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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION
OF MONTANA-DAKOTA UTILITIES CO.
AND OTTER TAIL POWER COMPANY FOR A
PERMIT TO CONSTRUCT THE BIG STONE
SOUTH TO ELLENDALE 345 kV
TRANSMISSION LINE

EL13-028

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Transcript of Proceedings
June 11, 2014
Volume II, pages 145-385

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BEFORE THE PUBLIC UTILITIES COMMISSION

GARY HANSON, CHAIRMAN
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF

John Smith
Karen Cremer
Greg Rislov
Brian Rounds
Katlyn Gustafson

APPEARANCES

Thomas Welk and Jason Sutton, Applicants
Bob Pesall, Intervener
Randall Schuring, Intervener
Bradley Morehouse, Intervener

Reported By Cheri McComsey Wittler, RPR, CRR

TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
Building, 500 East Capitol Avenue, Pierre, South Dakota,
on the 10th and 11th days of June, 2014.

1		<u>I N D E X</u>			
2	APPLICANT WITNESSES	DIRECT	CROSS	RD	RC
3	Henry Ford	28,223	37,69	91	--
4	Jason Weiers	226	73		
5		104	110,129	--	--
6	Angela Piner		135,137		
7	Danny Frederick	150	142	--	--
8	Jon Leman	170	154,165	188	--
9		189	173,182	219	214,216
10			192,199		217,219
11			200,203		
12	PESALL WITNESSES	DIRECT	CROSS	RD	RC
13	Gregory Tylka	228	239,255	273	277
14	Gerald Pesall	279	256		
15			287,300	311	--
16	SCHURING WITNESSES	DIRECT	CROSS	RD	RC
17	Randall Schuring	314	317,325	--	--
18			327		
19	MOREHOUSE WITNESSES	DIRECT	CROSS	RD	RC
20	Bradley Morehouse	343	349,360	--	--
21	PESALL REBUTTAL	DIRECT	CROSS	RD	RC
22	Gregory Tylka	363	364	--	--
23	Gerald Pesall	365	--	--	--
24	STAFF WITNESSES	DIRECT	CROSS	RD	RC
25	Brian Rounds	371	384,385	388	--

I N D E X (Continued)

2	APPLICANT EXHIBITS	M	O	R
3	1 - Application and Attachments	5	11	12
4	1A - Amendment to Application	5	11	12
5	2 - Responses to First Set of Staff Data Requests	5	11	12
6	3 - Responses to Second Set of Staff Data Requests	5	11	12
7	4 - Answers to First Set of Pesall Discovery	5	11	12
8	5 - Answers to Second Set of Pesall Discovery	5	11	12
9	6 - BSSE 9 - Map, Preferred Route	5	11	12
10	7 - Route Change Request Form	5	11	12
11	8 - Pesall First Requested Route Change	5	11	12
12	9 - Route Change Matrix BSSE 29-31 Confidential	5	11	12
13	10 - MISO Tariff Attachment FF	5	11	12
14	11 - Affidavit-Oct. 17 Public Input	5	11	12
15	12 - Affidavit-May 20 Public Input	5	11	12
16	13 - Updated Table of Public Outreach	5	11	12
17	14 - Danny Frederick CV	5	11	12
18	15 - Jon Leman CV	5	11	12
19	16A - Ford Testimony 4/25/14	5	11	12
20	16B - Ford Rebuttal Testimony 5/9/14	5	11	12
21	16C - Ford Suppl. Rebuttal 5/23/14	5	11	12
22	17 - Weiers Testimony 4/25/14	5	11	12
23	18 - Piner Testimony 4/25/14	5	11	12
24	19 - Frederick Testimony 4/25/14	5	11	12
25	20 - Leman Testimony 4/25/14	5	11	12
	21A - Pesall Property Photo - North	5	11	12
	21B - Pesall Property Photo - South	5	11	12
	21C - Pesall Aerial Map	5	11	12
	22 - Morehouse & Schuring Aerial Map	5	13	14
	23 - 6/3/14 Draft of Soybean Cyst Nematode Prevention Plan	5	13	14
	24 - PowerPoint-10/17/13 Public Hrg.	5	13	14
	25 - Route Map 6/10/14	5	13	14
	50 - PowerPoint 5/20/14 Public Hrg.	5	13	14
	50A - Revised Maps of Route Changes	5	13	14

1	I N D E X (Continued)			
2	PESALL EXHIBITS	M	O	R
3	101 - Pesall Direct	5	14	15
	102 - Tylka Direct	5	14	15
4	103 - Tylka CV	5	14	15
	104 - Tylka Surrebuttal	5	14	15
5	105 - 2014 SCN Distribution Map	5	14	15
	106 - 1956 USDA Special Report on SCN	5	14	15
6	107 - 1998 Soybean Digest Special Report on SCN	5	14	15
7	108 - 1996 First Report of SCN in SD	5	14	15
	109 - 2007 SCN University Fact Sheet	5	14	15
8	110 - 1955 SCN Plant Disease Reporter	5	14	15
9				
10	SCHURING EXHIBITS	M	O	R
11	201 - Statutes	5	15	--
	202 - Statutes	5	15	--
12	203 - Statutes	5	15	--
	204 - Statutes	5	15	--
13	205 - Statutes	5	15	--
	206 - Statutes	5	15	--
14				
15	MOREHOUSE EXHIBITS	M	O	R
16	207 - BSSE Overview Peterson Farms Reroute (Preliminary)	342	344	344
17				
18	STAFF EXHIBITS	M	O	R
19	301 - Settlement Stipulation	5	17	17
20				
21				
22				
23				
24				
25				

1 MR. SMITH: We'll reconvene the hearing in
2 Docket EL13-028, Big Stone South to Ellendale 345 kV
3 transmission line. We went into recess yesterday
4 afternoon at shortly before 5:00. It's now approximately
5 8:00 a.m.

6 And we'll turn then back to the Applicant's case
7 in chief here. And, Mr. Welk, please proceed with your
8 next witness.

9 MR. WELK: The Applicants would call
10 Angela Piner.

11 ANGELA PINER,
12 called as a witness, being first duly sworn in the above
13 cause, testified under oath as follows:

14 DIRECT EXAMINATION

15 BY MR. WELK:

16 Q. Would you please state your name.

17 A. Angela Piner.

18 Q. Angela, have you filed prefiled testimony in this
19 matter?

20 A. Yes, I have.

21 Q. Would you please summarize your testimony.

22 A. I will. Thank you.

23 I'm Angela Piner. I have a Master of Science degree
24 in biological sciences. For the last 12 years I've
25 worked at HDR, which is based in Omaha, Nebraska, and has

1 offices in both Rapid City and Sioux Falls, South Dakota.
2 HDR has over 8,500 employees in 200 locations around the
3 world, and we have access to archeologists, scientists,
4 economists, engineers to assist with the project.

5 During my tenure I have gained extensive experience
6 preparing and managing environmental review processes and
7 permitting for specifically transmission lines.

8 Over the last 10 years I've permitted over
9 2,300 miles of transmission lines that are currently in
10 operation or under construction, including some of the
11 largest transmission line projects here in South Dakota,
12 most recently the CapX2020 Brookings County to Hampton
13 project.

14 The purpose of my testimony is to provide a summary
15 of our role in the preparation of the transmission
16 facility Application and its amendment and the supporting
17 environmental studies, the outreach the project undertook
18 in engaging agencies and landowners in the development of
19 the project, and identifying the permits and approvals
20 required for the project construction.

21 I was the project manager who directed our team in
22 the studies and research conducted for the project and
23 most recently did this on the CapX2020 project as well.
24 We wrote the majority of the Application, coordinated the
25 portions of the Application provided by the owners and

1 other consultants working on the project.

2 In particular we performed the biological and
3 cultural studies in support of the Application. And we
4 have undergone extensive outreach with regulatory
5 agencies, as you can see in Exhibit 13. And we continue
6 to coordinate with them to this day.

7 Given the results of these studies and the
8 consultation with the regulatory agencies, the project
9 will comply with the applicable laws and rules related to
10 biological and archaeological resources identified in the
11 project and the conditions provided in the Stipulation
12 agreement.

13 Based on our work and studies, there are no
14 environmental issues that would prevent the issuance of
15 this permit and the construction of the project and all
16 necessary information is in the Application Amendment and
17 it satisfies the requirements.

18 If the Commission has questions regarding the terms
19 and conditions in paragraphs 11 to 19 of the Stipulation
20 agreement, I can speak to those. Additionally, given a
21 couple of questions from Mr. Pesall to Mr. Ford, I
22 thought I would address a few of those in my opening
23 comments.

24 First, the socioeconomic studies in the project.
25 There are information considering socioeconomics in

1 Sections 4, 19.1, and 20 of the Application, as well as
2 Responses to Staff's First Data Requests, paragraphs 5
3 and 8. Section 4 talks about the benefit of the project
4 through property taxes specifically.

5 Sections 19.1 provides a summary of the
6 socioeconomic conditions of the project and is very
7 typical of what you would see in the Application and is
8 very consistent with applications I've done in the
9 past.

10 Section 20 is employment estimates for the project.
11 And paragraph 5 in the First Data Request Response has
12 additional property and sales tax information details.
13 And paragraph 8 has additional information on employment
14 estimates and impacts to local economy.

15 In regard to soilborne pests, after conversations
16 with over 500 landowners who attended our project open
17 houses, many of those which were farmers and the
18 consultation we requested with NRCS and Department of
19 Agriculture, we were not aware of any issues of soilborne
20 pests.

21 We've addressed the evidence and have responded to
22 the soybean cyst nematode issue as provided by
23 Dr. Tylka's testimony and haven't provided evidence on
24 the soilborne pests as we are not aware of the prevalence
25 of those specific issues raised.

1 Weed transmission we have addressed in the
2 Application Section 22.4, and we have also addressed that
3 in paragraph 19 of the Stipulation.

4 That concludes my opening statements, and I'll turn
5 it over.

6 MR. SMITH: Please proceed, Mr. Pesall.

7 MR. PESALL: Thank you.

8 CROSS-EXAMINATION

9 BY MR. PESALL:

10 Q. Ms. Piner, you're originally from California; is
11 that correct?

12 A. That is correct.

13 Q. You have a Master of Science in biology?

14 A. That's correct.

15 Q. Where are you based nowadays?

16 A. I'm in Minneapolis, Minnesota.

17 Q. So as far as any of the economic or sociological
18 studies, you didn't conduct those yourself?

19 A. I directed the Staff that conducted the studies.

20 Q. So there are other Staff with your firm that
21 conducted those?

22 A. That's correct.

23 Q. And you don't work for MISO?

24 A. I do not.

25 Q. With respect to the cultural study that you indicate

1 your firm has conducted, can you briefly describe the
2 scope of that?

3 A. Sure. So for this stage of the project what we
4 typically do is what is called a Class 1 Survey. And
5 what that consists of is a literature review of the
6 resources in the project area and the general cultural
7 landscape in the project area.

8 And that is done under -- there's federal laws that
9 dictate how that is done. And so the report is
10 consistent with that and is something that the State
11 Historic Preservation Office is looking for. It's all
12 the requirements that they look for.

13 The next steps will be actually to do on the ground
14 surveys, but we won't conduct those until we've received
15 the route Application.

16 Q. What exactly is an on the ground survey?

17 A. It's actually people who dig holes and look for
18 artifacts on the ground.

19 Q. What kind of artifacts would they had been looking
20 for?

21 A. So there's a lot of different categories of
22 artifacts that they're looking for. They're typically --
23 you know, I think when I talked to the public the most
24 common thing is like arrowheads and other things.
25 They're looking for precontact -- I'm sorry. Things that

1 were out there before we settled the area basically.

2 Q. Does this cultural survey include any cultural
3 aspects for postcontact?

4 A. Can you --

5 Q. After settlement?

6 A. -- define that?

7 Yes. There are provisions of that, but I'm not an
8 expert in it. They do look at, you know, historical
9 buildings and other things that are in the project area
10 as a whole.

11 Q. Does the cultural survey consider ongoing cultural
12 activities with the people who are living there right
13 now?

14 A. These types of cultural surveys don't -- they do but
15 not -- I'm trying too -- I'm not an expert. I should ask
16 my experts on how that is assessed actually. But there
17 is a consideration of it, yes.

18 Q. But you can't speak to that right now?

19 A. I'm not an expert in it, no.

20 Q. With respect to the economic studies, has your
21 office done any studies as to the impact on land values
22 after the lines are put up in a case like this --

23 A. The land value portion of the Application was
24 conducted by KLJ and the owners.

25 Q. So as far as the impact on property values after a

1 line is constructed, you wouldn't be able to speak to
2 that?

3 A. I would not.

4 Q. Did the economic studies that your firm conducted
5 address the economic impacts to individual farmers or
6 producers in the area?

7 A. The economic study that was conducted is consistent
8 with the other studies we've done in the past, and I
9 think the Application speaks to itself. You typically
10 don't look at each individual landowner. You look at the
11 overall impacts to the project as a whole.

12 Q. So there isn't any information as far as the impact
13 on what would happen to individual landowners along the
14 route due to the interference from this line?

15 A. When you say "impacts" what you are specifically
16 talking to?

17 Q. For example, a landowner who is dealing with a power
18 line that goes across his property has to take certain
19 precautions. He can't refuel within 100 feet of the
20 line. He's got to work around the line. He may have to
21 adjust his GPS signals. He may have to deal with the
22 transmission of soilborne pests.

23 Do any of your economic studies take those into
24 account in assessing the negative impact of the line on
25 producers?

1 A. The particular study we did in the sections I
2 referenced did not account for that.

3 Q. Is there any other study you did that does account
4 for that?

5 A. I think you'd have to ask -- you know, in relation
6 to the property value piece that's the only place I can
7 think of that --

8 Q. So you're not aware of one?

9 A. I'm not aware of it.

10 Q. Okay. Just to clarify a few items in your
11 testimony, in your testimony you indicate I think it's on
12 page 9 that --

13 A. Just a moment.

14 Q. Certainly.

15 MR. WELK: What's the exhibit number?

16 MR. SUTTON: 18.

17 A. You say page 9?

18 Q. I think it's on page 9 where you're offering an
19 opinion about legal compliance. My notes indicate around
20 line 16.

21 A. There's a couple of questions in that area so I
22 guess I need to know what specific portion.

23 Q. Are you today opining that this facility would
24 comply with all applicable laws?

25 A. Yes.

1 Q. But you're offering that opinion as an environmental
2 scientist?

3 A. That is correct.

4 Q. You're not a lawyer?

5 A. I am not a lawyer.

6 Q. You're not from South Dakota?

7 A. I am not from --

8 MR. WELK: Objection. Relevancy again.

9 MR. SMITH: Sustained.

10 Q. Do you have any legal training at all?

11 A. No.

12 Q. In your testimony on page 10 of Exhibit 18 you offer
13 the opinion that the facility will not pose serious
14 injury to the environment or economic conditions of the
15 project area.

16 Do you still stand by that testimony today?

17 A. I don't see it on page 10.

18 Q. I apologize --

19 A. Maybe it's page 9.

20 Q. That may be at the end of page 9, not page 10.

21 A. Yes. That is what I'm stating.

22 Q. Now again you're offering that opinion as an
23 environmental scientist; correct?

24 A. That is correct.

25 Q. So you're not offering it as an economist?

1 A. That's correct.

2 Q. You're not an economist?

3 A. I am not an economist, but I do direct the work of
4 economists.

5 Q. And you've indicated that the studies you've relied
6 on to make that opinion didn't consult the economic
7 impact of producers along the route; correct?

8 A. In the sections I referenced regarding
9 socioeconomics we didn't address that. But I think if
10 you would look in the agricultural section of the
11 Application, we did talk to some of those issues you
12 raised.

13 Q. The studies you rely on also didn't address
14 soilborne pests like the soybean cyst nematode, did they?

15 A. No. Like I stated, we did not.

16 Q. Well, you would agree that potential spread of the
17 soybean cyst nematode is a relevant factor in
18 considering the environmental impact of the project,
19 isn't it?

20 A. Can you restate that question about what do you mean
21 by "relevant," I guess?

22 Q. In determining whether the project would have a
23 negative environmental impact, what factors do you
24 consider?

25 A. In regards to agricultural impacts or --

1 Q. Environmental impacts as a whole. Agriculture is
2 tied into the environment.

3 A. There are a lot of factors we consider when we talk
4 about environmental impacts. I think Mr. Henry Ford
5 talked about what we used in routing the line. And, you
6 know, we have to balance all of those different land uses
7 as a whole.

8 So it's -- there's a lot of competing interests out
9 there, and we have to make those choices.

10 Q. Would you consider the soybean cyst nematode to be
11 something that is relevant to that determination?

12 A. I'd say given the testimony of Dr. Tylka that it is
13 a serious issue and it is why the Applicants have created
14 a plan to mitigate.

15 Q. But you weren't aware of that when you originally
16 offered this opinion?

17 A. We weren't aware of it as an issue in South Dakota.

18 Q. You were aware of it in other states?

19 A. I personally was aware of it in Wisconsin, yes.

20 Q. But neither you nor any member of your team
21 investigated the presence of this nematode here in
22 South Dakota?

23 A. No. Like I stated, we talked to over 500 folks at
24 the open house meetings as well as agricultural agencies,
25 and no one brought it up until we saw it in your

1 testimony.

2 Q. Directing your attention to what according to my
3 notes would be page 10, around about line 17 of your
4 prefiled testimony.

5 A. Okay.

6 Q. You offer an opinion that the project would not
7 unduly interfere with the orderly development of the
8 region with due consideration to governing bodies.

9 Do you stand by that opinion today?

10 A. Yes.

11 Q. Are there any governing bodies that you were aware
12 of that expressed support for this project?

13 A. Not to my knowledge.

14 Q. There are governing bodies, however, that have
15 contacted the developers and expressed opposition to this
16 project, though; correct?

17 A. That is my understanding.

18 Q. At least three township boards.

19 A. Those are the only ones I'm aware of.

20 Q. Did you or any member of your team arrange to
21 personally meet with any township boards or county
22 commissions?

23 A. Yes. At the beginning of the project we did quite
24 extensive outreach at the local level and met with --
25 actually there was other counties at the time. We met

1 with all of those.

2 Q. You met with the commissions themselves?

3 A. We met with the -- sorry. Not the commissions, the
4 Staff that do the planning in the counties and that sort
5 of thing. I could look up the specifics if you're
6 interested.

7 Q. Well, my primary question is whether or not any
8 member of your team actually arranged to appear in a
9 public hearing before the county commissions?

10 A. That isn't common at this stage. We're really --
11 our role is really information gathering, and it's very
12 rare, although it does happen on occasion, to be in front
13 of commissions.

14 Q. That's not the question I asked. The question I
15 asked is whether you did in this case.

16 A. I don't remember, but I don't believe so.

17 Q. Okay. Thank you. You did, however, send notice
18 letters?

19 A. Yep.

20 Q. Okay. You would agree that the region through which
21 this line is intended to go has been developed primarily
22 for crop production?

23 A. That's correct.

24 Q. And you would agree that having power lines and
25 power poles in the middle of a productive field will in

1 some way interfere with crop production?

2 A. When you say "interfere" what are you speaking to?

3 Q. You've got to drive around power poles.

4 A. That's correct.

5 Q. Ultimately, that's going to slow down the process of
6 planting and harvesting, spraying?

7 A. I personally can't speak to it. I don't farm.

8 Q. So you didn't -- you aren't able to consider that in
9 offering your opinion about the impact on development of
10 the region?

11 A. I'd say I hear that from landowners when I talk to
12 them at meetings, yes.

13 Q. You accept that to be true?

14 A. I would have to. I'm not a farmer.

15 Q. You would agree that the presence of power lines
16 would also interfere with aerial spraying?

17 A. I guess I couldn't say that because I am aware of
18 areas where I've had folks tell me, you know, that it
19 wasn't an issue for them. They just had to change their
20 patterns or what have you. And I can't speak to, you
21 know, specific parcels, that kind of thing.

22 Q. You're not comfortable offering an opinion one way
23 or the other on that?

24 A. I'd say that aerial spraying is still possible in
25 specific cases. It just really is a site-specific issue.

1 Q. Would you agree that not being able to refuel a
2 tractor within 100 feet of the line is a negative impact
3 on crop production?

4 A. Again, I'm not a farmer so I can't speak to that so
5 I don't know.

6 Q. In the event that the current permit as currently --
7 rough morning.

8 A. That's okay.

9 Q. In the event that the currently requested petition
10 route is denied, has your firm prepared any alternative
11 plans?

12 A. That's not for me to decide. That would be a
13 question for the owners.

14 MR. PESALL: I don't think I have any additional
15 questions at this point. Thank you.

16 MR. SMITH: Thank you.

17 Mr. Schuring.

18 CROSS-EXAMINATION

19 BY MR. SCHURING:

20 Q. Yes, Ms. Piner. Timing. Was your study completed
21 before or after the route selection?

22 A. Which study specifically?

23 Q. Well, you said you studied the impact that this
24 would have, economic and socially, as a whole, not on the
25 individual producers. When was that study --

1 Was that study completed before the route
2 selection?

3 A. So the socioeconomic portions of the project were
4 analyzed once the final route prior to Application was
5 made. And so it was done in parallel with that
6 selection.

7 Q. Okay. So the route selection process had already
8 begun?

9 A. Yes. We typically utilize criteria in route
10 selection and then select a route and then evaluate the
11 impacts of that particular route in more detail. So we
12 use some high-level criteria in route selection and then
13 do an actual study.

14 Q. Would this process involve anybody from your firm or
15 under your direction to travel that route to see what
16 impact it would have upon individual operations?

17 A. Yeah. We did quite extensive studies out in the
18 area and have driven the project area quite a bit. It's
19 a part of the entire process that we undertake as a part
20 of the project.

21 Q. And so during that process then even if it would
22 have significant impact on an individual or a few
23 individuals, that really didn't have a bearing on the
24 route selection if it was small in comparison to the
25 160 miles of the route, the total?

1 A. If I understand your question, you're asking about
2 specific landowners and the impacts to them --

3 Q. Yes.

4 A. -- once the route is selected?

5 Q. Yes. What consideration did you give to that?

6 A. Sure. So we try to minimize those impacts as a
7 whole when we're looking at the project. But once it
8 gets on the landowner-to-landowner basis, that's where
9 the utility will work with them in determining how to
10 minimize impacts on their specific parcel. And I think
11 Henry spoke to some of that the other day.

12 Q. Okay. You heard Mr. Ford's yesterday?

13 A. Uh-huh.

14 Q. After I questioned I believe it was Commissioner
15 Hanson clarified either for a yes or no from Mr. Ford.
16 Because the utility does not need an easement from me,
17 they didn't think that they had any responsibility for
18 what effects it would have on my individual operation.
19 Is that the scope of the study too?

20 If you weren't involved in an easement but you were
21 adjacent to the project and affected by it, that that was
22 not a factor in consideration?

23 A. So is your question related to impacts to folks that
24 aren't physically impacted by the line? Is that the
25 question?

1 Q. They don't require an easement from our operation --

2 A. Right.

3 Q. -- to place the line where they want to place it.

4 We're a little over a quarter of a mile. We have a
5 significant impact by it. But Mr. Ford testified yes or
6 no yesterday point blank that we were irrelevant because
7 they didn't need an easement from us.

8 A. So the easement question isn't within my purview,
9 but I would offer that we do look at the overall impacts
10 of the project, including adjacent landowners, et cetera,
11 when it comes to the environmental factors that we looked
12 at for the project.

13 Q. In the scope of this socioeconomical study were you
14 aware that our dairy existed that close to the proposed
15 route?

16 A. My understanding is we were aware that your dairy
17 was in the project area, yes.

18 Q. In the project area or that close to the route?

19 A. At the time --

20 Q. The project area is a wide scope, you know.

21 A. It is.

22 Q. That's the community of Andover. I'm talking about
23 a quarter of a mile.

24 A. So when we filed the Application we were aware that
25 your dairy was to the west of the line that we were

1 proposing, yes.

2 Q. Actually my dairy is to the north of the line.

3 A. Well, when we originally proposed -- I could look at
4 a map again, but when we were following the rail line, I
5 think it was -- the north-south segment is what I'm
6 thinking of.

7 Q. Well, yes. And with the reroute it hasn't changed
8 the location from our dairy, whether there was a rail
9 line or a reroute. You're still taking the same
10 east-west route.

11 Okay. You answered my question.

12 MR. SCHURING: I guess, again, I really struggle
13 with the fact that because they don't need an easement
14 from us that we're irrelevant that they didn't think they
15 have any responsibility for the impact it would have on
16 my family operation.

17 Thank you.

18 MR. SMITH: Anything, Mr. Morehouse?

19 MR. MOREHOUSE: Nothing here.

20 MR. SMITH: Okay.

21 Staff?

22 MS. CREMER: Thank you. I have no questions.

23 MR. SMITH: Commissioners. Anything?

24 No Commissioner questions. I think --

25 COMMISSIONER NELSON: Look at that smile.

1 MR. SMITH: Hold it. Hold it.

2 MR. WELK: No redirect.

3 MR. SMITH: No redirect? Okay.

4 Please step down. I guess there's no down to it
5 but --

6 (The witness is excused.)

7 MR. SMITH: Mr. Sutton.

8 MR. SUTTON: At this time the Applicants would
9 call Danny Frederick.

10 DANNY FREDERICK,
11 called as a witness, being first duly sworn in the above
12 cause, testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MR. SUTTON:

15 Q. Please state your name for the record.

16 A. Danny Frederick.

17 Q. And, Danny, have you prepared some prefiled
18 testimony which has been admitted into evidence?

19 A. I have.

20 Q. Will you please summarize your testimony.

21 A. Okay. My name is Danny Frederick, and I am here to
22 provide testimony regarding the civil and structural
23 design of the project. Any questions of an electrical
24 nature will be answered by our electrical engineer
25 Jon Leman.

1 I graduated from the University of Missouri in 2002
2 with a Bachelor of Science degree in civil engineering.
3 After graduation I started work with Power Engineers as a
4 transmission line design engineer. I've worked on
5 transmission line design projects for the previous
6 12 years.

7 I've worked on projects of the distribution level
8 through 500 kV. So recent projects before this project
9 include serving as the owner's engineer on CapX2020
10 Brookings County to Hampton, which was 250 miles of
11 345 kV in South Dakota and Minnesota.

12 I served as the civil design engineer on the TrAIL
13 project in Pennsylvania, West Virginia, and Virginia,
14 which was 160 miles of 500 kV.

15 And I served as the project engineer and on-site
16 engineer on the Arrowhead to Weston project, which was
17 220 miles of 345 kV in Minnesota and Wisconsin.

18 I am currently serving as a project engineer 2 at
19 Power Engineers, and I am a registered professional
20 engineer.

21 I am the project engineer for this project where I
22 am responsible for the preliminary civil and structural
23 design of the project. I am leading the preliminary
24 engineer design efforts and providing engineering review
25 during the routing and permitting application

1 preparation.

2 During the preliminary design efforts I'm
3 responsible for evaluating the proposed route from an
4 engineering and constructability standpoint.

5 By working on the preliminary engineering design, I
6 have driven the entire preferred route. I have also
7 completed a structure study which was provided to the
8 owners to assist them in selecting the structures for the
9 project. I am continuing to work on the preliminary
10 design, which includes preliminary structure spotting and
11 reviewing any proposed changes of the route from an
12 engineering and constructibility standpoint.

13 At the previous public meetings we discussed
14 construction methods and techniques that will be used on
15 the project, and I am available to answer any additional
16 questions on that.

17 As part of the design process the line will be
18 designed to comply with the National Electric Safety Code
19 regarding strength requirement and clearances. In
20 addition to the NESC weather loading events, the project
21 will also be designed for a 200-year return period
22 weather event for extreme wind and concurrent wind and
23 ice.

24 From a civil engineering standpoint, it is my
25 opinion that the construction and operation of the

1 project will not cause any serious damage to the
2 landowners' property or to the safety of the landowners.

3 If the Commission has any questions regarding
4 paragraph 24 of the Stipulation agreement, I'm available
5 to answer them.

6 This concludes the summary of my prefiled testimony.

7 MR. SMITH: Mr. Pesall, proceed when you're
8 ready.

9 MR. PESALL: Thank you.

10 CROSS-EXAMINATION

11 BY MR. PESALL:

12 Q. You're a professional engineer; is that correct?

13 A. That's correct.

14 Q. That takes a bit longer to get after you finish
15 engineering school, doesn't it?

16 A. It does.

17 Q. Where are you based?

18 A. I report to the Ann Arbor, Michigan office for
19 Power Engineers.

20 Q. You don't work for MISO?

21 A. I do not.

22 Q. Wouldn't be offering any MISO-related opinions here
23 today?

24 A. I would not.

25 Q. Now I think you indicated that your primary area of

1 study was the pole construction aspect of this project;
2 is that correct?

3 A. That's correct.

4 Q. In doing the analysis you did for that part of the
5 project, did you conduct any studies specifically with
6 respect to local land use?

7 A. We did not perform any studies for land use, no.
8 The studies that I performed specifically was a structure
9 study.

10 Q. And you wouldn't have been involved in any
11 sociological or economic studies either?

12 A. No, I would not.

13 Q. And I believe in your testimony you indicated that
14 it's your assessment that steel monopole towers are
15 better for the landowners; is that correct?

16 A. It's perceived to be less impact to the landowners,
17 yes.

18 Q. You would agree, though, that no tower at all would
19 be still less impact to the landowners?

20 A. I would.

21 Q. Can you briefly describe the pole construction
22 process for us? What's involved in putting one of those
23 up?

24 A. Once the final structure location is known, we will
25 go through construction staking. So we go out, and they

1 stake the actual structure. Then civil foundation crews
2 would come in, and they will drill the foundation, come
3 in, place concrete.

4 After a period of time the concrete will cure, and
5 then they would come in and bring the structure and using
6 cranes they'll set the structure.

7 Q. So they will excavate a hole in the ground, fill it
8 with concrete, and put a structure on top of it?

9 A. That is correct.

10 Q. What kind of equipment are they using to excavate
11 this hole?

12 A. They're called drill rigs. Basically they're large
13 drill rigs with augers on it, depending on the size or
14 diameter of the hole.

15 Q. Do those drill rigs collect the soil that's
16 extracted, or is it just sort of spilled to the side of
17 the hole that they're actually digging?

18 A. It's spilled to the side. Just like if you were
19 drilling a hole for a post.

20 Q. Do you know about how many cubic feet of soil they
21 would be extracting for a foundation on each one of these
22 towers?

23 A. Each foundation will be site specific designed. So
24 throughout the entire project there will be a specific
25 design for each foundation. And that can vary.

1 And typically the tangents will be 6-foot diameter
2 and can be anywhere from 25 to 30 feet deep. So the
3 volume would be somewhere in the 30 cubic yards roughly.

4 Q. Somewhere around 30 cubic yards?

5 A. Yeah. It's give or take. It will be dependent on
6 the individual locations.

7 Q. Are you able to tell me -- and it may be in your
8 testimony already. I apologize if I don't recall it --
9 about how many total foundations or poles are going to go
10 up?

11 A. There are approximately 740 or so structures on the
12 entire project. That includes the North Dakota portion
13 also.

14 Q. Now as far as the equipment, the drill rig, for
15 example, do you know what one of those weighs?

16 A. It's really dependent upon which contractor is
17 chosen and then what equipment they bring to the site.

18 Q. Has the individual contractor equipment factored
19 into any sort of a soil compaction study that you may
20 have done?

21 A. Most of the equipment that we use is going to be
22 standard. Even though each individual contractor has
23 their own specific equipment, it's still going to roughly
24 be the same. Kind of like a tractor is a tractor.

25 Q. So it's anticipated there will be several different

1 contractors with different sets of equipment working on
2 this project?

3 A. Yes.

4 Q. I guess in your capacity as an engineer with the
5 towers have you prepared any plans for testing or safe
6 disposal of the soil that's distracted?

7 A. Testing in regards to what?

8 Q. Soilborne parasites.

9 A. That would not fall under what I'm doing as an
10 engineer. It might fall under environmental.

11 Q. Do you know the identities of the contractors that
12 are going to be used or where they're coming from?

13 A. No, I do not.

14 Q. It is anticipated, however, that whatever
15 contractors are used will have motorized wheeled
16 equipment that will travel from field to field?

17 A. Yes.

18 Q. So it is possible that those pieces of equipment
19 are going to transport soil from field to field as a
20 result?

21 A. There is a possibility of it.

22 Q. Now at one point in your testimony you mention the
23 cost of putting lines underground and testified that it
24 could cost 15 to 20 times more.

25 Do you stand by that today?

1 A. I do.

2 Q. You've also testified that it's more difficult to
3 maintain an underground line. You still stand by that
4 today?

5 A. I do.

6 Q. Okay. With respect to cost, is it possible to place
7 the lines underground for only portions of the route?

8 A. In what regards to cost? It's possible to do it,
9 but, yes, it would cost much more to do it, still in the
10 15 to 20 times range.

11 Q. But it is possible to do it only for portions of the
12 route, if necessary, rather than the entire route?

13 A. It is possible. Again, it's the cost issue is why
14 it has not been chosen.

15 Q. Is it possible to use any sort of a step down system
16 to reduce the voltage and, therefore, reduce the costs of
17 transmitting it underground?

18 A. I would not be able to answer that. I would refer
19 to our electrical engineers as far as any step downs.

20 Q. You're a civil engineer?

21 A. I am a civil engineer.

22 Q. With respect to constructing electrical lines in
23 this region of South Dakota, would you agree that storms,
24 ice storms, snow storms, and wind are probably the major
25 threats to a power line?

1 A. Those are all involved in -- or we look at all of
2 those weather events when designing the line, yes.

3 Q. And those would also be responsible for maintenance
4 costs?

5 A. In regards to what? If the line came down? Is that
6 what you're referring to?

7 Q. Yeah.

8 A. Well, yeah. There would be maintenance if something
9 happened to the line.

10 Q. In the event you had an underground line, you
11 wouldn't necessarily have the issues with wind and rain
12 and storms, would you?

13 A. In regards to that, no.

14 Q. Is that fact figured into your 15 to 20 times cost
15 multiplier?

16 A. No. But 15 to 20 times cost multiplier was the cost
17 of construction. Construction and material, I should
18 say. Sorry.

19 Q. In your testimony you also make reference to using
20 what you call best management practices to restore the
21 land after construction. Can you briefly describe what
22 you mean by "best management practices"?

23 A. A lot of the BMPs would be dictated through the
24 specifications on what's required through SWT plans
25 and environmental plans that will be passed. Some of

1 them -- that's not in my expertise, but some of what I
2 have seen in the past would be like silt fences, things
3 like that, using matting in locations where you have to
4 mat.

5 Q. So you're talking about erosion and runoff?

6 A. Uh-huh.

7 Q. Do any of your best management practices, to your
8 knowledge, relate to soil decompaction after
9 construction?

10 A. That will be part of the restoration process. The
11 soil decompaction will.

12 Q. Do you know what depth soil decompaction would go to
13 in this project?

14 A. I do not. That would have to be something I would
15 think would be site specific.

16 Q. Do you know what the typical maximum depth for soil
17 decompaction in a project like this is?

18 A. No. Generally speaking, I can't answer that. I
19 mean, I can give averages of what I have seen on other
20 projects, but not for this one.

21 Q. Do the best management practices you're referring
22 to, as best you understand them, have any provisions for
23 preventing the spread of soilborne pests?

24 A. The soilborne pests or the mitigation plan is
25 something that will be developed and throughout

1 construction that will be implemented.

2 Q. So that's not necessarily a part of the best
3 management practices that you were describing in your
4 testimony?

5 A. No.

6 Q. In your testimony you offer the opinion that the
7 project will not cause serious damage to landowner
8 property, health, or safety.

9 Do you stand by that opinion today?

10 A. I do.

11 Q. But you're only offering that opinion from an
12 engineering perspective; is that right?

13 A. A civil engineering perspective.

14 Q. In reaching that conclusion did you actually speak
15 to any of the farmers or other producers that operate
16 along the route?

17 A. I was involved in the public meetings, yes, the open
18 house meetings that we had.

19 Q. That was the extent of your interviews with
20 landowners?

21 A. That was.

22 Q. Strictly speaking, the transmission of soilborne
23 pests really isn't your field of expertise, is it?

24 A. It is not.

25 Q. You also offer the opinion that the project would

1 not unduly interfere with development in the region. Is
2 that strictly limited to your civil engineering
3 perspective?

4 A. Yes.

5 Q. You're not an economist or a farmer?

6 A. I am not.

7 Q. So you're not offering it as an economist or a
8 farmer but simply civil engineering?

9 A. Correct.

10 MR. PESALL: I have no additional questions.

11 MR. SMITH: Thank you.

12 Mr. Schuring.

13 MR. SCHURING: Thank you.

14 CROSS-EXAMINATION

15 BY MR. SCHURING:

16 Q. Mr. Frederick, pole design, structure design, you
17 said that's your field of expertise?

18 A. It is.

19 Q. Okay. I tried to ask a question yesterday, and I
20 think you may be the one that they referred it to. The
21 way this line passes in South Dakota it makes several
22 right angle corners. It doesn't -- you know, it doesn't
23 run straight west and straight north.

24 Is there a different structure for the 90-degree
25 angles that are incorporated in this plan?

1 A. Yes. There will be. For the large 90-degree angles
2 that you're talking about we call those dead-end
3 structures.

4 Q. Do you know how many 90-degree angles you're making
5 in South Dakota?

6 Particularly Brown County. I mean, that one is 2,
7 3 miles, 90-degree angle, a few more miles, 90-degree
8 angle.

9 A. Off the top of my head I can't tell you exactly how
10 many. I could estimate the number. It would probably be
11 in the 40 to 50 range, but that's purely an estimation.

12 Q. Can you have a qualified -- or a strong enough
13 structure on the 90 degree without a brace?

14 A. Yes. Yes, we can.

15 Q. Is there a significant difference in the cost of
16 those two type of poles?

17 A. When you're -- could you please explain a brace.
18 Are you referring like guy-wires?

19 Q. Typically power lines that are making 90-degree
20 angles, you know, are braced across the road with
21 additional poles or guide wires. There's no additional
22 bracing or structuring on these -- it's still a single
23 pole?

24 A. It is single pole, but that's yet to be determined
25 if there would be guy-wires. It would be a single pole.

1 There's a possibility of having what we call
2 self-supporting single poles, and then there's a dead-end
3 structure that we call it that does have guy-wires.

4 Q. Does that pole take any deeper foundation on it?

5 A. Yes. What I referred to earlier on the 6-by-25 or
6 30-foot-deep structure, that was our tangent structure,
7 and that's the in-line structures that we have.

8 The 90-degree corners, they see more load from the
9 line so, yes, they will be larger, deeper foundations.

10 Q. Will the base have a bigger diameter also?

11 A. It will.

12 Q. So you will remove significant more material?

13 A. On the 90-degree corners, yes.

14 Q. Okay. So there will be additional cost plus
15 additional labor involved in the 90s?

16 A. Yes.

17 Q. Would it be feasible to say then that it would have
18 been easier to run more direct north and more direct
19 west?

20 It's no more miles if -- if you take it you're going
21 so many miles west and you're going so many miles north,
22 if you do it two miles at a time, your line length is the
23 same. Because it was testified yesterday the shorter the
24 route the less power loss.

25 A. That was one of the routing criteria, yes.

1 Q. Okay. Would it be simpler to go straight west and
2 straight north?

3 A. Not necessarily. Because it's not just the line
4 length that is involved in the routing criteria. There's
5 other things that were looked at.

6 Q. What was the primary purpose then of all the
7 90 degrees?

8 A. Once all the -- when the routing was performed it
9 was all the criteria that Henry discussed yesterday,
10 that's where the route ended up going. And some of it --
11 we can't get everything. Like you can't have the
12 straight line like you're referring to. You have to put
13 in the 90-degree corners to go around obstacles or other
14 things that are out there.

15 Q. And this may not be your field of expertise then,
16 but I'm sitting here asking myself the question was the
17 route explored to go straight west from Big Stone and
18 then straight north?

19 MR. SUTTON: Mr. Smith, I'm going to object.
20 The selection of the route is beyond the testimony of
21 this witness.

22 MR. SCHURING: That's fine. I'll withdraw my
23 question.

24 Okay. Thank you, Mr. Frederick.

25 MR. SMITH: Mr. Morehouse?

1 MR. MOREHOUSE: Nothing here.

2 MR. SMITH: Okay.

3 Staff.

4 MS. CREMER: Nothing from Staff. Thank you.

5 MR. SMITH: Okay. Oh, Commissioners. Pardon
6 me. Pardon me. I don't want to forget about them.

7 COMMISSIONER NELSON: That would be wise,
8 Mr. Smith. Thank you.

9 In your initial testimony you talked about a
10 200-year factor. Can you run that by us again, what the
11 factor is?

12 THE WITNESS: It's a 200-year return period
13 weather event. So a 200-year event basically means you
14 have a half percent chance of that weather event
15 occurring in any one year.

16 Basically, you increase the wind loading and the
17 ice loading on the line. We look at both extreme wind
18 and concurrent ice and wind.

19 COMMISSIONER NELSON: Thank you.

20 CHAIRMAN HANSON: I'd just like to piggyback on
21 that, on the questions from Commissioner Nelson.

22 Sir, when you do that analysis of the half
23 percent of once every 200 years, excuse me, what criteria
24 or what weather event do you look at for what period of
25 time in South Dakota?

1 Do you understand what I'm looking at? For
2 instance, do you look at the past five years? Do you
3 look at the past 10 years to see what storm events have
4 taken place and then gauge it on that?

5 How is that arrived at?

6 THE WITNESS: So the question is how did we come
7 up with the 200-year and what that consists of?

8 CHAIRMAN HANSON: Thank you.

9 THE WITNESS: Well, the 50-year return period
10 weather event, that is dictated by the National Electric
11 Safety Code. And they have the 50-year return period
12 event for all of the United States. That is determined
13 through this code.

14 And then how you get to arrive at the 200-year
15 return period weather event is there are specific maps
16 that are in more detail from that.

17 So on this part of the country it will tell you,
18 okay, this is the 50-year return period event, and then
19 you have to factor that up. There's specific formulas to
20 use to find out what the factor is whether you want to go
21 to a 100-year, 200- or 500-year event.

22 CHAIRMAN HANSON: Thank you very much.

23 MR. SMITH: Any other Commissioner questions?

24 Any follow up, Mr. Pesall, to the Commissioners'
25 questions?

1 MR. PESALL: No. Thank you.

2 MR. SMITH: Okay. Mr. Schuring, any follow up?
3 Mr. Morehouse?

4 Okay. Redirect.

5 REDIRECT EXAMINATION

6 BY MR. SUTTON:

7 Q. Mr. Frederick, you testified that the cost of
8 burying a line is 15 to 20 times the cost of placing the
9 line overhead. Can you explain why it is that much more
10 expensive?

11 A. Yeah. Much of the work on the -- the 15 to 20 times
12 is the overall length of the line that would be buried.
13 So it's on an average. The shorter the section of line,
14 it would be more expensive for short sections of line to
15 go underground because much of the cost is going to be
16 involved in the transition from overhead down to
17 underground and then back on the opposite side where you
18 go overhead to under ground.

19 Q. So if the project was to bury a short, say,
20 1-mile section of the line, is it your testimony that the
21 cost of that would be greater than 15 to 20 times the
22 cost of going overhead?

23 A. I believe that it would, yes.

24 Q. And can you explain why there is an increased cost
25 of maintaining an underground line given the 345 kV

1 transmission versus an overhead line?

2 A. Well, there's -- specific costs to maintain the
3 underground line is, one, you can't see it. So if there
4 is a problem on the line or it does require maintenance,
5 it takes a significant outage on the line. A lot of it
6 would have to be excavated to actually do the work on
7 it.

8 And then another part of that is the material is not
9 very common at all. At this voltage, 345, the conductor
10 it's not a common material. There's long lead times on
11 it. So if you had to get -- if there was a repair that
12 required additional material, you could see extended
13 durations on the outage.

14 MR. SUTTON: No further questions.

15 MR. SMITH: Thank you. I think you may step
16 down.

17 (The witness is excused.)

18 MR. SUTTON: At this time the Applicants would
19 call Jon Leman.

20 JON LEMAN,
21 called as a witness, being first duly sworn in the above
22 cause, testified under oath as follows:

23 DIRECT EXAMINATION

24 BY MR. SUTTON:

25 Q. Please state your name for the record.

1 A. Jon Leman. No H in Jon.

2 Q. Mr. Leman, have you prepared and filed some prefilled
3 testimony that's in evidence in this matter?

4 A. Yes, I have.

5 Q. Will you please summarize that testimony.

6 A. Certainly. Good morning, Commissioners.

7 My name is Jon Leman. I am a senior project
8 engineer at Power Engineers. I also serve as the area
9 lead there for the Clarkston, Washington office where I
10 supervise other engineers.

11 My role at Power is to support electrical design of
12 transmission lines, both overhead and underground, as
13 well as perform other electrical studies and to
14 supervise -- to supervise those on my team who perform
15 those same studies.

16 I've been with Power Engineers for just over nine
17 years. Prior to my time with Power, I taught electrical
18 engineering for the United States Navy's nuclear program.
19 My education, I have a Bachelor of Science in electrical
20 engineering and a Master of Science in electrical
21 engineering as well.

22 My purpose today is to testify to the electrical
23 engineering design aspects of the project. And there are
24 three main aspects covered in my prefilled testimony. The
25 first is electric and magnetic fields. The second is

1 stray voltage. And the third is a possibility of GPS
2 interference.

3 So briefly summarizing those three points, first on
4 electric and magnetic fields, any transmission line
5 produces electric and magnetic fields, and those electric
6 and magnetic fields can induce voltage and currents on
7 metallic objects near the transmission line. Examples
8 would be parallel pipelines, parallel railroads, fences,
9 large metallic buildings, large vehicles.

10 The National Electric Safety Code determines
11 clearances that are required to make sure that there are
12 proper safeguards and to minimize those electric and
13 magnetic field interactions. And so this line is
14 designed to National Electric Safety Code standards, and
15 it is my opinion that this line in terms of electric and
16 magnetic fields does not cause any safety hazards to
17 people or livestock.

18 The second item, stray voltage. Other than electric
19 and magnetic field effects that I just mentioned, stray
20 voltage is an issue from distribution lines because of a
21 direct connection to the system that it's delivering
22 power to. And so we do not expect stray voltage issues
23 with this high voltage overhead transmission line.

24 And then, finally, in terms of GPS. So transmission
25 lines can and do -- particularly the high voltage

1 transmission lines can produce some radio interference.
2 But that radio interference is at a much different
3 frequency than the GPS systems, particularly the
4 agricultural guidance systems. So we don't expect
5 interference in that regard.

6 Clearly, a structure can cause a line of sight
7 obstruction, but no worse than a tree or a small building
8 and that obstruction would be momentary.

9 So, in summary, it's my opinion that this
10 transmission line is not going to cause any safety
11 hazards for humans or livestock and will not cause undue
12 interference with GPS guidance systems.

13 I'm also available to answer questions regarding
14 Staff's Stipulation, Exhibit 301, items 26, 32, and 33.

15 And that concludes my summary.

16 MR. SMITH: Mr. Pesall.

17 MR. PESALL: Thank you, Mr. Smith.

18 CROSS-EXAMINATION

19 BY MR. PESALL:

20 Q. Mr. Leman, you're an electrical engineer; is that
21 right?

22 A. Yes.

23 Q. So all of the testimony and opinions that you've
24 offered are in your capacity as an electrical engineer?

25 A. That is correct.

1 Q. You don't work for MISO?

2 A. Correct.

3 Q. In some of your prefiled testimony you describe EMF
4 radiation levels and indicate that they'll probably be
5 under IEEE standards; is that right?

6 A. Correct.

7 Q. I guess for the record could you explain what IEEE
8 is?

9 A. Sure. IEEE is the Institute of Electrical and
10 Electronic Engineers. It's a body that has convened to
11 develop technical papers, standards, and industry
12 guidelines for the electrical industry.

13 Q. They're not a government agency?

14 A. Correct.

15 Q. Now when you say that the EMF radiation levels
16 should be safe, do you mean safe exposure levels for
17 people and animals under the line?

18 A. Yes.

19 Q. Okay. Is that a ground level, or is that higher up?

20 A. The values we calculate are at ground level.

21 Q. So if a person's above ground level underneath the
22 line, the radiation exposure is going to be higher?

23 A. It will be higher than the levels at ground,
24 correct.

25 Q. When you offer that opinion are you also considering

1 the safety of electrical equipment that may be underneath
2 the line?

3 A. Yes.

4 Q. Is that also at ground level?

5 A. Well, the NESC clearances take into account that
6 objects can be above ground. And so the electric fields,
7 though calculated at ground level, the clearances
8 themselves are accounting for vehicles or objects that
9 could approach the transmission conductors.

10 Q. As far as the standards that you're referring to, do
11 those deal with common vehicles like cars and trucks, or
12 are they dealing with very tall vehicles like farm
13 equipment?

14 A. There are different aspects to that question. So,
15 for example, the NESC clearances, that's clearances to
16 anything, whether it's a large object, a small object, a
17 building.

18 The NESC electric field, electrostatic effect
19 calculations that we refer to, those deal with large --
20 the larger the surface area of the vehicle, the more
21 charge collecting ability it has. And so we account for
22 large farm vehicles when we do that calculation.

23 Q. So is it your opinion that there shouldn't be any
24 EMF radiation issues for persons in a farm vehicle?

25 A. Yes.

1 Q. Does that opinion encompass individuals who may have
2 cochlear implants or pacemakers?

3 A. Yes.

4 Q. Now in spite of those standards, you do acknowledge
5 that there can be radio interference from these towers,
6 however; is that correct?

7 A. Correct. Yes. They produce radio interference.

8 Q. Particularly, for example, with CB radios,
9 AM radios, or analog television?

10 A. They can interference with those to a limited
11 extent. It's going to be limited to very close to the
12 line.

13 Q. Do you agree with the statements in the Application
14 that one ought not to refuel the vehicle within 100 feet
15 of the line?

16 A. Yeah. It's recommended that you don't.

17 Q. And that's because of the potential for an
18 electrical discharge causing a fire?

19 A. Correct. It's very similar to a gas station where
20 they recommend don't get in or out of the vehicle.

21 Q. Now I think in your testimony you do acknowledge
22 that there are instances where the lines can induce
23 current in metal objects that parallel the line; is that
24 right?

25 A. Correct.

1 Q. Would that be a potential for objects like fence
2 lines or long metal buildings?

3 A. Yeah. If it's a metallic fence that parallels the
4 line, then, yes, possible.

5 Q. I think you also state in your testimony that there
6 are some options for grounding fences; is that correct?

7 A. Correct. Yeah. That mitigation has been around for
8 years and years. Very well-known.

9 Q. So if a person had a fence that ran along this line,
10 they would have to take the extra steps of grounding that
11 fence out?

12 A. If the line was sufficient along and parallel to the
13 transmission, then it should be grounded.

14 Q. Can you describe what's involved in grounding out a
15 fence?

16 A. Yeah. It depends on the site conditions. It
17 depends on the soil conditions. But it typically
18 involves a metallic connection to a ground rod, similar
19 to what you have at your home.

20 Q. And how many of those do you need per linear mile of
21 fence, I guess?

22 A. There are guidelines for that. I don't know the
23 numbers.

24 Q. So you're not able to testify as to what kind
25 expense a person with a fence would be looking at?

1 A. Correct.

2 Q. In your testimony you opine ultimately that there
3 would be no significant problems for landowners due to
4 stray voltage; is that correct?

5 A. Correct.

6 Q. Now that assumes that the landowner doesn't want to
7 construct a metal structure underneath the proposed
8 route, though; correct?

9 A. Well, even if they did want to build a metal
10 structure directly underneath the proposed route, again
11 mitigation options for that are well-known, and that
12 stray voltage issue would be limited to the EMF
13 effects.

14 Q. Finally, you do offer the opinion in your testimony
15 that the presence of these lines wouldn't create a
16 significant problem with GPS systems; is that right?

17 A. That's correct.

18 Q. But you are acknowledging here today that if a
19 person is driving a vehicle underneath that line, they
20 may experience GPS interference?

21 A. They may, due to the line-of-sight obstruction, like
22 if they pass behind a tree.

23 Q. In your experience, farmers don't typically drive
24 tractors under trees, though, do they?

25 A. Well, clarify your -- are we talking about

1 ground-based GPS or --

2 Q. Yes.

3 A. Or satellite GPS?

4 Q. The satellite GPS unit in a tractor.

5 A. Okay. So a ground-based GPS is going to have a
6 horizontal signal. So if it passed by a tree, even if
7 it's not under a tree, there could be line-of-sight
8 obstruction. So it's similar in principle to a
9 transmission structure.

10 Q. In the process of making the assessments that you've
11 given here today, have you actually tested any of the
12 currently available tractor guiding GPS systems with
13 similar lines?

14 A. I personally have not.

15 Q. So you're not able to testify from a personal
16 testimony here today?

17 A. Not as an individual who performs those tests. But
18 I have reviewed research that -- of individuals who have
19 performed those tests.

20 Q. Getting back to my previous question then, and this
21 is really the answer I'd like to get, is if a person's
22 driving a tractor underneath one of these lines, they're
23 directly under it, is there potential for GPS
24 interference?

25 A. If they are directly under the transmission line,

1 no, I would say it's extremely unlikely. As long as they
2 have line of sight to the ground-based unit.

3 Q. I'm not saying ground based. Purely satellite
4 based.

5 A. Purely satellite based. Then, no, I wouldn't expect
6 any interference from that.

7 Q. So in your testimony when you indicate that there is
8 the potential for some interference, you're referring
9 purely to ground-based GPS?

10 A. Correct.

11 MR. PESALL: Nothing further. Thank you.

12 MR. SMITH: Mr. Schuring.

13 MR. SCHURING: A quick question.

14 CROSS-EXAMINATION

15 BY MR. SCHURING:

16 Q. Jon, you said that this could have a impact on a
17 metal object running parallel to the line. Water is also
18 a conductor.

19 Would it have any effect on a waterway that passes
20 under this line?

21 A. I'm not aware of that ever having been addressed in
22 any of the research that I've looked at.

23 Q. So there could possibly be an effect?

24 A. Water is not as good of conductor as you'd think.
25 So I don't know the answer to that question.

1 Q. Okay. And I'm going to explain the reason I ask
2 that. We have a waterway most of the year that is going
3 to pass right underneath this line, flow right behind our
4 dairy right next to our lagoons also.

5 So I'm just wondering, you know, how do we find out
6 if that has an impact upon us? Is there research out
7 there by anybody?

8 A. Not that I'm aware of. The benefit there of a
9 waterway is it's large -- has a large cross-sectional
10 area, and it's continuously in contact with the ground
11 which is wet around it. So unlike a building which might
12 be isolated from the ground without mitigation or like a
13 fence that might be without ground for mitigation, the
14 waterway is continuously grounded.

15 Q. Are you able to say today, yes or no, that it would
16 not be impacted -- or our waterway would not be impacted
17 by it?

18 A. Definitively, no, I'm not.

19 MR. SCHURING: Thank you.

20 MR. SMITH: Mr. Morehouse.

21 CROSS-EXAMINATION

22 BY MR. MOREHOUSE:

23 Q. Yeah. I've got one question about the fences having
24 a charge in them underneath these power lines. That's
25 true that there could be some action there?

1 A. If the fence is parallel and if it's close enough
2 and long enough and if it's ungrounded, then, yes, it's
3 possible.

4 Q. How long of a fence -- or I guess what would the
5 length be of this charge that could be in this fence?
6 How long would it last? Does it go down as the fence
7 gets longer?

8 Like every 200 miles there's a fence. The end of
9 it you're probably not going to feel it, right close you
10 will, or is it going to be the same at both ends?

11 A. It varies based on configuration. I really couldn't
12 answer that question. It depends on the length of the
13 line, the configuration of the fence, the configuration
14 of the conductors. So that's not an easy answer.

15 Q. Okay. So there is the potential of the fence at the
16 other end, you know, carrying -- there's a fence running
17 right to my feedlot, tied to my feedlot, and there is
18 potential that this current -- or if there is a problem,
19 that it could, without grounding, have an impact on my
20 cattle in my feedlot because the fence also runs around,
21 loops around, comes to water stations.

22 And I did have stray voltage. I understand this is
23 not stray voltage; this is electromagnetic voltage. It's
24 a different deal but could have the same effect and have
25 a negative impact on my cattle coming up to drink water.

1 I know very well they won't drink water we have very
2 negative impacts on. So you still say that it has no
3 negative impact on the health of cattle?

4 A. Well, if it's -- if it's a situation that does, in
5 fact, induce voltage on the fence, if all the conditions
6 are right for that and if it's not grounded, so if it is
7 not mitigated, then certainly it could impact anybody
8 that touches that.

9 Q. Okay. So would you say that it would be -- or would
10 it be better -- would there be less of a chance of
11 getting -- electrifying this fence if the line was moved
12 a half a mile away than right on the fence? Or would the
13 fence still have the same potential of being charged up a
14 half a mile from the line?

15 A. Yeah. Any distance that an object is able to gain
16 away from a transmission line, the electromagnetic
17 effects are less. But it depends on how far.

18 If you are fenced directly under the line, then sure
19 some distance away the impacts are less in the
20 unmitigated case.

21 Q. So would you say it would be better to ground this
22 fence, or would it be better to maybe move the line so
23 you didn't even have an issue with it?

24 A. Well, grounding the fence is an easy solution. I
25 can't speak to all the other factors that would be in

1 play regarding a relocation of the route. So I can't
2 really compare that.

3 Q. Okay. If the factors -- if everybody was in
4 agreeance and it didn't cost anymore and everything was
5 equal, they could move the fence one half a mile, would
6 it be better to move the fence -- move the line, I mean,
7 than to build it there, if everything was the same,
8 without any other factors being involved?

9 A. Yeah. I'd have to say that the end result of both
10 is the same. Whether it's grounded or whether it's
11 moved, the end result is a safe fence.

12 MR. MOREHOUSE: Okay. Thank you.

13 THE WITNESS: You bet.

14 MR. SMITH: Staff.

15 MS. CREMER: Thank you.

16 CROSS-EXAMINATION

17 BY MS. CREMER:

18 Q. Good morning.

19 A. Morning.

20 Q. Are you aware of the communication systems being
21 used by agriculture producers today? Generally aware?

22 A. Am I aware of all the different types of
23 communication systems?

24 Q. Yeah. In general.

25 A. I can't say that I'm aware of all of them, no. I

1 don't work in the farming industry so --

2 Q. The ones that have been mentioned today and at the
3 public hearings, you generally understand how those
4 work?

5 A. Yes.

6 Q. Okay. Can you explain how those systems may be
7 affected by the project?

8 A. Well, there's a lot of different systems so we have
9 already discussed the GPS system. Do you have any
10 additional questions on the comments that I made there?

11 Q. I'm just really trying to clarify. I'm not trying
12 to lead you here, but if you would look at your written
13 testimony, and that's Exhibit 20, okay, and then if you
14 turn to page 10.

15 A. Okay.

16 Q. Okay. And it starts on line 9, and you state
17 "Electric field corona from high voltage power lines can
18 produce radiofrequency emissions, but these
19 radiofrequency emissions are generally at a lower
20 frequency than the frequencies used for satellite GPS
21 systems."

22 Do you see that?

23 A. Yes.

24 Q. Okay. Can you give me a little bit more specific
25 detail on the nature of those RF emissions? Basically

1 I'm asking what are the frequencies?

2 A. Okay. What are the frequencies of RF emissions from
3 transmission lines?

4 Q. Correct.

5 A. Okay. I'll describe it as a broadband noise. So it
6 spans multiple frequencies. The -- I guess I would say
7 down around 1 megahertz and below it tends to be a little
8 stronger. By the time you get up to about 20 or 30
9 megahertz it's very difficult to measure because it's so
10 small. So it spans from about 20 to 30 megahertz down.

11 Q. And are you aware of any communication systems that
12 operate in those lower frequencies -- in those lower
13 frequencies?

14 A. Sure. Ham radio communications, the HF bands
15 operate in those regions. There are -- of course,
16 AM radio is in that band. Those are a couple of
17 examples.

18 Q. Can you estimate how many projects you've worked on
19 similar to this one?

20 A. A quick estimate, 20 to 30.

21 Q. And have you received any reports from agricultural
22 producers about interference with the transmission line?

23 A. No. No. Not specifically related to transmission
24 lines.

25 Q. Do you believe the Stipulation, which I think you

1 referenced, which is Exhibit 301, in particular
2 paragraph 33, do you believe that adequately protects
3 agriculture producers who use those systems?

4 MR. PESALL: I'm going to object as calling for
5 a legal conclusion.

6 MR. SMITH: Pardon me?

7 MR. PESALL: I said I'm going to object as
8 calling for a legal conclusion.

9 MR. SMITH: Do you have a --

10 MS. CREMER: I do.

11 Q. Based on your experience and education do you have
12 an opinion as to whether or not in Exhibit 301,
13 paragraph 33 -- I've lost my question. Oh.

14 Do you believe that adequately protects agricultural
15 producers who use those systems?

16 MR. SMITH: Do you have an objection to that
17 framing of the question?

18 MS. CREMER: I'm asking if he has an opinion.

19 MR. PESALL: I think that's acceptable.

20 MR. SMITH: Okay. Thank you.

21 Q. And you just have to answer yes or no at this point.

22 A. Yes. It's adequate.

23 MS. CREMER: And all right. And then that would
24 be his opinion.

25 MR. SMITH: Is that all, Staff?

1 MS. CREMER: Yes. That's all I have. Thank
2 you.

3 MR. SMITH: Okay. Commissioners, questions?
4 Commissioner Nelson.

5 COMMISSIONER NELSON: We've spent a lot of time
6 talking about induced voltage in fence lines. Is that
7 voltage something that can be readily measured with your
8 typical handheld voltage meter, or is it a sub sub sub-1
9 volt that would take specialized equipment?

10 THE WITNESS: It depends on how long the fence
11 is and how close it is to the transmission line. But
12 certainly if it's not grounded, then it's something you
13 could measure with a volt meter.

14 Your accuracy might be impacted by the grounding
15 conditions and where you put your ground terminal and
16 your positive terminal, but it could be measurable.

17 COMMISSIONER NELSON: And once you've taken the
18 mitigation measures, you would be able to then also
19 measure and determine if your mitigation measures were
20 successful; is that correct?

21 THE WITNESS: That's correct.

22 COMMISSIONER NELSON: Thank you.

23 MR. SMITH: Other Commissioner questions?
24 Commissioner Fiegen?

25 Go ahead.

1 CHAIRMAN HANSON: Mr. Leman, do you know or have
2 an opinion on approximately how close a grounded object
3 would have to come to an energized line of this nature in
4 order to become a conductor?

5 THE WITNESS: Well, a conductor is any metallic
6 object, regardless of where it's at. So I'm not sure I
7 understand the question.

8 CHAIRMAN HANSON: For instance, I'll give you an
9 example then.

10 To become energized itself, as opposed to a
11 conductor. In other words, a tractor with a front end
12 loader -- that's not going to reach high enough. Someone
13 doing some construction of some sort and they are moving
14 an object, an auger or something. How close -- do you
15 know approximately how close that would have to come to
16 the line in order for energy to transfer to the auger?

17 THE WITNESS: And by energy transfer do you mean
18 like a flashover like an arc?

19 CHAIRMAN HANSON: Well, I'll give you an
20 example. When I was in local government some people --
21 some city employees were removing a well pump in the well
22 field. They raised that to an extent to a height that
23 it -- it did not come in contact with a line, but the
24 power from the line transferred to the vehicle itself,
25 and there were problems as a result of that.

1 So do you know, can electricity jump from that
2 line to a vehicle or something of that nature? Does it
3 have to be approximately 2 feet, 10 feet, 1 foot? Does
4 it have to come in actual contact?

5 THE WITNESS: Yeah. That's a difficult question
6 because there are a lot of factors involved. Humidity.

7 CHAIRMAN HANSON: Well, that was my second
8 question was if it was raining or if there was a heavy
9 fog.

10 THE WITNESS: Yeah. Any time -- NESC
11 establishes a boundary, and a conductive object should
12 not be within that boundary unless it's a, you know,
13 trained professional.

14 So any time you are in that boundary you are
15 increasing the risk of what I'll call a flashover where
16 there's basically a conductive path through air that's
17 formed because air's not -- any time you're in that
18 National Electric Safety Code boundary your risk
19 increases. The closer you get, the more the risk
20 increases.

21 But within dry conditions that could be just a
22 couple of feet, and wet conditions maybe a little more.
23 But the National Electric Safety Code clearances that are
24 established are established with that in mind for all the
25 conditions.

1 CHAIRMAN HANSON: So with this line your
2 estimate would be approximately 2 feet? It's not 10 feet
3 or anything of that nature?

4 THE WITNESS: Well, again, putting an exact
5 number is very difficult. But really good dry
6 conditions, ideal situation, yeah, it's -- I guess what I
7 will say is that the National Electric Safety Code
8 boundaries have margin for sure. And so if your
9 conditions are dry, you would have to get a lot closer
10 than the boundary that they require in order for that
11 flashover to occur.

12 CHAIRMAN HANSON: Do you know what the boundary
13 is for this line?

14 THE WITNESS: I don't. I didn't do the
15 electrical calculations for the clearances.

16 CHAIRMAN HANSON: Okay. Thank you. Appreciate
17 that. Thank you.

18 MR. SMITH: Commissioner Fiegen.

19 COMMISSIONER FIEGEN: Thank you. Mr. Lemman,
20 there's a couple of questions I have.

21 First of all, livestock producers, we want to
22 certainly protect them in South Dakota because it's
23 certainly part of our economy.

24 What do you do for fences when there are issues
25 and they do need to be grounded? Does the owner of the

1 transmission ground those fences for the livestock
2 producers, or is that an expense of the livestock
3 producer?

4 THE WITNESS: I don't know the exact procedure
5 that the Applicants would be implementing for that. That
6 would be a question for them. I will refer to Staff
7 Stipulation 32. I'll read that.

8 "The Applicant shall provide all landowners
9 information regarding the potential induction of current
10 voltage on fences and metal objects and mitigation
11 methods that can be applied to eliminate the induction.
12 Applicant will respond to landowners' concerns regarding
13 current voltage on fences or other structures within
14 100 feet of the edge of the right of the way of the
15 project and will assist those landowners in determining
16 methods and implementation of mitigation."

17 So any details beyond that would have to go to
18 the Applicant.

19 COMMISSIONER FIEGEN: So that question can be
20 followed up with somebody else that's going to testify
21 today to understand what that Stipulation means on assist
22 and if that means to help pay for, or does that mean just
23 expertise on what they need to do?

24 THE WITNESS: Well, I'm certainly not the one to
25 answer that question.

1 MR. WELK: Commissioner Fiegen, we'll get
2 somebody to answer the question.

3 COMMISSIONER FIEGEN: Great. Thank you.

4 The second question is, as Commissioners,
5 pipeline safety is extremely important, and corrosion of
6 pipeline, of course, is a culprit of pipelines. As you
7 know, corrosion can certainly happen.

8 And could you tell me if there's any parallel
9 pipeline safety issues with the transmission line and if
10 there's any cross -- are you crossing any pipelines?

11 THE WITNESS: To my knowledge, we're not
12 parallel to any transmission lines. I guess I don't -- I
13 don't know the answer to the crossing. Perhaps someone
14 on our team could answer that question. But I'm not
15 aware of any crossings or parallel for pipelines.

16 COMMISSIONER FIEGEN: So then there will be
17 somebody that can testify if we're crossing pipelines?
18 And if we do and that testimony comes up, can you tell me
19 what type of impact that has on corrosion of the
20 pipeline?

21 THE WITNESS: Okay. Sure.

22 For any transmission line if there is a pipeline
23 that crosses or is close in parallel, there are ACE
24 interference studies that are done that have been
25 designed to make sure that the corrosion aspects meet

1 NACE requirements. And they are the standards agency for
2 corrosion.

3 COMMISSIONER FIEGEN: So can you tell me what
4 some of those requirements are since I don't work in that
5 field?

6 THE WITNESS: Yeah. I can speak briefly
7 generally about them. But the requirements basically are
8 that the transmission project cannot induce current above
9 a certain threshold. Because above that threshold
10 corrosion is considered to be a risk.

11 COMMISSIONER FIEGEN: Thank you.

12 That's it, Mr. Smith.

13 MR. SMITH: Okay. I'm going to ask you one
14 question on that.

15 Isn't that what cathodic protection is for on a
16 pipeline system?

17 THE WITNESS: Yeah.

18 MR. SMITH: And, again, if we're talking
19 crossings here -- again, I get the parallel part where
20 there may be some other slight -- but, I mean, I've never
21 ever heard of an issue with a transmission line crossing
22 a pipeline before.

23 And, you know, I guess it's my understanding
24 from all the pipeline cases we've had that that's one of
25 the purposes of cathodic protection is to remove current

1 induction in a pipeline system but --

2 THE WITNESS: Yeah. That is true. Cathodic
3 protection does mitigate corrosion issues, and it's
4 really the parallel pipelines that have the induction
5 issues.

6 MR. SMITH: Thank you.

7 Any other questions?

8 Mr. Schuring, do you have a question?

9 MR. SCHURING: Mr. Smith, I made a couple brief
10 notes here if I could follow up, please.

11 MR. SMITH: You may.

12 RECROSS-EXAMINATION

13 BY MR. SCHURING:

14 Q. In regards to Ms. Fiegen's question on pipelines,
15 2 miles west of our dairy facilities the TransCanada
16 Pipeline is going to cross. It's not going to parallel,
17 but it's going to cross it. So they do cross some.

18 One of the questions that you addressed was GPS.
19 What about drones? That's become a big issue in
20 agriculture now. Is there going to be any effect on
21 drone operation on tracts of land that have this
22 transmission line across them?

23 A. I'd have to know more about the drones and the
24 communication systems that they're using so I really
25 can't answer that question right now.

1 Q. So we know this is coming, but you guys haven't done
2 any study or research to see what impact this would have
3 at this point?

4 A. Not for drones, no.

5 Q. Okay. Because it's coming. I mean, that's
6 something that's going to be here.

7 And a follow up to Mr. Hanson's question. He
8 mentioned that weather was going to be -- do heavy fog
9 conditions or rainy conditions expand or strengthen the
10 electromagnetic field?

11 A. The weather conditions -- no. They do not affect
12 the electric and magnetic field that's produced. That's
13 solely a factor of the currents in the line.

14 If you're getting very, very technical, the electric
15 field properties of water and have air are different, but
16 the amount of air that -- or the amount of water in the
17 air is so small that it doesn't impact the magnetic and
18 electric field profiles.

19 Q. Even in a heavy fog condition?

20 A. Correct.

21 Q. Okay. And then there was the question -- my
22 interpretation as a farmer, because I've been through
23 this before, is in your -- in your filed exhibit -- and
24 this was a question I think Commissioner Fiegen also
25 asked, you would assist a farmer.

1 The individual landowners that already exist, have a
2 fence line in place, should not bear any burden
3 financially to -- that was placed upon them by the
4 construction of a new power line with -- you know, that
5 burden should be on the Applicant. We should not have to
6 bear any costs to protect ourselves.

7 MR. SUTTON: I'm going to object to the extent
8 it's a question. Because he's indicated the owners have
9 to address the mitigation issue. It's beyond his
10 testimony.

11 MR. SMITH: That one I don't think is for him.

12 MR. SCHURING: Okay. I withdraw. Thank you.

13 MR. SMITH: Yeah. He won't be involved in
14 that.

15 Mr. Pesall, do you have any follow-ons?

16 RECROSS-EXAMINATION

17 BY MR. PESALL:

18 Q. One on I think it was Commissioner Fiegen's
19 question about the Stipulation and how that mitigation is
20 handled.

21 In your experience with lines of this nature do you
22 typically try and determine which fences may need
23 mitigation before the line is energized, or do you wait
24 and see what fences show up afterwards?

25 A. Yeah. It depends on the project. It depends on the

1 owner. But in the projects I've been involved with in
2 the past, it's varied all the way from they just do it
3 automatically and we assess case by case.

4 Q. Do you know what the Applicant's intent is in this
5 case?

6 A. Beyond what's in the Stipulation, I do not.

7 MR. SMITH: Mr. Morehouse, do you have another
8 question?

9 MR. MOREHOUSE: Yes, I do.

10 RECROSS-EXAMINATION

11 BY MR. MOREHOUSE:

12 Q. I was just wondering about Ms. Fiegen's question
13 about the Stipulation. 100 feet. It mentioned in there
14 100 feet from the line, you'll take care of something 100
15 feet from the line.

16 Does that mean anything over 100 feet from the line
17 is not in jeopardy of any or there's no potential danger
18 or threat or anything over once you get to that 100-foot
19 level?

20 MR. SUTTON: I'm going to object. The 100 foot
21 from the line misstates the Stipulation. It's 100 feet
22 from the right of way.

23 MR. SMITH: Yeah. That's what it is.

24 MR. MOREHOUSE: 100 feet from the right of way.
25 Okay. Then I can restate my question.

1 Q. Is 100 feet from the right of way?

2 A. Can you restate the first part of your question,
3 please.

4 Q. I was just wondering, is 100 feet from the right of
5 way as far out as -- is there any potential danger over
6 100 feet from the right of way? Zero potential danger
7 over 100 feet from the right of way?

8 A. Yeah. The term "danger," if I can answer that
9 question in terms of our electromagnetic field effects
10 beyond that, the electric field decreases very rapidly as
11 you get away from the conductors.

12 So once you're 100 feet beyond the edge of the right
13 of way, that electric field is extremely low. And so the
14 likelihood that that electric field can induce a
15 electrostatic charge on an object is very minimal.

16 MR. MOREHOUSE: Okay. Thank you.

17 MR. SMITH: Jason, I've been asked to remind you
18 to use your mic. when you object.

19 Anything else?

20 MR. PESALL: Nothing here.

21 MR. SMITH: Okay. Any other Commissioner
22 questions after hearing --

23 CHAIRMAN HANSON: I need to apologize for asking
24 a question, but I feel compelled to ask anyway.

25 What is involved in grounding a fence that is so

1 challenging? Is it -- in my mind it's attaching a wire
2 and putting it in the ground a couple of feet.

3 THE WITNESS: Yeah. It's not challenging. It's
4 straightforward mitigation, very well-known, widely used.

5 CHAIRMAN HANSON: Okay. Thank you.

6 MR. SMITH: Redirect?

7 MR. SUTTON: Thank you.

8 REDIRECT EXAMINATION

9 BY MR. SUTTON:

10 Q. Mr. Leman, Mr. Morehouse was asking you some
11 questions about the induced voltage in a fence resulting
12 from the electromagnetic field. Would you expect any
13 risk to livestock or persons for an induced -- or excuse
14 me. An induced voltage fence 1,200 feet from the
15 transmission line?

16 A. Let me clarify. So if the entirety of the fence is
17 at least 1,200 feet away from the transmission line, no.

18 Q. And that's correct. That was my question.

19 A. Even without mitigation.

20 MR. SUTTON: No further questions.

21 MR. SMITH: Do you have one last question?

22 MR. MOREHOUSE: Sure.

23 RECROSS-EXAMINATION

24 BY MR. MOREHOUSE:

25 Q. In my situation the entirety of the fence is not

1 1,200 feet away from the line. At one point the fence is
2 directly underneath the line.

3 A. Right. So in -- can you phrase that in terms of a
4 question if you want me to respond?

5 Q. My feedlot has a potential of being affected
6 because -- or I'm asking does my feedlot have the
7 potential of being affected from this line that is
8 directly over my fence traveling a half a mile and it
9 will hit my feedlot? It's not even a half a mile, but it
10 will hit my feedlot.

11 Sure. On Exhibit 22A.

12 A. Okay. I have it.

13 Q. Okay. At the bottom of the page, Section 26 there,
14 circled my feedlot, the line is in purple diagonally
15 across two quarters of land. And it is -- the right of
16 way will be -- my fence will be right under the right of
17 way.

18 And my question is that fence goes right up to my
19 feedlot to the south, and will my feedlot be affected --
20 could my feedlot be affected if -- say we even have it
21 properly grounded and that's a mechanical ground.
22 Everything's working and it's in place but for some
23 reason or another a wire got broke on the ground and now
24 I've got three dead steers laying by water or I don't
25 know for sure why my cattle in a pen are not doing well

1 because they're probably -- I don't physically watch them
2 drinking water every day. You know, you can see a few up
3 there but -- you know, you got enough cattle you can't
4 tell which animals, and every animal is different.

5 But say the grounding broke on that fence for some
6 reason and now the fence is electrified again and it's
7 putting current, some current toward my water where the
8 cattle got to drink, and now I have detrimental impacts
9 because of the power line.

10 A. Okay. There are a number of questions in there.
11 First, if a portion of the fence is underneath the
12 transmission right of way and then extends out past the
13 right of way and goes some distance, for example, in this
14 case over a quarter of a mile away, then that certainly
15 would be a candidate for what's discussed in
16 Stipulation 33.

17 So that portion that's under the transmission line
18 right of way could have induced voltage on it, and
19 because it's wire, it's conducted, that could be
20 transferred to the other end of the fence. So that would
21 be a candidate for grounding.

22 In terms of your question regarding what if the
23 ground broke? Well, lots of options are available to you
24 there, but multiple grounds would be the easiest one.

25 Q. But would you say it would still be better to move

1 the line and not even worry about the ground breaking
2 anywhere? If all the other factors were the same?

3 A. If every other factor was the same, yes.

4 MR. MOREHOUSE: Thank you.

5 MR. SMITH: Any other cross-examination
6 questions?

7 Mr. Sutton?

8 MR. SUTTON: No further redirect.

9 MR. SMITH: Okay. I think you may step down.
10 Are we ready for a break?

11 I think Cheri's ready for a break. Okay.
12 Thanks.

13 Why don't we do -- again, that clock's off, but
14 do about 15 minutes, give or take. Maybe we'll reconvene
15 about 10 o'clock.

16 (A short recess is taken)

17 MR. SMITH: Okay. I'm going to call the hearing
18 back to order after our recess.

19 And, Mr. Welk, please proceed with Applicant's
20 direct case.

21 MR. WELK: In response, Mr. Smith, to
22 Commissioner Fiegen's issues, one relating to the expense
23 issue on mitigating the fences, we have talked among the
24 project team, and we are going to request an amendment to
25 the Stipulation with the Staff in paragraph 32.

1 So I'd like to have everybody get, if you can,
2 Exhibit 301 and look at paragraph 32.

3 Everybody there?

4 The Applicant is willing to amend, and I believe
5 the Staff concur, that the last line of the paragraph 32
6 after the word "and" will be stricken to the end of the
7 sentence and inserted the phrase "will furnish, install,
8 and test at Applicant's expense recognized mitigation
9 materials," the sum and substance to address both
10 Commissioner Fiegen's concern and one of the landowner's
11 concern, that the Applicant will incur that expense but
12 it will install and test and provide the mitigation
13 materials.

14 So I don't know if --

15 REDIRECT EXAMINATION

16 BY MR. WELK:

17 Q. I'd ask Mr. Ford -- I'd remind you that you're still
18 under oath. And on behalf of the project would you agree
19 to that amendment to the Staff Stipulation in Exhibit
20 301?

21 A. Yes, I do.

22 MR. WELK: And if there's any questions about
23 that issue, anybody before I go to the next matter?

24 MR. SMITH: Mr. Pesall, do you have any
25 questions?

1 MR. PESALL: Would the complete amended version
2 of the Stipulation be circulated by everybody once we get
3 back to the office?

4 MR. WELK: I was going to ask how General
5 Counsel wanted that done. I've read it into the record,
6 but if you'd like a full executed amended Stipulation,
7 whatever works.

8 MR. SMITH: You know, in a sense for the long
9 haul I think that would be good so we have a document as
10 we move from -- you know, again, I'm not assuming the
11 project will be approved, you know, the permit will be
12 granted.

13 But if it is, it will be nice to have a
14 document that will live on for several years that
15 precisely reflects what the terms are in the Stipulation,
16 I think.

17 MR. WELK: Some of us may not be here for the
18 end of the duration of this line.

19 MR. SMITH: Might not be. You know, it's really
20 useful where you don't have to hunt around and search and
21 to have the document where it is, what it is and then
22 that's the rules of the game. If that's the way the
23 Commission determines to go.

24 Okay. So I think we should have it --

25 MR. WELK: We will do that when we get home.

1 MR. SMITH: And maybe just label it Amended
2 Stipulation.

3 MR. WELK: 301A works.

4 MR. SMITH: Okay. Yep.

5 Okay. With that, do you have any other
6 questions regarding this Amended Stipulation?

7 MR. PESALL: No.

8 MR. SMITH: Okay.

9 Mr. Schuring?

10 Mr. Morehouse?

11 MR. MOREHOUSE: No.

12 MR. SMITH: Commissioner Fiegen.

13 COMMISSIONER FIEGEN: First of all, thank you to
14 the Staff and the owners of the transmission line for
15 addressing this.

16 A question on the entire transmission line.
17 Will you be testing the fence where they're parallel or
18 where they cross, or will you do all the miles that
19 this is impacted or just when a livestock producer calls
20 you?

21 THE WITNESS: Typically it is when a livestock
22 producer calls us. I guess I'm not personally aware of
23 where all the fences are along the project, but there may
24 be some fences that, you know, it's obvious enough that
25 we would go ahead and ground it as we're constructing.

1 COMMISSIONER FIEGEN: So an advisor and I were
2 just visiting, and we just thought, you know, it would be
3 so simple, maybe take a few days but to actually drive
4 the route and if you guys have the testing material, just
5 to test the entire route so all our livestock producers
6 are aware of what's going on.

7 MR. SMITH: Any other questions related to this
8 at this point?

9 Mr. Welk?

10 MR. WELK: Yes. The second question I believe
11 that Commissioner Fiegen wanted to know was about the
12 pipeline crossings. And during the break we pulled out
13 Exhibit 1, which is the Applicant -- or the Application.

14 REDIRECT EXAMINATION

15 BY MR. WELK:

16 Q. And there is a map that you have before you in the
17 Application and, Mr. Ford, what is that?

18 A. The map is the project overview, Exhibit 1, which
19 shows the entire route of the project.

20 Q. Now that's the prior route; correct?

21 A. Yes. That is the prior route, the route at
22 application time.

23 Q. Just from a general concept, in reviewing that what
24 did you determine as to the number of pipeline
25 crossings?

1 A. This map does show -- at least at the time of the
2 map it shows all pipelines as well as our route, and we
3 do have one pipeline crossing just west of Andover. I
4 believe that's the Keystone Pipeline. It is a
5 perpendicular crossing so not a parallel. And it does
6 not show any other lines that we parallel close enough to
7 that would be at issue.

8 COMMISSIONER FIEGEN: Thank you.

9 MR. WELK: That's all I have. I wanted to make
10 sure we got your questions answered.

11 MR. SMITH: Okay. Any further questions at this
12 point?

13 MR. WELK: No. The Applicant would rest its
14 case in chief.

15 MR. SMITH: Okay. You may step down, yes.

16 (The witness is excused.)

17 MR. SMITH: Do you need a little time,
18 Mr. Pesall, or are ready?

19 MR. PESALL: If I could have about five minutes,
20 I would appreciate it.

21 MR. SMITH: Okay. We'll take a quick
22 five-minute break. And for anybody who hasn't signed in
23 yet, now is the chance.

24 (A short recess is taken)

25 MR. SMITH: I'm going to call the hearing back

1 to order following our break. And Applicant has finished
2 its direct case so we'll turn to Interveners, and we'll
3 begin with Mr. Pesall. And, please, commence.

4 MR. PESALL: Thank you, Mr. Smith. We'd begin
5 by calling Gregory Tylka.

6 GREGORY TYLKA,
7 called as a witness, being first duly sworn in the above
8 cause, testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. PESALL:

11 Q. Mr. Tylka, have you previously provided prefiled
12 testimony in these proceedings?

13 A. Yes, I have.

14 Q. And if asked all of the questions in those
15 documents, would you give the same answers today?

16 A. Yes.

17 Q. Can you briefly summarize who you are and what you
18 do for a living for the Commission?

19 A. My name is Gregory Tylka, and I'm a professor at
20 Iowa State University in the Department of Plant
21 Pathology and Microbiology, and I've been there since
22 February of 1990.

23 Q. And with respect to the soybean cyst nematode,
24 what's your background?

25 A. I live and breathe soybean cyst nematode. Basically

1 I was hired to work almost exclusively on that, and that
2 was my graduate training as well.

3 Q. Can you give the Commission a short explanation of
4 what the soybean cyst nematode is?

5 A. Sure. So generally I start off this explanation by
6 describing nematodes in general. These are microscopic
7 worms that live in water and soil, very common. And most
8 of them are good. They're beneficial.

9 But there are a subset of them that feed on plants.
10 And many of these plant feeding nematodes or plant
11 parasitic nematodes are native to the United States, and
12 they're commonly found in agricultural soils throughout
13 the United States.

14 But there also are a few that are introduced pests.
15 And soybean cyst nematode, which I'll probably refer to
16 as SCN from this point on, is one of those introduced
17 pests.

18 And introduced pests create unique problems in that
19 when they are introduced into a field first off they have
20 no natural enemies because they've never existed there
21 before. So many of the native plant parasitic nematodes
22 are not terribly damaging because there are other things
23 that live in the soil that eat nematodes for lunch, for
24 example.

25 But when you're a new introduced pest you have the

1 benefit of many years for not having any natural enemies.
2 And so that's one of the things that makes soybean cyst
3 nematode or SCN so difficult and so dangerous.

4 It also has aspects of its biology that make it very
5 unique and very damaging. Most nematodes are individual
6 worms that feed from the outside of the root and produce
7 five or 10 offspring. But soybean cyst nematode burrows
8 into the root. It attaches to the vascular tissue, which
9 is in the center of the root, and then the female swells
10 up to form what we refer to as a swollen female. And the
11 reason she swells up is because ovaries develop inside of
12 her that are very large.

13 Eventually the adult swollen female is about the
14 size of a printed period at the end of a sentence. So in
15 a book page or a newspaper. And that swollen female
16 fills up with eggs, 200 to 300 eggs. So a unique aspect
17 of the nematode's biology is that it has a very high
18 reproductive potential.

19 Now the whole life cycle of SCN can be completed in
20 four weeks. So when you think about how many weeks a
21 soybean crop is grown in your state or mine that allows
22 for three or four or five turns of the life cycle,
23 generations. And so that adds to the potential for
24 explosive increases in numbers.

25 And then if mother nature didn't give us enough of a

1 bad hand, that final aspect that makes it terribly
2 difficult to manage is the eggs inside the females. When
3 she dies those eggs can live 10 or more years without a
4 soybean crop being grown. Those eggs go dormant in the
5 soil.

6 So it's a very troublesome pest because of being an
7 introduced pest, having a high number of offspring per
8 individual, a short life cycle, and then very long lived
9 in the soil.

10 Management of soybean cyst nematode consists of
11 checking your fields to know if you have it or not, and
12 then once you've discovered you've got it, you're looking
13 at growing resistant soybean varieties or not growing a
14 host crop like soybeans or using a seed treatment, which
15 is a new management strategy that's just been brought on
16 to the market a couple of years ago.

17 So really check your fields, switch to a resistant
18 soybean variety, don't grow something that's a host crop,
19 or a seed treatment.

20 I want to just touch on the resistant soybean
21 varieties for a second because I don't want to give you
22 the impression that that's a cure. So resistant soybean
23 varieties suppress the reproduction of the nematode, but
24 it doesn't stop reproduction. And also it still suffers
25 some damage.

1 And then as you use the resistance over time, the
2 nematode can become resistant to resistance. So in Iowa
3 where we grow 11 million acres of soybeans, soybean cyst
4 nematode is in 75 percent of the field. It's not a death
5 sentence, but it's a significant economic hit to the
6 soybean production in any field that has it because of
7 these things.

8 And the seed treatment, which is the newest
9 management strategy, in my mind at least the verdict is
10 still out on whether or not they provide any additional
11 benefit or not.

12 Because of everything I've just said, I consider the
13 states of North Dakota, South Dakota, and parts of
14 Minnesota as being in a really unique situation in that
15 there are large tracts of land growing soybeans that
16 don't have soybean cyst nematode yet. And so that's a
17 unique opportunity in terms of management. In many
18 respects the best way to manage soybean cyst nematode is
19 to delay its arrival into a particular field.

20 So I find myself sitting here listening to
21 proceedings thinking of my career in the early '90s in
22 Iowa when soybean cyst nematode wasn't very widespread,
23 and we really beat the drum and talked about managing the
24 movement of soil to slow the spread of the nematode.
25 Once the nematode is present then we've covered already

1 what your management options are.

2 And as far as spread goes, as in my prefiled
3 testimony, anything that moves soil has the ability to
4 move soybean cyst nematode. I just want to bring you
5 back to a mental image of a female the size of a period
6 at the end of a sentence. And that little object has 200
7 to 300 offspring inside of her.

8 And so the smallest little particle that's able to
9 hold a period at the end of the sentence, that's the
10 amount of soil that could be moved to move the nematode.

11 Finally, one just short comment. I've heard
12 comments yesterday and today about farmers not mentioning
13 this in discussions and so forth. That doesn't surprise
14 me at all. Soybean cyst nematode has been in Iowa since
15 1978. And I arrived in 1990 and have devoted my career
16 to research and grower education on soybean cyst
17 nematode, and to this day I run into Iowa farmers who
18 were unaware of soybean cyst nematode.

19 So just because the farmer -- don't be alarmed or
20 don't let that throw you a curve ball. Soybean cyst
21 nematode is still somewhat unrecognized even in the
22 State of Iowa among some farmers.

23 And that concludes the summary of my prefiled
24 testimony.

25 Q. Mr. Tylka, I have just a couple more questions for

1 you then.

2 MR. SMITH: Mic.

3 MR. PESALL: It's on. I'll lean forward a bit
4 there.

5 Q. Can you explain to the Commission about when it came
6 into South Dakota and where it's at right now?

7 A. It's hard to say when it came in. As scientists
8 when we discover a pathogen of significance, we will
9 report it in a scientific journal. And so that report
10 was published by a South Dakota State University
11 professor in 1996 indicating that they had discovered it
12 in 1995. But when it actually showed up in the state
13 would be anybody's guess.

14 Q. What counties or where in the state is it
15 concentrated right now?

16 A. East -- the eastern band. I mean, I don't know
17 if I'd consider it the eastern third or the eastern
18 25 percent of the state. From north to south.

19 Q. And that would be reflected in the maps that we've
20 submitted in the exhibits?

21 A. Yeah. I should say I'm not a geographical expert,
22 but I had submitted a map that -- I'm in charge of
23 updating the known distribution map of soybean cyst
24 nematode in the nation and we just updated that map in
25 January of this year and I submitted the newest version

1 of that map.

2 Q. Turning your attention to the management plan that's
3 been submitted by the Applicants, which is Exhibit 23,
4 have you had a chance to review that exhibit?

5 A. Yes.

6 Q. Do you have any concerns about the efficacy of the
7 plan proposed in there?

8 A. I don't think I can comment on the potential
9 efficacy because there aren't details that would allow me
10 to make that judgment.

11 Q. Do you think it would need more details in what
12 regard?

13 A. In terms of the number of soil cores that would be
14 collected, where they would be collected in the field,
15 and in what type of a pattern. And probably most
16 importantly, how many acres would be represented by one
17 set of soil samples.

18 And the reason for all of that concern is I keep
19 going back to the biology of the nematode in that it's a
20 very aggregated pest. The individual worms themselves,
21 all plant parasitic nematodes, can only move an inch or
22 so under their own power. But remember that this
23 nematode's female produces 200 or 300 eggs inside of her
24 body. So that makes it even more aggregated or clustered
25 in a field.

1 So even from a field research perspective it's very
2 easy to miss soybean cyst nematode in soil samples,
3 depending on how many you take and when you take them and
4 the area that you take them from.

5 Q. Are there any issues that come to your mind with the
6 concept of washing down equipment between fields?

7 A. Yeah. I guess the thing that pops into my mind is
8 where will the water and soil that's washed off go? I
9 mean, I'm always thinking about those little dots, those
10 little white females full of 200 to 300 eggs. And it's
11 very easy to imagine a soil particle small enough to hold
12 one of those little dots being moved.

13 And I run into the same situation in research where
14 we will want to add soybean cyst nematode to certain
15 research areas to control it, to study it. And it's
16 very -- we have to be very careful as we do that not to
17 spread soil or runoff water because that would spread the
18 nematode.

19 Q. Is there a known false negative rate for soil
20 testing?

21 A. Yes. In the late '90s I worked closely with our
22 plant disease clinic where farmers send soil samples.
23 And for three years they processed the samples and gave
24 farmer results. And I had them save all the samples that
25 tested zero for soybean cyst nematode and I took the

1 leftover soil from them samples and I grew soybeans in
2 them to see if I could get soybean cyst nematode out of
3 it.

4 And 14 percent of the time -- over about
5 600 samples, 14 percent of the time we found soybean cyst
6 nematode on soybean roots, even though the standard soil
7 test gave us a zero egg count.

8 And so that has become part of our response to
9 farmers when we tell them that the egg count came back
10 zero. We warn them that there's a small percentage, 14,
11 15 percent, of false negatives.

12 Q. Is it 100 percent effective with laboratory
13 testing?

14 A. No. Our -- I haven't figured out a way to
15 experimentally test how effective our extractions
16 procedures are, but I know if we process a soil sample
17 once and we'll get a certain number of nematode eggs per
18 half a cup of soil, if we don't throw that soil away and
19 we process it a second time, we'll get some more out of
20 it. And then we process it a third time, and we'll get a
21 little bit more.

22 So I know that we're not getting 100 percent of the
23 nematode out during the first run of the sample. But for
24 research purposes that doesn't bother me because as long
25 as I treat every sample the same, I can still conduct

1 scientific research. But I know for a fact our
2 extraction procedures are not 100 percent effective.

3 Q. How deep can these little worms go?

4 A. Pretty much as deep as soybean roots would go in the
5 soil. And that kind of tends to surprise people. I
6 wouldn't have guessed soybeans went 6, 7 feet deep. But
7 when I was studying at the University of Georgia they had
8 a facility where they buried a room into the soil and
9 that room had glass walls and they would plant soybeans
10 above ground and let the soybeans grow and when they
11 touched the glass walls you could then see the roots 5,
12 6, 7 feet deep.

13 And I saw SCN females on roots 5, 6, 7 feet deep.
14 So I don't know what the maximum is, but I know it's at
15 least 5, 6, 7 feet deep.

16 Q. Finally then, in your opinion, looking at the
17 proposed mitigation plan, is that plan sufficiently
18 detailed to provide any assurance that the nematode would
19 not be spread by this project?

20 A. Not for me because of lack of detail.

21 MR. PESALL: Nothing further.

22 MR. SMITH: Is it Mr. Sutton?

23 MR. SUTTON: Correct, Mr. Smith. Is that
24 better?

25 MR. SMITH: Those mics., they don't pick up well

1 at a distance is one of the problems with it.

2 MR. SUTTON: Maybe that would help.

3 CROSS-EXAMINATION

4 BY MR. SUTTON:

5 Q. Good morning, Dr. Tylka.

6 A. Good morning.

7 Q. Now have you read the Application in this case?

8 A. I've read a lot of documents. The one I probably
9 read in the least amount of detail is there's a document
10 that's over 100 pages. Is that the Application?

11 Q. Exhibit 1 -- pull the exhibit for you.

12 MR. PESALL: I see 1A here. I don't see 1.
13 Here we are. It was under the map.

14 Q. So Exhibit 1 is the Application submitted by the
15 Applicants in this matter. Have you read that document?

16 A. From front to back, no.

17 Q. Can you tell us how many pages of that document
18 you've read?

19 A. No.

20 Q. Have you read any pages of that document?

21 A. Yes.

22 Q. More than five?

23 A. Yes.

24 Q. But you don't know how much of the document you've
25 read?

1 A. No. Between five and whatever -- it's over 100,
2 isn't it? Yeah. 112. Somewhere between five and 112.

3 Q. What specific sections did you read?

4 A. I scanned the document looking for things that would
5 relate to crops and crop production.

6 Q. Did you read any of those sections?

7 A. I think I did. I don't think I could recite them
8 unprompted, but I wouldn't have gone through the process
9 of reading and looking for crop-related sections without
10 stopping to read those. Because it takes a while just to
11 scan 112 pages to look for those types of information.

12 Q. How about the prefiled testimony submitted by the
13 Applicants? Have you read any of that?

14 A. Can I see those documents specifically?

15 Q. Sure. We'll go through them one by one, Bob.
16 Exhibit 16A, B, and C are prefiled testimony submitted by
17 Henry Ford.

18 Did you read any of those documents?

19 A. I think so. I've read documents by Henry Ford, but
20 I need to see what -- no. I did not read these.

21 Q. Exhibit 17 is the direct testimony of Jason Weiers.
22 Did you read that document?

23 A. Actually I think I can say now that I see the
24 documents you're referring to, I read only the documents
25 that related to soybean cyst nematode. So I believe

1 there were two specific documents written by Henry Ford
2 that related to the documents in the information that I
3 have filed.

4 Q. So let's handle it this way then. When you look at
5 Exhibit 16 there is a sub B and Exhibit 16C. Those are
6 the rebuttal and supplemental testimony of Henry Ford
7 that address the soybean cyst nematode.

8 Did you read those?

9 A. Absolutely, yes.

10 Q. And then you read the mitigation plan that you
11 testified about on direct; correct?

12 A. Yes.

13 Q. Have you read any other documents regarding the
14 Application in this case?

15 A. No. Well, other than the parts of this big document
16 that we started this line of questioning with.

17 Q. Can you tell me what counties this transmission line
18 is going to travel through in South Dakota?

19 A. Not without looking at a map.

20 Q. So as you sit here today, you don't know; right?

21 A. I couldn't -- I could not name the counties.

22 Q. Do you know sitting here today whether SCN is
23 present in the counties that the transmission line is
24 going to travel?

25 A. Yes.

1 Q. Do you know how many parcels of ground within those
2 counties SCN is present?

3 A. I have some data and a map that they did some more
4 fine resolution sampling of some counties in
5 South Dakota, and they -- I remember this because they
6 characterized areas within a county as having low,
7 medium, or high soybean cyst nematode population
8 densities.

9 Q. Did you submit that map as an appendix to your
10 prefiled testimony in this matter?

11 A. I don't think I did, no. I should state that I
12 collaborate with folks at South Dakota State University,
13 and I have an interest in soybean cyst nematode all
14 around my state and so I'm generally aware. I have
15 similar knowledge of soybean cyst nematode in Minnesota
16 and so forth.

17 Q. As you sit here today, can you tell us which
18 sections, for instance, within Brown County have a higher
19 incidence of SCN versus other portions of Brown County?

20 A. No.

21 Q. Same with Day County; correct?

22 A. Correct.

23 Q. Same with Grant County?

24 A. Correct.

25 Q. Do you know if Mr. Pesall has SCN on any soybeans

1 that he has?

2 A. I do not know.

3 Q. Do you know whether he's tested?

4 A. I do not know.

5 Q. How about any of the other landowner Interveners in
6 this case. Do you know whether they currently have SCN
7 on their farms?

8 A. I do not know that.

9 Q. You don't know whether any landowner on the proposed
10 line has SCN, do you?

11 A. That's a correct statement.

12 Q. Now I think you testified on direct that SCN first
13 became recognized in South Dakota in 1995; is that
14 right?

15 A. Yes.

16 Q. Do you know how many transmission projects have been
17 completed since 1995?

18 A. I do not.

19 Q. How about pipelines that have been installed?

20 A. I do not.

21 Q. Do you know how many miles of drain tile have been
22 installed in fields since '95?

23 MR. PESALL: Objection. Relevance.

24 MR. SMITH: Do you want to address that,
25 Mr. Sutton?

1 MR. SUTTON: Sure. It's relevant because the
2 basis for his assumptions are that when you dig into
3 the ground and go from field to field it spreads. My
4 point is there are many other mechanisms out there that
5 have been occurring and will occur, and we have not
6 developed the spread that he's indicating. That's the
7 relevance.

8 MR. SMITH: Do you want to repeat the question
9 and --

10 MR. SUTTON: Would you like me to reask it?
11 Would that be easier?

12 MR. SMITH: Sure.

13 Q. Dr. Tylka, can you tell me how many miles of drain
14 tile have been installed in South Dakota since 1995 when
15 SCN became present?

16 MR. SMITH: I'm going to overrule the objection.
17 If he knows, he can answer. If he doesn't, he can
18 answer.

19 A. I do not know.

20 Q. Now the spread of SCN is caused by the spread of
21 soil particles; is that correct?

22 A. Beyond an inch, yes. It can only spread on its own
23 power about an inch.

24 Q. And soil is moved by farm equipment?

25 A. That is correct.

1 Q. And it can be moved by wind erosion?

2 A. Yes.

3 Q. Also by water erosion?

4 A. I agree.

5 Q. Will you look at paragraph -- or your prefiled
6 direct testimony.

7 MR. SUTTON: Does he have that?

8 Q. Looking at paragraph 12 of Exhibit 101, that's the
9 direct prefiled testimony that you provided is
10 Exhibit 101, correct, Dr. Tylka?

11 A. The document I'm looking at has it as Exhibit 102.

12 Q. Oh, you're right. You're right. Correct. Thank
13 you. Looking at paragraph 12 on page 3, you opine that
14 construction equipment used in the project like the
15 proposed BSSE line can cause SCN to spread farther or
16 more rapidly than ordinary farming practices.

17 Is that your opinion?

18 A. Yeah. Opinion, yes.

19 Q. And then you go on and page 3 and on to page 4 to
20 talk about the basis for that opinion; is that right?

21 A. Yes.

22 Q. And when we look at paragraph 12 in the first
23 paragraph underneath the actual number 12, you answer the
24 opinion yes. And then you say "Soil disturbed by
25 construction equipment would likely result in greater

1 spread of the nematode than soil disturbed by other
2 common occurrences by making the soil more friable,
3 easily crumbled and prone to erosion, compared to soil
4 that is left undisturbed or disturbed just minimally."

5 That's your opinion; correct?

6 A. Yeah.

7 Q. What do you mean by undisturbed?

8 A. Well, undisturbed would be a situation like no-till
9 farming or just not -- nothing dug into the soil.

10 Q. So, for instance, disturbing the soil through till
11 farming practices would disturb and similarly make the
12 soil friable, would it not?

13 A. I wouldn't say similarly is correct.

14 Q. It would make the soil friable; correct?

15 A. Yes.

16 Q. And it would disturb the soil?

17 A. Yes.

18 Q. You're not aware of any academic studies that have
19 been performed indicating construction practices result
20 in the spread of SCN; correct?

21 A. No. I believe I stated that in the prefiled
22 testimony.

23 Q. No is a little ambiguous to the record there. So
24 the answer to my question is correct; correct?

25 A. Correct.

1 Q. There is no such testimony -- or excuse me. No such
2 research?

3 A. Can we start over? Can you rephrase so we both get
4 it clear?

5 Q. Sure. Fair enough. You are not aware of any
6 academic research indicating that construction practices
7 have resulted in a spread of SCN. Is that a correct
8 statement?

9 A. That is correct.

10 Q. Looking back at Exhibit 102, continuing on
11 paragraph 12, the basis for your opinions that the
12 construction process for BSSE will result in the spread
13 of SCN, in the second big paragraph underneath 12 you say
14 "Also soil moved by construction equipment could be from
15 properties owned by various farmers. And SCN infested
16 soil from less than a diligent farmer's field could be
17 moved into a field farmed by someone who diligently
18 worked to avoid introduction of SCN."

19 My question is, Dr. Tylka, do you have any knowledge
20 of any of the farming practices of the producers on the
21 route for the line?

22 A. No.

23 Q. So you have no idea how diligent they even are in
24 preventing the spread of SCN currently?

25 A. That is correct. I just know that diligence varies

1 among the farmers I have had personal experience with.
2 And I guess I can say that relates back to my opening
3 comments about the awareness of the nematode, and that's
4 what I meant by diligent.

5 Q. Now in your opening comments you also described some
6 mitigation techniques that farmers can employ if they get
7 SCN in their fields; is that right?

8 A. That's correct.

9 Q. And one of those is to grow nonhost crops such as
10 corn?

11 A. That is correct.

12 Q. And another option would be to include nonhost crops
13 like corn as part of a crop rotation; correct?

14 A. Yes.

15 Q. And, in fact, you recommend that to producers who
16 have SCN?

17 A. That's correct.

18 Q. That's part of the techniques used to minimize the
19 effect?

20 A. Correct.

21 Q. Another option would be to plant SCN resistant
22 variety seed; correct?

23 A. Correct.

24 Q. And as part of your work you have completed academic
25 research about the success in using SCN resistant seeds;

1 correct?

2 A. Yes.

3 Q. Have you ever been paid by any seed organization to
4 perform that research?

5 A. Yes. Up until the late 2000s when the funding was
6 then switched to Soybean Checkoff funding. So not
7 probably in the last six years, but prior to that.

8 Q. And, again, you recommend to producers if they have
9 SCN, to plant SCN resistant varieties; correct?

10 A. Yes.

11 Q. I think on direct you indicated that 75 percent of
12 Iowa is infected with SCN; is that right?

13 A. Yeah. By our last survey 10 years ago.

14 Q. Do you know what those statistics are for
15 South Dakota?

16 A. No.

17 Q. Are they still planting soybeans in Iowa?

18 A. Yes. 11 million acres.

19 Q. Do you know, are they installing transmission lines
20 in Iowa?

21 A. I do not.

22 Q. Have you ever been involved in any other case before
23 this one in which you have opined a transmission line
24 would result in the spread of SCN?

25 A. No.

1 Q. In your prefiled testimony in this matter you
2 address the maintenance associated with the line as well;
3 is that right?

4 A. Yes.

5 Q. And it's your opinion that the maintenance will not
6 increase the likelihood of spread of the SCN compared to,
7 for instance, vehicles driving through a field?

8 A. Correct.

9 Q. And you would agree with me that farmers frequently
10 have vehicles driving through their fields?

11 A. Sure. Yes.

12 Q. So it's your opinion that the maintenance aspect of
13 the line is not likely to increase the spread of SCN; is
14 that right?

15 A. Not 100 percent in that if you look at my last
16 sentence of paragraph 13, I really hone in on mud. And
17 my experience with farmers is they are very careful to
18 not drive in fields where compaction could be an issue.
19 And so if that were not as important of an issue in a
20 construction crew, there could be a difference between
21 the two.

22 Q. Could be, but you don't know?

23 A. I don't know.

24 Q. Is there data publicly available that would indicate
25 where SCN may exist on a parcel-by-parcel basis in

1 South Dakota?

2 A. I don't know for certain, but it would be -- my
3 guess is it would be very limited data.

4 Q. Do you know whether SDSU collects and maintains data
5 regarding its testing of parcels for SCN?

6 A. I don't know for certain, but I would be surprised
7 if they did not.

8 Q. Do you know whether that data was available -- or is
9 available to the Applicants?

10 A. That's a good question. Because at least in my
11 university any sample that would be submitted to our
12 plant disease clinic is considered confidential, and we
13 would be reluctant to share the results of a test that a
14 farmer sent in with anyone other than that particular
15 farmer. But I do not know the policies of SDSU.

16 Q. The confidentiality of that data, is that consistent
17 with what you've seen throughout your work on SCN?

18 A. I don't know enough to answer that question.

19 Q. I want to briefly switch and talk about the
20 mitigation plan. And, Dr. Tylka, while you're at it,
21 will you keep your direct testimony as well? I'm going
22 to refer to them both.

23 Dr. Tylka, for the record, the Soybean Cyst Nematode
24 Mitigation Plan is Exhibit 23; is that correct?

25 A. Correct.

1 Q. And in paragraph 16 of your direct testimony, which
2 is Exhibit 102, you address methods for preventing the
3 spread field to field by construction farm equipment; is
4 that right?

5 A. Yes.

6 Q. Looking at the first sentence of paragraph 16 on
7 your prefiled testimony, you indicate fields could be
8 tested for SCN in advance of moving equipment in by
9 collecting soil samples from the fields and having the
10 samples tested for the presence of the nematode.

11 Do you see that?

12 A. Yes.

13 Q. On direct you criticized the mitigation plan for
14 lack of detail regarding the testing protocol; is that
15 right?

16 A. I indicated I was unable to answer the question
17 because of lack of detail.

18 Q. Based upon your work with South Dakota State
19 University, would you have faith in their suggested
20 testing protocol as a mechanism for determining the
21 presence of SCN?

22 A. That's an excellent question. South Dakota State
23 University does not have a nematode person doing research
24 and extension. The last person that specialized in
25 nematodes was Jim Smolik who retired six or seven years

1 ago.

2 They have an extension soybean plant pathologist who
3 happens to be a graduate from Iowa State University and
4 has had a couple other jobs who's working there now. But
5 that individual -- and he has a very difficult to spell
6 and pronounce name. His first name is Emmanuel and his
7 last name begins with the letter B but I can't say his
8 last name. He typically consults with me on soybean cyst
9 nematode.

10 And earlier I had mentioned -- that's who I was
11 alluding to when I said I kind of keep an eye and a feel
12 on what's going on around the states, and Emmanuel is the
13 person who pretty much proactively communicates with me
14 about SCN issues.

15 Q. This Emmanuel that referring to, have you given him
16 direction as to the appropriate testing protocol?

17 A. No, I have not, and he has not asked.

18 Q. Do you trust his judgment in determining a testing
19 protocol?

20 A. With no disrespect to him, no. I have no idea of
21 his judgment with working with soybean cyst nematode, and
22 I don't believe he has ever worked with soybean cyst
23 nematode in his professional career. But I'm not certain
24 of that.

25 Q. Also as part of your prefilled testimony, Exhibit

1 102, paragraph 16, the second paragraph below it, you
2 note that another possible way to reduce the likelihood
3 of spread of SCN on equipment is to clean the equipment
4 before it moves from field to field; correct?

5 A. Yes.

6 Q. The mitigation plan that is Exhibit 23 includes as
7 part of its mitigation measures possibly cleaning the
8 equipment as one of the measures; is that right?

9 A. I'm virtually certain, but before I answer yes on
10 the record I want to make certain I saw it in the
11 document, in Exhibit 23.

12 Cleaning stations, is that what you're referring to,
13 cleaning stations?

14 Q. Correct.

15 A. Then yes.

16 Q. Have you read the Settlement Stipulation that is
17 Exhibit 301 in this case?

18 A. I'm pretty sure not, but if I could at least see it
19 before I confirm my answer.

20 No. I don't believe I've ever seen this document.

21 Q. As an expert testifying regarding the mitigation
22 plan for soybean cyst nematode, do you think it would be
23 important to read the document that represents the
24 agreement between the Applicants and the Commission Staff
25 implementing a mitigation plan?

1 A. I did not or do not because I believe I was given
2 the information in the document titled Soybean Cyst
3 Nematode Mitigation Plan, Exhibit 23. I didn't ever
4 imagine that there would be additional details in any
5 document other than the one titled Soybean Cyst Nematode
6 Mitigation Plan.

7 Q. And you don't know because you haven't read the
8 document?

9 A. I was not provided the document, yes.

10 MR. SUTTON: No further questions.

11 MR. SMITH: Mr. Schuring, do you have questions
12 of this witness?

13 MR. SCHURING: Yes.

14 CROSS-EXAMINATION

15 BY MR. SCHURING:

16 Q. Mr. Tylka, you claim that one of the remedies was to
17 plant SCN resistant varieties of soybeans. Would a
18 producer who has a clean field and then has SCN
19 introduced into it, would he expect the same yield from
20 an SCN resistant variety as a variety he was able to
21 plant previously?

22 A. The answer to that question is -- currently the
23 answer is it depends on the variety he or she would grow.
24 It used to be that SCN resistant soybean varieties did
25 not yield as well as nonresistant varieties in the

1 absence of the nematode.

2 That has become less of an issue over the past
3 20 years, but there still are some SCN resistant soybean
4 varieties that do not have top yield potential. So
5 that's my reason for my answer being it depends on the
6 variety that's chosen.

7 Q. Because of our growing season, as we move further
8 north into areas that have had less pressure from SCN,
9 would the varieties probably have more research done in
10 that area at this point?

11 A. The answer is yes. And there are much fewer
12 varieties available with SCN resistance in the maturity
13 groups grown in South Dakota relative to Iowa. Even
14 right now.

15 MR. SCHURING: Thank you.

16 MR. SMITH: Mr. Morehouse, any questions?

17 MR. MOREHOUSE: Nothing. Thank you.

18 MR. SMITH: Staff, any questions?

19 MS. CREMER: Thank you.

20 CROSS-EXAMINATION

21 BY MS. CREMER:

22 Q. Is there any way to determine how SCN is introduced
23 into a clean field?

24 A. I've never been asked that question in 28 years.

25 Q. Yay for me.

1 COMMISSIONER FIEGEN: Congratulations.

2 A. I don't think so. They all look the same and are
3 genetic the same. I don't think so.

4 Q. And is there any way to determine when SCN was
5 introduced into a clean field?

6 A. Not specifically. Although you could deduce some
7 timing information based on the numbers that are
8 detected. It doesn't show up in full blown force in
9 terms of numbers. It starts out slowly and builds up.

10 Q. And then looking at your Exhibit 105, it's a map.

11 A. Yes.

12 Q. You have that? So if I understood your testimony
13 correctly, where it shows there is SCN, there definitely
14 is in the dark portions of the map?

15 A. It should be red if it were printed in color.

16 Q. Yeah. I printed mine black and white, but okay. If
17 I understood you correctly, those areas that show up
18 white, those may also have SCN and you just haven't found
19 it yet?

20 A. That's correct.

21 MS. CREMER: Okay. Thank you.

22 THE WITNESS: That's a correct statement.

23 MR. SMITH: Is that all the questions you have?

24 MS. CREMER: That's all I have. Thank you.

25 MR. SMITH: We'll turn then to Commissioner

1 questions.

2 Commissioner Fiegen, do you want to go first?

3 COMMISSIONER FIEGEN: Sure. This has certainly
4 been an education, I'm sure, for all three Commissioners.
5 I think Commissioner Nelson and I were probably in soils
6 about 20 or 30 years ago with Dr. Malo at SDSU, and I
7 know we didn't talk about this. But my memory's not that
8 good.

9 Do you consult with local elevators, co-ops,
10 custom combiners, spray -- people that do commercial
11 spraying? Do you consult with them on the spread of this
12 disease?

13 THE WITNESS: No. And there's really two nos to
14 that. Consult in the State of Iowa would mean that I get
15 paid personally rather than through the University, and
16 so that answer is no.

17 But I also don't communicate with individual
18 co-ops and grain elevators other than through whatever
19 educational materials I produce or whatever I mention in
20 presentations. So I don't have a particular relationship
21 with any individual one of those organizations about
22 spreading or not spreading SCN.

23 COMMISSIONER FIEGEN: This is certainly
24 difficult to get my mind around because it's extremely
25 tricky. So when you go do your research do you go out

1 and research in fields, or does everything come in to
2 you?

3 THE WITNESS: No. Most of my field research is
4 done on farmers' fields.

5 COMMISSIONER FIEGEN: Okay. So what precautions
6 do you take and your assistants -- I'm sure you have some
7 grad assistants with you.

8 What type of precautions do you take on
9 vehicles, clothing, work boots, all of that?

10 THE WITNESS: Just knock off as much dirt as
11 possible, as much soil as possible. Soil probes is
12 probably another thing that would accumulate soil. We
13 just make sure we're not taking large clods of soil. But
14 we don't steam wash or power wash. We just -- we work in
15 fields with SCN. So we -- yeah.

16 COMMISSIONER FIEGEN: It is really tricky
17 because when an egg of 200 eggs -- that swollen female.

18 THE WITNESS: Female.

19 COMMISSIONER FIEGEN: And it's a point of a
20 period, it is in your boots. Because when I wear work
21 boots they have grooves.

22 THE WITNESS: Absolutely.

23 COMMISSIONER FIEGEN: I can knock off as much
24 soil as I can, but it's still there.

25 THE WITNESS: Yes.

1 COMMISSIONER FIEGEN: So the precautions of the
2 research people are pretty much not going through the
3 washing but mostly knocking off the excess.

4 THE WITNESS: Yeah. And let's be specific. You
5 asked about my particular research group. There may be
6 other research groups in other states where they do use
7 plastic booties on their feet and they do more thorough
8 precautions than I do.

9 COMMISSIONER FIEGEN: Sure. Thank you.

10 THE WITNESS: Yes.

11 COMMISSIONER FIEGEN: Are you aware --
12 especially when I see commercial sprayers out there
13 across the State of South Dakota, but I'm sure across
14 Iowa you have those big commercial sprayers. Are you
15 aware of any mechanisms they take to prevent the spread
16 of diseases?

17 Because, of course, they travel on roads. Roads
18 have mud. So they're picking up things while they're
19 traveling to the farmers, let alone from farm to farm to
20 elevator, all of that.

21 THE WITNESS: Yeah. The answer is no. And
22 forgive me if I'm over answering, but since you're
23 curious about that, the way I pitch managing the movement
24 of soil in Iowa is first in the context that
25 three-fourths of the fields have it. And that percentage

1 hasn't changed -- I think we have reached a steady state.

2 But, more importantly, we really hone in on any
3 operation that digs in the soil. And it goes back to the
4 line of questioning about disturbing soil and making it
5 more friable.

6 I just think I would get laughed out of the
7 state if I advocated everybody washing the tires on every
8 piece of equipment that goes through a field. So the
9 much greater risk is when that soil is disturbed. And in
10 Iowa it would be, you know, for tillage implements and so
11 forth.

12 COMMISSIONER FIEGEN: We certainly don't want
13 you laughed out of the state, but you could come to
14 South Dakota because I'm sure we have job openings
15 here.

16 THE WITNESS: And I don't disagree with you that
17 the amount of soil that would stick to a cleat in a boot
18 would be enough to have one of those females, but we have
19 to manage what's practical with what's prudent.

20 COMMISSIONER FIEGEN: I'd like to talk a little
21 bit about testing because I'm sure the other
22 Commissioners have the same questions I do about testing.
23 And so this is all new to me.

24 I would think the best test would be the roots
25 that you would have until harvest or actually after

1 harvest that -- instead of the soil sample that -- I
2 mean, how many probes would you need of soil samples, and
3 why isn't the roots the best way to test?

4 THE WITNESS: Well, the chances of error are
5 much greater when looking at roots. Because the females
6 of the nematode aren't very tightly attached to the
7 roots. And so when you're digging up roots, and even
8 though we say that's a way you can check your fields for
9 soybean cyst nematode in a hurry, you could miss it.

10 And so I know it sounds inefficient, but there's
11 50 years of research that shows that soil samples is
12 really the most reliable, steady way to check for this
13 thing.

14 COMMISSIONER FIEGEN: See, the internet just --
15 when we look and get our research we see these pictures
16 of the roots and the eggs on the roots so we just -- we
17 take that assumption.

18 THE WITNESS: That's a way -- and it goes back
19 to awareness, farmer awareness, and so forth, to get
20 folks to at least start checking for it. But anything --
21 any thorough treatment of checking fields that I would
22 have written would include soil sampling.

23 And soil sampling can be done any time of the
24 year. Whereas those females of SCN are on the roots only
25 for a specific time. And you really -- it's late June.

1 It's actually right now. Late June, mid, late June
2 through July.

3 And then when you get into August they're still
4 forming on the roots, but they're in the new roots which
5 are 2 and 3 feet deep or 4 feet deep, and you can't get
6 at them to dig them out. So digging roots and looking
7 for SCN females is a great way to check for about eight
8 weeks of the growing season.

9 COMMISSIONER FIEGEN: So when you go into a
10 field and you're testing for this disease like how many
11 or how far apart or -- tell us about the soil samples and
12 what complexity and the cost.

13 So how much does it cost a farmer to test their
14 field? Who does it? Do they do it themselves and send
15 it in? And then what's the cost of the test?

16 THE WITNESS: Okay. So the cost of the test at
17 Iowa State would be \$30 to have that sample processed.
18 And I'm guessing it's comparable at SDSU.

19 Who collects the soil sample? That would vary
20 by farmer. My perception is that usually it's somebody
21 from the co-op or the grain elevator that does it for
22 them.

23 And then the sample intensity is the wild card.
24 We advise them to take 20 soil cores from as small of an
25 area as possible but no more than 10 to 20 acres at a

1 time. And so 20 cores. And I pitch it as saying it's
2 one of those things in life where you get out of it what
3 you put into it. If you take 20 soil cores from five
4 acres, your results are going to be much more meaningful
5 than 20 soil cores from 20 acres or 20 soil cores from
6 80 acres.

7 COMMISSIONER FIEGEN: So if we had a quarter of
8 land, we would have 16 different samples? So 16 times
9 30. And then what is the estimated -- what's the average
10 of the estimated damage per bushel per acre on this
11 disease average?

12 THE WITNESS: I still can't answer even when you
13 threw that in an average. It depends greatly on weather.
14 In a year with adequate to excess moisture, yield loss
15 could be only 5 or 10 percent. But in a year that's dry
16 and warm, the yield loss literally could be 50 percent.
17 And I've heard some say 100 percent.

18 We've seen patches that have been killed,
19 patches of soybeans that are dead. And I guess that's
20 the definition of 100 percent yield loss. I don't know.
21 But I have research data showing 50 percent yield loss
22 even just comparing a susceptible variety to a resistant
23 variety, resistant yielding double the susceptible.

24 COMMISSIONER FIEGEN: I only have two more quick
25 questions.

1 THE WITNESS: That's fine.

2 COMMISSIONER FIEGEN: I'm sure everybody's
3 getting tired. The resistant soybean, when I was looking
4 at it -- and you kind of talked about it. Like is it
5 like a rotation of every three years, or they can only do
6 it three consecutive years?

7 I saw the three years and I couldn't remember
8 exactly and then you said you don't want to continually
9 plant it because there's the resistance that builds up.
10 What is the issue with that?

11 THE WITNESS: So the problem is even in my state
12 where we have literally 700 SCN resistant varieties to
13 pick from, 98 percent of them have the same set of
14 resistance genes. So the industry by and large is using
15 one set of resistance genes, which is not too dissimilar
16 to using one herbicide.

17 And all it takes is -- well, not all it takes.
18 Slowly as a few nematodes become able to reproduce on
19 that resistance, if that's the only type of resistance
20 it's exposed to, it starts to build up similar to weeds
21 becoming resistant to Glyphosate herbicide or Roundup.

22 So there are other types of resistance out
23 there, but apparently they're hard to breed into high
24 yielding soybeans. So we've been begging for 25 years
25 for more different types of resistance varieties, and

1 we're always told just give us another 10 years.

2 COMMISSIONER FIEGEN: I used to represent
3 Roundup about 30 years ago.

4 I think I'm going to hone in and allow the other
5 Commissioners to ask questions.

6 MR. SMITH: Commissioner Nelson, do you want to
7 go first or --

8 COMMISSIONER NELSON: What causes the egg to
9 break dormancy?

10 THE WITNESS: There's we believe three types of
11 eggs in that dead female. By the way, I didn't say it
12 earlier, but that dead female full of eggs is what we
13 call a cyst. So the name soybean cyst nematode, the
14 middle name, the word "cyst," is referring nothing more
15 than that dot that's a dead female full eggs.

16 So we believe some of those eggs will hatch when
17 it's warm enough and there's moisture available. Some
18 other of those eggs are going to hatch only when they
19 sense chemicals given off by soybeans or another host
20 crop. And then there's a third component of hatching
21 behavior that are truly dormant, and those eggs won't
22 hatch until 10 or more years have passed. And then when
23 they wake up from dormancy we believe they fall into one
24 of those other two categories.

25 COMMISSIONER NELSON: Based on that answer, the

1 next question I'm going to ask may be a tougher question
2 than I anticipated. I was going to ask what the -- not a
3 bell curve but what the curve is so far as the percentage
4 of eggs that will break dormancy each year over a 10-year
5 period.

6 THE WITNESS: With, say, corn being grown for
7 10 years or nothing being grown? Let me finish your
8 question for you.

9 COMMISSIONER NELSON: Yeah. There's apparently
10 a lot of variables to that.

11 THE WITNESS: So in the absence of a host, in
12 the absence of soybeans, the curve, I don't know how I'm
13 going to draw the curve for the court reporter, but for
14 you folks it's going to start high and we see a pretty
15 big drop, up to 50 percent in one year of corn, for
16 example, and then we see maybe another 10 percent drop in
17 another year of corn. And then it flattens out, and it's
18 a very slow decline down to zero. (Indicating)

19 And it's very, very difficult to eliminate
20 soybean cyst nematode because of that slow decline.
21 You're going to get a decent drop in one year of not
22 growing soybeans and a little more drop in a second year,
23 but then that's when the 10-year dormant eggs -- that's
24 all that's left at that point, and they're just going to
25 hang around for a decade or more.

1 COMMISSIONER NELSON: Thank you. I think the --
2 you answered the question regarding the number of samples
3 that you would consider necessary to do an adequate test.

4 I think the only other question I've got, in
5 talking about the SCN resistant varieties, is there a
6 refuge requirement for those?

7 THE WITNESS: No. We tried to create our own
8 refuge by suggesting that farmers grow a nonresistant
9 variety after growing resistance a couple of times and if
10 their numbers were relatively low.

11 And I've run into a few farmers that have done
12 that with pretty good success, but most of the farmers
13 I've encountered don't do that and they just grow
14 resistant soybeans all the time.

15 COMMISSIONER NELSON: One more question. You
16 indicated that the presence of SCN could be localized
17 within a field; is that correct?

18 THE WITNESS: Yeah. I could give you specifics
19 if you want --

20 COMMISSIONER NELSON: Well, let me ask the next
21 question.

22 So where we've got a power line going across a
23 field and maybe three poles -- so really a pretty defined
24 line across that field where the power line is going to
25 run.

1 The testing would only need to take place in
2 that line; is that correct?

3 THE WITNESS: (Nods head.)

4 COMMISSIONER NELSON: Can I get that answer
5 verbally?

6 THE WITNESS: I'm still thinking through it.
7 Yeah. I guess if you wanted to know if soybean cyst
8 nematode could be spread on the equipment associated with
9 this activity, only the areas that are going to be dug
10 into by that activity would need to be tested.

11 COMMISSIONER NELSON: Thank you. No more
12 questions.

13 CHAIRMAN HANSON: I just need to be clear on a
14 couple of things. You spoke to a potential depth of 6 or
15 7 feet. I assume you're not absolutely positive how deep
16 it actually can go. But how shallow can -- is it likely
17 to be?

18 THE WITNESS: I think we would find it in even
19 the upper inch of soil. The thing I would worry about
20 from a research standpoint is if those numbers were
21 indicative of, let's say -- typically we advise farmers
22 sample 6 to 8 inches deep and that's what we do for
23 research.

24 My worry with the upper 1 inch is in the middle
25 of summer when it gets pretty hot I would guess that

1 maybe some of those nematodes could get baked near the
2 soil surface, and maybe the numbers would be lower than
3 if you had collected to a depth of 8 inches.

4 CHAIRMAN HANSON: Okay. Because there was some
5 discussion it sounded like there needed to be some
6 excavation of some sort in order for it to be
7 transported. But it sounds like -- that seemed to
8 conflict a little bit with one of your other answers when
9 you said -- I believe it might have been Mr. Sutton's
10 question, could it be transported by the wind, and you
11 answered yes.

12 THE WITNESS: Yep.

13 CHAIRMAN HANSON: It could.

14 THE WITNESS: So my answer to your question, to
15 double back on your question, is it's present there at
16 the surface.

17 From a research standpoint where I'm measuring
18 numbers I would worry about only including that upper
19 inch because the numbers might be a little lower. But
20 it's present, and it's available to be wind blown, water
21 washed, all the things that we covered that move soil.

22 CHAIRMAN HANSON: So hunters going from one
23 field to the next, deer running from one field to the
24 next, any animals, badgers, skunks, whatever, rabbits --
25 what about water fowl and birds? They could transport it

1 as well?

2 THE WITNESS: There's actually a paper where
3 somebody has picked through bird droppings and found dead
4 SCN females with live eggs.

5 CHAIRMAN HANSON: It sounds like it's impossible
6 to stop this. This is terrible.

7 THE WITNESS: I mean, it is, but there are
8 certain parts of the country that are in a unique
9 situation. I would never say you can stop it or prevent
10 it, but there's things that could be done to slow it.

11 CHAIRMAN HANSON: And it develops immunity to
12 herbicides and --

13 THE WITNESS: Well, to resistant -- I was using
14 the herbicides as an analogy. But it can develop
15 resistance to the resistant varieties.

16 CHAIRMAN HANSON: What are some other host crops
17 besides soybeans that are grown in South Dakota?

18 THE WITNESS: What are the crops that are grown
19 in South Dakota?

20 CHAIRMAN HANSON: Sorghum, corn.

21 THE WITNESS: Wheat are not hosts.

22 CHAIRMAN HANSON: Wheat. What other --

23 THE WITNESS: So hosts are more into play when
24 you get into North Dakota and Minnesota and you talk
25 about edible beans. There's all kinds of different types

1 of edible beans.

2 It turns out some of those are as good of hosts
3 to SCN as soybeans are. But alfalfa is not a host. None
4 of the small grains. Not corn. Not sorghum. It's a
5 relatively picky eater, but not super picky to soybeans
6 only. There are a few other host crops.

7 CHAIRMAN HANSON: Okay. That's an interesting
8 adjective, picky eater.

9 So from a detection standpoint it sounds like
10 the only way to detect SCN is from either a sample, a
11 soil sample, plant sample, or via plant distress. Is it
12 obvious what the plant distress -- can you tell it
13 from -- how the reaction of a plant to the SCN, can you
14 ascertain that it's SCN?

15 THE WITNESS: You can't at first. That's part
16 of the insidiousness, if that's a word, of this pathogen
17 is that you could have it for several years, and by
18 several I would say six, seven, eight years, which in
19 Iowa means three or four soybean crops and the soybeans
20 will not look sick.

21 And so that's my job in Iowa is to convince
22 people to go out and test healthy looking fields for the
23 presence of this nematode. And if we catch it while the
24 soybeans still look healthy, then the numbers are
25 probably lower and more manageable than when we see large

1 dead spots. Because then numbers are really high, and
2 it's hard to manage.

3 And I should say also there's really two ways to
4 check for soybean cyst nematode. And Commissioner Fiegen
5 and I talked about digging roots for SCN females. And
6 the other way is good old soil sampling.

7 CHAIRMAN HANSON: Thank you.

8 MR. SMITH: Any other Commissioner questions?
9 Anything else?

10 No other questions, Mr. Sutton?

11 MR. SUTTON: No questions from the Applicants.

12 MR. SMITH: Okay. Then we'll turn back on
13 redirect.

14 Are you ready to do it?

15 MR. PESALL: I think so, yes. It should be
16 fairly brief.

17 REDIRECT EXAMINATION

18 BY MR. PESALL:

19 Q. Mr. Tylka, with respect to the questions you've been
20 asked about which counties are in play in South Dakota,
21 is that information reflected in the maps that you've
22 attached to your testimony?

23 A. Yes.

24 Q. So if the Commissioners or their assistants wanted
25 to look at the specific counties, they could see it right

1 there?

2 A. Yes. I'm just not aware of the county names and the
3 counties in South Dakota.

4 Q. If a farmer plants SCN resistant soybeans in a field
5 with soybeans, are they still going to suffer crop loss?
6 Excuse me. In a field with soybean cyst nematode are
7 they still going to suffer crop loss even though they're
8 planting the resistant variety?

9 A. Yes. The way the resistance works, the nematodes
10 still go into the roots, but when they try to feed the
11 plant stops that feeding. And so the resistant roots are
12 penetrated by the worms at a level similar to the
13 nonresistant varieties. And we believe that's why even
14 resistant soybean varieties don't produce maximum yields.
15 They suffer some yield loss.

16 Q. You were asked on cross-examination about your
17 review of the Application. This is Exhibit 1. Which I
18 don't need you to pull out at this point.

19 There are provisions in the Application that deal
20 with the outreach program that the Applicants have made
21 to talk to counties and farmers. Would that have any
22 impact on the soybean cyst nematode?

23 A. Was the outreach going to involve checking fields
24 for soybean cyst nematode?

25 Q. I don't recall that being in there.

1 A. If not, then no.

2 Q. There are sections of the Application that deal with
3 the endangered species of butterfly. Would that have any
4 impact on your analysis?

5 A. It would have no impact on soybean cyst nematode or
6 growers' behavior to soybean cyst nematode, in my
7 opinion.

8 Q. Is it fair to say that the parts of the Application
9 you didn't read in detail were the ones that didn't have
10 anything to do with the soybean cyst nematode?

11 MR. SUTTON: Object to the foundation. He
12 didn't read it. How can he know whether it applies or
13 not.

14 MR. SMITH: Overruled.

15 A. I actually scanned it. And I don't recall seeing
16 anything about soybean cyst nematode. Again, I guess to
17 restate my original description, I scanned the entire
18 document looking for agricultural and crop-specific
19 sections and don't recall encountering any SCN type
20 information.

21 Q. Do you still have I think it's Exhibit 301, the
22 Settlement Agreement in front of you there?

23 A. Yes.

24 Q. Could you turn to the last page or two and tell me
25 if there's a date on that document?

1 A. June 7, 2014.

2 Q. Could I ask you to turn to paragraph 17 of the
3 Settlement Agreement, which would be on page 6.

4 A. Got it.

5 Q. Do you see paragraph 17 there?

6 A. Yes.

7 Q. Which speaks to the development of a soybean cyst
8 nematode plan?

9 A. Yes.

10 Q. Could you read that entire section to yourself and
11 then tell me if that would have any impact on the
12 opinions you've offered. It's one sentence long.

13 A. And it's referring to this document which I've read.

14 Q. Right.

15 A. So there's no new information in that particular
16 passage you asked me to read.

17 Q. It just refers to the document that you did read?

18 A. Yes.

19 MR. PESALL: I have no additional questions.

20 MR. SMITH: And by "document you did read"
21 you're talking about Exhibit 23?

22 THE WITNESS: Exhibit 23, yes.

23 MR. SMITH: Is that correct?

24 THE WITNESS: Yes.

25 MR. SUTTON: Mr. Smith, may I ask a follow-up

1 question in light of that last part of the examination
2 about the Settlement Stipulation?

3 MR. SMITH: Sure.

4 RECROSS-EXAMINATION

5 BY MR. SUTTON:

6 Q. Dr. Tylka, will you read paragraph 17, please, out
7 loud this time rather than to yourself?

8 A. Sure. "Applicant shall develop and implement a
9 mitigation plan to minimize the spread of soybean cyst
10 nematode consistent with Exhibit 23 in consultation with
11 a crop pest control expert."

12 Q. So other than Exhibit 23, paragraph 17 of the
13 Settlement Stipulation recognizes the Applicants will
14 work with a crop pest expert; correct?

15 MR. PESALL: I'm going to object as calling for
16 a legal conclusion.

17 MR. SUTTON: I'll withdraw the question. No
18 further questions.

19 MR. SMITH: Any follow up then, Mr. Pesall?

20 MR. PESALL: No. Thank you.

21 MR. SMITH: I think that ends your testimony,
22 Mr. Tylka. So thank you very much.

23 THE WITNESS: Thank you.

24 (The witness is excused.)

25 MR. SMITH: Do you want to proceed right away,

1 Mr. Pesall, with any further witnesses?

2 MR. PESALL: I will be calling Gerald Pesall as
3 a witness. I don't know if we want to do it right now
4 and take a break or take an lunch break.

5 MR. SMITH: Maybe we should go into break. It's
6 approximately 11:30. How long -- are people going to be
7 going out to lunch, et cetera?

8 CHAIRMAN HANSON: Yes.

9 MR. SMITH: What should we take for a break? An
10 hour and a half? How is an hour and a half? We
11 reconvene at -- do you have a different opinion, Tom?

12 At 1:00?

13 MR. WELK: No. I think that all we're going to
14 have left is Mr. Pesall, which in talking with Bob,
15 that's going to be relatively short. The cross is going
16 to be relatively short. The other two Interveners who
17 will testify.

18 So I don't think -- at least what I know now, I
19 don't think it's going to take all that long.

20 MR. SMITH: Why don't we take an hour and a half
21 break, and that way people can relax over lunch.

22 We're in recess until 1 o'clock.

23 (A lunch recess is taken)

24 MR. SMITH: We'll call the hearing back to
25 order.

1 And, Mr. Pesall, we were proceeding with your
2 direct testimony here. And please proceed when you're
3 ready to do so.

4 MR. PESALL: Thank you, Mr. Smith. At this
5 point we would call Gerald Pesall.

6 GERALD PESALL,
7 called as a witness, being first duly sworn in the above
8 cause, testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. PESALL:

11 Q. Mr. Pesall, would you go ahead and explain to the
12 Commission who you are and what you do for a living.

13 A. My name is Gerald Pesall. I live in Day County,
14 South Dakota.

15 MR. SMITH: Mr. Pesall, can you grab the mic.
16 and drag it. You've got to sometimes drag it around a
17 little bit.

18 A. My name is Gerald Pesall. I live in Day County,
19 South Dakota. I farm for a living. I've been farming
20 for the last 53 years.

21 Q. How long has that farm that you work on been in
22 existence?

23 A. Over 125 years.

24 Q. What's your educational background?

25 A. I have a 12th grade education.

1 Q. About how many acres do you farm?

2 A. Approximately I planted this year 1,600 acres.

3 Q. What do you grow?

4 A. Beans, corn, and wheat.

5 Q. Do you grow soybeans?

6 A. Pardon?

7 Q. Soybeans?

8 A. Yeah. Beans, corn, wheat, and soybeans, yes.

9 Q. Did you submit prefiled testimony for this
10 proceeding?

11 A. Yes, I did.

12 Q. And if I asked you those same questions today, would
13 you give those same answers?

14 A. Yes, I would.

15 Q. Do you have any idea how long this family farm of
16 yours is going to last?

17 A. I have a daughter that's interested in taking over
18 when I decide to retire.

19 Q. So at least one more generation?

20 A. At least.

21 Q. What would you like to see happen?

22 A. Carry on indefinitely.

23 Q. Tell me this: You've got a parcel of ground that
24 brought this project to your attention; right?

25 A. That's right.

1 Q. Can you describe for the Commission what exactly
2 that situation is?

3 A. My whole farm, I own approximately 1,500 acres, and
4 I do not have a power pole on any of it. My land is open
5 to any kind of farming operation that would come in that
6 is available now or would come into existence because I
7 have no obstructions on it.

8 Q. With respect to the exact parcel that's tied in to
9 this project, can you tell them about that parcel?

10 A. It's completely all farm ground. It runs a half a
11 mile long. And they plan to put a power line out
12 approximately 75 foot out into my field, which will
13 create a hazard. Most of the farm equipment today,
14 sprayers are 90 to 120 foot wide already. And they're
15 putting it out at 75 foot so that's going to create a
16 problem.

17 Q. And when you say "create a problem," what --

18 A. Getting around it, overlapping. The chance of
19 accidents happening.

20 Q. Looking at this as a farmer from South Dakota --
21 well, first of all, are there other farmers like you in
22 the area?

23 A. Yes, there is.

24 Q. Any idea how many?

25 A. Oh, there's -- in the pattern of this power line I'd

1 say there's 12 or 15 right in my area that I know them
2 personally.

3 Q. Are there operations similar to yours?

4 A. Yes, they are.

5 Q. Are they as old as yours?

6 A. Some of them are; some of them aren't.

7 Q. They raise soybeans too?

8 A. Yes, they do.

9 Q. Speaking as a farmer from South Dakota, knowing what
10 you do about this project, are there environmental
11 concerns that you have?

12 A. Yes, there is. And one was discussed here today.
13 The cyst nematode is a very big concern of mine.

14 Q. Do you have anything to add about the concerns of
15 the cyst nematode that Mr. Tylka hasn't already
16 discussed?

17 A. Personally not, but I'm having my land at this
18 present time being sampled for it.

19 Q. Do you know the results yet?

20 A. No. I have not received them yet.

21 Q. Do you have crop insurance?

22 A. Yes, I do.

23 Q. Do you have any concerns about how the project would
24 interact with your crop insurance plan?

25 A. Yes, I do.

1 Q. Can you describe that?

2 A. Crop insurance history is set up over a period of
3 10 years. They take your yields over the 10 years, and
4 they pay you accordingly. If your yields go up, you get
5 more if you have a loss, and if your yields go down, you
6 get less.

7 It's called enterprise insurance. The whole farm is
8 lumped into one unit. But they also keep each field --
9 or section or quarter separate for reasons of if someone
10 comes in and takes over one quarter or another, they take
11 that yield off that quarter and apply it to the person
12 that would take over that farm, piece of ground to be
13 farmed. Yeah.

14 Q. So if somebody comes in and does construction work
15 and interferes with crop yield in a particular season,
16 how does that impact your insurance?

17 A. It can lower my yield. It will lower my chance of
18 collecting more from the insurance company if and when I
19 have a loss.

20 Q. And that's because they average it out over time?

21 A. Pardon?

22 Q. And that's because they average out your yields over
23 time?

24 A. Yes. Over 10 years, yes. And it only takes a few
25 bushels to drop your yield.

1 Q. In the event that you needed to cash in on a crop
2 insurance policy due to a damaged crop and had suffered
3 the negative impacts to your 10-year average, how would
4 that affect you economically?

5 A. Well, I would get less revenue off my whole total
6 farm by having that happen.

7 Q. Do you have any liability concerns about these wires
8 going across your land or other farmers' lands?

9 A. At the present time I do not have to worry because I
10 do not have a pole out there. If they put poles out
11 there, then I have a liability issue. Accidents do
12 happen and can happen at any time or place.

13 Q. Would that be the same for you as well as any other
14 farmers in your area?

15 A. Yes, it would.

16 Q. To your knowledge, do the other farmers in your area
17 have similar crop insurance plans?

18 A. Yes. The majority of them do. There's a few that
19 carry their own risk.

20 Q. What county do you live in?

21 A. Day County.

22 Q. And what township?

23 A. Highland Township.

24 Q. You have any experience managing road maintenance in
25 Highland Township?

1 A. Yes. I was a Highland Township supervisor for over
2 40 years.

3 Q. And in your experience as a township supervisor did
4 you have to oversee road maintenance?

5 A. Yes, I did.

6 Q. Given that 40 years of experience, do you have any
7 concerns about the road maintenance issues that might
8 arise as a result of this project?

9 A. Yes, I do.

10 Q. Okay. What are those?

11 A. I've had contractors come in and lay power -- or
12 telephone line and they destroyed the roadbeds and they
13 destroyed culverts. And they give me the number to call
14 and when I called the number it was disconnected so they
15 left the township and the township had to repair the
16 roads.

17 Q. Do you personally feel any need for improved
18 electrical service or better reliability for your
19 electrical service?

20 A. I was to a local REA meeting here about a week ago,
21 and they say we are sufficient with our electricity in
22 our area.

23 Q. Have any of the other farmers that are in your area
24 like you expressed any concerns that you've ever heard?

25 A. I --

1 MR. WELK: Objection. That calls for hearsay.
2 I can't cross-examine who he's referring to.

3 MR. SMITH: I'm going to let him answer it.
4 Are you going to overrule me?

5 CHAIRMAN HANSON: I'll sustain too.

6 A. What is the question?

7 Q. The question is objected to so we won't go into
8 that.

9 Do you know of anybody personally who would actually
10 benefit from the installation of this line?

11 A. No, I do not.

12 Q. And I guess my last question is do you think the
13 permit should be granted?

14 A. I said -- in my testimony I said no, and I still
15 stand by that ruling.

16 MR. PESALL: I don't have any additional --

17 A. Can I make one more statement?

18 Q. Please.

19 A. As far as I'm concerned, this project will take more
20 from agriculture in the state of South Dakota than it
21 will ever return.

22 MR. PESALL: Thank you. I don't have any
23 further questions.

24 I'll turn you over to Mr. Welk.

25 MR. SMITH: Mr. Welk, are you on this one?

1 MR. WELK: Yes, I am, Mr. Smith.

2 CROSS-EXAMINATION

3 BY MR. WELK:

4 Q. Is it all right if I call you Gerald or --

5 A. Oh, yes. Or Gerry.

6 Q. Thanks, Gerry. Have you read the Application for
7 the permit in this case?

8 A. Permit for what?

9 Q. To construct the facility. What we've been here for
10 two days.

11 A. They have an easement to my property.

12 Q. Sir, I asked you did you read the Application that's
13 been filed --

14 A. (Inaudible.)

15 (Discussion off the record)

16 Q. Mr. Pesall, in order to help her out, you have to
17 let me finish my question --

18 A. Okay.

19 Q. -- and I have to let you finish your answer.

20 A. Okay.

21 Q. Do we have a deal?

22 A. I hope so.

23 Q. So I'll ask you one more time. Have you read the
24 Application that was filed with the Public Utilities
25 Commission to request that they issue a construction

1 permit for this facility?

2 A. I don't know what you're asking me.

3 Q. It's Exhibit 1, and your nephew can go get that for
4 you. Exhibit 1.

5 A. I believe I did not review that.

6 Q. Did you review the responses to the data requests
7 that the Applicants gave to the Staff?

8 A. What does that pertain to?

9 Q. The Staff sent some written questions about their
10 issues and questions about the Application. We
11 responded. Your nephew also sent some written
12 questions.

13 A. Yes. I have them all here, and I read them all.
14 From all your engineers and so on?

15 Q. Yep. Did you review the responses to the Staff's
16 data requests?

17 A. I did reread some literature. Mr. Ford had a
18 rebuttal. I reread that. It was about three pages long.

19 Q. I'll ask you particularly --

20 MR. WELK: And, Bob, if you want to get those
21 for him, those are No. 2 and No. 3.

22 A. Okay. I got Exhibit 2 in front of me.

23 Q. Have you read that prior to looking at it right
24 now?

25 A. I believe so. I can't remember. It's been a

1 while.

2 Q. What about Exhibit 3? Other than looking at it now,
3 did you read it previously?

4 (Witness examines document)

5 A. I can't say for sure if I read this or not.

6 Q. What about the Stipulation that's marked 301 with
7 the Staff and the Applicants that just was filed
8 recently? Have you read that?

9 A. Yes. I believe I have. I received it from him, a
10 copy.

11 Q. You read it through, through it, the Stipulation?

12 A. I believe so, yes. It's been two to three weeks --
13 it's been at least two weeks since I read some of this
14 material.

15 Q. Well, the Stipulation wasn't in existence two weeks
16 ago. It was only in existence the last couple of days
17 before the hearing. So did you read that?

18 A. Then I did not receive it.

19 Q. Are you objecting to having the project located on
20 your property, or are you objecting to the project as a
21 whole?

22 A. Mainly, I'm objecting to the project on my property.

23 Q. So if the project wasn't located on your property,
24 would you be objecting to the project?

25 A. Not as much.

1 Q. What do you mean "not as much"?

2 A. Well, I made the comment here a little bit at the
3 end here I said this project will take more from
4 agriculture and the state of South Dakota than it will
5 return.

6 Q. Well, as I understand it -- and we will get the
7 exhibits in front of you that are your land. They're
8 Exhibits 21A and 21B and 21C.

9 Do you have those exhibits before you?

10 A. Yes, I do. B.

11 Q. 21A, 21B, and 21C.

12 A. Yes. I have A in front of me.

13 Q. Is 21A a true and accurate representation of the
14 land in which the project seeks to put its structures?

15 A. I believe so.

16 Q. The project proposes to put two structures on your
17 property, and those numbers are 457 and 458. Is that
18 your understanding?

19 A. According to this map, yes.

20 Q. And is that your field that's depicted in
21 Exhibit 21A?

22 A. Yes, it is.

23 Q. Do you do till or no-till in that?

24 A. Depends on the year and the conditions of the soil.

25 Q. Do you do both then?

1 A. Yes. I no-till, and I conventionally till.

2 Q. And that shows on Exhibit 21 that your home site is
3 approximately 1.4 miles west off the screen. Is that
4 accurate?

5 A. I guess I would have to go with that, yes.

6 Q. 21B is another depiction of your property looking
7 south. The 21A was looking north.

8 Again, is that a true and accurate depiction of
9 where the two structures would be located and the
10 location of your home site?

11 A. It looks to me that structure 458 is not on my
12 property.

13 Q. From that view?

14 A. Yes.

15 Q. You understand the project is proposing two
16 structures on your property?

17 A. To my knowledge at this time, yes.

18 Q. And is the aerial map that is 21C -- to your
19 knowledge, is that a true and accurate representation of
20 the route line as from an aerial view crossing your
21 property?

22 A. You don't have the sections or range numbers on
23 this. I can't tell.

24 Q. Is there any term --

25 A. Oh, 120,56, yes. But you don't have the --

1 Q. I'll let you finish your answer.

2 A. Okay. I'm following it now. I found Section 17,
3 120,56. Yes.

4 Q. So 21C is an accurate representation of the route
5 line on your property?

6 A. Which one?

7 Q. 21C. The one that you have in your hand, sir.

8 A. Right now I don't see any draft of anything. It's
9 just a plain open map. There's no line like on these
10 other exhibits.

11 21A it shows where the line is going. Here there's
12 no line drawn across this map.

13 Q. Do you see the purple line running north to south on
14 21C?

15 A. Oh, way down there. Okay. Yes. Now I get the
16 picture, yeah. I was looking at it wrong. I had it
17 facing wrong.

18 Q. So does 21C accurately reflect where the project has
19 told you they would intend to put the route on your
20 property?

21 A. Approximately, yes, I believe.

22 Q. I'm finished with those. You can put those down.
23 I'm finished with those exhibits.

24 Is there any term or condition that the Commission
25 could put on this permit that would satisfy you to allow

1 the project to voluntarily go across your land?

2 A. At this time, no.

3 Q. I want to talk a little bit about the SCN issue that
4 you said was a big issue. Do you recall that testimony?

5 A. Yes.

6 Q. You testified that you are having some soil sampling
7 done at this time?

8 A. Yes, I am.

9 Q. And when did you ask that that sampling be done?

10 A. Last Monday they got around to taking care of it. I
11 asked them about three weeks earlier, but they didn't
12 have time to do it. By an agronomist.

13 Q. Prior to the last three weeks, had you ever had your
14 land tested for whether SCN existed on the land?

15 A. Last summer I had spots out in my field that were
16 dead. And I had a field -- well, he works for this
17 company. He comes out, and he surveys your field and
18 tells you what kind of chemical you should use. And he
19 surveys the weeds and stuff.

20 And we looked at these spots, and he said according
21 to him it looked like cyst nematode or sudden death
22 syndrome could cause them spots.

23 Q. But other than someone telling you that prior to
24 three weeks ago, have you ever had your fields tested?

25 A. No, I have not.

1 Q. Where -- which field was it that you saw the
2 soybeans were dead? Was it in the parcel that's sought
3 to be crossed by the parcel?

4 A. Last year I had corn on that field so I really had
5 no visual view if there was any dead spots out there
6 because it was corn instead of soybeans. This year it's
7 planted into soybeans.

8 Q. No. But I'm asking just about the parcel that the
9 project may cover. Do you know if that parcel has ever
10 had SCN on it?

11 A. I will find out when I get the results back from the
12 soil test.

13 Q. But you don't know now?

14 A. Not right now, no.

15 Q. How many soil samples have you authorized to be
16 taken?

17 A. I think he took five or six.

18 Q. And what field was tested?

19 A. The field across the road, and the one where your
20 power line is projected to come on.

21 Q. The two fields that you had tested?

22 A. Yes.

23 Q. According to your testimony, you do custom farming
24 and tillage?

25 A. For the neighbors, yes.

1 Q. Do you till land for the neighbors when you do
2 custom tillage?

3 A. Sometimes.

4 Q. Have you ever cleaned or washed your machinery when
5 you've done custom tilling to try to prevent the spread
6 of SCN?

7 A. I have cleaned it, but I have never washed it.

8 Q. How do you clean it?

9 A. You got two hands. You use them.

10 Q. So you just scrub the dirt off?

11 A. Knock it off with a hammer. Pound on the shanks and
12 so on.

13 Q. Do you clean your own equipment on your own land?

14 A. Not necessarily from field to field unless there is
15 a reason for it.

16 Q. Have you undertaken any farming practices to avoid
17 or mitigate SCN?

18 A. I do rotation of crops to help control it.

19 Q. Have you ever used the seed that Dr. Tylka talked
20 about this morning?

21 A. I never have yet.

22 Q. Other than Dr. Tylka's testimony and evidence, do
23 you have any data or studies to support any of the
24 personal opinions that you provide in this case?

25 A. I do a lot of reading in farm magazines and stuff,

1 and that's where I get most of my information from.

2 Q. So other than reading farm magazines, that's where
3 your evidence is coming from? Other than living on the
4 land that you have for all of these years?

5 A. Yes.

6 Q. Are you aware of any other soil bearing pests other
7 than the SCN that might exist on your land?

8 A. Those can be controlled with chemicals, most of the
9 rest of them. These cannot.

10 Q. So your main concern is the SCN?

11 A. Right now it is, yes.

12 Q. You indicated in your testimony you think you have
13 sufficient electricity to your farmstead; correct?

14 A. Yes.

15 Q. Would you object to any electric line with poles
16 unless it provided electricity to you?

17 A. All my electricity to my farm and a number of
18 neighbors' farms is buried, including three-phase which
19 is high voltage.

20 Q. So as far as you're concerned, you've got all the
21 electricity you want, and you really don't care about
22 anybody else?

23 A. Yes. I do care about the neighborhood. I've been
24 to the local REA meeting, like I formerly said, and they
25 said at the present time they will not get anything --

1 any electricity from this line. They will not need it.
2 At the present time they are giving us all the
3 electricity that we need.

4 Q. So as long as you and your neighbors have sufficient
5 electricity, that's good enough for you?

6 A. We'll look at the future. At the present time we do
7 not need it.

8 Q. Well, you understand this line won't be built --
9 energized until 2019. Do you understand that?

10 A. There will be plenty of electricity for quite a
11 while.

12 Q. So as long as you and your neighbors have sufficient
13 electricity, you think that's sufficient?

14 A. Yes, I do. Because we will not get a lot of
15 benefits from this power line that's going to be going
16 across my property.

17 Q. Who did the SCN testing for you?

18 A. Wilbur-Ellis.

19 Q. And I understand -- where are they -- they've got a
20 couple of locations in South Dakota?

21 A. They're nationwide. Their agronomist come out and
22 took the soil samples.

23 Q. And which one of the Wilbur-Ellis locations in
24 South Dakota did the testing for you?

25 A. Summit.

1 Q. And how much does it cost you to have it tested?

2 A. It is paid by the bean Checkoff. The Soybean
3 Checkoff that I contribute to every year. I contributed
4 over \$3,000 to that Checkoff this year out of my crop
5 that I sold.

6 Q. So it doesn't cost you anything?

7 A. Yes, it has. But indirectly I receive the benefits
8 from it.

9 Q. So you contribute your money, and then that's what
10 pays for the testing?

11 A. Yes. So there is a serious concern about it, or
12 they wouldn't be doing this.

13 Q. Do you have a crop insurance policy that's in
14 writing?

15 A. Yes.

16 Q. Who is the carrier?

17 A. Breske Crop Insurance, Webster, South Dakota.

18 Q. How would you spell that?

19 A. B-R-S-K-E [sic].

20 Q. Have you had the same policy for a number of years?

21 A. Excuse me. I spelled that wrong. B-R-S -- I think
22 it's K-E.

23 MR. SCHURING: B-R-E-S-K-E.

24 MR. WELK: The court reporter got it.

25 Q. Have you had the same insurance policy for a number

1 of years?

2 A. I can't remember when I first took it out.

3 Q. But do you have a copy of it?

4 A. At home, yes.

5 Q. Would you be willing to share that with the
6 Commission and us to see the terms and conditions of your
7 crop insurance?

8 A. I could give you their telephone number right off
9 the top of my head and you could ask them for it and they
10 could fax it to you.

11 Q. That would be fine. You would authorize that to be
12 done?

13 A. Yes, I would.

14 Q. Who is the agent?

15 A. I've been dealing with Nikki Bloom mainly.

16 Q. Is that a male or female?

17 A. Female.

18 Q. And where does she reside?

19 A. She resides in Webster.

20 Q. And the name of the agency?

21 A. Pardon? She's a member of the agency, yes.

22 Q. What is the name of the agency?

23 A. Breske Crop Insurance. And would you like their
24 telephone number?

25 Q. I can find that. But they're not the insurance

1 company. They're the agent?

2 A. They're the agent for the company, yes. I can't
3 remember what the name of --

4 Q. That's fine.

5 A. They've changed -- they've changed -- they've joined
6 hands with other companies, and they've changed names or
7 something in the last three or four years.

8 Q. That's fine. With your authorization we can get a
9 copy of it and see who it is.

10 But has the carrier changed over the years, the
11 insurance carrier for your crop insurance?

12 A. I've been with Breske Crop Insurance, and if they
13 changed agencies and stuff, you'd have to get that
14 information from them.

15 MR. WELK: I don't have any other questions.
16 Thank you very much.

17 MR. SMITH: Okay.

18 Mr. Schuring, any examination?

19 MR. SCHURING: Yes.

20 CROSS-EXAMINATION

21 BY MR. SCHURING:

22 Q. I would like to follow up on that multiperil
23 insurance.

24 Gerry, is not multiperil crop insurance coverage
25 mandated by the Farm Bill and required to have -- possess

1 the coverage? Do you have to maintain a certain level of
2 crop insurance?

3 A. You have to carry crop insurance if you want to get
4 any compensation from the FSA office or federal crop if
5 there's a disaster. They only pay if there's a
6 disaster.

7 Q. But multiperil is mandated by the Farm Bill?

8 A. Yes. To be eligible for crop insurance loss.

9 Q. Okay. Yesterday we heard testimony from the
10 Applicants, and I don't remember which individual made
11 the comment, but they said because there was numerous
12 insurance -- crop insurance out there, that they didn't
13 know how it would impact the crop insurance coverage.

14 Is it not a fact that the yield part of the crop
15 insurance is consistent, regardless which company you
16 have multiperil insurance from?

17 A. They all treat you the same, no matter which company
18 you have.

19 Q. No. My question is, the yield part of the policy is
20 consistent, regardless which company sells you -- which
21 carrier sells you -- your yield established over 10 years
22 over total acres on the land, and it is only justified by
23 actual production?

24 A. Yes.

25 MR. WELK: Objection. There's no foundation

1 that he's read all the insurance policies that exist out
2 there. And the best evidence is the insurance policy
3 itself.

4 A. If would I change companies, my history would go
5 with the land.

6 Q. The yield part -- the yield part is consistent. We
7 have the option --

8 COMMISSIONER FIEGEN: Excuse me, Mr. -- is there
9 an objection that we have to deal with?

10 MR. SMITH: There is an objection. And I think
11 I'll sustain that because of competency in terms of this
12 because -- again, though, I don't know that the one
13 policy he has will address that question either. But,
14 unfortunately, we don't have an actual expert in
15 insurance at the hearing.

16 MR. SCHURING: Okay. I would beg to differ with
17 that a little bit because we've had to deal with it over
18 10 years.

19 Q. Mr. Pesall, the part of the policy that varies for
20 you is you get to elect an option price that you want to
21 insure it by and what percentage level; correct?

22 A. Yes.

23 Q. But your yield is the same, regardless which one of
24 the options you select?

25 A. Right.

1 MR. SCHURING: Thank you.

2 MR. SMITH: Mr. Morehouse?

3 MR. MOREHOUSE: No.

4 MR. SMITH: Staff?

5 MS. CREMER: Staff has nothing. Thank you.

6 MR. SMITH: Commissioners.

7 Commissioner Nelson, do you want to go?

8 COMMISSIONER NELSON: Mr. Pesall, several
9 questions. Let's go back to this issue of the testing
10 that you've just had done.

11 And so is it correct that you've raised this
12 concern about SCN before you even knew or know whether or
13 not your land is free of the nematode; is that correct?

14 THE WITNESS: Incidents started showing up in my
15 fields a few years ago, and I was getting concerned so I
16 started doing research on my own. And it finally come
17 down to last year I requested soil samples to be taken.
18 And they finally got out there this spring to take them.

19 COMMISSIONER NELSON: So you believe you've
20 already got the nematode on your property; is that
21 correct?

22 THE WITNESS: I have something out there, and
23 we're testing for it.

24 COMMISSIONER NELSON: I'm looking at
25 Exhibit 21C, and that's the map, and I'm trying to

1 understand the parcel that's being crossed by -- or the
2 power line is proposed to cross.

3 In that quarter is that entire quarter farm
4 ground, or is the southeast quarter of that quarter
5 something else?

6 How many acres of farm ground are in that
7 quarter?

8 THE WITNESS: They are -- I got approximately
9 118 acres of cropland in that stretch of land that the
10 power line is going to cross.

11 COMMISSIONER NELSON: Okay.

12 THE WITNESS: Out from the roads.

13 COMMISSIONER NELSON: In that 118 acres when
14 Wilbur-Ellis came and did your core samples how many core
15 samples did they take in that 118 acres?

16 THE WITNESS: He told me he had to take at least
17 10 to get a sample. And he filled up four packages of
18 soil he's going to send to Brookings to have sampled.

19 COMMISSIONER NELSON: So he took 10 samples out
20 of 118 acres?

21 THE WITNESS: And we took it in approximately
22 the line where you decide to put this power line
23 through.

24 COMMISSIONER NELSON: Did you hear Dr. Tylka
25 this morning testify that in order to do an accurate

1 sample, you'd have to do at least 20 samples in a 20-acre
2 area?

3 THE WITNESS: He took samples in more than one
4 spot. That's where he got his -- that's where he got his
5 dirt to put in the bags.

6 COMMISSIONER NELSON: Did he take as many core
7 samples as Dr. Tylka indicated this morning would need to
8 be done to do an accurate sample?

9 THE WITNESS: I was there. We walked out into
10 the fields to get them. We did not drive out with a
11 four-wheeler and get them.

12 COMMISSIONER NELSON: Let's move on to another
13 topic.

14 You've talked about the fact that these poles
15 are going to be set into the crop ground 75 feet in.
16 Would it solve part of your problem if those were set
17 along the road right of way?

18 THE WITNESS: Pardon? I don't quite understand
19 the question.

20 COMMISSIONER NELSON: Okay. We've looked at the
21 maps of your -- or the pictures of your farm, and you've
22 noted where those two poles are supposed to be placed.

23 If those poles were instead placed at the edge
24 of the road right of way, would that solve part of your
25 problem?

1 THE WITNESS: I have a dead man's corner, as I
2 call it, for aerial spraying. I have a line coming along
3 the north side of that field. And if you put one along
4 the west side of that field, two lines are going to join,
5 and anybody in his right mind is sure not going to be
6 spraying with an aerial applicator coming into that
7 corner.

8 He's either going to have to go under the lines
9 or over the lines, and his chances of an accident are
10 really going to increase.

11 COMMISSIONER NELSON: I understand that. Now
12 earlier you testified that all of the power lines in your
13 area are buried.

14 So are they buried, or are they not?

15 THE WITNESS: They are buried on my property. I
16 do not have any. But this is on the neighbor's property
17 on the opposite side of the road in Section 17. And
18 that's where this line -- your line is going to run north
19 and south and the line on the neighbor's land is running
20 east and west and that's why I call it a dead man's
21 corner where two lines cross.

22 COMMISSIONER NELSON: Yep. I follow.

23 Does Day County have any setback requirements
24 for power line poles from the roadways? Do you know?

25 THE WITNESS: On county roads it's in this

1 documentation. They have a 50-foot easement. If you go
2 out over 50 foot, the county can't say anything about it.

3 COMMISSIONER NELSON: So the road that parallels
4 your property, is this a county road or township road?

5 THE WITNESS: The way this line is coming by,
6 it's a county road.

7 COMMISSIONER NELSON: Okay. No further
8 questions. Thank you.

9 MR. SMITH: Mr. Pesall, could we have you drag
10 the mic. a little bit closer, please.

11 THE WITNESS: Sure. I talk to the person. I
12 don't talk to the mic.

13 MR. SMITH: I apologize. We have trouble
14 getting it on the recording.

15 THE WITNESS: Yes. She's doing a great job.

16 CHAIRMAN HANSON: Hi. Just a couple of
17 questions I'm not clear on.

18 When did you first learn of the -- we'll call it
19 the SCN.

20 THE WITNESS: Well, I've been concerned for the
21 last couple of years because my yields have been dropping
22 considerable. No matter what I do, what farming
23 practices I do, fertilize, use chemical, use the new
24 technology of seed, I cannot increase my yields.

25 At one time on my farm I produced 50 bushel

1 soybeans. Today if I can produce 34 to 35 bushel, I'm
2 happy. I guess I got to be happy. I ain't satisfied,
3 but I've got to be happy.

4 CHAIRMAN HANSON: It sounded like earlier you
5 stated you suspected something was wrong several years
6 ago.

7 THE WITNESS: Yes.

8 CHAIRMAN HANSON: But then you had it tested
9 and --

10 THE WITNESS: Well, it's in the process of being
11 tested.

12 CHAIRMAN HANSON: Okay. Okay. Has the
13 knowledge or information pertaining to SCN changed the
14 way that you farm?

15 THE WITNESS: About the only precautions I'm
16 taking is rotating crops. At the present time that's
17 mainly how I've been -- I plant wheat, corn, and soybeans
18 in a three-year rotation. And as you heard the testimony
19 this morning, that rotation is one way of controlling.
20 Not eliminating.

21 CHAIRMAN HANSON: All right. Thank you. That's
22 all I have.

23 MR. SMITH: Commissioner Fiegen.

24 COMMISSIONER FIEGEN: I just have one quick
25 follow up.

1 MR. SMITH: Fire away.

2 COMMISSIONER FIEGEN: First of all, thanks for
3 coming to Pierre.

4 I still have a question about the testing.
5 Because certainly I had a lot of questions from the
6 Iowa -- or to Iowa State, the professor from Iowa State.
7 Did it sound like the person that came and tested did
8 five or six samples?

9 THE WITNESS: Well, like I said, I tested it in
10 the area where they plan on putting the power. That's
11 why I did that.

12 COMMISSIONER FIEGEN: Okay. So it's like that
13 100 feet or whatever down the half-mile, and that's how
14 many acres?

15 THE WITNESS: He was pretty much informed on how
16 to take these samples. He told me how it was supposed to
17 be taken and stuff like that so.

18 COMMISSIONER FIEGEN: Sure. Yeah. We've
19 certainly had a lot of information today. And even the
20 protocol of sampling them, we heard from our expert
21 witness that, you know, he's certainly concerned on
22 protocol of sampling.

23 Thank you.

24 MR. SMITH: Any other -- pardon me. Any other
25 Commissioner questions?

1 Is there any follow-on cross-examination arising
2 from the Commissioner questions?

3 Mr. Welk.

4 MR. WELK: I have none.

5 MR. SMITH: Mr. Schuring or Morehouse?

6 Okay.

7 COMMISSIONER FIEGEN: I just have one more quick
8 question.

9 MR. SMITH: Oh, pardon me.

10 COMMISSIONER FIEGEN: I'm sorry. I forgot to
11 ask this question. When do they expect your soil sample
12 results to be returned to you?

13 THE WITNESS: I was told it takes about two
14 weeks.

15 COMMISSIONER FIEGEN: Two weeks, and that was
16 last Monday, did you say? So maybe this coming Monday or
17 so?

18 THE WITNESS: The agronomist was supposed to get
19 out there sooner but they've been busy and it's one thing
20 they put on the back burner.

21 COMMISSIONER FIEGEN: Sure. You're right.
22 Thank you.

23 MR. SMITH: Well, I'll ask again after that.
24 Any additional cross-examination?

25 MR. WELK: Not by the Applicants.

1 MR. SMITH: Okay.

2 Mr. Pesall.

3 MR. PESALL: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. PESALL:

6 Q. Gerry, do you recall early on in our work together
7 in this project me sending you a very large document that
8 talked about the whole project?

9 A. Now what are we talking about?

10 Q. Early on, shortly after you retained me to help you
11 make the case here --

12 A. Yes.

13 Q. -- do you recall me sending you a booklet of
14 paper --

15 A. Yes. I have that -- in fact, I think I've got it in
16 the trunk of my car, I think. I got a briefcase plumb
17 full of documentation and paperwork that he sent me. And
18 I've reviewed it all, but it's been so long ago that I
19 just can't remember.

20 Q. So you don't remember what the title of that was?

21 A. Not really.

22 Q. Do you remember what it covered?

23 A. Things I didn't like to hear -- or read about.

24 Q. Do you think that may have been the Application that
25 Mr. Welk was referring to earlier in his questioning?

1 A. I can't really give you a truthful answer on that.

2 Q. That's fine. You've been asked if you object to the
3 project as a whole or just to the part on your land.

4 Do you object to the project as a whole in spite of
5 the fact that it crosses your land?

6 A. Well, it wouldn't affect me as much if they kept it
7 off my land.

8 Q. Would you think it was a good idea if they kept it
9 off your land?

10 A. It would be a great idea if they kept it off my
11 land. I would go away and disappear.

12 Q. Let me rephrase the question. That wasn't the
13 answer I was going for.

14 Do you think that creating this project would be
15 good for all of South Dakota and all the other people
16 like you if they build it, regardless of your
17 involvement?

18 A. In my opinion, it's not going to do anything for
19 agriculture. We're going to lose economic development
20 in one form or another. In the long run, the state of
21 South Dakota is not going to gain anything by having this
22 line cross them.

23 Q. Then just to follow up on a couple of other
24 questions that the Commissioners asked, would it reduce
25 the number of problems you would have to deal with if

1 these towers could be moved over to the road right of way
2 instead of running through the field?

3 A. That would still not relieve all my liability
4 concerns about the power line.

5 Q. Would it relieve some of them?

6 A. It would make it a little easier for farming is
7 about it. But it would make it a hazard for aerial
8 spraying.

9 Q. And do you know exactly how many dirt samples the
10 person who came and tested your land took out of the
11 ground, how many individual pieces of dirt?

12 A. No, I didn't -- I didn't tabulate that. He put it
13 in a little packet, and he sealed it. He dumped it in a
14 5-gallon bucket and he stirred it all up and he put it in
15 a packet and it's on its way to Brookings.

16 MR. PESALL: That's all the questions I have.

17 MR. SMITH: Thank you. I think you may step
18 down now.

19 (The witness is excused.)

20 MR. SMITH: Any other witnesses, Mr. Pesall?

21 MR. PESALL: On behalf of Gerald Pesall, we
22 don't have any other witnesses.

23 We would rest on case in chief.

24 MR. SMITH: What happened to Exhibit 1? Where
25 did it go? Is it up there?

1 (Discussion off the record)

2 MR. SMITH: We'll go back on the record. And,
3 Mr. Schuring, please proceed.

4 And I don't know if you're going to call
5 witnesses other than yourself. But, otherwise, if it's
6 just you, then you'll have to come up to the witness
7 stand and be sworn and testify on your own behalf.

8 MR. SCHURING: Okay. I have no other witnesses
9 with me. And what I have to say I could do in closing
10 also. Unless somebody wants to ask me questions, I will
11 take the stand.

12 MR. SMITH: I think some people do. So please
13 take the stand.

14 RANDY SCHURING,
15 called as a witness, being first duly sworn in the above
16 cause, testified under oath as follows:

17 THE WITNESS: My name is Randy Schuring. I am a
18 resident of Day County and live at 507 South Second
19 Street, Andover, South Dakota.

20 I will make just a brief statement, if I might.
21 We have -- I'm concerned about my family operation. And
22 you can -- I'm sure you have picked that up from my
23 questions, not only here but at previous hearings.

24 I am a little remiss in the fact that I think
25 they thought they wouldn't have to deal with us, and they

1 have avoided us. Because the only contact that I have
2 had personally with any of the representatives of the
3 company was the right-of-way agent.

4 After we were granted party status in the
5 conference call on the Friday before the hearing in
6 Aberdeen she came down and seen me for about 20 minutes.

7 She indicated at that time that they were not
8 going to cross our property and they would not need any
9 right-of-way easement from us; therefore, they wouldn't
10 have to deal with us. And I indicated to her that that
11 was fine because in Sections 11 and 14 she said they were
12 going to be 150 feet into the neighbors, and we would
13 have no overhang or no tower structure.

14 The latest map that I was given when we arrived
15 here yesterday, all the sudden 11 and 14 it's down the
16 section line. And that was news to me.

17 And we had suggested in Aberdeen and we went
18 up -- were asked to go up to the map and indicate --
19 Mr. Morehouse and myself both talked about it, that
20 there was another route that would simplify things to
21 our area.

22 And it wouldn't eliminate me from the project
23 because it would cross two quarters of land that are
24 pasture and CRP.

25 My biggest concern is the fact that what it's

1 going to do to the value of the dairy. There's been --
2 for numerous years there's been articles written, and I
3 understand this is a distribution line -- or a
4 transmission line versus a distribution line.

5 But a lot of people, they read the articles of
6 the negative impact that electricity and dairy cattle
7 have. Whether it's fact, fiction, or rumor, it would --
8 it would lessen the interest in our dairy and more than
9 likely lessen the value of it.

10 My family has worked too hard through the years.
11 We've been in this facility 17 and a half years. It's
12 not something that's proposed. It's here. And we're
13 going to have to deal with it.

14 I was taken back a little bit yesterday when
15 Commissioner Hanson asked for a yes or no if they felt
16 they would have any liability concern, our facilities,
17 because it wasn't within their easement boundary.

18 So we as citizens of South Dakota have been here
19 for a lifetime. My dad's been -- in 1938 his mother and
20 sister were killed in a tornado right where I live. He
21 was 14 years old -- or excuse me. 11 years old. He
22 milked 14 cows by hand and bottled and delivered milk in
23 Andover.

24 We have upgraded the dairy facility, obviously.
25 We are state permitted for 1,350 cows. If you were to

1 build that structure today, it would be \$9 million, give
2 or take a few. Our facility with the depreciation is
3 worth approximately \$6 million. That 6 million, if that
4 became 2 million, who's going to reimburse me and my
5 family for all our efforts and hard work?

6 So that is my major concern. Am I absolutely
7 opposed to the project? We know we all have to look to
8 the future. And, like I said, with what we suggested to
9 them, we didn't suggest eliminating the project. We
10 suggested taking a better route through our area.

11 And I would still be impacted regardless which
12 route they took, but it wouldn't have the financial
13 effect on the dairy that the proximity is going to have
14 right now.

15 So that's a brief statement. I'll open myself
16 up for any questions that anybody might have.

17 MR. SMITH: Mr. Welk.

18 MR. WELK: Thank you.

19 CROSS-EXAMINATION

20 BY MR. WELK:

21 Q. Good afternoon, Mr. Schuring.

22 A. Yes. Thank you.

23 Q. Were you contacted in August of 2013 by a land agent
24 from KLJ to discuss the project?

25 A. I had one telephone contact, and I can't remember

1 the date for sure. I thought it was a little bit later
2 in the year, to be honest with you. I had one contact.

3 I indicated we weren't interested in it, and I had
4 no further contact from them until the meeting on our
5 facility in May.

6 Q. Did you tell the land agent in August of 2013 that
7 you didn't want the project coming across your land and
8 wants no part of the project?

9 A. I told her we weren't interested in the towers, yes.
10 And I wasn't interested in the overhang either.

11 Q. Let me ask this question then. As I understand your
12 testimony and your statement, you're not objecting to the
13 granting of the permit; you're just objecting because of
14 the proximity of the proposed line to your dairy
15 operation? Is that correct?

16 A. Yes. Why I made that statement is I don't think
17 that -- I don't think there's any reason for stopping it
18 because I don't think that will happen. But if it's
19 going to go, let's take the best possible routes.

20 Q. We marked, and I gave you a copy yesterday, an
21 Exhibit 22A. Can we get that?

22 A. Yes.

23 Q. 22A has been admitted into evidence, and it seeks to
24 depict where your dairy farm is located and also the
25 parcels in which there might be an overhang easement.

1 Do you see these on Exhibit 22A?

2 A. Yes, I do.

3 Q. And is this a true and accurate depiction of where
4 your dairy farm is in connection with the proposed route
5 line?

6 A. Yes, I would say it's fairly accurate.

7 Q. How far is it -- the line in regard to your dairy
8 operation is to the south; correct?

9 A. Yes. Across the road.

10 Q. So that's the point -- how far is it from your dairy
11 operation to the road to the south?

12 A. The quarter section line is on the north side of our
13 dairy, and so all the dairy plus the lagoons are built to
14 the south of that. It would be to -- to the lagoons
15 would be less than a quarter of a mile. To the dairy
16 would be just a little bit more than a quarter of a
17 mile.

18 Q. And then the line is proposed to be on the other
19 side of road and right of way; correct?

20 A. Yes.

21 Q. Now I'm not a dairy farmer so I apologize for my
22 ignorance, but in regard to your dairy cows and the daily
23 feeding, I see that there is a water lagoon, as you call
24 it.

25 Do the dairy cattle go into the southern part of

1 that quarter section from the dairy farm, or do they stay
2 in the dairy barns?

3 A. The dairy cows are confined.

4 Q. So the area that is between the dairy barn and the
5 road, there is a lagoon. And I drove out there. There's
6 a large pasture. Is that what you use that land for?

7 A. There is some grass on it. It's a wetland area
8 there.

9 Q. What is it used for in that wetland area?

10 A. When we can make hay around the edges, we put it up
11 for hay, and the rest of it has usually got water in it.

12 Q. So the dairy cows don't ever get any closer than the
13 dairy barn; is that correct? To the proposed site?

14 A. I would like to say no, but once in awhile they get
15 exercise.

16 Q. I understand. We might have a --

17 A. Somebody forgot to close a gate.

18 Q. But, generally speaking, the dairy cows, as I
19 understand it, are confined to the dairy barn except for
20 the rogue that might get out; is that correct?

21 A. Our facility is designed to be confined, yes.

22 Q. So the dairy cows themselves feeding every day and
23 getting milked are over a quarter of a mile from the road
24 and even a little bit further from the line because
25 that's the southern part of the road; is that correct?

1 A. Yes. If you look at that picture, if I might add
2 one thing, the county road coming out of Andover is not
3 on the quarter section line.

4 And on the east side of that road there are some
5 calf facilities, some buildings that extend to the south
6 just a little bit further than the actual milk barns.
7 They don't show up as well in this diagram, but there are
8 calf buildings on the other side also.

9 Q. The other parcels that are on Exhibit 22A that are
10 at least indicated to be Schuring Farms, that's the
11 middle of 22A, are those your parcels as well?

12 A. Yes.

13 Q. And what type of land is there?

14 A. The one is 100 percent cropland, and the other one
15 is a mixture of cropland and native grass.

16 Q. And do you see that it's proposed that there be an
17 overhang easement on those parcels?

18 A. I did when I received this yesterday.

19 Q. Do you have any objection to the line in regard to
20 the overhang easements?

21 A. As I indicated in the one telephone call that I had
22 in 2013 -- I apologize. I don't have the date. I
23 indicated at that time that we were not interested in
24 either the tower or the overhang. And when she visited
25 with me in May she said there would be no problem; there

1 won't be any. And then now I see it's been moved again.

2 I would not object as much to the overhang. My
3 major concern is with the dairy.

4 Q. I understand. And let me ask you a couple of
5 things. You gave some numbers to the Commission, and I
6 appreciate you sharing those.

7 Do you have any intention to sell your dairy
8 operation?

9 A. I am in a family corporation. I am general manager.
10 I have one brother and a nephew that are actively
11 involved plus between 25 and 30 other employees.

12 My brother has no interest in the dairy whatsoever.
13 If somebody could tell me -- none of us have any
14 guarantees we're going to be here tomorrow. When we
15 built this nobody told me how much work it's going to be.
16 I run this facility 24 hours a day. My phone in the
17 house rings 24 hours a day if something goes on that
18 needs attention in the barn.

19 If something were to happen to me or I get too much
20 stress, we may elect to sell it. But something happens
21 to me, I know they're going to sell it.

22 Q. So is the answer you don't know whether it's for
23 sale or not depending on your health?

24 A. Today it is not for sale, but it could be tomorrow.

25 Q. Have you ever received an offer for sale for your

1 operation?

2 A. I had a party three years ago from Minnesota that
3 just bought a facility south of Aberdeen that was vacant
4 that approached us, and they wanted to buy it. If not,
5 they wanted to know if we would lease it. And we had no
6 interest at the time.

7 Q. Do you have any data or evidence that the
8 transmission line where it is proposed to be located
9 would affect the health and safety of your dairy cattle?

10 A. I have no expert here to testify to that today.
11 There have been numerous articles in the dairy journals
12 concerning power lines and dairy facilities.

13 I do know of a facility at Bath, South Dakota,
14 Basin Electric's transmission line, which is the same
15 345 kV line -- and we have that on our land to the south
16 too. We actually have five steel towers for that line.
17 It went directly through a farm.

18 And they had increased cow health problems and
19 increased mastitis, particularly on days of heavy fog
20 and rain. And they are no longer milking because of
21 that transmission line. And that is a transmission line
22 also.

23 Q. Other than what you've just testified, do you have
24 any scientific data or evident to support --

25 A. I don't have anything to support it at this time.

1 Q. Was there -- in regard to the dairy operation
2 inquiry a couple of years ago that you just described --

3 A. Yes.

4 Q. -- did it ever get so far as to make a monetary
5 offer in writing, any what you consider a legitimate
6 business offer?

7 A. No, there was not. Because we were not interested.

8 MR. WELK: Thank you very much --

9 THE WITNESS: Mr. Welk, can I make one comment
10 to that?

11 Metropolitan Life or MetLife is financing
12 several confinement facilities, whether it be hog,
13 chicken, or dairies in the Midwest. And I just talked to
14 the land person who was in charge of that, and he -- you
15 know, he indicated that there have not been a lot of
16 these facilities sold at this time, but he was highly
17 suspicious of a couple of poultry units that had some
18 power lines and that there was less interest in them.

19 And, again, like I said, I can't come here today
20 and tell you that it's going to be 50 percent less, it's
21 going to be 25 percent less, it's going to be 30 percent
22 less. Because the problem is, is the perception that
23 there could be a problem.

24 And to get a dairy man interested in spending
25 several million dollars if there may be a problem, they

1 will look elsewhere.

2 Thank you.

3 MR. WELK: I don't have any further questions.

4 MR. SMITH: Mr. Pesall?

5 MR. PESALL: Thank you. Just a few questions at
6 this point.

7 CROSS-EXAMINATION

8 BY MR. PESALL:

9 Q. And probably the best way to cover this for the
10 record would be you explained your situation in ample
11 detail and provided references to all the maps and things
12 at the Aberdeen hearing; is that right?

13 A. Yes, I did.

14 Q. So if you went through or were asked the same
15 questions today, you'd give the same answers as you did
16 in the Aberdeen testimony?

17 A. Yes. I've been consistent all along.

18 Q. One of your primary concerns is the impact that this
19 is going to have on your land and your operation
20 valuation; right?

21 A. Yes. Very much so.

22 Q. Are you concerned about land values away from the
23 dairy facility itself?

24 A. Yes, I am. There was testimony yesterday that
25 whether there was structures on the land, two identical

1 tracts of land, soil types, and if there's structures on
2 one land and no structures on the other land, would they
3 be worth the same value?

4 You may get them appraised the same, but you won't
5 get them sold for the same value. Because we've had
6 numerous power lines in Brown County where there's been
7 land sold and in one instance one had a power line and
8 one didn't and there was 1,500 to \$2,000 an acre
9 difference in them.

10 In all reality, no, they're not going to bring the
11 same price.

12 Q. Do you have a crop insurance policy?

13 A. Yes, we do. It's required by the Farm Bill to
14 participate in the Farm Program.

15 Q. Are the terms of your crop insurance policy, to the
16 best of your knowledge, similar to those described by
17 Gerald Pesall in his testimony?

18 A. Yes. Very much. It's mandated by the Farm Program.
19 The yields are -- regardless who your agent is or what
20 company, the yields are established the same for the
21 10-year period. And it's based on actual production and
22 acres in the field.

23 I do have the option, like I stated earlier -- the
24 difference that the policies have is you got an option
25 you can go from 50 percent up to 85 percent coverage, and

1 you can go at a price election per bushel that you want
2 to insure. And the higher your guarantee and the higher
3 the price coverage is, the more that it costs the
4 producer.

5 So that's your difference. You can select the
6 minimum rate, or you can select the higher rate.

7 Q. In the same manner to which Mr. Pesall,
8 Gerald Pesall, has agreed to share that information with
9 the parties, would you be willing to share your crop
10 insurance information?

11 A. That would be fine.

12 MR. PESALL: I don't have anything further.

13 MR. SMITH: Mr. Morehouse, do you have any
14 questions?

15 MR. MOREHOUSE: Nothing here.

16 MR. SMITH: Staff?

17 MS. CREMER: Thank you.

18 CROSS-EXAMINATION

19 BY MS. CREMER:

20 Q. Good afternoon.

21 A. Yes.

22 Q. Is your dairy farm permitted?

23 A. We are permitted for 1,350 cows. State permit,
24 yes.

25 Q. And is that through -- I want to say the Department

1 of Ag? Who does that?

2 A. We had to get our permit through DENR, Department of
3 Environment and Natural Resources, for the state permit.
4 And we have the waste management plan and everything.
5 Well, you have to have the waste management plan to get
6 the permit.

7 Q. And does the County have a permit at all?

8 A. We are the only permitted facility in Day County,
9 whether it be beef, dairy, or chicken. But the County, I
10 worked with them put in CAFO ordinances for confinement
11 cattle feeding.

12 Q. Is that a difficult permit to secure? I mean, was
13 it time consuming?

14 A. The state permit obviously is a little more involved
15 than the county CAFO ordinance permit. And there's
16 extensive recordkeeping with it all the way from wind
17 speeds to daily moisture to where you pump, the soil
18 sampling. And our records had to be reviewed once a
19 year. With the CAFO permit they do not have to.

20 Yeah. A state permit is required for a 1,000 animal
21 unit and larger. A CAFO permit can go down to 300 head
22 within a county.

23 Q. What I'm trying to determine is --

24 MS. CREMER: I'm done. Thanks.

25 MR. SMITH: Commissioners.

1 Chairman Hanson.

2 CHAIRMAN HANSON: I just want to make sure I
3 understand when looking at the maps and through the
4 discussion with Mr. Welk in regards to distance from the
5 milk barns and the proposed line, it appears visually to
6 me that it's three-quarters of a -- they're approximately
7 three-quarters of a mile away, and I heard a quarter of a
8 mile.

9 THE WITNESS: Okay. That top boundary that you
10 see there, that's the half-mile line from the road that
11 the power line --

12 CHAIRMAN HANSON: Oh, I see. Okay. I was
13 looking at it as a section.

14 THE WITNESS: Yeah. The top of that map is a
15 half-mile.

16 CHAIRMAN HANSON: It's a quarter section. I was
17 looking at it as being a section. Thank you very much.

18 MR. SMITH: That everything, Gary?

19 CHAIRMAN HANSON: Yes.

20 MR. SMITH: Commissioner Fiegen.

21 COMMISSIONER FIEGEN: Thank you.

22 And thank you for coming to Pierre, and
23 certainly thank you on behalf of consumers in
24 South Dakota of producing milk. We sure all like ice
25 cream and cheese and all those fun things.

1 In Aberdeen I just can't remember. My neck was
2 turning, and I didn't look as well as I should have when
3 you and Mr. Morehouse put up a suggested route, which I
4 think was going to be on your land anyway.

5 Could you explain that route one more time? I'm
6 sure the other Commissioners remember it well. I don't
7 remember the route as well, how you explained it in
8 Aberdeen.

9 THE WITNESS: Okay. This map here also
10 indicates Mr. Morehouse's feed yard. And south of that
11 where they made the line turn back to the north, if they
12 would have continued straight west, they would have
13 crossed less cropland, mostly pasture land through the
14 hills. And in our case it would be pasture land and CRP.
15 And it continued over beyond the Day County-Brown County
16 line which would be three miles further west there. And
17 where it would turn north there they could eliminate it
18 coming up --

19 At first originally this map was adjacent to the
20 railroad tracks. And then it got moved to the reroute.
21 But the railroad tracks, Mr. Morehouse's feedlot, our
22 dairy would have been nonfactors. There would have been
23 three families but nobody within close proximity of the
24 line.

25 Whereas, when it came this way we have our dairy

1 facility, Mr. Morehouse's feedlot, and there would be,
2 what, three other families, I believe, that are involved
3 in this route.

4 COMMISSIONER FIEGEN: I'm struggling seeing
5 this. Because like 3 miles would be off this map; is
6 that correct?

7 THE WITNESS: Yes. It would be below this map
8 here.

9 MR. MOREHOUSE: Excuse me. Can you use this,
10 Randy, this exhibit that I wanted to propose? I'm
11 Brad Morehouse.

12 THE WITNESS: Exhibit 22A does not show that
13 route because it is south of that. If you took the map
14 that Brad had provided -- did you get a copy?

15 MR. WELK: Well, it's not into evidence so --

16 THE WITNESS: Okay. If I can describe it to
17 you.

18 COMMISSIONER FIEGEN: Could I just wait and ask
19 General Counsel if this isn't in evidence, may I ask that
20 they at least after the hearing or sometime that I can
21 see this map? Or how are we going to do this?

22 MR. SMITH: Well, Mr. Morehouse I think is going
23 to introduce it into evidence. And, you know, I don't
24 know if you --

25 THE WITNESS: Could we defer that question to

1 Mr. Morehouse then?

2 COMMISSIONER FIEGEN: Absolutely.

3 MR. WELK: One other concern about that exhibit
4 are the names of the landowners on there. And we've been
5 very careful not to disclose names of the landowners.

6 It came from us. We're not objecting to the
7 map. But I am concerned about the names of the
8 landowners because if this becomes a public piece --

9 MR. SMITH: Are you suggesting then that this be
10 a confidential exhibit?

11 MR. WELK: If we can do that and so -- this
12 doesn't have to be disclosed for people's names out
13 there. We've tried to be very careful with that.

14 THE WITNESS: It's already public record at the
15 courthouse, and we all have atlases at Day County so it's
16 not --

17 MR. SMITH: Public knowledge.

18 Mr. Morehouse, any thoughts on that?

19 MR. MOREHOUSE: I really didn't want -- or I
20 didn't mean for the names to be a big deal here. And
21 everybody has had access to them prior to today's
22 meeting. But if we want to keep it confidential from
23 here on, I don't have a problem with that.

24 MR. SMITH: Okay. And I agree with what you
25 said is in reality those names are available at the

1 Register of Deeds, but I think a lot of what the
2 Applicants were trying to do was avoid -- because we have
3 a very public website and all of that of having people's
4 identities and stuff revealed.

5 But what do you think, Tom? I mean, if these
6 are public documents, is that a problem having them be
7 public?

8 MR. WELK: Well, I'd like to talk to the land
9 people with these issues.

10 I mean, we've been very careful about that. And
11 I'm not in those day-to-day communications. I don't know
12 what representations we made on a day-by-day basis to the
13 landowners about confidentiality. I know we've told them
14 it will be confidential.

15 So for the purposes of this, if we could just
16 name it to be confidential, and we'll try to deal with --
17 let's get to the questions --

18 MR. SMITH: Err on the side of caution so why
19 not -- you don't have a problem either, Mr. Morehouse?

20 MR. MOREHOUSE: No, I don't.

21 MR. SMITH: Having it be treated as
22 confidential?

23 MR. MOREHOUSE: Confidential is fine.

24 CHAIRMAN HANSON: I have a concern, though.

25 MR. SMITH: Fire away.

1 CHAIRMAN HANSON: We are obliged to apply
2 everything as being nonconfidential unless there is a
3 very, very good reason for it to be confidential. And
4 this is not proprietary information.

5 So in my view unless there's an overriding
6 factor that I'm not considering, it could not be
7 confidential.

8 MR. SMITH: People who are actually doing the
9 filing have the right under our rules to file
10 confidential, and then we've got to actually go through a
11 proceeding to rule that he's not entitled to confidential
12 treatment.

13 CHAIRMAN HANSON: Correct.

14 MR. SMITH: Here we're dealing with a public
15 hearing so it's a little different. And the person who's
16 admitting it hasn't requested confidential treatment. So
17 as -- as of this point.

18 So I think really, Mr. Morehouse, if you're
19 going to be the person who's going to introduce this,
20 it's really up to you initially. And if someone believes
21 it's not entitled to that treatment, we've got a set of
22 rules that determine how the adjudication of that is
23 made. Okay? But it's kind of up to you.

24 THE WITNESS: Commissioner Fiegen, could I defer
25 your question until later then?

1 COMMISSIONER FIEGEN: And I do have one
2 more question. Sorry about all of that.

3 THE WITNESS: The only about that, you were
4 questioning about what we had proposed for a reroute.
5 When I contact with the agent and I suggested that in the
6 Aberdeen meeting too there was some indication that maybe
7 they would review that.

8 There has been no feedback on any review of an
9 alternate line at this point.

10 COMMISSIONER FIEGEN: Okay. Thank you.

11 The other question I had is you brought up -- in
12 your testimony you brought up Basin has a 345 line, I
13 think, in Bath? Is that what you said?

14 THE WITNESS: It comes through northwest of
15 Aberdeen. That one travels diagonally. It doesn't
16 travel down a section line. We also own land in south
17 Andover Township and Scotland Township where we have
18 these lines on it too.

19 COMMISSIONER FIEGEN: Okay. This Basin line, is
20 it on your property?

21 THE WITNESS: Yes, it is.

22 COMMISSIONER FIEGEN: Okay.

23 THE WITNESS: We purchased the property after
24 the line was built.

25 COMMISSIONER FIEGEN: Okay. Then you talked

1 about a dairy that was in close proximity of this line.

2 THE WITNESS: Yes.

3 COMMISSIONER FIEGEN: And that during certain
4 weather occasions they saw a difference in health --
5 animal health.

6 THE WITNESS: Yes.

7 COMMISSIONER FIEGEN: Can you explain a little
8 bit more about that?

9 THE WITNESS: Dairy cattle are very fickle
10 compared to beef cattle. They're under much more stress.
11 We ask much more of them. It doesn't take much to upset,
12 as far as either digestive or even in milking, mastitis.

13 Any little thing, stray voltage, moisture,
14 bacteria, hormone, they can all trigger different things
15 that a beef cow you probably wouldn't notice it because
16 they're not under the same stress that a dairy animal is.

17 We're asking a lot of these dairy cows. We
18 usually get 50 pounds of milk a day per cow, and now
19 we're getting 90 to 100 pounds a day on average. You
20 know, individual cows up to 180 pounds a day. If you
21 figure that out at 8.6 gallons of milk a day, that's a
22 lot of milk.

23 We milk around the clock. Our cows are -- you
24 know, we ask a lot of our cows. But cows -- you have to
25 be very, very careful when managing dairy cows. We can

1 make more mistakes with beef cows and get by.

2 I don't know if that entirely answers your
3 questions or not. But we do have three days a week,
4 Monday, Wednesday, and Friday, we have our local vet
5 consultant is out just, you know, to do any herd health
6 issues that we have. We review protocols at that time
7 with him and different things. But so we are very
8 intensely managed on that end of it.

9 COMMISSIONER FIEGEN: You gave us an example of
10 a dairy farm that could have been, which we don't know --
11 was impacted maybe by a 345. Is that how I understood
12 that, or was I --

13 THE WITNESS: Yes.

14 COMMISSIONER FIEGEN: -- misinterpreting? And
15 it was by Bath?

16 THE WITNESS: Yes. Their address would be rural
17 Bath, which is in Brown County. And this is the other
18 transmission line that comes through our area. It goes
19 right through their farm yard.

20 And they're not milking anymore. Their claim is
21 they had too many issues with the power line and got no
22 response. Yeah.

23 COMMISSIONER FIEGEN: So that power line was
24 within 100 feet of the operation of the dairy?

25 THE WITNESS: No. It was -- it was a little bit

1 further than that. I can't give you an exact distance,
2 but it was in a direct line of path, you know, through
3 their farm.

4 COMMISSIONER FIEGEN: Okay. Thank you.

5 MR. SMITH: Commissioner Nelson, do you have a
6 question?

7 COMMISSIONER NELSON: I do have several
8 questions, Mr. Schuring.

9 You made an interesting statement earlier. And
10 I understand why you made the statement, and I'd just
11 like to repeat it. You said whether it's fact, fiction,
12 or rumor, it affects the value.

13 You understand that this Commission must
14 consider facts; is that correct?

15 THE WITNESS: I do.

16 COMMISSIONER NELSON: Do you understand that we
17 have much more trouble dealing with fiction and rumor?

18 THE WITNESS: I do.

19 COMMISSIONER NELSON: Thank you. We had some --
20 go ahead.

21 THE WITNESS: My concern with that is after the
22 yes-no question from Mr. Hanson yesterday I have little
23 recourse but to express what the potential impacts are
24 here. And, obviously, the final result will be court.

25 COMMISSIONER NELSON: We've had some discussion

1 about how far the proposed line is away from your actual
2 barns, and near as I can estimate, about three-eighths of
3 a mile.

4 How far do you think the line would have to be
5 away from your barns before you would not be negatively
6 impacted by sale value?

7 THE WITNESS: Realistically, I think the next
8 section line, a mile and a half.

9 COMMISSIONER NELSON: Do you have anything to
10 base that on, or is that just kind of your gut feeling?

11 THE WITNESS: I have no factual information for
12 that.

13 COMMISSIONER NELSON: You indicated that you
14 purchased some property after a Basin line had --
15 345 line had been constructed on that property.

16 How much of a discount did you get on that
17 property when you purchased it because it had that line?

18 THE WITNESS: There were no other land sales in
19 that area in recent -- probably two years prior to that.
20 And our circumstance was a little bit different there.

21 South Dakota Wheat Growers approached us about
22 building a unit train facility. And we owned the only
23 property where the railroad and highway right of way did
24 follow each other where there was room enough to put a
25 spur in. And so we got a substantial price for that

1 land, and we needed to do a 1031.

2 And we didn't increase our operation any. We
3 went to three landlords that we were -- farmed their
4 ground since 19 -- or prior to 1980. And because they
5 had concerns about capital gains and I was concerned
6 about the capital gain on this property, we did not
7 negotiate. We needed to get a land deal done, and we
8 were right down to the deadline.

9 So basically I offered them what we had to pay
10 in penalty as far as capital gains to purchase. But
11 there was no history recently in that land area. And
12 this was just prior to the \$7 corn. So, you know, timing
13 was great for us. But there was no history to base on
14 the discount -- you know, what discount it would be
15 because of those.

16 We needed to get a 1031 done. And if you follow
17 1031, you're limited to 180 days.

18 COMMISSIONER NELSON: Thank you. That's all the
19 questions I've got.

20 MR. SMITH: Any other Commissioner questions?

21 We can probably talk about it in a little while,
22 but just one other thing.

23 Mr. Welk, this map that we're going to be
24 looking at with Mr. Morehouse, was this particular map
25 with the names of the people on it disclosed to him under

1 a condition -- a nondisclosure agreement covenant or
2 anything like that, or was it --

3 MR. WELK: I'll have to talk to KLJ who's here
4 about that. I don't know the answer to that. I'll do
5 that at the break.

6 MR. SMITH: Okay. Any further questions?
7 Commissioner Nelson has one other question.

8 COMMISSIONER NELSON: Mr. Schuring, if I could
9 go back in looking at this Exhibit 22A, you'll notice the
10 proposed line has a slight deviation to the south. It
11 looks like it's going around an existing substation just
12 to the east of your drive.

13 If the entire line was moved to that southern
14 location, and granted it's probably only going to move it
15 100, 150 feet, would that help you at all?

16 THE WITNESS: I don't -- at this point I'd have
17 to say no. Because the visual from the dairy, it's still
18 very prominent.

19 COMMISSIONER NELSON: I understand. Thank you.

20 THE WITNESS: That's why I indicated a mile
21 would be -- thank you.

22 MR. SMITH: Mr. Welk, do Applicants have any
23 additional questions, follow up on Commissioner
24 questions?

25 MR. WELK: No, Mr. Smith.

1 MR. SMITH: Mr. Pesall?

2 MR. PESALL: I don't have any additional
3 questions for the witness.

4 I would note that I'm going to be asking to
5 bring Mr. Tylka up for a brief question on the difference
6 between samples and cores just to explain that. Because,
7 obviously, there's some confusion. But we can do that at
8 some point if the Commission will allow.

9 MR. SMITH: I think you can be excused then.
10 Thank you.

11 (The witness is excused.)

12 MR. WELK: Would you give me a few moments so I
13 can talk to them?

14 MR. SMITH: Should we take a short break? We've
15 been at it a while here.

16 (A short recess is taken)

17 (Exhibit 207 is marked for identification)

18 MR. SMITH: Mr. Welk and I had a conversation
19 about the exhibit, you know, Exhibit 207 that we've been
20 talking about.

21 And please correct me if I'm wrong, but what you
22 informed me is that this was not turned over under a
23 confidentiality covenant and that all of the information
24 contained on here is contained on public plat documents
25 and that Applicants no longer are requesting confidential

1 treatment of the exhibit.

2 MR. WELK: What you have stated, General Counsel
3 Smith, is correct. And to further elucidate based on my
4 conversations with KLJ representatives is 207 was sent to
5 Mr. Morehouse trying to understand the route he wanted.
6 And so it was sent to him but because he couldn't see a
7 number of maps.

8 So I've asked them and confirmed that the names
9 do come from plat maps and some other information, but at
10 this point we aren't going to raise any issues regarding
11 confidentiality.

12 MR. SMITH: Okay. Well, that's solved then.

13 Then we'll call the hearing back to order. And
14 at this point I think we're done with Mr. Schuring. And
15 so, Mr. Morehouse, would you please take the stand.

16 BRAD MOREHOUSE,
17 called as a witness, being first duly sworn in the above
18 cause, testified under oath as follows:

19 MR. SMITH: Just please proceed when you're
20 ready, Mr. Morehouse.

21 THE WITNESS: Okay. Would it be the best to
22 have this entered into an exhibit -- admitted into
23 exhibit, whatever the terminology is at this time?

24 MR. SMITH: Yes. Are you offering it as an
25 exhibit?

1 MR. MOREHOUSE: Yes, I am.

2 MR. SMITH: Is there any objection from any
3 party to its admission into evidence?

4 MR. SUTTON: No objection from Applicants.

5 MR. PESALL: No objection from Mr. Pesall.

6 MR. SMITH: Mr. Schuring?

7 Okay. Exhibit 207 is admitted.

8 THE WITNESS: Thank you.

9 Well, first off I would, I guess, mic. -- I'd
10 like to thank the Commission Staff and everyone here,
11 Tom, all of you for putting up with me. Because I know
12 it would be a whole lot easier for me to teach you how to
13 feed cattle than it is for you to try to teach me to be
14 formal in a place like this.

15 So, with that, my purpose here is to get -- I'm
16 not opposed to this line, but my purpose would be to have
17 this line built in the very best possible place possible,
18 not in the place that has already been pretty well -- the
19 easements have been signed and it has been admitted to an
20 area without further looking into maybe a better area.

21 The area that Randy was describing, if we could
22 get to this Exhibit 207, the -- okay. This is an older
23 map, but it's one that I had found in my things the
24 other -- or yesterday, I guess. And --

25 Okay. You start at the bottom of the page.

1 That red line is the -- is the power line. And it goes
2 up, and right above there's a quarter and an 80 on
3 Section 26. Right above that is my feedlot.

4 Okay. The reroute -- this is the reroute.
5 Okay. Then going back, I did have a meeting with KLJ and
6 neighbors, and at that meeting I said I'd like that line
7 moved a half a mile away. And a neighbor said he'd like
8 that line moved 1,200 feet away. And KLJ said if we move
9 that line, to my understanding, 1,200 feet away, would
10 this neighbor sign up? And the neighbor said yes.

11 1,200 feet was better than the line that's shown
12 here right at the corner where 26 is, right on my
13 feedlot.

14 If you'll look in Exhibit 22A, and you can see
15 where my feedlot is down there, okay, that yellow -- that
16 purple line comes diagonally across two quarters. The
17 reason that is is because they already moved this line.
18 I had a neighbor -- I just got to keep going back all the
19 time.

20 I had a neighbor that was interested in putting
21 irrigation on. He owns this half section right south of
22 me. And that line would disable him if he wanted to put
23 an irrigation system in. So they did move that line over
24 a half a mile now starting at 12 down there.

25 They moved it a half a mile. They came north up

1 to -- it's the corner of 36 where Randy Zimmerman it
2 says, even though -- and that's where the diagonal
3 starts. And it goes across this Robert Anderson quarter,
4 and it goes diagonally across the Zimmerman quarter, if
5 you're following, and staying 1,200 feet away from my
6 feedlot.

7 Now that was good for them to move that away
8 from directly on top of me. But this line is not going
9 to go away in 10 years or 20 years or 30 years. And I've
10 got kids and grandkids that I hope they'll be farming
11 there, grazing cattle there, for a long time, probably as
12 long as this line will be there and maybe to the same
13 extent.

14 Now to me it would be much better if they
15 wouldn't -- if they -- they're already up to -- on
16 Section 36 they're up to the Zimmerman quarter. If they
17 would move that line and go straight north, they can
18 actually go a mile and a half further and not go
19 diagonally and then cut it across on the neighbor.

20 And he's said that he'd already like that
21 because this neighbor can use the money for the poles,
22 and he doesn't have any offspring coming up.

23 But anyway that would be a much better route,
24 if people follow. Okay. That's to get it away from my
25 feedlot.

1 Now you continue on, and you're going up to the
2 Schuring dairy. So you still got a problem, the way I am
3 looking at this. So the very best route is go down there
4 on 12 again, follow to that yellow line, which is our
5 township line, go west all the way to the edge of the
6 paper almost where there's a dotted line. And that's the
7 Basin Electric line. You would have to parallel that
8 line. And that's also the county line, the edge of the
9 paper.

10 You would have to parallel the Basin line for
11 about a mile across there until you got about a quarter
12 to a half a mile into the next county and then go
13 straight up north, and it would intersect the line where
14 it's going to be going west of the Schuring dairy over to
15 the county line.

16 You would get the same thing done. And also
17 it would alleviate some corners, it looks like to me,
18 which was stated earlier that corners cost more money to
19 build.

20 Okay. When you get -- and it's not on this --
21 and it's not on this map, but when you get into Brown
22 County there's three residents that are there right now.
23 Two are just -- they're more or less vacant places. One
24 of them people have lived there for a long time, but
25 they're right in their mid, late 60s, and I would guess

1 in 10 to 15 years that place isn't no longer going to be
2 there. And there's another place right there too, and I
3 guess that place is no longer going to be there. Right
4 into Brown County, which isn't shown on this map.

5 You go north then about a mile, half a mile to a
6 mile, and there is one cattle feeding facility there.
7 He's actually -- he raises bulls. And you could stay at
8 least a quarter of a mile away from him. And the rest of
9 the way there's nobody. So you'd have one operation to
10 really deal with going that proposed route.

11 Where this other way that I can tell -- if you
12 look on that map, all them little circles, the yellow
13 circles and the blue circles, those are residents,
14 occupied structures, farm sites, more or less. And
15 there's a lot of them that we're jogging around, getting
16 through, going the route which they have intended.

17 That is kind of a summary of the purpose I'm
18 here, to let's put this thing in the very best place and
19 not just put it in because some of the groundwork's been
20 laid.

21 MR. SMITH: Does that conclude your direct?

22 THE WITNESS: Yeah. Yep.

23 MR. SMITH: We'll turn to is it Mr. Sutton or --
24 do you want to go ahead, Jason? Is your mic. on?

25 MR. SUTTON: Yep. Of course.

CROSS-EXAMINATION

BY MR. SUTTON:

Q. Good afternoon, Mr. Morehouse.

A. Thank you.

Q. What would you like me to call you?

A. Brad is fine.

Q. Thanks, Brad. A lot easier than Mr. Morehouse.

A. Oh, you bet.

Q. A couple of questions. Have you read the Application that was submitted Applicants?

A. No.

Q. How about the prefiled testimony?

A. No. Bits and pieces. I don't have time to read that. I've been -- as far as I've been concerned with this and follow it and filed party status, I do read some of the stuff on the computer which is e-mailed to us so I have read bits and pieces.

Q. And to be fair, I think you indicated your objection isn't to the project?

A. No.

Q. It's to where the line is compared to your feedlot.

A. Absolutely.

Q. Let's look at the maps here for a couple of minutes. Let's start with Exhibit 207, the map that you gave us. Looking at Exhibit 207, first of all, there's a --

1 three-quarters and another parcel of land that are in
2 red.

3 Did you put that on there?

4 A. No, I did not.

5 Q. Do you know what that means?

6 A. I have no idea.

7 Q. You didn't --

8 A. That could be -- at that time that was the neighbor
9 that was having a problem with his irrigation in 26 all
10 the way up -- when you get to 26 he owns that half
11 section there. And that was the -- and that might be why
12 that was.

13 That was his property, and that was maybe why KLJ
14 had to get an easement from this other property if they'd
15 move the line. I guess I don't know. I'm assuming.

16 Q. Now originally when the first proposed route, if you
17 will, came out, the line was going to run north and
18 south closer to the railroad tracks which start up in
19 Section 12 on the top of the map; is that right?

20 A. Right.

21 Q. And then as part of that there was an issue that
22 came into play with one of your neighbors' irrigation
23 systems, and he requested a route change; is that
24 right?

25 A. I was told that too.

1 Q. And then as part of that we have this line in red on
2 Exhibit 207. That red line is the original route change
3 when it occurred; right?

4 A. Yes.

5 Q. And as part of that route change then when we look
6 at Section 26, there's a Bradley Morehouse right above
7 the parcel that's in red or orange; right?

8 A. Right.

9 Q. And that's the parcel that's got your feedlot?

10 A. Yes.

11 Q. So originally as designed the route change was going
12 to run right along on the quarter line right next to your
13 feedlot; is that right?

14 A. Yes.

15 Q. How close was it going to be to your feedlot if it
16 was on the quarter line?

17 A. The overhang would be right on top of the feedlot.
18 Because that feedlot goes right up to the quarter line.
19 Well, there's a few rows of these in there. 35 feet.

20 Q. Now will you please turn to Exhibit 22A. Do you
21 have that, Brad?

22 A. Yep.

23 Q. Exhibit 22A, we see down at the bottom there's the
24 Brad Morehouse feedlot; is that right?

25 A. Yep.

1 Q. And then you see that purple line?

2 A. Yep.

3 Q. That purple line is the route as it's currently
4 being proposed; correct?

5 A. Yes.

6 Q. So it comes in from the north, and rather than going
7 straight down the quarter line as it was before, it comes
8 on to your property a little bit and then starts angling
9 away across your neighbor's property; is that right?

10 A. Yes.

11 Q. And all you're going to have on your property is an
12 overhang easement. There's not going to be any
13 structures or poles; right?

14 A. I guess I didn't even know there was going to be an
15 overhang easement.

16 Q. Let me ask it this way: Are there going to be any
17 structures on your property, have you been told?

18 A. No. No.

19 Q. It's your understanding that there's not going to
20 be?

21 A. No. I didn't want structures. I don't want the
22 overhang.

23 Q. Now that the line angles away from your feedlot,
24 it's 1,200 feet away from the feedlot; is that correct?

25 A. Supposed to be.

1 Q. You talked about a neighbor who was concerned about
2 you moving the line a half-mile to the east rather than
3 1,200 feet. Do you recall that?

4 A. Yeah. They moved it a half-mile to the east.

5 Q. I think I might have confused you. I probably asked
6 a bad question. Let me back up here.

7 This angle on Exhibit 22A, right now when you first
8 started talking about the route that would help you but
9 not Mr. Schuring, you talked about moving the route a
10 half-mile rather than 1,200 feet. Which direction is
11 that half-mile?

12 A. Move it to the east, keep it coming up from where
13 it -- I always go from the south to the north. Everybody
14 else goes north to south. So move it over to it would be
15 township road. Come one and a half more miles, and then
16 everybody would be happy.

17 Q. At --

18 A. Other than Randy.

19 Q. I'm sorry. I didn't mean to start asking my
20 question while you answered.

21 At what point would you propose that the line starts
22 running west if it continued running north on the section
23 line that's a half-mile to the east of your quarter
24 line?

25 A. It could go north up to -- there's Randy Zimmerman,

1 if you see, and then you go Clark Olson. Let's see. Am
2 I right here?

3 Q. Which exhibit are you on?

4 A. I'm on Exhibit 207.

5 Q. Okay.

6 A. 207. It would go -- actually it would be Steven and
7 Gayle Horter. They own the half section there on the
8 east side of those railroad tracks. They own that
9 350 and 351 tower of the old, old one. But that's their
10 property.

11 So you go up there. You go to Joan Olson. You
12 would stay on Joan Olson property, head west right on the
13 Clark Olson. And then you would head -- then you'd be
14 back in line again.

15 Q. As part of that route, if the section line was
16 followed, isn't it true that the line would go over a
17 series of buildings? There isn't a residence there, but
18 there's some buildings, aren't there?

19 A. No.

20 Q. So it's your testimony that there are no buildings
21 corresponding to the section line west of your place?

22 A. There is a set of buildings on the east side of the
23 road, but we want to stay on the west side of the road.
24 And that's where this -- the alternate route to the
25 reroute is. The reroute to the reroute would be it's on

1 the west side of that road. And they come up and then
2 they cross over going diagonally across two quarters and
3 then they come up to the Olson one. So, no, there
4 wouldn't be any.

5 Q. In any event, when you brought that reroute up, your
6 neighbor indicated that he was concerned that that route
7 would affect his center pivot unit, didn't he? Which is
8 why he said he'd agree to 1,200 feet rather than the
9 half-mile?

10 A. No.

11 Q. That's not correct?

12 A. That's not correct at all.

13 Q. The neighbor that proposed the 1,200 feet, did you
14 discuss that number with him before the meeting that
15 occurred?

16 A. I can't remember that -- there was something that he
17 maybe wondered what somebody said to him, if 1,200 feet
18 would be acceptable. And I said maybe that's probably
19 acceptable to somebody. And he said, well, then I'll
20 sign off if you get that 1,200 feet. That was our --
21 yes, I did have some discussion, but I said I'd like it
22 to go a half-mile.

23 Okay. That actually reminds me, when we were in
24 that discussion I said, well, what would be wrong with
25 going at the time -- come up and go -- instead of turning

1 and going diagonally, I says would you mind if we go
2 right over the top of your existing -- he's got those
3 buildings on the east side of the road. I said what
4 would be the problem with going right over the top of
5 those?

6 And at that time I think it was Mr. Cummings was
7 there. Or maybe -- I believe. And he said we can't do
8 that. Or -- yeah. He didn't make that meeting so
9 Mr. Anderson wasn't there. That was a phone
10 conversation. Mr. Cummings said we can't do that because
11 we'd have to ground his residential site.

12 So now they've moved it clear to the other side of
13 the road so they wouldn't be going over that site. They
14 wouldn't be going any closer to that site. They're going
15 on the diagonal to it now, if they stayed on the east
16 side of the road.

17 Q. Let's set this meeting up here. There was a meeting
18 that was held on April 17 of 2014; is that right?

19 A. Boy, I can't remember dates exactly, but about.

20 Q. Do you recall a meeting that you had with KLJ and
21 several of yours neighbors?

22 A. Yes.

23 Q. Where was that meeting at?

24 A. My place.

25 Q. Who was there?

1 A. Mr. Olson, Mr. Schuring, Mr. McCain.

2 Q. And then do you recall --

3 A. No. No. Okay. Just a second. Mr. Zimmerman.
4 Randy never made it to that meeting. That was
5 Mr. Zimmerman.

6 MR. SCHURING: I was not invited to that
7 meeting.

8 A. Okay. That's what -- because I had talked to Karen,
9 Karen Mostu, KLJ's representative. And she informed me
10 that Randy did not have to be at this meeting because he
11 had no bearing on what -- on any of the lines that were
12 being changed down in our area. She says we'll deal with
13 him at a later time.

14 So Randy Schuring was not there. It was Randy
15 Zimmerman, a neighbor right to the east of me. It was
16 Tim Olson and James McCain.

17 Q. Before that meeting did you know that Mr. Anderson
18 sent an e-mail to the KLJ representative saying we are in
19 agreement if we can move the line 1,200 feet from
20 Mr. Morehouse's feedlot?

21 A. I had talked to Kevin about that earlier, and there
22 was something that I was aware of that could be going.
23 As far as an e-mail sent somewhere, I didn't know that
24 really. Maybe that happened.

25 Q. And, in fact, when the KLJ representative came at

1 that meeting or arrived at that meeting, they asked you
2 if you had discussed that e-mail and the 1,200 foot
3 number with Mr. Anderson before you showed up at the
4 meeting, didn't they?

5 A. They asked if -- that was the reason for the
6 meeting. Because I set the meeting up because I said
7 Kevin would sign off if they would move the line. Now
8 the 1,200 feet was not discussed.

9 Q. And, ultimately, the project agreed to move the line
10 1,200 feet?

11 A. Yeah. That -- at that meeting when they left it was
12 in agreeance -- or it was their -- they always say they
13 want to be cordial and do as much for the landowner as
14 possible. They kept stressing that we got to keep in
15 mind the person that the easements are for because
16 they're the people that are going to be dealing with the
17 poles. They're -- you're just dealing with overhang.
18 You're dealing with anything other than the poles.

19 So I respected that. And they said we will do the
20 best for you that we can is the words I can remember.
21 And I said I'd like it a half a mile. They said,
22 remember, we've got to be fair to the neighbors. And I
23 said, well, I'd like it a half a mile. We'll try to get
24 it as far as we can, but 1,200 feet seemed to be like the
25 number that was sticking in their head at that point.

1 Q. Now I'm not going to try and go back to the maps,
2 but you also mentioned an additional reroute that you had
3 that would take the route away from your property and
4 Mr. Schuring's dairy.

5 My question is for you, Mr. Morehouse, if that route
6 was adopted, isn't it true that that route will mean the
7 line will be routed more than a half-mile from any of the
8 current routing? I think you said it was 3 miles away;
9 is that right?

10 A. It's at least, I'd guess, a mile and a half.

11 Q. And do you know, Mr. Schuring, whether all of the
12 landowners who then would be within one half mile of that
13 new route would have received the required notice because
14 they weren't near the original route or a reroute?

15 A. I'm getting confused. Don't take much.

16 Q. I ask bad questions. Probably makes it worse.

17 Do you remember getting a landowner notice letter
18 that said we're going to have a public input meeting in
19 Aberdeen? You showed up. Do you remember getting that
20 letter?

21 A. Yes.

22 Q. My question is if we moved the route over to your
23 other route to the west that you talked about with
24 Mr. Schuring, do you know whether all of the landowners
25 who would be located within a half-mile of that new

1 western route actually would have received one of those
2 letters that only went to the landowners located within a
3 half-mile of the route and the reroute?

4 A. I don't know that.

5 Q. And that's -- you see my question and my issue?

6 A. Yeah. I don't know that.

7 Q. My last question for you, Mr. Schuring, is -- or
8 excuse me. Mr. Morehouse. I apologize, Brad.

9 A. I've been called worse.

10 Q. Your testimony today that you've provided and
11 Exhibit 207 that you've marked, that's the extent of the
12 evidence that you have to support your objections to the
13 permit; is that right?

14 A. Yes.

15 MR. SUTTON: No further questions.

16 MR. SMITH: Mr. Pesall.

17 MR. PESALL: I don't believe I have any
18 additional questions for Mr. Morehouse.

19 MR. SMITH: Okay. Then we're to Mr. Schuring.

20 CROSS-EXAMINATION

21 BY MR. SCHURING:

22 Q. Brad, in reference to the question that was asked if
23 any additional people would not have been notified with
24 that southern reroute.

25 Though I wasn't invited to the meeting but prior to

1 that I think that route had been expressed to KLJ. There
2 would have been ample time to notify people if they would
3 have seriously considered it?

4 A. Yes. I would say ample time would have been. But
5 it seemed like there was more energy going to be put into
6 going with the 1,200 feet than with the -- anything other
7 than that.

8 Q. Has anybody since that date notified you that they
9 seriously even considered that other route and would have
10 had ample time to notify prior to the meeting in
11 Aberdeen?

12 A. Nobody has contacted me about that.

13 MR. SCHURING: Thank you.

14 MR. SMITH: Is that all the questions?

15 MR. SCHURING: That's all. Thank you.

16 MR. SMITH: Okay.

17 Staff.

18 No questions?

19 Commissioners?

20 No questions.

21 Commissioner Fiegen.

22 COMMISSIONER FIEGEN: Just wait.

23 I just wanted to make sure our advisor over here
24 had it. So he has it now. Thanks.

25 MR. SMITH: Okay. No further Commissioner

1 questions?

2 Any follow on following Commissioner questions
3 from Applicants?

4 MR. SUTTON: No.

5 MR. SMITH: Any from Mr. Pesall?

6 MR. PESALL: Nothing from Mr. Pesall, no.

7 MR. SMITH: Mr. Schuring, do you have anything
8 further after that?

9 MR. SCHURING: No, I do not.

10 MR. SMITH: Okay. I guess we didn't really have
11 any Commissioner questions.

12 Okay. I guess we're done then, Mr. Morehouse,
13 at this point.

14 MR. PESALL: Mr. Smith, at this point I might
15 bring Mr. Tylka back if the Commission would indulge.

16 MR. SMITH: Do you have an objection at all,
17 Mr. Welk, if he has one last short --

18 MR. WELK: If he wants to bring Dr. Tylka back,
19 I don't have any objection.

20 MR. SMITH: Go ahead and recall it him.

21 MR. PESALL: We would recall Gregory Tylka.

22 MR. SMITH: Mr. Tylka, you're still sworn.

23 THE WITNESS: Yes, sir.

24

25

DIRECT EXAMINATION

1 BY MR. PESALL:

2 Q. Mr. Tylka, were you in the room during the recent
3 testimony on the record regarding soil samples, how many
4 had been conducted in various places?

5 A. Yes. In Gerald Pesall's instance, you mean?

6 Q. In particular, yes.

7 A. Yeah.

8 Q. Could you clarify the difference between soil cores
9 and soil samples and how that works?

10 A. Yeah. And I think especially Commissioner Fiegen
11 was trying to get at exactly what was done. And I think
12 what I heard Gerald Pesall say was that there were
13 several samples collected, each which comprised 10 or
14 more soil cores.

15 And then the other important point I heard was that
16 it was not from a large area. It was from a swath
17 underneath the anticipated line that was going to be
18 installed.

19 And when I heard that I sensed from Commissioner
20 Fiegen, which is always dangerous to sense what somebody
21 else is thinking, but I sensed that the interpretation
22 was that that was not a very good sample. But if you
23 consider it was 10 cores from an area that was only 100
24 feet wide by however feet long, then it actually would
25 have been a fairly reasonable sample.

1 So my interpretation, and maybe we need to have
2 Gerald Pesall confirm that I heard what he was saying was
3 that there were multiple -- five or six different 10-core
4 soil samples taken from an area 100 foot wide by 100 or
5 so feet long.

6 MR. PESALL: Thank you. That's the only
7 question I had for Mr. Tylka. We could potentially have
8 Mr. Pesall answer that one question if counsel would like
9 to indulge that as well for the Commission.

10 MR. SMITH: Should we wait and -- how do you
11 want to do that? What do you think, Mr. Sutton, or --

12 MR. SUTTON: I've got one question for cross,
13 and we'll bring Mr. Tylka [sic] back up.

14 MR. SMITH: Okay. Proceed.

15 CROSS-EXAMINATION

16 BY MR. SUTTON:

17 Q. Dr. Tylka, did Mr. Pesall contact you about doing
18 the sampling?

19 | A. No.

20 MR. SUTTON: No further questions.

21 MR. SMITH: Mr. Schuring, anything?

22 MR. SCHURING: No questions.

23 MR. SMITH: Mr. Morehouse?

24 MR. MOREHOUSE: No.

25 MR. SMITH: Staff?

1 MS. CREMER: No.

2 MR. SMITH: Anything? Commissioners, any follow
3 up?

4 Okay. I think we can let you go then. For now
5 anyway.

6 And then if you wish to call Mr. Pesall, feel
7 free to do that.

8 MR. PESALL: Would call Gerald Pesall for the
9 one question.

10 DIRECT EXAMINATION

11 BY MR. PESALL:

12 Q. Mr. Pesall, did you hear what Mr. Tylka had just
13 described about the sampling?

14 A. Yes. I think he explained it better than I did.

15 Q. To your recollection, is that what happened?

16 A. The best of my knowledge, I believe it was done that
17 way, yes.

18 MR. PESALL: No other questions.

19 MR. SMITH: Any questions of Mr. Pesall?

20 MR. WELK: No.

21 COMMISSIONER NELSON: I do.

22 MR. SMITH: Okay. Just a minute. Commissioner
23 Nelson has a question. I didn't see anybody else
24 indicate a question.

25 COMMISSIONER NELSON: Mr. Pesall, did you

1 accompany the folks when they were doing the cores?

2 THE WITNESS: Yes. I was out in the field with
3 them.

4 COMMISSIONER NELSON: And in the parcel that's
5 in question here you testified earlier that the cores
6 were taken along where the line would be located; is that
7 correct?

8 THE WITNESS: After I seen the map today,
9 actually I think we took the cores actually about where
10 the post is going to be put, right in that general area.

11 COMMISSIONER NELSON: How many cores did you
12 take in that location?

13 THE WITNESS: We had a sack full. Dumped a
14 bunch in a 5-gallon bucket, mixed them up, and he poured
15 them into a sack.

16 COMMISSIONER NELSON: Okay. Thank you.

17 MR. SMITH: Any further questions of Mr. Pesall?
18 Okay. You can go back to your seat.

19 (The witness is excused.)

20 MR. SMITH: And I think that concludes the
21 Intervener's direct cases; is that correct?

22 MR. PESALL: Yes. That's correct.

23 MR. SMITH: Okay. Staff, are you going to put
24 on anything?

25 MS. CREMER: Staff does not intend to. Thank

1 you.

2 MR. SMITH: Okay. Then we'll turn to Applicant
3 rebuttal. Are you going to put on a rebuttal case?

4 MR. WELK: No.

5 MR. SMITH: Okay. Well, I think the evidentiary
6 portion of the hearing is concluded. And at this point
7 why don't we turn to -- I'll address -- we talked about
8 this a little bit in the prehearing conference order, but
9 it was sort of a "may," not a "we're going to." That's I
10 remember anyway.

11 And so I'm going to sort of poll the parties as
12 to whether you would like to do closing arguments today
13 or whether you'd rather reserve that for following
14 briefing or what you'd like to do.

15 MR. WELK: We believe that we can adequately
16 address through submission of proposed findings and
17 conclusions and a written argument. So we do not intend
18 today to make an oral closing today.

19 MR. SMITH: Okay. Did you have something to
20 say, Commissioner Nelson?

21 COMMISSIONER NELSON: Just a question. I've got
22 several questions on the Settlement Stipulation that
23 would be addressed to both the owners and the Staff. I
24 don't know when the appropriate time to ask those is.

25 MR. SMITH: I think that's evidentiary hearing.

1 So I think we should do that before we turn to whether
2 anybody thinks we should do closings at this point.

3 Okay. So I think we should do that now.

4 COMMISSIONER FIEGEN: And then I also have just
5 a couple of questions of the Applicant if we could do
6 that or if it's not appropriate.

7 MR. SMITH: No. I think you're a Commissioner,
8 and any objection any of the parties to that, of allowing
9 the Commissioners to have witnesses retake the stand?

10 MR. WELK: If we know who they are and the
11 appropriate people to answer the question. Without
12 knowing what the question is, I don't know.

13 COMMISSIONER NELSON: Right. And I guess my
14 question, I don't know that it's even for witnesses that
15 have already testified, but it's for the Applicants
16 themselves and for Staff. And, you know, I can throw the
17 questions out and whoever they think can answer them is
18 fine with me.

19 MR. SMITH: Right. Why don't we do that. Why
20 don't you put the questions out there so that Mr. Welk
21 and Mr. Sutton can figure out who it is that ought to
22 address those. And also with Staff.

23 COMMISSIONER NELSON: Thank you. In looking at
24 the Settlement Stipulation, paragraph 26 talks about "If
25 the presence or operation of the project causes

1 unreasonable interference with radio television or other
2 license communication transmitting or receiving
3 equipment, the Applicant shall take all appropriate
4 action to minimize any such interference and shall make a
5 good-faith effort to restore or provide reception levels
6 equivalent to reception levels in the immediate areas
7 just prior to construction of the project."

8 This was the burden on the Applicant to resolve
9 any interference issues that arise as it relates to radio
10 TV or licensed communication equipment.

11 When I get to paragraph 33, and I do appreciate
12 the inclusion of 33, which deals with the GPS issue,
13 there all of a sudden it puts relatively little to no
14 burden on the Applicant to resolve the issue.

15 And so I guess my question is why is there a
16 different burden as it relates to agricultural equipment
17 interference versus other communication equipment?

18 MR. SMITH: And, Mr. Welk, I'm not sure who you
19 think the appropriate witness or witnesses would be to
20 address that.

21 MR. WELK: Well, if the Staff would like to go
22 ahead, we had a reason -- there was a reason it was
23 negotiated that way, and the biggest difference is the
24 license. As you notice, as Commissioner Nelson already
25 picked up on it, there's a difference between the

1 licensed communication equipment and the unlicensed. And
2 so there's a difference in that regard.

3 I'll let the Staff speak for themselves.
4 Mr. Leman was the one that consulted with us on that. So
5 that's the beginning framework of the difference,
6 Commissioner Nelson.

7 MR. SMITH: Let me ask this then. Karen, or
8 Ms. Cremer, in responding on behalf of Staff is there a
9 witness involved in this, or was this just a -- a
10 negotiated discussion on a legal basis with you?

11 MS. CREMER: Brian and Darren and I negotiated
12 with the Applicants on the language. There were, I don't
13 know, three or four drafts of the language that went back
14 and forth and discussions on the phone.

15 So my question would be, though, do you want
16 Brian to respond and not be under oath like we normally
17 do with a Stipulation? Do you want to stick him under
18 oath so you can use it for --

19 MR. SMITH: Well, if all we're talking about
20 here is negotiation, I mean, I think that's -- that's
21 just a legal matter that --

22 MS. CREMER: Right.

23 MR. SMITH: But if we're going to talk facts and
24 why -- you know, the facts that underlie, then I think
25 maybe we should have him sworn in.

1 MS. CREMER: I don't see there's any harm in
2 swearing him.

3 MR. SMITH: Okay. Do you want to take the stand
4 then, Brian, and be sworn in.

5 BRIAN ROUNDS,
6 called as a witness, being first duly sworn in the above
7 cause, testified under oath as follows:

8 MS. CREMER: I'll just run through some basic
9 questions here.

10 DIRECT EXAMINATION

11 BY MS. CREMER:

12 Q. Would you state your name and address for the
13 record.

14 A. My name is Brian Rounds. Work address?

15 Q. Yes.

16 A. 500 East Capitol, Pierre, South Dakota.

17 Q. And can you summarize quickly what your job
18 description is for purposes of this docket?

19 A. I'm a utility analyst at the Commission. I was
20 assigned to this docket as an analyst to analyze the
21 filing and make sure that it's filed within the law, and
22 then as we do in most of these cases, seek ways to
23 mitigate any impacts that might have been made.

24 Q. And then in case you have to offer an opinion later,
25 could you just give us a quick background of your

1 experience and education?

2 A. Sure. I have a degree in electrical engineering
3 from North Dakota State University in 2005. Spent a
4 small amount of time as a traffic design engineer for the
5 Department of Transportation before I was employed here
6 where I work mostly on siting cases, energy efficiency
7 cases, and some telecommunications cases.

8 Q. And as a part of your employment, you've gone to a
9 number of trainings; is that right?

10 A. That is correct.

11 Q. Thank you.

12 MS. CREMER: I will turn it over then for
13 questions.

14 MR. SMITH: Commissioner Nelson, fire away.

15 COMMISSIONER NELSON: Mr. Rounds, you heard my
16 question; is that correct? Can you respond?

17 THE WITNESS: Yes. So the first condition, I
18 think -- can you remind me of which number that is?

19 COMMISSIONER NELSON: 26.

20 THE WITNESS: No. 26 is somewhat of a standard
21 condition that we've used in past stipulations. And in
22 this case we wanted to make sure that it applied to -- we
23 had some questions about some of the agricultural,
24 electric equipment, RTK type of systems.

25 And one of the issues that came up was in

1 talking to some of the RTK vendors and some of the folks
2 who actually manufacture the equipment, a lot of them are
3 using different frequency -- different frequencies in the
4 area, depending on which vendor you're using.

5 So in Minnesota some cases they're using a
6 license spectrum, which is at a higher frequency. In
7 South Dakota, though, the folks that I talked to said
8 that they're using like 400 megahertz range where they
9 are actually in an unlicensed band.

10 And if you read closely, it says that any other
11 licensed communication transmitting or receiving
12 equipment. And so we thought that was a little bit
13 ambiguous when we're talking about the spectrum that the
14 equipment resides on.

15 I think you could probably make the argument
16 that that was licensed by the FCC. But we wanted to do
17 something a little more specific to make sure it was
18 covered. So that's why you saw the addition of
19 Condition 33.

20 I will say as far as putting the burden on the
21 Applicant, you know, I think I would contend that it
22 does. Despite the more clear language that the Applicant
23 intended to offer in Condition 32, the way we read that
24 last sentence I would say the last clause could be read
25 like this: Navigation, communication, transmitting, or

1 receiving equipment, and will assist those landowners in
2 implementation of mitigation.

3 And so we are saying that in assisting those
4 landowners in implementing that mitigation, there is a
5 burden placed on the Applicant.

6 COMMISSIONER NELSON: If the landowner incurs
7 expense in that mitigation, is that expense to the
8 landowner or to the Applicant under provision 33?

9 THE WITNESS: Well, I think you could -- I think
10 it's ambiguous. But I would assume that at least some of
11 that expense would be incurred by the Applicant.

12 COMMISSIONER NELSON: If there were expense
13 incurred in mitigation under paragraph 26, is that
14 expense incurred by the person receiving the interference
15 or by the Applicant?

16 THE WITNESS: I'd say that's much clearer in
17 showing that the Applicant is the one that has the
18 burden.

19 COMMISSIONER NELSON: Would Staff have any
20 objection to making paragraph 33 clearer in that if there
21 were any expense, that it would be to the Applicant, not
22 the landowner?

23 THE WITNESS: Speaking for Staff, I'm somewhat
24 hesitant, given the language that we've agreed to in the
25 Stipulation as far as supporting the Stipulation as it's

1 written. I think I'd probably have to defer that to my
2 attorney.

3 MR. SMITH: Can I ask a clarifying question
4 here? Are we talking about existing unlicensed systems
5 or anything somebody might purchase at any time out into
6 the infinitely foreseeable future here?

7 THE WITNESS: On Condition 26?

8 MR. SMITH: No. 33. Unlicensed.

9 THE WITNESS: I think that could be applied to
10 future equipment.

11 MR. SMITH: But as of now at least -- okay. I
12 guess that -- that kind of answers it. It just hits me
13 that at some point maybe -- and, again, we don't know
14 what vendors are going to do there, I guess, out in the
15 future, if they were going to go to lower demand or
16 whatever.

17 Then all the sudden we're in the license domain
18 again; correct?

19 THE WITNESS: Well, I mean, in all honesty, I
20 don't know of a case -- and I've been searching. I don't
21 know of a case in which any of the equipment that's
22 currently in use has been affected by a transmission line
23 anywhere, and I would assume that folks that are
24 designing that equipment are designing it around the
25 known interference issues with transmission lines. So I

1 don't think we're going to have an issue.

2 MR. SMITH: Okay. And can I ask you, as far as
3 you know, to your best knowledge, has the Commission ever
4 received any complaint or other kind of communication
5 out there from a -- from people who are near high
6 voltage transmission lines about interference with such
7 systems?

8 THE WITNESS: As far as I know, the Commission
9 has never received a complaint.

10 MR. SMITH: Okay.

11 COMMISSIONER NELSON: If I could continue, so
12 you would agree with Mr. Leman's earlier testimony that
13 other than very brief line of sight interruption, there
14 is very likely to be no interference with these ag GPS
15 systems; is that correct?

16 THE WITNESS: That is correct.

17 In fact, one of the -- one of the manufacturers,
18 one of the engineers who designs the equipment shared
19 with me that he actually mapped transmission lines using
20 the same -- the same equipment that they're putting on
21 tractors.

22 So, I mean, the job was to use the equipment
23 around transmission lines. They didn't have any issues.

24 COMMISSIONER NELSON: And so if a Commissioner,
25 for example, were to suggest a change to paragraph 33 to

1 require the Applicant to pay for any mitigation, the
2 likelihood of any liability or actual payment for
3 mitigation on the part of the Applicant would be very
4 low; is that correct?

5 THE WITNESS: That is correct.

6 COMMISSIONER NELSON: Moving on to another
7 topic. Thank you for helping us with that. And I'm
8 going to ask all of these same questions to the
9 Applicant. Okay? Just so that you all know where I'm
10 going.

11 The Soybean Cyst Nematode Mitigation Draft, when
12 I first saw that filed and it said Draft Plan and I read
13 through it my initial reaction was, okay, I understand
14 why they labeled it Draft because it's really brief. And
15 now I've come to understand that, no, this is, in fact,
16 the sum total of what's being proposed.

17 Are you comfortable that it is fully enough
18 fleshed out to really provide some significant parameters
19 for the construction of the line and protection in this
20 area?

21 THE WITNESS: I would say I'm not comfortable
22 with the plan as is alone. I would point to the extra
23 clause that we added that requires some additional
24 consultation with an expert or a specialist.

25 COMMISSIONER NELSON: Let me ask you about that

1 additional clause. It says specifically, and this is in
2 paragraph 17, "In consultation with a crop pest control
3 expert."

4 That doesn't necessarily mean that that person
5 has any expertise whatsoever with SCN. Would that be
6 correct?

7 THE WITNESS: Yeah. I think you could argue
8 that. I would not say that that's the intention.

9 COMMISSIONER NELSON: I understand that. But I
10 also understand that there are crop pest folks that have
11 varying degrees of expertise and varying --

12 MR. WELK: I would hope, Commissioner Nelson,
13 we would be smart enough to figure out if this addresses
14 SCN, that we would have someone who understood SCN.

15 COMMISSIONER NELSON: That would be my hope
16 also.

17 MR. WELK: Apparently the universe of SCN
18 experts is rather limited.

19 COMMISSIONER NELSON: That's what we gathered
20 today. Understand.

21 Let me move to a third issue. And I believe
22 this issue was brought up in Aberdeen about having a
23 construction manager that would be adequately trained on
24 compaction issues so that this would be able to determine
25 when they would need to halt construction if it would

1 cause excessive compaction based on the soil conditions
2 at the time.

3 Was there any consideration given in making that
4 a specific part of the Settlement Stipulation, or what
5 comfort does Staff have that that would be adequately
6 taken care of?

7 THE WITNESS: Can you tell me again what
8 exactly -- what exact condition you're --

9 COMMISSIONER NELSON: I'm not looking at any
10 particular condition here. I'm referring to something
11 that I heard in Aberdeen that concerned me. But I'm
12 wanting to know how is that being addressed?

13 THE WITNESS: Can you remind me the practice?

14 COMMISSIONER NELSON: Exactly.

15 In Aberdeen I understood there was concern about
16 compaction. And there was a line of discussion about,
17 okay, who has the ability to say we're not going to
18 construct today because the soil's too wet; we're going
19 to cause excessive compaction.

20 My recollection was that the Applicants
21 responded we've got a construction manager on site. That
22 person's got the authority to say no, today we're not
23 constructing because today's too wet. It's going to
24 cause excessive compaction. There was a question about
25 how do we know that person is adequately trained to make

1 those decisions?

2 So that's the point I'm at. How do we know
3 that? What is there in here that would give us some
4 comfort in that area?

5 THE WITNESS: Sure. I guess I would point to
6 more the Application and in explaining the way the
7 company intends to build the line and the practices they
8 intend to follow.

9 And I believe the Application and those types of
10 statements the company has made through data requests and
11 things like that have all been incorporated into the
12 Stipulation. So I don't think there's a condition that
13 points to that.

14 But I guess in my review of the Application I
15 didn't feel like that was a major concern. And given the
16 other transmission siting dockets we've had in the past
17 and lack of complaints received as a result of those, I
18 don't -- I guess I don't see that as being an issue.

19 COMMISSIONER NELSON: Thank you.

20 And the last question, and this is something
21 that I've talked about at each of our public meetings, is
22 whether or not the line could be moved from in the field
23 to the edge of the road right of way.

24 Obviously, that's not something that's being
25 required. Did Staff give that any consideration as to

1 making that a requirement? And I understand and I do
2 appreciate the Applicant's response to the legal hurdle
3 that that would pose in having to apply for variances or
4 waivers from the county.

5 THE WITNESS: Well, Staff, I guess -- we have a
6 legal opinion or Staff as a whole believes that we're not
7 allowed to tell the company where it put the line. We
8 can tell them yes or no or yes with conditions. So we
9 don't ever take that sort of tact.

10 We did ask a lot of questions as to why they
11 wouldn't put it along the road. I think for the most
12 part we were all in agreement that that's probably the
13 best place to put the line, unless there's some other
14 extenuating circumstances that require it to be out in
15 the field.

16 COMMISSIONER NELSON: That's all the questions I
17 had for you.

18 MR. SMITH: May I ask one follow up related
19 to --

20 COMMISSIONER NELSON: Sure.

21 MR. SMITH: Could you turn to paragraph 18.

22 Was it Staff's basic understanding that that
23 paragraph adequately addresses the compaction issue, that
24 you restore to what is basically achievable?

25 THE WITNESS: Yes. I would say as far as my

1 answer to Commissioner Nelson's question, I think he was
2 talking a little bit more about the process than the end
3 result.

4 MR. SMITH: Okay. You mean of not causing
5 compaction in the first place?

6 THE WITNESS: Correct.

7 MR. SMITH: Okay.

8 COMMISSIONER NELSON: That's all the questions
9 I've got for Mr. Rounds, unless -- I see there are some
10 other hands waving.

11 COMMISSIONER FIEGEN: Not for Mr. Rounds.

12 MR. SMITH: Not for Mr. Rounds. Okay.

13 Chairman Nelson, do you have any questions of
14 Mr. Rounds related to --

15 CHAIRMAN HANSON: Chairman Nelson?

16 MR. SMITH: I'm sorry. It's getting late.
17 You're both "sons."

18 Chairman Hanson.

19 CHAIRMAN HANSON: Mr. Roundson [sic], could you
20 tell us when we dealt with Keystone and we dealt with
21 similar situations here from the standpoint of
22 compaction, did you design or do you know if that --
23 those paragraphs were designed similarly to how
24 Keystone's was designed?

25 I didn't bother going back and looking at those

1 conditions, and I had forgotten to do that.

2 THE WITNESS: And I was not actually involved in
3 Keystone. I can say that a lot of the terminology in
4 here did come out of conditions that were imposed in
5 Keystone and were probably first used in Docket EL10-016,
6 which was the Brookings -- Brookings to Hampton CapX
7 line.

8 We had a couple of other analysts, engineers,
9 who had been active in the Keystone line and brought some
10 of those conditions over. I think in the past we weren't
11 nearly as concerned with a couple of the I'd say
12 construction practices prior to the Keystone siting.

13 CHAIRMAN HANSON: We spent a great deal of work
14 on it at that juncture to make sure we had it right. I
15 was just curious on it. I'll take a look at it.

16 Thank you. That's all I have.

17 MR. SMITH: And you had none for Mr. Rounds,
18 Commissioner Fiegen?

19 Okay. Then we'll turn to the parties. I'll get
20 to you there, Mr. Schuring. I thought maybe we should go
21 in our usual party order here.

22 Applicant, Mr. Welk, any questions for
23 Mr. Rounds?

24 MR. WELK: No. I think we will respond to
25 Commissioner Nelson's questions similar to what

1 Mr. Rounds did.

2 MR. SMITH: Okay. Mr. Pesall, any questions?

3 MR. PESALL: Yes. Thank you.

4 CROSS-EXAMINATION

5 BY MR. PESALL:

6 Q. Turning your attention to No. 26 of the Settlement
7 Agreement, would it be yours or Staff's interpretation
8 that the Applicant's obligation to help mitigate
9 communication interference apply to nonlicensed,
10 two-way radio communications like CB?

11 A. I would say to the extent that the equipment is
12 licensed, I would argue that it does. The reason that we
13 had created the other clause was because we thought it
14 maybe was a little bit ambiguous towards licensed --
15 licensed equipment.

16 Q. So just to be clear, as long as the equipment is FCC
17 licensed, commercial, off-the-shelf equipment, whether
18 the operator has a license or not, it's your
19 interpretation that this would cover it?

20 A. That's correct.

21 MR. PESALL: No other questions. Thank you.

22 MR. SMITH: Mr. Schuring.

23

24

25 CROSS-EXAMINATION

1 BY MR. SCHURING:

2 Q. Mr. Rounds, in preparing the Stipulation, are you
3 aware if there is any bonus or penalty in reference to a
4 deadline for completion?

5 A. You mean as far as --

6 Q. My question refers to -- let me explain it just a
7 little bit further before you answer it.

8 Keystone was brought up. I have direct experience
9 with Keystone because it crosses our land a mile and a
10 half. There were some of us landowners that were assured
11 at public hearing and there was approximately 10 of us
12 that took them to court on their easement. And under
13 oath they testified we won't be out there unless you can
14 be out there.

15 Who's going to have control of when they're on the
16 property and when they're not. And they told the judge,
17 well, we won't be out there if it's not fit to be out
18 there.

19 Bottom line is they took dozers out and pushed the
20 topsoil away so they could continue the work. And one of
21 the project people said we've got to get this done. We
22 got a deadline to meet.

23 So has there been any discussion that -- I don't
24 think that language fully protects that from happening if
25 there's nobody in charge to say -- and it almost has to

1 be an independent party to say you shouldn't be working
2 today because the conditions aren't fit.

3 Was there any discussion or any reference to
4 anything like that?

5 A. Any reference to an independent party?

6 Q. Well, I don't think the language that you've
7 incorporated into the Stipulation says, no, they can't
8 work -- you know, somebody's got to make -- somebody's
9 got to call that shot.

10 A. Well, I think the Applicant has said that they won't
11 do that; right? So under this Stipulation they're
12 basically swearing that they won't.

13 Q. We also had that same commitment or verbiage before,
14 and it didn't stop them. I realize that was a pipeline
15 versus a transmission line, but still you're hiring
16 outside parties to do the work.

17 And that's why my question is if there's a bonus or
18 a penalty on a completion date, they tend to be out there
19 when they shouldn't be out there.

20 A. And, you know -- in Keystone I believe we had a
21 third party -- I can't remember the word.

22 MS. CREMER: Liaison.

23 A. A liaison is what we called them. And there was the
24 consideration of doing something like that for this
25 project. I'll say in the end we obviously didn't put it

1 in the Stipulation at the end of the day. But, I mean,
2 it's something we've done in the past.

3 Q. And for what reason didn't you think it was
4 necessary in this project?

5 A. Well, in the case of putting in a pipeline the
6 impacts obviously to it the ground are quite a bit more,
7 that you've got to dig up, you know, basically a line
8 from the north end of the state to the south end of the
9 state.

10 In this case you're just drilling holes, a couple of
11 holes per mile. So, you know, it's -- it's, at least in
12 order of magnitude, smaller impact.

13 Q. Pipeline you're not driving cement trucks out across
14 the field. You've got heavy equipment removal -- those
15 core samples got to be removed someplace.

16 MS. CREMER: And I'm just going to object at
17 this point. We're getting a little far afield.

18 MR. SCHURING: Okay.

19 MR. SMITH: Okay.

20 MR. SCHURING: No further questions.

21 MR. SMITH: I mean, I'm just going to ask you
22 one question on that because it's the opposite of what
23 I've seen with pipeline is would you agree that the
24 equipment used in pipeline construction is massively
25 huger and more land affecting than will be used in this

1 situation? If you know.

2 THE WITNESS: I would say in my limited
3 experience that the equipment used in a pipeline -- or to
4 construct a pipeline is quite a bit larger.

5 MR. SMITH: Thank you.

6 MS. CREMER: I do have a question.

7 MR. SMITH: Go ahead.

8 REDIRECT EXAMINATION

9 BY MS. CREMER:

10 Q. And I think it's 17. If you look at paragraph 17, I
11 think we used the term "crop pest control expert."

12 Do you see that?

13 A. Yes.

14 Q. Do you recall when we were drafting this -- I think
15 we originally had soybean nematode cyst -- soybean cyst
16 nematode expert.

17 Do you recall why we changed that?

18 A. I do not.

19 Q. So if I prompted you, do you recall that we did that
20 thinking it was better to have it broader in case there
21 was something other than a soybean cyst nematode?

22 A. Yes. Yes. I believe that was the idea. I think
23 that was Darren's idea, not mine.

24 Q. And I think you would be correct.

25 MS. CREMER: And that's all I have.

1 MR. SMITH: Okay. Any other questions of
2 Mr. Rounds?

3 Okay. Thank you.

4 (The witness is excused.)

5 MR. SMITH: Commissioner Nelson, do you want to
6 proceed?

7 COMMISSIONER NELSON: Yeah. I think if we can
8 go to the Applicant then and delve into this question, my
9 question in the difference in paragraphs 26 and 33,
10 whoever you'd like to have deal with that.

11 MR. WELK: Well, 26 would be Jon Leman. That
12 was the one that we consulted with on that.

13 Do you want him to be called, or do you want me
14 to just try to answer it?

15 COMMISSIONER NELSON: Why don't you just give me
16 your answer, and then let's go from there.

17 MR. WELK: Well, I think the thing that we would
18 be concerned about is in responding to the unlicensed
19 agricultural navigation equipment we would want to be
20 sure that it's not a line of sight issue. We've already
21 agreed that if that was the logical conclusion, the pole
22 shouldn't be there. All right?

23 So we want to make sure if the interference is
24 because of the structure itself in a sense of line of
25 sight, that's not an unreasonable inference if you permit

1 the line.

2 So other than that, I'll ask Jon. Where is he
3 at?

4 We don't have anything else to add other than
5 what the Staff said.

6 COMMISSIONER NELSON: So would you be -- and
7 just so that you know, I concur with Mr. Leman and
8 Mr. Rounds in that the likelihood of any interference
9 other than the line of sight issue -- you know, I am
10 convinced that it's not there.

11 Would you be opposed to adding language to 33
12 similar to what we find in 26 requiring the Applicant to
13 assist with the mitigation if anything like that would be
14 found?

15 MR. WELK: No. We wouldn't object, as long as
16 you except out the "line of sight."

17 COMMISSIONER NELSON: Absolutely. That's
18 understood, and that's on the record and I think
19 everybody understands that. I would certainly be -- and
20 I would leave it up to you and Staff to figure out the
21 exact language of that change.

22 Moving on then to the Soybean Cyst Nematode
23 Draft, Mitigation Draft, and I -- I understand Mr. Ford
24 as he was testifying that a lot of it's going to depend
25 on what you find when you get out there.

1 But I'm wondering is there any way to flesh that
2 out a little bit further so far as what your sampling
3 methodologies might be?

4 MR. WELK: Well, if you look at Exhibit 23, it
5 talks about the protocols established by SDSU. So we
6 didn't want to micromanage the protocol and tell
7 somebody. So at least from the Applicant's standpoint,
8 we felt that we all had some confidence in SDSU. So, I
9 guess, even those of us that come from further south
10 institutions --

11 COMMISSIONER FIEGEN: Be careful.

12 MR. WELK: Very careful. So we thought since
13 they are our experts in the state, we would want to do
14 that.

15 And to be quite candid with the Commission and
16 others, we've tried to ask for private information and
17 they won't give it to us and they're very reluctant and
18 we don't want to put them in the middle of anything.

19 We are going to try to have them as a
20 consultant. But as those of you that know with higher
21 ed., they may not want to do that, for many reasons.

22 So we don't know where we're going to go. I
23 think you can trust us to find somebody who will be a
24 broader expert and have some SCN, but we don't have some
25 person now.

1 So we want to have somebody that -- if it isn't
2 us determining the protocol, it's some expert. And
3 that's really what we're getting to. And I don't know at
4 this point unless we get into the minutia and you want to
5 micromanage the protocol, it ought be developed with the
6 expert's consultation.

7 So that's why it's somewhat broad. And you can
8 see even in the discussion today, when you get into
9 micromanaging that area, we think it's up to the expert.
10 And we'd like to use SDSU, but we understand their
11 limitations. We may not be able to. That's where it's
12 currently at.

13 COMMISSIONER NELSON: Well, you've put me in a
14 little bit of a box. Because, obviously, I'm not going
15 to bash or question SDSU's expertise.

16 So you've attempted to find somebody there who
17 can establish a protocol, but thus far have not found a
18 person or willingness; is that correct?

19 MR. WELK: Well, we know, contrary to
20 Dr. Tylka's situation, the person he identified as
21 Emmanuel someone has been who we've been talking with.
22 Not me.

23 But I think there's been a reluctance. Because,
24 first of all, the practicality of this is when is the
25 sampling going to be done? And those of you in

1 Government understand this well. There's a fiscal year
2 that starts July 1. And when is there a contract? And
3 when does it have to be approved? And this line is a
4 couple of years away. And we're into that minutia,
5 trying to do that, and higher up is trying to approve it,
6 and all the things you're very familiar with.

7 So we have to work through those machinations
8 with SDSU, whether they want to do it or not do it. If
9 they perceive they're not -- you know, they want to
10 maintain neutrality in testing protocols. All of that
11 we're dealing with, and that's why it's impractical right
12 now to address it.

13 That's why we thought in order to give you some
14 degree of solace, we're okay to get the expert. You
15 know, we know we have to have somebody who has that
16 expertise. And, as Karen said, it's even broader than
17 that, but it is a limited amount and we'll go to our
18 first resources, and if not, we'll continue to look.

19 The good news is it's not next week.

20 COMMISSIONER NELSON: Yes. That's correct.
21 Thank you.

22 I think you make -- the only other question I'd
23 throw your direction is this question of a construction
24 manager adequately trained in compaction and making sure
25 they're sensitive to not being out there when they

1 shouldn't.

2 MR. WELK: That's in the -- not my wheelhouse.
3 That's more Mr. Ford.

4 And, Mr. Ford, do you want to respond to that?
5 Henry.

6 He's trying to get the answer from Danny.

7 MR. FORD: Yeah. We're just trying to figure
8 out if there is --

9 I guess what we're trying to figure out is if
10 there is a means of acquiring that kind of training other
11 than OJT. You know, most of those contractors that we
12 hire as construction managers, you know, have that type
13 of experience so that they, you know, have something to
14 rely on.

15 But whether there is any kind of particular
16 course or certification that they could get in soil
17 compaction, I guess we're unaware of that.

18 COMMISSIONER NELSON: I think at this point I
19 probably don't have any further questions. And I
20 understand that answer. My gut tells me -- and I'm from
21 a farm background. I mean, that's where I come from.

22 And I suspect that a farmer's going to look at
23 that issue a whole lot differently than your construction
24 manager. Because your construction manager's job is to
25 get the thing built. And a farmer's job is to make sure

1 that the land is productive for perpetuity. They look at
2 it completely differently.

3 And I guess what I'm looking for is some
4 assurance that the construction manager will be sensitive
5 to that perpetuity desire of productivity from that
6 property.

7 And I fully understand that the Settlement
8 Agreement requires remediation. But it's a whole lot
9 better if you can prevent the problem in the first
10 place.

11 That I think is all the questions I've got.
12 Thank you.

13 MR. SMITH: Okay. Any other Commissioner
14 questions involving the Stipulation?

15 Commissioner Fiegen?

16 COMMISSIONER FIEGEN: Not for sure exactly if
17 it's about the Stipulation.

18 MR. SMITH: Okay. Well, let's discuss it, and
19 we'll go the direction we need to go.

20 COMMISSIONER FIEGEN: Mr. Welk, you know, we
21 talked about crop insurance today. And I know that gets
22 to be frustrating because we don't know how many insurers
23 are out there, and we don't know the magnitude of it
24 because we don't know the damages that could happen the
25 next 10 years and if they will even claim on that crop

1 insurance.

2 But today -- I believe it was today or
3 yesterday -- you did ask if you could visit with their
4 agent and then the crop insurance to get more
5 investigation and more information.

6 What do you plan to do with that? Because, as I
7 talked about today I think it was, there's nothing in
8 this Stipulation about crop insurance. And it would be a
9 little hard to write because of the 10-year issue, and we
10 just don't when the damages are going to occur.

11 But what do you plan to do?

12 MR. WELK: Well, we asked, Commissioner, to look
13 at the policies. As I told you, this is a contract for
14 insurance. And so in its simplest terms it agrees to pay
15 certain things and certain terms and conditions.

16 And I've been doing this 40 years, insurance
17 comp. And everyone -- people have a different
18 perception. My State Farm homeowners policy I think is
19 the same as American Family. It's not. There are
20 different exclusions, and there are different
21 definitions.

22 So what I was trying to point out to you
23 yesterday, I want to see the policies and to see -- if
24 you're trying to answer a question, to show -- I mean, we
25 can go out and get a bunch of policies, but you can't

1 change the terms and conditions of the policy. The
2 policy is what it is.

3 So I just wanted to look at the terms and
4 conditions, look at the two that we have, and see what we
5 have. Because we've got two people who put that issue
6 and you did here in the record so at least we ought to be
7 able to look at theirs.

8 So that's all I want to do is look at it from
9 the legal standpoint. From the insured's standpoint it's
10 totally different from the insurer's standpoint. And you
11 can't change that. I can't change that. It's a
12 contract. So that was my purpose in asking for that.

13 COMMISSIONER FIEGEN: So there's necessarily no
14 plan on maybe amending the Stipulation of put something
15 in there of a 10-year look back period if damages occur
16 and it's not covered?

17 MR. WELK: No. There's no current intent.
18 We're playing on the crop damage, as was explained
19 before. You know, for two years we're paying up front,
20 you know, to try to take care of that. The question
21 is -- I mean, people can reasonably disagree whether
22 that's adequate or not. But we've told you what we
23 intend to do.

24 And my point in asking you that is to see what's
25 there. We believe -- we've been told through some

1 experts that there are definitions and exclusions that
2 would not put a temporary disturbance as part of the
3 damage calculation.

4 I don't know. That's why I need to see the
5 contract.

6 COMMISSIONER FIEGEN: Obviously, I do not know
7 either. That's why I asked the questions.

8 My final question is about the route. And as
9 you know, we can grant or deny or put stipulations on --
10 or conditions, I guess. So we don't really -- we cannot
11 direct you where to put your route.

12 But just could you help me understand the
13 process? And this might be for Mr. Ford. In Aberdeen
14 the last public hearing we had some of the Interveners
15 that suggested a change of route.

16 And I know it's very frustrating when it gets to
17 be this late in the game and we are now under state
18 statute to get this done in a timely manner and we only
19 have so much time before the Applicant has to have a
20 decision by the Commission.

21 But tell me about the process on what you do or
22 what you've done with the route changes that some of the
23 Interveners have wanted.

24 MR. WELK: I would put Mr. Ford on, or I can
25 summarize what I believe is already in the record.

1 The project has considered the route requests
2 very seriously. And it was described in the testimony
3 and also the data responses that there is a committee
4 that sits. And the way it starts is there is actually a
5 formal route request.

6 Part of the reason you have seen it and today of
7 people getting maps and deciding it goes down to this
8 section line and that section line and it becomes
9 garbled.

10 So it starts with a written form from the
11 landowner with the proposed route. There is engineering
12 and legal and environmental look at all of those. And
13 sometimes you found out there has been a better route.
14 But what one person thinks is a good route from one
15 perspective may not be. So it's a team effort to look at
16 it in a studied manner. And we've approved a number of
17 them.

18 Some, as in the Peterson reroute, it had to do
19 with the center pivot. Went out there and said I'm going
20 to plan a -- and we did that, and then it creates another
21 issue.

22 So you can't really as I understand it from the
23 engineers say, okay, we'll do a reroute without having
24 another route approved. And that includes landowner and
25 all the other things. So it is a complicated process,

1 and it's not something of just writing on a map that can
2 be done.

3 So that's the process. It's been done. There's
4 a lot of input for people. It's done seriously. It's at
5 the highest levels; legal, environmental, engineering all
6 look at this. So that's the process, and that's what
7 we've gone through.

8 COMMISSIONER FIEGEN: Sure. And I certainly
9 looked at all your reroutes and looked at the denied
10 ones, et cetera.

11 But since the Aberdeen hearing that we had,
12 which we had the list of denied ones and your processes
13 which you certainly just clarified that is in the record,
14 what did you do with the Aberdeen suggestion when we had
15 the public hearing, that group of Interveners? I mean, I
16 know all the other stuff because I've read through all of
17 that.

18 MR. WELK: Well, I can have the KLJ people
19 explain that or have Henry explain that.

20 Part of it is what is most frustrating, and I
21 know it is for Mr. Morehouse, is to come up with a route
22 that's outside the law.

23 I mean, so I can sit here say we'll study it and
24 maybe give you my sense. But you're going -- then we're
25 going to have to go through all re-inputs. Because I

1 think it's statutory. I don't think -- I'm not even sure
2 they can waive it.

3 I know Mr. Smith and I have, you know, talked
4 about that, whether that's even something you can legally
5 do, whether you have jurisdiction to do that. So it
6 depends on where it's at.

7 I can ask Mr. Ford or others what we did. Part
8 of it is trying to find out the route. And I, like you,
9 Commissioner Fiegen, couldn't follow. Maybe it was the
10 lateness of the hour. But I couldn't follow it. And
11 partly I had -- you can see still -- that's why it was
12 sent to him, 207 was sent to him. Tell us what the route
13 is. Tell us what it is because we have to start the
14 process.

15 So there were communications. Maybe I don't
16 know because I wasn't involved in it. If you want
17 someone to answer that precisely?

18 COMMISSIONER FIEGEN: Thank you. Yes, I would
19 like that. Thank you.

20 MR. WELK: Who would be the right one to talk
21 about that?

22 Mr. Ford represented to me it did not go to the
23 committee. It went only to KLJ. So I would have to have
24 somebody from KLJ answer that for you.

25 Mr. Fasteen, are you able to do that? Or we

1 also have the agent who was here. Who can testify about
2 that?

3 Terry?

4 MR. FASTEEN: I'm just reading what the agents
5 wrote.

6 MR. SMITH: We're going to take a few minutes,
7 and whoever you -- is going to have to take the stand and
8 be sworn for this.

9 MR. WELK: That's fine.

10 MR. SMITH: So we will do that.

11 Say, Tom, one other question before we break
12 here. On those insurance policies, and I don't -- I
13 guess, procedurally it's kind of weird, but, I mean, the
14 documents that are Intervener documents basically, are
15 those something that the parties could agree that we
16 could introduce as exhibits at the time they're
17 produced?

18 MR. PESALL: I think Mr. Pesall would be willing
19 to stipulate to late admission of an exhibit for his
20 policy at least.

21 MR. SMITH: What do you think, Mr. Welk?

22 MR. WELK: Yes. I believe that's the
23 appropriate procedure, and we should ask who's going to
24 furnish that.

25 Mr. Schuring, were you the one?

1 MR. SCHURING: Yes. I have no issue with it.

2 MR. SMITH: And it doesn't bother me if you want
3 to, you know, remove names and whatever might be in
4 there. You know, I don't know what's in them. If you
5 wanted to white that out or black it out so it's not all
6 public. But I just think those should be part of the
7 record.

8 Any objection to having those introduce,
9 Mr. Morehouse?

10 MR. MOREHOUSE: No, there's not.

11 MR. SMITH: Okay. Karen, any objection?

12 MS. CREMER: No. No objection.

13 MR. SMITH: Okay. Well, why don't we go that
14 route and, you know -- those can be circulated to all
15 parties, correct, before we --

16 MR. WELK: Yes. Why don't we reserve
17 Exhibit 208 for Mr. Pesall and 209 for Mr. Schuring's
18 insurance policy.

19 MR. PESALL: Could I use 111, just so my
20 numbering system's --

21 MR. WELK: I'm sorry. 111 and 208.

22 MR. SMITH: With that, should we take a break to
23 give them a chance to figure out who it is that should be
24 addressing those questions?

25 Five minutes?

1 (A short recess is taken.)

2 MR. SMITH: Let's call the hearing back to
3 order.

4 And, Mr. Welk, what have you decided with
5 respect to --

6 MR. WELK: Well, I made some inquiry, and I have
7 a witness. But here's what the bottom line is as I've
8 been informed.

9 The belief of KLJ, the land agents, is that they
10 believe that Mr. Morehouse had accepted the 1,200 foot
11 deviation. So the first time that they learned that he
12 didn't was at the May hearing, May 20. So they thought
13 they had a deal, so to speak, in parlance.

14 There has been no contact with him since. There
15 is a process, a reroute process, that should be followed.
16 I'm not sure today even what his route is and where it
17 is. And when the discussion was had about what his other
18 route was it was outside of the statutorily required
19 notice period so there wasn't a follow up. Because the
20 route couldn't possibly be done they didn't think at that
21 point in time, and so there was no contact.

22 And I have an agent, the actual agent that
23 spoke, and would testify about her understanding as to
24 the 1,200 foot was there. But I can represent after
25 talking with them there was no contact with him

1 afterwards.

2 So that's the representation, Commissioner
3 Fiegen.

4 MR. SMITH: Commissioner Fiegen, do you want to
5 weigh in?

6 COMMISSIONER FIEGEN: No additional questions.

7 MR. SMITH: Any other Commissioner questions at
8 this point in time?

9 Okay. Then let's turn -- you know, Mr. Welk has
10 expressed his views on oral argument today. And, again,
11 another option, of course, would be either oral argument
12 or just Commissioner questions at the August 6 decision
13 proceeding when the Commission takes it up for decision.

14 Mr. Pesall, what's your thought?

15 MR. PESALL: Well, I would like the opportunity
16 to make a very brief oral argument either today or
17 perhaps it would be better to do so at the beginning of
18 the proceedings on August 6.

19 MR. SMITH: It just hit me then that the
20 briefing would be done. But it's up to you. Either way
21 you want to do it. And after you've heard the briefing,
22 you know, you guys might -- you know, it might offer you
23 an opportunity then to orally respond and address things
24 that have occurred in that process. But it's up to you.

25 MR. PESALL: Having appeared before the Supreme

1 Court but not this Commission before, I would prefer to
2 brief and then argue.

3 MR. SMITH: Any Commissioner thoughts on that?
4 You know, and I know -- Commissioner Fiegen has a little
5 bit of a -- she's probably going to be on the telephone.
6 But, on the other hand, in this day and age, you know,
7 you can basically be present no matter where you are.
8 And so --

9 Well, should we at least tentatively plan on
10 that? We have a briefing schedule set by order. And we
11 will at least, you know, keep open the opportunity for
12 oral argument on the 6th, if the parties so choose to do
13 so.

14 How is that?

15 MR. PESALL: Then we have the option of waiving
16 it if it didn't appear necessary?

17 MR. SMITH: Right. It could be with written
18 submissions, the exchange, that everybody may feel that
19 we've just about beaten a dead horse at that point in
20 time.

21 Why don't we leave the decision on that for
22 discussion and hopefully agreement at a later date once
23 we see kind of how the briefing goes. How is that?

24 Any thoughts from any of the other parties as to
25 that?

1 Mr. Schuring or Mr. Morehouse, is that
2 acceptable, that we go that path or --

3 MR. SCHURING: Yes.

4 MR. MOREHOUSE: Sure.

5 MR. SMITH: Because, you know, I mean, it's not
6 quite, I guess, oral argument, but we've had a -- we've
7 heard a lot about what's going on already in the last two
8 days so maybe giving it a rest for a month while we brief
9 and all of that isn't a bad idea.

10 Karen, any thoughts?

11 MS. CREMER: I'm all out of thoughts. I got
12 nothing.

13 MR. SMITH: Okay. Well, I think we'll do that.
14 We've got the briefing schedule set up. And I think, as
15 far as I'm concerned, unless someone has something else
16 to address, I'm going to adjourn the hearing.

17 With that, the hearing is adjourned in
18 Docket EL13-028. And thank you, everyone.

19 (The hearing is adjourned at 4:25 p.m.)
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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 10th and 11th
11 days of June, 2014, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 30th day
14 of June, 2014.

15

16

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Cheri McComsey Wittler,
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Registered Professional Reporter
Certified Realtime Reporter

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\$2,000 ^[1] - 326:8 \$3,000 ^[1] - 298:4 \$30 ^[1] - 263:17	10-year ^[6] - 267:4, 267:23, 284:3, 326:21, 396:9, 397:15	11:30 ^[1] - 278:6 11th ^[2] - 146:4, 408:10	154,165 ^[1] - 147:5 16 ^[7] - 158:20, 241:5, 252:1, 252:6, 254:1, 264:8	179:16, 188:8, 188:11, 188:21, 204:13, 205:8, 205:10, 205:20, 256:3, 258:6, 263:24, 263:25, 264:1, 264:3, 264:5, 305:1, 315:6, 346:9, 404:12	
'	100 ^[32] - 157:19, 165:2, 195:14, 211:14, 217:13, 217:14, 217:16, 217:20, 217:21, 217:24, 218:1, 218:4, 218:6, 218:7, 218:12, 237:12, 237:22, 238:2, 239:10, 240:1, 250:15, 264:17, 264:20, 309:13, 321:14, 336:19, 337:24, 341:15, 363:23, 364:4	12 ^[39] - 148:3, 148:3, 148:4, 148:5, 148:6, 148:7, 148:8, 148:8, 148:9, 148:10, 148:11, 148:11, 148:12, 148:12, 148:13, 148:14, 148:14, 148:15, 148:15, 148:16, 148:16, 148:17, 148:17, 148:18, 148:18, 148:19, 150:24, 171:6, 245:8, 245:13, 245:22, 245:23, 247:11, 247:13, 282:1, 345:24, 347:4, 350:19	160 ^[2] - 166:25, 171:14 16A ^[2] - 148:14, 240:16 16B ^[1] - 148:15 16C ^[2] - 148:15, 241:5 17 ^[17] - 148:11, 148:16, 149:19, 162:3, 240:21, 276:2, 276:5, 277:6, 277:12, 292:2, 306:17, 316:11, 356:18, 378:2, 388:10	20-acre ^[1] - 305:1 200 ^[9] - 151:2, 186:23, 187:21, 201:8, 230:16, 233:6, 235:23, 236:10, 259:17 200,203 ^[1] - 147:7 200-year ^[6] - 172:21, 186:10, 186:12, 186:13, 187:7, 187:14	
'90s ^[2] - 232:21, 236:21 '95 ^[1] - 243:22	100-foot ^[1] - 217:18 100-year ^[1] - 187:21 101 ^[3] - 149:3, 245:8, 245:10 102 ^[5] - 149:3, 245:11, 247:10, 252:2, 254:1 103 ^[1] - 149:4 1031 ^[3] - 340:1, 340:16, 340:17 104 ^[2] - 147:4, 149:4 105 ^[2] - 149:5, 257:10 106 ^[1] - 149:5 107 ^[1] - 149:6 108 ^[1] - 149:7 109 ^[1] - 149:7 10th ^[2] - 146:4, 408:10	120 ^[1] - 281:14 120,56 ^[2] - 291:25, 292:3 125 ^[1] - 279:23 12th ^[1] - 279:25 13 ^[9] - 148:12, 148:19, 148:20, 148:21, 148:21, 148:22, 148:22, 152:5, 250:16 135,137 ^[1] - 147:4 14 ^[24] - 148:13, 148:19, 148:20, 148:21, 148:21, 148:22, 148:22, 149:3, 149:3, 149:4, 149:4, 149:5, 149:5, 149:6, 149:7, 149:7, 149:8, 237:4, 237:5, 237:10, 315:11, 315:15, 316:21, 316:22	170 ^[1] - 147:6 173,182 ^[1] - 147:6 18 ^[4] - 148:16, 158:16, 159:12, 381:21 180 ^[2] - 336:20, 340:17 188 ^[1] - 147:6 189 ^[1] - 147:6 19 ^[4] - 148:17, 152:19, 154:3, 340:4 19.1 ^[2] - 153:1, 153:5 192,199 ^[1] - 147:6 1938 ^[1] - 316:19 1955 ^[1] - 149:8 1956 ^[1] - 149:5 1978 ^[1] - 233:15 1980 ^[1] - 340:4 1990 ^[2] - 228:22, 233:15 1995 ^[4] - 234:12, 243:13, 243:17, 244:14 1996 ^[2] - 149:7, 234:11 1998 ^[1] - 149:6 1:00 ^[1] - 278:12 1A ^[2] - 148:3, 239:12	2000s ^[1] - 249:5 2002 ^[1] - 171:1 2005 ^[1] - 372:3 2007 ^[1] - 149:7 201 ^[1] - 149:11 2013 ^[3] - 317:23, 318:6, 321:22 2014 ^[7] - 145:9, 146:4, 149:5, 276:1, 356:18, 408:11, 408:14 2019 ^[1] - 297:9 202 ^[1] - 149:11 203 ^[1] - 149:12 204 ^[1] - 149:12 205 ^[1] - 149:13 206 ^[1] - 149:13 207 ^[13] - 149:16, 342:17, 342:19, 343:4, 344:7, 344:22, 349:24, 349:25, 351:2, 354:4, 354:6, 360:11, 401:12 208 ^[2] - 403:17, 403:21 209 ^[1] - 403:17 21 ^[1] - 291:2 214,216 ^[1] - 147:6 217,219 ^[1] - 147:7 219 ^[1] - 147:6 21A ^[7] - 148:18, 290:8, 290:11, 290:13, 290:21, 291:7, 292:11 21B ^[4] - 148:18, 290:8, 290:11, 291:6 21C ^[9] - 148:19, 290:8, 290:11,	
1	1 ^[16] - 148:3, 155:4, 205:7, 209:3, 226:13, 226:18, 239:11, 239:12, 239:14, 269:24, 274:17, 278:22, 288:3, 288:4, 313:24, 393:2 1,000 ^[1] - 328:20 1,200 ^[22] - 219:14, 219:17, 220:1, 345:8, 345:9, 345:11, 346:5, 352:24, 353:3, 353:10, 355:8, 355:13, 355:17, 355:20, 357:19, 358:2, 358:8, 358:10, 358:24, 361:6, 404:10, 404:24 1,350 ^[2] - 316:25, 327:23 1,500 ^[2] - 281:3, 326:8 1,600 ^[1] - 280:2 1-mile ^[1] - 188:20 1.4 ^[1] - 291:3 10 ^[33] - 148:11, 151:8, 159:12, 159:17, 159:20, 162:3, 187:3, 204:14, 209:3, 210:2, 222:15, 230:7, 231:3, 249:13, 263:25, 264:15, 266:1, 266:22, 267:7, 267:16, 283:3, 283:24, 301:21, 302:18, 304:17, 304:19, 346:9, 348:1, 363:13, 363:23, 385:11, 395:25	11 ^[34] - 145:9, 148:3, 148:3, 148:4, 148:5, 148:6, 148:7, 148:8, 148:8, 148:9, 148:10, 148:11, 148:11, 148:12, 148:12, 148:13, 148:14, 148:14, 148:15, 148:15, 148:16, 148:16, 148:17, 148:17, 148:18, 148:18, 148:19, 152:19, 232:3, 249:18, 315:11, 315:15, 316:21 110 ^[1] - 149:8 110,129 ^[1] - 147:4 111 ^[2] - 403:19, 403:21 112 ^[3] - 240:2, 240:11 118 ^[4] - 304:9,	142 ^[1] - 147:5 145-385 ^[1] - 145:9 15 ^[28] - 148:14, 149:3, 149:3, 149:4, 149:4, 149:5, 149:5, 149:6, 149:7, 149:7, 149:8, 149:11, 149:11, 149:12, 149:12, 149:13, 149:13, 177:24, 178:10, 179:14, 179:16, 188:8, 188:11, 188:21, 222:14, 237:11, 282:1, 348:1 150 ^[3] - 147:5,	2 ^[10] - 148:4, 171:18, 183:6, 209:3, 210:2, 214:15, 263:5, 288:21, 288:22, 317:4 2,300 ^[1] - 151:9 20 ^[28] - 148:12, 148:17, 153:1, 153:10, 177:24,	

291:18, 292:4, 292:7, 292:14, 292:18, 303:25 22 [1] - 148:19 22.4 [1] - 154:2 220 [1] - 171:17 226 [1] - 147:3 228 [1] - 147:9 22A [12] - 220:11, 318:21, 318:23, 319:1, 321:9, 321:11, 331:12, 341:9, 345:14, 351:20, 351:23, 353:7 23 [11] - 148:20, 235:3, 251:24, 254:6, 254:11, 255:3, 276:21, 276:22, 277:10, 277:12, 391:4 239,255 [1] - 147:9 24 [4] - 148:21, 173:4, 322:16, 322:17 25 [6] - 148:21, 176:2, 234:18, 265:24, 322:11, 324:21 250 [1] - 171:10 256 [1] - 147:10 26 [16] - 192:14, 220:13, 345:3, 345:12, 350:9, 350:10, 351:6, 368:24, 372:19, 372:20, 374:13, 375:7, 384:6, 389:9, 389:11, 390:12 273 [1] - 147:9 277 [1] - 147:9 279 [1] - 147:10 28 [1] - 256:24 28,223 [1] - 147:3 287,300 [1] - 147:10 29-31 [1] - 148:10	300 [5] - 230:16, 233:7, 235:23, 236:10, 328:21 301 [9] - 149:19, 192:14, 206:1, 206:12, 223:2, 223:20, 254:17, 275:21, 289:6 301A [1] - 225:3 30th [1] - 408:13 311 [1] - 147:10 314 [1] - 147:13 317,325 [1] - 147:13 32 [6] - 192:14, 211:7, 222:25, 223:2, 223:5, 373:23 327 [1] - 147:13 33 [13] - 192:14, 206:2, 206:13, 221:16, 369:11, 369:12, 373:19, 374:8, 374:20, 375:8, 376:25, 389:9, 390:11 34 [1] - 308:1 342 [1] - 149:16 343 [1] - 147:16 344 [2] - 149:16 345 [10] - 145:6, 150:2, 171:11, 171:17, 188:25, 189:9, 323:15, 335:12, 337:11, 339:15 349,360 [1] - 147:16 35 [2] - 308:1, 351:19 350 [1] - 354:9 351 [1] - 354:9 36 [2] - 346:1, 346:16 363 [1] - 147:18 364 [1] - 147:18 365 [1] - 147:19 37,69 [1] - 147:3 371 [1] - 147:21 384,385 [1] - 147:21 388 [1] - 147:21	4:25 [1] - 407:19	5	5 [56] - 148:3, 148:3, 148:4, 148:5, 148:6, 148:7, 148:8, 148:8, 148:9, 148:10, 148:11, 148:11, 148:12, 148:12, 148:13, 148:14, 148:14, 148:15, 148:15, 148:16, 148:16, 148:17, 148:17, 148:18, 148:18, 148:19, 148:19, 148:20, 148:21, 148:21, 148:22, 148:22, 149:3, 149:3, 149:4, 149:4, 149:5, 149:5, 149:6, 149:7, 149:7, 149:8, 149:11, 149:11, 149:12, 149:12, 149:13, 149:13, 149:19, 153:2, 153:11, 238:11, 238:13, 238:15, 264:15 5-gallon [2] - 313:14, 366:14 5/20/14 [1] - 148:22 5/23/14 [1] - 148:15 5/9/14 [1] - 148:15 50 [11] - 148:22, 183:11, 262:11, 264:16, 264:21, 267:15, 307:2, 307:25, 324:20, 326:25, 336:18 50-foot [1] - 307:1 50-year [3] - 187:9, 187:11, 187:18 500 [6] - 146:3, 153:16, 161:23, 171:8, 171:14, 371:16 500-year [1] - 187:21 507 [1] - 314:18 50A [1] - 148:22 53 [1] - 279:20 5:00 [1] - 150:4	317:3, 405:12, 405:18 6-by-25 [1] - 184:5 6-foot [1] - 176:1 6/10/14 [1] - 148:21 6/31/14 [1] - 148:20 600 [1] - 237:5 60s [1] - 347:25 6th [1] - 406:12	7	7 [8] - 148:8, 238:6, 238:12, 238:13, 238:15, 269:15, 276:1, 340:12 700 [1] - 265:12 73 [1] - 147:3 740 [1] - 176:11 75 [5] - 232:4, 249:11, 281:12, 281:15, 305:15	8	8 [5] - 148:9, 153:3, 153:13, 269:22, 270:3 8,500 [1] - 151:2 8.6 [1] - 336:21 80 [2] - 264:6, 345:2 85 [1] - 326:25 8:00 [1] - 150:5	9	9 [9] - 148:8, 148:10, 158:12, 158:17, 158:18, 159:19, 159:20, 204:16, 317:1 90 [4] - 183:13, 185:7, 281:14, 336:19 90-degree [9] - 182:24, 183:1, 183:4, 183:7, 183:19, 184:8, 184:13, 185:13 90s [1] - 184:15 91 [1] - 147:3 98 [1] - 265:13	A	a.m [1] - 150:5 Aberdeen [17] - 315:6, 315:17, 323:3, 325:12, 325:16, 330:1, 330:8, 335:6, 335:15, 359:19, 361:11, 378:22, 379:11, 379:15, 398:13, 400:11, 400:14 ability [3] - 194:21, 233:3, 379:17 able [17] - 157:1, 164:8, 165:1, 176:7, 178:18, 196:24, 198:15, 200:15, 202:15, 207:18, 233:8, 255:20, 265:18, 378:24, 392:11, 397:7, 401:25 above-entitled [2] - 146:2, 408:10 absence [3] - 256:1, 267:11, 267:12 absolutely [7] - 241:9, 259:22, 269:15, 317:6, 332:2, 349:22, 390:17 academic [3] - 246:18, 247:6, 248:24 accept [1] - 164:13 acceptable [4] - 206:19, 355:18, 355:19, 407
---	---	--------------------------	----------	--	---	----------	---	----------	--	----------	--	----------	--

<p>achievable [1] - 381:24</p> <p>acknowledge [2] - 195:4, 195:21</p> <p>acknowledging [1] - 197:18</p> <p>acquiring [1] - 394:10</p> <p>acre [2] - 264:10, 326:8</p> <p>acres [18] - 232:3, 235:16, 249:18, 263:25, 264:4, 264:5, 264:6, 280:1, 280:2, 281:3, 301:22, 304:6, 304:9, 304:13, 304:15, 304:20, 309:14, 326:22</p> <p>action [2] - 200:25, 369:4</p> <p>active [1] - 383:9</p> <p>actively [1] - 322:10</p> <p>activities [1] - 156:12</p> <p>activity [2] - 269:9, 269:10</p> <p>actual [11] - 166:13, 175:1, 209:4, 245:23, 301:23, 302:14, 321:6, 326:21, 339:1, 377:2, 404:22</p> <p>add [4] - 236:14, 282:14, 321:1, 390:4</p> <p>added [1] - 377:23</p> <p>adding [1] - 390:11</p> <p>addition [2] - 172:20, 373:18</p> <p>additional [24] - 153:12, 153:13, 165:14, 172:15, 182:10, 183:21, 184:14, 184:15, 189:12, 204:10, 232:10, 255:4, 276:19, 286:16, 310:24, 341:23, 342:2, 359:2, 360:18, 360:23, 377:23, 378:1, 405:6</p> <p>additionally [1] - 152:20</p> <p>address [21] - 152:22, 157:5, 160:9, 160:13, 216:9, 223:9, 241:7, 243:24, 250:2, 252:2, 302:13, 337:16, 367:7, 367:16, 368:22, 369:20, 371:12,</p>	<p>371:14, 393:12, 405:23, 407:16</p> <p>addressed [7] - 153:21, 154:1, 154:2, 199:21, 214:18, 367:23, 379:12</p> <p>addresses [2] - 378:13, 381:23</p> <p>addressing [2] - 225:15, 403:24</p> <p>adds [1] - 230:23</p> <p>adequate [4] - 206:22, 264:14, 268:3, 397:22</p> <p>adequately [8] - 206:2, 206:14, 367:15, 378:23, 379:5, 379:25, 381:23, 393:24</p> <p>adjacent [3] - 167:21, 168:10, 330:19</p> <p>adjective [1] - 272:8</p> <p>adjourn [1] - 407:16</p> <p>adjourned [2] - 407:17, 407:19</p> <p>adjudication [1] - 334:22</p> <p>adjust [1] - 157:21</p> <p>admission [2] - 344:3, 402:19</p> <p>admitted [5] - 170:18, 318:23, 343:22, 344:7, 344:19</p> <p>admitting [1] - 334:16</p> <p>adopted [1] - 359:6</p> <p>adult [1] - 230:13</p> <p>advance [1] - 252:8</p> <p>advise [2] - 263:24, 269:21</p> <p>advisor [2] - 226:1, 361:23</p> <p>advocated [1] - 261:7</p> <p>Aerial [2] - 148:19, 148:19</p> <p>aerial [7] - 164:16, 164:24, 291:18, 291:20, 306:2, 306:6, 313:7</p> <p>affect [5] - 215:11, 284:4, 312:6, 323:9, 355:7</p> <p>affected [7] - 167:21, 204:7, 220:5, 220:7, 220:19, 220:20, 375:22</p> <p>affecting [1] - 387:25</p> <p>affects [1] - 338:12</p> <p>Affidavit [2] - 148:11, 148:12</p>	<p>Affidavit-May [1] - 148:12</p> <p>Affidavit-Oct [1] - 148:11</p> <p>afield [1] - 387:17</p> <p>afternoon [4] - 150:4, 317:21, 327:20, 349:3</p> <p>afterwards [2] - 216:24, 405:1</p> <p>Ag [1] - 328:1</p> <p>ag [1] - 376:14</p> <p>age [1] - 406:6</p> <p>agencies [5] - 151:18, 152:5, 152:8, 161:24, 300:13</p> <p>agency [5] - 193:13, 213:1, 299:20, 299:21, 299:22</p> <p>agent [12] - 299:14, 300:1, 300:2, 315:3, 317:23, 318:6, 326:19, 335:5, 396:4, 402:1, 404:22</p> <p>agents [2] - 402:4, 404:9</p> <p>aggregated [2] - 235:20, 235:24</p> <p>ago [13] - 231:16, 249:13, 253:1, 258:6, 266:3, 285:20, 289:16, 293:24, 303:15, 308:6, 311:18, 323:2, 324:2</p> <p>agree [16] - 160:16, 163:20, 163:24, 164:15, 165:1, 174:18, 178:23, 195:13, 223:18, 245:4, 250:9, 332:24, 355:8, 376:12, 387:23, 402:15</p> <p>agreeance [2] - 203:4, 358:12</p> <p>agreed [4] - 327:8, 358:9, 374:24, 389:21</p> <p>agreement [12] - 152:12, 152:20, 173:4, 254:24, 275:22, 276:3, 341:1, 357:19, 381:12, 384:7, 395:8, 406:22</p> <p>agrees [1] - 396:14</p> <p>agricultural [11] - 160:10, 160:25, 161:24, 192:4,</p>	<p>205:21, 206:14, 229:12, 275:18, 369:16, 372:23, 389:19</p> <p>Agriculture [1] - 153:19</p> <p>agriculture [7] - 161:1, 203:21, 206:3, 214:20, 286:20, 290:4, 312:19</p> <p>agronomist [3] - 293:12, 297:21, 310:18</p> <p>ahead [8] - 207:25, 225:25, 279:11, 338:20, 348:24, 362:20, 369:22, 388:7</p> <p>ain't [1] - 308:2</p> <p>air [4] - 209:16, 215:15, 215:16, 215:17</p> <p>air's [1] - 209:17</p> <p>alarmed [1] - 233:19</p> <p>alfalfa [1] - 272:3</p> <p>alleviate [1] - 347:17</p> <p>allow [4] - 235:9, 266:4, 292:25, 342:8</p> <p>allowed [1] - 381:7</p> <p>allowing [1] - 368:8</p> <p>allows [1] - 230:21</p> <p>alluding [1] - 253:11</p> <p>almost [3] - 229:1, 347:6, 385:25</p> <p>alone [2] - 260:19, 377:22</p> <p>alternate [2] - 335:9, 354:24</p> <p>alternative [1] - 165:10</p> <p>AM [2] - 195:9, 205:16</p> <p>ambiguous [4] - 246:23, 373:13, 374:10, 384:14</p> <p>amend [1] - 223:4</p> <p>amended [3] - 224:1, 224:6, 225:1</p> <p>Amended [1] - 225:6</p> <p>amending [1] - 397:14</p> <p>amendment [4] - 151:16, 152:16, 222:24, 223:19</p> <p>Amendment [1] - 148:3</p> <p>American [1] - 396:19</p> <p>amount [7] - 215:16, 233:10, 239:9, 261:17, 372:4, 393:17</p>	<p>ample [4] - 325:10, 361:2, 361:4, 361:10</p> <p>analog [1] - 195:9</p> <p>analogy [1] - 271:14</p> <p>analysis [3] - 174:4, 186:22, 275:4</p> <p>analyst [2] - 371:19, 371:20</p> <p>analysts [1] - 383:8</p> <p>analyze [1] - 371:20</p> <p>analyzed [1] - 166:4</p> <p>AND [1] - 145:5</p> <p>Anderson [4] - 346:3, 356:9, 357:17, 358:3</p> <p>Andover [6] - 168:22, 227:3, 314:19, 316:23, 321:2, 335:17</p> <p>Angela [5] - 147:5, 150:10, 150:17, 150:18, 150:23</p> <p>ANGELA [1] - 150:11</p> <p>angle [4] - 182:22, 183:7, 183:8, 353:7</p> <p>angles [5] - 182:25, 183:1, 183:4, 183:20, 352:23</p> <p>angling [1] - 352:8</p> <p>animal [4] - 221:4, 328:20, 336:5, 336:16</p> <p>animals [3] - 193:17, 221:4, 270:24</p> <p>Ann [1] - 173:18</p> <p>answer [53] - 172:15, 173:5, 178:18, 180:18, 192:13, 198:21, 199:25, 201:12, 201:14, 206:21, 211:25, 212:2, 212:13, 212:14, 214:25, 218:8, 244:17, 244:18, 245:23, 246:24, 251:18, 252:16, 254:9, 254:19, 255:22, 255:23, 256:5, 256:11, 258:16, 260:21, 264:12, 266:25, 269:4, 270:14, 286:3, 287:19, 292:1, 312:1, 312:13, 322:22, 341:4, 364:8, 368:11, 368:17, 382:1, 385:7, 389:14, 389:16, 394:6, 394:20, 396:24,</p>
---	--	--	--	--

<p>401:17, 401:24 answered [6] - 169:11, 170:24, 227:10, 268:2, 270:11, 353:20 answering [1] - 260:22 answers [6] - 228:15, 270:8, 280:13, 325:15, 337:2, 375:12 Answers [2] - 148:6, 148:7 anticipated [4] - 176:25, 177:14, 267:2, 363:17 anyway [5] - 218:24, 330:4, 346:23, 365:5, 367:10 apart [1] - 263:11 apologize [7] - 159:18, 176:8, 218:23, 307:13, 319:21, 321:22, 360:8 appear [2] - 163:8, 406:16 APPEARANCES [1] - 145:19 appeared [1] - 405:25 appendix [1] - 242:9 applicable [2] - 152:9, 158:24 Applicant [31] - 211:8, 211:12, 211:18, 216:5, 223:4, 223:11, 226:13, 227:13, 228:1, 277:8, 367:2, 368:5, 369:3, 369:8, 369:14, 373:21, 373:22, 374:5, 374:8, 374:11, 374:15, 374:17, 374:21, 377:1, 377:3, 377:9, 383:22, 386:10, 389:8, 390:12, 398:19 APPLICANT [2] - 147:2, 148:2 Applicant's [7] - 150:6, 217:4, 222:19, 223:8, 381:2, 384:8, 391:7 Applicants [27] - 145:20, 150:9, 161:13, 170:8, 189:18, 211:5, 235:3, 239:15,</p>	<p>240:13, 251:9, 254:24, 273:11, 274:20, 277:13, 288:7, 289:7, 301:10, 310:25, 333:2, 341:22, 342:25, 344:4, 349:10, 362:3, 368:15, 370:12, 379:20 Application [36] - 148:3, 148:3, 151:16, 151:24, 151:25, 152:3, 152:16, 153:1, 153:7, 154:2, 155:15, 156:23, 157:9, 160:11, 166:4, 168:24, 195:13, 226:13, 226:17, 239:7, 239:10, 239:14, 241:14, 274:17, 274:19, 275:2, 275:8, 287:6, 287:12, 287:24, 288:10, 311:24, 349:10, 380:6, 380:9, 380:14 APPLICATION [1] - 145:4 application [2] - 171:25, 226:22 applications [1] - 153:8 applicator [1] - 306:6 applied [3] - 211:11, 372:22, 375:9 applies [1] - 275:12 apply [4] - 283:11, 334:1, 381:3, 384:9 appointed [1] - 408:8 appraised [1] - 326:4 appreciate [5] - 210:16, 227:20, 322:6, 369:11, 381:2 approach [1] - 194:9 approached [2] - 323:4, 339:21 appropriate [7] - 253:16, 367:24, 368:6, 368:11, 369:3, 369:19, 402:23 approvals [1] - 151:19 approve [1] - 393:5 approved [4] - 224:11, 393:3, 399:16, 399:24 April [1] - 356:18</p>	<p>Arbor [1] - 173:18 arc [1] - 208:18 archaeological [1] - 152:10 archeologists [1] - 151:3 area [48] - 155:6, 155:7, 156:1, 156:9, 157:6, 158:21, 159:15, 166:18, 168:17, 168:18, 168:20, 173:25, 190:8, 194:20, 200:10, 236:4, 256:10, 263:25, 281:22, 282:1, 284:14, 284:16, 285:22, 285:23, 305:2, 306:13, 309:10, 315:21, 317:10, 320:4, 320:7, 320:9, 337:18, 339:19, 340:11, 344:20, 344:21, 357:12, 363:16, 363:23, 364:4, 366:10, 373:4, 377:20, 380:4, 392:9 areas [7] - 164:18, 236:15, 242:6, 256:8, 257:17, 269:9, 369:6 argue [3] - 378:7, 384:12, 406:2 argument [7] - 367:17, 373:15, 405:10, 405:11, 405:16, 406:12, 407:6 arguments [1] - 367:12 arise [2] - 285:8, 369:9 arising [1] - 310:1 arrange [1] - 162:20 arranged [1] - 163:8 arrival [1] - 232:19 arrive [1] - 187:14 arrived [4] - 187:5, 233:15, 315:14, 358:1 Arrowhead [1] - 171:16 arrowheads [1] - 155:24 articles [3] - 316:2, 316:5, 323:11 artifacts [3] - 155:18, 155:19, 155:22 ascertain [1] - 272:14 aspect [4] - 174:1,</p>	<p>230:16, 231:1, 250:12 aspects [6] - 156:3, 190:23, 190:24, 194:14, 212:25, 230:4 assess [1] - 217:3 assessed [1] - 156:16 assessing [1] - 157:24 assessment [1] - 174:14 assessments [1] - 198:10 assigned [1] - 371:20 assist [7] - 151:4, 172:8, 211:15, 211:21, 215:25, 374:1, 390:13 assistants [3] - 259:6, 259:7, 273:24 assisting [1] - 374:3 associated [2] - 250:2, 269:8 assume [3] - 269:15, 374:10, 375:23 assumes [1] - 197:6 assuming [2] - 224:10, 350:15 assumption [1] - 262:17 assumptions [1] - 244:2 assurance [2] - 238:18, 395:4 assured [1] - 385:10 atlases [1] - 332:15 attached [3] - 262:6, 273:22, 408:11 attaches [1] - 230:8 attaching [1] - 219:1 Attachment [1] - 148:11 Attachments [1] - 148:3 attempted [1] - 392:16 attended [1] - 153:16 attention [5] - 162:2, 235:2, 280:24, 322:18, 384:6 attorney [1] - 375:2 auger [2] - 208:14, 208:16 augers [1] - 175:13 August [5] - 263:3, 317:23, 318:6, 405:12, 405:18 authority [1] - 379:22 authorization [1] - 300:8 authorize [1] - 299:11</p>	<p>authorized [1] - 294:15 automatically [1] - 217:3 available [13] - 172:15, 173:4, 192:13, 198:12, 221:23, 250:24, 251:8, 251:9, 256:12, 266:17, 270:20, 281:6, 332:25 Avenue [1] - 146:3 average [8] - 188:13, 264:9, 264:11, 264:13, 283:20, 283:22, 284:3, 336:19 averages [1] - 180:19 avoid [3] - 247:18, 295:16, 333:2 avoided [1] - 315:1 aware [33] - 153:19, 153:24, 158:8, 158:9, 161:15, 161:17, 161:18, 161:19, 162:11, 162:19, 164:17, 168:14, 168:16, 168:24, 199:21, 200:8, 203:20, 203:21, 203:22, 203:25, 205:11, 212:15, 225:22, 226:6, 242:14, 246:18, 247:5, 260:11, 260:15, 274:2, 296:6, 357:22, 385:3 awareness [3] - 248:3, 262:19 awhile [1] - 320:14</p>
B				
<p>B-R-E-S-K-E [1] - 298:23 bachelor [1] - 171:2 Bachelor [1] - 190:19 background [4] - 228:24, 279:24, 371:25, 394:21 bacteria [1] - 336:14 bad [4] - 231:1, 353:6, 359:16, 407:9 badgers [1] - 270:24 bags [1] - 305:5 baked [1] - 270:1 balance [1] - 161:6</p>				

<p>ball [1] - 233:20</p> <p>band [3] - 205:16, 234:16, 373:9</p> <p>bands [1] - 205:14</p> <p>barn [4] - 320:4, 320:13, 320:19, 322:18</p> <p>barns [5] - 320:2, 321:6, 329:5, 339:2, 339:5</p> <p>base [3] - 184:10, 339:10, 340:13</p> <p>based [19] - 150:25, 152:13, 154:15, 173:17, 198:1, 198:5, 199:2, 199:3, 199:4, 199:5, 199:9, 201:11, 206:11, 252:18, 257:7, 266:25, 326:21, 343:3, 379:1</p> <p>bash [1] - 392:15</p> <p>basic [2] - 371:8, 381:22</p> <p>basin [2] - 323:14, 335:12</p> <p>Basin [4] - 335:19, 339:14, 347:7, 347:10</p> <p>basis [7] - 167:8, 244:2, 245:20, 247:11, 250:25, 333:12, 370:10</p> <p>Bath [3] - 323:13, 337:15, 337:17</p> <p>bath [1] - 335:13</p> <p>bean [1] - 298:2</p> <p>beans [4] - 271:25, 272:1, 280:4, 280:8</p> <p>bear [2] - 216:2, 216:6</p> <p>bearing [3] - 166:23, 296:6, 357:11</p> <p>beat [1] - 232:23</p> <p>beaten [1] - 406:19</p> <p>became [3] - 243:13, 244:15, 317:4</p> <p>become [7] - 208:4, 208:10, 214:19, 232:2, 237:8, 256:2, 265:18</p> <p>becomes [2] - 332:8, 399:8</p> <p>becoming [1] - 265:21</p> <p>beef [4] - 328:9, 336:10, 336:15, 337:1</p> <p>BEFORE [1] - 145:11</p> <p>beg [1] - 302:16</p> <p>begging [1] - 265:24</p> <p>begin [2] - 228:3,</p>	<p>228:4</p> <p>beginning [3] - 162:23, 370:5, 405:17</p> <p>begins [1] - 253:7</p> <p>begun [1] - 166:8</p> <p>behalf [5] - 223:18, 313:21, 314:7, 329:23, 370:8</p> <p>behavior [2] - 266:21, 275:6</p> <p>behind [2] - 197:22, 200:3</p> <p>belief [1] - 404:9</p> <p>believes [2] - 334:20, 381:6</p> <p>bell [1] - 267:3</p> <p>below [3] - 205:7, 254:1, 331:7</p> <p>beneficial [1] - 229:8</p> <p>benefit [5] - 153:3, 200:8, 230:1, 232:11, 286:10</p> <p>benefits [2] - 297:15, 298:7</p> <p>best [21] - 179:20, 179:22, 180:7, 180:21, 180:22, 181:2, 232:18, 261:24, 262:3, 302:2, 318:19, 325:9, 326:16, 343:21, 344:17, 347:3, 348:18, 358:20, 365:16, 376:3, 381:13</p> <p>bet [2] - 203:13, 349:8</p> <p>better [18] - 174:15, 202:10, 202:21, 202:22, 203:6, 221:25, 238:24, 285:18, 317:10, 344:20, 345:11, 346:14, 346:23, 365:14, 388:20, 395:9, 399:13, 405:17</p> <p>between [10] - 236:6, 240:1, 240:2, 250:20, 254:24, 320:4, 322:11, 342:6, 363:8, 369:25</p> <p>beyond [8] - 185:20, 211:17, 216:9, 217:6, 218:10, 218:12, 244:22, 330:15</p> <p>Big [2] - 150:2, 185:17</p> <p>big [8] - 214:19, 241:15, 247:13,</p>	<p>260:14, 267:15, 282:13, 293:4, 332:20</p> <p>BIG [1] - 145:5</p> <p>bigger [1] - 184:10</p> <p>biggest [2] - 315:25, 369:23</p> <p>Bill [3] - 300:25, 301:7, 326:13</p> <p>biological [3] - 150:24, 152:2, 152:10</p> <p>biology [4] - 154:13, 230:4, 230:17, 235:19</p> <p>bird [1] - 271:3</p> <p>birds [1] - 270:25</p> <p>bit [31] - 166:18, 173:14, 204:24, 234:3, 237:21, 261:21, 270:8, 279:17, 290:2, 293:3, 302:17, 307:10, 316:14, 318:1, 319:16, 320:24, 321:6, 336:8, 337:25, 339:20, 352:8, 367:8, 373:12, 382:2, 384:14, 385:7, 387:6, 388:4, 391:2, 392:14, 406:5</p> <p>bits [2] - 349:13, 349:17</p> <p>black [2] - 257:16, 403:5</p> <p>blank [1] - 168:6</p> <p>Bloom [1] - 299:15</p> <p>blown [2] - 257:8, 270:20</p> <p>blue [1] - 348:13</p> <p>BMPs [1] - 179:23</p> <p>boards [2] - 162:18, 162:21</p> <p>Bob [4] - 145:20, 240:15, 278:14, 288:20</p> <p>bodies [3] - 162:8, 162:11, 162:14</p> <p>body [2] - 193:10, 235:24</p> <p>bonus [2] - 385:3, 386:17</p> <p>book [1] - 230:15</p> <p>booklet [1] - 311:13</p> <p>boot [1] - 261:17</p> <p>booties [1] - 260:7</p> <p>boots [3] - 259:9, 259:20, 259:21</p> <p>bother [3] - 237:24,</p>	<p>382:25, 403:2</p> <p>bottled [1] - 316:22</p> <p>bottom [5] - 220:13, 344:25, 351:23, 385:19, 404:7</p> <p>bought [1] - 323:3</p> <p>boundaries [1] - 210:8</p> <p>boundary [8] - 209:11, 209:12, 209:14, 209:18, 210:10, 210:12, 316:17, 329:9</p> <p>box [1] - 392:14</p> <p>boy [1] - 356:19</p> <p>brace [2] - 183:13, 183:17</p> <p>braced [1] - 183:20</p> <p>bracing [1] - 183:22</p> <p>BRAD [1] - 343:16</p> <p>Brad [8] - 331:11, 331:14, 349:6, 349:7, 351:21, 351:24, 360:8, 360:22</p> <p>Bradley [3] - 145:21, 147:16, 351:6</p> <p>break [16] - 222:10, 222:11, 226:12, 227:22, 228:1, 266:9, 267:4, 278:4, 278:5, 278:9, 278:21, 341:5, 342:14, 402:11, 403:22</p> <p>breaking [1] - 222:1</p> <p>breathe [1] - 228:25</p> <p>breed [1] - 265:23</p> <p>Breske [3] - 298:17, 299:23, 300:12</p> <p>BRIAN [1] - 371:5</p> <p>Brian [6] - 145:17, 147:21, 370:11, 370:16, 371:4, 371:14</p> <p>brief [10] - 214:9, 273:16, 314:20, 317:15, 342:5, 376:13, 377:14, 405:16, 406:2, 407:8</p> <p>briefcase [1] - 311:16</p> <p>briefing [6] - 367:14, 405:20, 405:21, 406:10, 406:23, 407:14</p> <p>briefly [7] - 155:1, 174:21, 179:21, 191:3, 213:6, 228:17, 251:19</p> <p>bring [8] - 175:5, 176:17, 233:4,</p>	<p>326:10, 342:5, 362:15, 362:18, 364:13</p> <p>broad [1] - 392:7</p> <p>broadband [1] - 205:5</p> <p>broader [3] - 388:20, 391:24, 393:16</p> <p>broke [3] - 220:23, 221:5, 221:23</p> <p>Brookings [6] - 151:12, 171:10, 304:18, 313:15, 383:6</p> <p>brother [2] - 322:10, 322:12</p> <p>brought [9] - 161:25, 231:15, 280:24, 335:11, 335:12, 355:5, 378:22, 383:9, 385:8</p> <p>Brown [7] - 183:6, 242:18, 242:19, 330:15, 337:17, 347:21, 348:4</p> <p>brown [1] - 326:6</p> <p>BRS [1] - 298:21</p> <p>BSKE [1] - 298:19</p> <p>BSSE [5] - 148:8, 148:10, 149:16, 245:15, 247:12</p> <p>bucket [2] - 313:14, 366:14</p> <p>build [7] - 197:9, 203:7, 265:20, 312:16, 317:1, 347:19, 380:7</p> <p>building [4] - 192:7, 194:17, 200:11, 339:22</p> <p>Building [1] - 146:3</p> <p>buildings [10] - 156:9, 191:9, 196:2, 321:5, 321:8, 354:17, 354:18, 354:20, 354:22, 356:3</p> <p>builds [2] - 257:9, 265:9</p> <p>built [6] - 297:8, 319:13, 322:15, 335:24, 344:17, 394:25</p> <p>bulls [1] - 348:7</p> <p>bunch [2] - 366:14, 396:25</p> <p>burden [8] - 216:2, 216:5, 369:8, 369:14, 369:16, 373:20, 374:5, 374:18</p> <p>buried [6] - 188:12,</p>
--	---	---	---	--

<p>238:8, 296:18, 306:13, 306:14, 306:15</p> <p>burner [1] - 310:20</p> <p>burrows [1] - 230:7</p> <p>bury [1] - 188:19</p> <p>burying [1] - 188:8</p> <p>bushel [4] - 264:10, 307:25, 308:1, 327:1</p> <p>bushels [1] - 283:25</p> <p>business [1] - 324:6</p> <p>busy [1] - 310:19</p> <p>butterfly [1] - 275:3</p> <p>buy [1] - 323:4</p> <p>BY [41] - 150:15, 154:9, 165:19, 170:14, 173:11, 182:15, 188:6, 189:24, 192:19, 199:15, 200:22, 203:17, 214:13, 216:17, 217:11, 219:9, 219:24, 223:16, 226:15, 228:10, 239:4, 255:15, 256:21, 273:18, 277:5, 279:10, 287:3, 300:21, 311:5, 317:20, 325:8, 327:19, 349:2, 360:21, 363:1, 364:16, 365:11, 371:11, 384:5, 385:1, 388:9</p>	<p>Capitol [3] - 146:2, 146:3, 371:16</p> <p>CapX [1] - 383:6</p> <p>CapX2020 [3] - 151:12, 151:23, 171:9</p> <p>car [1] - 311:16</p> <p>card [1] - 263:23</p> <p>care [6] - 217:14, 293:10, 296:21, 296:23, 379:6, 397:20</p> <p>career [3] - 232:21, 233:15, 253:23</p> <p>careful [8] - 236:16, 250:17, 332:5, 332:13, 333:10, 336:25, 391:11, 391:12</p> <p>carrier [4] - 298:16, 300:10, 300:11, 301:21</p> <p>carry [3] - 280:22, 284:19, 301:3</p> <p>carrying [1] - 201:16</p> <p>cars [1] - 194:11</p> <p>case [29] - 150:6, 156:22, 163:15, 202:20, 217:3, 217:5, 221:14, 222:20, 227:14, 228:2, 239:7, 241:14, 243:6, 249:22, 254:17, 287:7, 295:24, 311:11, 313:23, 330:14, 367:3, 371:24, 372:22, 375:20, 375:21, 387:5, 387:10, 388:20</p> <p>cases [8] - 164:25, 213:24, 366:21, 371:22, 372:6, 372:7, 373:5</p> <p>cash [1] - 284:1</p> <p>catch [1] - 272:23</p> <p>categories [2] - 155:21, 266:24</p> <p>catholic [3] - 213:15, 213:25, 214:2</p> <p>cattle [15] - 201:20, 201:25, 202:3, 220:25, 221:3, 221:8, 316:6, 319:25, 323:9, 328:11, 336:9, 336:10, 344:13, 346:11, 348:6</p> <p>caused [1] - 244:20</p>	<p>causes [2] - 266:8, 368:25</p> <p>causing [2] - 195:18, 382:4</p> <p>caution [1] - 333:18</p> <p>CB [2] - 195:8, 384:10</p> <p>cement [1] - 387:13</p> <p>center [3] - 230:9, 355:7, 399:19</p> <p>certain [14] - 157:18, 213:9, 236:14, 237:17, 251:2, 251:6, 253:23, 254:9, 254:10, 271:8, 301:1, 336:3, 396:15</p> <p>certainly [19] - 158:14, 190:6, 202:7, 207:12, 210:22, 210:23, 211:24, 212:7, 221:14, 258:3, 258:23, 261:12, 309:5, 309:19, 309:21, 329:23, 390:19, 400:8, 400:13</p> <p>CERTIFICATE [1] - 408:2</p> <p>certification [1] - 394:16</p> <p>Certified [2] - 408:6, 408:19</p> <p>CERTIFY [1] - 408:8</p> <p>cetera [3] - 168:10, 278:7, 400:10</p> <p>CHAIRMAN [42] - 145:12, 145:13, 186:20, 187:8, 187:22, 208:1, 208:8, 208:19, 209:7, 210:1, 210:12, 210:16, 218:23, 219:5, 269:13, 270:4, 270:13, 270:22, 271:5, 271:11, 271:16, 271:20, 271:22, 272:7, 273:7, 278:8, 286:5, 307:16, 308:4, 308:8, 308:12, 308:21, 329:2, 329:12, 329:16, 329:19, 333:24, 334:1, 334:13, 382:15, 382:19, 383:13</p> <p>Chairman [4] - 329:1, 382:13, 382:15, 382:18</p>	<p>challenging [2] - 219:1, 219:3</p> <p>chance [7] - 186:14, 202:10, 227:23, 235:4, 281:18, 283:17, 403:23</p> <p>chances [2] - 262:4, 306:9</p> <p>change [12] - 164:19, 302:4, 350:23, 351:2, 351:5, 351:11, 376:25, 390:21, 397:1, 397:11, 398:15</p> <p>Change [3] - 148:8, 148:9, 148:10</p> <p>changed [10] - 169:7, 261:1, 300:5, 300:6, 300:10, 300:13, 308:13, 357:12, 388:17</p> <p>Changes [1] - 148:22</p> <p>changes [2] - 172:11, 398:22</p> <p>characterized [1] - 242:6</p> <p>charge [7] - 194:21, 200:24, 201:5, 218:15, 234:22, 324:14, 385:25</p> <p>charged [1] - 202:13</p> <p>check [6] - 179:24, 231:17, 262:8, 262:12, 263:7, 273:4</p> <p>checking [4] - 231:11, 262:20, 262:21, 274:23</p> <p>checkoff [1] - 249:6</p> <p>Checkoff [3] - 298:2, 298:3, 298:4</p> <p>cheese [1] - 329:25</p> <p>chemical [2] - 293:18, 307:23</p> <p>chemicals [2] - 266:19, 296:8</p> <p>Cheri [2] - 145:24, 408:18</p> <p>CHERI [1] - 408:5</p> <p>Cheri's [1] - 222:11</p> <p>chicken [2] - 324:13, 328:9</p> <p>chief [3] - 150:7, 227:14, 313:23</p> <p>choices [1] - 161:9</p> <p>choose [1] - 406:12</p> <p>chosen [3] - 176:17, 178:14, 256:6</p> <p>CHRIS [1] - 145:13</p> <p>circled [1] - 220:14</p> <p>circles [3] - 348:12,</p>	<p>348:13</p> <p>circulated [2] - 224:2, 403:14</p> <p>circumstance [1] - 339:20</p> <p>circumstances [1] - 381:14</p> <p>citizens [1] - 316:18</p> <p>City [1] - 151:1</p> <p>city [1] - 208:21</p> <p>civil [11] - 170:22, 171:2, 171:12, 171:22, 172:24, 175:1, 178:20, 178:21, 181:13, 182:2, 182:8</p> <p>claim [3] - 255:16, 337:20, 395:25</p> <p>clarified [2] - 167:15, 400:13</p> <p>clarify [5] - 158:10, 197:25, 204:11, 219:16, 363:8</p> <p>clarifying [1] - 375:3</p> <p>Clark [2] - 354:1, 354:13</p> <p>Clarkston [1] - 190:9</p> <p>Class [1] - 155:4</p> <p>clause [4] - 373:24, 377:23, 378:1, 384:13</p> <p>clean [6] - 254:3, 255:18, 256:23, 257:5, 295:8, 295:13</p> <p>cleaned [2] - 295:4, 295:7</p> <p>cleaning [3] - 254:7, 254:12, 254:13</p> <p>clear [6] - 247:4, 269:13, 307:17, 356:12, 373:22, 384:16</p> <p>clearances [8] - 172:19, 191:11, 194:5, 194:7, 194:15, 209:23, 210:15</p> <p>clearer [2] - 374:16, 374:20</p> <p>clearly [1] - 192:6</p> <p>cleat [1] - 261:17</p> <p>clinic [2] - 236:22, 251:12</p> <p>clock [1] - 336:23</p> <p>clock's [1] - 222:13</p> <p>clods [1] - 259:13</p> <p>close [15] - 168:14, 168:18, 195:11, 201:1, 201:9, 207:11, 208:2,</p>
C				
<p>CAFO [4] - 328:10, 328:15, 328:19, 328:21</p> <p>calculate [1] - 193:20</p> <p>calculated [1] - 194:7</p> <p>calculation [2] - 194:22, 398:3</p> <p>calculations [2] - 194:19, 210:15</p> <p>calf [2] - 321:5, 321:8</p> <p>California [1] - 154:10</p> <p>candid [1] - 391:15</p> <p>candidate [2] - 221:15, 221:21</p> <p>cannot [4] - 213:8, 296:9, 307:24, 398:10</p> <p>capacity [2] - 177:4, 192:24</p> <p>capital [3] - 340:5, 340:6, 340:10</p>				

<p>208:14, 208:15, 212:23, 227:6, 320:17, 330:23, 336:1, 351:15 closely [2] - 236:21, 373:10 closer [6] - 209:19, 210:9, 307:10, 320:12, 350:18, 356:14 closing [3] - 314:9, 367:12, 367:18 closings [1] - 368:2 clothing [1] - 259:9 clustered [1] - 235:24 CO [1] - 145:4 co [3] - 258:9, 258:18, 263:21 co-op [1] - 263:21 co-ops [2] - 258:9, 258:18 cochlear [1] - 195:2 code [1] - 187:13 Code [7] - 172:18, 187:11, 191:10, 191:14, 209:18, 209:23, 210:7 collaborate [1] - 242:12 collect [1] - 175:15 collected [4] - 235:14, 270:3, 363:13 collecting [3] - 194:21, 252:9, 283:18 collects [2] - 251:4, 263:19 color [1] - 257:15 combiners [1] - 258:10 comfort [2] - 379:5, 380:4 comfortable [3] - 164:22, 377:17, 377:21 coming [16] - 177:12, 201:25, 215:1, 215:5, 296:3, 306:2, 306:6, 307:5, 309:3, 310:16, 318:7, 321:2, 329:22, 330:18, 346:22, 353:12 commence [1] - 228:3 comment [5] - 233:11, 235:8, 290:2, 301:11, 324:9 comments [5] - 152:23, 204:10, 233:12, 248:3, 248:5</p>	<p>commercial [4] - 258:10, 260:12, 260:14, 384:17 COMMISSION [3] - 145:1, 145:11, 145:14 Commission [25] - 152:18, 173:3, 224:23, 228:18, 229:3, 234:5, 254:24, 279:12, 281:1, 287:25, 292:24, 299:6, 322:5, 338:13, 342:8, 344:10, 362:15, 364:9, 371:19, 376:3, 376:8, 391:15, 398:20, 405:13, 406:1 COMMISSIONER [1] - 335:22 Commissioner [61] - 167:14, 169:24, 186:21, 187:23, 207:4, 207:23, 207:24, 210:18, 212:1, 215:24, 216:18, 218:21, 222:22, 223:10, 225:12, 226:11, 257:25, 258:2, 258:5, 266:6, 273:4, 273:8, 303:7, 308:23, 309:25, 310:2, 316:15, 329:20, 334:24, 338:5, 340:20, 341:7, 341:23, 361:21, 361:25, 362:2, 362:11, 363:10, 363:19, 365:22, 367:20, 368:7, 369:24, 370:6, 372:14, 376:24, 378:12, 382:1, 383:18, 383:25, 389:5, 395:13, 395:15, 396:12, 401:9, 405:2, 405:4, 405:7, 405:12, 406:3, 406:4 COMMISSIONER [132] - 145:13, 169:25, 186:7, 186:19, 207:5, 207:17, 207:22, 210:19, 211:19, 212:3, 212:16, 213:3, 213:11, 225:13,</p>	<p>226:1, 227:8, 257:1, 258:3, 258:23, 259:5, 259:16, 259:19, 259:23, 260:1, 260:9, 260:11, 261:12, 261:20, 262:14, 263:9, 264:7, 264:24, 265:2, 266:2, 266:8, 266:25, 267:9, 268:1, 268:15, 268:20, 269:4, 269:11, 302:8, 303:8, 303:19, 303:24, 304:11, 304:13, 304:19, 304:24, 305:6, 305:12, 305:20, 306:11, 306:22, 307:3, 307:7, 308:24, 309:2, 309:12, 309:18, 310:7, 310:10, 310:15, 310:21, 329:21, 331:4, 331:18, 332:2, 335:1, 335:10, 335:19, 335:25, 336:3, 336:7, 337:9, 337:14, 337:23, 338:4, 338:7, 338:16, 338:19, 338:25, 339:9, 339:13, 340:18, 341:8, 341:19, 361:22, 365:21, 365:25, 366:4, 366:11, 366:16, 367:21, 368:4, 368:13, 368:23, 372:15, 372:19, 374:6, 374:12, 374:19, 376:11, 376:24, 377:6, 377:25, 378:9, 378:15, 378:19, 379:9, 379:14, 380:19, 381:16, 381:20, 382:8, 382:11, 389:7, 389:15, 390:6, 390:17, 391:11, 392:13, 393:20, 394:18, 395:16, 395:20, 397:13, 398:6, 400:8, 401:18, 405:6 Commissioners [16] - 169:23, 186:5, 190:6, 207:3, 212:4,</p>	<p>258:4, 261:22, 266:5, 273:24, 303:6, 312:24, 328:25, 330:6, 361:19, 365:2, 368:9 Commissioners' [1] - 187:24 commissions [5] - 162:22, 163:2, 163:3, 163:9, 163:13 commitment [1] - 386:13 committee [2] - 399:3, 401:23 common [7] - 155:24, 163:10, 189:9, 189:10, 194:11, 229:7, 246:2 commonly [1] - 229:12 communicate [1] - 258:17 communicates [1] - 253:13 communication [12] - 203:20, 203:23, 205:11, 214:24, 369:2, 369:10, 369:17, 370:1, 373:11, 373:25, 376:4, 384:9 communications [4] - 205:14, 333:11, 384:10, 401:15 community [1] - 168:22 comp [1] - 396:17 compaction [12] - 176:19, 250:18, 378:24, 379:1, 379:16, 379:19, 379:24, 381:23, 382:5, 382:22, 393:24, 394:17 companies [2] - 300:6, 302:4 company [12] - 283:18, 293:17, 300:1, 300:2, 301:15, 301:17, 301:20, 315:3, 326:20, 380:7, 380:10, 381:7 COMPANY [1] - 145:5 comparable [1] - 263:18 compare [1] - 203:2 compared [4] - 246:3, 250:6, 336:10, 349:21</p>	<p>comparing [1] - 264:22 comparison [1] - 166:24 compelled [1] - 218:24 compensation [1] - 301:4 competency [1] - 302:11 competing [1] - 161:8 complaint [2] - 376:4, 376:9 complaints [1] - 380:17 complete [1] - 224:1 completed [6] - 165:20, 166:1, 172:7, 230:19, 243:17, 248:24 completely [2] - 281:10, 395:2 completion [2] - 385:4, 386:18 complexity [1] - 263:12 compliance [1] - 158:19 complicated [1] - 399:25 comply [3] - 152:9, 158:24, 172:18 component [1] - 266:20 comprised [1] - 363:13 computer [1] - 349:16 concentrated [1] - 234:15 concept [2] - 226:23, 236:6 concern [16] - 223:10, 223:11, 235:18, 282:13, 296:10, 298:11, 303:12, 315:25, 316:16, 317:6, 322:3, 332:3, 333:24, 338:21, 379:15, 380:15 concerned [16] - 286:19, 296:20, 303:15, 307:20, 309:21, 314:21, 325:22, 332:7, 340:5, 349:14, 353:1, 355:6, 379:11, 383:11, 389:18, 407:15 concerning [1] - 323:12</p>
---	---	---	--	---

<p>concerns ^[11] - 211:12, 235:6, 282:11, 282:14, 282:23, 284:7, 285:7, 285:24, 313:4, 325:18, 340:5</p> <p>conclude ^[1] - 348:21</p> <p>concluded ^[1] - 367:6</p> <p>concludes ^[5] - 154:4, 173:6, 192:15, 233:23, 366:20</p> <p>conclusion ^[5] - 181:14, 206:5, 206:8, 277:16, 389:21</p> <p>conclusions ^[1] - 367:17</p> <p>concrete ^[3] - 175:3, 175:4, 175:8</p> <p>concur ^[2] - 223:5, 390:7</p> <p>concurrent ^[2] - 172:22, 186:18</p> <p>condition ^[11] - 215:19, 292:24, 341:1, 372:17, 372:21, 373:19, 373:23, 375:7, 379:8, 379:10, 380:12</p> <p>conditions ^[28] - 152:11, 152:19, 153:6, 159:14, 196:16, 196:17, 202:5, 207:15, 209:21, 209:22, 209:25, 210:6, 210:9, 215:9, 215:11, 290:24, 299:6, 379:1, 381:8, 383:1, 383:4, 383:10, 386:2, 396:15, 397:1, 397:4, 398:10</p> <p>conduct ^[4] - 154:18, 155:14, 174:5, 237:25</p> <p>conducted ^[9] - 151:22, 154:19, 154:21, 155:1, 156:24, 157:4, 157:7, 221:19, 363:4</p> <p>conductive ^[2] - 209:11, 209:16</p> <p>conductor ^[6] - 189:9, 199:18, 199:24, 208:4, 208:5, 208:11</p> <p>conductors ^[3] - 194:9, 201:14, 218:11</p>	<p>conference ^[2] - 315:5, 367:8</p> <p>confidence ^[1] - 391:8</p> <p>confidential ^[13] - 251:12, 332:10, 332:22, 333:14, 333:16, 333:22, 333:23, 334:3, 334:7, 334:10, 334:11, 334:16, 342:25</p> <p>Confidential ^[1] - 148:10</p> <p>confidentiality ^[4] - 251:16, 333:13, 342:23, 343:11</p> <p>configuration ^[3] - 201:11, 201:13</p> <p>confined ^[3] - 320:3, 320:19, 320:21</p> <p>confinement ^[2] - 324:12, 328:10</p> <p>confirm ^[2] - 254:19, 364:2</p> <p>confirmed ^[1] - 343:8</p> <p>conflict ^[1] - 270:8</p> <p>confused ^[2] - 353:5, 359:15</p> <p>confusion ^[1] - 342:7</p> <p>congratulations ^[1] - 257:1</p> <p>connection ^[3] - 191:21, 196:18, 319:4</p> <p>consecutive ^[1] - 265:6</p> <p>consider ^[11] - 156:11, 160:24, 161:3, 161:10, 164:8, 232:12, 234:17, 268:3, 324:5, 338:14, 363:23</p> <p>considerable ^[1] - 307:22</p> <p>consideration ^[7] - 156:17, 162:8, 167:5, 167:22, 379:3, 380:25, 386:24</p> <p>considered ^[5] - 213:10, 251:12, 361:3, 361:9, 399:1</p> <p>considering ^[4] - 152:25, 160:18, 193:25, 334:6</p> <p>consistent ^[9] - 153:8, 155:10, 157:7, 251:16, 277:10, 301:15, 301:20, 302:6, 325:17</p>	<p>consists ^[3] - 155:5, 187:7, 231:10</p> <p>construct ^[4] - 197:7, 287:9, 379:18, 388:4</p> <p>CONSTRUCT ^[1] - 145:5</p> <p>constructability ^[1] - 172:4</p> <p>constructed ^[2] - 157:1, 339:15</p> <p>constructibility ^[1] - 172:12</p> <p>constructing ^[3] - 178:22, 225:25, 379:23</p> <p>construction ^[37] - 151:10, 151:20, 152:15, 172:14, 172:25, 174:1, 174:21, 174:25, 179:17, 179:21, 180:9, 181:1, 208:13, 216:4, 245:14, 245:25, 246:19, 247:6, 247:12, 247:14, 250:20, 252:3, 283:14, 287:25, 369:7, 377:19, 378:23, 378:25, 379:21, 383:12, 387:24, 393:23, 394:12, 394:23, 394:24, 395:4</p> <p>consult ^[4] - 160:6, 258:9, 258:11, 258:14</p> <p>consultant ^[2] - 337:5, 391:20</p> <p>consultants ^[1] - 152:1</p> <p>consultation ^[6] - 152:8, 153:18, 277:10, 377:24, 378:2, 392:6</p> <p>consulted ^[2] - 370:4, 389:12</p> <p>consults ^[1] - 253:8</p> <p>consumers ^[1] - 329:23</p> <p>consuming ^[1] - 328:13</p> <p>contact ^[12] - 200:10, 208:23, 209:4, 315:1, 317:25, 318:2, 318:4, 335:5, 364:17, 404:14, 404:21, 404:25</p> <p>contacted ^[3] - 162:15, 317:23,</p>	<p>361:12</p> <p>contained ^[2] - 342:24</p> <p>contend ^[1] - 373:21</p> <p>context ^[1] - 260:24</p> <p>continually ^[1] - 265:8</p> <p>continue ^[5] - 152:5, 347:1, 376:11, 385:20, 393:18</p> <p>Continued ^[2] - 148:1, 149:1</p> <p>continued ^[3] - 330:12, 330:15, 353:22</p> <p>continuing ^[2] - 172:9, 247:10</p> <p>continuously ^[2] - 200:10, 200:14</p> <p>contract ^[4] - 393:2, 396:13, 397:12, 398:5</p> <p>contractor ^[3] - 176:16, 176:18, 176:22</p> <p>contractors ^[5] - 177:1, 177:11, 177:15, 285:11, 394:11</p> <p>contrary ^[1] - 392:19</p> <p>contribute ^[2] - 298:3, 298:9</p> <p>contributed ^[1] - 298:3</p> <p>control ^[6] - 236:15, 277:11, 295:18, 378:2, 385:15, 388:11</p> <p>controlled ^[1] - 296:8</p> <p>controlling ^[1] - 308:19</p> <p>convened ^[1] - 193:10</p> <p>conventionally ^[1] - 291:1</p> <p>conversation ^[2] - 342:18, 356:10</p> <p>conversations ^[2] - 153:15, 343:4</p> <p>convince ^[1] - 272:21</p> <p>convinced ^[1] - 390:10</p> <p>coordinate ^[1] - 152:6</p> <p>coordinated ^[1] - 151:24</p> <p>copy ^[5] - 289:10, 299:3, 300:9, 318:20, 331:14</p> <p>cordial ^[1] - 358:13</p> <p>core ^[4] - 304:14, 305:6, 387:15</p> <p>cores ^[14] - 235:13, 263:24, 264:1,</p>	<p>264:3, 264:5, 342:6, 8 363:8, 363:14, 363:23, 366:1, 366:5, 366:9, 366:11</p> <p>corn ^[13] - 248:10, 248:13, 267:6, 267:15, 267:17, 271:20, 272:4, 280:4, 280:8, 294:4, 294:6, 308:17, 340:12</p> <p>corner ^[5] - 306:1, 306:7, 306:21, 345:12, 346:1</p> <p>corners ^[6] - 182:22, 184:8, 184:13, 185:13, 347:17, 347:18</p> <p>corona ^[1] - 204:17</p> <p>corporation ^[1] - 322:9</p> <p>correct ^[120] - 154:11, 154:12, 154:14, 154:22, 159:3, 159:23, 159:24, 160:1, 160:7, 162:16, 163:23, 164:4, 173:12, 173:13, 174:2, 174:3, 174:15, 175:9, 182:9, 192:25, 193:2, 193:6, 193:14, 193:24, 195:6, 195:7, 195:19, 195:25, 196:6, 196:7, 197:1, 197:4, 197:5, 197:8, 197:17, 199:10, 205:4, 207:20, 207:21, 215:20, 219:18, 226:20, 238:23, 241:11, 242:21, 242:22, 242:24, 243:11, 244:21, 244:25, 245:10, 245:12, 246:5, 246:13, 246:14, 246:20, 246:24, 246:25, 247:7, 247:9, 247:25, 248:8, 248:11, 248:13, 248:17, 248:20, 248:22, 248:23, 249:1, 249:9, 250:8, 251:24, 251:25, 254:4, 254:14, 257:20, 257:22, 268:17, 269:2,</p>
---	---	--	---	--

<p>276:23, 277:14, 296:13, 302:21, 303:11, 303:13, 303:21, 318:15, 319:8, 319:19, 320:13, 320:20, 320:25, 331:6, 334:13, 338:14, 342:21, 343:3, 352:4, 352:24, 355:11, 355:12, 366:7, 366:21, 366:22, 372:10, 372:16, 375:18, 376:15, 376:16, 377:4, 377:5, 378:6, 382:6, 384:20, 388:24, 392:18, 393:20, 403:15, 408:12</p> <p>correctly [2] - 257:13, 257:17</p> <p>corresponding [1] - 354:21</p> <p>corrosion [7] - 212:5, 212:7, 212:19, 212:25, 213:2, 213:10, 214:3</p> <p>cost [25] - 177:23, 177:24, 178:6, 178:8, 178:9, 178:13, 179:14, 179:16, 183:15, 184:14, 188:7, 188:8, 188:15, 188:21, 188:22, 188:24, 203:4, 263:12, 263:13, 263:15, 263:16, 298:1, 298:6, 347:18</p> <p>costs [5] - 178:16, 179:4, 189:2, 216:6, 327:3</p> <p>counsel [1] - 364:8</p> <p>Counsel [3] - 224:5, 331:19, 343:2</p> <p>count [2] - 237:7, 237:9</p> <p>counties [12] - 162:25, 163:4, 234:14, 241:17, 241:21, 241:23, 242:2, 242:4, 273:20, 273:25, 274:3, 274:21</p> <p>country [2] - 187:17, 271:8</p> <p>County [20] - 151:12, 171:10, 183:6, 242:18, 242:19,</p>	<p>242:21, 242:23, 279:13, 279:18, 284:21, 306:23, 314:18, 326:6, 328:8, 330:15, 332:15, 337:17, 347:22, 348:4</p> <p>county [18] - 162:21, 163:9, 242:6, 274:2, 284:20, 306:25, 307:2, 307:4, 307:6, 321:2, 328:7, 328:9, 328:15, 328:22, 347:8, 347:12, 347:15, 381:4</p> <p>COUNTY [1] - 408:3</p> <p>County-Brown [1] - 330:15</p> <p>couple [27] - 152:21, 158:21, 205:16, 209:22, 210:20, 214:9, 219:2, 231:16, 233:25, 253:4, 268:9, 269:14, 289:16, 297:20, 307:16, 307:21, 312:23, 322:4, 324:2, 324:17, 349:9, 349:23, 368:5, 383:8, 383:11, 387:10, 393:4</p> <p>course [6] - 205:15, 212:6, 260:17, 348:25, 394:16, 405:11</p> <p>court [4] - 267:13, 298:24, 338:24, 385:12</p> <p>Court [1] - 406:1</p> <p>courthouse [1] - 332:15</p> <p>covenant [2] - 341:1, 342:23</p> <p>cover [3] - 294:9, 325:9, 384:19</p> <p>coverage [5] - 300:24, 301:1, 301:13, 326:25, 327:3</p> <p>covered [6] - 190:24, 232:25, 270:21, 311:22, 373:18, 397:16</p> <p>cow [3] - 323:18, 336:15, 336:18</p> <p>cows [15] - 316:22, 316:25, 319:22, 320:3, 320:12, 320:18, 320:22, 327:23, 336:17,</p>	<p>336:20, 336:23, 336:24, 336:25, 337:1</p> <p>cranes [1] - 175:6</p> <p>cream [1] - 329:25</p> <p>create [6] - 197:15, 229:18, 268:7, 281:13, 281:15, 281:17</p> <p>created [2] - 161:13, 384:13</p> <p>creates [1] - 399:20</p> <p>creating [1] - 312:14</p> <p>Cremer [2] - 145:16, 370:8</p> <p>CREMER [31] - 169:22, 186:4, 203:15, 203:17, 206:10, 206:18, 206:23, 207:1, 256:19, 256:21, 257:21, 257:24, 303:5, 327:17, 327:19, 328:24, 365:1, 366:25, 370:11, 370:22, 371:1, 371:8, 371:11, 372:12, 386:22, 387:16, 388:6, 388:9, 388:25, 403:12, 407:11</p> <p>crew [1] - 250:20</p> <p>crews [1] - 175:1</p> <p>criteria [6] - 166:9, 166:12, 184:25, 185:4, 185:9, 186:23</p> <p>criticized [1] - 252:13</p> <p>crop [47] - 163:22, 164:1, 165:3, 230:21, 231:4, 231:14, 231:18, 240:5, 240:9, 248:13, 266:20, 274:5, 274:7, 275:18, 277:11, 277:14, 282:21, 282:24, 283:2, 283:15, 284:1, 284:2, 284:17, 298:4, 298:13, 299:7, 300:11, 300:24, 301:2, 301:3, 301:4, 301:8, 301:12, 301:13, 301:14, 305:15, 326:12, 326:15, 327:9, 378:2, 378:10, 388:11, 395:21, 395:25,</p>	<p>396:4, 396:8, 397:18</p> <p>Crop [3] - 298:17, 299:23, 300:12</p> <p>crop-related [1] - 240:9</p> <p>crop-specific [1] - 275:18</p> <p>cropland [4] - 304:9, 321:14, 321:15, 330:13</p> <p>crops [9] - 240:5, 248:9, 248:12, 271:16, 271:18, 272:6, 272:19, 295:18, 308:16</p> <p>CROSS [27] - 147:2, 147:8, 147:12, 147:15, 147:17, 147:20, 154:8, 165:18, 173:10, 182:14, 192:18, 199:14, 200:21, 203:16, 239:3, 255:14, 256:20, 287:2, 300:20, 317:19, 325:7, 327:18, 349:1, 360:20, 364:15, 384:4, 384:25</p> <p>cross [20] - 200:9, 212:10, 214:16, 214:17, 222:5, 225:18, 274:16, 278:15, 286:2, 304:2, 304:10, 306:21, 310:1, 310:24, 312:22, 315:8, 315:23, 355:2, 364:12</p> <p>CROSS- EXAMINATION [21] - 154:8, 165:18, 173:10, 182:14, 192:18, 199:14, 200:21, 203:16, 239:3, 255:14, 256:20, 287:2, 300:20, 317:19, 325:7, 327:18, 349:1, 360:20, 364:15, 384:4, 384:25</p> <p>cross-examination [4] - 222:5, 274:16, 310:1, 310:24</p> <p>cross-examine [1] - 286:2</p> <p>cross-sectional [1] - 200:9</p> <p>crossed [3] - 294:3,</p>	<p>304:1, 330:13</p> <p>crosses [3] - 212:23, 312:5, 385:9</p> <p>crossing [7] - 212:10, 212:13, 212:17, 213:21, 227:3, 227:5, 291:20</p> <p>crossings [4] - 212:15, 213:19, 226:12, 226:25</p> <p>CRP [2] - 315:24, 330:14</p> <p>CRR [1] - 145:24</p> <p>crumbled [1] - 246:3</p> <p>cubic [3] - 175:20, 176:3, 176:4</p> <p>culprit [1] - 212:6</p> <p>cultural [8] - 152:3, 154:25, 155:6, 156:2, 156:11, 156:14</p> <p>culverts [1] - 285:13</p> <p>Cummings [2] - 356:6, 356:10</p> <p>cup [1] - 237:18</p> <p>cure [2] - 175:4, 231:22</p> <p>curious [2] - 260:23, 383:15</p> <p>current [11] - 165:6, 195:23, 201:18, 211:9, 211:13, 213:8, 213:25, 221:7, 359:8, 397:17</p> <p>currents [2] - 191:6, 215:13</p> <p>curve [5] - 233:20, 267:3, 267:12, 267:13</p> <p>custom [4] - 258:10, 294:23, 295:2, 295:5</p> <p>cut [1] - 346:19</p> <p>CV [3] - 148:13, 148:14, 149:4</p> <p>cycle [3] - 230:19, 230:22, 231:8</p> <p>Cyst [1] - 148:20</p> <p>cyst [62] - 153:22, 160:14, 160:17, 161:10, 228:23, 228:25, 229:4, 229:15, 230:2, 230:7, 231:10, 232:3, 232:16, 232:18, 232:22, 233:4, 233:14, 233:16, 233:18, 233:20, 234:23, 236:2, 236:14, 236:25, 237:2,</p>
---	---	--	---	--

237:5, 240:25, 241:7, 242:7, 242:13, 242:15, 251:23, 253:8, 253:21, 253:22, 254:22, 255:2, 255:5, 262:9, 266:13, 266:14, 267:20, 269:7, 273:4, 274:6, 274:22, 274:24, 275:5, 275:6, 275:10, 275:16, 276:7, 277:9, 282:13, 282:15, 293:21, 377:11, 388:15, 388:21, 390:22	234:6, 234:10, 241:18, 242:5, 242:12, 243:13, 244:14, 249:15, 251:1, 252:18, 252:22, 256:13, 260:13, 261:14, 271:17, 271:19, 271:24, 273:20, 274:3, 279:14, 279:19, 281:20, 282:9, 286:20, 290:4, 297:20, 297:24, 298:17, 312:15, 312:21, 314:19, 316:18, 323:13, 329:24, 339:21, 371:16, 372:3, 373:7, 408:7, 408:13 DAKOTA [3] - 145:2, 145:4, 408:1 damage [6] - 173:1, 181:7, 231:25, 264:10, 397:18, 398:3 damaged [1] - 284:2 damages [3] - 395:24, 396:10, 397:15 damaging [2] - 229:22, 230:5 danger [4] - 217:17, 218:5, 218:6, 218:8 dangerous [2] - 230:3, 363:20 DANNY [1] - 170:10 Danny [7] - 147:6, 148:13, 170:9, 170:16, 170:17, 170:21, 394:6 dark [1] - 257:14 Darren [1] - 370:11 Darren's [1] - 388:23 data [16] - 153:2, 153:11, 242:3, 250:24, 251:3, 251:4, 251:8, 251:16, 264:21, 288:6, 288:16, 295:23, 323:7, 323:24, 380:10, 399:3 Data [2] - 148:4, 148:5 date [6] - 275:25, 318:1, 321:22, 361:8, 386:18, 406:22 Dated [1] - 408:13 dates [1] - 356:19 daughter [1] - 280:17	day-by-day [1] - 333:12 day-to-day [1] - 333:11 days [9] - 146:4, 226:3, 287:10, 289:16, 323:19, 337:3, 340:17, 407:8, 408:11 dead [15] - 183:2, 184:2, 220:24, 264:19, 266:11, 266:12, 266:15, 271:3, 273:1, 293:16, 294:2, 294:5, 306:1, 306:20, 406:19 dead-end [2] - 183:2, 184:2 deadline [3] - 340:8, 385:4, 385:22 deal [21] - 157:21, 194:11, 194:19, 201:24, 274:19, 275:2, 287:21, 302:9, 302:17, 312:25, 314:25, 315:10, 316:13, 332:20, 333:16, 340:7, 348:10, 357:12, 383:13, 389:10, 404:13 dealing [9] - 157:17, 194:12, 299:15, 334:14, 338:17, 358:16, 358:17, 358:18, 393:11 deals [1] - 369:12 dealt [2] - 382:20 death [2] - 232:4, 293:21 decade [1] - 267:25 decent [1] - 267:21 decide [3] - 165:12, 280:18, 304:22 decided [1] - 404:4 deciding [1] - 399:7 decision [4] - 398:20, 405:12, 405:13, 406:21 decisions [1] - 380:1 decline [2] - 267:18, 267:20 decompaction [4] - 180:8, 180:11, 180:12, 180:17 decreases [1] - 218:10 deduce [1] - 257:6 Deeds [1] - 333:1 deep [11] - 176:2,	238:3, 238:4, 238:6, 238:12, 238:13, 238:15, 263:5, 269:15, 269:22 deeper [2] - 184:4, 184:9 deer [1] - 270:23 defer [3] - 331:25, 334:24, 375:1 define [1] - 156:6 defined [1] - 268:23 definitely [1] - 257:13 definition [1] - 264:20 definitions [2] - 396:21, 398:1 definitively [1] - 200:18 degree [5] - 150:23, 171:2, 183:13, 372:2, 393:14 degrees [2] - 185:7, 378:11 delay [1] - 232:19 delivered [1] - 316:22 delivering [1] - 191:21 delve [1] - 389:8 demand [1] - 375:15 denied [3] - 165:10, 400:9, 400:12 DENR [1] - 328:2 densities [1] - 242:8 deny [1] - 398:9 department [1] - 228:20 Department [4] - 153:18, 327:25, 328:2, 372:5 dependent [2] - 176:5, 176:16 depict [1] - 318:24 depicted [1] - 290:20 depiction [3] - 291:6, 291:8, 319:3 depreciation [1] - 317:2 depth [4] - 180:12, 180:16, 269:14, 270:3 describe [9] - 155:1, 174:21, 179:21, 193:3, 196:14, 205:5, 281:1, 283:1, 331:16 described [5] - 248:5, 324:2, 326:16, 365:13, 399:2 describing [3] - 181:3, 229:6, 344:21 description [2] - 275:17, 371:18	design [17] - 170:23, 10 171:4, 171:5, 171:12, 171:23, 171:24, 172:2, 172:5, 172:10, 172:17, 175:25, 182:16, 190:11, 190:23, 372:4, 382:22 designed [9] - 172:18, 172:21, 175:23, 191:14, 212:25, 320:21, 351:11, 382:23, 382:24 designing [3] - 179:2, 375:24 designs [1] - 376:18 desire [1] - 395:5 despite [1] - 373:22 destroyed [2] - 285:12, 285:13 detail [9] - 166:11, 187:16, 204:25, 238:20, 239:9, 252:14, 252:17, 275:9, 325:11 detailed [1] - 238:18 details [5] - 153:12, 211:17, 235:9, 235:11, 255:4 detect [1] - 272:10 detected [1] - 257:8 detection [1] - 272:9 determination [1] - 161:11 determine [8] - 207:19, 216:22, 226:24, 256:22, 257:4, 328:23, 334:22, 378:24 determined [2] - 183:24, 187:12 determines [2] - 191:10, 224:23 determining [6] - 160:22, 167:9, 211:15, 252:20, 253:18, 392:2 detrimental [1] - 221:8 develop [4] - 193:11, 230:11, 271:14, 277:8 developed [4] - 163:21, 180:25, 244:6, 392:5 developers [1] - 162:15 development [6] - 151:18, 162:7, 164:9, 182:1, 276:7,
D				
dad's [1] - 316:19 daily [2] - 319:22, 328:17 dairies [1] - 324:13 dairy [56] - 168:14, 168:16, 168:25, 169:2, 169:8, 200:4, 214:15, 316:1, 316:6, 316:8, 316:24, 317:13, 318:14, 318:24, 319:4, 319:7, 319:10, 319:13, 319:15, 319:21, 319:22, 319:25, 320:1, 320:2, 320:3, 320:4, 320:12, 320:13, 320:18, 320:19, 320:22, 322:3, 322:7, 322:12, 323:9, 323:11, 323:12, 324:1, 324:24, 325:23, 327:22, 328:9, 330:22, 330:25, 336:1, 336:9, 336:16, 336:17, 336:25, 337:10, 337:24, 341:17, 347:2, 347:14, 359:4 Dakota [56] - 146:2, 146:3, 151:1, 151:11, 159:6, 161:17, 161:22, 171:11, 176:12, 178:23, 182:21, 183:5, 186:25, 210:22, 232:13,				

<p>312:19</p> <p>develops ^[1] - 271:11</p> <p>deviation ^[2] - 341:10, 404:11</p> <p>devoted ^[1] - 233:15</p> <p>diagonal ^[2] - 346:2, 356:15</p> <p>diagonally ^[7] - 220:14, 335:15, 345:16, 346:4, 346:19, 355:2, 356:1</p> <p>diagram ^[1] - 321:7</p> <p>diameter ^[3] - 175:14, 176:1, 184:10</p> <p>dictate ^[1] - 155:9</p> <p>dictated ^[2] - 179:23, 187:10</p> <p>dies ^[1] - 231:3</p> <p>differ ^[1] - 302:16</p> <p>difference ^[13] - 183:15, 250:20, 326:9, 326:24, 327:5, 336:4, 342:5, 363:8, 369:23, 369:25, 370:2, 370:5, 389:9</p> <p>different ^[28] - 155:21, 161:6, 176:25, 177:1, 182:24, 192:2, 194:14, 201:24, 203:22, 204:8, 215:15, 221:4, 264:8, 265:25, 271:25, 278:11, 334:15, 336:14, 337:7, 339:20, 364:3, 369:16, 373:3, 396:17, 396:20, 397:10</p> <p>differently ^[2] - 394:23, 395:2</p> <p>difficult ^[10] - 178:2, 205:9, 209:5, 210:5, 230:3, 231:2, 253:5, 258:24, 267:19, 328:12</p> <p>dig ^[4] - 155:17, 244:2, 263:6, 387:7</p> <p>Digest ^[1] - 149:6</p> <p>digestive ^[1] - 336:12</p> <p>digging ^[4] - 175:17, 262:7, 263:6, 273:5</p> <p>digs ^[1] - 261:3</p> <p>diligence ^[1] - 247:25</p> <p>diligent ^[3] - 247:16, 247:23, 248:4</p> <p>diligently ^[1] - 247:17</p> <p>DIRECT ^[14] - 147:2, 147:8, 147:12,</p>	<p>147:15, 147:17, 147:20, 150:14, 170:13, 189:23, 228:9, 279:9, 362:25, 365:10, 371:10</p> <p>direct ^[21] - 160:3, 184:18, 191:21, 222:20, 228:2, 240:21, 241:11, 243:12, 245:6, 245:9, 249:11, 251:21, 252:1, 252:13, 279:2, 338:2, 348:21, 366:21, 385:8, 398:11</p> <p>Direct ^[2] - 149:3, 149:3</p> <p>directed ^[2] - 151:21, 154:19</p> <p>directing ^[1] - 162:2</p> <p>direction ^[5] - 166:15, 253:16, 353:10, 393:23, 395:19</p> <p>directly ^[8] - 197:10, 198:23, 198:25, 202:18, 220:2, 220:8, 323:17, 346:8</p> <p>dirt ^[5] - 259:10, 295:10, 305:5, 313:9, 313:11</p> <p>disable ^[1] - 345:22</p> <p>disagree ^[2] - 261:16, 397:21</p> <p>disappear ^[1] - 312:11</p> <p>disaster ^[2] - 301:5, 301:6</p> <p>discharge ^[1] - 195:18</p> <p>disclose ^[1] - 332:5</p> <p>disclosed ^[2] - 332:12, 340:25</p> <p>disconnected ^[1] - 285:14</p> <p>discount ^[3] - 339:16, 340:14</p> <p>discover ^[1] - 234:8</p> <p>discovered ^[2] - 231:12, 234:11</p> <p>Discovery ^[2] - 148:6, 148:7</p> <p>discuss ^[3] - 317:24, 355:14, 395:18</p> <p>discussed ^[8] - 172:13, 185:9, 204:9, 221:15, 282:12, 282:16, 358:2, 358:8</p> <p>Discussion ^[2] - 287:15, 314:1</p>	<p>discussion ^[12] - 270:5, 329:4, 338:25, 355:21, 355:24, 370:10, 379:16, 385:23, 386:3, 392:8, 404:17, 406:22</p> <p>discussions ^[2] - 233:13, 370:14</p> <p>Disease ^[1] - 149:8</p> <p>disease ^[5] - 236:22, 251:12, 258:12, 263:10, 264:11</p> <p>diseases ^[1] - 260:16</p> <p>disposal ^[1] - 177:6</p> <p>disrespect ^[1] - 253:20</p> <p>dissimilar ^[1] - 265:15</p> <p>distance ^[6] - 202:15, 202:19, 221:13, 239:1, 329:4, 338:1</p> <p>distracted ^[1] - 177:6</p> <p>distress ^[2] - 272:11, 272:12</p> <p>Distribution ^[1] - 149:5</p> <p>distribution ^[5] - 171:7, 191:20, 234:23, 316:3, 316:4</p> <p>disturb ^[2] - 246:11, 246:16</p> <p>disturbance ^[1] - 398:2</p> <p>disturbed ^[4] - 245:24, 246:1, 246:4, 261:9</p> <p>disturbing ^[2] - 246:10, 261:4</p> <p>DO ^[1] - 408:8</p> <p>docket ^[2] - 371:18, 371:20</p> <p>Docket ^[3] - 150:2, 383:5, 407:18</p> <p>dockets ^[1] - 380:16</p> <p>document ^[26] - 224:9, 224:14, 224:21, 239:9, 239:15, 239:17, 239:20, 239:24, 240:4, 240:22, 241:15, 245:11, 254:11, 254:20, 254:23, 255:2, 255:5, 255:8, 255:9, 275:18, 275:25, 276:13, 276:17, 276:20, 289:4, 311:7</p> <p>documentation ^[2] - 307:1, 311:17</p> <p>documents ^[14] - 228:15, 239:8,</p>	<p>240:14, 240:18, 240:19, 240:24, 241:1, 241:2, 241:13, 333:6, 342:24, 402:14</p> <p>dollars ^[1] - 324:25</p> <p>domain ^[1] - 375:17</p> <p>done ^[39] - 153:8, 155:8, 155:9, 156:21, 157:8, 166:5, 176:20, 212:24, 215:1, 224:5, 256:9, 259:4, 262:23, 268:11, 271:10, 293:7, 293:9, 295:5, 299:12, 303:10, 305:8, 328:24, 340:7, 340:16, 343:14, 347:16, 362:12, 363:11, 365:16, 385:21, 387:2, 392:25, 398:18, 398:22, 400:2, 400:3, 400:4, 404:20, 405:20</p> <p>dormancy ^[3] - 266:9, 266:23, 267:4</p> <p>dormant ^[3] - 231:4, 266:21, 267:23</p> <p>dot ^[1] - 266:15</p> <p>dots ^[2] - 236:9, 236:12</p> <p>dotted ^[1] - 347:6</p> <p>double ^[2] - 264:23, 270:15</p> <p>down ^[32] - 164:5, 170:4, 178:15, 179:5, 188:16, 189:16, 201:6, 205:7, 205:10, 222:9, 227:15, 236:6, 267:18, 283:5, 292:15, 292:22, 303:17, 309:13, 313:18, 315:6, 315:15, 328:21, 335:16, 340:8, 345:15, 345:24, 347:3, 351:23, 352:7, 357:12, 399:7</p> <p>downs ^[1] - 178:19</p> <p>dozers ^[1] - 385:19</p> <p>Dr ^[17] - 153:23, 161:12, 239:5, 244:13, 245:10, 247:19, 251:20, 251:23, 258:6, 277:6, 295:19,</p>	<p>295:22, 304:24, 305:7, 362:18, 364:17, 392:20</p> <p>Draft ^[1] - 148:20</p> <p>draft ^[6] - 292:8, 377:11, 377:12, 377:14, 390:23</p> <p>drafting ^[1] - 388:14</p> <p>drafts ^[1] - 370:13</p> <p>drag ^[3] - 279:16, 307:9</p> <p>drain ^[2] - 243:21, 244:13</p> <p>draw ^[1] - 267:13</p> <p>drawn ^[1] - 292:12</p> <p>drill ^[5] - 175:2, 175:12, 175:13, 175:15, 176:14</p> <p>drilling ^[2] - 175:19, 387:10</p> <p>drink ^[3] - 201:25, 202:1, 221:8</p> <p>drinking ^[1] - 221:2</p> <p>drive ^[6] - 164:3, 197:23, 226:3, 250:18, 305:10, 341:12</p> <p>driven ^[2] - 166:18, 172:6</p> <p>driving ^[5] - 197:19, 198:22, 250:7, 250:10, 387:13</p> <p>drone ^[1] - 214:21</p> <p>drones ^[3] - 214:19, 214:23, 215:4</p> <p>drop ^[5] - 267:15, 267:16, 267:21, 267:22, 283:25</p> <p>dropping ^[1] - 307:21</p> <p>droppings ^[1] - 271:3</p> <p>drove ^[1] - 320:5</p> <p>drum ^[1] - 232:23</p> <p>dry ^[4] - 209:21, 210:5, 210:9, 264:15</p> <p>due ^[5] - 157:14, 162:8, 197:3, 197:21, 284:2</p> <p>dug ^[2] - 246:9, 269:9</p> <p>duly ^[9] - 150:12, 170:11, 189:21, 228:7, 279:7, 314:15, 343:17, 371:6, 408:8</p> <p>duly-appointed ^[1] - 408:8</p> <p>dumped ^[2] - 313:13, 366:13</p> <p>duration ^[1] - 224:18</p> <p>durations ^[1] - 189:13</p> <p>during ^[8] - 151:5,</p>
---	--	---	--	---

166:21, 171:25, 172:2, 226:12, 237:23, 336:3, 363:2	151:4, 160:4 economy [2] - 153:14, 210:23 ed [1] - 391:21 edge [6] - 211:14, 218:12, 305:23, 347:5, 347:8, 380:23 edges [1] - 320:10 edible [2] - 271:25, 272:1 education [6] - 190:19, 206:11, 233:16, 258:4, 279:25, 372:1 educational [2] - 258:19, 279:24 effect [7] - 194:18, 199:19, 199:23, 201:24, 214:20, 248:19, 317:13 effective [3] - 237:12, 237:15, 238:2 effects [5] - 167:18, 191:19, 197:13, 202:17, 218:9 efficacy [2] - 235:6, 235:9 efficiency [1] - 372:6 effort [2] - 369:5, 399:15 efforts [3] - 171:24, 172:2, 317:5 egg [4] - 237:7, 237:9, 259:17, 266:8 eggs [19] - 230:16, 231:2, 231:3, 231:4, 235:23, 236:10, 237:17, 259:17, 262:16, 266:11, 266:12, 266:15, 266:16, 266:18, 266:21, 267:4, 267:23, 271:4 eight [2] - 263:7, 272:18 eighths [1] - 339:2 either [13] - 167:15, 174:11, 272:10, 302:13, 306:8, 318:10, 321:24, 333:19, 336:12, 398:7, 405:11, 405:16, 405:20 EL10-016 [1] - 383:5 EL13-028 [3] - 145:4, 150:2, 407:18 elect [2] - 302:20, 322:20 election [1] - 327:1 Electric [6] - 172:18,	187:10, 191:10, 191:14, 209:18, 210:7 electric [20] - 190:25, 191:4, 191:5, 191:12, 191:15, 191:18, 194:6, 194:18, 204:17, 209:23, 215:12, 215:14, 215:18, 218:10, 218:13, 218:14, 296:15, 347:7, 372:24 electric's [1] - 323:14 electrical [20] - 170:23, 170:24, 178:19, 178:22, 190:11, 190:13, 190:17, 190:19, 190:20, 190:22, 192:20, 192:24, 193:9, 193:12, 194:1, 195:18, 210:15, 285:18, 285:19, 372:2 electricity [12] - 209:1, 285:21, 296:13, 296:16, 296:17, 296:21, 297:1, 297:3, 297:5, 297:10, 297:13, 316:6 electrified [1] - 221:6 electrifying [1] - 202:11 electromagnetic [5] - 201:23, 202:16, 215:10, 218:9, 219:12 electronic [1] - 193:10 electrostatic [2] - 194:18, 218:15 elevator [2] - 260:20, 263:21 elevators [2] - 258:9, 258:18 eligible [1] - 301:8 eliminate [4] - 211:11, 267:19, 315:22, 330:17 eliminating [2] - 308:20, 317:9 Ellendale [1] - 150:2 ELLENDALÉ [1] - 145:6 Ellis [3] - 297:18, 297:23, 304:14 elsewhere [1] - 325:1 elucidate [1] - 343:3 EMF [4] - 193:3,	193:15, 194:24, 197:12 emissions [4] - 204:18, 204:19, 204:25, 205:2 Emmanuel [4] - 253:6, 253:12, 253:15, 392:21 employ [1] - 248:6 employed [1] - 372:5 employees [3] - 151:2, 208:21, 322:11 employment [3] - 153:10, 153:13, 372:8 encompass [1] - 195:1 encountered [1] - 268:13 encountering [1] - 275:19 end [21] - 159:20, 183:2, 184:2, 201:8, 201:16, 203:9, 203:11, 208:11, 221:20, 223:6, 224:18, 230:14, 233:6, 233:9, 290:3, 337:8, 382:2, 386:25, 387:1, 387:8 endangered [1] - 275:3 ended [1] - 185:10 ends [2] - 201:10, 277:21 enemies [2] - 229:20, 230:1 energized [4] - 208:3, 208:10, 216:23, 297:9 energy [4] - 208:16, 208:17, 361:5, 372:6 engaging [1] - 151:18 engineer [19] - 170:24, 171:4, 171:9, 171:12, 171:15, 171:16, 171:18, 171:20, 171:21, 171:24, 173:12, 177:4, 177:10, 178:20, 178:21, 190:8, 192:20, 192:24, 372:4 engineering [18] - 171:2, 171:24, 172:4, 172:5, 172:12, 172:24, 173:15, 181:12, 181:13, 182:2, 182:8, 190:18,	190:20, 190:21, 12 190:23, 372:2, 399:11, 400:5 engineers [9] - 151:4, 171:19, 178:19, 190:10, 193:10, 288:14, 376:18, 383:8, 399:23 Engineers [4] - 171:3, 173:19, 190:8, 190:16 entered [1] - 343:22 enterprise [1] - 283:7 entire [12] - 166:19, 172:6, 175:24, 176:12, 178:12, 225:16, 226:5, 226:19, 275:17, 276:10, 304:3, 341:13 entirely [1] - 337:2 entirety [2] - 219:16, 219:25 entitled [4] - 146:2, 334:11, 334:21, 408:10 Environment [1] - 328:3 environment [2] - 159:14, 161:2 environmental [15] - 151:6, 151:17, 152:14, 159:1, 159:23, 160:18, 160:23, 161:1, 161:4, 168:11, 177:10, 179:25, 282:10, 399:12, 400:5 equal [1] - 203:5 equipment [50] - 175:10, 176:14, 176:17, 176:18, 176:21, 176:23, 177:1, 177:16, 177:18, 194:1, 194:13, 207:9, 236:6, 244:24, 245:14, 245:25, 247:14, 252:3, 252:8, 254:3, 254:8, 261:8, 269:8, 281:13, 295:13, 369:3, 369:10, 369:16, 369:17, 370:1, 372:24, 373:2, 373:12, 373:14, 374:1, 375:10, 375:21, 375:24, 376:18,
---	--	---	--	---

<p>376:20, 376:22, 384:11, 384:15, 384:16, 384:17, 387:14, 387:24, 388:3, 389:19</p> <p>equivalent [1] - 369:6</p> <p>erosion [4] - 180:5, 245:1, 245:3, 246:3</p> <p>err [1] - 333:18</p> <p>error [1] - 262:4</p> <p>especially [2] - 260:12, 363:10</p> <p>establish [1] - 392:17</p> <p>established [5] - 209:24, 301:21, 326:20, 391:5</p> <p>establishes [1] - 209:11</p> <p>estimate [5] - 183:10, 205:18, 205:20, 210:2, 339:2</p> <p>estimated [2] - 264:9, 264:10</p> <p>estimates [2] - 153:10, 153:14</p> <p>estimation [1] - 183:11</p> <p>et [3] - 168:10, 278:7, 400:10</p> <p>evaluate [1] - 166:10</p> <p>evaluating [1] - 172:3</p> <p>event [15] - 165:6, 165:9, 172:22, 179:10, 186:13, 186:14, 186:24, 187:10, 187:12, 187:15, 187:18, 187:21, 284:1, 355:5</p> <p>events [3] - 172:20, 179:2, 187:3</p> <p>eventually [1] - 230:13</p> <p>evidence [14] - 153:21, 153:23, 170:18, 190:3, 295:22, 296:3, 302:2, 318:23, 323:7, 331:15, 331:19, 331:23, 344:3, 360:12</p> <p>evident [1] - 323:24</p> <p>evidentiary [2] - 367:5, 367:25</p> <p>exact [6] - 210:4, 211:4, 281:8, 338:1, 379:8, 390:21</p> <p>exactly [10] - 155:16, 183:9, 265:8, 281:1, 313:9, 356:19, 363:11, 379:8, 379:14, 395:16</p>	<p>examination [6] - 222:5, 274:16, 277:1, 300:18, 310:1, 310:24</p> <p>EXAMINATION [41] - 150:14, 154:8, 165:18, 170:13, 173:10, 182:14, 188:5, 189:23, 192:18, 199:14, 200:21, 203:16, 214:12, 216:16, 217:10, 219:8, 219:23, 223:15, 226:14, 228:9, 239:3, 255:14, 256:20, 273:17, 277:4, 279:9, 287:2, 300:20, 311:4, 317:19, 325:7, 327:18, 349:1, 360:20, 362:25, 364:15, 365:10, 371:10, 384:4, 384:25, 388:8</p> <p>examine [1] - 286:2</p> <p>examines [1] - 289:4</p> <p>example [11] - 157:17, 176:15, 194:15, 195:8, 208:9, 208:20, 221:13, 229:24, 267:16, 337:9, 376:25</p> <p>examples [2] - 191:7, 205:17</p> <p>excavate [2] - 175:7, 175:10</p> <p>excavated [1] - 189:6</p> <p>excavation [1] - 270:6</p> <p>excellent [1] - 252:22</p> <p>except [2] - 320:19, 390:16</p> <p>excess [2] - 260:3, 264:14</p> <p>excessive [3] - 379:1, 379:19, 379:24</p> <p>exchange [1] - 406:18</p> <p>exclusions [2] - 396:20, 398:1</p> <p>exclusively [1] - 229:1</p> <p>excuse [9] - 186:23, 219:13, 247:1, 274:6, 298:21, 302:8, 316:21, 331:9, 360:8</p> <p>excused [9] - 170:6, 189:17, 227:16, 277:24, 313:19, 342:9, 342:11, 366:19, 389:4</p>	<p>executed [1] - 224:6</p> <p>exercise [1] - 320:15</p> <p>Exhibit [62] - 152:5, 159:12, 192:14, 204:13, 206:1, 206:12, 220:11, 223:2, 223:19, 226:13, 226:18, 235:3, 239:11, 239:14, 240:16, 240:21, 241:5, 245:8, 245:10, 245:11, 247:10, 251:24, 252:2, 253:25, 254:6, 254:11, 254:17, 255:3, 257:10, 274:17, 275:21, 276:21, 276:22, 277:10, 277:12, 288:3, 288:4, 288:22, 289:2, 290:21, 291:2, 303:25, 313:24, 318:21, 319:1, 321:9, 331:12, 341:9, 342:17, 344:22, 345:14, 349:24, 349:25, 351:2, 351:20, 351:23, 353:7, 354:4, 360:11, 391:4, 403:17</p> <p>exhibit [16] - 158:15, 215:23, 235:4, 239:11, 331:10, 332:3, 332:10, 342:19, 343:1, 343:22, 343:23, 343:25, 344:7, 354:3, 402:19</p> <p>EXHIBITS [5] - 148:2, 149:2, 149:10, 149:15, 149:18</p> <p>exhibits [6] - 234:20, 290:7, 290:9, 292:10, 292:23, 402:16</p> <p>Exhibits [1] - 290:8</p> <p>exist [4] - 216:1, 250:25, 296:7, 302:1</p> <p>existed [3] - 168:14, 229:20, 293:14</p> <p>existence [4] - 279:22, 281:6, 289:15, 289:16</p> <p>existing [3] - 341:11, 356:2, 375:4</p> <p>expand [1] - 215:9</p> <p>expect [6] - 191:22, 192:4, 199:5, 219:12, 255:19, 310:11</p>	<p>expense [11] - 196:25, 211:2, 222:22, 223:8, 223:11, 374:7, 374:11, 374:12, 374:14, 374:21</p> <p>expensive [2] - 188:10, 188:14</p> <p>experience [14] - 151:5, 197:20, 197:23, 206:11, 216:21, 248:1, 250:17, 284:24, 285:3, 285:6, 372:1, 385:8, 388:3, 394:13</p> <p>experimentally [1] - 237:15</p> <p>expert [18] - 156:8, 156:15, 156:19, 234:21, 254:21, 277:11, 277:14, 302:14, 309:20, 323:10, 377:24, 378:3, 388:11, 388:16, 391:24, 392:2, 392:9, 393:14</p> <p>expert's [1] - 392:6</p> <p>expertise [9] - 180:1, 181:23, 182:17, 185:15, 211:23, 378:5, 378:11, 392:15, 393:16</p> <p>experts [4] - 156:16, 378:18, 391:13, 398:1</p> <p>explain [14] - 183:17, 188:9, 188:24, 193:7, 200:1, 204:6, 234:5, 279:11, 330:5, 336:7, 342:6, 385:6, 400:19</p> <p>explained [4] - 325:10, 330:7, 365:14, 397:18</p> <p>explaining [1] - 380:6</p> <p>explanation [2] - 229:3, 229:5</p> <p>explored [1] - 185:17</p> <p>explosive [1] - 230:24</p> <p>exposed [1] - 265:20</p> <p>exposure [2] - 193:16, 193:22</p> <p>express [1] - 338:23</p> <p>expressed [5] - 162:12, 162:15, 285:24, 361:1, 405:10</p>	<p>extend [1] - 321:5</p> <p>extended [1] - 189:12</p> <p>extends [1] - 221:12</p> <p>extension [2] - 252:24, 253:2</p> <p>extensive [5] - 151:5, 152:4, 162:24, 166:17, 328:16</p> <p>extent [7] - 181:19, 195:11, 208:22, 216:7, 346:13, 360:11, 384:11</p> <p>extenuating [1] - 381:14</p> <p>extra [2] - 196:10, 377:22</p> <p>extracted [1] - 175:16</p> <p>extracting [1] - 175:21</p> <p>extraction [1] - 238:2</p> <p>extractions [1] - 237:15</p> <p>extreme [2] - 172:22, 186:17</p> <p>extremely [4] - 199:1, 212:5, 218:13, 258:24</p> <p>eye [1] - 253:11</p>
F				
<p>facilities [6] - 214:15, 316:16, 321:5, 323:12, 324:12, 324:16</p> <p>facility [19] - 151:16, 158:23, 159:13, 238:8, 287:9, 288:1, 316:11, 316:24, 317:2, 318:5, 320:21, 322:16, 323:3, 323:13, 325:23, 328:8, 331:1, 339:22, 348:6</p> <p>facing [1] - 292:17</p> <p>Fact [1] - 149:7</p> <p>fact [16] - 169:13, 179:14, 202:5, 238:1, 248:15, 301:14, 305:14, 311:15, 312:5, 314:24, 315:25, 316:7, 338:11, 357:25, 376:17, 377:15</p> <p>factor [9] - 160:17, 167:22, 186:10, 186:11, 187:19, 187:20, 215:13, 222:3, 334:6</p>				

<p>factored [1] - 176:18</p> <p>factors [8] - 160:23, 161:3, 168:11, 202:25, 203:3, 203:8, 209:6, 222:2</p> <p>facts [3] - 338:14, 370:23, 370:24</p> <p>factual [1] - 339:11</p> <p>fair [4] - 247:5, 275:8, 349:18, 358:22</p> <p>fairly [3] - 273:16, 319:6, 363:25</p> <p>faith [2] - 252:19, 369:5</p> <p>fall [3] - 177:9, 177:10, 266:23</p> <p>Falls [1] - 151:1</p> <p>false [2] - 236:19, 237:11</p> <p>familiar [1] - 393:6</p> <p>families [2] - 330:23, 331:2</p> <p>family [6] - 169:16, 280:15, 314:21, 316:10, 317:5, 322:9</p> <p>Family [1] - 396:19</p> <p>far [33] - 154:17, 156:25, 157:12, 176:14, 178:19, 194:10, 202:17, 218:5, 233:2, 263:11, 267:3, 286:19, 296:20, 319:7, 319:10, 324:4, 336:12, 339:1, 339:4, 340:10, 349:14, 357:23, 358:24, 373:20, 374:25, 376:2, 376:8, 381:25, 385:5, 387:17, 391:2, 392:17, 407:15</p> <p>Farm [4] - 300:25, 301:7, 326:13, 396:18</p> <p>farm [38] - 164:7, 194:12, 194:22, 194:24, 244:24, 252:3, 260:19, 279:19, 279:21, 280:1, 280:15, 281:3, 281:10, 281:13, 283:7, 283:12, 284:6, 295:25, 296:2, 296:17, 304:3, 304:6, 305:21, 307:25, 308:14, 318:24, 319:4,</p>	<p>320:1, 323:17, 326:14, 326:18, 327:22, 337:10, 337:19, 338:3, 348:14, 394:21</p> <p>farmed [3] - 247:17, 283:13, 340:3</p> <p>farmer [17] - 164:14, 165:4, 182:5, 182:8, 215:22, 215:25, 233:19, 236:24, 251:14, 251:15, 262:19, 263:13, 263:20, 274:4, 281:20, 282:9, 319:21</p> <p>farmer's [3] - 247:16, 394:22, 394:25</p> <p>farmers [24] - 153:17, 157:5, 181:15, 197:23, 233:12, 233:17, 233:22, 236:22, 237:9, 247:15, 248:1, 248:6, 250:9, 250:17, 260:19, 268:8, 268:11, 268:12, 269:21, 274:21, 281:21, 284:14, 284:16, 285:23</p> <p>farmers' [2] - 259:4, 284:8</p> <p>farming [12] - 204:1, 245:16, 246:9, 246:11, 247:20, 279:19, 281:5, 294:23, 295:16, 307:22, 313:6, 346:10</p> <p>Farms [2] - 149:16, 321:10</p> <p>farms [2] - 243:7, 296:18</p> <p>farmstead [1] - 296:13</p> <p>Fasteen [1] - 401:25</p> <p>FASTEEN [1] - 402:4</p> <p>fax [1] - 299:10</p> <p>FCC [2] - 373:16, 384:16</p> <p>feasible [1] - 184:17</p> <p>February [1] - 228:22</p> <p>federal [2] - 155:8, 301:4</p> <p>feed [5] - 229:9, 230:6, 274:10, 330:10, 344:13</p> <p>feedback [1] - 335:8</p> <p>feeding [6] - 229:10, 274:11, 319:23,</p>	<p>320:22, 328:11, 348:6</p> <p>feedlot [28] - 201:17, 201:20, 220:5, 220:6, 220:9, 220:10, 220:14, 220:19, 220:20, 330:21, 331:1, 345:3, 345:13, 345:15, 346:6, 346:25, 349:21, 351:9, 351:13, 351:15, 351:17, 351:18, 351:24, 352:23, 352:24, 357:20</p> <p>feet [59] - 157:19, 165:2, 175:20, 176:2, 195:14, 209:3, 209:22, 210:2, 211:14, 217:13, 217:14, 217:15, 217:16, 217:21, 217:24, 218:1, 218:4, 218:6, 218:7, 218:12, 219:2, 219:14, 219:17, 220:1, 238:6, 238:12, 238:13, 238:15, 260:7, 263:5, 269:15, 305:15, 309:13, 315:12, 337:24, 341:15, 345:8, 345:9, 345:11, 346:5, 351:19, 352:24, 353:3, 353:10, 355:8, 355:13, 355:17, 355:20, 357:19, 358:8, 358:10, 358:24, 361:6, 363:24, 364:5</p> <p>felt [2] - 316:15, 391:8</p> <p>female [13] - 230:9, 230:10, 230:13, 230:15, 233:5, 235:23, 259:17, 259:18, 266:11, 266:12, 266:15, 299:16, 299:17</p> <p>females [9] - 231:2, 236:10, 238:13, 261:18, 262:5, 262:24, 263:7, 271:4, 273:5</p> <p>fence [43] - 196:1, 196:3, 196:9, 196:11, 196:15, 196:21, 196:25,</p>	<p>200:13, 201:1, 201:4, 201:5, 201:6, 201:8, 201:13, 201:15, 201:16, 201:20, 202:5, 202:11, 202:12, 202:13, 202:22, 202:24, 203:5, 203:6, 203:11, 207:6, 207:10, 216:2, 218:25, 219:11, 219:14, 219:16, 219:25, 220:1, 220:8, 220:16, 220:18, 221:5, 221:6, 221:11, 221:20, 225:17</p> <p>fenced [1] - 202:18</p> <p>fences [13] - 180:2, 191:8, 196:6, 200:23, 210:24, 211:1, 211:10, 211:13, 216:22, 216:24, 222:23, 225:23, 225:24</p> <p>fertilize [1] - 307:23</p> <p>few [18] - 152:22, 158:10, 166:22, 183:7, 221:2, 226:3, 229:14, 265:18, 268:11, 272:6, 283:24, 284:18, 303:15, 317:2, 325:5, 342:12, 351:19, 402:6</p> <p>fewer [1] - 256:11</p> <p>FF [1] - 148:11</p> <p>fickle [1] - 336:9</p> <p>fiction [3] - 316:7, 338:11, 338:17</p> <p>Fiegen [20] - 207:24, 210:18, 212:1, 215:24, 225:12, 226:11, 258:2, 273:4, 308:23, 329:20, 334:24, 361:21, 363:10, 363:20, 383:18, 395:15, 401:9, 405:3, 405:4, 406:4</p> <p>FIEGEN [63] - 145:13, 210:19, 211:19, 212:3, 212:16, 213:3, 213:11, 225:13, 226:1, 227:8, 257:1, 258:3, 258:23, 259:5, 259:16, 259:19, 259:23, 260:1,</p>	<p>260:9, 260:11, 261:12, 261:20, 262:14, 263:9, 264:7, 264:24, 265:2, 266:2, 302:8, 308:24, 309:2, 309:12, 309:18, 310:7, 310:10, 310:15, 310:21, 329:21, 331:4, 331:18, 332:2, 335:1, 335:10, 335:19, 335:22, 335:25, 336:3, 336:7, 337:9, 337:14, 337:23, 338:4, 361:22, 368:4, 382:11, 391:11, 395:16, 395:20, 397:13, 398:6, 400:8, 401:18, 405:6</p> <p>Fiegen's [5] - 214:14, 216:18, 217:12, 222:22, 223:10</p> <p>field [73] - 163:25, 177:16, 177:19, 181:23, 182:17, 185:15, 191:13, 191:19, 194:18, 204:17, 208:22, 213:5, 215:10, 215:12, 215:15, 215:18, 218:9, 218:10, 218:13, 218:14, 219:12, 229:19, 232:4, 232:6, 232:19, 235:14, 235:25, 236:1, 244:3, 247:16, 247:17, 250:7, 252:3, 254:4, 255:18, 256:23, 257:5, 259:3, 261:8, 263:10, 263:14, 268:17, 268:23, 268:24, 270:23, 274:4, 274:6, 281:12, 283:8, 290:20, 293:15, 293:16, 293:17, 294:1, 294:4, 294:18, 294:19, 295:14, 306:3, 306:4, 313:2, 326:22, 366:2, 380:22, 381:15, 387:14</p> <p>fields [27] - 190:25, 191:4, 191:5, 191:6, 191:16, 194:6,</p>
--	---	---	--	---

<p>231:11, 231:17, 236:6, 243:22, 248:7, 250:10, 250:18, 252:7, 252:9, 259:1, 259:4, 259:15, 260:25, 262:8, 262:21, 272:22, 274:23, 293:24, 294:21, 303:15, 305:10 figure [7] - 336:21, 368:21, 378:13, 390:20, 394:7, 394:9, 403:23 figured [2] - 179:14, 237:14 file [1] - 334:9 filed [11] - 150:18, 168:24, 190:2, 215:23, 241:3, 287:13, 287:24, 289:7, 349:15, 371:21, 377:12 filig [2] - 334:9, 371:21 fill [1] - 175:7 filled [1] - 304:17 fills [1] - 230:16 final [5] - 166:4, 174:24, 231:1, 338:24, 398:8 finally [6] - 191:24, 197:14, 233:11, 238:16, 303:16, 303:18 financial [1] - 317:12 financially [1] - 216:3 financing [1] - 324:11 findings [1] - 367:16 fine [13] - 185:22, 242:4, 265:1, 299:11, 300:4, 300:8, 312:2, 315:11, 327:11, 333:23, 349:6, 368:18, 402:9 finish [5] - 173:14, 267:7, 287:17, 287:19, 292:1 finished [3] - 228:1, 292:22, 292:23 fire [4] - 195:18, 309:1, 333:25, 372:14 firm [5] - 154:20, 155:1, 157:4, 165:10, 166:14 first [44] - 150:12, 152:24, 153:2, 153:11, 170:11,</p>	<p>189:21, 190:25, 191:3, 210:21, 218:2, 221:11, 225:13, 228:7, 229:19, 237:23, 243:12, 245:22, 252:6, 253:6, 258:2, 260:24, 266:7, 272:15, 279:7, 281:21, 299:2, 307:18, 309:2, 314:15, 330:19, 343:17, 344:9, 349:25, 350:16, 353:7, 371:6, 372:17, 377:12, 382:5, 383:5, 392:24, 393:18, 395:9, 404:11 First [4] - 148:4, 148:6, 148:9, 149:7 fiscal [1] - 393:1 fit [2] - 385:17, 386:2 five [14] - 187:2, 227:19, 227:22, 230:7, 230:22, 239:22, 240:1, 240:2, 264:3, 294:17, 309:8, 323:16, 364:3, 403:25 five-minute [1] - 227:22 flashover [3] - 208:18, 209:15, 210:11 flattens [1] - 267:17 flesh [1] - 391:1 fleshed [1] - 377:18 flow [1] - 200:3 fog [4] - 209:9, 215:8, 215:19, 323:19 folks [11] - 161:23, 164:18, 167:23, 242:12, 262:20, 267:14, 366:1, 373:1, 373:7, 375:23, 378:10 follow [25] - 187:24, 188:2, 214:10, 215:7, 216:15, 276:25, 277:19, 300:22, 306:22, 308:25, 310:1, 312:23, 339:24, 340:16, 341:23, 346:24, 347:4, 349:15, 362:2, 365:2, 380:8, 381:18, 401:9, 401:10, 404:19</p>	<p>follow-on [1] - 310:1 follow-ons [1] - 216:15 follow-up [1] - 276:25 followed [3] - 211:20, 354:16, 404:15 following [8] - 169:4, 228:1, 292:2, 346:5, 362:2, 367:13 follows [8] - 150:13, 170:12, 189:22, 228:8, 279:8, 314:16, 343:18, 371:7 foot [10] - 209:3, 217:20, 281:12, 281:14, 281:15, 307:2, 358:2, 364:4, 404:10, 404:24 FOR [1] - 145:5 force [1] - 257:8 FORD [1] - 394:7 Ford [22] - 147:3, 148:14, 148:15, 148:15, 152:21, 161:4, 167:15, 168:5, 223:17, 226:17, 240:17, 240:19, 241:1, 241:6, 288:17, 390:23, 394:3, 394:4, 398:13, 398:24, 401:7, 401:22 Ford's [1] - 167:12 foreseeable [1] - 375:6 forget [1] - 186:6 forgive [1] - 260:22 forgot [2] - 310:10, 320:17 forgotten [1] - 383:1 Form [1] - 148:8 form [3] - 230:10, 312:20, 399:10 formal [2] - 344:14, 399:5 formed [1] - 209:17 formerly [1] - 296:24 forming [1] - 263:4 formulas [1] - 187:19 forth [5] - 233:13, 242:16, 261:11, 262:19, 370:14 forward [1] - 234:3 foundation [8] - 175:1, 175:2, 175:21, 175:23, 175:25, 184:4, 275:11, 301:25</p>	<p>foundations [2] - 176:9, 184:9 four [7] - 230:20, 230:22, 272:19, 300:7, 304:17, 305:11, 370:13 four-wheeler [1] - 305:11 fourths [1] - 260:25 fowl [1] - 270:25 framework [1] - 370:5 framing [1] - 206:17 FREDERICK [1] - 170:10 Frederick [9] - 147:6, 148:13, 148:17, 170:9, 170:16, 170:21, 182:16, 185:24, 188:7 free [2] - 303:13, 365:7 frequencies [7] - 204:20, 205:1, 205:2, 205:6, 205:12, 205:13, 373:3 frequency [4] - 192:3, 204:20, 373:3, 373:6 frequently [1] - 250:9 friable [4] - 246:2, 246:12, 246:14, 261:5 Friday [2] - 315:5, 337:4 front [8] - 163:12, 208:11, 239:16, 275:22, 288:22, 290:7, 290:12, 397:19 frustrating [3] - 395:22, 398:16, 400:20 FSA [1] - 301:4 full [7] - 224:6, 236:10, 257:8, 266:12, 266:15, 311:17, 366:13 fully [3] - 377:17, 385:24, 395:7 fun [1] - 329:25 funding [2] - 249:5, 249:6 furnish [2] - 223:7, 402:24 future [5] - 297:6, 317:8, 375:6, 375:10, 375:15</p>	<p style="text-align: right;">G 15</p> <p>gain [3] - 202:15, 312:21, 340:6 gained [1] - 151:5 gains [2] - 340:5, 340:10 gallons [1] - 336:21 game [2] - 224:22, 398:17 garbled [1] - 399:9 GARY [1] - 145:12 Gary [1] - 329:18 gas [1] - 195:19 gate [1] - 320:17 gathered [1] - 378:19 gathering [1] - 163:11 gauge [1] - 187:4 Gayle [1] - 354:7 General [3] - 224:4, 331:19, 343:2 general [6] - 155:6, 203:24, 226:23, 229:6, 322:9, 366:10 generally [8] - 180:18, 203:21, 204:3, 204:19, 213:7, 229:5, 242:14, 320:18 generation [1] - 280:19 generations [1] - 230:23 genes [2] - 265:14, 265:15 genetic [1] - 257:3 geographical [1] - 234:21 Georgia [1] - 238:7 GERALD [1] - 279:6 Gerald [14] - 147:10, 147:19, 278:2, 279:5, 279:13, 279:18, 287:4, 313:21, 326:17, 327:8, 363:5, 363:12, 364:2, 365:8 Gerry [4] - 287:5, 287:6, 300:24, 311:6 given [13] - 152:7, 152:20, 161:12, 188:25, 198:11, 253:15, 255:1, 266:19, 285:6, 315:14, 374:24, 379:3, 380:15 glass [2] - 238:9, 238:11 glyphosate [1] -</p>
--	---	---	---	---

<p>265:21 good-faith ^[1] - 369:5 governing ^[3] - 162:8, 162:11, 162:14 Government ^[1] - 393:1 government ^[2] - 193:13, 208:20 GPS ^[19] - 157:21, 191:1, 191:24, 192:3, 192:12, 197:16, 197:20, 198:1, 198:3, 198:4, 198:5, 198:12, 198:23, 199:9, 204:9, 204:20, 214:18, 369:12, 376:14 grab ^[1] - 279:15 grad ^[1] - 259:7 grade ^[1] - 279:25 graduate ^[2] - 229:2, 253:3 graduated ^[1] - 171:1 graduation ^[1] - 171:3 grain ^[2] - 258:18, 263:21 grains ^[1] - 272:4 grandkids ^[1] - 346:10 Grant ^[1] - 242:23 grant ^[1] - 398:9 granted ^[4] - 224:12, 286:13, 315:4, 341:14 granting ^[1] - 318:13 grass ^[2] - 320:7, 321:15 grazing ^[1] - 346:11 great ^[6] - 212:3, 263:7, 307:15, 312:10, 340:13, 383:13 greater ^[4] - 188:21, 245:25, 261:9, 262:5 greatly ^[1] - 264:13 Greg ^[1] - 145:16 Gregory ^[5] - 147:9, 147:18, 228:5, 228:19, 362:21 GREGORY ^[1] - 228:6 grew ^[1] - 237:1 ground ^[43] - 155:13, 155:16, 155:18, 175:7, 188:18, 193:19, 193:20, 193:21, 193:23, 194:4, 194:6, 194:7, 196:18, 198:1, 198:5, 199:2, 199:3, 199:9, 200:10,</p>	<p>200:12, 200:13, 202:21, 207:15, 211:1, 219:2, 220:21, 220:23, 221:23, 222:1, 225:25, 238:10, 242:1, 244:3, 280:23, 281:10, 283:12, 304:4, 304:6, 305:15, 313:11, 340:4, 356:11, 387:6 ground-based ^[4] - 198:1, 198:5, 199:2, 199:9 grounded ^[8] - 196:13, 200:14, 202:6, 203:10, 207:12, 208:2, 210:25, 220:21 grounding ^[9] - 196:6, 196:10, 196:14, 201:19, 202:24, 207:14, 218:25, 221:5, 221:21 grounds ^[1] - 221:24 groundwork's ^[1] - 348:19 group ^[2] - 260:5, 400:15 groups ^[2] - 256:13, 260:6 groves ^[1] - 259:21 grow ^[9] - 231:18, 232:3, 238:10, 248:9, 255:23, 268:8, 268:13, 280:3, 280:5 grower ^[1] - 233:16 Growers ^[1] - 339:21 growers' ^[1] - 275:6 growing ^[7] - 231:13, 232:15, 256:7, 263:8, 267:22, 268:9 grown ^[7] - 230:21, 231:4, 256:13, 267:6, 267:7, 271:17, 271:18 guarantee ^[1] - 327:2 guarantees ^[1] - 322:14 guess ^[49] - 158:22, 160:21, 164:17, 169:12, 170:4, 177:4, 193:7, 196:21, 201:4, 205:6, 210:6, 212:12, 213:23, 225:22, 234:13, 236:7, 248:2, 251:3,</p>	<p>264:19, 269:7, 269:25, 275:16, 286:12, 291:5, 308:2, 344:9, 344:24, 347:25, 348:3, 350:15, 352:14, 359:10, 362:10, 362:12, 368:13, 369:15, 375:12, 375:14, 380:5, 380:14, 380:18, 381:5, 391:9, 394:9, 394:17, 395:3, 398:10, 402:13, 407:6 guessed ^[1] - 238:6 guessing ^[1] - 263:18 guidance ^[2] - 192:4, 192:12 guide ^[1] - 183:21 guidelines ^[2] - 193:12, 196:22 guiding ^[1] - 198:12 Gustafson ^[1] - 145:17 gut ^[2] - 339:10, 394:20 guy ^[3] - 183:18, 183:25, 184:3 guy-wires ^[3] - 183:18, 183:25, 184:3 guys ^[3] - 215:1, 226:4, 405:22</p>	<p>329:10, 329:15, 353:2, 353:4, 353:10, 353:11, 353:23, 355:9, 355:22, 359:7, 359:25, 360:3 halt ^[1] - 378:25 ham ^[1] - 205:14 hammer ^[1] - 295:11 Hampton ^[3] - 151:12, 171:10, 383:6 hand ^[4] - 231:1, 292:7, 316:22, 406:6 handheld ^[1] - 207:8 handle ^[1] - 241:4 handled ^[1] - 216:20 hands ^[3] - 295:9, 300:6, 382:10 hang ^[1] - 267:25 HANSON ^[41] - 145:12, 186:20, 187:8, 187:22, 208:1, 208:8, 208:19, 209:7, 210:1, 210:12, 210:16, 218:23, 219:5, 269:13, 270:4, 270:13, 270:22, 271:5, 271:11, 271:16, 271:20, 271:22, 272:7, 273:7, 278:8, 286:5, 307:16, 308:4, 308:8, 308:12, 308:21, 329:2, 329:12, 329:16, 329:19, 333:24, 334:1, 334:13, 382:15, 382:19, 383:13 Hanson ^[5] - 167:15, 316:15, 329:1, 338:22, 382:18 Hanson's ^[1] - 215:7 happy ^[4] - 308:2, 308:3, 353:16 hard ^[6] - 234:7, 265:23, 273:2, 316:10, 317:5, 396:9 harm ^[1] - 371:1 harvest ^[2] - 261:25, 262:1 harvesting ^[1] - 164:6 hatch ^[3] - 266:16, 266:18, 266:22 hatching ^[1] - 266:20 haul ^[1] - 224:9 hay ^[2] - 320:10, 320:11 hazard ^[2] - 281:13,</p>	<p>313:7 hazards ^[2] - 191:16, 192:11 HDR ^[2] - 150:25, 151:2 head ^[7] - 183:9, 269:3, 299:9, 328:21, 354:12, 354:13, 358:25 health ^[8] - 181:8, 202:3, 322:23, 323:9, 323:18, 336:4, 336:5, 337:5 healthy ^[2] - 272:22, 272:24 hear ^[4] - 164:11, 304:24, 311:23, 365:12 heard ^[17] - 167:12, 213:21, 233:11, 264:17, 285:24, 301:9, 308:18, 309:20, 329:7, 363:12, 363:15, 363:19, 364:2, 372:15, 379:11, 405:21, 407:7 hearing ^[24] - 150:1, 163:9, 218:22, 222:17, 227:25, 278:24, 289:17, 302:15, 315:5, 325:12, 331:20, 334:15, 343:13, 367:6, 367:25, 385:11, 398:14, 400:11, 400:15, 404:2, 404:12, 407:16, 407:17, 407:19 hearings ^[2] - 204:3, 314:23 hearsay ^[1] - 286:1 heavy ^[5] - 209:8, 215:8, 215:19, 323:19, 387:14 height ^[1] - 208:22 held ^[2] - 146:1, 356:18 help ^[9] - 211:22, 239:2, 287:16, 295:18, 311:10, 341:15, 353:8, 384:8, 398:12 helping ^[1] - 377:7 Henry ^[10] - 147:3, 161:4, 167:11, 185:9, 240:17, 240:19, 241:1, 241:6, 394:5, 400:19</p>
H				
<p>half ^[42] - 186:14, 186:22, 202:12, 202:14, 203:5, 220:8, 220:9, 237:18, 278:10, 278:20, 281:10, 309:13, 316:11, 329:10, 329:15, 339:8, 345:7, 345:21, 345:24, 345:25, 346:18, 347:12, 348:5, 350:10, 353:2, 353:4, 353:10, 353:11, 353:15, 353:23, 354:7, 355:9, 355:22, 358:21, 358:23, 359:7, 359:10, 359:12, 359:25, 360:3, 385:10 half-mile ^[13] - 309:13,</p>				

herbicide [2] - 265:16, 265:21 herbicides [2] - 271:12, 271:14 herd [1] - 337:5 HEREBY [1] - 408:8 hesitant [1] - 374:24 HF [1] - 205:14 hi [1] - 307:16 high [13] - 166:12, 191:23, 191:25, 204:17, 208:12, 230:17, 231:7, 242:7, 265:23, 267:14, 273:1, 296:19, 376:5 high-level [1] - 166:12 higher [10] - 193:19, 193:22, 193:23, 242:18, 327:2, 327:6, 373:6, 391:20, 393:5 highest [1] - 400:5 Highland [3] - 284:23, 284:25, 285:1 highly [1] - 324:16 highway [1] - 339:23 hills [1] - 330:14 hire [1] - 394:12 hired [1] - 229:1 hiring [1] - 386:15 Historic [1] - 155:11 historical [1] - 156:8 history [4] - 283:2, 302:4, 340:11, 340:13 hit [4] - 220:9, 220:10, 232:5, 405:19 hits [1] - 375:12 hog [1] - 324:12 hold [4] - 170:1, 233:9, 236:11 hole [5] - 175:7, 175:11, 175:14, 175:17, 175:19 holes [3] - 155:17, 387:10, 387:11 home [5] - 196:19, 224:25, 291:2, 291:10, 299:4 homeowners [1] - 396:18 hone [3] - 250:16, 261:2, 266:4 honest [1] - 318:2 honesty [1] - 375:19 hope [4] - 287:22, 346:10, 378:12, 378:15 hopefully [1] - 406:22	horizontal [1] - 198:6 hormone [1] - 336:14 horse [1] - 406:19 Horter [1] - 354:7 host [7] - 231:14, 231:18, 266:19, 267:11, 271:16, 272:3, 272:6 hosts [3] - 271:21, 271:23, 272:2 hot [1] - 269:25 hour [4] - 278:10, 278:20, 401:10 hours [2] - 322:16, 322:17 house [3] - 161:24, 181:18, 322:17 houses [1] - 153:17 Hrg [2] - 148:21, 148:22 huger [1] - 387:25 humans [1] - 192:11 humidity [1] - 209:6 hunt [1] - 224:20 hunters [1] - 270:22 hurdle [1] - 381:2 hurry [1] - 262:9	157:24, 160:7, 160:18, 160:23, 164:9, 165:2, 165:23, 166:16, 166:22, 168:5, 169:15, 174:16, 174:19, 199:16, 200:6, 201:19, 201:25, 202:3, 202:7, 212:19, 215:2, 215:17, 274:22, 275:4, 275:5, 276:11, 283:16, 301:13, 316:6, 325:18, 387:12 impacted [8] - 167:24, 200:16, 207:14, 225:19, 317:11, 337:11, 339:6 impacts [20] - 153:14, 157:5, 157:11, 157:15, 160:25, 161:1, 161:4, 166:11, 167:2, 167:6, 167:10, 167:23, 168:9, 202:2, 202:19, 221:8, 284:3, 338:23, 371:23, 387:6 implants [1] - 195:2 implement [1] - 277:8 implementation [2] - 211:16, 374:2 implemented [1] - 181:1 implementing [3] - 211:5, 254:25, 374:4 implements [1] - 261:10 important [4] - 212:5, 250:19, 254:23, 363:15 importantly [2] - 235:16, 261:2 imposed [1] - 383:4 impossible [1] - 271:5 impractical [1] - 393:11 impression [1] - 231:22 improved [1] - 285:17 IN [1] - 145:4 in-line [1] - 184:7 Inaudible [1] - 287:14 inch [6] - 235:21, 244:22, 244:23, 269:19, 269:24, 270:19	inches [2] - 269:22, 270:3 incidence [1] - 242:19 incidents [1] - 303:14 include [4] - 156:2, 171:9, 248:12, 262:22 includes [4] - 172:10, 176:12, 254:6, 399:24 including [4] - 151:10, 168:10, 270:18, 296:18 inclusion [1] - 369:12 incorporated [3] - 182:25, 380:11, 386:7 increase [6] - 186:16, 250:6, 250:13, 306:10, 307:24, 340:2 increased [3] - 188:24, 323:18, 323:19 increases [3] - 209:19, 209:20, 230:24 increasing [1] - 209:15 incur [1] - 223:11 incurred [3] - 374:11, 374:13, 374:14 incurs [1] - 374:6 indefinitely [1] - 280:22 independent [2] - 386:1, 386:5 indicate [9] - 154:25, 158:11, 158:19, 193:4, 199:7, 250:24, 252:7, 315:18, 365:24 indicated [20] - 160:5, 173:25, 174:13, 216:8, 249:11, 252:16, 268:16, 296:12, 305:7, 315:7, 315:10, 318:3, 321:10, 321:21, 321:23, 324:15, 339:13, 341:20, 349:18, 355:6 indicates [1] - 330:10 Indicating [1] - 267:18 indicating [4] - 234:11, 244:6, 246:19, 247:6 indication [1] - 335:6 indicative [1] - 269:21 indirectly [1] - 298:7	individual [21] - 157:5, 157:10, 157:13, 165:25, 166:16, 166:22, 167:18, 176:6, 176:18, 176:22, 198:17, 216:1, 230:5, 231:8, 235:20, 253:5, 258:17, 258:21, 301:10, 313:11, 336:20 individuals [3] - 166:23, 195:1, 198:18 induce [5] - 191:6, 195:22, 202:5, 213:8, 218:14 induced [5] - 207:6, 219:11, 219:13, 219:14, 221:18 induction [4] - 211:9, 211:11, 214:1, 214:4 indulge [2] - 362:15, 364:9 industry [4] - 193:11, 193:12, 204:1, 265:14 inefficient [1] - 262:10 infected [1] - 249:12 inference [1] - 389:25 infested [1] - 247:15 infinitely [1] - 375:6 information [26] - 152:16, 152:25, 153:12, 153:13, 157:12, 163:11, 211:9, 240:11, 241:2, 255:2, 257:7, 273:21, 275:20, 276:15, 296:1, 300:14, 308:13, 309:19, 327:8, 327:10, 334:4, 339:11, 342:23, 343:9, 391:16, 396:5 informed [4] - 309:15, 342:22, 357:9, 404:8 initial [2] - 186:9, 377:13 injury [1] - 159:14 input [2] - 359:18, 400:4 Input [2] - 148:11, 148:12 inputs [1] - 400:25 inquiry [2] - 324:2, 404:6 inserted [1] - 223:7 inside [4] - 230:11, 231:2, 233:7, 235:23
---	--	--	---	--

insidiousness ^[1] - 272:16 install ^[2] - 223:7, 223:12 installation ^[1] - 286:10 installed ^[4] - 243:19, 243:22, 244:14, 363:18 installing ^[1] - 249:19 instance ^[7] - 187:2, 208:8, 242:18, 246:10, 250:7, 326:7, 363:5 instances ^[1] - 195:22 instead ^[5] - 262:1, 294:6, 305:23, 313:2, 355:25 institute ^[1] - 193:9 institutions ^[1] - 391:10 Insurance ^[3] - 298:17, 299:23, 300:12 insurance ^[38] - 282:21, 282:24, 283:2, 283:7, 283:16, 283:18, 284:2, 284:17, 298:13, 298:25, 299:7, 299:25, 300:11, 300:23, 300:24, 301:2, 301:3, 301:8, 301:12, 301:13, 301:15, 301:16, 302:1, 302:2, 302:15, 326:12, 326:15, 327:10, 395:21, 396:1, 396:4, 396:8, 396:14, 396:16, 402:12, 403:18 insure ^[2] - 302:21, 327:2 insured's ^[1] - 397:9 insurer's ^[1] - 397:10 insurers ^[1] - 395:22 intend ^[5] - 292:19, 366:25, 367:17, 380:8, 397:23 intended ^[3] - 163:21, 348:16, 373:23 intends ^[1] - 380:7 intensely ^[1] - 337:8 intensity ^[1] - 263:23 intent ^[2] - 217:4, 397:17 intention ^[2] - 322:7, 378:8	interact ^[1] - 282:24 interactions ^[1] - 191:13 interest ^[5] - 242:13, 316:8, 322:12, 323:6, 324:18 interested ^[9] - 163:6, 280:17, 318:3, 318:9, 318:10, 321:23, 324:7, 324:24, 345:20 interesting ^[2] - 272:7, 338:9 interests ^[1] - 161:8 interfere ^[5] - 162:7, 164:1, 164:2, 164:16, 182:1 interference ^[26] - 157:14, 191:2, 192:1, 192:2, 192:5, 192:12, 195:5, 195:7, 195:10, 197:20, 198:24, 199:6, 199:8, 205:22, 212:24, 369:1, 369:4, 369:9, 369:17, 374:14, 375:25, 376:6, 376:14, 384:9, 389:23, 390:8 interferes ^[1] - 283:15 internet ^[1] - 262:14 interpretation ^[5] - 215:22, 363:21, 364:1, 384:7, 384:19 interruption ^[1] - 376:13 intersect ^[1] - 347:13 Intervener ^[4] - 145:20, 145:21, 145:21, 402:14 Intervener's ^[1] - 366:21 Interveners ^[6] - 228:2, 243:5, 278:16, 398:14, 398:23, 400:15 interviews ^[1] - 181:19 introduce ^[4] - 331:23, 334:19, 402:16, 403:8 introduced ^[9] - 229:14, 229:16, 229:18, 229:19, 229:25, 231:7, 255:19, 256:22, 257:5 introduction ^[1] - 247:18 investigated ^[1] -	161:21 investigation ^[1] - 396:5 invited ^[2] - 357:6, 360:25 involve ^[2] - 166:14, 274:23 involved ^[21] - 167:20, 174:10, 174:22, 179:1, 181:17, 184:15, 185:4, 188:16, 196:14, 203:8, 209:6, 216:13, 217:1, 218:25, 249:22, 322:11, 328:14, 331:2, 370:9, 383:2, 401:16 involvement ^[1] - 312:17 involves ^[1] - 196:18 involving ^[1] - 395:14 Iowa ^[21] - 228:20, 232:2, 232:22, 233:14, 233:17, 233:22, 249:12, 249:17, 249:20, 253:3, 256:13, 258:14, 260:14, 260:24, 261:10, 263:17, 272:19, 272:21, 309:6 irrelevant ^[2] - 168:6, 169:14 irrigation ^[4] - 345:21, 345:23, 350:9, 350:22 isolated ^[1] - 200:12 issuance ^[1] - 152:14 issue ^[40] - 153:22, 161:13, 161:17, 164:19, 164:25, 178:13, 191:20, 197:12, 202:23, 213:21, 214:19, 216:9, 222:23, 223:23, 227:7, 250:18, 250:19, 256:2, 265:10, 284:11, 287:25, 293:3, 293:4, 303:9, 350:21, 360:5, 369:12, 369:14, 376:1, 378:21, 378:22, 380:18, 381:23, 389:20, 390:9, 394:23, 396:9, 397:5, 399:21, 403:1 issues ^[25] - 152:14,	153:19, 153:25, 160:11, 179:11, 191:22, 194:24, 210:24, 212:9, 214:3, 214:5, 222:22, 236:5, 253:14, 285:7, 288:10, 333:9, 337:6, 337:21, 343:10, 369:9, 372:25, 375:25, 376:23, 378:24 item ^[1] - 191:18 items ^[2] - 158:10, 192:14 itself ^[6] - 157:9, 208:10, 208:24, 302:3, 325:23, 389:24	justified ^[1] - 301:22 1 8 K K-E ^[1] - 298:22 Karen ^[7] - 145:16, 357:8, 357:9, 370:7, 393:16, 403:11, 407:10 Katlyn ^[1] - 145:17 keep ^[9] - 235:18, 251:21, 253:11, 283:8, 332:22, 345:18, 353:12, 358:14, 406:11 kept ^[4] - 312:6, 312:8, 312:10, 358:14 Kevin ^[2] - 357:21, 358:7 Keystone ^[9] - 227:4, 382:20, 383:3, 383:5, 383:9, 383:12, 385:8, 385:9, 386:20 Keystone's ^[1] - 382:24 kids ^[1] - 346:10 killed ^[2] - 264:18, 316:20 kind ^[19] - 155:19, 164:21, 175:10, 176:24, 196:24, 238:5, 253:11, 265:4, 281:5, 293:18, 334:23, 339:10, 348:17, 375:12, 376:4, 394:10, 394:15, 402:13, 406:23 kinds ^[1] - 271:25 KLJ ^[15] - 156:24, 317:24, 341:3, 343:4, 345:5, 345:8, 350:13, 356:20, 357:18, 357:25, 361:1, 400:18, 401:23, 401:24, 404:9 KLJ's ^[1] - 357:9 knock ^[3] - 259:10, 259:23, 295:11 knocking ^[1] - 260:3 knowing ^[2] - 282:9, 368:12 knowledge ^[13] - 162:13, 180:8, 212:11, 242:15, 247:19, 284:16, 291:17, 291:19,
J				
James ^[1] - 357:16 January ^[1] - 234:25 Jason ^[5] - 145:20, 147:4, 218:17, 240:21, 348:24 jeopardy ^[1] - 217:17 Jim ^[1] - 252:25 Joan ^[2] - 354:11, 354:12 job ^[7] - 261:14, 272:21, 307:15, 371:17, 376:22, 394:24, 394:25 jobs ^[1] - 253:4 jogging ^[1] - 348:15 John ^[1] - 145:15 join ^[1] - 306:4 joined ^[1] - 300:5 JON ^[1] - 189:20 Jon ^[10] - 147:6, 148:14, 170:25, 189:19, 190:1, 190:7, 199:16, 389:11, 390:2 journal ^[1] - 234:9 journals ^[1] - 323:11 judge ^[1] - 385:16 judgment ^[3] - 235:10, 253:18, 253:21 July ^[2] - 263:2, 393:2 jump ^[1] - 209:1 juncture ^[1] - 383:14 June ^[8] - 145:9, 146:4, 262:25, 263:1, 276:1, 408:11, 408:14 jurisdiction ^[1] - 401:5				

<p>308:13, 326:16, 332:17, 365:16, 376:3</p> <p>known [7] - 174:24, 196:8, 197:11, 219:4, 234:23, 236:19, 375:25</p> <p>knows [1] - 244:17</p> <p>KRISTIE [1] - 145:13</p> <p>kV [8] - 145:6, 150:2, 171:8, 171:11, 171:14, 171:17, 188:25, 323:15</p>	<p>167:8, 181:7, 197:6, 243:5, 243:9, 358:13, 359:17, 374:6, 374:8, 374:22, 399:11, 399:24</p> <p>landowner's [1] - 223:10</p> <p>landowner-to- landowner [1] - 167:8</p> <p>landowners [25] - 151:18, 153:16, 157:13, 164:11, 167:2, 168:10, 173:2, 174:15, 174:16, 174:19, 181:20, 197:3, 211:8, 211:15, 216:1, 332:4, 332:5, 332:8, 333:13, 359:12, 359:24, 360:2, 374:1, 374:4, 385:10</p> <p>landowners' [2] - 173:2, 211:12</p> <p>lands [1] - 284:8</p> <p>landscape [1] - 155:7</p> <p>language [8] - 370:12, 370:13, 373:22, 374:24, 385:24, 386:6, 390:11, 390:21</p> <p>large [17] - 175:12, 183:1, 191:9, 194:16, 194:19, 194:22, 200:9, 230:12, 232:15, 259:13, 265:14, 272:25, 311:7, 320:6, 363:16</p> <p>larger [4] - 184:9, 194:20, 328:21, 388:4</p> <p>largest [1] - 151:11</p> <p>last [32] - 150:24, 151:8, 201:6, 219:21, 223:5, 249:7, 249:13, 250:15, 252:24, 253:7, 253:8, 275:24, 277:1, 279:20, 280:16, 286:12, 289:16, 293:10, 293:13, 293:15, 294:4, 300:7, 303:17, 307:21, 310:16, 360:7, 362:17, 373:24, 380:20,</p>	<p>398:14, 407:7</p> <p>late [9] - 236:21, 249:5, 262:25, 263:1, 347:25, 382:16, 398:17, 402:19</p> <p>lateness [1] - 401:10</p> <p>latest [1] - 315:14</p> <p>laughed [2] - 261:6, 261:13</p> <p>law [2] - 371:21, 400:22</p> <p>laws [3] - 152:9, 155:8, 158:24</p> <p>lawyer [2] - 159:4, 159:5</p> <p>lay [1] - 285:11</p> <p>laying [1] - 220:24</p> <p>lead [3] - 189:10, 190:9, 204:12</p> <p>leading [1] - 171:23</p> <p>lean [1] - 234:3</p> <p>learn [1] - 307:18</p> <p>learned [1] - 404:11</p> <p>lease [1] - 323:5</p> <p>least [27] - 162:18, 219:17, 227:1, 232:9, 238:15, 239:9, 251:10, 254:18, 262:20, 278:18, 280:19, 280:20, 289:13, 304:16, 305:1, 321:10, 331:20, 348:8, 359:10, 374:10, 375:11, 387:11, 391:7, 397:6, 402:20, 406:9, 406:11</p> <p>leave [2] - 390:20, 406:21</p> <p>left [5] - 246:4, 267:24, 278:14, 285:15, 358:11</p> <p>leftover [1] - 237:1</p> <p>legal [12] - 158:19, 159:10, 206:5, 206:8, 277:16, 370:10, 370:21, 381:2, 381:6, 397:9, 399:12, 400:5</p> <p>legally [1] - 401:4</p> <p>legitimate [1] - 324:5</p> <p>Leman [15] - 147:6, 148:14, 148:17, 170:25, 189:19, 190:1, 190:2, 190:7, 192:20, 208:1, 210:19, 219:10, 370:4, 389:11, 390:7</p>	<p>LEMAN [1] - 189:20</p> <p>Leman's [1] - 376:12</p> <p>length [5] - 184:22, 185:4, 188:12, 201:5, 201:12</p> <p>less [19] - 174:16, 174:19, 184:24, 202:10, 202:17, 202:19, 247:16, 256:2, 256:8, 283:6, 284:5, 319:15, 324:18, 324:20, 324:21, 324:22, 330:13, 347:23, 348:14</p> <p>lessen [2] - 316:8, 316:9</p> <p>letter [3] - 253:7, 359:17, 359:20</p> <p>letters [2] - 163:18, 360:2</p> <p>level [12] - 162:24, 166:12, 171:7, 193:19, 193:20, 193:21, 194:4, 194:7, 217:19, 274:12, 301:1, 302:21</p> <p>levels [7] - 193:4, 193:15, 193:16, 193:23, 369:5, 369:6, 400:5</p> <p>liability [5] - 284:7, 284:11, 313:3, 316:16, 377:2</p> <p>liaison [2] - 386:22, 386:23</p> <p>license [5] - 369:2, 369:24, 373:6, 375:17, 384:18</p> <p>licensed [8] - 369:10, 370:1, 373:11, 373:16, 384:12, 384:14, 384:15, 384:17</p> <p>life [4] - 230:19, 230:22, 231:8, 264:2</p> <p>Life [1] - 324:11</p> <p>lifetime [1] - 316:19</p> <p>light [1] - 277:1</p> <p>likelihood [5] - 218:14, 250:6, 254:2, 377:2, 390:8</p> <p>likely [5] - 245:25, 250:13, 269:16, 316:9, 376:14</p> <p>limitations [1] - 392:11</p> <p>limited [9] - 182:2, 195:10, 195:11,</p>	<p>197:12, 251:3, 19</p> <p>340:17, 378:18, 388:2, 393:17</p> <p>LINE [1] - 145:6</p> <p>line [268] - 150:3, 151:11, 157:1, 157:14, 157:18, 157:20, 157:24, 158:20, 161:5, 162:3, 163:21, 165:2, 167:24, 168:3, 168:25, 169:2, 169:4, 169:9, 171:4, 171:5, 172:17, 178:3, 178:25, 179:2, 179:5, 179:9, 179:10, 182:21, 184:7, 184:9, 184:22, 185:3, 185:12, 186:17, 188:8, 188:9, 188:12, 188:13, 188:14, 188:20, 188:25, 189:1, 189:3, 189:4, 189:5, 191:4, 191:7, 191:13, 191:15, 191:23, 192:6, 192:10, 193:17, 193:22, 194:2, 195:12, 195:15, 195:23, 196:4, 196:9, 196:12, 197:19, 197:21, 198:7, 198:25, 199:2, 199:17, 199:20, 200:3, 201:13, 202:11, 202:14, 202:16, 202:18, 202:22, 203:6, 204:16, 205:22, 207:11, 208:3, 208:16, 208:23, 208:24, 209:2, 210:1, 210:13, 212:9, 212:22, 213:21, 214:22, 215:13, 216:2, 216:4, 216:23, 217:14, 217:15, 217:16, 217:21, 219:15, 219:17, 220:1, 220:2, 220:7, 220:14, 221:9, 221:17, 222:1, 223:5, 224:18, 225:14, 225:16, 241:16, 241:17, 241:23, 243:10,</p>
--	--	--	---	---

<p>245:15, 247:21, 249:23, 250:2, 250:13, 261:4, 268:22, 268:24, 269:2, 281:11, 281:25, 285:12, 286:10, 291:20, 292:5, 292:9, 292:11, 292:12, 292:13, 294:20, 296:15, 297:1, 297:8, 297:15, 304:2, 304:10, 304:22, 306:2, 306:18, 306:19, 306:24, 307:5, 312:22, 313:4, 315:16, 316:3, 316:4, 318:14, 319:5, 319:7, 319:12, 319:18, 320:24, 321:3, 321:19, 323:8, 323:14, 323:15, 323:16, 323:21, 326:7, 329:5, 329:10, 329:11, 330:11, 330:16, 330:24, 335:9, 335:12, 335:16, 335:19, 335:24, 336:1, 337:18, 337:21, 337:23, 338:2, 339:1, 339:4, 339:8, 339:14, 339:15, 339:17, 341:10, 341:13, 344:16, 344:17, 345:1, 345:6, 345:8, 345:9, 345:11, 345:16, 345:17, 345:22, 345:23, 346:8, 346:12, 346:17, 347:4, 347:5, 347:6, 347:7, 347:8, 347:10, 347:13, 347:15, 349:21, 350:15, 350:17, 351:1, 351:2, 351:12, 351:16, 351:18, 352:1, 352:3, 352:7, 352:23, 353:2, 353:21, 353:23, 353:24, 354:14, 354:15, 354:16, 354:21, 357:19, 358:7, 358:9, 359:7, 363:17, 366:6, 375:22, 376:13, 377:19, 379:16,</p>	<p>380:7, 380:22, 381:7, 381:13, 383:7, 383:9, 385:19, 386:15, 387:7, 389:20, 389:24, 390:1, 390:9, 390:16, 393:3, 399:8, 404:7 line-of-sight [2] - 197:21, 198:7 linear [1] - 196:20 lines [41] - 151:7, 151:9, 156:22, 163:24, 164:15, 177:23, 178:7, 178:22, 183:19, 190:12, 191:20, 191:25, 192:1, 195:22, 196:2, 197:15, 198:13, 198:22, 200:24, 204:17, 205:3, 205:24, 207:6, 212:12, 216:21, 227:6, 249:19, 306:4, 306:8, 306:9, 306:12, 306:21, 323:12, 324:18, 326:6, 335:18, 357:11, 375:25, 376:6, 376:19, 376:23 list [1] - 400:12 listening [1] - 232:20 literally [2] - 264:16, 265:12 literature [2] - 155:5, 288:17 live [11] - 224:14, 228:25, 229:7, 229:23, 231:3, 271:4, 279:13, 279:18, 284:20, 314:18, 316:20 lived [2] - 231:8, 347:24 livestock [9] - 191:17, 192:11, 210:21, 211:1, 211:2, 219:13, 225:19, 225:21, 226:5 living [5] - 156:12, 228:18, 279:12, 279:19, 296:3 load [1] - 184:8 loader [1] - 208:12 loading [3] - 172:20, 186:16, 186:17 local [8] - 153:14, 162:24, 174:6,</p>	<p>208:20, 258:9, 285:20, 296:24, 337:4 localized [1] - 268:16 located [8] - 289:19, 289:23, 291:9, 318:24, 323:8, 359:25, 360:2, 366:6 location [5] - 169:8, 174:24, 291:10, 341:14, 366:12 locations [5] - 151:2, 176:6, 180:3, 297:20, 297:23 logical [1] - 389:21 look [51] - 155:12, 155:17, 156:8, 157:10, 160:10, 163:5, 168:9, 169:3, 169:25, 179:1, 186:17, 186:24, 187:2, 187:3, 204:12, 223:2, 240:11, 241:4, 245:5, 245:22, 250:15, 257:2, 262:15, 272:20, 272:24, 273:25, 297:6, 317:7, 321:1, 325:1, 330:2, 345:14, 348:12, 349:23, 351:5, 383:15, 388:10, 391:4, 393:18, 394:22, 395:1, 396:12, 397:3, 397:4, 397:7, 397:8, 397:15, 399:12, 399:15, 400:6 looked [8] - 168:11, 185:5, 199:22, 293:20, 293:21, 305:20, 400:9 looking [42] - 155:11, 155:19, 155:22, 155:25, 167:7, 187:1, 196:25, 231:12, 238:16, 240:4, 240:9, 241:19, 245:8, 245:11, 245:13, 247:10, 252:6, 257:10, 262:5, 263:6, 265:3, 272:22, 275:18, 281:20, 288:23, 289:2, 291:6, 291:7, 292:16, 303:24, 329:3, 329:13, 329:17, 340:24,</p>	<p>341:9, 344:20, 347:3, 349:25, 368:23, 379:9, 382:25, 395:3 looks [3] - 291:11, 341:11, 347:17 loops [1] - 201:21 lose [1] - 312:19 loss [11] - 184:24, 264:14, 264:16, 264:20, 264:21, 274:5, 274:7, 274:15, 283:5, 283:19, 301:8 lost [1] - 206:13 loud [1] - 277:7 low [4] - 218:13, 242:6, 268:10, 377:4 lower [9] - 204:19, 205:12, 270:2, 270:19, 272:25, 283:17, 375:15 lumped [1] - 283:8 lunch [5] - 229:23, 278:4, 278:7, 278:21, 278:23</p>	<p>284:18 male [1] - 299:16 Malo [1] - 258:6 man [1] - 324:24 man's [2] - 306:1, 306:20 manage [4] - 231:2, 232:18, 261:19, 273:2 manageable [1] - 272:25 managed [1] - 337:8 management [13] - 179:20, 179:22, 180:7, 180:21, 181:3, 231:10, 231:15, 232:9, 232:17, 233:1, 235:2, 328:4, 328:5 manager [7] - 151:21, 322:9, 378:23, 379:21, 393:24, 394:24, 395:4 manager's [1] - 394:24 managers [1] - 394:12 managing [5] - 151:6, 232:23, 260:23, 284:24, 336:25 mandated [3] - 300:25, 301:7, 326:18 manner [3] - 327:7, 398:18, 399:16 manufacture</</p>
---	--	--	--	--

<p>148:21, 149:5 mapped [1] - 376:19 maps [11] - 187:15, 234:19, 273:21, 305:21, 325:11, 329:3, 343:7, 343:9, 349:23, 359:1, 399:7 Maps [1] - 148:22 margin [1] - 210:8 marked [4] - 289:6, 318:20, 342:17, 360:11 market [1] - 231:16 massively [1] - 387:24 Master [3] - 150:23, 154:13, 190:20 mastitis [2] - 323:19, 336:12 mat [1] - 180:4 material [7] - 179:17, 184:12, 189:8, 189:10, 189:12, 226:4, 289:14 materials [3] - 223:9, 223:13, 258:19 Matrix [1] - 148:10 MATTER [1] - 145:4 matter [12] - 146:2, 150:19, 190:3, 223:23, 239:15, 242:10, 250:1, 301:17, 307:22, 370:21, 406:7, 408:10 matting [1] - 180:3 maturity [1] - 256:12 maximum [3] - 180:16, 238:14, 274:14 McCain [2] - 357:1, 357:16 MCCOMSEY [1] - 408:5 McComsey [2] - 145:24, 408:18 mean [40] - 160:20, 179:22, 180:19, 183:6, 193:16, 203:6, 208:17, 211:22, 213:20, 215:5, 217:16, 234:16, 236:9, 246:7, 258:14, 262:2, 271:7, 290:1, 328:12, 332:20, 333:5, 333:10, 353:19, 359:6, 363:5, 370:20, 375:19, 376:22, 378:4, 382:4, 385:5,</p>	<p>387:1, 387:21, 394:21, 396:24, 397:21, 400:15, 400:23, 402:13, 407:5 meaningful [1] - 264:4 means [6] - 186:13, 211:21, 211:22, 272:19, 350:5, 394:10 meant [1] - 248:4 measurable [1] - 207:16 measure [3] - 205:9, 207:13, 207:19 measured [1] - 207:7 measures [4] - 207:18, 207:19, 254:7, 254:8 measuring [1] - 270:17 mechanical [1] - 220:21 mechanism [1] - 252:20 mechanisms [2] - 244:4, 260:15 medium [1] - 242:7 meet [3] - 162:21, 212:25, 385:22 meeting [26] - 285:20, 296:24, 318:4, 332:22, 335:6, 345:5, 345:6, 355:14, 356:8, 356:17, 356:20, 356:23, 357:4, 357:7, 357:10, 357:17, 358:1, 358:4, 358:6, 358:11, 359:18, 360:25, 361:10 meetings [6] - 161:24, 164:12, 172:13, 181:17, 181:18, 380:21 megahertz [4] - 205:7, 205:9, 205:10, 373:8 member [4] - 161:20, 162:20, 163:8, 299:21 memory's [1] - 258:7 mental [1] - 233:5 mention [2] - 177:22, 258:19 mentioned [6] - 191:19, 204:2, 215:8, 217:13, 253:10, 359:2 mentioning [1] -</p>	<p>233:12 met [4] - 162:24, 162:25, 163:2, 163:3 metal [6] - 195:23, 196:2, 197:7, 197:9, 199:17, 211:10 metallic [5] - 191:7, 191:9, 196:3, 196:18, 208:5 meter [2] - 207:8, 207:13 methodologies [1] - 391:3 methods [4] - 172:14, 211:11, 211:16, 252:2 MetLife [1] - 324:11 Metropolitan [1] - 324:11 mic [7] - 218:18, 234:2, 279:15, 307:10, 307:12, 344:9, 348:24 Michigan [1] - 173:18 microbiology [1] - 228:21 micromanage [2] - 391:6, 392:5 micromanaging [1] - 392:9 microscopic [1] - 229:6 mics [1] - 238:25 mid [2] - 263:1, 347:25 middle [5] - 163:25, 266:14, 269:24, 321:11, 391:18 Midwest [1] - 324:13 might [25] - 177:10, 200:11, 200:13, 207:14, 224:19, 270:9, 270:19, 285:7, 296:7, 314:20, 317:16, 318:25, 320:16, 320:20, 321:1, 350:11, 353:5, 362:14, 371:23, 375:5, 391:3, 398:13, 403:3, 405:22 mile [47] - 168:4, 168:23, 196:20, 202:12, 202:14, 203:5, 220:8, 220:9, 221:14, 281:11, 309:13, 319:15, 319:17, 320:23, 329:7, 329:8, 329:10, 329:15,</p>	<p>339:3, 339:8, 341:20, 345:7, 345:24, 345:25, 346:18, 347:11, 347:12, 348:5, 348:6, 348:8, 353:2, 353:4, 353:10, 353:11, 353:23, 355:9, 355:22, 358:21, 358:23, 359:7, 359:10, 359:12, 359:25, 360:3, 385:9, 387:11 miles [21] - 151:9, 166:25, 171:10, 171:14, 171:17, 183:7, 184:20, 184:21, 184:22, 201:8, 214:15, 225:18, 243:21, 244:13, 291:3, 330:16, 331:5, 353:15, 359:8 milk [8] - 316:22, 321:6, 329:5, 329:24, 336:18, 336:21, 336:22, 336:23 milked [2] - 316:22, 320:23 milking [3] - 323:20, 336:12, 337:20 million [7] - 232:3, 249:18, 317:1, 317:3, 317:4, 324:25 mind [9] - 209:24, 219:1, 232:9, 236:5, 236:7, 258:24, 306:5, 356:1, 358:15 mine [4] - 230:21, 257:16, 282:13, 388:23 minimal [1] - 218:15 minimally [1] - 246:4 minimize [6] - 167:6, 167:10, 191:12, 248:18, 277:9, 369:4 minimum [1] - 327:6 Minneapolis [1] - 154:16 Minnesota [8] - 154:16, 171:11, 171:17, 232:14, 242:15, 271:24, 323:2, 373:5 minute [2] - 227:22, 365:22 minutes [6] - 222:14, 227:19, 315:6, 349:23, 402:6,</p>	<p>403:25 minutia [2] - 392:4, 393:4 misinterpreting [1] - 337:14 MISO [5] - 148:11, 154:23, 173:20, 173:22, 193:1 MISO-related [1] - 173:22 miss [2] - 236:2, 262:9 Missouri [1] - 171:1 misstates [1] - 217:21 mistakes [1] - 337:1 mitigate [5] - 161:14, 214:3, 295:17, 371:23, 384:8 mitigated [1] - 202:7 mitigating [1] - 222:23 mitigation [38] - 180:24, 196:7, 197:11, 200:12, 200:13, 207:18, 207:19, 211:10, 211:16, 216:9, 216:19, 216:23, 219:4, 219:19, 223:8, 223:12, 238:17, 241:10, 248:6, 251:20, 251:24, 252:13, 254:6, 254:7, 254:21, 254:25, 255:3, 255:6, 277:9, 374:2, 374:4, 374:7, 374:13, 377:1, 377:3, 377:11, 390:13, 390:23 mixed [1] - 366:14 mixture [1] - 321:15 moisture [4] - 264:14, 266:17, 328:17, 336:13 moment [1] - 158:13 momentary [1] - 192:8 moments [1] - 342:12 Monday [4] - 293:10, 310:16, 337:4 monetary [1] - 324:4 money [3] - 298:9, 346:21, 347:18 monopole [1] - 174:14 MONTANA [1] - 145:4 MONTANA-DAKOTA [1] - 145:4 month [1] - 407:8 Morehouse [39] - 145:21, 147:16, 148:19, 169:18, 185:25, 188:3,</p>
--	--	--	---	---

200:20, 217:7, 219:10, 225:10, 256:16, 303:2, 310:5, 315:19, 327:13, 330:3, 331:11, 331:22, 332:1, 332:18, 333:19, 334:18, 340:24, 343:5, 343:15, 343:20, 349:3, 349:7, 351:6, 351:24, 359:5, 360:8, 360:18, 362:12, 364:23, 400:21, 403:9, 404:10, 407:1 MOREHOUSE ^[26] - 147:15, 149:15, 169:19, 186:1, 200:22, 203:12, 217:9, 217:11, 217:24, 218:16, 219:22, 219:24, 222:4, 225:11, 256:17, 303:3, 327:15, 331:9, 332:19, 333:20, 333:23, 343:16, 344:1, 364:24, 403:10, 407:4 Morehouse's ^[4] - 330:10, 330:21, 331:1, 357:20 morning ^[10] - 165:7, 190:6, 203:18, 203:19, 239:5, 239:6, 295:20, 304:25, 305:7, 308:19 most ^[18] - 151:12, 151:23, 155:23, 176:21, 200:2, 229:7, 230:5, 235:15, 259:3, 262:12, 268:12, 281:13, 296:1, 296:8, 371:22, 381:11, 394:11, 400:20 mostly ^[3] - 260:3, 330:13, 372:6 Mostu ^[1] - 357:9 mother ^[2] - 230:25, 316:19 motorized ^[1] - 177:15 move ^[24] - 202:22, 203:5, 203:6, 221:25, 224:10, 233:4, 233:10, 235:21, 256:7,	270:21, 305:12, 341:14, 345:8, 345:23, 346:7, 346:17, 350:15, 353:12, 353:14, 357:19, 358:7, 358:9, 378:21 moved ^[20] - 202:11, 203:11, 233:10, 236:12, 244:24, 245:1, 247:14, 247:17, 313:1, 322:1, 330:20, 341:13, 345:7, 345:8, 345:17, 345:25, 353:4, 356:12, 359:22, 380:22 movement ^[2] - 232:24, 260:23 moves ^[2] - 233:3, 254:4 moving ^[6] - 208:13, 252:8, 353:2, 353:9, 377:6, 390:22 MR ^[424] - 150:1, 150:9, 150:15, 154:6, 154:7, 154:9, 158:15, 158:16, 159:8, 159:9, 165:14, 165:16, 165:19, 169:12, 169:18, 169:19, 169:20, 169:23, 170:1, 170:2, 170:3, 170:7, 170:8, 170:14, 173:7, 173:9, 173:11, 182:10, 182:11, 182:13, 182:15, 185:19, 185:22, 185:25, 186:1, 186:2, 186:5, 187:23, 188:1, 188:2, 188:6, 189:14, 189:15, 189:18, 189:24, 192:16, 192:17, 192:19, 199:11, 199:12, 199:13, 199:15, 200:19, 200:20, 200:22, 203:12, 203:14, 206:4, 206:6, 206:7, 206:9, 206:16, 206:19, 206:20, 206:25, 207:3, 207:23, 210:18, 212:1, 213:13, 213:18, 214:6,	214:9, 214:11, 214:13, 216:7, 216:11, 216:12, 216:13, 216:17, 217:7, 217:9, 217:11, 217:20, 217:23, 217:24, 218:16, 218:17, 218:20, 218:21, 219:6, 219:7, 219:9, 219:20, 219:21, 219:22, 219:24, 222:4, 222:5, 222:8, 222:9, 222:17, 222:21, 223:16, 223:22, 223:24, 224:1, 224:4, 224:8, 224:17, 224:19, 224:25, 225:1, 225:3, 225:4, 225:7, 225:8, 225:11, 225:12, 226:7, 226:10, 226:15, 227:9, 227:11, 227:13, 227:15, 227:17, 227:19, 227:21, 227:25, 228:4, 228:10, 234:2, 234:3, 238:21, 238:22, 238:23, 238:25, 239:2, 239:4, 239:12, 243:23, 243:24, 244:1, 244:8, 244:10, 244:12, 244:16, 245:7, 255:10, 255:11, 255:13, 255:15, 256:15, 256:16, 256:17, 256:18, 257:23, 257:25, 266:6, 273:8, 273:11, 273:12, 273:15, 273:18, 275:11, 275:14, 276:19, 276:20, 276:23, 276:25, 277:3, 277:5, 277:15, 277:17, 277:19, 277:20, 277:21, 277:25, 278:2, 278:5, 278:9, 278:13, 278:20, 278:24, 279:4, 279:10, 279:15, 286:1, 286:3, 286:16, 286:22, 286:25, 287:1, 287:3, 288:20, 298:23, 298:24,	300:15, 300:17, 300:19, 300:21, 301:25, 302:10, 302:16, 303:1, 303:2, 303:3, 303:4, 303:6, 307:9, 307:13, 308:23, 309:1, 309:24, 310:4, 310:5, 310:9, 310:23, 310:25, 311:1, 311:3, 311:5, 313:16, 313:17, 313:20, 313:21, 313:24, 314:2, 314:8, 314:12, 317:17, 317:18, 317:20, 324:8, 325:3, 325:4, 325:5, 325:8, 327:12, 327:13, 327:15, 327:16, 328:25, 329:18, 329:20, 331:9, 331:15, 331:22, 332:3, 332:9, 332:11, 332:17, 332:19, 332:24, 333:8, 333:18, 333:20, 333:21, 333:23, 333:25, 334:8, 334:14, 338:5, 340:20, 341:3, 341:6, 341:22, 341:25, 342:1, 342:2, 342:9, 342:12, 342:14, 342:18, 343:2, 343:12, 343:19, 343:24, 344:1, 344:2, 344:4, 344:5, 344:6, 348:21, 348:23, 348:25, 349:2, 357:6, 360:15, 360:16, 360:17, 360:19, 360:21, 361:13, 361:14, 361:15, 361:16, 361:25, 362:4, 362:5, 362:6, 362:7, 362:9, 362:10, 362:14, 362:16, 362:18, 362:20, 362:21, 362:22, 363:1, 364:6, 364:10, 364:12, 364:14, 364:16, 364:20, 364:21, 364:22, 364:23, 364:24, 364:25, 365:2, 365:8, 365:11,	365:18, 365:19, 22 365:20, 365:22, 366:17, 366:20, 366:22, 366:23, 367:2, 367:4, 367:5, 367:15, 367:19, 367:25, 368:7, 368:10, 368:19, 369:18, 369:21, 370:7, 370:19, 370:23, 371:3, 372:14, 375:3, 375:8, 375:11, 376:2, 376:10, 378:12, 378:17, 381:18, 381:21, 382:4, 382:7, 382:12, 382:16, 383:17, 383:24, 384:2, 384:3, 384:5, 384:21, 384:22, 385:1, 387:18, 387:19, 387:20, 387:21, 388:5, 388:7, 389:1, 389:5, 389:11, 389:17, 390:15, 391:4, 391:12, 392:19, 394:2, 394:7, 395:13, 395:18, 396:12, 397:17, 398:24, 400:18, 401:20, 402:4, 402:6, 402:9, 402:10, 402:18, 402:21, 402:22, 403:1, 403:2, 403:10, 403:11, 403:13, 403:16, 403:19, 403:21, 403:22, 404:2, 404:6, 405:4, 405:7, 405:15, 405:19, 405:25, 406:3, 406:15, 406:17, 407:3, 407:4, 407:5, 407:13 MS ^[31] - 169:22, 186:4, 203:15, 203:17, 206:10, 206:18, 206:23, 207:1, 256:19, 256:21, 257:21, 257:24, 303:5, 327:17, 327:19, 328:24, 365:1, 366:25, 370:11, 370:22, 371:1, 371:8, 371:11, 372:12, 386:22, 387:16, 388:6,
--	--	--	---	---

388:9, 388:25, 403:12, 407:11 mud [2] - 250:16, 260:18 multiperil [4] - 300:22, 300:24, 301:7, 301:16 multiple [3] - 205:6, 221:24, 364:3 multiplier [2] - 179:15, 179:16 must [1] - 338:13	185:3, 295:14, 378:4, 397:13 necessary [5] - 152:16, 178:12, 268:3, 387:4, 406:16 neck [1] - 330:1 need [27] - 158:22, 167:16, 168:7, 169:13, 196:20, 210:25, 211:23, 216:22, 218:23, 227:17, 235:11, 240:20, 262:2, 269:1, 269:10, 269:13, 274:18, 285:17, 297:1, 297:3, 297:7, 305:7, 315:8, 364:1, 378:25, 395:19, 398:4 needed [5] - 270:5, 284:1, 340:1, 340:7, 340:16 needs [1] - 322:18 negative [9] - 157:24, 160:23, 165:2, 201:25, 202:2, 202:3, 236:19, 284:3, 316:6 negatively [1] - 339:5 negatives [1] - 237:11 negotiate [1] - 340:7 negotiated [3] - 369:23, 370:10, 370:11 negotiation [1] - 370:20 neighbor [12] - 345:7, 345:10, 345:18, 345:20, 346:19, 346:21, 350:8, 353:1, 355:6, 355:13, 357:15 neighbor's [3] - 306:16, 306:19, 352:9 neighborhood [1] - 296:23 neighbors [8] - 294:25, 295:1, 297:4, 297:12, 315:12, 345:6, 356:21, 358:22 neighbors' [2] - 296:18, 350:22 Nelson [16] - 186:21, 207:4, 258:5, 266:6, 303:7, 338:5, 341:7, 365:23, 367:20, 369:24, 370:6,	372:14, 378:12, 382:13, 382:15, 389:5 NELSON [71] - 145:13, 169:25, 186:7, 186:19, 207:5, 207:17, 207:22, 266:8, 266:25, 267:9, 268:1, 268:15, 268:20, 269:4, 269:11, 303:8, 303:19, 303:24, 304:11, 304:13, 304:19, 304:24, 305:6, 305:12, 305:20, 306:11, 306:22, 307:3, 307:7, 338:7, 338:16, 338:19, 338:25, 339:9, 339:13, 340:18, 341:8, 341:19, 365:21, 365:25, 366:4, 366:11, 366:16, 367:21, 368:13, 368:23, 372:15, 372:19, 374:6, 374:12, 374:19, 376:11, 376:24, 377:6, 377:25, 378:9, 378:15, 378:19, 379:9, 379:14, 380:19, 381:16, 381:20, 382:8, 389:7, 389:15, 390:6, 390:17, 392:13, 393:20, 394:18 Nelson's [2] - 382:1, 383:25 nematode [80] - 153:22, 160:14, 160:17, 161:10, 161:21, 228:23, 228:25, 229:4, 229:15, 230:3, 230:7, 231:10, 231:23, 232:2, 232:4, 232:16, 232:18, 232:22, 232:24, 232:25, 233:4, 233:10, 233:14, 233:17, 233:18, 233:21, 234:24, 235:19, 236:2, 236:14, 236:18, 236:25, 237:2, 237:6, 237:17, 237:23, 238:18, 240:25,	241:7, 242:7, 242:13, 242:15, 246:1, 248:3, 251:23, 252:10, 252:23, 253:9, 253:21, 253:23, 254:22, 255:3, 255:5, 256:1, 262:6, 262:9, 266:13, 267:20, 269:8, 272:23, 273:4, 274:6, 274:22, 274:24, 275:5, 275:6, 275:10, 275:16, 276:8, 277:10, 282:13, 282:15, 293:21, 303:13, 303:20, 377:11, 388:15, 388:16, 388:21, 390:22 Nematode [1] - 148:20 nematode's [2] - 230:17, 235:23 nematodes [11] - 229:6, 229:10, 229:11, 229:21, 229:23, 230:5, 235:21, 252:25, 265:18, 270:1, 274:9 nephew [3] - 288:3, 288:11, 322:10 NESC [5] - 172:20, 194:5, 194:15, 194:18, 209:10 neutrality [1] - 393:10 never [8] - 213:20, 229:20, 256:24, 271:9, 295:7, 295:21, 357:4, 376:9 new [9] - 216:4, 229:25, 231:15, 261:23, 263:4, 276:15, 307:23, 359:13, 359:25 newest [2] - 232:8, 234:25 news [2] - 315:16, 393:19 newspaper [1] - 230:15 next [13] - 150:8, 155:13, 200:4, 223:23, 267:1, 268:20, 270:23, 270:24, 339:7, 347:12, 351:12, 393:19, 395:25 nice [1] - 224:13 Nikki [1] - 299:15	nine [1] - 190:16 no-till [3] - 246:8, 290:23, 291:1 nobody [5] - 322:15, 330:23, 348:9, 361:12, 385:25 noise [1] - 205:5 nonconfidential [1] - 334:2 nondisclosure [1] - 341:1 none [4] - 272:3, 310:4, 322:13, 383:17 nonfactors [1] - 330:22 nonhost [2] - 248:9, 248:12 nonlicensed [1] - 384:9 nonresistant [3] - 255:25, 268:8, 274:13 normally [1] - 370:16 north [27] - 169:2, 169:5, 182:23, 184:18, 184:21, 185:2, 185:18, 234:18, 256:8, 291:7, 292:13, 306:3, 306:18, 319:12, 330:11, 330:17, 345:25, 346:17, 347:13, 348:5, 350:17, 352:6, 353:13, 353:14, 353:22, 353:25, 387:8 North [5] - 148:18, 176:12, 232:13, 271:24, 372:3 north-south [1] - 169:5 northwest [1] - 335:14 nos [1] - 258:13 Notary [2] - 408:7, 408:18 note [2] - 254:2, 342:4 noted [1] - 305:22 notes [3] - 158:19, 162:3, 214:10 nothing [15] - 169:19, 186:1, 186:4, 199:11, 218:20, 238:21, 246:9, 256:17, 266:14, 267:7, 303:5, 327:15, 362:6, 396:7, 407:12 notice [7] - 163:17,
---	---	--	---	---

<p>336:15, 341:9, 359:13, 359:17, 369:24, 404:19 notified [2] - 360:23, 361:8 notify [2] - 361:2, 361:10 nowadays [1] - 154:15 NRCS [1] - 153:18 nuclear [1] - 190:18 number [25] - 158:15, 183:10, 210:5, 221:10, 226:24, 231:7, 235:13, 237:17, 245:23, 268:2, 285:13, 285:14, 296:17, 298:20, 298:25, 299:8, 299:24, 312:25, 343:7, 355:14, 358:3, 358:25, 372:9, 372:18, 399:16 numbering [1] - 403:20 numbers [14] - 196:23, 230:24, 257:7, 257:9, 268:10, 269:20, 270:2, 270:18, 270:19, 272:24, 273:1, 290:17, 291:22, 322:5 numerous [4] - 301:11, 316:2, 323:11, 326:6</p>	<p>objecting [7] - 289:19, 289:20, 289:22, 289:24, 318:12, 318:13, 332:6 objection [20] - 159:8, 206:16, 243:23, 244:16, 286:1, 301:25, 302:9, 302:10, 321:19, 344:2, 344:4, 344:5, 349:18, 362:16, 362:19, 368:8, 374:20, 403:8, 403:11, 403:12 objections [1] - 360:12 objects [6] - 191:7, 194:6, 194:8, 195:23, 196:1, 211:10 obligation [1] - 384:8 obliged [1] - 334:1 obstacles [1] - 185:13 obstruction [4] - 192:7, 192:8, 197:21, 198:8 obstructions [1] - 281:7 obvious [2] - 225:24, 272:12 obviously [9] - 316:24, 328:14, 338:24, 342:7, 380:24, 386:25, 387:6, 392:14, 398:6 occasion [1] - 163:12 occasions [1] - 336:4 occupied [1] - 348:14 occur [4] - 210:11, 244:5, 396:10, 397:15 occurred [3] - 351:3, 355:15, 405:24 occurrences [1] - 246:2 occurring [2] - 186:15, 244:5 Oct [1] - 148:11 OF [7] - 145:2, 145:4, 145:4, 146:1, 408:1, 408:3 off-the-shelf [1] - 384:17 offer [13] - 159:12, 162:6, 168:9, 181:6, 181:25, 193:25, 197:14, 322:25, 324:5, 324:6, 371:24, 373:23, 405:22</p>	<p>offered [4] - 161:16, 192:24, 276:12, 340:9 offering [10] - 158:18, 159:1, 159:22, 159:25, 164:9, 164:22, 173:22, 181:11, 182:7, 343:24 Office [1] - 155:11 office [5] - 156:21, 173:18, 190:9, 224:3, 301:4 offices [1] - 151:1 offspring [4] - 230:7, 231:7, 233:7, 346:22 OJT [1] - 394:11 old [6] - 273:6, 282:5, 316:21, 354:9 older [1] - 344:22 Olson [7] - 354:1, 354:11, 354:12, 354:13, 355:3, 357:1, 357:16 Omaha [1] - 150:25 on-site [1] - 171:15 once [16] - 166:4, 167:4, 167:7, 174:24, 185:8, 186:23, 207:17, 217:18, 218:12, 224:2, 231:12, 232:25, 237:17, 320:14, 328:18, 406:22 one [126] - 158:8, 161:25, 164:22, 174:22, 175:21, 176:15, 177:22, 180:20, 182:20, 183:6, 184:25, 186:15, 189:3, 195:14, 198:22, 200:23, 203:5, 205:19, 211:24, 213:13, 213:24, 214:18, 216:11, 216:18, 219:21, 220:1, 221:24, 222:22, 223:10, 227:3, 229:16, 230:2, 233:11, 235:16, 236:12, 239:1, 239:8, 240:15, 248:9, 249:23, 254:8, 255:5, 255:16, 258:21, 261:18, 264:2, 265:15, 265:16, 266:23,</p>	<p>267:15, 267:21, 268:15, 270:8, 270:22, 270:23, 276:12, 280:19, 282:12, 283:8, 283:10, 286:17, 286:25, 287:23, 292:6, 292:7, 294:19, 297:23, 302:12, 302:23, 305:3, 306:3, 307:25, 308:19, 308:24, 310:7, 310:19, 312:20, 317:25, 318:2, 321:2, 321:14, 321:21, 322:10, 324:9, 325:18, 326:2, 326:7, 326:8, 330:5, 332:3, 335:1, 335:15, 340:22, 341:7, 344:23, 347:23, 348:6, 348:9, 350:22, 353:15, 354:9, 355:3, 359:12, 360:1, 362:17, 364:8, 364:12, 365:9, 370:4, 372:25, 374:17, 376:17, 376:18, 381:18, 385:20, 387:22, 389:12, 399:14, 401:20, 402:11, 402:25 ones [5] - 162:19, 204:2, 275:9, 400:10, 400:12 ongoing [1] - 156:11 Onida [1] - 408:13 ons [1] - 216:15 op [1] - 263:21 open [7] - 153:16, 161:24, 181:17, 281:4, 292:9, 317:15, 406:11 opening [4] - 152:22, 154:4, 248:2, 248:5 openings [1] - 261:14 operate [3] - 181:15, 205:12, 205:15 operation [20] - 151:10, 167:18, 168:1, 169:16, 172:25, 214:21, 261:3, 281:5, 314:21, 318:15, 319:8, 319:11, 322:8, 323:1, 324:1, 325:19, 337:24,</p>	<p>340:2, 348:9, 368:25 2 4 operations [2] - 166:16, 282:3 operator [1] - 384:18 opine [2] - 197:2, 245:13 opined [1] - 249:23 opining [1] - 158:23 opinion [38] - 158:19, 159:1, 159:13, 159:22, 160:6, 161:16, 162:6, 162:9, 164:9, 164:22, 172:25, 181:6, 181:9, 181:11, 181:25, 191:15, 192:9, 193:25, 194:23, 195:1, 197:14, 206:12, 206:18, 206:24, 208:2, 238:16, 245:17, 245:18, 245:20, 245:24, 246:5, 250:5, 250:12, 275:7, 278:11, 312:18, 371:24, 381:6 opinions [5] - 173:22, 192:23, 247:11, 276:12, 295:24 opportunity [4] - 232:17, 405:15, 405:23, 406:11 opposed [4] - 208:10, 317:7, 344:16, 390:11 opposite [3] - 188:17, 306:17, 387:22 opposition [1] - 162:15 ops [2] - 258:9, 258:18 option [8] - 248:12, 248:21, 302:7, 302:20, 326:23, 326:24, 405:11, 406:15 options [5] - 196:6, 197:11, 221:23, 233:1, 302:24 oral [6] - 367:18, 405:10, 405:11, 405:16, 406:12, 407:6 orally [1] - 405:23 orange [1] - 351:7 order [16] - 208:4, 208:16, 210:10, 222:18, 228:1, 270:6, 278:25,</p>
O				
<p>o'clock [2] - 222:15, 278:22 oath [12] - 150:13, 170:12, 189:22, 223:18, 228:8, 279:8, 314:16, 343:18, 370:16, 370:18, 371:7, 385:13 object [24] - 185:19, 194:16, 199:17, 202:15, 206:4, 206:7, 208:2, 208:6, 208:14, 209:11, 216:7, 217:20, 218:15, 218:18, 233:6, 275:11, 277:15, 296:15, 312:2, 312:4, 322:2, 387:16, 390:15 objected [1] - 286:7</p>				

<p>287:16, 304:25, 343:13, 367:8, 383:21, 387:12, 393:13, 404:3, 406:10</p> <p>orderly [1] - 162:7</p> <p>ordinance [1] - 328:15</p> <p>ordinances [1] - 328:10</p> <p>ordinary [1] - 245:16</p> <p>organization [1] - 249:3</p> <p>organizations [1] - 258:21</p> <p>original [3] - 275:17, 351:2, 359:14</p> <p>originally [7] - 154:10, 161:15, 169:3, 330:19, 350:16, 351:11, 388:15</p> <p>otherwise [1] - 314:5</p> <p>OTTER [1] - 145:5</p> <p>ought [4] - 195:14, 368:21, 392:5, 397:6</p> <p>ourselves [1] - 216:6</p> <p>outage [2] - 189:5, 189:13</p> <p>Outreach [1] - 148:13</p> <p>outreach [5] - 151:17, 152:4, 162:24, 274:20, 274:23</p> <p>outside [4] - 230:6, 386:16, 400:22, 404:18</p> <p>ovaries [1] - 230:11</p> <p>overall [3] - 157:11, 168:9, 188:12</p> <p>overhang [12] - 315:13, 318:10, 318:25, 321:17, 321:20, 321:24, 322:2, 351:17, 352:12, 352:15, 352:22, 358:17</p> <p>overhead [7] - 188:9, 188:16, 188:18, 188:22, 189:1, 190:12, 191:23</p> <p>overlapping [1] - 281:18</p> <p>overriding [1] - 334:5</p> <p>overrule [2] - 244:16, 286:4</p> <p>overruled [1] - 275:14</p> <p>oversee [1] - 285:4</p> <p>Overview [1] - 149:16</p> <p>overview [1] - 226:18</p> <p>own [13] - 176:23, 235:22, 244:22, 268:7, 281:3,</p>	<p>284:19, 295:13, 303:16, 314:7, 335:16, 354:7, 354:8</p> <p>owned [2] - 247:15, 339:22</p> <p>owner [2] - 210:25, 217:1</p> <p>owner's [1] - 171:9</p> <p>owners [7] - 151:25, 156:24, 165:13, 172:8, 216:8, 225:14, 367:23</p> <p>owns [2] - 345:21, 350:10</p>	<p>paragraphs [4] - 152:19, 153:2, 382:23, 389:9</p> <p>paralegals [1] - 196:3</p> <p>parallel [19] - 166:5, 191:8, 195:23, 196:12, 199:17, 201:1, 212:8, 212:12, 212:15, 212:23, 213:19, 214:4, 214:16, 225:17, 227:5, 227:6, 347:7, 347:10</p> <p>parallels [1] - 307:3</p> <p>parameters [1] - 377:18</p> <p>parasites [1] - 177:8</p> <p>parasitic [3] - 229:11, 229:21, 235:21</p> <p>parcel [15] - 167:10, 250:25, 280:23, 281:8, 281:9, 294:2, 294:3, 294:8, 294:9, 304:1, 350:1, 351:7, 351:9, 366:4</p> <p>parcel-by-parcel [1] - 250:25</p> <p>parcels [7] - 164:21, 242:1, 251:5, 318:25, 321:9, 321:11, 321:17</p> <p>pardon [9] - 186:5, 186:6, 206:6, 280:6, 283:21, 299:21, 305:18, 309:24, 310:9</p> <p>parlance [1] - 404:13</p> <p>part [43] - 166:19, 172:17, 174:4, 180:10, 181:2, 187:17, 189:8, 210:23, 213:19, 218:2, 237:8, 248:13, 248:18, 248:24, 253:25, 254:7, 272:15, 277:1, 301:14, 301:19, 302:6, 302:19, 305:16, 305:24, 312:3, 318:8, 319:25, 320:25, 350:21, 351:1, 351:5, 354:15, 372:8, 377:3, 379:4, 381:12, 398:2, 399:6, 400:20, 401:7, 403:6</p> <p>participate [1] - 326:14</p>	<p>particle [2] - 233:8, 236:11</p> <p>particles [1] - 244:21</p> <p>particular [14] - 152:2, 158:1, 166:11, 206:1, 232:19, 251:14, 258:20, 260:5, 276:15, 283:15, 340:24, 363:6, 379:10, 394:15</p> <p>particularly [6] - 183:6, 191:25, 192:3, 195:8, 288:19, 323:19</p> <p>parties [9] - 327:9, 367:11, 368:8, 383:19, 386:16, 402:15, 403:15, 406:12, 406:24</p> <p>partly [1] - 401:11</p> <p>parts [4] - 232:13, 241:15, 271:8, 275:8</p> <p>party [8] - 315:4, 323:2, 344:3, 349:15, 383:21, 386:1, 386:5, 386:21</p> <p>pass [2] - 197:22, 200:3</p> <p>passage [1] - 276:16</p> <p>passed [3] - 179:25, 198:6, 266:22</p> <p>passes [2] - 182:21, 199:19</p> <p>past [12] - 153:9, 157:8, 180:2, 187:2, 187:3, 217:2, 221:12, 256:2, 372:21, 380:16, 383:10, 387:2</p> <p>pasture [4] - 315:24, 320:6, 330:13, 330:14</p> <p>patches [2] - 264:18, 264:19</p> <p>path [3] - 209:16, 338:2, 407:2</p> <p>pathogen [2] - 234:8, 272:16</p> <p>pathologist [1] - 253:2</p> <p>pathology [1] - 228:21</p> <p>pattern [2] - 235:15, 281:25</p> <p>patterns [1] - 164:20</p> <p>pay [6] - 211:22, 283:4, 301:5, 340:9, 377:1, 396:14</p> <p>paying [1] - 397:19</p> <p>payment [1] - 377:2</p> <p>pays [1] - 298:10</p>	<p>pen [1] - 220:25</p> <p>penalty [3] - 340:10, 385:3, 386:18</p> <p>penetrated [1] - 274:12</p> <p>Pennsylvania [1] - 171:13</p> <p>people [31] - 155:17, 156:12, 191:17, 193:17, 208:20, 238:5, 258:10, 260:2, 272:22, 278:6, 278:21, 312:15, 314:12, 316:5, 333:9, 334:8, 340:25, 346:24, 347:24, 358:16, 360:23, 361:2, 368:11, 376:5, 385:21, 396:17, 397:5, 397:21, 399:7, 400:4, 400:18</p> <p>people's [2] - 332:12, 333:3</p> <p>per [8] - 196:20, 231:7, 237:17, 264:10, 327:1, 336:18, 387:11</p> <p>perceive [1] - 393:9</p> <p>perceived [1] - 174:16</p> <p>percent [26] - 186:14, 186:23, 232:4, 234:18, 237:4, 237:5, 237:11, 237:12, 237:22, 238:2, 249:11, 250:15, 264:15, 264:16, 264:17, 264:20, 264:21, 265:13, 267:15, 267:16, 321:14, 324:20, 324:21, 326:25</p> <p>percentage [4] - 237:10, 260:25, 267:3, 302:21</p> <p>perception [3] - 263:20, 324:22, 396:18</p> <p>perform [4] - 174:7, 190:13, 190:14, 249:4</p> <p>performed [5] - 152:2, 174:8, 185:8, 198:19, 246:19</p> <p>performs [1] - 198:17</p> <p>perhaps [2] - 212:13, 405:17</p> <p>period [17] - 172:21, 175:4, 186:12,</p>
---	---	--	---	--

186:24, 187:9, 187:11, 187:15, 187:18, 230:14, 233:5, 233:9, 259:20, 267:5, 283:2, 326:21, 397:15, 404:19 PERMIT [1] - 145:5 permit [22] - 152:15, 165:6, 224:11, 286:13, 287:7, 287:8, 288:1, 292:25, 318:13, 327:23, 328:2, 328:3, 328:6, 328:7, 328:12, 328:14, 328:15, 328:19, 328:20, 328:21, 360:13, 389:25 permits [1] - 151:19 permitted [5] - 151:8, 316:25, 327:22, 327:23, 328:8 permitting [2] - 151:7, 171:25 perpendicular [1] - 227:5 perpetuity [2] - 395:1, 395:5 person [21] - 196:9, 196:25, 197:19, 252:23, 252:24, 253:13, 283:11, 307:11, 309:7, 313:10, 324:14, 334:15, 334:19, 358:15, 374:14, 378:4, 379:25, 391:25, 392:18, 392:20, 399:14 person's [3] - 193:21, 198:21, 379:22 personal [3] - 198:15, 248:1, 295:24 personally [11] - 161:19, 162:21, 164:7, 198:14, 225:22, 258:15, 282:2, 282:17, 285:17, 286:9, 315:2 persons [2] - 194:24, 219:13 perspective [5] - 181:12, 181:13, 182:3, 236:1, 399:15 pertain [1] - 288:8 pertaining [1] - 308:13 PESALL [65] - 147:8, 147:17, 149:2, 154:7, 154:9, 165:14, 173:9, 173:11, 182:10, 188:1, 192:17, 192:19, 199:11, 206:4, 206:7, 206:19, 216:17, 218:20, 224:1, 225:7, 227:19, 228:4, 228:10, 234:3, 238:21, 239:12, 243:23, 273:15, 273:18, 276:19, 277:15, 277:20, 278:2, 279:4, 279:6, 279:10, 286:16, 286:22, 311:3, 311:5, 313:16, 313:21, 325:5, 325:8, 327:12, 342:2, 344:5, 360:17, 362:6, 362:14, 362:21, 363:1, 364:6, 365:8, 365:11, 365:18, 366:22, 384:3, 384:5, 384:21, 402:18, 403:19, 405:15, 405:25, 406:15 Pesall [60] - 145:20, 147:10, 147:19, 148:6, 148:7, 148:9, 148:18, 148:18, 148:19, 149:3, 152:21, 154:6, 173:7, 187:24, 192:16, 216:15, 223:24, 227:18, 228:3, 242:25, 277:19, 278:1, 278:2, 278:14, 279:1, 279:5, 279:11, 279:13, 279:15, 279:18, 287:16, 302:19, 303:8, 307:9, 311:2, 313:20, 313:21, 325:4, 326:17, 327:7, 327:8, 342:1, 344:5, 360:16, 362:5, 362:6, 363:12, 364:2, 364:8, 364:17, 365:6, 365:8, 365:12, 365:19, 365:25, 366:17, 384:2, 402:18, 403:17, 405:14 Pesall's [1] - 363:5 pest [9] - 229:25, 231:6, 231:7, 235:20, 277:11, 277:14, 378:2, 378:10, 388:11 pests [12] - 153:15, 153:20, 153:24, 157:22, 160:14, 180:23, 180:24, 181:23, 229:14, 229:17, 229:18, 296:6 Peterson [2] - 149:16, 399:18 petition [1] - 165:9 phase [1] - 296:18 phone [3] - 322:16, 356:9, 370:14 Photo [2] - 148:18, 148:18 phrase [2] - 220:3, 223:7 physically [2] - 167:24, 221:1 pick [2] - 238:25, 265:13 picked [3] - 271:3, 314:22, 369:25 picking [1] - 260:18 picky [3] - 272:5, 272:8 picture [2] - 292:16, 321:1 pictures [2] - 262:15, 305:21 piece [4] - 158:6, 261:8, 283:12, 332:8 pieces [4] - 177:18, 313:11, 349:13, 349:17 Pierre [4] - 146:3, 309:3, 329:22, 371:16 piggyback [1] - 186:20 PINER [1] - 150:11 Piner [7] - 147:5, 148:16, 150:10, 150:17, 150:23, 154:10, 165:20 pipeline [19] - 212:5, 212:6, 212:9, 212:20, 212:22, 213:16, 213:22, 213:24, 214:1, 226:12, 226:24, 227:3, 386:14, 387:5, 387:13, 387:23, 387:24, 388:3, 388:4 Pipeline [2] - 214:16, 227:4 pipelines [9] - 191:8, 212:6, 212:10, 212:15, 212:17, 214:4, 214:14, 227:2, 243:19 pitch [2] - 260:23, 264:1 pivot [2] - 355:7, 399:19 place [22] - 158:6, 168:3, 175:3, 178:6, 187:4, 216:2, 220:22, 269:1, 284:12, 344:14, 344:17, 344:18, 348:1, 348:2, 348:3, 348:18, 354:21, 356:24, 381:13, 382:5, 395:10 placed [4] - 216:3, 305:22, 305:23, 374:5 places [2] - 347:23, 363:4 placing [1] - 188:8 plain [1] - 292:9 plan [30] - 161:14, 180:24, 182:25, 235:2, 235:7, 238:17, 241:10, 251:20, 251:24, 252:13, 254:6, 254:22, 254:25, 255:3, 255:6, 276:8, 277:9, 281:11, 282:24, 309:10, 328:4, 328:5, 377:12, 377:22, 396:6, 396:11, 397:14, 399:20, 406:9 Plan [1] - 148:20 planning [1] - 163:4 plans [5] - 165:11, 177:5, 179:25, 284:17 plant [20] - 228:20, 229:10, 229:21, 235:21, 236:22, 238:9, 248:21, 249:9, 251:12, 253:2, 255:17, 255:21, 265:9, 272:11, 272:12, 272:13, 274:11, 308:17 Plant [1] - 149:8 planted [2] - 280:2, 294:7 planting [3] - 164:6, 26 249:17, 274:8 plants [2] - 229:9, 274:4 plastic [1] - 260:7 plat [2] - 342:24, 343:9 play [4] - 203:1, 271:23, 273:20, 350:22 playing [1] - 397:18 plenty [1] - 297:10 plumb [1] - 311:16 plus [3] - 184:14, 319:13, 322:11 point [42] - 165:15, 168:6, 177:22, 206:21, 215:3, 220:1, 226:8, 227:12, 229:16, 244:4, 256:10, 259:19, 267:24, 274:18, 279:5, 319:10, 325:6, 334:17, 335:9, 341:16, 342:8, 343:10, 343:14, 353:21, 358:25, 362:13, 362:14, 363:15, 367:6, 368:2, 375:13, 377:22, 380:2, 380:5, 387:17, 392:4, 394:18, 396:22, 397:24, 404:21, 405:8, 406:19 points [2] - 191:3, 380:13 pole [10] - 174:1, 174:21, 182:16, 183:23, 183:24, 183:25, 184:4, 281:4, 284:10, 389:21 poles [17] - 163:25, 164:3, 176:9, 183:16, 183:21, 184:2, 268:23, 284:10, 296:15, 305:14, 305:22, 305:23, 306:24, 346:21, 352:13, 358:17, 358:18 policies [7] - 251:15, 302:1, 326:24, 396:13, 396:23, 396:25, 402:12 policy [15] - 284:2, 298:13, 298:20, 298:25, 301:19,

<p>302:2, 302:13, 302:19, 326:12, 326:15, 396:18, 397:1, 397:2, 402:20, 403:18 poll [1] - 367:11 pops [1] - 236:7 population [1] - 242:7 portion [6] - 156:23, 158:22, 176:12, 221:11, 221:17, 367:6 portions [6] - 151:25, 166:3, 178:7, 178:11, 242:19, 257:14 pose [2] - 159:13, 381:3 positive [2] - 207:16, 269:15 possess [1] - 300:25 possibility [3] - 177:21, 184:1, 191:1 possible [17] - 164:24, 177:18, 178:6, 178:8, 178:11, 178:13, 178:15, 196:4, 201:3, 254:2, 259:11, 263:25, 318:19, 344:17, 358:14 possibly [3] - 199:23, 254:7, 404:20 post [2] - 175:19, 366:10 postcontact [1] - 156:3 potential [20] - 160:16, 195:17, 196:1, 198:23, 199:8, 201:15, 201:18, 202:13, 211:9, 217:17, 218:5, 218:6, 220:5, 220:7, 230:18, 230:23, 235:8, 256:4, 269:14, 338:23 potentially [1] - 364:7 poultry [1] - 324:17 pound [1] - 295:11 pounds [3] - 336:18, 336:19, 336:20 poured [1] - 366:14 power [42] - 157:17, 163:24, 163:25, 164:3, 164:15, 178:25, 183:19, 184:24, 190:11, 190:17, 191:22, 200:24, 204:17,</p>	<p>208:24, 216:4, 221:9, 235:22, 244:23, 259:14, 268:22, 268:24, 281:4, 281:11, 281:25, 285:11, 294:20, 297:15, 304:2, 304:10, 304:22, 306:12, 306:24, 309:10, 313:4, 323:12, 324:18, 326:6, 326:7, 329:11, 337:21, 337:23, 345:1 POWER [1] - 145:5 Power [5] - 171:3, 171:19, 173:19, 190:8, 190:16 PowerPoint [1] - 148:22 PowerPoint-10/17/13 [1] - 148:21 practical [1] - 261:19 practicality [1] - 392:24 practice [1] - 379:13 practices [14] - 179:20, 179:22, 180:7, 180:21, 181:3, 245:16, 246:11, 246:19, 247:6, 247:20, 295:16, 307:23, 380:7, 383:12 precautions [6] - 157:19, 259:5, 259:8, 260:1, 260:8, 308:15 precisely [2] - 224:15, 401:17 precontact [1] - 155:25 prefer [1] - 406:1 Preferred [1] - 148:8 preferred [1] - 172:6 prefiled [21] - 150:18, 162:4, 170:17, 173:6, 190:2, 190:24, 193:3, 228:11, 233:2, 233:23, 240:12, 240:16, 242:10, 245:5, 245:9, 246:21, 250:1, 252:7, 253:25, 280:9, 349:12 prehearing [1] - 367:8 Preliminary [1] - 149:16</p>	<p>preliminary [6] - 171:22, 171:23, 172:2, 172:5, 172:9, 172:10 preparation [2] - 151:15, 172:1 prepared [4] - 165:10, 170:17, 177:5, 190:2 preparing [2] - 151:6, 385:2 presence [8] - 161:21, 164:15, 197:15, 252:10, 252:21, 268:16, 272:23, 368:25 present [13] - 232:25, 241:23, 242:2, 244:15, 270:15, 270:20, 282:18, 284:9, 296:25, 297:2, 297:6, 308:16, 406:7 presentations [1] - 258:20 Preservation [1] - 155:11 pressure [1] - 256:8 pretty [10] - 238:4, 253:13, 254:18, 260:2, 267:14, 268:12, 268:23, 269:25, 309:15, 344:18 prevalence [1] - 153:24 prevent [5] - 152:14, 260:15, 271:9, 295:5, 395:9 preventing [3] - 180:23, 247:24, 252:2 Prevention [1] - 148:20 previous [4] - 171:5, 172:13, 198:20, 314:23 previously [3] - 228:11, 255:21, 289:3 price [5] - 302:20, 326:11, 327:1, 327:3, 339:25 primarily [1] - 163:21 primary [4] - 163:7, 173:25, 185:6, 325:18 principle [1] - 198:8 printed [3] - 230:14, 257:15, 257:16 private [1] - 391:16</p>	<p>proactively [1] - 253:13 probes [2] - 259:11, 262:2 problem [19] - 189:4, 197:16, 201:18, 265:11, 281:16, 281:17, 305:16, 305:25, 321:25, 324:22, 324:23, 324:25, 332:23, 333:6, 333:19, 347:2, 350:9, 356:4, 395:9 problems [6] - 197:3, 208:25, 229:18, 239:1, 312:25, 323:18 procedurally [1] - 402:13 procedure [2] - 211:4, 402:23 procedures [2] - 237:16, 238:2 proceed [10] - 150:7, 154:6, 173:7, 222:19, 277:25, 279:2, 314:3, 343:19, 364:14, 389:6 proceeding [4] - 279:1, 280:10, 334:11, 405:13 proceedings [5] - 228:12, 232:21, 405:18, 408:9, 408:12 PROCEEDINGS [1] - 146:1 Proceedings [1] - 145:8 process [25] - 164:5, 166:7, 166:14, 166:19, 166:21, 172:17, 174:22, 180:10, 198:10, 237:16, 237:19, 237:20, 240:8, 247:12, 308:10, 382:2, 398:13, 398:21, 399:25, 400:3, 400:6, 401:14, 404:15, 405:24 processed [2] - 236:23, 263:17 processes [2] - 151:6, 400:12 produce [7] - 192:1, 195:7, 204:18,</p>	<p>230:6, 258:19, 274:14, 308:1 produced [3] - 215:12, 307:25, 402:17 producer [5] - 211:3, 225:19, 225:22, 255:18, 327:4 producers [15] - 157:6, 157:25, 160:7, 165:25, 181:15, 203:21, 205:22, 206:3, 206:15, 210:21, 211:2, 226:5, 247:20, 248:15, 249:8 produces [2] - 191:5, 235:23 producing [1] - 329:24 production [7] - 163:22, 164:1, 165:3, 232:6, 240:5, 301:23, 326:21 productive [2] - 163:25, 395:1 productivity [1] - 395:5 Professional [2] - 408:6, 408:19 professional [4] - 171:19, 173:12, 209:13, 253:23 professor [3] - 228:19, 234:11, 309:6 profiles [1] - 215:18 program [4] - 190:18, 274:20, 326:14, 326:18 project [113] - 151:4, 151:13, 151:17, 151:19, 151:20, 151:21, 151:22, 151:23, 152:1, 152:8, 152:11, 152:15, 152:24, 153:3, 153:6, 153:10, 153:16, 155:3, 155:6, 155:7, 156:9, 157:11, 159:15, 160:18, 160:22, 162:6, 162:12, 162:16, 162:23, 166:3, 166:18, 166:20, 167:7, 167:21, 168:10, 168:12, 168:17, 168:18, 168:20, 170:23, 171:8, 171:13,</p>
---	---	---	---	--

171:15, 171:16, 171:18, 171:21, 171:23, 172:9, 172:15, 172:20, 173:1, 174:1, 174:5, 175:24, 176:12, 177:2, 180:13, 180:17, 181:7, 181:25, 188:19, 190:7, 190:23, 204:7, 211:15, 213:8, 216:25, 222:24, 223:18, 224:11, 225:23, 226:18, 226:19, 238:19, 245:14, 280:24, 281:9, 282:10, 282:23, 285:8, 286:19, 289:19, 289:20, 289:22, 289:23, 289:24, 290:3, 290:14, 290:16, 291:15, 292:18, 293:1, 294:9, 311:7, 311:8, 312:3, 312:4, 312:14, 315:22, 317:7, 317:9, 317:24, 318:7, 318:8, 349:19, 358:9, 368:25, 369:7, 385:21, 386:25, 387:4, 399:1 projected [1] - 294:20 projects [8] - 151:11, 171:5, 171:7, 171:8, 180:20, 205:18, 217:1, 243:16 prominent [1] - 341:18 prompted [1] - 388:19 prone [1] - 246:3 pronounce [1] - 253:6 proper [1] - 191:12 properly [1] - 220:21 properties [2] - 215:15, 247:15 Property [2] - 148:18, 148:18 property [42] - 153:4, 153:12, 156:25, 157:18, 158:6, 173:2, 181:8, 287:11, 289:20, 289:22, 289:23, 290:17, 291:6, 291:12, 291:16, 291:21, 292:5, 292:20, 297:16, 303:20, 306:15,	306:16, 307:4, 315:8, 335:20, 335:23, 339:14, 339:15, 339:17, 339:23, 340:6, 350:13, 350:14, 352:8, 352:9, 352:11, 352:17, 354:10, 354:12, 359:3, 385:16, 395:6 propose [2] - 331:10, 353:21 proposed [29] - 168:14, 169:3, 172:3, 172:11, 197:7, 197:10, 235:7, 238:17, 243:9, 245:15, 304:2, 316:12, 318:14, 319:4, 319:18, 320:13, 321:16, 323:8, 329:5, 335:4, 339:1, 341:10, 348:10, 350:16, 352:4, 355:13, 367:16, 377:16, 399:11 proposes [1] - 290:16 proposing [2] - 169:1, 291:15 proprietary [1] - 334:4 protect [2] - 210:22, 216:6 protection [4] - 213:15, 213:25, 214:3, 377:19 protects [3] - 206:2, 206:14, 385:24 protocol [10] - 252:14, 252:20, 253:16, 253:19, 309:20, 309:22, 391:6, 392:2, 392:5, 392:17 protocols [3] - 337:6, 391:5, 393:10 provide [9] - 151:14, 170:22, 211:8, 223:12, 232:10, 238:18, 295:24, 369:5, 377:18 provided [12] - 151:25, 152:11, 153:22, 153:23, 172:7, 228:11, 245:9, 255:9, 296:16, 325:11, 331:14, 360:10 provides [1] - 153:5 providing [1] - 171:24 provision [1] - 374:8	provisions [3] - 156:7, 180:22, 274:19 proximity [4] - 317:13, 318:14, 330:23, 336:1 prudent [1] - 261:19 PUBLIC [2] - 145:1, 145:11 Public [8] - 148:11, 148:12, 148:12, 148:21, 148:22, 287:24, 408:7, 408:18 public [19] - 155:23, 163:9, 172:13, 181:17, 204:3, 332:8, 332:14, 332:17, 333:3, 333:6, 333:7, 334:14, 342:24, 359:18, 380:21, 385:11, 398:14, 400:15, 403:6 publicly [1] - 250:24 published [1] - 234:10 pull [2] - 239:11, 274:18 pulled [1] - 226:12 pump [2] - 208:21, 328:17 purchase [2] - 340:10, 375:5 purchased [3] - 335:23, 339:14, 339:17 purely [4] - 183:11, 199:3, 199:5, 199:9 purple [5] - 220:14, 292:13, 345:16, 352:1, 352:3 purpose [7] - 151:14, 185:6, 190:22, 344:15, 344:16, 348:17, 397:12 purposes [4] - 213:25, 237:24, 333:15, 371:18 purview [1] - 168:8 pushed [1] - 385:19 put [43] - 156:22, 175:8, 185:12, 207:15, 264:3, 281:11, 284:10, 290:14, 290:16, 292:19, 292:22, 292:25, 304:22, 305:5, 306:3, 310:20, 313:12, 313:14, 320:10, 328:10, 330:3,	339:24, 345:22, 348:18, 348:19, 350:3, 361:5, 366:10, 366:23, 367:3, 368:20, 381:7, 381:11, 381:13, 386:25, 391:18, 392:13, 397:5, 397:14, 398:2, 398:9, 398:11, 398:24 puts [1] - 369:13 putting [12] - 174:22, 177:23, 210:4, 219:2, 221:7, 281:15, 309:10, 344:11, 345:20, 373:20, 376:20, 387:5 <div style="text-align: center;">Q</div> qualified [1] - 183:12 quarter [31] - 168:4, 168:23, 221:14, 264:7, 283:9, 283:10, 283:11, 304:3, 304:4, 304:7, 319:12, 319:15, 319:16, 320:1, 320:23, 321:3, 329:7, 329:16, 345:2, 346:3, 346:4, 346:16, 347:11, 348:8, 351:12, 351:16, 351:18, 352:7, 353:23 quarters [7] - 220:15, 315:23, 329:6, 329:7, 345:16, 350:1, 355:2 questioned [1] - 167:14 questioning [4] - 241:16, 261:4, 311:25, 335:4 questions [121] - 152:18, 152:21, 158:21, 165:15, 169:22, 169:24, 170:23, 172:16, 173:3, 182:10, 186:21, 187:23, 187:25, 189:14, 192:13, 204:10, 207:3, 207:23, 210:20, 214:7, 214:18, 218:22, 219:11, 219:20, 221:10, 222:6,	223:22, 223:25, 28 225:6, 226:7, 227:10, 227:11, 228:14, 233:25, 255:10, 255:11, 256:16, 256:18, 257:23, 258:1, 261:22, 264:25, 266:5, 269:12, 273:8, 273:10, 273:11, 273:19, 276:19, 277:18, 280:12, 286:23, 288:9, 288:10, 288:12, 300:15, 303:9, 307:8, 307:17, 309:5, 309:25, 310:2, 312:24, 313:16, 314:10, 314:23, 317:16, 325:3, 325:5, 325:15, 327:14, 333:17, 337:3, 338:8, 340:19, 340:20, 341:6, 341:23, 341:24, 342:3, 349:9, 359:16, 360:15, 360:18, 361:14, 361:18, 361:20, 362:1, 362:2, 362:11, 364:20, 364:22, 365:18, 365:19, 366:17, 367:22, 368:5, 368:17, 368:20, 371:9, 372:13, 372:23, 377:8, 381:10, 381:16, 382:8, 382:13, 383:22, 383:25, 384:2, 384:21, 387:20, 389:1, 394:19, 395:11, 395:14, 398:7, 403:24, 405:6, 405:7, 405:12 quick [7] - 199:13, 205:20, 227:21, 264:24, 308:24, 310:7, 371:25 quickly [1] - 371:17 quite [9] - 162:23, 166:17, 166:18, 297:10, 305:18, 387:6, 388:4, 391:15, 407:6
--	---	--	---	---

R	REA [2] - 285:20, 296:24	296:21, 306:10, 311:21, 312:1, 332:19, 334:18, 334:20, 348:10, 357:24, 362:10, 377:14, 377:18, 392:3, 398:10, 399:22	365:15, 379:20	199:8, 240:24, 253:15, 254:12, 266:14, 276:13, 286:2, 311:25, 379:10
rabbits [1] - 270:24	reach [1] - 208:12	Realtime [2] - 408:6, 408:19	recommend [3] - 195:20, 248:15, 249:8	reflect [1] - 292:18
radiation [4] - 193:4, 193:15, 193:22, 194:24	reached [1] - 261:1	reask [1] - 244:10	recommended [1] - 195:16	refers [2] - 276:17, 385:6
radio [9] - 192:1, 192:2, 195:5, 195:7, 205:14, 205:16, 369:1, 369:9, 384:10	reaching [1] - 181:14	reason [16] - 200:1, 220:23, 221:6, 230:11, 235:18, 256:5, 295:15, 318:17, 334:3, 345:17, 358:5, 369:22, 384:12, 387:3, 399:6	reconvene [3] - 150:1, 222:14, 278:11	reflect [1] - 292:18
radiofrequency [2] - 204:18, 204:19	reaction [2] - 272:13, 377:13	reasonable [1] - 363:25	record [19] - 170:15, 189:25, 193:7, 224:5, 246:23, 251:23, 254:10, 287:15, 314:1, 314:2, 325:10, 332:14, 363:3, 371:13, 390:18, 397:6, 398:25, 400:13, 403:7	reflected [2] - 234:19, 273:21
radios [2] - 195:8, 195:9	read [55] - 211:7, 224:5, 239:7, 239:8, 239:9, 239:15, 239:18, 239:20, 239:25, 240:3, 240:6, 240:10, 240:13, 240:18, 240:19, 240:20, 240:22, 240:24, 241:8, 241:10, 241:13, 254:16, 254:23, 255:7, 275:9, 275:12, 276:10, 276:13, 276:16, 276:17, 276:20, 277:6, 287:6, 287:12, 287:23, 288:13, 288:23, 289:3, 289:5, 289:8, 289:11, 289:13, 289:17, 302:1, 311:23, 316:5, 349:9, 349:13, 349:15, 349:17, 373:10, 373:23, 373:24, 377:12, 400:16	reasonably [1] - 397:21	recording [1] - 307:14	reflects [1] - 224:15
rail [2] - 169:4, 169:8	reading [4] - 240:9, 295:25, 296:2, 402:4	reasons [2] - 283:9, 391:21	recordkeeping [1] - 328:16	refuel [3] - 157:19, 165:1, 195:14
railroad [5] - 330:20, 330:21, 339:23, 350:18, 354:8	ready [7] - 173:8, 222:10, 222:11, 227:18, 273:14, 279:3, 343:20	REBUTTAL [1] - 147:17	records [1] - 328:18	refuge [2] - 268:6, 268:8
railroads [1] - 191:8	readily [1] - 207:7	rebuttal [4] - 241:6, 288:18, 367:3	recourse [1] - 338:23	regard [8] - 153:15, 192:5, 235:12, 319:7, 319:22, 321:19, 324:1, 370:2
rain [2] - 179:11, 323:20	realistically [1] - 339:7	Rebuttal [2] - 148:15, 148:15	RECROSS [5] - 214:12, 216:16, 217:10, 219:23, 277:4	regarding [18] - 152:18, 160:8, 170:22, 172:19, 173:3, 192:13, 203:1, 211:9, 211:12, 221:22, 225:6, 241:13, 251:5, 252:14, 254:21, 268:2, 343:10, 363:3
raining [1] - 209:8	reality [2] - 326:10, 332:25	receive [2] - 289:18, 298:7	RECROSS- EXAMINATION [5] - 214:12, 216:16, 217:10, 219:23, 277:4	regardless [7] - 208:6, 301:15, 301:20, 302:23, 312:16, 317:11, 326:19
rainy [1] - 215:9	realize [1] - 386:14	received [11] - 155:14, 205:21, 282:20, 289:9, 321:18, 322:25, 359:13, 360:1, 376:4, 376:9, 380:17	red [6] - 257:15, 345:1, 350:2, 351:1, 351:2, 351:7	regards [7] - 160:25, 177:7, 178:8, 179:5, 179:13, 214:14, 329:4
raise [2] - 282:7, 343:10	really [43] - 163:10, 163:11, 164:25, 166:23, 169:12, 176:16, 181:23, 198:21, 201:11, 203:2, 204:11, 210:5, 214:4, 214:24, 224:19, 231:17, 232:14, 232:23, 250:16, 258:13, 259:16, 261:2, 262:12, 262:25, 268:23, 273:1, 273:3, 294:4,	recent [3] - 171:8, 339:19, 363:2	redirect [6] - 170:2, 170:3, 188:4, 219:6, 222:8, 273:13	region [5] - 162:8, 163:20, 164:10, 178:23, 182:1
raised [4] - 153:25, 160:12, 208:22, 303:11	reception [2] - 369:5, 369:6	recently [4] - 151:12, 151:23, 289:8, 340:11	REDIRECT [7] - 188:5, 219:8, 223:15, 226:14, 273:17, 311:4, 388:8	regions [1] - 205:15
raises [1] - 348:7	recess [8] - 150:3, 222:16, 222:18, 227:24, 278:22, 278:23, 342:16, 404:1	receiving [4] - 369:2, 373:11, 374:1, 374:14	reduce [4] - 178:16, 254:2, 312:24	Register [1] - 333:1
ran [1] - 196:9	reality [2] - 326:10, 332:25	recite [1] - 240:7	refer [6] - 178:18, 194:19, 211:6, 229:15, 230:10, 251:22	Registered [2] - 408:5, 408:19
Randall [2] - 145:21, 147:13	realize [1] - 386:14	recognized [2] - 223:8, 243:13	reference [5] - 179:19, 360:22, 385:3, 386:3, 386:5	registered [1] - 171:19
RANDY [1] - 314:14	really [43] - 163:10, 163:11, 164:25, 166:23, 169:12, 176:16, 181:23, 198:21, 201:11, 203:2, 204:11, 210:5, 214:4, 214:24, 224:19, 231:17, 232:14, 232:23, 250:16, 258:13, 259:16, 261:2, 262:12, 262:25, 268:23, 273:1, 273:3, 294:4,	recognition [1] - 277:13	referenced [3] - 158:2, 160:8, 206:1	regulatory [2] - 152:4, 152:8
Randy [10] - 314:17, 331:10, 344:21, 346:1, 353:18, 353:25, 357:4, 357:10, 357:14	reimbursed [1] - 317:4	recognizes [1] - 277:13	references [1] - 325:11	relate [2] - 180:8, 240:5
range [4] - 178:10, 183:11, 291:22, 373:8	relate [2] - 180:8, 240:5	recollection [2] -	referred [2] - 182:20, 184:5	related [10] - 152:9, 167:23, 173:22, 205:23, 226:7, 240:9, 240:25, 241:2, 381:18, 382:14
Rapid [1] - 151:1	relates [3] - 248:2, 369:9, 369:16	recollect [2] -	referring [14] - 179:6, 180:21, 183:18, 185:12, 194:10,	relation [1] - 158:5
rapidly [2] - 218:10, 245:16	relation [1] - 158:5			
rare [1] - 163:12				
rate [3] - 236:19, 327:6				
rather [9] - 178:12, 258:15, 277:7, 352:6, 353:2, 353:10, 355:8, 367:13, 378:18				
RC [6] - 147:2, 147:8, 147:12, 147:15, 147:17, 147:20				
RD [6] - 147:2, 147:8, 147:12, 147:15, 147:17, 147:20				
re [1] - 400:25				
re-inputs [1] - 400:25				

<p>relationship ^[1] - 258:20</p> <p>relative ^[1] - 256:13</p> <p>relatively ^[5] - 268:10, 272:5, 278:15, 278:16, 369:13</p> <p>relax ^[1] - 278:21</p> <p>relevance ^[2] - 243:23, 244:7</p> <p>relevancy ^[1] - 159:8</p> <p>relevant ^[4] - 160:17, 160:21, 161:11, 244:1</p> <p>reliability ^[1] - 285:18</p> <p>reliable ^[1] - 262:12</p> <p>relied ^[1] - 160:5</p> <p>relieve ^[2] - 313:3, 313:5</p> <p>relocation ^[1] - 203:1</p> <p>reluctance ^[1] - 392:23</p> <p>reluctant ^[2] - 251:13, 391:17</p> <p>rely ^[2] - 160:13, 394:14</p> <p>remediation ^[1] - 395:8</p> <p>remedies ^[1] - 255:16</p> <p>remember ^[23] - 163:16, 235:22, 242:5, 265:7, 288:25, 299:2, 300:3, 301:10, 311:19, 311:20, 311:22, 317:25, 330:1, 330:6, 330:7, 355:16, 356:19, 358:20, 358:22, 359:17, 359:19, 367:10, 386:21</p> <p>remind ^[4] - 218:17, 223:17, 372:18, 379:13</p> <p>reminds ^[1] - 355:23</p> <p>remiss ^[1] - 314:24</p> <p>removal ^[1] - 387:14</p> <p>remove ^[3] - 184:12, 213:25, 403:3</p> <p>removed ^[1] - 387:15</p> <p>removing ^[1] - 208:21</p> <p>repair ^[2] - 189:11, 285:15</p> <p>repeat ^[2] - 244:8, 338:11</p> <p>rephrase ^[2] - 247:3, 312:12</p> <p>report ^[4] - 155:9, 173:18, 234:9</p> <p>Report ^[3] - 149:5, 149:6, 149:7</p>	<p>Reported ^[1] - 145:24</p> <p>reporter ^[3] - 267:13, 298:24, 408:9</p> <p>Reporter ^[5] - 149:8, 408:6, 408:19, 408:19</p> <p>reports ^[1] - 205:21</p> <p>represent ^[2] - 266:2, 404:24</p> <p>representation ^[4] - 290:13, 291:19, 292:4, 405:2</p> <p>representations ^[1] - 333:12</p> <p>representative ^[3] - 357:9, 357:18, 357:25</p> <p>representatives ^[2] - 315:2, 343:4</p> <p>represented ^[2] - 235:16, 401:22</p> <p>represents ^[1] - 254:23</p> <p>reproduce ^[1] - 265:18</p> <p>reproduction ^[2] - 231:23, 231:24</p> <p>reproductive ^[1] - 230:18</p> <p>request ^[4] - 153:11, 222:24, 287:25, 399:5</p> <p>Request ^[1] - 148:8</p> <p>requested ^[5] - 153:18, 165:9, 303:17, 334:16, 350:23</p> <p>Requested ^[1] - 148:9</p> <p>requesting ^[1] - 342:25</p> <p>requests ^[5] - 153:2, 288:6, 288:16, 380:10, 399:1</p> <p>Requests ^[2] - 148:4, 148:5</p> <p>require ^[5] - 168:1, 189:4, 210:10, 377:1, 381:14</p> <p>required ^[10] - 151:20, 179:24, 189:12, 191:11, 300:25, 326:13, 328:20, 359:13, 380:25, 404:18</p> <p>requirement ^[3] - 172:19, 268:6, 381:1</p> <p>requirements ^[6] - 152:17, 155:12, 213:1, 213:4, 213:7, 306:23</p> <p>requires ^[2] - 377:23, 395:8</p>	<p>395:8</p> <p>requiring ^[1] - 390:12</p> <p>reread ^[2] - 288:17, 288:18</p> <p>reroute ^[17] - 169:7, 169:9, 330:20, 335:4, 345:4, 354:25, 355:5, 359:2, 359:14, 360:3, 360:24, 399:18, 399:23, 404:15</p> <p>Reroute ^[1] - 149:16</p> <p>reroutes ^[1] - 400:9</p> <p>research ^[30] - 151:22, 198:18, 199:22, 200:6, 215:2, 233:16, 236:1, 236:13, 236:15, 237:24, 238:1, 247:2, 247:6, 248:25, 249:4, 252:23, 256:9, 258:25, 259:1, 259:3, 260:2, 260:5, 260:6, 262:11, 262:15, 264:21, 269:20, 269:23, 270:17, 303:16</p> <p>reserve ^[2] - 367:13, 403:16</p> <p>reside ^[1] - 299:18</p> <p>residence ^[1] - 354:17</p> <p>resident ^[1] - 314:18</p> <p>residential ^[1] - 356:11</p> <p>residents ^[2] - 347:22, 348:13</p> <p>resides ^[2] - 299:19, 373:14</p> <p>resistance ^[13] - 232:1, 232:2, 256:12, 265:9, 265:14, 265:15, 265:19, 265:22, 265:25, 268:9, 271:15, 274:9</p> <p>resistant ^[25] - 231:13, 231:17, 231:20, 231:22, 232:2, 248:21, 248:25, 249:9, 255:17, 255:20, 255:24, 256:3, 264:22, 264:23, 265:3, 265:12, 265:21, 268:5, 268:14, 271:13, 271:15, 274:4, 274:8, 274:11, 274:14</p>	<p>resolution ^[1] - 242:4</p> <p>resolve ^[2] - 369:8, 369:14</p> <p>resources ^[3] - 152:10, 155:6, 393:18</p> <p>Resources ^[1] - 328:3</p> <p>respect ^[9] - 154:25, 156:20, 174:6, 178:6, 178:22, 228:23, 273:19, 281:8, 404:5</p> <p>respected ^[1] - 358:19</p> <p>respects ^[1] - 232:18</p> <p>respond ^[7] - 211:12, 220:4, 370:16, 372:16, 383:24, 394:4, 405:23</p> <p>responded ^[3] - 153:21, 288:11, 379:21</p> <p>responding ^[2] - 370:8, 389:18</p> <p>response ^[5] - 153:11, 222:21, 237:8, 337:22, 381:2</p> <p>Responses ^[2] - 148:4, 148:5</p> <p>responses ^[4] - 153:2, 288:6, 288:15, 399:3</p> <p>responsibility ^[2] - 167:17, 169:15</p> <p>responsible ^[3] - 171:22, 172:3, 179:3</p> <p>rest ^[6] - 227:13, 296:9, 313:23, 320:11, 348:8, 407:8</p> <p>restate ^[4] - 160:20, 217:25, 218:2, 275:17</p> <p>restoration ^[1] - 180:10</p> <p>restore ^[3] - 179:20, 369:5, 381:24</p> <p>result ^[12] - 177:20, 203:9, 203:11, 208:25, 245:25, 246:19, 247:12, 249:24, 285:8, 338:24, 380:17, 382:3</p> <p>resulted ^[1] - 247:7</p> <p>resulting ^[1] - 219:11</p> <p>results ^[7] - 152:7, 236:24, 251:13, 264:4, 282:19, 294:11, 310:12</p> <p>retained ^[1] - 311:10</p> <p>retake ^[1] - 368:9</p> <p>retire ^[1] - 280:18</p>	<p>retired ^[1] - 252:25</p> <p>return ^[8] - 172:21, 186:12, 187:9, 187:11, 187:15, 187:18, 286:21, 290:5</p> <p>returned ^[1] - 310:12</p> <p>revealed ^[1] - 333:4</p> <p>revenue ^[1] - 284:5</p> <p>review ^[12] - 151:6, 155:5, 171:24, 235:4, 274:17, 288:5, 288:6, 288:15, 335:7, 335:8, 337:6, 380:14</p> <p>reviewed ^[3] - 198:18, 311:18, 328:18</p> <p>reviewing ^[2] - 172:11, 226:23</p> <p>Revised ^[1] - 148:22</p> <p>RF ^[2] - 204:25, 205:2</p> <p>rig ^[1] - 176:14</p> <p>right-of-way ^[2] - 315:3, 315:9</p> <p>rigs ^[3] - 175:12, 175:13, 175:15</p> <p>rings ^[1] - 322:17</p> <p>risk ^[7] - 209:15, 209:18, 209:19, 213:10, 219:13, 261:9, 284:19</p> <p>Rislov ^[1] - 145:16</p> <p>road ^[31] - 183:20, 284:24, 285:4, 285:7, 294:19, 305:17, 305:24, 306:17, 307:3, 307:4, 307:6, 313:1, 319:9, 319:11, 319:19, 320:5, 320:23, 320:25, 321:2, 321:4, 329:10, 353:15, 354:23, 355:1, 356:3, 356:13, 356:16, 380:23, 381:11</p> <p>roadbeds ^[1] - 285:12</p> <p>roads ^[5] - 260:17, 285:16, 304:12, 306:25</p> <p>roadways ^[1] - 306:24</p> <p>Robert ^[1] - 346:3</p> <p>rod ^[1] - 196:18</p> <p>rogue ^[1] - 320:20</p> <p>role ^[3] - 151:15, 163:11, 190:11</p> <p>room ^[4] - 238:8, 238:9, 339:24, 363:2</p> <p>root ^[3] - 230:6, 230:8,</p>
--	---	---	---	---

<p>230:9</p> <p>roots [18] - 237:6, 238:4, 238:11, 238:13, 261:24, 262:3, 262:5, 262:7, 262:16, 262:24, 263:4, 263:6, 273:5, 274:10, 274:11</p> <p>rotating [1] - 308:16</p> <p>rotation [5] - 248:13, 265:5, 295:18, 308:18, 308:19</p> <p>rough [1] - 165:7</p> <p>roughly [2] - 176:3, 176:23</p> <p>Rounds [3] - 145:17, 147:21, 371:14</p> <p>ROUNDS [1] - 371:5</p> <p>rounds [11] - 372:15, 382:9, 382:11, 382:12, 382:14, 383:17, 383:23, 384:1, 385:2, 389:2, 390:8</p> <p>roundson [1] - 382:19</p> <p>Roundup [2] - 265:21, 266:3</p> <p>Route [6] - 148:8, 148:8, 148:9, 148:10, 148:21, 148:22</p> <p>route [97] - 155:15, 157:14, 160:7, 165:10, 165:21, 166:1, 166:4, 166:7, 166:9, 166:10, 166:11, 166:12, 166:15, 166:24, 166:25, 167:4, 168:15, 168:18, 169:10, 172:3, 172:6, 172:11, 178:7, 178:12, 181:16, 184:24, 185:10, 185:17, 185:20, 197:8, 197:10, 203:1, 226:4, 226:5, 226:19, 226:20, 226:21, 227:2, 247:21, 291:20, 292:4, 292:19, 315:20, 317:10, 317:12, 319:4, 330:3, 330:5, 330:7, 331:3, 331:13, 343:5, 346:23, 347:3, 348:10, 348:16, 350:16, 350:23, 351:2,</p>	<p>351:5, 351:11, 352:3, 353:8, 353:9, 354:15, 354:24, 355:6, 359:3, 359:5, 359:6, 359:13, 359:14, 359:22, 359:23, 360:1, 360:3, 361:1, 361:9, 398:8, 398:11, 398:15, 398:22, 399:1, 399:5, 399:11, 399:13, 399:14, 399:24, 400:21, 401:8, 401:12, 403:14, 404:16, 404:18, 404:20</p> <p>routed [1] - 359:7</p> <p>routes [1] - 318:19</p> <p>routing [6] - 161:5, 171:25, 184:25, 185:4, 185:8, 359:8</p> <p>rows [1] - 351:19</p> <p>RPR [1] - 145:24</p> <p>RTK [2] - 372:24, 373:1</p> <p>rule [1] - 334:11</p> <p>rules [4] - 152:9, 224:22, 334:9, 334:22</p> <p>ruling [1] - 286:15</p> <p>rumor [3] - 316:7, 338:12, 338:17</p> <p>run [14] - 182:23, 184:18, 186:10, 233:17, 236:13, 237:23, 268:11, 268:25, 306:18, 312:20, 322:16, 350:17, 351:12, 371:8</p> <p>running [8] - 199:17, 201:16, 270:23, 292:13, 306:19, 313:2, 353:22</p> <p>runoff [2] - 180:5, 236:17</p> <p>runs [2] - 201:20, 281:10</p> <p>rural [1] - 337:16</p>	<p>Safety [7] - 172:18, 187:11, 191:10, 191:14, 209:18, 209:23, 210:7</p> <p>safety [8] - 173:2, 181:8, 191:16, 192:10, 194:1, 212:5, 212:9, 323:9</p> <p>sale [4] - 322:23, 322:24, 322:25, 339:6</p> <p>sales [2] - 153:12, 339:18</p> <p>sample [18] - 237:16, 237:23, 237:25, 251:11, 262:1, 263:17, 263:19, 263:23, 269:22, 272:10, 272:11, 304:17, 305:1, 305:8, 310:11, 363:22, 363:25</p> <p>sampled [2] - 282:18, 304:18</p> <p>samples [32] - 235:17, 236:2, 236:22, 236:23, 236:24, 237:1, 237:5, 252:9, 252:10, 262:2, 262:11, 263:11, 264:8, 268:2, 294:15, 297:22, 303:17, 304:14, 304:15, 304:19, 305:1, 305:3, 305:7, 309:8, 309:16, 313:9, 342:6, 363:3, 363:9, 363:13, 364:4, 387:15</p> <p>sampling [13] - 242:4, 262:22, 262:23, 273:6, 293:6, 293:9, 309:20, 309:22, 328:18, 364:18, 365:13, 391:2, 392:25</p> <p>satellite [5] - 198:3, 198:4, 199:3, 199:5, 204:20</p> <p>satisfied [1] - 308:2</p> <p>satisfies [1] - 152:17</p> <p>satisfy [1] - 292:25</p> <p>save [1] - 236:24</p> <p>saw [8] - 161:25, 238:13, 254:10, 265:7, 294:1, 336:4, 373:18, 377:12</p> <p>scan [1] - 240:11</p> <p>scanned [3] - 240:4, 275:15, 275:17</p>	<p>schedule [2] - 406:10, 407:14</p> <p>school [1] - 173:15</p> <p>SCHURING [34] - 147:12, 149:10, 165:19, 169:12, 182:13, 182:15, 185:22, 199:13, 199:15, 200:19, 214:9, 214:13, 216:12, 255:13, 255:15, 256:15, 298:23, 300:19, 300:21, 302:16, 303:1, 314:8, 314:14, 357:6, 360:21, 361:13, 361:15, 362:9, 364:22, 385:1, 387:18, 387:20, 403:1, 407:3</p> <p>Schuring [35] - 145:21, 147:13, 148:19, 165:17, 182:12, 188:2, 199:12, 214:8, 225:9, 255:11, 300:18, 310:5, 314:3, 314:17, 317:21, 321:10, 338:8, 341:8, 343:14, 344:6, 347:2, 347:14, 353:9, 357:1, 357:14, 359:11, 359:24, 360:7, 360:19, 362:7, 364:21, 383:20, 384:22, 402:25, 407:1</p> <p>Schuring's [2] - 359:4, 403:17</p> <p>Science [4] - 150:23, 154:13, 190:19, 190:20</p> <p>science [1] - 171:2</p> <p>sciences [1] - 150:24</p> <p>scientific [3] - 234:9, 238:1, 323:24</p> <p>scientist [2] - 159:2, 159:23</p> <p>scientists [2] - 151:3, 234:7</p> <p>SCN [85] - 149:5, 149:5, 149:6, 149:7, 149:7, 149:8, 229:16, 230:3, 230:19, 238:13, 241:22, 242:2, 242:19, 242:25,</p>	<p>243:6, 243:10, 243:12, 244:15, 244:20, 245:15, 246:20, 247:7, 247:13, 247:15, 247:18, 247:24, 248:7, 248:16, 248:21, 248:25, 249:9, 249:12, 249:24, 250:6, 250:13, 250:25, 251:5, 251:17, 252:8, 252:21, 253:14, 254:3, 255:17, 255:18, 255:20, 255:24, 256:3, 256:8, 256:12, 256:22, 257:4, 257:13, 257:18, 258:22, 259:15, 262:24, 263:7, 265:12, 268:5, 268:16, 271:4, 272:3, 272:10, 272:13, 272:14, 273:5, 274:4, 275:19, 293:3, 293:14, 294:10, 295:6, 295:17, 296:7, 296:10, 297:17, 303:12, 307:19, 308:13, 378:5, 378:14, 378:17, 391:24</p> <p>scope [4] - 155:2, 167:19, 168:13, 168:20</p> <p>Scotland [1] - 335:17</p> <p>screen [1] - 291:3</p> <p>scrub [1] - 295:10</p> <p>SD [1] - 149:7</p> <p>SDSU [8] - 251:4, 251:15, 258:6, 263:18, 391:5, 391:8, 392:10, 393:8</p> <p>SDSU's [1] - 392:15</p> <p>sealed [1] - 313:13</p> <p>search [1] - 224:20</p> <p>searching [1] - 375:20</p> <p>season [3] - 256:7, 263:8, 283:15</p> <p>seat [1] - 366:18</p> <p>second [12] - 190:25, 191:18, 209:7, 212:4, 226:10, 231:21, 237:19, 247:13, 254:1, 267:22, 314:18, 357:3</p>
	<p>S</p>			
	<p>sack [2] - 366:13, 366:15</p> <p>safe [4] - 177:5, 193:16, 203:11</p> <p>safeguards [1] - 191:12</p>			

<p>Second [2] - 148:5, 148:7</p> <p>section [27] - 153:3, 154:2, 160:10, 188:13, 188:20, 220:13, 276:10, 283:9, 292:2, 315:16, 319:12, 320:1, 321:3, 329:13, 329:16, 329:17, 335:16, 339:8, 345:21, 346:16, 350:11, 353:22, 354:7, 354:15, 354:21, 399:8</p> <p>Section [5] - 153:10, 306:17, 345:3, 350:19, 351:6</p> <p>sectional [1] - 200:9</p> <p>sections [13] - 153:1, 153:5, 158:1, 160:8, 188:14, 240:3, 240:6, 240:9, 242:18, 275:2, 275:19, 291:22, 315:11</p> <p>secure [1] - 328:12</p> <p>see [61] - 152:5, 153:7, 159:17, 166:15, 184:8, 187:3, 189:3, 189:12, 204:22, 215:2, 216:24, 221:2, 237:2, 238:11, 239:12, 240:14, 240:20, 240:23, 252:11, 254:18, 260:12, 262:14, 262:15, 267:14, 267:16, 272:25, 273:25, 276:5, 280:21, 292:8, 292:13, 299:6, 300:9, 319:1, 319:23, 321:16, 322:1, 329:10, 329:12, 331:21, 343:6, 345:14, 351:23, 352:1, 354:1, 360:5, 365:23, 371:1, 380:18, 382:9, 388:12, 392:8, 396:23, 397:4, 397:24, 398:4, 401:11, 406:23</p> <p>seed [7] - 231:14, 231:19, 232:8, 248:22, 249:3, 295:19, 307:24</p>	<p>seeds [1] - 248:25</p> <p>seeing [2] - 275:15, 331:4</p> <p>seek [1] - 371:22</p> <p>seeks [2] - 290:14, 318:23</p> <p>segment [1] - 169:5</p> <p>select [4] - 166:10, 302:24, 327:5, 327:6</p> <p>selected [1] - 167:4</p> <p>selecting [1] - 172:8</p> <p>selection [8] - 165:21, 166:2, 166:6, 166:7, 166:10, 166:12, 166:24, 185:20</p> <p>self [1] - 184:2</p> <p>self-supporting [1] - 184:2</p> <p>sell [3] - 322:7, 322:20, 322:21</p> <p>sells [2] - 301:20, 301:21</p> <p>send [4] - 163:17, 236:22, 263:14, 304:18</p> <p>sending [2] - 311:7, 311:13</p> <p>senior [1] - 190:7</p> <p>sense [5] - 224:8, 266:19, 363:20, 389:24, 400:24</p> <p>sensed [2] - 363:19, 363:21</p> <p>sensitive [2] - 393:25, 395:4</p> <p>sent [10] - 251:14, 288:9, 288:11, 311:17, 343:4, 343:6, 357:18, 357:23, 401:12</p> <p>sentence [9] - 223:7, 230:14, 232:5, 233:6, 233:9, 250:16, 252:6, 276:12, 373:24</p> <p>separate [1] - 283:9</p> <p>series [1] - 354:17</p> <p>serious [5] - 159:13, 161:13, 173:1, 181:7, 298:11</p> <p>seriously [4] - 361:3, 361:9, 399:2, 400:4</p> <p>serve [1] - 190:8</p> <p>served [2] - 171:12, 171:15</p> <p>service [2] - 285:18, 285:19</p> <p>serving [2] - 171:9, 171:18</p> <p>set [13] - 175:6,</p>	<p>235:17, 265:13, 265:15, 283:2, 305:15, 305:16, 334:21, 354:22, 356:17, 358:6, 406:10, 407:14</p> <p>Set [4] - 148:4, 148:5, 148:6, 148:7</p> <p>setback [1] - 306:23</p> <p>sets [1] - 177:1</p> <p>settled [1] - 156:1</p> <p>Settlement [7] - 149:19, 254:16, 277:2, 277:13, 367:22, 368:24, 379:4</p> <p>settlement [5] - 156:5, 275:22, 276:3, 384:6, 395:7</p> <p>seven [2] - 252:25, 272:18</p> <p>several [13] - 176:25, 182:21, 224:14, 272:17, 272:18, 303:8, 308:5, 324:12, 324:25, 338:7, 356:21, 363:13, 367:22</p> <p>shall [4] - 211:8, 277:8, 369:3, 369:4</p> <p>shallow [1] - 269:16</p> <p>shanks [1] - 295:11</p> <p>share [4] - 251:13, 299:5, 327:8, 327:9</p> <p>shared [1] - 376:18</p> <p>sharing [1] - 322:6</p> <p>Sheet [1] - 149:7</p> <p>shelf [1] - 384:17</p> <p>short [13] - 188:14, 188:19, 222:16, 227:24, 229:3, 231:8, 233:11, 278:15, 278:16, 342:14, 342:16, 362:17, 404:1</p> <p>shorter [2] - 184:23, 188:13</p> <p>shorthand [2] - 408:9</p> <p>shortly [2] - 150:4, 311:10</p> <p>shot [1] - 386:9</p> <p>show [8] - 216:24, 227:1, 227:6, 257:8, 257:17, 321:7, 331:12, 396:24</p> <p>showed [3] - 234:12, 358:3, 359:19</p> <p>showing [3] - 264:21, 303:14, 374:17</p> <p>shown [2] - 345:11,</p>	<p>348:4</p> <p>shows [6] - 226:19, 227:2, 257:13, 262:11, 291:2, 292:11</p> <p>sic [2] - 364:13, 382:19</p> <p>sic [1] - 298:19</p> <p>sick [1] - 272:20</p> <p>side [18] - 175:16, 175:18, 188:17, 306:3, 306:4, 306:17, 319:12, 319:19, 321:4, 321:8, 333:18, 354:8, 354:22, 354:23, 355:1, 356:3, 356:12, 356:16</p> <p>sight [9] - 192:6, 197:21, 198:7, 199:2, 376:13, 389:20, 389:25, 390:9, 390:16</p> <p>sign [3] - 345:10, 355:20, 358:7</p> <p>signal [1] - 198:6</p> <p>signals [1] - 157:21</p> <p>signed [2] - 227:22, 344:19</p> <p>significance [1] - 234:8</p> <p>significant [9] - 166:22, 168:5, 183:15, 184:12, 189:5, 197:3, 197:16, 232:5, 377:18</p> <p>silt [1] - 180:2</p> <p>similar [14] - 195:19, 196:18, 198:8, 198:13, 205:19, 242:15, 265:20, 274:12, 282:3, 284:17, 326:16, 382:21, 383:25, 390:12</p> <p>similarly [3] - 246:11, 246:13, 382:23</p> <p>simple [1] - 226:3</p> <p>simpler [1] - 185:1</p> <p>simplest [1] - 396:14</p> <p>simplify [1] - 315:20</p> <p>simply [1] - 182:8</p> <p>single [4] - 183:22, 183:24, 183:25, 184:2</p> <p>Sioux [1] - 151:1</p> <p>sister [1] - 316:20</p> <p>sit [3] - 241:20,</p>	<p>242:17, 400:23</p> <p>site [13] - 164:25, 171:15, 175:23, 176:17, 180:15, 196:16, 291:2, 291:10, 320:13, 356:11, 356:13, 356:14, 379:21</p> <p>site-specific [1] - 164:25</p> <p>sites [1] - 348:14</p> <p>siting [3] - 372:6, 380:16, 383:12</p> <p>sits [1] - 399:4</p> <p>sitting [3] - 185:16, 232:20, 241:22</p> <p>situation [11] - 202:4, 210:6, 219:25, 232:14, 236:13, 246:8, 271:9, 281:2, 325:10, 388:1, 392:20</p> <p>situations [1] - 382:21</p> <p>six [6] - 249:7, 252:25, 272:18, 294:17, 309:8, 364:3</p> <p>size [3] - 175:13, 230:14, 233:5</p> <p>skunks [1] - 270:24</p> <p>slight [2] - 213:20, 341:10</p> <p>slow [5] - 164:5, 232:24, 267:18, 267:20, 271:10</p> <p>slowly [2] - 257:9, 265:18</p> <p>small [10] - 166:24, 192:7, 194:16, 205:10, 215:17, 236:11, 237:10, 263:24, 272:4, 372:4</p> <p>smaller [1] - 387:12</p> <p>smallest [1] - 233:8</p> <p>smart [1] - 378:13</p> <p>smile [1] - 169:25</p> <p>Smith [16] - 145:15, 185:19, 186:8, 192:17, 213:12, 214:9, 222:21, 228:4, 238:23, 276:25, 279:4, 287:1, 341:25, 343:3, 362:14, 401:3</p> <p>SMITH [208] - 150:1, 154:6, 159:9, 165:16, 169:18, 169:20, 169:23, 170:1, 170:3, 170:7, 173:7, 182:11, 185:25, 186:2,</p>
---	--	--	--	---

186:5, 187:23, 188:2, 189:15, 192:16, 199:12, 200:20, 203:14, 206:6, 206:9, 206:16, 206:20, 206:25, 207:3, 207:23, 210:18, 213:13, 213:18, 214:6, 214:11, 216:11, 216:13, 217:7, 217:23, 218:17, 218:21, 219:6, 219:21, 222:5, 222:9, 222:17, 223:24, 224:8, 224:19, 225:1, 225:4, 225:8, 225:12, 226:7, 227:11, 227:15, 227:17, 227:21, 227:25, 234:2, 238:22, 238:25, 243:24, 244:8, 244:12, 244:16, 255:11, 256:16, 256:18, 257:23, 257:25, 266:6, 273:8, 273:12, 275:14, 276:20, 276:23, 277:3, 277:19, 277:21, 277:25, 278:5, 278:9, 278:20, 278:24, 279:15, 286:3, 286:25, 300:17, 302:10, 303:2, 303:4, 303:6, 307:9, 307:13, 308:23, 309:1, 309:24, 310:5, 310:9, 310:23, 311:1, 313:17, 313:20, 313:24, 314:2, 314:12, 317:17, 325:4, 327:13, 327:16, 328:25, 329:18, 329:20, 331:22, 332:9, 332:17, 332:24, 333:18, 333:21, 333:25, 334:8, 334:14, 338:5, 340:20, 341:6, 341:22, 342:1, 342:9, 342:14, 342:18, 343:12, 343:19, 343:24, 344:2, 344:6, 348:21, 348:23, 360:16,	360:19, 361:14, 361:16, 361:25, 362:5, 362:7, 362:10, 362:16, 362:20, 362:22, 364:10, 364:14, 364:21, 364:23, 364:25, 365:2, 365:19, 365:22, 366:17, 366:20, 366:23, 367:2, 367:5, 367:19, 367:25, 368:7, 368:19, 369:18, 370:7, 370:19, 370:23, 371:3, 372:14, 375:3, 375:8, 375:11, 376:2, 376:10, 381:18, 381:21, 382:4, 382:7, 382:12, 382:16, 383:17, 384:2, 384:22, 387:19, 387:21, 388:5, 388:7, 389:1, 389:5, 395:13, 395:18, 402:6, 402:10, 402:21, 403:2, 403:11, 403:13, 403:22, 404:2, 405:4, 405:7, 405:19, 406:3, 406:17, 407:5, 407:13 Smolik [1] - 252:25 snow [1] - 178:24 socially [1] - 165:24 socioeconomic [3] - 152:24, 153:6, 166:3 socioeconomical [1] - 168:13 socioeconomics [2] - 152:25, 160:9 sociological [2] - 154:17, 174:11 soil [90] - 175:15, 175:20, 176:19, 177:6, 177:19, 180:8, 180:11, 180:12, 180:16, 196:17, 229:7, 229:23, 231:5, 231:9, 232:24, 233:3, 233:10, 235:13, 235:17, 236:2, 236:8, 236:11, 236:17, 236:19, 236:22, 237:1, 237:6,	237:16, 237:18, 238:5, 238:8, 244:21, 244:24, 245:24, 246:1, 246:2, 246:3, 246:9, 246:10, 246:12, 246:14, 246:16, 247:14, 247:16, 252:9, 259:11, 259:12, 259:13, 259:24, 260:24, 261:3, 261:4, 261:9, 261:17, 262:1, 262:2, 262:11, 262:22, 262:23, 263:11, 263:19, 263:24, 264:3, 264:5, 269:19, 270:2, 270:21, 272:11, 273:6, 290:24, 293:6, 294:12, 294:15, 296:6, 297:22, 303:17, 304:18, 310:11, 326:1, 328:17, 363:3, 363:8, 363:9, 363:14, 364:4, 379:1, 394:16 soil's [1] - 379:18 soilborne [9] - 153:15, 153:19, 153:24, 157:22, 160:14, 177:8, 180:23, 180:24, 181:22 soils [2] - 229:12, 258:5 solace [1] - 393:14 sold [4] - 298:5, 324:16, 326:5, 326:7 solely [1] - 215:13 solution [1] - 202:24 solve [2] - 305:16, 305:24 solved [1] - 343:12 someone [10] - 208:12, 212:13, 247:17, 283:9, 293:23, 334:20, 378:14, 392:21, 401:17, 407:15 someplace [1] - 387:15 sometime [1] - 331:20 sometimes [3] - 279:16, 295:3, 399:13 somewhat [4] - 233:21, 372:20, 374:23, 392:7	somewhere [4] - 176:3, 176:4, 240:2, 357:23 sons [1] - 382:17 sooner [1] - 310:19 sorghum [2] - 271:20, 272:4 sorry [7] - 155:25, 163:3, 179:18, 310:10, 353:19, 382:16, 403:21 Sorry [1] - 335:2 sort [9] - 163:4, 175:16, 176:19, 178:15, 208:13, 270:6, 367:9, 367:11, 381:9 sought [1] - 294:2 sound [1] - 309:7 sounded [2] - 270:5, 308:4 sounds [4] - 262:10, 270:7, 271:5, 272:9 South [54] - 146:2, 146:3, 148:18, 150:2, 151:1, 151:11, 159:6, 161:17, 161:22, 171:11, 178:23, 182:21, 183:5, 186:25, 210:22, 232:13, 234:6, 234:10, 241:18, 242:5, 242:12, 243:13, 244:14, 249:15, 251:1, 252:18, 252:22, 256:13, 260:13, 261:14, 271:17, 271:19, 273:20, 274:3, 279:14, 279:19, 281:20, 282:9, 286:20, 290:4, 297:20, 297:24, 298:17, 312:15, 312:21, 314:19, 316:18, 323:13, 329:24, 339:21, 371:16, 373:7, 408:7, 408:13 SOUTH [3] - 145:2, 145:6, 408:1 south [23] - 169:5, 220:19, 234:18, 291:7, 292:13, 306:19, 314:18, 319:8, 319:11, 319:14, 321:5, 323:3, 323:15, 330:10, 331:13,	335:16, 341:10, 33 345:21, 350:18, 353:13, 353:14, 387:8, 391:9 southeast [1] - 304:4 southern [4] - 319:25, 320:25, 341:13, 360:24 soybean [73] - 153:22, 160:14, 160:17, 161:10, 228:23, 228:25, 229:4, 229:15, 230:2, 230:7, 230:21, 231:4, 231:10, 231:13, 231:18, 231:20, 231:22, 232:3, 232:6, 232:16, 232:18, 232:22, 233:4, 233:14, 233:16, 233:18, 233:20, 234:23, 236:2, 236:14, 236:25, 237:2, 237:5, 237:6, 238:4, 240:25, 241:7, 242:7, 242:13, 242:15, 249:6, 251:23, 253:2, 253:8, 253:21, 253:22, 254:22, 255:2, 255:5, 255:24, 256:3, 262:9, 265:3, 266:13, 267:20, 269:7, 272:19, 273:4, 274:6, 274:14, 274:22, 274:24, 275:5, 275:6, 275:10, 275:16, 276:7, 277:9, 377:11, 388:15, 388:21, 390:22 Soybean [3] - 148:20, 149:6, 298:2 soybeans [32] - 231:14, 232:3, 232:15, 237:1, 238:6, 238:9, 238:10, 242:25, 249:17, 255:17, 264:19, 265:24, 266:19, 267:12, 267:22, 268:14, 271:17, 272:3, 272:5, 272:19, 272:24, 274:4, 274:5, 280:5, 280:7, 280:8, 282:7, 294:2,
--	---	--	---	--

<p>294:6, 294:7, 308:1, 308:17</p> <p>spans [2] - 205:6, 205:10</p> <p>speaking [6] - 164:2, 180:18, 181:22, 282:9, 320:18, 374:23</p> <p>speaks [2] - 157:9, 276:7</p> <p>Special [2] - 149:5, 149:6</p> <p>specialist [1] - 377:24</p> <p>specialized [2] - 207:9, 252:24</p> <p>species [1] - 275:3</p> <p>specific [23] - 153:25, 158:22, 164:21, 164:25, 167:2, 167:10, 175:23, 175:24, 176:23, 180:15, 187:15, 187:19, 189:2, 204:24, 240:3, 241:1, 260:4, 262:25, 273:25, 275:18, 373:17, 379:4</p> <p>specifically [10] - 151:7, 153:4, 157:15, 165:22, 174:5, 174:8, 205:23, 240:14, 257:6, 378:1</p> <p>specifications [1] - 179:24</p> <p>specifics [2] - 163:5, 268:18</p> <p>spectrum [2] - 373:6, 373:13</p> <p>speeds [1] - 328:17</p> <p>spell [2] - 253:5, 298:18</p> <p>spelled [1] - 298:21</p> <p>spending [1] - 324:24</p> <p>spent [3] - 207:5, 372:3, 383:13</p> <p>spilled [2] - 175:16, 175:18</p> <p>spite [2] - 195:4, 312:4</p> <p>spot [1] - 305:4</p> <p>spots [5] - 273:1, 293:15, 293:20, 293:22, 294:5</p> <p>spotting [1] - 172:10</p> <p>spray [1] - 258:10</p> <p>sprayers [3] - 260:12, 260:14, 281:14</p> <p>spraying [7] - 164:6, 164:16, 164:24,</p>	<p>258:11, 306:2, 306:6, 313:8</p> <p>spread [27] - 160:16, 180:23, 232:24, 233:2, 236:17, 238:19, 244:6, 244:20, 244:22, 245:15, 246:1, 246:20, 247:7, 247:12, 247:24, 249:24, 250:6, 250:13, 252:3, 254:3, 258:11, 260:15, 269:8, 277:9, 295:5</p> <p>spreading [2] - 258:22</p> <p>spreads [1] - 244:3</p> <p>spring [1] - 303:18</p> <p>spur [1] - 339:25</p> <p>SS [1] - 408:2</p> <p>Staff [42] - 148:4, 148:5, 154:19, 154:20, 163:4, 169:21, 186:3, 186:4, 203:14, 206:25, 211:6, 222:25, 223:5, 223:19, 225:14, 254:24, 256:18, 288:7, 288:9, 289:7, 303:4, 303:5, 327:16, 344:10, 361:17, 364:25, 366:23, 366:25, 367:23, 368:16, 368:22, 369:21, 370:3, 370:8, 374:19, 374:23, 379:5, 380:25, 381:5, 381:6, 390:5, 390:20</p> <p>STAFF [3] - 145:14, 147:20, 149:18</p> <p>Staff's [5] - 153:2, 192:14, 288:15, 381:22, 384:7</p> <p>stage [2] - 155:3, 163:10</p> <p>stake [1] - 175:1</p> <p>staking [1] - 174:25</p> <p>stand [13] - 159:16, 162:9, 177:25, 178:3, 181:9, 286:15, 314:7, 314:11, 314:13, 343:15, 368:9, 371:3, 402:7</p> <p>standard [3] - 176:22, 237:6, 372:20</p> <p>standards [6] -</p>	<p>191:14, 193:5, 193:11, 194:10, 195:4, 213:1</p> <p>standpoint [11] - 172:4, 172:12, 172:24, 269:20, 270:17, 272:9, 382:21, 391:7, 397:9, 397:10</p> <p>start [9] - 229:5, 247:3, 262:20, 267:14, 344:25, 349:24, 350:18, 353:19, 401:13</p> <p>started [5] - 171:3, 241:16, 303:14, 303:16, 353:8</p> <p>starting [1] - 345:24</p> <p>starts [9] - 204:16, 257:9, 265:20, 346:3, 352:8, 353:21, 393:2, 399:4, 399:10</p> <p>state [28] - 150:16, 170:15, 189:25, 196:5, 204:16, 230:21, 234:12, 234:14, 234:18, 242:11, 242:14, 261:1, 261:7, 261:13, 265:11, 286:20, 290:4, 312:20, 316:25, 327:23, 328:3, 328:14, 328:20, 371:12, 387:8, 387:9, 391:13, 398:17</p> <p>State [17] - 146:2, 155:10, 228:20, 233:22, 234:10, 242:12, 252:18, 252:22, 253:3, 258:14, 260:13, 263:17, 309:6, 372:3, 396:18, 408:7</p> <p>STATE [2] - 145:2, 408:1</p> <p>statement [10] - 243:11, 247:8, 257:22, 286:17, 314:20, 317:15, 318:12, 318:16, 338:9, 338:10</p> <p>statements [3] - 154:4, 195:13, 380:10</p> <p>States [4] - 187:12, 190:18, 229:11, 229:13</p>	<p>states [4] - 161:18, 232:13, 253:12, 260:6</p> <p>stating [1] - 159:21</p> <p>station [1] - 195:19</p> <p>stations [3] - 201:21, 254:12, 254:13</p> <p>statistics [1] - 249:14</p> <p>status [2] - 315:4, 349:15</p> <p>statute [1] - 398:18</p> <p>Statutes [6] - 149:11, 149:11, 149:12, 149:12, 149:13, 149:13</p> <p>statutorily [1] - 404:18</p> <p>statutory [1] - 401:1</p> <p>stay [4] - 320:1, 348:7, 354:12, 354:23</p> <p>stayed [1] - 356:15</p> <p>staying [1] - 346:5</p> <p>steady [2] - 261:1, 262:12</p> <p>steam [1] - 259:14</p> <p>steel [2] - 174:14, 323:16</p> <p>steers [1] - 220:24</p> <p>step [7] - 170:4, 178:15, 178:19, 189:15, 222:9, 227:15, 313:17</p> <p>steps [2] - 155:13, 196:10</p> <p>Steven [1] - 354:6</p> <p>stick [2] - 261:17, 370:17</p> <p>sticking [1] - 358:25</p> <p>still [36] - 159:16, 164:24, 169:9, 174:19, 176:23, 178:3, 178:9, 183:22, 202:2, 202:13, 221:25, 223:17, 231:24, 232:10, 233:21, 237:25, 249:17, 256:3, 259:24, 263:3, 264:12, 269:6, 272:24, 274:5, 274:7, 274:10, 275:21, 286:14, 309:4, 313:3, 317:11, 341:17, 347:2, 362:22, 386:15, 401:11</p> <p>stipulate [1] - 402:19</p> <p>Stipulation [42] - 149:19, 152:11, 152:19, 154:3,</p>	<p>173:4, 192:14, 205:25, 211:7, 211:21, 216:19, 217:6, 217:13, 217:21, 221:16, 222:25, 223:19, 224:2, 224:6, 224:15, 225:2, 225:6, 254:16, 277:2, 277:13, 289:6, 289:11, 289:15, 367:22, 368:24, 370:17, 374:25, 379:4, 380:12, 385:2, 386:7, 386:11, 387:1, 395:14, 395:17, 396:8, 397:14</p> <p>stipulations [2] - 372:21, 398:9</p> <p>stirred [1] - 313:14</p> <p>Stone [2] - 150:2, 185:17</p> <p>STONE [1] - 145:5</p> <p>stop [4] - 231:24, 271:6, 271:9, 386:14</p> <p>stopping [2] - 240:10, 318:17</p> <p>stops [1] - 274:11</p> <p>storm [1] - 187:3</p> <p>storms [4] - 178:23, 178:24, 179:12</p> <p>straight [11] - 182:23, 185:1, 185:2, 185:12, 185:17, 185:18, 330:12, 346:17, 347:13, 352:7</p> <p>straightforward [1] - 219:4</p> <p>strategy [2] - 231:15, 232:9</p> <p>stray [9] - 191:1, 191:18, 191:19, 191:22, 197:4, 197:12, 201:22, 201:23, 336:13</p> <p>street [1] - 314:19</p> <p>strength [1] - 172:19</p> <p>strengthen [1] - 215:9</p> <p>stress [3] - 322:20, 336:10, 336:16</p> <p>stressing [1] - 358:14</p> <p>stretch [1] - 304:9</p> <p>stricken [1] - 223:6</p> <p>strictly [2] - 181:22, 182:2</p> <p>strong [1] - 183:12</p> <p>stronger [1] - 205:8</p>
---	--	--	--	---

structural [2] - 170:22, 171:22 structure [22] - 172:7, 172:10, 174:8, 174:24, 175:1, 175:5, 175:6, 175:8, 182:16, 182:24, 183:13, 184:3, 184:6, 192:6, 197:7, 197:10, 198:9, 291:11, 315:13, 317:1, 389:24 structures [16] - 172:8, 176:11, 183:3, 184:7, 211:13, 290:14, 290:16, 291:9, 291:16, 325:25, 326:1, 326:2, 348:14, 352:13, 352:17, 352:21 structuring [1] - 183:22 struggle [1] - 169:12 struggling [1] - 331:4 studied [2] - 165:23, 399:16 studies [25] - 151:17, 151:22, 152:3, 152:7, 152:13, 152:24, 154:18, 154:19, 156:20, 156:21, 157:4, 157:8, 157:23, 160:5, 160:13, 166:17, 174:5, 174:7, 174:8, 174:11, 190:13, 190:15, 212:24, 246:18, 295:23 study [18] - 154:25, 157:7, 158:1, 158:3, 165:20, 165:22, 165:25, 166:1, 166:13, 167:19, 168:13, 172:7, 174:1, 174:9, 176:19, 215:2, 236:15, 400:23 studying [1] - 238:7 stuff [7] - 293:19, 295:25, 300:13, 309:17, 333:4, 349:16, 400:16 sub [3] - 207:8, 241:5 sub-1 [1] - 207:8 submission [1] - 367:16 submissions [1] - 406:18	submit [2] - 242:9, 280:9 submitted [9] - 234:20, 234:22, 234:25, 235:3, 239:14, 240:12, 240:16, 251:11, 349:10 subset [1] - 229:9 substance [1] - 223:9 substantial [1] - 339:25 substation [1] - 341:11 success [2] - 248:25, 268:12 successful [1] - 207:20 sudden [4] - 293:21, 315:15, 369:13, 375:17 suffer [3] - 274:5, 274:7, 274:15 suffered [1] - 284:2 suffers [1] - 231:24 sufficient [6] - 196:12, 285:21, 296:13, 297:4, 297:12, 297:13 sufficiently [1] - 238:17 suggest [2] - 317:9, 376:25 suggested [7] - 252:19, 315:17, 317:8, 317:10, 330:3, 335:5, 398:15 suggesting [2] - 268:8, 332:9 suggestion [1] - 400:14 SULLY [1] - 408:3 sum [2] - 223:9, 377:16 summarize [6] - 150:21, 170:20, 190:5, 228:17, 371:17, 398:25 summarizing [1] - 191:3 summary [7] - 151:14, 153:5, 173:6, 192:9, 192:15, 233:23, 348:17 summer [2] - 269:25, 293:15 summit [1] - 297:25 super [1] - 272:5 supervise [3] - 190:10, 190:14	supervisor [2] - 285:1, 285:3 Suppl [1] - 148:15 supplemental [1] - 241:6 support [7] - 152:3, 162:12, 190:11, 295:23, 323:24, 323:25, 360:12 supporting [3] - 151:16, 184:2, 374:25 supposed [4] - 305:22, 309:16, 310:18, 352:25 suppress [1] - 231:23 Supreme [1] - 405:25 surface [3] - 194:20, 270:2, 270:16 surprise [2] - 233:13, 238:5 surprised [1] - 251:6 Surrebuttal [1] - 149:4 survey [4] - 155:16, 156:2, 156:11, 249:13 Survey [1] - 155:4 surveys [4] - 155:14, 156:14, 293:17, 293:19 susceptible [2] - 264:22, 264:23 suspect [1] - 394:22 suspected [1] - 308:5 suspicious [1] - 324:17 sustain [2] - 286:5, 302:11 sustained [1] - 159:9 Sutton [9] - 145:20, 170:7, 222:7, 238:22, 243:25, 273:10, 348:23, 364:11, 368:21 SUTTON [34] - 158:16, 170:8, 170:14, 185:19, 188:6, 189:14, 189:18, 189:24, 216:7, 217:20, 219:7, 219:9, 219:20, 222:8, 238:23, 239:2, 239:4, 244:1, 244:10, 245:7, 255:10, 273:11, 275:11, 276:25, 277:5, 277:17, 344:4, 348:25, 349:2, 360:15, 362:4, 364:12,	364:16, 364:20 Sutton's [1] - 270:9 swath [1] - 363:16 swearing [2] - 371:2, 386:12 sweat [1] - 179:24 swells [2] - 230:9, 230:11 switch [2] - 231:17, 251:19 switched [1] - 249:6 swollen [4] - 230:10, 230:13, 230:15, 259:17 sworn [13] - 150:12, 170:11, 189:21, 228:7, 279:7, 314:7, 314:15, 343:17, 362:22, 370:25, 371:4, 371:6, 402:8 syndrome [1] - 293:22 system [6] - 178:15, 191:21, 204:9, 213:16, 214:1, 345:23 system's [1] - 403:20 systems [19] - 192:3, 192:4, 192:12, 197:16, 198:12, 203:20, 203:23, 204:6, 204:8, 204:21, 205:11, 206:3, 206:15, 214:24, 350:23, 372:24, 375:4, 376:7, 376:15	technical [2] - 193:11, 352:15 techniques [3] - 172:14, 248:6, 248:18 technology [1] - 307:24 telecommunications [1] - 372:7 telephone [6] - 285:12, 299:8, 299:24, 317:25, 321:21, 406:5 television [2] - 195:9, 369:1 temporary [1] - 398:2 tend [1] - 386:18 tends [2] - 205:7, 238:5 tentatively [1] - 406:9 tenure [1] - 151:5 term [4] - 218:8, 291:24, 292:24, 388:11 terminal [2] - 207:15, 207:16 terminology [2] - 343:23, 383:3 terms [17] - 152:18, 191:15, 191:24, 218:9, 220:3, 221:22, 224:15, 232:17, 235:13, 257:9, 299:6, 302:11, 326:15, 396:14, 396:15, 397:1, 397:3 terrible [1] - 271:6 terribly [2] - 229:22, 231:1 Terry [1] - 402:3 test [14] - 223:8, 223:12, 226:5, 237:7, 237:15, 251:13, 261:24, 262:3, 263:13, 263:15, 263:16, 268:3, 272:22, 294:12 tested [16] - 198:11, 236:25, 243:3, 252:8, 252:10, 269:10, 293:14, 293:24, 294:18, 294:21, 298:1, 308:8, 308:11, 309:7, 309:9, 313:10 testified [21] - 150:13, 168:5, 170:12, 177:23, 178:2,
T				
Table [1] - 148:12 tabulate [1] - 313:12 tact [1] - 381:9 TAIL [1] - 145:5 talks [3] - 153:3, 368:24, 391:5 tall [1] - 194:12 tangent [1] - 184:6 tangents [1] - 176:1 Tariff [1] - 148:11 taught [1] - 190:17 tax [1] - 153:12 taxes [1] - 153:4 teach [2] - 344:12, 344:13 team [8] - 151:21, 161:20, 162:20, 163:8, 190:14, 212:14, 222:24, 399:15				

184:23, 188:7, 189:22, 228:8, 241:11, 243:12, 279:8, 293:6, 306:12, 314:16, 323:23, 343:18, 366:5, 368:15, 371:7, 385:13 testify ^[11] - 190:22, 196:24, 198:15, 211:20, 212:17, 278:17, 304:25, 314:7, 323:10, 402:1, 404:23 testifying ^[2] - 254:21, 390:24 testimony ^[78] - 150:18, 150:21, 151:14, 153:23, 158:11, 159:12, 159:16, 161:12, 162:1, 162:4, 170:18, 170:20, 170:22, 173:6, 174:13, 176:8, 177:22, 179:19, 181:4, 181:6, 185:20, 186:9, 188:20, 190:3, 190:5, 190:24, 192:23, 193:3, 195:21, 196:5, 197:2, 197:14, 198:16, 199:7, 204:13, 212:18, 216:10, 228:12, 233:3, 233:24, 240:12, 240:16, 240:21, 241:6, 242:10, 245:6, 245:9, 246:22, 247:1, 250:1, 251:21, 252:1, 252:7, 253:25, 257:12, 273:22, 277:21, 279:2, 280:9, 286:14, 293:4, 294:23, 295:22, 296:12, 301:9, 308:18, 318:12, 325:16, 325:24, 326:17, 335:12, 349:12, 354:20, 360:10, 363:3, 376:12, 399:2 Testimony ^[6] - 148:14, 148:15, 148:16, 148:16, 148:17, 148:17 testing ^[22] - 177:5,	177:7, 225:17, 226:4, 236:20, 237:13, 251:5, 252:14, 252:20, 253:16, 253:18, 261:21, 261:22, 263:10, 269:1, 297:17, 297:24, 298:10, 303:9, 303:23, 309:4, 393:10 tests ^[2] - 198:17, 198:19 THE ^[144] - 145:1, 145:2, 145:4, 145:5, 145:11, 186:12, 187:6, 187:9, 203:13, 207:10, 207:21, 208:5, 208:17, 209:5, 209:10, 210:4, 210:14, 211:4, 211:24, 212:11, 212:21, 213:6, 213:17, 214:2, 219:3, 225:21, 257:22, 258:13, 259:3, 259:10, 259:18, 259:22, 259:25, 260:4, 260:10, 260:21, 261:16, 262:4, 262:18, 263:16, 264:12, 265:1, 265:11, 266:10, 267:6, 267:11, 268:7, 268:18, 269:3, 269:6, 269:18, 270:12, 270:14, 271:2, 271:7, 271:13, 271:18, 271:21, 271:23, 272:15, 276:22, 276:24, 277:23, 303:14, 303:22, 304:8, 304:12, 304:16, 304:21, 305:3, 305:9, 305:18, 306:1, 306:15, 306:25, 307:5, 307:11, 307:15, 307:20, 308:7, 308:10, 308:15, 309:9, 309:15, 310:13, 310:18, 314:17, 324:9, 329:9, 329:14, 330:9, 331:7, 331:12, 331:16, 331:25, 332:14,	334:24, 335:3, 335:14, 335:21, 335:23, 336:2, 336:6, 336:9, 337:13, 337:16, 337:25, 338:15, 338:18, 338:21, 339:7, 339:11, 339:18, 341:16, 341:20, 343:21, 344:8, 348:22, 362:23, 366:2, 366:8, 366:13, 372:17, 372:20, 374:9, 374:16, 374:23, 375:7, 375:9, 375:19, 376:8, 376:16, 377:5, 377:21, 378:7, 379:7, 379:13, 380:5, 381:5, 381:25, 382:6, 383:2, 388:2 theirs ^[1] - 397:7 themselves ^[7] - 163:2, 194:8, 235:20, 263:14, 320:22, 368:16, 370:3 therefore ^[2] - 178:16, 315:9 they've ^[8] - 229:20, 297:19, 300:5, 300:6, 310:19, 356:12 thinking ^[6] - 169:6, 232:21, 236:9, 269:6, 363:21, 388:20 thinks ^[2] - 368:2, 399:14 third ^[6] - 191:1, 234:17, 237:20, 266:20, 378:21, 386:21 Thomas ^[1] - 145:20 thorough ^[2] - 260:7, 262:21 thoughts ^[5] - 332:18, 406:3, 406:24, 407:10, 407:11 threat ^[1] - 217:18 threats ^[1] - 178:25 three ^[34] - 162:18, 190:24, 191:3, 220:24, 230:22, 236:23, 258:4, 260:25, 265:5, 265:6, 265:7, 266:10, 268:23,	272:19, 288:18, 289:12, 293:11, 293:13, 293:24, 296:18, 300:7, 308:18, 323:2, 329:6, 329:7, 330:16, 330:23, 331:2, 337:3, 339:2, 340:3, 347:22, 350:1, 370:13 three-eighths ^[1] - 339:2 three-fourths ^[1] - 260:25 three-phase ^[1] - 296:18 three-quarters ^[3] - 329:6, 329:7, 350:1 three-year ^[1] - 308:18 threshold ^[2] - 213:9 threw ^[1] - 264:13 throughout ^[4] - 175:24, 180:25, 229:12, 251:17 throw ^[4] - 233:20, 237:18, 368:16, 393:23 tied ^[3] - 161:2, 201:17, 281:8 tightly ^[1] - 262:6 tile ^[2] - 243:21, 244:14 tillage ^[3] - 261:10, 294:24, 295:2 tilling ^[1] - 295:5 Tim ^[1] - 357:16 timely ^[1] - 398:18 timing ^[3] - 165:20, 257:7, 340:12 tired ^[1] - 265:3 tires ^[1] - 261:7 tissue ^[1] - 230:8 title ^[1] - 311:20 titled ^[2] - 255:2, 255:5 TO ^[2] - 145:5, 145:6 today ^[48] - 158:23, 159:16, 162:9, 173:23, 177:25, 178:4, 181:9, 190:22, 197:18, 198:11, 198:16, 200:15, 203:21, 204:2, 211:21, 228:15, 233:12, 241:20, 241:22, 242:17, 280:12, 281:13, 282:12, 308:1, 309:19, 317:1, 322:24,	323:10, 324:19, 36 325:15, 360:10, 366:8, 367:12, 367:18, 378:20, 379:18, 379:22, 386:2, 392:8, 395:21, 396:2, 396:7, 399:6, 404:16, 405:10, 405:16 today's ^[2] - 332:21, 379:23 together ^[1] - 311:6 Tom ^[4] - 278:11, 333:5, 344:11, 402:11 tomorrow ^[2] - 322:14, 322:24 took ^[14] - 236:25, 294:17, 297:22, 299:2, 304:19, 304:21, 305:3, 313:10, 317:12, 331:13, 366:9, 385:12, 385:19, 408:9 top ^[11] - 175:8, 183:9, 256:4, 299:9, 329:9, 329:14, 346:8, 350:19, 351:17, 356:2, 356:4 topic ^[2] - 305:13, 377:7 topsoil ^[1] - 385:20 tornado ^[1] - 316:20 total ^[5] - 166:25, 176:9, 284:5, 301:22, 377:16 totally ^[1] - 397:10 touch ^[1] - 231:20 touched ^[1] - 238:11 touches ^[1] - 202:8 tougher ^[1] - 267:1 toward ^[1] - 221:7 towards ^[1] - 384:14 tower ^[4] - 174:18, 315:13, 321:24, 354:9 towers ^[7] - 174:14, 175:22, 177:5, 195:5, 313:1, 318:9, 323:16 Township ^[4] - 284:23, 284:25, 285:1, 335:17 township ^[10] - 162:18, 162:21, 284:22, 285:3, 285:15, 307:4, 335:17, 347:5,
---	---	---	--	---

<p>353:15 tracks [4] - 330:20, 330:21, 350:18, 354:8 tractor [7] - 165:2, 176:24, 198:4, 198:12, 198:22, 208:11 tractors [2] - 197:24, 376:21 tracts [3] - 214:21, 232:15, 326:1 traffic [1] - 372:4 Trail [1] - 171:12 train [1] - 339:22 trained [4] - 209:13, 378:23, 379:25, 393:24 training [3] - 159:10, 229:2, 394:10 trainings [1] - 372:9 TransCanada [1] - 214:15 Transcript [1] - 145:8 TRANSCRIPT [1] - 146:1 transcription [1] - 408:12 transfer [2] - 208:16, 208:17 transferred [2] - 208:24, 221:20 transition [1] - 188:16 transmission [58] - 150:3, 151:7, 151:9, 151:11, 151:15, 154:1, 157:22, 171:4, 171:5, 181:22, 189:1, 190:12, 191:4, 191:7, 191:23, 191:24, 192:1, 192:10, 194:9, 196:13, 198:9, 198:25, 202:16, 205:3, 205:22, 205:23, 207:11, 211:1, 212:9, 212:12, 212:22, 213:8, 213:21, 214:22, 219:15, 219:17, 221:12, 221:17, 225:14, 225:16, 241:17, 241:23, 243:16, 249:19, 249:23, 316:4, 323:8, 323:14, 323:21, 337:18, 375:22, 375:25, 376:6,</p>	<p>376:19, 376:23, 380:16, 386:15 TRANSMISSION [1] - 145:6 transmitting [4] - 178:17, 369:2, 373:11, 373:25 transport [2] - 177:19, 270:25 Transportation [1] - 372:5 transported [2] - 270:7, 270:10 travel [6] - 166:15, 177:16, 241:18, 241:24, 260:17, 335:16 traveling [2] - 220:8, 260:19 travels [1] - 335:15 treat [2] - 237:25, 301:17 treated [1] - 333:21 treatment [8] - 231:14, 231:19, 232:8, 262:21, 334:12, 334:16, 334:21, 343:1 tree [4] - 192:7, 197:22, 198:6, 198:7 trees [1] - 197:24 tricky [2] - 258:25, 259:16 tried [4] - 182:19, 268:7, 332:13, 391:16 trigger [1] - 336:14 trouble [2] - 307:13, 338:17 troublesome [1] - 231:6 trucks [2] - 194:11, 387:13 true [10] - 164:13, 200:25, 214:2, 290:13, 291:8, 291:19, 319:3, 354:16, 359:6, 408:11 truly [1] - 266:21 trunk [1] - 311:16 trust [2] - 253:18, 391:23 truthful [1] - 312:1 try [11] - 167:6, 216:22, 274:10, 295:5, 333:16, 344:13, 358:23, 359:1, 389:14, 391:19, 397:20</p>	<p>trying [16] - 156:15, 204:11, 303:25, 328:23, 333:2, 343:5, 363:11, 393:5, 394:6, 394:7, 394:9, 396:22, 396:24, 401:8 turn [20] - 150:6, 154:4, 204:14, 228:2, 257:25, 273:12, 275:24, 276:2, 286:24, 330:11, 330:17, 348:23, 351:20, 367:2, 367:7, 368:1, 372:12, 381:21, 383:19, 405:9 turned [1] - 342:22 turning [4] - 235:2, 330:2, 355:25, 384:6 turns [2] - 230:22, 272:2 TV [1] - 369:10 two [36] - 183:16, 184:22, 220:15, 241:1, 250:21, 258:13, 264:24, 266:24, 273:3, 275:24, 278:16, 287:10, 289:12, 289:13, 289:15, 290:16, 291:9, 291:15, 294:21, 295:9, 305:22, 306:4, 306:21, 310:13, 310:15, 315:23, 325:25, 339:19, 345:16, 347:23, 355:2, 384:10, 397:4, 397:5, 397:19, 407:7 two-way [1] - 384:10 TYLKA [1] - 228:6 Tylka [34] - 147:9, 147:18, 149:3, 149:4, 149:4, 161:12, 228:5, 228:11, 228:19, 233:25, 239:5, 244:13, 245:10, 247:19, 251:20, 251:23, 255:16, 273:19, 277:6, 277:22, 282:15, 295:19, 304:24, 305:7, 342:5, 362:15, 362:18, 362:21, 362:22, 363:2, 364:7, 364:13, 364:17,</p>	<p>365:12 Tylka's [3] - 153:23, 295:22, 392:20 type [9] - 183:16, 212:19, 235:15, 259:8, 265:19, 275:19, 321:13, 372:24, 394:12 types [9] - 156:14, 203:22, 240:11, 265:22, 265:25, 266:10, 271:25, 326:1, 380:9 typical [3] - 153:7, 180:16, 207:8 typically [12] - 155:4, 155:22, 157:9, 166:9, 176:1, 183:19, 196:17, 197:23, 216:22, 225:21, 253:8, 269:21</p>	<p>193:21, 194:1, 197:7, 197:10, 197:19, 198:22, 200:3, 200:24, 220:2, 221:11, 245:23, 247:13, 363:17 understood [6] - 257:12, 257:17, 337:11, 378:14, 379:15, 390:18 undertake [1] - 166:19 undertaken [1] - 295:16 undertook [1] - 151:17 undisturbed [3] - 246:4, 246:7, 246:8 undue [1] - 192:11 unduly [2] - 162:7, 182:1 unfortunately [1] - 302:14 ungrounded [1] - 201:2 unique [6] - 229:18, 230:5, 230:16, 232:14, 232:17, 271:8 unit [6] - 198:4, 199:2, 283:8, 328:21, 339:22, 355:7 United [4] - 187:12, 190:18, 229:11, 229:13 units [1] - 324:17 universe [1] - 378:17 university [2] - 251:11, 258:15 University [10] - 149:7, 171:1, 228:20, 234:10, 238:7, 242:12, 252:19, 252:23, 253:3, 372:3 unless [11] - 209:12, 295:14, 296:16, 314:10, 334:2, 334:5, 381:13, 382:9, 385:13, 392:4, 407:15 unlicensed [5] - 370:1, 373:9, 375:4, 375:8, 389:18 unlike [1] - 200:11 unlikely [1] - 199:1 unmitigated [1] - 202:20 unprompted [1] - 240:8</p>
--	---	--	--	---

<p>unreasonable [2] - 369:1, 389:25</p> <p>unrecognized [1] - 233:21</p> <p>up [107] - 156:22, 161:25, 163:5, 174:23, 176:10, 185:10, 187:7, 187:19, 187:24, 188:2, 193:19, 201:25, 202:13, 205:8, 211:20, 212:18, 214:10, 215:7, 216:24, 220:18, 221:2, 230:10, 230:11, 230:16, 234:12, 238:25, 249:5, 257:8, 257:9, 257:17, 260:18, 262:7, 265:9, 265:20, 266:23, 267:15, 276:25, 277:19, 283:2, 283:4, 300:22, 303:14, 304:17, 308:25, 312:23, 313:14, 313:25, 314:6, 314:22, 315:18, 317:16, 320:10, 321:7, 326:25, 330:3, 330:18, 334:20, 334:23, 335:11, 335:12, 336:20, 341:23, 342:5, 344:11, 345:2, 345:10, 345:25, 346:15, 346:16, 346:22, 347:1, 347:13, 350:10, 350:18, 351:18, 353:6, 353:12, 353:25, 354:11, 355:1, 355:3, 355:5, 355:25, 356:17, 358:3, 358:6, 359:19, 364:13, 365:3, 366:14, 369:25, 372:25, 378:22, 381:18, 385:8, 387:7, 390:20, 392:9, 393:5, 397:19, 400:21, 404:19, 405:13, 405:20, 405:24, 407:14</p> <p>Updated [1] - 148:12</p> <p>updated [1] - 234:24</p> <p>updating [1] - 234:23</p>	<p>upgraded [1] - 316:24</p> <p>upper [3] - 269:19, 269:24, 270:18</p> <p>upset [1] - 336:11</p> <p>USDA [1] - 149:5</p> <p>useful [1] - 224:20</p> <p>uses [1] - 161:6</p> <p>usual [1] - 383:21</p> <p>UTILITIES [3] - 145:1, 145:4, 145:11</p> <p>Utilities [1] - 287:24</p> <p>utility [3] - 167:9, 167:16, 371:19</p> <p>utilize [1] - 166:9</p>	<p>250:7, 250:10, 259:9</p> <p>vendor [1] - 373:4</p> <p>vendors [2] - 373:1, 375:14</p> <p>verbally [1] - 269:5</p> <p>verbiage [1] - 386:13</p> <p>verdict [1] - 232:9</p> <p>version [2] - 224:1, 234:25</p> <p>versus [5] - 189:1, 242:19, 316:4, 369:17, 386:15</p> <p>vet [1] - 337:4</p> <p>via [1] - 272:11</p> <p>VICE [1] - 145:13</p> <p>view [4] - 291:13, 291:20, 294:5, 334:5</p> <p>views [1] - 405:10</p> <p>Virginia [2] - 171:13</p> <p>virtually [1] - 254:9</p> <p>visit [1] - 396:3</p> <p>visited [1] - 321:24</p> <p>visiting [1] - 226:2</p> <p>visual [2] - 294:5, 341:17</p> <p>visually [1] - 329:5</p> <p>volt [2] - 207:9, 207:13</p> <p>voltage [27] - 178:16, 189:9, 191:1, 191:6, 191:18, 191:20, 191:22, 191:23, 191:25, 197:4, 197:12, 201:22, 201:23, 202:5, 204:17, 207:6, 207:7, 207:8, 211:10, 211:13, 219:11, 219:14, 221:18, 296:19, 336:13, 376:6</p> <p>volume [1] - 176:3</p> <p>Volume [1] - 145:9</p> <p>voluntarily [1] - 293:1</p>	<p>266:17</p> <p>warn [1] - 237:10</p> <p>wash [2] - 259:14</p> <p>washed [4] - 236:8, 270:21, 295:4, 295:7</p> <p>washing [3] - 236:6, 260:3, 261:7</p> <p>Washington [1] - 190:9</p> <p>waste [2] - 328:4, 328:5</p> <p>watch [1] - 221:1</p> <p>water [18] - 199:17, 199:24, 201:21, 201:25, 202:1, 215:15, 215:16, 220:24, 221:2, 221:7, 229:7, 236:8, 236:17, 245:3, 270:20, 270:25, 319:23, 320:11</p> <p>waterway [5] - 199:19, 200:2, 200:9, 200:14, 200:16</p> <p>waving [1] - 382:10</p> <p>ways [2] - 273:3, 371:22</p> <p>wear [1] - 259:20</p> <p>weather [12] - 172:20, 172:22, 179:2, 186:13, 186:14, 186:24, 187:10, 187:15, 215:8, 215:11, 264:13, 336:4</p> <p>website [1] - 333:3</p> <p>Webster [2] - 298:17, 299:19</p> <p>Wednesday [1] - 337:4</p> <p>weed [1] - 154:1</p> <p>weeds [2] - 265:20, 293:19</p> <p>week [3] - 285:20, 337:3, 393:19</p> <p>weeks [11] - 230:20, 263:8, 289:12, 289:13, 289:15, 293:11, 293:13, 293:24, 310:14, 310:15</p> <p>Weiers [3] - 147:4, 148:16, 240:21</p> <p>weigh [1] - 405:5</p> <p>weighs [1] - 176:15</p> <p>weird [1] - 402:13</p> <p>WELK [65] - 150:9, 150:15, 158:15, 159:8, 170:2, 212:1, 222:21, 223:16,</p>	<p>223:22, 224:4, 224:17, 224:25, 225:3, 226:10, 226:15, 227:9, 227:13, 278:13, 286:1, 287:1, 287:3, 288:20, 298:24, 300:15, 301:25, 310:4, 310:25, 317:18, 317:20, 324:8, 325:3, 331:15, 332:3, 332:11, 333:8, 341:3, 341:25, 342:12, 343:2, 362:18, 365:20, 367:4, 367:15, 368:10, 369:21, 378:12, 378:17, 383:24, 389:11, 389:17, 390:15, 391:4, 391:12, 392:19, 394:2, 396:12, 397:17, 398:24, 400:18, 401:20, 402:9, 402:22, 403:16, 403:21, 404:6</p> <p>Welk [22] - 145:20, 150:7, 222:19, 226:9, 286:24, 286:25, 310:3, 311:25, 317:17, 324:9, 329:4, 340:23, 341:22, 342:18, 362:17, 368:20, 369:18, 383:22, 395:20, 402:21, 404:4, 405:9</p> <p>well-known [3] - 196:8, 197:11, 219:4</p> <p>west [22] - 168:25, 169:10, 182:23, 184:19, 184:21, 185:1, 185:17, 214:15, 227:3, 291:3, 306:4, 306:20, 330:12, 330:16, 347:5, 347:14, 353:22, 354:12, 354:21, 354:23, 355:1, 359:23</p> <p>West [1] - 171:13</p> <p>western [1] - 360:1</p> <p>Weston [1] - 171:16</p> <p>wet [4] - 200:11, 209:22, 379:18, 379:23</p> <p>wetland [2] - 320:7,</p>	
	<p>V</p>				
	<p>vacant [2] - 323:3, 347:23</p> <p>valuation [1] - 325:20</p> <p>value [8] - 156:23, 158:6, 316:1, 316:9, 326:3, 326:5, 338:12, 339:6</p> <p>values [4] - 156:21, 156:25, 193:20, 325:22</p> <p>variables [1] - 267:10</p> <p>variances [1] - 381:3</p> <p>varied [1] - 217:2</p> <p>varies [3] - 201:11, 247:25, 302:19</p> <p>varieties [16] - 231:13, 231:21, 231:23, 249:9, 255:17, 255:24, 255:25, 256:4, 256:9, 256:12, 265:12, 265:25, 268:5, 271:15, 274:13, 274:14</p> <p>variety [10] - 231:18, 248:22, 255:20, 255:23, 256:6, 264:22, 264:23, 268:9, 274:8</p> <p>various [2] - 247:15, 363:4</p> <p>vary [2] - 175:25, 263:19</p> <p>varying [2] - 378:11</p> <p>vascular [1] - 230:8</p> <p>vehicle [7] - 194:20, 194:24, 195:14, 195:20, 197:19, 208:24, 209:2</p> <p>vehicles [8] - 191:9, 194:8, 194:11, 194:12, 194:22,</p>	<p>W</p>	<p>wait [4] - 216:23, 331:18, 361:22, 364:10</p> <p>waive [1] - 401:2</p> <p>waivers [1] - 381:4</p> <p>waiving [1] - 406:15</p> <p>wake [1] - 266:23</p> <p>walked [1] - 305:9</p> <p>walls [2] - 238:9, 238:11</p> <p>wants [3] - 314:10, 318:8, 362:18</p> <p>warm [2] - 264:16,</p>		

320:9 whatsoever ^[2] - 322:12, 378:5 Wheat ^[1] - 339:21 wheat ^[5] - 271:21, 271:22, 280:4, 280:8, 308:17 wheeled ^[1] - 177:15 wheeler ^[1] - 305:11 wheelhouse ^[1] - 394:2 whereas ^[2] - 262:24, 330:25 white ^[4] - 236:10, 257:16, 257:18, 403:5 whole ^[18] - 156:10, 157:11, 161:1, 161:7, 165:24, 167:7, 230:19, 281:3, 283:7, 284:5, 289:21, 311:8, 312:3, 312:4, 344:12, 381:6, 394:23, 395:8 wide ^[4] - 168:20, 281:14, 363:24, 364:4 widely ^[1] - 219:4 widespread ^[1] - 232:22 Wilbur ^[3] - 297:18, 297:23, 304:14 Wilbur-Ellis ^[3] - 297:18, 297:23, 304:14 wild ^[1] - 263:23 willing ^[4] - 223:4, 299:5, 327:9, 402:18 willingness ^[1] - 392:18 wind ^[11] - 172:22, 178:24, 179:11, 186:16, 186:17, 186:18, 245:1, 270:10, 270:20, 328:16 wire ^[3] - 219:1, 220:23, 221:19 wires ^[5] - 183:18, 183:21, 183:25, 184:3, 284:7 Wisconsin ^[2] - 161:19, 171:17 wise ^[1] - 186:7 wish ^[1] - 365:6 withdraw ^[3] - 185:22, 216:12, 277:17 Witness ^[1] - 289:4 WITNESS ^[138] -	186:12, 187:6, 187:9, 203:13, 207:10, 207:21, 208:5, 208:17, 209:5, 209:10, 210:4, 210:14, 211:4, 211:24, 212:11, 212:21, 213:6, 213:17, 214:2, 219:3, 225:21, 257:22, 258:13, 259:3, 259:10, 259:18, 259:22, 259:25, 260:4, 260:10, 260:21, 261:16, 262:4, 262:18, 263:16, 264:12, 265:1, 265:11, 266:10, 267:6, 267:11, 268:7, 268:18, 269:3, 269:6, 269:18, 270:12, 270:14, 271:2, 271:7, 271:13, 271:18, 271:21, 271:23, 272:15, 276:22, 276:24, 277:23, 303:14, 303:22, 304:8, 304:12, 304:16, 304:21, 305:3, 305:9, 305:18, 306:1, 306:15, 306:25, 307:5, 307:11, 307:15, 307:20, 308:7, 308:10, 308:15, 309:9, 309:15, 310:13, 310:18, 314:17, 324:9, 329:9, 329:14, 330:9, 331:7, 331:12, 331:16, 331:25, 332:14, 334:24, 335:3, 335:14, 335:21, 335:23, 336:2, 336:6, 336:9, 337:13, 337:16, 337:25, 338:15, 338:18, 338:21, 339:7, 339:11, 339:18, 341:16, 341:20, 343:21, 344:8, 348:22, 362:23, 366:2, 366:8, 366:13, 372:17, 372:20, 374:9, 374:16, 374:23, 375:7,	375:9, 375:19, 376:8, 376:16, 377:5, 377:21, 378:7, 379:7, 379:13, 380:5, 381:5, 381:25, 382:6, 383:2, 388:2 witness ^[26] - 150:8, 150:12, 170:6, 170:11, 185:21, 189:17, 189:21, 227:16, 228:7, 255:12, 277:24, 278:3, 279:7, 309:21, 313:19, 314:6, 314:15, 342:3, 342:11, 343:17, 366:19, 369:19, 370:9, 371:6, 389:4, 404:7 witnesses ^[8] - 278:1, 313:20, 313:22, 314:5, 314:8, 368:9, 368:14, 369:19 WITNESSES ^[5] - 147:2, 147:8, 147:12, 147:15, 147:20 WITTLER ^[1] - 408:5 Wittler ^[2] - 145:24, 408:18 wondered ^[1] - 355:17 wondering ^[4] - 200:5, 217:12, 218:4, 391:1 word ^[4] - 223:6, 266:14, 272:16, 386:21 words ^[2] - 208:11, 358:20 works ^[5] - 224:7, 225:3, 274:9, 293:16, 363:9 world ^[1] - 151:3 worms ^[5] - 229:7, 230:6, 235:20, 238:3, 274:12 worry ^[5] - 222:1, 269:19, 269:24, 270:18, 284:9 worse ^[3] - 192:7, 359:16, 360:9 worth ^[2] - 317:3, 326:3 write ^[1] - 396:9 writing ^[3] - 298:14, 324:5, 400:1 written ^[10] - 204:12, 241:1, 262:22, 288:9, 288:11, 316:2, 367:17,	375:1, 399:10, 406:17 wrote ^[2] - 151:24, 402:5 Y yard ^[2] - 330:10, 337:19 yards ^[2] - 176:3, 176:4 year ^[22] - 186:15, 200:2, 234:25, 262:24, 264:14, 264:15, 267:4, 267:15, 267:17, 267:21, 267:22, 280:2, 290:24, 294:4, 294:6, 298:3, 298:4, 303:17, 308:18, 318:2, 328:19, 393:1 years ^[64] - 150:24, 151:8, 171:6, 186:23, 187:2, 187:3, 190:17, 196:8, 224:14, 230:1, 231:3, 231:16, 236:23, 249:7, 249:13, 252:25, 256:3, 256:24, 258:6, 262:11, 265:5, 265:6, 265:7, 265:24, 266:1, 266:3, 266:22, 267:7, 272:17, 272:18, 279:20, 279:23, 283:3, 283:24, 285:2, 285:6, 296:4, 298:20, 299:1, 300:7, 300:10, 301:21, 302:18, 303:15, 307:21, 308:5, 316:2, 316:10, 316:11, 316:21, 323:2, 324:2, 339:19, 346:9, 348:1, 393:4, 395:25, 396:16, 397:19 yellow ^[3] - 345:15, 347:4, 348:12 yes-no ^[1] - 338:22 yesterday ^[17] - 150:3, 167:12, 168:6, 182:19, 184:23, 185:9, 233:12, 301:9, 315:15,	316:14, 318:20, 321:18, 325:24, 338:22, 344:24, 396:3, 396:23 yield ^[18] - 255:19, 255:25, 256:4, 264:14, 264:16, 264:20, 264:21, 274:15, 283:11, 283:15, 283:17, 283:25, 301:14, 301:19, 301:21, 302:6, 302:23 yielding ^[2] - 264:23, 265:24 yields ^[9] - 274:14, 283:3, 283:4, 283:5, 283:22, 307:21, 307:24, 326:19, 326:20 yourself ^[4] - 154:18, 276:10, 277:7, 314:5 Z zero ^[5] - 218:6, 236:25, 237:7, 237:10, 267:18 Zimmerman ^[7] - 346:1, 346:4, 346:16, 353:25, 357:3, 357:5, 357:15
---	---	---	---	---