

In The Matter Of:

*State Environmental Commission
SEC Appeal Hearing*

*Moonlight Exploration Projects
November 20, 2008*

*Capitol Reporters
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Carson City, Nevada 89706
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STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION
SEC APPEAL HEARING
MOONLIGHT EXPLORATION PROJECTS
THURSDAY, NOVEMBER 20, 2008
CARSON CITY, NEVADA

THE COMMISSION: LEW DODGION, Chairman
IRA RACKLEY, Member
KENNETH MAYER, Member

FOR THE COMMISSION: ROSE MARIE REYNOLDS
Deputy Attorney General
JOHN B. WALKER
Executive Secretary
KATHY REBERT
Recording Secretary

FOR THE PERMITTEE: JANET HESS
Deputy Attorney General

FOR THE APPELLANT: DARLENE JACKSON, In Pro Per
CONNIE HERMAN, In Pro Per

FOR THE INTERVENER: THOMAS P. ERWIN
Attorney at Law

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INDEX OF WITNESSES

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
SHANE MARTIN	9	25, 32	39	41
DARLENE JACKSON	45	58, 63		
FRANK MAURER	67	74		
JOSEPH MARTINI	78	81		
CHARLES SULFRIAN	87	108, 109		

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1 CARSON CITY, NEVADA, THURSDAY, NOVEMBER 20, 2008 10:30 A.M.

2 -oOo-

3
4 CHAIRMAN DODGION: I will call this hearing of
5 the State Environmental Commission appeal panel to order.
6 I'm Lew Dodgion and I'll be acting as Chair of this panel
7 today, and with me I have two other Members of the State
8 Environmental Commission, Mr. Ira Rackley and Mr. Kenneth
9 Mayer.

10 For the record, this appeal hearing is being
11 convened on Thursday, November 20th, 2008, as public noticed,
12 10:30 here in the State Library in Carson City, Nevada. The
13 hearing is open to the public. Written notice stating the
14 time, place and location has been provided to all affected
15 parties. A copy of the appeal notice is posted outside this
16 building and other places within the Commission's
17 jurisdiction. Copies of the notice were also mailed to all
18 persons requesting such notice.

19 Before proceeding I would like to make note that
20 TGC Holdings, Limited, represented by Mr. Thomas P. Erwin --

21 MR. ERWIN: Yes, sir.

22 CHAIRMAN DODGION: -- has been granted intervener
23 status for this appeal. I'd like to now have the parties
24 present introduce themselves, note and for the record who you
25 are affiliated with. I will start with Ms. Hess.

1 (Roll call was taken of persons present.)

2 CHAIRMAN DODGION: With that you'll note that
3 these proceedings are going to be recorded. Testimony today
4 will be given under oath and witnesses will be sworn. Mary
5 with administer the oath.

6 We received four appeals from four parties. They
7 have been consolidated. Is that satisfactory?

8 MS. JACKSON: Yes.

9 CHAIRMAN DODGION: We will now begin this hearing
10 with the presentation of opening statements by the State's
11 attorney, Ms. Hess.

12 MS. HESS: Thank you, Mr. Chairman and
13 Commissioners. Good morning. One of the things that needs
14 to be asked today is what is really the purview of the
15 reclamation statutes and the regulations. That is the real
16 issue.

17 Did my clients do everything that they were
18 supposed to do by their own statutes and regulations. I have
19 one witness today. Now, I would also request as well that
20 anyone wishing to make a statement also be sworn in so that
21 they will be subject to cross-examination just as my witness
22 will be. Sometimes I misspeak and I tend to call this case
23 Moonlight and Moonlight project and sometimes I say mine. It
24 is not a mine, it is the Moonlight project.

25 So if I misspeak, it's just strictly that I

1 misspoke. I have a hard time with these initials, there's
2 just so many of them in this case. Contrary to some of the
3 things that the appellants have written, the Bureau does not
4 grant access to property by merely giving a reclamation
5 permit. That does not happen.

6 They also don't consider property values.
7 There's nothing in the statutes and regulation that has them
8 considering property value. Also NDEP does not build roads.
9 They have no statutory or regulatory authority to build a
10 road.

11 My witness here will also go through the
12 application process for you and there are a lot of questions
13 that I will be asking, and I understand the Commissioners
14 have their own expertise on this particular Board and know it
15 quite well, but I'm asking for the record. So please bear
16 that in mind. If I get going too slow, just let me know.

17 Now, there is the possibility of somebody
18 mentioning, one of the appellants, there's the possibility of
19 oil contamination. My witness will talk about what happens
20 with oil contaminated soil and how that is in fact dealt
21 with. The wildlife issue is handled by whoever it is that
22 NDEP, the Bureau, gives notice to.

23 So first of all, there's going to be a notice of
24 intent with a draft permit after a huge process that's been
25 going on in the NDEP and looking at the application which

1 also includes the plan in the application. So I just wish
2 that everybody would bear in mind what is the purview of the
3 Bureau's reclamation permit and the application process.
4 That is what it is that we're going to introduce evidence
5 about in this particular hearing, that everything was in fact
6 done properly and that as well there was no reason not to
7 give a reclamation permit because of course it is the State's
8 big goal to return all land to its original position.

9 Also some of these roads were existing long
10 before 1981 which is also in our statute, even though they
11 don't grant, the Bureau doesn't grant authority to enter on
12 to property. So if you have any further questions, I'll be
13 happy to answer them and so will my witness.

14 CHAIRMAN DODGION: On behalf of the appellant, do
15 you wish to make an opening statement? You can reserve that
16 or you can make it now.

17 MS. JACKSON: I'd just like to thank you for
18 granting the hearing and letting us come and say what we'd
19 like to say. Not being an attorney I don't have any
20 particular process. I have a letter, a statement that I'd
21 like to read that says pretty much everything I have to say.
22 I have an individual here, Mr. Frank Maurer, who would also
23 like to add something.

24 I'm going to mention a letter in my presentation.

25 CHAIRMAN DODGION: All right. Thank you. Does

1 the intervener wish to make an opening statement?

2 MR. ERWIN: Briefly, Mr. Chairman. I have here a
3 statement which sort of summarizes our position. I'd like to
4 have it filed in the record. I have several copies. I'm
5 going to give one to Ms. Jackson right now but I have copies
6 for each of you if you'd like them.

7 It's not a detailed recitation of the facts but
8 it does state in writing one of the issues that we raised in
9 previous correspondence, that being the limitations on the
10 authority of the Department, or excuse me, the Commission and
11 the NDEP to determine issues of property rights and feel it's
12 beyond the jurisdiction of the agency to do that.

13 We've stated that before and we are here prepared
14 to respond to the appeal on the merits, and we will have
15 Mr. Sulfrian and Mr. Martini testify on the merits, that we
16 believe there's a reclamation plan that adequately addresses
17 the statute and environmental impacts.

18 CHAIRMAN DODGION: The way we're going to proceed
19 from this point on is Ms. Hess will put on the State's case.
20 The witnesses will be sworn and be subject to
21 cross-examination by the Commission Members at any time and
22 by the appellant and also by the intervener.

23 We will then move on to the appellant's case.
24 You'll have your chance then to make your statements. You
25 can call your witness. At the same time while you're making

1 your presentation as you are testifying, you will have to be
2 sworn and you will also be subject to questions from the
3 Commission, questions from the Division's attorney and the
4 intervenor's attorney.

5 Then we'll move on and allow the intervener to
6 present their testimony and again the same thing, witnesses
7 will be sworn, they will be subject to questions by the
8 Commission, by you and then by the Division's attorney.

9 Does anyone have any questions before we get
10 started?

11 MS. JACKSON: Yes, I do. At what point shall I
12 give you copies of what I'm presenting?

13 CHAIRMAN DODGION: When you get ready to present
14 your case. That will be appropriate at that time.

15 MS. JACKSON: Thank you.

16 CHAIRMAN DODGION: Ms. Hess.

17 MS. HESS: Yes. I would like to call Shane
18 Martin to the stand, please.

19

20 SHANE MARTIN

21 called as a witness on behalf of the
22 Division, having been first duly sworn,
23 was examined and testified as follows:

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MS. HESS:

3 Q. Would you state your name for the record and
4 spell it, please?

5 A. My name is Shane Martin, spelled S-H-A-N-E, last
6 name is M-A-R-T-I-N.

7 Q. Thank you. Who do you work for?

8 A. I work for the Bureau of Mining Regulation and
9 Reclamation at the Division of Environmental Protection.

10 Q. What do you do for them in that Bureau?

11 A. I'm a permit writer in the reclamation branch.

12 Q. What is your educational background?

13 A. I have a bachelor of science in environmental and
14 occupational health from Cal State University, Northridge.

15 Q. Are you acquainted with the Moonlight project and
16 TGC Holdings, Incorporated?

17 A. Yes, I am. I'm the permit writer.

18 Q. What type of a project is Moonlight?

19 A. It's an exploration project on private and public
20 surface land.

21 Q. Are there regulations that mention exploration
22 projects in statutes and regulation, and also public and
23 private land?

24 A. Yes, there are. 519A of the Nevada
25 Administrative Code regulations.

1 Q. And what did you review in this project,
2 Moonlight project?

3 A. I reviewed a reclamation permit application
4 submitted by TGC Holdings.

5 Q. And what does the permit also include?

6 A. It also includes a map identifying the project
7 area and it includes a complete reclamation plan, and it
8 includes a cost estimate. It also includes a statement by
9 the applicant stating that they are willing to assume
10 responsibility.

11 Q. Would you please take a look at Exhibit 12 and
12 tell -- sorry, I mean Exhibit 11 -- and tell me what is this
13 particular document in Exhibit 12?

14 A. That's the reclamation permit application that
15 was submitted by TGC Holdings for the Moonlight exploration
16 project.

17 Q. Is that what also includes a plan?

18 A. Yes, that includes the reclamation plan.

19 Q. What is included in a plan for reclamation, for a
20 reclamation exploration project?

21 A. The reclamation plan includes a map, either a
22 topographic map or a sketch which shows the area where they
23 plan to do the exploration. It's also supposed to identify
24 any surface water that may have an impact on it.

25 It also describes the land where the project area

1 is located and where prior exploration work has been done,
2 along with the vintages of the exploration. It also includes
3 a description of the techniques for prospecting and
4 excavation.

5 It shows the proposed location and the
6 approximate width and length of the access road, and it
7 describes measures that will be taken to prevent
8 sedimentation of surface water, and it provides an estimate
9 of the acreage that will be disturbed by the project.

10 It also provides an anticipated schedule for the
11 project and for the reclamation work. It describes the
12 proposed use of the areas that will be affected.

13 Q. What statute are you taking a look at? I can see
14 that you're looking at one of the regulations or statutes in
15 Exhibit 12. Which one is it that you're looking at?

16 A. I'm looking at Nevada Administrative Code Chapter
17 519A.265.

18 Q. Was there anything else that you needed to add to
19 that? I didn't want to stop you midstream.

20 A. That pretty much covers all the requirements.

21 Q. All right. After you reviewed the plan, what did
22 you then do?

23 A. I determined whether the plan was complete or the
24 application was complete and whether it met all regulatory
25 requirements, and I noticed that there was some information

1 that was missing from the application.

2 So I contacted the consultant, Joseph Martini,
3 and sent a letter to him that identifies the information that
4 was missing from the application.

5 Q. Is that a common occurrence?

6 A. Yes.

7 Q. Would you take a look, please, at Exhibit 10 and
8 take a look at the book, and I apologize because they aren't
9 date stamped, Commissioners. It was one of the things that
10 my assistant was out with a lot of sick leave during this
11 time.

12 Take a look at the first four pages. Can you
13 identify those pages, please?

14 A. Yes. That's the letter along with the
15 information that I requested from the applicant, as well as
16 the consultant.

17 Q. What occurred on the basis of that particular
18 letter?

19 A. They provided me with all the information that I
20 requested in the letter.

21 Q. Did their project meet all the elements required
22 by the NACs and NRSSs at that particular point?

23 A. Yes, it did.

24 Q. Do the reclamation regulations apply to all roads
25 used in the project?

1 A. No, it exempts certain roads. The Nevada
2 Administrative Code 519A.105 exempts roads that were created
3 or built prior to January 1st, 1981.

4 Q. And that is 519A.105, isn't it?

5 A. Right.

6 Q. Now, after you determined that the map met the
7 regulations, then what did you do? Just give me generally
8 first of all what are the steps involved in issuing a
9 reclamation permit? Let's just start generally.

10 A. Well, first I draft a reclamation permit and then
11 I prepare a notice of intent. The notice of intent describes
12 the application and also states whether we plan to issue or
13 deny the permit. It just states that those are the two
14 possible situations.

15 Q. Where do those notices go, the notice of intent?

16 A. They go to the applicant, they go to the County
17 Commissioners, they go to all the right property owners, any
18 property owner in the project area.

19 They go to the Division of Minerals and they go
20 to the Department of Wildlife, and we have a whole mailing
21 list of people, interested parties who request to receive our
22 notices of intent.

23 Q. Now, if you would take a look at Exhibit 8, can
24 you identify for me what the first document is in there
25 that's two pages long?

1 A. That's the proof or affidavit of publication for
2 the notice of intent.

3 Q. No. I mean first identify the first two pages.

4 A. Oh, I'm sorry. That's the notice of intent.

5 Q. And what is the date that is for the comments or
6 information?

7 A. September 22nd, 5:00 p.m., 2008.

8 Q. I notice on the next page it has your name on it
9 and your telephone number, and a web site as well; is that
10 correct?

11 A. Yes.

12 Q. Now, to the next page which is where you were
13 wanting to be in the first place, let's discuss those two
14 pages, please. What are those?

15 A. That's the affidavit of publication for the
16 notice of intent that was sent to the Lovelock Review Miner
17 newspaper.

18 Q. Now, ignore the next two pages because that just
19 looks like it is -- does this start the draft permit right
20 here? Is that what that is, pages one through five?

21 A. Yes, that's the draft permit.

22 Q. So that is what you got together as well?

23 A. Right.

24 Q. Now, take a look at the mailing list. Under
25 private property owners I notice that that goes on to page

1 three, and then it stops there, even though it's under other
2 private ownership. You have the item Miner's Association,
3 the U.S. Forestry, Fish and Game and Wildlife and Great Basin
4 Resource Watch.

5 Do those people get copies or who gets copies of
6 the permits with the letters, the draft permit?

7 A. Everybody on the first four pages up until about
8 halfway down in the first column of the fourth page, up until
9 Michael Smith, Frank Maurer, Ph.D. was the last person to
10 receive the permit.

11 Q. Now, if you would take a look as well -- by the
12 way, who is Bethany, I notice there's a Bethany Graeser, did
13 I pronounce that right, Bethany, two pages of fax from her?
14 Did I pronounce that right, G-R-A-E-S-E-R, Graeser?

15 A. Yes.

16 Q. Who is Bethany Graeser?

17 A. She works for the Bureau of Mining Regulation and
18 Reclamation for Dave Gaskin, the Bureau Chief.

19 Q. Now, turn past all of her faxes here and take a
20 look at this alphabet thing. What is the alphabet stuff at
21 the back that has all of these e-mail addresses in there?

22 A. That's the e-mail mailing list that we send the
23 notices of intent to. Those are all the interested parties
24 that request to receive a copy of all our notices of intent.

25 Q. All right. Now, after you do the notice of

1 intent, is there any kind of fee for the application?

2 A. Yes. The applicant is required to submit a fee
3 with the permit application.

4 Q. And was that done in this case?

5 A. Yes.

6 Q. Also as well, what do you do to check how much
7 the reclamation cost is?

8 A. The applicant submits a reclamation cost estimate
9 and it describes all work they're going to do to reclaim the
10 site and it provides a calculation of -- they have to reshape
11 the site and regrade, revegetate and reclaim the site.

12 So basically it includes all the costs to reclaim
13 the project.

14 Q. Is it their cost or a third-party cost?

15 A. It's the cost for a third party to do the work.

16 Q. Did Moonlighting's plan have a means of
17 preventing excessive erosion and prevent loading of sediment
18 to the surface water?

19 A. Yes, it did.

20 Q. When you sent out the initial notice, did you
21 receive any telephone calls or written comments?

22 A. Yes, I did. I received several phone calls from
23 private property owners, including Darlene Jackson.

24 Q. Did you receive also a written comment from her
25 as well?

1 A. Yes, I did.

2 Q. Take a look at Exhibit 5. Can you identify
3 Exhibit 5 for me?

4 A. Yes. That's the written comments that we
5 received from Darlene Jackson.

6 Q. And as well, did you also receive a letter,
7 another letter that was written to Bill Houston as part of
8 that attachment?

9 A. Yes. There's a letter from Bill Houston to
10 Darlene Bunte.

11 Q. And there's a letter from her to Bill Houston as
12 well, right?

13 A. Right.

14 Q. Okay. Did she include in those comments also the
15 unexecuted access permit agreement?

16 A. Yes, she did.

17 Q. So those were her comments. When you had a
18 telephone call with her, do you recall what she actually had
19 to say and what you had to say?

20 A. Yes. I remember her saying that she didn't want
21 anybody to trespass on her property and she was afraid of
22 liability if somebody got hurt on her property, and she
23 didn't think that we had the right to authorize or issue a
24 permit to them for them to use private property.

25 Q. And what did you tell her?

1 A. I told her that the reclamation permit didn't
2 grant permission to access private property, that it only
3 covered how the project was going to be reclaimed and how
4 much the bond was going to be to reclaim the project.

5 Q. And then, Mr. Martin, what did you do after you
6 received the comments, during the comment period?

7 A. I prepared a written response to Ms. Jackson's
8 comments and I prepared those in the notice of final
9 decision.

10 Q. Is that the customary procedure at this juncture?

11 A. Yes.

12 Q. Take a look at Exhibit 7, if you would. Can you
13 identify that for me?

14 A. Yes. That's the notice of final decision.

15 Q. Did you also mention as well in there, include
16 the statute that appeals have to be taken within ten days
17 after notice of the action? Is that in what you did put in
18 there, NAC 519A.415 on the second page?

19 A. Yes. I included a copy of NAC 519A.415.

20 Q. Thank you. Now, I notice as well in the second
21 full paragraph there there is an italicized, underlined
22 section that says, "The NAC 519A regulations do not regulate
23 the operation of exploration sites or where exploration site
24 disturbances can be located. The permit does not serve as a
25 determination of ownership validity or the validity of any

1 mining claim to which it might relate."

2 The next sentence, "The reclamation permit does
3 not grant access to persons who do not otherwise have legal
4 access to any property," they don't grant access to persons.

5 Why was that included in this particular
6 document?

7 A. I included that because I was responding to
8 Ms. Jackson's comments.

9 Q. And I notice then later on we have another draft
10 of that particular permit that is attached in there. Then we
11 also have -- what is the document that's signed by David
12 Gaskin, Chief?

13 A. That's the reclamation permit.

14 Q. Who drafted that?

15 A. I did.

16 Q. Then I notice there's also the same mailing list
17 and as well the other interested parties. Is that correct as
18 what's included in that exhibit?

19 A. Yes. It includes the same people that were on
20 the original list, all the private property owners and the
21 applicant, as well as different agencies.

22 Q. Let's work backwards for a second. After you
23 received the comments, during the comment period, what did
24 you say that you did? Did I ask you that?

25 A. When I receive the comments?

1 Q. Yes. Back to before the notice of final
2 decision. What did you do after you received the comments
3 during the comment period?

4 A. Are you speaking of the written comments or the
5 verbal comments?

6 Q. Some verbal comments.

7 A. I spoke with people, some private property owners
8 called me, such as Darlene Jackson and Ronald Bunte, as well
9 as several other property, private property owners and they
10 wanted to know where the disturbance, the exploration was
11 going to be taking place.

12 So I asked them for their assessor's parcel
13 number and then I contacted the Pershing County Assessor's
14 Office and I had them fax me a map of the parcel numbers.

15 Then I contacted the person who called and let
16 them know what was going to be taking place on the property
17 and in a few instances I e-mailed that or faxed that to the
18 person who commented.

19 Q. Now, let's go back to after the final notice now.
20 Did you remember any calls from, a call from Mrs. Jackson
21 after the notice of final decision came out?

22 A. Yes.

23 Q. What did you have to say in response to what she
24 had to say on the telephone; do you remember?

25 A. Yeah. She was wondering why, I guess somebody

1 had contacted her and told her that they received a notice of
2 final decision which included an excerpt from her comments
3 and she was wondering why she didn't receive a written
4 response.

5 I told her that we did send her a written
6 response in the notice of final decision and that's how we
7 normally handle that, and that she should be receiving it. I
8 think the other person had just received it, so I think she
9 just hadn't received it in the mail yet.

10 I told her that we -- she reiterated the things
11 that she had said before about not wanting to give him access
12 on her property and I reiterated that our permit didn't
13 authorize access.

14 Q. Did you explain anything else to her?

15 A. Yes. She also said she wanted to appeal. So I
16 told her what the appeal procedures were and I also sent her
17 a form to appeal and what the procedures were. I think I
18 sent her a copy of the map, of the project area map where all
19 the exploration was going to be taking place.

20 Q. Did you talk to Connie Herman or Oma Dicus?

21 A. No.

22 MS. HESS: Did I pronounce your mother's name
23 correctly?

24 MS. JACKSON: Dicus.

25 ///

1 BY MS. HESS:

2 Q. Long "I". Did you speak to Ms. Dicus or Connie
3 Herman?

4 A. No, I didn't.

5 Q. If a reclamation permit doesn't give you access
6 to a property, what does the reclamation permit actually do?

7 A. It describes how the applicant is going to
8 reclaim the project. It identifies where all the disturbance
9 and all the exploration is going to occur, and describes how
10 they're going to comply with NAC 519A regulations.

11 Q. Does a reclamation permit cover operational
12 activities?

13 A. No.

14 Q. What was the amount of this reclamation project?

15 A. The reclamation bond amount was \$86,798.

16 Q. And you're looking at what exhibit?

17 A. I'm looking at Exhibit 7, the letter that was
18 attached to the notice of final decision.

19 Q. The one that went to Charles Sulfrian?

20 A. Yes.

21 Q. Now, you checked the figures as well. How did
22 you check the figures to know if they were correct?

23 A. They submitted a spread sheet called the standard
24 reclamation cost estimate and it's a spread sheet where you
25 enter all the dimensions of all the roads and the drill pads

1 and the revegetation seeding and everything that's going to
2 be done to reclaim the project and it calculates what the
3 cost is going to be.

4 Q. Do the statutes or regulations for the Bureau
5 require aerial photos?

6 A. No, they just require a topographic map or a
7 sketch.

8 Q. Does the Bureau settle property disputes?

9 A. No.

10 Q. Do any statutes or regulations in the reclamation
11 section allow the Bureau to consider property values?

12 A. No.

13 Q. Who is supposed to get the RS 2477 to
14 Mrs. Jackson?

15 A. Charles or their representative were looking up
16 that information and they said that they were going to
17 provide that to her.

18 Q. So you mean the applicant, correct?

19 A. Yeah, the applicant.

20 Q. The appellant just mentioned a possibility of
21 petroleum contaminated soil. How is petroleum contaminated
22 soil handled by the Bureau?

23 A. We would refer that to the -- if there was
24 petroleum contaminated soil, we would refer that to the
25 Bureau of Corrective Action.

1 Q. And how about wildlife, does the Bureau deal with
2 wildlife?

3 A. We send a copy of the notice of intent and the
4 notice of final decision to the Department of Wildlife, and
5 one of the requirements is that they revegetate the project
6 which benefits wildlife.

7 Q. Does the Bureau have any authority to build
8 roads?

9 A. No.

10 Q. Have you ever seen the project?

11 A. Yes, I have. I went out there this past Tuesday.

12 Q. Was there anything that you saw that changed your
13 mind about issuing this particular permit?

14 A. No. Everything seemed to be in compliance with
15 the permit and the regulations.

16 MS. HESS: Thank you very much. Now you're
17 subject to cross-examination.

18 CHAIRMAN DODGION: Before I open it up to the
19 other attorneys, does the Commission have any questions for
20 Mr. Martin at this time?

21 MEMBER RACKLEY: No, not at this time.

22 MEMBER MAYER: No, not at this time.

23 CHAIRMAN DODGION: I have a couple following up
24 on Ms. Hess's questions about petroleum contaminated soil.
25 Does this reclamation permit require the permittee to clean

1 up contaminated soil?

2 THE WITNESS: No. The permit -- that's not one
3 of the requirements of our regulation, of the reclamation
4 regulation, but if I did see contaminated soil then I would
5 refer that to the Bureau of Corrective Action.

6 CHAIRMAN DODGION: I understand that. My
7 question was you said that you do not require them in this
8 permit to clean up contaminated soil, either by petroleum or
9 by whatever they use for drilling, chemicals?

10 THE WITNESS: No, that's not one of the 519A
11 regulations.

12 CHAIRMAN DODGION: You don't consider that to be
13 part of a proper reclamation project?

14 THE WITNESS: I would. That's why I refer it to
15 the Bureau of Corrective Action, but that's not one of our
16 requirements.

17 CHAIRMAN DODGION: I'm a little confused about
18 pre-1981 disturbance. Can you elaborate a little bit on
19 that?

20 THE WITNESS: Yeah. The regulation permits
21 access roads that were built prior to January 1st, 1981, if
22 all the applicant is going to do is use that the road for
23 access and they're not planning on improving or widening the
24 road, then the road is exempt from the 519A regulation.

25 CHAIRMAN DODGION: Is that by regulation or by

1 statute?

2 THE WITNESS: It's by regulation.

3 CHAIRMAN DODGION: So the statute does not make
4 that exemption, it's made by regulation adopted by the
5 Environmental Commission?

6 THE WITNESS: As far as I know. I'm not sure if
7 the statute covers it, but I do know that the regulations
8 provide for the exemption. I'd may have to look.

9 CHAIRMAN DODGION: That's fine. Thank you.
10 Ms. Jackson.

11 CROSS-EXAMINATION

12 BY MS. JACKSON:

13 Q. First of all, when we spoke on the phone, I think
14 you remember incorrectly, I asked about the RS 2477 roads and
15 you said you didn't have any information on that, and no one
16 ever gave me any information whatsoever on it. I had to
17 research that myself.

18 So I did want to put that out. We did have many
19 conversations, but the one thing that you did recall
20 incorrectly was that you did not have the information for me
21 when I requested it, and no one ever approached me with
22 information. I did research it myself. So that's one point.

23 A. Did you have a question on that?

24 CHAIRMAN DODGION: She asked if you recalled
25 that.

1 THE WITNESS: Did you want me to respond to that?

2 BY MS. JACKSON:

3 Q. You may, yes.

4 A. Yes, you mentioned that you were finding out more
5 on that regulation, so I contacted the applicant and told the
6 applicant that Ms. Jackson would like more information on RS
7 2477, and I believe that the applicant sent you a letter
8 interpreting that regulation.

9 Q. A letter, but not actual information on it.

10 A. Right.

11 MS. JACKSON: At this point, since I'm not an
12 attorney and not versed in what I'm allowed to do, I'll just
13 ask the question, may I ask, since you brought up the point
14 of the oil and the questions that I had in my letter --

15 CHAIRMAN DODGION: You can ask him anything you
16 like.

17 MS. JACKSON: May I go ahead and ask directly if
18 he has knowledge?

19 CHAIRMAN DODGION: Yes.

20 BY MS. JACKSON:

21 Q. Part of my letter to you with regard to the
22 possible pollution was what about their using the roadway
23 with their heavy equipment and their responsibility to
24 maintain this property, their liability for any possible
25 accidents on the road that might be suffered, any physical

1 harm to any individual drivers or passengers that they might
2 meet on the route when they're on our property.

3 That in addition to the pollution bit is a big
4 concern to me, not simply trespassing, and I'm wondering if
5 you can tell me who will take care of those matters,
6 especially since you've just mentioned that their permit has
7 nothing to do with taking care of the oil or the other
8 polluting contaminant matters from the vehicles traveling
9 back and forth.

10 MS. HESS: I would object to that particular
11 question because it calls for a legal conclusion and my
12 witness is not an attorney.

13 MS. JACKSON: However, he did say that it was not
14 allowed for in the clause for the permit.

15 CHAIRMAN DODGION: Excuse me. Let me deal with
16 the objection. You do have a good point about legal
17 interpretation, but I think these issues were raised with
18 respect to the draft permit and these questions were asked
19 and he doesn't have to give a legal opinion because he is not
20 an attorney, but he can tell her how and what he did to set
21 those aside or to decide either to not respond to them or so
22 on.

23 With that, she's asked you a rather long list of
24 things. Perhaps you can go at them one at a time and get his
25 response?

1 BY MS. JACKSON:

2 Q. It doesn't seem to me that a bond for 87,000 plus
3 is enough for any of that to be done should you notice that
4 it was required.

5 A. Are you asking me a question?

6 Q. I'm just finishing -- I think I've asked as much
7 as I can. Now I'm waiting for your response.

8 A. Can you ask them one at a time?

9 CHAIRMAN DODGION: Let me see if I can help out
10 here. You've run through a litany of things, the pollution,
11 accidents on the road, traffic on the road, so on and so
12 forth.

13 MS. JACKSON: Anything that might lead to a need
14 for them --

15 CHAIRMAN DODGION: But you've asked them in a
16 very general way and I'll ask you to respond to it in the
17 same manner. The things that she's talked about that were
18 put on the record before you issued the final permit, you
19 need to respond to her as to why you didn't do something
20 about those in the permit or what you did in your decision
21 making to not do anything about them.

22 THE WITNESS: As far as the pollution and Indian
23 Creek oil contamination, those things weren't raised until
24 after the notice of final decision. So I couldn't respond to
25 those because they weren't brought up until after we issued

1 the notice of final decision.

2 CHAIRMAN DODGION: In your direct testimony you
3 indicated that the permit application addressed issues of
4 pollution loading.

5 THE WITNESS: Sediment loading.

6 CHAIRMAN DODGION: Pollution to the streams.

7 THE WITNESS: Yes. I believe she was talking
8 about contamination of oil. Is that what you were talking
9 about?

10 BY MS. JACKSON:

11 Q. Any oil drippings, slicks that could result in
12 damage to the environment is what my letter states, any
13 possible pollution to Indian Creek which I understand is a
14 seasonal waterway.

15 A. When did you raise these issues?

16 Q. I brought up my initial concerns with you on the
17 phone. Then I waited for a letter in response to my original
18 letter and my follow-up conversation. I received no answer
19 until I received a copy of your final permit, at which time I
20 appealed again stating these things.

21 A. In your first letter you didn't address
22 contamination or pollution of the stream or oil leaking from
23 the equipment.

24 Q. Only in our conversations, and then I waited for
25 a response and I heard absolutely nothing from anyone, and

1 then I received the notice of final that you had gone ahead
2 and given the permit.

3 A. My recollection is that you were addressing your
4 concerns about trespassing and liability, but you never
5 brought pollution of Indian Creek or leaking of oil from the
6 equipment until you submitted your response to the notice of
7 final decision.

8 Q. I elaborated on the points that I discussed.

9 CHAIRMAN DODGION: If I understand your answer --

10 THE WITNESS: I'm saying she didn't address those
11 issues until the notice, until after the notice of final
12 decision.

13 CHAIRMAN DODGION: Does the permit cover those
14 issues?

15 THE WITNESS: Yes, it does address -- they did
16 address those issues in the permit application. It's not
17 something that our regulations require them to address, I'm
18 sorry, leaking of oil or liability. I don't think they
19 addressed liability but they did address that they would
20 clean up petroleum contaminated soil and they would prevent
21 sediment loading to the stream.

22 So the issues that she raises, it did address
23 those except for the liability. I don't think that was
24 included in there.

25 CHAIRMAN DODGION: That might be a question you

1 might properly ask the intervener witnesses. Do you have any
2 other questions for Mr. Martin?

3 MS. JACKSON: I did discuss with him whether or
4 not any aerial photos had been made and if they had to submit
5 any aerial photos to show just the extent of what was going
6 to be done. I didn't get a response.

7 CHAIRMAN DODGION: He has testified that no
8 aerial photos were taken or submitted.

9 MS. JACKSON: Other than that, I have nothing.

10 CHAIRMAN DODGION: Thank you very much.

11 Mr. Erwin, do you have questions of Mr. Martin?

12 MR. ERWIN: Just a few, Mr. Chairman.

13 CROSS-EXAMINATION

14 BY MR. ERWIN:

15 Q. Mr. Martin, you stated that when the application
16 was filed you found some deficiencies in the application and
17 requested additional information from Mr. Martini at
18 Eenviroscientists; is that correct?

19 A. Yes.

20 Q. Would you turn to Exhibit 10 in the binder you
21 have there and in particular the third or fourth page in
22 there's a letter on Enviroscientists, Inc., letterhead dated
23 July 28th, 2008.

24 A. Okay.

25 Q. Is that the response you received from

1 Mr. Martini in response to your request for additional
2 information?

3 A. Yes.

4 Q. Did Mr. Martini's letter adequately address the
5 deficiencies in the original application?

6 A. Yes.

7 Q. How would you characterize Mr. Martini's response
8 to you? Was the company cooperative with you in your
9 request, Enviroscientists?

10 A. Yes, they were. It only took them a few days to
11 respond to my letter.

12 Q. Now, turning to this issue of potential releases
13 of petroleum substances or contaminants, your Bureau is
14 charged with addressing reclamation of activities that
15 disturb the surface, correct?

16 A. Yes.

17 Q. When these applications come in, your charge is
18 to address disturbances and activities that are planned or
19 intended by the applicant, correct?

20 A. Yes.

21 Q. Is there anything in the application for permit
22 that was filed by TGC that indicated they planned to
23 discharge any petroleum product on the property?

24 A. No.

25 Q. Is there anything in the plan that indicated they

1 intended to discharge any hazardous materials or unlawful
2 contaminants?

3 A. No.

4 Q. I know you're not a lawyer, Mr. Martin, but in
5 your experience with the Division of Environmental
6 Protection, are you aware that there are other statutes
7 outside of Chapter 519A which address release of contaminants
8 and hazardous materials to the air and water in the state of
9 Nevada?

10 A. Yes, there are.

11 Q. Is the prosecution of administrative or criminal
12 actions for those types of releases if they're unlawful, is
13 that vested in another bureau or agency?

14 A. Yes. I believe I mentioned that bureau earlier,
15 the Bureau of Corrective Action.

16 Q. In which department in the state of Nevada is
17 that bureau situated; the Department of Conservation and
18 National Resources?

19 A. Yes.

20 Q. It's their responsibility to investigate and
21 prosecute unlawful releases; is that correct?

22 A. Yeah. They're required to investigate and have
23 any contamination cleaned up. They have to meet a certain
24 threshold.

25 Q. Turning to the amount of the reclamation bond

1 that was approved as part of this permit application, that
2 amount was calculated by Mr. Martini's company,
3 Enviroscientists, correct?

4 A. Yes.

5 Q. And in the application itself there's quite a bit
6 of data about how they did that; is that true?

7 A. Can you rephrase that?

8 Q. In the application for the permit there is quite
9 a bit of data about how they calculated the amount of the
10 bond, the cost to reclaim their disturbances; is that
11 correct?

12 A. Yes.

13 Q. Does your Bureau have a set of formulas for
14 guiding applicants insofar as calculating those costs?

15 A. There is a standard reclamation cost estimator
16 that if they choose to use, they can use that spread sheet.
17 It's an Excel spread sheet program.

18 Q. With respect to this particular permit and
19 application, it was your conclusion that their estimation of
20 the costs of reclaiming the land disturbance, was it a
21 correct and accurate determination?

22 A. Yes.

23 MR. ERWIN: I have no further questions. Thank
24 you.

25 MEMBER RACKLEY: I have a question. Shane, you

1 mentioned or somebody mentioned RS 2477 roads. If I'm not
2 mistaken, those are the roads that sometimes the counties or
3 somebody had to accept; is that correct?

4 THE WITNESS: I think it is.

5 MS. HESS: I don't know if they have to accept
6 them or not. It was that the RS I believe pertains to a
7 federal law. I'm not sure on that, but I think it's
8 actually, from my DA days, that it's a federal law and it
9 basically allows, in spite of density, if it's one of those
10 roads that people have hunted on for six generations, they
11 were still permitted to go out and hunt on those.

12 MEMBER RACKLEY: It sticks in my mind that the
13 county had to designate them maybe is a better word than
14 accept them, designate them as a 2477 road in order for them
15 to grant that public access?

16 MS. HESS: Yes, but that is a different public
17 access, that is true, than what we're talking about in this
18 other regulation that the Commission passed.

19 MEMBER RACKLEY: If Pershing County designated
20 them, then they would grant a decree of public access across
21 the property?

22 MS. HESS: They do.

23 MEMBER RACKLEY: Is that right?

24 MS. HESS: That is correct, and it was granted by
25 the federal as well. Those roads are marked on federal maps

1 and maintained by the county.

2 MEMBER RACKLEY: In Exhibit 11, page 11, there's
3 a paragraph in there that deals with the contaminant
4 materials such as fuel delivery use and so forth.

5 MS. JACKSON: I'm sorry, I didn't hear that.

6 MEMBER RACKLEY: Page 11, section 2.8 and it's in
7 Exhibit 11. This pretty well kind of states what you're
8 saying, Shane, that there are other agencies who have
9 responsibility for spills and so forth and what the applicant
10 has said here is that they would notify the appropriate
11 agencies.

12 Is there something in Reclamation, in your
13 Division, that expedites that process in case something
14 happens? Is that part of the application process?

15 THE WITNESS: No. We don't even review those
16 sections because they don't pertain to our regulations.

17 MEMBER RACKLEY: So it's totally up to the
18 applicant for the reclamation permit to perform that, which I
19 don't know, is this common language?

20 THE WITNESS: Yeah, it's pretty common. There's
21 sections in here regarding spills and clean up. I mean,
22 they're nice to have but our regulations don't require them
23 so I don't specifically review them. They don't have to meet
24 any of our or pertain to any of our regulations.

25 I'll look through it but I won't be able to

1 comment on that.

2 MEMBER RACKLEY: Thank you.

3 MEMBER MAYER: Could we talk a little bit about
4 access to the reclamation site? Is the only access through
5 the appellant's property?

6 THE WITNESS: I believe there's about four
7 different access roads to the project.

8 MEMBER MAYER: Are there any prescriptive rights
9 of trespass on roads through your property?

10 MS. JACKSON: I'm sorry, are you speaking to me?

11 MEMBER MAYER: Yes.

12 MS. JACKSON: I address all of that in my
13 presentation here.

14 CHAIRMAN DODGION: We'll go over that again when
15 you put on your presentation.

16 MEMBER MAYER: So in other words, there's a lot
17 of other access to this piece of property that the permit
18 applies to?

19 THE WITNESS: Yeah. There's one on the east side
20 of the project as you drive down Highway 400. There's
21 several access roads on the east side of the project.

22 MEMBER MAYER: I noticed that on the map. The
23 other thing is according to tab 11, page 11, section 2.8,
24 anybody in the public that happens to see the spillage of oil
25 or any other contaminants can contact the proper division

1 that deals with these kind of things, which is not your
2 purview as far as the permitting process goes? It could be
3 the landowner, it could be the Department of Wildlife, it
4 could be any hiker, hunter or whatever, on the project site
5 could then make that notification and then the people doing
6 the project work are subject to those regulations?

7 THE WITNESS: Yeah, either that or if I see it
8 then I would refer it to someone else. Yeah, they could
9 contact anybody in the appropriate Bureau with the Division
10 of Environmental Protection and report that directly to them
11 or I can refer that if I see it while I'm out there on an
12 inspection.

13 CHAIRMAN DODGION: Ms. Hess?

14 MS. HESS: Yes.

15 REDIRECT EXAMINATION

16 BY MS. HESS:

17 Q. Is there anything in the statutes or regulations
18 in the Bureau of Reclamation that addresses liability on
19 private property?

20 A. No.

21 Q. Also, when you were out there taking a look at
22 the property, did you see any fences?

23 A. No.

24 Q. Did you see any no trespassing signs?

25 A. No.

1 Q. Isn't it true that there are hot lines that are
2 kept on NDEP's web site for calling in any kind of spills or
3 air pollution or anything that a consumer wants to report to
4 them?

5 A. Yes, it is.

6 Q. Is there any exploration disturbance that is
7 proposed on private land that is the property of the
8 appellant?

9 A. Can you repeat that?

10 Q. I'd be happy to repeat that. Is there any
11 exploration disturbance that is proposed on the private
12 property of the appellant?

13 A. No.

14 Q. Now, you are here today testifying just about
15 reclamation, the Bureau of Reclamation; is that correct?

16 A. Yes.

17 Q. So you are not part of the regulation section of
18 the Bureau of Mining; is that correct?

19 A. Yes.

20 Q. So there are two groups in the Bureau of Mining
21 Regulation and Reclamation; is that correct?

22 A. There's three of us; regulation, closure and
23 reclamation.

24 Q. All right. It's just not in the title. Do you
25 have any idea why it is that the reclamation cost addresses

1 how much it would cost by third parties to do the
2 reclamation?

3 A. In the event that something happens to the
4 applicant and they file bankruptcy or something, then that's
5 what it would cost a third party if our Bureau were to hire a
6 third party to reclaim the project.

7 Q. If a mining company reclaims everything
8 perfectly, then what happens to that bond?

9 A. Then we release the bond.

10 Q. To who?

11 A. Give it back to the applicant.

12 MS. HESS: Thank you. I have no further
13 questions.

14 CHAIRMAN DODGION: Thank you, Mr. Martin. You
15 may step down.

16 MS. JACKSON: May I ask one question, please, of
17 Mr. Martin?

18 CHAIRMAN DODGION: Go ahead.

19 MS. HESS: Then I have a right to as well.

20 REXCROSS-EXAMINATION

21 BY MS. JACKSON:

22 Q. You mentioned that the bond could be given back
23 after everything was done perfectly. When you and I spoke on
24 the phone, I asked you what the time frame would be where you
25 would be out looking and seeing how things were being taken

1 care of. You said usually within one to two years, possibly
2 three.

3 Is there an expiration on that bond as to how
4 long they have to do their clean up, and at which time it
5 expires and you give them back anything that's left?

6 A. No, there's no expiration. They're required to
7 maintain the bond.

8 Q. For what period of time since you said you would
9 only go out to double check perhaps every one to two or three
10 years? At what point would it become apparent that that work
11 was necessary and that's why I'm asking about an expiration
12 date on the bond.

13 A. No, there's no expiration date. If they want
14 their bond back, then they have to submit what's called an --

15 Q. They have to what?

16 A. They have to submit an attachment A which is a
17 request for release from reclamation liability and then we
18 would have to go out and do an inspection and check to make
19 sure everything looked okay, meets the regulation.

20 Q. Before the return of the bond?

21 A. Before the return of the bond.

22 Q. And anything that was noted and came up in the
23 future would not be recoverable, then, after the bond was
24 given back? Then it would be up to the state of Nevada to
25 follow through or the county if there was something missed?

1 A. I guess that's a possibility, if I miss
2 something.

3 MS. JACKSON: Thank you.

4 CHAIRMAN DODGION: All right, Mr. Martin, thank
5 you very much. Ms. Hess? Before you proceed further,
6 Ms. Hess, you have provided us with these exhibits and I
7 assume that you want to make them officially part of the
8 record?

9 MS. HESS: Yes, if I could move for that to be
10 made part of the record, please.

11 CHAIRMAN DODGION: Do you have any objection?

12 MS. JACKSON: No.

13 MR. ERWIN: No objection.

14 CHAIRMAN DODGION: Then we will accept this
15 binder with Exhibits 1 through 12 weighing approximately --
16 as part of the record. Ms. Hess?

17 MS. HESS: I just have one thing to add.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. HESS:

20 Q. What you would inspect after reclamation had been
21 completed? Are those things that you would check in the
22 regulations and in the statute that would have to be
23 accomplished, as well as in the permit, before the bond could
24 be released?

25 A. Yes.

1 Q. So they would have to make those statutory
2 corrections to that property?

3 A. Can you rephrase that?

4 Q. Okay. You were asked by the appellant about
5 returning the bond. Now, when do you get around -- if you're
6 going to return the bond, when do you do that?

7 A. We return it after we review a request for
8 release from reclamation liability, when we get that from the
9 applicant.

10 Q. And then what have you done or what would you do,
11 what kind of inspections would you do?

12 A. I would go out there and inspect the site and
13 make sure that they reclaimed it according to the regulations
14 and according to the permit.

15 MS. HESS: Thank you very much.

16 CHAIRMAN DODGION: Now are we done?

17 MS. JACKSON: May I ask a question?

18 CHAIRMAN DODGION: No, that's enough.

19 Mr. Martin, you may step down. Please do so.

20 MS. HESS: Thank you, Shane. Ms. Jackson, it's
21 your turn now. If you will come forward and be sworn?

22 MS. JACKSON: I'd like to give the attorneys
23 this, I just made one copy. I did make three or four, so
24 possibly if you don't wish them all, I know there's
25 additional information I see in the book. My presentation is

1 going to be in the format of strictly reading my information,
2 and you have that in front of you.

3 CHAIRMAN DODGION: All right. Any objection?

4 MS. JACKSON: And I do have some follow-up
5 points.

6 CHAIRMAN DODGION: Go ahead.

7
8 DARLENE JACKSON

9 called as a witness on behalf of herself

10 having been first duly sworn,

11 was examined and testified as follows:

12
13 MS. JACKSON: Thank you. I come here today as a
14 landowner of 50 years paying taxes on parcel 12 in the east
15 quarter of the southwest one-quarter of section 13 which
16 we're talking about here.

17 I also speak for the taxpayers Ronald Bunte whose
18 parents were Willard and Selma Bunte, his aunt, Florence
19 Swain of the Swain Trust, my aunt, Connie Herman here today,
20 as well as my mother Oma Dicus, also here today.

21 Fifty years ago we and other friends and
22 relatives attended a land presentation and bought many
23 parcels in many different sections in the same area. Many of
24 us envisioned a beautiful open wilderness where we could
25 enjoy nature and if circumstances permitted move on to the

1 land, settle, be good stewards of the land. This wasn't a
2 possibility for some of us during our working years.

3 We kept our lands for possible resale or to pass
4 on to our children. To my knowledge the only one actual
5 inhabitant is Dan Blair who owns in section 7. He just
6 finished building after living in a tent, and by the way, the
7 road TGC, Limited is now permitted to use for years to come
8 also goes right through his private land.

9 We have been approached by many to sell.

10 MS. HESS: Excuse me for a minute. I object to
11 this information about Dan Blair. That is not part of this
12 hearing.

13 MS. JACKSON: I have a witness here today --

14 CHAIRMAN DODGION: Just a second. Is this
15 Mr. Blair?

16 MS. JACKSON: No, but he is a friend of
17 Mr. Blair's.

18 CHAIRMAN DODGION: You object to any mention of
19 the road going through Blair's property?

20 MS. HESS: Yes. He is not here as an appellant.
21 Therefore, I object to it.

22 CHAIRMAN DODGION: Does the road go through his
23 property?

24 MS. HESS: I have no idea.

25 CHAIRMAN DODGION: We're going to find out, so I

1 overrule the objection.

2 MR. MAURER: I do know it goes through his
3 property and I have maps here.

4 MS. JACKSON: Yes, and I have maps. We have been
5 approached by many to sell and TGC Holdings to lease for \$200
6 for a five-year period. Their offer was refused. Out of the
7 blue we were told that they requested a permit which would
8 allow them to cross over and explore on public and private
9 properties.

10 I contacted the Bureau of Mining Regulation and
11 Reclamation and they wrote a letter requesting this not be
12 allowed. A short time later we were notified in writing that
13 a final permit had been granted.

14 Needless to say, we were astounded as private
15 property owners had no say on what happened on their own
16 land, especially since TGC is a private for-profit company.
17 I have a copy of my protest letter and that's in the paper
18 work that you have. Also in the binder.

19 CHAIRMAN DODGION: It has been admitted into the
20 record.

21 MS. JACKSON: Thank you. We were made aware of
22 the appeals process and we filed our individual appeal form,
23 so I'm here to speak with you today for all of us.

24 We were first informed by Charles Sulfrian of TGC
25 Holdings that we must allow them the right to use the road

1 through our private properties citing RS 2477. Then they
2 further stated that the road through our private properties
3 had been in existence for over 100 years and that meant they
4 had the right to use it as well as any other person.

5 He further stated that the access permit
6 agreement also, number one, limits our right of access to the
7 existing road, binds us to use the existing road only in a
8 manner that is consistent with the road as it exists today.

9 Three, prevents us from leaving the road, storing
10 or parking any vehicles on your parcel or storing any
11 equipment or supplies on your parcel. Four --

12 CHAIRMAN DODGION: If I could interrupt you just
13 a minute? This access permit agreement is an agreement that
14 the exploration company was offering you and asking you to
15 enter into?

16 MS. JACKSON: This was in their letter to me
17 stating that the access permit agreement also limits this.
18 This is the way he wrote the letter to me. I assumed that
19 meant the permit.

20 CHAIRMAN DODGION: You're assuming that means the
21 permit issued by the Division of Environmental Protection?

22 MS. JACKSON: Yes. He stated that the access
23 permit agreement also, and then he mentions these points, and
24 his letter is more than likely in the binder and I have a
25 copy of it.

1 CHAIRMAN DODGION: Go ahead.

2 MS. HESS: Commissioners, if you'd take a look at
3 Exhibit 5, that's where you'll find those documents.

4 MS. JACKSON: Okay. And four, provides other
5 protections regarding vegetation, erosion prevention and
6 minimizing the danger of fire. If they use the road only in
7 a manner that is consistent with the road as it exists today,
8 how will they do so with drilling rigs, equipment and
9 personnel?

10 Can you imagine what that existing dirt road will
11 look like over the years and the permit they have been given
12 is renewable. First, an RS 2477 road --

13 MR. ERWIN: Excuse me, Mr. Chairman. I would
14 object to the text of this letter from this point forward
15 because this is testimony that I'm objecting to because she's
16 rendering a legal opinion and it's not factual testimony on
17 that basis.

18 MS. JACKSON: I'm sorry, I can't hear you.

19 MR. ERWIN: Oh, you couldn't hear me?

20 MS. JACKSON: I can't hear what you're saying.

21 MR. ERWIN: I was objecting to the paragraph
22 beginning at the bottom of the page as testimony because it's
23 rendering a legal opinion, it's not factual with evidence,
24 and that's the purpose of this hearing. It's not her place
25 in this proceeding to render legal opinions. I just wanted

1 to have that objection on the record.

2 CHAIRMAN DODGION: You're objecting to the final
3 paragraph that starts with "First"?

4 MR. ERWIN: The text at the bottom and I'll just
5 make a blanket objection to the extent that she is reciting
6 in this statement any opinions of law on the basis that's not
7 testimony, it's legal opinion, and they shouldn't be
8 considered evidence or factual evidence in the record. It's
9 basically an argument being made.

10 CHAIRMAN DODGION: I understand and I do agree
11 with you as well.

12 MS. HESS: I'll join in that objection.

13 MS. JACKSON: I'd like to make mention that I
14 have notes of the people I spoke to, the names, and I have
15 the paper work here with me that states the things I'm
16 reading.

17 CHAIRMAN DODGION: I'd ask you to present your
18 testimony with respect to the Division's permit, the
19 reclamation permit and how that impacts or doesn't impact
20 you.

21 MS. JACKSON: In order to do that I have to refer
22 to the research that was given to me by BLM.

23 CHAIRMAN DODGION: You understand Mr. Erwin's
24 objection to that, that you've done some research and you're
25 offering your analysis of that research which is a legal

1 opinion.

2 MS. JACKSON: It's not my analysis. It's what I
3 have here and I could present it.

4 CHAIRMAN DODGION: Go ahead. Your objection is
5 on the record and we understand your objection.

6 MS. JACKSON: I'd like to read it and then I have
7 supporting statements.

8 MS. HESS: I would object as well on the basis
9 that BLM is not a party to this suit.

10 CHAIRMAN DODGION: I note your objection and I
11 don't know that we need the BLM here.

12 MR. ERWIN: Mr. Chairman, I understand you will
13 allow her to read this in. I would also make an objection
14 that any recitation of statements or letters or e-mails she
15 received from third parties who are not here to testify is
16 hearsay and not admissible, and I'd make that a blanket
17 objection to quotation of statements by third parties who are
18 not here to testify, including any documents she submits to
19 support those third-party statements.

20 CHAIRMAN DODGION: If she submits a document from
21 a third party that contains information that is over their
22 signature, are you objecting to that?

23 MR. ERWIN: Yes, because it is hearsay.

24 MS. HESS: Yes.

25 CHAIRMAN DODGION: You have no opportunity to

1 cross-examine them?

2 MR. ERWIN: Yes.

3 MS. HESS: That applies to the statements in that
4 letter as well.

5 CHAIRMAN DODGION: I'm inclined to agree with
6 you. However, I think in this situation we have to allow
7 wide latitude to the appellant. Your objection is
8 understood.

9 MS. JACKSON: I appreciate that very much. At
10 least I will read it, and then I do have printed excerpts,
11 not my interpretation, but printed excerpts here.

12 CHAIRMAN DODGION: We will take a look at them
13 and give them the weight that they deserve.

14 MS. JACKSON: Thank you. An RS 2477 road refers
15 to a road that is a maintained road in regular and continuous
16 use. This cow trail and dirt road that has been here for
17 over 100 years has certainly seen little, if any, regular or
18 constant travel. It was not asserted to be a 2477 road and
19 has not been maintained.

20 RS 2477 was repealed by the 10th Circuit Court of
21 Appeals. In any event, RS 2477 does not apply to private
22 properties. Only a state or a county, like Pershing County,
23 can assert that a road is an RS 2477 road.

24 From talking to Pershing County road department I
25 was told the road in question is not on record as having been

1 asserted to be an RS 2477 road by either the state of Nevada
2 or Pershing County.

3 I also spoke with a Mr. Bob Edwards of BLM about
4 this. He said BLM owns section 12. All the other parcels
5 through all the other sections TGC is granted a permit to
6 cross over our private property.

7 I also spoke at great length to a Mr. Trout and
8 extensively to a Mr. Don Buhler of the BLM in Washington,
9 D.C. Mr. Buhler e-mailed me a little helpful bit of
10 information regarding there. I have his e-mail printed that
11 was sent to me with me to substantiate that he did indeed
12 e-mail me.

13 The information has much reference to the impact
14 of surrounding public lands or resources and alternatives or
15 modifications that would avoid or minimize such impacts.

16 If it was an RS 2477 road, one important sentence
17 standing out is "The validity of an asserted RS 2477 road
18 must have been adjudicated as valid by a federal court,
19 recognized as valid by the BLM." RS 2477 again does not
20 apply to private property.

21 Secondly, we are especially upset this permit
22 allows TGC or the attorney there, it's either TGC, Limited to
23 continuously for many years cross over all our private lands
24 with our having absolutely no right or say. What this in
25 effect would be is SEC granting, would this in effect be SEC

1 granting a prescriptive easement. A prescriptive easement
2 calls for regular and continued use for a significant time.

3 Up until this time and all those 100-plus years
4 they have not had regular continued use for a significant
5 number of years. A dirt road doesn't bode well for drilling
6 rigs. It appears that granting a permit to the company to
7 drive over, disturb or build as suitable for passage, et
8 cetera, that the SEC is granting them the ability to assert a
9 prescriptive easement without our having a word to say or
10 ability to stop.

11 This cannot be right. Surely a cloud on title
12 on all our private properties would exist requiring much
13 future problems to it. Owners of property aren't made aware
14 of this type of problem. Nothing is documented and put into
15 public record making owners aware.

16 Don Buhler of BLM says BLM gets drug into the
17 middle of this because of old statutes and it's a huge issue
18 with tons of cases in the court. My letter stated my
19 concerns of liability to landowners, probable and possible
20 pollution of Indian Creek, danger to and loss of life to
21 wildlife and native vegetation.

22 We protest and want to preserve our enjoyment of
23 wilderness and protect our environment and our own rights to
24 our property without clouds of title.

25 The environmental importance of the issue as

1 cited even more profoundly by Professor Frank Maurer, a
2 biologist who is here today who also owns property in this
3 area. He has walked the ground, had aerial photos made,
4 stated the necessity of a watershed to protect our properties
5 from becoming polluted from the Moonlight mine and Phlueger
6 mine.

7 He states the danger to grouse and trout in the
8 Indian Creek, one of only four such trout streams in the
9 state of Nevada. He warns of the danger to our land from
10 becoming polluted like the Rochester mine. I have a map
11 which he provided which might be of interest to you and
12 that's in the paper work here.

13 As many other families, our family has some
14 Indian ancestors. I think I'm a lowly 32nd or something. I
15 do know much has been stated in all the land use rulings that
16 Indian lands are to be protected, and from what Professor
17 Maurer states, there are many Indian artifacts on the land
18 that should be investigated and preserved.

19 I've been told that in the 1800s the laws
20 regarding mining were made by miners for miners. That might
21 have been well and good then but our country has progressed
22 beyond those times.

23 Our property deeds contain 30-foot easements for
24 future roads should the owners of those easements decide to
25 develop them. Anyone landlocked or wishing to get to their

1 properties could very well explore the less damaging options
2 to the environment and private property owners' use of their
3 own land. Is the greater good that private property rights
4 be trampled over by any private, for-profit outfit that comes
5 along and decides to disregard our rights, our enjoyment of
6 wilderness, wildlife, pure water and air, and Indian Creek by
7 the SEC, stewards of the environment and the very agency that
8 is commissioned to protect, actually be the very agency to
9 permit this?

10 There are so many issues involved here. I ask
11 that you consider the greater picture. I see drilling rigs,
12 runoff into the creek, killing of wildlife, destruction of
13 native grasses, disturbing or destroying of Indian artifacts,
14 liability to many, and loss of other private property
15 enjoyments of natural wilderness.

16 I ask you to look at the picture from a new
17 perspective that will take into consideration the true
18 meaning of environmental stewardship.

19 I do have many of the RS 2477 road things printed
20 with my analysis and I do have the names and numbers of the
21 people that I spoke with.

22 MR. MAURER: May I made a correction?

23 MS. HESS: Objection.

24 CHAIRMAN DODGION: No.

25 MS. JACKSON: That is as much as I have to say.

1 My witness here would like to add something.

2 CHAIRMAN DODGION: At this moment, the Commission
3 panel may have some questions for you. Following that you
4 will be subject to questions by Ms. Hess and Mr. Erwin.
5 Following that we will allow you to call your witness subject
6 to objections from them. All right?

7 Ira, do you have questions of Ms. Jackson?

8 MEMBER RACKLEY: Ms. Jackson, the access purchase
9 agreement, I want to make sure I have it correctly, it was
10 submitted to you but you did not accept it?

11 MS. JACKSON: I did not. We had many offers to
12 buy. We also have the requests.

13 MEMBER MAYER: So currently there is no access
14 permit?

15 MS. JACKSON: Not between the company and me, no.

16 MEMBER MAYER: I noticed in your statement here
17 you talk in your last paragraph about a number of things that
18 are near and dear to my heart. They clearly are not the
19 purview of the Bureau, but really fall in the lap of the
20 Bureau of Land Management. Have you been actively involved
21 in the Bureau of Land Management process?

22 MS. JACKSON: No, I have not.

23 MEMBER MAYER: That's where the rubber meets the
24 road with a lot of these concerns that you have with the
25 Department of Wildlife and others, so I was just curious

1 whether or not you'd been involved in their planning process
2 and got your feelings and ideas known at that level that
3 really have jurisdiction over a lot of this stuff.

4 MS. JACKSON: I'm just very concerned with the
5 pollution from the tires, any oil, anything that's actually
6 going to be made possible by the use of that access road when
7 we have easements. They have other roads to use without
8 going through our private property.

9 I have the map of the properties they intend to
10 go. There is a road on record going through section 1, but
11 there is no right of way whatsoever listed as being asserted
12 by Pershing County or the state of Nevada.

13 CHAIRMAN DODGION: Ms. Hess, do you have
14 questions?

15 MS. HESS: Yes, I do.

16 CROSS-EXAMINATION

17 BY MS. HESS:

18 Q. Ms. Jackson, where do you live at this particular
19 time?

20 A. I live in El Dorado Hills, California.

21 Q. Also, who is Connie Herman? Is that your aunt?

22 A. She's my aunt.

23 Q. Do you know where your aunt lives?

24 A. Where my aunt lives?

25 Q. Yes.

1 A. She lives in Discovery Bay, California.

2 Q. How about Ron Bunte, where does he live?

3 A. He lives in San Juan Capistrano. I have a letter

4 from --

5 Q. We have letters from him as well. How about Don

6 Bunte?

7 A. Ron.

8 Q. Ron Bunte?

9 A. Ron Bunte is Ronald Bunte.

10 Q. So it's one and the same. They're not two

11 people?

12 A. No.

13 Q. Your mother, Oma Dicus, where does she live?

14 A. She lives with me in El Dorado Hills.

15 Q. When did you first go with a realtor out to the

16 property?

17 A. We did not. As I mentioned in my letter, we

18 bought through a land presentation in a private home.

19 Q. Where was this private home?

20 A. It was in Downey, California.

21 Q. Do you have a house on that property?

22 A. No.

23 Q. Do you have a fence around that property?

24 A. No.

25 Q. Does Connie Herman have a house on that property?

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A. No.

Q. Does she have a fence around that property?

A. No.

Q. Donald Bunte?

A. No. There is no Donald.

Q. There's just Ron Bunte?

A. Ron or Ronald Bunte.

Q. And how about your mother, does she have a house on her property in Pershing County?

A. No.

Q. When did you go out and actually see the property?

A. I went out with the County Assessor Buzz Gray and it was probably about 15 years ago.

Q. What would be 15 years ago?

A. I'm saying approximately. I'm not exactly sure of the date. 15 plus years ago.

Q. So you paid property tax on that for many years before you even saw it; is that correct?

A. Yes.

Q. Did your mother or your aunt go out there and see the property before you did?

A. Before I did? My aunt saw the property before I did.

Q. Do you know when she saw the property?

1 A. I'm sorry, I didn't hear you.

2 Q. Do you know when she saw the property, what was
3 the date she saw the property?

4 A. She's here. You would have to ask her. I don't
5 know the date myself.

6 Q. But you paid property tax on it for 50 years; is
7 that correct?

8 A. On my property, yes.

9 Q. Did you all buy the property at the same time?

10 A. We did.

11 Q. In Downieville, California?

12 A. Downey.

13 Q. Who do you --

14 A. I'm sorry. I lived in Downey. The presentation
15 was in Huntington Park.

16 Q. Huntington Park. Where is Huntington Park?

17 A. Probably about 15 miles from Downey.

18 Q. What state is that in?

19 A. California.

20 CHAIRMAN DODGION: Ms. Hess, I'm not sure I
21 understand how this is relevant.

22 THE WITNESS: I don't either.

23 MS. HESS: I'm trying to get to the date of the
24 road.

25 BY MS. HESS:

1 Q. 15 years ago when you went in to see that
2 property you in fact went in on a road; is that correct?

3 A. We went in partially on a road. We got out, got
4 in Buzz Gray's four-wheel truck and went across the sagebrush
5 area to where he told us he thought our property lines, the
6 range of where our property lies.

7 Q. How did you think that the road got into the
8 property, the road that went part of the way? Do you have
9 any idea?

10 A. We were on a gravel road in his four-wheel truck,
11 and then when he got to where he thought our -- we could go
12 off and see the property, he took us across just the rough
13 sagebrush.

14 Q. If you would hold on just a minute and let me ask
15 you a question. Did you know that there was previous mining
16 by other exploration projects that had gone on in that same
17 area?

18 A. We were told at the presentation I believe that
19 years ago there was an old mine. Not on our property, no.

20 Q. Did they mention, I'm talking about where the
21 exploration project is going, Hecla and Getty? Did mention
22 any of those particular mining claims?

23 A. No. No names were mentioned.

24 Q. So you didn't get any of the information that is
25 in 1.8 of Exhibit 11 then I take it. Did you know that the

1 disturbances that are in that mining area go back to 1860?

2 A. I don't understand why you're asking that since
3 it's not on our property.

4 Q. But is that not how you get to your property?

5 A. How we get to our property was as I mentioned.

6 Q. Didn't you take a road?

7 A. We took a gravel road that stopped.

8 Q. And then you got in a four-wheel drive?

9 A. And went across the sagebrush in a four-wheel
10 drive. I would have no way of knowing the other routes into
11 any of the surrounding area.

12 Q. One more question. Are you claiming today
13 that -- you're not claiming that the road is before 1980, the
14 gravel road; is that correct?

15 A. My best recollection is that we went there
16 sometime between 1985 and '87. I don't have a clue as to
17 when Connie Herman saw the land or how she got there.

18 MS. HESS: Thank you. I have no further
19 questions.

20 CHAIRMAN DODGION: Mr. Erwin.

21 MR. ERWIN: I have just a few.

22 CROSS-EXAMINATION

23 BY MR. ERWIN:

24 Q. Mrs. Jackson, do you have any formal education in
25 environmental science?

1 A. No.

2 Q. Do you have any formal education in the process
3 of permitting mineral exploration projects or mines?

4 A. Permitting?

5 Q. Permitting mineral exploration or mining
6 operations?

7 A. No.

8 Q. In the preparation of your objections to the
9 application for the permit or this appeal, did you engage a
10 consultant involved in permitting of mineral exploration
11 projects?

12 A. I don't know -- in my own calling and in talking
13 to people, I have a list of the different people I spoke
14 with. Whether they have anything to do with permitting I
15 don't know. I do have the departments they work for.

16 Q. Did you hire a consultant to work for you?

17 A. I did not hire anyone.

18 Q. Now, you indicated that you have owned this land
19 for 50 years or so; is that right?

20 A. Yes.

21 Q. How many times in total have you visited the
22 property since the date you bought it?

23 A. Twice.

24 Q. And was one this year?

25 A. No.

1 Q. The last time was about 15 years ago?

2 A. Fifteen plus years ago. I'd have to actually
3 research to see when it was.

4 Q. That was one time. When was other time you
5 visited the property?

6 A. One time we tried to find it and thought we had
7 actually come to it. We went to, again to a gravel road
8 until it stopped. We were told to go down a gravel road
9 until it stopped and at that point we tried to look and tried
10 see if we could find out, lining it up with Star Peak and
11 tried to see if we were in the right area.

12 That was my second time. I have no idea again
13 about Connie Herman.

14 Q. On that particular occasion when you thought you
15 were there, did you locate any survey monuments, either
16 public or private?

17 A. No. I wasn't really able at the time to verify
18 exactly where I was, only going where I was told, go to the
19 end of the dirt road. When it stops, go out and your
20 property should be within that parameter.

21 Q. Now, I take it that you haven't engaged a
22 caretaker or somebody to monitor --

23 A. No.

24 Q. -- folks that might be visiting your property?

25 A. No.

1 Q. So you wouldn't have any --

2 A. Excuse me, I take that back. The only thing that
3 would apply to that whatsoever was my letter to the sheriff
4 asking him to please notify me should there be a trespass or
5 a problem on my property.

6 Q. Did you ever receive a letter from the sheriff or
7 notification?

8 A. I have a copy of the letter that I wrote to him.
9 I have no copy of anything he wrote back to me.

10 Q. So you have no way of measuring or knowing how
11 often third parties used those roads out there?

12 A. No, other than what I can see and what I've been
13 told. They're not really continuously used or maintained
14 roads.

15 Q. My question was you don't have any means of
16 measuring or knowing how much use there was out there?

17 A. No, I do not myself personally.

18 MR. ERWIN: I have no additional questions.
19 Thank you.

20 CHAIRMAN DODGION: Ms. Jackson, do you have
21 anything further? I understand you want to call this
22 gentleman as a witness.

23 MS. JACKSON: Yes, I'd like to have Mr., excuse
24 me, Professor Maurer as a witness. If you have something
25 that you would like to add, I'd appreciate your coming up.

1 CHAIRMAN DODGION: Please come forward and let's
2 have you sworn.

3 MR. MAURER: I was just going to tell what I was
4 going to cover and if you felt it relevant.

5 CHAIRMAN DODGION: Come on up and we'll decide
6 whether it's relevant or redundant. If you would please
7 identify yourself?

8

9

FRANK MAURER

10 called as a witness on behalf of the
11 Appellant, having been first duly sworn,
12 was examined and testified as follows:

13

14 THE WITNESS: I'm dressed like I should be out in
15 the field. Sorry about that. My name is Frank Maurer,
16 M-A-U-R-E-R. I have been a professor. I'm not a professor
17 now. Officially I've worked on land projects of my own. I
18 have a land trust that I started about 20 years ago, Quail
19 Ridge Wilderness Conservancy.

20

21

22

23

I have a Ph.D. from Cornell University. I've
traveled in many countries, I speak several language, and I
have done conservation work with students and others in
places like Turkey, Sweden, Africa, et cetera.

24

25

CHAIRMAN DODGION: What is your interest in this
permit that is being appealed? Are you a landowner in the

1 area?

2 THE WITNESS: I am a landowner on the same road
3 further up. It's in the same development, I believe the Star
4 development that sold all this. As a biologist I have
5 visited the place many times. I've walked hundreds and
6 hundreds of hours looking at things. I investigated to see
7 what was there, what was important about the area as I do
8 anyplace I go.

9 I knew there was an old mine. I suppose I
10 realize that in Nevada things could change. In investigated
11 some with Bob Edwards about the mining laws of 1872 I think
12 which I wish would be changed and modernized.

13 I found that there was a sage grouse
14 reintroduction to that very, very area. I think it was in
15 1989 and '90.

16 MS. HESS: I would object to this. We have
17 notified the Wildlife people. The Wildlife people are in
18 charge of the grouse and that sort of thing.

19 CHAIRMAN DODGION: You do object to him
20 testifying?

21 MS. HESS: I object to any testimony about the
22 grouse out there because Wildlife did not bring that up and
23 they were notified of this, so I object to any testimony
24 about any kind of endangered species.

25 Like I said, Wildlife has notice of everything in

1 here, so I object to anything having to do with that
2 particular issue.

3 MR. ERWIN: I'd join in the objection. I'd also
4 object on the matter of relevancy. As I understand it, the
5 purpose of this hearing is to determine whether the
6 application for reclamation permit met the statutory and
7 regulatory requirements, and unless a witness is qualified to
8 address those issues and testify as to their sufficiency, I
9 don't think the testimony is relevant.

10 THE WITNESS: I can do that.

11 CHAIRMAN DODGION: All right. See that you stay
12 in the relevant area addressing that.

13 THE WITNESS: Am I able to state some of the
14 things that she was concerned about?

15 CHAIRMAN DODGION: You can state your concerns.
16 If you get too far into something that is redundant to what
17 we've already gone over, I'll tell you that.

18 THE WITNESS: I've done quite a lot of work with
19 sage grouse in Wyoming. I've also worked with a developer
20 there who had land that he divided up. So I was aware of how
21 to or the people to ask. So I went out and started looking
22 myself and didn't know what I was going to see at all.

23 I saw quite a number of sage grouse and then I
24 asked the Department of Wildlife, Sean Espinosa --

25 MS. HESS: Objection to anyone that isn't here to

1 testify about what was said.

2 THE WITNESS: Okay. I spoke with the Department
3 of Wildlife and they gave me this report and said, yes, sage
4 grouse have been reintroduced into the area.

5 MR. ERWIN: Objection, Your Honor. I don't think
6 he can testify to what these officials told him. It's
7 hearsay.

8 THE WITNESS: This is a report that they wrote.
9 I'm just saying that I saw the grouse and they've been
10 written about.

11 MR. ERWIN: I'm making a legal objection to the
12 admissibility of the report or any statements taken from the
13 report just for the record.

14 CHAIRMAN DODGION: I understand. I do agree with
15 your objection. I'm going to sustain it. The permitting
16 agency has notified during the permitting process the State
17 Department of Wildlife and I suspect also the federal Fish
18 and Wildlife Service and we've received no input or
19 objection.

20 THE WITNESS: Because the information wasn't
21 there.

22 CHAIRMAN DODGION: That's beyond your expertise I
23 believe to make that determination --

24 THE WITNESS: Well, the question with sage
25 grouse --

1 CHAIRMAN DODGION: -- and the relevancy to this
2 permit. This permit deals with the reclamation of areas that
3 are planned to be disturbed during this exploration project.
4 There have been no official objections based on sage grouse
5 or any wildlife concerns.

6 THE WITNESS: I'm saying I've discovered things
7 that they now are aware of that weren't known when I read the
8 report. I've seen the reports on all this and sage grouse
9 was not an issue, but since then I've looked at the area,
10 I've gotten to fly over the area, and they saw activity, they
11 would have to look at this again to see if there was any
12 activity in the area.

13 MS. HESS: Again, I have objections to this.
14 Wildlife is represented in the AG's office. They could come
15 into my office and discuss this with me. There's been
16 nothing that's been discussed.

17 I would object to things that have happened way
18 after this permit being brought up today that are not here to
19 be cross-examined and or what happened in Wyoming.

20 CHAIRMAN DODGION: The objection is sustained.
21 Go on to other areas that are relevant to the permit.

22 THE WITNESS: Well, I've seen all the things, the
23 artifacts on the ground, both on my property, on BLM property
24 all the way down through. I was told by Bob Edwards --

25 MR. ERWIN: Objection, hearsay.

1 MS. HESS: Objection.

2 THE WITNESS: Well, they tried to avoid it
3 anyway, but there's a lot more there than is in the official
4 record. See, I'm a scientist and we constantly are looking
5 at new data all the time.

6 CHAIRMAN DODGION: I do understand that.

7 THE WITNESS: So to have a law or something limit
8 your new knowledge is sort of like --

9 CHAIRMAN DODGION: Again, artifacts, Bureau of
10 Land Management.

11 THE WITNESS: Yeah, they're there.

12 CHAIRMAN DODGION: That's the responsibility of
13 the Bureau of Land Management. Those artifacts are not
14 considered and they're not part of this hearing, unless the
15 BLM raised those issues with respect to their permitting of
16 the project itself. It's beyond the scope of this panel.

17 THE WITNESS: All right, fine. So what I
18 proposed anyway was a watershed open space area where the
19 area would not be changed in its use in any way except for
20 disturbance by mining or exploring, and I have those papers
21 here.

22 I have a photograph. I have a letter to Bob
23 Edwards, this you probably have anyway, and the sage grouse
24 report from 1990. The only other thing I guess I can say is
25 that, and I've talked with Dan who lives on the road also, it

1 goes through his --

2 MS. HESS: Objection.

3 THE WITNESS: I saw the road myself, okay?
4 Forget that. The road has been pulverized so that in the
5 wintertime it's going to be very hard for any of us to get in
6 because the dirt from the large machinery and the trucks
7 going up and down, it's going to be very muddy.

8 The other thing I've noticed is that when the
9 large backhoe is it, the large machine that digs the holes, I
10 know there's a certain number of acreage that's supposed to
11 disturbed and nothing else, but it was never calculated that
12 the sagebrush on the roads would be trampled almost all the
13 way on one side or the other, sometimes both.

14 If you add up the one or two feet on either side
15 of the road, it goes a long way. It may be one can argue
16 that the sagebrush just fly in and how wide is the road, but
17 as far as animals and birds, this is a minor amount that's
18 been taken from the area.

19 It's disturbing to see that, for me as a
20 biologist, to see that kind of destruction along the road. I
21 probably won't be able to get in during wet times because of
22 the pulverization of the road. The road was moderately good
23 when I first started using it.

24 CHAIRMAN DODGION: The permit doesn't address the
25 maintenance of the road as much as the reclamation of the

1 road.

2 THE WITNESS: If that was going to happen but
3 that would take a lot of work. It's pulverized dirt.

4 CHAIRMAN DODGION: Any questions? Does that
5 complete your testimony?

6 THE WITNESS: Uh-huh.

7 CHAIRMAN DODGION: Ms. Hess.

8 CROSS-EXAMINATION

9 BY MS. HESS:

10 Q. When did you first see the road?

11 A. Okay. Now, the so-called gravel road that was
12 mentioned, that is Highway 400 I believe. Then there is a
13 dirt road that goes in and that one I saw -- well, I saw both
14 of them I think it was probably three years ago in this
15 month.

16 MS. HESS: I have no further questions.

17 CHAIRMAN DODGION: Mr. Erwin?

18 MR. ERWIN: No questions.

19 CHAIRMAN DODGION: Thank you very much for your
20 testimony.

21 THE WITNESS: Thank you. Do I leave these here?

22 MS. HESS: No, I object to that.

23 CHAIRMAN DODGION: They won't be allowed to be
24 admitted. Ms. Jackson, do you have anything further?

25 MS. JACKSON: No. I just wondered if you wanted

1 some of the information that I have.

2 CHAIRMAN DODGION: I think most of that has been
3 included in the record.

4 MS. JACKSON: No, that I referred to, the e-mails
5 to me from Dan Buhler.

6 CHAIRMAN DODGION: No, we'll not allow those to
7 come into the record.

8 MS. JACKSON: The Citizen News about RS 2477,
9 different things here that I read from and did not use, my
10 own interpretation, or a copy of the map that shows where
11 they're going to do all the different parcels, rather than
12 easements or a road up from section 1?

13 CHAIRMAN DODGION: I would like to see your map.

14 MS. JACKSON: I did not know if you needed a
15 letter from Ronald Bunte for me to represent him.

16 CHAIRMAN DODGION: No, that's not necessary. He
17 signed the original.

18 MS. JACKSON: Or the different people that I
19 talked to and their phone numbers.

20 CHAIRMAN DODGION: The only thing I'm interested
21 in is the map.

22 MS. JACKSON: So, just the map? Because I do
23 have all the information on the RS 2477.

24 CHAIRMAN DODGION: I assume this came from the
25 recorder's office?

1 MS. JACKSON: This shows that the road goes down
2 to parcel 1 but that there's no -- I contacted the Bureau or
3 the Department of Records and they informed me that there was
4 no --

5 MS. HESS: Objection, I can't hear.

6 THE REPORTER: I'm having a hard time hearing
7 too, Janet.

8 MS. HESS: I understand. My client got those for
9 her.

10 CHAIRMAN DODGION: Any objection to this?

11 MR. ERWIN: No.

12 MS. REBERT: We also didn't get a copy of
13 Ms. Jackson's statement.

14 MEMBER RACKLEY: We've got three of them here.

15 MS. REYNOLDS: You should admit the map with the
16 packet she passed out. This would be Exhibit B and the
17 packet she passed out would be Exhibit A.

18 MS. JACKSON: There are two maps, one that shows
19 a road going into parcel 1.

20 CHAIRMAN DODGION: Any objection to this being
21 admitted as her Exhibit A and that as her Exhibit B?

22 MR. ERWIN: Is that the letter to which we made
23 our objections?

24 CHAIRMAN DODGION: Yes.

25 MR. ERWIN: I would just repeat the objections to

1 any parts that are hearsay or not admissible stricken.

2 CHAIRMAN DODGION: For the record, with the
3 understanding of your objections.

4 MS. HESS: Thank you, and for the record I join
5 in those objections as well.

6 CHAIRMAN DODGION: Let's see. It's 12:30. We
7 finished the appellant's presentation. The panel would like
8 to just forge ahead so we will do that. We're at the point
9 where it's your turn, Mr. Erwin, for the intervener.

10 MR. ERWIN: Yes. My first witness would be
11 Joseph Martini.

12 CHAIRMAN DODGION: Let's take a five-minute
13 stretch break and we'll get back at it.

14 (A short recess was taken.)

15 CHAIRMAN DODGION: We're back on the record.
16 Mr. Erwin, are you ready?

17 MR. ERWIN: Yes, Mr. Chairman. We call Joseph
18 Martini.

19

20 JOSEPH MARTINI

21 called as a witness on behalf of the
22 Intervener, having been first duly sworn,
23 was examined and testified as follows:

24

25 ///

1 DIRECT EXAMINATION

2 BY MR. ERWIN:

3 Q. Would you state your full name and spell your
4 last name and tell us where you live?

5 A. Joseph Martini, M-A-R-T-I-N-I. I live in Elko,
6 Nevada.

7 Q. Mr. Martini, what is your occupation?

8 A. I work for Enviroscientists, an environmental
9 consulting firm. What I do is help companies apply for
10 permits. The majority of the companies are in the mining
11 industry, not all of them, and the majority of the mining
12 companies are exploration companies such as TGC Holdings.

13 Q. Did you undertake any education to support your
14 occupation as a environmental consultant?

15 A. I did not. My bachelor's degree is in
16 anthropology.

17 Q. You've been engaged in this business for how many
18 years?

19 A. Eleven years.

20 Q. About how many applications for reclamation plans
21 have you personally prepared?

22 A. Prepared by myself, probably ten. Been involved
23 with in some form or fashion, over 50.

24 Q. Do you know how many of these types of
25 applications your company has prepared?

1 A. Probably between 75 and 100.

2 Q. Did you participate in the preparation of the
3 application for this permit?

4 A. I did.

5 Q. What was your activity beginning with when you
6 first became acquainted with this Moonlight property?

7 A. The first thing I did on this property was
8 prepare a notice of intent or notices for TGC Holdings which
9 is a document that is given to the BLM for exploration
10 activities that are going to occur on public lands that are
11 administered by the BLM, of which there are several sections
12 within the project area that are public land administered by
13 the BLM.

14 And a notice, you inform the BLM that you're
15 going to be performing exploration activities that are going
16 to disturb less than five acres of land which means roads and
17 drill pads will not or removal of vegetation won't be larger
18 than five acres.

19 In the project area, I prepared three of those
20 for TGC Holdings, the first one being the Moonlight property
21 and the second two were section 12 and section 24.

22 Q. When did you prepare the first notice of intent
23 for them?

24 A. The first notice I actually prepared, the
25 original notice was submitted by another individual in the

1 company. I submitted and prepared the amendment to the
2 notice which changes locations of drill sites or roads.

3 Q. When was that?

4 A. I couldn't give you an exact date but I would say
5 possibly a year and a half ago.

6 Q. That was filed with the BLM, correct?

7 A. Winnemucca field office, yes.

8 Q. They approved or allowed the company to go
9 forward with the exploration under those notices?

10 A. Yes, they did.

11 Q. I'd ask you to look at figure 1 in the
12 application for the plan. It's a map. Do you have it there
13 before you?

14 A. Yes.

15 Q. This is part of Exhibit 11. Can you tell me and
16 describe generally what does this map describe so the
17 Commissioners understand what we're talking about here?

18 A. This map describes three specific things. The
19 red line is the project area, the area in which TGC Holdings
20 will be conducting exploration activities. The blue dots --
21 also there's two different colors in the different section
22 numbers.

23 The white color is private land. The olive green
24 color is public land that is administered by the BLM. The
25 blue dots depict activities that will be performed by TGC

1 under the notices on public land.

2 The red dots are proposed activities that would
3 be undertaken by TGC on private land under this permit that
4 has been granted by the Division of Environmental Protection.

5 Then there are also beyond that several
6 topographic maps that have several features on it that are
7 existing. One of those is a double dashed line which
8 indicates that there are roads existing in the area.

9 Other than that, anything else you were looking
10 for on that?

11 Q. That's fine. You actually participated in the
12 preparation of this application, correct?

13 A. Yes.

14 Q. What guidelines did you rely on to prepare this?

15 A. We relied on the Nevada Administrative, the NAC
16 519A which is the regulations that the Bureau of Mining
17 Regulation and Reclamation work under, and we also followed
18 the Code of Federal Regulations 3809, CFR 433, subsection
19 3809, which are the surface management regulations for the
20 Bureau of Land Management as part of this project happens on
21 public land.

22 Q. Based on your experience and preparation of these
23 reports and review of those regulations, does this plan
24 conform with the requirements under Chapter 519A of the
25 Nevada Revised Statutes?

1 A. Yes, it does.

2 Q. There was testimony earlier about the issue of
3 addressing spills of petroleum products or other
4 contaminants. Does this application or permit address those
5 types of things?

6 A. The permit that is granted does not address those
7 things. However, the application does.

8 Q. And that's in section 2.8?

9 A. Section 2.8 as well as an appended spill
10 prevention plan.

11 Q. What is a spill prevention plan?

12 A. That outlines what TGC has accepted they're
13 going -- it explains what they will do in the event of a
14 spill. It explains how they're going to try to prevent
15 spills from occurring, and it also explains what they will do
16 in the event a spill does occur.

17 Q. That spill prevention plan is part of the
18 application itself, correct?

19 A. It is appended to it, yes. It is appendix E of
20 the application and it is referenced in the text of the
21 application.

22 Q. I note as part of that or following that there is
23 quite a number of pages of material, data sheets and the
24 like. What are those documents, just a general description
25 why you have those in there?

1 A. These are descriptions of the products that could
2 possibly be used at the, during the program and they are
3 breakdowns of the materials that are going to be used. They
4 talk about health effects and toxicology and they outline
5 what you need to know about these products for your potential
6 safety when using these products.

7 Q. In this plan, does it contemplate any intentional
8 discharge of petroleum products on the site?

9 A. No.

10 Q. That's not what they are suggesting they're going
11 to be doing there, is it?

12 A. No.

13 Q. You mentioned that you prepared other plans as
14 has your company. The application itself, does it conform to
15 mining industry practices in the state of Nevada?

16 A. Yes.

17 Q. In your experience as a consultant, are you aware
18 that there are other laws and regulations that address
19 discharges of hazardous materials or other products like
20 petroleum products?

21 A. Yes.

22 Q. Has your company been engaged in responses to any
23 incidents like that?

24 A. No.

25 Q. So the record of your company is pretty fair and

1 good as far as compliance?

2 A. Yes.

3 Q. The plan application describes a calculation of a
4 bond amount. Can you tell us in relatively brief terms why
5 there's a calculation in this application and how you came to
6 calculate the amount?

7 A. It is a regulatory standard for both private and
8 public land that when a company disturbs ground as they do in
9 their plan, they will perform the reclamation of that, return
10 the land back to its previous condition.

11 In the event that the company is not able to
12 perform that, if they walk away from the property, a bond is
13 held with regulatory agencies so that they can contact a
14 third party to come out and perform the reclamation to the
15 standards described under the plan.

16 The way we calculate bonds here is with what's
17 called an SRCE, standardized reclamation cost estimate. It
18 is a cost estimating tool that was put together through
19 various agencies, NDEP, they were involved, BLM was involved,
20 industry was involved through the Nevada Mining Association,
21 and those three entities got together and came to a consensus
22 on how to calculate a cost of reclaiming these projects.

23 Q. What is your experience insofar as the accuracy
24 of these projections? Has it been pretty accurate?

25 A. I have not ever compared the cost of reclamation

1 to what is the calculated, but my guess would be that it's a
2 fairly conservative estimate from the fact that it takes into
3 account a third party, and when you have a third-party
4 company in a governmental situation they have to be paid a
5 certain amount of money which is generally higher than what a
6 company would likely pay the individuals that were going to
7 reclaim.

8 Q. When you use the term conservative, you're
9 calculating an amount that you hope is more than enough than
10 what would be anticipated?

11 A. Yes.

12 Q. Did you ever visit the Moonlight project
13 yourself?

14 A. I have on two occasions.

15 Q. What was the purpose of your visits?

16 A. The first visit, I went out with Mr. Sulfrian and
17 two individuals from the Winnemucca BLM. Mr. Fred Holzell
18 and an archeologist whose name escapes me. The purpose of
19 that visit was to look at the sites that were proposed under
20 the notices that we submitted to ensure that they did not
21 damage any archeological sites.

22 Q. How did you get out to the project?

23 A. I drove and I met Mr. Sulfrian. We used an
24 access known as the Spring Valley access on the north end of
25 the property -- south end of the property, excuse me.

1 Q. On existing roads?

2 A. On existing roads, yes. The second time we went
3 a different way.

4 MR. ERWIN: I have no further questions for you,
5 Mr. Martini. Thank you.

6 CHAIRMAN DODGION: Any questions of Mr. Martini?

7 MEMBER RACKLEY: Mr. Martini, to make sure I
8 heard you correctly, the red and blue dots on figure 1 are
9 all proposed exploration drilling?

10 THE WITNESS: No. The blue dots were proposed
11 under the notices, so those notices have already been
12 granted, so that work was allowed to go forward and some of
13 that work has been done. The red dots are proposed.

14 MEMBER RACKLEY: The red dots are all on private
15 land?

16 THE WITNESS: Yes.

17 MEMBER RACKLEY: That's all I have.

18 CHAIRMAN DODGION: How does the mining company
19 obtain access to drill on private land, to actually drill
20 holes on private property?

21 THE WITNESS: I am not party to how they come to
22 access. My expertise has been preparation of the application
23 which strictly has to do with the actual exploration
24 activity.

25 MEMBER MAYER: No questions at this time.

1 CHAIRMAN DODGION: Ms. Hess, do you have
2 questions for this witness?

3 MS. HESS: I just have one question.

4 CROSS-EXAMINATION

5 BY MS. HESS:

6 Q. The exploration project on private land, that
7 particular private land, do you know who that is owned by?

8 A. Various individuals I understand because there
9 are two sections. I do not know the names off the top of my
10 head. I believe one parcel is actually owned by TGC.

11 MS. HESS: Thank you. No further questions.

12 CHAIRMAN DODGION: Ms. Jackson, do you have
13 questions of Mr. Martini?

14 MS. JACKSON: No.

15 MR. ERWIN: Mr. Chair, we call Charles Sulfrian
16 as a witness.

17

18 CHARLES SULFRIAN

19 called as a witness on behalf of the
20 Intervener, having been first duly sworn,
21 was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. ERWIN:

25 Q. Mr. Sulfrian, would you please state your name

1 and spell your last name and tell us where you live?

2 A. My name is Charles Sulfrian, S-U-L-F-R-I-A-N. I
3 live in Colorado Springs, Colorado.

4 Q. What is your occupation, Mr. Sulfrian?

5 A. I'm a geologist and vice president for
6 exploration for Terraco Gold Corporation and its subsidiary,
7 TGC Holdings.

8 Q. How long have you been engaged by Terraco and TGC
9 Holdings?

10 A. Approximately four years now.

11 Q. How long have you been engaged in the profession
12 of geology?

13 A. Over 30 years.

14 Q. Do you have any education that's prepared you for
15 your occupation?

16 A. I have a bachelor's of science degree from the
17 University of Colorado in Colorado Springs, Colorado. I'm
18 also registered as a professional geologist in Wyoming and
19 Washington as Nevada does not have a professional
20 registration yet. I'm also certified as a professional
21 geologist with the AIPG, the American Institute of
22 Professional Geologists.

23 Q. For how long have you practiced as a professional
24 geologist?

25 A. For most of those 30 years.

1 Q. Have you worked in Nevada aside from your work at
2 Terraco and the TGC Holdings?

3 A. Yes, I've worked in Nevada approximately 24 years
4 and some of the companies I've worked for are Barrick
5 Resources Corporation, American Barrick Corporation, which is
6 now known as Barrick Gold Corporation, mostly at their Gold
7 Strike mine, but also at various other properties that they
8 controlled or owned.

9 I've worked for different companies in Nevada as
10 a consultant through my own consulting company which is ZyMin
11 Corporation.

12 Q. In your employment by Barrick did you have any
13 experience or responsibility for exploration drilling?

14 A. Yes. For 11 years I was the general supervisor
15 for drilling not only for the Gold Strike mine but also for
16 some of the exploration projects run by Barrick's exploration
17 office in northern Nevada.

18 Q. In this particular procedure we're dealing with
19 the Moonlight property which TGC Holdings, Limited, has an
20 interest in. When did you first become involved with this
21 particular project?

22 A. In 2006, early on.

23 Q. What have been your responsibilities for the
24 company dealing with this project?

25 A. Initially I investigate opportunities for the

1 company and then I practice what is considered in the
2 industry a step wise exploration program. You start out with
3 basic prospecting, sampling and progress on to more detailed
4 work as positive results are obtained, which would include
5 ultimately drilling.

6 Q. In that process did you identify target areas for
7 further exploration of the Moonlight project?

8 A. Yes.

9 Q. What types of property interests does TGC have in
10 this area?

11 A. We have approximately 200 claims and those are
12 unpatented mining claims that we ourselves have staked. We
13 purchased another 64 claims from the original claim owners
14 out there.

15 Q. Are those unpatented claims also?

16 A. Yes, they are.

17 Q. When you use the term unpatented, you mean mining
18 claims that are located on lands owned by the United States
19 government, correct?

20 A. Yes.

21 Q. Please continue. Thank you.

22 A. We also lease several patented mining claims and
23 those are essentially real property patented under the 1872
24 mining law and other revisions of that law since, and those
25 belong to local land owners.

1 Q. Does the company own any patented land itself?

2 A. We own one 20-acre lot in the same subdivision as
3 Dr. Maurer and Ms. Jackson and her family.

4 Q. How do you and your crew, so to speak, achieve
5 access to the properties that you have leased and that you
6 own?

7 A. Well, as you can see within our project area, and
8 you'd have to refer to the map which unfortunately I don't
9 have a copy of it but I think I know it pretty well.

10 Q. Let me give you a copy of the map so you have it
11 there before you.

12 A. My copy from my folder was used to make all of
13 your copies. There are various access routes that we use for
14 different areas that we propose to have drilling in, but the
15 basic underlying rule that I use is basically that of common
16 sense. The most direct route and existing roads in the area
17 are what we prefer to use because they minimize any
18 additional disturbance.

19 In fact, they usually create very little
20 disturbance even if there is some maintenance required on
21 those roads. Generally we stay -- well, we need to stay
22 within the boundaries of the existing road and the boundaries
23 of the existing road as that's been defined usually are
24 within the original berms that were cut for the roads.

25 Q. You testified that you identified this area as

1 being prospective. Did you participate with Mr. Martini with
2 the notices of intent that were filed with the BLM?

3 A. Yes, I did.

4 Q. At some point in time you determined that you
5 wanted to expand your project such that you needed a
6 reclamation plan as is the basis of the current proceeding?

7 A. That's correct.

8 Q. Did you participate in preparation of the
9 application for the permit?

10 A. Yes.

11 Q. Just describe in relatively brief terms what you
12 did insofar as preparation of the application.

13 A. Well, I assisted Joseph at Environscientists in
14 obtaining the information necessary to fulfill the
15 requirements of the permit, providing Mr. Martini with the
16 locations for our proposed drilling, our proposed access
17 routes and where we would perhaps need maintenance of
18 existing roads and where we would need to make new access,
19 just in general, the size of the sites, the number of sites,
20 things like that.

21 Q. Just clarify things. What activities does the
22 company have planned for the private lands that are owned by
23 the appellants?

24 A. None, other than surface access, to drive across
25 an existing road.

1 Q. So you're not planning on drilling on any of the
2 lands that are owned by the appellant?

3 A. No.

4 Q. That will occur on other properties in which your
5 company has an interest?

6 A. That's correct.

7 MR. ERWIN: Mr. Chairman, I'd like to file with
8 the Commission and have marked as our exhibit a declaration
9 of Mr. Sulfrian that basically summarizes this and to which
10 are attached some documents that I believe are already in the
11 record through other communications between the permittee and
12 the Bureau.

13 BY MR. ERWIN:

14 Q. Do you have your declaration there in front of
15 you, Mr. Sulfrian? Do you have it there?

16 A. Yes.

17 Q. Now, you talk about your background and some
18 other information concerning the project out there. Just to
19 cut to the quick, your testimony today would be consistent
20 with what you have in your declaration?

21 A. I hope so. Yes, it will.

22 Q. Among the documents that are attached to this, I
23 turn your attention to Exhibit 1. It's a patent number 203,
24 the Central Pacific Railway lands. Do you have it there?

25 A. Yes.

1 Q. Did you obtain this patent or deed as some people
2 refer to it from the Bureau of Land Management?

3 A. I obtained this through a request of other land
4 man, Mr. Bill Houston, yes.

5 Q. And you have examined it?

6 A. Yes.

7 Q. Does this patent include the lands that the
8 company owns, the lot that you testified to previously?

9 A. That is within the boundary of these lands, yes.

10 Q. How about the lands that are owned by the
11 appellants in the same I guess you would call it a
12 subdivision?

13 A. Yes.

14 Q. This patent was issued in the earlier part of the
15 twentieth century, correct?

16 A. I believe so. I'm looking for the date on it. I
17 think it's 1903 or 1904.

18 Q. Yes. In 1903, there's a page number in the upper
19 left, page 200 which I believe is the recorder's page number?

20 A. Yes, 1904.

21 Q. Do you see that? I believe the date is July 31,
22 1903; is that correct?

23 A. Recorded at the request of Wells Fargo and
24 Company, April 27, 1904.

25 Q. That's when it was recorded, but just above the

1 signature of Theodore Roosevelt is the date of the patent
2 itself, July 31, 1903?

3 A. Oh, yes, uh-huh.

4 Q. The next exhibit that you have attached to your
5 declaration is a map and in the upper portion of the
6 attachment is township 29 north, range 34 east. Do you have
7 that before you?

8 A. Yes.

9 Q. What is this?

10 A. This is a representation of a cadastral survey
11 that I obtained from the government land office which was
12 part of the Department of Interior and through the BLM.

13 Q. The BLM maintains those records presently?

14 A. Yes.

15 Q. What is a cadastral survey?

16 A. It is a subdivision of a township and it's run or
17 conducted by government surveyors to establish a land
18 subdivision system of the western U.S. which are townships,
19 ranges and sections. Sections are generally one square mile.

20 Q. Thirty-six per township, correct?

21 A. Yes.

22 Q. In the lower right-hand portion of this, it's not
23 easy to read, do you know the date of the particular
24 cadastral survey?

25 A. Yes, it's from October of 1895 is when it's

1 signed.

2 Q. Does this cadastral survey show any of the roads
3 that you used as access to your project?

4 A. Actually it shows several of them.

5 Q. Can you testify as to which of these is the road
6 that may pass through the appellant's property?

7 A. It's highlighted on the black and white, it's
8 highlighted in white and it basically travels from where the
9 Moonlight mine is which is a patented claim down through
10 Indian Creek Valley and out into section 13 and up through
11 the northeastern portion of that section.

12 Q. Just so we know what we're talking about, is the
13 Moonlight patented mine, is that sort of in the cradle of the
14 Y-shaped figure in the center of the map?

15 A. Yes.

16 Q. Then the road heads south and then turns east and
17 goes easterly until it gets out of the mountain range,
18 correct?

19 A. Yes.

20 Q. Who owns the Moonlight patented mine, do you
21 know?

22 A. Mr. John Hiser (phonetic).

23 Q. Does the company, TGC Holdings, Ltd., have an
24 interest in that property?

25 A. Yes. We have leased, it's actually officially

1 called the Grant mine and patent, and we have leased that
2 along with several other patented claims from Mr. Hiser.

3 Q. Do you know when those patents were issued?

4 A. The original patent for the Grant claim which is
5 now known as the Moonlight was I believe in 1868. It's one
6 of the first patents ever recorded in the country. I believe
7 it's mineral survey number 42.

8 Q. Now, this road that is shown on this cadastral
9 survey from 1895, is that a road that the company uses to
10 access the Moonlight project, the Grant patented claim?

11 A. That's correct.

12 Q. Turning to the next exhibit, it appears to be
13 another cadastral survey. To speed things up here, did you
14 obtain a copy of this from the BLM?

15 A. Yes, I did.

16 Q. What is the date of this cadastral survey?

17 A. September of 1903.

18 Q. So this cadastral survey appears to have been
19 completed about two months after the patent was issued for
20 those railroad claims; is that correct?

21 A. Yes.

22 Q. I note on this map there was highlighted in black
23 or dark ink a road. Is that the same road that appeared on
24 the 1895 cadastral survey?

25 A. Yes, it is. I might make one comment and it's

1 just for the sake of completeness as to why there are two
2 cadastral survey maps. If you'll notice on the first one,
3 the surveyors wrote impassable mountains on the western
4 border of the township. This is just the completion of the
5 original survey.

6 Q. All right. Have you looked at other maps that
7 show roads in this area?

8 A. Yes.

9 Q. Would one of them have been the road atlas
10 prepared by the Nevada Department of Transportation?

11 A. Yes. In fact, I used that map to send to both
12 Mr. Shane Martin and Ms. Connie Davis to help them see where
13 the road was in question that we were going to examine on
14 Tuesday and where to met, and that was I believe the NDOT's
15 road atlas from 1987.

16 Q. That's produced by a Nevada state agency; is that
17 correct?

18 A. Yes, the Department of Transportation.

19 Q. Do you know whether or not Pershing County has
20 identified this road by name or road designation or number?

21 A. Yes. It is called Wendell Road.

22 Q. How do you know that Pershing County identifies
23 this by name?

24 A. I was informed of this by the sole resident of
25 the subdivision, Mr. Dan Blair. He has a street address, I

1 believe it's 1265 Wendell Road, Unionville with a zip code.
2 He does get direct delivery and Fed Ex packages at his
3 residence.

4 Q. Turning in the application to the plan of
5 reclamation, you participated in its preparation by providing
6 information to Mr. Martini; is that correct?

7 A. That's correct.

8 Q. Now, did you have any involvement in the
9 calculation of the amount of the reclamation bond?

10 A. Yes. Again, by determining our drilling targets
11 and therefore the number of drill sites which we have a
12 fairly standard disturbance size, a footprint.

13 Now, that does vary by the slope of the ground
14 because if it's a steeper slope you end up with a little more
15 in the way of disturbance and you have to account for that.

16 Also as far as new road work, we've basically
17 scaled out the distances of the new road work that were
18 required and then we have set widths that are used in the
19 determination of the amount of disturbance.

20 Q. Has the company posted a declaration of work for
21 the work done out there to date?

22 A. Yes, in the three notices we bonded I believe
23 51,000, maybe \$52,000.

24 Q. What was the form of that bond?

25 A. It was a cash bond.

1 Q. So there are additional funds that would be
2 posted as a condition to your operations under this permit,
3 correct?

4 A. An additional \$34,000 needs to be posted before
5 we can begin any work under the permit.

6 Q. Based on your experience in mineral exploration
7 in Nevada and particularly your experience as a manager of
8 drilling projects, do you believe that this bond amount is
9 adequate to address the disturbances that your company will
10 create?

11 A. Yes. As Mr. Martini described, the rates that
12 are used for third parties are based on, and I always get
13 this wrong, is it's Davis-Bacon, I believe, and those rates
14 are at an amount generally higher than most of our
15 contractors charge.

16 So there is more than an adequate amount of
17 funding for a third party to come in. In fact, it even
18 includes I believe nowadays somewhere between, Joseph might
19 correct me if I'm wrong, 14 to 18 percent profit for that
20 third party.

21 Q. Mr. Sulfrian --

22 A. That may vary by project and things like that or
23 state. So I might be a little confused on that.

24 Q. Mr. Sulfrian, would you turn to Exhibit 11, if
25 you can get one of those black binders? Actually it's in

1 your permit. You have a copy of your application there.

2 Turn to page 11, please.

3 I'd like to ask you a question about section 2.8.
4 What is the purpose of section 2.8? What are you telling the
5 State that you will do or not do?

6 A. Well, it basically outlines our approach as if we
7 were filing a plan of operations, but this reflects our
8 policy that we will strive to prevent spills, but in case of
9 a spill, we have specific procedures and reporting
10 requirements that are in place, that the storage of any of
11 these potentially hazardous materials will be in appropriate
12 containers, they will be controlled and that the amounts are
13 limited.

14 Q. Mr. Sulfrian, as part of your operation, does it
15 contemplate that you're going to release hazardous materials
16 of any sort, including petroleum products?

17 A. Certainly none that would be on purpose, no.

18 Q. If you intended to do that would you be allowed
19 to get the permit in the first place?

20 A. No.

21 Q. Now, what is your company's policy toward
22 maintenance or education of its employees and subcontractors
23 about safety? Do you have any formal procedures or practices
24 that you employ?

25 A. Yes. Basically through my experience over the

1 past 30 years of either assisting or supervising drilling
2 operations, contractor controlled safety training as well as
3 environmental awareness and making sure that our contractors
4 are aware that we must maintain a safe work environment and
5 an environmentally restorable -- I'm reaching for the right
6 word.

7 We try to create as little impact as possible and
8 limit our surface disturbance as much as possible because it
9 just doesn't make sense from several different points of
10 view.

11 Number one, if you create additional disturbance
12 it costs you more just to do that with the equipment. Number
13 two, if you are creating more disturbance than you say that
14 you will, certainly that's going to be something that affects
15 your ability to get permits in the future.

16 Three, the amount of reclamation is going to be
17 more expensive that we'll have to do to be able to recover
18 our bond at the end. It's just basically good stewardship
19 and common sense.

20 We try to get the most direct routes to our
21 target areas, create the smallest amount of disturbance
22 because I'd rather put the money into a drill hole rather
23 than into a lot of extra road work.

24 Q. Do you have any requirements of your employment
25 insofar as safety training?

1 A. Yes. Everyone who works on our project must take
2 MSHA training. That's training that is required by the Mine
3 Safety Health Administration, and that usually involves a
4 minimum of 24 hours of training for new miners which we would
5 all fall under, such as annual training of eight hours.

6 Q. MSHA is a federal safety agency, correct?

7 A. Uh-huh.

8 Q. What about the company's policy towards
9 maintenance and operation of the equipment it uses for these
10 exploration activities?

11 A. Well, even though MSHA does not specifically
12 cover environmental issues, environmental awareness is always
13 part of that training and our corporate policies are to
14 always meet federal standards and to conduct our exploration
15 with a minimum of disturbance and basically have the
16 philosophy that our mother doesn't work here. Nobody's
17 coming in to clean up after us. We need to clean up after
18 ourselves.

19 Q. Mr. Sulfrian, how many times have you visited
20 this Moonlight project would you say?

21 A. As project manager I was on site every day during
22 our drilling operations, plus on my own for several months
23 throughout. I've probably been out to the property more than
24 100 times, whether it was mapping and sampling, walking the
25 ground and making sure where we're going to be contemplating

1 drill holes is going to work for us geologically as far as
2 mapping, things like. I've been out there quite a bit.

3 Q. So you've been on these roads that are shown on
4 the map, figure 1 in the application?

5 A. Yes.

6 Q. Based on your experience and 30 years of
7 exploration in Nevada, what would you say about the age and
8 regularity of the use of those roads?

9 A. Well, the age is not always something you can
10 tell by driving them, but they are certainly well established
11 and they do have evidence of constant active and current use.

12 Q. That's based on your having been out there 100 or
13 so times over the last several years?

14 A. And seeing folks from Lovelock and Buena Vista
15 Valley, which is the valley that adjoins the Humboldt Range,
16 whether they're up there camping, fishing, hunting, things
17 like that.

18 There are a lot of folks that go up and prospect
19 and I've found them on the dumps of the Moonlight mine. In
20 fact, our tour just the other day, we ran into a couple that
21 was driving down through section 13 and we had to move out of
22 their way so that they could pass.

23 Yes, there are people up there. Ranchers use
24 those roads too. They graze cattle on the properties out
25 there, both BLM and private, as do ranchers that run sheep

1 and they use the roads and they actually do maintain them
2 because the sheep rancher moves a trailer in.

3 So if he's able to move a travel trailer on to a
4 piece of ground to park, it has to be in reasonable shape.

5 Q. Mr. Sulfrian, touching on this idea of potential
6 liability, does the company maintain liability insurance for
7 its activities?

8 A. Yes, we do. We have project specific liability
9 insurance.

10 MR. ERWIN: I don't have any further questions of
11 Mr. Sulfrian at this time, Mr. Chairman.

12 THE WITNESS: Would I be able to make one more
13 comment?

14 MR. ERWIN: Feel free.

15 THE WITNESS: Our travel over some grounds is
16 through this access permit agreement that is not part of the
17 reclamation permit, and we have a signed access permit
18 agreement with Mr. Dan Blair.

19 It does indemnify the property owner from
20 liabilities resulting from any of our activities on their
21 ground and it does also limit the use before, not use, but
22 our access. We can only cross existing roads. We don't make
23 any new roads or we're not going to be drilling just based on
24 a permit access agreement.

25 ///

1 BY MR. ERWIN:

2 Q. This is on a property in the subdivision?

3 A. Yes. It's actually adjacent to one of the
4 appellant's lots.

5 Q. That's the same subdivision in which you own
6 property yourself?

7 A. Yes.

8 Q. And on your declaration you have a map that shows
9 easements that are in those deeds; is that correct?

10 A. That is correct.

11 Q. That's in your declaration, right?

12 A. Uh-huh.

13 MR. ERWIN: I have no further questions,
14 Mr. Chairman.

15 CHAIRMAN DODGION: You offered this declaration?

16 MR. ERWIN: We would move that into evidence.

17 MS. HESS: No objection.

18 CHAIRMAN DODGION: Do you have any objection to
19 this being admitted?

20 MS. JACKSON: No.

21 MS. REYNOLDS: We'll call the statement that you
22 passed out during your opening Intervener's Exhibit I and
23 your declaration will be Intervener's Exhibit II.

24 CHAIRMAN DODGION: Questions?

25 MEMBER RACKLEY: Mr. Sulfrian, going back to the

1 red and blue dots on your figure 1, has drilling occurred
2 where the blue dots are?

3 THE WITNESS: Not on all of the sites. Those are
4 all permitted under the notices on the BLM administered
5 grounds.

6 MEMBER RACKLEY: So you have a reclamation plan
7 existing for those the blue dots?

8 THE WITNESS: Yes. In fact, many of the sites
9 from the Moonlight notice of intent which is actually in the
10 southern and southwestern portion of the project area have
11 been recontoured. That's the initial process of reclamation.
12 So they have been regraded to original ground surface.

13 MEMBER RACKLEY: Has there been any issue with
14 spillage of any kind, any environmental issues at all that
15 you had to report during that drilling process?

16 THE WITNESS: No, not that I'm aware of. Now,
17 being the project manager I'm not out there 24 hours a day.

18 MEMBER RACKLEY: But if something had occurred, I
19 imagine as project manager --

20 THE WITNESS: It would have been reported to me
21 and I would have gone to the proper people.

22 MEMBER RACKLEY: The red dots then are the drill
23 sites included in this application?

24 THE WITNESS: Yes, but those are specifically
25 proposed drill sites that are on private land, on fee land.

1 MEMBER RACKLEY: Does this application cover both
2 the blue and red dots?

3 THE WITNESS: Yes, it does.

4 MEMBER MAYER: Just so I'm absolutely clear,
5 Ms. Jackson's property is in section 12?

6 THE WITNESS: Section 13. The colors on the
7 copies did not turn out as good, but section 13 is one of the
8 uncolored or white sections, and all of the odd sections in
9 this township are part of the original deed to the railroad,
10 the "checkerboard."

11 So all of the odd sections, 1, 11, 13, 15, 23,
12 those are privately owned in various ways.

13 MEMBER MAYER: So the road does run right through
14 her property?

15 THE WITNESS: Yes, it does.

16 CHAIRMAN DODGION: Ms. Hess, do you have any
17 questions of Mr. Sulfrian?

18 MS. HESS: I just have one.

19 CROSS-EXAMINATION

20 BY MS. HESS:

21 Q. You're proposing to built a road around the creek
22 so that you won't be cross-crossing the creek; is that
23 correct?

24 A. That's correct.

25 MS. HESS: Thank you. I have no further

1 questions.

2 CROSS-EXAMINATION

3 BY MS. JACKSON:

4 Q. You stated that you have an insurance policy that
5 covers liability for you. Does that extend to private
6 property owners or just you?

7 A. Well, being in charge of exploration, I am not
8 usually the one that sets up the insurance policy, but it
9 applies I believe to anything that occurs within the project
10 area, and the access permit agreement that we sent you also
11 indemnifies you from any liability for any occurrence that
12 occurs on your property.

13 Q. So the agreement that you have with Dan Blair, is
14 that a separate lease agreement?

15 A. No, it is an access permit agreement like we sent
16 you, identical to it.

17 Q. That was the one you sent us offering so much
18 money to sign?

19 A. Right, but again, I'd like to point out that is
20 not a lease. We are not going to do any work on your
21 property.

22 Q. I understand that. I'm just asking a question.
23 Can you get to your property any other way without going
24 through hundreds of acres of our private property?

25 A. Well, as you can see on the map that we have,

1 there are a number of routes but there are a number of
2 project areas within the entire project, and as I stated, it
3 is, number one, preferential for us because it's a common
4 sense approach to use the most direct access and to not make
5 extra roads where we don't need extra roads.

6 Now, in saying that we need to cross your
7 property, yes, we do, because that is the most direct route
8 to the anticipated drilling that we have in section 14, which
9 is the next square mile to the west of yours for a number of
10 reasons.

11 Number one, it's the shortest route. Number two,
12 it's an existing road so it limits the actual degradation of
13 any of the surface out there to an existing road.

14 Number three, we get our water from a ranch
15 further up in Buena Vista Valley and it is the shortest, most
16 direct route to that.

17 Q. Thank you. I note things all sound good from
18 your point of view as to why you've chosen it. However,
19 we're coming from the opposite point of view saying why don't
20 you consider alternate routes or going through the easements,
21 something that limits our exposure.

22 So from our point of view, the question of can
23 you get to your property any other way, it makes more sense
24 for you to consider alternates rather than put other parcels,
25 hundreds and hundreds of acres subject to what is best for

1 your company.

2 MR. ERWIN: I object to the question on the
3 grounds that it's not relevant because the purpose of the
4 reclamation permit application and the permit is to address
5 reclamation of the roads, it is not a business decision
6 making reference. That's not the purpose of this proceeding.

7 CHAIRMAN DODGION: You're exactly right. The
8 issue of this road and whether or not they have access to an
9 existing road is not within the purview of this Commission.
10 Their access is not granted by the issuance of this
11 reclamation permit.

12 That is a legal issue and you'll have to take it
13 up perhaps with county authorities, but it's not within our
14 purview and it's not properly here.

15 MS. JACKSON: I thought the purpose that he
16 mentioned in his statement was that they were trying to
17 disturb the least amount of land possible made that question
18 pertinent because he mentioned that they chose it to disturb
19 the least amount of land possible.

20 BY MS. JACKSON:

21 Q. Second, Professor Maurer --

22 A. Was there a question that I should address or
23 were you just making a statement?

24 Q. No. I asked you if you have considered other --

25 A. Yes, actually we have because you mentioned

1 easement --

2 Q. Excuse me. You mentioned that you chose the
3 route for your own benefit, but in addition to degrade the
4 least amount of land.

5 A. That's true.

6 Q. So I'm wondering if there was an alternative that
7 might have degraded the least amount of land. I know that
8 Professor Maurer testified that he had seen the road that was
9 already in use and it was eroded to the point now that he was
10 concerned when the rain came if he could get into his own
11 property.

12 A. Is that a question?

13 Q. Do you have any plans to make it so that the
14 private property owners can get into their land after you
15 degrade it to the point where when water comes it's too muddy
16 for us to use?

17 MR. ERWIN: Mr. Chair, I object because I don't
18 think there's any testimony that the company intends to
19 degrade the road --

20 MS. JACKSON: I don't --

21 MR. ERWIN: Excuse me, let me finish. There's no
22 testimony that the company wants to degrade the roads. I
23 think the testimony is to use the roads to cause the least
24 amount of impact and that is most efficient. I object to the
25 form of your question.

1 MS. JACKSON: May I explain further one small
2 amount?

3 CHAIRMAN DODGION: One small amount.

4 MS. JACKSON: I didn't say it was their intention
5 to degrade. I said they had according to Professor Maurer
6 already. That was just my point.

7 CHAIRMAN DODGION: Do you have other questions
8 that are relevant to the permit?

9 BY MS. JACKSON:

10 Q. Have you done any investigation whatsoever or
11 have any evidence to support that the state of Nevada or
12 Pershing County has asserted or recorded an RS 2477 road
13 right of way?

14 CHAIRMAN DODGION: Again, I don't believe that's
15 relevant to this permit. If you know the answer, go ahead.

16 THE WITNESS: Well, I would actually refer it to
17 our counsel. I believe there is. The county has named the
18 road, there is an actual delivery address on that road and it
19 is in active and constant use. In fact, Dr. Maurer uses that
20 road how many times a year, three or four?

21 BY MS. JACKSON:

22 Q. It has to be asserted and recorded and it has not
23 been.

24 A. That's beyond what I can answer.

25 CHAIRMAN DODGION: That's beyond the ability and

1 jurisdiction of this Commission.

2 MS. JACKSON: I think it bears greatly on this
3 and I'm sorry that I'm not able to give you the 2477 road
4 information.

5 CHAIRMAN DODGION: Additional questions?

6 MS. JACKSON: No, that's all.

7 CHAIRMAN DODGION: Thank you.

8 MR. ERWIN: I have no further witnesses,
9 Mr. Chairman.

10 MS. HESS: I have no redirect.

11 CHAIRMAN DODGION: We are now at my favorite time
12 of rebuttal. Do you wish to call any rebuttal witnesses,
13 Ms. Hess?

14 MS. HESS: No, I have no rebuttal, Mr. Chairman.

15 CHAIRMAN DODGION: Do you have any additional
16 witnesses or testimony to rebut anything?

17 MS. JACKSON: No, I do not.

18 CHAIRMAN DODGION: Mr. Erwin?

19 MR. ERWIN: We have presented all of our
20 testimony and evidence, Mr. Chairman.

21 CHAIRMAN DODGION: Very good. Let's move on to
22 closing arguments and we will proceed in the same order, with
23 the State, the appellant and the intervener.

24 Ms. Hess, you're up.

25 MS. HESS: Yes. Once again there's several

1 issues that the appellants wish to come in and discuss today,
2 but I think that the proper forum for that might be something
3 other than this Commission and certainly something other than
4 the permit.

5 As my witness testified, they don't grant access
6 to property. That was included in the final notice that was
7 sent out, the notice that mentioned that they are not
8 granting property rights. It isn't something that's in their
9 regulation that the Commission has in fact passed.

10 Mining of course is an important part of Nevada
11 economic benefit. Even with the prices down, it's something
12 that the legislature has tried to encourage.

13 I would just mention as well that it's obvious
14 that the roadway certainly by the intervener's exhibits meets
15 the NAC 519A.105 as far as for a roadway, even though the
16 permit doesn't grant that and it's not within the purview of
17 the permit.

18 The application for a permit is listed in NRS
19 519A.190. All of that particular section was complied with
20 and as well it had in 519A.330, it had everything about
21 revegetation, stabilization so that that land can be used for
22 something good for the State, continued use for people to go
23 out and prospect for their own amusement, a rock hound for
24 their own amusement, go out and fish.

25 The testimony is as well that Moonlight group

1 will not be having anything to do with the creek area right
2 out there and they have also tried to avoid that creek area
3 so that there won't be any degradation to the groundwater, to
4 the surface water as I was corrected.

5 As well in NAC 519A.340, they have also addressed
6 all of those issues in there, in the permitting section and
7 was looked at by my witness. The surety can be posted at any
8 time that they wish to.

9 So once again I would just mention that
10 everything has been done properly by the applicant on getting
11 their permit. They responded promptly to everything that was
12 required by my client asking them and it was responded to by
13 their experts.

14 Therefore, we would respectfully request that the
15 Bureau's decision to issue this reclamation permit be
16 affirmed because it was all done by the regulations and all
17 done by the statute. Thank you.

18 CHAIRMAN DODGION: Thank you. Ms. Jackson, do
19 you wish to make a closing statement?

20 MS. JACKSON: Just a very brief one, yes. The
21 actual permit for them is not the issue, it's going through
22 our private lands, and the reason I'm here at the hearing
23 today is just to present a picture from the private property
24 owners.

25 I think that it's great if they reclaim

1 everything. If they don't, it will just be something that
2 we'll all have to deal with at a different time.

3 The amount of the bond seems extremely small,
4 especially since they're talking about containing hazardous
5 waste in proper containers. We all know that that's
6 extremely expensive should anything like that occur.

7 I think Professor Maurer mentioned something
8 about the Rochester mine and the tailings and how they had to
9 close that in 1963 and the town went completely kerplunk. So
10 it's something that can happen, does happen and I think that
11 that's a very small amount of bond.

12 I think they brought up the RS 2477 road in the
13 very beginning as to one of the reasons they should have been
14 able to use it and I think that since it's right there for
15 anyone to read, there are many pertinent points that do apply
16 to the hearing.

17 While I'm not an attorney, I didn't interpret any
18 of that -- I was a real estate broker for over 20 years and I
19 just am here to explain my position and those of the several
20 other hundreds of acres of private owners that are not just
21 in our family but friends.

22 I know that there is a lis pendens filed against
23 a lot of these properties because of the mineral rights and
24 lawsuits and it just seems like it's getting so extremely
25 complicated, now bringing in another new issue and new

1 problems that I had to come and at least have my say.

2 CHAIRMAN DODGION: Thank you very much.

3 Mr. Erwin, do you have a closing statement?

4 MR. ERWIN: Yes, Mr. Chairman. I'd just
5 reiterate Ms. Hess's argument and that is the evidence here
6 and particularly the testimony of three individuals that I
7 would consider experts in this field, Mr. Martin, Mr. Martini
8 and Sulfrin, has not been contradicted by any competent
9 evidence whatsoever.

10 The fact is the application itself is undisputed
11 and from a legal standpoint, their testimony is it complies
12 with all the regulatory and statutory requirements. On that
13 basis it should be affirmed.

14 As far as field access, the application itself
15 addresses that, but I think a key point is the company has no
16 intention of disturbing the surface by releasing or
17 discharging contaminants. They couldn't get a permit to do
18 that from probably any agency in the state or federal
19 government if they wanted to, and that's why we have laws
20 which would penalize and criminalize unlawful disturbances of
21 those hazardous substances and obligates that the person who
22 discharges it to clean it up and pay all the costs.

23 The last thing that this company wants to or will
24 do would be to intentionally spill contaminants not just
25 because of the costs and regulatory, but the adverse impact

1 on the company which is a publicly traded company which has
2 disclosed any hazards anticipated and would do tremendous
3 damage of their operation as they operate in this industry in
4 Nevada.

5 On that basis, I think the plan adequately
6 addresses it as do the laws and regulations and the
7 Commission can take judicial notice of those federal and
8 state statutes and regulations that regulate discharge.

9 On this access route, I just reiterate what we
10 stated before and it's in our hearing statement. I don't
11 think this forum is the proper one for adjudication of
12 property rights. That by the constitution is vested in the
13 District Court up in Pershing County, but I would like to
14 correct some misconception about this RS 2477.

15 That law was enacted in 1875, and it was enacted
16 for exactly the purpose of protecting landowners like the
17 owner of the Grant mine patented claim.

18 Those patents of mining claims would be in
19 isolated rural areas and the patent necessarily withdraws
20 federally owned land that was not owned by the railroad or
21 any other property, and the concern was when the railroad
22 grants were issued, if you granted patents to Central Pacific
23 Railway you might create islands and isolate the patented
24 claim owner such that the railroad landowner might claim you
25 can't cross my land, and the Congress specifically addressed

1 that with RS 2477 by stating the rights of access across
2 former public lands that now become public land will be
3 preserved to earlier users.

4 That's exactly what this road is as shown on the
5 cadastral surveys to the Moonlight project and Grant mine.
6 That's exactly why it was enacted, RS 2477. It hasn't been
7 repealed in a sense that landowners not apply for new
8 patents, but it did to any patents issued up to October 22,
9 1976, when it was enacted.

10 If there's any question about whether or not this
11 law allows an individual private property owner such as the
12 owner of the Grant patented mine to rely on it, you just need
13 to read the case we cited in our hearing statement, Anderson
14 versus Richmond.

15 That's a Nevada Supreme Court case in which an
16 owner of property up near Incline Village in Lake Tahoe
17 proves the prior existence of an historic road coming down
18 the mountain to the valleys here, and the Court upheld the
19 right of that property owner to use that road even though
20 there were intervening subsequent patents issued to other
21 landowners and that's exactly what we have here.

22 To think that you must go to a County Commission
23 or the state of Nevada to preserve your right is a mistake.
24 That is not how the law works. There is a state statute
25 which allows a County Commission to designate these roads,

1 but it does require any private property owner who has a
2 right to preserve use of the road if necessary through legal
3 action in a District Court. Thank you.

4 MS. JACKSON: May I make one more comment?

5 CHAIRMAN DODGION: No. We've commented quite
6 enough. I'm going to close the evidentiary portion of the
7 hearing. At this time we normally ask if there's any
8 independent member of the public who would like to make a
9 comment and everyone here has been participating, so that
10 does not apply.

11 At this time we'll close the hearing and the
12 panel will take the matter under discussion and figure out
13 what to do. Would you like to take a little bit of a break
14 first?

15 MEMBER RACKLEY: I'm ready to forge on.

16 MEMBER MAYER: The great thing about this country
17 is you have an opportunity to air these kinds of issues in
18 various forums.

19 I break this down into three categories. One is
20 the Bureau of Land Management, resource management plan
21 aspect of it, exploration and energy. A myriad of things go
22 in there. The landowner needs to be aware and be fully
23 engaged.

24 Another one is a permit and that's our purview
25 and our purview only and I'd ask counsel to maybe frame for

1 us what we can and can't do.

2 And the other is the access thing. I think
3 counsel here has mentioned District Court. There's a bunch
4 of different avenues that one can pursue as a private
5 landowner relative to access.

6 I don't know whether I've articulated it
7 correctly, but it seems to fall into three things here and we
8 of course only want to deal with what we can really deal
9 with.

10 If it suits your pleasure, maybe we could have
11 counsel tell us from her perspective what our purview really
12 is.

13 CHAIRMAN DODGION: I think what counsel is going
14 to tell us is we're going to have to make some findings of
15 fact and so on here. If you have some advice for us before
16 we get too deep into this?

17 MS. REYNOLDS: As far as the access and the
18 roads, that is outside the purview of this Commission.
19 You're really limited to the permit itself, was the permit
20 properly granted under NRS and NAC Chapter 519A. That's what
21 your jurisdiction is over and that's really what you're
22 limited to.

23 CHAIRMAN DODGION: Exactly. Comments?

24 MEMBER RACKLEY: I couldn't agree with you more,
25 Commissioner Mayer. This issue is really with the permit and

1 to me the permit has met all of the requirements. I'm going
2 to support affirming or upholding the permit decision.

3 But the discussion that we've had here that is
4 outside of those with the access and other things is
5 something that happens a lot in this state. We have the same
6 kind of issues in just about every mining community when they
7 come back and activate these old permitted mines and they
8 have every right to do so, and as long as they follow our
9 rules and regulations with reclamation and following through
10 with discharges if any and they do, it's appropriate.

11 I agree, I'm glad you came up and participated.
12 I'm sorry that I can't support not affirming the permit
13 because your issues on access really need to go back to
14 either the local county or the BLM, whomever has the access
15 jurisdiction for those properties.

16 MS. JACKSON: The information I was given was by
17 BLM in Washington, D.C.

18 MEMBER RACKLEY: I'm not disputing where you got
19 your information or anything, it's that those issues need to
20 be handled in the proper venue, and unfortunately for those
21 parts of your concerns this Commission isn't it, and it's not
22 part of the reclamation permit.

23 CHAIRMAN DODGION: I have to agree with both of
24 you. The testimony that we've heard today, there's been
25 nothing that would indicate that the permit hasn't been

1 properly handled and that there's anything improper about it.

2 MS. JACKSON: That wasn't at issue.

3 CHAIRMAN DODGION: The issue of access through
4 these properties is not within our area of jurisdiction.

5 MS. JACKSON: The environmental aspect was very
6 important.

7 MEMBER MAYER: I would move based on the
8 testimony we've heard today to uphold and approve the permit
9 as issued by the Bureau.

10 MEMBER RACKLEY: I second.

11 CHAIRMAN DODGION: Any advice here? Do we need
12 to do anything else?

13 MS. REYNOLDS: Take a vote.

14 CHAIRMAN DODGION: All in favor?

15 (The vote was unanimously in favor of motion.)

16 CHAIRMAN DODGION: Let the record show there's
17 unanimous approval to uphold the permit as proposed. One
18 last time. This meeting is adjourned.

19

20 (The proceedings concluded at 1:52 p.m.)

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1 STATE OF NEVADA,)
2 CARSON CITY.) ss.

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I, MARY E. CAMERON, Official Court Reporter for the State of Nevada, Environmental Commission, do hereby certify:

That on Thursday, the 20th day of November, 2008, I was present at 100 North Stewart Street, Conference Room A, Carson City, Nevada, for the purpose of reporting in verbatim stenotype notes the within-entitled public hearing;

That the foregoing transcript, consisting of pages 1 through 124, inclusive, includes a full, true and correct transcription of my stenotype notes of said public hearing.

Dated at Carson City, Nevada, this 25th day of November, 2008.

MARY E. CAMERON, NV CCR #98

	45:15;96:10;104:21; 108:6,7,11	3:11;125:6	5 (3) 17:2,3;49:3	
#	14 (2)	22 (1)	5:00 (1)	9
#98 (2)	100:19;110:8	120:8	14:7	9 (1)
1:5;125:19.5	15 (7)	22nd (1)	50 (4)	2:5
\$	60:14,15,17;61:17;62:1; 65:1;108:11	14:7	45:14;61:6;64:19;78:23	90 (1)
	18 (1)	23 (1)	51,000 (1)	68:15
\$200 (1)	100:19	108:11	99:23	A
47:5	1800s (1)	24 (4)	519A (9)	
\$34,000 (1)	55:19	79:21;89:3;103:4;107:17	9:24;18:22;22:10;25:10, 24;34:7;81:16,24;122:20	ability (4)
100:4	1860 (1)	2477 (25)	519A105 (3)	54:8,10;102:15;113:25
\$52,000 (1)	63:1	23:13;26:14;27:7;36:1, 14;48:1;49:12;52:14,18, 20,21,23;53:1,16,17,19;	13:2,4;115:15	able (10)
99:23	1868 (1)	56:19;75:8,23;113:12;	519A190 (1)	37:25;65:17;69:13;
\$86,798 (1)	97:5	114:3;117:12;119:14;	115:19	73:21;84:11;102:17;
22:15	1872 (2)	120:1,6	519A265 (1)	105:3,12;114:3;117:14
/	68:11;90:23	25 (1)	11:17	above (1)
	1875 (1)	2:5	519A330 (1)	94:25
/// (5)	119:15	25th (1)	115:20	absolutely (3)
8:24,25;21:25;77:25; 105:25	1895 (3)	125:14	519A340 (1)	30:25;53:24;108:4
1	95:25;97:9,24	27 (1)	116:5	accept (5)
	1903 (5)	94:24	519A415 (2)	36:3,5,14;43:14;57:10
	94:17,18,22;95:2;97:17	28th (1)	18:18,19	accepted (1)
	1904 (3)	32:23	58 (1)	82:12
	94:17,20,24	29 (1)	2:5	access (59)
1 (12)	1963 (1)	95:6		5:4;11:6;17:15;18:2;
43:15;58:10;75:12;76:2, 19;80:11;86:8;93:23; 104:4;107:1;108:11;	117:9		6	19:3,4,4;21:11,13;22:5;
125:11	1976 (1)	3		25:21,23;36:15,17,20;
1.8 (1)	120:9		63 (1)	38:4,4,7,17,21;48:5,6,13,
62:25	1980 (1)	30 (4)	2:5	17,22;57:8,13;58:6;85:24,
1:52 (1)	63:13	88:13,25;102:1;104:6	64 (1)	24;86:19,22;91:5,13;
124:20	1981 (3)	30-foot (1)	90:13	92:16,18,24;96:3;97:10;
10 (2)	6:10;13:3;25:21	55:23	67 (1)	105:16,17,22,24;109:10,
12:7;32:20	1985 (1)	31 (2)	2:5	15;110:4;111:8,10;115:5;
10:30 (2)	63:16	94:21;95:2		118:14;119:9;120:1;
3:1,12	1987 (1)	32 (1)	7	122:2,5,17;123:4,13,14;
100 (6)	98:15	2:5		124:3
48:3;52:17;79:1;103:24; 104:12;125:7	1989 (1)	32nd (1)	7 (3)	accidents (2)
100-plus (1)	68:15	55:14	18:12;22:17;46:5	27:25;29:11
54:3	1990 (1)	34 (1)	74 (1)	accomplished (1)
108 (1)	72:24	95:6	2:5	43:23
2:5	1st (2)	3809 (2)	75 (1)	according (4)
109 (1)	13:3;25:21	81:18,19	79:1	38:23;44:13,14;113:5
2:5	2	39 (1)	775 (3)	account (2)
10th (1)		2:5	1:5,5;2:5	85:3;99:15
52:20	2.8 (6)	4	78 (1)	accuracy (1)
11 (13)	37:6;38:23;82:8,9;101:3, 4		2:5	84:23
10:12;37:2,2,6,7;38:23, 23;62:25;80:15;89:14; 100:24;101:2;108:11	20 (4)	400 (2)	8	accurate (2)
12 (8)	1:5;3:1;67:18;117:18	38:20;74:12		35:21;84:24
10:11,13;11:15;43:15; 45:14;53:4;79:21;108:5	200 (2)	41 (1)	8 (1)	achieve (1)
12:30 (1)	90:11;94:19	2:5	13:23	91:4
77:6	2006 (1)	410 (1)	81 (1)	acquainted (2)
124 (1)	89:22	1:5	2:5	9:15;79:6
125:11	2008 (7)	42 (1)	87 (2)	acreage (2)
1265 (1)	1:5;3:1,11;14:7;32:23;	97:7	2:5;63:16	11:9;73:10
99:1	125:6,15	433 (1)	87,000 (1)	acres (5)
13 (6)	203 (1)	81:18	29:2	79:16,18;109:24;110:25;
	93:23	45 (1)	882-5322 (3)	117:20
	20-acre (1)	2:5	1:5,5;2:5	across (6)
	91:2	5	89706 (1)	36:20;62:4,12;63:9;
	20th (2)		1:5	92:24;120:1
				acting (1)
				3:6

<p>action (6) 18:17;23:25;25:5,15; 34:15;121:3</p> <p>actions (1) 34:12</p> <p>activate (1) 123:7</p> <p>active (2) 104:11;113:19</p> <p>actively (1) 57:20</p> <p>activities (12) 22:12;33:14,18;79:10,15; 80:20,25;81:2,9,21; 103:10;105:7,20</p> <p>activity (4) 71:10,12;79:5;86:24</p> <p>actual (6) 27:9;46:4;86:23;110:12; 113:18;116:21</p> <p>actually (20) 17:18;22:6;36:8;56:8; 58:5;60:11;65:2,7;79:24; 81:11;86:19;87:10;96:4, 25;100:25;105:1;106:3; 107:9;111:25;113:16</p> <p>add (6) 6:23;11:18;43:17;57:1; 66:25;73:14</p> <p>addition (2) 28:3;112:3</p> <p>additional (10) 32:17;33:1;44:25;66:18; 91:18;100:1,4;102:11; 114:5,15</p> <p>address (21) 30:21;31:10,15,16,17,19, 22;33:4,18;34:7;38:12; 69:8;73:24;82:4,6;83:18; 98:25;100:9;111:4,22; 113:18</p> <p>addressed (4) 30:3;31:19;116:5;119:25</p> <p>addresses (6) 7:16;15:21;39:18;40:25; 118:15;119:6</p> <p>addressing (4) 31:3;33:14;69:12;82:3</p> <p>adequate (2) 100:9,16</p> <p>adequately (3) 7:16;33:4;119:5</p> <p>adjacent (1) 106:3</p> <p>adjoins (1) 104:15</p> <p>adjourned (1) 124:18</p> <p>adjudicated (1) 53:18</p> <p>adjudication (1) 119:11</p> <p>administer (1)</p>	<p>4:5</p> <p>administered (4) 79:11,12;80:24;107:4</p> <p>Administration (1) 103:3</p> <p>Administrative (5) 9:25;11:16;13:2;34:11; 81:15</p> <p>admissibility (1) 70:12</p> <p>admissible (2) 51:16;77:1</p> <p>admit (1) 76:15</p> <p>admitted (4) 47:19;74:24;76:21; 106:19</p> <p>adopted (1) 26:4</p> <p>adverse (1) 118:25</p> <p>advice (2) 122:15;124:11</p> <p>aerial (5) 23:5;32:4,5,8;55:3</p> <p>affected (2) 3:14;11:12</p> <p>affects (1) 102:14</p> <p>affidavit (2) 14:1,15</p> <p>affiliated (1) 3:25</p> <p>affirmed (2) 116:16;118:13</p> <p>affirming (2) 123:2,12</p> <p>afraid (1) 17:21</p> <p>Africa (1) 67:23</p> <p>again (14) 8:6;30:20;38:14;53:19; 65:7,12;71:11,13;72:9; 99:10;109:19;113:14; 114:25;116:9</p> <p>against (1) 117:22</p> <p>age (2) 104:7,9</p> <p>agencies (5) 19:21;37:8,11;84:13,19</p> <p>agency (8) 7:12;34:13;56:7,8;70:16; 98:16;103:6;118:18</p> <p>ago (11) 45:21;60:14,15,17;62:1, 19;65:1,2;67:18;74:14; 80:5</p> <p>agree (6) 50:10;52:5;70:14; 122:24;123:11,23</p> <p>agreement (14)</p>	<p>17:15;48:6,13,13,17,23; 57:9;105:16,18,24; 109:10,13,14,15</p> <p>AG's (1) 71:14</p> <p>ahead (8) 27:17;31:1;41:18;45:6; 49:1;51:4;77:8;113:15</p> <p>AIPG (1) 88:21</p> <p>air (4) 34:8;40:3;56:6;121:17</p> <p>allow (8) 8:5;23:11;47:8,25;51:13; 52:6;57:5;75:6</p> <p>allowed (7) 27:12;28:14;47:12; 74:23;80:8;86:12;101:18</p> <p>allows (4) 36:9;53:22;120:11,25</p> <p>almost (1) 73:12</p> <p>along (5) 11:2;12:14;56:5;73:20; 97:2</p> <p>alphabet (2) 15:20,20</p> <p>alternate (1) 110:20</p> <p>alternates (1) 110:24</p> <p>alternative (1) 112:6</p> <p>alternatives (1) 53:14</p> <p>always (4) 100:12;103:12,14;104:9</p> <p>amendment (1) 80:1</p> <p>American (2) 88:21;89:5</p> <p>Among (1) 93:22</p> <p>amount (26) 22:14,15;34:25;35:2,9; 73:17;84:4,6;85:5,9;99:9, 19;100:8,14,16;102:16, 21;111:17,19;112:4,7,24; 113:2,3;117:3,11</p> <p>amounts (1) 101:12</p> <p>amusement (2) 115:23,24</p> <p>analysis (3) 50:25;51:2;56:20</p> <p>ancestors (1) 55:14</p> <p>Anderson (1) 120:13</p> <p>animals (1) 73:17</p> <p>annual (1) 103:5</p>	<p>anthropology (1) 78:16</p> <p>anticipated (4) 11:10;85:10;110:8;119:2</p> <p>anyplace (1) 68:8</p> <p>apologize (1) 12:8</p> <p>apparent (1) 42:10</p> <p>APPEAL (11) 1:5;3:5,10,15,23;7:14; 21:15,16,17;47:22;64:9</p> <p>appealed (2) 30:20;67:25</p> <p>appeals (4) 4:6;18:16;47:22;52:21</p> <p>appeared (1) 97:23</p> <p>appears (3) 54:6;97:12,18</p> <p>APPELLANT (12) 1:5;6:14;7:22;23:20; 40:8,12;44:4;46:20;52:7; 67:11;93:2;114:23</p> <p>appellants (5) 5:3,18;92:23;94:11; 115:1</p> <p>appellant's (5) 7:23;38:5;77:7;96:6; 106:4</p> <p>appended (2) 82:9,19</p> <p>appendix (1) 82:19</p> <p>applicant (20) 10:9;12:15;13:16;16:2,8; 19:21;22:7;23:18,19; 25:22;27:5,6,7;33:19; 37:9,18;41:4,11;44:9; 116:10</p> <p>applicants (1) 35:14</p> <p>application (48) 5:12,25;6:1,3;10:3,14; 11:24;12:1,4;13:12;16:1, 3;30:3;31:16;32:15,16; 33:5,21;35:1,5,8,19; 37:14;64:9;69:6;79:3; 80:12;81:12;82:4,7,18,20, 21;83:14;84:3,5;86:22; 92:9,12;99:4;101:1; 104:4;107:23;108:1; 111:4;115:18;118:10,14</p> <p>applications (3) 33:17;78:20,25</p> <p>applies (3) 38:18;52:3;109:9</p> <p>apply (8) 12:24;52:21;53:20;66:3; 78:9;117:15;120:7; 121:10</p> <p>appreciate (2)</p>	<p>52:9;66:25</p> <p>approach (2) 101:6;110:4</p> <p>approached (3) 26:21;46:9;47:5</p> <p>appropriate (5) 8:14;37:10;39:9;101:11; 123:10</p> <p>approval (1) 124:17</p> <p>approve (1) 124:8</p> <p>approved (2) 35:1;80:8</p> <p>approximate (1) 11:6</p> <p>approximately (5) 43:15;60:16;88:10;89:3; 90:11</p> <p>April (1) 94:24</p> <p>archeological (1) 85:21</p> <p>archeologist (1) 85:18</p> <p>area (38) 10:7,22,25;13:18;21:18; 45:23;55:3;62:5,17;63:1, 11;65:11;68:1,7,14; 69:12;70:4;71:9,10,12; 72:18,19;73:18;79:12,19; 80:19,19;81:8;90:10; 91:7,16,25;98:7;107:10; 109:10;116:1,2;124:4</p> <p>areas (8) 11:12;71:2,21;90:6; 91:14;102:21;110:2; 119:19</p> <p>argue (1) 73:15</p> <p>argument (2) 50:9;118:5</p> <p>arguments (1) 114:22</p> <p>around (4) 44:5;59:23;60:2;108:21</p> <p>articulated (1) 122:6</p> <p>artifacts (5) 55:17;56:13;71:23;72:9, 13</p> <p>aside (2) 28:21;89:1</p> <p>aspect (2) 121:21;124:5</p> <p>assert (2) 52:23;54:8</p> <p>asserted (6) 52:18;53:1,17;58:11; 113:12,22</p> <p>Assessor (1) 60:13</p> <p>assessor's (2)</p>
---	--	---	---	--

<p>20:12,13 assistant (1) 12:10 assisted (1) 92:13 assisting (1) 102:1 Association (2) 15:2;84:20 assume (3) 10:9;43:7;75:24 assumed (1) 48:18 assuming (1) 48:20 astounded (1) 47:14 atlas (2) 98:9,15 attached (5) 19:10;22:18;93:10,22; 95:4 attachment (3) 17:8;42:16;95:6 attended (1) 45:22 attention (1) 93:23 Attorney (13) 1:5,5,5;4:11;6:19;8:3,4, 8;27:12;28:12,20;53:22; 117:17 attorneys (2) 24:19;44:22 aunt (8) 45:18,19;58:21,22,23,24; 60:21,23 authorities (1) 111:13 authority (4) 5:9;6:11;7:10;24:7 authorize (2) 17:23;21:13 avenues (1) 122:4 avoid (3) 53:15;72:2;116:2 aware (10) 34:6;47:21;54:13,15; 69:20;71:7;83:17;102:4; 107:16;121:22 awareness (2) 102:3;103:12 away (1) 84:12</p>	<p>15:21;20:1,19;28:9; 41:11,22;42:5,14,24;63:1; 66:2,9;77:13,15;84:10; 106:25;123:7,13 background (2) 9:12;93:17 backhoe (1) 73:9 backwards (1) 19:22 bankruptcy (1) 41:4 Barrick (4) 89:4,5,6,12 Barrick's (1) 89:16 based (8) 71:4;81:22;100:6,12; 104:6,12;105:23;124:7 basic (2) 90:3;91:15 basically (11) 16:12;36:9;50:9;91:15; 93:9;96:8;99:16;101:6, 25;102:18;103:15 Basin (1) 15:3 basis (7) 12:17;49:17;50:6;51:8; 92:6;118:13;119:5 bate (1) 12:9 Bay (1) 59:1 bear (2) 5:15;6:2 bears (1) 114:2 beautiful (1) 45:24 became (1) 79:6 become (3) 42:10;89:20;120:2 becoming (2) 55:5,10 begin (2) 4:9;100:5 beginning (3) 49:22;79:5;117:13 behalf (6) 6:14;8:21;45:9;67:10; 77:21;87:19 belong (1) 90:25 benefit (2) 112:3;115:11 benefits (1) 24:6 berms (1) 91:24 best (2) 63:15;110:25</p>	<p>Bethany (4) 15:12,12,13,16 better (1) 36:13 beyond (7) 7:12;55:22;70:22;72:16; 81:5;113:24,25 big (2) 6:8;28:3 Bill (4) 17:7,9,11;94:4 binder (4) 32:20;43:15;47:18;48:24 binders (1) 100:25 binds (1) 48:7 biologist (3) 55:2;68:4;73:20 birds (1) 73:17 bit (8) 25:18;28:3;35:5,9;38:3; 53:9;104:2;121:13 black (3) 96:7;97:22;100:25 Blair (6) 46:5,11,15;98:25;105:18; 109:13 Blair's (2) 46:17,19 blanket (2) 50:5;51:16 BLM (27) 50:22;51:9,11;53:3,4,8, 19;54:16,16;71:23;72:15; 79:9,11,13,14;80:6,24; 84:19;85:17;92:2;95:12, 13;97:14;104:25;107:4; 123:14,17 blue (9) 47:7;80:20,25;86:8,10; 107:1,2,7;108:2 Board (1) 5:14 Bob (4) 53:3;68:11;71:24;72:22 bode (1) 54:5 bond (27) 18:4;22:15;29:2;34:25; 35:10;41:8,9,22;42:3,7, 12,14,20,21,23;43:23; 44:5,6;84:4,12;99:9,24, 25;100:8;102:18;117:3, 11 bonded (1) 99:22 bonds (1) 84:16 book (2) 12:8;44:25 border (1)</p>	<p>98:4 both (8) 71:23;73:13;74:13;84:7; 98:11;104:25;108:1; 123:23 bottom (2) 49:22;50:4 bought (3) 45:22;59:18;64:22 boundaries (2) 91:22,22 boundary (1) 94:9 branch (1) 9:11 break (3) 77:13;121:13,19 breakdowns (1) 83:3 brief (3) 84:4;92:11;116:20 Briefly (1) 7:2 bring (1) 68:22 bringing (1) 117:25 broker (1) 117:18 brought (6) 27:13;29:25;30:16;31:5; 71:18;117:12 Buena (2) 104:14;110:15 Buhler (4) 53:8,9;54:16;75:5 build (4) 5:8,9;24:7;54:7 building (2) 3:16;46:6 built (3) 13:3;25:21;108:21 bunch (1) 122:3 Bunte (13) 17:10;20:8;45:17,18; 59:2,6,8,9,9;60:4,6,7; 75:15 Bureau (41) 5:3,22;6:11;9:8,10;15:17, 18;23:4,8,11,22,25;24:1, 7;25:5,15;33:13;34:13,14, 15,17;35:13;39:9,18; 40:15,18,20;41:5;47:10; 57:19,20,21;72:9,13;76:2; 81:16,20;93:12;94:2; 121:20;124:9 Bureau's (2) 6:3;116:15 business (2) 78:17;111:5 buy (2) 57:12;61:9</p>	<p>Buzz (2) 60:13;62:4</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>cadastral (11) 95:10,15,24;96:2;97:8, 13,16,18,24;98:2;120:5 Cal (1) 9:14 calculate (3) 84:6,16,22 calculated (4) 35:2,9;73:11;85:1 calculates (1) 23:2 calculating (2) 35:14;85:9 calculation (4) 16:10;84:3,5;99:9 California (5) 58:20;59:1,20;61:11,19 call (14) 3:4;4:1,22;7:25;8:17; 17:18;20:20;57:5;66:21; 77:17;87:15;94:11; 106:21;114:12 called (12) 8:21;20:8,15;22:23; 42:14;45:9;67:10;77:21; 84:17;87:19;97:1,98:21 calling (2) 40:2;64:12 calls (5) 16:21,22;20:20;28:11; 54:2 came (7) 20:21;42:22;75:24;84:5, 21;112:10;123:11 CAMERON (3) 1:5;125:4,19,5 camping (1) 104:16 can (52) 6:15,16;7:25;11:13; 12:12;13:23;17:2;18:12, 24;25:18;27:15;28:5,20, 24;29:7,8,9;35:7,16; 38:25;39:11;40:9;44:3; 49:10;52:23;66:12;69:10, 15;70:6;72:24;73:15; 80:15;84:4,13;91:7;96:5; 100:5,25;104:9;105:22; 109:23,25;110:22; 112:14;113:24;115:21; 116:7;117:10;119:7; 122:1,4,8 Capistrano (1) 59:3 CAPITOL (3) 1:5,5;2:5 care (3) 28:5,7;42:1</p>
<p style="text-align: center;">B</p> <hr/> <p>bachelor (1) 9:13 bachelor's (2) 78:15;88:16 back (18)</p>				

<p>caretaker (1) 65:22 CARSON (7) 1:5,5;3:1,12;125:2,8,14 case (10) 4:22;5:2;7:19,23;8:14; 16:4;37:13;101:8;120:13, 15 cases (1) 54:18 cash (1) 99:25 categories (1) 121:19 cattle (1) 104:24 cause (1) 112:23 CCR (2) 1:5;125:19.5 center (1) 96:14 Central (2) 93:24;119:22 century (1) 94:15 certain (4) 13:1;34:23;73:10;85:5 certainly (6) 52:17;101:17;102:14; 104:10;115:3,14 certified (1) 88:20 certify (1) 125:5 cetera (2) 54:8;67:23 CFR (1) 81:18 Chair (3) 3:6;87:15;112:17 Chairman (140) 1:5;3:4,22;4:2,9,12;6:14, 25;7:2,18;8:13,16;24:18, 23;25:6,12,17,25;26:3,9, 24;27:15,19;28:15;29:9, 15;30:2,6;31:9,13,25; 32:7,10,12;38:14;39:13; 41:14,18;43:4,11,14; 44:16,18;45:3,6;46:14,18, 22,25;47:19;48:12,20; 49:1,13;50:2,10,17,23; 51:4,10,12,20,25;52:5,12; 56:24;57:2;58:13;61:20; 63:20;66:20;67:1,5,24; 68:19;69:11,15;70:14,22; 71:1,20;72:6,9,12;73:24; 74:4,7,17,19,23;75:2,6,13, 16,20,24;76:10,20,24; 77:2,6,12,15,17;86:6,18; 87:1,12;93:7;105:11; 106:14,15,18,24;108:16; 111:7;113:3,7,14,25;</p>	<p>114:5,7,9,11,14,15,18,20, 21;116:18;118:2,4;121:5; 122:13,23;123:23;124:3, 11,14,16 chance (1) 7:24 change (1) 68:10 changed (3) 24:12;68:12;72:19 changes (1) 80:2 Chapter (4) 11:16;34:7;81:24;122:20 characterize (1) 33:7 charge (4) 33:17;68:18;100:15; 109:7 charged (1) 33:14 CHARLES (7) 2:5;22:19;23:15;47:24; 87:15,18;88:2 check (5) 16:6;22:22;42:9,18; 43:21 checked (1) 22:21 checkerboard (1) 108:10 chemicals (1) 25:9 Chief (2) 15:18;19:12 children (1) 46:4 choose (1) 35:16 chose (2) 111:18;112:2 chosen (1) 110:18 Circuit (1) 52:20 circumstances (1) 45:25 cited (2) 55:1;120:13 citing (1) 48:1 Citizen (1) 75:8 City (7) 1:5,5;3:1,12;125:2,8,14 claim (8) 19:1;90:13;96:9;97:4,10; 119:17,24,24 claiming (2) 63:12,13 claims (10) 62:22;90:11,12,13,15,18, 22;97:2,20;119:18</p>	<p>clarify (1) 92:21 clause (1) 28:14 clean (8) 24:25;25:8;31:20;37:21; 42:4;103:17,17;118:22 cleaned (1) 34:23 clear (1) 108:4 clearly (1) 57:18 client (2) 76:8;116:12 clients (1) 4:17 close (3) 117:9;121:6,11 closing (3) 114:22;116:19;118:3 closure (1) 40:22 cloud (1) 54:11 clouds (1) 54:24 clue (1) 63:16 Code (5) 9:25;11:16;13:2;81:18; 99:1 color (2) 80:23,24 Colorado (5) 88:3,3,17,17,17 colors (2) 80:21;108:6 column (1) 15:8 coming (4) 66:25;103:17;110:19; 120:17 comment (9) 16:24;18:6;19:23;20:3; 38:1;97:25;105:13;121:4, 9 commented (2) 20:18;121:5 comments (16) 14:5;16:21;17:4,14,17; 18:6,8;19:8,23,25;20:2,4, 5,6;21:2;122:23 COMMISSION (24) 1:5,5,5;3:5,8;7:10,21; 8:3,8;24:19;26:5;36:18; 57:2;93:8;111:9;114:1; 115:3,9;119:7;120:22,25; 122:18;123:21;125:5 commissioned (1) 56:8 Commissioner (1) 122:25</p>	<p>Commissioners (6) 4:13;5:13;12:9;13:17; 49:2;80:17 Commission's (1) 3:16 common (6) 12:5;37:19,20;91:15; 102:19;110:3 communications (1) 93:11 community (1) 123:6 companies (6) 78:9,10,12,12;89:4,9 company (38) 33:8;35:2;41:7;47:16; 48:14;54:6;57:15;78:25; 80:1,8;83:14,22,25;84:8, 11;85:4,6;86:18;89:10, 24;90:1;91:1,92:22;93:5; 94:8,24;96:23;97:9; 99:20;100:9;105:6;111:1; 112:18,22;118:15,23; 119:1,1 company's (2) 101:21;103:8 compared (1) 84:25 competent (1) 118:8 complete (4) 10:7;11:23,24;74:5 completed (2) 43:21;97:19 completely (1) 117:9 completeness (1) 98:1 completion (1) 98:4 compliance (2) 24:14;84:1 complicated (1) 117:25 complied (1) 115:19 complies (1) 118:11 comply (1) 22:10 concern (2) 28:4;119:21 concerned (3) 58:4;69:14;112:10 concerning (1) 93:18 concerns (7) 30:16;31:4;54:19;57:24; 69:15;71:5;123:21 concluded (1) 124:20 conclusion (2) 28:11;35:19</p>	<p>condition (2) 84:10;100:2 conduct (1) 103:14 conducted (1) 95:17 conducting (1) 80:20 Conference (1) 125:7 conform (2) 81:24;83:14 confused (2) 25:17;100:23 Congress (1) 119:25 CONNIE (9) 1:5;21:20;22:2;45:19; 58:21;59:25;63:17;65:13; 98:12 consensus (1) 84:21 Conservancy (1) 67:19 Conservation (2) 34:17;67:22 conservative (2) 85:2,8 consider (7) 5:6;23:11;25:12;56:11; 110:20,24;118:7 consideration (1) 56:17 considered (4) 50:8;72:14;90:1;111:24 considering (1) 5:8 consistent (3) 48:8;49:7;93:19 consisting (1) 125:10 consolidated (1) 4:7 constant (3) 52:18;104:11;113:19 constantly (1) 72:4 constitution (1) 119:12 consultant (7) 12:2,16;64:10,16;78:14; 83:17;89:10 consulting (2) 78:9;89:10 consumer (1) 40:3 contact (3) 38:25;39:9;84:13 contacted (7) 12:2;20:13,15;21:1;27:5; 47:10;76:2 contain (1) 55:23</p>
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<p>containers (2) 101:12;117:5 containing (1) 117:4 contains (1) 51:21 contaminant (2) 28:8;37:3 contaminants (7) 33:13;34:2,7;38:25;82:4; 118:17,24 contaminated (9) 5:20;23:21,21,24;24:24; 25:1,4,8;31:20 contamination (5) 5:19;29:23;30:8,22; 34:23 contemplate (2) 83:7;101:15 contemplating (1) 103:25 continue (1) 90:21 continued (3) 54:2,4;115:22 continuous (1) 52:15 continuously (2) 53:23;66:13 contractor (1) 102:2 contractors (2) 100:15;102:3 contradicted (1) 118:8 Contrary (1) 5:2 controlled (3) 89:8;101:12;102:2 convened (1) 3:11 conversation (1) 30:18 conversations (2) 26:19;30:24 cooperative (1) 33:8 Copies (8) 3:17;7:4,5;8:12;15:5,5; 91:13;108:7 copy (18) 3:15;15:24;18:19;21:18; 24:3;30:19;44:23;47:17; 48:25;66:8,9;75:10; 76:12;91:9,10,12;97:14; 101:1 Cornell (1) 67:20 corporate (1) 103:13 Corporation (5) 88:6;89:5,5,6,11 corrected (1)</p>	<p>116:4 correction (1) 56:22 corrections (1) 44:2 Corrective (4) 23:25;25:5,15;34:15 correctly (4) 21:23;57:9;86:8;122:7 correspondence (1) 7:9 cost (17) 10:8;16:7,8,14,14,15; 22:24;23:3;35:10,15; 40:25;41:1,5;84:17,18,22, 25 costs (6) 16:12;35:14,20;102:12; 118:22,25 counsel (5) 113:17;121:25;122:3,11, 13 counties (1) 36:2 countries (1) 67:21 country (3) 55:21;97:6;121:16 County (22) 13:16;20:13;36:13,19; 37:1;42:25;52:22,22,24; 53:2;58:12;60:9,13; 98:19,22;111:13;113:12, 17;119:13;120:22,25; 123:14 couple (2) 24:23;104:20 course (3) 6:7;115:10;122:8 Court (9) 52:20;53:18;54:18; 119:13;120:15,18;121:3; 122:3;125:4 cover (5) 22:11;31:13;67:4; 103:12;108:1 covered (1) 18:3 covers (3) 11:20;26:7;109:5 cow (1) 52:16 CP (1) 1:5 cradle (1) 96:13 create (6) 91:19;100:10;102:7,11, 21;119:23 created (1) 13:2 creating (1) 102:13</p>	<p>Creek (12) 29:23;30:13;31:5;54:20; 55:8;56:6,12;96:10; 108:21,22;116:1,2 crew (1) 91:4 criminal (1) 34:11 criminalize (1) 118:20 CROSS (7) 2:5;47:8;53:6,23; 105:22;110:6;119:25 cross-crossing (1) 108:22 cross-examination (11) 4:21;7:21;24:17;26:11; 32:13;58:16;63:22;74:8; 87:4;108:19;109:2 cross-examine (1) 52:1 cross-examined (1) 71:19 curious (1) 57:25 current (2) 92:6;104:11 currently (1) 57:13 customary (1) 18:10 cut (2) 91:24;93:19</p>	<p>Dave (1) 15:18 David (1) 19:11 Davis (1) 98:12 Davis-Bacon (1) 100:13 day (5) 103:21;104:20;107:17; 125:6,14 days (3) 18:16;33:10;36:8 DC (2) 53:9;123:17 deal (5) 24:1;28:15;117:2;122:8, 8 dealing (2) 89:18,24 deals (3) 37:3;39:1;71:2 dealt (1) 5:20 dear (1) 57:18 decide (3) 28:21;55:24;67:5 decides (1) 56:5 decision (16) 18:9,14;20:2,21;21:2,6; 22:18;24:4;29:20,24; 30:1;31:7,12;111:5; 116:15;123:2 declaration (9) 93:8,14,20;95:5;99:20; 106:8,11,15,23 decree (1) 36:20 deed (2) 94:1;108:9 deeds (2) 55:23;106:9 deep (1) 122:16 deficiencies (2) 32:16;33:5 defined (1) 91:23 degradation (2) 110:12;116:3 degrade (5) 112:3,15,19,22;113:5 degraded (1) 112:7 degree (2) 78:15;88:16 delivery (3) 37:4;99:2;113:18 density (1) 36:9 deny (1)</p>	<p>13:13 Department (15) 7:10;13:20;24:4;34:16, 17;39:3;52:24;57:25; 69:24;70:2,17;76:3; 95:12;98:10,18 departments (1) 64:15 depict (1) 80:25 Deputy (2) 1:5,5 describe (3) 80:16,16;92:11 described (2) 84:15;100:11 describes (9) 10:25;11:7,11;13:11; 16:9;22:7,9;80:18;84:3 description (2) 11:3;82:24 descriptions (1) 83:1 deserve (1) 52:13 designate (3) 36:13,14;120:25 designated (1) 36:19 designation (1) 98:20 destroying (1) 56:13 destruction (2) 56:12;73:20 detailed (2) 7:7;90:3 determination (4) 18:25;35:21;70:23;99:19 determine (2) 7:11;69:5 determined (3) 11:23;13:6;92:4 determining (1) 99:10 develop (1) 55:25 developer (1) 69:19 development (2) 68:3,4 Dicus (5) 21:20,24;22:2;45:20; 59:13 different (16) 19:21;36:16;38:7;45:23; 64:13;75:9,11,18;80:21, 21;86:3;89:9;91:14; 102:9;117:2;122:4 digs (1) 73:9 dimensions (1) 22:25</p>
		D		
		<p>DA (1) 36:8 damage (3) 30:12;85:21;119:3 damaging (1) 56:1 Dan (7) 46:5,11;72:25;75:5; 98:25;105:18;109:13 danger (4) 49:6;54:20;55:7,9 dark (1) 97:23 DARLENE (7) 1:5;2:5;16:23;17:5,10; 20:8;45:8 dashed (1) 81:7 data (4) 35:6,9;72:5;82:23 date (15) 14:5;42:12,13;60:17; 61:3,5,23;64:22;80:4; 94:16,21;95:1,23;97:16; 99:21 dated (2) 32:22;125:14</p>		

<p>DIRECT (11) 2:5;9:1;30:2;78:1;87:23; 91:16;99:2;102:20;110:4, 7,16 directly (2) 27:17;39:10 dirt (7) 49:10;52:16;54:5;65:19; 73:6;74:3,13 discharge (4) 33:23;34:1;83:8;119:8 discharges (3) 83:19;118:22;123:10 discharging (1) 118:17 disclosed (1) 119:2 discovered (1) 71:6 Discovery (1) 59:1 discuss (4) 14:13;32:3;71:15;115:1 discussed (2) 31:8;71:16 discussion (2) 121:12;123:3 disputes (1) 23:8 disputing (1) 123:18 disregard (1) 56:5 distances (1) 99:17 District (3) 119:13;121:3;122:3 disturb (5) 33:15;54:7;79:16; 111:17,18 disturbance (17) 20:10;22:8;25:18;35:20; 40:6,11;72:20;91:18,20; 99:12,15,19;102:8,11,13, 21;103:15 disturbances (6) 18:24;33:18;35:10;63:1; 100:9;118:20 disturbed (3) 11:9;71:3;73:11 disturbing (3) 56:13;73:19;118:16 disturbs (1) 84:8 divided (1) 69:20 Division (9) 8:22;9:9;13:19;34:5; 37:13;38:25;39:9;48:21; 81:4 Division's (3) 8:3,8;50:18 document (6)</p>	<p>10:13;13:24;19:6,11; 51:20;79:9 documented (1) 54:14 documents (5) 49:3;51:18;82:24;93:10, 22 DODGION (128) 1:5;3:4,6,22;4:2,9;6:14, 25;7:18;8:13,16;24:18, 23;25:6,12,17,25;26:3,9, 24;27:15,19;28:15;29:9, 15;30:2,6;31:9,13,25; 32:7,10;38:14;39:13; 41:14,18;43:4,11,14; 44:16,18;45:3,6;46:14,18, 22,25;47:19;48:12,20; 49:1;50:2,10,17,23;51:4, 10,20,25;52:5,12;56:24; 57:2;58:13;61:20;63:20; 66:20;67:1,5,24;68:19; 69:11,15;70:14,22;71:1, 20;72:6,9,12;73:24;74:4, 7,17,19,23;75:2,6,13,16, 20,24;76:10,20,24;77:2,6, 12,15;86:6,18;87:1,12; 106:15,18,24;108:16; 111:7;113:3,7,14,25; 114:5,7,11,15,18,21; 116:18;118:2;121:5; 122:13,23;123:23;124:3, 11,14,16 Don (3) 53:8;54:16;59:5 Donald (2) 60:4,5 done (18) 6:6;11:1;16:4;23:2;29:3; 32:6;41:23;44:10,16; 50:24;67:22;69:18;86:13; 99:21;113:10;116:10,16, 17 Dorado (2) 58:20;59:14 dots (12) 80:20,25;81:2;86:8,10, 13,14;107:1,2,7,22;108:2 double (2) 42:9;81:7 down (13) 15:8;38:20;41:15;44:19; 65:8;71:24;73:7;76:1; 96:9;104:21;115:11; 120:17;121:19 Downey (4) 59:20;61:12,14,17 Downieville (1) 61:11 Dr (2) 91:3;113:19 draft (7) 5:24;13:10;14:19,21; 15:6;19:9;28:18</p>	<p>drafted (1) 19:14 dressed (1) 67:14 drill (10) 22:25;79:17;80:2;86:19, 19;99:11;102:22;104:1; 107:22,25 drilling (19) 25:9;49:8;54:5;56:11; 86:9;89:13,15;90:5; 91:14;92:16;93:1;99:10; 100:8;102:1;103:22; 105:23;107:1,15;110:8 drippings (1) 30:11 drive (5) 38:20;54:7;63:8,10; 92:24 drivers (1) 28:1 driving (2) 104:10,21 drove (1) 85:23 drug (1) 54:16 duly (5) 8:22;45:10;67:11;77:22; 87:20 dumps (1) 104:19 during (12) 12:10;18:6;19:23;20:3; 46:2;70:16;71:3;73:21; 83:2;103:21;106:22; 107:15</p>	<p>Edwards (4) 53:3;68:11;71:24;72:23 Enviroscientists (1) 32:18 effect (2) 53:25,25 effects (1) 83:4 efficient (1) 112:24 eight (1) 103:5 either (11) 10:21;25:8;28:21;39:7; 53:1,22;61:22;65:15; 73:14;102:1;123:14 EI (2) 58:20;59:14 elaborate (1) 25:18 elaborated (1) 31:8 elements (1) 12:21 Eleven (1) 78:19 Elko (1) 78:5 else (6) 11:18;21:14;39:8;73:11; 81:9;124:12 e-mail (4) 15:21,22;53:10,12 e-mailed (2) 20:17;53:9 e-mails (2) 51:14;75:4 employ (1) 101:24 employees (1) 101:22 employment (2) 89:12;102:24 enacted (4) 119:15,15;120:6,9 encourage (1) 115:12 end (5) 65:19;85:24,25;99:14; 102:18 endangered (1) 68:24 energy (1) 121:21 engage (1) 64:9 engaged (6) 65:21;78:17;83:22;88:8, 11;121:23 enjoy (1) 45:25 enjoyment (2) 54:22;56:5</p>	<p>enjoyments (1) 56:15 enough (4) 29:3;44:18;85:9;121:6 ensure (1) 85:20 enter (3) 6:11;22:25;48:15 entire (1) 110:2 entities (1) 84:21 environment (5) 30:12;54:23;56:2,7; 102:4 ENVIRONMENTAL (22) 1:5;3:5,8;7:17;9:9,13; 26:5;34:5;39:10;48:21; 54:25;56:18;63:25;78:8, 14;81:4;102:3;103:12,12; 107:14;124:5;125:5 environmentally (1) 102:5 Enviroscientists (1) 92:13 Enviroscientists (4) 32:22;33:9;35:3;78:8 envisioned (1) 45:24 equipment (7) 27:23;30:23;31:6;48:11; 49:8;102:12;103:9 eroded (1) 112:9 erosion (2) 16:17;49:5 ERWIN (53) 1:5;3:20,21;7:2;32:11, 12,14;35:23;43:13;49:13, 19,21;50:4;51:12,23; 52:2;57:4;63:20,21,23; 66:18;69:3;70:5,11; 71:25;74:17,18;76:11,22, 25;77:9,10,16,17;78:2; 86:4;87:15,24;93:7,13; 105:10,14;106:1,13,16; 111:2;112:17,21;114:8, 18,19;118:3,4 Erwin's (1) 50:23 escapes (1) 85:18 especially (4) 28:6;47:16;53:21;117:4 Espinosa (1) 69:24 essentially (1) 90:23 establish (1) 95:17 established (1) 104:10 estate (1)</p>
E				
		<p>earlier (4) 34:14;82:2;94:14;120:3 early (1) 89:22 easement (4) 54:1,1,9;112:1 easements (6) 55:23,24;58:7;75:12; 106:9;110:20 East (6) 1:5;38:19,21;45:14; 95:6;96:16 easterly (1) 96:17 easy (1) 95:23 economic (1) 115:11 education (5) 63:24;64:2;78:13;88:14; 101:22 educational (1) 9:12</p>		

<p>117:18 estimate (6) 10:8;11:8;16:8;22:24; 84:17;85:2 estimating (1) 84:18 estimation (1) 35:19 estimator (1) 35:15 et (2) 54:7;67:23 even (11) 6:10;15:1;37:15;55:1; 60:19;91:20;100:17; 103:11;115:11,15;120:19 event (5) 41:3;52:21;82:13,16; 84:11 everybody (2) 6:2;15:7 Everyone (2) 103:1;121:9 evidence (10) 6:4;49:23;50:8,8;104:11; 106:16;113:11;114:20; 118:5,9 evidentiary (1) 121:6 Ex (1) 99:2 exact (1) 80:4 exactly (8) 60:16;65:18;111:7; 119:16;120:4,6,21;122:23 EXAMINATION (5) 9:1;39:15;43:18;78:1; 87:23 examine (1) 98:13 examined (6) 8:23;45:11;67:12;77:23; 87:21;94:5 excavation (1) 11:4 Excel (1) 35:17 except (2) 31:23;72:19 excerpt (1) 21:2 excerpts (2) 52:10,11 excessive (1) 16:17 excuse (9) 7:10;28:15;46:10;49:13; 66:2,23;85:25;112:2,21 Executive (1) 1:5 exempt (1) 25:24</p>	<p>exemption (2) 26:4,8 exempts (2) 13:1,2 Exhibit (29) 10:11,12,13;11:15;12:7; 13:23;17:2,3;18:12; 19:18;22:16,17;32:20; 37:2,7;49:3;62:25;76:16, 17,21,21;80:15;93:8,23; 95:4;97:12;100:24; 106:22,23 exhibits (3) 43:6,15;115:14 exist (1) 54:12 existence (2) 48:3;120:17 existing (18) 6:9;48:7,7;49:10;81:7,8; 86:1,2;91:16,22,23;92:18, 25;105:22;107:7;110:12, 13;111:9 exists (2) 48:8;49:7 expand (1) 92:5 expedites (1) 37:13 expensive (2) 102:17;117:6 experience (9) 34:5;81:22;83:17;84:23; 89:13;100:6,7;101:25; 104:6 expertise (3) 5:14;70:22;86:22 experts (2) 116:13;118:7 expiration (4) 42:3,6,11,13 expires (1) 42:5 explain (3) 21:14;113:1;117:19 explains (3) 82:13,14,15 EXPLORATION (42) 1:5;9:19,21;10:15,20,23; 11:1,2;18:23,23;20:10; 21:19;22:9;40:6,11; 48:14;62:16,21;64:3,5,10; 71:3;78:12;79:9,15;80:9, 20;86:9,23;87:6;88:6; 89:13,16,16;90:2,7;100:6; 103:10,14;104:7;109:7; 121:21 explore (2) 47:8;56:1 exploring (1) 72:20 exposure (1) 110:21</p>	<p>extend (1) 109:5 extensively (1) 53:8 extent (2) 32:5;50:5 extra (3) 102:23;110:5,5 extremely (3) 117:3,6,24</p> <p style="text-align: center;">F</p> <p>fact (13) 5:20;6:5;62:2;85:2; 91:19;98:11;100:17; 104:20;107:8;113:19; 115:9;118:10;122:15 facts (1) 7:7 factual (3) 49:16,23;50:8 fair (1) 83:25 fairly (2) 85:2;99:12 fall (3) 57:19;103:5;122:7 families (1) 55:13 family (3) 55:13;91:3;117:21 far (11) 26:6;29:22;39:2;69:16; 73:17;84:1;99:16;104:1; 115:15;118:14;122:17 Fargo (1) 94:23 fashion (1) 78:23 favor (2) 124:14,15 favorite (1) 114:11 fax (2) 15:13;20:14 faxed (1) 20:17 faxes (1) 15:19 features (1) 81:6 Fed (1) 99:2 federal (11) 36:7,8,25,25;53:18; 70:17;81:18;103:6,14; 118:18;119:7 federally (1) 119:20 fee (3) 16:1,2;107:25 feel (2)</p>	<p>7:11;105:14 feelings (1) 58:2 feet (1) 73:14 felt (1) 67:4 fence (2) 59:23;60:2 fences (1) 39:22 few (4) 20:17;32:12;33:10;63:21 field (4) 67:15;80:7;118:7,14 Fifteen (1) 65:2 Fifty (1) 45:21 figure (6) 80:11;86:8;96:14;104:4; 107:1;121:12 figures (2) 22:21,22 file (2) 41:4;93:7 filed (7) 7:4;32:16;33:22;47:22; 80:6;92:2;117:22 filing (1) 101:7 final (19) 18:8,14;20:1,19,21;21:2, 6;22:18;24:4;29:18,24; 30:1,19;31:1,7,11;47:13; 50:2;115:6 find (4) 46:25;49:3;65:6,10 finding (1) 27:4 findings (1) 122:14 fine (3) 26:9;72:17;81:11 finish (1) 112:21 finished (2) 46:6;77:7 finishing (1) 29:6 fire (1) 49:6 firm (1) 78:9 first (35) 5:23;8:22;12:12;13:8,10, 24;14:3,3,13;15:7,8; 26:13;30:21;45:10;47:24; 49:12;50:3;59:15;67:11; 73:23;74:10;77:10,22; 79:6,7,20,22,24;85:16; 87:20;89:20;97:6;98:2; 101:19;121:14</p>	<p>Fish (3) 15:3;70:17;115:24 fishing (1) 104:16 five (3) 14:20;79:16,18 five-minute (1) 77:12 five-year (1) 47:6 Florence (1) 45:18 fly (2) 71:10;73:16 folder (1) 91:12 folks (3) 65:24;104:14,18 follow (2) 42:25;123:8 followed (1) 81:17 following (5) 24:23;57:3,5;82:22; 123:9 follows (5) 8:23;45:11;67:12;77:23; 87:21 follow-up (2) 30:18;45:4 footprint (1) 99:12 foregoing (1) 125:10 Forestry (1) 15:3 forge (2) 77:8;121:15 Forget (1) 73:4 form (5) 21:17;47:22;78:23; 99:24;112:25 formal (3) 63:24;64:2;101:23 format (1) 45:1 former (1) 120:2 formulas (1) 35:13 for-profit (2) 47:16;56:4 forth (4) 28:9;29:12;37:4,9 forum (2) 115:2;119:11 forums (1) 121:18 forward (5) 44:21;49:14;67:1;80:9; 86:12 found (3)</p>
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<p>32:16;68:13;104:19 four (11) 4:6,6;12:12;15:7;38:6; 44:23;48:11;49:4;55:8; 88:10;113:20 fourth (2) 15:8;32:21 four-wheel (4) 62:4,10;63:8,9 frame (2) 41:24;121:25 FRANK (6) 2:5;6:22;15:9;55:1;67:9, 15 Fred (1) 85:17 free (1) 105:14 friend (1) 46:16 friends (2) 45:21;117:21 front (2) 45:2;93:14 fuel (1) 37:4 fulfill (1) 92:14 full (3) 18:21;78:3;125:11 fully (1) 121:22 funding (1) 100:17 funds (1) 100:1 further (21) 6:12;35:23;41:12;43:5, 18;48:2,5;63:18;66:21; 68:3;74:16,24;86:4; 87:11;90:7;105:10; 106:13;108:25;110:15; 113:1;114:8 future (4) 42:23;54:13;55:24; 102:15</p>	<p>gentleman (1) 66:22 geologically (1) 104:1 geologist (4) 88:5,18,21,24 Geologists (1) 88:22 geology (1) 88:12 gets (3) 15:5;54:16;96:17 Getty (1) 62:21 given (8) 4:4;31:2;41:22;42:24; 49:11;50:22;79:9;123:16 gives (1) 5:22 giving (1) 5:4 glad (1) 123:11 goal (1) 6:8 goes (9) 14:25;39:2;46:8;47:2; 73:1,15;74:13;76:1;96:17 Gold (4) 88:6;89:6,6,15 Good (12) 4:13;28:16;46:1;55:21; 56:3;73:22;84:1;102:18; 108:7;110:17;114:21; 115:22 government (4) 90:19;95:11,17;118:19 governmental (1) 85:4 Graeser (3) 15:12,14,16 G-R-A-E-S-E-R (1) 15:14 grant (16) 5:4;6:11,11;18:2;19:3,4; 36:15,20;97:1,4,10;115:5, 16;119:17;120:5,12 granted (10) 3:22;36:24;47:13;53:5; 81:4;82:6;86:12;111:10; 119:22;122:20 granting (6) 6:18;53:25;54:1,6,8; 115:8 grants (1) 119:22 grasses (1) 56:13 gravel (6) 62:10;63:7,14;65:7,8; 74:11 Gray (1) 60:13</p>	<p>Gray's (1) 62:4 graze (1) 104:24 Great (4) 15:3;53:7;116:25;121:16 greater (2) 56:3,11 greatly (1) 114:2 green (1) 80:23 ground (8) 55:3;71:23;84:8;99:13; 103:25;105:4,21;107:12 grounds (3) 105:15;107:5;111:3 groundwater (1) 116:3 group (1) 115:25 groups (1) 40:20 grouse (12) 55:7;68:13,18,22;69:19, 23;70:4,9,25;71:4,8;72:23 guess (5) 20:25;43:1;72:24;85:1; 94:11 guidelines (1) 81:14 guiding (1) 35:14</p>	<p>87:10 heads (1) 96:16 health (3) 9:14;83:4;103:3 hear (6) 37:5;49:18,19,20;61:1; 76:5 heard (4) 30:25;86:8;123:24;124:8 HEARING (20) 1:5;3:4,10,13;4:9;6:5,18; 46:12;49:24;69:5;72:14; 76:6;116:22;117:16; 119:10;120:13;121:7,11; 125:9,12 hearsay (5) 51:16,23;70:7;71:25; 77:1 heart (1) 57:18 heavy (1) 27:23 Hecla (1) 62:21 held (1) 84:13 help (3) 29:9;78:9;98:12 helpful (1) 53:9 hereby (1) 125:5</p>	<p>Hills (2) 58:20;59:14 hire (3) 41:5;64:16,17 Hiser (2) 96:22;97:2 historic (1) 120:17 hold (1) 62:14 Holdings (15) 3:20;9:16;10:4,15;47:5, 25;78:12;79:8,20;80:19; 88:7,9;89:2,19;96:23 hole (1) 102:22 holes (3) 73:9;86:20;104:1 Holzell (1) 85:17 home (2) 59:18,19 Honor (1) 70:5 hope (2) 85:9;93:21 hot (1) 40:1 hound (1) 115:23 hours (4) 68:6;103:4,5;107:17 house (3) 59:21,25;60:8 Houston (4) 17:7,9,11;94:4 huge (2) 5:24;54:17 Humboldt (1) 104:15 hundreds (6) 68:5,6;109:24;110:25,25; 117:20 hunt (1) 36:11 hunted (1) 36:10 hunter (1) 39:4 hunting (1) 104:16 Huntington (3) 61:15,16,16 hurt (1) 17:22</p>
G		H		I
<p>Game (1) 15:3 Gaskin (2) 15:18;19:12 gave (2) 26:16;70:3 General (6) 1:5,5;29:16;82:24; 89:14;92:19 generally (7) 13:7,9;80:16;85:5;91:21; 95:19;100:14 generations (1) 36:10</p>		<p>half (1) 80:5 halfway (1) 15:8 handle (1) 21:7 handled (4) 5:21;23:22;123:20;124:1 happen (4) 5:5;74:2;117:10,10 happened (3) 47:15;71:17,19 happens (7) 5:19;37:14;38:24;41:3,8; 81:20;123:5 happy (2) 6:13;40:10 hard (3) 5:1;73:5;76:6 harm (1) 28:1 hazardous (7) 34:1,8;83:19;101:11,15; 117:4;118:21 hazards (1) 119:2 head (1)</p>	<p>HERMAN (8) 1:5;21:20;22:3;45:19; 58:21;59:25;63:17;65:13 herself (1) 45:9 HESS (73) 1:5;3:25;4:11,12;7:19; 8:16,17;9:2;21:22;22:1; 24:16;28:10;36:5,16,22, 24;39:13,14,16;41:12,19; 43:5,6,9,16,17,19;44:15, 20;46:10,20,24;49:2; 50:12;51:8,24;52:3; 56:23;57:4;58:13,15,17; 61:20,23,25;63:18;68:16, 21;69:25;71:13;72:1; 73:2;74:7,9,16,22;76:5,8; 77:4;87:1,3,5,11;106:17; 108:16,18,20,25;114:10, 13,14,24,25 Hess's (2) 24:24;118:5 higher (2) 85:5;100:14 highlighted (3) 96:7,8;97:22 Highway (2) 38:20;74:12 hiker (1) 39:4</p>	<p>idea (5) 40:25;46:24;62:9;65:12; 105:5 ideas (1) 58:2</p>

<p>identical (1) 109:16 identified (2) 91:25;98:20 identifies (3) 12:3;22:8;98:22 identify (8) 10:23;12:13;13:24;14:3; 17:2;18:13;67:7;90:6 identifying (1) 10:6 ignore (1) 14:18 II (1) 106:23 imagine (2) 49:10;107:19 impact (6) 10:24;50:19;53:13; 102:7;112:24;118:25 impacts (3) 7:17;50:19;53:15 impassable (1) 98:3 importance (1) 54:25 important (4) 53:16;68:7;115:10;124:6 improper (1) 124:1 improving (1) 25:23 Inc (1) 32:22 incidents (1) 83:23 Incline (1) 120:16 inclined (1) 52:5 include (5) 10:5;17:14;18:15;90:4; 94:7 included (10) 10:19;18:19;19:5,7,18; 21:2;31:24;75:3;107:23; 115:6 includes (13) 6:1;10:6,7,8,8,17,18,21; 11:2;16:12;19:19;100:18; 125:11 including (3) 16:23;51:18;101:16 inclusive (1) 125:11 Incorporated (1) 9:16 incorrectly (2) 26:14,20 indeed (1) 53:11 indemnifies (1) 109:11</p>	<p>indemnify (1) 105:19 independent (1) 121:8 INDEX (1) 2:5 Indian (11) 29:22;30:13;31:5;54:20; 55:8,14,16,17;56:6,13; 96:10 indicate (1) 123:25 indicated (4) 30:3;33:22,25;64:18 indicates (1) 81:8 individual (5) 6:22;28:1;47:22;79:25; 120:11 individuals (4) 85:6,17;87:8;118:6 industry (5) 78:11;83:15;84:20;90:2; 119:3 inform (1) 79:14 information (30) 11:25;12:3,15,19;14:6; 23:16;26:15,16,20,22; 27:6,9;32:17;33:2;44:25; 45:1;46:11;51:21;53:10, 13;62:24;70:20;75:1,23; 92:14;93:18;99:6;114:4; 123:16,19 informed (3) 47:24;76:3;98:24 inhabitant (1) 46:5 initial (3) 16:20;30:16;107:11 Initially (1) 89:25 initials (1) 5:1 ink (1) 97:23 input (1) 70:18 insofar (4) 35:14;84:23;92:12; 102:25 inspect (2) 43:20;44:12 inspection (2) 39:12;42:18 inspections (1) 44:11 instances (1) 20:17 Institute (1) 88:21 insurance (4) 105:6,9;109:4,8</p>	<p>intend (1) 58:9 intended (3) 33:19;34:1;101:18 intends (1) 112:18 intent (16) 5:24;13:11,11,15,22; 14:2,4,16;15:23,24;16:1; 24:3;79:8,22;92:2;107:9 intention (2) 113:4;118:16 intentional (1) 83:7 intentionally (1) 118:24 interest (5) 55:11;67:24;89:20;93:5; 96:24 interested (4) 13:21;15:23;19:17;75:20 interests (1) 90:9 Interior (1) 95:12 interpret (1) 117:17 interpretation (3) 28:17;52:11;75:10 interpreting (1) 27:8 interrupt (1) 48:12 INTERVENER (10) 1:5;3:22;7:1,22;8:5; 32:1;77:9,22;87:20; 114:23 Intervener's (3) 106:22,23;115:14 intervening (1) 120:20 intervenor's (1) 8:4 into (24) 47:19;48:15;54:14,16; 56:12,17;62:7;63:10; 69:16;70:4;71:15;75:7; 76:19;85:2;96:10;102:22, 23;104:20;106:16; 112:10,14;121:19;122:7, 16 introduce (2) 3:24;6:4 investigate (3) 34:20,22;89:25 investigated (3) 55:18;68:6,10 investigation (1) 113:10 involved (10) 13:8;56:10;57:20;58:1; 64:10;78:22;84:19,19,20; 89:20</p>	<p>involvement (1) 99:8 involves (1) 103:3 IRA (3) 1:5;3:8;57:7 islands (1) 119:23 isolate (1) 119:23 isolated (1) 119:19 issuance (1) 111:10 issue (19) 4:16;5:21;13:12;17:23; 33:12;54:17,25;69:2; 71:9;82:2;107:13;111:8, 12;116:15,21;117:25; 122:25;124:2,3 issued (10) 29:18,25;48:21;94:14; 97:3,19;119:22;120:8,20; 124:9 issues (20) 7:8,11;28:17;30:3,15; 31:11,14,16,22;56:10; 69:8;72:15;103:12; 107:14;115:1;116:6; 121:17;123:6,13,19 issuing (2) 13:8;24:13 italicized (1) 18:21 item (1) 15:2</p>	<p>13:3;25:21 John (3) 1:5,5;96:22 join (3) 50:12;69:3;77:4 JOSEPH (8) 2:5;12:2;77:11,17,20; 78:5;92:13;100:18 Juan (1) 59:3 judicial (1) 119:7 July (3) 32:23;94:21;95:2 junction (1) 18:10 jurisdiction (7) 3:17;7:12;58:3;114:1; 122:21;123:15;124:4</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>KATHY (1) 1:5 KENNETH (2) 1:5;3:8 kept (2) 40:2;46:3 kerplunk (1) 117:9 key (1) 118:15 killing (1) 56:12 kind (9) 16:1;37:7;39:1;40:2; 44:11;68:24;73:20; 107:14;123:6 kinds (1) 121:17 knew (1) 68:9 knowing (3) 63:10;66:10,16 knowledge (3) 27:18;46:4;72:8 known (5) 58:2;71:7;85:24;89:6; 97:5</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>Lake (1) 120:16 land (57) 6:8;9:20,23;10:25;35:20; 40:7;45:22;46:1,1,8; 47:16;55:9,15,17;56:3; 57:20,21;59:18;63:17; 64:18;67:17,18;69:20; 72:10,13;79:12,16;80:23, 24;81:1,3,20,21;84:8,10; 86:15,19;87:6,7;90:25;</p>
---	---	--	--	---

<p>91:1;94:2,3;95:11,17; 107:25,25;111:17,19; 112:4,7,14;115:21; 119:20,25;120:2;121:20 landlocked (1) 55:25 landowner (7) 39:3;45:14;67:25;68:2; 119:24;121:22;122:5 landowners (4) 54:19;119:16;120:7,21 lands (14) 46:3;53:14,23;55:16; 79:10;90:18;92:22;93:2, 24;94:7,9,10;116:22; 120:2 language (2) 37:19;67:21 lap (1) 57:19 large (3) 73:6,9,9 larger (1) 79:17 last (9) 9:5;15:9;57:17;65:1; 78:4;88:1;104:13;118:23; 124:18 later (2) 19:9;47:12 latitude (1) 52:7 Law (10) 1:5;36:7,8;50:6;72:7; 90:24,24;119:15;120:11, 24 laws (5) 55:19;68:11;83:18; 118:19;119:6 lawsuits (1) 117:24 lawyer (1) 34:4 lead (1) 29:13 leaking (3) 30:22;31:5,18 lease (4) 47:5;90:22;109:14,20 leased (3) 91:5;96:25;97:1 least (7) 52:10;111:17,19;112:4,7, 23;118:1 leave (2) 12:10;74:21 leaving (1) 48:9 left (2) 42:5;94:19 legal (13) 19:3;28:11,16,19;49:16, 23,25;50:7,25;70:11;</p>	<p>111:12;118:11;121:2 legislature (1) 115:12 length (2) 11:6;53:7 less (2) 56:1;79:16 letter (38) 6:20,24;12:3,14,18,20; 17:6,7,9,11;22:17;27:7,9, 14,21;30:12,17,18,21; 32:22;33:4,11;47:11,17; 48:16,18,24;49:14;52:4; 54:18;59:3,17;66:3,6,8; 72:22;75:15;76:22 letterhead (1) 32:22 letters (3) 15:6;51:14;59:5 letting (1) 6:18 level (1) 58:2 LEW (2) 1:5;3:6 liabilities (1) 105:20 liability (16) 17:22;27:24;31:4,18,19, 23;39:18;42:17;44:8; 54:19;56:14;105:6,6,8; 109:5,11 Library (1) 3:12 lies (1) 62:6 life (1) 54:20 likely (2) 48:24;85:6 limit (3) 72:7;102:8;105:21 limitations (1) 7:9 Limited (7) 3:20;46:7;53:22;89:19; 101:13;122:19,22 limits (4) 48:6,17;110:12,21 line (2) 80:19;81:7 lines (2) 40:1;62:5 lining (1) 65:10 lis (1) 117:22 list (7) 13:21;14:24;15:22; 19:16,20;28:23;64:13 listed (2) 58:11;115:18 litany (1)</p>	<p>29:10 little (10) 25:17,18;38:3;52:17; 53:9;91:19;99:14;100:23; 102:7;121:13 live (8) 58:18,20;59:2,13;78:4,5; 88:1,3 lived (1) 61:14 lives (6) 58:23,24;59:1,3,14;72:25 living (1) 46:6 loading (4) 16:17;30:4,5;31:21 local (2) 90:25;123:14 locate (1) 65:15 located (3) 11:1;18:24;90:18 location (2) 3:14;11:5 locations (2) 80:2;92:16 long (10) 6:9;13:25;22:2;28:23; 42:4;73:15;88:8,11,23; 123:8 look (22) 10:11;11:13;12:7,8,12; 13:23;14:24;15:11,20; 17:2;18:12;26:8;37:25; 39:21;49:2,11;52:12; 56:16;65:9;71:11;80:11; 85:19 looked (4) 42:19;71:9;98:6;116:7 looking (13) 5:25;11:14,15,16;22:16, 17;23:15;41:25;68:6; 69:21;72:4;81:9;94:16 looks (1) 14:19 loss (2) 54:20;56:14 lot (14) 5:12;12:10;38:16;57:24; 58:3;69:18;72:3;74:3; 91:2;94:8;102:23;104:18; 117:23;123:5 lots (1) 106:4 Lovelock (2) 14:16;104:14 lower (1) 95:22 lowly (1) 55:14 Ltd (1) 96:23</p>	<p style="text-align: center;">M</p> <p>machine (1) 73:9 machinery (1) 73:6 mail (1) 21:9 mailed (1) 3:17 mailing (4) 13:20;14:24;15:22;19:16 maintain (5) 27:24;42:7;102:4;105:1, 6 maintained (4) 37:1;52:15,19;66:13 maintains (1) 95:13 maintenance (5) 73:25;91:20;92:17; 101:22;103:9 majority (2) 78:10,11 makes (1) 110:23 making (8) 7:25;29:21;54:15;70:11; 102:3;103:25;111:6,23 man (1) 94:4 Management (9) 57:20,21;72:10,13;81:19, 20;94:2;121:20,20 manager (4) 100:7;103:21;107:17,19 manner (3) 29:17;48:8;49:7 many (25) 5:2;26:18;45:22,23,23; 46:9;47:5;53:23;55:13, 17;56:10,14,19;57:11; 60:18;64:21;67:21;68:5; 78:17,20,24;103:19; 107:8;113:20;117:15 map (28) 10:6,21,22;13:6;20:14; 21:18,18;23:6;38:22; 55:10;58:9;75:10,13,21, 22;76:15;80:12,16,18; 91:8,10;95:5;96:14; 97:22;98:11;104:4;106:8; 109:25 mapping (2) 103:24;104:2 maps (7) 36:25;47:3,4;76:18;81:6; 98:2,6 MARIE (1) 1:5 marked (2) 36:25;93:8</p>	<p>MARTIN (16) 2:5;8:18,20;9:5;18:5; 24:20;32:2,11,15;34:4; 41:14,17;43:4;44:19; 98:12;118:7 M-A-R-T-I-N (1) 9:6 MARTINI (19) 2:5;7:15;12:2;32:17; 33:1;77:11,18,20;78:5,7; 86:5,6,7;87:13;92:1,15; 99:6;100:11;118:7 M-A-R-T-I-N-I (1) 78:5 Martini's (3) 33:4,7;35:2 MARY (4) 1:5;4:4;125:4,19,5 material (1) 82:23 materials (7) 34:1,8;37:4;83:3,19; 101:11,15 matter (2) 69:4;121:12 matters (2) 28:5,8 MAURER (17) 2:5;6:22;15:9;47:2;55:1, 17;56:22;66:24;67:3,9, 15;91:3;111:21;112:8; 113:5,19;117:7 M-A-U-R-E-R (1) 67:16 may (16) 10:24;26:8;27:3,13,17; 41:15,16;44:17,19;56:22; 57:3;73:15;96:6;100:22; 113:1;121:4 maybe (4) 36:13;99:23;121:25; 122:10 MAYER (17) 1:5;3:9;24:22;38:3,8,11, 16,22;57:13,16,23;86:25; 108:4,13;121:16;122:25; 124:7 mean (5) 10:12;14:3;23:18;37:21; 90:17 meaning (1) 56:18 means (4) 16:16;48:20;66:15;79:16 meant (2) 48:3,19 measures (1) 11:7 measuring (2) 66:10,16 meet (5) 12:21;28:2;34:23;37:23; 103:14</p>
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<p>meeting (1) 124:18</p> <p>meets (3) 42:19;57:23;115:14</p> <p>Member (41) 1:5,.5;24:21,22;35:25; 36:12,19,23;37:2,6,17; 38:2,3,8,11,16,22;57:8,13, 16,23;76:14;86:7,14,17, 25;106:25;107:6,13,18, 22;108:1,4,13;121:8,15, 16;122:24;123:18;124:7, 10</p> <p>Members (2) 3:7;7:21</p> <p>mention (9) 6:24;9:21;18:15;46:18; 50:13;62:20,21;115:13; 116:9</p> <p>mentioned (19) 23:20;27:4;28:6;34:14; 36:1,1;41:22;59:17; 62:23;63:5;74:12;83:13; 111:16,18,25;112:2; 115:7;117:7;122:3</p> <p>mentioning (1) 5:18</p> <p>mentions (1) 48:23</p> <p>merely (1) 5:4</p> <p>merits (2) 7:14,15</p> <p>met (6) 11:24;13:6;69:6;85:23; 98:14;123:1</p> <p>Michael (1) 15:9</p> <p>middle (1) 54:17</p> <p>midstream (1) 11:19</p> <p>might (16) 19:1;27:25;28:1;29:13; 31:25;32:1,55;11,20; 65:24;97:25;100:18,23; 112:7;115:2;119:23,24</p> <p>mile (2) 95:19;110:9</p> <p>miles (1) 61:17</p> <p>mind (4) 5:16;6:2;24:13;36:12</p> <p>mine (19) 4:23,24;55:5,6,10;62:19; 68:9;89:7,15;96:9,13,20; 97:1;103:2;104:19;117:8; 119:17;120:5,12</p> <p>Miner (1) 14:16</p> <p>mineral (6) 64:3,5,10;97:7;100:6; 117:23</p>	<p>Minerals (1) 13:19</p> <p>miners (3) 55:20,20;103:4</p> <p>Miner's (1) 15:2</p> <p>mines (2) 64:3;123:7</p> <p>minimize (2) 53:15;91:17</p> <p>minimizing (1) 49:6</p> <p>minimum (2) 103:4,15</p> <p>Mining (27) 9:8;15:17;19:1;40:18,20; 41:7;47:10;55:20;62:15, 22;63:1;64:5;68:11; 72:20;78:10,11;81:16; 83:15;84:20;86:18;90:12, 17,22,24;115:10;119:18; 123:6</p> <p>minor (1) 73:17</p> <p>minute (3) 46:10;48:13;62:14</p> <p>misconception (1) 119:14</p> <p>miss (1) 43:1</p> <p>missed (1) 42:25</p> <p>missing (2) 12:1,4</p> <p>misspeak (2) 4:22,25</p> <p>misspoke (1) 5:1</p> <p>mistake (1) 120:23</p> <p>mistaken (1) 36:2</p> <p>moderately (1) 73:22</p> <p>modernized (1) 68:12</p> <p>modifications (1) 53:15</p> <p>moment (1) 57:2</p> <p>money (3) 85:5;102:22;109:18</p> <p>monitor (1) 65:22</p> <p>month (1) 74:15</p> <p>months (2) 97:19;103:22</p> <p>monuments (1) 65:15</p> <p>MOONLIGHT (24) 1:5;4:23,23,24;9:15,18; 10:2,15;55:5;79:6,20;</p>	<p>85:12;89:19;90:7;96:9, 13,20;97:5,10;103:20; 104:19;107:9;115:25; 120:5</p> <p>Moonlighting's (1) 16:16</p> <p>more (18) 27:4,6;48:24;55:1;63:12; 72:3;85:9;90:3;99:14; 100:16;102:12,13,17; 103:23;105:12;110:23; 121:4;122:24</p> <p>morning (1) 4:13</p> <p>most (9) 75:2;88:25;91:16; 100:14;102:20;110:4,7, 15;112:24</p> <p>mostly (1) 89:6</p> <p>mother (5) 45:20;59:13;60:8,21; 103:16</p> <p>mother's (1) 21:22</p> <p>motion (1) 124:15</p> <p>mountain (2) 96:17;120:18</p> <p>mountains (1) 98:3</p> <p>move (9) 7:23;8:5;43:9;45:25; 104:21;105:3;106:16; 114:21;124:7</p> <p>moves (1) 105:2</p> <p>Mrs (3) 20:20;23:14;63:24</p> <p>MSHA (3) 103:2,6,11</p> <p>much (21) 6:21;11:20;16:6;18:4; 24:16;29:6;32:10;41:1; 43:5;44:15;52:9;53:13; 54:12;55:15;56:25;66:16; 73:25;74:19;102:8; 109:17;118:2</p> <p>muddy (2) 73:7;112:15</p> <p>must (5) 47:25;53:18;102:4; 103:1;120:22</p> <p>myriad (1) 121:21</p> <p>myself (7) 26:17,22;61:5;66:17; 69:22;73:3;78:22</p>	<p>115:15;116:5;122:20</p> <p>NACs (1) 12:22</p> <p>name (14) 9:3,5,6;14:8;21:22; 67:15;78:3,4;85:18; 87:25;88:1,2;98:20,23</p> <p>named (1) 113:17</p> <p>names (4) 50:14;56:20;62:23;87:9</p> <p>National (1) 34:18</p> <p>native (2) 54:21;56:13</p> <p>natural (1) 56:15</p> <p>nature (1) 45:25</p> <p>NDEP (5) 5:8,22,25;7:11;84:19</p> <p>NDEP's (1) 40:2</p> <p>NDOT's (1) 98:14</p> <p>near (2) 57:18;120:16</p> <p>necessarily (1) 119:19</p> <p>necessary (4) 42:11;75:16;92:14;121:2</p> <p>necessity (1) 55:4</p> <p>need (14) 29:13,19;51:11;83:5; 91:21;92:17,18;103:17; 110:5,6;120:12;123:13, 19;124:11</p> <p>needed (3) 11:18;75:14;92:5</p> <p>Needless (1) 47:14</p> <p>needs (3) 4:13;100:4;121:22</p> <p>Nevada (39) 1:5,.5,.5,.5;3:1,12;9:24; 11:16;13:1;34:9,16; 42:24;53:1;55:9;58:12; 68:10;78:6;81:15,25; 83:15;84:20;88:19;89:1, 3,9,17;98:10,16;100:7; 104:7;113:11;115:10; 119:4;120:15,23;125:1,5, 8,14</p> <p>new (11) 56:16;72:5,8;92:18; 99:16,17;103:4;105:23; 117:25,25;120:7</p> <p>News (1) 75:8</p> <p>newspaper (1) 14:17</p> <p>next (7)</p>	<p>14:8,12,18;19:2;95:4; 97:12;110:9</p> <p>nice (1) 37:22</p> <p>Nobody's (1) 103:16</p> <p>None (2) 92:24;101:17</p> <p>normally (2) 21:7;121:7</p> <p>north (3) 85:24;95:6;125:7</p> <p>northeastern (1) 96:11</p> <p>northern (1) 89:17</p> <p>Northridge (1) 9:14</p> <p>note (7) 3:19,24;4:2;51:10;82:22; 97:22;110:17</p> <p>noted (1) 42:22</p> <p>notes (3) 50:14;125:9,12</p> <p>notice (50) 3:13,15,17,18;5:22,23; 13:11,11,15;14:2,4,8,16, 25;15:12,25;16:20;18:8, 14,17,20;19:9,16;20:1,19, 21;21:1,6;22:18;24:3,4; 29:3,24;30:1;31:1,6,11, 11;68:25;79:8,14,22,24, 25;80:2;98:2;107:9; 115:6,7;119:7</p> <p>noticed (5) 3:11;11:25;38:22;57:16; 73:8</p> <p>notices (13) 13:15,22;15:23,24;79:8; 80:9;81:1;85:20;86:11, 11;92:2;99:22;107:4</p> <p>notification (2) 39:5;66:7</p> <p>notified (4) 47:12;68:17,23;70:16</p> <p>notify (2) 37:10;66:4</p> <p>NOVEMBER (5) 1:5;3:1,11;125:6,15</p> <p>nowadays (1) 100:18</p> <p>NRS (2) 115:18;122:20</p> <p>NRSs (1) 12:22</p> <p>number (24) 14:9;20:13;48:6;54:5; 57:17;69:23;73:10;82:23; 92:19;93:23;94:18,19; 97:7;98:20;99:11;102:11, 12;110:1,1,3,9,11,11,14</p> <p>numbers (4)</p>
		N		
		NAC (8) 18:18,19,22;22:10;81:15;		

<p>20:14;56:20;75:19;80:22 NV (1) 125:19.5</p>	<p>106:15 offering (3) 48:14;50:25;109:17</p>	<p>operational (1) 22:11 operations (5) 64:6;100:2;101:7;102:2; 103:22</p>	<p>4:18;47:15;54:23;56:3; 64:12;67:17;75:10;89:10; 91:1,2,6;103:22;106:5; 112:3,10;115:23,24</p>	<p>45:18 Park (4) 61:15,16,16;105:4 parking (1) 48:10</p>
<p>O</p>	<p>offers (1) 57:11</p>	<p>opinion (5) 28:19;49:16,23;50:7; 51:1</p>	<p>owned (11) 64:18;87:7,10;89:8; 90:18;92:22;93:2;94:10; 108:12;119:20,20</p>	<p>part (24) 17:7;25:13;27:21;35:1; 37:14;40:17;43:7,10,16; 46:11;62:8;72:14;80:15; 81:20;82:17,22;94:14; 95:12;101:14;103:13; 105:16;108:9;115:10; 123:22</p>
<p>oath (2) 4:4,5</p>	<p>Office (7) 20:14;71:14,15;75:25; 80:7;89:17;95:11</p>	<p>opportunities (1) 89:25</p>	<p>owner (9) 13:18;105:19;119:17,24; 120:11,12,16,19;121:1</p>	<p>partially (1) 62:3</p>
<p>object (17) 28:10;46:10,18,21;49:14; 51:8;68:16,19,21,23;69:1, 4;71:17;74:22;111:2; 112:17,24</p>	<p>official (3) 71:4;72:3;125:4</p>	<p>opportunity (2) 51:25;121:17</p>	<p>owners (16) 13:17;14:25;16:23; 19:20;20:7,9;47:15; 54:13,15;55:24;90:13,25; 109:6;112:14;116:24; 117:20</p>	<p>participate (3) 79:2;92:1,8</p>
<p>objecting (4) 49:15,21;50:2;51:22</p>	<p>officially (3) 43:7;67:17;96:25</p>	<p>opposite (1) 110:19</p>	<p>owns (5) 46:5;53:4;55:2;94:8; 96:20</p>	<p>participated (3) 81:11;99:5;123:11</p>
<p>objection (31) 28:16;43:11,13;45:3; 47:1;50:1,5,12,24;51:4,5, 10,13,17;52:7;56:23;69:3, 25;70:5,11,15,19;71:20, 25;72:1;73:2;76:5,10,20; 106:17,18</p>	<p>officials (1) 70:6</p>	<p>options (1) 56:1</p>	<p>owners' (1) 56:2</p>	<p>participating (1) 121:9</p>
<p>objections (8) 57:6;64:8;71:4,13;76:23, 25;77:3,5</p>	<p>often (1) 66:11</p>	<p>order (4) 3:5;36:14;50:21;114:22</p>	<p>ownership (2) 15:2;18:25</p>	<p>particular (21) 5:14;6:5,20;10:13;12:17, 22;19:5,10;24:13;28:10; 32:21;35:18;58:18;62:22; 65:14;69:2;87:7;89:18, 21;95:23;115:19</p>
<p>obligates (1) 118:21</p>	<p>oil (12) 5:19,20;27:14;28:7; 29:23;30:8,11,22;31:5,18; 38:24;58:5</p>	<p>original (12) 6:8;19:20;30:17;33:5; 75:17;79:25;90:13;91:24; 97:4;98:5;107:12;108:9</p>	<p>owns (5) 46:5;53:4;55:2;94:8; 96:20</p>	<p>particularly (2) 100:7;118:6</p>
<p>obligations (1) 118:21</p>	<p>Oma (3) 21:20;45:20;59:13</p>	<p>others (2) 57:25;67:22</p>	<p>P</p>	<p>parties (11) 3:15,23;4:6;13:21;15:23; 19:17;41:1;51:15,17; 66:11;100:12</p>
<p>obtain (3) 86:19;94:1;97:14</p>	<p>Once (2) 114:25;116:9</p>	<p>otherwise (1) 19:3</p>	<p>Pacific (2) 93:24;119:22</p>	<p>parties (11) 3:15,23;4:6;13:21;15:23; 19:17;41:1;51:15,17; 66:11;100:12</p>
<p>obtained (3) 90:4;94:3;95:11</p>	<p>One (71) 4:13,19;5:18;7:5,8;11:14, 15;12:9;14:20;22:19; 24:5;25:2,10,15;26:15,19, 21,22;28:24;29:8;36:9; 38:19;41:16;42:1,9; 43:17;44:23;46:4;48:6; 53:16;55:8;59:10;63:12; 64:24;65:4,6;73:13,14,15; 74:13;76:18;79:20;81:7; 87:3,10;91:2;95:19;97:5, 25;98:2,9;100:25;102:11; 105:12;106:3;108:7,18; 109:8,17;110:3,11;113:1, 3;116:20;117:13;119:11; 121:4,19,24;122:4;124:17</p>	<p>ourselves (2) 90:12;103:18</p>	<p>packages (1) 99:2</p>	<p>parts (2) 77:1;123:21</p>
<p>obtaining (1) 92:14</p>	<p>olive (1) 80:23</p>	<p>out (56) 12:10;16:20;20:21; 24:11;26:18;27:4;29:9; 36:11;39:11,21;41:25; 42:9,18;44:12;46:25; 47:6;53:17;59:15;60:11, 13,21;62:3;65:10,19; 66:11,16;67:14;68:22; 69:21;76:16,17;84:14; 85:16,22;90:2,14;93:18; 96:10,17;99:17,21; 103:23;104:2,12,21,24; 106:22;107:17;108:7; 109:19;110:13;115:7,23, 24;116:2;121:12</p>	<p>packet (2) 76:16,17</p>	<p>party (10) 16:15;41:5,6;51:9,21; 84:14;85:3;86:21;100:17, 20</p>
<p>obvious (1) 115:13</p>	<p>one-quarter (1) 45:15</p>	<p>outfit (1) 56:4</p>	<p>pads (2) 22:25;79:17</p>	<p>pass (3) 46:3;96:6;104:22</p>
<p>occasion (1) 65:14</p>	<p>only (18) 18:2;30:24;33:10;38:4; 42:9;46:4;48:7;49:6; 52:22;55:8;65:18;66:2; 72:24;75:20;89:15; 105:22;121:25;122:8</p>	<p>outline (1) 83:4</p>	<p>page (14) 14:8,12,25;15:8;18:18; 32:21;37:2,6;38:23; 49:22;94:18,19,19;101:2</p>	<p>passed (5) 36:18;76:16,17;106:22; 115:9</p>
<p>occasions (1) 85:14</p>	<p>open (4) 3:13;24:18;45:24;72:18</p>	<p>outlines (2) 82:12;101:6</p>	<p>pages (11) 12:12,13;13:25;14:3,14, 18,20;15:7,13;82:23; 125:10</p>	<p>passage (1) 54:7</p>
<p>occupation (4) 78:7,14;88:4,15</p>	<p>opening (4) 4:10;6:15;7:1;106:22</p>	<p>outside (4) 3:15;34:7;122:18;123:4</p>	<p>paid (3) 60:18;61:6;85:4</p>	<p>passengers (1) 28:1</p>
<p>occupational (1) 9:14</p>	<p>operate (1) 119:3</p>	<p>over (20) 38:14;47:8;48:3;49:11; 51:21;52:17;53:6,23; 54:7;56:4;58:3;69:17; 71:10;78:23;88:13; 101:25;104:13;105:15; 117:18;122:21</p>	<p>panel (6) 3:5,6;57:3;72:16;77:7; 121:12</p>	<p>past (3) 15:19;24:11;102:1</p>
<p>occur (5) 22:9;79:10;82:16;93:4; 117:6</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>override (1) 47:1</p>	<p>papers (1) 72:20</p>	<p>patent (9) 93:23;94:1,7,14;95:1; 97:1,4,19;119:19</p>
<p>occurred (3) 12:17;107:1,18</p>	<p>operating (1) 119:3</p>	<p>own (17)</p>	<p>paragraph (5) 18:21;37:3;49:21;50:3; 57:17</p>	<p>patented (11) 90:22,23;91:1;96:9,13, 20;97:2,10;119:17,23; 120:12</p>
<p>occurrence (2) 12:5;109:11</p>	<p>operating (1) 119:3</p>	<p>own (17)</p>	<p>parameter (1) 65:20</p>	<p>patents (7) 97:3,6;119:18,22;120:8, 8,20</p>
<p>occurring (1) 82:15</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parcel (8) 20:12,14;45:14;48:10,11; 76:2,19;87:10</p>	<p>pay (2) 85:6;118:22</p>
<p>occurs (2) 109:9,12</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parcels (4) 45:23;53:4;75:11;110:24</p>	<p>paying (1)</p>
<p>October (2) 95:25;120:8</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parents (1)</p>	<p>paying (1)</p>
<p>odd (2) 108:8,11</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parents (1)</p>	<p>paying (1)</p>
<p>off (2) 62:12;87:9</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parents (1)</p>	<p>paying (1)</p>
<p>offer (1) 47:6</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parents (1)</p>	<p>paying (1)</p>
<p>offered (1)</p>	<p>operation (4) 18:23;101:14;103:9; 119:3</p>	<p>own (17)</p>	<p>parents (1)</p>	<p>paying (1)</p>

<p>45:14 Peak (1) 65:10 penalize (1) 118:20 pendens (1) 117:22 people (19) 13:21;15:5;19:19;20:7; 36:10;39:5;50:14;56:21; 59:11;64:13,13;68:17,17; 69:21;75:18;94:1;104:23; 107:21;115:22 Per (3) 1:5,5;95:20 percent (1) 100:19 perfectly (2) 41:8,23 perform (4) 37:18;84:9,12,14 performed (1) 80:25 performing (1) 79:15 Perhaps (4) 28:24;42:9;92:17;111:13 period (5) 18:6;19:23;20:3;42:8; 47:6 permission (1) 18:2 permit (115) 5:5,24;6:3,7;9:11,17; 10:3,5,14;13:9,10,13; 14:19,21;15:6,10;16:3; 17:15,24;18:1,24;19:2,10, 13;21:12;22:5,6,11;24:13, 15,25;25:2,8;28:6,14,18; 29:18,20;30:3,19;31:2,13, 16;33:21;35:1,8,18; 37:18;38:17;43:23;44:14; 47:7,13;48:5,13,17,19,21, 23;49:11;50:18,19;53:5, 21;54:6;56:9;57:14;64:9; 67:25;69:6;71:2,2,18,21; 73:24;79:3;81:3;82:4,6; 92:9,15;100:2,5;101:1,19; 105:16,17,17,24;109:10, 15;111:4,4,11;113:8,15; 115:4,16,17,18;116:11, 15,21;118:17;121:24; 122:19,19,25;123:1,2,12, 22,25;124:8,17 permits (4) 15:6;25:20;78:10;102:15 permitted (5) 36:11;45:25;46:7;107:4; 123:7 PERMITTEE (3) 1:5;24:25;93:11 permitting (10) 39:2;64:3,4,5,10,14;</p>	<p>70:15,16;72:15;116:6 Pershing (11) 20:13;36:19;52:22,24; 53:2;58:12;60:9;98:19, 22;113:12;119:13 person (6) 15:9;20:15,18;21:8;48:4; 118:21 personally (2) 66:17;78:21 personnel (1) 49:9 persons (4) 3:18;4:1;19:3,4 perspective (2) 56:17;122:11 pertain (2) 37:16,24 pertains (1) 36:6 pertinent (2) 111:18;117:15 petroleum (12) 23:21,21,24;24:24;25:8; 31:20;33:13,23;82:3; 83:8,20;101:16 PhD (2) 15:9;67:20 philosophy (1) 103:16 Phluger (1) 55:5 phone (5) 16:22;26:13;30:17; 41:24;75:19 phonetic (1) 96:22 photograph (1) 72:22 photos (5) 23:5;32:4,5,8;55:3 physical (1) 27:25 picture (3) 56:11,16;116:23 piece (2) 38:17;105:4 place (9) 3:14;14:13;20:11,16; 21:19;49:24;68:5;101:10, 19 places (2) 3:16;67:23 plan (28) 6:1;7:16;10:7,17,18,19, 21,23;11:21,23;13:12; 16:16;33:25;80:12;81:23; 82:10,11,17;83:7;84:3,9, 15;92:6;99:4;101:7; 107:6;119:5;121:20 planned (4) 33:18,22;71:3;92:22 planning (3)</p>	<p>25:23;58:1;93:1 plans (3) 78:20;83:13;112:13 please (16) 5:15;8:18;9:4;10:11; 12:7,13;14:14;41:16; 43:10;44:19;66:4;67:1,6; 87:25;90:21;101:2 pleasure (1) 122:10 plus (4) 29:2;60:17;65:2;103:22 pm (2) 14:7;124:20 point (20) 7:19;8:11;12:22;26:22; 27:11,13;28:16;42:10; 49:14;65:9;77:8;92:4; 109:19;110:18,19,22; 112:9,15;113:6;118:15 points (5) 31:8;45:5;48:23;102:9; 117:15 policies (1) 103:13 policy (5) 101:8,21;103:8;109:4,8 polluted (2) 55:5,10 polluting (1) 28:8 pollution (12) 27:22;28:3;29:10,22; 30:4,6,13,22;31:5;40:3; 54:20;58:5 portion (5) 95:5,22;96:11;107:10; 121:6 position (3) 6:8;7:3;117:19 positive (1) 90:4 possibility (5) 5:17,18;23:20;43:1;46:2 possible (11) 13:14;27:22,24;30:13; 46:3;54:19;58:6;102:7,8; 111:17,19 possibly (4) 42:1;44:24;80:5;83:2 posted (5) 3:15;99:20;100:2,4; 116:7 potential (3) 33:12;83:5;105:5 potentially (1) 101:11 practice (1) 90:1 practiced (1) 88:23 practices (2) 83:15;101:23</p>	<p>pre-1981 (1) 25:18 prefer (1) 91:17 preferential (1) 110:3 preparation (8) 64:8;79:2;81:12,22; 86:22;92:8,12;99:5 prepare (4) 13:11;79:8,22;81:14 prepared (12) 7:13;18:7,8;78:21,22,25; 79:19,24;80:1;83:13; 88:14;98:10 prescriptive (4) 38:8;54:1,1,9 present (8) 3:24;4:1;8:6,13;50:17; 51:3;116:23;125:7 presentation (11) 4:10;6:24;8:1;38:13,15; 44:25;45:22;59:18;61:14; 62:18;77:7 presented (1) 114:19 presenting (1) 8:12 presently (1) 95:13 preserve (3) 54:22;120:23;121:2 preserved (2) 55:18;120:3 president (1) 88:5 pretty (7) 6:21;11:20;37:7,20; 83:25;84:24;91:9 prevent (5) 11:7;16:17;31:20;82:14; 101:8 preventing (1) 16:17 prevention (4) 49:5;82:10,11,17 prevents (1) 48:9 previous (3) 7:9;62:15;84:10 previously (1) 94:8 prices (1) 115:11 printed (4) 52:10,11;53:10;56:19 prior (4) 11:1;13:3;25:21;120:17 private (52) 9:19,23;14:25;15:2; 16:23;17:24;18:2;19:20; 20:7,9;39:19;40:7,11; 46:8;47:8,14,16;48:1,2;</p>	<p>52:21;53:6,20,23;54:12; 56:2,3,4,14;58:8;59:18, 19;65:16;80:23;81:3; 84:7;86:14,19,20;87:6,7; 92:22;104:25;107:25; 109:5,24;112:14;116:22, 23;117:20;120:11;121:1; 122:4 privately (1) 108:12 Pro (2) 1:5,5 probable (1) 54:19 probably (9) 60:14;61:17;72:23; 73:21;74:14;78:22;79:1; 103:23;118:18 problem (2) 54:14;66:5 problems (2) 54:13;118:1 procedure (2) 18:10;89:18 procedures (4) 21:16,17;101:9,23 proceed (3) 7:18;43:5;114:22 proceeding (4) 3:19;49:25;92:6;111:6 proceedings (2) 4:3;124:20 process (15) 5:12,24;6:3,20;37:13,14; 39:2;47:22;57:21;58:1; 64:2;70:16;90:6;107:11, 15 produced (1) 98:16 product (1) 33:23 products (8) 82:3;83:1,5,6,8,19,20; 101:16 profession (1) 88:11 professional (5) 88:18,19,20,22,23 Professor (9) 55:1,16;66:24;67:16,16; 111:21;112:8;113:5; 117:7 profit (1) 100:19 profoundly (1) 55:1 program (3) 35:17;83:2;90:2 progress (1) 90:3 progressed (1) 55:21 project (62)</p>
---	---	---	---	---

4:23,24;9:15,18,19;10:1,2,6,16,20,25;11:9,11;12:21,25;13:18;16:13;18:3,4;21:18;22:8,14;23:2;24:5,10;25:13;38:7,20,21;39:4,6;41:6;62:21;71:3;72:16;79:12,19;80:19;81:20;85:12,22;87:6;89:21,24;90:7;91:7;92:5;93:18;96:3;97:10;100:22;103:1,20,21;105:8;107:10,17,19;109:9;110:2,2;120:5 projections (1) 84:24 PROJECTS (9) 1:5;9:22;62:16;64:3,11;67:17;84:22;89:16;100:8 promptly (1) 116:11 pronounce (3) 15:13,14;21:22 proof (1) 14:1 proper (7) 25:13;38:25;107:21;115:2;117:5;119:11;123:20 properly (6) 6:6;32:1;111:14;116:10;122:20;124:1 properties (15) 47:9;48:1,2;52:22;54:12;55:4;56:1;58:9;89:7;91:5;93:4;104:24;117:23;123:15;124:4 property (117) 5:4,6,8;6:12;7:11;13:17,18;14:25;16:23;17:21,22,24;18:2;19:4,20;20:7,9,9,16;21:12;22:6;23:8,11;27:24;28:2;33:23;36:21;38:5,9,17;39:19,22;40:7,12;44:2;46:19,23;47:3,15;53:6,20;54:13,24;55:2,23;56:2,3,14;58:8;59:16,21,23,25;60:2,9,12,18,22,23,25;61:2,3,6,8,9;62:2,5,6,8,12,19;63:3,4,5;64:22;65:5,20,24;66:5;71:23,23;79:6,7,20;84:12;85:25,25;86:20;89:19;90:9,23;96:6,24;103:23;105:19;106:2,6;108:5,14;109:6,12,21,23,24;110:7,23;112:11,14;115:6,8;116:23;119:12,21;120:11,16,19;121:1 propose (1) 91:14 proposed (14) 11:5,12;40:7,11;72:18;81:2;85:19;86:9,10,13;	92:16,16;107:25;124:17 proposing (1) 108:21 prosecute (1) 34:21 prosecution (1) 34:11 prospect (2) 104:18;115:23 prospecting (2) 11:3;90:3 prospective (1) 92:1 protect (3) 54:23;55:4;56:8 protected (1) 55:16 protecting (1) 119:16 Protection (5) 9:9;34:6;39:10;48:21;81:4 protections (1) 49:5 protest (2) 47:17;54:22 proves (1) 120:17 provide (2) 23:17;26:8 provided (4) 3:14;12:19;43:6;55:11 provides (4) 11:8,10;16:10;49:4 providing (2) 92:15;99:5 public (23) 3:11,13;9:19,22;36:15,16,20;38:24;47:8;53:14;54:15;65:16;79:10,12;80:24;81:1,21;84:8;120:2,2;121:8;125:9,12 publication (2) 14:1,15 publicly (1) 119:1 pulverization (1) 73:22 pulverized (2) 73:4;74:3 purchase (1) 57:8 purchased (1) 90:13 pure (1) 56:6 purpose (11) 49:24;69:5;85:15,18;101:4,17;111:3,6,15;119:16;125:8 pursue (1) 122:4 purview (11)	4:14;6:2;39:2;57:19;111:9,14;115:16;121:24,25;122:11,18 put (9) 7:19;18:17;26:18;29:18;38:15;54:14;84:18;102:22;110:24 Q Quail (1) 67:18 qualified (1) 69:7 quarter (1) 45:15 quick (1) 93:19 quite (8) 5:15;35:5,8;69:18,23;82:23;104:2;121:5 quotation (1) 51:17 R RACKLEY (26) 1:5;3:8;24:21;35:25;36:12,19,23;37:2,6,17;38:2;57:8;76:14;86:7,14,17;106:25;107:6,13,18,22;108:1;121:15;122:24;123:18;124:10 railroad (5) 97:20;108:9;119:20,21,24 Railway (2) 93:24;119:23 rain (1) 112:10 raise (1) 30:15 raised (4) 7:8;28:17;29:23;72:15 raises (1) 31:22 ran (1) 104:20 ranch (1) 110:14 rancher (1) 105:2 Ranchers (2) 104:23,25 range (4) 62:6;95:6;96:17;104:15 ranges (1) 95:19 rates (2) 100:11,13 rather (5) 28:23;75:11;102:22,22;110:24	reaching (1) 102:5 read (9) 6:21;51:6,13;52:10;71:7;75:9;95:23;117:15;120:13 reading (2) 45:1;50:16 ready (3) 8:13;77:16;121:15 real (3) 4:15;90:23;117:18 realize (1) 68:10 really (11) 4:14;57:19;58:3;65:17;66:13;122:8,11,19,21,25;123:13 realtor (1) 59:15 reason (2) 6:6;116:22 reasonable (1) 105:4 reasons (2) 110:10;117:13 REBERT (2) 1:5;76:12 rebut (1) 114:16 rebuttal (3) 114:12,12,14 recall (2) 17:18;26:19 recalled (1) 26:24 receive (9) 13:21;15:10,24;16:21,24;17:6;19:25;21:3;66:6 received (15) 4:6;16:22;17:5;18:6;19:23;20:2;21:1,8,9;30:18,19;31:1;32:25;51:15;70:18 receiving (1) 21:7 recess (1) 77:14 recitation (2) 7:7;51:14 reciting (1) 50:5 reclaim (10) 16:9,11,12;18:4;22:8;23:2;35:10;41:6;85:7;116:25 reclaimed (2) 18:3;44:13 reclaiming (2) 35:20;84:22 reclaims (1) 41:7 reclamation (74)	4:15;5:4;6:3,7;7:16;9:9,11;10:3,7,14,18,19,20,21;11:11;12:24;13:9,10;15:18;16:7,8;18:1;19:2,13;22:5,6,11,14,15,24;23:10;24:25;25:3,13;33:14;34:25;35:15;37:12,18;38:4;39:18;40:15,15,21,23,25;41:2;42:17;43:20;44:8;47:11;50:19;69:6;71:2;73:25;78:20;81:17;84:9,14,17,25;92:6;99:5,9;102:16;105:17;107:6,11;111:4,5,11;116:15;123:9,22 recognized (1) 53:19 recollection (2) 31:3;63:15 recontoured (1) 107:11 record (26) 3:10,24;5:15;7:4;9:3;29:18;43:8,10,16;47:20;50:1,8;51:5;52:25;54:15;58:10;70:13;72:4;75:3,7;77:2,4,15;83:25;93:11;124:16 recorded (6) 4:3;94:23,25;97:6;113:12,22 recorder's (2) 75:25;94:19 Recording (1) 1:5 Records (2) 76:3;95:13 recover (1) 102:17 recoverable (1) 42:23 RECROSS (1) 2:5 RECROSS-EXAMINATION (1) 41:20 red (8) 80:19;81:2;86:8,13,14;107:1,22;108:2 REDIRECT (4) 2:5;39:15;43:18;114:10 redundant (2) 67:6;69:16 refer (10) 23:23,24;25:5,14;39:8,11;50:21;91:8;94:2;113:16 reference (2) 53:13;111:6 referenced (1) 82:20 referred (1) 75:4 refers (1)
---	---	--	--	--

<p>52:14 reflects (1) 101:7 refused (1) 47:6 regard (1) 27:21 regarding (4) 37:21;49:5;53:10;55:20 registered (1) 88:18 registration (1) 88:20 regrade (1) 16:11 regraded (1) 107:12 regular (4) 52:15,17;54:2,4 regularity (1) 104:8 regulate (2) 18:22;119:8 regulation (21) 5:7;9:8,22;15:17;25:3,4, 20,24,25;26:2,4;27:5,8; 36:18;40:17,21,22;42:19; 47:10;81:17;115:9 regulations (31) 4:15,18;9:21,25;11:14; 12:24;13:7;18:22;22:10; 23:4,10;24:15;25:11; 26:7;31:17;37:16,22,24; 39:6,17;43:22;44:13; 81:16,18,19,23;83:18; 116:16;119:6,8;123:9 regulatory (7) 5:9;11:24;69:7;84:7,13; 118:12,25 reintroduced (1) 70:4 reintroduction (1) 68:14 reiterate (2) 118:5;119:9 reiterated (2) 21:10,12 relate (1) 19:1 relative (1) 122:5 relatively (2) 84:4;92:11 relatives (1) 45:22 release (5) 34:7;41:9;42:17;44:8; 101:15 released (1) 43:24 releases (3) 33:12;34:12,21 releasing (1)</p>	<p>118:16 relevancy (2) 69:4;71:1 relevant (9) 61:21;67:4,6;69:9,12; 71:21;111:3;113:8,15 relied (1) 81:15 rely (2) 81:14;120:12 remember (4) 17:20;20:20,24;26:14 removal (1) 79:17 render (1) 49:25 rendering (2) 49:16,23 renewable (1) 49:12 repealed (2) 52:20;120:7 repeat (3) 40:9,10;76:25 rephrase (2) 35:7;44:3 report (9) 39:10;40:3;70:3,8,12,13; 71:8;72:24;107:15 REPORTED (2) 1:5;107:20 REPORTER (2) 76:6;125:4 REPORTERS (3) 1:5,5;2:5 reporting (2) 101:9;125:8 reports (2) 71:8;81:23 represent (1) 75:15 representation (1) 95:10 representative (1) 23:15 represented (2) 3:20;71:14 request (10) 4:19;13:21;15:24;33:1,9; 42:17;44:7;94:3,23; 116:14 requested (5) 12:15,20;26:21;32:17; 47:7 requesting (2) 3:18;47:11 requests (1) 57:12 require (7) 23:5,6;24:25;25:7;31:17; 37:22;121:1 required (9) 12:21;16:2;29:4;34:22;</p>	<p>42:6;91:20;99:18;103:2; 116:12 requirements (12) 11:20,25;24:5;25:3,16; 69:7;81:24;92:15;101:10; 102:24;118:12;123:1 requiring (1) 54:12 resale (1) 46:3 research (6) 26:17,22;50:22,24,25; 65:3 reserve (1) 6:15 reshape (1) 16:10 residence (1) 99:3 resident (1) 98:24 Resource (2) 15:4;121:20 Resources (3) 34:18;53:14;89:5 respect (4) 28:18;35:18;50:18;72:15 respectfully (1) 116:14 respond (7) 7:14;27:1;28:21;29:16, 19,24;33:11 responded (2) 116:11,12 responding (1) 19:7 response (13) 18:7;20:23;21:4,6;28:25; 29:7;30:17,25;31:6;32:6, 25;33:1,7 responses (1) 83:22 responsibilities (1) 89:23 responsibility (6) 10:10;27:23;34:20;37:9; 72:12;89:13 restorable (1) 102:5 result (1) 30:11 resulting (1) 105:20 results (1) 90:4 return (6) 6:8;42:20,21;44:6,7;84:9 returning (1) 44:5 revegetate (2) 16:11;24:5 revegetation (2) 23:1;115:21</p>	<p>review (6) 10:1;14:16;37:15,23; 44:7;81:23 reviewed (2) 10:3;11:21 Revised (1) 81:25 revisions (1) 90:24 REYNOLDS (5) 1:5;76:15;106:21; 122:17;124:13 Richmond (1) 120:14 Ridge (1) 67:19 right (44) 6:25;7:5;11:21;13:5,17; 14:19,23;15:13,14,25; 17:12,13,23;27:10;36:23; 40:24;41:19;43:4,45;3; 46:8;47:25;48:4,6;53:24; 54:11;57:6;58:11;64:19; 65:11;69:11;72:17;98:6; 102:5;106:11;108:13; 109:19;111:7;113:13; 116:1;117:14;120:19,23; 121:2;123:8 right-hand (1) 95:22 rights (9) 7:11;38:8;54:23;56:3,5; 115:8;117:23;119:12; 120:1 rigs (3) 49:8;54:6;56:11 road (106) 5:10;11:6;25:22,24,24; 27:25;29:11,11;36:14; 46:7,19,22;47:25;48:2,7, 7,8,9;49:6,7,10,12;52:14, 15,15,16,18,23,23,24,25; 53:1,16,17;54:5;56:19; 57:24;58:6,10;61:24; 62:2,3,7,8,10;63:6,7,13, 14;65:7,8,19;68:2;72:25; 73:3,4,15,16,20,22,22,25; 74:1,10,11,13;75:12;76:1, 19;91:22,23;92:25;96:5, 16;97:8,9,23,23;98:9,13, 15,20,20,21;99:1,16,17; 102:23;108:13,21;110:12, 13;111:8,9;112:8,19; 113:12,18,18,20;114:3; 117:12;120:4,17,19;121:2 roads (45) 5:8;6:9;12:24;13:1,2; 22:25;24:8;25:21;26:14; 36:1,2,10,25;38:7,9,21; 55:24;58:7;66:11,14; 73:12;79:16;80:2;81:8; 86:1,2;91:16,21,24;92:18; 96:2;98:7;104:3,8,24;</p>	<p>105:1,22,23;110:5,5; 111:5;112:22,23;120:25; 122:18 roadway (3) 27:22;115:14,15 Rochester (2) 55:10;117:8 rock (1) 115:23 Roll (1) 4:1 Ron (6) 59:2,7,8,9;60:6,7 Ronald (5) 20:8;45:17;59:9;60:7; 75:15 Room (1) 125:7 Roosevelt (1) 95:1 ROSE (1) 1:5 rough (1) 62:12 route (7) 28:2;91:16;110:7,11,16; 112:3;119:9 routes (6) 63:10;91:13;92:17; 102:20;110:1,20 RPR (1) 1:5 RS (23) 23:13;26:14;27:6;36:1,6; 48:1;49:12;52:14,20,21, 23;53:1,16,17,19;56:19; 75:8,23;113:12;117:12; 119:14;120:1,6 rubber (1) 57:23 rule (1) 91:15 rules (1) 123:9 rulings (1) 55:15 run (5) 29:10;89:16;95:16; 104:25;108:13 runoff (1) 56:12 rural (1) 119:19</p>
S				
<p>safe (1) 102:4 safety (6) 83:6;101:23;102:2,25; 103:3,6 sage (8) 68:13;69:19,23;70:3,24;</p>				

71:4,8;72:23 sagebrush (5) 62:4,13;63:9;73:12,16 sake (1) 98:1 same (17) 7:25;8:6;19:16,19;29:17; 45:23;59:10;61:9;62:16; 68:2,3;91:2;94:11;97:23; 106:5;114:22;123:5 sampling (2) 90:3;103:24 San (1) 59:3 satisfactory (1) 4:7 saw (13) 24:12;60:19,23,25;61:2, 3;63:17;69:23;70:9; 71:10;73:3;74:13,13 saying (9) 17:20;31:10;37:8;49:20; 60:16;70:9;71:6;110:6,19 scaled (1) 99:17 schedule (1) 11:10 science (3) 9:13;63:25;88:16 scientist (1) 72:4 scope (1) 72:16 Sean (1) 69:24 seasonal (1) 30:14 SEC (5) 1:5;53:25,25;54:8;56:7 second (9) 18:18,20;19:22;46:14; 65:12;79:21;86:2;111:21; 124:10 Secondly (1) 53:21 Secretary (2) 1:5,5 section (26) 18:22;23:11;37:6;38:23; 40:17;45:15;46:5;53:4; 58:10;75:12;79:21,21; 80:21;82:8,9;96:10,11; 101:3,4;104:21;108:5,6,7; 110:8;115:19;116:6 sections (11) 37:16,21;45:23;53:5; 79:11;87:9;95:19,19; 108:8,8,11 sediment (3) 16:17;30:5;31:21 sedimentation (1) 11:8 seeding (1)	23:1 seeing (2) 41:25;104:14 seem (1) 29:2 seemed (1) 24:14 seems (3) 117:3,24;122:7 sell (2) 46:9;47:5 Selma (1) 45:18 send (4) 15:22;21:5;24:3;98:11 sense (6) 91:16;102:9,19;110:4,23; 120:7 sent (11) 12:3;14:16;16:20;21:16, 18;27:7;53:11;109:10,15, 17;115:7 sentence (2) 19:2;53:16 separate (1) 109:14 September (2) 14:7;97:17 serve (1) 18:24 Service (1) 70:18 set (3) 28:20;35:13;99:18 sets (1) 109:8 settle (2) 23:8;46:1 several (16) 7:4;16:22;20:9;38:21; 67:21;79:11;81:5,6; 90:22;96:4;97:2;102:9; 103:22;104:13;114:25; 117:19 shall (1) 8:11 SHANE (8) 2:5;8:17,20;9:5;35:25; 37:8;44:20;98:12 S-H-A-N-E (1) 9:5 shape (1) 105:4 sheep (2) 104:25;105:2 sheet (4) 22:23,24;35:16,17 sheets (1) 82:23 sheriff (2) 66:3,6 short (2) 47:12;77:14	shortest (2) 110:11,15 show (4) 32:5;96:2;98:7;124:16 shown (3) 97:8;104:3;120:4 shows (7) 10:22;11:5;75:10;76:1, 18;96:4;106:8 sick (1) 12:10 side (4) 38:19,21;73:13,14 sign (1) 109:18 signature (2) 51:22;95:1 signed (4) 19:11;75:17;96:1;105:17 significant (2) 54:2,4 signs (1) 39:24 simply (1) 28:4 site (11) 14:9;16:10,11,11;18:23; 38:4;39:4;40:2;44:12; 83:8;103:21 sites (11) 18:23;80:2;85:19,21; 92:19,19;99:11;107:3,8, 23,25 situated (1) 34:17 situation (2) 52:6;85:4 situations (1) 13:14 six (1) 36:10 size (2) 92:19;99:12 sketch (2) 10:22;23:7 slicks (1) 30:11 slope (2) 99:13,14 slow (1) 5:16 small (4) 113:1,3;117:3,11 smallest (1) 102:21 Smith (1) 15:9 so-called (1) 74:11 soil (9) 5:20;23:21,22,24;24:24; 25:1,4,8;31:20 sold (1)	68:4 sole (1) 98:24 somebody (6) 5:17;17:22;20:25;36:1,3; 65:22 someone (1) 39:8 sometime (1) 63:16 Sometimes (4) 4:22,23;36:2;73:13 somewhere (1) 100:18 sorry (11) 10:12;14:4;31:18;37:5; 38:10;49:18;61:1,14; 67:15;114:3;123:12 sort (5) 7:3;68:18;72:8;96:13; 101:16 sound (1) 110:17 south (2) 85:25;96:16 southern (1) 107:10 southwest (1) 45:15 southwestern (1) 107:10 space (1) 72:18 speak (5) 22:2;45:17;47:23;67:21; 91:4 speaking (2) 20:4;38:10 species (1) 68:24 specific (3) 80:18;101:9;105:8 specifically (4) 37:23;103:11;107:24; 119:25 speed (1) 97:13 spell (3) 9:4;78:3;88:1 spelled (1) 9:5 spill (7) 82:9,11,14,16,17;101:9; 118:24 spillage (2) 38:24;107:14 spills (6) 37:9,21;40:2;82:3,15; 101:8 spite (1) 36:9 spoke (9) 20:7;26:13;41:23;50:14;	53:3,7;56:21;64:13;70:2 spread (4) 22:23,24;35:16,17 Spring (1) 85:24 Springs (2) 88:3,17 square (2) 95:19;110:9 SRCE (1) 84:17 ss (1) 125:1.5 stabilization (1) 115:21 staked (1) 90:12 stamped (1) 12:9 stand (1) 8:18 standard (4) 22:23;35:15;84:7;99:12 standardized (1) 84:17 standards (2) 84:15;103:14 standing (1) 53:17 standpoint (1) 118:11 Star (2) 65:10;68:3 start (4) 3:25;13:9;14:19;90:2 started (4) 8:10;67:18;69:21;73:23 starts (1) 50:3 STATE (35) 1:5,5;3:5,7,12;7:8;9:3, 14;34:8,16;42:24;52:22; 53:1;55:9;58:12;61:18; 69:13,15;70:16;78:3; 83:15;87:25;98:16; 100:23;101:5;113:11; 114:23;115:22;118:18; 119:8;120:23,24;123:5; 125:1,5 stated (11) 7:13;32:15;48:2,5,22; 54:18;55:4,15;109:4; 110:2;119:10 statement (16) 4:20;6:15,20;7:1,3;10:8; 50:6;57:16;76:13;106:21; 111:16,23;116:19;118:3; 119:10;120:13 statements (8) 4:10;7:24;51:7,14,17,19; 52:3;70:12 states (8) 13:12,13;30:12;37:7;
--	--	---	---	---

50:15;55:7,17;90:18 State's (3) 4:10;6:7;7:19 stating (5) 3:13;10:9;30:20;48:17; 120:1 status (1) 3:23 statute (10) 6:10;7:17;11:13;18:16; 26:1,3,7;43:22;116:17; 120:24 statutes (12) 4:15,18;5:7;9:22;11:14; 23:4,10;34:6;39:17; 54:17;81:25;119:8 statutory (4) 5:9;44:1;69:6;118:12 stay (3) 69:11;91:21,21 Ste (1) 1:5 steeper (1) 99:14 stenotype (2) 125:9,12 step (3) 41:15;44:19;90:2 steps (1) 13:8 stewards (2) 46:1;56:7 stewardship (2) 56:18;102:18 Stewart (1) 125:7 sticks (1) 36:12 still (1) 36:11 stop (2) 11:19;54:10 stopped (3) 63:7;65:8,9 stops (2) 15:1;65:19 storage (1) 101:10 storing (2) 48:9,10 stream (2) 30:22;31:21 streams (2) 30:6;55:8 Street (3) 1:5;98:25;125:7 stretch (1) 77:13 stricken (1) 77:1 strictly (3) 4:25;45:1;86:23 Strike (2)	89:7,15 strive (1) 101:8 students (1) 67:22 stuff (2) 15:20;58:3 subcontractors (1) 101:22 subdivision (7) 91:2;94:12;95:16,18; 98:25;106:2,5 subject (9) 4:21;7:20;8:2,7;24:17; 39:6;57:4,5;110:25 submit (4) 16:2;32:4;42:14,16 submits (3) 16:8;51:18,20 submitted (9) 10:4,15;22:23;31:6;32:8; 57:10;79:25;80:1;85:20 subsection (1) 81:18 subsequent (1) 120:20 subsidiary (1) 88:6 substances (2) 33:13;118:21 substantiate (1) 53:11 suffered (1) 27:25 sufficiency (1) 69:8 suggesting (1) 83:10 suit (1) 51:9 suitable (1) 54:7 suits (1) 122:10 SULFRIAN (22) 2:5;7:15;22:19;47:24; 85:16,23;87:15,18,25; 88:2,4;93:9,15;100:21,24; 101:14;103:19;105:5,11; 106:25;108:17;118:8 S-U-L-F-R-I-A-N (1) 88:2 summarizes (2) 7:3;93:9 supervising (1) 102:1 supervisor (1) 89:14 supplies (1) 48:11 support (5) 51:19;78:13;113:11; 123:2,12	supporting (1) 51:7 suppose (1) 68:9 supposed (4) 4:18;10:23;23:13;73:10 Supreme (1) 120:15 sure (10) 26:6;36:7;42:19;44:13; 57:9;60:16;61:20;86:7; 102:3;103:25 Surely (1) 54:11 surety (1) 116:7 surface (12) 9:20;10:24;11:8;16:18; 33:15;81:19;92:24;102:8; 107:12;110:13;116:4; 118:16 surrounding (2) 53:14;63:11 survey (13) 65:15;95:10,15,24;96:2; 97:7,9,13,16,18,24;98:2,5 surveyors (2) 95:17;98:3 surveys (1) 120:5 suspect (1) 70:17 sustain (1) 70:15 sustained (1) 71:20 Swain (2) 45:19,19 Sweden (1) 67:23 sworn (12) 4:4,20;7:20;8:2,7,22; 44:21;45:10;67:2,11; 77:22;87:20 system (1) 95:18	96:12;117:4 target (2) 90:6;102:21 targets (1) 99:10 tax (2) 60:18;61:6 taxes (1) 45:14 taxpayers (1) 45:17 techniques (1) 11:3 telephone (4) 14:9;16:21;17:18;20:24 telling (1) 101:4 ten (2) 18:16;78:22 tend (1) 4:22 tent (1) 46:6 term (2) 85:8;90:17 terms (2) 84:4;92:11 Terraco (3) 88:6,8;89:2 testified (10) 8:23;32:7;45:11;67:12; 77:23;87:21;91:25;94:8; 112:8;115:5 testify (7) 7:15;51:15,18;69:8;70:1, 6;96:5 testifying (3) 8:1;40:14;68:20 Testimony (25) 4:3;8:6;30:2;49:15,16, 22;50:7,18;68:21,23; 69:9;74:5,20;82:2;93:19; 112:18,22,23;114:16,20; 115:25;118:6,11;123:24; 124:8 TGC (26) 3:20;9:16;10:4,15;33:22; 46:7;47:5,16,24;53:5,22, 22;78:12;79:8,20;80:19, 25;81:3;82:12;87:10; 88:7,8;89:2,19;90:9; 96:23 Theodore (1) 95:1 Therefore (3) 46:21;99:11;116:14 third (14) 16:15;32:21;41:1,5,6; 51:15,17,21;66:11;84:14; 85:3;100:12,17,20 third-party (3) 16:14;51:19;85:3 Thirty-six (1)	95:20 THOMAS (2) 1:5;3:20 though (5) 6:10;15:1;103:11; 115:15;120:19 thought (5) 62:5,11;65:6,14;111:15 three (18) 15:1;40:22;42:2,9;44:23; 48:9;74:14;76:14;79:19; 80:18;84:21;99:22; 102:16;110:14;113:20; 118:6;121:19;122:7 threshold (1) 34:24 throughout (1) 103:23 THURSDAY (4) 1:5;3:1,11;125:6 times (8) 55:22;64:21;68:5;73:21; 103:19,24;104:13;113:20 tires (1) 58:5 title (3) 40:24;54:11,24 today (20) 3:7;4:3,14,19;40:14; 45:13,19,20;46:13;47:23; 48:8;49:7;55:2;63:12; 71:18;93:19;115:1; 116:23;123:24;124:8 together (3) 14:22;84:18,21 told (16) 18:1;21:1,5,10,16;27:5; 47:7;52:25;55:19;62:5, 18;65:8,18;66:13;70:6; 71:24 tons (1) 54:18 took (3) 33:10;62:12;63:7 tool (1) 84:18 top (1) 87:9 topographic (3) 10:22;23:6;81:6 total (1) 64:21 totally (1) 37:17 touching (1) 105:5 tour (1) 104:20 toward (1) 101:21 towards (1) 103:8 town (1)
T				
		tab (1) 38:23 Tahoe (1) 120:16 tailings (1) 117:8 talk (6) 5:19;21:20;38:3;57:17; 83:4;93:17 talked (3) 29:17;72:25;75:19 talking (10) 30:7,8;36:17;45:16; 52:24;62:20;64:12;80:17;		

<p>117:9 township (5) 95:6,16,20;98:4;108:9 townships (1) 95:18 toxicology (1) 83:4 traded (1) 119:1 traffic (1) 29:11 trail (1) 52:16 trailer (2) 105:2,3 training (7) 102:2,25;103:2,2,4,5,13 trampled (2) 56:4;73:12 transcript (1) 125:10 transcription (1) 125:12 Transportation (2) 98:10,18 travel (3) 52:18;105:3,15 traveled (1) 67:21 traveling (1) 28:8 travels (1) 96:8 tremendous (1) 119:2 trespass (3) 17:21;38:9;66:4 trespassing (3) 28:4;31:4;39:24 tried (7) 65:6,9,9,11;72:2;115:12; 116:2 Trout (3) 53:7;55:7,8 truck (2) 62:4,10 trucks (1) 73:6 true (6) 35:6;36:17;40:1;56:17; 112:5;125:11 Trust (2) 45:19;67:18 try (3) 82:14;102:7,20 trying (2) 61:23;111:16 Tuesday (2) 24:11;98:14 Turkey (1) 67:23 turn (8) 15:19;32:20;44:21;77:9;</p>	<p>93:23;100:24;101:2; 108:7 turning (4) 33:12;34:25;97:12;99:4 turns (1) 96:16 twentieth (1) 94:15 Twice (1) 64:23 two (22) 3:7;13:13,25;14:3,13,18; 15:13;40:20;42:1,9; 59:10;73:14;76:18;79:21; 80:21;85:14,17;87:9; 97:19;98:1;102:13; 110:11 type (2) 9:18;54:14 types (4) 34:12;78:24;82:5;90:9</p>	<p>69:7;72:14 unpatented (3) 90:12,15,17 up (46) 15:7,8;23:15;24:18,23; 25:1,8;27:13;29:25; 30:16;31:20;34:23;37:17, 21;42:4,22,24;54:3; 65:10;66:25;67:5;68:3, 22;69:20;71:18;73:7,14; 75:12;96:10;97:13;99:14; 103:17,17;104:16,18,23; 109:8;110:15;111:13; 114:24;117:12;118:22; 119:13;120:8,16;123:11 upheld (1) 120:18 uphold (2) 124:8,17 upholding (1) 123:2 upper (2) 94:18;95:5 upset (1) 53:21 use (42) 11:12;17:24;25:9,22; 35:16,16;37:4;46:7; 47:25;48:4,7;49:6;52:16; 54:2,4;55:15;56:2;58:6,7; 66:16;72:19;75:9;85:8; 90:17;91:13,15,17;104:8, 11,23;105:1,21,21;110:4; 112:9,16,23;113:19; 115:22;117:14;120:19; 121:2 used (12) 12:25;66:11,13;83:2,3; 85:23;91:12;96:3;98:11; 99:18;100:12;115:21 users (1) 120:3 uses (3) 97:9;103:9;113:19 using (3) 27:22;73:23;83:6 usually (5) 42:1;91:19,23;103:3; 109:8</p>	<p>values (2) 5:6;23:11 various (6) 84:19;87:8;89:7;91:13; 108:12;121:18 vary (2) 99:13;100:22 vegetation (3) 49:5;54:21;79:17 vehicles (2) 28:8;48:10 venue (1) 123:20 verbal (2) 20:5,6 verbatim (1) 125:8 verify (1) 65:17 versed (1) 27:12 versus (1) 120:14 vested (2) 34:13;119:12 vice (1) 88:5 view (4) 102:10;110:18,19,22 Village (1) 120:16 vintages (1) 11:2 visit (3) 85:12,16,19 visited (4) 64:21;65:5;68:5;103:19 visiting (1) 65:24 visits (1) 85:15 Vista (2) 104:14;110:15 vote (2) 124:13,15</p>	<p>55:9 Washington (3) 53:8;88:19;123:17 waste (1) 117:5 Watch (1) 15:4 water (8) 10:24;11:8;16:18;34:8; 56:6;110:14;112:15; 116:4 watershed (2) 55:4;72:18 waterway (1) 30:14 way (21) 7:18;15:12;29:16;46:6; 48:18;58:11;62:8;63:10; 66:10;71:17,24;72:19; 73:13,15;84:16;86:3; 99:15;104:22;109:23; 110:23;113:13 ways (1) 108:12 web (2) 14:9;40:2 weighing (1) 43:15 weight (1) 52:13 Wells (1) 94:23 Wendell (2) 98:21;99:1 weren't (3) 29:23,25;71:7 west (1) 110:9 western (2) 95:18;98:3 wet (1) 73:21 what's (3) 19:18;42:14;84:16 whatsoever (5) 26:16;58:11;66:3; 113:10;118:9 white (4) 80:23;96:7,8;108:8 whole (1) 13:20 whomever (1) 123:14 whose (2) 45:17;85:18 wide (2) 52:7;73:16 widening (1) 25:23 width (1) 11:6 widths (1) 99:18</p>
	U			
	<p>ultimately (1) 90:5 unanimous (1) 124:17 unanimously (1) 124:15 uncolored (1) 108:8 under (18) 4:4;14:24;15:1;80:9; 81:1,3,17,24;84:15;85:19; 86:11;90:23;100:2,5; 103:5;107:4;121:12; 122:20 underlined (1) 18:21 underlying (1) 91:15 understood (1) 52:8 undertake (1) 78:13 undertaken (1) 81:3 undisputed (1) 118:10 unexecuted (1) 17:15 unfortunately (2) 91:8;123:20 Unionville (1) 99:1 United (1) 90:18 University (3) 9:14;67:20;88:17 unlawful (4) 34:1,12,21;118:20 unless (2)</p>			
		V		
			W	
			<p>waited (2) 30:17,24 waiting (1) 29:7 walk (1) 84:12 walked (2) 55:3;68:5 WALKER (1) 1:5 walking (1) 103:24 wants (3) 40:3;112:22;118:23 warns (1)</p>	

<p>wilderness (5) 45:24;54:23;56:6,15; 67:19 wildlife (22) 5:21;13:20;15:3;24:1,2,4, 6;39:3;54:21;56:6,12; 57:25;68:17,17,22,25; 69:24;70:3,17,18;71:5,14 Willard (1) 45:18 willing (1) 10:9 Winnemucca (2) 80:7;85:17 wintertime (1) 73:5 wise (1) 90:2 wish (9) 6:1,15;7:1;44:24;68:12; 114:12;115:1;116:8,19 wishing (2) 4:20;55:25 withdraws (1) 119:19 within (15) 3:16;18:16;42:1;65:20; 79:12;91:7,22,24;94:9; 109:9;110:2;111:9,13; 115:16;124:4 within-entitled (1) 125:9 without (4) 54:9,24;58:7;109:23 witness (75) 4:19,21;5:11,19;6:13; 7:25;8:21;25:2,10,14,20; 26:2,6;27:1;28:12;29:22; 30:5,7;31:10,15;36:4; 37:15,20;38:6,19;39:7; 45:9;46:13;57:1,5;61:22; 66:22,24;67:10,14;68:2; 69:7,10,13,18;70:2,8,20, 24;71:6,22;72:2,7,11,17; 73:3;74:2,6,21;77:10,21; 86:10,16,21;87:2,16,19; 105:12,15;107:3,8,16,20, 24;108:3,6,15;113:16; 115:5;116:7 WITNESSES (9) 2:5,5;4:4;7:20;8:6;32:1; 114:8,12,16 wondered (1) 74:25 wondering (4) 20:25;21:3;28:4;112:6 word (3) 36:13;54:9;102:6 words (1) 38:16 work (33) 9:7,8;11:1,11;16:9,15; 19:22;39:6;42:10;47:18;</p>	<p>50:15;55:12;64:15,16; 67:22;69:18;74:3;78:8; 81:17;86:12,13;89:1; 90:4;99:16,17,20,21; 100:5;102:4,23;103:16; 104:1;109:20 worked (6) 67:17;69:19;89:1,3,4,9 working (1) 46:2 works (3) 15:17;103:1;120:24 writer (2) 9:11,17 writing (2) 7:8;47:12 Written (11) 3:13;5:3;16:21,24;17:4, 7;18:7;20:4;21:3,5;70:10 wrong (2) 100:13,19 wrote (6) 47:11;48:18;66:8,9;70:8; 98:3 Wyoming (3) 69:19;71:19;88:18</p> <p style="text-align: center;">Y</p> <p>year (3) 64:24;80:5;113:20 years (35) 42:1,10;45:14,21;46:2,7; 48:3;49:11;52:17;53:23; 54:3,5;60:14,15,17,18; 61:6;62:1,19;64:19;65:1, 2;67:18;74:14;78:18,19; 88:10,13,25;89:3,14; 102:1;104:6,13;117:18 Y-shaped (1) 96:14</p> <p style="text-align: center;">Z</p> <p>zip (1) 99:1 ZyMin (1) 89:10</p> <p style="text-align: center;">#</p> <p>#98 (2) 1:5;125:19,5</p> <p style="text-align: center;">\$</p> <p>\$200 (2) 47:5,5 \$34,000 (2) 100:4,4 \$52,000 (2) 99:23,23 \$86,798 (2)</p>	<p>22:15,15 / /// (10) 8:24,25;21:25;8:24,25; 77:25;21:25;105:25; 77:25;105:25</p> <p style="text-align: center;">1</p> <p>1 (23) 43:15;58:10;75:12;76:2, 19;80:11;86:8;93:23; 104:4;107:1;108:11; 43:15;58:10;75:12;76:2, 19;80:11;86:8;93:23; 104:4;107:1;108:11; 125:11 1.8 (2) 62:25,25 1:52 (2) 124:20,20 10 (4) 12:7;32:20;12:7;32:20 10:30 (4) 3:1,12,1,12 100 (11) 48:3;52:17;79:1;103:24; 104:12;48:3;52:17;79:1; 103:24;104:12;125:7 100-plus (2) 54:3,3 108 (1) 2:5 109 (1) 2:5 10th (2) 52:20,20 11 (26) 10:12,12;37:2,2,6,7; 38:23,23;62:25;80:15; 89:14;100:24;101:2; 108:11;37:2,2,6,7;38:23, 23;62:25;80:15;89:14; 100:24;101:2;108:11 12 (16) 10:11,13;11:15;10:11,13; 11:15;43:15;45:14;53:4; 79:21;108:5;43:15;45:14; 53:4;79:21;108:5 12:30 (2) 77:6,6 124 (1) 125:11 1265 (2) 99:1,1 13 (12) 45:15;96:10;104:21; 108:6,7,11;45:15;96:10; 104:21;108:6,7,11 14 (4) 100:19;110:8;100:19;</p>	<p>110:8 15 (14) 60:14,15,17;61:17;62:1; 65:1;108:11;60:14,15,17; 61:17;62:1;65:1;108:11 18 (2) 100:19,19 1800s (2) 55:19,19 1860 (2) 63:1,1 1868 (2) 97:5,5 1872 (4) 68:11;90:23;68:11;90:23 1875 (2) 119:15,15 1895 (6) 95:25;97:9,24;95:25; 97:9,24 1903 (10) 94:17,18,22;95:2;97:17; 94:17,18,22;95:2;97:17 1904 (6) 94:17,20,24,17,20,24 1963 (2) 117:9,9 1976 (2) 120:9,9 1980 (2) 63:13,13 1981 (6) 6:10;13:3;6:10;25:21; 13:3;25:21 1985 (2) 63:16,16 1987 (2) 98:15,15 1989 (2) 68:15,15 1990 (2) 72:24,24 1st (4) 13:3;25:21;13:3;25:21</p> <p style="text-align: center;">2</p> <p>2.8 (12) 37:6;38:23;82:8,9;101:3, 4;37:6;38:23;82:8,9; 101:3,4 20 (7) 1:5;3:1,1;67:18;117:18; 67:18;117:18 200 (4) 90:11;94:19;90:11;94:19 2006 (2) 89:22,22 2008 (11) 1:5;3:1,1,1,11;14:7; 32:23;14:7;32:23;125:6, 15 203 (2)</p>	<p>93:23,23 20-acre (2) 91:2,2 20th (3) 3:11,11;125:6 22 (2) 120:8,8 22nd (2) 14:7,7 23 (2) 108:11,11 24 (8) 79:21;89:3;103:4; 107:17;79:21;89:3;103:4; 107:17 2477 (50) 23:13;26:14;27:7;36:1, 14;48:1;49:12;52:14,18, 20,21,23;53:1,16,17,19; 56:19;75:8,23;23:13; 26:14;27:7;113:12;114:3; 117:12;119:14;120:1,6; 36:1,14;48:1;49:12; 52:14,18,20,21,23;53:1, 16,17,19;56:19;75:8,23; 113:12;114:3;117:12; 119:14;120:1,6 25 (1) 2:5 25th (1) 125:14 27 (2) 94:24,24 28th (2) 32:23,23 29 (2) 95:6,6</p> <p style="text-align: center;">3</p> <p>30 (8) 88:13,25;102:1;104:6; 88:13,25;102:1;104:6 30-foot (2) 55:23,23 31 (4) 94:21;95:2;94:21;95:2 32 (1) 2:5 32nd (2) 55:14,14 34 (2) 95:6,6 3809 (4) 81:18,19,18,19 39 (1) 2:5</p> <p style="text-align: center;">4</p> <p>400 (4) 38:20;74:12;38:20;74:12 41 (1)</p>
--	--	--	--	--

2:5 410 (1) 1:5 42 (2) 97:7,7 433 (2) 81:18,18 45 (1) 2:5	2:5 8 8 (2) 13:23,23 81 (1) 2:5 87 (3) 2:5;63:16,16 87,000 (2) 29:2,2 882-5322 (3) 1:5,5;2:5 89706 (1) 1:5	24;86:19,22;91:5,13; 92:16,18,24;96:3;97:10; 105:16,17,22,24;109:10, 15;110:4;111:8,10;115:5; 118:14;119:9;120:1; 122:2,5,17;123:4,13,14; 124:3 accidents (4) 27:25;29:11;27:25;29:11 accomplished (2) 43:23,23 according (8) 38:23;44:13,14;113:5; 38:23;44:13,14;113:5 account (4) 85:3;99:15;85:3;99:15 accuracy (2) 84:23,23 accurate (4) 35:21;84:24;35:21;84:24 achieve (2) 91:4,4 acquainted (4) 9:15,15;79:6,6 acreage (4) 11:9,9;73:10,10 acres (10) 79:16,18;109:24;110:25; 117:20;79:16,18;109:24; 110:25;117:20 across (12) 36:20;62:4,12;63:9; 92:24;120:1;36:20;62:4, 12;63:9;92:24;120:1 acting (2) 3:6,6 action (12) 18:17;23:25;25:5,15; 34:15;18:17;23:25;25:5, 15;121:3;34:15;121:3 actions (2) 34:12,12 activate (2) 123:7,7 active (4) 104:11;113:19;104:11; 113:19 actively (2) 57:20,20 activities (24) 22:12;33:14,18;79:10,15; 80:20,25;81:2;22:12; 92:21;103:10;105:7,20; 33:14,18;79:10,15;80:20, 25;81:2;92:21;103:10; 105:7,20 activity (8) 71:10,12;79:5;86:24; 71:10,12;79:5;86:24 actual (12) 27:9;46:4;86:23;27:9; 110:12;113:18;116:21; 46:4;86:23;110:12;	113:18;116:21 actually (40) 17:18;22:6;36:8;56:8; 58:5;60:11;17:18;65:2,7; 79:24;81:11;22:6;86:19; 87:10;96:4,25;100:25; 105:1;106:3;107:9; 111:25;113:16;36:8;56:8; 58:5;60:11;65:2,7;79:24; 81:11;86:19;87:10;96:4, 25;100:25;105:1;106:3; 107:9;111:25;113:16 add (12) 6:23;11:18;6:23;11:18; 43:17;57:1;66:25;73:14; 43:17;57:1;66:25;73:14 addition (4) 28:3,3;112:3,3 additional (20) 32:17;33:1;44:25;66:18; 91:18;100:1,4;102:11; 114:5,15;32:17;33:1; 44:25;66:18;91:18;100:1, 4;102:11;114:5,15 address (42) 30:21;31:10,15,16,17,19, 22;33:4,18;34:7;38:12; 69:8;73:24;82:4,6;83:18; 98:25;100:9;111:4,22; 113:18;30:21;31:10,15, 16,17,19,22;33:4,18;34:7; 38:12;69:8;73:24;82:4,6; 83:18;98:25;100:9;111:4, 22;113:18 addressed (8) 30:3;31:19;116:5;30:3; 119:25;31:19;116:5; 119:25 addresses (12) 7:16;15:21;7:16;39:18; 40:25;15:21;118:15; 119:6;39:18;40:25; 118:15;119:6 addressing (8) 31:3;33:14;69:12;82:3; 31:3;33:14;69:12;82:3 adequate (4) 100:9,16,9,16 adequately (6) 7:16,16;33:4;119:5;33:4; 119:5 adjacent (2) 106:3,3 adjoins (2) 104:15,15 adjourned (2) 124:18,18 adjudicated (2) 53:18,18 adjudication (2) 119:11,11 administer (2) 4:5,5	administered (8) 79:11,12;80:24;107:4; 79:11,12;80:24;107:4 Administration (2) 103:3,3 Administrative (10) 9:25;11:16;13:2;9:25; 34:11;11:16;13:2;81:15; 34:11;81:15 admissibility (2) 70:12,12 admissible (4) 51:16;77:1;51:16;77:1 admit (2) 76:15,15 admitted (8) 47:19;74:24;76:21; 106:19;47:19;74:24; 76:21;106:19 adopted (2) 26:4,4 adverse (2) 118:25,25 advice (4) 122:15;124:11;122:15; 124:11 aerial (10) 23:5;32:4,5,8;55:3;23:5; 32:4,5,8;55:3 affected (4) 3:14,14;11:12,12 affects (2) 102:14,14 affidavit (4) 14:1,15,1,15 affiliated (2) 3:25,25 affirmed (4) 116:16;118:13;116:16; 118:13 affirming (4) 123:2,12,2,12 afraid (2) 17:21,21 Africa (2) 67:23,23 again (28) 8:6,6;30:20;38:14;53:19; 65:7,12;71:11,13;72:9; 99:10;109:19;113:14; 114:25;116:9;30:20; 38:14;53:19;65:7,12; 71:11,13;72:9;99:10; 109:19;113:14;114:25; 116:9 against (2) 117:22,22 age (4) 104:7,9,7,9 agencies (10) 19:21;37:8,11;19:21; 84:13,19;37:8,11;84:13, 19
5	9			
5 (6) 17:2,3;49:3;17:2,3;49:3 5:00 (2) 14:7,7 50 (8) 45:14;61:6;64:19;78:23; 45:14;61:6;64:19;78:23 51,000 (2) 99:23,23 519A (18) 9:24;18:22;22:10;25:10, 24;9:24;34:7;18:22; 81:16,24;22:10;25:10,24; 122:20;34:7;81:16,24; 122:20 519A105 (6) 13:2,4,2,4;115:15,15 519A190 (2) 115:19,19 519A265 (2) 11:17,17 519A330 (2) 115:20,20 519A340 (2) 116:5,5 519A415 (4) 18:18,19,18,19 58 (1) 2:5	9 (1) 2:5 90 (2) 68:15,15			
	A			
	ability (8) 54:8,10;102:15;113:25; 54:8,10;102:15;113:25 able (10) 37:25;65:17;69:13; 73:21;84:11;102:17; 105:3,12;114:3;117:14; 37:25;65:17;69:13;73:21; 84:11;102:17;105:3,12; 114:3;117:14 above (2) 94:25,25 absolutely (6) 30:25;53:24;108:4; 30:25;53:24;108:4 accept (10) 36:3,5,14;43:14;57:10; 36:3,5,14;43:14;57:10 accepted (2) 82:12,12 access (118) 5:4;11:6;5:4;17:15;18:2; 19:3,4,4;21:11,13;22:5; 25:21,23;36:15,17,20; 38:4,4,7,17,21;11:6;48:5, 6,13,17,22;57:8,13;58:6; 17:15;18:2;19:3,4,4; 21:11,13;22:5;85:24,24; 86:19,22;91:5,13;92:16, 18,24;96:3;25:21,23; 97:10;105:16,17,22,24; 109:10,15;110:4;111:8, 10;115:5;118:14;119:9; 120:1;122:2,5,17;123:4, 13,14;124:3;36:15,17,20; 38:4,4,7,17,21;48:5,6,13, 17,22;57:8,13;58:6;85:24,			
6				
63 (1) 2:5 64 (2) 90:13,13 67 (1) 2:5				
7				
7 (6) 18:12;22:17;46:5;18:12; 22:17;46:5 74 (1) 2:5 75 (2) 79:1,1 775 (3) 1:5,5;2:5 78 (1)				

<p>agency (16) 7:12,12;34:13;56:7,8; 70:16;98:16;103:6; 118:18;34:13;56:7,8; 70:16;98:16;103:6; 118:18</p> <p>ago (22) 45:21;60:14,15,17;62:1, 19;65:1,2;67:18;74:14; 80:5;45:21;60:14,15,17; 62:1,19;65:1,2;67:18; 74:14;80:5</p> <p>agree (12) 50:10;52:5;70:14; 122:24;123:11,23;50:10; 52:5;70:14;122:24; 123:11,23</p> <p>agreement (28) 17:15;48:6,13,13,17,23; 57:9;17:15;105:16,18,24; 109:10,13,14,15;48:6,13, 13,17,23;57:9;105:16,18, 24;109:10,13,14,15</p> <p>AG's (2) 71:14,14</p> <p>ahead (16) 27:17;31:1;41:18;45:6; 49:1;51:4;77:8;27:17; 113:15;31:1;41:18;45:6; 49:1;51:4;77:8;113:15</p> <p>AIPG (2) 88:21,21</p> <p>air (8) 34:8;40:3;56:6;121:17; 34:8;40:3;56:6;121:17</p> <p>allow (16) 8:5;23:11;8:5;47:8,25; 51:13;52:6;57:5;75:6; 23:11;47:8,25;51:13; 52:6;57:5;75:6</p> <p>allowed (14) 27:12;28:14;47:12; 74:23;80:8;86:12;101:18; 27:12;28:14;47:12;74:23; 80:8;86:12;101:18</p> <p>allows (8) 36:9;53:22;120:11,25; 36:9;53:22;120:11,25</p> <p>almost (2) 73:12,12</p> <p>along (10) 11:2;12:14;11:2;12:14; 56:5;73:20;97:2;56:5; 73:20;97:2</p> <p>alphabet (4) 15:20,20,20,20</p> <p>alternate (2) 110:20,20</p> <p>alternates (2) 110:24,24</p> <p>alternative (2) 112:6,6</p> <p>alternatives (2)</p>	<p>53:14,14</p> <p>always (8) 100:12;103:12,14;104:9; 100:12;103:12,14;104:9</p> <p>amendment (2) 80:1,1</p> <p>American (4) 88:21;89:5;88:21;89:5</p> <p>Among (2) 93:22,22</p> <p>amount (52) 22:14,15;34:25;35:2,9; 73:17;84:4,6;22:14,15; 85:5,9;99:9,19;100:8,14, 16;102:16,21;111:17,19; 112:4,7,24;113:2,3;117:3, 11;34:25;35:2,9;73:17; 84:4,6;85:5,9;99:9,19; 100:8,14,16;102:16,21; 111:17,19;112:4,7,24; 113:2,3;117:3,11</p> <p>amounts (2) 101:12,12</p> <p>amusement (4) 115:23,24,23,24</p> <p>analysis (6) 50:25;51:2;56:20;50:25; 51:2;56:20</p> <p>ancestors (2) 55:14,14</p> <p>Anderson (2) 120:13,13</p> <p>animals (2) 73:17,17</p> <p>annual (2) 103:5,5</p> <p>anthropology (2) 78:16,16</p> <p>anticipated (8) 11:10,10;85:10;110:8; 119:2;85:10;110:8;119:2</p> <p>anyplace (2) 68:8,8</p> <p>apologize (2) 12:8,8</p> <p>apparent (2) 42:10,10</p> <p>APPEAL (21) 1:5;3:5,10,15,23;7:14; 3:5,10,15,23;21:15,16,17; 7:14;47:22;64:9;21:15, 16,17;47:22;64:9</p> <p>appealed (4) 30:20;67:25;30:20;67:25</p> <p>appeals (8) 4:6,6;18:16;47:22;52:21; 18:16;47:22;52:21</p> <p>appeared (2) 97:23,23</p> <p>appears (6) 54:6;97:12,18;54:6; 97:12,18</p> <p>APPELLANT (23)</p>	<p>1:5;6:14;7:22;6:14; 23:20;7:22;40:8,12;44:4; 46:20;52:7;67:11;23:20; 93:2;114:23;40:8,12; 44:4;46:20;52:7;67:11; 93:2;114:23</p> <p>appellants (10) 5:3,18,3,18;92:23;94:11; 115:1;92:23;94:11;115:1</p> <p>appellant's (10) 7:23,23;38:5;77:7;96:6; 106:4;38:5;77:7;96:6; 106:4</p> <p>appended (4) 82:9,19,9,19</p> <p>appendix (2) 82:19,19</p> <p>applicant (40) 10:9;12:15;13:16;16:2,8; 19:21;22:7;23:18,19; 25:22;27:5,6,7;33:19; 10:9;37:9,18;41:4,11; 44:9;12:15;13:16;16:2,8; 19:21;22:7;23:18,19; 25:22;27:5,6,7;116:10; 33:19;37:9,18;41:4,11; 44:9;116:10</p> <p>applicants (2) 35:14,14</p> <p>application (96) 5:12,25;6:1,3;10:3,14; 11:24;12:1,4;13:12;16:1, 3;5:12,25;6:1,3;30:3; 31:16;32:15,16;33:5,21; 35:1,5,8,19;10:3,14; 37:14;11:24;12:1,4; 13:12;16:1,3;64:9;69:6; 79:3;80:12;81:12;82:4,7, 18,20,21;83:14;84:3,5; 86:22;92:9,12;99:4; 101:1;104:4;107:23; 108:1;111:4;115:18;30:3; 118:10,14;31:16;32:15, 16;33:5,21;35:1,5,8,19; 37:14;64:9;69:6;79:3; 80:12;81:12;82:4,7,18,20, 21;83:14;84:3,5;86:22; 92:9,12;99:4;101:1; 104:4;107:23;108:1; 111:4;115:18;118:10,14</p> <p>applications (6) 33:17;78:20,25;33:17; 78:20,25</p> <p>applies (6) 38:18;52:3;109:9;38:18; 52:3;109:9</p> <p>apply (16) 12:24,24;52:21;53:20; 66:3;78:9;117:15;120:7; 121:10;52:21;53:20;66:3; 78:9;117:15;120:7; 121:10</p> <p>appreciate (4)</p>	<p>52:9;66:25;52:9;66:25</p> <p>approach (4) 101:6;110:4;101:6;110:4</p> <p>approached (6) 26:21;46:9;47:5;26:21; 46:9;47:5</p> <p>appropriate (10) 8:14,14;37:10;39:9; 101:11;123:10;37:10; 39:9;101:11;123:10</p> <p>approval (2) 124:17,17</p> <p>approve (2) 124:8,8</p> <p>approved (4) 35:1;80:8;35:1;80:8</p> <p>approximate (2) 11:6,6</p> <p>approximately (10) 43:15;60:16;88:10;89:3; 90:11;43:15;60:16;88:10; 89:3;90:11</p> <p>April (2) 94:24,24</p> <p>archeological (2) 85:21,21</p> <p>archeologist (2) 85:18,18</p> <p>area (76) 10:7,22,25;13:18;21:18; 10:7,22,25;45:23;13:18; 55:3;62:5,17;63:1,11; 65:11;68:1,7,14;69:12; 70:4;71:9,10,12;72:18,19; 73:18;79:12,19;80:19,19; 21:18;81:8;90:10;91:7, 16,25;98:7;107:10; 109:10;116:1,2;124:4; 45:23;55:3;62:5,17;63:1, 11;65:11;68:1,7,14; 69:12;70:4;71:9,10,12; 72:18,19;73:18;79:12,19; 80:19,19;81:8;90:10; 91:7,16,25;98:7;107:10; 109:10;116:1,2;124:4</p> <p>areas (16) 11:12,12;71:2,21;90:6; 91:14;102:21;110:2; 119:19;71:2,21;90:6; 91:14;102:21;110:2; 119:19</p> <p>argue (2) 73:15,15</p> <p>argument (4) 50:9;118:5;50:9;118:5</p> <p>arguments (2) 114:22,22</p> <p>around (8) 44:5;59:23;60:2;108:21; 44:5;59:23;60:2;108:21</p> <p>articulated (2) 122:6,6</p> <p>artifacts (10)</p>	<p>55:17;56:13;71:23;72:9, 13;55:17;56:13;71:23; 72:9,13</p> <p>aside (4) 28:21;89:1;28:21;89:1</p> <p>aspect (4) 121:21;124:5;121:21; 124:5</p> <p>assert (4) 52:23;54:8;52:23;54:8</p> <p>asserted (12) 52:18;53:1,17;58:11; 113:12,22;52:18;53:1,17; 58:11;113:12,22</p> <p>Assessor (2) 60:13,13</p> <p>assessor's (4) 20:12,13,12,13</p> <p>assistant (2) 12:10,10</p> <p>assisted (2) 92:13,13</p> <p>assisting (2) 102:1,1</p> <p>Association (4) 15:2,2;84:20,20</p> <p>assume (6) 10:9,9;43:7;75:24;43:7; 75:24</p> <p>assumed (2) 48:18,18</p> <p>assuming (2) 48:20,20</p> <p>astounded (2) 47:14,14</p> <p>atlas (4) 98:9,15,9,15</p> <p>attached (10) 19:10;22:18;19:10; 22:18;93:10,22;95:4; 93:10,22;95:4</p> <p>attachment (6) 17:8;42:16;17:8;95:6; 42:16;95:6</p> <p>attended (2) 45:22,22</p> <p>attention (2) 93:23,23</p> <p>Attorney (23) 1:5,5,5;4:11;6:19;8:3,4, 8;4:11;6:19;27:12;28:12, 20;8:3,4,8;53:22;27:12; 28:12,20;117:17;53:22; 117:17</p> <p>attorneys (4) 24:19;44:22;24:19;44:22</p> <p>aunt (16) 45:18,19;58:21,22,23,24; 60:21,23;45:18,19;58:21, 22,23,24;60:21,23</p> <p>authorities (2) 111:13,13</p> <p>authority (8)</p>
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<p>5:9;6:11;7:10;5:9;6:11; 24:7;7:10;24:7 authorize (4) 17:23;21:13;17:23;21:13 avenues (2) 122:4,4 avoid (6) 53:15;72:2;116:2;53:15; 72:2;116:2 aware (20) 34:6;47:21;54:13,15; 69:20;71:7;83:17;102:4; 107:16;121:22;34:6; 47:21;54:13,15;69:20; 71:7;83:17;102:4;107:16; 121:22 awareness (4) 102:3;103:12;102:3; 103:12 away (2) 84:12,12</p>	<p>Basin (2) 15:3,3 basis (14) 12:17,17;49:17;50:6; 51:8;92:6;118:13;119:5; 49:17;50:6;51:8;92:6; 118:13;119:5 bate (2) 12:9,9 Bay (2) 59:1,1 bear (4) 5:15;6:2;5:15;6:2 bears (2) 114:2,2 beautiful (2) 45:24,24 became (2) 79:6,6 become (6) 42:10;89:20;120:2; 42:10;89:20;120:2 becoming (4) 55:5,10,5,10 begin (4) 4:9,9;100:5,5 beginning (6) 49:22;79:5;117:13; 49:22;79:5;117:13 behalf (12) 6:14;8:21;6:14;8:21; 45:9;67:10;77:21;87:19; 45:9;67:10;77:21;87:19 belong (2) 90:25,25 benefit (4) 112:3;115:11;112:3; 115:11 benefits (2) 24:6,6 berms (2) 91:24,24 best (4) 63:15;110:25;63:15; 110:25 Bethany (8) 15:12,12,13,16,12,12,13, 16 better (2) 36:13,13 beyond (14) 7:12,12;55:22;70:22; 72:16;81:5;113:24,25; 55:22;70:22;72:16;81:5; 113:24,25 big (4) 6:8,8;28:3,3 Bill (8) 17:7,9,11,7,9,11;94:4,4 binder (8) 32:20;43:15;47:18; 48:24;32:20;43:15;47:18; 48:24</p>	<p>binders (2) 100:25,25 binds (2) 48:7,7 biologist (6) 55:2;68:4;73:20;55:2; 68:4;73:20 birds (2) 73:17,17 bit (16) 25:18;28:3;35:5,9;38:3; 53:9;25:18;104:2;28:3; 121:13;35:5,9;38:3;53:9; 104:2;121:13 black (6) 96:7;97:22;100:25;96:7; 97:22;100:25 Blair (12) 46:5,11,15;98:25;105:18; 109:13;46:5,11,15;98:25; 105:18;109:13 Blair's (4) 46:17,19,17,19 blanket (4) 50:5;51:16;50:5;51:16 BLM (54) 50:22;51:9,11;53:3,4,8, 19;54:16,16;71:23;72:15; 79:9,11,13,14;80:6,24; 84:19;85:17;92:2,95:12, 13;97:14;104:25;107:4; 123:14,17;50:22;51:9,11; 53:3,4,8,19;54:16,16; 71:23;72:15;79:9,11,13, 14;80:6,24;84:19;85:17; 92:2;95:12,13;97:14; 104:25;107:4;123:14,17 blue (18) 47:7;80:20,25;86:8,10; 107:1,2,7;108:2;47:7; 80:20,25;86:8,10;107:1,2, 7;108:2 Board (2) 5:14,14 Bob (8) 53:3;68:11;71:24;72:22; 53:3;68:11;71:24;72:22 bode (2) 54:5,5 bond (54) 18:4;22:15;29:2;34:25; 35:10;41:8,9,22;42:3,7, 12,14,20,21,23;43:23; 44:5,6;18:4;84:4,12; 22:15;99:9,24,25;100:8; 102:18;29:2;117:3,11; 34:25;35:10;41:8,9,22; 42:3,7,12,14,20,21,23; 43:23;44:5,6;84:4,12; 99:9,24,25;100:8;102:18; 117:3,11 bonded (2) 99:22,22</p>	<p>bonds (2) 84:16,16 book (4) 12:8;44:25;12:8;44:25 border (2) 98:4,4 both (16) 71:23;73:13;74:13;84:7; 98:11;104:25;108:1; 123:23;71:23;73:13; 74:13;84:7;98:11;104:25; 108:1;123:23 bottom (4) 49:22;50:4;49:22;50:4 bought (6) 45:22;59:18;64:22; 45:22;59:18;64:22 boundaries (4) 91:22,22,22,22 boundary (2) 94:9,9 branch (2) 9:11,11 break (6) 77:13;121:13,19;77:13; 121:13,19 breakdowns (2) 83:3,3 brief (6) 84:4;92:11;116:20;84:4; 92:11;116:20 Briefly (2) 7:2,2 bring (2) 68:22,22 bringing (2) 117:25,25 broker (2) 117:18,18 brought (12) 27:13;29:25;30:16;31:5; 71:18;27:13;29:25;30:16; 117:12;31:5;71:18; 117:12 Buena (4) 104:14;110:15;104:14; 110:15 Buhler (8) 53:8,9;54:16;75:5;53:8, 9;54:16;75:5 build (8) 5:8,9,8,9;24:7;54:7;24:7; 54:7 building (4) 3:16,16;46:6,6 built (6) 13:3;25:21;13:3;25:21; 108:21,21 bunch (2) 122:3,3 Bunte (26) 17:10;20:8;45:17,18; 59:2,6,8,9,9;60:4,6,7;</p>	<p>17:10;75:15;20:8;45:17, 18;59:2,6,8,9,9;60:4,6,7; 75:15 Bureau (82) 5:3,22;6:11;9:8,10;15:17, 18;5:3,22;6:11;23:4,8,11, 22,25;24:1,7;25:5,15;9:8, 10;33:13;34:13,14,15,17; 35:13;39:9,18;40:15,18; 20;41:5;47:10;15:17,18; 57:19,20,21;72:9,13;76:2; 81:16,20;23:4,8,11,22,25; 24:1,7;93:12;94:2;25:5, 15;121:20;124:9;33:13; 34:13,14,15,17;35:13; 39:9,18;40:15,18,20;41:5; 47:10;57:19,20,21;72:9, 13;76:2;81:16,20;93:12; 94:2;121:20;124:9 Bureau's (4) 6:3,3;116:15,15 business (4) 78:17;111:5;78:17;111:5 buy (4) 57:12;61:9;57:12;61:9 Buzz (4) 60:13;62:4;60:13;62:4</p>
B		C		
<p>bachelor (2) 9:13,13 bachelor's (4) 78:15;88:16;78:15;88:16 back (36) 15:21;20:1,19;28:9; 41:11,22;42:5,14,24; 15:21;63:1,66;2,9;20:1, 19;77:13,15;84:10; 106:25;28:9;123:7,13; 41:11,22;42:5,14,24;63:1; 66:2,9;77:13,15;84:10; 106:25;123:7,13 background (4) 9:12,12;93:17,17 backhoe (2) 73:9,9 backwards (2) 19:22,22 bankruptcy (2) 41:4,4 Barrick (8) 89:4,5,6,12,4,5,6,12 Barrick's (2) 89:16,16 based (16) 71:4;81:22;100:6,12; 104:6,12;105:23;124:7; 71:4;81:22;100:6,12; 104:6,12;105:23;124:7 basic (4) 90:3;91:15;90:3;91:15 basically (22) 16:12;36:9;50:9;16:12; 91:15;93:9;96:8;99:16; 101:6,25;102:18;103:15; 36:9;50:9;91:15;93:9; 96:8;99:16;101:6,25; 102:18;103:15</p>	<p>cadastral (22) 95:10,15,24;96:2;97:8, 13,16,18,24;98:2;120:5; 95:10,15,24;96:2;97:8,13, 16,18,24;98:2;120:5 Cal (2) 9:14,14 calculate (6) 84:6,16,22,6,16,22 calculated (8) 35:2,9;73:11;85:1;35:2, 9;73:11;85:1 calculates (2) 23:2,2 calculating (4) 35:14;85:9;35:14;85:9 calculation (8) 16:10,10;84:3,5;99:9; 84:3,5;99:9 California (10) 58:20;59:1,20;61:11,19; 58:20;59:1,20;61:11,19 call (28) 3:4;4:1,22;7:25;8:17;3:4; 4:1,22;17:18;20:20;7:25; 8:17;57:5;17:18;66:21; 20:20;77:17;87:15;94:11; 106:21;114:12;57:5; 66:21;77:17;87:15;94:11; 106:21;114:12 called (24) 8:21;20:8,15;22:23;8:21; 42:14;45:9;67:10;20:8,</p>			

<p>15;77:21;84:17;22:23; 87:19;97:1;98:21;42:14; 45:9;67:10;77:21;84:17; 87:19;97:1;98:21 calling (4) 40:2;64:12;40:2;64:12 calls (10) 16:21,22;20:20;28:11; 54:2;16:21,22;20:20; 28:11;54:2 came (14) 20:21;42:22;75:24; 20:21;84:5,21;112:10; 123:11;42:22;75:24;84:5, 21;112:10;123:11 CAMERON (3) 1:5;125:4,19.5 camping (2) 104:16,16 can (104) 6:15,16;7:25;11:13; 12:12;13:23;17:2;18:12, 24;6:15,16;7:25;25:18; 27:15;28:5,20,24;29:7,8, 9;35:7,16;38:25;39:11; 40:9;11:13;44:3;12:12; 13:23;49:10;52:23;17:2; 66:12;18:12,24;69:10,15; 70:6;72:24;73:15;80:15; 84:4,13;91:7;96:5;25:18; 100:5,25;104:9;27:15; 105:22;28:5,20,24; 109:23,25;110:22; 112:14;29:7,8,9;113:24; 115:21;116:7;117:10; 119:7;122:1,4,8;35:7,16; 38:25;39:11;40:9;44:3; 49:10;52:23;66:12;69:10, 15;70:6;72:24;73:15; 80:15;84:4,13;91:7;96:5; 100:5,25;104:9;105:22; 109:23,25;110:22; 112:14;113:24;115:21; 116:7;117:10;119:7; 122:1,4,8 Capistrano (2) 59:3,3 CAPITOL (3) 1:5,5;2:5 care (6) 28:5,7;42:1;28:5,7;42:1 caretaker (2) 65:22,22 CARSON (9) 1:5,5;3:1,12,1,12;125:2, 8,14 case (20) 4:22;5:2;7:19,23;8:14; 4:22;16:4;5:2;7:19,23; 8:14;37:13;16:4;101:8; 120:13,15;37:13;101:8; 120:13,15 cases (2)</p>	<p>54:18,18 cash (2) 99:25,25 categories (2) 121:19,19 cattle (2) 104:24,24 cause (2) 112:23,23 CCR (2) 1:5;125:19.5 center (2) 96:14,14 Central (4) 93:24;119:22;93:24; 119:22 century (2) 94:15,15 certain (8) 13:1;34:23;13:1;73:10; 85:5;34:23;73:10;85:5 certainly (12) 52:17;101:17;102:14; 104:10;115:3,14;52:17; 101:17;102:14;104:10; 115:3,14 certified (2) 88:20,20 certify (1) 125:5 cetera (4) 54:8;67:23;54:8;67:23 CFR (2) 81:18,18 Chair (6) 3:6,6;87:15;112:17; 87:15;112:17 Chairman (279) 1:5;3:4,22;4:2,9,12;6:14, 25;7:2,18;8:13,16;3:4,22; 4:2,9,12;6:14,25;24:18, 23;7:2,18;25:6,12,17,25; 26:3,9,24;27:15,19;28:15; 8:13,16;29:9,15;30:2,6; 31:9,13,25;32:7,10,12; 38:14;39:13;41:14,18; 43:4,11,14;44:16,18;45:3, 6;46:14,18,22,25;47:19; 48:12,20;49:1,13;50:2,10, 17,23;51:4,10,12,20,25; 52:5,12;56:24;57:2; 58:13;61:20;63:20;66:20; 67:1,5,24;68:19;69:11,15; 70:14,22;71:1,20;72:6,9, 12;73:24;74:4,7,17,19,23; 75:2,6,13,16,20,24;76:10, 20,24;77:2,6,12,15,17; 86:6,18;87:1,12;24:18,23; 93:7;25:6,12,17,25;26:3, 9,24;27:15,19;105:11; 106:14,15,18,24;108:16; 28:15;111:7;29:9,15; 113:3,7,14,25;114:5,7,9,</p>	<p>11,14,15,18,20,21; 116:18;30:2,6;118:2,4; 31:9,13,25;121:5;122:13, 23;123:23;124:3,11,14, 16;32:7,10,12;38:14; 39:13;41:14,18;43:4,11, 14;44:16,18;45:3,6;46:14, 18,22,25;47:19;48:12,20; 49:1,13;50:2,10,17,23; 51:4,10,12,20,25;52:5,12; 56:24;57:2;58:13;61:20; 63:20;66:20;67:1,5,24; 68:19;69:11,15;70:14,22; 71:1,20;72:6,9,12;73:24; 74:4,7,17,19,23;75:2,6,13, 16,20,24;76:10,20,24; 77:2,6,12,15,17;86:6,18; 87:1,12;93:7;105:11; 106:14,15,18,24;108:16; 111:7;113:3,7,14,25; 114:5,7,9,11,14,15,18,20, 21;116:18;118:2,4;121:5; 122:13,23;123:23;124:3, 11,14,16 chance (2) 7:24,24 change (2) 68:10,10 changed (6) 24:12;68:12;72:19; 24:12;68:12;72:19 changes (2) 80:2,2 Chapter (8) 11:16;34:7;11:16;81:24; 122:20;34:7;81:24; 122:20 characterize (2) 33:7,7 charge (8) 33:17;68:18;100:15; 109:7;33:17;68:18; 100:15;109:7 charged (2) 33:14,14 CHARLES (13) 2:5;22:19;23:15;47:24; 22:19;87:15,18;88:2; 23:15;47:24;87:15,18; 88:2 check (10) 16:6;22:22;42:9,18; 43:21;16:6;22:22;42:9, 18;43:21 checked (2) 22:21,21 checkerboard (2) 108:10,10 chemicals (2) 25:9,9 Chief (4) 15:18;19:12;15:18;19:12 children (2)</p>	<p>46:4,4 choose (2) 35:16,16 chose (4) 111:18;112:2;111:18; 112:2 chosen (2) 110:18,18 Circuit (2) 52:20,20 circumstances (2) 45:25,25 cited (4) 55:1;120:13;55:1;120:13 citing (2) 48:1,1 Citizen (2) 75:8,8 City (9) 1:5,5;3:1,12,1,12;125:2, 8,14 claim (16) 19:1,1;90:13;96:9;97:4, 10;119:17,24,24;90:13; 96:9;97:4,10;119:17,24, 24 claiming (4) 63:12,13,12,13 claims (20) 62:22;90:11,12,13,15,18, 22;97:2,20;119:18;62:22; 90:11,12,13,15,18,22; 97:2,20;119:18 clarify (2) 92:21,21 clause (2) 28:14,14 clean (16) 24:25;25:8;31:20;37:21; 42:4;24:25;25:8;103:17, 17;118:22;31:20;37:21; 42:4;103:17,17;118:22 cleaned (2) 34:23,23 clear (2) 108:4,4 clearly (2) 57:18,18 client (4) 76:8;116:12;76:8;116:12 clients (2) 4:17,17 close (6) 117:9;121:6,11;117:9; 121:6,11 closing (6) 114:22;116:19;118:3; 114:22;116:19;118:3 closure (2) 40:22,22 cloud (2) 54:11,11 clouds (2)</p>	<p>54:24,24 clue (2) 63:16,16 Code (10) 9:25;11:16;13:2;9:25; 11:16;13:2;81:18;99:1; 81:18;99:1 color (4) 80:23,24,23,24 Colorado (10) 88:3,3,17,17,17,3,3,17, 17,17 colors (4) 80:21;108:6;80:21;108:6 column (2) 15:8,8 coming (8) 66:25;103:17;110:19; 120:17;66:25;103:17; 110:19;120:17 comment (18) 16:24;18:6;19:23;20:3; 38:1;16:24;18:6;19:23; 20:3;97:25;105:13;121:4, 9;38:1;97:25;105:13; 121:4,9 commented (4) 20:18,18;121:5,5 comments (32) 14:5;16:21;17:4,14,17; 18:6,8;19:8,23,25;20:2,4, 5,6;21:2;14:5;16:21;17:4, 14,17;18:6,8;19:8,23,25; 20:2,4,5,6;21:2;122:23,23 COMMISSION (44) 1:5,5,5;3:5,8;7:10,21; 8:3,8;3:5,8;24:19;7:10, 21;26:5;8:3,8;36:18;57:2; 24:19;93:8;26:5;111:9; 114:1;115:3,9;119:7; 120:22,25;122:18; 123:21;36:18;57:2;93:8; 111:9;114:1;115:3,9; 119:7;120:22,25;122:18; 123:21;125:5 commissioned (2) 56:8,8 Commissioner (2) 122:25,25 Commissioners (12) 4:13;5:13;12:9;4:13; 13:17;5:13;12:9;13:17; 49:2;80:17;49:2;80:17 Commission's (2) 3:16,16 common (12) 12:5;37:19,20;12:5; 91:15;102:19;110:3; 37:19,20;91:15;102:19; 110:3 communications (2) 93:11,11 community (2)</p>
--	--	---	---	---

<p>123:6,6 companies (12) 78:9,10,12,12;89:4,9; 78:9,10,12,12;89:4,9 company (76) 33:8;35:2;41:7;47:16; 48:14;54:6;57:15;78:25; 80:1,8;83:14,22,25;84:8, 11;85:4,6;86:18;89:10, 24;90:1;91:1;92:22;93:5; 94:8,24;96:23;97:9; 99:20;100:9;105:6;111:1; 112:18,22;118:15,23; 119:1,1;33:8;35:2;41:7; 47:16;48:14;54:6;57:15; 78:25;80:1,8;83:14,22,25; 84:8,11;85:4,6;86:18; 89:10,24;90:1;91:1; 92:22;93:5;94:8,24; 96:23;97:9;99:20;100:9; 105:6;111:1;112:18,22; 118:15,23;119:1,1 company's (4) 101:21;103:8;101:21; 103:8 compared (2) 84:25,25 competent (2) 118:8,8 complete (8) 10:7;11:23,24;10:7; 11:23,24;74:5,5 completed (4) 43:21;97:19;43:21;97:19 completely (2) 117:9,9 completeness (2) 98:1,1 completion (2) 98:4,4 compliance (4) 24:14;84:1;24:14;84:1 complicated (2) 117:25,25 complied (2) 115:19,19 complies (2) 118:11,11 comply (2) 22:10,10 concern (4) 28:4,4;119:21,21 concerned (6) 58:4;69:14;112:10;58:4; 69:14;112:10 concerning (2) 93:18,18 concerns (14) 30:16;31:4;54:19;57:24; 69:15;71:5;30:16;31:4; 123:21;54:19;57:24; 69:15;71:5;123:21 concluded (2)</p>	<p>124:20,20 conclusion (4) 28:11;35:19;28:11;35:19 condition (4) 84:10;100:2;84:10;100:2 conduct (2) 103:14,14 conducted (2) 95:17,17 conducting (2) 80:20,20 Conference (1) 125:7 conform (4) 81:24;83:14;81:24;83:14 confused (4) 25:17,17;100:23,23 Congress (2) 119:25,25 CONNIE (17) 1:5;21:20;22:2;45:19; 58:21;59:25;63:17;65:13; 21:20;22:2;98:12;45:19; 58:21;59:25;63:17;65:13; 98:12 consensus (2) 84:21,21 Conservancy (2) 67:19,19 Conservation (4) 34:17;67:22;34:17;67:22 conservative (4) 85:2,8,2,8 consider (14) 5:6,6;23:11;25:12;56:11; 23:11;25:12;110:20,24; 118:7;56:11;110:20,24; 118:7 consideration (2) 56:17,17 considered (8) 50:8;72:14;90:1;111:24; 50:8;72:14;90:1;111:24 considering (2) 5:8,8 consistent (6) 48:8;49:7;93:19;48:8; 49:7;93:19 consisting (1) 125:10 consolidated (2) 4:7,7 constant (6) 52:18;104:11;113:19; 52:18;104:11;113:19 constantly (2) 72:4,4 constitution (2) 119:12,12 consultant (14) 12:2,16,2,16;64:10,16; 78:14;83:17;89:10;64:10, 16;78:14;83:17;89:10</p>	<p>consulting (4) 78:9;89:10;78:9;89:10 consumer (2) 40:3,3 contact (6) 38:25;39:9;84:13;38:25; 39:9;84:13 contacted (14) 12:2;20:13,15;21:1;27:5; 12:2;47:10;76:2;20:13, 15;21:1;27:5;47:10;76:2 contain (2) 55:23,23 containers (4) 101:12;117:5;101:12; 117:5 containing (2) 117:4,4 contains (2) 51:21,21 contaminant (4) 28:8;37:3;28:8;37:3 contaminants (14) 33:13;34:2,7;38:25;82:4; 118:17,24;33:13;34:2,7; 38:25;82:4;118:17,24 contaminated (18) 5:20,20;23:21,21,24; 24:24;25:1,4,8;31:20; 23:21,21,24;24:24;25:1,4, 8;31:20 contamination (10) 5:19,19;29:23;30:8,22; 34:23;29:23;30:8,22; 34:23 contemplate (4) 83:7;101:15;83:7;101:15 contemplating (2) 103:25,25 continue (2) 90:21,21 continued (6) 54:2,4;115:22;54:2,4; 115:22 continuous (2) 52:15,15 continuously (4) 53:23;66:13;53:23;66:13 contractor (2) 102:2,2 contractors (4) 100:15;102:3;100:15; 102:3 contradicted (2) 118:8,8 Contrary (2) 5:2,2 controlled (6) 89:8;101:12;102:2;89:8; 101:12;102:2 convened (2) 3:11,11 conversation (2)</p>	<p>30:18,18 conversations (4) 26:19;30:24;26:19;30:24 cooperative (2) 33:8,8 Copies (16) 3:17;7:4,5;8:12;3:17; 15:5,5;7:4,5;8:12;15:5,5; 91:13;108:7;91:13;108:7 copy (36) 3:15,15;15:24;18:19; 21:18;24:3;30:19;44:23; 47:17;48:25;15:24;66:8, 9;18:19;75:10;76:12; 21:18;91:9,10,12;24:3; 97:14;101:1;30:19;44:23; 47:17;48:25;66:8,9; 75:10;76:12;91:9,10,12; 97:14;101:1 Cornell (2) 67:20,20 corporate (2) 103:13,13 Corporation (10) 88:6;89:5,5,6,11;88:6; 89:5,5,6,11 corrected (2) 116:4,4 correction (2) 56:22,22 corrections (2) 44:2,2 Corrective (8) 23:25;25:5,15;34:15; 23:25;25:5,15;34:15 correctly (8) 21:23;57:9;21:23;86:8; 122:7;57:9;86:8;122:7 correspondence (2) 7:9,9 cost (34) 10:8;16:7,8,14,14,15; 22:24;23:3;35:10,15; 10:8;40:25;41:1,5;16:7,8, 14,14,15;84:17,18,22,25; 22:24;23:3;35:10,15; 40:25;41:1,5;84:17,18,22, 25 costs (12) 16:12;35:14,20;16:12; 102:12;118:22,25;35:14, 20;102:12;118:22,25 counsel (10) 113:17;121:25;122:3,11, 13;113:17;121:25;122:3, 11,13 counties (2) 36:2,2 countries (2) 67:21,21 country (6) 55:21;97:6;121:16; 55:21;97:6;121:16</p>	<p>County (44) 13:16;20:13;36:13,19; 37:1;42:25;13:16;52:22, 22,24;53:2;58:12;60:9, 13;20:13;98:19,22; 111:13;113:12,17; 119:13;120:22,25; 123:14;36:13,19;37:1; 42:25;52:22,22,24;53:2; 58:12;60:9,13;98:19,22; 111:13;113:12,17; 119:13;120:22,25;123:14 couple (4) 24:23,23;104:20,20 course (6) 6:7,7;115:10;122:8; 115:10;122:8 Court (17) 52:20;53:18;54:18; 119:13;120:15,18;121:3; 122:3;52:20;53:18;54:18; 119:13;120:15,18;121:3; 122:3;125:4 cover (10) 22:11;31:13;67:4;22:11; 103:12;108:1;31:13;67:4; 103:12;108:1 covered (2) 18:3,3 covers (6) 11:20;26:7;11:20;26:7; 109:5,5 cow (2) 52:16,16 CP (1) 1:5 cradle (2) 96:13,13 create (12) 91:19;100:10;102:7,11, 21;119:23;91:19;100:10; 102:7,11,21;119:23 created (2) 13:2,2 creating (2) 102:13,13 Creek (24) 29:23;30:13;31:5;54:20; 55:8;56:6,12;96:10; 108:21,22;29:23;116:1,2; 30:13;31:5;54:20;55:8; 56:6,12;96:10;108:21,22; 116:1,2 crew (2) 91:4,4 criminal (2) 34:11,11 criminalize (2) 118:20,20 CROSS (13) 2:5;47:8;53:6,23; 105:22;110:6;119:25; 47:8;53:6,23;105:22;</p>
--	---	--	---	--

<p>110:6;119:25 cross-crossing (2) 108:22,22 cross-examination (22) 4:21;7:21;4:21;24:17; 7:21;26:11;32:13;58:16; 63:22;74:8;87:4;24:17; 26:11;108:19;109:2; 32:13;58:16;63:22;74:8; 87:4;108:19;109:2 cross-examine (2) 52:1,1 cross-examined (2) 71:19,19 curious (2) 57:25,25 current (4) 92:6;104:11;92:6;104:11 currently (2) 57:13,13 customary (2) 18:10,10 cut (4) 91:24;93:19;91:24;93:19</p>	<p>Dave (2) 15:18,18 David (2) 19:11,11 Davis (2) 98:12,12 Davis-Bacon (2) 100:13,13 day (8) 103:21;104:20;107:17; 103:21;104:20;107:17; 125:6,14 days (6) 18:16;33:10;36:8;18:16; 33:10;36:8 DC (4) 53:9;123:17;53:9;123:17 deal (10) 24:1;28:15;24:1;28:15; 117:2;122:8,8;117:2; 122:8,8 dealing (4) 89:18,24,18,24 deals (6) 37:3;39:1;71:2;37:3; 39:1;71:2 dealt (2) 5:20,20 dear (2) 57:18,18 decide (6) 28:21;55:24;67:5;28:21; 55:24;67:5 decides (2) 56:5,5 decision (32) 18:9,14;20:2,21;21:2,6; 22:18;24:4;29:20,24; 30:1;31:7,12;18:9,14; 20:2,21;21:2,6;22:18; 24:4;111:5;29:20,24; 116:15;30:1;31:7,12; 123:2;111:5;116:15; 123:2 declaration (18) 93:8,14,20;95:5;99:20; 106:8,11,15,23;93:8,14, 20;95:5;99:20;106:8,11, 15,23 decree (2) 36:20,20 deed (4) 94:1;108:9;94:1;108:9 deeds (4) 55:23;106:9;55:23;106:9 deep (2) 122:16,16 deficiencies (4) 32:16;33:5;32:16;33:5 defined (2) 91:23,23 degradation (4) 110:12;116:3;110:12;</p>	<p>116:3 degrade (10) 112:3,15,19,22;113:5; 112:3,15,19,22;113:5 degraded (2) 112:7,7 degree (4) 78:15;88:16;78:15;88:16 delivery (6) 37:4;99:2;113:18;37:4; 99:2;113:18 density (2) 36:9,9 deny (2) 13:13,13 Department (30) 7:10;13:20;24:4;7:10; 34:16,17;39:3;13:20; 52:24;57:25;69:24;70:2, 17;76:3;24:4;95:12; 98:10,18;34:16,17;39:3; 52:24;57:25;69:24;70:2, 17;76:3;95:12;98:10,18 departments (2) 64:15,15 depict (2) 80:25,25 Deputy (2) 1:5,5 describe (6) 80:16,16;92:11;80:16,16; 92:11 described (4) 84:15;100:11;84:15; 100:11 describes (18) 10:25;11:7,11;13:11; 16:9;22:7,9;10:25;11:7, 11;13:11;16:9;80:18; 84:3;22:7,9;80:18;84:3 description (4) 11:3,3;82:24,24 descriptions (2) 83:1,1 deserve (2) 52:13,13 designate (6) 36:13,14;120:25;36:13, 14;120:25 designated (2) 36:19,19 designation (2) 98:20,20 destroying (2) 56:13,13 destruction (4) 56:12;73:20;56:12;73:20 detailed (4) 7:7,7;90:3,3 determination (8) 18:25;35:21;18:25; 70:23;99:19;35:21;70:23; 99:19</p>	<p>determine (4) 7:11,11;69:5,5 determined (6) 11:23;13:6;11:23;13:6; 92:4,4 determining (2) 99:10,10 develop (2) 55:25,25 developer (2) 69:19,19 development (4) 68:3,4,3,4 Dicus (10) 21:20,24;22:2;45:20; 59:13;21:20,24;22:2; 45:20;59:13 different (32) 19:21;36:16;38:7;45:23; 64:13;19:21;75:9,11,18; 80:21,21;86:3;89:9; 91:14;102:9;117:2;122:4; 36:16;38:7;45:23;64:13; 75:9,11,18;80:21,21;86:3; 89:9;91:14;102:9;117:2; 122:4 digs (2) 73:9,9 dimensions (2) 22:25,25 DIRECT (21) 2:5;9:1;30:2;9:1;78:1; 87:23;91:16;99:2;102:20; 110:4,7,16;30:2;78:1; 87:23;91:16;99:2;102:20; 110:4,7,16 directly (4) 27:17;39:10;27:17;39:10 dirt (14) 49:10;52:16;54:5;65:19; 73:6;74:3,13;49:10; 52:16;54:5;65:19;73:6; 74:3,13 discharge (8) 33:23;34:1;83:8;119:8; 33:23;34:1;83:8;119:8 discharges (6) 83:19;118:22;123:10; 83:19;118:22;123:10 discharging (2) 118:17,17 disclosed (2) 119:2,2 discovered (2) 71:6,6 Discovery (2) 59:1,1 discuss (8) 14:13;32:3;14:13;71:15; 115:1;32:3;71:15;115:1 discussed (4) 31:8;71:16;31:8;71:16 discussion (4)</p>	<p>121:12;123:3;121:12; 123:3 disputes (2) 23:8,8 disputing (2) 123:18,18 disregard (2) 56:5,5 distances (2) 99:17,17 District (6) 119:13;121:3;122:3; 119:13;121:3;122:3 disturb (10) 33:15;54:7;79:16; 111:17,18;33:15;54:7; 79:16;111:17,18 disturbance (34) 20:10;22:8;25:18;35:20; 40:6,11;72:20;20:10; 22:8;91:18,20;25:18; 99:12,15,19;102:8,11,13, 21;103:15;35:20;40:6,11; 72:20;91:18,20;99:12,15, 19;102:8,11,13,21;103:15 disturbances (12) 18:24;33:18;35:10;63:1; 18:24;100:9;118:20; 33:18;35:10;63:1;100:9; 118:20 disturbed (6) 11:9,9;71:3;73:11;71:3; 73:11 disturbing (6) 56:13;73:19;118:16; 56:13;73:19;118:16 disturbs (2) 84:8,8 divided (2) 69:20,20 Division (18) 8:22;9:9;13:19;8:22;9:9; 34:5;37:13;38:25;39:9; 48:21;13:19;81:4;34:5; 37:13;38:25;39:9;48:21; 81:4 Division's (6) 8:3,8,3,8;50:18,18 document (12) 10:13;13:24;19:6,11; 10:13;13:24;51:20;19:6, 11;79:9;51:20;79:9 documented (2) 54:14,14 documents (10) 49:3;51:18;82:24;93:10, 22;49:3;51:18;82:24; 93:10,22 DODGION (255) 1:5;3:4,6,22;4:2,9;6:14, 25;7:18;8:13,16;3:4,6,22; 4:2,9;6:14,25;24:18,23; 7:18;25:6,12,17,25;26:3,</p>
D				
<p>DA (2) 36:8,8 damage (6) 30:12;85:21;30:12; 119:3;85:21;119:3 damaging (2) 56:1,1 Dan (14) 46:5,11;72:25;75:5; 98:25;105:18;109:13; 46:5,11;72:25;75:5; 98:25;105:18;109:13 danger (8) 49:6;54:20;55:7,9;49:6; 54:20;55:7,9 dark (2) 97:23,23 DARLENE (12) 1:5;2:5;16:23;17:5,10; 20:8;45:8;16:23;17:5,10; 20:8;45:8 dashed (2) 81:7,7 data (8) 35:6,9;72:5;82:23;35:6, 9;72:5;82:23 date (30) 14:5;42:12,13;14:5; 60:17;61:3,5,23;64:22; 80:4;94:16,21;95:1,2,3; 97:16;99:21;42:12,13; 60:17;61:3,5,23;64:22; 80:4;94:16,21;95:1,2,3; 97:16;99:21 dated (3) 32:22,22;125:14</p>				

9,24;27:15,19;28:15;8:13,16;29:9,15;30:2,6;31:9,13,25;32:7,10;38:14;39:13;41:14,18;43:4,11,14;44:16,18;45:3,6;46:14,18,22,25;47:19;48:12,20;49:1;50:2,10,17,23;51:4,10,20,25;52:5,12;56:24;57:2;58:13;61:20;63:20;66:20;67:1,5,24;68:19;69:11,15;70:14,22;71:1,20;72:6,9,12;73:24;74:4,7,17,19,23;75:2,6,13,16,20,24;76:10,20,24;77:2,6,12,15;86:6,18;87:1,12;24:18,23;25:6,12,17,25;26:3,9,24;27:15,19;106:15,18,24;108:16;28:15;111:7;29:9,15;113:3,7,14,25;114:5,7,11,15,18,21;116:18;30:2,6;118:2;31:9,13,25;121:5;122:13,23;123:23;124:3,11,14,16;32:7,10;38:14;39:13;41:14,18;43:4,11,14;44:16,18;45:3,6;46:14,18,22,25;47:19;48:12,20;49:1;50:2,10,17,23;51:4,10,20,25;52:5,12;56:24;57:2;58:13;61:20;63:20;66:20;67:1,5,24;68:19;69:11,15;70:14,22;71:1,20;72:6,9,12;73:24;74:4,7,17,19,23;75:2,6,13,16,20,24;76:10,20,24;77:2,6,12,15;86:6,18;87:1,12;106:15,18,24;108:16;111:7;113:3,7,14,25;114:5,7,11,15,18,21;116:18;118:2;121:5;122:13,23;123:23;124:3,11,14,16	14;107:1,2,7,22;108:2 double (4) 42:9;81:7;42:9;81:7 down (26) 15:8;38:20;41:15;44:19;15:8;65:8;71:24;73:7;76:1;96:9;104:21;115:11;120:17;121:19;38:20;41:15;44:19;65:8;71:24;73:7;76:1;96:9;104:21;115:11;120:17;121:19 Downey (8) 59:20;61:12,14,17;59:20;61:12,14,17 Downieville (2) 61:11,11 Dr (4) 91:3;113:19;91:3;113:19 draft (14) 5:24;13:10;14:19,21;15:6;5:24;19:9;28:18;13:10;14:19,21;15:6;19:9;28:18 drafted (2) 19:14,14 dressed (2) 67:14,14 drill (20) 22:25;79:17;80:2;22:25;86:19,19;99:11;102:22;104:1;107:22,25;79:17;80:2;86:19,19;99:11;102:22;104:1;107:22,25 drilling (38) 25:9;49:8;54:5;56:11;86:9;89:13,15;90:5;91:14;92:16;93:1;25:9;99:10;100:8;102:1;103:22;105:23;107:1,15;110:8;49:8;54:5;56:11;86:9;89:13,15;90:5;91:14;92:16;93:1;99:10;100:8;102:1;103:22;105:23;107:1,15;110:8 drippings (2) 30:11,11 drive (10) 38:20;54:7;63:8,10;92:24;38:20;54:7;63:8,10;92:24 drivers (2) 28:1,1 driving (4) 104:10,21,10,21 drove (2) 85:23,23 drug (2) 54:16,16 duly (10) 8:22,22;45:10;67:11;77:22;87:20;45:10;67:11;77:22;87:20 .dumps (2)	104:19,19 during (24) 12:10;18:6;19:23;20:3;12:10;46:2;18:6;70:16;71:3;19:23;73:21;20:3;83:2;103:21;106:22;107:15;46:2;70:16;71:3;73:21;83:2;103:21;106:22;107:15 E earlier (8) 34:14;82:2;94:14;120:3;34:14;82:2;94:14;120:3 early (2) 89:22,22 easement (8) 54:1,1,9;112:1;54:1,1,9;112:1 easements (12) 55:23,24;58:7;75:12;106:9;110:20;55:23,24;58:7;75:12;106:9;110:20 East (11) 1:5;38:19,21;45:14;95:6;96:16;38:19,21;45:14;95:6;96:16 easterly (2) 96:17,17 easy (2) 95:23,23 economic (2) 115:11,11 education (10) 63:24;64:2;78:13;88:14;101:22;63:24;64:2;78:13;88:14;101:22 educational (2) 9:12,12 Edwards (8) 53:3;68:11;71:24;72:23;53:3;68:11;71:24;72:23 Envirosientists (2) 32:18,18 effect (4) 53:25,25,25,25 effects (2) 83:4,4 efficient (2) 112:24,24 eight (2) 103:5,5 either (22) 10:21;25:8;28:21;10:21;39:7;53:1,22;61:22;65:15;73:14;25:8;102:1;28:21;123:14;39:7;53:1,22;61:22;65:15;73:14;102:1;123:14 EI (4) 58:20;59:14;58:20;59:14 elaborate (2)	25:18,18 elaborated (2) 31:8,8 elements (2) 12:21,21 Eleven (2) 78:19,19 Elko (2) 78:5,5 else (12) 11:18;21:14;39:8;11:18;73:11;21:14;81:9;124:12;39:8;73:11;81:9;124:12 e-mail (8) 15:21,22;53:10,12;15:21,22;53:10,12 e-mailed (4) 20:17;53:9;20:17;53:9 e-mails (4) 51:14;75:4;51:14;75:4 employ (2) 101:24,24 employees (2) 101:22,22 employment (4) 89:12;102:24;89:12;102:24 enacted (8) 119:15,15;120:6,9;119:15,15;120:6,9 encourage (2) 115:12,12 end (10) 65:19;85:24,25;99:14;102:18;65:19;85:24,25;99:14;102:18 endangered (2) 68:24,24 energy (2) 121:21,21 engage (2) 64:9,9 engaged (12) 65:21;78:17;83:22;88:8,11;121:23;65:21;78:17;83:22;88:8,11;121:23 enjoy (2) 45:25,25 enjoyment (4) 54:22;56:5;54:22;56:5 enjoyments (2) 56:15,15 enough (8) 29:3;44:18;85:9;29:3;121:6;44:18;85:9;121:6 ensure (2) 85:20,20 enter (6) 6:11,11;22:25;48:15;22:25;48:15 entire (2) 110:2,2 entities (2)	84:21,21 environment (10) 30:12;54:23;56:2,7;102:4;30:12;54:23;56:2,7;102:4 ENVIRONMENTAL (42) 1:5;3:5,8;7:17;3:5,8;9:9,13;7:17;26:5;9:9,13;34:5;39:10;48:21;54:25;56:18;63:25;78:8,14;81:4;26:5;102:3;103:12,12;107:14;124:5;34:5;39:10;48:21;54:25;56:18;63:25;78:8,14;81:4;102:3;103:12,12;107:14;124:5;125:5 environmentally (2) 102:5,5 Envirosientists (2) 92:13,13 Envirosientists (8) 32:22;33:9;35:3;78:8;32:22;33:9;35:3;78:8 envisioned (2) 45:24,24 equipment (14) 27:23;30:23;31:6;48:11;49:8;102:12;103:9;27:23;30:23;31:6;48:11;49:8;102:12;103:9 eroded (2) 112:9,9 erosion (4) 16:17;49:5;16:17;49:5 ERWIN (105) 1:5;3:20,21;7:2;3:20,21;7:2;32:11,12,14;35:23;43:13;49:13,19,21;50:4;51:12,23;52:2;57:4;63:20,21,23;66:18;69:3;70:5,11;71:25;74:17,18;76:11,22,25;77:9,10,16,17;78:2;86:4;87:15,24;93:7,13;105:10,14;106:1,13,16;111:2;112:17,21;114:8,18,19;118:3,4;32:11,12,14;35:23;43:13;49:13,19,21;50:4;51:12,23;52:2;57:4;63:20,21,23;66:18;69:3;70:5,11;71:25;74:17,18;76:11,22,25;77:9,10,16,17;78:2;86:4;87:15,24;93:7,13;105:10,14;106:1,13,16;111:2;112:17,21;114:8,18,19;118:3,4 Erwin's (2) 50:23,23 escapes (2) 85:18,18 especially (8) 28:6;47:16;53:21;28:6;117:4;47:16;53:21;117:4 Espinosa (2)
---	---	--	--	--

69:24,24 essentially (2) 90:23,23 establish (2) 95:17,17 established (2) 104:10,10 estate (2) 117:18,18 estimate (12) 10:8;11:8;16:8;22:24; 10:8;11:8;16:8;84:17; 22:24;85:2;84:17;85:2 estimating (2) 84:18,18 estimation (2) 35:19,19 estimator (2) 35:15,15 et (4) 54:7;67:23;54:7;67:23 even (22) 6:10;15:1;6:10;37:15; 55:1;15:1;60:19;91:20; 100:17;103:11;115:11, 15;120:19;37:15;55:1; 60:19;91:20;100:17; 103:11;115:11,15;120:19 event (10) 41:3;52:21;82:13,16; 84:11;41:3;52:21;82:13, 16;84:11 everybody (4) 6:2;15:7;6:2;15:7 Everyone (4) 103:1;121:9;103:1;121:9 evidence (20) 6:4,4;49:23;50:8,8; 104:11;106:16;113:11; 114:20;118:5,9;49:23; 50:8,8;104:11;106:16; 113:11;114:20;118:5,9 evidentiary (2) 121:6,6 Ex (2) 99:2,2 exact (2) 80:4,4 exactly (16) 60:16;65:18;111:7; 119:16;120:4,6,21; 122:23;60:16;65:18; 111:7;119:16;120:4,6,21; 122:23 EXAMINATION (10) 9:1,1;39:15;43:18;78:1; 87:23;39:15;43:18;78:1; 87:23 examine (2) 98:13,13 examined (12) 8:23,23;45:11;67:12; 77:23;87:21;94:5;45:11;	67:12;77:23;87:21;94:5 excavation (2) 11:4,4 Excel (2) 35:17,17 except (4) 31:23;72:19;31:23;72:19 excerpt (2) 21:2,2 excerpts (4) 52:10,11,10,11 excessive (2) 16:17,17 excuse (18) 7:10,10;28:15;46:10; 49:13;66:2,23;85:25; 28:15;112:2,21;46:10; 49:13;66:2,23;85:25; 112:2,21 Executive (1) 1:5 exempt (2) 25:24,24 exemption (4) 26:4,8,4,8 exempts (4) 13:1,2,1,2 Exhibit (58) 10:11,12,13;11:15;12:7; 13:23;17:2,3;18:12; 19:18;22:16,17;32:20; 10:11,12,13;37:2,7;11:15; 12:7;13:23;49:3;62:25; 17:2,3;18:12;19:18; 76:16,17,21,21;80:15; 22:16,17;93:8,23;95:4; 97:12;100:24;106:22,23; 32:20;37:2,7;49:3;62:25; 76:16,17,21,21;80:15; 93:8,23;95:4;97:12; 100:24;106:22,23 exhibits (6) 43:6,15;115:14;43:6,15; 115:14 exist (2) 54:12,12 existence (4) 48:3;120:17;48:3;120:17 existing (36) 6:9,9;48:7,7;49:10;81:7, 8;86:1,2;91:16,22,23; 92:18,25;105:22;107:7; 110:12,13;111:9;48:7,7; 49:10;81:7,8;86:1,2; 91:16,22,23;92:18,25; 105:22;107:7;110:12,13; 111:9 exists (4) 48:8;49:7;48:8;49:7 expand (2) 92:5,5 expedites (2) 37:13,13	expensive (4) 102:17;117:6;102:17; 117:6 experience (18) 34:5;81:22;83:17;84:23; 89:13;100:6,7;101:25; 104:6;34:5;81:22;83:17; 84:23;89:13;100:6,7; 101:25;104:6 expertise (6) 5:14,14;70:22;86:22; 70:22;86:22 experts (4) 116:13;118:7;116:13; 118:7 expiration (8) 42:3,6,11,13,3,6,11,13 expires (2) 42:5,5 explain (6) 21:14,14;113:1;117:19; 113:1;117:19 explains (6) 82:13,14,15,13,14,15 EXPLORATION (83) 1:5;9:19,21;10:15,20,23; 11:1,2;18:23,23;20:10; 21:19;22:9;9:19,21; 10:15,20,23;40:6,11;11:1, 2;48:14;62:16,21;64:3,5, 10;18:23,23;71:3;20:10; 78:12;79:9,15;80:9,20; 21:19;22:9;86:9,23;87:6; 88:6;89:13,16,16;90:2,7; 100:6;103:10,14;104:7; 109:7;121:21;40:6,11; 48:14;62:16,21;64:3,5,10; 71:3;78:12;79:9,15;80:9, 20;86:9,23;87:6;88:6; 89:13,16,16;90:2,7;100:6; 103:10,14;104:7;109:7; 121:21 explore (4) 47:8;56:1;47:8;56:1 exploring (2) 72:20,20 exposure (2) 110:21,21 extend (2) 109:5,5 extensively (2) 53:8,8 extent (4) 32:5;50:5;32:5;50:5 extra (6) 102:23;110:5,5;102:23; 110:5,5 extremely (6) 117:3,6,24,3,6,24	5:20;6:5;5:20;6:5;62:2; 85:2;91:19;98:11;100:17; 104:20;107:8;113:19; 115:9;118:10;122:15; 62:2;85:2;91:19;98:11; 100:17;104:20;107:8; 113:19;115:9;118:10; 122:15 facts (2) 7:7,7 factual (6) 49:16,23;50:8;49:16,23; 50:8 fair (2) 83:25,25 fairly (4) 85:2;99:12;85:2;99:12 fall (6) 57:19;103:5;122:7; 57:19;103:5;122:7 families (2) 55:13,13 family (6) 55:13;91:3;117:21; 55:13;91:3;117:21 far (22) 26:6;29:22;39:2;69:16; 73:17;84:1;99:16;26:6; 104:1;29:22;115:15; 118:14;122:17;39:2; 69:16;73:17;84:1;99:16; 104:1;115:15;118:14; 122:17 Fargo (2) 94:23,23 fashion (2) 78:23,23 favor (4) 124:14,15,14,15 favorite (2) 114:11,11 fax (4) 15:13;20:14;15:13;20:14 faxed (2) 20:17,17 faxes (2) 15:19,19 features (2) 81:6,6 Fed (2) 99:2,2 federal (22) 36:7,8,25,25;53:18; 70:17;81:18;103:6,14; 118:18;119:7;36:7,8,25, 25;53:18;70:17;81:18; 103:6,14;118:18;119:7 federally (2) 119:20,20 fee (6) 16:1,2,1,2;107:25,25 feel (4) 7:11,11;105:14,14	feelings (2) 58:2,2 feet (2) 73:14,14 felt (2) 67:4,4 fence (4) 59:23;60:2;59:23;60:2 fences (2) 39:22,22 few (8) 20:17;32:12;33:10; 63:21;20:17;32:12;33:10; 63:21 field (8) 67:15;80:7;118:7,14; 67:15;80:7;118:7,14 Fifteen (2) 65:2,2 Fifty (2) 45:21,21 figure (12) 80:11;86:8;96:14;104:4; 107:1;121:12;80:11;86:8; 96:14;104:4;107:1; 121:12 figures (4) 22:21,22,21,22 file (4) 41:4;93:7;41:4;93:7 filed (14) 7:4,4;32:16;33:22;47:22; 80:6;92:2;117:22;32:16; 33:22;47:22;80:6;92:2; 117:22 filing (2) 101:7,7 final (38) 18:8,14;20:1,19,21;21:2, 6;22:18;24:4;29:18,24; 30:1,19;31:1,7,11;47:13; 50:2;18:8,14;20:1,19,21; 21:2,6;22:18;24:4;29:18, 24;115:6;30:1,19;31:1,7, 11;47:13;50:2;115:6 find (8) 46:25;49:3;65:6,10; 46:25;49:3;65:6,10 finding (2) 27:4,4 findings (2) 122:14,14 fine (6) 26:9;72:17;81:11;26:9; 72:17;81:11 finish (2) 112:21,21 finished (4) 46:6;77:7;46:6;77:7 finishing (2) 29:6,6 fire (2) 49:6,6
			F	
		fact (26)		

<p>firm (2) 78:9,9</p> <p>first (70) 5:23;8:22;12:12;13:8,10,24;14:3,3,13;15:7,8;5:23;26:13;8:22;30:21;12:12;45:10;47:24;13:8,10,24;49:12;50:3;14:3,3,13;15:7,8;59:15;67:11;73:23;74:10;77:10,22;79:6,7,20,22,24;85:16;87:20;89:20;97:6;98:2;26:13;101:19;30:21;121:14;45:10;47:24;49:12;50:3;59:15;67:11;73:23;74:10;77:10,22;79:6,7,20,22,24;85:16;87:20;89:20;97:6;98:2;101:19;121:14</p> <p>Fish (6) 15:3,3;70:17;115:24;70:17;115:24</p> <p>fishing (2) 104:16,16</p> <p>five (6) 14:20,20;79:16,18,16,18</p> <p>five-minute (2) 77:12,12</p> <p>five-year (2) 47:6,6</p> <p>Florence (2) 45:18,18</p> <p>fly (4) 71:10;73:16;71:10;73:16</p> <p>folder (2) 91:12,12</p> <p>folks (6) 65:24;104:14,18;65:24;104:14,18</p> <p>follow (4) 42:25;123:8;42:25;123:8</p> <p>followed (2) 81:17,17</p> <p>following (10) 24:23;57:3,5;82:22;24:23;123:9;57:3,5;82:22;123:9</p> <p>follows (10) 8:23,23;45:11;67:12;77:23;87:21;45:11;67:12;77:23;87:21</p> <p>follow-up (4) 30:18;45:4;30:18;45:4</p> <p>footprint (2) 99:12,12</p> <p>foregoing (1) 125:10</p> <p>Forestry (2) 15:3,3</p> <p>forge (4) 77:8;121:15;77:8;121:15</p> <p>Forget (2) 73:4,4</p>	<p>form (10) 21:17;47:22;78:23;21:17;99:24;112:25;47:22;78:23;99:24;112:25</p> <p>formal (6) 63:24;64:2;101:23;63:24;64:2;101:23</p> <p>format (2) 45:1,1</p> <p>former (2) 120:2,2</p> <p>formulas (2) 35:13,13</p> <p>for-profit (4) 47:16;56:4;47:16;56:4</p> <p>forth (8) 28:9;29:12;37:4,9;28:9;29:12;37:4,9</p> <p>forum (4) 115:2;119:11;115:2;119:11</p> <p>forums (2) 121:18,18</p> <p>forward (10) 44:21;49:14;67:1;80:9;86:12;44:21;49:14;67:1;80:9;86:12</p> <p>found (6) 32:16;68:13;104:19;32:16;68:13;104:19</p> <p>four (22) 4:6,6;12:12;4:6,6;15:7;38:6;44:23;12:12;48:11;49:4;55:8;15:7;88:10;113:20;38:6;44:23;48:11;49:4;55:8;88:10;113:20</p> <p>fourth (4) 15:8;32:21;15:8;32:21</p> <p>four-wheel (8) 62:4,10;63:8,9;62:4,10;63:8,9</p> <p>frame (4) 41:24;121:25;41:24;121:25</p> <p>FRANK (11) 2:5;6:22;15:9;6:22;55:1;15:9;67:9,15;55:1;67:9,15</p> <p>Fred (2) 85:17,17</p> <p>free (2) 105:14,14</p> <p>friend (2) 46:16,16</p> <p>friends (4) 45:21;117:21;45:21;117:21</p> <p>front (4) 45:2;93:14;45:2;93:14</p> <p>fuel (2) 37:4,4</p> <p>fulfill (2)</p>	<p>92:14,14</p> <p>full (5) 18:21,21;78:3,3;125:11</p> <p>fully (2) 121:22,22</p> <p>funding (2) 100:17,17</p> <p>funds (2) 100:1,1</p> <p>further (42) 6:12,12;35:23;41:12;43:5,18;48:2,5;63:18;66:21;68:3;74:16,24;86:4;87:11;90:7;105:10;106:13;108:25;110:15;113:1;114:8;35:23;41:12;43:5,18;48:2,5;63:18;66:21;68:3;74:16,24;86:4;87:11;90:7;105:10;106:13;108:25;110:15;113:1;114:8</p> <p>future (8) 42:23;54:13;55:24;102:15;42:23;54:13;55:24;102:15</p>	<p>123:16;41:22;42:24;49:11;50:22;79:9;123:16</p> <p>gives (2) 5:22,22</p> <p>giving (2) 5:4,4</p> <p>glad (2) 123:11,11</p> <p>goal (2) 6:8,8</p> <p>goes (18) 14:25;39:2;46:8;47:2;14:25;73:1,15;74:13;76:1;96:17;39:2;46:8;47:2;73:1,15;74:13;76:1;96:17</p> <p>Gold (8) 88:6;89:6,6,15;88:6;89:6,6,15</p> <p>Good (24) 4:13,13;28:16;46:1;55:21;56:3;73:22;84:1;102:18;108:7;28:16;110:17;114:21;115:22;46:1;55:21;56:3;73:22;84:1;102:18;108:7;110:17;114:21;115:22</p> <p>government (8) 90:19;95:11,17;118:19;90:19;95:11,17;118:19</p> <p>governmental (2) 85:4,4</p> <p>Graeser (6) 15:12,14,16,12,14,16</p> <p>G-R-A-E-S-E-R (2) 15:14,14</p> <p>grant (32) 5:4;6:11,11;5:4;18:2;19:3,4;6:11,11;36:15,20;18:2;19:3,4;97:1,4,10;115:5,16;119:17;120:5,12;36:15,20;97:1,4,10;115:5,16;119:17;120:5,12</p> <p>granted (20) 3:22,22;36:24;47:13;53:5;81:4;82:6;86:12;111:10;119:22;122:20;36:24;47:13;53:5;81:4;82:6;86:12;111:10;119:22;122:20</p> <p>granting (12) 6:18,18;53:25;54:1,6,8;115:8;53:25;54:1,6,8;115:8</p> <p>grants (2) 119:22,22</p> <p>grasses (2) 56:13,13</p> <p>gravel (12) 62:10;63:7,14;65:7,8;74:11;62:10;63:7,14;65:7,8;74:11</p> <p>Gray (2)</p>	<p>60:13,13</p> <p>Gray's (2) 62:4,4</p> <p>graze (2) 104:24,24</p> <p>Great (8) 15:3;53:7;15:3;116:25;121:16;53:7;116:25;121:16</p> <p>greater (4) 56:3,11,3,11</p> <p>greatly (2) 114:2,2</p> <p>green (2) 80:23,23</p> <p>ground (16) 55:3;71:23;84:8;99:13;103:25;105:4,21;107:12;55:3;71:23;84:8;99:13;103:25;105:4,21;107:12</p> <p>grounds (6) 105:15;107:5;111:3;105:15;107:5;111:3</p> <p>groundwater (2) 116:3,3</p> <p>group (2) 115:25,25</p> <p>groups (2) 40:20,20</p> <p>grouse (24) 55:7;68:13,18,22;69:19,23;70:4,9,25;71:4,8;72:23;55:7;68:13,18,22;69:19,23;70:4,9,25;71:4,8;72:23</p> <p>guess (10) 20:25;43:1;72:24;20:25;85:1;94:11;43:1;72:24;85:1;94:11</p> <p>guidelines (2) 81:14,14</p> <p>guiding (2) 35:14,14</p>
G				
<p>Game (2) 15:3,3</p> <p>Gaskin (4) 15:18;19:12;15:18;19:12</p> <p>gave (4) 26:16;70:3;26:16;70:3</p> <p>General (10) 1:5;5;29:16;82:24;89:14;92:19;29:16;82:24;89:14;92:19</p> <p>generally (14) 13:7,9,7,9;80:16;85:5;91:21;95:19;100:14;80:16;85:5;91:21;95:19;100:14</p> <p>generations (2) 36:10,10</p> <p>gentleman (2) 66:22,22</p> <p>geologically (2) 104:1,1</p> <p>geologist (8) 88:5,18,21,24,5,18,21,24</p> <p>Geologists (2) 88:22,22</p> <p>geology (2) 88:12,12</p> <p>gets (6) 15:5;54:16;15:5;96:17;54:16;96:17</p> <p>Getty (2) 62:21,21</p> <p>given (16) 4:4,4;31:2;41:22;42:24;49:11;50:22;79:9;31:2;</p>				
H				
<p>half (2) 80:5,5</p> <p>halfway (2) 15:8,8</p> <p>handle (2) 21:7,7</p> <p>handled (8) 5:21,21;23:22,22;123:20;124:1;123:20;124:1</p> <p>happen (8) 5:5,5;74:2;117:10,10;74:2;117:10,10</p> <p>happened (6) 47:15;71:17,19;47:15;71:17,19</p> <p>happens (14) 5:19,19;37:14;38:24;</p>				

<p>41:3,8;81:20;123:5; 37:14;38:24;41:3,8; 81:20;123:5 happy (4) 6:13,13;40:10,10 hard (6) 5:1,1;73:5;76:6;73:5; 76:6 harm (2) 28:1,1 hazardous (14) 34:1,8;83:19;101:11,15; 117:4;118:21;34:1,8; 83:19;101:11,15;117:4; 118:21 hazards (2) 119:2,2 head (2) 87:10,10 heads (2) 96:16,16 health (6) 9:14,14;83:4;103:3;83:4; 103:3 hear (12) 37:5;49:18,19,20;61:1; 76:5;37:5;49:18,19,20; 61:1;76:5 heard (8) 30:25;86:8;30:25; 123:24;124:8;86:8; 123:24;124:8 HEARING (37) 1:5;3:4,10,13;4:9;6:5,18; 3:4,10,13;4:9;6:5,18; 46:12;49:24;69:5;72:14; 76:6;116:22;117:16; 119:10;120:13;121:7,11; 46:12;49:24;69:5;72:14; 76:6;116:22;117:16; 119:10;120:13;121:7,11; 125:9,12 hearsay (10) 51:16,23;70:7;71:25; 77:1;51:16,23;70:7; 71:25;77:1 heart (2) 57:18,18 heavy (2) 27:23,23 Hecla (2) 62:21,21 held (2) 84:13,13 help (6) 29:9;78:9;98:12;29:9; 78:9;98:12 helpful (2) 53:9,9 hereby (1) 125:5 HERMAN (15) 1:5;21:20;22:3;45:19;</p>	<p>58:21;59:25;63:17;65:13; 21:20;22:3;45:19;58:21; 59:25;63:17;65:13 herself (2) 45:9,9 HESS (145) 1:5;3:25;4:11,12;7:19; 8:16,17;3:25;9:2;4:11,12; 21:22;22:1;24:16;7:19; 28:10;8:16,17;9:2;36:5; 16,22,24;39:13,14,16; 41:12,19;43:5,6,9,16,17, 19;44:15,20;46:10,20,24; 49:2;50:12;51:8,24;52:3; 56:23;57:4;58:13,15,17; 61:20,23,25;63:18;68:16, 21;69:25;71:13;72:1; 73:2;74:7,9,16,22;76:5,8; 77:4;21:22;22:1;87:1,3,5, 11;24:16;106:17;108:16, 18,20,25;28:10;114:10, 13,14,24,25;36:5,16,22, 24;39:13,14,16;41:12,19; 43:5,6,9,16,17,19;44:15, 20;46:10,20,24;49:2; 50:12;51:8,24;52:3; 56:23;57:4;58:13,15,17; 61:20,23,25;63:18;68:16, 21;69:25;71:13;72:1; 73:2;74:7,9,16,22;76:5,8; 77:4;87:1,3,5,11;106:17; 108:16,18,20,25;114:10, 13,14,24,25 Hess's (4) 24:24,24;118:5,5 higher (4) 85:5;100:14;85:5;100:14 highlighted (6) 96:7,8;97:22;96:7,8; 97:22 Highway (4) 38:20;74:12;38:20;74:12 hiker (2) 39:4,4 Hills (4) 58:20;59:14;58:20;59:14 hire (6) 41:5;64:16,17;41:5; 64:16,17 Hiser (4) 96:22;97:2;96:22;97:2 historic (2) 120:17,17 hold (2) 62:14,14 Holdings (30) 3:20,20;9:16;10:4,15; 9:16;10:4,15;47:5,25; 78:12;79:8,20;80:19; 88:7,9;89:2,19;96:23; 47:5,25;78:12;79:8,20; 80:19;88:7,9;89:2,19; 96:23</p>	<p>hole (2) 102:22,22 holes (6) 73:9;86:20;104:1;73:9; 86:20;104:1 Holzell (2) 85:17,17 home (4) 59:18,19,18,19 Honor (2) 70:5,5 hope (4) 85:9;93:21;85:9;93:21 hot (2) 40:1,1 hound (2) 115:23,23 hours (8) 68:6;103:4,5;107:17; 68:6;103:4,5;107:17 house (6) 59:21,25;60:8;59:21,25; 60:8 Houston (8) 17:7,9,11,7,9,11;94:4,4 huge (4) 5:24,24;54:17,17 Humboldt (2) 104:15,15 hundreds (12) 68:5,6;109:24;110:25,25; 117:20;68:5,6;109:24; 110:25,25;117:20 hunt (2) 36:11,11 hunted (2) 36:10,10 hunter (2) 39:4,4 hunting (2) 104:16,16 Huntington (6) 61:15,16,16,15,16,16 hurt (2) 17:22,22</p>	<p>17:2;18:13;10:23;12:13; 13:24;14:3;17:2;67:7; 18:13;90:6;67:7;90:6 identifying (2) 10:6,6 ignore (2) 14:18,18 II (2) 106:23,23 imagine (4) 49:10;107:19;49:10; 107:19 impact (12) 10:24,24;50:19;53:13; 102:7;112:24;118:25; 50:19;53:13;102:7; 112:24;118:25 impacts (6) 7:17,17;50:19;53:15; 50:19;53:15 impassable (2) 98:3,3 importance (2) 54:25,25 important (8) 53:16;68:7;115:10; 124:6;53:16;68:7;115:10; 124:6 improper (2) 124:1,1 improving (2) 25:23,23 Inc (2) 32:22,22 incidents (2) 83:23,23 Incline (2) 120:16,16 inclined (2) 52:5,5 include (10) 10:5;17:14;18:15;10:5; 17:14;18:15;90:4;94:7; 90:4;94:7 included (20) 10:19;18:19;19:5,7,18; 21:2;31:24;10:19;18:19; 19:5,7,18;75:3;21:2; 107:23;115:6;31:24;75:3; 107:23;115:6 includes (25) 6:1;10:6,7,8,17,18,21; 11:2;16:12;19:19;6:1; 10:6,7,8,17,18,21;11:2; 16:12;19:19;100:18,18; 125:11 including (6) 16:23;51:18;16:23; 101:16;51:18;101:16 inclusive (1) 125:11 Incorporated (2) 9:16,16</p>	<p>incorrectly (4) 26:14,20,14,20 indeed (2) 53:11,11 indemnifies (2) 109:11,11 indemnify (2) 105:19,19 independent (2) 121:8,8 INDEX (1) 2:5 Indian (22) 29:22;30:13;31:5;54:20; 55:8,14,16,17;56:6,13; 96:10;29:22;30:13;31:5; 54:20;55:8,14,16,17;56:6, 13;96:10 indicate (2) 123:25,25 indicated (8) 30:3;33:22,25;64:18; 30:3;33:22,25;64:18 indicates (2) 81:8,8 individual (10) 6:22,22;28:1;47:22; 79:25;28:1;120:11;47:22; 79:25;120:11 individuals (8) 85:6,17;87:8;118:6;85:6, 17;87:8;118:6 industry (10) 78:11;83:15;84:20;90:2; 119:3;78:11;83:15;84:20; 90:2;119:3 inform (2) 79:14,14 information (60) 11:25;12:3,15,19;14:6; 23:16;26:15,16,20,22; 27:6,9;32:17;33:2;11:25; 44:25;12:3,15,19;45:1; 46:11;51:21;14:6;53:10, 13;62:24;70:20;75:1,23; 23:16;92:14;93:18;99:6; 26:15,16,20,22;27:6,9; 114:4;123:16,19;32:17; 33:2;44:25;45:1;46:11; 51:21;53:10,13;62:24; 70:20;75:1,23;92:14; 93:18;99:6;114:4;123:16, 19 informed (6) 47:24;76:3;98:24;47:24; 76:3;98:24 inhabitant (2) 46:5,5 initial (6) 16:20;30:16;16:20; 107:11;30:16;107:11 Initially (2) 89:25,25</p>
		<p>I</p>		
		<p>idea (10) 40:25;46:24;62:9;65:12; 105:5;40:25;46:24;62:9; 65:12;105:5 ideas (2) 58:2,2 identical (2) 109:16,16 identified (4) 91:25;98:20;91:25;98:20 identifies (6) 12:3;22:8;12:3;22:8; 98:22,22 identify (16) 10:23;12:13;13:24;14:3;</p>		

<p>initials (2) 5:1,1 ink (2) 97:23,23 input (2) 70:18,18 insofar (8) 35:14;84:23;92:12; 102:25;35:14;84:23; 92:12;102:25 inspect (4) 43:20;44:12;43:20;44:12 inspection (4) 39:12;42:18;39:12;42:18 inspections (2) 44:11,11 instances (2) 20:17,17 Institute (2) 88:21,21 insurance (8) 105:6,9;109:4,8;105:6,9; 109:4,8 intend (2) 58:9,9 intended (6) 33:19;34:1;101:18; 33:19;34:1;101:18 intends (2) 112:18,18 intent (32) 5:24;13:11,11,15,22; 14:2,4,16;15:23,24;16:1; 5:24;24:3;13:11,11,15,22; 14:2,4,16;15:23,24;16:1; 79:8,22;92:2;24:3;107:9; 79:8,22;92:2;107:9 intention (4) 113:4;118:16;113:4; 118:16 intentional (2) 83:7,7 intentionally (2) 118:24,24 interest (10) 55:11;67:24;89:20;93:5; 96:24;55:11;67:24;89:20; 93:5;96:24 interested (8) 13:21;15:23;19:17; 13:21;15:23;19:17;75:20, 20 interests (2) 90:9,9 Interior (2) 95:12,12 interpret (2) 117:17,17 interpretation (6) 28:17;52:11;75:10; 28:17;52:11;75:10 interpreting (2) 27:8,8</p>	<p>interrupt (2) 48:12,12 INTERVENER (19) 1:5;3:22;7:1,22;8:5; 3:22;7:1,22;8:5;32:1; 77:9,22;87:20;114:23; 32:1;77:9,22;87:20; 114:23 Intervener's (6) 106:22,23;115:14; 106:22,23;115:14 intervening (2) 120:20,20 intervenor's (2) 8:4,4 into (48) 47:19;48:15;54:14,16; 56:12,17;62:7;63:10; 69:16;70:4;71:15;75:7; 76:19;85:2;96:10;102:22, 23;104:20;106:16; 112:10,14;121:19;122:7, 16;47:19;48:15;54:14,16; 56:12,17;62:7;63:10; 69:16;70:4;71:15;75:7; 76:19;85:2;96:10;102:22, 23;104:20;106:16; 112:10,14;121:19;122:7, 16 introduce (4) 3:24;6:4;3:24;6:4 investigate (6) 34:20,22;89:25;34:20,22; 89:25 investigated (6) 55:18;68:6,10;55:18; 68:6,10 investigation (2) 113:10,10 involved (20) 13:8,8;56:10;57:20;58:1; 64:10;78:22;84:19,19,20; 89:20;56:10;57:20;58:1; 64:10;78:22;84:19,19,20; 89:20 involvement (2) 99:8,8 involves (2) 103:3,3 IRA (5) 1:5;3:8,8;57:7,7 islands (2) 119:23,23 isolate (2) 119:23,23 isolated (2) 119:19,19 issuance (2) 111:10,10 issue (38) 4:16;5:21;4:16;13:12; 5:21;17:23;33:12;13:12; 54:17,25;17:23;69:2;</p>	<p>71:9;82:2;107:13;111:8, 12;116:15,21;117:25; 122:25;124:2,3;33:12; 54:17,25;69:2;71:9;82:2; 107:13;111:8,12;116:15, 21;117:25;122:25;124:2, 3 issued (20) 29:18,25;48:21;94:14; 97:3,19;29:18,25;119:22; 120:8,20;124:9;48:21; 94:14;97:3,19;119:22; 120:8,20;124:9 issues (40) 7:8,11,8,11;28:17;30:3, 15;31:11,14,16,22;56:10; 69:8;72:15;103:12; 107:14;28:17;115:1; 116:6;30:3,15;31:11,14, 16,22;121:17;123:6,13, 19;56:10;69:8;72:15; 103:12;107:14;115:1; 116:6;121:17;123:6,13,19 issuing (4) 13:8;24:13;13:8;24:13 italicized (2) 18:21,21 item (2) 15:2,2</p> <p style="text-align: center;">J</p> <p>JACKSON (188) 1:5;4:8;2:5;6:17;7:5; 8:11,15;4:8;16:23;17:5; 20:8,20;6:17;21:24; 23:14;7:5;26:10,12;27:2, 6,11,17,20;28:13;8:11,15; 29:1,13;30:10;32:3,9; 37:5;38:10,12;41:16,21; 43:3,12;44:17,20,22;45:4, 8,13;46:13,16;47:4,21; 48:16,22;49:4,18,20; 50:13,21;51:2,6;52:9,14; 56:25;57:7,8,11,15,22; 58:4,18;16:23;63:24; 17:5;66:20,23;74:24,25; 75:4,8,14,18,22;76:1,18; 20:8,20;21:24;87:12,14; 23:14;91:3;26:10,12; 27:2,6,11,17,20;106:20; 28:13;109:3;111:15,20; 112:20;29:1,13;113:1,4,9, 21;114:2,6,17;116:18,20; 30:10;121:4;123:16; 124:2,5;32:3,9;37:5; 38:10,12;41:16,21;43:3, 12;44:17,20,22;45:4,8,13; 46:13,16;47:4,21;48:16, 22;49:4,18,20;50:13,21; 51:2,6;52:9,14;56:25; 57:7,8,11,15,22;58:4,18; 63:24;66:20,23;74:24,25;</p>	<p>75:4,8,14,18,22;76:1,18; 87:12,14;91:3;106:20; 109:3;111:15,20;112:20; 113:1,4,9,21;114:2,6,17; 116:18,20;121:4;123:16; 124:2,5 Jackson's (8) 18:7;19:8;18:7;19:8; 76:13;108:5;76:13;108:5 JANET (3) 1:5;76:7,7 January (4) 13:3;25:21;13:3;25:21 John (4) 1:5,5;96:22,22 join (6) 50:12;69:3;77:4;50:12; 69:3;77:4 JOSEPH (15) 2:5;12:2,2;77:11,17,20; 78:5;92:13;100:18;77:11, 17,20;78:5;92:13;100:18 Juan (2) 59:3,3 judicial (2) 119:7,7 July (6) 32:23;94:21;95:2;32:23; 94:21;95:2 juncture (2) 18:10,10 jurisdiction (14) 3:17;7:12;3:17;7:12; 58:3;114:1;122:21; 123:15;124:4;58:3;114:1; 122:21;123:15;124:4</p> <p style="text-align: center;">K</p> <p>KATHY (1) 1:5 KENNETH (3) 1:5;3:8,8 kept (4) 40:2;46:3;40:2;46:3 kerplunk (2) 117:9,9 key (2) 118:15,15 killing (2) 56:12,12 kind (18) 16:1;37:7;39:1;40:2; 44:11;16:1;68:24;73:20; 107:14;123:6;37:7;39:1; 40:2;44:11;68:24;73:20; 107:14;123:6 kinds (2) 121:17,17 knew (2) 68:9,9 knowing (6) 63:10;66:10,16;63:10;</p>	<p>66:10,16 knowledge (6) 27:18;46:4;72:8;27:18; 46:4;72:8 known (10) 58:2;71:7;85:24;89:6; 97:5;58:2;71:7;85:24; 89:6;97:5</p> <p style="text-align: center;">L</p> <p>Lake (2) 120:16,16 land (114) 6:8;9:20,23;10:25;6:8; 9:20,23;35:20;10:25; 40:7;45:22;46:1,1,8; 47:16;55:9,15,17;56:3; 57:20,21;59:18;63:17; 64:18;67:17,18;69:20; 72:10,13;79:12,16;80:23, 24;81:1,3,20,21;84:8,10; 86:15,19;87:6,7;90:25; 91:1;94:2,3;95:11,17; 107:25,25;111:17,19; 112:4,7,14;115:21; 119:20,25;120:2;121:20; 35:20;40:7;45:22;46:1,1, 8;47:16;55:9,15,17;56:3; 57:20,21;59:18;63:17; 64:18;67:17,18;69:20; 72:10,13;79:12,16;80:23, 24;81:1,3,20,21;84:8,10; 86:15,19;87:6,7;90:25; 91:1;94:2,3;95:11,17; 107:25,25;111:17,19; 112:4,7,14;115:21; 119:20,25;120:2;121:20 landlocked (2) 55:25,25 landowner (14) 39:3;45:14;67:25;68:2; 119:24;121:22;122:5; 39:3;45:14;67:25;68:2; 119:24;121:22;122:5 landowners (8) 54:19;119:16;120:7,21; 54:19;119:16;120:7,21 lands (28) 46:3;53:14,23;55:16; 79:10;90:18;92:22;93:2, 24;94:7,9,10;116:22; 120:2;46:3;53:14,23; 55:16;79:10;90:18;92:22; 93:2,24;94:7,9,10;116:22; 120:2 language (4) 37:19;67:21;37:19;67:21 lap (2) 57:19,19 large (6) 73:6,9,9,6,9,9 larger (2)</p>
--	--	--	--	--

79:17,17 last (18) 9:5;15:9;9:5;15:9;57:17; 65:1;78:4;88:1;104:13; 118:23;124:18;57:17; 65:1;78:4;88:1;104:13; 118:23;124:18 later (4) 19:9;47:12;19:9;47:12 latitude (2) 52:7,7 Law (19) 1:5;36:7,8;50:6;72:7; 90:24,24;119:15;120:11, 24;36:7,8;50:6;72:7; 90:24,24;119:15;120:11, 24 laws (10) 55:19;68:11;83:18; 118:19;119:6;55:19; 68:11;83:18;118:19; 119:6 lawsuits (2) 117:24,24 lawyer (2) 34:4,4 lead (2) 29:13,13 leaking (6) 30:22;31:5,18;30:22; 31:5,18 lease (8) 47:5;90:22;109:14,20; 47:5;90:22;109:14,20 leased (6) 91:5;96:25;97:1;91:5; 96:25;97:1 least (14) 52:10;111:17,19;112:4,7, 23;118:1;52:10;111:17, 19;112:4,7,23;118:1 leave (4) 12:10,10;74:21,21 leaving (2) 48:9,9 left (4) 42:5;94:19;42:5;94:19 legal (26) 19:3;28:11,16,19;49:16, 23,25;50:7,25;70:11; 19:3;28:11,16,19;111:12; 118:11;121:2;49:16,23, 25;50:7,25;70:11;111:12; 118:11;121:2 legislature (2) 115:12,12 length (4) 11:6,6;53:7,7 less (4) 56:1;79:16;56:1;79:16 letter (76) 6:20,24;12:3,14,18,20; 17:6,7,9,11;6:20,24;	22:17;27:7,9,14,21;30:12, 17,18,21;32:22;33:4,11; 12:3,14,18,20;47:11,17; 48:16,18,24;49:14;52:4; 54:18;59:3,17;17:6,7,9, 11;66:3,6,8;72:22;75:15; 76:22;22:17;27:7,9,14,21; 30:12,17,18,21;32:22; 33:4,11;47:11,17;48:16, 18,24;49:14;52:4;54:18; 59:3,17;66:3,6,8;72:22; 75:15;76:22 letterhead (2) 32:22,22 letters (6) 15:6;51:14;15:6;59:5; 51:14;59:5 letting (2) 6:18,18 level (2) 58:2,2 LEW (3) 1:5;3:6,6 liabilities (2) 105:20,20 liability (32) 17:22;27:24;31:4,18,19, 23;39:18;42:17;44:8; 54:19;56:14;17:22;27:24; 105:6,6,8;109:5,11;31:4, 18,19,23;39:18;42:17; 44:8;54:19;56:14;105:6, 6,8;109:5,11 Library (2) 3:12,12 lies (2) 62:6,6 life (2) 54:20,20 likely (4) 48:24;85:6;48:24;85:6 limit (6) 72:7;102:8;105:21;72:7; 102:8;105:21 limitations (2) 7:9,9 Limited (14) 3:20,20;46:7;53:22; 89:19;101:13;122:19,22; 46:7;53:22;89:19;101:13; 122:19,22 limits (8) 48:6,17;110:12,21;48:6, 17;110:12,21 line (4) 80:19;81:7;80:19;81:7 lines (4) 40:1;62:5;40:1;62:5 lining (2) 65:10,10 lis (2) 117:22,22 list (14)	13:21;14:24;15:22; 19:16,20;28:23;13:21; 14:24;15:22;64:13;19:16, 20;28:23;64:13 listed (4) 58:11;115:18;58:11; 115:18 litany (2) 29:10,10 little (20) 25:17,18;38:3;52:17; 53:9;91:19;25:17,18; 99:14;100:23;102:7; 121:13;38:3;52:17;53:9; 91:19;99:14;100:23; 102:7;121:13 live (16) 58:18,20;59:2,13;78:4,5; 88:1,3;58:18,20;59:2,13; 78:4,5;88:1,3 lived (2) 61:14,14 lives (12) 58:23,24;59:1,3,14; 72:25;58:23,24;59:1,3,14; 72:25 living (2) 46:6,6 loading (8) 16:17;30:4,5;31:21; 16:17;30:4,5;31:21 local (4) 90:25;123:14;90:25; 123:14 locate (2) 65:15,15 located (6) 11:1;18:24;11:1;18:24; 90:18,18 location (4) 3:14,14;11:5,5 locations (4) 80:2;92:16;80:2;92:16 long (20) 6:9;13:25;6:9;22:2; 28:23;42:4;13:25;73:15; 22:2;88:8,11,23;28:23; 123:8;42:4;73:15;88:8, 11,23;123:8 look (44) 10:11;11:13;12:7,8,12; 13:23;14:24;15:11,20; 17:2;18:12;26:8;10:11; 37:25;39:21;11:13;12:7, 8,12;13:23;49:2,11; 52:12;14:24;56:16;15:11, 20;17:2;65:9;18:12; 71:11;80:11;85:19;26:8; 37:25;39:21;49:2,11; 52:12;56:16;65:9;71:11; 80:11;85:19 looked (8) 42:19;71:9;98:6;116:7;	42:19;71:9;98:6;116:7 looking (26) 5:25;11:14,15,16;5:25; 22:16,17;23:15;11:14,15, 16;41:25;68:6;69:21; 72:4;81:9;22:16,17; 23:15;94:16;41:25;68:6; 69:21;72:4;81:9;94:16 looks (2) 14:19,19 loss (4) 54:20;56:14;54:20;56:14 lot (28) 5:12;12:10;5:12;38:16; 12:10;57:24;58:3;69:18; 72:3;74:3;91:2;94:8; 102:23;104:18;117:23; 123:5;38:16;57:24;58:3; 69:18;72:3;74:3;91:2; 94:8;102:23;104:18; 117:23;123:5 lots (2) 106:4,4 Lovelock (4) 14:16,16;104:14,14 lower (2) 95:22,22 lowly (2) 55:14,14 Ltd (2) 96:23,23	110:23,23 making (16) 7:25,25;29:21;54:15; 70:11;102:3;103:25; 111:6,23;29:21;54:15; 70:11;102:3;103:25; 111:6,23 man (2) 94:4,4 Management (18) 57:20,21;72:10,13;81:19, 20;94:2;121:20,20;57:20, 21;72:10,13;81:19,20; 94:2;121:20,20 manager (8) 100:7;103:21;107:17,19; 100:7;103:21;107:17,19 manner (6) 29:17;48:8;49:7;29:17; 48:8;49:7 many (50) 5:2,2;26:18;45:22,23,23; 46:9;47:5;53:23;55:13, 17;56:10,14,19;57:11; 60:18;64:21;67:21;68:5; 78:17,20,24;26:18; 103:19;107:8;113:20; 117:15;45:22,23,23;46:9; 47:5;53:23;55:13,17; 56:10,14,19;57:11;60:18; 64:21;67:21;68:5;78:17, 20,24;103:19;107:8; 113:20;117:15 map (56) 10:6,21,22;13:6;20:14; 21:18,18;23:6;10:6,21,22; 38:22;13:6;55:10;58:9; 75:10,13,21,22;76:15; 20:14;80:12,16,18;21:18, 18;23:6;91:8,10;95:5; 96:14;97:22;98:11;104:4; 106:8;109:25;38:22; 55:10;58:9;75:10,13,21, 22;76:15;80:12,16,18; 91:8,10;95:5;96:14; 97:22;98:11;104:4;106:8; 109:25 mapping (4) 103:24;104:2;103:24; 104:2 maps (14) 36:25;47:3,4;76:18;81:6; 98:2,6;36:25;47:3,4; 76:18;81:6;98:2,6 MARIE (1) 1:5 marked (4) 36:25;93:8;36:25;93:8 MARTIN (31) 2:5;8:18,20;9:5;18:5; 24:20;8:18,20;32:2,11,15; 9:5;34:4;41:14,17;43:4; 44:19;18:5;24:20;98:12;
M				
machine (2) 73:9,9 machinery (2) 73:6,6 mail (2) 21:9,9 mailed (2) 3:17,17 mailing (8) 13:20;14:24;15:22; 19:16;13:20;14:24;15:22; 19:16 maintain (10) 27:24;42:7;102:4;27:24; 105:1,6;42:7;102:4; 105:1,6 maintained (8) 37:1;52:15,19;66:13; 37:1;52:15,19;66:13 maintains (2) 95:13,13 maintenance (10) 73:25;91:20;92:17; 101:22;103:9;73:25; 91:20;92:17;101:22; 103:9 majority (4) 78:10,11,10,11 makes (2)				

<p>118:7;32:2,11,15;34:4; 41:14,17;43:4;44:19; 98:12;118:7 M-A-R-T-I-N (2) 9:6,6 MARTINI (37) 2:5;7:15;12:2;7:15; 32:17;33:1;12:2;77:11, 18,20;78:5,7;86:5,6,7; 87:13;92:1,15;99:6; 100:11;118:7;32:17;33:1; 77:11,18,20;78:5,7;86:5, 6,7;87:13;92:1,15;99:6; 100:11;118:7 M-A-R-T-I-N-I (2) 78:5,5 Martini's (6) 33:4,7;35:2;33:4,7;35:2 MARY (5) 1:5;4:4,4,125:4,19.5 material (2) 82:23,23 materials (14) 34:1,8;37:4;83:3,19; 101:11,15;34:1,8;37:4; 83:3,19;101:11,15 matter (4) 69:4;121:12;69:4;121:12 matters (4) 28:5,8,5,8 MAURER (33) 2:5;6:22;15:9;6:22;47:2; 55:1,17;56:22;15:9; 66:24;67:3,9,15;91:3; 111:21;112:8;113:5,19; 117:7;47:2;55:1,17; 56:22;66:24;67:3,9,15; 91:3;111:21;112:8;113:5, 19;117:7 M-A-U-R-E-R (2) 67:16,16 may (32) 10:24;26:8;27:3,13,17; 10:24;41:15,16;44:17,19; 56:22;57:3;73:15;96:6; 100:22;26:8;27:3,13,17; 113:1;121:4;41:15,16; 44:17,19;56:22;57:3; 73:15;96:6;100:22;113:1; 121:4 maybe (8) 36:13;99:23;121:25; 122:10;36:13;99:23; 121:25;122:10 MAYER (33) 1:5;3:9,9;24:22;38:3,8, 11,16,22;57:13,16,23; 86:25;24:22;108:4,13; 121:16;122:25;124:7; 38:3,8,11,16,22;57:13,16, 23;86:25;108:4,13; 121:16;122:25;124:7 mean (10)</p>	<p>10:12;14:3;23:18;10:12; 37:21;14:3;23:18;90:17; 37:21;90:17 meaning (2) 56:18,18 means (8) 16:16;48:20;16:16; 66:15;79:16;48:20;66:15; 79:16 meant (4) 48:3,19,3,19 measures (2) 11:7,7 measuring (4) 66:10,16,10,16 meet (10) 12:21;28:2;34:23;37:23; 12:21;103:14;28:2;34:23; 37:23;103:14 meeting (2) 124:18,18 meets (6) 42:19;57:23;115:14; 42:19;57:23;115:14 Member (80) 1:5,5;24:21,22;35:25; 36:12,19,23;37:2,6,17; 38:2,3,8,11,16,22;57:8,13, 16,23;76:14;86:7,14,17, 25;24:21,22;106:25; 107:6,13,18,22;108:1,4, 13;121:8,15,16;122:24; 123:18;124:7,10;35:25; 36:12,19,23;37:2,6,17; 38:2,3,8,11,16,22;57:8,13, 16,23;76:14;86:7,14,17, 25;106:25;107:6,13,18, 22;108:1,4,13;121:8,15, 16;122:24;123:18;124:7, 10 Members (4) 3:7;7:21;3:7;7:21 mention (18) 6:24;9:21;18:15;6:24; 9:21;46:18;50:13;62:20, 21;18:15;115:13;116:9; 46:18;50:13;62:20,21; 115:13;116:9 mentioned (38) 23:20;27:4;28:6;34:14; 36:1,1;41:22;59:17; 62:23;63:5;74:12;83:13; 23:20;27:4;28:6;111:16, 18,25;112:2;115:7;117:7; 122:3;34:14;36:1,1; 41:22;59:17;62:23;63:5; 74:12;83:13;111:16,18, 25;112:2;115:7;117:7; 122:3 mentioning (2) 5:18,18 mentions (2) 48:23,23</p>	<p>merely (2) 5:4,4 merits (4) 7:14,15,14,15 met (12) 11:24;13:6;11:24;13:6; 69:6;85:23;98:14;123:1; 69:6;85:23;98:14;123:1 Michael (2) 15:9,9 middle (2) 54:17,17 midstream (2) 11:19,19 might (32) 19:1;27:25;28:1;29:13; 31:25;32:1;55:11,20; 65:24;19:1;97:25;100:18, 23;27:25;28:1;112:7; 29:13;115:2;119:23,24; 31:25;32:1;55:11,20; 65:24;97:25;100:18,23; 112:7;115:2;119:23,24 mile (4) 95:19;110:9;95:19;110:9 miles (2) 61:17,17 mind (8) 5:16;6:2,5;16:6;2;24:13; 36:12;24:13;36:12 mine (38) 4:23,24,23,24;55:5,6,10; 62:19;68:9;89:7,15;96:9, 13,20;97:1;103:2;104:19; 117:8;119:17;120:5,12; 55:5,6,10;62:19;68:9; 89:7,15;96:9,13,20;97:1; 103:2;104:19;117:8; 119:17;120:5,12 Miner (2) 14:16,16 mineral (12) 64:3,5,10;97:7;100:6; 117:23;64:3,5,10;97:7; 100:6;117:23 Minerals (2) 13:19,19 miners (6) 55:20,20;103:4;55:20,20; 103:4 Miner's (2) 15:2,2 mines (4) 64:3;123:7;64:3;123:7 minimize (4) 53:15;91:17;53:15;91:17 minimizing (2) 49:6,6 minimum (4) 103:4,15,4,15 Mining (54) 9:8;15:17;19:1;9:8; 40:18,20;41:7;47:10;</p>	<p>55:20;15:17;62:15,22; 63:1;64:5;68:11;72:20; 19:1;78:10,11;81:16; 83:15;84:20;86:18;90:12, 17,22,24;115:10;119:18; 123:6;40:18,20;41:7; 47:10;55:20;62:15,22; 63:1;64:5;68:11;72:20; 78:10,11;81:16;83:15; 84:20;86:18;90:12,17,22, 24;115:10;119:18;123:6 minor (2) 73:17,17 minute (6) 46:10;48:13;62:14; 46:10;48:13;62:14 misconception (2) 119:14,14 miss (2) 43:1,1 missed (2) 42:25,25 missing (4) 12:1,4,1,4 misspeak (4) 4:22,25,22,25 misspoke (2) 5:1,1 mistake (2) 120:23,23 mistaken (2) 36:2,2 moderately (2) 73:22,22 modernized (2) 68:12,12 modifications (2) 53:15,15 moment (2) 57:2,2 money (6) 85:5;102:22;109:18; 85:5;102:22;109:18 monitor (2) 65:22,22 month (2) 74:15,15 months (4) 97:19;103:22;97:19; 103:22 monuments (2) 65:15,15 MOONLIGHT (47) 1:5;4:23,23,24;9:15,18; 10:2,15;4:23,23,24;9:15, 18;10:2,15;55:5;79:6,20; 85:12;89:19;90:7;96:9, 13,20;97:5,10;103:20; 104:19;107:9;115:25; 120:5;55:5;79:6,20; 85:12;89:19;90:7;96:9, 13,20;97:5,10;103:20; 104:19;107:9;115:25;</p>	<p>120:5 Moonlighting's (2) 16:16,16 more (36) 27:4,6;48:24;55:1;63:12; 72:3;85:9;90:3;99:14; 100:16;102:12,13,17; 103:23;27:4,6;105:12; 110:23;121:4;122:24; 48:24;55:1;63:12;72:3; 85:9;90:3;99:14;100:16; 102:12,13,17;103:23; 105:12;110:23;121:4; 122:24 morning (2) 4:13,13 most (18) 75:2;88:25;91:16; 100:14;102:20;110:4,7, 15;112:24;75:2;88:25; 91:16;100:14;102:20; 110:4,7,15;112:24 mostly (2) 89:6,6 mother (10) 45:20;59:13;60:8,21; 103:16;45:20;59:13;60:8, 21;103:16 mother's (2) 21:22,22 motion (2) 124:15,15 mountain (4) 96:17;120:18;96:17; 120:18 mountains (2) 98:3,3 move (18) 7:23;8:5;7:23;8:5;43:9; 45:25;104:21;105:3; 106:16;114:21;124:7; 43:9;45:25;104:21;105:3; 106:16;114:21;124:7 moves (2) 105:2,2 Mrs (6) 20:20;23:14;63:24; 20:20;23:14;63:24 MSHA (6) 103:2,6,11,2,6,11 much (42) 6:21;11:20;16:6;18:4; 6:21;24:16;29:6;32:10; 11:20;41:1;43:5;44:15; 52:9;53:13;54:12;55:15; 56:25;16:6;66:16;18:4; 73:25;74:19;24:16;102:8; 109:17;29:6;118:2;32:10; 41:1;43:5;44:15;52:9; 53:13;54:12;55:15;56:25; 66:16;73:25;74:19;102:8; 109:17;118:2 muddy (4)</p>
--	--	--	---	---

<p>73:7;112:15;73:7;112:15 must (10) 47:25;53:18;102:4; 103:1;120:22;47:25; 53:18;102:4;103:1; 120:22 myriad (2) 121:21,21 myself (14) 26:17,22;61:5;66:17; 69:22;73:3;78:22;26:17, 22;61:5;66:17;69:22; 73:3;78:22</p>	<p>29:13,19;51:11;83:5; 91:21;92:17,18;103:17; 110:5,6;29:13,19;120:12; 123:13,19;124:11;51:11; 83:5;91:21;92:17,18; 103:17;110:5,6;120:12; 123:13,19;124:11 needed (6) 11:18,18;75:14;92:5; 75:14;92:5 Needless (2) 47:14,14 needs (6) 4:13,13;100:4;121:22; 100:4;121:22 NEVADA (70) 1:5,5,5,5,5;3:1,12,1,12; 9:24;11:16;13:1,9;24; 34:9,16;11:16;42:24; 13:1;53:1;55:9;58:12; 68:10;78:6;81:15,25; 83:15;84:20;88:19;89:1, 3,9,17;98:10,16;100:7; 104:7;113:11;115:10; 119:4;120:15,23;34:9,16; 42:24;53:1;55:9;58:12; 68:10;78:6;81:15,25; 83:15;84:20;88:19;89:1, 3,9,17;98:10,16;100:7; 104:7;113:11;115:10; 119:4;120:15,23;125:1,5, 8,14 new (22) 56:16;72:5,8;92:18; 99:16,17;103:4;105:23; 117:25,25;120:7;56:16; 72:5,8;92:18;99:16,17; 103:4;105:23;117:25,25; 120:7 News (2) 75:8,8 newspaper (2) 14:17,17 next (14) 14:8,12,18;19:2;14:8,12, 18;19:2;95:4;97:12; 110:9;95:4;97:12;110:9 nice (2) 37:22,22 Nobody's (2) 103:16,16 None (4) 92:24;101:17;92:24; 101:17 normally (4) 21:7,7;121:7,7 north (5) 85:24;95:6;85:24;95:6; 125:7 northeastern (2) 96:11,11 northern (2) 89:17,17</p>	<p>Northridge (2) 9:14,14 note (14) 3:19,24;4:2,3;19,24;4:2; 51:10;82:22;97:22; 110:17;51:10;82:22; 97:22;110:17 noted (2) 42:22,22 notes (4) 50:14,14;125:9,12 notice (100) 3:13,15,17,18;5:22,23; 3:13,15,17,18;13:11,11, 15;14:2,4,8,16,25;15:12, 25;16:20;5:22,23;18:8,14, 17,20;19:9,16;20:1,19,21; 21:1,6;22:18;24:3,4;29:3, 24;30:1;31:1,6,11,11; 13:11,11,15;14:2,4,8,16, 25;15:12,25;16:20;68:25; 18:8,14,17,20;19:9,16; 20:1,19,21;79:8,14,22,24, 25;80:2;21:1,6;22:18; 24:3,4;98:2;107:9;29:3, 24;115:6,7;30:1;119:7; 31:1,6,11,11;68:25;79:8, 14,22,24,25;80:2;98:2; 107:9;115:6,7;119:7 noticed (10) 3:11,11;11:25;38:22; 11:25;57:16;73:8;38:22; 57:16;73:8 notices (26) 13:15,22;15:23,24;13:15, 22;15:23,24;79:8;80:9; 81:1;85:20;86:11,11; 92:2;99:22;107:4;79:8; 80:9;81:1;85:20;86:11, 11;92:2;99:22;107:4 notification (4) 39:5;66:7;39:5;66:7 notified (8) 47:12;68:17,23;70:16; 47:12;68:17,23;70:16 notify (4) 37:10;66:4;37:10;66:4 NOVEMBER (7) 1:5;3:1,11,11;125:6,15 nowadays (2) 100:18,18 NRS (4) 115:18;122:20;115:18; 122:20 NRSs (2) 12:22,22 number (48) 14:9;20:13;48:6;14:9; 54:5;57:17;69:23;73:10; 20:13;82:23;92:19;93:23; 94:18,19;97:7;98:20; 99:11;102:11,12;110:1,1, 3,9,11,11,14;48:6;54:5;</p>	<p>57:17;69:23;73:10;82:23; 92:19;93:23;94:18,19; 97:7;98:20;99:11;102:11, 12;110:1,1,3,9,11,11,14 numbers (8) 20:14;56:20;75:19; 20:14;80:22;56:20;75:19; 80:22 NV (1) 125:19.5</p> <p style="text-align: center;">O</p> <p>oath (4) 4:4,5,4,5 object (34) 28:10;46:10,18,21;49:14; 51:8;68:16,19,21,23;69:1, 4;71:17;74:22;28:10; 111:2;112:17,24;46:10, 18,21;49:14;51:8;68:16, 19,21,23;69:1,4;71:17; 74:22;111:2;112:17,24 objecting (8) 49:15,21;50:2;51:22; 49:15,21;50:2;51:22 objection (62) 28:16;43:11,13;45:3; 47:1;50:1,5,12,24;51:4,5, 10,13,17;52:7;56:23;69:3, 25;70:5,11,15,19;71:20, 25;72:1;73:2;76:5,10,20; 106:17,18;28:16;43:11, 13;45:3;47:1;50:1,5,12, 24;51:4,5,10,13,17;52:7; 56:23;69:3,25;70:5,11,15, 19;71:20,25;72:1;73:2; 76:5,10,20;106:17,18 objections (16) 57:6;64:8;71:4,13;76:23, 25;77:3,5;57:6;64:8;71:4, 13;76:23,25;77:3,5 obligates (2) 118:21,21 obtain (6) 86:19;94:1;97:14;86:19; 94:1;97:14 obtained (6) 90:4;94:3;95:11;90:4; 94:3;95:11 obtaining (2) 92:14,14 obvious (2) 115:13,13 occasion (2) 65:14,14 occasions (2) 85:14,14 occupation (8) 78:7,14;88:4,15;78:7,14; 88:4,15 occupational (2) 9:14,14</p>	<p>occur (10) 22:9;79:10;82:16;22:9; 93:4;117:6;79:10;82:16; 93:4;117:6 occurred (6) 12:17,17;107:1,18,1,18 occurrence (4) 12:5,5;109:11,11 occurring (2) 82:15,15 occurs (4) 109:9,12,9,12 October (4) 95:25;120:8;95:25;120:8 odd (4) 108:8,11,8,11 off (4) 62:12;87:9;62:12;87:9 offer (2) 47:6,6 offered (2) 106:15,15 offering (6) 48:14;50:25;109:17; 48:14;50:25;109:17 offers (2) 57:11,11 Office (14) 20:14;71:14,15;75:25; 20:14;80:7;89:17;95:11; 71:14,15;75:25;80:7; 89:17;95:11 official (5) 71:4;72:3;71:4;72:3; 125:4 officially (6) 43:7;67:17;96:25;43:7; 67:17;96:25 officials (2) 70:6,6 often (2) 66:11,11 oil (24) 5:19,20,19,20;27:14; 28:7;29:23;30:8,11,22; 31:5,18;38:24;58:5; 27:14;28:7;29:23;30:8, 11,22;31:5,18;38:24;58:5 old (8) 54:17;62:19;68:9;123:7; 54:17;62:19;68:9;123:7 olive (2) 80:23,23 Oma (6) 21:20;45:20;59:13; 21:20;45:20;59:13 Once (4) 114:25;116:9;114:25; 116:9 One (142) 4:13,19;5:18;7:5,8;11:14, 15;12:9;4:13,19;14:20; 5:18;22:19;24:5;7:5,8;</p>
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<p>25:2,10,15;26:15,19,21,22;28:24;29:8;36:9;38:19;11:14,15;41:16;42:1,9;43:17;44:23;12:9;46:4;48:6;14:20;53:16;55:8;59:10;63:12;64:24;65:4,6;73:13,14,15;74:13;76:18;79:20;81:7;22:19;87:3,10;91:2;24:5;95:19;25:2,10,15;97:5,25;98:2,9;100:25;26:15,19,21,22;102:11;105:12;106:3;108:7,18;28:24;109:8,17;110:3,11;29:8;113:1,3;116:20;117:13;119:11;121:4,19,24;122:4;124:17;36:9;38:19;41:16;42:1,9;43:17;44:23;46:4;48:6;53:16;55:8;59:10;63:12;64:24;65:4,6;73:13,14,15;74:13;76:18;79:20;81:7;87:3,10;91:2;95:19;97:5,25;98:2,9;100:25;102:11;105:12;106:3;108:7,18;109:8,17;110:3,11;113:1,3;116:20;117:13;119:11;121:4,19,24;122:4;124:17</p> <p>one-quarter (2) 45:15,15</p> <p>only (36) 18:2;30:24;33:10;38:4;42:9;46:4;48:7;49:6;52:22;55:8;65:18;66:2;18:2;72:24;75:20;89:15;105:22;30:24;121:25;122:8;33:10;38:4;42:9;46:4;48:7;49:6;52:22;55:8;65:18;66:2;72:24;75:20;89:15;105:22;121:25;122:8</p> <p>oOo- (2) 3:2,2</p> <p>open (8) 3:13,13;24:18;45:24;72:18;24:18;45:24;72:18</p> <p>opening (8) 4:10;6:15;7:1;4:10;6:15;7:1;106:22,22</p> <p>operate (2) 119:3,3</p> <p>operation (8) 18:23,23;101:14;103:9;119:3;101:14;103:9;119:3</p> <p>operational (2) 22:11,11</p> <p>operations (10) 64:6;100:2;101:7;102:2;103:22;64:6;100:2;101:7;102:2;103:22</p> <p>opinion (10) 28:19;49:16,23;50:7;</p>	<p>51:1;28:19;49:16,23;50:7;51:1</p> <p>opinions (4) 49:25;50:6;49:25;50:6</p> <p>opportunities (2) 89:25,25</p> <p>opportunity (4) 51:25;121:17;51:25;121:17</p> <p>opposite (2) 110:19,19</p> <p>options (2) 56:1,1</p> <p>order (8) 3:5,5;36:14;50:21;114:22;36:14;50:21;114:22</p> <p>original (24) 6:8;19:20;6:8;30:17;33:5;19:20;75:17;79:25;90:13;91:24;97:4;98:5;107:12;108:9;30:17;33:5;75:17;79:25;90:13;91:24;97:4;98:5;107:12;108:9</p> <p>others (4) 57:25;67:22;57:25;67:22</p> <p>otherwise (2) 19:3,3</p> <p>ourselves (4) 90:12;103:18;90:12;103:18</p> <p>out (112) 12:10;16:20;20:21;24:11;26:18;27:4;29:9;36:11;39:11,21;41:25;42:9,18;44:12;12:10;46:25;47:6;53:17;59:15;60:11,13,21;16:20;62:3;65:10,19;66:11,16;67:14;68:22;69:21;76:16,17;20:21;84:14;85:16,22;90:2,14;24:11;93:18;96:10,17;99:17,21;26:18;103:23;104:2,12,21,24;27:4;106:22;107:17;108:7;109:19;110:13;29:9;115:7,23,24;116:2;121:12;36:11;39:11,21;41:25;42:9,18;44:12;46:25;47:6;53:17;59:15;60:11,13,21;62:3;65:10,19;66:11,16;67:14;68:22;69:21;76:16,17;84:14;85:16,22;90:2,14;93:18;96:10,17;99:17,21;103:23;104:2,12,21,24;106:22;107:17;108:7;109:19;110:13;115:7,23,24;116:2;121:12</p> <p>outfit (2) 56:4,4</p> <p>outline (2) 83:4,4</p>	<p>outlines (4) 82:12;101:6;82:12;101:6</p> <p>outside (8) 3:15,15;34:7;122:18;123:4;34:7;122:18;123:4</p> <p>over (40) 38:14;47:8;48:3;49:11;51:21;52:17;53:6,23;54:7;56:4;58:3;69:17;71:10;78:23;88:13;101:25;104:13;105:15;117:18;122:21;38:14;47:8;48:3;49:11;51:21;52:17;53:6,23;54:7;56:4;58:3;69:17;71:10;78:23;88:13;101:25;104:13;105:15;117:18;122:21</p> <p>override (2) 47:1,1</p> <p>own (34) 4:18,18;47:15;54:23;56:3;64:12;67:17;75:10;89:10;91:1,2,6;103:22;106:5;112:3,10;115:23,24;47:15;54:23;56:3;64:12;67:17;75:10;89:10;91:1,2,6;103:22;106:5;112:3,10;115:23,24</p> <p>owned (22) 64:18;87:7,10;89:8;90:18;92:22;93:2;94:10;108:12;119:20,20;64:18;87:7,10;89:8;90:18;92:22;93:2;94:10;108:12;119:20,20</p> <p>owner (18) 13:18,18;105:19;119:17,24;120:11,12,16,19;121:1;105:19;119:17,24;120:11,12,16,19;121:1</p> <p>owners (32) 13:17;14:25;16:23;19:20;20:7,9;47:15;13:17;14:25;54:13,15;55:24;16:23;19:20;20:7,9;90:13,25;109:6;112:14;116:24;117:20;47:15;54:13,15;55:24;90:13,25;109:6;112:14;116:24;117:20</p> <p>owners' (2) 56:2,2</p> <p>ownership (4) 15:2;18:25;15:2;18:25</p> <p>owns (10) 46:5;53:4;55:2;94:8;96:20;46:5;53:4;55:2;94:8;96:20</p>	<p>119:22</p> <p>packages (2) 99:2,2</p> <p>packet (4) 76:16,17,16,17</p> <p>pads (4) 22:25;79:17;22:25;79:17</p> <p>page (28) 14:8,12,25;15:8;18:18;32:21;37:2,6;38:23;49:22;14:8,12,25;15:8;18:18;94:18,19,19;101:2;32:21;37:2,6;38:23;49:22;94:18,19,19;101:2</p> <p>pages (21) 12:12,13;13:25;14:3,14,18,20;15:7,13;12:12,13;13:25;14:3,14,18,20;15:7,13;12:12,13;13:25;14:3,14,18,20;15:7,13;12:12,13</p> <p>paid (6) 60:18;61:6;85:4;60:18;61:6;85:4</p> <p>panel (12) 3:5,6,5,6;57:3;72:16;77:7;121:12;57:3;72:16;77:7;121:12</p> <p>paper (6) 47:17;50:15;55:12;47:17;50:15;55:12</p> <p>papers (2) 72:20,20</p> <p>paragraph (10) 18:21;37:3;49:21;50:3;57:17;18:21;37:3;49:21;50:3;57:17</p> <p>parameter (2) 65:20,20</p> <p>parcel (16) 20:12,14;45:14;48:10,11;76:2,19;20:12,14;87:10;45:14;48:10,11;76:2,19;87:10</p> <p>parcels (8) 45:23;53:4;75:11;110:24;45:23;53:4;75:11;110:24</p> <p>parents (2) 45:18,18</p> <p>Park (8) 61:15,16,16;105:4;61:15,16,16;105:4</p> <p>parking (2) 48:10,10</p> <p>part (48) 17:7;25:13;27:21;35:1;37:14;40:17;43:7,10,16;46:11;62:8;17:7;72:14;80:15;81:20;82:17,22;94:14;95:12;25:13;101:14;103:13;27:21;105:16;108:9;115:10;123:22;35:1;37:14;40:17;43:7,10,16;46:11;62:8;</p>	<p>72:14;80:15;81:20;82:17,22;94:14;95:12;101:14;103:13;105:16;108:9;115:10;123:22</p> <p>partially (2) 62:3,3</p> <p>participate (6) 79:2;92:1,8;79:2;92:1,8</p> <p>participated (6) 81:11;99:5;123:11;81:11;99:5;123:11</p> <p>participating (2) 121:9,9</p> <p>particular (42) 5:14;6:5,20;10:13;12:17,22;5:14;19:5,10;6:5,20;24:13;28:10;32:21;35:18;10:13;12:17,22;58:18;62:22;65:14;69:2;19:5,10;87:7;89:18,21;24:13;95:23;28:10;115:19;32:21;35:18;58:18;62:22;65:14;69:2;87:7;89:18,21;95:23;115:19</p> <p>particularly (4) 100:7;118:6;100:7;118:6</p> <p>parties (22) 3:15,23;4:6;3:15,23;4:6;13:21;15:23;19:17;41:1;13:21;15:23;17:15;23;66:11;19:17;100:12;41:1;51:15,17;66:11;100:12</p> <p>parts (4) 77:1;123:21;77:1;123:21</p> <p>party (20) 16:15;41:5,6;51:9,21;16:15;84:14;85:3;86:21;100:17,20;41:5,6;51:9,21;84:14;85:3;86:21;100:17,20</p> <p>pass (6) 46:3;96:6;104:22;46:3;96:6;104:22</p> <p>passage (2) 54:7,7</p> <p>passed (10) 36:18;76:16,17;106:22;115:9;36:18;76:16,17;106:22;115:9</p> <p>passengers (2) 28:1,1</p> <p>past (6) 15:19;24:11;15:19;24:11;102:1,1</p> <p>patent (18) 93:23;94:1,7,14;95:1;97:1,4,19;119:19;93:23;94:1,7,14;95:1;97:1,4,19;119:19</p> <p>patented (22) 90:22,23;91:1;96:9,13,20;97:2,10;119:17,23;120:12;90:22,23;91:1;</p>
		P		
		Pacific (4) 93:24;119:22;93:24;		

<p>96:9,13,20;97:2,10; 119:17,23;120:12 patents (14) 97:3,6;119:18,22;120:8, 8,20;97:3,6;119:18,22; 120:8,8,20 pay (4) 85:6;118:22;85:6;118:22 paying (2) 45:14,14 Peak (2) 65:10,10 penalize (2) 118:20,20 pendens (2) 117:22,22 people (38) 13:21;15:5;19:19;20:7; 36:10;39:5;13:21;50:14; 56:21;15:5;59:11;64:13, 13;68:17,17;69:21;19:19; 75:18;20:7;94:1;104:23; 107:21;115:22;36:10; 39:5;50:14;56:21;59:11; 64:13,13;68:17,17;69:21; 75:18;94:1;104:23; 107:21;115:22 Per (4) 1:5,5;95:20,20 percent (2) 100:19,19 perfectly (4) 41:8,23,8,23 perform (8) 37:18;84:9,12,14;37:18; 84:9,12,14 performed (2) 80:25,25 performing (2) 79:15,15 Perhaps (8) 28:24;42:9;92:17;28:24; 111:13;42:9;92:17; 111:13 period (10) 18:6;19:23;20:3;42:8; 47:6;18:6;19:23;20:3; 42:8;47:6 permission (2) 18:2,2 permit (230) 5:5,24;6:3,7;9:11,17; 10:3,5,14;13:9,10,13; 14:19,21;15:6,10;16:3; 5:5,24;17:15,24;18:1,24; 19:2,10,13;6:3,7;21:12; 22:5,6,11;24:13,15,25; 25:2,8;28:6,14,18;29:18, 20;30:3,19;31:2,13,16; 9:11,17;33:21;35:1,8,18; 10:3,5,14;37:18;38:17; 43:23;44:14;47:7,13; 48:5,13,17,19,21,23;13:9,</p>	<p>10,13;49:11;50:18,19; 14:19,21;53:5,21;54:6; 56:9;15:6,10;57:14;16:3; 64:9;17:15,24;67:25; 18:1,24;69:6;71:2,2,18, 21;19:2,10,13;73:24; 79:3;21:12;81:3;82:4,6; 22:5,6,11;92:9,15;24:13, 15,25;25:2,8;100:2,5; 101:1,19;105:16,17,17, 24;28:6,14,18;109:10,15; 111:4,4,11;29:18,20; 113:8,15;115:4,16,17,18; 116:11,15,21;30:3,19; 118:17;31:2,13,16; 121:24;122:19,19,25; 123:1,2,12,22,25;124:8, 17;33:21;35:1,8,18; 37:18;38:17;43:23;44:14; 47:7,13;48:5,13,17,19,21, 23;49:11;50:18,19;53:5, 21;54:6;56:9;57:14;64:9; 67:25;69:6;71:2,2,18,21; 73:24;79:3;81:3;82:4,6; 92:9,15;100:2,5;101:1,19; 105:16,17,17,24;109:10, 15;111:4,4,11;113:8,15; 115:4,16,17,18;116:11, 15,21;118:17;121:24; 122:19,19,25;123:1,2,12, 22,25;124:8,17 permits (8) 15:6;25:20;15:6;78:10; 25:20;102:15;78:10; 102:15 permitted (10) 36:11;45:25;46:7;107:4; 123:7;36:11;45:25;46:7; 107:4;123:7 PERMITTEE (5) 1:5;24:25,25;93:11,11 permitting (20) 39:2;64:3,4,5,10,14; 70:15,16;72:15;116:6; 39:2;64:3,4,5,10,14; 70:15,16;72:15;116:6 Pershing (22) 20:13;36:19;52:22,24; 53:2;58:12;60:9;20:13; 98:19,22;113:12;119:13; 36:19;52:22,24;53:2; 58:12;60:9;98:19,22; 113:12;119:13 person (12) 15:9;20:15,18;21:8;48:4; 15:9;20:15,18;21:8; 118:21;48:4;118:21 personally (4) 66:17;78:21;66:17;78:21 personnel (2) 49:9,9 persons (8) 3:18;4:1,3;18:4;1,19;3,4,</p>	<p>3,4 perspective (4) 56:17;122:11;56:17; 122:11 pertain (4) 37:16,24,16,24 pertains (2) 36:6,6 pertinent (4) 111:18;117:15;111:18; 117:15 petroleum (24) 23:21,21,24;24:24;25:8; 31:20;33:13,23;82:3; 83:8,20;23:21,21,24; 24:24;25:8;101:16;31:20; 33:13,23;82:3;83:8,20; 101:16 PhD (4) 15:9,9;67:20,20 philosophy (2) 103:16,16 Phlueger (2) 55:5,5 phone (10) 16:22;26:13;30:17; 41:24;16:22;75:19;26:13; 30:17;41:24;75:19 phonetic (2) 96:22,22 photograph (2) 72:22,22 photos (10) 23:5;32:4,5,8;55:3;23:5; 32:4,5,8,55:3 physical (2) 27:25,25 picture (6) 56:11,16;116:23;56:11, 16;116:23 piece (4) 38:17;105:4;38:17;105:4 place (18) 3:14,14;14:13;20:11,16; 21:19;49:24;14:13;68:5; 20:11,16;21:19;101:10, 19;49:24;68:5;101:10,19 places (4) 3:16,16;67:23,23 plan (56) 6:1;7:16;10:7,17,18,19, 21,23;11:21,23;13:12; 16:16;6:1;7:16;33:25; 10:7,17,18,19,21,23; 11:21,23;13:12;16:16; 80:12;81:23;82:10,11,17; 83:7;84:3,9,15;92:6;99:4; 101:7;107:6;119:5; 121:20;33:25;80:12; 81:23;82:10,11,17;83:7; 84:3,9,15;92:6;99:4; 101:7;107:6;119:5; 121:20</p>	<p>planned (8) 33:18,22;71:3;92:22; 33:18,22;71:3;92:22 planning (6) 25:23;58:1;93:1;25:23; 58:1;93:1 plans (6) 78:20;83:13;112:13; 78:20;83:13;112:13 please (32) 5:15;8:18;9:4;10:11; 12:7,13;14:14;5:15;8:18; 9:4;10:11;41:16;43:10; 44:19;12:7,13;14:14; 66:4;67:1,6;87:25;90:21; 101:2;41:16;43:10;44:19; 66:4;67:1,6;87:25;90:21; 101:2 pleasure (2) 122:10,10 plus (8) 29:2;60:17;65:2;103:22; 29:2;60:17;65:2;103:22 pm (4) 14:7,7;124:20,20 point (40) 7:19;8:11;12:22;7:19; 26:22;27:11,13;28:16; 8:11;42:10;12:22;49:14; 65:9;77:8;92:4;26:22; 27:11,13;28:16;109:19; 110:18,19,22;112:9,15; 113:6;118:15;42:10; 49:14;65:9;77:8;92:4; 109:19;110:18,19,22; 112:9,15;113:6;118:15 points (10) 31:8;45:5;48:23;102:9; 117:15;31:8;45:5;48:23; 102:9;117:15 policies (2) 103:13,13 policy (10) 101:8,21;103:8;109:4,8; 101:8,21;103:8;109:4,8 polluted (4) 55:5,10,5,10 polluting (2) 28:8,8 pollution (24) 27:22;28:3;29:10,22; 30:4,6,13,22;31:5;40:3; 54:20;58:5;27:22;28:3; 29:10,22;30:4,6,13,22; 31:5;40:3;54:20;58:5 portion (10) 95:5,22;96:11;107:10; 121:6;95:5,22;96:11; 107:10;121:6 position (6) 6:8;7:3;6:8;7:3;117:19, 19 positive (2)</p>	<p>90:4,4 possibility (10) 5:17,18,17,18;23:20; 43:1;46:2;23:20;43:1; 46:2 possible (22) 13:14;27:22,24;30:13; 46:3;13:14;54:19;58:6; 102:7,8;27:22,24;111:17, 19;30:13;46:3;54:19; 58:6;102:7,8;111:17,19 possibly (8) 42:1;44:24;80:5;83:2; 42:1;44:24;80:5;83:2 posted (10) 3:15,15;99:20;100:2,4; 116:7;99:20;100:2,4; 116:7 potential (6) 33:12;83:5;105:5;33:12; 83:5;105:5 potentially (2) 101:11,11 practice (2) 90:1,1 practiced (2) 88:23,23 practices (4) 83:15;101:23;83:15; 101:23 pre-1981 (2) 25:18,18 prefer (2) 91:17,17 preferential (2) 110:3,3 preparation (16) 64:8;79:2;81:12,22; 86:22;92:8,12;99:5;64:8; 79:2;81:12,22;86:22; 92:8,12;99:5 prepare (8) 13:11,11;79:8,22;81:14; 79:8,22;81:14 prepared (24) 7:13;18:7,8;7:13;18:7,8; 78:21,22,25;79:19,24; 80:1;83:13;88:14;98:10; 78:21,22,25;79:19,24; 80:1;83:13;88:14;98:10 prescriptive (8) 38:8;54:1,1,9;38:8;54:1, 1,9 present (15) 3:24;4:1;8:6,13;3:24;4:1; 8:6,13;50:17;51:3; 116:23;50:17;51:3; 116:23;125:7 presentation (22) 4:10;6:24;8:1;4:10;6:24; 8:1;38:13,15;44:25; 45:22;59:18;61:14;62:18; 77:7;38:13,15;44:25;</p>
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45:22;59:18;61:14;62:18; 77:7 presented (2) 114:19,19 presenting (2) 8:12,12 presently (2) 95:13,13 preserve (6) 54:22;120:23;121:2; 54:22;120:23;121:2 preserved (4) 55:18;120:3;55:18;120:3 president (2) 88:5,5 pretty (14) 6:21;11:20;6:21;37:7,20; 11:20;83:25;84:24;91:9; 37:7,20;83:25;84:24;91:9 prevent (10) 11:7;16:17;31:20;11:7; 16:17;82:14;101:8;31:20; 82:14;101:8 preventing (2) 16:17,17 prevention (8) 49:5;82:10,11,17;49:5; 82:10,11,17 prevents (2) 48:9,9 previous (6) 7:9,9;62:15;84:10;62:15; 84:10 previously (2) 94:8,8 prices (2) 115:11,11 printed (8) 52:10,11;53:10;56:19; 52:10,11;53:10;56:19 prior (8) 11:1;13:3;25:21;11:1; 13:3;25:21;120:17,17 private (104) 9:19,23;14:25;15:2; 16:23;17:24;18:2;19:20; 20:7,9;9:19,23;39:19; 40:7,11;46:8;47:8,14,16; 48:1,2;52:21;14:25;53:6, 20,23;54:12;56:2,3,4,14; 15:2;58:8;59:18,19; 16:23;17:24;65:16;18:2; 19:20;20:7,9;80:23;81:3; 84:7;86:14,19,20;87:6,7; 92:22;104:25;107:25; 109:5,24;112:14;116:22, 23;117:20;120:11;121:1; 122:4;39:19;40:7,11; 46:8;47:8,14,16;48:1,2; 52:21;53:6,20,23;54:12; 56:2,3,4,14;58:8;59:18, 19;65:16;80:23;81:3; 84:7;86:14,19,20;87:6,7;	92:22;104:25;107:25; 109:5,24;112:14;116:22, 23;117:20;120:11;121:1; 122:4 privately (2) 108:12,12 Pro (2) 1:..5, probable (2) 54:19,19 probably (18) 60:14;61:17;72:23; 73:21;74:14;78:22;79:1; 103:23;118:18;60:14; 61:17;72:23;73:21;74:14; 78:22;79:1;103:23; 118:18 problem (4) 54:14;66:5;54:14;66:5 problems (4) 54:13;118:1;54:13;118:1 procedure (4) 18:10,10;89:18,18 procedures (8) 21:16,17,16,17;101:9,23, 9,23 proceed (6) 7:18,18;43:5;114:22; 43:5;114:22 proceeding (8) 3:19,19;49:25;92:6; 111:6;49:25;92:6;111:6 proceedings (4) 4:3,3;124:20,20 process (30) 5:12,24;6:3,20;5:12,24; 6:3,20;37:13,14;39:2; 47:22;57:21;58:1;64:2; 70:16;90:6;107:11,15; 37:13,14;39:2;47:22; 57:21;58:1;64:2;70:16; 90:6;107:11,15 produced (2) 98:16,16 product (2) 33:23,23 products (16) 82:3;83:1,5,6,8,19,20; 101:16;82:3;83:1,5,6,8, 19,20;101:16 profession (2) 88:11,11 professional (10) 88:18,19,20,22,23,18,19, 20,22,23 Professor (18) 55:1,16;66:24;67:16,16; 111:21;112:8;113:5; 117:7;55:1,16;66:24; 67:16,16;111:21;112:8; 113:5;117:7 profit (2) 100:19,19	profoundly (2) 55:1,1 program (6) 35:17;83:2;90:2;35:17; 83:2;90:2 progress (2) 90:3,3 progressed (2) 55:21,21 project (124) 4:23,24;9:15,18,19;10:1, 2,6,16,20,25;11:9,11; 12:21,25;4:23,24;13:18; 16:13;18:3,4;21:18;22:8, 14;23:2;24:5,10;25:13; 9:15,18,19;10:1,2,6,16,20, 25;38:7,20,21;39:4,6; 11:9,11;41:6;12:21,25; 13:18;16:13;62:21;18:3, 4;71:3;72:16;79:12,19; 80:19;21:18;81:20;22:8, 14;85:12,22;87:6;23:2; 89:21,24;90:7;91:7;92:5; 24:5,10;93:18;96:3; 25:13;97:10;100:22; 103:1,20,21;105:8; 107:10,17,19;109:9; 110:2,2;120:5;38:7,20,21; 39:4,6;41:6;62:21;71:3; 72:16;79:12,19;80:19; 81:20;85:12,22;87:6; 89:21,24;90:7;91:7;92:5; 93:18;96:3;97:10;100:22; 103:1,20,21;105:8; 107:10,17,19;109:9; 110:2,2;120:5 projections (2) 84:24,24 PROJECTS (17) 1:5;9:22,22;62:16;64:3, 11;67:17;84:22;89:16; 100:8;62:16;64:3,11; 67:17;84:22;89:16;100:8 promptly (2) 116:11,11 pronounce (6) 15:13,14;21:22;15:13,14; 21:22 proof (2) 14:1,1 proper (14) 25:13;38:25;25:13; 107:21;115:2;117:5; 119:11;123:20;38:25; 107:21;115:2;117:5; 119:11;123:20 properly (12) 6:6,6;32:1;111:14; 116:10;122:20;124:1; 32:1;111:14;116:10; 122:20;124:1 properties (30) 47:9;48:1,2;52:22;54:12;	55:4;56:1;58:9;89:7;91:5; 93:4;104:24;117:23; 123:15;124:4;47:9;48:1, 2;52:22;54:12;55:4;56:1; 58:9;89:7;91:5;93:4; 104:24;117:23;123:15; 124:4 property (234) 5:4,6,8;6:12;7:11;13:17, 18;14:25;16:23;5:4,6,8; 17:21,22,24;18:2;19:4,20; 20:7,9,9,16;6:12;21:12; 22:6;23:8,11;7:11;27:24; 28:2;33:23;36:21;38:5,9, 17;39:19,22;40:7,12; 44:2;46:19,23;47:3,15; 13:17,18;14:25;53:6,20; 54:13,24;55:2,23;56:2,3, 14;58:8;59:16,21,23,25; 60:2,9,12,18,22,23,25; 16:23;61:2,3,6,8,9;62:2,5, 6,8,12,19;63:3,4,5;64:22; 17:21,22,24;65:5,20,24; 66:5;18:2;71:23,23;19:4, 20;20:7,9,9,16;79:6,7,20; 21:12;84:12;22:6;85:25, 25;86:20;23:8,11;89:19; 90:9,23;96:6,24;103:23; 72:24;105:19;106:2,6, 108:5,14;28:2;109:6,12, 21,23,24;110:7,23; 112:11,14;115:6,8; 116:23;119:12,21;120:11, 16,19;121:1;33:23;36:21; 38:5,9,17;39:19,22;40:7, 12;44:2;46:19,23;47:3, 15;53:6,20;54:13,24;55:2, 23;56:2,3,14;58:8;59:16, 21,23,25;60:2,9,12,18,22, 23,25;61:2,3,6,8,9;62:2,5, 6,8,12,19;63:3,4,5;64:22; 65:5,20,24;66:5;71:23,23; 79:6,7,20;84:12;85:25,25; 86:20;89:19;90:9,23; 96:6,24;103:23;105:19; 106:2,6;108:5,14;109:6, 12,21,23,24;110:7,23; 112:11,14;115:6,8; 116:23;119:12,21;120:11, 16,19;121:1 propose (2) 91:14,14 proposed (28) 11:5,12;40:7,11;11:5,12; 72:18;81:2;85:19;86:9, 10,13;92:16,16;107:25; 124:17;40:7,11;72:18; 81:2;85:19;86:9,10,13; 92:16,16;107:25;124:17 proposing (2) 108:21,21 prosecute (2) 34:21,21	prosecution (2) 34:11,11 prospect (4) 104:18;115:23;104:18; 115:23 prospecting (4) 11:3,3;90:3,3 prospective (2) 92:1,1 protect (6) 54:23;55:4;56:8;54:23; 55:4;56:8 protected (2) 55:16,16 protecting (2) 119:16,16 Protection (10) 9:9,9;34:6;39:10;48:21; 81:4;34:6;39:10;48:21; 81:4 protections (2) 49:5,5 protest (4) 47:17;54:22;47:17;54:22 proves (2) 120:17,17 provide (4) 23:17;26:8;23:17;26:8 provided (8) 3:14,14;12:19;43:6; 12:19;55:11;43:6;55:11 provides (8) 11:8,10;16:10;11:8,10; 49:4;16:10;49:4 providing (4) 92:15;99:5;92:15;99:5 public (44) 3:11,13,11,13;9:19,22,19, 22;36:15,16,20;38:24; 47:8;53:14;54:15;65:16; 79:10,12;80:24;81:1,21; 84:8;120:2,2;121:8; 36:15,16,20;38:24;47:8; 53:14;54:15;65:16;79:10, 12;80:24;81:1,21;84:8; 120:2,2;121:8;125:9,12 publication (4) 14:1,15,1,15 publicly (2) 119:1,1 pulverization (2) 73:22,22 pulverized (4) 73:4;74:3;73:4;74:3 purchase (2) 57:8,8 purchased (2) 90:13,13 pure (2) 56:6,6 purpose (21) 49:24;69:5;85:15,18; 101:4,17;111:3,6,15;
--	--	---	---	---

119:16;49:24;69:5;85:15; 18;101:4,17;111:3,6,15; 119:16;125:8 pursue (2) 122:4,4 purview (22) 4:14;6:2;4:14;6:2;39:2; 57:19;111:9,14;115:16; 121:24,25;122:11,18; 39:2;57:19;111:9,14; 115:16;121:24,25;122:11, 18 put (18) 7:19;18:17;7:19;26:18; 29:18;38:15;54:14;18:17; 84:18;26:18;102:22; 110:24;29:18;38:15; 54:14;84:18;102:22; 110:24	raised (8) 7:8;8;28:17;29:23;72:15; 28:17;29:23;72:15 raises (2) 31:22,22 ran (2) 104:20,20 ranch (2) 110:14,14 rancher (2) 105:2,2 Ranchers (4) 104:23,25,23,25 range (8) 62:6;95:6;96:17;104:15; 62:6;95:6;96:17;104:15 ranges (2) 95:19,19 rates (4) 100:11,13,11,13 rather (10) 28:23;75:11;102:22,22; 28:23;110:24;75:11; 102:22,22;110:24 reaching (2) 102:5,5 read (18) 6:21,21;51:6,13;52:10; 71:7;75:9;95:23;117:15; 120:13;51:6,13;52:10; 71:7;75:9;95:23;117:15; 120:13 reading (4) 45:1;50:16;45:1;50:16 ready (6) 8:13,13;77:16;121:15; 77:16;121:15 real (6) 4:15,15;90:23;117:18; 90:23;117:18 realize (2) 68:10,10 really (22) 4:14,14;57:19;58:3; 65:17;66:13;122:8,11,19, 21,25;123:13;57:19;58:3; 65:17;66:13;122:8,11,19, 21,25;123:13 realtor (2) 59:15,15 reason (4) 6:6,6;116:22,22 reasonable (2) 105:4,4 reasons (4) 110:10;117:13;110:10; 117:13 REBERT (3) 1:5;76:12,12 rebut (2) 114:16,16 rebuttal (6) 114:12,12,14,12,12,14	recall (4) 17:18;26:19;17:18;26:19 recalled (2) 26:24,24 receive (18) 13:21;15:10,24;16:21,24; 17:6;19:25;21:3;13:21; 15:10,24;16:21,24;17:6; 66:6;19:25;21:3;66:6 received (30) 4:6,6;16:22;17:5;18:6; 19:23;20:2;21:1,8,9; 30:18,19;31:1;32:25; 51:15;16:22;17:5;18:6; 70:18;19:23;20:2;21:1,8, 9;30:18,19;31:1;32:25; 51:15;70:18 receiving (2) 21:7,7 recess (2) 77:14,14 recitation (4) 7:7,7;51:14,14 reciting (2) 50:5,5 reclaim (20) 16:9,11,12;18:4;22:8; 23:2;35:10;41:6;16:9,11, 12;18:4;22:8;85:7;23:2; 116:25;35:10;41:6;85:7; 116:25 reclaimed (4) 18:3;44:13;18:3;44:13 reclaiming (4) 35:20;84:22;35:20;84:22 reclaims (2) 41:7,7 reclamation (148) 4:15;5:4;6:3;7:16;9:9; 11;10:3,7,14,18,19,20,21; 11:11;12:24;4:15;13:9, 10;15:18;16:7,8;5:4;18:1; 19:2,13;6:3,7;22:5,6,11, 14,15,24;23:10;24:25; 7:16;25:3,13;9:9,11; 33:14;34:25;35:15;10:3, 7,14,18,19,20,21;37:12, 18;38:4;39:18;40:15,15, 21,23,25;11:11;41:2; 42:17;43:20;44:8;12:24; 47:11;13:9,10;50:19; 15:18;16:7,8;18:1;69:6; 71:2;19:2,13;73:25; 78:20;81:17;84:9,14,17, 25;22:5,6,11,14,15,24; 23:10;92:6;24:25;25:3, 13;99:5,9;102:16;105:17; 107:6,11;111:4,5,11; 116:15;123:9,22;33:14; 34:25;35:15;37:12,18; 38:4;39:18;40:15,15,21, 23,25;41:2;42:17;43:20; 44:8;47:11;50:19;69:6;	71:2;73:25;78:20;81:17; 84:9,14,17,25;92:6;99:5, 9;102:16;105:17;107:6, 11;111:4,5,11;116:15; 123:9,22 recognized (2) 53:19,19 recollection (4) 31:3;63:15;31:3;63:15 recontoured (2) 107:11,11 record (52) 3:10,24;5:15;7:4;3:10, 24;9:3;5:15;7:4;29:18; 9:3;43:8,10,16;47:20; 50:1,8;51:5;52:25;54:15; 58:10;70:13;72:4;75:3,7; 77:2,4,15;83:25;93:11; 29:18;124:16;43:8,10,16; 47:20;50:1,8;51:5;52:25; 54:15;58:10;70:13;72:4; 75:3,7;77:2,4,15;83:25; 93:11;124:16 recorded (12) 4:3,3;94:23,25;97:6; 113:12,22;94:23,25;97:6; 113:12,22 recorder's (4) 75:25;94:19;75:25;94:19 Recording (1) 1:5 Records (4) 76:3;95:13;76:3;95:13 recover (2) 102:17,17 recoverable (2) 42:23,23 RECROSS (1) 2:5 RECROSS-EXAMINATION (2) 41:20,20 red (16) 80:19;81:2;86:8,13,14; 107:1,22;108:2;80:19; 81:2;86:8,13,14;107:1,22; 108:2 REDIRECT (7) 2:5;39:15;43:18;114:10; 39:15;43:18;114:10 redundant (4) 67:6;69:16;67:6;69:16 refer (20) 23:23,24;25:5,14;39:8, 11;50:21;23:23,24;91:8; 94:2;25:5,14;113:16; 39:8,11;50:21;91:8;94:2; 113:16 reference (4) 53:13;111:6;53:13;111:6 referenced (2) 82:20,20 referred (2) 75:4,4	refers (2) 52:14,14 reflects (2) 101:7,7 refused (2) 47:6,6 regard (2) 27:21,21 registering (8) 37:21;49:5;53:10;55:20; 37:21;49:5;53:10;55:20 registered (2) 88:18,18 registration (2) 88:20,20 regrade (2) 16:11,11 regraded (2) 107:12,12 regular (8) 52:15,17;54:2,4;52:15, 17;54:2,4 regularity (2) 104:8,8 regulate (4) 18:22,22;119:8,8 regulation (42) 5:7;9:8,22;15:17;5:7; 25:3,4,20,24,25;26:2,4; 27:5,8;9:8,22;36:18; 40:17,21,22;42:19;47:10; 15:17;81:17;25:3,4,20,24, 25;26:2,4;27:5,8;115:9; 36:18;40:17,21,22;42:19; 47:10;81:17;115:9 regulations (62) 4:15,18;9:21,25;11:14; 12:24;4:15,18;13:7; 18:22;22:10;23:4,10; 24:15;25:11;26:7;31:17; 9:21,25;37:16,22,24;39:6, 17;11:14;43:22;44:13; 12:24;13:7;18:22;81:16, 18,19,23;83:18;22:10; 23:4,10;24:15;25:11; 26:7;116:16;119:6,8; 31:17;123:9;37:16,22,24; 39:6,17;43:22;44:13; 81:16,18,19,23;83:18; 116:16;119:6,8;123:9 regulatory (14) 5:9;11:24;5:9;11:24; 69:7;84:7,13;118:12,25; 69:7;84:7,13;118:12,25 reintroduced (2) 70:4,4 reintroduction (2) 68:14,14 reiterate (4) 118:5;119:9;118:5;119:9 reiterated (4) 21:10,12,10,12 relate (2)
Q				
Quail (2) 67:18,18 qualified (2) 69:7,7 quarter (2) 45:15,15 quick (2) 93:19,19 quite (16) 5:15,15;35:5,8;69:18,23; 82:23;104:2;121:5;35:5, 8;69:18,23;82:23;104:2; 121:5 quotation (2) 51:17,17				
R				
RACKLEY (51) 1:5;3:8,8;24:21;35:25; 36:12,19,23;37:2,6,17; 38:2;57:8;76:14;86:7,14, 17;24:21;106:25;107:6, 13,18,22;108:1;121:15; 122:24;123:18;124:10; 35:25;36:12,19,23;37:2,6, 17;38:2;57:8;76:14;86:7, 14,17;106:25;107:6,13, 18,22;108:1;121:15; 122:24;123:18;124:10 railroad (10) 97:20;108:9;119:20,21, 24;97:20;108:9;119:20, 21,24 Railway (4) 93:24;119:23;93:24; 119:23 rain (2) 112:10,10 raise (2) 30:15,15				

<p>19:1,1 relative (2) 122:5,5 relatively (4) 84:4;92:11;84:4;92:11 relatives (2) 45:22,22 release (10) 34:7;41:9;42:17;44:8; 101:15;34:7;41:9;42:17; 44:8;101:15 released (2) 43:24,24 releases (6) 33:12;34:12,21;33:12; 34:12,21 releasing (2) 118:16,16 relevancy (4) 69:4;71:1;69:4;71:1 relevant (18) 61:21;67:4,6;69:9,12; 71:21;111:3;113:8,15; 61:21;67:4,6;69:9,12; 71:21;111:3;113:8,15 relied (2) 81:15,15 rely (4) 81:14;120:12;81:14; 120:12 remember (8) 17:20;20:20,24;26:14; 17:20;20:20,24;26:14 removal (2) 79:17,17 render (2) 49:25,25 rendering (4) 49:16,23,16,23 renewable (2) 49:12,12 repealed (4) 52:20;120:7;52:20;120:7 repeat (6) 40:9,10;76:25;40:9,10; 76:25 rephrase (4) 35:7;44:3;35:7;44:3 report (18) 39:10;40:3;70:3,8,12,13; 71:8;72:24;107:15;39:10; 40:3;70:3,8,12,13;71:8; 72:24;107:15 REPORTED (3) 1:5;107:20,20 REPORTER (3) 76:6,6;125:4 REPORTERS (3) 1:5;5;2:5 reporting (3) 101:9,9;125:8 reports (4) 71:8;81:23;71:8;81:23</p>	<p>represent (2) 75:15,15 representation (2) 95:10,10 representative (2) 23:15,15 represented (4) 3:20,20;71:14,14 request (20) 4:19,19;13:21;15:24; 33:1,9;42:17;44:7;13:21; 15:24;94:3,23;116:14; 33:1,9;42:17;44:7;94:3, 23;116:14 requested (10) 12:15,20;26:21;32:17; 12:15,20;47:7;26:21; 32:17;47:7 requesting (4) 3:18,18;47:11,11 requests (2) 57:12,12 require (14) 23:5,6;24:25;25:7;31:17; 37:22;23:5,6;24:25;25:7; 31:17;121:1;37:22;121:1 required (18) 12:21;16:2;29:4;34:22; 42:6;12:21;16:2;91:20; 99:18;103:2;29:4;116:12; 34:22;42:6;91:20;99:18; 103:2;116:12 requirements (24) 11:20,25;24:5;25:3,16; 11:20,25;69:7;81:24; 92:15;24:5;25:3,16; 101:10;102:24;118:12; 123:1;69:7;81:24;92:15; 101:10;102:24;118:12; 123:1 requiring (2) 54:12,12 resale (2) 46:3,3 research (12) 26:17,22;50:22,24,25; 65:3;26:17,22;50:22,24, 25;65:3 reserve (2) 6:15,15 reshape (2) 16:10,10 residence (2) 99:3,3 resident (2) 98:24,24 Resource (4) 15:4,4;121:20,20 Resources (6) 34:18;53:14;89:5;34:18; 53:14;89:5 respect (8) 28:18;35:18;50:18;</p>	<p>72:15;28:18;35:18;50:18; 72:15 respectfully (2) 116:14,14 respond (14) 7:14,14;27:1;28:21; 29:16,19,24;33:11;27:1; 28:21;29:16,19,24;33:11 responded (4) 116:11,12,11,12 responding (2) 19:7,7 response (26) 18:7;20:23;21:4,6;28:25; 29:7;30:17,25;31:6;32:6, 25;33:1,7;18:7;20:23; 21:4,6;28:25;29:7;30:17, 25;31:6;32:6,25;33:1,7 responses (2) 83:22,22 responsibilities (2) 89:23,23 responsibility (12) 10:10;27:23;34:20; 10:10;37:9;72:12;89:13; 27:23;34:20;37:9;72:12; 89:13 restorable (2) 102:5,5 result (2) 30:11,11 resulting (2) 105:20,20 results (2) 90:4,4 return (12) 6:8,8;42:20,21;44:6,7; 84:9;42:20,21;44:6,7; 84:9 returning (2) 44:5,5 revegetate (4) 16:11;24:5;16:11;24:5 revegetation (4) 23:1,1;115:21,21 review (12) 10:1;14:16;10:1;37:15, 23;44:7;14:16;81:23; 37:15,23;44:7;81:23 reviewed (4) 10:3;11:21;10:3;11:21 Revised (2) 81:25,25 revisions (2) 90:24,24 REYNOLDS (9) 1:5;76:15;106:21; 122:17;124:13;76:15; 106:21;122:17;124:13 Richmond (2) 120:14,14 Ridge (2) 67:19,19</p>	<p>right (88) 6:25;7:5;11:21;13:5,17; 14:19,23;15:13,14,25; 17:12,13,23;6:25;7:5; 27:10;36:23;40:24;11:21; 41:19;43:4;45:3;46:8; 47:25;48:4,6;13:5,17; 14:19,23;53:24;54:11; 15:13,14,25;57:6;58:11; 64:19;17:12,13,23;65:11; 69:11;72:17;98:6;102:5; 27:10;106:11;108:13; 109:19;111:7;113:13; 116:1;117:14;120:19,23; 121:2;123:8;36:23;40:24; 41:19;43:4;45:3;46:8; 47:25;48:4,6;53:24; 54:11;57:6;58:11;64:19; 65:11;69:11;72:17;98:6; 102:5;106:11;108:13; 109:19;111:7;113:13; 116:1;117:14;120:19,23; 121:2;123:8 right-hand (2) 95:22,22 rights (18) 7:11,11;38:8;54:23;56:3, 5;115:8;117:23;119:12; 120:1;38:8;54:23;56:3,5; 115:8;117:23;119:12; 120:1 rigs (6) 49:8;54:6;56:11;49:8; 54:6;56:11 road (212) 5:10;11:6;5:10;25:22,24, 24;27:25;29:11,11;36:14; 11:6;46:7,19,22;47:25; 48:2,7,7,8,9;49:6,7,10,12; 52:14,15,15,16,18,23,23, 24,25;53:1,16,17;54:5; 56:19;57:24;58:6,10; 61:24;62:2,3,7,8,10;63:6, 7,13,14;65:7,8,19;68:2; 72:25;73:3,4,15,16,20,22, 22,25;74:1,10,11,13; 75:12;76:1,19;91:22,23; 92:25;96:5,16;25:22,24, 24;97:8,9,23,23;98:9,13, 15,20,20,21;99:1,16,17; 102:23;27:25;108:13,21; 110:12,13;111:8,9;112:8, 19;29:11,11;113:12,18, 18,20;114:3;117:12; 120:4,17,19;121:2;36:14; 46:7,19,22;47:25;48:2,7, 7,8,9;49:6,7,10,12;52:14, 15,15,16,18,23,23,24,25; 53:1,16,17;54:5;56:19; 57:24;58:6,10;61:24; 62:2,3,7,8,10;63:6,7,13, 14;65:7,8,19;68:2;72:25; 73:3,4,15,16,20,22,22,25;</p>	<p>74:1,10,11,13;75:12;76:1, 19;91:22,23;92:25;96:5, 16;97:8,9,23,23;98:9,13, 15,20,20,21;99:1,16,17; 102:23;108:13,21;110:12, 13;111:8,9;112:8,19; 113:12,18,18,20;114:3; 117:12;120:4,17,19;121:2 roads (90) 5:8;6:9;12:24;13:1,2;5:8; 6:9;22:25;24:8;25:21; 26:14;36:1,2,10,25;38:7, 9,21;12:24;13:1,2;55:24; 58:7;66:11,14;73:12; 79:16;80:2;81:8;22:25; 86:1,2;91:16,21,24;92:18; 24:8;96:2;25:21;98:7; 26:14;104:3,8,24;105:1, 22,23;110:5,5;111:5; 112:22,23;120:25; 122:18;36:1,2,10,25;38:7, 9,21;55:24;58:7;66:11, 14;73:12;79:16;80:2; 81:8;86:1,2;91:16,21,24; 92:18;96:2;98:7;104:3,8, 24;105:1,22,23;110:5,5; 111:5;112:22,23;120:25; 122:18 roadway (6) 27:22,22;115:14,15,14, 15 Rochester (4) 55:10;117:8;55:10;117:8 rock (2) 115:23,23 Roll (2) 4:1,1 Ron (12) 59:2,7,8,9;60:6,7;59:2,7, 8,9;60:6,7 Ronald (10) 20:8;45:17;59:9;60:7; 75:15;20:8;45:17;59:9; 60:7;75:15 Room (1) 125:7 Roosevelt (2) 95:1,1 ROSE (1) 1:5 rough (2) 62:12,12 route (14) 28:2;91:16;28:2;110:7, 11,16;112:3;119:9;91:16; 110:7,11,16;112:3;119:9 routes (12) 63:10;91:13;92:17; 102:20;110:1,20;63:10; 91:13;92:17;102:20; 110:1,20 RPR (1) 1:5</p>
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<p>RS (46) 23:13;26:14;27:6;36:1,6; 48:1;49:12;52:14,20,21, 23;53:1,16,17,19;56:19; 75:8,23;23:13;26:14; 27:6;113:12;117:12; 119:14;120:1,6;36:1,6; 48:1;49:12;52:14,20,21, 23;53:1,16,17,19;56:19; 75:8,23;113:12;117:12; 119:14;120:1,6 rubber (2) 57:23,23 rule (2) 91:15,15 rules (2) 123:9,9 rulings (2) 55:15,15 run (10) 29:10;89:16;95:16; 104:25;108:13;29:10; 89:16;95:16;104:25; 108:13 runoff (2) 56:12,12 rural (2) 119:19,19</p>	<p>saw (26) 24:12;60:19,23,25;61:2, 3;63:17;69:23;70:9; 71:10;73:3;74:13,13; 24:12;60:19,23,25;61:2,3; 63:17;69:23;70:9;71:10; 73:3;74:13,13 saying (18) 17:20;31:10;37:8;49:20; 60:16;17:20;70:9;71:6; 110:6,19;31:10;37:8; 49:20;60:16;70:9;71:6; 110:6,19 scaled (2) 99:17,17 schedule (2) 11:10,10 science (6) 9:13,13;63:25;88:16; 63:25;88:16 scientist (2) 72:4,4 scope (2) 72:16,16 Sean (2) 69:24,24 seasonal (2) 30:14,14 SEC (9) 1:5;53:25,25;54:8;56:7; 53:25,25;54:8;56:7 second (18) 18:18,20;19:22;46:14; 65:12;18:18,20;19:22; 79:21;86:2;111:21; 124:10;46:14;65:12; 79:21;86:2;111:21; 124:10 Secondly (2) 53:21,21 Secretary (2) 1:5,5 section (52) 18:22;23:11;37:6;38:23; 40:17;45:15;46:5;53:4; 58:10;18:22;75:12;79:21, 21;80:21;82:8,9;23:11; 96:10,11;101:3,4;104:21; 108:5,6,7;110:8;115:19; 116:6;37:6;38:23;40:17; 45:15;46:5;53:4;58:10; 75:12;79:21,21;80:21; 82:8,9;96:10,11;101:3,4; 104:21;108:5,6,7;110:8; 115:19;116:6 sections (22) 37:16,21;45:23;53:5; 79:11;87:9;95:19,19; 108:8,8,11;37:16,21; 45:23;53:5;79:11;87:9; 95:19,19;108:8,8,11 sediment (6) 16:17;30:5;31:21;16:17;</p>	<p>30:5;31:21 sedimentation (2) 11:8,8 seeding (2) 23:1,1 seeing (4) 41:25;104:14;41:25; 104:14 seem (2) 29:2,2 seemed (2) 24:14,14 seems (6) 117:3,24;122:7;117:3,24; 122:7 sell (4) 46:9;47:5;46:9;47:5 Selma (2) 45:18,18 send (8) 15:22;21:5;24:3;15:22; 21:5;24:3;98:11,11 sense (12) 91:16;102:9,19;110:4,23; 120:7;91:16;102:9,19; 110:4,23;120:7 sent (22) 12:3;14:16;16:20;21:16, 18;27:7;12:3;14:16; 53:11;16:20;21:16,18; 27:7;109:10,15,17;115:7; 53:11;109:10,15,17;115:7 sentence (4) 19:2;53:16;19:2;53:16 separate (2) 109:14,14 September (4) 14:7,7;97:17,17 serve (2) 18:24,24 Service (2) 70:18,18 set (6) 28:20;35:13;99:18; 28:20;35:13;99:18 sets (2) 109:8,8 settle (4) 23:8;46:1;23:8;46:1 several (32) 7:4;16:22;20:9;7:4; 38:21;16:22;67:21;20:9; 79:11;81:5,6;90:22;96:4; 97:2;102:9;103:22; 104:13;114:25;117:19; 38:21;67:21;79:11;81:5, 6;90:22;96:4;97:2;102:9; 103:22;104:13;114:25; 117:19 shall (2) 8:11,11 SHANE (15) 2:5;8:17,20;9:5;8:17,20;</p>	<p>9:5;35:25;37:8;44:20; 98:12;35:25;37:8;44:20; 98:12 S-H-A-N-E (2) 9:5,5 shape (2) 105:4,4 sheep (4) 104:25;105:2;104:25; 105:2 sheet (8) 22:23,24;35:16,17;22:23, 24;35:16,17 sheets (2) 82:23,23 sheriff (4) 66:3,6,3,6 short (4) 47:12;77:14;47:12;77:14 shortest (4) 110:11,15,11,15 show (8) 32:5;96:2;98:7;124:16; 32:5;96:2;98:7;124:16 shown (6) 97:8;104:3;120:4;97:8; 104:3;120:4 shows (14) 10:22;11:5;10:22;11:5; 75:10;76:1,18;96:4; 106:8;75:10;76:1,18; 96:4;106:8 sick (2) 12:10,10 side (8) 38:19,21;73:13,14;38:19, 21;73:13,14 sign (2) 109:18,18 signature (4) 51:22;95:1;51:22;95:1 signed (8) 19:11,11;75:17;96:1; 105:17;75:17;96:1; 105:17 significant (4) 54:2,4,2,4 signs (2) 39:24,24 simply (2) 28:4,4 site (22) 14:9;16:10,11,11;18:23; 38:4;39:4;40:2;44:12; 14:9;16:10,11,11;18:23; 83:8;103:21;38:4;39:4; 40:2;44:12;83:8;103:21 sites (22) 18:23,23;80:2;85:19,21; 92:19,19;99:11;107:3,8, 23,25;80:2;85:19,21; 92:19,19;99:11;107:3,8, 23,25</p>	<p>situated (2) 34:17,17 situation (4) 52:6;85:4;52:6;85:4 situations (2) 13:14,14 six (2) 36:10,10 size (4) 92:19;99:12;92:19;99:12 sketch (4) 10:22;23:7;10:22;23:7 slicks (2) 30:11,11 slope (4) 99:13,14,13,14 slow (2) 5:16,16 small (8) 113:1,3;117:3,11;113:1, 3;117:3,11 smallest (2) 102:21,21 Smith (2) 15:9,9 so-called (2) 74:11,11 soil (18) 5:20,20;23:21,22,24; 24:24;25:1,4,8;31:20; 23:21,22,24;24:24;25:1,4, 8;31:20 sold (2) 68:4,4 sole (2) 98:24,24 somebody (12) 5:17,17;17:22;20:25; 36:1,3;17:22;65:22; 20:25;36:1,3;65:22 someone (2) 39:8,8 sometime (2) 63:16,16 Sometimes (8) 4:22,23,22,23;36:2; 73:13;36:2;73:13 somewhere (2) 100:18,18 sorry (22) 10:12;14:4;31:18;10:12; 37:5;38:10;49:18;14:4; 61:1,14;67:15;114:3; 31:18;123:12;37:5;38:10; 49:18;61:1,14;67:15; 114:3;123:12 sort (10) 7:3,3;68:18;72:8;96:13; 101:16;68:18;72:8;96:13; 101:16 sound (2) 110:17,17 south (4)</p>
S				
<p>safe (2) 102:4,4 safety (12) 83:6;101:23;102:2,25; 103:3,6;83:6;101:23; 102:2,25;103:3,6 sage (16) 68:13;69:19,23;70:3,24; 71:4,8;72:23;68:13; 69:19,23;70:3,24;71:4,8; 72:23 sagebrush (10) 62:4,13;63:9;73:12,16; 62:4,13;63:9;73:12,16 sake (2) 98:1,1 same (34) 7:25;8:6;19:16,19;7:25; 8:6;29:17;45:23;59:10; 61:9;62:16;68:2,3;19:16, 19;91:2;94:11;97:23; 106:5;29:17;114:22; 123:5;45:23;59:10;61:9; 62:16;68:2,3;91:2;94:11; 97:23;106:5;114:22; 123:5 sampling (4) 90:3;103:24;90:3;103:24 San (2) 59:3,3 satisfactory (2) 4:7,7</p>				

85:25;96:16;85:25;96:16 southern (2) 107:10,10 southwest (2) 45:15,15 southwestern (2) 107:10,10 space (2) 72:18,18 speak (10) 22:2;45:17;47:23;67:21; 22:2;91:4;45:17;47:23; 67:21;91:4 speaking (4) 20:4;38:10;20:4;38:10 species (2) 68:24,24 specific (6) 80:18;101:9;105:8; 80:18;101:9;105:8 specifically (8) 37:23;103:11;107:24; 119:25;37:23;103:11; 107:24;119:25 speed (2) 97:13,13 spell (6) 9:4,4;78:3;88:1;78:3; 88:1 spelled (2) 9:5,5 spill (14) 82:9,11,14,16,17;101:9; 118:24;82:9,11,14,16,17; 101:9;118:24 spillage (4) 38:24;107:14;38:24; 107:14 spills (12) 37:9,21;40:2;82:3,15; 101:8;37:9,21;40:2;82:3, 15;101:8 spite (2) 36:9,9 spoke (18) 20:7;26:13;41:23;50:14; 53:3,7;56:21;64:13;70:2; 20:7;26:13;41:23;50:14; 53:3,7;56:21;64:13;70:2 spread (8) 22:23,24;35:16,17;22:23, 24;35:16,17 Spring (2) 85:24,24 Springs (4) 88:3,17,3,17 square (4) 95:19;110:9;95:19;110:9 SRCE (2) 84:17,17 ss (1) 125:1.5 stabilization (2)	115:21,21 staked (2) 90:12,12 stamped (2) 12:9,9 stand (2) 8:18,18 standard (8) 22:23;35:15;84:7;22:23; 99:12;35:15;84:7;99:12 standardized (2) 84:17,17 standards (4) 84:15;103:14;84:15; 103:14 standing (2) 53:17,17 standpoint (2) 118:11,11 Star (4) 65:10;68:3;65:10;68:3 start (8) 3:25,25;13:9;14:19;13:9; 14:19;90:2,2 started (8) 8:10,10;67:18;69:21; 73:23;67:18;69:21;73:23 starts (2) 50:3,3 STATE (66) 1:5,5;3:5,7,12;7:8;3:5,7, 12;9:3,14;7:8;9:3,14; 34:8,16;42:24;52:22; 53:1;55:9;58:12;61:18; 69:13,15;70:16;78:3; 83:15;87:25;98:16; 100:23;101:5;113:11; 114:23;115:22;118:18; 119:8;120:23,24;123:5; 34:8,16;42:24;52:22; 53:1;55:9;58:12;61:18; 69:13,15;70:16;78:3; 83:15;87:25;98:16; 100:23;101:5;113:11; 114:23;115:22;118:18; 119:8;120:23,24;123:5; 125:1,5 stated (22) 7:13,13;32:15;48:2,5,22; 54:18;55:4,15;109:4; 110:2;119:10;32:15;48:2, 5,22;54:18;55:4,15; 109:4;110:2;119:10 statement (32) 4:20;6:15,20;7:1,3;10:8; 4:20;6:15,20;7:1,3;10:8; 50:6;57:16;76:13;106:21; 111:16,23;116:19;118:3; 119:10;120:13;50:6; 57:16;76:13;106:21; 111:16,23;116:19;118:3; 119:10;120:13 statements (16)	4:10;7:24;4:10;7:24; 51:7,14,17,19;52:3;70:12; 51:7,14,17,19;52:3;70:12 states (16) 13:12,13;30:12;37:7; 13:12,13;50:15;55:7,17; 90:18;30:12;37:7;50:15; 55:7,17;90:18 State's (6) 4:10;6:7;7:19;4:10;6:7; 7:19 stating (10) 3:13,13;10:9;30:20;10:9; 48:17;30:20;120:1;48:17; 120:1 status (2) 3:23,23 statute (20) 6:10;7:17;11:13;18:16; 6:10;7:17;26:1,3,7;11:13; 43:22;18:16;26:1,3,7; 116:17;120:24;43:22; 116:17;120:24 statutes (24) 4:15,18;5:7,9;22;11:14; 4:15,18;5:7;23:4,10;9:22; 34:6;39:17;11:14;54:17; 81:25;23:4,10;119:8; 34:6;39:17;54:17;81:25; 119:8 statutory (8) 5:9,9;44:1;69:6;118:12; 44:1;69:6;118:12 stay (6) 69:11;91:21,21;69:11; 91:21,21 Ste (1) 1:5 steeper (2) 99:14,14 stereotype (2) 125:9,12 step (6) 41:15;44:19;90:2;41:15; 44:19;90:2 steps (2) 13:8,8 stewards (4) 46:1;56:7;46:1;56:7 stewardship (4) 56:18;102:18;56:18; 102:18 Stewart (1) 125:7 sticks (2) 36:12,12 still (2) 36:11,11 stop (4) 11:19,19;54:10,10 stopped (6) 63:7;65:8,9;63:7;65:8,9 stops (4)	15:1,1;65:19,19 storage (2) 101:10,10 storing (4) 48:9,10,9,10 stream (4) 30:22;31:21;30:22;31:21 streams (4) 30:6;55:8;30:6;55:8 Street (4) 1:5;98:25,25;125:7 stretch (2) 77:13,13 stricken (2) 77:1,1 strictly (6) 4:25,25;45:1;86:23;45:1; 86:23 Strike (4) 89:7,15,7,15 strive (2) 101:8,8 students (2) 67:22,22 stuff (4) 15:20,20;58:3,3 subcontractors (2) 101:22,22 subdivision (14) 91:2;94:12;95:16,18; 98:25;106:2,5;91:2; 94:12;95:16,18;98:25; 106:2,5 subject (18) 4:21;7:20;8:2,7;4:21; 24:17;7:20;8:2,7;39:6; 57:4,5;24:17;110:25; 39:6;57:4,5;110:25 submit (8) 16:2;32:4;42:14,16;16:2; 32:4;42:14,16 submits (6) 16:8;51:18,20;16:8; 51:18,20 submitted (18) 10:4,15;22:23;31:6;32:8; 10:4,15;57:10;79:25; 80:1;22:23;85:20;31:6; 32:8;57:10;79:25;80:1; 85:20 subsection (2) 81:18,18 subsequent (2) 120:20,20 subsidiary (2) 88:6,6 substances (4) 33:13;118:21;33:13; 118:21 substantiate (2) 53:11,11 suffered (2) 27:25,25	sufficiency (2) 69:8,8 suggesting (2) 83:10,10 suit (2) 51:9,9 suitable (2) 54:7,7 suits (2) 122:10,10 SULFRIAN (43) 2:5;7:15;22:19;7:15; 47:24;22:19;85:16,23; 87:15,18,25;88:2,4;93:9, 15;100:21,24;101:14; 103:19;105:5,11;106:25; 108:17;118:8;47:24; 85:16,23;87:15,18,25; 88:2,4;93:9,15;100:21,24; 101:14;103:19;105:5,11; 106:25;108:17;118:8 S-U-L-F-R-I-A-N (2) 88:2,2 summarizes (4) 7:3,3;93:9,9 supervising (2) 102:1,1 supervisor (2) 89:14,14 supplies (2) 48:11,11 support (10) 51:19;78:13;113:11; 123:2,12;51:19;78:13; 113:11;123:2,12 supporting (2) 51:7,7 suppose (2) 68:9,9 supposed (8) 4:18;10:23;4:18;23:13; 10:23;73:10;23:13;73:10 Supreme (2) 120:15,15 sure (20) 26:6;36:7;42:19;44:13; 57:9;60:16;61:20;86:7; 26:6;102:3;103:25;36:7; 42:19;44:13;57:9;60:16; 61:20;86:7;102:3;103:25 Surely (2) 54:11,11 surety (2) 116:7,7 surface (24) 9:20;10:24;11:8;16:18; 9:20;33:15;10:24;11:8; 16:18;81:19;92:24;102:8; 107:12;110:13;116:4; 118:16;33:15;81:19; 92:24;102:8;107:12; 110:13;116:4;118:16 surrounding (4)
--	---	---	---	---

<p>53:14;63:11;53:14;63:11 survey (26) 65:15;95:10,15,24;96:2; 97:7,9,13,16,18,24;98:2, 5;65:15;95:10,15,24; 96:2;97:7,9,13,16,18,24; 98:2,5 surveyors (4) 95:17;98:3;95:17;98:3 surveys (2) 120:5,5 suspect (2) 70:17,17 sustain (2) 70:15,15 sustained (2) 71:20,20 Swain (4) 45:19,19,19,19 Sweden (2) 67:23,23 sworn (24) 4:4,20;7:20;8:2,7,22;4:4, 20;7:20;8:2,7,22;44:21; 45:10;67:2,11;77:22; 87:20;44:21;45:10;67:2, 11;77:22;87:20 system (2) 95:18,18</p>	<p>telephone (8) 14:9;16:21;17:18;20:24; 14:9;16:21;17:18;20:24 telling (2) 101:4,4 ten (4) 18:16,16;78:22,22 tend (2) 4:22,22 tent (2) 46:6,6 term (4) 85:8;90:17;85:8;90:17 terms (4) 84:4;92:11;84:4;92:11 Terraco (6) 88:6,8;89:2;88:6,8;89:2 testified (20) 8:23,23;32:7;45:11; 67:12;77:23;87:21;91:25; 94:8;112:8;115:5;32:7; 45:11;67:12;77:23;87:21; 91:25;94:8;112:8;115:5 testify (14) 7:15,15;51:15,18;69:8; 70:1,6;96:5;51:15,18; 69:8;70:1,6;96:5 testifying (6) 8:1,1;40:14;68:20;40:14; 68:20</p>	<p>32:21;41:1,5,6;51:15,17, 21;66:11;84:14;85:3; 100:12,17,20 third-party (6) 16:14;51:19;16:14;85:3; 51:19;85:3 Thirty-six (2) 95:20,20 THOMAS (3) 1:5;3:20,20 though (10) 6:10;15:1;6:10;15:1; 103:11;115:15;120:19; 103:11;115:15;120:19 thought (10) 62:5,11;65:6,14;111:15; 62:5,11;65:6,14;111:15 three (36) 15:1;40:22;42:2,9;44:23; 48:9;15:1;74:14;76:14; 79:19;80:18;84:21;99:22; 102:16;110:14;113:20; 118:6;121:19;122:7; 40:22;42:2,9;44:23;48:9; 74:14;76:14;79:19;80:18; 84:21;99:22;102:16; 110:14;113:20;118:6; 121:19;122:7 threshold (2) 34:24,24 throughout (2) 103:23,23 THURSDAY (6) 1:5;3:1,11,1,11;125:6 times (16) 55:22;64:21;68:5;73:21; 103:19,24;104:13; 113:20;55:22;64:21;68:5; 73:21;103:19,24;104:13; 113:20 tires (2) 58:5,5 title (6) 40:24;54:11,24;40:24; 54:11,24 today (40) 3:7;4:3,14,19;3:7;4:3,14, 19;40:14;45:13,19,20; 46:13;47:23;48:8;49:7; 55:2;63:12;71:18;93:19; 115:1;116:23;123:24; 124:8;40:14;45:13,19,20; 46:13;47:23;48:8;49:7; 55:2;63:12;71:18;93:19; 115:1;116:23;123:24; 124:8</p>	<p>27:5;47:7;52:25;55:19; 62:5,18;65:8,18;66:13; 70:6;71:24 tons (2) 54:18,18 took (6) 33:10;62:12;63:7;33:10; 62:12;63:7 tool (2) 84:18,18 top (2) 87:9,9 topographic (6) 10:22;23:6;10:22;81:6; 23:6;81:6 total (2) 64:21,21 totally (2) 37:17,17 touching (2) 105:5,5 tour (2) 104:20,20 toward (2) 101:21,21 towards (2) 103:8,8 town (2) 117:9,9 township (10) 95:6,16,20;98:4;108:9; 95:6,16,20;98:4;108:9 townships (2) 95:18,18 toxicology (2) 83:4,4 traded (2) 119:1,1 traffic (2) 29:11,11 trail (2) 52:16,16 trailer (4) 105:2,3,2,3 training (14) 102:2,25;103:2,2,4,5,13; 102:2,25;103:2,2,4,5,13 trampled (4) 56:4;73:12;56:4;73:12 transcript (1) 125:10 transcription (1) 125:12 Transportation (4) 98:10,18,10,18 travel (6) 52:18;105:3,15;52:18; 105:3,15 traveled (2) 67:21,21 traveling (2) 28:8,8 travels (2)</p>	<p>96:8,8 tremendous (2) 119:2,2 trespass (6) 17:21;38:9;17:21;66:4; 38:9;66:4 trespassing (6) 28:4;31:4;39:24;28:4; 31:4;39:24 tried (14) 65:6,9,9,11;72:2;115:12; 116:2;65:6,9,9,11;72:2; 115:12;116:2 Trout (6) 53:7;55:7,8;53:7;55:7,8 truck (4) 62:4,10,4,10 trucks (2) 73:6,6 true (11) 35:6;36:17;40:1;56:17; 112:5;35:6;36:17;40:1; 56:17;112:5;125:11 Trust (4) 45:19;67:18;45:19;67:18 try (6) 82:14;102:7,20;82:14; 102:7,20 trying (4) 61:23;111:16;61:23; 111:16 Tuesday (4) 24:11,11;98:14,14 Turkey (2) 67:23,23 turn (16) 15:19;32:20;44:21; 15:19;77:9;93:23;100:24; 101:2;108:7;32:20;44:21; 77:9;93:23;100:24;101:2; 108:7 turning (8) 33:12;34:25;97:12;99:4; 33:12;34:25;97:12;99:4 turns (2) 96:16,16 twentieth (2) 94:15,15 Twice (2) 64:23,23 two (44) 3:7,7;13:13,25;14:3,13, 18;15:13;40:20;42:1,9; 13:13,25;14:3,13,18; 15:13;59:10;73:14;76:18; 79:21;80:21;85:14,17; 87:9;97:19;98:1;102:13; 110:11;40:20;42:1,9; 59:10;73:14;76:18;79:21; 80:21;85:14,17;87:9; 97:19;98:1;102:13; 110:11 type (4)</p>
<p style="text-align: center;">T</p> <p>tab (2) 38:23,23 Tahoe (2) 120:16,16 tailings (2) 117:8,8 talk (12) 5:19,19;21:20;38:3; 57:17;21:20;83:4;93:17; 38:3;57:17;83:4;93:17 talked (6) 29:17;72:25;75:19; 29:17;72:25;75:19 talking (20) 30:7,8;36:17;45:16; 52:24;62:20;64:12;80:17; 96:12;30:7,8;117:4; 36:17;45:16;52:24;62:20; 64:12;80:17;96:12;117:4 target (4) 90:6;102:21;90:6;102:21 targets (2) 99:10,10 tax (4) 60:18;61:6;60:18;61:6 taxes (2) 45:14,14 taxpayers (2) 45:17,17 techniques (2) 11:3,3</p>	<p>Testimony (50) 4:3;8:6;4:3;8:6;30:2; 49:15,16,22;50:7,18; 68:21,23;69:9;74:5,20; 82:2;93:19;112:18,22,23; 114:16,20;115:25;30:2; 118:6,11;123:24;124:8; 49:15,16,22;50:7,18; 68:21,23;69:9;74:5,20; 82:2;93:19;112:18,22,23; 114:16,20;115:25;118:6, 11;123:24;124:8 TGC (52) 3:20,20;9:16;10:4,15; 9:16;33:22;10:4,15;46:7; 47:5,16,24;53:5,22,22; 78:12;79:8,20;80:19,25; 81:3;82:12;87:10;88:7,8; 89:2,19;90:9;96:23; 33:22;46:7;47:5,16,24; 53:5,22,22;78:12;79:8,20; 80:19,25;81:3;82:12; 87:10;88:7,8;89:2,19; 90:9;96:23 Theodore (2) 95:1,1 Therefore (6) 46:21;99:11;116:14; 46:21;99:11;116:14 third (28) 16:15;32:21;41:1,5,6; 51:15,17,21;16:15;66:11; 84:14;85:3;100:12,17,20;</p>	<p>throughout (2) 103:23,23 THURSDAY (6) 1:5;3:1,11,1,11;125:6 times (16) 55:22;64:21;68:5;73:21; 103:19,24;104:13; 113:20;55:22;64:21;68:5; 73:21;103:19,24;104:13; 113:20 tires (2) 58:5,5 title (6) 40:24;54:11,24;40:24; 54:11,24 today (40) 3:7;4:3,14,19;3:7;4:3,14, 19;40:14;45:13,19,20; 46:13;47:23;48:8;49:7; 55:2;63:12;71:18;93:19; 115:1;116:23;123:24; 124:8;40:14;45:13,19,20; 46:13;47:23;48:8;49:7; 55:2;63:12;71:18;93:19; 115:1;116:23;123:24; 124:8 together (6) 14:22,22;84:18,21,18,21 told (32) 18:1;21:1,5,10,16;27:5; 47:7;52:25;55:19;62:5, 18;65:8,18;66:13;18:1; 70:6;71:24;21:1,5,10,16;</p>	<p>township (10) 95:6,16,20;98:4;108:9; 95:6,16,20;98:4;108:9 townships (2) 95:18,18 toxicology (2) 83:4,4 traded (2) 119:1,1 traffic (2) 29:11,11 trail (2) 52:16,16 trailer (4) 105:2,3,2,3 training (14) 102:2,25;103:2,2,4,5,13; 102:2,25;103:2,2,4,5,13 trampled (4) 56:4;73:12;56:4;73:12 transcript (1) 125:10 transcription (1) 125:12 Transportation (4) 98:10,18,10,18 travel (6) 52:18;105:3,15;52:18; 105:3,15 traveled (2) 67:21,21 traveling (2) 28:8,8 travels (2)</p>	<p>turn (16) 15:19;32:20;44:21; 15:19;77:9;93:23;100:24; 101:2;108:7;32:20;44:21; 77:9;93:23;100:24;101:2; 108:7 turning (8) 33:12;34:25;97:12;99:4; 33:12;34:25;97:12;99:4 turns (2) 96:16,16 twentieth (2) 94:15,15 Twice (2) 64:23,23 two (44) 3:7,7;13:13,25;14:3,13, 18;15:13;40:20;42:1,9; 13:13,25;14:3,13,18; 15:13;59:10;73:14;76:18; 79:21;80:21;85:14,17; 87:9;97:19;98:1;102:13; 110:11;40:20;42:1,9; 59:10;73:14;76:18;79:21; 80:21;85:14,17;87:9; 97:19;98:1;102:13; 110:11 type (4)</p>

9:18,18;54:14,14 types (8) 34:12;78:24;82:5;90:9; 34:12;78:24;82:5;90:9	96:10;25:1,8;97:13; 99:14;103:17,17;104:16, 18,23;27:13;109:8; 110:15;111:13;29:25; 114:24;30:16;117:12; 118:22;119:13;120:8,16; 31:20;123:11;34:23; 37:17,21;42:4,22,24;54:3; 65:10;66:25;67:5;68:3, 22;69:20;71:18;73:7,14; 75:12;96:10;97:13;99:14; 103:17,17;104:16,18,23; 109:8;110:15;111:13; 114:24;117:12;118:22; 119:13;120:8,16;123:11	103:3;109:8 V valid (4) 53:18,19,18,19 validity (6) 18:25,25;53:17;18:25,25; 53:17 Valley (10) 85:24;96:10;104:15,15; 110:15;85:24;96:10; 104:15,15;110:15 valleys (2) 120:18,18 value (2) 5:8,8 values (4) 5:6,6;23:11,11 various (12) 84:19;87:8;89:7;91:13; 108:12;121:18;84:19; 87:8;89:7;91:13;108:12; 121:18 vary (4) 99:13;100:22;99:13; 100:22 vegetation (6) 49:5;54:21;79:17;49:5; 54:21;79:17 vehicles (4) 28:8;48:10;28:8;48:10 venue (2) 123:20,20 verbal (4) 20:5,6,5,6 verbatim (1) 125:8 verify (2) 65:17,17 versed (2) 27:12,12 versus (2) 120:14,14 vested (4) 34:13;119:12;34:13; 119:12 vice (2) 88:5,5 view (8) 102:10;110:18,19,22; 102:10;110:18,19,22 Village (2) 120:16,16 vintages (2) 11:2,2 visit (6) 85:12,16,19,12,16,19 visited (8) 64:21;65:5;68:5;103:19; 64:21;65:5;68:5;103:19 visiting (2) 65:24,24	visits (2) 85:15,15 Vista (4) 104:14;110:15;104:14; 110:15 vote (4) 124:13,15,13,15 W waited (4) 30:17,24,17,24 waiting (2) 29:7,7 walk (2) 84:12,12 walked (4) 55:3;68:5;55:3;68:5 WALKER (1) 1:5 walking (2) 103:24,24 wants (6) 40:3;112:22;118:23; 40:3;112:22;118:23 warns (2) 55:9,9 Washington (6) 53:8;88:19;123:17;53:8; 88:19;123:17 waste (2) 117:5,5 Watch (2) 15:4,4 water (16) 10:24;11:8;16:18;34:8; 10:24;11:8;56:6;16:18; 110:14;112:15;116:4; 34:8;56:6;110:14;112:15; 116:4 watershed (4) 55:4;72:18;55:4;72:18 waterway (2) 30:14,14 way (42) 7:18;15:12;7:18;29:16; 46:6;48:18;15:12;58:11; 62:8;63:10;66:10;71:17, 24;72:19;73:13,15;84:16; 86:3;99:15;104:22; 109:23;110:23;29:16; 113:13;46:6;48:18;58:11; 62:8;63:10;66:10;71:17, 24;72:19;73:13,15;84:16; 86:3;99:15;104:22; 109:23;110:23;113:13 ways (2) 108:12,12 web (4) 14:9;40:2;14:9;40:2 weighing (2) 43:15,15 weight (2)	52:13,13 Wells (2) 94:23,23 Wendell (4) 98:21;99:1;98:21;99:1 weren't (6) 29:23,25;71:7;29:23,25; 71:7 west (2) 110:9,9 western (4) 95:18;98:3;95:18;98:3 wet (2) 73:21,21 what's (6) 19:18;42:14;19:18; 84:16;42:14;84:16 whatsoever (10) 26:16;58:11;66:3;26:16; 113:10;118:9;58:11;66:3; 113:10;118:9 white (8) 80:23;96:7,8;108:8; 80:23;96:7,8;108:8 whole (2) 13:20,20 whomever (2) 123:14,14 whose (4) 45:17;85:18;45:17;85:18 wide (4) 52:7;73:16;52:7;73:16 widening (2) 25:23,23 width (2) 11:6,6 widths (2) 99:18,18 wilderness (10) 45:24;54:23;56:6,15; 67:19;45:24;54:23;56:6, 15;67:19 wildlife (44) 5:21;13:20;15:3;5:21; 24:1,2,4,6;39:3;13:20; 54:21;56:6,12;15:3; 57:25;68:17,17,22,25; 69:24;70:3,17,18;71:5,14; 24:1,2,4,6;39:3;54:21; 56:6,12;57:25;68:17,17, 22,25;69:24;70:3,17,18; 71:5,14 Willard (2) 45:18,18 willing (2) 10:9,9 Winnemucca (4) 80:7;85:17;80:7;85:17 wintertime (2) 73:5,5 wise (2) 90:2,2 wish (18)
U ultimately (2) 90:5,5 unanimous (2) 124:17,17 unanimously (2) 124:15,15 uncolored (2) 108:8,8 under (36) 4:4,4;14:24;15:1;14:24; 15:1;80:9;81:1,3,17,24; 84:15;85:19;86:11;90:23; 100:2,5;103:5;107:4; 121:12;122:20;80:9;81:1, 3,17,24;84:15;85:19; 86:11;90:23;100:2,5; 103:5;107:4;121:12; 122:20 underlined (2) 18:21,21 underlying (2) 91:15,15 understood (2) 52:8,8 undertake (2) 78:13,13 undertaken (2) 81:3,3 undisputed (2) 118:10,10 unexecuted (2) 17:15,15 unfortunately (4) 91:8;123:20;91:8;123:20 Unionville (2) 99:1,1 United (2) 90:18,18 University (6) 9:14,14;67:20;88:17; 67:20;88:17 unlawful (8) 34:1,12,21;118:20;34:1, 12,21;118:20 unless (4) 69:7;72:14;69:7;72:14 unpatented (6) 90:12,15,17,12,15,17 up (92) 15:7,8;23:15;24:18,23; 25:1,8;27:13;29:25; 30:16;31:20;34:23;37:17, 21;42:4,22,24;54:3;15:7, 8;65:10;66:25;67:5;68:3, 22;69:20;71:18;73:7,14; 75:12;23:15;24:18,23;	upheld (2) 120:18,18 uphold (4) 124:8,17,8,17 upholding (2) 123:2,2 upper (4) 94:18;95:5;94:18;95:5 upset (2) 53:21,21 use (84) 11:12;17:24;25:9,22; 35:16,16;37:4;11:12; 46:7;47:25;48:4,7;49:6; 52:16;54:2,4;55:15;56:2; 58:6,7;17:24;66:16; 72:19;75:9;85:8;90:17; 91:13,15,17;25:9,22; 104:8,11,23;105:1,21,21; 110:4;112:9,16,23; 113:19;115:22;117:14; 120:19;121:2;35:16,16; 37:4;46:7;47:25;48:4,7; 49:6;52:16;54:2,4;55:15; 56:2;58:6,7;66:16;72:19; 75:9;85:8;90:17;91:13, 15,17;104:8,11,23;105:1, 21,21;110:4;112:9,16,23; 113:19;115:22;117:14; 120:19;121:2 used (24) 12:25,25;66:11,13;83:2, 3;85:23;91:12;96:3; 98:11;99:18;100:12; 115:21;66:11,13;83:2,3; 85:23;91:12;96:3;98:11; 99:18;100:12;115:21 users (2) 120:3,3 uses (6) 97:9;103:9;113:19;97:9; 103:9;113:19 using (6) 27:22;73:23;83:6;27:22; 73:23;83:6 usually (10) 42:1;91:19,23;103:3; 109:8;42:1;91:19,23;	validity (6) 18:25,25;53:17;18:25,25; 53:17 Valley (10) 85:24;96:10;104:15,15; 110:15;85:24;96:10; 104:15,15;110:15 valleys (2) 120:18,18 value (2) 5:8,8 values (4) 5:6,6;23:11,11 various (12) 84:19;87:8;89:7;91:13; 108:12;121:18;84:19; 87:8;89:7;91:13;108:12; 121:18 vary (4) 99:13;100:22;99:13; 100:22 vegetation (6) 49:5;54:21;79:17;49:5; 54:21;79:17 vehicles (4) 28:8;48:10;28:8;48:10 venue (2) 123:20,20 verbal (4) 20:5,6,5,6 verbatim (1) 125:8 verify (2) 65:17,17 versed (2) 27:12,12 versus (2) 120:14,14 vested (4) 34:13;119:12;34:13; 119:12 vice (2) 88:5,5 view (8) 102:10;110:18,19,22; 102:10;110:18,19,22 Village (2) 120:16,16 vintages (2) 11:2,2 visit (6) 85:12,16,19,12,16,19 visited (8) 64:21;65:5;68:5;103:19; 64:21;65:5;68:5;103:19 visiting (2) 65:24,24	waited (4) 30:17,24,17,24 waiting (2) 29:7,7 walk (2) 84:12,12 walked (4) 55:3;68:5;55:3;68:5 WALKER (1) 1:5 walking (2) 103:24,24 wants (6) 40:3;112:22;118:23; 40:3;112:22;118:23 warns (2) 55:9,9 Washington (6) 53:8;88:19;123:17;53:8; 88:19;123:17 waste (2) 117:5,5 Watch (2) 15:4,4 water (16) 10:24;11:8;16:18;34:8; 10:24;11:8;56:6;16:18; 110:14;112:15;116:4; 34:8;56:6;110:14;112:15; 116:4 watershed (4) 55:4;72:18;55:4;72:18 waterway (2) 30:14,14 way (42) 7:18;15:12;7:18;29:16; 46:6;48:18;15:12;58:11; 62:8;63:10;66:10;71:17, 24;72:19;73:13,15;84:16; 86:3;99:15;104:22; 109:23;110:23;29:16; 113:13;46:6;48:18;58:11; 62:8;63:10;66:10;71:17, 24;72:19;73:13,15;84:16; 86:3;99:15;104:22; 109:23;110:23;113:13 ways (2) 108:12,12 web (4) 14:9;40:2;14:9;40:2 weighing (2) 43:15,15 weight (2)	western (4) 95:18;98:3;95:18;98:3 wet (2) 73:21,21 what's (6) 19:18;42:14;19:18; 84:16;42:14;84:16 whatsoever (10) 26:16;58:11;66:3;26:16; 113:10;118:9;58:11;66:3; 113:10;118:9 white (8) 80:23;96:7,8;108:8; 80:23;96:7,8;108:8 whole (2) 13:20,20 whomever (2) 123:14,14 whose (4) 45:17;85:18;45:17;85:18 wide (4) 52:7;73:16;52:7;73:16 widening (2) 25:23,23 width (2) 11:6,6 widths (2) 99:18,18 wilderness (10) 45:24;54:23;56:6,15; 67:19;45:24;54:23;56:6, 15;67:19 wildlife (44) 5:21;13:20;15:3;5:21; 24:1,2,4,6;39:3;13:20; 54:21;56:6,12;15:3; 57:25;68:17,17,22,25; 69:24;70:3,17,18;71:5,14; 24:1,2,4,6;39:3;54:21; 56:6,12;57:25;68:17,17, 22,25;69:24;70:3,17,18; 71:5,14 Willard (2) 45:18,18 willing (2) 10:9,9 Winnemucca (4) 80:7;85:17;80:7;85:17 wintertime (2) 73:5,5 wise (2) 90:2,2 wish (18)

<p>6:1,15;7:1;6:1,15;7:1; 44:24;68:12;114:12; 115:1;116:8,19;44:24; 68:12;114:12;115:1; 116:8,19 wishing (4) 4:20,20;55:25,25 withdraws (2) 119:19,19 within (30) 3:16,16;18:16;42:1; 65:20;18:16;79:12;91:7, 22,24;94:9;109:9;110:2; 111:9,13;115:16;124:4; 42:1;65:20;79:12;91:7, 22,24;94:9;109:9;110:2; 111:9,13;115:16;124:4 within-entitled (1) 125:9 without (8) 54:9,24;58:7;109:23; 54:9,24;58:7;109:23 witness (150) 4:19,21;5:11,19;6:13; 7:25;8:21;4:19,21;5:11, 19;6:13;7:25;25:2,10,14, 20;26:2,6;27:1;28:12; 8:21;29:22;30:5,7;31:10, 15;36:4;37:15,20;38:6, 19;39:7;45:9;46:13;57:1, 5;61:22;66:22,24;67:10, 14;68:2;69:7,10,13,18; 70:2,8,20,24;71:6,22; 72:2,7,11,17;73:3;74:2,6, 21;77:10,21;86:10,16,21; 87:2,16,19;25:2,10,14,20; 26:2,6;27:1;105:12,15; 107:3,8,16,20,24;108:3,6, 15;28:12;29:22;113:16; 115:5;116:7;30:5,7; 31:10,15;36:4;37:15,20; 38:6,19;39:7;45:9;46:13; 57:1,5;61:22;66:22,24; 67:10,14;68:2;69:7,10,13, 18;70:2,8,20,24;71:6,22; 72:2,7,11,17;73:3;74:2,6, 21;77:10,21;86:10,16,21; 87:2,16,19;105:12,15; 107:3,8,16,20,24;108:3,6, 15;113:16;115:5;116:7 witnesses (16) 4:4;2:5,5;7:20;8:6;4:4; 7:20;8:6;32:1;114:8,12, 16;32:1;114:8,12,16 wondered (2) 74:25,25 wondering (8) 20:25;21:3;28:4;20:25; 21:3;28:4;112:6,6 word (6) 36:13;54:9;102:6;36:13; 54:9;102:6 words (2)</p>	<p>38:16,16 work (66) 9:7,8;11:1,11;16:9,15; 19:22;9:7,8;39:6;11:1,11; 42:10;47:18;50:15;55:12; 16:9,15;64:15,16;67:22; 69:18;19:22;74:3;78:8; 81:17;86:12,13;89:1; 90:4;99:16,17,20,21; 100:5;102:4,23;103:16; 104:1;109:20;39:6;42:10; 47:18;50:15;55:12;64:15, 16;67:22;69:18;74:3; 78:8;81:17;86:12,13; 89:1;90:4;99:16,17,20,21; 100:5;102:4,23;103:16; 104:1;109:20 worked (12) 67:17;69:19;89:1,3,4,9; 67:17;69:19;89:1,3,4,9 working (2) 46:2,2 works (6) 15:17,17;103:1;120:24; 103:1;120:24 writer (4) 9:11,17,11,17 writing (4) 7:8,8;47:12,12 Written (22) 3:13;5:3;3:13;16:21,24; 5:3;17:4,7;18:7;20:4; 21:3,5;16:21,24;17:4,7; 18:7;70:10;20:4;21:3,5; 70:10 wrong (4) 100:13,19,13,19 wrote (12) 47:11;48:18;66:8,9;70:8; 98:3;47:11;48:18;66:8,9; 70:8;98:3 Wyoming (6) 69:19;71:19;88:18; 69:19;71:19;88:18</p>	<p>88:10,13,25;89:3,14; 102:1;104:6,13;117:18 Y-shaped (2) 96:14,14</p>	<p>Z</p>	<p>zip (2) 99:1,1 ZyMin (2) 89:10,10</p>
<p>Y</p> <p>year (6) 64:24;80:5;113:20; 64:24;80:5;113:20 years (70) 42:1,10;45:14,21;46:2,7; 48:3;49:11;52:17;53:23; 54:3,5;60:14,15,17,18; 61:6;62:1,19;64:19;65:1, 2;67:18;74:14;78:18,19; 88:10,13,25;89:3,14; 102:1;104:6,13;117:18; 42:1,10;45:14,21;46:2,7; 48:3;49:11;52:17;53:23; 54:3,5;60:14,15,17,18; 61:6;62:1,19;64:19;65:1, 2;67:18;74:14;78:18,19;</p>				