

South Dakota Public Utilities Commission

HP14-001 In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order  
Accepting Certification of Permit Issued in Docket HP09-001 - Evidentiary Hearing  
August 3, 2015, 8:00 a.m.

Room 414, State Capitol, 500 E. Capitol Ave., Pierre, SD

Please Print Legibly

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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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

HP14-001

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

Volume VII  
August 3, 2015  
Pages 1633-1934

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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

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2                   above-entitled matter, at the South Dakota State Capitol  
3                   Building, Room 414, 500 East Capitol Avenue, Pierre,  
4                   South Dakota, on the 3rd day of August, 2015.

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24

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I N D E X

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	2017 - Heidi Tillquist Amended Rebuttal and Exhibits (portions excluded)	2366
9		
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
	7001 - Carlyle Ducheneaux Prefiled Testimony	992
16	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	396 - TransCanada Response to DRA Interrogatory #56 - Worst Case Discharge into Little Missouri, Cheyenne, and White River Crossings Confidential	
20	1003 - A - Evan Vokes Prefiled Testimony (portions excluded)	1768
21	1003 - B - Dr. Arden David, Ph.D., P.E.'s Prefiled Testimony and Exhibits	1812
22	1003 - C - Sue Sibson Prefiled Testimony	1971
23	1003 - D - John Harter Rebuttal Testimony (portions excluded)	2186
24		
25		

I N D E X (Continued)

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

I N D E X (Continued)

## DIANA STESKAL EXHIBITS PAGE

5007 - Diana Steskal Exhibits H - Addition 988  
to Sue Sibson Timeline5008 - Exhibit 1 - Pictures taken by 989  
S. Metcalf

## YANKTON SIOUX TRIBE EXHIBITS PAGE

9011 - Faith Spotted Eagle Prefiled 1860  
Testimony and Exhibits (portions  
excluded)

I N D E X (Continued)

2	INTERVENOR WITNESS	PAGE
3	Cindy Myers	
4	Direct Testimony	1654
5	STANDING ROCK SIOUX TRIBE WITNESS	PAGE
6	Dr. Kevin Cahill	
7	Direct Examination by Mr. Capossela	1681
8	Cross-Examination by Mr. White	1691
9	Cross-Examination by Ms. Real Bird	1694
10	Cross-Examination by Mr. Rappold	1697
11	Cross-Examination by Mr. Harter	1698
12	Cross-Examination by Mr. Gough	1699
13	Phyllis Young	
14	Direct Examination by Mr. Capossela	1702
15	Cross-Examination by Mr. Taylor	1745
16	Cross-Examination by Mr. Clark	1748
17	Cross-Examination by Ms. Baker	1749
18	Cross-Examination by Mr. Dorr	1751
19	DAKOTA RURAL ACTION WITNESS	PAGE
20	Evan Vokes (Continued)	
21	Direct Examination by Mr. Martinez	1754
22	Cross-Examination by Mr. White	1768
23	Cross-Examination by Mr. Clark	1770
24	Cross-Examination by Mr. Capossela	1771
25	Cross-Examination by Mr. Harter	1772
26	Examination by Commissioner Hanson	1773
27	Examination by Chairman Nelson	1778
28	Dr. Arden Davis	
29	Direct Examination by Mr. Ellison	1784
30	Cross-Examination by Mr. Moore	1807
31	Cross-Examination by Mr. Clark	1812
32	Cross-Examination by Mr. Capossela	1814
33	Cross-Examination by Mr. Gough	1815
34	Cross-Examination by Mr. Harter	1820
35	Cross-Examination by Ms. Myers	1826
36	Cross-Examination by Mr. Seamans	1829
37	Cross-Examination by Mr. Dorr	1836

I N D E X (Continued)

YANKTON SIOUX TRIBE WITNESS PAGE

Faith Spotted Eagle

Direct Examination by Ms. Baker	1848
Cross-Examination by Mr. Capossela	1861
Cross-Examination by Mr. Rappold	1862
Cross-Examination by Mr. Gough	1863
Cross-Examination by Ms. Craven	1866
Cross-Examination by Ms. Lone Eagle	1867
Cross-Examination by Mr. Seamans	1869
Cross-Examination by Mr. Dorr	1870
Cross-Examination by Ms. Smith	1871
Examination by Chairman Nelson	1871
Recross-Examination by Mr. Taylor	1873
Redirect Examination by Ms. Baker	1874
Recross-Examination by Mr. Clark	1875
Recross-Examination by Mr. Rappold	1875

TRANSCANADA REBUTTAL WITNESS PAGE

Dr. Jon Schmidt

Direct Examination by Mr. Moore	1877
Cross-Examination by Mr. Clark	1879
Cross-Examination by Mr. Capossela	1879
Cross-Examination by Mr. Martinez	1882
Cross-Examination by Mr. Seamans	1885

STAFF WITNESS PAGE

Chris Hughes

Direct Examination by Ms. Edwards	1886
Cross-Examination by Mr. Rappold	1890
Cross-Examination by Ms. Real Bird	1893
Cross-Examination by Mr. Martinez	1896
Cross-Examination by Mr. Gough	1903
Cross-Examination by Ms. Lone Eagle	1905
Cross-Examination by Ms. Smith	1906
Recross-Examination by Mr. Martinez	1907



I N D E X (Continued)

STAFF WITNESS	PAGE
Jenny Hudson	
Direct Examination by Ms. Edwards	1910
Cross-Examination by Mr. Rappold	1912
Cross-Examination by Ms. Real Bird	1914
Cross-Examination by Mr. Ellison	1917
Cross-Examination by Mr. Gough	1922
Cross-Examination by Mr. Capossela	1925
Cross-Examination by Mr. Dorr	1926
Cross-Examination by Mr. Harter	1928
Cross-Examination by Ms. Lone Eagle	1930

1           MR. SMITH: It's 8 o'clock, Monday, August 3,  
2 the scheduled time for continuing the hearing. And so we  
3 will come back to order in docket -- in the hearing in  
4 Docket HP14-001, In the Matter of the Petition of  
5 TransCanada Keystone Pipeline LP for Order Accepting  
6 Certification of Permit Issued in Docket HP09-001 to  
7 Construct the Keystone XL Pipeline.

8           We had a couple of witnesses, as we discussed  
9 the other day, who were scheduled for time certain  
10 today.

11           And are there any matters to come before the  
12 Commission before we delve into that and figure out what  
13 order we're going to take here?

14           MR. MOORE: Mr. Smith, we have a very short  
15 procedural motion.

16           Katlyn, do you have -- can you put on the screen  
17 the one page? We just have a summary of what's left in  
18 the proceeding. Essentially we have been through eight  
19 witnesses in six days. We have 23 witnesses left and  
20 four and a half days. And we have five Intervenor  
21 witnesses. We have nine Staff witnesses. We have five  
22 witnesses for rebuttal from Keystone. We have three  
23 Intervenor witnesses for rebuttal, and we have one piece  
24 of surrebuttal.

25           And based on the way the hearing has proceeded

1 so far, it does not appear possible that we will complete  
2 that within four and a half days.

3 It's Keystone's position that given the narrow  
4 scope of this proceeding, not only should it be completed  
5 in less than 10 and a half days, but it's prejudicial to  
6 us if there were any further continuance and it's not  
7 completed within that time, especially given the fact  
8 that the original hearing in HP09 was completed in three  
9 days and the entire docket was resolved within one year.

10 So based on that concern, we would, first of  
11 all, renew our motion that there would be no friendly  
12 cross-examination of witnesses. And, secondly, we would  
13 ask that cross-examination of any adverse witness be  
14 limited to two hours for all of the parties who are  
15 cross-examining that witness.

16 We think that's a reasonable request. It's  
17 apparent from the conduct of the proceedings so far that  
18 the Intervenor's are closely aligned in this case. They  
19 have collaborated. They have shared notes. They have  
20 asked each other's questions.

21 Mr. Vokes is here testifying that he's here on  
22 behalf of all of them. You can see that he has served as  
23 a technical advisor to them during the course of various  
24 witness examinations. Given the alignment of the  
25 parties, it's not unreasonable that their collective

1 cross-examination would be limited.

2 And, frankly, Meera Kothari was on the stand for  
3 11 hours. Corey Goulet was on the stand for nine hours.  
4 Heidi Tillquist was on the stand for nine and a half  
5 hours. That is extraordinarily lengthy testimony.

6 So we think that both of those things would help  
7 expedite the proceedings and ensure that we can have a  
8 timely completion of the hearing.

9 The other thing that I would request, Mr. Smith,  
10 is we have two witnesses who have previous commitments  
11 after Tuesday, which was the originally scheduled  
12 completion date for the hearing, and we would ask that  
13 they be granted a time certain to present their rebuttal  
14 testimony out of order tomorrow. And those are Meera  
15 Kothari and John Schmidt.

16 And that's all I have. Thank you.

17 MR. MARTINEZ: Mr. Smith, Robin Martinez on  
18 behalf of Dakota Rural Action.

19 I certainly do sympathize with the need to be as  
20 expeditious as we can. I would, however, point out that  
21 placing limitations of that nature while it would seem to  
22 be expedient, also may wind up creating some difficult  
23 problems down the road, particularly in the realm of due  
24 process.

25 And I have no doubt that whichever way this

1 hearing comes out, should you rule, for instance, to  
2 certify the Permit, there will no doubt be an appeal of  
3 that to the court. And I have no doubt either that  
4 should you decide to deny the Permit, there will also be  
5 appeal to the court.

6 So I'm not sure how we reconcile that with the  
7 overall just core legal principle that we have that  
8 relates to due process in administrative hearings. And I  
9 think we have a real almost irreconcilable difference  
10 between those two.

11 And I'm honestly not saying that to be flip or  
12 difficult in any way. It just is a real challenge, and  
13 I'm not sure that we can necessarily resolve it in a way  
14 that does not wind up creating due process challenges  
15 down the road.

16 And, you know, I think that's all I have to say  
17 on that point.

18 MR. ELLISON: If I could just please add,  
19 Mr. Smith, last year, year and a half ago, in front of  
20 the DENR where normal minor permit proceedings take a  
21 week or less, due to the realities of the magnitude of  
22 the issues that were involved, the DENR decided, both the  
23 Mining Board and the Water Management Board, that it  
24 could take as long as three to four weeks. I mean, we've  
25 been saying from the beginning that it was going to take

1 a lot more time.

2 I share TransCanada's counsel's concern for the  
3 time. But to me the solution is not to cut off  
4 cross-examination because that would be a due process  
5 issue. The solution is if we need to come back.

6 Because the one thing that has never been put on  
7 the record by TransCanada is why even if we came back six  
8 months from now -- how they would in any way be  
9 prejudiced. Not one word other than some kind of a claim  
10 that this has to get done quickly.

11 And I wanted to put that on the record because  
12 our agencies -- as a South Dakotan I believe our agencies  
13 and this agency in particular has a very important  
14 responsibility to the citizens of the State of South  
15 Dakota. And we should not be -- we should not have to  
16 lessen our ability to raise issues that we feel are  
17 important simply for expediency, simply to save this  
18 multibillion dollar company some money.

19 And an easy solution is we should set a date  
20 certain to end, get as far as we can. If we can't finish  
21 by then, to schedule a matter months down the road when  
22 everybody can make it. And I know that has been  
23 difficult because there's so many parties. But that, I  
24 would suggest, is the only reasonable solution from a due  
25 process standpoint, especially where TransCanada cannot

1 point to one thing that they would be prejudiced by.

2 COMMISSIONER HANSON: Mr. Smith.

3 MR. SMITH: Commissioner Hanson.

4 COMMISSIONER HANSON: There's validity in both  
5 arguments that I'm listening to. And I certainly  
6 appreciate the challenge that TransCanada has been faced  
7 with here.

8 I think there have been I guess I'll say abuses  
9 of the process at this juncture. For instance, the  
10 testimony by Mr. Vokes up to this juncture. All of that  
11 could have been prefiled. And over Sunday I was debating  
12 whether or not we should just simply state that the rest  
13 of that information, the hour that Mr. Martinez said that  
14 we should be -- he's going to go over some additional  
15 information for us, that that should be typed up and  
16 presented to us just as it should have been. Because  
17 that's hours of time that there's 50 people here. That's  
18 50 hours of time.

19 There's been numerous redundancy in questions of  
20 witnesses by -- I see a lot of validity in TransCanada's  
21 request. At the same time I'm concerned about placing an  
22 entire hearing process at jeopardy from the standpoint of  
23 going to Circuit Court on appeal.

24 So I'm struggling with the motion. I see  
25 that -- and I guess we have all been struggling with

1     that. And whether or not we add another week and just  
2     state this is when it's going to be, and if you're going  
3     to participate, you're going to show up.

4             Because it's -- I think we have to get through  
5     the material, but from now on I'm not going to tolerate  
6     additional items that should not have been -- that should  
7     have been prefiled.

8             MR. SMITH: Okay. And I think, I mean, one  
9     thing I do think that we can do and without violating due  
10    process rights really is to hold tight to our Order,  
11    which did limit repetitive questioning.

12            I don't think there's been a huge amount of  
13    that, but there has been some. And, again, to some  
14    extent I think some of this deals with having  
15    non-attorney represented people involved. And I think  
16    that's part of that.

17            But I don't know. Thoughts, Commissioner or  
18    Chairman Nelson?

19            CHAIRMAN NELSON: I guess I'd like to consult  
20    with you out in the hallway before I say anything.

21            We're going to take just about 2 minutes of  
22    recess.

23                    (A short recess is taken)

24            CHAIRMAN NELSON: I want to thank Commissioner  
25    Hanson for his comments. It's interesting. Obviously



1 while he and I did not see or talk to each other  
2 yesterday, in our supposed day off yesterday we were both  
3 mentally reviewing last week. And I don't think either  
4 one of us are real pleased with how last week went.

5 We should be much farther along than we are. I  
6 want to make two observations in that regard.

7 First of all, in regard to the matter of the  
8 prefiled testimony and what we are seeing now with  
9 additional oral direct testimony with Mr. Vokes. I will  
10 grant that our Order regarding prefiled testimony did not  
11 limit this type of oral direct. But it was talked about,  
12 and I think it was everybody's assumption -- because I  
13 know it was talked about that when you file prefiled  
14 testimony that's supposed to be your testimony.

15 But, unfortunately, we didn't put that what we  
16 thought was an understanding in writing. Guarantee that  
17 ain't going to happen again with this Commission. We  
18 will not make that mistake again.

19 And so based on the fact that we didn't put it  
20 in writing, I'm not sure that we can at this point limit  
21 the discourse that's going on.

22 The second thing that I would mention, and I  
23 just reiterate, last week we saw repetitive questions --  
24 I heard the same question asked and answered a dozen  
25 times -- that may be a little exaggeration -- but

1 multiple times. And so if we do not approve this motion,  
2 I don't know where we're going with this, but I am going  
3 to say very strenuously if I hear the same question asked  
4 twice, I'm going to object.

5 It's wasting everybody's time and preventing us  
6 from getting to a final resolution. We as a Commission  
7 have a job to do. We have a decision to make, and we  
8 need to get to the end of the testimony in order to do  
9 our job. And this repetitive asking the same question  
10 multiple times is preventing us from doing the job that  
11 we're here to do.

12 So those are my two statements. We do need to  
13 move this along.

14 In regard to the motion, I want to say to  
15 TransCanada thank you for the motion. I don't think  
16 we're probably going to be able to support it. I dearly  
17 want to. But I think from a due process perspective, I'm  
18 not sure that we're going to be able to. Unless  
19 Commissioner Hanson has a different thought, but I think  
20 we're probably not going to be able to.

21 COMMISSIONER HANSON: Well, it's a multiple  
22 motion, in essence. And I can support portions of it but  
23 not in its entirety.

24 We'd have to overrule the motion as it is.

25 MR. SMITH: So the motion is overruled, is

1 denied.

2 Okay. With that, let's get to --

3 MR. MOORE: Mr. Smith, could we just address  
4 the subject of a time certain for rebuttal testimony of  
5 John Schmidt and Meera Kothari?

6 MR. SMITH: Yes. Are you going to -- are you  
7 going to request -- I mean, are you going to state  
8 anything about it?

9 MR. MOORE: Just what I stated earlier. Both of  
10 them have commitments after Tuesday, and we request that  
11 they be allowed to present their rebuttal testimony  
12 tomorrow.

13 MR. SMITH: Okay. Granted. That motion is  
14 granted.

15 MR. MOORE: Thank you.

16 MR. SMITH: Okay. What about today in terms  
17 of -- Ms. Myers, did you want to proceed right now?

18 MS. MYERS: That would be fine. I'm ready.

19 MR. SMITH: Are you going to testify from where  
20 you're at or --

21 MS. MYERS: No. I have a PowerPoint to show.

22 MR. SMITH: Come on up there.

23 MR. MARTINEZ: Mr. Smith, Robin Martinez for  
24 Dakota Rural Action. Could we get just a sense for the  
25 order of witnesses that we're going to have today? That

1 way we can maybe just get a roadmap for that?

2 MR. SMITH: Sure. I mean, Ms. Myers had a time  
3 certain, I think, so we agreed to that. What are  
4 thoughts, I guess? Give me your thoughts while she's  
5 getting things ready.

6 MR. MARTINEZ: Well, we had also I think a time  
7 certain today for Dr. Arden Davis who is here in Pierre.

8 MR. SMITH: Okay.

9 MR. MARTINEZ: Over the weekend I actually did  
10 give a lot of thought to the same issues that you raised,  
11 particularly with respect to Mr. Vokes's testimony, and  
12 we can shorten that. I know I told you an hour on  
13 Saturday. I worked hard to try to hone it down  
14 yesterday. And, honestly, I think I can probably do that  
15 in 15 to 20 minutes at most.

16 MR. SMITH: Okay. So if I understand right,  
17 we'll take Ms. Myers first, followed by Dr. Davis; is  
18 that correct? Oh, Vokes next?

19 CHAIRMAN NELSON: We'll finish him.

20 MR. SMITH: And then Arden Davis? Is that the  
21 thought?

22 Mr. Capossela.

23 MR. CAPOSSELA: Thank you.

24 We have a witness with an approved time certain  
25 also today, Dr. Kevin Cahill. Rebuttal testimony. But

1 just for the purpose of identifying what needs to get  
2 done today, that's one of the pieces.

3 MR. ELLISON: There is a little bit of  
4 flexibility with Dr. Davis. He can indeed stay over  
5 until tomorrow, if that would better suit whatever the  
6 scheduling would be.

7 I know that one of Standing Rock's witnesses has  
8 a heart issue, and whenever she gets here we would  
9 certainly have no objection of accommodating her.

10 CHAIRMAN NELSON: If I could ask TransCanada a  
11 question, the document that you had on the overhead,  
12 would you be amenable to me getting a copy of that?

13 MR. MOORE: Certainly.

14 CHAIRMAN NELSON: Katlyn, could you get a copy  
15 for probably several of us up here of that document.

16 MS. CRAVEN: I would like a copy too, please.

17 MR. MOORE: I can file it.

18 CHAIRMAN NELSON: That would be great. We'll do  
19 that. Thank you.

20 MR. ELLISON: If I might make a -- Bruce Ellison  
21 on behalf of Dakota Rural Action.

22 In going through the testimony of Staff, I mean,  
23 they have more witnesses than anybody. It seems like  
24 some of them are so close to each other. I'm just  
25 wondering if Staff would take a look at their witnesses

1 and see if it's really necessary to call all of them.

2 I mean, I notice, for example, there's two  
3 people coming from the EN Engineering firm. They're both  
4 corrosion experts, although they slightly talk about  
5 different things. As an example of that.

6 I mean, I'm not trying to suggest they not put  
7 on anybody they think is appropriate, but I'm just asking  
8 if they'd consider that.

9 COMMISSIONER HANSON: Mr. Chairman, I'd make  
10 that suggestion to all of the parties.

11 MR. ELLISON: Thank you.

12 MR. CAPOSSELA: Thank you. Briefly for the  
13 record, Standing Rock has reached out with respect to  
14 trying to find an agreement for the introduction of  
15 prefiled testimony and exhibits without making oral --  
16 without appearing to no avail. And so we are trying to  
17 move this along.

18 And there is a little bit of shall we say irony  
19 to the motion that was denied to the extent that some of  
20 the obstruction isn't perhaps -- or delays might be  
21 attributed to the motion maker. Be that as it may --

22 CHAIRMAN NELSON: Mr. Capossela, let's go back  
23 to the Capossela rule.

24 MR. CAPOSSELA: You bet. And we are trying to  
25 move things along, and that was a suggestion that I had

1 was to introduce testimony which don't go to the ultimate  
2 issue to help move things along. That may be one option  
3 moving forward.

4 MR. SMITH: Okay. Ms. Myers, have you been  
5 sworn?

6 (The oath is administered by the court reporter.)

7 MR. SMITH: Please proceed.

8 MS. MYERS: I'm Cindy Myers. I'm an R.N. from  
9 Holt County, Nebraska.

10 As a nurse, I have a strong desire to protect  
11 people and promote health. And our best medicine is  
12 clean drinking water. I strongly believe in prevention,  
13 and keeping water clean is a lot easier than trying to  
14 clean it up after the fact.

15 South Dakota Law says it's the Applicant, in  
16 this case TransCanada, who's the Applicant for a facility  
17 construction Permit has the burden of proof to establish  
18 that the facility will not substantially impair the  
19 health, safety, or welfare of the inhabitants.

20 MR. TAYLOR: Mr. Smith, can I ask a question for  
21 the purposes of objection?

22 MR. SMITH: You may.

23 MR. TAYLOR: Ms. Myers, this PowerPoint  
24 presentation that you're about to put up on the screen,  
25 is this a duplication of your prefiled testimony?

1 MS. MYERS: It's not an exact duplication, but  
2 it's based on that.

3 MR. TAYLOR: So it's not -- this is a  
4 restatement of your prefiled testimony?

5 MS. MYERS: I have more information, and the  
6 information that I've added is included in my prefiled  
7 exhibits.

8 MR. TAYLOR: I'd interpose an objection.  
9 Ms. Myers has had since April to prefile testimony, which  
10 she did. And she's had since April to amend her prefiled  
11 testimony if she wanted to add to it.

12 Her prefiled testimony is in the record. I have  
13 some general objections to her prefiled testimony, and we  
14 can dispense with all of that with a general objection,  
15 and then I have point-by-point objections to some of her  
16 proposed exhibits.

17 So if we can proceed in that fashion, we can be  
18 done with this in 15 minutes.

19 COMMISSIONER HANSON: Notwithstanding the  
20 particular objections you have on different items,  
21 Ms. Myers, is it possible for you to just simply discuss  
22 those items that you have not already prefiled?

23 MS. MYERS: Yeah. I could go through the  
24 PowerPoint and hit --

25 COMMISSIONER HANSON: Only touch on new items?



1 MS. MYERS: Yes.

2 COMMISSIONER HANSON: Okay. And on that basis I  
3 would support that, notwithstanding the arguments on  
4 which some of those new items might be objected to.

5 MR. TAYLOR: The rules say that I'm supposed to  
6 object question by question as we go through this  
7 process. I can make a general objection in five points  
8 that cover the bulk of her testimony.

9 If I make those five point general objection and  
10 then ask for a standing objection, procedurally if it's  
11 all right with the Commission, then I'll shut up and we  
12 can get through this.

13 MR. SMITH: Okay.

14 MR. TAYLOR: Now presuming that this PowerPoint  
15 mirrors her testimony, to the extent that her testimony  
16 is an attempt to impeach or challenge or relitigate the  
17 2010 Permit, we object to those portions of her  
18 testimony.

19 A good share of her testimony is argument. We  
20 object to the argument that's contained in her prefiled  
21 testimony and any of this PowerPoint presentation.

22 We object to the hearsay references that's  
23 contained in her testimony. The Stansbury report, the  
24 hospital administrator, the water plant operator guys.  
25 We object to her opinions that lack foundation and that

1 are based on purported scientific evidence.

2 And we object in particular to her opinions on  
3 why the Nebraska route was moved. It assumes facts that  
4 are not in evidence, and it assumes there are issues that  
5 are not relevant to anything in this proceeding.

6 And then finally and conclusively, we have  
7 discussed many times what the scope of this proceeding  
8 is. The bulk of her testimony has nothing to do with the  
9 scope of this proceeding, and we object on that basis.

10 Having said that, if we can have a standing  
11 objection to her testimony, those six elaborated points,  
12 then we'll be quiet.

13 (Pause)

14 MR. TAYLOR: The way I perceived handling this  
15 is that if you take my objection under advisement at the  
16 conclusion of her testimony, I'll renew my objection and  
17 form a motion to strike. And then as we -- at some time  
18 after the live hearing is concluded you can rule on that  
19 motion to strike or do it during a recess or something so  
20 we don't interrupt the flow.

21 MR. SMITH: Okay. Does that work?

22 CHAIRMAN NELSON: Yeah. That works. But I want  
23 to make a comment.

24 MR. SMITH: Go ahead.

25 CHAIRMAN NELSON: That's certainly acceptable to

1 me, but, Ms. Myers, again, please do not repeat anything  
2 that's in the prefiled testimony. We've read it, and so  
3 this has got to be new information that doesn't -- I  
4 don't think you want to go into the areas that have been  
5 objected to.

6 MS. MYERS: May I proceed?

7 COMMISSIONER HANSON: Yes.

8 MS. MYERS: I believe I may have mentioned  
9 there's no health impact statement.

10 The reason I bring this concern about the  
11 health, safety, and welfare of South Dakotans is because  
12 of other major spills in our country, specifically the  
13 Kalamazoo one in Mayfair, Arkansas. And I just want to  
14 point out that the Michigan Department of Health  
15 identified 320, which is 58 percent, of 550 individuals  
16 with adverse health effects from four community surveys  
17 along the impacted waterways.

18 I want to point out that the Draft TransCanada  
19 Keystone Emergency Response Plan in the FSEIS, which is  
20 Appendix Q, does not indicate a specific emergency  
21 medical response plan.

22 The pamphlet TransCanada provides instructs to  
23 monitor for benzene, and I don't think people even  
24 understand what some of those abbreviations mean. And  
25 I'm concerned about South Dakota first responders not

1 having the necessary equipment for benzene testing for  
2 air and water.

3 And my concern is for the first responders that  
4 they're able to protect themselves and mainly from  
5 inhaling the benzene fumes.

6 Kevin Schlosser is the emergency management  
7 coordinator at Avera McKennan. He assists here in Pierre  
8 at Avera St. Mary's. And when I talked with him he says,  
9 well, what are we dealing with? Give me a -- he refers  
10 to it as an SDS, safety data sheet. MSDS and SDS are  
11 interchangeable.

12 And he wants to know the chemicals involved, the  
13 time frame of like when it would be expected to reach the  
14 water intakes. He'd want to know how to slow it down,  
15 contain it, and he'd want to ask industry experts how  
16 soon it would reach us. He hasn't seen any of that.

17 He said if TransCanada would provide him a  
18 safety data sheet, it would be kept in the emergency  
19 department to have readily available.

20 He has not seen any or hasn't been given any  
21 information specific to tar sands oil product, and he  
22 said he'd rely on the county emergency manager, the  
23 sheriff's department, and also he'd rely on the safety  
24 data sheet for treatments.

25 He's not aware of any training to instruct

1 health facilities of how to respond to tar sands  
2 emergency disasters. And in the emergency it's  
3 particularly important to have that safety data sheet for  
4 decontamination, for review, and instructions.

5 He said he's checked with the person that does  
6 emergency preparedness at Avera St. Mary's, and  
7 apparently they have not seen a safety data sheet to this  
8 point.

9 There is a sample MSDS in the FSEIS, and there's  
10 a notation there that says These MSDS do not represent  
11 the actual product that would flow through the proposed  
12 Keystone Pipeline.

13 TransCanada informed me that they're not a  
14 medical provider and do not provide medical information  
15 and that the local medical authority has jurisdiction.

16 I found no evidence of communication with Indian  
17 Health Services or South Dakota Healthcare facilities.  
18 As a nurse, I feel staff education is needed concerning  
19 the tar sands oil product, like KXL spill scenario drills  
20 and treatment for benzene exposure. Treating benzene  
21 toxicity isn't usual for most health professionals.

22 And I think we understand with testimony from  
23 Ms. Tillquist that benzene is the dominant toxin to be  
24 concerned about. And that's quoted from the FSEIS.

25 The International Agency On Cancer Research has

1 placed benzene in the -- as a group is carcinogen, and  
2 it's also been determined carcinogenic by the Department  
3 of Health and Human Services and EPA.

4 Exposure to benzene can happen by ingestion,  
5 drinking food and water. Inhalation of vapors is a  
6 specific one for emergency responders. And it is a  
7 cloud, and it's not visible with the naked eye. There's  
8 special cameras that can take pictures of the clouds of  
9 benzene. It can absorb through your skin and splashes in  
10 the eye.

11 The EPA has set 5 parts per billion as the  
12 maximum permissible level of benzene in drinking water,  
13 but the goal is zero. And the ATSDR specifically says  
14 it's set at that because of benzene causing leukemia.

15 And Brad Vann, an environmental scientist, wrote  
16 me a note. He said you can't smell, taste, or see it.  
17 So it does require laboratory analysis to detect at that  
18 minute concentration. Therefore, it would be possible to  
19 drink diluted benzene above the NCL.

20 I believe we'll be hearing from Dr. Arden Davis.  
21 Because of benzene's solubility and its allowable limit  
22 of only 5 parts per billion in drinking water, a pipeline  
23 leak could contaminate a large volume of surface water  
24 and groundwater.

25 And he goes on to say it's soluble in water,

1 which we know, but this is the important point, is that  
2 it can be transported down gradient toward receptors such  
3 as public water supply wells, private wells, and springs  
4 or seeps. In certain cases benzene can be transported  
5 more than 500 or 1,000 feet down gradient in the  
6 aquifers.

7 Dr. Arden Davis says a crude oil or diluted  
8 bitumen leak could have devastating effects on  
9 groundwater in South Dakota.

10 This is to take note of, and this came directly  
11 out of ATSDR, the Agency for Toxic Substances and Disease  
12 Registry. Only a brief exposure, 5 to 10 minutes, to  
13 very high levels of benzene in the air can result in  
14 death. And that's my concern for the first responders.  
15 Lower levels also have symptoms.

16 So, of course, eating foods or drinking liquids  
17 containing the high levels of benzene can cause various  
18 symptoms, even leading to death also.

19 Some of the health consequences of benzene:  
20 Leukemia, anemia, lower immunity. It may be harmful to  
21 the reproductive system, and benzene can pass from the  
22 mother's blood to the fetus. Of course, there's not  
23 studies on that, but animal studies have shown that  
24 benzene can cause low birth weight, delayed bone  
25 formation, and bone marrow damage. Benzene works in the

1 bone marrow where blood cells are produced.

2 Dr. John Stansbury says there should have been a  
3 human health risk assessment that would have estimated  
4 the increased risk of cancer, but there isn't any such  
5 assessment. They simply indicate that there could be a  
6 significant undetected release of benzene which could be  
7 consumed by human receptors and leave it at that.

8 I believe we've covered this as far as  
9 Condition 40 and the BTEX permeating polyethylene water  
10 piping.

11 Iowa Department of Natural Resources did a  
12 plastic water line survey. They asked various states  
13 have you had any known problems with petroleum permeation  
14 related to plastic water lines? If yes, was the type of  
15 plastic water line known to be PVC or PE? And 13 states  
16 have known problems with permeation of plastic pipe. And  
17 the study actually has pictures.

18 I should point out of those 13 states, seven  
19 states have specifically had permeation incidences  
20 involving PVC.

21 So the Mni Wiconi we know is to cross paths with  
22 the KXL at mile marker 471. And at that location the  
23 water pipe is PVC. They'll be 6 feet apart. Leaks at  
24 this location could saturate the water pipe with benzene  
25 indefinitely if undetected pinholes leak oil. So it



1 would be more than being dipped in it. It would actually  
2 be saturating.

3 And we know pinhole leaks can be difficult to  
4 detect and yet spill large volumes. According to the  
5 FSEIS, a pinhole leak can create up to greater than a  
6 large spill, which is 42,000 gallons. And 1.5 to 2  
7 percent of the total volume can be undetected.

8 And in my Interrogatories I learned that  
9 TransCanada will only test in the event of a release,  
10 that we don't know about the undetected leaks affecting  
11 water supplies.

12 This came out of the FSEIS. In South Dakota  
13 there's 105 known wells within 1 mile of the proposed  
14 project, including Colome's city wells. And we've  
15 learned Condition 35 that the water in southern Tripp  
16 County is very vulnerable. And that aquifer in Tripp  
17 County serves for several domestic farm wells near the  
18 pipeline as well as the public water system at Colome.

19 I had Dr. Arden Davis review my calculations,  
20 and we know benzene is very potent, but I wanted to put  
21 it into a way to describe that more graphically.

22 So Colome's water tower is approximately 50,000  
23 gallons. And it only takes 17 drops of benzene to  
24 contaminate that much water. So we've learned that the  
25 benzene is -- becomes water soluble and separates out,

1 and it only takes very little.

2 Carol Moyer is the public water contact for  
3 Colome. So I visited with her on the phone. She said  
4 the first route crossed directly through the 10 acres  
5 where Colome's two wells are located. The route was  
6 moved approximately 200 yards from the well acreage.

7 She told me, I do have concerns. And she also  
8 told me, I don't think safety was a concern at all. And  
9 her belief is the route is moved just far enough to get  
10 an easement.

11 I believe this speaks to John Harter's concern  
12 about the cone of depression. This comes out of the  
13 FSEIS. A large municipal supply well such as Colome's or  
14 intake could potentially draw affected water to the well  
15 or intake since it would draw from a larger area of  
16 groundwater.

17 And we've seen this picture too. But the FSEIS  
18 clearly states the proposed project route would cross  
19 several tributaries to the Missouri River with the  
20 potential to affect the Missouri River. So the FSEIS is  
21 telling us they're concerned.

22 This map came from a magazine called Water  
23 Quality On Tap. And it's about the Missouri River Water  
24 Systems. And if you look at this map, all the colored  
25 areas are the areas in South Dakota which depend on the

1 Missouri River for their water supply. Lewis & Clark was  
2 more recently added. And Standing Rock now is also  
3 getting their water from the Missouri River.

4 So 62.3 percent of the population of  
5 South Dakota uses Missouri River water. Just the  
6 Sioux Falls area alone 284,000 people use water from the  
7 Missouri River. And these figures were compiled by  
8 Paul Seamans.

9 I went to the U.S.G.S. website. And there's a  
10 real interesting deal there. You can trace the river  
11 upstream. And so just to demonstrate all the tributaries  
12 on the different river valleys that flow into the  
13 Missouri River, this is the Grand River Drainage Basin.  
14 All of these river basins are crossed by the KXL route.

15 Here's the Moreau River Drainage Basin, the  
16 Cheyenne River Drainage Basin. As you can see, there's a  
17 lot of various tributaries. The Bad River Drainage  
18 Basin, which flows right through Ft. Pierre. The White  
19 River Drainage Basin.

20 And Dr. Arden Davis is concerned about river  
21 crossings, and he said at these river crossings and  
22 downstream the proposed pipeline poses serious risks and  
23 could have devastating effects on surface water and  
24 associated environmental resources, potentially affecting  
25 water supplies and surface water users.

1           He specifically is concerned about the Cheyenne  
2 River. He says if a release occurred at this crossing  
3 and it could not be controlled or went undetected for 12  
4 to 24 hours, petroleum contaminants could reach the  
5 Missouri River, potentially affecting water supplies and  
6 surface water users. So he says it could be transported  
7 60 miles downstream in 12 hours.

8           MR. SMITH: Ms. Myers, these people are here.  
9 They're going to be testifying themselves. And really  
10 it's utterly hearsay. And so why don't we move along and  
11 we're really repetitive too with what we've heard.

12           CHAIRMAN NELSON: If I could just be very clear,  
13 we are here to hear your testimony, not other people's  
14 that are going to be here later. Your testimony, please.

15           MS. MYERS: Okay. Can I point out it will be  
16 transported 120 miles downstream.

17           So the FSEIS does make it clear that -- a  
18 concern about crossing the tributary systems.

19           And the Montana DEQ noted an oil spill that  
20 traveled 70 miles downstream.

21           I am concerned about the water intakes in the  
22 Missouri River because of the threat to the public  
23 health.

24           This was the head lines in the Billings Gazette  
25 January 20 of this year. "Breach In Pipeline Found.

1 Cancer Causing Agent Detected In Water."

2 MR. TAYLOR: Mr. Smith.

3 MR. SMITH: Yes, Mr. Taylor.

4 MR. TAYLOR: My understanding is that Ms. Myers  
5 and her proposed exhibit list, some 60, 58 items,  
6 includes a whole host of quotes from newspaper articles  
7 and magazines, which are obviously hearsay and not  
8 admissible.

9 I didn't intend to object to that in the course  
10 of her examination. I thought I'd deal with her exhibits  
11 one by one when we got there.

12 But for her to -- I don't know if she proposes  
13 to offer this?

14 MS. MYERS: No. I don't propose to offer all  
15 the news articles from the newspapers.

16 MR. TAYLOR: Well, then she can't quote the  
17 newspapers in her direct testimony any more than she can  
18 offer the articles in the newspaper as truth of the  
19 fact --

20 MS. MYERS: This is the only news article that I  
21 quoted and I submitted as my final to the PUC.

22 MR. SMITH: Sustained.

23 MR. TAYLOR: My point is it's a hearsay  
24 objection.

25 MR. SMITH: Sustained. You know, it's hearsay.

1 COMMISSIONER HANSON: Just explain hearsay to  
2 her.

3 MR. SMITH: Yeah. It's hearsay in the sense  
4 that it isn't something that you observed. And, in order  
5 for it not to be hearsay, there has to be some underlying  
6 knowledge of what the underlying factual basis for a  
7 statement is. And I don't think we've heard one.

8 MS. MYERS: It's all on the basis of my concern  
9 for the health, safety, and welfare of South Dakotans and  
10 how much benzene entered into the water intake at  
11 Glendive, Montana.

12 MR. SMITH: Okay. But hearsay when you're  
13 telling us what someone else said or an article that you  
14 read, something of that nature. It has to be what you  
15 have particular knowledge of, other than just simply  
16 reporting what someone else said.

17 MS. MYERS: Can I say how much benzene entered  
18 into the water intake?

19 CHAIRMAN NELSON: Before you answer that, did  
20 you do the testing --

21 MS. MYERS: No.

22 CHAIRMAN NELSON: -- to determine that? So  
23 you've received this information from someplace else;  
24 correct?

25 MS. MYERS: Correct.

1           CHAIRMAN NELSON: Then my understanding is  
2 that's hearsay, and that's -- it's been objected to, and  
3 we've sustained the objection.

4           We want to hear what you've observed. Your  
5 testimony.

6           MS. MYERS: Okay. Can I go into my visits with  
7 the public water utility's operators?

8           MR. SMITH: Just a minute. Yes.

9           MS. CRAVEN: Thank you. Kimberly Craven for  
10 Indigenous Environmental Network.

11           Ms. Myers is a nurse. She is a health official.  
12 So she can testify to the health impacts of benzene  
13 without having been in a benzene vapor.

14           MR. SMITH: And we allowed her to do that. But  
15 in terms of what the intake amount was at the City of  
16 Glendive -- and she stated her source was a newspaper  
17 article. Well, again, it's -- it's a news story. Okay.  
18 But in terms of hard evidence here, it isn't, you know.

19           Anyway, proceed.

20           MS. MYERS: May I speak to my phone visit with  
21 the water plant operators here in South Dakota?

22           MR. SMITH: Again, you know, I think that's  
23 hearsay too, technically.

24           Do you care if she goes into that, Mr. Taylor?

25           MR. TAYLOR: Well, I mentioned in my opening

1        comments that I objected to her compilation of the  
2        hospital administrators and the water guys and all of  
3        those people who she called and talked to and then  
4        composes all of her notes and submits them.

5                And I object to those on the grounds of hearsay  
6        and lack of foundation and maintain that objection.

7                MR. SMITH: I think it is hearsay. Sorry,  
8        Ms. Myers, but I believe that's hearsay. Again, I agree  
9        with -- I agree with Ms. Craven that to the extent that  
10       you -- as a medical person, to the extent you have actual  
11       knowledge medically of that, in terms of the effects, I  
12       think you have enough expertise to be able to offer your  
13       opinions on that, and you've done so. But in terms of  
14       what other people have told you, again, that in general  
15       is hearsay. Okay.

16               MR. ELLISON: Mr. Smith, I have a question. I  
17       mean, this is a witness who is a nurse. She's in some  
18       ways a medical expert. All of TransCanada's witnesses  
19       testified to -- about documents, information contained in  
20       the documents that they did not prepare. So essentially  
21       all of TransCanada's testimony was hearsay.

22               Certainly an expert can rely upon whether it's a  
23       lay or a professional expert -- because the Rules of  
24       Evidence has been blurred lately.

25               MR. SMITH: And within her expertise, I agree.



1 I haven't precluded that in any way.

2 It's just once you get in terms of water system  
3 expertise, I don't think probably -- she hasn't really  
4 disclosed expertise in that.

5 MR. ELLISON: Although if there's impacts to the  
6 water and water is ingested, then it produces a basis for  
7 the problem.

8 But I thank you for being able to make the  
9 record.

10 MR. SMITH: Okay. Please proceed then.

11 MS. MYERS: From my visits I just would like to  
12 give the opinion that, you know, I feel water treatment  
13 plants need to be prepared just for the safety of the  
14 people that use those water intakes. Because I do feel  
15 it is a public health concern.

16 And this is the basis. Most spills that enter a  
17 water body could result in exceedance of the national MCL  
18 for benzene. And the FSEIS clearly states the importance  
19 of those water intake facilities being prepared.

20 And I'm concerned that a clean up of the dilbit  
21 spill is going to take more time. And we know in  
22 Kalamazoo after five years it still hasn't been cleaned  
23 up. And if that waterway is a source for drinking water,  
24 that could severely impair a drinking water source.

25 As a health professional I am concerned about

1 Finding of Fact 107, which used Dr. Madden's testimony to  
2 support the law about protecting the health, safety, and  
3 welfare of South Dakotans. He's not a medical doctor but  
4 an economist.

5 So, in my opinion as an R.N., I firmly believe  
6 the risks to drinking water is clearly stated in the  
7 FSEIS and testimony by Dr. Davis.

8 The ATSDR, the Agency for Toxic Substances and  
9 Disease Registry, is one of the highest authorities  
10 concerning toxins and clearly indicates benzene is a  
11 serious health threat.

12 This project poses a public health threat  
13 particularly to drinking water resources, and the project  
14 could substantially impair the health, safety, and  
15 welfare of South Dakotans.

16 And I believe we get lost in details, and we  
17 don't always see the big picture. And to me the big  
18 picture is water is life. This is the Rosebud Rural  
19 Water System water tower, and Mni Wiconi means water is  
20 life.

21 And I do thank you for allowing me to make my  
22 voice and be an Intervenor in this process.

23 MR. SMITH: Thank you.

24 Keystone.

25 MR. TAYLOR: I'd renew all of my prior

1 objections, supplement those prior objections by  
2 including the -- her commentary on the Iowa DENR survey,  
3 her Carol Moyer interview if it's not clear already, the  
4 water treatment plant managers' interviews.

5 And I'd also make an objection to those exhibits  
6 that were included in the PowerPoint that were not  
7 previously produced and make a motion to strike based on  
8 those objections to those portions of her testimony.

9 And if you'd like, I'll prepare a written  
10 statement point by point of the elements of her testimony  
11 that I believe are objectionable.

12 Final comment is she's submitted a list of  
13 exhibits that were initially identified as Cindy 1, 2,  
14 et cetera, and I'm not sure those have been converted to  
15 6001, 2, in the same order they were submitted.

16 MS. MYERS: Those, I cleaned up in my prefiled  
17 submissions, and they're labeled according to how  
18 Mr. Smith requested.

19 MR. TAYLOR: Do we have that list someplace?

20 MS. MYERS: Yep. It's on the disk that I  
21 provided for the court reporter.

22 MR. TAYLOR: When did you do that?

23 MS. MYERS: I did it Friday before the deadline  
24 or whenever that deadline was.

25 MR. TAYLOR: All right. So I'll get those from

1 the court reporter. And with the leave of the  
2 Commission, I'll submit my objections to those exhibits  
3 in writing rather than take 20 minutes to go through them  
4 right now.

5 Is that all right?

6 MR. SMITH: I think so.

7 Yes, ma'am?

8 MS. MYERS: May I say an objection to what  
9 Mr. Taylor said?

10 MR. SMITH: Sure.

11 MS. MYERS: I believe my information is  
12 important for the people of South Dakota, and that's what  
13 we're here for are the people of South Dakota. And I  
14 feel my information is very relevant for them, and I  
15 don't believe any of the information should be struck.

16 MR. SMITH: Okay. And now my understanding then  
17 on the -- in terms of the objection, are you proposing to  
18 submit a written objection that then we would take action  
19 on?

20 MR. TAYLOR: I can do that, or I can do it right  
21 now. Whichever way you want it done.

22 MR. SMITH: I kind of like the writing because  
23 then it's got precision to it. Is that acceptable?

24 MR. TAYLOR: Yes. That's fine with me. I'd  
25 just say the majority of my objections are -- there's

1     like 30 some news articles and so on, and it's all  
2     hearsay. And then there are other odds and ends.

3             MS. MYERS: I believe we need to pull up my  
4     exhibits that I filed so Mr. Taylor can view those.

5             MR. SMITH: Well, I think what we'll do is allow  
6     him to do that out of here and not waste time, and he can  
7     do that in writing. And then he's treating it -- he's  
8     made it as a motion to strike. And so that will be done  
9     after the fact. If the Commission deems it justifiable.  
10    Okay?

11            MS. MYERS: Can I submit my PowerPoint and all  
12    of my prefiled exhibits as evidence?

13            MR. SMITH: You can offer them, yes.

14            MS. MYERS: Yes. I'd like to offer them as  
15    evidence. And also the Iowa Natural Resources Survey on  
16    PVC pipe too. That's the only one that's not included in  
17    my prefiled.

18            MR. SMITH: Okay. They've been offered. Now  
19    I'm not going to rule on that yet because Mr. Taylor's  
20    going to make a submission in writing so we don't have to  
21    take a lot of time here. And then I will take action on  
22    that after that's been done and I've had a chance to  
23    review it and the Commissioners have.

24            Ms. Craven.

25            MS. CRAVEN: Thank you very much, Mr. Smith.

1 Sorry I'm irritating to you. I can tell that was  
2 irritating by the way you sighed.

3 MR. SMITH: Sorry.

4 MS. CRAVEN: Mr. Taylor had an opportunity to  
5 file a Motion in Limine prior to this hearing if he did  
6 not like Ms. Smith's [sic] prefiled testimony. This goes  
7 to Condition 2 regarding the Safe Drinking Water Act,  
8 which is something that needs to be complied with.

9 CHAIRMAN NELSON: Okay. Let's move on.

10 MR. SMITH: Okay. Thank you.

11 Do you have -- do you have cross-examination,  
12 TransCanada?

13 MR. TAYLOR: No cross.

14 MR. SMITH: Okay. Intervenors,  
15 cross-examination? I'll go in order.

16 Mr. Clark.

17 MR. CLARK: Cheyenne River Sioux Tribe has no  
18 questions for this witness.

19 MR. SMITH: Okay. Mr. Rappold is not here.

20 Mr. Capossela.

21 MR. CAPOSSELA: Thank you, Mr. Smith. No  
22 questions.

23 MR. SMITH: Okay. Ms. Real Bird or Ms. Yankton.

24 MS. REAL BIRD: The Yankton Sioux Tribe has no  
25 cross.

1 MR. SMITH: Okay. Mr. Blackburn. He's not  
2 here.

3 Okay. Mr. Ellison. Or Mr. Martinez.

4 MR. MARTINEZ: We have no cross-examination,  
5 Mr. Smith.

6 MR. SMITH: Ms. Craven.

7 MS. CRAVEN: Thank you. Kimberly Craven for the  
8 Indigenous Environmental Network.

9 CROSS-EXAMINATION

10 BY MS. CRAVEN:

11 Q. Ms. Myers, as a nurse could you please tell us what  
12 happens to the human body when it ingests or comes into  
13 contact with benzene?

14 MR. TAYLOR: Objection. Beyond the scope of  
15 direct.

16 MS. CRAVEN: Her entire testimony was about  
17 benzene.

18 MR. SMITH: I'm overruling that. I mean, in a  
19 sense it's almost been asked and answered, I think, but  
20 go ahead and answer it.

21 A. The benzene fumes are the most concerning with an  
22 initial spill because of the benzene's high  
23 concentration. And that actually can result in death.

24 And I know down at Mayfair, Arkansas there were a  
25 lot of respiratory problems. Like children with asthma

1 it exacerbated their symptoms.

2 And drinking or eating benzene contaminated water or  
3 benzene contaminated foods has lots of symptoms. And it  
4 depends on the concentration of the benzene.

5 MR. SMITH: Thank you.

6 Any further?

7 MS. CRAVEN: That's all. Thank you.

8 MR. SMITH: Mr. Gough?

9 MR. GOUGH: No questions.

10 MR. SMITH: Mr. Harter.

11 MR. HARTER: No questions.

12 MR. SMITH: Ms. Lone Eagle.

13 MS. LONE EAGLE: No questions.

14 MR. SMITH: Mr. Seamans.

15 MR. SEAMANS: No questions.

16 MR. SMITH: Ms. Smith.

17 MS. SMITH: I have no questions.

18 MR. SMITH: I was just going to see if any of  
19 the others were here, but I didn't think so.

20 Okay. Mr. Tanderup, any questions?

21 MR. TANDERUP: Thank you. No questions.

22 MR. SMITH: Oh, pardon me.

23 MR. TANDERUP: Thank you. No questions.

24 MR. SMITH: Mr. Rappold, I'm sorry. Did you  
25 have any cross-examination? You were gone when --



1 MR. RAPPOLD: Thank you. No, sir.

2 MR. SMITH: Thank you. I think that's all  
3 intervenors. Unless I missed somebody in the room.

4 Staff, any questions?

5 MR. CREMER: Thank you. Staff has no questions.

6 MR. SMITH: Okay. I think you may step down  
7 then, Ms. Myers.

8 THE WITNESS: Thank you.

9 COMMISSIONER HANSON: I would have a statement  
10 too, if I may. Not a question. But I just want to  
11 assure you, you're obviously extremely concerned about  
12 water degradation and challenges that could arrive from  
13 something of this nature, and I want to ensure you that  
14 the Commission is intimately aware of those challenges  
15 and we want to be absolutely certain that we protect the  
16 water supply.

17 I was responsible for the Sioux Falls Water  
18 Supply for seven years, the day-to-day operations of the  
19 water treatment plant. And I am the primary founder of  
20 the Lewis & Clark Rural Water Supply System. I was its  
21 first President and Chairman of the Board, and so I'm  
22 very concerned as well as this entire Commission is. So  
23 I want you to be assured of that.

24 MS. MYERS: Thank you. And I appreciate your  
25 concern for the water.

1 MR. SMITH: You may step down then.

2 Mr. Capossela, would you want to call your time  
3 certain witness right away? Is it one or two of them?

4 MR. CAPOSSELA: It's one, but we're ready to  
5 move ahead.

6 MR. SMITH: Okay. We'll give her a second here.

7 MR. CAPOSSELA: Thank you, Mr. Smith,  
8 Mr. Chairman.

9 MR. SMITH: I think you can proceed now.

10 MR. CAPOSSELA: Thank you, Mr. Smith. The  
11 Standing Rock Sioux Tribe calls Dr. Kevin Cahill as a  
12 rebuttal witness.

13 (The oath is administered by the court reporter.)

14 DIRECT EXAMINATION

15 BY MR. CAPOSSELA:

16 Q. Would you state your name and occupation for the  
17 record.

18 A. My name is Kevin Eugene Cahill, and I'm an economist  
19 with ECONorthwest.

20 Q. Would you describe the professional services  
21 provided by ECONorthwest.

22 A. Sure. So ECONorthwest is an economics consulting  
23 firm headquartered in Portland, Oregon. And I think  
24 there are five areas in which the firm practices. But  
25 basically they can be divided into two parts.

1           So one part is public policy, and that part deals  
2       with all kinds of public policy issues, labor economics  
3       and health economics. And the second part of the firm  
4       deals with litigation issues, anything involving a court  
5       proceeding or a Public Utilities Commission hearing like  
6       today.

7       Q.    Would you describe your educational and professional  
8       background.

9       A.    Sure. I have a bachelor's degree in economics and  
10      mathematics from Rutgers University. I have a master's  
11      degree in economics from Boston College, and I have a  
12      Ph.D. in economics from Boston College.

13           And I'll also mention I've maintained my  
14      relationship with Boston College in the 15 years since I  
15      have received my Ph.D. So I'm -- currently in addition  
16      to serving with ECONorthwest, I'm a research economist  
17      with the Center on Aging and Work at Boston College.

18      Q.    For whom are you testifying today, Dr. Cahill?

19      A.    For the Standing Rock Sioux Tribe.

20      Q.    Did you submit prefiled Rebuttal Testimony and an  
21      expert report in this proceeding?

22      A.    Yes, I did.

23      Q.    Are you familiar with the document marked  
24      Exhibit 8029 in this proceeding?

25      A.    That number doesn't mean anything to me. Presumably

1 it's my report.

2 Q. Well, let me show you so you can familiarize  
3 yourself with it.

4 A. Okay. Yes. This appears to be my report.

5 Q. This morning can you confirm the contents that  
6 Exhibit 8029 is your Rebuttal Testimony and report?

7 A. Yeah. I just did. I just flipped through the  
8 report, and it is a complete representation of the entire  
9 report.

10 MR. CAPOSSELA: The Standing Rock Sioux Tribe  
11 moves for the introduction of Exhibit 8029.

12 MR. SMITH: Keystone?

13 MR. WHITE: No objection.

14 MR. SMITH: Staff? Or wait a minute. Other  
15 intervenors? Staff?

16 MS. EDWARDS: No objection.

17 MR. SMITH: Okay. It's received.

18 Q. Dr. Cahill, are you aware of kind of the South  
19 Dakota Law under which this proceeding is taking place?

20 A. Yes. I'm generally aware, yes.

21 Q. Are you familiar with the Amended Conditions to the  
22 Permit -- to the South Dakota Permit for the Keystone XL  
23 Pipeline?

24 A. Yes, I am generally familiar with the Permit  
25 Conditions.

1 Q. Are you familiar with the prefiled testimony of  
2 Brian Walsh on behalf of the Staff of the Public  
3 Utilities Commission?

4 A. Yes, I am.

5 Q. And which Amended Conditions do you believe are  
6 involved with Mr. Walsh's prefiled testimony?

7 A. My understanding is that Mr. Walsh's testimony is  
8 relevant to the Amended Permit Conditions 1 and 3.

9 Q. Did he identify, explicitly identify, Amended  
10 Conditions 1 and 3 in his testimony?

11 A. Not in the testimony I reviewed. I did not see  
12 that.

13 MR. CREMER: And I would just note for the  
14 record that this is all prefiled testimony of Mr. Walsh  
15 that has not actually been presented yet.

16 So I just wanted to make sure that's clear to  
17 everyone, that because the witness is out of order, and I  
18 get that -- but you may want to couch that carefully,  
19 that this is prefiled testimony that has not yet been put  
20 in as an exhibit.

21 Thank you.

22 MR. CAPOSSELA: Thank you.

23 Q. Are you familiar with the Final Supplemental  
24 Environmental Impact Statement prepared by Department of  
25 State on the Keystone XL Pipeline?

1 A. Yes, I am.

2 Q. Would you -- what methodological model was used in  
3 the socioeconomic analysis contained in the FSEIS?

4 A. So in the FSEIS there's a fairly standard packaged  
5 econometric model that's called IMPLAN, and it's stands  
6 for impact of analysis. And that was the model used in  
7 the socioeconomic section of the FSEIS.

8 Q. Would you just briefly explain the IMPLAN model.

9 A. Yeah. So it's an input-output model. It's widely  
10 used for many different purposes. It's very credible.

11 Basically what you do in the IMPLAN model is you  
12 enter a certain number of jobs that might be used to  
13 build something, to build a plant or a pipeline. And the  
14 IMPLAN model then estimates how many direct jobs are  
15 created, indirect jobs, and induced jobs are created. It  
16 also calculates estimated tax benefits from a particular  
17 project.

18 So the whole goal of the IMPLAN model is for someone  
19 to enter this information about what's being built or  
20 produced and instructed and the IMPLAN model will tell  
21 you how many jobs are produced and what the tax benefits  
22 are. That's generally what IMPLAN models are used for.

23 Q. And in your estimation what comments do you have on  
24 the Application of the IMPLAN model in the FSEIS?

25 A. Oh, it's seriously flawed.

1           So the IMPLAN model is wonderful for certain things.  
2       So if you were a city, for example, and you wanted to  
3       recruit an employer to the city, and you wanted to know  
4       what would be the expected benefit of that employer  
5       locating in your city, you would use IMPLAN. You know,  
6       that's what you would use and it's very credible and it's  
7       recognized.

8           What IMPLAN is not good for is for an analysis where  
9       there's some kind of negative side effect. So if you  
10      were looking to recruit an employer, you'd say how many  
11      jobs are produced, and the IMPLAN model would give it to  
12      you.

13          If you're looking for a pipeline, for example,  
14      IMPLAN would tell you how many jobs are produced, but it  
15      won't tell you any negative consequences associated with  
16      the project.

17          It won't tell you how many jobs are lost. It won't  
18      tell you what the costs are, if there's a negative  
19      repercussion of the project. The IMPLAN model just gives  
20      you the benefit of the project, not the net benefit. So  
21      my take on that, you know, the socioeconomic section of  
22      the FSEIS might seem to give you a cost-benefit outcome,  
23      but it gives you a benefit-benefit outcome. It doesn't  
24      tell you anything about the negative side effects.

25          So anything you see in the socioeconomic analysis of

1 the FSEIS is the benefits associated with the Keystone XL  
2 project and nothing to do with the negative consequences.  
3 It is just the benefits.

4 That's my opinion on the socioeconomic analysis.

5 Q. Did it include -- did it calculate the potential  
6 negative economic effect of oil spills and property  
7 values in South Dakota?

8 A. It did not. And I would -- I have this report. I  
9 want to quote the -- the FSEIS here just so it's -- just  
10 so it's clear.

11 Well, maybe I won't be able to find it. The FSEIS  
12 socioeconomic section is not shy about the fact that they  
13 don't calculate costs associated -- the cost associated  
14 with the pipeline. They state it rather explicitly, and  
15 they basically say the negative consequences of the  
16 Keystone XL Pipeline for the socioeconomic analysis is  
17 beyond the scope of the project.

18 And I don't know what that means. Because  
19 presumably the State Department has a healthy budget.  
20 But they are very clear in saying that the socioeconomic  
21 analysis does not take into account the cost of a  
22 pipeline spill.

23 Q. Is that the way that these reports are routinely  
24 prepared and these projects routinely evaluated?

25 A. If I did an analysis like that, I don't think I'd be



1 working at ECONorthwest right now. It is seriously  
2 flawed. You cannot put together a cost-benefit analysis  
3 and simply ignore the cost. Not as a well respected  
4 economist. You just don't do that.

5 Q. Does it properly evaluate potential impacts on the  
6 quality of life in South Dakota?

7 A. It doesn't address any of the quality of life  
8 metrics. I mean, it uses IMPLAN, which is a  
9 straightforward input-output model. So sometimes in  
10 these kinds of analyses -- if ECONorthwest was doing an  
11 analysis, ECONorthwest would look at some costs.

12 One potential cost might be quality of life issues.  
13 So, for example, maybe you'd go to maybe Kalamazoo,  
14 Michigan and ask some people what they think about the  
15 pipeline spill. And you might want to ask people in  
16 South Dakota what they think about a pipeline spill. And  
17 you'd include that in your economic analysis. You  
18 wouldn't just ignore it.

19 Sorry. I'm rambling. The answer is no. They  
20 didn't include quality of life metrics.

21 MR. CREMER: And this is Karen Cremer of Staff.  
22 And I would agree with the witness that he's rambling.  
23 And I don't find this in the prefiled.

24 And were we not restricted to summarizing our  
25 prefiled? I thought that was the direction I heard this

1 morning.

2 MR. SMITH: I think so.

3 MR. CAPOSSELA: And I would refer Ms. Cremer to  
4 pages 16 and 17 of Dr. Cahill's expert report.

5 MR. CREMER: You know, that could be. I thought  
6 we were talking Brian Walsh at one point, and so I wasn't  
7 tracking.

8 MR. SMITH: Are you still making your objection?

9 MR. CREMER: I am. Thank you.

10 MR. WHITE: In that case, I might. Because I  
11 thought the purpose here was not to add significant  
12 additional details to prefiled testimony, and if it's in  
13 the prefiled testimony, we don't need to hear it live.  
14 The same rulings we just heard for Ms. Myers.

15 MR. SMITH: At least not on and on and on. Very  
16 brief.

17 MR. CAPOSSELA: Thank you, Mr. Smith. I can  
18 assure the Commission we're not going to go on and on.  
19 We are almost through, in fact, but we're not and I would  
20 appreciate the opportunity to proceed.

21 Sometimes we spend more time arguing over the  
22 testimony than it would take to do the testimony.

23 MR. SMITH: Thank you. Yeah. Proceed.

24 Q. Is there an -- when there is an -- say a tar sands  
25 crude pipeline running through a property, running

1 through a community, is there an economic factor to the  
2 risk posed by that pipeline?

3 A. There is a way to measure it from an economic  
4 standpoint, yes.

5 Q. Has that been conducted for the Keystone XL  
6 Pipeline?

7 A. There has been one report in particular that's  
8 been -- that I've reviewed. It's by a company called  
9 Battelle -- it's from June of 2013 -- which presumably  
10 does that. So it calculates the risks of a spill, and it  
11 calculates the costs associated with the spill.

12 But, oddly enough, in their conclusion statement  
13 they don't mention anything about what the expected cost  
14 is or the expected risk. So there is a way to do it.  
15 There's a way to do it right. But that way the -- the  
16 correct way to do it was not done.

17 Q. Is there significant socioeconomic benefit to the  
18 State of South Dakota upon the construction -- potential  
19 construction of the Keystone XL Pipeline project?

20 A. Without question there will be some benefits to this  
21 project.

22 Q. Is it significant?

23 A. In order to say whether or not it's significant it  
24 needs to be measured relative to the cost.

25 Q. Has it been measured relative to the cost?

1 A. Absolutely not.

2 Q. Will there be any socioeconomic benefit to the  
3 Standing Rock Sioux Tribe upon the potential construction  
4 of the Keystone XL Pipeline?

5 A. Possibly.

6 Q. Would that potential benefit be significant?

7 A. It needs to be measured relevant to the cost, and  
8 that has not been done.

9 MR. CAPOSSELA: I have no further questions for  
10 Dr. Cahill.

11 MR. SMITH: Okay. Keystone, cross-examination?

12 CROSS-EXAMINATION

13 BY MR. WHITE:

14 Q. Good morning, Dr. Cahill.

15 A. Good morning.

16 Q. Jim White from TransCanada Keystone. Just a few  
17 questions.

18 Who prepared the socioeconomic analysis in the  
19 FSEIS?

20 A. Presumably it was done by State Department and the  
21 staff at the State Department.

22 Q. And whose obligation under the National  
23 Environmental Policy Act is it to prepare the  
24 socioeconomic analysis?

25 A. Well, my understanding from NEPA is that one needs

1 to be prepared. I don't know the legal issues about who  
2 is responsible for actually preparing it.

3 Q. Okay. And is it your contention that TransCanada  
4 Keystone, the Applicant here, is not or cannot comply  
5 with any of the Conditions in the Commission's June 10  
6 Final Amended Permit Order in this docket -- or sorry.  
7 In HP09-001?

8 A. My testimony is regarding Mr. Walsh's -- I'm  
9 rebutting Mr. Walsh who comments on Amended Conditions 1  
10 and 3, and I think he's incorrect in his comments.

11 Q. So I'll ask you the question again.

12 Is it your contention that Keystone is not in  
13 compliance or cannot comply with any of the Conditions of  
14 the June 2010 Order?

15 MR. CAPOSSELA: Objection. It's been asked and  
16 answered.

17 MR. WHITE: Actually it was not answered.

18 MR. CAPOSSELA: He might not like the answer,  
19 but it has been asked and answered.

20 MR. SMITH: Overruled.

21 A. I will say I'm not an attorney. Thank goodness.  
22 I'm an economist. And I'm commenting on Mr. Walsh's  
23 testimony. And Mr. Walsh's testimony, it's my expert  
24 opinion that it's incorrect.

25 Q. Is it your opinion that TransCanada Keystone is not

1 or cannot comply with Condition 1 or 3 of the June 10  
2 Order?

3 MR. CAPOSSELA: Objection. I don't know how  
4 many times and how many different ways he's going to try  
5 to ask the same question.

6 MR. WHITE: It was a pretty direct question  
7 about whether Keystone is compliant. It's not about  
8 Mr. Walsh.

9 MR. SMITH: Are you able to answer that yes or  
10 no? His question?

11 A. So I have in front of me the Amended Permit  
12 Conditions 1 and 3. My understanding, not an attorney,  
13 as an economist, is that -- one is that the Keystone  
14 Pipeline has to comply with all federal laws. That's my  
15 interpretation of it.

16 And my interpretation of No. 3 is that Keystone  
17 Pipeline has to follow the guidelines in the FSEIS.

18 I think based on Mr. Walsh's testimony about risk  
19 being minimized -- Mr. Walsh says risks to South Dakota's  
20 natural resources will be minimized. That's the quote  
21 from Mr. Walsh.

22 What I'm saying is I think based on that I think  
23 that's incorrect. And I think that, therefore, there are  
24 issues with Amended Conditions 1 and 3.

25 Q. And do those issues relate to TransCanada Keystone's

1 ability to comply with those Conditions?

2 A. I'm not sure I can answer that. What I will say is  
3 the Keystone Pipeline as proposed doesn't appear to --  
4 needs to follow -- according to Amended Condition 1 needs  
5 to follow applicable laws and regulations. And 3 says it  
6 needs to comply with the FSEIS.

7 And I think Mr. Walsh's testimony is incorrect with  
8 respect to both. That's my position.

9 MR. WHITE: Thank you. No further questions.

10 MR. SMITH: Intervenors? Any cross-examination?

11 Ms. Real Bird?

12 MS. REAL BIRD: I have a question.

13 CROSS-EXAMINATION

14 BY MS. REAL BIRD:

15 Q. Good morning, Dr. Cahill. My name is Thomasina Real  
16 Bird. I'm an attorney for the Yankton Sioux Tribe. I  
17 have one question or comment to follow up about the  
18 statement you made about the quality of life metrics that  
19 were reviewed in the analysis.

20 You mentioned that some of the metrics were not  
21 included or missing. In your opinion, what are the  
22 quality of life metrics that should be included in any  
23 analysis?

24 MR. WHITE: Objection on the basis of the  
25 friendly cross rule that was discussed this morning.

1 These two parties are obviously aligned.

2 MS. REAL BIRD: Mr. Smith, I just came up with a  
3 question in listening to his testimony.

4 MR. SMITH: Right. Well, the Commission -- we  
5 did not -- we did not impose a friendly cross rule. I  
6 think what we did impose was a no repetitive rule.

7 Okay. So it's overruled. Please proceed.

8 A. So I'll introduce that by saying what Mr. Walsh said  
9 is the risks to South Dakota's natural resources will be  
10 minimized. That was his statement.

11 There's nothing in the FSEIS in the socioeconomic  
12 analysis that justifies that. Because it's incorrect  
13 because that metric has not been presented. It's absent.

14 So your question is what quality of life metrics  
15 would be included is an excellent question because we  
16 know what the benefits are. Those benefits are outlined  
17 in the socioeconomic analysis. We don't know what the  
18 costs are. And the costs for quality of life measures  
19 are -- in many times in economics are the hardest to get.  
20 And the reason is because they're hard to quantify.

21 And some economists would just comment about it.  
22 Others would actually conduct a survey. And so you would  
23 ask people certain questions. You might ask them what is  
24 your willingness to pay to avoid having a certain thing  
25 in front of you, such as a pipeline?



1           What is your willingness -- or what is the impact on  
2 your life, and what do you think it might be on your  
3 property values? You know, things that would attempt to  
4 quantify what the impact on the quality of life is.

5           And then you would also do an analysis of jobs, and  
6 you'd say, okay, we know what the jobs gained are. Now  
7 what might the jobs lost be, and you'd quantify that.  
8 And you'd add them all up, and that would give you the  
9 potential costs of the pipeline.

10          And, as I said, there's also -- from what I  
11 understand in the previous testimony, there's some health  
12 issues at play here. That would also be a cost.

13          So I hope that answers your question. That's how  
14 you would address quality of life. It's one of three.  
15 You look at jobs, quality of life, health impacts and  
16 you'd add them up and that would be the cost and then  
17 you'd weigh them against the benefit and see if it's a  
18 good idea.

19 Q.   Thank you. And just one more question related to  
20 questioning from TransCanada.

21          In your opinion, has TransCanada proved that it can  
22 comply with Condition 1 and 3 from what you've reviewed?

23 A.   There's not enough information available. It  
24 doesn't -- it's hard to comment on something that doesn't  
25 exist. It doesn't exist. It's incomplete, and,

1 therefore, Mr. Walsh's testimony is incorrect.

2 MS. REAL BIRD: Thank you.

3 No further questions.

4 MR. SMITH: Additional Intervenor questions?

5 MR. RAPPOLD: One.

6 MR. SMITH: Mr. Rappold.

7 MR. RAPPOLD: Thank you, Mr. Smith.

8 CROSS-EXAMINATION

9 BY MR. RAPPOLD:

10 Q. Dr. Cahill, Matt Rappold on behalf of Rosebud Sioux  
11 Tribe.

12 Mr. Capossela asked you a question regarding  
13 socioeconomic benefits that you may have observed for the  
14 Standing Rock Sioux Tribe that you may have encountered  
15 when you reviewed your materials and prepared.

16 I'd just like to ask, did you notice anything in the  
17 materials that you reviewed or prepared that would  
18 indicate any consideration was given to the Rosebud Sioux  
19 Tribe as it related to socioeconomic considerations?

20 A. The analysis that I reviewed looked at jobs in  
21 South Dakota generally. And actually it was a pretty  
22 poor estimate of that.

23 But to answer your question, I did not see anything  
24 with respect to benefits to that Tribe.

25 MR. RAPPOLD: Thank you. No further questions.

1 MR. SMITH: Any other Intervenor questions?

2 Mr. Harter.

3 CROSS-EXAMINATION

4 BY MR. HARTER:

5 Q. Doctor, with all the reviews you've done on  
6 different I'm going to say pipeline projects, do these  
7 pipelines have a negative effect on asset value of a  
8 person's property?

9 A. I'll state for the record I would not consider  
10 myself an expert on pipelines or the economics of  
11 pipelines. I'm a microeconomist, and I've applied my  
12 skills to many things like the F-35A fighter jet, for  
13 example.

14 It seems -- I think you don't need a Ph.D. in  
15 economics to understand that having a pipeline near a  
16 property might reduce its value. And the socioeconomic  
17 section does comment on it. Oddly enough, it says  
18 property values might even go up. So I don't see that,  
19 why that would happen.

20 The analysis that I reviewed did mention in passing  
21 that property values may increase or decrease as a result  
22 of the pipeline. My opinion is it seems like common  
23 sense that property values would go down.

24 MR. HARTER: Just one follow-up question to the  
25 answer.

1 MR. SMITH: Go ahead.

2 Q. So if the report says the value goes up, would you  
3 think that that's probably only because of the value of  
4 the pipeline?

5 A. The report just -- I'll restrict my answer to what  
6 the report says. The report says there's a possibility  
7 for property values to go up or down, and we don't know  
8 what it is so we're not -- the socioeconomic analysis  
9 says we don't know what it is so we'll just stay quiet.

10 MR. HARTER: Thank you.

11 MR. SMITH: Mr. Gough, did you have a question?

12 CROSS-EXAMINATION

13 BY MR. GOUGH:

14 Q. Bob Gough, InterTribal Council on Utility Policy.  
15 Good morning, sir.

16 A. Good morning.

17 Q. Quick question.

18 Your testimony with regard to the Standing Rock  
19 Sioux Tribe in terms of benefits, you indicated possibly.  
20 Would you elaborate on that, please.

21 A. Yeah. The benefits in the socioeconomic analysis is  
22 almost entirely shifted to jobs. There is income tax or  
23 just tax benefits. Presumably if someone from the Tribe  
24 got one of those estimated four jobs for South Dakota  
25 from operations, which is the estimate that I get --

1     there's 35 permanent jobs, 15 temporary jobs for the  
2     entire country. You look at South Dakota's ratio. Based  
3     on the ratio in the report, you get four. So maybe  
4     someone from the Tribe would get one of those four jobs  
5     in South Dakota.

6     Q.     That is the possible benefit.

7             Was it your testimony that that should be weighed  
8     against possible risk?

9     A.     As an objective economist, you need to take into  
10    account the benefits and the costs. And what I'm saying  
11    is that might be a benefit. And so that was my only  
12    statement, that there may be a benefit to the Tribe.  
13    Maybe they'll get one of those four jobs or two of those  
14    four jobs. You know, you need to look at the total  
15    things as an objective economist.

16    Q.     Did you see any extension of risk to the Standing  
17    Rock Sioux Tribe that might offset those two job  
18    benefits?

19    A.     There's -- the analysis of risk in the socioeconomic  
20    analysis is absent. So the answer's no. Not from a  
21    socioeconomic standpoint.

22    Q.     Thank you, sir. And with regard to the tax  
23    benefits, do you see those accruing to the reservation?

24    A.     I haven't done that analysis so I don't know.

25             MR. GOUGH: Thank you, sir.

1 MR. SMITH: Any other Intervenor  
2 cross-examination?

3 Seeing none, Staff.

4 MR. CREMER: Staff does not have any questions.  
5 Thank you.

6 MR. SMITH: Okay. Any -- do you have any  
7 redirect?

8 MR. CAPOSSELA: No. Thank you, Mr. Smith.

9 MR. SMITH: I think you may step down.

10 THE WITNESS: Great. Thank you.

11 MR. SMITH: Should we do Ms. Young now,  
12 Mr. Capossela? Because she had a time certain.

13 Are you willing to take her now?

14 MR. CAPOSSELA: We are prepared to move forward,  
15 but we do not have a time certain for any other  
16 witnesses.

17 MR. SMITH: Oh, you don't?

18 MR. CAPOSSELA: No. Just Dr. Cahill because he  
19 had to travel from out of state. And he was included in  
20 a motion along with a Staff witness for today.

21 MR. SMITH: Okay.

22 MR. CAPOSSELA: No. It's just Dr. Cahill.

23 MR. SMITH: Okay. Just Dr. Cahill.

24 MR. CAPOSSELA: So we're prepared to move kind  
25 of in the ordinary order otherwise.

1 MR. SMITH: Okay. Do we want to do -- next up  
2 would be then --

3 CHAIRMAN NELSON: Is Ms. Young prepared to go?

4 MR. CAPOSSELA: Mr. Chairman, Ms. Young is  
5 prepared to go. Our -- another witness is not prepared  
6 to go today but will be prepared to go tomorrow. But  
7 Ms. Young is prepared right now if that is where we are  
8 at in the process.

9 CHAIRMAN NELSON: And which other witness are  
10 you referring to?

11 MR. CAPOSSELA: Doug Crow Ghost, the water  
12 resource director from the Tribe. There has been some  
13 discussion of other individuals that there are ceremonial  
14 functions that have been taking place, and so Crow Ghost  
15 will be here tomorrow and is not here today.

16 But Ms. Young is here, and we're prepared to  
17 proceed in that respect.

18 CHAIRMAN NELSON: I think that would be great.

19 MR. CAPOSSELA: The Standing Rock Sioux Tribe  
20 calls Ms. Phyllis Young as our direct testimonial  
21 witness.

22 (The oath is administered by the court reporter.)

23 DIRECT EXAMINATION

24 BY MR. CAPOSSELA:

25 Q. Before we begin, Ms. Young, let me thank you for

1 being here this morning.

2 Would you state your name and address for the  
3 record.

4 A. My name is Phyllis Young.

5 Q. What is your occupation?

6 A. I'm a Tribal Council at large for the Standing Rock  
7 Tribal Nation.

8 Q. And as a -- would you just summarize your duties as  
9 a council person at large? And include committees and  
10 projects as a council person that you're involved with,  
11 if you would.

12 A. I'm responsible for the Health, Education, and  
13 Welfare Committee of the Standing Rock Tribe. I'm also  
14 the water team member for the Tribe, and for the past  
15 four years I've sat in negotiations with the State of  
16 South Dakota and the State of North Dakota to move on  
17 water participation, development, and it's a very  
18 important integral part of our development on water.

19 Q. Would you elaborate on the significance of water to  
20 the Tribe?

21 You mentioned it's very important. Would you  
22 briefly elaborate on that?

23 A. Mni Wiconi, water is life. In the traditional  
24 perspective the Lakotas believe that the power of  
25 water -- the power of life comes from water.



1 All living things are born in water. And our  
2 traditional says that the power of water comes from the  
3 stars and that those stars have a bearing on what happens  
4 in our universe.

5 So water -- without water there is no life. And  
6 that is the traditional perspective of Lakota, why --  
7 Mni Wiconi means water is life, and that is the most  
8 important and critical element that we discuss in all of  
9 these transactions.

10 Q. Did you submit prefiled testimony in this  
11 proceeding, written prefiled testimony?

12 A. Yes, I did.

13 Q. Can you confirm your prefiled written testimony for  
14 the Utilities Commission this morning?

15 A. Yes.

16 MR. CAPOSSELA: Standing Rock Sioux Tribe moves  
17 for the introduction of the exhibit that's marked 8001.

18 MR. SMITH: Is there any objection?

19 MR. TAYLOR: Much as I did with the previous  
20 witness that I examined, rather than elaborate the  
21 objections line by line to her testimony, I'll make this  
22 general objection, and it can be ruled on later if you'd  
23 like.

24 To the extent that her testimony addresses  
25 treaty rights, usufructuary issues, aboriginal land

1 rights, to the extent that it addresses the treaties, the  
2 scope of the Great Sioux Reservation, the Black Hills  
3 Decision and so forth, the Commission has already ruled  
4 that those issues are not to be taken into account in  
5 these proceedings, and so I would move to strike that  
6 portion of her testimony.

7 To the extent it addresses the U.N. statement of  
8 policy with respect to aboriginal people, hearsay,  
9 unsworn out-of-court statement of James Anaya, the  
10 purported author, move to strike it on that basis.

11 And eventually I guess we'll get to the offer of  
12 the exhibits that are called out in her testimony, and  
13 I'll address those then.

14 MR. SMITH: I will grant the motion or sustain  
15 the objection. Either way you want to put it. And my  
16 understanding with the exception of those items you  
17 mentioned, that the remainder of her exhibit could be  
18 admitted.

19 MR. TAYLOR: The remainder of her testimony.

20 MR. SMITH: Uh-huh.

21 MR. CAPOSSELA: Mr. Smith, there was nothing in  
22 Ms. Young's testimony regarding aboriginal usufructuary  
23 rights so there's nothing to strike. Aboriginal rights  
24 are not equated with treaty rights. It's the difference  
25 between utilities law and automobile accident law.

1 They're different things.

2 And so the objection is totally superfluous.  
3 Aboriginal rights and treaty rights are two different  
4 things, and so the objection really results in the  
5 striking of no prefiled testimony. And certainly up to  
6 this point Ms. Young has not testified with respect to  
7 aboriginal rights or usufructuary rights, and we continue  
8 to spend more time arguing over testimony than it would  
9 take to conduct the testimony.

10 MR. SMITH: Treaty rights --

11 MR. CAPOSSELA: The Commission's Order granting  
12 the motion to exclude consideration of aboriginal rights  
13 and usufructuary rights did not preclude consideration of  
14 treaty rights. It's not something we're going to spend a  
15 great deal time on, and I would appreciate the  
16 opportunity to move forward with Ms. Young's testimony,  
17 particularly in light of the fact that her participation  
18 in the proceeding this morning was a difficult thing for  
19 her. For reasons we don't need to get into.

20 MR. DORR: The actual Order talked -- it  
21 precludes aboriginal title discussion. It doesn't say  
22 aboriginal rights. It doesn't say treaty rights. It  
23 says aboriginal title and usufructuary rights. Those are  
24 very different terms, and the terminology that you --  
25 that was used on the Order does not preclude treaty

1 discussion. That's a totally different term.

2 Thank you.

3 MR. SMITH: Okay. As of this time then, we will  
4 not sustain the objection. If you wish to produce  
5 something in writing that defines more explicitly --  
6 because we did take a look at our --

7 MR. DORR: Mr. Smith, I can't hear you back  
8 here.

9 MR. SMITH: Pardon me. I must not have had my  
10 mic. in front of my mouth. Whenever I turn my head over  
11 there it goes away.

12 We're not going to sustain the objection at this  
13 time because we took a look at the Order, and it talks  
14 about, again, aboriginal and usufructuary. And the  
15 testimony seems to at least on the surface -- yeah. Some  
16 of it seems to talk about treaty rights, which is not  
17 really the same thing.

18 So if you wish to produce something in writing,  
19 do so, and we'll take a look at it.

20 MR. TAYLOR: Okay. I'll prepare a statement.

21 MR. SMITH: Okay.

22 MR. TAYLOR: And submit it.

23 MR. SMITH: Okay.

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

25 Q. Ms. Young, did you grow up on the Standing Rock

1 Reservation?

2 A. I did.

3 Q. Would you briefly tell us a little bit about your  
4 childhood at Standing Rock?

5 A. I lived on the shore of the Missouri River.  
6 Standing Rock encompasses 107 miles of shoreline on the  
7 Missouri River. I lived in the riverbed. I lived there  
8 until I was 10 years old.

9 I was subject to the removal of our home from the  
10 building of the Oahe Dam. And so I know homelessness and  
11 hunger in America, and I survived it. It's a character  
12 builder.

13 And I still have great respect for the processes of  
14 democracy. But that's my life. I sacrificed my home and  
15 our garden, our self-sustenance and the creation of a  
16 state of welfare and dependency that I could never  
17 accept. I grew up there subject to all the conditions of  
18 colonialism. I understand people have to sacrifice for  
19 projects of development. I lived it.

20 So after I was 10 years old I went to boarding  
21 school because I had no home. I had to depend on the  
22 good Christian people in this country for a boarding  
23 school. I had to depend on the good Americans that had  
24 great compassion for me as an individual.

25 I am a subject of relocation, dislocation at the

1 highest levels, rehabilitation, but we survived. We  
2 occupied the Missouri River before the development, and  
3 we still live there today. And there's nothing that can  
4 take that away from us.

5 So I've given, as have my grandfathers and my -- I  
6 was raised on a VA pension. My grandfather was a code  
7 talker in the first World War. All of my uncles, four of  
8 them, my father, my brother served in the military. So  
9 I'm very familiar with the battles in the first World  
10 War, in the Philippines, at Normandy.

11 I had an uncle who was very famous in the movie and  
12 in books about the struggle at Normandy and a hero at  
13 Korea and Vietnam. I was raised by men who earned Purple  
14 Hearts fighting for America. And I feel like I lived my  
15 life sacrificing, giving up my home, my land, my  
16 sustenance, my survival in the national interest.

17 So I understand development. I understand it fully.  
18 I lived it. I survived it. And I still live on the  
19 shores of that Missouri River. And I have five water  
20 rights. One of them is my drinking water. I am not only  
21 a Lakota patriot to my own people -- I learned that when  
22 I was 40 years old.

23 Prior to that I was a good American. I was a good  
24 American. I was raised that way. And I am a spoiled  
25 American today because of my childhood. I like clean

1 drinking water. And I like the American way, anyway you  
2 can have it. I was raised that way.

3 And so I'm a dual citizen of this country. I have  
4 given all that I can, but to give up my water, to have it  
5 taken from me is genocide. And believe me, I want to say  
6 this to the Commissioners, thank you from the bottom of  
7 my heart for this exercise of democracy.

8 I continue to live in awe of the Democratic process  
9 in this country. I'm a spoiled person in terms of the  
10 diplomacy that has been afforded Standing Rock by the  
11 Congressional people in the State of North Dakota. To be  
12 accorded a voice, be the standards what they may be,  
13 lower or higher, or not recognizing us or silencing us or  
14 having protocol.

15 I'm an elder of the Standing Rock Tribal Nation.  
16 And I have earned my way. Believe me, I have been  
17 escorted by security out of offices in the United  
18 Nations.

19 We have rights that have been guaranteed by  
20 Article VI of the Constitution of the United States. I  
21 grew up respecting this Constitution and understanding  
22 the treaties that are the supreme law of the land that  
23 have set aside the home lands for us and the Winters  
24 Doctrine that provides for clean drinking water and  
25 enough water for Indian people.

1 I'm one of 26 Tribal Nations on the Missouri River.  
2 In the English way and on the documents created by the  
3 United States we have prior right. We have -- at  
4 Standing Rock we have never waived our right. We have  
5 never given it up. And no one has -- can introduce  
6 wrongful conduct for unilateral taking. No one.

7 And under the treaty, 15 Statue 635 we are not  
8 subject to eminent domain. And under the treaty we are  
9 also bound to protect the settlers. So we are bound to  
10 protect the farmers and ranchers, the Cowboys and Indians  
11 Alliance. We are committed to that so that no one has to  
12 suffer anymore from the major development that has  
13 occurred.

14 Q. Ms. Young, let me comment -- let me ask about that,  
15 about the effects of the development.

16 You testified that your home was destroyed by the  
17 Oahe Dam. Now the Oahe Dam is far away from the Standing  
18 Rock Reservation. It's at least 100 miles away.

19 Is it your testimony today that an energy project  
20 100 or hundreds of miles away from the reservation can  
21 actually affect the land and water on the reservation?

22 MR. TAYLOR: I'd like to interpose an objection,  
23 please. Far beyond the scope of any issue before this  
24 Commission in these proceedings. It's about as leading a  
25 question as could be proposed. And it has no relevancy



1 to any issue that we're here to discuss.

2 With all due respect to Ms. Young.

3 CHAIRMAN NELSON: Sustained.

4 MR. CAPOSSELA: I would ask that the witness be  
5 permitted to answer the question. The impacts of the  
6 Keystone Pipeline as it relates to the Amended Conditions  
7 I think is the ultimate issue in the proceeding. And if  
8 there's an impact of a pipeline on a reservation that  
9 might not be immediately adjacent to the pipeline, I  
10 think that's -- that's relevant evidence.

11 That's good testimony for the Commission to  
12 hear. Especially in light of the fact that Mr. Goulet,  
13 for example, testified that the pipeline -- and no one  
14 objected to his testimony, that the pipeline avoids the  
15 Indian reservations; it doesn't go through any federal  
16 lands or tribal lands.

17 Well, that's TransCanada's testimony, and that  
18 was relevant and fair testimony with respect to the  
19 impacts on the Tribes.

20 Now we're establishing the potential impacts  
21 even though it may not run across tribal lands, and I  
22 think that's fair game and I would --

23 COMMISSIONER HANSON: It's in her prefiled.  
24 She's answered it in her prefiled testimony.

25 MR. SMITH: And her statement that she's made I

1 think she's already covered that. The way I understood  
2 is her concern is to the water, the waters, which we all  
3 know Standing Rock is -- we know where it is.

4 MR. CAPOSSELA: Thank you. Then I'll move on.  
5 But I'll ask a related question and see where we can get.

6 Q. Ms. Young, TransCanada wrote to the Standing Rock  
7 Sioux Tribe under oath, "Given the distance between the  
8 Standing Rock Reservation boundary and the proposed  
9 route, it seems unlikely that subsistence hunting and  
10 fishing by tribal members would be influenced, and it  
11 seems unlikely that subsistence plant gathering by the  
12 tribal members would be influenced."

13 Do you have any comment on that statement by  
14 TransCanada?

15 MR. TAYLOR: I'd object to that. This is not a  
16 factual inquiry. This is a policy statement on the part  
17 of counsel that he's soliciting from this witness. It is  
18 totally irrelevant to these proceedings.

19 Maybe, with all due respect to Ms. Young who is  
20 a well-known member of the Standing Rock community and  
21 highly respected member of the Native American community  
22 in South Dakota, these are policy issues for discussing  
23 before the Legislature. This is not an issue before this  
24 Commission today.

25 MR. CAPOSSELA: We're attempting to offer

1 evidence on the impacts, the potential impacts, of the  
2 Keystone XL Pipeline on the Standing Rock Sioux Tribe  
3 that when we talk about the requirement that the project  
4 comply with applicable law we're well within the  
5 boundaries of what this proceeding is about. We're well  
6 within the boundaries.

7 MR. TAYLOR: And I would also point out that  
8 Ms. Young filed prefiled testimony in April, and to the  
9 extent that these issues are addressed in her prefiled  
10 testimony, we're covering -- reploting the ground.

11 MR. SMITH: I guess I'm -- I don't understand  
12 the objection really.

13 CHAIRMAN NELSON: Overruled.

14 MR. SMITH: Okay. Overruled, and let's proceed.

15 MR. CAPOSSELA: If I may just so we can move  
16 forward, I'm going to reread the quote. And I appreciate  
17 the need to keep it moving.

18 MR. SMITH: Sure.

19 MR. CAPOSSELA: To keep the proceeding moving.

20 Q. Ms. Young, what TransCanada wrote is "Given the  
21 distance between Standing Rock Reservation boundary and  
22 the proposed route, it seems unlikely that subsistence  
23 hunting and fishing by tribal members would be  
24 influenced, and it seems unlikely that subsistence plant  
25 gathering by tribal members would be influenced."

1           Do you agree with that? Do you have any comment on  
2 that?

3       A. I believe that the influences of development will  
4 impact us regionally in all areas, not just the Game &  
5 Fish. The plant life as well. And the waterways that it  
6 does -- that it will infringe upon already have a heavy  
7 toll as far as the water quality.

8           So we're trying to sustain our systems, natural  
9 systems, riparian and otherwise.

10           MR. CAPOSSELA: The Standing Rock Sioux Tribe  
11 moves that the Commission take judicial notice of the  
12 Fort Laramie Treaty of 1851 under Rule 201 of the Rules  
13 of Procedure governing official documents and documents  
14 that have just a very high level of reliability that they  
15 are what they purport to be.

16           So we ask that the Commission take judicial  
17 notice of the Ft. Laramie Treaty of 1851 that's codified  
18 in 11 Statutory Law 749 and enter that into the record  
19 with judicial notice.

20           MR. SMITH: Any response from TransCanada?

21           MR. TAYLOR: The Commission can take judicial  
22 notice. I obviously can't object to that. But I object  
23 to the relevancy of the Treaty of 1851 with respect to  
24 these proceedings.

25           MR. SMITH: Well, it is a -- we'll take judicial

1 notice. Without -- there's no ruling here as to its  
2 status, I guess, at this point in time. Subsequent  
3 things that have happened. Okay.

4 MR. CAPOSSELA: Thank you. We're not asking for  
5 a ruling on its status. We move to enter it into the  
6 record. It's marked as Exhibit 8002. And we move to  
7 enter it into the record accordingly.

8 MR. SMITH: Okay. Any objection?

9 MR. TAYLOR: Did Mr. Capossela say that he moves  
10 for its submission?

11 MR. SMITH: Yeah. We've already taken judicial.  
12 But he wanted to put a physical copy in on that basis.

13 MR. TAYLOR: The Treaty of 1851 has no relevancy  
14 to any issue before the Commission today. And I object  
15 on that basis.

16 MR. SMITH: Okay. The objection is sustained.  
17 And it is what it is. It's in the laws, and we're taking  
18 judicial notice. But on relevancy grounds we're not  
19 going to admit it.

20 MR. CAPOSSELA: Let me point out, Mr. Smith,  
21 that Mr. Goulet testified on his respect for tribal  
22 rights, and so the door is open.

23 The Standing Rock Sioux Tribe moves for the  
24 Commission to take judicial notice of the Treaty of 1868  
25 that's Codified 15 Statutory Law 635.

1 MR. SMITH: Commissioners -- or TransCanada, any  
2 opinion -- or objection?

3 MR. TAYLOR: You can take judicial notice. I  
4 don't object to that. But I'll say right now that I  
5 again object to the relevancy of the Treaty to the issues  
6 before the Commission.

7 MR. SMITH: Granted. We'll take judicial  
8 notice, again, subject to that implies no legal  
9 conclusion by the Commission as to what effect it may  
10 have on anything here as of this time.

11 MR. CAPOSSELA: I'm going to approach the  
12 witness with the exhibit that's marked Exhibit 8004.

13 Would counsel like me to show it to counsel  
14 prior to showing it to the witness?

15 MR. TAYLOR: No.

16 Q. Ms. Young, I just handed you a document. Would you  
17 describe it?

18 A. It's the map of the 1868 Treaty and the lands  
19 defined in it.

20 Q. Would you just elaborate a little bit about the map?  
21 There's different portions of it in different shades, and  
22 could you just elaborate on that?

23 A. There are territory -- Lakota Nation territories in  
24 a five-state area: Montana, North Dakota, South Dakota,  
25 Wyoming, and Colorado.

1 Q. Was that -- I'm sorry.

2 A. There are 11 reservations within that original  
3 boundary.

4 Q. How come -- why are there 11 reservations within the  
5 boundary of a single treaty map?

6 A. There was an act in 1889 that is called the Chicago  
7 Change where the Commissioners changed the treaty without  
8 the knowledge of anyone, either party or officials in  
9 Washington, D.C.

10 And those laws are still in contention, and those  
11 are at the federal level that we still are contending  
12 that we are not subject to unilateral decisions, whether  
13 they are Federal Court or whether they are Congressional  
14 acts, because we're subject to mutual respect and mutual  
15 participation. And everything that is done has to be by  
16 mutual consent. That has not transpired.

17 However, we have been relegated to the different  
18 reservations that are still subject to federal law that  
19 we have to be consulted as tribal people, tribal nations.

20 We have never been consulted in this process, in  
21 these lands. These are our -- these are reserve  
22 territories, based on that original 1868 Treaty.

23 MR. TAYLOR: I have a motion if she's done with  
24 her answer.

25 MR. SMITH: Pardon me. Yes.

1           MR. TAYLOR: With all due respect to Ms. Young,  
2 I'd move to strike, number one, to her characterization  
3 of the 1889 Act.

4           Number two, I'd move that any testimony that she  
5 has given with respect to so-called treaty rights outside  
6 of the reservation, that is within the Greater Sioux  
7 Reservation, the 1868 Treaty lands, the 1851 Treaty  
8 lands. It's not relevant to any issue before the  
9 Commission with respect to the ability of TransCanada to  
10 comply with the 50 Conditions in the Permit.

11           Second point, government-to-government  
12 discussions are between the United States and the Tribes,  
13 not between TransCanada and the Tribes. All of this  
14 testimony, although interesting, is irrelevant.

15           MR. SMITH: Any response?

16           MR. CAPOSSELA: The requirement that the  
17 Keystone XL project cannot be built unless all applicable  
18 laws are complied with, there are a broad range of laws  
19 that give Tribes consultation rights to -- outside of  
20 their reservation boundaries on account of the treaty.

21           And so it may not get to the most ultimate  
22 issue, penultimate issue of the proceeding, but to say  
23 that it's irrelevant is clearly erroneous because they  
24 have to comply with the law, and the law confers  
25 consultation rights when treaty rights are affected.



1 That's Executive Order 13175. And the government does it  
2 at the federal level and the state level all the time.

3 MR. SMITH: Okay. I guess the issue I kind of  
4 have with that, though, is these are legal issues. These  
5 are not factual issues.

6 MR. DORR: Mr. Smith.

7 MR. SMITH: Yes, sir.

8 MR. DORR: This is Gary Dorr. He's talking  
9 about two different things here. There is a  
10 government-to-government consultation, but that's under  
11 another law. 15 Stat 635 spells out that anybody that  
12 crosses the territory under Article 2 of the treaty must  
13 gain compliance from the Tribes.

14 And that's a different type of consultation that  
15 is required and this witness is speaking to. She's not  
16 talking about the Federal Government to government  
17 consultation. There are two distinct differences.

18 This is relevant to what she's talking about,  
19 and it's relevant to the proceedings.

20 Thank you.

21 MR. TAYLOR: The legal issues, Mr. Smith, with  
22 respect to government-to-government relationships, with  
23 respect to TransCanada's participation in those  
24 government-to-government relationships are properly a  
25 matter for posthearing briefing if the issue is going to

1 be addressed.

2 The point I make is is that her testimony with  
3 respect to that is irrelevant to the issues that are now  
4 before the Commission. If there is some contention to be  
5 made by the Tribes that TransCanada has an obligation to  
6 obtain the consent of the Tribes before it constructs its  
7 pipeline, number one, that was not raised in the  
8 2009-2010 Permit hearings, and to some extent it is an  
9 effort to relitigate that subject.

10 Number two, it is, as you observed, a matter of  
11 law, an issue to be briefed and decided in either motion  
12 practice or in posthearing briefing. It is not the  
13 subject of testimony. And we really don't need a  
14 witness's testimony on their opinion as to what the legal  
15 issues raised by the 1858 -- 1851, 1868 treaties mean  
16 before this Commission.

17 MR. SMITH: I'm going to sustain on the grounds  
18 that I think those are issues of law.

19 Now if she offers testimony on -- perhaps on,  
20 you know, whether -- factually whether consultation did  
21 or did not occur, I will -- that may be -- we'll discuss  
22 that when you get to it, but that's at least factual.  
23 Did they happen?

24 MR. CAPOSSELA: I would suggest that what we're  
25 talking about is mixed questions of fact and law, but

1 I'll move on.

2 Q. Ms. Young, do you know who Lou Thompson is?

3 A. No.

4 Q. Do you know who Sarah Metcalf is?

5 A. No.

6 Q. As a Tribal Council member and as a member of the  
7 Health, Education and Welfare Committee of the Tribe, if  
8 any government agency or any project sponsor were to  
9 communicate or consult with the Tribe on a significant  
10 project near the reservation in the ordinary course of  
11 business, would you be aware and would you be asked to  
12 participate in those discussions?

13 A. Yes.

14 Q. Has the Department of State or TransCanada  
15 communicated with the Standing Rock Sioux Tribe and asked  
16 for any input from the Tribe about the Keystone XL  
17 Pipeline project?

18 A. As far as I know, the State Department in  
19 Washington, D.C. did put out an environmental impact  
20 assessment, an EIS, Environmental Impact Statement,  
21 requesting comments in the Federal Register. And  
22 Standing Rock Sioux Tribe responded to that.

23 Q. Did any representatives of the State Department or  
24 TransCanada visit the reservation and ask to meet with  
25 you and ask for your input on the project or its

1 potential impacts on the reservation?

2 A. In TransCanada, no. But in other proposed pipelines  
3 they did.

4 Q. So on other projects they've come and consulted with  
5 you, but not this one. Is that your testimony?

6 A. Yes.

7 MR. TAYLOR: I'd move to strike that. I didn't  
8 get a chance to make my objection before she answered.

9 Number one, the question is leading and  
10 subjective. Number two, it assumes facts not in  
11 evidence. Number three, it has no bearing on this. It  
12 calls for an answer that's irrelevant to any proceeding,  
13 anything that goes on in these proceedings.

14 MR. CAPOSSELA: Mr. Smith, a motion was  
15 sustained on questions of law. And we were directed to  
16 move it on to questions of fact and I have earnestly  
17 tried to do that and I am earnestly trying to keep this  
18 thing moving.

19 MR. SMITH: Okay. I'm going to overrule the  
20 objection.

21 MR. CAPOSSELA: Thank you.

22 Before I proceed, though, I've seen some eye  
23 contact with the court reporter. And if it is time and  
24 appropriate for a break, I wanted to bring that up.

25 MR. SMITH: Okay. How much longer do you have?

1 MR. CAPOSSELA: Not very much longer in the  
2 questioning, but it may -- there may be further  
3 discussion amongst counsel.

4 MR. SMITH: Okay. Should we just take a break?  
5 What do you think? 15? 10:30 we'll reconvene.

6 (A short recess is taken)

7 MR. SMITH: We'll call the hearing back to order  
8 in HP14-001.

9 Direct examination of Standing Rock.

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

11 Q. Ms. Young, are you ready to proceed?

12 A. Yes.

13 Q. Thank you. You've given very helpful specific  
14 testimony with respect to the issue of communication and  
15 consultation.

16 And, you know, as far as you're concerned at the  
17 very least they never showed up on the reservation and  
18 had a meeting or had that communication.

19 To your knowledge, what has TransCanada -- what  
20 efforts has TransCanada made, if any, to communicate or  
21 interact with any Tribes or tribal communities? To your  
22 knowledge, what, if anything, has happened in that  
23 regard?

24 MR. TAYLOR: Aren't we well within the scope of  
25 what's covered in her prefiled testimony?

1           MR. SMITH: Yes. Generally speaking. But she  
2 does discuss communications, consultation.

3           MR. TAYLOR: So can we just go with the prefiled  
4 testimony and end the direct examination?

5           MR. SMITH: I think yesterday we -- I think the  
6 Commissioner ruled that there's nothing that explicitly  
7 precludes -- right. If there's new information. I mean,  
8 we've read her testimony.

9           MR. CAPOSSELA: Thank you, Commissioner.  
10 There's two points I'd like to make. Firstly, I've asked  
11 TransCanada to permit Ms. Young to avoid appearing in  
12 person. Now I don't want to get into the negotiations  
13 that happened outside of this room because it's not  
14 permissible. But it gets right to the feedback that's  
15 being given right now.

16           The effort's been made under fairly difficult  
17 circumstances for Ms. Young to appear. I would ask that  
18 we be permitted to proceed. And I'll state for the  
19 record that Ms. Young has things to say. This has been a  
20 lengthy hearing. I do -- have no interest whatsoever in  
21 wasting the Commission's time. And we're going to move  
22 forward as quickly as we can and flesh out the record  
23 that we feel needs to get fleshed out and move on. And  
24 we're committed to doing that. I need to go home too.

25           MR. SMITH: Okay. Overruled. Please proceed.

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

2 Q. They didn't show up at Standing Rock. Do you have  
3 any knowledge about any other interactions that  
4 TransCanada has had with Indian people in South Dakota?  
5 And if so, what is it?

6 A. I believe they had a meeting in Faith, South Dakota.

7 Q. Do you have any knowledge about what happened at the  
8 Faith meeting?

9 MR. TAYLOR: Can I ask a question for the  
10 purposes of objection?

11 MR. SMITH: Yes.

12 MR. TAYLOR: Ms. Young, did you attend the  
13 meeting in Faith, South Dakota?

14 THE WITNESS: I did not.

15 MR. TAYLOR: Thank you.

16 I object to her characterization of anything  
17 that went on at that meeting.

18 MR. CAPOSSELA: I asked her --

19 MR. SMITH: Sustained.

20 Q. Have you read any account about what happened in  
21 Faith?

22 A. I went to a mobilization meeting, what we had,  
23 information meetings asking each other from the different  
24 tribal nations what was transpiring, and there was a lot  
25 of activity, questions from Cheyenne River.

1 I have sons and nephews who went to the meetings as  
2 young people because they are part landowners in Cheyenne  
3 River Reservation.

4 Q. Have you read any accounts of what happened in  
5 Faith?

6 A. I did.

7 Q. Would you describe what you've read?

8 MR. TAYLOR: Objection. That calls for hearsay.  
9 Anything that her nephews or anybody else told her about  
10 what went on at the meetings and anything she read about  
11 at the meetings if she's now going to testify as to what  
12 took place from the meetings, she's just admitted she  
13 doesn't know anything about it, and it's all based on  
14 hearsay.

15 MR. CAPOSSELA: That's not what she said, but  
16 also I will establish a hearsay exception if I'm  
17 permitted to proceed. And the exception is a statement  
18 against interest by TransCanada, which is an exception to  
19 the hearsay rule.

20 MR. TAYLOR: If we're going to --

21 MR. SMITH: Do you have a response, Mr. Taylor?

22 MR. TAYLOR: Yeah. I do. You don't prove an  
23 admission against interest by having a witness say I read  
24 in the newspaper that a certain -- that the parties said  
25 thus and such.



1           You introduce into evidence the person to whom  
2           the admission was made, and then that person recounts the  
3           admission.

4           MR. CAPOSSELA: And we are going -- we are  
5           halfway through or three-quarters of the way through  
6           establishing a foundation for documentation that's not in  
7           the newspaper, and if I'm permitted to proceed, we will  
8           establish this. And I am trying to get through this,  
9           Mr. Smith.

10          MR. CREMER: If I can --

11          MR. SMITH: Yeah. We'll sustain it on the  
12          newspaper stuff, but if there's other documents -- and I  
13          don't recall even -- I don't honestly personally remember  
14          newspaper but --

15          MR. CAPOSSELA: Thank you.

16          MR. SMITH: Go ahead.

17          MR. CREMER: Mr. Smith, if I might, if I  
18          understand your hearsay objection, it's declarations  
19          against interest; is that correct?

20                 Is that what you're propounding?

21          MR. CAPOSSELA: Yes.

22          MR. CREMER: Okay. My understanding is that has  
23          to -- you can do that if the declarant is unavailable to  
24          testify.

25          CHAIRMAN NELSON: Sustained. Let's move along.

1 MR. SMITH: Sustained.

2 Q. What do you know -- what did you read about the  
3 Faith meeting?

4 A. I read a tribal relations community meeting with  
5 Cheyenne River community dated November 13, 2013.

6 Q. Who wrote it? What entity wrote it?

7 A. TransCanada. Keystone XL.

8 Q. What's the date of that?

9 A. It is November 13, 2013.

10 Q. Maybe would you read the caption of the -- explain  
11 what the document is.

12 A. It's on the letterhead of TransCanada. It says A go  
13 forward action required, and it's to develop -- prepare  
14 and deliver communication materials to develop a security  
15 plan, provide a map of the workforce camps in  
16 South Dakota, and integrate planning with the PGI.

17 The meeting is a debrief. It's a record of their  
18 meeting held in Faith, South Dakota, and it lists sort of  
19 a schedule of events that had occurred -- excuse me.

20 A, instead of exacerbate the issue, it was decided  
21 to move the meeting to Faith. A prayer was offered by  
22 tribal elders to set the tone of the meeting. About  
23 40 people attended the meeting to get information on the  
24 workforce camps.

25 A, questions ranged from clarification on

1 workforce camps to issues announced with the project in  
2 general.

3 MR. SMITH: Mr. Taylor.

4 A. Opponents of the project soon began venting their  
5 concerns and --

6 MR. TAYLOR: Ms. Young, may I interrupt, please.

7 MR. CAPOSSELA: No. He may not interrupt  
8 Ms. Young. He may approach you, Mr. Smith, but it's not  
9 appropriate at this time for him to question the  
10 witness.

11 MR. SMITH: Mr. Taylor, do you have an objection  
12 or something?

13 MR. TAYLOR: Well, the question he asked was  
14 what's the caption, and now she's reading the document.  
15 I think we're talking about proposed Standing Rock  
16 Exhibit 8005.

17 MR. CAPOSSELA: And why don't we just move to --  
18 having established the foundation, having established  
19 that it's an exception to the hearsay rule, Standing Rock  
20 Sioux Tribe moves to introduce Exhibit 8005 into the  
21 record.

22 MR. SMITH: Is there objection?

23 MR. TAYLOR: Yes. I object on the grounds that,  
24 number one, it's not relevant. Number two, the  
25 foundation is improper. Number three, it's not the best

1 evidence. If they want to have somebody -- they should  
2 have said, okay, we're going to have somebody come and  
3 testify about the meeting.

4 So there's no proper foundation for the  
5 admission of this on the grounds that Mr. Capossela  
6 claims that it's submissions against interest. And we'd  
7 move that it not be admitted into evidence on that basis.

8 MR. CAPOSSELA: I simply do not see what more  
9 extensive foundation could be laid for a document. She  
10 explained how she received it. She explained what it is.  
11 The foundation's been laid. It's their document. It's  
12 clearly authentic. It's an admission by a party opponent  
13 under South Dakota Codified Law 19-19-801D-2.

14 This is not hearsay. This is an authenticated  
15 document and admissible evidence, and we will move  
16 forward as expeditiously as possible if permitted.

17 MR. SMITH: Okay. We'll admit the document. It  
18 appears to be a TransCanada record. We don't have to  
19 read the entire thing, though.

20 MR. CAPOSSELA: I understand that.

21 MR. SMITH: Thank you. All right.

22 MR. CAPOSSELA: And I'll take responsibility for  
23 that. I don't think she understood my question. I  
24 probably should have asked the question a little bit  
25 better.

1 MR. SMITH: Okay. Thank you.

2 THE WITNESS: You wanted fact.

3 Q. Having looked at the document, being familiar with  
4 the document, understanding what consultation is,  
5 understanding what happened, as a member of the tribal  
6 government and as a longstanding respected member of your  
7 community, what is your view about what that document  
8 says about TransCanada and its relationship with the  
9 Indian Tribes in the state?

10 MR. TAYLOR: Objection. That calls for an  
11 opinion on the part of this witness as to an exhibit that  
12 they've offered.

13 MR. CAPOSSELA: And we've also established that  
14 she's in a position -- not withstanding the fact that  
15 she's a lay witness. Lay witnesses can under some  
16 circumstances give opinions. And we've laid the  
17 foundation for her to do that.

18 She's a member of the tribal government. She's  
19 a community leader. She's involved with consultation  
20 with all kinds of agencies and project sponsors.

21 MR. SMITH: Okay. Overruled.

22 MR. CAPOSSELA: Thank you.

23 Q. What do you think the -- what does the memo reflect  
24 as it relates to TransCanada and the Tribes?

25 A. They did not have consultation. We heard it all

1 throughout Cheyenne River, Rosebud, Pine Ridge, Santee,  
2 Yankton, Lower Brule, Crow Creek, and Standing Rock.  
3 They did not have consultation.

4 When your land is going to be affected, your own  
5 individual land ownership, you surely should be  
6 consulted. As a Tribe, tribal government, we have not  
7 been consulted. We have not -- nothing has been put on  
8 the table on this is what we want as to do.

9 There has never been a consultation with individuals  
10 or Tribes.

11 Q. Ms. Young, you mentioned you're aware that the  
12 Department of State prepared an Environmental Impact  
13 Statement and that the Standing Rock Sioux Tribe  
14 submitted comments to that Environmental Impact  
15 Statement. Is that correct?

16 You remember what I'm talking about --

17 A. Yes.

18 Q. -- what your testimony is?

19 MR. CAPOSSELA: I'm going to approach the  
20 witness with an exhibit that's marked 8007. And it's a  
21 page PC 175 from the FSEIS.

22 Q. When the Standing Rock Sioux Tribe commented to  
23 Department of State did their comments articulate  
24 concerns with the 1851 and 1868 Treaties that have been  
25 discussed already this morning?

1 A. Yes.

2 Q. The page that I referenced in the FSEIS, are you  
3 looking at that?

4 A. Yes.

5 Q. Okay. Is that a -- is that document a portrayal of  
6 the Tribe's comment and a response to the Tribe's comment  
7 by the State Department and the environmental review  
8 document?

9 A. Yes.

10 Q. Did they respond -- did the State Department address  
11 the Tribe's concerns that were expressed about the  
12 impacts on your rights?

13 A. Specific to --

14 Q. The 1851 and 1868 Treaties.

15 A. Specific to the Ft. Laramie Treaties, yes.

16 Q. What did they say?

17 A. That the Draft Supplemental EIS is deficient because  
18 it is in violation of laws, treaties, conventions, and  
19 international agreements such as Treaty 8, the Universal  
20 Declaration of Human Rights, Kyoto Accord, Pelly  
21 Amendment, Convention of Wetlands of International  
22 Importance, Convention of the Rights of Indigenous  
23 Peoples, the Ft. Laramie Treaties, and due to the lack of  
24 action by the Canadian government to prevent impacts to  
25 the Athabasca Delta and its First Nation peoples, the

1 Rome Statute of the International Criminal Court.

2 Q. That's the comment. Would you proceed and as best  
3 you can read on, and what was the State Department's  
4 response to those concerns?

5 MR. TAYLOR: I'm going to object to this  
6 approach. If he's going to offer that into evidence, he  
7 can offer it into evidence. If he's not, there's no  
8 reason for her to read from it.

9 And if he does offer it into evidence, there's  
10 no reason to read from it. It speaks for itself.

11 MR. CAPOSSELA: It could be done by now.

12 MR. SMITH: Is it in evidence already? We've  
13 taken judicial notice.

14 MR. TAYLOR: The FSEIS you took judicial notice  
15 of. I'm talking --

16 MR. CAPOSSELA: The Standing Rock Sioux Tribe  
17 will move to introduce exhibit that's marked Exhibit  
18 8007.

19 MR. SMITH: Has Mr. Taylor and Staff been able  
20 to see that?

21 MR. TAYLOR: I don't need to see it.

22 MR. SMITH: Objection?

23 MR. TAYLOR: To the extent it applies to all the  
24 tribal right issues we've discussed before, I renew those  
25 objections. If the FSEIS is part of the record, then



1 this is duplicate. Other than that, no objection.

2 MR. SMITH: Well, we've taken judicial notice of  
3 it. So is it in there?

4 MR. CAPOSSELA: It's one of -- it is in the  
5 FSEIS. One page that we've taken out of the FSEIS that's  
6 our --

7 MR. SMITH: So you've identified it.

8 MR. CAPOSSELA: Yes.

9 MR. SMITH: I think it's already in the record.  
10 Your testimony now is pointed to your concerns relative  
11 to what's in there?

12 MR. CAPOSSELA: Correct. I'm going to move to a  
13 different part of the FSEIS.

14 Q. Exhibit 8008, Ms. Young, lists of bunch of other  
15 projects -- the State Department lists a bunch of other  
16 federal projects because it has an obligation to evaluate  
17 the cumulative impacts of many federal projects when  
18 looking at any one federal project.

19 Now is there a concern by the Standing Rock Sioux  
20 Tribe that there may be a -- not Keystone XL but a  
21 different pipeline that can affect the reservation? Is  
22 there a concern at Standing Rock right now about that?

23 MR. TAYLOR: I'd object. How can that possibly  
24 be relevant to any issue that's before this Commission?

25 MR. SMITH: Sustained.

1           MR. CAPOSSELA: As I tried to elaborate in my  
2 question, the National Environmental Policy Act  
3 requires -- and we've got to comply with all applicable  
4 law here. Requires that a federal agency when taking a  
5 look at the environmental impacts of a project look at  
6 other projects that may also affect the environment.

7           And so that's a requirement of federal law,  
8 applicable law.

9           MR. SMITH: I'm going to sustain it, I think,  
10 because the -- yeah. That's Department of State. That's  
11 not us.

12          MR. ELLISON: Mr. Smith, point of order and  
13 clarification.

14          Could the Commission please allow for counsel to  
15 respond to any motions by TransCanada --

16          MR. SMITH: Sure.

17          MR. ELLISON: -- prior to making any rulings?

18          MR. SMITH: Yeah.

19          MR. ELLISON: Thank you.

20          MR. SMITH: I just didn't see anybody indicate.  
21 Usually I see some action, somebody that wants to say  
22 something, and I didn't see anything here.

23          MR. ELLISON: I understand, sir. I just wanted  
24 to bring that up.

25          Thank you.

1 MR. CAPOSSELA: I'm going to approach the  
2 witness.

3 I handed her a document that's been marked as  
4 Exhibit 8008, the Commission having already said it's  
5 been taken judicial notice. It's already in the record.  
6 It includes a chart that begins on page 4.15 in Volume 4  
7 of the FSEIS.

8 Q. And I want you to take your time, Ms. Young, and  
9 look through that chart.

10 MR. TAYLOR: Are we still talking about 8008?

11 MR. CAPOSSELA: Yes, sir.

12 MR. TAYLOR: Thank you.

13 (Witness examines document)

14 Q. Now, Ms. Young, these pages of the FSEIS list the  
15 other projects that the State Department has evaluated in  
16 conjunction with Keystone XL to determine the cumulative  
17 environmental impacts of other projects to the extent  
18 that those cumulative impacts may exist.

19 MR. TAYLOR: I'll renew my prior objection.

20 MR. SMITH: I mean, are we talking a -- are we  
21 talking whether the Department of State process met --  
22 appropriately met the requirements?

23 MR. CAPOSSELA: On the environmental impacts of  
24 Keystone XL on the Standing Rock Reservation. Yes, sir.

25 MR. SMITH: I think that's a Department of State

1 proceeding. And we're not that.

2 MR. CAPOSSELA: It's in the record. The  
3 document's in the record. I'm highlighting the concerns  
4 of the Tribe that relate to that document with respect to  
5 the environmental impacts on the reservation. And we  
6 could be done.

7 MR. SMITH: Okay. Why don't we just let her --  
8 let her offer her opinion, and we'll be done with it.

9 MR. CAPOSSELA: Yeah. And it's not an opinion.  
10 Q. Ms. Young, in that extensive list of related  
11 projects did the State Department include Dakota Access  
12 pipeline in that table on that chart in that  
13 Environmental Impact Statement?

14 A. No.

15 MR. TAYLOR: Just give me a standing objection,  
16 and I won't say another word.

17 MR. SMITH: I'll give you a standing objection.  
18 Yes.

19 MR. CAPOSSELA: The Standing Rock Sioux Tribe  
20 will move that the Commission take judicial notice of  
21 Exhibit 8009, a couple of pages out of a government  
22 document published by the executive office of the  
23 President, Council On Environmental Quality, back in  
24 1997.

25 It's guidance under the National Environmental

1 Policy Act for environmental justice, and we ask the  
2 Commission to take judicial notice of the existence of  
3 this document.

4 MR. TAYLOR: If you're going to take judicial  
5 notice of a government document, you've got to take  
6 judicial notice of the whole thing, not just of the  
7 pages. But that's okay.

8 MR. SMITH: Is it? And you're confident that's  
9 an official record that --

10 MR. TAYLOR: I don't know anything about the  
11 foundation, but I'm not going to argue about it. I do  
12 have a relevancy objection when we get to the point that  
13 he offers it.

14 MR. SMITH: Okay. Thank you.  
15 Proceed.

16 MR. CAPOSSELA: Has my request been granted in  
17 that regard, Mr. Smith?

18 MR. SMITH: That's to what?

19 MR. CAPOSSELA: For judicial notice of the  
20 Council On Environmental Quality guidance on how agencies  
21 are supposed to conduct these types of reviews.

22 MR. SMITH: Yeah. But, again, are we talking  
23 Department of State here?

24 MR. CAPOSSELA: Well, it's a White House  
25 document.

1           MR. SMITH:   Pertaining to the Department of  
2   State?

3           MR. CAPOSSELA:   Pertaining to all government  
4   agencies, all federal agencies.

5           MR. SMITH:   Okay.   But not to us.

6           MR. CAPOSSELA:   Not to the Public Utilities  
7   Commission.

8           MR. SMITH:   To the U.S. government.

9           MR. CAPOSSELA:   To the U.S. government.  
10   Correct.   We are in the United States here.   Federal law  
11   applies.

12           MR. SMITH:   We are.   But that's not our  
13   proceeding.

14           And I'm going to sustain the objection relative  
15   to that.   For that reason, that that's -- that's whether  
16   the Department of State proceeding was handled correctly  
17   and in accordance with whatever that says.

18   Q.   Ms. Young, as we conclude, is there anything else  
19   that you'd like to say this morning to the Public  
20   Utilities Commission?

21   A.   I just would like -- I understand the processes and  
22   the jurisdictions of the different commissions in  
23   North Dakota and South Dakota that do not have the  
24   jurisdiction for federal intervention or federal actions  
25   that have occurred.

1           However, I do take exception to the issue of no  
2       consultation has occurred to the landowners, to the  
3       ranchers, the farmers, the Cowboys and Indians in  
4       South Dakota have not been consulted. I represent all of  
5       them.

6           I have a long history of partnerships with people in  
7       South Dakota, with the 33 ranchers that supported the  
8       Black Hills that want their homes to be protected and  
9       fight against intrusion by eminent domain. And so I  
10      speak for them.

11          I was a -- I was a party to the -- keeping the  
12      uranium -- keeping Union Carbide out of the Black Hills  
13      in 1980, and I'm very proud of being a partner with the  
14      farmers and the railroads and the companies that dealt  
15      with ETC Pipeline. I've been an activist all my life  
16      protecting the homeland but appreciating the partnerships  
17      with the good people.

18          I have to say I have associated with the best in  
19      South Dakota as far as the Cowboys and Indians Alliance  
20      that we formed back in 1985. And it continues today. So  
21      I take exception to it the eminent domain that is  
22      occurring.

23          TransCanada does not have that authority to do that  
24      in this country. And they have set the stage for  
25      international debate and dialogue and otherwise for the

1 Indian Nations in this country.

2 So it's not appropriate for a foreign corporation to  
3 use eminent domain to acquire private property for the  
4 cowboys, and I speak for them also.

5 So I want to say that -- once again, thank this  
6 Commission for accommodating us, for hearing our voice.  
7 I have never come here to the government, but I have  
8 great partnerships among the people in South Dakota.

9 That's the difference between the State of North  
10 Dakota because I have -- had a great mentor, the late  
11 Senator Burdick, who was in the North Dakota Senate. And  
12 he taught me a lot of things.

13 And one of the things that I conceded was that I  
14 would not use the word "genocide" in the Democratic  
15 process because he accorded us the dignity of legislation  
16 to address additional compensation for what we lost in  
17 Oahe.

18 But, for the record, I want to say when you're  
19 10 years old and you're going on 70 and you haven't  
20 received just compensation I have never -- my grandfather  
21 never received his home and the compensation for it so  
22 that I would like to see before I leave this world. And  
23 I would like to see ample water, adequate land source,  
24 and clean air to breathe for seven generations of our  
25 people.



1           And so please understand our struggle, that we're  
2     protecting our homelands and that we want the best for  
3     our people, for our children and our grandchildren. And  
4     I would like to be a partner with the State of South  
5     Dakota when it comes to our children.

6           So I want to thank everyone for allowing me to  
7     exercise my Democratic process. I'm in awe, and I will  
8     continue to state that the rest of my life about the  
9     freedoms that we are allowed to express. And, you know,  
10    it gave me great character to be homeless and to be  
11    hungry and to face adversity, gave me the credentials  
12    that I need to protect the generations to come.

13          So -- (speaks Lakota.)

14          And thank you for allowing this process to take  
15    place. Thank you for all the workers, the thinkers, and  
16    the doers. And I'm in awe of this court reporter here.  
17    So thank you.

18                 MR. CAPOSSELA: Thank you very much, Mrs. Young.  
19    No additional questions for this witness from the Tribe.

20                 MR. SMITH: Ma'am, don't leave yet because there  
21    may be questions by other parties.

22                 Keystone, any cross?

23                 MR. TAYLOR: Thank you, Mr. Smith.

24

25

CROSS-EXAMINATION

BY MR. TAYLOR:

Q. Ms. Young, although we've only met in the hall, my name is William Taylor. I'm a lawyer from Sioux Falls, and I represent TransCanada. I just have a handful of questions for you.

Were you on the Standing Rock Tribal Council at the time the Tribal Council adopted a resolution opposing the Keystone Pipeline?

MR. CAPOSSELA: Objection. It assumes facts that are not in evidence. He could rephrase it in a way that it probably would be a good question, but it just assumes something that's not in the record. Namely, that there's a resolution.

MR. SMITH: Sustained. Can you lay a foundation?

Q. Did the Tribal Council of the Standing Rock Tribe adopt a resolution opposing the Keystone Pipeline?

A. Yes.

Q. Were you on the Council when it was adopted?

A. There are two or three resolutions. The first one is in 2007. I was not on Tribal Council. In 2009 there was another resolution from the Rock Creek community that the Tribal Council endorsed. I was not on Tribal Council at that time. In 2012 I believe there is a third

1 resolution, and I was on Tribal Council at that time.

2 Q. Are you familiar with TransCanada's aboriginal  
3 peoples policy?

4 A. I'm not sure.

5 Q. You don't think you're familiar with it, or you're  
6 just not sure?

7 A. No. No.

8 Q. Do you know how many contacts there have been  
9 between Department of State and the Standing Rock Tribe  
10 since the commencement of the various applications for  
11 presidential permits for construction of the KXL  
12 Pipeline?

13 MR. CAPOSSELA: Objection on the grounds that  
14 it's a vague question. If he -- again, if he rephrased  
15 it and articulated what a contact is, then I think it  
16 would be proper. Did they call? Did they e-mail? Did  
17 they show up?

18 But it's a vague question, and that makes it  
19 difficult to answer in the form that it's been asked.

20 MR. TAYLOR: I'll rephrase.

21 MR. SMITH: Okay. Thank you.

22 Q. Ms. Young, you heard what Mr. Capossela just said  
23 about e-mails and letters and telephones and meetings.

24 Do you know anything about the cumulative number of  
25 letters, telephone calls, e-mails, meetings, and other

1 contacts between Department of State and your Tribe with  
2 respect to the Keystone KXL Pipeline project?

3 A. I'm familiar with the Federal Register that  
4 addressed the environmental impacts that were re-redone a  
5 couple of times, and I was responsible for reviewing what  
6 impacts it had on the health and -- of the Tribe.

7 Q. My question was do you know how many contacts there  
8 have been between --

9 MR. CAPOSSELA: I'm going to object because she  
10 understood the question, and she answered it as best she  
11 could. You know, again, he's asking the same question  
12 over and over if he doesn't get the answer that they  
13 like.

14 She answered what she's familiar with with  
15 respect to State Department contacts.

16 MR. TAYLOR: I thought this was cross exam.

17 MR. SMITH: It is. Overruled.

18 Maybe could you ask her in a couple of questions  
19 or something like that?

20 Q. Do you know how many meetings were held on the  
21 reservation between Department of State representatives  
22 and the Tribe with respect to the KXL Pipeline  
23 Presidential Permit Application?

24 A. There was no consultation on the reservation at all  
25 by the State Department.

1 Q. Do you know how many meetings may have been held off  
2 the reservation between representatives of the Standing  
3 Rock Sioux Tribe and Department of State?

4 A. I don't know that.

5 MR. TAYLOR: That's all the questions I have for  
6 this witness.

7 Thank you.

8 MR. SMITH: Intervenor questions?

9 CROSS-EXAMINATION

10 BY MR. CLARK:

11 Q. Thank you, Ms. Young. Travis Clark on behalf of  
12 Cheyenne River Sioux Tribe.

13 As a duly elected representative of the Standing  
14 Rock Sioux Tribe is it your opinion that a community  
15 meeting where some enrolled members of a Tribe are  
16 present, does that constitute consultation with a duly  
17 elected tribal government?

18 A. No.

19 Q. Same question. Is a community meeting where perhaps  
20 there's one or two -- a few elected tribal leaders  
21 present, does that constitute consultation with the  
22 government of a tribal nation?

23 A. No.

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

25 MR. SMITH: Mr. Rappold.

1 MR. RAPPOLD: Good morning, Ms. Young. My name  
2 is Matt Rappold. I represent your relatives to the south  
3 from the Sicangu Lakota Oyate.

4 Thank you for being here today. I have no  
5 questions for you.

6 MR. SMITH: Ms. Real Bird or Ms. Baker.

7 MS. BAKER: Thank you. Jennifer Baker for the  
8 Yankton Sioux Tribe.

9 CROSS-EXAMINATION

10 BY MS. BAKER:

11 Q. Representative Young, just a quick follow up to  
12 Mr. Clark's questions to you.

13 Mr. Taylor asked you about meetings of the Tribe and  
14 the Department of State. As far as the meetings that  
15 you are aware of that occurred, do you consider those  
16 to actually count as government-to-government  
17 consultation?

18 A. No.

19 Q. Thank you. Mr. Taylor mentioned that -- he  
20 mentioned TransCanada's aboriginal regulations policy.  
21 That policy states that it's guided by principles of  
22 trust, respect, and responsibility.

23 Based on your experience do you feel that  
24 TransCanada complies with this policy of its own?

25 MR. TAYLOR: I'm going to object --

1 A. No.

2 MR. TAYLOR: -- to that question. She already  
3 said she doesn't know anything about TransCanada's  
4 policy.

5 MS. BAKER: This is follow up to his  
6 cross-examination question. He raised the issue.

7 MR. SMITH: Overruled.

8 MS. BAKER: Thank you.

9 Q. Would you mind, again, based on your experience do  
10 you feel that TransCanada complies with its own policy on  
11 aboriginal regulations?

12 A. No.

13 MS. BAKER: Thank you.

14 Nothing further.

15 MR. SMITH: Okay. Mr. Ellison or Mr. Martinez?

16 MR. ELLISON: Dakota Rural Action thanks  
17 Ms. Young for her testimony, but we have no questions for  
18 her.

19 MR. SMITH: Thank you.

20 Ms. Craven.

21 MS. CRAVEN: Kimberly Craven with the Indigenous  
22 Environmental Network.

23 We have no questions, but we thank you for  
24 appearing here today. We understand you had some health  
25 issues, and you came here at your own personal risk. We

1 really appreciate you appearing.

2 Thank you.

3 MR. SMITH: Mr. Gough.

4 MR. GOUGH: The InterTribal Council On Utility  
5 Policy has no questions other than to say thank you again  
6 for coming. We understand the health issues as well and  
7 hope for -- hope for all the best for your good health.

8 Thank you.

9 THE WITNESS: Thank you.

10 MR. SMITH: Mr. Dorr.

11 CROSS-EXAMINATION

12 BY MR. DORR:

13 Q. Thank you. I have a couple of questions. Someone  
14 asked you if there was government-to-government  
15 consultation, and you answered that there was not.

16 Was there any consultation on behalf of TransCanada  
17 and the Tribe?

18 A. No.

19 MR. DORR: Thank you.

20 No further questions.

21 MR. SMITH: Mr. Harter.

22 MR. HARTER: I have no questions. Thank you,  
23 Ms. Young.

24 MR. SMITH: Is Ms. Lone Eagle here?

25 MS. LONE EAGLE: My name is Elizabeth Lone



1 Eagle. I'm an enrolled member of the Rosebud Sioux  
2 Tribe, and I'm married into the Cheyenne River Sioux  
3 Tribe. We live in Bridger, South Dakota.

4 In order to greet you in that way, I say --  
5 (speaks Lakota) -- for being here this morning and I have  
6 no questions.

7 Thank you.

8 MS. MYERS: No questions.

9 MR. SMITH: No questions? Okay. Thank you.  
10 Mr. Seamans?

11 MR. SEAMANS: No questions.

12 MR. SMITH: Ms. Smith.

13 MS. SMITH: No questions.

14 MR. SMITH: Mr. Tanderup.

15 MR. TANDERUP: No questions.

16 MR. SMITH: Thank you.

17 Staff.

18 MS. EDWARDS: Thank you. Commission Staff has  
19 no questions.

20 MR. SMITH: Okay. Is there any redirect?

21 MR. CAPOSSELA: No, thank you, Mr. Smith.

22 MR. SMITH: Oh, the Commissioner -- Chairman  
23 Nelson has a statement or a question.

24 CHAIRMAN NELSON: Actually no questions. I just  
25 want to say you've had to endure a lot of legal wrangling

1 and you understand that's part of the process, but I want  
2 to echo thank you for being here and during the process.

3 THE WITNESS: Thank you.

4 MR. SMITH: Okay. Now you're done.

5 CHAIRMAN NELSON: Mr. Capossela, if I could just  
6 clarify again, Mr. Crow Ghost is not here today? He's on  
7 tomorrow.

8 MR. CAPOSSELA: With your indulgence,  
9 Mr. Chairman. Thank you.

10 CHAIRMAN NELSON: Okay. Perfect.

11 MR. SMITH: I think we're back to Dakota Rural  
12 Action then. Mr. Martinez, you were in progress.

13 MR. MARTINEZ: Yeah. I was going to say given  
14 the timing, it probably makes sense to go ahead and try  
15 to finish up now with Mr. Vokes. We can certainly get  
16 finished before noon. I think that's, of course, going  
17 to depend on the length of any cross-examination, but  
18 we'll see how that goes.

19 MR. SMITH: We can take a break again, but we'll  
20 forge ahead.

21 MR. MARTINEZ: Thank you, Mr. Smith. I'd like  
22 to go ahead and recall Mr. Vokes to the stand.

23 MR. SMITH: Mr. Vokes, do you want to make your  
24 way up here, please.

25 Mr. Vokes, I'll just let you know you remain

1 sworn.

2 MR. MARTINEZ: I told you that we've really  
3 focused on trying to narrow down the scope of Mr. Vokes's  
4 testimony. And just to give you kind of a little bit of  
5 roadmap, we're going really focus on one incident that  
6 occurred for the project plan for the KXL Pipeline itself  
7 as opposed to going into a lot of other matters.

8 DIRECT EXAMINATION (Continued)

9 Q. (BY MR. MARTINEZ) Mr. Vokes, did you work on the  
10 KXL project?

11 A. Yes, I did.

12 Q. Which segments?

13 A. I worked on one section in Canada and some support  
14 actions in the United States.

15 Q. Which sections in the United States?

16 A. It was for the KXL Gulf Coast, I believe. I'm not  
17 sure if it was for Phrase 3 or not.

18 Q. Okay. Are you familiar with a particular contractor  
19 called Weldsonix?

20 A. I am very familiar with a contractor called  
21 Weldsonix.

22 Q. Who was Weldsonix?

23 A. Weldsonix is a nondestructive examination company.  
24 They're a contract -- they're an inspection contractor.

25 Q. Were you familiar -- was Weldsonix hired to do work

1 for the KXL Pipeline project?

2 A. We went and saw that KXL was used on the Gulf Coast  
3 Extension.

4 Q. Okay. Now were you familiar with Weldsonix prior to  
5 any work that they did on KXL?

6 A. Yes, I was. Previously Nova Gas Transmission, a  
7 portion of TransCanada Corporation, previously dismissed  
8 Weldsonix and asked them to be removed from the  
9 recommended suppliers, qualified suppliers.

10 Q. Why was that?

11 A. Because they had problems with performance, serious  
12 performance issues that affected pipeline construction.

13 Q. And when you said that they were engaging in the  
14 nondestructive examination of the pipeline, I'm presuming  
15 that that was -- they were in charge of inspecting or  
16 using that particular inspection technique to inspect  
17 welds on the pipeline; is that correct?

18 A. That's correct. To inspect and accept welds on the  
19 pipeline.

20 Q. Okay. Now given what you've described, that they  
21 were either dismissed or not supposed to be part of the  
22 overall supply chain or approved list of contractors, how  
23 did they become then a contractor on the KXL project?

24 A. We were in the process of updating our supply chain  
25 management list. And the Keystone project went and put

1 forward the use of Weldsonix as a contractor. And a  
2 member of the Keystone quality management team objected  
3 to their inclusion in the list.

4 Q. Well, let me take a step back. Were you told by any  
5 particular individuals at TransCanada that you should go  
6 ahead and use Weldsonix on this project?

7 A. I was ordered by David Taylor and Meera Kothari that  
8 Weldsonix would be qualified.

9 Q. What do you mean by "qualified"?

10 A. The qualification is a technical process where we  
11 bring them to our facility and they have a series of  
12 tasks to perform within a week. They were given a set of  
13 specific instructions that they had to carry out to  
14 enable them to carry out those tasks.

15 Q. But apparently you obviously had issues with  
16 Weldsonix and their performance; is that correct?

17 A. I did.

18 Q. Okay. Did you raise those issues with Mr. Taylor?

19 A. Yes.

20 Q. Did you also raise those issues with Mrs. Kothari?

21 A. No. There was no communication with Ms. Kothari.  
22 During the qualification there was no communication with  
23 Ms. Kothari about the performance of the contractor.

24 Q. Did you raise those issues with her prior to the  
25 qualification?

1 A. Yes. We absolutely raised those issues. Other  
2 people raised those issues as well, including the --

3 Q. I was going to say you've preempted my next question  
4 which was going to be did other individuals within  
5 TransCanada raise issues with Weldsonix using them as a  
6 contractor to either Mr. Taylor or Mr. Kothari?

7 A. Yes. The supply chain management had raised  
8 objections. Keystone quality management team also raised  
9 objection. And the -- the grandfather of automated  
10 ultrasonic testing, Dave Hodgkinson, had also raised  
11 objection to the qualification of Weldsonix.

12 Q. Now these objections, did those occur during the  
13 course of discussions during project team meetings?

14 A. These appeared -- occurred over a period of months.

15 Q. And were you involved in those discussions?

16 A. Yes.

17 Q. Okay. Were there other concerns raised in those  
18 discussions that you had about Weldsonix?

19 A. During the qualification there was definitely some  
20 concerns raised with performance and safety.

21 Q. Did you discuss, for instance, during those  
22 discussions any issues that Weldsonix had with other  
23 pipelines, for example, let's say any of the Kinder  
24 Morgan Pipelines that they worked on?

25 A. That was made well-known that Weldsonix was key

1 to Kinder Morgan's fine when they built the Rocky  
2 Mountains Express, and problems with the welding  
3 inspector resulted in a series of hydro test failures.

4 Q. Now did you have any information from other sources  
5 such as maybe PHMSA about this particular contractor and  
6 issues that had arisen with their performance?

7 A. Yes. There was actually publicly available  
8 documents that people could find online and also I knew  
9 one of the operators from that pipeline and he actually  
10 went -- he told a complete story of what happened.

11 Q. Now hold on. The publicly available documents that  
12 you referred to, were those from PHMSA?

13 A. Yes.

14 Q. And did you obtain those and then raise those as  
15 issues during the course of the discussions you had with  
16 the KXL project team?

17 A. There were so many pieces of evidence introduced  
18 into the qualification of Weldsonix.

19 Q. Okay. Were there concerns that you had concerning  
20 Weldsonix's ability or even its failure to comply with  
21 the regulatory requirements that PHMSA had?

22 A. That's correct.

23 Q. Okay. Now when you raised all of these response --  
24 or questions, when you and others within TransCanada  
25 raised these questions concerning this particular

1 contractor, what was Mr. Taylor's response, for instance?

2 A. I was supposed to go ahead and make sure it  
3 happened. And when there was a safety violation he went  
4 and turned it back to be my fault that the contractor did  
5 something wrong.

6 Q. Ultimately did you proceed with qualifying Weldsonix  
7 as a contractor even over the objections that you and  
8 others raised?

9 A. I never completed the qualification of Weldsonix as  
10 a contractor. They had completed the technical portion  
11 of the visit, and there was information gathering and  
12 analysis left to do.

13 Q. Okay. What can you tell us that could potentially  
14 happen to a pipeline in the event a contractor such as  
15 Weldsonix didn't follow the rules with regard to the  
16 inspection of pipeline welds?

17 A. I think the Kinder Morgan Rocky Mountain Express is  
18 the classic example where you have multiple hydro test  
19 failures, and I believe they also had an in-service  
20 failure.

21 Q. And by a failure do you mean a pipeline leak or  
22 breach?

23 A. That's correct.

24 Q. Do you know if Weldsonix was ultimately hired by  
25 TransCanada to perform services with respect to the KXL



1 Pipeline?

2 A. Yes. I saw them in Texas.

3 Q. Okay.

4 MR. ELLISON: Excuse me. I notice Chairman  
5 Hanson is -- do we need a break, Chairman Hanson?

6 COMMISSIONER HANSON: No. If I lay down, then  
7 you'll need a break. Thank you.

8 MR. MARTINEZ: And that was actually my last  
9 question for Mr. Vokes. So I'm finished with Mr. Vokes  
10 at this time.

11 MR. SMITH: Keystone, are you ready to go?

12 MR. WHITE: Mr. Smith, I don't know whether  
13 Mr. Martinez intends to offer Mr. Vokes's prefiled  
14 testimony. There was a pending objection to that on  
15 Saturday. It might be appropriate to take that up before  
16 we understand what the scope of our cross needs to be.

17 MR. MARTINEZ: We will need to offer that as an  
18 exhibit and offer that into evidence. I believe we had  
19 designated it as DRA Exhibit 3-A.

20 MR. WHITE: We do have objections to portions of  
21 DRA Exhibit 3-A on hearsay grounds as preliminarily  
22 discussed on Saturday, but we've taken the opportunity to  
23 go through and identify the paragraphs by number.

24 They're not numbered. The lines aren't  
25 numbered, but if we could maybe take it on a

1 paragraph-by-paragraph basis, that might be useful.

2 MR. SMITH: Okay. Just a minute. I want to try  
3 to find it here.

4 I found it.

5 MR. WHITE: Okay. So with respect to the first  
6 two paragraphs, we have no objection. With respect to  
7 what I'll call paragraph 3 which deals with allegations  
8 around things that occurred in the year 2015, all of  
9 those allegations which are apparently related to  
10 conversations with "another ex-TransCanada Pipeline's  
11 employee" could not have been within personal knowledge  
12 of Mr. Vokes. They occurred well after he ceased being  
13 an active employee in 2011.

14 So whatever he testifies to here must  
15 necessarily have been learned from others and cannot be  
16 of his own personal knowledge and, therefore, constitutes  
17 hearsay. So object to the admission of paragraph 3.

18 MR. MARTINEZ: Can we perhaps take and sort of  
19 deal with the objections as we address each particular  
20 paragraph as opposed to having to go through the whole --

21 MR. WHITE: Up to the Commission, but I'm happy  
22 to do it that way.

23 MR. SMITH: I think that would be -- better  
24 personally.

25 MR. MARTINEZ: I think it would make more sense

1 in terms of the flow and trying to get it resolved.

2 Obviously, we disagree with that particular  
3 objection because I think it's very well-known that  
4 Mr. Vokes in particular as a whistle blower has been  
5 involved in making a number of complaints and has  
6 actually been called, for instance, to testify in front  
7 of the National Energy Board, the Canadian Senate about a  
8 lot of these matters.

9 And, you know, by virtue of his participation in  
10 those National Energy Board proceedings and the Canadian  
11 Senate proceedings, these items are certainly within the  
12 scope of his personal knowledge, regardless of whether or  
13 not they occurred before or after his employment with  
14 TransCanada.

15 MR. WHITE: Whether or not he participated in  
16 hearings well after the fact does not go back and make  
17 this -- make these allegations matters that could have  
18 been within his personal knowledge at a time when he  
19 wasn't there.

20 MR. SMITH: Staff, do you have a position on  
21 this?

22 MR. CREMER: Staff does not take a position.  
23 Thank you.

24 MR. SMITH: Okay. We'll sustain that.

25 MR. WHITE: Next objection is with respect to

1 paragraph 4, the next paragraph.

2 So this paragraph pertains to allegations  
3 regarding an incident that occurred in October of 2013.  
4 Again, Mr. Vokes was not an employee of TransCanada in  
5 2013 so anything that he says or thinks -- or purports to  
6 know about an event and the cause of an event that  
7 occurred in 2013 could not possibly be within his  
8 personal knowledge. He was gone for two years.

9 Hearsay objection.

10 MR. MARTINEZ: I would seriously disagree with  
11 that. While the pipeline did indeed rupture  
12 postemployment with respect to Mr. Vokes, he's clearly  
13 testifying that in his opinion that occurred as a result  
14 of cost and scheduling decisions that were made by his  
15 peers and project managers back during the time when he  
16 actually was employed and would have had knowledge of the  
17 particular circumstances that he believes resulted in  
18 ultimately that pipeline breach.

19 MR. WHITE: And since he wasn't there at the  
20 time that the incident occurred, he cannot know what the  
21 exact cause was so he can't relate the cause back to his  
22 speculation around what the cause might have been. He  
23 was not there at the time the cause was determined.

24 MR. MARTINEZ: Well, he's expressed his opinion  
25 as to what those causes are. The Commission may or may

1 not take that, you know, as it desires. But he's  
2 certainly demonstrated his knowledge of these particular  
3 issues and the fact that he certainly believes that that  
4 may be the case. And I would suggest that that is  
5 admissible.

6 And also I would suggest that TransCanada could  
7 certainly present rebuttal testimony. In fact, they've  
8 already designated a rebuttal witness if they don't  
9 believe that --

10 MR. WHITE: Whether or not we have a rebuttal  
11 witness prepared has nothing to do with the admissibility  
12 of this portion of his exhibit.

13 MR. SMITH: Okay. The Commissioners feel it  
14 should be overruled. So we're overruling at this point.

15 MR. WHITE: The final paragraphs we'll address  
16 are paragraphs 10 through 13. These paragraphs have to  
17 do with the Gulf Coast project. The Gulf Coast project,  
18 as we've heard earlier in this proceeding, was  
19 constructed between August of 2012 and December of 2013.

20 Mr. Vokes was not an employee during that  
21 period. In fact, has testified that his -- he was not --  
22 he was not showing up for work starting October 26, 2011,  
23 well before the commencement of construction of the  
24 Gulf Coast project.

25 Therefore, anything that he purports to know

1 about the Gulf Coast project well postdates his  
2 employment and cannot be within his personal knowledge  
3 and, therefore, hearsay objection.

4 MR. SMITH: Can you point to us, where are these  
5 paragraphs?

6 MR. WHITE: Okay. So I started numbering, and  
7 going through the document what I call paragraph 10 is  
8 the last paragraph on the bottom of page 3. And that  
9 carries on to 11, 12, and 13 around the middle of page --  
10 well, it's unnumbered, but it must be page 4.

11 MR. MARTINEZ: My suggestion with that would be  
12 that what Mr. Vokes testified to this morning was  
13 specifically related to the selection of the welding  
14 inspections. And, you know, that occurred -- or for the  
15 Gulf Coast segment while he was actually employed at  
16 TransCanada.

17 And, you know, based on his testimony it  
18 certainly would, you know, appear that whatever issues  
19 that resulted from welding certainly could have then been  
20 tied to the selection of the welding inspection  
21 contractor at that point in time.

22 To the extent that Mr. Vokes is testifying about  
23 those particular issues that related to the selection of  
24 the inspection team and the processes that occurred and,  
25 as he has testified, the fact that TransCanada went ahead

1 and proceeded to use a critical inspection contractor  
2 that Mr. Vokes and others within TransCanada clearly had  
3 issues with, I think is very relevant. And that  
4 certainly -- that portion of his testimony would not be  
5 hearsay.

6 MR. WHITE: If you look at paragraph 10, it  
7 specifically refers to information that he received from  
8 a former worker that was forwarded to him after his  
9 dismissal. So obviously he's using information gathered  
10 after his termination of employment.

11 The material or the information contained in  
12 these paragraphs relates to the period of time that the  
13 Gulf Coast was under construction. If you look at  
14 paragraph 13, "During Gulf Coast construction I had." So  
15 these paragraphs pertain to activities that occurred  
16 posttermination of employment.

17 MR. MARTINEZ: Well, and I would suggest that  
18 we've already entered as exhibits DRA Exhibits No. 69 and  
19 70, which specifically do relate to the Gulf Coast. And,  
20 furthermore, I think it's clearly within bounds for  
21 Mr. Vokes to testify about any communications he may have  
22 had with TransCanada employees either prior to or  
23 subsequent to the termination of his employment with the  
24 company.

25 And the other thing that we also have is we

1 clearly have an exception to statements of hearsay,  
2 particularly as they relate to admissions by party  
3 opponents. That's clearly a portion of the South Dakota  
4 hearsay rules.

5 CHAIRMAN NELSON: If I could just ask,  
6 paragraph 13 was the last one that was in question at  
7 this point; is that correct?

8 MR. WHITE: Yes. Yes, it is.

9 MR. MARTINEZ: 13 is the one that starts with, I  
10 believe, During the Keystone Gulf Coast construction.

11 Is that what you're referring to, Mr. White?

12 MR. WHITE: Yes, it is.

13 MR. MARTINEZ: Okay. Thank you, sir.

14 MR. SMITH: I'm going to sustain with respect to  
15 10, 11, and 12 and deny with respect to 13.

16 MR. MARTINEZ: Do you have any other objections  
17 with respect to the prefiled testimony?

18 MR. WHITE: We have no other objections to the  
19 Prefiled Direct Testimony at this time.

20 MR. MARTINEZ: I've concluded with the witness.

21 MR. SMITH: Yes. And you offered this; correct?

22 MR. MARTINEZ: Yes.

23 MR. SMITH: And the exhibit number is what?

24 MR. MARTINEZ: We're designated as 3-A.

25 MR. SMITH: What thousands are you?



1 MR. MARTINEZ: That would be 1003, I believe is  
2 what it would start with.

3 MR. SMITH: So 1003-A?

4 MR. MARTINEZ: Correct.

5 MR. SMITH: Is admitted. Those portions which  
6 were not subject to granting of exclusion motions by  
7 Keystone.

8 MR. WHITE: And sorry.

9 MR. SMITH: Are you done with your direct exam?  
10 Okay. Mr. White.

11 MR. WHITE: Just a few questions for  
12 cross-examination of the witness.

13 CROSS-EXAMINATION

14 BY MR. WHITE:

15 Q. Mr. Vokes, I think you testified on Saturday evening  
16 that your current employment is with your own company; is  
17 that correct?

18 A. That's correct.

19 Q. And what's the name of that company?

20 A. Kantana Metallurgican Process Services.

21 Q. And how many employees does that company have?

22 A. One.

23 Q. And who would that be?

24 A. Me.

25 Q. And what services does your company provide?

1 A. I have provided consulting services on a variety of  
2 metallurgical subjects.

3 Q. And I think we discussed briefly on Saturday your  
4 videotaping of the proceedings. Is that --

5 MR. MARTINEZ: I would object to this question.

6 MR. WHITE: I haven't asked the question.

7 MR. MARTINEZ: Okay. Go ahead.

8 Q. Are those videotapes being made for the purposes of  
9 your company's use?

10 MR. MARTINEZ: I would object to that question.  
11 I don't believe it has any relevancy to these proceedings  
12 or to Mr. Vokes's testimony here.

13 MR. WHITE: Goes to bias.

14 MR. SMITH: How does it go to bias? I guess I  
15 need to have that explained.

16 MR. WHITE: If it's for the purposes of  
17 utilization by Mr. Vokes to continue his efforts to  
18 discredit TransCanada, that it would appear that that  
19 would be a bias.

20 MR. MARTINEZ: Well, I'm not necessarily sure  
21 how that relates to --

22 MR. SMITH: Okay. Sustained.

23 MR. WHITE: We have no further questions of  
24 Mr. Vokes.

25 MR. SMITH: Intervenor examination of Mr. Vokes.

1 MR. CLARK: Thank you, Mr. Smith. I just have  
2 two questions.

3 CROSS-EXAMINATION

4 BY MR. CLARK:

5 Q. Mr. Vokes, you've detailed in the testimony that  
6 you've given orally and in your prefiled a number of  
7 management and technical issues that you believe call  
8 into question TransCanada's ability to construct and  
9 operate KXL safely.

10 Would it be your opinion that the management issues  
11 and technical issues that you've described have a  
12 potential impact on the ability of TransCanada to safely  
13 cross the Bridger Creek area?

14 A. There have been HDD sections before that haven't  
15 been pulled completely through, and they've had to go  
16 after the coating is damaged. I believe that was on  
17 NorthStar, NCC NorthStar.

18 So some of these are very technically challenged,  
19 and we certainly wouldn't want schedule and cost to get  
20 in the way of technical quality.

21 MR. CLARK: Thank you.

22 No further questions.

23 MR. SMITH: Okay. Mr. Rappold.

24 MR. RAPPOLD: Rosebud has no questions, sir.

25 MR. SMITH: Okay. Thank you.

1 Mr. Capossela.

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

3 Briefly.

4 CROSS-EXAMINATION

5 BY MR. CAPOSSELA:

6 Q. Mr. Vokes, are you against oil and gas development?

7 A. No. I am absolutely not against oil and gas  
8 development.

9 MR. CAPOSSELA: Thank you. I have no further  
10 questions.

11 MR. SMITH: Thank you. Ms. Real Bird or Baker.

12 MS. REAL BIRD: Yankton has no questions for  
13 Mr. Vokes.

14 MR. SMITH: Okay. Mr. Blackburn's not here.  
15 Ms. Craven.

16 MS. CRAVEN: The Indigenous Environmental  
17 Network has no questions for Mr. Vokes.

18 MR. SMITH: Mr. Gough.

19 MR. GOUGH: No questions from the InterTribal  
20 COUP.

21 Thank you.

22 MR. DORR: Mr. Dorr. Mr. Dorr has no  
23 questions.

24 MR. SMITH: Thank you.

25 Mr. Harter.

1 MR. HARTER: I have just one.

2 MR. SMITH: Okay. Fire away.

3 CROSS-EXAMINATION

4 BY MR. HARTER:

5 Q. Mr. Vokes, on the base Keystone project were you  
6 aware of the portion of the pipe, I believe it was in  
7 Marshall County, that floated back out of the ground  
8 because of wet conditions?

9 A. No --

10 MR. WHITE: Objection. Assumes facts not in  
11 evidence.

12 MR. SMITH: Sustained. And he doesn't know.  
13 Okay.

14 MR. HARTER: Okay. Thank you.

15 MR. SMITH: Ms. Lone Eagle.

16 MS. LONE EAGLE: This is Elizabeth Lone Eagle.  
17 I have no questions.

18 MR. SMITH: Ms. Myers.

19 MS. MYERS: Cindy Myers has no questions.

20 MR. SEAMANS: No questions.

21 Ms. Smith.

22 MS. SMITH: No questions.

23 MR. SMITH: Mr. Tanderup.

24 MR. TANDERUP: No questions.

25 MR. SMITH: Staff.

1 MS. EDWARDS: Thank you. No questions.

2 MR. SMITH: Okay. Do you have any redirect?

3 MR. MARTINEZ: Not at this time. I think we're  
4 concluded.

5 Sorry. Commissioner questions?

6 Perhaps Commissioner Hanson may spur some  
7 questions that may result in redirect.

8 MR. SMITH: Mr. Hanson, any questions?

9 COMMISSIONER HANSON: Mr. Vokes, thank you for  
10 your testimony.

11 As I understand your testimony -- please correct  
12 me if I'm wrong -- you did not witness any of the welding  
13 or construction of Keystone in South Dakota?

14 Is that correct?

15 THE WITNESS: No. I was not responsible for  
16 South Dakota.

17 COMMISSIONER HANSON: Okay. Have you observed  
18 any of the ultrasonic tests that took place in  
19 South Dakota?

20 THE WITNESS: No. I have not observed the  
21 ultrasonic tests that have taken place in South Dakota.

22 COMMISSIONER HANSON: Are you familiar with the  
23 process that was used in South Dakota?

24 THE WITNESS: I am very familiar with the  
25 process that was used in South Dakota.

1           COMMISSIONER HANSON: So would you describe for  
2 us the process of welding that took place in  
3 South Dakota.

4           THE WITNESS: The process of welding that took  
5 place in South Dakota, the contract, both contractors  
6 Michels and Price Gregory used a combination of  
7 mechanized gas metal arc welding, and they used a process  
8 of manual shield and metal arc welding.

9           And the pipe joining techniques they went and  
10 used was -- to go from light wall to heavy wall  
11 transitions was the back bevel transition where the pipes  
12 are the same diameter to the outside. So the inside of  
13 the pipe is manually ground. And this is the cause of  
14 the Otterburne explosion actually.

15           And the important thing about the back bevel  
16 transitions is on the automated ultrasonic -- or, I mean,  
17 on the automated mechanized welding we have to use  
18 automated ultrasonic testing. They have to be used  
19 together. It's not an option whether or not you can use  
20 them.

21           And, whereas, manual welding we can use both  
22 radiography, and we can use automated ultrasonic testing.  
23 When we come to back bevel transitions we can only use  
24 what we call -- well, the vernacular is a bit different  
25 in Canada and the United States.

1           So the -- we have to use in Canada -- we call it  
2 double wall exposure, single wall review, and where we  
3 shoot through both walls of the pipe and project it on to  
4 a single type of film. And this sort of technique  
5 results in film that's hard to read.

6           And there was actually a couple of cracks that  
7 were missed and there was a couple of hydro test failures  
8 and there was arguments about whether or not the  
9 contractor had actually seen the crack previous to  
10 putting it in service.

11           But the point being is part of the welding and  
12 inspection does result in long-term defects that are hard  
13 to detect with in-line inspection that can result in a  
14 future leak. Sometimes it can be an immediate leak such  
15 as it was with the construction of hydro test failures,  
16 and sometimes it can wait 30, 40 years such as it did at  
17 Otterburne, Manitoba.

18           COMMISSIONER HANSON: Thank you for the  
19 elaboration. You went beyond the question, but thank you  
20 for the extra information.

21           Are you aware then that -- or not aware of the  
22 percentage of welds that were ultrasonically tested on  
23 the Keystone Pipeline in South Dakota?

24           THE WITNESS: No. I can't say that I'm -- I'm  
25 aware of that. All I can tell you is that if it was



1 welded with a mechanized gas metal arc process, it was  
2 inspected with a contractor, hired automated ultrasonic  
3 inspection contractor.

4 COMMISSIONER HANSON: That contractor was an  
5 independent contractor?

6 THE WITNESS: If they work for a welding  
7 contractor, I would not consider them an independent  
8 contractor.

9 COMMISSIONER HANSON: They were -- it was not  
10 the same company, and it was not a subsidiary, is that  
11 correct, of welder?

12 THE WITNESS: That is correct. It is a very  
13 specialized business.

14 COMMISSIONER HANSON: Thank you. And how many  
15 welds on each joint are accomplished?

16 THE WITNESS: So basically you summarize it as  
17 there's one girth weld per joint as delivered.

18 COMMISSIONER HANSON: Don't they go through a  
19 stage where they move the housing units from three in a  
20 row as they go from one to the next, and then they put on  
21 the circular apparatus that does the weld and they do  
22 that three times?

23 THE WITNESS: Well, okay. So that's a different  
24 question.

25 So how many welding passes? How many welding

1 passes depends on how thick the pipe is. Generally you  
2 have to have a root pass. You have to have a hot pass.  
3 And then some types of thin pipes you can actually get  
4 away with going right to the surface. Other types of  
5 thick wall you can actually spend quite a while welding.

6 COMMISSIONER HANSON: So do you know how many  
7 passes were done in Keystone Pipeline in South Dakota.

8 THE WITNESS: Robert Lazor issued the welding  
9 procedures. He can tell you.

10 COMMISSIONER HANSON: Where was the peaked pipe  
11 used?

12 THE WITNESS: I believe -- just trying to  
13 remember exactly where they were. I think they were --  
14 I'm trying to remember.

15 COMMISSIONER HANSON: Let me rephrase that.

16 Are you aware of any peaked pipe being used in  
17 South Dakota?

18 THE WITNESS: The pipe -- I believe all the pipe  
19 that was used in South Dakota would have been -- or the  
20 vast majority of it should have been Welspun pipe, which  
21 came from a spiral mill in India.

22 COMMISSIONER HANSON: So your answer is?

23 THE WITNESS: No.

24 COMMISSIONER HANSON: Thank you.

25 Are you aware of any peaked pipe being used in

1 the United States on the Keystone Pipeline?

2 THE WITNESS: No.

3 COMMISSIONER HANSON: Thank you.

4 To the best of your knowledge, is there a  
5 complete archive of all of the ultrasonic testing that's  
6 done on each weld? Is that archived?

7 THE WITNESS: Yes, it is. It's -- there's  
8 arguments on the archiving of it because the nature of  
9 the archiving is digital. So we keep both a paper and a  
10 digital copy. We're supposed to keep it for the lifetime  
11 of the pipe.

12 COMMISSIONER HANSON: Thank you. No further  
13 questions.

14 MR. SMITH: Chairman Nelson.

15 CHAIRMAN NELSON: Just a couple.

16 Commissioner Hanson asked you questions  
17 specifically about the welding process in South Dakota on  
18 the base Keystone Pipeline. And in your answer you were  
19 talking about hydro test failures.

20 Were those failures in South Dakota?

21 THE WITNESS: I couldn't tell -- I couldn't tell  
22 you that question. TransCanada operates as silos so they  
23 don't let you know everything about all the projects  
24 unless somebody from the project actually comes and talks  
25 to you.

1           CHAIRMAN NELSON: On Saturday you -- and  
2 Commissioner Hanson just asked a follow-up question about  
3 this issue of peaked pipe. And you talked at length  
4 about the risk of using this peaked pipe in Keystone I.

5           Can you quantify the risk that you were talking  
6 about?

7           THE WITNESS: Most of the risks that are in the  
8 code are hard to quantify. We see a lot of things wrong.  
9 And some may never have a bearing, but they're forbidden  
10 for a reason because somebody somewhere sometime had a  
11 problem with them, and those are -- those are why they  
12 become forbidden practices. And the code and the  
13 regulations were written in mandatory language.

14           And if you do risk analysis, it's quite another  
15 story than compliance. And we know what we can get away  
16 with and what we can't get away with. But sometimes  
17 depending on the circumstances the risks are extended.

18           And I've been -- I was involved in several of  
19 those incidences where the argument was that it posed  
20 little risk even though the compliance was obvious. Or  
21 the lack of compliance was obvious.

22           And sometimes they never make a difference, and  
23 sometimes they make an absolute disaster. It's --  
24 there's a tree, a risk analysis tree, that many  
25 industries use, and it talks about the number of small

1 incidences leading to the next incremental level of  
2 incident, which leads to the next incremental level of  
3 incident, which leads to the next incremental level.

4 The problem with pipe lining, oftentimes you go  
5 from the small incidences to the major incidences  
6 immediately. There's no warning in between.

7 CHAIRMAN NELSON: No more questions.

8 MR. SMITH: Do you have any follow-ons?

9 MR. MARTINEZ: Nothing further on redirect.

10 MR. SMITH: Okay. Thanks.

11 Do any Intervenors feel -- or TransCanada?

12 MR. WHITE: No follow up.

13 MR. SMITH: Okay. Any Intervenors have any  
14 follow up to Commissioner questions?

15 I'm just going to ask the whole group and see if  
16 I -- okay.

17 Seeing none, Staff, any follow on?

18 Okay. I think you may be excused then,  
19 Mr. Vokes. Thank you.

20 What do you think? We're at 10 to.

21 Commissioner Nelson would like to have a  
22 discussion about, you know, order this afternoon so we  
23 kind of can get organized here over the noon hour.

24 CHAIRMAN NELSON: If I've understood things  
25 correctly, you're ready with Dr. Davis; is that correct?

1 MR. ELLISON: I'm sorry?

2 CHAIRMAN NELSON: Are you ready with Dr. Davis  
3 immediately after lunch?

4 MR. ELLISON: Yes. We could go, sir.

5 CHAIRMAN NELSON: I think that would probably be  
6 good. I see Ms. Spotted Eagle is here, and so she would  
7 be able to go today; is that correct?

8 MS. REAL BIRD: Sure. And then I think Staff  
9 had a time certain witness too that we could accommodate  
10 before --

11 CHAIRMAN NELSON: They flexed until today or  
12 tomorrow, either one. Correct?

13 Which would you prefer?

14 MS. EDWARDS: He actually -- his flight was  
15 cancelled, and I told him to not get on a plane until he  
16 hears from me depending on how long this goes. So not  
17 today.

18 CHAIRMAN NELSON: Not today?

19 MS. EDWARDS: Yes.

20 CHAIRMAN NELSON: What about Ms. Sibson? Is she  
21 prepared to go today?

22 MR. ELLISON: It's my understanding that the  
23 Sibsons will be here tomorrow.

24 MS. REAL BIRD: Chairman Nelson, we had an  
25 update from the witness with a preference for tomorrow if

1     that can be accommodated.

2             CHAIRMAN NELSON: Well, maybe yes, maybe no  
3     because we need to keep working through, folks.

4             Now having said that, we've also got a couple of  
5     Keystone rebuttal witnesses, and so we may end up getting  
6     to them today. So we're going to go through Davis,  
7     Spotted Eagle, and then probably into the rebuttal  
8     witnesses, as I see it.

9             MR. ELLISON: There's certainly -- to my  
10    knowledge, I believe that there would be Staff witnesses  
11    also that may be available to go.

12            CHAIRMAN NELSON: And I guess, you know,  
13    that's -- you probably need to work that out whether or  
14    not you want your folks to go first or whether you want  
15    to cede to their rebuttal witnesses. Doesn't matter to  
16    me.

17            MR. DORR: Chairman Hanson, this is Gary Dorr.  
18    I have a witness also, but he won't be here today.

19            CHAIRMAN NELSON: And who is that?

20            MR. DORR: Wayne Frederick. The Honorable Wayne  
21    Frederick.

22            MS. CRAVEN: Chairman Nelson. I thought it was  
23    understood that all the direct testimony would be  
24    presented before the rebuttal as much as possible. And  
25    the Commission Staff does have a lot of direct testimony.

1           CHAIRMAN NELSON: Absolutely. And if we want to  
2 command Ms. Sibson to be here this afternoon, I guess we  
3 can probably do that. It depends on how flexible we want  
4 to be.

5           MR. ELLISON: I think that what was being  
6 proposed was that there may be other witnesses that are  
7 actually here for Staff that might be able to go.

8           MR. CREMER: Correct. But I believe the  
9 rebuttal witnesses need to be done tomorrow. And based  
10 on the length of time it has taken previously, it is  
11 probably best to get them done and out of the way.

12          MR. ELLISON: I'm not suggesting anything  
13 different than what's being proposed. I was just simply  
14 stating that the Sibsons are not here, and there may be  
15 other witnesses who can give --

16          CHAIRMAN NELSON: I understand that. But if  
17 Ms. Craven's point is that we're going to go in the  
18 absolute order that we've laid out, then she's next on  
19 the list.

20                 And I'm suggesting we need to have a little  
21 flexibility here. That's where I'm coming from.

22          MR. ELLISON: I'm not arguing against --

23          CHAIRMAN NELSON: I think we've got a lineup for  
24 this afternoon. Let's break for lunch and come back at  
25 10 after 1:00.



1 (A lunch recess is taken)

2 MR. SMITH: Okay. We're going to reconvene  
3 after the recess. We had a couple of issues with -- with  
4 some records here so we've got that resolved.

5 COMMISSIONER HANSON: Mr. Smith, before we begin  
6 I'd like to have a -- or if we have begun -- you've  
7 called it to order, I assume?

8 During the break I was privileged to see a -- is  
9 Mr. Dorr here?

10 MS. BAKER: He's coming back, but he's not here  
11 yet.

12 COMMISSIONER HANSON: All right. I'll wait for  
13 my comments until he returns.

14 MR. SMITH: Mr. Ellison, please proceed.

15 MR. ELLISON: Thank you. Dakota Rural Action  
16 calls professor and Dr. Arden Davis.

17 (The oath of affirmation is administered  
18 by the court reporter.)

19 DIRECT EXAMINATION

20 BY MR. ELLISON:

21 Q. Dr. Davis, would you please give us a brief summary  
22 of your education and training.

23 A. I've taught geological engineering and groundwater  
24 courses for about 30 years or more at South Dakota School  
25 of Mines. I have a bachelor's degree in geology from the

1 University of Minnesota and my master's and Ph.D. in  
2 geological engineering from South Dakota School of Mines.

3 I'm a registered professional engineer in  
4 South Dakota, and I've done consulting work since the  
5 1980s roughly or slightly earlier.

6 Q. Are you at this point a professor emeritus at the  
7 School of Mines?

8 A. Yes. I retired in June, and now I'm a professor  
9 emeritus. So I no longer teach but I do a little  
10 research, yeah.

11 Q. Were you involved in any pipeline spill issues or  
12 tank spill issues of crude oil in the State of South  
13 Dakota?

14 A. The Williams Pipeline at Hayward Elementary School  
15 was a project I was involved in back in the 1980s. And  
16 I've also done consulting work for people for various  
17 environmental contamination problems.

18 Q. When you were working on that pipeline spill were  
19 you working with the State of South Dakota?

20 A. That was actually a tank that leaked, but it was for  
21 Williams Pipeline Company. But, yes, I worked with the  
22 State of South Dakota.

23 Q. Now you have submitted written testimony in this  
24 matter, have you not?

25 A. Yes.

1 Q. And I'm not going to go through it because it's  
2 there, but I do want to ask if you would please help us  
3 with -- I'm going to be referring to attachments to your  
4 written testimony.

5 Doctor, do you recognize this map?

6 A. Yes. That's from the State Department, a map of the  
7 water body crossings.

8 Q. And within your professional training and experience  
9 is this a general overview of the water systems, at least  
10 the surface water systems within our state?

11 A. The northwestern corner of South Dakota here in  
12 Harding County is where the proposed route would cross  
13 the Little Missouri River, which flows into the Missouri.  
14 And then to the southeast would be the Moreau River and  
15 the Grand River and Cherry Creek, and then down toward  
16 the Cheyenne River here.

17 And then the Bad River would be crossed and the  
18 White River. Now those are the surface water bodies, the  
19 major ones, but there are many smaller creeks in between.  
20 And then there are numerous small aquifers. For example,  
21 there's wind blown --

22 Q. If I may, you actually -- as part of your written  
23 testimony you actually have some more detailed maps, do  
24 you not, that you attached to your testimony?

25 A. Yes.

1 Q. And that would perhaps make it easier for the  
2 Commission to get a better visualization of what it is  
3 that you're talking about?

4 A. That's right.

5 Q. Is this one of those maps, sir?

6 A. Yes. This is the South Dakota State Geologic Map.  
7 And I superimposed on there the general proposed route of  
8 the pipeline from northwest to southeast.

9 Q. Okay. You began by telling us about the -- first  
10 the hydrology in northwestern South Dakota. We've heard  
11 a lot of testimony hearing about the hydrology in Tripp  
12 County.

13 But if you could please tell us about the hydrology  
14 in northwestern South Dakota where the pipeline enters  
15 the state.

16 A. The area here of the green color where my pointer is  
17 is the Hell Creek Formation, which is shale, but it  
18 contains bentonite.

19 Q. And is that a formation that has any connection to  
20 water resources?

21 A. The Hell Creek generally is not widely used as an  
22 aquifer but somewhat by ranchers in the area for small  
23 stock watering and for domestic use.

24 Q. And as you were to advance just a little bit to --  
25 well, is there anything about the geology of that area

1 that you feel is important for the Commission to note?

2 A. The Hell Creek, as I mentioned, contains bentonite.  
3 So in steep areas it could be subject to slope failure.

4 Q. And why does that occur? Why is it susceptible to  
5 slope failure?

6 A. Well, bentonite is a clay mineral. It's a platy  
7 mineral that can absorb water in between the sheetlike  
8 layers. And bentonite in particular can absorb up to  
9 around 190 percent of its own weight in water. So the  
10 weight of water divided by the weight of solids can be  
11 almost two to one.

12 And when it absorbs water then it's prone to  
13 failure. It also shrinks drastically during dry periods  
14 so it's the swell-shrink material that leads to slope  
15 instability.

16 Q. If there were to be 3 or 4 inches of rain falling on  
17 that particular area, would that be particularly  
18 problematic in terms of the stability of the area?

19 A. It could be, but it would depend also on the  
20 intensity of the rainfall. If it all came really fast  
21 and all ran off, it might not soak in. If it were a  
22 three- or four-day soaker, then it would really absorb a  
23 lot of water into the bentonite.

24 Q. Thank you. I'm wondering if you can work your way  
25 down on this particular map and tell us what you can

1 about the hydrology and geology of the area, especially  
2 as they interrelate with each other.

3 A. In the area here southeast of the town of Buffalo is  
4 wind blown material that is somewhat similar to sand  
5 hills type material. And where it's saturated then it  
6 can form a minor aquifer in the area.

7 And so it's exposed right at the surface, and that's  
8 the recharge area there. That's the light yellow, which  
9 is eolian material. I think it's shown as QE on the map,  
10 although it's not possible to read at this scale.

11 Q. If I put on a little bit larger version of that  
12 map -- this is more of a localized version of the map,  
13 sir?

14 A. Yes. It's right in this area here. That lightest  
15 yellow is that wind blown material that, were saturated,  
16 can make an aquifer.

17 Q. Sorry. I didn't mean to interrupt you. I was just  
18 trying to get the most visually descriptive map or  
19 diagram in front of you.

20 And as you proceed out of Harding County.

21 A. In this area there's alluvium along this creek. It  
22 looks like -- I'm having a little trouble reading it.  
23 That's the North Fork of the Moreau River. And this was  
24 the Grand River up there. There's alluvium along there  
25 as well. But this yellow is alluvium, which is permeable

1 sand and gravel.

2 Q. Okay. And if there was to be a spill up in the  
3 northwestern part of the state along the pipeline route,  
4 and focusing just on that part of the state, what would  
5 be the potential travel areas and areas of concern in  
6 terms of contamination?

7 A. It could travel underground. If there were a  
8 rupture along the alluvium, it could travel to the  
9 groundwater there. Or it could travel as overland flow  
10 in the perennial streams here.

11 Q. I imagine it would make a difference whether the  
12 ground is frozen versus whether it is midsummer?

13 A. Certainly.

14 Q. How so?

15 A. Well, if the ground is not frozen, in the summertime  
16 then infiltration could occur much more rapidly from the  
17 land surface.

18 Now if there were an underground leak of the  
19 pipeline below about the frost line, 3 or 4 feet deep  
20 below that point it could be traveling even in the  
21 wintertime.

22 Q. So if TransCanada buried its pipe approximately  
23 6 feet under the ground, it would be right at pretty much  
24 what we regard as our frost level?

25 A. I'm sorry?

1 Q. Okay. If TransCanada buries its pipe approximately  
2 6 feet under the surface, would that be around the frost  
3 level that you're talking about?

4 A. That would be slightly below it, I believe.

5 Q. Showing you the -- what I hope is the next map along  
6 the route -- does that seem to be the next map along the  
7 route, sir?

8 A. Yes. In the upper northwestern corner there the  
9 proposed pipeline route is shown in black. And there  
10 across is the Fox Hills Aquifer.

11 Q. And what's important about the Fox Hills Aquifer?

12 A. It's probably northwestern South Dakota's most  
13 important aquifer in terms of the towns that use it. And  
14 it's exposed over a wide area so that's the recharge area  
15 of the aquifer. It's sand, sandstone.

16 Q. And is there a difference between if there was to be  
17 a spill at a recharge area versus further away from the  
18 recharge area in terms of both infiltration into the  
19 water system?

20 A. If the aquifer were confined below the surface with  
21 a confining layer at the surface, then there would be  
22 much less chance for contamination from a surface spill  
23 to get down to the confining layer to the aquifer.

24 But where the recharge area is exposed, it's right  
25 at the surface, and infiltration of the contaminant could



1 occur.

2 Q. Would it then just flow down the aquifer in its  
3 normal flow direction gradient?

4 A. Typically it would flow by gravity until it reaches  
5 the water table and then start flowing with the  
6 groundwater gradient.

7 Q. Is there much of a confining layer above the Fox  
8 Hills Aquifer that would actually act as a confined  
9 layer, or what is the geology?

10 A. Where the Fox Hills is exposed there, that KFH,  
11 there is no confining layer there, that's the aquifer at  
12 the surface.

13 Q. What was that term that you used?

14 A. KFH is the symbol for the Fox Hills.

15 Q. Okay. Thank you. Continuing on then with this map,  
16 what can you -- you know, as you proceed from -- I guess  
17 you're going what, northwest to southeast along the  
18 general pipeline route?

19 A. Yes.

20 Q. Is there something, other formations both in terms  
21 of water resource areas and related geological  
22 formations, that you could use this map to help us  
23 understand along the pipeline route?

24 A. Well, to continue with the route, it goes off of  
25 this map, off of the northwestern corner. But if we go

1 to another map, we could possibly.

2 Q. Is this the map?

3 A. Yes. There's the Fox Hills Formation, the aquifer  
4 that I mentioned. And then here it gets to where it  
5 crosses the Pierre Shale, which is a cretaceous aged  
6 black shale but also contains a lot of bentonite and  
7 could cause engineering and construction problems because  
8 of the bentonite.

9 Q. How so? What are the characteristics of bentonite  
10 that would create potential issues?

11 A. Well, as I mentioned before, the Pierre Shale with  
12 bentonite is subject to slope failure because of  
13 instability because of the nature of the bentonite. It  
14 is a clay mineral. It has very little resistance to  
15 sliding, a low angle of internal friction.

16 And so that, with a combination of the swelling  
17 potential, taking on water, can lead to instability and  
18 could potentially cause problems with the pipeline,  
19 especially on steep slopes. For example, where it would  
20 come down the slope toward the Cheyenne River and then  
21 back up out of it.

22 Q. Could you show us on that map the extent of the  
23 Pierre Shale along that route?

24 A. It would be a little bit up here, I believe. And  
25 then starting roughly in here. And except for the

1 alluvium layer and this quaternium terrace, which is an  
2 aquifer, and this eolian material it would continue on  
3 through Pierre Shale through almost the entire section of  
4 state geological map.

5 Q. Do you have any idea on this particular map what  
6 kind of length of travel through area in terms of  
7 miles -- can you give us an approximation on this map?

8 A. I'm not sure about this map itself without a scale  
9 there, but I did a quick calculation for the entire state  
10 with the proposed route, and I think it's slightly more  
11 than 150 miles of Pierre Shale.

12 Q. This sliding or hazardous slide area, is that a very  
13 rough lay explanation or statement of what it is?

14 A. I'm sorry. Could you repeat the question?

15 Q. Sure. I think I constantly get the term wrong.  
16 What would you describe it in terms of it's a slip or a  
17 slide?

18 What's the correct term for this geology?

19 A. There are various terms, but typically slope failure  
20 is used as a general term there. But landslide  
21 accurately describes it as well.

22 Q. Okay. How steep does a -- well, let me back up a  
23 moment. What is the topography as you go through that --  
24 along the general route? Is it flat?

25 A. In much of western South Dakota it's fairly rugged

1 topography on the Pierre Shale. Tend to go up a ridge  
2 and down into a gully and up a ridge. And so it's not  
3 been smoothed out the way much of eastern South Dakota  
4 has by the glaciers. It's a rougher, more rugged  
5 terrain.

6 Q. If it's a steep slope, then that's more problematic  
7 than a less steep slope. Would that be fair to say in  
8 terms of the slide?

9 A. That's correct.

10 Q. If it was a less steep slope would, that eliminate  
11 the problem?

12 A. Not necessarily.

13 Q. You gave us a figure of 100 and how many miles?

14 A. I think it's a little over 150 miles of Pierre  
15 Shale.

16 Q. Would you say that only 1.6 miles along that entire  
17 route are potentially problematic for sliding?

18 A. I would be very surprised to hear that.

19 Q. You mentioned, sir, that Cheyenne River is --  
20 Cheyenne River, could you show us where that is, please,  
21 on this map.

22 A. The Cheyenne River flows along here. It drains  
23 almost the entire Black Hills (indicating).

24 Q. And where does it drain into?

25 A. It drains into the Oahe Reservoir. And this is the

1 upstream end of the Oahe Reservoir on the Cheyenne arm  
2 here where that larger area of blue water is. So that's  
3 the Oahe Reservoir right there. So this would be  
4 downstream from the crossing toward the Oahe.

5 Q. Did you do any effort to calculate the speed at  
6 which if there was a spill right at the Cheyenne River  
7 crossing about how long it would take for waterborne  
8 components of the dilbit to reach the Oahe?

9 A. Along this stretch I did a calculation. Assuming  
10 water velocity of around 5, 5 and a half miles per hour  
11 from a U.S. Geological Survey report, which is, in my  
12 experience, typical of the Cheyenne River during  
13 flooding. So about 5 miles per hour conservatively.

14 And this is a distance of about 40 miles as the crow  
15 flies. So with the sinuosity of the river it might be 80  
16 to 100, 120 miles. So at 5 miles an hour in potentially  
17 12 to 24 hours contaminants could reach the Oahe  
18 Reservoir from that crossing area here.

19 Q. Are you familiar with the contents of crude oil, of  
20 dilbit, bitumen?

21 A. To some degree, yes. I believe that it contains  
22 benzene, for example, and toluylene and xylene.

23 Q. Are any of those highly soluble?

24 A. Benzene is quite soluble, and toluene and xylene as  
25 well. Benzene probably the most -- contaminant of

1 concern because of its maximum contaminant level of five  
2 parts per billion.

3 Q. Five parts per billion. Do you understand that to  
4 be -- that's the danger level?

5 A. That's what the U.S. Environmental Protection Agency  
6 has said as the maximum contaminant level that is  
7 allowable in drinking water.

8 Q. Thank you. Was there anything else on this  
9 particular map, sir, that you could help us to -- that  
10 would be helpful to the Commission in terms of  
11 understanding the geology and hydrology of the area as  
12 you work your way southeast?

13 A. There is a bigger area of alluvium along a major  
14 stream like the Cheyenne. So all the yellow areas here  
15 are alluvium. And that forms an aquifer. It might not  
16 be widely used. But some ranchers probably have wells in  
17 the area or shallow dugouts where water can collect for  
18 their stock.

19 And this terrace material where it's saturated,  
20 that's on the flat upland area here. And this eolian  
21 material here again, the QE, where those are saturated  
22 they form aquifer material, and that could be exploited  
23 now or in the future and also supplies water to certain  
24 springs and seeps and to vegetation in the area.

25 Q. For those people who may be less familiar with

1 hydrological terms or connections, an alluvial area, how  
2 does that relate to a river body?

3 A. The river transports gravel and sand and silt and so  
4 forth, and so the alluvium is deposited by the river over  
5 years and decades and centuries. So the alluvium tends  
6 to be found on the very bottom of the valley there.

7 And the river level is basically about the water  
8 table level.

9 Q. Is there any connection hydrologically between the  
10 two?

11 A. Yes. Unless the river bottom is very muddy or  
12 silty, it will tend to have a hydraulic connection  
13 between the alluvium and the river itself.

14 Q. Thank you. Anything more on this particular map,  
15 sir, that would be -- that you could tell us?

16 A. Well, here's the Bad River. And there's a lot of  
17 alluvium along that as well. Going from Philip over to  
18 Midland, here's the proposed crossing of the Bad River.

19 Q. And what potential problems would there be there if  
20 there was a spill?

21 A. Similar to what I mentioned with the Cheyenne River.  
22 The Bad River, of course, flows into the Missouri near  
23 Pierre, in this area here. Ft. Pierre, I should say.

24 Q. I'm going to show you the -- what I hope is the next  
25 map. Is that the next map?

1 A. Yes. There is Midland, and there's the Bad River,  
2 and there is Ft. Pierre and the Missouri River where it  
3 joins.

4 Q. Tell us about, if you could, the geology, hydrology  
5 of the area around the river area.

6 A. Well, here as before there's a lot of Pierre Shale.  
7 Much of western South Dakota has the Pierre Shale exposed  
8 so the slope stability problems here would be a major  
9 concern, I think especially in a deep valley like the  
10 Bad River. And slope failures can occur there.

11 There's also some eolian material right here --

12 Q. What's that?

13 A. This is the windblown sand.

14 Q. Sorry. And is there a -- well, could you tell us  
15 about the permeability of that sand?

16 A. Because it's transported by wind it has a grain size  
17 probably of a little less than a millimeter. So it's a  
18 medium sand that is permeable.

19 Q. Does that create any particular issues in terms of  
20 absorption, water absorption?

21 A. Rainfall could infiltrate very easily into that.  
22 And so, of course, a spill of contaminant could as well.

23 Q. Of water soluble components?

24 A. Benzene and so forth.

25 Q. Is this the next map in order?



1 A. Yes. There is the proposed route, and here the  
2 light orange material, Qt is a terrace. A terrace is  
3 actually a former alluvial floodplain that's now left at  
4 a higher elevation, but it's similar material. It will  
5 tend to be gravel and sand and some silt so it's  
6 permeable.

7 So there's a large area there of that permeable  
8 material where saturated -- that is an aquifer. Now here  
9 is the White River and again we can see a lot of yellow  
10 alluvial material shown on the map there. And so the  
11 White River, of course, is fairly steep banks and, again,  
12 the possibility of the bentonite in the Pierre Shale  
13 which is that olive green color again and has the symbol  
14 Kp, that would be a concern there with the slopes of the  
15 breaks of the White River.

16 Q. It looks like there's a lot of green there along  
17 that route.

18 A. That's all Pierre Shale there.

19 Q. And the potential slippage capacity of the soil is  
20 prevalent?

21 A. Yes. Because it's bentonite containing.

22 Q. Would this be, again, the next map, to your  
23 knowledge along the route?

24 A. Yes. I believe this is the last one. It could be  
25 slid a little bit farther to the right probably. And

1     there in Tripp County the proposed route would go on to  
2     sand hills and Ogallala type material.

3     Q.    What particular concern would there be of that  
4     material?  Maybe first if you could describe for us -- I  
5     mean, it's called the sand hills, but describe for us the  
6     geology and then the -- any interrelationship with the  
7     hydrology in the area.

8     A.    The Sand Hills Formation is wind deposited.  So it  
9     was dune type sand that was blown by the wind.  And so  
10    these are sand grains that are of a certain size.  It's  
11    not silty.  It is a permeable sand.

12           And that overlies the Ogallala Aquifer.  Especially  
13    in the state of Nebraska.  The Sand Hills is a major  
14    recharge area for the underlying Ogallala Aquifer.

15    Q.    Does that recharge area also carry north to within  
16    our state?

17    A.    Yes.  This is part of the recharge area, and it  
18    continues on here.  For example, there near Colome and  
19    here in this To, that orange is the Ogallala Aquifer.

20    Q.    And is that whole area recharge area?

21    A.    Yes.

22    Q.    Uh-huh.  I mean, it looks fairly massive  
23    geographically.

24    A.    Well, that's how aquifers get recharged.  The rate  
25    might be only a tenth of precipitation so you need a

1 large area to provide recharge for an aquifer in cases  
2 like this, the big widely used aquifer like the Ogallala.

3 Q. We have had testimony, Doctor, about that with the  
4 exception of the rivers within our state and Bridger  
5 Creek, which TransCanada plans to use -- well, let me  
6 back up a little bit.

7 Do you know what horizontal drilling is?

8 A. Yes.

9 Q. Do you know what open trench -- what would be the  
10 right word?

11 A. For a water body crossing?

12 Q. Yes.

13 A. Yes.

14 Q. Do you have any concerns about the fact that  
15 TransCanada, with the exception of the major river  
16 crossings and Bridger Creek, plans to use open trench  
17 crossing?

18 MR. MOORE: I'll just object that this is beyond  
19 the scope of the prefiled testimony, and there's  
20 insufficient foundation.

21 Q. Do you want to give us an explanation, sir, of open  
22 trench and what your concerns might be?

23 MR. MOORE: Excuse me. I would just request a  
24 ruling on my objection, please.

25 MR. ELLISON: Excuse me.

1 MR. SMITH: Can you repeat the question? Can  
2 you repeat the question again, please.

3 (Reporter reads back the requested question.)

4 MR. ELLISON: And if I might briefly state, it  
5 is not in the written testimony. However, it became a  
6 subject during the course of this hearing, and, thus, I  
7 am requesting leave to take advantage of Dr. Davis's  
8 expertise in this area to further give us information  
9 that hopefully will be helpful to the Commission in its  
10 decision-making.

11 MR. SMITH: I'm going to overrule subject to the  
12 Commission's oversight.

13 CHAIRMAN NELSON: Foundation question. I guess  
14 I'd like to know what his expertise is in construction  
15 techniques before we go to that question. If we can  
16 establish that, then I'm fine with the question.

17 Q. Doctor, can you tell us?

18 A. My expertise primarily is geological engineering and  
19 so this relation to the materials that would be affected  
20 by any construction and to some degree the amount of  
21 erosion and so forth that could occur.

22 MR. ELLISON: Would that be sufficient?

23 MR. SMITH: Overruled.

24 Q. So what would be your concerns, sir, about what we  
25 understand are some 300 either perennial, intermediate,

1 or ephemeral streams? But if you could focus on the  
2 perennial because we know that means there's water all  
3 the time?

4 A. Yeah. Perennial means it flows continually.

5 Q. Okay. Please tell us what the affects would be and  
6 what your concerns would be about such a process.

7 A. Directional drilling underneath a stream would cause  
8 much less surface and environmental disruption for the  
9 stream itself. And open cut would tend to disturb the  
10 land. And if it were during a rainy period, that would  
11 be made much worse.

12 Q. Thank you. Just a couple more questions, if I  
13 might.

14 Would you be concerned about the fact that -- about  
15 TransCanada is still undergoing evaluation of high  
16 consequence areas in the areas that we've been talking  
17 about as opposed to having submitted a final assessment  
18 for this Commission to review?

19 A. Yes.

20 MR. MOORE: I'll object that, again, it's beyond  
21 the scope of his prefled. I'll object that it's  
22 argumentative. And I'll object to foundation.

23 Q. Can you give an opinion as to incomplete assessments  
24 of such areas for the Commission to decide whether  
25 TransCanada can, in fact, comply with Conditions to

1 protect those areas?

2 A. Yes. My opinion is that that could potentially be a  
3 problem, and I am concerned.

4 Q. If the --

5 MR. ELLISON: I'm sorry. Did I jump ahead? I  
6 apologize.

7 MR. SMITH: Overruled.

8 MR. ELLISON: Thank you.

9 Q. If this pipeline was not constructed in a manner  
10 that would protect our water resources from the impact of  
11 a spill, how would you -- would you be -- do you have an  
12 opinion as to what this could potentially mean to any  
13 affected water resource area?

14 MR. MOORE: I'll object to foundation,  
15 speculation. The question is argumentative.

16 MR. SMITH: Overruled.

17 A. If a leak or spill were to occur, it could cause  
18 consequences that could take decades to finally clean up.  
19 My concern is mainly for protection of groundwater, other  
20 environmental resources, and drinking water.

21 Q. Would you have the confidence that such a cleanup  
22 could actually be 100 percent effective?

23 A. I have never seen a case where it was 100 percent  
24 effective.

25 Q. Now I've saved this for last because in anticipation

1 it might draw an objection, but hopefully not. Do you  
2 have a slide that would be able to show -- for  
3 illustrative purposes, not an exhibit, but for  
4 illustrative purposes what a slide would look like?

5 A. I have several slides on a travel drive that I  
6 brought along in a PowerPoint presentation.

7 Q. And would they help you to illustrate the testimony  
8 that you have given us?

9 A. Yes.

10 MR. MOORE: And for the record I'll object that  
11 this is not previously disclosed. We've been disclosing  
12 prefiled testimony and exhibits. If Dr. Davis wanted to  
13 present a PowerPoint in with his testimony, it could have  
14 been disclosed to us before today. It's prejudicial, and  
15 I object.

16 MR. ELLISON: Again, this is cross-examination.  
17 And we are not attempting to introduce -- it's just a  
18 couple of slides. But it would be for illustrative  
19 purposes so that the Commission could actually see what  
20 such a slide looks like.

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

22 MR. ELLISON: All right. Thank you.

23 With that, that's all the testimony I have --  
24 all the questions I have.

25

CROSS-EXAMINATION

BY MR. MOORE:

Q. Good afternoon, Dr. Davis. My name is James Moore. I'm one of the lawyers representing TransCanada.

You're a geologist and a professional engineer; correct?

A. I'm a geologic engineer and professional engineer.

Q. You are an expert in South Dakota geology?

A. Yes.

Q. You're also an expert in the fate and transport of oil pipeline spills?

A. As far as the contaminants such as benzene, yes.

Q. You are not an expert in pipeline integrity, are you?

A. No.

Q. You're not an expert in emergency response planning for an oil pipeline spill, are you?

A. No.

Q. You are not an expert in routing a pipeline, are you?

A. When it comes to routing a pipeline, I have a fair amount of experience as far as what is important, where the route should go or shouldn't go. So I would have to disagree with that.

Q. Have you done a site-specific soils analysis related



1 to the Keystone XL Pipeline route throughout  
2 South Dakota?

3 A. No.

4 Q. Dr. Davis, with respect to the fate and transport of  
5 a potential oil spill on the Keystone XL Pipeline, other  
6 than the example that's contained in your prefiled  
7 testimony related to the Cheyenne River, have you done  
8 any independent analysis of such a spill related to the  
9 Keystone XL Pipeline?

10 A. Not in detail, no.

11 Q. And with respect to the Cheyenne River example  
12 that's contained in your testimony, you assumed a  
13 velocity of the Cheyenne River of 5 to 5 and a half miles  
14 per hour which is based on your experience and research  
15 in the field; correct?

16 A. And publication of the U.S. Geological Survey, yes.  
17 From their own data.

18 Q. And, Dr. Davis, you have not conducted an  
19 independent risk assessment with respect to the Keystone  
20 XL Pipeline; is that correct?

21 A. That's correct.

22 Q. You did not testify before the Public Utilities  
23 Commission when the Permit for the Keystone XL Pipeline  
24 was granted in 2010, did you?

25 A. No.

1 Q. You did testify in the Permit proceeding for the  
2 Keystone Pipeline in eastern South Dakota in 2007; is  
3 that correct?

4 A. Yes.

5 Q. And in that hearing you testified about risks to  
6 groundwater resources posed by the proposed Keystone  
7 Pipeline?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. And you testified about risks to aquifers from the  
12 Keystone Pipeline?

13 A. Yes.

14 Q. And you testified about risks to recharge areas for  
15 shallow aquifers in eastern South Dakota?

16 A. I believe so.

17 Q. And you testified about risks due to the proposed  
18 route crossing areas with alluvium?

19 A. Yes.

20 Q. And you testified about risks due to the pipeline  
21 route crossing areas with sandy soils?

22 A. Yes.

23 Q. And you've also testified through your prefiled  
24 testimony in this case to all of those risks associated  
25 with the Keystone XL Pipeline in western South Dakota; is

1     that correct?

2     A.    Yes.

3     Q.    Dr. Davis, have you reviewed the Construction  
4     Mitigation Reclamation Plan for the Keystone XL Pipeline?

5     A.    No.

6     Q.    So you're not aware of particular mitigation  
7     measures that can be used during construction, for  
8     instance, related to crossing areas of steep slopes?

9     A.    Not in detail, no.

10    Q.    And are you aware of any of the details of  
11    Keystone's integrity management program to monitor areas  
12    of steep slopes?

13    A.    I believe I read a little bit about that, but I  
14    can't recall it at the moment.

15    Q.    Mr. Ellison asked you a question about testimony  
16    during the hearing related to 1.6 miles of areas of  
17    specifically high landslide risk related to the Keystone  
18    XL Pipeline.

19         Do you recall that question?

20    A.    I don't recall the exact question, but I remember  
21    the general sense of it.

22    Q.    Do you know anything about the testimony on which  
23    that 1.6 mile figure was based?

24    A.    I don't know.

25    Q.    You were not here to hear personally; correct?

1 A. No.

2 Q. And you were not listening to it on the web?

3 A. No.

4 Q. Dr. Davis, have you reviewed the Permit Conditions  
5 attached to the Amended Final Decision and Order for the  
6 Keystone XL Pipeline?

7 A. Excuse me?

8 Q. Have you reviewed the Permit Conditions that are  
9 part of the Public Utilities Commission's Amended Final  
10 Decision and Order granting a Permit for the Keystone XL  
11 Pipeline?

12 A. Yes.

13 Q. All right.

14 MR. MOORE: That's all I have for you. Thank  
15 you very much.

16 MR. ELLISON: Excuse me. I realized I forgot a  
17 housekeeping matter. I don't believe I formally offered  
18 the written testimony of Dr. Davis. That was an  
19 oversight on my part.

20 It is DRA Exhibit 3. And since I understand  
21 that Mr. Vokes's written testimony was marked as Exhibit  
22 3-A, I would propose that it be marked DRA Exhibit 3-B.

23 MR. MOORE: And we have no objection to the  
24 admission of the prefiled testimony.

25 MR. SMITH: Any other objection?

1           Seeing none, it's admitted.

2           MR. ELLISON: Thank you.

3           MR. SMITH: Intervenor questions, Mr. Clark.

4                           CROSS-EXAMINATION

5   BY MR. CLARK:

6   Q.   Thank you, Dr. Davis. Travis Clark on behalf of the  
7   Cheyenne River Sioux Tribe.

8           You stated in your direct testimony that there is  
9   considerable risk of pipeline failure in the northwestern  
10   portion of the state due to slope failure; correct?

11   A.   Yes.

12   Q.   That would necessarily include that proposed portion  
13   of the pipeline that is immediately adjacent to the  
14   Cheyenne River Sioux Tribe, would it not?

15   A.   I believe it would.

16   Q.   Are you generally familiar with mitigation  
17   techniques such as riprap, geotech style material, and  
18   resloping?

19   A.   Yes.

20   Q.   Would any of these measures eliminate the risk of  
21   pipeline failure due to slope failure?

22   A.   No. They wouldn't eliminate the risk, no.

23   Q.   So you would agree that even with these mitigation  
24   efforts there's still the potential of pipeline failure  
25   due to slope failure?

1 A. Yes.

2 Q. You also stated in your direct testimony that crude  
3 oil or diluted bitumen leak would have devastating  
4 effects on water supplies because such contaminants can  
5 be transported long distances quickly.

6 My question is related to that portion of your  
7 testimony. Are you aware of the proposed Bridger Creek  
8 Crossing?

9 A. Yes.

10 Q. Are you aware that the Mni Waste Water Company's  
11 water intake is approximately 76 miles downstream of that  
12 crossing?

13 A. I didn't know that particular detail, no.

14 Q. In your direct testimony you outlined a spill  
15 scenario which asserts that crude oil spill in a major  
16 water source could potentially be transported 60 to 120  
17 miles downstream within 12 to 24 hours; is that correct?

18 A. Yes.

19 Q. Generally speaking, because I understand that the --  
20 you know, it depends on the speed of the water movement,  
21 but, generally speaking, would that estimate be more or  
22 less accurate with regard to a spill in the Bridger Creek  
23 area?

24 A. Roughly of that order of magnitude.

25 Q. So would you agree that the statement it is

1 impossible for contaminants spilled in the Bridger Creek  
2 area to be transported -- I'm sorry. Let me rephrase. I  
3 confused myself.

4 Would you agree with the statement that it is  
5 impossible for contaminants spilled in the Bridger Creek  
6 area to be transported 76 miles?

7 A. Could you restate the question? I lost my train of  
8 thought.

9 Q. No worries.

10 Is it impossible for contaminants to travel 76 miles  
11 down Bridger Creek?

12 A. I don't think it's impossible, no.

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

14 MR. SMITH: Mr. Rappold?

15 MR. RAPPOLD: Rosebud has no questions for the  
16 witness.

17 Thank you.

18 MR. SMITH: Mr. Capossela.

19 MR. CAPOSSELA: Thank you, Mr. Smith. Briefly.

20 CROSS-EXAMINATION

21 BY MR. CAPOSSELA:

22 Q. Dr. Davis, my name is Peter Capossela. I'm a lawyer  
23 for the Standing Rock Sioux Tribe.

24 A project engineer for the Keystone XL Pipeline  
25 testified that horizontal directional drilling method for

1 stream crossings is being utilized for all perennial  
2 streams in western South Dakota.

3 Are you familiar with the Grand River?

4 MR. MOORE: Excuse me. I'll just object to the  
5 question as a misstatement of the record.

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

7 Q. Are you familiar with the Grand River?

8 A. Somewhat, yes.

9 Q. Is it a perennial or intermittent stream?

10 A. It's perennial.

11 MR. CAPOSSELA: Thank you, Dr. Davis. I have no  
12 further questions.

13 MS. REAL BIRD: Yankton has no questions for the  
14 Doctor.

15 MR. SMITH: Ms. Craven.

16 MS. CRAVEN: The Indigenous Environmental  
17 Network has no questions for Dr. Davis, but thank you  
18 very much for coming and traveling all the way to be here  
19 with us.

20 MR. SMITH: Mr. Gough.

21 MR. GOUGH: Thank you. Yes.

22 CROSS-EXAMINATION

23 BY MR. GOUGH:

24 Q. Bob Gough, InterTribal Council On Utility Policy.  
25 Thank you, sir. I appreciate your testimony.



1           And in that testimony you indicated that the Pierre  
2       Shale and bentonite combination is subject to sliding and  
3       causing slope failure and land slides; is that correct?

4       A.    Yes.

5       Q.    And you indicated that this occurs most likely when  
6       it takes on water?

7       A.    Typically that's when we start to notice more slope  
8       failures. But it doesn't necessarily need to be during  
9       the wet period. We've been surprised sometimes by slope  
10      failures that have occurred almost out of the blue.

11      Q.    Uh-huh. Thank you.

12           Basically a good deal of this West River terrain has  
13      been shaped by water; is that correct?

14      A.    By runoff.

15      Q.    By runoff?

16      A.    Yes.

17      Q.    And is it more or less likely for these kinds of  
18      failures to occur during heavy precipitation incidents  
19      rather than lighter drizzles?

20      A.    That increases the odds of it. Other factors can  
21      come into it too such as a river meander that might be  
22      cutting away at the toe of slope and so forth. So there  
23      are other factors as well.

24      Q.    Was much of this real estate rearranged during the  
25      500-year flood in 2011? Do you know?

1 A. Not to a greatly significant degree over large  
2 expansions, but in the river valleys some of the channels  
3 might have been modified a little.

4 Q. Okay. And it's your testimony that that's basically  
5 how over many, many, many years this terrain has been  
6 actually shaped?

7 A. That's true, yeah.

8 Q. Would it be your opinion that with more frequent and  
9 intense precipitation events we are likely to see more of  
10 this slope failure and landslide?

11 MR. MOORE: I'll just object. Irrelevance and  
12 speculation.

13 MR. SMITH: Overruled.

14 MR. GOUGH: Thank you.

15 Q. You can answer.

16 A. Yes. I think it's possible that we could see more  
17 slope failures. And, in fact, maybe over the last  
18 20 years I think I've noticed more recently.

19 Q. You're testifying here as a geologic engineer?

20 A. Yes.

21 Q. And you're telling me that your personal eyewitness  
22 of geology and geological events has occurred over the  
23 last 20 years?

24 A. Well, I've noticed I think more land slides. Maybe  
25 it's because I've been looking for them more, but I think

1 I've seen more in the last 20 years.

2 Q. How long have you been a geological engineer?

3 A. For about 36 years.

4 Q. 36 years. So basically the second half of your  
5 career you've seen -- you've noticed more of these?

6 A. Yes.

7 Q. To what would you attribute that, if anything?

8 A. I am not sure about that. I think one thing might  
9 be urbanization. Another might be sometimes more intense  
10 precipitation or weather periods than I remember when I  
11 was younger.

12 Q. Do you have any knowledge as to whether during the  
13 operational phase of this proposed pipeline we are likely  
14 to see precipitation events greater than we've seen in  
15 the past?

16 MR. MOORE: Object to relevance.

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

18 MR. GOUGH: It goes to whether we may see more  
19 land slides and slope failure.

20 MR. MOORE: I'll also object to foundation for  
21 this witness.

22 MR. SMITH: Right. I mean, his testimony thus  
23 far is he's a geological expert. I don't know that he's  
24 a weather prediction -- there's no foundation for his  
25 expertise in that area.

1 Q. Sir, do you see weather as independent of geology?

2 A. I'm not a meteorologist, but they are interrelated.

3 Q. And with regard to this interrelation, would you --  
4 what is your opinion with regard to the likelihood of  
5 increased land slides or slope failures during the  
6 forthcoming lifetime of this proposed project?

7 MR. MOORE: I'll object to foundation and  
8 speculation.

9 MR. SMITH: Sustained.

10 Q. You see these likelihoods of incidents along the  
11 Pierre Shale and bentonite features over 150 miles of the  
12 300 plus miles of the route in South Dakota?

13 A. Potentially.

14 Q. Potentially.

15 MR. GOUGH: No further questions.

16 Thank you very much.

17 MR. SMITH: Mr. Dorr.

18 MR. DORR: I have no questions.

19 MR. SMITH: Mr. Harter. Oh, wait a minute.

20 Mr. Harter.

21 MR. HARTER: I have one question. Did my map,  
22 my big paper map, get left up here? Because I don't have  
23 it in back of my stuff.

24 Does the Commission want the one pulled up on  
25 the overhead so you can see it? It's basically the same

1 thing as what we used yesterday and the day before where  
2 he can just look at that. It just depends on if you  
3 and/or TransCanada want to see it at the same time.

4 MR. SMITH: Is that on the system, Tina?

5 (Pause)

6 CROSS-EXAMINATION

7 BY MR. HARTER:

8 Q. Mr. Davis, John Harter. The map in question at  
9 the -- what would be the bottom side of the trees you see  
10 where the blue line's coming across the red line?

11 A. Yes.

12 Q. Okay. And at the bottom side of that the line will  
13 come out from the end of those trees over and intersect  
14 the blue line.

15 But my question has to do with where the blue  
16 pipeline route borders what has been through testimony  
17 said to be the protection area for the City of Colome's  
18 water source. And it has been stated that it's 175 foot  
19 outside of this water source protection area.

20 My question is do you see this being a potential  
21 concern being this close?

22 MR. MOORE: Objection. Foundation.

23 MR. SMITH: Sustained. Ask him some preliminary  
24 questions, could you.

25 MR. HARTER: I guess I thought I was laying the

1 foundation for it.

2 MR. SMITH: Which particular foundation elements  
3 do you think are missing, Mr. Moore?

4 MR. MOORE: I don't know what Dr. Davis knows  
5 about this particular piece of property. I don't know  
6 what he knows about the soils. I don't know what he  
7 knows about the topography. I don't know whether he  
8 knows whether it's up gradient or down gradient from the  
9 service water protection area. I don't have any idea.

10 MR. SMITH: Okay. You heard some of those  
11 foundational things then.

12 Q. Dr. Davis, are you familiar with the City of  
13 Colome's water well area and my property?

14 A. A little bit. But I'm having trouble getting myself  
15 oriented on this map. So I don't know how it relates to  
16 the other maps that I've been looking at.

17 Q. Okay. Dr. Davis, do you see where the City of  
18 Colome's marked?

19 A. Yes.

20 Q. Okay. The area on the previous map that was up is  
21 approximately 4 miles west of Colome.

22 Does this map here help you relate the water surface  
23 charge area to where the City of Colome's water source  
24 is?

25 A. Yes.

1 MR. HARTER: Do I just close this to -- okay.

2 Q. Okay. So going back to this map, looking at the  
3 blue area in the segmented lines on this area, the  
4 outside borders of this area have been stated as being  
5 the outside edge of the source protection area for the  
6 City of Colome's water wells.

7 The Keystone XL is proposed to be installed where it  
8 shows it's closest to it, 175 foot from this. Would you  
9 give me your opinion on what, if any, concerns you would  
10 see from this?

11 MR. MOORE: Object to foundation again.

12 MR. SMITH: Again you've got things like is he  
13 familiar? Does he know what the geology of this  
14 particular area is and what the permeability is in that  
15 area. And gradient.

16 MR. HARTER: Thank you, Mr. Smith.

17 Q. Do you have knowledge of the soils and how they  
18 slope to this area of the Colome city wells?

19 A. I believe that this is the permeable windblown  
20 material that I mentioned in my report, of Sand Hills  
21 type material. And I believe that the hydraulic gradient  
22 there, according to work that my students have done, is  
23 somewhat north or northeastward, in that area.

24 Q. With the lower portion of the rolling Sand Hills of  
25 this area there's -- there is also wetlands area. Are

1 you aware of this?

2 A. It looks like it from the air photo there that I'm  
3 looking at.

4 Q. Okay. Would you say that there's a high potential  
5 for -- if a spill occurred, for getting into the aquifer  
6 source in this area?

7 MR. MOORE: Object. Foundation.

8 MR. SMITH: What do you think is still lacking?

9 MR. MOORE: I guess, Mr. Smith, I'm not  
10 interested in helping to lay foundation for the  
11 testimony.

12 My objection is it's insufficient.

13 MR. SMITH: Does he know what the  
14 characteristics are of the groundwater formation in that  
15 particular area.

16 MR. HARTER: Thank you.

17 Q. Do you know what the characteristics for the  
18 groundwater in this area are, Mr. Davis?

19 A. It's permeable, Sand Hills type material, and the  
20 hydraulic gradient is generally in this northeastward  
21 direction that I mentioned. There's hydraulic connection  
22 between the wetlands here and the subsurface groundwater.

23 And so I would have concerns about protection of the  
24 water supply.

25 Q. Where the bottom of the trench is going to be it's



1 7 foot into the ground, and the bottom of the pipe is  
2 going to be laying in that.

3 Would you say that at times during the year that the  
4 pipe could be submerged in water sand?

5 A. I don't know enough to say.

6 Q. Thank you. With the pipe at the closest portion to  
7 the segmented blue lines in this photo -- and this would  
8 be in the area, an upgraded area or the hillier area of  
9 the property, and the pipeline will lay only 175 foot  
10 from this blue segmented area.

11 Is there a possibility of their source protection  
12 water area being contaminated?

13 MR. MOORE: Object to foundation.

14 MR. SMITH: Overruled.

15 A. It appears to me that, yes, it could be.

16 Q. Thank you. During the work that you done on the  
17 Keystone I with your testimony and the years of  
18 experience that -- that you testified to to give  
19 information for the project, do you feel that TransCanada  
20 took any of your concerns into their confidence and tried  
21 to keep the area more protected for water sources?

22 MR. MOORE: Object to relevance. Argument.

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

24 MR. HARTER: Can I try and rephrase it?

25 MR. SMITH: You may. You may.

1 MR. HARTER: Thank you.

2 Q. On Keystone I you gave testimony to possible effects  
3 of the pipeline to water resources; correct?

4 A. Yes.

5 Q. And within your testimony did you bring up concerns  
6 about water resources?

7 A. Yes.

8 Q. And do you feel that these concerns were listened  
9 to?

10 MR. MOORE: Same objection. I mean, ultimately  
11 it was the Commission's decision whether or not to issue  
12 a Permit.

13 MR. SMITH: Yeah. I'm just -- I'm really  
14 struggling with that.

15 MR. ELLISON: But isn't that a different  
16 question because it's additional information provided to  
17 the company, and I believe, as I interpreted the  
18 question, it was whether the company took the expert  
19 testimony provided by Dr. Davis into consideration in  
20 making any changes or other modifications --

21 MR. SMITH: Well, I think step one is on  
22 foundation. Does he have any knowledge of that?

23 MR. HARTER: I guess I thought that's what I was  
24 asking, if he thought what he gave them --

25 MR. SMITH: Well, you were asking for an opinion

1 about whether they did it. I think first we need do you  
2 have any knowledge of that at all.

3 MR. HARTER: Okay. Thank you.

4 Q. Dr. Davis, do you have any knowledge that  
5 TransCanada took into consideration testimony that you  
6 gave to protect water resources?

7 MR. MOORE: I'll again object to relevance.

8 MR. HARTER: I guess in my --

9 MR. SMITH: I'm sorry. I didn't hear it because  
10 Commissioner Nelson was asking me something.

11 Can you repeat it, Cheri, and what the objection  
12 was.

13 (Reporter reads back the last question and objection.)

14 MR. SMITH: I'm going to overrule.

15 A. I don't know if they considered it or not. They  
16 didn't act on any of our recommendations, that I recall.

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

18 MR. SMITH: Ms. Lone Eagle.

19 MS. LONE EAGLE: I have no questions.

20 MR. SMITH: Ms. Myers.

21 CROSS-EXAMINATION

22 BY MS. MYERS:

23 Q. Good afternoon, Dr. Davis. I'm Cindy Myers. I'm an  
24 individual Intervenor.

25 The migration of benzene into drinking water sources

1 such as aquifers and waterways, do you feel this project  
2 would substantially impair the health, safety, and  
3 welfare of the inhabitants in the siting area?

4 MR. MOORE: I'll object to relevance. That goes  
5 to the burden in the underlying permitting proceeding.

6 Q. You've talked about benzene migrating down into  
7 drinking water sources. Can you give me an example of  
8 that?

9 A. Where a leak or a spill of hydrocarbons containing  
10 benzene occurs, the benzene is soluble, and you can see  
11 it in samples of water taken if the people are aware of  
12 the spill or leak.

13 And in my experience it can move 500 to up to 1,000  
14 feet or more down gradient. Not in all cases, but in  
15 some cases I have seen that in permeable material.

16 Benzene right around a typical gasoline leak or  
17 spill, for example, might be up to 30 or 40 parts per  
18 million. And that's more than 1,000 times the maximum  
19 contaminant level which is 5 parts per billion.

20 Now down gradient those contaminant concentrations  
21 will decrease somewhat because of dilution and even  
22 because of microbial action by aerobic bacteria in the  
23 subsurface. And that's why the leak doesn't go on  
24 forever. It might go for 500 feet or more, 1,000 feet.

25 Q. Thank you. How difficult is it to test for benzene?

1 A. Not particularly difficult to take a sample and to  
2 send it in to a lab such as Midcontinent Testing Labs.  
3 That's one that we've relied on over the years.

4 Q. I don't know if this would be in your area, but do  
5 most water treatment plants, are they able to remove the  
6 benzene from the water?

7 A. It's expensive. It can be removed in certain ways.  
8 For example, treated water can be fed into an air  
9 stripper tower and essentially the benzene, most of it,  
10 can be evaporated off.

11 Now if I recall correctly, I think for the City of  
12 Sioux Falls, it might have been water that -- from the  
13 Williams Pipeline Hayward Elementary School leak that was  
14 treated to a level that was acceptable where it could be  
15 taken into the waste water treatment plant.

16 Too high a level of the benzene wouldn't have been  
17 acceptable.

18 Q. Is it possible for benzene to enter into a public  
19 water intake?

20 A. It's possible, yes.

21 Q. And is it possible for it to enter into the system  
22 without being noticed?

23 A. I suppose it could.

24 Q. Benzene at 5 parts per billion is very minute. Are  
25 you able to know that benzene is contaminated -- or the

1 water is contaminated with benzene without testing?

2 A. Most people probably would not notice it because of  
3 taste or smell. Possibly a few very sensitive persons  
4 might be able to detect it, but most people would not be  
5 able to.

6 Q. So the only way we would know if benzene was in the  
7 water is by testing?

8 A. That's the best way.

9 Q. Do you have concerns as far as with humans and  
10 drinking water that's contaminated with benzene?

11 A. Benzene is known to be cancer causing, and so  
12 certainly I would have concerns about drinking water that  
13 were contaminated by benzene.

14 MS. MYERS: That concludes my questions. Thank  
15 you.

16 MR. SMITH: Okay. Mr. Seamans.

17 MR. SEAMANS: Yes. I have just one question,  
18 one or two.

19 CROSS-EXAMINATION

20 BY MR. SEAMANS:

21 Q. Along the Cheyenne River breaks when a landslide  
22 occurs is it a slow gradual process of a matter of days  
23 or weeks, or does it occur more rapidly?

24 A. It could be either. Sometimes it shows up  
25 overnight. It could be fairly sudden, or it could be a

1 slower movement.

2 Q. Okay.

3 MR. SEAMANS: I guess that's all I have. Thank  
4 you.

5 MR. SMITH: Ms. Smith.

6 MS. SMITH: I have no questions.

7 MR. SMITH: Okay. Mr. Tanderup.

8 MR. TANDERUP: I have no questions. Thank you.

9 MR. SMITH: Commissioner questions? Pardon me.  
10 Oh, Staff.

11 MS. EDWARDS: Thank you. No questions.

12 MR. SMITH: Commissioner Nelson, do you have  
13 one?

14 CHAIRMAN NELSON: Doctor, one question just  
15 related to this map again.

16 You indicated that the water gradient is to the  
17 northeast. We've had repeated testimony that the  
18 pipeline is proposed to be about 175 feet away from the  
19 edge of the groundwater protection area.

20 You've also testified that you have concern  
21 about this area so far as contamination of that  
22 particular area.

23 How does that concern occur when it is up  
24 gradient from where the pipeline is?

25 THE WITNESS: The hydraulic gradient in the

1 Sand Hills and Ogallala is not very clearly defined from  
2 the maps that I've seen by my students and so it's a  
3 fairly general gradient and we're not always certain when  
4 we see the potentiometric contours on a map.

5 And very rarely will you see any kind of arrows,  
6 for example, on a U.S. Geological Survey map that shows  
7 what they think the direction of groundwater flow is  
8 because they're just not certain.

9 CHAIRMAN NELSON: Thank you.

10 MR. SMITH: Commissioner Hanson.

11 COMMISSIONER HANSON: Thank you.

12 Doctor, thank you very much for your testimony  
13 on water. I certainly appreciate it. It's very  
14 interesting.

15 I'm going to state a couple of things, and I'm  
16 only going to paraphrase what you said so please correct  
17 me when incorrectly paraphrase what you said.

18 I believe you testified that you were not here  
19 and capable of testifying on pipeline integrity.  
20 Although you also stated in regards to a question that  
21 was queried of you pertaining to riprap and other types  
22 of preventative methods that might be used to stop  
23 erosion or reduce erosion.

24 And you said -- and this is where I'm not  
25 positive. You said something pertaining to the fact that



1 those methods would not did you say prevent or reduce the  
2 potential for pipeline mishap?

3 THE WITNESS: I think the sense of what I was  
4 trying to convey is that it would not guarantee that a  
5 slope failure wouldn't occur.

6 And my big concern is a slope failure could be  
7 big enough that a pipeline would not be able to stand up  
8 to it. There was a large slope failure near Red Shirt on  
9 the tributary of the Cheyenne River that caused about  
10 2 million cubic yards of material to move. And I don't  
11 believe the pipeline could withstand that. I don't  
12 believe that measures such as riprap would have prevented  
13 that slope failure from occurring.

14 COMMISSIONER HANSON: Have you examined the  
15 pipeline route itself? I believe you said no from the  
16 standpoint of potential areas where it might be a  
17 challenge.

18 THE WITNESS: I'm sorry. I didn't hear the  
19 first part of your question clearly.

20 COMMISSIONER HANSON: All right. Without any  
21 editorializing I'll state did you examine the pipeline  
22 route to be certain -- well, to ascertain whether or not  
23 there were potential challenges to such a failure?

24 THE WITNESS: Not on the ground. But from  
25 looking at geologic maps and topographic maps of the

1 steepness of slope I made that determination.

2 COMMISSIONER HANSON: All right. Thank you.  
3 This is your testimony, but it's mainly for integrity of  
4 the City of Sioux Falls utilities. You testified  
5 pertaining to the fact that you were involved in  
6 mitigation efforts with the tank farm in Sioux Falls with  
7 Williams Pipeline?

8 THE WITNESS: I was more involved with the  
9 investigation of it and fixing of the blame or  
10 responsibility for the leak on Williams Pipeline Company.

11 And after that I had some involvement with the  
12 mitigation, but I was not employed.

13 COMMISSIONER HANSON: Thank you for your efforts  
14 there.

15 Do you recall, if I remind you, that the -- I'm  
16 sure you recall the product. I believe you -- but I  
17 don't want to tell you what it was, but do you recall  
18 what the product was?

19 THE WITNESS: That was unleaded gasoline from  
20 Tank 1341.

21 COMMISSIONER HANSON: Thank you. And you also  
22 remember that there's a super funds site that was  
23 adjacent to that.

24 THE WITNESS: I think it was on the Williams  
25 Pipeline property over on the eastern side, the old burn

1 pit, I believe.

2 COMMISSIONER HANSON: And do you recall the  
3 measures from the City of Sioux Falls of placing  
4 monitoring wells to the south and to the east of those  
5 areas?

6 THE WITNESS: I don't remember a lot about that  
7 because I wasn't as involved with the burn pit area, but  
8 I do recall that a student who worked on some of the logs  
9 there said there was free product or free hydrocarbons  
10 floating on the water table in that area.

11 COMMISSIONER HANSON: I appreciate everyone's  
12 allowing me to pursue this a little bit further than what  
13 is necessary here.

14 However, I believe you testified that the City  
15 of Sioux Falls treated those waters and probably diluted  
16 them to an effect where the benzene would be appropriate.  
17 And if you'll recall, there were monitoring wells to  
18 assure it did not cross the Skunk Creek or the Sioux  
19 River and get into either the Green Sand Treatment Center  
20 on the west side of Sioux Falls or the line treatment  
21 center main facility.

22 THE WITNESS: Well, I hope I didn't misstate  
23 anything, but it was my understanding that the produced  
24 water from the recovery wells near Hayward Elementary  
25 School had water that needed to be disposed of.

1           So what I was trying to describe is the air  
2   stripper towers that they ran it through so that then I  
3   was told by Mike Meyer from the Department of Environment  
4   and Resources then it would be acceptable to go into the  
5   Sioux Falls city sewer.

6           So I apologize if I misstated something.

7           COMMISSIONER HANSON: Okay. It went to the  
8   water reclamation, not the water purification. All  
9   right.

10          I think just one last question, and that is were  
11   you involved in another spill that took place, a leak of  
12   a pipeline that took place north of the City of Sioux  
13   Falls in which the product was oil?

14          THE WITNESS: No. I was not directly involved  
15   in that, but I was aware of it because of Mike Meyer who  
16   worked for the DENR at that time.

17          COMMISSIONER HANSON: I misstated that. The  
18   product was a petroleum product.

19          Thank you. Appreciate that, Mr. Smith.

20          MR. SMITH: Yep. Thank you.

21          Are there any follow-up questions to  
22   Commissioner questions?

23          Mr. Dorr.

24

25

CROSS-EXAMINATION

BY MR. DORR:

Q. I have a question -- I'm not sure where it goes right now -- of the witness.

On that topographical -- or on that map that's up there, the point where it comes closest to being within the Colome city water well, if the pipeline where it sits is 80 to 100 feet higher than the Colome city water supply right there, at that range would that be considered up gradient, the pipeline?

MR. MOORE: I'm going to object to foundation. The question is based on facts not in evidence. And I'm going to also object that the exhibit that we're looking at does not accurately show the current proposed pipeline route.

MR. SMITH: Okay. This one here does not?

Okay. And I think the evidence --

MR. ELLISON: Actually I'm not sure there was foundation for the objection.

MR. SMITH: Pardon me?

MR. ELLISON: I'm not sure there was foundation for the objection as to whether the pipeline route --

MR. SMITH: Based on the evidence we've heard here today and actually the evidence we've heard -- and I've heard nothing to contradict that -- is the pipeline

1 is -- the current location is down gradient, not up  
2 gradient from the well intake.

3 MR. DORR: That's my question is trying to get  
4 to that fact. I was out there with TransCanada's team  
5 when they went through that property, and the point where  
6 they're crossing is approximately 80 to 100 feet higher  
7 than the Colome city water well. And I want to ask this  
8 expert if the pipeline is above the city water supply by  
9 100 feet, if that's up gradient.

10 MR. MOORE: I have the same objections I  
11 previously stated.

12 MR. SMITH: Well, I just -- yeah. I think --  
13 overruled. Okay.

14 A. It would have the potential for contamination to get  
15 into the water supply. What wouldn't be certain, if it  
16 was directly up gradient or at some angle. And without  
17 more wells it would be difficult, frankly, to say.

18 MR. DORR: Thank you.

19 MR. SMITH: Any additional questions following  
20 on Commissioner questions?

21 MR. HARTER: Mr. Smith, John Harter. I would  
22 just like to make a note for the record the only reason  
23 there is not an updated picture of this is because I have  
24 never received one.

25 Thank you.

1 MR. SMITH: Okay. So noted.

2 Any other follow-on questions?

3 Seeing none --

4 MR. ELLISON: I guess I would state there would  
5 be no redirect.

6 MR. SMITH: What's that?

7 MR. ELLISON: There will be no redirect of  
8 Dr. Davis.

9 MR. SMITH: There will not?

10 MR. ELLISON: No, sir.

11 MR. SMITH: Thank you. You may step down.

12 Gary, did you have something you wanted to say?

13 COMMISSIONER HANSON: As I have said on occasion  
14 in meetings that sometimes when you feel compelled to  
15 make a statement, you probably should not, but I feel  
16 compelled.

17 I don't think that there's any secret that I'm  
18 in a considerable amount of pain up here. Mr. Ellison  
19 asked me if we needed to take a break earlier. I assume  
20 that's because I was seated forward, and I was feeling  
21 quite nauseous from the pills that I was taking.

22 I do have a really, really bad hip. I  
23 understand that my personal problems are no different  
24 from all of the challenges that you folks have. I know  
25 there's a lot of ailments we all have, especially as we

1 get older.

2 I have some spinal problems, some hip problems,  
3 and I'm in a lot of pain so I take pills. And I  
4 understand that someone decided that they'd -- I saw a  
5 number of people taking pictures during the process here,  
6 and I was interested to learn that someone decided to  
7 post on Facebook saying that because of the position I  
8 was seated in my chair that I was sleeping during the  
9 hearings. Which I was not.

10 I could not have participated in the questions  
11 and in the discussion, nor could I have participated in  
12 the procedures from -- well, overruling and sustaining  
13 objections.

14 But, you know, we talk about fairness. We talk  
15 about the fact that we want to have good hearings here,  
16 and I appreciate that. I am not going to make false  
17 statements about anyone who's here. I'm not going to  
18 make false statements ever about anyone if I can  
19 certainly help it.

20 But to put some statements repeated on to  
21 Facebook saying -- making statements that are false,  
22 absolutely false, really perturbs me greatly. I have  
23 committed myself to doing an excellent job for the  
24 citizens of South Dakota, and I truly resent personal  
25 attacks.



1           Thank you.

2           MR. ELLISON: Commissioner, my reason for asking  
3 if you wanted to take a break is I am well-aware of pain  
4 pills and how they affect one, and my concern was that it  
5 was making it difficult for you and that perhaps you  
6 needed a little bit of time to do that.

7           COMMISSIONER HANSON: Thank you, Mr. Ellison.  
8 My remarks were not pointed at you.

9           MR. ELLISON: No. I understand that.

10          COMMISSIONER HANSON: There was another party  
11 that made several false statements.

12          MR. ELLISON: I just wanted to say that I do  
13 understand. And my question, my only concern, is is that  
14 I know how they can affect one's ability to concentrate  
15 and pay attention. And if you had needed a break, I know  
16 DRA would certainly not have objected to that.

17          COMMISSIONER HANSON: I appreciate that.

18          My injured hip, I'm going to have a hip  
19 replacement, but it only hurts when I'm sitting down.  
20 That's why I get up periodically. And I've found two  
21 positions where I can -- where I'm not in pain, and one  
22 of those is when I'm leaning to my left. And, otherwise,  
23 I try to stand up, but I have some other problems with my  
24 spine that create challenges when I stand up too long.  
25 So that's the reason for it.

1 I appreciate your --

2 MR. ELLISON: Yeah. I just had not seen that  
3 before, sir, and that caused my concern.

4 COMMISSIONER HANSON: When I sat up, took my  
5 glasses off, I was extremely nauseous at that point  
6 trying to figure out if I could ride it out or if I  
7 should find a wastebasket. So I appreciate your asking.

8 MR. ELLISON: Thank you, sir, for explaining it  
9 to us.

10 MR. SMITH: Ms. Craven.

11 MS. CRAVEN: I just wanted to add I appreciate,  
12 Commissioner Hanson, you sharing that because to us in  
13 the audience it looked like to us you were asleep, and we  
14 were quite -- you know, couldn't understand why this  
15 testimony of Evan Vokes was putting you to sleep. So I  
16 think we do appreciate the explanation.

17 And I would offer a motion that we continue this  
18 hearing until you're feeling better and that we have a  
19 full, you know, robust hearing at that time when you're  
20 better, when Commissioner Fiegen's better, and we are all  
21 actively listening to the hearing together.

22 COMMISSIONER HANSON: Thank you for the  
23 suggestion, but I'm not going to have the operation until  
24 October so -- or early November. So that's just not  
25 going to happen.

1 MR. HARTER: I would just like to add something.  
2 As a person who had -- has a back injury, it was quite  
3 easily for me to recognize and Mr. Hanson and I had a  
4 conversation about this so I actually knew that there was  
5 some discomfort going on up there. And as an Intervenor  
6 I would apologize for what's gone on.

7 Thank you.

8 MR. SMITH: I don't know if the Commissioners  
9 need to act on that, but if it's me, I'm going to deny  
10 the motion to continue.

11 At this point now we're at a quarter to 3:00.  
12 Again, I think the next witness that I am indicating was  
13 going to be called today due to presence and so on was  
14 Yankton Sioux Tribe's witness Ms. Spotted Eagle.

15 I don't know what the extent of this is. Do you  
16 want to go now, or do you want to take a break first and  
17 get orientated?

18 MS. REAL BIRD: Take a short break.

19 MR. SMITH: Break.

20 MS. BAKER: We'd like to take a brief break.

21 Thank you.

22 MR. SMITH: We'll take 15 minutes and maybe a  
23 couple minutes after 3 o'clock.

24 (A short recess is taken)

25 MR. SMITH: Chairman Nelson, did you have

1 something?

2 CHAIRMAN NELSON: Yeah. In the ever kind of  
3 shifting sands of who's going in what order, assuming we  
4 have some time left after Ms. Spotted Eagle, Staff has  
5 indicated that they can put on some of their direct  
6 witnesses today.

7 And so maybe we'll try to get some of those out  
8 of the way and that will leave Kothari and Schmidt for  
9 first thing tomorrow morning if that's acceptable.

10 MR. MARTINEZ: Commissioner Nelson, it might be  
11 helpful for us to know which of the Staff witnesses will  
12 be up next.

13 CHAIRMAN NELSON: Just hang on. I need to get  
14 their response to my statement first.

15 MR. TAYLOR: We'd like to get -- well, your  
16 suggestion is we move to Staff rather than do Kothari and  
17 Schmidt?

18 CHAIRMAN NELSON: Only because they are rebuttal  
19 witnesses and Staff direct witnesses, and you had  
20 indicated they would both be here tomorrow. And if  
21 that's problematic --

22 MR. TAYLOR: They're not rebuttal to Staff  
23 witnesses, however.

24 CHAIRMAN NELSON: Oh.

25 Ms. Cremer.

1 MR. CREMER: Just hold that thought a moment.

2 (Pause)

3 MR. CREMER: So Staff has -- Mr. Hughes's  
4 testimony is -- we can either file a one-page  
5 supplemental testimony that I believe Keystone will then  
6 want to look at and address, or if nobody wants us to do  
7 that, we can merely ask him on the stand do you have some  
8 concerns, and he can lay out his concerns.

9 But it is a mathematical formula. So that's the  
10 only reason we were looking at written, doing written  
11 testimony. But we can do it either way.

12 MR. TAYLOR: I'd also say at this moment we  
13 don't intend to offer Ms. Kothari as rebuttal testimony.  
14 We're going to withdraw it. So we're down to John  
15 Schmidt, as to those witnesses that leave.

16 CHAIRMAN NELSON: Well, I guess if it -- if it  
17 doesn't impact any of Staff's witnesses, if you want to  
18 get them out the way, that's fine with us.

19 MR. TAYLOR: It would certainly make their lives  
20 easier.

21 MR. ELLISON: I thought we were going to go to  
22 Ms. Spotted Eagle.

23 MR. SMITH: Ms. Spotted Eagle. Thank for  
24 reminding me. We are. That's who's next.

25 MS. CRAVEN: Kimberly Craven for the Indigenous

1 Environmental Network.

2 I'd like to go back to what Commissioner Hanson  
3 said about he doesn't have a Facebook page but someone  
4 told him that Gary Dorr has posted this on his Facebook  
5 page.

6 Are we being monitored by the Commission Staff  
7 or something? How does it happen that something that  
8 Gary posted becomes --

9 MR. SMITH: I know nothing about this  
10 whatsoever.

11 COMMISSIONER HANSON: No one's monitoring  
12 anyone. I have three Facebook pages myself and people --  
13 I never used Gary Dorr's name. You've used it for the  
14 first time here. And I did receive a copy of what he  
15 said. That's -- now that you've stated it.

16 MS. CRAVEN: You made the point of making sure  
17 he was in the room when you made the statement so you  
18 used it first.

19 COMMISSIONER HANSON: Gary did not arrive for  
20 about 20 minutes after it started. And I simply looked  
21 to see if he was here. He was not. And I stated that I  
22 will wait until he's here, and then I spoke to it.

23 When I spoke to it I did not point out that it  
24 was on his Facebook page. But now that you've broached  
25 that, yes, it was. And he can speak to it if he wants.

1 He's certainly capable of speaking for himself.

2 And the Facebook page speaks for itself too. It  
3 was -- it was inflammatory and it was false and, you  
4 know, there are times when -- it's obvious I was not  
5 sleeping during the testimony that you referred to  
6 because I asked several questions of that witness, and I  
7 could not have been able to engage him in that discussion  
8 if I had been.

9 The fact is that if I took a picture of anyone  
10 in this audience at one time or another and there were  
11 three people taking pictures, you're going to take a  
12 picture of someone when they blink and then you can play  
13 the game of saying that the person was sleeping when, in  
14 fact, they were not.

15 There's a lot of games like that that are  
16 played. I'm supposed to have a thicker skin than that.  
17 Like I say, sometimes when you're compelled to speak you  
18 probably shouldn't speak, think about it afterwards,  
19 write the letter to the editor and then the next day  
20 decide whether you're going to send it or not.

21 But, nevertheless, I want us to play by the  
22 rules that we have spoken of several times that we're  
23 going to try and be fair to each other. We're not going  
24 to misrepresent what somebody else says. We're not going  
25 to misrepresent or throw rocks. We're going to conduct

1       ourselves as professionals here.

2               I guess I refer to it first as the Capossela  
3 rule because he brought it up at one juncture. And I  
4 think that should abide for all of us for both  
5 directions. We should play fair and not misrepresent to  
6 the citizens what's taking place here. No one's  
7 monitoring anyone.

8               MR. DORR: Mr. Smith, I will address my actions.  
9 They take place outside of this room. They're not within  
10 the bounds of this hearing. And so I kind of take  
11 offense to it because it's on about 30 Facebook pages and  
12 about 40 Twitter pages so, I mean, I didn't even take the  
13 picture. And now I'm being addressed. And I --

14              You know, I sympathize with you for having the  
15 pain and the pain meds, but for all intents and purposes  
16 that was not a blink. I've seen several pictures and,  
17 like I said, I didn't take any of those pictures.

18              So I feel bad that we have to address this here  
19 in this room during this hearing. It's not even part of  
20 the hearing. If Mr. Hanson wants to have an interview  
21 with me, I am available outside of this room for  
22 interviews.

23              Thank you very much.

24              COMMISSIONER HANSON: Thank you. We've had an  
25 interview, and we'll move on at this juncture. But you



1 understand when you post something it goes to 40 pages.  
2 Those 40 pages have the ability to send it on to other  
3 pages. Those go on and on and on. That's how it got to  
4 me.

5 Thank you, Mr. Chairman.

6 MR. SMITH: Yankton, Ms. Real Bird or Ms. Baker,  
7 please proceed.

8 MS. BAKER: Thank you, Mr. Smith. Jennifer  
9 Baker for the Yankton Sioux Tribe. The Yankton Sioux  
10 Tribe would like to call Faith Spotted Eagle.

11 (The oath is administered by the court reporter.)

12 DIRECT EXAMINATION

13 BY MS. BAKER:

14 Q. Thank you, Ms. Spotted Eagle. Could you please  
15 state your name and your address.

16 A. Thomasina, Jennifer -- (speaks Dakota). Faith  
17 Spotted Eagle.

18 (Speaks Dakota.)

19 Q. Thank you. Ms. Spotted Eagle, are you a member of  
20 the Yankton Sioux Tribe?

21 A. Yes.

22 Q. And what's your occupation, or what kind of work do  
23 you do?

24 A. In the English Western world I have a master's in  
25 guidance and counseling, and in the Dakota World --

1 Q. I asked you to explain your work.

2 A. In the Western World I have a master's in guidance  
3 and counseling and various other added things that I have  
4 taken over the years. And I am a PTSD therapist with the  
5 VA currently with the Tucson VA and in the Dakota world I  
6 am a person with two societies, the White Buffalo Calf  
7 Society and the Brave Heart Society. In our language we  
8 call them (speaks Dakota).

9 So I work with families and children on a grassroots  
10 cultural base in our community. And in the Oceti  
11 Sakowin, which is the Seven Council Fires.

12 Q. Could you just elaborate a little bit what is the  
13 Seven Council Fires or the Oceti Sakowin?

14 A. The Oceti Sakowin is composed of the three  
15 linguistic groups: The Dakota, the Nakota, and Lakota.  
16 And I am a member of all three linguistic groups. But I  
17 currently reside on a Dakota Nakota homeland in  
18 Lake Andes, South Dakota.

19 Q. Thank you.

20 Ms. Spotted Eagle, did you previously submit  
21 testimony, written testimony, to the Commission?

22 A. Yes, I did.

23 Q. And in that testimony I believe you stated that the  
24 Brave Heart Society and the treaty committee organized  
25 and hosted a conference in anticipation of man camps from

1 the proposed pipeline.

2 Could you explain to us why you felt it was  
3 important to organize that gathering?

4 A. Yes. We did that August of I believe it was 2013.  
5 And we have -- I have a lifelong concern. I was one of  
6 the founding members -- I was the president at the time  
7 that the White Buffalo Calf Women's Society was formed in  
8 1977 on the Rosebud Sicangu Oyate.

9 And we saw lots and lots of sexual and physical  
10 violence. And so it was reminiscent of what has been  
11 happening in our cultural history.

12 And I'm also a member of Brave Heart Society, which  
13 intervenes on behalf of women and family who have been  
14 impacted by historical trauma.

15 So when we heard about the man camps coming it  
16 raised a lot of, I guess, flags for me and historical  
17 trauma. Because the man camps are similar to what  
18 happened when Fort Randall was formed with the coming of  
19 the soldiers, and those were man camps in the 1800s.

20 Fort Randall was formed with many, many men,  
21 probably 1,200 or more men that were stationed there to  
22 pose captivity on us, make sure that we didn't practice  
23 our religion, essentially colonized for that purpose.

24 So when the man camp issue came up it evoked a very  
25 similar feeling of economics because it was done for

1 economics reasons in the 1800s as it is now. Very  
2 similar.

3 And at that point we summoned other partners in the  
4 field. Having been one of the first founders of the  
5 first Native American women's shelter in the  
6 United States we asked other people who were involved in  
7 the domestic physical sexual assault movement to come to  
8 Fort Randall. We also invited U.S. Attorney Brendan  
9 Johnson at the time -- I understand he's not there  
10 anymore but we invited him to come and several of his  
11 Staff members came and we had a two-day conference to  
12 evoke our alarm and have discussions about what we needed  
13 to do to prevent this from happening.

14 Q. Thank you. You stated that Brendan Johnson was  
15 invited. Did he actually attend the conference?

16 A. He did. He was actually on the agenda. I've worked  
17 with Brendan over the years as a tribal official. I'm  
18 also a chair of the Ihanktonwan Treaty Council. And I  
19 asked him to come speak and he appeared and he actually  
20 made a presentation.

21 Q. Okay. And was his presentation related to the man  
22 camps?

23 A. Yes. He stated that he knew that that was the  
24 situation. And I think the statement that stands out in  
25 my mind that Brendan said when he did his presentation,

1 he said that they had to wait until the crime happened,  
2 which created even more alarm on our part because we  
3 don't want to wait around and wait for crimes to happen.

4 And since then he's issued statements that say --  
5 I've seen them printed over and over again that he says  
6 that it is a problem when you have a large congregation  
7 of men coming into an area where there is poverty  
8 present.

9 Q. Thank you.

10 Ms. Spotted Eagle, you stated in your prefiled  
11 testimony the Commission should expect a surge in crime  
12 and violent crime in areas of the man camps if the  
13 pipeline were approved. In your personal and  
14 professional experience what impacts do these types of  
15 crimes have on the health and welfare of individual  
16 victims?

17 A. I think that in my -- I don't want to say line of  
18 work because it's more of a life path. I see some risk  
19 factors that are pretty well established. And we've  
20 known them ourselves in our communities that we live in  
21 because we see them every day.

22 But there are some events in our history that have  
23 deconstructed our value systems. For example, the  
24 outline of our religion. And that was not restored until  
25 recently as 1978. And that was -- there are many, many

1 factors that deconstructed our value system which brought  
2 on one of the highest risk factors, which is poverty.  
3 Poverty doesn't occur by itself unless something is  
4 deconstructed.

5 Another risk factor is alcohol and drug abuse. In  
6 some communities the meth rates are at 30 percent.  
7 Domestic and sexual violence, which comes from the  
8 breakdown of the family, again the deconstruction brought  
9 on by colonialism. The rape and physical assaults,  
10 Department of Justice came out and did some hearings,  
11 which I was a presenter at, and they have stated that the  
12 rates are 3 out of 5 native women will face physical or  
13 sexual assault in their lifetime.

14 And as a survivor, I have experienced both. I've  
15 been physically assaulted, and I have also been sexually  
16 assaulted. So I'm a survivor so I know that one in -- if  
17 you look at a room like this, it would be 1, 2, 3, 1, 2,  
18 3, every third person would be a risk factor.

19 Foster care is another risk factor because you have  
20 children. The Indian Law Project is doing a -- some  
21 hearings currently, and they've estimated that on a  
22 yearly basis you have 700 native children that go into  
23 foster care because of the deconstruction of the values.

24 And so we have a high number of youth that are going  
25 into foster care separated from their families. And once

1 they age out of foster homes -- because oftentimes they  
2 are not placed -- then they are at high risk.

3 We saw this happening in the Sioux Falls area. They  
4 had three cases within the last three years involving the  
5 sex trafficking, which is also another high risk factor  
6 where 40 percent of the victims in three cases were  
7 Native American.

8 The other risk factor is that we have youth who are  
9 fetal alcohol effect, FAS, fetal alcohol syndrome. They  
10 don't have full judgment, and they also are subject to  
11 the presence of man camps.

12 Another one -- there's two that are very, very  
13 concerning to me as a grandmother and as a member of  
14 women's societies, cultural societies is that this is  
15 very much a gendered issue because it is a violent act  
16 against a gender, meaning the females in our Tribes. And  
17 that when you have environmental effects in a nation it's  
18 going to affect the reproductive rights of our women  
19 which we have seen before, with the uranium and the high  
20 content in the Cheyenne River of uranium that has  
21 appeared in the hair follicles of our people near  
22 Bridger. Those are just some of the issues in addition  
23 to sex trafficking.

24 Q. So you explained that those are some risk factors.  
25 And do you feel that those risk factors are particularly

1 prevalent on the reservation?

2 A. I think that minus the sex trafficking, that is one  
3 that we have not had to contend with at a large presence,  
4 but after we've seen what has happened in the Bakken  
5 range it is really a primary concern because we are not  
6 equipped to deal with the influx of that large of a male  
7 population.

8 Q. Thank you.

9 Let's switch gears just for a minute. Do any  
10 Yankton tribal communities get their drinking water from  
11 South Dakota's rivers?

12 A. Yes. Lake Andes specifically, and I know  
13 Chamberlain does. We get our water directly from the  
14 Missouri River.

15 Q. Okay. Do you have any concerns about the proposed  
16 pipeline with respect to that drinking water  
17 specifically?

18 A. I think that's the primary concern from the Treaty  
19 Council that I'm a part of. Because we have senior  
20 rights to the water based on our treaty that was talked  
21 about this morning and some subsequent court cases.

22 But we have a large concern beyond our own life  
23 times. We have a belief system that we always look out  
24 for seven generations forward. So being a grandmother, I  
25 want my water to be safe for all people.



1           And the other issue in treaty rights, it does say in  
2 the treaty that we also are concerned about the people  
3 that we have made the treaty with. So this is not an  
4 Indian thing or a native thing when it comes to water.  
5 It affects all people.

6 Q.   You mentioned in your prefiled testimony that all of  
7 your ceremonies rely on the presence of water and that  
8 your community sun dances and ceremonies take place  
9 adjacent to the Missouri River.

10           Does the proposed pipeline concern you with respect  
11 to these ceremonies?

12 A.   Most definitely. We currently have a -- we come  
13 from a culture that has seven sacred rights that guide  
14 our paths in life. One of the ones we've worked very  
15 hard -- for the 18th year we just had our Asnati  
16 Awicalowanpi, which is a coming of age ceremony for our  
17 young girls. And it's the ceremony we have when they  
18 reach their first menses.

19           And we teach them in a ceremony with water because  
20 water is the first medicine. We all were born with the  
21 first medicine in the womb when we were inside our  
22 mothers, and that's considered the medicine that's  
23 brought to life.

24           So we have water ceremonies for healing. And for  
25 that reason we have our ceremony right adjacent to the

1 Missouri River. And we've had 121 girls go through that  
2 ceremony.

3 Q. Is there any connection between your concern about  
4 the water and your concern about the man camps? Is there  
5 any way to tie those two together?

6 A. I think that the culture is so intertwined with our  
7 belief systems, with our ceremony, and the fact that  
8 we -- you heard that in many of the tribal people that  
9 have come before this panel that we talk about -- when  
10 you talk about another person we'll say my relatives.

11 And so we are concerned that all of our relatives  
12 are safe and that our populations, which are at high  
13 risk, are not impinged because we need to make our  
14 grandchildren safe through the water which are essential  
15 to the ceremonies.

16 And in regard to the ceremonial aspect with our  
17 young girls, because of the deconstruction with the  
18 culture there are many girls that don't have access to  
19 the ceremony. And we consider that a very, very  
20 frightening thing. Because they don't always know how to  
21 be safe.

22 They've grown up in an environment that has no  
23 safety when it has that many risk factors, and so they  
24 need the best protection that we could provide for them  
25 by the systems that are not in place even. Like law

1 enforcement.

2 Q. Thank you, Ms. Spotted Eagle. Do you have anything  
3 further that you'd like to add?

4 Anything else that you think might assist the  
5 Commission in their decision?

6 A. I think one of the things that I would like to  
7 mention is that there's a lot of this -- the whole  
8 concept of man camps is a gendered conflict. Because the  
9 very idea of calling a facility a man camp is a very  
10 threatening statement in terms of our history.

11 Because we have in anthropology and research that we  
12 do, in repatriation work we see that even in historical  
13 times many of our women were taken by the soldiers  
14 through rape.

15 There's a story in the Fort Randall area where there  
16 actually was a member of the fort who had admiration for  
17 one of the women in the camp and that woman of course did  
18 not want to be noticed by him. And so she avoided him.  
19 And even at the risk of arresting her, she still  
20 continued to avoid him.

21 And there became a point in time when she died and  
22 she was put on a scaffold and he had the soldiers take  
23 her skull and the skull was taken to the Smithsonian for  
24 examination to determine why she was so pretty.

25 He was essentially enamored by her. But I think

1 that goes beyond the boundaries of humanity. And so  
2 having a history like that, when you have 1,200 men  
3 coming into an environment where we have that kind of  
4 experience and we have a skill set that we know those  
5 things are repetitive, it's history repeating itself.

6 Q. Thank you, Ms. Spotted Eagle.

7 Do you have any changes that you would like to make  
8 to your prefiled testimony at this time?

9 A. I think that one thing that needs to be noted is  
10 that in the discussions on the treaty there has never  
11 been any women that have signed those treaties. And at  
12 the same time we -- history has proven that we are at the  
13 greatest risk in that type of involvement.

14 And I think that one of our leaders, Sitting Bull,  
15 noticed that, and one of his concerns when he was  
16 imprisoned at Fort Randall, he said that I fear for our  
17 women. So he knew exactly what was going on from the  
18 violence that was coming from the man camp from the  
19 1800s.

20 Q. Thank you.

21 Ms. Spotted Eagle, if I were to ask you the  
22 questions contained in your prefiled testimony, would  
23 your answers today be the same?

24 A. Yes.

25 Q. Thank you.

1 MS. BAKER: Commissioners and Mr. Smith, I would  
2 like to offer Exhibit 9011 into evidence.

3 MR. SMITH: Keystone. Or TransCanada.

4 MS. BAKER: And actually I'm sorry. If I may  
5 correct myself, with the exception of the excluded  
6 questions 24 through 33, I would like to offer 9011.

7 MR. SMITH: Mr. Taylor.

8 MR. TAYLOR: I was going to renew our objection  
9 based on 24 or 33 or whatever those numbers are. But  
10 with that correction I would say that we have no  
11 objection.

12 MR. SMITH: Okay. Intervenors?

13 MR. ELLISON: No objections.

14 MR. SMITH: I don't think we need to go -- just  
15 indicate, and we'll move.

16 MR. GOUGH: Is this on whether there's an  
17 objection?

18 MR. SMITH: Yes.

19 MR. GOUGH: No objection.

20 MR. SMITH: I don't see any.

21 Staff.

22 MS. EDWARDS: No objection.

23 MR. SMITH: The exhibit is admitted.

24 MS. BAKER: Thank you. I have no further  
25 questions for Ms. Spotted Eagle.

1 MR. SMITH: Okay. TransCanada.

2 MR. TAYLOR: No cross. Thank you.

3 MR. SMITH: Okay. Is there any cross by any  
4 Intervenors?

5 Mr. Capossela.

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

7 CROSS-EXAMINATION

8 BY MR. CAPOSSELA:

9 Q. You testified that you're a PTSD counselor for the  
10 VA?

11 A. Yes.

12 Q. Would you comment on the service by South Dakota  
13 Native Americans in our armed forces and the extent of it  
14 both historically and today?

15 MR. TAYLOR: Just a minute. Just a minute.  
16 With all due respect to the soldiers in the Native  
17 American society and the soldiers in the American  
18 society, this is absolutely totally irrelevant to any  
19 issue before the Commission.

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

21 MR. CAPOSSELA: I have no further questions,  
22 Mr. Smith.

23 MR. RAPPOLD: Rosebud would like to ask a few  
24 questions.

25

CROSS-EXAMINATION

BY MR. RAPPOLD:

Q. Good afternoon, Ms. Spotted Eagle. Matt Rappold. I represent the Rosebud Sioux Tribe.

Based on your understanding and knowledge of Indian law from what you've said today, do you know if the Yankton Sioux Tribe would have the ability to prosecute any people from the man camps if a crime was committed on the Yankton Reservation?

A. No.

Q. Are you aware of any communications or efforts that have taken place to actually create a coordinated law enforcement response between the Yankton Sioux Tribe Police Department, the State of South Dakota, and the Department of Justice?

A. The Violence Against Women Act is attempting to break new ground by doing that. But those take resources and many, many tribal meetings and consultations like you've been talking about here to get to that point to be effective.

And then once it's installed then it's a learning curve, and it's certainly not something that deals with 1,200 men.

Q. And in the context of the VAWA legislation that you referenced, that's the special criminal domestic violence

1 jurisdiction?

2 A. Yes.

3 Q. Would it also be your understanding of that law that  
4 there would need to be a -- an actual relationship  
5 between the non-Indian and the tribal member?

6 A. Yes. Because that is for domestic violence, and  
7 many of the participants, the 1,200 people would not be  
8 tied in with domestic violence foreseeable.

9 Q. So that wouldn't --

10 A. It wouldn't have any relevance.

11 Q. Okay. Is it your testimony then that there really  
12 hasn't been any coordination of efforts?

13 A. No.

14 Q. For general crimes on the reservation?

15 A. No coordination.

16 MR. RAPPOLD: Thank you. No further questions.

17 MR. SMITH: Any other Intervenor examination?

18 Mr. Gough.

19 CROSS-EXAMINATION

20 BY MR. GOUGH:

21 Q. Good afternoon. Did you get a chance to review the  
22 '09 Application and '10 Permit documents?

23 A. Yes. To the extent that I could.

24 Q. Yes. Did you participate in the '09 or '10  
25 proceedings?



1 A. Yes.

2 Q. Do you feel that the decision made with regard to  
3 the issues you've raised here were adequately addressed  
4 in that Permit?

5 A. Not --

6 MR. TAYLOR: Objection. First of all, there's  
7 no foundation, improper foundation. And, second, it  
8 doesn't matter. Any attempt to impeach the 2009-2010  
9 proceedings through testimony in this proceeding is  
10 inappropriate.

11 MR. GOUGH: I thought our questions were  
12 restricted to the '09-10 Permit proceedings.

13 MR. SMITH: Well, what it deals with is whether  
14 the Conditions -- the issue here is whether the --  
15 whether Keystone continues to comply with the Conditions  
16 in the Order. Those 50 Conditions.

17 Q. Are you aware the 50 Conditions under the current  
18 recertification process?

19 A. Yes. I'm not infinitely aware of them, but I have  
20 read them.

21 Q. Have you read through them with an eye towards  
22 concerns that you have raised here today?

23 A. Yes.

24 Q. Do you feel that Keystone has adequately complied  
25 with the -- in those Conditions with the concerns that

1     you've raised?

2     A.    No.

3     Q.    And could you articulate a particular example?

4     A.    I think that when --

5                 MR. TAYLOR:  Excuse me, Ms. Spotted Eagle.

6                 We have intentionally avoided the debate on the  
7     question of lay opinions as to the ultimate question.  
8     And this is the first time that anyone has posed a direct  
9     question asking the opinion of a lay witness on the  
10    ultimate question before the board.

11                I'm constrained to interpose an objection.  If  
12    you want to argue the issue of whether or not a lay  
13    witness can offer an opinion on the ultimate outcome of  
14    this decision, we can argue that right now, or you can  
15    note my objection and then do whatever you want to do  
16    with respect to her testimony.  We can argue it later.  
17    Whatever suits you.

18                MR. SMITH:  And maybe I'm misunderstanding but  
19    what I understood the question to be wasn't asking for  
20    her legal opinion but was asking what specific factual --  
21    that's the way I'm interpreting it.

22                MR. GOUGH:  Yes, sir.  I understand.

23                MR. SMITH:  Okay.  And if she knows of anything,  
24    you know.  And maybe that would be the foundational -- do  
25    you know of anything?

1           MR. GOUGH: I understand the concern raised. I  
2           had understood her to be basically recognized as an  
3           officer within the Oyate Lakota, Dakota, Nakota Oyate as  
4           an office holder with the rights to have opinions on  
5           these matters.

6           But I'll withdraw the question.

7           Thank you.

8           MR. SMITH: Any other Intervenor questions?

9           THE WITNESS: Could I make a comment?

10          MR. SMITH: Not really, no. Not -- because your  
11          testimony is completed, your direct, so --

12          Any questions --

13          MS. CRAVEN: I have a question.

14                               CROSS-EXAMINATION

15          BY MS. CRAVEN:

16          Q. Kimberly Craven for the Indigenous Environmental  
17          Network. Thank you, Ms. Spotted Eagle, for being here  
18          today.

19               Is there anything else you would like to add, your  
20          comments?

21               MR. TAYLOR: Just a minute. You know, that's  
22          not proper cross-examination. Anything else you want to  
23          add. She can talk about anything from the Time Magazine.

24               THE WITNESS: It has relevance, though. I would  
25          like to add that --

1 MR. TAYLOR: Can I have a ruling?

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

3 MS. LONE EAGLE: Mr. Smith, I don't want to jump  
4 out of line. I was waiting for you to get to the  
5 Individual Intervenors, but I have a couple of questions.

6 MR. SMITH: Oh, pardon me. I'm sorry.

7 CROSS-EXAMINATION

8 BY MS. LONE EAGLE:

9 Q. Elizabeth Lone Eagle from Bridger. I'm an  
10 Individual Intervenor. Are you aware of the location of  
11 any other man camps?

12 A. Yes. I'm aware of the one that will be close to  
13 Bridger.

14 Q. And do you happen to know what specifically that  
15 location is?

16 A. My understanding is that it's in Harding County.  
17 Near Harding County. And I'm not sure of the exact  
18 mileage from Bridger. But I have the same concerns.  
19 Because whether it was -- in our situation the man camp  
20 will take an hour to get to -- not quite an hour to get  
21 to Fort Randall, which is about 48 to 50 minutes.

22 And so within even two hours it's still a risk  
23 because we live in an isolated area, and it provides a  
24 place for recreation.

25 And so the concerns are when you live in an isolated

1 area and people are looking for recreation, even driving  
2 to Rapid City. But Bridger is close, very, very close.

3 Q. Okay. That was close to what my next question was.  
4 Do you know what the emergency response time is to your  
5 area?

6 A. To my rather area from -- please expound.

7 Q. Well --

8 A. If something happens?

9 Q. Yeah. If something happens, what's the emergency  
10 response time?

11 A. I think that in this situation they wouldn't be able  
12 to be respond. It would be compounded because we don't  
13 have jurisdiction. So it would be even longer than the  
14 original response time, which could be two to three  
15 hours.

16 Q. Okay. That's pretty significant.

17 Have you ever been to the Bridger area?

18 A. Yes.

19 Q. Do you have any particular concerns with that area?

20 A. I do. Because I have personal -- as I stated  
21 earlier in my testimony, I have expertise in the fact  
22 that I am a sexual abuse survivor, and I am a survivor of  
23 a physical assault.

24 And just speaking personally, it's the kind of  
25 situation where there needs an immediate response. And

1 someone three or four hours away when you're in danger is  
2 a violation in my mind of a human right.

3 MS. LONE EAGLE: Okay. Thank you. I have no  
4 further questions.

5 MR. SMITH: I think I couldn't see you because  
6 there's that post there is the issue so I had no idea you  
7 were signaling.

8 Are there any other Individual Intervenor  
9 questions?

10 MR. SEAMANS: Paul Seamans. I've got a couple  
11 of questions.

12 CROSS-EXAMINATION

13 BY MR. SEAMANS:

14 Q. Ms. Spotted Eagle, you spoke of the importance of  
15 water. What are the Yankton Sioux Tribe's claims on  
16 water rights of the Missouri River water?

17 A. We consider ourselves senior water holders. Based  
18 on already proven -- and our attorneys can speak to that  
19 with the Winters Doctrine.

20 Q. Has Yankton Sioux Tribe forfeited any of your  
21 rights?

22 A. No.

23 MR. SEAMANS: Thank you.

24 MR. SMITH: Mr. Dorr.  
25

CROSS-EXAMINATION

BY MR. DORR:

Q. Thank you. Gary Dorr, Individual Intervenor.

Ms. Spotted Eagle, you just answered the question, and you just said the response time would be compounded because you didn't have jurisdiction.

Was that criminal jurisdiction you were talking about?

A. Yes. If there's a rape, it's a federal crime. And so we would have to contact the U.S. Attorney. And, again, being a sexual abuse survivor, it's a situation where you're extremely unsafe, and there is virtually nothing that you can do during that period of time until the proper authorities are contacted.

Q. So the Tribe still -- does the Tribe still maintain civil jurisdiction over certain areas?

A. Yes.

MR. DORR: All right. Thank you. No more questions.

MR. SMITH: Okay. Any other Intervenor examination?

I'm not seeing any indication.

MS. SMITH: Excuse me. I need to speak faster.

CROSS-EXAMINATION

BY MS. SMITH:

Q. Ms. Spotted Eagle, in your expertise as a grandmother and mother and I wanted to seek advice from you, if I wanted to move myself and my granddaughters to that area what would you advise me?

A. I would -- to where I'm at or where --

Q. Near a man camp. What would you advise?

A. I would say that it would not be safe. And I would also say it for all populations, but primarily when you work with a traumatized population the biggest single factor that will assist a population in healing and recovery is a sense of safety. And there is absolutely no sense of safety.

MS. SMITH: Thank you. I won't be moving there. Thank you.

MR. SMITH: Staff.

MS. EDWARDS: Thank you, Mr. Smith. Staff has no questions for this witness.

MR. SMITH: Commissioners.

Chairman Nelson.

CHAIRMAN NELSON: Just a couple of questions.

We had a letter that was submitted to the Commission from a Lynn Peterson from the City of Yankton. And he talked about the very positive experience that the



1 City of Yankton had with all of the workers that were  
2 housed there when the first Keystone was built.

3 Obviously that's very close to Yankton Sioux  
4 Reservation. So tell us about the problems that you  
5 encountered when that first Keystone was built.

6 THE WITNESS: I think that in our history, in  
7 border town relations, they always are tenuous. In fact,  
8 the physical assault that I told you I was involved in, I  
9 had my leg broken in Vermillion, South Dakota in a  
10 physical assault which is 30 miles from Vermillion. So  
11 we always consider border towns tenuous places anyway.  
12 But the presence of people who do not even understand our  
13 culture probably even intensifies it.

14 CHAIRMAN NELSON: Again, so if I could ask, when  
15 all of these men were housed in Yankton for the first  
16 Keystone what kind of problems did they create on your  
17 reservation?

18 THE WITNESS: I think that we felt like the  
19 intrusion intensified race relations because I went to  
20 some of the hearings, and it was not friendly.

21 CHAIRMAN NELSON: And I guess the last question  
22 I've got, we've had a lot of discussion over the last  
23 week about the fact that the Cheyenne River Sioux Tribe  
24 has banned anyone associated with Keystone from entering  
25 their reservation.

1           Would you make that same recommendation to your  
2 governing council?

3           THE WITNESS:   Yes.

4           CHAIRMAN NELSON:   Thank you.   No further  
5 questions.

6           THE WITNESS:   Thank you.

7           MR. SMITH:   Commissioner Hanson?

8           COMMISSIONER HANSON:   No.

9           MR. SMITH:   Any follow up, again, limited to  
10 Commissioner questions?   Or redirect?

11                           RECROSS-EXAMINATION

12   BY MR. TAYLOR:

13   Q.   In fact, Ms. Spotted Eagle, the Yankton Sioux Tribe  
14 has adopted a number of resolutions --

15   A.   Yes.

16   Q.   -- in opposition to the Keystone XL project, have  
17 they not?

18   A.   Yes.

19   Q.   And those are of record?

20   A.   Yes.

21           MR. TAYLOR:   Thank you.

22           MR. SMITH:   Any questions following on  
23 Commissioner questions?

24           MS. BAKER:   Jennifer Baker for the Yankton Sioux  
25 Tribe.

REDIRECT EXAMINATION

1  
2 BY MS. BAKER:

3 Q. I'd just like to clarify for the record, I don't  
4 know that it's been established that there were man camps  
5 for the construction for the first Keystone, the Keystone  
6 base pipeline.

7 Do we know that was a fact?

8 CHAIRMAN NELSON: If I can address that, the  
9 letter that we received, and it's in the docket from  
10 Lynn Peterson, the answer is no. My understanding was  
11 that Yankton was not a man camp, but that's where all of  
12 the men were staying. And he mentioned several different  
13 campgrounds that were developed to house the men as they  
14 were working in that area.

15 MS. BAKER: Okay. So just to be clear, there  
16 weren't man camps from that first Keystone; it was a  
17 different situation?

18 CHAIRMAN NELSON: No. And I don't believe I  
19 used the word man camps.

20 MS. BAKER: Okay. Thank you.

21 THE WITNESS: Mr. Nelson, my answer would be  
22 different if I was aware of that. Because I'm even much  
23 more alarmed with the concentration of men together that  
24 are separated from their families. It's a different  
25 situation.

1 MR. SMITH: Ms. Baker, do you have redirect?

2 MS. BAKER: No. No redirect. Thank you.

3 MR. SMITH: I think you may step down. Thank  
4 you.

5 THE WITNESS: Did you have one?

6 MR. CLARK: I did.

7 MR. SMITH: Is that a follow on to Commissioner  
8 questions?

9 MR. CLARK: It's a follow on to Commissioner  
10 Nelson's.

11 RECROSS-EXAMINATION

12 BY MR. CLARK:

13 Q. Ms. Spotted Eagle, in your opinion would the  
14 presence of a tribal resolution be sufficient protection  
15 against the crimes that you're worried about and that you  
16 detail in your testimony?

17 A. No. Because they're just words.

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

19 MR. RAPPOLD: I'd have one more question,  
20 Mr. Smith.

21 RECROSS-EXAMINATION

22 BY MR. RAPPOLD:

23 Q. Ms. Spotted Eagle, are you aware of any other Tribes  
24 in South Dakota that have passed similar resolutions?

25 A. I'm aware of Cheyenne River of forbidding any kind

1 of trespass. But I think again in our situation there  
2 are jurisdiction questions, but that's our next move in  
3 conversations.

4 MR. RAPPOLD: Thank you.

5 MR. SMITH: Any other follow on to Commissioner  
6 questions?

7 Okay. Ms. Baker, redirect?

8 MS. BAKER: No, thank you.

9 MR. SMITH: Okay. You may now step down. Thank  
10 you.

11 Okay. Now we had one suggestion about maybe  
12 having Mr. Schmidt -- have him up here. Or Staff.

13 Can I hear from Staff as to your thoughts about  
14 that versus proceeding with your witnesses?

15 MS. EDWARDS: I guess I would defer to  
16 TransCanada since their witnesses apparently have to go.  
17 Ours are in the room and ready to go if need be.

18 MR. TAYLOR: We could put Mr. Schmidt on now.  
19 We can listen to the Staff witnesses.

20 My colleagues want to note that there is the  
21 possibility that even though I said we were withdrawing  
22 Meera Kothari's rebuttal testimony, there is a  
23 possibility that she may have to speak to one of the  
24 Staff witness's testimony. Don't know that for sure yet.

25 MR. SMITH: Thoughts? And who would that be?

1 MR. TAYLOR: Witness Hughes.

2 MR. SMITH: And so are you suggesting that  
3 perhaps he be called now so that that would be feasible?

4 MR. TAYLOR: Let's go ahead and do Schmidt and  
5 then move into the Staff testimony, and we'll see what  
6 happens.

7 MR. SMITH: Okay. All right. Okay.

8 Please proceed when you're ready. You're under  
9 oath.

10 MR. MOORE: Thank you, Mr. Smith.

11 DIRECT EXAMINATION

12 BY MR. MOORE:

13 Q. Dr. Schmidt, can you introduce yourself again,  
14 please.

15 A. John Schmidt with exp Energy Services.

16 Q. Have you previously testified in this proceeding?

17 A. Yes.

18 Q. And have you prepared prefiled rebuttal testimony  
19 marked as Exhibit 2009?

20 A. Yes.

21 Q. And to whose direct testimony are you responding in  
22 the rebuttal testimony?

23 A. Two individuals. Just specific questions from their  
24 direct testimony. Mr. Crow Ghost and Mr. Ducheneaux.

25 Q. And do you have any corrections or changes to make

1 to your prefiled rebuttal testimony?

2 A. Just clarification on No. 4.

3 We actually had started a temporary water use permit  
4 process and withdrew it. But, otherwise, no.

5 Q. With that change, if I asked you the same questions  
6 as posed in the prefiled direct today, would you state  
7 the same answers?

8 A. Yes.

9 Q. And do you adopt the Prefiled Direct Testimony today  
10 with that change?

11 A. The rebuttal, yes.

12 Q. Sorry. Thank you.

13 MR. MOORE: Mr. Smith, I would offer Exhibit  
14 2009.

15 MR. SMITH: Okay. Is there objection from any  
16 parties?

17 I'm seeing none. So Exhibit 2009 is admitted.

18 MR. MOORE: Thank you. I'd tender the witness  
19 for cross-examination.

20 MR. SMITH: Okay.

21 MR. ELLISON: Wait. I guess I just had one  
22 question, if I may. I'm sorry. Strike that. No  
23 objection.

24 MR. SMITH: Okay. Mr. Clark.

25

CROSS-EXAMINATION

1  
2 BY MR. CLARK:

3 Q. Thank you, Dr. Schmidt. You stated in your rebuttal  
4 testimony to Mr. Ducheneaux's testimony that you do not  
5 expect significant disturbance of existing pollutants  
6 during the HDD crossing in the Bridger Creek area; is  
7 that correct?

8 A. Yeah. Based on what we've seen from the DENR  
9 database as far as existing contamination.

10 Q. Would you agree that significant disturbance is not  
11 the same as no possibility of disturbance whatsoever?

12 A. Yeah. I would agree to that.

13 MR. CLARK: No further questions.

14 MR. SMITH: Mr. Rappold.

15 MR. RAPPOLD: No, sir.

16 MR. SMITH: No questions.

17 Mr. Capossela.

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

19 CROSS-EXAMINATION

20 BY MR. CAPOSSELA:

21 Q. Mr. Schmidt, Peter Capossela with the Standing Rock  
22 Sioux Tribe.

23 Can you list the Indian Tribes in the state? Do you  
24 know who they are? Can you just list them?

25 MR. MOORE: Mr. Smith, I'll just object that



1 this is beyond the scope of the rebuttal, and I also  
2 believe that he previously did this when he testified on  
3 direct.

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

5 Q. Do you know what river systems in South Dakota are  
6 in the status of over appropriation presently?

7 A. Just generally our discussions with DENR indicate  
8 there are a lot of existing water rights, but I don't  
9 have the exact numbers of which ones, you know, what  
10 their cap is, as far as water level.

11 Q. Do you know which Tribes have ongoing negotiations  
12 with South Dakota with respect to the quantification of  
13 Indian water rights?

14 A. I believe DENR's website says they've been working  
15 on that for several years with all the Tribes in  
16 South Dakota.

17 Q. Are you familiar with the permitting process in  
18 South Dakota?

19 A. Yes.

20 Q. Under the prior appropriation process? Would you  
21 walk through that?

22 A. So an Applicant has to -- they have forms on their  
23 website. You can submit them electronically. You can  
24 submit a paper copy, but you have to describe the  
25 project; the water use, the sources, the volumes, the

1 times of year. And then you submit that, and then DENR  
2 takes the Application, and they notice users of that  
3 water source.

4 And, you know, first in line basically. So if  
5 there's 20 people ahead of us, we would be number 21 as  
6 far as how much water we could get from that source.

7 Q. Okay. Do Indian Tribes -- do you know if Indian  
8 Tribes in exercising water rights must acquire permits  
9 from DENR in order to exercise those rights?

10 Do you know the answer to that question? And if so,  
11 please answer.

12 A. I don't know that, no.

13 Q. Do you know if DENR considers federally reserved  
14 Indian water rights when determining whether water is  
15 available in a stream system for future permits? Do you  
16 know, do they consider that? Is that on a website? Is  
17 that --

18 A. It must be because they list that they're in  
19 discussions with all the Tribes on their rights to the  
20 waters. So I would assume so, but I don't know if  
21 there's any specific language on their website that  
22 indicates that.

23 Q. So do you know if the state engineer considers  
24 Indian water rights when determining whether to issue a  
25 temporary water permit?

1 A. I believe so, yes.

2 Q. Do you know what quantification means of Indian  
3 water rights? Do you know what that terminology means?

4 A. I would assume it means to determine how much.

5 Q. And do you know what Tribes in South Dakota, if any,  
6 have final quantifications of their water rights?

7 A. I do not know.

8 MR. CAPOSSELA: I have no further questions,  
9 Mr. Smith, of Mr. Schmidt.

10 Thank you, Mr. Schmidt.

11 MR. SMITH: Ms. Real Bird.

12 MS. REAL BIRD: Yankton has no questions at this  
13 time.

14 MR. SMITH: Mr. is it Martinez, or who's going?

15 MR. MARTINEZ: That will be me.

16 CROSS-EXAMINATION

17 BY MR. MARTINEZ:

18 Q. Just one question as a follow up to what was  
19 recently posed to you by Mr. Clark. And you referred to  
20 sort of a significant disturbance in sedimentation or in  
21 the bed of a water crossing.

22 What do you define as significant?

23 A. If you look at the FSEIS, they kind of give  
24 categories, long-term impact, short-term impact, high,  
25 low, medium.

1           What you do a crossing of a stream you're looking at  
2           a trench that maybe is 40 feet wide over the whole length  
3           of that stream. And you compare it to the water impacts  
4           of, say, spring melt that goes through that entire  
5           drainage.

6           So compared to that, it's not a significant impact.  
7           And that's how the NEPA documents are written.

8           Q.    So that's primarily a function of definitions within  
9           NEPA? Is that your --

10          A.    That's usually what you go with, yes.

11          Q.    Okay. Is there a specific definition of something  
12          that may be deemed not as significant or insignificant?

13          A.    I can't think offhand. But there could be, yeah. I  
14          mean, I don't have all -- you know, the Corps of  
15          Engineers has deemed these types of crossings as not  
16          significant because they issued a general permit. So  
17          they can't do a general permit unless -- for utilities as  
18          nationwide Permit No. 12.

19          So in their mind reviewing thousands of these they  
20          don't deem this a significant impact so they issue  
21          general permits to those.

22          Q.    Okay. The word "significant" seems to be sort of  
23          fairly, at least in my mind, subjective standard. Do you  
24          know if there are sort of objective criteria that are set  
25          out to determine whether or not something is significant

1 and what those are?

2 A. Most NEPA studies are subjective. It's the nature  
3 of how they do their work. Probably back in the '70s  
4 they started with quantification, but it was -- you know,  
5 that quantification was in the eye of whoever did that  
6 quantification.

7 MR. MARTINEZ: Okay. Thank you. No further  
8 questions.

9 MR. SMITH: Thank you. Ms. Craven.

10 MS. CRAVEN: The Indigenous Environmental  
11 Network has no questions.

12 Thank you.

13 MR. SMITH: Thank you.

14 Mr. Gough.

15 MR. GOUGH: InterTribal COUP has no questions.  
16 Thank you.

17 MR. SMITH: Mr. Dorr.

18 MR. DORR: I have no questions.

19 MR. SMITH: Mr. Harter.

20 MR. HARTER: I probably do, but I was outside  
21 too long.

22 MR. SMITH: Is that right?

23 Okay. Ms. Lone Eagle.

24 MS. LONE EAGLE: No questions at this time.

25 MR. SMITH: Ms. Myers.

1 MS. MYERS: No questions.

2 MR. SMITH: Mr. Seamans.

3 MR. SEAMANS: Yes. I have maybe a question or  
4 two.

5 CROSS-EXAMINATION

6 BY MR. SEAMANS:

7 Q. Mr. Schmidt, on the Cheyenne River when you start  
8 your horizontal drilling, does it start at the valley  
9 floor, or does it start up above at the breaks or where  
10 actually do you start boring?

11 A. I think Meera showed a drawing of an HDD yesterday  
12 or a couple of days ago. I can't remember. You start at  
13 what's called the entry hole, and on that drawing it was  
14 on the east side of the creek, Bridger Creek.

15 So I'm not sure which direction they're drilling on  
16 the Cheyenne, but you start on the bluff and you exit on  
17 the other bluff so there's nothing in the valley floor.

18 Q. Do you have any idea about how long that bore would  
19 be approximately?

20 A. I don't know offhand. But if Bridger was 3,600, I  
21 think the Cheyenne's probably that or longer.

22 MR. SEAMANS: Okay. Thank you. No more  
23 questions.

24 MR. SMITH: Ms. Smith.

25 MS. SMITH: I have no questions.

1 MR. SMITH: Okay. Mr. Tanderup. I'm sorry.

2 MR. TANDERUP: No questions. Thank you.

3 MR. SMITH: We'll go to Staff.

4 MS. EDWARDS: Thank you. Staff has no cross.

5 MR. SMITH: Okay. Commissioners.

6 COMMISSIONER HANSON: Thank you, Doctor. No.

7 MR. SMITH: Any questions, Commissioner  
8 questions?

9 Okay. Any follow on redirect?

10 MR. MOORE: No redirect. Thank you.

11 MR. SMITH: I think you may step down. Thank  
12 you, Mr. Schmidt.

13 Okay. Staff, are we going to go to you now  
14 then?

15 MS. EDWARDS: Could I take 30 seconds to consult  
16 with my witness?

17 MR. SMITH: Should we take a five-minute break  
18 here?

19 MS. EDWARDS: Staff calls Chris Hughes.

20 (The oath is administered by the court reporter.)

21 DIRECT EXAMINATION

22 BY MS. EDWARDS:

23 Q. Mr. Hughes, state your name and business address for  
24 the record, please.

25 A. Christopher Hughes, 28100 Torch Parkway,

1 Warrenville, Illinois.

2 Q. And what is your professional title?

3 A. Senior project manager.

4 Q. As senior project manager what are your job  
5 responsibilities?

6 A. I manage engineers, and I manage projects that they  
7 work on. Usually related to liquids integrity and  
8 control room management.

9 Q. I think I may have forgotten to ask you, for whom do  
10 you work?

11 A. EN Engineering.

12 Q. Thank you. Can you briefly summarize your  
13 educational background?

14 A. I have a master's degree in welding engineering and  
15 a bachelor's degree in mathematics.

16 Q. And can you briefly summarize your job experience  
17 since college?

18 A. I've worked as a gas controller for Columbia Gas.  
19 I've worked as a pipeline integrity engineer for  
20 Enterprise Products. I've also worked as an engineering  
21 consultant for CC Technologies, DMV, and Pipeline  
22 Integrity, and my current position at EN Engineering.

23 Q. Drawing your attention to what has been marked for  
24 identification purposes as Exhibit 3008, is that your  
25 prefilled testimony?



1 A. Yes, it is.

2 Q. Do you have any additions, deletions, or edits to  
3 make to that testimony?

4 A. Just a deletion of my addition.

5 Q. Which is part of that prefiled testimony; correct?

6 A. Correct.

7 Q. If I asked you the same questions today, would your  
8 answers be the same?

9 A. Yes.

10 MS. EDWARDS: At this time would I move for the  
11 admission of Exhibit 3008.

12 MR. SMITH: TransCanada.

13 MR. WHITE: No objection.

14 MR. SMITH: Intervenors.

15 MR. RAPPOLD: I just have a question.

16 Does this include the supplemental prefiled  
17 testimony that was just filed? Is that part of what's  
18 being moved to be admitted?

19 MS. EDWARDS: No.

20 MR. RAPPOLD: Okay. Thank you.

21 MR. SMITH: Is there objection from Intervenors?

22 I'm not seeing any. I think Exhibit 3008 is  
23 received.

24 Q. And, Mr. Hughes, just for clarification purposes,  
25 can you explain the situation with your supplemental

1 testimony?

2 A. Yes. I calculated off of habit -- used 70,000 for  
3 X70M pipe, forgetting that they made the change to a hard  
4 calculation of 70,300.

5 So if I add in the 70,300, I come up with 1,307 as  
6 opposed to 1,302 I did at 70,000. I apologize for making  
7 that mistake.

8 Q. So it's your testimony that we don't need your  
9 supplemental testimony?

10 A. Yes, it is.

11 MS. EDWARDS: Thank you. I have no further  
12 questions, and I would tender him for cross.

13 MR. SMITH: Keystone.

14 MR. WHITE: We have no questions for Mr. Hughes.

15 MR. SMITH: Okay. Mr. Clark.

16 MR. CLARK: Cheyenne River Sioux Tribe has no  
17 questions for this witness.

18 MR. SMITH: Mr. Rappold.

19 MR. RAPPOLD: I'm confused. And it's not meant  
20 towards the witness. I'm confused as to what happened  
21 with -- what's going on with the supplemental testimony.

22 THE WITNESS: I can explain if --

23 MR. SMITH: Can you ask him a question about it  
24 since you're up?

25 MR. RAPPOLD: I'd prefer that his attorney

1 explained it.

2 MR. SMITH: Okay. Ms. Edwards, would you  
3 please --

4 MS. EDWARDS: I can attempt to. We did file  
5 supplemental testimony today based on some calculations  
6 that he had been doing after listening to Meera Kothari's  
7 testimony. He ran those calculations last night and was  
8 coming up with a different answer.

9 However, after we submitted the supplemental  
10 testimony he found out that the error was his, not hers.  
11 So we are not putting that into evidence.

12 Thank you.

13 MR. SMITH: Does that answer it?

14 MR. RAPPOLD: I think so.

15 MR. SMITH: Okay. Please proceed if you've got  
16 additional.

17 MR. RAPPOLD: A few.

18 CROSS-EXAMINATION

19 BY MR. RAPPOLD:

20 Q. You work for EN Engineering?

21 A. Correct.

22 Q. And that's the same company that also has  
23 TransCanada listed as a client on their website?

24 A. Our website lists all past clients. I do not know  
25 if they're a current client or not. They are not from my

1 group. They had been at one time or another. I do not  
2 know if they are a current client.

3 Q. In your testimony, Direct Testimony, you go over  
4 some of the requirements for the SCADA systems; is that  
5 correct?

6 A. Yes, sir. I did cover the SCADA.

7 Q. And do you feel that the -- your testimony regarding  
8 the SCADA requirements is as reflective of the  
9 requirements under the CFR that addresses those  
10 requirements? It would be 49 CFR 195.446.

11 A. Yes, sir.

12 Q. Your testimony is comprehensive?

13 A. It's not comprehensive.

14 Q. It's not comprehensive?

15 A. No, sir. But --

16 Q. How come it's not comprehensive?

17 A. Because 49 195.466 is auditable and enforceable by  
18 PHMSA, and they perform regular audits.

19 Q. So you didn't think it was necessary to provide a  
20 comprehensive information about those requirements to the  
21 Commission today?

22 A. I could have repeated what is stated in 195.466,  
23 sir.

24 Q. But you didn't?

25 A. I didn't believe I needed to since we were referring

1 to 49 CFR 195 and it was readily available to reference.

2 Q. Have you actually looked at their plan?

3 A. I have not looked at their CRM plan, no.

4 Q. Is there a reason why you didn't look at their plan?

5 A. Because it's enforceable by PHMSA, and it has  
6 certain requirements that they are required to meet  
7 regardless if I have looked at it or not.

8 Q. Regardless of whether it's enforceable by PHMSA,  
9 it's still relevant before this Commission, isn't it?

10 MR. WHITE: Objection. Argumentative.

11 Q. Is, to your knowledge, the requirements --

12 MR. SMITH: Sustained.

13 Go ahead.

14 Q. -- relevant to the Commission today?

15 A. Per -- my testimony was to be an objective look at  
16 the Findings of Fact and the changes on the table -- I  
17 forget exactly what it's called but the Table of Changes  
18 on if there's anything that has changed that would be a  
19 violation of 49 CFR 195, and I did not see that.

20 So any relevant portions I addressed in my  
21 testimony. I did not see anything other than that.

22 Q. Your testimony then is that you've provided an  
23 objective look without actually reviewing documents;  
24 correct?

25 MS. EDWARDS: Objection. Argumentative.

1 MR. SMITH: Overruled.

2 A. No. I did not review TransCanada's CRM documents.

3 MR. RAPPOLD: Thank you. I have no further  
4 questions.

5 MR. SMITH: Okay. Mr. Capossela.

6 MR. CAPOSSELA: I have no questions for this  
7 witness, Mr. Smith. Thank you.

8 MR. SMITH: Ms. Baker, Ms. Real Bird.

9 CROSS-EXAMINATION

10 BY MS. REAL BIRD:

11 Q. Good afternoon, Mr. Hughes. My name is Thomasina  
12 Real Bird. I'm an attorney for the Yankton Sioux Tribe.

13 Are you represented here today by an attorney?

14 A. No, I'm not.

15 Q. Did you consult with your own attorney in the  
16 presentation of your testimony?

17 A. No, ma'am.

18 Q. I have a question about your prefiled testimony on  
19 page 2 and your answer beginning on line 10.

20 A. Okay.

21 Q. What did you mean by proposed changes to the  
22 Findings of Fact as that phrase is used in your  
23 testimony?

24 A. The proposed changes in the Finding -- in table --  
25 in the Tracking Table of Changes, those are the proposed

1 changes that TransCanada -- the changes that TransCanada  
2 proposed. Those were what I was referring to.

3 Q. And why did you choose to use the phrase "proposed  
4 changes to the Findings of Fact"?

5 A. Because those are changes to the Findings of Fact  
6 that TransCanada proposed.

7 Q. Did you anyone direct you to include that phrase as  
8 a part of one of the purposes of your testimony?

9 A. No, ma'am.

10 Q. Did you prepare your own testimony?

11 A. Yes, ma'am.

12 Q. Did PUC Staff review your testimony and suggest  
13 changes?

14 A. I believe they reviewed it. They did not suggest  
15 changes.

16 Q. Did Mr. Schramm review your testimony and suggest  
17 changes?

18 A. No, ma'am.

19 Q. Did anybody review your testimony and suggest  
20 changes?

21 A. No one suggested changes. Jenny Hudson may have  
22 reviewed my testimony.

23 Q. Are you aware that your testimony regarding the  
24 purposes is identical to the testimony of your colleague,  
25 Mr. Schramm?

1 A. I did not realize.

2 Q. Word for word identical?

3 A. I was going off of what we were asked to review by  
4 the PUC.

5 Q. So you were not aware that your testimony regarding  
6 the purposes are identical?

7 A. I probably used the same source that he did from our  
8 send out from PUC of what we were asked to review.

9 Q. Is Mr. Schramm your supervisor?

10 A. No.

11 Q. Would you explain your positions relative to each  
12 other and your company's organizational chart?

13 A. We do not really have a relative position. He works  
14 in the corrosion services field services group. I do  
15 not. We both work in integrity services, but we are not  
16 in direct line with each other.

17 Q. Did PUC Staff send you the questions that you answer  
18 in your testimony?

19 A. No.

20 Q. Would you describe the information that you  
21 indicated earlier that you received from PUC Staff?

22 A. I did not see the PUC Staff. I received the  
23 information from Jenny Hudson who's my supervisor.

24 Q. Okay. And would you describe the information you  
25 received from Ms. Hudson?



1 A. Which would be the questions asked here.

2 Q. Okay. Oh, okay. So that clarifies. The questions  
3 came from Ms. Hudson.

4 MS. REAL BIRD: No further questions.

5 MR. SMITH: Mr. Ellison or Mr. Martinez.

6 MR. MARTINEZ: Mr. Martinez on behalf of Dakota  
7 Rural Action. I have a number of questions.

8 CROSS-EXAMINATION

9 BY MR. MARTINEZ:

10 Q. Mr. Hughes, I guess before I go into your direct  
11 filed testimony, I just have something in addition to  
12 what Mr. Rappold asked about your supplemental testimony  
13 that I'd like to get cleared up.

14 A. Sure.

15 Q. Did you author that document?

16 A. Yes. I did.

17 Q. Do you know a gentleman by the name of Chad Olson?

18 A. No. Never heard of him.

19 Q. What I'm wondering is why when we searched the meta  
20 data that was on the supplemental testimony that was  
21 submitted the user I.D. on the meta data -- we did a web  
22 search on that, and it turns out to be the same as the  
23 user I.D. by the individual by the name of Chad Olson.

24 So I'm just wondering what your explanation is for  
25 that?

1 A. I have no idea. I'm not sure what you're referring  
2 to.

3 Q. Do you know what meta data is in an electronic file?

4 A. Vaguely. Vaguely.

5 Q. Your prefiled testimony --

6 A. I wrote that testimony this morning so --

7 Q. Oh, okay.

8 A. So it wasn't -- I don't know why the meta data would  
9 be anything other than myself.

10 Q. Okay. I just wanted to clear that up because, you  
11 know, when we looked at it, it just seemed kind of rather  
12 curious to us. And I appreciate your explanation.

13 From my understanding is, based on your prefiled  
14 testimony, that you were to look at any of the new  
15 requirements of the Federal Pipeline Safety Regulations  
16 since the Amended Final Decision and Order was issued; is  
17 that correct?

18 A. Correct.

19 Q. Okay. Did you do any independent review of  
20 TransCanada's compliance documents? I think you've  
21 already indicated that you didn't review the Control Room  
22 Management Plan.

23 A. I did not review any of their compliance documents.

24 Q. Okay. Are you aware of issues that TransCanada may  
25 have had that I think have previously been referenced in

1 testimony concerning welding inspections on the Gulf  
2 Coast Pipeline?

3 A. I heard what was mentioned in testimony or most of  
4 what was mentioned in testimony.

5 Q. But other than what you've heard in testimony, have  
6 you engaged in any independent review of what may have  
7 occurred there?

8 A. No, I have not.

9 Q. Okay. Going further through your prefiled  
10 testimony, if you'll look to the last question at the  
11 bottom of page 4 where it talks about updated project  
12 specifications related to Finding No. 18, your statement  
13 says that Part 195, it references certain manufacturing  
14 requirements for pipe.

15 You also state that assuming the pipe is  
16 manufactured per the requirements that you referenced,  
17 the change doesn't violate Part 195.

18 A. Correct.

19 Q. Did you conduct any independent review to determine  
20 whether or not TransCanada's pipes were actually  
21 manufactured per the requirements?

22 A. No, I did not. That would come from the pipe mill.

23 Q. Take a look at page 5 of your prefiled testimony.  
24 The very first question was, once again, based on an  
25 assumption the pipe was manufactured per the

1 requirements.

2 The same holds true; no independent review?

3 A. No independent review.

4 Q. Okay. Tell me a little bit about your experience  
5 and familiarity with SCADA systems.

6 A. I've got a -- a good general knowledge of how SCADA  
7 system works. I do not know all the intricacies.

8 Q. Did you review the exhibit that DRA has entered into  
9 evidence? It was Confidential Exhibit No. 395, which  
10 were TransCanada's SCADA specifications.

11 A. No, I did not.

12 Q. Okay. What can you tell me about TransCanada's  
13 proposed SCADA system architecture for the proposed KXL  
14 Pipeline?

15 A. I couldn't tell you anything, even if I had reviewed  
16 that document, I still wouldn't be able to tell you  
17 anything because I do not work on the architecture side  
18 of anything dealing with SCADA.

19 Q. Okay. Do you know how SCADA systems communicate  
20 data?

21 A. In general.

22 Q. Can you please describe that for us.

23 A. You'll have an RTU, remote terminal unit, at the  
24 location of a valve or where you're monitoring your  
25 pipeline system. And there will be different sensors and

1 gauges that measure pressure, temperature, various  
2 things, even as far as the AC -- the electrical power at  
3 that location, and it sends it back to the SCADA system,  
4 which is then monitored by the controllers.

5 Q. How is that -- how are the sensors connected to the  
6 control unit you referenced that's on the pipeline?

7 A. I do not know specifically.

8 Q. Do you know if they're connected with fiberoptic  
9 cable or just plain copper wires?

10 A. I couldn't tell you specifically, no.

11 Q. Okay. Now when the SCADA system communicates from  
12 that controller unit back to the control room do you know  
13 how those communications occur?

14 A. It could be anything from a wireless to a satellite  
15 to hard landlines.

16 Q. Do you know if those communications are encrypted?

17 A. I do not know.

18 Q. Would you agree with the statement that essentially  
19 SCADA systems are very sort of software driven?

20 A. In part, yes.

21 Q. Okay. Do the SCADA systems in addition to getting  
22 the sensor data that you've referenced, do they also do  
23 things like are they capable of controlling, for  
24 instance, the valves on a pipeline?

25 A. If the valve is a remote control valve, yes.

1 Q. Do you know if any valves on the KXL Pipeline are to  
2 be remote controlled?

3 A. They stated they were going to have 20 remote  
4 controlled valves.

5 Q. Okay. So the answer is yes?

6 A. Yes.

7 Q. Okay. Do you have any experience with intrusion  
8 detection and cyber security as it relates to the  
9 software and systems that control the SCADA systems?

10 A. No. Other than attending a session by the FBI,  
11 cyber security, speaking on the need to protect SCADA  
12 systems.

13 Q. Are you familiar with something known as the Stuxnet  
14 worm or virus?

15 A. No, I am not, sir.

16 Q. Beyond what you've described today in terms of your  
17 background, do you have any background in software  
18 engineering?

19 A. No. I've done some work with configuring routers  
20 and switches for working on a network and some network  
21 monitoring. But outside of that, no. Like I wouldn't be  
22 able to work at a help desk or do any extreme software  
23 help.

24 Q. Nor would you be able to, for instance, design  
25 intrusion detection?

1 A. No.

2 Q. Regimes or anything like that for a -- for a  
3 software system?

4 A. Not at all.

5 Q. Okay. How complex do you know is the -- is the  
6 software and the systems that drive the SCADA -- or that  
7 compromise the SCADA systems?

8 A. Complex is kind of relative. I can't give a very  
9 good answer for that without knowing the architecture  
10 that well. I know there's a lot of hard code written  
11 into the equipment. And then the SCADA software that  
12 runs all the equipment. I would assume it's at some  
13 level complex.

14 Q. Okay. Now I understand that -- or the sense I'm  
15 getting from your testimony is that you -- largely it's  
16 based on a review of the PHMSA regulations. Is that  
17 true?

18 A. Yes, sir. And the submitted Final Amendment and  
19 Changes, Table of Changes.

20 Q. Are you aware of a lawsuit that is being filed by  
21 the National Wildlife Federation against PHMSA for  
22 apparently PHMSA's -- what they allege is PHMSA's  
23 requirement to adequately put regulations in place  
24 concerning pipelines and pipeline spills over the last  
25 decade?

1 MR. WHITE: Objection. Assumes facts not in  
2 evidence.

3 MS. EDWARDS: I'm going to object on relevance  
4 and foundation.

5 MR. MARTINEZ: I just asked if he's aware of it.  
6 I didn't ask if he had any details.

7 MR. WHITE: There hasn't been any indication  
8 that any such lawsuit exists.

9 MR. MARTINEZ: I'm just asking if he's aware of  
10 it. Either he is or he isn't.

11 MR. SMITH: I'll overrule and let him answer  
12 that.

13 Are you aware?

14 A. I saw a Google headline mentioning something, but I  
15 did not read the article.

16 MR. MARTINEZ: Okay. Thank you. I have no  
17 further questions.

18 MR. SMITH: Ms. Craven.

19 MS. CRAVEN: I have no questions for this  
20 witness.

21 MR. SMITH: Mr. Gough.

22 CROSS-EXAMINATION

23 BY MR. GOUGH:

24 Q. Good afternoon, Bob Gough InterTribal Council On  
25 Utility Policy.



1 A. Good afternoon.

2 Q. You're here testifying on behalf of the Staff.

3 A. Correct.

4 Q. And you heard Staff counsel's explanation of why you  
5 were required to supplement or that you supplemented your  
6 testimony?

7 A. Why I withdrew my supplement?

8 Q. Correct.

9 A. Yes.

10 Q. And what was that in your own words? What was your  
11 understanding of her explanation?

12 A. That I made a mistake.

13 Q. And was this because you were initially confused by  
14 the testimony that was given in court?

15 A. No. It's because I was using the wrong number. I  
16 was using the number that traditionally had been used  
17 X70 pipe or 70,000.

18 But in the 44th Edition they have a hard calculation  
19 to use 70,300 for your yield strength. And when I put  
20 that number in then it corrected my error.

21 Q. You saw a changed calculation?

22 A. Yes. I went -- it came out to 1,307 and change.

23 MR. GOUGH: All right. Thank you. No further  
24 questions.

25 MR. SMITH: Mr. Dorr.

1 Mr. Dorr, do you have questions?

2 MR. DORR: No questions.

3 MR. SMITH: Thank you.

4 Mr. Harter.

5 MR. DORR: Mr. Smith, I would just ask you to  
6 speak up. I have a hearing loss from 11 years in the  
7 army. I can't distinguish some of your words.

8 MR. SMITH: Pardon me. And it's keeping the  
9 mic. in front of me too. I apologize. I'll just keep an  
10 eye too and make sure I've gotten your attention. Thank  
11 you.

12 Mr. Harter.

13 MR. HARTER: No questions.

14 MR. SMITH: Ms. Lone Eagle.

15 MS. LONE EAGLE: I just right now have one  
16 question.

17 CROSS-EXAMINATION

18 BY MS. LONE EAGLE:

19 Q. How was the error brought to your attention?

20 A. I figured it out. I double-checked with a colleague  
21 of mine who's an expert in metallurgy and asked him if  
22 there was a change in the 44th Edition that had a higher  
23 yield strength listed than 70,000 because I couldn't  
24 figure out why it wouldn't have been correct in the first  
25 place, and he looked it up for me.

1 MS. LONE EAGLE: Okay. Thank you.

2 MR. SMITH: Is that all you have?

3 MS. LONE EAGLE: Yeah.

4 MR. SMITH: Okay. Ms. Myers.

5 MS. MYERS: No questions.

6 MR. SMITH: Mr. Seamans.

7 MR. SEAMANS: No questions.

8 MR. SMITH: Ms. Smith.

9 MS. SMITH: Yes.

10 CROSS-EXAMINATION

11 BY MS. SMITH:

12 Q. Can you tell me, sir, where the pipe is made?

13 A. I do not know for sure. From testimony it sounded  
14 like it was made in India, but I could not verify that.

15 Q. Okay. So that answers my second question. Thank  
16 you.

17 A. Uh-huh.

18 MR. SMITH: Okay. Mr. Tanderup.

19 MR. TANDERUP: No questions.

20 MR. SMITH: Staff, do you have redirect?

21 MS. EDWARDS: We do not.

22 MR. MARTINEZ: Mr. Smith, if you would indulge  
23 me there was one more question that I, unfortunately,  
24 neglected to ask. Would that be okay?

25 MR. SMITH: That would be fine. I didn't see

1 any indication when I was looking over there. So go  
2 ahead.

3 RECROSS-EXAMINATION

4 BY MR. MARTINEZ:

5 Q. Mr. Hughes, do you know who TransCanada's SCADA  
6 system vendor is?

7 A. I do not.

8 Q. Are you familiar with a company called Teledyne  
9 VariSystems?

10 A. I've heard of them.

11 Q. Okay. Do you have any information as to whether or  
12 not any systems that were put in place by that company  
13 were actually hacked?

14 A. That I do not. I have no knowledge.

15 MR. MARTINEZ: Okay. Thank you. That's all I  
16 have.

17 MR. SMITH: I forgot to ask. Are there any  
18 Commissioner questions of this witness?

19 I think that gets us back to your -- do you have  
20 redirect?

21 MS. EDWARDS: Staff has no redirect. Thank you.

22 MR. SMITH: Okay. You may step down.

23 With that, Mr. Taylor, was this the witness to  
24 whom Ms. Kothari's testimony would be directed, that you  
25 wanted to have out of the way?

1 MR. TAYLOR: Yeah. We're taken care of. Thank  
2 you.

3 MR. SMITH: Oh, you are. Thank you.

4 MR. ELLISON: I'm sorry. I couldn't hear that  
5 response, Mr. White.

6 MR. TAYLOR: The issue that we discussed with  
7 respect to Ms. Kothari was taken care of by Mr. Hughes in  
8 his testimony so we don't need him.

9 MR. SMITH: Oh, okay.

10 MR. ELLISON: Thank you, Mr. Taylor.

11 MR. SMITH: So Staff, please proceed.

12 MR. CREMER: Why wouldn't it be DRA? I thought  
13 Staff was going last and we were just doing that witness  
14 so the rebuttal --

15 MR. SMITH: So we could get to Meera?

16 MR. CREMER: Right.

17 MR. SMITH: Okay. Are you ready?

18 DRA can't go because Ms. Sibson is not present.

19 MR. CREMER: I thought she was here.

20 MR. SMITH: I don't think so. I don't see her.  
21 Of course, that's been many years ago but --

22 MR. CREMER: You need new glasses.

23 MS. SIBSON: We just came in a couple of minutes  
24 ago.

25 MR. SMITH: You're behind the pole. I can't see

1 anything back there.

2 MR. MARTINEZ: We would actually like just a  
3 couple of minutes. Because Ms. Sibson just got here, we  
4 would like a couple of minutes to talk to her.

5 MR. SMITH: Do you want to take a break? Cheri  
6 would like a break.

7 MR. MARTINEZ: That would be extremely helpful.

8 MR. SMITH: Break until 15 to? That would be  
9 12, 13 minutes.

10 MR. MARTINEZ: Thank you, Mr. Smith.

11 (A short recess is taken)

12 MR. SMITH: Ms. Edwards, regarding the  
13 continuation here, I chatted with Ms. Sibson on the way  
14 in. And, as I understand it, she was not really quite  
15 prepared to appear today.

16 Am I correct that we're going to hold her off  
17 until tomorrow?

18 MR. ELLISON: That would certainly be our  
19 preference, with the okay of the Commission.

20 MR. SMITH: It is for me. I mean, I spoke with  
21 her for a while, and I understand her concerns. If Staff  
22 is able and ready to go forward, I don't see why we  
23 couldn't go that direction instead.

24 MR. ELLISON: I just have one other very brief  
25 matter. I applaud the building crew in taking care of

1 the temperature. I'm now wondering whether I should have  
2 brought a winter jacket.

3 MR. SMITH: Is it a little too chilly, do you  
4 think? I'm okay, but if somebody's uncomfortable, the  
5 only way we can know is if you let us know.

6 MR. ELLISON: It's just a dramatic change. We  
7 appreciate it.

8 MR. SMITH: Yeah. You get a room full of  
9 bodies, it makes a difference.

10 Is Staff prepared to move on and ready to  
11 accommodate?

12 MS. EDWARDS: I suppose as a courtesy to the  
13 other parties, we will move forward and call Ms. Hudson.

14 (The oath is administered by the court reporter.)

15 DIRECT EXAMINATION

16 BY MS. EDWARDS:

17 Q. Ms. Hudson, please state your name and business  
18 address for the record.

19 A. My name is Jenny Hudson. My business address is  
20 28100 Torch Parkway, Warrenville, Illinois.

21 Q. And by whom are you employed?

22 A. EN Engineering.

23 Q. What is your professional title?

24 A. Vice president/senior project manager.

25 Q. And in that role what are your job responsibilities?

1 A. I oversee our integrity management group.

2 Q. Can you briefly summarize your educational  
3 background?

4 A. I have a bachelor's of science in geological  
5 engineering, and I have my professional engineering  
6 license in the State of Illinois.

7 Q. And can you briefly describe your work experience  
8 since college?

9 A. Yes. After college I worked for several years at  
10 Nicor Gas. And then I joined EN Engineering where at  
11 EN Engineering my role included corrosion control and  
12 integrity management services.

13 Q. Drawing your attention to what has been marked for  
14 identification purposes as Exhibit 3006, is this your  
15 prefiled testimony?

16 A. Is there a copy of it up here?

17 Yes, it is.

18 Q. Do you have any additions, deletions, or corrections  
19 to make?

20 A. I actually have two minor editorial changes that I  
21 do need to make. On page 3, line 12 I need to add the  
22 code reference 195.54 to the list of changes.

23 And then on page 4, line 16, the first complete  
24 sentence should read this amendment added a new section  
25 in 195.207. I had omitted the word "in."



1 Q. Thank you. If I asked you those same questions  
2 today, would your answers be the same?

3 A. Yes.

4 MS. EDWARDS: At this time I would move for the  
5 admission of Exhibit 3006.

6 MR. SMITH: Is there any objection to the  
7 admission of the prefiled testimony? Keystone?

8 MR. MOORE: No objection, Mr. Smith. Thank you.

9 MR. SMITH: I'm not seeing anything from  
10 Intervenors.

11 Okay. Exhibit 2006?

12 MS. EDWARDS: 3006, sir.

13 MR. SMITH: Okay. Exhibit 3006 is admitted.

14 MS. EDWARDS: And with that, I have no further  
15 questions on direct.

16 MR. SMITH: Keystone.

17 MR. MOORE: No questions. Thank you.

18 MR. SMITH: Okay. Mr. Clark.

19 MR. CLARK: No questions for this witness.

20 MR. SMITH: Mr. Rappold.

21 MR. RAPPOLD: Just a few. Thank you, Mr. Smith.

22 CROSS-EXAMINATION

23 BY MR. RAPPOLD:

24 Q. Ms. Hudson, Matt Rappold. I represent the Rosebud  
25 Sioux Tribe. I'd turn you to your testimony on page 7,

1 line 6. I believe this is an answer to a question. And  
2 the question actually starts on page 6. So page 7, line  
3 6 you state that "control room management requirements  
4 were not specifically addressed in the prior  
5 proceedings."

6 That's accurate; correct?

7 A. Correct. Yes.

8 Q. Okay. And then based on that, would it be your  
9 understanding that the Commission has reviewed or seen no  
10 evidence regarding Keystone's ability to comply with this  
11 requirement?

12 A. Well, as of this time the Control Room Management  
13 Plan would be something that is put into place once the  
14 pipeline goes into operation. And so at this point in  
15 the process it would not necessarily be expected that  
16 there would be a Control Room Management Plan in place  
17 for this pipeline.

18 Q. So then it's accurate to say that they have seen no  
19 evidence on the subject?

20 A. I don't know what they have seen. I have not seen.

21 Q. You haven't seen any of that either?

22 A. No.

23 Q. Okay. Thank you.

24 MR. RAPPOLD: I have no further questions.

25 MR. SMITH: Mr. Capossela.

1 MR. CAPOSSELA: Thank you, Mr. Smith. No  
2 questions for this witness.

3 MR. SMITH: Ms. Real Bird or Baker.

4 CROSS-EXAMINATION

5 BY MS. REAL BIRD:

6 Q. Good afternoon. My name is Thomasina Real Bird.  
7 I'm an attorney for the Yankton Sioux Tribe.

8 Are you represented here today by an attorney?

9 A. No.

10 Q. And, Ms. Hudson, did you consult with your own  
11 attorney in the preparation of your testimony?

12 A. No.

13 Q. I have a question about your prefiled testimony on  
14 page 2 and your answer beginning on line 1.

15 A. Okay.

16 Q. What did you mean by "proposed changes to the  
17 Findings of Fact" as that phrase is used in your  
18 testimony?

19 A. It was just referring to the changes indicated by  
20 Keystone on the Tracking Table of Changes.

21 Q. Did anyone direct you to include that phrase as a  
22 part of one of the purposes of your testimony?

23 A. No.

24 Q. Did you prepare your own testimony?

25 A. I did.

1 Q. Did PUC Staff review your testimony and suggest  
2 changes?

3 A. They did look at it, but they did not suggest  
4 changes.

5 Q. Did anybody review your testimony and suggest  
6 changes?

7 A. No.

8 Q. Ms. Hudson, we heard from an earlier witness that  
9 you were the EN Engineering personnel who received  
10 information from PUC Staff regarding your testimonies; is  
11 that correct?

12 A. Correct.

13 Q. And would you describe the information that you  
14 received from PUC Staff.

15 A. We were -- well, as far as can you be more specific?

16 Q. What documents did you receive?

17 A. The documents that we received were through the PUC  
18 website. So the documents that were filed within the  
19 docket.

20 Q. So the publicly available documents?

21 A. Correct.

22 Q. And did you receive anything else from PUC Staff by  
23 way of phone calls or facsimile or other methods other  
24 than the website?

25 A. No.

1 Q. Well, how did you know the scope of your work?

2 A. So the -- well, okay. I mean, there obviously were  
3 some contractual discussions that were held.

4 Q. Did anybody provide questions to you in whole or in  
5 part?

6 A. No.

7 Q. Did anybody provide answers to you in whole or in  
8 part?

9 A. No.

10 Q. And are you aware that your testimony regarding the  
11 purposes is identical to your colleagues, Mr. Hughes and  
12 Mr. Schramm?

13 A. Yes.

14 Q. And could you explain why that is?

15 A. So as part of the preparation for the project I  
16 prepared -- I guess the response which is contained on  
17 the first half of page 2, to -- in an effort to make sure  
18 that we were being consistent and meeting the  
19 expectations of PUC Staff, I prepared that answer and  
20 then provided it to my colleagues and -- as reference.

21 Q. So you did prepare those sentences in the first half  
22 of page 2 that your colleagues used as their testimony?

23 A. They chose to adopt the same language, yes.

24 Q. Any other suggestions that you provided to your  
25 colleagues?

1 A. No.

2 MS. REAL BIRD: No further questions.

3 MR. SMITH: Mr. Ellison or Mr. Martinez.

4 MR. ELLISON: Just a few questions.

5 CROSS-EXAMINATION

6 BY MR. ELLISON:

7 Q. Good afternoon, ma'am. My name is Bruce Ellison. I  
8 represent Dakota Rural Action, one of the attorneys  
9 involved in that representation.

10 Looking on page 2 of your written testimony,  
11 Exhibit 3006, you state, ma'am, do you not, that one of  
12 the objectives of Staff was to ensure that the Applicant  
13 has met any new requirements imposed by the Federal  
14 Pipeline Safety Regulations 49 CFR 195 since the Amended  
15 Final Decision and Order back in 2010 of this Commission;  
16 is that correct?

17 A. Correct.

18 Q. Okay. You discuss a number of regulatory changes in  
19 your written testimony, do you not?

20 A. Correct.

21 Q. When was the most recent amendment?

22 A. If I remember correctly, the most recent amendment  
23 was -- I guess subject to check -- in March of this year.

24 Q. And would it be fair to say that the changes that  
25 you cite in here or other parts of 49 CFR 195 that you

1 cite in here have happened earlier than that and since  
2 2010; is that correct?

3 A. Correct.

4 Q. Okay. What documents of TransCanada's design plans  
5 have you reviewed to ensure that the Applicant has met  
6 any new requirements imposed by these regulatory changes?

7 A. So as part of this proceeding I reviewed the  
8 Tracking Table of Changes and the Amended Permit  
9 Conditions. And as stated in my testimony, the majority  
10 of the changes to code were insignificant in nature.

11 They were either editorial changes or changes that  
12 did not apply to TransCanada. With the exception of the  
13 control room management regulation, which as I stated  
14 previously, was not something that I would necessarily  
15 expect at this stage in the process for TransCanada to  
16 have in place for this pipeline.

17 Q. Not something that you would necessarily expect. A  
18 lot of qualifiers in there; is that right, ma'am?

19 A. I suppose.

20 MS. EDWARDS: Objection. Argumentative.

21 MR. ELLISON: No. It's simply I'm asking her to  
22 characterize her words, which she answered.

23 A. I just do not want my words to be taken out of  
24 context.

25 Q. Absolutely. I'm sorry. I'm waiting for a ruling.

1 MR. SMITH: Okay. I was going to suggest that  
2 maybe you ask a question just more straightforward.

3 MR. ELLISON: Yes, sir. I will. I'd be happy  
4 to do that.

5 Q. To my earlier question of whether you had reviewed  
6 any TransCanada documents which you could then tell this  
7 Commission based upon the review of TransCanada's  
8 documents that, in fact, you can ensure that the  
9 Applicant has met any new requirements imposed, your  
10 answer would be no, wouldn't it?

11 A. As part of this proceeding, the TransCanada  
12 documents that I reviewed was the Tracking Table of  
13 Changes.

14 Q. Okay. And the Tracking Table of Changes, is that  
15 supposed to be any kind of design documents in any way?  
16 That's just proposed findings; correct?

17 A. That's changes to the design. But, again, the  
18 changes that have been made to regulations have been  
19 editorial in nature, and some of them have not been  
20 applicable to TransCanada.

21 Q. So are you saying that basically your testimony  
22 is -- because there have been really no real changes,  
23 your testimony is irrelevant?

24 A. I don't think it's irrelevant at all. Because part  
25 of the scope was to review changes that have occurred in



1 Part 195 since the Amended Permit Conditions were issued  
2 in June of 2010.

3 Q. Well, if you don't have -- if TransCanada doesn't  
4 have to develop at this point any control management  
5 plan, then really there's nothing that you looked at in  
6 terms of design plans. I'm not talking about Findings of  
7 Fact that they would like changed.

8 You haven't looked at any control room management  
9 design plans that would take into consideration any  
10 changes in 49 CFR Part 195?

11 A. In my opinion, the changes that have occurred in  
12 Part 195 did not warrant a review of design.

13 Q. Okay. People of South Dakota are paying your firm  
14 by the hour for each one of you, the three of you that  
15 are here?

16 A. That's correct.

17 Q. And you've been here the entire hearing?

18 A. No. That's not correct.

19 MS. EDWARDS: Objection. That assumes facts not  
20 in evidence and is a mischaracterization of who is  
21 actually paying her contract.

22 Q. Who is paying your contract?

23 MR. SMITH: Sustained.

24 MS. EDWARDS: Objection. Same reason.

25 MR. ELLISON: Goes to bias. Interest.

1 Q. Who's paying your contract?

2 MR. SMITH: Okay. I'm going to overrule. If  
3 she knows. And I don't know that she knows.

4 Q. Do you know, ma'am?

5 A. The contract, I believe, is with the South Dakota  
6 PUC.

7 Q. Okay. And essentially the three of you have come in  
8 here to say that there are changes in the regs and if the  
9 regs are followed, everything will be okay; correct?

10 A. I don't believe that's what we've said.

11 Q. Well, you're the third witness, and other than  
12 looking at Findings of Fact since you have been here  
13 listening to the testimony of others, you would agree  
14 that you have not looked at -- neither you nor your  
15 colleagues, because they testified, have not looked at  
16 any design plans, development plans, of TransCanada's to  
17 provide this Commission with any evidence, as you state  
18 as your purpose in the second part of your purpose to  
19 ensure that Applicant has met any new requirements  
20 imposed by the changes; isn't that correct?

21 A. As I stated previously, the changes to code did not  
22 warrant a detailed review.

23 Q. So your answer is, is you can't assure this  
24 Commission that the Applicant has met any new  
25 requirements, however important or unimportant at the

1 moment you feel they are?

2 MS. EDWARDS: Objection. Asked and answered.

3 MR. SMITH: Sustained.

4 MR. ELLISON: No further questions.

5 MR. SMITH: Ms. Craven.

6 MS. CRAVEN: I have no questions for this  
7 witness.

8 MR. SMITH: Thank you.

9 Mr. Gough.

10 MR. GOUGH: Yes. I have a couple of questions.  
11 Thank you.

12 CROSS-EXAMINATION

13 BY MR. GOUGH:

14 Q. Good afternoon, Ms. Hudson.

15 You heard the testimony of your colleagues at  
16 EN Engineering?

17 A. Correct.

18 Q. Did you conduct any independent review of documents  
19 separate from that of your colleagues, or are you relying  
20 on their report and reviewed their reports of what they  
21 did?

22 A. No. Each of us performed our own -- our own review.

23 Q. Okay. And in that review was it only the tracking  
24 tables that you looked at? Is that what I understood  
25 from previous testimony?

1 MS. EDWARDS: Objection. Asked and answered.  
2 We've been through this.

3 MR. GOUGH: I'm just trying to get it clear in  
4 my mind.

5 MR. SMITH: Sustained.

6 Q. Did you look at the original Permit Application?

7 A. Yes.

8 Q. In your review of that Permit Application did you  
9 focus particularly on engineering documents and the like?

10 A. Yes.

11 Q. Did you notice during the review of the engineering  
12 documents in the original Application how many of them  
13 were actually signed off on?

14 A. I -- no.

15 Q. Did you notice that any of them were signed off on?

16 A. That was not something I looked at specifically.

17 Q. You're a licensed engineer?

18 A. Correct.

19 Q. And in your professional responsibility preparing  
20 documents for submission to permits and the like, do you  
21 normally submit them without signature?

22 A. If they are final documents, then I would say they  
23 would -- yeah. They would typically have some sort of  
24 signature on them.

25 Q. Is it your understanding that this Commission should

1 be making determinations on final documents?

2 MS. EDWARDS: Objection. This is outside the  
3 scope of her direct.

4 MR. SMITH: Sustained.

5 MR. GOUGH: This is follow up to her previous  
6 sentence, that she reviewed them.

7 Q. So you can't tell me how many documents that you saw  
8 were final or not in the Application?

9 A. I guess I would like to make sure that I understand  
10 your question correctly. When you are -- are you  
11 referring back to the original like 2009 Docket?

12 Q. Yes.

13 A. I would not recall that, no.

14 Q. On what basis then can you assure the Commission  
15 that compliance can be made to nonfinal documents,  
16 engineering documents?

17 A. Can you repeat the question, please.

18 MR. GOUGH: I'd ask the reporter.

19 (Reporter reads back the last question.)

20 A. I guess that -- for the scope of what I was  
21 specifically looking at, which my area is related to  
22 pipeline integrity so that is 195.452, I think any  
23 documents related to that area of code would not  
24 necessarily be signed.

25 So and maybe I'm misunderstanding your line of

1 questioning. But I was not necessarily looking at design  
2 drawings. I am not a design engineer.

3 MR. GOUGH: All right. Thank you.

4 MR. CAPOSSELA: Mr. Smith, excuse me. I know I  
5 may be out of order, but can I ask a question quickly  
6 because I maybe able to put some form into some of the  
7 concerns underlying the recent questioning.

8 MR. GOUGH: No objection.

9 MR. SMITH: Proceed.

10 CROSS-EXAMINATION

11 BY MR. CAPOSSELA:

12 Q. Peter Capossela of Standing Rock Sioux Tribe.

13 How do you know that the Tracking Table of Changes  
14 is a complete accounting of the changes in the plan and  
15 design of the Keystone XL Pipeline?

16 Do you just take TransCanada's word for it?

17 A. I guess I do not know with 100 percent certainty  
18 that those are all the changes.

19 MR. CAPOSSELA: Thank you.

20 No further questions, Mr. Smith. Thank you for  
21 indulging me.

22 MR. SMITH: Mr. Gough.

23 MR. GOUGH: Thank you.

24 And since it's your testimony that you really  
25 didn't look beyond those tracking tables, I'll leave it

1 at that.

2 Thank you.

3 MR. SMITH: Was that a question, or was that a  
4 statement?

5 MR. GOUGH: That was a statement. I'm not going  
6 to ask her to repeat the testimony. We'll hear  
7 objections to that. And I thought I would save the time  
8 I just ate up.

9 Thank you.

10 MR. SMITH: All right. We'll move on then to  
11 Mr. Dorr.

12 CROSS-EXAMINATION

13 BY MR. DORR:

14 Q. Mr. Dorr, Individual Intervenor. Gary Dorr.

15 When did you receive word that you would be  
16 testifying to the proposed changes of fact?

17 A. I don't recall the exact date. March or April,  
18 subject to check.

19 Q. Of this year?

20 A. Uh-huh. Yes.

21 Q. Who notified you of the proposed changes to the  
22 Finding of Fact were being considered?

23 A. I'm sorry. Can you repeat the question, please.

24 Q. Who notified you that the proposed changes to the  
25 Findings of Fact were being considered for your

1 testimony?

2 MS. EDWARDS: Objection. Relevance.

3 MR. DORR: It's part of her testimony.

4 MR. SMITH: I'll overrule. At least within  
5 reason.

6 A. Ms. Edwards.

7 Q. Okay. Your testimony deals with 49 CFR Part 195,  
8 the Federal Pipeline Safety Regulations. Is this a  
9 federal law?

10 A. Yes.

11 Q. If TransCanada did not comply with this federal law,  
12 would the Keystone XL Pipeline Permit for certification  
13 be denied?

14 MR. MOORE: Excuse me, Mr. Smith. I'll just  
15 object to that, that it's ultimately argumentative.  
16 That's the issue for the Commission.

17 MR. DORR: I'll reword.

18 MR. SMITH: Okay. Sustained.

19 Q. As an expert, what would be your recommendation if  
20 the Keystone XL Pipeline did not comply with this federal  
21 law?

22 A. Well, if -- I mean, the Keystone Pipeline, it's  
23 federal law. It needs to comply with Part 195.

24 Q. So, in your opinion, if they did not comply, as an  
25 expert would you advise that the Permit be denied?



1 MS. EDWARDS: Object. Assuming facts not in  
2 evidence.

3 MR. SMITH: Overruled.

4 A. If there was evidence that there was noncompliance  
5 with Part 195, I guess it would be my opinion that there  
6 would need to be an understanding of what those  
7 noncompliances were, first of all, and then potentially  
8 depending upon the severity or nature of those  
9 noncompliances, then, yes, the Permit potentially should  
10 be denied.

11 MR. DORR: I have no further questions.

12 MR. SMITH: Thank you.

13 Mr. Harter.

14 MR. HARTER: I have a couple.

15 CROSS-EXAMINATION

16 BY MR. HARTER:

17 Q. In your testimony you have knowledge of the SCADA  
18 systems; correct?

19 A. I have minimal knowledge of SCADA systems.

20 Q. Okay. So you probably won't be able to answer my  
21 questions.

22 Does EN Engineering have I'm going to say a section  
23 of people or people within its organization that actually  
24 authenticate the documents that you look at and make sure  
25 they're signed off on?

1 A. I guess I'm not sure I understand the question.  
2 Which -- I mean, which documents?

3 Q. Engineering documents.

4 A. Okay.

5 Q. So is there someone within your organization that  
6 you work for that makes sure that you're getting signed  
7 off documents that you have to work with to make  
8 competent decisions on?

9 A. So are you referring to -- just to general documents  
10 that we would prepare internally for a client?

11 Q. Well, the documents that you have to review to make  
12 your decisions like you did in this case.

13 Do you make sure that they're signed off on yourself  
14 to use them within your decision-making, or does someone  
15 do that for you?

16 A. I guess I don't quite understand the question. I  
17 mean, if -- as a company, if we were to release final  
18 drawings to a client, they would be signed off on.

19 But I'm not sure if that's answering your  
20 question.

21 Q. Not quite. If somebody -- like you received  
22 documents from, let's say, TransCanada or whatever  
23 company it is to review, do you look at those documents  
24 to make sure that they're signed off on from other  
25 engineers before you review them?

1 A. I guess it would -- it would depend on the specific  
2 scope of work and the purpose for our review as to  
3 whether or not this would be something that we would look  
4 at.

5 I mean, there are times for clients that we may be  
6 asked to look over draft documents, and in that case I  
7 would not expect draft documents to be signed.

8 MR. HARTER: Thank you.

9 MR. SMITH: Is that all, Mr. Harter?

10 Ms. Lone Eagle.

11 MS. LONE EAGLE: Thank you.

12 CROSS-EXAMINATION

13 BY MS. LONE EAGLE:

14 Q. The questions I have are things that I started  
15 wondering about as you were testifying and answering  
16 other questions.

17 So you said your contract is with the PUC; is that  
18 correct?

19 A. Correct.

20 Q. Okay. Did you ever seek any information outside of  
21 what was provided by the PUC Staff on your own?

22 A. I mean, we looked at code documents and industry  
23 documents.

24 Q. Okay. And that was outside of what the PUC asked  
25 you to look at?

1 A. Well, it was within our scope to look at Part 195.

2 Q. Okay. Okay. And you stated earlier that Kristen  
3 Edwards was the Staff member who told you that the PUC  
4 was considering these changes to the Finding of Fact?

5 A. She -- Ms. Edwards was the one that indicated that  
6 the Findings of Fact needed to be included within our  
7 scope of work.

8 Q. Okay. So Ms. Edwards is the person from the PUC  
9 Staff that you received your direction from in terms of  
10 the scope of your work?

11 A. Correct.

12 Q. Okay. Were you ever told that the PUC Staff is a  
13 neutral party in this matter?

14 A. It has been indicated to us that the PUC is an  
15 unbiased party in this matter.

16 Q. Did you ever share that with your other colleagues  
17 that provided testimony?

18 A. Yes. It was clear to them.

19 MS. LONE EAGLE: Okay. Thank you.

20 MR. SMITH: Is that all, Ms. Lone Eagle?

21 Ms. Myers.

22 MS. MYERS: No questions.

23 MR. SMITH: Mr. Seamans.

24 MR. SEAMANS: No questions.

25 MR. SMITH: Ms. Smith.

1 MS. SMITH: No questions.

2 MR. SMITH: Mr. Tanderup.

3 MR. TANDERUP: No questions.

4 MR. SMITH: Commissioner questions.

5 No questions.

6 Does Staff have any redirect?

7 MS. EDWARDS: We have no redirect. I'd simply  
8 thank Ms. Hudson for getting on the stand last minute.

9 MR. SMITH: I think we're going to go into  
10 recess.

11 CHAIRMAN NELSON: Before we do, I want to just  
12 get clear what's going to happen tomorrow.

13 This is my understanding: Sue Sibson is going  
14 to lead off. Doug Crow Ghost up next. Mr. Dorr, Wayne  
15 Frederick up tomorrow? And then after that we go into  
16 Staff; correct?

17 MS. EDWARDS: Yes.

18 CHAIRMAN NELSON: Wow. I like agreement all the  
19 way across. That's a great way to end.

20 The only other comment that I'd like to make,  
21 folks, it's been evident today that you really, really  
22 tried to keep the duplicative questions to a minimum.

23 Thank you.

24 MR. CAPOSSELA: Before we go off the record, may  
25 I make briefly -- I would like counsel to visit briefly

1 with Mr. Smith and we can do it off the record but I'd  
2 like to do it right now.

3 MS. REAL BIRD: Could we get the order of  
4 Staff's witnesses?

5 MR. SMITH: Staff, do you have that?

6 MS. EDWARDS: I believe we'll start with  
7 Daniel Flo. And after that, Karen, alphabetical? Yeah.

8 MR. ELLISON: Could you say that again, please.  
9 I couldn't hear you.

10 MS. EDWARDS: Yeah. We'll start with Mr. Flo  
11 and then work in alphabetical order.

12 MR. ELLISON: Okay. Thank you.

13 (The hearing is adjourned at 5:30 p.m.)  
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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 3rd day of  
11 August, 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

16

17

18 Cheri McComsey Wittler,  
19 Notary Public and  
20 Registered Professional Reporter  
21 Certified Realtime Reporter

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25

#	1718:4, 1765:9, 1767:15, 1905:6	1772 [1] - 1638:16	1903 [1] - 1639:19	1745:22, 1809:2
#56 [1] - 1635:20	11000 [1] - 1636:3	1773 [1] - 1638:17	1905 [1] - 1639:19	2009 [6] - 1635:7, 1745:22, 1877:19, 1878:14, 1878:17, 1924:11
,	12 [9] - 1667:3, 1667:7, 1765:9, 1767:15, 1796:17, 1813:17, 1883:18, 1909:9, 1911:21	1778 [1] - 1638:17	1906 [1] - 1639:20	2009-2010 [2] - 1721:8, 1864:8
'09 [2] - 1863:22, 1863:24	120 [3] - 1667:16, 1796:16, 1813:16	1784 [1] - 1638:19	1907 [1] - 1639:20	2009-2012 [1] - 1636:23
'09-10 [1] - 1864:12	121 [1] - 1857:1	179 [1] - 1635:18	1910 [1] - 1640:3	201 [1] - 1715:12
'10 [2] - 1863:22, 1863:24	13 [12] - 1636:7, 1663:15, 1663:18, 1729:5, 1729:9, 1764:16, 1765:9, 1766:14, 1767:6, 1767:9, 1767:15, 1909:9	18 [1] - 1898:12	1912 [2] - 1635:11, 1640:4	2010 [6] - 1656:17, 1692:14, 1808:24, 1917:15, 1918:2, 1920:2
'70s [1] - 1884:3	13175 [1] - 1720:1	1800s [3] - 1850:19, 1851:1, 1859:19	1914 [1] - 1640:4	2011 [3] - 1761:13, 1764:22, 1816:25
1	1341 [1] - 1833:20	1807 [1] - 1638:19	1917 [1] - 1640:5	2012 [4] - 1636:8, 1636:10, 1745:25, 1764:19
1 [14] - 1637:4, 1664:13, 1674:13, 1684:8, 1684:10, 1692:9, 1693:1, 1693:12, 1693:24, 1694:4, 1696:22, 1853:17, 1914:14	1418 [1] - 1635:11	1812 [2] - 1635:23, 1638:20	1922 [1] - 1640:5	2013 [10] - 1635:7, 1636:7, 1690:9, 1729:5, 1729:9, 1763:3, 1763:5, 1763:7, 1764:19, 1850:4
1,000 [4] - 1662:5, 1827:13, 1827:18, 1827:24	149 [1] - 1635:3	1814 [1] - 1638:20	1925 [1] - 1640:6	2013-2014 [1] - 1636:23
1,200 [4] - 1850:21, 1859:2, 1862:23, 1863:7	15 [10] - 1651:15, 1655:18, 1682:14, 1700:1, 1711:7, 1716:25, 1720:11, 1724:5, 1842:22, 1909:8	1815 [1] - 1638:21	1926 [1] - 1640:6	2014 [1] - 1636:7
1,302 [1] - 1889:6	150 [3] - 1794:11, 1795:14, 1819:11	1820 [1] - 1638:21	1928 [1] - 1640:7	2015 [7] - 1633:9, 1633:10, 1634:4, 1761:8, 1934:11, 1934:14
1,307 [2] - 1889:5, 1904:22	1525 [1] - 1635:16	1826 [1] - 1638:22	1930 [1] - 1640:7	2017 [1] - 1635:8
1.5 [1] - 1664:6	16 [2] - 1689:4, 1911:23	1829 [1] - 1638:22	195 [13] - 1892:1, 1892:19, 1898:13, 1898:17, 1917:14, 1917:25, 1920:1, 1920:10, 1920:12, 1927:7, 1927:23, 1928:5, 1931:1	2024 [1] - 1636:8
1.6 [3] - 1795:16, 1810:16, 1810:23	1633-1934 [1] - 1633:11	1836 [1] - 1638:23	195.207 [1] - 1911:25	2027 [1] - 1636:13
10 [15] - 1642:5, 1662:12, 1665:4, 1692:5, 1693:1, 1708:8, 1708:20, 1743:19, 1764:16, 1765:7, 1766:6, 1767:15, 1780:20, 1783:25, 1893:19	1651 [1] - 1638:3	1848 [1] - 1639:3	195.446 [1] - 1891:10	2032 [1] - 1636:11
100 [10] - 1711:18, 1711:20, 1795:13, 1796:16, 1805:22, 1805:23, 1836:8, 1837:6, 1837:9, 1925:17	1681 [1] - 1638:6	1851 [8] - 1715:12, 1715:17, 1715:23, 1716:13, 1719:7, 1721:15, 1733:24, 1734:14	195.452 [1] - 1924:22	2034 [1] - 1636:9
1003 [5] - 1635:22, 1635:23, 1635:24, 1635:24, 1768:1	1683 [1] - 1636:15	1858 [1] - 1721:15	195.466 [2] - 1891:17, 1891:22	2059 [1] - 1635:13
1003-A [1] - 1768:3	1691 [1] - 1638:6	1860 [1] - 1637:6	195.54 [1] - 1911:22	21 [1] - 1881:5
105 [1] - 1664:13	1694 [1] - 1638:7	1861 [1] - 1639:4	1971 [1] - 1635:24	2132 [1] - 1636:3
107 [2] - 1673:1, 1708:6	1697 [1] - 1638:7	1862 [1] - 1639:4	1977 [1] - 1850:8	2186 [1] - 1635:24
10:30 [1] - 1724:5	1698 [1] - 1638:8	1863 [1] - 1639:5	1978 [1] - 1852:25	2261 [1] - 1635:5
11 [7] - 1643:3, 1715:18, 1718:2,	1699 [1] - 1638:8	1866 [1] - 1639:5	1980 [1] - 1742:13	23 [1] - 1641:19
	17 [2] - 1664:23, 1689:4	1867 [1] - 1639:6	1980s [2] - 1785:5, 1785:15	2366 [1] - 1635:8
	1702 [1] - 1638:10	1868 [7] - 1716:24, 1717:18, 1718:22, 1719:7, 1721:15, 1733:24, 1734:14	1985 [1] - 1742:20	2395 [1] - 1635:6
	1709 [1] - 1636:5	1869 [1] - 1639:6	1997 [1] - 1739:24	24 [5] - 1667:4, 1796:17, 1813:17, 1860:6,



3	40 <sup>[1]</sup> - 1663:9, 1709:22, 1729:23, 1775:16, 1796:14, 1827:17, 1847:12, 1848:1, 1848:2, 1854:6, 1883:2 414 <sup>[1]</sup> - 1634:3 42,000 <sup>[1]</sup> - 1664:6 44th <sup>[2]</sup> - 1904:18, 1905:22 471 <sup>[1]</sup> - 1663:22 48 <sup>[1]</sup> - 1867:21 48(a <sup>[1]</sup> - 1635:18 49 <sup>[8]</sup> - 1891:10, 1891:17, 1892:1, 1892:19, 1917:14, 1917:25, 1920:10, 1927:7	6/6/11 <sup>[1]</sup> - 1636:12 60 <sup>[3]</sup> - 1667:7, 1668:5, 1813:16 6001 <sup>[1]</sup> - 1674:15 62.3 <sup>[1]</sup> - 1666:4 635 <sup>[3]</sup> - 1711:7, 1716:25, 1720:11 658 <sup>[1]</sup> - 1635:4 69 <sup>[1]</sup> - 1766:18	984 <sup>[3]</sup> - 1636:17, 1636:18, 1636:19 985 <sup>[3]</sup> - 1636:21, 1636:21, 1636:22 988 <sup>[2]</sup> - 1636:24, 1637:3 989 <sup>[1]</sup> - 1637:4 992 <sup>[1]</sup> - 1635:15 994 <sup>[1]</sup> - 1635:3	1799:20 abuse <sup>[3]</sup> - 1853:5, 1868:22, 1870:11 abuses <sup>[1]</sup> - 1646:8 AC <sup>[1]</sup> - 1900:2 accept <sup>[2]</sup> - 1708:17, 1755:18 acceptable <sup>[6]</sup> - 1657:25, 1675:23, 1828:14, 1828:17, 1835:4, 1843:9 ACCEPTING <sup>[1]</sup> - 1633:5 accepting <sup>[1]</sup> - 1641:5 Access <sup>[1]</sup> - 1739:11 access <sup>[1]</sup> - 1857:18 accident <sup>[1]</sup> - 1705:25 accommodate <sup>[2]</sup> - 1781:9, 1910:11 accommodated <sup>[1]</sup> - 1782:1 accommodating <sup>[2]</sup> - 1652:9, 1743:6 accomplished <sup>[1]</sup> - 1776:15 Accord <sup>[1]</sup> - 1734:20 accordance <sup>[1]</sup> - 1741:17 accorded <sup>[2]</sup> - 1710:12, 1743:15 according <sup>[4]</sup> - 1664:4, 1674:17, 1694:4, 1822:22 accordingly <sup>[1]</sup> - 1716:7 account <sup>[5]</sup> - 1687:21, 1700:10, 1705:4, 1719:20, 1726:20 accounting <sup>[1]</sup> - 1925:14 accounts <sup>[1]</sup> - 1727:4 accruing <sup>[1]</sup> - 1700:23 accurate <sup>[3]</sup> - 1813:22, 1913:6, 1913:18 accurately <sup>[2]</sup> - 1794:21, 1836:14 acquire <sup>[2]</sup> - 1743:3, 1881:8 acreage <sup>[1]</sup> - 1665:6 acres <sup>[1]</sup> - 1665:4 Act <sup>[5]</sup> - 1677:7, 1691:23, 1737:2, 1740:1, 1862:16 act <sup>[6]</sup> - 1718:6, 1719:3, 1792:8, 1826:16, 1842:9, 1854:15 action <sup>[6]</sup> - 1675:18, 1676:21, 1729:13,
	5	7	A	
	4	5 <sup>[14]</sup> - 1633:9, 1661:11, 1661:22, 1662:12, 1796:10, 1796:13, 1796:16, 1808:13, 1827:19, 1828:24, 1853:12, 1898:23 50 <sup>[6]</sup> - 1646:17, 1646:18, 1719:10, 1864:16, 1864:17, 1867:21 50,000 <sup>[1]</sup> - 1664:22 500 <sup>[4]</sup> - 1634:3, 1662:5, 1827:13, 1827:24 500-year <sup>[1]</sup> - 1816:25 5000 <sup>[1]</sup> - 1636:17 5001 <sup>[1]</sup> - 1636:18 5002 <sup>[1]</sup> - 1636:19 5003 <sup>[1]</sup> - 1636:21 5004 <sup>[1]</sup> - 1636:21 5005 <sup>[1]</sup> - 1636:22 5006 <sup>[1]</sup> - 1636:24 5007 <sup>[1]</sup> - 1637:3 5008 <sup>[1]</sup> - 1637:4 533 <sup>[1]</sup> - 1635:4 550 <sup>[1]</sup> - 1658:15 563 <sup>[1]</sup> - 1635:7 58 <sup>[2]</sup> - 1658:15, 1668:5 5:30 <sup>[1]</sup> - 1933:13	7 <sup>[3]</sup> - 1824:1, 1912:25, 1913:2 7/16/10 <sup>[1]</sup> - 1636:14 70 <sup>[3]</sup> - 1667:20, 1743:19, 1766:19 70,000 <sup>[4]</sup> - 1889:2, 1889:6, 1904:17, 1905:23 70,300 <sup>[3]</sup> - 1889:4, 1889:5, 1904:19 700 <sup>[1]</sup> - 1853:22 7001 <sup>[1]</sup> - 1635:15 7002 <sup>[1]</sup> - 1635:16 749 <sup>[1]</sup> - 1715:18 76 <sup>[3]</sup> - 1813:11, 1814:6, 1814:10	abbreviations <sup>[1]</sup> - 1658:24 abide <sup>[1]</sup> - 1847:4 ability <sup>[10]</sup> - 1645:16, 1694:1, 1719:9, 1758:20, 1770:8, 1770:12, 1840:14, 1848:2, 1862:7, 1913:10 able <sup>[25]</sup> - 1649:16, 1649:18, 1649:20, 1659:4, 1671:12, 1672:8, 1687:11, 1693:9, 1735:19, 1781:7, 1783:7, 1806:2, 1828:5, 1828:25, 1829:4, 1829:5, 1832:7, 1846:7, 1868:11, 1899:16, 1901:22, 1901:24, 1909:22, 1925:6, 1928:20 aboriginal <sup>[14]</sup> - 1704:25, 1705:8, 1705:22, 1705:23, 1706:3, 1706:7, 1706:12, 1706:21, 1706:22, 1706:23, 1707:14, 1746:2, 1749:20, 1750:11 above-entitled <sup>[2]</sup> - 1634:2, 1934:10 absent <sup>[2]</sup> - 1695:13, 1700:20 absolute <sup>[2]</sup> - 1779:23, 1783:18 absolutely <sup>[9]</sup> - 1680:15, 1691:1, 1757:1, 1771:7, 1783:1, 1839:22, 1861:18, 1871:13, 1918:25 absorb <sup>[4]</sup> - 1661:9, 1788:7, 1788:8, 1788:22 absorbs <sup>[1]</sup> - 1788:12 absorption <sup>[2]</sup> -
6		8		
4	6 <sup>[6]</sup> - 1663:23, 1790:23, 1791:2, 1913:1, 1913:2, 1913:3	9		
4 <sup>[9]</sup> - 1738:6, 1763:1, 1765:10, 1788:16, 1790:19, 1821:21, 1878:2, 1898:11, 1911:23 4.15 <sup>[1]</sup> - 1738:6		9011 <sup>[3]</sup> - 1637:6, 1860:2, 1860:6		

1734:24, 1737:21, 1827:22 <b>Action</b> [8] - 1643:18, 1650:24, 1652:21, 1750:16, 1753:12, 1784:15, 1896:7, 1917:8 <b>ACTION</b> [2] - 1635:17, 1638:13 <b>actions</b> [3] - 1741:24, 1754:14, 1847:8 <b>active</b> [1] - 1761:13 <b>actively</b> [1] - 1841:21 <b>activist</b> [1] - 1742:15 <b>activities</b> [1] - 1766:15 <b>activity</b> [1] - 1726:25 <b>acts</b> [1] - 1718:14 <b>actual</b> [4] - 1660:11, 1671:10, 1706:20, 1863:4 <b>add</b> [14] - 1644:18, 1647:1, 1655:11, 1689:11, 1696:8, 1696:16, 1841:11, 1842:1, 1858:3, 1866:19, 1866:23, 1866:25, 1889:5, 1911:21 <b>added</b> [4] - 1655:6, 1666:2, 1849:3, 1911:24 <b>Addition</b> [1] - 1637:3 <b>addition</b> [5] - 1682:15, 1854:22, 1888:4, 1896:11, 1900:21 <b>additional</b> [10] - 1646:14, 1647:6, 1648:9, 1689:12, 1697:4, 1743:16, 1744:19, 1825:16, 1837:19, 1890:16 <b>additions</b> [2] - 1888:2, 1911:18 <b>address</b> [17] - 1650:3, 1688:7, 1696:14, 1703:2, 1705:13, 1734:10, 1743:16, 1761:19, 1764:15, 1844:6, 1847:8, 1847:18, 1848:15, 1874:8, 1886:23, 1910:18, 1910:19 <b>addressed</b> [7] - 1714:9, 1721:1, 1747:4, 1847:13, 1864:3, 1892:20, 1913:4 <b>addresses</b> [4] - 1704:24, 1705:1, 1705:7, 1891:9	<b>Addresses</b> [1] - 1636:17 <b>adequate</b> [1] - 1743:23 <b>adequately</b> [3] - 1864:3, 1864:24, 1902:23 <b>adjacent</b> [5] - 1712:9, 1812:13, 1833:23, 1856:9, 1856:25 <b>adjourned</b> [1] - 1933:13 <b>administered</b> [7] - 1654:6, 1681:13, 1702:22, 1784:17, 1848:11, 1886:20, 1910:14 <b>administrative</b> [1] - 1644:8 <b>administrator</b> [1] - 1656:24 <b>administrators</b> [1] - 1671:2 <b>admiration</b> [1] - 1858:16 <b>admissibility</b> [1] - 1764:11 <b>admissible</b> [3] - 1668:8, 1731:15, 1764:5 <b>admission</b> [10] - 1727:23, 1728:2, 1728:3, 1731:5, 1731:12, 1761:17, 1811:24, 1888:11, 1912:5, 1912:7 <b>admissions</b> [1] - 1767:2 <b>admit</b> [2] - 1716:19, 1731:17 <b>admitted</b> [9] - 1705:18, 1727:12, 1731:7, 1768:5, 1812:1, 1860:23, 1878:17, 1888:18, 1912:13 <b>adopt</b> [3] - 1745:18, 1878:9, 1916:23 <b>adopted</b> [3] - 1745:8, 1745:20, 1873:14 <b>advance</b> [1] - 1787:24 <b>advantage</b> [1] - 1803:7 <b>adverse</b> [2] - 1642:13, 1658:16 <b>adversity</b> [1] - 1744:11 <b>advice</b> [1] - 1871:4 <b>advise</b> [3] - 1871:6, 1871:8, 1927:25	<b>advisement</b> [1] - 1657:15 <b>advisor</b> [1] - 1642:23 <b>aerobic</b> [1] - 1827:22 <b>affect</b> [7] - 1665:20, 1711:21, 1736:21, 1737:6, 1840:4, 1840:14, 1854:18 <b>affected</b> [6] - 1665:14, 1719:25, 1733:4, 1755:12, 1803:19, 1805:13 <b>affecting</b> [3] - 1664:10, 1666:24, 1667:5 <b>affects</b> [2] - 1804:5, 1856:5 <b>Affidavit</b> [2] - 1636:21, 1636:22 <b>affirmation</b> [1] - 1784:17 <b>afforded</b> [1] - 1710:10 <b>afternoon</b> [13] - 1780:22, 1783:2, 1783:24, 1807:3, 1826:23, 1862:3, 1863:21, 1893:11, 1903:24, 1904:1, 1914:6, 1917:7, 1922:14 <b>afterwards</b> [1] - 1846:18 <b>Ag</b> [1] - 1636:19 <b>age</b> [2] - 1854:1, 1856:16 <b>aged</b> [1] - 1793:5 <b>agencies</b> [6] - 1645:12, 1732:20, 1740:20, 1741:4 <b>Agency</b> [2] - 1636:20, 1797:5 <b>agency</b> [6] - 1645:13, 1660:25, 1662:11, 1673:8, 1722:8, 1737:4 <b>agenda</b> [1] - 1851:16 <b>agent</b> [1] - 1668:1 <b>aging</b> [1] - 1682:17 <b>ago</b> [4] - 1644:19, 1885:12, 1908:21, 1908:24 <b>agree</b> [12] - 1671:8, 1671:9, 1671:25, 1688:22, 1715:1, 1812:23, 1813:25, 1814:4, 1879:10, 1879:12, 1900:18, 1921:13 <b>agreed</b> [1] - 1651:3 <b>agreement</b> [2] -	1653:14, 1932:18 <b>agreements</b> [1] - 1734:19 <b>ahead</b> [17] - 1657:24, 1678:20, 1681:5, 1699:1, 1728:16, 1753:14, 1753:20, 1753:22, 1756:6, 1759:2, 1765:25, 1769:7, 1805:5, 1877:4, 1881:5, 1892:13, 1907:2 <b>ailments</b> [1] - 1838:25 <b>ain't</b> [1] - 1648:17 <b>air</b> [6] - 1659:2, 1662:13, 1743:24, 1823:2, 1828:8, 1835:1 <b>alarm</b> [2] - 1851:12, 1852:2 <b>alarmed</b> [1] - 1874:23 <b>alcohol</b> [3] - 1853:5, 1854:9 <b>aligned</b> [2] - 1642:18, 1695:1 <b>alignment</b> [1] - 1642:24 <b>allegations</b> [4] - 1761:7, 1761:9, 1762:17, 1763:2 <b>allege</b> [1] - 1902:22 <b>Alliance</b> [2] - 1711:11, 1742:19 <b>allow</b> [2] - 1676:5, 1737:14 <b>allowable</b> [2] - 1661:21, 1797:7 <b>allowed</b> [3] - 1650:11, 1670:14, 1744:9 <b>allowing</b> [4] - 1673:21, 1744:6, 1744:14, 1834:12 <b>alluvial</b> [3] - 1798:1, 1800:3, 1800:10 <b>alluvium</b> [12] - 1789:21, 1789:24, 1789:25, 1790:8, 1794:1, 1797:13, 1797:15, 1798:4, 1798:5, 1798:13, 1798:17, 1809:18 <b>almost</b> [8] - 1644:9, 1678:19, 1689:19, 1699:22, 1788:11, 1794:3, 1795:23, 1816:10 <b>alone</b> [1] - 1666:6 <b>alphabetical</b> [2] - 1933:7, 1933:11 <b>amenable</b> [1] -	1652:12 <b>amend</b> [1] - 1655:10 <b>Amended</b> [18] - 1635:8, 1636:3, 1683:21, 1684:5, 1684:8, 1684:9, 1692:6, 1692:9, 1693:11, 1693:24, 1694:4, 1712:6, 1811:5, 1811:9, 1897:16, 1917:14, 1918:8, 1920:1 <b>amendment</b> [5] - 1734:21, 1902:18, 1911:24, 1917:21, 1917:22 <b>America</b> [2] - 1708:11, 1709:14 <b>American</b> [9] - 1709:23, 1709:24, 1709:25, 1710:1, 1713:21, 1851:5, 1854:7, 1861:17 <b>Americans</b> [2] - 1708:23, 1861:13 <b>amount</b> [5] - 1647:12, 1670:15, 1803:20, 1807:22, 1838:18 <b>ample</b> [1] - 1743:23 <b>analyses</b> [1] - 1688:10 <b>analysis</b> [31] - 1661:17, 1685:3, 1685:6, 1686:8, 1686:25, 1687:4, 1687:16, 1687:21, 1687:25, 1688:2, 1688:11, 1688:17, 1691:18, 1691:24, 1694:19, 1694:23, 1695:12, 1695:17, 1696:5, 1697:20, 1698:20, 1699:8, 1699:21, 1700:19, 1700:20, 1700:24, 1759:12, 1779:14, 1779:24, 1807:25, 1808:8 <b>Anaya</b> [1] - 1705:9 <b>Andes</b> [2] - 1849:18, 1855:12 <b>anemia</b> [1] - 1662:20 <b>angle</b> [2] - 1793:15, 1837:16 <b>animal</b> [1] - 1662:23 <b>Ann</b> [2] - 1636:11, 1636:13 <b>announced</b> [1] - 1730:1 <b>answer</b> [34] - 1669:19, 1678:20, 1688:19,
--	---	---	--	--

<p>1692:18, 1693:9, 1694:2, 1697:23, 1698:25, 1699:5, 1712:5, 1718:24, 1723:12, 1746:19, 1747:12, 1777:22, 1778:18, 1817:15, 1874:10, 1874:21, 1881:10, 1881:11, 1890:8, 1890:13, 1893:19, 1895:17, 1901:5, 1902:9, 1903:11, 1913:1, 1914:14, 1916:19, 1919:10, 1921:23, 1928:20</p> <p><b>answer's</b> [1] - 1700:20</p> <p><b>answered</b> [14] - 1648:24, 1678:19, 1692:16, 1692:17, 1692:19, 1712:24, 1723:8, 1747:10, 1747:14, 1751:15, 1870:4, 1918:22, 1922:2, 1923:1</p> <p><b>answering</b> [2] - 1929:19, 1930:15</p> <p><b>answers</b> [7] - 1696:13, 1859:23, 1878:7, 1888:8, 1906:15, 1912:2, 1916:7</p> <p><b>anthropology</b> [1] - 1858:11</p> <p><b>anticipation</b> [2] - 1805:25, 1849:25</p> <p><b>Antoine</b> [1] - 1636:3</p> <p><b>anyway</b> [3] - 1670:19, 1710:1, 1872:11</p> <p><b>apart</b> [1] - 1663:23</p> <p><b>apologize</b> [5] - 1805:6, 1835:6, 1842:6, 1889:6, 1905:9</p> <p><b>apparatus</b> [1] - 1776:21</p> <p><b>apparent</b> [1] - 1642:17</p> <p><b>appeal</b> [3] - 1644:2, 1644:5, 1646:23</p> <p><b>appear</b> [6] - 1642:1, 1694:3, 1725:17, 1765:18, 1769:18, 1909:15</p> <p><b>appeared</b> [3] - 1757:14, 1851:19, 1854:21</p> <p><b>appearing</b> [4] - 1653:16, 1725:11, 1750:24, 1751:1</p> <p><b>Appendix</b> [1] - 1658:20</p>	<p><b>applaud</b> [1] - 1909:25</p> <p><b>applicable</b> [6] - 1694:5, 1714:4, 1719:17, 1737:3, 1737:8, 1919:20</p> <p><b>Applicant</b> [9] - 1654:15, 1654:16, 1692:4, 1880:22, 1917:12, 1918:5, 1919:9, 1921:19, 1921:24</p> <p><b>Application</b> [8] - 1685:24, 1747:23, 1863:22, 1881:2, 1923:6, 1923:8, 1923:12, 1924:8</p> <p><b>applications</b> [1] - 1746:10</p> <p><b>applied</b> [1] - 1698:11</p> <p><b>applies</b> [2] - 1735:23, 1741:11</p> <p><b>apply</b> [1] - 1918:12</p> <p><b>appointed</b> [1] - 1934:8</p> <p><b>appreciate</b> [18] - 1646:6, 1680:24, 1689:20, 1706:15, 1714:16, 1751:1, 1815:25, 1831:13, 1834:11, 1835:19, 1839:16, 1840:17, 1841:1, 1841:7, 1841:11, 1841:16, 1897:12, 1910:7</p> <p><b>appreciating</b> [1] - 1742:16</p> <p><b>approach</b> [5] - 1717:11, 1730:8, 1733:19, 1735:6, 1738:1</p> <p><b>appropriate</b> [6] - 1653:7, 1723:24, 1730:9, 1743:2, 1760:15, 1834:16</p> <p><b>appropriately</b> [1] - 1738:22</p> <p><b>appropriation</b> [2] - 1880:6, 1880:20</p> <p><b>approve</b> [1] - 1649:1</p> <p><b>approved</b> [3] - 1651:24, 1755:22, 1852:13</p> <p><b>approximation</b> [1] - 1794:7</p> <p><b>April</b> [4] - 1655:9, 1655:10, 1714:8, 1926:17</p> <p><b>Aquifer</b> [6] - 1791:10, 1791:11, 1792:8, 1801:12, 1801:14, 1801:19</p>	<p><b>aquifer</b> [18] - 1664:16, 1787:22, 1789:6, 1789:16, 1791:13, 1791:15, 1791:20, 1791:23, 1792:2, 1792:11, 1793:3, 1794:2, 1797:15, 1797:22, 1800:8, 1802:1, 1802:2, 1823:5</p> <p><b>aquifers</b> [6] - 1662:6, 1786:20, 1801:24, 1809:11, 1809:15, 1827:1</p> <p><b>arc</b> [3] - 1774:7, 1774:8, 1776:1</p> <p><b>architecture</b> [3] - 1899:13, 1899:17, 1902:9</p> <p><b>archive</b> [1] - 1778:5</p> <p><b>archived</b> [1] - 1778:6</p> <p><b>archiving</b> [2] - 1778:8, 1778:9</p> <p><b>Arden</b> [9] - 1635:23, 1638:18, 1651:7, 1651:20, 1661:20, 1662:7, 1664:19, 1666:20, 1784:16</p> <p><b>area</b> [93] - 1665:15, 1666:6, 1717:24, 1770:13, 1787:16, 1787:22, 1787:25, 1788:17, 1788:18, 1789:1, 1789:3, 1789:6, 1789:8, 1789:14, 1789:21, 1791:14, 1791:17, 1791:18, 1791:24, 1794:6, 1794:12, 1796:2, 1796:18, 1797:11, 1797:13, 1797:17, 1797:20, 1797:24, 1798:1, 1798:23, 1799:5, 1800:7, 1801:7, 1801:14, 1801:15, 1801:17, 1801:20, 1802:1, 1803:8, 1805:13, 1813:23, 1814:2, 1814:6, 1818:25, 1820:17, 1820:19, 1821:9, 1821:13, 1821:20, 1821:23, 1822:3, 1822:4, 1822:5, 1822:14, 1822:15, 1822:18, 1822:23, 1822:25, 1823:6, 1823:15, 1823:18, 1824:8, 1824:10,</p>	<p>1824:12, 1824:21, 1827:3, 1828:4, 1830:19, 1830:21, 1830:22, 1834:7, 1834:10, 1852:7, 1854:3, 1858:15, 1867:23, 1868:1, 1868:5, 1868:6, 1868:17, 1868:19, 1871:6, 1874:14, 1879:6, 1924:21, 1924:23</p> <p><b>Area</b> [1] - 1636:19</p> <p><b>areas</b> [24] - 1658:4, 1665:25, 1681:24, 1715:4, 1788:3, 1790:5, 1792:21, 1797:14, 1804:16, 1804:24, 1805:1, 1809:14, 1809:18, 1809:21, 1810:8, 1810:11, 1810:16, 1832:16, 1834:5, 1852:12, 1870:16</p> <p><b>argue</b> [4] - 1740:11, 1865:12, 1865:14, 1865:16</p> <p><b>arguing</b> [3] - 1689:21, 1706:8, 1783:22</p> <p><b>argument</b> [4] - 1656:19, 1656:20, 1779:19, 1824:22</p> <p><b>argumentative</b> [6] - 1804:22, 1805:15, 1892:10, 1892:25, 1918:20, 1927:15</p> <p><b>arguments</b> [4] - 1646:5, 1656:3, 1775:8, 1778:8</p> <p><b>arisen</b> [1] - 1758:6</p> <p><b>Arkansas</b> [2] - 1658:13, 1678:24</p> <p><b>arm</b> [1] - 1796:1</p> <p><b>armed</b> [1] - 1861:13</p> <p><b>army</b> [1] - 1905:7</p> <p><b>arresting</b> [1] - 1858:19</p> <p><b>arrive</b> [2] - 1680:12, 1845:19</p> <p><b>arrows</b> [1] - 1831:5</p> <p><b>article</b> [4] - 1668:20, 1669:13, 1670:17, 1903:15</p> <p><b>Article</b> [2] - 1710:20, 1720:12</p> <p><b>articles</b> [4] - 1668:6, 1668:15, 1668:18, 1676:1</p> <p><b>articulate</b> [2] - 1733:23, 1865:3</p> <p><b>articulated</b> [1] -</p>	<p>1746:15</p> <p><b>ascertain</b> [1] - 1832:22</p> <p><b>aside</b> [1] - 1710:23</p> <p><b>asleep</b> [1] - 1841:13</p> <p><b>Asnati</b> [1] - 1856:15</p> <p><b>aspect</b> [1] - 1857:16</p> <p><b>assault</b> [5] - 1851:7, 1853:13, 1868:23, 1872:8, 1872:10</p> <p><b>assaulted</b> [2] - 1853:15, 1853:16</p> <p><b>assaults</b> [1] - 1853:9</p> <p><b>asserts</b> [1] - 1813:15</p> <p><b>assessment</b> [5] - 1663:3, 1663:5, 1722:20, 1804:17, 1808:19</p> <p><b>Assessment</b> [1] - 1636:8</p> <p><b>assessments</b> [1] - 1804:23</p> <p><b>asset</b> [1] - 1698:7</p> <p><b>assist</b> [2] - 1858:4, 1871:12</p> <p><b>assists</b> [1] - 1659:7</p> <p><b>associated</b> [9] - 1666:24, 1686:15, 1687:1, 1687:13, 1690:11, 1742:18, 1809:24, 1872:24</p> <p><b>assume</b> [5] - 1784:7, 1838:19, 1881:20, 1882:4, 1902:12</p> <p><b>assumed</b> [1] - 1808:12</p> <p><b>assumes</b> [8] - 1657:3, 1657:4, 1723:10, 1745:10, 1745:13, 1772:10, 1903:1, 1920:19</p> <p><b>assuming</b> [4] - 1796:9, 1843:3, 1898:15, 1928:1</p> <p><b>assumption</b> [2] - 1648:12, 1898:25</p> <p><b>assure</b> [5] - 1680:11, 1689:18, 1834:18, 1921:23, 1924:14</p> <p><b>assured</b> [1] - 1680:23</p> <p><b>asthma</b> [1] - 1678:25</p> <p><b>ate</b> [1] - 1926:8</p> <p><b>Athabasca</b> [1] - 1734:25</p> <p><b>ATSDR</b> [3] - 1661:13, 1662:11, 1673:8</p> <p><b>attached</b> [3] - 1786:24, 1811:5, 1934:11</p> <p><b>attachments</b> [1] - 1786:3</p>
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<b>attacks</b> <sup>[1]</sup> - 1839:25 <b>attempt</b> <sup>[4]</sup> - 1656:16, 1696:3, 1864:8, 1890:4 <b>attempting</b> <sup>[3]</sup> - 1713:25, 1806:17, 1862:16 <b>attend</b> <sup>[2]</sup> - 1726:12, 1851:15 <b>attended</b> <sup>[1]</sup> - 1729:23 <b>attending</b> <sup>[1]</sup> - 1901:10 <b>attention</b> <sup>[5]</sup> - 1840:15, 1887:23, 1905:10, 1905:19, 1911:13 <b>attorney</b> <sup>[11]</sup> - 1647:15, 1692:21, 1693:12, 1694:16, 1889:25, 1893:12, 1893:13, 1893:15, 1914:7, 1914:8, 1914:11 <b>Attorney</b> <sup>[2]</sup> - 1851:8, 1870:10 <b>attorneys</b> <sup>[2]</sup> - 1869:18, 1917:8 <b>attribute</b> <sup>[1]</sup> - 1818:7 <b>attributed</b> <sup>[1]</sup> - 1653:21 <b>audience</b> <sup>[2]</sup> - 1841:13, 1846:10 <b>auditable</b> <sup>[1]</sup> - 1891:17 <b>audits</b> <sup>[1]</sup> - 1891:18 <b>August</b> <sup>[8]</sup> - 1633:9, 1633:10, 1634:4, 1641:1, 1764:19, 1850:4, 1934:11, 1934:14 <b>authentic</b> <sup>[1]</sup> - 1731:12 <b>authenticate</b> <sup>[1]</sup> - 1928:24 <b>authenticated</b> <sup>[1]</sup> - 1731:14 <b>author</b> <sup>[2]</sup> - 1705:10, 1896:15 <b>authorities</b> <sup>[2]</sup> - 1673:9, 1870:14 <b>authority</b> <sup>[2]</sup> - 1660:15, 1742:23 <b>automated</b> <sup>[6]</sup> - 1757:9, 1774:16, 1774:17, 1774:18, 1774:22, 1776:2 <b>automobile</b> <sup>[1]</sup> - 1705:25 <b>avail</b> <sup>[1]</sup> - 1653:16 <b>available</b> <sup>[9]</sup> -	1659:19, 1696:23, 1758:7, 1758:11, 1782:11, 1847:21, 1881:15, 1892:1, 1915:20 <b>Avenue</b> <sup>[1]</sup> - 1634:3 <b>Avera</b> <sup>[3]</sup> - 1659:7, 1659:8, 1660:6 <b>avoid</b> <sup>[3]</sup> - 1695:24, 1725:11, 1858:20 <b>avoided</b> <sup>[2]</sup> - 1858:18, 1865:6 <b>avoids</b> <sup>[1]</sup> - 1712:14 <b>aware</b> <sup>[37]</sup> - 1659:25, 1680:14, 1683:18, 1683:20, 1722:11, 1733:11, 1749:15, 1772:6, 1775:21, 1775:25, 1777:16, 1777:25, 1810:6, 1810:10, 1813:7, 1813:10, 1823:1, 1827:11, 1835:15, 1840:3, 1862:11, 1864:17, 1864:19, 1867:10, 1867:12, 1874:22, 1875:23, 1875:25, 1894:23, 1895:5, 1897:24, 1902:20, 1903:5, 1903:9, 1903:13, 1916:10 <b>awe</b> <sup>[3]</sup> - 1710:8, 1744:7, 1744:16 <b>Awicalowanpi</b> <sup>[1]</sup> - 1856:16	1860:24, 1873:24, 1874:2, 1874:15, 1874:20, 1875:2, 1876:8 <b>Baker</b> <sup>[13]</sup> - 1638:11, 1639:3, 1639:9, 1749:6, 1749:7, 1771:11, 1848:6, 1848:9, 1873:24, 1875:1, 1876:7, 1893:8, 1914:3 <b>Bakken</b> <sup>[1]</sup> - 1855:4 <b>banks</b> <sup>[1]</sup> - 1800:11 <b>banned</b> <sup>[1]</sup> - 1872:24 <b>base</b> <sup>[4]</sup> - 1772:5, 1778:18, 1849:10, 1874:6 <b>based</b> <sup>[30]</sup> - 1641:25, 1642:10, 1648:19, 1655:2, 1657:1, 1674:7, 1693:18, 1693:22, 1700:2, 1718:22, 1727:13, 1749:23, 1750:9, 1765:17, 1783:9, 1808:14, 1810:23, 1836:12, 1836:23, 1855:20, 1860:9, 1862:5, 1869:17, 1879:8, 1890:5, 1897:13, 1898:24, 1902:16, 1913:8, 1919:7 <b>Basin</b> <sup>[5]</sup> - 1666:13, 1666:15, 1666:16, 1666:18, 1666:19 <b>basins</b> <sup>[1]</sup> - 1666:14 <b>basis</b> <sup>[14]</sup> - 1656:2, 1657:9, 1669:6, 1669:8, 1672:6, 1672:16, 1694:24, 1705:10, 1716:12, 1716:15, 1731:7, 1761:1, 1853:22, 1924:14 <b>Battelle</b> <sup>[1]</sup> - 1690:9 <b>battles</b> <sup>[1]</sup> - 1709:9 <b>bearing</b> <sup>[3]</sup> - 1704:3, 1723:11, 1779:9 <b>became</b> <sup>[2]</sup> - 1803:5, 1858:21 <b>become</b> <sup>[2]</sup> - 1755:23, 1779:12 <b>becomes</b> <sup>[2]</sup> - 1664:25, 1845:8 <b>bed</b> <sup>[1]</sup> - 1882:21 <b>BEFORE</b> <sup>[1]</sup> - 1633:13 <b>began</b> <sup>[2]</sup> - 1730:4, 1787:9 <b>begin</b> <sup>[2]</sup> - 1702:25,	1784:5 <b>beginning</b> <sup>[3]</sup> - 1644:25, 1893:19, 1914:14 <b>begins</b> <sup>[1]</sup> - 1738:6 <b>begun</b> <sup>[1]</sup> - 1784:6 <b>behalf</b> <sup>[11]</sup> - 1642:22, 1643:18, 1652:21, 1684:2, 1697:10, 1748:11, 1751:16, 1812:6, 1850:13, 1896:6, 1904:2 <b>behind</b> <sup>[1]</sup> - 1908:25 <b>belief</b> <sup>[3]</sup> - 1665:9, 1855:23, 1857:7 <b>believes</b> <sup>[2]</sup> - 1763:17, 1764:3 <b>below</b> <sup>[4]</sup> - 1790:19, 1790:20, 1791:4, 1791:20 <b>benefit</b> <sup>[14]</sup> - 1686:4, 1686:20, 1686:22, 1686:23, 1688:2, 1690:17, 1691:2, 1691:6, 1696:17, 1700:6, 1700:11, 1700:12 <b>benefit-benefit</b> <sup>[1]</sup> - 1686:23 <b>benefits</b> <sup>[15]</sup> - 1685:16, 1685:21, 1687:1, 1687:3, 1690:20, 1695:16, 1697:13, 1697:24, 1699:19, 1699:21, 1699:23, 1700:10, 1700:18, 1700:23 <b>bentonite</b> <sup>[14]</sup> - 1787:18, 1788:2, 1788:6, 1788:8, 1788:23, 1793:6, 1793:8, 1793:9, 1793:12, 1793:13, 1800:12, 1800:21, 1816:2, 1819:11 <b>benzene</b> <sup>[59]</sup> - 1658:23, 1659:1, 1659:5, 1660:20, 1660:23, 1661:1, 1661:4, 1661:9, 1661:12, 1661:14, 1661:19, 1662:4, 1662:13, 1662:17, 1662:19, 1662:21, 1662:24, 1662:25, 1663:6, 1663:24, 1664:20, 1664:23, 1664:25, 1669:10, 1669:17, 1670:12, 1670:13, 1672:18,	1673:10, 1678:13, 1678:17, 1678:21, 1679:2, 1679:3, 1679:4, 1796:22, 1796:24, 1796:25, 1799:24, 1807:12, 1826:25, 1827:6, 1827:10, 1827:16, 1827:25, 1828:6, 1828:9, 1828:16, 1828:18, 1828:24, 1828:25, 1829:1, 1829:6, 1829:10, 1829:11, 1829:13, 1834:16 <b>benzene's</b> <sup>[2]</sup> - 1661:21, 1678:22 <b>best</b> <sup>[11]</sup> - 1654:11, 1730:25, 1735:2, 1742:18, 1744:2, 1747:10, 1751:7, 1778:4, 1783:11, 1829:8, 1857:24 <b>bet</b> <sup>[1]</sup> - 1653:24 <b>better</b> <sup>[7]</sup> - 1652:5, 1731:25, 1761:23, 1787:2, 1841:18, 1841:20 <b>between</b> <sup>[23]</sup> - 1644:10, 1705:25, 1713:7, 1714:21, 1719:12, 1719:13, 1743:9, 1746:9, 1747:1, 1747:8, 1747:21, 1748:2, 1764:19, 1780:6, 1786:19, 1788:7, 1791:16, 1798:9, 1798:13, 1823:22, 1857:3, 1862:13, 1863:5 <b>bevel</b> <sup>[3]</sup> - 1774:11, 1774:15, 1774:23 <b>beyond</b> <sup>[11]</sup> - 1678:14, 1687:17, 1711:23, 1775:19, 1802:18, 1804:20, 1855:22, 1859:1, 1880:1, 1901:16, 1925:25 <b>bias</b> <sup>[4]</sup> - 1769:13, 1769:14, 1769:19, 1920:25 <b>big</b> <sup>[6]</sup> - 1673:17, 1802:2, 1819:22, 1832:6, 1832:7 <b>bigger</b> <sup>[1]</sup> - 1797:13 <b>biggest</b> <sup>[1]</sup> - 1871:11 <b>Billings</b> <sup>[1]</sup> - 1667:24 <b>billion</b> <sup>[6]</sup> - 1661:11, 1661:22, 1797:2,
	<p style="text-align: center;"><b>B</b></p>			
	<b>bachelor's</b> <sup>[4]</sup> - 1682:9, 1784:25, 1887:15, 1911:4 <b>Background</b> <sup>[1]</sup> - 1636:10 <b>background</b> <sup>[5]</sup> - 1682:8, 1887:13, 1901:17, 1911:3 <b>bacteria</b> <sup>[1]</sup> - 1827:22 <b>bad</b> <sup>[2]</sup> - 1838:22, 1847:18 <b>Bad</b> <sup>[7]</sup> - 1666:17, 1786:17, 1798:16, 1798:18, 1798:22, 1799:1, 1799:10 <b>BAKER</b> <sup>[18]</sup> - 1749:7, 1749:10, 1750:5, 1750:8, 1750:13, 1784:10, 1842:20, 1848:8, 1848:13, 1860:1, 1860:4,			



1797:3, 1827:19, 1828:24 <b>BIRD</b> [16] - 1677:24, 1694:12, 1694:14, 1695:2, 1697:2, 1771:12, 1781:8, 1781:24, 1815:13, 1842:18, 1882:12, 1893:10, 1896:4, 1914:5, 1917:2, 1933:3 <b>Bird</b> [14] - 1638:7, 1639:18, 1640:4, 1677:23, 1694:11, 1694:16, 1749:6, 1771:11, 1848:6, 1882:11, 1893:8, 1893:12, 1914:3, 1914:6 <b>birth</b> [1] - 1662:24 <b>bit</b> [18] - 1652:3, 1653:18, 1708:3, 1717:20, 1731:24, 1754:4, 1774:24, 1787:24, 1789:11, 1793:24, 1800:25, 1802:6, 1810:13, 1821:14, 1834:12, 1840:6, 1849:12, 1899:4 <b>bitumen</b> [3] - 1662:8, 1796:20, 1813:3 <b>Black</b> [4] - 1705:2, 1742:8, 1742:12, 1795:23 <b>black</b> [2] - 1791:9, 1793:6 <b>Blackburn</b> [1] - 1678:1 <b>Blackburn's</b> [1] - 1771:14 <b>blame</b> [1] - 1833:9 <b>blink</b> [2] - 1846:12, 1847:16 <b>blood</b> [2] - 1662:22, 1663:1 <b>blower</b> [1] - 1762:4 <b>blown</b> [4] - 1786:21, 1789:4, 1789:15, 1801:9 <b>blue</b> [8] - 1796:2, 1816:10, 1820:10, 1820:14, 1820:15, 1822:3, 1824:7, 1824:10 <b>bluff</b> [2] - 1885:16, 1885:17 <b>blurred</b> [1] - 1671:24 <b>board</b> [2] - 1680:21, 1865:10	<b>Board</b> [4] - 1644:23, 1762:7, 1762:10 <b>boarding</b> [2] - 1708:20, 1708:22 <b>Bob</b> [3] - 1699:14, 1815:24, 1903:24 <b>bodies</b> [2] - 1786:18, 1910:9 <b>body</b> [5] - 1672:17, 1678:12, 1786:7, 1798:2, 1802:11 <b>bone</b> [3] - 1662:24, 1662:25, 1663:1 <b>books</b> [1] - 1709:12 <b>border</b> [2] - 1872:7, 1872:11 <b>borders</b> [2] - 1820:16, 1822:4 <b>bore</b> [1] - 1885:18 <b>boring</b> [1] - 1885:10 <b>born</b> [2] - 1704:1, 1856:20 <b>Boston</b> [4] - 1682:11, 1682:12, 1682:14, 1682:17 <b>bottom</b> [9] - 1710:6, 1765:8, 1798:6, 1798:11, 1820:9, 1820:12, 1823:25, 1824:1, 1898:11 <b>bound</b> [2] - 1711:9 <b>boundaries</b> [4] - 1714:5, 1714:6, 1719:20, 1859:1 <b>boundary</b> [4] - 1713:8, 1714:21, 1718:3, 1718:5 <b>bounds</b> [2] - 1766:20, 1847:10 <b>Brad</b> [1] - 1661:15 <b>Brave</b> [3] - 1849:7, 1849:24, 1850:12 <b>breach</b> [3] - 1667:25, 1759:22, 1763:18 <b>break</b> [19] - 1723:24, 1724:4, 1753:19, 1760:5, 1760:7, 1783:24, 1784:8, 1838:19, 1840:3, 1840:15, 1842:16, 1842:18, 1842:19, 1842:20, 1862:17, 1886:17, 1909:5, 1909:6, 1909:8 <b>breakdown</b> [1] - 1853:8 <b>breaks</b> [3] - 1800:15, 1829:21, 1885:9 <b>breathe</b> [1] - 1743:24 <b>Brendan</b> [4] - 1851:8,	1851:14, 1851:17, 1851:25 <b>Brian</b> [3] - 1633:19, 1684:2, 1689:6 <b>Bridger</b> [18] - 1752:3, 1770:13, 1802:4, 1802:16, 1813:7, 1813:22, 1814:1, 1814:5, 1814:11, 1854:22, 1867:9, 1867:13, 1867:18, 1868:2, 1868:17, 1879:6, 1885:14, 1885:20 <b>brief</b> [5] - 1662:12, 1689:16, 1784:21, 1842:20, 1909:24 <b>briefed</b> [1] - 1721:11 <b>briefing</b> [2] - 1720:25, 1721:12 <b>briefly</b> [14] - 1653:12, 1685:8, 1703:22, 1708:3, 1769:3, 1771:3, 1803:4, 1814:19, 1887:12, 1887:16, 1911:2, 1911:7, 1932:25 <b>bring</b> [5] - 1658:10, 1723:24, 1737:24, 1756:11, 1825:5 <b>broached</b> [1] - 1845:24 <b>broad</b> [1] - 1719:18 <b>broken</b> [1] - 1872:9 <b>brother</b> [1] - 1709:8 <b>brought</b> [7] - 1806:6, 1847:3, 1853:1, 1853:8, 1856:23, 1905:19, 1910:2 <b>Bruce</b> [2] - 1652:20, 1917:7 <b>Brule</b> [1] - 1733:2 <b>BTEX</b> [1] - 1663:9 <b>budget</b> [1] - 1687:19 <b>Buffalo</b> [2] - 1849:6, 1850:7 <b>buffalo</b> [1] - 1789:3 <b>build</b> [2] - 1685:13 <b>builder</b> [1] - 1708:12 <b>Building</b> [1] - 1634:3 <b>building</b> [2] - 1708:10, 1909:25 <b>built</b> [5] - 1685:19, 1719:17, 1758:1, 1872:2, 1872:5 <b>bulk</b> [2] - 1656:8, 1657:8 <b>Bull</b> [1] - 1859:14 <b>bunch</b> [2] - 1736:14, 1736:15	<b>burden</b> [2] - 1654:17, 1827:5 <b>Burdick</b> [1] - 1743:11 <b>buried</b> [1] - 1790:22 <b>buries</b> [1] - 1791:1 <b>burn</b> [2] - 1833:25, 1834:7 <b>business</b> [5] - 1722:11, 1776:13, 1886:23, 1910:17, 1910:19 <b>BY</b> [61] - 1678:10, 1681:15, 1691:13, 1694:14, 1697:9, 1698:4, 1699:13, 1702:24, 1745:2, 1748:10, 1749:10, 1751:12, 1754:9, 1768:14, 1770:4, 1771:5, 1772:4, 1784:20, 1807:2, 1812:5, 1814:21, 1815:23, 1820:7, 1826:22, 1829:20, 1836:2, 1848:13, 1861:8, 1862:2, 1863:20, 1866:15, 1867:8, 1869:13, 1870:2, 1871:2, 1873:12, 1874:2, 1875:12, 1875:22, 1877:12, 1879:2, 1879:20, 1882:17, 1885:6, 1886:22, 1890:19, 1893:10, 1896:9, 1903:23, 1905:18, 1906:11, 1907:4, 1910:16, 1912:23, 1914:5, 1917:6, 1922:13, 1925:11, 1926:13, 1928:16, 1930:13	1889:2 <b>calculates</b> [3] - 1685:16, 1690:10, 1690:11 <b>calculation</b> [5] - 1794:9, 1796:9, 1889:4, 1904:18, 1904:21 <b>calculations</b> [3] - 1664:19, 1890:5, 1890:7 <b>Calf</b> [2] - 1849:6, 1850:7 <b>cameras</b> [1] - 1661:8 <b>camp</b> [7] - 1850:24, 1858:9, 1858:17, 1859:18, 1867:19, 1871:8, 1874:11 <b>campgrounds</b> [1] - 1874:13 <b>camps</b> [17] - 1729:15, 1729:24, 1730:1, 1849:25, 1850:15, 1850:17, 1850:19, 1851:22, 1852:12, 1854:11, 1857:4, 1858:8, 1862:8, 1867:11, 1874:4, 1874:16, 1874:19 <b>Canada</b> [3] - 1754:13, 1774:25, 1775:1 <b>Canadian</b> [3] - 1734:24, 1762:7, 1762:10 <b>cancelled</b> [1] - 1781:15 <b>cancer</b> [4] - 1660:25, 1663:4, 1668:1, 1829:11 <b>cannot</b> [9] - 1645:25, 1688:2, 1692:4, 1692:13, 1693:1, 1719:17, 1761:15, 1763:20, 1765:2 <b>cap</b> [1] - 1880:10 <b>capable</b> [3] - 1831:19, 1846:1, 1900:23 <b>capacity</b> [1] - 1800:19 <b>Capitol</b> [2] - 1634:2, 1634:3 <b>CAPOSSELA</b> [101] - 1651:23, 1653:12, 1653:24, 1677:21, 1681:4, 1681:7, 1681:10, 1681:15, 1683:10, 1684:22, 1689:3, 1689:17, 1691:9, 1692:15, 1692:18, 1693:3, 1701:8, 1701:14,
<b>C</b>				
<b>C1</b> [1] - 1636:19 <b>C2</b> [1] - 1636:20 <b>cable</b> [1] - 1900:9 <b>Cahill</b> [14] - 1636:15, 1638:5, 1651:25, 1681:11, 1681:18, 1682:18, 1683:18, 1691:10, 1691:14, 1694:15, 1697:10, 1701:18, 1701:22, 1701:23 <b>Cahill's</b> [1] - 1689:4 <b>calculate</b> [3] - 1687:5, 1687:13, 1796:5 <b>calculated</b> [1] -				

1701:18, 1701:22, 1701:24, 1702:4, 1702:11, 1702:19, 1702:24, 1704:16, 1705:21, 1706:11, 1707:24, 1712:4, 1713:4, 1713:25, 1714:15, 1714:19, 1715:10, 1716:4, 1716:20, 1717:11, 1719:16, 1721:24, 1723:14, 1723:21, 1724:1, 1724:10, 1725:9, 1726:1, 1726:18, 1727:15, 1728:4, 1728:15, 1728:21, 1730:7, 1730:17, 1731:8, 1731:20, 1731:22, 1732:13, 1732:22, 1733:19, 1735:11, 1735:16, 1736:4, 1736:8, 1736:12, 1737:1, 1738:1, 1738:11, 1738:23, 1739:2, 1739:9, 1739:19, 1740:16, 1740:19, 1740:24, 1741:3, 1741:6, 1741:9, 1744:18, 1745:10, 1746:13, 1747:9, 1752:21, 1753:8, 1771:2, 1771:5, 1771:9, 1814:19, 1814:21, 1815:11, 1861:6, 1861:8, 1861:21, 1879:18, 1879:20, 1882:8, 1893:6, 1914:1, 1925:4, 1925:11, 1925:19, 1932:24 <b>Capossela</b> [28] - 1638:6, 1638:10, 1638:16, 1638:20, 1639:4, 1639:13, 1640:6, 1651:22, 1653:22, 1653:23, 1677:20, 1681:2, 1697:12, 1701:12, 1716:9, 1731:5, 1746:22, 1753:5, 1771:1, 1814:18, 1814:22, 1847:2, 1861:5, 1879:17, 1879:21, 1893:5, 1913:25, 1925:12 <b>caption</b> [2] - 1729:10, 1730:14 <b>captivity</b> [1] - 1850:22 <b>carbide</b> [1] - 1742:12	<b>carcinogen</b> [1] - 1661:1 <b>carcinogenic</b> [1] - 1661:2 <b>care</b> [7] - 1670:24, 1853:19, 1853:23, 1853:25, 1908:1, 1908:7, 1909:25 <b>career</b> [1] - 1818:5 <b>carefully</b> [1] - 1684:18 <b>Carlyle</b> [1] - 1635:15 <b>Carol</b> [2] - 1665:2, 1674:3 <b>carries</b> [1] - 1765:9 <b>carry</b> [3] - 1756:13, 1756:14, 1801:15 <b>case</b> [8] - 1642:18, 1654:16, 1689:10, 1764:4, 1805:23, 1809:24, 1929:12, 1930:6 <b>Case</b> [2] - 1635:18, 1635:20 <b>cases</b> [7] - 1662:4, 1802:1, 1827:14, 1827:15, 1854:4, 1854:6, 1855:21 <b>categories</b> [1] - 1882:24 <b>caused</b> [2] - 1832:9, 1841:3 <b>causes</b> [1] - 1763:25 <b>causing</b> [4] - 1661:14, 1668:1, 1816:3, 1829:11 <b>CC</b> [1] - 1887:21 <b>ceased</b> [1] - 1761:12 <b>cede</b> [1] - 1782:15 <b>cells</b> [1] - 1663:1 <b>center</b> [3] - 1682:17, 1834:19, 1834:21 <b>centuries</b> [1] - 1798:5 <b>ceremonial</b> [2] - 1702:13, 1857:16 <b>ceremonies</b> [5] - 1856:7, 1856:8, 1856:11, 1856:24, 1857:15 <b>ceremony</b> [7] - 1856:16, 1856:17, 1856:19, 1856:25, 1857:2, 1857:7, 1857:19 <b>certain</b> [27] - 1643:13, 1645:20, 1650:4, 1651:3, 1651:7, 1651:24, 1662:4, 1680:15, 1681:3, 1685:12, 1686:1, 1695:23, 1695:24,	1701:12, 1701:15, 1727:24, 1781:9, 1797:23, 1801:10, 1828:7, 1831:3, 1831:8, 1832:22, 1837:15, 1870:16, 1892:6, 1898:13 <b>certainly</b> [26] - 1643:19, 1646:5, 1652:9, 1652:13, 1657:25, 1671:22, 1706:5, 1753:15, 1762:11, 1764:2, 1764:3, 1764:7, 1765:18, 1765:19, 1766:4, 1770:19, 1782:9, 1790:13, 1829:12, 1831:13, 1839:19, 1840:16, 1844:19, 1846:1, 1862:22, 1909:18 <b>certain</b> [1] - 1641:9 <b>certainty</b> [1] - 1925:17 <b>CERTIFICATE</b> [1] - 1934:2 <b>CERTIFICATION</b> [1] - 1633:5 <b>certification</b> [2] - 1641:6, 1927:12 <b>Certified</b> [2] - 1934:6, 1934:19 <b>certify</b> [1] - 1644:2 <b>CERTIFY</b> [1] - 1934:8 <b>cetera</b> [1] - 1674:14 <b>CFR</b> [8] - 1891:9, 1891:10, 1892:1, 1892:19, 1917:14, 1917:25, 1920:10, 1927:7 <b>Chad</b> [2] - 1896:17, 1896:23 <b>chain</b> [3] - 1755:22, 1755:24, 1757:7 <b>chair</b> [2] - 1839:8, 1851:18 <b>Chairman</b> [18] - 1638:17, 1639:8, 1647:18, 1653:9, 1680:21, 1681:8, 1702:4, 1752:22, 1753:9, 1760:4, 1760:5, 1778:14, 1781:24, 1782:17, 1782:22, 1842:25, 1848:5, 1871:21 <b>CHAIRMAN</b> [57] - 1633:14, 1633:14, 1647:19, 1647:24, 1651:19, 1652:10, 1652:14, 1652:18,	1653:22, 1657:22, 1657:25, 1667:12, 1669:19, 1669:22, 1670:1, 1677:9, 1702:3, 1702:9, 1702:18, 1712:3, 1714:13, 1728:25, 1752:24, 1753:5, 1753:10, 1767:5, 1778:15, 1779:1, 1780:7, 1780:24, 1781:2, 1781:5, 1781:11, 1781:18, 1781:20, 1782:2, 1782:12, 1782:19, 1783:1, 1783:16, 1783:23, 1803:13, 1830:14, 1831:9, 1843:2, 1843:13, 1843:18, 1843:24, 1844:16, 1871:22, 1872:14, 1872:21, 1873:4, 1874:8, 1874:18, 1932:11, 1932:18 <b>challenge</b> [4] - 1644:12, 1646:6, 1656:16, 1832:17 <b>challenged</b> [1] - 1770:18 <b>challenges</b> [6] - 1644:14, 1680:12, 1680:14, 1832:23, 1838:24, 1840:24 <b>Chamberlain</b> [1] - 1855:13 <b>chance</b> [4] - 1676:22, 1723:8, 1791:22, 1863:21 <b>Change</b> [1] - 1718:7 <b>change</b> [7] - 1878:5, 1878:10, 1889:3, 1898:17, 1904:22, 1905:22, 1910:6 <b>changed</b> [4] - 1718:7, 1892:18, 1904:21, 1920:7 <b>changes</b> [44] - 1825:20, 1859:7, 1877:25, 1892:16, 1893:21, 1893:24, 1894:1, 1894:4, 1894:5, 1894:13, 1894:15, 1894:17, 1894:20, 1894:21, 1902:19, 1911:20, 1911:22, 1914:16, 1914:19, 1915:2, 1915:4, 1915:6, 1917:18, 1917:24,	1918:6, 1918:10, 1918:11, 1919:17, 1919:18, 1919:22, 1919:25, 1920:10, 1920:11, 1921:8, 1921:20, 1921:21, 1925:14, 1925:18, 1926:16, 1926:21, 1926:24, 1931:4 <b>Changes</b> [8] - 1892:17, 1893:25, 1902:19, 1914:20, 1918:8, 1919:13, 1919:14, 1925:13 <b>channels</b> [1] - 1817:2 <b>character</b> [2] - 1708:11, 1744:10 <b>characteristics</b> [3] - 1793:9, 1823:14, 1823:17 <b>characterization</b> [2] - 1719:2, 1726:16 <b>characterize</b> [1] - 1918:22 <b>charge</b> [2] - 1755:15, 1821:23 <b>chart</b> [4] - 1738:6, 1738:9, 1739:12, 1895:12 <b>chatted</b> [1] - 1909:13 <b>check</b> [2] - 1917:23, 1926:18 <b>checked</b> [2] - 1660:5, 1905:20 <b>chemicals</b> [1] - 1659:12 <b>CHERI</b> [1] - 1934:5 <b>Cheri</b> [5] - 1633:24, 1636:21, 1826:11, 1909:5, 1934:18 <b>Cherry</b> [1] - 1786:15 <b>CHEYENNE</b> [1] - 1635:14 <b>Cheyenne</b> [34] - 1635:21, 1636:6, 1666:16, 1667:1, 1677:17, 1726:25, 1727:2, 1729:5, 1733:1, 1748:12, 1752:2, 1786:16, 1793:20, 1795:19, 1795:20, 1795:22, 1796:1, 1796:6, 1796:12, 1797:14, 1798:21, 1808:7, 1808:11, 1808:13, 1812:7, 1812:14, 1829:21, 1832:9, 1854:20, 1872:23, 1875:25, 1885:7,
---	--	---	---	---

1885:16, 1889:16 <b>Cheyenne's</b> <sup>[1]</sup> - 1885:21 <b>Chicago</b> <sup>[1]</sup> - 1718:6 <b>childhood</b> <sup>[2]</sup> - 1708:4, 1709:25 <b>children</b> <sup>[6]</sup> - 1678:25, 1744:3, 1744:5, 1849:9, 1853:20, 1853:22 <b>chilly</b> <sup>[1]</sup> - 1910:3 <b>choose</b> <sup>[1]</sup> - 1894:3 <b>chose</b> <sup>[1]</sup> - 1916:23 <b>Chris</b> <sup>[2]</sup> - 1639:16, 1886:19 <b>CHRIS</b> <sup>[1]</sup> - 1633:14 <b>Christian</b> <sup>[1]</sup> - 1708:22 <b>Christopher</b> <sup>[2]</sup> - 1635:12, 1886:25 <b>Cindy</b> <sup>[5]</sup> - 1638:3, 1654:8, 1674:13, 1772:19, 1826:23 <b>Circuit</b> <sup>[1]</sup> - 1646:23 <b>circular</b> <sup>[1]</sup> - 1776:21 <b>circumstances</b> <sup>[4]</sup> - 1725:17, 1732:16, 1763:17, 1779:17 <b>cite</b> <sup>[2]</sup> - 1917:25, 1918:1 <b>citizen</b> <sup>[1]</sup> - 1710:3 <b>citizens</b> <sup>[3]</sup> - 1645:14, 1839:24, 1847:6 <b>city</b> <sup>[11]</sup> - 1664:14, 1670:15, 1686:2, 1686:3, 1686:5, 1822:18, 1835:5, 1836:7, 1836:8, 1837:7, 1837:8 <b>City</b> <sup>[13]</sup> - 1820:17, 1821:12, 1821:17, 1821:23, 1822:6, 1828:11, 1833:4, 1834:3, 1834:14, 1835:12, 1868:2, 1871:24, 1872:1 <b>civil</b> <sup>[1]</sup> - 1870:16 <b>claim</b> <sup>[1]</sup> - 1645:9 <b>claims</b> <sup>[2]</sup> - 1731:6, 1869:15 <b>clarification</b> <sup>[4]</sup> - 1729:25, 1737:13, 1878:2, 1888:24 <b>clarifies</b> <sup>[1]</sup> - 1896:2 <b>clarify</b> <sup>[2]</sup> - 1753:6, 1874:3 <b>CLARK</b> <sup>[16]</sup> - 1677:17, 1748:10, 1748:24, 1770:1, 1770:4, 1770:21, 1812:5,	1814:13, 1875:6, 1875:9, 1875:12, 1875:18, 1879:2, 1879:13, 1889:16, 1912:19 <b>Clark</b> <sup>[15]</sup> - 1638:11, 1638:15, 1638:20, 1639:9, 1639:13, 1666:1, 1677:16, 1680:20, 1748:11, 1812:3, 1812:6, 1878:24, 1882:19, 1889:15, 1912:18 <b>Clark's</b> <sup>[1]</sup> - 1749:12 <b>classic</b> <sup>[1]</sup> - 1759:18 <b>clay</b> <sup>[2]</sup> - 1788:6, 1793:14 <b>clean</b> <sup>[8]</sup> - 1654:12, 1654:13, 1654:14, 1672:20, 1709:25, 1710:24, 1743:24, 1805:18 <b>cleaned</b> <sup>[2]</sup> - 1672:22, 1674:16 <b>cleanup</b> <sup>[1]</sup> - 1805:21 <b>clear</b> <sup>[11]</sup> - 1667:12, 1667:17, 1674:3, 1684:16, 1687:10, 1687:20, 1874:15, 1897:10, 1923:3, 1931:18, 1932:12 <b>cleared</b> <sup>[1]</sup> - 1896:13 <b>clearly</b> <sup>[13]</sup> - 1665:18, 1672:18, 1673:6, 1673:10, 1719:23, 1731:12, 1763:12, 1766:2, 1766:20, 1767:1, 1767:3, 1831:1, 1832:19 <b>client</b> <sup>[5]</sup> - 1890:23, 1890:25, 1891:2, 1929:10, 1929:18 <b>clients</b> <sup>[2]</sup> - 1890:24, 1930:5 <b>close</b> <sup>[8]</sup> - 1652:24, 1820:21, 1822:1, 1867:12, 1868:2, 1868:3, 1872:3 <b>closely</b> <sup>[1]</sup> - 1642:18 <b>closest</b> <sup>[3]</sup> - 1822:8, 1824:6, 1836:6 <b>cloud</b> <sup>[1]</sup> - 1661:7 <b>clouds</b> <sup>[1]</sup> - 1661:8 <b>Coast</b> <sup>[12]</sup> - 1754:16, 1755:2, 1764:17, 1764:24, 1765:1, 1765:15, 1766:13, 1766:14, 1766:19, 1767:10, 1898:2 <b>coating</b> <sup>[1]</sup> - 1770:16	<b>code</b> <sup>[9]</sup> - 1709:6, 1779:8, 1779:12, 1902:10, 1911:22, 1918:10, 1921:21, 1924:23, 1930:22 <b>Codified</b> <sup>[1]</sup> - 1731:13 <b>codified</b> <sup>[2]</sup> - 1715:17, 1716:25 <b>collaborated</b> <sup>[1]</sup> - 1642:19 <b>colleague</b> <sup>[2]</sup> - 1894:24, 1905:20 <b>colleagues</b> <sup>[9]</sup> - 1876:20, 1916:11, 1916:20, 1916:22, 1916:25, 1921:15, 1922:15, 1922:19, 1931:16 <b>collect</b> <sup>[1]</sup> - 1797:17 <b>collective</b> <sup>[1]</sup> - 1642:25 <b>college</b> <sup>[5]</sup> - 1682:11, 1682:12, 1887:17, 1911:8, 1911:9 <b>College</b> <sup>[2]</sup> - 1682:14, 1682:17 <b>Colome</b> <sup>[8]</sup> - 1664:18, 1665:3, 1801:18, 1821:21, 1822:18, 1836:7, 1836:8, 1837:7 <b>Colome's</b> <sup>[9]</sup> - 1664:14, 1664:22, 1665:5, 1665:13, 1820:17, 1821:13, 1821:18, 1821:23, 1822:6 <b>colonialism</b> <sup>[2]</sup> - 1708:18, 1853:9 <b>colonized</b> <sup>[1]</sup> - 1850:23 <b>color</b> <sup>[2]</sup> - 1787:16, 1800:13 <b>Colorado</b> <sup>[1]</sup> - 1717:25 <b>colored</b> <sup>[1]</sup> - 1665:24 <b>Columbia</b> <sup>[1]</sup> - 1887:18 <b>combination</b> <sup>[3]</sup> - 1774:6, 1793:16, 1816:2 <b>coming</b> <sup>[13]</sup> - 1653:3, 1751:6, 1783:21, 1784:10, 1815:18, 1820:10, 1850:15, 1850:18, 1852:7, 1856:16, 1859:3, 1859:18, 1890:8 <b>command</b> <sup>[1]</sup> - 1783:2 <b>commencement</b> <sup>[2]</sup> -	1746:10, 1764:23 <b>comment</b> <sup>[15]</sup> - 1657:23, 1674:12, 1694:17, 1695:21, 1696:24, 1698:17, 1711:14, 1713:13, 1715:1, 1734:6, 1735:2, 1861:12, 1866:9, 1932:20 <b>commentary</b> <sup>[1]</sup> - 1674:2 <b>commented</b> <sup>[1]</sup> - 1733:22 <b>commenting</b> <sup>[1]</sup> - 1692:22 <b>comments</b> <sup>[10]</sup> - 1647:25, 1671:1, 1685:23, 1692:9, 1692:10, 1722:21, 1733:14, 1733:23, 1784:13, 1866:20 <b>COMMISSION</b> <sup>[3]</sup> - 1633:1, 1633:13, 1633:16 <b>Commission</b> <sup>[66]</sup> - 1641:12, 1648:17, 1649:6, 1656:11, 1675:2, 1676:9, 1680:14, 1680:22, 1682:5, 1684:3, 1689:18, 1695:4, 1704:14, 1705:3, 1711:24, 1712:11, 1713:24, 1715:11, 1715:16, 1715:21, 1716:14, 1716:24, 1717:6, 1717:9, 1719:9, 1721:4, 1721:16, 1736:24, 1737:14, 1738:4, 1739:20, 1740:2, 1741:7, 1741:20, 1743:6, 1752:18, 1761:21, 1763:25, 1782:25, 1787:2, 1788:1, 1797:10, 1803:9, 1804:18, 1804:24, 1806:19, 1808:23, 1819:24, 1845:6, 1849:21, 1852:11, 1858:5, 1861:19, 1871:24, 1891:21, 1892:9, 1892:14, 1909:19, 1913:9, 1917:15, 1919:7, 1921:17, 1921:24, 1923:25, 1924:14, 1927:16 <b>Commission's</b> <sup>[6]</sup> - 1692:5, 1706:11,	1725:21, 1803:12, 8 1811:9, 1825:11 <b>Commissioner</b> <sup>[34]</sup> - 1638:17, 1646:3, 1647:17, 1647:24, 1649:19, 1725:6, 1725:9, 1752:22, 1773:5, 1773:6, 1778:16, 1779:2, 1780:14, 1780:21, 1826:10, 1830:9, 1830:12, 1831:10, 1835:22, 1837:20, 1840:2, 1841:12, 1841:20, 1843:10, 1845:2, 1873:7, 1873:10, 1873:23, 1875:7, 1875:9, 1876:5, 1886:7, 1907:18, 1932:4 <b>COMMISSIONER</b> <sup>[52]</sup> - 1633:15, 1646:2, 1646:4, 1649:21, 1653:9, 1655:19, 1655:25, 1656:2, 1658:7, 1669:1, 1680:9, 1712:23, 1760:6, 1773:9, 1773:17, 1773:22, 1774:1, 1775:18, 1776:4, 1776:9, 1776:14, 1776:18, 1777:6, 1777:10, 1777:15, 1777:22, 1777:24, 1778:3, 1778:12, 1784:5, 1784:12, 1831:11, 1832:14, 1832:20, 1833:2, 1833:13, 1833:21, 1834:2, 1834:11, 1835:7, 1835:17, 1838:13, 1840:7, 1840:10, 1840:17, 1841:4, 1841:22, 1845:11, 1845:19, 1847:24, 1873:8, 1886:6 <b>Commissioners</b> <sup>[9]</sup> - 1676:23, 1710:6, 1717:1, 1718:7, 1764:13, 1842:8, 1860:1, 1871:20, 1886:5 <b>commissions</b> <sup>[1]</sup> - 1741:22 <b>commitments</b> <sup>[2]</sup> - 1643:10, 1650:10 <b>committed</b> <sup>[4]</sup> - 1711:11, 1725:24, 1839:23, 1862:8
--	--	--	---	--

<b>committee</b> [3] - 1703:13, 1722:7, 1849:24 <b>committees</b> [1] - 1703:9 <b>common</b> [1] - 1698:22 <b>communicate</b> [3] - 1722:9, 1724:20, 1899:19 <b>communicated</b> [1] - 1722:15 <b>communicates</b> [1] - 1900:11 <b>communication</b> [6] - 1660:16, 1724:14, 1724:18, 1729:14, 1756:21, 1756:22 <b>communications</b> [5] - 1725:2, 1766:21, 1862:11, 1900:13, 1900:16 <b>communities</b> [4] - 1724:21, 1852:20, 1853:6, 1855:10 <b>community</b> [13] - 1658:16, 1690:1, 1713:20, 1713:21, 1729:4, 1729:5, 1732:7, 1732:19, 1745:23, 1748:14, 1748:19, 1849:10, 1856:8 <b>Community</b> [2] - 1636:6, 1636:6 <b>companies</b> [1] - 1742:14 <b>company</b> [16] - 1645:18, 1690:8, 1754:23, 1766:24, 1768:16, 1768:19, 1768:21, 1768:25, 1776:10, 1825:17, 1825:18, 1890:22, 1907:8, 1907:12, 1929:17, 1929:23 <b>Company</b> [2] - 1785:21, 1833:10 <b>Company's</b> [1] - 1813:10 <b>company's</b> [2] - 1769:9, 1895:12 <b>compare</b> [1] - 1883:3 <b>compared</b> [1] - 1883:6 <b>compassion</b> [1] - 1708:24 <b>compelled</b> [3] - 1838:14, 1838:16, 1846:17 <b>compensation</b> [3] - 1743:16, 1743:20, 1743:21 <b>competent</b> [1] - 1929:8 <b>compilation</b> [1] - 1671:1 <b>compiled</b> [1] - 1666:7 <b>complaints</b> [1] - 1762:5 <b>complete</b> [6] - 1642:1, 1683:8, 1758:10, 1778:5, 1911:23, 1925:14 <b>completed</b> [6] - 1642:4, 1642:7, 1642:8, 1759:9, 1759:10, 1866:11 <b>completely</b> [1] - 1770:15 <b>completion</b> [2] - 1643:8, 1643:12 <b>complex</b> [3] - 1902:5, 1902:8, 1902:13 <b>compliance</b> [8] - 1692:13, 1720:13, 1779:15, 1779:20, 1779:21, 1897:20, 1897:23, 1924:15 <b>compliant</b> [1] - 1693:7 <b>complied</b> [3] - 1677:8, 1719:18, 1864:24 <b>complies</b> [2] - 1749:24, 1750:10 <b>comply</b> [19] - 1692:4, 1692:13, 1693:1, 1693:14, 1694:1, 1694:6, 1696:22, 1714:4, 1719:10, 1719:24, 1737:3, 1758:20, 1804:25, 1864:15, 1913:10, 1927:11, 1927:20, 1927:23, 1927:24 <b>components</b> [2] - 1796:8, 1799:23 <b>composed</b> [1] - 1849:14 <b>composes</b> [1] - 1671:4 <b>compounded</b> [2] - 1868:12, 1870:5 <b>comprehensive</b> [5] - 1891:12, 1891:13, 1891:14, 1891:16, 1891:20 <b>compromise</b> [1] - 1902:7 <b>conceded</b> [1] - 1743:13 <b>concentrate</b> [1] - 1840:14 <b>concentration</b> [4] - 1661:18, 1678:23, 1679:4, 1874:23 <b>concentrations</b> [1] - 1827:20 <b>concept</b> [1] - 1858:8 <b>concern</b> [35] - 1642:10, 1645:2, 1658:10, 1659:3, 1662:14, 1665:8, 1665:11, 1667:18, 1669:8, 1672:15, 1680:25, 1713:2, 1736:19, 1736:22, 1790:5, 1797:1, 1799:9, 1800:14, 1801:3, 1805:19, 1820:21, 1830:20, 1830:23, 1832:6, 1840:4, 1840:13, 1841:3, 1850:5, 1855:5, 1855:18, 1855:22, 1856:10, 1857:3, 1857:4, 1866:1 <b>concerned</b> [16] - 1646:21, 1658:25, 1660:24, 1665:21, 1666:20, 1667:1, 1667:21, 1672:20, 1672:25, 1680:11, 1680:22, 1724:16, 1804:14, 1805:3, 1856:2, 1857:11 <b>concerning</b> [8] - 1660:18, 1673:10, 1678:21, 1758:19, 1758:25, 1854:13, 1898:1, 1902:24 <b>concerns</b> [32] - 1665:7, 1730:5, 1733:24, 1734:11, 1735:4, 1736:10, 1739:3, 1757:17, 1757:20, 1758:19, 1802:14, 1802:22, 1803:24, 1804:6, 1822:9, 1823:23, 1824:20, 1825:5, 1825:8, 1829:9, 1829:12, 1844:8, 1855:15, 1859:15, 1864:22, 1864:25, 1867:18, 1867:25, 1868:19, 1909:21, 1925:7 <b>conclude</b> [1] - 1741:18 <b>concluded</b> [3] - 1657:18, 1767:20, 1773:4 <b>concludes</b> [1] - 1829:14 <b>conclusion</b> [3] - 1657:16, 1690:12, 1717:9 <b>conclusively</b> [1] - 1657:6 <b>Condition</b> [6] - 1663:9, 1664:15, 1677:7, 1693:1, 1694:4, 1696:22 <b>conditions</b> [2] - 1708:17, 1772:8 <b>Conditions</b> [23] - 1683:21, 1683:25, 1684:5, 1684:8, 1684:10, 1692:5, 1692:9, 1692:13, 1693:12, 1693:24, 1694:1, 1712:6, 1719:10, 1804:25, 1811:4, 1811:8, 1864:14, 1864:15, 1864:16, 1864:17, 1864:25, 1918:9, 1920:1 <b>conduct</b> [8] - 1642:17, 1695:22, 1706:9, 1711:6, 1740:21, 1846:25, 1898:19, 1922:18 <b>conducted</b> [2] - 1690:5, 1808:18 <b>cone</b> [1] - 1665:12 <b>conference</b> [3] - 1849:25, 1851:11, 1851:15 <b>confers</b> [1] - 1719:24 <b>confidence</b> [2] - 1805:21, 1824:20 <b>confident</b> [1] - 1740:8 <b>Confidential</b> [2] - 1635:19, 1635:21 <b>confidential</b> [1] - 1899:9 <b>configuring</b> [1] - 1901:19 <b>confined</b> [2] - 1791:20, 1792:8 <b>confining</b> [4] - 1791:21, 1791:23, 1792:7, 1792:11 <b>confirm</b> [2] - 1683:5, 1704:13 <b>conflict</b> [1] - 1858:8 <b>confused</b> [4] - 1814:3, 1889:19, 1889:20, 1904:13 <b>congregation</b> [1] - 1852:6 <b>Congress</b> [1] - 1636:9 <b>Congressional</b> [3] - 1636:9, 1710:11, 1718:13 <b>conjunction</b> [1] - 1738:16 <b>connected</b> [2] - 1900:5, 1900:8 <b>connection</b> [5] - 1787:19, 1798:9, 1798:12, 1823:21, 1857:3 <b>connections</b> [1] - 1798:1 <b>consent</b> [2] - 1718:16, 1721:6 <b>consequence</b> [1] - 1804:16 <b>consequences</b> [5] - 1662:19, 1686:15, 1687:2, 1687:15, 1805:18 <b>conservatively</b> [1] - 1796:13 <b>consider</b> [8] - 1653:8, 1698:9, 1749:15, 1776:7, 1857:19, 1869:17, 1872:11, 1881:16 <b>considerable</b> [2] - 1812:9, 1838:18 <b>consideration</b> [6] - 1697:18, 1706:12, 1706:13, 1825:19, 1826:5, 1920:9 <b>considerations</b> [1] - 1697:19 <b>considered</b> [5] - 1826:15, 1836:10, 1856:22, 1926:22, 1926:25 <b>considering</b> [1] - 1931:4 <b>considers</b> [2] - 1881:13, 1881:23 <b>consistent</b> [1] - 1916:18 <b>constantly</b> [1] - 1794:15 <b>constitute</b> [2] - 1748:16, 1748:21 <b>constitutes</b> [1] - 1761:16 <b>Constitution</b> [2] - 1710:20, 1710:21 <b>constrained</b> [1] - 1865:11 <b>construct</b> [2] - 1641:7, 1770:8	9
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<b>CONSTRUCT</b> <sup>[1]</sup> - 1633:6 <b>constructed</b> <sup>[2]</sup> - 1764:19, 1805:9 <b>construction</b> <sup>[17]</sup> - 1654:17, 1690:18, 1690:19, 1691:3, 1746:11, 1755:12, 1764:23, 1766:13, 1766:14, 1767:10, 1773:13, 1775:15, 1793:7, 1803:14, 1803:20, 1810:7, 1874:5 <b>Construction</b> <sup>[1]</sup> - 1810:3 <b>constructs</b> <sup>[1]</sup> - 1721:6 <b>consult</b> <sup>[5]</sup> - 1647:19, 1722:9, 1886:15, 1893:15, 1914:10 <b>consultant</b> <sup>[1]</sup> - 1887:21 <b>consultation</b> <sup>[20]</sup> - 1719:19, 1719:25, 1720:10, 1720:14, 1720:17, 1721:20, 1724:15, 1725:2, 1732:4, 1732:19, 1732:25, 1733:3, 1733:9, 1742:2, 1747:24, 1748:16, 1748:21, 1749:17, 1751:15, 1751:16 <b>consultations</b> <sup>[1]</sup> - 1862:18 <b>consulted</b> <sup>[6]</sup> - 1718:19, 1718:20, 1723:4, 1733:6, 1733:7, 1742:4 <b>consulting</b> <sup>[4]</sup> - 1681:22, 1769:1, 1785:4, 1785:16 <b>consumed</b> <sup>[1]</sup> - 1663:7 <b>contact</b> <sup>[5]</sup> - 1665:2, 1678:13, 1723:23, 1746:15, 1870:10 <b>contacted</b> <sup>[1]</sup> - 1870:14 <b>contacts</b> <sup>[4]</sup> - 1746:8, 1747:1, 1747:7, 1747:15 <b>contain</b> <sup>[1]</sup> - 1659:15 <b>contained</b> <sup>[9]</sup> - 1656:20, 1656:23, 1671:19, 1685:3, 1766:11, 1808:6, 1808:12, 1859:22, 1916:16	<b>containing</b> <sup>[3]</sup> - 1662:17, 1800:21, 1827:9 <b>contains</b> <sup>[4]</sup> - 1787:18, 1788:2, 1793:6, 1796:21 <b>contaminant</b> <sup>[7]</sup> - 1791:25, 1796:25, 1797:1, 1797:6, 1799:22, 1827:19, 1827:20 <b>contaminants</b> <sup>[7]</sup> - 1667:4, 1796:17, 1807:12, 1813:4, 1814:1, 1814:5, 1814:10 <b>contaminate</b> <sup>[2]</sup> - 1661:23, 1664:24 <b>contaminated</b> <sup>[7]</sup> - 1679:2, 1679:3, 1824:12, 1828:25, 1829:1, 1829:10, 1829:13 <b>contamination</b> <sup>[6]</sup> - 1785:17, 1790:6, 1791:22, 1830:21, 1837:14, 1879:9 <b>contend</b> <sup>[1]</sup> - 1855:3 <b>contending</b> <sup>[1]</sup> - 1718:11 <b>content</b> <sup>[1]</sup> - 1854:20 <b>contention</b> <sup>[4]</sup> - 1692:3, 1692:12, 1718:10, 1721:4 <b>contents</b> <sup>[2]</sup> - 1683:5, 1796:19 <b>context</b> <sup>[2]</sup> - 1862:24, 1918:24 <b>continually</b> <sup>[1]</sup> - 1804:4 <b>continuance</b> <sup>[1]</sup> - 1642:6 <b>continuation</b> <sup>[1]</sup> - 1909:13 <b>continue</b> <sup>[8]</sup> - 1706:7, 1710:8, 1744:8, 1769:17, 1792:24, 1794:2, 1841:17, 1842:10 <b>Continued</b> <sup>[7]</sup> - 1636:1, 1637:1, 1638:1, 1638:14, 1639:1, 1640:1, 1754:8 <b>continued</b> <sup>[1]</sup> - 1858:20 <b>continues</b> <sup>[3]</sup> - 1742:20, 1801:18, 1864:15 <b>continuing</b> <sup>[2]</sup> -	1641:2, 1792:15 <b>contours</b> <sup>[1]</sup> - 1831:4 <b>contract</b> <sup>[7]</sup> - 1754:24, 1774:5, 1920:21, 1920:22, 1921:1, 1921:5, 1930:17 <b>contractor</b> <sup>[22]</sup> - 1754:18, 1754:20, 1754:24, 1755:23, 1756:1, 1756:23, 1757:6, 1758:5, 1759:1, 1759:4, 1759:7, 1759:10, 1759:14, 1765:21, 1766:1, 1775:9, 1776:2, 1776:3, 1776:4, 1776:5, 1776:7, 1776:8 <b>contractors</b> <sup>[2]</sup> - 1755:22, 1774:5 <b>contractual</b> <sup>[1]</sup> - 1916:3 <b>contradict</b> <sup>[1]</sup> - 1836:25 <b>Control</b> <sup>[3]</sup> - 1897:21, 1913:12, 1913:16 <b>control</b> <sup>[10]</sup> - 1887:8, 1900:6, 1900:12, 1900:25, 1901:9, 1911:11, 1913:3, 1918:13, 1920:4, 1920:8 <b>controlled</b> <sup>[3]</sup> - 1667:3, 1901:2, 1901:4 <b>controller</b> <sup>[2]</sup> - 1887:18, 1900:12 <b>controllers</b> <sup>[1]</sup> - 1900:4 <b>controlling</b> <sup>[1]</sup> - 1900:23 <b>convention</b> <sup>[2]</sup> - 1734:21, 1734:22 <b>conventions</b> <sup>[1]</sup> - 1734:18 <b>conversation</b> <sup>[1]</sup> - 1842:4 <b>conversations</b> <sup>[2]</sup> - 1761:10, 1876:3 <b>converted</b> <sup>[1]</sup> - 1674:14 <b>convey</b> <sup>[1]</sup> - 1832:4 <b>coordinated</b> <sup>[1]</sup> - 1862:12 <b>coordination</b> <sup>[2]</sup> - 1863:12, 1863:15 <b>coordinator</b> <sup>[1]</sup> - 1659:7 <b>copper</b> <sup>[1]</sup> - 1900:9 <b>copy</b> <sup>[8]</sup> - 1652:12,	1652:14, 1652:16, 1716:12, 1778:10, 1845:14, 1880:24, 1911:16 <b>core</b> <sup>[1]</sup> - 1644:7 <b>Corey</b> <sup>[2]</sup> - 1635:3, 1643:3 <b>corner</b> <sup>[3]</sup> - 1786:11, 1791:8, 1792:25 <b>Corporation</b> <sup>[1]</sup> - 1755:7 <b>corporation</b> <sup>[1]</sup> - 1743:2 <b>Corps</b> <sup>[1]</sup> - 1883:14 <b>correct</b> <sup>[79]</sup> - 1651:18, 1669:24, 1669:25, 1690:16, 1728:19, 1733:15, 1736:12, 1741:10, 1755:17, 1755:18, 1756:16, 1758:22, 1759:23, 1767:7, 1767:21, 1768:4, 1768:17, 1768:18, 1773:11, 1773:14, 1776:11, 1776:12, 1780:25, 1781:7, 1781:12, 1783:8, 1794:18, 1795:9, 1807:6, 1808:15, 1808:20, 1808:21, 1809:3, 1809:9, 1810:1, 1810:25, 1812:10, 1813:17, 1816:3, 1816:13, 1825:3, 1831:16, 1860:5, 1879:7, 1888:5, 1888:6, 1890:21, 1891:5, 1892:24, 1897:17, 1897:18, 1898:18, 1904:3, 1904:8, 1905:24, 1909:16, 1913:6, 1913:7, 1915:11, 1915:12, 1915:21, 1917:16, 1917:17, 1917:20, 1918:2, 1918:3, 1919:16, 1920:16, 1920:18, 1921:9, 1921:20, 1922:17, 1923:18, 1928:18, 1930:18, 1930:19, 1931:11, 1932:16, 1934:11 <b>corrected</b> <sup>[1]</sup> - 1904:20 <b>correction</b> <sup>[1]</sup> - 1860:10 <b>corrections</b> <sup>[2]</sup> - 1877:25, 1911:18	<b>correctly</b> <sup>[5]</sup> - 1741:16, 1780:25, 1828:11, 1917:22, 1924:10 <b>corrosion</b> <sup>[3]</sup> - 1653:4, 1895:14, 1911:11 <b>cost</b> <sup>[14]</sup> - 1686:22, 1687:13, 1687:21, 1688:2, 1688:3, 1688:12, 1690:13, 1690:24, 1690:25, 1691:7, 1696:12, 1696:16, 1763:14, 1770:19 <b>cost-benefit</b> <sup>[2]</sup> - 1686:22, 1688:2 <b>costs</b> <sup>[8]</sup> - 1686:18, 1687:13, 1688:11, 1690:11, 1695:18, 1696:9, 1700:10 <b>couch</b> <sup>[1]</sup> - 1684:18 <b>council</b> <sup>[8]</sup> - 1703:9, 1703:10, 1739:23, 1740:20, 1745:20, 1851:18, 1855:19, 1873:2 <b>Council</b> <sup>[15]</sup> - 1699:14, 1703:6, 1722:6, 1745:7, 1745:8, 1745:17, 1745:22, 1745:24, 1746:1, 1751:4, 1815:24, 1849:11, 1849:13, 1903:24 <b>counsel</b> <sup>[6]</sup> - 1713:17, 1717:13, 1724:3, 1737:14, 1932:25 <b>counsel's</b> <sup>[2]</sup> - 1645:2, 1904:4 <b>counseling</b> <sup>[2]</sup> - 1848:25, 1849:3 <b>counselor</b> <sup>[1]</sup> - 1861:9 <b>count</b> <sup>[1]</sup> - 1749:16 <b>country</b> <sup>[7]</sup> - 1658:12, 1700:2, 1708:22, 1710:3, 1710:9, 1742:24, 1743:1 <b>county</b> <sup>[1]</sup> - 1659:22 <b>County</b> <sup>[10]</sup> - 1654:9, 1664:16, 1664:17, 1772:7, 1786:12, 1787:12, 1789:20, 1801:1, 1867:16, 1867:17 <b>COUNTY</b> <sup>[1]</sup> - 1934:3 <b>COUP</b> <sup>[2]</sup> - 1771:20, 1884:15 <b>couple</b> <sup>[23]</sup> - 1641:8, 1739:21, 1747:5,
---	--	---	--	---

1747:18, 1751:13, 1775:6, 1775:7, 1778:15, 1782:4, 1784:3, 1804:12, 1806:18, 1831:15, 1842:23, 1867:5, 1869:10, 1871:22, 1885:12, 1908:23, 1909:3, 1909:4, 1922:10, 1928:14 <b>course</b> [14] - 1642:23, 1662:16, 1662:22, 1668:9, 1722:10, 1753:16, 1757:13, 1758:15, 1798:22, 1799:22, 1800:11, 1803:6, 1858:17, 1908:21 <b>courses</b> [1] - 1784:24 <b>court</b> [18] - 1644:3, 1644:5, 1654:6, 1674:21, 1675:1, 1681:13, 1682:4, 1702:22, 1705:9, 1723:23, 1735:1, 1744:16, 1784:18, 1848:11, 1855:21, 1886:20, 1904:14, 1910:14 <b>Court</b> [2] - 1646:23, 1718:13 <b>courtesy</b> [1] - 1910:12 <b>cover</b> [2] - 1656:8, 1891:6 <b>covered</b> [3] - 1663:8, 1713:1, 1724:25 <b>covering</b> [1] - 1714:10 <b>cowboys</b> [1] - 1743:4 <b>Cowboys</b> [3] - 1711:10, 1742:3, 1742:19 <b>crack</b> [1] - 1775:9 <b>cracks</b> [1] - 1775:6 <b>CRAVEN</b> [20] - 1652:16, 1670:9, 1676:25, 1677:4, 1678:7, 1678:10, 1678:16, 1679:7, 1750:21, 1771:16, 1782:22, 1815:16, 1841:11, 1844:25, 1845:16, 1866:13, 1866:15, 1884:10, 1903:19, 1922:6 <b>Craven</b> [16] - 1639:5, 1670:9, 1671:9, 1676:24, 1678:6, 1678:7, 1750:20, 1750:21, 1771:15, 1815:15, 1841:10, 1844:25, 1866:16, 1884:9, 1903:18, 1922:5 <b>Craven's</b> [1] - 1783:17 <b>create</b> [6] - 1664:5, 1793:10, 1799:19, 1840:24, 1862:12, 1872:16 <b>created</b> [4] - 1685:15, 1711:2, 1852:2 <b>creating</b> [2] - 1643:22, 1644:14 <b>creation</b> [1] - 1708:15 <b>credentials</b> [1] - 1744:11 <b>credible</b> [2] - 1685:10, 1686:6 <b>creek</b> [2] - 1789:21, 1885:14 <b>Creek</b> [17] - 1733:2, 1745:23, 1770:13, 1786:15, 1787:17, 1787:21, 1788:2, 1802:5, 1802:16, 1813:7, 1813:22, 1814:1, 1814:5, 1814:11, 1834:18, 1879:6, 1885:14 <b>creeks</b> [1] - 1786:19 <b>Cremer</b> [4] - 1633:18, 1688:21, 1689:3, 1843:25 <b>CREMER</b> [17] - 1680:5, 1684:13, 1688:21, 1689:5, 1689:9, 1701:4, 1728:10, 1728:17, 1728:22, 1762:22, 1783:8, 1844:1, 1844:3, 1908:12, 1908:16, 1908:19, 1908:22 <b>cretaceous</b> [1] - 1793:5 <b>crew</b> [1] - 1909:25 <b>crime</b> [5] - 1852:1, 1852:11, 1852:12, 1862:8, 1870:9 <b>crimes</b> [4] - 1852:3, 1852:15, 1863:14, 1875:15 <b>criminal</b> [3] - 1735:1, 1862:25, 1870:7 <b>criteria</b> [1] - 1883:24 <b>critical</b> [2] - 1704:8, 1766:1 <b>CRM</b> [2] - 1892:3, 1893:2 <b>CROSS</b> [48] - 1678:9, 1691:12, 1694:13, 1697:8, 1698:3, 1699:12, 1745:1, 1748:9, 1749:9, 1751:11, 1768:13, 1770:3, 1771:4, 1772:3, 1807:1, 1812:4, 1814:20, 1815:22, 1820:6, 1826:21, 1829:19, 1836:1, 1861:7, 1862:1, 1863:19, 1866:14, 1867:7, 1869:12, 1870:1, 1871:1, 1879:1, 1879:19, 1882:16, 1885:5, 1890:18, 1893:9, 1896:8, 1903:22, 1905:17, 1906:10, 1912:22, 1914:4, 1917:5, 1922:12, 1925:10, 1926:12, 1928:15, 1930:12 <b>Cross</b> [47] - 1638:6, 1638:7, 1638:7, 1638:8, 1638:8, 1638:10, 1638:11, 1638:11, 1638:12, 1638:15, 1638:15, 1638:16, 1638:16, 1638:19, 1638:20, 1638:20, 1638:21, 1638:21, 1638:22, 1638:22, 1638:23, 1639:4, 1639:4, 1639:5, 1639:5, 1639:6, 1639:6, 1639:7, 1639:7, 1639:13, 1639:13, 1639:14, 1639:14, 1639:17, 1639:18, 1639:18, 1639:19, 1639:19, 1639:20, 1640:4, 1640:4, 1640:5, 1640:5, 1640:6, 1640:6, 1640:7, 1640:7 <b>cross</b> [34] - 1642:12, 1642:13, 1642:15, 1643:1, 1645:4, 1663:21, 1665:18, 1677:11, 1677:13, 1677:15, 1677:25, 1678:4, 1679:25, 1691:11, 1694:10, 1694:25, 1695:5, 1701:2, 1744:22, 1747:16, 1750:6, 1753:17, 1760:16, 1768:12, 1770:13, 1786:12, 1806:16, 1834:18, 1861:2, 1861:3, 1866:22, 1878:19, 1886:4, 1889:12 <b>CROSS-</b> <b>EXAMINATION</b> [48] - 1678:9, 1691:12, 1694:13, 1697:8, 1698:3, 1699:12, 1745:1, 1748:9, 1749:9, 1751:11, 1768:13, 1770:3, 1771:4, 1772:3, 1807:1, 1812:4, 1814:20, 1815:22, 1820:6, 1826:21, 1829:19, 1836:1, 1861:7, 1862:1, 1863:19, 1866:14, 1867:7, 1869:12, 1870:1, 1871:1, 1879:1, 1879:19, 1882:16, 1885:5, 1890:18, 1893:9, 1896:8, 1903:22, 1905:17, 1906:10, 1912:22, 1914:4, 1917:5, 1922:12, 1925:10, 1926:12, 1928:15, 1930:12 <b>Cross-Examination</b> [47] - 1638:6, 1638:7, 1638:7, 1638:8, 1638:8, 1638:10, 1638:11, 1638:11, 1638:12, 1638:15, 1638:15, 1638:16, 1638:16, 1638:19, 1638:20, 1638:20, 1638:21, 1638:21, 1638:22, 1638:22, 1638:23, 1639:4, 1639:4, 1639:5, 1639:5, 1639:6, 1639:6, 1639:7, 1639:7, 1639:13, 1639:13, 1639:14, 1639:14, 1639:17, 1639:18, 1639:18, 1639:19, 1639:19, 1639:20, 1640:4, 1640:4, 1640:5, 1640:5, 1640:6, 1640:6, 1640:7, 1640:7 <b>cross-examination</b> [17] - 1642:12, 1642:13, 1643:1, 1645:4, 1677:11, 1677:15, 1678:4, 1679:25, 1691:11, 1694:10, 1701:2, 1744:22, 1747:16, 1750:6, 1753:17, 1760:16, 1768:12, 1770:13, 1786:12, 1806:16, 1694:10, 1701:2, 11 1750:6, 1753:17, 1768:12, 1806:16, 1866:22, 1878:19 <b>cross-examining</b> [1] - 1642:15 <b>crossed</b> [3] - 1665:4, 1666:14, 1786:17 <b>crosses</b> [2] - 1720:12, 1793:5 <b>Crossing</b> [1] - 1813:8 <b>crossing</b> [16] - 1667:2, 1667:18, 1796:4, 1796:7, 1796:18, 1798:18, 1802:11, 1802:17, 1809:18, 1809:21, 1810:8, 1813:12, 1837:6, 1879:6, 1882:21, 1883:1 <b>crossings</b> [6] - 1666:21, 1786:7, 1802:16, 1815:1, 1883:15 <b>Crossings</b> [1] - 1635:21 <b>crow</b> [1] - 1796:14 <b>Crow</b> [7] - 1636:7, 1702:11, 1702:14, 1733:2, 1753:6, 1877:24, 1932:14 <b>CRR</b> [1] - 1633:24 <b>crude</b> [6] - 1662:7, 1689:25, 1785:12, 1796:19, 1813:2, 1813:15 <b>cubic</b> [1] - 1832:10 <b>cultural</b> [3] - 1849:10, 1850:11, 1854:14 <b>culture</b> [4] - 1856:13, 1857:6, 1857:18, 1872:13 <b>cumulative</b> [4] - 1736:17, 1738:16, 1738:18, 1746:24 <b>curious</b> [1] - 1897:12 <b>current</b> [7] - 1768:16, 1836:14, 1837:1, 1864:17, 1887:22, 1890:25, 1891:2 <b>curve</b> [1] - 1862:22 <b>cut</b> [2] - 1645:3, 1804:9 <b>cutting</b> [1] - 1816:22 <b>cyber</b> [2] - 1901:8, 1901:11 <b>Cynthia</b> [2] - 1636:11, 1636:13	
--	--

D				
D.C [2] - 1718:9, 1722:19	1934:1	1680:18	decontamination [1] - 1660:4	deny [3] - 1644:4, 1767:15, 1842:9
Dakota [109] - 1634:2, 1634:4, 1643:18, 1645:15, 1650:24, 1652:21, 1654:15, 1658:25, 1660:17, 1662:9, 1664:12, 1665:25, 1666:5, 1670:21, 1675:12, 1675:13, 1683:19, 1683:22, 1687:7, 1688:6, 1688:16, 1690:18, 1697:21, 1699:24, 1700:5, 1703:16, 1710:11, 1713:22, 1717:24, 1726:4, 1726:6, 1726:13, 1729:16, 1729:18, 1731:13, 1739:11, 1741:23, 1742:4, 1742:7, 1742:19, 1743:8, 1743:10, 1743:11, 1744:5, 1750:16, 1752:3, 1753:11, 1767:3, 1773:13, 1773:16, 1773:19, 1773:21, 1773:23, 1773:25, 1774:3, 1774:5, 1775:23, 1777:7, 1777:17, 1777:19, 1778:17, 1778:20, 1784:15, 1784:24, 1785:2, 1785:4, 1785:13, 1785:19, 1785:22, 1786:11, 1787:6, 1787:10, 1787:14, 1794:25, 1795:3, 1799:7, 1807:8, 1808:2, 1809:2, 1809:15, 1809:25, 1815:2, 1819:12, 1839:24, 1848:18, 1848:25, 1849:5, 1849:15, 1849:17, 1849:18, 1861:12, 1862:14, 1866:3, 1872:9, 1875:24, 1880:5, 1880:12, 1880:16, 1880:18, 1882:5, 1896:6, 1917:8, 1920:13, 1921:5, 1934:7, 1934:13	Dakota's [5] - 1693:19, 1695:9, 1700:2, 1791:12, 1855:11	days [7] - 1641:19, 1641:20, 1642:2, 1642:5, 1642:9, 1829:22, 1885:12	decrease [2] - 1698:21, 1827:21	department [3] - 1659:19, 1659:23, 1862:14
	Dakota [2] - 1848:16, 1849:8	deadline [2] - 1674:23, 1674:24	deem [1] - 1883:20	Department [35] - 1636:19, 1658:14, 1661:2, 1663:11, 1684:24, 1687:19, 1691:20, 1691:21, 1722:14, 1722:18, 1722:23, 1733:12, 1733:23, 1734:7, 1734:10, 1736:15, 1737:10, 1738:15, 1738:21, 1738:25, 1739:11, 1740:23, 1741:1, 1741:16, 1746:9, 1747:1, 1747:15, 1747:21, 1747:25, 1748:3, 1749:14, 1786:6, 1835:3, 1853:10, 1862:15
	Dakotan [1] - 1645:12	deal [6] - 1666:10, 1668:10, 1706:15, 1761:19, 1816:12, 1855:6	deemed [2] - 1883:12, 1883:15	
	Dakotans [4] - 1658:11, 1669:9, 1673:3, 1673:15	dealing [2] - 1659:9, 1899:18	deems [1] - 1676:9	
	Dam [3] - 1708:10, 1711:17	deals [7] - 1647:14, 1682:1, 1682:4, 1761:7, 1862:22, 1864:13, 1927:7	deep [2] - 1790:19, 1799:9	
	damage [1] - 1662:25	dealt [1] - 1742:14	defects [1] - 1775:12	
	damaged [1] - 1770:16	dearly [1] - 1649:16	defer [1] - 1876:15	
	Dan [1] - 1635:5	death [3] - 1662:14, 1662:18, 1678:23	Deficiencies [2] - 1636:12, 1636:14	
	dances [1] - 1856:8	debate [2] - 1742:25, 1865:6	deficient [1] - 1734:17	
	danger [2] - 1797:4, 1869:1	debating [1] - 1646:11	define [1] - 1882:22	
	Daniel [2] - 1635:13, 1933:7	debrief [1] - 1729:17	defined [2] - 1717:19, 1831:1	
	Darren [1] - 1633:19	decade [1] - 1902:25	defines [1] - 1707:5	
	data [12] - 1659:10, 1659:18, 1659:24, 1660:3, 1660:7, 1808:17, 1896:20, 1896:21, 1897:3, 1897:8, 1899:20, 1900:22	decades [2] - 1798:5, 1805:18	definitely [2] - 1757:19, 1856:12	
	database [1] - 1879:9	December [1] - 1764:19	definition [1] - 1883:11	
	date [4] - 1643:12, 1645:19, 1729:8, 1926:17	decide [3] - 1644:4, 1804:24, 1846:20	definitions [1] - 1883:8	
	dated [2] - 1636:12, 1729:5	decided [5] - 1644:22, 1721:11, 1729:20, 1839:4, 1839:6	degradation [1] - 1680:12	
	Dated [1] - 1934:13	decision [8] - 1649:7, 1705:3, 1803:10, 1825:11, 1858:5, 1864:2, 1865:14, 1929:14	degree [8] - 1682:9, 1682:11, 1784:25, 1796:21, 1803:20, 1817:1, 1887:14, 1887:15	
	Dave [1] - 1757:10	Decision [4] - 1811:5, 1811:10, 1897:16, 1917:15	delayed [1] - 1662:24	
	David [3] - 1635:11, 1635:23, 1756:7	decision-making [2] - 1803:10, 1929:14	delays [1] - 1653:20	
	Davis [35] - 1638:18, 1651:7, 1651:17, 1651:20, 1652:4, 1661:20, 1662:7, 1664:19, 1666:20, 1673:7, 1780:25, 1781:2, 1782:6, 1784:16, 1784:21, 1806:12, 1807:3, 1808:4, 1808:18, 1810:3, 1811:4, 1811:18, 1812:6, 1814:22, 1815:11, 1815:17, 1820:8, 1821:4, 1821:12, 1821:17, 1823:18, 1825:19, 1826:4, 1826:23, 1838:8	decisions [4] - 1718:12, 1763:14, 1929:8, 1929:12	deletion [1] - 1888:4	
	Davis's [1] - 1803:7	declarant [1] - 1728:23	deletions [2] - 1888:2, 1911:18	
	day-to-day [1] -	declaration [1] - 1734:20	deliver [1] - 1729:14	
		declarations [1] - 1728:18	delivered [1] - 1776:17	
		deconstructed [3] - 1852:23, 1853:1, 1853:4	Delta [1] - 1734:25	
		deconstruction [3] - 1853:8, 1853:23, 1857:17	delve [1] - 1641:12	
			democracy [2] - 1708:14, 1710:7	
			Democratic [3] - 1710:8, 1743:14, 1744:7	
			demonstrate [1] - 1666:11	
			demonstrated [1] - 1764:2	
			denied [5] - 1650:1, 1653:19, 1927:13, 1927:25, 1928:10	
			DENR [9] - 1644:20, 1644:22, 1674:2, 1835:16, 1879:8, 1880:7, 1881:1, 1881:9, 1881:13	
			DENR's [1] - 1880:14	
DAKOTA [4] - 1633:2, 1635:17, 1638:13,				

<p><b>desire</b> <sup>[1]</sup> - 1654:10</p> <p><b>desires</b> <sup>[1]</sup> - 1764:1</p> <p><b>desk</b> <sup>[1]</sup> - 1901:22</p> <p><b>destroyed</b> <sup>[1]</sup> - 1711:16</p> <p><b>detail</b> <sup>[4]</sup> - 1808:10, 1810:9, 1813:13, 1875:16</p> <p><b>detailed</b> <sup>[3]</sup> - 1770:5, 1786:23, 1921:22</p> <p><b>details</b> <sup>[4]</sup> - 1673:16, 1689:12, 1810:10, 1903:6</p> <p><b>detect</b> <sup>[4]</sup> - 1661:17, 1664:4, 1775:13, 1829:4</p> <p><b>detected</b> <sup>[1]</sup> - 1668:1</p> <p><b>detection</b> <sup>[2]</sup> - 1901:8, 1901:25</p> <p><b>determination</b> <sup>[1]</sup> - 1833:1</p> <p><b>determinations</b> <sup>[1]</sup> - 1924:1</p> <p><b>determine</b> <sup>[6]</sup> - 1669:22, 1738:16, 1858:24, 1882:4, 1883:25, 1898:19</p> <p><b>determined</b> <sup>[2]</sup> - 1661:2, 1763:23</p> <p><b>determining</b> <sup>[2]</sup> - 1881:14, 1881:24</p> <p><b>devastating</b> <sup>[3]</sup> - 1662:8, 1666:23, 1813:3</p> <p><b>develop</b> <sup>[3]</sup> - 1729:13, 1729:14, 1920:4</p> <p><b>developed</b> <sup>[1]</sup> - 1874:13</p> <p><b>development</b> <sup>[11]</sup> - 1703:17, 1703:18, 1708:19, 1709:2, 1709:17, 1711:12, 1711:15, 1715:3, 1771:6, 1771:8, 1921:16</p> <p><b>DF-2</b> <sup>[1]</sup> - 1635:13</p> <p><b>diagram</b> <sup>[1]</sup> - 1789:19</p> <p><b>dialogue</b> <sup>[1]</sup> - 1742:25</p> <p><b>diameter</b> <sup>[1]</sup> - 1774:12</p> <p><b>DIANA</b> <sup>[2]</sup> - 1636:16, 1637:2</p> <p><b>Diana</b> <sup>[1]</sup> - 1637:3</p> <p><b>died</b> <sup>[1]</sup> - 1858:21</p> <p><b>difference</b> <sup>[7]</sup> - 1644:9, 1705:24, 1743:9, 1779:22, 1790:11, 1791:16, 1910:9</p> <p><b>differences</b> <sup>[1]</sup> - 1720:17</p>	<p><b>different</b> <sup>[31]</sup> - 1649:19, 1653:5, 1655:20, 1666:12, 1685:10, 1693:4, 1698:6, 1706:1, 1706:3, 1706:24, 1707:1, 1717:21, 1718:17, 1720:9, 1720:14, 1726:23, 1736:13, 1736:21, 1741:22, 1774:24, 1776:23, 1783:13, 1825:15, 1838:23, 1874:12, 1874:17, 1874:22, 1874:24, 1890:8, 1899:25</p> <p><b>difficult</b> <sup>[11]</sup> - 1643:22, 1644:12, 1645:23, 1664:3, 1706:18, 1725:16, 1746:19, 1827:25, 1828:1, 1837:17, 1840:5</p> <p><b>digital</b> <sup>[2]</sup> - 1778:9, 1778:10</p> <p><b>dignity</b> <sup>[1]</sup> - 1743:15</p> <p><b>dilbit</b> <sup>[3]</sup> - 1672:20, 1796:8, 1796:20</p> <p><b>diluted</b> <sup>[4]</sup> - 1661:19, 1662:7, 1813:3, 1834:15</p> <p><b>dilution</b> <sup>[1]</sup> - 1827:21</p> <p><b>diplomacy</b> <sup>[1]</sup> - 1710:10</p> <p><b>dipped</b> <sup>[1]</sup> - 1664:1</p> <p><b>DIRECT</b> <sup>[8]</sup> - 1681:14, 1702:23, 1754:8, 1784:19, 1848:12, 1877:11, 1886:21, 1910:15</p> <p><b>direct</b> <sup>[30]</sup> - 1648:9, 1648:11, 1668:17, 1678:15, 1685:14, 1693:6, 1702:20, 1724:9, 1725:4, 1768:9, 1782:23, 1782:25, 1812:8, 1813:2, 1813:14, 1843:5, 1843:19, 1865:8, 1866:11, 1877:21, 1877:24, 1878:6, 1880:3, 1891:3, 1894:7, 1895:16, 1896:10, 1912:15, 1914:21, 1924:3</p> <p><b>Direct</b> <sup>[15]</sup> - 1635:3, 1635:3, 1635:4, 1635:4, 1638:3, 1638:6, 1638:10, 1638:14, 1638:19,</p>	<p>1639:3, 1639:12, 1639:17, 1640:3, 1767:19, 1878:9</p> <p><b>directed</b> <sup>[2]</sup> - 1723:15, 1907:24</p> <p><b>direction</b> <sup>[7]</sup> - 1688:25, 1792:3, 1823:21, 1831:7, 1885:15, 1909:23, 1931:9</p> <p><b>directional</b> <sup>[2]</sup> - 1804:7, 1814:25</p> <p><b>directions</b> <sup>[1]</sup> - 1847:5</p> <p><b>directly</b> <sup>[5]</sup> - 1662:10, 1665:4, 1835:14, 1837:16, 1855:13</p> <p><b>director</b> <sup>[1]</sup> - 1702:12</p> <p><b>disagree</b> <sup>[3]</sup> - 1762:2, 1763:10, 1807:24</p> <p><b>disaster</b> <sup>[1]</sup> - 1779:23</p> <p><b>disasters</b> <sup>[1]</sup> - 1660:2</p> <p><b>Discharge</b> <sup>[1]</sup> - 1635:20</p> <p><b>disclosed</b> <sup>[3]</sup> - 1672:4, 1806:11, 1806:14</p> <p><b>disclosing</b> <sup>[1]</sup> - 1806:11</p> <p><b>discomfort</b> <sup>[1]</sup> - 1842:5</p> <p><b>discourse</b> <sup>[1]</sup> - 1648:21</p> <p><b>Discovery</b> <sup>[1]</sup> - 1635:8</p> <p><b>discredit</b> <sup>[1]</sup> - 1769:18</p> <p><b>discuss</b> <sup>[7]</sup> - 1655:21, 1704:8, 1712:1, 1721:21, 1725:2, 1757:21, 1917:18</p> <p><b>discussed</b> <sup>[8]</sup> - 1641:8, 1657:7, 1694:25, 1733:25, 1735:24, 1760:22, 1769:3, 1908:6</p> <p><b>discussing</b> <sup>[1]</sup> - 1713:22</p> <p><b>discussion</b> <sup>[8]</sup> - 1702:13, 1706:21, 1707:1, 1724:3, 1780:22, 1839:11, 1846:7, 1872:22</p> <p><b>discussions</b> <sup>[12]</sup> - 1719:12, 1722:12, 1757:13, 1757:15, 1757:18, 1757:22, 1758:15, 1851:12, 1859:10, 1880:7, 1881:19, 1916:3</p> <p><b>disease</b> <sup>[2]</sup> - 1662:11, 1673:9</p> <p><b>disk</b> <sup>[1]</sup> - 1674:20</p>	<p><b>dislocation</b> <sup>[1]</sup> - 1708:25</p> <p><b>dismissal</b> <sup>[1]</sup> - 1766:9</p> <p><b>dismissed</b> <sup>[2]</sup> - 1755:7, 1755:21</p> <p><b>dispense</b> <sup>[1]</sup> - 1655:14</p> <p><b>disposed</b> <sup>[1]</sup> - 1834:25</p> <p><b>disruption</b> <sup>[1]</sup> - 1804:8</p> <p><b>distance</b> <sup>[3]</sup> - 1713:7, 1714:21, 1796:14</p> <p><b>distances</b> <sup>[1]</sup> - 1813:5</p> <p><b>distinct</b> <sup>[1]</sup> - 1720:17</p> <p><b>distinguish</b> <sup>[1]</sup> - 1905:7</p> <p><b>disturb</b> <sup>[1]</sup> - 1804:9</p> <p><b>disturbance</b> <sup>[4]</sup> - 1879:5, 1879:10, 1879:11, 1882:20</p> <p><b>divided</b> <sup>[2]</sup> - 1681:25, 1788:10</p> <p><b>DMV</b> <sup>[1]</sup> - 1887:21</p> <p><b>DO</b> <sup>[1]</sup> - 1934:8</p> <p><b>DOCKET</b> <sup>[1]</sup> - 1633:5</p> <p><b>docket</b> <sup>[6]</sup> - 1641:3, 1642:9, 1692:6, 1874:9, 1915:19, 1924:11</p> <p><b>Docket</b> <sup>[2]</sup> - 1641:4, 1641:6</p> <p><b>doctor</b> <sup>[8]</sup> - 1673:3, 1698:5, 1786:5, 1802:3, 1803:17, 1815:14, 1830:14, 1886:6</p> <p><b>Doctor</b> <sup>[1]</sup> - 1831:12</p> <p><b>Doctrine</b> <sup>[2]</sup> - 1710:24, 1869:19</p> <p><b>document</b> <sup>[25]</sup> - 1652:11, 1652:15, 1682:23, 1717:16, 1729:11, 1730:14, 1731:9, 1731:11, 1731:15, 1731:17, 1732:3, 1732:4, 1732:7, 1734:5, 1734:8, 1738:3, 1738:13, 1739:4, 1739:22, 1740:3, 1740:5, 1740:25, 1765:7, 1896:15, 1899:16</p> <p><b>document's</b> <sup>[1]</sup> - 1739:3</p> <p><b>documentation</b> <sup>[1]</sup> - 1728:6</p> <p><b>documents</b> <sup>[45]</sup> - 1671:19, 1671:20,</p>	<p>1711:2, 1715:13, 1728:12, 1758:8, 1758:11, 1863:22, 1883:7, 1892:23, 1893:2, 1897:20, 1897:23, 1915:16, 1915:17, 1915:18, 1915:20, 1918:4, 1919:6, 1919:8, 1919:12, 1919:15, 1922:18, 1923:9, 1923:12, 1923:20, 1923:22, 1924:1, 1924:7, 1924:15, 1924:16, 1924:23, 1928:24, 1929:2, 1929:3, 1929:7, 1929:9, 1929:11, 1929:22, 1929:23, 1930:6, 1930:7, 1930:22, 1930:23</p> <p><b>doers</b> <sup>[1]</sup> - 1744:16</p> <p><b>dollar</b> <sup>[1]</sup> - 1645:18</p> <p><b>domain</b> <sup>[4]</sup> - 1711:8, 1742:9, 1742:21, 1743:3</p> <p><b>domestic</b> <sup>[7]</sup> - 1664:17, 1787:23, 1851:7, 1853:7, 1862:25, 1863:6, 1863:8</p> <p><b>dominant</b> <sup>[1]</sup> - 1660:23</p> <p><b>done</b> <sup>[31]</sup> - 1645:10, 1652:2, 1655:18, 1671:13, 1675:21, 1676:8, 1676:22, 1690:16, 1691:8, 1691:20, 1698:5, 1700:24, 1718:15, 1718:23, 1735:11, 1739:6, 1739:8, 1753:4, 1768:9, 1777:7, 1778:6, 1783:9, 1783:11, 1785:4, 1785:16, 1807:25, 1808:7, 1822:22, 1824:16, 1850:25, 1901:19</p> <p><b>door</b> <sup>[1]</sup> - 1716:22</p> <p><b>DORR</b> <sup>[23]</sup> - 1706:20, 1707:7, 1720:6, 1720:8, 1751:12, 1751:19, 1771:22, 1782:17, 1782:20, 1819:18, 1836:2, 1837:3, 1837:18, 1847:8, 1870:2, 1870:18, 1884:18, 1905:2, 1905:5,</p>
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<p>1926:13, 1927:3, 1927:17, 1928:11</p> <p><b>Dorr</b> [22] - 1638:12, 1638:23, 1639:7, 1640:6, 1720:8, 1751:10, 1771:22, 1782:17, 1784:9, 1819:17, 1835:23, 1845:4, 1869:24, 1870:3, 1884:17, 1904:25, 1905:1, 1926:11, 1926:14, 1932:14</p> <p><b>Dorr's</b> [1] - 1845:13</p> <p><b>double</b> [2] - 1775:2, 1905:20</p> <p><b>double-checked</b> [1] - 1905:20</p> <p><b>doubt</b> [3] - 1643:25, 1644:2, 1644:3</p> <p><b>Doug</b> [3] - 1636:7, 1702:11, 1932:14</p> <p><b>Douglas</b> [1] - 1633:20</p> <p><b>down</b> [34] - 1643:23, 1644:15, 1645:21, 1651:13, 1659:14, 1662:2, 1662:5, 1678:24, 1680:6, 1681:1, 1698:23, 1699:7, 1701:9, 1754:3, 1760:6, 1786:15, 1788:25, 1791:23, 1792:2, 1793:20, 1795:2, 1814:11, 1821:8, 1827:6, 1827:14, 1827:20, 1837:1, 1838:11, 1840:19, 1844:14, 1875:3, 1876:9, 1886:11, 1907:22</p> <p><b>downstream</b> [7] - 1666:22, 1667:7, 1667:16, 1667:20, 1796:4, 1813:11, 1813:17</p> <p><b>dozen</b> [1] - 1648:24</p> <p><b>Dr</b> [52] - 1635:23, 1636:11, 1636:13, 1638:5, 1638:18, 1639:12, 1651:7, 1651:17, 1651:25, 1652:4, 1661:20, 1662:7, 1663:2, 1664:19, 1666:20, 1673:1, 1673:7, 1681:11, 1682:18, 1683:18, 1689:4, 1691:10, 1691:14, 1694:15, 1697:10,</p>	<p>1701:18, 1701:22, 1701:23, 1780:25, 1781:2, 1784:16, 1784:21, 1803:7, 1806:12, 1807:3, 1808:4, 1808:18, 1810:3, 1811:4, 1811:18, 1812:6, 1815:11, 1815:17, 1821:4, 1821:12, 1821:17, 1825:19, 1826:4, 1826:23, 1838:8, 1877:13, 1879:3</p> <p><b>dr</b> [1] - 1814:22</p> <p><b>DRA</b> [11] - 1635:18, 1635:19, 1760:19, 1760:21, 1766:18, 1811:20, 1811:22, 1840:16, 1899:8, 1908:12, 1908:18</p> <p><b>Draft</b> [3] - 1636:12, 1636:14, 1734:17</p> <p><b>draft</b> [3] - 1658:18, 1930:6, 1930:7</p> <p><b>drain</b> [1] - 1795:24</p> <p><b>drainage</b> [1] - 1883:5</p> <p><b>Drainage</b> [5] - 1666:13, 1666:15, 1666:16, 1666:17, 1666:19</p> <p><b>drains</b> [2] - 1795:22, 1795:25</p> <p><b>dramatic</b> [1] - 1910:6</p> <p><b>drastically</b> [1] - 1788:13</p> <p><b>draw</b> [3] - 1665:14, 1665:15, 1806:1</p> <p><b>drawing</b> [4] - 1885:11, 1885:13, 1887:23, 1911:13</p> <p><b>drawings</b> [2] - 1925:2, 1929:18</p> <p><b>drilling</b> [5] - 1802:7, 1804:7, 1814:25, 1885:8, 1885:15</p> <p><b>drills</b> [1] - 1660:19</p> <p><b>drink</b> [1] - 1661:19</p> <p><b>Drinking</b> [1] - 1677:7</p> <p><b>drinking</b> [21] - 1654:12, 1661:5, 1661:12, 1661:22, 1662:16, 1672:23, 1672:24, 1673:6, 1673:13, 1679:2, 1709:20, 1710:1, 1710:24, 1797:7, 1805:20, 1826:25, 1827:7, 1829:10, 1829:12, 1855:10,</p>	<p>1855:16</p> <p><b>drive</b> [2] - 1806:5, 1902:6</p> <p><b>driven</b> [1] - 1900:19</p> <p><b>driving</b> [1] - 1868:1</p> <p><b>drizzles</b> [1] - 1816:19</p> <p><b>drops</b> [1] - 1664:23</p> <p><b>drug</b> [1] - 1853:5</p> <p><b>dry</b> [1] - 1788:13</p> <p><b>dual</b> [1] - 1710:3</p> <p><b>Ducheneaux</b> [2] - 1635:15, 1877:24</p> <p><b>Ducheneaux's</b> [1] - 1879:4</p> <p><b>due</b> [19] - 1643:23, 1644:8, 1644:14, 1644:21, 1645:4, 1645:24, 1647:9, 1649:17, 1712:2, 1713:19, 1719:1, 1734:23, 1809:17, 1809:20, 1812:10, 1812:21, 1812:25, 1842:13, 1861:16</p> <p><b>dugouts</b> [1] - 1797:17</p> <p><b>duly</b> [3] - 1748:13, 1748:16, 1934:8</p> <p><b>duly-appointed</b> [1] - 1934:8</p> <p><b>dune</b> [1] - 1801:9</p> <p><b>duplicate</b> [1] - 1736:1</p> <p><b>duplication</b> [2] - 1654:25, 1655:1</p> <p><b>uplicative</b> [1] - 1732:22</p> <p><b>during</b> [34] - 1642:23, 1657:19, 1753:2, 1756:22, 1757:12, 1757:13, 1757:19, 1757:21, 1758:15, 1763:15, 1764:20, 1766:14, 1767:10, 1784:8, 1788:13, 1796:12, 1803:6, 1804:10, 1810:7, 1810:16, 1816:8, 1816:18, 1816:24, 1818:12, 1819:5, 1824:3, 1824:16, 1839:5, 1839:8, 1846:5, 1847:19, 1870:13, 1879:6, 1923:11</p> <p><b>duties</b> [1] - 1703:8</p>	<p>1746:25</p> <p><b>EAGLE</b> [15] - 1679:13, 1751:25, 1772:16, 1826:19, 1867:3, 1867:8, 1869:3, 1884:24, 1905:15, 1905:18, 1906:1, 1906:3, 1930:11, 1930:13, 1931:19</p> <p><b>Eagle</b> [41] - 1637:6, 1639:3, 1639:6, 1639:19, 1640:7, 1679:12, 1751:24, 1752:1, 1772:15, 1772:16, 1781:6, 1782:7, 1826:18, 1842:14, 1843:4, 1844:22, 1844:23, 1848:10, 1848:14, 1848:17, 1848:19, 1849:20, 1852:10, 1858:2, 1859:6, 1859:21, 1860:25, 1862:3, 1865:5, 1866:17, 1867:9, 1869:14, 1870:4, 1871:3, 1873:13, 1875:13, 1875:23, 1884:23, 1905:14, 1930:10, 1931:20</p> <p><b>early</b> [1] - 1841:24</p> <p><b>earned</b> [2] - 1709:13, 1710:16</p> <p><b>earnestly</b> [2] - 1723:16, 1723:17</p> <p><b>Easement</b> [2] - 1636:19, 1636:24</p> <p><b>easement</b> [1] - 1665:10</p> <p><b>easier</b> [3] - 1654:13, 1787:1, 1844:20</p> <p><b>easily</b> [2] - 1799:21, 1842:3</p> <p><b>East</b> [1] - 1634:3</p> <p><b>east</b> [2] - 1834:4, 1885:14</p> <p><b>eastern</b> [4] - 1795:3, 1809:2, 1809:15, 1833:25</p> <p><b>easy</b> [1] - 1645:19</p> <p><b>eating</b> [2] - 1662:16, 1679:2</p> <p><b>echo</b> [1] - 1753:2</p> <p><b>econometric</b> [1] - 1685:5</p> <p><b>economic</b> [4] - 1687:6, 1688:17, 1690:1, 1690:3</p> <p><b>economics</b> [11] - 1681:22, 1682:2,</p>	<p>1682:3, 1682:9, 1682:11, 1682:12, 1695:19, 1698:10, 1698:15, 1850:25, 1851:1</p> <p><b>economist</b> [8] - 1673:4, 1681:18, 1682:16, 1688:4, 1692:22, 1693:13, 1700:9, 1700:15</p> <p><b>economists</b> [1] - 1695:21</p> <p><b>ECONorthwest</b> [7] - 1681:19, 1681:21, 1681:22, 1682:16, 1688:1, 1688:10, 1688:11</p> <p><b>edge</b> [2] - 1822:5, 1830:19</p> <p><b>edition</b> [2] - 1904:18, 1905:22</p> <p><b>editor</b> [1] - 1846:19</p> <p><b>editorial</b> [3] - 1911:20, 1918:11, 1919:19</p> <p><b>editorializing</b> [1] - 1832:21</p> <p><b>edits</b> [1] - 1888:2</p> <p><b>education</b> [4] - 1660:18, 1703:12, 1722:7, 1784:22</p> <p><b>educational</b> [3] - 1682:7, 1887:13, 1911:2</p> <p><b>Edwards</b> [9] - 1633:17, 1639:17, 1640:3, 1890:2, 1909:12, 1927:6, 1931:3, 1931:5, 1931:8</p> <p><b>EDWARDS</b> [38] - 1683:16, 1752:18, 1773:1, 1781:14, 1781:19, 1830:11, 1860:22, 1871:18, 1876:15, 1886:4, 1886:15, 1886:19, 1886:22, 1888:10, 1888:19, 1889:11, 1890:4, 1892:25, 1903:3, 1906:21, 1907:21, 1910:12, 1910:16, 1912:4, 1912:12, 1912:14, 1918:20, 1920:19, 1920:24, 1922:2, 1923:1, 1924:2, 1927:2, 1928:1, 1932:7, 1932:17, 1933:6, 1933:10</p> <p><b>effect</b> [6] - 1686:9,</p>
<b>E</b>				
<p><b>e-mail</b> [1] - 1746:16</p> <p><b>e-mails</b> [2] - 1746:23,</p>				

1687:6, 1698:7, 1717:9, 1834:16, 1854:9 <b>effective</b> [3] - 1805:22, 1805:24, 1862:20 <b>effects</b> [9] - 1658:16, 1662:8, 1666:23, 1671:11, 1686:24, 1711:15, 1813:4, 1825:2, 1854:17 <b>effort</b> [3] - 1721:9, 1796:5, 1916:17 <b>effort's</b> [1] - 1725:16 <b>efforts</b> [7] - 1724:20, 1769:17, 1812:24, 1833:6, 1833:13, 1862:11, 1863:12 <b>eight</b> [1] - 1641:18 <b>EIS</b> [3] - 1636:14, 1722:20, 1734:17 <b>either</b> [17] - 1644:3, 1648:3, 1705:15, 1718:8, 1721:11, 1755:21, 1757:6, 1766:22, 1781:12, 1803:25, 1829:24, 1834:19, 1844:4, 1844:11, 1903:10, 1913:21, 1918:11 <b>elaborate</b> [8] - 1699:20, 1703:19, 1703:22, 1704:20, 1717:20, 1717:22, 1737:1, 1849:12 <b>elaborated</b> [1] - 1657:11 <b>elaboration</b> [1] - 1775:19 <b>elder</b> [1] - 1710:15 <b>elders</b> [1] - 1729:22 <b>elected</b> [3] - 1748:13, 1748:17, 1748:20 <b>electrical</b> [1] - 1900:2 <b>electronic</b> [1] - 1897:3 <b>electronically</b> [1] - 1880:23 <b>element</b> [1] - 1704:8 <b>Elementary</b> [2] - 1785:14, 1828:13 <b>elementary</b> [1] - 1834:24 <b>elements</b> [2] - 1674:10, 1821:2 <b>elevation</b> [1] - 1800:4 <b>eliminate</b> [3] - 1795:10, 1812:20, 1812:22 <b>Elizabeth</b> [3] - 1751:25, 1772:16, 1867:9	<b>Ellison</b> [12] - 1638:19, 1640:5, 1652:20, 1678:3, 1750:15, 1784:14, 1810:15, 1838:18, 1840:7, 1896:5, 1917:3, 1917:7 <b>ELLISON</b> [57] - 1644:18, 1652:3, 1652:20, 1653:11, 1671:16, 1672:5, 1737:12, 1737:17, 1737:19, 1737:23, 1750:16, 1760:4, 1781:1, 1781:4, 1781:22, 1782:9, 1783:5, 1783:12, 1783:22, 1784:15, 1784:20, 1802:25, 1803:4, 1803:22, 1805:5, 1805:8, 1806:16, 1806:22, 1811:16, 1812:2, 1825:15, 1836:18, 1836:21, 1838:4, 1838:7, 1838:10, 1840:2, 1840:9, 1840:12, 1841:2, 1841:8, 1844:21, 1860:13, 1878:21, 1908:4, 1908:10, 1909:18, 1909:24, 1910:6, 1917:4, 1917:6, 1918:21, 1919:3, 1920:25, 1922:4, 1933:8, 1933:12 <b>Emergency</b> [1] - 1658:19 <b>emergency</b> [11] - 1658:20, 1659:6, 1659:18, 1659:22, 1660:2, 1660:6, 1661:6, 1807:16, 1868:4, 1868:9 <b>emeritus</b> [2] - 1785:6, 1785:9 <b>eminent</b> [4] - 1711:8, 1742:9, 1742:21, 1743:3 <b>employed</b> [4] - 1763:16, 1765:15, 1833:12, 1910:21 <b>employee</b> [4] - 1761:11, 1761:13, 1763:4, 1764:20 <b>employees</b> [2] - 1766:22, 1768:21 <b>employer</b> [3] - 1686:3, 1686:4, 1686:10	<b>employment</b> [6] - 1762:13, 1765:2, 1766:10, 1766:16, 1766:23, 1768:16 <b>EN</b> [10] - 1653:3, 1887:11, 1887:22, 1890:20, 1910:22, 1911:10, 1911:11, 1915:9, 1922:16, 1928:22 <b>enable</b> [1] - 1756:14 <b>enamored</b> [1] - 1858:25 <b>encompasses</b> [1] - 1708:6 <b>encountered</b> [2] - 1697:14, 1872:5 <b>encrypted</b> [1] - 1900:16 <b>end</b> [7] - 1645:20, 1649:8, 1725:4, 1782:5, 1796:1, 1820:13, 1932:19 <b>endorsed</b> [1] - 1745:24 <b>ends</b> [1] - 1676:2 <b>endure</b> [1] - 1752:25 <b>Energy</b> [2] - 1762:7, 1762:10 <b>energy</b> [2] - 1711:19, 1877:15 <b>enforceable</b> [3] - 1891:17, 1892:5, 1892:8 <b>enforcement</b> [2] - 1858:1, 1862:13 <b>engage</b> [1] - 1846:7 <b>engaged</b> [1] - 1898:6 <b>engaging</b> [1] - 1755:13 <b>engineer</b> [11] - 1785:3, 1807:5, 1807:7, 1814:24, 1817:19, 1818:2, 1881:23, 1887:19, 1923:17, 1925:2 <b>Engineering</b> [10] - 1653:3, 1887:11, 1887:22, 1890:20, 1910:22, 1911:10, 1911:11, 1915:9, 1922:16, 1928:22 <b>engineering</b> [13] - 1784:23, 1785:2, 1793:7, 1803:18, 1887:14, 1887:20, 1901:18, 1911:5, 1923:9, 1923:11, 1924:16, 1929:3 <b>Engineers</b> [1] -	1883:15 <b>engineers</b> [2] - 1887:6, 1929:25 <b>English</b> [2] - 1711:2, 1848:24 <b>enrolled</b> [2] - 1748:15, 1752:1 <b>ensure</b> [6] - 1643:7, 1680:13, 1917:12, 1918:5, 1919:8, 1921:19 <b>enter</b> [8] - 1672:16, 1685:12, 1685:19, 1715:18, 1716:5, 1716:7, 1828:18, 1828:21 <b>entered</b> [4] - 1669:10, 1669:17, 1766:18, 1899:8 <b>entering</b> [1] - 1872:24 <b>enterprise</b> [1] - 1887:20 <b>enters</b> [1] - 1787:14 <b>entire</b> [13] - 1642:9, 1646:22, 1678:16, 1680:22, 1683:8, 1700:2, 1731:19, 1794:3, 1794:9, 1795:16, 1795:23, 1883:4, 1920:17 <b>entirely</b> [1] - 1699:22 <b>entirety</b> [1] - 1649:23 <b>entitled</b> [2] - 1634:2, 1934:10 <b>entity</b> [1] - 1729:6 <b>entry</b> [1] - 1885:13 <b>environment</b> [4] - 1737:6, 1835:3, 1857:22, 1859:3 <b>environmental</b> [16] - 1661:15, 1666:24, 1722:19, 1734:7, 1737:5, 1738:17, 1738:23, 1739:5, 1739:23, 1740:1, 1740:20, 1747:4, 1785:17, 1804:8, 1805:20, 1854:17 <b>Environmental</b> [18] - 1636:10, 1670:10, 1678:8, 1684:24, 1691:23, 1722:20, 1733:12, 1733:14, 1737:2, 1739:13, 1739:25, 1750:22, 1771:16, 1797:5, 1815:16, 1845:1, 1866:16, 1884:10 <b>eoian</b> [4] - 1789:9, 1794:2, 1797:20,	1799:11 <b>EPA</b> [4] - 1636:11, 1636:13, 1661:3, 1661:11 <b>ephemeral</b> [1] - 1804:1 <b>equated</b> [1] - 1705:24 <b>equipment</b> [3] - 1659:1, 1902:11, 1902:12 <b>equipped</b> [1] - 1855:6 <b>erosion</b> [3] - 1803:21, 1831:23 <b>erroneous</b> [1] - 1719:23 <b>error</b> [3] - 1890:10, 1904:20, 1905:19 <b>escorted</b> [1] - 1710:17 <b>especially</b> [8] - 1642:7, 1645:25, 1712:12, 1789:1, 1793:19, 1799:9, 1801:12, 1838:25 <b>essence</b> [1] - 1649:22 <b>essential</b> [1] - 1857:14 <b>essentially</b> [7] - 1641:18, 1671:20, 1828:9, 1850:23, 1858:25, 1900:18, 1921:7 <b>establish</b> [4] - 1654:17, 1727:16, 1728:8, 1803:16 <b>established</b> [5] - 1730:18, 1732:13, 1852:19, 1874:4 <b>establishing</b> [2] - 1712:20, 1728:6 <b>estate</b> [1] - 1816:24 <b>estimate</b> [3] - 1697:22, 1699:25, 1813:21 <b>estimated</b> [4] - 1663:3, 1685:16, 1699:24, 1853:21 <b>estimates</b> [1] - 1685:14 <b>estimation</b> [1] - 1685:23 <b>et</b> [1] - 1674:14 <b>ETC</b> [1] - 1742:15 <b>Eugene</b> [1] - 1681:18 <b>evaluate</b> [2] - 1688:5, 1736:16 <b>evaluated</b> [2] - 1687:24, 1738:15 <b>evaluation</b> [1] - 1804:15 <b>Evan</b> [3] - 1635:22, 1638:14, 1841:15 <b>evaporated</b> [1] -
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<p>1828:10</p> <p><b>evening</b> [1] - 1768:15</p> <p><b>event</b> [4] - 1664:9, 1759:14, 1763:6</p> <p><b>events</b> [5] - 1729:19, 1817:9, 1817:22, 1818:14, 1852:22</p> <p><b>eventually</b> [1] - 1705:11</p> <p><b>evidence</b> [35] - 1657:1, 1657:4, 1660:16, 1670:18, 1676:12, 1676:15, 1712:10, 1714:1, 1723:11, 1728:1, 1731:1, 1731:7, 1731:15, 1735:6, 1735:7, 1735:9, 1735:12, 1745:11, 1758:17, 1760:18, 1772:11, 1836:12, 1836:17, 1836:23, 1836:24, 1860:2, 1890:11, 1899:9, 1903:2, 1913:10, 1913:19, 1920:20, 1921:17, 1928:2, 1928:4</p> <p><b>Evidence</b> [1] - 1671:24</p> <p><b>evident</b> [1] - 1932:21</p> <p><b>evoke</b> [1] - 1851:12</p> <p><b>evoked</b> [1] - 1850:24</p> <p><b>ex</b> [1] - 1761:10</p> <p><b>ex-TransCanada</b> [1] - 1761:10</p> <p><b>exacerbate</b> [1] - 1729:20</p> <p><b>exacerbated</b> [1] - 1679:1</p> <p><b>exact</b> [6] - 1655:1, 1763:21, 1810:20, 1867:17, 1880:9, 1926:17</p> <p><b>exactly</b> [3] - 1777:13, 1859:17, 1892:17</p> <p><b>exaggeration</b> [1] - 1648:25</p> <p><b>exam</b> [2] - 1747:16, 1768:9</p> <p><b>Examination</b> [63] - 1638:6, 1638:6, 1638:7, 1638:7, 1638:8, 1638:8, 1638:10, 1638:10, 1638:11, 1638:11, 1638:12, 1638:14, 1638:15, 1638:15, 1638:16, 1638:16, 1638:17, 1638:17,</p>	<p>1638:19, 1638:19, 1638:20, 1638:20, 1638:21, 1638:21, 1638:22, 1638:22, 1638:23, 1639:3, 1639:4, 1639:4, 1639:5, 1639:5, 1639:6, 1639:6, 1639:7, 1639:7, 1639:8, 1639:8, 1639:9, 1639:9, 1639:10, 1639:12, 1639:13, 1639:13, 1639:14, 1639:14, 1639:17, 1639:17, 1639:18, 1639:18, 1639:19, 1639:19, 1639:20, 1639:20, 1640:3, 1640:4, 1640:4, 1640:5, 1640:5, 1640:6, 1640:6, 1640:7, 1640:7</p> <p><b>examination</b> [26] - 1642:12, 1642:13, 1643:1, 1645:4, 1668:10, 1677:11, 1677:15, 1678:4, 1679:25, 1691:11, 1694:10, 1701:2, 1724:9, 1725:4, 1750:6, 1753:17, 1754:23, 1755:14, 1768:12, 1769:25, 1806:16, 1858:24, 1863:17, 1866:22, 1870:21, 1878:19</p> <p><b>EXAMINATION</b> [61] - 1678:9, 1681:14, 1691:12, 1694:13, 1697:8, 1698:3, 1699:12, 1702:23, 1745:1, 1748:9, 1749:9, 1751:11, 1754:8, 1768:13, 1770:3, 1771:4, 1772:3, 1784:19, 1807:1, 1812:4, 1814:20, 1815:22, 1820:6, 1826:21, 1829:19, 1836:1, 1848:12, 1861:7, 1862:1, 1863:19, 1866:14, 1867:7, 1869:12, 1870:1, 1871:1, 1873:11, 1874:1, 1875:11, 1875:21, 1877:11, 1879:1, 1879:19, 1882:16, 1885:5, 1886:21, 1890:18,</p>	<p>1893:9, 1896:8, 1903:22, 1905:17, 1906:10, 1907:3, 1910:15, 1912:22, 1914:4, 1917:5, 1922:12, 1925:10, 1926:12, 1928:15, 1930:12</p> <p><b>examinations</b> [1] - 1642:24</p> <p><b>examine</b> [1] - 1832:21</p> <p><b>examined</b> [2] - 1704:20, 1832:14</p> <p><b>examines</b> [1] - 1738:13</p> <p><b>examining</b> [1] - 1642:15</p> <p><b>example</b> [21] - 1653:2, 1653:5, 1686:2, 1686:13, 1688:13, 1698:13, 1712:13, 1757:23, 1759:18, 1786:20, 1793:19, 1796:22, 1801:18, 1808:6, 1808:11, 1827:7, 1827:17, 1828:8, 1831:6, 1852:23, 1865:3</p> <p><b>exceedance</b> [1] - 1672:17</p> <p><b>excellent</b> [2] - 1695:15, 1839:23</p> <p><b>except</b> [1] - 1793:25</p> <p><b>exception</b> [12] - 1705:16, 1727:16, 1727:17, 1727:18, 1730:19, 1742:1, 1742:21, 1767:1, 1802:4, 1802:15, 1860:5, 1918:12</p> <p><b>exclude</b> [1] - 1706:12</p> <p><b>excluded</b> [7] - 1635:5, 1635:9, 1635:22, 1635:25, 1636:5, 1637:7, 1860:5</p> <p><b>exclusion</b> [1] - 1768:6</p> <p><b>excuse</b> [11] - 1729:19, 1760:4, 1802:23, 1802:25, 1811:7, 1811:16, 1815:4, 1865:5, 1870:23, 1925:4, 1927:14</p> <p><b>excused</b> [1] - 1780:18</p> <p><b>executive</b> [2] - 1720:1, 1739:22</p> <p><b>exercise</b> [3] - 1710:7, 1744:7, 1881:9</p> <p><b>exercising</b> [1] - 1881:8</p> <p><b>Exhibit</b> [41] - 1635:11,</p>	<p>1635:11, 1636:17, 1636:18, 1636:19, 1636:20, 1636:21, 1636:21, 1636:22, 1636:23, 1636:24, 1637:4, 1682:24, 1683:6, 1683:11, 1716:6, 1717:12, 1730:16, 1730:20, 1735:17, 1736:14, 1738:4, 1739:21, 1760:19, 1760:21, 1811:20, 1811:21, 1811:22, 1860:2, 1877:19, 1878:13, 1878:17, 1887:24, 1888:11, 1888:22, 1899:9, 1911:14, 1912:5, 1912:11, 1912:13, 1917:11</p> <p><b>exhibit</b> [15] - 1668:5, 1684:20, 1704:17, 1705:17, 1717:12, 1732:11, 1733:20, 1735:17, 1760:18, 1764:12, 1767:23, 1806:3, 1836:13, 1860:23, 1899:8</p> <p><b>EXHIBITS</b> [9] - 1635:2, 1635:10, 1635:14, 1635:17, 1636:2, 1636:4, 1636:16, 1637:2, 1637:5</p> <p><b>exhibits</b> [13] - 1653:15, 1655:7, 1655:16, 1668:10, 1674:5, 1674:13, 1675:2, 1676:4, 1676:12, 1705:12, 1766:18, 1806:12</p> <p><b>Exhibits</b> [13] - 1635:3, 1635:3, 1635:4, 1635:4, 1635:5, 1635:6, 1635:9, 1635:12, 1635:13, 1635:23, 1636:15, 1637:3, 1637:7</p> <p><b>exist</b> [3] - 1696:25, 1738:18</p> <p><b>existence</b> [1] - 1740:2</p> <p><b>existing</b> [3] - 1879:5, 1879:9, 1880:8</p> <p><b>exists</b> [1] - 1903:8</p> <p><b>exit</b> [1] - 1885:16</p> <p><b>exp</b> [1] - 1877:15</p> <p><b>expansions</b> [1] - 1817:2</p> <p><b>expect</b> [5] - 1852:11, 1879:5, 1918:15, 1918:17, 1930:7</p>	<p><b>expectations</b> [1] - 1916:19</p> <p><b>expected</b> [5] - 1659:13, 1686:4, 1690:13, 1690:14, 1913:15</p> <p><b>expediency</b> [1] - 1645:17</p> <p><b>expedient</b> [1] - 1643:22</p> <p><b>expedite</b> [1] - 1643:7</p> <p><b>expeditious</b> [1] - 1643:20</p> <p><b>expeditiously</b> [1] - 1731:16</p> <p><b>expensive</b> [1] - 1828:7</p> <p><b>experience</b> [15] - 1749:23, 1750:9, 1786:8, 1796:12, 1807:22, 1808:14, 1824:18, 1827:13, 1852:14, 1859:4, 1871:25, 1887:16, 1899:4, 1901:7, 1911:7</p> <p><b>experienced</b> [1] - 1853:14</p> <p><b>expert</b> [18] - 1671:18, 1671:22, 1671:23, 1682:21, 1689:4, 1692:23, 1698:10, 1807:8, 1807:10, 1807:13, 1807:16, 1807:19, 1818:23, 1825:18, 1837:8, 1905:21, 1927:19, 1927:25</p> <p><b>expertise</b> [10] - 1671:12, 1671:25, 1672:3, 1672:4, 1803:8, 1803:14, 1803:18, 1818:25, 1868:21, 1871:3</p> <p><b>experts</b> [2] - 1653:4, 1659:15</p> <p><b>explain</b> [9] - 1669:1, 1685:8, 1729:10, 1849:1, 1850:2, 1888:25, 1889:22, 1895:11, 1916:14</p> <p><b>explained</b> [5] - 1731:10, 1769:15, 1854:24, 1890:1</p> <p><b>explaining</b> [1] - 1841:8</p> <p><b>explanation</b> [7] - 1794:13, 1802:21, 1841:16, 1896:24, 1897:12, 1904:4, 1904:11</p>
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<p><b>explicitly</b> <sup>[4]</sup> - 1684:9, 1687:14, 1707:5, 1725:6</p> <p><b>exploited</b> <sup>[1]</sup> - 1797:22</p> <p><b>explosion</b> <sup>[1]</sup> - 1774:14</p> <p><b>exposed</b> <sup>[5]</sup> - 1789:7, 1791:14, 1791:24, 1792:10, 1799:7</p> <p><b>exposure</b> <sup>[4]</sup> - 1660:20, 1661:4, 1662:12, 1775:2</p> <p><b>expound</b> <sup>[1]</sup> - 1868:6</p> <p><b>express</b> <sup>[2]</sup> - 1744:9, 1758:2</p> <p><b>Express</b> <sup>[1]</sup> - 1759:17</p> <p><b>expressed</b> <sup>[2]</sup> - 1734:11, 1763:24</p> <p><b>extended</b> <sup>[1]</sup> - 1779:17</p> <p><b>extension</b> <sup>[2]</sup> - 1700:16, 1755:3</p> <p><b>extensive</b> <sup>[2]</sup> - 1731:9, 1739:10</p> <p><b>extent</b> <sup>[17]</sup> - 1647:14, 1653:19, 1656:15, 1671:9, 1671:10, 1704:24, 1705:1, 1705:7, 1714:9, 1721:8, 1735:23, 1738:17, 1765:22, 1793:22, 1842:15, 1861:13, 1863:23</p> <p><b>extra</b> <sup>[1]</sup> - 1775:20</p> <p><b>extraordinarily</b> <sup>[1]</sup> - 1643:5</p> <p><b>extreme</b> <sup>[1]</sup> - 1901:22</p> <p><b>extremely</b> <sup>[4]</sup> - 1680:11, 1841:5, 1870:12, 1909:7</p> <p><b>eye</b> <sup>[6]</sup> - 1661:7, 1661:10, 1723:22, 1864:21, 1884:5, 1905:10</p> <p><b>eyewitness</b> <sup>[1]</sup> - 1817:21</p>	<p>1845:12, 1845:24, 1846:2, 1847:11</p> <p><b>faced</b> <sup>[1]</sup> - 1646:6</p> <p><b>facilities</b> <sup>[3]</sup> - 1660:1, 1660:17, 1672:19</p> <p><b>facility</b> <sup>[5]</sup> - 1654:16, 1654:18, 1756:11, 1834:21, 1858:9</p> <p><b>facsimile</b> <sup>[1]</sup> - 1915:23</p> <p><b>Fact</b> <sup>[11]</sup> - 1673:1, 1892:16, 1893:22, 1894:5, 1914:17, 1920:7, 1921:12, 1926:22, 1926:25, 1931:4, 1931:6</p> <p><b>fact</b> <sup>[37]</sup> - 1642:7, 1648:19, 1654:14, 1668:19, 1676:9, 1687:12, 1689:19, 1706:17, 1712:12, 1721:25, 1723:16, 1732:2, 1732:14, 1762:16, 1764:3, 1764:7, 1764:21, 1765:25, 1802:14, 1804:14, 1804:25, 1817:17, 1831:25, 1833:5, 1837:4, 1839:15, 1846:9, 1846:14, 1857:7, 1868:21, 1872:7, 1872:23, 1873:13, 1874:7, 1894:4, 1919:8, 1926:16</p> <p><b>factor</b> <sup>[7]</sup> - 1690:1, 1853:5, 1853:18, 1853:19, 1854:5, 1854:8, 1871:12</p> <p><b>factors</b> <sup>[8]</sup> - 1816:20, 1816:23, 1852:19, 1853:1, 1853:2, 1854:24, 1854:25, 1857:23</p> <p><b>facts</b> <sup>[8]</sup> - 1657:3, 1723:10, 1745:10, 1772:10, 1836:12, 1903:1, 1920:19, 1928:1</p> <p><b>factual</b> <sup>[5]</sup> - 1669:6, 1713:16, 1720:5, 1721:22, 1865:20</p> <p><b>factually</b> <sup>[1]</sup> - 1721:20</p> <p><b>failure</b> <sup>[22]</sup> - 1758:20, 1759:20, 1759:21, 1788:3, 1788:5, 1788:13, 1793:12, 1794:19, 1812:9, 1812:10, 1812:21, 1812:24, 1812:25, 1816:3, 1817:10,</p>	<p>1818:19, 1832:5, 1832:6, 1832:8, 1832:13, 1832:23</p> <p><b>failures</b> <sup>[12]</sup> - 1758:3, 1759:19, 1775:7, 1775:15, 1778:19, 1778:20, 1799:10, 1816:8, 1816:10, 1816:18, 1817:17, 1819:5</p> <p><b>fair</b> <sup>[7]</sup> - 1712:18, 1712:22, 1795:7, 1807:21, 1846:23, 1847:5, 1917:24</p> <p><b>fairly</b> <sup>[8]</sup> - 1685:4, 1725:16, 1794:25, 1800:11, 1801:22, 1829:25, 1831:3, 1883:23</p> <p><b>fairness</b> <sup>[1]</sup> - 1839:14</p> <p><b>Faith</b> <sup>[12]</sup> - 1637:6, 1639:3, 1726:6, 1726:8, 1726:13, 1726:21, 1727:5, 1729:3, 1729:18, 1729:21, 1848:10, 1848:16</p> <p><b>falling</b> <sup>[1]</sup> - 1788:16</p> <p><b>Falls</b> <sup>[12]</sup> - 1666:6, 1680:17, 1745:4, 1828:12, 1833:4, 1833:6, 1834:3, 1834:15, 1834:20, 1835:5, 1835:13, 1854:3</p> <p><b>false</b> <sup>[6]</sup> - 1839:16, 1839:18, 1839:21, 1839:22, 1840:11, 1846:3</p> <p><b>familiar</b> <sup>[27]</sup> - 1682:23, 1683:21, 1683:24, 1684:1, 1684:23, 1709:9, 1732:3, 1746:2, 1746:5, 1747:3, 1747:14, 1754:18, 1754:20, 1754:25, 1755:4, 1773:22, 1773:24, 1796:19, 1797:25, 1812:16, 1815:3, 1815:7, 1821:12, 1822:13, 1880:17, 1901:13, 1907:8</p> <p><b>familiarity</b> <sup>[1]</sup> - 1899:5</p> <p><b>familiarize</b> <sup>[1]</sup> - 1683:2</p> <p><b>families</b> <sup>[3]</sup> - 1849:9, 1853:25, 1874:24</p> <p><b>family</b> <sup>[2]</sup> - 1850:13, 1853:8</p>	<p><b>famous</b> <sup>[1]</sup> - 1709:11</p> <p><b>far</b> <sup>[22]</sup> - 1642:1, 1642:17, 1645:20, 1663:8, 1665:9, 1711:17, 1711:23, 1715:7, 1722:18, 1724:16, 1742:19, 1749:14, 1807:12, 1807:22, 1818:23, 1829:9, 1830:21, 1879:9, 1880:10, 1881:6, 1900:2, 1915:15</p> <p><b>farm</b> <sup>[2]</sup> - 1664:17, 1833:6</p> <p><b>Farm</b> <sup>[1]</sup> - 1636:19</p> <p><b>farmers</b> <sup>[3]</sup> - 1711:10, 1742:3, 1742:14</p> <p><b>FAS</b> <sup>[1]</sup> - 1854:9</p> <p><b>fashion</b> <sup>[1]</sup> - 1655:17</p> <p><b>fast</b> <sup>[1]</sup> - 1788:20</p> <p><b>faster</b> <sup>[1]</sup> - 1870:23</p> <p><b>fate</b> <sup>[2]</sup> - 1807:10, 1808:4</p> <p><b>father</b> <sup>[1]</sup> - 1709:8</p> <p><b>fault</b> <sup>[1]</sup> - 1759:4</p> <p><b>FBI</b> <sup>[1]</sup> - 1901:10</p> <p><b>fear</b> <sup>[1]</sup> - 1859:16</p> <p><b>feasible</b> <sup>[1]</sup> - 1877:3</p> <p><b>features</b> <sup>[1]</sup> - 1819:11</p> <p><b>fed</b> <sup>[1]</sup> - 1828:8</p> <p><b>Federal</b> <sup>[4]</sup> - 1718:13, 1720:16, 1722:21, 1747:3</p> <p><b>federal</b> <sup>[22]</sup> - 1693:14, 1712:15, 1718:11, 1718:18, 1720:2, 1736:16, 1736:17, 1736:18, 1737:4, 1737:7, 1741:4, 1741:10, 1741:24, 1870:9, 1897:15, 1917:13, 1927:8, 1927:9, 1927:11, 1927:20, 1927:23</p> <p><b>federally</b> <sup>[1]</sup> - 1881:13</p> <p><b>Federation</b> <sup>[1]</sup> - 1902:21</p> <p><b>feedback</b> <sup>[1]</sup> - 1725:14</p> <p><b>feet</b> <sup>[13]</sup> - 1662:5, 1663:23, 1790:19, 1790:23, 1791:2, 1827:14, 1827:24, 1830:18, 1836:8, 1837:6, 1837:9, 1883:2</p> <p><b>felt</b> <sup>[2]</sup> - 1850:2, 1872:18</p> <p><b>females</b> <sup>[1]</sup> - 1854:16</p> <p><b>Fernandez</b> <sup>[2]</sup> -</p>	<p>1636:11, 1636:13</p> <p><b>fetal</b> <sup>[2]</sup> - 1854:9</p> <p><b>fetus</b> <sup>[1]</sup> - 1662:22</p> <p><b>few</b> <sup>[8]</sup> - 1691:16, 1748:20, 1768:11, 1829:3, 1861:23, 1890:17, 1912:21, 1917:4</p> <p><b>fiberoptic</b> <sup>[1]</sup> - 1900:8</p> <p><b>FIGEN</b> <sup>[1]</sup> - 1633:14</p> <p><b>Figien's</b> <sup>[1]</sup> - 1841:20</p> <p><b>field</b> <sup>[3]</sup> - 1808:15, 1851:4, 1895:14</p> <p><b>fight</b> <sup>[1]</sup> - 1742:9</p> <p><b>fighter</b> <sup>[1]</sup> - 1698:12</p> <p><b>fighting</b> <sup>[1]</sup> - 1709:14</p> <p><b>figure</b> <sup>[5]</sup> - 1641:12, 1795:13, 1810:23, 1841:6, 1905:24</p> <p><b>figured</b> <sup>[1]</sup> - 1905:20</p> <p><b>figures</b> <sup>[1]</sup> - 1666:7</p> <p><b>file</b> <sup>[6]</sup> - 1648:13, 1652:17, 1677:5, 1844:4, 1890:4, 1897:3</p> <p><b>filed</b> <sup>[6]</sup> - 1676:4, 1714:8, 1888:17, 1896:11, 1902:20, 1915:18</p> <p><b>files</b> <sup>[1]</sup> - 1796:15</p> <p><b>film</b> <sup>[2]</sup> - 1775:4, 1775:5</p> <p><b>Final</b> <sup>[4]</sup> - 1811:5, 1811:9, 1897:16, 1917:15</p> <p><b>final</b> <sup>[13]</sup> - 1649:6, 1668:21, 1674:12, 1684:23, 1692:6, 1764:15, 1804:17, 1882:6, 1902:18, 1923:22, 1924:1, 1924:8, 1929:17</p> <p><b>finally</b> <sup>[2]</sup> - 1657:6, 1805:18</p> <p><b>Findings</b> <sup>[8]</sup> - 1892:16, 1893:22, 1894:5, 1914:17, 1920:6, 1921:12, 1926:25, 1931:6</p> <p><b>findings</b> <sup>[2]</sup> - 1894:4, 1919:16</p> <p><b>fine</b> <sup>[6]</sup> - 1650:18, 1675:24, 1758:1, 1803:16, 1844:18, 1906:25</p> <p><b>finish</b> <sup>[3]</sup> - 1645:20, 1651:19, 1753:15</p> <p><b>finished</b> <sup>[2]</sup> - 1753:16, 1760:9</p> <p><b>fire</b> <sup>[1]</sup> - 1772:2</p>
<b>F</b>				
<p><b>F-35A</b> <sup>[1]</sup> - 1698:12</p> <p><b>F.J</b> <sup>[1]</sup> - 1635:6</p> <p><b>F1</b> <sup>[1]</sup> - 1636:22</p> <p><b>F2</b> <sup>[1]</sup> - 1636:23</p> <p><b>face</b> <sup>[2]</sup> - 1744:11, 1853:12</p> <p><b>Facebook</b> <sup>[8]</sup> - 1839:7, 1839:21, 1845:3, 1845:4,</p>				



<b>Fires</b> [1] - 1849:11 <b>fires</b> [1] - 1849:13 <b>firm</b> [5] - 1653:3, 1681:23, 1681:24, 1682:3, 1920:13 <b>firmly</b> [1] - 1673:5 <b>first</b> [43] - 1642:10, 1648:7, 1651:17, 1658:25, 1659:3, 1662:14, 1665:4, 1680:21, 1709:7, 1709:9, 1734:25, 1745:21, 1761:5, 1782:14, 1787:9, 1801:4, 1826:1, 1832:19, 1842:16, 1843:9, 1843:14, 1845:14, 1845:18, 1847:2, 1851:4, 1851:5, 1856:18, 1856:20, 1856:21, 1864:6, 1865:8, 1872:2, 1872:5, 1872:15, 1874:5, 1874:16, 1881:4, 1898:24, 1905:24, 1911:23, 1916:17, 1916:21, 1928:7 <b>firstly</b> [1] - 1725:10 <b>Fish</b> [1] - 1715:5 <b>fishing</b> [2] - 1713:10, 1714:23 <b>five</b> [11] - 1641:20, 1641:21, 1656:7, 1656:9, 1672:22, 1681:24, 1709:19, 1717:24, 1797:1, 1797:3, 1886:17 <b>five-minute</b> [1] - 1886:17 <b>five-state</b> [1] - 1717:24 <b>fixing</b> [1] - 1833:9 <b>flags</b> [1] - 1850:16 <b>flat</b> [2] - 1794:24, 1797:20 <b>flawed</b> [2] - 1685:25, 1688:2 <b>flesh</b> [1] - 1725:22 <b>fleshed</b> [1] - 1725:23 <b>flexed</b> [1] - 1781:11 <b>flexibility</b> [2] - 1652:4, 1783:21 <b>flexible</b> [1] - 1783:3 <b>flight</b> [1] - 1781:14 <b>flip</b> [1] - 1644:11 <b>flipped</b> [1] - 1683:7 <b>Flo</b> [3] - 1635:13, 1933:7, 1933:10 <b>floated</b> [1] - 1772:7	<b>floating</b> [1] - 1834:10 <b>flood</b> [1] - 1816:25 <b>flooding</b> [1] - 1796:13 <b>floodplain</b> [1] - 1800:3 <b>floor</b> [2] - 1885:9, 1885:17 <b>flow</b> [9] - 1657:20, 1660:11, 1666:12, 1762:1, 1790:9, 1792:2, 1792:3, 1792:4, 1831:7 <b>flowing</b> [1] - 1792:5 <b>flows</b> [5] - 1666:18, 1786:13, 1795:22, 1798:22, 1804:4 <b>focus</b> [3] - 1754:5, 1804:1, 1923:9 <b>focused</b> [1] - 1754:3 <b>focusing</b> [1] - 1790:4 <b>folks</b> [4] - 1782:3, 1782:14, 1838:24, 1932:21 <b>follicles</b> [1] - 1854:21 <b>follow</b> [22] - 1693:17, 1694:4, 1694:5, 1694:17, 1698:24, 1749:11, 1750:5, 1759:15, 1779:2, 1780:8, 1780:12, 1780:14, 1780:17, 1835:21, 1838:2, 1873:9, 1875:7, 1875:9, 1876:5, 1882:18, 1886:9, 1924:5 <b>follow-on</b> [1] - 1838:2 <b>follow-ons</b> [1] - 1780:8 <b>follow-up</b> [3] - 1698:24, 1779:2, 1835:21 <b>followed</b> [2] - 1651:17, 1921:9 <b>following</b> [2] - 1837:19, 1873:22 <b>food</b> [1] - 1661:5 <b>foods</b> [2] - 1662:16, 1679:3 <b>foot</b> [4] - 1820:18, 1822:8, 1824:1, 1824:9 <b>FOR</b> [1] - 1633:5 <b>forbidden</b> [2] - 1779:9, 1779:12 <b>forbidding</b> [1] - 1875:25 <b>forces</b> [1] - 1861:13 <b>foreign</b> [1] - 1743:2 <b>foreseeable</b> [1] - 1863:8	<b>forever</b> [1] - 1827:24 <b>forfeited</b> [1] - 1869:20 <b>forge</b> [1] - 1753:20 <b>forget</b> [1] - 1892:17 <b>forgetting</b> [1] - 1889:3 <b>forgot</b> [2] - 1811:16, 1907:17 <b>forgotten</b> [1] - 1887:9 <b>Fork</b> [1] - 1789:23 <b>form</b> [5] - 1657:17, 1746:19, 1789:6, 1797:22, 1925:6 <b>formally</b> [1] - 1811:17 <b>formation</b> [3] - 1662:25, 1787:19, 1823:14 <b>Formation</b> [3] - 1787:17, 1793:3, 1801:8 <b>formations</b> [2] - 1792:20, 1792:22 <b>formed</b> [4] - 1742:20, 1850:7, 1850:18, 1850:20 <b>former</b> [2] - 1766:8, 1800:3 <b>forms</b> [2] - 1797:15, 1880:22 <b>formula</b> [1] - 1844:9 <b>fort</b> [1] - 1858:16 <b>Fort</b> [7] - 1715:12, 1850:18, 1850:20, 1851:8, 1858:15, 1859:16, 1867:21 <b>forth</b> [5] - 1705:3, 1798:4, 1799:24, 1803:21, 1816:22 <b>forthcoming</b> [1] - 1819:6 <b>forward</b> [12] - 1654:3, 1701:14, 1706:16, 1714:16, 1725:22, 1729:13, 1731:16, 1756:1, 1838:20, 1855:24, 1909:22, 1910:13 <b>forwarded</b> [1] - 1766:8 <b>foster</b> [4] - 1853:19, 1853:23, 1853:25, 1854:1 <b>foundation</b> [31] - 1656:25, 1671:6, 1728:6, 1730:18, 1730:25, 1731:4, 1731:9, 1732:17, 1740:11, 1745:16, 1802:20, 1803:13, 1804:22, 1805:14, 1818:20, 1818:24, 1819:7, 1820:22, 1821:1, 1821:2, 1822:11, 1823:7, 1823:10, 1824:13, 1825:22, 1836:11, 1836:19, 1836:21, 1864:7, 1903:4 <b>foundation's</b> [1] - 1731:11 <b>foundational</b> [2] - 1821:11, 1865:24 <b>founder</b> [1] - 1680:19 <b>founders</b> [1] - 1851:4 <b>founding</b> [1] - 1850:6 <b>four</b> [13] - 1641:20, 1642:2, 1644:24, 1658:16, 1699:24, 1700:3, 1700:4, 1700:13, 1700:14, 1703:15, 1709:7, 1788:22, 1869:1 <b>four-day</b> [1] - 1788:22 <b>Fox</b> [6] - 1791:10, 1791:11, 1792:7, 1792:10, 1792:14, 1793:3 <b>frame</b> [1] - 1659:13 <b>frankly</b> [2] - 1643:2, 1837:17 <b>Frederick</b> [3] - 1782:20, 1782:21, 1932:15 <b>free</b> [2] - 1834:9 <b>freedoms</b> [1] - 1744:9 <b>frequent</b> [1] - 1817:8 <b>friction</b> [1] - 1793:15 <b>Friday</b> [1] - 1674:23 <b>friendly</b> [4] - 1642:11, 1694:25, 1695:5, 1872:20 <b>frightening</b> [1] - 1857:20 <b>Frisch</b> [1] - 1636:21 <b>front</b> [7] - 1644:19, 1693:11, 1695:25, 1707:10, 1762:6, 1789:19, 1905:9 <b>frost</b> [3] - 1790:19, 1790:24, 1791:2 <b>frozen</b> [2] - 1790:12, 1790:15 <b>FSEIS</b> [33] - 1658:19, 1660:9, 1660:24, 1664:5, 1664:12, 1665:13, 1665:17, 1665:20, 1667:17, 1672:18, 1673:7, 1685:3, 1685:4, 1685:7, 1685:24, 1686:22, 1687:1, 1687:9, 1687:11, 1691:19, 1693:17, 1 8 1694:6, 1695:11, 1733:21, 1734:2, 1735:14, 1735:25, 1736:5, 1736:13, 1738:7, 1738:14, 1882:23 <b>Ft</b> [6] - 1666:18, 1715:17, 1734:15, 1734:23, 1798:23, 1799:2 <b>full</b> [3] - 1841:19, 1854:10, 1910:8 <b>fully</b> [1] - 1709:17 <b>fumes</b> [2] - 1659:5, 1678:21 <b>function</b> [1] - 1883:8 <b>functions</b> [1] - 1702:14 <b>funds</b> [1] - 1833:22 <b>furthermore</b> [1] - 1766:20 <b>future</b> [3] - 1775:14, 1797:23, 1881:15
<b>G</b>		
<b>gain</b> [1] - 1720:13 <b>gained</b> [1] - 1696:6 <b>gallons</b> [2] - 1664:6, 1664:23 <b>Game</b> [1] - 1715:4 <b>game</b> [2] - 1712:22, 1846:13 <b>games</b> [1] - 1846:15 <b>garden</b> [1] - 1708:15 <b>GARY</b> [1] - 1633:15 <b>Gary</b> [9] - 1720:8, 1782:17, 1838:12, 1845:4, 1845:8, 1845:13, 1845:19, 1870:3, 1926:14 <b>gas</b> [6] - 1771:6, 1771:7, 1774:7, 1776:1, 1887:18 <b>Gas</b> [2] - 1755:6, 1911:10 <b>gasoline</b> [2] - 1827:16, 1833:19 <b>gathered</b> [1] - 1766:9 <b>gathering</b> [4] - 1713:11, 1714:25, 1759:11, 1850:3 <b>gauges</b> [1] - 1900:1 <b>Gazette</b> [1] - 1667:24 <b>gears</b> [1] - 1855:9 <b>gender</b> [1] - 1854:16 <b>gendered</b> [2] - 1854:15, 1858:8		

<p><b>general</b> <sup>[21]</sup> - 1655:13, 1655:14, 1656:7, 1656:9, 1671:14, 1704:22, 1730:2, 1786:9, 1787:7, 1792:18, 1794:20, 1794:24, 1810:21, 1831:3, 1863:14, 1883:16, 1883:17, 1883:21, 1899:6, 1899:21, 1929:9</p> <p><b>generally</b> <sup>[12]</sup> - 1683:20, 1683:24, 1685:22, 1697:21, 1725:1, 1777:1, 1787:21, 1812:16, 1813:19, 1813:21, 1823:20, 1880:7</p> <p><b>generations</b> <sup>[3]</sup> - 1743:24, 1744:12, 1855:24</p> <p><b>genocide</b> <sup>[2]</sup> - 1710:5, 1743:14</p> <p><b>gentleman</b> <sup>[1]</sup> - 1896:17</p> <p><b>geographically</b> <sup>[1]</sup> - 1801:23</p> <p><b>geologic</b> <sup>[4]</sup> - 1787:6, 1807:7, 1817:19, 1832:25</p> <p><b>Geological</b> <sup>[3]</sup> - 1796:11, 1808:16, 1831:6</p> <p><b>geological</b> <sup>[9]</sup> - 1784:23, 1785:2, 1792:21, 1794:4, 1803:18, 1817:22, 1818:2, 1818:23, 1911:4</p> <p><b>geologist</b> <sup>[1]</sup> - 1807:5</p> <p><b>geology</b> <sup>[12]</sup> - 1784:25, 1787:25, 1789:1, 1792:9, 1794:18, 1797:11, 1799:4, 1801:6, 1807:8, 1817:22, 1819:1, 1822:13</p> <p><b>geotech</b> <sup>[1]</sup> - 1812:17</p> <p><b>Ghost</b> <sup>[6]</sup> - 1636:7, 1702:11, 1702:14, 1753:6, 1877:24, 1932:14</p> <p><b>Giles</b> <sup>[2]</sup> - 1636:11, 1636:13</p> <p><b>girls</b> <sup>[4]</sup> - 1856:17, 1857:1, 1857:17, 1857:18</p> <p><b>girth</b> <sup>[1]</sup> - 1776:17</p> <p><b>given</b> <sup>[19]</sup> - 1642:3, 1642:7, 1642:24,</p>	<p>1659:20, 1697:18, 1709:5, 1710:4, 1711:5, 1713:7, 1714:20, 1719:5, 1724:13, 1725:15, 1753:13, 1755:20, 1756:12, 1770:6, 1806:8, 1904:14</p> <p><b>glaciers</b> <sup>[1]</sup> - 1795:4</p> <p><b>glasses</b> <sup>[2]</sup> - 1841:5, 1908:22</p> <p><b>Glendive</b> <sup>[2]</sup> - 1669:11, 1670:16</p> <p><b>goal</b> <sup>[2]</sup> - 1661:13, 1685:18</p> <p><b>goodness</b> <sup>[1]</sup> - 1692:21</p> <p><b>Google</b> <sup>[1]</sup> - 1903:14</p> <p><b>Gough</b> <sup>[18]</sup> - 1638:8, 1638:21, 1639:5, 1639:19, 1640:5, 1679:8, 1699:11, 1699:14, 1751:3, 1771:18, 1815:20, 1815:24, 1863:18, 1884:14, 1903:21, 1903:24, 1922:9, 1925:22</p> <p><b>GOUGH</b> <sup>[28]</sup> - 1679:9, 1699:13, 1700:25, 1751:4, 1771:19, 1815:21, 1815:23, 1817:14, 1818:18, 1819:15, 1860:16, 1860:19, 1863:20, 1864:11, 1865:22, 1866:1, 1884:15, 1903:23, 1904:23, 1922:10, 1922:13, 1923:3, 1924:5, 1924:18, 1925:3, 1925:8, 1925:23, 1926:5</p> <p><b>Goulet</b> <sup>[4]</sup> - 1635:3, 1643:3, 1712:12, 1716:21</p> <p><b>governing</b> <sup>[2]</sup> - 1715:13, 1873:2</p> <p><b>government</b> <sup>[27]</sup> - 1719:11, 1720:1, 1720:10, 1720:16, 1720:22, 1720:24, 1722:8, 1732:6, 1732:18, 1733:6, 1734:24, 1739:21, 1740:5, 1741:3, 1741:8, 1741:9, 1743:7, 1748:17, 1748:22, 1749:16, 1751:14</p>	<p><b>Government</b> <sup>[1]</sup> - 1720:16</p> <p><b>government-to-government</b> <sup>[6]</sup> - 1719:11, 1720:10, 1720:22, 1720:24, 1749:16, 1751:14</p> <p><b>gradient</b> <sup>[20]</sup> - 1662:2, 1662:5, 1792:3, 1792:6, 1821:8, 1822:15, 1822:21, 1823:20, 1827:14, 1827:20, 1830:16, 1830:24, 1830:25, 1831:3, 1836:10, 1837:1, 1837:2, 1837:9, 1837:16</p> <p><b>gradual</b> <sup>[1]</sup> - 1829:22</p> <p><b>grain</b> <sup>[1]</sup> - 1799:16</p> <p><b>grains</b> <sup>[1]</sup> - 1801:10</p> <p><b>Grand</b> <sup>[5]</sup> - 1666:13, 1786:15, 1789:24, 1815:3, 1815:7</p> <p><b>grandchildren</b> <sup>[2]</sup> - 1744:3, 1857:14</p> <p><b>granddaughters</b> <sup>[1]</sup> - 1871:5</p> <p><b>grandfather</b> <sup>[3]</sup> - 1709:6, 1743:20, 1757:9</p> <p><b>grandfathers</b> <sup>[1]</sup> - 1709:5</p> <p><b>grandmother</b> <sup>[3]</sup> - 1854:13, 1855:24, 1871:4</p> <p><b>grant</b> <sup>[2]</sup> - 1648:10, 1705:14</p> <p><b>granted</b> <sup>[6]</sup> - 1643:13, 1650:13, 1650:14, 1717:7, 1740:16, 1808:24</p> <p><b>granting</b> <sup>[3]</sup> - 1706:11, 1768:6, 1811:10</p> <p><b>graphically</b> <sup>[1]</sup> - 1664:21</p> <p><b>grassroots</b> <sup>[1]</sup> - 1849:9</p> <p><b>gravel</b> <sup>[3]</sup> - 1790:1, 1798:3, 1800:5</p> <p><b>gravity</b> <sup>[1]</sup> - 1792:4</p> <p><b>great</b> <sup>[10]</sup> - 1652:18, 1701:10, 1702:18, 1706:15, 1708:13, 1708:24, 1743:8, 1743:10, 1744:10, 1932:19</p> <p><b>Great</b> <sup>[1]</sup> - 1705:2</p> <p><b>greater</b> <sup>[3]</sup> - 1664:5, 1719:6, 1818:14</p> <p><b>greatest</b> <sup>[1]</sup> - 1859:13</p>	<p><b>greatly</b> <sup>[2]</sup> - 1817:1, 1839:22</p> <p><b>green</b> <sup>[4]</sup> - 1787:16, 1800:13, 1800:16, 1834:19</p> <p><b>greet</b> <sup>[1]</sup> - 1752:4</p> <p><b>Greg</b> <sup>[1]</sup> - 1633:18</p> <p><b>Gregory</b> <sup>[1]</sup> - 1774:6</p> <p><b>grew</b> <sup>[2]</sup> - 1708:17, 1710:21</p> <p><b>ground</b> <sup>[9]</sup> - 1714:10, 1772:7, 1774:13, 1790:12, 1790:15, 1790:23, 1824:1, 1832:24, 1862:17</p> <p><b>grounds</b> <sup>[7]</sup> - 1671:5, 1716:18, 1721:17, 1730:23, 1731:5, 1746:13, 1760:21</p> <p><b>groundwater</b> <sup>[13]</sup> - 1661:24, 1662:9, 1665:16, 1784:23, 1790:9, 1792:6, 1805:19, 1809:6, 1823:14, 1823:18, 1823:22, 1830:19, 1831:7</p> <p><b>group</b> <sup>[5]</sup> - 1661:1, 1780:15, 1891:1, 1895:14, 1911:1</p> <p><b>groups</b> <sup>[2]</sup> - 1849:15, 1849:16</p> <p><b>grow</b> <sup>[1]</sup> - 1707:25</p> <p><b>grown</b> <sup>[1]</sup> - 1857:22</p> <p><b>guarantee</b> <sup>[2]</sup> - 1648:16, 1832:4</p> <p><b>guaranteed</b> <sup>[1]</sup> - 1710:19</p> <p><b>guess</b> <sup>[35]</sup> - 1646:8, 1646:25, 1647:19, 1651:4, 1705:11, 1714:11, 1716:2, 1720:3, 1769:14, 1782:12, 1783:2, 1792:16, 1803:13, 1820:25, 1823:9, 1825:23, 1826:8, 1830:3, 1838:4, 1844:16, 1847:2, 1850:16, 1872:21, 1876:15, 1878:21, 1896:10, 1916:16, 1917:23, 1924:9, 1924:20, 1925:17, 1928:5, 1929:1, 1929:16, 1930:1</p> <p><b>guidance</b> <sup>[4]</sup> - 1739:25, 1740:20, 1848:25, 1849:2</p> <p><b>guide</b> <sup>[1]</sup> - 1856:13</p>	<p><b>guided</b> <sup>[1]</sup> - 1749:21 1 9</p> <p><b>guidelines</b> <sup>[1]</sup> - 1693:17</p> <p><b>Gulf</b> <sup>[12]</sup> - 1754:16, 1755:2, 1764:17, 1764:24, 1765:1, 1765:15, 1766:13, 1766:14, 1766:19, 1767:10, 1898:1</p> <p><b>gully</b> <sup>[1]</sup> - 1795:2</p> <p><b>Gustafson</b> <sup>[1]</sup> - 1633:20</p> <p><b>guys</b> <sup>[2]</sup> - 1656:24, 1671:2</p>
				<b>H</b>
				<p><b>habit</b> <sup>[1]</sup> - 1889:2</p> <p><b>hacked</b> <sup>[1]</sup> - 1907:13</p> <p><b>hair</b> <sup>[1]</sup> - 1854:21</p> <p><b>half</b> <sup>[10]</sup> - 1641:20, 1642:2, 1642:5, 1643:4, 1644:19, 1796:10, 1808:13, 1818:4, 1916:17, 1916:21</p> <p><b>halfway</b> <sup>[1]</sup> - 1728:5</p> <p><b>hall</b> <sup>[1]</sup> - 1745:3</p> <p><b>hallway</b> <sup>[1]</sup> - 1647:20</p> <p><b>handed</b> <sup>[2]</sup> - 1717:16, 1738:3</p> <p><b>handful</b> <sup>[1]</sup> - 1745:5</p> <p><b>handled</b> <sup>[1]</sup> - 1741:16</p> <p><b>handling</b> <sup>[1]</sup> - 1657:14</p> <p><b>hang</b> <sup>[1]</sup> - 1843:13</p> <p><b>HANSON</b> <sup>[52]</sup> - 1633:15, 1646:2, 1646:4, 1649:21, 1653:9, 1655:19, 1655:25, 1656:2, 1658:7, 1669:1, 1680:9, 1712:23, 1760:6, 1773:9, 1773:17, 1773:22, 1774:1, 1775:18, 1776:4, 1776:9, 1776:14, 1776:18, 1777:6, 1777:10, 1777:15, 1777:22, 1777:24, 1778:3, 1778:12, 1784:5, 1784:12, 1831:11, 1832:14, 1832:20, 1833:2, 1833:13, 1833:21, 1834:2, 1834:11, 1835:7, 1835:17, 1838:13, 1840:7, 1840:10, 1840:17, 1841:4,</p>

1841:22, 1845:11, 1845:19, 1847:24, 1873:8, 1886:6 <b>Hanson</b> [17] - 1638:17, 1646:3, 1647:25, 1649:19, 1760:5, 1773:6, 1773:8, 1778:16, 1779:2, 1782:17, 1831:10, 1841:12, 1842:3, 1845:2, 1847:20, 1873:7 <b>happy</b> [2] - 1761:21, 1919:3 <b>hard</b> [12] - 1651:13, 1670:18, 1695:20, 1696:24, 1775:5, 1775:12, 1779:8, 1856:15, 1889:3, 1900:15, 1902:10, 1904:18 <b>hardest</b> [1] - 1695:19 <b>Harding</b> [4] - 1786:12, 1789:20, 1867:16, 1867:17 <b>harmful</b> [1] - 1662:20 <b>HARTER</b> [27] - 1679:11, 1698:4, 1698:24, 1699:10, 1751:22, 1772:1, 1772:4, 1772:14, 1819:21, 1820:7, 1820:25, 1822:1, 1822:16, 1823:16, 1824:24, 1825:1, 1825:23, 1826:3, 1826:8, 1826:17, 1837:21, 1842:1, 1884:20, 1905:13, 1928:14, 1928:16, 1930:8 <b>Harter</b> [18] - 1635:24, 1638:8, 1638:16, 1638:21, 1640:7, 1679:10, 1698:2, 1751:21, 1771:25, 1819:19, 1819:20, 1820:8, 1837:21, 1884:19, 1905:4, 1905:12, 1928:13, 1930:9 <b>Harter's</b> [1] - 1665:11 <b>Hayward</b> [3] - 1785:14, 1828:13, 1834:24 <b>hazardous</b> [1] - 1794:12 <b>HDD</b> [3] - 1770:14, 1879:6, 1885:11 <b>head</b> [2] - 1667:24,	1707:10 <b>headline</b> [1] - 1903:14 <b>headquartered</b> [1] - 1681:23 <b>healing</b> [2] - 1856:24, 1871:12 <b>Health</b> [2] - 1658:14, 1660:17 <b>health</b> [31] - 1654:11, 1654:19, 1658:9, 1658:11, 1658:16, 1660:1, 1660:21, 1661:3, 1662:19, 1663:3, 1667:23, 1669:9, 1670:11, 1670:12, 1672:15, 1672:25, 1673:2, 1673:11, 1673:12, 1673:14, 1682:3, 1696:11, 1696:15, 1703:12, 1722:7, 1747:6, 1750:24, 1751:6, 1751:7, 1827:2, 1852:15 <b>healthcare</b> [1] - 1660:17 <b>healthy</b> [1] - 1687:19 <b>hear</b> [14] - 1649:3, 1667:13, 1670:4, 1689:13, 1707:7, 1712:12, 1795:18, 1810:25, 1826:9, 1832:18, 1876:13, 1908:4, 1926:6, 1933:9 <b>heard</b> [22] - 1648:24, 1667:11, 1669:7, 1688:25, 1689:14, 1732:25, 1746:22, 1764:18, 1787:10, 1821:10, 1836:23, 1836:24, 1836:25, 1850:15, 1857:8, 1896:18, 1898:3, 1898:5, 1904:4, 1907:10, 1915:8, 1922:15 <b>hearing</b> [28] - 1641:2, 1641:3, 1641:25, 1642:8, 1643:8, 1643:12, 1644:1, 1646:22, 1657:18, 1661:20, 1677:5, 1682:5, 1724:7, 1725:20, 1743:6, 1787:11, 1803:6, 1809:5, 1810:16, 1841:18, 1841:19, 1841:21, 1847:10, 1847:19, 1847:20,	1905:6, 1920:17, 1933:13 <b>Hearing</b> [1] - 1633:8 <b>hearings</b> [8] - 1644:8, 1721:8, 1762:16, 1839:9, 1839:15, 1853:10, 1853:21, 1872:20 <b>hears</b> [1] - 1781:16 <b>hearsay</b> [32] - 1656:22, 1667:10, 1668:7, 1668:23, 1668:25, 1669:1, 1669:3, 1669:5, 1669:12, 1670:2, 1670:23, 1671:5, 1671:7, 1671:8, 1671:15, 1671:21, 1676:2, 1705:8, 1727:8, 1727:14, 1727:16, 1727:19, 1728:18, 1730:19, 1731:14, 1760:21, 1761:17, 1763:9, 1765:3, 1766:5, 1767:1, 1767:4 <b>Heart</b> [3] - 1849:7, 1849:24, 1850:12 <b>heart</b> [2] - 1652:8, 1710:7 <b>hearts</b> [1] - 1709:14 <b>heavy</b> [3] - 1715:6, 1774:10, 1816:18 <b>Heidi</b> [3] - 1635:4, 1635:8, 1643:4 <b>held</b> [5] - 1634:1, 1729:18, 1747:20, 1748:1, 1916:3 <b>Hell</b> [3] - 1787:17, 1787:21, 1788:2 <b>help</b> [10] - 1643:6, 1654:2, 1786:2, 1792:22, 1797:9, 1806:7, 1821:22, 1839:19, 1901:22, 1901:23 <b>helpful</b> [5] - 1724:13, 1797:10, 1803:9, 1843:11, 1909:7 <b>helping</b> [1] - 1823:10 <b>HEREBY</b> [1] - 1934:8 <b>hero</b> [1] - 1709:12 <b>high</b> [14] - 1662:13, 1662:17, 1678:22, 1715:14, 1804:15, 1810:17, 1823:4, 1828:16, 1853:24, 1854:2, 1854:5, 1854:19, 1857:12, 1882:24	<b>higher</b> [5] - 1710:13, 1800:4, 1836:8, 1837:6, 1905:22 <b>highest</b> [3] - 1673:9, 1709:1, 1853:2 <b>highlighting</b> [1] - 1739:3 <b>highly</b> [2] - 1713:21, 1796:23 <b>hillier</b> [1] - 1824:8 <b>hills</b> [3] - 1789:5, 1801:2, 1801:5 <b>Hills</b> [16] - 1705:2, 1742:8, 1742:12, 1791:10, 1791:11, 1792:8, 1792:10, 1792:14, 1793:3, 1795:23, 1801:8, 1801:13, 1822:20, 1822:24, 1823:19, 1831:1 <b>himself</b> [1] - 1846:1 <b>hip</b> [4] - 1838:22, 1839:2, 1840:18 <b>hired</b> [3] - 1754:25, 1759:24, 1776:2 <b>historical</b> [3] - 1850:14, 1850:16, 1858:12 <b>historically</b> [1] - 1861:14 <b>history</b> [8] - 1742:6, 1850:11, 1852:22, 1858:10, 1859:2, 1859:5, 1859:12, 1872:6 <b>hit</b> [1] - 1655:24 <b>Hodgkinson</b> [1] - 1757:10 <b>hold</b> [4] - 1647:10, 1758:11, 1844:1, 1909:16 <b>holder</b> [1] - 1866:4 <b>holders</b> [1] - 1869:17 <b>holds</b> [1] - 1899:2 <b>hole</b> [1] - 1885:13 <b>Holt</b> [1] - 1654:9 <b>home</b> [8] - 1708:9, 1708:14, 1708:21, 1709:15, 1710:23, 1711:16, 1725:24, 1743:21 <b>homeland</b> [2] - 1742:16, 1849:17 <b>homelands</b> [1] - 1744:2 <b>homeless</b> [1] - 1744:10 <b>homelessness</b> [1] - 1708:10	<b>homes</b> [2] - 1742:8, 20 1854:1 <b>hone</b> [1] - 1651:13 <b>honestly</b> [3] - 1644:11, 1651:14, 1728:13 <b>honorable</b> [1] - 1782:20 <b>hope</b> [6] - 1696:13, 1751:7, 1791:5, 1798:24, 1834:22 <b>hopefully</b> [2] - 1803:9, 1806:1 <b>horizontal</b> [3] - 1802:7, 1814:25, 1885:8 <b>hospital</b> [2] - 1656:24, 1671:2 <b>host</b> [1] - 1668:6 <b>hosted</b> [1] - 1849:25 <b>hot</b> [1] - 1777:2 <b>hour</b> [10] - 1646:13, 1651:12, 1780:23, 1796:10, 1796:13, 1796:16, 1808:14, 1867:20, 1920:14 <b>hours</b> [13] - 1642:14, 1643:3, 1643:5, 1646:17, 1646:18, 1667:4, 1667:7, 1796:17, 1813:17, 1867:22, 1868:15, 1869:1 <b>house</b> [2] - 1740:24, 1874:13 <b>housed</b> [2] - 1872:2, 1872:15 <b>housekeeping</b> [1] - 1811:17 <b>housing</b> [1] - 1776:19 <b>HP09</b> [1] - 1642:8 <b>HP09-001</b> [3] - 1633:5, 1641:6, 1692:7 <b>HP14-001</b> [3] - 1633:4, 1641:4, 1724:8 <b>Hudson</b> [14] - 1635:11, 1640:3, 1894:21, 1895:23, 1895:25, 1896:3, 1910:13, 1910:17, 1910:19, 1912:24, 1914:10, 1915:8, 1922:14, 1932:8 <b>huge</b> [1] - 1647:12 <b>Hughes</b> [13] - 1635:12, 1639:16, 1877:1, 1886:19, 1886:23, 1886:25, 1888:24, 1889:14, 1893:11, 1896:10,
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<p>1907:5, 1908:7, 1916:11</p> <p><b>Hughes's</b> [1] - 1844:3</p> <p><b>human</b> [6] - 1661:3, 1663:3, 1663:7, 1678:12, 1734:20, 1869:2</p> <p><b>humanity</b> [1] - 1859:1</p> <p><b>humans</b> [1] - 1829:9</p> <p><b>hundreds</b> [1] - 1711:20</p> <p><b>hunger</b> [1] - 1708:11</p> <p><b>hungry</b> [1] - 1744:11</p> <p><b>hunting</b> [2] - 1713:9, 1714:23</p> <p><b>hurts</b> [1] - 1840:19</p> <p><b>hydraulic</b> [5] - 1798:12, 1822:21, 1823:20, 1823:21, 1830:25</p> <p><b>hydro</b> [5] - 1758:3, 1759:18, 1775:7, 1775:15, 1778:19</p> <p><b>hydrocarbons</b> [2] - 1827:9, 1834:9</p> <p><b>hydrological</b> [1] - 1798:1</p> <p><b>hydrologically</b> [1] - 1798:9</p> <p><b>hydrology</b> [7] - 1787:10, 1787:11, 1787:13, 1789:1, 1797:11, 1799:4, 1801:7</p>	<p><b>Illinois</b> [3] - 1887:1, 1910:20, 1911:6</p> <p><b>illustrate</b> [1] - 1806:7</p> <p><b>illustrative</b> [3] - 1806:3, 1806:4, 1806:18</p> <p><b>imagine</b> [1] - 1790:11</p> <p><b>immediate</b> [2] - 1775:14, 1868:25</p> <p><b>immediately</b> [4] - 1712:9, 1780:6, 1781:3, 1812:13</p> <p><b>immunity</b> [1] - 1662:20</p> <p><b>Impact</b> [5] - 1684:24, 1722:20, 1733:12, 1733:14, 1739:13</p> <p><b>impact</b> [14] - 1658:9, 1685:6, 1696:1, 1696:4, 1712:8, 1715:4, 1722:19, 1770:12, 1805:10, 1844:17, 1882:24, 1883:6, 1883:20</p> <p><b>impacted</b> [2] - 1658:17, 1850:14</p> <p><b>impacts</b> [22] - 1670:12, 1672:5, 1688:5, 1696:15, 1712:5, 1712:19, 1712:20, 1714:1, 1723:1, 1734:12, 1734:24, 1736:17, 1737:5, 1738:17, 1738:18, 1738:23, 1739:5, 1747:4, 1747:6, 1852:14, 1883:3</p> <p><b>impair</b> [4] - 1654:18, 1672:24, 1673:14, 1827:2</p> <p><b>impeach</b> [2] - 1656:16, 1864:8</p> <p><b>impinged</b> [1] - 1857:13</p> <p><b>IMPLAN</b> [15] - 1685:5, 1685:8, 1685:11, 1685:14, 1685:18, 1685:20, 1685:22, 1685:24, 1686:1, 1686:5, 1686:8, 1686:11, 1686:14, 1686:19, 1688:8</p> <p><b>implies</b> [1] - 1717:8</p> <p><b>importance</b> [3] - 1672:18, 1734:22, 1869:14</p> <p><b>important</b> [15] - 1645:13, 1645:17, 1660:3, 1662:1,</p>	<p>1675:12, 1703:18, 1703:21, 1704:8, 1774:15, 1788:1, 1791:11, 1791:13, 1807:22, 1850:3, 1921:25</p> <p><b>impose</b> [2] - 1695:5, 1695:6</p> <p><b>imposed</b> [4] - 1917:13, 1918:6, 1919:9, 1921:20</p> <p><b>impossible</b> [4] - 1814:1, 1814:5, 1814:10, 1814:12</p> <p><b>imprisoned</b> [1] - 1859:16</p> <p><b>improper</b> [2] - 1730:25, 1864:7</p> <p><b>IN</b> [2] - 1633:4, 1633:5</p> <p><b>in-line</b> [1] - 1775:13</p> <p><b>in-service</b> [1] - 1759:19</p> <p><b>inappropriate</b> [1] - 1864:10</p> <p><b>inches</b> [1] - 1788:16</p> <p><b>incidences</b> [5] - 1663:19, 1779:19, 1780:1, 1780:5</p> <p><b>incident</b> [5] - 1754:5, 1763:3, 1763:20, 1780:2, 1780:3</p> <p><b>incidents</b> [2] - 1816:18, 1819:10</p> <p><b>include</b> [9] - 1687:5, 1688:17, 1688:20, 1703:9, 1739:11, 1812:12, 1888:16, 1894:7, 1914:21</p> <p><b>included</b> [9] - 1655:6, 1674:6, 1676:16, 1694:21, 1694:22, 1695:15, 1701:19, 1911:11, 1931:6</p> <p><b>includes</b> [2] - 1668:6, 1738:6</p> <p><b>including</b> [3] - 1664:14, 1674:2, 1757:2</p> <p><b>inclusion</b> [1] - 1756:3</p> <p><b>income</b> [1] - 1699:22</p> <p><b>incomplete</b> [2] - 1696:25, 1804:23</p> <p><b>incorrect</b> [6] - 1692:10, 1692:24, 1693:23, 1694:7, 1695:12, 1697:1</p> <p><b>incorrectly</b> [1] - 1831:17</p> <p><b>increase</b> [1] - 1698:21</p> <p><b>increased</b> [2] -</p>	<p>1663:4, 1819:5</p> <p><b>increases</b> [1] - 1816:20</p> <p><b>incremental</b> [3] - 1780:1, 1780:2, 1780:3</p> <p><b>indeed</b> [2] - 1652:4, 1763:11</p> <p><b>indefinitely</b> [1] - 1663:25</p> <p><b>independent</b> [11] - 1776:5, 1776:7, 1808:8, 1808:19, 1819:1, 1897:19, 1898:6, 1898:19, 1899:2, 1899:3, 1922:18</p> <p><b>India</b> [2] - 1777:21, 1906:14</p> <p><b>Indian</b> [17] - 1660:16, 1710:25, 1712:15, 1726:4, 1732:9, 1743:1, 1853:20, 1856:4, 1862:5, 1863:5, 1879:23, 1880:13, 1881:7, 1881:14, 1881:24, 1882:2</p> <p><b>Indians</b> [3] - 1711:10, 1742:3, 1742:19</p> <p><b>indicate</b> [6] - 1658:20, 1663:5, 1697:18, 1737:20, 1860:15, 1880:7</p> <p><b>indicated</b> [11] - 1699:19, 1816:1, 1816:5, 1830:16, 1843:5, 1843:20, 1895:21, 1897:21, 1914:19, 1931:5, 1931:14</p> <p><b>indicates</b> [2] - 1673:10, 1881:22</p> <p><b>indicating</b> [1] - 1842:12</p> <p><b>indicating</b> [1] - 1795:23</p> <p><b>indication</b> [3] - 1870:22, 1903:7, 1907:1</p> <p><b>indigenous</b> [1] - 1734:22</p> <p><b>Indigenous</b> [8] - 1670:10, 1678:8, 1750:21, 1771:16, 1815:16, 1844:25, 1866:16, 1884:10</p> <p><b>indirect</b> [1] - 1685:15</p> <p><b>Individual</b> [5] - 1867:5, 1867:10,</p>	<p>1869:8, 1870:3, 1926:14</p> <p><b>individual</b> [5] - 1708:24, 1733:5, 1826:24, 1852:15, 1896:23</p> <p><b>individuals</b> [6] - 1658:15, 1702:13, 1733:9, 1756:5, 1757:4, 1877:23</p> <p><b>induced</b> [1] - 1685:15</p> <p><b>indulge</b> [1] - 1906:22</p> <p><b>indulgence</b> [1] - 1753:8</p> <p><b>indulging</b> [1] - 1925:21</p> <p><b>industries</b> [1] - 1779:25</p> <p><b>industry</b> [2] - 1659:15, 1930:22</p> <p><b>infiltrate</b> [1] - 1799:21</p> <p><b>infiltration</b> [3] - 1790:16, 1791:18, 1791:25</p> <p><b>infinitely</b> [1] - 1864:19</p> <p><b>inflammatory</b> [1] - 1846:3</p> <p><b>influenced</b> [4] - 1713:10, 1713:12, 1714:24, 1714:25</p> <p><b>influences</b> [1] - 1715:3</p> <p><b>influx</b> [1] - 1855:6</p> <p><b>information</b> [34] - 1646:13, 1646:15, 1655:5, 1655:6, 1658:3, 1659:21, 1660:14, 1669:23, 1671:19, 1675:11, 1675:14, 1675:15, 1685:19, 1696:23, 1725:7, 1726:23, 1729:23, 1758:4, 1759:11, 1766:7, 1766:9, 1766:11, 1775:20, 1803:8, 1824:19, 1825:16, 1891:20, 1895:20, 1895:23, 1895:24, 1907:11, 1915:10, 1915:13, 1930:20</p> <p><b>informed</b> [1] - 1660:13</p> <p><b>infringe</b> [1] - 1715:6</p> <p><b>ingested</b> [1] - 1672:6</p> <p><b>ingestion</b> [1] - 1661:4</p> <p><b>ingests</b> [1] - 1678:12</p> <p><b>inhabitants</b> [2] - 1654:19, 1827:3</p> <p><b>inhalation</b> [1] - 1661:5</p> <p><b>inhaling</b> [1] - 1659:5</p>
<b>I</b>				
<p><b>I.D</b> [2] - 1896:21, 1896:23</p> <p><b>idea</b> [7] - 1696:18, 1794:5, 1821:9, 1858:9, 1869:6, 1885:18, 1897:1</p> <p><b>identical</b> [4] - 1894:24, 1895:2, 1895:6, 1916:11</p> <p><b>identification</b> [2] - 1887:24, 1911:14</p> <p><b>identified</b> [3] - 1658:15, 1674:13, 1736:7</p> <p><b>identify</b> [3] - 1684:9, 1760:23</p> <p><b>identifying</b> [1] - 1652:1</p> <p><b>ignore</b> [2] - 1688:3, 1688:18</p> <p><b>lhanktonwan</b> [1] - 1851:18</p>				



<p><b>initial</b> <sup>[1]</sup> - 1678:22</p> <p><b>injured</b> <sup>[1]</sup> - 1840:18</p> <p><b>injury</b> <sup>[1]</sup> - 1842:2</p> <p><b>input</b> <sup>[4]</sup> - 1685:9, 1688:9, 1722:16, 1722:25</p> <p><b>input-output</b> <sup>[2]</sup> - 1685:9, 1688:9</p> <p><b>inquiry</b> <sup>[1]</sup> - 1713:16</p> <p><b>inside</b> <sup>[2]</sup> - 1774:12, 1856:21</p> <p><b>insignificant</b> <sup>[2]</sup> - 1883:12, 1918:10</p> <p><b>inspect</b> <sup>[2]</sup> - 1755:16, 1755:18</p> <p><b>inspected</b> <sup>[1]</sup> - 1776:2</p> <p><b>inspecting</b> <sup>[1]</sup> - 1755:15</p> <p><b>inspection</b> <sup>[9]</sup> - 1754:24, 1755:16, 1759:16, 1765:20, 1765:24, 1766:1, 1775:12, 1775:13, 1776:3</p> <p><b>inspections</b> <sup>[2]</sup> - 1765:14, 1898:1</p> <p><b>inspector</b> <sup>[1]</sup> - 1758:3</p> <p><b>instability</b> <sup>[3]</sup> - 1788:15, 1793:13, 1793:17</p> <p><b>installed</b> <sup>[2]</sup> - 1822:7, 1862:21</p> <p><b>instance</b> <sup>[8]</sup> - 1644:1, 1646:9, 1757:21, 1759:1, 1762:6, 1810:8, 1900:24, 1901:24</p> <p><b>instead</b> <sup>[2]</sup> - 1729:20, 1909:23</p> <p><b>instruct</b> <sup>[1]</sup> - 1659:25</p> <p><b>instructed</b> <sup>[1]</sup> - 1685:20</p> <p><b>instructions</b> <sup>[2]</sup> - 1660:4, 1756:13</p> <p><b>instructs</b> <sup>[1]</sup> - 1658:22</p> <p><b>insufficient</b> <sup>[2]</sup> - 1802:20, 1823:12</p> <p><b>intake</b> <sup>[9]</sup> - 1665:14, 1665:15, 1669:10, 1669:18, 1670:15, 1672:19, 1813:11, 1828:19, 1837:2</p> <p><b>intakes</b> <sup>[3]</sup> - 1659:14, 1667:21, 1672:14</p> <p><b>integral</b> <sup>[1]</sup> - 1703:18</p> <p><b>integrate</b> <sup>[1]</sup> - 1729:16</p> <p><b>Integrated</b> <sup>[1]</sup> - 1636:8</p> <p><b>integrity</b> <sup>[11]</sup> - 1807:13, 1810:11, 1831:19, 1833:3,</p>	<p>1887:7, 1887:19, 1887:22, 1895:15, 1911:1, 1911:12, 1924:22</p> <p><b>intend</b> <sup>[2]</sup> - 1668:9, 1844:13</p> <p><b>intends</b> <sup>[1]</sup> - 1760:13</p> <p><b>intense</b> <sup>[2]</sup> - 1817:9, 1818:9</p> <p><b>intensified</b> <sup>[1]</sup> - 1872:19</p> <p><b>intensifies</b> <sup>[1]</sup> - 1872:13</p> <p><b>intensity</b> <sup>[1]</sup> - 1788:20</p> <p><b>intentionally</b> <sup>[1]</sup> - 1865:6</p> <p><b>intents</b> <sup>[1]</sup> - 1847:15</p> <p><b>interact</b> <sup>[1]</sup> - 1724:21</p> <p><b>interactions</b> <sup>[1]</sup> - 1726:3</p> <p><b>interchangeable</b> <sup>[1]</sup> - 1659:11</p> <p><b>interest</b> <sup>[7]</sup> - 1709:16, 1725:20, 1727:18, 1727:23, 1728:19, 1731:6, 1920:25</p> <p><b>interested</b> <sup>[2]</sup> - 1823:10, 1839:6</p> <p><b>interesting</b> <sup>[4]</sup> - 1647:25, 1666:10, 1719:14, 1831:14</p> <p><b>intermediate</b> <sup>[1]</sup> - 1803:25</p> <p><b>intermittent</b> <sup>[1]</sup> - 1815:9</p> <p><b>internal</b> <sup>[1]</sup> - 1793:15</p> <p><b>internally</b> <sup>[1]</sup> - 1929:10</p> <p><b>international</b> <sup>[5]</sup> - 1660:25, 1734:19, 1734:21, 1735:1, 1742:25</p> <p><b>interpose</b> <sup>[3]</sup> - 1655:8, 1711:22, 1865:11</p> <p><b>interpretation</b> <sup>[2]</sup> - 1693:15, 1693:16</p> <p><b>interpreted</b> <sup>[1]</sup> - 1825:17</p> <p><b>interpreting</b> <sup>[1]</sup> - 1865:21</p> <p><b>interrelate</b> <sup>[1]</sup> - 1789:2</p> <p><b>interrelated</b> <sup>[1]</sup> - 1819:2</p> <p><b>interrelation</b> <sup>[1]</sup> - 1819:3</p> <p><b>interrelationship</b> <sup>[1]</sup> - 1801:6</p> <p><b>Interrogatories</b> <sup>[1]</sup> - 1664:8</p> <p><b>Interrogatory</b> <sup>[2]</sup> -</p>	<p>1635:18, 1635:20</p> <p><b>interrupt</b> <sup>[4]</sup> - 1657:20, 1730:6, 1730:7, 1789:17</p> <p><b>intersect</b> <sup>[1]</sup> - 1820:13</p> <p><b>InterTribal</b> <sup>[6]</sup> - 1699:14, 1751:4, 1771:19, 1815:24, 1884:15, 1903:24</p> <p><b>intertwined</b> <sup>[1]</sup> - 1857:6</p> <p><b>intervenes</b> <sup>[1]</sup> - 1850:13</p> <p><b>INTERVENOR</b> <sup>[1]</sup> - 1638:2</p> <p><b>Intervenor</b> <sup>[18]</sup> - 1641:20, 1641:23, 1673:22, 1697:4, 1698:1, 1701:1, 1748:8, 1769:25, 1812:3, 1826:24, 1842:5, 1863:17, 1866:8, 1867:10, 1869:8, 1870:3, 1870:20, 1926:14</p> <p><b>Intervenors</b> <sup>[13]</sup> - 1642:18, 1677:14, 1680:3, 1683:15, 1694:10, 1780:11, 1780:13, 1860:12, 1861:4, 1867:5, 1888:14, 1888:21, 1912:10</p> <p><b>intervention</b> <sup>[1]</sup> - 1741:24</p> <p><b>interview</b> <sup>[3]</sup> - 1674:3, 1847:20, 1847:25</p> <p><b>interviews</b> <sup>[2]</sup> - 1674:4, 1847:22</p> <p><b>intimately</b> <sup>[1]</sup> - 1680:14</p> <p><b>intricacies</b> <sup>[1]</sup> - 1899:7</p> <p><b>introduce</b> <sup>[8]</sup> - 1654:1, 1695:8, 1711:5, 1728:1, 1730:20, 1735:17, 1806:17, 1877:13</p> <p><b>introduced</b> <sup>[1]</sup> - 1758:17</p> <p><b>introduction</b> <sup>[3]</sup> - 1653:14, 1683:11, 1704:17</p> <p><b>intrusion</b> <sup>[4]</sup> - 1742:9, 1872:19, 1901:7, 1901:25</p> <p><b>investigation</b> <sup>[1]</sup> - 1833:9</p> <p><b>invited</b> <sup>[3]</sup> - 1851:8, 1851:10, 1851:15</p>	<p><b>involved</b> <sup>[19]</sup> - 1644:22, 1647:15, 1659:12, 1684:6, 1703:10, 1732:19, 1757:15, 1762:5, 1779:18, 1785:11, 1785:15, 1833:5, 1833:8, 1834:7, 1835:11, 1835:14, 1851:6, 1872:8, 1917:9</p> <p><b>involvement</b> <sup>[2]</sup> - 1833:11, 1859:13</p> <p><b>involving</b> <sup>[3]</sup> - 1663:20, 1682:4, 1854:4</p> <p><b>Iowa</b> <sup>[3]</sup> - 1663:11, 1674:2, 1676:15</p> <p><b>irony</b> <sup>[1]</sup> - 1653:18</p> <p><b>irreconcilable</b> <sup>[1]</sup> - 1644:9</p> <p><b>irrelevance</b> <sup>[1]</sup> - 1817:11</p> <p><b>irrelevant</b> <sup>[8]</sup> - 1713:18, 1719:14, 1719:23, 1721:3, 1723:12, 1861:18, 1919:23, 1919:24</p> <p><b>irritating</b> <sup>[2]</sup> - 1677:1, 1677:2</p> <p><b>isolated</b> <sup>[2]</sup> - 1867:23, 1867:25</p> <p><b>issue</b> <sup>[32]</sup> - 1645:5, 1652:8, 1654:2, 1711:23, 1712:1, 1712:7, 1713:23, 1716:14, 1719:8, 1719:22, 1720:3, 1720:25, 1721:11, 1724:14, 1729:20, 1736:24, 1742:1, 1750:6, 1779:3, 1825:11, 1850:24, 1854:15, 1856:1, 1861:19, 1864:14, 1865:12, 1869:6, 1881:24, 1883:20, 1908:6, 1927:16</p> <p><b>issued</b> <sup>[6]</sup> - 1641:6, 1777:8, 1852:4, 1883:16, 1897:16, 1920:1</p> <p><b>ISSUED</b> <sup>[1]</sup> - 1633:5</p> <p><b>Issues</b> <sup>[1]</sup> - 1636:10</p> <p><b>issues</b> <sup>[52]</sup> - 1644:22, 1645:16, 1651:10, 1657:4, 1682:2, 1682:4, 1688:12, 1692:1, 1693:24, 1693:25, 1696:12,</p>	<p>1704:25, 1705:4, 1713:22, 1714:9, 1717:5, 1720:4, 1720:5, 1720:21, 1721:3, 1721:15, 1721:18, 1730:1, 1735:24, 1750:25, 1751:6, 1755:12, 1756:15, 1756:18, 1756:20, 1756:24, 1757:1, 1757:2, 1757:5, 1757:22, 1758:6, 1758:15, 1764:3, 1765:18, 1765:23, 1766:3, 1770:7, 1770:10, 1770:11, 1784:3, 1785:11, 1785:12, 1793:10, 1799:19, 1854:22, 1864:3, 1897:24</p> <p><b>items</b> <sup>[8]</sup> - 1647:6, 1655:20, 1655:22, 1655:25, 1656:4, 1668:5, 1705:16, 1762:11</p> <p><b>itself</b> <sup>[9]</sup> - 1735:10, 1754:6, 1794:8, 1798:13, 1804:9, 1832:15, 1846:2, 1853:3, 1859:5</p>
				<b>J</b>
				<p><b>jacket</b> <sup>[1]</sup> - 1910:2</p> <p><b>James</b> <sup>[2]</sup> - 1705:9, 1807:3</p> <p><b>January</b> <sup>[1]</sup> - 1667:25</p> <p><b>Jennifer</b> <sup>[4]</sup> - 1749:7, 1848:8, 1848:16, 1873:24</p> <p><b>Jenny</b> <sup>[5]</sup> - 1635:11, 1640:3, 1894:21, 1895:23, 1910:19</p> <p><b>jeopardy</b> <sup>[1]</sup> - 1646:22</p> <p><b>jet</b> <sup>[1]</sup> - 1698:12</p> <p><b>Jim</b> <sup>[1]</sup> - 1691:16</p> <p><b>job</b> <sup>[8]</sup> - 1649:7, 1649:9, 1649:10, 1700:17, 1839:23, 1887:4, 1887:16, 1910:25</p> <p><b>jobs</b> <sup>[20]</sup> - 1685:12, 1685:14, 1685:15, 1685:21, 1686:11, 1686:14, 1686:17, 1696:5, 1696:6, 1696:7, 1696:15, 1697:20, 1699:22, 1699:24, 1700:1,</p>

1700:4, 1700:13, 1700:14 <b>John</b> [10] - 1633:17, 1635:24, 1643:15, 1650:5, 1663:2, 1665:11, 1820:8, 1837:21, 1844:14, 1877:15 <b>Johnson</b> [2] - 1851:9, 1851:14 <b>joined</b> [1] - 1911:10 <b>joining</b> [1] - 1774:9 <b>joins</b> [1] - 1799:3 <b>joint</b> [2] - 1776:15, 1776:17 <b>Jon</b> [3] - 1635:4, 1635:7, 1639:12 <b>Jones</b> [2] - 1636:11, 1636:13 <b>Jose</b> [2] - 1636:11, 1636:13 <b>judgment</b> [1] - 1854:10 <b>judicial</b> [19] - 1715:11, 1715:16, 1715:19, 1715:21, 1715:25, 1716:11, 1716:18, 1716:24, 1717:3, 1717:7, 1735:13, 1735:14, 1736:2, 1738:5, 1739:20, 1740:2, 1740:4, 1740:6, 1740:19 <b>July</b> [1] - 1633:9 <b>jump</b> [2] - 1805:5, 1867:3 <b>juncture</b> [4] - 1646:9, 1646:10, 1847:3, 1847:25 <b>June</b> [6] - 1690:9, 1692:5, 1692:14, 1693:1, 1785:8, 1920:2 <b>jurisdiction</b> [8] - 1660:15, 1741:24, 1863:1, 1868:13, 1870:6, 1870:7, 1870:16, 1876:2 <b>jurisdictions</b> [1] - 1741:22 <b>Justice</b> [1] - 1853:10 <b>justice</b> [2] - 1740:1, 1862:15 <b>justifiable</b> [1] - 1676:9 <b>justifies</b> [1] - 1695:12	1658:13, 1672:22, 1688:13 <b>Kantana</b> [1] - 1768:20 <b>Karen</b> [3] - 1633:18, 1688:21, 1933:7 <b>Katlyn</b> [3] - 1633:20, 1641:16, 1652:14 <b>Kearney</b> [1] - 1633:19 <b>keep</b> [9] - 1714:17, 1714:19, 1723:17, 1778:9, 1778:10, 1782:3, 1824:21, 1905:9, 1932:22 <b>keeping</b> [4] - 1654:13, 1742:11, 1742:12, 1905:8 <b>kept</b> [1] - 1659:18 <b>Kerri</b> [2] - 1636:11, 1636:13 <b>Kerri-Ann</b> [2] - 1636:11, 1636:13 <b>Kevin</b> [6] - 1636:15, 1638:5, 1651:25, 1659:6, 1681:11, 1681:18 <b>key</b> [1] - 1757:25 <b>Keystone</b> [88] - 1636:10, 1636:18, 1641:5, 1641:7, 1641:22, 1658:19, 1660:12, 1673:24, 1683:12, 1683:22, 1684:25, 1687:1, 1687:16, 1690:5, 1690:19, 1691:4, 1691:11, 1691:16, 1692:4, 1692:12, 1692:25, 1693:7, 1693:13, 1693:16, 1694:3, 1712:6, 1714:2, 1719:17, 1722:16, 1729:7, 1736:20, 1738:16, 1738:24, 1744:22, 1745:9, 1745:18, 1747:2, 1755:25, 1756:2, 1757:8, 1760:11, 1767:10, 1768:7, 1772:5, 1773:13, 1775:23, 1777:7, 1778:1, 1778:18, 1779:4, 1782:5, 1808:1, 1808:5, 1808:9, 1808:19, 1808:23, 1809:2, 1809:6, 1809:12, 1809:25, 1810:4, 1810:17, 1811:6, 1811:10, 1814:24, 1822:7,	1824:17, 1825:2, 1844:5, 1860:3, 1864:15, 1864:24, 1872:2, 1872:5, 1872:16, 1872:24, 1873:16, 1874:5, 1874:16, 1889:13, 1912:7, 1912:16, 1914:20, 1925:15, 1927:12, 1927:20, 1927:22 <b>KEYSTONE</b> [2] - 1633:4, 1633:6 <b>Keystone's</b> [4] - 1642:3, 1693:25, 1810:11, 1913:10 <b>KFH</b> [2] - 1792:10, 1792:14 <b>Kimberly</b> [5] - 1670:9, 1678:7, 1750:21, 1844:25, 1866:16 <b>kind</b> [21] - 1645:9, 1675:22, 1683:18, 1686:9, 1701:24, 1720:3, 1754:4, 1780:23, 1794:6, 1831:5, 1843:2, 1847:10, 1848:22, 1859:3, 1868:24, 1872:16, 1875:25, 1882:23, 1897:11, 1902:8, 1919:15 <b>Kinder</b> [3] - 1757:23, 1758:1, 1759:17 <b>kinds</b> [4] - 1682:2, 1688:10, 1732:20, 1816:17 <b>King</b> [1] - 1635:5 <b>knowing</b> [1] - 1902:9 <b>knowledge</b> [30] - 1669:6, 1669:15, 1671:11, 1718:8, 1724:19, 1724:22, 1726:3, 1726:7, 1761:11, 1761:16, 1762:12, 1762:18, 1763:8, 1763:16, 1764:2, 1765:2, 1778:4, 1782:10, 1800:23, 1818:12, 1822:17, 1825:22, 1826:2, 1826:4, 1862:5, 1892:11, 1899:6, 1907:14, 1928:17, 1928:19 <b>known</b> [10] - 1663:13, 1663:15, 1663:16, 1664:13, 1713:20, 1757:25, 1762:3, 1829:11, 1852:20,	1901:13 <b>knows</b> [7] - 1821:4, 1821:6, 1821:7, 1821:8, 1865:23, 1921:3 <b>Korea</b> [1] - 1709:13 <b>Kothari</b> [13] - 1635:3, 1643:2, 1643:15, 1650:5, 1756:7, 1756:20, 1756:21, 1756:23, 1757:6, 1843:8, 1843:16, 1844:13, 1908:7 <b>Kothari's</b> [3] - 1876:22, 1890:6, 1907:24 <b>Kp</b> [1] - 1800:14 <b>Kristen</b> [2] - 1633:17, 1931:2 <b>KRISTIE</b> [1] - 1633:14 <b>KXL</b> [18] - 1660:19, 1663:22, 1666:14, 1746:11, 1747:2, 1747:22, 1754:6, 1754:10, 1754:16, 1755:1, 1755:2, 1755:5, 1755:23, 1758:16, 1759:25, 1770:9, 1899:13, 1901:1 <b>Kyoto</b> [1] - 1734:20	1790:17, 1804:10, 23 1816:3, 1817:24, 1818:19, 1819:5 <b>landlines</b> [1] - 1900:15 <b>landowners</b> [2] - 1727:2, 1742:2 <b>Landowners/ Witnesses</b> [1] - 1636:18 <b>lands</b> [8] - 1710:23, 1712:16, 1712:21, 1717:18, 1718:21, 1719:7, 1719:8 <b>landslide</b> [4] - 1794:20, 1810:17, 1817:10, 1829:21 <b>language</b> [4] - 1779:13, 1849:7, 1881:21, 1916:23 <b>Laramie</b> [4] - 1715:12, 1715:17, 1734:15, 1734:23 <b>large</b> [14] - 1661:23, 1664:4, 1664:6, 1665:13, 1703:6, 1703:9, 1800:7, 1802:1, 1817:1, 1832:8, 1852:6, 1855:3, 1855:6, 1855:22 <b>largely</b> [1] - 1902:15 <b>larger</b> [3] - 1665:15, 1789:11, 1796:2 <b>last</b> [23] - 1644:19, 1648:3, 1648:4, 1648:23, 1760:8, 1765:8, 1767:6, 1800:24, 1805:25, 1817:17, 1817:23, 1818:1, 1826:13, 1835:10, 1854:4, 1872:21, 1872:22, 1890:7, 1898:10, 1902:24, 1908:13, 1924:19, 1932:8 <b>late</b> [1] - 1743:10 <b>lately</b> [1] - 1671:24 <b>Law</b> [3] - 1654:15, 1683:19, 1731:13 <b>law</b> [28] - 1673:2, 1705:25, 1710:22, 1714:4, 1715:18, 1716:25, 1718:18, 1719:24, 1720:11, 1721:11, 1721:18, 1721:25, 1723:15, 1737:4, 1737:7, 1737:8, 1741:10, 1853:20, 1857:25,
<b>K</b>			<b>L</b>	
<b>Kalamazoo</b> [3] -			<b>lab</b> [1] - 1828:2 <b>labeled</b> [1] - 1674:17 <b>labor</b> [1] - 1682:2 <b>laboratory</b> [1] - 1661:17 <b>labs</b> [1] - 1828:2 <b>lack</b> [4] - 1656:25, 1671:6, 1734:23, 1779:21 <b>lacking</b> [1] - 1823:8 <b>laid</b> [4] - 1731:9, 1731:11, 1732:16, 1783:18 <b>Lake</b> [2] - 1849:18, 1855:12 <b>Lakota</b> [8] - 1704:6, 1709:21, 1717:23, 1744:13, 1749:3, 1752:5, 1849:15, 1866:3 <b>Lakotas</b> [1] - 1703:24 <b>land</b> [13] - 1704:25, 1709:15, 1710:22, 1711:21, 1733:4, 1733:5, 1743:23,	

1862:6, 1862:12, 1863:3, 1927:9, 1927:11, 1927:21, 1927:23 <b>laws</b> [7] - 1693:14, 1694:5, 1716:17, 1718:10, 1719:18, 1734:18 <b>lawsuit</b> [2] - 1902:20, 1903:8 <b>lawyer</b> [2] - 1745:4, 1814:22 <b>lawyers</b> [1] - 1807:4 <b>lay</b> [12] - 1671:23, 1732:15, 1745:15, 1760:6, 1794:13, 1823:10, 1824:9, 1844:8, 1865:7, 1865:9, 1865:12 <b>layer</b> [6] - 1791:21, 1791:23, 1792:7, 1792:9, 1792:11, 1794:1 <b>layers</b> [1] - 1788:8 <b>laying</b> [2] - 1820:25, 1824:2 <b>Lazor</b> [1] - 1777:8 <b>lead</b> [2] - 1793:17, 1932:14 <b>leader</b> [1] - 1732:19 <b>leaders</b> [2] - 1748:20, 1859:14 <b>leading</b> [4] - 1662:18, 1711:24, 1723:9, 1780:1 <b>leads</b> [3] - 1780:2, 1780:3, 1788:14 <b>leak</b> [17] - 1661:23, 1662:8, 1663:25, 1664:5, 1759:21, 1775:14, 1790:18, 1805:17, 1813:3, 1827:9, 1827:12, 1827:16, 1827:23, 1828:13, 1833:10, 1835:11 <b>leaked</b> [1] - 1785:20 <b>leaks</b> [3] - 1663:23, 1664:3, 1664:10 <b>leaning</b> [1] - 1840:22 <b>learn</b> [1] - 1839:6 <b>learned</b> [5] - 1664:8, 1664:15, 1664:24, 1709:21, 1761:15 <b>learning</b> [1] - 1862:21 <b>least</b> [8] - 1689:15, 1707:15, 1711:18, 1721:22, 1724:17, 1786:9, 1883:23, 1927:4	<b>leave</b> [8] - 1663:7, 1675:1, 1743:22, 1744:20, 1803:7, 1843:8, 1844:15, 1925:25 <b>left</b> [7] - 1641:17, 1641:19, 1759:12, 1800:3, 1819:22, 1840:22, 1843:4 <b>leg</b> [1] - 1872:9 <b>legal</b> [8] - 1644:7, 1692:1, 1717:8, 1720:4, 1720:21, 1721:14, 1752:25, 1865:20 <b>legislation</b> [2] - 1743:15, 1862:24 <b>Legislature</b> [1] - 1713:23 <b>length</b> [5] - 1753:17, 1779:3, 1783:10, 1794:6, 1883:2 <b>lengthy</b> [2] - 1643:5, 1725:20 <b>less</b> [10] - 1642:5, 1644:21, 1791:22, 1795:7, 1795:10, 1797:25, 1799:17, 1804:8, 1813:22, 1816:17 <b>lessen</b> [1] - 1645:16 <b>Letter</b> [2] - 1636:11, 1636:13 <b>letter</b> [3] - 1846:19, 1871:23, 1874:9 <b>letterhead</b> [1] - 1729:12 <b>letters</b> [2] - 1746:23, 1746:25 <b>leukemia</b> [2] - 1661:14, 1662:20 <b>level</b> [20] - 1661:12, 1715:14, 1718:11, 1720:2, 1780:1, 1780:2, 1780:3, 1790:24, 1791:3, 1797:1, 1797:4, 1797:6, 1798:7, 1798:8, 1827:19, 1828:14, 1828:16, 1880:10, 1902:13 <b>levels</b> [4] - 1662:13, 1662:15, 1662:17, 1709:1 <b>Lewis</b> [2] - 1666:1, 1680:20 <b>license</b> [1] - 1911:6 <b>licensed</b> [1] - 1923:17 <b>life</b> [27] - 1673:18, 1673:20, 1688:6,	1688:7, 1688:12, 1688:20, 1694:18, 1694:22, 1695:14, 1695:18, 1696:2, 1696:4, 1696:14, 1696:15, 1703:23, 1703:25, 1704:5, 1704:7, 1708:14, 1709:15, 1715:5, 1742:15, 1744:8, 1852:18, 1855:22, 1856:14, 1856:23 <b>lifelong</b> [1] - 1850:5 <b>lifetime</b> [3] - 1778:10, 1819:6, 1853:13 <b>light</b> [5] - 1706:17, 1712:12, 1774:10, 1789:8, 1800:2 <b>lighter</b> [1] - 1816:19 <b>lightest</b> [1] - 1789:14 <b>likelihood</b> [1] - 1819:4 <b>likelihoods</b> [1] - 1819:10 <b>likely</b> [4] - 1816:5, 1816:17, 1817:9, 1818:13 <b>Limine</b> [1] - 1677:5 <b>limit</b> [4] - 1647:11, 1648:11, 1648:20, 1661:21 <b>limitations</b> [1] - 1643:21 <b>limited</b> [3] - 1642:14, 1643:1, 1873:9 <b>line</b> [21] - 1663:12, 1663:15, 1704:21, 1775:13, 1790:19, 1820:10, 1820:12, 1820:14, 1834:20, 1852:17, 1867:4, 1881:4, 1893:19, 1895:16, 1911:21, 1911:23, 1913:1, 1913:2, 1914:14, 1924:25 <b>line's</b> [1] - 1820:10 <b>lines</b> [5] - 1663:14, 1667:24, 1760:24, 1822:3, 1824:7 <b>lineup</b> [1] - 1783:23 <b>linguistic</b> [2] - 1849:15, 1849:16 <b>lining</b> [1] - 1780:4 <b>liquids</b> [2] - 1662:16, 1887:7 <b>list</b> [13] - 1668:5, 1674:12, 1674:19, 1738:14, 1739:10, 1755:22, 1755:25, 1756:3, 1783:19,	1879:23, 1879:24, 1881:18, 1911:22 <b>listed</b> [2] - 1890:23, 1905:23 <b>listen</b> [1] - 1876:19 <b>listened</b> [1] - 1825:8 <b>listening</b> [6] - 1646:5, 1695:3, 1811:2, 1841:21, 1890:6, 1921:13 <b>lists</b> [4] - 1729:18, 1736:14, 1736:15, 1890:24 <b>litigation</b> [1] - 1682:4 <b>live</b> [9] - 1657:18, 1689:13, 1709:3, 1709:18, 1710:8, 1752:3, 1852:20, 1867:23, 1867:25 <b>lived</b> [6] - 1708:5, 1708:7, 1708:19, 1709:14, 1709:18 <b>lives</b> [1] - 1844:19 <b>living</b> [1] - 1704:1 <b>local</b> [1] - 1660:15 <b>localized</b> [1] - 1789:12 <b>located</b> [1] - 1665:5 <b>locating</b> [1] - 1686:5 <b>location</b> [7] - 1663:22, 1663:24, 1837:1, 1867:10, 1867:15, 1899:24, 1900:3 <b>logs</b> [1] - 1834:8 <b>LONE</b> [15] - 1679:13, 1751:25, 1772:16, 1826:19, 1867:3, 1867:8, 1869:3, 1884:24, 1905:15, 1905:18, 1906:1, 1906:3, 1930:11, 1930:13, 1931:19 <b>Lone</b> [14] - 1639:6, 1639:19, 1640:7, 1679:12, 1751:24, 1751:25, 1772:15, 1772:16, 1826:18, 1867:9, 1884:23, 1905:14, 1930:10, 1931:20 <b>long-term</b> [2] - 1775:12, 1882:24 <b>longstanding</b> [1] - 1732:6 <b>look</b> [35] - 1652:25, 1665:24, 1688:11, 1696:15, 1700:2, 1700:14, 1707:6, 1707:13, 1707:19, 1737:5, 1738:9, 1766:6, 1766:13,	1806:4, 1820:2, 24 1844:6, 1853:17, 1855:23, 1882:23, 1892:4, 1892:15, 1892:23, 1897:14, 1898:10, 1898:23, 1915:3, 1923:6, 1925:25, 1928:24, 1929:23, 1930:3, 1930:6, 1930:25, 1931:1 <b>looked</b> [16] - 1697:20, 1732:3, 1841:13, 1845:20, 1892:2, 1892:3, 1892:7, 1897:11, 1905:25, 1920:5, 1920:8, 1921:14, 1921:15, 1922:24, 1923:16, 1930:22 <b>looking</b> [18] - 1686:10, 1686:13, 1734:3, 1736:18, 1817:25, 1821:16, 1822:2, 1823:3, 1832:25, 1836:13, 1844:10, 1868:1, 1883:1, 1907:1, 1917:10, 1921:12, 1924:21, 1925:1 <b>looks</b> [5] - 1789:22, 1800:16, 1801:22, 1806:20, 1823:2 <b>loss</b> [1] - 1905:6 <b>lost</b> [5] - 1673:16, 1686:17, 1696:7, 1743:16, 1814:7 <b>Lou</b> [1] - 1722:2 <b>low</b> [3] - 1662:24, 1793:15, 1882:25 <b>Lower</b> [1] - 1733:2 <b>lower</b> [4] - 1662:15, 1662:20, 1710:13, 1822:24 <b>LP</b> [2] - 1633:5, 1641:5 <b>lunch</b> [3] - 1781:3, 1783:24, 1784:1 <b>Lynn</b> [2] - 1871:24, 1874:10
<b>M</b>				
<b>ma'am</b> [10] - 1675:7, 1744:20, 1893:17, 1894:9, 1894:11, 1894:18, 1917:7, 1917:11, 1918:18, 1921:4 <b>Madden's</b> [1] - 1673:1				

<b>Magazine</b> <sup>[1]</sup> - 1866:23 <b>magazine</b> <sup>[1]</sup> - 1665:22 <b>magazines</b> <sup>[1]</sup> - 1668:7 <b>magnitude</b> <sup>[2]</sup> - 1644:21, 1813:24 <b>mail</b> <sup>[1]</sup> - 1746:16 <b>mails</b> <sup>[2]</sup> - 1746:23, 1746:25 <b>main</b> <sup>[1]</sup> - 1834:21 <b>maintain</b> <sup>[2]</sup> - 1671:6, 1870:15 <b>maintained</b> <sup>[1]</sup> - 1682:13 <b>major</b> <sup>[9]</sup> - 1658:12, 1711:12, 1780:5, 1786:19, 1797:13, 1799:8, 1801:13, 1802:15, 1813:15 <b>majority</b> <sup>[3]</sup> - 1675:25, 1777:20, 1918:9 <b>maker</b> <sup>[1]</sup> - 1653:21 <b>male</b> <sup>[1]</sup> - 1855:6 <b>man</b> <sup>[20]</sup> - 1849:25, 1850:15, 1850:17, 1850:19, 1850:24, 1851:21, 1852:12, 1854:11, 1857:4, 1858:8, 1858:9, 1859:18, 1862:8, 1867:11, 1867:19, 1871:8, 1874:4, 1874:11, 1874:16, 1874:19 <b>manage</b> <sup>[2]</sup> - 1887:6 <b>management</b> <sup>[15]</sup> - 1659:6, 1755:25, 1756:2, 1757:7, 1757:8, 1770:7, 1770:10, 1810:11, 1887:8, 1911:1, 1911:12, 1913:3, 1918:13, 1920:4, 1920:8 <b>Management</b> <sup>[4]</sup> - 1644:23, 1897:22, 1913:12, 1913:16 <b>manager</b> <sup>[4]</sup> - 1659:22, 1887:3, 1887:4, 1910:24 <b>managers</b> <sup>[1]</sup> - 1763:15 <b>managers'</b> <sup>[1]</sup> - 1674:4 <b>mandatory</b> <sup>[1]</sup> - 1779:13 <b>Manitoba</b> <sup>[1]</sup> - 1775:17	<b>manner</b> <sup>[1]</sup> - 1805:9 <b>manual</b> <sup>[2]</sup> - 1774:8, 1774:21 <b>manually</b> <sup>[1]</sup> - 1774:13 <b>manufactured</b> <sup>[3]</sup> - 1898:16, 1898:21, 1898:25 <b>manufacturing</b> <sup>[1]</sup> - 1898:13 <b>map</b> <sup>[45]</sup> - 1665:22, 1665:24, 1717:18, 1717:20, 1718:5, 1729:15, 1786:5, 1786:6, 1787:6, 1788:25, 1789:9, 1789:12, 1789:18, 1791:5, 1791:6, 1792:15, 1792:22, 1792:25, 1793:1, 1793:2, 1793:22, 1794:4, 1794:5, 1794:7, 1794:8, 1795:21, 1797:9, 1798:14, 1798:25, 1799:25, 1800:10, 1800:22, 1819:21, 1819:22, 1820:8, 1821:15, 1821:20, 1821:22, 1822:2, 1830:15, 1831:4, 1831:6, 1836:5 <b>Maps</b> <sup>[1]</sup> - 1635:7 <b>maps</b> <sup>[6]</sup> - 1786:23, 1787:5, 1821:16, 1831:2, 1832:25 <b>March</b> <sup>[2]</sup> - 1917:23, 1926:17 <b>marked</b> <sup>[13]</sup> - 1682:23, 1704:17, 1716:6, 1717:12, 1733:20, 1735:17, 1738:3, 1811:21, 1811:22, 1821:18, 1877:19, 1887:23, 1911:13 <b>marker</b> <sup>[1]</sup> - 1663:22 <b>married</b> <sup>[1]</sup> - 1752:2 <b>marrow</b> <sup>[2]</sup> - 1662:25, 1663:1 <b>Marshall</b> <sup>[1]</sup> - 1772:7 <b>MARTINEZ</b> <sup>[46]</sup> - 1643:17, 1650:23, 1651:6, 1651:9, 1678:4, 1753:13, 1753:21, 1754:2, 1754:9, 1760:8, 1760:17, 1761:18, 1761:25, 1763:10, 1763:24, 1765:11, 1766:17, 1767:9, 1767:13, 1767:16,	1767:20, 1767:22, 1767:24, 1768:1, 1768:4, 1769:5, 1769:7, 1769:10, 1769:20, 1773:3, 1780:9, 1843:10, 1882:15, 1882:17, 1884:7, 1896:6, 1896:9, 1903:5, 1903:9, 1903:16, 1906:22, 1907:4, 1907:15, 1909:2, 1909:7, 1909:10 <b>Martinez</b> <sup>[14]</sup> - 1638:14, 1639:18, 1639:20, 1643:17, 1646:13, 1650:23, 1678:3, 1750:15, 1753:12, 1760:13, 1882:14, 1896:5, 1896:6, 1917:3 <b>martinez</b> <sup>[1]</sup> - 1639:14 <b>Mary's</b> <sup>[2]</sup> - 1659:8, 1660:6 <b>massive</b> <sup>[1]</sup> - 1801:22 <b>master's</b> <sup>[5]</sup> - 1682:10, 1785:1, 1848:24, 1849:2, 1887:14 <b>material</b> <sup>[24]</sup> - 1647:5, 1766:11, 1788:14, 1789:4, 1789:5, 1789:9, 1789:15, 1794:2, 1797:19, 1797:21, 1797:22, 1799:11, 1800:2, 1800:4, 1800:8, 1800:10, 1801:2, 1801:4, 1812:17, 1822:20, 1822:21, 1823:19, 1827:15, 1832:10 <b>materials</b> <sup>[4]</sup> - 1697:15, 1697:17, 1729:14, 1803:19 <b>mathematical</b> <sup>[1]</sup> - 1844:9 <b>mathematics</b> <sup>[2]</sup> - 1682:10, 1887:15 <b>Matt</b> <sup>[4]</sup> - 1697:10, 1749:2, 1862:3, 1912:24 <b>MATTER</b> <sup>[1]</sup> - 1633:4 <b>matter</b> <sup>[15]</sup> - 1634:2, 1641:4, 1645:21, 1648:7, 1720:25, 1721:10, 1782:15, 1785:24, 1811:17, 1829:22, 1864:8, 1909:25, 1931:13, 1931:15, 1934:10	<b>matters</b> <sup>[5]</sup> - 1641:11, 1754:7, 1762:8, 1762:17, 1866:5 <b>maximum</b> <sup>[4]</sup> - 1661:12, 1797:1, 1797:6, 1827:18 <b>Mayfair</b> <sup>[2]</sup> - 1658:13, 1678:24 <b>McComsey</b> <sup>[2]</sup> - 1633:24, 1934:18 <b>MCCOMSEY</b> <sup>[1]</sup> - 1934:5 <b>McKenna</b> <sup>[1]</sup> - 1659:7 <b>MCL</b> <sup>[1]</sup> - 1672:17 <b>mean</b> <sup>[35]</sup> - 1644:24, 1647:8, 1650:7, 1651:2, 1652:22, 1653:2, 1653:6, 1658:24, 1671:17, 1678:18, 1682:25, 1688:8, 1721:15, 1725:7, 1738:20, 1756:9, 1759:21, 1774:16, 1789:17, 1801:5, 1801:22, 1805:12, 1818:22, 1825:10, 1847:12, 1883:14, 1893:21, 1909:20, 1914:16, 1916:2, 1927:22, 1929:2, 1929:17, 1930:5, 1930:22 <b>meander</b> <sup>[1]</sup> - 1816:21 <b>meaning</b> <sup>[1]</sup> - 1854:16 <b>means</b> <sup>[8]</sup> - 1673:19, 1687:18, 1704:7, 1804:2, 1804:4, 1882:2, 1882:3, 1882:4 <b>meant</b> <sup>[1]</sup> - 1889:19 <b>measure</b> <sup>[2]</sup> - 1690:3, 1900:1 <b>measured</b> <sup>[3]</sup> - 1690:24, 1690:25, 1691:7 <b>measures</b> <sup>[5]</sup> - 1695:18, 1810:7, 1812:20, 1832:12, 1834:3 <b>mechanized</b> <sup>[3]</sup> - 1774:7, 1774:17, 1776:1 <b>medical</b> <sup>[7]</sup> - 1658:21, 1660:14, 1660:15, 1671:10, 1671:18, 1673:3 <b>medically</b> <sup>[1]</sup> - 1671:11 <b>medicine</b> <sup>[4]</sup> -	1654:11, 1856:20, 25 1856:21, 1856:22 <b>medium</b> <sup>[2]</sup> - 1799:18, 1882:25 <b>meds</b> <sup>[1]</sup> - 1847:15 <b>Meera</b> <sup>[9]</sup> - 1635:3, 1643:2, 1643:14, 1650:5, 1756:7, 1876:22, 1885:11, 1890:6, 1908:15 <b>meet</b> <sup>[2]</sup> - 1722:24, 1892:6 <b>meeting</b> <sup>[17]</sup> - 1724:18, 1726:6, 1726:8, 1726:13, 1726:17, 1726:22, 1729:3, 1729:4, 1729:17, 1729:18, 1729:21, 1729:22, 1729:23, 1731:3, 1748:15, 1748:19, 1916:18 <b>Meeting</b> <sup>[1]</sup> - 1636:6 <b>meetings</b> <sup>[14]</sup> - 1726:23, 1727:1, 1727:10, 1727:11, 1727:12, 1746:23, 1746:25, 1747:20, 1748:1, 1749:13, 1749:14, 1757:13, 1838:14, 1862:18 <b>melt</b> <sup>[1]</sup> - 1883:4 <b>member</b> <sup>[17]</sup> - 1703:14, 1713:20, 1713:21, 1722:6, 1732:5, 1732:6, 1732:18, 1752:1, 1756:2, 1848:19, 1849:16, 1850:12, 1854:13, 1858:16, 1863:5, 1931:3 <b>members</b> <sup>[7]</sup> - 1713:10, 1713:12, 1714:23, 1714:25, 1748:15, 1850:6, 1851:11 <b>memo</b> <sup>[1]</sup> - 1732:23 <b>men</b> <sup>[10]</sup> - 1709:13, 1850:20, 1850:21, 1852:7, 1859:2, 1862:23, 1872:15, 1874:12, 1874:13, 1874:23 <b>menses</b> <sup>[1]</sup> - 1856:18 <b>mentally</b> <sup>[1]</sup> - 1648:3 <b>mention</b> <sup>[5]</sup> - 1648:22, 1682:13, 1690:13, 1698:20, 1858:7 <b>mentioned</b> <sup>[19]</sup> - 1658:8, 1670:25,
---	---	---	---	---



<p>1694:20, 1703:21, 1705:17, 1733:11, 1749:19, 1749:20, 1788:2, 1793:4, 1793:11, 1795:19, 1798:21, 1822:20, 1823:21, 1856:6, 1874:12, 1898:3, 1898:4</p> <p><b>mentioning</b> [1] - 1903:14</p> <p><b>mentor</b> [1] - 1743:10</p> <p><b>merely</b> [1] - 1844:7</p> <p><b>met</b> [8] - 1738:21, 1738:22, 1745:3, 1917:13, 1918:5, 1919:9, 1921:19, 1921:24</p> <p><b>meta</b> [4] - 1896:19, 1896:21, 1897:3, 1897:8</p> <p><b>metal</b> [3] - 1774:7, 1774:8, 1776:1</p> <p><b>metallurgical</b> [1] - 1769:2</p> <p><b>Metallurgican</b> [1] - 1768:20</p> <p><b>metallurgy</b> [1] - 1905:21</p> <p><b>Metcalf</b> [2] - 1637:4, 1722:4</p> <p><b>meteorologist</b> [1] - 1819:2</p> <p><b>meth</b> [1] - 1853:6</p> <p><b>method</b> [1] - 1814:25</p> <p><b>methodological</b> [1] - 1685:2</p> <p><b>methods</b> [3] - 1831:22, 1832:1, 1915:23</p> <p><b>metric</b> [1] - 1695:13</p> <p><b>metrics</b> [6] - 1688:8, 1688:20, 1694:18, 1694:20, 1694:22, 1695:14</p> <p><b>Meyer</b> [2] - 1835:3, 1835:15</p> <p><b>mic</b> [2] - 1707:10, 1905:9</p> <p><b>Michels</b> [1] - 1774:6</p> <p><b>Michigan</b> [2] - 1658:14, 1688:14</p> <p><b>microbial</b> [1] - 1827:22</p> <p><b>microeconomist</b> [1] - 1698:11</p> <p><b>Midcontinent</b> [1] - 1828:2</p> <p><b>middle</b> [1] - 1765:9</p> <p><b>Midland</b> [2] - 1798:18,</p>	<p>1799:1</p> <p><b>midsummer</b> [1] - 1790:12</p> <p><b>might</b> [42] - 1652:20, 1653:20, 1656:4, 1685:12, 1686:22, 1688:12, 1688:15, 1689:10, 1692:18, 1695:23, 1696:2, 1696:7, 1698:16, 1698:18, 1700:11, 1700:17, 1712:9, 1728:17, 1760:15, 1761:1, 1763:22, 1783:7, 1788:21, 1796:15, 1797:15, 1801:25, 1802:22, 1803:4, 1804:13, 1806:1, 1816:21, 1817:3, 1818:8, 1818:9, 1827:17, 1827:24, 1828:12, 1829:4, 1831:22, 1832:16, 1843:10, 1858:4</p> <p><b>migrating</b> [1] - 1827:6</p> <p><b>migration</b> [1] - 1826:25</p> <p><b>Mike</b> [2] - 1835:3, 1835:15</p> <p><b>mile</b> [3] - 1663:22, 1664:13, 1810:23</p> <p><b>mileage</b> [1] - 1867:18</p> <p><b>miles</b> [26] - 1667:7, 1667:16, 1667:20, 1708:6, 1711:18, 1711:20, 1794:7, 1794:11, 1795:13, 1795:14, 1795:16, 1796:10, 1796:13, 1796:14, 1796:16, 1808:13, 1810:16, 1813:11, 1813:17, 1814:6, 1814:10, 1819:11, 1819:12, 1821:21, 1872:10</p> <p><b>military</b> [1] - 1709:8</p> <p><b>mill</b> [2] - 1777:21, 1898:22</p> <p><b>millimeter</b> [1] - 1799:17</p> <p><b>million</b> [2] - 1827:18, 1832:10</p> <p><b>mind</b> [6] - 1750:9, 1851:25, 1869:2, 1883:19, 1883:23, 1923:4</p> <p><b>mine</b> [1] - 1905:21</p> <p><b>mineral</b> [3] - 1788:6, 1788:7, 1793:14</p>	<p><b>Mines</b> [3] - 1784:25, 1785:2, 1785:7</p> <p><b>minimal</b> [1] - 1928:19</p> <p><b>minimized</b> [3] - 1693:19, 1693:20, 1695:10</p> <p><b>minimum</b> [1] - 1932:22</p> <p><b>Mining</b> [1] - 1644:23</p> <p><b>Minnesota</b> [1] - 1785:1</p> <p><b>minor</b> [3] - 1644:20, 1789:6, 1911:20</p> <p><b>minus</b> [1] - 1855:2</p> <p><b>minute</b> [12] - 1661:18, 1670:8, 1683:14, 1761:2, 1819:19, 1828:24, 1855:9, 1861:15, 1866:21, 1886:17, 1932:8</p> <p><b>minutes</b> [13] - 1647:21, 1651:15, 1655:18, 1662:12, 1675:3, 1842:22, 1842:23, 1845:20, 1867:21, 1908:23, 1909:3, 1909:4, 1909:9</p> <p><b>mirrors</b> [1] - 1656:15</p> <p><b>mischaracterization</b> [1] - 1920:20</p> <p><b>mishap</b> [1] - 1832:2</p> <p><b>misrepresent</b> [3] - 1846:24, 1846:25, 1847:5</p> <p><b>missed</b> [2] - 1680:3, 1775:7</p> <p><b>missing</b> [2] - 1694:21, 1821:3</p> <p><b>Missouri</b> [24] - 1635:20, 1665:19, 1665:20, 1665:23, 1666:1, 1666:3, 1666:5, 1666:7, 1666:13, 1667:5, 1667:22, 1708:5, 1708:7, 1709:2, 1709:19, 1711:1, 1786:13, 1798:22, 1799:2, 1855:14, 1856:9, 1857:1, 1869:16</p> <p><b>misstate</b> [1] - 1834:22</p> <p><b>misstated</b> [2] - 1835:6, 1835:17</p> <p><b>misstatement</b> [1] - 1815:5</p> <p><b>mistake</b> [3] - 1648:18, 1889:7, 1904:12</p> <p><b>misunderstanding</b> [2]</p>	<p>- 1865:18, 1924:25</p> <p><b>Mitigation</b> [1] - 1810:4</p> <p><b>mitigation</b> [5] - 1810:6, 1812:16, 1812:23, 1833:6, 1833:12</p> <p><b>mixed</b> [1] - 1721:25</p> <p><b>Mni</b> [5] - 1663:21, 1673:19, 1703:23, 1704:7, 1813:10</p> <p><b>mobilization</b> [1] - 1726:22</p> <p><b>model</b> [14] - 1685:2, 1685:5, 1685:6, 1685:8, 1685:9, 1685:11, 1685:14, 1685:18, 1685:20, 1685:24, 1686:1, 1686:11, 1686:19, 1688:9</p> <p><b>models</b> [1] - 1685:22</p> <p><b>modifications</b> [1] - 1825:20</p> <p><b>modified</b> [1] - 1817:3</p> <p><b>moment</b> [5] - 1794:23, 1810:14, 1844:1, 1844:12, 1922:1</p> <p><b>Monday</b> [1] - 1641:1</p> <p><b>money</b> [1] - 1645:18</p> <p><b>monitor</b> [2] - 1658:23, 1810:11</p> <p><b>monitored</b> [2] - 1845:6, 1900:4</p> <p><b>monitoring</b> [6] - 1834:4, 1834:17, 1845:11, 1847:7, 1899:24, 1901:21</p> <p><b>Montana</b> [3] - 1667:19, 1669:11, 1717:24</p> <p><b>months</b> [3] - 1645:8, 1645:21, 1757:14</p> <p><b>Moore</b> [4] - 1638:19, 1639:12, 1807:3, 1821:3</p> <p><b>MOORE</b> [40] - 1641:14, 1650:3, 1650:9, 1650:15, 1652:13, 1652:17, 1802:18, 1802:23, 1804:20, 1805:14, 1806:10, 1807:2, 1811:14, 1811:23, 1815:4, 1817:11, 1818:16, 1818:20, 1819:7, 1820:22, 1821:4, 1822:11, 1823:7, 1823:9, 1824:13, 1824:22, 1825:10, 1826:7,</p>	<p>1827:4, 1836:11, 1837:10, 1877:10, 1877:12, 1878:13, 1878:18, 1879:25, 1886:10, 1912:8, 1912:17, 1927:14</p> <p><b>Moreau</b> [3] - 1666:15, 1786:14, 1789:23</p> <p><b>Morgan</b> [2] - 1757:24, 1759:17</p> <p><b>Morgan's</b> [1] - 1758:1</p> <p><b>morning</b> [19] - 1683:5, 1689:1, 1691:14, 1691:15, 1694:15, 1694:25, 1699:15, 1699:16, 1703:1, 1704:14, 1706:18, 1733:25, 1741:19, 1749:1, 1752:5, 1765:12, 1843:9, 1855:21, 1897:6</p> <p><b>most</b> [20] - 1651:15, 1660:21, 1672:16, 1678:21, 1704:7, 1719:21, 1779:7, 1789:18, 1791:12, 1796:25, 1816:5, 1828:5, 1828:9, 1829:2, 1829:4, 1856:12, 1884:2, 1898:3, 1917:21, 1917:22</p> <p><b>mother</b> [1] - 1871:4</p> <p><b>mother's</b> [1] - 1662:22</p> <p><b>mothers</b> [1] - 1856:22</p> <p><b>Motion</b> [1] - 1677:5</p> <p><b>motion</b> [24] - 1641:15, 1642:11, 1646:24, 1649:1, 1649:14, 1649:15, 1649:22, 1649:24, 1649:25, 1650:13, 1653:19, 1653:21, 1657:17, 1657:19, 1674:7, 1676:8, 1701:20, 1705:14, 1706:12, 1718:23, 1721:11, 1723:14, 1841:17, 1842:10</p> <p><b>motions</b> [2] - 1737:15, 1768:6</p> <p><b>Mountain</b> [1] - 1759:17</p> <p><b>Mountains</b> [1] - 1758:2</p> <p><b>mouth</b> [1] - 1707:10</p> <p><b>move</b> [46] - 1649:13, 1653:17, 1653:25, 1654:2, 1667:10, 1677:9, 1681:5,</p>
--	--	---	--	---

1701:14, 1701:24, 1703:16, 1705:5, 1705:10, 1706:16, 1713:4, 1714:15, 1716:5, 1716:6, 1719:2, 1719:4, 1722:1, 1723:7, 1723:16, 1725:21, 1725:23, 1728:25, 1729:21, 1730:17, 1731:7, 1731:15, 1735:17, 1736:12, 1739:20, 1776:19, 1827:13, 1832:10, 1843:16, 1847:25, 1860:15, 1871:5, 1876:2, 1877:5, 1888:10, 1910:10, 1910:13, 1912:4, 1926:10 <b>moved</b> [4] - 1657:3, 1665:6, 1665:9, 1888:18 <b>movement</b> [3] - 1813:20, 1830:1, 1851:7 <b>moves</b> [6] - 1683:11, 1704:16, 1715:11, 1716:9, 1716:23, 1730:20 <b>movie</b> [1] - 1709:11 <b>moving</b> [5] - 1654:3, 1714:17, 1714:19, 1723:18, 1871:15 <b>Moyer</b> [2] - 1665:2, 1674:3 <b>MR</b> [929] - 1641:1, 1641:14, 1643:17, 1644:18, 1646:3, 1647:8, 1649:25, 1650:3, 1650:6, 1650:9, 1650:13, 1650:15, 1650:16, 1650:19, 1650:22, 1650:23, 1651:2, 1651:6, 1651:8, 1651:9, 1651:16, 1651:20, 1651:23, 1652:3, 1652:13, 1652:17, 1652:20, 1653:11, 1653:12, 1653:24, 1654:4, 1654:7, 1654:20, 1654:22, 1654:23, 1655:3, 1655:8, 1656:5, 1656:13, 1656:14, 1657:14, 1657:21, 1657:24, 1667:8, 1668:2, 1668:3, 1668:4,	1668:16, 1668:22, 1668:23, 1668:25, 1669:3, 1669:12, 1670:8, 1670:14, 1670:22, 1670:25, 1671:7, 1671:16, 1671:25, 1672:5, 1672:10, 1673:23, 1673:25, 1674:19, 1674:22, 1674:25, 1675:6, 1675:10, 1675:16, 1675:20, 1675:22, 1675:24, 1676:5, 1676:13, 1676:18, 1677:3, 1677:10, 1677:13, 1677:14, 1677:17, 1677:19, 1677:21, 1677:23, 1678:1, 1678:4, 1678:6, 1678:14, 1678:18, 1679:5, 1679:8, 1679:9, 1679:10, 1679:11, 1679:12, 1679:14, 1679:15, 1679:16, 1679:18, 1679:21, 1679:22, 1679:23, 1679:24, 1680:1, 1680:2, 1680:5, 1680:6, 1681:1, 1681:4, 1681:6, 1681:7, 1681:9, 1681:10, 1681:15, 1683:10, 1683:12, 1683:13, 1683:14, 1683:17, 1684:13, 1684:22, 1688:21, 1689:2, 1689:3, 1689:5, 1689:8, 1689:9, 1689:10, 1689:15, 1689:17, 1689:23, 1691:9, 1691:11, 1691:13, 1692:15, 1692:17, 1692:18, 1692:20, 1693:3, 1693:6, 1693:9, 1694:9, 1694:10, 1694:24, 1695:4, 1697:4, 1697:5, 1697:6, 1697:7, 1697:9, 1697:25, 1698:1, 1698:4, 1698:24, 1699:1, 1699:10, 1699:11, 1699:13, 1700:25, 1701:1, 1701:4, 1701:6, 1701:8, 1701:9, 1701:11, 1701:14, 1701:17, 1701:18, 1701:21,	1701:22, 1701:23, 1701:24, 1702:1, 1702:4, 1702:11, 1702:19, 1702:24, 1704:16, 1704:18, 1704:19, 1705:14, 1705:19, 1705:20, 1705:21, 1706:10, 1706:11, 1706:20, 1707:3, 1707:7, 1707:9, 1707:20, 1707:21, 1707:22, 1707:23, 1707:24, 1711:22, 1712:4, 1712:25, 1713:4, 1713:15, 1713:25, 1714:7, 1714:11, 1714:14, 1714:15, 1714:18, 1714:19, 1715:10, 1715:20, 1715:21, 1715:25, 1716:4, 1716:8, 1716:9, 1716:11, 1716:13, 1716:16, 1716:20, 1717:1, 1717:3, 1717:7, 1717:11, 1717:15, 1718:23, 1718:25, 1719:1, 1719:15, 1719:16, 1720:3, 1720:6, 1720:7, 1720:8, 1720:21, 1721:17, 1721:24, 1723:7, 1723:14, 1723:19, 1723:21, 1723:25, 1724:1, 1724:4, 1724:7, 1724:10, 1724:24, 1725:1, 1725:3, 1725:5, 1725:9, 1725:25, 1726:1, 1726:9, 1726:11, 1726:12, 1726:15, 1726:18, 1726:19, 1727:8, 1727:15, 1727:20, 1727:21, 1727:22, 1728:4, 1728:10, 1728:11, 1728:15, 1728:16, 1728:17, 1728:21, 1728:22, 1729:1, 1730:3, 1730:6, 1730:7, 1730:11, 1730:13, 1730:17, 1730:22, 1730:23, 1731:8, 1731:17, 1731:20, 1731:21, 1731:22, 1732:1, 1732:10, 1732:13, 1732:21, 1732:22, 1733:19, 1735:5,	1735:11, 1735:12, 1735:14, 1735:16, 1735:19, 1735:21, 1735:22, 1735:23, 1736:2, 1736:4, 1736:7, 1736:8, 1736:9, 1736:12, 1736:23, 1736:25, 1737:1, 1737:9, 1737:12, 1737:16, 1737:17, 1737:18, 1737:19, 1737:20, 1737:23, 1738:1, 1738:10, 1738:11, 1738:12, 1738:19, 1738:20, 1738:23, 1738:25, 1739:2, 1739:7, 1739:9, 1739:15, 1739:17, 1739:19, 1740:4, 1740:8, 1740:10, 1740:14, 1740:16, 1740:18, 1740:19, 1740:22, 1740:24, 1741:1, 1741:3, 1741:5, 1741:6, 1741:8, 1741:9, 1741:12, 1744:18, 1744:20, 1744:23, 1745:2, 1745:10, 1745:15, 1746:13, 1746:20, 1746:21, 1747:9, 1747:16, 1747:17, 1748:5, 1748:8, 1748:10, 1748:24, 1748:25, 1749:1, 1749:6, 1749:25, 1750:2, 1750:7, 1750:15, 1750:16, 1750:19, 1751:3, 1751:4, 1751:10, 1751:12, 1751:19, 1751:21, 1751:22, 1751:24, 1752:9, 1752:11, 1752:12, 1752:14, 1752:15, 1752:16, 1752:20, 1752:21, 1752:22, 1753:4, 1753:8, 1753:11, 1753:13, 1753:19, 1753:21, 1753:23, 1754:2, 1754:9, 1760:4, 1760:8, 1760:11, 1760:12, 1760:17, 1760:20, 1761:2, 1761:5, 1761:18, 1761:21, 1761:23, 1761:25, 1762:15, 1762:20, 1762:22, 1762:24,	1762:25, 1763:10, 27 1763:19, 1763:24, 1764:10, 1764:13, 1764:15, 1765:4, 1765:6, 1765:11, 1766:6, 1766:17, 1767:8, 1767:9, 1767:12, 1767:13, 1767:14, 1767:16, 1767:18, 1767:20, 1767:21, 1767:22, 1767:23, 1767:24, 1767:25, 1768:1, 1768:3, 1768:4, 1768:5, 1768:8, 1768:9, 1768:11, 1768:14, 1769:5, 1769:6, 1769:7, 1769:10, 1769:13, 1769:14, 1769:16, 1769:20, 1769:22, 1769:23, 1769:25, 1770:1, 1770:4, 1770:21, 1770:23, 1770:24, 1770:25, 1771:2, 1771:5, 1771:9, 1771:11, 1771:14, 1771:18, 1771:19, 1771:22, 1771:24, 1772:1, 1772:2, 1772:4, 1772:10, 1772:12, 1772:14, 1772:15, 1772:18, 1772:20, 1772:23, 1772:24, 1772:25, 1773:2, 1773:3, 1773:8, 1778:14, 1780:8, 1780:9, 1780:10, 1780:12, 1780:13, 1781:1, 1781:4, 1781:22, 1782:9, 1782:17, 1782:20, 1783:5, 1783:8, 1783:12, 1783:22, 1784:2, 1784:14, 1784:15, 1784:20, 1802:18, 1802:23, 1802:25, 1803:1, 1803:4, 1803:11, 1803:22, 1803:23, 1804:20, 1805:5, 1805:7, 1805:8, 1805:14, 1805:16, 1806:10, 1806:16, 1806:21, 1806:22, 1807:2, 1811:14, 1811:16, 1811:23, 1811:25, 1812:2, 1812:3, 1812:5, 1814:13, 1814:14,
--	---	---	---	--

1814:15, 1814:18, 1814:19, 1814:21, 1815:4, 1815:6, 1815:11, 1815:15, 1815:20, 1815:21, 1815:23, 1817:11, 1817:13, 1817:14, 1818:16, 1818:17, 1818:18, 1818:20, 1818:22, 1819:7, 1819:9, 1819:15, 1819:17, 1819:18, 1819:19, 1819:21, 1820:4, 1820:7, 1820:22, 1820:23, 1820:25, 1821:2, 1821:4, 1821:10, 1822:1, 1822:11, 1822:12, 1822:16, 1823:7, 1823:8, 1823:9, 1823:13, 1823:16, 1824:13, 1824:14, 1824:22, 1824:23, 1824:24, 1824:25, 1825:1, 1825:10, 1825:13, 1825:15, 1825:21, 1825:23, 1825:25, 1826:3, 1826:7, 1826:8, 1826:9, 1826:14, 1826:17, 1826:18, 1826:20, 1827:4, 1829:16, 1829:17, 1829:20, 1830:3, 1830:5, 1830:7, 1830:8, 1830:9, 1830:12, 1831:10, 1835:20, 1836:2, 1836:11, 1836:16, 1836:18, 1836:20, 1836:21, 1836:23, 1837:3, 1837:10, 1837:12, 1837:18, 1837:19, 1837:21, 1838:1, 1838:4, 1838:6, 1838:7, 1838:9, 1838:10, 1838:11, 1840:2, 1840:9, 1840:12, 1841:2, 1841:8, 1841:10, 1842:1, 1842:8, 1842:19, 1842:22, 1842:25, 1843:10, 1843:15, 1843:22, 1844:1, 1844:3, 1844:12, 1844:19, 1844:21, 1844:23, 1845:9, 1847:8, 1848:6, 1860:3, 1860:7, 1860:8,	1860:12, 1860:13, 1860:14, 1860:16, 1860:18, 1860:19, 1860:20, 1860:23, 1861:1, 1861:2, 1861:3, 1861:6, 1861:8, 1861:15, 1861:20, 1861:21, 1861:23, 1862:2, 1863:16, 1863:17, 1863:20, 1864:6, 1864:11, 1864:13, 1865:5, 1865:18, 1865:22, 1865:23, 1866:1, 1866:8, 1866:10, 1866:21, 1867:1, 1867:2, 1867:6, 1869:5, 1869:10, 1869:13, 1869:23, 1869:24, 1870:2, 1870:18, 1870:20, 1871:17, 1871:20, 1873:7, 1873:9, 1873:12, 1873:21, 1873:22, 1875:1, 1875:3, 1875:6, 1875:7, 1875:9, 1875:12, 1875:18, 1875:19, 1875:22, 1876:4, 1876:5, 1876:9, 1876:18, 1876:25, 1877:1, 1877:2, 1877:4, 1877:7, 1877:10, 1877:12, 1878:13, 1878:15, 1878:18, 1878:20, 1878:21, 1878:24, 1879:2, 1879:13, 1879:14, 1879:15, 1879:16, 1879:18, 1879:20, 1879:25, 1880:4, 1882:8, 1882:11, 1882:14, 1882:15, 1882:17, 1884:7, 1884:9, 1884:13, 1884:15, 1884:17, 1884:18, 1884:19, 1884:20, 1884:22, 1884:25, 1885:2, 1885:3, 1885:6, 1885:22, 1885:24, 1886:1, 1886:2, 1886:3, 1886:5, 1886:7, 1886:10, 1886:11, 1886:17, 1888:12, 1888:13, 1888:14, 1888:15, 1888:20, 1888:21, 1889:13, 1889:14, 1889:15,	1889:16, 1889:18, 1889:19, 1889:23, 1889:25, 1890:2, 1890:13, 1890:14, 1890:15, 1890:17, 1890:19, 1892:10, 1892:12, 1893:1, 1893:3, 1893:5, 1893:6, 1893:8, 1896:5, 1896:6, 1896:9, 1903:1, 1903:5, 1903:7, 1903:9, 1903:11, 1903:16, 1903:18, 1903:21, 1903:23, 1904:23, 1904:25, 1905:2, 1905:3, 1905:5, 1905:8, 1905:13, 1905:14, 1906:2, 1906:4, 1906:6, 1906:7, 1906:8, 1906:18, 1906:19, 1906:20, 1906:22, 1906:25, 1907:4, 1907:15, 1907:17, 1907:22, 1908:1, 1908:3, 1908:4, 1908:6, 1908:9, 1908:10, 1908:11, 1908:12, 1908:15, 1908:16, 1908:17, 1908:19, 1908:20, 1908:22, 1908:25, 1909:2, 1909:5, 1909:7, 1909:8, 1909:10, 1909:12, 1909:18, 1909:20, 1909:24, 1910:3, 1910:6, 1910:8, 1912:6, 1912:8, 1912:9, 1912:13, 1912:16, 1912:17, 1912:18, 1912:19, 1912:20, 1912:21, 1912:23, 1913:24, 1913:25, 1914:1, 1914:3, 1917:3, 1917:4, 1917:6, 1918:21, 1919:1, 1919:3, 1920:23, 1920:25, 1921:2, 1922:3, 1922:4, 1922:5, 1922:8, 1922:10, 1922:13, 1923:3, 1923:5, 1924:4, 1924:5, 1924:18, 1925:3, 1925:4, 1925:8, 1925:9, 1925:11, 1925:19, 1925:22, 1925:23,	1926:3, 1926:5, 1926:10, 1926:13, 1927:3, 1927:4, 1927:14, 1927:17, 1927:18, 1928:3, 1928:11, 1928:12, 1928:14, 1928:16, 1930:8, 1930:9, 1931:20, 1931:23, 1931:24, 1931:25, 1932:2, 1932:3, 1932:4, 1932:9, 1932:24, 1933:5, 1933:8, 1933:12, <b>MS</b> <sup>[164]</sup> - 1650:18, 1650:21, 1652:16, 1654:8, 1655:1, 1655:5, 1655:23, 1656:1, 1658:6, 1658:8, 1667:15, 1668:14, 1668:20, 1669:8, 1669:17, 1669:21, 1669:25, 1670:6, 1670:9, 1670:20, 1672:11, 1674:16, 1674:20, 1674:23, 1675:8, 1675:11, 1676:3, 1676:11, 1676:14, 1676:25, 1677:4, 1677:24, 1678:7, 1678:10, 1678:16, 1679:7, 1679:13, 1679:17, 1680:24, 1683:16, 1694:12, 1694:14, 1695:2, 1697:2, 1749:7, 1749:10, 1750:5, 1750:8, 1750:13, 1750:21, 1751:25, 1752:8, 1752:13, 1752:18, 1771:12, 1771:16, 1772:16, 1772:19, 1772:22, 1773:1, 1781:8, 1781:14, 1781:19, 1781:24, 1782:22, 1784:10, 1815:13, 1815:16, 1826:19, 1826:22, 1829:14, 1830:6, 1830:11, 1841:11, 1842:18, 1842:20, 1844:25, 1845:16, 1848:8, 1848:13, 1860:1, 1860:4, 1860:22, 1860:24, 1866:13, 1866:15, 1867:3, 1867:8, 1869:3, 1870:23, 1871:2, 1871:15, 1871:18,	1873:24, 1874:2, 28 1874:15, 1874:20, 1875:2, 1876:8, 1876:15, 1882:12, 1884:10, 1884:24, 1885:1, 1885:25, 1886:4, 1886:15, 1886:19, 1886:22, 1888:10, 1888:19, 1889:11, 1890:4, 1892:25, 1893:10, 1896:4, 1903:3, 1903:19, 1905:15, 1905:18, 1906:1, 1906:3, 1906:5, 1906:9, 1906:11, 1906:21, 1907:21, 1908:23, 1910:12, 1910:16, 1912:4, 1912:12, 1912:14, 1914:5, 1917:2, 1918:20, 1920:19, 1920:24, 1922:2, 1922:6, 1923:1, 1924:2, 1927:2, 1928:1, 1930:11, 1930:13, 1931:19, 1931:22, 1932:1, 1932:7, 1932:17, 1933:3, 1933:6, 1933:10 <b>MSDS</b> <sup>[3]</sup> - 1659:10, 1660:9, 1660:10 <b>muddy</b> <sup>[1]</sup> - 1798:11 <b>multibillion</b> <sup>[1]</sup> - 1645:18 <b>multiple</b> <sup>[4]</sup> - 1649:1, 1649:10, 1649:21, 1759:18 <b>municipal</b> <sup>[1]</sup> - 1665:13 <b>must</b> <sup>[6]</sup> - 1707:9, 1720:12, 1761:14, 1765:10, 1881:8, 1881:18 <b>mutual</b> <sup>[3]</sup> - 1718:14, 1718:16 <b>MYERS</b> <sup>[35]</sup> - 1650:18, 1650:21, 1654:8, 1655:1, 1655:5, 1655:23, 1656:1, 1658:6, 1658:8, 1667:15, 1668:14, 1668:20, 1669:8, 1669:17, 1669:21, 1669:25, 1670:6, 1670:20, 1672:11, 1674:16, 1674:20, 1674:23, 1675:8, 1675:11, 1676:3,
---	---	---	--	--

<p>1676:11, 1676:14, 1680:24, 1752:8, 1772:19, 1826:22, 1829:14, 1885:1, 1906:5, 1931:22</p> <p><b>Myers</b> [25] - 1638:3, 1638:22, 1650:17, 1651:2, 1651:17, 1654:4, 1654:8, 1654:23, 1655:9, 1655:21, 1658:1, 1667:8, 1668:4, 1670:11, 1671:8, 1678:11, 1680:7, 1689:14, 1772:18, 1772:19, 1826:20, 1826:23, 1884:25, 1906:4, 1931:21</p>	<p><b>natural</b> [4] - 1676:15, 1693:20, 1695:9, 1715:8</p> <p><b>nature</b> [9] - 1643:21, 1669:14, 1680:13, 1778:8, 1793:13, 1884:2, 1918:10, 1919:19, 1928:8</p> <p><b>nauseous</b> [2] - 1838:21, 1841:5</p> <p><b>NCC</b> [1] - 1770:17</p> <p><b>NCL</b> [1] - 1661:19</p> <p><b>near</b> [10] - 1664:17, 1698:15, 1722:10, 1798:22, 1801:18, 1832:8, 1834:24, 1854:21, 1867:17, 1871:8</p> <p><b>Nebraska</b> [3] - 1654:9, 1657:3, 1801:13</p> <p><b>necessarily</b> [11] - 1644:13, 1761:15, 1769:20, 1795:12, 1812:12, 1816:8, 1913:15, 1918:14, 1918:17, 1924:24, 1925:1</p> <p><b>necessary</b> [4] - 1653:1, 1659:1, 1834:13, 1891:19</p> <p><b>need</b> [42] - 1643:19, 1645:5, 1649:8, 1649:12, 1672:13, 1676:3, 1689:13, 1698:14, 1700:9, 1700:14, 1706:19, 1714:17, 1721:13, 1725:24, 1735:21, 1744:12, 1760:5, 1760:7, 1760:17, 1769:15, 1782:3, 1782:13, 1783:9, 1783:20, 1801:25, 1816:8, 1826:1, 1842:9, 1843:13, 1857:13, 1857:24, 1860:14, 1863:4, 1870:23, 1876:17, 1889:8, 1901:11, 1908:8, 1908:22, 1911:21, 1928:6</p> <p><b>needed</b> [8] - 1660:18, 1834:25, 1838:19, 1840:6, 1840:15, 1851:12, 1891:25, 1931:6</p> <p><b>needs</b> [13] - 1652:1, 1677:8, 1690:24, 1691:7, 1691:25, 1694:4, 1694:6,</p>	<p>1725:23, 1760:16, 1859:9, 1868:25, 1927:23</p> <p><b>negative</b> [8] - 1686:9, 1686:15, 1686:18, 1686:24, 1687:2, 1687:6, 1687:15, 1698:7</p> <p><b>neglected</b> [1] - 1906:24</p> <p><b>negotiations</b> [3] - 1703:15, 1725:12, 1880:11</p> <p><b>NELSON</b> [56] - 1633:14, 1647:19, 1647:24, 1651:19, 1652:10, 1652:14, 1652:18, 1653:22, 1657:22, 1657:25, 1667:12, 1669:19, 1669:22, 1670:1, 1677:9, 1702:3, 1702:9, 1702:18, 1712:3, 1714:13, 1728:25, 1752:24, 1753:5, 1753:10, 1767:5, 1778:15, 1779:1, 1780:7, 1780:24, 1781:2, 1781:5, 1781:11, 1781:18, 1781:20, 1782:2, 1782:12, 1782:19, 1783:1, 1783:16, 1783:23, 1803:13, 1830:14, 1831:9, 1843:2, 1843:13, 1843:18, 1843:24, 1844:16, 1871:22, 1872:14, 1872:21, 1873:4, 1874:8, 1874:18, 1932:11, 1932:18</p> <p><b>Nelson</b> [14] - 1638:17, 1639:8, 1647:18, 1752:23, 1778:14, 1780:21, 1781:24, 1782:22, 1826:10, 1830:12, 1842:25, 1843:10, 1871:21, 1874:21</p> <p><b>Nelson's</b> [1] - 1875:10</p> <p><b>NEPA</b> [4] - 1691:25, 1883:7, 1883:9, 1884:2</p> <p><b>nephews</b> [2] - 1727:1, 1727:9</p> <p><b>net</b> [1] - 1686:20</p> <p><b>Network</b> [8] - 1670:10, 1678:8, 1750:22, 1771:17, 1815:17,</p>	<p>1845:1, 1866:17, 1884:11</p> <p><b>network</b> [2] - 1901:20</p> <p><b>neutral</b> [1] - 1931:13</p> <p><b>never</b> [18] - 1645:6, 1708:16, 1711:4, 1711:5, 1718:20, 1724:17, 1733:9, 1743:7, 1743:20, 1743:21, 1759:9, 1779:9, 1779:22, 1805:23, 1837:24, 1845:13, 1859:10, 1896:18</p> <p><b>nevertheless</b> [1] - 1846:21</p> <p><b>new</b> [13] - 1655:25, 1656:4, 1658:3, 1725:7, 1862:17, 1897:14, 1908:22, 1911:24, 1917:13, 1918:6, 1919:9, 1921:19, 1921:24</p> <p><b>news</b> [4] - 1668:15, 1668:20, 1670:17, 1676:1</p> <p><b>newspaper</b> [7] - 1668:6, 1668:18, 1670:16, 1727:24, 1728:7, 1728:12, 1728:14</p> <p><b>newspapers</b> [2] - 1668:15, 1668:17</p> <p><b>next</b> [23] - 1651:18, 1702:1, 1757:3, 1762:25, 1763:1, 1776:20, 1780:1, 1780:2, 1780:3, 1783:18, 1791:5, 1791:6, 1798:24, 1798:25, 1799:25, 1800:22, 1842:12, 1843:12, 1844:24, 1846:19, 1868:3, 1876:2, 1932:14</p> <p><b>Nicor</b> [1] - 1911:10</p> <p><b>night</b> [1] - 1890:7</p> <p><b>nine</b> [3] - 1641:21, 1643:3, 1643:4</p> <p><b>nobody</b> [1] - 1844:6</p> <p><b>non</b> [2] - 1647:15, 1863:5</p> <p><b>non-attorney</b> [1] - 1647:15</p> <p><b>non-Indian</b> [1] - 1863:5</p> <p><b>noncompliance</b> [1] - 1928:4</p> <p><b>noncompliances</b> [2] - 1928:7, 1928:9</p>	<p><b>nondestructive</b> [2] - 29 1754:23, 1755:14</p> <p><b>none</b> [5] - 1701:3, 1780:17, 1812:1, 1838:3, 1878:17</p> <p><b>nonfinal</b> [1] - 1924:15</p> <p><b>noon</b> [2] - 1753:16, 1780:23</p> <p><b>normal</b> [2] - 1644:20, 1792:3</p> <p><b>normally</b> [1] - 1923:21</p> <p><b>Normandy</b> [2] - 1709:10, 1709:12</p> <p><b>north</b> [3] - 1801:15, 1822:23, 1835:12</p> <p><b>North</b> [7] - 1703:16, 1710:11, 1717:24, 1741:23, 1743:9, 1743:11, 1789:23</p> <p><b>northeast</b> [1] - 1830:17</p> <p><b>northeastward</b> [2] - 1822:23, 1823:20</p> <p><b>NorthStar</b> [2] - 1770:17</p> <p><b>northwest</b> [2] - 1787:8, 1792:17</p> <p><b>northwestern</b> [8] - 1786:11, 1787:10, 1787:14, 1790:3, 1791:8, 1791:12, 1792:25, 1812:9</p> <p><b>Notary</b> [2] - 1934:7, 1934:18</p> <p><b>notation</b> [1] - 1660:10</p> <p><b>note</b> [7] - 1661:16, 1662:10, 1684:13, 1788:1, 1837:22, 1865:15, 1876:20</p> <p><b>noted</b> [3] - 1667:19, 1838:1, 1859:9</p> <p><b>notes</b> [2] - 1642:19, 1671:4</p> <p><b>nothing</b> [16] - 1657:8, 1687:2, 1695:11, 1705:21, 1705:23, 1709:3, 1725:6, 1733:7, 1750:14, 1764:11, 1780:9, 1836:25, 1845:9, 1870:13, 1885:17, 1920:5</p> <p><b>notice</b> [26] - 1653:2, 1697:16, 1715:11, 1715:17, 1715:19, 1715:22, 1716:1, 1716:18, 1716:24, 1717:3, 1717:8, 1735:13, 1735:14, 1736:2, 1738:5,</p>
<b>N</b>				
<p><b>naked</b> [1] - 1661:7</p> <p><b>Nakota</b> [3] - 1849:15, 1849:17, 1866:3</p> <p><b>name</b> [21] - 1681:16, 1681:18, 1694:15, 1703:2, 1703:4, 1745:4, 1749:1, 1751:25, 1768:19, 1807:3, 1814:22, 1845:13, 1848:15, 1886:23, 1893:11, 1896:17, 1896:23, 1910:17, 1910:19, 1914:6, 1917:7</p> <p><b>namely</b> [1] - 1745:13</p> <p><b>narrow</b> [2] - 1642:3, 1754:3</p> <p><b>Nation</b> [1] - 1717:23</p> <p><b>nation</b> [5] - 1703:7, 1710:15, 1734:25, 1748:22, 1854:17</p> <p><b>national</b> [2] - 1672:17, 1709:16</p> <p><b>National</b> [6] - 1691:22, 1737:2, 1739:25, 1762:7, 1762:10, 1902:21</p> <p><b>Nations</b> [1] - 1710:18</p> <p><b>nations</b> [4] - 1711:1, 1718:19, 1726:24, 1743:1</p> <p><b>nationwide</b> [1] - 1883:18</p> <p><b>native</b> [3] - 1853:12, 1853:22, 1856:4</p> <p><b>Native</b> [5] - 1713:21, 1851:5, 1854:7, 1861:13, 1861:16</p> <p><b>Natural</b> [1] - 1663:11</p>				

<p>1739:20, 1740:2, 1740:5, 1740:6, 1740:19, 1760:4, 1816:7, 1829:2, 1881:2, 1923:11, 1923:15</p> <p><b>noticed</b> [6] - 1817:18, 1817:24, 1818:5, 1828:22, 1858:18, 1859:15</p> <p><b>notified</b> [2] - 1926:21, 1926:24</p> <p><b>Nova</b> [1] - 1755:6</p> <p><b>November</b> [4] - 1636:7, 1729:5, 1729:9, 1841:24</p> <p><b>number</b> [27] - 1682:25, 1685:12, 1719:2, 1719:4, 1721:7, 1721:10, 1723:9, 1723:10, 1723:11, 1730:24, 1730:25, 1746:24, 1760:23, 1762:5, 1767:23, 1770:6, 1779:25, 1839:5, 1853:24, 1873:14, 1881:5, 1896:7, 1904:15, 1904:16, 1904:20, 1917:18</p> <p><b>numbered</b> [2] - 1760:24, 1760:25</p> <p><b>numbering</b> [1] - 1765:6</p> <p><b>numbers</b> [2] - 1860:9, 1880:9</p> <p><b>numerous</b> [2] - 1646:19, 1786:20</p> <p><b>nurse</b> [5] - 1654:10, 1660:18, 1670:11, 1671:17, 1678:11</p>	<p>1657:9, 1668:9, 1671:5, 1713:15, 1715:22, 1716:14, 1717:4, 1717:5, 1726:16, 1730:23, 1735:5, 1736:23, 1747:9, 1749:25, 1761:17, 1769:5, 1769:10, 1802:18, 1804:20, 1804:21, 1804:22, 1805:14, 1806:10, 1806:15, 1815:4, 1817:11, 1818:16, 1818:20, 1819:7, 1822:11, 1823:7, 1824:13, 1824:22, 1826:7, 1827:4, 1836:11, 1836:13, 1879:25, 1903:3, 1927:15, 1928:1</p> <p><b>objected</b> [7] - 1656:4, 1658:5, 1670:2, 1671:1, 1712:14, 1756:2, 1840:16</p> <p><b>objection</b> [99] - 1652:9, 1654:21, 1655:8, 1655:14, 1656:7, 1656:9, 1656:10, 1657:11, 1657:15, 1657:16, 1668:24, 1670:3, 1671:6, 1674:5, 1675:8, 1675:17, 1675:18, 1678:14, 1683:13, 1683:16, 1689:8, 1692:15, 1693:3, 1694:24, 1704:18, 1704:22, 1705:15, 1706:2, 1706:4, 1707:4, 1707:12, 1711:22, 1714:12, 1716:8, 1716:16, 1717:2, 1723:8, 1723:20, 1726:10, 1727:8, 1728:18, 1730:11, 1730:22, 1732:10, 1735:22, 1736:1, 1738:19, 1739:15, 1739:17, 1740:12, 1741:14, 1745:10, 1746:13, 1757:9, 1757:11, 1760:14, 1761:6, 1762:3, 1762:25, 1763:9, 1765:3, 1772:10, 1802:24, 1806:1, 1806:21, 1811:23, 1811:25, 1820:22, 1823:12, 1825:10,</p>	<p>1826:11, 1826:13, 1836:19, 1836:22, 1860:8, 1860:11, 1860:17, 1860:19, 1860:22, 1864:6, 1865:11, 1865:15, 1878:15, 1878:23, 1888:13, 1888:21, 1892:10, 1892:25, 1903:1, 1912:6, 1912:8, 1918:20, 1920:19, 1920:24, 1922:2, 1923:1, 1924:2, 1925:8, 1927:2</p> <p><b>objectionable</b> [1] - 1674:11</p> <p><b>objections</b> [21] - 1655:13, 1655:15, 1655:20, 1674:1, 1674:8, 1675:2, 1675:25, 1704:21, 1735:25, 1757:8, 1757:12, 1759:7, 1760:20, 1761:19, 1767:16, 1767:18, 1837:10, 1839:13, 1860:13, 1926:7</p> <p><b>objective</b> [5] - 1700:9, 1700:15, 1883:24, 1892:15, 1892:23</p> <p><b>objectives</b> [1] - 1917:12</p> <p><b>obligation</b> [3] - 1691:22, 1721:5, 1736:16</p> <p><b>observations</b> [1] - 1648:6</p> <p><b>observed</b> [6] - 1669:4, 1670:4, 1697:13, 1721:10, 1773:17, 1773:20</p> <p><b>obstruction</b> [1] - 1653:20</p> <p><b>obtain</b> [2] - 1721:6, 1758:14</p> <p><b>obvious</b> [3] - 1779:20, 1779:21, 1846:4</p> <p><b>obviously</b> [10] - 1647:25, 1668:7, 1680:11, 1695:1, 1715:22, 1756:15, 1762:2, 1766:9, 1872:3, 1916:2</p> <p><b>occasion</b> [1] - 1838:13</p> <p><b>occupation</b> [3] - 1681:16, 1703:5, 1848:22</p> <p><b>occupied</b> [1] - 1709:2</p>	<p><b>occur</b> [14] - 1721:21, 1757:12, 1788:4, 1790:16, 1792:1, 1799:10, 1803:21, 1805:17, 1816:18, 1829:23, 1830:23, 1832:5, 1853:3, 1900:13</p> <p><b>occurred</b> [24] - 1667:2, 1711:13, 1729:19, 1741:25, 1742:2, 1749:15, 1754:6, 1757:14, 1761:8, 1761:12, 1762:13, 1763:3, 1763:7, 1763:13, 1763:20, 1765:14, 1765:24, 1766:15, 1816:10, 1817:22, 1823:5, 1898:7, 1919:25, 1920:11</p> <p><b>occurring</b> [2] - 1742:22, 1832:13</p> <p><b>occurs</b> [3] - 1816:5, 1827:10, 1829:22</p> <p><b>Oceti</b> [3] - 1849:10, 1849:13, 1849:14</p> <p><b>October</b> [3] - 1763:3, 1764:22, 1841:24</p> <p><b>oddly</b> [2] - 1690:12, 1698:17</p> <p><b>odds</b> [2] - 1676:2, 1816:20</p> <p><b>OF</b> [8] - 1633:2, 1633:4, 1633:4, 1633:5, 1634:1, 1934:1, 1934:3</p> <p><b>offense</b> [1] - 1847:11</p> <p><b>offer</b> [21] - 1668:13, 1668:14, 1668:18, 1671:12, 1676:13, 1676:14, 1705:11, 1713:25, 1735:6, 1735:7, 1735:9, 1739:8, 1760:13, 1760:17, 1760:18, 1841:17, 1844:13, 1860:2, 1860:6, 1865:13, 1878:13</p> <p><b>offered</b> [5] - 1676:18, 1729:21, 1732:12, 1767:21, 1811:17</p> <p><b>offers</b> [2] - 1721:19, 1740:13</p> <p><b>offhand</b> [2] - 1883:13, 1885:20</p> <p><b>office</b> [2] - 1739:22, 1866:4</p> <p><b>officer</b> [1] - 1866:3</p> <p><b>offices</b> [1] - 1710:17</p>	<p><b>official</b> [4] - 1670:11, 1715:13, 1740:9, 1851:17</p> <p><b>officials</b> [1] - 1718:8</p> <p><b>offset</b> [1] - 1700:17</p> <p><b>oftentimes</b> [2] - 1780:4, 1854:1</p> <p><b>Ogallala</b> [6] - 1801:2, 1801:12, 1801:14, 1801:19, 1802:2, 1831:1</p> <p><b>Oil</b> [1] - 1636:9</p> <p><b>oil</b> [16] - 1659:21, 1660:19, 1662:7, 1663:25, 1667:19, 1687:6, 1771:6, 1771:7, 1785:12, 1796:19, 1807:11, 1807:17, 1808:5, 1813:3, 1813:15, 1835:13</p> <p><b>old</b> [5] - 1708:8, 1708:20, 1709:22, 1743:19, 1833:25</p> <p><b>older</b> [1] - 1839:1</p> <p><b>olive</b> [1] - 1800:13</p> <p><b>Olson</b> [2] - 1896:17, 1896:23</p> <p><b>omitted</b> [1] - 1911:25</p> <p><b>once</b> [6] - 1672:2, 1743:5, 1853:25, 1862:21, 1898:24, 1913:13</p> <p><b>one</b> [112] - 1641:17, 1641:23, 1642:9, 1645:6, 1645:9, 1646:1, 1647:8, 1648:4, 1652:2, 1652:7, 1654:2, 1658:13, 1661:6, 1668:11, 1669:7, 1673:9, 1676:16, 1681:3, 1681:4, 1682:1, 1688:12, 1689:6, 1690:7, 1691:25, 1693:13, 1694:17, 1696:14, 1696:19, 1697:5, 1698:24, 1699:24, 1700:4, 1700:13, 1709:20, 1711:1, 1711:5, 1711:6, 1711:11, 1712:13, 1719:2, 1721:7, 1723:5, 1723:9, 1730:24, 1736:4, 1736:5, 1736:18, 1743:13, 1745:21, 1748:20, 1754:5, 1754:13, 1758:9,</p>
<b>O</b>				
<p><b>o'clock</b> [2] - 1641:1, 1842:23</p> <p><b>Oahe</b> [10] - 1708:10, 1711:17, 1743:17, 1795:25, 1796:1, 1796:3, 1796:4, 1796:8, 1796:17</p> <p><b>oath</b> [9] - 1654:6, 1681:13, 1702:22, 1713:7, 1784:17, 1848:11, 1877:9, 1886:20, 1910:14</p> <p><b>object</b> [49] - 1649:4, 1656:6, 1656:17, 1656:20, 1656:22, 1656:25, 1657:2,</p>				



1767:6, 1767:9, 1768:22, 1772:1, 1776:17, 1776:20, 1781:12, 1787:5, 1788:11, 1800:24, 1807:4, 1818:8, 1819:21, 1819:24, 1825:21, 1828:3, 1829:17, 1829:18, 1830:13, 1830:14, 1835:10, 1836:16, 1837:24, 1840:4, 1840:21, 1844:4, 1846:10, 1847:3, 1850:5, 1851:4, 1853:2, 1853:16, 1854:12, 1855:2, 1856:14, 1858:6, 1858:17, 1859:9, 1859:14, 1859:15, 1867:12, 1875:5, 1875:19, 1876:11, 1876:23, 1878:21, 1882:18, 1891:1, 1894:8, 1894:21, 1905:15, 1906:23, 1909:24, 1914:22, 1917:8, 1917:11, 1920:14, 1931:5 <b>one's</b> [3] - 1840:14, 1845:11, 1847:6 <b>one-page</b> [1] - 1844:4 <b>ones</b> [3] - 1786:19, 1856:14, 1880:9 <b>ongoing</b> [1] - 1880:11 <b>Onida</b> [1] - 1934:13 <b>online</b> [1] - 1758:8 <b>ons</b> [1] - 1780:8 <b>open</b> [5] - 1716:22, 1802:9, 1802:16, 1802:21, 1804:9 <b>opening</b> [1] - 1670:25 <b>operate</b> [1] - 1770:9 <b>operates</b> [1] - 1778:22 <b>operation</b> [2] - 1841:23, 1913:14 <b>operational</b> [1] - 1818:13 <b>operations</b> [2] - 1680:18, 1699:25 <b>operator</b> [1] - 1656:24 <b>operators</b> [3] - 1670:7, 1670:21, 1758:9 <b>opinion</b> [31] - 1672:12, 1673:5, 1687:4, 1692:24, 1692:25, 1694:21, 1696:21, 1698:22, 1717:2, 1721:14, 1732:11, 1739:8, 1739:9, 1748:14, 1763:13, 1763:24, 1770:10, 1804:23, 1805:2, 1805:12, 1817:8, 1819:4, 1822:9, 1825:25, 1865:9, 1865:13, 1865:20, 1875:13, 1920:11, 1927:24, 1928:5 <b>opinions</b> [6] - 1656:25, 1657:2, 1671:13, 1732:16, 1865:7, 1866:4 <b>opponent</b> [1] - 1731:12 <b>opponents</b> [2] - 1730:4, 1767:3 <b>opportunity</b> [4] - 1677:4, 1689:20, 1706:16, 1760:22 <b>opposed</b> [4] - 1754:7, 1761:20, 1804:17, 1889:6 <b>opposing</b> [2] - 1745:8, 1745:18 <b>opposition</b> [1] - 1873:16 <b>option</b> [2] - 1654:2, 1774:19 <b>oral</b> [3] - 1648:9, 1648:11, 1653:15 <b>orally</b> [1] - 1770:6 <b>orange</b> [2] - 1800:2, 1801:19 <b>order</b> [36] - 1641:3, 1641:5, 1641:13, 1643:14, 1647:10, 1648:10, 1649:8, 1650:25, 1669:4, 1674:15, 1677:15, 1684:17, 1690:23, 1692:6, 1692:14, 1693:2, 1701:25, 1706:11, 1706:20, 1706:25, 1707:13, 1720:1, 1724:7, 1737:12, 1752:4, 1780:22, 1783:18, 1784:7, 1799:25, 1813:24, 1843:3, 1864:16, 1881:9, 1925:5, 1933:3, 1933:11 <b>Order</b> [4] - 1811:5, 1811:10, 1897:16, 1917:15 <b>ORDER</b> [1] - 1633:5 <b>ordered</b> [1] - 1756:7 <b>ordinary</b> [2] - 1701:25, 1722:10 <b>Oregon</b> [1] - 1681:23 <b>organization</b> [2] - 1928:23, 1929:5 <b>organizational</b> [1] - 1895:12 <b>organize</b> [1] - 1850:3 <b>organized</b> [2] - 1780:23, 1849:24 <b>orientated</b> [1] - 1842:17 <b>oriented</b> [1] - 1821:15 <b>original</b> [7] - 1642:8, 1718:2, 1718:22, 1868:14, 1923:6, 1923:12, 1924:11 <b>originally</b> [1] - 1643:11 <b>otherwise</b> [5] - 1701:25, 1715:9, 1742:25, 1840:22, 1878:4 <b>Otterburne</b> [2] - 1774:14, 1775:17 <b>ourselves</b> [3] - 1847:1, 1852:20, 1869:17 <b>out-of-court</b> [1] - 1705:9 <b>outcome</b> [3] - 1686:22, 1686:23, 1865:13 <b>outline</b> [1] - 1852:24 <b>outlined</b> [2] - 1695:16, 1813:14 <b>output</b> [2] - 1685:9, 1688:9 <b>outside</b> [14] - 1719:5, 1719:19, 1725:13, 1774:12, 1820:19, 1822:4, 1822:5, 1847:9, 1847:21, 1884:20, 1901:21, 1924:2, 1930:20, 1930:24 <b>overall</b> [2] - 1644:7, 1755:22 <b>overhead</b> [2] - 1652:11, 1819:25 <b>overland</b> [1] - 1790:9 <b>overlies</b> [1] - 1801:12 <b>overnight</b> [1] - 1829:25 <b>overrule</b> [7] - 1649:24, 1723:19, 1803:11, 1826:14, 1903:11, 1921:2, 1927:4 <b>overruled</b> [18] - 1649:25, 1692:20, 1695:7, 1714:13, 1714:14, 1725:25, 1732:21, 1747:17, 1750:7, 1764:14, 1803:23, 1805:7, 1805:16, 1817:13, 1824:14, 1837:13, 1893:1, 1928:3 <b>overruling</b> [3] - 1678:18, 1764:14, 1839:12 <b>oversee</b> [1] - 1911:1 <b>oversight</b> [2] - 1803:12, 1811:19 <b>overview</b> [1] - 1786:9 <b>own</b> [18] - 1709:21, 1733:4, 1749:24, 1750:10, 1750:25, 1761:16, 1768:16, 1788:9, 1808:17, 1855:22, 1893:15, 1894:10, 1904:10, 1914:10, 1914:24, 1922:22, 1930:21 <b>ownership</b> [1] - 1733:5 <b>Oyate</b> [4] - 1749:3, 1850:8, 1866:3	1739:9, 1748:14, 1763:13, 1763:24, 1770:10, 1804:23, 1805:2, 1805:12, 1817:8, 1819:4, 1822:9, 1825:25, 1865:9, 1865:13, 1865:20, 1875:13, 1920:11, 1927:24, 1928:5 <b>opinions</b> [6] - 1656:25, 1657:2, 1671:13, 1732:16, 1865:7, 1866:4 <b>opponent</b> [1] - 1731:12 <b>opponents</b> [2] - 1730:4, 1767:3 <b>opportunity</b> [4] - 1677:4, 1689:20, 1706:16, 1760:22 <b>opposed</b> [4] - 1754:7, 1761:20, 1804:17, 1889:6 <b>opposing</b> [2] - 1745:8, 1745:18 <b>opposition</b> [1] - 1873:16 <b>option</b> [2] - 1654:2, 1774:19 <b>oral</b> [3] - 1648:9, 1648:11, 1653:15 <b>orally</b> [1] - 1770:6 <b>orange</b> [2] - 1800:2, 1801:19 <b>order</b> [36] - 1641:3, 1641:5, 1641:13, 1643:14, 1647:10, 1648:10, 1649:8, 1650:25, 1669:4, 1674:15, 1677:15, 1684:17, 1690:23, 1692:6, 1692:14, 1693:2, 1701:25, 1706:11, 1706:20, 1706:25, 1707:13, 1720:1, 1724:7, 1737:12, 1752:4, 1780:22, 1783:18, 1784:7, 1799:25, 1813:24, 1843:3, 1864:16, 1881:9, 1925:5, 1933:3, 1933:11 <b>Order</b> [4] - 1811:5, 1811:10, 1897:16, 1917:15 <b>ORDER</b> [1] - 1633:5 <b>ordered</b> [1] - 1756:7 <b>ordinary</b> [2] - 1701:25, 1722:10 <b>Oregon</b> [1] - 1681:23 <b>organization</b> [2] - 1928:23, 1929:5 <b>organizational</b> [1] - 1895:12 <b>organize</b> [1] - 1850:3 <b>organized</b> [2] - 1780:23, 1849:24 <b>orientated</b> [1] - 1842:17 <b>oriented</b> [1] - 1821:15 <b>original</b> [7] - 1642:8, 1718:2, 1718:22, 1868:14, 1923:6, 1923:12, 1924:11 <b>originally</b> [1] - 1643:11 <b>otherwise</b> [5] - 1701:25, 1715:9, 1742:25, 1840:22, 1878:4 <b>Otterburne</b> [2] - 1774:14, 1775:17 <b>ourselves</b> [3] - 1847:1, 1852:20, 1869:17 <b>out-of-court</b> [1] - 1705:9 <b>outcome</b> [3] - 1686:22, 1686:23, 1865:13 <b>outline</b> [1] - 1852:24 <b>outlined</b> [2] - 1695:16, 1813:14 <b>output</b> [2] - 1685:9, 1688:9 <b>outside</b> [14] - 1719:5, 1719:19, 1725:13, 1774:12, 1820:19, 1822:4, 1822:5, 1847:9, 1847:21, 1884:20, 1901:21, 1924:2, 1930:20, 1930:24 <b>overall</b> [2] - 1644:7, 1755:22 <b>overhead</b> [2] - 1652:11, 1819:25 <b>overland</b> [1] - 1790:9 <b>overlies</b> [1] - 1801:12 <b>overnight</b> [1] - 1829:25 <b>overrule</b> [7] - 1649:24, 1723:19, 1803:11, 1826:14, 1903:11, 1921:2, 1927:4 <b>overruled</b> [18] - 1649:25, 1692:20, 1695:7, 1714:13, 1714:14, 1725:25, 1732:21, 1747:17, 1750:7, 1764:14, 1803:23, 1805:7, 1805:16, 1817:13, 1824:14, 1837:13, 1893:1, 1928:3 <b>overruling</b> [3] - 1678:18, 1764:14, 1839:12 <b>oversee</b> [1] - 1911:1 <b>oversight</b> [2] - 1803:12, 1811:19 <b>overview</b> [1] - 1786:9 <b>own</b> [18] - 1709:21, 1733:4, 1749:24, 1750:10, 1750:25, 1761:16, 1768:16, 1788:9, 1808:17, 1855:22, 1893:15, 1894:10, 1904:10, 1914:10, 1914:24, 1922:22, 1930:21 <b>ownership</b> [1] - 1733:5 <b>Oyate</b> [4] - 1749:3, 1850:8, 1866:3	1848:3 <b>Pages</b> [1] - 1633:11 <b>pain</b> [6] - 1838:18, 1839:3, 1840:3, 1840:21, 1847:15 <b>pamphlet</b> [1] - 1658:22 <b>panel</b> [1] - 1857:9 <b>paper</b> [3] - 1778:9, 1819:22, 1880:24 <b>paragraph</b> [13] - 1761:1, 1761:7, 1761:17, 1761:20, 1763:1, 1763:2, 1765:7, 1765:8, 1766:6, 1766:14, 1767:6 <b>paragraph-by-</b> <b>paragraph</b> [1] - 1761:1 <b>paragraphs</b> [8] - 1760:23, 1761:6, 1764:15, 1764:16, 1765:5, 1766:12, 1766:15 <b>paraphrase</b> [2] - 1831:16, 1831:17 <b>pardon</b> [7] - 1679:22, 1707:9, 1718:25, 1830:9, 1836:20, 1867:6, 1905:8 <b>Parkway</b> [2] - 1886:25, 1910:20 <b>Part</b> [8] - 1898:13, 1898:17, 1920:1, 1920:10, 1920:12, 1927:23, 1928:5, 1931:1 <b>part</b> [37] - 1647:16, 1682:1, 1682:3, 1703:18, 1713:16, 1727:2, 1732:11, 1735:25, 1736:13, 1753:1, 1755:21, 1775:11, 1786:22, 1790:3, 1790:4, 1801:17, 1811:9, 1811:19, 1832:19, 1847:19, 1852:2, 1855:19, 1888:5, 1888:17, 1894:8, 1900:20, 1914:22, 1916:5, 1916:8, 1916:15, 1918:7, 1919:11, 1919:24, 1921:18, 1927:3, 1927:7 <b>participants</b> [1] - 1863:7 <b>participate</b> [3] -
---	--	---

<p>1647:3, 1722:12, 1863:24</p> <p><b>participated</b> [3] - 1762:15, 1839:10, 1839:11</p> <p><b>participation</b> [5] - 1703:17, 1706:17, 1718:15, 1720:23, 1762:9</p> <p><b>particular</b> [34] - 1645:13, 1655:20, 1657:2, 1669:15, 1685:16, 1690:7, 1754:18, 1755:16, 1756:5, 1758:5, 1758:25, 1761:19, 1762:2, 1762:4, 1763:17, 1764:2, 1765:23, 1788:8, 1788:17, 1788:25, 1794:5, 1797:9, 1798:14, 1799:19, 1801:3, 1810:6, 1813:13, 1821:2, 1821:5, 1822:14, 1823:15, 1830:22, 1865:3, 1868:19</p> <p><b>particularly</b> [10] - 1643:23, 1651:11, 1660:3, 1673:13, 1706:17, 1767:2, 1788:17, 1828:1, 1854:25, 1923:9</p> <p><b>parties</b> [9] - 1642:14, 1642:25, 1645:23, 1653:10, 1695:1, 1727:24, 1744:21, 1878:16, 1910:13</p> <p><b>partner</b> [2] - 1742:13, 1744:4</p> <p><b>partners</b> [1] - 1851:3</p> <p><b>partnerships</b> [3] - 1742:6, 1742:16, 1743:8</p> <p><b>parts</b> [9] - 1661:11, 1661:22, 1681:25, 1797:2, 1797:3, 1827:17, 1827:19, 1828:24, 1917:25</p> <p><b>party</b> [7] - 1718:8, 1731:12, 1742:11, 1767:2, 1840:10, 1931:13, 1931:15</p> <p><b>pass</b> [3] - 1662:21, 1777:2</p> <p><b>passed</b> [1] - 1875:24</p> <p><b>passes</b> [3] - 1776:25, 1777:1, 1777:7</p> <p><b>passing</b> [1] - 1698:20</p> <p><b>past</b> [3] - 1703:14,</p>	<p>1818:15, 1890:24</p> <p><b>path</b> [1] - 1852:18</p> <p><b>paths</b> [2] - 1663:21, 1856:14</p> <p><b>patriot</b> [1] - 1709:21</p> <p><b>Paul</b> [2] - 1666:8, 1869:10</p> <p><b>Paula</b> [1] - 1636:3</p> <p><b>Pause</b> [3] - 1657:13, 1820:5, 1844:2</p> <p><b>pay</b> [2] - 1695:24, 1840:15</p> <p><b>paying</b> [4] - 1920:13, 1920:21, 1920:22, 1921:1</p> <p><b>PC</b> [1] - 1733:21</p> <p><b>PE</b> [1] - 1663:15</p> <p><b>peaked</b> [5] - 1777:10, 1777:16, 1777:25, 1779:3, 1779:4</p> <p><b>peers</b> [1] - 1763:15</p> <p><b>Pelly</b> [1] - 1734:20</p> <p><b>pending</b> [1] - 1760:14</p> <p><b>pension</b> [1] - 1709:6</p> <p><b>penultimate</b> [1] - 1719:22</p> <p><b>people</b> [54] - 1646:17, 1647:15, 1653:3, 1654:11, 1658:23, 1666:6, 1667:8, 1671:3, 1671:14, 1672:14, 1675:12, 1675:13, 1688:14, 1688:15, 1695:23, 1705:8, 1708:18, 1708:22, 1709:21, 1710:11, 1710:25, 1718:19, 1726:4, 1727:2, 1729:23, 1742:6, 1742:17, 1743:8, 1743:25, 1744:3, 1757:2, 1758:8, 1785:16, 1797:25, 1827:11, 1829:2, 1829:4, 1839:5, 1845:12, 1846:11, 1851:6, 1854:21, 1855:25, 1856:2, 1856:5, 1857:8, 1862:8, 1863:7, 1868:1, 1872:12, 1881:5, 1920:13, 1928:23</p> <p><b>people's</b> [1] - 1667:13</p> <p><b>peoples</b> [3] - 1734:23, 1734:25, 1746:3</p> <p><b>per</b> [15] - 1661:11, 1661:22, 1776:17, 1796:10, 1796:13, 1797:2, 1797:3,</p>	<p>1808:14, 1827:17, 1827:19, 1828:24, 1892:15, 1898:16, 1898:21, 1898:25</p> <p><b>perceived</b> [1] - 1657:14</p> <p><b>percent</b> [9] - 1658:15, 1664:7, 1666:4, 1788:9, 1805:22, 1805:23, 1853:6, 1854:6, 1925:17</p> <p><b>percentage</b> [1] - 1775:22</p> <p><b>perennial</b> [7] - 1790:10, 1803:25, 1804:2, 1804:4, 1815:1, 1815:9, 1815:10</p> <p><b>perfect</b> [1] - 1753:10</p> <p><b>perform</b> [3] - 1756:12, 1759:25, 1891:18</p> <p><b>performance</b> [6] - 1755:11, 1755:12, 1756:16, 1756:23, 1757:20, 1758:6</p> <p><b>performed</b> [1] - 1922:22</p> <p><b>perhaps</b> [8] - 1653:20, 1721:19, 1748:19, 1761:18, 1773:6, 1787:1, 1840:5, 1877:3</p> <p><b>period</b> [6] - 1757:14, 1764:21, 1766:12, 1804:10, 1816:9, 1870:13</p> <p><b>periodically</b> [1] - 1840:20</p> <p><b>periods</b> [2] - 1788:13, 1818:10</p> <p><b>Perkins</b> [1] - 1635:6</p> <p><b>permanent</b> [1] - 1700:1</p> <p><b>permeability</b> [2] - 1799:15, 1822:14</p> <p><b>permeable</b> [8] - 1789:25, 1799:18, 1800:6, 1800:7, 1801:11, 1822:19, 1823:19, 1827:15</p> <p><b>permeating</b> [1] - 1663:9</p> <p><b>permeation</b> [3] - 1663:13, 1663:16, 1663:19</p> <p><b>permissible</b> [2] - 1661:12, 1725:14</p> <p><b>permit</b> [6] - 1644:20, 1725:11, 1878:3, 1881:25, 1883:16,</p>	<p>1883:17</p> <p><b>PERMIT</b> [1] - 1633:5</p> <p><b>Permit</b> [31] - 1641:6, 1644:2, 1644:4, 1654:17, 1656:17, 1683:22, 1683:24, 1684:8, 1692:6, 1693:11, 1719:10, 1721:8, 1747:23, 1808:23, 1809:1, 1811:4, 1811:8, 1811:10, 1825:12, 1863:22, 1864:4, 1864:12, 1883:18, 1918:8, 1920:1, 1923:6, 1923:8, 1927:12, 1927:25, 1928:9</p> <p><b>permits</b> [5] - 1746:11, 1881:8, 1881:15, 1883:21, 1923:20</p> <p><b>permitted</b> [5] - 1712:5, 1725:18, 1727:17, 1728:7, 1731:16</p> <p><b>permitting</b> [2] - 1827:5, 1880:17</p> <p><b>person</b> [14] - 1660:5, 1671:10, 1703:9, 1703:10, 1710:9, 1725:12, 1728:1, 1728:2, 1842:2, 1846:13, 1849:6, 1853:18, 1857:10, 1931:8</p> <p><b>person's</b> [1] - 1698:8</p> <p><b>personal</b> [12] - 1750:25, 1761:11, 1761:16, 1762:12, 1762:18, 1763:8, 1765:2, 1817:21, 1838:23, 1839:24, 1852:13, 1868:20</p> <p><b>personally</b> [4] - 1728:13, 1761:24, 1810:25, 1868:24</p> <p><b>personnel</b> [1] - 1915:9</p> <p><b>persons</b> [1] - 1829:3</p> <p><b>perspective</b> [3] - 1649:17, 1703:24, 1704:6</p> <p><b>pertain</b> [1] - 1766:15</p> <p><b>pertaining</b> [5] - 1741:1, 1741:3, 1831:21, 1831:25, 1833:5</p> <p><b>pertains</b> [1] - 1763:2</p> <p><b>perturbs</b> [1] - 1839:22</p> <p><b>Peter</b> [3] - 1814:22, 1879:21, 1925:12</p> <p><b>Peterson</b> [2] -</p>	<p>1871:24, 1874:10 32</p> <p><b>PETITION</b> [1] - 1633:4</p> <p><b>Petition</b> [1] - 1641:4</p> <p><b>petroleum</b> [3] - 1663:13, 1667:4, 1835:18</p> <p><b>PGI</b> [1] - 1729:16</p> <p><b>Ph.D</b> [6] - 1635:23, 1636:15, 1682:12, 1682:15, 1698:14, 1785:1</p> <p><b>phase</b> [1] - 1818:13</p> <p><b>Philip</b> [1] - 1798:17</p> <p><b>Philippines</b> [1] - 1709:10</p> <p><b>PHMSA</b> [8] - 1758:5, 1758:12, 1758:21, 1891:18, 1892:5, 1892:8, 1902:16, 1902:21</p> <p><b>PHMSA's</b> [2] - 1902:22</p> <p><b>phone</b> [3] - 1665:3, 1670:20, 1915:23</p> <p><b>photo</b> [2] - 1823:2, 1824:7</p> <p><b>Photos</b> [1] - 1636:24</p> <p><b>phrase</b> [6] - 1754:17, 1893:22, 1894:3, 1894:7, 1914:17, 1914:21</p> <p><b>Phyllis</b> [4] - 1636:5, 1638:9, 1702:20, 1703:4</p> <p><b>physical</b> [8] - 1716:12, 1850:9, 1851:7, 1853:9, 1853:12, 1868:23, 1872:8, 1872:10</p> <p><b>physically</b> [1] - 1853:15</p> <p><b>picture</b> [7] - 1665:17, 1673:17, 1673:18, 1837:23, 1846:9, 1846:12, 1847:13</p> <p><b>pictures</b> [6] - 1661:8, 1663:17, 1839:5, 1846:11, 1847:16, 1847:17</p> <p><b>Pictures</b> [1] - 1637:4</p> <p><b>piece</b> [2] - 1641:23, 1821:5</p> <p><b>pieces</b> [2] - 1652:2, 1758:17</p> <p><b>Pierre</b> [20] - 1634:3, 1651:7, 1659:7, 1666:18, 1793:5, 1793:11, 1793:23, 1794:3, 1794:11, 1795:1, 1795:14,</p>
---	--	---	---	--

1798:23, 1799:2, 1799:6, 1799:7, 1800:12, 1800:18, 1816:1, 1819:11 <b>pills</b> [3] - 1838:21, 1839:3, 1840:4 <b>Pine</b> [1] - 1733:1 <b>pinhole</b> [2] - 1664:3, 1664:5 <b>pinholes</b> [1] - 1663:25 <b>pipe</b> [31] - 1663:16, 1663:23, 1663:24, 1676:16, 1772:6, 1774:9, 1774:13, 1775:3, 1777:1, 1777:10, 1777:16, 1777:18, 1777:20, 1777:25, 1778:11, 1779:3, 1779:4, 1780:4, 1790:22, 1791:1, 1824:1, 1824:4, 1824:6, 1889:3, 1898:14, 1898:15, 1898:22, 1898:25, 1904:17, 1906:12 <b>Pipeline</b> [56] - 1636:10, 1636:19, 1641:5, 1641:7, 1660:12, 1683:23, 1684:25, 1687:16, 1690:6, 1690:19, 1691:4, 1693:14, 1693:17, 1694:3, 1712:6, 1714:2, 1722:17, 1745:9, 1745:18, 1746:12, 1747:2, 1747:22, 1754:6, 1755:1, 1760:1, 1775:23, 1777:7, 1778:1, 1778:18, 1785:14, 1785:21, 1808:1, 1808:5, 1808:9, 1808:20, 1808:23, 1809:2, 1809:7, 1809:12, 1809:25, 1810:4, 1810:18, 1811:6, 1811:11, 1814:24, 1828:13, 1833:7, 1833:10, 1833:25, 1898:2, 1899:14, 1901:1, 1925:15, 1927:12, 1927:20, 1927:22 <b>pipeline</b> [94] - 1661:22, 1664:18, 1666:22, 1667:25, 1685:13, 1686:13, 1687:14, 1687:22,	1688:15, 1688:16, 1689:25, 1690:2, 1695:25, 1696:9, 1698:6, 1698:15, 1698:22, 1699:4, 1712:8, 1712:9, 1712:13, 1712:14, 1721:7, 1736:21, 1739:12, 1742:15, 1755:12, 1755:14, 1755:17, 1755:19, 1758:9, 1759:14, 1759:16, 1759:21, 1763:11, 1763:18, 1785:11, 1785:18, 1787:8, 1787:14, 1790:3, 1790:19, 1791:9, 1792:18, 1792:23, 1793:18, 1805:9, 1807:11, 1807:13, 1807:17, 1807:19, 1807:21, 1809:20, 1812:9, 1812:13, 1812:21, 1812:24, 1818:13, 1820:16, 1824:9, 1825:3, 1830:18, 1830:24, 1831:19, 1832:2, 1832:7, 1832:11, 1832:15, 1832:21, 1835:12, 1836:7, 1836:10, 1836:14, 1836:22, 1836:25, 1837:8, 1850:1, 1852:13, 1855:16, 1856:10, 1874:6, 1887:19, 1887:21, 1897:15, 1899:25, 1900:6, 1900:24, 1902:24, 1913:14, 1913:17, 1917:14, 1918:16, 1924:22, 1927:8 <b>PIPELINE</b> [2] - 1633:4, 1633:6 <b>Pipeline's</b> [1] - 1761:10 <b>pipelines</b> [7] - 1698:7, 1698:10, 1698:11, 1723:2, 1757:23, 1757:24, 1902:24 <b>pipes</b> [3] - 1774:11, 1777:3, 1898:20 <b>pipng</b> [1] - 1663:10 <b>pit</b> [2] - 1834:1, 1834:7 <b>place</b> [22] - 1683:19, 1702:14, 1727:12, 1744:15, 1773:18, 1773:21, 1774:2, 1774:5, 1835:11,	1835:12, 1847:6, 1847:9, 1856:8, 1857:25, 1862:12, 1867:24, 1902:23, 1905:25, 1907:12, 1913:13, 1913:16, 1918:16 <b>placed</b> [2] - 1661:1, 1854:2 <b>places</b> [1] - 1872:11 <b>placing</b> [3] - 1643:21, 1646:21, 1834:3 <b>plain</b> [1] - 1900:9 <b>Plan</b> [5] - 1658:19, 1810:4, 1897:22, 1913:13, 1913:16 <b>plan</b> [8] - 1658:21, 1729:15, 1754:6, 1892:2, 1892:3, 1892:4, 1920:5, 1925:14 <b>plane</b> [1] - 1781:15 <b>planning</b> [2] - 1729:16, 1807:16 <b>plans</b> [7] - 1802:5, 1802:16, 1918:4, 1920:6, 1920:9, 1921:16 <b>plant</b> [9] - 1656:24, 1670:21, 1674:4, 1680:19, 1685:13, 1713:11, 1714:24, 1715:5, 1828:15 <b>plants</b> [2] - 1672:13, 1828:5 <b>plastic</b> [4] - 1663:12, 1663:14, 1663:15, 1663:16 <b>platy</b> [1] - 1788:6 <b>play</b> [4] - 1696:12, 1846:12, 1846:21, 1847:5 <b>played</b> [1] - 1846:16 <b>pleased</b> [1] - 1648:4 <b>plus</b> [1] - 1819:12 <b>point</b> [44] - 1643:20, 1644:17, 1646:1, 1648:20, 1655:15, 1656:9, 1658:14, 1658:18, 1660:8, 1662:1, 1663:18, 1667:15, 1668:23, 1674:10, 1689:6, 1706:6, 1714:7, 1716:2, 1716:20, 1719:11, 1721:2, 1737:12, 1740:12, 1764:14, 1765:4, 1765:21, 1767:7, 1775:11, 1783:17,	1785:6, 1790:20, 1836:6, 1837:5, 1841:5, 1842:11, 1845:16, 1845:23, 1851:3, 1858:21, 1862:19, 1913:14, 1920:4 <b>point-by-point</b> [1] - 1655:15 <b>pointed</b> [2] - 1736:10, 1840:8 <b>pointer</b> [1] - 1787:16 <b>points</b> [3] - 1656:7, 1657:11, 1725:10 <b>pole</b> [1] - 1908:25 <b>police</b> [1] - 1862:14 <b>Policy</b> [3] - 1691:23, 1737:2, 1740:1 <b>policy</b> [15] - 1682:1, 1682:2, 1699:14, 1705:8, 1713:16, 1713:22, 1746:3, 1749:20, 1749:21, 1749:24, 1750:4, 1750:10, 1751:5, 1815:24, 1903:25 <b>pollutants</b> [1] - 1879:5 <b>polyethylene</b> [1] - 1663:9 <b>poor</b> [1] - 1697:22 <b>population</b> [4] - 1666:4, 1855:7, 1871:11, 1871:12 <b>populations</b> [2] - 1857:12, 1871:10 <b>portion</b> [12] - 1705:6, 1755:7, 1759:10, 1764:12, 1766:4, 1767:3, 1772:6, 1812:10, 1812:12, 1813:6, 1822:24, 1824:6 <b>portions</b> [13] - 1635:5, 1635:9, 1635:22, 1635:25, 1636:5, 1637:7, 1649:22, 1656:17, 1674:8, 1717:21, 1760:20, 1768:5, 1892:20 <b>Portland</b> [1] - 1681:23 <b>portrayal</b> [1] - 1734:5 <b>pose</b> [1] - 1850:22 <b>posed</b> [6] - 1690:2, 1779:19, 1809:6, 1865:8, 1878:6, 1882:19 <b>poses</b> [2] - 1666:22, 1673:12 <b>position</b> [8] - 1642:3, 1694:8, 1732:14,	1762:20, 1762:22, 33 1839:7, 1887:22, 1895:13 <b>positions</b> [2] - 1840:21, 1895:11 <b>positive</b> [2] - 1831:25, 1871:25 <b>possibility</b> [6] - 1699:6, 1800:12, 1824:11, 1876:21, 1876:23, 1879:11 <b>possible</b> [13] - 1642:1, 1655:21, 1661:18, 1700:6, 1700:8, 1731:16, 1782:24, 1789:10, 1817:16, 1825:2, 1828:18, 1828:20, 1828:21 <b>possibly</b> [6] - 1691:5, 1699:19, 1736:23, 1763:7, 1793:1, 1829:3 <b>post</b> [3] - 1839:7, 1848:1, 1869:6 <b>postdates</b> [1] - 1765:1 <b>posted</b> [2] - 1845:4, 1845:8 <b>postemployment</b> [1] - 1763:12 <b>posthearing</b> [2] - 1720:25, 1721:12 <b>posttermination</b> [1] - 1766:16 <b>potent</b> [1] - 1664:20 <b>potential</b> [25] - 1665:20, 1687:5, 1688:5, 1688:12, 1690:18, 1691:3, 1691:6, 1696:9, 1712:20, 1714:1, 1723:1, 1770:12, 1790:5, 1793:10, 1793:17, 1798:19, 1800:19, 1808:5, 1812:24, 1820:20, 1823:4, 1832:2, 1832:16, 1832:23, 1837:14 <b>potentially</b> [14] - 1665:14, 1666:24, 1667:5, 1759:13, 1793:18, 1795:17, 1796:16, 1805:2, 1805:12, 1813:16, 1819:13, 1819:14, 1928:7, 1928:9 <b>potentiometric</b> [1] - 1831:4 <b>poverty</b> [3] - 1852:7, 1853:2, 1853:3
--	--	--	---	--



<p><b>power</b> <sup>[4]</sup> - 1703:24, 1703:25, 1704:2, 1900:2</p> <p><b>PowerPoint</b> <sup>[9]</sup> - 1650:21, 1654:23, 1655:24, 1656:14, 1656:21, 1674:6, 1676:11, 1806:6, 1806:13</p> <p><b>practice</b> <sup>[2]</sup> - 1721:12, 1850:22</p> <p><b>practices</b> <sup>[2]</sup> - 1681:24, 1779:12</p> <p><b>prayer</b> <sup>[1]</sup> - 1729:21</p> <p><b>precipitation</b> <sup>[5]</sup> - 1801:25, 1816:18, 1817:9, 1818:10, 1818:14</p> <p><b>precision</b> <sup>[1]</sup> - 1675:23</p> <p><b>preclude</b> <sup>[2]</sup> - 1706:13, 1706:25</p> <p><b>precluded</b> <sup>[1]</sup> - 1672:1</p> <p><b>precludes</b> <sup>[2]</sup> - 1706:21, 1725:7</p> <p><b>prediction</b> <sup>[1]</sup> - 1818:24</p> <p><b>preempted</b> <sup>[1]</sup> - 1757:3</p> <p><b>prefer</b> <sup>[2]</sup> - 1781:13, 1889:25</p> <p><b>preference</b> <sup>[2]</sup> - 1781:25, 1909:19</p> <p><b>profile</b> <sup>[1]</sup> - 1655:9</p> <p><b>Profiled</b> <sup>[10]</sup> - 1635:15, 1635:16, 1635:22, 1635:23, 1635:24, 1636:5, 1636:7, 1637:6, 1767:19, 1878:9</p> <p><b>prefiled</b> <sup>[65]</sup> - 1646:11, 1647:7, 1648:8, 1648:10, 1648:13, 1653:15, 1654:25, 1655:4, 1655:6, 1655:10, 1655:12, 1655:13, 1655:22, 1656:20, 1658:2, 1674:16, 1676:12, 1676:17, 1677:6, 1682:20, 1684:1, 1684:6, 1684:14, 1684:19, 1688:23, 1688:25, 1689:12, 1689:13, 1704:10, 1704:11, 1704:13, 1706:5, 1712:23, 1712:24, 1714:8, 1714:9, 1724:25, 1725:3, 1760:13,</p>	<p>1767:17, 1770:6, 1802:19, 1804:21, 1806:12, 1808:6, 1809:23, 1811:24, 1852:10, 1856:6, 1859:8, 1859:22, 1877:18, 1878:1, 1878:6, 1887:25, 1888:5, 1888:16, 1893:18, 1897:5, 1897:13, 1898:9, 1898:23, 1911:15, 1912:7, 1914:13</p> <p><b>prejudiced</b> <sup>[2]</sup> - 1645:9, 1646:1</p> <p><b>prejudicial</b> <sup>[2]</sup> - 1642:5, 1806:14</p> <p><b>preliminarily</b> <sup>[1]</sup> - 1760:21</p> <p><b>preliminary</b> <sup>[1]</sup> - 1820:23</p> <p><b>preparation</b> <sup>[2]</sup> - 1914:11, 1916:15</p> <p><b>prepare</b> <sup>[9]</sup> - 1671:20, 1674:9, 1691:23, 1707:20, 1729:13, 1894:10, 1914:24, 1916:21, 1929:10</p> <p><b>prepared</b> <sup>[24]</sup> - 1672:13, 1672:19, 1684:24, 1687:24, 1691:18, 1692:1, 1697:15, 1697:17, 1701:14, 1701:24, 1702:3, 1702:5, 1702:6, 1702:7, 1702:16, 1733:12, 1764:11, 1781:21, 1877:18, 1909:15, 1910:10, 1916:16, 1916:19</p> <p><b>preparedness</b> <sup>[1]</sup> - 1660:6</p> <p><b>preparing</b> <sup>[2]</sup> - 1692:2, 1923:19</p> <p><b>presence</b> <sup>[6]</sup> - 1842:13, 1854:11, 1855:3, 1856:7, 1872:12, 1875:14</p> <p><b>present</b> <sup>[9]</sup> - 1633:14, 1643:13, 1650:11, 1748:16, 1748:21, 1764:7, 1806:13, 1852:8, 1908:18</p> <p><b>presentation</b> <sup>[7]</sup> - 1654:24, 1656:21, 1806:6, 1851:20, 1851:21, 1851:25, 1893:16</p> <p><b>presented</b> <sup>[4]</sup> -</p>	<p>1646:16, 1684:15, 1695:13, 1782:24</p> <p><b>presenter</b> <sup>[1]</sup> - 1853:11</p> <p><b>presently</b> <sup>[1]</sup> - 1880:6</p> <p><b>president</b> <sup>[3]</sup> - 1680:21, 1739:23, 1850:6</p> <p><b>president/senior</b> <sup>[1]</sup> - 1910:24</p> <p><b>presidential</b> <sup>[1]</sup> - 1746:11</p> <p><b>Presidential</b> <sup>[1]</sup> - 1747:23</p> <p><b>pressure</b> <sup>[1]</sup> - 1900:1</p> <p><b>presumably</b> <sup>[5]</sup> - 1682:25, 1687:19, 1690:9, 1691:20, 1699:23</p> <p><b>presuming</b> <sup>[2]</sup> - 1656:14, 1755:14</p> <p><b>pretty</b> <sup>[6]</sup> - 1693:6, 1697:21, 1790:23, 1852:19, 1858:24, 1868:16</p> <p><b>prevalent</b> <sup>[2]</sup> - 1800:20, 1855:1</p> <p><b>prevent</b> <sup>[3]</sup> - 1734:24, 1832:1, 1851:13</p> <p><b>preventative</b> <sup>[1]</sup> - 1831:22</p> <p><b>prevented</b> <sup>[1]</sup> - 1832:12</p> <p><b>preventing</b> <sup>[2]</sup> - 1649:5, 1649:10</p> <p><b>prevention</b> <sup>[1]</sup> - 1654:12</p> <p><b>previous</b> <sup>[7]</sup> - 1643:10, 1696:11, 1704:19, 1775:9, 1821:20, 1922:25, 1924:5</p> <p><b>previously</b> <sup>[12]</sup> - 1674:7, 1755:6, 1755:7, 1783:10, 1806:11, 1837:11, 1849:20, 1877:16, 1880:2, 1897:25, 1918:14, 1921:21</p> <p><b>Price</b> <sup>[1]</sup> - 1774:6</p> <p><b>primarily</b> <sup>[3]</sup> - 1803:18, 1871:10, 1883:8</p> <p><b>primary</b> <sup>[3]</sup> - 1680:19, 1855:5, 1855:18</p> <p><b>principle</b> <sup>[1]</sup> - 1644:7</p> <p><b>principles</b> <sup>[1]</sup> - 1749:21</p> <p><b>printed</b> <sup>[1]</sup> - 1852:5</p> <p><b>private</b> <sup>[2]</sup> - 1662:3,</p>	<p>1743:3</p> <p><b>privileged</b> <sup>[1]</sup> - 1784:8</p> <p><b>problem</b> <sup>[6]</sup> - 1672:7, 1779:11, 1780:4, 1795:11, 1805:3, 1852:6</p> <p><b>problematic</b> <sup>[4]</sup> - 1788:18, 1795:6, 1795:17, 1843:21</p> <p><b>problems</b> <sup>[17]</sup> - 1643:23, 1663:13, 1663:16, 1678:25, 1755:11, 1758:2, 1785:17, 1793:7, 1793:18, 1798:19, 1799:8, 1838:23, 1839:2, 1840:23, 1872:4, 1872:16</p> <p><b>procedural</b> <sup>[1]</sup> - 1641:15</p> <p><b>procedurally</b> <sup>[1]</sup> - 1656:10</p> <p><b>procedure</b> <sup>[1]</sup> - 1715:13</p> <p><b>procedures</b> <sup>[2]</sup> - 1777:9, 1839:12</p> <p><b>proceed</b> <sup>[29]</sup> - 1650:17, 1654:7, 1655:17, 1658:6, 1670:19, 1672:10, 1681:9, 1689:20, 1689:23, 1695:7, 1702:17, 1714:14, 1723:22, 1724:11, 1725:18, 1725:25, 1727:17, 1728:7, 1735:2, 1740:15, 1759:6, 1784:14, 1789:20, 1792:16, 1848:7, 1877:8, 1890:15, 1908:11, 1925:9</p> <p><b>proceeded</b> <sup>[2]</sup> - 1641:25, 1766:1</p> <p><b>proceeding</b> <sup>[27]</sup> - 1641:18, 1642:4, 1657:5, 1657:7, 1657:9, 1682:5, 1682:21, 1682:24, 1683:19, 1704:11, 1706:18, 1712:7, 1714:5, 1714:19, 1719:22, 1723:12, 1739:1, 1741:13, 1741:16, 1764:18, 1809:1, 1827:5, 1864:9, 1876:14, 1877:16, 1918:7, 1919:11</p> <p><b>PROCEEDINGS</b> <sup>[1]</sup> -</p>	<p>1634:1</p> <p><b>proceedings</b> <sup>[19]</sup> - 1642:17, 1643:7, 1644:20, 1705:5, 1711:24, 1713:18, 1715:24, 1720:19, 1723:13, 1762:10, 1762:11, 1769:4, 1769:11, 1863:25, 1864:9, 1864:12, 1913:5, 1934:9, 1934:12</p> <p><b>process</b> <sup>[39]</sup> - 1643:24, 1644:8, 1644:14, 1645:4, 1645:25, 1646:9, 1646:22, 1647:10, 1649:17, 1656:7, 1673:22, 1702:8, 1710:8, 1718:20, 1738:21, 1743:15, 1744:7, 1744:14, 1753:1, 1753:2, 1755:24, 1756:10, 1768:20, 1773:23, 1773:25, 1774:2, 1774:4, 1774:7, 1776:1, 1778:17, 1804:6, 1829:22, 1839:5, 1864:18, 1878:4, 1880:17, 1880:20, 1913:15, 1918:15</p> <p><b>processes</b> <sup>[3]</sup> - 1708:13, 1741:21, 1765:24</p> <p><b>produce</b> <sup>[2]</sup> - 1707:4, 1707:18</p> <p><b>produced</b> <sup>[7]</sup> - 1663:1, 1674:7, 1685:20, 1685:21, 1686:11, 1686:14, 1834:23</p> <p><b>Produced</b> <sup>[1]</sup> - 1635:7</p> <p><b>produces</b> <sup>[1]</sup> - 1672:6</p> <p><b>product</b> <sup>[9]</sup> - 1659:21, 1660:11, 1660:19, 1833:16, 1833:18, 1834:9, 1835:13, 1835:18</p> <p><b>products</b> <sup>[1]</sup> - 1887:20</p> <p><b>Professional</b> <sup>[2]</sup> - 1934:6, 1934:19</p> <p><b>professional</b> <sup>[13]</sup> - 1671:23, 1672:25, 1681:20, 1682:7, 1785:3, 1786:8, 1807:5, 1807:7, 1852:14, 1887:2, 1910:23, 1911:5, 1923:19</p>
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<p><b>professionals</b> [2] - 1660:21, 1847:1</p> <p><b>professor</b> [3] - 1784:16, 1785:6, 1785:8</p> <p><b>program</b> [1] - 1810:11</p> <p><b>progress</b> [1] - 1753:12</p> <p><b>project</b> [54] - 1664:14, 1665:18, 1673:12, 1673:13, 1685:17, 1686:16, 1686:19, 1686:20, 1687:2, 1687:17, 1690:19, 1690:21, 1711:19, 1714:3, 1719:17, 1722:8, 1722:10, 1722:17, 1722:25, 1730:1, 1730:4, 1732:20, 1736:18, 1737:5, 1747:2, 1754:6, 1754:10, 1755:1, 1755:23, 1755:25, 1756:6, 1757:13, 1758:16, 1763:15, 1764:17, 1764:24, 1765:1, 1772:5, 1775:3, 1778:24, 1785:15, 1814:24, 1819:6, 1824:19, 1827:1, 1853:20, 1873:16, 1880:25, 1887:3, 1887:4, 1898:11, 1910:24, 1916:15</p> <p><b>projects</b> [14] - 1687:24, 1698:6, 1703:10, 1708:19, 1723:4, 1736:15, 1736:16, 1736:17, 1737:6, 1738:15, 1738:17, 1739:11, 1778:23, 1887:6</p> <p><b>promote</b> [1] - 1654:11</p> <p><b>prone</b> [1] - 1788:12</p> <p><b>proof</b> [1] - 1654:17</p> <p><b>proper</b> [4] - 1731:4, 1746:16, 1866:22, 1870:14</p> <p><b>properly</b> [2] - 1688:5, 1720:24</p> <p><b>Property</b> [1] - 1636:17</p> <p><b>property</b> [15] - 1687:6, 1689:25, 1696:3, 1698:8, 1698:16, 1698:18, 1698:21, 1698:23, 1699:7, 1743:3, 1821:5, 1821:13, 1824:9, 1833:25, 1837:5</p> <p><b>propose</b> [2] - 1668:14,</p>	<p>1811:22</p> <p><b>proposed</b> [46] - 1655:16, 1660:11, 1664:13, 1665:18, 1666:22, 1668:5, 1694:3, 1711:25, 1713:8, 1714:22, 1723:2, 1730:15, 1783:6, 1783:13, 1786:12, 1787:7, 1791:9, 1794:10, 1798:18, 1800:1, 1801:1, 1809:6, 1809:17, 1812:12, 1813:7, 1818:13, 1819:6, 1822:7, 1830:18, 1836:14, 1850:1, 1855:15, 1856:10, 1893:21, 1893:24, 1893:25, 1894:2, 1894:3, 1894:6, 1899:13, 1914:16, 1919:16, 1926:16, 1926:21, 1926:24</p> <p><b>proposes</b> [1] - 1668:12</p> <p><b>proposing</b> [1] - 1675:17</p> <p><b>propounding</b> [1] - 1728:20</p> <p><b>prosecute</b> [1] - 1862:7</p> <p><b>protect</b> [10] - 1654:10, 1659:4, 1680:15, 1711:9, 1711:10, 1744:12, 1805:1, 1805:10, 1826:6, 1901:11</p> <p><b>protected</b> [2] - 1742:8, 1824:21</p> <p><b>protecting</b> [3] - 1673:2, 1742:16, 1744:2</p> <p><b>protection</b> [10] - 1805:19, 1820:17, 1820:19, 1821:9, 1822:5, 1823:23, 1824:11, 1830:19, 1857:24, 1875:14</p> <p><b>Protection</b> [1] - 1797:5</p> <p><b>protocol</b> [1] - 1710:14</p> <p><b>proud</b> [1] - 1742:13</p> <p><b>prove</b> [1] - 1727:22</p> <p><b>proved</b> [1] - 1696:21</p> <p><b>proven</b> [2] - 1859:12, 1869:18</p> <p><b>provide</b> [10] - 1659:17, 1660:14, 1729:15, 1768:25, 1802:1,</p>	<p>1857:24, 1891:19, 1916:4, 1916:7, 1921:17</p> <p><b>provided</b> [10] - 1674:21, 1681:21, 1769:1, 1825:16, 1825:19, 1892:22, 1916:20, 1916:24, 1930:21, 1931:17</p> <p><b>provider</b> [1] - 1660:14</p> <p><b>provides</b> [3] - 1658:22, 1710:24, 1867:23</p> <p><b>PTSD</b> [2] - 1849:4, 1861:9</p> <p><b>PUBLIC</b> [2] - 1633:1, 1633:13</p> <p><b>public</b> [10] - 1662:3, 1664:18, 1665:2, 1667:22, 1670:7, 1672:15, 1673:12, 1682:1, 1682:2, 1828:18</p> <p><b>Public</b> [8] - 1682:5, 1684:2, 1741:6, 1741:19, 1808:22, 1811:9, 1934:7, 1934:18</p> <p><b>publication</b> [1] - 1808:16</p> <p><b>publicly</b> [3] - 1758:7, 1758:11, 1915:20</p> <p><b>published</b> [1] - 1739:22</p> <p><b>PUC</b> [21] - 1668:21, 1894:12, 1895:4, 1895:8, 1895:17, 1895:21, 1895:22, 1915:1, 1915:10, 1915:14, 1915:17, 1915:22, 1916:19, 1921:6, 1930:17, 1930:21, 1930:24, 1931:3, 1931:8, 1931:12, 1931:14</p> <p><b>pull</b> [1] - 1676:3</p> <p><b>pulled</b> [2] - 1770:15, 1819:24</p> <p><b>purification</b> [1] - 1835:8</p> <p><b>purple</b> [1] - 1709:13</p> <p><b>purport</b> [1] - 1715:15</p> <p><b>purported</b> [2] - 1657:1, 1705:10</p> <p><b>purports</b> [2] - 1763:5, 1764:25</p> <p><b>purpose</b> [6] - 1652:1, 1689:11, 1850:23, 1921:18, 1930:2</p> <p><b>purposes</b> [17] -</p>	<p>1654:21, 1685:10, 1726:10, 1769:8, 1769:16, 1806:3, 1806:4, 1806:19, 1847:15, 1887:24, 1888:24, 1894:8, 1894:24, 1895:6, 1911:14, 1914:22, 1916:11</p> <p><b>pursue</b> [1] - 1834:12</p> <p><b>put</b> [26] - 1641:16, 1645:6, 1645:11, 1648:15, 1648:19, 1653:6, 1654:24, 1664:20, 1684:19, 1688:2, 1705:15, 1716:12, 1722:19, 1733:7, 1755:25, 1776:20, 1789:11, 1839:20, 1843:5, 1858:22, 1876:18, 1902:23, 1904:19, 1907:12, 1913:13, 1925:6</p> <p><b>putting</b> [3] - 1775:10, 1841:15, 1890:11</p> <p><b>PVC</b> [4] - 1663:15, 1663:20, 1663:23, 1676:16</p>	<p><b>quantifications</b> [1] - 35 1882:6</p> <p><b>quantify</b> [5] - 1695:20, 1696:4, 1696:7, 1779:5, 1779:8</p> <p><b>quarter</b> [1] - 1842:11</p> <p><b>quarters</b> [1] - 1728:5</p> <p><b>quaternium</b> [1] - 1794:1</p> <p><b>queried</b> [1] - 1831:21</p> <p><b>questioning</b> [5] - 1647:11, 1696:20, 1724:2, 1925:1, 1925:7</p> <p><b>questions</b> [187] - 1642:20, 1646:19, 1648:23, 1677:18, 1677:22, 1679:9, 1679:11, 1679:13, 1679:15, 1679:17, 1679:20, 1679:21, 1679:23, 1680:4, 1680:5, 1691:9, 1691:17, 1694:9, 1695:23, 1697:3, 1697:4, 1697:25, 1698:1, 1701:4, 1721:25, 1723:15, 1723:16, 1726:25, 1729:25, 1744:19, 1744:21, 1745:6, 1747:18, 1748:5, 1748:8, 1748:24, 1749:5, 1749:12, 1750:17, 1750:23, 1751:5, 1751:13, 1751:20, 1751:22, 1752:6, 1752:8, 1752:9, 1752:11, 1752:13, 1752:15, 1752:19, 1752:24, 1758:24, 1758:25, 1768:11, 1769:23, 1770:2, 1770:22, 1770:24, 1771:10, 1771:12, 1771:17, 1771:19, 1771:23, 1772:17, 1772:19, 1772:20, 1772:22, 1772:24, 1773:1, 1773:5, 1773:7, 1773:8, 1778:13, 1778:16, 1780:7, 1780:14, 1804:12, 1806:24, 1812:3, 1814:13, 1814:15, 1815:12, 1815:13, 1815:17, 1819:15, 1819:18, 1820:24, 1826:19, 1829:14,</p>
<b>Q</b>				
<p><b>QE</b> [2] - 1789:9, 1797:21</p> <p><b>Qt</b> [1] - 1800:2</p> <p><b>qualification</b> [7] - 1756:10, 1756:22, 1756:25, 1757:11, 1757:19, 1758:18, 1759:9</p> <p><b>qualified</b> [3] - 1755:9, 1756:8, 1756:9</p> <p><b>qualifiers</b> [1] - 1918:18</p> <p><b>qualifying</b> [1] - 1759:6</p> <p><b>Quality</b> [1] - 1636:8</p> <p><b>quality</b> [18] - 1665:23, 1688:6, 1688:7, 1688:12, 1688:20, 1694:18, 1694:22, 1695:14, 1695:18, 1696:4, 1696:14, 1696:15, 1715:7, 1739:23, 1740:20, 1756:2, 1757:8, 1770:20</p> <p><b>quantification</b> [5] - 1880:12, 1882:2, 1884:4, 1884:5, 1884:6</p>				

1830:6, 1830:8, 1830:9, 1830:11, 1835:21, 1835:22, 1837:19, 1837:20, 1838:2, 1839:10, 1846:6, 1859:22, 1860:6, 1860:25, 1861:21, 1861:24, 1863:16, 1864:11, 1866:8, 1866:12, 1867:5, 1869:4, 1869:9, 1869:11, 1870:19, 1871:19, 1871:22, 1873:5, 1873:10, 1873:22, 1873:23, 1875:8, 1875:18, 1876:2, 1876:6, 1877:23, 1878:5, 1879:13, 1879:16, 1882:8, 1882:12, 1884:8, 1884:11, 1884:15, 1884:18, 1884:24, 1885:1, 1885:23, 1885:25, 1886:2, 1886:7, 1886:8, 1888:7, 1889:12, 1889:14, 1889:17, 1893:4, 1893:6, 1895:17, 1896:1, 1896:2, 1896:4, 1896:7, 1903:17, 1903:19, 1904:24, 1905:1, 1905:2, 1905:13, 1906:5, 1906:7, 1906:19, 1907:18, 1912:1, 1912:15, 1912:17, 1912:19, 1913:24, 1914:2, 1916:4, 1917:2, 1917:4, 1922:4, 1922:6, 1922:10, 1925:20, 1928:11, 1928:21, 1930:14, 1930:16, 1931:22, 1931:24, 1932:1, 1932:3, 1932:4, 1932:5, 1932:22 <b>quick</b> [3] - 1699:17, 1749:11, 1794:9 <b>quickly</b> [4] - 1645:10, 1725:22, 1813:5, 1925:5 <b>quiet</b> [2] - 1657:12, 1699:9 <b>quite</b> [10] - 1777:5, 1779:14, 1796:24, 1838:21, 1841:14, 1842:2, 1867:20, 1909:14, 1929:16,	1929:21 <b>quote</b> [4] - 1668:16, 1687:9, 1693:20, 1714:16 <b>quoted</b> [2] - 1660:24, 1668:21 <b>quotes</b> [1] - 1668:6  <b>R</b>  <b>R.N</b> [2] - 1654:8, 1673:5 <b>race</b> [1] - 1872:19 <b>radiography</b> [1] - 1774:22 <b>railroads</b> [1] - 1742:14 <b>rain</b> [1] - 1788:16 <b>rainfall</b> [2] - 1788:20, 1799:21 <b>rainy</b> [1] - 1804:10 <b>raise</b> [6] - 1645:16, 1756:18, 1756:20, 1756:24, 1757:5, 1758:14 <b>raised</b> [23] - 1651:10, 1709:6, 1709:13, 1709:24, 1710:2, 1721:7, 1721:15, 1750:6, 1757:1, 1757:2, 1757:7, 1757:8, 1757:10, 1757:17, 1757:20, 1758:23, 1758:25, 1759:8, 1850:16, 1864:3, 1864:22, 1865:1, 1866:1 <b>rambling</b> [2] - 1688:19, 1688:22 <b>ran</b> [3] - 1788:21, 1835:2, 1890:7 <b>ranchers</b> [5] - 1711:10, 1742:3, 1742:7, 1787:22, 1797:16 <b>Randall</b> [6] - 1850:18, 1850:20, 1851:8, 1858:15, 1859:16, 1867:21 <b>range</b> [3] - 1719:18, 1836:9, 1855:5 <b>ranged</b> [1] - 1729:25 <b>rape</b> [3] - 1853:9, 1858:14, 1870:9 <b>Rapid</b> [1] - 1868:2 <b>rapidly</b> [2] - 1790:16, 1829:23 <b>Rappold</b> [19] - 1638:7, 1639:4, 1639:10, 1639:17, 1640:4,	1677:19, 1679:24, 1697:6, 1697:10, 1748:25, 1749:2, 1770:23, 1814:14, 1862:3, 1879:14, 1889:18, 1896:12, 1912:20, 1912:24 <b>RAPPOLD</b> [26] - 1680:1, 1697:5, 1697:7, 1697:9, 1697:25, 1749:1, 1770:24, 1814:15, 1861:23, 1862:2, 1863:16, 1875:19, 1875:22, 1876:4, 1879:15, 1888:15, 1888:20, 1889:19, 1889:25, 1890:14, 1890:17, 1890:19, 1893:3, 1912:21, 1912:23, 1913:24 <b>rarely</b> [1] - 1831:5 <b>rate</b> [1] - 1801:24 <b>rates</b> [2] - 1853:6, 1853:12 <b>rather</b> [7] - 1675:3, 1687:14, 1704:20, 1816:19, 1843:16, 1868:6, 1897:11 <b>ratio</b> [2] - 1700:2, 1700:3 <b>re</b> [1] - 1747:4 <b>Re</b> [2] - 1636:12, 1636:14 <b>re-redone</b> [1] - 1747:4 <b>reach</b> [6] - 1659:13, 1659:16, 1667:4, 1796:8, 1796:17, 1856:18 <b>reached</b> [1] - 1653:13 <b>reaches</b> [1] - 1792:4 <b>read</b> [22] - 1658:2, 1669:14, 1725:8, 1726:20, 1727:4, 1727:7, 1727:10, 1727:23, 1729:2, 1729:4, 1729:10, 1731:19, 1735:3, 1735:8, 1735:10, 1775:5, 1789:10, 1810:13, 1864:20, 1864:21, 1903:15, 1911:24 <b>readily</b> [2] - 1659:19, 1892:1 <b>reading</b> [2] - 1730:14, 1789:22 <b>reads</b> [3] - 1803:3, 1826:13, 1924:19 <b>ready</b> [12] - 1650:18,	1651:5, 1681:4, 1724:11, 1760:11, 1780:25, 1781:2, 1876:17, 1877:8, 1908:17, 1909:22, 1910:10 <b>REAL</b> [16] - 1677:24, 1694:12, 1694:14, 1695:2, 1697:2, 1771:12, 1781:8, 1781:24, 1815:13, 1842:18, 1882:12, 1893:10, 1896:4, 1914:5, 1917:2, 1933:3 <b>Real</b> [14] - 1638:7, 1639:18, 1640:4, 1677:23, 1694:11, 1694:15, 1749:6, 1771:11, 1848:6, 1882:11, 1893:8, 1893:12, 1914:3, 1914:6 <b>real</b> [6] - 1644:9, 1644:12, 1648:4, 1666:10, 1816:24, 1919:22 <b>realities</b> [1] - 1644:21 <b>realize</b> [1] - 1895:1 <b>realized</b> [1] - 1811:16 <b>really</b> [28] - 1647:10, 1653:1, 1667:9, 1667:11, 1672:3, 1706:4, 1707:17, 1714:12, 1721:13, 1751:1, 1754:2, 1754:5, 1788:20, 1788:22, 1825:13, 1838:22, 1839:22, 1855:5, 1863:11, 1866:10, 1895:13, 1909:14, 1919:22, 1920:5, 1925:24, 1932:21 <b>realm</b> [1] - 1643:23 <b>Realtime</b> [2] - 1934:6, 1934:19 <b>rearranged</b> [1] - 1816:24 <b>reason</b> [14] - 1658:10, 1695:20, 1735:8, 1735:10, 1741:15, 1779:10, 1837:22, 1840:2, 1840:25, 1844:10, 1856:25, 1892:4, 1920:24, 1927:5 <b>reasonable</b> [2] - 1642:16, 1645:24 <b>reasons</b> [2] - 1706:19,	1851:1 <b>Rebuttal</b> [7] - 1635:5, 1635:6, 1635:7, 1635:8, 1635:24, 1636:3, 1636:15 <b>REBUTTAL</b> [1] - 1639:11 <b>rebuttal</b> [28] - 1641:22, 1641:23, 1643:13, 1650:4, 1650:11, 1651:25, 1681:12, 1682:20, 1683:6, 1764:7, 1764:8, 1764:10, 1782:5, 1782:7, 1782:15, 1782:24, 1783:9, 1843:18, 1843:22, 1844:13, 1876:22, 1877:18, 1877:22, 1878:1, 1878:11, 1879:3, 1880:1, 1908:14 <b>rebutting</b> [1] - 1692:9 <b>receive</b> [4] - 1845:14, 1915:16, 1915:22, 1926:15 <b>received</b> [18] - 1669:23, 1682:15, 1683:17, 1731:10, 1743:20, 1743:21, 1766:7, 1837:24, 1874:9, 1888:23, 1895:21, 1895:22, 1895:25, 1915:9, 1915:14, 1915:17, 1929:21, 1931:9 <b>recent</b> [3] - 1917:21, 1917:22, 1925:7 <b>recently</b> [4] - 1666:2, 1817:18, 1852:25, 1882:19 <b>receptors</b> [2] - 1662:2, 1663:7 <b>recertification</b> [1] - 1864:18 <b>recess</b> [9] - 1647:22, 1647:23, 1657:19, 1724:6, 1784:1, 1784:3, 1842:24, 1909:11, 1932:10 <b>recharge</b> [11] - 1789:8, 1791:14, 1791:17, 1791:18, 1791:24, 1801:14, 1801:15, 1801:17, 1801:20, 1802:1, 1809:14 <b>recharged</b> [1] - 1801:24 <b>reclamation</b> [1] -
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1835:8 <b>Reclamation</b> [2] - 1636:22, 1810:4 <b>recognize</b> [2] - 1786:5, 1842:3 <b>recognized</b> [2] - 1686:7, 1866:2 <b>recognizing</b> [1] - 1710:13 <b>recommendation</b> [2] - 1873:1, 1927:19 <b>recommendations</b> [1] - 1826:16 <b>recommended</b> [1] - 1755:9 <b>reconcile</b> [1] - 1644:6 <b>reconvene</b> [2] - 1724:5, 1784:2 <b>record</b> [34] - 1645:7, 1645:11, 1653:13, 1655:12, 1672:9, 1681:17, 1684:14, 1698:9, 1703:3, 1715:18, 1716:6, 1716:7, 1725:19, 1725:22, 1729:17, 1730:21, 1731:18, 1735:25, 1736:9, 1738:5, 1739:2, 1739:3, 1740:9, 1743:18, 1745:13, 1806:10, 1815:5, 1837:22, 1873:19, 1874:3, 1886:24, 1910:18, 1932:24, 1933:1 <b>records</b> [1] - 1784:4 <b>recounts</b> [1] - 1728:2 <b>recovery</b> [2] - 1834:24, 1871:13 <b>recreation</b> [2] - 1867:24, 1868:1 <b>Recross</b> [4] - 1639:8, 1639:9, 1639:10, 1639:20 <b>RECROSS</b> [4] - 1873:11, 1875:11, 1875:21, 1907:3 <b>Recross-</b> <b>Examination</b> [4] - 1639:8, 1639:9, 1639:10, 1639:20 <b>RECROSS-</b> <b>EXAMINATION</b> [4] - 1873:11, 1875:11, 1875:21, 1907:3 <b>recruit</b> [2] - 1686:3, 1686:10 <b>Red</b> [1] - 1832:8 <b>red</b> [1] - 1820:10	<b>REDIRECT</b> [1] - 1874:1 <b>redirect</b> [18] - 1701:7, 1752:20, 1773:2, 1773:7, 1780:9, 1838:5, 1838:7, 1873:10, 1875:1, 1875:2, 1876:7, 1886:9, 1886:10, 1906:20, 1907:20, 1907:21, 1932:6, 1932:7 <b>Redirect</b> [1] - 1639:9 <b>redone</b> [1] - 1747:4 <b>reduce</b> [3] - 1698:16, 1831:23, 1832:1 <b>redundancy</b> [1] - 1646:19 <b>refer</b> [2] - 1689:3, 1847:2 <b>reference</b> [3] - 1892:1, 1911:22, 1916:20 <b>referenced</b> [6] - 1734:2, 1862:25, 1897:25, 1898:16, 1900:6, 1900:22 <b>references</b> [2] - 1656:22, 1898:13 <b>referred</b> [3] - 1758:12, 1846:5, 1882:19 <b>referring</b> [9] - 1702:10, 1767:11, 1786:3, 1891:25, 1894:2, 1897:1, 1914:19, 1924:11, 1929:9 <b>refers</b> [2] - 1659:9, 1766:7 <b>reflect</b> [1] - 1732:23 <b>reflective</b> [1] - 1891:8 <b>regard</b> [14] - 1648:6, 1648:7, 1649:14, 1699:18, 1700:22, 1724:23, 1740:17, 1759:15, 1790:24, 1813:22, 1819:3, 1819:4, 1857:16, 1864:2 <b>regarding</b> [13] - 1648:10, 1677:7, 1692:8, 1697:12, 1705:22, 1763:3, 1891:7, 1894:23, 1895:5, 1909:12, 1913:10, 1915:10, 1916:10 <b>regardless</b> [3] - 1762:12, 1892:7, 1892:8 <b>regards</b> [1] - 1831:20	<b>regimes</b> [1] - 1902:2 <b>regionally</b> [1] - 1715:4 <b>Register</b> [2] - 1722:21, 1747:3 <b>Registered</b> [2] - 1934:5, 1934:19 <b>registered</b> [1] - 1785:3 <b>registry</b> [2] - 1662:12, 1673:9 <b>regs</b> [2] - 1921:8, 1921:9 <b>regular</b> [1] - 1891:18 <b>regulation</b> [1] - 1918:13 <b>regulations</b> [10] - 1694:5, 1749:20, 1750:11, 1779:13, 1897:15, 1902:16, 1902:23, 1917:14, 1919:18, 1927:8 <b>regulatory</b> [3] - 1758:21, 1917:18, 1918:6 <b>rehabilitation</b> [1] - 1709:1 <b>reiterate</b> [1] - 1648:23 <b>relate</b> [7] - 1693:25, 1739:4, 1763:21, 1766:19, 1767:2, 1798:2, 1821:22 <b>related</b> [22] - 1663:14, 1696:19, 1697:19, 1713:5, 1739:10, 1761:9, 1765:13, 1765:23, 1792:21, 1807:25, 1808:7, 1808:8, 1810:8, 1810:16, 1810:17, 1813:6, 1830:15, 1851:21, 1887:7, 1898:12, 1924:21, 1924:23 <b>relates</b> [7] - 1644:8, 1712:6, 1732:24, 1766:12, 1769:21, 1821:15, 1901:8 <b>relation</b> [1] - 1803:19 <b>Relations</b> [1] - 1636:6 <b>relations</b> [3] - 1729:4, 1872:7, 1872:19 <b>relationship</b> [3] - 1682:14, 1732:8, 1863:4 <b>relationships</b> [2] - 1720:22, 1720:24 <b>relative</b> [7] - 1690:24, 1690:25, 1736:10, 1741:14, 1895:11, 1895:13, 1902:8 <b>relatives</b> [3] - 1749:2,	1857:10, 1857:11 <b>release</b> [4] - 1663:6, 1664:9, 1667:2, 1929:17 <b>relegated</b> [1] - 1718:17 <b>relevance</b> [8] - 1818:16, 1824:22, 1826:7, 1827:4, 1863:10, 1866:24, 1903:3, 1927:2 <b>relevancy</b> [7] - 1711:25, 1715:23, 1716:13, 1716:18, 1717:5, 1740:12, 1769:11 <b>relevant</b> [15] - 1657:5, 1675:14, 1684:8, 1691:7, 1712:10, 1712:18, 1719:8, 1720:18, 1720:19, 1730:24, 1736:24, 1766:3, 1892:9, 1892:14, 1892:20 <b>reliability</b> [1] - 1715:14 <b>relied</b> [1] - 1828:3 <b>religion</b> [2] - 1850:23, 1852:24 <b>relitigate</b> [2] - 1656:16, 1721:9 <b>relocation</b> [1] - 1708:25 <b>rely</b> [4] - 1659:22, 1659:23, 1671:22, 1856:7 <b>relying</b> [1] - 1922:19 <b>remain</b> [1] - 1753:25 <b>remainder</b> [2] - 1705:17, 1705:19 <b>remarks</b> [1] - 1840:8 <b>remember</b> [10] - 1728:13, 1733:16, 1777:13, 1777:14, 1810:20, 1818:10, 1833:22, 1834:6, 1885:12, 1917:22 <b>remind</b> [1] - 1833:15 <b>reminding</b> [1] - 1844:24 <b>reminiscent</b> [1] - 1850:10 <b>remote</b> [4] - 1899:23, 1900:25, 1901:2, 1901:3 <b>removal</b> [1] - 1708:9 <b>remove</b> [1] - 1828:5 <b>removed</b> [2] - 1755:8, 1828:7 <b>renew</b> [6] - 1642:11,	1657:16, 1673:25, 37 1735:24, 1738:19, 1860:8 <b>repatriation</b> [1] - 1858:12 <b>repeat</b> [8] - 1658:1, 1794:14, 1803:1, 1803:2, 1826:11, 1924:17, 1926:6, 1926:23 <b>repeated</b> [3] - 1830:17, 1839:20, 1891:22 <b>repeating</b> [1] - 1859:5 <b>repercussion</b> [1] - 1686:19 <b>repetitive</b> [6] - 1647:11, 1648:23, 1649:9, 1667:11, 1695:6, 1859:5 <b>rephrase</b> [5] - 1745:11, 1746:20, 1777:15, 1814:2, 1824:24 <b>rephrase</b> [1] - 1746:14 <b>replacement</b> [1] - 1840:19 <b>replowing</b> [1] - 1714:10 <b>report</b> [18] - 1656:23, 1682:21, 1683:1, 1683:4, 1683:6, 1683:8, 1683:9, 1687:8, 1689:4, 1690:7, 1699:2, 1699:5, 1699:6, 1700:3, 1796:11, 1822:20, 1922:20 <b>Report</b> [2] - 1636:8, 1636:9 <b>Reported</b> [1] - 1633:24 <b>Reporter</b> [7] - 1803:3, 1826:13, 1924:19, 1934:6, 1934:19, 1934:19 <b>reporter</b> [13] - 1654:6, 1674:21, 1675:1, 1681:13, 1702:22, 1723:23, 1744:16, 1784:18, 1848:11, 1886:20, 1910:14, 1924:18, 1934:9 <b>reporting</b> [1] - 1669:16 <b>reports</b> [2] - 1687:23, 1922:20 <b>represent</b> [7] - 1660:10, 1742:4,
---	--	--	---	--

1745:5, 1749:2, 1862:4, 1912:24, 1917:8 <b>representation</b> [2] - 1683:8, 1917:9 <b>representative</b> [2] - 1748:13, 1749:11 <b>representatives</b> [3] - 1722:23, 1747:21, 1748:2 <b>represented</b> [3] - 1647:15, 1893:13, 1914:8 <b>representing</b> [1] - 1807:4 <b>reproductive</b> [2] - 1662:21, 1854:18 <b>request</b> [7] - 1642:16, 1643:9, 1646:21, 1650:7, 1650:10, 1740:16, 1802:23 <b>requested</b> [2] - 1674:18, 1803:3 <b>requesting</b> [2] - 1722:21, 1803:7 <b>require</b> [1] - 1661:17 <b>required</b> [4] - 1720:15, 1729:13, 1892:6, 1904:5 <b>requirement</b> [5] - 1714:3, 1719:16, 1737:7, 1902:23, 1913:11 <b>requirements</b> [20] - 1738:22, 1758:21, 1891:4, 1891:8, 1891:9, 1891:10, 1891:20, 1892:6, 1892:11, 1897:15, 1898:14, 1898:16, 1898:21, 1899:1, 1913:3, 1917:13, 1918:6, 1919:9, 1921:19, 1921:25 <b>requires</b> [2] - 1737:3, 1737:4 <b>reread</b> [1] - 1714:16 <b>research</b> [5] - 1660:25, 1682:16, 1785:10, 1808:14, 1858:11 <b>Research</b> [1] - 1636:9 <b>resent</b> [1] - 1839:24 <b>Reservation</b> [6] - 1705:2, 1711:18, 1714:21, 1719:7, 1738:24, 1872:4 <b>reservation</b> [23] - 1700:23, 1708:1, 1711:20, 1711:21,	1712:8, 1713:8, 1719:6, 1719:20, 1722:10, 1722:24, 1723:1, 1724:17, 1727:3, 1736:21, 1739:5, 1747:21, 1747:24, 1748:2, 1855:1, 1862:9, 1863:14, 1872:17, 1872:25 <b>reservations</b> [4] - 1712:15, 1718:2, 1718:4, 1718:18 <b>reserve</b> [1] - 1718:21 <b>reserved</b> [1] - 1881:13 <b>Reservoir</b> [4] - 1795:25, 1796:1, 1796:3, 1796:18 <b>reside</b> [1] - 1849:17 <b>resistance</b> [1] - 1793:14 <b>resloping</b> [1] - 1812:18 <b>resolution</b> [7] - 1649:6, 1745:8, 1745:14, 1745:18, 1745:23, 1746:1, 1875:14 <b>resolutions</b> [3] - 1745:21, 1873:14, 1875:24 <b>resolve</b> [1] - 1644:13 <b>resolved</b> [3] - 1642:9, 1762:1, 1784:4 <b>resource</b> [3] - 1702:12, 1792:21, 1805:13 <b>Resources</b> [1] - 1663:11 <b>resources</b> [14] - 1666:24, 1673:13, 1676:15, 1693:20, 1695:9, 1787:20, 1805:10, 1805:20, 1809:6, 1825:3, 1825:6, 1826:6, 1835:4, 1862:17 <b>respect</b> [43] - 1651:11, 1653:13, 1694:8, 1697:24, 1702:17, 1705:8, 1706:6, 1708:13, 1712:2, 1712:18, 1713:19, 1715:23, 1716:21, 1718:14, 1719:1, 1719:5, 1719:9, 1720:22, 1720:23, 1721:3, 1724:14, 1739:4, 1747:2, 1747:15, 1747:22,	1749:22, 1759:25, 1761:5, 1761:6, 1762:25, 1763:12, 1767:14, 1767:15, 1767:17, 1808:4, 1808:11, 1808:19, 1855:16, 1856:10, 1861:16, 1865:16, 1880:12, 1908:7 <b>respected</b> [3] - 1688:3, 1713:21, 1732:6 <b>respecting</b> [1] - 1710:21 <b>respiratory</b> [1] - 1678:25 <b>respond</b> [4] - 1660:1, 1734:10, 1737:15, 1868:12 <b>responded</b> [1] - 1722:22 <b>responders</b> [4] - 1658:25, 1659:3, 1661:6, 1662:14 <b>responding</b> [1] - 1877:21 <b>Response</b> [3] - 1635:18, 1635:19, 1658:19 <b>response</b> [18] - 1658:21, 1715:20, 1719:15, 1727:21, 1734:6, 1735:4, 1758:23, 1759:1, 1807:16, 1843:14, 1862:13, 1868:4, 1868:10, 1868:14, 1868:25, 1870:5, 1908:5, 1916:16 <b>responsibilities</b> [2] - 1887:5, 1910:25 <b>responsibility</b> [5] - 1645:14, 1731:22, 1749:22, 1833:10, 1923:19 <b>responsible</b> [5] - 1680:17, 1692:2, 1703:12, 1747:5, 1773:15 <b>rest</b> [2] - 1646:12, 1744:8 <b>restate</b> [1] - 1814:7 <b>restatement</b> [1] - 1655:4 <b>restored</b> [1] - 1852:24 <b>restrict</b> [1] - 1699:5 <b>restricted</b> [2] - 1688:24, 1864:12 <b>result</b> [8] - 1662:13, 1672:17, 1678:23,	1698:21, 1763:13, 1773:7, 1775:12, 1775:13 <b>resulted</b> [3] - 1758:3, 1763:17, 1765:19 <b>results</b> [2] - 1706:4, 1775:5 <b>retired</b> [1] - 1785:8 <b>returns</b> [1] - 1784:13 <b>review</b> [37] - 1660:4, 1664:19, 1676:23, 1734:7, 1775:2, 1804:18, 1863:21, 1893:2, 1894:12, 1894:16, 1894:19, 1895:3, 1895:8, 1897:19, 1897:21, 1897:23, 1898:6, 1898:19, 1899:2, 1899:3, 1899:8, 1902:16, 1915:1, 1915:5, 1919:7, 1919:25, 1920:12, 1921:22, 1922:18, 1922:22, 1922:23, 1923:8, 1923:11, 1929:11, 1929:23, 1929:25, 1930:2 <b>reviewed</b> [21] - 1684:11, 1690:8, 1694:19, 1696:22, 1697:15, 1697:17, 1697:20, 1698:20, 1810:3, 1811:4, 1811:8, 1894:14, 1894:22, 1899:15, 1913:9, 1918:5, 1918:7, 1919:5, 1919:12, 1922:20, 1924:6 <b>reviewing</b> [4] - 1648:3, 1747:5, 1883:19, 1892:23 <b>reviews</b> [2] - 1698:5, 1740:21 <b>Revised</b> [1] - 1635:13 <b>reword</b> [1] - 1927:17 <b>Rick</b> [1] - 1635:6 <b>ride</b> [1] - 1841:6 <b>Ridge</b> [1] - 1733:1 <b>ridge</b> [2] - 1795:1, 1795:2 <b>rights</b> [44] - 1647:10, 1704:25, 1705:1, 1705:23, 1705:24, 1706:3, 1706:7, 1706:10, 1706:12, 1706:13, 1706:14, 1706:22, 1706:23, 1707:16, 1709:20,	1710:19, 1716:22, 38 1719:5, 1719:19, 1719:25, 1734:12, 1734:20, 1734:22, 1854:18, 1855:20, 1856:1, 1856:13, 1866:4, 1869:16, 1869:21, 1880:8, 1880:13, 1881:8, 1881:9, 1881:14, 1881:19, 1881:24, 1882:3, 1882:6 <b>riparian</b> [1] - 1715:9 <b>riprap</b> [3] - 1812:17, 1831:21, 1832:12 <b>risk</b> [34] - 1663:3, 1663:4, 1690:2, 1690:14, 1693:18, 1700:8, 1700:16, 1700:19, 1750:25, 1779:4, 1779:5, 1779:14, 1779:20, 1779:24, 1808:19, 1810:17, 1812:9, 1812:20, 1812:22, 1852:18, 1853:2, 1853:5, 1853:18, 1853:19, 1854:2, 1854:5, 1854:8, 1854:24, 1854:25, 1857:13, 1857:23, 1858:19, 1859:13, 1867:22 <b>risks</b> [13] - 1666:22, 1673:6, 1690:10, 1693:19, 1695:9, 1779:7, 1779:17, 1809:5, 1809:11, 1809:14, 1809:17, 1809:20, 1809:24 <b>Rislov</b> [1] - 1633:18 <b>river</b> [17] - 1666:10, 1666:12, 1666:14, 1666:20, 1666:21, 1796:15, 1798:2, 1798:3, 1798:4, 1798:7, 1798:11, 1798:13, 1799:5, 1802:15, 1816:21, 1817:2, 1880:5 <b>RIVER</b> [1] - 1635:14 <b>River</b> [74] - 1635:21, 1636:6, 1665:19, 1665:20, 1665:23, 1666:1, 1666:3, 1666:5, 1666:7, 1666:13, 1666:15, 1666:16, 1666:17, 1666:19, 1667:2, 1667:5, 1667:22,
---	---	--	--	---



1677:17, 1708:5, 1708:7, 1709:2, 1709:19, 1711:1, 1726:25, 1727:3, 1729:5, 1733:1, 1748:12, 1752:2, 1786:13, 1786:14, 1786:15, 1786:16, 1786:17, 1786:18, 1789:23, 1789:24, 1793:20, 1795:19, 1795:20, 1795:22, 1796:6, 1796:12, 1798:16, 1798:18, 1798:21, 1798:22, 1799:1, 1799:2, 1799:10, 1800:9, 1800:11, 1800:15, 1808:7, 1808:11, 1808:13, 1812:7, 1812:14, 1815:3, 1815:7, 1816:12, 1829:21, 1832:9, 1834:19, 1854:20, 1855:14, 1856:9, 1857:1, 1869:16, 1872:23, 1875:25, 1885:7, 1889:16 <b>riverbed</b> [1] - 1708:7 <b>rivers</b> [2] - 1802:4, 1855:11 <b>road</b> [3] - 1643:23, 1644:15, 1645:21 <b>roadmap</b> [2] - 1651:1, 1754:5 <b>Robert</b> [1] - 1777:8 <b>Robin</b> [2] - 1643:17, 1650:23 <b>robust</b> [1] - 1841:19 <b>Rock</b> [51] - 1653:13, 1666:2, 1681:11, 1682:19, 1683:10, 1691:3, 1697:14, 1699:18, 1700:17, 1702:19, 1703:6, 1703:13, 1704:16, 1707:25, 1708:4, 1708:6, 1710:10, 1710:15, 1711:4, 1711:18, 1713:3, 1713:6, 1713:8, 1713:20, 1714:2, 1714:21, 1715:10, 1716:23, 1722:15, 1722:22, 1724:9, 1726:2, 1730:15, 1730:19, 1733:2, 1733:13, 1733:22, 1735:16, 1736:19, 1736:22, 1738:24,	1739:19, 1745:7, 1745:17, 1745:23, 1746:9, 1748:3, 1748:14, 1814:23, 1879:21, 1925:12 <b>ROCK</b> [2] - 1636:4, 1638:4 <b>Rock's</b> [1] - 1652:7 <b>rocks</b> [1] - 1846:25 <b>Rocky</b> [2] - 1758:1, 1759:17 <b>role</b> [2] - 1910:25, 1911:11 <b>rolling</b> [1] - 1822:24 <b>Rome</b> [1] - 1735:1 <b>Room</b> [4] - 1634:3, 1897:21, 1913:12, 1913:16 <b>room</b> [14] - 1680:3, 1725:13, 1845:17, 1847:9, 1847:19, 1847:21, 1853:17, 1876:17, 1887:8, 1900:12, 1910:8, 1913:3, 1918:13, 1920:8 <b>root</b> [1] - 1777:2 <b>ROSEBUD</b> [1] - 1636:2 <b>Rosebud</b> [11] - 1673:18, 1697:10, 1697:18, 1733:1, 1752:1, 1770:24, 1814:15, 1850:8, 1861:23, 1862:4, 1912:24 <b>rough</b> [1] - 1794:13 <b>rougher</b> [1] - 1795:4 <b>roughly</b> [3] - 1785:5, 1793:25, 1813:24 <b>Rounds</b> [1] - 1633:19 <b>route</b> [35] - 1657:3, 1665:4, 1665:5, 1665:9, 1665:18, 1666:14, 1713:9, 1714:22, 1786:12, 1787:7, 1790:3, 1791:6, 1791:7, 1791:9, 1792:18, 1792:23, 1792:24, 1793:23, 1794:10, 1794:24, 1795:17, 1800:1, 1800:17, 1800:23, 1801:1, 1807:23, 1808:1, 1809:18, 1809:21, 1819:12, 1820:16, 1832:15, 1832:22, 1836:15, 1836:22 <b>Route</b> [1] - 1635:7	<b>routers</b> [1] - 1901:19 <b>routinely</b> [2] - 1687:23, 1687:24 <b>routing</b> [2] - 1807:19, 1807:21 <b>row</b> [1] - 1776:20 <b>RPR</b> [1] - 1633:24 <b>RTU</b> [1] - 1899:23 <b>rugged</b> [2] - 1794:25, 1795:4 <b>rule</b> [11] - 1644:1, 1653:23, 1657:18, 1676:19, 1694:25, 1695:5, 1695:6, 1715:12, 1727:19, 1730:19, 1847:3 <b>ruled</b> [3] - 1704:22, 1705:3, 1725:6 <b>Rules</b> [1] - 1671:23 <b>rules</b> [5] - 1656:5, 1715:12, 1759:15, 1767:4, 1846:22 <b>ruling</b> [5] - 1716:1, 1716:5, 1802:24, 1867:1, 1918:25 <b>rulings</b> [2] - 1689:14, 1737:17 <b>run</b> [1] - 1712:21 <b>running</b> [2] - 1689:25 <b>runoff</b> [2] - 1816:14, 1816:15 <b>runs</b> [1] - 1902:12 <b>rupture</b> [2] - 1763:11, 1790:8 <b>Rural</b> [9] - 1643:18, 1650:24, 1652:21, 1673:18, 1750:16, 1753:11, 1784:15, 1896:7, 1917:8 <b>rural</b> [1] - 1680:20 <b>RURAL</b> [2] - 1635:17, 1638:13 <b>Rutgers</b> [1] - 1682:10	1658:11, 1659:10, 1659:18, 1659:23, 1660:3, 1660:7, 1665:8, 1669:9, 1672:13, 1673:2, 1673:14, 1757:20, 1759:3, 1827:2, 1857:23, 1871:13, 1871:14, 1897:15, 1917:14, 1927:8 <b>Sakowin</b> [3] - 1849:11, 1849:13, 1849:14 <b>sample</b> [2] - 1660:9, 1828:1 <b>samples</b> [1] - 1827:11 <b>Sand</b> [7] - 1636:9, 1801:8, 1801:13, 1822:20, 1822:24, 1823:19, 1831:1 <b>sand</b> [15] - 1789:4, 1790:1, 1791:15, 1798:3, 1799:13, 1799:15, 1799:18, 1800:5, 1801:2, 1801:5, 1801:9, 1801:10, 1801:11, 1824:4, 1834:19 <b>sands</b> [5] - 1659:21, 1660:1, 1660:19, 1689:24, 1843:3 <b>sandstone</b> [1] - 1791:15 <b>sandy</b> [1] - 1809:21 <b>Santee</b> [1] - 1733:1 <b>Sarah</b> [1] - 1722:4 <b>sat</b> [2] - 1703:15, 1841:4 <b>satellite</b> [1] - 1900:14 <b>saturate</b> [1] - 1663:24 <b>saturated</b> [5] - 1789:5, 1789:15, 1797:19, 1797:21, 1800:8 <b>saturating</b> [1] - 1664:2 <b>Saturday</b> [6] - 1651:13, 1760:15, 1760:22, 1768:15, 1769:3, 1779:1 <b>save</b> [2] - 1645:17, 1926:7 <b>saved</b> [1] - 1805:25 <b>saw</b> [9] - 1648:23, 1755:2, 1760:2, 1839:4, 1850:9, 1854:3, 1903:14, 1904:21, 1924:7 <b>SCADA</b> [21] - 1891:4, 1891:6, 1891:8, 1899:5, 1899:6, 1899:10, 1899:13,	1899:18, 1899:19, 3 9 1900:3, 1900:11, 1900:19, 1900:21, 1901:9, 1901:11, 1902:6, 1902:7, 1902:11, 1907:5, 1928:17, 1928:19 <b>scaffold</b> [1] - 1858:22 <b>scale</b> [2] - 1789:10, 1794:8 <b>scenario</b> [2] - 1660:19, 1813:15 <b>Scenarios</b> [1] - 1635:19 <b>schedule</b> [3] - 1645:21, 1729:19, 1770:19 <b>scheduled</b> [3] - 1641:2, 1641:9, 1643:11 <b>scheduling</b> [2] - 1652:6, 1763:14 <b>Schlosser</b> [1] - 1659:6 <b>Schmidt</b> [19] - 1635:4, 1635:7, 1639:12, 1643:15, 1650:5, 1843:8, 1843:17, 1844:15, 1876:12, 1876:18, 1877:4, 1877:13, 1877:15, 1879:3, 1879:21, 1882:9, 1882:10, 1885:7, 1886:12 <b>School</b> [5] - 1784:24, 1785:2, 1785:7, 1785:14, 1828:13 <b>school</b> [3] - 1708:21, 1708:23, 1834:25 <b>Schramm</b> [5] - 1635:11, 1894:16, 1894:25, 1895:9, 1916:12 <b>science</b> [1] - 1911:4 <b>scientific</b> [1] - 1657:1 <b>scientist</b> [1] - 1661:15 <b>scope</b> [22] - 1642:4, 1657:7, 1657:9, 1678:14, 1687:17, 1705:2, 1711:23, 1724:24, 1754:3, 1760:16, 1762:12, 1802:19, 1804:21, 1880:1, 1916:1, 1919:25, 1924:3, 1924:20, 1930:2, 1931:1, 1931:7, 1931:10 <b>screen</b> [2] - 1641:16, 1654:24 <b>SD</b> [1] - 1636:8
<b>S</b>				
<b>sacred</b> [1] - 1856:13 <b>sacrifice</b> [1] - 1708:18 <b>sacrificed</b> [1] - 1708:14 <b>sacrificing</b> [1] - 1709:15 <b>Safe</b> [1] - 1677:7 <b>safe</b> [5] - 1855:25, 1857:12, 1857:14, 1857:21, 1871:9 <b>safely</b> [2] - 1770:9, 1770:12 <b>safety</b> [21] - 1654:19,				

<b>SDS</b> [2] - 1659:10 <b>SEAMANS</b> [14] - 1679:15, 1752:11, 1772:20, 1829:17, 1829:20, 1830:3, 1869:10, 1869:13, 1869:23, 1885:3, 1885:6, 1885:22, 1906:7, 1931:24 <b>Seamans</b> [11] - 1638:22, 1639:6, 1639:14, 1666:8, 1679:14, 1752:10, 1829:16, 1869:10, 1885:2, 1906:6, 1931:23 <b>search</b> [1] - 1896:22 <b>searched</b> [1] - 1896:19 <b>seated</b> [2] - 1838:20, 1839:8 <b>second</b> [8] - 1648:22, 1681:6, 1682:3, 1719:11, 1818:4, 1864:7, 1906:15, 1921:18 <b>secondly</b> [1] - 1642:12 <b>seconds</b> [1] - 1886:15 <b>secret</b> [1] - 1838:17 <b>section</b> [8] - 1685:7, 1686:21, 1687:12, 1698:17, 1754:13, 1794:3, 1911:24, 1928:22 <b>sections</b> [2] - 1754:15, 1770:14 <b>security</b> [4] - 1710:17, 1729:14, 1901:8, 1901:11 <b>sedimentation</b> [1] - 1882:20 <b>see</b> [62] - 1642:22, 1646:20, 1646:24, 1648:1, 1653:1, 1661:16, 1666:16, 1673:17, 1679:18, 1684:11, 1686:25, 1696:17, 1697:23, 1698:18, 1700:16, 1700:23, 1713:5, 1731:8, 1735:20, 1735:21, 1737:20, 1737:21, 1737:22, 1743:22, 1743:23, 1753:18, 1779:8, 1780:15, 1781:6, 1782:8, 1784:8, 1800:9, 1806:19, 1817:9, 1817:16, 1818:14, 1818:18, 1819:1, 1819:10, 1819:25, 1820:3, 1820:9, 1820:20, 1821:17, 1822:10, 1827:10, 1831:4, 1831:5, 1845:21, 1852:18, 1852:21, 1858:12, 1860:20, 1869:5, 1877:5, 1892:19, 1892:21, 1895:22, 1906:25, 1908:20, 1908:25, 1909:22 <b>seeing</b> [9] - 1648:8, 1701:3, 1780:17, 1812:1, 1838:3, 1870:22, 1878:17, 1888:22, 1912:9 <b>seek</b> [2] - 1871:4, 1930:20 <b>seem</b> [3] - 1643:21, 1686:22, 1791:6 <b>seeps</b> [2] - 1662:4, 1797:24 <b>segment</b> [1] - 1765:15 <b>segmented</b> [3] - 1822:3, 1824:7, 1824:10 <b>segments</b> [1] - 1754:12 <b>SEIS</b> [1] - 1636:12 <b>Selected</b> [1] - 1636:10 <b>selection</b> [3] - 1765:13, 1765:20, 1765:23 <b>self</b> [1] - 1708:15 <b>self-sustenance</b> [1] - 1708:15 <b>senate</b> [2] - 1743:11, 1762:7 <b>Senate</b> [1] - 1762:11 <b>Senator</b> [1] - 1743:11 <b>send</b> [5] - 1828:2, 1846:20, 1848:2, 1895:8, 1895:17 <b>sends</b> [1] - 1900:3 <b>senior</b> [4] - 1855:19, 1869:17, 1887:3, 1887:4 <b>sense</b> [11] - 1650:24, 1669:3, 1678:19, 1698:23, 1753:14, 1761:25, 1810:21, 1832:3, 1871:13, 1871:14, 1902:14 <b>sensitive</b> [1] - 1829:3 <b>sensor</b> [1] - 1900:22 <b>sensors</b> [2] - 1899:25, 1900:5 <b>sentence</b> [2] -	1911:24, 1924:6 <b>sentences</b> [1] - 1916:21 <b>separate</b> [1] - 1922:19 <b>separated</b> [2] - 1853:25, 1874:24 <b>separates</b> [1] - 1664:25 <b>series</b> [2] - 1756:11, 1758:3 <b>serious</b> [3] - 1666:22, 1673:11, 1755:11 <b>seriously</b> [3] - 1685:25, 1688:1, 1763:10 <b>served</b> [2] - 1642:22, 1709:8 <b>serves</b> [1] - 1664:17 <b>Service</b> [2] - 1636:9, 1636:20 <b>service</b> [4] - 1759:19, 1775:10, 1821:9, 1861:12 <b>Services</b> [1] - 1660:17 <b>services</b> [11] - 1661:3, 1681:20, 1759:25, 1768:20, 1768:25, 1769:1, 1877:15, 1895:14, 1895:15, 1911:12 <b>serving</b> [1] - 1682:16 <b>session</b> [1] - 1901:10 <b>set</b> [9] - 1645:19, 1661:11, 1661:14, 1710:23, 1729:22, 1742:24, 1756:12, 1859:4, 1883:24 <b>settlers</b> [1] - 1711:9 <b>Seven</b> [1] - 1849:11 <b>seven</b> [6] - 1663:18, 1680:18, 1743:24, 1849:13, 1855:24, 1856:13 <b>several</b> [13] - 1652:15, 1664:17, 1665:19, 1779:18, 1806:5, 1840:11, 1846:6, 1846:22, 1847:16, 1851:10, 1874:12, 1880:15, 1911:9 <b>severely</b> [1] - 1672:24 <b>severity</b> [1] - 1928:8 <b>sewer</b> [1] - 1835:5 <b>sex</b> [3] - 1854:5, 1854:23, 1855:2 <b>sexual</b> [6] - 1850:9, 1851:7, 1853:7, 1853:13, 1868:22, 1870:11 <b>sexually</b> [1] - 1853:15	<b>shades</b> [1] - 1717:21 <b>Shale</b> [13] - 1793:5, 1793:11, 1793:23, 1794:3, 1794:11, 1795:1, 1795:15, 1799:6, 1799:7, 1800:12, 1800:18, 1816:2, 1819:11 <b>shale</b> [2] - 1787:17, 1793:6 <b>shall</b> [1] - 1653:18 <b>shallow</b> [2] - 1797:17, 1809:15 <b>shaped</b> [2] - 1816:13, 1817:6 <b>share</b> [3] - 1645:2, 1656:19, 1931:16 <b>shared</b> [1] - 1642:19 <b>sharing</b> [1] - 1841:12 <b>sheet</b> [5] - 1659:10, 1659:18, 1659:24, 1660:3, 1660:7 <b>sheetlike</b> [1] - 1788:7 <b>shelter</b> [1] - 1851:5 <b>sheriff's</b> [1] - 1659:23 <b>shield</b> [1] - 1774:8 <b>shifted</b> [1] - 1699:22 <b>shifting</b> [1] - 1843:3 <b>Shirt</b> [1] - 1832:8 <b>shoot</b> [1] - 1775:3 <b>shore</b> [1] - 1708:5 <b>shoreline</b> [1] - 1708:6 <b>shores</b> [1] - 1709:19 <b>short</b> [7] - 1641:14, 1647:23, 1724:6, 1842:18, 1842:24, 1882:24, 1909:11 <b>short-term</b> [1] - 1882:24 <b>shorten</b> [1] - 1651:12 <b>shorthand</b> [2] - 1934:9 <b>show</b> [11] - 1647:3, 1650:21, 1683:2, 1717:13, 1726:2, 1746:17, 1793:22, 1795:20, 1798:24, 1806:2, 1836:14 <b>showed</b> [2] - 1724:17, 1885:11 <b>showing</b> [3] - 1717:14, 1764:22, 1791:5 <b>shown</b> [4] - 1662:23, 1789:9, 1791:9, 1800:10 <b>shows</b> [3] - 1822:8, 1829:24, 1831:6 <b>shrink</b> [1] - 1788:14 <b>shrinks</b> [1] - 1788:13	<b>shut</b> [1] - 1656:11 <b>shy</b> [1] - 1687:12 <b>Sibson</b> [11] - 1635:24, 1636:21, 1636:23, 1636:24, 1637:3, 1781:20, 1783:2, 1908:18, 1909:3, 1909:13, 1932:13 <b>SIBSON</b> [1] - 1908:23 <b>Sibsons</b> [2] - 1781:23, 1783:14 <b>sic</b> [1] - 1677:6 <b>Sicangu</b> [2] - 1749:3, 1850:8 <b>side</b> [8] - 1686:9, 1686:24, 1820:9, 1820:12, 1833:25, 1834:20, 1885:14, 1899:17 <b>sighed</b> [1] - 1677:2 <b>signaling</b> [1] - 1869:7 <b>signature</b> [2] - 1923:21, 1923:24 <b>signed</b> [10] - 1859:11, 1923:13, 1923:15, 1924:24, 1928:25, 1929:6, 1929:13, 1929:18, 1929:24, 1930:7 <b>significance</b> [1] - 1703:19 <b>significant</b> [19] - 1663:6, 1689:11, 1690:17, 1690:22, 1690:23, 1691:6, 1722:9, 1817:1, 1868:16, 1879:5, 1879:10, 1882:20, 1882:22, 1883:6, 1883:12, 1883:16, 1883:20, 1883:22, 1883:25 <b>silencing</b> [1] - 1710:13 <b>silos</b> [1] - 1778:22 <b>silt</b> [2] - 1798:3, 1800:5 <b>silty</b> [2] - 1798:12, 1801:11 <b>similar</b> [7] - 1789:4, 1798:21, 1800:4, 1850:17, 1850:25, 1851:2, 1875:24 <b>simply</b> [12] - 1645:17, 1646:12, 1655:21, 1663:5, 1669:15, 1688:3, 1731:8, 1783:13, 1845:20, 1918:21, 1932:7 <b>single</b> [4] - 1718:5,
---	--	---	---

1775:2, 1775:4, 1871:11 <b>sinuosity</b> [1] - 1796:15 <b>Sioux</b> [69] - 1666:6, 1677:17, 1677:24, 1680:17, 1681:11, 1682:19, 1683:10, 1691:3, 1694:16, 1697:10, 1697:14, 1697:18, 1699:19, 1700:17, 1702:19, 1704:16, 1705:2, 1713:7, 1714:2, 1715:10, 1716:23, 1719:6, 1722:15, 1722:22, 1730:20, 1733:13, 1733:22, 1735:16, 1736:19, 1739:19, 1745:4, 1748:3, 1748:12, 1748:14, 1749:8, 1752:1, 1752:2, 1812:7, 1812:14, 1814:23, 1828:12, 1833:4, 1833:6, 1834:3, 1834:15, 1834:18, 1834:20, 1835:5, 1835:12, 1842:14, 1848:9, 1848:20, 1854:3, 1862:4, 1862:7, 1862:13, 1869:15, 1869:20, 1872:3, 1872:23, 1873:13, 1873:24, 1879:22, 1889:16, 1893:12, 1912:25, 1914:7, 1925:12 <b>SILOUX</b> [6] - 1635:14, 1636:2, 1636:4, 1637:5, 1638:4, 1639:2 <b>site</b> [2] - 1807:25, 1833:22 <b>site-specific</b> [1] - 1807:25 <b>siting</b> [1] - 1827:3 <b>sits</b> [1] - 1836:7 <b>Sitting</b> [1] - 1859:14 <b>sitting</b> [1] - 1840:19 <b>situation</b> [9] - 1851:24, 1867:19, 1868:11, 1868:25, 1870:11, 1874:17, 1874:25, 1876:1, 1888:25 <b>six</b> [3] - 1641:19, 1645:7, 1657:11 <b>size</b> [2] - 1799:16,	1801:10 <b>skill</b> [1] - 1859:4 <b>skills</b> [1] - 1698:12 <b>skin</b> [2] - 1661:9, 1846:16 <b>skull</b> [2] - 1858:23 <b>Skunk</b> [1] - 1834:18 <b>sleep</b> [1] - 1841:15 <b>sleeping</b> [3] - 1839:8, 1846:5, 1846:13 <b>slid</b> [1] - 1800:25 <b>slide</b> [6] - 1794:12, 1794:17, 1795:8, 1806:2, 1806:4, 1806:20 <b>slides</b> [6] - 1806:5, 1806:18, 1816:3, 1817:24, 1818:19, 1819:5 <b>sliding</b> [4] - 1793:15, 1794:12, 1795:17, 1816:2 <b>slightly</b> [4] - 1653:4, 1785:5, 1791:4, 1794:10 <b>slip</b> [1] - 1794:16 <b>slippage</b> [1] - 1800:19 <b>slope</b> [28] - 1788:3, 1788:5, 1788:14, 1793:12, 1793:20, 1794:19, 1795:6, 1795:7, 1795:10, 1799:8, 1799:10, 1812:10, 1812:21, 1812:25, 1816:3, 1816:7, 1816:9, 1816:22, 1817:10, 1817:17, 1818:19, 1819:5, 1822:18, 1832:5, 1832:6, 1832:8, 1832:13, 1833:1 <b>slopes</b> [4] - 1793:19, 1800:14, 1810:8, 1810:12 <b>slow</b> [2] - 1659:14, 1829:22 <b>slower</b> [1] - 1830:1 <b>small</b> [4] - 1779:25, 1780:5, 1786:20, 1787:22 <b>smaller</b> [1] - 1786:19 <b>smell</b> [2] - 1661:16, 1829:3 <b>SMITH</b> [418] - 1641:1, 1646:3, 1647:8, 1649:25, 1650:6, 1650:13, 1650:16, 1650:19, 1650:22, 1651:2, 1651:8,	1651:16, 1651:20, 1654:4, 1654:7, 1654:22, 1656:13, 1657:21, 1657:24, 1667:8, 1668:3, 1668:22, 1668:25, 1669:3, 1669:12, 1670:8, 1670:14, 1670:22, 1671:7, 1671:25, 1672:10, 1673:23, 1675:6, 1675:10, 1675:16, 1675:22, 1676:5, 1676:13, 1676:18, 1677:3, 1677:10, 1677:14, 1677:19, 1677:23, 1678:1, 1678:6, 1678:18, 1679:5, 1679:8, 1679:10, 1679:12, 1679:14, 1679:16, 1679:17, 1679:18, 1679:22, 1679:24, 1680:2, 1680:6, 1681:1, 1681:6, 1681:9, 1683:12, 1683:14, 1683:17, 1689:2, 1689:8, 1689:15, 1689:23, 1691:11, 1692:20, 1693:9, 1694:10, 1695:4, 1697:4, 1697:6, 1698:1, 1699:1, 1699:11, 1701:1, 1701:6, 1701:9, 1701:11, 1701:17, 1701:21, 1701:23, 1702:1, 1704:18, 1705:14, 1705:20, 1706:10, 1707:3, 1707:9, 1707:21, 1707:23, 1712:25, 1714:11, 1714:14, 1714:18, 1715:20, 1715:25, 1716:8, 1716:11, 1716:16, 1717:1, 1717:7, 1718:25, 1719:15, 1720:3, 1720:7, 1721:17, 1723:19, 1723:25, 1724:4, 1724:7, 1725:1, 1725:5, 1725:25, 1726:11, 1726:19, 1727:21, 1728:11, 1728:16, 1729:1, 1730:3, 1730:11, 1730:22, 1731:17, 1731:21, 1732:1, 1732:21, 1735:12, 1735:19,	1735:22, 1736:2, 1736:7, 1736:9, 1736:25, 1737:9, 1737:16, 1737:18, 1737:20, 1738:20, 1738:25, 1739:7, 1739:17, 1740:8, 1740:14, 1740:18, 1740:22, 1741:1, 1741:5, 1741:8, 1741:12, 1744:20, 1745:15, 1746:21, 1747:17, 1748:8, 1748:25, 1749:6, 1750:7, 1750:15, 1750:19, 1751:3, 1751:10, 1751:21, 1751:24, 1752:9, 1752:12, 1752:13, 1752:14, 1752:16, 1752:20, 1752:22, 1753:4, 1753:11, 1753:19, 1753:23, 1760:11, 1761:2, 1761:23, 1762:20, 1762:24, 1764:13, 1765:4, 1767:14, 1767:21, 1767:23, 1767:25, 1768:3, 1768:5, 1768:9, 1769:14, 1769:22, 1769:25, 1770:23, 1770:25, 1771:11, 1771:14, 1771:18, 1771:24, 1772:2, 1772:12, 1772:15, 1772:18, 1772:22, 1772:23, 1772:25, 1773:2, 1773:8, 1778:14, 1780:8, 1780:10, 1780:13, 1784:2, 1784:14, 1803:1, 1803:11, 1803:23, 1805:7, 1805:16, 1806:21, 1811:25, 1812:3, 1814:14, 1814:18, 1815:6, 1815:15, 1815:20, 1817:13, 1818:17, 1818:22, 1819:9, 1819:17, 1819:19, 1820:4, 1820:23, 1821:2, 1821:10, 1822:12, 1823:8, 1823:13, 1824:14, 1824:23, 1824:25, 1825:13, 1825:21, 1825:25, 1826:9, 1826:14, 1826:18, 1826:20, 1829:16, 1830:5,	1830:6, 1830:7, 41 1830:9, 1830:12, 1831:10, 1835:20, 1836:16, 1836:20, 1836:23, 1837:12, 1837:19, 1838:1, 1838:6, 1838:9, 1838:11, 1841:10, 1842:8, 1842:19, 1842:22, 1842:25, 1844:23, 1845:9, 1848:6, 1860:3, 1860:7, 1860:12, 1860:14, 1860:18, 1860:20, 1860:23, 1861:1, 1861:3, 1861:20, 1863:17, 1864:13, 1865:18, 1865:23, 1866:8, 1866:10, 1867:2, 1867:6, 1869:5, 1869:24, 1870:20, 1870:23, 1871:2, 1871:15, 1871:17, 1871:20, 1873:7, 1873:9, 1873:22, 1875:1, 1875:3, 1875:7, 1876:5, 1876:9, 1876:25, 1877:2, 1877:7, 1878:15, 1878:20, 1878:24, 1879:14, 1879:16, 1880:4, 1882:11, 1882:14, 1884:9, 1884:13, 1884:17, 1884:19, 1884:22, 1884:25, 1885:2, 1885:24, 1885:25, 1886:1, 1886:3, 1886:5, 1886:7, 1886:11, 1886:17, 1888:12, 1888:14, 1888:21, 1889:13, 1889:15, 1889:18, 1889:23, 1890:2, 1890:13, 1890:15, 1892:12, 1893:1, 1893:5, 1893:8, 1896:5, 1903:11, 1903:18, 1903:21, 1904:25, 1905:3, 1905:8, 1905:14, 1906:2, 1906:4, 1906:6, 1906:8, 1906:9, 1906:11, 1906:18, 1906:20, 1906:25, 1907:17, 1907:22, 1908:3, 1908:9, 1908:11, 1908:15, 1908:17, 1908:20,
---	--	--	--	--



1908:25, 1909:5, 1909:8, 1909:12, 1909:20, 1910:3, 1910:8, 1912:6, 1912:9, 1912:13, 1912:16, 1912:18, 1912:20, 1913:25, 1914:3, 1917:3, 1919:1, 1920:23, 1921:2, 1922:3, 1922:5, 1922:8, 1923:5, 1924:4, 1925:9, 1925:22, 1926:3, 1926:10, 1927:4, 1927:18, 1928:3, 1928:12, 1930:9, 1931:20, 1931:23, 1931:25, 1932:1, 1932:2, 1932:4, 1932:9, 1933:5 <b>Smith</b> [80] - 1633:17, 1639:7, 1639:20, 1641:14, 1643:9, 1643:17, 1644:19, 1646:2, 1650:3, 1650:23, 1654:20, 1668:2, 1671:16, 1674:18, 1676:25, 1677:21, 1678:5, 1679:16, 1681:7, 1681:10, 1689:17, 1695:2, 1697:7, 1701:8, 1705:21, 1707:7, 1707:24, 1716:20, 1720:6, 1720:21, 1723:14, 1724:10, 1726:1, 1728:9, 1728:17, 1730:8, 1737:12, 1740:17, 1744:23, 1752:12, 1752:21, 1753:21, 1760:12, 1770:1, 1771:2, 1772:21, 1784:5, 1814:19, 1822:16, 1823:9, 1830:5, 1835:19, 1837:21, 1847:8, 1848:8, 1860:1, 1861:6, 1861:22, 1867:3, 1871:18, 1875:20, 1877:10, 1878:13, 1879:18, 1879:25, 1882:9, 1885:24, 1893:7, 1905:5, 1906:8, 1906:22, 1909:10, 1912:8, 1912:21, 1914:1, 1925:4, 1925:20, 1927:14, 1931:25,	1933:1 <b>Smith's</b> [1] - 1677:6 <b>Smithsonian</b> [1] - 1858:23 <b>smoothed</b> [1] - 1795:3 <b>so-called</b> [1] - 1719:5 <b>soak</b> [1] - 1788:21 <b>soaker</b> [1] - 1788:22 <b>societies</b> [3] - 1849:6, 1854:14 <b>society</b> [4] - 1849:7, 1850:7, 1861:17, 1861:18 <b>Society</b> [3] - 1849:7, 1849:24, 1850:12 <b>socioeconomic</b> [21] - 1685:3, 1685:7, 1686:21, 1686:25, 1687:4, 1687:12, 1687:16, 1687:20, 1690:17, 1691:2, 1691:18, 1691:24, 1695:11, 1695:17, 1697:13, 1697:19, 1698:16, 1699:8, 1699:21, 1700:19, 1700:21 <b>software</b> [7] - 1900:19, 1901:9, 1901:17, 1901:22, 1902:3, 1902:6, 1902:11 <b>soil</b> [1] - 1800:19 <b>soils</b> [4] - 1807:25, 1809:21, 1821:6, 1822:17 <b>soldiers</b> [5] - 1850:19, 1858:13, 1858:22, 1861:16, 1861:17 <b>soliciting</b> [1] - 1713:17 <b>solids</b> [1] - 1788:10 <b>solubility</b> [1] - 1661:21 <b>soluble</b> [6] - 1661:25, 1664:25, 1796:23, 1796:24, 1799:23, 1827:10 <b>solution</b> [4] - 1645:3, 1645:5, 1645:19, 1645:24 <b>someone</b> [13] - 1669:13, 1669:16, 1685:18, 1699:23, 1700:4, 1751:13, 1839:4, 1839:6, 1845:3, 1846:12, 1869:1, 1929:5, 1929:14 <b>someplace</b> [2] -	1669:23, 1674:19 <b>sometime</b> [1] - 1779:10 <b>sometimes</b> [12] - 1688:9, 1689:21, 1775:14, 1775:16, 1779:16, 1779:22, 1779:23, 1816:9, 1818:9, 1829:24, 1838:14, 1846:17 <b>somewhat</b> [5] - 1787:22, 1789:4, 1815:8, 1822:23, 1827:21 <b>somewhere</b> [1] - 1779:10 <b>sons</b> [1] - 1727:1 <b>soon</b> [2] - 1659:16, 1730:4 <b>sorry</b> [26] - 1671:7, 1677:1, 1677:3, 1679:24, 1688:19, 1692:6, 1718:1, 1768:8, 1773:5, 1781:1, 1789:17, 1790:25, 1794:14, 1799:14, 1805:5, 1814:2, 1826:9, 1832:18, 1860:4, 1867:6, 1878:12, 1878:22, 1886:1, 1908:4, 1918:25, 1926:23 <b>sort</b> [8] - 1729:18, 1761:18, 1775:4, 1882:20, 1883:22, 1883:24, 1900:19, 1923:23 <b>sounded</b> [1] - 1906:13 <b>source</b> [14] - 1670:16, 1672:23, 1672:24, 1743:23, 1813:16, 1820:18, 1820:19, 1821:23, 1822:5, 1823:6, 1824:11, 1881:3, 1881:6, 1895:7 <b>sources</b> [5] - 1758:4, 1824:21, 1826:25, 1827:7, 1880:25 <b>south</b> [2] - 1749:2, 1834:4 <b>SOUTH</b> [2] - 1633:2, 1934:1 <b>South</b> [98] - 1634:2, 1634:4, 1645:12, 1645:14, 1654:15, 1658:11, 1658:25, 1660:17, 1662:9, 1664:12, 1665:25,	1666:5, 1669:9, 1670:21, 1673:3, 1673:15, 1675:12, 1675:13, 1683:18, 1683:22, 1687:7, 1688:6, 1688:16, 1690:18, 1693:19, 1695:9, 1697:21, 1699:24, 1700:2, 1700:5, 1703:16, 1713:22, 1717:24, 1726:4, 1726:6, 1726:13, 1729:16, 1729:18, 1731:13, 1741:23, 1742:4, 1742:7, 1742:19, 1743:8, 1744:4, 1752:3, 1767:3, 1773:13, 1773:16, 1773:19, 1773:21, 1773:23, 1773:25, 1774:3, 1774:5, 1775:23, 1777:7, 1777:17, 1777:19, 1778:17, 1778:20, 1784:24, 1785:2, 1785:4, 1785:12, 1785:19, 1785:22, 1786:11, 1787:6, 1787:10, 1787:14, 1791:12, 1794:25, 1795:3, 1799:7, 1807:8, 1808:2, 1809:2, 1809:15, 1809:25, 1815:2, 1819:12, 1839:24, 1849:18, 1855:11, 1861:12, 1862:14, 1872:9, 1875:24, 1880:5, 1880:12, 1880:16, 1880:18, 1882:5, 1920:13, 1921:5, 1934:7, 1934:13 <b>southeast</b> [5] - 1786:14, 1787:8, 1789:3, 1792:17, 1797:12 <b>southern</b> [1] - 1664:15 <b>speaking</b> [7] - 1720:15, 1725:1, 1813:19, 1813:21, 1846:1, 1868:24, 1901:11 <b>speaks</b> [8] - 1665:11, 1735:10, 1744:13, 1752:5, 1846:2, 1848:16, 1848:18, 1849:8 <b>special</b> [2] - 1661:8,	1862:25 <b>specialized</b> [1] - 1776:13 <b>specific</b> [14] - 1658:20, 1659:21, 1661:6, 1724:13, 1734:13, 1734:15, 1756:13, 1807:25, 1865:20, 1877:23, 1881:21, 1883:11, 1915:15, 1930:1 <b>specifically</b> [17] - 1658:12, 1661:13, 1663:19, 1667:1, 1765:13, 1766:7, 1766:19, 1778:17, 1810:17, 1855:12, 1855:17, 1867:14, 1900:7, 1900:10, 1913:4, 1923:16, 1924:21 <b>specifications</b> [2] - 1898:12, 1899:10 <b>speculation</b> [4] - 1763:22, 1805:15, 1817:12, 1819:8 <b>speed</b> [2] - 1796:5, 1813:20 <b>spells</b> [1] - 1720:11 <b>spend</b> [4] - 1689:21, 1706:8, 1706:14, 1777:5 <b>spill</b> [33] - 1660:19, 1664:4, 1664:6, 1667:19, 1672:21, 1678:22, 1687:22, 1688:15, 1688:16, 1690:10, 1690:11, 1785:11, 1785:12, 1785:18, 1790:2, 1791:17, 1791:22, 1796:6, 1798:20, 1799:22, 1805:11, 1805:17, 1807:17, 1808:5, 1808:8, 1813:14, 1813:15, 1813:22, 1823:5, 1827:9, 1827:12, 1827:17, 1835:11 <b>Spill</b> [1] - 1635:19 <b>spilled</b> [2] - 1814:1, 1814:5 <b>spills</b> [5] - 1658:12, 1672:16, 1687:6, 1807:11, 1902:24 <b>spinal</b> [1] - 1839:2 <b>spine</b> [1] - 1840:24 <b>spiral</b> [1] - 1777:21 <b>splashes</b> [1] - 1661:9 <b>spoiled</b> [2] - 1709:24,
---	---	--	---	--

<p>1710:9</p> <p><b>spoken</b> <sup>[1]</sup> - 1846:22</p> <p><b>sponsor</b> <sup>[1]</sup> - 1722:8</p> <p><b>sponsors</b> <sup>[1]</sup> - 1732:20</p> <p><b>Spotted</b> <sup>[25]</sup> - 1637:6, 1639:3, 1781:6, 1782:7, 1842:14, 1843:4, 1844:22, 1844:23, 1848:10, 1848:17, 1848:19, 1849:20, 1852:10, 1858:2, 1859:6, 1859:21, 1860:25, 1862:3, 1865:5, 1866:17, 1869:14, 1870:4, 1871:3, 1873:13, 1875:13</p> <p><b>spotted</b> <sup>[2]</sup> - 1848:14, 1875:23</p> <p><b>spring</b> <sup>[1]</sup> - 1883:4</p> <p><b>springs</b> <sup>[2]</sup> - 1662:3, 1797:24</p> <p><b>spur</b> <sup>[1]</sup> - 1773:6</p> <p><b>SS</b> <sup>[1]</sup> - 1934:2</p> <p><b>St</b> <sup>[2]</sup> - 1659:8, 1660:6</p> <p><b>stability</b> <sup>[2]</sup> - 1788:18, 1799:8</p> <p><b>staff</b> <sup>[3]</sup> - 1660:18, 1691:21, 1877:5</p> <p><b>Staff</b> <sup>[68]</sup> - 1641:21, 1652:22, 1652:25, 1680:4, 1680:5, 1683:14, 1683:15, 1684:2, 1688:21, 1701:3, 1701:4, 1701:20, 1735:19, 1752:17, 1752:18, 1762:20, 1762:22, 1772:25, 1780:17, 1781:8, 1782:10, 1782:25, 1783:7, 1830:10, 1843:4, 1843:11, 1843:16, 1843:19, 1843:22, 1844:3, 1845:6, 1851:11, 1860:21, 1871:17, 1871:18, 1876:12, 1876:13, 1876:19, 1876:24, 1886:3, 1886:4, 1886:13, 1886:19, 1894:12, 1895:17, 1895:21, 1895:22, 1904:2, 1904:4, 1906:20, 1907:21, 1908:11, 1908:13, 1909:21, 1910:10, 1915:1, 1915:10, 1915:14, 1915:22,</p>	<p>1916:19, 1917:12, 1930:21, 1931:3, 1931:9, 1931:12, 1932:6, 1932:16, 1933:5</p> <p><b>STAFF</b> <sup>[4]</sup> - 1633:16, 1635:10, 1639:15, 1640:2</p> <p><b>Staff's</b> <sup>[2]</sup> - 1844:17, 1933:4</p> <p><b>stage</b> <sup>[3]</sup> - 1742:24, 1776:19, 1918:15</p> <p><b>stand</b> <sup>[9]</sup> - 1643:2, 1643:3, 1643:4, 1753:22, 1832:7, 1840:23, 1840:24, 1844:7, 1932:8</p> <p><b>standard</b> <sup>[2]</sup> - 1685:4, 1883:23</p> <p><b>standards</b> <sup>[1]</sup> - 1710:12</p> <p><b>Standing</b> <sup>[49]</sup> - 1652:7, 1653:13, 1666:2, 1681:11, 1682:19, 1683:10, 1697:14, 1699:18, 1700:16, 1702:19, 1703:6, 1703:13, 1704:16, 1707:25, 1708:4, 1708:6, 1710:10, 1710:15, 1711:4, 1711:17, 1713:3, 1713:8, 1713:20, 1714:2, 1714:21, 1715:10, 1716:23, 1722:15, 1722:22, 1724:9, 1726:2, 1730:15, 1730:19, 1733:2, 1733:13, 1733:22, 1735:16, 1736:19, 1736:22, 1738:24, 1739:19, 1745:7, 1745:17, 1746:9, 1748:2, 1748:13, 1814:23, 1879:21, 1925:12</p> <p><b>standing</b> <sup>[6]</sup> - 1656:10, 1657:10, 1691:3, 1713:6, 1739:15, 1739:17</p> <p><b>STANDING</b> <sup>[2]</sup> - 1636:4, 1638:4</p> <p><b>standpoint</b> <sup>[5]</sup> - 1645:25, 1646:22, 1690:4, 1700:21, 1832:16</p> <p><b>stands</b> <sup>[2]</sup> - 1685:5, 1851:24</p> <p><b>Stansbury</b> <sup>[2]</sup> -</p>	<p>1656:23, 1663:2</p> <p><b>stars</b> <sup>[2]</sup> - 1704:3</p> <p><b>start</b> <sup>[11]</sup> - 1768:2, 1792:5, 1816:7, 1885:7, 1885:8, 1885:9, 1885:10, 1885:12, 1885:16, 1933:6, 1933:10</p> <p><b>started</b> <sup>[5]</sup> - 1765:6, 1845:20, 1878:3, 1884:4, 1930:14</p> <p><b>starting</b> <sup>[2]</sup> - 1764:22, 1793:25</p> <p><b>starts</b> <sup>[2]</sup> - 1767:9, 1913:2</p> <p><b>Stat</b> <sup>[1]</sup> - 1720:11</p> <p><b>State</b> <sup>[45]</sup> - 1634:2, 1636:12, 1636:14, 1645:14, 1684:25, 1687:19, 1690:18, 1691:20, 1691:21, 1703:15, 1703:16, 1710:11, 1722:14, 1722:18, 1722:23, 1733:12, 1733:23, 1734:7, 1734:10, 1735:3, 1736:15, 1737:10, 1738:15, 1738:21, 1738:25, 1739:11, 1740:23, 1741:2, 1741:16, 1743:9, 1744:4, 1746:9, 1747:1, 1747:15, 1747:21, 1747:25, 1748:3, 1749:14, 1785:12, 1785:19, 1785:22, 1787:6, 1862:14, 1911:6, 1934:7</p> <p><b>state</b> <sup>[39]</sup> - 1646:12, 1647:2, 1650:7, 1681:16, 1687:14, 1698:9, 1701:19, 1703:2, 1708:16, 1717:24, 1720:2, 1725:18, 1732:9, 1744:8, 1786:6, 1786:10, 1787:15, 1790:3, 1790:4, 1794:4, 1794:9, 1801:13, 1801:16, 1802:4, 1803:4, 1812:10, 1831:15, 1832:21, 1838:4, 1848:15, 1878:6, 1879:23, 1881:23, 1886:23, 1898:15, 1910:17, 1913:3, 1917:11, 1921:17</p> <p><b>STATE</b> <sup>[2]</sup> - 1633:2,</p>	<p>1934:1</p> <p><b>Statement</b> <sup>[5]</sup> - 1684:24, 1722:20, 1733:13, 1733:15, 1739:13</p> <p><b>statement</b> <sup>[28]</sup> - 1658:9, 1669:7, 1674:10, 1680:9, 1690:12, 1694:18, 1695:10, 1700:12, 1705:7, 1705:9, 1707:20, 1712:25, 1713:13, 1713:16, 1727:17, 1752:23, 1794:13, 1813:25, 1814:4, 1838:15, 1843:14, 1845:17, 1851:24, 1858:10, 1898:12, 1900:18, 1926:4, 1926:5</p> <p><b>statements</b> <sup>[8]</sup> - 1649:12, 1767:1, 1839:17, 1839:18, 1839:20, 1839:21, 1840:11, 1852:4</p> <p><b>states</b> <sup>[7]</sup> - 1663:12, 1663:15, 1663:18, 1663:19, 1665:18, 1672:18, 1749:21</p> <p><b>States</b> <sup>[9]</sup> - 1710:20, 1711:3, 1719:12, 1741:10, 1754:14, 1754:15, 1774:25, 1778:1, 1851:6</p> <p><b>stating</b> <sup>[1]</sup> - 1783:14</p> <p><b>stationed</b> <sup>[1]</sup> - 1850:21</p> <p><b>Statue</b> <sup>[1]</sup> - 1711:7</p> <p><b>status</b> <sup>[3]</sup> - 1716:2, 1716:5, 1880:6</p> <p><b>statute</b> <sup>[1]</sup> - 1735:1</p> <p><b>statutory</b> <sup>[2]</sup> - 1715:18, 1716:25</p> <p><b>stay</b> <sup>[2]</sup> - 1652:4, 1699:9</p> <p><b>staying</b> <sup>[1]</sup> - 1874:12</p> <p><b>steep</b> <sup>[9]</sup> - 1788:3, 1793:19, 1794:22, 1795:6, 1795:7, 1795:10, 1800:11, 1810:8, 1810:12</p> <p><b>steepness</b> <sup>[1]</sup> - 1833:1</p> <p><b>step</b> <sup>[10]</sup> - 1680:6, 1681:1, 1701:9, 1756:4, 1825:21, 1838:11, 1875:3, 1876:9, 1886:11, 1907:22</p> <p><b>STESKAL</b> <sup>[2]</sup> - 1636:16, 1637:2</p>	<p><b>Steskal</b> <sup>[1]</sup> - 1637:3</p> <p><b>Steve</b> <sup>[1]</sup> - 1635:16</p> <p><b>still</b> <sup>[18]</sup> - 1672:22, 1689:8, 1708:13, 1709:3, 1709:18, 1718:10, 1718:11, 1718:18, 1738:10, 1804:15, 1812:24, 1823:8, 1858:19, 1867:22, 1870:15, 1892:9, 1899:16</p> <p><b>stock</b> <sup>[2]</sup> - 1787:23, 1797:18</p> <p><b>stop</b> <sup>[1]</sup> - 1831:22</p> <p><b>story</b> <sup>[4]</sup> - 1670:17, 1758:10, 1779:15, 1858:15</p> <p><b>straightforward</b> <sup>[2]</sup> - 1688:9, 1919:2</p> <p><b>stream</b> <sup>[8]</sup> - 1797:14, 1804:7, 1804:9, 1815:1, 1815:9, 1881:15, 1883:1, 1883:3</p> <p><b>streams</b> <sup>[3]</sup> - 1790:10, 1804:1, 1815:2</p> <p><b>strength</b> <sup>[2]</sup> - 1904:19, 1905:23</p> <p><b>strenuously</b> <sup>[1]</sup> - 1649:3</p> <p><b>stretch</b> <sup>[1]</sup> - 1796:9</p> <p><b>strike</b> <sup>[10]</sup> - 1657:17, 1657:19, 1674:7, 1676:8, 1705:5, 1705:10, 1705:23, 1719:2, 1723:7, 1878:22</p> <p><b>striking</b> <sup>[1]</sup> - 1706:5</p> <p><b>stripper</b> <sup>[2]</sup> - 1828:9, 1835:2</p> <p><b>strong</b> <sup>[1]</sup> - 1654:10</p> <p><b>strongly</b> <sup>[1]</sup> - 1654:12</p> <p><b>struck</b> <sup>[1]</sup> - 1675:15</p> <p><b>struggle</b> <sup>[2]</sup> - 1709:12, 1744:1</p> <p><b>struggling</b> <sup>[3]</sup> - 1646:24, 1646:25, 1825:14</p> <p><b>student</b> <sup>[1]</sup> - 1834:8</p> <p><b>students</b> <sup>[2]</sup> - 1822:22, 1831:2</p> <p><b>studies</b> <sup>[3]</sup> - 1662:23, 1884:2</p> <p><b>study</b> <sup>[1]</sup> - 1663:17</p> <p><b>stuff</b> <sup>[2]</sup> - 1728:12, 1819:23</p> <p><b>Stuxnet</b> <sup>[1]</sup> - 1901:13</p> <p><b>style</b> <sup>[1]</sup> - 1812:17</p> <p><b>subject</b> <sup>[21]</sup> - 1650:4, 1708:9, 1708:17,</p>
--	---	---	---	---

026586

1677:13, 1678:14, 1704:19, 1705:19, 1707:20, 1707:22, 1711:22, 1713:15, 1714:7, 1715:21, 1716:9, 1716:13, 1717:3, 1717:15, 1718:23, 1719:1, 1720:21, 1723:7, 1724:24, 1725:3, 1726:9, 1726:12, 1726:15, 1727:8, 1727:20, 1727:22, 1730:6, 1730:13, 1730:23, 1732:10, 1735:5, 1735:14, 1735:21, 1735:23, 1736:23, 1738:10, 1738:12, 1738:19, 1739:15, 1740:4, 1740:10, 1744:23, 1745:2, 1746:20, 1747:16, 1748:5, 1749:25, 1750:2, 1843:15, 1843:22, 1844:12, 1844:19, 1860:8, 1861:2, 1861:15, 1864:6, 1865:5, 1866:21, 1867:1, 1873:12, 1873:21, 1876:18, 1877:1, 1877:4, 1908:1, 1908:6 <b>Taylor's</b> [2] - 1676:19, 1759:1 <b>teach</b> [2] - 1785:9, 1856:19 <b>team</b> [7] - 1703:14, 1756:2, 1757:8, 1757:13, 1758:16, 1765:24, 1837:4 <b>technical</b> [6] - 1642:23, 1756:10, 1759:10, 1770:7, 1770:11, 1770:20 <b>technically</b> [2] - 1670:23, 1770:18 <b>technique</b> [2] - 1755:16, 1775:4 <b>techniques</b> [3] - 1774:9, 1803:15, 1812:17 <b>Technologies</b> [1] - 1887:21 <b>Teledyne</b> [1] - 1907:8 <b>telephone</b> [1] - 1746:25 <b>telephones</b> [1] - 1746:23 <b>temperature</b> [2] -	1900:1, 1910:1 <b>temporary</b> [3] - 1700:1, 1878:3, 1881:25 <b>tend</b> [4] - 1795:1, 1798:12, 1800:5, 1804:9 <b>tender</b> [2] - 1878:18, 1889:12 <b>tends</b> [1] - 1798:5 <b>tenth</b> [1] - 1801:25 <b>tenuous</b> [2] - 1872:7, 1872:11 <b>term</b> [8] - 1707:1, 1775:12, 1792:13, 1794:15, 1794:18, 1794:20, 1882:24 <b>terminal</b> [1] - 1899:23 <b>termination</b> [2] - 1766:10, 1766:23 <b>terminology</b> [2] - 1706:24, 1882:3 <b>terms</b> [27] - 1650:16, 1670:15, 1670:18, 1671:11, 1671:13, 1672:2, 1675:17, 1699:19, 1706:24, 1710:9, 1762:1, 1788:18, 1790:6, 1791:13, 1791:18, 1792:20, 1794:6, 1794:16, 1794:19, 1795:8, 1797:10, 1798:1, 1799:19, 1858:10, 1901:16, 1920:6, 1931:9 <b>terrace</b> [4] - 1794:1, 1797:19, 1800:2 <b>terrain</b> [3] - 1795:5, 1816:12, 1817:5 <b>territories</b> [2] - 1717:23, 1718:22 <b>territory</b> [2] - 1717:23, 1720:12 <b>Terry</b> [1] - 1636:21 <b>test</b> [7] - 1664:9, 1758:3, 1759:18, 1775:7, 1775:15, 1778:19, 1827:25 <b>tested</b> [1] - 1775:22 <b>testified</b> [25] - 1671:19, 1706:6, 1711:16, 1712:13, 1716:21, 1764:21, 1765:12, 1765:25, 1768:15, 1809:5, 1809:11, 1809:14, 1809:17, 1809:20, 1809:23, 1814:25, 1824:18, 1830:20,	1831:18, 1833:4, 1834:14, 1861:9, 1877:16, 1880:2, 1921:15 <b>testifies</b> [1] - 1761:14 <b>testify</b> [9] - 1650:19, 1670:12, 1727:11, 1728:24, 1731:3, 1762:6, 1766:21, 1808:22, 1809:1 <b>testifying</b> [10] - 1642:21, 1667:9, 1682:18, 1763:13, 1765:22, 1817:19, 1831:19, 1904:2, 1926:16, 1930:15 <b>testimonial</b> [1] - 1702:20 <b>testimonies</b> [1] - 1915:10 <b>Testimony</b> [16] - 1635:11, 1635:11, 1635:12, 1635:13, 1635:15, 1635:16, 1635:22, 1635:23, 1635:24, 1635:24, 1636:5, 1636:7, 1637:7, 1638:3, 1767:19, 1878:9 <b>testimony</b> [259] - 1643:5, 1643:14, 1646:10, 1648:8, 1648:9, 1648:10, 1648:14, 1649:8, 1650:4, 1650:11, 1651:11, 1651:25, 1652:22, 1653:15, 1654:1, 1654:25, 1655:4, 1655:9, 1655:11, 1655:12, 1655:13, 1656:8, 1656:15, 1656:18, 1656:19, 1656:21, 1656:23, 1657:8, 1657:11, 1657:16, 1658:2, 1660:22, 1667:13, 1667:14, 1668:17, 1670:5, 1671:21, 1673:1, 1673:7, 1674:8, 1674:10, 1677:6, 1678:16, 1682:20, 1683:6, 1684:1, 1684:6, 1684:7, 1684:10, 1684:11, 1684:14, 1684:19, 1689:12, 1689:13, 1689:22, 1692:8, 1692:23, 1693:18, 1694:7, 1695:3,	1696:11, 1697:1, 1699:18, 1700:7, 1704:10, 1704:11, 1704:13, 1704:21, 1704:24, 1705:6, 1705:12, 1705:19, 1705:22, 1706:5, 1706:8, 1706:9, 1706:16, 1707:15, 1711:19, 1712:11, 1712:14, 1712:17, 1712:18, 1712:24, 1714:8, 1714:10, 1719:4, 1719:14, 1721:2, 1721:13, 1721:14, 1721:19, 1723:5, 1724:14, 1724:25, 1725:4, 1725:8, 1733:18, 1736:10, 1750:17, 1754:4, 1760:14, 1764:7, 1765:17, 1766:4, 1767:17, 1769:12, 1770:5, 1773:10, 1773:11, 1782:23, 1782:25, 1785:23, 1786:4, 1786:23, 1786:24, 1787:11, 1802:3, 1802:19, 1803:5, 1806:7, 1806:12, 1806:13, 1806:23, 1808:7, 1808:12, 1809:24, 1810:15, 1810:22, 1811:18, 1811:21, 1811:24, 1812:8, 1813:2, 1813:7, 1813:14, 1815:25, 1816:1, 1817:4, 1818:22, 1820:16, 1823:11, 1824:17, 1825:2, 1825:5, 1825:19, 1826:5, 1830:17, 1831:12, 1833:3, 1841:15, 1844:4, 1844:5, 1844:11, 1844:13, 1846:5, 1849:21, 1849:23, 1852:11, 1856:6, 1859:8, 1859:22, 1863:11, 1864:9, 1865:16, 1866:11, 1868:21, 1875:16, 1876:22, 1876:24, 1877:5, 1877:18, 1877:21, 1877:22, 1877:24, 1878:1, 1879:4, 1887:25, 1888:3, 1888:5, 1888:17, 1889:1,	1889:8, 1889:9, 45 1889:21, 1890:5, 1890:7, 1890:10, 1891:3, 1891:7, 1891:12, 1892:15, 1892:21, 1892:22, 1893:16, 1893:18, 1893:23, 1894:8, 1894:10, 1894:12, 1894:16, 1894:19, 1894:22, 1894:23, 1894:24, 1895:5, 1895:18, 1896:11, 1896:12, 1896:20, 1897:5, 1897:6, 1897:14, 1898:1, 1898:3, 1898:4, 1898:5, 1898:10, 1898:23, 1902:15, 1904:6, 1904:14, 1906:13, 1907:24, 1908:8, 1911:15, 1912:7, 1912:25, 1914:11, 1914:13, 1914:18, 1914:22, 1914:24, 1915:1, 1915:5, 1916:10, 1916:22, 1917:10, 1917:19, 1918:9, 1919:21, 1919:23, 1921:13, 1922:15, 1922:25, 1925:24, 1926:6, 1927:1, 1927:3, 1927:7, 1928:17, 1931:17 <b>testing</b> [9] - 1659:1, 1669:20, 1757:10, 1774:18, 1774:22, 1778:5, 1828:2, 1829:1, 1829:7 <b>tests</b> [2] - 1773:18, 1773:21 <b>Texas</b> [1] - 1760:2 <b>THE</b> [48] - 1633:1, 1633:2, 1633:4, 1633:6, 1633:13, 1680:8, 1701:10, 1726:14, 1732:2, 1751:9, 1753:3, 1773:15, 1773:20, 1773:24, 1774:4, 1775:24, 1776:6, 1776:12, 1776:16, 1776:23, 1777:8, 1777:12, 1777:18, 1777:23, 1778:2, 1778:7, 1778:21, 1779:7, 1830:25, 1832:3, 1832:18, 1832:24, 1833:8, 1833:19, 1833:24,
--	--	--	---	--



1834:6, 1834:22, 1835:14, 1866:9, 1866:24, 1872:6, 1872:18, 1873:3, 1873:6, 1874:21, 1875:5, 1889:22 <b>themselves</b> [2] - 1659:4, 1667:9 <b>therapist</b> [1] - 1849:4 <b>therefore</b> [6] - 1661:18, 1693:23, 1697:1, 1761:16, 1764:25, 1765:3 <b>they've</b> [8] - 1676:18, 1723:4, 1732:12, 1764:7, 1770:15, 1853:21, 1857:22, 1880:14 <b>thick</b> [2] - 1777:1, 1777:5 <b>thicker</b> [1] - 1846:16 <b>thin</b> [1] - 1777:3 <b>thinkers</b> [1] - 1744:15 <b>thinks</b> [1] - 1763:5 <b>third</b> [3] - 1745:25, 1853:18, 1921:11 <b>Thomasina</b> [4] - 1694:15, 1848:16, 1893:11, 1914:6 <b>Thompson</b> [1] - 1722:2 <b>thoughts</b> [5] - 1647:17, 1651:4, 1876:13, 1876:25 <b>thousands</b> [2] - 1767:25, 1883:19 <b>threat</b> [3] - 1667:22, 1673:11, 1673:12 <b>threatening</b> [1] - 1858:10 <b>three</b> [22] - 1641:22, 1642:8, 1644:24, 1696:14, 1723:11, 1728:5, 1730:25, 1745:21, 1776:19, 1776:22, 1788:22, 1845:12, 1846:11, 1849:14, 1849:16, 1854:4, 1854:6, 1868:14, 1869:1, 1920:14, 1921:7 <b>three-quarters</b> [1] - 1728:5 <b>throughout</b> [2] - 1733:1, 1808:1 <b>throw</b> [1] - 1846:25 <b>tie</b> [1] - 1857:5 <b>tied</b> [2] - 1765:20, 1863:8 <b>tight</b> [1] - 1647:10	<b>Tillquist</b> [4] - 1635:4, 1635:8, 1643:4, 1660:23 <b>Timeline</b> [2] - 1636:22, 1637:3 <b>timely</b> [1] - 1643:8 <b>timing</b> [1] - 1753:14 <b>Tina</b> [2] - 1633:20, 1820:4 <b>title</b> [4] - 1706:21, 1706:23, 1887:2, 1910:23 <b>TO</b> [1] - 1633:6 <b>today</b> [48] - 1641:10, 1650:16, 1650:25, 1651:7, 1651:25, 1652:2, 1682:6, 1682:18, 1701:20, 1702:6, 1702:15, 1709:3, 1709:25, 1711:19, 1713:24, 1716:14, 1742:20, 1749:4, 1750:24, 1753:6, 1781:7, 1781:11, 1781:17, 1781:18, 1781:21, 1782:6, 1782:18, 1806:14, 1836:24, 1842:13, 1843:6, 1859:23, 1861:14, 1862:6, 1864:22, 1866:18, 1878:6, 1878:9, 1888:7, 1890:5, 1891:21, 1892:14, 1893:13, 1901:16, 1909:15, 1912:2, 1914:8, 1932:21 <b>toe</b> [1] - 1816:22 <b>together</b> [5] - 1688:2, 1774:19, 1841:21, 1857:5, 1874:23 <b>tolerate</b> [1] - 1647:5 <b>toll</b> [1] - 1715:7 <b>toluene</b> [1] - 1796:24 <b>toluylene</b> [1] - 1796:22 <b>tomorrow</b> [15] - 1643:14, 1650:12, 1652:5, 1702:6, 1702:15, 1753:7, 1781:12, 1781:23, 1781:25, 1783:9, 1843:9, 1843:20, 1909:17, 1932:12, 1932:15 <b>tone</b> [1] - 1729:22 <b>took</b> [14] - 1707:13, 1727:12, 1735:14, 1773:18, 1774:2,	1774:4, 1824:20, 1825:18, 1826:5, 1835:11, 1835:12, 1841:4, 1846:9, 1934:9 <b>topographic</b> [1] - 1832:25 <b>topographical</b> [1] - 1836:5 <b>topography</b> [3] - 1794:23, 1795:1, 1821:7 <b>torch</b> [1] - 1886:25 <b>Torch</b> [1] - 1910:20 <b>total</b> [2] - 1664:7, 1700:14 <b>totally</b> [4] - 1706:2, 1707:1, 1713:18, 1861:18 <b>touch</b> [1] - 1655:25 <b>toward</b> [4] - 1662:2, 1786:15, 1793:20, 1796:4 <b>towards</b> [2] - 1864:21, 1889:20 <b>tower</b> [3] - 1664:22, 1673:19, 1828:9 <b>towers</b> [1] - 1835:2 <b>town</b> [2] - 1789:3, 1872:7 <b>towns</b> [2] - 1791:13, 1872:11 <b>toxic</b> [2] - 1662:11, 1673:8 <b>toxicity</b> [1] - 1660:21 <b>toxin</b> [1] - 1660:23 <b>toxins</b> [1] - 1673:10 <b>trace</b> [1] - 1666:10 <b>Tracking</b> [6] - 1893:25, 1914:20, 1918:8, 1919:12, 1919:14, 1925:13 <b>tracking</b> [3] - 1689:7, 1922:23, 1925:25 <b>traditional</b> [3] - 1703:23, 1704:2, 1704:6 <b>traditionally</b> [1] - 1904:16 <b>trafficking</b> [3] - 1854:5, 1854:23, 1855:2 <b>train</b> [1] - 1814:7 <b>training</b> [3] - 1659:25, 1784:22, 1786:8 <b>transactions</b> [1] - 1704:9 <b>TransCanada</b> [93] - 1635:18, 1635:19, 1636:18, 1641:5,	1645:7, 1645:25, 1646:6, 1649:15, 1652:10, 1654:16, 1658:18, 1658:22, 1659:17, 1660:13, 1664:9, 1677:12, 1691:16, 1692:3, 1692:25, 1693:25, 1696:20, 1696:21, 1713:6, 1713:14, 1714:20, 1715:20, 1717:1, 1719:9, 1719:13, 1721:5, 1722:14, 1722:24, 1723:2, 1724:19, 1724:20, 1725:11, 1726:4, 1727:18, 1729:7, 1729:12, 1731:18, 1732:8, 1732:24, 1737:15, 1742:23, 1745:5, 1749:24, 1750:10, 1751:16, 1755:7, 1756:5, 1757:5, 1758:24, 1759:25, 1761:10, 1762:14, 1763:4, 1764:6, 1765:16, 1765:25, 1766:2, 1766:22, 1769:18, 1770:12, 1778:22, 1780:11, 1790:22, 1791:1, 1802:5, 1802:15, 1804:15, 1804:25, 1807:4, 1820:3, 1824:19, 1826:5, 1860:3, 1861:1, 1876:16, 1888:12, 1890:23, 1894:1, 1894:6, 1897:24, 1918:12, 1918:15, 1919:6, 1919:11, 1919:20, 1920:3, 1927:11, 1929:22 <b>TRANSCANADA</b> [3] - 1633:4, 1635:2, 1639:11 <b>TransCanada's</b> [21] - 1645:2, 1646:20, 1671:18, 1671:21, 1712:17, 1720:23, 1746:2, 1749:20, 1750:3, 1770:8, 1837:4, 1893:2, 1897:20, 1898:20, 1899:10, 1899:12, 1907:5, 1918:4, 1919:7, 1921:16, 1925:16 <b>Transcript</b> [1] - 1633:8 <b>TRANSCRIPT</b> [1] -	1634:1 <b>transcription</b> [1] - 1934:12 <b>transition</b> [1] - 1774:11 <b>transitions</b> [3] - 1774:11, 1774:16, 1774:23 <b>transmission</b> [1] - 1755:6 <b>transpired</b> [1] - 1718:16 <b>transpiring</b> [1] - 1726:24 <b>transport</b> [2] - 1807:10, 1808:4 <b>transported</b> [9] - 1662:2, 1662:4, 1667:6, 1667:16, 1799:16, 1813:5, 1813:16, 1814:2, 1814:6 <b>transports</b> [1] - 1798:3 <b>trauma</b> [2] - 1850:14, 1850:17 <b>traumatized</b> [1] - 1871:11 <b>travel</b> [8] - 1701:19, 1790:5, 1790:7, 1790:8, 1790:9, 1794:6, 1806:5, 1814:10 <b>traveled</b> [1] - 1667:20 <b>traveling</b> [2] - 1790:20, 1815:18 <b>Travis</b> [2] - 1748:11, 1812:6 <b>treated</b> [3] - 1828:8, 1828:14, 1834:15 <b>treaties</b> [9] - 1705:1, 1710:22, 1721:15, 1733:24, 1734:14, 1734:15, 1734:18, 1734:23, 1859:11 <b>treating</b> [2] - 1660:20, 1676:7 <b>treatment</b> [8] - 1660:20, 1672:12, 1674:4, 1680:19, 1828:5, 1828:15, 1834:19, 1834:20 <b>treatments</b> [1] - 1659:24 <b>Treaty</b> [9] - 1715:12, 1715:17, 1715:23, 1716:13, 1716:24, 1717:18, 1718:22, 1719:7 <b>treaty</b> [26] - 1704:25,
---	--	---	---	--

<p>1705:24, 1706:3, 1706:10, 1706:14, 1706:22, 1706:25, 1707:16, 1711:7, 1711:8, 1717:5, 1718:5, 1718:7, 1719:5, 1719:20, 1719:25, 1720:12, 1734:19, 1849:24, 1851:18, 1855:18, 1855:20, 1856:1, 1856:2, 1856:3, 1859:10</p> <p><b>tree</b> [2] - 1779:24</p> <p><b>trees</b> [2] - 1820:9, 1820:13</p> <p><b>trench</b> [5] - 1802:9, 1802:16, 1802:22, 1823:25, 1883:2</p> <p><b>trespass</b> [1] - 1876:1</p> <p><b>Tribal</b> [10] - 1636:6, 1703:6, 1722:6, 1745:7, 1745:8, 1745:17, 1745:22, 1745:24, 1746:1</p> <p><b>tribal</b> [29] - 1703:7, 1710:15, 1711:1, 1712:16, 1712:21, 1713:10, 1713:12, 1714:23, 1714:25, 1716:21, 1718:19, 1724:21, 1726:24, 1729:4, 1729:22, 1732:5, 1732:18, 1733:6, 1735:24, 1748:17, 1748:20, 1748:22, 1851:17, 1855:10, 1857:8, 1862:18, 1863:5, 1875:14</p> <p><b>Tribe</b> [75] - 1677:17, 1677:24, 1681:11, 1682:19, 1683:10, 1691:3, 1694:16, 1697:11, 1697:14, 1697:19, 1697:24, 1699:19, 1699:23, 1700:4, 1700:12, 1700:17, 1702:12, 1702:19, 1703:13, 1703:14, 1703:20, 1704:16, 1713:7, 1714:2, 1715:10, 1716:23, 1722:7, 1722:9, 1722:15, 1722:16, 1722:22, 1730:20, 1733:6, 1733:13, 1733:22, 1735:16, 1736:20, 1739:4, 1739:19,</p>	<p>1744:19, 1745:17, 1746:9, 1747:1, 1747:6, 1747:22, 1748:3, 1748:12, 1748:14, 1748:15, 1749:8, 1749:13, 1751:17, 1752:2, 1752:3, 1812:7, 1812:14, 1814:23, 1848:9, 1848:10, 1848:20, 1862:4, 1862:7, 1862:13, 1869:20, 1870:15, 1872:23, 1873:13, 1873:25, 1879:22, 1889:16, 1893:12, 1912:25, 1914:7, 1925:12</p> <p><b>TRIBE</b> [6] - 1635:14, 1636:2, 1636:4, 1637:5, 1638:4, 1639:2</p> <p><b>Tribe's</b> [5] - 1734:6, 1734:11, 1842:14, 1869:15</p> <p><b>Tribes</b> [20] - 1712:19, 1719:12, 1719:13, 1719:19, 1720:13, 1721:5, 1721:6, 1724:21, 1732:9, 1732:24, 1733:10, 1854:16, 1875:23, 1879:23, 1880:11, 1880:15, 1881:7, 1881:8, 1881:19, 1882:5</p> <p><b>tributaries</b> [3] - 1665:19, 1666:11, 1666:17</p> <p><b>tributary</b> [2] - 1667:18, 1832:9</p> <p><b>tried</b> [4] - 1723:17, 1737:1, 1824:20, 1932:22</p> <p><b>Tripp</b> [4] - 1664:15, 1664:16, 1787:11, 1801:1</p> <p><b>trouble</b> [2] - 1789:22, 1821:14</p> <p><b>true</b> [4] - 1817:7, 1899:2, 1902:17, 1934:11</p> <p><b>truly</b> [1] - 1839:24</p> <p><b>trust</b> [1] - 1749:22</p> <p><b>truth</b> [1] - 1668:18</p> <p><b>try</b> [8] - 1651:13, 1693:4, 1753:14, 1761:2, 1824:24, 1840:23, 1843:7, 1846:23</p>	<p><b>trying</b> [18] - 1653:6, 1653:14, 1653:16, 1653:24, 1654:13, 1715:8, 1723:17, 1728:8, 1754:3, 1762:1, 1777:12, 1777:14, 1789:18, 1832:4, 1835:1, 1837:3, 1841:6, 1923:3</p> <p><b>Tucson</b> [1] - 1849:5</p> <p><b>Tuesday</b> [2] - 1643:11, 1650:10</p> <p><b>turn</b> [2] - 1707:10, 1912:25</p> <p><b>turned</b> [1] - 1759:4</p> <p><b>turns</b> [1] - 1896:22</p> <p><b>twice</b> [1] - 1649:4</p> <p><b>Twitter</b> [1] - 1847:12</p> <p><b>two</b> [38] - 1642:14, 1643:10, 1644:10, 1648:6, 1649:12, 1653:2, 1665:5, 1681:3, 1681:25, 1695:1, 1700:13, 1700:17, 1706:3, 1719:4, 1720:9, 1720:17, 1721:10, 1723:10, 1725:10, 1730:24, 1745:21, 1748:20, 1761:6, 1763:8, 1770:2, 1788:11, 1798:10, 1829:18, 1840:20, 1849:6, 1851:11, 1854:12, 1857:5, 1867:22, 1868:14, 1877:23, 1885:4, 1911:20</p> <p><b>two-day</b> [1] - 1851:11</p> <p><b>type</b> [10] - 1648:11, 1663:14, 1720:14, 1775:4, 1789:5, 1801:2, 1801:9, 1822:21, 1823:19, 1859:13</p> <p><b>typed</b> [1] - 1646:15</p> <p><b>types</b> [6] - 1740:21, 1777:3, 1777:4, 1831:21, 1852:14, 1883:15</p> <p><b>typical</b> [2] - 1796:12, 1827:16</p> <p><b>typically</b> [4] - 1792:4, 1794:19, 1816:7, 1923:23</p>	<p><b>U.S</b> [8] - 1741:8, 1741:9, 1796:11, 1797:5, 1808:16, 1831:6, 1851:8, 1870:10</p> <p><b>U.S.G.S</b> [1] - 1666:9</p> <p><b>ultimate</b> [6] - 1654:1, 1712:7, 1719:21, 1865:7, 1865:10, 1865:13</p> <p><b>ultimately</b> [5] - 1759:6, 1759:24, 1763:18, 1825:10, 1927:15</p> <p><b>ultrasonic</b> [8] - 1757:10, 1773:18, 1773:21, 1774:16, 1774:18, 1774:22, 1776:2, 1778:5</p> <p><b>ultrasonically</b> [1] - 1775:22</p> <p><b>unavailable</b> [1] - 1728:23</p> <p><b>unbiased</b> [1] - 1931:15</p> <p><b>uncle</b> [1] - 1709:11</p> <p><b>uncles</b> [1] - 1709:7</p> <p><b>uncomfortable</b> [1] - 1910:4</p> <p><b>under</b> [20] - 1657:15, 1683:19, 1691:22, 1711:7, 1711:8, 1713:7, 1715:12, 1720:10, 1720:12, 1725:16, 1731:13, 1732:15, 1739:25, 1766:13, 1790:23, 1791:2, 1864:17, 1877:8, 1880:20, 1891:9</p> <p><b>undergoing</b> [1] - 1804:15</p> <p><b>underground</b> [2] - 1790:7, 1790:18</p> <p><b>underlying</b> [5] - 1669:5, 1669:6, 1801:14, 1827:5, 1925:7</p> <p><b>underneath</b> [1] - 1804:7</p> <p><b>understood</b> [8] - 1713:1, 1731:23, 1747:10, 1780:24, 1782:23, 1865:19, 1866:2, 1922:24</p> <p><b>undetected</b> [5] - 1663:6, 1663:25, 1664:7, 1664:10, 1667:3</p> <p><b>unfortunately</b> [2] -</p>	<p>1648:15, 1906:23 4 7</p> <p><b>unilateral</b> [2] - 1711:6, 1718:12</p> <p><b>unimportant</b> [1] - 1921:25</p> <p><b>union</b> [1] - 1742:12</p> <p><b>unit</b> [3] - 1899:23, 1900:6, 1900:12</p> <p><b>United</b> [10] - 1710:17, 1710:20, 1711:3, 1719:12, 1741:10, 1754:14, 1754:15, 1774:25, 1778:1, 1851:6</p> <p><b>units</b> [1] - 1776:19</p> <p><b>universal</b> [1] - 1734:19</p> <p><b>universe</b> [1] - 1704:4</p> <p><b>University</b> [2] - 1682:10, 1785:1</p> <p><b>unleaded</b> [1] - 1833:19</p> <p><b>unless</b> [7] - 1649:18, 1680:3, 1719:17, 1778:24, 1798:11, 1853:3, 1883:17</p> <p><b>unlikely</b> [4] - 1713:9, 1713:11, 1714:22, 1714:24</p> <p><b>unnumbered</b> [1] - 1765:10</p> <p><b>unreasonable</b> [1] - 1642:25</p> <p><b>unsafe</b> [1] - 1870:12</p> <p><b>unsworn</b> [1] - 1705:9</p> <p><b>up</b> [99] - 1643:22, 1644:14, 1646:10, 1646:15, 1647:3, 1650:22, 1652:15, 1654:14, 1654:24, 1656:11, 1664:5, 1672:20, 1672:23, 1674:16, 1676:3, 1694:17, 1695:2, 1696:8, 1696:16, 1698:18, 1698:24, 1699:2, 1699:7, 1702:1, 1706:5, 1707:25, 1708:17, 1709:15, 1710:4, 1710:21, 1711:5, 1723:24, 1724:17, 1726:2, 1737:24, 1746:17, 1749:11, 1750:5, 1753:15, 1753:24, 1760:15, 1761:21, 1764:22, 1779:2, 1780:12, 1780:14, 1782:5, 1788:8, 1789:24,</p>
--	--	--	--	---

## U

**U.N** [1] - 1705:7

1790:2, 1793:21, 1793:24, 1794:22, 1795:1, 1795:2, 1802:6, 1805:18, 1819:22, 1819:24, 1821:8, 1821:20, 1825:5, 1827:13, 1827:17, 1829:24, 1830:23, 1832:7, 1835:21, 1836:5, 1836:10, 1837:1, 1837:9, 1837:16, 1838:18, 1840:20, 1840:23, 1840:24, 1841:4, 1842:5, 1843:12, 1847:3, 1850:24, 1857:22, 1873:9, 1876:12, 1882:18, 1885:9, 1889:5, 1889:24, 1890:8, 1896:13, 1897:10, 1905:6, 1905:25, 1911:16, 1924:5, 1926:8, 1932:14, 1932:15 <b>update</b> [1] - 1781:25 <b>updated</b> [2] - 1837:23, 1898:11 <b>updating</b> [1] - 1755:24 <b>upgraded</b> [1] - 1824:8 <b>upland</b> [1] - 1797:20 <b>upper</b> [1] - 1791:8 <b>upstream</b> [2] - 1666:11, 1796:1 <b>uranium</b> [3] - 1742:12, 1854:19, 1854:20 <b>urbanization</b> [1] - 1818:9 <b>US</b> [5] - 1636:11, 1636:12, 1636:13, 1636:14, 1636:19 <b>useful</b> [1] - 1761:1 <b>user</b> [2] - 1896:21, 1896:23 <b>users</b> [3] - 1666:25, 1667:6, 1881:2 <b>uses</b> [2] - 1666:5, 1688:8 <b>usual</b> [1] - 1660:21 <b>usufructuary</b> [6] - 1704:25, 1705:22, 1706:7, 1706:13, 1706:23, 1707:14 <b>Utilities</b> [6] - 1682:5, 1684:3, 1741:6, 1741:20, 1808:22, 1811:9 <b>utilities</b> [4] - 1704:14, 1705:25, 1833:4, 1883:17	<b>UTILITIES</b> [2] - 1633:1, 1633:13 <b>utility</b> [3] - 1751:4, 1815:24, 1903:25 <b>Utility</b> [1] - 1699:14 <b>utility's</b> [1] - 1670:7 <b>utilization</b> [1] - 1769:17 <b>utilized</b> [1] - 1815:1 <b>utterly</b> [1] - 1667:10  <b>V</b>  <b>VA</b> [4] - 1709:6, 1849:5, 1861:10 <b>vague</b> [2] - 1746:14, 1746:18 <b>vaguely</b> [2] - 1897:4 <b>validity</b> [2] - 1646:4, 1646:20 <b>valley</b> [4] - 1798:6, 1799:9, 1885:8, 1885:17 <b>valleys</b> [2] - 1666:12, 1817:2 <b>value</b> [6] - 1698:7, 1698:16, 1699:2, 1699:3, 1852:23, 1853:1 <b>values</b> [7] - 1687:7, 1696:3, 1698:18, 1698:21, 1698:23, 1699:7, 1853:23 <b>valve</b> [3] - 1899:24, 1900:25 <b>valves</b> [3] - 1900:24, 1901:1, 1901:4 <b>Vance</b> [1] - 1635:16 <b>Vann</b> [1] - 1661:15 <b>vapor</b> [1] - 1670:13 <b>vapors</b> [1] - 1661:5 <b>Variation</b> [1] - 1635:7 <b>variety</b> [1] - 1769:1 <b>various</b> [9] - 1642:23, 1662:17, 1663:12, 1666:17, 1746:10, 1785:16, 1794:19, 1849:3, 1900:1 <b>VariSystems</b> [1] - 1907:9 <b>vast</b> [1] - 1777:20 <b>VAWA</b> [1] - 1862:24 <b>vegetation</b> [1] - 1797:24 <b>velocity</b> [2] - 1796:10, 1808:13 <b>vendor</b> [1] - 1907:6 <b>venting</b> [1] - 1730:4 <b>verify</b> [1] - 1906:14	<b>Vermillion</b> [2] - 1872:9, 1872:10 <b>vernacular</b> [1] - 1774:24 <b>version</b> [2] - 1789:11, 1789:12 <b>versus</b> [3] - 1790:12, 1791:17, 1876:14 <b>VI</b> [1] - 1710:20 <b>VICE</b> [1] - 1633:14 <b>vice</b> [1] - 1910:24 <b>victims</b> [2] - 1852:16, 1854:6 <b>videotapes</b> [1] - 1769:8 <b>videotaping</b> [1] - 1769:4 <b>Vietnam</b> [1] - 1709:13 <b>view</b> [2] - 1676:4, 1732:7 <b>VII</b> [1] - 1633:10 <b>violate</b> [1] - 1898:17 <b>violating</b> [1] - 1647:9 <b>violation</b> [4] - 1734:18, 1759:3, 1869:2, 1892:19 <b>Violence</b> [1] - 1862:16 <b>violence</b> [6] - 1850:10, 1853:7, 1859:18, 1862:25, 1863:6, 1863:8 <b>violent</b> [2] - 1852:12, 1854:15 <b>virtually</b> [1] - 1870:12 <b>virtue</b> [1] - 1762:9 <b>virus</b> [1] - 1901:14 <b>visible</b> [1] - 1661:7 <b>visit</b> [4] - 1670:20, 1722:24, 1759:11, 1932:25 <b>visited</b> [1] - 1665:3 <b>visits</b> [2] - 1670:6, 1672:11 <b>visualization</b> [1] - 1787:2 <b>visually</b> [1] - 1789:18 <b>voice</b> [3] - 1673:22, 1710:12, 1743:6 <b>Vokes</b> [34] - 1635:22, 1638:14, 1642:21, 1646:10, 1648:9, 1651:18, 1753:15, 1753:22, 1753:23, 1753:25, 1754:9, 1760:9, 1761:12, 1762:4, 1763:4, 1763:12, 1764:20, 1765:12, 1765:22, 1766:2, 1766:21, 1768:15, 1769:17,	1769:24, 1769:25, 1770:5, 1771:6, 1771:13, 1771:17, 1772:5, 1773:9, 1780:19, 1841:15 <b>Vokes's</b> [5] - 1651:11, 1754:3, 1760:13, 1769:12, 1811:21 <b>volume</b> [2] - 1661:23, 1664:7 <b>Volume</b> [2] - 1633:10, 1738:6 <b>volumes</b> [2] - 1664:4, 1880:25 <b>vulnerable</b> [1] - 1664:16  <b>W</b>  <b>wait</b> [9] - 1683:14, 1775:16, 1784:12, 1819:19, 1845:22, 1852:1, 1852:3, 1878:21 <b>waiting</b> [2] - 1867:4, 1918:25 <b>waived</b> [1] - 1711:4 <b>walk</b> [1] - 1880:21 <b>wall</b> [5] - 1774:10, 1775:2, 1777:5 <b>walls</b> [1] - 1775:3 <b>Walsh</b> [8] - 1684:2, 1684:14, 1689:6, 1692:9, 1693:8, 1693:19, 1693:21, 1695:8 <b>Walsh's</b> [8] - 1684:6, 1684:7, 1692:8, 1692:22, 1692:23, 1693:18, 1694:7, 1697:1 <b>wants</b> [5] - 1659:12, 1737:21, 1844:6, 1845:25, 1847:20 <b>War</b> [2] - 1709:7, 1709:10 <b>warning</b> [1] - 1780:6 <b>warrant</b> [2] - 1920:12, 1921:22 <b>Warrenville</b> [2] - 1887:1, 1910:20 <b>Washington</b> [2] - 1718:9, 1722:19 <b>Waste</b> [1] - 1813:10 <b>waste</b> [2] - 1676:6, 1828:15 <b>wastebasket</b> [1] - 1841:7 <b>wasting</b> [2] - 1649:5,	1725:21 <b>water</b> [192] - 1654:12, 1654:13, 1656:24, 1659:2, 1659:14, 1661:5, 1661:12, 1661:22, 1661:23, 1661:25, 1662:3, 1663:9, 1663:12, 1663:14, 1663:15, 1663:23, 1663:24, 1664:11, 1664:15, 1664:18, 1664:22, 1664:24, 1664:25, 1665:2, 1665:14, 1665:22, 1665:23, 1666:1, 1666:3, 1666:5, 1666:6, 1666:23, 1666:25, 1667:5, 1667:6, 1667:21, 1668:1, 1669:10, 1669:18, 1670:7, 1670:21, 1671:2, 1672:2, 1672:6, 1672:12, 1672:14, 1672:17, 1672:19, 1672:23, 1672:24, 1673:6, 1673:13, 1673:18, 1673:19, 1674:4, 1679:2, 1680:12, 1680:16, 1680:17, 1680:19, 1680:20, 1680:25, 1702:11, 1703:14, 1703:17, 1703:18, 1703:19, 1703:23, 1703:25, 1704:1, 1704:2, 1704:5, 1704:7, 1709:19, 1709:20, 1710:1, 1710:4, 1710:24, 1710:25, 1711:21, 1713:2, 1715:7, 1743:23, 1786:7, 1786:9, 1786:10, 1786:18, 1787:20, 1788:7, 1788:9, 1788:10, 1788:12, 1788:23, 1791:19, 1792:5, 1792:21, 1793:17, 1796:2, 1796:10, 1797:7, 1797:17, 1797:23, 1798:7, 1799:20, 1799:23, 1802:11, 1804:2, 1805:10, 1805:13, 1805:20, 1813:4, 1813:11, 1813:16, 1813:20, 1816:6, 1816:13, 1820:18, 1820:19, 1821:9,
--	---	--	--	--

<p>1821:13, 1821:22, 1821:23, 1822:6, 1823:24, 1824:4, 1824:12, 1824:21, 1825:3, 1825:6, 1826:6, 1826:25, 1827:7, 1827:11, 1828:5, 1828:6, 1828:8, 1828:12, 1828:15, 1828:19, 1829:1, 1829:7, 1829:10, 1829:12, 1830:16, 1831:13, 1834:10, 1834:24, 1834:25, 1835:8, 1836:7, 1836:8, 1837:7, 1837:8, 1837:15, 1855:10, 1855:13, 1855:16, 1855:20, 1855:25, 1856:4, 1856:7, 1856:19, 1856:20, 1856:24, 1857:4, 1857:14, 1869:15, 1869:16, 1869:17, 1878:3, 1880:8, 1880:10, 1880:13, 1880:25, 1881:3, 1881:6, 1881:8, 1881:14, 1881:24, 1881:25, 1882:3, 1882:6, 1882:21, 1883:3</p> <p><b>Water</b> [5] - 1636:8, 1644:23, 1673:19, 1677:7, 1813:10</p> <p><b>waterborne</b> [1] - 1796:7</p> <p><b>watering</b> [1] - 1787:23</p> <p><b>waters</b> [3] - 1713:2, 1834:15, 1881:20</p> <p><b>waterway</b> [1] - 1672:23</p> <p><b>waterways</b> [3] - 1658:17, 1715:5, 1827:1</p> <p><b>Wayne</b> [3] - 1782:20, 1932:14</p> <p><b>ways</b> [3] - 1671:18, 1693:4, 1828:7</p> <p><b>weather</b> [3] - 1818:10, 1818:24, 1819:1</p> <p><b>web</b> [2] - 1811:2, 1896:21</p> <p><b>website</b> [9] - 1666:9, 1880:14, 1880:23, 1881:16, 1881:21, 1890:23, 1890:24, 1915:18, 1915:24</p> <p><b>week</b> [7] - 1644:21,</p>	<p>1647:1, 1648:3, 1648:4, 1648:23, 1756:12, 1872:23</p> <p><b>weekend</b> [1] - 1651:9</p> <p><b>weeks</b> [2] - 1644:24, 1829:23</p> <p><b>weigh</b> [1] - 1696:17</p> <p><b>weighed</b> [1] - 1700:7</p> <p><b>weight</b> [4] - 1662:24, 1788:9, 1788:10</p> <p><b>weld</b> [3] - 1776:17, 1776:21, 1778:6</p> <p><b>welded</b> [1] - 1776:1</p> <p><b>welder</b> [1] - 1776:11</p> <p><b>welding</b> [20] - 1758:2, 1765:13, 1765:19, 1765:20, 1773:12, 1774:2, 1774:4, 1774:7, 1774:8, 1774:17, 1774:21, 1775:11, 1776:6, 1776:25, 1777:5, 1777:8, 1778:17, 1887:14, 1898:1</p> <p><b>welds</b> [5] - 1755:17, 1755:18, 1759:16, 1775:22, 1776:15</p> <p><b>Weldsonix</b> [21] - 1754:19, 1754:21, 1754:22, 1754:23, 1754:25, 1755:4, 1755:8, 1756:1, 1756:6, 1756:8, 1756:16, 1757:5, 1757:11, 1757:18, 1757:22, 1757:25, 1758:18, 1759:6, 1759:9, 1759:15, 1759:24</p> <p><b>Weldsonix's</b> [1] - 1758:20</p> <p><b>welfare</b> [10] - 1654:19, 1658:11, 1669:9, 1673:3, 1673:15, 1703:13, 1708:16, 1722:7, 1827:3, 1852:15</p> <p><b>well-aware</b> [1] - 1840:3</p> <p><b>well-known</b> [3] - 1713:20, 1757:25, 1762:3</p> <p><b>wells</b> [13] - 1662:3, 1664:13, 1664:14, 1664:17, 1665:5, 1797:16, 1822:6, 1822:18, 1834:4, 1834:17, 1834:24, 1837:17</p> <p><b>Welspun</b> [1] - 1777:20</p>	<p><b>West</b> [1] - 1816:12</p> <p><b>west</b> [2] - 1821:21, 1834:20</p> <p><b>western</b> [6] - 1794:25, 1799:7, 1809:25, 1815:2, 1848:24, 1849:2</p> <p><b>wet</b> [2] - 1772:8, 1816:9</p> <p><b>wetlands</b> [3] - 1734:21, 1822:25, 1823:22</p> <p><b>whatsoever</b> [3] - 1725:20, 1845:10, 1879:11</p> <p><b>whereas</b> [1] - 1774:21</p> <p><b>whichever</b> [2] - 1643:25, 1675:21</p> <p><b>whistle</b> [1] - 1762:4</p> <p><b>WHITE</b> [35] - 1683:13, 1689:10, 1691:13, 1692:17, 1693:6, 1694:9, 1694:24, 1760:12, 1760:20, 1761:5, 1761:21, 1762:15, 1762:25, 1763:19, 1764:10, 1764:15, 1765:6, 1766:6, 1767:8, 1767:12, 1767:18, 1768:8, 1768:11, 1768:14, 1769:6, 1769:13, 1769:16, 1769:23, 1772:10, 1780:12, 1888:13, 1889:14, 1892:10, 1903:1, 1903:7</p> <p><b>white</b> [2] - 1638:15, 1740:24</p> <p><b>White</b> [13] - 1635:21, 1638:6, 1666:18, 1691:16, 1767:11, 1768:10, 1786:18, 1800:9, 1800:11, 1800:15, 1849:6, 1850:7, 1908:5</p> <p><b>whole</b> [10] - 1668:6, 1685:18, 1740:6, 1761:20, 1780:15, 1801:20, 1858:7, 1883:2, 1916:4, 1916:7</p> <p><b>Wiconi</b> [4] - 1663:21, 1673:19, 1703:23, 1704:7</p> <p><b>wide</b> [2] - 1791:14, 1883:2</p> <p><b>widely</b> [4] - 1685:9, 1787:21, 1797:16, 1802:2</p>	<p><b>Wildlife</b> [1] - 1902:21</p> <p><b>William</b> [1] - 1745:4</p> <p><b>Williams</b> [6] - 1785:14, 1785:21, 1828:13, 1833:7, 1833:10, 1833:24</p> <p><b>willing</b> [1] - 1701:13</p> <p><b>willingness</b> [2] - 1695:24, 1696:1</p> <p><b>wind</b> [8] - 1643:22, 1644:14, 1786:21, 1789:4, 1789:15, 1799:16, 1801:8, 1801:9</p> <p><b>windblown</b> [2] - 1799:13, 1822:19</p> <p><b>winter</b> [1] - 1910:2</p> <p><b>Winters</b> [2] - 1710:23, 1869:19</p> <p><b>wintertime</b> [1] - 1790:21</p> <p><b>wireless</b> [1] - 1900:14</p> <p><b>wires</b> [1] - 1900:9</p> <p><b>wish</b> [2] - 1707:4, 1707:18</p> <p><b>withdraw</b> [2] - 1844:14, 1866:6</p> <p><b>withdrawing</b> [1] - 1876:21</p> <p><b>withdrew</b> [2] - 1878:4, 1904:7</p> <p><b>withstand</b> [1] - 1832:11</p> <p><b>withstanding</b> [3] - 1655:19, 1656:3, 1732:14</p> <p><b>Witness</b> [1] - 1738:13</p> <p><b>witness</b> [60] - 1642:13, 1642:15, 1642:24, 1651:24, 1671:17, 1677:18, 1681:3, 1681:12, 1684:17, 1688:22, 1701:20, 1702:5, 1702:9, 1702:21, 1704:20, 1712:4, 1713:17, 1717:12, 1717:14, 1720:15, 1727:23, 1730:10, 1732:11, 1732:15, 1733:20, 1738:2, 1744:19, 1748:6, 1764:8, 1764:11, 1767:20, 1768:12, 1773:12, 1781:9, 1781:25, 1782:18, 1814:16, 1818:21, 1836:4, 1842:12, 1842:14, 1846:6, 1865:9, 1865:13,</p>	<p>1871:19, 1877:1, 4 9 1878:18, 1886:16, 1889:17, 1889:20, 1893:7, 1903:20, 1907:18, 1907:23, 1908:13, 1912:19, 1914:2, 1915:8, 1921:11, 1922:7</p> <p><b>WITNESS</b> [49] - 1638:2, 1638:4, 1638:13, 1639:2, 1639:11, 1639:15, 1640:2, 1680:8, 1701:10, 1726:14, 1732:2, 1751:9, 1753:3, 1773:15, 1773:20, 1773:24, 1774:4, 1775:24, 1776:6, 1776:12, 1776:16, 1776:23, 1777:8, 1777:12, 1777:18, 1777:23, 1778:2, 1778:7, 1778:21, 1779:7, 1830:25, 1832:3, 1832:18, 1832:24, 1833:8, 1833:19, 1833:24, 1834:6, 1834:22, 1835:14, 1866:9, 1866:24, 1872:6, 1872:18, 1873:3, 1873:6, 1874:21, 1875:5, 1889:22</p> <p><b>witness's</b> [2] - 1721:14, 1876:24</p> <p><b>witnesses</b> [35] - 1641:8, 1641:19, 1641:21, 1641:22, 1641:23, 1642:12, 1643:10, 1646:20, 1650:25, 1652:7, 1652:23, 1652:25, 1671:18, 1701:16, 1732:15, 1782:5, 1782:8, 1782:10, 1782:15, 1783:6, 1783:9, 1783:15, 1843:6, 1843:11, 1843:19, 1843:23, 1844:15, 1844:17, 1876:14, 1876:16, 1876:19, 1933:4</p> <p><b>WITTLER</b> [1] - 1934:5</p> <p><b>Wittler</b> [2] - 1633:24, 1934:18</p> <p><b>woman</b> [1] - 1858:17</p> <p><b>womb</b> [1] - 1856:21</p> <p><b>Women</b> [1] - 1862:16</p> <p><b>women</b> [7] - 1850:13,</p>
---	---	---	--	--



1853:12, 1854:18, 1858:13, 1858:17, 1859:11, 1859:17 <b>women's</b> [3] - 1850:7, 1851:5, 1854:14 <b>wonderful</b> [1] - 1686:1 <b>wondering</b> [6] - 1652:25, 1788:24, 1896:19, 1896:24, 1910:1, 1930:15 <b>word</b> [11] - 1645:9, 1739:16, 1743:14, 1802:10, 1874:19, 1883:22, 1895:2, 1911:25, 1925:16, 1926:15 <b>words</b> [5] - 1875:17, 1904:10, 1905:7, 1918:22, 1918:23 <b>worker</b> [1] - 1766:8 <b>workers</b> [2] - 1744:15, 1872:1 <b>workforce</b> [3] - 1729:15, 1729:24, 1730:1 <b>works</b> [4] - 1657:22, 1662:25, 1895:13, 1899:7 <b>World</b> [2] - 1709:7, 1709:9 <b>world</b> [5] - 1743:22, 1848:24, 1848:25, 1849:2, 1849:5 <b>worm</b> [1] - 1901:14 <b>worried</b> [1] - 1875:15 <b>worries</b> [1] - 1814:9 <b>worse</b> [1] - 1804:11 <b>Worst</b> [2] - 1635:18, 1635:20 <b>wow</b> [1] - 1932:18 <b>wrangling</b> [1] - 1752:25 <b>write</b> [1] - 1846:19 <b>writing</b> [8] - 1648:16, 1648:20, 1675:3, 1675:22, 1676:7, 1676:20, 1707:5, 1707:18 <b>written</b> [18] - 1674:9, 1675:18, 1704:11, 1704:13, 1779:13, 1785:23, 1786:4, 1786:22, 1803:5, 1811:18, 1811:21, 1844:10, 1849:21, 1883:7, 1902:10, 1917:10, 1917:19 <b>wrongful</b> [1] - 1711:6 <b>wrote</b> [6] - 1661:15, 1713:6, 1714:20,	1729:6, 1897:6 <b>Wyoming</b> [1] - 1717:25  <b>X</b>  <b>X70</b> [1] - 1904:17 <b>X70M</b> [1] - 1889:3 <b>XL</b> [33] - 1633:6, 1636:10, 1641:7, 1683:22, 1684:25, 1687:1, 1687:16, 1690:5, 1690:19, 1691:4, 1714:2, 1719:17, 1722:16, 1729:7, 1736:20, 1738:16, 1738:24, 1808:1, 1808:5, 1808:9, 1808:20, 1808:23, 1809:25, 1810:4, 1810:18, 1811:6, 1811:10, 1814:24, 1822:7, 1873:16, 1925:15, 1927:12, 1927:20 <b>xylene</b> [2] - 1796:22, 1796:24  <b>Y</b>  <b>YANKTON</b> [2] - 1637:5, 1639:2 <b>Yankton</b> [28] - 1677:23, 1677:24, 1694:16, 1733:2, 1749:8, 1771:12, 1815:13, 1842:14, 1848:6, 1848:9, 1848:20, 1855:10, 1862:7, 1862:9, 1862:13, 1869:15, 1869:20, 1871:24, 1872:1, 1872:3, 1872:15, 1873:13, 1873:24, 1874:11, 1882:12, 1893:12, 1914:7 <b>yards</b> [2] - 1665:6, 1832:10 <b>year</b> [10] - 1642:9, 1644:19, 1667:25, 1761:8, 1824:3, 1856:15, 1881:1, 1917:23, 1926:19 <b>yearly</b> [1] - 1853:22 <b>years</b> [27] - 1672:22, 1680:18, 1682:14, 1703:15, 1708:8, 1708:20, 1709:22,	1743:19, 1763:8, 1775:16, 1784:24, 1798:5, 1817:5, 1817:18, 1817:23, 1818:1, 1818:3, 1818:4, 1824:17, 1828:3, 1849:4, 1851:17, 1854:4, 1880:15, 1905:6, 1908:21, 1911:9 <b>yellow</b> [5] - 1789:8, 1789:15, 1789:25, 1797:14, 1800:9 <b>yesterday</b> [6] - 1648:2, 1651:14, 1725:5, 1820:1, 1885:11 <b>yield</b> [2] - 1904:19, 1905:23 <b>young</b> [41] - 1701:11, 1702:3, 1702:4, 1702:7, 1702:16, 1702:25, 1706:6, 1707:25, 1711:14, 1712:2, 1713:6, 1713:19, 1714:8, 1714:20, 1717:16, 1719:1, 1722:2, 1724:11, 1725:11, 1725:17, 1725:19, 1726:12, 1727:2, 1730:6, 1730:8, 1733:11, 1736:14, 1738:8, 1738:14, 1739:10, 1741:18, 1744:18, 1745:3, 1746:22, 1748:11, 1749:1, 1749:11, 1750:17, 1751:23, 1856:17, 1857:17 <b>Young</b> [4] - 1636:5, 1638:9, 1702:20, 1703:4 <b>young's</b> [2] - 1705:22, 1706:16 <b>younger</b> [1] - 1818:11 <b>yourself</b> [3] - 1683:3, 1877:13, 1929:13 <b>youth</b> [2] - 1853:24, 1854:8  <b>Z</b>  <b>zero</b> [1] - 1661:13
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