellite surface facilities will be?

14 A That's correct. The -- the satellite and
15 cross-surface facilities will be consolidated on
16 the -- in the north half, north half of section 36.

17 Q And so it's Franklin Mountain Energy 3's
18 proposal, basically, to develop the satellite and the
19 cross, codevelop those from a single set of surface
20 facilities?

21 A Correct.

22 Q I want to talk about this slide just a
23 moment. This is part of Exhibit B-8, and this is a
24 slide that you prepared to discuss the methodology by
25 which Franklin Mountain Energy 3 intends to target the

1 cross and the satellite reservoirs; is that right?

2 A That's correct.

3 Q Can you just walk through this slide, just
4 quickly for us, to help address some of the questions
5 or issues that have been raised today?

6 A Yeah. So when we took kind of a holistic
7 approach to kind of maximize recovery and economically
8 develop this area, a standard kind of 1280 unit,
9 as -- as the cross and satellite were originally
10 in -- in four sections. You know, we noticed that
11 when you -- on the heel side, which is where the
12 vertical turns to a horizontal in the laterals, that
13 your first take point of -- of when you turn
14 horizontal is significantly inside of that section.

15 So by the example here of the standard
16 spacing unit heel to heel, it's showing the -- the
17 unrecovered reserves by drilling the heel. So if we
18 look at -- if we look at reserves left behind, the
19 heel is not contributing equally as any part of the
20 other part of the lateral, across the -- those full
21 40-acre units -- blocks that are in there.

22 So by doing -- by creating -- and then
23 these -- the map, I guess, on the right side, is -- by
24 creating these overlapping units, the wells to the
25 north can capture the reserves that the wells to the

1 south cannot, and vice versa. The wells to the south
2 are capturing those reserves that the -- the wells
3 to -- to the north cannot.

4 So by creating this overlapping unit,
5 we -- we are increasing the -- the recovery of the
6 resource in the formations.

7 Q Thank you. And so this here where you're
8 showing a standard spacing unit heel to heel, this
9 would occur in any spacing unit? This isn't something
10 that only happens to Franklin Mountain Energy 3; is
11 that right?

12 A Yeah. Every -- every company drilling
13 a -- a well would have the same problem.

14 Q So if this were the center line
15 between -- if this was the cross, or the satellite
16 unit to the north -- and by "this," I'm pointing to
17 the right-hand side of this drawing. And if this were
18 the cross-unit to the south, then what you're saying
19 is, if these weren't codeveloped, there would be
20 reserves left behind?

21 A That's correct.

22 Q And the diagram to the right, though, shows
23 your proposal for the cross and the satellite wells;
24 is that right?

25 A That's correct.

1 Q And so is FME's position that it's
2 effectively reducing the amount of reserves that are
3 left behind?

4 A That's correct. Yes. We are able to
5 capture more reservoir, and recover more resource, by
6 creating this overlapping unit.

7 Q And does that also impact costs of -- the
8 cost associated with developing these wells?

9 A No, it would not.

10 Q Won't it reduce the overall cost, though?
11 Because you'll have a single set of --

12 MR. FELDEWERT: Objection. Leading.

13 THE HEARING EXAMINER: Sustained. Find
14 another way to ask the question.

15 MR. FELDEWERT: I think he already
16 answered it.

17 BY MS. BENNETT:

18 Q In the bullets in your slide, it says, "No
19 additional capex required to access the additional
20 reserves." Can you expand on that a bit?

21 A Yeah. By creating this -- our consolidated
22 well -- well pads and corridors, we can effectively
23 use those existing pads to drill both units from the
24 same surface disturbance.

25 Q And so does that reduce the costs of the

1 development?

2 A Yeah. Each -- each unit would share in the
3 costs of those -- of the surface -- building the
4 surface, and any surface facility costs.

5 THE HEARING EXAMINER: Ms. Bennett,
6 before you read this slide here, which direction is
7 north?

8 MS. BENNETT: Unfortunately --

9 THE HEARING EXAMINER: To the right is
10 north?

11 MS. BENNETT: Yes. Let's -- do you see
12 where my hand is on that?

13 THE HEARING EXAMINER: I do.

14 MS. BENNETT: That would -- if we could
15 have oriented it this way, that would have been north.

16 THE HEARING EXAMINER: Sure. I think
17 it would be helpful to put a direction, and say north
18 with an arrow, or something. Because normally, north
19 is up. Okay, thank you.

20 MS. BENNETT: Yes. And this was
21 intended to be more of a demonstrative than a diagram
22 of the cross and satellite wells, but we could
23 certainly reorient it --

24 THE HEARING EXAMINER: No, no. I
25 understand how it is now. I wanted to make sure I was

1 correct in my understanding. Thank you.

2 MS. BENNETT: Yes. Definitely.

3 BY MS. BENNETT:

4 Q Let's see. So this slide B-7 talks a bit
5 more, or discusses a bit more, about the benefits of
6 the overlapping, or the codeveloping, of these units
7 together; is that right?

8 A That's correct. Yep. The efficiencies that
9 we can create by creating overlapping units and a
10 consolidated surface.

11 Q One thing I meant to ask you about is, who
12 owns the surface here in the north half of the north
13 half of section 36?

14 A I believe that is the State of New Mexico,
15 the state land office.

16 Q And so will your proposal of codeveloping
17 the satellite and the cross units lead to less surface
18 disturbance on state lands?

19 A That's correct.

20 THE HEARING EXAMINER: Is north up in
21 this?

22 MS. BENNETT: Yes.

23 THE HEARING EXAMINER: If it's not,
24 will you tell me, when you show a slide? Thank you.

25 MS. BENNETT: I will, for sure. Thank

1 you.

2 BY MS. BENNETT:

3 Q Just kind of skipping around here, because I
4 had additional questions I was going to ask, but let's
5 see if -- I appreciate your patience with me while I
6 reorient myself here a bit. Mr. Zink, when did you
7 propose the cross wells to Matador, and the other
8 working interest owners in this area?

9 A We sent out well proposals back in July,
10 2023.

11 Q And does your proposal letter -- could you
12 read the last line of your proposal letter?

13 A "Should you have any questions, please do
14 not hesitate to contact the undersigned at
15 720" -- phone number.

16 Q And did anyone from Matador call you about
17 the cross spacing units?

18 A No, they did not.

19 Q Have you been having ongoing discussions
20 with Matador about potential trades?

21 A We have, yes.

22 Q And have those trade discussions been
23 fruitful?

24 A We have traded emails and chatted about it,
25 but nothing material has come to fruition here.

1 Q In those trade discussions, has Matador ever
2 raised the question about the first take points or
3 last take points of the cross wells?

4 A No, they have not.

5 Q Is there anything else -- again, just
6 limiting my questions only to the question that's been
7 raised by MRC. Is there anything else that you would
8 like the Division to know about Franklin Mountain
9 Energy 3's development plans in this area?

10 A No, I think we've -- I think I've covered
11 it. Just we looked at kind of a whole approach,
12 holistic approach, how to maximize the development and
13 recovery of -- of this area. And we believe that
14 creating these overlapping units will do that, will
15 increase the recoverable reserves, and by -- and also
16 limit our surface disturbance in the area.

17 MS. BENNETT: Thank you.

18 THE HEARING EXAMINER: So before we
19 turn to our technical examiner, John Garcia, who's
20 appearing virtually, we'll go to Mr. Feldewert for any
21 cross-examination?

22 MR. FELDEWERT: Yes, sir.

23 THE HEARING EXAMINER: Please.

24 //

25 //

CROSS-EXAMINATION

BY MR. FELDEWERT:

Q Mr. Zink, I have your affidavit -- or statement -- I shouldn't say -- is it an affidavit -- or an affidavit. I have that up. I want you to -- I'm going to go to paragraph 45. If you want to -- do you have the exhibit book in front of you? You can --

A I do, yes.

Q What's that?

A I do.

Q Okay. Let me ask you something. Do you have any other notes in front of you, or do you just have the exhibit book?

A I have the exhibit book and some pen notes, yeah.

Q Pen notes that I saw you referring to during the testimony?

A Sure.

Q Okay. Could I see those?

A Sure.

MR. FELDEWERT: Okay. May I take a look at those at the break? It may prompt some more questions.

THE HEARING EXAMINER: Why don't we

1 take a five-minute break now, so you can look at the
2 notes? And we'll get back on the record. It is
3 now -- let's say that it is 10 a.m., even though it is
4 not -- oh, thank you, John. We're going to go off the
5 record for seven minutes, and we will come back at
6 10:05 a.m. Thank you.

7 MS. BENNETT: Mr. Examiner, before we
8 go off the record, I'd like to object to
9 Mr. Feldewert's request to review Mr. Zink's notes.

10 THE HEARING EXAMINER: What is the
11 objection?

12 MS. BENNETT: Basically, that those
13 notes may have been made during the course of our
14 conversations, and so they could have confidential
15 information in them.

16 THE HEARING EXAMINER: Why don't you
17 review them first, make sure there's no
18 attorney-client privilege in there. And then -- do we
19 need more time, then? Do you want to take ten minutes
20 so that you have time to review them, and then we can
21 have Mr. Feldewert review whatever you deem is
22 acceptable?

23 MS. BENNETT: Yes.

24 THE HEARING EXAMINER: If there's an
25 argument about that, we'll come back and deal with it.

1 Is that fair?

2 MR. FELDEWERT: That's fair. Yeah. I
3 mean, I reserve my right to --

4 THE HEARING EXAMINER: Of course,
5 obviously.

6 MR. FELDEWERT: -- consider it, but
7 yes.

8 THE HEARING EXAMINER: We'll be back on
9 the record at 10:10 a.m. Thank you.

10 (Off the record.)

11 THE HEARING EXAMINER: It is 10:13 a.m.
12 on February 8. We are back on the record.

13 Mr. Feldewert had asked the witness to some notes.

14 There was an objection. How did that pan out?

15 MS. BENNETT: Thank you, Mr. Hearing
16 Examiner. We reviewed the notes and we provided
17 Mr. Feldewert with a smaller portion of the notes that
18 we felt was a good-faith and eliminated anything that
19 Mr. Zink had not testified about, as well as anything
20 that was irrelevant or subject to attorney-client
21 confidentiality.

22 THE HEARING EXAMINER: Mr. Feldewert?

23 MR. FELDEWERT: So if I may --

24 MS. BENNETT: I can hold it.

25 MR. FELDEWERT: You hold it.

1 So I did not see Mr. Zink turn the page
2 over, so that's fine. I don't care what's on the
3 back. He did have the entirety of the front in front
4 of him, and I did see him look down, as you did, to
5 his notes during his testimony.

6 They folded up the bottom portion of
7 the notes. I don't know what's in there. They claim
8 that's attorney-client privilege. I don't have
9 anything to go on. My suggestion is, maybe you can
10 take a quick look at it, and see if there's any -- if
11 you agree. But that's where we're at.

12 THE HEARING EXAMINER: But from what
13 you did see, are you ready to continue
14 cross-examination?

15 MR. FELDEWERT: Yes. Yes.

16 THE HEARING EXAMINER: Ms. Bennett,
17 would you show me the bottom part of the note?

18 MS. BENNETT: Yes, Mr. Hearing
19 Examiner.

20 THE HEARING EXAMINER: Thank you.

21 MS. BENNETT: And also, it's based on
22 attorney-client privilege, but also the fact that he
23 did not testify to this material at all. It's outside
24 the scope of his direct.

25 THE HEARING EXAMINER: Okay. Whose

1 writing is it?

2 MS. BENNETT: That's Mr. Zink's, taken
3 during a meeting.

4 THE HEARING EXAMINER: Okay. Thank
5 you.

6 MS. BENNETT: Thank you.

7 THE HEARING EXAMINER: Okay. So
8 Mr. Feldewert, we did an in-camera review of the part
9 of the note that you were not provided, and I agree it
10 is attorney-client privileged, so please proceed with
11 your examination.

12 MR. FELDEWERT: Thank you.

13 THE HEARING EXAMINER: Thank you.

14 BY MR. FELDEWERT:

15 Q Mr. Zink, I have your statement -- affidavit
16 in front of you. I'm at paragraph 45; okay?

17 A Okay.

18 Q It says that Franklin Mountain Energy
19 negotiated with the uncommitted interest owners in
20 good faith?

21 A Correct.

22 Q What does that mean to you? What does the
23 company have to do if they're negotiating in good
24 faith with each of the uncommitted owners?

25 A It's reaching out, answering questions that

1 they may have, seeing if there's any way to come
2 forward in resolution, but probably providing
3 information at their request.

4 Q Anything else?

5 A No.

6 Q Okay. So you would agree with me that you
7 have to do more than just send your well proposal
8 there?

9 A Agreed.

10 Q And as you put -- you said you have to reach
11 out?

12 A Yeah.

13 Q Okay. And that would be --

14 MS. BENNETT: I have to object to this
15 line of questioning, because it's beyond the scope of
16 the limited issue that Mr. Feldewert has identified.

17 THE HEARING EXAMINER: I'm going to
18 overrule that objection. And Ms. Bennett, please make
19 your objections a little quicker in the future.
20 Mr. Feldewert is pointing out an exhibit here that is
21 admitted into evidence. He is the author of this
22 affidavit. It specifically says that he negotiated in
23 good faith, and Mr. Feldewert is basically exploring
24 that statement. So I don't -- am I missing why this
25 is outside the scope?

1 MS. BENNETT: Mr. Feldewert's sole
2 objection is whether the overlap is going to impact
3 correlative rights, which is not related to
4 negotiations.

5 THE HEARING EXAMINER: I'm going to
6 give him -- I realize that those are the three issues
7 that he stated, but I'm going to give him some
8 latitude here, because I feel like -- I'm going to
9 give him some latitude here. So I've overruled the
10 objection. Please proceed.

11 BY MR. FELDEWERT:

12 Q So just to finish that up, you made
13 reference to the last sentence in the well proposal,
14 that if anybody has questions, to give -- I guess it
15 was Don Johnson. Is that who wrote the letter?

16 A That was the landman, yes.

17 Q Give him a call. Okay. But you agree with
18 me that you just don't stop there; you got to reach
19 out to each of the owners that you seek to pool?

20 A Yeah. We reach out; we see if there's
21 voluntary pooling. Obviously, the first -- first
22 stage is to try to get voluntary pooling, versus
23 seeking compulsory pooling.

24 Q Okay. Good. I want you to take a look at
25 Exhibit B-18-C. Let me know when you have

1 that -- maybe in the book in front of you. I'm going
2 to try to bring it up on the screen. There we go.

3 THE HEARING EXAMINER: Can you turn it?

4 MR. FELDEWERT: I am -- yes. Yes. Is
5 that better?

6 THE HEARING EXAMINER: Yeah.

7 MR. FELDEWERT: Let me know when you
8 get there, Mr. Zink.

9 THE HEARING EXAMINER: Mr. Feldewert, I
10 don't see this mark as B-18-C. Where do you see
11 B-18-C?

12 MR. FELDEWERT: I think it's on the
13 prior slide. There's B-18-B.

14 THE HEARING EXAMINER: Okay.

15 MR. FELDEWERT: There's B-18-C-1. I
16 think it's supposed to be B-18-C. Let me put it this
17 way. I'm on page 60 of the 385-page PDF.

18 BY MR. FELDEWERT:

19 Q Are you there, Mr. Zink?

20 A Yes, I am now.

21 Q Okay. Do you have a pen with you?

22 A Yeah, I do.

23 Q Okay. If I look at that exhibit -- now,
24 does this accurately represent the parties that you
25 seek to pool, down there under the line "uncommitted

1 working interests"?

2 A Yes, with the addition of the unleased
3 mineral owners, that there's 34 of them.

4 Q Thirty-four of them. So there hasn't been
5 any change in parties that you seek to pool?

6 A That's not correct. We have received
7 voluntary pooling from -- from at least one of those
8 parties.

9 Q Do you know who?

10 A Yeah, I do.

11 Q Which one?

12 A VPD New Mexico has executed a JOA.

13 Q That's listed on here, second from the
14 bottom?

15 A Correct.

16 Q Okay. Anyone else?

17 A No.

18 Q So these are then -- aside from VPD New
19 Mexico, these represent all the parties that you seek
20 to pool here today?

21 A Correct.

22 Q Okay. Would you do me a favor; okay?

23 MS. BENNETT: Objection, Mr. Hearing
24 Examiner. This is not the pooled party slide. This
25 is a unit recap slide, which does not identify all of

1 the parties that Franklin Mountain Energy 3 is seeking
2 to pool today, number. And --

3 THE HEARING EXAMINER: So what is the
4 objection based on?

5 MS. BENNETT: That he's
6 mischaracterizing the exhibit.

7 THE HEARING EXAMINER: Okay.

8 MS. BENNETT: Excuse me for standing
9 up. And my second objection is that this is not at
10 all related to the correlative rights issue that he
11 raised. The parties that Franklin Mountain Energy is
12 seeking to pool is not related to the correlative
13 rights issue.

14 THE HEARING EXAMINER: All right.
15 Let's take this in two parts. Mr. Feldewert, the
16 first part?

17 MR. FELDEWERT: I asked him -- I said,
18 "Are these the parties that you still seek to pool?"
19 And he said, "Yes."

20 THE HEARING EXAMINER: Okay. And the
21 second part?

22 MR. FELDEWERT: The second part is, it
23 goes to the information that's been disclosed with
24 respect to the correlative rights issue.

25 THE HEARING EXAMINER: Ms. Bennett?

1 MS. BENNETT: Mr. Hearing Examiner,
2 this is a unit recap of the working interests and
3 uncommitted interests that Franklin Mountain Energy is
4 seeking to pool, so Mr. Zink was correct in saying
5 that this is the list of the parties -- of the
6 uncommitted and working interest owners that Franklin
7 Mountain Energy 3 is seeking to pool. But there are
8 overriding royalty interest owners as well, and
9 that -- those are listed in the compulsory
10 pooling -- or excuse me, the parties to be pooled
11 lists.

12 THE HEARING EXAMINER: Is there an
13 exhibit number for that?

14 MS. BENNETT: Yes, there is. It is --

15 MR. FELDEWERT: I can keep this short.
16 I'm not interested in the overrides.

17 THE HEARING EXAMINER: Okay. So
18 Ms. Bennett, I'm going to overrule your objections.
19 But thank you for pointing out that this exhibit may
20 or may not speak to what Mr. Feldewert is
21 cross-examining.

22 BY MR. FELDEWERT:

23 Q Mr. Zink, with your pen, would you put a dot
24 on Exhibit B-18-C, next to Devon Energy? Okay. And
25 then go down, and put a dot next to Charles D. Ray.

1 And put a dot next to Stillwater Investments. Put a
2 dot next to Tarpon Industry Corporation, and put a dot
3 next to Jon Brickey. All right?

4 A I don't see Devon Energy on this slide.

5 Q B-18?

6 A You're saying page 60, and what you have
7 pulled up here.

8 Q Okay, hold on a second. Maybe I got the
9 wrong one. This'll be for the west-half-east-half
10 unit. Would you go to maybe PDF 72? This is what was
11 filed?

12 A Correct.

13 Q Okay. Are you there?

14 A I am there.

15 Q That one has Devon; right?

16 A Correct.

17 Q Okay. You okay with the dots?

18 A Yeah.

19 Q Okay. You got to keep it in front of you,
20 and just know that Devon's included.

21 A All right.

22 Q Would you then turn for me to
23 Exhibit -- what you marked as B-16?

24 THE HEARING EXAMINER: Can we have a
25 page number, Mr. Feldewert?

Page 67

1 MR. FELDEWERT: Yeah. Trying to get
2 there, sorry.

3 BY MR. FELDEWERT:

4 Q This would be your summary of
5 communications, Mr. Zink?

6 A Correct.

7 Q Did you put this together?

8 A Under my direction, yes.

9 Q Somebody else put it together, but it was
10 under your direction?

11 A Yes.

12 Q Okay. And does it accurately represent the
13 communications that the companies had with the
14 parties?

15 A With specific parties, yes. We did
16 not -- we did not add anyone that we did not have any
17 contact with, or -- or phone calls with. Didn't mean
18 we didn't reach out; just means we didn't have active
19 negotiations with.

20 Q So as I look at this exhibit, there's no
21 entry for Devon to indicate that there was some kind
22 of communication or effort to communicate with them?

23 A Devon is not listed on the slide. Correct.

24 Q Neither is Charles D. Ray?

25 A Correct.

1 Q Neither is Stillwater Investments?

2 A Correct.

3 Q And neither is Tarpon Industries?

4 A Correct. They are not on the slide.

5 Q And neither is Jon Brickey?

6 A That's correct.

7 Q Okay.

8 A But since these slides were prepared, we
9 have had talks with Devon, and with Charles D. Ray.
10 And that interest, I think, has actually -- has been
11 assigned to a new entity. And we -- we spoke with
12 them, I think yesterday or two days ago.

13 Q What about the unleased mineral interest
14 owners that you list there as with 34? I don't see
15 any kind of entry with any of them indicating on
16 Exhibit B-16 -- A, that you reached out; B, who you
17 reached out to, and what was discussed. Nothing.

18 A Correct. They are not on -- on this slide.

19 Q Okay. Now, in your affidavit at paragraph
20 25 -- are you there?

21 A Yes.

22 Q Okay. If I go to the next page, you
23 reference the fact that you have orders for the
24 satellite Wolfcamp units, which overlap the
25 cross-state units?

1 A Correct.

2 Q That would be in the Wolfcamp, as you know?

3 A Yes.

4 Q Okay. And am I correct that Franklin
5 Mountain plans to likewise overlap the Bone Spring
6 cross-state units with the satellite Bone Spring
7 units?

8 A That's correct.

9 Q Okay. You mentioned in your testimony, and
10 you reference on Exhibit B-7, as you say, the benefits
11 of your suggested overlap. Let me get to B-7. You
12 there, Mr. Zink?

13 A I am, yes.

14 Q Okay. And you know that this overlap, you
15 state, will allow you to consolidate to a single tank
16 battery?

17 A Correct.

18 Q Okay. Isn't it true that you can't
19 consolidate to a single tank battery without proposing
20 overlapping spacing units?

21 A That is a possibility. Correct.

22 Q And how would that be done?

23 A Can you please re-ask your question?

24 Q How would you be able to consolidate into a
25 single tank battery without creating overlapping

1 spacing units? How would you do it?

2 A Surface commingling.

3 Q There you go. Surface commingling. Okay.
4 So you could create standard spacing units that don't
5 overlap, and then get approval to commingle between
6 the two standard spacing units, and that would allow
7 you to consolidate tank batteries?

8 A That's correct.

9 Q So, circle that up. You don't have to have
10 overlapping spacing units to accomplish what you seek
11 to do here in Exhibit B-7?

12 A That's correct.

13 Q Okay.

14 A However, that doesn't -- as we look at a
15 larger development plan in recovering the maximum
16 amount of resource, creating the overlapping spacing
17 units allows us to do that.

18 Q Now, the overlap that you are proposing is
19 going to be similar to what is shown here, what was
20 marked as Exhibit C-1; is that what you're suggesting?

21 A Yes.

22 Q So this would represent the proposed overlap
23 to both the Wolfcamp and the cross-state -- I'm sorry.
24 Both the Wolfcamp and Bone Spring cross-state units
25 and satellite units?

1 A Correct.

2 Q Okay. Which should mean that all of the
3 40-acre tracts along the north half of the north half
4 of section 36 would be dedicated to two different
5 spacing units?

6 A That's correct.

7 Q And each of those -- the wells dedicated to
8 those two spacing units will produce from basically
9 the same interval?

10 A Correct.

11 Q Okay. And thereby both be producing from
12 the -- both the satellite wells and the Bone
13 Spring -- and the cross-state wells will be producing
14 from the north half of the north half of section 36?

15 A That's correct.

16 Q All right. And are you aware, Mr. Zink,
17 that production from oil wells on a proposed spacing
18 unit is shared on a straight-acreage basis?

19 A That is correct. But it's also --

20 THE HEARING EXAMINER: Excuse me,
21 witness. Where is this exhibit? I cannot find this
22 in the package.

23 MR. FELDEWERT: It would be our
24 exhibit, C-1.

25 THE HEARING EXAMINER: Maybe

1 we -- well, you're just using it for demonstrative.

2 MR. FELDEWERT: Yeah, I am. And it's
3 also -- I can also say this is from the Division's
4 public record.

5 THE HEARING EXAMINER: I understand.
6 Is there any objection to using this as a
7 demonstrative exhibit?

8 MS. BENNETT: No, Your Honor -- or no,
9 Mr. Hearing Examiner.

10 THE HEARING EXAMINER: All right. But
11 we don't -- but I want the record to be clear. So can
12 you tell me, and put on the record, exactly where you
13 have found this, and what you've labeled it in
14 your -- you're going to submit this as evidence?

15 MR. FELDEWERT: We have submitted it as
16 part of our Exhibit C package, yes.

17 THE HEARING EXAMINER: Okay, great. So
18 C package -- do we have an exhibit number on this?

19 MR. FELDEWERT: Should be C-1, as I
20 recall.

21 THE HEARING EXAMINER: So right now,
22 you're looking at C-1, and --

23 MR. FELDEWERT: And I can also say that
24 this was an exhibit in --

25 THE HEARING EXAMINER: That's okay. I

1 know, another case.

2 MR. FELDEWERT: Yes.

3 THE HEARING EXAMINER: But I just want
4 to know -- because you're going to seek to admit this
5 later? Is that your plan?

6 MR. FELDEWERT: Yes.

7 THE HEARING EXAMINER: Okay. So this
8 is C-1. Thank you.

9 BY MR. FELDEWERT:

10 Q So while we're on this, Mr. Zink, this is a
11 diagram that your company put together?

12 A Yes, we did.

13 Q Okay. And does this, in your opinion,
14 accurately represent what the company intends to do,
15 both with respect to the satellite spacing units and
16 the cross-state spacing units?

17 A Yes.

18 Q Okay. And does it accurately represent the
19 fact that the cross-state well will be roughly
20 completed halfway into those north-half, north-half
21 tracts?

22 A That's correct. And I think the
23 understanding is that every single well, horizontal
24 well, leaves hundreds of acres behind, both in the
25 heel and in the toe, because --

1 Q We'll talk about that. My question is, I
2 just want to make sure I'm accurate -- I'm
3 understanding here. And which means then that the
4 satellite wells devoted to the satellite spacing units
5 are going to have completed intervals roughly halfway
6 into the north half of the north half of section 36?

7 A That's correct.

8 Q Both targeting the same reservoir?

9 A Yes.

10 Q Okay. Now, when you talk about setbacks;
11 okay? Looking at this exhibit. Let's use this one.
12 What setbacks are you talking about that are being
13 produced, that would otherwise not be produced if you
14 complied with the Division's standard statewide
15 setbacks?

16 A The standard setbacks are 100 feet
17 from -- from the lease line. However, when you
18 account for the drilling the curve of a horizontal
19 well, you're effectively 5 to 600 feet into
20 the -- into the quarter-quarter of the 40-acre
21 spacing, which is exactly almost half of that -- that
22 40 acres.

23 So what this is showing is that the well
24 that is -- so the cross well's going south. Their
25 first take point is exactly half -- after you build

1 the curve is, you know, midway through that quarter
2 line.

3 And by creating this overlap, you're
4 allowing the satellite, which would be drilled with
5 the standard curve. And coming back, and they would
6 effectively capture the reserves that -- that the
7 cross wells could not, because of that -- that curve
8 that has to be built.

9 Q Now, that would -- I just want to talk
10 about -- you talked about the standard setbacks. I'm
11 not talking about the development plan that you guys
12 had decided; okay? I'm talking about the setbacks
13 that you referenced. You're talking about the
14 100-foot setbacks that are required by the Division's
15 statewide rules that are required for the location of
16 the first take point and the last take point?

17 A Correct.

18 Q Okay. When I look at this map, am I correct
19 that, if we look at that line between section 25 and
20 36, the first hundred-foot setback would be just south
21 of that section line?

22 A It would be, if it's 100 feet off the line.
23 Yes.

24 Q Hundred feet off the line. And the other
25 setback that would occur if you were developing

1 section 25 and 26 using standard setbacks would be on
2 the other side of that section line, in the south half
3 of the south half of 25?

4 A Correct.

5 Q Okay. Which then means that, if we took the
6 cross-state wells and we took those green lines and
7 went a little more north to that 100-foot setback,
8 that's where the first take point would be, under the
9 normal rules?

10 A That is -- yes.

11 Q Okay. And then across state wells would be
12 perforated from that 100-foot setback from the section
13 line, all the way down through section one, to the
14 100-foot setback at the bottom of the last take point?

15 A Yes.

16 Q Okay.

17 MS. BENNETT: Objection, Your
18 Honor -- I'm sorry. Objection, Mr. Hearing Examiner.
19 That mischaracterizes Mr. Zink's testimony.
20 Mr. Zink's testimony was not that there's a
21 perforation at 100 feet; his testimony was that that
22 is the setback, but not that that's where the
23 perforation occurs.

24 THE HEARING EXAMINER: Mr. Feldewert?

25 MR. FELDEWERT: I said under the

1 normal -- if you align with the normal setback rules,
2 that's where they would be.

3 THE HEARING EXAMINER: Isn't that it?

4 MS. BENNETT: Mr. Examiner, Mr. Zink's
5 testimony was that, even with the normal setbacks of
6 100 feet, that does not mean that your first "perf" is
7 at 100 feet, because of the design build of the curve.
8 That's what his testimony was, not that the standard
9 setbacks automatically allow a 100-foot perf.

10 THE HEARING EXAMINER: I'm going to
11 sustain the objection. Would you rephrase the -- do
12 we need to strike something from the record, then?
13 Was there an answer given?

14 MS. BENNETT: No, Your Honor -- no,
15 sir.

16 THE HEARING EXAMINER: Okay. So
17 you -- with just the question before the answer?

18 MS. BENNETT: Yes.

19 THE HEARING EXAMINER: Mr. Feldewert,
20 would you rephrase the question?

21 MR. FELDEWERT: Sure.

22 BY MR. FELDEWERT:

23 Q When you say, Mr. Zink, that the benefit of
24 this plan is that it's going to capture reserves that
25 would not be otherwise captured, what are you talking

1 about?

2 A So as you build a curve, you know, it
3 takes -- a steel pipe bends over time. And to get
4 from -- from vertical to horizontal, you're
5 effectively 5, 6, 700 feet, depending on the surface
6 hole location, where you can effectively -- in the
7 specific target or in the zone. And by doing this,
8 and creating -- I'm taking this holistic approach of
9 how to recover the maximum amount of reserves, that by
10 creating this overlapping unit, we are
11 recovering -- recovering the reserves that would
12 effectively be left by -- by building that curve on
13 each other's spacing unit.

14 Now, every well -- every well on the base
15 end leaves, you know, hundreds of feet of
16 unrecoverable, based off of these setbacks, and basing
17 off of current drilling technology. So by creating
18 this overlapping unit, we are capturing those
19 reserves.

20 Q Are you aware, Mr. Zink, that a majority of
21 the wells in the basin meet the 100-foot setback for
22 the first and last take?

23 A I'm aware that our development in the area
24 of -- you know, we are -- if we're at a legal location
25 on lease, that we are not remotely close to that

1 100-foot setback for our first perf. We are 5 to 600
2 on average for every well that we have drilled, to
3 date.

4 Q Are you aware that a number of other
5 operators are able to build their curve and produce
6 meeting the 100-foot setbacks for the first and last
7 take point?

8 MS. BENNETT: Objection, Mr. Hearing
9 Examiner. There's no evidence in the record of these
10 other operators meeting the setbacks.

11 MR. FELDEWERT: I'm asking if you're
12 aware.

13 THE HEARING EXAMINER: Sorry?

14 MR. FELDEWERT: I'm asking him if he's
15 aware.

16 THE HEARING EXAMINER: Right, but
17 there's an objection, so are you going to address the
18 objection?

19 MR. FELDEWERT: Sure. I mean, it's a
20 legitimate question. I want to know what his
21 knowledge is in this area as the land manager, with
22 respect to how wells are customarily developed in this
23 area, using the commission setbacks.

24 THE HEARING EXAMINER: I'm not sure how
25 that's relevant.

1 MR. FELDEWERT: Because he's claiming
2 that they cannot meet those requirements.

3 THE HEARING EXAMINER: Ms. Bennett?

4 MS. BENNETT: If Mr. Zink understands
5 the question, I think he can answer it. But I do
6 think it's an unsubstantiated question, because it
7 presumes that there are other operators who are
8 meeting the 100-foot setback, and we don't have any
9 evidence in the record of that.

10 THE HEARING EXAMINER: So are you
11 withdrawing your objection, or are you maintaining it?

12 MS. BENNETT: I'm maintaining it. I'm
13 maintaining my objection.

14 THE HEARING EXAMINER: So it doesn't
15 matter whether he understands what you said a minute
16 ago; you're just maintaining the objection?

17 MS. BENNETT: I am, yes.

18 THE HEARING EXAMINER: I'm going to
19 sustain the objection.

20 MR. FELDEWERT: May I offer, then,
21 Mr. Examiner, if you look at the division's pooling
22 cases, and you look at most of those pooling cases,
23 you will see C-102s that are filed with the Division,
24 that show development plans where the first take point
25 is 100 feet off one line, and the last take point is

1 100 feet off the other line. It is commonly done. He
2 knows that. So that's -- I will say that for the
3 record, and I will go on. Mr. Zink --

4 MS. BENNETT: Mr. Examiner, I have an
5 objection. There's nothing in any of the exhibits
6 that MRC filed that alerted us to these issues. In
7 addition, the fact that operators identify the
8 setback, the legal setback on their C-102s, does not
9 make a well. That is not a representation of an
10 as-built well, an as-drilled well.

11 So Mr. Feldewert's representation -- it
12 may be accurate that what's in the Division's records
13 represents a 100-foot setback, but that's because what
14 the Division's roles require. That does not reflect
15 operationally the reality of the operational issues,
16 which is what Mr. Zink is testifying about.

17 THE HEARING EXAMINER: Mr. Feldewert is
18 not a witness, so what he said is not evidence. We
19 all know that. I don't know that a clarification is
20 neither helpful nor hinders. I sustained your
21 objection before, so Mr. Feldewert is going to ask his
22 next question.

23 BY MR. FELDEWERT:

24 Q So Mr. Zink, the back-build that you're
25 talking about is based upon where you decided to put

1 your surface hole locations; correct?

2 A It is based off of where we put our surface
3 hole location.

4 Q All right. Now, when I look at the mineral
5 interests out here in the north half of the north half
6 of section 36; okay? How much does Franklin Mountain
7 own in the north half of the north half of 36?

8 A There is a slide on that. In the north half
9 of the north half of section 36, we own approximately
10 55 percent of working interest.

11 Q Both the Bone Spring and the Wolfcamp?

12 A I believe that's correct. Yes, that's
13 correct.

14 Q Okay. And you would agree with me, then,
15 that under your plan, the owners of the north half of
16 the north half of 36 are going to get their
17 proportionate share of the production from the
18 satellite wells, based on a straight-acreage basis?

19 A That is correct.

20 Q Okay. And that those same owners in the
21 north half of the north half of section 36 are going
22 to get their proportionate share of the cross-state
23 wells on a straight-acreage basis?

24 A That's correct.

25 Q Okay. And to the extent that that

1 production does not proportionately come from the
2 north half of the north half of section 36, it then
3 comes out of the portion that would otherwise go to
4 the owners in the remaining tracts; correct?

5 A Correct. But that's also under the
6 assumption that every single piece -- every single
7 40-acre is equally -- equally contributes across that
8 lateral. And in case of the toe and the heel, that
9 they cannot equally contribute the same amount of
10 production that the center of the section would
11 contribute. So the well bore is not effectively
12 draining the -- each part of the lateral, each part of
13 the 40 equally.

14 Q Under your development plan?

15 A Yes.

16 Q Okay.

17 A Or under every -- every typical development
18 plan. There's always 100 feet -- anyone who drills a
19 horizontal well, there's effectively a resource that
20 is unrecoverable by -- by the drilling technology
21 today. At a legal location.

22 Q That's your opinion as a landman?

23 A My opinion as a landman.

24 Q Okay. All right. But one of the things
25 that companies demonstrate in seeking pooling is they

1 represent that the 40-acre tract will be
2 proportionate -- proportionately contribute to the
3 spacing unit; correct?

4 A From an ownership perspective? Correct.

5 Q From a production perspective.

6 A From an ownership perspective, they each
7 have a -- in this case, if it's eight -- eight 40s,
8 they each would have one-eighth share of the
9 production across the lateral.

10 Q Correct --

11 A But that doesn't mean that production is
12 coming equally from each part of that well bore across
13 the lateral.

14 Q But that's what companies represent in these
15 pooling cases; correct?

16 A Correct.

17 Q Okay. They represent that it's going to be
18 shared on an equal -- on a straight-acreage basis, and
19 that each 40-acre tract will proportionately
20 contribute to the production from the well bore;
21 correct?

22 A Yeah.

23 Q Okay. How many working interest owners are
24 in the satellite spacing units to the north?

25 A There are three total.

1 Q Three total?

2 A Yes.

3 Q You?

4 A Yes.

5 Q Mackle Main [ph]? Who else?

6 A No.

7 Q No? Okay.

8 A Us.

9 Q Who else?

10 A Company called Opus, and a company called
11 Slash.

12 Q Slash? Okay. What percentage interest does
13 Franklin Mountain own for each of these satellite
14 spacing units to the north?

15 A Depending on the specific unit we own,
16 anywhere from 100 percent to 75 percent,
17 approximately. Maybe a little less, depending on
18 the -- the stand-up units.

19 Q Okay. I want to then turn to what -- your
20 Exhibit B-8.

21 THE HEARING EXAMINER: What page number
22 is that?

23 MR. FELDEWERT: I'm going to get to
24 that, sorry. Page 32 of the PDF.

25 THE HEARING EXAMINER:

1 Mr. Feldewert -- not to break your stride, but I was
2 looking at the filed documents in this case from you,
3 your exhibits admitted with your pre-hearing
4 statement, and I could not find that Exhibit C that
5 you were showing before, the one with the yellow.
6 Where is that?

7 MR. FELDEWERT: I'm sorry. Exhibit
8 C-2.

9 THE HEARING EXAMINER: That's fine.
10 But where is this document that you are -- when was
11 this filed?

12 MR. FELDEWERT: With our pre-hearing
13 statement.

14 THE HEARING EXAMINER: Right. I found
15 the pre-hearing statement, and I did not see anything
16 past Exhibit B. So when did you file this pre-hearing
17 statement?

18 MR. FELDEWERT: With -- on the day that
19 they were due. Yeah.

20 THE HEARING EXAMINER: Which case
21 number did you file this in?

22 MR. FELDEWERT: In all of the cases.

23 THE HEARING EXAMINER: Okay. I'm
24 looking at 23833. Is that a fair case to look at?

25 MR. FELDEWERT: I think it should be;

1 right?

2 THE HEARING EXAMINER: It's one of the
3 cases that we're here today for.

4 MR. FELDEWERT: Yes.

5 THE HEARING EXAMINER: And I'm looking
6 at the documents filed in this case, and I see your
7 filing on February 2nd. And it says at the top of
8 it -- let me get to it. It says, "MRC's Pre-hearing
9 Statement." Is that accurate?

10 MR. FELDEWERT: It should be this
11 document that I have up here, now.

12 THE HEARING EXAMINER: I have -- my
13 document is 119 pages, and so is this.

14 MR. FELDEWERT: Okay. All right.

15 THE HEARING EXAMINER: Okay. What page
16 of this document is C-2 on?

17 MR. FELDEWERT: It would be page 98.

18 THE HEARING EXAMINER: Okay, let me get
19 to it, because I could not find it. My page 98 says
20 "Exhibit B-2." That's why I'm confused, because I'm
21 looking at the exhibit number on the left, and your
22 exhibit numbers are on the right. So now I see C-2.
23 But mine is not yellow either, so that's why I'm
24 confused.

25 MR. FELDEWERT: Copy. Sorry.

1 THE HEARING EXAMINER: Okay. So the
2 B-2 was what? The original exhibit from another case?

3 MR. FELDEWERT: Yes. That's my
4 understanding.

5 THE HEARING EXAMINER: Okay. And this
6 is --

7 MR. FELDEWERT: Oh, and if you look at
8 "OCD hearing, 10/5/23" -- you see that there?

9 THE HEARING EXAMINER: I do now. I do
10 now.

11 MR. FELDEWERT: Yeah. That's
12 what -- so I just took it from -- and I apologize.

13 THE HEARING EXAMINER: I understand why
14 I'm confused now, but I'm not confused anymore.

15 MR. FELDEWERT: Okay.

16 THE HEARING EXAMINER: So now where are
17 we, now?

18 MR. FELDEWERT: I don't know. Now I'm
19 confused.

20 BY MR. FELDEWERT:

21 Q If I go to -- let me get back to where I
22 was. I would be on what I think is part of your
23 Exhibit B-8, Mr. Zink, which is page 32 of your
24 exhibits. PDF, I'm sorry.

25 A Yep. I'm there.

1 Q Are you there? Okay.

2 A Yes.

3 Q Now, I think you helped orient us earlier.
4 But just so it's clear, if I looked at the two
5 triangles, those represent first take points?

6 A Correct. They do not represent setbacks.

7 Q They represent first take points?

8 A First take points, correct. Not setbacks.

9 Q Got you. Okay. And if I look at the
10 diamond to the left, is that supposed to represent the
11 cross-state well, or the satellite well?

12 A This slide is a generic slide, just to
13 illustrate how we do -- or how we are looking at an
14 overlapping spacing unit. But if you would like me to
15 assign spacing unit names for how we would use this in
16 the cross and satellite cases, the left side I guess
17 would be the south -- would be the cross, and the
18 right side would be the -- would be the satellite.

19 Q Okay. So then the line between the right
20 diamond in the diagram on the right-hand side -- I'm
21 sorry. The line to the right of the right diamond on
22 the right-hand side would be the section line between
23 25 and 36?

24 A That would be -- yeah. A lease line, yes.

25 Q Okay.

1 A A lease line of a spacing unit, correct.

2 Q Okay. And that rectangle box in the middle
3 would represent the north half of the north half of
4 36?

5 A On -- yes. On the right map, that would be
6 an example -- yeah. A heel-to-heel in an overlapping
7 spacing unit, in this instance, yes.

8 Q Okay. So then --

9 A That would be the north half, north half of
10 section 36.

11 Q Okay. So the first take point for the
12 satellite well would be the one on the right, and the
13 first take point for the cross-state well is the one
14 on the left?

15 A As an illustration to show how each one of
16 those units is recovering those reserves, yes. As an
17 illustration, yes.

18 Q Okay. And that's based on your decision to
19 have a surface hole location in the north half of the
20 north half of 36 roughly what, halfway in the middle
21 of that section?

22 A Correct.

23 Q Okay. All right. It doesn't show footages
24 on here; do you see that?

25 A Yes.

1 Q How close is the first take point for the
2 cross-state well going to be to the quarter-quarter
3 line between the north half of the north half and the
4 south half of the south half?

5 A If I understand correctly from the review
6 with our drilling department, and our engineers, our
7 first take points are approximately six -- 600 feet
8 off of -- from the section line.

9 Q From the quarter-quarter line?

10 A From the -- I guess either-or. From
11 the -- if you went 600 feet south of the -- of the
12 northern section line, or 600 feet north of the
13 southern north-half/north-half lease line.

14 Q Okay. So let's go -- this line on the left,
15 that would be the line between the north half of the
16 north half and the south half of the north half;
17 right?

18 A Sure. I think I understand what you're
19 talking about.

20 Q And that first take point there with a
21 triangle would be the cross-state; right?

22 A If we're assigning this illustration to what
23 actually is going to happen at the -- at the cross and
24 satellite, how we operationally plan to develop it,
25 then those would probably be even closer together.

1 But this was just an illustration to -- to show how
2 our approach, and how overlapping spacing units,
3 maximizes reserves and effectively develops the
4 resource.

5 Q But this is all I have to go on, in looking
6 at your file at this point; okay?

7 A Okay.

8 Q All right. So, can you tell me if that left
9 first take point is for the cross-state wells?

10 MS. BENNETT: Objection, Mr. Hearing
11 Examiner, that it's asked and answered about whether
12 this is actually representative of the cross-state
13 wells or not. Mr. Zink has said this is for
14 illustrative purposes only.

15 THE HEARING EXAMINER: Mr. Feldewert?

16 MR. FELDEWERT: My question's going to
17 be, where -- at what footage is the cross-state well?
18 Where's the first take point going to be, from the
19 north line?

20 THE WITNESS: My --

21 THE HEARING EXAMINER: Hold on. Hold
22 on.

23 So Mr. Feldewert, have you addressed
24 the objection?

25 MR. FELDEWERT: Well, I -- that's the

1 question I was going to ask him. Where is
2 that -- this triangle, left triangle? My question
3 was, what's the footage? And I got interrupted.

4 THE HEARING EXAMINER: Okay.

5 So Ms. Bennett, you've heard the
6 question that's going to be asked. Do you still
7 maintain the objection to that question?

8 MS. BENNETT: Yes, I do. Mr. Zink
9 previously testified about the footage for each of the
10 wells, noting that they would be approximately 600
11 feet off the quarter-quarter section line, and the
12 section line.

13 THE HEARING EXAMINER: And
14 Mr. Feldewert, why does that not answer your question?

15 MR. FELDEWERT: Because I want to know
16 which one's going to be which.

17 THE HEARING EXAMINER: And would you
18 ask it that way?

19 MR. FELDEWERT: I will. Okay.

20 THE HEARING EXAMINER: Okay. So I'm
21 sustaining the objection, so please rephrase your
22 question.

23 BY MR. FELDEWERT:

24 Q Mr. Zink, Exhibit B-8, the triangle we see
25 to the left, which is going to the cross-state unit;

1 correct? As you told me?

2 A Correct.

3 Q Okay. That triangle, how far is that going
4 to be from the section line between 25 and 36?

5 A From my understanding of reviewing with the
6 drilling department and engineering department, we
7 would likely be about -- approximately 600 feet off
8 the section line.

9 Q Six hundred feet off the section line?

10 A Off the section line.

11 Q That would be the north line of the unit?

12 A Correct.

13 Q Okay. And then the first take point for the
14 satellite well, how far will that be off of the
15 section line between 25 and 36?

16 A My understanding that they would be also 600
17 feet.

18 Q Six hundred feet from the north line, the
19 section line?

20 A From the -- from the -- 600 from the south
21 of the quarter-quarter line.

22 Q Quarter-quarter line. Okay, so thank you.
23 So that would be 600 feet from the quarter-quarter
24 line. If that's the case, then wouldn't the triangle
25 on the right represent the cross-state first take

1 point?

2 A Again, this is an illustration of our plans,
3 of kind of our approach to an overlapping spacing
4 unit. This is not the exact drilling plans for any
5 cross or satellite well.

6 Q But that satellite well is going to have its
7 first perf 600 feet from the quarter-quarter line
8 between the north half of the north half and the south
9 half of the north half of section 36?

10 A Sounds about right.

11 Q Okay. And it'll be perforated from that
12 point on?

13 A Yeah, that's my understanding.

14 Q All right. Okay. And the production from
15 that satellite well will go entirely to the owners in
16 the satellite spacing unit?

17 A That's correct.

18 Q Okay. What's going to be the completed
19 interval overlap between the cross-state and the
20 satellite well, based on your drilling plan?

21 A If it's my understanding, there'd be zero
22 overlap. But again, I have not reviewed those plans.

23 Q Zero overlap? How can that be?

24 A Because the well to the north is capturing
25 the reserves left behind on the well to the south, and

1 the well to the south is capturing reserves left
2 behind on the well to the north.

3 Q Okay. So what you told me, though, is that
4 the first take point from the -- for the satellite, or
5 for the cross-state well, is going to be roughly 600
6 feet from the section line, first take point; correct?

7 A Correct.

8 Q And that'll be thereafter perforated and
9 completed. And from 600 feet from that section line
10 down to the remaining of the spacing unit. That's
11 right?

12 A Sounds -- sounds right.

13 Q Okay. And the satellite unit -- its first
14 take point is going to be 600 feet from the
15 quarter-quarter line between the north half of the
16 north half and the south half of the north half; is
17 that right?

18 A That is my understanding of how this is
19 going to work.

20 Q All right. So if that's the case, wouldn't
21 they overlap between those two points, in terms of
22 their completed interval?

23 A I mean, if you're using those numbers, it's
24 possible, yes.

25 Q Okay. All right. That would be the plan?

1 A I would obviously defer to the operation
2 team on how they complete those intervals and how they
3 drill those wells, but that's my understanding.

4 Q Okay. All right. Okay. Both draining from
5 the same reservoir?

6 A Correct.

7 Q Now, when I look at the -- are you aware
8 that your company filed C-102s for the satellite
9 wells?

10 A Yes, I am aware.

11 Q Okay. And have you looked at those?

12 A The C-102s that are part of the exhibit?
13 Yes, I have.

14 Q The ones you filed for the satellite wells?

15 A Oh, for the satellite wells?

16 Q Yeah.

17 A Yes. C-102s for the satellite wells -- for
18 the Wolfcamp wells. Yeah, we filed.

19 Q Okay. All right. I'm going to pull that up
20 on the screen. That's been filed with the Division;
21 right?

22 A Yeah.

23 Q And it was approved by the Division on
24 December 14, 2023?

25 A Yeah. As you -- yep.

1 Q Okay. All right. And when I look at the
2 C-102 for the satellite wells, is the 701-H -- that
3 would be for the west-half, west-half spacing unit?

4 A Yeah.

5 Q Okay. Does it identify anywhere a first and
6 last take point for that well?

7 A No, it does not.

8 Q Okay. And --

9 A It's my understanding that the OCD does not
10 require first take points on their --

11 Q Oh. Okay. It identifies --

12 A Not -- not until your as-drills have been
13 filed. And right now, we have not drilled those
14 wells.

15 Q It identifies your surface hole location as
16 being in the south half of the north half of section
17 36?

18 A That it does.

19 Q Correct?

20 A Yep.

21 Q Is that still where it's going to be?

22 A I believe so, yes.

23 Q Okay. Then you've also filed with the
24 Division your C-102 for the cross-state well; correct?
25 The ones that you're seeking to pool?

1 A Yes.

2 Q And if I look at the Division's file for
3 that well, again in the west half, west half,
4 Wolfcamp, same spacing unit, it was also approved on
5 December 14, 2023; is that right?

6 A That's correct.

7 Q Okay. And it likewise does not show a first
8 or last take point?

9 A Correct.

10 Q Okay. And it shows the cross-state well as
11 being drilled from that same surface hole location as
12 the satellite well?

13 A That is correct.

14 Q Okay.

15 A And based off of surface constraints I
16 believe for that quarter, that quarter-quarter, yes.
17 Our well -- our well pad had to be south.

18 Q Okay.

19 A I think there's existing wells -- well pads
20 out there, and there's some existing surface
21 constraints and power lines up in that
22 northwest-northwest quarter.

23 Q Okay. And if I used this as an exhibit;
24 okay? To try to understand this. Your cross-state
25 well is going to back-build and then be perforated 600

1 feet from that section line?

2 A That is my understanding of how we're going
3 to develop these units. Correct.

4 Q First take point being 600 feet?

5 A Approximately.

6 Q Not 100 feet?

7 A Not 100 feet, no.

8 Q Okay. And the cross-state well's going to
9 come down from the north and be roughly 600 feet from
10 that quarter-quarter line above that surface hole
11 location. That would be the first take point?

12 A Correct.

13 Q Okay. And then the completed interval would
14 overlap -- between that -- the cross-state first take
15 point and the satellite first take point?

16 A Correct.

17 Q Okay. All right. Now, when I look at your
18 C-102 filed in this case -- have you looked at that?

19 A Yes. That's part of the exhibits? Yes, I
20 have.

21 Q Okay. Let's go to -- sorry. This would be
22 for one of your cross-state wells?

23 A Yes.

24 Q Looks like it's page 80 of the PDF?

25 A Yeah.

1 Q Okay. If I blow it up, and I look at it, it
2 doesn't reflect what you just explained to me, does
3 it?

4 A Correct.

5 Q It shows the first take point at standard
6 setbacks 100 feet from the north line?

7 A That's what that says.

8 Q So it represents that's where your first
9 take point's going to be, and then it's going to go
10 south through the remainder of the spacing unit?

11 A Correct.

12 Q Okay. Which is different from what you just
13 told me; right?

14 A Correct.

15 Q Okay. Now, when I look at your well
16 proposal letters that you sent out to the working
17 interest owners -- let's go to page 49 of the PDF.
18 Now, I understand you didn't draft this and you didn't
19 send it out. It was someone under your supervision;
20 is that right?

21 A Correct.

22 Q Okay. Is there -- when those were sent out
23 in July of 2023, that was before any of the satellite
24 wells were permitted on the Division's website;
25 correct?

1 A Correct.

2 Q All right. Does it identify anywhere in
3 these well proposal letters where your first and last
4 take point are going to be?

5 A No. There's no requirement from the OCD to
6 make a valid well proposal have first take points.

7 Q Okay. Is there any mention in here of your
8 plan to overlap the spacing unit with the spacing unit
9 for the satellite wells?

10 A No, but our applications for pooling do
11 include overlapping spacing units.

12 Q And we've already looked at the filed
13 C-102s. They didn't reflect where the first and last
14 take points are going to be; correct?

15 A Correct.

16 Q Okay. Let's look at the public notice on
17 page 45 for this hearing. Does this public notice
18 identify where your proposed first take points and
19 last take points are going to be for the cross-state
20 wells?

21 A No.

22 Q Is there any mention in here of the
23 satellite spacing units?

24 A No. It mentions notice of overlapping unit.

25 Q What's it say?

1 A It says "compulsory pooling and notice of
2 overlapping unit in Lea County."

3 Q Say anything else? Let me help you out. It
4 says, "The spacing unit proposed in this application
5 will partially overlap a spacing unit in section 26."
6 Do you see that?

7 THE HEARING EXAMINER: Mr. Feldewert,
8 you said 26. Did you mean 36?

9 MR. FELDEWERT: Thirty-six. Thank you.

10 THE HEARING EXAMINER: Just thought I'd
11 make it clear.

12 THE WITNESS: Yes. I see that.

13 BY MR. FELDEWERT:

14 Q All right. It doesn't say anything about
15 what spacing unit?

16 A No.

17 Q Doesn't say satellite wells?

18 A No.

19 Q Doesn't say north half of the north half of
20 36?

21 A Does not.

22 Q Doesn't say who the operator's going to be?

23 A Nope.

24 Q Nothing?

25 A Nope.

1 Q Okay. If I look at the -- and when I look
2 at the application --

3 MS. BENNETT: Mr. Hearing Examiner, I
4 object to this line of questioning. It's basically a
5 thinly veiled attempt to reopen the motion to vacate,
6 which the hearing examiner already ruled that MRC had
7 actual notice, and denied the motion to vacate on the
8 notice issue. And so there's no need to rehash that,
9 because it's already been ruled on.

10 THE HEARING EXAMINER: Mr. Feldewert?

11 MR. FELDEWERT: Denied the motion to
12 vacate, but certainly has not denied the information.
13 And that reflects on whether -- on the impact on
14 correlative rights, and more importantly, whether
15 anybody was aware that they were going to overlap
16 these spacing units, and thereby infringe on their
17 correlative rights.

18 THE HEARING EXAMINER: So
19 Mr. Feldewert, where is this questioning going?

20 MR. FELDEWERT: What's our application
21 say? It says, "Compulsory pooling and notice of
22 overlapping spacing unit." Okay. They seem to be
23 saying, "Well, we're going to give you all notice of
24 overlapping spacing unit by way of our application,"
25 and then ask the Division to pool the spacing unit and

1 the overlap. That's what they seem to be requesting;
2 okay?

3 My point being here, is that -- A, they
4 can't do that, because it impacts correlative rights.
5 You can decide that. I'll let your experts decide
6 whether there's an impact on correlative rights.
7 Secondly, there is no way that anybody got sufficient
8 notice to understand that they were seeking approval
9 of an overlapping spacing unit.

10 They couldn't look at anything. There
11 weren't any permits filed until mid-December, which
12 means --

13 THE HEARING EXAMINER: Thank you.

14 Ms. Bennett, I did deny the motion to
15 vacate, because I felt in part this issue was better
16 resolved through evidence here at the hearing. So I'm
17 going to override the objection, because I feel like
18 Mr. Feldewert has a right to ask questions about
19 notice.

20 Please go ahead.

21 BY MR. FELDEWERT:

22 Q Mr. Zink -- and maybe I've already previewed
23 it. If we look at your application that went out with
24 the notice, it doesn't identify if the affected
25 working interest owners were your first take point or

1 your last take points are going to be for the wells?

2 A No, it does not.

3 Q Okay. And all it says with respect to the
4 notice of overlapping spacing unit is that it's going
5 to be overlap some spacing unit somewhere in section
6 36, operated by someone. But you don't tell --

7 A Correct.

8 Q Even though it was your plan, and you had
9 the knowledge; correct?

10 A We -- there's no mention of -- of the
11 overlapping spacing unit, on where it is, on the
12 application.

13 Q Or even who's going to operate?

14 A Nope.

15 Q Okay. All right. When you say in your
16 notes that you had up there in the stand, that you had
17 notes that C-102s -- you said "minor oversight." What
18 did you mean by that?

19 A I believe that the -- when we applied for or
20 submitted the C-102s, they were signed by our
21 regulatory department, and certified that -- that
22 based on her understanding, that we had ownership
23 across the -- 100 percent of the lateral.

24 Q Why was that important?

25 A It's -- except -- at that point, we did not

1 have ownership across 100 percent of the lateral. It
2 was a -- it was a minor oversight.

3 Q These are the C-102s that you filed with the
4 Division that didn't identify the first take point and
5 the last take point?

6 A Agreed, yeah.

7 Q Okay. And you're saying that the
8 certification on those C-102s that you filed with the
9 Division was false?

10 A There was a minor oversight at -- as of her
11 understanding of when she filed, that we had 100
12 percent of -- or either had joinder of 100 percent, or
13 we effectively owned 100 percent of it.

14 Q Which you represented that you did, when it
15 wasn't true, as a company?

16 A As a company, in that submittal, yes. It
17 was a minor oversight.

18 Q And in fact, isn't there a Division rule
19 that requires you to either have a pooling order or
20 have an interest in each spacing unit before you can
21 file C-102s?

22 A That is correct. But also, in -- in several
23 of our Bone Spring applications, we do have ownership
24 in 100 percent of those laterals. So yes. For
25 certain -- certain units in the Wolfcamp,

1 there's -- yes, there was a misrepresentation, and a
2 minor oversight on that -- on that certification.

3 Q Violation of the Division rule?

4 A Minor oversight.

5 Q That's fine. And again, these are the
6 ones -- what you're talking about is, not only were
7 they filed with the Division, but didn't show a first
8 take point or last take?

9 A Correct.

10 Q Okay. Is there anything that's in your
11 filed hearing packet, or anything that we can look at
12 in the Division's files, that would identify how you
13 intend to overlap these spacing units and the footages
14 involved with your first take points? Anything?

15 A In the exhibits, specifically? No.

16 Q Anything that's been filed with the
17 Division?

18 A Not that I'm aware of.

19 Q Anything that was provided to the affected
20 working interest owners?

21 A Nope.

22 Q And sitting here today, there's nothing that
23 shows the Division where your first take point is
24 going to be for your cross-state wells, and where your
25 first take point is going to be for your satellite

1 wells?

2 A That's correct.

3 Q And nothing identifies to the Division, or
4 to anybody that's looked at the record, how much
5 perforated overlap there's going to be in the north
6 half of the north half of section 36?

7 A There's nothing in the application that
8 mentions that.

9 Q Is there anything anywhere?

10 A No.

11 Q Okay.

12 A As a -- as a prudent operator in the basin,
13 if -- if I were to read the application, and my assets
14 were a part of that overlap, and I had questions, I
15 would reach out to that company and ask.

16 Q You don't feel like --

17 A And that's a standard practice that we do in
18 our office. If we receive something that doesn't make
19 sense, that we go get answers.

20 Q So in your opinion, you sent out something
21 that doesn't make sense, and you expect somebody to
22 call you?

23 A I didn't necessarily say what we sent out
24 didn't make sense. I said if I was reviewing
25 something that I had questions on, I would reach out.

1 MR. FELDEWERT: That's all the
2 questions I have, Mr. Zink.

3 THE HEARING EXAMINER: Thank you. I'm
4 going to turn to Mr. John Garcia, our technical
5 examiner.

6 MR. GARCIA: Good morning, Mr. Zink.

7 THE WITNESS: Good morning.

8 MR. GARCIA: Mr. Hearing Examiner, I
9 also have questions for Mr. Feldewert. So I don't
10 know if he has witnesses later, or if I'm allowed to
11 ask Mr. Feldewert questions.

12 THE HEARING EXAMINER: Mr. Feldewert is
13 not a witness, so I don't believe that you can ask him
14 evidentiary questions. If you have a legal question,
15 that might be proper, but --

16 MR. GARCIA: The first one's a legal
17 question, for sure.

18 THE HEARING EXAMINER: I think it'd be
19 best if we just -- this is an evidentiary hearing. I
20 think it would be better not to ask legal questions at
21 this point. I think if our attorneys have questions
22 for Mr. Feldewert, they can pose them, you know, from
23 the Division. But let's just --

24 MR. GARCIA: Oh, well that's no fun.

25 THE HEARING EXAMINER: That's too bad.

1 So Mr. Garcia, would you ask your questions of
2 Mr. Zink, please?

3 MR. GARCIA: I will.

4 CROSS-EXAMINATION

5 BY MR. GARCIA:

6 Q Morning, Mr. Zink. Few questions; not too
7 many. Mr. Feldewert touched on some of them. And I
8 believe Mr. Feldewert is screen-sharing, so I'm
9 looking at this exhibit real quick.

10 MR. GARCIA: Mr. Feldewert, I guess
11 since you're screen-sharing, do you mind looking at
12 page 32 of FME's exhibit packet for me?

13 MR. FELDEWERT: Page 32 of the PDF?

14 MR. GARCIA: Yes, please.

15 MR. FELDEWERT: Okay.

16 BY MR. GARCIA:

17 Q Fully understand, this is just, you know, to
18 display thoughts. This is no technical merits here;
19 there's no numbers to this. Has MRC, who I believe
20 Mr. Feldewert is representing -- MRC ever approached
21 you, asking you not to do basically the example on the
22 right side of this, but letting you know they prefer
23 the example on the left side? Have they ever reached
24 out to you, saying like, "Hey, can you do the example
25 on the left side?"

1 A No, they have not reached out at all about
2 this example.

3 Q And it might not be this example directly,
4 just like the overall process of like, "Hey, there's
5 overlap. We prefer you not to have overlap. We
6 prefer you to do two standards that kind of butt up
7 against each other," like what we see depicted here on
8 the left? And bear with my speed; I'm going to take
9 notes.

10 A We have not received any questions from MRC
11 regarding the overlap, or any questions regarding the
12 overlap from them.

13 Q And so they haven't, therefore, pitched any
14 alternative development plan for you guys to complete?

15 A For us? No.

16 Q Sorry, just taking some notes. Okay. And
17 then quick question -- I think Mr. Feldewert, two
18 pages above, it shows the color -- sorry, let me see.
19 PDF page 29, which is the color of the satellite and
20 the cross, and the rest of the spacing units?

21 A Mm-hmm.

22 Q On your -- Mr. Zink, I'm assuming these
23 light blue certain squares are central tank batteries;
24 is that correct? I'm assuming they're tank batteries.

25 A Those are -- those are in fact well pads,

1 location of existing -- or of well pads, where we plan
2 to -- those wells from.

3 Q Okay. And you said this plan will help ease
4 surface disturbance. Are your well pads and
5 facilities going to be on the same pad, or are they
6 going to be separate pads?

7 A So we will have a -- it will be separate
8 pads. We have a -- off-well-site central tank
9 battery.

10 Q Okay. But all of that --

11 A Separate facility, yes. Yes.

12 Q Okay. But these well pads and the tank
13 battery are already there?

14 A Yep. Well, they are -- they are not
15 existing at this moment. We are currently building
16 surface for our satellite wells.

17 Q Okay. So those blue squares technically
18 could be moved, if needed?

19 A No. I think that we've already started.
20 Either -- we have the approvals to execute on that,
21 and I -- I know the field is working on either
22 obtaining an appointment to start building those as we
23 speak.

24 Q Okay. But high-level, they're not locked in
25 stone, because there's no equipment there?

1 A Okay.

2 MR. GARCIA: Sorry. I'm trying to see
3 what Mr. Feldewert asked, so I don't re-ask it.

4 Mr. Feldewert, sorry for going back,
5 but can we go back to page 32? It's the diagram that
6 you've been on for a while. This one right here.

7 MR. FELDEWERT: This one?

8 MR. GARCIA: Yes, please.

9 BY MR. GARCIA:

10 Q Mr. Zink, so if we did do the left option
11 for your well pads -- again, you know, I understand
12 this is theory example here. You know, they're saying
13 there's a 4-to-600-foot build period, makes it hard to
14 do the 100-foot setbacks. Have you guys at FME ever
15 considered pursuing an NSL to put these perforations
16 closer than 600 feet, if you did the left-hand-side
17 option?

18 A Well, I think that becomes a -- a question
19 of where are you in the formation, as you're drilling
20 the curve. You know, with -- with standard build
21 rates, you know, if you're -- if you're, you know,
22 perforated is 100 feet, you know, you could be in a
23 totally different zone, depending on the -- on the
24 decks.

25 Q Okay. Correct. Have you guys ever explored

1 putting the build-back outside the spacing units?
2 Therefore, you could perf inside the spacing unit
3 still.

4 A That would require some additional
5 documentation, some surface easements and
6 notifications to go off-lease, to do that back-build.

7 Q Okay. So therefore, it's easier just to
8 build inside spacing unit for you guys?

9 A Yeah, typically. Yeah, on-lease, being a
10 legal location, correct.

11 MR. GARCIA: I think that's all my
12 questions for now, Mr. Hearing Examiner.

13 THE HEARING EXAMINER: Okay. Thank
14 you, Mr. Garcia.

15 Ms. Bennett, what follow-up do you
16 have?

17 MS. BENNETT: Thank you, Mr. Examiner.

18 REDIRECT EXAMINATION

19 BY MS. BENNETT:

20 Q Mr. Zink, you were asked by Mr. Feldewert
21 whether -- about each quarter-quarter section
22 contributing proportionately to a unit. Do you recall
23 that?

24 A Yes.

25 Q And in your opinion, is it that each

1 quarter-quarter section contributes exactly
2 proportionately? Or is it more or less
3 proportionately?

4 A It's more or less proportionate.

5 Q On the question about
6 back-builds -- Mr. Garcia just asked you a question
7 about back-builds, and Mr. Feldewert mentioned
8 back-builds. Back-builds are not -- would you say
9 that back-builds are unusual in New Mexico?

10 MR. FELDEWERT: I would object to the
11 form of the question. She objected to my question
12 when I asked him about what their operators are doing,
13 and it was sustained, so I don't think he can testify
14 to that.

15 THE HEARING EXAMINER: Would you
16 restate your objection?

17 MR. FELDEWERT: Yes. I think it goes
18 outside the scope of his expertise and knowledge. And
19 it would be unfair, because you didn't let me ask him
20 a question when I asked him what other operators were
21 doing, and his knowledge of that.

22 THE HEARING EXAMINER: Okay.
23 Ms. Bennett?

24 MS. BENNETT: I'll rephrase the
25 question.

1 THE HEARING EXAMINER: Okay, so
2 sustained.

3 BY MS. BENNETT:

4 Q Mr. Zink, you mentioned a moment ago that a
5 back-build in this particular area would not be
6 feasible; is that right?

7 A Correct.

8 Q And why was that?

9 A I'd been given where the surface was, and
10 going off -- off-lease, that would have required some
11 additional documentation that we have not secured, and
12 would be outside of the normal scope.

13 Q And by "additional" -- what do you mean by
14 "additional documentation"? Can you expand on that a
15 little?

16 A Yeah. You'd have to acquire some sort of
17 subsurface easements or something from both a mineral
18 owner and a surface owner in the offsetting unit.

19 Q Mr. Feldewert asked you if there was
20 anything in the record that identified the overlap.
21 Do you remember that question?

22 A Yes.

23 Q I'm looking at Exhibit C-1 in the MRC
24 exhibits, which I'm using only as a demonstrative.
25 This has not yet been admitted, and we would have some

Page 118

1 objections to the admission of MRC's exhibits, but I'm
2 using this as a demonstrative for the moment. Do you
3 see at the bottom, where it says "OCD examiner
4 hearing, 10/5/2023"?

5 THE HEARING EXAMINER: What page?

6 MS. BENNETT: I'm sorry. I'm on
7 page -- sorry. I thought I was sharing my screen.
8 But it's -- do you mind either letting me share my
9 screen, or pulling it up?

10 MR. FELDEWERT: Yeah, I can pull it up.
11 Hold on. Sorry. There we go.

12 THE HEARING EXAMINER: Is that it?

13 MS. BENNETT: Yes, thank you. So -- if
14 you could scroll down to the bottom, please?

15 BY MS. BENNETT:

16 Q Do you see at the bottom, it says "OCD
17 examiner hearing, 10/5/2023"?

18 A Yes.

19 Q So was this -- based on that time, or that
20 stamp, what's your impression of where this came from?

21 A This came -- this was an exhibit, I'm
22 assuming, from our satellite cases.

23 Q And this was done on October 5, 2023; is
24 that right?

25 A Correct.

1 Q At any time after October 5, 2023, did you
2 hear from Matador?

3 A No.

4 Q Does this map depict more or less FME's
5 proposed satellite and cross overlap?

6 A Yes, it does.

7 Q And do you -- I'm just asking you if you
8 know this. Do you know if the satellite cases were
9 published on the OCD's docket?

10 A Yes.

11 Q Do you know if the satellite cases
12 identified that they would be targeting section 36?

13 A Yes.

14 Q If the situation were reversed, and you were
15 MRC, would you have seen on the docket that the
16 satellite cases were targeting section 36?

17 MR. FELDEWERT: Objection. Calls for
18 speculation.

19 THE HEARING EXAMINER: I'm going to
20 overrule that objection, because this witness is
21 qualified as an expert, and I from my own experience
22 clearly remember that experts have the ability to form
23 an opinion in their field. Are you suggesting this is
24 outside his field that he's qualified as an expert?

25 MR. FELDEWERT: Well, she's asking him

1 to speculate as to what MRC would have been observing
2 and noticed.

3 THE HEARING EXAMINER: And how is that
4 outside his field of expertise?

5 MR. FELDEWERT: Because he's
6 speculating.

7 THE HEARING EXAMINER: Well, I've
8 overruled that objection, based on what I've already
9 said.

10 So please, answer the question -- are
11 you done asking the question?

12 MS. BENNETT: I am.

13 But do you need me to restate it?

14 THE WITNESS: Yeah, please restate it.

15 BY MS. BENNETT:

16 Q If the situation were reversed, and I'm
17 asking you as Franklin Mountain Energy, would you have
18 seen that section 36 was involved in the satellite
19 development?

20 A In my job, in my role, I do monitor the OCD
21 docket, and I do look at -- to where these cases are,
22 and where they -- and do they affect any of our
23 company assets. And so I would review that, and it
24 would -- I would pick up on this, that it would -- it
25 would interfere -- potentially interfere with our

1 company assets, and I would reach out. Or file an
2 objection, or contact our attorney, to enter the
3 appearance on our behalf.

4 Q Thank you. This slide was prepared by
5 Franklin Mountain Energy; is that right?

6 A Yes, it was.

7 Q And was this slide prepared for the
8 satellite hearings?

9 A Yes, it was.

10 Q Was there any -- so this -- and I
11 guess -- yeah. Never mind. Mr. Feldewert asked you
12 some questions about the overlap in the
13 completed -- in the lateral length between satellite
14 and cross. Does Franklin Mountain Energy plan to
15 address the overlap, or any purported overlap, in its
16 development plans?

17 A Yes.

18 Q And is it your intention to develop this
19 acreage responsibly?

20 A Yes.

21 Q Is Franklin Mountain Energy proposing any
22 upgrades to the infrastructure in this area?

23 A We are, yes.

24 Q Will that inure to the benefit of MRC?

25 A It would, yes. We are -- we are aware that

1 this area has been historically developed vertically,
2 and that the current infrastructure in place is just
3 not adequate to -- to handle horizontal development.
4 And part of our budget for 2024 will be spending
5 significant capital to upgrade and build our own
6 pipelines, to support our development plans in this
7 area and across this asset.

8 Q And Mr. Zink, earlier Mr. Feldewert asked
9 you -- and again, I'm going back to the question he
10 asked you about whether there's anything in the
11 record -- anything in the public records that would
12 identify the overlap. And I believe your answer to
13 that was no. But having seen the slide, and having
14 this -- recalling that FME prepared this for the
15 Division's hearing that day, does that change your
16 answer to that question?

17 A This -- this slide does show the
18 relationship between satellite and cross, and the
19 potential overlapping unit.

20 Q Mr. Zink, do the satellite applications
21 identify or contain approximately the same language as
22 the cross applications regarding an overlap?

23 A Yes, they do.

24 Q So the satellite applications say that
25 they'll be overlapping in section 36?

1 A Yes.

2 Q And then the cross applications say they'll
3 be overlapping in section 36?

4 A Yes.

5 Q Were you asking to be designated operator of
6 the satellite units?

7 A Yes.

8 Q Were you asking to be designated operator of
9 the cross units?

10 A Yes.

11 Q In your opinion, is there any question as to
12 who was going to be operating the satellite units?

13 A No, there's no question.

14 MS. BENNETT: Thank you. Those are all
15 the questions I have. Thank you.

16 THE HEARING EXAMINER: Mr. Feldewert,
17 cross-examination on the redirect?

18 MR. FELDEWERT: Certainly.

19 RE-CROSS-EXAMINATION

20 BY MR. FELDEWERT:

21 Q You mentioned -- so let me ask you this,
22 Mr. Zink. Was MRC a party to case 23829, which we see
23 up, and from which this exhibit was admitted?

24 A MRC does not have a working interest in
25 that -- in that unit, no. So they are not a party.

Page 124

1 Q They were not an affected party?

2 A They were not notified.

3 Q Okay. Because they don't have an ownership
4 in the satellite units?

5 A That's correct.

6 Q And they don't have an ownership in the
7 north half of the north half of 36?

8 A Correct.

9 Q Okay. The applications for the satellite
10 unit that Ms. Bennett just referenced -- were they
11 provided to MRC?

12 A They were made public to the OCD.

13 Q Okay. But they were not sent to MRC,
14 because it didn't impact them; correct?

15 A They were not -- yeah. They were not sent
16 any notices of that, because they were not a party to
17 that -- those cases.

18 Q Those unleased mineral interest owners down
19 there in section one, in the south end of the cross
20 units; okay? Were they involved in the satellite
21 cases?

22 A No.

23 Q Did they receive notice of the satellite
24 cases?

25 A They're -- they were not a party to the

1 satellite cases.

2 Q So they didn't notice?

3 A They did not receive notice, yes.

4 Q And they would not have received the
5 applications for the satellite unit?

6 A That's correct.

7 Q They would have only received the
8 application for the cross-state unit?

9 A That's correct.

10 Q Okay. And all it told them was that it was
11 going to overlap some spacing unit somewhere in
12 section 36?

13 A Correct.

14 MR. FELDEWERT: Okay. That's all the
15 questions.

16 THE HEARING EXAMINER: Mr. Garcia, is
17 there any cross-examination on the redirect that
18 Ms. Bennett conducted?

19 MR. GARCIA: I believe I am okay.

20 THE HEARING EXAMINER: Okay.

21 Ms. Bennett, do you have anything
22 further for this witness?

23 MS. BENNETT: No I do not. I do
24 reserve the right to recall him?

25 THE HEARING EXAMINER: Okay. So may

1 this witness be excused, subject to that? Okay.

2 MS. BENNETT: Thank you.

3 THE HEARING EXAMINER: Thank you.

4 You're excused.

5 It is 11:30. Who is your next witness?

6 MS. BENNETT: Mr. Hearing Examiner, our
7 next witness is Ben Kessel, the geologist.

8 THE HEARING EXAMINER: Do you feel like
9 we can get through his direct examination in the next
10 half-hour or so?

11 MS. BENNETT: I think that, if it
12 pleases the hearing examiner, I would like to discuss
13 with Mr. Feldewert whether we can just stipulate to
14 his testimony, and not do any direct or cross, except
15 for him to adopt his affidavit.

16 THE HEARING EXAMINER: Okay.

17 Mr. Feldewert?

18 MR. FELDEWERT: I just have very few
19 questions for him.

20 THE HEARING EXAMINER: Okay.

21 MR. FELDEWERT: I mean, we've -- I've
22 already stipulated to his testimony.

23 THE HEARING EXAMINER: Right.

24 MS. BENNETT: Well, in that case then,
25 I understood Mr. Feldewert is wanting to streamline

1 the cases, but we will move forward with Mr. Kessel.

2 Mr. Kessel, if you please
3 approach -- and I do believe at least my part will be
4 done very briefly.

5 THE HEARING EXAMINER: Okay.

6 MS. BENNETT: Thank you.

7 WHEREUPON,

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

12 DIRECT EXAMINATION

13 BY MS. BENNETT:

14 Q Good morning, Mr. Kessel. Would you please
15 state your name for the record?

16 A Ben Kessel.

17 Q And for whom do you work?

18 A Franklin Mountain Energy.

19 Q And in what capacity?

20 A I'm the director of geology.

21 Q And you've previously testified before the
22 Division, and your credentials were accepted as a
23 matter of record; is that correct?

24 A Yes, that's correct.

25 Q And are you familiar with the applications

1 that FME 3 filed in these cases?

2 A Yes, I am.

3 Q And did you submit an affidavit for your
4 direct testimony?

5 A Yes, I did.

6 THE HEARING EXAMINER: Ms. Bennett,
7 would you direct the witness to bring the microphone a
8 little closer, because it's hard for me to hear him?
9 Thank you.

10 THE WITNESS: My apologies.

11 MS. BENNETT: Thank you.

12 THE HEARING EXAMINER: Thanks.

13 BY MS. BENNETT:

14 Q And you've prepared exhibits as well to
15 support your affidavit?

16 A Yes, I did.

17 Q Do you have any changes to your affidavit?

18 A No, I do not.

19 Q Do you have any changes to your exhibits?

20 A No, I do not.

21 Q At this time, I'd like to ask if you will
22 adopt your testimony.

23 A Yes, I will.

24 MS. BENNETT: Thank you. I have no
25 questions for Mr. Kessel.

1 THE HEARING EXAMINER: Thank you.

2 Cross-examination?

3 MR. FELDEWERT: Certainly.

4 CROSS-EXAMINATION

5 BY MR. FELDEWERT:

6 Q Mr. Kessel, would you -- I'm looking at your
7 affidavit, and I believe I'm going to first go to page
8 184 of the 385-page PDF.

9 A Yes, I'm there.

10 Q And it would be your affidavit, paragraph
11 14-C. Are you there?

12 A Yes.

13 Q And you testify that "each quarter-quarter
14 section" -- that would be each 40-acre tract; right?

15 A Yes.

16 Q -- "in the proposed units" -- you're talking
17 about the cross-state units; right?

18 A Yes.

19 Q -- "will contribute more or less equally to
20 production"?

21 A Yes.

22 Q Okay. And then you make the same statement
23 in paragraph 22-C, with respect to the Wolfcamp?

24 A That's correct.

25 Q Okay. So the first paragraph 14 related to

Page 130

1 the Bone Spring units, and paragraph 22-C related to
2 the Wolfcamp units; right?

3 A Yes.

4 Q Okay. Why did you provide that opinion?
5 What's the purpose?

6 A The purpose is to show the contribution
7 along the lateral.

8 Q Why is that important?

9 A It's important to just -- to show that more
10 or less, that we expect equal contribution along the
11 lateral.

12 Q Along the lateral. Okay. And is that
13 because you don't want to adversely impact the
14 correlative rights of the parties that you were
15 pooling into your spacing unit?

16 A It's more from an opinion of a reservoir, a
17 subsurface opinion.

18 Q Okay. Why is that opinion important?

19 A Because it's --

20 MS. BENNETT: Objection, Mr. Hearing
21 Examiner. He's already answered that question.

22 THE HEARING EXAMINER: Mr. Feldewert?

23 MR. FELDEWERT: What was your answer?

24 THE HEARING EXAMINER: Mr. Feldewert?

25 MR. FELDEWERT: Well, I'm not sure he

1 answered it.

2 THE HEARING EXAMINER: Well, then we
3 have a court reporter who can find the answer to the
4 question. And what was the question that you were
5 objecting to?

6 MS. BENNETT: What's the importance
7 of -- or why did he include this language in his
8 affidavit?

9 THE HEARING EXAMINER: Okay. Let's
10 see.

11 (The reporter read the record as
12 requested.)

13 THE HEARING EXAMINER: Did you hear
14 that, Mr. Feldewert?

15 MR. FELDEWERT: Yes.

16 THE HEARING EXAMINER: Okay.

17 MR. FELDEWERT: Why is that important?

18 THE HEARING EXAMINER: So hold on,
19 don't answer the question yet. So I'm sustaining the
20 objection, so now please rephrase the question.

21 MR. FELDEWERT: Certainly.

22 BY MR. FELDEWERT:

23 Q Why is that important?

24 A It's important for us to show that we are
25 contacting the reservoir along the lateral, and that

1 we are intending on completing along that entirety of
2 the reservoir -- or of the lateral.

3 Q Are you aware that production is shared from
4 that well bore on a straight-acreage basis?

5 A I am aware.

6 Q Okay. And that's required by the pooling
7 statute?

8 A I am aware.

9 Q And are you aware that the pooling statute
10 requires the Division to ensure that the correlative
11 rights of the working interest owners being
12 affected --

13 A Yes, I am.

14 Q -- are not impacted by a development plan?

15 MS. BENNETT: Objection, Mr. Hearing
16 Examiner. That's a legal question, not a geology
17 question.

18 THE HEARING EXAMINER: Objection is
19 sustained. You don't have to answer that question.

20 Mr. Feldewert, please continue.

21 BY MR. FELDEWERT:

22 Q If a 40-acre tract is not meeting that
23 standard; okay? Is that a problem?

24 MS. BENNETT: Objection. Calls for
25 speculation. And there is no indication that there is

1 a 40-acre tract that is not meeting that standard.

2 THE HEARING EXAMINER: Mr. Feldewert,
3 is that based on the evidence, that question?

4 MR. FELDEWERT: It's based on his
5 opinion. It says, "will contribute more or less
6 equally."

7 THE HEARING EXAMINER: I'm going to
8 allow the question.

9 BY MR. FELDEWERT:

10 Q What happens if it doesn't?

11 A I'm not sure how we would know that,
12 from -- without significant expense in testing, to
13 understand what the contribution is. And I think even
14 at that point, it would be speculative and maybe a bit
15 unclear.

16 Q So does it concern you at all, with respect
17 to the rights of the owners in the proposed
18 cross-state unit --

19 A Was that the end of the question?

20 Q No, I'm trying to get the exhibit. Sorry
21 about that. Give me a minute. So owners in the
22 cross-state unit -- let's take those unleased mineral
23 interest owners down there in section one, which I
24 think is roughly where MRC owns its interest as well;
25 okay? They're going to have included in your proposed

1 spacing unit 40-acre tracts that are essentially going
2 to have two straws in the same reservoir; correct?

3 A That is incorrect.

4 Q Wasn't the satellite state wells going to
5 drain from the same reservoir in the north half of the
6 north half as the cross-state wells?

7 A The satellite wells will capture reserves
8 that the cross wells do not. Therefore, that's a net
9 benefit.

10 Q Aren't their completed intervals going to
11 overlap?

12 A Minimally.

13 Q How much -- what do you consider to be
14 "minimally"?

15 A On average, we're 600 feet from the north
16 line on our first take points.

17 Q Okay. How much of overlap is there going to
18 be in the completed interval between the cross-state
19 wells and the satellite wells in the north half of the
20 north half of section 36?

21 MS. BENNETT: Objection, Mr. Hearing
22 Examiner. This is a geology witness, not a drilling
23 or production engineer, and so I think this is outside
24 of the scope of his testimony.

25 THE HEARING EXAMINER: Mr. Feldewert?

1 MR. FELDEWERT: He offered his opinion
2 that they're going to contribute more or less equally.
3 It would seem that he would have to have knowledge of
4 this -- of their development plan, and what they
5 intend to do, to make -- offer that opinion.

6 THE HEARING EXAMINER: Ms. Bennett?

7 MS. BENNETT: Mr. Hearing Examiner,
8 Mr. Kessel's opinion is based on the geology, and
9 whether there are any geologic impediments that would
10 impair each quarter-quarter section from contributing
11 more or less equally. That's the focus of his study,
12 is to understand the geology in the area, and whether
13 each quarter-quarter section has the potential to be
14 productive.

15 THE HEARING EXAMINER: Mr. Feldewert,
16 I'm going to sustain the objection. Can you rephrase
17 your question to keep it within the scope of his
18 expertise?

19 MR. FELDEWERT: Well, my question is
20 whether he can answer the question of how much the
21 perforated intervals are going to overlap, and
22 therefore drain the same reservoir; okay? And the
23 answer to that question.

24 THE HEARING EXAMINER: Ms. Bennett?

25 MS. BENNETT: That is the question I

1 was objecting to, based on the fact that that's
2 outside of his expertise.

3 THE HEARING EXAMINER: So
4 Mr. Feldewert, there's no way for you to rephrase that
5 question to ask it based on his expertise?

6 MR. FELDEWERT: My understanding is
7 that he believes that, based on the geology in their
8 development plan, that the tracts are going to
9 contribute more or less equally. It's what he's
10 testified to. So if he's going to offer that opinion,
11 then he needs to understand what their proposed
12 drilling plan is going to be.

13 THE HEARING EXAMINER: Mr. Feldewert, I
14 understand Ms. Bennett's objection that his expert
15 opinion is based solely on the geology. And so he's
16 here as an expert in geology. So if your question
17 doesn't focus on the geology aspect of his opinion,
18 then it's improper.

19 MR. FELDEWERT: Okay.

20 BY MR. FELDEWERT:

21 Q Can you give me an example, Mr. Kessel, of
22 when a 40-acre tract would not contribute more or less
23 equally to the production from the well bore?

24 MS. BENNETT: Mr. Hearing Examiner,
25 that's beyond the scope of Mr. Kessel's direct, and so

1 I object.

2 THE HEARING EXAMINER: Well,
3 Ms. Bennett, he has been qualified as an expert in
4 this field. And I believe I'm going to give the same
5 latitude I gave to you, in that experts can -- and we
6 can look at the rule. Even though the rules of
7 evidence are not -- let me pull it up.

8 Even though the rules of evidence are
9 not in effect in the same way that they would be at a
10 criminal or civil trial, 11-702 I believe is the
11 expert -- here it is, yes. Okay. So what the rule
12 says is, "A witness who's qualified as an expert by
13 knowledge, skill, experience, training, and education,
14 may testify in the form of an opinion or otherwise, if
15 that expert's knowledge will help the trier of fact to
16 understand the evidence, or to determine a fact in
17 issue."

18 So Mr. Feldewert, how does that
19 question help the trier of fact -- not necessarily me,
20 but the Division, when they take this case under
21 advisement -- how does that question help the Division
22 understand the evidence, or determine a fact in issue?

23 MR. FELDEWERT: The Division will need
24 to, if it has enough information, examine their
25 proposed spacing unit and their development plan, and

1 ascertain whether it meets the standards of the
2 order -- of the pooling statute, which requires that
3 the proposed spacing unit and development plan does
4 not negatively impact correlative rights; okay? My
5 question to him is to provide an example of when a
6 40-acre tract would not meet the standard necessary
7 for pooling, since he offered an opinion that it does.

8 THE HEARING EXAMINER: And Ms. Bennett,
9 I'm looking at the rest of the expert opinion. This
10 is rule 11-703. "An expert may base an opinion on
11 facts or data in the case that the expert has been
12 made aware or personally observed. If experts in the
13 particular field would reasonably rely on those kinds
14 of facts or data in forming an opinion on the subject,
15 they need not be admissible for the opinion to be
16 admitted.

17 "But if the facts or data would
18 otherwise be inadmissible, the proponent of the
19 opinion may disclose them to the jury only if the
20 probative value" -- and it goes on. So hearing the
21 rule, do you still maintain your objection?

22 MS. BENNETT: I agree that Mr. Kessel
23 is -- if he understands the question, then he can
24 answer it, and I will withdraw the objection.

25 THE HEARING EXAMINER: Okay.

1 And Mr. Kessel, I'm just going to
2 advise you that, when you answer this question, it
3 must be based on your expertise.

4 THE WITNESS: Okay.

5 THE HEARING EXAMINER: So do you
6 understand the question?

7 THE WITNESS: Maybe like a rephrase, or
8 a --

9 THE HEARING EXAMINER: Yes. Would you
10 restate the question?

11 MR. FELDEWERT: Can you read it back?

12 THE HEARING EXAMINER: Sure.

13 Mr. Court Reporter, can you read the
14 question that Mr. Feldewert asked about three or four
15 minutes ago, before there was an objection?

16 (The reporter read the record as
17 requested.)

18 THE WITNESS: Yes. If -- there are
19 some issues that we could have done whole, like if a
20 stage was screened down in completion, because of the
21 geologic factors. Sometimes that does happen, where
22 you have to skip stages. So --

23 BY MR. FELDEWERT:

24 Q Let me stop you there, on that first
25 example. So then you'd have less perforations in that

1 40-acre tract than in others?

2 A You would have a less effective frack.

3 Q Less effective frack. Okay, go ahead.

4 A There could be other mechanical issues down
5 a hole, where you have to skip a stage.

6 Q Skip a frack stage?

7 A Correct.

8 Q That means that we'd have less perforations?

9 A Correct.

10 Q In a 40-acre tract versus other tracts?

11 A It just would be a stage-by-stage basis.

12 Q Okay. But in your example, you would have,
13 for example, a particular 40-acre tract, you may have
14 a problem with your perforations such that that
15 40-acre tract is not perforated similar to the 40-acre
16 tracts?

17 A That could happen.

18 Q Okay. And that would be an example where it
19 wouldn't contribute more or less equally?

20 A That could -- that could be a factor.

21 Q Okay. What else?

22 A There could also be subsurface structures,
23 like faults, fractures, that make the frack less
24 effective.

25 Q And again, then, that frack would not

1 contribute proportionately to the production from the
2 well?

3 A It might not.

4 Q Okay. Any others?

5 A That's all I can think of for now.

6 MR. FELDEWERT: Okay. That's all the
7 questions I have. Thank you.

8 THE HEARING EXAMINER: Okay.

9 Mr. Garcia, do you have any
10 cross-examination for this witness?

11 MR. GARCIA: Mr. Kessel, are you
12 comfortable talking about frack design and
13 characteristics? Or is that another witness?

14 THE WITNESS: It's -- it's not my
15 expertise, but I could attempt to answer the question.

16 MR. GARCIA: Ms. Bennett, do you have a
17 witness that's comfortable with frack design and
18 characteristics?

19 MS. BENNETT: Yes.

20 MR. GARCIA: Okay. I will --

21 MS. BENNETT: To the extent --

22 MR. GARCIA: They're very minimal
23 questions, so I'll reserve my questions for, I
24 believe, your reservoir engineer.

25 MS. BENNETT: Thank you.

1 THE HEARING EXAMINER: Thank you,
2 Mr. Garcia.

3 Ms. Bennett, would you identify the
4 witness that Mr. Garcia was asking about?

5 MS. BENNETT: Yes. That would be
6 Mr. McCoy.

7 THE HEARING EXAMINER: McCoy? Okay, so
8 John, that's Mr. McCoy.

9 MR. GARCIA: Thank you.

10 THE HEARING EXAMINER: Will he be last?

11 MS. BENNETT: He will be.

12 THE HEARING EXAMINER: He'll be last.

13 Ms. Bennett, any redirect based on the
14 cross-examination that Mr. Feldewert asked?

15 MS. BENNETT: Yes.

16 THE HEARING EXAMINER: Go ahead.

17 REDIRECT EXAMINATION

18 BY MS. BENNETT:

19 Q Mr. Feldewert asked you about the unleased
20 mineral interest owners in section one. Do you recall
21 that?

22 A Yes.

23 Q Do you know if MRC Permian owns any interest
24 in section one? I'm sorry -- in section 36?

25 A I don't believe they do.

1 Q Will Franklin Mountain Energy's plan have
2 any impact on the owners in section one, in terms of
3 accessing the reserves in section one?

4 A No. Our plan is more complete, where we
5 access reserves that would have been left behind in a
6 traditional non-overlapping spacing unit.

7 Q So what you're saying, then, if I understand
8 your response, is that you're accessing additional
9 reserves in 36 that could not otherwise be accessed?

10 A Yes.

11 Q Is that a detriment to section one owners?

12 A No.

13 Q Are the owners in section one -- well, I
14 don't think this is within your expertise, so I won't
15 ask that question. Are you familiar with the
16 Division's proximity tract rule?

17 A Vaguely.

18 Q What's your understanding of the proximity
19 tract rule?

20 A Um --

21 Q Actually, that's okay. I appreciate you --

22 A Sorry.

23 Q Yeah, that's fine. I sort of threw you a
24 curveball there.

25 THE HEARING EXAMINER: Are you

1 withdrawing the question?

2 MS. BENNETT: I'm withdrawing the
3 question.

4 I think those are all the questions I
5 have for you, Mr. Kessel. Thank you for your time.

6 THE HEARING EXAMINER: May this witness
7 be excused?

8 MS. BENNETT: Subject to recall.

9 THE HEARING EXAMINER: We'll do that
10 for all of your witnesses, subject to recall.

11 MS. BENNETT: Thank you.

12 THE HEARING EXAMINER: Okay. It is now
13 noon. I'd like to take a lunch break, but keep it
14 brief, because I don't know how this is going to go,
15 and I'd like to wrap this up in one day.
16 Mr. Feldewert, how long do you want for lunch?

17 MR. FELDEWERT: Well, we all have to go
18 out to get our lunch -- yeah. So an hour?

19 THE HEARING EXAMINER: Okay. Well, we
20 may be here after 5 o'clock today, but okay. We'll be
21 off the record from 12 to 1, and we will come back
22 then. Thank you.

23 (Off the record.)

24 THE HEARING EXAMINER: It's 1 o'clock
25 on February 8. We are continuing this special

1 hearing.

2 And Ms. Bennett, do you have your next
3 witness?

4 MS. BENNETT: I do. Thank you,
5 Mr. Hearing Examiner. At this time, I'd like to call
6 Cory McCoy.

7 THE HEARING EXAMINER: Now, he was
8 going to be your last witness.

9 MS. BENNETT: That's correct.

10 THE HEARING EXAMINER: Are we
11 switching? Okay.

12 You're going to be sworn in, Mr. McCoy.

13 MR. MCCOY: Okay.

14 WHEREUPON,

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

19 THE HEARING EXAMINER: Thank you, sir.

20 MS. BENNETT: Thank you.

21 THE HEARING EXAMINER: Ms. Bennett?

22 DIRECT EXAMINATION

23 BY MS. BENNETT:

24 Q Mr. McCoy, please state your name for the
25 record.

1 A Cory McCoy.

2 Q Thank you. And for whom do you work?

3 A Franklin Mountain.

4 Q In what capacity?

5 A As a production engineer and reservoir
6 engineer.

7 Q And earlier today, we went through your
8 resume, which was attached to your affidavit as
9 Exhibit D-1. Is that a true and accurate copy of your
10 resume?

11 A Correct.

12 Q And you were accepted as an expert in
13 petroleum and reservoir engineering matters. Are you
14 familiar with the applications FME 3 filed in these
15 cases?

16 A Yes.

17 Q Did you prepare an affidavit in these cases?

18 A I did.

19 Q Did you prepare exhibits?

20 A I did.

21 Q Have you had a chance to review your
22 affidavit?

23 A Yes.

24 Q And in reviewing your affidavit, was there a
25 change that you wanted to make to your affidavit?

1 A Yes. In paragraph four, change "Delaware"
2 to "Permian."

3 Q Okay. I will go ahead and get this up on
4 the screen. Here in paragraph four, where it says
5 "Delaware," you wanted to change that to --

6 A Permian.

7 Q Okay. And why is that?

8 A Because I've worked in the Midland basin as
9 well, in Texas.

10 Q Okay. And with that change, do you adopt
11 your affidavit and your exhibits as your testimony?

12 A I do.

13 Q Your testimony had three primary takeaways
14 that you were going to discuss today, prior to MRC's
15 withdrawal of its applications; right?

16 A Correct.

17 Q And so of the three takeaways, takeaway
18 number -- the first bullet is the one that is
19 presently before the Division; is that your
20 understanding?

21 A Yes.

22 Q Okay. And if you wouldn't mind giving the
23 Division some additional background on the -- it's
24 paragraphs 11 and 12 in your affidavit, which I have
25 highlighted here, where you discuss the benefits and

1 the co-development between the satellite and cross
2 units. Will you provide a bit more color on that, if
3 you will?

4 A Yeah. So being able to codevelop and use
5 one corridor, we're able to develop our plan -- 16
6 cross, 16 satellite, so a total of 32 wells, all
7 coming to a central tank battery. As mentioned
8 previously, we're already pushing dirt on the
9 satellite, so those costs are already being -- dollars
10 already being spent.

11 So the cross-unit at the end of the whole
12 project will obviously be reallocated to everything.
13 But because it's over 32 wells, RFEs are going to be
14 cheaper, rather than two independent projects.

15 Q Thank you. And how about the actual
16 overlap? In your affidavit, you talked about how
17 codeveloping these units will allow oil and gas
18 reserves located in the north half of section 36 to be
19 accessed that wouldn't otherwise be accessed. Can you
20 explain a little bit more about that to the examiners?

21 A Yeah. So being able to -- to overlap
22 and -- and codevelop essentially is you're just
23 extending your completed lateral footage. And -- and
24 this reservoir where we're looking at be out per foot.
25 So like every foot counts in that -- in that well.

1 So if we're able to get an additional 500
2 feet, that's two more frack stages, times -- you know,
3 just easy math. A hundred, you know, a foot -- I
4 mean, that's substantial dollars. So that overlap is
5 impactful as regarding a recovery of resources.

6 Whereas the two independent heel-to-heel
7 curves as we've discussed in the previous testimony
8 here shows that there's a delta of about 500 feet. So
9 we've -- we've ran math with our drill engineers and
10 well planners.

11 If you want to build on ten degrees per
12 hundred, and that -- that horizontal section from the
13 section line to basically the -- the cartoon first
14 take point, there's going to be 500 feet. And ten
15 degrees per hundred is industry standard.

16 What we're doing here in the -- in the
17 overlap is we're just moving that same curve, but
18 we're -- we're putting them back-to-back, so we're
19 able to -- to access that resource that would not be
20 caught in the two independent heel-to-heel contact.

21 Q Thank you. And so I think you were talking
22 about this as the cartoon, the first cartoon you were
23 talking about; right?

24 A Correct.

25 Q By this, I mean the standard spacing unit

1 heel-to-heel diagram.

2 A Yep.

3 Q And so when you said -- and I'm definitely
4 not going to remember what you said. Ten feet per
5 500, or something like that? Ten degrees per 500?

6 A Yeah. Ten degrees per -- per hundred.

7 Q Per hundred?

8 A Yeah. Which is -- we call that a build
9 rate. And that's -- basically, if you want to think
10 about a train, and how a train turns, you can't -- a
11 train can't turn at 90 degrees. It's got a lot -- a
12 lot of momentum behind it.

13 Similar with drill pipe and drilling, it
14 takes time to bend, and -- and turn those tracks,
15 and -- and have a train turn. So a similar kind of
16 analogy here, is that you're -- you're just
17 giving -- you're giving up footage, as the -- with the
18 heel-to-heel interaction there.

19 Q And so looking at the standard unit
20 heel-to-heel, what you're saying is that from the
21 top -- the blue line essentially represents the build
22 curve; is that what you're saying?

23 A Correct.

24 Q And that build curve is 10 degrees per
25 hundred feet?

1 A Yep.

2 Q And that's what limits the ability to get a
3 first take point at 100 feet; is that what you're
4 saying?

5 A Yes. We've ran math on hypotheticals, if
6 you want to go into that of what it takes as well.

7 Q That's okay. The next cartoon, though, the
8 overlapping spacing unit heel-to-heel. What you're
9 showing there is the same -- a similar build curve,
10 but that you're able to condense the distance between
11 the two take points? Is that accurate?

12 A Yeah. So the -- this visual shows a
13 back-build, so we're able to -- to back
14 behind -- build behind the section line and come in at
15 a -- at a flatter angle, rather than sitting at the
16 top of the section line, and drilling down and then
17 trying to turn. So we're -- we're just taking a -- a
18 larger angle of -- of approach to -- to hit
19 the -- that landing point.

20 Q What is your overall assessment of the
21 overlapping or co-development, in terms of reserves?
22 Is it your opinion -- what is your opinion about FME
23 3's ability to access reserves?

24 A I mean, I think it -- it's -- I mean, this
25 definitely overlapping plan is far more superior than

1 probably the -- than the heel-to-heel in other basins.
2 They've -- they've identified this as -- as kind of an
3 off-lease pot, where you can drill off-lease and come
4 in at a wider -- wider angle and -- and hit that first
5 take point, to maximize lateral angle. So I mean, the
6 cross-sections here in -- in the state of New Mexico,
7 there's -- there's probably significant resources not
8 getting developed in a heel-to-heel interaction.

9 Q One of the other items that you testified to
10 in your affidavit was that you would reduce costs
11 while maximizing reserves. Can you explain a little
12 bit more about how it reduces costs?

13 A Yeah. A lot of it is from the -- from the
14 surface, so we're able to commingle. We're able -- we
15 don't have to drill, or don't have to move dirt on
16 multiple paths. So a smaller surface disruption
17 there.

18 We're bringing in one takeaway, one
19 pipeline, one waterline, around multiple coming in on
20 the pipeline corridor. So those are really the
21 dividends that we see commingling those two -- not
22 commingling. Codeveloping those two units.

23 Q You were here earlier today, when
24 Mr. Feldewert was asking Mr. Zink and Mr. Kessel about
25 the distance between the two take points on this

1 slide -- were you here then?

2 A Correct.

3 Q And this slide is illustrative only; right?
4 It's not -- this doesn't reflect your actual
5 development plan?

6 A Correct.

7 Q But in analyzing this option of codeveloping
8 these four sections, what do you think the overlap, or
9 the -- yeah, the overlap, I guess, for lack of a
10 better word, would be there? Between the first two
11 take points, or the overlap in their completed
12 laterals?

13 A Yeah, so there -- there would be some
14 overlap. It's probably going to be 90 to 100 feet,
15 but there's multiple ways to -- that we can mitigate
16 that, whether it be from the -- when we do our
17 completions, we can -- we can stage our first -- first
18 perforations. So there -- we can minimize overlap.

19 We've also -- so -- so that's one way to
20 mitigate overlap. But yeah, well bores will be -- be
21 overlapped. Whether they're going to be perfed and
22 producing in that zone is a different story, and we'll
23 have to get with our completions and drilling team,
24 and get as-drill, and see how -- how that plays out.

25 Q One thing you mentioned just a minute ago

1 that really resonated with me is that you'll
2 be -- "you," Franklin Mountain Energy, will be able to
3 control this development plan, and so you'll be able
4 to monitor the staging the perforations. Did I
5 understand that correctly?

6 A Yeah. Correct.

7 MS. BENNETT: That's all I have for the
8 moment. Thank you.

9 THE HEARING EXAMINER: Mr. Feldewert?

10 MR. FELDEWERT: I'm going to go to your
11 Exhibit B-8, Mr. McCoy.

12 THE HEARING EXAMINER: What page
13 number?

14 MR. FELDEWERT: That's what I'm trying
15 to get to. Looks like 32 of the 385 PDF.

16 CROSS-EXAMINATION

17 BY MR. FELDEWERT:

18 Q Okay. Got it up on screen. Are you there,
19 Mr. McCoy?

20 A I found it.

21 Q Okay. So now, what you show here, in terms
22 of your overlap, would you agree with me that your
23 back-build, and what you need to do, and where you can
24 first perf based on the back-build, starts with where
25 you put your well pad?

1 A That is part of it.

2 Q Okay. So for example, if your well pad
3 wasn't on, as you depict here in the north half of the
4 north half of section 36, but was either on the
5 acreage to the north of that or in the south half of
6 36, then that would impact your ability to back-build
7 and reach a 100-foot setback take point; right?

8 A Pulling up the map here. Sorry. I'm a
9 visual guy.

10 Q Sure.

11 A So again, section one -- 36 here. So your
12 question?

13 Q So I mean, your diagram here is based on
14 surface hole location in the north half of the north
15 half; right?

16 A Yes.

17 Q Okay. If you didn't have a surface hole
18 location there, and you did need to build -- let's say
19 a surface hole was over to -- in section to the north;
20 right? Then you would have the ability to drill down
21 into the north half of the north half and reach the
22 100-foot take point and perf there?

23 A We'd be off-lease, but as established
24 earlier in Lee's testimony, there are, I guess,
25 regulatory -- there's paperwork that can be approved.

1 Q Additional paperwork that could be approved,
2 but you have to do additional paperwork?

3 A But we would be also off-lease again,
4 currently.

5 Q All right. Another option is that you could
6 be on the south half of the north half, I guess
7 on-lease somewhere, and then you could back-build and
8 perhaps reach the 100-foot take point; right?

9 A I don't agree with that one.

10 Q How close could you get?

11 A As -- as we ran numbers with our directional
12 planners, if we have -- if Rix Kelly [ph] is right on
13 the section line, and we drill straight down, it
14 is -- it's going to take around 56 degrees per hundred
15 to lay in the curve at 90 degrees at 100 feet for the
16 first take point. Current technology, additional
17 operational risk, it's not possible.

18 Q But when I look at what you filed,
19 cross-state spacing unit, you see that? There's your
20 surface hole location in unit E; right? That'll be
21 the south half of the north half of section 36?

22 MS. BENNETT: Can you --

23 MR. FELDEWERT: On the screen?

24 THE WITNESS: Yeah, I'm looking. South
25 half of the --

1 MS. BENNETT: Mr. Examiner, may I ask
2 Mr. Feldewert to scroll down just a little bit, so we
3 can see which well this is, and which -- what we're
4 looking at here?

5 MR. FELDEWERT: So this is the C-102
6 that your company filed. Forget the operator
7 certification; we've already talked about that.
8 Here's the 701-H for the Wolfcamp.

9 MS. BENNETT: Mr. Examiner, I object to
10 the characterization about the Wolfcamp. And as
11 Mr. Zink testified earlier, Franklin Mountain Energy
12 does have an interest in every tract in the Wolfcamp.

13 THE HEARING EXAMINER: So what is your
14 objection?

15 MS. BENNETT: I object to his
16 characterization of "forget the C-102, forget the
17 certification, we've already talked about that."
18 That's a mischaracterization.

19 THE HEARING EXAMINER: Mr. Feldewert?

20 MR. FELDEWERT: That's fine. I was
21 forgetting it -- my question.

22 BY MR. FELDEWERT:

23 Q This is the C-102 that your company filed
24 for the 701 -- cross-state 701-H; right?

25 A Yes.

1 Q Okay. And it was filed in November of '23,
2 and then approved by the Division in December of '23;
3 right?

4 A Correct.

5 Q And on here, you show that your surface hole
6 location is going to be unit E of 36 -- would be the
7 south half of the north half; right?

8 A Correct.

9 Q And then according -- it doesn't show where
10 the first take point is going to be, but this is where
11 you indicated your surface hole location is going to
12 be. Is that changed now?

13 A I'm not sure.

14 Q You know that every foot counts; right?

15 A Absolutely.

16 Q Okay. And your -- give me a minute. And
17 according to your plan, the cross-state unit is only
18 going to have about -- what, 600 feet of perforated
19 interval in the north half of the north half?

20 A Yes.

21 Q That's it? Okay. And the remaining tracks,
22 for the most part, are going to have --

23 A Six hundred feet.

24 Q I'm sorry?

25 A On the north.

1 Q Six hundred feet on the north?

2 A Yeah.

3 Q Okay. So that 40-acre tract, those tracts
4 are on the north half of the north half, only have
5 about 600 feet of perforated interval for the
6 cross-state?

7 A Yes.

8 Q Okay. The remaining tracts in the
9 cross-state unit are going to have -- what, almost
10 twice that?

11 A The remaining -- as in --

12 Q The remaining tracts in the cross-state
13 units will have twice the perforations as you planned
14 for the north half of the north half.

15 A Not sure I understand your question.

16 Q The perforated lateral is removed to the
17 south half of the north half, and then the north
18 half -- or the south half of section one, and the
19 south half of the south half of section one. The
20 perforated intervals for those 40-acre tracts will be
21 twice what it is for each tract in the north half,
22 north half; right?

23 A Not necessarily.

24 Q You're not planning on perfing those tracts?

25 A We will perforate the overlap. Once -- once

1 the wells are drilled, we'll -- we'll have the -- the
2 perforation from 600 feet to the north half, north
3 half.

4 Q Okay. So let's go to the -- maybe it's
5 easier showing on this plot that you actually filed
6 with the Division. So the --

7 MS. BENNETT: Mr. Examiner, if he could
8 slide the slide down, so we could see which plot he's
9 talking about?

10 MR. FELDEWERT: I'm sorry.

11 THE HEARING EXAMINER: Is it possible
12 to zoom out a little bit --

13 MR. FELDEWERT: Yeah, I could. I
14 could. All right.

15 THE HEARING EXAMINER: -- so that we
16 could see more of the exhibit?

17 MR. FELDEWERT: Sure.

18 THE HEARING EXAMINER: That's helpful.

19 MR. FELDEWERT: Can we still see it?

20 THE HEARING EXAMINER: I can.

21 BY MR. FELDEWERT:

22 Q So this -- for the record, this is for what
23 you filed for the -- in November, for the cross-state
24 701-H. Is that correct?

25 A Yes.

1 Q Okay. All right. And if I'm understanding
2 you correctly, your development plan now is to
3 perforate -- let's just take the west half of the west
4 half. Perforate -- starting perforation about halfway
5 through the north half of the north half?

6 A Yes.

7 Q And then your perforations would continue
8 south, along the well bore?

9 A Yes.

10 Q Okay. And so when we get to that -- south
11 half of the north half unit, that would have -- what,
12 twice as many perforated lateral? 600 to roughly 1200
13 feet?

14 A Yes, by that math.

15 Q Okay. Same thing for the remaining tracts?

16 A Yep.

17 Q Okay. And as you pointed out, every foot
18 counts. And you calculated about 100 barrels of oil
19 per foot?

20 A Yeah, for simple math.

21 Q Okay, simple math. Let's just keep it
22 simple. So that means that the tract here in the
23 north half of the north half, since it's only going to
24 have half the perfs, it's only going to produce about
25 half of the expected production from the remaining

1 five tracts?

2 A I would argue that it's -- we're gaining
3 perfs compared to -- by doing the back -- back-build
4 than the typical heel-to-heel.

5 Q But taking into account where you put your
6 surface hole location. But my point is -- okay?
7 Let's keep it simple. If each of these tracts produce
8 ten barrels of oil; okay? And you only have half of
9 the perfs in the north half of the north half as
10 exhibit tracts, it would only produce, simple math,
11 about five barrels of oil.

12 A Yeah, that would be the proportionate share.
13 Yep.

14 Q And then all these -- well, these mineral
15 and interest owners would share in the production from
16 that well bore on a straight-acreage basis; right?

17 A Correct.

18 Q So they would be forced to share all these
19 working interest owners down here in the remainder of
20 36 and section one would be forced to share their
21 production in the well bore, as if the north half of
22 the north half was producing ten barrels of oil
23 instead of five; right?

24 MS. BENNETT: Mr. Examiner --

25 THE WITNESS: Correct, but --

1 MS. BENNETT: I object to this
2 question. I don't understand -- I don't think that
3 this is within -- the idea of sharing, and how it's
4 going to impact the owners in section one, I don't
5 know that's within Mr. McCoy's expertise.

6 MR. FELDEWERT: I was going to say,
7 because he's a drilling engineer, and he offered his
8 opinion on correlative rights.

9 THE HEARING EXAMINER: Ms. Bennett?

10 MS. BENNETT: If Mr. McCoy understands
11 the question, then I'll waive my objection.

12 MR. FELDEWERT: He already answered the
13 question. He said "correct."

14 MS. BENNETT: I don't believe he
15 answered the question.

16 MR. FELDEWERT: Ask the court reporter.
17 (The reporter read the record as
18 requested.)

19 MR. FELDEWERT: All right. That's all
20 the questions I have. Thank you.

21 THE HEARING EXAMINER: Do you have any
22 redirect?

23 MS. BENNETT: I do, yes.

24 THE HEARING EXAMINER: Please.

25 MS. BENNETT: Would you like me to do

1 my redirect before Mr. Garcia asks his questions,
2 or --

3 THE HEARING EXAMINER: Mr. Garcia, do
4 you have any questions for this witness?

5 MR. GARCIA: Just a few.

6 THE HEARING EXAMINER: Please, go
7 ahead.

8 CROSS-EXAMINATION

9 BY MR. GARCIA:

10 Q Afternoon, Mr. McCoy. Did I say that
11 correctly?

12 A Yes.

13 Q Quick few questions about fracking. For
14 these two wells, the satellite and the cross-spacing
15 in the well bores, how far apart are your frack and
16 perf clusters?

17 A Between -- between stages or between wells?

18 Q Between stages. Sorry about that.

19 A Our stages are 220 feet.

20 Q Okay. And I guess with these being slight
21 overlap between the satellite wells, is that 220 feet
22 going to kind of be near between first take point,
23 first take point?

24 A Yeah. The stages will be adjusted as -- as
25 the as-drills come in.

1 Q Okay. And are you guys planning
2 on -- losing my word of thought here, but
3 stack-fracking these; therefore, you're not doing both
4 last frack stages at the same time as each other. Are
5 you guys expecting any frack kits from each other?

6 A We will codevelop these if we have the
7 opportunity, all 16 at a time -- 16 together, eight at
8 a time, sorry.

9 Q Okay. Yeah, because like when I used to
10 frack, you know, you start one well ahead of the
11 other, so their zones get farther apart while you're
12 fracking. Because you're codeveloping, no worries
13 about parent and child effects with these wells at
14 all, with the 16 cross and the 16 satellite?

15 A No. This is all virgin reservoir, so
16 there's not a parent that's been depleted in the
17 section in that -- that we are targeting.

18 Q Okay. And then I know you are going to
19 wine-rack your crossbow wells. Are you also
20 wine-racking your satellite, and if so, are they
21 offset wine racks with each other?

22 A Yeah, so we'll -- those developments are
23 wine-racked, and they'll be back-to-back, so it'll be
24 almost a continuous four-mile reservoir.

25 Q It'll be a slight horizontal deviation, so

1 you guys don't have collision?

2 A Yes. Correct.

3 Q Okay. I guess how much buffer zone do you
4 guys -- looking out for that slight horizontal
5 deviation?

6 A Check with our drilling on AC, but usually
7 it's probably 30 -- 30 feet of uncertainty. So
8 we'll -- we'll stagger them as -- as far as we can,
9 but -- and definitely have it be on point when we
10 start drilling with the AC.

11 Q Yeah, but once all drilled and done and
12 fracked, essentially these will be almost in line, as
13 close as you can get with modern-day technology?

14 A Can you repeat the question?

15 Q Once it's all drilled and completed,
16 basically the crossbow and the satellite wells will
17 essentially be in line with each other, as far as you
18 can get with modern-day technology?

19 A Yeah.

20 MR. GARCIA: I think that's all my
21 questions.

22 THE HEARING EXAMINER: Thank you,
23 Mr. Garcia.

24 Ms. Bennett?

25 MS. BENNETT: Thank you. I do have a

1 few redirect questions. And if I could use the
2 screen, that would be awesome.

3 MR. FELDEWERT: Oh, yeah. Sorry.

4 REDIRECT EXAMINATION

5 BY MS. BENNETT:

6 Q I'm going to turn back to page 32 of the
7 materials, which is the overview of the -- the
8 illustration of the standard versus overlapping
9 spacing unit.

10 A Okay.

11 Q And so Mr. Feldewert asked you about the 600
12 feet of perforated lateral length in the north half,
13 north half. Do you remember that?

14 A I do.

15 Q And if we're looking at this standard
16 spacing unit heel-to-toe, what's the approximate
17 distance between the section line and the first take
18 point?

19 A Built on -- if the curve is built on tens,
20 it's around 600 feet.

21 Q And so does that mean that, even with the
22 standard spacing unit, there would be about 600 feet
23 of lost reserves?

24 A Correct.

25 Q Does your overlapping spacing unit

1 heel-to-heel reduce that distance between the section
2 line and the first take point?

3 A Between the section line and first take
4 point?

5 Q Let me start again. I'm sorry. I withdraw
6 that question. So you're looking at the standard
7 spacing unit. There's about 600 feet between the
8 section line and the first take point?

9 A Correct.

10 Q And then in the overlapping spacing unit,
11 though, your first take points are much closer
12 together?

13 A Yes.

14 Q So when you're proposing the overlapping
15 spacing unit, are you able to get closer -- the first
16 take points closer to each other than in the standard
17 heel-to-heel unit?

18 A Yes. It's about half.

19 Q And so are you able to access more reserves
20 that way?

21 A Yes.

22 MS. BENNETT: Those are the only
23 questions I have -- redirect. Thank you.

24 THE WITNESS: Thank you.

25 THE HEARING EXAMINER: Any cross based

1 on that?

2 MR. FELDEWERT: Sure. Yes. If I may
3 share?

4 RECROSS-EXAMINATION

5 BY MR. FELDEWERT:

6 Q Mr. McCoy, first off, again, your surface
7 hole location dictates what you can do in terms of
8 getting that first take point; right? You start with
9 a surface hole location, and you go from there; right?

10 A Yes, that's part of the equation.

11 Q Okay. All right. And in putting together
12 this exhibit package, you all attempted to represent
13 what your actual drilling plan is; correct?

14 MS. BENNETT: Mr. Hearing Examiner, if
15 I could ask Mr. Feldewert to zoom out, to see if this
16 is part of our hearing packet or not?

17 MR. FELDEWERT: Let me ask the
18 question.

19 You attempted to represent what your
20 drilling plan is; right? In this hearing packet -- in
21 your hearing packet?

22 MS. BENNETT: Mr. Examiner, I'm still
23 not sure if this is the C-102 from our hearing packet
24 yet.

25 MR. FELDEWERT: We'll get to that.

Page 170

1 THE HEARING EXAMINER: I feel like you
2 should zoom out and then zoom back in if you want to
3 be zoomed in. I think she has a valid question, so
4 yes, zoom out.

5 MR. FELDEWERT: Okay. This is your
6 hearing packet, and I don't want to lose my page.

7 THE HEARING EXAMINER: Thank you.

8 BY MR. FELDEWERT:

9 Q So we can see this is your hearing packet;
10 right?

11 A Correct.

12 Q Okay. And did you attempt to accurately
13 demonstrate and provide the Division information on
14 what your drilling plan is in this hearing packet?

15 A That is the intent.

16 Q Okay. Then when I looked at this page 59
17 out of 385, it states your first take point is going
18 to be 100 feet from the north line; right?

19 A That is correct. It's what it says.

20 Q Okay. Which means from that surface hole
21 location, at least somebody was contemplating that you
22 would be able to drill back and be 100 feet off the
23 north line. That's what you represented to the
24 Division? The company did. I shouldn't say "you";
25 the company did.

1 A Yeah, I'm thinking here.

2 Q Okay. And somebody signed that in November
3 of 2023, and then you all put this in your hearing
4 packet; right?

5 A Yes, it is in here.

6 MR. FELDEWERT: Okay. That's all the
7 questions I have.

8 THE HEARING EXAMINER: Mr. Garcia, do
9 you have any questions based on the cross-examination?

10 MR. GARCIA: No further questions.

11 THE HEARING EXAMINER: Ms. Bennett, is
12 there any redirect on that specific question?

13 MS. BENNETT: I'm sorry,
14 Mr. Examiner --

15 THE HEARING EXAMINER: The question is,
16 do you have any redirect based on Mr. Feldewert's
17 single cross-examination question?

18 MS. BENNETT: If I may confer with my
19 co-counsel, just for a moment?

20 THE HEARING EXAMINER: Sure. You might
21 want to turn your mic off.

22 MS. BENNETT: No further questions.
23 Thank you.

24 THE HEARING EXAMINER: Very good. May
25 this witness be excused?

1 MS. BENNETT: Subject to recall.

2 THE HEARING EXAMINER: Yes, they're all
3 the same.

4 MS. BENNETT: Thank you.

5 THE HEARING EXAMINER: Would you call
6 your next witness?

7 MS. BENNETT: Mr. McCoy was our final
8 witness.

9 THE HEARING EXAMINER: Okay. All
10 right. So do you rest your case-in-chief?

11 MS. BENNETT: Yes, we do.

12 THE HEARING EXAMINER: Very good.

13 Mr. Feldewert, do you have a case?

14 MR. FELDEWERT: Of course I have a
15 case. You mean, do I have a witness?

16 THE HEARING EXAMINER: I know you have
17 a witness.

18 MR. FELDEWERT: I do have a witness.

19 THE HEARING EXAMINER: Okay. Let's get
20 your witness sworn in.

21 MR. FELDEWERT: Sure. We'll call
22 Mr. Tanner Schulz, who is, I believe, on the line.

23 THE HEARING EXAMINER: Can we make him
24 bigger? Perfect. We're going to swear you in, sir.

25 //

1 WHEREUPON,

2 TANNER SCHULZ,

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

6 THE HEARING EXAMINER: Mr. Feldewert,
7 do you want to deal with your exhibits now?

8 MR. FELDEWERT: Sure. Yes. I would
9 move the admission of -- well, do you want me to have
10 him --

11 DIRECT EXAMINATION

12 BY MR. FELDEWERT:

13 Q Mr. Schulz, did you submit a self-affirmed
14 statement in this case?

15 A Yes, sir. I did.

16 Q And was it marked in the hearing package
17 filed by MRC Permian as Exhibit C?

18 A Yes, I believe so.

19 Q And then it also had two additional exhibits
20 with it, C-1 and C-2?

21 A That's correct.

22 Q Okay. And do you adopt that statement as
23 your testimony here today?

24 A I do.

25 MR. FELDEWERT: Okay. I move the

Page 174

1 admission of MRC Exhibits C, C-1, and C-2.

2 THE HEARING EXAMINER: Okay. First of
3 all, I'd like to see them. And I'm looking at a
4 document with 119 pages. Is that the correct
5 document?

6 MR. FELDEWERT: Yes, sir.

7 THE HEARING EXAMINER: Okay, good.
8 What page is this Exhibit C-1?

9 MR. FELDEWERT: Ninety-two.

10 THE HEARING EXAMINER: Let me get
11 there.

12 MR. FELDEWERT: Sure.

13 THE HEARING EXAMINER: Has this witness
14 been qualified before as an expert?

15 MR. FELDEWERT: He has not. His
16 credentials are laid out in paragraph number two. So
17 after giving you an opportunity to read it, I'll move
18 to --

19 THE HEARING EXAMINER: You don't need
20 to; I'm looking at it on my computer.

21 MR. FELDEWERT: Okay.

22 THE HEARING EXAMINER: So would that be
23 page 96? No. What page number is it?

24 MR. FELDEWERT: Should be page 92.

25 THE HEARING EXAMINER: Okay. I'm on

1 page 92, but didn't you just say that you have a CV
2 for him?

3 MR. FELDEWERT: No, his credentials are
4 in paragraph two.

5 THE HEARING EXAMINER: Thank you. I
6 see. So there's no CV; it's all in paragraph two?

7 MR. FELDEWERT: Yes, sir.

8 THE HEARING EXAMINER: Okay. In what
9 field are you seeking to admit him as an expert?

10 MR. FELDEWERT: Expert witness in
11 drilling and engineering.

12 THE HEARING EXAMINER: Ms. Bennett,
13 have you had a chance to review this?

14 MR. DEBRINE: Mr. Examiner, I'm the one
15 cross-examining this witness.

16 THE HEARING EXAMINER: Wonderful.
17 Mr. DeWine?

18 MR. DEBRINE: DeBrine.

19 THE HEARING EXAMINER: DeBrine. Have
20 you had an opportunity to review the credentials?

21 MR. DEBRINE: I have, but I have an
22 objection to this witness offering any opinions with
23 regard to petroleum engineering matters, because his
24 affidavit reflects that he did not undertake any study
25 with regard to the reservoir to excavate reserves.

1 All he did was look at two applications that are
2 attached to his affidavit.

3 He can offer opinions with regard to
4 those documents, but I think any other opinions would
5 be improper, particularly given the posture of this
6 case, where we were basically blindsided with regard
7 to this contention about impairment of correlative
8 rights. We were coming to this hearing expecting
9 competing applications for development plans with our
10 wells going in one direction, there is another, and
11 then they completely abandoned it.

12 And now it's unclear what their
13 intentions are. They filed notice of dismissals
14 without consulting any parties. The Division has not
15 granted those dismissals, so we're sort of in a limbo
16 of procedural posture.

17 They indicated they had thrown the
18 white flag with regard to working interest control.
19 They cannot establish that they should be named an
20 operator for these tracts, but the concern that this
21 is just a ruse to further delay -- given the history
22 of delay tactics that have been perpetrated since the
23 applications were filed, that they're going to come
24 back and file new applications.

25 And we believe that the Division has

1 the authority, similar to under rule 41 of the Rules
2 of Civil Procedure, that the dismissal of adverse
3 applications should be with prejudice, so they cannot
4 file new applications with respect to the acreage
5 that's at issue in these cases.

6 THE HEARING EXAMINER: Okay. Let's
7 just start from the beginning of your objection. And
8 the way I understand your objection is that you object
9 to his being qualified as an expert in petroleum
10 engineering; is that correct?

11 MR. DEBRINE: Partially, but it's also
12 that he should not be offered -- he shouldn't be
13 allowed to testify with respect to opinions on
14 reservoir engineering, because he's undertaken no
15 study. He's only offering two exhibits, which are
16 applications that were filed by Franklin Mountain in
17 this case and in the satellite case.

18 So his opinion should be limited to
19 those documents. But he's undertaken no reservoir
20 engineering study, and shouldn't be allowed to express
21 opinions with regard to reserves that would be
22 developed or impairment of correlative rights that
23 aren't apparent from those documents.

24 THE HEARING EXAMINER: So Mr. Feldewert
25 is offering this witness as an expert in petroleum

1 engineering. That's what I understood. Was that
2 right, Mr. Feldewert?

3 MR. FELDEWERT: Yes. Yes, sir.

4 THE HEARING EXAMINER: Okay, fine.
5 Does petroleum engineering include reservoir
6 engineering?

7 MR. FELDEWERT: Certainly.

8 THE HEARING EXAMINER: Certainly.
9 Okay. And are you saying that it doesn't?

10 MR. DEBRINE: No, I'm not saying it
11 doesn't. And I believe, given the witness's
12 experience in the basin and his education, he would be
13 qualified to express opinion with regard to reservoir
14 engineering. But he has not given us any supporting
15 information to support those opinions. He's
16 undertaken no study. It's just a naked review of two
17 documents that he's appending to his -- and that's the
18 basis for his affidavit.

19 THE HEARING EXAMINER: Thank you,
20 Mr. DeBrine. I understand where you're going with
21 this, so let me see if I can phrase it in my own mind.
22 You're not objecting to his being qualified as a
23 petroleum engineer, which would include reservoir
24 engineer. Your objection is to his familiarity with
25 the specific issues that you just stated, and that his

1 opinion would not be reliable in those situations?

2 MR. DEBRINE: Right, because he had
3 undertaken no study with respect to the reservoir at
4 issue to express reservoir engineering.

5 THE HEARING EXAMINER: All right. I
6 understand. It seems to me -- and without going to
7 Mr. Feldewert, because I think I can deal with this
8 without going to you -- it seems to me that the second
9 part of your objection is premature. That he hasn't
10 testified yet. I realize that you have here a
11 statement, an affidavit from him.

12 And you can object to its admission
13 into evidence. We'll get to that. But I think your
14 objection to his familiarity with these issues is a
15 bit premature, since we haven't really got there yet.
16 We're just dealing with whether he's qualified to be a
17 petroleum engineer.

18 MR. DEBRINE: Right. And given that
19 clarification and the limitation, then we do not
20 object to him being qualified as a reservoir engineer.

21 THE HEARING EXAMINER: Okay. I still
22 need to read paragraph two; I haven't done that yet,
23 because of your objection, so just give me a minute.

24 Mr. Feldewert, what is BOPCO?

25 MR. FELDEWERT: That was a -- it's

1 called BopCo. That was an old oil and gas company.

2 THE HEARING EXAMINER: It's a what
3 company?

4 MR. FELDEWERT: Oil and gas.

5 THE HEARING EXAMINER: Oil and gas
6 company?

7 MR. FELDEWERT: Mm-hmm. If I was
8 thinking about it -- now you got me thrown here. It
9 was owned by the Bops Brothers [ph], out of Fort
10 Worth, Texas.

11 THE HEARING EXAMINER: But the bottom
12 line is, it was an oil and gas company?

13 MR. FELDEWERT: Yes. So what he's
14 saying is -- trying to get the context here, sorry.

15 THE HEARING EXAMINER: It's page 92.

16 MR. FELDEWERT: Yeah. He worked for
17 BopCo LP for about four years.

18 THE HEARING EXAMINER: Right, and I
19 didn't know what BopCo was. That's why I asked.

20 MR. FELDEWERT: It's the company.

21 THE HEARING EXAMINER: It wasn't
22 defined anywhere here that I could find.

23 MR. FELDEWERT: Mm-hmm.

24 THE HEARING EXAMINER: Okay. Based on
25 the information here, I just want to make sure that

1 this has been -- okay. Based on paragraph nine, I
2 will admit Mr. Schulz as an expert witness in the
3 field of petroleum engineering.

4 MR. FELDEWERT: Thank you.

5 THE HEARING EXAMINER: We have that out
6 of the way.

7 MR. FELDEWERT: Okay, great.

8 THE HEARING EXAMINER: Dealing with
9 your exhibits.

10 MR. FELDEWERT: Yes. So I move the
11 admission of the exhibits, and his self-affirmed
12 statement.

13 THE HEARING EXAMINER: Okay. And have
14 you -- I just want to see how these are marked. Are
15 these marked? Because I don't see markings here.
16 Okay. I see a C-1 -- I see Exhibit C-1 at the end
17 with a --

18 MR. FELDEWERT: So let's go back to
19 that page 92.

20 THE HEARING EXAMINER: Yes.

21 MR. FELDEWERT: Bottom right-hand
22 corner.

23 THE HEARING EXAMINER: Oh, that's C. I
24 see -- so you're doing the first page of each exhibit?

25 MR. FELDEWERT: Yes. Yes.

1 THE HEARING EXAMINER: Okay. So you're
2 seeking the admission of C, C-1 -- what other one?

3 MR. FELDEWERT: And C-2.

4 THE HEARING EXAMINER: And C-2. And
5 what page does C-2 start on?

6 MR. FELDEWERT: C-2 is comprised of
7 page 98.

8 THE HEARING EXAMINER: Starts on 98.
9 Okay. Okay, so let's go to Mr. DeBrine.

10 Mr. DeBrine, do you object to any of
11 these exhibits?

12 MR. DEBRINE: No objection to the
13 exhibits, but I think Mr. Feldewert also wanted the
14 admission of the self-affirmed statement, and we do
15 have objections with respect to that.

16 THE HEARING EXAMINER: But isn't the
17 self-affirming statement -- isn't that an exhibit? I
18 think that's C.

19 MR. DEBRINE: Yeah, I guess it is.
20 Yes.

21 THE HEARING EXAMINER: So then you're
22 objecting to C?

23 MR. DEBRINE: We're objecting to C, but
24 not the exhibits C-1, C-2, which are just the
25 applications.

1 THE HEARING EXAMINER: Okay, fine.

2 So Mr. Feldewert, there's an objection
3 to the admission of Exhibit C. So I will admit
4 Exhibit C-1 and C-2 into evidence, and you can proceed
5 to lay a foundation for Exhibit C, for his admission
6 into evidence.

7 (Exhibit C-1 and Exhibit C-2 were
8 marked for identification and received
9 into evidence.)

10 MR. FELDEWERT: What's the basis for
11 the objection?

12 THE HEARING EXAMINER: Mr. DeBrine?

13 MR. DEBRINE: Paragraph eight of
14 Exhibit C, for the court to offer opinions with
15 respect to reservoir engineering letters, and the
16 affidavit does not indicate that this witness
17 undertook any study whatsoever with regard to the
18 reservoir at issue. And we were not provided
19 any -- any calculations or data that he may have
20 prepared. And so the opinions are lacking foundation,
21 and should not be allowed, because they're not allowed
22 when they lack foundation.

23 MR. FELDEWERT: Would you read
24 paragraph eight?

25 THE HEARING EXAMINER: What is your

1 response to the objection?

2 MR. FELDEWERT: Paragraph eight.

3 THE HEARING EXAMINER: So give me a
4 legal basis here.

5 MR. FELDEWERT: Certainly. I mean, he
6 has looked -- as he points out in paragraph eight, he
7 looked at the same thing I looked at, looked at their
8 filings, to try to figure out what their plan is and
9 what they are doing. Had the same kind of difficulty
10 that I had in trying to figure out what they're doing.

11 They've offered no study to support
12 what they're doing. They haven't even offered you a
13 document that shows them what their plan is, where
14 their perms are going to be, and why that's
15 appropriate, and how it does not impact correlative
16 rights, which is their burden. That's their burden;
17 okay?

18 What he's saying in paragraph eight
19 is -- I looked at your stuff. Here's what I was able
20 to glean out of it. Either the north half of the
21 north half of section 36 is not being developed -- or
22 not being fully developed by cross-state wells, since
23 the completed lateral will either not penetrate the
24 tracts comprising the north half of the north half of
25 section 36, or will be cut short in those tracts while

1 all the other tracts in proposed cross-state spacing
2 unit will have fully completed laterals.

3 Or Franklin Mountain is planning to
4 complete the entirety of the north half of the north
5 half of section 36 with its cross-state wells, but is
6 also planning to develop the same portion of that same
7 north half of north half of section 36 with its
8 satellite wells, thereby draining the target
9 reservoirs for the benefit of the satellite owners.
10 Under either scenario, the interest owners in the
11 cross-state spacing units who do not own in the north
12 half of the north half of section 36 are adversely
13 impacted, since their proportionate interest in the
14 production from the cross-state wells is being diluted
15 by the inclusion of the north half of the north half
16 acreage, that will contribute less reserves than the
17 cross-state spacing wells, than the remaining tracts
18 in section 36, and one that comprised the proposed
19 spacing unit. He is fully qualified to offer that
20 opinion.

21 THE HEARING EXAMINER: Okay.

22 Mr. Feldewert, in my judgement, there
23 is an objection to the reliability of this opinion.
24 Now it's up to you, by asking questions to this
25 witness, to demonstrate to me that it's reliable. If

1 you can demonstrate it's reliable, then I'll accept
2 it, and I'll override the objection. So, you have
3 your witness.

4 BY MR. FELDEWERT:

5 Q Mr. Schulz --

6 A Yes, sir.

7 Q Did you review the record that was filed by
8 Franklin Mountain in these cases?

9 A Yes, sir. I did.

10 Q Okay. And did you do that using your
11 background as a petroleum engineer?

12 A Yes, sir. I did.

13 Q And did you undertake to determine what
14 Franklin Mountain was actually planning to do under
15 their filed applications?

16 A No, sir. I could not tell what they were
17 planning on doing.

18 Q Okay. And you could not tell, even after
19 applying your expertise as a petroleum engineer?

20 A That is correct.

21 Q Okay. Did you make certain assumptions,
22 based on the information that was provided to you?

23 A Can you clarify?

24 Q Did you assume, for example, that it
25 appeared that they were planning to only complete a

1 well in about half of the north half of the north half
2 spacing units?

3 A Yes. Yeah. Based on the -- the document
4 that we obtained from the satellite case hearings,
5 where it shows the -- the wells going north for the
6 satellite, cross-state unit going south, it appeared
7 that either they're not going to develop the north
8 half of the north half of the cross-state units, and
9 they would develop that with the satellite units, thus
10 diluting the cross-state working interest owners; or
11 that there would be some overlap, where the actual,
12 you know, wells would be perforated and fracked in the
13 same interval, thus draining reserves from two wells
14 in kind of an inefficient use of capital.

15 Q And did you draw that assumption or
16 conclusion based on what they had represented in what
17 you marked as Exhibit C-2?

18 A Yes, sir. I did.

19 Q Okay. When you looked at the information,
20 what other facts or assumptions did you make based on
21 what they filed? And I'm looking at Exhibit C-1.

22 A So --

23 THE HEARING EXAMINER: Just give me one
24 second. Witness, one second.

25 Mr. Feldewert, it would help me greatly

1 if your witness would define the word "record." You
2 asked him in the beginning, "Did you review the
3 record?" I don't know -- I'm left unclear at what
4 record he reviewed. So very specifically, would you
5 find out from your witness what documents he reviewed?
6 Because I'm not sure what he's talking about.

7 BY MR. FELDEWERT:

8 Q Mr. Schulz, I think I asked you, did you
9 look at what Franklin Mountain had filed in this case?

10 A Yes.

11 Q Okay. Did you also then look at some
12 documents that were filed in the Division's cases on
13 their public website in what was known as the
14 satellite pooling cases?

15 A Yes.

16 Q Did --

17 MR. DEBRINE: Mr. Examiner, I'll
18 object. His affidavit said he only looked at the two
19 applications that he identifies. He doesn't say he
20 looked at anything beyond that. And now we're getting
21 more testimony.

22 THE HEARING EXAMINER: Would you show
23 me what sentence in here it says that?

24 MR. DEBRINE: He says "I'm familiar
25 with the applications filed by Franklin Mountain" in

1 paragraph three, but he doesn't say he reviewed any of
2 the other materials that were submitted for this case,
3 any of the exhibits, any of the affidavits of our
4 experts, or anything else. And he's not offering any
5 opinions that counter the -- and he doesn't reference
6 those.

7 He doesn't reference any data that he
8 looked at. He just references these two applications.
9 And so we've got some kind of an expert in English or
10 something, that is reading and interpreting the
11 applications.

12 MR. FELDEWERT: Look at paragraph five.

13 THE HEARING EXAMINER: Okay. I'm not
14 going to look at anything right now. I'm going to ask
15 you, Mr. Feldewert, to ask your witness exactly what
16 did he review. Not just filings, not record -- those
17 terms are not helpful to me. I'm trying to understand
18 the basis of his opinion, and I need to understand
19 from your witness what documents exactly he reviewed.

20 If he reviewed the entire exhibit
21 packet that Franklin filed in this case on -- was it
22 Thursday? I think it was Thursday. Not sure.
23 Thursday or Friday of last week. I need to understand
24 exactly what he reviewed. So would you please ask
25 him?

1 BY MR. FELDEWERT:

2 Q Mr. Schulz, I'm going to direct your
3 attention to paragraph five of your statement; okay?
4 It indicates that you reviewed the pooling application
5 materials for Franklin Mountain's cross-state and
6 satellite state wells. What were you referencing
7 there?

8 A Referencing the -- the drilling permits that
9 I went to the NMOCD website, looking at a number of
10 the cross-state unit wells, as well as the satellite
11 state unit wells, looking at the drilling permits
12 there, looking at the -- the case -- I'm blanking on
13 the terminology. The -- the case material, right,
14 that was provided. Looked at the -- off of the NMOCD
15 website, and also the exhibits that were submitted
16 from Franklin Mountain. Reviewed those, you know,
17 over the course of the past week.

18 Q And based on that review of those materials,
19 is that why you then -- was the basis to offer your
20 opinions that you see, applying -- that you provided
21 applying your expertise as a petroleum engineer?

22 A Yes, that is correct.

23 THE HEARING EXAMINER: Still dealing
24 with the objection, so let's stop for a minute.
25 Although I would like clarification from the witness.

Page 191

1 Let me find the filing.

2 Mr. Schulz, we have a 385-page document
3 that Franklin Mountain filed. It looks like you filed
4 it on the second of February?

5 MS. BENNETT: Mr. Examiner, we filed it
6 on the first of February. There's two different dates
7 that appear on documents filed with the Division.
8 There's a filing date and a released date, and we
9 filed on February 1st, at around 5 o'clock.

10 THE HEARING EXAMINER: Okay.

11 So Mr. Schulz, were you able to review
12 the Franklin Mountain Energy exhibits, which totaled
13 approximately 385 pages?

14 THE WITNESS: Yes. I can't say I read
15 every page in detail, but I did review the 385-page
16 document.

17 THE HEARING EXAMINER: Okay. In
18 addition to these, you reviewed applications made by
19 Franklin Mountain?

20 THE WITNESS: Correct.

21 THE HEARING EXAMINER: In both the
22 cross-state and the satellite wells?

23 THE WITNESS: Yes, sir. That is
24 correct.

25 THE HEARING EXAMINER: And that's what

1 you're basing your opinion on?

2 THE WITNESS: Yes, sir.

3 THE HEARING EXAMINER: And nothing
4 else?

5 THE WITNESS: No, sir.

6 THE HEARING EXAMINER: Mr. DeBrine,
7 you've heard what he has reviewed to formulate his
8 opinion. Do you still have an objection?

9 MR. DEBRINE: Yes, the same objection,
10 Mr. Examiner. And also, I would point out what must
11 have been an inadvertent misstatement by Mr. Schulz.
12 It would have been impossible for him to review
13 Franklin Mountain's exhibits.

14 He executed his affidavit on the same
15 day, and they filed his affidavit with their exhibits
16 a few minutes after we filed ours. So unless he went
17 to the Evelyn Wood Super Speed Reader School, he could
18 not have reviewed those exhibits before he signed this
19 affidavit.

20 THE HEARING EXAMINER: Mr. Feldewert?

21 MR. FELDEWERT: Certainly when this was
22 filed, all he had available to him was what he could
23 glean from the satellite wells case file, and then
24 their pooling applications. That's correct; okay?
25 And so I asked him to take a look at that, and see

1 what you can ascertain about correlative rights, and
2 the potential impact on correlative rights.

3 Whatever weight you want to give it is
4 fine, but there's nothing wrong with the expert
5 looking at what's available to him, just like any
6 other party would be able to do, and ascertain what
7 concerns he has about correlative rights. That's what
8 he's articulating. These are the concerns.

9 THE HEARING EXAMINER: Let me take five
10 minutes. I want to confer with Mr. Garcia, and then
11 we'll come back on the record. It is 1:58 -- let's
12 come back at 2:05. Thank you.

13 (Off the record.)

14 THE HEARING EXAMINER: Okay. We're
15 back on the record. It is 2:05. I have taken the
16 opportunity to confer with my technical examiner, and
17 we are going to allow this affidavit to come in, this
18 self-affirming statement to come in, and give it the
19 weight that we deem appropriate, with the
20 understanding that the amount of evidence that was
21 reviewed by this witness does not include 385 pages'
22 worth of Franklin Mountain exhibits. That being said,
23 Mr. Feldewert, this is your witness, so please
24 proceed.

25 //

1 (Exhibit C was marked for
2 identification and received into
3 evidence.)

4 MR. FELDEWERT: Thank you. So I think
5 I'd asked him to adopt it, and it's now been admitted?

6 THE HEARING EXAMINER: It has been
7 admitted.

8 MR. FELDEWERT: Okay. All right.

9 BY MR. FELDEWERT:

10 Q Now Mr. Tanner, at the time that you filed
11 this, as you pointed out, the only thing you had to go
12 on in terms of what they were planning was what you
13 marked as Exhibit C-1, which was a filed C-102 for
14 their cross-state 701-H; is that right?

15 A That is correct.

16 Q And then the document that you were able to
17 pull down from the satellite case file?

18 A That is correct.

19 Q Okay. And is the -- the document from the
20 case file is where it would appear that they were only
21 perforating half of the north half of the north half
22 order sections for the cross-state wells?

23 A That is correct.

24 Q And Exhibit C-1, which is their filed C-102,
25 doesn't indicate where their first take point is going

1 to be?

2 A That is correct.

3 Q Therefore, you didn't have any information
4 as to how they were going to develop the north half of
5 the north half?

6 A Correct.

7 Q Okay. Now, you've had a chance to sit here
8 and listen to the presentation by Franklin Mountain
9 today?

10 A Yes, sir. I have.

11 Q Okay. Did you see any kind of reservoir
12 study presented by Franklin Mountain that would
13 support their development, in terms of --

14 THE HEARING EXAMINER: I think
15 someone's microphone on their computer might be on.

16 THE WITNESS: I don't know if you guys
17 are getting the feedback, but I'm getting some
18 feedback on my end.

19 MR. FELDEWERT: Let's try this again.

20 MR. GARCIA: Mr. Feldewert, you are
21 echoing through Ms. Bennett's microphone, it sounds
22 like.

23 MR. FELDEWERT: She's muted.

24 MS. BENNETT: I just muted, so --

25 MR. FELDEWERT: Oh. Thanks. Okay.

1 BY MR. FELDEWERT:

2 Q In the presentation by Franklin Mountain
3 today, did you see any type of reservoir study to
4 address the impact on correlative rights from their
5 proposed overlapping of the cross-state units and the
6 satellite state units?

7 A No, sir. I did not.

8 Q Did you see anything in their presentation
9 today that identified where they're actually going to
10 put their first take point and their last take points?

11 A Other than it's 100 feet from the north line
12 for the cross-state units, no.

13 Q Okay. Anything -- any study that you've
14 seen today to identify the impact of wherever they're
15 going to put their first take points, or the last take
16 points, on correlative rights?

17 A No.

18 Q Okay. In light of that, for the reasons
19 stated in your affidavit, do you still have concerns
20 that their plan is going to impact the correlative
21 rights of MRC's ownership and other working interest
22 owners in acreage outside of the north half of the
23 north half of 36?

24 A Yes, sir. I do.

25 Q Okay. And what is that opinion?

1 A That opinion is that the development of the
2 state line -- or excuse me, the satellite state units
3 are going to be actually draining the reserves that
4 are inside of the cross-state unit development area,
5 thus diluting the -- the reserves of the working
6 interest owners in the cross-state unit.

7 MR. FELDEWERT: Okay. That's all the
8 questions I have.

9 THE HEARING EXAMINER: Thank you.

10 Mr. DeBrine, do you have any
11 cross-examination for this witness?

12 MR. DEBRINE: Yes, I do, Mr. Examiner.
13 Thank you.

14 CROSS-EXAMINATION

15 BY MR. DEBRINE:

16 Q Have you been listening to the hearing
17 today, when Mr. Zink testified earlier, Mr. Schulz?

18 A Yes, sir. I was.

19 Q And did you hear his testimony with regard
20 to the proposal letters that were sent out by Franklin
21 Mountain back in July of 2023?

22 A Yes, sir.

23 Q And did you also review those as part of
24 your -- the work you did after the exhibits were
25 filed, when you said you reviewed materials that were

Page 198

1 submitted by Franklin Mountain?

2 A Yes, I reviewed them in July. But I did
3 review them here recently, to make sure I understood
4 the scope of this.

5 Q What work have you done for MRC with respect
6 to its development plans for this area for its
7 Mongoose wells that were the subject of its original
8 applications, that it withdrew at the eleventh hour?

9 MR. FELDEWERT: Objection. Given that
10 those have been withdrawn, I don't see what the
11 relevancy is to the issue that he has testified to,
12 and that is the correlative rights.

13 MR. DEBRINE: I'm just trying to
14 determine when he first started looking at this area,
15 is all.

16 MR. FELDEWERT: What area?

17 MR. DEBRINE: The area that's at issue
18 in the cross-applications, and then were also at issue
19 in the -- because Matador had its own development
20 plan. I'm trying to determine if he was involved in
21 the team that was involved in putting those together
22 when he first started looking at this.

23 THE HEARING EXAMINER: So the
24 objection -- the legal basis for the objection is
25 what?

1 MR. FELDEWERT: So, two things. One,
2 it's outside the scope of what he's testified to,
3 which is the impact of their plan on correlative
4 rights. Secondly, it's not relevant to anything
5 that's before the Division, because Matador's
6 applications have been dismissed.

7 THE HEARING EXAMINER: So the legal
8 objections are: outside the scope, and it's
9 irrelevant, the question. What's your response?

10 MR. DEBRINE: Our response is, I'm
11 entitled to understand what this expert has done in
12 this particular area, and -- and to support his
13 opinions, or may impeach his opinions. Because he's
14 just trying to thread the needle and offer a very
15 narrow opinion, but I need to know whether he's been
16 looking at this area, if he could have undertaken
17 studies but chose not to. And that's where I'm trying
18 to go with this.

19 THE HEARING EXAMINER: Mr. Feldewert, I
20 received this exhibit over the objection of counsel.
21 So I'm going to give him some latitude to
22 cross-examine your witness on the basis of the
23 opinion. So I'm overruling the objection.

24 Please proceed.

25 //

1 BY MR. DEBRINE:

2 Q Yeah. Were you part of the -- did you
3 assist Matador in evaluating the acreage that's the
4 subject of Franklin Mountain's cross-wells? And when
5 did you first undertake that work?

6 A I guess I'm generally aware of -- of our
7 proposals that are going out the door, and the
8 developments that we have planned for the company,
9 given my position in kind of the head of our reservoir
10 team and reserves team. I was not specifically part
11 of the Mongoose proposals going out the door.

12 Was aware of it, but also aware of just kind
13 of all of our operations and projects that we're
14 trying to set up around the basin, be it in this area
15 with Mongoose or further to the south, or the
16 west-east, or -- kind of name it.

17 Q When did you first get brought in to assist
18 in these cases?

19 A Specifically the Mongoose, probably a few
20 weeks ago, early January. With this specific hearing,
21 I suppose.

22 Q You heard Mr. Zink's testimony with regard
23 to the proposal letters, which said, "Should you have
24 any questions, please don't hesitate to contact the
25 undersigned," which was Mr. Johnson, and gave his

1 phone number? Do you remember that testimony?

2 A Yes, sir. I do recall that.

3 Q Are you aware -- well, let's first with you.
4 Did you ever call Mr. Johnson and ask him for
5 information about the location of the first and last
6 take points at any time during the last six months
7 since the proposal letters were sent?

8 A No, I did not.

9 Q Do you know if anybody else at Matador
10 shared the concerns that you expressed in your
11 testimony earlier?

12 A No, I do not.

13 Q Do you know if anyone at Matador ever asked
14 Mr. Johnson, or anybody else at Franklin Mountain, for
15 information about the location of the first and last
16 take points of its cross wells at any time during the
17 last six months after the proposal letters were sent,
18 or after September when the applications were filed?

19 A No, sir. I do not know if they ever reached
20 out.

21 Q Do you know if anyone at Matador has a
22 relationship with anyone at Franklin Mountain, based
23 on past projects or past proposals, so that they could
24 just pick up the phone and ask them a question if they
25 had any?

1 A No, I'm not aware.

2 Q Are you aware that Franklin Mountain at any
3 time refused to provide any information to Matador
4 during the last six months?

5 A No, not that I'm aware of.

6 Q Did Matador request the Division to issue a
7 subpoena to Franklin Mountain to get information
8 regarding the first and last take points of the cross
9 and satellite wells, or any other information that you
10 would believe assists you in evaluating the overlap
11 between the wells?

12 A No, I do not know.

13 Q And that's something that could have been
14 done?

15 A Certainly.

16 Q Would you agree, if you're drilling a
17 horizontal well from a surface location on the spacing
18 unit, that there's drilling curve limitations that
19 prevent the first take point from being
20 located -- that will result in the first take point
21 being located a significant distance from the legal
22 distance required by spacing unit rules from the outer
23 unit boundary?

24 A I'm sorry. Can you clarify?

25 Q Yeah. You're aware that there's limitations

1 with regard to drilling technology, so that if you're
2 starting your well bore on the location of the surface
3 unit, the first take point is going to be
4 substantially beyond the 100-foot line where you could
5 locate it, because you just can't build a curve in
6 order to locate that first take point within the first
7 100 feet without a back-build?

8 A Correct. Without a back-build, if you're
9 just going straight down, then yes, that limitation
10 does exist.

11 Q And your affidavit said you work in the
12 Texas Delaware basin, the Eagle Ford, and the Austin
13 Chalk?

14 A Yes, sir.

15 Q Are you aware of field rules adopted by the
16 Texas Railroad Commission which allow for off-lease
17 penetration points?

18 A Vaguely aware.

19 Q Would you agree that having an off-lease
20 penetration point allows you to build your curve so
21 that when the well bore turns horizontal, you can
22 locate your first take point at that 100-foot legal
23 location line and capture more resources?

24 A Yes, I would agree with that.

25 Q And would the railroad commission of Texas

1 have determined in adopting those rules -- determined
2 that correlative rights would be protected, and waste
3 would be prevented?

4 MR. FELDEWERT: Objection. Calls for
5 speculation.

6 THE HEARING EXAMINER: Hold on.

7 Mr. DeBrine, are you going to answer
8 the objection?

9 MR. DEBRINE: Yes.

10 Are you familiar with the Texas --

11 THE HEARING EXAMINER: He's made an
12 objection. I'm asking you, are you going to answer
13 his objection to me, so I can make a ruling?

14 MR. DEBRINE: I'll withdraw the
15 question, and try and lay a foundation.

16 THE HEARING EXAMINER: Okay.
17 Sustained.

18 MR. FELDEWERT: I know you're giving
19 him leeway here, but I have a hard time understanding
20 about how what's going on with the Texas Railroad
21 Commission has anything to do with New Mexico.

22 THE HEARING EXAMINER: You want to
23 address that?

24 MR. DEBRINE: It's just a recognition
25 that he's worked primarily in Texas, and he's familiar

1 with how they operate out there. And it's -- I think
2 you can take administrative notice of the fact that
3 the railroad commission has adopted specific special
4 field rules that allow for off-lease penetration
5 points to deal with this very problem that Franklin
6 Mountain is trying to solve here, with regard to the
7 cross-development.

8 THE HEARING EXAMINER: So --

9 MR. FELDEWERT: Object --

10 THE HEARING EXAMINER: Hold on.

11 So how is it relevant that they have
12 the administrative rule in Texas? Are you saying that
13 we should have that rule here, or that we do? What
14 are you saying?

15 MR. DEBRINE: What I'm saying is that
16 Franklin Mountain is trying to accomplish the same
17 thing, essentially, through its development plan for
18 the satellite and cross wells, and it's something
19 that's recognized in Texas as a matter of
20 administrative practice under their rules.

21 THE HEARING EXAMINER: I'm not sure how
22 that's relevant here. I mean, I understand where
23 you're going with that. I just -- I don't know
24 that -- why is that relevant here?

25 MR. DEBRINE: I think it's relevant

1 here, because if this witness is familiar and has
2 worked in Texas for most of his career, and there's
3 the determination that correlative rights are
4 protected and waste is prevented by -- through those
5 rules, then it affects his credibility, where he's
6 complaining about Franklin Mountain essentially doing
7 the same thing.

8 THE HEARING EXAMINER: It's a thin
9 line.

10 Mr. Feldewert?

11 MR. FELDEWERT: So they're -- I'm not
12 sure where they're going with this, but first off, I
13 don't know what problem he's talking about; okay?
14 He's assuming that there's some kind of problem. The
15 only problem I can see is that they chose a surface
16 hole location that they feel has forced them to
17 infringe upon the other interest owners' correlative
18 rights. I don't know what the problem is; okay?

19 Secondly, Mr. Schulz has simply said,
20 "Look, based on what they've told us about their
21 plans, it's going to infringe upon our correlative
22 rights." What's going on in Texas has nothing to do
23 with that. Absolutely nothing to do with that.

24 You're the Division; you're the ones
25 that have to determine whether this application can go

1 forward, based on what they told you thus far that
2 they're going to do. But his line of questioning has
3 nothing to do with that issue.

4 MR. DEBRINE: I would say it just goes
5 to the credibility of the witness. If Matador's doing
6 off-lease penetration points in order to access
7 additional resources in Texas.

8 MR. FELDEWERT: Is that the question?

9 MR. DEBRINE: That'll be my next
10 question. But I was just trying to get his
11 familiarity with the Texas Railroad Commission rules
12 that allow for it.

13 THE HEARING EXAMINER: All right.

14 MR. GARCIA: Sorry to interrupt you
15 real quick. Mr. Hearing Examiner, Beth Ryan says
16 she's having a hard time hearing you, that your mic
17 seems like it's off.

18 THE HEARING EXAMINER: It is -- it was,
19 Mr. Garcia, because the feedback in the room had
20 gotten pretty bad, and I didn't want it to be my mic
21 that was the cause of it. So thank you for mentioning
22 it. I'll try to remember to turn on the mic.

23 Question is, is this relevant? Now, if
24 it goes to the credibility of the witness, then that
25 issue is always open for cross-examination,

1 Mr. Feldewert.

2 So Mr. DeBrine, I am going to ask you
3 to rephrase your question so that it's very clear that
4 you're asking this question for that reason, and that
5 reason only.

6 MR. DEBRINE: Yes. It only goes to the
7 witness's credibility with regard to his familiarity
8 with the Texas rules --

9 THE HEARING EXAMINER: Right.

10 MR. DEBRINE: -- that specifically
11 allow for the off-lease penetration points.

12 THE HEARING EXAMINER: I understand.
13 You've made your point, so I've overruled -- well, in
14 a way, I've really sustained the objection, and I'm
15 saying to you, if what you are asking goes to the
16 credibility of this witness, please phrase your
17 questions so that that's clear to me.

18 MR. DEBRINE: Maybe I'll try from a
19 different angle, Mr. Examiner.

20 THE HEARING EXAMINER: That's
21 your -- yes.

22 BY MR. DEBRINE:

23 Q Mr. Schulz, isn't it true that Matador has
24 drilled several wells in Texas with off-lease
25 penetration points, in order to take advantage of the

1 special field rules in the basin?

2 A I'm not familiar with the specifics, but I
3 believe that is true.

4 Q Is it also true that Matador or MRC has
5 drilled wells in the New Mexico Delaware basin, where
6 it had acquired an off-lease surface location, so that
7 it could capture additional resources?

8 A I didn't -- yeah, I'm not familiar with the
9 specifics, but yes, I believe that is true.

10 Q And have you participated in groups after
11 receiving a well proposal from another operator, where
12 the technical teams will get together so that you can
13 gain a better understanding of what the proposal
14 consists of, and what their plans are?

15 A Yes, sir. I have.

16 Q And you never requested that kind of
17 conference with regard to the proposals that were
18 submitted by Franklin Mountain in these cases; isn't
19 that true?

20 A Not that I'm aware of. It's a different
21 team that handles them internally.

22 MR. DEBRINE: No further questions.

23 THE HEARING EXAMINER:

24 Mr. Feldewert -- oh, wait a minute. Mr. Garcia, do
25 you have any questions for this witness?

1 MR. GARCIA: I have one question.

2 THE HEARING EXAMINER: Please.

3 CROSS-EXAMINATION

4 BY MR. GARCIA:

5 Q Mr. Schulz, do you know, I guess -- when was
6 Matador first notified of the overlap? Do you have a
7 date when you guys were first notified of this?

8 A Sorry, can you repeat that?

9 Q What day were you first aware that there was
10 going to be an overlap spacing unit that affected
11 your --

12 A I'm not sure when Matador was notified. I
13 was notified, as I said earlier, a few weeks ago.

14 MR. GARCIA: Okay. That's all my
15 questions.

16 THE HEARING EXAMINER: I have one
17 clarification. Mr. Schulz, I know you said a few
18 weeks ago, but didn't you also say early January?

19 THE WITNESS: Yes, sir.

20 THE HEARING EXAMINER: Okay. All
21 right.

22 Mr. Feldewert?

23 MR. FELDEWERT: No questions.

24 THE HEARING EXAMINER: No redirect?

25 MR. FELDEWERT: No, sir.

Page 211

1 THE HEARING EXAMINER: Okay. May this
2 witness be excused?

3 MR. FELDEWERT: Yes.

4 THE HEARING EXAMINER: Okay.

5 Mr. Schulz, thank you for your
6 testimony.

7 THE WITNESS: Yes, sir. Thank y'all.
8 Appreciate it.

9 THE HEARING EXAMINER: Thank you.
10 What do you have next?

11 MR. FELDEWERT: That's it.

12 THE HEARING EXAMINER: That's it?

13 MR. FELDEWERT: Other than my closing.

14 MS. BENNETT: Mr. Examiner, may we take
15 a five-minute break --

16 THE HEARING EXAMINER: Sure.

17 MS. BENNETT: -- to discuss whether
18 we'd like to recall any of our witnesses?

19 THE HEARING EXAMINER: As a rebuttal
20 case?

21 MS. BENNETT: Yes.

22 THE HEARING EXAMINER: Okay. Now you
23 know, Ms. Bennett and Mr. Debrine, I, as a criminal
24 prosecutor, understand what a rebuttal case is really
25 about, so you need to show me that you were surprised,

1 and that you couldn't have done this in your direct
2 case-in-chief. That being said, let's take a
3 five-minute break. It is now 2:26; let's come back at
4 3:31. Thank you.

5 MS. BENNETT: Thank you.

6 (Off the record.)

7 THE HEARING EXAMINER: It is 2:31;
8 we're back on the record.

9 Does Franklin Energy have a rebuttal
10 case?

11 MS. BENNETT: No, we do not. Thank
12 you.

13 THE HEARING EXAMINER: Okay, very good.
14 And I don't think Matador has a rebuttal case.

15 MR. FELDEWERT: No, sir.

16 THE HEARING EXAMINER: Okay. When it
17 comes to closing argument, I like to get the parties'
18 take on the following. Had a discussion with the
19 technical examiner, and we are going to require
20 post-hearing submissions from the parties, proposed
21 findings of fact, and proposed conclusions of law.
22 And I wonder whether it wouldn't be more efficient to
23 have closing argument as part of the submission.
24 Let's start with Franklin Mountain.

25 MS. BENNETT: Thank you, Mr. Hearing

1 Examiner. If we are going to do written
2 closings -- or written findings of fact and
3 conclusions of law, then I do think it makes sense to
4 do it as part of the written closing.

5 THE HEARING EXAMINER: Mr. Feldewert?

6 MR. FELDEWERT: I agree. I agree.

7 THE HEARING EXAMINER: Yes, I
8 understand.

9 MR. DEBRINE: And that's sort of
10 consistent with past Division precedent, too.

11 THE HEARING EXAMINER: There you go.
12 Thank you.

13 MR. FELDEWERT: Well, not in my cases.
14 I like to just not have to file the brief, and file
15 findings of fact and conclusions of law, because it's
16 just more money spent. So it's not routine for my
17 cases.

18 THE HEARING EXAMINER: Thank you,
19 Mr. Feldewert. I just want to mention that any issue
20 not in the closing argument is deemed waived. Okay.
21 Is there anything else before we go off the record?

22 MS. BENNETT: Yes, Mr. Hearing
23 Examiner. Just two items of clarification. First,
24 because the MRC Permian cases were dismissed,
25 Mr. Feldewert did not seek to admit any of the other

1 exhibits, and I just want to make sure that the
2 record's clear on that, that the other exhibits that
3 were part of their exhibit packet have not been
4 admitted.

5 THE HEARING EXAMINER: Mr. Feldewert?

6 MR. FELDEWERT: Correct.

7 THE HEARING EXAMINER: We admitted MRC
8 Permian's Exhibit C, C-1, and C-2. Those were the
9 only exhibits that were admitted.

10 MS. BENNETT: Thank you. And the other
11 point of clarification is timing for our closing
12 submissions. And I would propose -- I would like to
13 get this done as quickly as possible. We have been
14 trying to diligently move these cases forward.

15 But I also do think that the transcript
16 of the hearing will be important, especially the
17 admissions by Matador. So we would like to wait until
18 the -- at least I think we'd like to wait. Would we
19 like to wait until the transcript is available?

20 MR. DEBRINE: Yeah, and I think it'll
21 be helpful to refer to the transcript in the factual
22 findings.

23 THE HEARING EXAMINER: Any objection to
24 that, Mr. Feldewert?

25 MR. FELDEWERT: I was going to say we

1 need the transcript, yes.

2 THE HEARING EXAMINER: All right.

3 Mr. Court Reporter, when do you think
4 you could have this ready?

5 THE REPORTER: The standard turnaround
6 is ten days.

7 THE HEARING EXAMINER: Does Franklin
8 want to expedite this?

9 MS. BENNETT: May I take a brief moment
10 and look at my calendar?

11 THE HEARING EXAMINER: Mm-hmm.

12 MS. BENNETT: Thank you.

13 Can we briefly confer?

14 THE HEARING EXAMINER: Yes. We're off
15 the record.

16 (Off the record.)

17 THE HEARING EXAMINER: We're back on
18 the record.

19 MS. BENNETT: Thank you for the
20 opportunity to confer, and we do not need an expedited
21 transcript.

22 THE HEARING EXAMINER: Okay, so ten
23 days. Okay. So what we'll do is -- and I don't know
24 how they do it here, but previously, there was -- when
25 the transcript comes in, it comes in to the OCD;

1 right? Does it go to the parties as well, or just to
2 the OCD?

3 THE REPORTER: I believe it only comes
4 to the OCD.

5 THE HEARING EXAMINER: Are we paying
6 for it?

7 THE REPORTER: I'd have to check with
8 my office.

9 THE HEARING EXAMINER: Does anyone know
10 if OCD's paying for this transcript?

11 MS. BENNETT: Yes.

12 MR. DEBRINE: I believe we hold a
13 contract with the court reporter to provide
14 transcripts for all the cases.

15 THE HEARING EXAMINER: We do? Yes?
16 Okay.

17 MR. GARCIA: Examiner?

18 THE HEARING EXAMINER: Yes.

19 MR. GARCIA: We have a contract with
20 them that averages ten-day turnaround.

21 THE HEARING EXAMINER: Thank you.

22 MR. GARCIA: They are submitted to
23 Sheila, and then Sheila has the power to implement
24 them to all the dockets for public view.

25 THE HEARING EXAMINER: Perfect. Thank

1 you, Mr. Garcia. So luckily, they didn't ask for
2 expedited, because it would've cost us money. So when
3 the transcript comes in, we'll issue a notice of
4 transcript filing, and then Sheila will send the
5 transcripts to the parties. And how many weeks do the
6 parties want to file their post-hearing submissions?
7 Let's start with you, Franklin.

8 MS. BENNETT: Two weeks.

9 THE HEARING EXAMINER: Two weeks.

10 Mr. Feldewert?

11 MR. FELDEWERT: We're filing
12 simultaneously, just one; right? I mean just one
13 closing statement --

14 THE HEARING EXAMINER: From each party.

15 MR. FELDEWERT: From each party. Not a
16 response, not a reply?

17 THE HEARING EXAMINER: No. No.

18 MR. FELDEWERT: Great. And two weeks
19 after the transcript arrives I think makes sense.

20 THE HEARING EXAMINER: Okay, good. So
21 let's get some dates here. What date do you believe
22 the transcript will come to Sheila at the dock?

23 MR. FELDEWERT: May I suggest
24 something? And that is, not knowing when the
25 transcript is, we could just say we all agree to two

1 weeks after the transcript is distributed.

2 THE HEARING EXAMINER: Right. Thank
3 you.

4 What date do you think the transcript
5 will come in?

6 THE REPORTER: Probably the 22nd of
7 February, so ten business days.

8 THE HEARING EXAMINER: Ten business
9 days?

10 THE REPORTER: Yes.

11 THE HEARING EXAMINER: Okay. So
12 basically two weeks?

13 THE REPORTER: Yes.

14 THE HEARING EXAMINER: February 22nd.
15 Okay. And then two weeks from -- what do you have two
16 weeks from February 22nd?

17 THE REPORTER: I have the 7th of
18 February.

19 THE HEARING EXAMINER: You mean March?

20 THE REPORTER: Sorry.

21 THE HEARING EXAMINER: March 7th, okay.
22 All right. So we're looking at approximately February
23 22nd for the transcript to be filed with the OCD, and
24 approximately March 7th, which is two weeks after.
25 Maybe the way you count, will actually be March 8th,

1 Mr. Feldewert? You don't count the day it comes in?

2 MR. FELDEWERT: I think that's correct,
3 yeah.

4 THE HEARING EXAMINER: Okay. So it's
5 probably March 8th, then.

6 MR. FELDEWERT: And I know that this
7 fun bunch is also going to be back before the Division
8 on March 7th, so we'll adjust as needed. But I
9 understand.

10 THE HEARING EXAMINER: Right. Okay,
11 sounds good. Do we have any other matters to discuss
12 before we conclude the -- now, we are leaving the
13 evidentiary record for Franklin to submit an amended
14 exhibit packet, which will include what exactly,
15 again?

16 MS. BENNETT: The amendments will be to
17 include a table of contents; to revise the
18 organization; to update the pooled party lists, along
19 with the committed interest lists, because the
20 committed interest lists also identify pooled parties.

21 THE HEARING EXAMINER: Okay.

22 MS. BENNETT: And there may be -- we
23 have -- we were missing a pooled party list, and I
24 think our Wolfcamp pooled party lists may have left
25 off some of the overwrites. Sitting here right now, I

1 can't recall that, but it will be wrapped up in the
2 pooled party list.

3 THE HEARING EXAMINER: So you'll submit
4 one document --

5 MS. BENNETT: I will.

6 THE HEARING EXAMINER: -- to
7 Mr. Feldewert?

8 MS. BENNETT: Yes.

9 THE HEARING EXAMINER: And we'll wait
10 for him to timely make an objection before we accept
11 it. When -- so if that's the case, if you submit it
12 to Mr. Feldewert by Monday close of business, because
13 it's a few more things than you thought originally,
14 Mr. Feldewert, how long before we can receive an
15 objection from you or not?

16 MR. FELDEWERT: So I have a personal
17 problem, in that I have to fly to St. Louis tomorrow
18 to deal with my mother. She's not doing real well.

19 THE HEARING EXAMINER: Sorry.

20 MR. FELDEWERT: I'm hoping to fly back
21 Tuesday. Now, I'm assuming hopefully -- I don't know
22 what's happening -- I can probably look at it during
23 that period of time; it shouldn't take very long. But
24 I just don't know; okay?

25 THE HEARING EXAMINER: Okay. Well,

1 then we'll set a deadline, understanding your flights
2 and your family -- we'll set a deadline for Wednesday
3 close of business, that we will leave this evidentiary
4 record open. So we're giving you two more days to be
5 able to get it to Mr. Feldewert, and if he's going to
6 make an objection, he'll make it by Wednesday, close
7 of business, because we need to close the record to
8 move this along.

9 In the meantime, the court reporting
10 agency will produce a transcript that won't be
11 affected by what we discussed today. Is there
12 anything else that we need to discuss before we're
13 finished?

14 MR. FELDEWERT: I just --

15 MR. GARCIA: I just --

16 THE HEARING EXAMINER: Mr. Garcia?

17 MR. GARCIA: Just a reminder, no one
18 has an approved compulsory pooling application in
19 hand. So I caution your clients to be cautious of
20 what money they're spending moving forward. In recent
21 months, we've had parties continue going forward
22 without approved quarter in hand, and it has backfired
23 on them. So I'd just keep that in mind.

24 THE HEARING EXAMINER: Parties have a
25 question about what Mr. Garcia just said?

1 MR. DEBRINE: I couldn't understand
2 what he said.

3 MR. FELDEWERT: I'm not sure I heard
4 him.

5 THE HEARING EXAMINER: Mr. Garcia,
6 would you say that again, slowly?

7 MR. GARCIA: Yeah. Just I would
8 caution your clients on what money they are spending,
9 and what operations they are spending. I believe
10 Franklin Mountain's actively moving dirt, which is
11 technically allowed without an order in hand, but
12 it -- further operations, you know, without an order,
13 I would be cautious of that. We have had some cases
14 move forward with field activities without an order in
15 hand, and it has backfired on those operators, because
16 their order was never issued.

17 MS. BENNETT: If I could speak briefly
18 to that?

19 THE HEARING EXAMINER: Just address
20 Mr. Garcia, then.

21 MS. BENNETT: Mr. Garcia, thank you for
22 that. I would just note that Franklin Mountain Energy
23 3 does have approved orders for its satellite wells.

24 MR. GARCIA: Yeah, I'm kind of talking
25 about the cross wells.

1 MS. BENNETT: Oh, okay.

2 MR. GARCIA: Without getting into
3 specifics, we've had operators produce without
4 compulsory pooling orders in hand, and it has resulted
5 in issues for those operators.

6 MS. BENNETT: Thank you.

7 THE HEARING EXAMINER: I think that
8 clarification helped, Mr. Garcia. Thank you.

9 Anything else?

10 MR. FELDEWERT: So my understanding is,
11 you want an opposing brief with proposed findings and
12 conclusions, and a proposed form of order; is that
13 right?

14 THE HEARING EXAMINER: No, I didn't ask
15 for a proposed form of order.

16 MR. FELDEWERT: Okay. All right, got
17 it.

18 THE HEARING EXAMINER: Just proposed
19 findings of fact, conclusions of law, and closing
20 argument.

21 MR. FELDEWERT: Thank you.

22 THE HEARING EXAMINER: Anything else?

23 MR. FELDEWERT: No, sir.

24 THE HEARING EXAMINER: Okay, good.

25 Mr. Garcia, anything else from you?

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MR. GARCIA: Nothing else.

THE HEARING EXAMINER: Okay, we are off
the record.

(Whereupon, at 2:43 p.m., the
proceeding was concluded.)

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CERTIFICATE

I, JAMES COGSWELL, 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.



JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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I, DANIEL WEINER, 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.



DANIEL WEINER

&	197:11 204:4,7	1280 49:8	215:8
& 3:10	204:22	130 4:12	2022 47:16
1	102 99:2,24	14 98:24 100:5	2023 54:10
1 5:13 15:21,23	101:18 158:5	130:11,25	98:24 100:5
15:25 18:17	158:16,23	143 4:11	102:23 119:23
63:15 71:20	170:23 195:13	146 4:14	120:1 172:3
72:24 73:19,22	195:24	15 34:22 42:12	198:21
74:8 118:23	102s 12:23	150 44:8	2024 2:2 123:4
145:21,24	46:22 81:23	155 4:15	211 4:20
147:9 174:20	82:8 98:8,12	16 4:3 67:23	22 130:23
175:1,8 182:16	98:17 103:13	69:16 149:5,6	131:1
182:16 183:2	107:17,20	166:7,7,14,14	220 165:19,21
183:24 184:4,7	108:3,8,21	165 4:16	22nd 219:6,14
188:21 195:13	10:05 57:6	168 4:14	219:16,23
195:24 215:8	10:10 58:9	17 11:24	23 11:16 159:1
10 42:12 57:3	10:13 58:11	170 4:15	159:2
151:24	11 34:22	174 4:18	23829 11:12,14
10/5/2023	148:24	18 12:17 62:25	124:22
119:4,17	11-702 138:10	63:10,11,13,15	23832 11:12
10/5/23 89:8	11-703 139:10	63:16 66:24	23833 6:4
100 75:16	111 6:4 20:4	67:5	19:25 87:24
76:14,22 77:7	112 4:9 6:4	184 130:8	23833-23840
77:12,14,21	20:4	184/184 5:14	1:8
78:6,7,9 79:21	115 6:4 20:4	5:15	23961 6:5
80:1,6 81:8,25	116 4:7	195/195 5:17	23961-23964
82:1,13 84:18	119 88:13	198 4:19	1:18
86:16 101:6,7	175:4	1:58 194:11	24 32:21
102:6 107:23	11:30 127:5	1st 2:8 192:9	24110 6:4 20:3
108:1,11,12,13	12 19:2,4 34:22	2	34:22
108:24 115:14	145:21 148:24	2 5:15 87:8	24142 6:5
115:22 152:3	1200 162:12	88:16,20,22	24142-24145
154:14 156:7	1220 2:8	89:2 174:20	1:13
156:22 157:8	124 4:8	175:1 183:3,4	24145 6:6
157:15 162:18	128 4:11	183:5,6,24	25 32:21 69:20
171:18,22		184:4,7 188:17	76:19 77:1,3

[25 - 7th]

<p>90:23 95:4,15 26 77:1 104:5,8 29 113:19 29713 227:17 2:05 194:12,15 2:26 213:3 2:31 213:7 2:43 225:4 2nd 88:7</p>	<p>35 6:4 20:1 39:6 36 10:15 12:8 15:6,10,11 16:8,11 18:8 18:17 28:11 30:18,19 32:20 32:22 34:16 48:16 53:13 72:4,14 75:6 76:20 83:6,7,9 83:16,21 84:2 90:23 91:4,10 91:20 95:4,15 96:9 99:17 104:8,20 107:6 110:6 120:12 120:16 121:18 123:25 124:3 125:7 126:12 135:20 143:24 144:9 149:18 156:4,6,11 157:21 159:6 163:20 185:21 185:25 186:5,7 186:12,18 197:23 360 10:12 38 6:4 20:1 385 63:17 130:8 155:15 171:17 192:2 192:13,15 194:21</p>	<p>39 5:4,4 6:4 20:1 3:31 213:4</p>	<p>55 83:10 56 4:8 157:14 59 171:16 5th 6:23</p>
3		4	6
<p>3 1:6 18:24 19:4,11,20 20:15 21:13 25:8,12 35:19 35:20 36:5 39:18 46:3,13 48:2,25 50:10 65:1 66:7 129:1 147:14 223:23 3's 19:17 24:3 24:15 47:5,8 48:17 55:9 152:23 30 39:6 167:7,7 31 28:11 32 86:24 89:23 112:12,13 115:5 149:6,13 155:15 168:6 320 10:22 31:24 32311 226:19 34 64:3 69:14</p>		<p>4 115:13 40 10:22,25 12:12 30:20,24 31:4,9,15,23,25 32:10,12 33:3 47:23 49:21 72:3 75:20,22 84:7,13 85:1 85:19 130:14 133:22 134:1 135:1 137:22 139:6 141:1,10 141:13,15,15 160:3,20 40s 85:7 41 5:5,5 178:1 42 5:6,6 43 5:7,7 44 5:9,9 45 4:7 56:6 60:16 103:17 49 102:17</p>	<p>6 48:1 79:5 60 63:17 67:6 600 75:19 80:1 92:7,11,12 94:10 95:7,16 95:20,23 96:7 97:5,9,14 100:25 101:4,9 115:13,16 135:15 159:18 160:5 161:2 162:12 168:11 168:20,22 169:7 6385283 2:11 64 6:5</p>
		5	7
		<p>5 6:23 75:19 79:5 80:1 119:23 120:1 145:20 192:9 500 150:1,8,14 151:5,5</p>	<p>7 53:4 70:10,11 71:11 70-2-17 14:24 700 79:5 701 99:2 158:8 158:24,24 161:24 195:14 72 67:10 720 54:15 75 86:16 7th 219:17,21 219:24 220:8</p>

[8 - address]

8	150:19 152:10 152:13 153:14 153:14 155:2,3 169:15,19 171:22 185:19 192:11 194:6 195:16 222:5	226:9 227:5 accurately 63:24 68:12 74:14,18 171:12 acquire 35:21 118:16 acquired 39:19 210:6 acquisition 47:16,16 acre 10:22,22 10:25 12:12 30:20,24 31:4 31:9,15,23,24 31:25 32:10,12 33:3 47:23 49:21 72:3 75:20 84:7 85:1,19 130:14 133:22 134:1 135:1 137:22 139:6 141:1,10 141:13,15,15 160:3,20 acreage 10:3,12 10:21 19:16 20:23 31:9,23 39:19 43:15 47:14,15 72:18 83:18,23 85:18 122:19 133:4 156:5 163:16 178:4 186:16 197:22 201:3	acres 74:24 75:22 action 226:12 226:16 227:8 227:12 active 68:18 actively 223:10 activities 223:14 actual 105:7 149:15 154:4 170:13 188:11 actually 9:19 15:17 20:14 24:7 35:4 39:18 69:10 92:23 93:12 144:21 161:5 187:14 197:9 198:3 219:25 add 68:16 addition 64:2 82:7 192:18 additional 51:19,19 54:4 116:4 118:11 118:13,14 144:8 148:23 150:1 157:1,2 157:16 174:19 208:7 210:7 address 17:13 26:12 49:4 80:17 122:15 197:4 205:23
8	2:2 48:23 58:12 86:20 89:23 94:24 145:25 155:11		
80	101:24		
87505	2:9		
8:59	2:3 6:2		
8th	6:3 219:25 220:5		
9	159:15 207:23 ac 167:6,10 accept 187:1 221:10 acceptable 57:22 accepted 21:15 46:7 128:22 147:12 access 18:20 19:20 51:19 144:5 150:19 152:23 169:19 208:6 accessed 144:9 149:19,19 accessing 18:19 144:3,8 accomplish 71:10 206:16 account 75:18 163:5 accurate 75:2 82:12 88:9 147:9 152:11		
9	4:2 90 151:11 154:14 157:15 92 175:24 176:1 181:15 182:19 96 175:23 98 88:17,19 183:7,8		
a			
a.m.	2:3 6:2 57:3,6 58:9,11		
abandoned	177:11		
ability	120:22 152:2,23 156:6 156:20 226:10 227:7		
able	28:17 38:21 40:15 51:4 70:24 80:5 149:4,5 149:21 150:1		

[address - alternative]

<p>223:19 addressed 93:23 addressing 18:15 adequate 123:3 adjust 220:8 adjusted 165:24 administrative 14:13 206:2,12 206:20 admissible 139:15 admission 44:16 119:1 174:9 175:1 180:12 182:11 183:2,14 184:3 184:5 admissions 215:17 admit 37:5 38:10 74:4 176:9 182:2 184:3 214:25 admitted 21:7 38:24,24 41:9 41:22 43:22 44:20 61:21 87:3 118:25 124:23 139:16 195:5,7 215:4 215:7,9</p>	<p>admitting 36:23 41:6 42:17 43:4,19 adopt 46:25 127:15 129:22 148:10 174:22 195:5 adopted 204:15 206:3 adopting 205:1 advance 40:24 advantage 209:25 adverse 178:2 adversely 131:13 186:12 advise 140:2 advisement 138:21 afes 39:14 43:16,17 affect 8:11 17:15,19 121:22 affected 106:24 109:19 125:1 133:12 211:10 222:11 affects 207:5 affidavit 5:5,6 5:7 38:4 39:5,6 41:14,15 42:4 43:13,13 46:15 56:3,5,5 60:15 61:22 69:19</p>	<p>127:15 129:3 129:15,17 130:7,10 132:8 147:8,17,22,24 147:25 148:11 148:24 149:16 153:10 176:24 177:2 179:18 180:11 184:16 189:18 193:14 193:15,19 194:17 197:19 204:11 affidavits 190:3 affirm 44:4 affirmed 5:8,16 44:3 174:13 182:11 183:14 affirming 183:17 194:18 afford 30:5 afternoon 165:10 agency 222:10 ago 69:12 81:16 118:4 140:15 154:25 201:20 211:13 211:18 agree 59:11 60:9 61:6 62:17 83:14 139:22 155:22 157:9 203:16 204:19,24</p>	<p>214:6,6 218:25 agreed 27:11 61:9 108:6 agreement 39:24 agrees 9:23 16:22 ahead 34:9 36:24 37:12 41:9 106:20 141:3 143:16 148:3 165:7 166:10 alerted 82:6 align 78:1 allegation 34:22 alleged 29:16 allocated 10:24 31:8,25 allow 19:19 70:15 71:6 78:9 134:8 149:17 194:17 204:16 206:4 208:12 209:11 allowed 111:10 178:13,20 184:21,21 223:11 allowing 76:4 allows 71:17 204:20 alternative 24:10,16,18,20</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[alternative - area]

<p>113:14 amassed 25:8 amend 40:10 amended 39:20 40:16 41:5,5 220:13 amendments 220:16 amount 18:3 19:8 25:6 35:20 51:2 71:16 79:9 84:9 194:20 analogy 151:16 analyzing 154:7 angle 152:15 152:18 153:4,5 209:19 answer 13:6,7 78:13,17 81:5 94:14 121:10 123:12,16 131:23 132:3 132:19 133:19 136:20,23 139:24 140:2 142:15 205:7 205:12 answered 51:16 93:11 131:21 132:1 164:12,15 answering 60:25</p>	<p>answers 110:19 anticipate 7:14 anybody 44:13 62:14 105:15 106:7 110:4 202:9,14 anymore 17:9 89:14 anyway 9:12 16:2 38:21 apart 165:15 166:11 apodaca 3:3 6:20 apologies 129:10 apologize 21:24 37:4 38:8 89:12 apparent 178:23 apparently 18:7 28:4 31:2 appear 14:7 192:7 195:20 appearance 8:20 122:3 appeared 187:25 188:6 appearing 55:20 appears 10:10 appending 179:17</p>	<p>application 5:13 39:13 104:4 105:2,20 105:24 106:23 107:12 110:7 110:13 126:8 191:4 207:25 222:18 applications 1:5,11,15 7:20 7:21,22,24 14:17,21 16:25 17:9,15 18:2 25:20 27:18 34:25 35:4 38:20 46:12 103:10 108:23 123:20,22,24 124:2 125:9 126:5 128:25 147:14 148:15 177:1,9,23,24 178:3,4,16 183:25 187:15 189:19,25 190:8,11 192:18 193:24 199:8,18 200:6 202:18 applied 107:19 applies 26:16 applying 187:19 191:20 191:21</p>	<p>appointment 114:22 appreciate 54:5 144:21 212:8 approach 24:6 47:17 48:2 49:7 55:11,12 79:8 93:2 96:3 128:3 152:18 approached 112:20 appropriate 185:15 194:19 approval 1:16 71:5 106:8 approvals 114:20 approved 98:23 100:4 156:25 157:1 159:2 222:18 222:22 223:23 approximate 168:16 approximately 19:1 83:9 86:17 92:7 94:10 95:7 101:5 123:21 192:13 219:22 219:24 area 12:8 19:14 47:15,18 49:8 54:8 55:9,13 55:16 79:23</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[area - back]

80:21,23 118:5 122:22 123:1,7 136:12 198:4 199:6,14,16,17 200:12,16 201:14 areas 29:10 argue 25:11 29:7 163:2 argument 29:7 29:8 33:25 34:2 57:25 213:17,23 214:20 224:20 arguments 25:10 armstrong 3:17 7:13 arrives 218:19 arrow 52:18 articulating 194:8 ascertain 139:1 194:1,6 aside 64:18 asked 27:6 34:1 58:13 65:17 93:11 94:6 115:3 116:20 117:6,12,20 118:19 122:11 123:8,10 140:14 143:14 143:19 168:11 181:19 189:2,8	193:25 195:5 202:13 asking 25:2 30:11 38:10 80:11,14 112:21 120:7 120:25 121:11 121:17 124:5,8 143:4 153:24 186:24 205:12 209:4,15 asks 165:1 aspect 137:17 assertion 27:1 assessment 152:20 asset 123:7 assets 110:13 121:23 122:1 assign 90:15 assigned 69:11 assigning 92:22 assist 201:3,17 assists 203:10 associated 51:8 assume 36:6 187:24 assuming 12:20 113:22,24 119:22 207:14 221:21 assumption 84:6 188:15 assumptions 187:21 188:20	attached 147:8 177:2 attempt 105:5 142:15 171:12 attempted 170:12,19 attendees 3:2 attention 191:3 attorney 57:18 58:20 59:8,22 60:10 122:2 226:14 227:10 attorneys 111:21 audio 226:8 227:3 austin 204:12 author 61:21 authority 178:1 automatically 78:9 available 27:17 193:22 194:5 215:19 average 80:2 135:15 averages 217:20 awarding 10:3 aware 72:16 79:20,23 80:4 80:12,15 98:7 98:10 105:15 109:18 122:25 133:3,5,8,9	139:12 201:6 201:12,12 202:3 203:1,2 203:5,25 204:15,18 210:20 211:9 awesome 168:2 aztec 6:9
			b
			b 5:1,5 11:21 22:3 37:17 38:4 39:4 41:5 41:8,8,10 48:1 48:23 53:4 62:25 63:10,11 63:13,13,15,16 66:24 67:5,23 69:16,16 70:10 70:11 71:11 86:20 87:16 88:20 89:2,23 94:24 155:11 back 47:16 54:9 57:2,5,25 58:8,12 59:3 76:5 82:24 89:21 100:25 115:4,5 116:1 116:6 117:6,7 117:8,8,9 118:5 123:9 140:11 145:21 150:18,18 152:13,13 155:23,24

[back - bennett]

<p>156:6 157:7 163:3,3 166:23 166:23 168:6 171:2,22 177:24 182:18 194:11,12,15 198:21 204:7,8 213:3,8 216:17 220:7 221:20 backfired 222:22 223:15 background 148:23 187:11 backwards 19:4 bad 111:25 208:20 barrels 162:18 163:8,11,22 base 79:14 139:10 based 20:6 25:5 26:20 34:2 43:14 59:21 65:4 79:16 82:25 83:2,18 91:18 96:20 100:15 107:22 119:19 121:8 134:3,4 136:8 137:1,5,7,15 140:3 143:13 155:24 156:13 169:25 172:9 172:16 181:24</p>	<p>182:1 187:22 188:3,16,20 191:18 202:22 207:20 208:1 basic 20:16 basically 11:13 24:25 30:2 37:19 48:18 57:12 61:23 72:8 105:4 112:21 150:13 151:9 167:16 177:6 219:12 basin 79:21 110:12 148:8 179:12 201:14 204:12 210:1,5 basing 79:16 193:1 basins 42:14 153:1 basis 10:21 20:8 31:9,23 72:18 83:18,23 85:18 133:4 141:11 163:16 179:18 184:10 185:4 190:18 191:19 199:24 200:22 batteries 71:7 113:23,24 battery 70:16 70:19,25 114:9 114:13 149:7</p>	<p>bear 113:8 beginning 178:7 189:2 behalf 7:13 122:3 believe 21:16 23:24 53:14 55:13 83:12 99:22 100:16 107:19 111:13 112:8,19 123:12 126:19 128:3 130:7 138:4,10 142:24 143:25 164:14 173:22 174:18 177:25 179:11 203:10 210:3,9 217:3 217:12 218:21 223:9 believes 137:7 ben 3:14 4:10 5:6 21:12 41:14 127:7 128:8,16 bend 151:14 bends 79:3 beneficial 19:22 benefit 16:8 24:7 78:23 122:24 135:9 186:9</p>	<p>benefits 53:5 70:10 148:25 bennet 17:22 bennett 3:4 4:3 4:7,11,14 5:9 7:6,8 8:8 12:25 14:9,11 16:19 16:20 17:10,18 19:23,24 20:5 20:12 21:11,23 22:4,7,10,14,17 22:21,24 23:2 23:5,11,19,22 23:25 24:13,19 24:23 25:4,15 26:13 27:6 29:6 33:15,20 33:23 34:7,10 34:18,24 35:8 35:12,16,18 36:4,25 37:10 37:13,16,21 38:2,4,7,12 39:4 40:17,23 41:13 42:4,7,9 42:20,24 43:12 44:2 45:2,17 51:17 52:5,8 52:11,14,20 53:2,3,22,25 54:2 55:17 57:7,12,23 58:15,24 59:16 59:18,21 60:2 60:6 61:14,18</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[bennett - build]

62:1 64:23	164:23,25	149:2,20	bottom 59:6,17
65:5,8,25 66:1	167:24,25	153:12 158:2	64:14 77:14
66:14,18 73:8	168:5 169:22	161:12 180:15	119:3,14,16
77:17 78:4,14	170:14,22	blanking	181:11 182:21
78:18 80:8	172:11,13,18	191:12	boundary
81:3,4,12,17	172:22 173:1,4	blindsided	203:23
82:4 93:10	173:7,11	177:6	box 91:2
94:5,8 105:3	176:12 192:5	blocks 49:21	break 56:23
106:14 116:15	196:24 212:14	blow 29:12,12	57:1 87:1
116:17,19	212:17,21,23	102:1	145:13 212:15
117:23,24	213:5,11,25	blue 113:23	213:3
118:3 119:6,13	214:22 215:10	114:17 151:21	brickey 67:3
119:15 121:12	216:9,12,19	bone 7:22,23	69:5
121:15 124:14	217:11 218:8	19:4 20:7	brief 145:14
125:10 126:18	220:16,22	21:18 26:4,21	214:14 216:9
126:21,23	221:5,8 223:17	35:1 41:17	224:11
127:2,6,11,24	223:21 224:1,6	70:5,6 71:24	briefly 33:21
128:6,13 129:6	bennett's	72:12 83:11	47:7 128:4
129:11,13,24	137:14 196:21	108:23 131:1	216:13 223:17
131:20 132:6	best 111:19	book 21:21	bring 63:2
133:15,24	226:10 227:6	56:7,14,15	129:7
135:21 136:6,7	beth 208:15	63:1	bringing
136:24,25	better 10:2	bopco 180:24	153:18
137:24 138:3	63:5 106:15	181:1,17,19	brothers 181:9
139:8,22	111:20 154:10	bops 181:9	brought 201:17
142:16,19,21	210:13	bore 11:5 31:8	budget 123:4
142:25 143:3,5	beyond 13:1	31:16 32:2	buffer 167:3
143:11,13,15	61:15 137:25	47:23 84:11	build 75:25
143:18 145:2,8	189:20 204:4	85:12,20 133:4	78:7 79:2 80:5
145:11 146:2,4	bigger 28:15,17	137:23 162:8	82:24 100:25
146:9,20,21,23	173:24	163:16,21	115:13,20
155:7 157:22	bit 13:1,16	204:2,21	116:1,6,8
158:1,9,15	29:19 37:3	bores 31:6	118:5 123:5
161:7 163:24	51:20 53:4,5	32:13 33:6	150:11 151:8
164:1,9,10,14	54:6 134:14	154:20 165:15	151:21,24

[build - cases]

<p>152:9,13,14 155:23,24 156:6,18 157:7 163:3 204:5,7 204:8,20 building 2:7 52:3 79:12 114:15,22 builds 117:6,7 117:8,8,9 built 76:8 82:10 168:19 168:19 bullet 148:18 bullets 51:18 bunch 220:7 burden 15:2 185:16,16 business 41:3 219:7,8 221:12 222:3,7 butt 113:6 butter 26:2,3,9 34:23 35:2 button 45:7</p>	<p>73:19,22 74:8 81:23 82:8 87:4,8 88:16 88:22 98:8,12 98:17 99:2,24 101:18 103:13 107:17,20 108:3,8,21 118:23 130:11 130:23 131:1 158:5,16,23 170:23 174:17 174:20,20 175:1,1,1,8 182:16,16,23 183:2,2,3,4,5,6 183:18,22,23 183:24,24 184:3,4,4,5,7,7 184:14 188:17 188:21 195:1 195:13,13,24 195:24 215:8,8 215:8 calculated 162:18 calculations 184:19 calendar 216:10 call 9:17 45:3 54:16 62:17 110:22 146:5 151:8 173:5,21 202:4</p>	<p>called 35:2 45:13 86:10,10 128:9 146:16 174:3 181:1 calling 6:6 21:12 calls 68:17 120:17 133:24 205:4 camera 60:8 capacity 45:25 128:19 147:4 capex 51:19 capital 123:5 188:14 capture 49:25 51:5 76:6 78:24 135:7 204:23 210:7 captured 78:25 capturing 50:2 79:18 96:24 97:1 care 59:2 career 207:2 cartoon 150:13 150:22,22 152:7 case 1:7,12,17 6:3,5 11:6,12 11:13,17,20 12:1,24 17:15 17:19 18:7 29:16,18 36:10 36:18 37:22,23</p>	<p>39:10,15 45:1 74:1 84:8 85:7 87:2,20,24 88:6 89:2 95:24 97:20 101:18 124:22 127:24 138:20 139:11 173:10 173:13,15 174:14 177:6 178:17,17 188:4 189:9 190:2,21 191:12,13 193:23 195:17 195:20 212:20 212:24 213:2 213:10,14 221:11 cases 6:6,7 8:11 9:21 11:12 13:5,21 17:1 19:25 20:7,8 25:21 26:1,1,8 26:16,23 27:1 34:22,25 35:1 38:12 39:9,12 46:10,13 47:4 81:22,22 85:15 87:22 88:3 90:16 119:22 120:8,11,16 121:21 125:17 125:21,24 126:1 128:1</p>
<p>c</p>			
<p>c 3:1 5:6,13,15 5:16 6:1 12:23 15:21,23,25 22:1,13,20,22 41:13 42:1,7,7 46:22 62:25 63:10,11,15,16 66:24 71:20 72:24 73:16,18</p>			

[cases - come]

<p>129:1 147:15 147:17 178:5 187:8 189:12 189:14 201:18 210:18 214:13 214:17,24 215:14 217:14 223:13 caught 150:20 cause 208:21 caution 222:19 223:8 cautious 222:19 223:13 center 50:14 84:10 central 113:23 114:8 149:7 certain 108:25 108:25 113:23 187:21 certainly 19:8 29:2 32:19 33:5 38:7 52:23 105:12 124:18 130:3 132:21 179:7,8 185:5 193:21 203:15 certificate 226:1 227:1 certification 108:8 109:2 158:7,17</p>	<p>certified 107:21 certify 226:4 227:2 cetera 28:3 chakalian 2:4 3:6 21:23 chalk 204:13 chance 29:6 147:21 176:13 196:7 change 64:5 123:15 147:25 148:1,5,10 changed 159:12 changes 8:10 40:2,3 41:7 46:20 129:17 129:19 characteristics 142:13,18 characterizati... 44:12 158:10 158:16 charles 66:25 68:24 69:9 chase 20:17 chatted 54:24 cheaper 149:14 check 6:8 167:6 217:7 checklist 37:24 checklists 5:4 22:11 37:17,22</p>	<p>38:1,11,16 chief 36:10,18 45:1 173:10 213:2 child 166:13 chino 2:7 chose 200:17 207:15 circle 71:9 civil 138:10 178:2 claim 59:7 claiming 81:1 clarification 82:19 180:19 191:25 211:17 214:23 215:11 224:8 clarify 6:7 8:9 21:7,9 187:23 203:24 clarifying 34:8 clear 32:9 73:11 90:4 104:11 209:3 209:17 215:2 clearly 10:5 120:22 clerk 3:3 client 57:18 58:20 59:8,22 60:10 clients 222:19 223:8</p>	<p>close 41:3 79:25 92:1 157:10 167:13 221:12 222:3,6 222:7 closer 92:25 115:16 129:8 169:11,15,16 closing 212:13 213:17,23 214:4,20 215:11 218:13 224:19 closings 214:2 clusters 165:16 codevelop 19:18 48:9,19 149:4,22 166:6 codeveloped 50:19 codeveloping 18:11 24:6 53:6,16 149:17 153:22 154:7 166:12 cog 3:19 8:20 cogswell 2:10 226:2,20 collision 167:1 color 113:18,19 149:2 come 11:2 54:25 57:5,25 61:1 84:1 101:9 145:21</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[come - conservation]

<p>152:14 153:3 165:25 177:23 194:11,12,17 194:18 213:3 218:22 219:5 comes 84:3 213:17 216:25 216:25 217:3 218:3 220:1 comfortable 142:12,17 coming 76:5 85:12 149:7 153:19 177:8 commingle 71:5 153:14 commingling 71:2,3 153:21 153:22 commission 9:25 80:23 204:16,25 205:21 206:3 208:11 committed 19:15 220:19 220:20 commonly 82:1 communicate 68:22 communication 68:22 communicati... 68:5,13</p>	<p>companies 68:13 84:25 85:14 company 1:12 1:16 50:12 60:23 74:11,14 86:10,10 98:8 108:15,16 110:15 121:23 122:1 158:6,23 171:24,25 181:1,3,6,12,20 201:8 compare 17:23 compared 163:3 comparison 43:14,16 compelling 10:1 17:5 25:10 competing 7:20 7:21,22,24 9:21 16:25,25 17:8,14 177:9 complaining 207:6 complaint 19:6 complete 98:2 113:14 144:4 186:4 187:25 completed 74:20 75:5 96:18 97:9,22 101:13 122:13</p>	<p>135:10,18 149:23 154:11 167:15 185:23 186:2 completely 177:11 completing 133:1 completion 140:20 completions 154:17,23 complied 75:14 comprised 183:6 186:18 comprising 185:24 compulsory 1:7 1:12,18 5:4 22:10 37:16,21 37:23 38:11 39:12 62:23 66:9 104:1 105:21 222:18 224:4 computer 175:20 196:15 concern 134:16 177:20 concerns 10:15 194:7,8 197:19 202:10 conclude 220:12</p>	<p>concluded 225:5 conclusion 188:16 conclusions 213:21 214:3 214:15 224:12 224:19 condense 152:10 conditions 30:4 conducted 126:18 confer 172:18 194:10,16 216:13,20 conference 210:17 confidential 57:14 confidentiality 58:21 confused 13:12 14:18,19 88:20 88:24 89:14,14 89:19 confusing 12:16 confusion 12:21 35:3 conocophillips 3:19 conservation 1:3 3:3,7,12</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[consider - correlative]

<p>consider 36:20 58:6 135:13</p> <p>considered 115:15</p> <p>consistent 214:10</p> <p>consists 210:14</p> <p>consolidate 70:15,19,24 71:7</p> <p>consolidated 48:15 51:21 53:10</p> <p>constraints 100:15,21</p> <p>consult 40:24</p> <p>consulting 177:14</p> <p>contact 54:14 68:17 122:2 150:20 201:24</p> <p>contacting 132:25</p> <p>contacts 39:14</p> <p>contain 123:21</p> <p>contained 37:20</p> <p>contemplating 171:21</p> <p>contends 25:20</p> <p>contention 34:5 34:6 177:7</p> <p>contents 21:25 220:17</p>	<p>contested 17:1 18:7 47:4</p> <p>context 181:14</p> <p>continue 21:10 29:18 59:13 133:20 162:7 222:21</p> <p>continuing 145:25</p> <p>continuous 166:24</p> <p>contract 217:13,19</p> <p>contrast 17:24</p> <p>contribute 11:4 15:6 30:21,22 31:5 32:1,12 33:5 34:12 84:9,11 85:2 85:20 130:19 134:5 136:2 137:9,22 141:19 142:1 186:16</p> <p>contributes 36:7 47:24 84:7 117:1</p> <p>contributing 31:16 49:19 116:22 136:10</p> <p>contribution 131:6,10 134:13</p> <p>control 17:3,5 24:24 25:7</p>	<p>155:3 177:18</p> <p>controlling 10:3 17:6 25:12</p> <p>conversations 57:14</p> <p>copy 23:13 88:25 147:9</p> <p>corner 182:22</p> <p>corporation 3:18 67:2</p> <p>correct 35:12 46:17,19 48:4 48:7,11,14,21 49:2 50:21,25 51:4 53:1,8,19 60:21 64:6,15 64:21 66:4 67:12,16 68:6 68:23,25 69:2 69:4,6,18 70:1 70:4,8,17,21 71:8,12 72:1,6 72:10,15,19 74:22 75:7 76:17,18 77:4 83:1,12,13,19 83:24 84:4,5 85:3,4,10,15,16 85:21 90:6,8 91:1,22 95:1,2 95:12 96:17 97:6,7 98:6 99:19,24 100:6 100:9,13 101:3</p>	<p>101:12,16</p> <p>102:4,11,14,21</p> <p>102:25 103:1</p> <p>103:14,15</p> <p>107:7,9 108:22</p> <p>109:9 110:2</p> <p>113:24 115:25</p> <p>116:10 118:7</p> <p>119:25 125:5,8</p> <p>125:14 126:6,9</p> <p>126:13 128:23</p> <p>128:24 130:24</p> <p>135:2 141:7,9</p> <p>146:9 147:11</p> <p>148:16 150:24</p> <p>151:23 154:2,6</p> <p>155:6 159:4,8</p> <p>161:24 163:17</p> <p>163:25 164:13</p> <p>167:2 168:24</p> <p>169:9 170:13</p> <p>171:11,19</p> <p>174:21 175:4</p> <p>178:10 187:20</p> <p>191:22 192:20</p> <p>192:24 193:24</p> <p>195:15,18,23</p> <p>196:2,6 204:8</p> <p>215:6 220:2</p> <p>correctly 92:5 155:5 162:2 165:11</p> <p>corrects 37:6</p> <p>correlative 10:16 11:7</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[correlative - curve]

<p>16:9 18:12,16 24:4 28:8 30:2 30:9 31:17 62:3 65:10,12 65:24 105:14 105:17 106:4,6 131:14 133:10 139:4 164:8 177:7 178:22 185:15 194:1,2 194:7 197:4,16 197:20 199:12 200:3 205:2 207:3,17,21 corridor 149:5 153:20 corridors 51:22 cory 3:15 4:13 5:7 22:17 42:5 42:7 146:6,15 147:1 cost 36:7 51:8 51:10 218:2 costs 19:21 43:16 51:7,25 52:3,4 149:9 153:10,12 counsel 7:3 172:19 200:20 226:11,14 227:7,10 count 219:25 220:1 counter 190:5</p>	<p>counts 149:25 159:14 162:18 county 1:9,13 1:19 104:2 course 12:1 57:13 58:4 173:14 191:17 court 6:14 45:6 132:3 140:13 164:16 184:14 216:3 217:13 222:9 covered 55:10 create 10:22 53:9 71:4 creating 47:21 49:22,24 50:4 51:6,21 53:9 55:14 70:25 71:16 76:3 79:8,10,17 credentials 21:15 46:6 128:22 175:16 176:3,20 credibility 207:5 208:5,24 209:7,16 criminal 138:10 212:23 cross 10:11,18 11:20 12:3,6 12:13 15:8,9 15:12 16:3 18:18 20:1</p>	<p>25:23 26:4,9 26:15 27:15,21 28:5,8 30:17 30:22,23 31:2 32:10 33:5 34:25 35:5,6,7 35:8,9,11 47:10 48:6,7,9 48:12,15,19 49:1,9 50:15 50:18,23 52:22 53:17 54:7,17 55:3,21 56:1 59:14 66:21 69:25 70:6 71:23,24 72:13 74:16,19 75:24 76:7 77:6 83:22 90:11,16 90:17 91:13 92:2,21,23 93:9,12,17 94:25 95:25 96:5,19 97:5 99:24 100:10 100:24 101:8 101:14,22 103:19 109:24 112:4 113:20 120:5 122:14 123:18,22 124:2,9,17 125:19 126:8 126:17 127:14 130:2,4,17</p>	<p>134:18,22 135:6,8,18 142:10 143:14 149:1,6,11 153:6 155:16 157:19 158:24 159:17 160:6,9 160:12 161:23 165:8,14 166:14 169:25 172:9,17 176:15 185:22 186:1,5,11,14 186:17 188:6,8 188:10 191:5 191:10 192:22 195:14,22 197:5,12 198:4 198:6,11,14 199:18 200:22 201:4 202:16 203:8 206:7,18 208:25 211:3 223:25 crossbow 166:19 167:16 cup 26:2,3,9 34:23 35:2 current 79:17 123:2 157:16 currently 114:15 157:4 curve 75:18 76:1,5,7 78:7 79:2,12 80:5</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[curve - design]

<p>115:20 150:17 151:22,24 152:9 157:15 168:19 203:18 204:5,20 curveball 144:24 curves 18:21 150:7 customarily 80:22 cut 33:16 185:25 cv 42:16 176:1 176:6 cx 4:5</p>	<p>day 87:18 123:15 145:15 167:13,18 193:15 211:9 217:20 220:1 days 39:17 69:12 216:6,23 219:7,9 222:4 deadline 222:1 222:2 deaf 19:7 deal 14:19 20:1 33:18 44:25 57:25 174:7 180:7 206:5 221:18 dealing 29:8 180:16 182:8 191:23 deana 3:4 5:9 debrine 3:8 4:19 176:14,18 176:18,19,21 178:11 179:10 179:20 180:2 180:18 183:9 183:10,12,19 183:23 184:12 184:13 189:17 189:24 193:6,9 198:10,12,15 199:13,17 200:10 201:1 205:7,9,14,24 206:15,25</p>	<p>208:4,9 209:2 209:6,10,18,22 210:22 212:23 214:9 215:20 217:12 223:1 december 98:24 100:5 106:11 159:2 decide 106:5,5 decided 76:12 82:25 decision 41:2 91:18 decks 115:24 declaration 5:8 44:3 declarations 23:6 dedicate 35:5 dedicated 72:4 72:7 deem 57:21 194:19 deemed 214:20 defective 29:16 defer 98:1 define 189:1 defined 181:22 definitely 53:2 151:3 152:25 167:9 degrees 150:11 150:15 151:5,6 151:11,24 157:14,15</p>	<p>delaware 42:13 148:1,5 204:12 210:5 delay 177:21 177:22 delta 150:8 delving 13:4 demonstrate 18:15 84:25 171:13 186:25 187:1 demonstrated 9:18 demonstrative 52:21 73:1,7 118:24 119:2 denied 105:7 105:11,12 deny 106:14 department 1:2 2:6 92:6 95:6,6 107:21 depending 79:5 86:15,17 115:23 depict 48:12 120:4 156:3 depicted 113:7 depleted 166:16 description 5:2 5:11 design 78:7 142:12,17</p>
d			
<p>d 4:1 5:7 6:1 22:16,17 23:19 23:20 41:23 42:4 43:11,12 43:19,21,23 66:25 68:24 69:9 147:9 daniel 227:2,18 data 139:11,14 139:17 184:19 190:7 date 2:2 20:22 80:3 192:8,8 211:7 218:21 219:4 dates 192:6 218:21</p>			

[designated - display]

<p>designated 124:5,8</p> <p>designed 19:9</p> <p>detail 13:5 192:15</p> <p>determination 207:3</p> <p>determine 16:24 138:16 138:22 187:13 199:14,20 207:25</p> <p>determined 205:1,1</p> <p>detriment 16:9 16:10 144:11</p> <p>develop 19:16 20:22 27:22,23 30:24 47:20 48:18 49:8 92:24 101:3 122:18 149:5 186:6 188:7,9 196:4</p> <p>developed 31:1 47:12 80:22 123:1 153:8 178:22 185:21 185:22</p> <p>developing 51:8 76:25</p> <p>development 5:15 10:1 19:14 24:3,11 24:12,15 28:2</p>	<p>43:15 47:5,8 47:18 52:1</p> <p>55:9,12 71:15 76:11 79:23 81:24 84:14,17</p> <p>113:14 121:19 122:16 123:3,6</p> <p>133:14 136:4 137:8 138:25 139:3 149:1 152:21 154:5 155:3 162:2 177:9 196:13 198:1,4 199:6 199:19 206:7 206:17</p> <p>developments 166:22 201:8</p> <p>develops 93:3</p> <p>deviation 166:25 167:5</p> <p>devon 66:24 67:4,15 68:21 68:23 69:9</p> <p>devon's 67:20</p> <p>devoted 75:4</p> <p>dewine 176:17</p> <p>diagram 12:10 12:10 15:16 31:4 50:22 52:21 74:11 90:20 115:5 151:1 156:13</p> <p>diamond 90:10 90:20,21</p>	<p>dictates 170:7</p> <p>different 17:23 18:6 72:4 102:12 115:23 154:22 192:6 209:19 210:20</p> <p>difficult 34:6</p> <p>difficulty 185:9</p> <p>digital 226:8 227:3</p> <p>diligently 19:13 35:22 215:14</p> <p>diluted 186:14</p> <p>diluting 188:10 198:5</p> <p>dilution 24:4</p> <p>diminution 24:4</p> <p>direct 45:16 46:15 59:24 127:9,14 128:12 129:4,7 137:25 146:22 174:11 191:2 213:1</p> <p>direction 52:6 52:17 68:8,10 177:10</p> <p>directional 157:11</p> <p>directly 16:8 113:3</p> <p>director 20:14 39:5 46:1 128:20</p>	<p>dirt 149:8 153:15 223:10</p> <p>disclose 139:19</p> <p>disclosed 65:23</p> <p>discovered 10:9 27:20</p> <p>discrete 21:2,3</p> <p>discuss 7:20 41:7 48:24 127:12 148:14 148:25 212:17 220:11 222:12</p> <p>discussed 46:21 69:17 150:7 222:11</p> <p>discusses 53:5</p> <p>discussion 213:18</p> <p>discussions 54:19,22 55:1</p> <p>dismiss 13:21 18:2</p> <p>dismissal 6:22 6:23 9:21 17:14,19 20:6 25:9 178:2</p> <p>dismissals 177:13,15</p> <p>dismissed 6:7 7:23 25:24 26:16 27:2 200:6 214:24</p> <p>dismissing 7:21</p> <p>display 112:18</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[dispute - e]

<p>dispute 10:7 13:9 28:2 34:20 disputed 10:3 disruption 153:16 distance 152:10 153:25 168:17 169:1 203:21 203:22 distributed 219:1 disturbance 51:24 53:18 55:16 114:4 dividends 153:21 division 1:3 3:3 3:7,13 9:25 11:25 13:3 16:23 17:3 21:14 23:13,15 23:24 24:1 27:2 38:20 39:11 42:10 46:6 55:8 81:23 98:20,23 99:24 105:25 108:4,9,18 109:3,7,17,23 110:3 111:23 128:22 133:10 138:20,21,23 148:19,23 159:2 161:6</p>	<p>171:13,24 177:14,25 192:7 200:5 203:6 207:24 214:10 220:7 division's 11:10 16:23 73:3 75:14 76:14 81:21 82:12,14 100:2 102:24 109:12 123:15 144:16 189:12 dock 218:22 docket 26:6,8 120:9,15 121:21 dockets 217:24 document 87:10 88:11,13 88:16 175:4,5 185:13 188:3 192:2,16 195:16,19 221:4 documentation 116:5 118:11 118:14 documents 87:2 88:6 177:4 178:19 178:23 179:17 189:5,12 190:19 192:7 doing 13:11 26:22 30:15,16</p>	<p>33:2 49:22 79:7 117:12,21 150:16 163:3 166:3 182:24 185:9,10,12 187:17 207:6 208:5 221:18 dollars 149:9 150:4 don 62:15 door 23:4 201:7,11 dot 66:23,25 67:1,2,2 dots 67:17 draft 102:18 drain 47:22 135:5 136:22 drainage 32:11 draining 28:7 30:20 84:12 98:4 186:8 188:13 198:3 draw 188:15 drawing 50:17 drawn 12:18 drill 5:14 15:7 51:23 98:3 150:9 151:13 153:3,15 154:24 156:20 157:13 171:22 drilled 76:4 80:2 82:10 99:13 100:11</p>	<p>161:1 167:11 167:15 209:24 210:5 drilling 18:20 42:12 49:17 50:12 75:18 79:17 84:20 92:6 95:6 96:4 96:20 115:19 135:22 137:12 151:13 152:16 154:23 164:7 167:6,10 170:13,20 171:14 176:11 191:8,11 203:16,18 204:1 drills 84:18 99:12 165:25 drive 2:8 due 18:8,20 87:19 duly 45:13 128:9 146:16 174:3 226:5 dx 4:5</p>
			e
			<p>e 3:1,1,8 4:1 5:1 5:8 6:1,1 22:21 22:23,24 23:4 23:5 44:1,2,17 44:19,21 157:20 159:6</p>

[eagle - equation]

<p>eagle 204:12 earl 3:8 earlier 25:6 90:3 123:8 147:7 153:23 156:24 158:11 198:17 202:11 211:13 early 9:22 201:20 211:18 ears 19:7 ease 114:3 easements 116:5 118:17 easier 116:7 161:5 east 67:9 201:16 easy 150:3 echoing 196:21 economically 49:7 education 138:13 179:12 effect 138:9 effective 141:2 141:3,24 effectively 47:20 51:2,22 75:19 76:6 79:5,6,12 84:11,19 93:3 108:13 effects 166:13</p>	<p>efficiencies 53:8 efficient 21:1 213:22 efficiently 47:12,22 effort 68:22 eight 10:22 26:16 31:23 38:1,10 85:7,7 166:7 184:13 184:24 185:2,6 185:18 eighth 10:24 31:9,14,24 85:8 either 13:17,23 15:8 26:22 88:23 92:10 108:12,19 114:20,21 119:8 156:4 185:20,23 186:10 188:7 eleventh 18:2 199:8 eliminated 58:18 elizabeth 3:19 emails 54:24 employed 226:11,14 227:8,11 employee 226:13 227:10</p>	<p>energy 1:2,6 2:5 3:5,9,14,16 3:18,23 5:3 18:24 19:11,17 19:20 20:15,22 21:13 24:15 25:7,12 35:19 35:20 36:5 37:1 39:18 45:24 46:3 47:5,8 48:2,17 48:25 50:10 55:9 60:18 65:1,11 66:3,7 66:24 67:4 121:17 122:5 122:14,21 128:18 155:2 158:11 192:12 213:9 223:22 energy's 17:24 144:1 engineer 3:15 3:21 18:10 22:18 42:23 135:23 142:24 147:5,6 164:7 179:23,24 180:17,20 187:11,19 191:21 engineering 42:13,21,25 43:2,6 95:6 147:13 176:11</p>	<p>176:23 178:10 178:14,20 179:1,5,6,14 180:4 182:3 184:15 engineers 92:6 150:9 english 15:2 190:9 ensure 30:4 133:10 enter 122:2 entered 39:24 entire 26:12 190:20 entirely 96:15 entirety 10:14 59:3 133:1 186:4 entitled 34:13 200:11 entity 69:11 entry 8:20 44:12 68:21 69:15 equal 17:2,4 85:18 131:10 equally 49:19 84:7,9,13 85:12 130:19 134:6 136:2,11 137:9,23 141:19 equation 170:10</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[equipment - examiner]

<p>equipment 114:25</p> <p>equitable 31:14</p> <p>error 27:3</p> <p>es 4:5 226:4</p> <p>especially 215:16</p> <p>essentially 11:18 18:6 135:1 149:22 151:21 167:12 167:17 206:17 207:6</p> <p>establish 177:19</p> <p>established 9:24 156:23</p> <p>et 28:3</p> <p>evaluate 16:25</p> <p>evaluating 201:3 203:10</p> <p>evd 5:2,11</p> <p>evelyn 193:17</p> <p>evidence 10:1,8 13:15,24 14:14 14:14 15:17,19 20:10 21:5,10 23:24,25 36:15 36:24 38:17,24 39:3 41:6,9,12 41:23 42:3 43:19,22,25 44:16,20,23 61:21 73:14 80:9 81:9</p>	<p>82:18 106:16 134:3 138:7,8 138:16,22 180:13 184:4,6 184:9 194:20 195:3</p> <p>evidentiary 29:8 40:22 41:2 111:14,19 220:13 222:3</p> <p>exact 96:4</p> <p>exactly 73:12 75:21,25 117:1 190:15,19,24 220:14</p> <p>examination 36:19 45:16 55:21 56:1 59:14 60:11 112:4 116:18 124:17,19 126:17 127:9 128:12 130:2,4 142:10 143:14 143:17 146:22 155:16 165:8 168:4 170:4 172:9,17 174:11 198:11 198:14 208:25 211:3</p> <p>examine 138:24 200:22</p> <p>examined 45:15 128:11</p>	<p>146:18 174:5</p> <p>examiner 2:4 3:6,12 6:2,9,12 6:17,21 7:2,5 7:10,13,16 8:3 8:7,18,22 9:2,9 10:19 12:25 13:13 14:1,4,8 14:12,23 15:1 15:18,22 16:15 16:18,21 17:7 17:12,21 19:23 19:25 20:9,24 21:19,24 22:2 22:5,8,12,16,19 22:22,25 23:3 23:8,11,17,20 23:23 24:8,17 24:21 25:2,13 25:16 26:5,11 26:25 27:5 28:14,18,21,25 29:4,14,23 30:11 31:19 32:3,14,24 33:7,10,14,22 34:1,9,17,21 35:6,10,13,17 35:25 36:9,12 36:21 37:1,8 37:11,15,18,25 38:3,5,9,13,18 38:22 40:4,8 40:13,20 41:1 41:19,22 42:6</p>	<p>42:8,15,22 43:1,7,9,18,21 44:9,15,19 45:5 51:13 52:5,9,13,16,24 53:20,23 55:18 55:19,23 56:25 57:7,10,16,24 58:4,8,11,16,22 59:12,16,19,20 59:25 60:4,7 60:13 61:17 62:5 63:3,6,9 63:14 64:24 65:3,7,14,20,25 66:1,12,17 67:24 72:20,25 73:5,9,10,17,21 73:25 74:3,7 77:18,24 78:3 78:4,10,16,19 80:9,13,16,24 81:3,10,14,18 81:21 82:4,17 86:21,25 87:9 87:14,20,23 88:2,5,12,15,18 89:1,5,9,13,16 93:11,15,21 94:4,13,17,20 104:7,10 105:3 105:6,10,18 106:13 111:3,5 111:8,12,18,25 116:12,13,17</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[examiner - exhibit]

117:15,22	173:2,5,9,12,16	212:1,4,9,12,14	excuse 24:14
118:1 119:3,5	173:19,23	212:16,19,22	35:1 65:8
119:12,17	174:6 175:2,7	213:7,13,16,19	66:10 72:20
120:19 121:3,7	175:10,13,19	214:1,5,7,11,18	198:2
124:16 126:16	175:22,25	214:23 215:5,7	excused 127:1
126:20,25	176:5,8,12,14	215:23 216:2,7	127:4 145:7
127:3,6,8,12,16	176:16,19	216:11,14,17	172:25 212:2
127:20,23	178:6,24 179:4	216:22 217:5,9	execute 114:20
128:5 129:6,12	179:8,19 180:5	217:15,17,18	executed 64:12
130:1 131:21	180:21 181:2,5	217:21,25	193:14
131:22,24	181:11,15,18	218:9,14,17,20	exhibit 5:4,5,6
132:2,9,13,16	181:21,24	219:2,8,11,14	5:7,8,13,15,16
132:18 133:16	182:5,8,13,20	219:19,21	15:21,23,25
133:18 134:2,7	182:23 183:1,4	220:4,10,21	37:2 39:1
135:22,25	183:8,16,21	221:3,6,9,19,25	40:16 41:10
136:6,7,15,24	184:1,12,25	222:16,24	42:1,11 43:23
137:3,13,24	185:3 186:21	223:5,19 224:7	44:21 47:25,25
138:2 139:8,25	188:23 189:17	224:14,18,22	48:23 56:7,14
140:5,9,12	189:22 190:13	224:24 225:2	56:15 61:20
142:8 143:1,7	191:23 192:5	examiners 47:7	62:25 63:23
143:10,12,16	192:10,17,21	149:20	65:6 66:13,19
144:25 145:6,9	192:25 193:3,6	examining	66:24 67:23
145:12,19,24	193:10,20	66:21 176:15	68:20 69:16
146:5,7,10,19	194:9,14,16	example 11:2	70:10 71:11,20
146:21 155:9	195:6 196:14	49:15 91:6	72:21,24 73:7
155:12 158:1,9	198:9,12	112:21,23,24	73:16,18,24
158:13,19	199:23 200:7	113:2,3 115:12	75:11 86:20
161:7,11,15,18	200:19 205:6	137:21 139:5	87:4,7,16
161:20 163:24	205:11,16,22	140:25 141:12	88:20,21,22
164:9,21,24	206:8,10,21	141:13,18	89:2,23 94:24
165:3,6 167:22	207:8 208:13	156:2 187:24	98:12 100:23
169:25 170:14	208:15,18	excavate	112:9,12
170:22 171:1,7	209:9,12,19,20	176:25	118:23 119:21
172:8,11,14,15	210:23 211:2	except 18:7	124:23 134:20
172:20,24	211:16,20,24	107:25 127:14	147:9 155:11

[exhibit - familiarity]

161:16 163:10 170:12 174:17 175:8 182:16 182:24 183:17 184:3,4,5,7,7 184:14 188:17 188:21 190:20 195:1,13,24 200:20 215:3,8 220:14 exhibits 13:2,8 17:23 18:4,5 21:20,25 36:24 37:1,5 39:7,8,8 39:9,10 40:25 41:15 43:15 44:12,24 46:18 46:20 47:1 82:5 87:3 89:24 101:19 109:15 118:24 119:1 129:14 129:19 147:19 148:11 174:7 174:19 175:1 178:15 182:9 182:11 183:11 183:13,24 190:3 191:15 192:12 193:13 193:15,18 194:22 198:24 215:1,2,9 exist 204:10	existing 35:1 51:23 100:19 100:20 114:1 114:15 expand 51:20 118:14 expect 110:21 131:10 expected 162:25 expecting 166:5 177:8 expedite 216:8 expedited 216:20 218:2 expense 30:8 134:12 experience 18:10 42:12 120:21 138:13 179:12 expert 42:17,18 43:4 120:21,24 137:14,16 138:3,11,12 139:9,10,11 147:12 175:14 176:9,10 178:9 178:25 182:2 190:9 194:4 200:11 expert's 138:15 expertise 117:18 121:4 136:18 137:2,5	140:3 142:15 144:14 164:5 187:19 191:21 experts 23:10 106:5 120:22 138:5 139:12 190:4 explain 7:24 8:6 16:2,13 149:20 153:11 explained 102:2 explaining 13:12 19:14 explanation 9:15 38:23 explored 115:25 exploring 61:23 express 178:20 179:13 180:4 expressed 202:10 extending 149:23 extent 83:25 142:21	fact 17:19 18:13 24:5 59:22 69:23 74:19 82:7 108:18 113:25 137:1 138:15 138:16,19,22 206:2 213:21 214:2,15 224:19 factor 10:3 17:6 24:24 141:20 factors 16:24 17:3 140:21 facts 139:11,14 139:17 188:20 factual 215:21 fair 30:8 34:13 34:18 58:1,2 87:24 faith 58:18 60:20,24 61:23 falls 19:7 false 108:9 familiar 46:9 46:12 128:25 144:15 147:14 189:24 205:10 205:25 207:1 210:2,8 familiarity 179:24 180:14 208:11 209:7
		f	
		facilities 19:19 48:13,15,20 114:5 facility 52:4 114:11	

[family - feldewert]

family 222:2	102:6 115:16	44:10,11,18	115:7 116:20
fantastic 22:16	115:22 135:15	51:12,15 55:20	117:7,10,17
far 41:8 95:3	150:2,8,14	55:22 56:2,22	118:19 119:10
95:14 152:25	151:4,25 152:3	57:21 58:2,6	120:17,25
165:15 167:8	154:14 157:15	58:13,17,22,23	121:5 122:11
167:17 208:1	159:18,23	58:25 59:15	123:8 124:16
farther 166:11	160:1,5 161:2	60:8,12,14	124:18,20
fashion 26:21	162:13 165:19	61:16,20,23	126:14 127:13
faults 141:23	165:21 167:7	62:11 63:4,7,9	127:17,18,21
favor 25:11	168:12,20,22	63:12,15,18	127:25 130:3,5
64:22	169:7 171:18	65:15,17,22	131:22,23,24
fe 2:9	171:22 197:11	66:15,20,22	131:25 132:14
feasible 118:6	204:7	67:25 68:1,3	132:15,17,21
february 2:2	feldewert 3:10	72:23 73:2,15	132:22 133:20
6:3,23 58:12	4:2,8,12,15,18	73:19,23 74:2	133:21 134:2,4
88:7 145:25	6:24 7:1,4,11	74:6,9 77:24	134:9 135:25
192:4,6,9	7:18 8:1,5,9,13	77:25 78:19,21	136:1,15,19
219:7,14,16,18	8:25 9:3,13,14	78:22 80:11,14	137:4,6,13,19
219:22	13:4,11,25	80:19 81:1,20	137:20 138:18
feedback	14:3,6,16,24	82:17,21,23	138:23 140:11
196:17,18	15:4,20,24	86:23 87:1,7	140:14,23
208:19	16:17,22 18:9	87:12,18,22,25	142:6 143:14
feel 12:25 62:8	20:2,6 21:2	88:4,10,14,17	143:19 145:16
106:17 110:16	24:2,5,9 25:14	88:25 89:3,7	145:17 153:24
127:8 171:1	25:17 26:3,7	89:11,15,18,20	155:9,10,14,17
207:16	26:18 27:4,9	93:15,16,23,25	157:23 158:2,5
feet 75:16,19	28:16,20,24	94:14,15,19,23	158:19,20,22
76:22,24 77:21	29:2,11,15,17	104:7,9,13	161:10,13,17
78:6,7 79:5,15	30:1,14 31:21	105:10,11,19	161:19,21
81:25 82:1	32:6,16 33:1,9	105:20 106:18	164:6,12,16,19
84:18 92:7,11	33:12 36:12	106:21 111:1,9	168:3,11 170:2
92:12 94:11	38:14,16,19	111:11,12,22	170:5,15,17,25
95:7,9,17,18,23	40:5,6,11,24	112:7,8,10,13	171:5,8 172:6
96:7 97:6,9,14	41:20,21 43:3	112:15,20	173:13,14,18
101:1,4,6,7,9	43:5,8,20	113:17 115:3,4	173:21 174:6,8

[feldewert - first]

174:12,25	220:1,2,6	26:24 27:13	final 173:7
175:6,9,12,15	221:7,12,14,16	29:15,17 36:17	financially
175:21,24	221:20 222:5	37:1 39:24	226:15 227:11
176:3,7,10	222:14 223:3	40:7,9 46:13	find 21:22
178:24 179:2,3	224:10,16,21	67:11 81:23	26:13 51:13
179:7 180:7,24	224:23	82:6 87:2,11	72:21 87:4
180:25 181:4,7	feldewert's	88:6 98:8,14	88:19 132:3
181:13,16,20	25:1 57:9 62:1	98:18,20 99:13	181:22 189:5
181:23 182:4,7	82:11 172:16	99:23 101:18	192:1
182:10,18,21	felt 58:18	103:12 106:11	findings 213:21
182:25 183:3,6	106:15	108:3,8,11	214:2,15
183:13 184:2	field 5:15	109:7,11,16	215:22 224:11
184:10,23	114:21 120:23	129:1 147:14	224:19
185:2,5 186:22	120:24 121:4	157:18 158:6	fine 14:8 29:5
187:4 188:25	138:4 139:13	158:23 159:1	59:2 87:9
189:7 190:12	176:9 182:3	161:5,23	109:5 144:23
190:15 191:1	204:15 206:4	174:17 177:13	158:20 179:4
193:20,21	210:1 223:14	177:23 178:16	184:1 194:4
194:23 195:4,8	fields 23:16	187:7,15	finish 62:12
195:9 196:19	figure 185:8,10	188:21 189:9	finished 25:14
196:20,23,25	figured 29:11	189:12,25	222:13
197:1 198:7	file 11:13 39:20	190:21 192:3,3	first 6:8 11:9
199:9,16 200:1	40:15,17 41:4	192:5,7,9	20:13 29:24,25
200:19 205:4	87:16,21 93:6	193:15,16,22	30:1 32:6 39:7
205:18 206:9	100:2 108:21	195:10,13,24	45:3,13 49:13
207:10,11	122:1 177:24	198:25 202:18	55:2 57:17
208:8 209:1	178:4 193:23	219:23	62:21,21 65:16
210:24 211:22	195:17,20	files 11:10,12	75:25 76:16,20
211:23,25	214:14,14	109:12	77:8 78:6
212:3,11,13	218:6	filing 88:7	79:22 80:1,6
213:15 214:5,6	filed 6:23 7:19	192:1,8 218:4	81:24 90:5,7,8
214:13,19,25	9:16 11:17,25	218:11	91:11,13 92:1
215:5,6,24,25	12:23 17:22	filings 9:17,18	92:7,20 93:9
218:10,11,15	18:3 20:7	185:8 190:16	93:18 95:13,25
218:18,23	25:20 26:19,20		96:7 97:4,6,13

[first - franklin]

<p>99:5,10 100:7 101:4,11,14,15 102:5,8 103:3 103:6,13,18 106:25 108:4 109:7,14,23,25 111:16 128:9 130:7,25 135:16 140:24 146:16 148:18 150:13,22 152:3 153:4 154:10,17,17 155:24 157:16 159:10 165:22 165:23 168:17 169:2,3,8,11,15 170:6,8 171:17 174:3 175:2 182:24 192:6 195:25 197:10 197:15 199:14 199:22 201:5 201:17 202:3,5 202:15 203:8 203:19,20 204:3,6,6,22 207:12 211:6,7 211:9 214:23 five 57:1 163:1 163:11,23 190:12 191:3 194:9 212:15 213:3</p>	<p>flag 177:18 flatter 152:15 flights 222:1 floor 2:8 fly 221:17,20 fme 24:3 43:15 46:13 115:14 123:14 129:1 147:14 152:22 fme's 51:1 112:12 120:4 focus 36:18 136:11 137:17 folded 59:6 folks 19:15 follow 116:15 following 25:19 213:18 follows 45:15 128:11 146:18 174:5 foot 76:14,20 77:7,12,14 78:9 79:21 80:1,6 81:8 82:13 115:13 115:14 149:24 149:25 150:3 156:7,22 157:8 159:14 162:17 162:19 204:4 204:22 footage 93:17 94:3,9 149:23 151:17</p>	<p>footages 91:23 109:13 forced 163:18 163:20 207:16 ford 204:12 foregoing 226:3,4 227:4 forget 158:6,16 158:16 forgetting 158:21 form 117:11 120:22 138:14 224:12,15 formation 25:22 115:19 formations 21:17 50:6 forming 139:14 forms 38:19 formulate 193:7 fort 181:9 forward 7:23 61:2 128:1 208:1 215:14 222:20,21 223:14 found 73:13 87:14 155:20 foundation 184:5,20,22 205:15 four 18:11 19:18 24:6</p>	<p>25:18 33:8 47:6,12 49:10 64:4 140:14 148:1,4 154:8 166:24 181:17 frack 141:2,3,6 141:23,25 142:12,17 150:2 165:15 166:4,5,10 fracked 167:12 188:12 fracking 165:13 166:3 166:12 fractures 141:23 francis 2:8 franklin 1:5 3:4 3:8,14,15,23 5:3 7:7 9:19,23 10:5 17:24 18:24 19:11,17 19:19 20:14,21 21:13 24:15 25:7,11,21 35:18,19 36:5 37:1 39:18 45:24 46:2 47:4,8 48:2,17 48:25 50:10 55:8 60:18 65:1,11 66:3,6 70:4 83:6 86:13 121:17</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[franklin - go]

<p>122:5,14,21 128:18 144:1 147:3 155:2 158:11 178:16 186:3 187:8,14 189:9,25 190:21 191:5 191:16 192:3 192:12,19 193:13 194:22 196:8,12 197:2 198:20 199:1 201:4 202:14 202:22 203:2,7 206:5,16 207:6 210:18 213:9 213:24 216:7 218:7 220:13 223:10,22 fresh 16:23 friday 7:19 190:23 front 11:14 56:7,13 59:3,3 60:16 63:1 67:19 fruitful 54:23 fruition 54:25 full 49:20 fully 27:23 31:1 112:17 185:22 186:2,19 fun 111:24 220:7</p>	<p>fundamental 27:3 further 16:14 126:22 172:10 172:22 177:21 201:15 210:22 223:12 226:13 227:9 futile 24:24 future 61:19</p> <hr/> <p style="text-align: center;">g</p> <hr/> <p>g 6:1 gain 210:13 gaining 163:2 garcia 3:12 4:9 4:16,20 6:10 6:10,11 9:5,10 55:19 111:4,6 111:8,16,24 112:1,3,5,10,14 112:16 115:2,8 115:9 116:11 116:14 117:6 126:16,19 142:9,11,16,20 142:22 143:2,4 143:9 165:1,3 165:5,9 167:20 167:23 172:8 172:10 194:10 196:20 208:14 208:19 210:24 211:1,4,14 217:17,19,22 218:1 222:15</p>	<p>222:16,17,25 223:5,7,20,21 223:24 224:2,8 224:25 225:1 gas 30:8 149:17 181:1,4,5,12 general 13:16 13:20 generally 201:6 generic 90:12 geologic 21:17 136:9 140:21 geologist 3:14 21:13 41:14 127:7 geology 22:14 41:15,17 128:20 133:16 135:22 136:8 136:12 137:7 137:15,16,17 getting 19:15 31:11,11,13 153:8 170:8 189:20 196:17 196:17 224:2 give 20:10,18 28:25 29:6 33:24 40:19 62:6,7,9,14,17 105:23 134:21 137:21 138:4 159:16 180:23 185:3 188:23 194:3,18</p>	<p>200:21 given 78:13 118:9 177:5,21 179:11,14 180:18 199:9 201:9 giving 17:16 148:22 151:17 151:17 175:17 205:18 222:4 glean 185:20 193:23 go 6:3 11:16,24 12:11,14 16:8 20:15 28:22 34:9 36:24 37:11 41:9 55:20 56:6 57:4,8 59:9 63:2 66:25 67:10 69:22 71:3 82:3 84:3 89:21 92:14 93:5 96:15 101:21 102:9 102:17 106:20 110:19 115:5 116:6 119:11 130:7 141:3 143:16 145:14 145:17 148:3 152:6 155:10 161:4 165:6 170:9 182:18 183:9 195:11</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[go - half]

<p>200:18 207:25 214:11,21 217:1 goes 65:23 117:17 139:20 208:4,24 209:6 209:15 going 8:1,11 10:11,12,13 12:6,7,11,14,19 13:1,4,14,22 14:6,18 15:9 15:11,25 16:7 18:16 20:11,18 20:24 21:3,8 24:3 26:5,13 28:5,6 29:21 30:16,21,22,23 30:24 31:1,2,3 31:5,15 32:12 33:24 54:4 56:6 57:4 61:17 62:2,5,7 62:8 63:1 66:18 71:19 73:14 74:4 75:5,24 78:10 78:24 80:17 81:18 82:21 83:16,21 85:17 86:23 92:2,23 93:16,18 94:1 94:6,16,25 95:3 96:6,18 97:5,14,19</p>	<p>98:19 99:21 100:25 101:2,8 102:9,9 103:4 103:14,19 104:22 105:15 105:19,23 106:17 107:1,4 107:13 109:24 109:25 110:5 111:4 113:8 114:5,6 115:4 118:10 120:19 123:9 124:12 126:11 130:7 134:7,25 135:1 135:4,10,17 136:2,16,21 137:8,10,12 138:4 140:1 145:14 146:8 146:12 148:14 149:13 150:14 151:4 154:14 154:21 155:10 157:14 159:6 159:10,11,18 159:22 160:9 162:23,24 164:4,6 165:22 166:18 168:6 171:17 173:24 177:10,23 179:20 180:6,8 185:14 188:5,6 188:7 190:14</p>	<p>190:14 191:2 194:17 195:25 196:4 197:9,15 197:20 198:3 200:21 201:7 201:11 204:3,9 205:7,12,20 206:23 207:12 207:21,22 208:2 209:2 211:10 213:19 214:1 215:25 220:7 222:5,21 good 6:18 7:10 7:11,12 8:7 14:1 16:20 18:3 32:16 33:14 38:3,13 45:8,18 58:18 60:20,23 61:23 62:24 111:6,7 128:14 172:24 173:12 175:7 213:13 218:20 220:11 224:24 gotten 11:11 208:20 granted 177:15 great 6:12 73:17 182:7 218:18 greatly 188:25 green 45:8 77:6 gregory 2:4 3:6</p>	<p>grounds 29:19 groups 210:10 guess 40:1 49:23 62:14 90:16 92:10 112:10 122:11 154:9 156:24 157:6 165:20 167:3 183:19 201:6 211:5 guy 156:9 guys 76:11 113:14 115:14 115:25 116:8 166:1,5 167:1 167:4 196:16 211:7</p>
			h
			<p>h 3:10 5:1 99:2 158:8,24 161:24 195:14 half 10:14,14 12:7,7,13,13,15 12:15,19,20 15:5,5,10,10,11 15:11 16:7,8 16:11 28:11 30:17,18,19,19 31:3,3,4 32:19 32:21,21 48:16 48:16 53:12,13 67:9,9 72:3,3 72:14,14 74:20 74:20 75:6,6 75:21,25 77:2</p>

[half - hearing]

77:3 83:5,5,7,7 83:8,9,15,16,21 83:21 84:2,2 91:3,3,9,9,19 91:20 92:3,3,4 92:4,13,13,15 92:16,16,16 96:8,8,9,9 97:15,16,16,16 99:3,3,16,16 100:3,3 104:19 104:19 110:6,6 125:7,7 127:10 135:5,6,19,20 149:18 156:3,4 156:5,14,15,21 156:21 157:6,6 157:21,21,25 159:7,7,19,19 160:4,4,14,14 160:17,17,18 160:18,19,19 160:21,22 161:2,3 162:3 162:4,5,5,11,11 162:23,23,24 162:25 163:8,9 163:9,21,22 168:12,13 169:18 185:20 185:21,24,24 186:4,5,7,7,12 186:12,15,15 188:1,1,1,8,8 195:21,21,21	196:4,5 197:22 197:23 halfway 12:12 12:14 74:20 75:5 91:20 162:4 hall 2:7 hand 45:10 50:17 52:12 90:20,22 115:16 182:21 222:19,22 223:11,15 224:4 handle 123:3 handles 210:21 happen 92:23 140:21 141:17 happening 221:22 happens 50:10 134:10 happy 13:6,7 hard 115:13 129:8 205:19 208:16 hart 3:10 he'll 143:12 222:6 head 201:9 hear 6:10,11,13 8:17 9:12 27:8 120:2 129:8 132:13 198:19	heard 47:3 94:5 193:7 201:22 223:3 hearing 2:1,4 3:6 6:2,12,17 6:21 7:2,5,10 7:16,19 8:3,7 8:18,22 9:2,9 9:16 12:4 13:13,22 14:1 14:4,8,12,13,23 15:1,18,22 16:15,18 17:7 17:12,21 19:23 19:25 20:9,24 20:25 21:19,24 22:2,5,8,12,16 22:19,22,25 23:3,8,11,17,20 23:23 24:8,17 24:21 25:2,13 25:16 26:5,11 26:12,17,25 27:1,5 28:14 28:18,21,25 29:4,14,23 30:11 31:19 32:3,14,24 33:7,10,14,22 34:1,9,17,21 35:6,10,13,17 35:25 36:9,13 36:21 37:8,11 37:15,18,25 38:3,5,9,13,18	38:22 40:4,8 40:13,20 41:1 41:19,22 42:6 42:8,15,22 43:1,7,9,18,21 44:9,15,19 45:5 51:13 52:5,9,13,16,24 53:20,23 55:18 55:23 56:25 57:10,16,24 58:4,8,11,15,22 59:12,16,18,20 59:25 60:4,7 60:13 61:17 62:5 63:3,6,9 63:14 64:23 65:3,7,14,20,25 66:1,12,17 67:24 72:20,25 73:5,9,10,17,21 73:25 74:3,7 77:18,24 78:3 78:10,16,19 80:8,13,16,24 81:3,10,14,18 82:17 86:21,25 87:3,9,12,14,15 87:16,20,23 88:2,5,8,12,15 88:18 89:1,5,8 89:9,13,16 93:10,15,21 94:4,13,17,20 103:17 104:7
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[hearing - historically]

104:10 105:3,6	164:21,24	205:11,16,22	151:20,20
105:10,18	165:3,6 167:22	206:8,10,21	152:8,8 153:1
106:13,16	169:25 170:14	207:8 208:13	153:1,8,8
109:11 111:3,8	170:16,20,21	208:15,16,18	163:4,4 168:16
111:12,18,19	170:23 171:1,6	209:9,12,20	169:1,1,17,17
111:25 116:12	171:7,9,14	210:23 211:2	help 8:5 49:4
116:13 117:15	172:3,8,11,15	211:16,20,24	104:3 114:3
117:22 118:1	172:20,24	212:1,4,9,12,16	138:15,19,21
119:4,5,12,17	173:2,5,9,12,16	212:19,22	188:25
120:19 121:3,7	173:19,23	213:7,13,16,20	helped 90:3
123:15 124:16	174:6,16 175:2	213:25 214:5,7	224:8
126:16,20,25	175:7,10,13,19	214:11,18,22	helpful 52:17
127:3,6,8,12,16	175:22,25	215:5,7,16,23	82:20 161:18
127:20,23	176:5,8,12,16	216:2,7,11,14	190:17 215:21
128:5 129:6,12	176:19 177:8	216:17,22	helping 13:16
130:1 131:20	178:6,24 179:4	217:5,9,15,18	13:17
131:22,24	179:8,19 180:5	217:21,25	hereto 226:15
132:2,9,13,16	180:21 181:2,5	218:6,9,14,17	227:11
132:18 133:15	181:11,15,18	218:20 219:2,8	hesitate 54:14
133:18 134:2,7	181:21,24	219:11,14,19	201:24
135:21,25	182:5,8,13,20	219:21 220:4	hey 112:24
136:6,7,15,24	182:23 183:1,4	220:10,21	113:4
137:3,13,24	183:8,16,21	221:3,6,9,19,25	high 114:24
138:2 139:8,20	184:1,12,25	222:16,24	highlight 29:25
139:25 140:5,9	185:3 186:21	223:5,19 224:7	30:12
140:12 142:8	188:23 189:22	224:14,18,22	highlighted
143:1,7,10,12	190:13 191:23	224:24 225:2	28:19 29:10,24
143:16 144:25	192:10,17,21	hearings 122:8	31:18 148:25
145:6,9,12,19	192:25 193:3,6	188:4	highlighting
145:24 146:1,5	193:20 194:9	heel 49:11,16	30:10,13
146:7,10,19,21	194:14 195:6	49:16,17,19	hinders 82:20
155:9,12	196:14 198:9	50:8,8 74:25	hinkle 3:17
158:13,19	198:16 199:23	84:8 91:6,6	historically
161:11,15,18	200:7,19	150:6,6,20,20	123:1
161:20 164:9	201:20 205:6	151:1,1,18,18	

[history - including]

<p>history 177:21 hit 152:18 153:4 hmm 43:12 113:21 181:7 181:23 216:11 hold 8:14 22:25 37:18 58:24,25 67:8 93:21,21 119:11 132:18 205:6 206:10 217:12 hole 79:6 83:1 83:3 91:19 99:15 100:11 101:10 141:5 156:14,17,19 157:20 159:5 159:11 163:6 170:7,9 171:20 207:16 holistic 47:17 48:2 49:6 55:12 79:8 holland 3:10 honor 73:8 77:18 78:14 hopefully 221:21 hoping 221:20 horizontal 1:17 10:23 49:12,14 74:23 75:18 79:4 84:19 123:3 150:12</p>	<p>166:25 167:4 203:17 204:21 hour 18:2 127:10 145:18 199:8 hundred 76:20 76:24 95:9,18 150:3,12,15 151:6,7,25 157:14 159:23 160:1 hundreds 74:24 79:15 hypotheticals 152:5</p>	<p>123:21 143:3 197:14 220:20 illustrate 90:13 illustration 91:15,17 92:22 93:1 96:2 168:8 illustrative 93:14 154:3 immediately 48:10,11 impact 10:15 11:6 18:12,16 47:6,9 51:7 62:2 105:13 106:6 125:14 131:13 139:4 144:2 156:6 164:4 185:15 194:2 197:4,14 197:20 200:3 impacted 133:14 186:13 impactful 150:5 impacts 19:21 28:8 106:4 impair 136:10 impairment 177:7 178:22 impeach 200:13 impediments 136:9</p>	<p>implement 217:23 importance 132:6 important 15:15 34:14 35:14 107:24 131:8,9,18 132:17,23,24 215:16 importantly 105:14 impossible 193:12 impression 119:20 improper 137:18 177:5 inadmissible 139:18 inadvertent 193:11 inadvertently 21:25 include 23:13 26:2 28:10 33:4 103:11 132:7 179:5,23 194:21 220:14 220:17 included 27:23 42:11 67:20 134:25 including 19:22 32:7</p>
	i		
	<p>idea 164:3 identical 26:22 identification 39:2 41:11 42:2 43:24 44:22 184:8 195:2 identified 61:16 118:20 120:12 153:2 197:9 identifies 99:11 99:15 110:3 189:19 identify 64:25 82:7 99:5 103:2,18 106:24 108:4 109:12 123:12</p>		

[inclusion - issue]

<p>inclusion 186:15</p> <p>incorrect 135:3</p> <p>increase 55:15</p> <p>increased 9:19</p> <p>increasing 50:5</p> <p>independent 149:14 150:6 150:20</p> <p>index 21:20 37:9,10,19 41:7</p> <p>indicate 68:21 184:16 195:25</p> <p>indicated 11:25 12:4 159:11 177:17</p> <p>indicates 12:9 12:10 191:4</p> <p>indicating 69:15</p> <p>indication 13:4 133:25</p> <p>industries 69:3</p> <p>industry 67:2 150:15</p> <p>inefficient 188:14</p> <p>inform 27:19</p> <p>information 20:19,20 27:17 41:5 57:15 61:3 65:23 105:12 138:24 171:13 179:15</p>	<p>181:25 187:22 188:19 196:3 202:5,15 203:3 203:7,9</p> <p>informational 34:4</p> <p>informed 27:13</p> <p>infrastructure 122:22 123:2</p> <p>infringe 105:16 207:17,21</p> <p>infringement 31:17</p> <p>initial 47:16</p> <p>inside 49:14 116:2,8 198:4</p> <p>instance 91:7</p> <p>intend 10:10 12:5 13:22 15:7 26:20 27:14 29:21 32:8 109:13 136:5</p> <p>intended 52:21</p> <p>intending 133:1</p> <p>intends 19:16 48:25 74:14</p> <p>intent 20:15 36:18 171:15</p> <p>intention 122:18</p> <p>intentionally 6:6</p>	<p>intentions 177:13</p> <p>interaction 151:18 153:8</p> <p>interest 9:20 10:2,6,17 12:2 17:3,5 18:25 19:8,9 24:24 25:7,12 27:10 28:9 30:6 34:16 36:1 39:22 44:5,6 47:9 54:8 60:19 66:6,8 69:10,13 83:10 85:23 86:12 102:17 106:25 108:20 109:20 124:24 125:18 133:11 134:23 134:24 143:20 143:23 158:12 163:15,19 177:18 186:10 186:13 188:10 197:21 198:6 207:17 220:19 220:20</p> <p>interested 66:16 226:15 227:12</p> <p>interests 28:1 39:19,21 64:1 66:2,3 83:5</p>	<p>interfere 121:25,25</p> <p>internally 210:21</p> <p>interpreting 190:10</p> <p>interrupt 20:25 208:14</p> <p>interrupted 94:3</p> <p>interruption 9:13</p> <p>interval 11:22 72:9 96:19 97:22 101:13 135:18 159:19 160:5 188:13</p> <p>intervals 10:8 11:19 28:3 31:1 75:5 98:2 135:10 136:21 160:20</p> <p>intervening 39:17</p> <p>inure 122:24</p> <p>investments 67:1 69:1</p> <p>involved 109:14 121:18 125:20 199:20 199:21</p> <p>irrelevant 58:20 200:9</p> <p>issue 10:9,9 18:7,13 21:2,4</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[issue - lacking]

<p>21:9 27:7 30:3 30:9 36:19 47:3 61:16 65:10,13,24 105:8 106:15 138:17,22 178:5 180:4 184:18 199:11 199:17,18 203:6 208:3,25 214:19 218:3 issued 223:16 issues 32:4 33:17 34:4 36:20 46:23,24 49:5 62:6 82:6 82:15 140:19 141:4 179:25 180:14 224:5 it'd 26:4 111:18 it'll 96:11 166:23,25 215:20 items 153:9 214:23</p>	<p>john 3:12 6:9 55:19 57:4 111:4 143:8 johnson 62:15 201:25 202:4 202:14 joinder 35:21 35:23 108:12 jon 67:3 69:5 jr 3:8 judgement 186:22 july 54:9 102:23 198:21 199:2 jury 139:19 justified 9:21 25:8</p>	<p>kessel's 22:14 136:8 137:25 kind 47:11,12 47:17 49:6,7,8 54:3 55:11 68:21 69:15 96:3 113:6 151:15 153:2 165:22 185:9 188:14 190:9 196:11 201:9 201:12,16 207:14 210:16 223:24 kinds 139:13 kits 166:5 know 12:10 19:6 26:23 27:12 29:20,20 29:22 32:17 33:2 35:14 38:22 39:6,11 44:15 47:13 49:10 55:8 59:7 62:25 63:7 64:9 67:20 70:2,14 74:1,4 76:1 79:2,15,24 80:20 82:19,19 89:18 94:15 111:10,22 112:17,22 114:21 115:11 115:12,20,21</p>	<p>115:21,22 120:8,8,11 134:11 143:23 145:14 150:2,3 159:14 164:5 166:10,18 173:16 181:19 188:12 189:3 191:16 196:16 200:15 202:9 202:13,19,21 203:12 205:18 206:23 207:13 207:18 211:5 211:17 212:23 216:23 217:9 220:6 221:21 221:24 223:12 knowing 218:24 knowledge 80:21 107:9 117:18,21 136:3 138:13 138:15 226:10 227:6 known 17:25 189:13 knows 82:2</p>
<p>j</p>	<p>keep 13:15,19 17:16 20:25 66:15 67:19 136:17 145:13 162:21 163:7 222:23</p>	<p>kelly 157:12 kessel 3:14 4:10 5:6 21:12 23:14 41:14 127:7 128:1,2 128:8,14,16 129:25 130:6 137:21 139:22 140:1 142:11 145:5 153:24</p>	<p>labeled 73:13 lack 154:9 184:22 lacking 184:20</p>
<p>jaclyn 3:17 7:13 james 2:10 226:2,20 january 201:20 211:18 joa 64:12 job 2:11 121:20</p>	<p>k</p>	<p>knowing 218:24 knowledge 80:21 107:9 117:18,21 136:3 138:13 138:15 226:10 227:6 known 17:25 189:13 knows 82:2</p>	<p>l</p>

[laid - lines]

<p>laid 175:16 land 20:14,16 39:5 46:1 53:15 80:21 landing 152:19 landman 3:23 20:14 62:16 84:22,23 lands 46:9 53:18 language 123:21 132:7 larger 71:15 152:18 late 8:10 lateral 49:20 84:8,12 85:9 85:13 107:23 108:1 122:13 131:7,11,12 132:25 133:2 149:23 153:5 160:16 162:12 168:12 185:23 laterals 47:23 49:12 108:24 154:12 186:2 latest 40:18,21 latitude 62:8,9 138:5 200:21 law 3:3 213:21 214:3,15 224:19 lay 157:15 184:5 205:15</p>	<p>layout 9:6,11 lea 1:8,13,19 104:2 lead 24:4 53:17 leading 51:12 learned 11:9 26:19 lease 39:13 75:17 79:25 90:24 91:1 92:13 116:6,9 118:10 153:3,3 156:23 157:3,7 204:16,19 206:4 208:6 209:11,24 210:6 leave 40:21 41:2 222:3 leaves 74:24 79:15 leaving 220:12 lee 3:23 4:6 5:5 20:13 39:5 45:3,12,22 lee's 156:24 leeway 205:19 left 49:18 50:20 51:3 79:12 88:21 90:10,16 91:14 92:14 93:8 94:2,25 96:25 97:1 112:23,25 113:8 115:10</p>	<p>115:16 144:5 189:3 220:24 legal 29:7 79:24 82:8 84:21 111:14 111:16,20 116:10 133:16 185:4 199:24 200:7 203:21 204:22 legitimate 80:20 length 122:13 168:12 letter 39:14 54:11,12 62:15 letters 102:16 103:3 184:15 198:20 201:23 202:7,17 letting 112:22 119:8 level 114:24 light 113:23 197:18 likely 21:16 25:23 26:15 95:7 likewise 70:5 100:7 limbo 177:15 limit 55:16 limitation 180:19 204:9</p>	<p>limitations 203:18,25 limited 24:2 61:16 178:18 limiting 55:6 limits 152:2 line 50:14 54:12 61:15 63:25 75:17 76:2,19,21,22 76:24 77:2,13 81:25 82:1 90:19,21,22,24 91:1 92:3,8,9 92:12,13,14,15 93:19 94:11,12 95:4,8,9,10,11 95:15,18,19,21 95:22,24 96:7 97:6,9,15 101:1,10 102:6 105:4 135:16 150:13 151:21 152:14,16 157:13 167:12 167:17 168:17 169:2,3,8 171:18,23 173:22 181:12 197:11 198:2 204:4,23 207:9 208:2 lines 77:6 100:21</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[list - makes]

<p>list 3:2 66:5 69:14 220:23 221:2 listed 35:11 64:13 66:9 68:23 listen 196:8 listening 198:16 lists 39:20,23 46:22 66:11 220:18,19,20 220:24 little 12:16 13:1 13:16 17:25 29:18 37:3 40:19 61:19 77:7 86:17 118:15 129:8 149:20 153:11 158:2 161:12 llc 1:6 3:19 llp 3:10,17 locate 204:5,6 204:22 located 149:18 203:20,21 location 2:5 76:15 79:6,24 83:3 84:21 91:19 99:15 100:11 101:11 114:1 116:10 156:14,18 157:20 159:6</p>	<p>159:11 163:6 170:7,9 171:21 202:5,15 203:17 204:2 204:23 207:16 210:6 locations 83:1 locator 41:16 locked 114:24 long 46:2 145:16 221:14 221:23 look 12:22 42:17 49:18,18 56:23 57:1 59:4,10 62:24 63:23 68:20 71:14 76:18,19 81:21,22 83:4 87:24 89:7 90:9 98:7 99:1 100:2 101:17 102:1,15 103:16 105:1,1 106:10,23 109:11 121:21 138:6 157:18 177:1 189:9,11 190:12,14 193:25 207:20 216:10 221:22 looked 18:5 55:11 90:4 98:11 101:18 103:12 110:4</p>	<p>171:16 185:6,7 185:7,7,19 188:19 189:18 189:20 190:8 191:14 looking 7:18 9:11 73:22 75:11 87:2,24 88:5,21 90:13 93:5 112:9,11 118:23 130:6 139:9 149:24 151:19 157:24 158:4 167:4 168:15 169:6 175:3,20 188:21 191:9 191:11,12 194:5 199:14 199:22 200:16 219:22 looks 8:15 22:19 36:11 101:24 155:15 192:3 lose 171:6 losing 166:2 lost 168:23 lot 151:11,12 153:13 louis 221:17 low 19:8 lower 31:10 lp 181:17</p>	<p>luckily 218:1 lunch 145:13 145:16,18</p> <hr/> <p style="text-align: center;">m</p> <hr/> <p>m 3:4,17 42:7 mackle 86:5 made 57:13 62:12 125:12 139:12 192:18 205:11 209:13 main 86:5 maintain 94:7 139:21 maintaining 81:11,12,13,16 majority 18:25 24:23 79:20 make 8:20 28:14,17 34:2 34:6,7 36:13 40:25 41:2 52:25 57:17 61:18 75:2 82:9 103:6 104:11 110:18 110:21,24 130:22 136:5 141:23 147:25 173:23 181:25 187:21 188:20 199:3 205:13 215:1 221:10 222:6,6 makes 36:6 115:13 214:3</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[makes - mine]

<p>218:19 making 30:13 30:14 31:24 manager 80:21 map 39:13 41:16 49:23 76:18 91:5 120:4 156:8 march 219:19 219:21,24,25 220:5,8 mark 63:10 marked 39:1 41:10 42:1 43:23 44:21 67:23 71:20 174:16 182:14 182:15 184:8 188:17 195:1 195:13 markings 182:15 matador 54:7 54:16,20 55:1 120:2 199:19 201:3 202:9,13 202:21 203:3,6 209:23 210:4 211:6,12 213:14 215:17 matador's 200:5 208:5 material 54:25 59:23 191:13</p>	<p>materials 23:6 26:24 27:13 39:15,25 168:7 190:2 191:5,18 198:25 math 150:3,9 152:5 162:14 162:20,21 163:10 matter 19:10 21:15 46:7 81:15 128:23 206:19 matters 33:18 36:11 147:13 176:23 220:11 maximize 49:7 55:12 153:5 maximizes 93:3 maximizing 153:11 maximum 71:15 79:9 mccoy 3:15 4:13 5:7 23:12 23:17 24:1 42:5,7,9 43:9 143:6,7,8 146:6,12,13,15 146:24 147:1 155:11,19 164:10 165:10 170:6 173:7 mccoy's 22:17 164:5</p>	<p>mclean 3:17 7:12,13 mean 38:16 58:3 60:22 68:17 72:2 78:6 80:19 85:11 97:23 104:8 107:18 118:13 127:21 150:4,25 152:24,24 153:5 156:13 168:21 173:15 185:5 206:22 218:12 219:19 meaning 10:21 means 31:10 45:8 68:18 75:3 77:5 106:12 141:8 162:22 171:20 meant 53:11 mechanical 141:4 meet 14:21 15:2 79:21 81:2 139:6 meeting 60:3 80:6,10 81:8 133:22 134:1 meets 139:1 memorized 19:2 mention 103:7 103:22 107:10</p>	<p>214:19 mentioned 70:9 117:7 118:4 124:21 149:7 154:25 mentioning 208:21 mentions 103:24 110:8 merits 112:18 methodology 48:24 mexico 1:1,9,13 1:19 2:5 53:14 64:12,19 117:9 153:6 205:21 210:5 226:22 mic 172:21 208:16,20,22 michael 3:10 microphone 45:7 129:7 196:15,21 mid 106:11 middle 91:2,20 midland 148:8 midway 76:1 mile 166:24 mind 17:16 112:11 119:8 122:11 148:22 179:21 222:23 mine 9:4,6 88:23</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[mineral - mrc]

<p>mineral 39:21 64:3 69:13 83:4 118:17 125:18 134:22 143:20 163:14 minerals 1:2 2:5 minimal 142:22 minimally 135:12,14 minimize 154:18 minimizing 19:21 minor 40:2 107:17 108:2 108:10,17 109:2,4 minute 8:10 24:9 57:1 81:15 134:21 154:25 159:16 180:23 191:24 210:24 212:15 213:3 minutes 57:5 57:19 140:15 193:16 194:10 mischaracteri... 158:18 mischaracteri... 77:19 mischaracteri... 65:6</p>	<p>mislabeled 34:23 misrepresent... 109:1 missing 61:24 220:23 misstatement 193:11 mistake 12:20 26:8 mitigate 154:15 154:20 mm 43:12 113:21 181:7 181:23 216:11 modern 167:13 167:18 modrall 3:4,8 7:8 moment 17:8 17:17 20:25 28:22 29:1 48:23 114:15 118:4 119:2 155:8 172:19 216:9 momentum 151:12 monday 6:7 40:18,20 41:3 221:12 money 214:16 218:2 222:20 223:8</p>	<p>mongoose 199:7 201:11 201:15,19 monitor 121:20 155:4 months 202:6 202:17 203:4 222:21 morning 6:25 7:10,11,12,17 16:20 45:18,19 111:6,7 112:6 128:14 mother 221:18 motion 29:15 29:17 105:5,7 105:11 106:14 mountain 1:6 3:5,9,14,15,23 5:3 7:7 9:19,24 10:5 17:24 18:24 19:11,17 19:19 20:15,22 21:13 24:15 25:7,11,21 35:19,20 36:5 37:1 39:18 45:24 46:3 47:5,8 48:2,17 48:25 50:10 55:8 60:18 65:1,11 66:3,7 70:5 83:6 86:13 121:17 122:5,14,21</p>	<p>128:18 144:1 147:3 155:2 158:11 178:16 186:3 187:8,14 189:9,25 191:16 192:3 192:12,19 194:22 196:8 196:12 197:2 198:21 199:1 202:14,22 203:2,7 206:6 206:16 207:6 210:18 213:24 223:22 mountain's 191:5 193:13 201:4 223:10 mouth 25:1 move 7:22 128:1 153:15 174:9,25 175:17 182:10 215:14 222:8 223:14 moved 114:18 moving 150:17 222:20 223:10 mrc 1:11,15 3:10,21 5:12 6:24 9:23 10:16 12:1 18:1,25 19:22 24:10,14,19 25:6,20 27:10</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[mrc - north]

<p>28:9 32:7 34:15 47:6 55:7 82:6 105:6 112:19 112:20 113:10 118:23 120:15 121:1 122:24 124:22,24 125:11,13 134:24 143:23 174:17 175:1 199:5 210:4 214:24 215:7 mrc's 9:21 17:24 34:18 43:14 88:8 119:1 148:14 197:21 multiple 153:16,19 154:15 muted 196:23 196:24 mystery 11:7</p>	<p>natural 1:2 2:5 nature 27:19 near 165:22 necessarily 110:23 138:19 160:23 necessary 139:6 need 21:7 29:12 33:18 34:3,6 39:20,21 40:21 44:25 57:19 78:12 105:8 121:13 138:23 139:15 155:23 156:18 175:19 180:22 190:18 190:23 200:15 212:25 216:1 216:20 222:7 222:12 needed 114:18 220:8 needing 8:20 needle 200:14 needs 8:9 28:2 137:11 negatively 18:11,16 28:9 47:6,9 139:4 negotiated 60:19 61:22 negotiating 60:23</p>	<p>negotiations 62:4 68:19 neither 18:19 68:24 69:1,3,5 82:20 226:11 227:7 net 135:8 never 122:11 210:16 223:16 new 1:1,9,13,19 2:5 53:14 64:12,18 69:11 117:9 153:6 177:24 178:4 205:21 210:5 226:22 nine 182:1 ninety 175:9 nm 2:9 nmocd 191:9 191:14 non 18:7 19:13 37:6 40:1 144:6 noon 145:13 nope 46:24 104:23,25 107:14 109:21 normal 77:9 78:1,1,5 118:12 normally 52:18 north 10:12,14 10:14 12:6,7,7 12:12,13,14,15</p>	<p>12:19,20 15:5 15:5,10,10,11 15:11 16:7,8 28:6 30:17,18 30:19,19 31:2 31:3 32:21,21 48:10,11,16,16 49:25 50:3,16 52:7,10,15,17 52:18 53:12,12 53:20 72:3,3 72:14,14 74:20 74:20 75:6,6 77:7 83:5,5,7,7 83:8,9,15,16,21 83:21 84:2,2 85:24 86:14 91:3,3,9,9,19 91:20 92:3,3 92:12,13,13,15 92:16,16 93:19 95:11,18 96:8 96:8,9,24 97:2 97:15,16,16 99:16 101:9 102:6 104:19 104:19 110:5,6 125:7,7 135:5 135:6,15,19,20 149:18 156:3,4 156:5,14,14,19 156:21,21 157:6,21 159:7 159:19,19,25 160:1,4,4,14,14</p>
n			
<p>n 3:1 4:1 6:1 naked 179:16 name 45:21 128:15 146:24 201:16 named 26:1 177:19 names 90:15 narrow 200:15</p>			

[north - obviously]

160:17,17,21 160:22 161:2,2 162:5,5,11,23 162:23 163:9,9 163:21,22 168:12,13 171:18,23 185:20,21,24 185:24 186:4,4 186:7,7,11,12 186:15,15 188:1,1,5,7,8 195:21,21 196:4,5 197:11 197:22,23 northern 92:12 northwest 100:22,22 nos 1:7,12 notary 226:21 note 39:16 59:17 60:9 223:22 notebook 22:1 noted 25:9 notes 56:13,15 56:17 57:2,9 57:13 58:13,16 58:17 59:5,7 107:16,17 113:9,16 notice 1:7 6:22 6:22 20:6 23:5 23:7 27:18 29:16 44:4,7,8	44:14 103:16 103:17,24 104:1 105:7,8 105:21,23 106:8,19,24 107:4 125:23 126:2,3 177:13 206:2 218:3 noticed 49:10 121:2 notices 125:16 notifications 116:6 notified 125:2 211:6,7,12,13 noting 94:10 november 159:1 161:23 172:2 nsl 115:15 number 23:4 33:8 54:15 65:2 66:13 67:25 73:18 80:4 86:21 87:21 88:21 148:18 155:13 175:16,23 191:9 202:1 numbered 33:10 numbers 6:4,5 88:22 97:23 112:19 157:11	o o 6:1 42:7 o'clock 145:20 145:24 192:9 object 38:21 44:11,16 57:8 61:14 105:4 117:10 138:1 158:9,15 164:1 178:8 180:12 180:20 183:10 189:18 206:9 objected 40:25 117:11 objecting 20:2 21:6,9 24:11 24:14 132:5 137:1 179:22 183:22,23 objection 13:10 13:14 20:3,8 36:15 38:15 40:6,9 41:4,8 41:21 42:17 43:4,19 51:12 57:11 58:14 61:18 62:2,10 64:23 65:4,9 73:6 77:17,18 78:11 80:8,17 80:18 81:11,13 81:16,19 82:5 82:21 93:10,24 94:7,21 106:17 117:16 120:17	120:20 121:8 122:2 131:20 132:20 133:15 133:18,24 135:21 136:16 137:14 139:21 139:24 140:15 158:14 164:11 176:22 178:7,8 179:24 180:9 180:14,23 183:12 184:2 184:11 185:1 186:23 187:2 191:24 193:8,9 199:9,24,24 200:20,23 205:4,8,12,13 209:14 215:23 221:10,15 222:6 objections 61:19 66:18 119:1 183:15 200:8 observed 139:12 observing 121:1 obtained 188:4 obtaining 114:22 obviously 17:23 58:5 62:21 98:1
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[obviously - okay]

<p>149:12 occur 10:13 50:9 76:25 occurs 77:23 ocd 89:8 99:9 103:5 119:3,16 121:20 125:12 216:25 217:2,4 219:23 ocd's 120:9 217:10 october 119:23 120:1 offer 81:20 136:5 137:10 177:3 184:14 186:19 191:19 200:14 offered 136:1 139:7 164:7 178:12 185:11 185:12 offering 176:22 178:15,25 190:4 office 7:9 53:15 110:18 217:8 officer 226:2 offset 47:14 166:21 offsetting 43:14 118:18 oh 8:3,14 26:7 35:17 38:18 40:6 57:4 89:7</p>	<p>98:15 99:11 111:24 168:3 182:23 196:25 210:24 224:1 oil 1:3 3:3,6,12 30:8 72:17 149:17 162:18 163:8,11,22 181:1,4,5,12 okay 6:12,14 6:17 7:2,5 8:7 8:12,19,22 9:17 10:2,10 11:7,14 12:24 14:1,12,20,23 15:16,17 16:15 17:21 20:9 22:8 23:20,23 25:16 27:5,9 27:11,16 28:21 28:25 29:9,14 29:23 30:2 31:12,20 32:3 32:7 33:2,4,7 33:23 34:17,21 35:13,14 36:9 36:14,16 37:11 38:3,13 40:4,8 40:13 41:1,19 42:8 43:3,9,18 43:21 44:9,19 44:25 52:19 56:12,20,22 59:25 60:4,7 60:16,17 61:6</p>	<p>61:13 62:17,24 63:14,21,23 64:16,22,22 65:7,20 66:17 66:24 67:8,13 67:17,17,19 68:12 69:7,19 69:22 70:4,9 70:14,18 71:3 71:13 72:2,11 73:17,25 74:7 74:13,18 75:10 75:11 76:12,18 77:5,11,16 78:16 83:6,14 83:20,25 84:16 84:24 85:17,23 86:7,12,19 87:23 88:14,15 88:18 89:1,5 89:15 90:1,9 90:19,25 91:2 91:8,11,18,23 92:14 93:6,7 94:4,19,20 95:3,13,22 96:11,14,18 97:3,13,25 98:4,4,11,19 99:1,5,8,11,23 100:7,10,14,18 100:23,24 101:8,13,17,21 102:1,12,15,22 103:7,16 105:1</p>	<p>105:22 106:2 107:3,15 108:7 109:10 110:11 112:15 113:16 114:3,10,12,17 114:24 115:1 115:25 116:7 116:13 117:22 118:1 125:3,9 125:13,20 126:10,14,19 126:20,25 127:1,16,20 128:5 130:22 130:25 131:4 131:12,18 132:9,16 133:6 133:23 134:25 135:17 136:22 137:19 138:11 139:4,25 140:4 141:3,12,18,21 142:4,6,8,20 143:7 144:21 145:12,19,20 146:11,13 148:3,7,10,22 152:7 155:18 155:21 156:2 156:17 159:1 159:16,21 160:3,8 161:4 162:1,10,15,17 162:21 163:6,8 165:20 166:1,9</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[okay - ought]

<p>166:18 167:3 168:10 170:11 171:5,12,16,20 172:2,6 173:9 173:19 174:22 174:25 175:2,7 175:21,25 176:8 178:6 179:4,9 180:21 181:24 182:1,7 182:13,16 183:1,9,9 184:1 185:17 186:21 187:10 187:18,21 188:19 189:11 190:13 191:3 192:10,17 193:24 194:14 195:8,19 196:7 196:11,25 197:13,18,25 198:7 205:16 207:13,18 211:14,20 212:1,4,22 213:13,16 214:20 216:22 216:23 217:16 218:20 219:11 219:15,21 220:4,10,21 221:24,25 224:1,16,24 225:2</p>	<p>old 181:1 omitted 21:25 once 160:25,25 167:11,15 one's 94:16 111:16 ones 25:21 98:14 99:25 109:6 207:24 ongoing 54:19 online 21:22 open 40:22 41:3 208:25 222:4 opening 4:2,3 8:2,4,8,12 13:1 13:15,19 17:13 17:16 operate 107:13 206:1 operated 107:6 operating 3:19 8:21 124:12 operation 98:1 operational 82:15 157:17 operationally 82:15 92:24 operations 10:4 201:13 223:9 223:12 operator 36:5,6 110:12 124:5,8 158:6 177:20 210:11</p>	<p>operator's 104:22 operators 11:2 19:13 80:5,10 81:7 82:7 117:12,20 223:15 224:3,5 opinion 74:13 84:22,23 110:20 116:25 120:23 124:11 131:4,16,17,18 134:5 136:1,5 136:8 137:10 137:15,17 138:14 139:7,9 139:10,14,15 139:19 152:22 152:22 164:8 178:18 179:13 180:1 186:20 186:23 190:18 193:1,8 197:25 198:1 200:15 200:23 opinions 176:22 177:3,4 178:13,21 179:15 184:14 184:20 190:5 191:20 200:13 200:13 opportunity 30:7 33:25 166:7 175:17</p>	<p>176:20 194:16 216:20 opposing 224:11 option 115:10 115:17 154:7 157:5 opus 86:10 order 37:3,7 108:19 139:2 195:22 204:6 208:6 209:25 223:11,12,14 223:16 224:12 224:15 orders 11:11 28:13 30:3 31:22 69:23 223:23 224:4 ordinarily 18:20 organization 220:18 organizational 46:22 orient 90:3 orientation 41:16 oriented 52:15 original 89:2 199:7 originally 49:9 221:13 ought 28:17</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[outcome - pad]

<p>outcome 226:16 227:12</p> <p>outer 203:22</p> <p>outside 59:23 61:25 116:1 117:18 118:12 120:24 121:4 135:23 137:2 197:22 200:2,8</p> <p>overall 51:10 113:4 152:20</p> <p>overlap 10:11 10:13 11:6,9 12:5 18:8 19:7 26:21 27:12,14 27:20 28:5 32:8 44:7,14 47:5 62:2 69:24 70:5,11 70:14 71:5,18 71:22 76:3 96:19,22,23 97:21 101:14 103:8 104:5 105:15 106:1 107:5 109:13 110:5,14 113:5 113:5,11,12 118:20 120:5 122:12,15,15 123:12,22 126:11 135:11 135:17 136:21 149:16,21 150:4,17 154:8</p>	<p>154:9,11,14,18 154:20 155:22 160:25 165:21 188:11 203:10 211:6,10</p> <p>overlapped 154:21</p> <p>overlapping 1:8,17 20:21 47:21 49:24 50:4 51:6 53:6 53:9 55:14 70:20,25 71:10 71:16 79:10,18 90:14 91:6 93:2 96:3 103:11,24 104:2 105:22 105:24 106:9 107:4,11 123:19,25 124:3 144:6 152:8,21,25 168:8,25 169:10,14 197:5</p> <p>override 106:17 187:2</p> <p>overrides 66:16</p> <p>overriding 44:5 66:8</p> <p>overrule 61:18 66:18 120:20</p> <p>overruled 62:9 121:8 209:13</p>	<p>overruling 200:23</p> <p>oversight 107:17 108:2 108:10,17 109:2,4</p> <p>overview 5:15 39:8 168:7</p> <p>overwrites 220:25</p> <p>own 28:1 32:4 47:14 83:7,9 86:13,15 120:21 123:5 179:21 186:11 199:19</p> <p>owned 108:13 181:9</p> <p>owner 30:5 34:13 36:2,7 118:18,18</p> <p>owners 10:17 12:2 16:3,9,10 16:11 18:17 19:10 24:7 27:10 28:9 30:6 31:10 32:7,18,19,20 35:22 39:22 44:5,6 47:6,9 54:8 60:19,24 62:19 64:3 66:6,8 69:14 83:15,20 84:4 85:23 96:15</p>	<p>102:17 106:25 109:20 125:18 133:11 134:17 134:21,23 143:20 144:2 144:11,13 163:15,19 164:4 186:9,10 188:10 197:22 198:6 207:17</p> <p>ownership 20:19 34:16 85:4,6 107:22 108:1,23 125:3 125:6 197:21</p> <p>owns 32:14 35:14 53:12 134:24 143:23</p>
			p
			<p>p 3:1,1 6:1</p> <p>p.m. 6:23 225:4</p> <p>package 72:22 73:16,18 170:12 174:16</p> <p>packet 37:2,6 39:17 41:5 109:11 112:12 170:16,20,21 170:23 171:6,9 171:14 172:4 190:21 215:3 220:14</p> <p>pad 100:17 114:5 155:25 156:2</p>

[pads - perforated]

<p>pads 51:22,23 100:19 113:25 114:1,4,6,8,12 115:11</p> <p>page 11:16,24 12:17 25:18,19 59:1 63:17,17 67:6,25 69:22 86:21,24 88:15 88:17,19 89:23 101:24 102:17 103:17 112:12 112:13 113:19 115:5 119:5,7 130:7,8 155:12 168:6 171:6,16 175:8,23,23,24 176:1 181:15 182:19,24 183:5,7 192:2 192:15,15</p> <p>pages 44:8 88:13 113:18 175:4 192:13 194:21</p> <p>pan 58:14</p> <p>paperwork 156:25 157:1,2</p> <p>paragraph 56:6 60:16 69:19 130:10 130:23,25 131:1 148:1,4 175:16 176:4,6 180:22 182:1</p>	<p>184:13,24 185:2,6,18 190:1,12 191:3</p> <p>paragraphs 148:24</p> <p>paraphrasing 34:14</p> <p>parent 166:13 166:16</p> <p>part 8:2 16:5 30:13,17,18 48:23 49:19,20 59:17 60:8 65:16,21,22 73:16 84:12,12 85:12 89:22 98:12 101:19 106:15 110:14 123:4 128:3 156:1 159:22 170:10,16 180:9 198:23 201:2,10 213:23 214:4 215:3</p> <p>partially 104:5 178:11</p> <p>participated 210:10</p> <p>particular 118:5 139:13 141:13 200:12</p> <p>particularly 177:5</p>	<p>parties 18:3 39:13 40:3 63:24 64:5,8 64:19 65:1,11 65:18 66:5,10 68:14,15 131:14 177:14 213:17,20 217:1 218:5,6 220:20 222:21 222:24 226:12 226:14 227:8 227:11</p> <p>partners 35:19</p> <p>parts 28:19 65:15</p> <p>party 12:1 19:13 39:20,23 46:22 64:24 124:22,25 125:1,16,25 194:6 218:14 218:15 220:18 220:23,24 221:2</p> <p>past 87:16 191:17 202:23 202:23 214:10</p> <p>paths 153:16</p> <p>patience 54:5</p> <p>paying 217:5 217:10</p> <p>pdf 11:16,24 12:17 63:17 67:10 86:24</p>	<p>89:24 101:24 102:17 112:13 113:19 130:8 155:15</p> <p>pecos 2:7</p> <p>pen 56:15,17 63:21 66:23</p> <p>penetrate 185:23</p> <p>penetration 204:17,20 206:4 208:6 209:11,25</p> <p>percent 19:1,3 19:4,4 83:10 86:16,16 107:23 108:1 108:12,12,13 108:24</p> <p>percentage 19:10 86:12</p> <p>perf 78:6,9 80:1 96:7 116:2 155:24 156:22 165:16</p> <p>perfect 36:21 173:24 217:25</p> <p>perfectly 6:11 6:13 8:18</p> <p>perfed 154:21</p> <p>perfining 160:24</p> <p>perforate 31:3 160:25 162:3,4</p> <p>perforated 31:1 77:12</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[perforated - point]

<p>96:11 97:8 100:25 110:5 115:22 136:21 141:15 159:18 160:5,16,20 162:12 168:12 188:12 perforating 195:21 perforation 77:21,23 161:2 162:4 perforations 15:9 33:3 115:15 140:25 141:8,14 154:18 155:4 160:13 162:7 perfs 162:24 163:3,9 185:14 period 115:13 221:23 permian 1:11 1:15 3:11,21 5:12 42:14 47:7 143:23 148:2,6 174:17 214:24 permian's 215:8 permit 5:13 permits 106:11 191:8,11 permitted 102:24</p>	<p>perpetrated 177:22 person 45:4 personal 9:6 221:16 personally 139:12 perspective 85:4,5,6 persuasion 15:3 petroleum 3:21 42:20,22 43:5 147:13 176:23 178:9,25 179:5 179:23 180:17 182:3 187:11 187:19 191:21 ph 86:5 157:12 181:9 phone 54:15 68:17 202:1,24 phrase 179:21 209:16 pick 121:24 202:24 piece 84:6 pipe 79:3 151:13 pipeline 153:19 153:20 pipelines 123:6 pitched 113:13 place 123:2</p>	<p>plain 15:2 plan 10:1 15:5 17:24,25 19:15 19:17 24:3 43:16 71:15 74:5 76:11 78:24 83:15 84:14,18 92:24 96:20 97:25 103:8 107:8 113:14 114:1,3 122:14 133:14 136:4 137:8,12 138:25 139:3 144:1,4 149:5 152:25 154:5 155:3 159:17 162:2 170:13 170:20 171:14 185:8,13 197:20 199:20 200:3 206:17 planned 160:13 201:8 planners 150:10 157:12 planning 160:24 166:1 186:3,6 187:14 187:17,25 195:12 plans 28:4 55:9 70:5 81:24 96:2,4,22 122:16 123:6</p>	<p>177:9 199:6 207:21 210:14 plays 154:24 please 17:15 21:10 26:12 45:9,20 54:13 55:23 60:10 61:18 62:10 70:23 94:21 106:20 112:2 112:14 115:8 119:14 121:10 121:14 128:2 128:14 132:20 133:20 146:24 164:24 165:6 190:24 194:23 200:24 201:24 209:16 211:2 pleases 127:12 plot 161:5,8 point 9:20 11:22 13:17 14:20 16:13,16 30:12,14 33:1 34:8 44:13 49:13 75:25 76:16,16 77:8 77:14 80:7 81:24,25 91:11 91:13 92:1,20 93:6,9,18 95:13 96:1,12 97:4,6,14 99:6 100:8 101:4,11</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[point - prevented]

<p>101:15,15 102:5 103:4 106:3,25 107:25 108:4,5 109:8,23,25 111:21 134:14 150:14 152:3 152:19 153:5 156:7,22 157:8 157:16 159:10 163:6 165:22 165:23 167:9 168:18 169:2,4 169:8 170:8 171:17 193:10 195:25 197:10 203:19,20 204:3,6,20,22 209:13 215:11 point's 102:9 pointed 162:17 195:11 pointing 27:3 50:16 61:20 66:19 points 32:25 55:2,3 90:5,7,8 92:7 97:21 99:10 103:6,14 103:18,19 107:1 109:14 135:16 152:11 153:25 154:11 169:11,16 185:6 197:10</p>	<p>197:15,16 202:6,16 203:8 204:17 206:5 208:6 209:11 209:25 pool 10:17,22 25:22 27:11,21 32:9 44:6 62:19 63:25 64:5,20 65:2 65:12,18 66:4 66:7 99:25 105:25 pooled 10:20 34:19 39:14,20 39:23 40:3 46:22 64:24 66:10 220:18 220:20,23,24 221:2 pooling 1:7,12 1:19 5:4 9:21 11:1,11 14:16 14:17,20 16:12 22:11 28:12 30:3 31:22 37:16,22,23,23 38:11 39:12 62:21,22,23 64:7 66:10 81:21,22 84:25 85:15 103:10 104:1 105:21 108:19 131:15 133:6,9 139:2</p>	<p>139:7 189:14 191:4 193:24 222:18 224:4 portion 58:17 59:6 84:3 186:6 pose 111:22 position 51:1 201:9 possibility 70:21 possible 97:24 157:17 161:11 215:13 post 213:20 218:6 posture 177:5 177:16 pot 153:3 potential 54:20 123:19 136:13 194:2 potentially 121:25 power 100:21 217:23 practice 110:17 206:20 pre 7:19 9:16 87:3,12,15,16 88:8 precedent 9:24 25:9 214:10 prefer 112:22 113:5,6</p>	<p>prehearing 25:17,18 26:19 prejudice 178:3 prejudicial 18:1 preliminary 33:18 36:11 premature 180:9,15 prepare 147:17 147:19 prepared 46:18 48:24 69:8 122:4,7 123:14 129:14 184:20 227:3 preparing 18:4 preponderance 14:14 present 20:11 presentation 196:8 197:2,8 presented 196:12 presenting 13:23 presently 148:19 presumes 81:7 pretty 208:20 prevent 203:19 prevented 205:3 207:4</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>previewed 106:22</p> <p>previous 150:7</p> <p>previously 21:14 23:9,12 28:4 42:10 46:5 94:9 128:21 149:8 216:24</p> <p>primarily 205:25</p> <p>primary 148:13</p> <p>prior 63:13 148:14 226:5</p> <p>privilege 57:18 59:8,22</p> <p>privileged 60:10</p> <p>pro 7:3</p> <p>probably 61:2 92:25 153:1,7 154:14 167:7 201:19 219:6 220:5 221:22</p> <p>probative 139:20</p> <p>problem 9:14 50:13 133:23 141:14 206:5 207:13,14,15 207:18 221:17</p> <p>procedural 177:16</p>	<p>procedure 178:2</p> <p>proceed 44:1 60:10 62:10 184:4 194:24 200:24</p> <p>proceeding 225:5 227:4</p> <p>proceedings 226:3,5,6,9 227:6</p> <p>process 113:4</p> <p>produce 72:8 80:5 162:24 163:7,10 222:10 224:3</p> <p>produced 75:13,13</p> <p>producing 72:11,13 154:22 163:22</p> <p>production 10:20,23 16:4 30:21 31:6,7 31:14,15,25 32:13 33:6 42:21,24 43:1 43:6 72:17 83:17 84:1,10 85:5,9,11,20 96:14 130:20 133:3 135:23 137:23 142:1 147:5 162:25 163:15,21</p>	<p>186:14</p> <p>production's 31:11</p> <p>productive 136:14</p> <p>project 149:12</p> <p>projects 149:14 201:13 202:23</p> <p>prompt 56:23</p> <p>proof 23:6</p> <p>proper 111:15</p> <p>proponent 139:18</p> <p>proportionate 83:17,22 85:2 117:4 163:12 186:13</p> <p>proportionately 11:4 15:6 30:21 31:6,8 31:16 32:1,13 33:6 34:12 84:1 85:2,19 116:22 117:2,3 142:1</p> <p>proposal 39:14 48:18 50:23 53:16 54:11,12 61:7 62:13 102:16 103:3,6 198:20 201:23 202:7,17 210:11,13</p> <p>proposals 16:25 54:9</p>	<p>201:7,11 202:23 210:17</p> <p>propose 14:15 54:7 215:12</p> <p>proposed 9:20 11:4,6 25:23 26:15 27:12,19 48:9 71:22 72:17 103:18 104:4 120:5 130:16 134:17 134:25 137:11 138:25 139:3 186:1,18 197:5 213:20,21 224:11,12,15 224:18</p> <p>proposing 24:10,16,18,19 32:9 70:19 71:18 122:21 169:14</p> <p>prosecutor 212:24</p> <p>protect 19:9</p> <p>protected 205:2 207:4</p> <p>provide 44:7 131:4 139:5 149:2 171:13 203:3 217:13</p> <p>provided 44:4 44:13 58:16 60:9 109:19 125:11 184:18</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[provided - quickly]

<p>187:22 191:14 191:20 providing 61:2 provision 31:21 proximity 144:16,18 prudent 110:12 public 27:18 73:4 103:16,17 123:11 125:12 189:13 217:24 226:21 published 26:6 120:9 pull 98:19 119:10 138:7 195:17 pulled 11:13 67:7 pulling 119:9 156:8 purported 122:15 purpose 36:13 131:5,6 purposes 34:4 93:14 pursuing 115:15 pushing 149:8 put 21:3 52:17 61:10 63:16 66:23,25 67:1 67:1,2 68:7,9 73:12 74:11</p>	<p>82:25 83:2 115:15 155:25 163:5 172:3 197:10,15 putting 24:25 33:3 116:1 150:18 170:11 199:21</p> <p style="text-align: center;">q</p> <p>qualified 23:9 23:15 120:21 120:24 138:3 138:12 175:14 178:9 179:13 179:22 180:16 180:20 186:19 226:7 qualify 42:18 quarter 75:20 75:20 76:1 92:2,2,9,9 94:11,11 95:21 95:21,22,22,23 95:23 96:7,7 97:15,15 100:16,16,16 100:22 101:10 101:10 116:21 116:21 117:1,1 130:13,13 136:10,10,13 136:13 222:22 question 24:2 32:16 51:14 55:2,6 70:23</p>	<p>75:1 78:17,20 80:20 81:5,6 82:22 94:1,2,6 94:7,14,22 111:14,17 113:17 115:18 117:5,6,11,11 117:20,25 118:21 121:10 121:11 123:9 123:16 124:11 124:13 131:21 132:4,4,19,20 133:16,17,19 134:3,8,19 136:17,19,20 136:23,25 137:5,16 138:19,21 139:5,23 140:2 140:6,10,14 142:15 144:15 145:1,3 156:12 158:21 160:15 164:2,11,13,15 167:14 169:6 170:18 171:3 172:12,15,17 200:9 202:24 205:15 208:8 208:10,23 209:3,4 211:1 222:25 question's 93:16</p>	<p>questioning 61:15 105:4,19 208:2 questions 7:15 13:7 20:16 49:4 54:4,13 55:6 56:24 60:25 62:14 106:18 110:14 110:25 111:2,9 111:11,14,20 111:21 112:1,6 113:10,11 116:12 122:12 124:15 126:15 127:19 129:25 142:7,23,23 145:4 164:20 165:1,4,13 167:21 168:1 169:23 172:7,9 172:10,22 186:24 198:8 201:24 209:17 210:22,25 211:15,23 quick 59:10 112:9 113:17 165:13 208:15 quicker 61:19 quickly 49:4 215:13</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[r - recovery]

r	113:1 202:19	213:14	58:9,10,12
r 3:1 6:1	reaching 60:25	recall 34:15	73:4,11,12
rack 166:19	read 14:20	73:20 116:22	78:12 80:9
racked 166:23	28:19 31:19	126:24 143:20	81:9 82:3
racking 166:20	52:6 54:12	145:8,10 173:1	110:4 118:20
racks 166:21	110:13 132:11	202:2 212:18	123:11 128:15
railroad 204:16	140:11,13,16	221:1	128:23 132:11
204:25 205:20	164:17 175:17	recalling	140:16 145:21
206:3 208:11	180:22 184:23	123:14	145:23 146:25
raise 12:21	192:14	recap 64:25	161:22 164:17
13:10 45:9	reader 193:17	66:2	187:7 189:1,3
raised 36:19	reading 190:10	receive 30:7	189:4 190:16
49:5 55:2,7	ready 6:15,19	110:18 125:23	194:11,13,15
65:11	6:20 59:13	126:3 221:14	213:6,8 214:21
raises 10:15	216:4	received 39:2	216:15,16,18
raising 21:3	real 28:1 112:9	41:11 42:2	220:13 222:4,7
24:3 27:7	208:15 221:18	43:24 44:22	225:3 226:9
33:17	reality 82:15	64:6 113:10	227:5
ran 150:9	realize 15:15	126:4,7 184:8	record's 215:2
152:5 157:11	62:6 180:10	195:2 200:20	recorded 226:6
rate 151:9	reallocated	receiving	recording
rates 115:21	149:12	210:11	226:8 227:4
rather 149:14	really 10:7 13:9	recent 9:16	records 82:12
152:15	38:17 153:20	222:20	123:11
ray 66:25 68:24	155:1 180:15	recently 10:9	recover 30:7
69:9	209:14 212:24	27:20 199:3	51:5 79:9
rcx 4:5	reason 8:23	recognition	recoverable
rdx 4:5	209:4,5	205:24	55:15
reach 61:10	reasonable	recognized	recovering
62:18,20 68:18	30:5	43:10 206:19	71:15 79:11,11
110:15,25	reasonably	record 6:3,7	91:16
122:1 156:7,21	139:13	13:10 21:4,15	recovery 49:7
157:8	reasons 197:18	32:4 40:22	50:5 55:13
reached 69:16	rebuttal 212:19	41:3 45:21	150:5
69:17 112:23	212:24 213:9	46:7 57:2,5,8	

[recross - requested]

<p>recross 124:19 170:4</p> <p>rectangle 91:2</p> <p>redirect 116:18 124:17 126:17 143:13,17 164:22 165:1 168:1,4 169:23 172:12,16 211:24</p> <p>reduce 47:21 51:10,25 153:10 169:1</p> <p>reduced 226:7</p> <p>reduces 153:12</p> <p>reducing 51:2</p> <p>refer 215:21</p> <p>reference 62:13 69:23 70:10 190:5,7</p> <p>referenced 76:13 125:10</p> <p>references 190:8</p> <p>referencing 191:6,8</p> <p>referring 56:17</p> <p>reflect 82:14 102:2 103:13 154:4</p> <p>reflects 105:13 176:24</p> <p>refused 203:3</p> <p>regard 176:23 176:25 177:3,6</p>	<p>177:18 178:21 179:13 184:17 198:19 201:22 204:1 206:6 209:7 210:17</p> <p>regarding 29:15 113:11 113:11 123:22 150:5 203:8</p> <p>regional 41:16</p> <p>regulatory 107:21 156:25</p> <p>rehash 105:8</p> <p>reiterate 18:23</p> <p>relate 39:7,8</p> <p>related 62:3 65:10,12 130:25 131:1 226:11 227:7</p> <p>relationship 123:18 202:22</p> <p>relative 226:13 227:10</p> <p>released 192:8</p> <p>relevancy 199:11</p> <p>relevant 36:20 80:25 200:4 206:11,22,24 206:25 208:23</p> <p>reliability 186:23</p> <p>reliable 180:1 186:25 187:1</p>	<p>rely 139:13</p> <p>remain 14:19</p> <p>remainder 102:10 163:19</p> <p>remaining 84:4 97:10 159:21 160:8,11,12 162:15,25 186:17</p> <p>remains 11:7</p> <p>remember 39:22 118:21 120:22 151:4 168:13 202:1 208:22</p> <p>reminder 222:17</p> <p>remotely 79:25</p> <p>remove 39:21</p> <p>removed 160:16</p> <p>reopen 105:5</p> <p>reorient 52:23 54:6</p> <p>repeat 167:14 211:8</p> <p>rephrase 78:11 78:20 94:21 117:24 132:20 136:16 137:4 140:7 209:3</p> <p>reply 218:16</p> <p>reported 2:10</p> <p>reporter 6:14 6:16 45:6,9</p>	<p>132:3,11 140:13,16 164:16,17 216:3,5 217:3 217:7,13 219:6 219:10,13,17 219:20</p> <p>reporting 222:9</p> <p>represent 63:24 64:19 68:12 71:22 74:14,18 85:1 85:14,17 90:5 90:6,7,10 91:3 95:25 170:12 170:19</p> <p>representation 25:5 82:9,11</p> <p>representative 93:12</p> <p>represented 108:14 171:23 188:16</p> <p>representing 6:24 7:7 112:20</p> <p>represents 82:13 102:8 151:21</p> <p>request 57:9 61:3 203:6</p> <p>requested 132:12 140:17 164:18 210:16</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[requesting - right]

<p>requesting 106:1</p> <p>require 82:14 99:10 116:4 213:19</p> <p>required 11:1 51:19 76:14,15 118:10 133:6 203:22</p> <p>requirement 103:5</p> <p>requirements 81:2</p> <p>requires 31:22 38:20 108:19 133:10 139:2</p> <p>reserve 58:3 126:24 142:23</p> <p>reserves 18:19 19:20 49:17,18 49:25 50:2,20 51:2,20 55:15 76:6 78:24 79:9,11,19 91:16 93:3 96:25 97:1 135:7 144:3,5 144:9 149:18 152:21,23 153:11 168:23 169:19 176:25 178:21 186:16 188:13 198:3,5 201:10</p>	<p>reserving 40:9</p> <p>reservoir 3:15 11:23 15:14 18:9 22:18 30:20 42:13 51:5 75:8 98:5 131:16 132:25 133:2 135:2,5 136:22 142:24 147:5,13 149:24 166:15 166:24 176:25 178:14,19 179:5,13,23 180:3,4,20 184:15,18 196:11 197:3 201:9</p> <p>reservoirs 49:1 186:9</p> <p>resolution 61:2</p> <p>resolved 106:16</p> <p>resonated 155:1</p> <p>resource 47:20 47:22 50:6 51:5 71:16 84:19 93:4 150:19</p> <p>resources 1:2 2:6 150:5 153:7 204:23 208:7 210:7</p>	<p>respect 18:9 24:2 65:24 74:15 80:22 107:3 130:23 134:16 178:4 178:13 180:3 183:15 184:15 199:5</p> <p>respective 23:15</p> <p>respond 33:21 33:25 34:3</p> <p>response 144:8 185:1 200:9,10 218:16</p> <p>responsibly 122:19</p> <p>rest 113:20 139:9 173:10</p> <p>restate 117:16 121:13,14 140:10</p> <p>result 203:20</p> <p>resulted 224:4</p> <p>resume 23:13 42:11,11 43:13 147:8,10</p> <p>reversed 120:14 121:16</p> <p>review 42:16 57:9,17,20,21 60:8 92:5 121:23 147:21 176:13,20 179:16 187:7</p>	<p>189:2 190:16 191:18 192:11 192:15 193:12 198:23 199:3</p> <p>reviewed 11:10 58:16 96:22 189:4,5 190:1 190:19,20,24 191:4,16 192:18 193:7 193:18 194:21 198:25 199:2</p> <p>reviewing 95:5 110:24 147:24</p> <p>revise 220:17</p> <p>revision 37:6</p> <p>rfes 149:13</p> <p>right 7:6 12:8 13:18 14:13 26:8,10 27:6,9 29:16 33:15 36:24 37:11 40:21 42:23 45:8,9 46:10 46:16 47:19 49:1,23 50:11 50:17,22,24 52:9 53:7 58:3 65:14 67:3,15 67:21 72:16 73:10,21 80:16 83:4 84:24 87:14 88:1,14 88:22 90:18,19 90:20,21,21,22</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[right - satellite]

91:5,12,23 92:17,21 93:8 95:25 96:10,14 97:11,12,17,20 97:25 98:4,19 98:21 99:1,13 100:5 101:17 102:13,20 103:2 104:14 106:18 107:15 112:22 115:6 118:6 119:24 122:5 126:24 127:23 130:14 130:17 131:2 148:15 150:23 154:3 156:7,15 156:20 157:5,8 157:12,20 158:24 159:3,7 159:14 160:22 161:14 162:1 163:16,23 164:19 170:8,9 170:11,20 171:10,18 172:4 173:10 179:2 180:2,5 180:18 181:18 182:21 190:14 191:13 195:8 195:14 208:13 209:9 211:21 216:2 217:1 218:12 219:2	219:22 220:10 220:25 224:13 224:16 rights 10:16 11:7 16:10 18:12,17 24:5 28:8 30:2,9 31:17 62:3 65:10,13,24 105:14,17 106:4,6 131:14 133:11 134:17 139:4 164:8 177:8 178:22 185:16 194:1,2 194:7 197:4,16 197:21 199:12 200:4 205:2 207:3,18,22 risk 157:17 rix 157:12 roadmap 20:10 23:21 role 121:20 roles 82:14 room 208:19 roughly 74:19 75:5 91:20 97:5 101:9 134:24 162:12 routine 214:16 royalty 44:5 66:8 rule 108:18 109:3 138:6,11	139:10,21 144:16,19 178:1 206:12 206:13 ruled 105:6,9 rules 76:15 77:9 78:1 138:6,8 178:1 203:22 204:15 205:1 206:4,20 207:5 208:11 209:8 210:1 ruling 34:2 205:13 ruse 177:21 ryan 3:19 8:15 8:16,19,23 208:15	72:12 74:15 75:4,4 76:4 83:18 85:24 86:13 90:11,16 90:18 91:12 92:24 95:14 96:5,6,15,16,20 97:4,13 98:8 98:14,15,17 99:2 100:12 101:15 102:23 103:9,23 104:17 109:25 113:19 114:16 119:22 120:5,8 120:11,16 121:18 122:8 122:13 123:18 123:20,24 124:6,12 125:4 125:9,20,23 126:1,5 135:4 135:7,19 149:1 149:6,9 165:14 165:21 166:14 166:20 167:16 178:17 186:8,9 188:4,6,9 189:14 191:6 191:10 192:22 193:23 195:17 197:6 198:2 203:9 206:18 223:23
		s	
		s 3:1 5:1 6:1 santa 2:9 satellite 10:12 11:10,18 12:5 12:11,23 13:5 15:12 16:5,6,9 18:18 27:16 28:6,6 30:18 32:11,15,22 35:15,21,23 36:2,2,6 48:8 48:13,14,18 49:1,9 50:15 50:23 52:22 53:17 69:24 70:6 71:25	

[saw - seek]

<p>saw 56:17 saying 26:14 35:11 36:1 50:18 66:4 67:6 105:23 108:7 112:24 115:12 144:7 151:20,22 152:4 179:9,10 181:14 185:18 206:12,14,15 209:15 says 22:22 30:2 51:18 60:18 61:22 88:7,8 88:19 102:7 104:1,4 105:21 107:3 119:3,16 134:5 138:12 148:4 171:19 189:23,24 208:15 scenario 186:10 school 193:17 schulz 3:21 4:17 5:17 173:22 174:2 174:13 182:2 187:5 189:8 191:2 192:2,11 193:11 198:17 207:19 209:23 211:5,17 212:5</p>	<p>scope 59:24 61:15,25 117:18 118:12 135:24 136:17 137:25 199:4 200:2,8 screen 9:1,6,11 63:2 98:20 112:8,11 119:7 119:9 148:4 155:18 157:23 168:2 screened 140:20 scroll 29:3,9 119:14 158:2 second 8:14 23:1 30:9 31:18,20 37:14 64:13 65:9,21 65:22 67:8 180:8 188:24 188:24 192:4 secondly 32:9 106:7 200:4 207:19 section 10:15 12:8 15:6 16:10 18:8,17 18:17 28:11,11 29:24,25 30:1 32:20,20 34:16 34:19 48:16 49:14 53:13 72:4,14 75:6</p>	<p>76:19,21 77:1 77:2,12,13 83:6,9,21 84:2 84:10 90:22 91:10,21 92:8 92:12 94:11,12 95:4,8,9,10,15 95:19 96:9 97:6,9 99:16 101:1 104:5 107:5 110:6 116:21 117:1 120:12,16 121:18 123:25 124:3 125:19 126:12 130:14 134:23 135:20 136:10,13 143:20,24,24 144:2,3,11,13 149:18 150:12 150:13 152:14 152:16 156:4 156:11,19 157:13,21 160:18,19 163:20 164:4 166:17 168:17 169:1,3,8 185:21,25 186:5,7,12,18 sections 18:11 19:18 24:7 32:21 47:6,13 47:13 49:10</p>	<p>153:6 154:8 195:22 secured 118:11 see 8:23 11:17 11:25 19:12 28:15,22 37:15 42:16 52:11 53:4 54:5 56:20 59:1,4 59:10,13 62:20 63:10,10 67:4 69:14 81:23 87:15 88:6,22 89:8 91:24 94:24 104:6,12 113:7,18 115:2 119:3,16 124:22 132:10 153:21 154:24 157:19 158:3 161:8,16,19 170:15 171:9 175:3 176:6 179:21 182:14 182:15,16,16 182:24 191:20 193:25 196:11 197:3,8 199:10 207:15 seeing 13:17 61:1 seek 10:17 11:18,19 27:11 28:10 33:4 62:19 63:25</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[seek - sir]

<p>64:5,19 65:18 71:10 74:4 214:25 seeking 25:22 27:21 35:4 42:18 44:6 62:23 65:1,12 66:4,7 84:25 99:25 106:8 176:9 183:2 seem 105:22 106:1 136:3 seems 21:1 180:6,8 208:17 seen 19:12 25:6 36:17 40:11 120:15 121:18 123:13 197:14 self 5:8,16 44:3 174:13 182:11 183:14,17 194:18 send 61:7 102:19 218:4 sense 110:19,21 110:24 214:3 218:19 sent 54:9 102:16,22 110:20,23 125:13,15 198:20 202:7 202:17 sentence 25:20 62:13 189:23</p>	<p>separate 39:10 114:6,7,11 september 202:18 set 9:10 19:18 39:7,9 48:19 51:11 201:14 222:1,2 setback 76:20 76:25 77:7,12 77:14,22 78:1 79:21 80:1 81:8 82:8,8,13 156:7 setbacks 18:20 27:22 47:21 75:10,12,15,16 76:10,12,14 77:1 78:5,9 79:16 80:6,10 80:23 90:6,8 102:6 115:14 setting 9:5 seven 16:24 30:13 57:5 several 44:3 108:22 209:24 shanor 3:17 share 11:8 16:4 30:8 31:14 34:14,18 52:2 83:17,22 85:8 119:8 163:12 163:15,18,20 170:3</p>	<p>shared 10:21 31:22 72:18 85:18 133:3 202:10 sharing 112:8 112:11 119:7 164:3 sheila 3:3 6:19 8:23 9:10,12 217:23,23 218:4,22 short 36:14 66:15 185:25 show 11:3,8 12:19 13:23 14:15 23:24 24:1 29:21 48:1 53:24 59:17 81:24 91:15,23 93:1 100:7 109:7 123:17 131:6,9 132:24 155:21 159:5,9 189:22 212:25 showing 43:15 49:16 50:8 75:23 87:5 152:9 161:5 shown 71:19 shows 8:25 9:7 42:12 50:22 100:10 102:5 109:23 113:18 150:8 152:12</p>	<p>185:13 188:5 side 49:11,23 50:17 77:2 90:16,18,20,22 112:22,23,25 115:16 signature 226:19 227:17 signed 107:20 172:2 193:18 significant 123:5 134:12 153:7 203:21 significantly 49:14 similar 10:8 26:22 35:20 71:19 141:15 151:13,15 152:9 178:1 simple 162:20 162:21,22 163:7,10 simply 15:1 207:19 simultaneously 218:12 single 19:18 48:19 51:11 70:15,19,25 74:23 84:6,6 172:17 sir 7:1 36:22 44:18 55:22 78:15 146:19</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[sir - spacing]

173:24 174:15 175:6 176:7 179:3 187:6,9 187:12,16 188:18 192:23 193:2,5 196:10 197:7,24 198:18,22 202:2,19 204:14 210:15 211:19,25 212:7 213:15 224:23 sit 196:7 site 114:8 sitting 109:22 152:15 220:25 situation 120:14 121:16 situations 180:1 six 25:19 92:7 95:9,18 104:9 159:23 160:1 202:6,17 203:4 skill 138:13 skills 226:10 227:6 skip 20:17 140:22 141:5,6 skipping 54:3 slash 3:18 7:14 86:11,12 slide 48:12,22 48:24 49:3	51:18 52:6 53:4,24 63:13 64:24,25 67:4 68:23 69:4,18 83:8 90:12,12 122:4,7 123:13 123:17 154:1,3 161:8,8 slides 69:8 slight 165:20 166:25 167:4 slowly 223:6 smaller 58:17 153:16 sole 62:1 solely 137:15 solve 206:6 somebody 68:9 110:21 171:21 172:2 someone's 196:15 sorry 8:14 9:13 15:18 23:2 68:2 71:23 77:18 80:13 86:24 87:7 88:25 89:24 90:21 101:21 113:16,18 115:2,4 119:6 119:7,11 134:20 143:24 144:22 156:8 159:24 161:10	165:18 166:8 168:3 169:5 172:13 181:14 203:24 208:14 211:8 219:20 221:19 sort 19:7 24:25 29:7 118:16 144:23 177:15 214:9 sound 6:8 sounds 6:17 96:10 97:12,12 196:21 220:11 south 2:8 10:11 12:7 16:4,11 28:5,10 32:19 50:1,1,18 75:24 76:20 77:2,3 90:17 92:4,4,11,16 95:20 96:8,25 97:1,16 99:16 100:17 102:10 125:19 156:5 157:6,21,24 159:7 160:17 160:18,19,19 162:8,10 188:6 201:15 southern 92:13 spacing 1:8,18 10:6,7,20,23,24 11:4,21 12:5,6 12:18 15:8,13	16:6 20:19,20 26:21 27:14,15 27:16,21 28:2 30:16 31:24 32:17,22 35:5 49:16 50:8,9 54:17 70:20 71:1,4,6,10,16 72:5,8,17 74:15,16 75:4 75:21 79:13 85:3,24 86:14 90:14,15 91:1 91:7 93:2 96:3 96:16 97:10 99:3 100:4 102:10 103:8,8 103:11,23 104:4,5,15 105:16,22,24 105:25 106:9 107:4,5,11 108:20 109:13 113:20 116:1,2 116:8 126:11 131:15 135:1 138:25 139:3 144:6 150:25 152:8 157:19 165:14 168:9 168:16,22,25 169:7,10,15 186:1,11,17,19 188:2 203:17 203:22 211:10
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[speak - statement]

<p>speak 66:20 114:23 223:17</p> <p>special 145:25 206:3 210:1</p> <p>specific 68:15 79:7 86:15 172:12 179:25 201:20 206:3</p> <p>specifically 43:7 61:22 109:15 189:4 201:10,19 209:10</p> <p>specifics 210:2 210:9 224:3</p> <p>speculate 121:1</p> <p>speculating 121:6</p> <p>speculation 120:18 133:25 205:5</p> <p>speculative 134:14</p> <p>speed 113:8 193:17</p> <p>spending 123:4 222:20 223:8,9</p> <p>spent 18:3 149:10 214:16</p> <p>sperling 3:4,8 7:9</p> <p>spoke 69:11</p> <p>spring 7:22,23 19:4 20:7 21:18 26:4,21</p>	<p>35:1 41:17 70:5,6 71:24 72:13 83:11 108:23 131:1</p> <p>squares 113:23 114:17</p> <p>st 2:8 221:17</p> <p>stack 9:7 166:3</p> <p>stacked 47:19</p> <p>stage 62:22 140:20 141:5,6 141:11,11 154:17</p> <p>stages 140:22 150:2 165:17 165:18,19,24 166:4</p> <p>stagger 167:8</p> <p>staging 155:4</p> <p>stamp 119:20</p> <p>stand 47:13 86:18 107:16</p> <p>standard 14:14 14:21 27:22 49:8,15 50:8 71:4,6 75:14 75:16 76:5,10 77:1 78:8 102:5 110:17 115:20 133:23 134:1 139:6 150:15,25 151:19 168:8 168:15,22 169:6,16 216:5</p>	<p>standards 113:6 139:1</p> <p>standing 65:8</p> <p>start 8:8,11 16:23 33:19 36:23 114:22 166:10 167:10 169:5 170:8 178:7 183:5 213:24 218:7</p> <p>started 114:19 199:14,22</p> <p>starting 11:22 162:4 204:2</p> <p>starts 155:24 183:8</p> <p>state 1:1 10:11 10:18 11:20 12:3,6,13 15:8 15:9,12 16:3 20:1 25:23 26:4,9,15 27:15,21 28:5 28:8 30:17,22 30:23 31:2 32:10 33:5 35:6,8,9,11 45:21 47:7 53:14,15,18 69:25 70:6,15 71:23,24 72:13 74:16,19 77:6 77:11 83:22 90:11 91:13 92:2,21 93:9</p>	<p>93:12,17 94:25 95:25 96:19 97:5 99:24 100:10,24 101:8,14,22 103:19 109:24 126:8 128:15 130:17 134:18 134:22 135:4,6 135:18 146:24 153:6 157:19 158:24 159:17 160:6,9,12 161:23 185:22 186:1,5,11,14 186:17 188:6,8 188:10 191:5,6 191:10,11 192:22 195:14 195:22 197:5,6 197:12 198:2,2 198:4,6 226:22</p> <p>stated 62:7 179:25 197:19</p> <p>statement 4:2,3 5:16 7:19 8:2,4 8:8,12 9:16 13:2,15,20 17:14,17 25:18 25:19 26:14,19 56:4 60:15 61:24 87:4,13 87:15,17 88:9 130:22 174:14 174:22 180:11</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[statement - surface]

<p>182:12 183:14 183:17 191:3 194:18 218:13 states 171:17 statewide 75:14 76:15 status 46:9 statute 10:19 11:1 14:17,22 16:12 19:9 28:12 31:7 34:10 133:7,9 139:2 statutory 33:25 staying 28:7 steel 79:3 stillwater 67:1 69:1 stipulate 127:13 stipulated 127:22 stipulation 21:7 stone 114:25 stop 17:7 62:18 140:24 191:24 story 154:22 straight 10:21 31:9,23 72:18 83:18,23 85:18 133:4 157:13 163:16 204:9 straightforward 13:8</p>	<p>straws 15:13 135:2 streamline 127:25 stress 41:16 stride 87:1 strike 78:12 structures 141:22 studies 22:15 22:18 200:17 study 41:17 136:11 176:24 178:15,20 179:16 180:3 184:17 185:11 196:12 197:3 197:13 stuff 185:19 subject 32:11 46:10 58:20 127:1 139:14 145:8,10 173:1 199:7 201:4 submission 213:23 submissions 213:20 215:12 218:6 submit 37:5,23 39:12 73:14 129:3 174:13 220:13 221:3 221:11</p>	<p>submittal 108:16 submitted 13:3 34:24 39:17 46:15 73:15 107:20 190:2 191:15 199:1 210:18 217:22 submitting 40:24 subpoena 203:7 substantial 150:4 substantially 204:4 substantive 37:6 40:1,2 subsurface 118:17 131:17 141:22 suck 16:7 sufficient 106:7 suggest 218:23 suggested 70:11 suggesting 24:5 71:20 120:23 suggestion 59:9 suite 41:15 summary 39:14 68:4 super 193:17 superior 152:25</p>	<p>supervision 102:19 support 123:6 129:15 179:15 185:11 196:13 200:12 supporting 179:14 suppose 201:21 supposed 22:23 63:16 90:10 sure 28:24 36:12 40:14,25 52:16,25 53:25 56:19,21 57:17 75:2 78:21 80:19,24 92:18 111:17 131:25 134:11 140:12 156:10 159:13 160:15 161:17 170:2,23 172:20 173:21 174:8 175:12 181:25 189:6 190:22 199:3 206:21 207:12 211:12 212:16 215:1 223:3 surface 19:19 19:21 48:13,15 48:19 51:24 52:3,4,4 53:10 53:12,17 55:16 71:2,3 79:5</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[surface - teams]

83:1,2 91:19 99:15 100:11 100:15,20 101:10 114:4 114:16 116:5 118:9,18 153:14,16 156:14,17,19 157:20 159:5 159:11 163:6 170:6,9 171:20 203:17 204:2 207:15 210:6 surprised 212:25 sustain 13:14 78:11 81:19 136:16 sustained 51:13 82:20 117:13 118:2 133:19 205:17 209:14 sustaining 94:21 132:19 swear 45:6 173:24 switching 146:11 sworn 45:13 128:9 146:12 146:16 173:20 174:3 226:5	t t 5:1 tab 22:1,3,5,9 22:10,13,20 23:18 37:13,14 37:17,20,21 38:4,10,15,24 39:4 41:5,8,8 41:13 43:11,12 43:19,21 44:2 44:17,19 table 21:24 220:17 tactics 177:22 take 12:22 17:17 49:13 55:2,3 56:22 57:1,19 59:10 62:24 65:15 75:25 76:16,16 77:8,14 79:22 80:7 81:24,25 90:5,7,8 91:11 91:13 92:1,7 92:20 93:9,18 95:13,25 97:4 97:6,14 99:6 99:10 100:8 101:4,11,14,15 102:5,9 103:4 103:6,14,18,19 106:25 107:1 108:4,5 109:8 109:8,14,23,25 113:8 134:22	135:16 138:20 145:13 150:14 152:3,11 153:5 153:25 154:11 156:7,22 157:8 157:14,16 159:10 162:3 165:22,23 168:17 169:2,3 169:8,11,16 170:8 171:17 193:25 194:9 195:25 197:10 197:10,15,15 202:6,16 203:8 203:19,20 204:3,6,22 206:2 209:25 212:14 213:2 213:18 216:9 221:23 takeaway 148:17 153:18 takeaways 148:13,17 taken 31:11 60:2 194:15 226:3,12 227:9 takes 79:3 151:14 152:6 talk 14:25 48:22 75:1,10 76:9 talked 76:10 149:16 158:7	158:17 talking 9:7,8 18:14 43:11 48:1,6 75:12 76:11,12,13 78:25 82:25 92:19 109:6 130:16 142:12 150:21,23 161:9 189:6 207:13 223:24 talks 53:4 69:9 tank 70:15,19 70:25 71:7 113:23,24 114:8,12 149:7 tanner 3:21 4:17 5:17 173:22 174:2 195:10 target 10:7 11:18,19 28:3 28:7 48:25 79:7 186:8 targeting 75:8 120:12,16 166:17 tarpon 67:2 69:3 team 98:2 154:23 199:21 201:10,10 210:21 teams 210:12
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[technical - think]

<p>technical 3:12 6:9 10:8 55:19 111:4 112:18 194:16 210:12 213:19 technically 114:17 223:11 technology 79:17 84:20 157:16 167:13 167:18 204:1 tell 13:20 14:18 45:14 53:24 73:12 93:8 107:6 128:10 146:17 174:4 187:16,18 ten 57:19 150:11,14 151:4,5,6 163:8,22 216:6 216:22 217:20 219:7,8 tens 168:19 terminology 191:13 terms 30:4 97:21 144:2 152:21 155:21 170:7 190:17 195:12 196:13 testified 21:14 23:12 42:10 45:15 46:5 58:19 94:9</p>	<p>128:11,21 137:10 146:18 153:9 158:11 174:5 180:10 198:17 199:11 200:2 testify 59:23 117:13 130:13 138:14 178:13 testifying 18:21 21:17 82:16 226:5 testimony 19:12 21:16 23:14 46:16 47:1 56:18 59:5 70:9 77:19,20,21 78:5,8 127:14 127:22 129:4 129:22 135:24 148:11,13 150:7 156:24 174:23 189:21 198:19 201:22 202:1,11 212:6 testing 134:12 texas 148:9 181:10 204:12 204:16,25 205:10,20,25 206:12,19 207:2,22 208:7 208:11 209:8 209:24</p>	<p>text 33:25 thank 7:16 8:16 8:19 9:9 16:17 16:18,20 17:18 20:12 21:11 25:15 28:16 36:21,25 38:23 39:4 41:13 45:2 46:5 50:7 52:19 53:1,24 53:25 55:17 57:4,6 58:9,15 59:20 60:4,6 60:12,13 66:19 74:8 95:22 104:9 106:13 111:3 116:13 116:17 119:13 122:4 124:14 124:15 127:2,3 128:6 129:9,11 129:24 130:1 142:7,25 143:1 143:9 145:5,11 145:22 146:4 146:19,20 147:2 149:15 150:21 155:8 164:20 167:22 167:25 169:23 169:24 171:7 172:23 173:4 176:5 179:19 182:4 194:12 195:4 198:9,13</p>	<p>208:21 212:5,7 212:9 213:4,5 213:11,25 214:12,18 215:10 216:12 216:19 217:21 217:25 219:2 223:21 224:6,8 224:21 thanks 7:2 45:20 129:12 196:25 theory 115:12 thin 207:8 thing 53:11 154:25 162:15 185:7 195:11 206:17 207:7 things 17:2,13 84:24 200:1 221:13 think 9:10 26:7 26:9 33:12,24 34:15 35:2,5 40:14,17 44:8 44:13 51:15 52:16 55:10,10 63:12,16 69:10 69:12 74:22 81:5,6 87:25 89:22 90:3 92:18 100:19 111:18,20,21 113:17 114:19 115:18 116:11</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[think - trades]

117:13,17	three 18:25	34:5 37:5	totally 115:23
127:11 134:13	32:25 33:11,16	39:18 41:7	touched 112:7
134:24 135:23	46:24 62:6	46:21 47:3	tracks 27:23
142:5 144:14	85:25 86:1	48:6 49:5	151:14 159:21
145:4 150:21	140:14 148:13	64:20 65:2	tract 11:3
151:9 152:24	148:17 190:1	84:21 88:3	12:14 30:6,20
154:8 164:2	threw 144:23	109:22 145:20	30:24 31:5,10
167:20 171:3	thrown 177:17	147:7 148:14	31:15,25 32:10
177:4 180:7,13	181:8	153:23 174:23	32:12 33:4
183:13,18	thursday 2:2	196:9 197:3,9	34:11 39:13
189:8 190:22	37:2 190:22,22	197:14 198:17	85:1,19 130:14
195:4 196:14	190:23	222:11	133:22 134:1
206:1,25	time 2:3 14:20	today's 25:25	137:22 139:6
213:14 214:3	18:4 19:21	26:16	141:1,10,13,15
215:15,18,20	38:6 40:19	toe 74:25 84:8	144:16,19
216:3 218:19	45:3 46:25	168:16	158:12 160:3
219:4 220:2,24	57:19,20 79:3	together 53:7	160:21 162:22
224:7	119:19 120:1	68:7,9 74:11	tracts 10:22,25
thinking 172:1	129:21 145:5	92:25 166:7	12:12 15:5
181:8	146:5 151:14	169:12 170:11	28:10 30:25
thinly 105:5	166:4,7,8	199:21 210:12	31:11,24 72:3
third 19:13	195:10 202:6	told 95:1 97:3	74:21 84:4
thirty 64:4	202:16 203:3	102:13 126:10	135:1 137:8
104:9	205:19 208:16	207:20 208:1	141:10,16
this'll 67:9	221:23	tomorrow	160:3,8,12,20
thought 47:17	timely 221:10	40:18 221:17	160:24 162:15
104:10 119:7	times 150:2	took 49:6 77:5	163:1,7,10
166:2 221:13	timing 215:11	77:6 89:12	177:20 185:24
thoughtful 24:6	today 7:15	top 28:22,23	185:25 186:1
thoughtfully	13:22,24 14:2	88:7 151:21	186:17
47:11	14:5,10 18:14	152:16	trade 54:22
thoughts	19:12 20:11	total 85:25 86:1	55:1
112:18	21:2 25:6,22	149:6	traded 54:24
thread 200:14	26:12 27:1,8	totaled 192:12	trades 54:20
	27:24 32:4		

[traditional - understanding]

<p>traditional 144:6</p> <p>train 151:10,10 151:11,15</p> <p>training 138:13</p> <p>transcriber 227:1</p> <p>transcript 215:15,19,21 216:1,21,25 217:10 218:3,4 218:19,22,25 219:1,4,23 222:10 227:3,5</p> <p>transcriptionist 226:8</p> <p>transcripts 217:14 218:5</p> <p>trial 138:10</p> <p>triangle 92:21 94:2,2,24 95:3 95:24</p> <p>triangles 90:5</p> <p>trier 138:15,19</p> <p>true 70:18 108:15 147:9 209:23 210:3,4 210:9,19 226:9 227:5</p> <p>truth 45:14,14 45:15 128:10 128:10,11 146:17,17,18 174:4,4,5</p>	<p>try 36:13 62:22 63:2 100:24 185:8 196:19 205:15 208:22 209:18</p> <p>trying 9:10 16:1 68:1 115:2 134:20 152:17 155:14 181:14 185:10 190:17 199:13 199:20 200:14 200:17 201:14 206:6,16 208:10 215:14</p> <p>tuesday 221:21</p> <p>turn 45:7 49:13 55:19 59:1 63:3 67:22 86:19 111:4 151:11,14,15 152:17 168:6 172:21 208:22</p> <p>turnaround 216:5 217:20</p> <p>turns 49:12 151:10 204:21</p> <p>twice 160:10,13 160:21 162:12</p> <p>two 15:13 32:25 46:4,4 47:19 65:15 69:12 71:6 72:4,8 90:4 97:21 113:6,17</p>	<p>135:2 149:14 150:2,6,20 152:11 153:21 153:22,25 154:10 165:14 174:19 175:9 175:16 176:4,6 177:1 178:15 179:16 180:22 188:13 189:18 190:8 192:6 200:1 214:23 218:8,9,18,25 219:12,15,15 219:24 222:4</p> <p>type 197:3</p> <p>typewriting 226:7</p> <p>typical 84:17 163:4</p> <p>typically 116:9</p> <hr/> <p style="text-align: center;">u</p> <hr/> <p>um 144:20</p> <p>uncertainty 167:7</p> <p>unclear 32:7 134:15 177:12 189:3</p> <p>uncommitted 60:19,24 63:25 66:3,6</p> <p>uncover 29:18</p> <p>under 9:24 11:1,12 14:21 15:4 16:22</p>	<p>25:9,21 28:12 30:15 31:7,22 43:16 63:25 68:8,10 77:8 77:25 83:15 84:5,14,17 102:19 138:20 178:1 186:10 187:14 206:20</p> <p>undersigned 54:14 201:25</p> <p>understand 13:13 14:17 16:16 20:3 24:9 33:16 34:4 52:25 73:5 89:13 92:5,18 100:24 102:18 106:8 112:17 115:11 134:13 136:12 137:11,14 138:16,22 140:6 144:7 155:5 160:15 164:2 178:8 179:20 180:6 190:17,18,23 200:11 206:22 209:12 212:24 214:8 220:9 223:1</p> <p>understanding 20:5 24:13,22 25:3,5,25 27:7</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[understanding - using]

48:5 53:1 74:23 75:3 89:4 95:5,16 96:13,21 97:18 98:3 99:9 101:2 107:22 108:11 137:6 144:18 148:20 162:1 194:20 205:19 210:13 222:1 224:10 understands 81:4,15 139:23 164:10 understood 127:25 179:1 199:3 undertake 176:24 187:13 201:5 undertaken 178:14,19 179:16 180:3 200:16 undertook 184:17 undisclosed 28:4 undisputed 21:16 unfair 117:19 unfortunate 17:25 unfortunately 37:3 52:8	unit 1:8,18 10:23,24 11:4 11:21 15:12,12 15:13 16:6 28:2 30:6,16 31:24 32:10,17 32:22 33:5 35:5 47:21 48:7 49:8,16 50:4,8,9,16,18 51:6 52:2 64:25 66:2 67:10 72:18 79:10,13,18 85:3 86:15 90:14,15 91:1 91:7 94:25 95:11 96:4,16 97:10,13 99:3 100:4 102:10 103:8,8,24 104:2,4,5,15 105:22,24,25 106:9 107:4,5 107:11 108:20 116:2,8,22 118:18 123:19 124:25 125:10 126:5,8,11 131:15 134:18 134:22 135:1 138:25 139:3 144:6 149:11 150:25 151:19 152:8 157:19	157:20 159:6 159:17 160:9 162:11 168:9 168:16,22,25 169:7,10,15,17 186:2,19 188:6 191:10,11 198:4,6 203:18 203:22,23 204:3 211:10 units 9:20 10:6 10:11,12,18,20 12:3,5,6,18 15:8 16:3 20:19,20,21 25:8 26:21 27:15,15,16,22 28:5,6,6,8 35:21 47:10,12 47:19 48:6 49:21,24 51:23 53:6,9,17 54:17 55:14 69:24,25 70:6 70:7,20 71:1,4 71:6,10,17,24 71:25 72:5,8 74:15,16 75:4 85:24 86:14,18 91:16 93:2 101:3 103:11 103:23 105:16 108:25 109:13 113:20 116:1 124:6,9,12	125:4,20 130:16,17 131:1,2 149:2 149:17 153:22 160:13 186:11 188:2,8,9 197:5,6,12 198:2 unleased 39:21 64:2 69:13 125:18 134:22 143:19 unnecessary 30:7 unrecoverable 79:16 84:20 unrecovered 49:17 unsubstantiat... 81:6 unusual 117:9 update 220:18 upgrade 123:5 upgrades 122:22 use 51:23 75:11 90:15 149:4 168:1 188:14 used 100:23 166:9 using 19:18 47:14 73:1,6 77:1 80:23 97:23 118:24 119:2 187:10
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[usual - wells]

usual 41:15	w	waterline	weight 194:3
usually 167:6		wait 8:14 14:25	194:19
v	37:18 210:24	way 12:18	weiner 227:2
vacate 105:5,7	215:17,18,19	51:14 52:15	227:18
105:12 106:15	221:9	61:1 63:17	well's 75:24
vaguely 144:17	waited 18:1	77:13 94:18	101:8
204:18	waive 164:11	105:24 106:7	wells 10:12,20
valid 103:6	waived 214:20	137:4 138:9	10:24 11:10,18
171:3	walk 49:3	154:19 169:20	11:20 12:11,13
value 139:20	want 6:8 17:17	178:8 182:6	12:23 15:7,10
veiled 105:5	18:23 20:10,17	209:14 219:25	15:12,13 16:5
verbalize 27:6	29:2,12 45:7	ways 154:15	16:7 18:18,18
versa 26:10	48:22 56:5,7	we've 42:10	18:19 20:1
50:1	57:19 62:24	46:21 47:11	25:23 26:15
versus 62:22	73:11 74:3	55:10 103:12	30:17,19,22,24
141:10 168:8	75:2 76:9	114:19 127:21	31:2 32:11,15
vertical 49:12	80:20 86:19	150:7,9,9	32:23 34:25
79:4	94:15 131:13	152:5 154:19	35:2,5,7,15,23
vertically 123:1	145:16 150:11	158:7,17 190:9	35:24 36:2,3,6
vice 26:10 50:1	151:9 152:6	222:21 224:3	47:22 48:8
video 14:7	171:2,6 172:21	website 102:24	49:24,25 50:1
videoconfere...	174:7,9 181:25	189:13 191:9	50:2,23 51:8
3:13,20,22	182:14 194:3	191:15	52:22 54:7
view 217:24	194:10 205:22	wednesday	55:3 72:7,12
violation 109:3	208:20 214:19	222:2,6	72:13,17 75:4
virgin 166:15	215:1 216:8	week 9:22	76:7 77:6,11
virtually 55:20	218:6 224:11	36:14 190:23	79:21 80:22
visual 152:12	wanted 52:25	191:17	83:18,23 93:9
156:9	147:25 148:5	weeks 201:20	93:13 94:10
voluntary	183:13	211:13,18	98:3,9,14,15,17
35:21,23 62:21	wanting 28:18	218:5,8,9,18	98:18 99:2,14
62:22 64:7	127:25	219:1,12,15,16	100:19 101:22
vpd 64:12,18	waste 205:2	219:24	102:24 103:9
	207:4	weigh 25:11	103:20 104:17
			107:1 109:24

[wells - wrap]

<p>110:1 114:2,16 135:4,6,7,8,19 135:19 149:6 149:13 161:1 165:14,17,21 166:13,19 167:16 177:10 185:22 186:5,8 186:14,17 188:5,12,13 191:6,10,11 192:22 193:23 195:22 199:7 201:4 202:16 203:9,11 206:18 209:24 210:5 223:23 223:25 wendell 2:7 went 12:17 77:7 92:11 106:23 147:7 191:9 193:16 west 67:9 99:3 99:3 100:3,3 162:3,3 201:16 whatsoever 17:20 184:17 white 177:18 whoever's 9:7 wider 153:4,4 wine 166:19,20 166:21,23 withdraw 13:21 139:24</p>	<p>169:5 205:14 withdrawal 148:15 withdrawing 81:11 145:1,2 withdrawn 199:10 withdrew 199:8 witness 4:5 20:13 21:12 45:3,13 58:13 72:21 82:18 93:20 104:12 111:7,13 120:20 121:14 126:22 127:1,5 127:7 128:9 129:7,10 135:22 138:12 140:4,7,18 142:10,13,14 142:17 143:4 145:6 146:3,8 146:16 157:24 163:25 165:4 169:24 172:25 173:6,8,15,17 173:18,20 174:3 175:13 176:10,15,22 178:25 182:2 184:16 186:25 187:3 188:24 189:1,5 190:15</p>	<p>190:19 191:25 192:14,20,23 193:2,5 194:21 194:23 196:16 198:11 200:22 207:1 208:5,24 209:16 210:25 211:19 212:2,7 226:4 witness's 179:11 209:7 witnesses 13:6 14:2,5,9 18:14 18:21 21:5 23:9 36:16 111:10 145:10 212:18 wolfcamp 7:21 11:20,21,21 12:18 19:1,3,5 20:8 21:18 25:22 26:23 27:14 41:18 69:24 70:2 71:23,24 83:11 98:18 100:4 108:25 130:23 131:2 158:8,10 158:12 220:24 wonder 20:2 213:22 wonderful 8:22 176:16 wood 193:17</p>	<p>word 154:10 166:2 189:1 words 24:25 32:4 work 20:21 33:16 35:20 45:23,24 97:19 128:17 147:2 198:24 199:5 201:5 204:11 worked 35:22 42:13 46:2 148:8 181:16 205:25 207:2 working 9:19 10:2,16 12:2 17:3,4 18:25 19:8,9,13,16 24:24 25:7,12 27:10 28:9 36:1 39:22 44:5 54:8 64:1 66:2,6 83:10 85:23 102:16 106:25 109:20 114:21 124:24 133:11 163:19 177:18 188:10 197:21 198:5 worries 166:12 worth 181:10 194:22 would've 218:2 wrap 145:15</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[wrapped - zoomed]

wrapped 221:1	153:13 154:9	70:12 72:16
writing 60:1	154:13,20	74:10 78:23
written 214:1,2 214:4	155:6 157:24	79:20 81:4
wrong 67:9 194:4	160:2 161:13	82:3,16,24
wrote 62:15	162:20 163:12	89:23 93:13
x	165:24 166:9	94:8,24 106:22
x 4:1 5:1	166:22 167:11	111:2,6 112:2
y	167:19 168:3	112:6 113:22
y 42:7	172:1 181:16	115:10 116:20
y'all 8:16 212:7	183:19 188:3	118:4 123:8,20
yeah 8:5 9:3 15:24 22:24 26:7 28:16,20 33:1,13 35:8 49:6 50:12 51:21 52:2 56:16 58:2 61:12 62:20 63:6,22 64:10 67:18 68:1 73:2 85:22 87:19 89:11 90:24 91:6 96:13 98:16,18 98:22,25 99:4 101:25 108:6 116:9,9 118:16 119:10 121:14 122:11 125:15 144:23 145:18 149:4,21 151:6 151:8 152:12	201:2 203:25 210:8 215:20 220:3 223:7,24	124:22 153:24 158:11 198:17
	years 42:12 46:4,4 181:17	zink's 57:9 60:2 77:19,20 78:4 201:22
	yellow 28:19 87:5 88:23	zone 28:7 79:7 115:23 154:22 167:3
	yep 53:8 89:25 98:25 99:20 114:14 151:2 152:1 162:16 163:13	zones 166:11
	yesterday 69:12	zoom 161:12 170:15 171:2,2 171:4
	z	zoomed 171:3
	zero 96:21,23	
	zink 3:23 4:6 5:5 20:13 22:3 23:14 24:1 39:5 45:4,4,5 45:12,18,22 54:6 56:3 58:19 59:1 60:15 63:8,19 66:4,23 68:5	