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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION HP14-001
OF TRANSCANADA KEYSTONE PIPELINE,
LP FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

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Transcript of Hearing
July 27, 2015 through August 5, 2015

Volume II
July 28, 2015
Pages 232-489

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN (not present)
GARY HANSON, COMMISSIONER

COMMISSION STAFF

John Smith
Kristen Edwards
Karen Cremer
Greg Rislov
Brian Rounds
Darren Kearney
Tina Douglas
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
Building, Room 414, 500 East Capitol Avenue, Pierre,
South Dakota, on the 28th day of July, 2015.

<u>I N D E X</u>		
1		
2	TRANSCANADA EXHIBITS	PAGE
3	2001 - Corey Goulet Direct with Exhibits	149
	2003 - Meera Kothari Direct with Exhibits	994
4	2004 - Heidi Tillquist Direct with Exhibits	658
	2005 - Jon Schmidt Direct with Exhibits	533
5	2006 - Dan King Rebuttal with Exhibits	2261
	(portions excluded)	
6	2007 - F.J. "Rick" Perkins Rebuttal with Exhibits	2395
7	2009 - Jon Schmidt Rebuttal	1878
	2013 - Route Variation Maps Produced in Discovery	563
8		
9	2017 - Heidi Tillquist Amended Rebuttal and Exhibits (portions excluded)	2366
10	STAFF EXHIBITS	PAGE
11	3006 - Jenny Hudson Testimony and Exhibit	1912
	3007 - David Schramm Testimony and Exhibit	1418
12	3008 - Christopher Hughes Testimony and Exhibits	1888
13	3009 - Daniel Flo Testimony and Exhibits DF-2 Revised	2059
14		
15	CHEYENNE RIVER SIOUX TRIBE EXHIBITS	PAGE
16	7001 - Carlyle Ducheneaux Prefiled Testimony	992
	7002 - Steve Vance Prefiled Testimony	1525
17	DAKOTA RURAL ACTION EXHIBITS	PAGE
18	179 - TransCanada Response to DRA Interrogatory 48(a) - Worst Case Spill Scenarios Confidential	
19		
20	396 - TransCanada Response to DRA Interrogatory #56 - Worst Case Discharge into Little Missouri, Cheyenne, and White River Crossings Confidential	
21		
22	1003 - A - Evan Vokes Prefiled Testimony (portions excluded)	1768
23	1003 - B - Dr. Arden David, Ph.D., P.E.'s Prefiled Testimony and Exhibits	1812
24	1003 - C - Sue Sibson Prefiled Testimony	1971
25	1003 - D - John Harter Rebuttal Testimony (portions excluded)	2186

<u>I N D E X (Continued)</u>		
1		
2	ROSEBUD SIOUX TRIBE EXHIBITS	PAGE
3	11000 - A - Paula Antoine Amended Rebuttal	2132
4	STANDING ROCK SIOUX TRIBE EXHIBITS	PAGE
5	8001 - Phyllis Young Prefiled Testimony (portions excluded)	1709
6	8005 - Tribal Relations Community Meeting with Cheyenne River Community on	1731
7	November 13, 2013	
8	8010 - Doug Crow Ghost Prefiled Testimony	2014
8	8013 - 2012 SD Integrated Report for Surface Water Quality Assessment	2024
9	8014 - Congressional Research Service, Report for Congress, Oil Sand and the	2034
10	Keystone XL Pipeline: Background and Selected Environmental Issues (2012)	
11	8024 - Letter of Cynthia Giles, US EPA to Jose Fernandez & Dr. Kerri-Ann Jones, US Dept. of State, Re: Deficiencies	2032
12	in Draft SEIS dated 6/6/11	
13	8025 - Letter of Cynthia Giles, US EPA to Jose Fernandez & Dr. Kerri-Ann Jones, US Dept. of State, Re: Deficiencies	2027
14	in Draft EIS, 7/16/10	
15	8029 - Kevin Cahill, Ph.D. Rebuttal and Exhibits	1683
16		
17	DIANA STESKAL EXHIBITS	PAGE
18	5000 - Exhibit A - Property Addresses/ Landowners/Witnesses	984
19	5001 - Exhibit B - TransCanada Keystone Pipeline Easement Area	984
20	5002 - Exhibit C1 - US Department of Ag Farm Service Agency - 28-106N-57W and Exhibit C2 - 33-106N-57W	984
21	5003 - Exhibit D - Sue Sibson Affidavit	985
22	5004 - Exhibit E - Terry and Cheri Frisch Affidavit	985
23	5005 - Exhibit F1 - Reclamation of Timeline by Sue Sibson - 2009-2012 and Exhibit F2 - 2013-2014	985
24	5006 - Exhibit G - Sue Sibson Easement Photos	988
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X (Continued)

DIANA STESKAL EXHIBITS	PAGE
5007 - Diana Steskal Exhibits H - Addition to Sue Sibson Timeline	988
5008 - Exhibit 1 - Pictures taken by S. Metcalf	989
YANKTON SIOUX TRIBE EXHIBITS	PAGE
9011 - Faith Spotted Eagle Prefiled Testimony and Exhibits (portions excluded)	1860

1	<u>I N D E X (Continued)</u>	
2	TRANSCANADA WITNESS	PAGE
3	Corey Goulet	
	Cross-Examination by Ms. Craven	241
4	Cross-Examination by Mr. Harter	248
	Cross-Examination by Ms. Lone Eagle	269
5	Cross-Examination by Mr. Seamans	283
	Cross-Examination by Ms. Edwards	300
6	Examination by Commissioner Hanson	302
	Examination by Chairman Nelson	308
7	Recross-Examination by Mr. Clark	312
	Recross-Examination by Mr. Capossela	313
8	Recross-Examination by Ms. Real Bird	314
	Recross-Examination by Mr. Gough	332
9	Recross-Examination by Mr. Blackburn	340
	Cross-Examination by Mr. Ellison	353
10	Recross-Examination by Mr. Harter	391
	Recross-Examination by Ms. Lone Eagle	397
11	Recross-Examination by Ms. Edwards	419
12	David Diakow	
	Direct Examination by Mr. White	422
13	Cross-Examination by Mr. Clark	423
	Cross-Examination by Mr. Capossela	426
14	Cross-Examination by Ms. Real Bird	428
	Cross-Examination by Mr. Blackburn	431
15		
16	TRANSCANADA WITNESS	PAGE
17	Frederick J. "Rick" Perkins	
	Direct Examination by Mr. Taylor	476
18		
19		
20		
21		
22		
23		
24		
25		

1 MR. SMITH: South Dakota Public Utilities
2 Commission Docket HP09-001, In the Matter of the
3 Application by TransCanada Keystone Pipeline, LP For a
4 Permit Under the South Dakota Energy Conversion and
5 Transmission Facilities Act to Construct the Keystone XL
6 Pipeline.

7 We were in the middle of cross-examination of
8 Mr. Corey Goulet. And we've had kind of a conundrum here
9 to deal with. Mr. Rappold has been hospitalized with
10 pancreatitis, and we've been trying to determine a
11 mechanism for him to perhaps do his cross-examination by
12 telephone.

13 Again, we weren't going to do any of that, but
14 this is an unusual circumstance so we were going to see
15 if we could accommodate.

16 So we're going to take the remaining
17 cross-examiners following Matt, and then we will see if
18 perhaps by that time he can -- he can get on and
19 whatever.

20 Otherwise, what we thought is we'd let
21 Mr. Goulet step down, and if we can work something out,
22 we could retake the stand perhaps later in the day.

23 Do you have an issue with that?

24 MR. ELLISON: No. Absolutely not. I just am
25 very concerned about the Rosebud Tribe not being

1 represented. And I know you are too, sir. And I
2 appreciate that.

3 MR. SMITH: And I noticed Ms. Wynne is on the
4 list, but she's apparently not going to come up. You
5 know, I don't know.

6 I mean, if he's going to be laid up for a long
7 time, she maybe should give that a second thought. But
8 maybe that's not possible. I don't know.

9 MR. ELLISON: As I understand, it's a pretty
10 painful ordeal.

11 MR. SMITH: Yeah. I'm sure it is. Yeah.

12 Do you know the status of Ms. Wynne as to
13 whether she would be able to be here?

14 MR. ELLISON: I don't, sir. I don't know if she
15 would be -- even if she came up, she might be a body
16 without preparation. And that could be problematic.

17 MR. SMITH: Well, anyway that's where we stand,
18 and we'll just have to see what happens.

19 And so at this time the next person on the list
20 here -- oh, pardon me.

21 Chairman Nelson has some preliminary matters
22 to discuss before we call Mr. Goulet back to the stand.

23 CHAIRMAN NELSON: Thank you. Just a couple of
24 quick housekeeping items.

25 For those of you listening on the internet, when

1 we take a recess and then come back you will probably
2 have to hit refresh on your browser in order to regain
3 the audio feed after a recess or after a lunch break.

4 The second thing is -- and this is really,
5 really good news -- yesterday we spent considerable time
6 talking about Commissioner Fiegen. Last night at 5:30
7 her pathology report following surgery came back, and she
8 is cancer free. Absolutely wonderful news.

9 And even better, she's going home from the
10 hospital today. And so she is well on her way to
11 recovery, and we are all just ecstatic about that and so
12 wanted to share that given our conversation yesterday.

13 Thank you, Mr. Smith.

14 MR. SMITH: Thank you.

15 Mr. Goulet, would you please retake the stand.

16 Ms. Craven, you're up next once he gets up here
17 and set up.

18 MS. CRAVEN: Do you want me to come up here --

19 MR. SMITH: Either way you want. If you come up
20 here, then Mr. Rappold, assuming he's even able to -- oh,
21 okay. Okay. Fine.

22 MS. CRAVEN: Good morning. My name is Kimberly
23 Craven. I'm appearing on behalf of the Indigenous
24 Environmental Network, and I just have a few questions
25 for Mr. Goulet.

CROSS-EXAMINATION

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BY MS. CRAVEN:

Q. I am interested in finding out more about No. 14, which is listed on Appendix C of the Tracking Table of Changes. And I have asked in my discovery requests about the Marketlink Project and wasn't provided any information, just a link to a website where there wasn't -- I think it was either the Montana or the North Dakota website.

And so I'd like to get more information about that, about when it was first initiated. When was it first initiated?

A. I don't know the exact date it was initiated. It would have been initiated by our commercial team. But I believe it was in the 2010, 2011 time frame.

Q. Because it wasn't part of -- it was not part of the original Application; is that correct?

A. That's my understanding, yeah.

Q. Okay. And so where are -- where is TransCanada right now in getting that particular pipeline permitted at the state level?

A. Well, we've included it in our most recent Application to the Department of State. And my understanding is that's the regulatory body that we would have to get permission from to build that facility.

1 Q. So you don't need permission from North Dakota where
2 it originates?

3 A. No. We wouldn't. We don't have any facilities in
4 North Dakota.

5 Q. Because the pipeline is to bring oil from the Bakken
6 field near Williston down to Montana to hook up with the
7 Keystone XL.

8 A. That's not part of our actual facilities. That
9 would be someone else's facilities.

10 Q. So you do not need permitting for that pipeline in
11 either Montana or North Dakota? Is that what you're
12 saying?

13 A. Well, someone else would, but not TransCanada.

14 Q. So you're not actually building that pipeline?

15 A. That's correct.

16 Q. You're just letting it connect to your pipeline?

17 A. To our terminal facility and pipeline. That's
18 correct.

19 Q. Because it is listed on your website as one of your
20 projects.

21 A. Sorry. The pipeline that connects to the Marketlink
22 facilities in Montana would not be one of our projects.
23 You may be referring to another project in North Dakota
24 that we've submitted for a Presidential Permit through
25 Department of State, but that's not the pipeline that

1 connects to the Bakken facilities.

2 Q. What pipeline is that?

3 A. That would be the Upland Project.

4 Q. Okay. I was able to print off a map of the Keystone
5 assets, and the Marketlink Pipeline is listed on your
6 website as being one of your assets.

7 A. Well, the Marketlink Project would be considered
8 our -- part of our assets. But those are really only
9 terminal facilities. And there's two sets of terminal
10 facilities, the one that we just referred to in Baker,
11 Montana, that we made an Application for and Marketlink
12 facilities in Cushing, Oklahoma, which we've already
13 constructed.

14 So all we're doing is taking crude in at Baker,
15 Montana onto the Keystone XL system and delivering it off
16 in Cushing, Oklahoma.

17 Q. Do you know who's building that pipeline then?

18 A. I don't have direct knowledge of that. Perhaps
19 Mr. Diakow knows, and you can ask him. He's next.

20 Q. So now I have a question about -- I don't know that
21 much about the oils in the pipeline and how they're going
22 to mix. Because the Keystone Pipeline is designed to
23 carry tar sands oil.

24 So what is the process for putting the crude oil
25 onto that pipeline with tar sands oil going into it -- or

1 flowing through it already?

2 A. Yeah. I'll briefly describe the process. You know,
3 the Keystone XL Pipeline is designed to carry a number of
4 different crude oils, including oil sands crude and other
5 light and medium heavy crudes.

6 We move those as batches down the system. And so
7 when we -- and I talked about this a little bit
8 yesterday. When we inject a batch of oil at Baker,
9 Montana, we shut down the pipeline upstream at Baker,
10 Montana, and we inject a full batch of that product into
11 the system and then start up the system once again from
12 Hardisty, Alberta once that batch is in the line.

13 Those batches move down the line and remain
14 segregated because we maintain a minimum flow rate which
15 allows it to be turbulent. And that's how we actually
16 deliver a customer's batch from start to finish as one
17 continuous and separate batch.

18 Q. So do you have to clean out the tar sands and the
19 chemicals that create the slurry to move it along before
20 you put the Bakken crude oil in it?

21 A. No, you don't. First of all, there's no really
22 chemicals that are added to bitumen to form oil sands.
23 It's just another form of hydrocarbon. Usually a
24 condenser or a naphtha, which has a lighter density than
25 bitumen and, therefore -- but it's still just

1 hydrocarbons. Usually some of them come from gas oils
2 that are naturally occurring.

3 Q. So there's no benzene or other oils that are added
4 to it to create the slurry to get the tar sands to move?

5 A. Well, first of all, benzene's a natural part of all
6 oils, not just oil sands crude. And, therefore, no,
7 there's nothing else added to make it, other than lighter
8 crude to make it flow more easily.

9 Q. And where does the lighter crude come from?

10 A. As I mentioned, you know, the lighter oils products
11 or hydrocarbon products come from things like natural gas
12 wells. All natural gas wells have a condensate, or most
13 natural gas wells, unless they're considered dry wells,
14 have a condensate that comes with the natural gas that's
15 removed from the natural gas, and then those hydrocarbons
16 are added to bitumen to create the oil sands crude
17 product that we transport in our pipeline.

18 Q. And does that also originate in Alberta?

19 A. Sometimes it does. Sometimes it's brought in from
20 elsewhere. But a lot of it does originate in the western
21 Canadian sedimentary basin in Alberta and -- or
22 Saskatchewan, Canada.

23 Q. Do you use the scenario of batching in other
24 pipelines that you all operate?

25 A. Well, we use the batching technique that I referred

1 to in our base Keystone Pipeline today. And that's the
2 only other liquid pipeline that we would operate at this
3 time.

4 Q. Okay. So I was provided an article last night by
5 Dallas Goldtooth who's going to the sundance. And in it
6 it says that Canadian oil can be exported around the
7 world from the U.S., provided it has not been blended
8 with any U.S. crude.

9 Is that true?

10 A. That's my understanding.

11 Q. So this batching, you can assure people that it's
12 not -- there's no like residual blending that occurs as
13 it is batched along?

14 A. That's correct.

15 Q. Okay.

16 A. But our intention would never be to -- you know, is
17 not to use this pipeline for export. We've signed
18 contracts with our shippers, and their intention is to
19 transport the crude to their refineries or customers'
20 refineries and process the crude in the United States.

21 Q. And is that true for the tar sands? All that tar
22 sands would process in the United States?

23 A. That's our understanding. That's what our
24 customers' intention is, yes.

25 Q. So it won't be shipped to China as everyone

1 believes, sold to China?

2 A. That's correct.

3 Q. Okay. So let's see. So that explains why I can't
4 find a map of what the Marketlink looks like. Because I
5 can't really determine whether it's going to go down
6 through North Dakota and then over to Montana or whether
7 it's going to go out from Williston down through Montana.

8 Do you know the route of that Marketlink?

9 A. Well, again, the Marketlink is just two terminal
10 facilities. It's one in Baker, Montana, one in Cushing,
11 Oklahoma, and it utilizes the Keystone XL pipe to move
12 the product in a batched manner.

13 Q. But you do not know the route of the pipeline that
14 will be --

15 A. Well, obviously the route of the pipeline is the
16 route of the Keystone XL Pipeline.

17 Q. Okay. But the Marketlink, the --

18 A. That's correct. The Marketlink refers not to a
19 pipeline system but to the ability for us to take on
20 crude at one location and deliver it to another. Even
21 though the original intention of Keystone XL was to, you
22 know, take in crude at Hardisty, Alberta and deliver it
23 to the Gulf Coast, as you've heard and what's in our
24 filed testimony is that we've modified it to add the
25 Marketlink Project to allow injections at Baker, Montana

1 and take off crude at Cushing, Oklahoma.

2 Q. And do you have any other plans for additional
3 terminals anywhere else along the pipeline route?

4 A. Not at this time.

5 Q. Okay. All right.

6 MS. CRAVEN: I think that's all my questions
7 right now. And I thank you for your time.

8 THE WITNESS: Thank you.

9 MR. SMITH: Thank you.

10 Maybe I should ask too, are there any Individual
11 Intervenors here today that were not here yesterday?

12 I don't see any indication of that.

13 Is Ms. Braun here? She's not here?

14 MR. ELLISON: Not yet.

15 UNIDENTIFIED SPEAKER: She'll be here later.

16 MR. SMITH: I think next is Lewis Grassrope is
17 who I show. Is he here?

18 Okay. I don't see him.

19 Next then would be Mr. John Harter. Are you
20 okay, John?

21 CROSS-EXAMINATION

22 BY MR. HARTER:

23 Q. Mr. Goulet, for my spelling abilities, would you
24 spell your last name for me.

25 A. G-O-U-L-E-T.

1 Q. Thank you.

2 Mr. Goulet, how much do you make working for
3 TransCanada?

4 MR. TAYLOR: Objection. Irrelevant. Beyond the
5 scope of his direct examination.

6 MR. SMITH: Sustained.

7 MR. HARTER: Mr. Smith.

8 MR. SMITH: Pardon me?

9 MR. HARTER: When TransCanada sent
10 Interrogatories to me they asked for my personal banking
11 records. I think that I have the right to ask and have a
12 question answered for anything that I ask them.

13 MR. SMITH: Well, I certainly am not going to
14 allow evidence in this hearing about your personal
15 financial records. That's not going to happen.

16 MR. HARTER: Thank you.

17 Q. Mr. Goulet, do you believe in land shifting?

18 A. Pardon me?

19 Q. In land shifting? Hills, river hills.

20 A. I believe it's possible for erosion to occur over
21 time.

22 Q. What about land settling like in the river hills
23 country, in hill country?

24 A. Well, I'm not familiar with the hill country
25 specifically, but there are cases of settlement of land.

1 Q. So is there a way that you guys when you're
2 installing a pipeline that you control this?

3 A. Well, we do a detailed geological assessment of our
4 route to determine if there's any concerns associated
5 with shifting or settling lands prior to building a
6 pipeline.

7 Q. So by that, is that like -- like plate shifting type
8 of deals like for what they talk about during
9 earthquakes? Different levels of shifting? Is that what
10 you're talking?

11 A. Not necessarily. We're not talking about plate
12 tectonics or anything like that. We're characterizing
13 the soils and the geology along the pipeline route to
14 ensure they're capable of withstanding, you know, the
15 pipeline and not creating any long-term adverse effect to
16 the pipeline.

17 So we're looking at soil types and those type of
18 factors as we do that. Sometimes we do that just with
19 visual examinations. Sometimes we do that with
20 information that's available through public record. And
21 sometimes we do that by actually taking bores.

22 For example, when you do a directional drill under a
23 river you actually have to do bores in advance to
24 determine what the geology of that crossing looks like.

25 Q. Thank you.

1 Has land shifting ever damaged a TransCanada
2 Pipeline?

3 A. We have had situations in our 40,000-mile network
4 where we've had some movement of pipelines as a result of
5 what you call shifting lands. Usually it's on a slope.
6 And most of the time we have a slope monitoring program
7 for areas where we believe there is a high risk of that
8 occurring. And we usually mitigate the problem before it
9 damages the pipeline.

10 Q. What were the conditions at the Guadalajara,
11 Mexico -- where you had an outage?

12 MR. TAYLOR: If you know.

13 A. Yeah. I'm not familiar with that particular
14 pipeline outage, as you referred to it, so I can't
15 comment on it.

16 Q. Do you know who the contractor was on this project?

17 A. I do not know, no.

18 Q. Who is the contractor for Keystone XL?

19 A. Well, we haven't selected all the contractors for
20 Keystone -- or any of the contractors for Keystone XL at
21 this time.

22 Q. Do you believe in climate change?

23 MR. TAYLOR: Objection. Beyond the scope of the
24 hearing.

25 MR. SMITH: Would you repeat the question?

1 MR. HARTER: I asked if he believed in climate
2 change. That's all the further I'm going on it.

3 MR. TAYLOR: And it's also immaterial what his
4 personal beliefs are.

5 MR. SMITH: I'm going to sustain the objection.

6 Q. Do you believe that weather change can have an
7 adverse effect on your pipelines?

8 MR. TAYLOR: Objection.

9 MR. SMITH: I'm going to overrule that.

10 MR. TAYLOR: Can I ask one thing. John Harter,
11 would you not get quite so close to the microphone
12 because it echoes a little bit. Hold your head back just
13 a little.

14 MR. CAPOSSELA: I can hear fine.

15 MR. TAYLOR: I'm sorry. Maybe they can all hear
16 fine, but as I have told this Commission, I have a
17 significant hearing impairment. And if you'd just
18 accommodate me a little bit, thank you.

19 MR. CAPOSSELA: We can reverse tables.

20 MR. SMITH: Are you able to answer the question?

21 A. I don't believe that -- well, first of all, let me
22 say that a pipeline is buried and, as such, is not really
23 affected by weather change, per se, or weather
24 conditions, per se.

25 There are situations where pipelines, not

1 necessarily our own, are affected by weather events, such
2 as flooding. And that's really my only comment.

3 Q. Do you contact the property owners when you go to
4 the Corps of Engineers for your permits? For your high
5 consequence areas?

6 A. I'm not -- I'm not sure I can answer that question.
7 I think John Schmidt who's after me is better equipped to
8 answer that question.

9 Q. Thank you.

10 Would you explain how you get from -- from the
11 original docket that said that the pipeline would deliver
12 700,000 barrels per day at 1,440 psi and 900,000 -- up to
13 900,000 with a Special Permit to increase the pressure to
14 80 percent of maximum operating pressure?

15 You have been advertising that you're going to move
16 830,000 barrels per day. So in my mind that tells me
17 that you're going to operate over the 70 percent standard
18 level.

19 So would you explain that for us.

20 A. Sure. I can. I'll try to make this as simple as I
21 can.

22 First of all, the current code is 72 percent, not
23 70 percent. Secondly, in our original Application we
24 indicated that we were going to operate at 700,000
25 barrels per day with a reduced number of pumping units

1 and that the pipeline had an ultimate capacity of 900,000
2 barrels per day once we had added all the pumping units.
3 And that was including the Special Permit to operate at
4 80 percent.

5 Once we decided to withdraw from our Application for
6 a Special Permit and go down back to the basic code of
7 72 percent, that reduced our average throughput to
8 830,000 barrels per day.

9 Q. And that's because you're putting in extra pumping
10 facilities to get that above 700,000?

11 A. No. The reduction from 900,000 barrels per day to
12 830,000 barrels per day is because we're operating at a
13 lower capacity of the pipe, 72 percent rather than
14 80 percent.

15 Q. Okay. Thank you.

16 Does your company take no for an answer from tribal
17 entities when you ask to use their lands?

18 A. Well, as I have testified previously, currently
19 we're not planning to build a pipeline on any tribal
20 lands or lands held in trust by the Tribe. So we
21 don't -- we don't seek their approval or an easement
22 across their lands to use their land.

23 Q. Does your company respect their tribal rights?

24 A. Well, we certainly do. We recognize the
25 significance of the land and traditions and the

1 importance of building relationships with the
2 North American -- or sorry. Native American Tribes. And
3 that's why we have an outreach program and a Native
4 American policy to work with the Tribes to be inclusive
5 and supportive of their communities.

6 Q. Thank you.

7 Are you aware of -- I don't know the article. In
8 Canada one of the pipeline companies, and I can't tell
9 you which one it was, they put 130 Conditions on them in
10 Canada.

11 Are you aware of these Conditions?

12 A. I don't know what you're referring to so I can't
13 comment on it.

14 Q. Okay. Thank you.

15 If I can find that, I would like to maybe later on
16 reask.

17 You've stated that you have contracts to fill the
18 proposed Keystone XL line from the additional on-ramps.
19 I guess I was a little confused by how you don't know
20 whose pipelines these are when you say you have the
21 contracts for them.

22 A. Well, as I stated earlier, I think Mr. Diakow would
23 have a little more detail than I do relative to that, as
24 he's responsible for securing those contracts, and he'd
25 probably know the counterparties better than I.

1 Q. Thank you.

2 When you were talking about the tax revenue and the
3 people that you met with were just tickled pink over what
4 you were giving them, don't you think they would be
5 tickled pink if they were given what you promised to the
6 state when you came?

7 MR. TAYLOR: Objection. Argumentative.

8 MR. SMITH: Sustained.

9 MR. HARTER: Does that mean he doesn't answer?

10 MR. SMITH: You can rephrase in a way that's not
11 argumentative.

12 MR. HARTER: Tell me when it's not argumentative
13 because I might not know.

14 MR. SMITH: Well, you have a conclusion
15 contained in your question.

16 MR. HARTER: Okay. Thank you.

17 Q. Don't you think that if -- the communities would be
18 better off and myself as a taxpayer of South Dakota if
19 you would have -- if the revenue generated would have
20 been what you promised?

21 A. Well, we estimated the taxes that we were going to
22 pay on the original Keystone, I think you're referring
23 to --

24 Q. Yes.

25 A. -- in good faith, based on how we thought our assets

1 would be valued. And when the Department of Revenue used
2 a different assessment methodology and the taxes ended up
3 being less, you know, it was unfortunate that it was
4 different than what we had estimated.

5 But, as I say, we did the original calculation in
6 good faith. And as I stated earlier, nevertheless, the
7 counties are happy with the revenue they're receiving
8 from the pipeline and their contribution to their
9 revenue.

10 Q. When you give a statement like that to them and you
11 say it's in good faith you don't consider that a verbal
12 contract with the people?

13 MR. TAYLOR: Argumentative.

14 MR. SMITH: Sustained.

15 Q. Do you consider when you make a statement in public
16 a verbal contract with the people?

17 MR. TAYLOR: Same objection.

18 MR. HARTER: I don't know how I can rephrase
19 that.

20 MR. SMITH: Are you able to answer that?

21 A. Well, sure. I can say that I don't necessarily
22 consider that to be a contract. It's not a contract in
23 the sense -- in the true sense of the word.

24 We're providing information to the best of our
25 ability. We don't purport that information to be an

1 accurate number. It's an estimate. And we don't pretend
2 or guarantee that we're going to pay that amount.

3 Q. Don't you think that when you are at a public
4 meeting that you ought to tell the citizens that?

5 MR. TAYLOR: Argumentative.

6 MR. ELLISON: I don't understand how that's all
7 argumentative, with all due respect.

8 MR. SMITH: Tell us why it's argumentative,
9 Mr. Taylor.

10 MR. TAYLOR: It's argumentative because it does
11 not solicit a statement from this witness. It's designed
12 to express Mr. Harter's view of what went on in the
13 public meeting as opposed to elicit facts from this
14 witness. It's an argument.

15 MR. CREMER: Mr. Smith, do we all get to weigh
16 in?

17 MR. SMITH: Yeah.

18 MR. CREMER: Oh, good. Not only would I agree
19 that it's argumentative but it's assuming facts not in
20 evidence.

21 MR. SMITH: I think I'll sustain it on that
22 grounds.

23 MR. HARTER: I'll move on.

24 MR. SMITH: Thank you.

25 Go ahead, John.

1 Q. There was talk yesterday about the cathodic
2 protection. That's the electric current that you run
3 through your line?

4 A. That's partially correct. The cathodic protection
5 system is a system where you impress a current between
6 the pipeline and an anode, which is a sacrificial piece
7 of metal that's buried in the ground.

8 And you do that to prevent corrosion of your
9 pipeline system. It acts -- it works much like an anode
10 on a motor boat motor or the anode that you have in your
11 hot water tank and prevents the pipeline from corroding.

12 Q. So you're preventing -- sorry.

13 You're preventing your pipeline from corroding;
14 right?

15 A. That's correct. But I think I know where your
16 argument's headed. We also work with counterparties that
17 we cross, and we tie to their pipeline as well. And we
18 ensure that neither their pipeline or our pipeline is
19 corroding and in many cases get permission from them to
20 bond their pipeline to our pipeline so that our cathodic
21 protection system can protect both of the pipelines.

22 Q. Thank you. On my property the City of Colome has a
23 cast iron line that runs across it that you will be
24 crossing. This line was put in when I was a little boy
25 so that's around 48 years ago, somewhere in there. The

1 reason I remember it is because when they were drilling
2 wells they thought I fell in one.

3 My question is how are you addressing the issue of
4 the City of Colome's almost 50 or around 50 year old
5 pipeline?

6 A. Well, we have 80 some crossings. I think 89.
7 Ms. Kothari will be able to tell you more details if you
8 need them. 89 crossings of pipelines in the segment of
9 Keystone XL through South Dakota.

10 And for each and every one of them we'll be working
11 with the counterparties to obtain a crossing agreement,
12 and we'll consider the specific case and determine if we
13 have to bond, first of all -- if we have to bond test
14 leads to the counterparty's pipeline.

15 And when we do that we would protect the system as I
16 described earlier.

17 Q. My concern is the fact that it's 50 years old and
18 there's 50 years of corrosion in it. And my
19 understanding is, is that nobody's even done an
20 inspection on it. So this is --

21 Are you having to -- planning on lowering that
22 pipeline below your pipeline?

23 MR. TAYLOR: If you know.

24 A. Well, I don't know what the individual plan is for
25 that pipeline crossing.

1 MR. HARTER: I would think that would be common
2 sense.

3 Q. Thank you.

4 Who would know that? Ms. Kothari?

5 A. You know, she might. It depends if that individual
6 crossing plan had been established yet or not.

7 Q. Well, eight years, and I was told you were going to
8 do it two years ago. I would think you would have a
9 plan.

10 MR. TAYLOR: Is that a question?

11 MR. HARTER: It's a statement.

12 Q. Do you know how the cone of depression of the City
13 of Colome's water line was determined -- or water wells?

14 A. I do not.

15 Q. And who would know that?

16 A. I'm not sure anyone on our Staff would understand
17 the depression of the City of Colome. Although you might
18 test that with Mr. Schmidt.

19 Q. The cone of depression is the sucking areas of the
20 wells, if you're not familiar with the term.

21 A. I'm familiar with the term.

22 Q. Okay.

23 A. But I'm not familiar with that specific case.

24 Q. Thank you. How are you treating southern Tripp
25 County as a high consequence area?

1 A. I don't understand your question. Can you rephrase
2 it?

3 Q. In the Conditions you were supposed to treat
4 southern Tripp County, because of the Ogallala Plains
5 Aquifer and high water table, as a high consequence
6 area.

7 My question is what are you doing to treat it as a
8 high consequence area?

9 MR. TAYLOR: I'll interpose an objection that
10 that's a misstatement of the record. But to the extent
11 the witness can answer it, I'd say go ahead.

12 MR. SMITH: It is a slight misstatement. It's
13 not truly a -- I don't think we declared it a high
14 consequence area.

15 What did we call it, Mr. Taylor? We did say
16 that it would be a -- I'd have to dig it out and see.

17 MR. TAYLOR: I can't remember the term.

18 MR. HARTER: I think it's No. 35. Does somebody
19 have that they can pull up?

20 MR. SMITH: Yeah. We found it to be a
21 hydrologically sensitive area.

22 MR. HARTER: Okay. And they're supposed to
23 treat it as such.

24 MR. SMITH: Yes, they are.

25 Q. So what I want to know is what are you doing to

1 treat southern Tripp County as a hydrologically safe
2 area?

3 MR. SMITH: Sensitive.

4 Q. Sensitive area.

5 A. I'm not specific -- familiar with that detail. But
6 you may want to ask Ms. Tillquist about that.

7 Q. Thank you.

8 Earlier they were talking about -- you talked about
9 the -- having to recoat the pipeline. My understanding
10 of that conversation was when you were talking about that
11 it was already laid in the ground.

12 So how do you recoat the bottom of the pipeline?

13 A. Well, if the pipeline is already laid into the
14 ground, you actually excavate it and bell hole around the
15 area that needs to be recoated, remove the old coating
16 and -- by blast, usually sandblasting, and then recoat
17 it using the same technique you would have -- or a
18 slightly modified technique from the one you used the
19 first time.

20 Q. Is the coating, is that a heat process to make that
21 bond, or is it chemical?

22 A. It's a chemical. It's an epoxy.

23 Q. Okay. Thank you.

24 Would you explain on the Keystone I line why there
25 were areas in just two years that wore to the thickness

1 of a dime?

2 A. Well, I am not familiar with the complete details of
3 the incident that you're referring to. I'd suggest maybe
4 you talk to Mr. King about that in more detail.

5 Q. Okay. Did you have to replace sections of pipe
6 because of that?

7 A. I believe we installed a sleeve on top of the
8 pipeline was the repair technique that was used.

9 Q. How many sections since Keystone I's went into
10 operation have you had to replace?

11 A. I don't believe we've replaced any sections of
12 Keystone I. I shouldn't say that. Again, I think
13 Mr. King would have better information on that. I
14 couldn't say for sure.

15 Q. Thank you.

16 At an earlier hearing, and it wasn't you that stated
17 this, but it was said that you learned from things that
18 you did wrong on Keystone I.

19 Do you have knowledge of what those things were?

20 A. Well, I think we always learn from things we've done
21 in the past. We have a continuous improvement program,
22 which is the cornerstone of any management system. And I
23 believe we have a strong management system for not only
24 building our pipelines but operating and maintaining them
25 over time.

1 Earlier we talked about CP systems. And that would
2 be a good example where we built the original Keystone
3 Pipeline. We did not use passive anodes as we were
4 installing the pipeline. And now we use that as part of
5 our plans when we install a new pipeline.

6 For example, when the Gulf Coast pipeline was built
7 we installed passive anodes during construction to
8 protect the pipeline until it could be put into
9 operation.

10 And then we installed the permanent system while we
11 were constructing the line. And then when we energized
12 the power for the pipeline we were able to get the
13 permanent active system up and running.

14 These are examples -- that's an example where we
15 hadn't used the passive system previously. It goes
16 beyond the code that's required. We make sure that the
17 permanent system is tested in the first few months of the
18 operation and well before it's required under code, which
19 is 12 months to be operational, and under our Special
20 Conditions six months.

21 So we have a passive system that's available to us
22 that goes beyond code to protect the pipeline during
23 construction and an active cathodic protection system
24 that's available when we first go into operation, which,
25 as I said, exceeds code.

1 That's an example of lessons learned and continuous
2 improvement.

3 Q. Was the pipe wall thickness of Keystone I, did that
4 pose an issue after you brought it into operation?

5 A. I don't know what you're referring to specifically.
6 I don't think the pipe wall thickness posed a concern,
7 no.

8 Q. What I was told was it expanded beyond the maximum
9 diameter that it was supposed to.

10 MR. TAYLOR: Objection. That assumes facts that
11 are not in evidence. Well beyond the scope of the direct
12 examination of this witness.

13 MR. SMITH: Sustained.

14 Q. Did Keystone I when it come into operation expand
15 beyond -- the pipe expand bigger than what it was
16 supposed to?

17 MR. TAYLOR: Same objection.

18 MR. HARTER: I rephrased the question.

19 MR. SMITH: If you can answer it. I'm going to
20 let him try to answer it if he can. If he knows.

21 A. Well, again, I'm certainly not the expert to talk
22 about Keystone I. I wasn't directly involved in it.
23 Mr. King might have a little bit of information that he
24 can share with you relative to the topic you're referring
25 to.

1 Q. Thank you.

2 Are reports generated for all surveys that you do on
3 property?

4 A. Yeah. We would obtain a report from every survey we
5 do. We get that from our third-party contractor who
6 would conduct the survey.

7 Q. So can you answer why when I asked for these reports
8 I was told there were none?

9 MR. TAYLOR: If you know.

10 A. I'm not aware --

11 MR. ELLISON: Excuse me. I'm going to interpose
12 an objection. This is the third time that Mr. Taylor has
13 prompted the witness with "if you know."

14 It's improper. I object to it. I would ask for
15 counsel to be admonished that it is improper.

16 MR. SMITH: Mr. Taylor, do you have a response?

17 MR. TAYLOR: Well, yeah. First of all,
18 Mr. Ellison can say what he wants, but this isn't -- he's
19 not conducting the examination. It's not his question.
20 So number one.

21 Number two, it's perfectly appropriate to
22 suggest to the witness that if he knows -- I can make an
23 objection it's beyond the scope of his direct examination
24 if that's easier.

25 MR. ELLISON: Proper objections help.

1 MR. SMITH: Okay.

2 MR. HARTER: Mr. Smith.

3 MR. SMITH: Uh-huh.

4 MR. HARTER: I just -- when he does that to me
5 it's just common sense. Because this man is smart
6 enough, what he's doing, that he's going to know if he
7 knows or not.

8 MR. TAYLOR: I move that comment be stricken.

9 MR. SMITH: Why don't we just proceed.

10 MR. HARTER: Thank you.

11 A. Can you rephrase the question, Mr. Harter?

12 Q. I've got to find which one I was on.

13 I don't know that I can rephrase it. I asked for
14 reports for my property, and I was told there were none.
15 And this was for the paleontology, all the things that
16 you send your people there to go to my property.

17 A. Well, I'm not familiar with your specific situation
18 or the surveys that were done on your property so I can't
19 answer the question.

20 Q. But there are reports done for everybody's property
21 when you do your surveys?

22 A. I'd say that's generally true.

23 Q. Thank you.

24 MR. HARTER: That's all. Thank you.

25 MR. SMITH: Thank you, Mr. Harter.

1 Q. I'm just anticipating some objections by Mr. Taylor,
2 and this was answers that were offered in testimony
3 yesterday.

4 MR. SMITH: Ms. Lone Eagle, do you have the mic.
5 pretty close to your mouth there?

6 MS. LONE EAGLE: Am I too close?

7 MR. SMITH: No. I'm having a little trouble
8 hearing you actually.

9 MS. LONE EAGLE: Is that better?

10 MR. SMITH: It is. Thanks.

11 Q. Okay. Mr. Goulet, could you just please refresh my
12 memory as you listed a number of different titles that
13 you have in your position at TransCanada.

14 Could you refresh my memory as to what those are,
15 please.

16 A. I'm the president of Keystone projects, and I'm the
17 vice president and general manager of major projects
18 implementation.

19 Q. Okay. Thank you. If memory serves, part of your
20 position involves the development and implementation of
21 the Keystone XL Pipeline; is that correct?

22 A. That's correct.

23 Q. Okay. And as part of that, you oversee the
24 personnel, process, and systems involved with the
25 Keystone XL Pipeline?

1 A. At a high level, yeah.

2 Q. Okay. You mentioned during your testimony
3 yesterday the names of two people, Heidi Tillquist and
4 Lou Thompson.

5 Could you refresh my memory as to what their
6 positions are and maybe give just a general job
7 description if you can.

8 A. Well, Ms. Tillquist will be testifying later, and
9 I'm sure she'll be able to describe, you know, her job in
10 much better detail than I can. But she's a third-party
11 contractor who assists us in the development of the
12 Keystone XL Pipeline.

13 Q. Okay.

14 A. And to the second part of your question,
15 Mr. Thompson is a manager of Native American tribal
16 relationships in the United States.

17 Q. Okay. You wouldn't happen to know, is Mr. Thompson
18 an enrolled tribal member anywhere in the United States?

19 A. I'm not aware if he is or not.

20 Q. Okay. Do you know whether or not he has any Native
21 American ancestry?

22 A. I don't -- I don't know specifically, no.

23 Q. Okay. Thank you.

24 In reference to Ms. Tillquist, one of the references
25 that you made to her yesterday was in regards to whether

1 or not a certain Tribe may or may not be within the
2 vicinity of the pipeline, specifically with reference to
3 contacting them and their emergency services.

4 A. Well, I think we were talking about high consequence
5 areas and the impact of spills and whether they had been
6 contacted. And I think I referred you to Ms. Tillquist
7 to answer that question, as I don't have direct knowledge
8 of the process we used in her work.

9 Q. Okay. I believe part of the -- part of the answer
10 that you gave -- because there was a question as to who
11 determined the criteria of the affected area, and you
12 said that she would -- am I correct? I want to make sure
13 I'm remembering correctly, but she would have something
14 to do with that criteria and that determination?

15 A. I think I said something like that, yeah.

16 Q. Okay. I just want to make sure. Jeez. I have a
17 bunch of different questions.

18 With regards to Mr. Thompson, I realize that you're
19 not aware of his -- of whether or not he's Native
20 American, but -- and whether or not he's enrolled, but
21 specifically because his job involves dealing with Native
22 American Tribes, could you tell me how he was selected
23 and if you know what his qualifications are dealing with
24 Tribes?

25 MR. TAYLOR: I think that's beyond the scope of

1 the issues in this hearing. Asks for an answer that's
2 irrelevant to anything that has anything to do with what
3 we're here to talk about.

4 MR. SMITH: I think I will sustain that.

5 Q. So Mr. Thompson is a TransCanada employee? He's not
6 a contractor?

7 A. That's correct.

8 Q. Okay. Does he report directly to you?

9 A. He does not. He reports into our Community and
10 Sustainability Department, and that's led by a different
11 vice president.

12 Q. Do you get any type of reports? I mean, do you see
13 anything of what he does in his work? You know what I
14 mean? Like a report, anything?

15 A. I mean, I have conference calls from time to time
16 with him, and I have a general understanding of the work
17 he's doing for the Keystone XL system. And I receive
18 the, you know, aud. report from him or e-mail describing
19 what the current status of his work is.

20 Q. Okay. Do you know, does he contract with anyone, or
21 has he contracted in the course of his work in
22 South Dakota with any Native American person?

23 A. I believe we have a contract with at least one
24 Native American person in South Dakota.

25 Q. Do you happen to know who that is?

1 A. Patty Gorneau.

2 Q. Okay. In what capacity was she contracted?

3 A. Well, she's a consultant who helps us with our plans
4 and for engaging the Tribes in South Dakota.

5 Q. Okay. Would you have any knowledge of a meeting
6 that took place in Faith, South Dakota at any time within
7 the last few years?

8 MR. TAYLOR: This is beyond the scope of
9 examination.

10 MS. LONE EAGLE: It's with regard to a
11 question -- it's a follow-up question regarding
12 Ms. Gorneau.

13 MR. SMITH: Did you have an objection? It
14 didn't register because your mic. was off.

15 MR. TAYLOR: I'm sorry. I didn't have my
16 microphone turned on.

17 This is well beyond the scope of the
18 examination -- of direct examination of Mr. Goulet.
19 Object on that basis.

20 MR. ELLISON: But it does go to bringing out
21 the full and true disclosure of the facts under
22 SDCL 1-26-19(2).

23 Q. Are you able to answer that?

24 A. Well, I'm going to say that I'm not aware of the
25 meeting in Faith so I can't comment on it.

1 Q. Okay. Thank you.

2 As the person that's responsible for the development
3 and implementation of the Keystone XL Pipeline, you do
4 take a look at budgets and expenditures and approve or
5 deny those; correct?

6 A. At a high level I do.

7 Q. Okay. Does any of the budget that Mr. Thompson
8 uses -- does any of that come from your budget? Or is
9 that a different budget?

10 A. No. Some of the funding for an outreach program
11 with the Tribes comes from the Keystone XL budget.

12 Q. Okay. And are you aware whether or not Ms. Gorneau
13 would have any access to that funding?

14 A. Well, I think she'd be paid in her capacity in
15 providing support to Mr. Thompson, yes.

16 Q. Okay. But only a salary? Nothing beyond that, that
17 you're aware of?

18 A. That's correct. She would be paid -- she'd be paid
19 for the work that she does.

20 Q. Okay. So in that budget regarding your outreach to
21 native Tribes, what sort of expenditures might you have?

22 A. Well, we have -- you know, I know that Mr. Thompson
23 has at least two employees as well who work with him who
24 are engaged in contacting the Tribes. And, you know, we
25 have a very inclusive and supportive program for working

1 with the Tribes, and we have objectives to provide
2 Native American Tribes with business opportunities with
3 community investment and with educational donation and
4 scholarships.

5 And those two individuals would be talking to the
6 Tribes about those opportunities. And we've used this
7 program effectively on many other projects. On the Gulf
8 Coast project we engaged numerous Tribes in the
9 construction of that project and, in fact, by the end of
10 this year we will probably have three community
11 agreements in place.

12 So that team is responsible for developing those
13 relationships and doing those type of activities.

14 Q. Okay. Specifically, are you aware whether or not in
15 that budget there's anything for, say, incentives such as
16 perhaps, you know, offering generators, you know, to the
17 Tribe in the event of a power outage, a mass power
18 outage, or perhaps, I don't know, something that could be
19 given to the tribal members as perhaps a gift?

20 A. Well, we would work with the Tribes on a community
21 investment program. I'm not aware of the one you're
22 referring to. But really we talk to the Tribes about
23 what would help their community. And whether it's an
24 educational program or a donation to a project that
25 they're engaged in, it may mean different types of things

1 depending on the Tribe we're working with.

2 Q. Are you aware whether or not any of these things
3 that you've talked about have been specifically offered
4 to the Cheyenne River Sioux Tribe or to the Rosebud Sioux
5 Tribe?

6 A. Well, I think we would have talked in concept about
7 a community investment program and education program, but
8 to my knowledge we haven't signed any letter of intent or
9 memorandum of understanding with any of the Tribes in
10 South Dakota in this regard.

11 Q. Okay. Are you aware as to whether or not there's
12 been any contact made?

13 A. I believe we've tried to contact the Tribes to talk
14 about these type of programs, but, you know, as you're
15 aware, there's been many resolutions passed by a number
16 of the Tribes indicating they don't support Keystone XL
17 and, in fact, some of the Tribes have indicated they
18 don't want any of their members or their leaders to work
19 with us either.

20 So it's been difficult. But notwithstanding that,
21 we're committed to continuing to work with South Dakota
22 Tribes and to their benefit because we understand how
23 important this project could be to them.

24 Q. Okay. Are you aware as to whether or not any
25 individual tribal members have been approached by either

1 Mr. Thompson or any of his contractors?

2 A. Well, I think they probably talk to individual Tribe
3 members where they're able to. But, I mean, that would
4 be part of their job is to work with the Native American
5 tribal communities, and so they would talk to individuals
6 within that Tribe either at a leadership level or at a
7 membership level.

8 Q. Okay. Thank you.

9 One of the things that was brought up also was
10 that -- and I know more about the Cheyenne River Sioux
11 Tribe's legislation so I'll refer specifically to that.
12 But the Cheyenne River Sioux Tribe has passed legislation
13 that absolutely forbids TransCanada, any contractors,
14 equipment, anything associated with this project from
15 coming on -- or any person from coming onto or within
16 their reservation boundaries.

17 Are you aware of any violations to that law?

18 A. Well, I think -- we haven't started construction yet
19 so I'm not aware of any violations associated with that.
20 I do know we tried to make contact with the Cheyenne
21 River, and at one point, you know, I'm sure that our
22 Staff was on the reservation.

23 I don't know if that was before or after the
24 resolution was passed.

25 Q. Well, it was after. And they were escorted off,

1 just to let you know.

2 So about this legislation that was passed where it
3 is absolutely illegal, like I said, or anything
4 associated with it or any person associated with this
5 project from coming within the reservation boundaries,
6 Mr. Clark referred yesterday to the Bridger Creek area,
7 which is the Four Corners area. It is where Pennington,
8 Mead, Haakon, and Ziebach County all meet at the bridge.
9 And Ziebach is reservation.

10 Within that area where that construction will take
11 place, at this time the only access is through the
12 reservation. What would you think possibly -- or have
13 you considered on any level that you're aware of, how to
14 avoid violating that tribal law and still be able to have
15 access to that area?

16 A. Well, I think we can gain access to our crossing
17 either from the west or from the south. And our -- we
18 fully intend to honor your resolution and not to -- not
19 to use Highway 34 or any other roads within the
20 reservation during the construction of the Keystone XL
21 Pipeline.

22 And so we can make plans to avoid the reservation
23 roads and will do so. And I'm sure Ms. Kothari will
24 probably have a little more information that she can
25 share with you on some of the specifics of our plans.

1 Q. Okay. Thank you.

2 Getting back to the budgetary items I was asking
3 about earlier, can you tell me what the difference
4 between a community investment program is and a bribe?

5 MR. TAYLOR: Objection. The question's
6 argumentative.

7 MR. SMITH: Sustained.

8 Q. Could you describe to me how a community investment
9 program works?

10 A. Well, at a high level I can. I'm certainly no
11 expert in it.

12 But generally what we do is work with the leadership
13 of a Tribe to determine what special projects or what
14 initiatives they have which would benefit the Tribe and
15 determine a mechanism by which we can lawfully invest in
16 that endeavor.

17 Q. Okay. You would work only with tribal leaders? You
18 might not -- perhaps a contractor approach an individual
19 tribal member?

20 A. Our normal -- our normal process is to work with
21 leadership to develop a letter of intent, as I spoke
22 about earlier, and follow that up with a memorandum of
23 understanding.

24 And then once that relationship is more engrained,
25 we would actually sign a community agreement which would

1 have the details of such possible investments in the
2 Tribe's endeavors.

3 Q. Okay. Thank you.

4 I'm going to go back a little bit to some of the
5 work that Heidi Tillquist would be involved in.

6 We had talked about the vicinity. Did she also work
7 with areas involving the high consequence -- high
8 consequence areas?

9 A. I believe she does, and I'm sure you can ask that in
10 much more detail with her.

11 Q. Sure. Sure. I will.

12 Can you explain to me what a voluntary evacuation
13 zone is?

14 A. I'm not familiar with the term. I understand that
15 there are -- that there are some organizations that use
16 that term. We don't particularly use that term in
17 TransCanada.

18 Q. Well, it's on the website called the Keystone
19 Mapping Project, and it's under -- it's Keystone. It's
20 on the Keystone website, and it's called the South Dakota
21 KXL voluntary evacuation zone.

22 Are you not familiar with that?

23 A. I'm not familiar with that, and I would doubt that
24 it would be on our website.

25 Q. Can you tell me who in your organization might be

1 familiar with that?

2 A. Well, I think probably Ms. Kothari could tell you a
3 little more about it when she gets up.

4 MS. LONE EAGLE: I think that's it for me.
5 Thank you.

6 MR. SMITH: Ms. Myers, are you going to have
7 quite a number of questions?

8 MS. MYERS: I don't have any questions.

9 MR. SMITH: You don't have any?

10 MS. MYERS: No.

11 MR. SMITH: Paul.

12 MR. SEAMANS: I might be able to do it in
13 15 minutes.

14 MR. SMITH: Okay. Why don't we proceed then.
15 Right. And then we have Commissioners. Maybe,
16 Paul, we should just take a break right now.
17 We'll be in recess.

18 (A short recess is taken)

19 MR. SMITH: We'll call the hearing back to order
20 in Docket HP14-001.

21 We're undertaking cross-examination, and it's
22 Intervenor Paul Seamans's opportunity to cross-examine.

23 MR. SEAMANS: Thank you, Mr. Smith. This is
24 Paul Seamans.

25

CROSS-EXAMINATION

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BY MR. SEAMANS:

Q. I would like to go back to some of the things we talked about yesterday when you and Mr. Ellison were talking about tax revenues.

Mr. Goulet, could you tell us how much that the counties along Keystone I are going to get for tax revenues per year?

A. Well, I think, as I stated yesterday, I think the first full year of operation we paid approximately 3 million dollars in South Dakota for the counties along the 220 miles of base Keystone or Keystone Phase 1 in terms of tax revenues.

And that's increased to about 3.9 million dollars in 2013. And we expect to pay 4.3 million dollars for 2014.

Q. Okay. Well, you had to figure an estimate for the Keystone XL. Could you repeat what that was?

A. Well, we've never done a formal estimate for Keystone XL, but I think using a similar methodology for the base Keystone we expect, and you've probably seen me recite this in the media, 20 million dollars in taxes payable, you know, for Keystone XL per year.

Q. Okay. That's the figure I was looking for.

Who receives this tax money on Keystone XL? Which

1 counties? Is that all counties --

2 A. Well, every county would get a share of that. I
3 believe there's nine counties in total, and each one of
4 them would receive some part of that.

5 Q. Would it just be the counties along the route? No
6 other county in South Dakota would receive any of that
7 property tax money?

8 A. That's correct. I think that's how the property tax
9 system works.

10 Q. Who came up with this 20 million dollar figure?
11 TransCanada, is that a figure that they developed?

12 A. Yeah. You know, we've asked our tax department who
13 are now more familiar with South Dakota tax practice than
14 they were previously and obviously we're paying taxes and
15 they're familiar with the assessment methodology the
16 Department of Revenue used -- or does use in calculating
17 our taxes for the base Keystone to give us an estimate
18 and that's what they came up with.

19 Q. What is this 20 million dollars based on? Is it
20 just the value of the pipeline, or how do they figure
21 that?

22 A. Well, it's based on the methodology that's used.
23 And I'm no tax expert, but I understand that, you know,
24 there's two or three different methods that can be used
25 to determine what the taxes are, and one is capitalized

1 income, and another one is replacement value, and a third
2 one has to do with comparable income.

3 And I understand that the Department of Revenue has
4 used a capitalized income formula for determining our
5 taxes on the base Keystone system.

6 Q. Is TransCanada considered a common carrier?

7 A. We are.

8 Q. Okay. As a common carrier -- or I should say does
9 each individual county set their own taxes on this, their
10 section of the pipeline?

11 A. My understanding is that the assessment comes from
12 the Department of Revenue and is provided to each county.

13 Q. So it's centrally assessed basically by the State?

14 A. That's my understanding.

15 Q. In September of 2009 Michael Kenyan from the
16 Department of Revenue filed prefiled testimony with the
17 PUC, and he -- have you ever seen his testimony?

18 A. I have not.

19 Q. He says that the centrally assessed value of the
20 pipeline is determined by the value of the pipeline, the
21 value of the product, and the value of the company that
22 owns the pipeline.

23 Does that sound right to you maybe, or do you know?

24 A. Well, I think you've just described the kind of
25 three methodologies that I was referring to earlier, in

1 different terms.

2 Q. Well, I don't think there are three different
3 methodologies. I think they're all part of the same
4 methodology. All three of them are used to determine the
5 taxes that will be paid by TransCanada.

6 A. They could be. I'm not -- I'm not specifically
7 knowledgeable about the assessment methodology that was
8 used by the Department of Revenue.

9 Q. Okay. I guess the reason I'm going there is because
10 I kind of want to explain a little bit about why
11 Keystone I is taxed the way it is.

12 The number one part of it, the value of the
13 pipeline, what will happen to the value of the pipeline
14 as time goes on, in your opinion?

15 A. Well, it depends how you define "value."

16 Q. Well, taxable value.

17 A. Yeah. So the asset depreciates over time.

18 Q. Yes. So that part of the formula the value will
19 probably go down every year; correct?

20 A. I expect it would go down a small amount every year
21 based on depreciation.

22 Q. Okay. And the value of the product shipped can vary
23 from year to year; right? Of course.

24 A. Well, yeah. It depends on the price of the product.

25 Q. So and yesterday I believe in some of your testimony

1 you said that the -- in the last 12 months the value of
2 oil is probably half of what it was? It maybe went from
3 \$100 a barrel to maybe --

4 A. I think over the last year that's about correct.

5 Q. Okay. So that -- that probably makes a difference
6 in the variation of the taxes paid because they went up
7 in like 20 -- or they went up last year, and with the
8 price of oil going down that part of the formula will
9 probably take -- will lower the value of the tax -- the
10 amount of taxes paid.

11 A. Well, my understanding of capitalized income is it's
12 based on the income of the pipeline and not the product
13 that's shipped.

14 Q. Oh. So it doesn't make any difference to
15 TransCanada as far as your contract goes whether it's \$50
16 a barrel or \$100 a barrel; right?

17 A. That's correct.

18 Q. Okay. The third part of this formula for
19 determining taxes is the value of the company. Who owns
20 Keystone XL?

21 A. Well, Keystone -- TransCanada Keystone, LP is the
22 owner of the Keystone XL Pipeline.

23 Q. It is not TransCanada, the company; right?

24 A. Well, TransCanada Corporation -- or sorry.
25 TransCanada Keystone Pipeline, LP is a wholly owned

1 subsidiary of TransCanada Corporation.

2 Q. Okay. What would you consider the approximate value
3 of TransCanada, the company? 40 billion, 50 billion?

4 A. Well, our market cap is about 35 billion dollars,
5 but we have assets in excess of 50 billion dollars.

6 Q. Okay. And what would be the value of the company
7 that owns the Keystone -- your subsidiary? Do you have a
8 rough estimate of what would be the value of that
9 company?

10 A. Well, that company would own the existing assets of
11 the Keystone Pipeline system, which would include
12 Keystone Phase 1, the Cushing extension, the Gulf Coast
13 project, which off the top of my head might be
14 12 billion dollars.

15 Q. Okay. And once the Keystone XL is -- if it were to
16 be completed, this subsidiary would still exist?

17 A. That's right. And once it was completed, the assets
18 of Keystone XL would be included in the sense of that
19 subsidiary. So the assets would increase to some
20 20 billion dollars roughly.

21 Q. Okay. I guess I'd kind of like to go back a little
22 bit to Keystone 1 now on the taxes that they've been
23 paying over the years. I have a sheet here that I would
24 kind of like to show you if that's permissible.

25 MR. TAYLOR: Mr. Seamans, can you tell me, has

1 this been marked as an exhibit?

2 MR. SEAMANS: I think it's marked.

3 Q. Mr. Goulet, could you read what was written at the
4 bottom as far as the exhibit goes?

5 A. Yeah. Actually on the side here it says
6 Keystone 0768.

7 Q. I think it was DRA Exhibit 15?

8 A. That's right. DRA Exhibit No. 15, page 1.

9 MR. TAYLOR: All right. Thank you. That's
10 fine.

11 Q. So this is basically a breakdown of the taxes that
12 TransCanada has paid on the Keystone I for the years
13 starting in 2009 and going through a five-year period up
14 to 2013; is that correct?

15 Does that look about right?

16 A. Yeah. These are the figures that I referred to
17 earlier, and in 2010 we paid about 3 million dollars. Or
18 exactly \$2,954,846.

19 Q. And down in the lower right-hand corner is the total
20 figure that TransCanada paid to these counties along the
21 route of Keystone I; right? 14 million?

22 A. Yeah. It's 14 million.

23 Q. And change?

24 A. \$128,000 and change.

25 Q. And if it were 15 million over five years, it would

1 be 3 million a year average; right? Just figure in your
2 head.

3 A. Yeah. But if you include the 4.3 million dollars
4 we expect, the number over five years would be about
5 18.4 million dollars.

6 Q. Okay. Let's do it over six years then if we're
7 going to do that. So it will still be about 3 million.
8 I'll give you the benefit of the doubt and say 3.3, 3.4.

9 A. Slightly higher than that, but okay.

10 Q. Yeah. Over a five-year period they were promised
11 9 million dollars a year, and that's -- for five years
12 that's 45 million dollars that they promised these
13 counties.

14 MR. TAYLOR: I'm going to object to the form of
15 the question.

16 MR. SMITH: I'm going to sustain that.

17 Q. Didn't TransCanada basically promise these counties
18 9 million dollars a year in the beginning?

19 MR. TAYLOR: Same objection.

20 MR. SMITH: Instead of the word "promise" can
21 you rephrase that?

22 Q. Okay. Estimate. Did they estimate that they would
23 pay them 9 million dollars a year?

24 A. That's what I testified to earlier.

25 Q. Uh-huh. And 9 million dollars a year times five

1 years would be 45 million dollars?

2 A. That's correct.

3 Q. They got under 15 million dollars?

4 A. Well, 18.4 million dollars actually.

5 Q. Okay. Let's go to six years times nine, and that's
6 54 million dollars, ain't it? Isn't it?

7 A. Well, we've operated the pipeline system for five
8 years. Therefore, we have to use five years. I don't
9 think we'll quibble over the fact the difference is
10 45 million dollars to 18.4 million dollars over five
11 years.

12 Q. Okay. Okay. That's easy to figure out too.
13 54 million -- or 18 million -- they're still getting
14 about a third of what had been estimated.

15 A. Yeah. Slightly over a third. Yeah.

16 Q. Okay. I guess that's kind of what I was getting at.
17 The Keystone I is approximately 200 miles; is that
18 right?

19 A. 220 miles, I believe.

20 Q. 220 miles.

21 And the Keystone XL is 313 approximately?

22 A. I think we've indicated it's 315 now with the route
23 changes that we've contemplated.

24 Q. I guess what I'm getting at is the 20 million dollar
25 estimate that I see in the media seems pretty high if

1 people along Keystone I are only getting about a third of
2 the estimated taxes that -- I guess I can't use the word
3 promised but was estimated that they were going to get;
4 is that correct?

5 A. Well, I don't view the estimate as being pretty
6 high. There are many factors that go into that estimate,
7 one of which is the capital cost associated with the
8 Keystone XL Pipeline, which in evidence is almost
9 2 billion dollars, which is significantly higher than the
10 \$500 million or so that we spent to pay -- or to build
11 Keystone, the base Keystone Project.

12 On top of that -- and the reasons for that increase
13 are many. We've agreed to other technical changes to the
14 project that we've talked about previously, and there's
15 been inflation associated with the construction of the
16 project.

17 And, finally, there's been delays in the regulatory
18 process which has increased the cost of the project as
19 well.

20 So all those things contribute to a higher capital
21 cost. And the operating costs are also higher because of
22 inflation. And you add all of those together, we're
23 charging a toll which is higher to our shippers.

24 So whatever methodology you use to assess the taxes,
25 the amount of taxes we'll spend on Keystone -- or we'll

1 pay on Keystone XL will be quite a bit higher than they
2 were on the base Keystone Project.

3 Q. On Keystone I why are they a third of what they're
4 estimated? Why are the counties receiving a third of
5 what they're estimated to be?

6 A. Well, I think I mentioned earlier that the
7 Department of Revenue used a different assessment
8 methodology than we had expected. We expected that they
9 would use the replacement cost of the project, and they
10 used a different methodology, as you've outlined.

11 Q. I guess I'm done with those questions on taxes.
12 I've got a couple others.

13 Are you a professional licensed engineer?

14 A. I am in the province of Alberta.

15 Q. Is that civil engineer or what?

16 A. I'm a mechanical engineer by training.

17 Q. Okay. Now it was mentioned, talked about the other
18 day, about this -- oh, corrosion on a pipeline and it
19 corroded down to about the thickness of a dime in two
20 years.

21 I believe you said it was because of interference
22 with another pipeline; is that correct? Or do you
23 remember that?

24 A. Yeah. At a high level, it was a result of
25 interference of another pipeline that runs in parallel to

1 that particular portion of pipeline in Missouri. And
2 there's also electrical transmission line, I believe, in
3 that area as well.

4 We don't have any similar situations in
5 South Dakota. We have a number of crossings that I
6 referred to earlier. 89, I believe. But in those
7 situations where a pipeline runs in parallel, not
8 withstanding that fact, we know how to prevent corrosion
9 from occurring in those situations and intend to employ
10 those measures on Keystone XL.

11 And, as I mentioned earlier, Mr. King can provide
12 anymore details that you need about that particular
13 situation.

14 Q. Do you consider this pipeline interference when you
15 design a pipeline?

16 A. We do. Our alignment sheets, one of the important
17 aspects is to include facilities in the general vicinity
18 of the pipeline so that we understand what we have to do
19 to protect those facilities and our own facilities.

20 Q. Okay. Thank you. In your testimony to John Harter,
21 I believe it was, you stated that you have respect for
22 the Indian people? Or does TransCanada?

23 A. Well, we certainly aim to develop a relationship
24 based on respect and trust between the company and Native
25 American Tribes, yes.

1 Q. Well, I have a memo here from a meeting in --
2 TransCanada memo to the Cheyenne River community in
3 November 13 of 2013 and kind of headlined Go Forward
4 Action. It's a memo to some of your TransCanada people.

5 Then it's got -- you know, part of the debriefing is
6 develop a security plan. And farther down it's
7 opportunities and lessons learned.

8 One of your participants says --

9 MR. TAYLOR: Objection.

10 Mr. Seamans, you have to lay some foundation
11 with this witness. First you've got to -- before you can
12 testify about the memo, you have to examine him to figure
13 out if he knows what you're talking about.

14 MR. SEAMANS: Okay. Well, I probably complicate
15 matters a little too much. I'm just going to withdraw
16 that question.

17 Well, I guess that's all I have. I thank you
18 for your time.

19 THE WITNESS: Thank you.

20 MR. SMITH: Staff? I think we're done on the
21 Intervenors, aren't we?

22 MR. GOUGH: Mr. Smith, Bob Gough. Beg your
23 indulgence.

24 Yesterday I asked a single question believing
25 that I -- I did have an appointment. I've moved it to

1 later in Rapid City this afternoon. And I'm wondering if
2 I may ask a couple of questions based on information that
3 was elicited during the other examination.

4 MR. TAYLOR: I'd object to that. He had his
5 chance to do his cross-examination, and this is not
6 recross of redirect.

7 MR. SMITH: Commissioners?

8 CHAIRMAN NELSON: Sustained.

9 MR. SMITH: Okay. The answer, I guess, is no.

10 MR. ELLISON: In other words, am I understanding
11 that if an issue is raised by the question of another
12 party, that we are not then allowed to inquire further on
13 that issue?

14 This is a pretty basic multiparty type of
15 situation that such questioning is always allowed in the
16 circuit courts.

17 COMMISSIONER HANSON: No.

18 MR. ELLISON: Yes, it is.

19 COMMISSIONER HANSON: It's not how we've done
20 it.

21 MR. SMITH: Yeah. I mean, Commissioners, it's
22 your decision.

23 COMMISSIONER HANSON: We have a process here,
24 and if we go through that process properly, everyone has
25 the opportunity to ask their questions. And there's the

1 rebuttal processes. There's the -- if everyone gets to
2 tag off of everyone else's questions, this will never
3 end.

4 So it's up to you to ask your questions when
5 they come up, and then everyone has a fair shot at the
6 witness.

7 MR. ELLISON: Okay. I'd like to interpose a
8 standing objection. I think this is highly improper. It
9 is a violation of due process rights of DRA to not be
10 able to ask follow-up questions that are either raised by
11 other Intervenors, by TransCanada, by the PUC, by the
12 Commission itself. And I understood that we were going
13 to be allowed to ask questions after the Commissioners
14 ask questions.

15 MR. SMITH: Yes. That is the case.

16 COMMISSIONER HANSON: After that, yes.

17 MR. ELLISON: Okay. So it's really a question
18 of timing; am I right?

19 COMMISSIONER HANSON: Correct.

20 MR. ELLISON: No problems then.

21 COMMISSIONER HANSON: But you don't get to do it
22 after each witness. Otherwise, it will take forever.
23 Excuse me after each attorney comes up and asks their
24 questions. We don't do round robin.

25 MR. ELLISON: I understand.

1 COMMISSIONER HANSON: It's after the
2 Commissioners ask their questions. Then we follow the
3 same process.

4 MR. ELLISON: Okay. Thank you, sir. That
5 explanation -- I withdraw my objection.

6 MR. GOUGH: So I understand I will be able to
7 have an opportunity after you've questioned the witness?

8 MR. SMITH: Yes.

9 MS. CRAVEN: Will Mr. Goulet be appearing as a
10 rebuttal witness too because he has rebuttal testimony?

11 MR. SMITH: I have no idea. The way we work
12 that with prefiled is usually we have those offered into
13 evidence up front on the direct case. And the reason is
14 because it's absurd to try to create a faux order.

15 I mean, we've already seen their prefiled direct
16 and rebuttal so people are perfectly -- we'd rather get
17 both of those in up front or objected to and not allowed
18 in and then question them regarding all of it.

19 I have no idea who TransCanada will actually
20 call in rebuttal. I don't. I don't know that. I have
21 no idea.

22 MR. GOUGH: So my understanding is this witness
23 will be available. He's filed surrebuttal testimony. He
24 will be available during the rebuttal portion of this?

25 MR. SMITH: I do not know. You should be

1 questioning him about all of his testimony right now.

2 MR. GOUGH: I would love to.

3 MR. SMITH: That's what's been done by most of
4 the witnesses. They've utilized all of their -- they've
5 asked questions about all of their prefiled testimony.

6 I mean, we don't pretend that we don't know it
7 exists. I'll put it that way. And this is the live
8 hearing. We do prefiled as sort of a discovery
9 enhancement.

10 And to us every bit of the prefiled testimony
11 ought to be delved into during the original round of
12 cross-examination.

13 MR. GOUGH: So do I understand your procedure,
14 Staff will get to ask questions now, and then the --

15 MR. SMITH: Followed by Commissioners. And then
16 we allow parties an additional round to respond to that,
17 and then we finally go to the --

18 MR. GOUGH: Thank you.

19 MR. SMITH: With that, we'll turn to -- oh,
20 pardon me.

21 MS. CRAVEN: I'm sorry. I have one more point.
22 Just a clarification on the logistics of what's
23 happening.

24 It was my understanding we were going to have
25 the direct testimony, and then we would be having the

1 but, you know, we wouldn't file an Emergency Response
2 Plan until closer to the -- you know, to the operation of
3 the pipeline.

4 Q. Thank you. At what point in time during the
5 development of the Emergency Response Plan do you
6 determine what local government and organizations would
7 be contacted in the event of an incident?

8 A. Well, I'm not sure I'm the person to ask about that.
9 Perhaps Ms. Tillquist could tell you more details on
10 exactly when we contact local folks.

11 Q. Okay. And to the extent to which it is under your
12 control, would you be willing to reach out to the Tribes
13 even if you determined they weren't local in proximity?

14 A. Well, as I described earlier, we have an extensive
15 tribal relations program and would continue to work with
16 the Tribes throughout the development and implementation
17 of the project, to the extent that they're willing to
18 engage with us.

19 Q. And in the event of an emergency or spill, at that
20 time would you continue to work with local law
21 enforcement and emergency response personnel?

22 A. Yes.

23 MS. EDWARDS: Thank you.

24 No further questions.

25 MR. SMITH: Okay. Commissioners, are --

1 Commissioner Hanson.

2 COMMISSIONER HANSON: Good morning, Mr. Goulet.

3 THE WITNESS: Good morning.

4 COMMISSIONER HANSON: You are vastly familiar
5 with the quality of the pipe, I'm assuming, the quality
6 of the construction?

7 THE WITNESS: I have knowledge of it, yes.

8 COMMISSIONER HANSON: All right. Well --

9 THE WITNESS: Some people might argue I'm vastly
10 knowledgeable.

11 COMMISSIONER HANSON: I've read so much and
12 there's so much paper here, I don't remember whether I
13 heard it on a commercial or whether I read it, but I've
14 heard several times that this is going to be the safest
15 pipeline ever built.

16 Would you testify and is it to the best of your
17 knowledge that this is the safest pipeline ever built?
18 Can you testify to that?

19 THE WITNESS: Well, I would say at this time and
20 place no other pipeline has been requested to incorporate
21 the Special Conditions, the 59 Special Conditions which
22 are in Appendix Z of the Final Supplemental Environmental
23 Impact Statement, and as such, don't have the
24 redundancies and safety measures which we will build on
25 Keystone XL.

1 So that's why we like to say that this will be
2 the safest pipeline ever built in America. Because of
3 those Special Conditions.

4 COMMISSIONER HANSON: It sounds as if, though,
5 it might be safer to say it's one of the safest
6 pipelines.

7 I mean, can you honestly say this is the safest
8 pipeline ever built in America?

9 THE WITNESS: Well, until we -- sorry.

10 COMMISSIONER HANSON: Go ahead.

11 THE WITNESS: Until we -- you know, until we
12 build the pipeline, I suppose we can't say it is the
13 safest, but we can say the measures that are incorporated
14 in this pipeline are significantly more than any other
15 pipeline that is built and will --

16 And I base this on the conclusion that the
17 Department of State provided in their report, and I would
18 point you to it. It indicates that this would have a
19 higher degree of safety than a pipeline built under the
20 normal code.

21 COMMISSIONER HANSON: Okay. I'd like to revisit
22 taxes just for a moment if I could, having been through
23 the process with Keystone, as well as with XL.

24 You testified in both orally and written
25 testimony pertaining -- and you've testified several

1 times pertaining to the estimated payment in taxes by
2 Keystone will be around 9.3 million and that the actual
3 2014 would be 4.3 million and that that was due to a -- I
4 believe you said a change in the tax method by the
5 Department of Revenue. Either the Department of Revenue
6 or the Legislature made some changes or the Department of
7 Revenue decided to tax it in a different methodology.

8 What is difference, though, between that
9 actual -- do you know or is there someone else such as
10 Mr. Kloecher [phonetic], I believe is that how you
11 pronounce his name, Steve Kloecher, I believe.

12 THE WITNESS: I'm not familiar with
13 Steve Kloecher. I think Ken Marsh is the person in our
14 company.

15 COMMISSIONER HANSON: Would you be able to tell
16 me, tell us, what the effect of the DOR's methodology
17 change -- the dollar amount -- it sounds as if you were
18 saying the difference between the 4.3 and the 9.3,
19 5 million dollars, is a result of the --

20 THE WITNESS: They changed the assessment
21 methodology. That's right.

22 COMMISSIONER HANSON: Right.

23 However, are you saying -- are you actually
24 testifying that the entirety of that difference is a
25 result of that change in methodology, or are there other

1 reasons?

2 THE WITNESS: Well, I mean, the estimate would
3 have been based on the estimated cost of the project.
4 I'm not familiar about how the cost of the project
5 changed or what the operating cost changed from the
6 estimate to the actual.

7 There may have been some slight variations as a
8 result of things, you know, factors such as that. But my
9 understanding based on what I've been told is that the
10 assessment methodology change was the biggest factor in
11 contributing to that change I think from 9.1 actually to
12 4.3.

13 I should also point out that the -- using the
14 replacement cost would have probably resulted in a
15 decreasing tax revenue over time. And that's what we
16 might have expected.

17 And what's happening now with the new assessment
18 methodology that's used is you can see that the taxes are
19 actually increasing over time.

20 So, you know, I guess if we were here 10 years
21 from now, we would see the difference between our
22 estimate and what was actually paid, you know, decreased
23 dramatically because the methodology actually allows for
24 increasing revenue over time.

25 COMMISSIONER HANSON: Thank you for that

1 explanation.

2 In your rebuttal testimony -- I believe it's
3 Exhibit 2010 -- on paragraph 8 you've stated that you
4 personally viewed -- and this is in regard to the Sibson
5 properties. That you've reviewed the photographs and
6 some of the information.

7 Have you spent any amount of time trying to
8 figure out how to resolve that challenge with their real
9 property?

10 THE WITNESS: Well, I've talked to the staff
11 about that particular problem. And, you know, we've
12 worked hard on the Sibson's property to try to solve the
13 problem we've had, that's there.

14 We have some 403 landowners and 535 tracts on
15 the 220 miles of the original Keystone Pipeline. And
16 with the exception of nine tracts where reclamation
17 continues, all of the other tracks have been fully
18 reclaimed and to the landowners' satisfaction.

19 In this particular case we've almost every year
20 gone back and worked with the Sibsons to try to modify
21 the plan and do some more reclamation in order to satisfy
22 their concerns and will continue to do so until we're
23 successful.

24 In addition, we'll continue to compensate them
25 for any lost crop damage until we are successful at fully

1 reclaiming the land.

2 The process that, you know, we'll use is to -- I
3 understand that most recently in July of this year that
4 there was another inspection of the land, and our expert
5 indicates that the native grasses that we planted have
6 established themselves, and he believes that over time
7 they will fill in to the point where it will be
8 successful and the problem will be solved. And some of
9 the weeds and other, you know, vegetation that's not
10 desirable will be, in effect, choked out.

11 COMMISSIONER HANSON: Thank you for the
12 thoroughness of your answer. I had about five questions
13 pertaining to that, and you answered all of them.

14 With the exception of -- is it confidential the
15 percentage of compensation you're giving them in relation
16 to the cropland loss?

17 THE WITNESS: I don't have personal knowledge of
18 what we're paying them at this time.

19 Typically when we obtain an easement from a
20 landowner we end up paying a decreasing value over five
21 years to compensate for crop loss, starting at
22 100 percent obviously in the first year because they're
23 not able to use that land as it was before, but over time
24 a decreasing amount.

25 In this particular case because of their

1 concerns I'm sure we're probably paying more than
2 normal.

3 COMMISSIONER HANSON: Would there be someone
4 testifying later on who would have that information?

5 THE WITNESS: I don't think we have anyone who
6 would have that direct knowledge.

7 COMMISSIONER HANSON: Thank you.

8 And you testified that there were nine tracts
9 out of the entire -- not just in South Dakota but
10 throughout the entire pathway of the Keystone Pipeline?

11 THE WITNESS: No. It was nine out of 535 tracts
12 in South Dakota.

13 COMMISSIONER HANSON: Okay. Thank you very
14 much. Appreciate that.

15 Thank you. I'm finished, Mr. Smith.

16 MR. SMITH: Thank you.

17 Chairman Nelson.

18 CHAIRMAN NELSON: I almost hesitate to ask this
19 question because I can't tag it to a particular
20 Condition, which is what we ought to be talking about
21 here today. But my curiosity drives me to ask the
22 question.

23 There's been some discussion about this
24 corrosion in a particular location on the base Keystone
25 Pipeline that ended up the thickness of a dime.

1 THE WITNESS: Uh-huh.

2 CHAIRMAN NELSON: With the kind of pressures
3 that you're operating on, that to me would have caused a
4 burst at that location.

5 Is that what happened, or how was that
6 discovered?

7 THE WITNESS: Well, you know, again, Mr. King
8 can probably provide much more detail so I'll keep this
9 fairly high level.

10 The actual feature, although it was as thick as
11 a dime, it was also only the size of a dime in diameter.
12 And as such, that feature wouldn't normally result in a
13 burst, I think is the word you used, even at full line
14 pressure. Right.

15 The feature would have to be very much longer
16 than that. Inches, if not feet, longer for that to cause
17 a burst, if you will. So that's the first thing.

18 And, secondly, we have a number of different
19 layers in our pipeline integrity program. And you've
20 heard about a few today. Starts with fusion bond epoxy
21 to prevent corrosion in the first place. And then a
22 cathodic protection system --

23 Well, first of all, as I testified today, a
24 passive cathodic protection system during construction to
25 protect the pipe when it's buried. And then an impressed

1 or active cathodic protection system to protect the pipe
2 and any defects that might be in the coating once it goes
3 into operation.

4 But on top of that we're also assessing the
5 pipeline throughout the life by doing in-line
6 inspections. And the first one has to be completed
7 according to our Special Conditions very early into
8 operation. And then we would do subsequent in-line
9 inspections every three to five years.

10 For example, usually the length of time between
11 the next inspection we would determine by what you found
12 in the first inspection. And it was that in-line
13 inspection, that first in-line inspection, that was done
14 on that segment of pipe that found that feature and
15 allowed us to go out there and repair that feature before
16 it became a problem.

17 But that is one of the layers of our pipeline
18 integrity program that's designed to make sure that the
19 pipeline can operate in a safe manner for many, many
20 decades.

21 CHAIRMAN NELSON: How many of those dime
22 thickness, dime-sized spots did you discover?

23 THE WITNESS: Again, I don't have that detail.
24 There were very few, as I understand it, on that in-line
25 inspection, and I'm sure Mr. King will be able to provide

1 a little more detail on that.

2 CHAIRMAN NELSON: Thank you. The last question
3 I'm going to shift to play off of Mr. Hanson's question
4 regarding the Sibson situation.

5 Reclamation is a big deal to me. But here's
6 what's got me puzzled about this whole thing. Why are we
7 having such problem with that one location and no
8 problems on most of the rest of it. That's got me
9 puzzled.

10 Can you help me out about what is so unique
11 about that spot?

12 THE WITNESS: You know, I've asked that same
13 question, Chairman Nelson. And it has to do with, you
14 know, many, many factors. And that's what's -- you know,
15 that's what's unique about reclamation is that every
16 property is slightly different from the type of land that
17 you're trying to reclaim to how it's used by the
18 landowner.

19 And, you know, many other tracts are, you know,
20 farmed, for example, in corn. And so the reclamation --
21 if you were to go out -- in fact, earlier or last week I
22 was at a pump station in northern Nebraska that we
23 visited called the Hartington Pump Station.

24 And, you know, when we were at that pump station
25 you looked north and south from that pump station and

1 looked at the corn, you would have never even been able
2 to know where the right of way is, let alone the pipeline
3 because, you know, that crop looked identical throughout.
4 It was consistent.

5 So, in this particular case, from what I've been
6 told, it probably has a little bit to do with the type of
7 land it is. It probably has a little bit to do with how
8 it was originally planted. And it also probably has a
9 little bit to do with, you know, just giving it time for
10 those native species to germinate and reestablish
11 themselves.

12 CHAIRMAN NELSON: Thank you.

13 MR. SMITH: Any other Commissioner questions?

14 Okay. With that, we will then turn to
15 Intervenors and any responsive cross-examination.

16 Mr. Clark.

17 MR. CLARK: Thank you, Mr. Smith. Travis Clark
18 on behalf of Cheyenne River Sioux Tribe.

19 RE-CROSS-EXAMINATION

20 BY MR. CLARK:

21 Q. The HCA review process outlining Condition 34 is now
22 closed; isn't that correct? It's completed?

23 A. Well, I think we're still finalizing that process so
24 it is not closed per se.

25 Q. Once it becomes closed, affected local tribal

1 governments will have no opportunity to partake in that
2 process; isn't that correct?

3 A. Well, I think once we've -- I guess by definition
4 once you end a process that no outside, you know,
5 interested parties would have the ability to provide
6 further input or input that was meaningful and would
7 change the findings of the analysis.

8 MR. CLARK: Thank you. No further questions.

9 MR. SMITH: Okay. Next is Mr. Rappold, and he
10 is not here, nor Ms. Wynne.

11 So we're to Mr. Capossela, I think.

12 MR. CAPOSSELA: Thank you, Mr. Smith.

13 RE-CROSS-EXAMINATION

14 BY MR. CAPOSSELA:

15 Q. Mr. Goulet, you testified that TransCanada will
16 "continue to work with the Tribes."

17 What South Dakota Tribes do you work with?

18 A. Well, you know, as I said, we've reached out to
19 Tribes previously over the last several years, and in
20 some cases we did talk to tribal communities. But as I
21 have testified, some Tribes now have resolutions in place
22 and don't permit their tribal members to work with us.
23 So that restricts the amount of interaction we can have
24 with them.

25 Q. So when you say you'll continue, you don't -- is

1 that entire -- continue suggests something you're
2 presently conducting.

3 A. Well, we'll continue to try to work with them,
4 Mr. Capossela. And we'll reach out, and if they're
5 willing to work with us, we're willing to work with
6 them.

7 Q. You did testify that there was interactions between
8 TransCanada and Standing Rock Sioux Tribe. Would you
9 elaborate on that? Who, when, where, what?

10 A. I don't have the specific details of all the
11 relationships or discussions we've had with each of the
12 Tribes over the last several years. I do know that
13 that's one of the Tribes that we've tried to reach out
14 over the last several years.

15 MR. CAPOSSELA: I have no further questions.

16 Thank you, Mr. Smith, Commissioners.

17 MR. SMITH: Thank you.

18 Ms. Real Bird or Ms. Baker.

19 RE CROSS-EXAMINATION

20 BY MS. REAL BIRD:

21 Q. Good morning, Mr. Goulet. Thomasina Real Bird for
22 the Yankton Sioux Tribe.

23 The material safety data sheets that were mentioned
24 in your testimony, I'd like to touch on that.

25 Who were the responders and officials that

1 participated in the test of your company's ability to
2 provide the applicable MSDS?

3 A. Yeah. I think you're referring to the Nebraska
4 Department of Environmental Quality test that was done as
5 part of our permitting process in Nebraska. Is that
6 true?

7 Q. Yes. And I'm asking about the statements in your
8 rebuttal.

9 A. Right. So you asked who was --

10 Q. Who were the responders and officials that
11 participated in the test that were mentioned in your
12 rebuttal?

13 A. I understand there were a handful of different local
14 responders associated with that particular test.

15 Q. Do you know who they are?

16 A. Not off the top of my head, but I believe some of
17 them are listed in the rebuttal testimony. If not, I
18 think they're also in the Final Supplemental
19 Environmental Impact Statement. They're described in
20 there as well.

21 Q. Do you know if any of them were tribal responders or
22 officials?

23 A. I don't believe they were.

24 Q. The rebuttal testimony describes this process where
25 the landowner -- it would simulate a landowner detecting

1 an event?

2 A. And calling an 811 line. That's right.

3 Q. The 811 line, actually it said the scenario chosen
4 for the exercise was a landowner performing excavation
5 work without first calling 811 to determine the location.
6 And it described the process where a landowner would call
7 TransCanada's toll-free emergency line to report the
8 incident.

9 Are the toll-free emergency lines made known to
10 landowners, or how would that information get to the
11 correct person in real life?

12 A. Well, first of all, all the landowners would be
13 aware of the toll-free number, and as well on all our
14 marker signs along the road it's listed on -- it's
15 written on the bottom of that sign.

16 So there's many different ways that you'd be able to
17 obtain that number.

18 Q. So landowners that you identify along the route are
19 given the toll-free number?

20 A. That's right. We meet with each of the landowners
21 on a periodic basis and speak to them about our Emergency
22 Response Plan, as well as, you know, their land and the
23 pipeline and give them the information that they need.

24 And in that package of information that we would
25 update from time to time it would include that

1 information.

2 Q. And then you also said it's placed on signs along
3 the route. How close in distance are the signs placed
4 along the route?

5 A. Well, they're placed at every road crossing as a
6 minimum. And more frequently as required depending on
7 the surface features.

8 Q. Is anybody else provided with the toll-free number,
9 like local responders?

10 A. Emergency responders. As part of our Emergency
11 Response Plan we would also meet through the operation
12 with the various emergency responders and give them --
13 provide them basic information that -- in general more
14 detailed information than we would provide to landowners
15 or other members of the public.

16 Q. But you don't know if Tribes have been a part of the
17 Emergency Response Plan draft template?

18 A. Well, I'm not -- first of all, the Emergency
19 Response Plan is still in development.

20 Q. Uh-huh.

21 A. And to my knowledge I'm not aware if the Tribes have
22 been involved at this point.

23 Q. And do you intend to engage Tribes and provide this
24 information to them even if they aren't willing to engage
25 in other discussions?

1 So my question is at a minimum would you provide the
2 notice to Tribes of the information that would be
3 relevant to the simulation that was conducted if it were
4 to happen in real life?

5 A. Well, certainly the Tribes which would be
6 affected -- and we talked about, you know, ways in which
7 they could be affected. They're downstream of the
8 pipeline or there's a river that goes through there, the
9 reservation or tribal lands.

10 We would contact those people and -- you know, those
11 Tribes and provide them the information like anyone else
12 and reach out regardless of what -- you know, they had a
13 resolution or not, I guess.

14 Q. Yeah. That's my question, if you were going to stop
15 at -- you know, if they had the resolution or if you
16 perceived them to not want to engage --

17 A. No.

18 Q. -- you would, nonetheless, provide the
19 information --

20 A. That's correct.

21 Q. -- in a notice form. Okay.

22 The thickness of a dime incident, have there been
23 any other incidents on Keystone I that were similar?

24 A. Well, first of all, I don't know if I'd call it an
25 incident, but it was a feature that was found during the

1 in-line inspection.

2 Again, I think Mr. King will be able to provide you
3 with better information than I can about other features
4 which are found during those inspections.

5 But my understanding is there were no other features
6 as deep as the one that we talked about.

7 Q. So feature, what would that include? I guess I
8 don't know the definition of feature that you're --

9 A. So when you do an in-line inspection you get the
10 results back and you go and you, you know, visually
11 examine anything which you deem to be, you know, a
12 concern.

13 And so on a typical in-line inspection there might
14 be some what we call excavations or digs along the
15 pipeline to look at those features. And this is one that
16 was done and repaired.

17 Often you never find anything of significance, and
18 you literally recoat the pipeline and put it back into --
19 you know, put it back, the ground back, and continue to
20 operate the pipeline.

21 Q. So the in-line inspection, how do you determine
22 which areas to excavate and inspect?

23 A. It's based on the results from the in-line
24 inspection tool.

25 Q. Okay.

1 A. The tool is a tool that travels along with the flow
2 of the oil. And it's using a number of different
3 technologies. Every in-line inspection tool is slightly
4 different, but they use a number of technologies to
5 determine the thickness of the pipe at any location along
6 the -- on the pipeline.

7 And you can tell by the fact that it picks up a
8 feature that's only a dime in diameter that it's a very
9 sensitive tool and can pick up almost anything on the
10 pipeline.

11 Q. Do you happen to know how many features have
12 resulted in excavation since Keystone I's been built?

13 A. I don't have that information.

14 Q. No general estimate?

15 A. No.

16 Q. Who would have that information in your
17 organization?

18 A. Our pipeline integrity department would have that
19 information.

20 Q. Would any of the folks that are scheduled to testify
21 here have that information?

22 A. I don't know if they -- Mr. King has that available
23 to him or not.

24 Q. Does TransCanada know what happens to the refined
25 product following the refinement process?

1 A. Well, generally we know that it's -- it's sold
2 domestically, and there's a small percentage, as we
3 talked about yesterday, that is sold internationally.
4 But short of that, we don't have any knowledge.

5 You know, the oil, as I testified yesterday, is not
6 owned by us. The refiners refine their product, and
7 they're a business that goes and sells that product as
8 they deem appropriate.

9 Q. So what is your testimony based on that only a small
10 percentage is exported?

11 A. Well, it's based on kind of public records of what
12 percentage of all refined products are exported from the
13 United States. And that would be in the neighborhood,
14 you know, of less than 15 percent is my understanding
15 today.

16 Q. So it's based on current information?

17 A. That's right.

18 Q. So is there anything that would be available to
19 predict what the shippers that receive the product from
20 your pipeline will do?

21 A. Not to my knowledge. You know, they have businesses
22 and they have their own plans and they're changing all
23 the time. And we're not privy to their business plans.

24 Q. So is it fair to say we cannot -- you cannot
25 accurately predict where the refined product will end up,

1 whether that's exported or domestic use?

2 A. I think, again, you'd have to look at public records
3 and the U.S. Energy Information Administration and their
4 predictions of the amount of refined products that are
5 manufactured in the United States and their prediction of
6 how much is exported.

7 And, again, that's public information. But it is
8 fair to say that I can't personally predict that.

9 Q. We'll switch gears.

10 Have there been any letters of intent signed with
11 any Tribes in South Dakota?

12 A. No.

13 Q. Have there been any MOUs signed with any Tribes in
14 South Dakota?

15 A. No.

16 Q. Have there been any community agreements signed with
17 any Tribes in South Dakota?

18 A. No.

19 Q. Have you engaged in the process to offer letters of
20 intent with any Tribes in South Dakota?

21 A. We've contemplated it.

22 Q. Which Tribes have you contemplated?

23 A. I'm not sure that we've actually sent the letters of
24 intent to them yet. And, again, it has to do with the
25 Tribes' indication that they didn't want to work with us.

1 Q. So which Tribes are you contemplating sending
2 letters of intent to?

3 A. We would like to send letters of intent to and agree
4 on a letter of intent with all Tribes if they were
5 willing to.

6 Q. As you sit here today, which Tribes are you
7 contemplating sending letters of intent to?

8 A. As I said, all of the Sioux Tribes in South Dakota,
9 if it makes sense to and if it's germane to them and
10 they're interested in participating. Particularly those
11 in the closest proximity to the pipeline alignment.

12 Q. Have you prepared any draft letters of intent with
13 the intention of proposing it to any Tribe in
14 South Dakota?

15 A. I don't know that a -- an outline for a letter of
16 intent may have been drafted, but I don't know that the
17 final form has been drafted.

18 Q. Which Tribes would fit in that category?

19 A. Again, we haven't actually, to my knowledge, issued
20 any letters of intent yet or agreed on any letters of
21 intent.

22 Q. Which Tribes have you discussed letters of intent
23 with?

24 A. I think we've reached out to many Tribes to see if
25 they'd be interested. Most of them have rebuffed our --

1 our offers.

2 Q. And what form of the reaching out -- what form does
3 reaching out take?

4 A. It's talking. It's talking with, you know, tribal
5 leadership.

6 Q. So the elected leadership or the governing body of a
7 Tribe? Who do you --

8 A. Either in both.

9 Q. Who do you address the letter to or the phone call
10 to?

11 A. I'm not familiar with, you know, the exact process
12 that's used, but it would be the leadership of the Tribe.

13 Q. And would that be from a vice president or a
14 president, or who in your organization would do the
15 communication?

16 A. I mentioned Mr. Thompson, and he'd be the person
17 that would most likely do that. If things progressed
18 with the discussions and there's an interest, you know,
19 someone that he reports to or even myself might get
20 involved.

21 And, in fact, you know, I was at a signing ceremony
22 for the Gulf Coast project last year for one of the
23 Tribes and participated in that process. And our
24 intention is to try to work on more such agreements with
25 Tribes across the United States.

1 Q. What would be an example of a community investment
2 program that you mentioned earlier?

3 A. Well, I mean, there's all sorts of forms community
4 investment can take. But really we work with the Tribes
5 to determine what's important to them. And, you know, in
6 some cases we might invest in infrastructure and
7 participate in infrastructure.

8 Sometimes it will be a program that they have. It
9 all really depends on what their needs are. And if it
10 meets our criteria, then we would consider it as part of
11 an investment, community investment program.

12 Q. Do you receive those needs from the elected
13 leadership or just any tribal member?

14 A. Well, it's not any tribal member. It has to be with
15 the leadership. It has to be a formal agreement between
16 TransCanada and the Tribe that dictates how that money is
17 spent.

18 We obviously want to make sure it's fair and
19 equitable and that Tribal members have equal access. And
20 the only way that you can do that is by doing it with
21 the -- you know, having an agreement with the leadership.

22 Q. So, for example, a community investment program
23 would not include providing household furnishings to just
24 one or two tribal members?

25 A. No, it wouldn't.

1 Q. And what do you ask for in return for these Tribes
2 that enter into agreements with your company?

3 A. As I said earlier, we're respecting, you know, their
4 traditional traditions and the use of the land and the
5 importance of building, you know, a relationship based on
6 respect and trust.

7 And we don't expect anything in return other than a
8 relationship. No different than we would have with, you
9 know, other stakeholders that we might invest in similar
10 programs when we're going near or through a community,
11 we'd have a similar program.

12 Maybe not quite as extensive, but, you know, we do
13 the same sorts of things in all the communities in which
14 we operate.

15 We believe a linear pipeline or any linear
16 infrastructure is -- because of its very nature, touches
17 so many different people, that it's important to have a
18 relationship with the various stakeholders and
19 communities along its land. And so this would be just
20 another relationship that we make sure that we respect
21 and work with.

22 Q. So somewhere in your answer I heard you don't expect
23 anything in return. Is that the short answer to my
24 question?

25 A. That's the short answer, I guess.

1 Q. So what's the consideration for the agreement? The
2 Tribe does not agree to anything so it's a unilateral
3 agreement?

4 A. Well, many corporations engage in community
5 investment programs that help the communities in which
6 they operate. There's a recognition that the facilities
7 and the business that's undertaken by a company has some
8 sort of effect on the community, and, therefore, these
9 types of programs are designed to recognize that and
10 provide, you know, charitable programs that can be used
11 by the community.

12 That's a normal part of corporate business practice
13 throughout the United States.

14 Q. So what about Tribes just south of South Dakota, you
15 know, that are very close, actually bordering, share a
16 contiguous border with South Dakota?

17 Has there been any letters of intent signed with
18 those Tribes?

19 A. I'm not personally familiar with any letters of
20 intent with any Tribes close to South Dakota.

21 Q. What about Tribes in the southern leg of the
22 pipeline project?

23 A. As I mentioned to you earlier, I've been involved in
24 one signing with one Tribe on the Gulf Coast project, and
25 our intention or our objective is to -- is to actually

1 reach three community agreements with three Tribes in the
2 Gulf Coast region by the end of this year.

3 Q. What's the Tribe that you have the agreement with
4 now?

5 A. I can't remember off the top of my head.

6 Q. Is it the Ponca Tribe?

7 A. I believe that might be the Tribe, yeah.

8 Q. And what did you provide to that Tribe?

9 A. I don't have those details.

10 Q. And is it true that in return your company required
11 their consent for the pipeline project for the southern
12 portion?

13 A. I doubt that. But I don't have that detail.

14 Q. Who in your organization would have that detail?

15 A. Mr. Thompson would.

16 Q. Would anybody testifying in this evidentiary
17 hearing --

18 A. I doubt anyone testifying would.

19 Q. And are you -- I know we had questions earlier about
20 Mr. Thompson. Is he subordinate to you?

21 A. No. He works for a corporate department that
22 provides support to the department which I lead. He
23 works for the community and sustainability department.

24 Q. So is anybody testifying during this hearing his
25 superior in your organization?

1 A. No, they're not.

2 Q. In your opinion, what are the energy requirements of
3 the people of South Dakota?

4 MR. TAYLOR: I'm going to object to that as far
5 beyond the scope of any issue that's --

6 MS. REAL BIRD: The statute provides the
7 Commission take that into consideration for these
8 projects, that the energy needs of South Dakota are met.

9 MR. SMITH: The purpose of this hearing is to
10 determine whether Keystone remains in compliance with
11 Permit Conditions.

12 MS. REAL BIRD: And Condition 1 includes
13 adherence to South Dakota State law, including --

14 MR. SMITH: That Permit has been issued in
15 accordance with that standard, and I'm going to sustain
16 the objection.

17 Q. How does the proposed Keystone XL Project -- in your
18 estimation, how would TransCanada's Keystone XL Project
19 benefit the people of South Dakota?

20 MR. TAYLOR: Same objection. Beyond the scope
21 of the hearing.

22 MS. REAL BIRD: And, Mr. Smith, the Amended
23 Condition 1 includes -- requires the company to adhere to
24 state law. They have to demonstrate their ability to
25 meet that, continue to meet that. And so I do believe

1 it's within the scope of this hearing.

2 MR. SMITH: Continue to meet what now?

3 MS. REAL BIRD: The Amended Condition 1 includes
4 following state law. So they have to demonstrate -- they
5 have to certify the ability to meet that Condition 1,
6 including the South Dakota Codified Law that requires the
7 energy requirements of the people of South Dakota be met
8 by this project.

9 MR. TAYLOR: Mr. Smith, that's a misstatement of
10 what the statute says.

11 MS. REAL BIRD: I'll read it. I'll pull it up
12 if you want to hear it. It was in my opening remarks
13 too.

14 Codified law 41-41B-1, halfway through. "By
15 assuming permit authority, the State must also ensure
16 that these facilities are constructed in an orderly and
17 timely manner so that the energy requirements of the
18 people of the state are fulfilled."

19 MR. SMITH: It appears to me that that is
20 directing the State to do that. Not Keystone.

21 MS. REAL BIRD: We have the State in this room,
22 though. You have to evaluate the proposed facility here.

23 MR. SMITH: And we did that when we issued the
24 Permit.

25 I don't know. Other thoughts?

1 MS. REAL BIRD: I'd like to --

2 CHAIRMAN NELSON: Sustained.

3 COMMISSIONER HANSON: Sustained.

4 MR. SMITH: Sustained. The Commissioners
5 sustained.

6 Q. I think one last -- Mr. Goulet, have you ever
7 required any form of verification prior to following
8 through with a community contribution?

9 A. I'm not aware of such a requirement. But I think we
10 generally want to determine that a community contribution
11 was going to the right places. But I'm not personally
12 aware of any requirement to verify.

13 MS. REAL BIRD: Thank you, Mr. Goulet. No more
14 questions.

15 (A short recess is taken)

16 MR. SMITH: Mr. Blackburn.

17 MR. BLACKBURN: Mr. Smith, my colleague
18 Bob Gough has requested that he precede me because he has
19 another appointment.

20 Is that allowed?

21 MR. SMITH: It is allowed.

22 MR. GOUGH: Thank you very much. Thank you,
23 Mr. Blackburn.

24

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RE CROSS-EXAMINATION

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BY MR. GOUGH:

Q. Hello again, sir, Mr. Goulet. Bob Gough. Just to follow up with a couple of questions.

You're familiar with both the FEIS and the FSEIS in this matter?

A. I'm more familiar with the FSEIS, as when I took over the Keystone responsibility I believe the FEIS was no longer being considered. So I'm more familiar with the FSEIS and not very much on the FEIS.

Q. Okay. Are you aware of any conflicts between them?

A. Well, I don't know what you mean by conflicts, but I know there were some changes made between the two documents as a result of changing circumstances, changing projects, and changing information.

Q. Were these significant changes, in your opinion?

A. I don't think any of the changes that we made to the project basically between Hardisty, Alberta and Steele City, Nebraska are significant.

Q. What were the circumstances that required that change from the FEIS?

A. As I say, that's a general question. There were many small changes associated with the document. Probably, you know, our plans had changed a little bit. We had done reroutes.

1 The FSEIS, for example, incorporated the reroute
2 that we considered in -- or that we implemented in
3 Nebraska. That would be a change to the document.

4 Q. Did you have a role in providing input into the
5 FSEIS?

6 A. I provided some input into the document, yes.

7 Q. And what was the nature of that input?

8 A. Well, I would have reviewed parts of the -- well,
9 first of all, let's be clear. The FSEIS is actually --
10 it's generated by Department of State. So I would have
11 provided some of the information that went to the
12 Department of State, but they're creating the document
13 itself.

14 So, for example, I would have reviewed information
15 by Staff that would have been provided to the -- to the
16 Department of State.

17 Q. Thank you. And you're familiar with the Conditions
18 that the FSEIS provides?

19 A. I'm generally familiar with them.

20 Q. To your knowledge, are there any conflicts with the
21 original Conditions imposed by this Commission on your
22 project?

23 A. No. I'm not aware of any conflicts between the
24 Conditions of the FSEIS and the Conditions imposed by
25 this -- our PUC -- or South Dakota PUC Permit.

1 Q. So it would be your position that the FSEIS would
2 not in any way -- the changes there would not in any way
3 result in significant changes in the Permit Conditions
4 issued in 2010?

5 A. That's correct.

6 Q. In earlier questioning you were asked and made some
7 remarks with regard to the adverse weather conditions and
8 flooding that your pipeline may have to withstand; is
9 that correct?

10 A. I think I was asked a question about that.

11 Q. Right. Are you overseeing the preparation of the
12 adverse weather plan that Condition 25 requires of you?

13 A. I think that -- well, I'm overseeing. I mean,
14 ultimately it's in my area of accountability, but I
15 wouldn't personally be doing it, no.

16 Q. Who would personally be doing it? Do you know?

17 A. I'm not sure we've established that yet.

18 Q. Have you established parameters for that adverse
19 weather plan?

20 A. I'm not personally aware of the parameters -- the
21 parameters have been established or not.

22 Q. Would you be relying on whomever it is that you
23 obtain or contract to give you the parameters?

24 A. Yeah. That would be the normal course of business.

25 Q. Will you be providing any input into what you would

1 expect to have out of that adverse weather plan?

2 A. I doubt it.

3 Q. Do you know to what degree of flooding your pipeline
4 will be designed to meet?

5 A. Well, our HDDs are designed in such a manner that
6 they're not affected by severe events of river flooding.
7 And that's why we directionally drill most of our major
8 river crossings and maintain a distance of a minimum of
9 25 feet between the deepest part of the channel and the
10 pipeline, the top of the pipeline.

11 The exact criteria that's used to determine, you
12 know, whether it's a 100-year event or a 500-year event,
13 I'm not familiar with.

14 Q. So you're not familiar whether these are designed to
15 withstand 100-year events or 500-year events?

16 A. I don't know what the exact criteria is, but I do
17 know that we take a very conservative approach to it and,
18 as I said, used horizontal directional drilling as a
19 means of making sure that we never get into a situation
20 where there's scouring of a pipe in new pipelines that
21 are built today.

22 Q. Thank you. What percentage of your pipeline may be
23 above ground?

24 A. Well, the majority of the pipeline is buried. The
25 only time that you would -- the pipeline would not be

1 buried is within the pump stations themselves.

2 You know, this is probably a question better
3 answered by Ms. Kothari later, but I'm not familiar with
4 any other above ground pieces of pipe.

5 Q. Do you have a distinction made between streams and
6 rivers with regard to the scouring and drilling?

7 A. Well, certainly, depending on the size of the stream
8 or river, we would determine what the most appropriate
9 technique is to cross the river. So we don't necessarily
10 use directional drills on smaller creeks.

11 Q. Can you give me any -- an understanding of how small
12 a creek are you talking about? Where do we draw lines
13 between rivers and creeks?

14 A. So, again, I think Ms. Kothari could provide a
15 little more detail that I don't have.

16 Q. You had discussed earlier with regard to some of the
17 more fragile land conditions where pipeline may be
18 buried.

19 Has your planning incorporated any new information
20 with regard to earthquakes occurring in South Dakota?

21 A. Not to my knowledge. But, again, Ms. Kothari would
22 have that detail.

23 Q. Your responses to questions with regard to crop
24 loss -- and you said the amounts, of course, would
25 diminish over time.

1 How long of a time period are you anticipating that
2 such compensation may be made available to farmers and
3 ranchers?

4 A. Well, generally -- and this is just a
5 generalization -- we're able to reclaim the land and
6 reestablish the crops very quickly after construction
7 within a season or two. And by the third season you may
8 not see any crop damage whatsoever.

9 But in certain circumstances, as we've talked about
10 earlier, one unique circumstance, it takes longer to
11 reestablish.

12 Generally we use a formula over five years because
13 that's about the worst-case scenario we've generally
14 seen. And, if anything, that formula provides more
15 compensation to landowners than they would have received
16 if they were, you know, able to have a full crop over
17 those five years.

18 Q. What is the anticipated lifetime of this project?
19 Lifetime of the infrastructure?

20 A. Well, I mean, pipelines can last for decades. You
21 know, we -- we have -- you know, and Mr. Diakow can
22 provide more information, but I think it's public
23 knowledge that our average length of our long-term
24 contracts is about 18 years on a pipeline such as this.

25 But that's not to say those contracts would not be

1 renewed. And depending upon how the -- you know, if you
2 maintain the maintenance on the pipeline and -- as I
3 described earlier, you can operate a pipeline like this
4 for 40, 50, 60 years quite easily.

5 It's really up to our regulator, PHMSA, to determine
6 and approve that a pipeline can continue to operate in a
7 safe manner.

8 Q. And at some point, though, it would be beyond its
9 functional life as a safe piece of infrastructure, I
10 would assume?

11 A. Technically if it's maintained properly, a pipeline
12 could last indefinitely. Technically.

13 Q. Practically, have we seen -- have you seen pipelines
14 such as you're planning -- although, I understand you're
15 planning state of the art, and state of the art means
16 simply untried. I mean, we've not gotten there before
17 where we don't have a history to do state of the art, as
18 I understand it.

19 A. Well, I don't think I've used the word state of the
20 art. So many of the techniques -- all of the techniques
21 I've talked about are well-known to us. So we're not
22 experimenting or testing with anything here.

23 But, you know, there's pipelines that were built in
24 the '50s that are still in operation today in the
25 United States and are safely transporting hydrocarbons.

1 And given that technology's improved since the '50s,
2 I'm sure there will be pipelines that are built today
3 that are operated even longer.

4 Q. So is it your opinion that we will -- are you
5 anticipating ever having to remove this pipeline as a
6 company? Not you as the officer but you as a company?

7 MR. TAYLOR: Mr. Smith, I've tried to be as
8 liberal as I can, but this is far beyond the scope of
9 cross-examination by any other party. It's beyond the
10 scope of the direct examination of this witness, and I'd
11 object on that basis.

12 MR. GOUGH: I'm just trying to get a sense of
13 how long this pipeline's going to be in the ground. We
14 talk about reclamation of putting it in. I'm wondering
15 about reclamation when it's functionally finished.

16 MR. SMITH: Well, I'll let him see if he can
17 answer that. Again, like he said, he's assuming it may
18 last indefinitely, but that's his answer previously.

19 A. Sorry. Can you remind me of the question,
20 Mr. Gough?

21 Q. Sure.

22 At some point are you anticipating having to remove
23 the pipeline?

24 MR. TAYLOR: Now that's a different question,
25 and it is well beyond the scope.

1 MR. SMITH: I think it is, yes. And so I'm
2 going to sustain.

3 Q. So we do not know what the lifetime of this piece of
4 infrastructure is likely to be. Is that the
5 understanding I should have?

6 MR. TAYLOR: Objection. That's argumentative.
7 Been asked and answered at least three times.

8 MR. SMITH: Yeah. That's been asked and
9 answered enough. Sustained.

10 MR. GOUGH: No further questions.

11 MR. SMITH: Mr. Blackburn.

12 REXCROSS-EXAMINATION

13 BY MR. BLACKBURN:

14 Q. You had testified that there was a corn field where
15 the pipeline went through where you couldn't see where
16 the pipeline was at this point; is that correct?

17 A. I did, based on my observations last week.

18 Q. And is it true that you've seen many, many pipeline
19 rights of way during your long career?

20 A. That's true.

21 Q. Have you looked at pipeline rights of way from
22 satellite and/or aircraft photo imagery?

23 A. I've seen some photo pictures and satellite
24 imagery over the years, yes.

25 Q. Yeah. Have you looked at pipeline rights of way on

1 Google Maps or Google Earth?

2 A. I don't think I've -- well, I shouldn't say that.
3 Yes, I probably have looked at Google Maps to look at
4 facilities and right of way and pipelines in the past.

5 Q. Do you believe it's possible to -- looking at those
6 kinds of maps, to generally trace the route of a pipeline
7 across the landscape?

8 A. Sometimes it's very difficult, and sometimes it's
9 easier. It depends on the terrain. It depends on
10 features such as -- the most important feature is whether
11 there's vegetation like trees. And if there's trees,
12 it's easy to follow the pipeline right of way.

13 Q. Is it possible to see the soil disturbance on those
14 pictures over a pipeline that's -- even a pipeline that's
15 been in place for some time?

16 A. I wouldn't say it's easy. I think that was the --

17 Q. Is it possible?

18 A. It's possible. I guess at times it might be
19 possible. It depends on the length of time from the
20 point at which it was installed.

21 Q. So it's fair to say that on some pieces of property
22 the pipeline might have a longer term effect on the soil
23 and the soil productivity?

24 A. I think we'd recognize that soils are different and
25 disturbance will have a different effect in different

1 soils.

2 Q. In your opinion, are pipelines routes -- routes of
3 existing pipelines secrets?

4 A. Sorry. Are they secrets?

5 Q. Uh-huh.

6 A. Well, I think we have to be -- I think we have to be
7 careful how we share information in this day and age.
8 And, you know, they're considered, you know, necessary
9 and important infrastructure for the United States.

10 Q. And there are signs along the pipeline routes
11 required by law?

12 A. There are.

13 Q. And returning to the question of safety, you had
14 testified that if pipelines are maintained, they can last
15 indefinitely essentially.

16 Is that a fair characterization?

17 A. That's a fair characterization.

18 Q. Getting to the word "if" there, is it true that
19 there are human elements in maintaining the safety of a
20 pipeline?

21 Human management, human activity will determine
22 whether a pipeline is maintained safely?

23 A. I think that's a fair statement.

24 Q. Are there other aspects of pipeline safety that have
25 more to do with the physical nature of a pipeline, how

1 it's constructed and the materials of which it's
2 constructed?

3 A. In some cases. You know, for example, there were
4 pipelines from the '50s built -- or where the pipe was
5 supplied by a certain manufacturer that today there's a
6 known fact that those pipelines have higher incidents of
7 issues than perhaps other pipelines.

8 So that's an example of a physical characteristic
9 that may determine the length that a pipeline can be
10 operated.

11 Q. So is it true that if a pipeline is not maintained
12 properly, it can become a safety risk?

13 A. I guess that general statement is correct. But, you
14 know, you don't want me to go into the long dialogue that
15 TransCanada has a very extensive maintenance and pipeline
16 integrity program.

17 But, just generally, I would make that comment so we
18 would never be in a situation where we would be worrying
19 about the maintenance of a pipeline.

20 Q. Has TransCanada ever received any corrective action
21 orders from PHMSA on the Gulf Coast project?

22 A. I'm not sure that we've received any corrective
23 action orders. We have received -- no. I don't think we
24 have received any correction action orders.

25 Q. Have you received any letters from TransCanada --

1 from PHMSA or other forms of communications related to
2 the safety of the construction on the Gulf Coast project?

3 A. I am personally aware of two warning letters that we
4 received during the construction on the Gulf Coast
5 project.

6 Q. And are you generally familiar with the contents of
7 those letters?

8 A. Generally.

9 Q. Could you describe the contents of those letters?

10 A. Well, I think one was associated with welding, and
11 another one was associated with -- and I'd refresh my
12 memory. Coating. And there might have even been one
13 more feature that was talked about.

14 Q. Did TransCanada evaluate the merits of those
15 letters?

16 A. We did. We had extensive conversations with PHMSA
17 relative to those letters.

18 And it should be important to point out that, you
19 know, PHMSA does not consider those to be, you know,
20 compliance letters or -- they're merely providing
21 operators with their opinions on some potential issues
22 they've seen during their inspections of the pipeline.

23 Q. Do you agree that TransCanada had failed to comply
24 with any of its Special Conditions with regard to those
25 letters?

1 A. I think in all cases we rectified the concerns that
2 PHMSA may have had, and we were in compliance with the
3 Special Conditions. They would have never allowed us to
4 put the pipeline in service if we had not been.

5 Q. What were the causes of the conditions which you
6 corrected?

7 A. Well, as I said, one of them was coating damage that
8 we went back and recoated a number of pipe joints because
9 of concerns of coating.

10 Q. That was the correction. What was the cause of
11 those coating failures?

12 A. I think that particular one was weld splatter.

13 Q. And the other problems were related to welding?

14 A. I think the concern or the warning letter indicated
15 that there was -- and you have to forgive me. My memory
16 over the details is not perfectly clear, but there was a
17 concern over the rate of -- welding rejection rate that
18 we had in the early stages of one of the spreads that was
19 used on that pipeline.

20 Q. And do you remember what the welding rejection rate
21 was?

22 A. It was somewhere between 10 and 20 percent in the
23 early stages of the project.

24 Q. Do you know how many welds that -- approximately how
25 many welds were rejected?

1 A. Again, I don't have those details. But let me just
2 say that any rejected weld would have been repaired
3 satisfactorily so that it passed the inspection, and,
4 therefore, a good weld was placed into service.

5 The inspections that are done to reject a weld are
6 part of the quality assurance and quality control program
7 that you have in normal practice when you're building an
8 infrastructure and a pipeline as well.

9 Q. What was the failing in the quality control systems
10 that TransCanada had in place that resulted in you being
11 notified of these failures by PHMSA instead of correcting
12 them yourself before PHMSA became involved?

13 A. Well, generally there was no issue with our quality
14 control program. In fact, that's why we found out we had
15 a high incidence of weld failures.

16 So obviously our contractor in that case had a
17 problem with their process of welding that they had to
18 rectify. And the quality control program was 100 percent
19 effective.

20 Q. So your testimony is that it was the contractor that
21 failed to properly manage their welders?

22 A. The welding process. And we worked with the
23 contractor and over time their welding process and
24 production improved dramatically and by the end, you
25 know, was acceptable.

1 Q. You testified that the tax paid by -- paid on
2 pipelines in South Dakota might increase on the base
3 Keystone Pipeline and potentially on the Keystone XL
4 Pipeline might increase; is that correct?

5 A. Well, I think I testified that the taxes are
6 increasing on the base Keystone Project year over year,
7 as you can see from the records over the last five
8 years.

9 Q. And do you understand -- do you know why they are
10 increasing in terms of the calculations of the tax?

11 A. Well, as I said, the assessment methodology that
12 they use basically results in an increase in assessed
13 value in any given year and, therefore, taxes are
14 increased.

15 Q. Do you know the actual calculations in detail?

16 A. No, I don't. And I testified to that previously.

17 Q. Right. I'm sorry.

18 Do you know, is it approximately -- the value
19 increasing and the tax increase, approximately the same
20 as inflation?

21 A. I'm not aware of the formula so I wouldn't be able
22 to predict. All we can say, it's -- you know, from the
23 start of operation to now it's increased from 3 million
24 dollars to 4.3 million dollars, which is 1.3 million
25 dollars on a base of 3 percent, which is almost

1 50 percent, which is almost 10 percent increase per
2 year.

3 Q. Okay. Thank you. Moving back to the Bakken
4 Marketlink for just a couple of questions.

5 Could you describe in general the modifications that
6 were required in Canada to allow oil to be injected into
7 the pipeline in Montana?

8 A. To my knowledge, there would have been no changes in
9 Canada to allow injection at the Bakken Marketlink.

10 And I conferred with Staff during one of the breaks
11 and want to also point out that I was mistaken. There is
12 a 5-mile section of pipeline related to the Bakken
13 Marketlink facilities in Montana, you know, on top of the
14 tanks and terminal facilities that would be
15 established -- or built there.

16 And that's associated with building a segment of the
17 pipeline from other pipeline companies' locations to the
18 tank terminal which would sit adjacent to the Keystone XL
19 Pipeline.

20 So I just wanted to take this opportunity to correct
21 that as well.

22 Q. Thank you.

23 A. But I'm not aware of any changes that would be
24 required in Canada to allow for the injection in Montana
25 and taking the crude off in Cushing, other than some

1 changes obviously to the operating control center and the
2 programs that are in that operating control center.

3 Q. There were no additional tanks built in Canada to
4 allow that?

5 A. No, there wasn't.

6 Q. Thank you.

7 If I remember correctly from the 2009 proceeding,
8 originally is it fair to say that TransCanada planned to
9 have Keystone XL be a sole purpose pipeline in the sense
10 of moving oil only from Canada to either Cushing or the
11 Gulf Coast of the United States?

12 A. I believe that was the original intention, yes.

13 Q. Does that structure -- it was called a bullet
14 pipeline; is that correct?

15 A. I think that was the term that was often used.

16 Q. Is that operational design a relatively simple
17 pipeline to operate in terms of not having a lot of on
18 and off-ramps?

19 A. I think it doesn't change dramatically having one
20 additional on-ramp. It's approximately the same design.

21 The only difference is that one-eighth of the time
22 the segment between Hardisty, Alberta and Montana won't
23 operate, and the crude will be injected at the Bakken
24 Marketlink facility in Baker, Montana. That's the only
25 really difference in the operation.

1 Q. Okay. Thank you.

2 This is just to clarify whether you are the correct
3 witness.

4 With regard to more detail about the in-line
5 inspections done on the base Keystone Pipeline, is that
6 something that you were directly involved with
7 personally, or is that something that another witness is
8 more familiar with?

9 A. Well, Mr. King would be more familiar with those
10 in-line inspections than I am. And I wasn't responsible
11 for it, nor was any of my Staff.

12 Q. Thank you. Appreciate the clarification.

13 MR. BLACKBURN: No more questions.

14 MR. SMITH: Thank you.

15 Mr. Ellison, are you going to have extensive
16 questioning?

17 MR. ELLISON: I think it will take a while, sir.

18 MR. SMITH: Well, we usually do an hour and 15.
19 Should we break now and go to 1:00?

20 MR. ELLISON: Whatever you feel would be best.

21 (Discussion off the record)

22 MR. MARTINEZ: Yeah. One thing I had I think in
23 terms of a logistical issue, I think during Mr. Ellison's
24 questioning here we're going to have a number of
25 exhibits.

1 And I think it was my understanding that since
2 we had submitted them all electronically we'd be able to
3 project them on screens during the use of that.

4 Logistically how can we accomplish that?
5 Because that way we can avoid bringing a truckload of
6 paper.

7 MS. GUSTAFSON: At the computer we can project
8 them onto these screens and two of the TVs back there.
9 So if you have a paper copy, we also have a way of
10 managing that.

11 MR. ELLISON: That computer that's by the desk?

12 MR. SMITH: Mr. Martinez, I've got to remind you
13 too we need to get that -- what do you call it?

14 MR. MARTINEZ: Flash drive.

15 MR. SMITH: Yeah. Yeah. There you go.

16 MR. ELLISON: Thank you. I still may need
17 technical help.

18 MR. MARTINEZ: That particular flash drive just
19 has the exhibits on it that Mr. Ellison is going to use
20 for his cross-examination. It's not going to contain all
21 of the exhibits. We can give you that on a separate
22 drive.

23 MR. SMITH: We're going to go into break.

24 (A lunch recess is taken)

25 MR. SMITH: We'll call the hearing back to order

1 in Docket HP14-001.

2 Get settled there. I've got one preliminary
3 issue I wanted to talk about. I just mentioned it to you
4 out there, Bruce, but it's not just you.

5 We've got four parties yet who have not
6 submitted flash drives of the exhibits to Cheri. That
7 includes TransCanada. Or are you submitting paper
8 copies?

9 MR. MOORE: I'll have it tomorrow.

10 MR. SMITH: Okay. And the others that
11 haven't -- like first thing in the morning?

12 MR. MOORE: Yes.

13 MR. SMITH: Okay. And is that true with you
14 too, DRA? You said --

15 MR. MARTINEZ: We're saving it to a flash drive
16 right now.

17 MR. SMITH: You are. Thank you, sir.

18 Matt's not here, Rosebud.

19 And again, Travis, are you going to just provide
20 paper?

21 MR. CLARK: No. Like DRA, I thought filing on
22 the E system is sufficient. Tracey Zephier is on her way
23 so she's bringing the flash drive with her. She's
24 heading here today.

25 MR. SMITH: It is sufficient in terms of us, but

1 it's the official record for the reporter in the
2 transcript.

3 MR. CLARK: Got you. But she's on her way with
4 it.

5 MR. SMITH: We're fine with filing it online,
6 but in terms of the official record of the reporter, we
7 need to somehow in some form give it to her.

8 Okay. With that, I think that's it this
9 morning. And, again, the ones right now we don't have
10 any from are Rosebud, Cheyenne River, DRA, and
11 TransCanada. So first thing in the morning at the latest
12 we'd like to have that done.

13 (Discussion off the record)

14 MR. SMITH: I think Mr. Ellison is set up so
15 please begin your cross-examination.

16 MR. ELLISON: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MR. ELLISON:

19 Q. Good afternoon, Mr. Goulet.

20 A. Good afternoon.

21 Q. Sir, on some of the questions that you were asked by
22 some of the other folks, I think including Commissioner
23 Hanson, about -- I think you said something about that
24 you anticipate this to be the safest pipeline built.

25 Is that your testimony?

1 A. What I said was that the 59 Special Conditions that
2 we've agreed to adopt as part of the Department of State
3 process would afford a level of safety or a degree of
4 safety higher than any other previously built pipeline.

5 Q. Okay. You're not saying it's safe. You're not
6 saying it will not leak.

7 A. I never said it will not leak.

8 Q. And you can't even tell us if it does leak, how many
9 barrels of dilbit?

10 A. Diluted bitumen?

11 Q. Thank you.

12 You can't tell us whether it would be a small leak
13 or a tremendous one, can you?

14 A. Well, I can't predict the future.

15 Q. Okay. Fair enough.

16 Tell me, sir, how different was the construction on
17 the Keystone baseline, the one that went down eastern
18 South Dakota? What's really different between that and
19 the proposed KXL in terms of --

20 You said the 59 Special Conditions. Wasn't that
21 pipeline also built pretty close to those Conditions as
22 well?

23 A. Well, 51 Conditions were adopted for the base
24 Keystone.

25 Q. Okay. So eight different ones?

1 A. That's right.

2 Q. Okay. And the base Keystone Pipeline has leaked.

3 A. There's been 14 minor leaks in the first year of
4 operation I think you're referring to at the pump
5 stations. And those are associated with small diameter
6 fittings and seals. Not the pipe itself.

7 And in total, 450 barrels of crude oil has leaked
8 from the system. Of that, 400 were in one particular
9 incident.

10 Q. At Ludden?

11 A. Ludden Pump Station but --

12 Q. 400 barrels?

13 A. Can I finish?

14 Q. Well, I don't know. It depends on what you want to
15 say.

16 A. And the -- all of those leaks, as I said, was at
17 pump stations, and the pump stations have a dike to
18 contain any problems we've had, any crude oil that's
19 released.

20 And since that first year of operation, we modified
21 our preventative maintenance plans, and we haven't had
22 any significant leaks since then.

23 Q. Most of the leaks that occur in pipelines, they do
24 occur at pump stations, don't they?

25 A. Well, I think there's generally more leaks at pump

1 stations, but I don't have particular statistics. I
2 think one of my colleagues probably has better
3 information than I do on that.

4 Q. And which one would that be, sir? Who would that
5 be?

6 A. Ms. Tillquist.

7 Q. Thank you.

8 There was also a question that was asked of you
9 about the new tax assessment methodology and some changes
10 in the Department of Revenue.

11 Did you actually -- and, I mean, you personally or
12 someone in your immediate staff below you actually get a
13 copy of this proposed change or actual change and tax
14 assessment from South Dakota Department of Revenue?

15 A. Well, let me be clear. There was no changes in the
16 department as you've characterized or changes in the tax
17 assessment. They adopted an assessment methodology at
18 the beginning of the pipeline that resulted in the taxes
19 that we talked about earlier.

20 Q. Was that something in writing?

21 A. Well, they would provide that assessment to us, yes.
22 And to answer your question, that would have been
23 provided again to our tax department, and Mr. Ken Marsh
24 would have received that.

25 Q. One of the questions you were also asked that

1 elicited an answer, did it not, that you looked at a
2 series of photographs of the Sibson property. Is that
3 correct, sir?

4 A. That's correct.

5 Q. Was this a series of like 12 photographs?

6 A. I've seen quite a bit more than that. I'd say I
7 looked at over 100 photographs in total.

8 Q. And when were the first photographs that you looked
9 at -- when did you see them?

10 A. When were they taken?

11 Q. When did you see them?

12 A. Oh, I saw the first imagines of those a year and a
13 half ago or something like that.

14 Q. When was the most recent viewing that you did of
15 those pictures?

16 A. I don't see why it's relevant but maybe --

17 Q. That's not your decision.

18 A. Even three days ago.

19 Q. Okay. And that was a batch of 12?

20 A. No. I looked at far more than that even three days
21 ago.

22 Q. Where did those pictures come from?

23 A. I don't know offhand.

24 Q. Was it taken by TransCanada?

25 A. It probably was provided by TransCanada. We've done

1 a recent evaluation of the property.

2 Q. Was that provided by counsel for TransCanada?

3 A. Yes, it was.

4 Q. Okay. And you're saying it was 100 or so pictures,
5 not 12.

6 A. That's what I looked at three days ago, yeah.

7 MS. EDWARDS: Can I ask a clarifying question of
8 counsel?

9 Are we talking about the 12 photographs that
10 were discussed at the motions hearing last week?

11 MR. ELLISON: We could be. Because that's what
12 I'm trying to understand is this -- I didn't bring this
13 up. This was brought up by, I believe, questions from
14 Commissioner Hanson. It elicited a response from
15 Mr. Goulet that he had looked at photographs. That was
16 the first I had heard of that.

17 I'm trying to explore that because if, in fact,
18 he looked at those 12 photographs, that might prompt a
19 motion on our behalf.

20 MS. EDWARDS: Thank you, Mr. Ellison.

21 MR. ELLISON: You're welcome.

22 Q. Does that look familiar, sir?

23 MR. TAYLOR: Can you identify for us what
24 exhibit number that is?

25 Oh, I'm sorry. I asked if Mr. Ellison could

1 identify which exhibit number that is so I can track it.

2 MR. ELLISON: I'm happy to do that, when I get
3 my glasses.

4 Mr. Taylor, this would be 397.

5 MR. TAYLOR: 397?

6 MR. ELLISON: Yes, sir.

7 Q. Does that look like one of the pictures you looked
8 at, sir?

9 A. I couldn't tell you if that was one of the pictures
10 I looked at or not.

11 Q. Okay. Let's look at another one, if I can do this.

12 MR. TAYLOR: Are we following down the line,
13 397 --

14 MR. ELLISON: Yes. This would be 398. My
15 apologies, Mr. Taylor.

16 Q. Again, sir.

17 A. Again, these are pictures of fields that I couldn't
18 distinguish whether this is a picture I looked at three
19 days ago or not.

20 Q. Okay. Let's look at 399.

21 A. I definitely have not seen that picture.

22 Q. Okay. Did you see pictures that, in fact, showed
23 areas where there had not been --

24 A. I definitely did not see that picture.

25 MR. ELLISON: That was 400.

1 A. Nor that one.

2 Q. Okay.

3 A. I looked at pictures which are relatively recent
4 and, as I told you earlier, were from a recent inspection
5 that was done on the property.

6 Q. So these were done by TransCanada, you're saying?

7 A. I believe so. I wanted to get a characterization of
8 what the existing conditions of the property were and
9 asked to get an updated look at some pictures.

10 Q. Now of the pictures that you saw -- so what about
11 this? Does this look familiar?

12 A. No. I never looked at this one.

13 MR. TAYLOR: I asked the question is this 402.
14 Mr. Ellison said, no, it's 403. I didn't have my mic. on
15 so I think we're good now.

16 Q. Did you look at pictures, sir, that depicted areas
17 where it didn't seem like there was a lot of grass
18 growing?

19 A. I think most of the pictures that I looked at showed
20 conditions where there were perhaps a number of species
21 that weren't desired. Weeds, noxious weeds, et cetera.

22 I never saw any pictures three days ago that
23 indicated there wasn't a lot of grass growing, as you put
24 it.

25 Q. Okay. In the reclamation plan that's put together

1 for each individual landowner how do those noxious weeds
2 fit in?

3 A. Well, again, you know, we're trying to reclaim the
4 land to a condition which is very similar, if not
5 identical, to what it looked like prior to the pipeline
6 being built.

7 Q. Would you agree, sir, that the landowner would be
8 the best source of information as to whether, in fact,
9 the land had been reclaimed to its original condition?

10 A. Well, I think that would be one piece of
11 information. The off-right-of-way condition of the land
12 would be another piece of information which would
13 indicate whether the land was in nearly the same
14 condition.

15 Q. When you say off right of way you mean adjacent
16 land?

17 A. That's right.

18 Q. To the row?

19 A. That's right.

20 Q. You were asked a question, sir, about whether a
21 dime-sized hole would cause a burst in the pipeline, and
22 I think your answer was no. Is that correct?

23 A. Well, I think you've simplified the question and the
24 response but --

25 Q. Okay. Please tell me.

1 A. Generally a dime-sized defect that didn't extend
2 through the wall would not cause a burst of the pipeline.

3 Q. Okay. If it went through the wall?

4 A. Obviously it would create a leak.

5 Q. And is it the kind of thing that even if you start
6 out with a small little hole, that because this is under
7 a pressurized environment, that one can expect that hole
8 to grow?

9 A. Probably not.

10 Q. The leak that recently happened out in California --
11 well, strike that.

12 Would you describe this situation where -- on the
13 Gulf Coast line where I think you said it was a
14 95 percent loss of wall?

15 A. It wasn't on the Gulf Coast line. It was on Phase 1
16 at milepost 995.

17 Q. Okay. That was by St. Louis?

18 A. In Missouri.

19 Q. In Missouri. How close to the river was that?

20 A. I'm not aware of that detail.

21 Q. Okay. It was actually -- the greatest depth was
22 almost 97 percent loss, was it not?

23 A. I'm not familiar with all the details associated
24 with that.

25 Q. Are you familiar with TransCanada's Study of Root

1 Cause and Contributing Factors to the Keystone Pipeline
2 Corrosion Anomaly Final Report of TransCanada 2-13-13?

3 A. I've never seen that report before.

4 Q. Okay. Now is it your testimony that the corrosion
5 in this area we're talking about outside of St. Louis,
6 that the largest corrosion that was found was dime sized?

7 A. That's my understanding based on the information
8 provided to me.

9 Q. And who provided that information to you?

10 A. Our pipeline integrity department and our
11 communications department.

12 Q. Do you have any names, sir?

13 A. Well, Mr. Mark Cooper would have provided me some
14 basic information and talking points that we would have
15 used at the time that we found the feature to speak to
16 the public and to regulators about it.

17 Q. Okay. So you were gathering information before you
18 went out to speak to the public, I think, as you just
19 said. Basically you're trying to provide accurate
20 information to them?

21 A. Well, what we're trying to do is, if questioned, be
22 able to respond to general questions about that
23 particular situation.

24 Q. What's the diameter of a dime, sir? Do you know?

25 A. Not off the top of my head. Maybe a centimeter.

1 I'll give it to you in metric.

2 Q. I'm handing you, sir, a ruler with a dime.

3 A. Okay.

4 Q. And what can you tell me about -- a little over a
5 half inch, did you say maybe?

6 A. Yeah. Maybe five-eighths of an inch.

7 MR. ELLISON: Counsel, 153.

8 MR. TAYLOR: 153?

9 MR. ELLISON: Yes, sir.

10 Q. Looking at page --

11 MR. CREMER: Is this one that's confidential?

12 MR. ELLISON: It's one that was given to us in a
13 nonconfidential manner. So as far as I'm concerned, no.

14 MR. CREMER: Well --

15 MR. ELLISON: If it's given to us in a
16 nonconfidential manner, it's given to us in a
17 nonconfidential manner.

18 MR. CREMER: Oh, I couldn't understand what you
19 were saying. You were saying nonconfidential?

20 MR. ELLISON: Yes, ma'am.

21 MR. CREMER: Okay. I thought you said it was
22 given to us in a confidential manner.

23 Q. You see that piece of corrosion?

24 A. I do.

25 Q. It's a little less than 2 inches, is it not?

1 MR. TAYLOR: I'm going to object to the form of
2 the question. First he's got to lay a little foundation.
3 We have to identify what this is.

4 MR. ELLISON: Very good. We can do that.

5 Q. This is page 17, some photographs taken from the
6 Study of the Root Cause of Contributing Factors, Keystone
7 Pipeline Corrosion Anomaly Investigation.

8 MR. TAYLOR: Do you want to show him the report,
9 Bruce?

10 MR. ELLISON: I'm showing him a page of the
11 report. I'll give him the whole one.

12 A. I've never seen this document before.

13 Q. Okay. And if you look at the previous page, on
14 page 16 you see that this is the big -- this is the one
15 that went the deepest. This is the one that was almost
16 97 percent gone; correct?

17 MR. TAYLOR: Object to the form of the question.

18 First of all, he's got to lay foundation for
19 what this picture is and establish that it has some
20 relevancy to the issues that we're talking about. And
21 once he's accomplished that foundation, then he can ask
22 his questions about this witness's impression of that
23 picture.

24 Q. Do you see, sir, that it is from Dig Site 1 on
25 page 16 of this TransCanada report?

1 A. I do.

2 Q. Okay. And we are talking about it does say on the
3 second line at the right side of the page that the peak
4 depth was 96.8 percent?

5 A. It does.

6 Q. Okay. And then we go down to Figure 9 on the same
7 page?

8 A. Yep.

9 Q. Okay. Now, first of all, let's focus on picture 9
10 for a while. You see how that ruler bends in the
11 picture.

12 This is a big dent as well as the anomalies caused
13 by corrosion, is it not?

14 MR. TAYLOR: Object to the form of the question.
15 Counsel is testifying. He can ask the witness what the
16 picture shows.

17 MR. ELLISON: This is cross-examination,
18 counsel. I can do it any way I would like.

19 MR. TAYLOR: Forgive me. Will you allow me to
20 finish?

21 MR. ELLISON: Sure.

22 MR. TAYLOR: He has to ask the witness if he
23 knows what the picture is. He has to lay some basic
24 foundation before he can ask his impression. And he
25 can't ask the question for basic foundation by telling

1 what he thinks it is.

2 MR. ELLISON: We can do it the way --

3 Q. All right. Look at the bottom of that first
4 paragraph, sir, under Dig Site 1, right above Figure 9.

5 A. I see it.

6 Q. And you see it says the corrosion anomalies can be
7 seen in Figures 9, 10 and 11. Do you see where it says
8 that?

9 A. Yep.

10 Q. And the one that's on the bottom of page 16 is
11 Figure 9; is that right?

12 A. That's correct.

13 Q. And it's directly related to the deepest peak depth
14 of 96.8 percent; correct? Again, second line.

15 A. Yep. Second line says 96.8.

16 Q. All right. So now looking at Figure 9, you see how
17 the ruler bends into the pipe on the picture, does it
18 not?

19 A. Well, it -- it appears that the ruler does have some
20 distortion, but that by no way indicates that there's a
21 dent.

22 Q. I see.

23 MR. TAYLOR: Mr. Smith, I still have to
24 interpose a foundation objection. There's been no
25 demonstration of what this photograph shows or that this

1 witness has ever seen it before or that this witness is
2 doing anything more than reading what it says in the text
3 of the article.

4 I mean, to ask him his impressions about does
5 this mean it's a half-inch deep or does this mean it's an
6 eighth of an inch deep, all he's doing is reading from
7 the text of the article.

8 The exhibit speaks for itself. It has not been
9 introduced into evidence, and there's no foundation for
10 it.

11 MR. ELLISON: May I go on?

12 CHAIRMAN NELSON: You need to rule on that,
13 John.

14 MR. SMITH: Well, I'll probably sustain it. But
15 do you want to do those things, or do you want to just --

16 MR. ELLISON: Sure. I mean, I thought I had
17 done that.

18 MR. SMITH: Okay.

19 MR. ELLISON: I'll start again.

20 Q. Figure 9 I think you've just testified you
21 understand from this TransCanada report is related to
22 Dig Site 1 and the anomalies found therein?

23 A. That's what the paper says.

24 Q. Okay. You don't have to look over at your attorney.

25 A. I'm not looking at my attorney. I'm looking at you,

1 sir.

2 Q. Okay. I saw you look over there.

3 MR. TAYLOR: I'm behind you.

4 Q. And you're saying that as a president -- I mean, if
5 there is a dent in there, that's a construction issue, is
6 it not?

7 A. If there were a dent, it may be a construction
8 issue. It may be an operating issue. I have no way of
9 knowing that.

10 Q. And this report doesn't mention anything about a
11 dent, though, does it, to your knowledge?

12 A. Well, I haven't -- it's the first time I've seen the
13 report.

14 Q. All right. Let's move on. Let's look on the next
15 page, page 10 -- I'm sorry. Page 17.

16 You will agree that Figure 10, just like Figure 9
17 and just like Figure 11, are all based upon this one Dig
18 Site No. 1?

19 MR. SMITH: Are you going to scroll down so we
20 can look at it?

21 MR. ELLISON: Sure.

22 A. That's correct. That's what the first paragraph
23 says in the last sentence.

24 Q. Okay.

25 MR. ELLISON: We're getting to impeachment

1 questions.

2 Q. You testified that the information you were provided
3 was that the anomalies caused by corrosion, by whatever
4 caused the corrosion, were dime sized; correct?

5 A. I referred to one anomaly, which is the one of the
6 largest -- the biggest concern that was dime sized. I
7 did not talk about all the corrosion features at this
8 site or any other.

9 In fact, I said that the -- I didn't have the
10 detailed information of this -- of this investigation,
11 and that would have to be provided by others if they were
12 able to.

13 Q. You just told us, though, that the deepest one was
14 dime sized; correct?

15 A. That was my understanding.

16 Q. All right. This is the deepest one. 96.8 percent
17 is the deepest anomaly that was found; isn't that
18 correct, sir?

19 MR. TAYLOR: Mr. Smith, the question is
20 argumentative. He's debating with him whether this is
21 the same piece of corrosion that he was testifying about,
22 and he's asking him to look at this picture and a
23 document that's not in evidence that he's already said he
24 has never seen before and then is trying to impeach him
25 on that basis.

1 The question is completely improper. It lacks
2 foundation. It's argumentative, and it assumes facts
3 that are not in evidence.

4 Q. Did you not say, sir --

5 CHAIRMAN NELSON: John, you need to rule on
6 that.

7 MR. SMITH: Okay. I will sustain in the sense
8 of can you attempt to go through those foundational
9 things and get there.

10 MR. ELLISON: Okay.

11 Q. Let's go back to page 16, sir, of Exhibit 153, DRA
12 Exhibit 153, TransCanada's report 2-13-13.

13 On page 16 it says that Figures 10 and 11 relate to
14 this same dig site, Dig Site 1.

15 A. That's correct.

16 Q. And it says that this is the 96.8 percent loss of
17 wall.

18 A. Actually what it says is that --

19 Q. Peak depth.

20 A. -- there were six anomalies caused by external
21 corrosion with a peak depth of corrosion reported at
22 96.8 percent. And then it goes on to show pictures of
23 three such defects and doesn't identify which one of the
24 three was 96.8 percent.

25 So I have no way of relating the 96.8 percent to any

1 one of those three figures.

2 Q. Well, we'll address some of this with other
3 witnesses, but would you agree with me, sir, that on
4 page 17, Figure 10, the anomaly that is shown there,
5 which we know is related to Dig Site 1 -- and you'd
6 figure that the pictures would be taken of the worst
7 ones. Wouldn't you expect that, sir?

8 MR. TAYLOR: The question is again --

9 A. I don't know what the pictures were taken of.

10 Q. Okay. Who would know?

11 A. Well, the person who filed the report.

12 Q. Okay. Well, let's just -- so we can get it out of
13 you for your testimony, you would agree the anomaly shown
14 in Figure 10 is nearly 2 inches in diameter; correct?

15 A. Maybe 1 and three-quarters average diameter.

16 Q. All right. It's almost what, 2 and a half times
17 bigger than a dime, maybe 3?

18 A. That's true. But it also says minimal corrosion
19 products there. For all I know, that corrosion feature
20 is 20 percent through wall.

21 Q. Does it say anything in the description of Dig Site
22 No. 1 that shows or says that the smallest one was
23 20 percent peak?

24 A. It just says that the maximum depth, the peak depth
25 of the corrosion is 96.8. Nothing more than that. And

1 it indicates there were six anomalies at that location.

2 Q. Okay. Let's look at Figure 11. Again, we're
3 dealing with using your observations one and three
4 quarter inches?

5 A. Something like that.

6 Q. Okay. So we know that's two out of the six; right?

7 MR. SMITH: Mr. Ellison, can you page down so we
8 can see? Do you have that one so you can page down so we
9 can see?

10 MR. ELLISON: Thank you.

11 A. I'm going to save a lot perhaps -- this Public
12 Utilities Commission's time a little bit here and just
13 say that you have six defects. This particular report,
14 which I've never seen before, indicates that one of the
15 defects at this site is 96.8 percent through wall.

16 These defects, these other defects, could have been
17 found at the site -- the report indicates they were found
18 at the site as well. It does not indicate what the depth
19 was.

20 None of the defects in my experience in 30 years of
21 pipe lining would be injurious from the perspective of
22 being close to rupturing. Therefore, the only -- the
23 only problem would have been the depth of the corrosion,
24 and that's why they've commented on the peak depth of
25 corrosion for all six of these defects in one -- at one

1 time.

2 Q. When the indications came back this wall was
3 virtually 97 percent gone, your company shut this
4 pipeline down immediately, didn't it?

5 A. In a normal course of business -- I don't remember
6 if it was shut down or if the pressure was just reduced.
7 But in the normal course of business if we got an
8 indication from an in-line inspection tool of this type
9 of condition we would take some action.

10 Q. A shutdown is costly, is it not?

11 A. It's costly, but it's important that we preserve the
12 integrity of the pipeline.

13 Q. And it doesn't happen any time there's an anomaly.
14 It only happens if there's a danger of an eruption; isn't
15 that right?

16 A. That's not necessarily true. It happens whenever
17 our protocol indicates that we have to shut down or
18 reduce the pressure in order to allow the investigation.

19 Q. If the anomaly was 50 percent wall loss, you
20 wouldn't shut the pipeline down, would you?

21 A. It depends on the length. It's a complicated
22 situation that you can't just make sweeping statements
23 about, Mr. Ellison.

24 Q. Okay. You did shut this pipeline down for four
25 days?

1 A. Again, I don't remember the details. I wasn't
2 involved. It was during operations.

3 Q. Let's go down to the one on page 18, sir, Dig
4 Site 2, which according to this report had a 73.9 percent
5 loss of wall.

6 A. That's what I read.

7 Q. And would you agree with me that that anomaly is
8 over an inch, based upon the ruler?

9 A. About an inch, yeah.

10 Q. Okay. And there's only one anomaly that was at this
11 dig site; isn't that right?

12 A. Well, I have to read the paragraph but --

13 MR. TAYLOR: Mr. Smith, I have to impose the
14 same objection I've imposed a couple of times before.

15 What we're doing here is we're having a witness
16 read and comment on a report that he's never seen, that
17 has not been offered into evidence. We don't have any
18 foundation for the background of the report, its
19 significance.

20 The Commission hasn't seen any of it. The only
21 foundation that we have is it's got a TransCanada label
22 on the top. He's got to link this all up.

23 If this is an effort to put into evidence the
24 contents of a report without putting in the report
25 itself, it's completely improper cross-examination,

1 direct examination, or argument.

2 MR. ELLISON: Would you stipulate to the
3 admission of DRA Exhibit 153?

4 MR. TAYLOR: No. You can lay your foundation.

5 MR. SMITH: What relief are you asking for,
6 Mr. Taylor, from me in terms of --

7 MR. TAYLOR: Are you talking to me?

8 MR. SMITH: Yes.

9 MR. TAYLOR: I didn't hear you.

10 MR. SMITH: What relief are you asking me for?
11 I wasn't quite understanding it.

12 MR. TAYLOR: The testimony is improper. It's
13 out of order. These questions he should not be allowed
14 to inquire of the witness in this manner.

15 The objection simply should be he's asking this
16 witness to assume facts that are not in evidence and
17 arrive at opinions.

18 MR. SMITH: Okay.

19 MR. ELLISON: First of all, I've offered to put
20 this into evidence so we could eliminate a big problem,
21 but you don't want us to do that. Right.

22 MR. TAYLOR: What I said, Mr. Ellison, was I
23 would not stipulate, and you know from your many years of
24 experience, just as I do, that it is inappropriate to ask
25 counsel to stipulate to the foundation of an exhibit in

1 the course of trial when it has never been -- when
2 there's no other effort made to establish the
3 foundation.

4 MR. ELLISON: Okay. It happens in almost every
5 trial.

6 MR. SMITH: Are you asking that I rule that
7 Mr. Ellison not be permitted to question him further
8 about this exhibit at all? Is that the relief you're
9 asking for?

10 MR. TAYLOR: Until the foundation is laid and
11 the exhibit is admitted.

12 It would be different if this witness knew
13 something about this report. It's no different than
14 Mr. Ellison giving you the report to read and asking you
15 questions about it.

16 MR. ELLISON: But the Commission had not
17 stated -- no Commissioner had stated nor had Mr. Smith
18 stated that the --

19 We're talking about a dime-sized anomaly. And,
20 thus, I can ask for cross-examination. I don't have to
21 admit an exhibit for use during cross-examination for
22 impeachment.

23 This is impeachment. This witness said dime
24 sized. The pictures that are in the TransCanada report
25 of this incident, including now the worst two anomalies,

1 are at least twice, if not three times larger than a
2 dime.

3 To me it goes to the credibility of this
4 witness as to the information that he has provided this
5 Commission because clearly he is minimizing his
6 testimony.

7 MR. TAYLOR: It's perfectly appropriate for him
8 to --

9 COMMISSIONER HANSON: Excuse me, Mr. Smith. If
10 I'm going to consider this as evidence, and I think
11 that's what counsel wants us to do, I need to see the
12 whole report. I can't see pictures and things of that
13 nature. So I really need to have it.

14 So if you're going to pursue it, then you've got
15 to present it and have it as an exhibit.

16 MR. ELLISON: I have tried twice to get
17 counsel's stipulation.

18 COMMISSIONER HANSON: I've been here.

19 MR. ELLISON: I understand, sir. I'm not trying
20 to argue with you.

21 COMMISSIONER HANSON: Yeah. Just go ahead and
22 go through the proper presentation to make it an exhibit.

23 Q. Are TransCanada documents -- they're usually kept in
24 the ordinary course of business; is that right?

25 Documents that TransCanada creates, especially if it's

1 studying causes of anomalies?

2 A. They're kept, yes. They're on file.

3 Q. And they usually have the TransCanada logo on them?

4 A. They may or may not.

5 Q. Okay. This one --

6 A. It depends if a consultant did the report or not.

7 Q. Who is Kevin Garrity?

8 A. I have no clue other than to see that he is -- from
9 this report he's Senior Vice President of Mears Group,
10 Inc.

11 Q. Who is James Card [phonetic]?

12 A. James Card is an employee in our organization.

13 Q. And the manager of pipe integrity corrosion
14 prevention?

15 A. That's correct.

16 Q. He's one of the signers of this report?

17 A. That's correct.

18 Q. Do you have any doubt that this report was kept in
19 the ordinary course of business at TransCanada?

20 A. I can't speculate if it was kept or not, but I
21 assume it was.

22 MR. ELLISON: I would move for the admission of
23 153.

24 MR. SMITH: Is there an objection?

25 MR. TAYLOR: I can't object to the admission of

1 the report on the business records rule because the
2 foundation wasn't laid for that, but that does not mean
3 because it's in evidence that the contents of the -- the
4 substance of the report are admissible.

5 It doesn't mean that he can cross-examine this
6 witness based on this witness's understanding of a report
7 he hasn't read.

8 If he wants to cross-examine a witness about the
9 dime size -- his understanding of what constitutes a
10 dime-sized spot of corrosion, those are the questions he
11 gets to ask him.

12 What do you know about this? He's already said
13 what he knows about this. If he wants to examine the
14 author of the report about how the report was made,
15 that's fine. He can call him as a witness.

16 But what this is is not an attempt to impeach
17 Mr. Goulet. This is a backdoor attempt to put this
18 report into evidence for its contents without laying the
19 proper foundation. Just because it's a business record
20 doesn't mean that it is substantive evidence in this
21 case.

22 MR. ELLISON: When can Mr. Card be present?

23 MR. SMITH: So you're saying -- I'm going to
24 admit the exhibit then.

25 MR. TAYLOR: Limited basis?

1 MR. SMITH: On a limited basis.

2 MR. ELLISON: Thank you. Can Mr. Card be
3 present tomorrow?

4 MR. TAYLOR: I don't know.

5 MR. ELLISON: Well, we'd like to have him
6 present, please.

7 MR. TAYLOR: Well, you have the subpoena power.

8 MR. ELLISON: Do you know where he is?

9 MR. TAYLOR: No. I don't know the man, never
10 heard of him, never met his name before this moment.

11 MR. ELLISON: Are you counsel for TransCanada?

12 MR. TAYLOR: What do you think?

13 MR. ELLISON: I have to wonder.

14 MR. SMITH: Let's move on.

15 Q. All right. You would agree with me, sir, that
16 Exhibit 153, which has been admitted into evidence, and
17 you would agree with me that the anomalies shown in
18 Figures 10, 11, and 12 are all significantly greater than
19 a dime, are they not, sir?

20 This was going to be like one or two questions.

21 A. Actually, I would agree that the defects in 10 and
22 11 are more than a dime, but I see a couple of defects in
23 Figure 9 that could be -- that are approximately the size
24 of a dime and could indeed be the defects that are
25 96.8 percent through wall.

1 Q. Your job is to make sure that a pipeline is built
2 correctly; correct?

3 A. That's part of my job.

4 Q. Okay. And one of the things that you try and do is
5 you want to take care of any problems that could avoid
6 corrosion; is that correct?

7 A. That's correct. And we've had a lot of testimony
8 about what we do to prevent corrosion.

9 Q. And sometimes it happens anyway; isn't that right?
10 Even shortly after the construction phase. Dents, things
11 like that?

12 A. Well, in this particular case it happened, but I
13 think we've taken measures to prevent recurrence of this
14 type of defect.

15 MR. ELLISON: I move to strike the answer as
16 unresponsive.

17 MR. SMITH: Overruled.

18 Q. As the man in charge of the quality of the pipeline
19 that is being built, if you instructed subordinates to go
20 out and study anomalies that were found, would you expect
21 them to give you the minimal data, pick out the smallest,
22 least problematic anomaly, show you pictures and talk
23 about it, or would you fire that person if that's what
24 they did because they didn't show you the worst problem
25 that you clearly had to deal with?

1 MR. TAYLOR: Mr. Smith, the question's
2 argumentative. It's a dialogue on the part of counsel.
3 It's not an inquiry.

4 MR. SMITH: Can you simplify and rephrase.
5 Sustained. Please simplify.

6 MR. ELLISON: I'll try. Thank you, Mr. Smith.

7 Q. Do you expect your quality control people or your
8 inspectors to give you -- I mean, you're concerned about
9 safety; right?

10 A. For sure.

11 Q. You want to know what the real problem is if there's
12 a problem?

13 A. For sure.

14 Q. You would expect them to give you -- start with the
15 worst -- or maybe start with the least worst, but get to
16 the worst and make sure that you are aware of whatever is
17 the worst of the problems that you're dealing with?

18 A. I would expect that, yes.

19 Q. Okay. And you would expect then that if they're
20 going to give you two photographs of anomalies,
21 especially on one that came within 3 percent -- had
22 3 percent of its wall thickness left, you would expect
23 that they would be showing you pictures of the worst
24 ones, wouldn't you?

25 MR. TAYLOR: Again, Mr. Smith, this is not

1 proper cross-examination. It's a dialogue on the part of
2 counsel and an argumentative statement.

3 MR. SMITH: Okay. I'm going to overrule that.

4 CHAIRMAN NELSON: I'm going to sustain.

5 MR. SMITH: Oh, you're going to sustain?

6 CHAIRMAN NELSON: Well --

7 COMMISSIONER HANSON: I've been debating the
8 entire process. But I'll sustain.

9 MR. SMITH: Okay.

10 Q. You mentioned something about a sleeve that was put
11 over the worst of the anomalies in this event or series
12 of events?

13 A. My understanding is that a sleeve was used in this
14 particular location. And I base that not on any direct
15 knowledge but what I've been told.

16 Q. Were you told whether it was a Plidco 1,000 or
17 1,500?

18 A. I understand that a Plidco was initially installed
19 on the defect that's been replaced with a pressure
20 containing sleeve since the Plidco is a temporary
21 repair.

22 Q. I think you told us, did you not, that you -- the
23 initial expectation is that if this pipeline were allowed
24 and constructed, that you're good for at least 18 years
25 of contracts?

1 Did I understand that correctly?

2 A. I said the average length of our contracts on this
3 pipeline are approximately 18 years. But they run in
4 length from five years to, I don't know, 20 or 25 years.
5 But the average is 18.

6 Q. And that you said if they were properly maintained,
7 they could go for 50 to 60 years, maybe even longer?

8 A. That's what I stated.

9 Q. Can you state whether TransCanada, once it has no
10 longer a use for this pipeline -- is there an abandonment
11 plan?

12 A. Well, if we decided to stop using the pipeline, we
13 would create an abandonment plan.

14 Q. And that generally means leaving it in the ground,
15 doesn't it?

16 A. Well, the regulations are changing relative to that.
17 It depends on the jurisdiction in which the pipeline is
18 operated.

19 Q. Would the cheapest thing for the company be to leave
20 it in the ground?

21 A. Not necessarily.

22 Q. It's expensive to remove?

23 A. You'd have to assess the options at that time.

24 Q. If it's abandoned, it actually could serve as a
25 water conduit, can't it?

1 A. Well, first of all, it's abandoned on the ground --
2 it depends on how it's abandoned on the ground.
3 Sometimes you can put a nitrogen blanket on the pipeline
4 to protect against corrosion.

5 Q. Is that the inside or outside?

6 A. Inside.

7 Q. Okay.

8 A. Sometimes you can fill the abandoned pipeline with a
9 grout or cement material. It all depends on the
10 regulation and the practices used by the company in
11 question.

12 Q. What would be the safest practice for TransCanada to
13 utilize once it's done with this pipeline? Safest from
14 an environmental standpoint, to the land of the people of
15 the State of South Dakota?

16 MR. TAYLOR: Mr. Smith, this all calls for
17 speculation. We're talking about things that could
18 happen at an unknown time in the future under unknown
19 circumstances. And it's not relevant to any issue before
20 the Commission either.

21 MR. ELLISON: I didn't bring this up. I didn't
22 bring this up initially. I have it in my notes. I'm
23 just asking some questions about it, sir.

24 MR. SMITH: Okay. And are you suggesting he
25 brought it up?

1 MR. ELLISON: I don't remember who asked the
2 question, but there was discussion about 18-year
3 contracts and life for 50, 60 years and whatnot.

4 MR. SMITH: Well, we didn't have objection at
5 that point, and I agree some questions were asked about
6 life expectancy --

7 MR. ELLISON: I'm almost done. I'm just trying
8 to get -- could have done this all in 10 minutes.

9 MR. SMITH: Right. I mean, I'll put it this
10 way. There's no -- I can't understand what Permit
11 Condition this would relate to because I don't think we
12 have conditions in there on this subject.

13 So on relevancy grounds from that standpoint I'm
14 having trouble seeing the relevancy of this.

15 What was your grounds again, Mr. Taylor?

16 MR. TAYLOR: Well, nobody asked any questions
17 about what would happen if the pipeline were abandoned.
18 There were questions asked about the life of the
19 contract, and there were questions asked about the
20 potential life of the pipeline. But there has been no
21 inquiry made and other examination regarding how you go
22 about abandoning a pipeline, what's happening when it's
23 abandoned, taken out of service, et cetera.

24 Besides that, as you correctly observed, there
25 is no Condition in our Permit with respect to

1 abandonment.

2 MR. SMITH: Okay. I'm going to sustain the
3 objection then.

4 Q. You mentioned, sir, about some warning letters that
5 you were aware of issued by PHMSA throughout the Gulf
6 Coast. Welds? Welding situation?

7 A. Yes.

8 Q. Isn't it a fact there's also been a warning letter
9 issued by PHMSA on the Keystone base pipeline in the
10 Spread 3 Audit?

11 A. I'm not personally familiar with that. And that
12 predates my involvement in Keystone.

13 Q. Okay. When you say you're not personally familiar
14 with it, you are familiar with it? You've heard about
15 it?

16 A. No. I've never heard of a base Keystone spread 3
17 warning letter.

18 Q. Okay. Now with regard to the warning letters that
19 you are familiar with as to the Gulf Coast pipeline, I
20 believe that you talked with us, did you not, about that
21 TransCanada has a quality control program?

22 A. Yes, we do.

23 Q. Because you want to make sure that the pipeline is
24 built correctly; is that right?

25 A. That's correct. That it meets the specifications

1 and PHMSA's requirements under the regulations.

2 Q. Up until the point that PHMSA sent a warning letter
3 talking about how the welders were not properly certified
4 and that, therefore, the welds were in question,
5 Keystone's TransCanada's whatever term you want to use,
6 integrity management program had not found those
7 problems, had they?

8 A. Oh, they definitely had. In fact, we self-reported
9 those problems to PHMSA. And it's only through our
10 self-reporting to PHMSA did they understand that our weld
11 reject rate was as high as it was during the initial
12 phases of construction.

13 And it's our quality control program that
14 established or that found these welding defects and
15 ensured that they were repaired.

16 Q. So it's your testimony that TransCanada found the
17 problems, reported it to PHMSA, and then PHMSA sent a
18 warning letter saying you guys got to deal with this?

19 A. That's exactly the process that PHMSA uses.

20 Q. Okay. How much pipeline had to get dug up? Quite a
21 bit, wasn't it?

22 A. Well, not in that particular case. If I remember
23 correctly, all of the welds had been prepared before they
24 were lowered into the ditch and backfilled.

25 Q. Would it be fair to say that TransCanada already

1 approved the welding process that had been utilized?

2 A. That's correct. We were using a qualified and
3 approved welding procedure.

4 Q. By unqualified people?

5 A. No. That's your characterization.

6 Q. Well, that was what was in the warning letter,
7 wasn't it?

8 A. All of the people who were welding on that line had
9 passed a welding qualification test. I think the concern
10 that PHMSA had -- and I'm paraphrasing now. Don't have
11 the letter in front of me -- was they were concerned that
12 the welders did not have the skill to be able to perform
13 that welding in a productive manner on a continuous
14 basis.

15 Q. As was shown by the numerous problems that were
16 found.

17 A. I think their concern was that the welding reject
18 rate initially was higher than they would expect. And it
19 was higher than we would expect as well. And, therefore,
20 we had concerns about our contractor and their ability to
21 produce welds at a productive rate with a reasonable
22 number of defects.

23 Q. Okay. I imagine we'll be getting into this with
24 another witness, and we'll see how close it matches.

25 MR. ELLISON: I have no further questions.

1 MR. SMITH: Thank you.

2 Ms. Craven, any questions?

3 MS. CRAVEN: No.

4 MR. SMITH: I think, Mr. Harter, we're at you.

5 RE CROSS-EXAMINATION

6 BY MR. HARTER:

7 Q. Thank you. I'm just going to -- I've got a question
8 from the testimony you just immediately made.

9 Isn't it -- is it not a standard for TransCanada to
10 hire experienced welders to do their welding?

11 A. Well, we don't hire the welders directly, but our
12 expectation is that our contractors will hire welders who
13 are capable of performing welds in a productive manner
14 with a reasonable number of defects.

15 Q. So your quality integrity team, would that not be a
16 part of their job to make sure these people are hiring
17 qualified people to do this?

18 A. Well, actually what you do is you test the welders
19 in advance of allowing them to weld on the pipeline. And
20 they have to pass a rigorous test that shows that they
21 can weld on a pipeline.

22 That doesn't always indicate that they're able to do
23 so in a productive manner. But once they pass the test,
24 you allow them to weld on the line, and then you monitor
25 the weld reject rate, which is what we just talked about.

1 Q. As a property owner that doesn't give me a warm,
2 fuzzy feeling.

3 A. Well, sir, that's the manner in which quality
4 control is conducted in the construction of a pipeline.
5 But I assure you that the quality control program will
6 prevent defects from being present in the welds on the
7 pipeline.

8 Q. I pray you're right.

9 Before you go into a person's property why are
10 baseline studies not done and given to both parties so
11 that they have them?

12 MR. TAYLOR: I'd object to the question. This
13 is beyond the scope of cross-examination, and this is
14 Mr. Harter repeating the examination that he attempted on
15 cross.

16 MR. HARTER: Mr. Smith.

17 MR. SMITH: Yes, sir.

18 MR. HARTER: Basically it goes back to it's not
19 only my property, it's the Sibson's property, which has
20 been brought up and entered into testimony. And it is my
21 understanding that they didn't even go in and plant the
22 right -- the correct grasses that were there into the --
23 back into the property.

24 So if they don't know what they're doing, then
25 my question is why didn't they have a baseline to go by

1 in the first place.

2 MR. SMITH: Okay. Mr. Taylor.

3 MR. TAYLOR: I understand the question. But the
4 question is he had his opportunity to cross on that
5 subject. This is recross.

6 MR. SMITH: We're doing recross here, which is
7 supposed to be limited to that which occurred through
8 other cross or through Commissioners.

9 MR. TAYLOR: Yeah. He can't anchor recross on
10 his own cross.

11 MR. SMITH: Okay. Any thoughts, Commissioners?

12 CHAIRMAN NELSON: Sustained.

13 MR. SMITH: Okay. I'm going to sustain it.

14 MR. HARTER: That means it's over?

15 MR. SMITH: That question.

16 Q. Well, I'll probably get in trouble for this one too,
17 but I'm going to ask.

18 At public meetings it was stated -- public meetings
19 in South Dakota it was stated that TransCanada will use
20 almost three-quarter-inch thick pipeline.

21 Why did TransCanada downgrade the pipe wall
22 thickness for this project?

23 MR. TAYLOR: I'm going to make the same
24 objection. He had his opportunity to ask those questions
25 on cross. This is not a subject that was discussed

1 elsewhere.

2 MR. HARTER: That's fine. I'll ask someone
3 else.

4 MR. SMITH: Okay.

5 MR. HARTER: Thank you.

6 Q. Is TransCanada standard to reclaim property back to
7 100 percent of what it was before you went in?

8 A. That's our objective.

9 Q. And if you don't reach it?

10 A. Well, we work with the land loaner until we can. As
11 I have indicated in the base Keystone Pipeline, in the
12 535 tracts, we've been able to do that in all but nine
13 cases to date.

14 And we're working on those nine cases to ensure that
15 we do that.

16 Q. Thank you. One question on crossing the properties
17 of the Indian Tribes.

18 It was my impression that -- I'm going to ask you
19 this. Do you plan on crossing the treaty territories of
20 the Tribe, even if they say no?

21 A. I've stated before in my testimony that we're not
22 crossing reservation land or lands held in trust.
23 Historical treaty lands are another matter, and I don't
24 have any -- any comment on the lawfulness of crossing
25 those other than we're going to meet the laws of

1 South Dakota.

2 Q. Thank you. I guess, on that, what about federal
3 laws? It says all laws, doesn't it?

4 A. Including federal laws, yes.

5 Q. Thank you. I'm not sure I got the right department
6 written in here. I got integrity department written or
7 quality management that you're using on the Keystone I,
8 Keystone XL.

9 My question is are these the same integrity
10 departments that were in charge of your gas pipeline that
11 blew up?

12 A. I don't know what you're talking about relative to
13 the gas pipeline. Can you be more specific, sir?

14 Q. There's a new gas pipeline that I don't have the
15 name of it that was put in -- I know part of it was
16 across Wyoming, and soon after it was put into operation
17 there was one, if not two, explosions on that pipeline.

18 Is the gas pipeline a different integrity department
19 than Keystone XL?

20 A. Well, first of all, that project that you're
21 referring to I think is the Bison Project.

22 Q. I think you're correct.

23 A. And the quality management organization for that
24 project would have been different than the quality
25 management organization that would be used on a different

1 pipeline project.

2 Q. Thank you. What is the failsafe procedure if you
3 lose power at a pumping station?

4 A. Well, sorry. A failsafe procedure if you --

5 Q. If you --

6 A. Are you asking what happens when you lose power at a
7 pump station?

8 Q. Yes.

9 A. Well, what happens is the -- well, I don't -- I'm
10 not the expert on this, but my general understanding is
11 that the local computer brings the pump station into a
12 failsafe mode, if it doesn't have communication or power
13 to that location.

14 And there are actually backup batteries that will
15 allow that to occur. Anymore detail than that and, you
16 know, I can't provide it.

17 Q. So there is a backup system so that there isn't a
18 pressure surge from a massive shutdown?

19 A. That's correct. There is a backup power system at
20 each of our pump stations.

21 Q. Thank you.

22 MR. HARTER: That will be all.

23 MR. SMITH: Thank you.

24 Ms. Lone Eagle, any questions?

25 MS. LONE EAGLE: Yes, I do.

RECROSS-EXAMINATION

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BY MS. LONE EAGLE:

Q. Earlier yesterday and earlier today several times you made the statement that you respect the Tribes.

Could you define what you consider to be respect in that context?

A. Well, respect is a fairly common word, and it just means that you have mutual admiration for one another and that you -- you will treat them in a fair manner.

Q. I see. Who do you have that advises you -- I know that you had mentioned the Native American component of your company, but who do you have that specifically would advise you in terms of using terms such as respect when, I guess, dealing with the native Tribes?

A. Well, we have many experts who contribute to our indigenous policy, our aboriginal policy in Canada, and our Native American tribal policy. And, you know, I couldn't list all of the people who provide input into that, but I know many of them are tribal members.

And, in fact, in Canada, one of them was a former chief of a First Nations in Canada that does consulting and provides us with his opinions.

Q. What about U.S. Tribes and, in particular, the Oceti Sakowin here in South Dakota?

A. I'm not familiar with who may have provided us any

1 consulting information.

2 Q. Okay. What about with regard to certain protocols
3 where the Tribes are concerned?

4 A. Again, I don't have those details.

5 Q. Okay. One of the other things that we had talked
6 about or you had also talked about with others was
7 regarding the community investment programs.

8 What type of transparency do you use when offering
9 or implementing those programs?

10 A. I think we've talked a little bit about like --
11 about this before. And we use formal agreements when it
12 comes to these community investment programs because we
13 want it to be a formal and transparent process.

14 And so, as I discussed earlier, they start with an
15 LOI. They move into the MOU, and they end up in a
16 community agreement.

17 Q. Okay. And just to be clear, in these agreements
18 there is nothing that is -- or even during perhaps the
19 negotiation process there is nothing that you ask of the
20 Tribes or any tribal member in return for these
21 programs?

22 A. I talked about our policy relative to community
23 investment.

24 Q. Okay. I just wanted to clarify that there is
25 nothing expected in return.

1 A. No.

2 Q. And that that never comes up during the negotiation
3 process?

4 A. Well, certainly we talk about the project, but we're
5 not asking for anything in particular when we -- when we
6 enter into community investment agreements.

7 MS. LONE EAGLE: Okay. I'm not exactly sure
8 what the process is for introducing this, but I have
9 Exhibit 8006, which is a letter from Art Cunningham, the
10 senior aboriginal and Native American policy advisor for
11 TransCanada, and it's addressed to Mr. Long Crow.

12 Is it okay for me to go ahead and read what this
13 letter states? I'm an individual. I'm not an attorney.

14 But it says Dear Mr. Long Crow: We would like
15 to thank you for inviting us to the Ideal meeting --

16 MR. TAYLOR: Wait, wait, wait. If your
17 intention is to put the letter into evidence, the proper
18 way to do it is to not read it.

19 If you want this witness to testify about the
20 letter, you have to show it to him and establish that he
21 knows something about it so that he can testify from it.
22 And it has to also have been listed as an exhibit. And
23 maybe it was.

24 MR. SMITH: I don't know what it is, and so I
25 don't know.

1 MR. TAYLOR: Does it have a number?

2 MS. LONE EAGLE: Exhibit 8006. I stated that
3 when I first --

4 MR. TAYLOR: Cheyenne River 8006?

5 MS. LONE EAGLE: It just says Exhibit 8006.

6 MR. TAYLOR: Okay. We got it.

7 MS. LONE EAGLE: So do I need to bring this up
8 to show him?

9 MR. SMITH: Yeah. Just bring it up and show it
10 to him. And ask him if he recognizes it and if he knows
11 what it is and establish if there's some basis for him to
12 be able to testify about it.

13 (Witness examines document)

14 A. I've never seen this letter before.

15 Q. Okay. But you can read and understand what it says?

16 A. Well, I haven't had the opportunity to.

17 Q. Well, it's not very long.

18 A. Do you want me to read the whole thing?

19 Q. Yes, please.

20 (Witness examines document)

21 A. Okay. I've read it. It's going to be hard for me
22 to refer to it if I don't have it.

23 MS. REAL BIRD: Ms. Lone Eagle, do you want to
24 have a copy so he can have a copy too?

25 MS. LONE EAGLE: Thank you. Yes. I'm sorry.

1 Q. Okay. In paragraph 3 of that letter it says "As
2 described at the meeting, we are prepared to commit to
3 compensating the community for the development of the
4 work plan."

5 You stated earlier that there's nothing expected in
6 return. Would you agree that the word "compensating"
7 would imply that there was something expected in return?

8 A. Well, what this means -- the whole idea in
9 establishing a community investment plan or a community
10 agreement is that we work together with the Tribes. And
11 I described this earlier. We work together with the
12 Tribes to establish what's important to them.

13 The work plan is actually that the Tribes provide to
14 us, and we -- we also offered to pay for the development
15 of the work plan so that the Tribes don't have to spend
16 their own resources and money to develop that work plan.

17 So it also goes on to say "In order for us to invest
18 in the development of the work plan, we would need
19 verification the community is willing to work with us."

20 Obviously, if you're not willing to work with us, we
21 can't proceed with the community agreement.

22 Q. But your statement was in your testimony that you
23 don't expect anything in return. And this is expecting
24 something.

25 A. Well, actually we're compensating you to develop a

1 work plan. And the work plan is just simply a document
2 that has been provided by the -- by the Tribe indicating
3 what their interests are in arriving at a community
4 agreement.

5 Q. Okay. Thank you. I think there's another one I
6 have to run back and get real quick.

7 (Discussion off the record)

8 Q. Are you familiar with the situation in Ontario where
9 TransCanada gave the town a fire truck in exchange for
10 support of the Energy East Pipeline?

11 MR. TAYLOR: I'm going to object to the
12 question. This is far beyond the scope of anything
13 that's relevant to the issues in this case, and that's
14 not something that was discussed in cross-examination.

15 MS. LONE EAGLE: I suppose maybe I -- I'm not an
16 attorney. And I guess I would call that -- what was the
17 term you used Mr. Ellison, impeachment testimony?

18 MR. ELLISON: Yes.

19 MS. LONE EAGLE: Is that the correct term?

20 MR. ELLISON: It is the correct term.

21 MS. LONE EAGLE: Impeachment testimony.

22 He stated that they don't expect anything in
23 return when they do these community investment types of
24 things, and I just want to know if he's aware of that
25 situation.

1 MR. SMITH: Well, and I agree on relevancy,
2 Mr. Taylor. I mean, I think one of the issues with that
3 is nobody bothered to object to the original
4 cross-examination relevance. So it's sort of like now
5 it's hanging out there, and so it's a little harder for
6 me to sustain a relevancy objection.

7 So go ahead.

8 Q. I don't have a copy of this. I thought I would
9 have. But it's up on the screen. This is an internal
10 memo from TransCanada -- a TransCanada internal memo.

11 And what is is a meeting debrief regarding a meeting
12 that took place in Faith, South Dakota on November 13,
13 2013. And that's been referenced already both in opening
14 statements, and, you know, it is an exhibit. It's been
15 brought up in testimony.

16 MR. TAYLOR: The first question you have to ask
17 him is if he's ever seen that before.

18 MS. LONE EAGLE: I was getting to that. I'm not
19 an attorney.

20 MR. TAYLOR: I understand. Thank you.

21 Q. Have you ever seen this memo before?

22 A. I have not.

23 Q. Okay. You also testified earlier that you have been
24 in on conference calls with Lou Thompson and other people
25 from his department with regards to this project.

1 During any of these conference calls was this
2 meeting or this memo referenced, to your recollection?

3 A. Well, I'd have to read some of the contents to
4 figure that out.

5 Q. Take a couple of minutes to do that. This too is
6 also not very long.

7 A. I'm somewhat familiar with the meeting that's
8 referenced in this. I remember some conversations about
9 a meeting in Faith, South Dakota.

10 Q. Okay. Thank you.

11 MS. LONE EAGLE: I'd like to be able to offer
12 this as evidence also.

13 MR. TAYLOR: I'm going to continue with a
14 foundation objection. There's no foundation for the
15 admission of this particular exhibit, the fact that he's
16 familiar with it. And at this point the relevancy is
17 again an issue.

18 MR. SMITH: Do you have -- I mean, do you have
19 personal knowledge of it?

20 MS. LONE EAGLE: Of this?

21 MR. SMITH: Yes.

22 MS. LONE EAGLE: Yes, I do. I was at this
23 meeting.

24 MR. SMITH: When you do your direct testimony
25 okay --

1 MS. LONE EAGLE: I'm not doing direct testimony.
2 I can only do cross-examination. But this also would go
3 to some impeachment testimony. That's what I was trying
4 to lay the foundation for.

5 And it has to do with questions that he answered
6 regarding Mr. Thompson and Patty -- I don't have her name
7 written down in front of me.

8 MR. SMITH: So you're not going to testify?

9 MS. LONE EAGLE: No. I missed a deadline
10 because I have to get everything through the mail. So
11 everything about a week later than everyone else. So I
12 was precluded from testifying myself.

13 This is the only opportunity I have to be able
14 to -- and this goes to testimony that he gave regarding
15 some of these things earlier.

16 MR. SMITH: Well, maybe ask him a few additional
17 questions in terms of his knowledge of it and some of
18 that, and then offer it.

19 MS. LONE EAGLE: That's what I was trying to get
20 to. And it was in reference to Mr. Thompson --

21 MR. SMITH: I thought you had the right to
22 testify and then you could just set the foundation.

23 MS. LONE EAGLE: That was taken from me.

24 COMMISSIONER HANSON: She does.

25 MR. SMITH: Do you want to take a look at it,

1 Gary?

2 In the meantime, why don't you proceed with
3 asking him some questions, and we'll see if you can lay
4 the foundation that's sufficient to --

5 MS. LONE EAGLE: I'm sorry. The reason I can't
6 testify is I missed the deadline for my prefiled
7 testimony. If you would allow me to, I would surely
8 during that time be willing to do that.

9 COMMISSIONER HANSON: Excuse me. On our -- on
10 our order pertaining to -- I don't see your name as being
11 one of the persons who were precluded from testifying.

12 MS. LONE EAGLE: I was told that if I didn't
13 have my prefiled testimony in on time, I would be
14 precluded from testifying.

15 COMMISSIONER HANSON: I have the order in front
16 of me.

17 MS. LONE EAGLE: That's fine. If I'm mistaken,
18 I'm --

19 MR. SMITH: I think the people who are totally
20 precluded are the people who totally refused to respond
21 in any way to discovery.

22 MR. BLACKBURN: That's not correct.

23 MR. SMITH: That is not correct.

24 MR. CAPOSSELA: TransCanada moved and the
25 Commission granted the Motion to Preclude the testimony

1 of any Intervenor who did not timely file prefiled
2 testimony.

3 COMMISSIONER HANSON: I have the Order in front
4 of me, and it's ordered that the following persons will
5 be precluded from testifying or presenting evidence at
6 the hearing due to their failure to respond or respond
7 adequately to discovery: Rosebud Sioux Tribe, Tribal
8 Utility Commission, Viola Waln, Cheryl and Terry Frisch,
9 Lewis Grassrope, Robert Allpress, Jeff Jensen, Louis
10 Genung, Jerry Jones, Cody Jones, Debbie Trapp, Gena
11 Parkhurst, Joye Braun, 350.org, Chastity Jewett, Dallas
12 Goldtooth, Ronald Fees, John Harter, Bold Nebraska, and
13 Carolyn Smith. You're not named in that Order.

14 MS. LONE EAGLE: Okay. But there was another
15 Order that also said that anyone who did not file
16 prefiled testimony. That one was regarding the
17 discovery.

18 There was another one regarding prefiled
19 testimony, and I did miss that deadline. Because, like I
20 said, I have to get everything by U.S. Postal Service so
21 I'm sometimes almost a week behind.

22 MS. EDWARDS: This is Kristen Edwards of Staff.
23 I believe earlier, as Ms. Lone Eagle stated, there was a
24 Motion to Preclude based on failure to answer discovery.
25 However, on April 14, 2015, the Commission considered a

1 motion by TransCanada to preclude direct testimony from
2 those who did not file prefiled testimony by the April 27
3 deadline, and the Commission granted that motion with the
4 caveat that they would still be allowed to file rebuttal
5 testimony.

6 MS. LONE EAGLE: If you want to let me in to
7 testify, I'm fine with that. But I do still have a
8 couple of questions just regarding the witness's
9 knowledge with regard to a couple of things with regard
10 to the Faith meeting.

11 MR. SMITH: Why don't we just go down that path
12 and get this over with.

13 MS. LONE EAGLE: Okay.

14 Q. As a person in an administrative position, I'm sure
15 that you make sure that the people that are acting on
16 your behalf in this project, that they will do so with
17 the integrity that you expect them to perform those
18 duties; is that correct?

19 A. I hope that they will follow TransCanada's values
20 and undertake their jobs with the integrity we expect
21 them to. That's one of our values.

22 Q. Okay. And you testified earlier that Patty Gorneau
23 was a contractor with Lou Thompson under this -- under
24 the Department that he --

25 A. The tribal relations?

1 Q. Yeah. The tribal relations.

2 A. Yes.

3 Q. And she was representing TransCanada in that
4 capacity in our area?

5 A. I don't know if it was specific -- when you mean
6 "our area," what area --

7 Q. Well, with the Tribes --

8 A. In South Dakota --

9 Q. -- and specifically at this meeting in Faith,
10 South Dakota.

11 A. I don't know that she was there or not. I don't
12 have that level of detail.

13 Q. Okay. She was present. I'm just letting you know.

14 This statement -- there's a statement in the -- let
15 me pull it up. In the memo that says -- I believe it's
16 under the Opportunities and Lessons Learned.

17 What I'm trying to find is the statement about the
18 "pressure" to not have the meeting at Takini as was
19 originally intended.

20 Oh, here it was. "The meeting was held in Faith,
21 South Dakota owing to some pressure for hosting it at the
22 school in Takini."

23 What would you consider -- given your understanding
24 and knowledge of Cheyenne River Sioux Tribe's laws
25 regarding TransCanada and their personnel, what would you

1 consider that pressure to have been?

2 MR. TAYLOR: I'd object to the form of the
3 question. She's in effect trying to -- she's in effect
4 trying to get -- put some portion of the exhibit into
5 evidence by reading it and then asking him if he agrees
6 with it.

7 MS. LONE EAGLE: Well, I'm trying to get -- get
8 some understanding of more along the lines of the
9 previous question I asked.

10 MR. SMITH: Where are we at in here? I'm having
11 trouble finding it.

12 MS. LONE EAGLE: Under Meeting Debrief. It's
13 point No. 1.

14 MR. SMITH: I'm going to overrule.

15 Q. Let me try to get this another way.

16 With regards to that integrity, you would expect
17 your people to be honest with you when they were
18 reporting something to you; is that correct?

19 A. I would hope so, yes.

20 Q. Okay. What would your reaction be then to find out
21 that they were not being honest with you?

22 A. You're speculating that they weren't honest with me.
23 I haven't seen any indication they were not.

24 Q. Well, I guess what I'm trying to get at is that --
25 and I don't know how to do this without also, you know,

1 giving my own -- because I was present at this meeting so
2 I have firsthand knowledge that some of the things in
3 here are dishonest, to say the least.

4 A. Well --

5 Q. And given the fact that you were in on some
6 conference calls regarding this, this what happened here,
7 and it involved employees that were representing you, I
8 guess I'm trying to get at how -- and it goes to
9 Conditions 1 and, I believe, 6 and 7. Those are the ones
10 regarding the laws and the local governments. So it does
11 pertain to Conditions with the Permit.

12 MR. SMITH: Just ask him first what he knows
13 about this meeting.

14 MS. LONE EAGLE: Okay. Thank you very much.

15 Q. What do you know about this meeting that's
16 referenced in this letter?

17 A. I don't know that much. In the conference calls
18 that I referred to I would have been made aware that we
19 had originally tried to host the meeting in Takini and
20 that it was moved to Faith and that when it was held in
21 Faith there were some concerns raised by the Tribes, and
22 there was a lot of opposition.

23 That would be the extent of my knowledge of this
24 event.

25 Q. Okay. But you don't know any of the details?

1 A. I would not know any of these details.

2 Q. Okay. I don't know if I can even ask the next
3 question that I have. But I do have a couple more
4 questions written down. I wanted to go specifically with
5 this.

6 MR. SMITH: Yeah. I think if you're going
7 beyond what he knows --

8 MS. LONE EAGLE: Yeah. Nothing beyond this.

9 MR. SMITH: Okay. Go back to your seat now.

10 MS. LONE EAGLE: Thank you. Thank you for
11 indulging me.

12 Q. Okay. I guess there's one more -- one more question
13 that I have in reference to the memo. Sorry.

14 You said you respect the Tribes. Why is there a
15 recommendation to have security at tribal meetings?

16 A. Well, I can't speculate why someone suggested that,
17 other than based on my general knowledge there was some
18 concern over safety as a result of that meeting. That's
19 all I know.

20 Q. Okay. And that is what you consider to be respect
21 in this sense?

22 MR. TAYLOR: Objection. The question's
23 argumentative.

24 MS. LONE EAGLE: I'll withdraw the question.

25 Q. Now with respect to Mr. Thompson -- and, like I

1 said, this is in your position as an administrator and
2 someone who expects certain things of the people who are
3 working to assist you with this pipeline and what your
4 expectations would be, what would you expect someone
5 working -- and I don't know exactly what his job
6 description is, but what would you expect in terms of
7 qualifications and experience for someone in a position
8 like Mr. Thompson?

9 MR. TAYLOR: I'm going to object to relevancy.
10 I don't think that this is --

11 MS. LONE EAGLE: Excuse me. Mr. Goulet
12 testified earlier regarding his position and stating that
13 he is the face of the pipeline and he is the person that
14 oversees this all.

15 However, at a lower level there are people that
16 are representing essentially not just TransCanada but
17 Mr. Goulet. So I would think a reasonable person would
18 want to know what does he expect of those people to
19 ensure that they are qualified to do these things on
20 essentially his behalf.

21 I know it's several management levels down, but
22 given that, you know, he has testified that --

23 MR. SMITH: Ms. Lone Eagle, I'm going to let you
24 go forward. I'm going to overrule and let you go forward
25 with your question.

1 MS. LONE EAGLE: Thank you.

2 A. Well, first of all, it's not really up to me to
3 establish what the criteria are for that particular
4 position. That would be the responsibility of the
5 corporate department, Community and Sustainability, as I
6 have testified earlier. And I would trust them to ensure
7 that they develop criteria for experience and credentials
8 for the position.

9 Q. Okay. But so you're saying that you yourself, you
10 don't particularly know what you would expect. Is that
11 what your answer is?

12 A. Well, I just generally expect someone to -- in that
13 type of position to understand tribal matters and to be
14 knowledgeable about interacting with various types of
15 stakeholders, including the Tribes.

16 Q. Okay. Thank you.

17 Is Mr. Thompson a South Dakota resident?

18 A. No, he's not.

19 Q. Do you know if he is from -- either born or raised
20 in South Dakota?

21 A. He is not.

22 Q. So he -- you expect him, though, based on your
23 statement regarding tribal relations for him in the
24 course of his job here in South Dakota to be familiar
25 with tribal protocols?

1 A. I would expect him to do -- I'd expect him or people
2 who work for him to do analysis and gather information
3 which would inform them about the protocols of the Tribes
4 they're working on.

5 Q. Okay. And that would include a Ms. Gorneau? Patty
6 Gorneau? I could be pronouncing her name wrong.

7 A. As she's a member of one of the Tribes, I would
8 expect that she would know some of the protocols.

9 Q. And that she would follow those?

10 A. I'm speculating.

11 Q. That's fine. I realize it's speculation.

12 So in keeping with the terms of Condition No. 1 and
13 in relation to 6 and 7 with regard to the local
14 governments and the laws, and also in dealing with the
15 community investment programs, the U.S. Constitution is
16 our federal law.

17 Are you familiar with that?

18 MR. TAYLOR: I'm going to object to the form of
19 the question. I'm going to object to the scope of the
20 question.

21 MS. LONE EAGLE: Okay.

22 MR. TAYLOR: And I would also say that she's --
23 to some degree she's covering the same ground she covered
24 in her earlier cross-examination so this is not proper
25 recross.

1 MS. LONE EAGLE: I'm trying to lay a foundation
2 for some of the questions that were asked by some of the
3 other tribal governments with respect to meeting the
4 Conditions of 1 and 6 and 7 in the original cross.

5 MR. SMITH: I guess I'm having trouble
6 comprehending what they have to do with 6 and 7. Yeah.
7 I mean, Condition 6 is the public liaison officer and --

8 MS. LONE EAGLE: Okay. I may be wrong on the
9 numbers. I may have written them down wrong for my
10 questions. That is possible.

11 But it's the Conditions relating to the local
12 governments, and we had questions regarding those before
13 in reference to the tribal governments.

14 And then the other Condition has to do with
15 following all the state and federal laws. And I'm trying
16 to lay a foundation. First of all, is Mr. Goulet aware
17 that the United States Constitution is federal law for
18 the United States.

19 MR. TAYLOR: Well, I fail to see how his
20 understanding of the Constitution of the United States is
21 relevant to whether or not this Certification Petition is
22 accepted.

23 And, besides that, she's the one that asked most
24 of the questions about local government so she's crossing
25 her own ground again.

1 MR. SMITH: I'm going to sustain that.

2 MS. LONE EAGLE: Okay.

3 Q. Well, then the U.S. Constitution -- are you aware
4 that the United States has a Constitution?

5 A. I am.

6 Q. Okay. Thank you. So the federal laws of the
7 United States, Article 6 of the Constitution states that
8 treaties are the supreme law of the land which makes the
9 treaties federal law.

10 MR. TAYLOR: It's argument.

11 MS. LONE EAGLE: I was catching my breath, if
12 that's all right.

13 MR. SMITH: Ms. Lone Eagle, I think when we get
14 into issues like constitutionality we're talking about
15 issues of law that are way beyond the purview of
16 Mr. Goulet's testimony or expertise.

17 MS. LONE EAGLE: Okay.

18 MR. SMITH: He's not a constitutional lawyer.

19 MS. LONE EAGLE: Okay.

20 Q. Who do you have to advise you on such matters as
21 Constitution and treaties with regard to the laws that
22 you have to abide by with this pipeline?

23 MR. TAYLOR: This is well beyond the scope of
24 anybody else's cross-examination, and it's irrelevant and
25 immaterial.

1 MR. SMITH: Again, I think it is, and I think
2 we're beyond that. So, you know, I just think this is
3 outside the scope of what's been dealt with here.

4 MS. LONE EAGLE: Okay. Thank you.

5 MR. SMITH: We have earlier precluded in an
6 Order prefiled testimony regarding aboriginal and those
7 kind of rights. And usufructuary rights.

8 MS. LONE EAGLE: That's the extent of my
9 questions then.

10 Cindy Myers did not ask questions on cross. Can
11 she still ask them on recross?

12 MR. SMITH: Not theoretically, no.

13 MS. MYERS: They're related to the ERP and MSDS
14 that was brought up earlier.

15 MR. SMITH: Yeah. If you didn't cross-examine,
16 normally we don't allow recross. There are going to be
17 other witnesses up here that will have more to do with
18 that. Okay, Ms. Myers?

19 MS. MYERS: Okay.

20 MR. SMITH: And those people you will be able to
21 be engaged in cross-examination with. Okay?

22 MS. MYERS: Yep.

23 MR. SMITH: Okay. Paul.

24 MR. SEAMANS: I have no questions.

25 MR. SMITH: Let's take a 15-minute break.

1 Wait a minute. I forgot Staff's recross here.
2 Pardon me. Sorry, Kristen.

3 Staff, do you have any recross?

4 MS. EDWARDS: Very briefly.

5 RECROSS-EXAMINATION

6 BY MS. EDWARDS:

7 Q. Mr. Goulet, there was some testimony about corrosion
8 within your pipeline system. Would it be true that you
9 would be filing an Integrity Management Plan at some
10 point with regard to this project?

11 A. With Keystone XL?

12 Q. Yes.

13 A. Yeah. We would have an Integrity Management Plan
14 for operation of the pipeline.

15 Q. And have you formulated that plan yet?

16 A. No. We wouldn't have it completed yet.

17 Q. Would you take into consideration anything you
18 learned from previous experiences such as the corrosion
19 you discussed earlier when you formulate that plan?

20 A. We certainly would, yes.

21 Q. And will that plan be filed with PHMSA?

22 A. I believe it would be filed with PHMSA, yes.

23 Q. Thank you. You also talked about potential
24 abandonment of the pipeline.

25 Should you abandon a pipeline, would you file a

1 report with PHMSA prior to conducting any abandonment
2 activities?

3 A. I actually think that we -- I'm not an expert in
4 this area, but I think we actually have to get approval
5 of our abandonment plans from PHMSA.

6 Q. Okay. And understanding we couldn't require you to,
7 would you be willing to file that report with the PUC
8 should it ever come to that?

9 A. I think we certainly would.

10 MS. EDWARDS: Thank you. No further questions.

11 MR. SMITH: Do you have redirect, Mr. Taylor?

12 MR. TAYLOR: Let's take our break and talk about
13 it.

14 MR. SMITH: Okay. Thank you.

15 (A short recess is taken)

16 MR. SMITH: Mr. Taylor, I see Mr. Goulet is not
17 up there. Do you have redirect?

18 MR. TAYLOR: We have no redirect for Mr. Goulet.
19 And I'd like to take up the issue of what we're going to
20 do about Mr. Rappold not being present. Mr. Goulet will
21 be here until about noon tomorrow.

22 MR. SMITH: Ms. Craven just was up talking to
23 me, and maybe you could get on your mic. Apparently he
24 just contacted her a little while ago and had some news.
25 If you want to share that.

1 MS. CRAVEN: Sure. So I guess he is improving.
2 He's gotten his first bowl of Jello since Sunday night so
3 that's good news, and they're working on his potassium.
4 I don't know if we're violating HIPAA laws sharing all of
5 this stuff publicly.

6 He probably won't be back today, but I'm
7 checking with him to see if he can be here first thing in
8 the morning. And I will tell him that Mr. Goulet will be
9 here until about noon tomorrow. So hopefully he will be
10 joining us. We miss our colleague.

11 MR. SMITH: Do you have anything, Mr. Taylor?

12 MR. TAYLOR: If somebody finds something out
13 tonight, I'd appreciate if they'd call and let me know so
14 we can figure out for our purposes who's going to be
15 testifying in the morning.

16 MR. SMITH: Do they have your cell number?

17 MR. TAYLOR: I'll give it to Kimberly. She's
18 probably got it.

19 MR. SMITH: Please call your next witness,
20 Mr. Taylor.

21 MR. WHITE: Good afternoon, Commissioners. My
22 name is Jim White, Associate General Counsel with
23 TransCanada.

24 I'll be calling our next witness, David Diakow.

25 (The oath is administered by the court reporter.)

DIRECT EXAMINATION

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BY MR. WHITE:

Q. Good afternoon, Mr. Diakow.

A. Good afternoon.

Q. Could you state your name for the record, please.

A. David Diakow.

Q. And your business address?

A. Calgary, Alberta.

Q. And your position with TransCanada?

A. I'm vice president of commercial liquids pipelines.

Q. And do you have with you today what's been marked as Exhibit 2002?

A. Yes.

Q. Is that the prepared direct testimony of David Diakow?

A. Yes.

Q. And have you reviewed that testimony?

A. Yes, I have.

Q. And if I asked you the questions in that prepared direct testimony today, would your answers be the same?

A. Yes.

Q. Do you adopt that as your sworn testimony in this proceeding?

A. I do.

MR. WHITE: I'd move the admission of 2002 in

1 evidence.

2 MR. ELLISON: No objection.

3 MR. SMITH: Hearing none, it's admitted. 2002?

4 MR. WHITE: Yes.

5 MR. SMITH: Exhibit 202 is admitted.

6 MR. WHITE: And the witness is available for
7 cross.

8 MR. SMITH: Mr. Clark.

9 CROSS-EXAMINATION

10 BY MR. CLARK:

11 Q. Good afternoon, Mr. Diakow. You stated in your
12 direct testimony that you have reviewed the Conditions
13 contained in the Amended Final Decision and Order; is
14 that correct?

15 A. Yes.

16 Q. You also stated in your direct testimony that it is
17 your belief that Keystone can continue to meet all
18 Conditions set forth in the Amended Final Decision and
19 Order; is that correct?

20 A. That's correct.

21 Q. So that would necessarily include Conditions 6, 7,
22 and 34; is that correct?

23 A. I think my testimony refers to Findings 24 to 29.

24 Q. Correct. But you stated that you had reviewed all
25 the Conditions contained in the Amended Final Decision

1 and Order and that to your best knowledge you knew of
2 nothing that prohibited TransCanada from being able to
3 continue to meet all the Conditions.

4 MR. WHITE: I'm going to object to the
5 characterization of the testimony. The testimony states
6 "The changes discussed in Findings 24 to 29 related to
7 demand do not affect Keystone's ability to meet the
8 Conditions on which the Permit was granted."

9 MR. CLARK: At the end of his testimony he
10 states that he has reviewed the Conditions contained in
11 the entire Final Decision and Order -- that he's reviewed
12 the Conditions contained in the Final Decision and Order
13 and that to his knowledge there's nothing that keeps
14 TransCanada from being able to meet those Conditions in
15 the future. It does not limit itself to that particular
16 Condition.

17 MR. SMITH: Right. What it does say is that
18 there's nothing in terms of the changes that occur in
19 Findings 24 through 29 that would render -- that those do
20 not affect Keystone's ability to -- so his is limited to
21 the effect of those findings; right? His opinion on
22 that.

23 MR. CLARK: Okay. I'll move on.

24 Q. To the best of your personal knowledge, has
25 Keystone, TransCanada, or any of its agents notified the

1 Cheyenne River Sioux Tribe of the Bridger Creek route
2 change?

3 MR. WHITE: Objection. Relevance to this
4 witness's testimony.

5 MR. SMITH: I don't have those -- those Tracking
6 Table of Changes up here, but I think those all related
7 to -- just a minute.

8 MR. CLARK: I'm simply asking if to his
9 knowledge whether or not --

10 MR. SMITH: For that limited purpose I guess he
11 can answer I don't know, if it's a very general question.

12 MR. CLARK: It's just a very general question,
13 yes, sir.

14 MR. SMITH: But his testimony deals with
15 Tracking Table of Changes 24 to 29.

16 Q. Then I'll simply rephrase to his general knowledge
17 has TransCanada, Keystone, or any of its agents been in
18 communication with the Cheyenne River Sioux Tribe?

19 A. I don't know.

20 MR. CLARK: No further questions.

21 MR. SMITH: Okay. Next is Mr. Rappold who can't
22 participate right now.

23 So I think we're at Mr. Capossela.

24 MR. CAPOSSELA: Thank you, Mr. Smith.

25 I'll conduct my cross from the dais. They put

1 me in the far back corner. I can't see the witness from
2 where I'm seated.

3 CROSS-EXAMINATION

4 BY MR. CAPOSSELA:

5 Q. Mr. Diakow, do you know how much a barrel of oil
6 costs today?

7 A. I think the price is around \$50.

8 Q. In your testimony, in your direct testimony, you
9 stated "The crude oil market is dynamic, and it's
10 changed."

11 Would you articulate that further? How has it
12 changed? What are the factors driving the dynamism in
13 the crude oil market today?

14 A. I'd say world crude prices, supply has further
15 increased from Canada, supply is increasing in the U.S.,
16 and the price of oil is volatile.

17 Q. I'm sorry. The last thing that you said?

18 A. The price of oil is volatile.

19 Q. In what direction?

20 A. Both up and down.

21 Q. The price of oil is going up?

22 A. It went down to 40 recently. It went back up to 60,
23 and now it's back down to 50. I'd say that's up and
24 down.

25 Q. Would you just give a -- do you have an estimate of

1 how much a price of oil was, say, August 1, 2014? Last
2 year?

3 A. No, I don't. Probably less than \$100 a barrel.

4 Q. Approximately \$100 a barrel, though?

5 A. No. Less than \$100 a barrel.

6 Q. Okay. The WTI indicates that a year ago it was
7 about \$103 a barrel. Would you -- do you think that's
8 wrong or based on your testimony -- based on your
9 knowledge, do you think that the WTI figures are accurate
10 figures?

11 A. I'd have to confirm the figure.

12 Q. Is there any level of concern that the diminishing
13 cost of oil will render Keystone XL to be economically
14 infeasible?

15 A. No.

16 Q. Is there any level of cost to a barrel of oil that
17 would make TransCanada change its mind about investing
18 2 billion dollars in Keystone XL?

19 A. No.

20 MR. CAPOSSELA: I have no further questions,
21 Mr. Smith. Thank you.

22 MR. SMITH: Thank you.

23 Ms. Real Bird or Baker.

24 MS. REAL BIRD: Thank you, Mr. Smith. Thomasina
25 Real Bird for the Yankton Sioux Tribe.

CROSS-EXAMINATION

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BY MS. REAL BIRD:

Q. Good afternoon, sir.

Once the product leaves -- once the product would leave the proposed pipeline and get to the shippers what happens after that, if you know, to the product?

A. So TransCanada's a transport, provides transportation services. So the services we provide to our shippers we take -- the shippers deliver crude to the receipt end of our pipeline system. Our job is to transport and take care of custody of that crude, transport it at delivery points on our system.

Q. And do you know what happens after the product gets to the delivery points?

A. No. That's up to our shippers. Typically deliver to terminal hubs, and then the shippers take it from there.

Q. So you don't know what -- where that end product is after you transport it?

A. Are you talking about the crude oil?

Q. I'm talking about the product after it's delivered from your pipeline to whoever receives it.

A. Well, typically crude is further refined into different value products after we deliver it.

Q. Which products would typically be produced after

1 it's refined?

2 A. After it's refined?

3 Q. Or following the refinement as a result of the
4 refiner process.

5 A. Well, I'm not a refinery expert, but typical -- I
6 think everybody knows typical refiner generates products
7 like gasoline, diesel fuel.

8 Q. And do you know what happens to gasoline or diesel
9 fuel after it leaves the refinery? I'm just trying to
10 follow the chain of where this product goes starting from
11 your transportation services.

12 MR. WHITE: I'm going to object to this line of
13 questioning on the grounds of what happens to the product
14 after it leaves the pipeline has nothing to do with any
15 of the 50 Conditions in the Commission's Order.

16 MR. SMITH: Sustained.

17 Q. So there's some general information in the public
18 sphere about the demand for the pipeline. What is that
19 based upon?

20 A. I don't know what information you're referring to.

21 Q. I think it's in your testimony as to your -- the
22 shipper commitments and referencing that as an
23 endorsement of the pipeline.

24 A. Right.

25 Q. Is that based solely on contracts with the shipper?

1 A. Yeah. So the way we measure demand -- again, our
2 company provides transportation services so the way
3 our -- our measure of demand is our shipper commitments,
4 shipper contracts for our pipeline system.

5 So all of those contracts are in full force and
6 effect, and we still have shippers -- shippers are on
7 board with us with respect to the project.

8 Q. And your testimony also discusses the demand for
9 imported heavy crude. What is that information based
10 upon?

11 A. I'd say that's based on more the information in
12 the -- provided by the U.S. Energy Information
13 Administration.

14 So typical demand, this is in -- demand for heavy
15 crude, for example, at the U.S. Gulf Coast is around
16 3 and a half million barrels a day, both heavy and medium
17 sour crude. So that demand is relative constant, has
18 remained constant over the years, and according to the
19 EIA is expected to remained robust and constant for the
20 next number of decades.

21 Q. So just to be clear, we're talking about demand by
22 U.S. refineries to produce the heavy crude, not demand
23 for any refined product following that refinery process.

24 A. I was referring to demand by U.S. refineries for
25 heavy crude.

1 Q. Okay.

2 A. As an input to the refining process.

3 Q. Okay. And just to be clear, do you have any
4 testimony or information regarding the demand for refined
5 product following the refinement by U.S. refineries?

6 A. I don't. Again, I'm not a refinery expert. They
7 handle the inputs and outputs of the refining so --

8 MS. REAL BIRD: Thank you, sir. No further
9 questions.

10 MR. SMITH: Thank you.

11 I think that brings us to Mr. Blackburn.

12 MR. BLACKBURN: Thank you, Mr. Smith.

13 CROSS-EXAMINATION

14 BY MR. BLACKBURN:

15 Q. Mr. Diakow?

16 A. That's right.

17 Q. All right. Thank you.

18 Let's walk through this. In answer to question 2 in
19 your testimony, Exhibit 2002, you say "I'm responsible
20 for the commercial activities for TransCanada's liquid
21 pipelines business, including the Keystone XL project."

22 Could you describe in a little more detail what the
23 scope of your responsibility is there?

24 A. It's more dealing with our existing operating
25 system. So more on the asset management point view. So

1 I continue to deal with pricing, tariff applications,
2 dealing with our shippers if they have any commercial
3 issues with respect to interpretation of our tariffs or
4 contractual agreements we have with them.

5 Q. And it includes both relationships related to
6 current pipeline activities, liquid pipeline activities,
7 and also with regard to pipelines that are in development
8 stage?

9 A. It involves some development activities from a
10 commercial perspective, those with respect to Keystone
11 XL. We have another division within our group that is
12 solely responsible for business development.

13 Q. When you say another division within your group, are
14 those your supervisees?

15 A. They are not.

16 Q. Could you describe this division a bit more,
17 responsibility, so I understand what you do and what you
18 know versus this other group?

19 A. Sure. The other commercial group is a vice
20 president of business development. So he basically
21 handles all up and coming new concepts, putting together
22 new commercial deals.

23 And the idea is at some point those are handed over
24 to me and my people to manage the asset, manage the
25 ongoing commercial aspects with our actual shippers.

1 Q. So does that mean that your group or you are not
2 responsible for negotiating the transportation services
3 agreement for the Keystone XL Pipeline?

4 A. I was involved in negotiating those commercial deals
5 for the Keystone XL Pipeline.

6 Q. Were you responsible for them?

7 A. I was at the time.

8 Q. At the time. Did you change positions then?

9 A. Yes, we did.

10 Q. Thank you. Appreciate that.

11 Are you also involved in the -- well, let me take a
12 step back.

13 Does TransCanada's capacity -- is TransCanada's
14 capacity acquired by shippers via a nominations process?
15 On a monthly basis.

16 A. Yes. They submit a monthly nomination. Every month
17 there's kind of industry standard dates under which they
18 supply nominations so we know month to month what we need
19 to ship on the pipeline system.

20 Q. Could you describe -- just define what the
21 nomination process is so -- not everybody understands
22 that word.

23 A. Essentially a shipper on a certain -- by a certain
24 day of the month they submit a nomination that says they
25 would like to nominate for 10,000 barrels per day of

1 capacity and to be shipped and delivered in the
2 subsequent month.

3 Q. And if Mr. Taylor would allow me a little bit of
4 latitude here, rather than laying tremendous amounts of
5 foundation, I wanted to see if this witness agreed with
6 Mr. Goulet that there have been no communications between
7 TransCanada and its contracted Keystone XL shippers
8 related to changes in the terms of the transportation
9 service agreements.

10 A. Sorry. Could you repeat the question?

11 Q. Sure. Have any shippers contacted TransCanada to
12 propose changes in any of the transportation services
13 agreements for the Keystone XL Pipeline?

14 A. I consider any communications between us and our
15 shippers confidential.

16 MR. WHITE: Mr. Smith, before we go further down
17 this line of questioning, while the issues around demand
18 may be interesting, they have nothing to do with any of
19 the Conditions that are in the Commission's Order, the
20 50 Conditions in the Commission's Order. So I think all
21 of these questions are really irrelevant to the outcome
22 of this proceeding.

23 MR. SMITH: I agree with that. Because of the
24 existence of that Tracking Table of Changes, however,
25 filed by TransCanada, I guess I felt because of that and

1 it was included as part of the Petition, that those
2 things that cross over into that, to the extent they're
3 in there -- and that's primarily what I think
4 Conditions -- I can't remember the numbers but 24 through
5 29 --

6 MR. BLACKBURN: And if I may.

7 MR. SMITH: Go ahead, yes.

8 MR. BLACKBURN: If I may, Mr. Smith, paragraph 4
9 of Exhibit 2002 states that -- the last sentence says "In
10 general I can testify to demand for the project."

11 If Mr. White's argument is that demand for the
12 project is not relevant to this proceeding, then this
13 testimony should be stricken in its entirety.

14 MR. WHITE: So back to the Tracking Table --

15 MR. BLACKBURN: That's not what Mr. White is
16 saying.

17 MR. WHITE: If I might, the Tracking Table is
18 submitted updating --

19 (Discussion off the record)

20 MR. WHITE: The Tracking Table is submitted to
21 update changes to the Findings of Fact since the 2010
22 Order. The ultimate question in this case is whether or
23 not TransCanada can continue to meet the 50 Conditions
24 upon which the Permit was granted. Not whether there
25 have been any changes to the underlying Findings of Fact.

1 There are no Conditions in the Commission's
2 Order that have anything to do with whether there's
3 demand for the project. Therefore, while the Findings of
4 Fact have been updated, issues around that related to
5 demand are not relevant to the ultimate question here.

6 MR. SMITH: Response.

7 MR. BLACKBURN: Allow me again to read from this
8 exhibit itself. And I'm not talking about the
9 tracking -- changes of tracking -- I'll get it right.

10 I quote from paragraph 11. Let me just read the
11 response -- response to question 11 says -- the question
12 is "Are you aware of any reason that Keystone cannot
13 continue to meet the Conditions in which the Permit was
14 granted by the Commission?"

15 Answer: "No. I have reviewed the Conditions
16 contained in the Final Decision and Order dated June 29,
17 2010. The changes discussed in Findings 24 through 29
18 related to the demand do not affect Keystone's ability to
19 meet the Conditions on which the Permit was granted."

20 Well, if that's the case and now Mr. White is
21 saying that all those Findings of Fact 24 to 29 are not
22 related to the Conditions, why did they say that
23 they're -- why did they even make the argument that they
24 do, in effect -- or meet the Conditions.

25 The logical thing for Mr. White or TransCanada

1 to do would be to say -- not to put this testimony in at
2 all but instead just to say, well, these are not related
3 to the Conditions. But instead we now have an exhibit
4 that has been introduced and accepted by the Commission
5 related to need for the pipeline, and at this point I
6 don't believe -- I believe that Mr. White's argument is
7 precluded because they've already admitted that this
8 testimony and this type of evidence is relevant to the
9 case. Otherwise, they wouldn't have put this evidence in
10 in the first place.

11 MR. SMITH: Any last thoughts, Mr. White?

12 MR. WHITE: My last thought would be I'd ask
13 Mr. Blackburn how he can link this testimony up to
14 whether or not TransCanada can continue to meet the
15 Conditions upon which the Permit was granted. That's the
16 test of relevance here.

17 MR. BLACKBURN: How did you? Because you put it
18 in because of this case. You put the testimony in on
19 need. So how is it linked? You tell me because you
20 linked it.

21 MR. SMITH: Yeah. I mean, you guys chose to
22 introduce this, Mr. White. Explain that and why evidence
23 involving demand was introduced and if -- if it's totally
24 irrelevant. And I would tend to agree it doesn't --
25 doesn't seem to have anything to do with our Conditions,

1 but you guys chose to introduce evidence involving this.

2 MR. WHITE: We did. Because we wanted to be
3 comprehensive in our Tracking Table of Changes to make
4 sure that any Findings of Fact that might have changed at
5 all were addressed.

6 That's what we did. That's what this testimony
7 was about. But it's not about whether or not we can
8 continue to meet the Conditions upon which the Permit was
9 granted. It doesn't relate to that directly. Demand is
10 not a factor there.

11 MR. SMITH: Okay.

12 COMMISSIONER HANSON: Excuse me. I understand
13 we have a difference of opinion here. I would sustain
14 the objection. I'm seeing it different. I'm seeing it
15 as counsel's arguing, and so --

16 MR. SMITH: Well, baseline I --

17 CHAIRMAN NELSON: If I might, I think I need to
18 hear from both Commissioners. I would overrule the
19 objection. As Mr. Smith has said, you all brought it in.
20 You all brought the testimony in.

21 Now do I see the relevance at this point? No.
22 But you brought it in, and as long as you brought it in,
23 I think they have the right to cross on it.

24 MR. SMITH: With that, at least the two of us
25 will overrule. And you may proceed, although I would

1 appreciate it if you'd keep this relatively brief
2 because, again, it has such limited relevance here.

3 But --

4 COMMISSIONER HANSON: And I would add,
5 Mr. Smith, that any argument pertaining to these has to
6 be related to the Conditions.

7 If they cannot relate it to the Conditions, then
8 there's no point in going through the examination.

9 MR. SMITH: If that's okay. But please proceed,
10 Mr. Blackburn.

11 MR. BLACKBURN: Well, first a couple of things.
12 First on cross-examination the scope is much broader than
13 simply what is relevant on -- to the case as a whole, to
14 the ultimate question here.

15 And, second, essentially what I'm hearing you
16 say is that, well, we'll bring it in, but we're going to
17 limit what you can ask about it, which is very vague
18 direction.

19 And, frankly, if we're going to go that route,
20 then it would be much clearer to move to strike the
21 evidence all together. And so I'd ask for the Commission
22 to consider that motion.

23 MR. SMITH: You have just moved to strike?

24 MR. BLACKBURN: Yes, sir.

25 MR. SMITH: Okay. And --

1 MR. ELLISON: Indeed if this is the limitation
2 that's going to be imposed, we would join in the motion
3 to strike.

4 MR. SMITH: Yeah. I'm not suggesting
5 severely -- you know, you can question. I'm just
6 wondering where we go and what good it does.

7 MR. ELLISON: Well, this issue keeps coming up.
8 And I guess I'm concerned because repeatedly the
9 Commission has said that anything that is related to the
10 Amended Conditions or the Findings of Fact. Not just the
11 Table of Changes, but the Findings of Fact.

12 Because those came later -- they were amended,
13 and they came later in 2010 -- that we were entitled to
14 inquire of it.

15 MR. SMITH: Right.

16 MR. ELLISON: So for those reasons, if -- and,
17 in fact, almost every witness that TransCanada has
18 noticed in their testimony they address the Findings of
19 Fact that they are testifying about.

20 So I guess I would move to strike TransCanada's
21 entire case unless they can submit testimony that has to
22 do with the Amended Conditions and to show that they are,
23 in fact, in compliance.

24 Because each one, as I said, you can notice in
25 the direct testimony they state in the paragraph this is

1 about proposed changes and Findings of Fact, 1, 2, 3, 4,
2 5. This witness said it was 24 through 29.

3 So I think TransCanada needs to make a decision
4 about this. And if they want to proceed that only things
5 related to Amended Conditions, then I guess I'd almost --
6 I'd move to strike Mr. Goulet's testimony as well because
7 I didn't hear anything about Amended Conditions there
8 either.

9 COMMISSIONER HANSON: We have two motions now.

10 CHAIRMAN NELSON: Let's take them one at a time.

11 COMMISSIONER HANSON: The second motion has to
12 be out of order because we already have a motion before
13 us. So let's deal with that one.

14 MR. ELLISON: Yes, sir.

15 MR. SMITH: And you're talking about his motion
16 to --

17 COMMISSIONER HANSON: Mr. Ellison's motion
18 was out of order because we already have one from
19 Mr. Blackburn and we're listening to what Mr. White has
20 to say on that.

21 MR. SMITH: Okay. I see. Okay.

22 Mr. White.

23 MR. WHITE: So this testimony is unique from the
24 other testimony.

25 The other testimony -- the testimony of the

1 other witnesses deals with Findings of Fact that actually
2 have a bearing on one or more Conditions in the
3 Commission's Order.

4 This testimony was put in in support of the
5 Tracking Table, which we prepared to give the Commission
6 a comprehensive understanding of the changes that
7 occurred with respect to their Findings of Fact.

8 It happens that those Findings of Fact never
9 were linked up to any of the Conditions that were imposed
10 in the Order.

11 So I guess I would say if the Commission is
12 interested in more information on updating these
13 particular Findings of Fact with respect to demand,
14 that's what this testimony is for.

15 If there's an understanding that demand has
16 nothing to do with whether or not we can continue to meet
17 the Conditions upon which the Permit is granted, then
18 this testimony is probably not necessary.

19 MR. HARTER: May I ask a question?

20 MR. SMITH: Yes, please.

21 MR. HARTER: Mr. Smith, would it not have been
22 up to TransCanada with the argument they're making to put
23 that in front of you when they presented the evidence?
24 Otherwise, you're going to take it the way you've taken
25 it.

1 I would assume that if they wanted it taken a
2 certain way, then they would have entered it in that way.

3 MR. SMITH: Okay. I'm not quite sure I'm
4 understanding the point but --

5 MR. HARTER: Well, my point is he's trying to
6 say, well, we didn't enter it for this reason. We
7 entered it for this reason. He didn't tell anybody that.
8 He didn't let any Intervenors know that.

9 And he's trying to make you believe now that he
10 entered it for a different reason than it was entered.
11 How are we supposed to be mind readers and figure that
12 out?

13 MR. SMITH: I would say this: One bit of that
14 to some extent is our fault in an Order we drafted very
15 early in this process before the interventions and all of
16 that really began. And that is we did include the phrase
17 Findings of Fact in one of our very early Orders.

18 Since then, no. But we did. In one of the very
19 early Orders we did. And so some of that's probably our
20 problem.

21 But, again, that was what Keystone originally
22 filed. And, again, if I'm understanding Mr. White, what
23 he was saying is that the Tracking Table of Changes,
24 they're not requesting changes or anything of Findings of
25 Fact. They're merely -- that was merely an exhibit, if

1 you will, to demonstrate, as far as they knew, changes to
2 the Findings of Fact that were contained in the original
3 Order, not the Conditions.

4 Okay. But that lets -- as an informative thing
5 to let the Commission know what changes to the overall
6 underlying facts related to this case that were contained
7 in the Findings had changed since then.

8 But unlike the other -- most of the other
9 Findings of Fact which have some relevance to the
10 Conditions, these really don't, since we have no
11 Conditions related to demand. We have some Findings of
12 Fact related to demand but no Conditions related to
13 demand.

14 MS. CRAVEN: Excuse me, Mr. Smith. Shouldn't
15 they have raised this objection a long time ago when we
16 were doing discovery? We've had two rounds of discovery
17 on this issue. I mean, we've all had, you know,
18 testimony submitted about it.

19 And now at this date when we're all sitting here
20 they say it's not relevant. It seems like they missed
21 their shot at that a long time ago.

22 MR. SMITH: Thoughts, Commissioners?

23 CHAIRMAN NELSON: I'd deny the motion, and let's
24 ask questions. We've got two Commissioners here.

25 COMMISSIONER HANSON: You need to proceed the

1 way the Chair directed you. We have a slight
2 disagreement.

3 CHAIRMAN NELSON: Yeah. Mr. Smith has asked my
4 opinion. This is Chairman Nelson. I would deny the
5 motion to strike the testimony and allow Mr. Blackburn to
6 proceed with questions, understanding that they should
7 relate to Conditions since that is what's mentioned in
8 the testimony.

9 MR. BLACKBURN: Excuse me, Commissioner.
10 Essentially what you just said was the testimony doesn't
11 relate to Conditions but I can only ask questions about
12 Conditions. I'm not exactly sure how logically I can
13 comply with that direction.

14 CHAIRMAN NELSON: In the paragraph 11 it talks
15 about the fact that the Findings it says related to
16 demand do not affect Keystone's ability to meet the
17 Conditions on which the Permit is granted.

18 And I'm presuming you're trying to make an
19 alternative argument to that. And so I would presume
20 that your questions would follow that line.

21 MR. BLACKBURN: That's correct. But if they are
22 not related to any of the Conditions in the case --
23 that's what they're arguing, and that's what you just
24 said, that they're not related to the Conditions.

25 I understand that paragraph 11 says that. But

1 unless I misheard you, I heard you say that need does not
2 relate to any of the Conditions and so, therefore, I
3 can -- if I can only ask questions about Conditions but
4 none of the need issues relate to Conditions, then how
5 can I ask questions about Conditions if they're not
6 related to need by your own definition?

7 CHAIRMAN NELSON: Because they brought in the
8 issue of Findings of Fact 24 through 29 and said that
9 they do not affect the Conditions.

10 And my presumption is your questions are going
11 to go down that path and try to make an alternative
12 argument. And so I'm --

13 MR. BLACKBURN: But they do affect the
14 Conditions.

15 CHAIRMAN NELSON: Correct. I'm assuming that's
16 the direction your questions are going.

17 COMMISSIONER HANSON: And that is what my
18 original statement was, that this is stating that they do
19 not apply to the Conditions. So you are going to have
20 to -- if your questions are going to apply to this
21 testimony, it has to apply to the Conditions.

22 You have to show how your questions and the
23 matter pertains to meeting the Conditions. Now if you
24 can do that, that's fine. You can ask questions.

25 But if you're going to get anywhere in your

1 attempt to stop the certification, then you have to show
2 how this relates to the fact that they cannot meet one of
3 those Conditions.

4 That's the whole purpose of this process here,
5 to show whether or not they meet those Conditions. And
6 if you can show they don't, then fine.

7 But if it's just an exercise in asking a great
8 deal of questions and you ultimately will never get to
9 discussing a Condition and how they do not meet it, then
10 there's no point in going through that exercise.

11 MR. BLACKBURN: I believe what this is is a
12 matter of relevance to the cases which is a matter of law
13 and primary law and is defined -- I'm not sure that the
14 questions will define whether it's relevant or not.

15 You're asking me essentially to show through
16 questions that it's relevant. Mr. White said that it
17 isn't relevant.

18 COMMISSIONER HANSON: You're in a circular
19 argument here. The fact is the entire point of having
20 these hearings is to determine whether or not the
21 Applicant can continue to meet the Conditions of the
22 Permit.

23 Those Conditions of the Permit might in some
24 way -- they say that these don't relate to it. Maybe
25 they do. And that's your job to show -- if you're

1 telling us that you can do that, then, by God, go ahead
2 and do it. We're not stopping you.

3 I'm just telling you if you're going to go
4 through a two-hour exercise and questions, it doesn't
5 matter what they are. If they never relate to one of
6 those Conditions in showing how they cannot meet the
7 Condition, then it's superfluous.

8 MR. BLACKBURN: So initially you're asking me
9 how I can --

10 COMMISSIONER HANSON: I think I was very clear
11 so you need to proceed with your process.

12 MR. SMITH: Mr. Capossela.

13 MR. CAPOSSELA: Thank you, Mr. Smith.

14 The Tribe acknowledges that direct testimony, in
15 order to be relevant, must relate to compliance,
16 continuing compliance with the Amended Conditions.

17 But things are a little bit different on
18 cross-examination and rebuttal evidence. The standard
19 shifts to what did TransCanada offer for testimony in
20 evidence and does the -- do the questions on
21 cross-examination, are they within the scope of the
22 evidence that was offered in the testimony that was
23 offered.

24 And so looking at relevance in the context of
25 cross-examination or in the context of rebuttal testimony

1 is a little bit different. We need to go back to the
2 direct testimony and look at that. And as long as it's
3 on the same subject matter as the direct testimony, then
4 it's permissible.

5 Thank you for permitting me to argue on that.

6 COMMISSIONER HANSON: Mr. Capossela, I did not
7 in any way say that it was not permissible. I said it
8 ultimately has to deal with the Conditions, if it's going
9 to have a purpose before us.

10 MR. CAPOSSELA: And thank you, Commissioner
11 Hanson, for clarifying that.

12 Our point is to look at what cross-examination
13 and rebuttal evidence can do, regardless of any
14 Condition. If the Applicant has gone to a certain place
15 in their direct testimony, then the cross-examiner can go
16 to that place.

17 Now it may not be that helpful.

18 COMMISSIONER HANSON: There is no argument with
19 what you just said, no argument at all.

20 MR. CAPOSSELA: Thank you. That's our point.

21 COMMISSIONER HANSON: Okay.

22 MR. SMITH: Mr. Blackburn, do you just want to
23 strike out and we'll see how it goes? How is that?

24 MR. BLACKBURN: We will try.

25 MR. SMITH: Thank you.

1 Q. I believe I was asking a question -- I'll move on to
2 the next piece of this. I was asking about the
3 transportation service agreements.

4 And is there anyway we can go back and look and see
5 what the last question was before this?

6 (Reporter reads back the last question and answer.)

7 MR. BLACKBURN: I would request that the
8 Commission order the witness to answer the question.

9 MR. SMITH: And can I ask you in terms of the
10 confidentiality sometimes the word confidential is pretty
11 broadly used.

12 Is there particular information here that is not
13 that which makes it -- I'm assuming identity, pricing,
14 that kind of thing is what renders it confidential; is
15 that correct?

16 MR. WHITE: Yes.

17 THE WITNESS: Yes.

18 MR. SMITH: And the question was again what,
19 Cheri?

20 MR. BLACKBURN: I believe it was have there been
21 any --

22 THE WITNESS: We also have confidentiality
23 agreements with each of our shippers regarding just
24 general confidentiality where we sit down and have a
25 discussion with them, and I can't have -- you know, I

1 can't disclose those kind of confidential discussions
2 with an external party outside the party as well.

3 MR. SMITH: Okay. But just in terms of have you
4 had any conversations, you can answer that; correct?
5 That doesn't delve into what the nature of those
6 conversations were.

7 MR. WHITE: I'm sorry, Mr. Smith, but the
8 discussion was very specific. Have you had any
9 discussions about terminating contracts.

10 MR. BLACKBURN: Actually that was not the
11 question.

12 MR. SMITH: Can you read it again, Cheri?
13 (Reporter reads back the last question.)

14 MR. SMITH: And that violates the confidential
15 provision how, Mr. White?

16 MR. WHITE: It's a discussion -- it's a question
17 that relates to whether we've had discussions with
18 shippers about the terms and provisions of our DSAs.
19 Those discussions are conducted under confidentiality
20 agreements.

21 MR. SMITH: But that's the substance of them;
22 right? Not just whether they've occurred; is that
23 correct?

24 MR. WHITE: Correct.

25 MR. SMITH: Okay. In terms of whether they've

1 occurred then, that -- if I'm understanding, that's
2 beyond the scope of the confidentiality covenants; is
3 that correct?

4 MR. WHITE: So the question is whether those
5 shippers have requested changes to those contracts.
6 That's a substantive question.

7 MR. SMITH: Okay. Well, in that -- I don't
8 really know if it is because we're not getting -- we
9 don't know what the nature of the requested changes is.

10 MR. WHITE: If any.

11 MR. SMITH: If any, yeah. So in terms of have
12 there been any, is that a violation of the
13 confidentiality --

14 MR. WHITE: If the question is have you had any
15 discussions with your shippers, that's a nonsubstantive
16 question. If the question is have the shippers come to
17 you and requested changes in your DSAs, in my mind that's
18 a substantive question.

19 MR. SMITH: Well, I mean, the bottom line if
20 this is confidential, what we're going to have to do is
21 we're going to have to go into closed session regarding
22 this. Okay.

23 MR. WHITE: So let's try an answer to that
24 question and see where we go.

25 MR. SMITH: Okay. Did you hear the general

1 question?

2 Rephrase it in a way that it doesn't get to
3 substance at all or maybe it did.

4 CHAIRMAN NELSON: That's fine.

5 MR. SMITH: Okay. Let's answer this question,
6 and then we'll see where we go.

7 (Reporter reads back the last question.)

8 A. Yes, they have.

9 Q. Thank you. And now just to follow through, are you
10 able to describe what those changes are?

11 MR. WHITE: So that's a substantive question.

12 MR. SMITH: Okay. If we're entering into the
13 confidential realm, then we're going to have to clear the
14 room of folks who are not subject to a confidentiality
15 agreement.

16 MR. WHITE: I'm sorry. If I might, before we go
17 through that exercise, is there any way of tying this
18 question to one of the 50 Conditions in the Commission's
19 Order? Because otherwise we're engaged in a huge
20 exercise for no purpose.

21 MR. SMITH: Mr. Blackburn, do you have a thought
22 on that? And I agree with you that they introduced those
23 Findings, but, as I understand it, the purpose of that as
24 he's explained it was just to let us know, you know, that
25 all the changes that might have --

1 MR. HARTER: I'd like it known for the record
2 that I object to that. John Harter.

3 MR. MARTINEZ: Mr. Smith, I might add there was
4 a fairly recent hearing where we're looking at a
5 transcript of that, and I believe it was Mr. Moore who at
6 that hearing basically said, and I quote "We expect that
7 the Tracking Table forms the basis for discussion at the
8 evidentiary hearing about whether Keystone can continue
9 to meet the Conditions on which the Permit was granted."

10 And so, you know, I think it's very clear that
11 they have opened the door to that in terms of forming the
12 basis for it.

13 MR. SMITH: Okay. And if I understand that,
14 what you're suggesting is we go into confidential session
15 and allow questioning on this. Is that what your point
16 is?

17 MR. MARTINEZ: That would seem appropriate.

18 MR. WHITE: So, again, I would like to ask,
19 which Condition is it that we're now going to be focusing
20 on that this testimony will show that we can't satisfy?

21 MR. MARTINEZ: Well, I think what Mr. White
22 is -- is coming back to the same circular question.
23 They've got the burden to go forward. I think as
24 Mr. Capossela has pointed out, once they've opened the
25 door, we as Intervenors are entitled to ask what we want

1 as long as it relates back to the testimony.

2 The other alternative would be you could go
3 ahead and reconsider granting the motion to strike and
4 simply eliminate his testimony completely from these
5 proceedings.

6 MR. BLACKBURN: And if I may again, rereading
7 the last sentence to the answer to question 11, it says
8 "The changes discussed in Findings No. 24 to 29 related
9 to demand do not affect Keystone's ability to meet the
10 Conditions under which the Permit was granted."

11 That means that the alternative to that would be
12 to say that they do affect it. In other words,
13 TransCanada said they don't affect that Condition. Well,
14 the argument, counterargument, would be that they do
15 affect those Conditions.

16 How they might affect those Conditions is hard
17 to say without having full cross-examination.

18 COMMISSIONER HANSON: My philosophy class would
19 put two premises ahead of that conclusion and say that
20 it's not necessarily a conclusion you can reach.
21 However, I understand your argument.

22 What we're saying here is we have a tremendous
23 challenge ahead of us to turn off the web, to have
24 everybody leave, to go through all of that process just
25 to have an exercise of asking questions.

1 You have every right to ask the questions. The
2 door is open. But to what accomplishment is it? Is it
3 just to eat up a couple of hours of time, or is it to
4 actually arrive at something? Do you plan to arrive at
5 something?

6 MR. MARTINEZ: Commissioner Hanson, if I may
7 answer that question, the question really relates to due
8 process and the statutes that permit the full examination
9 of whatever witnesses are on the stand.

10 And I would also suggest that this is -- since
11 we are talking about a public record, it's the public
12 business of the Commission to do -- to engage in a full
13 and fair examination.

14 COMMISSIONER HANSON: We've gone through that.
15 I've agreed to it. There's no argument there. So the
16 purpose is to just go through the exercise.

17 Okay. I understand.

18 MR. SMITH: Okay. If we're going to enter the
19 realm of confidential, then we are going to need to clear
20 the room of folks who are not under a confidentiality
21 covenant with --

22 MR. WHITE: Mr. Smith, before you do that, so
23 take a step back. When we filed this certificate,
24 certification, we had no guidance on what was required.
25 We made it comprehensive. We included changes to the

1 Finding of Fact. They were referenced in the early
2 Commission Order. We kept it in. We filed testimony on
3 it.

4 Obviously, this testimony is now creating
5 difficulty for the proceeding in the sense that we're
6 going to have in-camera cross-examination on an issue
7 that has no bearing on the outcome of the case. That
8 seems like a futile effort for all parties here.

9 I think if that's the Commission's determination
10 that that's how we would go with respect to continuing
11 this cross, we all might be better off if we simply
12 withdraw this witness's testimony.

13 MR. SMITH: Are you making a motion to withdraw
14 your testimony?

15 MR. WHITE: I would move to withdraw the
16 testimony.

17 MR. SMITH: Do any Intervenors have an objection
18 to that?

19 MR. CAPOSSELA: The Standing Rock Sioux Tribe
20 would object to that. It's competent testimony properly
21 put into the record based on proper cross-examination.
22 It is -- it may not be --

23 MR. SMITH: Relevant.

24 MR. CAPOSSELA: It may not be determinative of
25 the ultimate fact of the case, but it is determinative of

1 a fact in the case. That's all it has to be.

2 MR. SMITH: Okay. What relevance does it have?
3 Explain to us.

4 MR. CAPOSSELA: If I may, I'm going to go back
5 to my seat in the other far corner. I like this view
6 much better.

7 Mr. Smith and Commission members, momentarily
8 I'm reviewing the Findings of Fact.

9 MR. SMITH: Thank you.

10 MR. CAPOSSELA: Finding 14, Transport,
11 incremental crude production from western Canadian
12 sedimentary basin and domestic production from Williston
13 to the refineries.

14 Finding 25, 26, 27 involves production of crude.
15 24, transport of additional crude production from the
16 basin in Alberta.

17 All of these Findings relate to the movement of
18 oil, the shipper contracts referenced by Mr. Blackburn
19 and Bold Nebraska.

20 Throughout the Findings of Fact these topics,
21 these subjects, are included, they're addressed, the
22 Permit was based on them in some form, and the Conditions
23 are imposed because these Findings exist.

24 They've been -- there was no motion. There was
25 no objection to the introduction of Mr. Diakow's

1 testimony. It is relevant, admissible testimony, and the
2 questions asked by Mr. Blackburn are within their scope.

3 If there's a confidentiality agreement between
4 TransCanada and the shippers and TransCanada's argument
5 is that confidentiality agreement somehow prohibits
6 TransCanada from answering a question -- a proper
7 question in this proceeding, then that confidentiality
8 agreement would be in violation of the law.

9 And so it's the -- the question seeks relevant
10 evidence. It's within the scope of the direct. It
11 emanates -- it stems from numerous Findings of Fact. I'm
12 not sure that going into executive session is necessary,
13 but we would have no objection to that.

14 But to -- just because the witness on
15 cross-examination is being asked to give information that
16 may be embarrassing, that may diminish the strength of
17 TransCanada's case that the Permit should be certified,
18 does not give TransCanada the right to strike the
19 evidence.

20 MR. SMITH: I think that's not the point. I
21 think the point is these are private shipper agreements.
22 It's intellectual property and it's proprietary and
23 that's what we're talking about.

24 MR. CAPOSSELA: No privilege has been cited by
25 TransCanada to justify withholding this information from

1 the record in this hearing. That would be the proper
2 way.

3 MR. SMITH: It's just we'd have to go into
4 closed session.

5 MR. CAPOSSELA: And we don't object to that.
6 But we do object --

7 MR. SMITH: To not being allowed to question
8 him.

9 MR. CAPOSSELA: And to striking the testimony
10 because TransCanada is uncomfortable with the direction
11 that the cross-examination has gone.

12 MR. SMITH: I just think -- I think the reason
13 is because they think it doesn't add enough to warrant
14 going into closed session and the hassle is what I
15 understood Mr. White to say. That's what I understood
16 him to say.

17 MR. CAPOSSELA: But as has been discussed,
18 cross-examination is a right, and Dakota Rural Action
19 made that argument. I don't need to spend any time on
20 it.

21 MR. MARTINEZ: Mr. Smith and Commissioners, if I
22 may add something, what we really have in terms of the
23 confidentiality that's being asserted is really a matter
24 of contract.

25 You know, I would love to understand what the

1 scope is of the actual confidentiality terms that are in
2 place with the shippers. I mean, in my corporate
3 practice I've drafted a lot of confidentiality
4 agreements, and most of those basically have one big out.
5 And that big out is, is if disclosure is required as a
6 matter of law in a proceeding.

7 And at that point there's usually a provision in
8 those agreements that says if that's going to be the case
9 or if it's put into play, and TransCanada has clearly put
10 it into play here, then it's really on them to go and
11 notify the counterparties to those agreements that those
12 are in play and that there may not be any confidentiality
13 under the terms of the contracts on that basis.

14 So really we don't know, unless TransCanada's
15 willing to actually share with us and I think share with
16 you the actual scope of the terms of the confidentiality
17 that they have.

18 COMMISSIONER HANSON: Mr. Smith.

19 MR. SMITH: Commissioner Hanson.

20 COMMISSIONER HANSON: There's a great deal of
21 discussion right now pertaining to the confidentiality,
22 and that's not the subject before us right now. That was
23 a previous discussion. We have a request from
24 TransCanada to remove their exhibit.

25 So I have a question of Staff attorneys. Once a

1 exhibit is presented, I'm not familiar with -- I think
2 we've allowed exhibits to be removed previously, but what
3 is the process?

4 Once an exhibit is submitted, can it legally be
5 removed by a Applicant? Or does it have to stay in?

6 MR. CREMER: Well, and I was looking through our
7 rules in 20:10:01 to see what we had on that. I have not
8 found anything that talks about -- there are certain
9 things the Commission has to agree, to withdraw a
10 Petition, things like that, when we put those in front of
11 the Commission.

12 I don't recall parties before -- you know, there
13 being an argue that they can't if they have asked to
14 withdraw.

15 And I thought earlier Mr. Blackburn or somebody
16 over there did ask that it be stricken. And so to me
17 that could be reviewed and grant the motion to strike
18 because I think before maybe you objected to the striking
19 of it.

20 But now you no longer object; is that true,
21 Mr. White?

22 MR. WHITE: That's true. And there actually was
23 no ruling on that motion to strike.

24 MR. CREMER: So there you go. Maybe you can
25 solve it that way.

1 COMMISSIONER HANSON: Mr. Smith, in the absence
2 of any rule prohibiting us, I know that we have allowed
3 Applicants to remove their entire Application, and it
4 doesn't matter whether anyone objects or not to it.
5 They're allowed to do it.

6 So if they wish to remove their exhibit, I think
7 we should allow them to do that. Especially in view that
8 there was a double motion asking that it be removed by
9 the parties that are now arguing that it should not be
10 allowed to be removed.

11 So that is my position on it.

12 MR. HARTER: TransCanada did not accept that
13 when it was presented, did they, Mr. Hanson?

14 COMMISSIONER HANSON: No. But it's not open to
15 argument with me at this juncture simply because of what
16 I said previously.

17 And now I'm ruling on the request to have it
18 removed, and it's up to my fellow Commissioner to decide
19 whether to allow it or not.

20 CHAIRMAN NELSON: This would probably not have
21 been the direction that I would have gone but we do need
22 to move forward and I would certainly concur that
23 historically we have allowed parties to withdraw anything
24 that they've filed.

25 And so I will support you, Commissioner Hanson.

1 MR. SMITH: So, as I understand it, the
2 Commission is -- okay. The exhibit -- I forget the name.
3 2002?

4 MR. WHITE: 2002.

5 MR. SMITH: 2002 is stricken from the record.

6 MS. REAL BIRD: Mr. Smith.

7 MR. SMITH: Yes, ma'am. Ms. Real Bird.

8 MS. REAL BIRD: Are those Findings of Fact and
9 the Tracking Table of Changes also being stricken that
10 relate to Mr. Diakow's testimony that's now been
11 withdrawn?

12 MR. SMITH: The exhibit as evidence has been
13 removed. The Tracking Table --

14 MS. REAL BIRD: Is the company withdrawing that
15 portion of its Appendix C?

16 MR. WHITE: The Tracking Table stands for what
17 it stands for. You'll give it the weight that it
18 deserves, given that it has no testimony beyond it, I
19 assume.

20 MR. SMITH: There's no -- it's just in there.
21 All that does is just show -- I think that it just
22 illustrates that any changes, whether they have anything
23 to do with the Conditions in the Order or not, you know.

24 MS. REAL BIRD: Thank you for that
25 clarification.

1 MR. SMITH: Any other thoughts?

2 MS. CRAVEN: Well, TransCanada has submitted
3 almost all of their direct testimony with regards to
4 those Tracking Table of Changes.

5 What are we to do with the other testimony?

6 MR. SMITH: You mean the other part of the
7 tracking --

8 MS. CRAVEN: Well, like all the direct testimony
9 goes to those Tracking Table of Changes.

10 MR. SMITH: Yeah. The Tracking Table of
11 Changes, nothing's happened to that. That's in the
12 Application. It's been received into evidence, and
13 it's -- it's still there.

14 MR. CREMER: Mr. Smith, and maybe I missed it,
15 but I believe at this point the only testimony -- the
16 only thing that's been received on the record is
17 Mr. Goulet's direct and rebuttal and --

18 MR. SMITH: Okay. I'm sorry. I think you're
19 right.

20 MR. CREMER: Thank you.

21 MR. SMITH: At any rate, the only thing that's
22 been stricken is the testimony. That's it. And so the
23 Tracking Table of Changes is still part of the
24 Application. Okay?

25 Just Exhibit 2002.

1 MR. ELLISON: I guess I would need a -- I would
2 need a point of clarification from Commissioner Hanson.

3 If all that is stricken is 2002, then is the
4 entire testimony being stricken?

5 MR. SMITH: Yes. In terms of evidence in the
6 case, yes.

7 MR. ELLISON: Okay. So we're not just talking
8 about Exhibit 2002. We're talking about any other
9 questions and answers that have been given by this
10 witness?

11 This entire witness's testimony is being
12 stricken?

13 Am I correct in that?

14 MR. SMITH: Well, I suppose to the extent it
15 relates in any way to that.

16 What questions would you be concerned about?

17 MR. ELLISON: Well, I guess my feeling is
18 this -- and I guess I'm really confused now.

19 Putting aside the fact of regardless what was in
20 the written Order, there were numerous discussions
21 during -- oral discussions during hearings that anything
22 relating to Findings of Fact or the Amended Conditions
23 was subject for presentation and inquiry.

24 If this is the case, then I want to make a --
25 first of all, Mr. Goulet did not testify to a -- about a

1 single Amended Condition. So, therefore, under the
2 premise that is being raised by TransCanada and
3 Commissioner Hanson, his testimony's completely
4 irrelevant, and I move to strike.

5 I would also move to strike the testimony coming
6 up of any witness who has not presented in their
7 submitted written testimony, rebuttal, surrebuttal,
8 whatever it might be, linked any particular paragraph of
9 their testimony or subject matter of their testimony to a
10 particular amended complaint -- I'm sorry. Amended
11 Condition that they are attempting to prove that any such
12 testimony be stricken from the record and other testimony
13 not be allowed.

14 I think that basically means we could have a
15 really short hearing because I think that with a very
16 limited exception, none of the submitted testimony has
17 addressed a specific amended complaint -- I'm sorry.
18 Amended Condition that it purports to support. And,
19 therefore, the testimony, as I'm understanding what
20 TransCanada and Mr. Hanson wants, is irrelevant.

21 And so I am making this motion now because the
22 rules can't keep changing every five minutes, and that's
23 what it seems like is going on. And I really have a
24 serious problem with that.

25 But let's start one step at a time. If this is

1 where we're at, I would move to strike Mr. Goulet's
2 testimony in its entirety because there was not a single
3 reference on direct or cross to any particular Amended
4 Condition and, therefore, his testimony is completely
5 irrelevant.

6 COMMISSIONER HANSON: Mr. Smith.

7 MR. SMITH: Commissioner Hanson.

8 COMMISSIONER HANSON: What transpired, in case
9 you were not paying attention to a portion of it, was
10 that the gentleman over here with TransCanada, Mr. Jim
11 White, moved to remove an exhibit, and we granted that.

12 All of the other ancillary discussion at that
13 point is moot. It doesn't matter what positions people
14 were taking. A party removed their exhibit.

15 And, obviously, we know why they removed it;
16 because it was creating all of this additional discussion
17 around -- that we were going to have to have everybody
18 leave and sign waivers and go through a protracted
19 process here.

20 MR. ELLISON: You mean, normal stuff.

21 COMMISSIONER HANSON: They removed their
22 exhibit. That's fine. They can do that. If they move
23 to remove another exhibit and we decide to let them do
24 it, we'll let them do it.

25 MR. ELLISON: I understand that particular part,

1 sir.

2 COMMISSIONER HANSON: Okay. But just because
3 they removed that does not mean they have to remove all
4 of their exhibits.

5 MR. ELLISON: Commissioner Hanson, you have
6 stated that as far as you are concerned, unless direct or
7 cross-examination has to do particularly with a
8 referenced Amended Condition, it is not relevant to these
9 proceedings.

10 Based upon that I have moved for the striking of
11 not only the balance of Mr. Diakow's testimony but also
12 Mr. Goulet's because there was never a discussion of an
13 Amended Condition anywhere in that testimony. So this is
14 a new motion, sir.

15 COMMISSIONER HANSON: You are rewording what I
16 said and the position I have taken.

17 MR. ELLISON: Please --

18 COMMISSIONER HANSON: You don't need to
19 interrupt me, sir.

20 MR. ELLISON: Sorry.

21 COMMISSIONER HANSON: I have stated numerous
22 times that you can have at it, you can have all the
23 questions you want, you can go through the process.
24 However, the process we're going through here is a
25 certification of a Permit. And you eventually need to

1 get to those Conditions.

2 You can talk about my son's Impala Super Sport
3 if you want because it burns oil, but somehow you've got
4 to get back to the process of the Conditions in order for
5 us to make a determination.

6 So that's what I'm saying. Go ahead and ask all
7 the questions you want. Go through the process. But you
8 eventually have to get to the point of showing us -- and
9 that's what -- what we've said numerous times. Show us
10 the Condition that they do not meet.

11 MR. ELLISON: I think, Mr. Hanson, you're
12 forgetting that the burden, with all due respect, is on
13 TransCanada to show that they can meet the Amended
14 Conditions.

15 We may refute that, but they have the burden of
16 proof as was stated at the beginning of these particular
17 proceedings. My position is, which I am asking the
18 Commission now to consider is that if the only thing that
19 is relevant is testimony related to -- by TransCanada as
20 to how they can prove that they can continue to comply or
21 are able or are willing to comply with specific
22 Conditions then any testimony that is not related to
23 that, as I'm understanding from what you're saying, is
24 irrelevant to these proceedings.

25 And, therefore, if that's true -- and if it's

1 not true, then I don't really understand what we've been
2 doing for the last hour. Because the part -- I
3 understand there may be testimony they don't want you to
4 hear. I mean, that's why they continually are
5 obstructionists.

6 I am completely confused now about what this
7 hearing is about. Because as I go through the direct
8 testimony of every single one of their witnesses, I found
9 one instance where there was one reference to one
10 Amended Condition.

11 Everybody else talks about the proposed changes
12 of Findings of Fact, that table. They all say their
13 testimony is based upon Finding of Fact proposed changes
14 4 through 15. They say nothing about Amended Conditions.

15 So I am making a motion at this point to strike
16 the testimony of Mr. Goulet because there was never any
17 mention of an Amended Condition that his testimony was
18 about.

19 And I am moving to strike an oral Motion in
20 Limine of any prospective TransCanada testimony that does
21 not relate expressly to an Amended Condition.

22 And one of the things that maybe we should do is
23 go through each of the written testimonies that have been
24 submitted paragraph by paragraph because, as I said,
25 ultimately we'll have a very short hearing.

1 CHAIRMAN NELSON: Okay. If I might, just a
2 couple of points.

3 The mentioned the burden of TransCanada. You're
4 correct. Apparently they believe that they can meet that
5 burden without this witness. They've chosen to withdraw
6 the testimony. We've granted that.

7 What I want to be very clear about, and I'm not
8 sure that I'm clear at this point, because that direct
9 testimony has been withdrawn, it is my assumption also
10 that all of the cross-examination is gone with it. Is
11 that our understanding?

12 Because you can't have cross without direct. Is
13 that correct, Mr. Smith?

14 MR. SMITH: Yes.

15 CHAIRMAN NELSON: Okay. Secondly, then let's
16 move on to your motion regarding Mr. Goulet.

17 Throughout the entirety of that questioning
18 exactly what you have said is rolling around in my mind
19 but nobody challenged it at that time and I think now is
20 too late to do that. And so I would not be inclined to
21 grant your motion at this point.

22 And as far as the prospective witnesses, I'd
23 prefer to just -- let's take them one at a time and see
24 where it goes.

25 MR. ELLISON: And I appreciate that, sir. I

1 just wanted to put -- you call it a standing motion but
2 we can address it individually and we will intend to do
3 that and I thank you for giving some guidance on that.

4 Just briefly on Mr. Goulet, the reason why the
5 motion on at least DRA's part at this time comes about,
6 because of what has been expressed during this witness's
7 testimony as to the only things that are relevant.

8 And so it is based upon that more limited
9 understanding that I make the motion, and that's all I'll
10 say on that.

11 CHAIRMAN NELSON: And I understand, but nobody
12 was making objections at the time. In the back of my
13 mind I'm asking why, but it didn't happen. So,
14 therefore, let's move ahead and see if we can make some
15 progress.

16 MS. REAL BIRD: Sir, could I just make one
17 point?

18 We did make that objection in a Motion in Limine
19 pointing out the feature that their prefiled did not
20 relate directly to a Condition. So we did make that
21 objection before the hearing process even started.

22 So when it was rolling around in your mind, it
23 was again rolling around in my mind, sir. So if this is
24 a reconsideration of our prehearing Motion in Limine, I
25 mean, that's what I'm hearing. So the same reasoning.

1 MR. SMITH: Okay. Mr. Ellison.

2 MR. ELLISON: Yes, sir.

3 MR. SMITH: Your motion is denied.

4 MR. ELLISON: As to Mr. Goulet?

5 MR. SMITH: Yes.

6 MR. ELLISON: Okay. Thank you.

7 MR. SMITH: And I think that's all that was on
8 the table; right? At this point? Okay.

9 Yes, sir, Mr. Blackburn.

10 MR. BLACKBURN: A couple of points then. First,
11 does that mean that TransCanada's withdrawing this
12 witness?

13 MR. SMITH: TransCanada, does that mean that?

14 MR. WHITE: Yes, it does.

15 MR. SMITH: Any objection?

16 MR. BLACKBURN: Since this is closely related to
17 the conversation we just had, I'm not going to reargue
18 those points. However, other Intervenors may wish to
19 make different arguments.

20 MR. SMITH: I'm not seeing anything so I think
21 Mr. is it Diakow or --

22 THE WITNESS: Yes.

23 MR. SMITH: What ethnicity is that?

24 THE WITNESS: Ukrainian.

25 MR. SMITH: Okay. There you go. Just curious.

1 You may step down.

2 MR. BLACKBURN: Mr. Smith, I would request since
3 we just eliminated a witness that normally would have
4 taken a fair amount of time, may we have a 15-minute
5 recess -- it may be about time for a break anyway -- to
6 discuss how to proceed from here?

7 MR. SMITH: Yeah. Any objection to that? I
8 mean, we're getting close to the end of the day.

9 CHAIRMAN NELSON: I'm okay with that.

10 MR. BLACKBURN: Or should we just call it for
11 the day? I'm just trying to --

12 MR. SMITH: Yeah. I'm trying to think now.

13 COMMISSIONER HANSON: We've got to go to
14 10 o'clock if we're going to get this done.

15 MR. SMITH: We've got to go to 10 o'clock? My
16 sister and brother-in-law are going to be sad that I
17 can't join them for dinner tonight.

18 Should we take a recess? Yes or no? Or should
19 we just adjourn for the day and be done? I mean, we're
20 going to be a quarter to 5:00.

21 CHAIRMAN NELSON: I guess my question for Cheri,
22 if we take 15 minutes, can you do another hour?

23 That would be my preference. Let's take 15
24 minutes, and then we'll come back and see how far we can
25 get into the next witness.

1 MS. CRAVEN: Who is the next witness?

2 MR. WHITE: Mr. Rick Perkins is our next
3 witness.

4 (A short recess is taken)

5 MR. SMITH: Okay. Given the withdrawal of
6 Mr. Diakow, I am assume that means there will be no
7 additional Intervenor examination regarding him.

8 Am I correct?

9 CHAIRMAN NELSON: Correct.

10 MR. SMITH: Is that correct?

11 MR. BLACKBURN: It's not clear how there could
12 be if he's been withdrawn as a witness.

13 MR. SMITH: Okay.

14 Mr. Taylor, Mr. White, Mr. Moore, would you call
15 your next witness, please.

16 MR. TAYLOR: Applicant calls Rick Perkins.

17 (The oath is administered by the court reporter.)

18 DIRECT EXAMINATION

19 BY MR. TAYLOR:

20 Q. Will you state your name for the record, please.

21 A. Yes, sir. Frederick J. Perkins.

22 Q. You go by Rick?

23 A. Rick.

24 Q. What is your occupation Mr. Perkins?

25 A. Project manager for TransCanada, specifically

1 Keystone, project manager in charge of logistics and
2 services.

3 Q. Do you have in front of you what's been marked
4 Exhibit 2007, the rebuttal testimony of F.J. Rick
5 Perkins?

6 A. Yes, sir.

7 Q. Have you read that in anticipation of this hearing
8 today?

9 A. I have.

10 Q. Do you adopt that as your testimony in this matter?

11 A. I do.

12 Q. Thank you.

13 MR. TAYLOR: Surrender the witness for
14 cross-examination. Oh, and I'll offer 2007.

15 MR. ELLISON: May I inquire for the purposes of
16 making an objection?

17 MR. SMITH: You may.

18 MR. ELLISON: Mr. Perkins, do you have
19 Exhibit 2007 in front of you, sir?

20 THE WITNESS: Yes, sir.

21 MR. ELLISON: I'd like you to look on page 1,
22 please.

23 THE WITNESS: Okay.

24 MR. ELLISON: There are questions 1 through 4.
25 And I guess the answer to 4 goes over to the top of

1 page 2.

2 Do you see that, sir?

3 THE WITNESS: Yes, sir.

4 MR. ELLISON: Is there any Amended Condition
5 that you see or that you're referring to in questions and
6 answers to questions 1 through 4?

7 THE WITNESS: No, sir.

8 MR. ELLISON: All right. Looking at the page 2,
9 questions 5 through 8 and your answers, do you in your
10 written testimony reference any Amended Condition that
11 your testimony is in support of?

12 THE WITNESS: No, sir.

13 MR. ELLISON: Going to page 3, your questions
14 and answers to questions 9 through 11, is there anything
15 in your written testimony that refers to any -- that
16 doesn't support any particular Amended Condition?

17 THE WITNESS: No, sir.

18 MR. ELLISON: Going to page 4, please, questions
19 12 through 15 and your answers going on to page 5, is
20 there anything in there, in your written testimony, which
21 refers to an Amended Condition that your testimony is in
22 support of?

23 THE WITNESS: No, sir.

24 MR. ELLISON: Going on to the last page, page 5,
25 there's one question, a new question, question 16. Is

1 there anything in your answer that refers to an Amended
2 Condition that that question and answer is in support of?

3 THE WITNESS: No, sir.

4 MR. ELLISON: Okay. I move to strike -- I
5 object to the admission of TransCanada Exhibit 2007
6 because it does not state any Amended Condition that it
7 is in support of, and, therefore, it is irrelevant to
8 these proceedings.

9 MR. SMITH: Mr. Taylor.

10 MR. TAYLOR: Mr. Perkins' testimony is captioned
11 Rebuttal Testimony of F.J. Perkins, and question 2 is
12 Whose testimony are you rebutting? Answer: Faith
13 Spotted Eagle.

14 The purpose of the testimony is rebuttal
15 testimony offered for that purpose.

16 MR. SMITH: Okay. The --

17 MR. ELLISON: It does not address any Amended
18 Condition. And, therefore, is irrelevant.

19 MR. SMITH: I'm going to deny the motion on the
20 grounds that it is responsive to testimony submitted by
21 an Intervenor.

22 MS. REAL BIRD: And, sir, can I ask for
23 reconsideration of that motion?

24 We haven't yet offered the direct witness that
25 this rebuttal testimony is based upon. And as a matter

1 of strategy, just because we filed prefiled does not
2 necessarily mean we're going to call that witness during
3 this hearing. If the Applicant hasn't met its burden,
4 that might be our strategy.

5 MR. TAYLOR: Well, I think the Yankton Sioux's
6 choice then is to either withdraw the testimony of
7 Faith Spotted Eagle now or we get to offer our testimony.

8 The concept of prefiled testimony is everyone's
9 case is on the table, and it's a fair expectation that
10 those witnesses will remain.

11 Now if they withdraw Faith Spotted Eagle as a
12 witness and withdraw her prefiled testimony at some point
13 in the hearing, then we may deal with this differently.

14 Don't know.

15 MS. REAL BIRD: It's illogical to have rebuttal
16 before direct, and it's not our case yet. We don't have
17 to make the decision whether or not to call a direct even
18 though we've prefiled. There's nothing in the statute or
19 the regulations that require us to be locked in in that
20 way.

21 So my suggestion would be to, I guess, rule on
22 the motion. I'm asking for reconsideration of DRA's
23 motion. Or in the alternative, consider having this
24 rebuttal go after the direct.

25 And, I mean, that remains true for any of the

1 rebuttals. I don't see why it's out of order in this
2 way.

3 MR. SMITH: Yeah. I mean, historically we've
4 treated -- because the "rebuttal testimony" that's
5 prefiled is totally known to everyone that we've always
6 allowed people to proceed with that in their direct case.
7 That's just the way we've done it for years and years and
8 years.

9 MS. REAL BIRD: But, sir, that doesn't mean,
10 though, that there can't be a change as the hearing goes
11 along. And if a party decides when it presents its case
12 not to call a direct, why would the Commission consider
13 wasting time and resources and having rebuttal go before
14 that?

15 It seems out of order, and it's out of order
16 based upon our first conversation with the order we were
17 going to go in yesterday morning.

18 MR. SMITH: Okay. I don't remember --

19 MS. REAL BIRD: Well, we talked about the
20 Applicant going with its direct, everyone doing cross.
21 Then the Intervenors going with their direct, everyone
22 doing cross, the Staff going with direct, everyone doing
23 cross, and then the Applicant going with its rebuttal and
24 if any of the Intervenors or Staff had rebuttal after
25 that, that's the order we did discuss yesterday morning.

1 MR. SMITH: We did. It's just this is their
2 direct. Their direct is the witness who filed prefiled
3 rebuttal testimony, but this is their direct testimony in
4 this hearing.

5 MS. REAL BIRD: That's not clear to anybody,
6 sir.

7 MR. ELLISON: I would also state, Mr. Smith,
8 that until the witness -- for example, until Mr. Perkins
9 adopted TransCanada's Exhibit 2007, the prefiled
10 testimony was not evidence in these proceedings. That's
11 the reason why the testimony is adopted, as I understand
12 it, from an evidentiary standpoint.

13 MR. SMITH: Right.

14 MR. ELLISON: So until Ms. Spotted Eagle -- if
15 she does testify, her testimony is not in evidence to be
16 rebutted. So this is TransCanada's case, but I don't
17 know how you can rebut testimony that's not even in
18 evidence yet. Just because it's been noticed is not the
19 same thing.

20 So DRA would join in the Yankton Sioux Tribe's
21 motion that this witness is either premature or the
22 testimony is irrelevant.

23 MS. CRAVEN: IEN also joins that motion.

24 MR. CLARK: And the Cheyenne River Sioux Tribe
25 would also join that motion.

1 MR. BLACKBURN: Bold Nebraska joins the motion
2 as well.

3 COMMISSIONER HANSON: Excuse me. Do I
4 understand your motion?

5 Would you repeat your motion again to make
6 sure -- since we've had some certain ancillary arguments
7 around it.

8 MS. REAL BIRD: I renewed DRA's motion that it
9 be stricken. In the alternative, if the Commission is
10 inclined to reject that motion, have it be reordered so
11 that the rebuttal properly follows direct if we do choose
12 to introduce direct.

13 COMMISSIONER HANSON: Thank you. You asked for
14 reconsideration. Thank you.

15 MR. SMITH: Commissioners.

16 CHAIRMAN NELSON: Commissioner Hanson, why don't
17 you enunciate how you would like to proceed, and then I
18 will respond to that.

19 COMMISSIONER HANSON: From the standpoint of
20 being able to place this in a somewhat sensible order, I
21 would ask that we -- I would move to overrule the motion
22 to reconsider.

23 However, I think the point is well made that you
24 have rebuttal after -- or if the other testimony is
25 given. So we can put it in that proper order.

1 MR. SMITH: Well, do we want to grant the motion
2 to reconsider so we can undo what I did?

3 CHAIRMAN NELSON: No.

4 MR. SMITH: Oh, you don't?

5 CHAIRMAN NELSON: No. I concur with
6 Commissioner Hanson on that. But we would grant Ms. Real
7 Bird's alternative motion that this be placed in the
8 proper order; is that correct?

9 COMMISSIONER HANSON: That's correct.

10 MR. SMITH: Okay. Thank you.

11 CHAIRMAN NELSON: My only question I guess for
12 TransCanada, does that create some logistics problems?

13 MR. TAYLOR: Well, I know Mr. Perkins has
14 another engagement that he made later in the week that he
15 made relying somewhat on the historic process. I don't
16 know whether he can get out of that or not?

17 THE WITNESS: Yes, I can. I'll just reschedule
18 it.

19 CHAIRMAN NELSON: Let me just make one further
20 point. I mean, we've been very, very fluid in allowing
21 folks to kind of schedule things as they needed to be.
22 But that said, Ms. Real Bird, if you would like to stand
23 on your motion, we will. It's up to you.

24 But if you stand on that, I think we're probably
25 done granting any fluidity in moving things around. So

1 what's good for one side is good for the other. So I
2 think it's your call.

3 MS. REAL BIRD: Well, I think my motion is
4 narrow as to the specific witness. And so if parties
5 have other arrangements that have already been granted
6 and that poses a problem that somebody raises, I think
7 that should be addressed at that time.

8 CHAIRMAN NELSON: And absolutely. Anything that
9 we have granted up to this point we certainly are not
10 going to back away from that. And I will consider your
11 motion narrow and deal with any future requests as they
12 come.

13 MS. REAL BIRD: Yes, sir.

14 MR. SMITH: I guess, with that, you may step
15 down.

16 THE WITNESS: Okay.

17 MR. TAYLOR: I'd just make the comment,
18 Commissioners, and I said it before, if it's good for the
19 goose, it's good for the gander. And we have a number of
20 witnesses that have other things to do and other places
21 to be, and we've arranged for them to be here now.

22 If we don't get to call -- if we have to call
23 our witnesses in order, then everybody else can call
24 their witnesses in order, and we'll play this game that
25 way.

1 CHAIRMAN NELSON: That's what I'm understanding
2 they've said. Yes.

3 MR. ELLISON: For any that have not already been
4 granted.

5 CHAIRMAN NELSON: Correct.

6 MR. SMITH: Mr. Capossela.

7 MR. CAPOSSELA: Thank you, Mr. Smith. My
8 understanding is the basis of the Yankton Sioux Tribe
9 motion is not that normal courtesies be dispensed with
10 but instead that rebuttal testimony come after the
11 testimony. And that's all.

12 And so I think that counsel's diatribe is
13 inconsistent with what preceded it. And so I'm hoping
14 that we move forward in that light. And I wanted to
15 state that for the record, and thank you for permitting
16 me to do so.

17 MR. TAYLOR: Well, my point is that we have
18 witnesses who will testify on direct and also are
19 rebuttal witnesses.

20 Does that mean that if we call a witness and we
21 take their direct testimony, then we take their rebuttal
22 testimony three days from now?

23 If that's the process, just tell me, and we'll
24 work it out.

25 CHAIRMAN NELSON: Let's take it one at a time

1 and see if we get objections.

2 My opinion would be that you can proceed as you
3 wish, and if there's an objection raised, we'll deal with
4 it at that point.

5 MR. TAYLOR: Thank you.

6 MR. SMITH: Commissioners, it's now after 5:00.
7 Should we proceed yet today with additional witnesses?
8 We're at our scheduled conclusion.

9 Okay. Mr. Taylor, do you want to call your next
10 witness?

11 MR. TAYLOR: Our next witness is John Schmidt,
12 and John Schmidt's testimony is involved. I think it
13 would be much more credible if we start in the morning
14 with Mr. Schmidt. He's going to be on the stand for a
15 long time.

16 MR. SMITH: Okay. With that, I'm hearing a
17 request to go into recess.

18 Is there any objection?

19 MR. ELLISON: No objection on the part of DRA.

20 MR. SMITH: Any what now?

21 COMMISSIONER HANSON: Housekeeping?

22 MR. TAYLOR: Do you still want to have a
23 lawyer's meeting as we talked about before?

24 MR. SMITH: No. I guess not.

25 Thank you. We're adjourned until 8 o'clock

1 tomorrow morning.

2 (The hearing is adjourned at 5:05 p.m.)

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

3 COUNTY OF SULLY)

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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 28th day of July,
11 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 30th day of
14 August, 2015.

15

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18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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#	358:4, 394:7	1912 [1] - 234:11	2032 [1] - 235:11	30th [1] - 489:13
#56 [1] - 234:20	100-year [2] - 335:12, 335:15	1971 [1] - 234:24	2034 [1] - 235:9	312 [1] - 237:7
\$	1003 [4] - 234:22, 234:23, 234:24, 234:24	1:00 [1] - 350:19	2059 [1] - 234:13	313 [2] - 237:7, 291:21
\$100 [5] - 287:3, 287:16, 427:3, 427:4, 427:5	11 [12] - 367:7, 369:17, 371:13, 373:2, 381:18, 381:22, 436:10, 436:11, 445:14, 445:25, 455:7, 478:14	2	20:10:01 [1] - 462:7	314 [1] - 237:8
\$103 [1] - 427:7	11000 [1] - 235:3	2 [11] - 292:9, 364:25, 372:14, 372:16, 375:4, 427:18, 431:18, 441:1, 478:1, 478:8, 479:11	2132 [1] - 235:3	315 [1] - 291:22
\$128,000 [1] - 289:24	12 [10] - 265:19, 287:1, 288:14, 357:5, 357:19, 358:5, 358:9, 358:18, 381:18, 478:19	2-13-13 [2] - 363:2, 371:12	2186 [1] - 234:24	33-106N-57W [1] - 235:20
\$2,954,846 [1] - 289:18	13 [3] - 235:7, 295:3, 403:12	20 [10] - 283:22, 284:10, 284:19, 287:7, 288:20, 291:24, 345:22, 372:20, 372:23, 385:4	220 [4] - 283:12, 291:19, 291:20, 306:15	332 [1] - 237:8
\$50 [2] - 287:15, 426:7	130 [1] - 255:9	200 [1] - 291:17	2261 [1] - 234:5	34 [3] - 279:19, 312:21, 423:22
\$500 [1] - 292:10	14 [6] - 241:3, 289:21, 289:22, 355:3, 407:25, 458:10	2001 [1] - 234:3	232-489 [1] - 232:11	340 [1] - 237:9
'	1418 [1] - 234:11	2002 [11] - 422:12, 422:25, 423:3, 431:19, 435:9, 464:3, 464:4, 464:5, 465:25, 466:3, 466:8	2366 [1] - 234:8	35 [2] - 262:18, 288:4
'50s [3] - 338:24, 339:1, 343:4	149 [1] - 234:3	2003 [1] - 234:3	2395 [1] - 234:6	350.org [1] - 407:11
0	15 [11] - 282:13, 289:7, 289:8, 289:25, 291:3, 321:14, 350:18, 471:14, 475:22, 475:23, 478:19	2004 [1] - 234:4	24 [11] - 423:23, 424:6, 424:19, 425:15, 435:4, 436:17, 436:21, 441:2, 446:8, 455:8, 458:15	353 [1] - 237:9
0768 [1] - 289:6	15-minute [2] - 418:25, 475:4	2005 [1] - 234:4	241 [1] - 237:3	391 [1] - 237:10
1	153 [7] - 364:7, 364:8, 371:11, 371:12, 376:3, 379:23, 381:16	2006 [1] - 234:5	248 [1] - 237:4	396 [1] - 234:19
1 [27] - 236:4, 283:12, 288:12, 288:22, 289:8, 329:12, 329:23, 330:3, 330:5, 362:15, 365:24, 367:4, 368:22, 369:18, 371:14, 372:5, 372:15, 372:22, 410:13, 411:9, 415:12, 416:4, 427:1, 441:1, 477:21, 477:24, 478:6	1683 [1] - 235:15	2007 [6] - 234:6, 477:4, 477:14, 477:19, 479:5, 482:9	25 [4] - 334:12, 335:9, 385:4, 458:14	397 [4] - 237:10, 359:4, 359:5, 359:13
1,000 [1] - 384:16	17 [3] - 365:5, 369:15, 372:4	2009 [4] - 234:7, 285:15, 289:13, 349:7	26 [1] - 458:14	398 [1] - 359:14
1,440 [1] - 253:12	1709 [1] - 235:5	2009-2012 [1] - 235:23	269 [1] - 237:4	399 [1] - 359:20
1,500 [1] - 384:17	1731 [1] - 235:6	2010 [7] - 241:15, 289:17, 306:3, 334:4, 435:21, 436:17, 440:13	27 [3] - 232:9, 408:2, 458:14	4
1-26-19(2) [1] - 274:22	1768 [1] - 234:22	2011 [1] - 241:15	28 [1] - 232:10	4 [7] - 435:8, 441:1, 471:14, 477:24, 477:25, 478:6, 478:18
1.3 [1] - 347:24	179 [1] - 234:18	2012 [2] - 235:8, 235:10	28-106N-57W [1] - 235:20	4.3 [6] - 283:15, 290:3, 304:3, 304:18, 305:12, 347:24
10 [14] - 305:20, 345:22, 348:1, 367:7, 369:15, 369:16, 371:13, 372:4, 372:14, 381:18, 381:21, 387:8, 475:14, 475:15	18 [6] - 291:13, 337:24, 375:3, 384:24, 385:3, 385:5	2013 [6] - 234:7, 235:7, 283:15, 289:14, 295:3, 403:13	283 [1] - 237:5	40 [3] - 288:3, 338:4, 426:22
10,000 [1] - 433:25	18-year [1] - 387:2	2013-2014 [1] - 235:23	28th [2] - 233:4, 489:10	40,000-mile [1] - 251:3
100 [5] - 307:22, 346:18, 357:7,	18.4 [3] - 290:5, 291:4, 291:10	2014 [4] - 235:7, 283:16, 304:3, 427:1	29 [11] - 423:23, 424:6, 424:19, 425:15, 435:5, 436:16, 436:17, 436:21, 441:2, 446:8, 455:8	400 [3] - 355:8, 355:12, 359:25
	1812 [1] - 234:23	2015 [7] - 232:9, 232:10, 233:4, 407:25, 489:11, 489:14	3	402 [1] - 360:13
	1860 [1] - 236:6	2017 [1] - 234:8	3 [15] - 283:11, 289:17, 290:1, 290:7, 347:23, 347:25, 372:17, 383:21, 383:22, 388:10, 388:16, 401:1, 430:16, 441:1, 478:13	403 [2] - 306:14, 360:14
	1878 [1] - 234:7	202 [1] - 423:5	3.3 [1] - 290:8	41-41B-1 [1] - 330:14
	1888 [1] - 234:12	2024 [1] - 235:8	3.4 [1] - 290:8	414 [1] - 233:3
		2027 [1] - 235:13	3.9 [1] - 283:14	419 [1] - 237:11
			30 [1] - 373:20	422 [1] - 237:12
			300 [1] - 237:5	423 [1] - 237:13
			3006 [1] - 234:11	426 [1] - 237:13
			3007 [1] - 234:11	428 [1] - 237:14
			3008 [1] - 234:12	431 [1] - 237:14
			3009 [1] - 234:13	45 [3] - 290:12, 291:1, 291:10
			302 [1] - 237:6	450 [1] - 355:7
			308 [1] - 237:6	476 [1] - 237:17
				48 [1] - 259:25
				48(a) [1] - 234:18
				5
				5 [6] - 232:9, 304:19, 441:2, 478:9, 478:19, 478:24

<p>5-mile [1] - 348:12 50 [16] - 260:4, 260:17, 260:18, 288:3, 288:5, 338:4, 348:1, 374:19, 385:7, 387:3, 426:23, 429:15, 434:20, 435:23, 453:18 500 [1] - 233:3 500-year [2] - 335:12, 335:15 5000 [1] - 235:17 5001 [1] - 235:18 5002 [1] - 235:19 5003 [1] - 235:21 5004 [1] - 235:21 5005 [1] - 235:22 5006 [1] - 235:24 5007 [1] - 236:3 5008 [1] - 236:4 51 [1] - 354:23 533 [1] - 234:4 535 [3] - 306:14, 308:11, 394:12 54 [2] - 291:6, 291:13 563 [1] - 234:7 59 [3] - 302:21, 354:1, 354:20 5:00 [2] - 475:20, 487:6 5:05 [1] - 488:2 5:30 [1] - 240:6</p>	<p style="text-align: center;">8</p> <p>8 [3] - 306:3, 478:9, 487:25 80 [4] - 253:14, 254:4, 254:14, 260:6 8001 [1] - 235:5 8005 [1] - 235:6 8006 [4] - 399:9, 400:2, 400:4, 400:5 8010 [1] - 235:7 8013 [1] - 235:8 8014 [1] - 235:9 8024 [1] - 235:11 8025 [1] - 235:13 8029 [1] - 235:15 811 [3] - 316:2, 316:3, 316:5 830,000 [3] - 253:16, 254:8, 254:12 89 [3] - 260:6, 260:8, 294:6</p>	<p style="text-align: center;">A</p> <p>abandon [1] - 419:25 abandoned [6] - 385:24, 386:1, 386:2, 386:8, 387:17, 387:23 abandoning [1] - 387:22 abandonment [6] - 385:10, 385:13, 388:1, 419:24, 420:1, 420:5 abide [1] - 417:22 abilities [1] - 248:23 ability [12] - 247:19, 257:25, 313:5, 315:1, 329:24, 330:5, 390:20, 424:7, 424:20, 436:18, 445:16, 455:9 able [38] - 239:13, 240:20, 243:4, 252:20, 257:20, 260:7, 265:12, 271:9, 274:23, 278:3, 279:14, 282:12, 297:10, 298:6, 304:15, 307:23, 310:25, 312:1, 316:16, 319:2, 337:5, 337:16, 347:21, 351:2, 363:22, 370:12, 390:12, 391:22, 394:12, 400:12, 404:11, 405:13, 418:20, 424:2, 424:14, 453:10, 470:21, 483:20 aboriginal [3] - 397:16, 399:10, 418:6 above-entitled [2] - 233:2, 489:10 absence [1] - 463:1 absolutely [5] - 238:24, 240:8, 278:13, 279:3, 485:8 absurd [1] - 298:14 accept [1] - 463:12 acceptable [1] - 346:25 accepted [2] - 416:22, 437:4 ACCEPTING [1] - 232:5</p>	<p>access [5] - 275:13, 279:11, 279:15, 279:16, 325:19 accommodate [2] - 238:15, 252:18 accomplish [1] - 351:4 accomplished [1] - 365:21 accomplishment [1] - 456:2 accordance [1] - 329:15 according [3] - 310:7, 375:4, 430:18 accountability [1] - 334:14 accurate [3] - 258:1, 363:19, 427:9 accurately [1] - 321:25 acknowledges [1] - 448:14 acquired [1] - 433:14 act [1] - 238:5 acting [1] - 408:15 Action [1] - 460:18 ACTION [1] - 234:17 action [5] - 295:4, 343:20, 343:23, 343:24, 374:9 active [3] - 265:13, 265:23, 310:1 activities [6] - 276:13, 420:2, 431:20, 432:6, 432:9 activity [1] - 342:21 acts [1] - 259:9 actual [10] - 242:8, 304:2, 304:9, 305:6, 309:10, 347:15, 356:13, 432:25, 461:1, 461:16 add [6] - 247:24, 292:22, 439:4, 454:3, 460:13, 460:22 added [5] - 244:22, 245:3, 245:7, 245:16, 254:2 addition [1] - 306:24 Addition [1] - 236:3 additional [10] - 248:2, 255:18, 299:16, 349:3, 349:20, 405:16, 458:15, 468:16, 476:7, 487:7 address [7] - 300:12, 324:9, 372:2, 422:7,</p>	<p>440:18, 473:2, 479:17 addressed [5] - 399:11, 438:5, 458:21, 467:17, 485:7 Addresses [1] - 235:17 addressing [1] - 260:3 adequately [1] - 407:7 adhere [1] - 329:23 adherence [1] - 329:13 adjacent [2] - 348:18, 361:15 adjourn [1] - 475:19 adjourned [2] - 487:25, 488:2 administered [2] - 421:25, 476:17 Administration [2] - 322:3, 430:13 administrative [1] - 408:14 administrator [1] - 413:1 admiration [1] - 397:8 admissible [2] - 380:4, 459:1 admission [6] - 376:3, 379:22, 379:25, 404:15, 422:25, 479:5 admit [2] - 377:21, 380:24 admitted [5] - 377:11, 381:16, 423:3, 423:5, 437:7 admonished [1] - 267:15 adopt [3] - 354:2, 422:22, 477:10 adopted [4] - 354:23, 356:17, 482:9, 482:11 advance [2] - 250:23, 391:19 adverse [6] - 250:15, 252:7, 334:7, 334:12, 334:18, 335:1 advertising [1] - 253:15 advise [2] - 397:13, 417:20 advises [1] - 397:10 advisor [1] - 399:10 affect [11] - 424:7, 424:20, 436:18, 445:16, 446:9,</p>	<p style="text-align: right;">2</p>
<p style="text-align: center;">6</p> <p>6 [7] - 411:9, 415:13, 416:4, 416:6, 416:7, 417:7, 423:21 6/6/11 [1] - 235:12 60 [4] - 338:4, 385:7, 387:3, 426:22 658 [1] - 234:4</p>	<p style="text-align: center;">9</p> <p>9 [14] - 290:11, 290:18, 290:23, 290:25, 366:6, 366:9, 367:4, 367:7, 367:11, 367:16, 368:20, 369:16, 381:23, 478:14 9.1 [1] - 305:11 9.3 [2] - 304:2, 304:18 900,000 [4] - 253:12, 253:13, 254:1, 254:11 9011 [1] - 236:6 95 [1] - 362:14 96.8 [11] - 366:4, 367:14, 367:15, 370:16, 371:16, 371:22, 371:24, 371:25, 372:25, 373:15, 381:25 97 [3] - 362:22, 365:16, 374:3 984 [3] - 235:17, 235:18, 235:19 985 [3] - 235:21, 235:21, 235:22 988 [2] - 235:24, 236:3 989 [1] - 236:4 992 [1] - 234:15 994 [1] - 234:3 995 [1] - 362:16</p>				
<p style="text-align: center;">7</p> <p>7 [5] - 411:9, 415:13, 416:4, 416:6, 423:21 7/16/10 [1] - 235:14 70 [2] - 253:17, 253:23 700,000 [3] - 253:12, 253:24, 254:10 7001 [1] - 234:15 7002 [1] - 234:16 72 [3] - 253:22, 254:7, 254:13 73.9 [1] - 375:4</p>					

<p>446:13, 455:9, 455:12, 455:13, 455:15, 455:16 affected [7] - 252:23, 253:1, 272:11, 312:25, 318:6, 318:7, 335:6 Affidavit [2] - 235:21, 235:22 afford [1] - 354:3 afternoon [8] - 296:1, 353:19, 353:20, 421:21, 422:3, 422:4, 423:11, 428:3 Ag [1] - 235:19 age [1] - 342:7 Agency [1] - 235:20 agents [2] - 424:25, 425:17 ago [12] - 259:25, 261:8, 357:13, 357:18, 357:21, 358:6, 359:19, 360:22, 440:24, 427:6, 444:15, 444:21 agree [19] - 258:18, 323:3, 327:2, 344:23, 361:7, 369:16, 372:3, 372:13, 375:7, 381:15, 381:17, 381:21, 387:5, 401:6, 403:1, 434:23, 437:24, 453:22, 462:9 agreed [5] - 292:13, 323:20, 354:2, 434:5, 456:15 agreement [16] - 260:11, 280:25, 325:15, 325:21, 327:1, 327:3, 328:3, 398:16, 401:10, 401:21, 402:4, 433:3, 453:15, 459:3, 459:5, 459:8 agreements [18] - 276:11, 322:16, 324:24, 326:2, 328:1, 398:11, 398:17, 399:6, 432:4, 434:9, 434:13, 450:3, 450:23, 451:20, 459:21, 461:4, 461:8, 461:11 agrees [1] - 410:5 ahead [15] - 258:25, 262:11, 269:10,</p>	<p>269:20, 303:10, 378:21, 399:12, 403:7, 435:7, 448:1, 455:3, 455:19, 455:23, 470:6, 473:14 aim [1] - 294:23 ain't [1] - 291:6 aircraft [1] - 340:22 Alberta [9] - 244:12, 245:18, 245:21, 247:22, 293:14, 332:18, 349:22, 422:8, 458:16 alignment [2] - 294:16, 323:11 allow [19] - 247:25, 249:14, 299:16, 348:6, 348:9, 348:24, 349:4, 366:19, 374:18, 391:24, 396:15, 406:7, 418:16, 434:3, 436:7, 445:5, 454:15, 463:7, 463:19 allowed [19] - 296:12, 296:15, 297:13, 298:17, 310:15, 331:20, 331:21, 345:3, 376:13, 384:23, 408:4, 460:7, 462:2, 463:2, 463:5, 463:10, 463:23, 467:13, 481:6 allowing [2] - 391:19, 484:20 allows [2] - 244:15, 305:23 Allpress [1] - 407:9 almost [17] - 260:4, 292:8, 306:19, 308:18, 320:9, 347:25, 348:1, 362:22, 365:15, 372:16, 377:4, 387:7, 393:20, 407:21, 440:17, 441:5, 465:3 alone [1] - 312:2 alternative [7] - 445:19, 446:11, 455:2, 455:11, 480:23, 483:9, 484:7 Amended [31] - 234:8, 235:3, 329:22, 330:3, 423:13, 423:18, 423:25, 440:10, 440:22,</p>	<p>441:5, 441:7, 448:16, 466:22, 467:1, 467:10, 467:18, 468:3, 469:8, 469:13, 470:13, 471:10, 471:14, 471:17, 471:21, 478:4, 478:10, 478:16, 478:21, 479:1, 479:6, 479:17 amended [3] - 440:12, 467:10, 467:17 America [2] - 303:2, 303:8 American [15] - 255:2, 255:4, 271:15, 271:21, 272:20, 272:22, 273:22, 273:24, 276:2, 278:4, 294:25, 397:11, 397:17, 399:10 amount [10] - 258:2, 286:20, 287:10, 292:25, 304:17, 306:7, 307:24, 313:23, 322:4, 475:4 amounts [2] - 336:24, 434:4 analysis [2] - 313:7, 415:2 ancestry [1] - 271:21 anchor [1] - 393:9 ancillary [2] - 468:12, 483:6 Ann [2] - 235:11, 235:13 anode [3] - 259:6, 259:9, 259:10 anodes [2] - 265:3, 265:7 anomalies [12] - 366:12, 367:6, 368:22, 370:3, 371:20, 373:1, 377:25, 379:1, 381:17, 382:20, 383:20, 384:11 anomaly [12] - 363:2, 365:7, 370:5, 370:17, 372:4, 372:13, 374:13, 374:19, 375:7, 375:10, 377:19, 382:22 answer [43] - 252:20, 253:6, 253:8, 254:16, 256:9, 257:20, 262:11,</p>	<p>266:19, 266:20, 267:7, 268:19, 269:11, 272:7, 272:9, 273:1, 274:23, 296:9, 307:12, 326:22, 326:23, 326:25, 339:17, 339:18, 356:22, 357:1, 361:22, 382:15, 407:24, 414:11, 425:11, 431:18, 436:15, 450:6, 450:8, 451:4, 452:23, 453:5, 455:7, 456:7, 477:25, 479:1, 479:2, 479:12 answered [6] - 249:12, 307:13, 336:3, 340:7, 340:9, 405:5 answering [1] - 459:6 answers [7] - 270:2, 422:20, 466:9, 478:6, 478:9, 478:14, 478:19 anticipate [1] - 353:24 anticipated [1] - 337:18 anticipating [4] - 270:1, 337:1, 339:5, 339:22 anticipation [1] - 477:7 Antoine [1] - 235:3 anyway [4] - 239:17, 382:9, 450:4, 475:5 apologies [1] - 359:15 appearing [2] - 240:23, 298:9 appendix [1] - 302:22 Appendix [2] - 241:4, 464:15 applicable [1] - 315:2 Applicant [7] - 447:21, 449:14, 462:5, 476:16, 480:3, 481:20, 481:23 Applicants [1] - 463:3 Application [9] - 238:3, 241:17, 241:23, 243:11, 253:23, 254:5, 463:3, 465:12, 465:24 applications [1] - 432:1 apply [3] - 446:19, 446:20, 446:21</p>	<p>appointed [1] - 489:8 3 appointment [2] - 295:25, 331:19 appreciate [7] - 239:2, 308:14, 350:12, 421:13, 433:10, 439:1, 472:25 approach [2] - 280:18, 335:17 approached [1] - 277:25 appropriate [5] - 267:21, 321:8, 336:8, 378:7, 454:17 approval [2] - 254:21, 420:4 approve [2] - 275:4, 338:6 approved [2] - 390:1, 390:3 approximate [1] - 288:2 April [2] - 407:25, 408:2 Aquifer [1] - 262:5 Arden [1] - 234:23 Area [1] - 235:19 area [20] - 261:25, 262:6, 262:8, 262:14, 262:21, 263:2, 263:4, 263:15, 272:11, 279:6, 279:7, 279:10, 279:15, 294:3, 334:14, 363:5, 409:4, 409:6, 420:4 areas [10] - 251:7, 253:5, 261:19, 263:25, 272:5, 281:7, 281:8, 319:22, 359:23, 360:16 argue [4] - 302:9, 378:20, 449:5, 462:13 arguing [3] - 438:15, 445:23, 463:9 argument [19] - 258:14, 376:1, 417:10, 435:11, 436:23, 437:6, 439:5, 442:22, 445:19, 446:12, 447:19, 449:18, 449:19, 455:14, 455:21, 456:15, 459:4, 460:19, 463:15 argument's [1] -</p>
---	---	---	--	--

<p>259:16 argumentative [16] - 256:7, 256:11, 256:12, 257:13, 258:5, 258:7, 258:8, 258:10, 258:19, 280:6, 340:6, 370:20, 371:2, 383:2, 384:2, 412:23 arguments [2] - 474:19, 483:6 arranged [1] - 485:21 arrangements [1] - 485:5 arrive [3] - 376:17, 456:4 arriving [1] - 402:3 art [4] - 338:15, 338:17, 338:20 Art [1] - 399:9 article [4] - 246:4, 255:7, 368:3, 368:7 Article [1] - 417:7 articulate [1] - 426:11 aside [1] - 466:19 aspects [3] - 294:17, 342:24, 432:25 asserted [1] - 460:23 assess [2] - 292:24, 385:23 assessed [3] - 285:13, 285:19, 347:12 assessing [1] - 310:4 Assessment [1] - 235:8 assessment [15] - 250:3, 257:2, 284:15, 285:11, 286:7, 293:7, 304:20, 305:10, 305:17, 347:11, 356:9, 356:14, 356:17, 356:21 asset [3] - 286:17, 431:25, 432:24 assets [8] - 243:5, 243:6, 243:8, 256:25, 288:5, 288:10, 288:17, 288:19 assist [1] - 413:3 assists [1] - 271:11 Associate [1] - 421:22 associated [14] - 250:4, 278:14, 278:19, 279:4, 292:7, 292:15, 315:14, 332:23, 344:10, 344:11, 348:16, 355:5,</p>	<p>362:23 assume [6] - 338:10, 376:16, 379:21, 443:1, 464:19, 476:6 assumes [2] - 266:10, 371:2 assuming [7] - 240:20, 258:19, 302:5, 330:15, 339:17, 446:15, 450:13 assumption [1] - 472:9 assurance [1] - 346:6 assure [2] - 246:11, 392:5 attached [1] - 489:11 attempt [4] - 371:8, 380:16, 380:17, 447:1 attempted [1] - 392:14 attempting [1] - 467:11 attention [1] - 468:9 attorney [6] - 297:23, 368:24, 368:25, 399:13, 402:16, 403:19 attorneys [1] - 461:25 aud [1] - 273:18 audio [1] - 240:3 audit [1] - 388:10 August [3] - 232:9, 427:1, 489:14 author [1] - 380:14 authority [1] - 330:15 available [10] - 250:20, 265:21, 265:24, 298:23, 298:24, 300:25, 320:22, 321:18, 337:2, 423:6 Avenue [1] - 233:3 average [6] - 254:7, 290:1, 337:23, 372:15, 385:2, 385:5 avoid [4] - 279:14, 279:22, 351:5, 382:5 aware [35] - 255:7, 255:11, 267:10, 271:19, 272:19, 274:24, 275:12, 275:17, 276:14, 276:21, 277:2, 277:11, 277:15, 277:24, 278:17, 278:19, 279:13, 316:13, 317:21, 331:9, 331:12, 332:11, 333:23,</p>	<p>334:20, 344:3, 347:21, 348:23, 362:20, 383:16, 388:5, 402:24, 411:18, 416:16, 417:3, 436:12</p> <p style="text-align: center;">B</p> <p>backdoor [1] - 380:17 backfilled [1] - 389:24 background [1] - 375:18 Background [1] - 235:10 backup [3] - 396:14, 396:17, 396:19 Baker [9] - 243:10, 243:14, 244:8, 244:9, 247:10, 247:25, 314:18, 349:24, 427:23 Bakken [7] - 242:5, 243:1, 244:20, 348:3, 348:9, 348:12, 349:23 balance [1] - 469:11 bank [1] - 269:12 banking [1] - 249:10 barrel [9] - 287:3, 287:16, 426:5, 427:3, 427:4, 427:5, 427:7, 427:16 barrels [12] - 253:12, 253:16, 253:25, 254:2, 254:8, 254:11, 254:12, 354:9, 355:7, 355:12, 430:16, 433:25 base [19] - 246:1, 283:12, 283:21, 284:17, 285:5, 292:11, 293:2, 303:16, 308:24, 347:2, 347:6, 347:25, 350:5, 354:23, 355:2, 384:14, 388:9, 388:16, 394:11 based [35] - 256:25, 284:19, 284:22, 286:21, 287:12, 294:24, 296:2, 305:3, 305:9, 319:23, 321:9, 321:11, 321:16, 326:5, 340:17, 363:7, 369:17, 375:8, 380:6,</p>	<p>407:24, 412:17, 414:22, 427:8, 429:19, 429:25, 430:9, 430:11, 457:21, 458:22, 469:10, 471:13, 473:8, 479:25, 481:16 baseline [4] - 354:17, 392:10, 392:25, 438:16 basic [6] - 254:6, 296:14, 317:13, 363:14, 366:23, 366:25 basin [3] - 245:21, 458:12, 458:16 basis [14] - 269:14, 274:19, 316:21, 339:11, 370:25, 380:25, 381:1, 390:14, 400:11, 433:15, 454:7, 454:12, 461:13, 486:8 batch [6] - 244:8, 244:10, 244:12, 244:16, 244:17, 357:19 batched [2] - 246:13, 247:12 batches [2] - 244:6, 244:13 batching [3] - 245:23, 245:25, 246:11 batteries [1] - 396:14 bearing [2] - 442:2, 457:7 became [2] - 310:16, 346:12 become [1] - 343:12 becomes [1] - 312:25 BEFORE [1] - 232:13 beg [1] - 295:22 began [1] - 443:16 begin [1] - 353:15 beginning [3] - 290:18, 356:18, 470:16 behalf [5] - 240:23, 312:18, 358:19, 408:16, 413:20 behind [2] - 369:3, 407:21 belief [1] - 423:17 beliefs [1] - 252:4 believes [2] - 247:1, 307:6 bell [1] - 263:14 below [2] - 260:22,</p>	<p>356:12 bends [2] - 366:10, 367:17 benefit [4] - 277:22, 280:14, 290:8, 329:19 benzene [1] - 245:3 benzene's [1] - 245:5 best [6] - 257:24, 302:16, 350:20, 361:8, 424:1, 424:24 better [12] - 240:9, 253:7, 255:25, 256:18, 264:13, 270:9, 271:10, 319:3, 336:2, 356:2, 457:11, 458:6 between [22] - 259:5, 280:4, 294:24, 304:8, 304:18, 305:21, 310:10, 314:7, 325:15, 332:11, 332:13, 332:18, 333:23, 335:9, 336:5, 336:13, 345:22, 349:22, 354:18, 434:6, 434:14, 459:3 beyond [27] - 249:4, 251:23, 265:16, 265:22, 266:8, 266:11, 266:15, 267:23, 272:25, 274:8, 274:17, 275:16, 329:5, 329:20, 338:8, 339:8, 339:9, 339:25, 392:13, 402:12, 412:7, 412:8, 417:15, 417:23, 418:2, 452:2, 464:18 big [6] - 311:5, 365:14, 366:12, 376:20, 461:4, 461:5 bigger [2] - 266:15, 372:17 biggest [2] - 305:10, 370:6 billion [8] - 288:3, 288:4, 288:5, 288:14, 288:20, 292:9, 427:18 Bird [8] - 237:8, 237:14, 314:18, 314:21, 427:23, 427:25, 464:7, 484:22 BIRD [26] - 314:20, 329:6, 329:12,</p>
--	---	---	---	--

<p>329:22, 330:3, 330:11, 330:21, 331:1, 331:13, 400:23, 427:24, 428:2, 431:8, 464:6, 464:8, 464:14, 464:24, 473:16, 479:22, 480:15, 481:9, 481:19, 482:5, 483:8, 485:3, 485:13</p> <p>Bird's [1] - 484:7</p> <p>Bison [1] - 395:21</p> <p>bit [22] - 244:7, 252:12, 252:18, 266:23, 281:4, 286:10, 288:22, 293:1, 299:10, 312:6, 312:7, 312:9, 332:24, 357:6, 373:12, 389:21, 398:10, 432:16, 434:3, 443:13, 448:17, 449:1</p> <p>bitumen [4] - 244:22, 244:25, 245:16, 354:10</p> <p>BLACKBURN [29] - 331:17, 340:13, 350:13, 406:22, 431:12, 431:14, 435:6, 435:8, 435:15, 436:7, 437:17, 439:11, 439:24, 445:9, 445:21, 446:13, 447:11, 448:8, 449:24, 450:7, 450:20, 451:10, 455:6, 474:10, 474:16, 475:2, 475:10, 476:11, 483:1</p> <p>Blackburn [16] - 237:9, 237:14, 331:16, 331:23, 340:11, 431:11, 437:13, 439:10, 441:19, 445:5, 449:22, 453:21, 458:18, 459:2, 462:15, 474:9</p> <p>blanket [1] - 386:3</p> <p>blast [1] - 263:16</p> <p>blended [1] - 246:7</p> <p>blending [1] - 246:12</p> <p>blew [1] - 395:11</p> <p>board [1] - 430:7</p> <p>boat [1] - 259:10</p> <p>Bob [3] - 295:22,</p>	<p>331:18, 332:3</p> <p>body [3] - 239:15, 241:24, 324:6</p> <p>Bold [3] - 407:12, 458:19, 483:1</p> <p>bond [5] - 259:20, 260:13, 263:21, 309:20</p> <p>border [1] - 327:16</p> <p>bordering [1] - 327:15</p> <p>bores [2] - 250:21, 250:23</p> <p>born [1] - 414:19</p> <p>bothered [1] - 403:3</p> <p>bottom [6] - 263:12, 289:4, 316:15, 367:3, 367:10, 452:19</p> <p>boundaries [2] - 278:16, 279:5</p> <p>bowl [1] - 421:2</p> <p>boy [1] - 259:24</p> <p>Braun [2] - 248:13, 407:11</p> <p>break [7] - 240:3, 282:16, 350:19, 351:23, 418:25, 420:12, 475:5</p> <p>breakdown [1] - 289:11</p> <p>breaks [1] - 348:10</p> <p>breath [1] - 417:11</p> <p>Brian [1] - 232:19</p> <p>bribe [1] - 280:4</p> <p>bridge [1] - 279:8</p> <p>Bridger [2] - 279:6, 425:1</p> <p>brief [1] - 439:1</p> <p>briefly [3] - 244:2, 419:4, 473:4</p> <p>bring [7] - 242:5, 358:12, 386:21, 386:22, 400:7, 400:9, 439:16</p> <p>bringing [3] - 274:20, 351:5, 352:23</p> <p>brings [2] - 396:11, 431:11</p> <p>broader [1] - 439:12</p> <p>broadly [1] - 450:11</p> <p>brother [1] - 475:16</p> <p>brother-in-law [1] - 475:16</p> <p>brought [13] - 245:19, 266:4, 278:9, 358:13, 386:25, 392:20, 403:15, 418:14, 438:19, 438:20, 438:22, 446:7</p>	<p>browser [1] - 240:2</p> <p>Bruce [2] - 352:4, 365:9</p> <p>budget [6] - 275:7, 275:8, 275:9, 275:11, 275:20, 276:15</p> <p>budgetary [1] - 280:2</p> <p>budgets [1] - 275:4</p> <p>build [5] - 241:25, 254:19, 292:10, 302:24, 303:12</p> <p>Building [1] - 233:3</p> <p>building [9] - 242:14, 243:17, 250:5, 255:1, 264:24, 269:22, 326:5, 346:7, 348:16</p> <p>built [22] - 265:2, 265:6, 302:15, 302:17, 303:2, 303:8, 303:15, 303:19, 320:12, 335:21, 338:23, 339:2, 343:4, 348:15, 349:3, 353:24, 354:4, 354:21, 361:6, 382:1, 382:19, 388:24</p> <p>bullet [1] - 349:13</p> <p>bunch [1] - 272:17</p> <p>burden [6] - 454:23, 470:12, 470:15, 472:3, 472:5, 480:3</p> <p>buried [6] - 252:22, 259:7, 309:25, 335:24, 336:1, 336:18</p> <p>burns [1] - 470:3</p> <p>burst [5] - 309:4, 309:13, 309:17, 361:21, 362:2</p> <p>business [17] - 276:2, 321:7, 321:23, 327:7, 327:12, 334:24, 374:5, 374:7, 378:24, 379:19, 380:1, 380:19, 422:7, 431:21, 432:12, 432:20, 456:12</p> <p>businesses [1] - 321:21</p> <p>BY [20] - 241:2, 248:22, 269:19, 283:2, 300:20, 312:20, 313:14, 314:20, 332:2, 340:13, 353:18,</p>	<p>391:6, 397:2, 419:6, 422:2, 423:10, 426:4, 428:2, 431:14, 476:19</p> <p style="text-align: center;">C</p> <p>C1 [1] - 235:19</p> <p>C2 [1] - 235:20</p> <p>Cahill [1] - 235:15</p> <p>calculating [1] - 284:16</p> <p>calculation [1] - 257:5</p> <p>calculations [2] - 347:10, 347:15</p> <p>Calgary [1] - 422:8</p> <p>California [1] - 362:10</p> <p>camera [1] - 457:6</p> <p>Canada [12] - 245:22, 255:8, 255:10, 348:6, 348:9, 348:24, 349:3, 349:10, 397:16, 397:20, 397:21, 426:15</p> <p>Canadian [3] - 245:21, 246:6, 458:11</p> <p>cancer [1] - 240:8</p> <p>cannot [6] - 321:24, 436:12, 439:7, 447:2, 448:6</p> <p>cap [1] - 288:4</p> <p>capable [2] - 250:14, 391:13</p> <p>capacity [8] - 254:1, 254:13, 274:2, 275:14, 409:4, 433:13, 433:14, 434:1</p> <p>capital [2] - 292:7, 292:20</p> <p>capitalized [3] - 284:25, 285:4, 287:11</p> <p>Capitol [2] - 233:2, 233:3</p> <p>CAPOSSELA [21] - 252:14, 252:19, 313:12, 313:14, 314:15, 406:24, 425:24, 426:4, 427:20, 448:13, 449:10, 449:20, 457:19, 457:24, 458:4, 458:10, 459:24, 460:5, 460:9, 460:17, 486:7</p> <p>Capossela [9] - 237:7, 237:13, 313:11,</p>	<p>314:4, 425:23, 448:12, 449:6, 454:24, 486:6</p> <p>captioned [1] - 479:10</p> <p>Card [3] - 379:11, 379:12, 381:2</p> <p>card [1] - 380:22</p> <p>care [2] - 382:5, 428:11</p> <p>career [1] - 340:19</p> <p>careful [1] - 342:7</p> <p>Carlyle [1] - 234:15</p> <p>Carolyn [1] - 407:13</p> <p>carrier [2] - 285:6, 285:8</p> <p>carry [2] - 243:23, 244:3</p> <p>Case [2] - 234:18, 234:20</p> <p>case [34] - 260:12, 261:23, 297:15, 298:13, 306:19, 307:25, 312:5, 337:13, 346:16, 380:21, 382:12, 389:22, 402:13, 435:22, 436:20, 437:9, 437:18, 439:13, 440:21, 444:6, 445:22, 457:7, 457:25, 458:1, 459:17, 461:8, 466:6, 466:24, 468:8, 480:9, 480:16, 481:6, 481:11, 482:16</p> <p>cases [9] - 249:25, 259:19, 313:20, 325:6, 343:3, 345:1, 394:13, 394:14, 447:12</p> <p>cast [1] - 259:23</p> <p>catching [1] - 417:11</p> <p>category [1] - 323:18</p> <p>catholic [7] - 259:1, 259:4, 259:20, 265:23, 309:22, 309:24, 310:1</p> <p>caused [5] - 309:3, 366:12, 370:3, 370:4, 371:20</p> <p>causes [2] - 345:5, 379:1</p> <p>caveat [1] - 408:4</p> <p>cell [1] - 421:16</p> <p>cement [1] - 386:9</p> <p>center [2] - 349:1, 349:2</p> <p>centimeter [1] -</p>	5
---	---	---	---	--	---

<p>363:25 centrally [2] - 285:13, 285:19 ceremony [1] - 324:21 certain [11] - 272:1, 337:9, 343:5, 398:2, 413:2, 433:23, 443:2, 449:14, 462:8, 483:6 certainly [12] - 249:13, 254:24, 266:21, 280:10, 294:23, 318:5, 336:7, 399:4, 419:20, 420:9, 463:22, 485:9 certificate [1] - 456:23 CERTIFICATE [1] - 489:2 certification [4] - 416:21, 447:1, 456:24, 469:25 CERTIFICATION [1] - 232:5 certified [2] - 389:3, 459:17 Certified [2] - 489:6, 489:19 certify [1] - 330:5 CERTIFY [1] - 489:8 cetera [2] - 360:21, 387:23 chain [1] - 429:10 chair [1] - 445:1 Chairman [5] - 237:6, 239:21, 308:17, 311:13, 445:4 CHAIRMAN [39] - 232:14, 232:14, 239:23, 296:8, 308:18, 309:2, 310:21, 311:2, 312:12, 331:2, 368:12, 371:5, 384:4, 384:6, 393:12, 438:17, 441:10, 444:23, 445:3, 445:14, 446:7, 446:15, 453:4, 463:20, 472:1, 472:15, 473:11, 475:9, 475:21, 476:9, 483:16, 484:3, 484:5, 484:11, 484:19, 485:8, 486:1, 486:5, 486:25 challenge [2] - 306:8, 455:23 challenged [1] - 472:19</p>	<p>chance [1] - 296:5 change [21] - 251:22, 252:2, 252:6, 252:23, 289:23, 289:24, 304:4, 304:17, 304:25, 305:10, 305:11, 313:7, 332:21, 333:3, 349:19, 356:13, 425:2, 427:17, 433:8, 481:10 changed [8] - 304:20, 305:5, 332:24, 426:10, 426:12, 438:4, 444:7 changes [39] - 291:23, 292:13, 304:6, 332:13, 332:16, 332:17, 332:23, 334:2, 334:3, 348:8, 348:23, 349:1, 356:9, 356:15, 356:16, 424:6, 424:18, 434:8, 434:12, 435:21, 435:25, 436:9, 436:17, 441:1, 442:6, 443:24, 444:1, 444:5, 452:5, 452:9, 452:17, 453:10, 453:25, 455:8, 456:25, 464:22, 465:4, 471:11, 471:13 Changes [11] - 241:5, 425:6, 425:15, 434:24, 438:3, 440:11, 443:23, 464:9, 465:9, 465:11, 465:23 changing [6] - 321:22, 332:14, 332:15, 385:16, 467:22 channel [1] - 335:9 characteristic [1] - 343:8 characterization [5] - 342:16, 342:17, 360:7, 390:5, 424:5 characterized [1] - 356:16 characterizing [1] - 250:12 charge [3] - 382:18, 395:10, 477:1 charging [1] - 292:23 charitable [1] - 327:10 Chastity [1] - 407:11 cheapest [1] - 385:19</p>	<p>checking [1] - 421:7 chemical [2] - 263:21, 263:22 chemicals [2] - 244:19, 244:22 Cheri [7] - 232:24, 235:21, 352:6, 450:19, 451:12, 475:21, 489:18 CHERI [1] - 489:5 Cheryl [1] - 407:8 CHEYENNE [1] - 234:14 Cheyenne [15] - 234:21, 235:6, 269:23, 277:4, 278:10, 278:12, 278:20, 295:2, 312:18, 353:10, 400:4, 409:24, 425:1, 425:18, 482:24 chief [1] - 397:21 China [2] - 246:25, 247:1 choice [1] - 480:6 choked [1] - 307:10 choose [1] - 483:11 chose [2] - 437:21, 438:1 chosen [2] - 316:3, 472:5 CHRIS [1] - 232:14 Christopher [1] - 234:12 Cindy [1] - 418:10 circuit [1] - 296:16 circular [2] - 447:18, 454:22 circumstance [2] - 238:14, 337:10 circumstances [4] - 332:14, 332:20, 337:9, 386:19 cited [1] - 459:24 citizens [1] - 258:4 City [6] - 259:22, 260:4, 261:12, 261:17, 296:1, 332:19 civil [1] - 293:15 clarification [4] - 299:22, 350:12, 464:25, 466:2 clarify [2] - 350:2, 398:24 clarifying [2] - 358:7, 449:11 CLARK [12] - 312:17, 312:20, 313:8,</p>	<p>352:21, 353:3, 423:10, 424:9, 424:23, 425:8, 425:12, 425:20, 482:24 Clark [6] - 237:7, 237:13, 279:6, 312:16, 312:17, 423:8 class [1] - 455:18 clean [1] - 244:18 clear [14] - 333:9, 345:16, 356:15, 398:17, 430:21, 431:3, 448:10, 453:13, 454:10, 456:19, 472:7, 472:8, 476:11, 482:5 clearer [1] - 439:20 clearly [3] - 378:5, 382:25, 461:9 climate [2] - 251:22, 252:1 close [11] - 252:11, 270:5, 270:6, 317:3, 327:15, 327:20, 354:21, 362:19, 373:22, 390:24, 475:8 closed [6] - 312:22, 312:24, 312:25, 452:21, 460:4, 460:14 closely [1] - 474:16 closer [1] - 301:2 closest [1] - 323:11 clue [1] - 379:8 Coast [16] - 247:23, 265:6, 276:8, 288:12, 324:22, 327:24, 328:2, 343:21, 344:2, 344:4, 349:11, 362:13, 362:15, 388:6, 388:19, 430:15 coating [7] - 263:15, 263:20, 310:2, 344:12, 345:7, 345:9, 345:11 code [7] - 253:22, 254:6, 265:16, 265:18, 265:22, 265:25, 303:20 Codified [1] - 330:6 codified [1] - 330:14 Cody [1] - 407:10 colleague [2] - 331:17, 421:10 colleagues [1] - 356:2</p>	<p>Colome [2] - 259:22, 261:17 Colome's [2] - 260:4, 261:13 coming [7] - 278:15, 279:5, 432:21, 440:7, 454:22, 467:5 comment [9] - 251:15, 253:2, 255:13, 268:8, 274:25, 343:17, 375:16, 394:24, 485:17 commented [1] - 373:24 commercial [10] - 241:14, 302:13, 422:10, 431:20, 432:2, 432:10, 432:19, 432:22, 432:25, 433:4 COMMISSION [3] - 232:1, 232:13, 232:16 Commission [30] - 238:2, 252:16, 297:12, 329:7, 333:21, 375:20, 377:16, 378:5, 386:20, 406:25, 407:8, 407:25, 408:3, 436:14, 437:4, 439:21, 440:9, 442:5, 442:11, 444:5, 450:8, 456:12, 457:2, 458:7, 462:9, 462:11, 464:2, 470:18, 481:12, 483:9 Commission's [8] - 373:12, 429:15, 434:19, 434:20, 436:1, 442:3, 453:18, 457:9 COMMISSIONER [62] - 232:15, 296:17, 296:19, 296:23, 297:16, 297:19, 297:21, 298:1, 302:2, 302:4, 302:8, 302:11, 303:4, 303:10, 303:21, 304:15, 304:22, 305:25, 307:11, 308:3, 308:7, 308:13, 331:3, 378:9, 378:18, 378:21, 384:7, 405:24, 406:9, 406:15, 407:3,</p>	6
--	--	--	--	--	---

<p>438:12, 439:4, 441:9, 441:11, 441:17, 444:25, 446:17, 447:18, 448:10, 449:6, 449:18, 449:21, 455:18, 456:14, 461:18, 461:20, 463:1, 463:14, 468:6, 468:8, 468:21, 469:2, 469:15, 469:18, 469:21, 475:13, 483:3, 483:13, 483:19, 484:9, 487:21</p> <p>Commissioner [19] - 237:6, 240:6, 302:1, 312:13, 353:22, 358:14, 377:17, 445:9, 449:10, 456:6, 461:19, 463:18, 463:25, 466:2, 467:3, 468:7, 469:5, 483:16, 484:6</p> <p>Commissioners [19] - 282:15, 296:7, 296:21, 297:13, 298:2, 299:15, 301:25, 314:16, 331:4, 393:8, 393:11, 421:21, 438:18, 444:22, 444:24, 460:21, 483:15, 485:18, 487:6</p> <p>commit [1] - 401:2</p> <p>commitments [2] - 429:22, 430:3</p> <p>committed [1] - 277:21</p> <p>common [5] - 261:1, 268:5, 285:6, 285:8, 397:7</p> <p>communication [3] - 324:15, 396:12, 425:18</p> <p>communications [4] - 344:1, 363:11, 434:6, 434:14</p> <p>communities [7] - 255:5, 256:17, 278:5, 313:20, 326:13, 326:19, 327:5</p> <p>community [37] - 273:9, 276:3, 276:10, 276:20, 276:23, 277:7, 280:4, 280:8,</p>	<p>280:25, 295:2, 322:16, 325:1, 325:3, 325:11, 325:22, 326:10, 327:4, 327:8, 327:11, 328:1, 328:23, 331:8, 331:10, 398:7, 398:12, 398:16, 398:22, 399:6, 401:3, 401:9, 401:19, 401:21, 402:3, 402:23, 414:5, 415:15</p> <p>Community [2] - 235:6, 235:6</p> <p>companies [1] - 255:8</p> <p>companies' [1] - 348:17</p> <p>company [23] - 254:16, 254:23, 285:21, 287:19, 287:23, 288:3, 288:6, 288:9, 288:10, 294:24, 304:14, 326:2, 327:7, 328:10, 329:23, 339:6, 374:3, 385:19, 386:10, 397:12, 430:2, 464:14</p> <p>company's [1] - 315:1</p> <p>comparable [1] - 285:2</p> <p>compensate [2] - 306:24, 307:21</p> <p>compensating [3] - 401:3, 401:6, 401:25</p> <p>compensation [3] - 307:15, 337:2, 337:15</p> <p>competent [1] - 457:20</p> <p>complaint [2] - 467:10, 467:17</p> <p>complete [1] - 264:2</p> <p>completed [5] - 288:16, 288:17, 310:6, 312:22, 419:16</p> <p>completely [6] - 371:1, 375:25, 455:4, 467:3, 468:4, 471:6</p> <p>compliance [6] - 329:10, 344:20, 345:2, 440:23, 448:15, 448:16</p> <p>complicate [1] - 295:14</p>	<p>complicated [1] - 374:21</p> <p>comply [4] - 344:23, 445:13, 470:20, 470:21</p> <p>component [1] - 397:11</p> <p>comprehending [1] - 416:6</p> <p>comprehensive [3] - 438:3, 442:6, 456:25</p> <p>computer [3] - 351:7, 351:11, 396:11</p> <p>concept [2] - 277:6, 480:8</p> <p>concepts [1] - 432:21</p> <p>concern [10] - 260:17, 266:6, 319:12, 345:14, 345:17, 370:6, 390:9, 390:17, 412:18, 427:12</p> <p>concerned [8] - 238:25, 364:13, 383:8, 390:11, 398:3, 440:8, 466:16, 469:6</p> <p>concerns [7] - 250:4, 306:22, 308:1, 345:1, 345:9, 390:20, 411:21</p> <p>conclusion [5] - 256:14, 303:16, 455:19, 455:20, 487:8</p> <p>concur [2] - 463:22, 484:5</p> <p>condensate [2] - 245:12, 245:14</p> <p>condenser [1] - 244:24</p> <p>condition [5] - 361:4, 361:9, 361:11, 361:14, 374:9</p> <p>Condition [36] - 308:20, 312:21, 329:12, 329:23, 330:3, 330:5, 334:12, 387:11, 387:25, 415:12, 416:7, 416:14, 424:16, 447:9, 448:7, 449:14, 454:19, 455:13, 467:1, 467:11, 467:18, 468:4, 469:8, 469:13, 470:10, 471:10, 471:17, 471:21, 473:20, 478:4,</p>	<p>478:10, 478:16, 478:21, 479:2, 479:6, 479:18</p> <p>conditions [8] - 251:10, 252:24, 334:7, 336:17, 345:5, 360:8, 360:20, 387:12</p> <p>Conditions [96] - 255:9, 255:11, 262:3, 265:20, 302:21, 303:3, 310:7, 329:11, 333:17, 333:21, 333:24, 334:3, 344:24, 345:3, 354:1, 354:20, 354:21, 354:23, 411:9, 411:11, 416:4, 416:11, 423:12, 423:18, 423:21, 423:25, 424:3, 424:8, 424:10, 424:12, 424:14, 429:15, 434:19, 434:20, 435:4, 435:23, 436:1, 436:13, 436:15, 436:19, 436:22, 436:24, 437:3, 437:15, 437:25, 438:8, 439:6, 439:7, 440:10, 440:22, 441:5, 441:7, 442:2, 442:9, 442:17, 444:3, 444:10, 444:11, 444:12, 445:7, 445:11, 445:12, 445:17, 445:22, 445:24, 446:2, 446:3, 446:4, 446:5, 446:9, 446:14, 446:19, 446:21, 446:23, 447:3, 447:5, 447:21, 447:23, 448:6, 448:16, 449:8, 453:18, 454:9, 455:10, 455:15, 455:16, 458:22, 464:23, 466:22, 470:1, 470:4, 470:14, 470:22, 471:14</p> <p>conduct [2] - 267:6, 425:25</p> <p>conducted [3] - 318:3, 392:4, 451:19</p> <p>conducting [3] -</p>	<p>267:19, 314:2, 420:1 7</p> <p>conduit [1] - 385:25</p> <p>cone [2] - 261:12, 261:19</p> <p>conference [5] - 273:15, 403:24, 404:1, 411:6, 411:17</p> <p>conferred [1] - 348:10</p> <p>Confidential [2] - 234:19, 234:21</p> <p>confidential [12] - 307:14, 364:11, 364:22, 434:15, 450:10, 450:14, 451:1, 451:14, 452:20, 453:13, 454:14, 456:19</p> <p>confidentiality [17] - 450:10, 450:22, 450:24, 451:19, 452:2, 452:13, 453:14, 456:20, 459:3, 459:5, 459:7, 460:23, 461:1, 461:3, 461:12, 461:16, 461:21</p> <p>confirm [1] - 427:11</p> <p>conflicts [4] - 332:11, 332:12, 333:20, 333:23</p> <p>confused [3] - 255:19, 466:18, 471:6</p> <p>Congress [1] - 235:9</p> <p>Congressional [1] - 235:9</p> <p>connect [1] - 242:16</p> <p>connects [2] - 242:21, 243:1</p> <p>consent [1] - 328:11</p> <p>consequence [8] - 253:5, 261:25, 262:5, 262:8, 262:14, 272:4, 281:7, 281:8</p> <p>conservative [1] - 335:17</p> <p>consider [19] - 257:11, 257:15, 257:22, 260:12, 288:2, 294:14, 325:10, 344:19, 378:10, 397:5, 409:23, 410:1, 412:20, 434:14, 439:22, 470:18, 480:23, 481:12, 485:10</p> <p>considerable [1] - 240:5</p> <p>consideration [3] - 327:1, 329:7, 419:17</p>
--	--	---	--	---

<p>considered [8] - 243:7, 245:13, 279:13, 285:6, 332:9, 333:2, 342:8, 407:25</p> <p>consistent [1] - 312:4</p> <p>constant [3] - 430:17, 430:18, 430:19</p> <p>constitutes [1] - 380:9</p> <p>Constitution [7] - 415:15, 416:17, 416:20, 417:3, 417:4, 417:7, 417:21</p> <p>constitutional [1] - 417:18</p> <p>constitutionality [1] - 417:14</p> <p>CONSTRUCT [1] - 232:6</p> <p>construct [1] - 238:5</p> <p>constructed [5] - 243:13, 330:16, 343:1, 343:2, 384:24</p> <p>constructing [1] - 265:11</p> <p>construction [18] - 265:7, 265:23, 276:9, 278:18, 279:10, 279:20, 292:15, 302:6, 309:24, 337:6, 344:2, 344:4, 354:16, 369:5, 369:7, 382:10, 389:12, 392:4</p> <p>consultant [2] - 274:3, 379:6</p> <p>consulting [2] - 397:21, 398:1</p> <p>contact [6] - 253:3, 277:12, 277:13, 278:20, 301:10, 318:10</p> <p>contacted [4] - 272:6, 301:7, 420:24, 434:11</p> <p>contacting [2] - 272:3, 275:24</p> <p>contain [2] - 351:20, 355:18</p> <p>contained [8] - 256:15, 423:13, 423:25, 424:10, 424:12, 436:16, 444:2, 444:6</p> <p>containing [1] - 384:20</p> <p>contemplated [3] - 291:23, 322:21, 322:22</p>	<p>contemplating [2] - 323:1, 323:7</p> <p>contents [6] - 344:6, 344:9, 375:24, 380:3, 380:18, 404:3</p> <p>context [3] - 397:6, 448:24, 448:25</p> <p>contiguous [1] - 327:16</p> <p>continually [1] - 471:4</p> <p>continue [24] - 301:15, 301:20, 306:22, 306:24, 313:16, 313:25, 314:1, 314:3, 319:19, 329:25, 330:2, 338:6, 404:13, 423:17, 424:3, 432:1, 435:23, 436:13, 437:14, 438:8, 442:16, 447:21, 454:8, 470:20</p> <p>Continued [3] - 235:1, 236:1, 237:1</p> <p>continues [1] - 306:17</p> <p>continuing [3] - 277:21, 448:16, 457:10</p> <p>continuous [4] - 244:17, 264:21, 266:1, 390:13</p> <p>contract [10] - 257:12, 257:16, 257:22, 273:20, 273:23, 287:15, 334:23, 387:19, 460:24</p> <p>contracted [3] - 273:21, 274:2, 434:7</p> <p>contractor [11] - 251:16, 251:18, 267:5, 271:11, 273:6, 280:18, 346:16, 346:20, 346:23, 390:20, 408:23</p> <p>contractors [5] - 251:19, 251:20, 278:1, 278:13, 391:12</p> <p>contracts [16] - 246:18, 255:17, 255:21, 255:24, 337:24, 337:25, 384:25, 385:2, 387:3, 429:25, 430:4, 430:5, 451:9, 452:5, 458:18, 461:13</p> <p>contractual [1] - 432:4</p>	<p>contribute [2] - 292:20, 397:15</p> <p>contributing [3] - 305:11, 363:1, 365:6</p> <p>contribution [3] - 257:8, 331:8, 331:10</p> <p>control [13] - 250:2, 301:12, 346:6, 346:9, 346:14, 346:18, 349:1, 349:2, 383:7, 388:21, 389:13, 392:4, 392:5</p> <p>conundrum [1] - 238:8</p> <p>conversation [4] - 240:12, 263:10, 474:17, 481:16</p> <p>conversations [4] - 344:16, 404:8, 451:4, 451:6</p> <p>conversion [1] - 238:4</p> <p>Cooper [1] - 363:13</p> <p>copies [1] - 352:8</p> <p>copy [5] - 351:9, 356:13, 400:24, 403:8</p> <p>Corey [3] - 234:3, 237:3, 238:8</p> <p>corn [3] - 311:20, 312:1, 340:14</p> <p>corner [3] - 289:19, 426:1, 458:5</p> <p>Corners [1] - 279:7</p> <p>cornerstone [1] - 264:22</p> <p>corporate [4] - 327:12, 328:21, 414:5, 461:2</p> <p>Corporation [2] - 287:24, 288:1</p> <p>corporations [1] - 327:4</p> <p>Corps [1] - 253:4</p> <p>correct [85] - 241:17, 242:15, 242:18, 246:14, 247:2, 247:18, 259:4, 259:15, 270:21, 270:22, 272:12, 273:7, 275:5, 275:18, 284:8, 286:19, 287:4, 287:17, 289:14, 291:2, 292:4, 293:22, 300:24, 312:22, 313:2, 316:11, 318:20, 334:5, 334:9, 340:16, 343:13, 347:4, 348:20,</p>	<p>349:14, 350:2, 357:3, 357:4, 361:22, 365:16, 367:12, 367:14, 369:22, 370:4, 370:14, 370:18, 371:15, 372:14, 379:15, 379:17, 382:2, 382:6, 382:7, 388:25, 390:2, 392:22, 395:22, 396:19, 402:19, 402:20, 406:22, 406:23, 408:18, 410:18, 423:14, 423:19, 423:20, 423:22, 423:24, 445:21, 446:15, 450:15, 451:4, 451:23, 451:24, 452:3, 466:13, 472:4, 472:13, 476:8, 476:9, 476:10, 484:8, 484:9, 486:5, 489:11</p> <p>Correct [1] - 297:19</p> <p>corrected [1] - 345:6</p> <p>correcting [1] - 346:11</p> <p>correction [2] - 343:24, 345:10</p> <p>corrective [2] - 343:20, 343:22</p> <p>correctly [7] - 272:13, 349:7, 382:2, 385:1, 387:24, 388:24, 389:23</p> <p>corroded [1] - 293:19</p> <p>corroding [3] - 259:11, 259:13, 259:19</p> <p>corrosion [31] - 259:8, 260:18, 293:18, 294:8, 308:24, 309:21, 363:2, 363:4, 363:6, 364:23, 365:7, 366:13, 367:6, 370:3, 370:4, 370:7, 370:21, 371:21, 372:18, 372:19, 372:25, 373:23, 373:25, 379:13, 380:10, 382:6, 382:8, 386:4, 419:7, 419:18</p> <p>cost [10] - 292:7, 292:18, 292:21, 293:9, 305:3, 305:4, 305:5, 305:14, 427:13, 427:16</p>	<p>costly [2] - 374:10, 374:11</p> <p>costs [2] - 292:21, 426:6</p> <p>counsel [11] - 267:15, 358:2, 358:8, 364:7, 366:15, 366:18, 376:25, 378:11, 381:11, 383:2, 384:2</p> <p>Counsel [1] - 421:22</p> <p>counsel's [3] - 378:17, 438:15, 486:12</p> <p>counterargument [1] - 455:14</p> <p>counterparties [4] - 255:25, 259:16, 260:11, 461:11</p> <p>counterparty's [1] - 260:14</p> <p>counties [11] - 257:7, 283:7, 283:11, 284:1, 284:3, 284:5, 289:20, 290:13, 290:17, 293:4</p> <p>country [3] - 249:23, 249:24</p> <p>County [4] - 261:25, 262:4, 263:1, 279:8</p> <p>COUNTY [1] - 489:3</p> <p>county [4] - 284:2, 284:6, 285:9, 285:12</p> <p>couple [15] - 239:23, 293:12, 296:2, 332:4, 348:4, 375:14, 381:22, 404:5, 408:8, 408:9, 412:3, 439:11, 456:3, 472:2, 474:10</p> <p>course [10] - 273:21, 286:23, 334:24, 336:24, 374:5, 374:7, 377:1, 378:24, 379:19, 414:24</p> <p>court [2] - 421:25, 476:17</p> <p>courtesies [1] - 486:9</p> <p>courts [1] - 296:16</p> <p>covenant [1] - 456:21</p> <p>covenants [1] - 452:2</p> <p>covered [1] - 415:23</p> <p>covering [1] - 415:23</p> <p>CP [1] - 265:1</p> <p>CRAVEN [15] - 240:18, 240:22, 241:2, 248:6, 298:9, 299:21, 300:7, 300:16, 391:3, 421:1, 444:14, 465:2, 465:8, 476:1,</p>	8
---	---	--	---	---	---

<p>482:23 Craven [5] - 237:3, 240:16, 240:23, 391:2, 420:22 create [7] - 244:19, 245:4, 245:16, 298:14, 362:4, 385:13, 484:12 creates [1] - 378:25 creating [4] - 250:15, 333:12, 457:4, 468:16 credentials [1] - 414:7 credibility [1] - 378:3 credible [1] - 487:13 creek [1] - 336:12 Creek [2] - 279:6, 425:1 creeks [2] - 336:10, 336:13 CREMER [10] - 258:15, 258:18, 364:11, 364:14, 364:18, 364:21, 462:6, 462:24, 465:14, 465:20 Cremer [1] - 232:18 criteria [7] - 272:11, 272:14, 325:10, 335:11, 335:16, 414:3, 414:7 crop [6] - 306:25, 307:21, 312:3, 336:23, 337:8, 337:16 cropland [1] - 307:16 crops [1] - 337:6 Cross [10] - 237:3, 237:4, 237:4, 237:5, 237:5, 237:9, 237:13, 237:13, 237:14, 237:14 CROSS [10] - 241:1, 248:21, 269:18, 283:1, 300:19, 353:17, 423:9, 426:3, 428:1, 431:13 cross [61] - 238:7, 238:11, 238:17, 259:17, 282:21, 282:22, 296:5, 299:12, 300:18, 312:15, 336:9, 339:9, 351:20, 353:15, 366:17, 375:25, 377:20, 377:21, 377:21, 380:5, 380:8, 384:1, 392:13, 392:13, 392:15, 393:4, 393:8,</p>	<p>393:10, 393:25, 402:14, 403:4, 405:2, 415:24, 416:4, 417:24, 418:10, 418:15, 418:21, 423:7, 425:25, 435:2, 438:23, 439:12, 448:18, 448:21, 448:25, 449:12, 449:15, 455:17, 457:6, 457:11, 457:21, 459:15, 460:11, 460:18, 468:3, 469:7, 472:10, 472:12, 477:14, 481:20, 481:22, 481:23 Cross-Examination [10] - 237:3, 237:4, 237:4, 237:5, 237:5, 237:9, 237:13, 237:13, 237:14, 237:14, 237:14 CROSS-EXAMINATION [10] - 241:1, 248:21, 269:18, 283:1, 300:19, 353:17, 423:9, 426:3, 428:1, 431:13 cross-examination [36] - 238:7, 238:11, 282:21, 296:5, 299:12, 300:18, 312:15, 339:9, 351:20, 353:15, 366:17, 375:25, 377:20, 377:21, 384:1, 392:13, 402:14, 403:4, 405:2, 415:24, 417:24, 418:21, 439:12, 448:18, 448:21, 448:25, 449:12, 455:17, 457:6, 457:21, 459:15, 460:11, 460:18, 469:7, 472:10, 477:14 cross-examine [4] - 282:22, 380:5, 380:8, 418:15 cross-examiner [1] - 449:15 cross-examiners [1] - 238:17 crossing [12] - 250:24, 259:24, 260:11, 260:25, 261:6,</p>	<p>279:16, 317:5, 394:16, 394:19, 394:22, 394:24, 416:24 Crossings [1] - 234:21 crossings [4] - 260:6, 260:8, 294:5, 335:8 Crow [3] - 235:7, 399:11, 399:14 CRR [1] - 232:24 crude [34] - 243:14, 243:24, 244:4, 244:20, 245:6, 245:8, 245:9, 245:16, 246:8, 246:19, 246:20, 247:20, 247:22, 248:1, 348:25, 349:23, 355:7, 355:18, 426:9, 426:13, 426:14, 428:9, 428:11, 428:20, 428:23, 430:9, 430:15, 430:17, 430:22, 430:25, 458:11, 458:14, 458:15 crudes [1] - 244:5 Cunningham [1] - 399:9 curiosity [1] - 308:21 curious [1] - 474:25 current [6] - 253:22, 259:2, 259:5, 273:19, 321:16, 432:6 Cushing [7] - 243:12, 243:16, 247:10, 248:1, 288:12, 348:25, 349:10 custody [1] - 428:11 customer's [1] - 244:16 customers' [2] - 246:19, 246:24 Cynthia [2] - 235:11, 235:13</p>	<p>274:6, 277:10, 277:21, 281:20, 283:11, 284:6, 284:13, 294:5, 308:9, 308:12, 313:17, 322:11, 322:14, 322:17, 322:20, 323:8, 323:14, 327:14, 327:16, 327:20, 329:3, 329:8, 329:13, 329:19, 330:6, 330:7, 333:25, 336:20, 347:2, 354:18, 356:14, 386:15, 393:19, 395:1, 397:24, 403:12, 404:9, 409:8, 409:10, 409:21, 414:17, 414:20, 414:24, 460:18, 489:7, 489:13 DAKOTA [3] - 232:2, 234:17, 489:1 Dallas [2] - 246:5, 407:11 damage [3] - 306:25, 337:8, 345:7 damaged [1] - 251:1 damages [1] - 251:9 Dan [1] - 234:5 danger [1] - 374:14 Daniel [1] - 234:13 Darren [1] - 232:19 data [2] - 314:23, 382:21 date [3] - 241:13, 394:13, 444:19 Dated [1] - 489:13 dated [2] - 235:12, 436:16 dates [1] - 433:17 David [6] - 234:11, 234:23, 237:12, 421:24, 422:6, 422:14 days [7] - 357:18, 357:20, 358:6, 359:19, 360:22, 374:25, 486:22 deadline [4] - 405:9, 406:6, 407:19, 408:3 deal [12] - 238:9, 311:5, 382:25, 389:18, 432:1, 441:13, 447:8, 449:8, 461:20, 480:13, 485:11, 487:3</p>	<p>dealing [8] - 272:21, 272:23, 373:3, 383:17, 397:14, 415:14, 431:24, 432:2 deals [5] - 250:8, 425:14, 432:22, 433:4, 442:1 dealt [1] - 418:3 dear [1] - 399:14 debating [2] - 370:20, 384:7 Debbie [1] - 407:10 debrief [2] - 403:11, 410:12 debriefing [1] - 295:5 decades [3] - 310:20, 337:20, 430:20 decide [2] - 463:18, 468:23 decided [3] - 254:5, 304:7, 385:12 decides [1] - 481:11 Decision [4] - 423:13, 423:18, 423:25, 436:16 decision [6] - 296:22, 357:17, 424:11, 424:12, 441:3, 480:17 declared [1] - 262:13 decreased [1] - 305:22 decreasing [3] - 305:15, 307:20, 307:24 deem [2] - 319:11, 321:8 deep [3] - 319:6, 368:5, 368:6 deepest [6] - 335:9, 365:15, 367:13, 370:13, 370:16, 370:17 defect [3] - 362:1, 382:14, 384:19 defects [15] - 310:2, 371:23, 373:13, 373:15, 373:16, 373:20, 373:25, 381:21, 381:22, 381:24, 389:14, 390:22, 391:14, 392:6 Deficiencies [2] - 235:12, 235:14 define [4] - 286:15, 397:5, 433:20, 447:14 defined [1] - 447:13</p>
D				
		<p>dais [1] - 425:25 Dakota [61] - 233:2, 233:4, 238:1, 238:4, 241:9, 242:1, 242:4, 242:11, 242:23, 247:6, 256:18, 260:9, 273:22, 273:24, 274:4,</p>		

<p>definitely [3] - 359:21, 359:24, 389:8</p> <p>definition [3] - 313:3, 319:8, 446:6</p> <p>degree [4] - 303:19, 335:3, 354:3, 415:23</p> <p>delays [1] - 292:17</p> <p>deliver [7] - 244:16, 247:20, 247:22, 253:11, 428:9, 428:15, 428:24</p> <p>delivered [2] - 428:21, 434:1</p> <p>delivering [1] - 243:15</p> <p>delivery [2] - 428:12, 428:14</p> <p>delve [1] - 451:5</p> <p>delved [1] - 299:11</p> <p>demand [27] - 424:7, 429:18, 430:1, 430:3, 430:8, 430:14, 430:17, 430:21, 430:22, 430:24, 431:4, 434:17, 435:10, 435:11, 436:3, 436:5, 436:18, 437:23, 438:9, 442:13, 442:15, 444:11, 444:12, 444:13, 445:16, 455:9</p> <p>demonstrate [3] - 329:24, 330:4, 444:1</p> <p>demonstration [1] - 367:25</p> <p>denied [1] - 474:3</p> <p>density [1] - 244:24</p> <p>dent [5] - 366:12, 367:21, 369:5, 369:7, 369:11</p> <p>dents [1] - 382:10</p> <p>deny [4] - 275:5, 444:23, 445:4, 479:19</p> <p>Department [21] - 235:19, 241:23, 242:25, 257:1, 284:16, 285:3, 285:12, 285:16, 286:8, 293:7, 303:17, 304:5, 304:6, 333:10, 333:12, 333:16, 354:2, 356:10, 356:14, 408:24</p> <p>department [16] - 273:10, 284:12, 315:4, 320:18, 328:21, 328:22,</p>	<p>328:23, 356:16, 356:23, 363:10, 363:11, 395:5, 395:6, 395:18, 403:25, 414:5</p> <p>departments [1] - 395:10</p> <p>depicted [1] - 360:16</p> <p>depreciates [1] - 286:17</p> <p>depreciation [1] - 286:21</p> <p>depression [3] - 261:12, 261:17, 261:19</p> <p>Dept [2] - 235:12, 235:14</p> <p>depth [10] - 362:21, 366:4, 367:13, 371:19, 371:21, 372:24, 373:18, 373:23, 373:24</p> <p>describe [10] - 244:2, 271:9, 280:8, 344:9, 348:5, 362:12, 431:22, 432:16, 433:20, 453:10</p> <p>described [8] - 260:16, 285:24, 301:14, 315:19, 316:6, 338:3, 401:2, 401:11</p> <p>describes [1] - 315:24</p> <p>describing [1] - 273:18</p> <p>description [3] - 271:7, 372:21, 413:6</p> <p>deserves [1] - 464:18</p> <p>design [3] - 294:15, 349:16, 349:20</p> <p>designed [8] - 243:22, 244:3, 258:11, 310:18, 327:9, 335:4, 335:5, 335:14</p> <p>desirable [1] - 307:10</p> <p>desired [1] - 360:21</p> <p>desk [1] - 351:11</p> <p>detail [18] - 255:23, 263:5, 264:4, 271:10, 281:10, 309:8, 310:23, 311:1, 328:13, 328:14, 336:15, 336:22, 347:15, 350:4, 362:20, 396:15, 409:12, 431:22</p> <p>detailed [3] - 250:3, 317:14, 370:10</p> <p>details [14] - 260:7,</p>	<p>264:2, 281:1, 294:12, 301:9, 314:10, 328:9, 345:16, 346:1, 362:23, 375:1, 398:4, 411:25, 412:1</p> <p>detecting [1] - 315:25</p> <p>determination [3] - 272:14, 457:9, 470:5</p> <p>determinative [2] - 457:24, 457:25</p> <p>determine [23] - 238:10, 247:5, 250:4, 250:24, 260:12, 280:13, 280:15, 284:25, 286:4, 301:6, 310:11, 316:5, 319:21, 320:5, 325:5, 329:10, 331:10, 335:11, 336:8, 338:5, 342:21, 343:9, 447:20</p> <p>determined [4] - 261:13, 272:11, 285:20, 301:13</p> <p>determining [2] - 285:4, 287:19</p> <p>develop [6] - 280:21, 294:23, 295:6, 401:16, 401:25, 414:7</p> <p>developed [1] - 284:11</p> <p>developing [2] - 276:12, 300:23</p> <p>development [13] - 270:20, 271:11, 275:2, 301:5, 301:16, 317:19, 401:3, 401:14, 401:18, 432:7, 432:9, 432:12, 432:20</p> <p>DF-2 [1] - 234:13</p> <p>Diakow [13] - 237:12, 243:19, 255:22, 337:21, 421:24, 422:3, 422:6, 422:15, 423:11, 426:5, 431:15, 474:21, 476:6</p> <p>Diakow's [3] - 458:25, 464:10, 469:11</p> <p>dialogue [3] - 343:14, 383:2, 384:1</p> <p>diameter [7] - 266:9, 309:11, 320:8, 355:5, 363:24,</p>	<p>372:14, 372:15</p> <p>DIANA [2] - 235:16, 236:2</p> <p>Diana [1] - 236:3</p> <p>diatribe [1] - 486:12</p> <p>dictates [1] - 325:16</p> <p>diesel [2] - 429:7, 429:8</p> <p>difference [11] - 280:3, 287:5, 287:14, 291:9, 304:8, 304:18, 304:24, 305:21, 349:21, 349:25, 438:13</p> <p>different [41] - 244:4, 250:9, 257:2, 257:4, 270:12, 272:17, 273:10, 275:9, 276:25, 284:24, 286:1, 286:2, 293:7, 293:10, 304:7, 309:18, 311:16, 315:13, 316:16, 320:2, 320:4, 326:8, 326:17, 339:24, 341:24, 341:25, 354:16, 354:18, 354:25, 377:12, 377:13, 395:18, 395:24, 395:25, 428:24, 438:14, 443:10, 448:17, 449:1, 474:19</p> <p>differently [1] - 480:13</p> <p>difficult [2] - 277:20, 341:8</p> <p>difficulty [1] - 457:5</p> <p>dig [4] - 262:16, 369:17, 371:14, 375:11</p> <p>Dig [7] - 365:24, 367:4, 368:22, 371:14, 372:5, 372:21, 375:3</p> <p>digs [1] - 319:14</p> <p>dike [1] - 355:17</p> <p>dilbit [1] - 354:9</p> <p>diluted [1] - 354:10</p> <p>dime [26] - 264:1, 293:19, 308:25, 309:11, 310:21, 310:22, 318:22, 320:8, 361:21, 362:1, 363:6, 363:24, 364:2, 370:4, 370:6, 370:14, 372:17, 377:19, 377:23, 378:2, 380:9,</p>	<p>380:10, 381:19, 381:22, 381:24</p> <p>dime-sized [5] - 310:22, 361:21, 362:1, 377:19, 380:10</p> <p>diminish [2] - 336:25, 459:16</p> <p>diminishing [1] - 427:12</p> <p>dinner [1] - 475:17</p> <p>direct [52] - 243:18, 249:5, 266:11, 267:23, 272:7, 274:18, 298:13, 298:15, 299:25, 300:5, 308:6, 339:10, 376:1, 384:14, 404:24, 405:1, 408:1, 422:14, 422:20, 423:12, 423:16, 426:8, 440:25, 448:14, 449:2, 449:3, 449:15, 459:10, 465:3, 465:8, 465:17, 468:3, 469:6, 471:7, 472:8, 472:12, 479:24, 480:16, 480:17, 480:24, 481:6, 481:12, 481:20, 481:21, 481:22, 482:2, 482:3, 483:11, 483:12, 486:18, 486:21</p> <p>Direct [6] - 234:3, 234:3, 234:4, 234:4, 237:12, 237:17</p> <p>DIRECT [2] - 422:1, 476:18</p> <p>directed [1] - 445:1</p> <p>directing [1] - 330:20</p> <p>direction [6] - 426:19, 439:18, 445:13, 446:16, 460:10, 463:21</p> <p>directional [3] - 250:22, 335:18, 336:10</p> <p>directionally [1] - 335:7</p> <p>directly [7] - 266:22, 273:8, 350:6, 367:13, 391:11, 438:9, 473:20</p> <p>disagreement [1] - 445:2</p> <p>Discharge [1] - 234:20</p>	10
---	--	--	---	---	----

<p>disclose [1] - 451:1</p> <p>disclosure [2] - 274:21, 461:5</p> <p>discover [1] - 310:22</p> <p>discovered [1] - 309:6</p> <p>discovery [8] - 241:5, 299:8, 406:21, 407:7, 407:17, 407:24, 444:16</p> <p>Discovery [1] - 234:8</p> <p>discuss [3] - 239:22, 475:6, 481:25</p> <p>discussed [11] - 323:22, 336:16, 358:10, 393:25, 398:14, 402:14, 419:19, 424:6, 436:17, 455:8, 460:17</p> <p>discusses [1] - 430:8</p> <p>discussing [1] - 447:9</p> <p>Discussion [3] - 353:13, 402:7, 435:19</p> <p>discussion [12] - 308:23, 350:21, 387:2, 450:25, 451:8, 451:16, 454:7, 461:21, 461:23, 468:12, 468:16, 469:12</p> <p>discussions [11] - 269:3, 314:11, 317:25, 324:18, 451:1, 451:9, 451:17, 451:19, 452:15, 466:20, 466:21</p> <p>dishonest [1] - 411:3</p> <p>dispensed [1] - 486:9</p> <p>distance [2] - 317:3, 335:8</p> <p>distinction [1] - 336:5</p> <p>distinguish [1] - 359:18</p> <p>distortion [1] - 367:20</p> <p>disturbance [2] - 341:13, 341:25</p> <p>ditch [1] - 389:24</p> <p>division [3] - 432:11, 432:13, 432:16</p> <p>DO [1] - 489:8</p> <p>Docket [3] - 238:2, 282:20, 352:1</p> <p>DOCKET [1] - 232:5</p> <p>docket [1] - 253:11</p> <p>document [9] - 332:23, 333:3, 333:6, 333:12, 365:12, 370:23,</p>	<p>400:13, 400:20, 402:1</p> <p>documents [3] - 332:14, 378:23, 378:25</p> <p>dollar [3] - 284:10, 291:24, 304:17</p> <p>dollars [29] - 283:11, 283:14, 283:15, 283:22, 284:19, 288:4, 288:5, 288:14, 288:20, 289:17, 290:3, 290:5, 290:11, 290:12, 290:18, 290:23, 290:25, 291:1, 291:3, 291:4, 291:6, 291:10, 292:9, 304:19, 347:24, 347:25, 427:18</p> <p>domestic [2] - 322:1, 458:12</p> <p>domestically [1] - 321:2</p> <p>donation [2] - 276:3, 276:24</p> <p>done [28] - 260:19, 264:20, 268:18, 268:20, 283:19, 293:11, 295:20, 296:19, 299:3, 310:13, 315:4, 319:16, 332:25, 346:5, 350:5, 353:12, 357:25, 360:5, 360:6, 368:17, 386:13, 387:7, 387:8, 392:10, 475:14, 475:19, 481:7, 484:25</p> <p>door [3] - 454:11, 454:25, 456:2</p> <p>DOR's [1] - 304:16</p> <p>Dorr [1] - 269:23</p> <p>double [1] - 463:8</p> <p>doubt [6] - 281:23, 290:8, 328:13, 328:18, 335:2, 379:18</p> <p>Doug [1] - 235:7</p> <p>Douglas [1] - 232:20</p> <p>down [40] - 238:21, 242:6, 244:6, 244:9, 244:13, 247:5, 247:7, 254:6, 286:19, 286:20, 287:8, 289:19, 293:19, 295:6,</p>	<p>354:17, 359:12, 366:6, 369:19, 373:7, 373:8, 374:4, 374:6, 374:17, 374:20, 374:24, 375:3, 405:7, 408:11, 412:4, 413:21, 416:9, 426:20, 426:22, 426:23, 426:24, 434:16, 446:11, 450:24, 475:1, 485:15</p> <p>downgrade [1] - 393:21</p> <p>downstream [1] - 318:7</p> <p>Dr [3] - 234:23, 235:11, 235:13</p> <p>DRA [12] - 234:18, 234:19, 289:7, 289:8, 297:9, 352:14, 352:21, 353:10, 371:11, 376:3, 482:20, 487:19</p> <p>DRA's [3] - 473:5, 480:22, 483:8</p> <p>draft [3] - 300:25, 317:17, 323:12</p> <p>Draft [2] - 235:12, 235:14</p> <p>drafted [4] - 323:16, 323:17, 443:14, 461:3</p> <p>dramatically [3] - 305:23, 346:24, 349:19</p> <p>draw [1] - 336:12</p> <p>drill [2] - 250:22, 335:7</p> <p>drilling [3] - 260:1, 335:18, 336:6</p> <p>drills [1] - 336:10</p> <p>drive [5] - 351:14, 351:18, 351:22, 352:15, 352:23</p> <p>drives [2] - 308:21, 352:6</p> <p>driving [1] - 426:12</p> <p>dry [1] - 245:13</p> <p>DSAs [2] - 451:18, 452:17</p> <p>Ducheneaux [1] - 234:15</p> <p>due [6] - 258:7, 297:9, 304:3, 407:6, 456:7, 470:12</p> <p>dug [1] - 389:20</p> <p>duly [1] - 489:8</p>	<p>duly-appointed [1] - 489:8</p> <p>during [32] - 250:8, 265:7, 265:22, 269:2, 271:2, 279:20, 296:3, 298:24, 299:11, 300:5, 301:4, 309:24, 318:25, 319:4, 328:24, 340:19, 344:4, 344:22, 348:10, 350:23, 351:3, 375:2, 377:21, 389:11, 398:18, 399:2, 404:1, 406:8, 466:21, 473:6, 480:2</p> <p>duties [1] - 408:18</p> <p>dynamic [1] - 426:9</p> <p>dynamism [1] - 426:12</p>	<p>Earth [1] - 341:1</p> <p>earthquakes [2] - 250:9, 336:20</p> <p>easement [2] - 254:21, 307:19</p> <p>Easement [2] - 235:19, 235:24</p> <p>easier [2] - 267:24, 341:9</p> <p>easily [2] - 245:8, 338:4</p> <p>East [2] - 233:3, 402:10</p> <p>eastern [1] - 354:17</p> <p>easy [3] - 291:12, 341:12, 341:16</p> <p>eat [1] - 456:3</p> <p>echoes [1] - 252:12</p> <p>economically [1] - 427:13</p> <p>ecstatic [1] - 240:11</p> <p>education [1] - 277:7</p> <p>educational [2] - 276:3, 276:24</p> <p>Edwards [4] - 232:17, 237:5, 300:21, 407:22</p> <p>EDWARDS [8] - 300:20, 301:23, 358:7, 358:20, 407:22, 419:4, 419:6, 420:10</p> <p>edwards [1] - 237:11</p> <p>effect [12] - 250:15, 252:7, 304:16, 307:10, 327:8, 341:22, 341:25, 410:3, 424:21, 430:6, 436:24</p> <p>effective [1] - 346:19</p> <p>effectively [1] - 276:7</p> <p>effort [3] - 375:23, 377:2, 457:8</p> <p>EIA [1] - 430:19</p> <p>eight [2] - 261:7, 354:25</p> <p>eighth [2] - 349:21, 368:6</p> <p>eighths [1] - 364:6</p> <p>EIS [1] - 235:14</p> <p>either [16] - 240:19, 241:8, 242:11, 277:19, 277:25, 278:6, 279:17, 297:10, 304:5, 324:8, 349:10, 386:20, 414:19, 441:8, 480:6, 482:21</p> <p>elaborate [1] - 314:9</p> <p>elected [2] - 324:6,</p>	11
E					
			<p>e-mail [1] - 273:18</p> <p>EAGLE [47] - 269:17, 269:19, 270:6, 270:9, 274:10, 282:4, 396:25, 397:2, 399:7, 400:2, 400:5, 400:7, 400:25, 402:15, 402:19, 402:21, 403:18, 404:11, 404:20, 404:22, 405:1, 405:9, 405:19, 405:23, 406:5, 406:12, 406:17, 407:14, 408:6, 408:13, 410:7, 410:12, 411:14, 412:8, 412:10, 412:24, 413:11, 414:1, 415:21, 416:1, 416:8, 417:2, 417:11, 417:17, 417:19, 418:4, 418:8</p> <p>Eagle [14] - 236:6, 237:4, 237:10, 269:16, 270:4, 396:24, 400:23, 407:23, 413:23, 417:13, 479:13, 480:7, 480:11, 482:14</p> <p>early [7] - 310:7, 345:18, 345:23, 443:15, 443:17, 443:19, 457:1</p>		

<p>325:12 electric [1] - 259:2 electrical [1] - 294:2 electronically [1] - 351:2 elements [1] - 342:19 elicit [1] - 258:13 elicited [3] - 296:3, 357:1, 358:14 eliminate [2] - 376:20, 455:4 eliminated [1] - 475:3 Ellison [16] - 237:9, 267:18, 283:4, 350:15, 351:19, 353:14, 358:20, 358:25, 360:14, 373:7, 374:23, 376:22, 377:7, 377:14, 402:17, 474:1 ELLISON [98] - 238:24, 239:9, 239:14, 248:14, 258:6, 267:11, 267:25, 274:20, 296:10, 296:18, 297:7, 297:17, 297:20, 297:25, 298:4, 350:17, 350:20, 351:11, 351:16, 353:16, 353:18, 358:11, 358:21, 359:2, 359:6, 359:14, 359:25, 364:7, 364:9, 364:12, 364:15, 364:20, 365:4, 365:10, 366:17, 366:21, 367:2, 368:11, 368:16, 368:19, 369:21, 369:25, 371:10, 373:10, 376:2, 376:19, 377:4, 377:16, 378:16, 378:19, 379:22, 380:22, 381:2, 381:5, 381:8, 381:11, 381:13, 382:15, 383:6, 386:21, 387:1, 387:7, 390:25, 402:18, 402:20, 423:2, 440:1, 440:7, 440:16, 441:14, 466:1, 466:7, 466:17, 468:20, 468:25, 469:5, 469:17, 469:20,</p>	<p>470:11, 472:25, 474:2, 474:4, 474:6, 477:15, 477:18, 477:21, 477:24, 478:4, 478:8, 478:13, 478:18, 478:24, 479:4, 479:17, 482:7, 482:14, 486:3, 487:19 Ellison's [2] - 350:23, 441:17 elsewhere [2] - 245:20, 394:1 emanates [1] - 459:11 embarrassing [1] - 459:16 emergency [7] - 272:3, 301:19, 301:21, 316:7, 316:9, 317:10, 317:12 Emergency [7] - 300:23, 301:1, 301:5, 316:21, 317:10, 317:17, 317:18 employ [1] - 294:9 employee [2] - 273:5, 379:12 employees [2] - 275:23, 411:7 end [12] - 276:9, 297:3, 307:20, 313:4, 321:25, 328:2, 346:24, 398:15, 424:9, 428:10, 428:18, 475:8 endeavor [1] - 280:16 endeavors [1] - 281:2 ended [2] - 257:2, 308:25 endorsement [1] - 429:23 energized [1] - 265:11 energy [5] - 238:4, 329:2, 329:8, 330:7, 330:17 Energy [3] - 322:3, 402:10, 430:12 enforcement [1] - 301:21 engage [6] - 301:18, 317:23, 317:24, 318:16, 327:4, 456:12 engaged [6] - 275:24, 276:8, 276:25, 322:19, 418:21,</p>	<p>453:19 engagement [1] - 484:14 engaging [1] - 274:4 engineer [3] - 293:13, 293:15, 293:16 Engineers [1] - 253:4 engrained [1] - 280:24 enhancement [1] - 299:9 enrolled [2] - 271:18, 272:20 ensure [6] - 250:14, 259:18, 330:15, 394:14, 413:19, 414:6 ensured [1] - 389:15 enter [4] - 326:2, 399:6, 443:6, 456:18 entered [5] - 392:20, 443:2, 443:7, 443:10 entering [1] - 453:12 entire [10] - 308:9, 308:10, 314:1, 384:8, 424:11, 440:21, 447:19, 463:3, 466:4, 466:11 entirety [4] - 304:24, 435:13, 468:2, 472:17 entities [1] - 254:17 entitled [4] - 233:2, 440:13, 454:25, 489:10 enunciate [1] - 483:17 environment [1] - 362:7 Environmental [3] - 235:10, 240:24, 315:19 environmental [3] - 302:22, 315:4, 386:14 EPA [2] - 235:11, 235:13 epoxy [2] - 263:22, 309:20 equal [1] - 325:19 equipment [1] - 278:14 equipped [1] - 253:7 equitable [1] - 325:19 erosion [1] - 249:20 ERP [1] - 418:13 eruption [1] - 374:14 escorted [1] - 278:25 especially [3] - 378:25, 383:21, 463:7 essentially [7] -</p>	<p>342:15, 413:16, 413:20, 433:23, 439:15, 445:10, 447:15 establish [6] - 365:19, 377:2, 399:20, 400:11, 401:12, 414:3 established [7] - 261:6, 307:6, 334:17, 334:18, 334:21, 348:15, 389:14 establishing [1] - 401:9 estimate [15] - 258:1, 283:17, 283:19, 284:17, 288:8, 290:22, 291:25, 292:5, 292:6, 305:2, 305:6, 305:22, 320:14, 426:25 estimated [9] - 256:21, 257:4, 291:14, 292:2, 292:3, 293:4, 293:5, 304:1, 305:3 estimation [1] - 329:18 et [2] - 360:21, 387:23 ethnicity [1] - 474:23 evacuation [2] - 281:12, 281:21 evaluate [2] - 330:22, 344:14 evaluation [1] - 358:1 Evan [1] - 234:22 event [8] - 276:17, 301:7, 301:19, 316:1, 335:12, 384:11, 411:24 events [5] - 253:1, 335:6, 335:15, 384:12 eventually [2] - 469:25, 470:8 evidence [40] - 249:14, 258:20, 266:11, 292:8, 298:13, 368:9, 370:23, 371:3, 375:17, 375:23, 376:16, 376:20, 378:10, 380:3, 380:18, 380:20, 381:16, 399:17, 404:12, 407:5, 410:5, 423:1, 437:8, 437:9, 437:22, 438:1, 439:21,</p>	<p>442:23, 448:18, 448:20, 448:22, 449:13, 459:10, 459:19, 464:12, 465:12, 466:5, 482:10, 482:15, 482:18 evidentiary [3] - 328:16, 454:8, 482:12 exact [4] - 241:13, 324:11, 335:11, 335:16 exactly [7] - 289:18, 301:10, 389:19, 399:7, 413:5, 445:12, 472:18 EXAMINATION [20] - 241:1, 248:21, 269:18, 283:1, 300:19, 312:19, 313:13, 314:19, 332:1, 340:12, 353:17, 391:5, 397:1, 419:5, 422:1, 423:9, 426:3, 428:1, 431:13, 476:18 Examination [22] - 237:3, 237:4, 237:4, 237:5, 237:5, 237:6, 237:6, 237:7, 237:7, 237:8, 237:9, 237:9, 237:10, 237:10, 237:10, 237:11, 237:12, 237:13, 237:13, 237:14, 237:14, 237:17 examination [52] - 238:7, 238:11, 249:5, 266:12, 267:19, 267:23, 274:9, 274:18, 282:21, 296:3, 296:5, 299:12, 300:18, 312:15, 339:9, 339:10, 351:20, 353:15, 366:17, 375:25, 376:1, 377:20, 377:21, 384:1, 387:21, 392:13, 392:14, 402:14, 403:4, 405:2, 415:24, 417:24, 418:21, 439:8, 439:12, 448:18, 448:21, 448:25, 449:12, 455:17, 456:8, 456:13, 457:6, 457:21,</p>	<p>12</p>
---	---	---	---	--	-----------

<p>459:15, 460:11, 460:18, 469:7, 472:10, 476:7, 477:14</p> <p>examinations [1] - 250:19</p> <p>examine [7] - 282:22, 295:12, 319:11, 380:5, 380:8, 380:13, 418:15</p> <p>examiner [1] - 449:15</p> <p>examiners [1] - 238:17</p> <p>examines [2] - 400:13, 400:20</p> <p>example [15] - 250:22, 265:2, 265:6, 265:14, 266:1, 310:10, 311:20, 325:1, 325:22, 333:1, 333:14, 343:3, 343:8, 430:15, 482:8</p> <p>examples [1] - 265:14</p> <p>excavate [2] - 263:14, 319:22</p> <p>excavation [2] - 316:4, 320:12</p> <p>excavations [1] - 319:14</p> <p>exceeds [1] - 265:25</p> <p>exception [3] - 306:16, 307:14, 467:16</p> <p>excess [1] - 288:5</p> <p>exchange [1] - 402:9</p> <p>excluded [6] - 234:5, 234:9, 234:22, 234:25, 235:5, 236:7</p> <p>excuse [10] - 267:11, 269:1, 297:23, 378:9, 406:9, 413:11, 438:12, 444:14, 445:9, 483:3</p> <p>executive [1] - 459:12</p> <p>exercise [8] - 316:4, 447:7, 447:10, 448:4, 453:17, 453:20, 455:25, 456:16</p> <p>Exhibit [32] - 234:11, 234:11, 235:17, 235:18, 235:19, 235:20, 235:21, 235:21, 235:22, 235:23, 235:24, 236:4, 289:7, 289:8, 306:3, 371:11, 371:12, 376:3, 381:16, 399:9,</p>	<p>400:2, 400:5, 422:12, 423:5, 431:19, 435:9, 465:25, 466:8, 477:4, 477:19, 479:5, 482:9</p> <p>exhibit [29] - 289:1, 289:4, 358:24, 359:1, 368:8, 376:25, 377:8, 377:11, 377:21, 378:15, 378:22, 380:24, 399:22, 403:14, 404:15, 410:4, 436:8, 437:3, 443:25, 461:24, 462:1, 462:4, 463:6, 464:2, 464:12, 468:11, 468:14, 468:22, 468:23</p> <p>exhibits [6] - 350:25, 351:19, 351:21, 352:6, 462:2, 469:4</p> <p>EXHIBITS [9] - 234:2, 234:10, 234:14, 234:17, 235:2, 235:4, 235:16, 236:2, 236:5</p> <p>Exhibits [13] - 234:3, 234:3, 234:4, 234:4, 234:5, 234:6, 234:9, 234:12, 234:13, 234:23, 235:15, 236:3, 236:7</p> <p>exist [2] - 288:16, 458:23</p> <p>existence [1] - 434:24</p> <p>existing [4] - 288:10, 342:3, 360:8, 431:24</p> <p>exists [1] - 299:7</p> <p>expand [2] - 266:14, 266:15</p> <p>expanded [1] - 266:8</p> <p>expect [32] - 283:15, 283:21, 286:20, 290:4, 326:7, 326:22, 335:1, 362:7, 372:7, 382:20, 383:7, 383:14, 383:18, 383:19, 383:22, 390:18, 390:19, 401:23, 402:22, 408:17, 408:20, 410:16, 413:4, 413:6, 413:18, 414:10, 414:12, 414:22, 415:1, 415:8, 454:6</p> <p>expectancy [1] - 387:6</p>	<p>expectation [3] - 384:23, 391:12, 480:9</p> <p>expectations [1] - 413:4</p> <p>expected [7] - 293:8, 305:16, 398:25, 401:5, 401:7, 430:19</p> <p>expecting [1] - 401:23</p> <p>expects [1] - 413:2</p> <p>expenditures [2] - 275:4, 275:21</p> <p>expensive [1] - 385:22</p> <p>experience [4] - 373:20, 376:24, 413:7, 414:7</p> <p>experienced [1] - 391:10</p> <p>experiences [1] - 419:18</p> <p>experimenting [1] - 338:22</p> <p>expert [8] - 266:21, 280:11, 284:23, 307:4, 396:10, 420:3, 429:5, 431:6</p> <p>expertise [1] - 417:16</p> <p>experts [1] - 397:15</p> <p>explain [7] - 253:10, 253:19, 263:24, 281:12, 286:10, 437:22, 458:3</p> <p>explained [1] - 453:24</p> <p>explanations [1] - 247:3</p> <p>explanation [2] - 298:5, 306:1</p> <p>explore [1] - 358:17</p> <p>explosions [1] - 395:17</p> <p>export [1] - 246:17</p> <p>exported [5] - 246:6, 321:10, 321:12, 322:1, 322:6</p> <p>express [1] - 258:12</p> <p>expressed [1] - 473:6</p> <p>expressly [1] - 471:21</p> <p>extend [1] - 362:1</p> <p>extension [1] - 288:12</p> <p>extensive [5] - 301:14, 326:12, 343:15, 344:16, 350:15</p> <p>extent [8] - 262:10, 301:11, 301:17, 411:23, 418:8, 435:2, 443:14, 466:14</p> <p>external [2] - 371:20, 451:2</p> <p>extra [1] - 254:9</p>	<p style="text-align: center;">F</p> <p>F.J [3] - 234:6, 477:4, 479:11</p> <p>F1 [1] - 235:22</p> <p>F2 [1] - 235:23</p> <p>face [1] - 413:13</p> <p>facilities [19] - 238:5, 242:3, 242:8, 242:9, 242:22, 243:1, 243:9, 243:10, 243:12, 247:10, 254:10, 294:17, 294:19, 327:6, 330:16, 341:4, 348:13, 348:14</p> <p>facility [4] - 241:25, 242:17, 330:22, 349:24</p> <p>fact [27] - 260:17, 276:9, 277:17, 291:9, 294:8, 311:21, 320:7, 324:21, 343:6, 346:14, 358:17, 359:22, 361:8, 370:9, 388:8, 389:8, 397:20, 404:15, 411:5, 440:17, 440:23, 445:15, 447:2, 447:19, 457:25, 458:1, 466:19</p> <p>Fact [27] - 435:21, 435:25, 436:4, 436:21, 438:4, 440:10, 440:11, 440:19, 441:1, 442:1, 442:7, 442:8, 442:13, 443:17, 443:25, 444:2, 444:9, 444:12, 446:8, 457:1, 458:8, 458:20, 459:11, 464:8, 466:22, 471:12, 471:13</p> <p>factor [2] - 305:10, 438:10</p> <p>factors [7] - 250:18, 292:6, 305:8, 311:14, 363:1, 365:6, 426:12</p> <p>facts [7] - 258:13, 258:19, 266:10, 274:21, 371:2, 376:16, 444:6</p> <p>fail [1] - 416:19</p> <p>failed [2] - 344:23, 346:21</p>	<p style="text-align: right;">13</p> <p>failing [1] - 346:9</p> <p>failsafe [3] - 396:2, 396:4, 396:12</p> <p>failure [2] - 407:6, 407:24</p> <p>failures [3] - 345:11, 346:11, 346:15</p> <p>fair [15] - 297:5, 321:24, 322:8, 325:18, 341:21, 342:16, 342:17, 342:23, 349:8, 354:15, 389:25, 397:9, 456:13, 475:4, 480:9</p> <p>fairly [3] - 309:9, 397:7, 454:4</p> <p>faith [3] - 256:25, 257:6, 257:11</p> <p>Faith [13] - 236:6, 274:6, 274:25, 403:12, 404:9, 408:10, 409:9, 409:20, 411:20, 411:21, 479:12, 480:7, 480:11</p> <p>familiar [45] - 249:24, 251:13, 261:20, 261:21, 261:23, 263:5, 264:2, 268:17, 281:14, 281:22, 281:23, 282:1, 284:13, 284:15, 302:4, 304:12, 305:4, 324:11, 327:19, 332:5, 332:7, 332:9, 333:17, 333:19, 335:13, 335:14, 336:3, 344:6, 350:8, 350:9, 358:22, 360:11, 362:23, 362:25, 388:11, 388:13, 388:14, 388:19, 397:25, 402:8, 404:7, 404:16, 414:24, 415:17, 462:1</p> <p>far [13] - 287:15, 289:4, 329:4, 339:8, 357:20, 364:13, 402:12, 426:1, 444:1, 458:5, 469:6, 472:22, 475:24</p> <p>Farm [1] - 235:19</p> <p>farmed [1] - 311:20</p> <p>farmers [1] - 337:2</p> <p>fault [1] - 443:14</p> <p>faux [1] - 298:14</p> <p>feature [14] - 309:10,</p>
--	--	--	---	--

<p>309:12, 309:15, 310:14, 310:15, 318:25, 319:7, 319:8, 320:8, 341:10, 344:13, 363:15, 372:19, 473:19</p> <p>features [7] - 317:7, 319:3, 319:5, 319:15, 320:11, 341:10, 370:7</p> <p>federal [7] - 395:2, 395:4, 415:16, 416:15, 416:17, 417:6, 417:9</p> <p>feed [1] - 240:3</p> <p>Fees [1] - 407:12</p> <p>feet [2] - 309:16, 335:9</p> <p>FEIS [4] - 332:5, 332:8, 332:10, 332:21</p> <p>fell [1] - 260:2</p> <p>fellow [1] - 463:18</p> <p>felt [1] - 434:25</p> <p>Fernandez [2] - 235:11, 235:13</p> <p>few [6] - 240:24, 265:17, 274:7, 309:20, 310:24, 405:16</p> <p>FIGEN [1] - 232:14</p> <p>Figien [1] - 240:6</p> <p>field [2] - 242:6, 340:14</p> <p>fields [1] - 359:17</p> <p>Figure [11] - 366:6, 367:11, 367:16, 368:20, 369:16, 369:17, 372:4, 372:14, 373:2, 381:23</p> <p>figure [16] - 283:17, 283:24, 284:10, 284:11, 284:20, 289:20, 290:1, 291:12, 295:12, 306:8, 367:4, 372:6, 404:4, 421:14, 427:11, 443:11</p> <p>figures [7] - 289:16, 367:7, 371:13, 372:1, 381:18, 427:9, 427:10</p> <p>file [8] - 301:1, 379:2, 407:1, 407:15, 408:2, 408:4, 419:25, 420:7</p> <p>filed [13] - 247:24, 285:16, 298:23, 372:11, 419:21,</p>	<p>419:22, 434:25, 443:22, 456:23, 457:2, 463:24, 480:1, 482:2</p> <p>filing [3] - 352:21, 353:5, 419:9</p> <p>fill [3] - 255:17, 307:7, 386:8</p> <p>final [5] - 302:22, 323:17, 363:2, 424:11, 424:12</p> <p>Final [5] - 315:18, 423:13, 423:18, 423:25, 436:16</p> <p>finalizing [1] - 312:23</p> <p>finally [2] - 292:17, 299:17</p> <p>financial [1] - 249:15</p> <p>Findings [28] - 424:19, 435:21, 435:25, 436:3, 436:17, 436:21, 438:4, 440:10, 440:11, 440:18, 441:1, 442:1, 442:7, 442:8, 442:13, 443:17, 443:24, 444:2, 444:9, 444:11, 446:8, 455:8, 458:8, 458:20, 459:11, 464:8, 466:22, 471:12</p> <p>findings [9] - 313:7, 423:23, 424:6, 424:21, 444:7, 445:15, 453:23, 458:17, 458:23</p> <p>fine [14] - 240:21, 252:14, 252:16, 289:10, 353:5, 380:15, 394:2, 406:17, 408:7, 415:11, 446:24, 447:6, 453:4, 468:22</p> <p>finish [3] - 244:16, 355:13, 366:20</p> <p>finished [2] - 308:15, 339:15</p> <p>fire [2] - 382:23, 402:9</p> <p>first [57] - 241:11, 244:21, 245:5, 252:21, 253:22, 260:13, 263:19, 265:17, 265:24, 267:17, 283:10, 295:11, 300:13, 307:22, 309:17, 309:21, 309:23, 310:6, 310:12,</p>	<p>310:13, 316:5, 316:12, 317:18, 318:24, 333:9, 352:11, 353:11, 355:3, 355:20, 357:8, 357:12, 358:16, 365:2, 365:18, 366:9, 367:3, 369:12, 369:22, 376:19, 386:1, 393:1, 395:20, 397:21, 400:3, 403:16, 411:12, 414:2, 416:16, 421:2, 421:7, 437:10, 439:11, 439:12, 466:25, 474:10, 481:16</p> <p>firsthand [1] - 411:2</p> <p>fit [2] - 323:18, 361:2</p> <p>fittings [1] - 355:6</p> <p>five [18] - 289:13, 289:25, 290:4, 290:10, 290:11, 290:25, 291:7, 291:8, 291:10, 307:12, 307:20, 310:9, 337:12, 337:17, 347:7, 364:6, 385:4, 467:22</p> <p>five-eighths [1] - 364:6</p> <p>five-year [2] - 289:13, 290:10</p> <p>flash [5] - 351:14, 351:18, 352:6, 352:15, 352:23</p> <p>Flo [1] - 234:13</p> <p>flooding [4] - 253:2, 334:8, 335:3, 335:6</p> <p>flow [3] - 244:14, 245:8, 320:1</p> <p>flowing [1] - 244:1</p> <p>fluid [1] - 484:20</p> <p>fluidity [1] - 484:25</p> <p>focus [1] - 366:9</p> <p>focusing [1] - 454:19</p> <p>folks [6] - 301:10, 320:20, 353:22, 453:14, 456:20, 484:21</p> <p>follow [11] - 274:11, 280:22, 297:10, 298:2, 332:4, 341:12, 408:19, 415:9, 429:10, 445:20, 453:9</p> <p>follow-up [2] - 274:11, 297:10</p>	<p>followed [1] - 299:15</p> <p>following [11] - 238:17, 240:7, 320:25, 330:4, 331:7, 359:12, 407:4, 416:15, 429:3, 430:23, 431:5</p> <p>follows [1] - 483:11</p> <p>FOR [1] - 232:5</p> <p>forbids [1] - 278:13</p> <p>force [1] - 430:5</p> <p>forever [1] - 297:22</p> <p>forget [1] - 464:2</p> <p>forgetting [1] - 470:12</p> <p>forgive [2] - 345:15, 366:19</p> <p>forgot [1] - 419:1</p> <p>form [15] - 244:22, 244:23, 290:14, 318:21, 323:17, 324:2, 331:7, 353:7, 365:1, 365:17, 366:14, 410:2, 415:18, 458:22</p> <p>formal [4] - 283:19, 325:15, 398:11, 398:13</p> <p>former [1] - 397:20</p> <p>forming [1] - 454:11</p> <p>forms [3] - 325:3, 344:1, 454:7</p> <p>formula [7] - 285:4, 286:18, 287:8, 287:18, 337:12, 337:14, 347:21</p> <p>formulate [1] - 419:19</p> <p>formulated [1] - 419:15</p> <p>forth [1] - 423:18</p> <p>forward [6] - 295:3, 413:24, 454:23, 463:22, 486:14</p> <p>foundation [25] - 295:10, 365:2, 365:18, 365:21, 366:24, 366:25, 367:24, 368:9, 371:2, 375:18, 375:21, 376:4, 376:25, 377:3, 377:10, 380:2, 380:19, 404:14, 405:4, 405:22, 406:4, 416:1, 416:16, 434:5</p> <p>foundational [1] - 371:8</p> <p>Four [1] - 279:7</p> <p>four [2] - 352:5, 374:24</p>	<p>fragile [1] - 336:17 1 4</p> <p>frame [1] - 241:15</p> <p>frankly [1] - 439:19</p> <p>Frederick [2] - 237:16, 476:21</p> <p>free [6] - 240:8, 316:7, 316:9, 316:13, 316:19, 317:8</p> <p>frequently [1] - 317:6</p> <p>Frisch [2] - 235:21, 407:8</p> <p>front [10] - 298:13, 298:17, 390:11, 405:7, 406:15, 407:3, 442:23, 462:10, 477:3, 477:19</p> <p>FSEIS [9] - 332:5, 332:7, 332:10, 333:1, 333:5, 333:9, 333:18, 333:24, 334:1</p> <p>fuel [2] - 429:7, 429:9</p> <p>fulfilled [1] - 330:18</p> <p>full [9] - 244:10, 274:21, 283:10, 309:13, 337:16, 430:5, 455:17, 456:8, 456:12</p> <p>fully [3] - 279:18, 306:17, 306:25</p> <p>functional [1] - 338:9</p> <p>functionally [1] - 339:15</p> <p>funding [2] - 275:10, 275:13</p> <p>furnishings [1] - 325:23</p> <p>fusion [1] - 309:20</p> <p>futile [1] - 457:8</p> <p>future [4] - 354:14, 386:18, 424:15, 485:11</p> <p>fuzzy [1] - 392:2</p>
G				
<p>G-O-U-L-E-T [1] - 248:25</p> <p>gain [1] - 279:16</p> <p>game [1] - 485:24</p> <p>gander [1] - 485:19</p> <p>Garrity [1] - 379:7</p> <p>GARY [1] - 232:15</p> <p>Gary [2] - 269:23, 406:1</p> <p>gas [10] - 245:1, 245:11, 245:12, 245:13, 245:14,</p>				

<p>245:15, 395:10, 395:13, 395:14, 395:18</p> <p>gasoline [2] - 429:7, 429:8</p> <p>gather [1] - 415:2</p> <p>gathering [1] - 363:17</p> <p>gears [1] - 322:9</p> <p>Gena [1] - 407:10</p> <p>general [19] - 270:17, 271:6, 273:16, 294:17, 317:13, 320:14, 332:22, 343:13, 348:5, 363:22, 396:10, 412:17, 425:11, 425:12, 425:16, 429:17, 435:10, 450:24, 452:25</p> <p>General [1] - 421:22</p> <p>generalization [1] - 337:5</p> <p>generally [17] - 268:22, 280:12, 321:1, 331:10, 333:19, 337:4, 337:12, 337:13, 341:6, 343:17, 344:6, 344:8, 346:13, 355:25, 362:1, 385:14, 414:12</p> <p>generated [3] - 256:19, 267:2, 333:10</p> <p>generates [1] - 429:6</p> <p>generators [1] - 276:16</p> <p>gentleman [1] - 468:10</p> <p>Genung [1] - 407:10</p> <p>geological [1] - 250:3</p> <p>geology [2] - 250:13, 250:24</p> <p>germane [1] - 323:9</p> <p>germinate [1] - 312:10</p> <p>Ghost [1] - 235:7</p> <p>gift [1] - 276:19</p> <p>Giles [2] - 235:11, 235:13</p> <p>given [18] - 240:12, 256:5, 276:19, 316:19, 339:1, 347:13, 364:12, 364:15, 364:16, 364:22, 392:10, 409:23, 411:5, 413:22, 464:18, 466:9, 476:5, 483:25</p> <p>glasses [1] - 359:3</p>	<p>God [1] - 448:1</p> <p>Goldtooth [2] - 246:5, 407:12</p> <p>Google [3] - 341:1, 341:3</p> <p>goose [1] - 485:19</p> <p>Gorneau [6] - 274:1, 274:12, 275:12, 408:22, 415:5, 415:6</p> <p>GOUGH [10] - 295:22, 298:6, 298:22, 299:2, 299:13, 299:18, 331:22, 332:2, 339:12, 340:10</p> <p>Gough [5] - 237:8, 295:22, 331:18, 332:3, 339:20</p> <p>Goulet [38] - 234:3, 237:3, 238:8, 238:21, 239:22, 240:15, 240:25, 248:23, 249:2, 249:17, 270:11, 274:18, 283:6, 289:3, 298:9, 302:2, 313:15, 314:21, 331:6, 331:13, 332:3, 353:19, 358:15, 380:17, 413:11, 413:17, 416:16, 419:7, 420:16, 420:18, 420:20, 421:8, 434:6, 466:25, 471:16, 472:16, 473:4, 474:4</p> <p>Goulet's [5] - 417:16, 441:6, 465:17, 468:1, 469:12</p> <p>governing [1] - 324:6</p> <p>government [2] - 301:6, 416:24</p> <p>governments [6] - 313:1, 411:10, 415:14, 416:3, 416:12, 416:13</p> <p>grant [4] - 462:17, 472:21, 484:1, 484:6</p> <p>granted [17] - 406:25, 408:3, 424:8, 435:24, 436:14, 436:19, 437:15, 438:9, 442:17, 445:17, 454:9, 455:10, 468:11, 472:6, 485:5, 485:9, 486:4</p> <p>granting [2] - 455:3, 484:25</p>	<p>grass [2] - 360:17, 360:23</p> <p>grasses [2] - 307:5, 392:22</p> <p>Grassrope [2] - 248:16, 407:9</p> <p>great [2] - 447:7, 461:20</p> <p>greater [1] - 381:18</p> <p>greatest [1] - 362:21</p> <p>Greg [1] - 232:18</p> <p>ground [13] - 259:7, 263:11, 263:14, 319:19, 335:23, 336:4, 339:13, 385:14, 385:20, 386:1, 386:2, 415:23, 416:25</p> <p>grounds [5] - 258:22, 387:13, 387:15, 429:13, 479:20</p> <p>group [5] - 432:11, 432:13, 432:18, 432:19, 433:1</p> <p>Group [1] - 379:9</p> <p>grout [1] - 386:9</p> <p>grow [1] - 362:8</p> <p>growing [2] - 360:18, 360:23</p> <p>Guadalajara [1] - 251:10</p> <p>guarantee [1] - 258:2</p> <p>guess [39] - 255:19, 286:9, 288:21, 291:16, 291:24, 292:2, 293:11, 295:17, 296:9, 305:20, 313:3, 318:13, 319:7, 326:25, 341:18, 343:13, 395:2, 397:14, 402:16, 410:24, 411:8, 412:12, 416:5, 421:1, 425:10, 434:25, 440:8, 440:20, 441:5, 442:11, 466:1, 466:17, 466:18, 475:21, 477:25, 480:21, 484:11, 485:14, 487:24</p> <p>guidance [2] - 456:24, 473:3</p> <p>Gulf [16] - 247:23, 265:6, 276:7, 288:12, 324:22, 327:24, 328:2, 343:21, 344:2, 344:4, 349:11,</p>	<p>362:13, 362:15, 388:5, 388:19, 430:15</p> <p>GUSTAFSON [1] - 351:7</p> <p>Gustafson [1] - 232:20</p> <p>guys [4] - 250:1, 389:18, 437:21, 438:1</p>	<p>Hanson [17] - 237:6, 15 302:1, 353:23, 358:14, 449:11, 456:6, 461:19, 463:13, 463:25, 466:2, 467:3, 467:20, 468:7, 469:5, 470:11, 483:16, 484:6</p> <p>Hanson's [1] - 311:3</p> <p>happy [2] - 257:7, 359:2</p> <p>hard [3] - 306:12, 400:21, 455:16</p> <p>harder [1] - 403:5</p> <p>Hardisty [4] - 244:12, 247:22, 332:18, 349:22</p> <p>Harter [12] - 234:24, 237:4, 237:10, 248:19, 252:10, 268:11, 268:25, 294:20, 391:4, 392:14, 407:12, 454:2</p> <p>HARTER [33] - 248:22, 249:7, 249:9, 249:16, 252:1, 256:9, 256:12, 256:16, 257:18, 258:23, 261:1, 261:11, 262:18, 262:22, 266:18, 268:2, 268:4, 268:10, 268:24, 269:8, 269:15, 391:6, 392:16, 392:18, 393:14, 394:2, 394:5, 396:22, 442:19, 442:21, 443:5, 454:1, 463:12</p> <p>Harter's [1] - 258:12</p> <p>Hartington [1] - 311:23</p> <p>hassle [1] - 460:14</p> <p>HCA [1] - 312:21</p> <p>HDDs [1] - 335:5</p> <p>head [6] - 252:12, 288:13, 290:2, 315:16, 328:5, 363:25</p> <p>headed [1] - 259:16</p> <p>heading [1] - 352:24</p> <p>headlined [1] - 295:3</p> <p>hear [9] - 252:14, 252:15, 269:5, 330:12, 376:9, 438:18, 441:7, 452:25, 471:4</p>
H				
			<p>Haakon [1] - 279:8</p> <p>half [6] - 287:2, 357:13, 364:5, 368:5, 372:16, 430:16</p> <p>half-inch [1] - 368:5</p> <p>halfway [1] - 330:14</p> <p>hand [1] - 289:19</p> <p>handed [1] - 432:23</p> <p>handful [1] - 315:13</p> <p>handing [1] - 364:2</p> <p>handle [1] - 431:7</p> <p>handles [1] - 432:21</p> <p>hands [1] - 300:12</p> <p>hanging [1] - 403:5</p> <p>HANSON [62] - 232:15, 296:17, 296:19, 296:23, 297:16, 297:19, 297:21, 298:1, 302:2, 302:4, 302:8, 302:11, 303:4, 303:10, 303:21, 304:15, 304:22, 305:25, 307:11, 308:3, 308:7, 308:13, 331:3, 378:9, 378:18, 378:21, 384:7, 405:24, 406:9, 406:15, 407:3, 438:12, 439:4, 441:9, 441:11, 441:17, 444:25, 446:17, 447:18, 448:10, 449:6, 449:18, 449:21, 455:18, 456:14, 461:18, 461:20, 463:1, 463:14, 468:6, 468:8, 468:21, 469:2, 469:15, 469:18, 469:21, 475:13, 483:3, 483:13, 483:19, 484:9, 487:21</p>	

<p>heard ^[10] - 247:23, 302:13, 302:14, 309:20, 326:22, 358:16, 381:10, 388:14, 388:16, 446:1</p> <p>Hearing ^[1] - 232:8</p> <p>hearing ^[34] - 249:14, 251:24, 252:17, 264:16, 270:8, 273:1, 282:19, 299:8, 328:17, 328:24, 329:9, 329:21, 330:1, 351:25, 358:10, 407:6, 423:3, 439:15, 454:4, 454:6, 454:8, 460:1, 467:15, 471:7, 471:25, 473:21, 473:25, 477:7, 480:3, 480:13, 481:10, 482:4, 487:16, 488:2</p> <p>hearings ^[2] - 447:20, 466:21</p> <p>heat ^[1] - 263:20</p> <p>heavy ^[6] - 244:5, 430:9, 430:14, 430:16, 430:22, 430:25</p> <p>Heidi ^[4] - 234:4, 234:8, 271:3, 281:5</p> <p>held ^[5] - 233:1, 254:20, 394:22, 409:20, 411:20</p> <p>hello ^[1] - 332:3</p> <p>help ^[5] - 267:25, 276:23, 311:10, 327:5, 351:17</p> <p>helpful ^[1] - 449:17</p> <p>helps ^[1] - 274:3</p> <p>HEREBY ^[1] - 489:8</p> <p>hesitate ^[1] - 308:18</p> <p>high ^[19] - 251:7, 253:4, 261:25, 262:5, 262:8, 262:13, 271:1, 272:4, 275:6, 280:10, 281:7, 291:25, 292:6, 293:24, 309:9, 346:15, 389:11</p> <p>higher ^[11] - 290:9, 292:9, 292:20, 292:21, 292:23, 293:1, 303:19, 343:6, 354:4, 390:18, 390:19</p> <p>highly ^[1] - 297:8</p>	<p>Highway ^[1] - 279:19</p> <p>hill ^[2] - 249:23, 249:24</p> <p>hills ^[3] - 249:19, 249:22</p> <p>HIPAA ^[1] - 421:4</p> <p>hire ^[3] - 391:10, 391:11, 391:12</p> <p>hiring ^[1] - 391:16</p> <p>historic ^[1] - 484:15</p> <p>historical ^[1] - 394:23</p> <p>historically ^[2] - 463:23, 481:3</p> <p>history ^[1] - 338:17</p> <p>hit ^[1] - 240:2</p> <p>hold ^[1] - 252:12</p> <p>hole ^[4] - 263:14, 361:21, 362:6, 362:7</p> <p>home ^[1] - 240:9</p> <p>honest ^[3] - 410:17, 410:21, 410:22</p> <p>honestly ^[1] - 303:7</p> <p>honor ^[1] - 279:18</p> <p>hook ^[1] - 242:6</p> <p>hope ^[2] - 408:19, 410:19</p> <p>hopefully ^[1] - 421:9</p> <p>hoping ^[1] - 486:13</p> <p>horizontal ^[1] - 335:18</p> <p>hospital ^[1] - 240:10</p> <p>hospitalized ^[1] - 238:9</p> <p>host ^[1] - 411:19</p> <p>hosting ^[1] - 409:21</p> <p>hot ^[1] - 259:11</p> <p>hour ^[4] - 350:18, 448:4, 471:2, 475:22</p> <p>hours ^[1] - 456:3</p> <p>household ^[1] - 325:23</p> <p>housekeeping ^[2] - 239:24, 487:21</p> <p>HP09-001 ^[2] - 232:5, 238:2</p> <p>HP14-001 ^[3] - 232:4, 282:20, 352:1</p> <p>hubs ^[1] - 428:16</p> <p>Hudson ^[1] - 234:11</p> <p>huge ^[1] - 453:19</p> <p>Hughes ^[1] - 234:12</p> <p>human ^[3] - 342:19, 342:21</p> <p>hydrocarbon ^[2] - 244:23, 245:11</p> <p>hydrocarbons ^[3] - 245:1, 245:15, 338:25</p> <p>hydrologically ^[2] - 262:21, 263:1</p>	<p style="text-align: center;">I</p> <p>I's ^[2] - 264:9, 320:12</p> <p>idea ^[5] - 298:11, 298:19, 298:21, 401:8, 432:23</p> <p>Ideal ^[1] - 399:15</p> <p>identical ^[2] - 312:3, 361:5</p> <p>identify ^[5] - 316:18, 358:23, 359:1, 365:3, 371:23</p> <p>identity ^[1] - 450:13</p> <p>IEN ^[1] - 482:23</p> <p>II ^[1] - 232:10</p> <p>illegal ^[1] - 279:3</p> <p>illogical ^[1] - 480:15</p> <p>illustrates ^[1] - 464:22</p> <p>imaginary ^[2] - 340:22, 340:24</p> <p>imagine ^[1] - 390:23</p> <p>imagines ^[1] - 357:12</p> <p>immaterial ^[2] - 252:3, 417:25</p> <p>immediate ^[1] - 356:12</p> <p>immediately ^[2] - 374:4, 391:8</p> <p>Impact ^[1] - 315:19</p> <p>impact ^[2] - 272:5, 302:23</p> <p>impairment ^[1] - 252:17</p> <p>Impala ^[1] - 470:2</p> <p>impeach ^[2] - 370:24, 380:16</p> <p>impeachment ^[6] - 369:25, 377:22, 377:23, 402:17, 402:21, 405:3</p> <p>implementation ^[4] - 270:18, 270:20, 275:3, 301:16</p> <p>implemented ^[1] - 333:2</p> <p>implementing ^[1] - 398:9</p> <p>imply ^[1] - 401:7</p> <p>importance ^[2] - 255:1, 326:5</p> <p>important ^[9] - 277:23, 294:16, 325:5, 326:17, 341:10, 342:9, 344:18, 374:11, 401:12</p> <p>imported ^[1] - 430:9</p> <p>impose ^[1] - 375:13</p> <p>imposed ^[6] - 333:21,</p>	<p>333:24, 375:14, 440:2, 442:9, 458:23</p> <p>impress ^[1] - 259:5</p> <p>impressed ^[1] - 309:25</p> <p>impression ^[3] - 365:22, 366:24, 394:18</p> <p>impressions ^[1] - 368:4</p> <p>improper ^[6] - 267:14, 267:15, 297:8, 371:1, 375:25, 376:12</p> <p>improved ^[2] - 339:1, 346:24</p> <p>improvement ^[2] - 264:21, 266:2</p> <p>improving ^[1] - 421:1</p> <p>IN ^[2] - 232:4, 232:5</p> <p>in-camera ^[1] - 457:6</p> <p>in-line ^[14] - 310:5, 310:8, 310:12, 310:13, 310:24, 319:1, 319:9, 319:13, 319:21, 319:23, 320:3, 350:4, 350:10, 374:8</p> <p>inappropriate ^[1] - 376:24</p> <p>Inc ^[1] - 379:10</p> <p>incentives ^[1] - 276:15</p> <p>inch ^[7] - 364:5, 364:6, 368:5, 368:6, 375:8, 375:9, 393:20</p> <p>inches ^[4] - 309:16, 364:25, 372:14, 373:4</p> <p>incidence ^[1] - 346:15</p> <p>incident ^[7] - 264:3, 301:7, 316:8, 318:22, 318:25, 355:9, 377:25</p> <p>incidents ^[2] - 318:23, 343:6</p> <p>inclined ^[2] - 472:20, 483:10</p> <p>include ^[9] - 288:11, 290:3, 294:17, 316:25, 319:7, 325:23, 415:5, 423:21, 443:16</p> <p>included ^[5] - 241:22, 288:18, 435:1, 456:25, 458:21</p> <p>includes ^[5] - 329:12, 329:23, 330:3, 352:7, 432:5</p> <p>including ^[9] - 244:4, 254:3, 329:13,</p>	<p>330:6, 353:22, 377:25, 395:4, 414:15, 431:21</p> <p>inclusive ^[2] - 255:4, 275:25</p> <p>income ^[5] - 285:1, 285:2, 285:4, 287:11, 287:12</p> <p>inconsistent ^[1] - 486:13</p> <p>incorporate ^[1] - 302:20</p> <p>incorporated ^[3] - 303:13, 333:1, 336:19</p> <p>increase ^[8] - 253:13, 288:19, 292:12, 347:2, 347:4, 347:12, 347:19, 348:1</p> <p>increased ^[5] - 283:14, 292:18, 347:14, 347:23, 426:15</p> <p>increasing ^[6] - 305:19, 305:24, 347:6, 347:10, 347:19, 426:15</p> <p>incremental ^[1] - 458:11</p> <p>indeed ^[2] - 381:24, 440:1</p> <p>indefinitely ^[3] - 338:12, 339:18, 342:15</p> <p>Indian ^[2] - 294:22, 394:17</p> <p>indicate ^[3] - 361:13, 373:18, 391:22</p> <p>indicated ^[6] - 253:24, 277:17, 291:22, 345:14, 360:23, 394:11</p> <p>indicates ^[8] - 303:18, 307:5, 367:20, 373:1, 373:14, 373:17, 374:17, 427:6</p> <p>indicating ^[2] - 277:16, 402:2</p> <p>indication ^[4] - 248:12, 322:25, 374:8, 410:23</p> <p>indications ^[1] - 374:2</p> <p>indigenous ^[1] - 397:16</p> <p>Indigenous ^[1] - 240:23</p> <p>individual ^[8] - 260:24, 261:5,</p>
---	--	---	--	---

<p>277:25, 278:2, 280:18, 285:9, 361:1, 399:13 Individual [1] - 248:10 individually [1] - 473:2 individuals [2] - 276:5, 278:5 indulgence [1] - 295:23 indulging [1] - 412:11 industry [1] - 433:17 infeasible [1] - 427:14 inflation [3] - 292:15, 292:22, 347:20 inform [1] - 415:3 Information [2] - 322:3, 430:12 information [58] - 241:7, 241:10, 250:20, 257:24, 257:25, 264:13, 266:23, 279:24, 296:2, 300:11, 306:6, 308:4, 316:10, 316:23, 316:24, 317:1, 317:13, 317:14, 317:24, 318:2, 318:11, 318:19, 319:3, 320:13, 320:16, 320:19, 320:21, 321:16, 322:7, 332:15, 333:11, 333:14, 336:19, 337:22, 342:7, 356:3, 361:8, 361:11, 361:12, 363:7, 363:9, 363:14, 363:17, 363:20, 370:2, 370:10, 378:4, 398:1, 415:2, 429:17, 429:20, 430:9, 430:11, 431:4, 442:12, 450:12, 459:15, 459:25 informative [1] - 444:4 infrastructure [8] - 325:6, 325:7, 326:16, 337:19, 338:9, 340:4, 342:9, 346:8 initial [2] - 384:23, 389:11 initiated [4] - 241:11, 241:12, 241:13, 241:14 initiatives [1] - 280:14</p>	<p>inject [2] - 244:8, 244:10 injected [2] - 348:6, 349:23 injection [2] - 348:9, 348:24 injections [1] - 247:25 injurious [1] - 373:21 input [8] - 313:6, 333:4, 333:6, 333:7, 334:25, 397:18, 431:2 inputs [1] - 431:7 inquire [4] - 296:12, 376:14, 440:14, 477:15 inquiry [3] - 383:3, 387:21, 466:23 inside [2] - 386:5, 386:6 inspect [1] - 319:22 inspection [16] - 260:20, 307:4, 310:11, 310:12, 310:13, 310:25, 319:1, 319:9, 319:13, 319:21, 319:24, 320:3, 346:3, 360:4, 374:8 inspections [7] - 310:6, 310:9, 319:4, 344:22, 346:5, 350:5, 350:10 inspectors [1] - 383:8 install [1] - 265:5 installed [5] - 264:7, 265:7, 265:10, 341:20, 384:18 installing [2] - 250:2, 265:4 instance [1] - 471:9 instead [5] - 290:20, 346:11, 437:2, 437:3, 486:10 instructed [1] - 382:19 Integrated [1] - 235:8 integrity [15] - 309:19, 310:18, 320:18, 343:16, 363:10, 374:12, 379:13, 389:6, 391:15, 395:6, 395:9, 395:18, 408:17, 408:20, 410:16 Integrity [2] - 419:9, 419:13 intellectual [1] - 459:22 intend [4] - 279:18, 294:9, 317:23, 473:2</p>	<p>intended [1] - 409:19 intent [16] - 277:8, 280:21, 322:10, 322:20, 322:24, 323:2, 323:3, 323:4, 323:7, 323:12, 323:16, 323:20, 323:21, 323:22, 327:17, 327:20 intention [9] - 246:16, 246:18, 246:24, 247:21, 323:13, 324:24, 327:25, 349:12, 399:17 interacting [1] - 414:14 interaction [1] - 313:23 interactions [1] - 314:7 interest [1] - 324:18 interested [5] - 241:3, 313:5, 323:10, 323:25, 442:12 interesting [1] - 434:18 interests [1] - 402:3 interference [3] - 293:21, 293:25, 294:14 internal [2] - 403:9, 403:10 internationally [1] - 321:3 internet [1] - 239:25 interpose [4] - 262:9, 267:11, 297:7, 367:24 interpretation [1] - 432:3 Interrogatories [1] - 249:10 Interrogatory [2] - 234:18, 234:20 interrupt [1] - 469:19 Intervenor [4] - 282:22, 407:1, 476:7, 479:21 Intervenors [10] - 248:11, 295:21, 297:11, 312:15, 443:8, 454:25, 457:17, 474:18, 481:21, 481:24 interventions [1] - 443:15 introduce [3] - 437:22, 438:1, 483:12 introduced [4] - 368:9, 437:4,</p>	<p>437:23, 453:22 introducing [1] - 399:8 introduction [1] - 458:25 invest [4] - 280:15, 325:6, 326:9, 401:17 investigation [3] - 365:7, 370:10, 374:18 investing [1] - 427:17 investment [18] - 276:3, 276:21, 277:7, 280:4, 280:8, 325:1, 325:4, 325:11, 325:22, 327:5, 398:7, 398:12, 398:23, 399:6, 401:9, 402:23, 415:15 investments [1] - 281:1 inviting [1] - 399:15 involved [13] - 266:22, 270:24, 281:5, 317:22, 324:20, 327:23, 346:12, 350:6, 375:2, 411:7, 433:4, 433:11, 487:12 involvement [1] - 388:12 involves [4] - 270:20, 272:21, 432:9, 458:14 involving [3] - 281:7, 437:23, 438:1 iron [1] - 259:23 irrelevant [12] - 249:4, 273:2, 417:24, 434:21, 437:24, 467:4, 467:20, 468:5, 470:24, 479:7, 479:18, 482:22 issue [19] - 238:23, 260:3, 266:4, 296:11, 296:13, 329:5, 346:13, 350:23, 352:3, 369:5, 369:8, 386:19, 404:17, 420:19, 440:7, 444:17, 446:8, 457:6 issued [6] - 323:19, 329:14, 330:23, 334:4, 388:5, 388:9 ISSUED [1] - 232:5 issues [12] - 273:1, 343:7, 344:21,</p>	<p>365:20, 402:13, 17 403:2, 417:14, 417:15, 432:3, 434:17, 436:4, 446:4 Issues [1] - 235:10 items [2] - 239:24, 280:2 itself [7] - 297:12, 333:13, 355:6, 368:8, 375:25, 424:15, 436:8</p>
J				
				<p>James [2] - 379:11, 379:12 jeez [1] - 272:16 Jeff [1] - 407:9 Jello [1] - 421:2 Jenny [1] - 234:11 Jensen [1] - 407:9 Jerry [1] - 407:10 Jewett [1] - 407:11 Jim [2] - 421:22, 468:10 job [11] - 271:6, 271:9, 272:21, 278:4, 382:1, 382:3, 391:16, 413:5, 414:24, 428:10, 447:25 jobs [1] - 408:20 John [14] - 232:17, 234:24, 248:19, 248:20, 252:10, 253:7, 258:25, 294:20, 368:13, 371:5, 407:12, 454:2, 487:11, 487:12 join [4] - 440:2, 475:17, 482:20, 482:25 joining [1] - 421:10 joins [2] - 482:23, 483:1 joints [1] - 345:8 Jon [2] - 234:4, 234:7 Jones [4] - 235:11, 235:13, 407:10 Jose [2] - 235:11, 235:13 Joye [1] - 407:11 July [5] - 232:9, 232:10, 233:4, 307:3, 489:10 junction [1] - 463:15 June [1] - 436:16 jurisdiction [1] -</p>

385:17 justify [1] - 459:25	294:10, 302:25, 303:23, 304:2, 306:15, 308:10, 308:24, 318:23, 320:12, 329:10, 329:17, 329:18, 330:20, 332:8, 347:3, 347:6, 348:18, 349:9, 350:5, 354:17, 354:24, 355:2, 363:1, 365:6, 388:9, 388:12, 388:16, 394:11, 395:7, 395:8, 395:19, 419:11, 423:17, 424:25, 425:17, 427:13, 427:18, 431:21, 432:10, 433:3, 433:5, 434:7, 434:13, 436:12, 443:21, 454:8, 477:1	412:17, 424:1, 424:13, 424:24, 425:9, 425:16, 427:9 knowledgeable [3] - 286:7, 302:10, 414:14 known [5] - 316:9, 338:21, 343:6, 454:1, 481:5 knows [12] - 243:19, 266:20, 267:22, 268:7, 295:13, 366:23, 380:13, 399:21, 400:10, 411:12, 412:7, 429:6 Kothari [8] - 234:3, 260:7, 261:4, 279:23, 282:2, 336:3, 336:14, 336:21 Kristen [4] - 232:17, 300:21, 407:22, 419:2 KRISTIE [1] - 232:14 KXL [2] - 281:21, 354:19	Witnesses [1] - 235:18 lands [9] - 250:5, 251:5, 254:17, 254:20, 254:22, 318:9, 394:22, 394:23 landscape [1] - 341:7 larger [1] - 378:1 largest [2] - 363:6, 370:6 last [34] - 240:6, 246:4, 248:24, 274:7, 287:1, 287:4, 287:7, 311:2, 311:21, 313:19, 314:12, 314:14, 324:22, 331:6, 337:20, 338:12, 339:18, 340:17, 342:14, 347:7, 358:10, 369:23, 426:17, 427:1, 435:9, 437:11, 437:12, 450:5, 450:6, 451:13, 453:7, 455:7, 471:2, 478:24 late [1] - 472:20 latest [1] - 353:11 latitude [1] - 434:4 Law [1] - 330:6 law [18] - 278:17, 279:14, 301:20, 329:13, 329:24, 330:4, 330:14, 342:11, 415:16, 416:17, 417:8, 417:9, 417:15, 447:12, 447:13, 459:8, 461:6, 475:16 lawfully [1] - 280:15 lawfulness [1] - 394:24 laws [11] - 394:25, 395:3, 395:4, 409:24, 411:10, 415:14, 416:15, 417:6, 417:21, 421:4 lawyer [1] - 417:18 lawyer's [1] - 487:23 lay [9] - 295:10, 365:2, 365:18, 366:23, 376:4, 405:4, 406:3, 416:1, 416:16 layers [2] - 309:19, 310:17 laying [2] - 380:18, 434:4 lead [1] - 328:22	leaders [2] - 277:18, 18 280:17 leadership [9] - 278:6, 280:12, 280:21, 324:5, 324:6, 324:12, 325:13, 325:15, 325:21 leads [1] - 260:14 leak [6] - 354:6, 354:7, 354:8, 354:12, 362:4, 362:10 leaked [2] - 355:2, 355:7 leaks [5] - 355:3, 355:16, 355:22, 355:23, 355:25 learn [1] - 264:20 learned [5] - 264:17, 266:1, 295:7, 409:16, 419:18 least [10] - 273:23, 275:23, 340:7, 378:1, 382:22, 383:15, 384:24, 411:3, 438:24, 473:5 leave [4] - 385:19, 428:5, 455:24, 468:18 leaves [3] - 428:4, 429:9, 429:14 leaving [1] - 385:14 led [1] - 273:10 left [1] - 383:22 leg [1] - 327:21 legally [1] - 462:4 legislation [3] - 278:11, 278:12, 279:2 Legislature [1] - 304:6 length [7] - 310:10, 337:23, 341:19, 343:9, 374:21, 385:2, 385:4 less [5] - 257:3, 321:14, 364:25, 427:3, 427:5 lessons [3] - 266:1, 295:7, 409:16 letter [19] - 277:8, 280:21, 323:4, 323:15, 324:9, 345:14, 388:8, 388:17, 389:2, 389:18, 390:6, 390:11, 399:9, 399:13, 399:17, 399:20, 400:14, 401:1, 411:16 Letter [2] - 235:11, 235:13
K				
Karen [1] - 232:18 Katlyn [1] - 232:20 Kearney [1] - 232:19 keep [3] - 309:8, 439:1, 467:22 keeping [1] - 415:12 keeps [2] - 424:13, 440:7 Ken [2] - 304:13, 356:23 Kenyan [1] - 285:15 kept [5] - 378:23, 379:2, 379:18, 379:20, 457:2 Kerri [2] - 235:11, 235:13 Kerri-Ann [2] - 235:11, 235:13 Kevin [2] - 235:15, 379:7 Keystone [122] - 235:10, 235:18, 238:3, 238:5, 242:7, 243:4, 243:15, 243:22, 244:3, 246:1, 247:11, 247:16, 247:21, 251:18, 251:20, 255:18, 256:22, 260:9, 263:24, 264:9, 264:12, 264:18, 265:2, 266:3, 266:14, 266:22, 270:16, 270:21, 270:25, 271:12, 273:17, 275:3, 275:11, 277:16, 279:20, 281:18, 281:19, 281:20, 283:7, 283:12, 283:18, 283:20, 283:21, 283:23, 283:25, 284:17, 285:5, 286:11, 287:20, 287:21, 287:22, 287:25, 288:7, 288:11, 288:12, 288:15, 288:18, 288:22, 289:6, 289:12, 289:21, 291:17, 291:21, 292:1, 292:8, 292:11, 292:25, 293:1, 293:2, 293:3,	KEYSTONE [2] - 232:4, 232:6 Keystone's [6] - 389:5, 424:7, 424:20, 436:18, 445:16, 455:9 Kimberly [2] - 240:22, 421:17 kind [15] - 238:8, 285:24, 286:10, 288:21, 288:24, 291:16, 295:3, 309:2, 321:11, 362:5, 418:7, 433:17, 450:14, 451:1, 484:21 kinds [1] - 341:6 King [10] - 234:5, 264:4, 264:13, 266:23, 294:11, 309:7, 310:25, 319:2, 320:22, 350:9 Kloecher [3] - 304:10, 304:11, 304:13 knowing [1] - 369:9 knowledge [32] - 243:18, 264:19, 272:7, 274:5, 277:8, 302:7, 302:17, 307:17, 308:6, 317:21, 321:4, 321:21, 323:19, 333:20, 336:21, 337:23, 348:8, 369:11, 384:15, 404:19, 405:17, 408:9, 409:24, 411:2, 411:23,	label [1] - 375:21 lacks [1] - 371:1 laid [5] - 239:6, 263:11, 263:13, 377:10, 380:2 land [26] - 249:17, 249:19, 249:22, 249:25, 251:1, 254:22, 254:25, 307:1, 307:4, 307:23, 311:16, 312:7, 316:22, 326:4, 326:19, 336:17, 337:5, 361:4, 361:9, 361:11, 361:13, 361:16, 386:14, 394:10, 394:22, 417:8 landowner [8] - 307:20, 311:18, 315:25, 316:4, 316:6, 361:1, 361:7 landowners [7] - 306:14, 316:10, 316:12, 316:18, 316:20, 317:14, 337:15 landowners' [1] - 306:18 Landowners/	L	

<p>letters [22] - 322:10, 322:19, 322:23, 323:2, 323:3, 323:7, 323:12, 323:20, 323:22, 327:17, 327:19, 343:25, 344:3, 344:7, 344:9, 344:15, 344:17, 344:20, 344:25, 388:4, 388:18</p> <p>letting [2] - 242:16, 409:13</p> <p>level [15] - 241:21, 253:18, 271:1, 275:6, 278:6, 278:7, 279:13, 280:10, 293:24, 309:9, 354:3, 409:12, 413:15, 427:12, 427:16</p> <p>levels [2] - 250:9, 413:21</p> <p>Lewis [2] - 248:16, 407:9</p> <p>liaison [1] - 416:7</p> <p>liberal [1] - 339:8</p> <p>licensed [1] - 293:13</p> <p>life [8] - 310:5, 316:11, 318:4, 338:9, 387:3, 387:6, 387:18, 387:20</p> <p>lifetime [3] - 337:18, 337:19, 340:3</p> <p>light [2] - 244:5, 486:14</p> <p>lighter [4] - 244:24, 245:7, 245:9, 245:10</p> <p>likely [2] - 324:17, 340:4</p> <p>Limine [3] - 471:20, 473:18, 473:24</p> <p>limit [2] - 424:15, 439:17</p> <p>limitation [1] - 440:1</p> <p>limited [8] - 380:25, 381:1, 393:7, 424:20, 425:10, 439:2, 467:16, 473:8</p> <p>line [40] - 244:12, 244:13, 255:18, 259:3, 259:23, 259:24, 261:13, 263:24, 265:11, 294:2, 309:13, 310:5, 310:8, 310:12, 310:13, 310:24, 316:2, 316:3, 316:7, 319:1, 319:9, 319:13, 319:21, 319:23,</p>	<p>320:3, 350:4, 350:10, 359:12, 362:13, 362:15, 366:3, 367:14, 367:15, 374:8, 390:8, 391:24, 429:12, 434:17, 445:20, 452:19</p> <p>linear [2] - 326:15</p> <p>lines [3] - 316:9, 336:12, 410:8</p> <p>lining [1] - 373:21</p> <p>link [3] - 241:7, 375:22, 437:13</p> <p>linked [4] - 437:19, 437:20, 442:9, 467:8</p> <p>liquid [3] - 246:2, 431:20, 432:6</p> <p>liquids [1] - 422:10</p> <p>list [3] - 239:4, 239:19, 397:18</p> <p>listed [7] - 241:4, 242:19, 243:5, 270:12, 315:17, 316:14, 399:22</p> <p>listening [2] - 239:25, 441:19</p> <p>literally [1] - 319:18</p> <p>live [2] - 299:7, 300:14</p> <p>loaner [1] - 394:10</p> <p>local [12] - 301:6, 301:10, 301:13, 301:20, 312:25, 315:13, 317:9, 396:11, 411:10, 415:13, 416:11, 416:24</p> <p>location [9] - 247:20, 308:24, 309:4, 311:7, 316:5, 320:5, 373:1, 384:14, 396:13</p> <p>locations [1] - 348:17</p> <p>locked [1] - 480:19</p> <p>logical [1] - 436:25</p> <p>logically [1] - 445:12</p> <p>logistical [1] - 350:23</p> <p>logistically [1] - 351:4</p> <p>logistics [3] - 299:22, 477:1, 484:12</p> <p>logo [1] - 379:3</p> <p>LOI [1] - 398:15</p> <p>LONE [47] - 269:17, 269:19, 270:6, 270:9, 274:10, 282:4, 396:25, 397:2, 399:7, 400:2, 400:5, 400:7, 400:25, 402:15, 402:19, 402:21,</p>	<p>403:18, 404:11, 404:20, 404:22, 405:1, 405:9, 405:19, 405:23, 406:5, 406:12, 406:17, 407:14, 408:6, 408:13, 410:7, 410:12, 411:14, 412:8, 412:10, 412:24, 413:11, 414:1, 415:21, 416:1, 416:8, 417:2, 417:11, 417:17, 417:19, 418:4, 418:8</p> <p>Lone [9] - 237:4, 237:10, 269:16, 270:4, 396:24, 400:23, 407:23, 413:23, 417:13</p> <p>long-term [2] - 250:15, 337:23</p> <p>look [25] - 275:4, 289:15, 319:15, 322:2, 341:3, 358:22, 359:7, 359:11, 359:20, 360:9, 360:11, 360:16, 365:13, 367:3, 368:24, 369:2, 369:14, 369:20, 370:22, 373:2, 405:25, 449:2, 449:12, 450:4, 477:21</p> <p>looked [20] - 311:25, 312:1, 312:3, 340:21, 340:25, 341:3, 357:1, 357:7, 357:8, 357:20, 358:6, 358:15, 358:18, 359:7, 359:10, 359:18, 360:3, 360:12, 360:19, 361:5</p> <p>looking [11] - 250:17, 283:24, 341:5, 364:10, 367:16, 368:25, 448:24, 454:4, 462:6, 478:8</p> <p>looks [2] - 247:4, 250:24</p> <p>lose [2] - 396:3, 396:6</p> <p>loss [8] - 307:16, 307:21, 336:24, 362:14, 362:22, 371:16, 374:19, 375:5</p> <p>lost [1] - 306:25</p> <p>Lou [3] - 271:4,</p>	<p>403:24, 408:23</p> <p>Louis [3] - 362:17, 363:5, 407:9</p> <p>love [2] - 299:2, 460:25</p> <p>lower [4] - 254:13, 287:9, 289:19, 413:15</p> <p>lowered [1] - 389:24</p> <p>lowering [1] - 260:21</p> <p>LP [4] - 232:5, 238:3, 287:21, 287:25</p> <p>Ludden [2] - 355:10, 355:11</p> <p>lunch [2] - 240:3, 351:24</p>	<p>391:13, 391:23, 392:3, 397:9</p> <p>manufactured [1] - 322:5</p> <p>manufacturer [1] - 343:5</p> <p>map [2] - 243:4, 247:4</p> <p>mapping [1] - 281:19</p> <p>maps [2] - 341:3, 341:6</p> <p>Maps [2] - 234:7, 341:1</p> <p>Mark [1] - 363:13</p> <p>marked [4] - 289:1, 289:2, 422:11, 477:3</p> <p>marker [1] - 316:14</p> <p>market [3] - 288:4, 426:9, 426:13</p> <p>Marketlink [15] - 241:6, 242:21, 243:5, 243:7, 243:11, 247:4, 247:8, 247:9, 247:17, 247:18, 247:25, 348:4, 348:9, 348:13, 349:24</p> <p>Marsh [2] - 304:13, 356:23</p> <p>MARTINEZ [9] - 350:22, 351:14, 351:18, 352:15, 454:3, 454:17, 454:21, 456:6, 460:21</p> <p>Martinez [1] - 351:12</p> <p>mass [1] - 276:17</p> <p>massive [1] - 396:18</p> <p>matches [1] - 390:24</p> <p>material [2] - 314:23, 386:9</p> <p>materials [1] - 343:1</p> <p>Matt [1] - 238:17</p> <p>Matt's [1] - 352:18</p> <p>matter [17] - 233:2, 238:2, 332:6, 394:23, 446:23, 447:12, 448:5, 449:3, 460:23, 461:6, 463:4, 467:9, 468:13, 477:10, 479:25, 489:10</p> <p>MATTER [1] - 232:4</p> <p>matters [4] - 239:21, 295:15, 414:13, 417:20</p> <p>maximum [3] - 253:14, 266:8, 372:24</p> <p>MCCOMSEY [1] -</p>
M				
<p>ma'am [2] - 364:20, 464:7</p> <p>mail [2] - 273:18, 405:10</p> <p>maintain [3] - 244:14, 335:8, 338:2</p> <p>maintained [5] - 338:11, 342:14, 342:22, 343:11, 385:6</p> <p>maintaining [2] - 264:24, 342:19</p> <p>maintenance [4] - 338:2, 343:15, 343:19, 355:21</p> <p>major [2] - 270:17, 335:7</p> <p>majority [1] - 335:24</p> <p>man [3] - 268:5, 381:9, 382:18</p> <p>manage [3] - 346:21, 432:24</p> <p>Management [2] - 419:9, 419:13</p> <p>management [9] - 264:22, 264:23, 342:21, 389:6, 395:7, 395:23, 395:25, 413:21, 431:25</p> <p>manager [5] - 270:17, 271:15, 379:13, 476:25, 477:1</p> <p>managing [1] - 351:10</p> <p>manner [15] - 247:12, 310:19, 330:17, 335:5, 338:7, 364:13, 364:16, 364:17, 364:22, 376:14, 390:13,</p>				

<p>489:5 McComsey [2] - 232:24, 489:18 Mead [1] - 279:8 mean [53] - 239:6, 256:9, 273:12, 273:14, 273:15, 276:25, 278:3, 296:21, 298:15, 299:6, 303:7, 305:2, 325:3, 332:12, 334:13, 337:20, 338:16, 356:11, 361:15, 368:4, 368:5, 368:16, 369:4, 380:2, 380:5, 380:20, 383:8, 387:9, 403:2, 404:18, 409:5, 416:7, 433:1, 437:21, 444:17, 452:19, 461:2, 465:6, 468:20, 469:3, 471:4, 473:25, 474:11, 474:13, 475:8, 475:19, 480:2, 480:25, 481:3, 481:9, 484:20, 486:20 meaningful [1] - 313:6 means [10] - 269:5, 335:19, 338:15, 385:14, 393:14, 397:8, 401:8, 455:11, 467:14, 476:6 meantime [1] - 406:2 Mears [1] - 379:9 measure [2] - 430:1, 430:3 measures [4] - 294:10, 302:24, 303:13, 382:13 mechanical [1] - 293:16 mechanism [2] - 238:11, 280:15 media [2] - 283:22, 291:25 medium [2] - 244:5, 430:16 Meera [1] - 234:3 meet [31] - 279:8, 316:20, 317:11, 329:25, 330:2, 330:5, 335:4, 394:25, 423:17, 424:3, 424:7, 424:14, 435:23,</p>	<p>436:13, 436:19, 436:24, 437:14, 438:8, 442:16, 445:16, 447:2, 447:5, 447:9, 447:21, 448:6, 454:9, 455:9, 470:10, 470:13, 472:4 meeting [26] - 258:4, 258:13, 274:5, 274:25, 295:1, 399:15, 401:2, 403:11, 404:2, 404:7, 404:9, 404:23, 408:10, 409:9, 409:18, 409:20, 410:12, 411:1, 411:13, 411:15, 411:19, 412:18, 416:3, 446:23, 487:23 Meeting [1] - 235:6 meetings [3] - 393:18, 412:15 meets [2] - 325:10, 388:25 member [6] - 271:18, 280:19, 325:13, 325:14, 398:20, 415:7 members [10] - 276:19, 277:18, 277:25, 278:3, 313:22, 317:15, 325:19, 325:24, 397:19, 458:7 membership [1] - 278:7 memo [10] - 295:1, 295:2, 295:4, 295:12, 403:10, 403:21, 404:2, 409:15, 412:13 memorandum [2] - 277:9, 280:22 memory [7] - 269:21, 270:12, 270:14, 270:19, 271:5, 344:12, 345:15 mention [2] - 369:10, 471:17 mentioned [16] - 245:10, 271:2, 293:6, 293:17, 294:11, 314:23, 315:11, 324:16, 325:2, 327:23, 352:3, 384:10, 388:4, 397:11,</p>	<p>445:7, 472:3 merely [3] - 344:20, 443:25 merits [1] - 344:14 met [5] - 256:3, 329:8, 330:7, 381:10, 480:3 metal [1] - 259:7 Metcalfe [1] - 236:4 method [1] - 304:4 methodologies [2] - 285:25, 286:3 methodology [19] - 257:2, 283:20, 284:15, 284:22, 286:4, 286:7, 292:24, 293:8, 293:10, 304:7, 304:16, 304:21, 304:25, 305:10, 305:18, 305:23, 347:11, 356:9, 356:17 methods [1] - 284:24 metric [1] - 364:1 Mexico [1] - 251:11 mic [5] - 269:2, 270:4, 274:14, 360:14, 420:23 Michael [1] - 285:15 microphone [2] - 252:11, 274:16 middle [1] - 238:7 might [37] - 239:15, 256:13, 261:5, 261:17, 266:23, 275:21, 280:18, 281:25, 282:12, 288:13, 302:9, 303:5, 305:16, 310:2, 319:13, 324:19, 325:6, 326:9, 328:7, 341:18, 341:22, 344:12, 347:2, 347:4, 358:18, 435:17, 438:4, 438:17, 447:23, 453:16, 453:25, 454:3, 455:16, 457:11, 467:8, 472:1, 480:4 milepost [1] - 362:16 miles [5] - 283:12, 291:17, 291:19, 291:20, 306:15 million [36] - 283:11, 283:14, 283:15, 283:22, 284:10, 284:19, 289:17, 289:21, 289:22,</p>	<p>289:25, 290:1, 290:3, 290:5, 290:7, 290:11, 290:12, 290:18, 290:23, 290:25, 291:1, 291:3, 291:4, 291:6, 291:10, 291:13, 291:24, 292:10, 304:2, 304:3, 304:19, 347:23, 347:24, 430:16 mind [8] - 253:16, 427:17, 443:11, 452:17, 472:18, 473:13, 473:22, 473:23 minimal [2] - 372:18, 382:21 minimizing [1] - 378:5 minimum [4] - 244:14, 317:6, 318:1, 335:8 minor [1] - 355:3 minute [2] - 419:1, 425:7 minutes [6] - 282:13, 387:8, 404:5, 467:22, 475:22, 475:24 misheard [1] - 446:1 miss [2] - 407:19, 421:10 missed [4] - 405:9, 406:6, 444:20, 465:14 Missouri [4] - 234:20, 294:1, 362:18, 362:19 misstatement [3] - 262:10, 262:12, 330:9 mistaken [2] - 348:11, 406:17 mitigate [1] - 251:8 mix [1] - 243:22 mode [1] - 396:12 modifications [1] - 348:5 modified [3] - 247:24, 263:18, 355:20 modify [1] - 306:20 moment [2] - 303:22, 381:10 momentarily [1] - 458:7 money [4] - 283:25, 284:7, 325:16, 401:16 monitor [1] - 391:24 monitoring [1] - 251:6 Montana [17] - 241:8,</p>	<p>242:6, 242:11, 242:22, 243:11, 243:15, 244:9, 244:10, 247:6, 247:7, 247:10, 247:25, 348:7, 348:13, 348:24, 349:22, 349:24 month [5] - 433:16, 433:18, 433:24, 434:2 monthly [2] - 433:15, 433:16 months [4] - 265:17, 265:19, 265:20, 287:1 MOORE [2] - 352:9, 352:12 Moore [2] - 454:5, 476:14 moot [1] - 468:13 morning [13] - 240:22, 302:2, 302:3, 314:21, 352:11, 353:9, 353:11, 421:8, 421:15, 481:17, 481:25, 487:13, 488:1 most [17] - 241:22, 245:12, 251:6, 299:3, 307:3, 311:8, 323:25, 324:17, 335:7, 336:8, 341:10, 355:23, 357:14, 360:19, 416:23, 444:8, 461:4 motion [45] - 358:19, 408:1, 408:3, 439:22, 440:2, 441:11, 441:12, 441:15, 441:17, 444:23, 445:5, 455:3, 457:13, 458:24, 462:17, 462:23, 463:8, 467:21, 469:14, 471:15, 472:16, 472:21, 473:1, 473:5, 473:9, 474:3, 479:19, 479:23, 480:22, 480:23, 482:21, 482:23, 482:25, 483:1, 483:4, 483:5, 483:8, 483:10, 483:21, 484:1, 484:7, 484:23, 485:3, 485:11, 486:9 Motion [5] - 406:25, 407:24, 471:19,</p>
--	--	---	---	--

<p>473:18, 473:24 motions [2] - 358:10, 441:9 motor [2] - 259:10 MOU [1] - 398:15 MOUs [1] - 322:13 mouth [1] - 270:5 move [30] - 244:6, 244:13, 244:19, 245:4, 247:11, 253:15, 258:23, 268:8, 369:14, 379:22, 381:14, 382:15, 398:15, 422:25, 424:23, 439:20, 440:20, 441:6, 450:1, 457:15, 463:22, 467:4, 467:5, 468:1, 468:22, 472:16, 473:14, 479:4, 483:21, 486:14 moved [6] - 295:25, 406:24, 411:20, 439:23, 468:11, 469:10 movement [2] - 251:4, 458:17 moving [4] - 348:3, 349:10, 471:19, 484:25 MR [637] - 238:1, 238:24, 239:3, 239:9, 239:11, 239:14, 239:17, 240:14, 240:19, 248:9, 248:14, 248:16, 248:22, 249:4, 249:6, 249:7, 249:8, 249:9, 249:13, 249:16, 251:12, 251:23, 251:25, 252:1, 252:3, 252:5, 252:8, 252:9, 252:10, 252:14, 252:15, 252:19, 252:20, 256:7, 256:8, 256:9, 256:10, 256:12, 256:14, 256:16, 257:13, 257:14, 257:17, 257:18, 257:20, 258:5, 258:6, 258:8, 258:10, 258:15, 258:17, 258:18, 258:21, 258:23, 258:24, 260:23, 261:1, 261:10, 261:11, 262:9,</p>	<p>262:12, 262:17, 262:18, 262:20, 262:22, 262:24, 263:3, 266:10, 266:13, 266:17, 266:18, 266:19, 267:9, 267:11, 267:16, 267:17, 267:25, 268:1, 268:2, 268:3, 268:4, 268:8, 268:9, 268:10, 268:24, 268:25, 269:8, 269:10, 269:15, 269:16, 270:4, 270:7, 270:10, 272:25, 273:4, 274:8, 274:13, 274:15, 274:20, 280:5, 280:7, 282:6, 282:9, 282:11, 282:12, 282:14, 282:19, 282:23, 283:2, 288:25, 289:2, 289:9, 290:14, 290:16, 290:19, 290:20, 295:9, 295:14, 295:20, 295:22, 296:4, 296:7, 296:9, 296:10, 296:18, 296:21, 297:7, 297:15, 297:17, 297:20, 297:25, 298:4, 298:6, 298:8, 298:11, 298:22, 298:25, 299:2, 299:3, 299:13, 299:15, 299:18, 299:19, 300:6, 300:8, 300:17, 301:25, 308:16, 312:13, 312:17, 312:20, 313:8, 313:9, 313:12, 313:14, 314:15, 314:17, 329:4, 329:9, 329:14, 329:20, 330:2, 330:9, 330:19, 330:23, 331:4, 331:16, 331:17, 331:21, 331:22, 332:2, 339:7, 339:12, 339:16, 339:24, 340:1, 340:6, 340:8, 340:10, 340:11, 340:13, 350:13, 350:14, 350:17, 350:18, 350:20,</p>	<p>350:22, 351:11, 351:12, 351:14, 351:15, 351:16, 351:18, 351:23, 351:25, 352:9, 352:10, 352:12, 352:13, 352:15, 352:17, 352:21, 352:25, 353:3, 353:5, 353:14, 353:16, 353:18, 358:11, 358:21, 358:23, 359:2, 359:5, 359:6, 359:12, 359:14, 359:25, 360:13, 364:7, 364:8, 364:9, 364:11, 364:12, 364:14, 364:15, 364:18, 364:20, 364:21, 365:1, 365:4, 365:8, 365:10, 365:17, 366:14, 366:17, 366:19, 366:21, 366:22, 367:2, 367:23, 368:11, 368:14, 368:16, 368:18, 368:19, 369:3, 369:19, 369:21, 369:25, 370:19, 371:7, 371:10, 372:8, 373:7, 373:10, 375:13, 376:2, 376:4, 376:5, 376:7, 376:8, 376:9, 376:10, 376:12, 376:18, 376:19, 376:22, 377:4, 377:6, 377:10, 377:16, 378:7, 378:16, 378:19, 379:22, 379:24, 379:25, 380:22, 380:23, 380:25, 381:1, 381:2, 381:4, 381:5, 381:7, 381:8, 381:9, 381:11, 381:12, 381:13, 381:14, 382:15, 382:17, 383:1, 383:4, 383:6, 383:25, 384:3, 384:5, 384:9, 386:16, 386:21, 386:24, 387:1, 387:4, 387:7, 387:9, 387:16, 388:2, 390:25, 391:1, 391:4, 391:6,</p>	<p>392:12, 392:16, 392:17, 392:18, 393:2, 393:3, 393:6, 393:9, 393:11, 393:13, 393:14, 393:15, 393:23, 394:2, 394:4, 394:5, 396:22, 396:23, 399:16, 399:24, 400:1, 400:4, 400:6, 400:9, 402:11, 402:18, 402:20, 403:1, 403:16, 403:20, 404:13, 404:18, 404:21, 404:24, 405:8, 405:16, 405:21, 405:25, 406:19, 406:22, 406:23, 406:24, 408:11, 410:2, 410:10, 410:14, 411:12, 412:6, 412:9, 412:22, 413:9, 413:23, 415:18, 415:22, 416:5, 416:19, 417:1, 417:10, 417:13, 417:18, 417:23, 418:1, 418:5, 418:12, 418:15, 418:20, 418:23, 418:24, 418:25, 420:11, 420:12, 420:14, 420:16, 420:18, 420:22, 421:11, 421:12, 421:16, 421:17, 421:19, 421:21, 422:2, 422:25, 423:2, 423:3, 423:4, 423:5, 423:6, 423:8, 423:10, 424:4, 424:9, 424:17, 424:23, 425:3, 425:5, 425:8, 425:10, 425:12, 425:14, 425:20, 425:21, 425:24, 426:4, 427:20, 427:22, 429:12, 429:16, 431:10, 431:12, 431:14, 434:16, 434:23, 435:6, 435:7, 435:8, 435:14, 435:15, 435:17, 435:20, 436:6, 436:7, 437:11, 437:12, 437:17, 437:21, 438:2, 438:11,</p>	<p>438:16, 438:24, 439:9, 439:11, 439:23, 439:24, 439:25, 440:1, 440:4, 440:7, 440:15, 440:16, 441:14, 441:15, 441:21, 441:23, 442:19, 442:20, 442:21, 443:3, 443:5, 443:13, 444:22, 445:9, 445:21, 446:13, 447:11, 448:8, 448:12, 448:13, 449:10, 449:20, 449:22, 449:24, 449:25, 450:7, 450:9, 450:16, 450:18, 450:20, 451:3, 451:7, 451:10, 451:12, 451:14, 451:16, 451:21, 451:24, 451:25, 452:4, 452:7, 452:10, 452:11, 452:14, 452:19, 452:23, 452:25, 453:5, 453:11, 453:12, 453:16, 453:21, 454:1, 454:3, 454:13, 454:17, 454:18, 454:21, 455:6, 456:6, 456:18, 456:22, 457:13, 457:15, 457:17, 457:19, 457:23, 457:24, 458:2, 458:4, 458:9, 458:10, 459:20, 459:24, 460:3, 460:5, 460:7, 460:9, 460:12, 460:17, 460:21, 461:19, 462:6, 462:22, 462:24, 463:12, 464:1, 464:4, 464:5, 464:7, 464:12, 464:16, 464:20, 465:1, 465:6, 465:10, 465:14, 465:18, 465:20, 465:21, 466:1, 466:5, 466:7, 466:14, 466:17, 468:7, 468:20, 468:25, 469:5, 469:17, 469:20, 470:11, 472:14, 472:25, 474:1,</p>	21
---	--	---	--	---	----

<p>474:2, 474:3, 474:4, 474:5, 474:6, 474:7, 474:10, 474:13, 474:14, 474:15, 474:16, 474:20, 474:23, 474:25, 475:2, 475:7, 475:10, 475:12, 475:15, 476:2, 476:5, 476:10, 476:11, 476:13, 476:16, 476:19, 477:13, 477:15, 477:17, 477:18, 477:21, 477:24, 478:4, 478:8, 478:13, 478:18, 478:24, 479:4, 479:9, 479:10, 479:16, 479:17, 479:19, 480:5, 481:3, 481:18, 482:1, 482:7, 482:13, 482:14, 482:24, 483:1, 483:15, 484:1, 484:4, 484:10, 484:13, 485:14, 485:17, 486:3, 486:6, 486:7, 486:17, 487:5, 487:6, 487:11, 487:16, 487:19, 487:20, 487:22, 487:24</p> <p>MS [102] - 240:18, 240:22, 241:2, 248:6, 269:17, 269:19, 270:6, 270:9, 274:10, 282:4, 282:8, 282:10, 298:9, 299:21, 300:7, 300:16, 300:20, 301:23, 314:20, 329:6, 329:12, 329:22, 330:3, 330:11, 330:21, 331:1, 331:13, 351:7, 358:7, 358:20, 391:3, 396:25, 397:2, 399:7, 400:2, 400:5, 400:7, 400:23, 400:25, 402:15, 402:19, 402:21, 403:18, 404:11, 404:20, 404:22, 405:1, 405:9, 405:19, 405:23, 406:5, 406:12,</p>	<p>406:17, 407:14, 407:22, 408:6, 408:13, 410:7, 410:12, 411:14, 412:8, 412:10, 412:24, 413:11, 414:1, 415:21, 416:1, 416:8, 417:2, 417:11, 417:17, 417:19, 418:4, 418:8, 418:13, 418:19, 418:22, 419:4, 419:6, 420:10, 421:1, 427:24, 428:2, 431:8, 444:14, 464:6, 464:8, 464:14, 464:24, 465:2, 465:8, 473:16, 476:1, 479:22, 480:15, 481:9, 481:19, 482:5, 482:23, 483:8, 485:3, 485:13</p> <p>MSDS [2] - 315:2, 418:13</p> <p>multiparty [1] - 296:14</p> <p>must [2] - 330:15, 448:15</p> <p>mutual [1] - 397:8</p> <p>Myers [3] - 282:6, 418:10, 418:18</p> <p>MYERS [5] - 282:8, 282:10, 418:13, 418:19, 418:22</p>	<p>307:5, 312:10, 397:14</p> <p>natural [6] - 245:5, 245:11, 245:12, 245:13, 245:14, 245:15</p> <p>naturally [1] - 245:2</p> <p>nature [6] - 326:16, 333:7, 342:25, 378:13, 451:5, 452:9</p> <p>near [2] - 242:6, 326:10</p> <p>nearly [2] - 361:13, 372:14</p> <p>Nebraska [8] - 311:22, 315:3, 315:5, 332:19, 333:3, 407:12, 458:19, 483:1</p> <p>necessarily [9] - 250:11, 253:1, 257:21, 336:9, 374:16, 385:21, 423:21, 455:20, 480:2</p> <p>necessary [3] - 342:8, 442:18, 459:12</p> <p>need [32] - 242:1, 242:10, 260:8, 269:11, 294:12, 316:23, 351:13, 351:16, 353:7, 368:12, 371:5, 378:11, 378:13, 400:7, 401:18, 433:18, 437:5, 437:19, 438:17, 444:25, 446:1, 446:4, 446:6, 448:11, 449:1, 456:19, 460:19, 463:21, 466:1, 466:2, 469:18, 469:25</p> <p>needed [1] - 484:21</p> <p>needs [5] - 263:15, 325:9, 325:12, 329:8, 441:3</p> <p>negotiating [2] - 433:2, 433:4</p> <p>negotiation [2] - 398:19, 399:2</p> <p>neighborhood [1] - 321:13</p> <p>NELSON [38] - 232:14, 239:23, 296:8, 308:18, 309:2, 310:21, 311:2, 312:12, 331:2, 368:12, 371:5,</p>	<p>384:4, 384:6, 393:12, 438:17, 441:10, 444:23, 445:3, 445:14, 446:7, 446:15, 453:4, 463:20, 472:1, 472:15, 473:11, 475:9, 475:21, 476:9, 483:16, 484:3, 484:5, 484:11, 484:19, 485:8, 486:1, 486:5, 486:25</p> <p>Nelson [5] - 237:6, 239:21, 308:17, 311:13, 445:4</p> <p>Network [1] - 240:24</p> <p>network [1] - 251:3</p> <p>never [28] - 246:16, 269:13, 283:19, 297:2, 312:1, 319:17, 335:19, 343:18, 345:3, 354:7, 360:12, 360:22, 363:3, 365:12, 370:24, 373:14, 375:16, 377:1, 381:9, 381:10, 388:16, 399:2, 400:14, 442:8, 447:8, 448:5, 469:12, 471:16</p> <p>nevertheless [1] - 257:6</p> <p>new [10] - 265:5, 305:17, 335:20, 336:19, 356:9, 395:14, 432:21, 432:22, 469:14, 478:25</p> <p>news [4] - 240:5, 240:8, 420:24, 421:3</p> <p>next [20] - 239:19, 240:16, 243:19, 248:16, 248:19, 310:11, 313:9, 369:14, 412:2, 421:19, 421:24, 425:21, 430:20, 450:2, 475:25, 476:1, 476:2, 476:15, 487:9, 487:11</p> <p>night [3] - 240:6, 246:4, 421:2</p> <p>nine [7] - 284:3, 291:5, 306:16, 308:8, 308:11, 394:12, 394:14</p> <p>nitrogen [1] - 386:3</p>	<p>nobody [4] - 387:16, 22 403:3, 472:19, 473:11</p> <p>nobody's [1] - 260:19</p> <p>nominate [1] - 433:25</p> <p>nomination [3] - 433:16, 433:21, 433:24</p> <p>nominations [2] - 433:14, 433:18</p> <p>nonconfidential [4] - 364:13, 364:16, 364:17, 364:19</p> <p>none [6] - 267:8, 268:14, 373:20, 423:3, 446:4, 467:16</p> <p>nonetheless [1] - 318:18</p> <p>nonsubstantive [1] - 452:15</p> <p>noon [2] - 420:21, 421:9</p> <p>normal [11] - 280:20, 303:20, 308:2, 327:12, 334:24, 346:7, 374:5, 374:7, 468:20, 486:9</p> <p>normally [3] - 309:12, 418:16, 475:3</p> <p>North [7] - 241:9, 242:1, 242:4, 242:11, 242:23, 247:6, 255:2</p> <p>north [1] - 311:25</p> <p>northern [1] - 311:22</p> <p>Notary [2] - 489:7, 489:18</p> <p>notes [1] - 386:22</p> <p>nothing [16] - 245:7, 275:16, 372:25, 398:18, 398:19, 398:25, 401:5, 412:8, 424:2, 424:13, 424:18, 429:14, 434:18, 442:16, 471:14, 480:18</p> <p>nothing's [1] - 465:11</p> <p>notice [3] - 318:2, 318:21, 440:24</p> <p>noticed [3] - 239:3, 440:18, 482:18</p> <p>notified [2] - 346:11, 424:25</p> <p>notify [1] - 461:11</p> <p>November [3] - 235:7, 295:3, 403:12</p> <p>noxious [2] - 360:21, 361:1</p> <p>number [29] - 244:3,</p>
N		<p>name [12] - 240:22, 248:24, 304:11, 381:10, 395:15, 405:6, 406:10, 415:6, 421:22, 422:5, 464:2, 476:20</p> <p>named [1] - 407:13</p> <p>names [2] - 271:3, 363:12</p> <p>naphtha [1] - 244:24</p> <p>narrow [2] - 485:4, 485:11</p> <p>nations [1] - 397:21</p> <p>Native [14] - 255:2, 255:3, 271:15, 271:20, 272:19, 272:21, 273:22, 273:24, 276:2, 278:4, 294:24, 397:11, 397:17, 399:10</p> <p>native [4] - 275:21,</p>	<p>name [12] - 240:22, 248:24, 304:11, 381:10, 395:15, 405:6, 406:10, 415:6, 421:22, 422:5, 464:2, 476:20</p> <p>named [1] - 407:13</p> <p>names [2] - 271:3, 363:12</p> <p>naphtha [1] - 244:24</p> <p>narrow [2] - 485:4, 485:11</p> <p>nations [1] - 397:21</p> <p>Native [14] - 255:2, 255:3, 271:15, 271:20, 272:19, 272:21, 273:22, 273:24, 276:2, 278:4, 294:24, 397:11, 397:17, 399:10</p> <p>native [4] - 275:21,</p>	<p>name [12] - 240:22, 248:24, 304:11, 381:10, 395:15, 405:6, 406:10, 415:6, 421:22, 422:5, 464:2, 476:20</p> <p>named [1] - 407:13</p> <p>names [2] - 271:3, 363:12</p> <p>naphtha [1] - 244:24</p> <p>narrow [2] - 485:4, 485:11</p> <p>nations [1] - 397:21</p> <p>Native [14] - 255:2, 255:3, 271:15, 271:20, 272:19, 272:21, 273:22, 273:24, 276:2, 278:4, 294:24, 397:11, 397:17, 399:10</p> <p>native [4] - 275:21,</p>

<p>253:25, 258:1, 267:20, 267:21, 270:12, 277:15, 282:7, 286:12, 290:4, 294:5, 309:18, 316:13, 316:17, 316:19, 317:8, 320:2, 320:4, 345:8, 350:24, 358:24, 359:1, 360:20, 390:22, 391:14, 400:1, 421:16, 430:20, 485:19</p> <p>numbers [2] - 416:9, 435:4</p> <p>numerous [6] - 276:8, 390:15, 459:11, 466:20, 469:21, 470:9</p>	<p>457:17, 458:25, 459:13, 473:18, 473:21, 474:15, 475:7, 477:16, 487:3, 487:18, 487:19</p> <p>objections [5] - 267:25, 269:3, 270:1, 473:12, 487:1</p> <p>objective [2] - 327:25, 394:8</p> <p>objectives [1] - 276:1</p> <p>objects [1] - 463:4</p> <p>observations [2] - 340:17, 373:3</p> <p>observed [1] - 387:24</p> <p>obstructionists [1] - 471:5</p> <p>obtain [5] - 260:11, 267:4, 307:19, 316:17, 334:23</p> <p>obviously [10] - 247:15, 284:14, 307:22, 325:18, 346:16, 349:1, 362:4, 401:20, 457:4, 468:15</p> <p>occupation [1] - 476:24</p> <p>occur [6] - 249:20, 300:14, 355:23, 355:24, 396:15, 424:18</p> <p>occurred [4] - 393:7, 442:7, 451:22, 452:1</p> <p>occurring [4] - 245:2, 251:8, 294:9, 336:20</p> <p>occurs [1] - 246:12</p> <p>Oceti [1] - 397:24</p> <p>OF [8] - 232:2, 232:4, 232:4, 232:5, 233:1, 489:1, 489:3</p> <p>off-ramps [1] - 349:18</p> <p>off-right-of-way [1] - 361:11</p> <p>offer [6] - 322:19, 404:11, 405:18, 448:19, 477:14, 480:7</p> <p>offered [10] - 270:2, 277:3, 298:12, 375:17, 376:19, 401:14, 448:22, 448:23, 479:15, 479:24</p> <p>offering [2] - 276:16, 398:8</p> <p>offers [1] - 324:1</p> <p>offhand [1] - 357:23</p> <p>officer [2] - 339:6,</p>	<p>416:7</p> <p>official [2] - 353:1, 353:6</p> <p>officials [3] - 314:25, 315:10, 315:22</p> <p>often [2] - 319:17, 349:15</p> <p>Ogallala [1] - 262:4</p> <p>oil [31] - 242:5, 243:23, 243:24, 243:25, 244:4, 244:8, 244:20, 244:22, 245:6, 245:16, 246:6, 287:2, 287:8, 320:2, 321:5, 348:6, 349:10, 355:7, 355:18, 426:5, 426:9, 426:13, 426:16, 426:18, 426:21, 427:1, 427:13, 427:16, 428:20, 458:18, 470:3</p> <p>Oil [1] - 235:9</p> <p>oils [6] - 243:21, 244:4, 245:1, 245:3, 245:6, 245:10</p> <p>Oklahoma [4] - 243:12, 243:16, 247:11, 248:1</p> <p>old [3] - 260:4, 260:17, 263:15</p> <p>on-ramp [1] - 349:20</p> <p>on-ramps [1] - 255:18</p> <p>once [21] - 240:16, 244:11, 244:12, 254:2, 254:5, 280:24, 288:15, 288:17, 310:2, 312:25, 313:3, 313:4, 365:21, 385:9, 386:13, 391:23, 428:4, 454:24, 461:25, 462:4</p> <p>one [135] - 242:19, 242:22, 243:6, 243:10, 244:16, 247:10, 247:20, 252:10, 255:8, 255:9, 260:2, 260:10, 263:18, 267:20, 268:12, 269:8, 271:24, 273:23, 276:21, 278:9, 278:21, 284:3, 284:25, 285:1, 285:2, 286:12, 292:7,</p>	<p>294:16, 295:8, 299:21, 300:12, 303:5, 310:6, 310:17, 311:7, 314:13, 319:6, 319:15, 324:22, 325:24, 327:24, 331:6, 337:10, 344:10, 344:11, 344:12, 345:7, 345:12, 345:18, 348:10, 349:19, 349:21, 350:22, 352:2, 354:13, 354:17, 355:8, 356:2, 356:4, 356:25, 359:7, 359:9, 359:11, 360:1, 360:12, 361:10, 362:7, 364:11, 364:12, 365:11, 365:14, 365:15, 367:10, 369:17, 370:5, 370:13, 370:16, 371:23, 372:1, 372:22, 373:3, 373:8, 373:14, 373:25, 375:3, 375:10, 379:5, 379:16, 381:20, 382:4, 383:21, 393:16, 394:16, 395:17, 397:8, 397:20, 398:5, 402:5, 403:2, 406:11, 407:16, 407:18, 408:21, 412:12, 415:7, 416:23, 440:24, 441:10, 441:13, 441:18, 442:2, 443:13, 443:17, 443:18, 447:2, 448:5, 453:18, 461:4, 467:25, 471:8, 471:9, 471:22, 472:23, 473:16, 478:25, 484:19, 485:1, 486:25</p> <p>one-eighth [1] - 349:21</p> <p>ones [5] - 353:9, 354:25, 372:7, 383:24, 411:9</p> <p>ongoing [1] - 432:25</p> <p>Onida [1] - 489:13</p> <p>online [2] - 269:5, 353:5</p>	<p>Ontario [1] - 402:8 23</p> <p>open [2] - 456:2, 463:14</p> <p>opened [2] - 454:11, 454:24</p> <p>opening [2] - 330:12, 403:13</p> <p>operate [13] - 245:24, 246:2, 253:17, 253:24, 254:3, 310:19, 319:20, 326:14, 327:6, 338:3, 338:6, 349:17, 349:23</p> <p>operated [4] - 291:7, 339:3, 343:10, 385:18</p> <p>operating [10] - 253:14, 254:12, 264:24, 292:21, 305:5, 309:3, 349:1, 349:2, 369:8, 431:24</p> <p>operation [18] - 264:10, 265:9, 265:18, 265:24, 266:4, 266:14, 283:10, 301:2, 310:3, 310:8, 317:11, 338:24, 347:23, 349:25, 355:4, 355:20, 395:16, 419:14</p> <p>operational [2] - 265:19, 349:16</p> <p>operations [1] - 375:2</p> <p>operators [1] - 344:21</p> <p>opinion [9] - 286:14, 329:2, 332:16, 339:4, 342:2, 424:21, 438:13, 445:4, 487:2</p> <p>opinions [3] - 344:21, 376:17, 397:22</p> <p>opportunities [4] - 276:2, 276:6, 295:7, 409:16</p> <p>opportunity [9] - 282:22, 296:25, 298:7, 313:1, 348:20, 393:4, 393:24, 400:16, 405:13</p> <p>opposed [1] - 258:13</p> <p>opposition [1] - 411:22</p> <p>options [1] - 385:23</p> <p>oral [2] - 466:21, 471:19</p> <p>orally [1] - 303:24</p> <p>ordeal [1] - 239:10</p>
O				
<p>o'clock [3] - 475:14, 475:15, 487:25</p> <p>oath [2] - 421:25, 476:17</p> <p>object [25] - 267:14, 274:19, 290:14, 296:4, 329:4, 339:11, 365:1, 365:17, 366:14, 379:25, 392:12, 402:11, 403:3, 410:2, 413:9, 415:18, 415:19, 424:4, 429:12, 454:2, 457:20, 460:5, 460:6, 462:20, 479:5</p> <p>objected [2] - 298:17, 462:18</p> <p>objection [46] - 249:4, 251:23, 252:5, 252:8, 256:7, 257:17, 262:9, 266:10, 266:17, 267:12, 267:23, 274:13, 280:5, 290:19, 295:9, 297:8, 298:5, 329:16, 329:20, 340:6, 367:24, 375:14, 376:15, 379:24, 387:4, 388:3, 393:24, 403:6, 404:14, 412:22, 423:2, 425:3, 438:14, 438:19, 444:15,</p>	<p>457:17, 458:25, 459:13, 473:18, 473:21, 474:15, 475:7, 477:16, 487:3, 487:18, 487:19</p> <p>objections [5] - 267:25, 269:3, 270:1, 473:12, 487:1</p> <p>objective [2] - 327:25, 394:8</p> <p>objectives [1] - 276:1</p> <p>objects [1] - 463:4</p> <p>observations [2] - 340:17, 373:3</p> <p>observed [1] - 387:24</p> <p>obstructionists [1] - 471:5</p> <p>obtain [5] - 260:11, 267:4, 307:19, 316:17, 334:23</p> <p>obviously [10] - 247:15, 284:14, 307:22, 325:18, 346:16, 349:1, 362:4, 401:20, 457:4, 468:15</p> <p>occupation [1] - 476:24</p> <p>occur [6] - 249:20, 300:14, 355:23, 355:24, 396:15, 424:18</p> <p>occurred [4] - 393:7, 442:7, 451:22, 452:1</p> <p>occurring [4] - 245:2, 251:8, 294:9, 336:20</p> <p>occurs [1] - 246:12</p> <p>Oceti [1] - 397:24</p> <p>OF [8] - 232:2, 232:4, 232:4, 232:5, 233:1, 489:1, 489:3</p> <p>off-ramps [1] - 349:18</p> <p>off-right-of-way [1] - 361:11</p> <p>offer [6] - 322:19, 404:11, 405:18, 448:19, 477:14, 480:7</p> <p>offered [10] - 270:2, 277:3, 298:12, 375:17, 376:19, 401:14, 448:22, 448:23, 479:15, 479:24</p> <p>offering [2] - 276:16, 398:8</p> <p>offers [1] - 324:1</p> <p>offhand [1] - 357:23</p> <p>officer [2] - 339:6,</p>	<p>416:7</p> <p>official [2] - 353:1, 353:6</p> <p>officials [3] - 314:25, 315:10, 315:22</p> <p>often [2] - 319:17, 349:15</p> <p>Ogallala [1] - 262:4</p> <p>oil [31] - 242:5, 243:23, 243:24, 243:25, 244:4, 244:8, 244:20, 244:22, 245:6, 245:16, 246:6, 287:2, 287:8, 320:2, 321:5, 348:6, 349:10, 355:7, 355:18, 426:5, 426:9, 426:13, 426:16, 426:18, 426:21, 427:1, 427:13, 427:16, 428:20, 458:18, 470:3</p> <p>Oil [1] - 235:9</p> <p>oils [6] - 243:21, 244:4, 245:1, 245:3, 245:6, 245:10</p> <p>Oklahoma [4] - 243:12, 243:16, 247:11, 248:1</p> <p>old [3] - 260:4, 260:17, 263:15</p> <p>on-ramp [1] - 349:20</p> <p>on-ramps [1] - 255:18</p> <p>once [21] - 240:16, 244:11, 244:12, 254:2, 254:5, 280:24, 288:15, 288:17, 310:2, 312:25, 313:3, 313:4, 365:21, 385:9, 386:13, 391:23, 428:4, 454:24, 461:25, 462:4</p> <p>one [135] - 242:19, 242:22, 243:6, 243:10, 244:16, 247:10, 247:20, 252:10, 255:8, 255:9, 260:2, 260:10, 263:18, 267:20, 268:12, 269:8, 271:24, 273:23, 276:21, 278:9, 278:21, 284:3, 284:25, 285:1, 285:2, 286:12, 292:7,</p>	<p>294:16, 295:8, 299:21, 300:12, 303:5, 310:6, 310:17, 311:7, 314:13, 319:6, 319:15, 324:22, 325:24, 327:24, 331:6, 337:10, 344:10, 344:11, 344:12, 345:7, 345:12, 345:18, 348:10, 349:19, 349:21, 350:22, 352:2, 354:13, 354:17, 355:8, 356:2, 356:4, 356:25, 359:7, 359:9, 359:11, 360:1, 360:12, 361:10, 362:7, 364:11, 364:12, 365:11, 365:14, 365:15, 367:10, 369:17, 370:5, 370:13, 370:16, 371:23, 372:1, 372:22, 373:3, 373:8, 373:14, 373:25, 375:3, 375:10, 379:5, 379:16, 381:20, 382:4, 383:21, 393:16, 394:16, 395:17, 397:8, 397:20, 398:5, 402:5, 403:2, 406:11, 407:16, 407:18, 408:21, 412:12, 415:7, 416:23, 440:24, 441:10, 441:13, 441:18, 442:2, 443:13, 443:17, 443:18, 447:2, 448:5, 453:18, 461:4, 467:25, 471:8, 471:9, 471:22, 472:23, 473:16, 478:25, 484:19, 485:1, 486:25</p> <p>one-eighth [1] - 349:21</p> <p>ones [5] - 353:9, 354:25, 372:7, 383:24, 411:9</p> <p>ongoing [1] - 432:25</p> <p>Onida [1] - 489:13</p> <p>online [2] - 269:5, 353:5</p>	<p>Ontario [1] - 402:8 23</p> <p>open [2] - 456:2, 463:14</p> <p>opened [2] - 454:11, 454:24</p> <p>opening [2] - 330:12, 403:13</p> <p>operate [13] - 245:24, 246:2, 253:17, 253:24, 254:3, 310:19, 319:20, 326:14, 327:6, 338:3, 338:6, 349:17, 349:23</p> <p>operated [4] - 291:7, 339:3, 343:10, 385:18</p> <p>operating [10] - 253:14, 254:12, 264:24, 292:21, 305:5, 309:3, 349:1, 349:2, 369:8, 431:24</p> <p>operation [18] - 264:10, 265:9, 265:18, 265:24, 266:4, 266:14, 283:10, 301:2, 310:3, 310:8, 317:11, 338:24, 347:23, 349:25, 355:4, 355:20, 395:16, 419:14</p> <p>operational [2] - 265:19, 349:16</p> <p>operations [1] - 375:2</p> <p>operators [1] - 344:21</p> <p>opinion [9] - 286:14, 329:2, 332:16, 339:4, 342:2, 424:21, 438:13, 445:4, 487:2</p> <p>opinions [3] - 344:21, 376:17, 397:22</p> <p>opportunities [4] - 276:2, 276:6, 295:7, 409:16</p> <p>opportunity [9] - 282:22, 296:25, 298:7, 313:1, 348:20, 393:4, 393:24, 400:16, 405:13</p> <p>opposed [1] - 258:13</p> <p>opposition [1] - 411:22</p> <p>options [1] - 385:23</p> <p>oral [2] - 466:21, 471:19</p> <p>orally [1] - 303:24</p> <p>ordeal [1] - 239:10</p>

<p>ORDER [1] - 232:5 Order [4] - 423:13, 423:19, 424:1, 436:16 order [44] - 240:2, 282:19, 298:14, 306:21, 351:25, 374:18, 376:13, 401:17, 406:10, 406:15, 407:3, 407:13, 407:15, 418:6, 424:11, 424:12, 429:15, 434:19, 434:20, 435:22, 436:2, 441:12, 441:18, 442:3, 442:10, 443:14, 444:3, 448:15, 450:8, 453:19, 457:2, 464:23, 466:20, 470:4, 481:1, 481:15, 481:16, 481:25, 483:20, 483:25, 484:8, 485:23, 485:24 ordered [1] - 407:4 orderly [1] - 330:16 orders [5] - 343:21, 343:23, 343:24, 443:17, 443:19 ordinary [2] - 378:24, 379:19 organization [8] - 281:25, 320:17, 324:14, 328:14, 328:25, 379:12, 395:23, 395:25 organizations [2] - 281:15, 301:6 original [16] - 241:17, 247:21, 253:11, 253:23, 256:22, 257:5, 265:2, 299:11, 306:15, 333:21, 349:12, 361:9, 403:3, 416:4, 444:2, 446:18 originally [5] - 312:8, 349:8, 409:19, 411:19, 443:21 originate [2] - 245:18, 245:20 originates [1] - 242:2 otherwise [5] - 238:20, 297:22, 437:9, 442:24, 453:19 ought [3] - 258:4, 299:11, 308:20</p>	<p>outrage [4] - 251:11, 251:14, 276:17, 276:18 outcome [2] - 434:21, 457:7 outline [1] - 323:15 outlined [1] - 293:10 outlining [1] - 312:21 outputs [1] - 431:7 outreach [3] - 255:3, 275:10, 275:20 outside [5] - 313:4, 363:5, 386:5, 418:3, 451:2 overall [1] - 444:5 override [7] - 252:9, 384:3, 410:14, 413:24, 438:18, 438:25, 483:21 overruled [1] - 382:17 oversee [1] - 270:23 overseeing [2] - 334:11, 334:13 oversees [1] - 413:14 owing [1] - 409:21 own [10] - 253:1, 285:9, 288:10, 294:19, 321:22, 393:10, 401:16, 411:1, 416:25, 446:6 owned [2] - 287:25, 321:6 owner [2] - 287:22, 392:1 owners [1] - 253:3 owners' [1] - 269:12 owns [3] - 285:22, 287:19, 288:7</p>	<p>478:1, 478:8, 478:13, 478:18, 478:19, 478:24 Pages [1] - 232:11 paid [13] - 275:14, 275:18, 283:10, 286:5, 287:6, 287:10, 289:12, 289:17, 289:20, 305:22, 347:1 painful [1] - 239:10 paleontology [1] - 268:15 pancreatitis [1] - 238:10 paper [6] - 302:12, 351:6, 351:9, 352:7, 352:20, 368:23 paragraph [13] - 306:3, 367:4, 369:22, 375:12, 401:1, 435:8, 436:10, 440:25, 445:14, 445:25, 467:8, 471:24 parallel [2] - 293:25, 294:7 parameters [4] - 334:18, 334:20, 334:21, 334:23 paraphrasing [1] - 390:10 pardon [5] - 239:20, 249:8, 249:18, 299:20, 419:2 Parkhurst [1] - 407:11 part [39] - 241:16, 242:8, 243:8, 245:5, 265:4, 270:19, 270:23, 271:14, 272:9, 278:4, 284:4, 286:3, 286:12, 286:18, 287:8, 287:18, 295:5, 315:5, 317:10, 317:16, 325:10, 327:12, 335:9, 346:6, 354:2, 382:3, 383:2, 384:1, 391:16, 395:15, 435:1, 465:6, 465:23, 468:25, 471:2, 473:5, 487:19 partake [1] - 313:1 partially [1] - 259:4 participants [1] - 295:8 participate [2] - 325:7, 425:22 participated [3] -</p>	<p>315:1, 315:11, 324:23 participating [1] - 323:10 particular [33] - 241:20, 251:13, 294:1, 294:12, 306:11, 306:19, 307:25, 308:19, 308:24, 312:5, 315:14, 345:12, 351:18, 355:8, 356:1, 363:23, 373:13, 382:12, 384:14, 389:22, 397:23, 399:5, 404:15, 414:3, 424:15, 442:13, 450:12, 467:8, 467:10, 468:3, 468:25, 470:16, 478:16 particularly [4] - 281:16, 323:10, 414:10, 469:7 parties [9] - 299:16, 313:5, 352:5, 392:10, 457:8, 462:12, 463:9, 463:23, 485:4 parts [1] - 333:8 party [8] - 267:5, 271:10, 296:12, 339:9, 451:2, 468:14, 481:11 pass [2] - 391:20, 391:23 passed [6] - 277:15, 278:12, 278:24, 279:2, 346:3, 390:9 passive [5] - 265:3, 265:7, 265:15, 265:21, 309:24 past [2] - 264:21, 341:4 path [2] - 408:11, 446:11 pathology [1] - 240:7 pathway [1] - 308:10 Patty [4] - 274:1, 405:6, 408:22, 415:5 Paul [5] - 282:11, 282:16, 282:22, 282:24, 418:23 Paula [1] - 235:3 pay [7] - 256:22, 258:2, 283:15, 290:23, 292:10, 293:1, 401:14 payable [1] - 283:23</p>	<p>paying [6] - 284:14, 288:23, 307:18, 307:20, 308:1, 468:9 payment [1] - 304:1 peak [7] - 366:3, 367:13, 371:19, 371:21, 372:23, 372:24, 373:24 Pennington [1] - 279:7 people [38] - 246:11, 256:3, 257:12, 257:16, 268:16, 269:5, 271:3, 292:1, 294:22, 295:4, 298:16, 302:9, 318:10, 326:17, 329:3, 329:19, 330:7, 330:18, 383:7, 386:14, 390:4, 390:8, 391:16, 391:17, 397:18, 403:24, 406:19, 406:20, 408:15, 410:17, 413:2, 413:15, 413:18, 415:1, 418:20, 432:24, 468:13, 481:6 per [14] - 252:23, 252:24, 253:12, 253:16, 253:25, 254:2, 254:8, 254:11, 254:12, 283:8, 283:23, 312:24, 348:1, 433:25 perceived [1] - 318:16 percent [35] - 253:14, 253:17, 253:22, 253:23, 254:4, 254:7, 254:13, 254:14, 307:22, 321:14, 345:22, 346:18, 347:25, 348:1, 362:14, 362:22, 365:16, 366:4, 367:14, 370:16, 371:16, 371:22, 371:24, 371:25, 372:20, 372:23, 373:15, 374:3, 374:19, 375:4, 381:25, 383:21, 383:22, 394:7 percentage [5] - 307:15, 321:2, 321:10, 321:12, 335:22</p>
P		<p>P.E.'s [1] - 234:23 p.m [1] - 488:2 package [1] - 316:24 PAGE [11] - 234:2, 234:10, 234:14, 234:17, 235:2, 235:4, 235:16, 236:2, 236:5, 237:2, 237:15 page [27] - 289:8, 364:10, 365:5, 365:10, 365:13, 365:14, 365:25, 366:3, 366:7, 367:10, 369:15, 371:11, 371:13, 372:4, 373:7, 373:8, 375:3, 477:21,</p>	<p>478:1, 478:8, 478:13, 478:18, 478:19, 478:24 Pages [1] - 232:11 paid [13] - 275:14, 275:18, 283:10, 286:5, 287:6, 287:10, 289:12, 289:17, 289:20, 305:22, 347:1 painful [1] - 239:10 paleontology [1] - 268:15 pancreatitis [1] - 238:10 paper [6] - 302:12, 351:6, 351:9, 352:7, 352:20, 368:23 paragraph [13] - 306:3, 367:4, 369:22, 375:12, 401:1, 435:8, 436:10, 440:25, 445:14, 445:25, 467:8, 471:24 parallel [2] - 293:25, 294:7 parameters [4] - 334:18, 334:20, 334:21, 334:23 paraphrasing [1] - 390:10 pardon [5] - 239:20, 249:8, 249:18, 299:20, 419:2 Parkhurst [1] - 407:11 part [39] - 241:16, 242:8, 243:8, 245:5, 265:4, 270:19, 270:23, 271:14, 272:9, 278:4, 284:4, 286:3, 286:12, 286:18, 287:8, 287:18, 295:5, 315:5, 317:10, 317:16, 325:10, 327:12, 335:9, 346:6, 354:2, 382:3, 383:2, 384:1, 391:16, 395:15, 435:1, 465:6, 465:23, 468:25, 471:2, 473:5, 487:19 partake [1] - 313:1 partially [1] - 259:4 participants [1] - 295:8 participate [2] - 325:7, 425:22 participated [3] -</p>	<p>315:1, 315:11, 324:23 participating [1] - 323:10 particular [33] - 241:20, 251:13, 294:1, 294:12, 306:11, 306:19, 307:25, 308:19, 308:24, 312:5, 315:14, 345:12, 351:18, 355:8, 356:1, 363:23, 373:13, 382:12, 384:14, 389:22, 397:23, 399:5, 404:15, 414:3, 424:15, 442:13, 450:12, 467:8, 467:10, 468:3, 468:25, 470:16, 478:16 particularly [4] - 281:16, 323:10, 414:10, 469:7 parties [9] - 299:16, 313:5, 352:5, 392:10, 457:8, 462:12, 463:9, 463:23, 485:4 parts [1] - 333:8 party [8] - 267:5, 271:10, 296:12, 339:9, 451:2, 468:14, 481:11 pass [2] - 391:20, 391:23 passed [6] - 277:15, 278:12, 278:24, 279:2, 346:3, 390:9 passive [5] - 265:3, 265:7, 265:15, 265:21, 309:24 past [2] - 264:21, 341:4 path [2] - 408:11, 446:11 pathology [1] - 240:7 pathway [1] - 308:10 Patty [4] - 274:1, 405:6, 408:22, 415:5 Paul [5] - 282:11, 282:16, 282:22, 282:24, 418:23 Paula [1] - 235:3 pay [7] - 256:22, 258:2, 283:15, 290:23, 292:10, 293:1, 401:14 payable [1] - 283:23</p>

<p>perfectly [4] - 267:21, 298:16, 345:16, 378:7</p> <p>perform [2] - 390:12, 408:17</p> <p>performing [2] - 316:4, 391:13</p> <p>perhaps [13] - 238:11, 238:18, 238:22, 243:18, 276:16, 276:18, 276:19, 280:18, 301:9, 343:7, 360:20, 373:11, 398:18</p> <p>period [3] - 289:13, 290:10, 337:1</p> <p>periodic [1] - 316:21</p> <p>Perkins [12] - 234:6, 237:16, 300:3, 476:2, 476:16, 476:21, 476:24, 477:5, 477:18, 479:11, 482:8, 484:13</p> <p>Perkins' [1] - 479:10</p> <p>permanent [3] - 265:10, 265:13, 265:17</p> <p>permissible [3] - 288:24, 449:4, 449:7</p> <p>permission [3] - 241:25, 242:1, 259:19</p> <p>Permit [28] - 238:4, 242:24, 253:13, 254:3, 254:6, 329:11, 329:14, 330:24, 333:25, 334:3, 387:10, 387:25, 411:11, 424:8, 435:24, 436:13, 436:19, 437:15, 438:8, 442:17, 445:17, 447:22, 447:23, 454:9, 455:10, 458:22, 459:17, 469:25</p> <p>PERMIT [1] - 232:5</p> <p>permit [3] - 313:22, 330:15, 456:8</p> <p>permits [1] - 253:4</p> <p>permitted [2] - 241:20, 377:7</p> <p>permitting [4] - 242:10, 315:5, 449:5, 486:15</p> <p>person [15] - 239:19, 273:22, 273:24, 275:2, 278:15,</p>	<p>279:4, 301:8, 304:13, 316:11, 324:16, 372:11, 382:23, 408:14, 413:13, 413:17</p> <p>person's [1] - 392:9</p> <p>personal [6] - 249:10, 249:14, 252:4, 307:17, 404:19, 424:24</p> <p>personally [12] - 306:4, 322:8, 327:19, 331:11, 334:15, 334:16, 334:20, 344:3, 350:7, 356:11, 388:11, 388:13</p> <p>personnel [3] - 270:24, 301:21, 409:25</p> <p>persons [2] - 406:11, 407:4</p> <p>perspective [2] - 373:21, 432:10</p> <p>pertain [1] - 411:11</p> <p>pertaining [6] - 303:25, 304:1, 307:13, 406:10, 439:5, 461:21</p> <p>pertains [1] - 446:23</p> <p>Petition [3] - 416:21, 435:1, 462:10</p> <p>PETITION [1] - 232:4</p> <p>Ph.D [2] - 234:23, 235:15</p> <p>Phase [3] - 283:12, 288:12, 362:15</p> <p>phase [1] - 382:10</p> <p>phases [1] - 389:12</p> <p>philosophy [1] - 455:18</p> <p>PHMSA [21] - 338:5, 343:21, 344:1, 344:16, 344:19, 345:2, 346:11, 346:12, 388:5, 388:9, 389:2, 389:9, 389:10, 389:17, 389:19, 390:10, 419:21, 419:22, 420:1, 420:5</p> <p>PHMSA's [1] - 389:1</p> <p>phone [1] - 324:9</p> <p>phonetic [2] - 304:10, 379:11</p> <p>photo [2] - 340:22, 340:23</p> <p>photograph [1] - 367:25</p> <p>photographs [10] -</p>	<p>306:5, 357:2, 357:5, 357:7, 357:8, 358:9, 358:15, 358:18, 365:5, 383:20</p> <p>Photos [1] - 235:24</p> <p>phrase [1] - 443:16</p> <p>Phyllis [1] - 235:5</p> <p>physical [2] - 342:25, 343:8</p> <p>pick [2] - 320:9, 382:21</p> <p>picks [1] - 320:7</p> <p>picture [11] - 359:18, 359:21, 359:24, 365:19, 365:23, 366:9, 366:11, 366:16, 366:23, 367:17, 370:22</p> <p>pictures [22] - 340:23, 341:14, 357:15, 357:22, 358:4, 359:7, 359:9, 359:17, 359:22, 360:3, 360:9, 360:10, 360:16, 360:19, 360:22, 371:22, 372:6, 372:9, 377:24, 378:12, 382:22, 383:23</p> <p>Pictures [1] - 236:4</p> <p>piece [8] - 259:6, 338:9, 340:3, 361:10, 361:12, 364:23, 370:21, 450:2</p> <p>pieces [2] - 336:4, 341:21</p> <p>Pierre [1] - 233:3</p> <p>pink [2] - 256:3, 256:5</p> <p>pipe [20] - 247:11, 254:13, 264:5, 266:3, 266:6, 266:15, 302:5, 309:25, 310:1, 310:14, 320:5, 335:20, 336:4, 343:4, 345:8, 355:6, 367:17, 373:21, 379:13, 393:21</p> <p>Pipeline [35] - 235:10, 235:19, 238:3, 238:6, 243:5, 243:22, 244:3, 246:1, 247:16, 251:2, 265:3, 270:21, 270:25, 271:12, 275:3, 279:21, 287:22, 287:25, 288:11,</p>	<p>292:8, 306:15, 308:10, 308:25, 347:3, 347:4, 348:19, 350:5, 355:2, 363:1, 365:7, 394:11, 402:10, 433:3, 433:5, 434:13</p> <p>pipeline [206] - 241:20, 242:5, 242:10, 242:14, 242:16, 242:17, 242:21, 242:25, 243:2, 243:17, 243:21, 243:25, 244:9, 245:17, 246:2, 246:17, 247:13, 247:15, 247:19, 248:3, 250:2, 250:6, 250:13, 250:15, 250:16, 251:9, 251:14, 252:22, 253:11, 254:1, 254:19, 255:8, 257:8, 259:6, 259:9, 259:11, 259:13, 259:17, 259:18, 259:20, 260:5, 260:14, 260:22, 260:25, 263:9, 263:12, 263:13, 264:8, 265:4, 265:5, 265:6, 265:8, 265:12, 265:22, 272:2, 284:20, 285:10, 285:20, 285:22, 286:13, 287:12, 291:7, 293:18, 293:22, 293:25, 294:1, 294:7, 294:14, 294:15, 294:18, 301:3, 302:15, 302:17, 302:20, 303:2, 303:8, 303:12, 303:14, 303:15, 303:19, 309:19, 310:5, 310:17, 310:19, 312:2, 316:23, 318:8, 319:15, 319:18, 319:20, 320:6, 320:10, 320:18, 321:20, 323:11, 326:15, 327:22, 328:11, 334:8, 335:3, 335:10, 335:22, 335:24, 335:25, 336:17, 337:24, 338:2, 338:3, 338:6,</p>	<p>338:11, 339:5, 339:23, 340:15, 340:16, 340:18, 340:21, 340:25, 341:6, 341:12, 341:14, 341:22, 342:10, 342:20, 342:22, 342:24, 342:25, 343:9, 343:11, 343:15, 343:19, 344:22, 345:4, 345:19, 346:8, 348:7, 348:12, 348:17, 349:9, 349:14, 349:17, 353:24, 354:4, 354:21, 356:18, 361:5, 361:21, 362:2, 363:10, 374:4, 374:12, 374:20, 374:24, 382:1, 382:18, 384:23, 385:3, 385:10, 385:12, 385:17, 386:3, 386:8, 386:13, 387:17, 387:20, 387:22, 388:9, 388:19, 388:23, 389:20, 391:19, 391:21, 392:4, 392:7, 393:20, 395:10, 395:13, 395:14, 395:17, 395:18, 396:1, 413:3, 413:13, 417:22, 419:8, 419:14, 419:24, 419:25, 428:5, 428:10, 428:22, 429:14, 429:18, 429:23, 430:4, 432:6, 433:19, 437:5</p> <p>PIPELINE [2] - 232:4, 232:6</p> <p>pipeline's [1] - 339:13</p> <p>pipelines [26] - 245:24, 251:4, 252:7, 252:25, 255:20, 259:21, 260:8, 264:24, 303:6, 335:20, 337:20, 338:13, 338:23, 339:2, 341:4, 342:2, 342:3, 342:14, 343:4, 343:6, 343:7, 347:2, 355:23, 422:10, 431:21, 432:7</p> <p>place [15] - 274:6,</p>	25
---	--	--	---	---	----

<p>276:11, 279:11, 302:20, 309:21, 313:21, 341:15, 346:10, 393:1, 403:12, 437:10, 449:14, 449:16, 461:2, 483:20</p> <p>placed [5] - 317:2, 317:3, 317:5, 346:4, 484:7</p> <p>places [2] - 331:11, 485:20</p> <p>Plains [1] - 262:4</p> <p>Plan [9] - 300:23, 301:2, 301:5, 316:22, 317:11, 317:17, 317:19, 419:9, 419:13</p> <p>plan [24] - 260:24, 261:6, 261:9, 295:6, 306:21, 334:12, 334:19, 335:1, 360:25, 385:11, 385:13, 394:19, 401:4, 401:9, 401:13, 401:15, 401:16, 401:18, 402:1, 419:15, 419:19, 419:21, 456:4</p> <p>planned [1] - 349:8</p> <p>planning [5] - 254:19, 260:21, 336:19, 338:14, 338:15</p> <p>plans [10] - 248:2, 265:5, 274:3, 279:22, 279:25, 321:22, 321:23, 332:24, 355:21, 420:5</p> <p>plant [1] - 392:21</p> <p>planted [2] - 307:5, 312:8</p> <p>plate [2] - 250:7, 250:11</p> <p>play [6] - 300:9, 311:3, 461:9, 461:10, 461:12, 485:24</p> <p>Plidco [3] - 384:16, 384:18, 384:20</p> <p>point [48] - 278:21, 299:21, 301:4, 303:18, 305:13, 307:7, 317:22, 338:8, 339:22, 340:16, 341:20, 344:18, 348:11, 387:5, 389:2, 404:16, 410:13, 419:10, 431:25,</p>	<p>432:23, 437:5, 438:21, 439:8, 443:4, 443:5, 447:10, 447:19, 449:12, 449:20, 454:15, 459:20, 459:21, 461:7, 465:15, 466:2, 468:13, 470:8, 471:15, 472:8, 472:21, 473:17, 474:8, 480:12, 483:23, 484:20, 485:9, 486:17, 487:4</p> <p>pointed [1] - 454:24</p> <p>pointing [1] - 473:19</p> <p>points [6] - 363:14, 428:12, 428:14, 472:2, 474:10, 474:18</p> <p>policy [6] - 255:4, 397:16, 397:17, 398:22, 399:10</p> <p>Ponca [1] - 328:6</p> <p>portion [6] - 294:1, 298:24, 328:12, 410:4, 464:15, 468:9</p> <p>portions [6] - 234:5, 234:9, 234:22, 234:25, 235:5, 236:7</p> <p>pose [1] - 266:4</p> <p>posed [1] - 266:6</p> <p>poses [1] - 485:6</p> <p>position [14] - 270:13, 270:20, 334:1, 408:14, 413:1, 413:7, 413:12, 414:4, 414:8, 414:13, 422:9, 463:11, 469:16, 470:17</p> <p>positions [3] - 271:6, 433:8, 468:13</p> <p>possible [9] - 239:8, 249:20, 281:1, 341:5, 341:13, 341:17, 341:18, 341:19, 416:10</p> <p>possibly [1] - 279:12</p> <p>Postal [1] - 407:20</p> <p>potassium [1] - 421:3</p> <p>potential [3] - 344:21, 387:20, 419:23</p> <p>potentially [1] - 347:3</p> <p>power [8] - 265:12, 276:17, 381:7, 396:3, 396:6, 396:12, 396:19</p> <p>practically [1] - 338:13</p>	<p>practice [5] - 284:13, 327:12, 346:7, 386:12, 461:3</p> <p>practices [1] - 386:10</p> <p>pray [1] - 392:8</p> <p>precede [1] - 331:18</p> <p>preceded [1] - 486:13</p> <p>Preclude [2] - 406:25, 407:24</p> <p>preclude [1] - 408:1</p> <p>precluded [7] - 405:12, 406:11, 406:14, 406:20, 407:5, 418:5, 437:7</p> <p>predates [1] - 388:12</p> <p>predict [5] - 321:19, 321:25, 322:8, 347:22, 354:14</p> <p>prediction [1] - 322:5</p> <p>predictions [1] - 322:4</p> <p>prefer [1] - 472:23</p> <p>preference [1] - 475:23</p> <p>Prefiled [8] - 234:15, 234:16, 234:22, 234:23, 234:24, 235:5, 235:7, 236:6</p> <p>prefiled [22] - 285:16, 298:12, 298:15, 299:5, 299:8, 299:10, 300:8, 406:6, 406:13, 407:1, 407:16, 407:18, 408:2, 418:6, 473:19, 480:1, 480:8, 480:12, 480:18, 481:5, 482:2, 482:9</p> <p>prehearing [1] - 473:24</p> <p>preliminary [2] - 239:21, 352:2</p> <p>prematore [1] - 482:21</p> <p>premise [1] - 467:2</p> <p>premises [1] - 455:19</p> <p>preparation [2] - 239:16, 334:11</p> <p>prepared [6] - 323:12, 389:23, 401:2, 422:14, 422:19, 442:5</p> <p>present [9] - 232:14, 378:15, 380:22, 381:3, 381:6, 392:6, 409:13, 411:1, 420:20</p> <p>presentation [2] - 378:22, 466:23</p> <p>presented [4] - 442:23, 462:1,</p>	<p>463:13, 467:6</p> <p>presenting [1] - 407:5</p> <p>presently [1] - 314:2</p> <p>presents [1] - 481:11</p> <p>preserve [1] - 374:11</p> <p>President [1] - 379:9</p> <p>president [8] - 270:16, 270:17, 273:11, 324:13, 324:14, 369:4, 422:10, 432:20</p> <p>Presidential [1] - 242:24</p> <p>pressure [10] - 253:13, 253:14, 309:14, 374:6, 374:18, 384:19, 396:18, 409:18, 409:21, 410:1</p> <p>pressures [1] - 309:2</p> <p>pressurized [1] - 362:7</p> <p>presume [1] - 445:19</p> <p>presuming [1] - 445:18</p> <p>presumption [1] - 446:10</p> <p>pretend [2] - 258:1, 299:6</p> <p>pretty [7] - 239:9, 270:5, 291:25, 292:5, 296:14, 354:21, 450:10</p> <p>prevent [6] - 259:8, 294:8, 309:21, 382:8, 382:13, 392:6</p> <p>preventative [1] - 355:21</p> <p>preventing [2] - 259:12, 259:13</p> <p>prevention [1] - 379:14</p> <p>prevents [1] - 259:11</p> <p>previous [4] - 365:13, 410:9, 419:18, 461:23</p> <p>previously [10] - 254:18, 265:15, 284:14, 292:14, 313:19, 339:18, 347:16, 354:4, 462:2, 463:16</p> <p>price [7] - 286:24, 287:8, 426:7, 426:16, 426:18, 426:21, 427:1</p> <p>prices [1] - 426:14</p> <p>pricing [2] - 432:1, 450:13</p> <p>primarily [1] - 435:3</p>	<p>primary [1] - 447:13 26</p> <p>print [1] - 243:4</p> <p>private [1] - 459:21</p> <p>privilege [1] - 459:24</p> <p>privy [1] - 321:23</p> <p>problem [15] - 251:8, 306:11, 306:13, 307:8, 310:16, 311:7, 346:17, 373:23, 376:20, 382:24, 383:11, 383:12, 443:20, 467:24, 485:6</p> <p>problematic [2] - 239:16, 382:22</p> <p>problems [11] - 297:20, 311:8, 345:13, 355:18, 382:5, 383:17, 389:7, 389:9, 389:17, 390:15, 484:12</p> <p>procedure [4] - 299:13, 390:3, 396:2, 396:4</p> <p>proceed [15] - 268:9, 282:14, 401:21, 406:2, 438:25, 439:9, 441:4, 444:25, 445:6, 448:11, 475:6, 481:6, 483:17, 487:2, 487:7</p> <p>proceeding [7] - 349:7, 422:23, 434:22, 435:12, 457:5, 459:7, 461:6</p> <p>PROCEEDINGS [1] - 233:1</p> <p>proceedings [8] - 455:5, 469:9, 470:17, 470:24, 479:8, 482:10, 489:9, 489:12</p> <p>process [57] - 243:24, 244:2, 246:20, 246:22, 263:20, 270:24, 272:8, 280:20, 292:18, 296:23, 296:24, 297:9, 298:3, 300:23, 303:23, 307:2, 312:21, 312:23, 313:2, 313:4, 315:5, 315:24, 316:6, 320:25, 322:19, 324:11, 324:23, 346:17, 346:22, 346:23, 354:3,</p>
--	---	--	--	---

<p>384:8, 389:19, 390:1, 398:13, 398:19, 399:3, 399:8, 429:4, 430:23, 431:2, 433:14, 433:21, 443:15, 447:4, 448:11, 455:24, 456:8, 462:3, 468:19, 469:23, 469:24, 470:4, 470:7, 473:21, 484:15, 486:23</p> <p>processes [1] - 297:1</p> <p>produce [2] - 390:21, 430:22</p> <p>produced [1] - 428:25</p> <p>Produced [1] - 234:7</p> <p>product [22] - 244:10, 245:17, 247:12, 285:21, 286:22, 286:24, 287:12, 320:25, 321:6, 321:7, 321:19, 321:25, 428:4, 428:6, 428:13, 428:18, 428:21, 429:10, 429:13, 430:23, 431:5</p> <p>production [5] - 346:24, 458:11, 458:12, 458:14, 458:15</p> <p>productive [4] - 390:13, 390:21, 391:13, 391:23</p> <p>productivity [1] - 341:23</p> <p>products [8] - 245:10, 245:11, 321:12, 322:4, 372:19, 428:24, 428:25, 429:6</p> <p>Professional [2] - 489:6, 489:19</p> <p>professional [1] - 293:13</p> <p>program [28] - 251:6, 255:3, 264:21, 275:10, 275:25, 276:7, 276:21, 276:24, 277:7, 280:4, 280:9, 301:15, 309:19, 310:18, 325:2, 325:8, 325:11, 325:22, 326:11, 343:16, 346:6, 346:14, 346:18, 388:21, 389:6,</p>	<p>389:13, 392:5</p> <p>programs [11] - 277:14, 326:10, 327:5, 327:9, 327:10, 349:2, 398:7, 398:9, 398:12, 398:21, 415:15</p> <p>progress [1] - 473:15</p> <p>progressed [1] - 324:17</p> <p>prohibited [1] - 424:2</p> <p>prohibiting [1] - 463:2</p> <p>prohibits [1] - 459:5</p> <p>Project [9] - 241:6, 243:7, 247:25, 292:11, 293:2, 329:17, 329:18, 347:6, 395:21</p> <p>project [47] - 242:23, 243:3, 251:16, 276:8, 276:9, 276:24, 277:23, 278:14, 279:5, 281:19, 288:13, 292:14, 292:16, 292:18, 293:9, 301:17, 305:3, 305:4, 324:22, 327:22, 327:24, 328:11, 330:8, 332:18, 333:22, 337:18, 343:21, 344:2, 344:5, 345:23, 351:3, 351:7, 393:22, 395:20, 395:24, 396:1, 399:4, 403:25, 408:16, 419:10, 430:7, 431:21, 435:10, 435:12, 436:3, 476:25, 477:1</p> <p>projects [8] - 242:20, 242:22, 270:16, 270:17, 276:7, 280:13, 329:8, 332:15</p> <p>promise [2] - 290:17, 290:20</p> <p>promised [5] - 256:5, 256:20, 290:10, 290:12, 292:3</p> <p>prompt [1] - 358:18</p> <p>prompted [1] - 267:13</p> <p>pronounce [1] - 304:11</p> <p>pronouncing [1] - 415:6</p> <p>proof [1] - 470:16</p>	<p>proper [11] - 267:25, 378:22, 380:19, 384:1, 399:17, 415:24, 457:21, 459:6, 460:1, 483:25, 484:8</p> <p>properly [8] - 296:24, 338:11, 343:12, 346:21, 385:6, 389:3, 457:20, 483:11</p> <p>properties [2] - 306:5, 394:16</p> <p>property [25] - 253:3, 259:22, 267:3, 268:14, 268:16, 268:18, 268:20, 269:11, 284:7, 284:8, 306:9, 306:12, 311:16, 341:21, 357:2, 358:1, 360:5, 360:8, 392:1, 392:9, 392:19, 392:23, 394:6, 459:22</p> <p>Property [1] - 235:17</p> <p>propose [1] - 434:12</p> <p>proposed [9] - 255:18, 329:17, 330:22, 354:19, 356:13, 428:5, 441:1, 471:11, 471:13</p> <p>proposing [1] - 323:13</p> <p>proprietary [1] - 459:22</p> <p>prospective [2] - 471:20, 472:22</p> <p>protect [8] - 259:21, 260:15, 265:8, 265:22, 294:19, 309:25, 310:1, 386:4</p> <p>protection [7] - 259:2, 259:4, 259:21, 265:23, 309:22, 309:24, 310:1</p> <p>protocol [1] - 374:17</p> <p>protocols [4] - 398:2, 414:25, 415:3, 415:8</p> <p>protracted [1] - 468:18</p> <p>prove [2] - 467:11, 470:20</p> <p>provide [24] - 276:1, 294:11, 309:8, 310:25, 313:5, 315:2, 317:13, 317:14, 317:23, 318:1, 318:11, 318:18, 319:2,</p>	<p>327:10, 328:8, 336:14, 337:22, 352:19, 356:21, 363:19, 396:16, 397:18, 401:13, 428:8</p> <p>provided [21] - 241:6, 246:4, 246:7, 285:12, 303:17, 317:8, 333:6, 333:11, 333:15, 356:23, 357:25, 358:2, 363:8, 363:9, 363:13, 370:2, 370:11, 378:4, 397:25, 402:2, 430:12</p> <p>provides [7] - 328:22, 329:6, 333:18, 337:14, 397:22, 428:7, 430:2</p> <p>providing [6] - 257:24, 275:15, 325:23, 333:4, 334:25, 344:20</p> <p>province [1] - 293:14</p> <p>provision [2] - 451:15, 461:7</p> <p>provisions [1] - 451:18</p> <p>proximity [2] - 301:13, 323:11</p> <p>psi [1] - 253:12</p> <p>Public [4] - 238:1, 373:11, 489:7, 489:18</p> <p>PUBLIC [2] - 232:1, 232:13</p> <p>public [17] - 250:20, 257:15, 258:3, 258:13, 317:15, 321:11, 322:2, 322:7, 337:22, 363:16, 363:18, 393:18, 416:7, 429:17, 456:11</p> <p>publicly [1] - 421:5</p> <p>PUC [5] - 285:17, 297:11, 333:25, 420:7</p> <p>pull [3] - 262:19, 330:11, 409:15</p> <p>Pump [1] - 355:11</p> <p>pump [13] - 311:22, 311:23, 311:24, 311:25, 336:1, 355:4, 355:17, 355:24, 355:25, 396:7, 396:11, 396:20</p>	<p>pumping [4] - 253:25, 27 254:2, 254:9, 396:3</p> <p>purport [1] - 257:25</p> <p>purports [1] - 467:18</p> <p>purpose [10] - 329:9, 349:9, 425:10, 447:4, 449:9, 453:20, 453:23, 456:16, 479:14, 479:15</p> <p>purposes [2] - 421:14, 477:15</p> <p>pursue [1] - 378:14</p> <p>purview [1] - 417:15</p> <p>put [34] - 244:20, 255:9, 259:24, 265:8, 299:7, 319:18, 319:19, 345:4, 360:23, 360:25, 375:23, 376:19, 380:17, 384:10, 386:3, 387:9, 395:15, 395:16, 399:17, 410:4, 425:25, 437:1, 437:9, 437:17, 437:18, 442:4, 442:22, 455:19, 457:21, 461:9, 462:10, 473:1, 483:25</p> <p>putting [6] - 243:24, 254:9, 339:14, 375:24, 432:21, 466:19</p> <p>puzzled [2] - 311:6, 311:9</p>
Q				
<p>qualification [1] - 390:9</p> <p>qualifications [2] - 272:23, 413:7</p> <p>qualified [3] - 390:2, 391:17, 413:19</p> <p>quality [18] - 302:5, 315:4, 346:6, 346:9, 346:13, 346:18, 382:18, 383:7, 388:21, 389:13, 391:15, 392:3, 392:5, 395:7, 395:23, 395:24</p> <p>Quality [1] - 235:8</p> <p>quarter [3] - 373:4, 393:20, 475:20</p> <p>quarters [1] - 372:15</p> <p>question's [3] - 280:5,</p>				

<p>383:1, 412:22 questioned [2] - 298:7, 363:21 questioning [10] - 269:24, 296:15, 299:1, 334:6, 350:16, 350:24, 429:13, 434:17, 454:15, 472:17 questions [97] - 240:24, 248:6, 269:22, 272:17, 282:7, 282:8, 293:11, 296:2, 296:25, 297:2, 297:4, 297:10, 297:13, 297:14, 297:24, 298:2, 299:5, 299:14, 301:24, 307:12, 312:13, 313:8, 314:15, 328:19, 331:14, 332:4, 336:23, 340:10, 348:4, 350:13, 353:21, 356:25, 358:13, 363:22, 365:22, 370:1, 376:13, 377:15, 380:10, 381:20, 386:23, 387:5, 387:16, 387:18, 387:19, 390:25, 391:2, 393:24, 396:24, 405:5, 405:17, 406:3, 408:8, 412:4, 416:2, 416:10, 416:12, 416:24, 418:9, 418:10, 418:24, 420:10, 422:19, 425:20, 427:20, 431:9, 434:21, 444:24, 445:6, 445:11, 445:20, 446:3, 446:5, 446:10, 446:16, 446:20, 446:22, 446:24, 447:8, 447:14, 447:16, 448:4, 448:20, 455:25, 456:1, 459:2, 466:9, 466:16, 469:23, 470:7, 477:24, 478:5, 478:6, 478:9, 478:13, 478:14, 478:18 quibble [1] - 291:9 quick [2] - 239:24,</p>	<p>402:6 quickly [1] - 337:6 quite [9] - 252:11, 282:7, 293:1, 326:12, 338:4, 357:6, 376:11, 389:20, 443:3 quote [2] - 436:10, 454:6</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raised [7] - 296:11, 297:10, 411:21, 414:19, 444:15, 467:2, 487:3 raises [1] - 485:6 ramp [1] - 349:20 ramps [2] - 255:18, 349:18 ranchers [1] - 337:3 Rapid [1] - 296:1 Rappold [5] - 238:9, 240:20, 313:9, 420:20, 425:21 rate [9] - 244:14, 345:17, 345:20, 389:11, 390:18, 390:21, 391:25, 465:21 rather [3] - 254:13, 298:16, 434:4 Re [2] - 235:12, 235:14 reach [7] - 301:12, 314:4, 314:13, 318:12, 328:1, 394:9, 455:20 reached [2] - 313:18, 323:24 reaching [2] - 324:2, 324:3 react [1] - 300:14 reaction [1] - 410:20 read [19] - 289:3, 302:11, 302:13, 330:11, 375:6, 375:12, 375:16, 377:14, 380:7, 399:12, 399:18, 400:15, 400:18, 400:21, 404:3, 436:7, 436:10, 451:12, 477:7 readers [1] - 443:11 reading [4] - 300:10, 368:2, 368:6, 410:5 reads [3] - 450:6, 451:13, 453:7 real [5] - 306:8,</p>	<p>316:11, 318:4, 383:11, 402:6 Real [9] - 237:8, 237:14, 314:18, 314:21, 427:23, 427:25, 464:7, 484:6, 484:22 REAL [26] - 314:20, 329:6, 329:12, 329:22, 330:3, 330:11, 330:21, 331:1, 331:13, 400:23, 427:24, 428:2, 431:8, 464:6, 464:8, 464:14, 464:24, 473:16, 479:22, 480:15, 481:9, 481:19, 482:5, 483:8, 485:3, 485:13 realize [2] - 272:18, 415:11 really [29] - 240:4, 240:5, 243:8, 244:21, 247:5, 252:22, 253:2, 276:22, 297:17, 325:4, 325:9, 338:5, 349:25, 354:18, 378:13, 414:2, 434:21, 443:16, 444:10, 452:8, 456:7, 460:22, 460:23, 461:10, 461:14, 466:18, 467:15, 467:23, 471:1 realm [2] - 453:13, 456:19 Realtime [2] - 489:6, 489:19 reargue [1] - 474:17 reask [1] - 255:16 reason [11] - 260:1, 286:9, 298:13, 406:5, 436:12, 443:6, 443:7, 443:10, 460:12, 473:4, 482:11 reasonable [3] - 390:21, 391:14, 413:17 reasoning [1] - 473:25 reasons [3] - 292:12, 305:1, 440:16 rebuffed [1] - 323:25 rebut [1] - 482:17 Rebuttal [7] - 234:5, 234:6, 234:7, 234:8, 234:24, 235:3,</p>	<p>235:15 rebuttal [35] - 297:1, 298:10, 298:16, 298:20, 298:24, 300:1, 300:4, 306:2, 315:8, 315:12, 315:17, 315:24, 408:4, 448:18, 448:25, 449:13, 465:17, 467:7, 477:4, 479:11, 479:14, 479:25, 480:15, 480:24, 481:4, 481:13, 481:23, 481:24, 482:3, 483:11, 483:24, 486:10, 486:19, 486:21 rebuttals [1] - 481:1 rebutted [1] - 482:16 rebutting [1] - 479:12 receipt [1] - 428:10 receive [5] - 273:17, 284:4, 284:6, 321:19, 325:12 received [10] - 337:15, 343:20, 343:22, 343:23, 343:24, 343:25, 344:4, 356:24, 465:12, 465:16 receives [2] - 283:25, 428:22 receiving [2] - 257:7, 293:4 recent [6] - 241:22, 357:14, 358:1, 360:3, 360:4, 454:4 recently [3] - 307:3, 362:10, 426:22 recess [11] - 240:1, 240:3, 282:17, 282:18, 331:15, 351:24, 420:15, 475:5, 475:18, 476:4, 487:17 recite [1] - 283:22 reclaim [4] - 311:17, 337:5, 361:3, 394:6 reclaimed [2] - 306:18, 361:9 reclaiming [1] - 307:1 Reclamation [1] - 235:22 reclamation [8] - 306:16, 306:21, 311:5, 311:15, 311:20, 339:14, 339:15, 360:25 recoat [4] - 263:9,</p>	<p>263:12, 263:16, 319:18 recoated [2] - 263:15, 345:8 recognition [1] - 327:6 recognize [3] - 254:24, 327:9, 341:24 recognizes [1] - 400:10 recollection [1] - 404:2 recommendation [1] - 412:15 reconsider [3] - 455:3, 483:22, 484:2 reconsideration [4] - 473:24, 479:23, 480:22, 483:14 record [19] - 250:20, 262:10, 350:21, 353:1, 353:6, 353:13, 380:19, 402:7, 422:5, 435:19, 454:1, 456:11, 457:21, 460:1, 464:5, 465:16, 467:12, 476:20, 486:15 records [7] - 249:11, 249:15, 269:12, 321:11, 322:2, 347:7, 380:1 recovery [1] - 240:11 RE CROSS [8] - 312:19, 313:13, 314:19, 332:1, 340:12, 391:5, 397:1, 419:5 re cross [9] - 296:6, 393:5, 393:6, 393:9, 415:25, 418:11, 418:16, 419:1, 419:3 Recross [8] - 237:7, 237:7, 237:8, 237:8, 237:9, 237:10, 237:10, 237:11 RE CROSS- EXAMINATION [8] - 312:19, 313:13, 314:19, 332:1, 340:12, 391:5, 397:1, 419:5 Recross- Examination [8] - 237:7, 237:7, 237:8, 237:8, 237:9, 237:10, 237:10, 237:11</p>
--	--	---	--	--

<p>rectified [1] - 345:1 rectify [1] - 346:18 recurrence [1] - 382:13 redirect [4] - 296:6, 420:11, 420:17, 420:18 reduce [1] - 374:18 reduced [3] - 253:25, 254:7, 374:6 reduction [1] - 254:11 redundancies [1] - 302:24 reestablish [3] - 312:10, 337:6, 337:11 refer [2] - 278:11, 400:22 reference [8] - 271:24, 272:2, 405:20, 412:13, 416:13, 468:3, 471:9, 478:10 referenced [7] - 403:13, 404:2, 404:8, 411:16, 457:1, 458:18, 469:8 references [1] - 271:24 referencing [1] - 429:22 referred [9] - 243:10, 245:25, 251:14, 272:6, 279:6, 289:16, 294:6, 370:5, 411:18 referring [14] - 242:23, 255:12, 256:22, 264:3, 266:5, 266:24, 276:22, 285:25, 315:3, 355:4, 395:21, 429:20, 430:24, 478:5 refers [5] - 247:18, 423:23, 478:15, 478:21, 479:1 refine [1] - 321:6 refined [9] - 320:24, 321:12, 321:25, 322:4, 428:23, 429:1, 429:2, 430:23, 431:4 refinement [3] - 320:25, 429:3, 431:5 refiner [2] - 429:4, 429:6 refineries [6] - 246:19, 246:20, 430:22, 430:24, 431:5, 458:13</p>	<p>refiners [1] - 321:6 refinery [4] - 429:5, 429:9, 430:23, 431:6 refining [2] - 431:2, 431:7 refresh [6] - 240:2, 269:21, 270:11, 270:14, 271:5, 344:11 refused [1] - 406:20 refute [1] - 470:15 regain [1] - 240:2 regard [18] - 274:10, 277:10, 306:4, 334:7, 336:6, 336:16, 336:20, 336:23, 344:24, 350:4, 388:18, 398:2, 408:9, 415:13, 417:21, 419:10, 432:7 regarding [24] - 274:11, 275:20, 298:18, 311:4, 387:21, 398:7, 403:11, 405:6, 405:14, 407:16, 407:18, 408:8, 409:25, 411:6, 411:10, 413:12, 414:23, 416:12, 418:6, 431:4, 450:23, 452:21, 472:16, 476:7 regardless [3] - 318:12, 449:13, 466:19 regards [5] - 271:25, 272:18, 403:25, 410:16, 465:3 region [1] - 328:2 register [1] - 274:14 Registered [2] - 489:5, 489:19 registering [1] - 269:4 regulation [1] - 386:10 regulations [3] - 385:16, 389:1, 480:19 regulator [1] - 338:5 regulators [1] - 363:16 regulatory [2] - 241:24, 292:17 reject [5] - 346:5, 389:11, 390:17, 391:25, 483:10 rejected [2] - 345:25, 346:2 rejection [2] - 345:17, 345:20</p>	<p>relate [15] - 371:13, 387:11, 438:9, 439:7, 445:7, 445:11, 446:2, 446:4, 447:24, 448:5, 448:15, 458:17, 464:10, 471:21, 473:20 related [31] - 344:1, 345:13, 348:12, 367:13, 368:21, 372:5, 418:13, 424:6, 425:6, 432:5, 434:8, 436:4, 436:18, 436:22, 437:2, 437:5, 439:6, 440:9, 441:5, 444:6, 444:11, 444:12, 445:15, 445:22, 445:24, 446:6, 455:8, 470:19, 470:22, 474:16 relates [5] - 447:2, 451:17, 455:1, 456:7, 466:15 relating [3] - 371:25, 416:11, 466:22 relation [2] - 307:15, 415:13 Relations [1] - 235:6 relations [4] - 301:15, 408:25, 409:1, 414:23 relationship [6] - 280:24, 294:23, 326:5, 326:8, 326:18, 326:20 relationships [5] - 255:1, 271:16, 276:13, 314:11, 432:5 relative [7] - 255:23, 266:24, 344:17, 385:16, 395:12, 398:22, 430:17 relatively [3] - 349:16, 360:3, 439:1 released [1] - 355:19 relevance [9] - 403:4, 425:3, 437:16, 438:21, 439:2, 444:9, 447:12, 448:24, 458:2 relevancy [7] - 365:20, 387:13, 387:14, 403:1, 403:6, 404:16, 413:9 relevant [20] - 318:3, 357:16, 386:19, 402:13, 416:21,</p>	<p>435:12, 436:5, 437:8, 439:13, 444:20, 447:14, 447:16, 447:17, 448:15, 457:23, 459:1, 459:9, 469:8, 470:19, 473:7 relief [3] - 376:5, 376:10, 377:8 relying [2] - 334:22, 484:15 remain [2] - 244:13, 480:10 remained [2] - 430:18, 430:19 remaining [1] - 238:16 remains [2] - 329:10, 480:25 remarks [2] - 330:12, 334:7 remember [15] - 260:1, 262:17, 269:6, 293:23, 302:12, 328:5, 345:20, 349:7, 374:5, 375:1, 387:1, 389:22, 404:8, 435:4, 481:18 remembering [1] - 272:13 remind [3] - 269:2, 339:19, 351:12 remove [10] - 263:15, 339:5, 339:22, 385:22, 461:24, 463:3, 463:6, 468:11, 468:23, 469:3 removed [11] - 245:15, 462:2, 462:5, 463:8, 463:10, 463:18, 464:13, 468:14, 468:15, 468:21, 469:3 render [2] - 424:19, 427:13 renders [1] - 450:14 renewed [2] - 338:1, 483:8 reordered [1] - 483:10 repair [3] - 264:8, 310:15, 384:21 repaired [3] - 319:16, 346:2, 389:15 repeat [4] - 251:25, 283:18, 434:10, 483:5 repeatedly [1] - 440:8 repeating [1] - 392:14 rephrase [9] - 256:10,</p>	<p>257:18, 262:1, 268:11, 268:13, 290:21, 383:4, 425:16, 453:2 rephrased [1] - 266:18 replace [2] - 264:5, 264:10 replaced [2] - 264:11, 384:19 replacement [3] - 285:1, 293:9, 305:14 report [40] - 240:7, 267:4, 273:8, 273:14, 273:18, 303:17, 316:7, 363:2, 363:3, 365:8, 365:11, 365:25, 368:21, 369:10, 369:13, 371:12, 372:11, 373:13, 373:17, 375:4, 375:16, 375:18, 375:24, 377:13, 377:14, 377:24, 378:12, 379:6, 379:9, 379:16, 379:18, 380:1, 380:4, 380:6, 380:14, 380:18, 420:1, 420:7 Report [2] - 235:8, 235:9 reported [3] - 371:21, 389:8, 389:17 Reported [1] - 232:24 Reporter [6] - 451:13, 453:7, 489:6, 489:19, 489:19 reporter [6] - 353:1, 353:6, 421:25, 450:6, 476:17, 489:9 reporting [2] - 389:10, 410:18 reports [7] - 267:2, 267:7, 268:14, 268:20, 273:9, 273:12, 324:19 represented [1] - 239:1 representing [3] - 409:3, 411:7, 413:16 request [7] - 269:13, 269:14, 450:7, 461:23, 463:17, 475:2, 487:17 requested [5] - 302:20, 331:18, 452:5, 452:9, 452:17 requesting [1] - 443:24</p>	29
---	---	---	--	--	----

<p>requests [2] - 241:5, 485:11</p> <p>require [2] - 420:6, 480:19</p> <p>required [11] - 265:16, 265:18, 317:6, 328:10, 331:7, 332:20, 342:11, 348:6, 348:24, 456:24, 461:5</p> <p>requirement [2] - 331:9, 331:12</p> <p>requirements [4] - 329:2, 330:7, 330:17, 389:1</p> <p>requires [3] - 329:23, 330:6, 334:12</p> <p>rereading [1] - 455:6</p> <p>reroute [1] - 333:1</p> <p>reroutes [1] - 332:25</p> <p>reschedule [1] - 484:17</p> <p>Research [1] - 235:9</p> <p>reservation [9] - 278:16, 278:22, 279:5, 279:9, 279:12, 279:20, 279:22, 318:9, 394:22</p> <p>resident [1] - 414:17</p> <p>residual [1] - 246:12</p> <p>resolution [4] - 278:24, 279:18, 318:13, 318:15</p> <p>resolutions [2] - 277:15, 313:21</p> <p>resolve [1] - 306:8</p> <p>resources [2] - 401:16, 481:13</p> <p>respect [22] - 254:23, 258:7, 294:21, 294:24, 326:6, 326:20, 387:25, 397:4, 397:5, 397:7, 397:13, 412:14, 412:20, 412:25, 416:3, 430:7, 432:3, 432:10, 442:7, 442:13, 457:10, 470:12</p> <p>respecting [1] - 326:3</p> <p>respond [6] - 299:16, 363:22, 406:20, 407:6, 483:18</p> <p>responders [7] - 314:25, 315:10, 315:14, 315:21, 317:9, 317:10, 317:12</p> <p>response [7] - 267:16,</p>	<p>301:21, 358:14, 361:24, 436:6, 436:11</p> <p>Response [9] - 234:18, 234:19, 300:23, 301:1, 301:5, 316:22, 317:11, 317:17, 317:19</p> <p>responses [1] - 336:23</p> <p>responsibility [4] - 332:8, 414:4, 431:23, 432:17</p> <p>responsible [8] - 255:24, 275:2, 276:12, 350:10, 431:19, 432:12, 433:2, 433:6</p> <p>responsive [2] - 312:15, 479:20</p> <p>rest [1] - 311:8</p> <p>restricts [1] - 313:23</p> <p>result [10] - 251:4, 293:24, 304:19, 304:25, 305:8, 309:12, 332:14, 334:3, 412:18, 429:3</p> <p>resulted [4] - 305:14, 320:12, 346:10, 356:18</p> <p>results [3] - 319:10, 319:23, 347:12</p> <p>retake [2] - 238:22, 240:15</p> <p>return [10] - 326:1, 326:7, 326:23, 328:10, 398:20, 398:25, 401:6, 401:7, 401:23, 402:23</p> <p>returning [1] - 342:13</p> <p>revenue [6] - 256:2, 256:19, 257:7, 257:9, 305:15, 305:24</p> <p>Revenue [12] - 257:1, 284:16, 285:3, 285:12, 285:16, 286:8, 293:7, 304:5, 304:7, 356:10, 356:14</p> <p>revenues [3] - 283:5, 283:8, 283:13</p> <p>reverse [1] - 252:19</p> <p>review [1] - 312:21</p> <p>reviewed [10] - 306:5, 333:8, 333:14, 422:17, 423:12, 423:24, 424:10,</p>	<p>424:11, 436:15, 462:17</p> <p>reviewing [1] - 458:8</p> <p>Revised [1] - 234:13</p> <p>revisit [1] - 303:21</p> <p>rewording [1] - 469:15</p> <p>Rick [8] - 234:6, 237:16, 300:3, 476:2, 476:16, 476:22, 476:23, 477:4</p> <p>right-hand [1] - 289:19</p> <p>rights [7] - 254:23, 297:9, 340:19, 340:21, 340:25, 418:7</p> <p>rigorous [1] - 391:20</p> <p>risk [2] - 251:7, 343:12</p> <p>Rislov [1] - 232:18</p> <p>RIVER [1] - 234:14</p> <p>river [9] - 249:19, 249:22, 250:23, 318:8, 335:6, 335:8, 336:8, 336:9, 362:19</p> <p>River [14] - 234:21, 235:6, 277:4, 278:10, 278:12, 278:21, 295:2, 312:18, 353:10, 400:4, 409:24, 425:1, 425:18, 482:24</p> <p>rivers [2] - 336:6, 336:13</p> <p>road [2] - 316:14, 317:5</p> <p>roads [2] - 279:19, 279:23</p> <p>Robert [1] - 407:9</p> <p>robin [1] - 297:24</p> <p>robust [1] - 430:19</p> <p>Rock [2] - 314:8, 457:19</p> <p>ROCK [1] - 235:4</p> <p>role [1] - 333:4</p> <p>rolling [3] - 472:18, 473:22, 473:23</p> <p>Ronald [1] - 407:12</p> <p>Room [1] - 233:3</p> <p>room [3] - 330:21, 453:14, 456:20</p> <p>root [2] - 362:25, 365:6</p> <p>ROSEBUD [1] - 235:2</p> <p>Rosebud [5] - 238:25, 277:4, 352:18, 353:10, 407:7</p> <p>rough [1] - 288:8</p> <p>roughly [1] - 288:20</p>	<p>round [4] - 297:24, 299:11, 299:16, 300:13</p> <p>Rounds [1] - 232:19</p> <p>rounds [2] - 300:13, 444:16</p> <p>route [16] - 247:8, 247:13, 247:15, 247:16, 248:3, 250:4, 250:13, 284:5, 289:21, 291:22, 316:18, 317:3, 317:4, 341:6, 425:1, 439:19</p> <p>Route [1] - 234:7</p> <p>routes [3] - 342:2, 342:10</p> <p>row [1] - 361:18</p> <p>RPR [1] - 232:24</p> <p>rule [6] - 368:12, 371:5, 377:6, 380:1, 463:2, 480:21</p> <p>ruler [5] - 364:2, 366:10, 367:17, 367:19, 375:8</p> <p>rules [2] - 462:7, 467:22</p> <p>ruling [2] - 462:23, 463:17</p> <p>run [3] - 259:2, 385:3, 402:6</p> <p>running [1] - 265:13</p> <p>runs [3] - 259:23, 293:25, 294:7</p> <p>rupturing [1] - 373:22</p> <p>Rural [1] - 460:18</p> <p>RURAL [1] - 234:17</p>	<p>Sakowin [1] - 397:24 30</p> <p>salary [1] - 275:16</p> <p>Sand [1] - 235:9</p> <p>sandblasting [1] - 263:16</p> <p>sands [10] - 243:23, 243:25, 244:4, 244:18, 244:22, 245:4, 245:6, 245:16, 246:21, 246:22</p> <p>Saskatchewan [1] - 245:22</p> <p>satellite [2] - 340:22, 340:23</p> <p>satisfaction [1] - 306:18</p> <p>satisfactorily [1] - 346:3</p> <p>satisfy [2] - 306:21, 454:20</p> <p>save [1] - 373:11</p> <p>saving [1] - 352:15</p> <p>saw [4] - 357:12, 360:10, 360:22, 369:2</p> <p>scenario [3] - 245:23, 316:3, 337:13</p> <p>Scenarios [1] - 234:19</p> <p>schedule [1] - 484:21</p> <p>scheduled [2] - 320:20, 487:8</p> <p>Schmidt [6] - 234:4, 234:7, 253:7, 261:18, 487:11, 487:14</p> <p>Schmidt's [1] - 487:12</p> <p>scholarships [1] - 276:4</p> <p>school [1] - 409:22</p> <p>Schramm [1] - 234:11</p> <p>scope [26] - 249:5, 251:23, 266:11, 267:23, 272:25, 274:8, 274:17, 329:5, 329:20, 330:1, 339:8, 339:10, 339:25, 392:13, 402:12, 415:19, 417:23, 418:3, 431:23, 439:12, 448:21, 452:2, 459:2, 459:10, 461:1, 461:16</p> <p>scouring [2] - 335:20, 336:6</p> <p>screen [1] - 403:9</p> <p>screens [2] - 351:3, 351:8</p>
S				
			<p>sacrificial [1] - 259:6</p> <p>sad [1] - 475:16</p> <p>safe [5] - 263:1, 310:19, 338:7, 338:9, 354:5</p> <p>safely [2] - 338:25, 342:22</p> <p>safer [1] - 303:5</p> <p>safest [9] - 302:14, 302:17, 303:2, 303:5, 303:7, 303:13, 353:24, 386:12, 386:13</p> <p>safety [12] - 302:24, 303:19, 314:23, 342:13, 342:19, 342:24, 343:12, 344:2, 354:3, 354:4, 383:9, 412:18</p>	

<p>script [1] - 300:10</p> <p>scroll [1] - 369:19</p> <p>SD [1] - 235:8</p> <p>SDCL [1] - 274:22</p> <p>se [3] - 252:23, 252:24, 312:24</p> <p>seals [1] - 355:6</p> <p>Seamans [4] - 237:5, 282:24, 288:25, 295:10</p> <p>SEAMANS [6] - 282:12, 282:23, 283:2, 289:2, 295:14, 418:24</p> <p>Seamans's [1] - 282:22</p> <p>season [2] - 337:7</p> <p>seat [2] - 412:9, 458:5</p> <p>seated [1] - 426:2</p> <p>second [8] - 239:7, 240:4, 271:14, 366:3, 367:14, 367:15, 439:15, 441:11</p> <p>secondly [3] - 253:23, 309:18, 472:15</p> <p>secrets [2] - 342:3, 342:4</p> <p>section [2] - 285:10, 348:12</p> <p>sections [3] - 264:5, 264:9, 264:11</p> <p>securing [1] - 255:24</p> <p>security [2] - 295:6, 412:15</p> <p>sedimentary [2] - 245:21, 458:12</p> <p>see [60] - 238:14, 238:17, 239:18, 247:3, 248:12, 248:18, 262:16, 273:12, 291:25, 305:18, 305:21, 323:24, 337:8, 339:16, 340:15, 341:13, 347:7, 357:9, 357:11, 357:16, 359:22, 359:24, 364:23, 365:14, 365:24, 366:10, 367:5, 367:6, 367:7, 367:16, 367:22, 373:8, 373:9, 378:11, 378:12, 379:8, 381:22, 390:24, 397:10, 406:3, 406:10, 416:19, 420:16, 421:7, 426:1, 434:5,</p>	<p>438:21, 441:21, 449:23, 450:4, 452:24, 453:6, 462:7, 472:23, 473:14, 475:24, 478:2, 478:5, 481:1, 487:1</p> <p>seeing [4] - 387:14, 438:14, 474:20</p> <p>seek [1] - 254:21</p> <p>seeks [1] - 459:9</p> <p>seem [3] - 360:17, 437:25, 454:17</p> <p>segment [4] - 260:8, 310:14, 348:16, 349:22</p> <p>segregated [1] - 244:14</p> <p>SEIS [1] - 235:12</p> <p>Selected [1] - 235:10</p> <p>selected [2] - 251:19, 272:22</p> <p>self [2] - 389:8, 389:10</p> <p>self-reported [1] - 389:8</p> <p>self-reporting [1] - 389:10</p> <p>sells [1] - 321:7</p> <p>send [2] - 268:16, 323:3</p> <p>sending [2] - 323:1, 323:7</p> <p>senior [1] - 399:10</p> <p>Senior [1] - 379:9</p> <p>sense [12] - 257:23, 261:2, 268:5, 288:18, 300:15, 323:9, 339:12, 349:9, 371:7, 412:21, 457:5</p> <p>sensible [1] - 483:20</p> <p>sensitive [4] - 262:21, 263:3, 263:4, 320:9</p> <p>sent [4] - 249:9, 322:23, 389:2, 389:17</p> <p>sentence [3] - 369:23, 435:9, 455:7</p> <p>separate [2] - 244:17, 351:21</p> <p>September [1] - 285:15</p> <p>series [3] - 357:2, 357:5, 384:11</p> <p>serious [1] - 467:24</p> <p>serve [1] - 385:24</p> <p>serves [1] - 270:19</p> <p>service [5] - 345:4, 346:4, 387:23, 434:9, 450:3</p>	<p>Service [3] - 235:9, 235:20, 407:20</p> <p>services [8] - 272:3, 428:8, 429:11, 430:2, 433:2, 434:12, 477:2</p> <p>session [5] - 452:21, 454:14, 459:12, 460:4, 460:14</p> <p>set [5] - 240:17, 285:9, 353:14, 405:22, 423:18</p> <p>sets [1] - 243:9</p> <p>settled [1] - 352:2</p> <p>settlement [1] - 249:25</p> <p>settling [2] - 249:22, 250:5</p> <p>several [7] - 302:14, 303:25, 313:19, 314:12, 314:14, 397:3, 413:21</p> <p>severe [1] - 335:6</p> <p>severely [1] - 440:5</p> <p>share [9] - 240:12, 266:24, 279:25, 284:2, 327:15, 342:7, 420:25, 461:15</p> <p>sharing [1] - 421:4</p> <p>sheet [1] - 288:23</p> <p>sheets [2] - 294:16, 314:23</p> <p>shift [1] - 311:3</p> <p>shifting [7] - 249:17, 249:19, 250:5, 250:7, 250:9, 251:1, 251:5</p> <p>shifts [1] - 448:19</p> <p>ship [1] - 433:19</p> <p>shipped [4] - 246:25, 286:22, 287:13, 434:1</p> <p>shipper [7] - 429:22, 429:25, 430:3, 430:4, 433:23, 458:18, 459:21</p> <p>shippers [23] - 246:18, 292:23, 321:19, 428:5, 428:9, 428:15, 428:16, 430:6, 432:2, 432:25, 433:14, 434:7, 434:11, 434:15, 450:23, 451:18, 452:5, 452:15, 452:16, 459:4, 461:2</p> <p>short [9] - 282:18, 321:4, 326:23,</p>	<p>326:25, 331:15, 420:15, 467:15, 471:25, 476:4</p> <p>shorthand [2] - 489:9</p> <p>shortly [1] - 382:10</p> <p>shot [2] - 297:5, 444:21</p> <p>show [20] - 248:17, 288:24, 365:8, 371:22, 382:22, 382:24, 399:20, 400:8, 400:9, 440:22, 446:22, 447:1, 447:5, 447:6, 447:15, 447:25, 454:20, 464:21, 470:9, 470:13</p> <p>showed [2] - 359:22, 360:19</p> <p>showing [4] - 365:10, 383:23, 448:6, 470:8</p> <p>shown [4] - 372:4, 372:13, 381:17, 390:15</p> <p>shows [4] - 366:16, 367:25, 372:22, 391:20</p> <p>shut [6] - 244:9, 374:3, 374:6, 374:17, 374:20, 374:24</p> <p>shutdown [2] - 374:10, 396:18</p> <p>Sibson [8] - 234:24, 235:21, 235:23, 235:24, 236:3, 306:4, 311:4, 357:2</p> <p>Sibson's [2] - 306:12, 392:19</p> <p>Sibsons [1] - 306:20</p> <p>side [3] - 289:5, 366:3, 485:1</p> <p>sign [3] - 280:25, 316:15, 468:18</p> <p>signed [6] - 246:17, 277:8, 322:10, 322:13, 322:16, 327:17</p> <p>signers [1] - 379:16</p> <p>significance [3] - 254:25, 319:17, 375:19</p> <p>significant [5] - 252:17, 332:16, 332:19, 334:3, 355:22</p> <p>significantly [3] - 292:9, 303:14, 381:18</p> <p>signing [2] - 324:21,</p>	<p>327:24</p> <p>signs [4] - 316:14, 317:2, 317:3, 342:10</p> <p>similar [6] - 283:20, 294:4, 318:23, 326:9, 326:11, 361:4</p> <p>simple [2] - 253:20, 349:16</p> <p>simplified [1] - 361:23</p> <p>simplify [2] - 383:4, 383:5</p> <p>simply [9] - 338:16, 376:15, 402:1, 425:8, 425:16, 439:14, 455:4, 457:11, 463:15</p> <p>simulate [1] - 315:25</p> <p>simulation [1] - 318:3</p> <p>single [4] - 295:24, 467:1, 468:2, 471:8</p> <p>Sioux [19] - 269:23, 277:4, 278:10, 278:12, 312:18, 314:8, 314:22, 323:8, 407:7, 409:24, 425:1, 425:18, 427:25, 457:19, 482:20, 482:24, 486:8</p> <p>SIoux [4] - 234:14, 235:2, 235:4, 236:5</p> <p>Sioux's [1] - 480:5</p> <p>sister [1] - 475:16</p> <p>sit [3] - 323:6, 348:18, 450:24</p> <p>Site [7] - 365:24, 367:4, 368:22, 371:14, 372:5, 372:21, 375:4</p> <p>site [7] - 369:18, 370:8, 371:14, 373:15, 373:17, 373:18, 375:11</p> <p>sitting [1] - 444:19</p> <p>situation [12] - 268:17, 294:13, 296:15, 311:4, 335:19, 343:18, 362:12, 363:23, 374:22, 388:6, 402:8, 402:25</p> <p>situations [5] - 251:3, 252:25, 294:4, 294:7, 294:9</p> <p>six [8] - 265:20, 290:6, 291:5, 371:20, 373:1, 373:6, 373:13, 373:25</p> <p>size [4] - 309:11, 336:7, 380:9, 381:23</p> <p>sized [10] - 310:22,</p>	31
--	--	--	---	---	----

<p>361:21, 362:1, 363:6, 370:4, 370:6, 370:14, 377:19, 377:24, 380:10 skill [1] - 390:12 sleeve [4] - 264:7, 384:10, 384:13, 384:20 slight [3] - 262:12, 305:7, 445:1 slightly [5] - 263:18, 290:9, 291:15, 311:16, 320:3 slope [2] - 251:5, 251:6 slurry [2] - 244:19, 245:4 small [8] - 286:20, 321:2, 321:9, 332:23, 336:11, 354:12, 355:5, 362:6 smaller [1] - 336:10 smallest [2] - 372:22, 382:21 smart [1] - 268:5 SMITH [269] - 238:1, 239:3, 239:11, 239:17, 240:14, 240:19, 248:9, 248:16, 249:6, 249:8, 249:13, 251:25, 252:5, 252:9, 252:20, 256:8, 256:10, 256:14, 257:14, 257:20, 258:8, 258:17, 258:21, 258:24, 262:12, 262:20, 262:24, 263:3, 266:13, 266:19, 267:16, 268:1, 268:3, 268:9, 268:25, 269:10, 269:16, 270:4, 270:7, 270:10, 273:4, 274:13, 280:7, 282:6, 282:9, 282:11, 282:14, 282:19, 290:16, 290:20, 295:20, 296:7, 296:9, 296:21, 297:15, 298:8, 298:11, 298:25, 299:3, 299:15, 299:19, 300:6, 300:8, 300:17, 301:25, 308:16, 312:13, 313:9, 314:17, 329:9, 329:14,</p>	<p>330:2, 330:19, 330:23, 331:4, 331:16, 331:21, 339:16, 340:1, 340:8, 340:11, 350:14, 350:18, 351:12, 351:15, 351:23, 351:25, 352:10, 352:13, 352:17, 352:25, 353:5, 353:14, 368:14, 368:18, 369:19, 371:7, 373:7, 376:5, 376:8, 376:10, 376:18, 377:6, 379:24, 380:23, 381:1, 381:14, 382:17, 383:4, 384:3, 384:5, 384:9, 386:24, 387:4, 387:9, 388:2, 391:1, 391:4, 392:17, 393:2, 393:6, 393:11, 393:13, 393:15, 394:4, 396:23, 399:24, 400:9, 403:1, 404:18, 404:21, 404:24, 405:8, 405:16, 405:21, 405:25, 406:19, 406:23, 408:11, 410:10, 410:14, 411:12, 412:6, 412:9, 413:23, 416:5, 417:1, 417:13, 417:18, 418:1, 418:5, 418:12, 418:15, 418:20, 418:23, 418:25, 420:11, 420:14, 420:16, 420:22, 421:11, 421:16, 421:19, 423:3, 423:5, 423:8, 424:17, 425:5, 425:10, 425:14, 425:21, 427:22, 429:16, 431:10, 434:23, 435:7, 436:6, 437:11, 437:21, 438:11, 438:16, 438:24, 439:9, 439:23, 439:25, 440:4, 440:15, 441:15, 441:21, 442:20, 443:3, 443:13, 444:22, 448:12, 449:22, 449:25,</p>	<p>450:9, 450:18, 451:3, 451:12, 451:14, 451:21, 451:25, 452:7, 452:11, 452:19, 452:25, 453:5, 453:12, 453:21, 454:13, 456:18, 457:13, 457:17, 457:23, 458:2, 458:9, 459:20, 460:3, 460:7, 460:12, 461:19, 464:1, 464:5, 464:7, 464:12, 464:20, 465:1, 465:6, 465:10, 465:18, 465:21, 466:5, 466:14, 468:7, 472:14, 474:1, 474:3, 474:5, 474:7, 474:13, 474:15, 474:20, 474:23, 474:25, 475:7, 475:12, 475:15, 476:5, 476:10, 476:13, 477:17, 479:9, 479:16, 479:19, 481:3, 481:18, 482:1, 482:13, 483:15, 484:1, 484:4, 484:10, 485:14, 486:6, 487:6, 487:16, 487:20, 487:24 Smith [53] - 232:17, 240:13, 249:7, 258:15, 268:2, 269:8, 282:23, 295:22, 308:15, 312:17, 313:12, 314:16, 329:22, 330:9, 331:17, 339:7, 367:23, 370:19, 375:13, 377:17, 378:9, 383:1, 383:6, 383:25, 386:16, 392:16, 407:13, 425:24, 427:21, 427:24, 431:12, 434:16, 435:8, 438:19, 439:5, 442:21, 444:14, 445:3, 448:13, 451:7, 454:3, 456:22, 458:7, 460:21, 461:18, 463:1, 464:6, 465:14, 468:6,</p>	<p>472:13, 475:2, 482:7, 486:7 soil [4] - 250:17, 341:13, 341:22, 341:23 soils [3] - 250:13, 341:24, 342:1 sold [3] - 247:1, 321:1, 321:3 sole [1] - 349:9 solely [2] - 429:25, 432:12 solicit [1] - 258:11 solve [2] - 306:12, 462:25 solved [1] - 307:8 someone [12] - 242:9, 242:13, 304:9, 308:3, 324:19, 356:12, 394:2, 412:16, 413:2, 413:4, 413:7, 414:12 sometimes [13] - 245:19, 250:18, 250:19, 250:21, 325:8, 341:8, 382:9, 386:3, 386:8, 407:21, 450:10 somewhat [3] - 404:7, 483:20, 484:15 somewhere [3] - 259:25, 326:22, 345:22 son's [1] - 470:2 soon [1] - 395:16 sorry [26] - 242:21, 252:15, 255:2, 259:12, 274:15, 287:24, 299:21, 303:9, 339:19, 342:4, 347:17, 358:25, 369:15, 396:4, 400:25, 406:5, 412:13, 419:2, 426:17, 434:10, 451:7, 453:16, 465:18, 467:10, 467:17, 469:20 sort [4] - 275:21, 299:8, 327:8, 403:4 sorts [2] - 325:3, 326:13 sound [1] - 285:23 sounds [2] - 303:4, 304:17 sour [1] - 430:17 source [1] - 361:8 SOUTH [2] - 232:2, 489:1</p>	<p>south [3] - 279:17, 32 311:25, 327:14 South [54] - 233:2, 233:4, 238:1, 238:4, 256:18, 260:9, 273:22, 273:24, 274:4, 274:6, 277:10, 277:21, 281:20, 283:11, 284:6, 284:13, 294:5, 308:9, 308:12, 313:17, 322:11, 322:14, 322:17, 322:20, 323:8, 323:14, 327:14, 327:16, 327:20, 329:3, 329:8, 329:13, 329:19, 330:6, 330:7, 333:25, 336:20, 347:2, 354:18, 356:14, 386:15, 393:19, 395:1, 397:24, 403:12, 404:9, 409:8, 409:10, 409:21, 414:17, 414:20, 414:24, 489:7, 489:13 southern [5] - 261:24, 262:4, 263:1, 327:21, 328:11 SPEAKER [1] - 248:15 speaks [1] - 368:8 Special [12] - 253:13, 254:3, 254:6, 265:19, 302:21, 303:3, 310:7, 344:24, 345:3, 354:1, 354:20 special [1] - 280:13 species [2] - 312:10, 360:20 specific [11] - 260:12, 261:23, 263:5, 268:17, 314:10, 395:13, 409:5, 451:8, 467:17, 470:21, 485:4 specifically [13] - 249:25, 266:5, 271:22, 272:2, 272:21, 276:14, 277:3, 278:11, 286:6, 397:12, 409:9, 412:4, 476:25 specifications [1] - 388:25 specifics [1] - 279:25 speculate [2] -</p>
---	---	--	---	--

<p>379:20, 412:16 speculating [2] - 410:22, 415:10 speculation [2] - 386:17, 415:11 spell [1] - 248:24 spelling [1] - 248:23 spend [3] - 292:25, 401:15, 460:19 spent [4] - 240:5, 292:10, 306:7, 325:17 sphere [1] - 429:18 spill [1] - 301:19 Spill [1] - 234:19 spills [1] - 272:5 splatter [1] - 345:12 sport [1] - 470:2 spot [2] - 311:11, 380:10 spots [1] - 310:22 Spotted [5] - 236:6, 479:13, 480:7, 480:11, 482:14 spread [2] - 388:10, 388:16 spreads [1] - 345:18 SS [1] - 489:2 St [2] - 362:17, 363:5 staff [2] - 306:10, 356:12 STAFF [2] - 232:16, 234:10 Staff [15] - 261:16, 269:1, 278:22, 295:20, 299:14, 300:17, 300:21, 333:15, 348:10, 350:11, 407:22, 419:3, 461:25, 481:22, 481:24 Staff's [2] - 300:22, 419:1 stage [1] - 432:8 stages [2] - 345:18, 345:23 stakeholders [3] - 326:9, 326:18, 414:15 stand [8] - 238:22, 239:17, 239:22, 240:15, 456:9, 484:22, 484:24, 487:14 standard [6] - 253:17, 329:15, 391:9, 394:6, 433:17, 448:18 Standing [2] - 314:8, 457:19</p>	<p>STANDING [1] - 235:4 standing [2] - 297:8, 473:1 standpoint [4] - 386:14, 387:13, 482:12, 483:19 stands [2] - 464:16, 464:17 start [10] - 244:11, 244:16, 347:23, 362:5, 368:19, 383:14, 383:15, 398:14, 467:25, 487:13 started [2] - 278:18, 473:21 starting [3] - 289:13, 307:21, 429:10 starts [1] - 309:20 state [19] - 241:21, 256:6, 329:24, 330:4, 330:15, 330:18, 330:20, 338:15, 338:17, 338:19, 385:9, 416:15, 422:5, 440:25, 476:20, 479:6, 482:7, 486:15 State [15] - 233:2, 235:12, 235:14, 241:23, 242:25, 285:13, 303:17, 329:13, 330:21, 333:10, 333:12, 333:16, 354:2, 386:15, 489:7 STATE [2] - 232:2, 489:1 Statement [2] - 302:23, 315:19 statement [14] - 257:10, 257:15, 258:11, 261:11, 342:23, 343:13, 384:2, 397:4, 401:22, 409:14, 409:17, 414:23, 446:18 statements [3] - 315:7, 374:22, 403:14 states [5] - 399:13, 417:7, 424:5, 424:10, 435:9 States [16] - 246:20, 246:22, 271:16, 271:18, 321:13, 322:5, 324:25, 327:13, 338:25, 342:9, 349:11,</p>	<p>416:17, 416:18, 416:20, 417:4, 417:7 stating [2] - 413:12, 446:18 station [7] - 311:22, 311:23, 311:24, 311:25, 396:3, 396:7, 396:11 Station [1] - 355:11 stations [7] - 336:1, 355:5, 355:17, 355:24, 356:1, 396:20 statistics [1] - 356:1 status [2] - 239:12, 273:19 statute [3] - 329:6, 330:10, 480:18 statutes [1] - 456:8 stay [1] - 462:5 Steele [1] - 332:19 stems [1] - 459:11 step [6] - 238:21, 433:12, 456:23, 467:25, 475:1, 485:14 STESKAL [2] - 235:16, 236:2 Steskal [1] - 236:3 Steve [3] - 234:16, 304:11, 304:13 still [17] - 244:25, 279:14, 288:16, 290:7, 291:13, 312:23, 317:19, 338:24, 351:16, 367:23, 408:4, 408:7, 418:11, 430:6, 465:13, 465:23, 487:22 stipulate [3] - 376:2, 376:23, 376:25 stipulation [1] - 378:17 stop [3] - 318:14, 385:12, 447:1 stopping [1] - 448:2 strategy [2] - 480:1, 480:4 stream [1] - 336:7 streams [1] - 336:5 strength [1] - 459:16 stricken [11] - 268:8, 464:5, 464:9, 465:22, 466:3, 466:4, 466:12, 467:12, 483:9 strike [19] - 362:11, 382:15, 439:20,</p>	<p>439:23, 440:3, 440:20, 441:6, 445:5, 449:23, 455:3, 459:18, 462:17, 462:23, 467:4, 467:5, 468:1, 471:15, 471:19, 479:4 striking [3] - 460:9, 462:18, 469:10 strong [1] - 264:23 structure [1] - 349:13 studies [1] - 392:10 study [3] - 362:25, 365:6, 382:20 studying [1] - 379:1 stuff [2] - 421:5, 468:20 subject [8] - 387:12, 393:5, 393:25, 449:3, 453:14, 461:22, 466:23, 467:9 subjects [1] - 458:21 submit [3] - 433:16, 433:24, 440:21 submitted [12] - 242:24, 351:2, 352:6, 435:18, 435:20, 444:18, 462:4, 465:2, 467:7, 467:16, 471:24, 479:20 submitting [1] - 352:7 subordinate [1] - 328:20 subordinates [1] - 382:19 subpoena [1] - 381:7 subsequent [3] - 300:13, 310:8, 434:2 subsidiary [4] - 288:1, 288:7, 288:16, 288:19 substance [3] - 380:4, 451:21, 453:3 substantive [4] - 380:20, 452:6, 452:18, 453:11 successful [3] - 306:23, 306:25, 307:8 sucking [1] - 261:19 Sue [5] - 234:24, 235:21, 235:23, 235:24, 236:3 sufficient [3] - 352:22, 352:25, 406:4 suggest [3] - 264:3, 267:22, 456:10</p>	<p>suggested [1] - 33 412:16 suggesting [3] - 386:24, 440:4, 454:14 suggestion [1] - 480:21 suggests [1] - 314:1 SULLY [1] - 489:3 sundance [1] - 246:5 Sunday [1] - 421:2 super [1] - 470:2 superfluous [1] - 448:7 superior [1] - 328:25 supervisees [1] - 432:14 Supplemental [1] - 315:18 supplemental [1] - 302:22 supplied [1] - 343:5 supply [3] - 426:14, 426:15, 433:18 support [12] - 275:15, 277:16, 328:22, 402:10, 442:4, 463:25, 467:18, 478:11, 478:16, 478:22, 479:2, 479:7 supportive [2] - 255:5, 275:25 suppose [3] - 303:12, 402:15, 466:14 supposed [6] - 262:3, 262:22, 266:9, 266:16, 393:7, 443:11 supreme [1] - 417:8 surely [1] - 406:7 Surface [1] - 235:8 surface [1] - 317:7 surge [1] - 396:18 surgery [1] - 240:7 surrebuttal [2] - 298:23, 467:7 surrender [1] - 477:13 survey [2] - 267:4, 267:6 surveys [3] - 267:2, 268:18, 268:21 sustain [16] - 252:5, 258:21, 273:4, 290:16, 329:15, 340:2, 368:14, 371:7, 384:4, 384:5, 384:8, 388:2, 393:13, 403:6, 417:1, 438:13 sustainability [3] -</p>
--	---	--	---	---

<p>273:10, 328:23, 414:5 sustained [14] - 249:6, 256:8, 257:14, 266:13, 280:7, 296:8, 331:2, 331:3, 331:4, 331:5, 340:9, 383:5, 393:12, 429:16 sweeping [1] - 374:22 switch [1] - 322:9 sworn [1] - 422:22 system [37] - 243:15, 244:6, 244:11, 247:19, 259:5, 259:9, 259:21, 260:15, 264:22, 264:23, 265:10, 265:13, 265:15, 265:17, 265:21, 265:23, 269:4, 273:17, 284:9, 285:5, 288:11, 291:7, 309:22, 309:24, 310:1, 352:22, 355:8, 396:17, 396:19, 419:8, 428:10, 428:12, 430:4, 431:25, 433:19 systems [3] - 265:1, 270:24, 346:9</p>	<p>tariff [1] - 432:1 tariffs [1] - 432:3 tax [21] - 256:2, 283:5, 283:7, 283:13, 283:25, 284:7, 284:8, 284:12, 284:13, 284:23, 287:9, 304:4, 304:7, 305:15, 347:1, 347:10, 347:19, 356:9, 356:13, 356:16, 356:23 taxable [1] - 286:16 taxed [1] - 286:11 taxes [24] - 256:21, 257:2, 283:22, 284:14, 284:17, 284:25, 285:5, 285:9, 286:5, 287:6, 287:10, 287:19, 288:22, 289:11, 292:2, 292:24, 292:25, 293:11, 303:22, 304:1, 305:18, 347:5, 347:13, 356:18 taxpayer [1] - 256:18 Taylor [21] - 237:17, 258:9, 262:15, 267:12, 267:16, 270:1, 300:2, 359:4, 359:15, 376:6, 387:15, 393:2, 403:2, 420:11, 420:16, 421:11, 421:20, 434:3, 476:14, 479:9, 487:9 TAYLOR [105] - 249:4, 251:12, 251:23, 252:3, 252:8, 252:10, 252:15, 256:7, 257:13, 257:17, 258:5, 258:10, 260:23, 261:10, 262:9, 262:17, 266:10, 266:17, 267:9, 267:17, 268:8, 272:25, 274:8, 274:15, 280:5, 288:25, 289:9, 290:14, 290:19, 295:9, 296:4, 329:4, 329:20, 330:9, 339:7, 339:24, 340:6, 358:23, 359:5, 359:12, 360:13, 364:8, 365:1, 365:8, 365:17, 366:14,</p>	<p>366:19, 366:22, 367:23, 369:3, 370:19, 372:8, 375:13, 376:4, 376:7, 376:9, 376:12, 376:22, 377:10, 378:7, 379:25, 380:25, 381:4, 381:7, 381:9, 381:12, 383:1, 383:25, 386:16, 387:16, 392:12, 393:3, 393:9, 393:23, 399:16, 400:1, 400:4, 400:6, 402:11, 403:16, 403:20, 404:13, 410:2, 412:22, 413:9, 415:18, 415:22, 416:19, 417:10, 417:23, 420:12, 420:18, 421:12, 421:17, 476:16, 476:19, 477:13, 479:10, 480:5, 484:13, 485:17, 486:17, 487:5, 487:11, 487:22 team [3] - 241:14, 276:12, 391:15 technical [2] - 292:13, 351:17 technically [2] - 338:11, 338:12 technique [5] - 245:25, 263:17, 263:18, 264:8, 336:9 techniques [2] - 338:20 technologies [2] - 320:3, 320:4 technology's [1] - 339:1 tectonics [1] - 250:12 telephone [1] - 238:12 template [2] - 300:25, 317:17 temporary [1] - 384:20 tend [1] - 437:24 term [14] - 250:15, 261:20, 261:21, 262:17, 281:14, 281:16, 337:23, 341:22, 349:15, 389:5, 402:17, 402:19, 402:20 terminal [7] - 242:17, 243:9, 247:9, 348:14, 348:18,</p>	<p>428:16 terminals [1] - 248:3 terminating [1] - 451:9 terms [27] - 283:13, 286:1, 347:10, 349:17, 350:23, 352:25, 353:6, 354:19, 376:6, 397:13, 405:17, 413:6, 415:12, 424:18, 434:8, 450:9, 451:3, 451:18, 451:25, 452:11, 454:11, 460:22, 461:1, 461:13, 461:16, 466:5 terrain [1] - 341:9 territories [1] - 394:19 Terry [2] - 235:21, 407:8 test [11] - 260:13, 261:18, 315:1, 315:4, 315:11, 315:14, 390:9, 391:18, 391:20, 391:23, 437:16 tested [1] - 265:17 testified [22] - 254:18, 269:21, 290:24, 303:24, 303:25, 308:8, 309:23, 313:15, 313:21, 321:5, 340:14, 342:14, 347:1, 347:5, 347:16, 368:20, 370:2, 403:23, 408:22, 413:12, 413:22, 414:6 testify [16] - 295:12, 302:16, 302:18, 314:7, 320:20, 399:19, 399:21, 400:12, 405:8, 405:22, 406:6, 408:7, 435:10, 466:25, 482:15, 486:18 testifying [14] - 271:8, 304:24, 308:4, 328:16, 328:18, 328:24, 366:15, 370:21, 405:12, 406:11, 406:14, 407:5, 421:15, 440:19 testimonies [1] - 471:23</p>	<p>testimony [176] - 34 247:24, 270:2, 271:2, 285:16, 285:17, 286:25, 294:20, 298:10, 298:23, 299:1, 299:5, 299:10, 299:25, 300:4, 303:25, 306:2, 314:24, 315:17, 315:24, 321:9, 346:20, 353:25, 363:4, 372:13, 376:12, 378:6, 382:7, 389:16, 391:8, 392:20, 394:21, 401:22, 402:17, 402:21, 403:15, 404:24, 405:1, 405:3, 405:14, 406:7, 406:13, 406:25, 407:2, 407:16, 407:19, 408:1, 408:2, 408:5, 417:16, 418:6, 419:7, 422:14, 422:17, 422:20, 422:22, 423:12, 423:16, 423:23, 424:5, 424:9, 425:4, 425:14, 426:8, 427:8, 429:21, 430:8, 431:4, 431:19, 435:13, 437:1, 437:8, 437:13, 437:18, 438:6, 438:20, 440:18, 440:21, 440:25, 441:6, 441:23, 441:24, 441:25, 442:4, 442:14, 442:18, 444:18, 445:5, 445:8, 445:10, 446:21, 448:14, 448:19, 448:22, 448:25, 449:2, 449:3, 449:15, 454:20, 455:1, 455:4, 457:2, 457:4, 457:12, 457:14, 457:16, 457:20, 459:1, 460:9, 464:10, 464:18, 465:3, 465:5, 465:8, 465:15, 465:22, 466:4, 466:11, 467:5, 467:7, 467:9, 467:12, 467:16, 467:19, 468:2,</p>
T				
<p>table [4] - 262:5, 471:12, 474:8, 480:9 Table [19] - 241:4, 425:6, 425:15, 434:24, 435:14, 435:17, 435:20, 438:3, 440:11, 442:5, 443:23, 454:7, 464:9, 464:13, 464:16, 465:4, 465:9, 465:10, 465:23 tables [1] - 252:19 tag [2] - 297:2, 308:19 Takini [3] - 409:18, 409:22, 411:19 talks [3] - 445:14, 462:8, 471:11 tank [2] - 259:11, 348:18 tanks [2] - 348:14, 349:3 tar [6] - 243:23, 243:25, 244:18, 245:4, 246:21</p>				

<p>468:4, 469:11, 469:13, 470:19, 470:22, 471:3, 471:8, 471:13, 471:16, 471:17, 471:20, 472:6, 472:9, 473:7, 477:4, 477:10, 478:10, 478:11, 478:15, 478:20, 478:21, 479:10, 479:11, 479:12, 479:14, 479:15, 479:20, 479:25, 480:6, 480:7, 480:8, 480:12, 481:4, 482:3, 482:10, 482:11, 482:15, 482:17, 482:22, 483:24, 486:10, 486:11, 486:21, 486:22, 487:12</p> <p>Testimony [13] - 234:11, 234:11, 234:12, 234:13, 234:15, 234:16, 234:22, 234:23, 234:24, 234:24, 235:5, 235:7, 236:7</p> <p>testimony's [1] - 467:3</p> <p>testing [1] - 338:22</p> <p>text [2] - 368:2, 368:7</p> <p>THE [39] - 232:1, 232:2, 232:4, 232:6, 232:13, 248:8, 295:19, 302:3, 302:7, 302:9, 302:19, 303:9, 303:11, 304:12, 304:20, 305:2, 306:10, 307:17, 308:5, 308:11, 309:1, 309:7, 310:23, 311:12, 450:17, 450:22, 474:22, 474:24, 477:20, 477:23, 478:3, 478:7, 478:12, 478:17, 478:23, 479:3, 484:17, 485:16</p> <p>theater [1] - 300:9</p> <p>themselves [3] - 307:6, 312:11, 336:1</p> <p>theoretically [1] - 418:12</p> <p>therefore [18] - 244:25, 245:6, 291:8, 327:8, 346:4,</p>	<p>347:13, 373:22, 389:4, 390:19, 436:3, 446:2, 467:1, 467:19, 468:4, 470:25, 473:14, 479:7, 479:18</p> <p>therein [1] - 368:22</p> <p>they've [14] - 288:22, 299:4, 344:22, 373:24, 437:7, 451:22, 451:25, 454:23, 454:24, 458:24, 463:24, 472:5, 486:2</p> <p>thick [2] - 309:10, 393:20</p> <p>thickness [10] - 263:25, 266:3, 266:6, 293:19, 308:25, 310:22, 318:22, 320:5, 383:22, 393:22</p> <p>thinks [1] - 367:1</p> <p>third [11] - 267:5, 267:12, 271:10, 285:1, 287:18, 291:14, 291:15, 292:1, 293:3, 293:4, 337:7</p> <p>third-party [2] - 267:5, 271:10</p> <p>Thomasina [2] - 314:21, 427:24</p> <p>Thompson [19] - 271:4, 271:15, 271:17, 272:18, 273:5, 275:7, 275:15, 275:22, 278:1, 324:16, 328:15, 328:20, 403:24, 405:6, 405:20, 408:23, 412:25, 413:8, 414:17</p> <p>thoroughness [1] - 307:12</p> <p>thoughts [5] - 330:25, 393:11, 437:11, 444:22, 465:1</p> <p>three [22] - 276:10, 284:24, 285:25, 286:2, 286:4, 310:9, 328:1, 340:7, 357:18, 357:20, 358:6, 359:18, 360:22, 371:23, 371:24, 372:1, 372:15, 373:3, 378:1, 393:20, 486:22</p>	<p>three-quarter-inch [1] - 393:20</p> <p>three-quarters [1] - 372:15</p> <p>throughout [8] - 301:16, 308:10, 310:5, 312:3, 327:13, 388:5, 458:20, 472:17</p> <p>throughput [1] - 254:7</p> <p>tickled [2] - 256:3, 256:5</p> <p>tie [1] - 259:17</p> <p>Tillquist [10] - 234:4, 234:8, 263:6, 271:3, 271:8, 271:24, 272:6, 281:5, 301:9, 356:6</p> <p>Timeline [2] - 235:22, 236:3</p> <p>timely [2] - 330:17, 407:1</p> <p>timing [1] - 297:18</p> <p>Tina [1] - 232:20</p> <p>titles [1] - 270:12</p> <p>TO [1] - 232:6</p> <p>today [23] - 240:10, 246:1, 248:11, 269:1, 300:3, 308:21, 309:20, 309:23, 321:15, 323:6, 335:21, 338:24, 339:2, 343:5, 352:24, 397:3, 421:6, 422:11, 422:20, 426:6, 426:13, 477:8, 487:7</p> <p>together [6] - 292:22, 360:25, 401:10, 401:11, 432:21, 439:21</p> <p>toll [6] - 292:23, 316:7, 316:9, 316:13, 316:19, 317:8</p> <p>toll-free [5] - 316:7, 316:9, 316:13, 316:19, 317:8</p> <p>tomorrow [5] - 352:9, 381:3, 420:21, 421:9, 488:1</p> <p>tonight [2] - 421:13, 475:17</p> <p>took [4] - 274:6, 332:7, 403:12, 489:9</p> <p>tool [6] - 319:24, 320:1, 320:3, 320:9, 374:8</p> <p>top [11] - 264:7, 288:13, 292:12,</p>	<p>310:4, 315:16, 328:5, 335:10, 348:13, 363:25, 375:22, 477:25</p> <p>topic [1] - 266:24</p> <p>topics [1] - 458:20</p> <p>total [4] - 284:3, 289:19, 355:7, 357:7</p> <p>totally [4] - 406:19, 406:20, 437:23, 481:5</p> <p>touch [1] - 314:24</p> <p>touches [1] - 326:16</p> <p>town [1] - 402:9</p> <p>trace [1] - 341:6</p> <p>Tracey [1] - 352:22</p> <p>track [1] - 359:1</p> <p>Tracking [18] - 241:4, 425:5, 425:15, 434:24, 435:14, 435:17, 435:20, 438:3, 442:5, 443:23, 454:7, 464:9, 464:13, 464:16, 465:4, 465:9, 465:10, 465:23</p> <p>tracking [3] - 436:9, 465:7</p> <p>tracks [1] - 306:17</p> <p>tracts [6] - 306:14, 306:16, 308:8, 308:11, 311:19, 394:12</p> <p>traditional [1] - 326:4</p> <p>traditions [2] - 254:25, 326:4</p> <p>training [1] - 293:16</p> <p>TransCanada [115] - 234:18, 234:19, 235:18, 238:3, 241:19, 242:13, 249:3, 249:9, 251:1, 269:11, 270:13, 273:5, 278:13, 281:17, 284:11, 285:6, 286:5, 287:15, 287:21, 287:23, 287:24, 287:25, 288:1, 288:3, 289:12, 289:20, 290:17, 294:22, 295:2, 295:4, 297:11, 298:19, 313:15, 314:8, 320:24, 325:16, 343:15, 343:20, 343:25, 344:14, 344:23, 346:10, 349:8,</p>	<p>352:7, 353:11, 357:24, 357:25, 358:2, 360:6, 363:2, 365:25, 368:21, 375:21, 377:24, 378:23, 378:25, 379:3, 379:19, 381:11, 385:9, 386:12, 388:21, 389:16, 389:25, 391:9, 393:19, 393:21, 394:6, 399:11, 402:9, 403:10, 406:24, 408:1, 409:3, 409:25, 413:16, 421:23, 422:9, 424:2, 424:14, 424:25, 425:17, 427:17, 434:7, 434:11, 434:25, 435:23, 436:25, 437:14, 440:17, 441:3, 442:22, 448:19, 455:13, 459:4, 459:6, 459:18, 459:25, 460:10, 461:9, 461:24, 463:12, 465:2, 467:2, 467:20, 468:10, 470:13, 470:19, 471:20, 472:3, 474:13, 476:25, 479:5, 484:12</p> <p>TRANSCANADA [4] - 232:4, 234:2, 237:2, 237:15</p> <p>TransCanada's [17] - 316:7, 329:18, 362:25, 371:12, 389:5, 408:19, 428:7, 431:20, 433:13, 440:20, 459:4, 459:17, 461:14, 474:11, 482:9, 482:16</p> <p>TRANSCRIPT [1] - 233:1</p> <p>transcript [2] - 353:2, 454:5</p> <p>Transcript [1] - 232:8</p> <p>transcription [1] - 489:12</p> <p>transmission [2] - 238:5, 294:2</p> <p>transparency [1] - 398:8</p> <p>transparent [1] - 398:13</p>	35
---	---	---	---	---	----

<p>transpired [1] - 468:8 transport [8] - 245:17, 246:19, 428:7, 428:11, 428:12, 428:19, 458:10, 458:15 transportation [7] - 428:8, 429:11, 430:2, 433:2, 434:8, 434:12, 450:3 transporting [1] - 338:25 Trapp [1] - 407:10 travels [1] - 320:1 Travis [2] - 312:17, 352:19 treat [5] - 262:3, 262:7, 262:23, 263:1, 397:9 treated [1] - 481:4 treaties [3] - 417:8, 417:9, 417:21 treating [1] - 261:24 treaty [2] - 394:19, 394:23 trees [2] - 341:11 tremendous [3] - 354:13, 434:4, 455:22 trial [2] - 377:1, 377:5 Tribal [3] - 235:6, 325:19, 407:7 tribal [32] - 254:16, 254:19, 254:23, 271:15, 271:18, 276:19, 277:25, 278:5, 279:14, 280:17, 280:19, 301:15, 312:25, 313:20, 313:22, 315:21, 318:9, 324:4, 325:13, 325:14, 325:24, 397:17, 397:19, 398:20, 408:25, 409:1, 412:15, 414:13, 414:23, 414:25, 416:3, 416:13 Tribe [37] - 238:25, 254:20, 269:23, 269:24, 272:1, 276:17, 277:1, 277:4, 277:5, 278:2, 278:6, 278:12, 280:13, 280:14, 312:18, 314:8, 314:22, 323:13, 324:7, 324:12, 325:16, 327:2,</p>	<p>327:24, 328:3, 328:6, 328:7, 328:8, 394:20, 402:2, 407:7, 425:1, 425:18, 427:25, 448:14, 457:19, 482:24, 486:8 TRIBE [4] - 234:14, 235:2, 235:4, 236:5 Tribe's [4] - 278:11, 281:2, 409:24, 482:20 Tribes [71] - 255:2, 255:4, 272:22, 272:24, 274:4, 275:11, 275:21, 275:24, 276:1, 276:2, 276:6, 276:8, 276:20, 276:22, 277:9, 277:13, 277:16, 277:17, 277:22, 294:25, 301:12, 301:16, 313:16, 313:17, 313:19, 313:21, 314:12, 314:13, 317:16, 317:21, 317:23, 318:2, 318:5, 318:11, 322:11, 322:13, 322:17, 322:20, 322:22, 323:1, 323:4, 323:6, 323:8, 323:18, 323:22, 323:24, 324:23, 324:25, 325:4, 326:1, 327:14, 327:18, 327:20, 327:21, 328:1, 394:17, 397:4, 397:14, 397:23, 398:3, 398:20, 401:10, 401:12, 401:13, 401:15, 409:7, 411:21, 412:14, 414:15, 415:3, 415:7 Tribes' [1] - 322:25 tried [6] - 277:13, 278:20, 314:13, 339:7, 378:16, 411:19 Tripp [3] - 261:24, 262:4, 263:1 trouble [5] - 270:7, 387:14, 393:16, 410:11, 416:5 truck [1] - 402:9 truckload [1] - 351:5 true [21] - 246:9,</p>	<p>246:21, 257:23, 268:22, 274:21, 315:6, 328:10, 340:18, 340:20, 342:18, 343:11, 352:13, 372:18, 374:16, 419:8, 462:20, 462:22, 470:25, 471:1, 480:25, 489:11 truly [1] - 262:13 trust [5] - 254:20, 294:24, 326:6, 394:22, 414:6 try [14] - 253:20, 266:20, 269:5, 298:14, 306:12, 306:20, 314:3, 324:24, 382:4, 383:6, 410:15, 446:11, 449:24, 452:23 trying [28] - 238:10, 306:7, 311:17, 339:12, 358:12, 358:17, 361:3, 363:19, 363:21, 370:24, 378:19, 387:7, 405:3, 405:19, 409:17, 410:3, 410:4, 410:7, 410:24, 411:8, 416:1, 416:15, 429:9, 443:5, 443:9, 445:18, 475:11, 475:12 turbulent [1] - 244:15 turn [3] - 299:19, 312:14, 455:23 turned [1] - 274:16 TVs [1] - 351:8 twice [2] - 378:1, 378:16 two [26] - 243:9, 247:9, 261:8, 263:25, 267:21, 271:3, 275:23, 276:5, 284:24, 293:19, 325:24, 332:13, 337:7, 344:3, 351:8, 373:6, 377:25, 381:20, 383:20, 395:17, 438:24, 441:9, 444:16, 444:24, 448:4, 455:19 two-hour [1] - 448:4 tying [1] - 453:17 type [13] - 250:7, 250:17, 273:12,</p>	<p>276:13, 277:14, 296:14, 311:16, 312:6, 374:8, 382:14, 398:8, 414:13, 437:8 types [5] - 250:17, 276:25, 327:9, 402:23, 414:14 typical [4] - 319:13, 429:5, 429:6, 430:14 typically [4] - 307:19, 428:15, 428:23, 428:25</p> <p style="text-align: center;">U</p> <p>U.S [13] - 246:7, 246:8, 322:3, 397:23, 407:20, 415:15, 417:3, 426:15, 430:12, 430:15, 430:22, 430:24, 431:5 Ukrainian [1] - 474:24 ultimate [5] - 254:1, 435:22, 436:5, 439:14, 457:25 ultimately [4] - 334:14, 447:8, 449:8, 471:25 uncomfortable [1] - 460:10 under [23] - 238:4, 250:22, 265:18, 265:19, 274:21, 281:19, 291:3, 301:11, 303:19, 362:6, 367:4, 386:18, 389:1, 408:23, 409:16, 410:12, 433:17, 451:19, 455:10, 456:20, 461:13, 467:1 underlying [2] - 435:25, 444:6 understood [3] - 297:12, 460:15 undertake [1] - 408:20 undertaken [1] - 327:7 undertaking [1] - 282:21 undo [1] - 484:2 unfortunate [1] - 257:3 UNIDENTIFIED [1] - 248:15 unilateral [1] - 327:2 unique [4] - 311:10,</p>	<p>311:15, 337:10, 441:23 United [16] - 246:20, 246:22, 271:16, 271:18, 321:13, 322:5, 324:25, 327:13, 338:25, 342:9, 349:11, 416:17, 416:18, 416:20, 417:4, 417:7 units [2] - 253:25, 254:2 unknown [2] - 386:18 unless [5] - 245:13, 440:21, 446:1, 461:14, 469:6 unlike [1] - 444:8 unqualified [1] - 390:4 unresponsive [1] - 382:16 untried [1] - 338:16 unusual [1] - 238:14 up [77] - 239:4, 239:6, 239:15, 240:16, 240:17, 240:18, 240:19, 242:6, 244:11, 253:12, 257:2, 262:19, 265:13, 274:11, 278:9, 280:22, 282:3, 284:10, 284:18, 287:6, 287:7, 289:13, 297:4, 297:5, 297:10, 297:23, 298:13, 298:17, 307:20, 308:25, 320:7, 320:9, 321:25, 330:11, 332:4, 338:5, 353:14, 358:13, 375:22, 386:21, 386:22, 386:25, 389:2, 389:20, 392:20, 395:11, 398:15, 399:2, 400:7, 400:9, 403:9, 403:15, 409:15, 414:2, 418:14, 418:17, 420:17, 420:19, 420:22, 425:6, 426:20, 426:21, 426:22, 426:23, 428:15, 432:21, 437:13, 440:7, 442:9, 442:22, 456:3, 463:18, 467:6, 484:23, 485:9 update [2] - 316:25,</p>
--	--	--	---	--

<p>435:21 updated [2] - 360:9, 436:4 updating [2] - 435:18, 442:12 upland [1] - 243:3 upstream [1] - 244:9 US [5] - 235:11, 235:12, 235:13, 235:14, 235:19 uses [2] - 275:8, 389:19 usufructuary [1] - 418:7 UTILITIES [2] - 232:1, 232:13 Utilities [2] - 238:1, 373:12 Utility [1] - 407:8 utilize [1] - 386:13 utilized [2] - 299:4, 390:1 utilizes [1] - 247:11</p>	<p>Vice [1] - 379:9 VICE [1] - 232:14 vice [5] - 270:17, 273:11, 324:13, 422:10, 432:19 vicinity [3] - 272:2, 281:6, 294:17 view [5] - 258:12, 292:5, 431:25, 458:5, 463:7 viewed [1] - 306:4 viewing [1] - 357:14 Viola [1] - 407:8 violates [1] - 451:14 violating [2] - 279:14, 421:4 violation [3] - 297:9, 452:12, 459:8 violations [2] - 278:17, 278:19 virtually [1] - 374:3 visited [1] - 311:23 visual [1] - 250:19 visually [1] - 319:10 Vokes [1] - 234:22 volatile [2] - 426:16, 426:18 Volume [1] - 232:10 voluntary [2] - 281:12, 281:21</p>	<p>385:25 ways [2] - 316:16, 318:6 weather [8] - 252:6, 252:23, 253:1, 334:7, 334:12, 334:19, 335:1 web [1] - 455:23 website [7] - 241:7, 241:9, 242:19, 243:6, 281:18, 281:20, 281:24 weeds [4] - 307:9, 360:21, 361:1 week [6] - 311:21, 340:17, 358:10, 405:11, 407:21, 484:14 weigh [1] - 258:15 weight [1] - 464:17 welcome [1] - 358:21 weld [10] - 345:12, 346:2, 346:4, 346:5, 346:15, 389:10, 391:19, 391:21, 391:24, 391:25 welders [7] - 346:21, 389:3, 390:12, 391:10, 391:11, 391:12, 391:18 welding [16] - 344:10, 345:13, 345:17, 345:20, 346:17, 346:22, 346:23, 388:6, 389:14, 390:1, 390:3, 390:8, 390:9, 390:13, 390:17, 391:10 welds [8] - 345:24, 345:25, 388:6, 389:4, 389:23, 390:21, 391:13, 392:6 well-known [1] - 338:21 wells [7] - 245:12, 245:13, 260:2, 261:13, 261:20 west [1] - 279:17 western [2] - 245:20, 458:11 whatnot [1] - 387:3 whatsoever [1] - 337:8 WHITE [33] - 421:21, 422:2, 422:25, 423:4, 423:6, 424:4, 425:3, 429:12, 434:16, 435:14, 435:17, 435:20,</p>	<p>437:12, 438:2, 441:23, 450:16, 451:7, 451:16, 451:24, 452:4, 452:10, 452:14, 452:23, 453:11, 453:16, 454:18, 456:22, 457:15, 462:22, 464:4, 464:16, 474:14, 476:2 White [18] - 234:21, 237:12, 421:22, 435:15, 436:20, 436:25, 437:11, 437:22, 441:19, 441:22, 443:22, 447:16, 451:15, 454:21, 460:15, 462:21, 468:11, 476:14 White's [2] - 435:11, 437:6 whole [7] - 311:6, 365:11, 378:12, 400:18, 401:8, 439:13, 447:4 wholly [1] - 287:25 willing [12] - 301:12, 301:17, 314:5, 317:24, 323:5, 401:19, 401:20, 406:8, 420:7, 461:15, 470:21 Williston [3] - 242:6, 247:7, 458:12 wish [3] - 463:6, 474:18, 487:3 withdraw [14] - 254:5, 295:15, 298:5, 412:24, 457:12, 457:13, 457:15, 462:9, 462:14, 463:23, 472:5, 480:6, 480:11, 480:12 withdrawal [1] - 476:5 withdrawing [2] - 464:14, 474:11 withdrawn [3] - 464:11, 472:9, 476:12 withholding [1] - 459:25 withstand [2] - 334:8, 335:15 withstanding [3] - 250:14, 277:20, 294:8 witness [60] - 258:11,</p>	<p>258:14, 262:11, 266:12, 267:13, 267:22, 295:11, 297:6, 297:22, 298:7, 298:10, 298:22, 339:10, 350:3, 350:7, 366:15, 366:22, 368:1, 375:15, 376:14, 376:16, 377:12, 377:23, 378:4, 380:6, 380:8, 380:15, 390:24, 399:19, 421:19, 421:24, 423:6, 426:1, 434:5, 440:17, 441:2, 450:8, 459:14, 466:10, 467:6, 472:5, 474:12, 475:3, 475:25, 476:1, 476:3, 476:12, 476:15, 477:13, 479:24, 480:2, 480:12, 482:2, 482:8, 482:21, 485:4, 486:20, 487:10, 487:11 Witness [2] - 400:13, 400:20 WITNESS [35] - 237:2, 237:15, 248:8, 295:19, 302:3, 302:7, 302:9, 302:19, 303:9, 303:11, 304:12, 304:20, 305:2, 306:10, 307:17, 308:5, 308:11, 309:1, 309:7, 310:23, 311:12, 450:17, 450:22, 474:22, 474:24, 477:20, 477:23, 478:3, 478:7, 478:12, 478:17, 478:23, 479:3, 484:17, 485:16 witness's [7] - 365:22, 380:6, 408:8, 425:4, 457:12, 466:11, 473:6 witnesses [15] - 299:4, 300:2, 372:3, 418:17, 442:1, 456:9, 471:8, 472:22, 480:10, 485:20, 485:23, 485:24, 486:18, 486:19, 487:7</p>
V				37
<p>vague [1] - 439:17 value [22] - 284:20, 285:1, 285:19, 285:20, 285:21, 286:12, 286:13, 286:15, 286:16, 286:18, 286:22, 287:1, 287:9, 287:19, 288:2, 288:6, 288:8, 307:20, 347:13, 347:18, 428:24 valued [1] - 257:1 values [2] - 408:19, 408:21 Vance [1] - 234:16 Variation [1] - 234:7 variation [1] - 287:6 variations [1] - 305:7 various [3] - 317:12, 326:18, 414:14 vary [1] - 286:22 vastly [2] - 302:4, 302:9 vegetation [2] - 307:9, 341:11 verbal [2] - 257:11, 257:16 verification [2] - 331:7, 401:19 verify [1] - 331:12 versus [1] - 432:18 via [1] - 433:14</p>				
V	W			
<p>wait [4] - 399:16, 419:1 waivers [1] - 468:18 walk [1] - 431:18 wall [14] - 266:3, 266:6, 362:2, 362:3, 362:14, 371:17, 372:20, 373:15, 374:2, 374:19, 375:5, 381:25, 383:22, 393:21 Waln [1] - 407:8 wants [5] - 267:18, 378:11, 380:8, 380:13, 467:20 warm [1] - 392:1 warning [9] - 344:3, 345:14, 388:4, 388:8, 388:17, 388:18, 389:2, 389:18, 390:6 warrant [1] - 460:13 wasting [1] - 481:13 Water [1] - 235:8 water [5] - 259:11, 261:13, 262:5,</p>		<p>385:25 ways [2] - 316:16, 318:6 weather [8] - 252:6, 252:23, 253:1, 334:7, 334:12, 334:19, 335:1 web [1] - 455:23 website [7] - 241:7, 241:9, 242:19, 243:6, 281:18, 281:20, 281:24 weeds [4] - 307:9, 360:21, 361:1 week [6] - 311:21, 340:17, 358:10, 405:11, 407:21, 484:14 weigh [1] - 258:15 weight [1] - 464:17 welcome [1] - 358:21 weld [10] - 345:12, 346:2, 346:4, 346:5, 346:15, 389:10, 391:19, 391:21, 391:24, 391:25 welders [7] - 346:21, 389:3, 390:12, 391:10, 391:11, 391:12, 391:18 welding [16] - 344:10, 345:13, 345:17, 345:20, 346:17, 346:22, 346:23, 388:6, 389:14, 390:1, 390:3, 390:8, 390:9, 390:13, 390:17, 391:10 welds [8] - 345:24, 345:25, 388:6, 389:4, 389:23, 390:21, 391:13, 392:6 well-known [1] - 338:21 wells [7] - 245:12, 245:13, 260:2, 261:13, 261:20 west [1] - 279:17 western [2] - 245:20, 458:11 whatnot [1] - 387:3 whatsoever [1] - 337:8 WHITE [33] - 421:21, 422:2, 422:25, 423:4, 423:6, 424:4, 425:3, 429:12, 434:16, 435:14, 435:17, 435:20,</p>	<p>437:12, 438:2, 441:23, 450:16, 451:7, 451:16, 451:24, 452:4, 452:10, 452:14, 452:23, 453:11, 453:16, 454:18, 456:22, 457:15, 462:22, 464:4, 464:16, 474:14, 476:2 White [18] - 234:21, 237:12, 421:22, 435:15, 436:20, 436:25, 437:11, 437:22, 441:19, 441:22, 443:22, 447:16, 451:15, 454:21, 460:15, 462:21, 468:11, 476:14 White's [2] - 435:11, 437:6 whole [7] - 311:6, 365:11, 378:12, 400:18, 401:8, 439:13, 447:4 wholly [1] - 287:25 willing [12] - 301:12, 301:17, 314:5, 317:24, 323:5, 401:19, 401:20, 406:8, 420:7, 461:15, 470:21 Williston [3] - 242:6, 247:7, 458:12 wish [3] - 463:6, 474:18, 487:3 withdraw [14] - 254:5, 295:15, 298:5, 412:24, 457:12, 457:13, 457:15, 462:9, 462:14, 463:23, 472:5, 480:6, 480:11, 480:12 withdrawal [1] - 476:5 withdrawing [2] - 464:14, 474:11 withdrawn [3] - 464:11, 472:9, 476:12 withholding [1] - 459:25 withstand [2] - 334:8, 335:15 withstanding [3] - 250:14, 277:20, 294:8 witness [60] - 258:11,</p>	<p>258:14, 262:11, 266:12, 267:13, 267:22, 295:11, 297:6, 297:22, 298:7, 298:10, 298:22, 339:10, 350:3, 350:7, 366:15, 366:22, 368:1, 375:15, 376:14, 376:16, 377:12, 377:23, 378:4, 380:6, 380:8, 380:15, 390:24, 399:19, 421:19, 421:24, 423:6, 426:1, 434:5, 440:17, 441:2, 450:8, 459:14, 466:10, 467:6, 472:5, 474:12, 475:3, 475:25, 476:1, 476:3, 476:12, 476:15, 477:13, 479:24, 480:2, 480:12, 482:2, 482:8, 482:21, 485:4, 486:20, 487:10, 487:11 Witness [2] - 400:13, 400:20 WITNESS [35] - 237:2, 237:15, 248:8, 295:19, 302:3, 302:7, 302:9, 302:19, 303:9, 303:11, 304:12, 304:20, 305:2, 306:10, 307:17, 308:5, 308:11, 309:1, 309:7, 310:23, 311:12, 450:17, 450:22, 474:22, 474:24, 477:20, 477:23, 478:3, 478:7, 478:12, 478:17, 478:23, 479:3, 484:17, 485:16 witness's [7] - 365:22, 380:6, 408:8, 425:4, 457:12, 466:11, 473:6 witnesses [15] - 299:4, 300:2, 372:3, 418:17, 442:1, 456:9, 471:8, 472:22, 480:10, 485:20, 485:23, 485:24, 486:18, 486:19, 487:7</p>

<p>WITTLER ^[1] - 489:5 Wittler ^[2] - 232:24, 489:18 wonder ^[1] - 381:13 wonderful ^[1] - 240:8 wondering ^[3] - 296:1, 339:14, 440:6 word ^[10] - 257:23, 290:20, 292:2, 309:13, 338:19, 342:18, 397:7, 401:6, 433:22, 450:10 words ^[2] - 296:10, 455:12 wore ^[1] - 263:25 works ^[5] - 259:9, 280:9, 284:9, 328:21, 328:23 world ^[2] - 246:7, 426:14 worrying ^[1] - 343:18 Worst ^[2] - 234:18, 234:20 worst ^[10] - 337:13, 372:6, 377:25, 382:24, 383:15, 383:16, 383:17, 383:23, 384:11 worst-case ^[1] - 337:13 writing ^[1] - 356:20 written ^[14] - 289:3, 303:24, 316:15, 395:6, 405:7, 412:4, 416:9, 466:20, 467:7, 471:23, 478:10, 478:15, 478:20 WTI ^[2] - 427:6, 427:9 Wynne ^[3] - 239:3, 239:12, 313:10 Wyoming ^[1] - 395:16</p>	<p>287:20, 287:22, 288:15, 288:18, 291:21, 292:8, 293:1, 294:10, 302:25, 303:23, 329:17, 329:18, 347:3, 348:18, 349:9, 395:8, 395:19, 419:11, 427:13, 427:18, 431:21, 432:11, 433:3, 433:5, 434:7, 434:13</p>	<p>283:4, 283:9, 286:25, 295:24, 321:3, 321:5, 397:3, 481:17, 481:25 Young ^[1] - 235:5 yourself ^[2] - 346:12, 414:9</p>
X	Y	Z
<p>XL ^[51] - 232:6, 235:10, 238:5, 242:7, 243:15, 244:3, 247:11, 247:16, 247:21, 251:18, 251:20, 255:18, 260:9, 270:21, 270:25, 271:12, 273:17, 275:3, 275:11, 277:16, 279:20, 283:18, 283:20, 283:23, 283:25,</p>	<p>Yankton ^[6] - 269:23, 314:22, 427:25, 480:5, 482:20, 486:8 YANKTON ^[1] - 236:5 year ^[32] - 260:4, 276:10, 283:8, 283:10, 283:23, 286:19, 286:20, 286:23, 287:4, 287:7, 289:13, 290:1, 290:10, 290:11, 290:18, 290:23, 290:25, 306:19, 307:3, 307:22, 324:22, 328:2, 347:6, 347:13, 348:2, 355:3, 355:20, 357:12, 427:2, 427:6 years ^[43] - 259:25, 260:17, 260:18, 261:7, 261:8, 263:25, 274:7, 288:23, 289:12, 289:25, 290:4, 290:6, 290:11, 291:1, 291:5, 291:8, 291:11, 293:20, 305:20, 307:21, 310:9, 313:19, 314:12, 314:14, 337:12, 337:17, 337:24, 338:4, 340:24, 347:8, 373:20, 376:23, 384:24, 385:3, 385:4, 385:7, 387:3, 430:18, 481:7, 481:8 yesterday ^[20] - 240:5, 240:12, 244:8, 248:11, 259:1, 269:22, 269:24, 270:3, 271:3, 271:25, 279:6,</p>	<p>Zephier ^[1] - 352:22 Ziebach ^[2] - 279:8, 279:9 zone ^[2] - 281:13, 281:21</p>