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

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In THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF Docket No. 16-23 OCD  
CONSIDERING:

Case Nos. 23448, 23449, 23450,  
23451, 23452, 23453, 23454,  
23455, 23594, 23595, 23596,  
23597, 23598, 23599, 23600,  
23601, 23508, 23509, 23510,  
23511, 23512, 23513, 23514,  
23515, 23516, 23517, 23518,  
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VIDEOCONFERENCE HEARING

DATE: Friday, August 11, 2023  
TIME: 8:30 a.m.  
BEFORE: Honorable Examiner Felicia Orth  
LOCATION: Remote Proceeding  
Albuquerque, NM 87102  
REPORTED BY: Jan Gibson, CCR, RPR, CRR  
JOB NO.: 6056708

A P P E A R A N C E S

ON BEHALF OF CIMAREX:

WILLIAM ZIMSKY, ESQUIRE (by videoconference)

Abadie & Schill

214 McKenzie Street

Santa Fe, NM 87501

ON BEHALF OF MRC PERMIAN COMPANY AND PRIDE ENERGY  
COMPANY:

JIM BRUCE, ESQUIRE (by videoconference)

James Bruce, Attorney at Law

P.O. Box 1056

Santa Fe, NM 87504

jamesbruc@aol.com

ON BEHALF OF DEVON ENERGY PRODUCTION COMPANY, LP;  
COTERRA ENERGY; AND CIMAREX ENERGY COMPANY:

DARIN SAVAGE, ESQUIRE (by videoconference)

Abadie & Schill

214 McKenzie Street

Santa Fe, NM 87501

darin@abadieschill.com

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

ON BEHALF OF OIL CONSERVATION DIVISION:

HAILEE THOMPSON (by videoconference)

JOHN GARCIA (by videoconference)

Energy, Minerals and Natural Resources Department

1220 South Street Francis Drive

Santa Fe, NM 87505

ON BEHALF OF MRC PERMIAN COMPANY AND PRIDE ENERGY  
COMPANY:

JIM BRUCE, ESQUIRE (by videoconference)

James Bruce, Attorney at Law

P.O. Box 1056

Santa Fe, NM 87504

jamesbruc@aol.com

ALSO PRESENT:

Marlene Salvidrez, Host (by videoconference)

John Coffman, Landman, Coterra Energy Company (by  
videoconference)

Staci Mueller, Geologist, Cimarex Energy Company  
(by videoconference)

Kody Murphy (by videoconference)

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I N D E X

| THE WITNESSES:                                | PAGE: |
|---|-------|
| TRAVIS MACHA                                  |       |
| Direct Examination Continued by Mr. Rankin... | 7     |
| Cross-Examination by Mr. Savage...            | 15    |
| Redirect Examination...                       | 49    |
| Examination by Mr. Garcia...                  | 50    |
| DAVRO CLEMENTS                                |       |
| Direct Examination by Mr. Rankin...           | 58    |
| Cross-Examination by Mr. Zimsky...            | 62    |
| Examination by Mr. Garcia...                  | 69    |
| REPORTER'S CERTIFICATE...                     | 89    |

EXHIBITS

ADMITTED INTO EVIDENCE

|  |    |
|--|----|
| Exhibits D. (Including D1 through D5)    |    |
| Clements Statement and Attachments...    | 60 |
| Exhibit G. Rankin Affidavit...           | 73 |
| Exhibit H. Affidavit of Publication...   | 73 |
| Exhibit I. Permian Rebuttal Documents... | 78 |
| Exhibit J. Permian Rebuttal Documents... | 78 |
| Exhibit K. Permian Rebuttal Documents... | 78 |

1 (Note: In session at 8:30.)

2 HEARING EXAMINER ORTH: This is Felicia  
3 Orth. We are back for a third day in several cases:  
4 23448, 23455, 23594, 233601, and 23508 through  
5 23523. The principal parties are Cimarex and Read &  
6 Stevens. Other parties included Foran Oil, Northern  
7 Oil & Gas, Sandstone. There were some others.

8 When we broke yesterday, Mr. Rankin was  
9 examining Mr. Macha. I know that we have a new  
10 court reporter today, Jan Gibson. Please speak up.

11 MR. RANKIN: Adam Rankin with Holland &  
12 Hart.

13 HEARING EXAMINER ORTH: Terrific. If you  
14 would like to resume, unless there's some  
15 preliminary matter we need to discuss?

16 MR. RANKIN: I don't believe at this time,  
17 Madam Examiner. I think we can proceed, unless  
18 Mr. Savage has something he'd like to raise before  
19 we get started. I know we had discussed that they  
20 wanted to do some surrebuttal, and I think we can  
21 address that as they present it.

22 MR. SAVAGE: I agree with that.

23 HEARING EXAMINER ORTH: All right. Thank  
24 you very much. Sorry, Mr. Savage?

25 MR. SAVAGE: I just said we can proceed,

1 as far as I'm concerned. Thank you.

2 HEARING EXAMINER ORTH: All right. Thank  
3 you. Go ahead, Mr. Rankin.

4 MR. RANKIN: Thank you, Madam Examiner.

5 TRAVIS MACHA

6 (having been previously sworn, testified as  
7 follows:)

8 DIRECT EXAMINATION CONTINUED

9 BY MR. RANKIN

10 Q. Mr. Macha, can you hear me okay?

11 A. Yes, sir. Can you hear me?

12 Q. I can hear you great. I'm going to share  
13 my screen, and we'll pick up from where we left off  
14 yesterday afternoon. Let me know when you can see  
15 Exhibit I, Slide No. 2.

16 A. I can see it.

17 Q. I believe yesterday when we left off you  
18 were explaining the information here on the top part  
19 of this chart, the differences between the parties  
20 with the orange and the blue and how this chart  
21 indicates which formation they favor as well as how  
22 that lines up with their working interests.

23 Now, I think what I wanted to touch on  
24 before we left this slide, Mr. Macha, is if you can  
25 explain what this bottom section of the chart here

Page 7

1 reflects and how that relates to what you explained  
2 yesterday up here on the first chart, the top chart.

3 A. Right. So obviously, we kind of  
4 summarized that top chart yesterday. Moving down to  
5 that bottom chart, I kind of just break out the  
6 Permian interest and the Permian Supporter interest,  
7 the Cimarex interest and the Cimarex Supporter  
8 interest, all out respectively. I think there are a  
9 few things to note in here. Obviously, Cimarex and  
10 Permian own a very similar interest, kind of the  
11 Bone Spring across these four sections, and Cimarex,  
12 indeed, their supporters do indeed own a bit more  
13 than Permian Supporters, so they do have a larger  
14 control in that Bone Spring pool.

15 However, you kind of jump over to the  
16 Wolfcamp side, you can see that that's where things  
17 change a little bit. Permian does own kind of a bit  
18 substantially larger interest in the Wolfcamp than  
19 Cimarex, as with their supporters. And the only  
20 note that I have on here is kind of just a  
21 clarification of a potential land perspective. I'm  
22 not talking about technical, that there might be a  
23 potential bias here as to why, you know, you might  
24 would rather drill the Bone Spring and deplete the  
25 Wolfcamp without taking that Wolfcamp ownership into

1 account.

2 Q. Thank you, Mr. Macha. We'll move to the  
3 next slide here. I think a lot of this was covered  
4 essentially through cross, so I don't know that we  
5 need to spend as much time on it. But if you would,  
6 just explain to us what this all means, and then at  
7 the end I'll just -- so Cimarex -- so the record is  
8 clear, I believe you have a copy of each of these  
9 correspondences which have been included with this  
10 exhibit; is that right?

11 A. Yes.

12 Q. So just touch on this. Explain what this  
13 shows just briefly so we have it for the record.

14 A. Yeah. I kind of broke it going from the  
15 top to bottom here. The top three parties, Cimarex  
16 lists as their active supporters. Challenger Crude,  
17 I think, throughout this entire process has been  
18 actively, you know, stating that they're neutral.  
19 So they have issued now three separate letters  
20 stating such, all of which are included in here.

21 Union Hill, I saw that they were listed as  
22 a committed active supporter last week when Cimarex  
23 submitted their exhibits, so I went ahead and  
24 reached out because I was a little confused as he  
25 had stated he was neutral as well. And I got that

1 clarification in that e-mail right there.

2 Then Highland Texas, that's just one that  
3 I haven't seen any evidence of that support. They  
4 might, you know, present that today, and if so,  
5 that's great.

6 Popping over to the right side, Marks Oil,  
7 that's one that was listed as committed. I think we  
8 talked about that might have just been a typo, but  
9 we went ahead and included that for clarification.

10 In the bottom left we can see an  
11 assignment from Magnum Hunter to Joseph Foran back  
12 from 2004 and, you know, following those arrows,  
13 from what we're seeing out of Cimarex's exhibits it  
14 looks as though they are crediting Foran's interest  
15 to themselves. So I think that's just another thing  
16 that we wanted to note.

17 That directly contributes what their  
18 Exhibits A10, D23 as well as their Hearing Packet 4  
19 they have adopted as they don't have a active title  
20 opinion in the Wolfcamp, they adopted our Wolfcamp  
21 ownership so Foran does pop up there as well.

22 Q. Thank you, Mr. Macha. Now, there's  
23 another set of slides here. If you would, just  
24 explain. These look similar to each other, number  
25 one. And then they also look similar to what was in

1 your direct testimony, I believe under Exhibits C8  
2 and C9. Would you explain what these are and the  
3 difference between these and what you submitted with  
4 your direct testimony and why they are here?

5 A. Right. So this kind of -- this and the  
6 next seven slides, they are complimentary to the  
7 original division of interest that we broke out by  
8 leasehold. And again, Cimarex kind of raised an  
9 issue with us doing leasehold-based interest, so  
10 here we just went ahead and supplemented the  
11 contractual, just for the reason if whatever the OCD  
12 would prefer to see, whether that be leasehold or  
13 contractual, that they have both interests broken  
14 out here.

15 And as a reminder, the red bars indicate  
16 owners who own a different interest between the Bone  
17 Spring and the Wolfcamp. The blue bars indicate  
18 owners owning a uniform interest between the Bone  
19 Spring and Wolfcamp.

20 Q. And you have done this for each space unit  
21 so examiners can compare this against the leasehold  
22 interest you did? You prepared it?

23 A. That is correct.

24 Q. Great. So this is one for each of the  
25 contractual interests?

1 A. Yes, sir.

2 Q. Now, Mr. Macha, we included this here. I  
3 had forgotten that we'd already submitted this so I  
4 apologize. But this essentially is just the letter  
5 that was supplemental Exhibit C12 where Chase is  
6 indicating its support or concerns and maybe  
7 potentially support about developing the Wolfcamp.  
8 They are referring specifically to a statement that  
9 was made by Northern Oil & Gas. Can you let us  
10 know, what was it that Northern Oil & Gas -- what  
11 statement did they make?

12 A. I think Northern was primarily concerned  
13 with kind of disregard for the Wolfcamp and concern  
14 that there was no true appraisal of that Wolfcamp.  
15 So in the interest of protection of correlative  
16 rights as well as the possibly more lucrative  
17 development, they issued a letter that they did  
18 support the exploration of a co-development  
19 strategy. Chase here has adopted that statement as  
20 well.

21 Q. And Northern's statement is found at  
22 Exhibit C12, Page 9 of that exhibit; is that right?

23 A. That is correct.

24 Q. And then these show the supporting -- the  
25 following pages are just the supporting

1 correspondence that you highlighted in the previous  
2 slide under Exhibit I?

3 A. Yes, sir. That's correct. All this is  
4 just backup documentation. Obviously, we're not  
5 hiding anything, so this is all the evidence of  
6 such.

7 Q. Now, the last thing in that packet that I  
8 wanted to touch on that came up in the interim here,  
9 Mr. Macha, is a letter that was submitted to the  
10 division by E.G.L. Resources. Can you explain what  
11 this letter is and how you got a copy of it and what  
12 your understanding of E.G.L. Resources' concerns  
13 are?

14 A. E.G.L. is the operating entity for PBEX,  
15 and they have been actively following this case.  
16 The first I heard from them was actually on July  
17 20th, I think the day that we were supposed to have  
18 this hearing. They reached out. They kind of  
19 wanted some clarification as to what was going on as  
20 to, you know, why Cimarex was trying to preclude the  
21 development in the Wolfcamp. And they, in turn,  
22 issued this letter as they themselves have an  
23 operated tract in the area that they are pursuing  
24 co-development, and they have concerns that the  
25 precedent set if Cimarex's case was to be adopted

1 would be applied to this area as a whole and  
2 potentially elsewhere.

3 Q. And Mr. Macha, the next image, explain  
4 what that shows and how this relates to the letter  
5 you just reviewed.

6 A. Right. It says "PBEX Leasehold." Like I  
7 said, E.G.L. is the operating arm of PBEX. So as  
8 you can see, we have kind of discussed the Batman  
9 project in this right offset, the Joker Bane, and  
10 then PBEX's leasehold is just one section to the  
11 west of that. And we are viewing that as fairly  
12 analogous geology as well.

13 Q. Thank you. That was everything,  
14 Mr. Macha. Is there anything else, in terms of  
15 land, by way of Mr. Coffman's exhibits that you want  
16 to touch on?

17 A. I don't think so. I think we pretty much  
18 covered it.

19 Q. Thank you very much. Let me make sure I  
20 covered everything myself. We did. With that,  
21 Madam Hearing Officer, I have no further questions  
22 of Mr. Macha at this time, and we will offer him for  
23 cross-examination by counsel and the Division.

24 HEARING EXAMINER ORTH: Thank you very  
25 much, Mr. Rankin. Mr. Savage, do you have questions

1 of Mr. Macha?

2 MR. SAVAGE: I do, Madam Examiner.

3 CROSS-EXAMINATION

4 BY MR. SAVAGE

5 Q. Mr. Macha, as I ask these questions, if  
6 there's anything you don't understand or didn't  
7 hear, please ask me to repeat it. And good morning.  
8 I appreciate your attention and consideration of  
9 these questions.

10 Do you have access, just to make sure we  
11 have everything that will be available to be viewed,  
12 do you have access to Cimarex's Hearing Packet 1  
13 that has John Coffman's landman's statement?

14 A. Yes, I have paper copies.

15 Q. Okay. I just want to make sure we have  
16 all that up front so we're not -- you know, I fumble  
17 around on my end quite a bit trying to find stuff on  
18 the fly.

19 So you have that. And then, of course,  
20 you have your testimony and exhibits and the  
21 rebuttal. Do you, by chance, have a standard  
22 pooling order, a typical pooling order at your  
23 fingertips?

24 A. I don't have a standard pooling order at  
25 my fingertips.

Page 15

1 Q. I may be able to share that then when we  
2 get to that point.

3 A. If you would like me to get one.

4 Q. I think we can -- I don't like using the  
5 share option, but I can do that if needed. And do  
6 you have a copy of Permian Resources' response to  
7 Cimarex's brief? If not, I can share an excerpt  
8 from that, I believe.

9 So let's go ahead and start with those.  
10 So if I can direct your attention to Exhibit I, and  
11 this is Page 5 of 44 on the rebuttal exhibits. And  
12 that's where the underlying citations are. Do you  
13 see that?

14 A. Page 5? Give me just one second.

15 Q. That's Page 5 of the PDF and that's the  
16 page that has the underlying exhibits where you  
17 point out that they are not Bone Spring only, but  
18 there's complementary applications that reference  
19 the Wolfcamp. You're familiar with that exhibit?

20 A. I'm familiar with I being this  
21 (indicating).

22 MR. GARCIA: Mr. Savage, I lost you. Are  
23 we on rebuttal exhibits?

24 MR. SAVAGE: We are on rebuttal exhibits,  
25 Mr. Garcia.

1 MR. GARCIA: Thank you.

2 Q. That's one of the Exhibit Is. Above that.  
3 Does your Exhibit I start with the Brief Historical  
4 Timeline and there's a Cimarex brief rebuttal?

5 A. Yes.

6 Q. Okay.

7 A. Brief rebuttal is what you're talking  
8 about?

9 Q. Brief rebuttal is the one I'm interested  
10 in.

11 A. Okay, yes.

12 Q. In your testimony, you wondered what the  
13 intention of those cites were; is that correct?

14 A. Yes, sir.

15 Q. And I understand that. Would you accept  
16 that it was an error that arose while writing a  
17 brief on a short deadline and that they should have  
18 a notice of errata?

19 A. Yeah, absolutely. We are all human,  
20 right?

21 Q. Yes. And I appreciate that. But it was  
22 an attempt to make a point. And I want to  
23 understand what P.R.'s inventory is regarding Bone  
24 Spring units in this area. You're fully familiar  
25 with Permian Resources' inventory in this area of

1 interest?

2 A. I would say I'm familiar with all of the  
3 target formations. As for actual inventory, that  
4 would be an engineering or geology question.

5 Q. Okay. In your direct testimony, in the  
6 Paragraph 31 of your testimony, you say that Permian  
7 Resources had been active in the area of interest  
8 for about three years; is that correct?

9 A. Three years would be about right. I would  
10 say more two-ish.

11 Q. Okay. I believe you used -- the exact  
12 term you used was 36 months.

13 A. Okay, yeah. Most active operator in the  
14 last 36 months, correct.

15 Q. Okay. I was looking around at the OCD map  
16 last night and I came across Permian Resources North  
17 Lea Wells, Nos. 1, 2 and 3, and you're familiar with  
18 those, correct?

19 A. Correct.

20 Q. You got those from Read & Stevens, it  
21 looks like?

22 A. Correct. We did not drill those.

23 Q. Right. But I looked at that map closely  
24 after my little miscitation, and it looks like those  
25 are all Bone Spring units; is that correct?

1 A. That is correct.

2 Q. Okay. So we do have one reference in here  
3 that is Bone Spring. And then in your testimony --  
4 let's see here -- you say that Permian Resources in  
5 the past 36 months has drilled four Bone Spring  
6 wells and one Wolfcamp well. Is that an accurate  
7 statement? That's Paragraph 31.

8 A. That is correct. Permian Resources.

9 Q. Okay. Do you remember the -- go ahead.

10 A. Being the Batman wells.

11 Q. Oh, those are the Batman wells. Okay. So  
12 those are ones that you do claim co-development on  
13 those?

14 A. We did the appraisal of the co-development  
15 in the Wolfcamp while it was a stand-alone third-run  
16 test.

17 Q. Okay. Let's see here. Okay. So let me  
18 see if I can pull up the response. If you can bear  
19 with me just a minute here. You don't, by chance,  
20 have a law background as a landman?

21 A. No, I do not.

22 Q. I was curious about that. I'll see if I  
23 can share this. Hold on just a minute.

24 MR. SAVAGE: Madam Examiner, I'm having a  
25 little technical difficulty. Could I get my IT

1 person?

2 HEARING EXAMINER ORTH: Oh, yes.

3 MR. SAVAGE: I'm sorry. This is the first  
4 time I have tried to share this. Hold on.

5 (Note: A discussion was held off the  
6 record).

7 MR. SAVAGE: So I cannot share this  
8 apparently under the current settings. So I will  
9 have to set this up after a break.

10 Q (By Mr. Savage) So I'm going to --  
11 Mr. Rankin can verify this, if there's a question,  
12 whether or not this is accurate, okay, Mr. Macha?  
13 So in this Permian response, Permian states on Page  
14 6 of this response, "Nor is there any basis to  
15 conclude, from the language of the Act," and that's  
16 the Oil and Gas Act, "that drainage is somehow  
17 distinct from production for the purposes of  
18 assessing impairment of correlative rights."

19 Do you understand that language, what  
20 they're saying?

21 A. I would think I understand, but I would  
22 defer legal questions.

23 Q. Okay. Let me just -- in plain language,  
24 as I understand this, is that Permian Resources is  
25 arguing there's no difference between drainage and

1 production in regards to correlative rights. Do you  
2 agree with that?

3 A. Can you direct me to the exact language so  
4 I can read it?

5 Q. So it says, "Nor is there any basis."

6 A. I see.

7 Q. "Nor is there any basis to conclude from  
8 the language of the Act that drainage is somehow  
9 distinct from production for the purposes of  
10 assessing impairment to correlative rights."

11 So do you agree that basically, generally,  
12 and there may be legal nuances, but generally  
13 drainage is the same as production?

14 A. I would say production is what's coming  
15 out of your wellhead. Drainage is what you are  
16 capturing, right? But with that said, I mean, here  
17 you're talking about correlative rights. I mean,  
18 it's the protection of everybody's right to produce  
19 their minerals.

20 Q. And what's being drained ends up coming  
21 out of the wellhead; would you agree with that?

22 A. Everything that you are attributing to  
23 your interest in your wellbore comes out of your  
24 wellhead.

25 Q. And you were present yesterday when your

1 geologist, Mr. Bradford, confirmed that there was no  
2 baffles between the Third Bone Spring and the Upper  
3 Wolfcamp that there is in this area, subject lands,  
4 that there's going to be some percentage of  
5 drainage? Do you agree with that?

6 A. Yes. I think he clarified that that is a  
7 common occurrence across a lot of Lea County.

8 Q. So it's a common occurrence across a lot  
9 of Lea County. So that would be a common occurrence  
10 in the North Lea wells?

11 A. That's potentially correct.

12 Q. So let's assume that one of the North Lea  
13 wells drains a certain percentage of the Upper  
14 Wolfcamp, and an owner in the Upper Wolfcamp comes  
15 to Permian, comes to you and says, "Based on Permian  
16 Resources' position, you're producing my minerals  
17 and I have a right to payment." Would you agree?  
18 Would Permian Resources pay that owner?

19 A. I would say that there were no active debt  
20 severances. When those wells were drilled, all  
21 owners were noticed appropriately and all owners  
22 participated or not consented as they chose.

23 Q. Okay. So let's say Permian Resources has  
24 a Bone Spring unit. And this is an assumption, this  
25 is hypothetical. And you agree that there is a lot

1 of severances in this area between the Bone Spring  
2 in many areas and the Wolfcamp, correct?

3 A. That is a common occurrence, especially in  
4 the Joker and Bane.

5 Q. Okay. So let's assume that Permian  
6 Resources does have a Bone Spring unit, only unit,  
7 in an area where there is severances, and one of the  
8 owners of the Upper Wolfcamp comes to Permian and  
9 says, "I have more interest in the Wolfcamp, and  
10 you're producing my minerals, and I have a right to  
11 payment." What about in that situation? Would  
12 Permian Resources pay the owner?

13 A. I think that would be a legal question  
14 that I'm not prepared to answer.

15 Q. Okay. That's fair. Would you say that  
16 the other option, an option would be that Permian  
17 Resources has a pooling order issued by the Division  
18 for the Bone Spring, and it's producing from the  
19 Bone Spring as defined by the Bone Spring and  
20 therefore would not be liable for the drainage? Do  
21 you think that would be an option?

22 MR. RANKIN: Madam Hearing Officer. I  
23 think this is treading on to asking for legal  
24 conclusions about liability and how that plays out.  
25 I understand where Mr. Savage is going. I mean, I

1 understand he was trying to make a distinction  
2 somehow, but I think Mr. Macha has attempted to  
3 answer, but I feel like it's getting into the legal  
4 issues about making a legal conclusion.

5 MR. SAVAGE: Madam Examiner, if I could  
6 just point out, before you make a ruling on that,  
7 Mr. Macha has clearly opined on legal issues in his  
8 direct testimony. He has claimed that -- himself  
9 has claimed that Cimarex has violated the statute,  
10 has violated correlative rights. He actually said  
11 we have a clear statutory violation in how we are  
12 planning to develop in Option 2. So he has opined  
13 on legal matters. And I agree that this is touching  
14 on legal matters, but I think the answers that  
15 Mr. Macha is giving are intelligent and useful to  
16 the Division.

17 HEARING EXAMINER ORTH: Yeah, I did notice  
18 that Mr. Macha seemed reasonably sophisticated in  
19 his answers in terms of discerning between technical  
20 and legal matters and the legal matters that perhaps  
21 he did have an opinion on and those that he didn't.  
22 So keep going, Mr. Savage. And Mr. Macha, you're  
23 doing just fine. Keep making that distinction and  
24 answer where you can.

25 Q (By Mr. Savage) Okay. So you, as a

1 landman, you received a pooling order from the  
2 division. Do you, in your layman experience and how  
3 you've dealt with orders and landowners, do you  
4 think it would be a fair response or at least an  
5 option to say that we have a bona fide order from  
6 the Division that pools the Bone spring and we are  
7 paying on production in the Bone Spring and that is  
8 all that we have to do or are obligated?

9 A. I would say, yeah, that's mostly correct.  
10 I also would say if the Wolfcamp owner has an issue,  
11 they have the right to go drill their own well or do  
12 whatever they want to.

13 Q. I thank you for that. That is a fair --  
14 sounds like a fair answer.

15 You talk in your testimony, direct  
16 testimony, that you applied for development areas in  
17 the potash area; is that correct?

18 A. That is correct.

19 Q. Had you applied for permits for the Bane  
20 and Joker wells?

21 A. No, we have not because we are following  
22 the BON OC rule.

23 Q. Okay. And you're aware that Cimarex has  
24 applied for permits as well -- has applied for  
25 permits? Are you aware of that?

1 A. Yes, I am aware.

2 Q. Okay. If my math is correct, and correct  
3 me if I'm wrong, but it looks like you're pooling in  
4 your applications 48 wells; is that correct?

5 A. That is correct.

6 Q. And I'm trying to get a grasp on the  
7 timeline for these 48 wells, but you were present  
8 during Mr. Bradford's testimony. He said it was  
9 going to take several years?

10 A. Correct.

11 Q. Okay. And so you agree that that's a fair  
12 estimate of a timeline?

13 A. Yes.

14 Q. In your packet in your exhibits, you have  
15 the well applications, correct?

16 A. Yes.

17 Q. And you're familiar with well  
18 applications --

19 A. Correct.

20 Q. -- from the past. Let's see here. Do you  
21 agree that all the 48 wells were proposed in the  
22 applications as initial wells?

23 A. Correct.

24 Q. And even though you don't have a copy of  
25 the standard pooling order, could you get a copy

1 real quick? Would that be something you could pull  
2 real quick? I'm wondering, I can't share the order,  
3 but I can read the passage that I'm interested in  
4 discussing.

5 A. I can read it. I'm not going to be able  
6 to pull it up.

7 Q. That's fair enough. Let me see if I  
8 can -- okay. So this is an order?

9 MR. RANKIN: Mr. Savage, what order  
10 number?

11 MR. SAVAGE: This is a Cimarex order I had  
12 on my computer. And I checked it against several  
13 orders. It's for Case No. 22893, Order No. R22343,  
14 and this was an uncontested case so this is a very  
15 simple pooling case.

16 Q. Under the order, Paragraph 19, and this  
17 looks to me like standard language, it says, "The  
18 operator shall commence drilling the wells within  
19 one year," and it's wells plural. "The operator  
20 shall commence drilling the wells within one year  
21 after the date of this order and complete each well  
22 no later than one year after the commencement of  
23 drilling the well." Do you understand that?

24 A. Yes, I do.

25 Q. So, for example, in some of your

1 applications for the Bone Spring, you propose  
2 multiple wells, correct?

3 A. Correct.

4 Q. And I can't remember exactly the total  
5 number, but it was quite a few. Over five; is that  
6 correct in a particular application?

7 A. Can you repeat that?

8 Q. At least five in the Bone Spring  
9 applications, correct? I can pull up the  
10 application, but it was a handful?

11 A. Yeah.

12 Q. Okay. So if I'm reading this correctly,  
13 this says you have one year. You have to commence  
14 the drilling of the wells, and those are all  
15 proposed as initial wells, correct? Within one year  
16 after the date of the order. Is that correct? Is  
17 that a correct reading of that?

18 A. So I think what you're getting on is, are  
19 we going to drill every single well within a year?  
20 What I would say --

21 Q. That's actually not what I'm getting at.  
22 Let me finish what I'm getting at and then I'll let  
23 you have the opportunity to elaborate or explain.  
24 But in Paragraph 20 it says, "This order shall  
25 terminate automatically if operator fails to comply

1 with Paragraph 19, unless operator obtains an  
2 extension by amending this order for good cause  
3 shown."

4 That's standard language in a pooling  
5 order, correct?

6 A. To my understanding.

7 Q. Okay. So as I understand how these read  
8 together, it looks to me like if this language is  
9 enforced as written, if it's enforced as written, if  
10 you do not commence all the wells in the application  
11 within one year then this order would terminate  
12 automatically, correct?

13 MR. RANKIN: Madam Hearing Officer. I  
14 just want to interject here for a moment.  
15 Mr. Savage, as I understand, is asserting that  
16 division pooling orders require all initial wells to  
17 be drilled within the time frames. The Division, as  
18 I understand, does not take that position. It's  
19 only to perfect an order one well is needed to be  
20 drilled. I think this is getting down a rabbit hole  
21 into the legal issue.

22 HEARING EXAMINER ORTH: All right.

23 MR. SAVAGE: Madam Examiner, I'm just  
24 pointing out that if this language, as written, is  
25 enforced as written, then it looks like an order may

1 be terminated automatically. Now, the OCD may have  
2 full discretion to not enforce it or to allow it to  
3 be perfected by one well. I don't see that in the  
4 order, so I'm raising a question about if Permian  
5 Resources has created a risk about their being able  
6 to not only complete all 48 wells within their own  
7 timeline but, you know, also within the plain  
8 language of the order that's issued.

9 HEARING EXAMINER ORTH: Okay. And I  
10 understand the point you're going for here. I'm  
11 just wondering, though, if you have laid enough of a  
12 foundation with Mr. Macha that -- let's see, he has  
13 experience with the division in a variety of ways.  
14 They write orders so that one well has to be drilled  
15 within a year or all wells have to be drilled within  
16 a year. I guess I haven't heard yet that Mr. Macha  
17 has personal knowledge of the basis for those kinds  
18 of decisions.

19 MR. SAVAGE: May I continue trying to lay  
20 that foundation?

21 HEARING EXAMINER ORTH: Yes, yes.

22 MR. SAVAGE: Okay.

23 Q (By Mr. Savage) Mr. Macha, as the language  
24 is written, do you agree there may be a risk that  
25 the order could be terminated under the language as

1 expressed?

2 A. I would say the language is a little  
3 confusing, but historically speaking, I have never  
4 seen any case where an order has been terminated  
5 after they have only drilled one or two or three of  
6 the initial wells and not all of them.

7 Q. And you could agree that you could ask for  
8 an extension; is that correct?

9 A. That's correct.

10 Q. And the criteria for an extension, that's  
11 good cause; is that correct?

12 A. The criteria for an extension --

13 Q. To get an extension approved you would  
14 have to show good cause?

15 A. Yes.

16 Q. If you knew at the time that you made the  
17 application that you would not be able to -- if you  
18 knew at the time or had knowledge that you were not  
19 able to drill the well within a year and yet you  
20 went ahead and filed the application, do you think  
21 that would qualify as good cause?

22 A. Yes.

23 Q. Okay. If you were not able to drill -- as  
24 I remember, do you remember your engineer,  
25 Mr. Fechtel, talking about whether or not they would

1 actually drill these wells that were applied for and  
2 proposed, and Mr. Bradford also saying that there  
3 may be a possibility that you would not drill the  
4 wells as proposed? Do you remember those comments?

5 A. Yes.

6 Q. So if you chose which wells to drill and  
7 which wells not to drill, which ones would you do  
8 first?

9 A. It's currently the intent to do the Third  
10 Bone Wolfcamp A co-development first. That's what I  
11 can tell you. Other than that, the geology and  
12 engineering drives are well-planning decisions, not  
13 land.

14 Q. So it sounded to me like the engineer, if  
15 I remember right, he even said there may be a  
16 possibility that you wouldn't drill the Wolfcamp if  
17 you drilled the Third Bone Spring first and tests  
18 came back that it looked like it was sufficient?

19 A. As you probably remember as well, he said  
20 that is extremely unlikely.

21 Q. Okay. In your testimony, you have  
22 requested edits to the well election language to  
23 give owners a little bit more time to make the  
24 election; is that correct?

25 A. So it's not just a little more time.

1 Under the standard compulsory pooling order, an  
2 operator, if they pooled, let's say, 48 wells, an  
3 operator would have the liberty to cash-call for all  
4 48 wells immediately upon receiving that order. The  
5 intent of this is to, in good faith, say we will not  
6 cash-call anyone unless it is actively going to be  
7 spud within 60 days.

8 Q. Okay. I understand that. Thank you. But  
9 you are proposing and budgeting for all 48 wells.  
10 So even though this election language provides that  
11 kind of relief to the owners as to when they would  
12 have to pay, isn't the overall burden of payment or  
13 the imposition of risk penalty still the same, it's  
14 for all 48 wells?

15 A. That's correct. And they also have the  
16 liberty to consent or non-consent at their well.

17 Q. That's correct. If they do a non-consent  
18 they would probably get nothing for their interest  
19 because it would be subject to the risk penalty; is  
20 that correct?

21 A. That or they can sell the wellbore. They  
22 can do whatever they would like.

23 Q. Okay. Let's look at our Exhibit 1, Brief  
24 Historical Timeline. Do you have that in front of  
25 you?

1 A. Yep.

2 Q. Okay. So I was looking through the  
3 timeline, and I'm a little confused by the box that  
4 say,s, "2018 to present, Read & Stevens operatorship  
5 and tested by Cimarex." You've looked at the  
6 landman's -- Cimarex's landman's testimony and  
7 exhibits, correct?

8 A. Correct.

9 Q. Did you see Exhibit 8? Do you have that  
10 in front of you, Exhibit A8 that's part of his  
11 testimony?

12 A. Is that the first packet?

13 Q. Yes. I asked that be Hearing Packet 1 to  
14 keep things simple. I'm trying to scroll down.

15 A. It's the summary judgment on the motion.

16 Q. That's correct. Who was the plaintiff in  
17 that?

18 A. The plaintiff would be Read & Stevens.

19 Q. Okay. And basically, in this, if I  
20 understand it, they were -- it was actually Hunter  
21 Magnum, but that's a proxy for Cimarex. I'm just  
22 going to use the term "Cimarex." So Cimarex was  
23 wanting to be the operator under this existing 1979  
24 operating agreement; is that correct?

25 A. That is correct.

1 Q. And Read & Stevens came along and instead  
2 of Cimarex challenging Read & Stevens, Read &  
3 Stevens challenged Cimarex and said, "You can't be  
4 operator," is that correct?

5 A. To my understanding -- from my  
6 understanding, that's probably correct. I did not  
7 work for Read & Stevens at the time. I was not  
8 personally acquainted with this stuff, so I can't  
9 speak directly to the facts.

10 Q. That's fair enough. You can pick up the  
11 last sentence on Exhibit A8. And am I correct that  
12 it says, "Plaintiff's motion for partial summary  
13 judgment holding that Magnum Hunter has for viable  
14 right to serve as operator under the 1979 operating  
15 agreement is denied"?

16 A. Correct.

17 Q. So basically --

18 MR. SAVAGE: I'm getting an echo, Madam  
19 Examiner.

20 Q. So basically that is saying that Cimarex  
21 does have a right to be an operator under that.

22 A. This is not the only summary judgment they  
23 issued. I believe there's one in 2017 that stated  
24 that, indeed, Cimarex theoretically could be the  
25 operator of that JOA, as with anybody else subject

1 to that JOA.

2 Q. In your understanding of this, and I  
3 realize you weren't there at the time, but did not  
4 Cimarex win the election to be operator after that  
5 summary judgment?

6 A. I personally have not ever reviewed any  
7 elections, so I would have to defer to Cimarex's  
8 documentation on that.

9 Q. Okay. Well, would it be fair to say that,  
10 at least that based on what you can see from this  
11 history, that Read & Stevens looks like  
12 intentionally made it difficult for Cimarex?

13 A. Yeah. I mean, I do understand, just  
14 looking at the historical timeline, they are the  
15 only ones that drilled wells in those four sections  
16 in the past 20 years, so I understand they were  
17 probably wanting to protect that is operatorship.

18 Q. And you understand, based on Cimarex's  
19 landman's description of their history of  
20 development over numerous sections as a pioneer  
21 since 2010, that they also had a big stake in this  
22 area as well? Do you agree with that?

23 A. I would say "pioneer" is a strong word,  
24 but yes, they have a large position.

25 Q. Okay. Thank you. Let's see. Okay.

1 Let's go to your Exhibit I, Page 4 of 44. This is  
2 the contractual versus leasehold summary that we  
3 just -- that you looked at briefly just a moment  
4 ago.

5 A. Yes.

6 Q. Okay. So looking at this, looking at the  
7 bottom line and going across from left to right in  
8 the Bone Spring, let's look at the Bone Spring  
9 first, the total tally is that Permian Resources  
10 controls 875.74 acres or a 21.12 percent working  
11 interest, correct?

12 A. Correct.

13 Q. And Cimarex exceeds that amount by  
14 controlling 1287.03 acres or 50.23 percent working  
15 interest; is that correct?

16 A. That would be correct.

17 Q. So it's clear that Cimarex controls the  
18 working interest in the Bone Spring, correct?

19 A. I would say they have a majority interest  
20 of the support in the Bone Spring, correct.

21 Q. Okay. So then let's look at the bottom  
22 line of the Wolfcamp. You show Permian Resources  
23 controlling 1011.59 acres or 39.4 percent working  
24 interest, correct? That's Permian Resources?

25 A. Yep.

1 Q. And Cimarex exceeds that amount by  
2 controlling 1070.97 acres or 41.80 percent working  
3 interest, correct?

4 A. That's correct.

5 Q. So one of the main things you can get from  
6 this table, sounds like you get a number of things,  
7 but ultimately, it's that Cimarex controls the  
8 majority working interest in both the Bone Spring  
9 and the Wolfcamp, correct?

10 A. Yes, they have a larger control.  
11 Obviously --

12 Q. Okay. Thank you. I appreciate the answer  
13 on that. That's the answer he was looking for. Are  
14 you familiar with the term assignment that Cimarex  
15 received from the Hudson Group?

16 A. Which, the Delmar Hudson? Or John  
17 referenced they might have received a Josephine  
18 Hudson Trust recently.

19 Q. This is, looks like, a term assignment  
20 that covers Javalina, Zorro, Delmar, Josephine  
21 Hudson Trust, Highland Texas, Cimarex and Shelton,  
22 Lindys Trust and William Hudson and a term  
23 assignment. And it looks like they support Cimarex?

24 A. I'm not aware of a term assignment from  
25 Javalina or Zorro or Moore & Shelton to Cimarex.

1 Q. Okay. So assuming it was, it is, and that  
2 this is what our landman informs us is the case,  
3 that it's a term assignment and it's a done deal, as  
4 I have been informed, that would add additional  
5 acreage to Cimarex, correct?

6 A. That would be correct if that's the case.

7 Q. Okay. And, you know, it's not 50 percent  
8 more, but it's a handful of acres additionally in  
9 that regard?

10 A. Yeah, I would say that's all taken into  
11 account in the total Cimarex support already.

12 Q. Okay. So my numbers differ from that. I  
13 show numbers based on that term assignment to be  
14 more that you did not take into account by the term  
15 assignment. You say you did not know about it,  
16 correct?

17 A. Yeah, but I'm adding that Cimarex-owned  
18 plus Cimarex Support for that total Cimarex Support  
19 number.

20 Q. Okay.

21 A. Javalina, Zorro, Moore & Shelton, they  
22 have all been taken into account as Cimarex  
23 supporters.

24 Q. Did you happen to be present when  
25 Cimarex's engineer gave his testimony?

1 A. Yes.

2 Q. Could I ask you to go to Exhibit D22 as  
3 part of the engineer's testimony? And I'm going  
4 to -- let's see here. Did you see that Exhibit D22?

5 A. I'm pulling it up.

6 Q. Okay. I know it's a lot to flip through,  
7 1200 pages or so.

8 A. E22, yes.

9 Q. D22.

10 A. Yep.

11 Q. Okay. So looking at this, D22, so on your  
12 table in Exhibit I, you point out that HOG  
13 Partnership has a little bit more acreage, 166  
14 acres, in the Wolfcamp and a little bit less acres  
15 in the Bone Spring. That's 142 acres, correct?

16 A. That is correct.

17 Q. And based on that, you're saying that  
18 Cimarex is biased towards the Bone Spring. I mean,  
19 the accumulation of those deltas is your basis for  
20 saying that Cimarex is biased towards the Bone  
21 Spring, correct?

22 A. I wouldn't say the additional Wolfcamp  
23 owners by other parties; I would say the additional  
24 Bone Spring acres by Cimarex would be biased.

25 Q. So HOG would be disadvantaged in Cimarex's

1 plan, in your view?

2 A. Speaking towards correlative rights, yes.

3 Q. If you look at D22, this is part of a  
4 series of exhibits where Cimarex points out that,  
5 take HOG as an example, where HOG -- even though HOG  
6 owns less in the Bone Spring, if Cimarex's plan  
7 payment prevailed, based on this exhibit, do you  
8 agree that this exhibit shows that HOG would get  
9 \$45,000 per acre under Cimarex's plan and HOG would  
10 get \$15,000 per acre under Permian's plan?

11 A. That is Cimarex's math. That is correct.

12 Q. It is, it's Cimarex's math. But do you  
13 understand that that's derived from the massive  
14 costs that Permian's plan imposes upon the working  
15 owners?

16 A. So I can't speak to that assumption, but I  
17 would say that it's also -- you know, they are  
18 assuming economics on the Wolfcamp that are  
19 probably, pursuant to our engineer's testimony,  
20 probably flawed.

21 Q. Okay. But do you agree that massive  
22 amounts of cost imposed upon a working interest is  
23 going to reduce their revenue that they receive for  
24 their working interest?

25 A. Assuming -- no, I don't think that's the

1 case. If you're drawing a lot of wells that are all  
2 economic, you're going to make a lot of money.

3 Q. You heard Mr. Bradford talk about the  
4 amount that would be produced from the Wolfcamp is  
5 probably more minimal than significant? Do you  
6 agree with that?

7 A. I would not agree with that, and I'm not  
8 going to speak to the geology or engineering, but  
9 the Wolfcamp, as per testimony, has been proven to  
10 be a viable target.

11 Q. So would you agree -- let's assume that  
12 two operators are going to produce comparably the  
13 same amount from production, okay? That's an  
14 assumption. If one of the operators imposes 50  
15 percent more costs than the other operator, wouldn't  
16 the working interest owners, under, let's say,  
17 Operator A, who imposed 50 percent more costs,  
18 receive less revenue for their working interest than  
19 under Operator B?

20 A. Hypothetically, yes.

21 Q. All right. Thank you. So everybody, all  
22 the owners that own in the Wolfcamp also own in the  
23 Bone Spring except for two?

24 A. That is correct.

25 Q. That's correct? Okay. And can you tell

1 me how much those two individuals, each one owns?  
2 Let's say net acres?

3 A. Yeah, so 1.6 acres each.

4 Q. So that's a pretty small amount, would you  
5 agree?

6 A. I would say you can't discount the small  
7 owner.

8 Q. So Permian Resources is going to drill \$95  
9 million worth of Wolfcamp wells to account for 1.6  
10 acres each?

11 A. That's not why we are drilling the wells.  
12 We are drilling them because we think it's an  
13 economic target and we want to make money.

14 Q. But doesn't Cimarex also claim that  
15 drilling the Third Bone Springs is just as much an  
16 economic target and would produce the same amount of  
17 production?

18 A. I would say Cimarex does not have a  
19 co-development test in the area so they are relying  
20 on assumptions and third-party data.

21 Q. Okay. But Cimarex did provide an ERU  
22 amount, correct, in their exhibits?

23 A. Are you referring to the Parry wells?

24 Q. Well, their derivation of what the EUR  
25 would be as applied to the subject lands. They did

1 project that information, correct?

2 A. I'm not sure. I haven't as thoroughly  
3 reviewed the engineering as I have the land.

4 Q. Okay. Have you reviewed your engineering?

5 A. Yes.

6 Q. Did your engineering project a EUR?

7 A. I believe so.

8 Q. What was that EUR?

9 A. I don't remember off the top of my head.

10 Q. So we really don't know if they did or  
11 not, correct?

12 A. You can ask our engineer.

13 Q. Thank you. Hold on. Let me check my  
14 notes here. Let's go to Exhibit I where you have  
15 those bar charts. I'm just going to look at one of  
16 them here. So I'm looking at Page 9 of 44 on the  
17 PDF and this is the east half west half.

18 A. East half west half of Joker or Bane?

19 Q. Joker. Do you see that?

20 A. Yep.

21 Q. Okay. So your point is, is that in the  
22 Bone Spring, Magnum Hunter, Cimarex has the larger  
23 bar, and as you point out, if I'm correct, that's  
24 because they focus on the Bone Spring, correct? And  
25 Read & Stevens has a little bit less in the Bone

1 Spring, correct?

2 A. Correct.

3 Q. And then in the Wolfcamp, Magnum Hunter  
4 has less, 14 percent, and then Read & Stevens has a  
5 little bit more, correct?

6 A. Correct.

7 Q. But you do not account in here for the  
8 support that each one has, right, on those bars?

9 A. No, I have summarized that elsewhere.

10 Q. Okay. So the support, as I understand it,  
11 comes from each one of these other little small  
12 bars?

13 A. Correct.

14 Q. Okay. Across. Both in the Bone Spring  
15 and the Wolfcamp. I haven't gone through and  
16 calculated exactly, but considering that Magnum  
17 Hunter has the majority support, or Cimarex has  
18 majority support in the Wolfcamp, if you took these  
19 and stacked them onto the Magnum Hunter, that bar  
20 would actually be significantly longer, would you  
21 agree?

22 A. Significantly? I mean, like I said, we  
23 have summarized --

24 Q. Okay. So when you account for that,  
25 you're looking at -- and you know, Cimarex does have

1 majority working interest in the Wolfcamp. You  
2 agree, right?

3 A. I would say them plus their supporters  
4 have a larger working interest in the Wolfcamp,  
5 correct.

6 Q. Correct. So those two bars, if you added  
7 that, accounted for the additional support, it would  
8 look like that with the little bar for Magnum Hunter  
9 and the big bar for Read & Stevens. It would  
10 actually look more comparable, correct?

11 A. Yes. The illustrations here are meant to  
12 be informative, not biased either way. This is raw  
13 data.

14 Q. And Magnum Hunter might even exceed, if  
15 you added the support as an illustration?

16 A. Correct.

17 Q. Let's go to your exhibit, the various  
18 letters of support that you mentioned. Challenger,  
19 Union Hill. Highland Texas, I don't believe, had  
20 ever supported Cimarex. Do you agree with that?  
21 That was one of the mistakes that Mr. Rankin pointed  
22 out. Do you agree with that?

23 A. Per my understanding, that's correct.

24 Q. Okay. The Marks Oil, we're looking at  
25 Marks Oil, Union Hill, Challenger. And E.G.L., you

1 know, their interest, they don't particularly have a  
2 working interest in here. You agree with that?

3 They are interested, as you point out, in the  
4 precedent. They are a little ways away, correct?

5 A. Yes.

6 Q. Okay. So would you agree that if they  
7 happen to present a superior co-development plan  
8 against the challenge, that they could prevail on  
9 the merits even if Cimarex prevailed on the merits  
10 in this case, correct?

11 A. I would potentially assume that.

12 Q. Okay. So really, precedent, it's really  
13 not a significant concern considering that you have  
14 an opportunity to show -- if you do have a  
15 co-development plan that's superior, you do have an  
16 opportunity to show that to the division?

17 A. I would say the precedent is somewhat  
18 dangerous regardless.

19 Q. So given that you took these changes,  
20 these transitions to neutrality, you took those into  
21 account in your final tally on working interest?

22 A. That's correct. In mine, yes.

23 Q. So even with those minor shifts, Cimarex  
24 still controls majority working interest in both the  
25 Bone Spring and the Wolfcamp?

1 A. That would be my thought, yes.

2 Q. Okay. And just to go back to one more  
3 question about the working interest owners that  
4 support Cimarex, all except for two own in the Bone  
5 Spring and the Wolfcamp, as you said. Do you agree?  
6 And yet they support Cimarex, even though only their  
7 Bone Spring interest will be developed and their  
8 Wolfcamp interest would not be developed, correct?

9 A. Correct.

10 Q. So they're really not too concerned about  
11 any issue of correlative rights regarding the  
12 Wolfcamp, correct?

13 A. They are not concerned about their  
14 correlative rights. That would be my assumption. I  
15 would also assume that, you know, they're looking  
16 at, as Cimarex pointed out, the broad history of  
17 third Bone Spring development in the area rather  
18 than the actual test of the Wolfcamp up here.

19 MR. SAVAGE: Madam Examiner, can I check  
20 my notes real quick?

21 HEARING EXAMINER ORTH: Yes.

22 MR. SAVAGE: Madam Examiner, I think that  
23 concludes my cross-examination.

24 HEARING EXAMINER ORTH: All right. Thank  
25 you very much. Mr. Savage. Mr. Rankin, do you have

1 any follow-up before I turn to the technical  
2 examiners?

3 MR. RANKIN: Two minor questions just for  
4 clarification just to make the record clear.

5 REDIRECT EXAMINATION

6 BY MR. RANKIN

7 Q. Mr. Macha, looking at the big chart, the  
8 contractual versus leasehold interest summary on  
9 your Exhibit I.

10 A. Yes.

11 Q. One thing I want to make clear, I don't  
12 think it came through in the record, because in this  
13 chart you're comparing working interest as a  
14 contractual basis versus leasehold on the top chart.  
15 But when you summarize the support on the bottom  
16 chart, I don't think it came through whether those  
17 numbers are based on leasehold interests or  
18 contractual interests in the bottom chart.

19 A. Those are based on leasehold. As we  
20 mentioned, it is our understanding that per OCD  
21 statute, they care about the leasehold over  
22 voluntary agreements.

23 Q. Thank you. That's the only thing I wanted  
24 to clarify for the record. Thank you, Madam  
25 Examiner. No further questions.

Page 49

1 HEARING EXAMINER ORTH: Thank you,  
2 Mr. Rankin. Mr. Garcia, do you have questions of  
3 Mr. Macha?

4 MR. GARCIA: I have a few.

5 EXAMINATION

6 BY MR. GARCIA

7 Q. Staying on the exhibit Mr. Rankin just  
8 pointed to, I may have missed it, but in the top  
9 table, what are the blue and orange tables  
10 correlating to?

11 A. Yeah, so the blue is just another  
12 indicator of the blue owners own more in the  
13 Wolfcamp formation than the Bone Spring formation  
14 and the orange owners own more in the Bone Spring  
15 formation than the Wolfcamp formation.

16 Q. So blue is Wolfcamp?

17 A. Yes. And then the white part is the NA.  
18 When I put formation favor, that means they own  
19 equal in the Bone Spring and the Wolfcamp.

20 Q. Okay. I guess I didn't make that  
21 connection. That makes more sense now. Going to  
22 the next slide on that, it's the Joker?

23 A. Yep.

24 Q. You have an e-mail from Robert, and I'm  
25 not going to attempt the last name. It sounds like

Page 50

1 he is related to Union Hill Oil & Gas, and I guess  
2 I'm just curious, because I don't know Robert, how  
3 he's connected since the e-mail addresses are  
4 different than Union Hill.

5 A. Yeah. So Robert, he's the owner of Union  
6 Hill, from our understanding. If you all do need  
7 further documentation that he is the owner, that's  
8 fine. I think Cimarex would probably testify that  
9 Robert is the one that they have been dealing with  
10 at Union Hill as well.

11 Q. I believe your testimony is enough. I  
12 mean, everything you give testimony to is under  
13 oath, so I just didn't know who he was because I did  
14 not see his name in our database.

15 A. Right.

16 Q. I should have asked this question probably  
17 a long time ago, probably when Cimarex first  
18 started. From a birdseye view looking down on this  
19 acreage, is all of Cimarex and all of Permian's  
20 acreage 100 percent overlap or is there a slight  
21 acreage that's not overlapped with these two blends?

22 A. So like the actual foothold, like the  
23 footprint of our acreage on these four sections? Is  
24 that what you're talking about?

25 Q. Yeah. And your counsel probably knows

1 what I'm talking about. Typically, we will get  
2 exhibits which will be a birdseye of say, like,  
3 Section 5 and Section 4 of the Contessa case, and  
4 there'll be a color like orange for Company A, blue  
5 for Company B, and then green will be the  
6 overlapping contested area. Is it all contested?

7 A. Yes. So we mostly overlap on everything.  
8 In the north half of Section 4 there was a form-out  
9 from the Hudson family to Read & Stevens. That did  
10 terminate as to the Bone Spring and Wolfcamp  
11 formation. So pursuant to Cimarex's acquisition of  
12 the Delmar Hudson Trust term assignment, they have  
13 an interest in the north half of Section 4, whereas  
14 we do not, so that is different in the footprint.

15 Q. But as far as your plan, there will be a  
16 well there no matter what, though, for either's  
17 plan?

18 A. Yes, correct.

19 Q. Okay. It seems like the common topic when  
20 it comes to the landman statements is CML and  
21 Warren, I believe are their names. I guess, what  
22 have you guys' communication been with them and what  
23 is their stance on this?

24 A. Yeah. So Warren, I reached out to -- I  
25 made contact with both of them as well as most of

1 the other owners, or all of the other owners, since  
2 we proposed these wells. And then back in, I think,  
3 June and early July was when our communication  
4 really kind of ramped up. You know, CLM  
5 specifically, they have been pretty vocal and  
6 somewhat upset about the fact that the Wolfcamp is  
7 being left out. The Warren Associates, they are a  
8 smaller entity out of Dallas. They have been very  
9 cordial to deal with, but they also have that same  
10 concern about the Wolfcamp not being developed.

11 Q. Okay. Sorry, looking through my notes.  
12 I'm trying to take notes.

13 HEARING EXAMINER ORTH: Did you say you  
14 are done? Oh, sorry.

15 MR. GARCIA: No, I was trying to take  
16 notes. My typing is slow today.

17 Q. (By Mr. Garcia) I think my last question.  
18 I am not a landman. Could you describe to me, my  
19 lawyers probably understand but I do not, what is  
20 the difference between working interest owners and  
21 leasehold owners? I guess why does it go from total  
22 PR support to 34 percent to 39 percent? Like what's  
23 the difference between leaseholder ownership?

24 A. Leasehold versus contractual?

25 Q. Yeah, sorry, contractual versus leasehold.

1           A.       So a lot of this was subject to -- like I  
2 think that 1979 JOA has been kind of the center of  
3 the conversation. That JOA covers the south halves  
4 of Section 4, 5, 8 and 9. And when that JOA was  
5 signed back in 1979, those owners at the time agreed  
6 to blend their interest across that entire area.

7                   Subsequent to that, you know -- that's  
8 been 43 years ago, I think. Subsequent to that,  
9 there's been a lot of assignments back and forth.  
10 So the raw leasehold is where their leasehold is  
11 derived from. Let's say I own on the west half of  
12 Section 5 100 percent and I agree to spread my 320  
13 acres across all sections. I would still have my  
14 leasehold 100 percent in the west half of Section 5;  
15 however, I would have a smaller contractual interest  
16 across the entire area.

17           Q.       It's like what, I guess, some of the  
18 operators have called operating agreements, where  
19 you may have interest here and interest there, but  
20 you share different interests in areas you may not  
21 have interests?

22           A.       Yes, that's what I'm talking about, the  
23 factual interest and then subject to a JOA.

24           Q.       Okay. Sometimes I have to clarify the  
25 definitions I don't know, because 400 operators,

1 they all call the same thing different things, I  
2 have learned.

3 I believe that is all my questions. Thank  
4 you.

5 HEARING EXAMINER ORTH: All right. Thank,  
6 Mr. Garcia. Ms. Thompson, do you have questions for  
7 Mr. Macha?

8 MS. THOMPSON: I have no questions at the  
9 moment.

10 HEARING EXAMINER ORTH: All right. Thank  
11 you. Mr. Rankin, do you have any follow-up? Or  
12 anything that was raised by the questioning that you  
13 would want to follow up on?

14 MR. RANKIN: No. I think Mr. Garcia asked  
15 good questions about contractual interests, and it  
16 sounds like Mr. Macha explained it satisfactorily  
17 but, of course, if they do have any questions I am  
18 happy to address that further, but I think we can  
19 potentially provide some additional clarification in  
20 a closing brief, if necessary.

21 HEARING EXAMINER ORTH: Thank you. Thank  
22 you for your testimony, Mr. Macha.

23 MR. GARCIA: Mr. Rankin, you reminded me  
24 of one thing real quick. This hearing aside, I have  
25 some concern of how counsel is interpreting my

1 standard orders, like when you discussed what  
2 Paragraph 19 and 20 means. So I guess I will  
3 probably clarify that at our standard Thursday  
4 hearing to all counsel on some Division's thoughts  
5 on how that is to read, just so you are aware.

6 MR. RANKIN: So we have to wait?

7 MR. GARCIA: I mean, I can do it now.  
8 Just all you guys' peers aren't here. I have no  
9 issue doing it here. That paragraph is plural,  
10 "wells," so it is intended all wells that are  
11 attached to Exhibit A are drilled within a year and  
12 completed subsequently a year after that.

13 As you know, extensions are granted based  
14 off of good-faith efforts, but I think it's  
15 Paragraph 2 of the recently updated standard order,  
16 which before there was added some NSP wording in  
17 there, "If this well needs an NSP in the future, you  
18 must go get one," basically. Paragraph 2, I think,  
19 says, "All wells in Exhibit A are deemed wells  
20 throughout the rest of the order." So anything in  
21 Exhibit is A is intended to drill within that year.  
22 They are defining wells and initial wells.

23 But I will reclarify just to make sure  
24 everybody, all counsel is present, on Thursday also.  
25 There are other law firms like Dana, et cetera.

1 HEARING EXAMINER ORTH: Okay. Any  
2 questions about that from anyone during this  
3 hearing? All right. Well, thank you, Mr. Garcia.  
4 Thank you, Mr. Macha, for your testimony, and we'll  
5 move on to Mr. Rankin's last witness.

6 MR. RANKIN: Thank you, Madam Hearing  
7 Officer. We have one final witness to call and then  
8 we can do our notice. Our last witness, Mr. Davro  
9 Clements. I think he will appear here shortly. We  
10 had to make a quick change out of witnesses.

11 HEARING EXAMINER ORTH: If you need a  
12 break to do that, that's fine.

13 MR. RANKIN: Maybe just a five-minute  
14 break so we can make sure everyone is set up.

15 HEARING EXAMINER ORTH: Sure, sure. Let's  
16 take ten minutes.

17 (Note: The hearing stood in recess at  
18 9:46 to 9:56.)

19 HEARING EXAMINER ORTH: When we broke,  
20 Mr. Rankin was about to call Mr. Clements.

21 MR. RANKIN: We call the final witness,  
22 Mr. Davro Clements. He needs to be sworn in.

23 HEARING EXAMINER ORTH: Yes.

24 DAVRO CLEMENTS  
25 after having been first duly sworn under oath,

1 was questioned and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RANKIN

4 Q. Thank you. Mr. Clements, will you please  
5 state your full name and explain by whom are you  
6 employed, and for the benefit of the court reporter  
7 would you please spell it?

8 A. Yes. My name is Davro Clements. That is  
9 C-L-E-M-E-N-T-S, and I'm currently employed by  
10 Permian Resources as a facilities engineer.

11 Q. And have you previously testified before  
12 the Division?

13 A. I have not.

14 Q. Have you included your resume, which  
15 outlines your education and work experience as a  
16 petroleum engineer and facilities engineer?

17 A. I have.

18 MR. RANKIN: Madam Examiner, I would  
19 tender Mr. Clements as an expert in facilities  
20 engineering.

21 HEARING EXAMINER ORTH: Mr. Zimsky, any  
22 objection?

23 MR. ZIMSKY: No objection.

24 HEARING EXAMINER ORTH: All right. Thank  
25 you. He is so recognized.

Page 58

1 Q. (By Mr. Rankin) Mr. Clements, have you  
2 prepared a self-affirmed statement for the purposes  
3 of this case?

4 A. I have.

5 Q. You are familiar with the applications  
6 that were filed by Permian Resources and by Read &  
7 Stevens and by Cimarex Energy Company?

8 A. Yes.

9 Q. And your self-affirmed statement that you  
10 prepared in regard to these applications, that was  
11 marked as Exhibit D in the exhibit packet filed in  
12 this case?

13 A. Yes.

14 Q. Did you also prepare some exhibits that  
15 were attached to your statement?

16 A. Yes.

17 Q. And those are marked as Exhibits D1  
18 through D5?

19 A. That's correct.

20 MR. RANKIN: At this time I would move the  
21 admission of Exhibit D with the attachments D1  
22 through D5 into the record.

23 HEARING EXAMINER ORTH: Mr. Zimsky?

24 MR. ZIMSKY: No objection.

25 HEARING EXAMINER ORTH: Thank you. They

1 are admitted.

2 (Note: Exhibits D, including D1 through  
3 D5, admitted into evidence.)

4 Q. (By Mr. Rankin) Mr. Clements, just a  
5 couple points on rebuttal. You've reviewed the  
6 facility engineer's testimony and exhibits that were  
7 prepared on behalf of Cimarex?

8 A. I have.

9 Q. Do you have a comment or response to their  
10 testimony about the size and the surface disturbance  
11 of their proposed development plan?

12 A. Yes. In Exhibit C1 by Mr. Boyle, they  
13 note their surface development plan, which is very  
14 similar to ours, four well pads, one CTB pad and  
15 associated roads. The surface disturbance  
16 associated with that plan is 33.9 acres. With our  
17 plan, again, four well pads, one CTB pad and  
18 associated roads we're at 30.9 acres, so 9 percent  
19 less surface disturbance, which is important to note  
20 here, considering the environmentally sensitive area  
21 with wildlife and native vegetation.

22 Q. And then another comment, I think, that  
23 was made during Mr.-- I believe it was Mr. Boyle,  
24 his testimony, was the critique of Permian's plan  
25 where you would have to run flow lines repeatedly

1 under the road, potentially, as I understood? Or,  
2 you know -- do you have a comment or a response to  
3 that?

4 A. Yeah. I think the biggest concern was  
5 just coming back to install flow lines for our  
6 development. As we drill wells we would install  
7 flow lines. That is a very common practice by  
8 operators.

9 It is important to note that that is  
10 correct, we would come back likely three to four  
11 times to install flow lines as we develop the new  
12 wells. But again, it's important to note that this  
13 is right-of-way. That is approved by the BLM,  
14 on-site approval by the BLM or Center of Excellence,  
15 also known as CEM. So every time we come back we  
16 are coming back to that same parcel of land, that  
17 flow land right-of-way, which is deemed  
18 non-impactful to critical wildlife or native  
19 vegetation.

20 Q. Can you explain whether that additional  
21 returning back to install additional flow lines, is  
22 that going to be disturbing additional acreage or  
23 not? Can you explain that?

24 A. No, sir. So we have right-of-way granted  
25 to us that is a 30-foot-wide right-of-way that runs

1 from the well pads to the central tank battery. So  
2 every time that we come back to install additional  
3 flow lines, we are coming back to that same proven,  
4 approved right-of-way.

5 Q. Thank you. Anything else, Mr. Clements,  
6 in terms of responses to the facility engineering  
7 testimony?

8 A. No, I think that's all.

9 MR. RANKIN: Madam Hearing Officer, no  
10 further questions of Mr. Clements and offer him for  
11 cross-examination by counsel and the Division.

12 HEARING EXAMINER ORTH: Thank you very  
13 much, Mr. Rankin. Mr. Zimsky, do you have questions  
14 of Ms. Clements?

15 MR. ZIMSKY: Yes, Madam Hearing Examiner,  
16 I do.

17 CROSS-EXAMINATION

18 BY MR. ZIMSKY

19 Q. Good morning, Mr. Clements. My name is  
20 William Zimsky. I'm one of the attorneys for  
21 Cimarex. I have a few questions for you. Following  
22 up on the flow line testimony you just provided,  
23 every time you go out there you're going to have to  
24 have equipment to go out on those right-of-ways to  
25 install that flow line, correct?

Page 62

1 A. That is correct.

2 Q. And each time you send that equipment out,  
3 you will be in that same right-of-way, but you're  
4 still going to have to go underneath; is that  
5 correct?

6 A. That is correct for the most part.  
7 Depending on the development plan, the number of  
8 wells we will be completing at each time, we will  
9 make a decision on how many bores to install across  
10 the road, across the highway. So initially for a  
11 full development it would be five road bores, and  
12 then again, depending on the number of wells we are  
13 completing at a time, we would install potentially  
14 multiple road bores at once just to prevent us  
15 having to come back and do that again.

16 Q. That's for drilling underneath the road,  
17 but otherwise you would have the equipment out on  
18 the right-of-ways to install?

19 A. Yes, sir.

20 Q. Do you use any type of emission  
21 surveillance systems on this project or generally,  
22 as a matter of practice at Permian Resources?

23 A. Yes, we use a multi-facet approach. In  
24 previous years, 2021 and 2022, we did voluntary  
25 flyovers with OGI cameras. We think this is a

1 decent approach to get a wildlife scale of potential  
2 emission recognition, but we have focused more now  
3 on realtime monitoring. So we have piloted five  
4 monitoring systems on location where we can monitor  
5 potential methane emissions in realtime, and that's  
6 24 hours a day. So the difference between flyover,  
7 you may see something detected in the morning and  
8 then you have an incident later in the day, that  
9 doesn't really provide a lot of impact in terms of  
10 reducing emissions. So having realtime monitoring  
11 is the approach that we are taking.

12 Q. How many high-risk emission devices do you  
13 have on your closed vent system off of your tanks?  
14 And by high-risk emission devices, I mean end of  
15 lines, B patches or vacuum valves off of your  
16 device?

17 A. We have one per tank and we have seven  
18 tanks on location.

19 Q. Do you have any upgrades beyond  
20 containment to lower your spill risk, such as  
21 stainless steel piping on your water system?

22 A. We do internally coded piping on our water  
23 system in some applications and poly piping in other  
24 applications.

25 Q. Do you have any stainless steel piping?

1 A. We do on some of our water transfer pumps.

2 Q. Does Permian Resources have flaring  
3 guidelines, company-wide policy regarding those?

4 A. We do not have a company-wide policy. It  
5 is a case-by-case basis.

6 Q. Now I'm to share Exhibit D3. Do you see  
7 D3, Operations and Environmental Overview?

8 A. Yes.

9 Q. My question is, I don't see a single unit  
10 off the tanks. Does Permian Resources install --  
11 well, excuse me. I can't see the flares in the  
12 picture. Does Permian Resources install a  
13 low-pressure flare?

14 A. We install a low-pressure flare.

15 Q. You do?

16 A. Yes.

17 Q. And does Permian Resources install  
18 redundant vapor recovery units?

19 A. Yes, we do.

20 Q. And in Paragraph 10 of your statement you  
21 indicate that you can operate up to 40 OSIG. Can  
22 you sell oil at that pressure or do you have to  
23 maintain a lower pressure to continue to operate?

24 A. We operate at a lower pressure. We just  
25 use the 40-ounce tanks more so for preventative

1 volume swings and prevent emissions. But we operate  
2 at a lower pressure.

3 Q. Now, it's your plan to use one central  
4 gathering tank; is that correct?

5 A. Yes, sir.

6 Q. Now, the proposal as filed is for 96  
7 wells. Paragraph 5 states that Permian, utilizing  
8 the compact construction "with the ability to  
9 expand." Will Permian Resources have to expand  
10 their CTB pad to add all wells into the vicinity?

11 A. There is a proposal for 48 wells but not  
12 96. But when we build out the central tank battery,  
13 we build it for the, kind of, initial plan of wells  
14 that we completed in the near term, and then we come  
15 back to add wells. It's as simple as adding test  
16 separators for each well.

17 Q. You are correct. My math was off by  
18 double.

19 A. That's right.

20 Q. And one of your CTB pads would be  
21 sufficient? You wouldn't have to expand to meet all  
22 of those wells?

23 A. We would not expand the surface location,  
24 the pad itself, no.

25 Q. Are you going to have enough room for all

1 the separators for 48 wells?

2 A. Yes.

3 Q. On the one pad as it exists?

4 A. Yes.

5 Q. And does your 33.9 acres include both of  
6 the CTB pads?

7 A. We would just be 30.9 acres, and that  
8 includes the one CTB pad, which is the Joker.

9 Q. If you added the second CTB pad, what  
10 would your acreage be?

11 A. I believe it goes up to 34.5.

12 Q. And has Permian Resources, to your  
13 knowledge, ever built a facility that handles 48  
14 wells on a CTB pad?

15 A. The largest that we have built to date is  
16 24, but the facility sizing and design is dependent  
17 more on the volume than the physical number of wells  
18 coming to a location.

19 Q. The volume of production?

20 A. Yes, sir.

21 Q. And you indicate that there's currently  
22 one. Is that the maximum, you have one CTB pad that  
23 services 24 wells?

24 A. That's our biggest to date, yes.

25 Q. Where is that located?

1           A.       That is located in New Mexico in Lea  
2 County.

3           Q.       And what's the development with the wells?

4           A.       It's the Gordita Tostada and Eric Cartman.

5           Q.       Do you have a township range?

6           A.       I don't off the top of my -- I think it's  
7 --

8           Q.       And can you spell those, Gordita --

9           A.       Gordita, G-O-R-D-I-T-A; Tostada,  
10 T-O-S-T-A-D-A; and Eric Cartman, E-R-I-C,  
11 C-A-R-T-M-A-N.

12          Q.       Do you have a Stan Marsh development?  
13 That's just a South Park reference.

14          A.       We don't.

15          Q.       I believe that's all the questions that I  
16 have. Thank you, Mr. Clements.

17                   HEARING EXAMINER ORTH: Thank you,  
18 Mr. Zimsky. Mr. Rankin, do you have follow-up with  
19 this witness before I turn to the technical  
20 witnesses?

21                   MR. SAVAGE: I do not.

22                   HEARING EXAMINER ORTH: Thank you,  
23 Mr. Garcia, do you have questions of Mr. Clements?

24                   MR. GARCIA: Just a few.

25

EXAMINATION

BY MR. GARCIA

Q. Returning multiple times to install multiple flow lines and they were okay with that also?

A. Yes. This has been a common practice with us on other federal projects.

Q. And then I see in your exhibits you have WD. I'm assuming that's your water takeaway. Do you also have takeaway for gas and oil, I'm assuming, in the works or already approved?

A. Yes, we already have infrastructure connected to our Batman development and we have proposals for water, gas and oil for the Joker Bane, which is a matter of getting through this hearing and receiving an order to move forward with those.

Q. And those proposals will be able to handle 100 percent takeaway?

A. Yes.

Q. I think your counsel had asked Cimarex if they were going to encounter any takeaway issues or high-line pressure and how they reacted in that situation. I guess I'm just curious how you guys also react in those situations of high-line pressure.

1 A. Specifically on water, oil or gas?

2 Q. I guess all three.

3 A. I'd say it's a case-by-case basis. In  
4 this area specifically, you know, we have experience  
5 with the Batman developments, and takeaway has been  
6 very strong. Oil and gas, with the partners that  
7 we're currently working with, have been very  
8 reliable, very low pressure. Water is a little bit  
9 more of a challenge in this area, but we already  
10 have what we believe is a leg up, being connected to  
11 Dellik, Faskin and our own SWD as well, so I'm  
12 excited to see this development occur just because  
13 of how much the emission companies are involved.

14 Q. And if you did struggle with oil and gas,  
15 would the wells be shut in or how would that work?

16 A. We typically would go to a high-pressure  
17 flare and work with the emission company to get that  
18 resolved. Again, we haven't seen that issue up here  
19 in this subject lands. We have been 99 plus percent  
20 recovered.

21 Q. Okay.

22 A. When we do flare, we continue to follow  
23 the OCD rules and submit C119s and C115s as  
24 required.

25 Q. I think Mr. Zimsky asked, I'm looking at

1 your photo of the site. Is this in New Mexico?

2 A. Yes.

3 Q. Is this the Batman tank battery or is this  
4 a different one?

5 A. This is a different one. This is the -- I  
6 believe this is the Black Hawk Black Hat, which is  
7 in Eddy County.

8 Q. Okay. You expect a similar design for  
9 these wells?

10 A. Yes.

11 Q. And it looks like you have a recovery on  
12 there. Are those BRUs on the bottom right? Is that  
13 what those are?

14 A. That's right, yeah.

15 Q. Okay. Is it three of them?

16 A. Yes.

17 Q. Okay. So you guys use BRTs and BRUs  
18 combined?

19 A. Yes, it's a very effective method for  
20 capturing gas.

21 Q. I believe that's all my questions.

22 HEARING EXAMINER ORTH: Thank you,  
23 Mr. Garcia. Ms. Thompson, do you have questions of  
24 Mr. Clements?

25 MS. THOMPSON: I have no questions.

1 HEARING EXAMINER ORTH: All right. Thank  
2 you. Any follow-up from you, Mr. Rankin?

3 MR. RANKIN: No, Madam Hearing Officer, I  
4 have no further questions of Mr. Clements.

5 HEARING EXAMINER ORTH: All right. Thank  
6 you very much, Mr. Clements, for your testimony.

7 THE WITNESS: Thank you.

8 HEARING EXAMINER ORTH: So I believe that  
9 was your fourth witness, Mr. Rankin.

10 MR. RANKIN: It was. And the last item  
11 remaining is for us to just review our notice and  
12 have those exhibits be proffered and accepted into  
13 the record. So if I may proceed with that short  
14 discussion, I can get that submitted and our case  
15 wrapped up.

16 HEARING EXAMINER ORTH: Thank you.

17 MR. RANKIN: Madam Hearing Officer,  
18 attached to our exhibit packet that we filed back in  
19 July are my affidavit marked as Exhibit G, which  
20 indicates that we have provided notice to each of  
21 the parties at Permian that Read & Stevens seek to  
22 pool in these cases, and that affidavit reflects  
23 that we provided notice by a certified letter, a  
24 sample of which is included in that exhibit, showing  
25 that we sent out notice to the parties on the dates

1 indicated on the letter.

2 Following the letters that we sent out in  
3 each of the cases you will see in the exhibit packet  
4 a manifest or report of the certified mailings that  
5 were sent out as of the date indicated here. I  
6 believe it is July 12th. And then following the  
7 status of the certified mailing in Exhibit H is a  
8 copy of the affidavit of publication for each of the  
9 cases, indicating that we have published notice,  
10 directing attention to the parties that were seeking  
11 to pool in each case, and that is marked as Exhibit  
12 H.

13 With that, Madam Hearing Officer, I would  
14 move the admission of Exhibits G and H into the  
15 record.

16 HEARING EXAMINER ORTH: Any objection,  
17 Mr. Zimsky?

18 MR. SAVAGE: No objection. This is  
19 Mr. Savage.

20 HEARING EXAMINER ORTH: Thank you,  
21 Mr. Savage. Exhibits G and H are admitted.

22 (Note: Exhibits G and H admitted into  
23 evidence.)

24 MR. RANKIN: Madam Hearing Officer, at  
25 this time that completes our case. I want to make

1 one comment because I want it to be on the record.

2 Mr. Garcia did make an announcement that  
3 is contrary to the way the Division has interpreted,  
4 up to now, the horizontal well rule that was  
5 initially passed by regulation in the order. So I  
6 don't know exactly how we need to address that, but  
7 I want to be able to just reserve the right to  
8 address it since that announcement came in the  
9 middle or towards the end of the hearing.

10 So I just want to make sure that, you  
11 know, there's a placeholder on that issue. We may  
12 need to address it in the closing arguments and  
13 we'll do so. I just want to not be prejudiced if I  
14 have to come back at a later time to respond to that  
15 if it becomes an issue in this case.

16 HEARING EXAMINER ORTH: I understand why  
17 you would want to address that, Mr. Rankin, and I  
18 think closing arguments are a great place for you to  
19 address it, unless someone has a better idea. So  
20 let's get Mr. Savage or Mr. Zimsky back with us on  
21 the screen.

22 MR. GARCIA: Felicia, may I talk to Adam  
23 real quick about that? And Darin?

24 HEARING EXAMINER ORTH: Mr. Garcia, yes,  
25 of course.

1 MR. GARCIA: There may be a lot of  
2 confusion. Adam and Rod are not in the picture. We  
3 can always address that offline because it affects  
4 more than just this case. And we can walk through  
5 and make sure everyone is on the same page and make  
6 sure our views are the same as, I think, Eric when  
7 he made that change, I think, like two-and-a-half  
8 years ago. But we can look into it offline.

9 I guess as far as these cases, I would be  
10 optimistic saying either party could drill all the  
11 wells proposed in one year, whether the outcome of  
12 this case. So maybe in your closing arguments you  
13 guys can address the paragraph that Darin brought up  
14 because I don't think either party can drill  
15 approximately 30 wells in one year. I mean, it's  
16 something I am open to in contested hearings on  
17 modifying and changing, as you proposed modifying  
18 the timelines of AFE payments, et cetera. Contested  
19 hearings are kind of their own beast and not set to  
20 standard language, if that helps at all.

21 MR. RANKIN: Understood. And I appreciate  
22 that, and I think it's something perhaps offline or  
23 between now and closing we can address that, but I  
24 appreciate the further clarification as we go  
25 forward.

1 HEARING EXAMINER ORTH: Thank you,  
2 Mr. Garcia.

3 MR. SAVAGE: Madam Hearing Examiner, may I  
4 make a point of clarification based on Mr. Garcia's  
5 comment?

6 HEARING EXAMINER ORTH: Yes. You're a  
7 little soft.

8 MR. SAVAGE: Okay. Let me see if I can  
9 turn this up. Okay. Is that better?

10 Mr. Garcia, just for clarification,  
11 Cimarex did applications for ten wells in this. Our  
12 plan includes 30 wells, but the actual number of  
13 applications as initial wells was ten, which we  
14 believe is doable within the time frame.

15 MR. GARCIA: Fine. I would put it --  
16 both -- in your closing arguments on the issue.

17 MR. SAVAGE: Thank you.

18 HEARING EXAMINER ORTH: All right. So I  
19 understand that Read & Stevens has completed their  
20 presentation. Mr. Zimsky, would Cimarex want to be  
21 putting on any other evidence?

22 MR. ZIMSKY: Madam Examiner, we have  
23 decided we don't need to call our engineer or  
24 geologist or landman back to respond to the rebuttal  
25 exhibits that Permian Resources submitted, I, J and

1 K. I think they have been adequately covered.

2 We had filed some rebuttal exhibits on our  
3 own, basically consisting of the investor reports, a  
4 presentation made by Permian Resources recently, the  
5 second quarter earnings presentation. And the  
6 second one was the AFEs. I think they were dated  
7 August 2nd, 2023 that coincide with our Exhibit D-18  
8 that Mr. Behm testified about. I think Mr. Garcia  
9 said that he wanted us to submit them. I'm not sure  
10 in my recollection and he can obviously correct me.

11 So that's the purpose of the AFEs. So we  
12 could call a witness, Mr. Coffman, I think, to, I  
13 guess, sponsor them if -- obviously, subject to  
14 Mr. Rankin's objections.

15 HEARING EXAMINER ORTH: All right.  
16 Mr. Rankin?

17 MR. RANKIN: Madam Hearing Officer, we  
18 have no objection to the submission of those  
19 excerpts from the report nor to the updated AFEs.

20 HEARING EXAMINER ORTH: All right. You  
21 don't feel we need Mr. Coffman to get them in?

22 MR. RANKIN: No. I understood Mr. Coffman  
23 to say during his testimony that they had updated  
24 numbers, so I believe AFEs are just supplementing  
25 his testimony and the investor reports are just, you

1 know, public information, and I'm not concerned  
2 about that.

3 HEARING EXAMINER ORTH: Thank you very  
4 much. Mr. Zimsky, they will be admitted then and we  
5 don't need to recall Mr. Coffman.

6 (Note: Exhibits I, J and K admitted into  
7 evidence.)

8 MR. ZIMSKY: Thank you, Madam Hearing  
9 Examiner.

10 HEARING EXAMINER ORTH: Is there anything  
11 further from anyone at all?

12 MR. RANKIN: Other than just to discuss --

13 HEARING EXAMINER ORTH: Post-hearing  
14 submissions.

15 MR. GARCIA: I have items I would like to  
16 see in the post-hearing submissions.

17 HEARING EXAMINER ORTH: Please go ahead,  
18 Mr. Garcia.

19 MR. GARCIA: I guess I will start with  
20 Mr. Savage and Mr. Zimsky. In your closing  
21 arguments, I'm assuming you guys are submitting  
22 those through writing. One issue I think Adam  
23 brought up in one of his motions maybe is, I guess  
24 I'm just curious, the whole producing minerals that  
25 are in a different formation with the Dep 7s

1 present, and if you could find either some statutes  
2 or rule references or past cases, Supreme Court  
3 cases, et cetera, that that is allowed or has been  
4 done before, because I'm unaware of it.

5 MR. SAVAGE: Mr. Garcia, would it be  
6 appropriate -- that's a pretty thick issue, and I  
7 don't know how long we have for the closing  
8 statement, but we did a brief and Permian Resources  
9 did a response, and they raised some very good  
10 issues and important issues. And typically in that  
11 series you get a chance to do a reply. I'm  
12 wondering if it would be possible to do a short  
13 reply that addresses just that issue of the Third  
14 Bone Spring producing from the Wolfcamp for your  
15 records.

16 MR. GARCIA: Yeah. I guess the issue I  
17 want both parties to address is the legal standings  
18 of what was basically presented here of producing  
19 the Bone Spring, knowingly draining the Wolfcamp  
20 with the depth severance, essentially, is what I'm  
21 going to call it.

22 MR. SAVAGE: Okay.

23 MR. GARCIA: So that's to you and to  
24 Mr. Rankin, to kind of justify both your views on  
25 that. How you do that is up to Felicia. I think

1 your Option 2, Mr. Savage, had proposed a compulsory  
2 pool rule of Wolfcamp, not put a well there. Our  
3 compulsory pool rule, I don't think it talks about  
4 this, so I'm also curious if there's anywhere you  
5 have seen before where OCD has compulsory pool  
6 formation that doesn't have a well.

7 MR. SAVAGE: I think you have to go to  
8 some of the other states, such as Oklahoma, that has  
9 a little bit longer history to see.

10 MR. GARCIA: That's fine. If you need to  
11 reference other states and how they do it, I'm open  
12 to seeing that. I mean, everything is on the table  
13 for this case. On the flip side of the coin,  
14 Mr. Rankin, I would like to see if you have  
15 something where it is required to have a well in the  
16 formation to compulsory pool because I think you  
17 objected to that Option 2 because of that view.

18 MR. RANKIN: Sure. We included that  
19 discussion about the rules and requirements in the  
20 statute in our memo, but --

21 MR. GARCIA: Yeah, and if you guys have  
22 said this before, sorry. I have tried my best  
23 keeping up with these case files. It's just a  
24 monster of a case.

25 MR. RANKIN: We don't want to over-paper

1 the Division, so we tried to keep the response very  
2 tight and limited to ten pages. I think we  
3 addressed it there. My only concern, Madam Hearing  
4 Officer and Mr. Garcia, is I think Mr. Savage and I  
5 did discuss his interest in trying to respond or  
6 provide a reply of some kind to our legal arguments  
7 that we raised in a legal memo. I don't necessarily  
8 have a problem with that at all. I mean, I think  
9 it's fair for each side to put their whole case  
10 forward.

11 Not knowing what he's going to say,  
12 however, my only concern would be, I'm trying to  
13 figure out how to make this as streamlined as  
14 possible. And if we were to file simultaneous  
15 closings, I may not have the opportunity to respond  
16 to whatever he says. And I don't want this to go on  
17 forever, back and forth, back and forth, but if he  
18 would like to provide a reply brief on the legal  
19 issues, my suggestion would be that it be filed in  
20 advance of closing. That way I can address any  
21 issues on that front in the closing.

22 HEARING EXAMINER ORTH: That would make  
23 sense. To me, that gives Mr. Savage an opportunity  
24 to reply to the specific points related to the  
25 motion. And then, of course, there's an invitation,

1 a request really, from Mr. Garcia to address the two  
2 points in your closing. You're not constrained by  
3 the boundaries of the motion, the contours of the  
4 motion. All right. Mr. Garcia, was there any other  
5 requests?

6 MR. GARCIA: Two more. For both  
7 applicants, please submit your views on the whole  
8 timeline of drillings, and we will take both of your  
9 views under consideration on that. Again,  
10 everything is open on the table still, so we will  
11 review both of those arguments.

12 And then the last thing is I have been  
13 digging through the rules all morning, and one rule  
14 that popped up that was not stored in my memory is  
15 19-15-12-9, which discusses pool segregations. And  
16 basically, it is an operator's duty -- I'm  
17 butchering the rule here, but operator duty to  
18 produce each pool as a single common source, supply  
19 and complete case, maintain and operate wells as  
20 individual sources.

21 Basically, doing so is prohibited unless  
22 Division pre-approves. I guess if both of you can  
23 address the rule and how your operators plan on  
24 complying with it, because I believe both operators  
25 testified that there is drainage between these two

1 formations with either wellbore design. Each well  
2 will drain both formations. And mainly Paragraph A  
3 of that rule is where it's all at. The other rule I  
4 had not read before.

5 HEARING EXAMINER ORTH: Is that all?

6 MR. GARCIA: I believe so.

7 HEARING EXAMINER ORTH: Thank you very  
8 much, Mr. Garcia. It is helpful to know what you're  
9 looking for when you weigh the technical evidence.

10 MR. GARCIA: Just as a side note, I think  
11 there was some, what if the order was issued next  
12 week. It will not be issued next week. I will  
13 wait, at a minimum, until the transcripts come in,  
14 just the three days of testimony, just so everyone  
15 is on the same page.

16 HEARING EXAMINER ORTH: All right. Thank  
17 you for that. So Mr. Savage, a week or ten days for  
18 your reply?

19 MR. SAVAGE: Madam Hearing Examiner, since  
20 Mr. Garcia says it's going to be a little while for  
21 the reporter, and we have some time and it's a  
22 complicated case, I wonder if we should allow just a  
23 little bit more time to really be able to research  
24 this. To get that initial brief in, it was on such  
25 a short fuse, and you can see that as a result some

1 of the citations were miscited. And we don't want  
2 to be in a situation like that. So I would  
3 recommend -- I don't know how much time would be --  
4 I mean, I would think that even four weeks might be  
5 sufficient to address all the issues.

6 HEARING EXAMINER ORTH: Wait, I'm sorry.  
7 So I understand for the closing argument, we  
8 certainly need to wait for the transcripts on that.  
9 I'm just asking about the reply.

10 MR. SAVAGE: I'm sorry, I'm sorry. Yeah,  
11 I would think two weeks for the reply would be fair.

12 HEARING EXAMINER ORTH: Two weeks? All  
13 right. We will have the transcript within that  
14 window, I'm sure.

15 MR. SAVAGE: If the transcript is not, can  
16 we revisit that deadline?

17 HEARING EXAMINER ORTH: I strongly believe  
18 that it will be. As I understand it, that's the  
19 understanding that the Division has with the court  
20 reporters.

21 MR. SAVAGE: Okay. Thank you.

22 HEARING EXAMINER ORTH: It's often  
23 produced more quickly than that, but unless Marlene  
24 corrects me here, I think two weeks is the outside.

25 MS. SALVIDREZ: Yes, they are supposed to

1 be sent to us in two weeks. The court reporter does  
2 have 14 days. Sometimes it does go beyond that, but  
3 they recently have been giving them to us within  
4 about a two-week time frame.

5 HEARING EXAMINER ORTH: Thank you,  
6 Marlene. All right. So if you're going to get your  
7 reply in two weeks and we will have the transcript  
8 in two weeks, then perhaps -- what do you think,  
9 Mr. Rankin? Is four weeks too generous after the  
10 transcript is received for closing?

11 MR. RANKIN: No, I think that's  
12 reasonable. I think two weeks from the transcript  
13 is reasonable, and I think that gives us time to  
14 address any issues in reply that we deem appropriate  
15 in closing. So I think two weeks from the  
16 transcript is workable, for sure.

17 HEARING EXAMINER ORTH: Mr. Zimsky and  
18 Mr. Savage?

19 MR. SAVAGE: What would be the page  
20 limitation be on the closing statement?

21 HEARING EXAMINER ORTH: I'll tell you  
22 what, I don't impose page limitations unless there's  
23 a really compelling reason. Anyone want to  
24 articulate one? I haven't heard one yet.

25 MR. RANKIN: My view is shorter is always

1 better, everyone would agree.

2 MR. SAVAGE: Agreed.

3 HEARING EXAMINER ORTH: All right.

4 MR. RANKIN: Just to be clear, I guess,  
5 you had mentioned, Madam Hearing Officer, the option  
6 of the Findings of Fact and Conclusions of Law. Is  
7 that something you would still like to see or is  
8 that still on the table?

9 HEARING EXAMINER ORTH: Very much so.  
10 Very much so. And as far as I'm concerned, that  
11 would just be part of the closing brief. You don't  
12 have to cover the waterfront with, you know, the  
13 basic proposed findings. If you want to focus on  
14 kind of the trickier ones, the more contested ones,  
15 that's fine.

16 MR. SAVAGE: Madam Examiner, since we're  
17 going to address this thoroughly in the reply and  
18 closing statement, is a closing oral statement  
19 necessary?

20 HEARING EXAMINER ORTH: No, I don't invite  
21 closing statements verbally because I'm looking  
22 forward to them in writing. I, frankly, think  
23 lawyers need to reflect on the evidence, some of it  
24 surprising, what have you, that's come in before  
25 they can make a reasonable closing statement.

1 MR. SAVAGE: I assumed we were going  
2 towards that. I agree with that philosophy.

3 HEARING EXAMINER ORTH: One day I am  
4 writing a book. Okay. Ms. Vance, do you have  
5 something to add?

6 MS. VANCE: No.

7 HEARING EXAMINER ORTH: Anything else we  
8 should talk about? Just to restate before we get  
9 off the platform, Mr. Savage will submit a reply to  
10 the motion within 14 days. We'll have the  
11 transcript within 14 days and closing statements  
12 will be due 14 days after that. And again, in the  
13 event the transcript is, for some reason -- forest  
14 fires, what have you -- not submitted within 14  
15 days, the closing statement deadline would be  
16 extended. Is that everyone's -- we're all on the  
17 same page here?

18 MR. SAVAGE: Yes. Just so I know, and I  
19 apologize, Marlene, are the parties notified when  
20 the transcript comes in or how does that work?

21 MS. SALVIDREZ: As soon as I receive the  
22 transcripts for these contested cases I e-mail them  
23 to all counsel right away.

24 MR. RANKIN: Thank you.

25 HEARING EXAMINER ORTH: Anything else at

1 all? All right. I'm really pleased we got through  
2 this, notwithstanding my technological difficulties  
3 and the ones we had two days ago in Santa Fe. We  
4 got to the other side, so thank you all very much  
5 for hanging in there. I will see most of you next  
6 Thursday.

7 (Note: The hearing was adjourned at  
8 10:38.)

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REPORTER'S CERTIFICATE

I, Jan Gibson, New Mexico Certified Court Reporter, do hereby certify that I reported the foregoing proceedings on August 11, 2023 in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and were reduced to printed form by me or under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.



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|   |   |  |  |
|---|---|--|--|
| <b>&amp;</b>  | <b>18</b> 77:7  | <b>23455</b> 1:11 6:4  | <b>31</b> 18:6 19:7  |
| <b>&amp;</b> 3:4,19 6:5,7<br>6:11 12:9,10<br>18:20 34:4,18<br>35:1,2,2,7<br>36:11 38:25<br>39:21 44:25<br>45:4 46:9 51:1<br>52:9 59:6<br>72:21 76:19  | <b>19</b> 27:16 29:1<br>56:2<br><b>19-15-12-9</b><br>82:15<br><b>194</b> 89:20<br><b>1979</b> 34:23<br>35:14 54:2,5   | <b>23508</b> 1:13 6:4<br><b>23509</b> 1:13<br><b>23510</b> 1:13<br><b>23511</b> 1:14<br><b>23512</b> 1:14<br><b>23513</b> 1:14<br><b>23514</b> 1:14<br><b>23515</b> 1:15<br><b>23516</b> 1:15<br><b>23517</b> 1:15<br><b>23518</b> 1:15<br><b>23519</b> 1:16<br><b>23520</b> 1:16<br><b>23521</b> 1:16<br><b>23522</b> 1:16<br><b>23523</b> 1:17 6:5<br><b>23594</b> 1:11 6:4<br><b>23595</b> 1:11<br><b>23596</b> 1:11<br><b>23597</b> 1:12<br><b>23598</b> 1:12<br><b>23599</b> 1:12<br><b>23600</b> 1:12<br><b>23601</b> 1:13 | <b>320</b> 54:12<br><b>33.9</b> 60:16 67:5<br><b>34</b> 53:22<br><b>34.5.</b> 67:11<br><b>36</b> 18:12,14<br>19:5<br><b>39</b> 53:22<br><b>39.4</b> 37:23  |
| <b>1</b>  | <b>2</b>  | <b>3</b>   | <b>4</b>   |
| <b>1</b> 15:12 18:17<br>33:23 34:13<br><b>1.6</b> 43:3,9<br><b>10</b> 65:20<br><b>100</b> 51:20<br>54:12,14 69:18<br><b>1011.59</b> 37:23<br><b>1056</b> 3:12 4:14<br><b>1070.97</b> 38:2<br><b>10:38</b> 88:8<br><b>11</b> 2:2 89:8<br><b>12/31/23</b> 89:20<br><b>1200</b> 40:7<br><b>1220</b> 4:7<br><b>1287.03</b> 37:14<br><b>12th</b> 73:6<br><b>14</b> 45:4 85:2<br>87:10,11,12,14<br><b>142</b> 40:15<br><b>15</b> 5:5<br><b>15,000</b> 41:10<br><b>16-23</b> 1:7<br><b>166</b> 40:13 | <b>2</b> 7:15 18:17<br>24:12 56:15,18<br>80:1,17<br><b>20</b> 28:24 36:16<br>56:2<br><b>2004</b> 10:12<br><b>2010</b> 36:21<br><b>2017</b> 35:23<br><b>2018</b> 34:4<br><b>2021</b> 63:24<br><b>2022</b> 63:24<br><b>2023</b> 2:2 77:7<br>89:8<br><b>20th</b> 13:17<br><b>21.12</b> 37:10<br><b>214</b> 3:5,20<br><b>22893</b> 27:13<br><b>233601</b> 6:4<br><b>23448</b> 1:9 6:4<br><b>23449</b> 1:9<br><b>23450</b> 1:9<br><b>23451</b> 1:10<br><b>23452</b> 1:10<br><b>23453</b> 1:10<br><b>23454</b> 1:10 | <b>24</b> 64:6 67:16<br>67:23<br><b>28821</b> 89:19<br><b>2nd</b> 77:7   | <b>4</b> 10:18 37:1<br>52:3,8,13 54:4<br><b>40</b> 65:21,25<br><b>400</b> 54:25<br><b>41.80</b> 38:2<br><b>43</b> 54:8<br><b>44</b> 16:11 37:1<br>44:16<br><b>45,000</b> 41:9<br><b>48</b> 26:4,7,21<br>30:6 33:2,4,9<br>33:14 66:11<br>67:1,13<br><b>49</b> 5:6 |
|   |   | <b>5</b>   | <b>5</b>   |
|   |   | <b>3</b> 18:17<br><b>30</b> 61:25 75:15<br>76:12<br><b>30.9</b> 60:18 67:7   | <b>5</b> 16:11,14,15<br>52:3 54:4,12<br>54:14 66:7<br><b>50</b> 5:7 39:7<br>42:14,17<br><b>50.23</b> 37:14<br><b>58</b> 5:10   |

[6 - agree]

|                      |                          |                        |                        |
|----------------------|--------------------------|------------------------|------------------------|
| <b>6</b>             | <b>a8</b> 34:10 35:11    | 39:8 40:14,14          | <b>address</b> 6:21    |
| <b>6</b> 20:14       | <b>abadie</b> 3:4,19     | 40:15,24 43:2          | 55:18 74:6,8           |
| <b>60</b> 5:18 33:7  | <b>abadieschill.c...</b> | 43:3,10 54:13          | 74:12,17,19            |
| <b>6056708</b> 2:8   | 3:22                     | 60:16,18 67:5          | 75:3,13,23             |
| <b>62</b> 5:11       | <b>ability</b> 66:8      | 67:7                   | 79:17 81:20            |
| <b>69</b> 5:12       | <b>able</b> 16:1 27:5    | <b>act</b> 20:15,16    | 82:1,23 84:5           |
| <b>7</b>             | 30:5 31:17,19            | 21:8                   | 85:14 86:17            |
| <b>7</b> 5:4         | 31:23 69:17              | <b>active</b> 9:16,22  | <b>addressed</b> 81:3  |
| <b>73</b> 5:19,20    | 74:7 83:23               | 10:19 18:7,13          | <b>addresses</b> 51:3  |
| <b>78</b> 5:21,22,23 | <b>above</b> 17:2        | 22:19                  | 79:13                  |
| <b>7s</b> 78:25      | <b>absolutely</b>        | <b>actively</b> 9:18   | <b>adequately</b>      |
| <b>8</b>             | 17:19                    | 13:15 33:6             | 77:1                   |
| <b>8</b> 34:9 54:4   | <b>accept</b> 17:15      | <b>actual</b> 18:3     | <b>adjourned</b> 88:7  |
| <b>87102</b> 2:6     | <b>accepted</b> 72:12    | 48:18 51:22            | <b>admission</b>       |
| <b>875.74</b> 37:10  | <b>access</b> 15:10,12   | 76:12                  | 59:21 73:14            |
| <b>87501</b> 3:6,21  | <b>account</b> 9:1       | <b>actually</b> 13:16  | <b>admitted</b> 5:16   |
| <b>87504</b> 3:13    | 39:11,14,22              | 24:10 28:21            | 60:1,3 73:21           |
| 4:15                 | 43:9 45:7,24             | 32:1 34:20             | 73:22 78:4,6           |
| <b>87505</b> 4:8     | 47:21                    | 45:20 46:10            | <b>adopted</b> 10:19   |
| <b>89</b> 5:14       | <b>accounted</b> 46:7    | <b>adam</b> 6:11       | 10:20 12:19            |
| <b>8:30</b> 2:3 6:1  | <b>accumulation</b>      | 74:22 75:2             | 13:25                  |
| <b>9</b>             | 40:19                    | 78:22                  | <b>advance</b> 81:20   |
| <b>9</b> 12:22 44:16 | <b>accurate</b> 19:6     | <b>add</b> 39:4 66:10  | <b>afe</b> 75:18       |
| 54:4 60:18           | 20:12                    | 66:15 87:5             | <b>afes</b> 77:6,11,19 |
| <b>95</b> 43:8       | <b>acquainted</b>        | <b>added</b> 46:6,15   | 77:24                  |
| <b>96</b> 66:6,12    | 35:8                     | 56:16 67:9             | <b>affects</b> 75:3    |
| <b>99</b> 70:19      | <b>acquisition</b>       | <b>adding</b> 39:17    | <b>affidavit</b> 5:19  |
| <b>9:46</b> 57:18    | 52:11                    | 66:15                  | 5:20 72:19,22          |
| <b>9:56</b> 57:18    | <b>acre</b> 41:9,10      | <b>additional</b> 39:4 | 73:8                   |
| <b>a</b>             | <b>acreage</b> 39:5      | 40:22,23 46:7          | <b>affirmed</b> 59:2,9 |
| <b>a.m.</b> 2:3      | 40:13 51:19,20           | 55:19 61:20,21         | <b>afternoon</b> 7:14  |
| <b>a10</b> 10:18     | 51:21,23 61:22           | 61:22 62:2             | <b>ago</b> 37:4 51:17  |
|                      | 67:10                    | <b>additionally</b>    | 54:8 75:8 88:3         |
|                      | <b>acres</b> 37:10,14    | 39:8                   | <b>agree</b> 6:22 21:2 |
|                      | 37:23 38:2               |                        | 21:11,21 22:5          |

[agree - attorney]

|  |   |  |   |
|--|---|--|---|
| <p>22:17,25 24:13<br/>                 26:11,21 30:24<br/>                 31:7 36:22<br/>                 41:8,21 42:6,7<br/>                 42:11 43:5<br/>                 45:21 46:2,20<br/>                 46:22 47:2,6<br/>                 48:5 54:12<br/>                 86:1 87:2<br/> <b>agreed</b> 54:5<br/>                 86:2<br/> <b>agreement</b><br/>                 34:24 35:15<br/> <b>agreements</b><br/>                 49:22 54:18<br/> <b>ahead</b> 7:3 9:23<br/>                 10:9 11:10<br/>                 16:9 19:9<br/>                 31:20 78:17<br/> <b>albuquerque</b><br/>                 2:6<br/> <b>allow</b> 30:2<br/>                 83:22<br/> <b>allowed</b> 79:3<br/> <b>amending</b> 29:2<br/> <b>amount</b> 37:13<br/>                 38:1 42:4,13<br/>                 43:4,16,22<br/> <b>amounts</b> 41:22<br/> <b>analogous</b><br/>                 14:12<br/> <b>announcement</b><br/>                 74:2,8<br/> <b>answer</b> 23:14<br/>                 24:3,24 25:14</p> | <p>38:12,13<br/> <b>answers</b> 24:14<br/>                 24:19<br/> <b>anybody</b> 35:25<br/> <b>aol.com</b> 3:14<br/>                 4:16<br/> <b>apologize</b> 12:4<br/>                 87:19<br/> <b>apparently</b><br/>                 20:8<br/> <b>appear</b> 57:9<br/> <b>applicants</b> 82:7<br/> <b>application</b><br/>                 28:6,10 29:10<br/>                 31:17,20<br/> <b>applications</b><br/>                 16:18 26:4,15<br/>                 26:18,22 28:1<br/>                 28:9 59:5,10<br/>                 64:23,24 76:11<br/>                 76:13<br/> <b>applied</b> 14:1<br/>                 25:16,19,24,24<br/>                 32:1 43:25<br/> <b>appraisal</b> 12:14<br/>                 19:14<br/> <b>appreciate</b> 15:8<br/>                 17:21 38:12<br/>                 75:21,24<br/> <b>approach</b><br/>                 63:23 64:1,11<br/> <b>appropriate</b><br/>                 79:6 85:14<br/> <b>appropriately</b><br/>                 22:21</p> | <p><b>approval</b> 61:14<br/> <b>approved</b><br/>                 31:13 61:13<br/>                 62:4 69:11<br/> <b>approves</b> 82:22<br/> <b>approximately</b><br/>                 75:15<br/> <b>area</b> 13:23 14:1<br/>                 17:24,25 18:7<br/>                 22:3 23:1,7<br/>                 25:17 36:22<br/>                 43:19 48:17<br/>                 52:6 54:6,16<br/>                 60:20 70:4,9<br/> <b>areas</b> 23:2<br/>                 25:16 54:20<br/> <b>arguing</b> 20:25<br/> <b>argument</b> 84:7<br/> <b>arguments</b><br/>                 74:12,18 75:12<br/>                 76:16 78:21<br/>                 81:6 82:11<br/> <b>arm</b> 14:7<br/> <b>arose</b> 17:16<br/> <b>arrows</b> 10:12<br/> <b>articulate</b><br/>                 85:24<br/> <b>aside</b> 55:24<br/> <b>asked</b> 34:13<br/>                 51:16 55:14<br/>                 69:20 70:25<br/> <b>asking</b> 23:23<br/>                 84:9<br/> <b>asserting</b> 29:15</p> | <p><b>assessing</b> 20:18<br/>                 21:10<br/> <b>assignment</b><br/>                 10:11 38:14,19<br/>                 38:23,24 39:3<br/>                 39:13,15 52:12<br/> <b>assignments</b><br/>                 54:9<br/> <b>associated</b><br/>                 60:15,16,18<br/> <b>associates</b> 53:7<br/> <b>assume</b> 22:12<br/>                 23:5 42:11<br/>                 47:11 48:15<br/> <b>assumed</b> 87:1<br/> <b>assuming</b> 39:1<br/>                 41:18,25 69:9<br/>                 69:11 78:21<br/> <b>assumption</b><br/>                 22:24 41:16<br/>                 42:14 48:14<br/> <b>assumptions</b><br/>                 43:20<br/> <b>attached</b> 56:11<br/>                 59:15 72:18<br/> <b>attachments</b><br/>                 5:18 59:21<br/> <b>attempt</b> 17:22<br/>                 50:25<br/> <b>attempted</b> 24:2<br/> <b>attention</b> 15:8<br/>                 16:10 73:10<br/> <b>attorney</b> 3:11<br/>                 4:13</p> |
|--|---|--|---|

[attorneys - brief]

|   |  |  |  |
|---|--|--|--|
| <p><b>attorneys</b> 62:20<br/>89:14</p> <p><b>attributing</b><br/>21:22</p> <p><b>august</b> 2:2 77:7<br/>89:8</p> <p><b>automatically</b><br/>28:25 29:12<br/>30:1</p> <p><b>available</b> 15:11</p> <p><b>aware</b> 25:23,25<br/>26:1 38:24<br/>56:5</p>  | <p><b>based</b> 11:9<br/>22:15 36:10,18<br/>39:13 40:17<br/>41:7 49:17,19<br/>56:13 76:4</p> <p><b>basic</b> 86:13</p> <p><b>basically</b> 21:11<br/>34:19 35:17,20<br/>56:18 77:3<br/>79:18 82:16,21</p> <p><b>basis</b> 20:14<br/>21:5,7 30:17<br/>40:19 49:14<br/>65:5 70:3</p> <p><b>batman</b> 14:8<br/>19:10,11 69:13<br/>70:5 71:3</p> <p><b>battery</b> 62:1<br/>66:12 71:3</p> <p><b>bear</b> 19:18</p> <p><b>beast</b> 75:19</p> <p><b>behalf</b> 3:2,8,16<br/>4:3,10 60:7</p> <p><b>behm</b> 77:8</p> <p><b>believe</b> 6:16<br/>7:17 9:8 11:1<br/>16:8 18:11<br/>35:23 44:7<br/>46:19 51:11<br/>52:21 55:3<br/>60:23 67:11<br/>68:15 70:10<br/>71:6,21 72:8<br/>73:6 76:14<br/>77:24 82:24</p> | <p>83:6 84:17</p> <p><b>benefit</b> 58:6</p> <p><b>best</b> 80:22</p> <p><b>better</b> 74:19<br/>76:9 86:1</p> <p><b>beyond</b> 64:19<br/>85:2</p> <p><b>bias</b> 8:23</p> <p><b>biased</b> 40:18,20<br/>40:24 46:12</p> <p><b>big</b> 36:21 46:9<br/>49:7</p> <p><b>biggest</b> 61:4<br/>67:24</p> <p><b>birdseye</b> 51:18<br/>52:2</p> <p><b>bit</b> 8:12,17,17<br/>15:17 32:23<br/>40:13,14 44:25<br/>45:5 70:8 80:9<br/>83:23</p> <p><b>black</b> 71:6,6</p> <p><b>blend</b> 54:6</p> <p><b>blends</b> 51:21</p> <p><b>blm</b> 61:13,14</p> <p><b>blue</b> 7:20 11:17<br/>50:9,11,12,16<br/>52:4</p> <p><b>bon</b> 25:22</p> <p><b>bona</b> 25:5</p> <p><b>bone</b> 8:11,14<br/>8:24 11:16,18<br/>16:17 17:23<br/>18:25 19:3,5<br/>22:2,24 23:1,6</p> | <p>23:18,19,19<br/>25:6,7 28:1,8<br/>32:10,17 37:8<br/>37:8,18,20<br/>38:8 40:15,18<br/>40:20,24 41:6<br/>42:23 43:15<br/>44:22,24,25<br/>45:14 47:25<br/>48:4,7,17<br/>50:13,14,19<br/>52:10 79:14,19</p> <p><b>book</b> 87:4</p> <p><b>bores</b> 63:9,11<br/>63:14</p> <p><b>bottom</b> 7:25<br/>8:5 9:15 10:10<br/>37:7,21 49:15<br/>49:18 71:12</p> <p><b>boundaries</b><br/>82:3</p> <p><b>box</b> 3:12 4:14<br/>34:3</p> <p><b>boyle</b> 60:12,23</p> <p><b>bradford</b> 22:1<br/>32:2 42:3</p> <p><b>bradford's</b><br/>26:8</p> <p><b>break</b> 8:5 20:9<br/>57:12,14</p> <p><b>brief</b> 16:7 17:3<br/>17:4,7,9,17<br/>33:23 55:20<br/>79:8 81:18<br/>83:24 86:11</p> |
| <b>b</b>  |  |  |  |
| <p><b>b</b> 42:19 52:5<br/>64:15</p> <p><b>back</b> 6:3 10:11<br/>32:18 48:2<br/>53:2 54:5,9<br/>61:5,10,15,16<br/>61:21 62:2,3<br/>63:15 66:15<br/>72:18 74:14,20<br/>76:24 81:17,17</p> <p><b>background</b><br/>19:20</p> <p><b>backup</b> 13:4</p> <p><b>baffles</b> 22:2</p> <p><b>bane</b> 14:9 23:4<br/>25:19 44:18<br/>69:14</p> <p><b>bar</b> 44:15,23<br/>45:19 46:8,9</p> <p><b>bars</b> 11:15,17<br/>45:8,12 46:6</p> |  |  |  |

[briefly - clarification]

|  |   |   |   |
|--|---|---|---|
| <p><b>briefly</b> 9:13<br/>37:3</p> <p><b>broad</b> 48:16</p> <p><b>broke</b> 6:8 9:14<br/>11:7 57:19</p> <p><b>broken</b> 11:13</p> <p><b>brought</b> 75:13<br/>78:23</p> <p><b>brts</b> 71:17</p> <p><b>bruce</b> 3:10,11<br/>4:12,13</p> <p><b>brus</b> 71:12,17</p> <p><b>budgeting</b> 33:9</p> <p><b>build</b> 66:12,13</p> <p><b>built</b> 67:13,15</p> <p><b>burden</b> 33:12</p> <p><b>butchering</b><br/>82:17</p> | <p><b>cameras</b> 63:25</p> <p><b>capturing</b><br/>21:16 71:20</p> <p><b>care</b> 49:21</p> <p><b>cartman</b> 68:4<br/>68:10</p> <p><b>case</b> 1:9 13:15<br/>13:25 27:13,14<br/>27:15 31:4<br/>39:2,6 42:1<br/>47:10 52:3<br/>59:3,12 65:5,5<br/>70:3,3 72:14<br/>73:11,25 74:15<br/>75:4,12 80:13<br/>80:23,24 81:9<br/>82:19 83:22<br/>89:15,16</p> <p><b>cases</b> 6:3 72:22<br/>73:3,9 75:9<br/>79:2,3 87:22</p> <p><b>cash</b> 33:3,6</p> <p><b>cause</b> 29:2<br/>31:11,14,21</p> <p><b>ccr</b> 2:7 89:19<br/>89:20</p> <p><b>cem</b> 61:15</p> <p><b>center</b> 54:2<br/>61:14</p> <p><b>central</b> 62:1<br/>66:3,12</p> <p><b>certain</b> 22:13</p> <p><b>certainly</b> 84:8</p> <p><b>certificate</b> 5:14<br/>89:5</p> | <p><b>certified</b> 72:23<br/>73:4,7 89:6</p> <p><b>certify</b> 89:7,13</p> <p><b>cetera</b> 56:25<br/>75:18 79:3</p> <p><b>challenge</b> 47:8<br/>70:9</p> <p><b>challenged</b><br/>35:3</p> <p><b>challenger</b> 9:16<br/>46:18,25</p> <p><b>challenging</b><br/>35:2</p> <p><b>chance</b> 15:21<br/>19:19 79:11</p> <p><b>change</b> 8:17<br/>57:10 75:7</p> <p><b>changes</b> 47:19</p> <p><b>changing</b> 75:17</p> <p><b>chart</b> 7:19,20<br/>7:25 8:2,2,4,5<br/>49:7,13,14,16<br/>49:18</p> <p><b>charts</b> 44:15</p> <p><b>chase</b> 12:5,19</p> <p><b>check</b> 44:13<br/>48:19</p> <p><b>checked</b> 27:12</p> <p><b>chose</b> 22:22<br/>32:6</p> <p><b>cimarex</b> 3:2,17<br/>4:22 6:5 8:7,7<br/>8:9,11,19 9:7<br/>9:15,22 11:8<br/>13:20 17:4</p> | <p>24:9 25:23<br/>27:11 34:5,21<br/>34:22,22 35:2<br/>35:3,20,24<br/>36:4,12 37:13<br/>37:17 38:1,7<br/>38:14,21,23,25<br/>39:5,11,17,18<br/>39:18,22 40:18<br/>40:20,24 41:4<br/>43:14,18,21<br/>44:22 45:17,25<br/>46:20 47:9,23<br/>48:4,6,16 51:8<br/>51:17,19 59:7<br/>60:7 62:21<br/>69:20 76:11,20</p> <p><b>cimarex's</b><br/>10:13 13:25<br/>15:12 16:7<br/>34:6 36:7,18<br/>39:25 40:25<br/>41:6,9,11,12<br/>52:11</p> <p><b>citations</b> 16:12<br/>84:1</p> <p><b>cites</b> 17:13</p> <p><b>claim</b> 19:12<br/>43:14</p> <p><b>claimed</b> 24:8,9</p> <p><b>clarification</b><br/>8:21 10:1,9<br/>13:19 49:4<br/>55:19 75:24<br/>76:4,10</p> |
| <b>c</b>   |   |   |   |
| <p><b>c</b> 3:1 4:1 58:9<br/>68:10,11</p> <p><b>c1</b> 60:12</p> <p><b>c115s</b> 70:23</p> <p><b>c119s</b> 70:23</p> <p><b>c12</b> 12:5,22</p> <p><b>c8</b> 11:1</p> <p><b>c9</b> 11:2</p> <p><b>calculated</b><br/>45:16</p> <p><b>call</b> 33:3,6 55:1<br/>57:7,20,21<br/>76:23 77:12<br/>79:21</p> <p><b>called</b> 1:6 54:18</p>   |   |   |   |

[clarified - consented]

|  |   |  |  |
|--|---|--|--|
| <p><b>clarified</b> 22:6<br/> <b>clarify</b> 49:24<br/> 54:24 56:3<br/> <b>clear</b> 9:8 24:11<br/> 37:17 49:4,11<br/> 86:4<br/> <b>clearly</b> 24:7<br/> <b>clements</b> 5:9,18<br/> 57:9,20,22,24<br/> 58:4,8,19 59:1<br/> 60:4 62:5,10<br/> 62:14,19 68:16<br/> 68:23 71:24<br/> 72:4,6<br/> <b>clm</b> 53:4<br/> <b>closed</b> 64:13<br/> <b>closely</b> 18:23<br/> <b>closing</b> 55:20<br/> 74:12,18 75:12<br/> 75:23 76:16<br/> 78:20 79:7<br/> 81:20,21 82:2<br/> 84:7 85:10,15<br/> 85:20 86:11,18<br/> 86:18,21,25<br/> 87:11,15<br/> <b>closings</b> 81:15<br/> <b>cml</b> 52:20<br/> <b>coded</b> 64:22<br/> <b>coffman</b> 4:20<br/> 77:12,21,22<br/> 78:5<br/> <b>coffman's</b><br/> 14:15 15:13</p> | <p><b>coin</b> 80:13<br/> <b>coincide</b> 77:7<br/> <b>color</b> 52:4<br/> <b>combined</b><br/> 71:18<br/> <b>come</b> 61:10,15<br/> 62:2 63:15<br/> 66:14 74:14<br/> 83:13 86:24<br/> <b>comes</b> 21:23<br/> 22:14,15 23:8<br/> 45:11 52:20<br/> 87:20<br/> <b>coming</b> 21:14<br/> 21:20 61:5,16<br/> 62:3 67:18<br/> <b>commence</b><br/> 27:18,20 28:13<br/> 29:10<br/> <b>commencem...</b><br/> 27:22<br/> <b>comment</b> 60:9<br/> 60:22 61:2<br/> 74:1 76:5<br/> <b>comments</b> 32:4<br/> <b>committed</b> 9:22<br/> 10:7<br/> <b>common</b> 22:7,8<br/> 22:9 23:3<br/> 52:19 61:7<br/> 69:6 82:18<br/> <b>communication</b><br/> 52:22 53:3<br/> <b>compact</b> 66:8</p> | <p><b>companies</b><br/> 70:13<br/> <b>company</b> 3:8,9<br/> 3:16,17 4:10<br/> 4:11,20,22<br/> 52:4,5 59:7<br/> 65:3,4 70:17<br/> <b>comparable</b><br/> 46:10<br/> <b>comparably</b><br/> 42:12<br/> <b>compare</b> 11:21<br/> <b>comparing</b><br/> 49:13<br/> <b>compelling</b><br/> 85:23<br/> <b>complementary</b><br/> 16:18<br/> <b>complete</b> 27:21<br/> 30:6 82:19<br/> <b>completed</b><br/> 56:12 66:14<br/> 76:19<br/> <b>completes</b><br/> 73:25<br/> <b>completing</b><br/> 63:8,13<br/> <b>complicated</b><br/> 83:22<br/> <b>complimentary</b><br/> 11:6<br/> <b>comply</b> 28:25<br/> <b>complying</b><br/> 82:24</p> | <p><b>compulsory</b><br/> 33:1 80:1,3,5<br/> 80:16<br/> <b>computer</b><br/> 27:12<br/> <b>concern</b> 12:13<br/> 47:13 53:10<br/> 55:25 61:4<br/> 81:3,12<br/> <b>concerned</b> 7:1<br/> 12:12 48:10,13<br/> 78:1 86:10<br/> <b>concerns</b> 12:6<br/> 13:12,24<br/> <b>conclude</b> 20:15<br/> 21:7<br/> <b>concludes</b><br/> 48:23<br/> <b>conclusion</b> 24:4<br/> <b>conclusions</b><br/> 23:24 86:6<br/> <b>confirmed</b> 22:1<br/> <b>confused</b> 9:24<br/> 34:3<br/> <b>confusing</b> 31:3<br/> <b>confusion</b> 75:2<br/> <b>connected</b> 51:3<br/> 69:13 70:10<br/> <b>connection</b><br/> 50:21<br/> <b>consent</b> 33:16<br/> 33:16,17<br/> <b>consented</b><br/> 22:22</p> |
|--|---|--|--|

[conservation - d]

|  |  |   |   |
|--|--|---|---|
| <p><b>conservation</b><br/>1:3,6 4:3 89:2</p> <p><b>consideration</b><br/>15:8 82:9</p> <p><b>considering</b> 1:8<br/>45:16 47:13<br/>60:20</p> <p><b>consisting</b> 77:3</p> <p><b>constrained</b><br/>82:2</p> <p><b>construction</b><br/>66:8</p> <p><b>cont'd</b> 4:1</p> <p><b>contact</b> 52:25</p> <p><b>containment</b><br/>64:20</p> <p><b>contessa</b> 52:3</p> <p><b>contested</b> 52:6<br/>52:6 75:16,18<br/>86:14 87:22</p> <p><b>continue</b> 30:19<br/>65:23 70:22</p> <p><b>continued</b> 5:4<br/>7:8</p> <p><b>contours</b> 82:3</p> <p><b>contractual</b><br/>11:11,13,25<br/>37:2 49:8,14<br/>49:18 53:24,25<br/>54:15 55:15</p> <p><b>contrary</b> 74:3</p> <p><b>contributes</b><br/>10:17</p> <p><b>control</b> 8:14<br/>38:10</p> | <p><b>controlling</b><br/>37:14,23 38:2</p> <p><b>controls</b> 37:10<br/>37:17 38:7<br/>47:24</p> <p><b>conversation</b><br/>54:3</p> <p><b>copies</b> 15:14</p> <p><b>copy</b> 9:8 13:11<br/>16:6 26:24,25<br/>73:8</p> <p><b>cordial</b> 53:9</p> <p><b>correct</b> 11:23<br/>12:23 13:3<br/>17:13 18:8,14<br/>18:18,19,22,25<br/>19:1,8 22:11<br/>23:2 25:9,17<br/>25:18 26:2,2,4<br/>26:5,10,15,19<br/>26:23 28:2,3,6<br/>28:9,15,16,17<br/>29:5,12 31:8,9<br/>31:11 32:24<br/>33:15,17,20<br/>34:7,8,16,24,25<br/>35:4,6,11,16<br/>37:11,12,15,16<br/>37:18,20,24<br/>38:3,4,9 39:5,6<br/>39:16 40:15,16<br/>40:21 41:11<br/>42:24,25 43:22<br/>44:1,11,23,24<br/>45:1,2,5,6,13</p> | <p>46:5,6,10,16,23<br/>47:4,10,22<br/>48:8,9,12<br/>52:18 59:19<br/>61:10 62:25<br/>63:1,5,6 66:4<br/>66:17 77:10<br/>89:10</p> <p><b>correctly</b> 28:12</p> <p><b>corrects</b> 84:24</p> <p><b>correlating</b><br/>50:10</p> <p><b>correlative</b><br/>12:15 20:18<br/>21:1,10,17<br/>24:10 41:2<br/>48:11,14</p> <p><b>corresponden...</b><br/>13:1</p> <p><b>corresponden...</b><br/>9:9</p> <p><b>cost</b> 41:22</p> <p><b>costs</b> 41:14<br/>42:15,17</p> <p><b>coterra</b> 3:17<br/>4:20</p> <p><b>counsel</b> 14:23<br/>51:25 55:25<br/>56:4,24 62:11<br/>69:20 87:23</p> <p><b>county</b> 22:7,9<br/>68:2 71:7</p> <p><b>couple</b> 60:5</p> <p><b>course</b> 15:19<br/>55:17 74:25</p> | <p>81:25</p> <p><b>court</b> 6:10 58:6<br/>79:2 84:19<br/>85:1 89:6</p> <p><b>cover</b> 86:12</p> <p><b>covered</b> 9:3<br/>14:18,20 77:1</p> <p><b>covers</b> 38:20<br/>54:3</p> <p><b>created</b> 30:5</p> <p><b>crediting</b> 10:14</p> <p><b>criteria</b> 31:10<br/>31:12</p> <p><b>critical</b> 61:18</p> <p><b>critique</b> 60:24</p> <p><b>cross</b> 5:5,11 9:4<br/>14:23 15:3<br/>48:23 62:11,17</p> <p><b>crr</b> 2:7 89:19</p> <p><b>crude</b> 9:16</p> <p><b>ctb</b> 60:14,17<br/>66:10,20 67:6<br/>67:8,9,14,22</p> <p><b>curious</b> 19:22<br/>51:2 69:23<br/>78:24 80:4</p> <p><b>current</b> 20:8</p> <p><b>currently</b> 32:9<br/>58:9 67:21<br/>70:7</p> |
|  |  |   | <b>d</b>  |
|  |  |   | <p><b>d</b> 5:1,17 59:11<br/>59:21 60:2<br/>68:9,10 77:7</p>  |

[d1 - disregard]

|   |   |  |  |
|---|---|--|--|
| <p><b>d1</b> 5:17 59:17<br/>59:21 60:2<br/><b>d22</b> 40:2,4,9,11<br/>41:3<br/><b>d23</b> 10:18<br/><b>d3</b> 65:6,7<br/><b>d5</b> 5:17 59:18<br/>59:22 60:3<br/><b>dallas</b> 53:8<br/><b>dana</b> 56:25<br/><b>dangerous</b><br/>47:18<br/><b>darin</b> 3:18,22<br/>74:23 75:13<br/><b>data</b> 43:20<br/>46:13<br/><b>database</b> 51:14<br/><b>date</b> 2:2 27:21<br/>28:16 67:15,24<br/>73:5<br/><b>dated</b> 77:6<br/><b>dates</b> 72:25<br/><b>davro</b> 5:9 57:8<br/>57:22,24 58:8<br/><b>day</b> 6:3 13:17<br/>64:6,8 87:3<br/><b>days</b> 33:7 83:14<br/>83:17 85:2<br/>87:10,11,12,15<br/>88:3<br/><b>deadline</b> 17:17<br/>84:16 87:15<br/><b>deal</b> 39:3 53:9<br/><b>dealing</b> 51:9</p> | <p><b>dealt</b> 25:3<br/><b>debt</b> 22:19<br/><b>decent</b> 64:1<br/><b>decided</b> 76:23<br/><b>decision</b> 63:9<br/><b>decisions</b> 30:18<br/>32:12<br/><b>deem</b> 85:14<br/><b>deemed</b> 56:19<br/>61:17<br/><b>defer</b> 20:22<br/>36:7<br/><b>defined</b> 23:19<br/><b>defining</b> 56:22<br/><b>definitions</b><br/>54:25<br/><b>dellik</b> 70:11<br/><b>delmar</b> 38:16<br/>38:20 52:12<br/><b>deltas</b> 40:19<br/><b>denied</b> 35:15<br/><b>dep</b> 78:25<br/><b>department</b> 1:2<br/>4:6 89:1<br/><b>dependent</b><br/>67:16<br/><b>depending</b> 63:7<br/>63:12<br/><b>deplete</b> 8:24<br/><b>depth</b> 79:20<br/><b>derivation</b><br/>43:24<br/><b>derived</b> 41:13<br/>54:11</p> | <p><b>describe</b> 53:18<br/><b>description</b><br/>36:19<br/><b>design</b> 67:16<br/>71:8 83:1<br/><b>detected</b> 64:7<br/><b>develop</b> 24:12<br/>61:11<br/><b>developed</b> 48:7<br/>48:8 53:10<br/><b>developing</b><br/>12:7<br/><b>development</b><br/>12:17,18 13:21<br/>13:24 19:12,14<br/>25:16 32:10<br/>36:20 43:19<br/>47:7,15 48:17<br/>60:11,13 61:6<br/>63:7,11 68:3<br/>68:12 69:13<br/>70:12<br/><b>developments</b><br/>70:5<br/><b>device</b> 64:16<br/><b>devices</b> 64:12<br/>64:14<br/><b>devon</b> 3:16<br/><b>differ</b> 39:12<br/><b>difference</b> 11:3<br/>20:25 53:20,23<br/>64:6<br/><b>differences</b><br/>7:19</p> | <p><b>different</b> 11:16<br/>51:4 52:14<br/>54:20 55:1<br/>71:4,5 78:25<br/><b>difficult</b> 36:12<br/><b>difficulties</b> 88:2<br/><b>difficulty</b> 19:25<br/><b>digging</b> 82:13<br/><b>direct</b> 5:4,10<br/>7:8 11:1,4<br/>16:10 18:5<br/>21:3 24:8<br/>25:15 58:2<br/>89:12<br/><b>directing</b> 73:10<br/><b>directly</b> 10:17<br/>35:9<br/><b>disadvantaged</b><br/>40:25<br/><b>discerning</b><br/>24:19<br/><b>discount</b> 43:6<br/><b>discretion</b> 30:2<br/><b>discuss</b> 6:15<br/>78:12 81:5<br/><b>discussed</b> 6:19<br/>14:8 56:1<br/><b>discusses</b> 82:15<br/><b>discussing</b> 27:4<br/><b>discussion</b> 20:5<br/>72:14 80:19<br/><b>disposition</b><br/>89:16<br/><b>disregard</b><br/>12:13</p> |
|---|---|--|--|

[distinct - essentially]

|  |  |   |  |
|--|--|---|--|
| <p><b>distinct</b> 20:17<br/>21:9<br/><b>distinction</b> 24:1<br/>24:23<br/><b>disturbance</b><br/>60:10,15,19<br/><b>disturbing</b><br/>61:22<br/><b>division</b> 1:3,7<br/>4:3 11:7 13:10<br/>14:23 23:17<br/>24:16 25:2,6<br/>29:16,17 30:13<br/>47:16 58:12<br/>62:11 74:3<br/>81:1 82:22<br/>84:19 89:2<br/><b>division's</b> 56:4<br/><b>doable</b> 76:14<br/><b>docket</b> 1:7<br/><b>documentation</b><br/>13:4 36:8 51:7<br/><b>documents</b><br/>5:21,22,23<br/><b>doing</b> 11:9<br/>24:23 56:9<br/>82:21<br/><b>double</b> 66:18<br/><b>drain</b> 83:2<br/><b>drainage</b> 20:16<br/>20:25 21:8,13<br/>21:15 22:5<br/>23:20 82:25<br/><b>drained</b> 21:20</p> | <p><b>draining</b> 79:19<br/><b>drains</b> 22:13<br/><b>drawing</b> 42:1<br/><b>drill</b> 8:24 18:22<br/>25:11 28:19<br/>31:19,23 32:1<br/>32:3,6,7,16<br/>43:8 56:21<br/>61:6 75:10,14<br/><b>drilled</b> 19:5<br/>22:20 29:17,20<br/>30:14,15 31:5<br/>32:17 36:15<br/>56:11<br/><b>drilling</b> 27:18<br/>27:20,23 28:14<br/>43:11,12,15<br/>63:16<br/><b>drillings</b> 82:8<br/><b>drive</b> 4:7<br/><b>drives</b> 32:12<br/><b>due</b> 87:12<br/><b>duly</b> 57:25<br/><b>duty</b> 82:16,17</p> | <p><b>earnings</b> 77:5<br/><b>east</b> 44:17,18<br/><b>echo</b> 35:18<br/><b>economic</b> 42:2<br/>43:13,16<br/><b>economics</b><br/>41:18<br/><b>eddy</b> 71:7<br/><b>edits</b> 32:22<br/><b>education</b><br/>58:15<br/><b>effective</b> 71:19<br/><b>efforts</b> 56:14<br/><b>either</b> 46:12<br/>75:10,14 79:1<br/>83:1<br/><b>either's</b> 52:16<br/><b>elaborate</b> 28:23<br/><b>election</b> 32:22<br/>32:24 33:10<br/>36:4<br/><b>elections</b> 36:7<br/><b>emission</b> 63:20<br/>64:2,12,14<br/>70:13,17<br/><b>emissions</b> 64:5<br/>64:10 66:1<br/><b>employed</b> 58:6<br/>58:9 89:13<br/><b>encounter</b><br/>69:21<br/><b>ends</b> 21:20<br/><b>energy</b> 1:2 3:8<br/>3:16,17,17 4:6<br/>4:10,20,22</p> | <p>59:7 89:1<br/><b>enforce</b> 30:2<br/><b>enforced</b> 29:9,9<br/>29:25<br/><b>engineer</b> 31:24<br/>32:14 39:25<br/>44:12 58:10,16<br/>58:16 76:23<br/><b>engineer's</b> 40:3<br/>41:19 60:6<br/><b>engineering</b><br/>18:4 32:12<br/>42:8 44:3,4,6<br/>58:20 62:6<br/><b>entire</b> 9:17 54:6<br/>54:16<br/><b>entity</b> 13:14<br/>53:8<br/><b>environmental</b><br/>65:7<br/><b>environment...</b><br/>60:20<br/><b>equal</b> 50:19<br/><b>equipment</b><br/>62:24 63:2,17<br/><b>eric</b> 68:4,10<br/>75:6<br/><b>errata</b> 17:18<br/><b>error</b> 17:16<br/><b>eru</b> 43:21<br/><b>especially</b> 23:3<br/><b>esquire</b> 3:3,10<br/>3:18 4:12<br/><b>essentially</b> 9:4<br/>12:4 79:20</p> |
|  | <p><b>e</b></p>  |   |  |
|  | <p><b>e</b> 3:1,1 4:1,1 5:1<br/>10:1 50:24<br/>51:3 58:9,9<br/>68:10 87:22<br/><b>e.g.l.</b> 13:10,12<br/>13:14 14:7<br/>46:25<br/><b>e22</b> 40:8<br/><b>early</b> 53:3</p>   |   |  |

[estimate - fair]

|  |   |  |  |
|--|---|--|--|
| <p><b>estimate</b> 26:12<br/> <b>et</b> 56:25 75:18<br/> 79:3<br/> <b>eur</b> 43:24 44:6<br/> 44:8<br/> <b>event</b> 87:13<br/> <b>everybody</b><br/> 42:21 56:24<br/> <b>everybody's</b><br/> 21:18<br/> <b>everyone's</b><br/> 87:16<br/> <b>evidence</b> 5:16<br/> 10:3 13:5 60:3<br/> 73:23 76:21<br/> 78:7 83:9<br/> 86:23<br/> <b>exact</b> 18:11<br/> 21:3<br/> <b>exactly</b> 28:4<br/> 45:16 74:6<br/> <b>examination</b><br/> 5:4,5,6,7,10,11<br/> 5:12 7:8 14:23<br/> 15:3 48:23<br/> 49:5 50:5 58:2<br/> 62:11,17 69:1<br/> <b>examiner</b> 2:4<br/> 6:2,13,17,23<br/> 7:2,4 14:24<br/> 15:2 19:24<br/> 20:2 24:5,17<br/> 29:22,23 30:9<br/> 30:21 35:19<br/> 48:19,21,22,24</p> | <p>49:25 50:1<br/> 53:13 55:5,10<br/> 55:21 57:1,11<br/> 57:15,19,23<br/> 58:18,21,24<br/> 59:23,25 62:12<br/> 62:15 68:17,22<br/> 71:22 72:1,5,8<br/> 72:16 73:16,20<br/> 74:16,24 76:1<br/> 76:3,6,18,22<br/> 77:15,20 78:3<br/> 78:9,10,13,17<br/> 81:22 83:5,7<br/> 83:16,19 84:6<br/> 84:12,17,22<br/> 85:5,17,21<br/> 86:3,9,16,20<br/> 87:3,7,25<br/> <b>examiners</b><br/> 11:21 49:2<br/> <b>examining</b> 6:9<br/> <b>example</b> 27:25<br/> 41:5<br/> <b>exceed</b> 46:14<br/> <b>exceeds</b> 37:13<br/> 38:1<br/> <b>excellence</b><br/> 61:14<br/> <b>except</b> 42:23<br/> 48:4<br/> <b>excerpt</b> 16:7<br/> <b>excerpts</b> 77:19<br/> <b>excited</b> 70:12</p> | <p><b>excuse</b> 65:11<br/> <b>exhibit</b> 5:19,20<br/> 5:21,22,23<br/> 7:15 9:10 12:5<br/> 12:22,22 13:2<br/> 16:10,19 17:2<br/> 17:3 33:23<br/> 34:9,10 35:11<br/> 37:1 40:2,4,12<br/> 41:7,8 44:14<br/> 46:17 49:9<br/> 50:7 56:11,19<br/> 56:21 59:11,11<br/> 59:21 60:12<br/> 65:6 72:18,19<br/> 72:24 73:3,7<br/> 73:11 77:7<br/> <b>exhibits</b> 5:15<br/> 5:17 9:23<br/> 10:13,18 11:1<br/> 14:15 15:20<br/> 16:11,16,23,24<br/> 26:14 34:7<br/> 41:4 43:22<br/> 52:2 59:14,17<br/> 60:2,6 69:8<br/> 72:12 73:14,21<br/> 73:22 76:25<br/> 77:2 78:6<br/> <b>existing</b> 34:23<br/> <b>exists</b> 67:3<br/> <b>expand</b> 66:9,9<br/> 66:21,23<br/> <b>expect</b> 71:8</p> | <p><b>experience</b> 25:2<br/> 30:13 58:15<br/> 70:4<br/> <b>expert</b> 58:19<br/> <b>expires</b> 89:20<br/> <b>explain</b> 7:25<br/> 9:6,12 10:24<br/> 11:2 13:10<br/> 14:3 28:23<br/> 58:5 61:20,23<br/> <b>explained</b> 8:1<br/> 55:16<br/> <b>explaining</b> 7:18<br/> <b>exploration</b><br/> 12:18<br/> <b>expressed</b> 31:1<br/> <b>extended</b> 87:16<br/> <b>extension</b> 29:2<br/> 31:8,10,12,13<br/> <b>extensions</b><br/> 56:13<br/> <b>extremely</b><br/> 32:20</p> |
| <b>f</b>   |   |  |  |
| <p><b>facet</b> 63:23<br/> <b>facilities</b> 58:10<br/> 58:16,19<br/> <b>facility</b> 60:6<br/> 62:6 67:13,16<br/> <b>fact</b> 53:6 86:6<br/> <b>facts</b> 35:9<br/> <b>factual</b> 54:23<br/> <b>fails</b> 28:25<br/> <b>fair</b> 23:15 25:4<br/> 25:13,14 26:11</p>  |   |  |  |

[fair - garcia]

|   |   |  |   |
|---|---|--|---|
| <p>27:7 35:10<br/>36:9 81:9<br/>84:11<br/><b>fairly</b> 14:11<br/><b>faith</b> 33:5<br/>56:14<br/><b>familiar</b> 16:19<br/>16:20 17:24<br/>18:2,17 26:17<br/>38:14 59:5<br/><b>family</b> 52:9<br/><b>far</b> 7:1 52:15<br/>75:9 86:10<br/><b>faskin</b> 70:11<br/><b>favor</b> 7:21<br/>50:18<br/><b>fe</b> 3:6,13,21 4:8<br/>4:15 88:3<br/><b>fechtel</b> 31:25<br/><b>federal</b> 69:7<br/><b>feel</b> 24:3 77:21<br/><b>felicia</b> 2:4 6:2<br/>74:22 79:25<br/><b>fide</b> 25:5<br/><b>figure</b> 81:13<br/><b>file</b> 81:14<br/><b>filed</b> 31:20 59:6<br/>59:11 66:6<br/>72:18 77:2<br/>81:19<br/><b>files</b> 80:23<br/><b>final</b> 47:21 57:7<br/>57:21 89:15<br/><b>find</b> 15:17 79:1</p> | <p><b>findings</b> 86:6<br/>86:13<br/><b>fine</b> 24:23 51:8<br/>57:12 76:15<br/>80:10 86:15<br/><b>fingertips</b><br/>15:23,25<br/><b>finish</b> 28:22<br/><b>fires</b> 87:14<br/><b>firms</b> 56:25<br/><b>first</b> 8:2 13:16<br/>20:3 32:8,10<br/>32:17 34:12<br/>37:9 51:17<br/>57:25<br/><b>five</b> 28:5,8<br/>57:13 63:11<br/>64:3<br/><b>flare</b> 65:13,14<br/>70:17,22<br/><b>flares</b> 65:11<br/><b>flaring</b> 65:2<br/><b>flawed</b> 41:20<br/><b>flip</b> 40:6 80:13<br/><b>flow</b> 60:25 61:5<br/>61:7,11,17,21<br/>62:3,22,25<br/>69:4<br/><b>fly</b> 15:18<br/><b>flyover</b> 64:6<br/><b>flyovers</b> 63:25<br/><b>focus</b> 44:24<br/>86:13<br/><b>focused</b> 64:2</p> | <p><b>follow</b> 49:1<br/>55:11,13 68:18<br/>70:22 72:2<br/><b>following</b> 10:12<br/>12:25 13:15<br/>25:21 62:21<br/>73:2,6<br/><b>follows</b> 7:7<br/>58:1<br/><b>foot</b> 61:25<br/><b>foothold</b> 51:22<br/><b>footprint</b> 51:23<br/>52:14<br/><b>foran</b> 6:6 10:11<br/>10:21<br/><b>foran's</b> 10:14<br/><b>foregoing</b> 89:8<br/>89:9<br/><b>forest</b> 87:13<br/><b>forever</b> 81:17<br/><b>forgotten</b> 12:3<br/><b>form</b> 52:8<br/>89:11<br/><b>formation</b> 7:21<br/>50:13,13,15,15<br/>50:18 52:11<br/>78:25 80:6,16<br/><b>formations</b><br/>18:3 83:1,2<br/><b>forth</b> 54:9<br/>81:17,17<br/><b>forward</b> 69:16<br/>75:25 81:10<br/>86:22</p> | <p><b>found</b> 12:21<br/><b>foundation</b><br/>30:12,20<br/><b>four</b> 8:11 19:5<br/>36:15 51:23<br/>60:14,17 61:10<br/>84:4 85:9<br/><b>fourth</b> 72:9<br/><b>frame</b> 76:14<br/>85:4<br/><b>frames</b> 29:17<br/><b>francis</b> 4:7<br/><b>frankly</b> 86:22<br/><b>friday</b> 2:2<br/><b>front</b> 15:16<br/>33:24 34:10<br/>81:21<br/><b>full</b> 30:2 58:5<br/>63:11<br/><b>fully</b> 17:24<br/><b>fumble</b> 15:16<br/><b>further</b> 14:21<br/>49:25 51:7<br/>55:18 62:10<br/>72:4 75:24<br/>78:11 89:13<br/><b>fuse</b> 83:25<br/><b>future</b> 56:17</p> |
|   |   |  | <b>g</b>  |
|   |   |  | <p><b>g</b> 5:19 68:9<br/>72:19 73:14,21<br/>73:22<br/><b>garcia</b> 4:5 5:7<br/>5:12 16:22,25<br/>17:1 50:2,4,6</p>  |

[garcia - hearing]

|  |   |   |  |
|--|---|---|--|
| <p>53:15,17 55:6<br/>55:14,23 56:7<br/>57:3 68:23,24<br/>69:2 71:23<br/>74:2,22,24<br/>75:1 76:2,10<br/>76:15 77:8<br/>78:15,18,19<br/>79:5,16,23<br/>80:10,21 81:4<br/>82:1,4,6 83:6,8<br/>83:10,20<br/><b>garcia's</b> 76:4<br/><b>gas</b> 6:7 12:9,10<br/>20:16 51:1<br/>69:10,14 70:1<br/>70:6,14 71:20<br/><b>gathering</b> 66:4<br/><b>generally</b> 21:11<br/>21:12 63:21<br/><b>generous</b> 85:9<br/><b>geologist</b> 4:22<br/>22:1 76:24<br/><b>geology</b> 14:12<br/>18:4 32:11<br/>42:8<br/><b>getting</b> 24:3<br/>28:18,21,22<br/>29:20 35:18<br/>69:15<br/><b>gibson</b> 2:7 6:10<br/>89:6,19<br/><b>give</b> 16:14<br/>32:23 51:12</p> | <p><b>given</b> 47:19<br/><b>gives</b> 81:23<br/>85:13<br/><b>giving</b> 24:15<br/>85:3<br/><b>go</b> 7:3 16:9<br/>19:9 25:11<br/>37:1 40:2<br/>44:14 46:17<br/>48:2 53:21<br/>56:18 62:23,24<br/>63:4 70:16<br/>75:24 78:17<br/>80:7 81:16<br/>85:2<br/><b>goes</b> 67:11<br/><b>going</b> 7:12 9:14<br/>13:19 20:10<br/>22:4 23:25<br/>24:22 26:9<br/>27:5 28:19<br/>30:10 33:6<br/>34:22 37:7<br/>40:3 41:23<br/>42:2,8,12 43:8<br/>44:15 50:21,25<br/>61:22 62:23<br/>63:4 66:25<br/>69:21 79:21<br/>81:11 83:20<br/>85:6 86:17<br/>87:1<br/><b>good</b> 15:7 29:2<br/>31:11,14,21<br/>33:5 55:15</p> | <p>56:14 62:19<br/>79:9<br/><b>gordita</b> 68:4,8<br/>68:9<br/><b>granted</b> 56:13<br/>61:24<br/><b>grasp</b> 26:6<br/><b>great</b> 7:12 10:5<br/>11:24 74:18<br/><b>green</b> 52:5<br/><b>group</b> 38:15<br/><b>guess</b> 30:16<br/>50:20 51:1<br/>52:21 53:21<br/>54:17 56:2<br/>69:23 70:2<br/>75:9 77:13<br/>78:19,23 79:16<br/>82:22 86:4<br/><b>guidelines</b> 65:3<br/><b>guys</b> 52:22 56:8<br/>69:23 71:17<br/>75:13 78:21<br/>80:21</p> <hr/> <p style="text-align: center;"><b>h</b></p> <hr/> <p><b>h</b> 5:20 73:7,12<br/>73:14,21,22<br/><b>hailee</b> 4:4<br/><b>half</b> 44:17,17<br/>44:18,18 52:8<br/>52:13 54:11,14<br/>75:7<br/><b>halves</b> 54:3<br/><b>handful</b> 28:10<br/>39:8</p> | <p><b>handle</b> 69:17<br/><b>handles</b> 67:13<br/><b>hanging</b> 88:5<br/><b>happen</b> 39:24<br/>47:7<br/><b>happy</b> 55:18<br/><b>hart</b> 6:12<br/><b>hat</b> 71:6<br/><b>hawk</b> 71:6<br/><b>head</b> 44:9<br/><b>hear</b> 7:10,11,12<br/>15:7<br/><b>heard</b> 13:16<br/>30:16 42:3<br/>85:24<br/><b>hearing</b> 1:5 2:1<br/>6:2,13,23 7:2<br/>10:18 13:18<br/>14:21,24 15:12<br/>20:2 23:22<br/>24:17 29:13,22<br/>30:9,21 34:13<br/>48:21,24 50:1<br/>53:13 55:5,10<br/>55:21,24 56:4<br/>57:1,3,6,11,15<br/>57:17,19,23<br/>58:21,24 59:23<br/>59:25 62:9,12<br/>62:15 68:17,22<br/>69:15 71:22<br/>72:1,3,5,8,16<br/>72:17 73:13,16<br/>73:20,24 74:9<br/>74:16,24 76:1</p> |
|--|---|---|--|

[hearing - interest]

|   |   |   |   |
|---|---|---|---|
| <p>76:3,6,18<br/>77:15,17,20<br/>78:3,8,10,13,13<br/>78:16,17 81:3<br/>81:22 83:5,7<br/>83:16,19 84:6<br/>84:12,17,22<br/>85:5,17,21<br/>86:3,5,9,20<br/>87:3,7,25 88:7<br/><b>hearings</b> 75:16<br/>75:19<br/><b>held</b> 20:5<br/><b>helpful</b> 83:8<br/><b>helps</b> 75:20<br/><b>hiding</b> 13:5<br/><b>high</b> 64:12,14<br/>69:22,24 70:16<br/><b>highland</b> 10:2<br/>38:21 46:19<br/><b>highlighted</b><br/>13:1<br/><b>highway</b> 63:10<br/><b>hill</b> 9:21 46:19<br/>46:25 51:1,4,6<br/>51:10<br/><b>historical</b> 17:3<br/>33:24 36:14<br/><b>historically</b><br/>31:3<br/><b>history</b> 36:11<br/>36:19 48:16<br/>80:9<br/><b>hog</b> 40:12,25<br/>41:5,5,5,8,9</p> | <p><b>hold</b> 19:23 20:4<br/>44:13<br/><b>holding</b> 35:13<br/><b>hole</b> 29:20<br/><b>holland</b> 6:11<br/><b>honorable</b> 2:4<br/><b>horizontal</b> 74:4<br/><b>host</b> 4:19<br/><b>hours</b> 64:6<br/><b>hudson</b> 38:15<br/>38:16,18,21,22<br/>52:9,12<br/><b>human</b> 17:19<br/><b>hunter</b> 10:11<br/>34:20 35:13<br/>44:22 45:3,17<br/>45:19 46:8,14<br/><b>hypothetical</b><br/>22:25<br/><b>hypothetically</b><br/>42:20</p> | <p><b>important</b><br/>60:19 61:9,12<br/>79:10<br/><b>impose</b> 85:22<br/><b>imposed</b> 41:22<br/>42:17<br/><b>imposes</b> 41:14<br/>42:14<br/><b>imposition</b><br/>33:13<br/><b>incident</b> 64:8<br/><b>include</b> 67:5<br/><b>included</b> 6:6<br/>9:9,20 10:9<br/>12:2 58:14<br/>72:24 80:18<br/><b>includes</b> 67:8<br/>76:12<br/><b>including</b> 5:17<br/>60:2<br/><b>indicate</b> 11:15<br/>11:17 65:21<br/>67:21<br/><b>indicated</b> 73:1<br/>73:5<br/><b>indicates</b> 7:21<br/>72:20<br/><b>indicating</b> 12:6<br/>16:21 73:9<br/><b>indicator</b> 50:12<br/><b>individual</b><br/>82:20<br/><b>individuals</b><br/>43:1</p> | <p><b>information</b><br/>7:18 44:1 78:1<br/><b>informative</b><br/>46:12<br/><b>informed</b> 39:4<br/><b>informs</b> 39:2<br/><b>infrastructure</b><br/>69:12<br/><b>initial</b> 26:22<br/>28:15 29:16<br/>31:6 56:22<br/>66:13 76:13<br/>83:24<br/><b>initially</b> 63:10<br/>74:5<br/><b>install</b> 61:5,6<br/>61:11,21 62:2<br/>62:25 63:9,13<br/>63:18 65:10,12<br/>65:14,17 69:3<br/><b>intelligent</b><br/>24:15<br/><b>intended</b> 56:10<br/>56:21<br/><b>intent</b> 32:9<br/>33:5<br/><b>intention</b> 17:13<br/><b>intentionally</b><br/>36:12<br/><b>interest</b> 8:6,6,7<br/>8:8,10,18<br/>10:14 11:7,9<br/>11:16,18,22<br/>12:15 18:1,7<br/>21:23 23:9</p> |
|   | <p><b>i</b></p>   |   |   |
|   | <p><b>idea</b> 74:19<br/><b>illustration</b><br/>46:15<br/><b>illustrations</b><br/>46:11<br/><b>image</b> 14:3<br/><b>immediately</b><br/>33:4<br/><b>impact</b> 64:9<br/><b>impactful</b><br/>61:18<br/><b>impairment</b><br/>20:18 21:10</p>   |   |   |

[interest - lands]

|  |   |   |  |
|--|---|---|--|
| 33:18 37:11,15<br>37:18,19,24<br>38:3,8 41:22<br>41:24 42:16,18<br>46:1,4 47:1,2<br>47:21,24 48:3<br>48:7,8 49:8,13<br>52:13 53:20<br>54:6,15,19,19<br>54:23 81:5<br>89:15<br><b>interested</b> 17:9<br>27:3 47:3<br><b>interests</b> 7:22<br>11:13,25 49:17<br>49:18 54:20,21<br>55:15<br><b>interim</b> 13:8<br><b>interject</b> 29:14<br><b>internally</b><br>64:22<br><b>interpreted</b><br>74:3<br><b>interpreting</b><br>55:25<br><b>inventory</b><br>17:23,25 18:3<br><b>investor</b> 77:3<br>77:25<br><b>invitation</b><br>81:25<br><b>invite</b> 86:20<br><b>involved</b> 70:13<br><b>ish</b> 18:10 | <b>issue</b> 11:9<br>25:10 29:21<br>48:11 56:9<br>70:18 74:11,15<br>76:16 78:22<br>79:6,13,16<br><b>issued</b> 9:19<br>12:17 13:22<br>23:17 30:8<br>35:23 83:11,12<br><b>issues</b> 24:4,7<br>69:21 79:10,10<br>81:19,21 84:5<br>85:14<br><b>item</b> 72:10<br><b>items</b> 78:15   | 69:14<br><b>joseph</b> 10:11<br><b>josephine</b><br>38:17,20<br><b>judgment</b><br>34:15 35:13,22<br>36:5<br><b>july</b> 13:16 53:3<br>72:19 73:6<br><b>jump</b> 8:15<br><b>june</b> 53:3<br><b>justify</b> 79:24   | 41:17 44:10<br>45:25 47:1<br>48:15 51:2,13<br>53:4 54:7,25<br>56:13 61:2<br>70:4 74:6,11<br>78:1 79:7 83:8<br>84:3 86:12<br>87:18<br><b>knowing</b> 81:11<br><b>knowingly</b><br>79:19<br><b>knowledge</b><br>30:17 31:18<br>67:13<br><b>known</b> 61:15<br><b>knows</b> 51:25<br><b>kody</b> 4:24 |
|  | <b>j</b>  | <b>k</b>  | <b>l</b>   |
|  | <b>j</b> 5:22 76:25<br>78:6<br><b>james</b> 3:11 4:13<br><b>jamesbruc</b> 3:14<br>4:16<br><b>jan</b> 2:7 6:10<br>89:6,19<br><b>javalina</b> 38:20<br>38:25 39:21<br><b>jim</b> 3:10 4:12<br><b>joa</b> 35:25 36:1<br>54:2,3,4,23<br><b>job</b> 2:8<br><b>john</b> 4:5,20<br>15:13 38:16<br><b>joker</b> 14:9 23:4<br>25:20 44:18,19<br>50:22 67:8 | <b>k</b> 5:23 77:1<br>78:6<br><b>keep</b> 24:22,23<br>34:14 81:1<br><b>keeping</b> 80:23<br><b>kind</b> 8:3,5,10<br>8:15,17,20<br>9:14 11:5,8<br>12:13 13:18<br>14:8 33:11<br>53:4 54:2<br>66:13 75:19<br>79:24 81:6<br>86:14<br><b>kinds</b> 30:17<br><b>knew</b> 31:16,18<br><b>know</b> 6:9,19<br>7:14 8:23 9:4<br>9:18 10:4,12<br>12:10 13:20<br>15:16 30:7<br>39:7,15 40:6 | <b>l</b> 58:9<br><b>laid</b> 30:11<br><b>land</b> 8:21 14:15<br>32:13 44:3<br>61:16,17<br><b>landman</b> 4:20<br>19:20 25:1<br>39:2 52:20<br>53:18 76:24<br><b>landman's</b><br>15:13 34:6,6<br>36:19<br><b>landowners</b><br>25:3<br><b>lands</b> 22:3<br>43:25 70:19                             |

[language - madam]

|  |   |  |  |
|--|---|--|--|
| <p><b>language</b> 20:15<br/>20:19,23 21:3<br/>21:8 27:17<br/>29:4,8,24 30:8<br/>30:23,25 31:2<br/>32:22 33:10<br/>75:20</p> <p><b>large</b> 36:24</p> <p><b>larger</b> 8:13,18<br/>38:10 44:22<br/>46:4</p> <p><b>largest</b> 67:15</p> <p><b>law</b> 3:11 4:13<br/>19:20 56:25<br/>86:6</p> <p><b>lawyers</b> 53:19<br/>86:23</p> <p><b>lay</b> 30:19</p> <p><b>layman</b> 25:2</p> <p><b>lea</b> 18:17 22:7,9<br/>22:10,12 68:1</p> <p><b>learned</b> 55:2</p> <p><b>leasehold</b> 11:8<br/>11:9,12,21<br/>14:6,10 37:2<br/>49:8,14,17,19<br/>49:21 53:21,24<br/>53:25 54:10,10<br/>54:14</p> <p><b>leaseholder</b><br/>53:23</p> <p><b>left</b> 7:13,17,24<br/>10:10 37:7<br/>53:7</p> | <p><b>leg</b> 70:10</p> <p><b>legal</b> 20:22<br/>21:12 23:13,23<br/>24:3,4,7,13,14<br/>24:20,20 29:21<br/>79:17 81:6,7<br/>81:18</p> <p><b>letter</b> 12:4,17<br/>13:9,11,22<br/>14:4 72:23<br/>73:1</p> <p><b>letters</b> 9:19<br/>46:18 73:2</p> <p><b>liability</b> 23:24</p> <p><b>liable</b> 23:20</p> <p><b>liberty</b> 33:3,16</p> <p><b>license</b> 89:20</p> <p><b>likely</b> 61:10</p> <p><b>limitation</b><br/>85:20</p> <p><b>limitations</b><br/>85:22</p> <p><b>limited</b> 81:2</p> <p><b>lindys</b> 38:22</p> <p><b>line</b> 37:7,22<br/>62:22,25 69:22<br/>69:24</p> <p><b>lines</b> 7:22 60:25<br/>61:5,7,11,21<br/>62:3 64:15<br/>69:4</p> <p><b>listed</b> 9:21 10:7</p> <p><b>lists</b> 9:16</p> <p><b>little</b> 8:17 9:24<br/>18:24 19:25</p> | <p>31:2 32:23,25<br/>34:3 40:13,14<br/>44:25 45:5,11<br/>46:8 47:4 70:8<br/>76:7 80:9<br/>83:20,23</p> <p><b>located</b> 67:25<br/>68:1</p> <p><b>location</b> 2:5<br/>64:4,18 66:23<br/>67:18</p> <p><b>long</b> 51:17 79:7</p> <p><b>longer</b> 45:20<br/>80:9</p> <p><b>look</b> 10:24,25<br/>33:23 37:8,21<br/>41:3 44:15<br/>46:8,10 75:8</p> <p><b>looked</b> 18:23<br/>32:18 34:5<br/>37:3</p> <p><b>looking</b> 18:15<br/>34:2 36:14<br/>37:6,6 38:13<br/>40:11 44:16<br/>45:25 46:24<br/>48:15 49:7<br/>51:18 53:11<br/>70:25 83:9<br/>86:21</p> <p><b>looks</b> 10:14<br/>18:21,24 26:3<br/>27:17 29:8,25<br/>36:11 38:19,23<br/>71:11</p> | <p><b>lost</b> 16:22</p> <p><b>lot</b> 9:3 22:7,8<br/>22:25 40:6<br/>42:1,2 54:1,9<br/>64:9 75:1</p> <p><b>low</b> 65:13,14<br/>70:8</p> <p><b>lower</b> 64:20<br/>65:23,24 66:2</p> <p><b>lp</b> 3:16</p> <p><b>lucrative</b> 12:16</p> <hr/> <p style="text-align: center;"><b>m</b></p> <hr/> <p><b>m</b> 58:9 68:11</p> <p><b>macha</b> 5:3 6:9<br/>7:5,10,24 9:2<br/>10:22 12:2<br/>13:9 14:3,14<br/>14:22 15:1,5<br/>20:12 24:2,7<br/>24:15,18,22<br/>30:12,16,23<br/>49:7 50:3 55:7<br/>55:16,22 57:4</p> <p><b>madam</b> 6:17<br/>7:4 14:21 15:2<br/>19:24 23:22<br/>24:5 29:13,23<br/>35:18 48:19,22<br/>49:24 57:6<br/>58:18 62:9,15<br/>72:3,17 73:13<br/>73:24 76:3,22<br/>77:17 78:8<br/>81:3 83:19<br/>86:5,16</p> |
|--|---|--|--|

[made - native]

|   |  |   |   |
|---|--|---|---|
| <p><b>made</b> 12:9<br/>31:16 36:12<br/>52:25 60:23<br/>75:7 77:4</p> <p><b>magnum</b> 10:11<br/>34:21 35:13<br/>44:22 45:3,16<br/>45:19 46:8,14</p> <p><b>mail</b> 10:1 50:24<br/>51:3 87:22</p> <p><b>mailing</b> 73:7</p> <p><b>mailings</b> 73:4</p> <p><b>main</b> 38:5</p> <p><b>maintain</b> 65:23<br/>82:19</p> <p><b>majority</b> 37:19<br/>38:8 45:17,18<br/>46:1 47:24</p> <p><b>make</b> 12:11<br/>14:19 15:10,15<br/>17:22 24:1,6<br/>32:23 42:2<br/>43:13 49:4,11<br/>50:20 56:23<br/>57:10,14 63:9<br/>73:25 74:2,10<br/>75:5,5 76:4<br/>81:13,22 86:25</p> <p><b>makes</b> 50:21</p> <p><b>making</b> 24:4,23</p> <p><b>manifest</b> 73:4</p> <p><b>map</b> 18:15,23</p> <p><b>marked</b> 59:11<br/>59:17 72:19<br/>73:11</p> | <p><b>marks</b> 10:6<br/>46:24,25</p> <p><b>marlene</b> 4:19<br/>84:23 85:6<br/>87:19</p> <p><b>marsh</b> 68:12</p> <p><b>massive</b> 41:13<br/>41:21</p> <p><b>math</b> 26:2<br/>41:11,12 66:17</p> <p><b>matter</b> 1:5 6:15<br/>52:16 63:22<br/>69:15</p> <p><b>matters</b> 24:13<br/>24:14,20,20</p> <p><b>maximum</b><br/>67:22</p> <p><b>mckenzie</b> 3:5<br/>3:20</p> <p><b>mealtime</b> 64:3</p> <p><b>mean</b> 21:16,17<br/>23:25 36:13<br/>40:18 45:22<br/>51:12 56:7<br/>64:14 75:15<br/>80:12 81:8<br/>84:4</p> <p><b>means</b> 9:6<br/>50:18 56:2</p> <p><b>meant</b> 46:11</p> <p><b>meet</b> 66:21</p> <p><b>memo</b> 80:20<br/>81:7</p> <p><b>memory</b> 82:14</p> | <p><b>mentioned</b><br/>46:18 49:20<br/>86:5</p> <p><b>merits</b> 47:9,9</p> <p><b>methane</b> 64:5</p> <p><b>method</b> 71:19</p> <p><b>mexico</b> 1:1 68:1<br/>71:1 89:1,6</p> <p><b>middle</b> 74:9</p> <p><b>million</b> 43:9</p> <p><b>mine</b> 47:22</p> <p><b>minerals</b> 1:2<br/>4:6 21:19<br/>22:16 23:10<br/>78:24 89:1</p> <p><b>minimal</b> 42:5</p> <p><b>minimum</b><br/>83:13</p> <p><b>minor</b> 47:23<br/>49:3</p> <p><b>minute</b> 19:19<br/>19:23 57:13</p> <p><b>minutes</b> 57:16</p> <p><b>miscitation</b><br/>18:24</p> <p><b>miscited</b> 84:1</p> <p><b>missed</b> 50:8</p> <p><b>mistakes</b> 46:21</p> <p><b>modifying</b><br/>75:17,17</p> <p><b>moment</b> 29:14<br/>37:3 55:9</p> <p><b>money</b> 42:2<br/>43:13</p> | <p><b>monitor</b> 64:4</p> <p><b>monitoring</b><br/>64:3,4,10</p> <p><b>monster</b> 80:24</p> <p><b>months</b> 18:12<br/>18:14 19:5</p> <p><b>moore</b> 38:25<br/>39:21</p> <p><b>morning</b> 15:7<br/>62:19 64:7<br/>82:13</p> <p><b>motion</b> 34:15<br/>35:12 81:25<br/>82:3,4 87:10</p> <p><b>motions</b> 78:23</p> <p><b>move</b> 9:2 57:5<br/>59:20 69:16<br/>73:14</p> <p><b>moving</b> 8:4</p> <p><b>mrc</b> 3:8 4:10</p> <p><b>mueller</b> 4:22</p> <p><b>multi</b> 63:23</p> <p><b>multiple</b> 28:2<br/>63:14 69:3,4</p> <p><b>murphy</b> 4:24</p> <hr/> <p style="text-align: center;"><b>n</b></p> <hr/> <p><b>n</b> 3:1 4:1 5:1<br/>58:9 68:11</p> <p><b>name</b> 50:25<br/>51:14 58:5,8<br/>62:19</p> <p><b>names</b> 52:21</p> <p><b>native</b> 60:21<br/>61:18</p> |
|---|--|---|---|

[natural - okay]

|  |   |  |   |
|--|---|--|---|
| <p><b>natural</b> 1:2 4:6<br/>89:1<br/><b>near</b> 66:14<br/><b>necessarily</b><br/>81:7<br/><b>necessary</b><br/>55:20 86:19<br/><b>need</b> 6:15 9:5<br/>51:6 57:11<br/>74:6,12 76:23<br/>77:21 78:5<br/>80:10 84:8<br/>86:23<br/><b>needed</b> 16:5<br/>29:19<br/><b>needs</b> 56:17<br/>57:22<br/><b>neither</b> 89:13<br/><b>net</b> 43:2<br/><b>neutral</b> 9:18,25<br/><b>neutrality</b><br/>47:20<br/><b>never</b> 31:3<br/><b>new</b> 1:1 6:9<br/>61:11 68:1<br/>71:1 89:1,6<br/><b>night</b> 18:16<br/><b>nm</b> 2:6 3:6,13<br/>3:21 4:8,15<br/>89:20<br/><b>non</b> 33:16,17<br/>61:18<br/><b>north</b> 18:16<br/>22:10,12 52:8<br/>52:13</p> | <p><b>northern</b> 6:6<br/>12:9,10,12<br/><b>northern's</b><br/>12:21<br/><b>nos</b> 1:9 18:17<br/><b>note</b> 6:1 8:9,20<br/>10:16 20:5<br/>57:17 60:2,13<br/>60:19 61:9,12<br/>73:22 78:6<br/>83:10 88:7<br/><b>notes</b> 44:14<br/>48:20 53:11,12<br/>53:16<br/><b>notice</b> 17:18<br/>24:17 57:8<br/>72:11,20,23,25<br/>73:9<br/><b>noticed</b> 22:21<br/><b>notified</b> 87:19<br/><b>notwithstandi...</b><br/>88:2<br/><b>nsp</b> 56:16,17<br/><b>nuances</b> 21:12<br/><b>number</b> 10:24<br/>27:10 28:5<br/>38:6 39:19<br/>63:7,12 67:17<br/>76:12<br/><b>numbers</b> 39:12<br/>39:13 49:17<br/>77:24<br/><b>numerous</b><br/>36:20</p> | <p><b>o</b><br/><b>o</b> 68:9,10<br/><b>oath</b> 51:13<br/>57:25<br/><b>objected</b> 80:17<br/><b>objection</b> 58:22<br/>58:23 59:24<br/>73:16,18 77:18<br/><b>objections</b><br/>77:14<br/><b>obligated</b> 25:8<br/><b>obtains</b> 29:1<br/><b>obviously</b> 8:3,9<br/>13:4 38:11<br/>77:10,13<br/><b>oc</b> 25:22<br/><b>occur</b> 70:12<br/><b>occurrence</b><br/>22:7,8,9 23:3<br/><b>ocd</b> 1:7 11:11<br/>18:15 30:1<br/>49:20 70:23<br/>80:5<br/><b>offer</b> 14:22<br/>62:10<br/><b>officer</b> 14:21<br/>23:22 29:13<br/>57:7 62:9 72:3<br/>72:17 73:13,24<br/>77:17 81:4<br/>86:5<br/><b>offline</b> 75:3,8<br/>75:22<br/><b>offset</b> 14:9</p> | <p><b>ogi</b> 63:25<br/><b>oh</b> 19:11 20:2<br/>53:14<br/><b>oil</b> 1:3,6 4:3 6:6<br/>6:7 10:6 12:9<br/>12:10 20:16<br/>46:24,25 51:1<br/>65:22 69:10,14<br/>70:1,6,14 89:2<br/><b>okay</b> 7:10<br/>15:15 17:6,11<br/>18:5,11,13,15<br/>19:2,9,11,17,17<br/>20:12,23 22:23<br/>23:5,15 24:25<br/>25:23 26:2,11<br/>27:8 28:12<br/>29:7 30:9,22<br/>31:23 32:21<br/>33:8,23 34:2<br/>34:19 36:9,25<br/>36:25 37:6,21<br/>38:12 39:1,7<br/>39:12,20 40:6<br/>40:11 41:21<br/>42:13,25 43:21<br/>44:4,21 45:10<br/>45:14,24 46:24<br/>47:6,12 48:2<br/>50:20 52:19<br/>53:11 54:24<br/>57:1 69:4<br/>70:21 71:8,15<br/>71:17 76:8,9<br/>79:22 84:21</p> |
|--|---|--|---|

|  |  |   |  |
|--|--|---|--|
| <p>87:4<br/> <b>oklahoma</b> 80:8<br/> <b>once</b> 63:14<br/> <b>ones</b> 19:12 32:7<br/> 36:15 86:14,14<br/> 88:3<br/> <b>open</b> 75:16<br/> 80:11 82:10<br/> <b>operate</b> 65:21<br/> 65:23,24 66:1<br/> 82:19<br/> <b>operated</b> 13:23<br/> <b>operating</b><br/> 13:14 14:7<br/> 34:24 35:14<br/> 54:18<br/> <b>operations</b> 65:7<br/> <b>operator</b> 18:13<br/> 27:18,19 28:25<br/> 29:1 33:2,3<br/> 34:23 35:4,14<br/> 35:21,25 36:4<br/> 42:15,17,19<br/> 82:17<br/> <b>operator's</b><br/> 82:16<br/> <b>operators</b><br/> 42:12,14 54:18<br/> 54:25 61:8<br/> 82:23,24<br/> <b>operatorship</b><br/> 34:4 36:17<br/> <b>opined</b> 24:7,12<br/> <b>opinion</b> 10:20<br/> 24:21</p> | <p><b>opportunity</b><br/> 28:23 47:14,16<br/> 81:15,23<br/> <b>optimistic</b><br/> 75:10<br/> <b>option</b> 16:5<br/> 23:16,16,21<br/> 24:12 25:5<br/> 80:1,17 86:5<br/> <b>oral</b> 86:18<br/> <b>orange</b> 7:20<br/> 50:9,14 52:4<br/> <b>order</b> 15:22,22<br/> 15:24 23:17<br/> 25:1,5 26:25<br/> 27:2,8,9,11,13<br/> 27:16,21 28:16<br/> 28:24 29:2,5<br/> 29:11,19,25<br/> 30:4,8,25 31:4<br/> 33:1,4 56:15<br/> 56:20 69:16<br/> 74:5 83:11<br/> <b>orders</b> 25:3<br/> 27:13 29:16<br/> 30:14 56:1<br/> <b>original</b> 11:7<br/> <b>orth</b> 2:4 6:2,3<br/> 6:13,23 7:2<br/> 14:24 20:2<br/> 24:17 29:22<br/> 30:9,21 48:21<br/> 48:24 50:1<br/> 53:13 55:5,10<br/> 55:21 57:1,11</p> | <p>57:15,19,23<br/> 58:21,24 59:23<br/> 59:25 62:12<br/> 68:17,22 71:22<br/> 72:1,5,8,16<br/> 73:16,20 74:16<br/> 74:24 76:1,6<br/> 76:18 77:15,20<br/> 78:3,10,13,17<br/> 81:22 83:5,7<br/> 83:16 84:6,12<br/> 84:17,22 85:5<br/> 85:17,21 86:3<br/> 86:9,20 87:3,7<br/> 87:25<br/> <b>osig</b> 65:21<br/> <b>ounce</b> 65:25<br/> <b>outcome</b> 75:11<br/> <b>outlines</b> 58:15<br/> <b>outside</b> 84:24<br/> <b>overall</b> 33:12<br/> <b>overlap</b> 51:20<br/> 52:7<br/> <b>overlapped</b><br/> 51:21<br/> <b>overlapping</b><br/> 52:6<br/> <b>overview</b> 65:7<br/> <b>own</b> 8:10,12,17<br/> 11:16 25:11<br/> 30:6 42:22,22<br/> 48:4 50:12,14<br/> 50:18 54:11<br/> 70:11 75:19<br/> 77:3</p> | <p><b>owned</b> 39:17<br/> <b>owner</b> 22:14,18<br/> 23:12 25:10<br/> 43:7 51:5,7<br/> <b>owners</b> 11:16<br/> 11:18 22:21,21<br/> 23:8 32:23<br/> 33:11 40:23<br/> 41:15 42:16,22<br/> 48:3 50:12,14<br/> 53:1,1,20,21<br/> 54:5<br/> <b>ownership</b> 8:25<br/> 10:21 53:23<br/> <b>owning</b> 11:18<br/> <b>owns</b> 41:6 43:1</p>                                  |
|  |  |   | <b>p</b>   |
|  |  |   | <p><b>p</b> 3:1,1 4:1,1<br/> <b>p.o.</b> 3:12 4:14<br/> <b>p.r.'s</b> 17:23<br/> <b>packet</b> 10:18<br/> 13:7 15:12<br/> 26:14 34:12,13<br/> 59:11 72:18<br/> 73:3<br/> <b>pad</b> 60:14,17<br/> 66:10,24 67:3<br/> 67:8,9,14,22<br/> <b>pads</b> 60:14,17<br/> 62:1 66:20<br/> 67:6<br/> <b>page</b> 5:2 12:22<br/> 16:11,14,15,16<br/> 20:13 37:1<br/> 44:16 75:5</p> |

|  |   |  |  |
|--|---|--|--|
| <p>83:15 85:19,22<br/>87:17</p> <p><b>pages</b> 12:25<br/>40:7 81:2 89:9</p> <p><b>paper</b> 15:14<br/>80:25</p> <p><b>paragraph</b><br/>18:6 19:7<br/>27:16 28:24<br/>29:1 56:2,9,15<br/>56:18 65:20<br/>66:7 75:13<br/>83:2</p> <p><b>parcel</b> 61:16</p> <p><b>park</b> 68:13</p> <p><b>parry</b> 43:23</p> <p><b>part</b> 7:18 34:10<br/>40:3 41:3<br/>50:17 63:6<br/>86:11</p> <p><b>partial</b> 35:12</p> <p><b>participated</b><br/>22:22</p> <p><b>particular</b> 28:6</p> <p><b>particularly</b><br/>47:1</p> <p><b>parties</b> 6:5,6<br/>7:19 9:15<br/>40:23 72:21,25<br/>73:10 79:17<br/>87:19 89:14</p> <p><b>partners</b> 70:6</p> <p><b>partnership</b><br/>40:13</p> | <p><b>party</b> 43:20<br/>75:10,14</p> <p><b>passage</b> 27:3</p> <p><b>passed</b> 74:5</p> <p><b>past</b> 19:5 26:20<br/>36:16 79:2</p> <p><b>patches</b> 64:15</p> <p><b>pay</b> 22:18<br/>23:12 33:12</p> <p><b>paying</b> 25:7</p> <p><b>payment</b> 22:17<br/>23:11 33:12<br/>41:7</p> <p><b>payments</b><br/>75:18</p> <p><b>pbex</b> 13:14<br/>14:6,7</p> <p><b>pbex's</b> 14:10</p> <p><b>pdf</b> 16:15 44:17</p> <p><b>peers</b> 56:8</p> <p><b>penalty</b> 33:13<br/>33:19</p> <p><b>percent</b> 37:10<br/>37:14,23 38:2<br/>39:7 42:15,17<br/>45:4 51:20<br/>53:22,22 54:12<br/>54:14 60:18<br/>69:18 70:19</p> <p><b>percentage</b><br/>22:4,13</p> <p><b>perfect</b> 29:19</p> <p><b>perfected</b> 30:3</p> <p><b>permian</b> 3:8<br/>4:10 5:21,22</p> | <p>5:23 8:6,6,10<br/>8:13,17 16:6<br/>17:25 18:6,16<br/>19:4,8 20:13<br/>20:13,24 22:15<br/>22:15,18,23<br/>23:5,8,12,16<br/>30:4 37:9,22<br/>37:24 43:8<br/>58:10 59:6<br/>63:22 65:2,10<br/>65:12,17 66:7<br/>66:9 67:12<br/>72:21 76:25<br/>77:4 79:8</p> <p><b>permian's</b><br/>41:10,14 51:19<br/>60:24</p> <p><b>permits</b> 25:19<br/>25:24,25</p> <p><b>person</b> 20:1</p> <p><b>personal</b> 30:17</p> <p><b>personally</b> 35:8<br/>36:6</p> <p><b>perspective</b><br/>8:21</p> <p><b>petroleum</b><br/>58:16</p> <p><b>philosophy</b><br/>87:2</p> <p><b>photo</b> 71:1</p> <p><b>physical</b> 67:17</p> <p><b>pick</b> 7:13 35:10</p> <p><b>picture</b> 65:12<br/>75:2</p> | <p><b>piloted</b> 64:3</p> <p><b>pioneer</b> 36:20<br/>36:23</p> <p><b>pipng</b> 64:21,22<br/>64:23,25</p> <p><b>place</b> 74:18</p> <p><b>placeholder</b><br/>74:11</p> <p><b>plain</b> 20:23<br/>30:7</p> <p><b>plaintiff</b> 34:16<br/>34:18</p> <p><b>plaintiff's</b><br/>35:12</p> <p><b>plan</b> 41:1,6,9<br/>41:10,14 47:7<br/>47:15 52:15,17<br/>60:11,13,16,17<br/>60:24 63:7<br/>66:3,13 76:12<br/>82:23</p> <p><b>planning</b> 24:12<br/>32:12</p> <p><b>platform</b> 87:9</p> <p><b>plays</b> 23:24</p> <p><b>please</b> 6:10<br/>15:7 58:4,7<br/>78:17 82:7</p> <p><b>pleased</b> 88:1</p> <p><b>plural</b> 27:19<br/>56:9</p> <p><b>plus</b> 39:18 46:3<br/>70:19</p> <p><b>point</b> 16:2,17<br/>17:22 24:6</p> |
|--|---|--|--|

[point - provide]

|   |   |  |  |
|---|---|--|--|
| <p>30:10 40:12<br/>44:21,23 47:3<br/>76:4<br/><b>pointed</b> 46:21<br/>48:16 50:8<br/><b>pointing</b> 29:24<br/><b>points</b> 41:4<br/>60:5 81:24<br/>82:2<br/><b>policy</b> 65:3,4<br/><b>poly</b> 64:23<br/><b>pool</b> 8:14 72:22<br/>73:11 80:2,3,5<br/>80:16 82:15,18<br/><b>pooled</b> 33:2<br/><b>pooling</b> 15:22<br/>15:22,24 23:17<br/>25:1 26:3,25<br/>27:15 29:4,16<br/>33:1<br/><b>pools</b> 25:6<br/><b>pop</b> 10:21<br/><b>popped</b> 82:14<br/><b>popping</b> 10:6<br/><b>position</b> 22:16<br/>29:18 36:24<br/><b>possibility</b> 32:3<br/>32:16<br/><b>possible</b> 79:12<br/>81:14<br/><b>possibly</b> 12:16<br/><b>post</b> 78:13,16<br/><b>potash</b> 25:17<br/><b>potential</b> 8:21<br/>8:23 64:1,5</p> | <p><b>potentially</b><br/>12:7 14:2<br/>22:11 47:11<br/>55:19 61:1<br/>63:13<br/><b>pr</b> 53:22<br/><b>practice</b> 61:7<br/>63:22 69:6<br/><b>pre</b> 82:22<br/><b>precedent</b><br/>13:25 47:4,12<br/>47:17<br/><b>preclude</b> 13:20<br/><b>prefer</b> 11:12<br/><b>prejudiced</b><br/>74:13<br/><b>preliminary</b><br/>6:15<br/><b>prepare</b> 59:14<br/><b>prepared</b> 11:22<br/>23:14 59:2,10<br/>60:7<br/><b>present</b> 4:18<br/>6:21 10:4<br/>21:25 26:7<br/>34:4 39:24<br/>47:7 56:24<br/>79:1<br/><b>presentation</b><br/>76:20 77:4,5<br/><b>presented</b><br/>79:18<br/><b>pressure</b> 65:13<br/>65:14,22,23,24<br/>66:2 69:22,25</p> | <p>70:8,16<br/><b>pretty</b> 14:17<br/>43:4 53:5 79:6<br/><b>prevail</b> 47:8<br/><b>prevailed</b> 41:7<br/>47:9<br/><b>prevent</b> 63:14<br/>66:1<br/><b>preventative</b><br/>65:25<br/><b>previous</b> 13:1<br/>63:24<br/><b>previously</b> 7:6<br/>58:11<br/><b>pride</b> 3:8 4:10<br/><b>primarily</b><br/>12:12<br/><b>principal</b> 6:5<br/><b>printed</b> 89:11<br/><b>probably</b> 32:19<br/>33:18 35:6<br/>36:17 41:19,20<br/>42:5 51:8,16<br/>51:17,25 53:19<br/>56:3<br/><b>problem</b> 81:8<br/><b>proceed</b> 6:17<br/>6:25 72:13<br/><b>proceeding</b> 2:5<br/><b>proceedings</b><br/>89:8,11<br/><b>process</b> 9:17<br/><b>produce</b> 21:18<br/>42:12 43:16<br/>82:18</p> | <p><b>produced</b> 42:4<br/>84:23<br/><b>producing</b><br/>22:16 23:10,18<br/>78:24 79:14,18<br/><b>production</b><br/>3:16 20:17<br/>21:1,9,13,14<br/>25:7 42:13<br/>43:17 67:19<br/><b>proffered</b><br/>72:12<br/><b>prohibited</b><br/>82:21<br/><b>project</b> 14:9<br/>44:1,6 63:21<br/><b>projects</b> 69:7<br/><b>proposal</b> 66:6<br/>66:11<br/><b>proposals</b><br/>69:14,17<br/><b>propose</b> 28:1<br/><b>proposed</b> 26:21<br/>28:15 32:2,4<br/>53:2 60:11<br/>75:11,17 80:1<br/>86:13<br/><b>proposing</b> 33:9<br/><b>protect</b> 36:17<br/><b>protection</b><br/>12:15 21:18<br/><b>proven</b> 42:9<br/>62:3<br/><b>provide</b> 43:21<br/>55:19 64:9</p> |
|---|---|--|--|

[provide - recognition]

|  |  |   |   |
|--|--|---|---|
| <p>81:6,18<br/> <b>provided</b> 62:22<br/> 72:20,23<br/> <b>provides</b> 33:10<br/> <b>proxy</b> 34:21<br/> <b>public</b> 78:1<br/> <b>publication</b><br/> 5:20 73:8<br/> <b>published</b> 73:9<br/> <b>pull</b> 19:18 27:1<br/> 27:6 28:9<br/> <b>pulling</b> 40:5<br/> <b>pumps</b> 65:1<br/> <b>purpose</b> 1:7<br/> 77:11<br/> <b>purposes</b> 20:17<br/> 21:9 59:2<br/> <b>pursuant</b> 41:19<br/> 52:11<br/> <b>pursuing</b> 13:23<br/> <b>put</b> 50:18 76:15<br/> 80:2 81:9<br/> <b>putting</b> 76:21</p> | <p><b>questions</b> 14:21<br/> 14:25 15:5,9<br/> 20:22 49:3,25<br/> 50:2 55:3,6,8<br/> 55:15,17 57:2<br/> 62:10,13,21<br/> 68:15,23 71:21<br/> 71:23,25 72:4<br/> <b>quick</b> 27:1,2<br/> 48:20 55:24<br/> 57:10 74:23<br/> <b>quickly</b> 84:23<br/> <b>quite</b> 15:17<br/> 28:5</p>  | <p>57:6,13,20,21<br/> 58:3,18 59:1<br/> 59:20 60:4<br/> 62:9,13 68:18<br/> 72:2,3,9,10,17<br/> 73:24 74:17<br/> 75:21 77:16,17<br/> 77:22 78:12<br/> 79:24 80:14,18<br/> 80:25 85:9,11<br/> 85:25 86:4<br/> 87:24<br/> <b>rankin's</b> 57:5<br/> 77:14<br/> <b>rather</b> 8:24<br/> 48:17<br/> <b>raw</b> 46:12<br/> 54:10<br/> <b>reached</b> 9:24<br/> 13:18 52:24<br/> <b>react</b> 69:24<br/> <b>reacted</b> 69:22<br/> <b>read</b> 6:5 18:20<br/> 21:4 27:3,5<br/> 29:7 34:4,18<br/> 35:1,2,2,7<br/> 36:11 44:25<br/> 45:4 46:9 52:9<br/> 56:5 59:6<br/> 72:21 76:19<br/> 83:4<br/> <b>reading</b> 28:12<br/> 28:17<br/> <b>real</b> 27:1,2<br/> 48:20 55:24</p> | <p>74:23<br/> <b>realize</b> 36:3<br/> <b>really</b> 44:10<br/> 47:12,12 48:10<br/> 53:4 64:9 82:1<br/> 83:23 85:23<br/> 88:1<br/> <b>realtime</b> 64:5<br/> 64:10<br/> <b>reason</b> 11:11<br/> 85:23 87:13<br/> <b>reasonable</b><br/> 85:12,13 86:25<br/> <b>reasonably</b><br/> 24:18<br/> <b>rebuttal</b> 5:21<br/> 5:22,23 15:21<br/> 16:11,23,24<br/> 17:4,7,9 60:5<br/> 76:24 77:2<br/> <b>recall</b> 78:5<br/> <b>receive</b> 41:23<br/> 42:18 87:21<br/> <b>received</b> 25:1<br/> 38:15,17 85:10<br/> <b>receiving</b> 33:4<br/> 69:16<br/> <b>recently</b> 38:18<br/> 56:15 77:4<br/> 85:3<br/> <b>recess</b> 57:17<br/> <b>reclarify</b> 56:23<br/> <b>recognition</b><br/> 64:2</p> |
| <p><b>q</b></p>  | <p><b>r</b></p>  |   |   |
| <p><b>qualify</b> 31:21<br/> <b>quarter</b> 77:5<br/> <b>question</b> 18:4<br/> 20:11 23:13<br/> 30:4 48:3<br/> 51:16 53:17<br/> 65:9<br/> <b>questioned</b><br/> 58:1<br/> <b>questioning</b><br/> 55:12</p>  | <p><b>r</b> 3:1 4:1 68:9<br/> 68:10,11<br/> <b>r</b>22343 27:13<br/> <b>rabbit</b> 29:20<br/> <b>raise</b> 6:18<br/> <b>raised</b> 11:8<br/> 55:12 79:9<br/> 81:7<br/> <b>raising</b> 30:4<br/> <b>ramped</b> 53:4<br/> <b>range</b> 68:5<br/> <b>rankin</b> 5:4,10<br/> 5:19 6:8,11,11<br/> 6:16 7:3,4,9<br/> 14:25 20:11<br/> 23:22 27:9<br/> 29:13 46:21<br/> 48:25 49:3,6<br/> 50:2,7 55:11<br/> 55:14,23 56:6</p> |   |   |

[recognized - right]

|   |   |  |  |
|---|---|--|--|
| <p><b>recognized</b><br/>58:25</p> <p><b>recollection</b><br/>77:10</p> <p><b>recommend</b><br/>84:3</p> <p><b>record</b> 9:7,13<br/>20:6 49:4,12<br/>49:24 59:22<br/>72:13 73:15<br/>74:1</p> <p><b>records</b> 79:15</p> <p><b>recovered</b><br/>70:20</p> <p><b>recovery</b> 65:18<br/>71:11</p> <p><b>red</b> 11:15</p> <p><b>redirect</b> 5:6<br/>49:5</p> <p><b>reduce</b> 41:23</p> <p><b>reduced</b> 89:11</p> <p><b>reducing</b> 64:10</p> <p><b>redundant</b><br/>65:18</p> <p><b>reference</b> 16:18<br/>19:2 68:13<br/>80:11</p> <p><b>referenced</b><br/>38:17</p> <p><b>references</b> 79:2</p> <p><b>referring</b> 12:8<br/>43:23</p> <p><b>reflect</b> 86:23</p> <p><b>reflects</b> 8:1<br/>72:22</p> | <p><b>regard</b> 39:9<br/>59:10</p> <p><b>regarding</b><br/>17:23 48:11<br/>65:3</p> <p><b>regardless</b><br/>47:18</p> <p><b>regards</b> 21:1</p> <p><b>regulation</b> 74:5</p> <p><b>related</b> 51:1<br/>81:24 89:14</p> <p><b>relates</b> 8:1 14:4</p> <p><b>reliable</b> 70:8</p> <p><b>relief</b> 33:11</p> <p><b>relying</b> 43:19</p> <p><b>remaining</b><br/>72:11</p> <p><b>remember</b> 19:9<br/>28:4 31:24,24<br/>32:4,15,19<br/>44:9</p> <p><b>reminded</b><br/>55:23</p> <p><b>reminder</b> 11:15</p> <p><b>remote</b> 2:5</p> <p><b>repeat</b> 15:7<br/>28:7</p> <p><b>repeatedly</b><br/>60:25</p> <p><b>reply</b> 79:11,13<br/>81:6,18,24<br/>83:18 84:9,11<br/>85:7,14 86:17<br/>87:9</p> | <p><b>report</b> 73:4<br/>77:19</p> <p><b>reported</b> 2:7<br/>89:7</p> <p><b>reporter</b> 6:10<br/>58:6 83:21<br/>85:1 89:7</p> <p><b>reporter's</b> 5:14<br/>89:5</p> <p><b>reporters</b> 84:20</p> <p><b>reports</b> 77:3,25</p> <p><b>request</b> 82:1</p> <p><b>requested</b><br/>32:22</p> <p><b>requests</b> 82:5</p> <p><b>require</b> 29:16</p> <p><b>required</b> 70:24<br/>80:15</p> <p><b>requirements</b><br/>80:19</p> <p><b>research</b> 83:23</p> <p><b>reserve</b> 74:7</p> <p><b>resolved</b> 70:18</p> <p><b>resources</b> 1:2<br/>4:6 13:10,12<br/>16:6 17:25<br/>18:7,16 19:4,8<br/>20:24 22:16,18<br/>22:23 23:6,12<br/>23:17 30:5<br/>37:9,22,24<br/>43:8 58:10<br/>59:6 63:22<br/>65:2,10,12,17<br/>66:9 67:12</p> | <p>76:25 77:4<br/>79:8 89:1</p> <p><b>respectively</b><br/>8:8</p> <p><b>respond</b> 74:14<br/>76:24 81:5,15</p> <p><b>response</b> 16:6<br/>19:18 20:13,14<br/>25:4 60:9 61:2<br/>79:9 81:1</p> <p><b>responses</b> 62:6</p> <p><b>rest</b> 56:20</p> <p><b>restate</b> 87:8</p> <p><b>result</b> 83:25</p> <p><b>resume</b> 6:14<br/>58:14</p> <p><b>returning</b><br/>61:21 69:3</p> <p><b>revenue</b> 41:23<br/>42:18</p> <p><b>review</b> 72:11<br/>82:11</p> <p><b>reviewed</b> 14:5<br/>36:6 44:3,4<br/>60:5</p> <p><b>revisit</b> 84:16</p> <p><b>right</b> 6:23 7:2<br/>8:3 9:10 10:1,6<br/>11:5 12:22<br/>14:6,9 17:20<br/>18:9,23 21:16<br/>21:18 22:17<br/>23:10 25:11<br/>29:22 32:15<br/>35:14,21 37:7</p> |
|---|---|--|--|

[right - settings]

|   |  |  |  |
|---|--|--|--|
| <p>42:21 45:8<br/> 46:2 48:24<br/> 51:15 55:5,10<br/> 57:3 58:24<br/> 61:13,17,24,25<br/> 62:4,24 63:3<br/> 63:18 66:19<br/> 71:12,14 72:1<br/> 72:5 74:7<br/> 76:18 77:15,20<br/> 82:4 83:16<br/> 84:13 85:6<br/> 86:3 87:23<br/> 88:1<br/> <b>rights</b> 12:16<br/> 20:18 21:1,10<br/> 21:17 24:10<br/> 41:2 48:11,14<br/> <b>risk</b> 30:5,24<br/> 33:13,19 64:12<br/> 64:14,20<br/> <b>road</b> 61:1<br/> 63:10,11,14,16<br/> <b>roads</b> 60:15,18<br/> <b>robert</b> 50:24<br/> 51:2,5,9<br/> <b>rod</b> 75:2<br/> <b>room</b> 66:25<br/> <b>rpr</b> 2:7 89:19<br/> <b>rule</b> 25:22 74:4<br/> 79:2 80:2,3<br/> 82:13,17,23<br/> 83:3,3<br/> <b>rules</b> 70:23<br/> 80:19 82:13</p> | <p><b>ruling</b> 24:6<br/> <b>run</b> 19:15<br/> 60:25<br/> <b>runs</b> 61:25</p> <hr/> <p><b>s</b></p> <hr/> <p><b>s</b> 3:1 4:1 34:4<br/> 58:9 68:10<br/> <b>salvidrez</b> 4:19<br/> 84:25 87:21<br/> <b>sample</b> 72:24<br/> <b>sandstone</b> 6:7<br/> <b>santa</b> 3:6,13,21<br/> 4:8,15 88:3<br/> <b>satisfactorily</b><br/> 55:16<br/> <b>savage</b> 3:18 5:5<br/> 6:18,22,24,25<br/> 14:25 15:2,4<br/> 16:22,24 19:24<br/> 20:3,7,10<br/> 23:25 24:5,22<br/> 24:25 27:9,11<br/> 29:15,23 30:19<br/> 30:22,23 35:18<br/> 48:19,22,25<br/> 68:21 73:18,19<br/> 73:21 74:20<br/> 76:3,8,17<br/> 78:20 79:5,22<br/> 80:1,7 81:4,23<br/> 83:17,19 84:10<br/> 84:15,21 85:18<br/> 85:19 86:2,16<br/> 87:1,9,18</p> | <p><b>saw</b> 9:21<br/> <b>saying</b> 20:20<br/> 32:2 35:20<br/> 40:17,20 75:10<br/> <b>says</b> 14:6 21:5<br/> 22:15 23:9<br/> 27:17 28:13,24<br/> 35:12 56:19<br/> 81:16 83:20<br/> <b>scale</b> 64:1<br/> <b>schill</b> 3:4,19<br/> <b>screen</b> 7:13<br/> 74:21<br/> <b>scroll</b> 34:14<br/> <b>second</b> 16:14<br/> 67:9 77:5,6<br/> <b>section</b> 7:25<br/> 14:10 52:3,3,8<br/> 52:13 54:4,12<br/> 54:14<br/> <b>sections</b> 8:11<br/> 36:15,20 51:23<br/> 54:13<br/> <b>see</b> 7:14,16<br/> 8:16 10:10<br/> 11:12 14:8<br/> 16:13 19:4,17<br/> 19:18,22 21:6<br/> 26:20 27:7<br/> 30:3,12 34:9<br/> 36:10,25 40:4<br/> 40:4 44:19<br/> 51:14 64:7<br/> 65:6,9,11 69:8<br/> 70:12 73:3</p> | <p>76:8 78:16<br/> 80:9,14 83:25<br/> 86:7 88:5<br/> <b>seeing</b> 10:13<br/> 80:12<br/> <b>seek</b> 72:21<br/> <b>seeking</b> 73:10<br/> <b>seemed</b> 24:18<br/> <b>seems</b> 52:19<br/> <b>seen</b> 10:3 31:4<br/> 70:18 80:5<br/> <b>segregations</b><br/> 82:15<br/> <b>self</b> 59:2,9<br/> <b>sell</b> 33:21 65:22<br/> <b>send</b> 63:2<br/> <b>sense</b> 50:21<br/> 81:23<br/> <b>sensitive</b> 60:20<br/> <b>sent</b> 72:25 73:2<br/> 73:5 85:1<br/> <b>sentence</b> 35:11<br/> <b>separate</b> 9:19<br/> <b>separators</b><br/> 66:16 67:1<br/> <b>series</b> 41:4<br/> 79:11<br/> <b>serve</b> 35:14<br/> <b>services</b> 67:23<br/> <b>session</b> 6:1<br/> <b>set</b> 10:23 13:25<br/> 20:9 57:14<br/> 75:19<br/> <b>settings</b> 20:8</p> |
|---|--|--|--|

[seven - started]

|  |   |  |   |
|--|---|--|---|
| <p><b>seven</b> 11:6<br/>64:17</p> <p><b>several</b> 6:3 26:9<br/>27:12</p> <p><b>severance</b><br/>79:20</p> <p><b>severances</b><br/>22:20 23:1,7</p> <p><b>share</b> 7:12 16:1<br/>16:5,7 19:23<br/>20:4,7 27:2<br/>54:20 65:6</p> <p><b>shelton</b> 38:21<br/>38:25 39:21</p> <p><b>shifts</b> 47:23</p> <p><b>short</b> 17:17<br/>72:13 79:12<br/>83:25</p> <p><b>shorter</b> 85:25</p> <p><b>shorthand</b> 89:9</p> <p><b>shortly</b> 57:9</p> <p><b>show</b> 12:24<br/>31:14 37:22<br/>39:13 47:14,16</p> <p><b>showing</b> 72:24</p> <p><b>shown</b> 29:3</p> <p><b>shows</b> 9:13<br/>14:4 41:8</p> <p><b>shut</b> 70:15</p> <p><b>side</b> 8:16 10:6<br/>80:13 81:9<br/>83:10 88:4</p> <p><b>signature</b> 89:19</p> <p><b>signed</b> 54:5</p> | <p><b>significant</b> 42:5<br/>47:13</p> <p><b>significantly</b><br/>45:20,22</p> <p><b>similar</b> 8:10<br/>10:24,25 60:14<br/>71:8</p> <p><b>simple</b> 27:15<br/>34:14 66:15</p> <p><b>simultaneous</b><br/>81:14</p> <p><b>single</b> 28:19<br/>65:9 82:18</p> <p><b>sir</b> 7:11 12:1<br/>13:3 17:14<br/>61:24 63:19<br/>66:5 67:20</p> <p><b>site</b> 61:14 71:1</p> <p><b>situation</b> 23:11<br/>69:23 84:2</p> <p><b>situations</b><br/>69:24</p> <p><b>size</b> 60:10</p> <p><b>sizing</b> 67:16</p> <p><b>slide</b> 7:15,24<br/>9:3 13:2 50:22</p> <p><b>slides</b> 10:23<br/>11:6</p> <p><b>slight</b> 51:20</p> <p><b>slow</b> 53:16</p> <p><b>small</b> 43:4,6<br/>45:11</p> <p><b>smaller</b> 53:8<br/>54:15</p> | <p><b>soft</b> 76:7</p> <p><b>somewhat</b><br/>47:17 53:6</p> <p><b>soon</b> 87:21</p> <p><b>sophisticated</b><br/>24:18</p> <p><b>sorry</b> 6:24 20:3<br/>53:11,14,25<br/>80:22 84:6,10<br/>84:10</p> <p><b>sounded</b> 32:14</p> <p><b>sounds</b> 25:14<br/>38:6 50:25<br/>55:16</p> <p><b>source</b> 82:18</p> <p><b>sources</b> 82:20</p> <p><b>south</b> 4:7 54:3<br/>68:13</p> <p><b>space</b> 11:20</p> <p><b>speak</b> 6:10 35:9<br/>41:16 42:8</p> <p><b>speaking</b> 31:3<br/>41:2</p> <p><b>specific</b> 81:24</p> <p><b>specifically</b><br/>12:8 53:5 70:1<br/>70:4</p> <p><b>spell</b> 58:7 68:8</p> <p><b>spend</b> 9:5</p> <p><b>spill</b> 64:20</p> <p><b>sponsor</b> 77:13</p> <p><b>spread</b> 54:12</p> <p><b>spring</b> 8:11,14<br/>8:24 11:17,19<br/>16:17 17:24</p> | <p>18:25 19:3,5<br/>22:2,24 23:1,6<br/>23:18,19,19<br/>25:6,7 28:1,8<br/>32:17 37:8,8<br/>37:18,20 38:8<br/>40:15,18,21,24<br/>41:6 42:23<br/>44:22,24 45:1<br/>45:14 47:25<br/>48:5,7,17<br/>50:13,14,19<br/>52:10 79:14,19</p> <p><b>springs</b> 43:15</p> <p><b>spud</b> 33:7</p> <p><b>staci</b> 4:22</p> <p><b>stacked</b> 45:19</p> <p><b>stainless</b> 64:21<br/>64:25</p> <p><b>stake</b> 36:21</p> <p><b>stan</b> 68:12</p> <p><b>stance</b> 52:23</p> <p><b>stand</b> 19:15</p> <p><b>standard</b> 15:21<br/>15:24 26:25<br/>27:17 29:4<br/>33:1 56:1,3,15<br/>75:20</p> <p><b>standings</b><br/>79:17</p> <p><b>start</b> 16:9 17:3<br/>78:19</p> <p><b>started</b> 6:19<br/>51:18</p> |
|--|---|--|---|

[state - table]

|  |  |   |   |
|--|--|---|---|
| <p><b>state</b> 1:1 58:5<br/>89:1<br/><b>stated</b> 9:25<br/>35:23<br/><b>statement</b> 5:18<br/>12:8,11,19,21<br/>15:13 19:7<br/>59:2,9,15<br/>65:20 79:8<br/>85:20 86:18,18<br/>86:25 87:15<br/><b>statements</b><br/>52:20 86:21<br/>87:11<br/><b>states</b> 20:13<br/>66:7 80:8,11<br/><b>stating</b> 9:18,20<br/><b>status</b> 73:7<br/><b>statute</b> 24:9<br/>49:21 80:20<br/><b>statutes</b> 79:1<br/><b>statutory</b> 24:11<br/><b>staying</b> 50:7<br/><b>steel</b> 64:21,25<br/><b>stenographic</b><br/>89:9<br/><b>stevens</b> 6:6<br/>18:20 34:4,18<br/>35:1,2,3,7<br/>36:11 44:25<br/>45:4 46:9 52:9<br/>59:7 72:21<br/>76:19<br/><b>stood</b> 57:17</p> | <p><b>stored</b> 82:14<br/><b>strategy</b> 12:19<br/><b>streamlined</b><br/>81:13<br/><b>street</b> 3:5,20<br/>4:7<br/><b>strong</b> 36:23<br/>70:6<br/><b>strongly</b> 84:17<br/><b>struggle</b> 70:14<br/><b>stuff</b> 15:17 35:8<br/><b>subject</b> 22:3<br/>33:19 35:25<br/>43:25 54:1,2,3<br/>70:19 77:13<br/><b>submission</b><br/>77:18<br/><b>submissions</b><br/>78:14,16<br/><b>submit</b> 70:23<br/>77:9 82:7 87:9<br/><b>submitted</b> 9:23<br/>11:3 12:3 13:9<br/>72:14 76:25<br/>87:14<br/><b>submitting</b><br/>78:21<br/><b>subsequent</b><br/>54:7,8<br/><b>subsequently</b><br/>56:12<br/><b>substantially</b><br/>8:18<br/><b>sufficient</b> 32:18<br/>66:21 84:5</p> | <p><b>suggestion</b><br/>81:19<br/><b>summarize</b><br/>49:15<br/><b>summarized</b><br/>8:4 45:9,23<br/><b>summary</b> 34:15<br/>35:12,22 36:5<br/>37:2 49:8<br/><b>superior</b> 47:7<br/>47:15<br/><b>supervision</b><br/>89:12<br/><b>supplemental</b><br/>12:5<br/><b>supplemented</b><br/>11:10<br/><b>supplementing</b><br/>77:24<br/><b>supply</b> 82:18<br/><b>support</b> 10:3<br/>12:6,7,18<br/>37:20 38:23<br/>39:11,18,18<br/>45:8,10,17,18<br/>46:7,15,18<br/>48:4,6 49:15<br/>53:22<br/><b>supported</b><br/>46:20<br/><b>supporter</b> 8:6,7<br/>9:22<br/><b>supporters</b><br/>8:12,13,19<br/>9:16 39:23</p> | <p>46:3<br/><b>supporting</b><br/>12:24,25<br/><b>supposed</b> 13:17<br/>84:25<br/><b>supreme</b> 79:2<br/><b>sure</b> 14:19<br/>15:10,15 44:2<br/>56:23 57:14,15<br/>57:15 74:10<br/>75:5,6 77:9<br/>80:18 84:14<br/>85:16<br/><b>surface</b> 60:10<br/>60:13,15,19<br/>66:23<br/><b>surprising</b><br/>86:24<br/><b>surrebuttal</b><br/>6:20<br/><b>surveillance</b><br/>63:21<br/><b>swd</b> 70:11<br/><b>swings</b> 66:1<br/><b>sworn</b> 7:6<br/>57:22,25<br/><b>system</b> 64:13<br/>64:21,23<br/><b>systems</b> 63:21<br/>64:4</p> |
|  |  |   | <b>t</b>  |
|  |  |   | <p><b>t</b> 58:9 68:9,10<br/>68:10,11<br/><b>table</b> 38:6<br/>40:12 50:9</p>  |

[table - thompson]

|  |   |   |  |
|--|---|---|--|
| 80:12 82:10<br>86:8<br><b>tables</b> 50:9<br><b>take</b> 26:9 29:18<br>39:14 41:5<br>53:12,15 57:16<br>82:8<br><b>takeaway</b> 69:9<br>69:10,18,21<br>70:5<br><b>taken</b> 39:10,22<br><b>talk</b> 25:15 42:3<br>74:22 87:8<br><b>talked</b> 10:8<br><b>talking</b> 8:22<br>17:7 21:17<br>31:25 51:24<br>52:1 54:22<br><b>talks</b> 80:3<br><b>tally</b> 37:9 47:21<br><b>tank</b> 62:1 64:17<br>66:4,12 71:3<br><b>tanks</b> 64:13,18<br>65:10,25<br><b>target</b> 18:3<br>42:10 43:13,16<br><b>technical</b> 8:22<br>19:25 24:19<br>49:1 68:19<br>83:9<br><b>technological</b><br>88:2<br><b>tell</b> 32:11 42:25<br>85:21 | <b>ten</b> 57:16 76:11<br>76:13 81:2<br>83:17<br><b>tender</b> 58:19<br><b>term</b> 18:12<br>34:22 38:14,19<br>38:22,24 39:3<br>39:13,14 52:12<br>66:14<br><b>terminate</b><br>28:25 29:11<br>52:10<br><b>terminated</b><br>30:1,25 31:4<br><b>terms</b> 14:14<br>24:19 62:6<br>64:9<br><b>terrific</b> 6:13<br><b>test</b> 19:16<br>43:19 48:18<br>66:15<br><b>tested</b> 34:5<br><b>testified</b> 7:6<br>58:1,11 77:8<br>82:25<br><b>testify</b> 51:8<br><b>testimony</b> 11:1<br>11:4 15:20<br>17:12 18:5,6<br>19:3 24:8<br>25:15,16 26:8<br>32:21 34:6,11<br>39:25 40:3<br>41:19 42:9<br>51:11,12 55:22 | 57:4 60:6,10<br>60:24 62:7,22<br>72:6 77:23,25<br>83:14<br><b>tests</b> 32:17<br><b>texas</b> 10:2<br>38:21 46:19<br><b>thank</b> 6:23 7:1<br>7:2,4 9:2 10:22<br>14:13,19,24<br>17:1 25:13<br>33:8 36:25<br>38:12 42:21<br>44:13 48:24<br>49:23,24 50:1<br>55:3,5,10,21,21<br>57:3,4,6 58:4<br>58:24 59:25<br>62:5,12 68:16<br>68:17,22 71:22<br>72:1,5,7,16<br>73:20 76:1,17<br>78:3,8 83:7,16<br>84:21 85:5<br>87:24 88:4<br><b>theoretically</b><br>35:24<br><b>thick</b> 79:6<br><b>thing</b> 10:15<br>13:7 49:11,23<br>55:1,24 82:12<br><b>things</b> 8:9,16<br>34:14 38:5,6<br>55:1 | <b>think</b> 6:17,20<br>7:23 8:8 9:3,17<br>10:7,15 12:12<br>13:17 14:17,17<br>16:4 20:21<br>22:6 23:13,21<br>23:23 24:2,14<br>25:4 28:18<br>29:20 31:20<br>41:25 43:12<br>48:22 49:12,16<br>51:8 53:2,17<br>54:2,8 55:14<br>55:18 56:14,18<br>57:9 60:22<br>61:4 62:8<br>63:25 68:6<br>69:20 70:25<br>74:18 75:6,7<br>75:14,22 77:1<br>77:6,8,12<br>78:22 79:25<br>80:3,7,16 81:2<br>81:4,8 83:10<br>84:4,11,24<br>85:8,11,12,13<br>85:15 86:22<br><b>third</b> 6:3 19:15<br>22:2 32:9,17<br>43:15,20 48:17<br>79:13<br><b>thompson</b> 4:4<br>55:6,8 71:23<br>71:25 |
|--|---|---|--|

[thoroughly - units]

|   |  |  |  |
|---|--|--|--|
| <p><b>thoroughly</b> 44:2 86:17</p> <p><b>thought</b> 48:1</p> <p><b>thoughts</b> 56:4</p> <p><b>three</b> 9:15,19 18:8,9 31:5 61:10 70:2 71:15 83:14</p> <p><b>thursday</b> 56:3 56:24 88:6</p> <p><b>tight</b> 81:2</p> <p><b>time</b> 2:3 6:16 9:5 14:22 20:4 29:17 31:16,18 32:23,25 35:7 36:3 51:17 54:5 59:20 61:15 62:2,23 63:2,8,13 73:25 74:14 76:14 83:21,23 84:3 85:4,13</p> <p><b>timeline</b> 17:4 26:7,12 30:7 33:24 34:3 36:14 82:8</p> <p><b>timelines</b> 75:18</p> <p><b>times</b> 61:11 69:3</p> <p><b>title</b> 10:19</p> <p><b>today</b> 6:10 10:4 53:16</p> <p><b>together</b> 29:8</p> <p><b>took</b> 45:18 47:19,20</p> | <p><b>top</b> 7:18 8:2,4 9:15,15 44:9 49:14 50:8 68:6</p> <p><b>topic</b> 52:19</p> <p><b>tostada</b> 68:4,9</p> <p><b>total</b> 28:4 37:9 39:11,18 53:21</p> <p><b>touch</b> 7:23 9:12 13:8 14:16</p> <p><b>touching</b> 24:13</p> <p><b>towards</b> 40:18 40:20 41:2 74:9 87:2</p> <p><b>township</b> 68:5</p> <p><b>tract</b> 13:23</p> <p><b>transcript</b> 84:13,15 85:7 85:10,12,16 87:11,13,20 89:10</p> <p><b>transcripts</b> 83:13 84:8 87:22</p> <p><b>transfer</b> 65:1</p> <p><b>transitions</b> 47:20</p> <p><b>travis</b> 5:3 7:5</p> <p><b>treading</b> 23:23</p> <p><b>trickier</b> 86:14</p> <p><b>tried</b> 20:4 80:22 81:1</p> <p><b>true</b> 12:14 89:10</p> | <p><b>trust</b> 38:18,21 38:22 52:12</p> <p><b>trying</b> 13:20 15:17 24:1 26:6 30:19 34:14 53:12,15 81:5,12</p> <p><b>turn</b> 13:21 49:1 68:19 76:9</p> <p><b>two</b> 18:10 31:5 42:12,23 43:1 46:6 48:4 49:3 51:21 75:7 82:1,6,25 84:11,12,24 85:1,4,7,8,12 85:15 88:3</p> <p><b>type</b> 63:20</p> <p><b>typical</b> 15:22</p> <p><b>typically</b> 52:1 70:16 79:10</p> <p><b>typing</b> 53:16</p> <p><b>typo</b> 10:8</p> <p style="text-align: center;"><b>u</b></p> <p><b>ultimately</b> 38:7</p> <p><b>unaware</b> 79:4</p> <p><b>uncontested</b> 27:14</p> <p><b>under</b> 11:1 13:2 20:8 27:16 30:25 33:1 34:23 35:14,21 41:9 41:10 42:16,19 51:12 57:25</p> | <p>61:1 82:9 89:12</p> <p><b>underlying</b> 16:12,16</p> <p><b>underneath</b> 63:4,16</p> <p><b>understand</b> 15:6 17:15,23 20:19,21,24 23:25 24:1 27:23 29:7,15 29:18 30:10 33:8 34:20 36:13,16,18 41:13 45:10 53:19 74:16 76:19 84:7,18</p> <p><b>understanding</b> 13:12 29:6 35:5,6 36:2 46:23 49:20 51:6 84:19</p> <p><b>understood</b> 61:1 75:21 77:22</p> <p><b>uniform</b> 11:18</p> <p><b>union</b> 9:21 46:19,25 51:1 51:4,5,10</p> <p><b>unit</b> 11:20 22:24 23:6,6 65:9</p> <p><b>units</b> 17:24 18:25 65:18</p> |
|---|--|--|--|

[updated - wolfcamp]

|  |  |  |   |
|--|--|--|---|
| <p><b>updated</b> 56:15<br/>77:19,23<br/><b>upgrades</b> 64:19<br/><b>upper</b> 22:2,13<br/>22:14 23:8<br/><b>upset</b> 53:6<br/><b>use</b> 34:22 63:20<br/>63:23 65:25<br/>66:3 71:17<br/><b>used</b> 18:11,12<br/><b>useful</b> 24:15<br/><b>using</b> 16:4<br/><b>utilizing</b> 66:7</p>  | <p><b>view</b> 41:1 51:18<br/>80:17 85:25<br/><b>viewed</b> 15:11<br/><b>viewing</b> 14:11<br/><b>views</b> 75:6<br/>79:24 82:7,9<br/><b>violated</b> 24:9<br/>24:10<br/><b>violation</b> 24:11<br/><b>vocal</b> 53:5<br/><b>volume</b> 66:1<br/>67:17,19<br/><b>voluntary</b><br/>49:22 63:24</p>                                   | <p><b>warren</b> 52:21<br/>52:24 53:7<br/><b>water</b> 64:21,22<br/>65:1 69:9,14<br/>70:1,8<br/><b>waterfront</b><br/>86:12<br/><b>way</b> 14:15<br/>46:12 61:13,17<br/>61:24,25 62:4<br/>63:3 74:3<br/>81:20<br/><b>ways</b> 30:13<br/>47:4 62:24<br/>63:18<br/><b>wd</b> 69:9<br/><b>week</b> 9:22<br/>83:12,12,17<br/>85:4<br/><b>weeks</b> 84:4,11<br/>84:12,24 85:1<br/>85:7,8,9,12,15<br/><b>weigh</b> 83:9<br/><b>wellbore</b> 21:23<br/>33:21 83:1<br/><b>wellhead</b> 21:15<br/>21:21,24<br/><b>wells</b> 18:17<br/>19:6,10,11<br/>22:10,13,20<br/>25:20 26:4,7<br/>26:21,22 27:18<br/>27:19,20 28:2<br/>28:14,15 29:10<br/>29:16 30:6,15</p> | <p>31:6 32:1,4,6,7<br/>33:2,4,9,14<br/>36:15 42:1<br/>43:9,11,23<br/>53:2 56:10,10<br/>56:19,19,22,22<br/>61:6,12 63:8<br/>63:12 66:7,10<br/>66:11,13,15,22<br/>67:1,14,17,23<br/>68:3 70:15<br/>71:9 75:11,15<br/>76:11,12,13<br/>82:19<br/><b>went</b> 9:23 10:9<br/>11:10 31:20<br/><b>west</b> 14:11<br/>44:17,18 54:11<br/>54:14<br/><b>white</b> 50:17<br/><b>wide</b> 61:25<br/>65:3,4<br/><b>wildlife</b> 60:21<br/>61:18 64:1<br/><b>william</b> 3:3<br/>38:22 62:20<br/><b>win</b> 36:4<br/><b>window</b> 84:14<br/><b>witness</b> 57:5,7<br/>57:8,21 68:19<br/>72:7,9 77:12<br/><b>witnesses</b> 5:2<br/>57:10 68:20<br/><b>wolfcamp</b> 8:16<br/>8:18,25,25</p> |
| <b>v</b>   | <b>w</b>   |  |   |
| <p><b>vacuum</b> 64:15<br/><b>valves</b> 64:15<br/><b>vance</b> 87:4,6<br/><b>vapor</b> 65:18<br/><b>variety</b> 30:13<br/><b>various</b> 46:17<br/><b>vegetation</b><br/>60:21 61:19<br/><b>vent</b> 64:13<br/><b>verbally</b> 86:21<br/><b>verify</b> 20:11<br/><b>versus</b> 37:2<br/>49:8,14 53:24<br/>53:25<br/><b>viable</b> 35:13<br/>42:10<br/><b>vicinity</b> 66:10<br/><b>videoconfere...</b><br/>2:1 3:3,10,18<br/>4:4,5,12,19,21<br/>4:23,24</p> | <p><b>wait</b> 56:6 83:13<br/>84:6,8<br/><b>walk</b> 75:4<br/><b>want</b> 14:15<br/>15:15 17:22<br/>25:12 29:14<br/>43:13 49:11<br/>55:13 73:25<br/>74:1,7,10,13,17<br/>76:20 79:17<br/>80:25 81:16<br/>84:1 85:23<br/>86:13<br/><b>wanted</b> 6:20<br/>7:23 10:16<br/>13:8,19 49:23<br/>77:9<br/><b>wanting</b> 34:23<br/>36:17</p> |  |   |

[wolfcamp - zorro]

|  |  |   |
|--|--|---|
| 10:20,20 11:17<br>11:19 12:7,13<br>12:14 13:21<br>16:19 19:6,15<br>22:3,14,14<br>23:2,8,9 25:10<br>32:10,16 37:22<br>38:9 40:14,22<br>41:18 42:4,9<br>42:22 43:9<br>45:3,15,18<br>46:1,4 47:25<br>48:5,8,12,18<br>50:13,15,16,19<br>52:10 53:6,10<br>79:14,19 80:2<br><b>wonder</b> 83:22<br><b>wondered</b><br>17:12<br><b>wondering</b><br>27:2 30:11<br>79:12<br><b>word</b> 36:23<br><b>wording</b> 56:16<br><b>work</b> 35:7<br>58:15 70:15,17<br>87:20<br><b>workable</b> 85:16<br><b>working</b> 7:22<br>37:10,14,18,23<br>38:2,8 41:14<br>41:22,24 42:16<br>42:18 46:1,4<br>47:2,21,24<br>48:3 49:13 | 53:20 70:7<br><b>works</b> 69:11<br><b>worth</b> 43:9<br><b>wrapped</b> 72:15<br><b>write</b> 30:14<br><b>writing</b> 17:16<br>78:22 86:22<br>87:4<br><b>written</b> 29:9,9<br>29:24,25 30:24<br><b>wrong</b> 26:3   | <b>yep</b> 34:1 37:25<br>40:10 44:20<br>50:23<br><b>yesterday</b> 6:8<br>7:14,17 8:2,4<br>21:25   |
|  | <b>x</b>   | <b>z</b>  |
|  | <b>x</b> 5:1   | <b>zimsky</b> 3:3 5:11<br>58:21,23 59:23<br>59:24 62:13,15<br>62:18,20 68:18<br>70:25 73:17<br>74:20 76:20,22<br>78:4,8,20<br>85:17<br><b>zorro</b> 38:20,25<br>39:21 |
|  | <b>y</b>   |   |
|  | <b>yeah</b> 9:14<br>17:19 18:13<br>24:17 25:9<br>28:11 36:13<br>39:10,17 43:3<br>50:11 51:5,25<br>52:24 53:25<br>61:4 71:14<br>79:16 80:21<br>84:10<br><b>year</b> 27:19,20<br>27:22 28:13,15<br>28:19 29:11<br>30:15,16 31:19<br>56:11,12,21<br>75:11,15<br><b>years</b> 18:8,9<br>26:9 36:16<br>54:8 63:24<br>75:8 |   |

New Mexico Rules of Civil Procedure for the  
District Courts

Article 5, Rule 1-030

(e) Review by Witness; Changes; Signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Subparagraph (1) of Paragraph F of this rule whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1,  
2019. PLEASE REFER TO THE APPLICABLE STATE RULES  
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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