



TRANSCRIPTS FOR CASE #:

DCI 2005 - 00105

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2005-00105

IN RE: Harper Brothers, Inc. in ref. to Fort
Myers-Harper Mine IPD

Transcript of Proceedings

Before Diana Parker, Chief Hearing Examiner, held
at the Hearing Examiner's Hearing Room, 1500
Monroe Street, Fort Myers, Florida, on January
16, 2008.

PRESENT:

Mr. Russell Schropp, Attorney for the Applicant
Mr. Chip Block, Principal Planner
Mr. Rob Spickerman, Assistant County Attorney
Mr. Sam Lee, Natural Resources
Mr. Howard Wegis, Utilities
Ms. Suzie Derheimer, Environmental Sciences

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I N D E XWITNESSES PAGE

Russell Schropp - Presentation	4
Tom McLean - Presentation	36
Examination by Mr. Schropp	39
Examination by Hearing Examiner	39
Kirk Martin - Presentation	43
Examination by Mr. Schropp	59
Examination by Mr. Block	59
Ed Ladd - Presentation	76
Ken Passarella	
Examination by Hearing Examiner	80
Chip Block - Presentation	87
Suzie Derheimer - Presentation	97
Lee Werst - Presentation	100
Examination by Hearing Examiner	104
Howard Wegis	
Examination by Hearing Examiner	124

E X H I B I T SNUMBER DESCRIPTION PAGEApplicant's:

1	Aerial Map	6
2	Aerial Map	11
3	Composite Exhibit	11
4	Letter from Water Management District to Harper Brothers	22
5	Letter from Florida Rock to Water Management District	22
6	Approved Phasing Plan	26
7	New Master Concept Plan	38
9	Power Point Presentation by Mr. Martin	43

1 HEARING EXAMINER: Good morning.

2 I am Diana Parker, Chief Hearing Examiner for Lee
3 County. This is Wednesday, January the 16th, Case No.
4 DCI2005-00105, Fort Myers-Harper Mine IPD.

5 County Attorney have any comments before we
6 commence the hearing?

7 MR. SPICKERMAN: No public is present, but if
8 you'd like me to go around the table with introductions.

9 HEARING EXAMINER: Okay, that will be fine.

10 MR. SPICKERMAN: Rob Spickerman, Assistant County
11 Attorney.

12 MR. BLOCK: Chip Block with Lee County Community
13 Development.

14 MR. SCHROPP: Russell Schropp with Henderson,
15 Franklin, representing the applicant.

16 MR. LADD: Ed Ladd with Florida Rock.

17 MS. SANVILLE: Lori Sanville, Florida Rock.

18 MR. BLOCK: Madam Hearing Examiner, just for that
19 record also, we also have staff members from Natural
20 Resources, Sam Lee; from Utilities, Howard Wegis; and from
21 Environmental Sciences, Suzie Derheimer, just to put all
22 the staff members on the presentation.

23 HEARING EXAMINER: Okay. Good.

24 All right. Before we get started this morning, I
25 need to swear in everyone who will be testifying. If you

1 are an Attorney and testifying to facts, you should be
2 sworn in as well. So at this point in time if you're
3 going to talk, please raise your right hand.

4 (All witnesses were sworn.)

5 HEARING EXAMINER: All right. Russ, you ready?

6 MR. SCHROPP: Yes.

7 HEARING EXAMINER: Let's do it.

8 Thereupon,

9 RUSSELL SCHROPP,

10 called as a witness by the Applicant, having been
11 previously duly sworn, was examined and testified as
12 follows:

13 MR. SCHROPP: Good morning.

14 For the record, I'm Russell Schropp with the
15 Henderson, Franklin law firm here in Fort Myers here today
16 representing the applicant, which is Harper Brothers,
17 Inc., as we've already identified, here with my clients
18 from Florida Rock, Ed Ladd and Lori Sanville who are
19 seated at the table with me. Also Tom May from Florida
20 Rock is out here as well, along with our consulting team,
21 Tom McLean from Hole Montes, Kirk Martin from CDM, and Ken
22 Passarella from Passarella & Associates as well as
23 consultants for Florida Rock, Ron Inge and Tracy Hayden.

24 Just a brief explanation of -- the applicant is
25 listed as Harper Brothers, Inc., and as I've noted the

1 folks at the table with me as my clients are from Florida
2 Rock. Florida Rock purchased Harper Brothers, Inc. in, I
3 believe it was June of 1999.

4 HEARING EXAMINER: Okay.

5 MR. SCHROPP: So Harper Brothers, Inc. is a
6 wholly owned subsidiary of Florida Rock Industries.

7 This is a request to modify a portion of an
8 approved mining operation known generally throughout the
9 years as the Harper Brothers Green Meadow Mine. It has
10 been approved in various phases through various actions
11 throughout the year, and I will basically go through that
12 in just a moment.

13 But the aspects that we're asking to modify today
14 are limited to three aspects of the approved -- a portion
15 of the approved plan. The first of this aspect is a
16 dewatering. We're seeking clarification that dewatering
17 in accordance with the plans and a process that have been
18 meticulously worked out with the Natural Resources staff
19 and county staff can occur on the remainder of the
20 mining -- on the site.

21 The second is a modification to the phasing plans
22 that were previously approved by resolution for a portion
23 of the mine.

24 And the third aspect of this request is to
25 address a wetland impact that inadvertently occurred

1 during the mining process to approximately .79 acres of
2 wetland area that was inadvertently mined during the
3 recent mining processes.

4 If I could put some aerals up on the
5 board to help me. I probably should have done this
6 before.

7 If I could move to the aerals, the larger aerial
8 here, which I guess would be Applicant's Exhibit 1, if I
9 could refer to it in that manner, shows the general
10 location of the mine relative to the surrounding area.
11 I'll put my hand over generally the area of the mine here
12 so you can see in perspective where it is.

13 (Applicant's Exhibit No. 1 was marked for
14 identification.)

15 MR. SCHROPP: This is Alico Road leading eastward
16 from I-75. At this point where Alico bends south, there's
17 an extension or what we called an access road or internal
18 access road back to the mine that has been in place for
19 many years that leads back to the mine.

20 In perspective here again, this is Alico Road
21 running south and Corkscrew Road at the bottom of the
22 aerial. Just for your reference point, some other
23 projects that have been through the process through the
24 years, particularly in terms of mining.

25 The Youngquist (ph) Mine is here and also over on

1 the west side of Alico Road, and then the Rinker Mine,
2 which used to be the old Florida Rock Mine, but through
3 transactions is now owned by Rinker.

4 HEARING EXAMINER: So everything that's outlined
5 in the purple color there, the hot pinky color, whatnot,
6 is actually mines?

7 MR. SCHROPP: Yes, that's correct. And, in fact,
8 it does not include this Youngquist Mines on the portion
9 to the west of Alico Road there. And, of course, this old
10 mine area over here, that used to be the old Florida Rock
11 Mine. And you can see some additional mining down on the
12 south side of Corkscrew Road that I believe being the old
13 RMC Mine, in perspective of this area here and, of course,
14 the airport's up at the far northwest corner of the
15 aerial.

16 This is a little bit more of a closeup of the
17 Florida Rock Harper Brothers mining operation. I'll refer
18 to it invariably by different names, either as the Florida
19 Rock Mine, the Harper Brothers Mine or the Green Meadow
20 Mine, but that's mainly because I've been involved with it
21 since about 1984. So my familiarity with it transcends,
22 I guess, the various names for the mine.

23 But, just generally, the original mine, and I'll
24 take you through it historically, the original mine for
25 Harper Brothers was approved in 1981. And it basically

1 applied to the southern part of Section 2. And that --
2 I'm going to put my hand pretty much over what would be
3 the original mine that was approved in 1981. It was 480
4 acres. And approved by special exception with a general
5 excavation permit in 1981.

6 In 1984, culminating in 1985, the first expansion
7 to the Harper Brothers Mine was requested for rezoning and
8 approved on April 15th, 1985.

9 And it basically applied to the northern part of
10 2, Section 2, which is here (indicating), the eastern half
11 of Section 3, which is here (indicating), and the southern
12 portion of Section 35, which is up here (indicating).

13 So as of -- and that was also approved by special
14 exception in the AG-2 district. So as of 1985, the mining
15 operation approved by special exception in the county
16 consisted of all of Section 2, the east half of Section 3,
17 and the southern portion of Section 35.

18 And if you look closer at these aerials, you can
19 see the section marks, but probably can't see them from
20 there.

21 HEARING EXAMINER: No.

22 MR. SCHROPP: That is how the mine stood after
23 1985. You may be aware that in the late '80s there were
24 refinements to the zoning regulations that required larger
25 mining operations to go through the Industrial Planned

1 Development process, so when Harper Brothers looked at
2 expanding the mine again in the late '80s, they proceeded
3 through the IPD rezoning process for the future
4 expansions.

5 And, essentially, the expansions occurred in this
6 manner. The first expansion occurred in 1988 and covered
7 Section 1 and the northern part of Section 12 over here,
8 which was rezoned in 1988, modified in 1992, and again in
9 1996, to add additional land over here in Section 11 at
10 this point here, again following the boundary of what's
11 shown there in purple.

12 Again, that was approved through an IPD, approved
13 in 1992, which actually superseded, I believe, the 1988
14 zoning resolution, and then a 1996 modification which
15 added the last remaining 80 acres in the southern part of
16 Section 11.

17 In 2001 there was a modification done to the
18 entirety of what I'll call the expansion mine, and by that
19 I refer to everything that was zoned IPD in Sections 1, 11
20 and 12, and that basically -- the main change there was to
21 increase the depth of the mining operation to 68 feet,
22 which is the presently permitted depth for the mine
23 expansion area.

24 That's a general overview of the history of the
25 permitting or zoning of the mining operation that I've

1 referred to overall as the Green Meadow Mine. The portion
2 that we are dealing with today applies only to the
3 expansion area that was approved by IPD zoning throughout
4 the late '80s and up to 2001 was the last modification.

5 And, again, that is the boundary shown here,
6 Sections 1, 12 and 11.

7 HEARING EXAMINER: All right. So the first part
8 of this, the Section 2, the east half of 3 and the south
9 half of 35, those are still under the special exception,
10 they've never been rezoned to an IPD?

11 MR. SCHROPP: That's correct.

12 HEARING EXAMINER: Okay.

13 MR. SCHROPP: With that little bit of overview
14 just to sort of trip through history, I'd like to talk --
15 just give an overview of the issues that are associated
16 with this request.

17 As I indicated, the first one is dewatering. We
18 have requested and are seeking clarification as noted
19 earlier that dewatering can occur in accordance with the
20 process that we have worked out with staff and with which
21 staff concurs.

22 In order to understand the need for this
23 clarification, I need to review briefly the history of
24 this portion of the mine and the pertinent treatment of
25 dewatering in past approvals and conditions that were

1 issued by the County Commission ultimately in connection
2 with dewatering. So with your indulgence, I'd like to
3 pass out -- I guess, if I could keep everything straight,
4 the second aerial I guess would be Applicant's 2?

5 HEARING EXAMINER: Yes.

6 (Applicant's Exhibit No. 2 was marked for
7 identification.)

8 MR. SCHROPP: If I could pass out a series of
9 zoning resolutions appropriate to this property, both the
10 original mine and the new mine, and ask that that be
11 accepted as Composite Exhibit 3 for the applicant.

12 HEARING EXAMINER: Okay.

13 (Applicant's Exhibit No. 3 was marked for
14 identification.)

15 MR. SCHROPP: Composite Exhibit 3 is a series of
16 resolutions that have been approved throughout the years
17 that reflect the approvals that I just went through
18 historically. And what I'd like to do is just briefly
19 point out the conditions that have been applied to the
20 project pertinent to dewatering throughout the years.

21 The first approval, as I indicated, was for the
22 original mine site in the southern part of Section 2. And
23 with any luck, if I did my collating right, the first
24 resolution on the top of the package is Resolution
25 Z-81-185.

1 And as you can see, back in the dawn of zoning
2 time for Lee County at the time this mining was approved,
3 there were no conditions attached to the approval at all
4 specifically with regard to the special exception for
5 general excavation.

6 There was following that in 1983 the second
7 resolution that's in your package as ZAB-83-260(a), and I
8 think I've also got 260 attached to that, which was a
9 reaffirmation of the general excavation permit granted in
10 1981, was still applicable to the original 480 acres.
11 And, again, as you can see, there is no condition --
12 really conditions at all, much less conditions attached to
13 the resolution.

14 The first expansion to the mine, as I indicated,
15 went to Sections -- north part of 2, east half of 3 and
16 the southern part of Section 35, and that's Resolution
17 ZAB-84-195. And there for the first time dewatering is
18 actually addressed as are a number of other issues in
19 connection with the permit itself or the approval itself.

20 But if you flip to the final page of that
21 resolution, ZAB-84-195, you'll note there's a condition
22 which says, "No dewatering of the pits which would lower
23 the water level shall be performed." Not an outright ban
24 on dewatering, but a condition saying that no dewatering
25 that would lower the water level, we presume, of the

1 excavation pit, or perhaps that's open to interpretation,
2 but that was the condition that was approved at that
3 point.

4 And, again, that condition applies only to
5 Section -- north part of 2, east part of 3, south part of
6 Section 35.

7 In 1985 we were required under the then existing
8 regulations to obtain a renewal of the original permit
9 that was granted in 1981 for the original 480 acres, and
10 that's the next resolution that's in your packet. It's
11 ZAB-85-49. And at that point in the renewal of that
12 general excavation permit, the county inserted a condition
13 on the approval of the original 480 acres, and that
14 condition pertaining to dewatering in particular is
15 recited as Condition L on Page 3 of the resolution, and it
16 says, "No dewatering of the pits which would lower the
17 water level shall be performed." Essentially the same as
18 the previous resolution that I went over. And given the
19 timing of these two actions and resolutions, they were, I
20 believe, months apart, one in April of '85, one in June of
21 '85, the conditions were made to be -- or reflect the
22 same.

23 However, at that point, we had what we thought
24 was a significant legal issue between Harper Brothers and
25 what the county was trying to accomplish, that being that

1 we did not believe that the county had the ability --
2 based on the evidence that was presented at the hearing
3 and through the application at that time, we believe that
4 the county did not have the ability to apply new
5 conditions to the already approved general excavation. So
6 we filed a suit challenging the validity of the conditions
7 attached to the renewal permit in 1985.

8 That litigation hung around for a couple of
9 years, but ultimately was resolved through a stipulation
10 and Settlement Agreement that is the next document
11 contained in the packet. And, basically, Harper Brothers
12 and Lee County at that point agreed on the specific
13 conditions that could be applied to the renewal permit
14 that was approved in 1985.

15 And, again, we dealt with dewatering in Condition
16 L, but the condition agreed to between Harper Brothers and
17 Lee County at that point was significantly different and
18 reads "Dewatering of the surficial aquifer, i.e. the
19 aquifer above the first confining layer, shall be
20 permitted if approved by the South Florida Water
21 Management District. No dewatering shall be allowed from
22 the sandstone aquifer or any other aquifer below the first
23 confining layer. This provision shall not preclude Harper
24 Brothers from drilling and utilizing wells into aquifers
25 located below the first confining layer if approved and

1 permitted by the South Florida Water Management District
2 and Lee County."

3 So at this point we started having a divergence
4 of conditions applicable to dewatering in connection with
5 the mining operation.

6 Now, keep in mind up to this point we're still
7 just dealing with the original mine and the first
8 expansion which are under the special exception for AG and
9 really aren't a part of the request today, but I point
10 them out just as historical -- for their historical value
11 and also to kind of point out later on the condition of
12 all the dewatering conditions as Florida Rock came into
13 operation of this property in 1999 and 2000.

14 As I indicated, the expanded mine really started
15 being approved in 1988 under the IPD, and that's the part
16 of the mine that we are dealing with today which are for
17 Sections 1, 11 and 12.

18 In 1988 rezoning was approved by Z-88-210, and
19 bear with me, I didn't highlight it on this copy of the
20 resolution so it's going to take me a minute to find it.

21 MR. BLOCK: 9(b).

22 HEARING EXAMINER: Page 3, Page 4, 9(b).

23 MR. SCHROPP: Yes. On Page 4, Condition 9(b).

24 And, again, we have a little bit of a divergence of the
25 condition pertaining to dewatering, but it reads

1 specifically, "No dewatering of the pits for excavation
2 purposes shall be performed unless permitted by the South
3 Florida Water Management District and expressly approved
4 by the Board of County Commissioners at a later date.

5 "This condition shall not prohibit the use of
6 ground water in connection with the rock crushing process
7 if done in accordance with the South Florida Water
8 Management District rules and permits."

9 That was applicable to Sections 1 and 12. It was
10 the initial portion of the expansion that we're dealing
11 with today.

12 In 1992 the mine added I believe about 480 acres,
13 500 acres in Sections 11 and 12 of the mining operation,
14 and, again, I'll step to the aerial, to include the
15 northern portions of Section 11, the extreme southern
16 portion of Section 12 at that time. And that was approved
17 by Resolution Z-92-036(a).

18 There was actually an 036 without an (a), but
19 there was a minor correction that had to be made, so I
20 think I've only provided to you Resolution Z-92-036(a).
21 And that dewatering condition is reflected in Condition
22 12, and is essentially similar to the '88 condition but
23 says, "No dewatering of the pits for excavation purposes
24 shall be allowed. This does not prohibit use of ground
25 water in connection with the rock crushing operations if

1 approved by the South Florida Water Management District."

2 In 1997 --

3 HEARING EXAMINER: Can I stop you there for a
4 second?

5 MR. SCHROPP: Sure.

6 HEARING EXAMINER: All right. They've been
7 talking about dewatering of the pits all up until this
8 point. Now, all of a sudden we have the phrase "for
9 excavation purposes." What's that supposed to mean?

10 MR. SCHROPP: Well, that's the essence of what
11 I'm getting into at the end of this, but the phrases of
12 the pits and for excavation purposes, as I'll go through
13 and momentarily -- we're open to interpretation, differing
14 interpretations I think it's fair to say between staff and
15 Florida Rock as this evolved in the more recent history.
16 So if I can go through the conditions, I think I can get
17 to the answer to the question.

18 HEARING EXAMINER: All right.

19 MR. SCHROPP: In 1996 and '97, the final addition
20 of property was made to this operation, and it was the
21 southerly 80 acres in Section 11, roughly down here where
22 this aerial reflects it has already been excavated. I
23 believe this is an October of '05 aerial, so it's several
24 years old. There's been more excavation than what's shown
25 on there. But the '96 resolution, actually it's Z-96-068,

1 was approved in 1997, Condition 5, has yet another
2 dewatering condition that's different from the rest and
3 basically says, "There may be no dewatering in conjunction
4 with this excavation."

5 And I think that's really the only condition that
6 clearly reflects that dewatering is probably -- is not
7 permitted as part of the mining in conjunction with this
8 operation. But keep in mind, this resolution applied
9 only to the southerly 80 acres of Section 11, did not
10 modify the remainder of the operation that had previously
11 been approved.

12 HEARING EXAMINER: At this point in time then,
13 there are three conditions on the expansion relating to
14 dewatering or just two?

15 MR. SCHROPP: I think there's three, but two are
16 virtually identical.

17 HEARING EXAMINER: Okay.

18 MR. SCHROPP: And then there's a couple others
19 that are applicable to the old mine.

20 HEARING EXAMINER: Right, to the old mine. But
21 since we're not working the old mine, I'm sort of ignoring
22 it. Okay.

23 MR. SCHROPP: That's fine.

24 And then the final action, I guess, that is
25 included in your packet is Resolution Z-00-076, which was

1 approved in 2001. And this does not add a condition on
2 dewatering I don't believe. Chip, correct me if I'm
3 wrong. But I think it relied on the previous approvals
4 that were granted for the remainder of Section 1, 11 and
5 12. And as I indicated, the primary purpose of this
6 resolution was to increase the depth of excavation from 55
7 feet to 68 feet over the entirety of the mining
8 operation.

9 It also modified the phasing schedule, as I
10 recall, to reflect what was then the current proposed
11 operating schedule.

12 That's a rather painful summary of the zoning
13 history of the project, but you've got it all before you,
14 and I wanted to specifically point out the dewatering
15 conditions.

16 As Florida Rock took over the mining operations
17 of this project from Harper Brothers in the 1999, 2000,
18 2001 time frame area and moved into Sections 1, 11 and 12,
19 to a greater degree than what they had been and not
20 realizing that there was this divergence of conditions
21 throughout the entire mine, both the old mine and the new
22 expansion, they engaged in a form of dewatering activity
23 that Mr. Martin will describe for you with greater detail
24 shortly.

25 This was not intended as a violation of any

1 zoning condition obviously. It was not hidden, it was not
2 obfuscated in any way, and Florida Rock thought it was a
3 perfectly acceptable thing to do under the conditions that
4 they were aware of. And given the mish mash of
5 conditions, I think it's probably a reasonable assumption
6 that varying interpretations can attach to the conditions.

7 In particular you've noted that one of the
8 conditions refers, and it's the condition that refers to
9 the bulk of this area that's the subject of the hearing
10 today, one of the conditions indicates that no dewatering
11 for excavation purposes is permitted. It also says no
12 dewatering of the pits is permitted. Kind of begs the
13 question, what is encompassed by the term of the pits and
14 what is encompassed by the term for excavation purposes.

15 More to the point, Florida Rock at this point had
16 a dewatering permit from South Florida Water Management
17 District which is the agency primarily involved in
18 regulating the use and consumption of ground water, as you
19 know, in the state. And if I may, I probably should pass
20 out the Water Management District permit for the record so
21 that you have it in your file.

22 HEARING EXAMINER: Now, the Resolution Z-00-076,
23 this was to amend the IPD, to modify the approved phasing
24 schedule and increase the depth of excavation. I note in
25 here that in Condition 6 it talks about the phasing being

1 amended, and it then goes on to say all previous
2 conditions of Resolution Z-92 and Z-96, et cetera, related
3 directly to phasing are amended by this condition.

4 They didn't have any -- there was no
5 consolidation of this?

6 MR. SCHROPP: There was no codification or
7 consolidation of conditions, I believe, Chip?

8 MR. BLOCK: That's correct.

9 HEARING EXAMINER: Okay. So that's the closest
10 that it came and that related only to the phasing schedule
11 because typically when they start doing these, they do
12 a -- trying to do a recodification and a voiding of all
13 the previous resolutions rather than being governed by
14 about 16 different resolutions when you've got to figure
15 out what you're doing.

16 MR. SCHROPP: And that's a wonderful idea, and
17 that's what we're proposing to be done today as you can
18 see from the Staff Report which I'll get into in just a
19 minute. But Chip has taken it upon himself to kind of
20 codify the conditions from all previous resolutions so
21 that we have one set, delete the ones that are no longer
22 applicable and modify the ones that we need to modify at
23 this proceeding and then have only one resolution or
24 instrument that will control what I'll call the mine
25 expansion in Sections 1, 11 and 12.

1 What I have just passed out to you are two
2 documents, and I don't know if you want to call them
3 separate exhibits or a composite exhibit, but they both
4 reflect the South Florida Water Management District
5 dewatering permit.

6 HEARING EXAMINER: All right. One is from the
7 Water Management District to Harper Brothers and the other
8 one is from Florida Rock to the South Florida Water
9 Management District. Let's list them as two separate
10 exhibits, please. No. 4 will be the Water Management
11 District's letter to Harper Brothers and No. 5 will be the
12 Florida Rock letter to the Water Management District.

13 (Applicant's Exhibits Nos. 4 and 5 were marked
14 for identification.)

15 MR. SCHROPP: You can certainly review these
16 documents in greater detail when you start deliberating on
17 this case. The letter from the District to Harper
18 Brothers dated August 22nd, 2003, actually attaches the
19 dewatering permit that was authorized at that point by the
20 District.

21 And I just call your attention, I guess, to one
22 particular condition. Condition 26 on the last page of
23 that permit requires the dewatering process to be
24 conducted -- I'll just read it. "Operation will take
25 place in 100 x 300 foot cells and dewatering effluent will

1 be routed to recharge trenches, retention areas and
2 previously constructed cells as necessary to contain all
3 dewatering effluent on site and keep recharge trenches
4 above minimum levels."

5 Mr. Martin will describe in more detail the
6 process that's being used here, but what is envisioned is
7 that we don't dewater from the pits. We dewater from
8 what's called a dewatering cell which opens up the next
9 area to be excavated and become the pit.

10 Therein lies some confusion in interpreting the
11 conditions we've previously gone through. Harper Brothers
12 didn't view this as dewatering of the pits, they viewed it
13 as dewatering of a dewatering cell that was not precluded
14 by the zoning resolutions that are currently in effect.

15 I point it out at this point because this
16 condition requires the cells to be 100 x 300 foot cells.

17 The letter, which is the next exhibit, from
18 Florida Rock to the District confirms a letter of
19 modification to the permit to allow the cells to be an
20 average of 200 feet by 1,000 feet with a maximum of 400
21 feet by 1,000 feet.

22 The cells as permitted originally were just found
23 to be too small to do meaningful excavation as part of the
24 process. So the cells are allowed to be up to 400 x 1,000
25 feet.

1 Under the conditions that I have just described
2 and the dewatering permit that I've just passed out,
3 Florida Rock was engaging in dewatering in Section 11, in
4 Section 1, and a county inspection in late 2005 noted
5 that, and the county wrote us a nice letter saying we
6 think this is a violation of your permits because as we
7 interpret the permits for Section 1, 11 and 12, it says,
8 no excavation of the pits for excavation purposes is
9 permitted for the bulk of the property.

10 As you recall, the 180 acres section is more
11 explicit and says that no dewatering shall occur.
12 However, at this particular time, and it's interesting
13 that this aerial kind of coincides with the time of the
14 county inspection, that condition I think was applicable,
15 condition of no dewatering was applicable primarily to
16 this area that had already been excavated. And so
17 dewatering was kind of a moot point I guess lawyers would
18 say.

19 As I have kind of indicated, we believe at the
20 time that we received this letter from the county
21 asserting that it was a violation, we believe there was a
22 certain amount of ambiguity in the conditions that would
23 justify us taking the position that dewatering in the
24 manner that we are conducting it, that Mr. Martin will
25 describe, is not precluded by the existing zoning

1 regulations or zoning conditions.

2 However, we thought the more prudent and more
3 certain approach was to try and clarify the conditions by
4 going back through the zoning process, certainly is the
5 more congenial approach and we try to resolve things
6 amicably wherever we can.

7 So I notified the county that we would be filing
8 an application to, among other things, address dewatering
9 and clarify that dewatering in the manner proposed and
10 conducted on the site is a permitted use under the zoning
11 conditions.

12 However, I guess I need to state, I guess, for
13 the record that should the zoning action not be
14 successful, I don't want our appearance here to be
15 interpreted as a waiver of any defense to any future code
16 enforcement case that we might have to participate in if
17 this is not resolved through the zoning process.

18 So at this point that's where we are with regard
19 to dewatering, and I apologize for the depth of the
20 presentation, but I think I needed to get it all out on
21 the record as to where we are.

22 Attached to the Staff Report there's a letter
23 from Tony Waterhouse of the South Florida Water Management
24 District confirming that the status of the dewatering
25 permit issued by that agency is still active.

1 The proposed solution we have in this rezoning is
2 to recognize the dewatering under a very specific process
3 with safeguards to ensure that there are no impacts to
4 ground water and a comprehensive monitoring program to
5 detect any issues that may arise in the future be approved
6 at this time. As I indicated several sometimes, Kirk will
7 address that in more detail.

8 The second aspect of the request today is a
9 phasing modification, and I guess, if I could -- I'll be
10 briefer with this one, much briefer.

11 The currently approved phasing plan is on the
12 board to the left which probably should be identified as
13 an exhibit, whatever the next one is.

14 HEARING EXAMINER: It will be No. 6.

15 MR. SCHROPP: No. 6 would be the presently
16 approved mining plan with phasing on it. And it
17 delineated three separate phases throughout the entirety
18 of Sections 1, 11 and 12.

19 Phase 1 is shown by this cross-hatched area here,
20 here and here (indicating), and so it was basically
21 intended to be Phase 1 over three separate areas.

22 Phase 2 would pick up out of this phase, north of
23 that Phase 1 and to the north of that Phase 1.

24 And then Phase 3, the final phase, was the area
25 here (indicating), that cross-hatched area.

1 The current proposed phase modification
2 delineates a Phase 1, which is primarily Section 11, which
3 is nearly completed at this time. And then a Phase 2,
4 which is broken down into five sub phases for varying
5 years that will follow completion of the excavation in
6 Phase 1.

7 Tom McLean, the project engineer, will describe
8 the mining process that is used at this point. There's
9 been some changes in equipment through the years and
10 changes in processes, and he'll describe why this phasing
11 approach is required for the current operations process.
12 I'm probably not qualified to get into that level of
13 detail. But that describes or shows the differences in
14 the phases.

15 But as you can see, the first of the Phase 2 sub
16 phases begins in the center of Phase 1 and then works its
17 way out, Phase 2, Phase 2.2, excuse me, and then 2.3 I've
18 lost, 2.3 here and 2.4 and 2.5 over here. So it basically
19 starts at the center and works its way out and Mr. McLean
20 will go through the reasons for that.

21 The third aspect of the request today is to deal
22 with the wetland impact that inadvertently occurred. I
23 don't know how else to say it. But if I could pass out
24 one additional handout here dealing with that issue.

25 And where we're dealing with, if I could step to

1 the -- utilize the currently existing plan, there is a
2 wetland down here in the far southwest corner of Section
3 11 which was to be preserved and there was a setback from
4 that wetland to the excavation area which you see the
5 cross-hatched area there.

6 Currently, the current mine plan on this plan
7 reflects that excavation will occur into the wetland area
8 here and denotes a 3.87 acre impact. That's not entirely
9 accurate, and I'll go over the reasons why.

10 As reflected on what I just passed out, sometime
11 in 2001, 2002, excavation began in Section 11. During the
12 excavation, the southwest corner of Section 11 where this
13 wetland is located, there was a wetland field that's
14 outlined on the Master Concept Plan, and the mining
15 setback limits between the wetland and the approved mining
16 area was breached, was basically excavated and excavation
17 occurred into an area of the wetland that was a wetland
18 field, if you will, occurred up to an area where there had
19 been a berm established.

20 And if you can look at the aerals that are
21 attached to the exhibit that I just passed out, you can
22 see the progression.

23 The first aerial basically reflects the section
24 as it existed in 1998 and the aerial below that reflects
25 the agricultural ditch that was used on the Master Concept

1 Plan to denote the wetland boundary at that point.

2 Flipping to 2002 on the next page, you can see
3 where the excavation has occurred as of that point and has
4 excavated the setback area from the wetland as well as a
5 portion of the wetland that existed at that time.

6 The next aerial just is a before and after quick
7 and dirty comparison of what we're dealing with.

8 On the fourth aerial, fourth page, the red line
9 depicts an approximate -- the wetland field that was
10 excavated that was shown to be preserved or intended to be
11 preserved as part of the original plan.

12 The next three slides are, I think, probably the
13 most important for purposes of the presentation. The next
14 one is -- the green line represents the extent of the
15 permitted excavation on the current Master Concept Plan.
16 You can see that it was -- the excavation is extended past
17 that in areas at this point.

18 The light blue line represents the extent of the
19 wetland boundary that was shown on the Master Concept
20 Plan. And the distance, the difference between the blue
21 area and green area is not wetland but was upland that was
22 supposed to be setback area. In other words, it wasn't
23 wetland area but was intended not to be excavated as a
24 setback from the wetland area.

25 The next page reflects that more or graphically

1 without an aerial but basically shows the same
2 information.

3 And the last page in your packet actually
4 reflects the acreages that are involved here.

5 The wetland area impact shown there in the red
6 cross hatching has really been calculated as about .79
7 acres rather than 3.87 acres of wetland impact. And the
8 total impact area that reflects non wetland area that was
9 excavated that wasn't shown to be excavated on the Master
10 Concept Plan, the total area of impact was 2.26 acres.

11 I think when we submitted the original Master
12 Concept Plan modification as part of this application, we
13 simply took the area of the entire wetland and setback
14 area for modification.

15 So that explains what has occurred and how. It
16 was simply an oversight in the field where existing berms
17 were followed rather than flagging, and we're here trying
18 to correct that situation through essentially after the
19 fact recognition.

20 The Staff Report addresses the conditions and
21 basically indicates that mitigation and compensation for
22 the impacted wetland will be worked out with the Water
23 Management District prior to issuance of Development Order
24 mining operations permit for the project. And, quite
25 frankly, that may be done by permit modification or it may

1 be done by consent agreement. We need to visit with the
2 District after this hearing.

3 That basically concludes my presentation of the
4 issues that are up for discussion today or that we are
5 asking to modify.

6 I would like to, if I could, address Staff
7 Report, and, Madam Hearing Examiner, I'm going to work off
8 the memorandum that Chip filed with you yesterday, January
9 14th, because that reflects the modified conditions and
10 findings that are contained -- the most recent proposals
11 by staff.

12 And as I indicated in my memorandum to you
13 yesterday, we are in agreement with the conditions and
14 recommendations of staff. There are a few minor tweaks
15 and corrections that I would respectfully suggest in this
16 memorandum.

17 The first occurs on Page 2, and it's more of just
18 a verbiage change. The finding and conclusion 2.c on Page
19 2 of that memorandum says that "The requested amended IPD
20 zoning as conditioned is compatible with existing or
21 planned uses in the surrounding area as the proposed
22 dewatering of the excavation is not have," it probably
23 should say "will not have negative impacts on the quality
24 and quantity of water available."

25 The next minor correction would be on Condition 1

1 of the amended conditions by staff on Page 3 of the
2 memorandum where it begins "The development use and
3 reclamation of this property shall be in accordance with
4 the ten page Master Concept Plan." The date reflected
5 there is February 22nd, 2007. There was a later submitted
6 plan that occurred at or shortly after Chip did the
7 original Staff Report, so the updated version doesn't
8 reflect the new date on the amended Master Concept Plan.

9 That date as shown on this exhibit, the last
10 revised date is 09-07-07, September 7th, 2007. So I'd
11 respectfully suggest that that condition be reflected --
12 reflect that date.

13 HEARING EXAMINER: Okay.

14 MR. SCHROPP: Then the only other things I'll
15 talk about are the environmental conditions that are
16 contained in primarily Conditions 20 through 25. And I
17 may need help from Suzie, but Conditions 23 and 25 reflect
18 a 3.87 acre wetland impact. That probably, I would
19 respectfully suggest, needs to be changed to reflect the
20 wetland impact was 0.79 acres based on the information
21 that was just provided to you.

22 And we'd certainly subsequent to this hearing be
23 happy to submit a revised Master Concept Plan that
24 delineates what we just passed out or reflects more
25 clearly what we just passed out.

1 The other is, and I'm losing it here, but there
2 was a condition, I think, that dealt with doing a
3 protected species survey. Suzie and I can't find it at
4 this point. For the remainder of the wetland --

5 MS. DERHEIMER: No. 12.

6 MR. SCHROPP: No. 12. Thank you.

7 Protected species survey, I think it was staff's
8 feeling that the remainder of the wetland was likely to
9 be -- was intended to be impacted by what we had
10 originally submitted. It is not. We're going to leave
11 the remainder of the wetland as it is. Oh, yes, it is 25.

12 HEARING EXAMINER: Okay. I've got two 25s on
13 mine so I think that 25 on the following page should be
14 26.

15 MR. SCHROPP: Yes. And the first 25 talks about
16 doing a protected species survey for the remainder of the
17 wetland but that's going to be --

18 MS. DERHEIMER: I didn't get January 14th, I
19 apologize. I only got the 11th.

20 MR. SCHROPP: That's going to be -- the remainder
21 of the wetland will remain on site. It's not proposed to
22 be impacted. The part that has been impacted, there's
23 really no sense to do a protected species survey because
24 it doesn't exist anymore, so we would respectfully suggest
25 that that condition can be deleted upon correction of the

1 Master Concept Plan that reflects that the remainder of
2 the wetland will remain on site.

3 I'll let Suzie address whether that's acceptable
4 with her, but I believe it is.

5 HEARING EXAMINER: Okay.

6 MR. SCHROPP: With that, I think that concludes
7 our -- at least my portion of the presentation in chief.
8 The remainder of our presentation I would like Mr. McLean
9 to go next, and he'll explain the phasing modification in
10 a little more detail and explain why it's necessary. Next
11 we'll have Kirk Martin address dewatering in a little more
12 depth, explain the process that's involved here and what
13 has been worked out with staff. And then I'd like to have
14 Ed Ladd address just one minor operational aspect of the
15 operations out there that we think further supports the
16 need for the dewatering process that we have proposed.

17 Ken Passarella is here. I had not planned him to
18 speak directly to this. If you have any wetland questions
19 with regard to the quality of the wetland or the nature of
20 what's been done or anything else, he's certainly here to
21 answer any questions. But the wetland impact is fairly
22 straightforward as we've laid it out.

23 I didn't think I needed to bring him up for our
24 presentation in chief. But if you do have any questions
25 of him, we're happy to make him available.

1 HEARING EXAMINER: Maybe you can just answer one
2 question for me, Russ. Is this the only time that a
3 wetland has been impacted during an excavation on this
4 project?

5 MR. SCHROPP: There -- actually, gee, and Ron may
6 remember this better than I do. There was an impact in
7 Section 1 at one point or did we -- there was an impact to
8 this wetland here inadvertently, 1992. It was in the '90s
9 at some point because we went to staff and
10 administratively resolved it. It was restored, but,
11 again, it was a relatively minor impact to this wetland on
12 the east side of Section 1.

13 Ron reminded me, it was actually done as part of
14 the farming operation on the site rather than part of the
15 mining. There was no mining occurring at that location at
16 that point. It was the farmer that got a little carried
17 away.

18 HEARING EXAMINER: It was still part of the AG.

19 MR. SCHROPP: So that was resolved. As we have
20 done here, we came in at that point and county pointed it
21 out to us and said, hey, it was a mistake in the field and
22 we need to correct it.

23 HEARING EXAMINER: All right.

24 MR. SCHROPP: Thank you.

25 If there's no further questions, I'd like to call

1 Tom McLean as our next witness. He has previously been
2 accepted in this forum as an expert in civil engineering,
3 and I would tender him as an expert in that field today.

4 HEARING EXAMINER: Okay. Civil engineering with
5 a specialty in water management?

6 MR. SCHROPP: Water management.

7 MR. McLEAN: Yes.

8 HEARING EXAMINER: Okay. Any objections from
9 staff?

10 MR. BLOCK: No, ma'am.

11 HEARING EXAMINER: County Attorney?

12 MR. SPICKERMAN: No, ma'am.

13 HEARING EXAMINER: Okay. Accepted.

14 Thereupon,

15 TOM McLEAN,
16 called as a witness by the Applicant, having been
17 previously duly sworn, was examined and testified as
18 follows:

19 MR. McLEAN: For the record, Tom McLean with Hole
20 Montes for the applicant. And, again, I'm going to speak
21 to phasing and the need for the change on the Master
22 Concept Plan. I'm going to step over there.

23 As Russell pointed out, this exhibit -- I can't
24 remember the number, whether it's 5 or 6.

25 HEARING EXAMINER: That's No. 6.

1 MR. McLEAN: -- is the current approved Master
2 Concept Plan from Zoning Resolution Z-00-076, which dealt
3 with the depth change of 50 to 68.

4 As you can see it has a Phase 1, Phase 2 --
5 Phase 1, Phase 2 and Phase 3. Basically, Phase 1 starts
6 out in the farthest point from the mining operation, and
7 it moves generally towards this point, which is -- you can
8 look on an aerial photograph here, it's moving to this
9 point right here (indicating) which is one of the roadways
10 that allows the off-road dumps to get into the plant. So
11 they were trying -- the theory was to excavate from the
12 farthest points out to the closest point in. And while it
13 saves haul road time, if you will, for the off road dump
14 trucks to get it to the plant, it really would cause the
15 excavator that -- these are large drag lines, electrically
16 operated drag lines, to walk in these linear operations.
17 So they would start at one point and move all the way down
18 and bring it all the way back and start again. And it's a
19 linear process which they're excavating this way and
20 they're just walking it back to the starting point, which
21 is in today's world inefficient with the fuel costs and
22 electric costs.

23 So what they're asking to do is to go to Exhibit
24 No. 7 or 6?

25 HEARING EXAMINER: That is going to be No. 7.

1 (Applicant's Exhibit No. 7 was marked for
2 identification.)

3 MR. McLEAN: Which is the new Master Concept Plan
4 for this particular case. Again, we've discussed that
5 Phase 1 is over in Section 11, it's approximately 90 to 95
6 percent complete. In fact, I believe they're excavating
7 in the last northern portion of it.

8 The new process really will take place in what we
9 call Phase 2, further broken down into Phase 2.1 to 2.5.
10 They're going to start with what it is called a key cut
11 which runs right down the middle of Phase 2.1, either from
12 the south to the north or from north to south. But it
13 starts the excavation in one direction and actually
14 proceeds in a circular movement from that point forward.
15 Basically, what it does, it's more efficient because
16 there's less walking time. There's more excavating time.
17 And, again, in today's fuel costs and power costs, it's a
18 much more efficient process and more cost effective.

19 One more point I'd like to point out on this
20 particular Master Concept Plan that wasn't addressed. I
21 made reference to they're working toward this line, which
22 is that haul road towards the plant. We actually added an
23 arrow that showed it. It previously was not shown on the
24 current Master Concept Plan. That's the area I'm talking
25 about. It mentions that it goes to the Harper processing

1 plant.

2 So that is my presentation, short but sweet. If
3 there are any questions.

4 HEARING EXAMINER: Hold on a second.

5 Questions, Russ, of your witness?

6 MR. SCHROPP: Just one. As a result of the
7 change in phasing, was there any increase in the actual
8 excavation area proposed for that area?

9 MR. McLEAN: No, sir.

10 MR. SCHROPP: Okay.

11 HEARING EXAMINER: Questions by staff?

12 MR. BLOCK: No, ma'am.

13 HEARING EXAMINER: County Attorney?

14 MR. SPICKERMAN: No, ma'am.

15 HEARING EXAMINER: I have a couple of questions.

16 MR. McLEAN: Oh, I'm sorry.

17 HEARING EXAMINER: Don't ever walk away without
18 me asking you a question because it's going to happen.

19 MR. McLEAN: I apologize.

20 HEARING EXAMINER: That's all right.

21 Okay. I'm looking at the Master Concept Plan
22 copy that was submitted along with the Staff Report for my
23 review, and this is the proposed phasing which is the same
24 as Exhibit 7 up there.

25 The area that's actually got no indication of any

1 kind of little bubbles or triangles or octagons or what
2 the heck ever up there, stop signs, whatever those little
3 suckers are, that area is a preserve area, those are going
4 to not be mined?

5 MR. McLEAN: Correct. They're setbacks from --

6 HEARING EXAMINER: Okay.

7 MR. McLEAN: -- from well fields.

8 HEARING EXAMINER: I'm really looking at the big
9 one right there.

10 MR. McLEAN: Yes, ma'am.

11 HEARING EXAMINER: All right. I guess my
12 question is more logistic than anything else. The little
13 back slashed area which is Phase 2.2, all right, there is
14 no setback indicated on this for the preserve area. Does
15 the hard line that indicates the preserve area include the
16 setback, the mining setback already?

17 MR. McLEAN: I believe that is the case.

18 HEARING EXAMINER: All right.

19 MR. McLEAN: The actual jurisdictional line would
20 be within that.

21 HEARING EXAMINER: Within that.

22 MR. McLEAN: That dark line, yes, ma'am.

23 HEARING EXAMINER: Okay. So that -- okay.

24 Now, this little fellow walks around, he drags up
25 the dirt and I suppose at this time we're talking about

1 dirt, we're not talking rock yet, or are we talking both?

2 MR. McLEAN: Actually, it's going to be rock.
3 Removal of what's called the overburden first, which is
4 the first 110, 120 feet, and I'll let Mr. Ladd speak to
5 the direct process of it, and then the large excavator
6 that we're speaking of actually works on a pad of crushed
7 rock and moves -- when you drive up to take a look at it,
8 it's worth taking a look at the size of the machine to
9 appreciate it.

10 HEARING EXAMINER: Okay. So when do they start
11 actually loading the dump trucks? How do they get it from
12 here over to the processing area? Do they have the real
13 big dump trucks, I mean, the ones that have the 12 foot
14 tall tires on them and stuff?

15 MR. McLEAN: Yes, ma'am.

16 HEARING EXAMINER: Okay.

17 MR. McLEAN: That's what I referred to as an
18 off-road dump.

19 HEARING EXAMINER: Okay. I'm having a little
20 trouble seeing the actual working of the phasing because
21 if you do 2.1 and then you start doing 2.2, then you come
22 out to do 2.3, how in the heck are you going to get this
23 little guy back there? Because when you get to 2.3 and
24 2.5, 2.2 and 2.1's already dug out.

25 MR. McLEAN: They'll leave paths for the machine,

1 for the actual haul road -- or the off road dumps to
2 actually move through the site. They won't dig through
3 that last but --

4 HEARING EXAMINER: Okay. Because I could see
5 these guys having to get on a pontoon to get across. I
6 was going to say that's not going to work.

7 Okay. I may have some questions of the
8 environmental person on the little narrow neck there
9 between the Green Meadow Road and the preserve area and
10 how wide that is and how much traffic is actually going to
11 be used on that and what measures are being taken to
12 protect the preserves from the dust and stuff that are
13 going to come off those vehicles.

14 Okay. That's it. Thank you.

15 MR. SCHROPP: That's all I have.

16 If I could, our next witness, I'd like to call
17 Kirk Martin from CDN. He has previously been tendered and
18 accepted as an expert witness in this forum in the areas
19 of geology and water resources, and I would tender him as
20 an expert in those fields today.

21 HEARING EXAMINER: Okay. Objections from staff?

22 MR. BLOCK: No, ma'am.

23 HEARING EXAMINER: Okay. County Attorney?

24 MR. SPICKERMAN: No objections.

25 HEARING EXAMINER: All right. Accepted.

1 Kirk, do you have a doctorate or something?

2 MR. MARTIN: I do not. A lot of years of
3 experience.

4 HEARING EXAMINER: Didn't know if we needed to
5 introduce you and refer to you as Dr. Martin. We've had a
6 few of those doctors in the last mining hearing.

7 MR. MARTIN: For some reason, they keep making
8 the doctors work for me so somebody likes what I do.

9 HEARING EXAMINER: Okay. I'll accept him as an
10 expert then in geology and water resources.

11 MR. SCHROPP: Thank you.

12 Thereupon,

13 KIRK MARTIN,
14 called as a witness by the Applicant, having been
15 previously duly sworn, was examined and testified as
16 follows:

17 MR. SCHROPP: And I have copies, hard copies of
18 Mr. Martin's upcoming power point presentation if you'd
19 like them now or like them at the end?

20 HEARING EXAMINER: It doesn't make any
21 difference. I'll mark those down as Applicant's Exhibit
22 No. 9.

23 (Applicant's Exhibit No. 9 was marked for
24 identification.)

25 MR. MARTIN: I went to power point format due to

1 the fact that I've got a lot of slides, but most of them
2 are very quick because what I want to be doing is I'll be
3 showing you some sequency slides that shows the progress
4 of mining, both in a horizontal and vertical view.
5 Hopefully, it will give you a good picture of what really
6 goes on here.

7 HEARING EXAMINER: Okay.

8 MR. MARTIN: Overall I'll give you a site
9 overview similar to what Russell already talked about.
10 I'll talk about the geology of the different materials
11 that we are mining and how we treat those materials. Then
12 get into the mining dewatering methodologies, that's where
13 I'll spend the bulk of my time. At the end I'll talk
14 about the monitoring program we use to assure that there's
15 no off-site impacts or adverse impacts and then summarize
16 at that point.

17 Site plan is just showing the boundary as Russell
18 talked about. This area is mined out (indicating). This
19 area is currently being mined (indicating). And, of
20 course, Section 1 and 12 are future. It shows the section
21 numbers and then the mining areas that are part of this
22 application. Section 11, Section 12 and Section 1 are
23 the subject of this application.

24 The geology as discussed earlier consists of an
25 upper section of what is referred to in the mining

1 industry as fill material. It's really unconsolidated
2 sand, organics, et cetera. Overburden is another term
3 that's used. That extends anywhere from about 5 to 20
4 feet in thickness. And that is the area, the material
5 that would be considered for dewatering.

6 I think the requirements of the conditions
7 require no more than 20 feet of dewatering, but that
8 basically depends on the depth of material, it could be
9 anywhere from 5 to 20 feet of material that would be
10 dewatered.

11 Underlying that is the limestone. That's the
12 aggregate rock that's mined. That process -- that
13 thickness is somewhere between 40 and 70 feet and no
14 dewatering is proposed there. That's all dug in the wet.
15 And the purpose of the dewatering in the upper material is
16 just to remove this material most effectively, most
17 efficiently in order to get down to the rock material.

18 Underlying the rock material that's the primary
19 target for the mine is a clay layer that separates the
20 upper water table aquifer from the lower sandstone
21 aquifer, and this clay is very continuous, very -- it
22 provides a very good hydraulic requirement.

23 Conditions for mining, previous resolutions
24 include no more than -- a maximum depth of 68 feet or the
25 first confinement.

1 I'll come back to these vertical cross sections
2 later, but I'm going to get into the methodology here a
3 little bit. I'm going to talk about Section 1 because
4 it's a nice big area that we can kind of talk to as to how
5 the process goes. Then after I get done with that, I'll
6 bring you back to Section 11 where the process is already
7 ongoing to show you how that works.

8 Section 1, as Tom referred to earlier is going to
9 start with a key cut. We essentially created dewatering
10 cell. That cell can be no more than 400 feet by 1,000
11 feet. I think it's typical it's smaller than that, but
12 that is the maximum extent.

13 The dewatering cell is cut down to the top of the
14 rock. Water is pumped out of that and where that water
15 goes then is pumped into a perimeter ditch. That
16 perimeter ditch is required to be maintained for the water
17 level in order to essentially clear the hydraulic barrier
18 so that we're not affecting any water levels off site,
19 thus the purpose of that perimeter ditch.

20 So, again, a dewatering cell, water pumped out of
21 it into the perimeter ditch.

22 HEARING EXAMINER: Okay. Let me stop you there
23 real quick then. So just for this one cell which is going
24 to still be surrounded by the rest of the dirt and
25 whatnot, the water is coming out of the 400 x 1,000 down

1 to the top of the rock?

2 MR. MARTIN: Correct.

3 HEARING EXAMINER: So the rock is not going to
4 really be exposed?

5 MR. MARTIN: Not at this point. One of the
6 purposes of the key cut is to start getting into some of
7 that rock material. I'll show you that in just a second.
8 But they'll dewater this cell in order to get to that rock
9 material. They'll excavate that to build their path to
10 set their excavator on and start the process.

11 What you're going to see is a dewatered cell for
12 the upper formation that essentially the next phase will
13 show it, but as that falls along, they follow right behind
14 that digging the rock out after the dewatering cell is
15 filled back with water.

16 HEARING EXAMINER: Okay. So you're going to take
17 the dirt out -- pump the water out, take the dirt out, put
18 the water back in and then they're going to do the rock?

19 MR. MARTIN: Right. So the next cell then, you
20 just start moving to this. Again, we're still cutting the
21 key cut right now. You start with a new dewatering cell.
22 The water pumped out of there would go back into the
23 previous cell and still to the recharge trench that
24 surrounds the site.

25 This process is continued until you get done with

1 the key cut ditch, at which point you start what Tom
2 described as the circular fashion that just continue on
3 with this. And this continues on and this keeps running
4 the thing and essentially keeps the process moving of
5 dewatering a cell to remove the overburden, moving to the
6 next cell, dewater that, pump that water back in there and
7 then start the excavation for the rock.

8 HEARING EXAMINER: Now, your trenches along the
9 perimeter, what depth are we talking about on the trench?

10 MR. MARTIN: It's just barely cut. I have a
11 cross section of that. It's just barely cut into the
12 ground. I think it's like three to four feet deep with
13 usually about two feet of berm on either side of it. They
14 essentially dig out a ditch, make a berm on either side of
15 it to allow water to be able to stack slightly up in that
16 area.

17 HEARING EXAMINER: I wish you guys had been in
18 the other hearing, I got all kinds of information in the
19 other hearing about dewatering and about perimeter ditches
20 and the trenches and the whole works and whether or not
21 they worked and -- the water level in the ditch is going
22 to be two to three feet?

23 MR. MARTIN: It's typically maintained near land
24 surface. They are required to maintain that water level
25 at 24 feet above mean sea level.

1 HEARING EXAMINER: So what's the surface level,
2 though?

3 MR. MARTIN: 26, 27. Like I say, it's very near
4 land surface.

5 HEARING EXAMINER: Okay. It's going to be two to
6 three feet below the actual ground level?

7 MR. MARTIN: Correct.

8 HEARING EXAMINER: Because my main concern with
9 that is the wetlands, typically your wetlands are, you
10 know, 12 inches or so below the ground level in order to
11 have the water to be a wetland, to stay a wetland. And if
12 you start digging the perimeter ditch too shallow or too
13 deep, it's going to start sucking the water out of the
14 wetland instead of putting the water back in the wetland
15 unless you've got the water in that trench clear up to at
16 least where the wetland was or higher.

17 MR. MARTIN: That's a good point when we start
18 cutting ditches. I mean, you know, the way we drain lands
19 is cutting ditches and usually that means hauling water
20 off or conveying water off somewhere else. In this case
21 it's a closed system, a closed ditch, and again that water
22 is maintained in the ditch. And I'll get into this, I'll
23 be talking of the monitoring program, where staff did
24 monitoring in the ditch and also 17 monitor wells all
25 around the property, monitor for water level.

1 HEARING EXAMINER: Okay. Let me ask a question.
2 The monitoring wells, now, they're all around the
3 property. Are there going to be any monitoring wells in
4 or immediately adjacent to any of these wetlands,
5 especially the big one? I see you've got a nice big one
6 there and you've got all those big ones down here in the
7 preserve area. Are you having any kind of monitoring
8 wells in those because if you're not, how can you tell
9 what the water effect is in the wetland area if you're
10 doing everything outside it, if you're monitoring outside
11 it but not within it?

12 MR. MARTIN: I've got a figure that shows it more
13 clearly. It's real small right here for me to tell. The
14 intent is to monitor for off site water levels and for
15 potential impacts in off site and wetland areas.

16 Generally, if we're showing that water levels are
17 consistent, and we have a very wide array of a well
18 distributed monitor network, typically you won't find a
19 pathway between those monitor wells where water levels are
20 drastically different. So the monitoring network itself
21 provides good assurance. But, yes, the intent is to show
22 that we're not affecting wetlands or anybody else on
23 site.

24 HEARING EXAMINER: Okay. Okay.

25 MR. MARTIN: What I'm going to do now is go to a

1 vertical cross section. What I have done is shown you the
2 pattern of cell dewatering, again just that upper material
3 is dewatered. Now, I'm going to cut a vertical cross
4 section west to east across here, and we're going to go
5 through the same process.

6 Just refer back. We kind of zoomed in a little
7 bit on our cross section. We've got our fill material, 5
8 to 20 feet. We've got our limestone that's 40 to 70 feet
9 there, underlain by clay.

10 MR. LEE: I'd like to ask a question --

11 HEARING EXAMINER: Hang on until we get to
12 staff's questions. I'll let you -- Sam, I'll let you ask
13 him questions at that time, some cross-examination
14 questions at that time. He's going to love that.

15 MR. MARTIN: What I've done here is I've started
16 with the key cut. The key cut is in place here. If you
17 recall, we cut the key cut with those series of dewatering
18 cells. Once it's in there, again it's filled with water
19 and the water in that lake is essentially the same as the
20 ground water level that's surrounding it. Those water
21 levels are the same.

22 HEARING EXAMINER: Right. And they should be.

23 MR. MARTIN: Yes.

24 HEARING EXAMINER: Is that a draw down at all?

25 MR. MARTIN: No. What you see in the lake, dig a

1 hole next to it in the ground, it's the same water level.

2 HEARING EXAMINER: Okay. I'm not sure I agree
3 with you on that, but we'll go on. I'll let Sam do the
4 questions on those.

5 MR. MARTIN: Here we show an adjacent dewatering
6 cell. If you'll recall in my aerial view, we start with a
7 key ditch and then started the cells going around it. So
8 what I have drawn here is a dewatering cell and we're
9 drawing water out of it and creating a draw down.

10 What you see is that draw down tends to be
11 attenuated by the large lake here at the key cut. On the
12 other side, where we don't have any surface water body to
13 attenuate that draw down, we get some draw down and it's
14 running off site.

15 The modeling we did for this site shows that that
16 draw down does not extend very far. However, we still are
17 applying recharge trenches to make sure there are no
18 problems.

19 HEARING EXAMINER: The recharge trench along the
20 perimeter is to ensure that there is no actual draw down
21 from off site?

22 MR. MARTIN: That's correct.

23 HEARING EXAMINER: Okay.

24 MR. MARTIN: So here I've drawn the recharge
25 trench in there and just to kind of flip back and forth

1 real quick, you can see where the recharge trench has an
2 effect on that water level by creating a constant
3 hydraulic carrier and recharge water to that point so that
4 we don't have any impacts outside of that trench.

5 Clearly we have impacts here inside the mining
6 area, but outside of the recharge trench there are no
7 impacts.

8 I'm just going to blow this up a little bit, zoom
9 in. Just to kind of show you a dewatering cell, you've
10 got pumps that go back to the mine pit. Again, this is
11 full of water at all times. And then pumps that go to the
12 recharge trench to create that hydraulic barrier and
13 maintain water levels throughout the site or off site,
14 rather.

15 HEARING EXAMINER: So those pumps are going to be
16 working all the time then?

17 MR. MARTIN: That's correct. As long as that
18 cell is being dewatered, those pumps are running. In
19 terms of the process, it's about a four to six week
20 process for each cell to be dewatered. So as soon as that
21 cell is done, they move to the next one adjacent to it and
22 pretty much a continuum and then back pump to that cell.
23 So the total time of dewatering is four to six weeks per
24 cell.

25 HEARING EXAMINER: Okay.

1 MR. MARTIN: And then the same thing, I'm just
2 going to show you the sequence, that over time, the lake
3 grows as we continue the process circular to the
4 dewatering process. The large lake is maintained. We
5 pump water into that lake and into the recharge trench as
6 necessary.

7 Now, this is -- I want to show you something we
8 refer to as vertical exaggeration. Any time we do
9 geologic drawings, we always, in order to be able to see
10 everything, we have to do what's called vertical
11 exaggeration, which means the vertical scale is vastly
12 different from the horizontal scale.

13 So what I've done just to kind of give you an
14 idea, is I've gotten closer to a realistic scale so when
15 you start stretching that scale back out, you see that --
16 in this case I've got a mine lake that's about a thousand
17 feet across, a dewatering cell and a recharge trench which
18 you can see, it's in a real scale, the resolution is far
19 different. And I do that because it's easy to get
20 confused. You get so used to seeing those vertical
21 exaggerated drawings, that it's hard to realize what's
22 really going out there. But this is to give you an idea
23 what it really looks like in a real scale.

24 This is the Section 11 mining area. You recall
25 that was the one to the south. The reason I wanted to

1 just draw you back to this, is this is ongoing right now.
2 And, unfortunately, the aerial I have is three or four
3 years old, that's underlaying this. So what I've drawn in
4 here is the current lake size. It is full of water. But,
5 again, this process is going to be continued through 2008
6 with dewatering cells running along here and perimeter
7 ditches surrounding the wetlands and off site.

8 I believe that Section 11 comes next and then
9 Section 1 and then Section 12.

10 Finally, all the analysis we can do is good, it's
11 necessary, it's prudent, however, in my mind, the best
12 assurances is a good mining program. What we've got is we
13 have continuous water level monitoring, that's essentially
14 a transducer in the ground that takes water levels I
15 believe it's every minute throughout the property at 17
16 locations.

17 In addition to that, we have water quality
18 monitoring that's done quarterly at four locations. Those
19 four locations are located near the -- towards the north
20 where the Lee County public supply wells are. So those
21 are monitored quarterly for a number of parameters,
22 physical and chemical parameters.

23 This is just a map of the monitoring array. And
24 you had asked about wetland locations. So here we've got
25 good monitoring at these. I don't have anything there, I

1 do have them, you know, on either side of it. But, again,
2 we've got monitor wells at all these wetland locations, so
3 I think the answer to your question is 90 plus percent,
4 yes, on covering the wetlands specifically, maybe not this
5 one.

6 HEARING EXAMINER: Okay. Okay.

7 MR. MARTIN: These are just some examples of some
8 hydrographs. This is water levels through time and some
9 of these marked wells. The three at the top are some
10 longer term. These go back to January '82, so this is,
11 you know, quite a long term monitoring. And these are
12 some more recent ones that start back just this year.
13 This is in Section 1 where they were currently mining.

14 What you can see is essentially the dewatering
15 has been occurring at this site for decades. We had no
16 appreciable effect on any water levels. You see that the
17 highs are fairly consistent, the lows are fairly
18 consistent. I'm going to blow into -- or zoom into one of
19 these in just a minute and show you a more closeup. But
20 essentially you can see there's no effect from our
21 dewatering activities on a regional basis here, either
22 long term or short term.

23 This is one of the marked wells located fairly
24 close to the property. And, again, January '82 through
25 pretty current. One of the things you can see there, the

1 highs are fairly consistent at the 27 foot range. The
2 lows average probably in the 23 to 24. But you can pull
3 out specific droughts here. And when people talk about
4 water level changes, I mean, you can see a 1985 drought,
5 '88, '89, 2000, 2001 drought was probably one of the worst
6 we had.

7 Due to natural drought conditions, we've got
8 water levels that are, in this case, you figure the
9 average low is somewhere in the 23 range. We're down here
10 at 19 feet, so you're looking at four feet of water level
11 difference just based on natural conditions out there. So
12 despite the fact we have consistency in our tops and
13 bottoms, you zoom in, you can see the natural fluctuations
14 that occurred. Again, no impact of dewatering activities
15 on site are apparent in this.

16 HEARING EXAMINER: Kirk, where was that monitor,
17 the 1892? Do you have any idea in reference to your
18 property?

19 MR. MARTIN: I think it is this guy. It's one of
20 these.

21 HEARING EXAMINER: So the original mine started
22 in '81 and then they started monitoring in '82 or started
23 it just say about the same time as the monitoring
24 started. Okay. Is that the only monitoring, long-term
25 monitoring station that you guys have in the area?

1 MR. MARTIN: No. Again, I have got four -- most
2 of those are located north. Keep in mind that this was
3 the early mining area. I don't know which wells they are.
4 But it may be the corners like 1, 2, 3 and 4. I can
5 confirm that for you.

6 I have names on them. There are four wells with
7 very long term monitoring that went along with the
8 original mining operation.

9 Of course, over time, wells have been added to
10 the process. So at current we've got 17 wells and you can
11 see the array is very good.

12 Just in summary, the fill dewatering that's
13 described has been conducted for many years at the Harper
14 Brothers mine. The methodology has evolved over time.
15 Basically it's proven to be very effective in maintaining
16 off site water levels. Some key characteristics of that
17 is we have limited cell dewatering, fairly small cells
18 both in terms of vertical extent and aerial extent, also
19 in terms of time, and, you know, a month, six weeks of
20 dewatering for any given point in space.

21 Also, we have a system perimeter trenches that
22 keeps water levels from being affected off site or in any
23 areas that we don't want water levels to be affected,
24 wetlands in particular.

25 Finally, we have a very extensive monitoring

1 program that assures compliance with the water level and
2 water quality objectives at the site.

3 I'll be happy to answer any questions.

4 MR. SCHROPP: I have one. Kirk, if I could bring
5 you back, and I don't know if you can bring it up there or
6 we can work off the hand version, but the Slide 10.

7 And the depth of the water levels in the recharge
8 trench relative to the ground water level, can you
9 compare that? I mean, is the level in the recharge
10 trench, the depth of the recharge trench, is that above
11 the water level, equal to, below?

12 MR. MARTIN: It depends on the time of year. In
13 the wet season, we're probably near water table. In the
14 dry season we're probably above it in terms of the
15 recharge trench.

16 MR. SCHROPP: So in the dry season the recharge
17 trench would be above the water level?

18 MR. MARTIN: Very likely. As I pointed out in
19 that one hydrograph, too, if you had a drought condition,
20 water levels in a very dry, dry season could be much lower
21 than that. They're required by the permits to be at 24
22 feet NGBD.

23 MR. SCHROPP: Thank you.

24 HEARING EXAMINER: Chip, anything?

25 MR. BLOCK: I think I have one question, and this

1 is my lack of knowledge of how things work.

2 Kirk -- for the record, Chip Block -- when you're
3 looking at the recharge trench and monitoring the levels
4 of the wells that you have there, how do you determine
5 that the water levels have decreased below the surrounding
6 area in those monitoring wells to the point that maybe the
7 recharge trench is not working or something? What I'm
8 trying to get at is that I see the monitoring wells around
9 the edge of the mining operation, but the general area may
10 itself have either lower water levels beyond your
11 monitoring area or maybe higher levels beyond the
12 monitoring area.

13 How do you adjust or can the recharge trench and
14 the amount of water going into it be adjusted to address
15 that point?

16 MR. MARTIN: It could be adjusted. I think one
17 of the reasons they set up the dewatering permit is to set
18 a stage for that because they wanted something to be
19 simplistic to control. What to some degrees it has a
20 self-regulating aspect.

21 For example, when you have a dry season, water
22 levels are lower, the differential head between a
23 recharge trench and below would mean that more water is
24 allowed to be pulled in there. You've got a greater
25 difference in the head from the top to bottom, so more

1 water's in there. When the water levels are high, less
2 water is probably entering the system because you have
3 less differential. So it's not perfect, but it does have
4 a self-regulating aspect to it.

5 MR. BLOCK: How do you make the comparison then
6 for your monitoring well and the level of water in that to
7 the ground water level further away from the site so that
8 you know that you're not impacting the surrounding area?

9 MR. MARTIN: The marked well data are essentially
10 around the perimeter of the site as you saw. If you were
11 to see effects there, either high or low, you would know
12 that you have a problem and you were adding too much water
13 or we've got draw downs that are affecting it.

14 I don't know of any better way to establish
15 that. Again, you saw the data that were presented. We're
16 not having an effect that you can note in the data set.
17 If you saw some spike ups or spike downs that were not
18 associated with a drought or a flood condition, then, yes,
19 I would look at the site and say are we doing something
20 wrong here. But none of the data over two decades of time
21 have shown anything like that.

22 Again, the monitoring is kind of our backup
23 assurance. The fact we have small cells, limited time,
24 limited vertical extent, limited aerial extent, that's all
25 part of this plan to minimize the potential for impacts.

1 The monitoring plan is just to assure that we don't have
2 any.

3 HEARING EXAMINER: How deep are the monitoring
4 wells?

5 MR. MARTIN: They vary. We've got some that are
6 actually hand dug that are like, you know, 5 or 10 feet
7 deep. We've got others that are 40 feet or so. It varies
8 but it's all tapped into the water table aquifer.

9 HEARING EXAMINER: Dr. Lee, do you want to ask
10 him questions?

11 MR. LEE: Yes.

12 HEARING EXAMINER: State your name, please, for
13 the record.

14 MR. LEE: Sam Lee with Natural Resources.

15 Basically, when I review their approach, the main
16 thing I can emphasize is that the recharge trench would be
17 utilized but in their estimation it's not considered a
18 quantitative way of conservatively estimating the adverse
19 impact. So that's what I agree with them.

20 It's obvious if I ask him to head the recharge
21 trench for the added water, the draw down will be
22 obviously reduced from the one they estimated without
23 recharge water, sending the water to the recharge trench.
24 So that's what their standing point that we will operate
25 recharge trench but that important was not included in

1 their modeling explanation.

2 HEARING EXAMINER: So, in other words, they did
3 the model without including the effects of the
4 dewatering -- or the, I'm sorry, the recharge trench.

5 MR. LEE: With including.

6 HEARING EXAMINER: They did include it.

7 MR. LEE: Didn't include it in the model.

8 HEARING EXAMINER: Did not include it, okay, in
9 the model. So then the result that they got in the model
10 actually was more conservative because the dewatering
11 trench or the recharge trench over there is going to
12 actually make things better instead of worse?

13 MR. LEE: Yes, ma'am. That's what I want to
14 re-emphasize everybody.

15 Having said that, I just see your presentation
16 maybe not critical but in methodology, when you write this
17 slide, when you done this one, move on next one, how you
18 going to do this one? Previous slide, you're going to be
19 this one gone, the barrier. How you going to excavate or
20 remove this dirt when you move to next?

21 HEARING EXAMINER: There's the rock pad there.

22 MR. MARTIN: I'm going to look at someone else to
23 answer that.

24 MR. SCHROPP: Probably Ed Ladd would be the best.

25 HEARING EXAMINER: Okay. State your name, Ed,

1 and if you would, answer the question.

2 MR. LADD: Ed Ladd, vice president of operations
3 for Florida Rock.

4 MR. SCHROPP: And, Ed, before you get into that,
5 could you explain your duties in connection with the mine?

6 MR. LADD: Sure. My voice kind of carries if
7 that's okay.

8 HEARING EXAMINER: We'll pick you up on the --

9 MR. LADD: I don't have a Doctorate or a degree,
10 and I can't say I stayed in a Holiday Inn last night.
11 This is my area of responsibility as far as this mine
12 goes.

13 As I understand the question, I'm sorry, one more
14 time for me.

15 MR. LEE: When you got this excavation, then you
16 move up, and you previously said wider water, this barrier
17 is gone, when you do this excavation, move out, how you
18 going to excavate down?

19 MR. LADD: This progression, while it shows this
20 way, is also laterally this way. This is where the large
21 drag line sits, this is the pad that it sits on. This is
22 the material along with the material directly under it
23 that we excavate, and we pile that about directly above
24 this dewatering cell. And this dewatering cell
25 subsequently moves laterally till we get to the edge of

1 the excavation. Does that answer --

2 HEARING EXAMINER: No. Because that raises a
3 question for me because you got the darn thing and it's
4 got to sit on the rock pad, okay, but you got a hole in
5 front of it, you got a lake behind it, and you're going to
6 dig out underneath it to put in the hole in front of it
7 so it can move to the hole in front of it and sit on the
8 rock pad there.

9 How are you going to dig out from underneath it?
10 I think that's what he's asking, how are you getting rid
11 of that because the creepy crawler thing can't go
12 anywhere, you know. I mean, where is it going to go
13 while it's digging that out to fill in the dewatering
14 cell?

15 MR. LADD: It moves. If you had, not a profile
16 view, but so to speak a topographical view. The machine
17 sits on this material.

18 HEARING EXAMINER: Right there.

19 MR. LADD: And it digs this material and deposits
20 it into the dewatering cell, all right?

21 HEARING EXAMINER: So it's going to run along the
22 side then, scooping it out behind it and dumping it in and
23 backing up and scooping it out and dumping it in.

24 MR. LADD: It crawls laterally, if I can show you
25 on this, it may be easier. You're looking at a profile

1 view. But let's say that it's right up in the top of 2.1,
2 the machine moves laterally along the key cut,
3 depositing the material. It fills the dewatering cell,
4 creates a stockpile. That material is picked up, and as
5 you had asked earlier how is it deposited in the trucks,
6 and it is picked up with loaders and deposited in the
7 trucks. These trucks move towards this point and then
8 ultimately towards the plant.

9 So while that activity that you see up there, it
10 is going on laterally on this side and then as the machine
11 crosses, goes on laterally on this side, continues on.
12 And what we do is we continue to make a circular pattern
13 and expand our way through the deposit towards the outer
14 excavation boundaries. Does that make sense?

15 HEARING EXAMINER: Okay. So it's going to
16 essentially be backing up and digging out and dropping?

17 MR. LADD: Correct. It sits on a stable
18 foundation pad made of rock like you see in there. And it
19 actually digs into the mine pit as is shown there. And
20 what we're after is we're after this toe of the limestone
21 material, and we dig that back and take our pad out from
22 under it. So we kind of swing to, let's say, the left or
23 the right, dig under water and recover this material and
24 then swing over onto the pad that we have just sat on as
25 we slide back and we dig that out and deposit it over

1 beside it. We just keep walking our way down the pit that
2 way. So you expand this kind of laterally and maybe even
3 longitudinally as you traverse it.

4 MR. LEE: So this is not the fill dirt, this is
5 rock out of this here? This is the fill dirt?

6 MR. LADD: This is a rock pad. This has already
7 been -- the fill dirt has already been -- originally this
8 was this dewatering cell, and then it has been filled in
9 by the rock that we swing and excavate and creates the pad
10 that we sit on, and we create the dewatering cell beside
11 it. And we just continue that process outwardly. I'm
12 obviously not answering the question.

13 HEARING EXAMINER: I understand what he's
14 saying. Yes.

15 Sam, what they're doing is when they're digging
16 the rock out, the limestone out, they're putting it in
17 what was the dewatering cell. They're now filling up that
18 dewatering cell, okay, and that's where they take the
19 stuff out and load it in the trucks and stuff. Then when
20 they get to a certain spot, they stop on that because the
21 creepy crawler is moving around and he's still digging,
22 but what's going to happen is that as he comes around this
23 way, he's now starting to dig into what had been his pad
24 before, all right. And he's going to crawl all the way
25 around digging out his pad and dumping it in that

1 dewatering cell while he's digging out the limestone
2 underneath. And then he's got to move over to what used
3 to be the dewatering cell on the limestone that he's
4 deposited there and start digging next to it to dig out
5 the dirt for his next dewatering cell.

6 If you've ever done any sewing, it's like
7 making a square with a sewing machine, okay. That kind of
8 thing.

9 MR. LEE: I guess I haven't a degree in mining
10 for that.

11 Okay. Thank you.

12 Next question, can you show me that trench, the
13 recharge trench all around the circumference of the
14 property? That's okay.

15 You would excavate trans force before you start
16 first or at same time, especially in the beginning or end
17 of the project. When you excavate continuous trans here,
18 my concern would be, as Madam Hearing Examiner pointed
19 out, higher ground like here maybe necessarily sending
20 the water may cause impact here in the beginning stage
21 when you -- during the middle of the dewatering, you're
22 going to keep sending water. But I'm afraid not
23 considering about the contour elevation difference if you
24 keep excavating three, four feet, continuous from here to
25 here, then you may -- wetland here, send the water to down

1 here causing draw down, how are you going to address that
2 issue?

3 MR. MARTIN: Let me make sure I'm clear what
4 you're worried about is prior to adding water to the
5 trench, you're worried about it being a consistent form of
6 drain to existing lands.

7 One of the things -- the trenches are now and it
8 was surveyed according to the storm water permit that's in
9 place with the Water Management District, I can't tell you
10 what the dimensions are, but it was permitted by the
11 District according to the topography of the wetland, the
12 wetlands that are there, and so forth. But the District
13 has approved that and it is built at this time.

14 Like I said, once the dewatering is in place, the
15 water is being pumped to the trench, I don't see its
16 effect, but if you do have a situation where you have
17 higher topography in, say, the northeast, the ditch is
18 only being dug deep enough to get that water level to that
19 24 feet range, I would guess, I don't know this for a
20 fact, but I would guess that you would only be digging in
21 the trench as deep as you need to go in that area. So,
22 essentially, you could have the bottom of the ditch at
23 this location being a different level than the bottom of
24 the ditch at this location. So you're not necessarily
25 incising deeper and form it into the formation because of

1 drainage.

2 MR. LEE: And you're higher than this water
3 table?

4 MR. MARTIN: I don't know the answer to that. It
5 was permitted to the District. We could look into those
6 levels to see exactly what they are. I can't tell you
7 right now.

8 MR. LEE: And that would not be lower than
9 existing water table because it's not necessarily sending
10 water --

11 HEARING EXAMINER: Okay.

12 MR. MARTIN: I think it's a good point in terms
13 of the condition. Obviously we're going to look into a
14 situation or condition that violates the District permit.
15 So I think we need to look at those together would be the
16 way to do that.

17 MR. LEE: You need more capacity but not
18 excavating deeper than any water table.

19 MR. MARTIN: I'm just seeing if anybody knows
20 exactly how deep those are and so forth. We can check on
21 that, Sam, it's a good question. Again, it is according
22 to the District permit. We can look into that and see if
23 there's any issue. My gut feeling is that because, like I
24 say, it should be higher topography at that location, it
25 would not be in incising deeper there because we're at a

1 higher elevation already so we're only digging down to the
2 point where we need to be able to put that water level.

3 HEARING EXAMINER: Sam, let me ask you a question
4 now, make sure I understand what you were just saying. I
5 understand your concern because that was essentially the
6 same concern that I had. But you actually brought in more
7 of the ground level elevation off the site in your example
8 to Kirk. Now, I understand about not having the recharge
9 trench lower than the water table. Which one? The water
10 table is underground but the wetland is going to have a
11 different water level than the water table in an upland
12 area. So what are we talking about here when you say the
13 water table? Are we talking about specifically the
14 wetland water table, are we talking about the upland water
15 table?

16 MR. LEE: I thought this was not going into the
17 wetland, it's outside of the wetland.

18 HEARING EXAMINER: Right. But if it's lower than
19 the water in the wetland, it's going to suck the water out
20 of the wetland.

21 MR. LEE: You can add that -- that's a very
22 good point. You can add that one for excavating the
23 trench, not only the water table but water level would
24 be sometimes higher than the water you find under
25 ground?

1 MR. MARTIN: I'm going to respond -- I'm going to
2 look at Ken Passarella, our environmental consultant,
3 because most of the wetlands in this area I have not seen
4 a water table condition where you actually have a
5 different water level in the wetland than you do. So my
6 contention would be that water level is the same. But,
7 again, it's a good question. In order to respond to Sam's
8 question in your comment there, we just need to look at
9 the bottom elevation of the ditch and make sure we're not
10 incising too deep that would cause a drainage situation.

11 HEARING EXAMINER: Yes. Because that would be my
12 concern, particularly since in looking at the -- I'm
13 hoping that's the east side. The east side and the south
14 side of this Section 1, that looks like a major wetland
15 area out there, and if that recharge ditch becomes lower
16 than the wetland elevation, whatever, yes, you're just
17 sucking the water right out of -- whether it's on the site
18 or off the site, you're sucking the water right out of the
19 wetlands next door. Instead of being able to give back to
20 them, you're actually taking away from them.

21 MR. MARTIN: Again, Sam's questions are
22 essentially before we start putting water into it. Once
23 we start putting water into it, I don't think this
24 question would be of issue. And once the mine is done, I
25 don't think it's of issue. But just to clarify, Russell,

1 I think what we want to do in my opinion, based on this
2 commentary, is to look at the bottom elevations of those
3 trenches and make sure we're not incised too deep.

4 HEARING EXAMINER: You guys work that out then.
5 Anything else, Sam?

6 MR. LEE: Another minor point, if I may. This is
7 one I think you have that one copied from Frank Winslow.

8 HEARING EXAMINER: Yes. It was attached to the
9 Staff Report I have.

10 MR. LEE: I just noticed that draw down depths
11 is up to 20 feet. We have it up to 18 feet. Just a
12 minor cosmetic change. Maybe you can have him resupply
13 this.

14 MR. MARTIN: I could probably resupply a figure.
15 I believe that the modeling was done to 20 feet. So what
16 you're looking at is just the figure, doesn't illustrate
17 how deep that goes.

18 HEARING EXAMINER: All right. Is that still
19 Figure 10 in the calculated dewatering cell --

20 MR. LEE: Right.

21 HEARING EXAMINER: You need to look at the draw
22 down. At the 1,000 feet it says .06 feet draw down. All
23 right. But in the explanation it is talking about a .6
24 draw down. You guys --

25 MR. LEE: Mine has a .421 draw down.

1 HEARING EXAMINER: Well, maybe I got in the wrong
2 one. Yes, I do. Okay. So the .6 must have been the
3 first one that I got, because I wrote down the question on
4 that one. I don't know where the other one went to. Was
5 that attached to your memo, Chip?

6 MR. BLOCK: The more recent one given to staff
7 that I have available to me was attached to the
8 memorandum.

9 HEARING EXAMINER: Okay. That's what I'm looking
10 for. That's the one you're referencing is --

11 MR. LEE: Yes.

12 HEARING EXAMINER: Okay. So it's .421.

13 All right. Well, that other one was obviously
14 incorrect then because this one says .4 and it's supposed
15 to have been a smaller draw down than the original, so the
16 other graph was incorrect. Okay.

17 MR. LEE: And that text accompanied by this
18 figure is that each excavation takes seven weeks?

19 HEARING EXAMINER: Four to six I think they
20 said.

21 MR. LEE: Seven weeks, the number of days is 42
22 days I count on my fingers. Seven is 49 days.

23 HEARING EXAMINER: So you're only running it six
24 days a week?

25 MR. MARTIN: Yes.

1 MR. LEE: But still work they may have to
2 maintain that 49 days.

3 MR. MARTIN: I told Sam we get seven weeks worth
4 of work done in six.

5 HEARING EXAMINER: He didn't buy that, huh?

6 MR. LEE: Off days, I don't know. Next day pump
7 more water to the backup.

8 HEARING EXAMINER: I'm assuming that the pumps
9 are running 24/7.

10 MR. MARTIN: Yes.

11 HEARING EXAMINER: Otherwise, you know, I mean,
12 there would be no point in having the darn things.

13 MR. LEE: Four fingers come up with 42 days.
14 That's all.

15 HEARING EXAMINER: Thank you, Sam.

16 Anything else of Kirk?

17 All right. Folks, let's take an almost ten-
18 minute break. Let's be back here, please, at five minutes
19 after 11:00. Water only in this room, please, and we'll
20 continue on with the applicant's presentation.

21 (A recess was taken.)

22 HEARING EXAMINER: Okay. Let's go back on the
23 record.

24 Okay. We're done with Kirk Martin. Your next
25 witness.

1 MR. SCHROPP: It would be Ed Ladd again.

2 HEARING EXAMINER: Okay.

3 MR. SCHROPP: And as we previously indicated,
4 he's the operations director of the mine, and I wanted him
5 to briefly address one other aspect of the operation for
6 the request we have here today.

7 Thereupon,

8 ED LADD,

9 called as a witness by the Applicant, having been
10 previously duly sworn, was examined and testified as
11 follows:

12 MR. LADD: As you saw, and I thank you because
13 you did an actually better job than I probably could have
14 done of addressing how we encompass this area.

15 I wanted to also, as I previously said, the
16 trucks that carry the material to the processing plant,
17 while this aerial delineates the entry point to the plant,
18 the roads that access the stockpiled material tend to move
19 to try to get to the material. So it's not always a
20 corridor right here that stays in place.

21 HEARING EXAMINER: Okay.

22 MR. LADD: The other portion of this that I
23 wanted to reiterate, the machine that we use is a very
24 large electric drag line. It weighs just short of three
25 million pounds. If you can envision, it's the size of a

1 small warehouse with a long boom on it. It's a very large
2 machine.

3 Just the sheer weight of it alone is an obvious
4 safety concern for us at all times. So the dewatering of
5 the fill pit, as we kind of alluded to in there, and the
6 replacement within that fill pit void with the rock,
7 allows us the structural capacity to support this machine
8 as well as the stability. So the machine needs to sit
9 rock on rock at all times, otherwise it's at risk of
10 sinking, if you will.

11 If we did not dewater, and this is one of the
12 biggest reasons we went to the large electric machine,
13 first off that it's economical, second off that it uses
14 electrical power in a cleaner environment, the second
15 thing that would happen is if we came in and were not
16 allowed to dewater that cell and build that rock on rock
17 pad, we'd have to introduce much smaller diesel operated
18 machines, non electric, and we'd have to transport fuel
19 back to these diesel machines at all times to keep them
20 excavating, to keep the material, being the fill, from
21 filling that void and to use kind of a good analogy of --
22 I can give you another one.

23 If you can envision a clear cake mixing bowl full
24 of sand with water on top of it and you take a teaspoon
25 and you try to dig a hole in it, it never happens. If you

1 pour the water off the cake mixing bowl, you can dig the
2 sand. And that's really the analogy that dewatering
3 allows us to do. It gives us structural stability and
4 also keeps us in a cleaner environmental program without
5 the diesel fuel. That was really my point.

6 HEARING EXAMINER: How long have you been
7 operations director for Florida Rock?

8 MR. LADD: About five years.

9 HEARING EXAMINER: Okay. And is it this specific
10 mine or were you in another mine and moved over to this
11 mine?

12 MR. LADD: This mine is one of about 18 that are
13 under my direct responsibility. All of Florida and the
14 Bahamas.

15 HEARING EXAMINER: That must make nice trips.

16 MR. LADD: It sounds really good the first time
17 or second time you go. And after about the tenth time,
18 it's just not as fun anymore. Trust me.

19 HEARING EXAMINER: Okay. How much experience
20 have you had? I understood five years with Florida Rock.
21 What's your previous experience?

22 MR. LADD: I have been in mining and site-related
23 activities and underground installation right here in Lee
24 County since 1979.

25 HEARING EXAMINER: Okay. Have you worked with

1 any of the other mines in the area?

2 MR. LADD: Well, the old Florida Rock Mine, which
3 is currently the Brinker Mine, yes, I was there as well.

4 HEARING EXAMINER: Okay. Questions of your
5 witness?

6 Questions by staff?

7 MR. BLOCK: No, ma'am.

8 HEARING EXAMINER: Okay.

9 MR. LADD: Thank you.

10 HEARING EXAMINER: Thank you.

11 MR. SCHROPP: Madam Hearing Examiner, I believe
12 that concludes our case in chief on the issues that we've
13 brought forth today for your consideration. As I
14 indicated, Ken Passarella is here if you have any specific
15 wetland questions or issues with regard to the wetland
16 impact that we are trying to address or any other issues
17 associated with wetland. I mention that because Ken has a
18 deposition this afternoon and needs to leave shortly. So
19 if you do have any questions or think his input might be
20 important, now would be the time.

21 HEARING EXAMINER: Now would be the time.

22 MR. SCHROPP: Thank you. I'll bring Ken
23 Passarella up. Thank you.

24 And as he's coming up, I believe he has
25 previously been tendered and accepted as an expert in

1 wetland ecology, and I would tender him as an expert in
2 that field today.

3 HEARING EXAMINER: Any objection, Suzie?

4 MS. DERHEIMER: No.

5 HEARING EXAMINER: Okay. Accepted.

6 Thereupon,

7 KEN PASSARELLA,

8 called as a witness by the Applicant, having been
9 previously duly sworn, was examined and testified as
10 follow:

11 HEARING EXAMINER: You are sworn in, Ken?

12 MR. PASSARELLA: Yes, I am.

13 HEARING EXAMINER: Okay. State your name for the
14 record.

15 MR. PASSARELLA: For the record, my name is Ken
16 Passarella with Passarella & Associates. President and
17 principal ecologist with Passarella & Associates.

18 HEARING EXAMINER: Okay. The question that I
19 have really relates to the proposed phasing plan and that
20 one little teeny neck right there at the end. See the
21 dog's head that sticks out, a little ear up and the whole
22 bit? Yes. All right. Right there at his muzzle, that
23 one little area right in there, how wide is that? No, the
24 part that's -- yes, right there. How wide is that; do you
25 know?

1 MR. PASSARELLA: How wide is that mining area
2 right there?

3 HEARING EXAMINER: Yes. How wide is the area?

4 MR. PASSARELLA: Tom, do you have a scale? We
5 could scale it off for you?

6 MR. McLEAN: For the record, Tom McLean with Hole
7 Montes.

8 Are you talking about this strip of 2.4?

9 HEARING EXAMINER: Yes, that's what I'm talking
10 about.

11 MR. McLEAN: Approximately 300 to 400 feet.

12 HEARING EXAMINER: 300 to 400 feet wide.

13 MR. McLEAN: That's 2.4. And then there's a
14 section of 2.1 that's probably in the 100 foot range.

15 HEARING EXAMINER: Okay. So somewhere, say, 400
16 to 500 wide. All right. And when they get out there and
17 they start specifically digging the overburden, there's a
18 lot of dust involved. Have you guys made any kind of
19 management plan or anything to keep down -- I mean,
20 there's dust involved in mining the rock, but at least
21 it's wet. But with the dirt, it's dry. Have you made any
22 kind of plan or thought about any kind of a plan to
23 protect those wetlands from that flying dust?

24 MR. PASSARELLA: I would defer to Florida Rock,
25 but I do know they have a dust management plan where they

1 have to water the roads and keep things watered to
2 minimize the amount of dust flowing in the area. But I
3 don't know the details of that. It's an operations issue,
4 and I would defer to them on an explanation of that.

5 HEARING EXAMINER: Okay. But that's watering the
6 roads and stuff. What I'm concerned about is when they're
7 actually doing the excavation. If they're doing a water
8 cell, I mean one of the dewatering cells there, and
9 they're digging out the dirt and they've already taken the
10 water out, when they start digging that dirt out, there's
11 going to be a lot of dust flying. Is there anything --

12 MR. SCHROPP: That might be Ed's area.

13 MR. LADD: Ed Ladd again.

14 It's actually not as dusty as you're envisioning.
15 We're digging a hole in the ground and we're getting a
16 certain amount of moisture content that stays residual in
17 the dirt even though you're dewatering and taking that
18 out. The moisture content in that dirt that you're
19 digging is probably in the 16 to 17 percent range.

20 HEARING EXAMINER: Enough to get it to hold
21 together?

22 MR. LADD: Right. So you really aren't seeing
23 the dust there that I think you're envisioning. In
24 addition to that, we do utilize a pretty intensive dust
25 management program with large water trucks that run

1 through their hourly and spray.

2 HEARING EXAMINER: Is there going to be any
3 storage, any piles of dirt along any of the perimeter of
4 that wetland area?

5 MR. LADD: Typically, no. The dirt in piles,
6 that leaves the site as well.

7 HEARING EXAMINER: Because I know they've got a
8 100 foot setback for, I think it was the piles,
9 stockpiles, 100 foot setback. But when you get a nice
10 breeze going and you get nice dust, it will cover
11 everything. So -- okay.

12 MR. PASSARELLA: As far as dust having a negative
13 impact on the wetlands, I mean, in southwest Florida we
14 have a lot of agricultural operations out in these rural
15 areas. And during certain times of the year, there is no
16 vegetation on those agricultural fields so it's not
17 unusual even to get dust blowing around and then dirt
18 moving around as a result of that. And I haven't seen any
19 negative impact from the result of those agricultural
20 operations from dust blowing off of those into, you know,
21 maybe whatever may occur in the adjacent wetlands. I
22 mean, we have a lot of healthy wetlands out in that area.
23 I haven't seen any negative impacts as a result of that.

24 HEARING EXAMINER: My concern is that, you know,
25 we're talking about a 12 hour day, Chip? Is this a 12

1 hour day operation?

2 MR. BLOCK: It could be 24. There's no limited
3 hours of operation.

4 HEARING EXAMINER: All right. So we're talking
5 about the wind in a natural setting versus a manmade
6 setting here because you've got the trucks going through,
7 you've got the creepy crawler dumping stuff, you've got
8 the -- it's just a whole lot of things contributing to the
9 wind factor and the dust bowl that it's going to end up or
10 can end up.

11 I just wondered if there was any kind of plan
12 involved -- have there been anything on any of the
13 wetlands, any of the other wetland areas that you know of?

14 MR. SCHROPP: The only thing I would note also,
15 and, Ken, you may know, I believe there's a required
16 setback from excavation to wetland boundaries that's
17 fairly significant as well.

18 MR. PASSARELLA: Right. It varies depending on,
19 you know, the draw down effect, potential draw down effect
20 of the excavated area. It's regulated through our DEP
21 permits or our South Florida Water Management District
22 permits for the project.

23 MR. LADD: If I can, I wanted to make sure you
24 had a good picture of this, but the piles of dirt that you
25 are talking about and within that area from the wetland

1 out into our active mining area, we've got berms for the
2 recharge trench operation and once again the dirt is in
3 still a very wet condition. 16, 17 percent moisture is
4 really high. Most of the customers really would like it
5 down in the 4 to 5 percent.

6 HEARING EXAMINER: So you guys are actually
7 taking it right out of the cell and putting it right into
8 the trucks for delivery?

9 MR. LADD: Yes.

10 HEARING EXAMINER: So you're not actually going
11 to be having any kind of stockpiles of the dirt itself,
12 but the rock will be stockpiled?

13 MR. LADD: The rock will be stockpiled, that's
14 correct. The dirt is a valuable commodity. It's leaving
15 there just as fast as it's being excavated. So I wanted
16 to make sure you were comfortable that we really don't
17 have that dust condition happening.

18 HEARING EXAMINER: Okay. I'll do a site visit
19 and you guys can convert me.

20 I don't have any other questions of this witness.
21 Anybody else have questions of this witness?

22 MR. BLOCK: I do not. Suzie?

23 HEARING EXAMINER: Suzie?

24 MS. DERHEIMER: No.

25 HEARING EXAMINER: Thank you.

1 MR. SCHROPP: With that, our group is available
2 for any follow-up questions. I guess I would note at the
3 conclusion here of our presentation, that we did have a
4 meeting out in the neighborhood with residents nearby. I
5 believe that occurred back in September of last year,
6 September of 2007, and tried to address the issues and
7 concerns that they had. And it was well attended. And I
8 suspect the reason they're not here is because we probably
9 did a pretty good job of addressing those issues and
10 concerns.

11 HEARING EXAMINER: Can you tell me off the top of
12 your head, Russ, what some of those concerns were?

13 MR. SCHROPP: I did not attend the meeting, so
14 Lori or Ed.

15 MR. LADD: Ed Ladd again.

16 Once again, our adjacent neighbors attended along
17 Mallard Lane and some of the surrounding area. As you can
18 probably imagine, when you get them in a room, the primary
19 concerns were truck traffic issues and questions about
20 blasting and schedules of blasting. That was really
21 primarily what we talked through at that meeting.

22 HEARING EXAMINER: And they didn't have any noise
23 or lighting concerns or anything specifically?

24 MR. LADD: I don't recall any lighting concerns
25 at all. And the noise, if there was any conversation

1 about it, it was probably related to the dump trucks
2 traveling up and down the roads as I recall. Anybody
3 else?

4 HEARING EXAMINER: Okay. The electric digger
5 thingie tends to be a lot quieter than the diesels.

6 MR. LADD: It is extremely quiet. The diesels
7 are somewhat the opposite.

8 HEARING EXAMINER: They are very loud.

9 Okay. Thank you.

10 MR. SCHROPP: Thank you. That's all we have.

11 HEARING EXAMINER: All right. Chip, are we ready
12 to make staff presentation?

13 MR. BLOCK: Yes, ma'am.

14 Thereupon,

15 CHIP BLOCK,
16 called as a witness by Staff, having been previously duly
17 sworn, was examined and testified as follows:

18 MR. BLOCK: Good morning.

19 For the record, my name is Alvin "Chip" Block. I
20 am with the Department of Community Development, Principal
21 Planner. I have taken the oath today for this public
22 hearing, and I would like to be accepted as an expert
23 witness in land use planning and zoning. I have been
24 previously tendered as such in this forum and would again
25 like to be accepted for this case.

1 HEARING EXAMINER: Okay. Any objections from the
2 applicant?

3 MR. SCHROPP: No objection.

4 HEARING EXAMINER: All right. Accepted.

5 MR. BLOCK: Madam Hearing Examiner, first of all,
6 what I will relate to and discuss is very quickly Mr.
7 Schropp's presentation from the standpoint of history on
8 the case. He does have a little bit more history on this
9 case than I do, because he goes back to the 1981 case and,
10 unfortunately, I was not able to be involved with or was
11 it fortunately not being able to be involved with the
12 Harper Brothers mining operation up until 1988 when the
13 first IPD zoning application came in.

14 At that point that's approximately the same time
15 I started beginning handling the mining operations in Lee
16 County, and this may have been my first one, or very close
17 to my first ones. So since that time, I have been the
18 planner involved with this particular mining operation.
19 So between Russell and myself, I think we can provide the
20 history.

21 As to what Russ has talked about during the
22 presentation on history, I really have nothing to say as
23 to -- negative toward that. I believe he presented the
24 history correctly to you with use of the resolutions and
25 the intents and even the settlement agreement that was

1 involved with this.

2 With that being said, you do have a staff review
3 of this case. It's actually contained in two separate
4 documents, one being a Staff Report of September 18th,
5 that would be in the lower left-hand corner of the Staff
6 Report, as to this last printed date, September 18th,
7 2007.

8 This has been supplemented by a memorandum from
9 my office of January -- dated January 14th.

10 The original staff recommendation on this case
11 was a recommendation to approve the phasing and the
12 wetland impacts but not to approve the dewatering request.

13 With that recommendation, the applicant needed to
14 sit down and ask for a continuance of this case to allow
15 them to sit down with county staff, go over the dewatering
16 proposal and provide information to staff. And we have
17 done that on a number of occasions since the continuation
18 of this particular case. We have either sat down and
19 talked with the applicant and their representatives or
20 have shared information back and forth as to the
21 dewatering and dewatering modeling associated to the
22 operation.

23 With that happening, we have come to the point at
24 this time, based upon the background information on the
25 memorandum and our understanding of the permitting through

1 the Water Management District, that we are now satisfied
2 that the applicant has addressed the concerns that the
3 staff had raised as to a recommendation of denial of
4 dewatering. And the January 14th memorandum provides the
5 Hearing Examiner a recommendation of approval of all three
6 aspects of this application. The phasing change, the
7 changes to the wetland impacts and also the change to
8 allow for dewatering of this particular mining operation.

9 The memorandum also includes a change in the
10 findings under the Comprehensive Plan policies, goals,
11 policies and objectives that we have raised because we now
12 find that the proposed dewatering of the operation will --
13 is not expected to have any impacts on the well field
14 operation immediately adjacent to this nor to the private
15 wells in the area based upon the modeling that has been
16 done.

17 And as pointed out by Dr. Lee during his question
18 and answer of Kirk Martin, they did a conservative
19 approach in their modeling and that conservative approach
20 was to not consider the trenching that was being proposed
21 and looked at the dewatering model associated to that.

22 And even under the conservative approach, staff
23 felt comfortable that there were going to be no adverse
24 impacts. But following that, knowing that they were going
25 to go with the trenching provisions, Dr. Lee and Natural

1 Resources staff, Lee Werst who is also here today, were
2 satisfied that adverse impacts on surrounding users,
3 whether they be the private wells or the utility location,
4 wells associated to that, there were going to be no
5 impacts, and that is why we're able to recommend approval
6 of this.

7 As Russell pointed out during his presentation,
8 he is correct that I felt it necessary in this application
9 to try to codify all of the conditions from the previous
10 zoning actions contained within this area, the new mining
11 area that they've been talking about, the expansion as
12 they have put it during their presentation.

13 So I have attempted through this memorandum to
14 codify all of the conditions associated to this mining
15 operation so that we have one document to fall back on for
16 enforcement proceedings rather than looking at three
17 separate ones.

18 And since dewatering is being recommended for
19 approval, it takes away the areas of where the language is
20 different in the three resolutions for dewatering
21 activities, whether they be dewatering is not allowed
22 within the excavation pits versus dewatering is not
23 allowed as part of the mining operation. It just codifies
24 everything together and creates the ability to dewater
25 subject to following the modeling information provided by

1 CDM and also complies with the approvals of the Water
2 Management District.

3 The memorandum also includes the new findings and
4 conclusions to assist the Hearing Examiner. What Mr.
5 Schropp has pointed out under -- in the second page under
6 2.c as to a change in the language, we have absolutely no
7 problem with that where he asks that it be considered a
8 statement that dewatering of the excavation will not have
9 negative impacts on the quality and quantity of the water
10 available is a correct statement. We have no problem
11 changing that on Page 2 of the memorandum of the Staff
12 Report for the Hearing Examiner.

13 As to Condition 1 on the third page, I apologize,
14 I still have not learned how to paginate -- provide page
15 numbers on these without typing them individually.

16 HEARING EXAMINER: You need a secretary, they're
17 wonderful.

18 MR. BLOCK: However, due to the budget, I don't
19 think the planner is going to have a secretary to do that.
20 So I'm learning through our internal services staff a way
21 to do that, but I still haven't learned that process.

22 Going to Condition 1, Mr. Schropp asked that the
23 Master Concept Plan date be changed from February 22nd,
24 2007, to the September 7th, I believe it was, 2007,
25 09-07-07 date.

1 What I'd like to do is point out, Madam Hearing
2 Examiner, that really all they're doing is changing one
3 sheet. It's Sheet 7 of 10 of the Master Concept Plan.
4 Really, that's the only change. So my opinion is that it
5 would be better worded that the Master Concept Plan is
6 still the same state of the stamped received date of
7 February 22nd, 2007, with the exception of Sheet 7 of 10
8 which will reflect a revised date associated to it that
9 will be received when, as Mr. Schropp pointed out, they
10 need to make some slight changes on that sheet for I
11 believe it was the wetland impact acreage that you were
12 noting and actually depicting the impacts, the actual
13 impacts of the mining operation area, where it was going
14 to be -- or has been mined at this time.

15 So I think what we need to do is just keep that
16 date blank and as the applicant provides us that new
17 sheet, it will have a revised date on it and that will be
18 the sole exception. And then we will put those pages
19 together for the Board of County Commissioners when it
20 goes to them. And also as part of the resolution should
21 the Board of County Commissioners approve the case and for
22 that matter presuming that you would also recommend
23 approval of the case to the Board of County
24 Commissioners.

25 The other item was the actual acreage associated

1 to a couple of conditions, and that is the acreage of
2 wetland impact, changing it to 0.79 acres, if my notes and
3 memory is correct on that.

4 HEARING EXAMINER: Right.

5 MR. BLOCK: And we have -- I don't think Suzie
6 has any particular problem with that because it identifies
7 the changes that the applicant has noted as to the actual
8 impacted area.

9 Also have a note here that says that we're going
10 to need new language to address the depth of the lake
11 trench recharge as Mr. Martin was pointing out during his
12 presentation and needs to work that out, so I think we
13 need to keep the record open on that regard, too. So
14 we're looking at keeping the record open for at least two
15 points at this time. That being a revised Sheet 7 of 10
16 of the Master Concept Plan, and the conditional language
17 regarding the depth of the trench, recharge trench.

18 In summary to my portion of the presentation,
19 staff has recommended approval of this case, of the three
20 changes that are being proposed by the applicant with the
21 conditions as outlined in the staff memorandum and as
22 corrected during this public hearing.

23 I do have with me today from county staff, Lee
24 Werst from Natural Resources, Howard Wegis from utilities,
25 and Suzie Derheimer from Environmental Sciences. I know

1 Suzie has a short presentation that will address a few
2 points that she needs to make. I also know that Lee Werst
3 has a very short presentation from the standpoint of
4 making a point concerning I believe it was the monitoring
5 wells and some things that had -- that I actually asked of
6 Kirk Martin that I think he needs to clarify to help the
7 Hearing Examiner know how the monitoring wells work and
8 go from there. And Howard Wegis does not have a
9 presentation to make, but knowing that we're next to the
10 county well field operation, I will point out that all
11 staff has looked at this, the three divisions and
12 departments that I've talked about have looked at this,
13 and they concur with the staff recommendation of approval,
14 but should you have questions on the well field operation,
15 Howard is here to answer those questions and Natural
16 Resources is here to answer any questions regarding the
17 ground water modeling and all and Suzie is here to answer
18 any questions on Environmental Sciences. But from my
19 standpoint I'm finished with my presentation and open it
20 up to questions either of the Hearing Examiner or the
21 applicant or County Attorney.

22 HEARING EXAMINER: Questions of this witness by
23 the County Attorney?

24 MR. SPICKERMAN: No questions.

25 MR. SCHROPP: I have no questions.

1 HEARING EXAMINER: Chip, I have a bunch of -- I
2 don't know whether to go ahead and try to get the rest of
3 them out of the way and then bring you back up or just go
4 ahead and --

5 MR. BLOCK: If you don't have a lot of questions
6 associated to the other division --

7 HEARING EXAMINER: I might to Lee Werst and Sam
8 Lee if he's still here, whatever. I may have questions, a
9 few of them regarding the modeling.

10 MR. BLOCK: I think Lee can answer the questions
11 on the modeling so if you would like to go to the other
12 members of county staff and have them completed and go
13 from there and come back to me, you're welcome to do that.

14 HEARING EXAMINER: Let's do that. Let's at least
15 get Suzie so she can go on to whatever she wants to do,
16 if she wants to get out of here.

17 MR. BLOCK: I don't know why she would want to do
18 that.

19 HEARING EXAMINER: We can take her out of turn
20 and then -- because I do have quite a few questions for
21 you and I don't want to hold everybody up totally.

22 MR. BLOCK: Fine. Then I'll turn it over to
23 Suzie and then to Lee, and if you've got questions, you
24 can ask them.

25 HEARING EXAMINER: All right. Thank you.

1 Thereupon,

2 SUZIE DERHEIMER,

3 called as a witness by Staff, having been previously duly
4 sworn, was examined and testified as follows:

5 MS. DERHEIMER: Hi. For the record, Suzie
6 Derheimer, Environmental Sciences. I have been sworn.
7 And I have been deemed an expert witness in past hearings
8 in environmental planning, and I request to do so today.

9 HEARING EXAMINER: Okay. Any objections from the
10 applicant?

11 MR. SCHROPP: No objections.

12 HEARING EXAMINER: All right. Accepted.

13 MS. DERHEIMER: I just want to clarify a couple
14 of things that was presented by the applicant, and I think
15 Chip did address the wetland acreage.

16 Based upon what was submitted by the applicant at
17 this hearing, and that it is -- a new Master Concept Plan
18 is changed to reflect those -- that wetland acreage,
19 environmental staff doesn't have an issue with changing
20 Condition 23, the wetland acreage.

21 Given that it has not been officially reviewed by
22 Southwest Florida yet, I'd like to make sure that the plus
23 or minus is included in there.

24 HEARING EXAMINER: Okay. Plus or minus 7 --

25 MS. DERHEIMER: Right. I don't want to say

1 exactly seven nine because these conditions tend to be
2 taken very literally, so plus or minus would probably be
3 appropriate in case Southwest Florida does offer a smaller
4 or greater impact.

5 Also, in the original Environmental Science
6 Condition No, I believe it's 25, I apologize, I don't have
7 the January 14th memo, I have the 11th, so it's a
8 different condition.

9 HEARING EXAMINER: Okay. The original 25 was
10 prior to the Development Order approval. The Development
11 Order plans must delineate a minimum of 396 acres.

12 MS. DERHEIMER: Okay.

13 HEARING EXAMINER: Is that it or are you --

14 MS. DERHEIMER: On the memo January 14th, No. 25,
15 states that prior to Development Order approval, the
16 applicant must submit for review and approval by the
17 Division of Environmental staff a current protected
18 species assessment. This condition was written based upon
19 the current MCP, which identifies an impact of 3.87 acres,
20 which according to this MCP does depict an impact to
21 cypress and indigenous habitat.

22 Based upon that, staff was requiring a protected
23 species assessment of that area. Based upon what was
24 submitted by the applicant at this hearing and will be
25 documented on the Master Concept Plan, there are no

1 proposed impacts, there are just existing impacts. So if
2 a new MCP is submitted to show just existing impacts, then
3 the protected species survey, Condition No. 25, should not
4 be required. Okay. Does that make sense?

5 HEARING EXAMINER: Yes.

6 MS. DERHEIMER: Okay. Thank you. And I think
7 that was the two issues. And I'm just really here for any
8 other questions that you may have.

9 HEARING EXAMINER: Okay. Questions by County
10 Attorney of this witness?

11 MR. SPICKERMAN: No questions.

12 HEARING EXAMINER: Questions by the applicant?

13 MR. SCHROPP: No.

14 HEARING EXAMINER: Suzie, I actually don't have
15 any questions either. Thank you, ma'am.

16 MS. DERHEIMER: Thank you.

17 MR. BLOCK: At this moment I'll have Lee Werst
18 come up, Madam Hearing Examiner, from Natural Resources.
19 As he comes up, he has been previously accepted, but I'll
20 let him kind of go through his background and ask that he
21 be accepted as an expert witness.

22 MR. WERST: Lee Werst for the record. I have not
23 been sworn and I have been previously accepted as a
24 witness in monitoring and hydrogeology and also have
25 experience with dewatering, too.

1 Thereupon,

2 LEE WERST,

3 called as a witness by Staff, having been first duly
4 sworn, was examined and testified as follows:

5 HEARING EXAMINER: Thank you. State your name
6 again for the record.

7 MR. WERST: Lee Werst, Lee County hydrogeologist.

8 Now, what I'd like to bring to your attention, if
9 I may, please, is a couple of points that I don't think
10 were discussed and I apologize. I was late in to the
11 hearing this morning. But I'd like you to be aware that
12 the area that they're going to be working in, and I
13 believe it's Section 12, is or was up until six months ago
14 an agricultural area, so, therefore, the ditches that are
15 introduced also as hydraulic trenches were in existence
16 since 1981.

17 Now, I don't think that the whole picture, that
18 everybody understands that. So prior to any dewatering
19 taking place, these are ditches that already are
20 established and are there. So, therefore, natural water
21 levels for monitoring that are established prior to any
22 construction, during construction and even after
23 construction will show what's going on as you well
24 understand.

25 With that being in mind, I would like you to be

1 also aware that the ditches not only -- the way farming
2 was done out there was the ditches were filled from water
3 from the existing mine. It was pumped from the mine to
4 flood irrigate this agricultural area, okay, and that's
5 not well known also.

6 Usually in an agricultural water use permit from
7 the South Florida Water Management District, water level
8 monitoring is not always something that's very prevalent,
9 especially in the earlier years.

10 Now, what I'd also like you to be aware is with a
11 dewatering permit that's established by the South Florida
12 Water Management permit, it actually is a more controlled
13 permit.

14 They actually put regulations in the permit that
15 staff gauges will be installed, surveyed and installed in
16 these hydraulic trenches, ditches, so that water levels
17 are maintained at a certain level which is usually on or
18 around the mean season high water level, mean season high
19 -- wet season water table.

20 HEARING EXAMINER: Wet season.

21 MR. WERST: Yes, ma'am. And that way it's
22 constantly at a saturated point so that you're more aware.
23 And, again, it's a more controlled environment this way,
24 rather than the previous way of agricultural use which
25 flooded and then let go and flooded and let go.

1 The other point that I'd like to bring out is
2 there were 17 monitoring wells that have been established
3 located throughout this very large project. So in event
4 you will actually be able to establish an ambient water
5 level in areas that are not being dewatered nor mined. So
6 you can at that point use that -- and that's how I plan on
7 reviewing this project also when water levels are
8 submitted to me, you can actually see what the natural
9 ambient water level is as compared to how it's being
10 adjusted with a hydraulic trench and the dewatering that's
11 going on.

12 HEARING EXAMINER: Now, let me ask you a
13 question. That's what you plan. Is there a condition
14 that sets out that they will provide you with the
15 monitoring data from all 17 of the monitoring wells, not
16 just the ones in close proximity to what's actually being
17 mined at this point?

18 MR. WERST: Yes, ma'am. As a matter of fact, a
19 package was just submitted to me yesterday from those
20 wells and that's a good thing. With that in mind, the
21 information is submitted to me quarterly and reviewed.

22 Of course, now please keep in mind that the wells
23 actually have monitoring trolls is what they're referred
24 to in the wells that actually take per minute readings.
25 So you're seeing -- you're literally watching water levels

1 as they happen, and that's how the data that Mr. Martin
2 introduced to you also is from that monitoring device.

3 HEARING EXAMINER: So, now, when you've got the
4 minute by minute play here of that data and stuff, all
5 right, when you get the quarterly report, is that a
6 compilation, a summarization or all of that dad gum minute
7 by minute byplay?

8 MR. WERST: Every minute by minute replay.

9 HEARING EXAMINER: So you get to go through the
10 whole little fellow, huh?

11 MR. WERST: God bless Excel. That's why you've
12 got hydrographs. Yes. And that's exactly what we do is
13 we look at that and we can look at it. If we see
14 something particular, technically the way we'll look at it
15 first would be to look at certain spikes or high points
16 within the hydrographs that are also provided. And then
17 if it's something that looks way out of the norm, we're
18 going to refer back to that point to see.

19 What we'll also take in consideration, please
20 keep in mind that we're going to also take into
21 consideration rainfall or there lack of, and droughts that
22 are going on also because we have to take that in effect
23 of what the ambient water level should be. Okay?

24 HEARING EXAMINER: Okay. Anybody have any
25 questions of this witness?

1 MR. SCHROPP: No.

2 MR. BLOCK: No.

3 HEARING EXAMINER: I've got several.

4 MR. WERST: Fire away.

5 HEARING EXAMINER: All right. Looking at Chip's
6 latest submittal, which is January 14th, okay, the CDM
7 transmittal, okay, it says, the very front page, it was
8 sent to Sam Lee from Frank Winslow. It says, "Attached is
9 the revised modeling writeup based on on-site slug
10 testing."

11 I'm assuming the slug testing is not the little
12 critters?

13 MR. WERST: You're absolutely correct. That's a
14 very good question. What that is it's a measure of
15 transitivity. The way that's performed is it's a
16 calculated volume of water, and it can be done two ways,
17 either a calculated volume of water can be drawn out and
18 then it's a measurement of time to see when that water
19 recovers back.

20 HEARING EXAMINER: When the water comes up?

21 MR. WERST: Or vice versa. It's a calculated
22 amount of water that is in a tank and at that point it's
23 released down the well. They know the time that it takes
24 to get down the well, and then again they measure the
25 amount of time of recovery and that's what a slug test is.

1 HEARING EXAMINER: Okay. I would not have made
2 it that.

3 The next thing that -- okay, so it says several
4 slug out tests were performed and resulted -- I'm on the
5 second page now -- and resulted in the same K value which
6 is your hydraulic conductivity value.

7 MR. WERST: That's correct.

8 HEARING EXAMINER: Now, when they say several
9 tests were performed, are they talking about this
10 particular monitoring well or this particular section or
11 this particular area or are they talking about several
12 over the site?

13 MR. WERST: Yes, ma'am. I would have to probably
14 refer that question closer to Mr. Martin if I could. I
15 believe it was throughout the site is where they were
16 done, and that's what they're looking to is to establish a
17 transitivity throughout the site of what it is.

18 HEARING EXAMINER: All right. Because the other
19 hearing that we had on trans -- and et cetera and et
20 cetera, everybody kept saying but it's not homogeneous,
21 it's not homogeneous. So you can't take it in one spot
22 and expect it to be the same some place else.

23 MR. WERST: That's the whole idea, yes, ma'am.

24 HEARING EXAMINER: That's the purpose of my
25 question.

1 Now, I have another one in here. Okay. Now,
2 they're doing the hydraulic -- I'm looking now at the next
3 page which is Harper Brothers Mine, it starts with the
4 numerical draw down model, then it goes to model geometry
5 and development.

6 MR. WERST: Yes.

7 HEARING EXAMINER: And in the middle of the
8 second, the biggest, fattest paragraph there where it has
9 the 200 rows, 200 columns, it says that the hydraulic
10 conductivity from slug testing performed on an on-site
11 monitor well completed in the unconsolidated sediments at
12 the project site. So I'm assuming that that means that
13 the slug testing was only done through the dirt.

14 MR. WERST: That's correct.

15 HEARING EXAMINER: It didn't go into the rock at
16 all?

17 MR. WERST: Yes, ma'am. And if I can explain the
18 idea behind that.

19 HEARING EXAMINER: Yes, sir, please.

20 MR. WERST: It's probably constructed to the
21 depth that they will be dewatering to. So that you can
22 establish the material, that only material that you're
23 affecting right there. You're not going to affect below
24 an intake of a pump. You're only going to affect at the
25 pump or above it.

1 HEARING EXAMINER: Now, my next question with
2 that is one of the first things in the power point showed
3 me the ripple effect, you've got dirt, you've got -- you
4 know, I mean, it's not a clean cut line as far as the rock
5 is concerned.

6 MR. WERST: You're correct.

7 HEARING EXAMINER: So if you're taking a 20 foot
8 section of dirt and you're determining what the hydraulic
9 conductivity is and it's all dirt, isn't that going to be
10 a different conductivity if you get halfway through this
11 and then you've got pockets of rock in the middle of this
12 little sucker --

13 MR. WERST: Yes, ma'am.

14 HEARING EXAMINER: -- so that you may end up with
15 only ten feet of actual honest to God dirt?

16 MR. WERST: And I would probably, if I could,
17 refer back to Mr. Martin on that, but also keep in mind
18 that it doesn't really jut up and down.

19 HEARING EXAMINER: I know.

20 MR. WERST: I think that that picture is kind of
21 a little bit over exaggerated. It's more of a gradual
22 incline is the way it is. And keep in mind with that
23 gradual incline, their dewatering level will also be
24 raised, too. Yes, ma'am. They're not going to -- the
25 proposal is not to dewater any lower or into the rock at

1 all.

2 HEARING EXAMINER: Okay. Now, what if you've got
3 a situation where you have a three ton limestone rock
4 completely surrounded by sand, all right. They're going
5 to dewater to the top of that three ton rock and then when
6 they get around to actually digging, they're going to dig
7 that three ton rock out and now we've got sand underneath
8 it?

9 MR. WERST: Yes.

10 HEARING EXAMINER: Okay. So then their test
11 would actually only be to that rock itself if they
12 actually did the conductivity test? It would be to the
13 rock itself?

14 MR. WERST: If that existed, that potential does
15 exist, yes, ma'am.

16 HEARING EXAMINER: Because I've seen some of the
17 mines on my site visits where they are out there and they
18 are digging out the dirt, and they get some enormous
19 boulders.

20 MR. WERST: It's referred to as cap rock,
21 commonly known, yes, ma'am. And, technically, in some
22 areas they'll probably be below that because it may come
23 up because there is sand a little bit lower than that
24 which may extend down to 20 feet.

25 HEARING EXAMINER: Okay. So it says that they

1 came up with -- the hydraulic conductivity value from the
2 slug testing is consistent with the range of hydraulic
3 conductivity value for sands in literature, and that's 3
4 to 283 feet per day for well sorted sands.

5 MR. WERST: Yes.

6 HEARING EXAMINER: I'm assuming that we're
7 assuming that what they have out there is well sorted
8 sand.

9 MR. WERST: Yes, ma'am.

10 HEARING EXAMINER: Okay. All right. Then they
11 go on with "A vertical hydraulic conductivity of 4.5 feet
12 per day was assumed since the horizontal K values are
13 typically two to five times higher than the vertical K
14 values." What is this?

15 MR. WERST: Okay. I'm sorry, which paragraph are
16 we on?

17 HEARING EXAMINER: The very bottom sentence of
18 the 200 row model.

19 MR. WERST: Still the same paragraph.

20 HEARING EXAMINER: Same paragraph, bottom
21 sentence. What is that telling you? What does that tell
22 you and then you tell me.

23 MR. WERST: Okay. What they're saying with that,
24 the vertical hydraulic conductivity, in other words, the
25 movement of the water.

1 HEARING EXAMINER: Up and down.

2 MR. WERST: Up and down.

3 HEARING EXAMINER: Not sideways.

4 MR. WERST: Right. Is two to five times higher
5 than the values technically in the sand. So it -- please,
6 would you step up and explain that maybe in the model. I
7 think Kirk with the slug test can explain that a little.

8 HEARING EXAMINER: 13 days of mining hearing and
9 all of this stuff comes in and I'm working my way into
10 getting a Ph.D. I mean, I'm going to ask for college
11 credit here one of these days.

12 MR. BLOCK: If you get it, please let me know
13 because I will ask for it too.

14 HEARING EXAMINER: You want to go, too, huh?

15 MR. BLOCK: Yes, ma'am.

16 HEARING EXAMINER: All right, Kirk.

17 MR. MARTIN: You have a number of questions I'll
18 try and respond. One of the questions you have most
19 recent was the idea of horizontal permeability being
20 different than vertical permeability. The slug test
21 actually measures permeability. What they typically do is
22 they measure -- there's actually different ways to do
23 them, but the ones we did were for measuring horizontal
24 permeability.

25 HEARING EXAMINER: Okay. So the slug test that

1 you all did was the horizontal.

2 MR. MARTIN: Correct.

3 HEARING EXAMINER: Not the vertical.

4 MR. MARTIN: Correct. We typically only use
5 vertical slug tests when we're looking at clays, things
6 like that. They don't really work that well in sand.
7 But, again, what we measured was horizontal permeability.

8 In sands the vertical permeability is typically
9 less than horizontal permeability by a factor of two to
10 five. If you go into certain rock types it can be greater
11 than that. Some of like in limestones we typically use
12 like a ten to one. And the reason for that is because
13 gravity is affecting things so it gets compacted and
14 things lay down in layers. So there's some preferred
15 permeability between the layers less so in a vertical
16 sense. So what happened there, because we had data for
17 the horizontal permeability to create the model, we used
18 these assumed values for the vertical to create the model.

19 HEARING EXAMINER: Okay. All right. So then
20 this is the model that said at 1,000 feet you're going to
21 have a .421 draw down?

22 MR. MARTIN: That's correct.

23 HEARING EXAMINER: Okay. Next question, down at
24 the very bottom sentence in that section, "The river,
25 drain, and evapotranspiration packages were not used in

1 the model." Why?

2 MR. MARTIN: This was a very simple model. The
3 idea was just to show what draw down was occurring in a
4 very simplistic approach, very conservative approach as
5 Sam Lee testified to earlier.

6 Whenever you start using all the components of
7 the model, you start getting a more complex model, that
8 means you have to get more data. You have to calibrate
9 more data. So it's real easy to say I'd like to model
10 everything, but it's a major undertaking. So what you
11 want to do is design your tools to answer the questions at
12 hand. In this case we have a question about how far away
13 could we assume in a conservative analysis draw down would
14 occur and to what magnitude that would be. So this
15 approach was taken.

16 You get into talking to world class modelers, at
17 least in my opinion the ones who really get it are the
18 ones who go as simple as possible because the more complex
19 you go, the more unknowns you have to make up information
20 for. So what you want to do is design your tool to answer
21 the question.

22 HEARING EXAMINER: All right. Okay. I
23 understand about the trench. I understand about the model
24 and what you guys have done and what you came up with at
25 1,000 feet and what you came up with at 2,000 feet or

1 2,500 feet, whatever it was. But it seems to me to get a
2 real honest to God picture of what the true draw down is
3 going to be, you'd have to use at least the
4 evapotranspiration packages because you're looking at a
5 major lake out here.

6 When this is all over and done with, man, you
7 know, you got lots of water and not a whole lot of dirt or
8 anything else. It just seems to me that that should have
9 been part of the assumptions or the review in that because
10 we're looking at, what, 900 acres; is that the size of the
11 mine overall?

12 MR. SCHROPP: Probably close to it.

13 HEARING EXAMINER: That's a pretty dad gum big
14 hole in the ground.

15 MR. MARTIN: If I could, again going back to the
16 idea that we want to design our tools to address the
17 question, the idea of whether this is to be a mine or not
18 was not in question. The mine is already approved. What
19 the question was, is there any effect on the dewatering
20 that's been proposed. This was the approach that was
21 taken to show that.

22 When you don't use some of the other modules and
23 the model, evaporation, rainfall and so forth, you're
24 assuming that all those things are equal. So you could
25 apply them to the model, but you'd apply the same amount

1 to the pre model and the post model. So they have no net
2 effect.

3 HEARING EXAMINER: So you're holding them
4 essentially as constant.

5 MR. MARTIN: Correct. What we're looking at is
6 what is the net effect of the dewatering, and the
7 dewatering only. And that's again a very simple tool
8 applied here.

9 HEARING EXAMINER: Okay. What is drain? You've
10 got the river, drain, and evapotranspiration packages.
11 What is drain?

12 MR. MARTIN: MODFLOW has modular components. You
13 can add and take away different components to create the
14 model you want. It has many, many -- there's probably
15 almost 20 of them right now with the MODFLOW. A drain
16 package essentially -- let me step back a bit. A MODFLOW
17 model consists of a grid. It's actually a cube of grids.
18 You've got vertical stacking and you've got an array of
19 grid cells. Taking a drain package is a way to try and
20 simulate a drainage feature such as a canal, ditch or
21 something. What it is is taking a row of cells and
22 establishing a constant head for different time series.

23 It's just a way of simulating a drainage effect.
24 A river package is a little more complex, in that you can
25 do the same thing. You can create a linear river, but

1 that -- in the module, the MODFLOW, that use allows you to
2 adjust that river with flows and different heads for
3 different times whereas a drain package is typically held
4 at a constant level.

5 HEARING EXAMINER: That's interesting. I would
6 have thought the river would have been more of a
7 constant.

8 Okay.

9 MR. MARTIN: You had a couple of further
10 questions that I could probably address if you want me to.

11 HEARING EXAMINER: Okay.

12 MR. MARTIN: You had a question about the varying
13 thickness of the sand and how that affected the
14 permeability. That's a great question. Essentially the
15 slug test, we calculate permeability. Transitivity is
16 fact -- contains both permeability and thickness. So the
17 more thickness you have, the more transitivity. We are
18 modeling, our entire analytical approach, we use the full
19 20 foot as our assumed maximum thickness. So in all
20 cases, all analysis are done at the highest transitivity
21 we could use. So any of the dewatering cells of lesser
22 depth, we have less water withdrawn from them, less
23 effective. So we can use the worst use. But you're
24 right, varying thickness does change -- it may not change
25 permeability, which is something you kind of alluded to,

1 but it does definitely change transitivity because the
2 thickness is a factor.

3 HEARING EXAMINER: Okay. All right. That makes
4 sense. I think that may be all that I have. Let me look
5 through the -- as I said, you give me a little bit of
6 knowledge and you're in trouble.

7 Have you guys done the retrenching, the perimeter
8 trenching system on the rest of the mine?

9 MR. MARTIN: That would be a question for
10 Harper -- Florida Rock.

11 MS. SANVILLE: Retrenching all around the mine
12 due to the pre-existing order issued by the South Florida
13 Water Management District back in the early '80s, and it
14 is that that has been utilized for agricultural throughout
15 the years and now being converted over.

16 HEARING EXAMINER: Over to a --

17 MS. SANVILLE: Dewatering trench.

18 HEARING EXAMINER: State your name, please, for
19 the record.

20 MS. SANVILLE: I'm sorry, Lori Sanville from
21 Florida Rock.

22 HEARING EXAMINER: All right. I don't have
23 anything else marked on the other tests and stuff that I
24 have in here, so that must have been it.

25 Okay. If I think of anything else, I will call

1 you back up.

2 MR. WERST: One last point, Madam Hearing
3 Examiner. Has it been established that dewatering will
4 stop within 100 foot of a public supply well? Has that
5 been established to you also so that you're aware of it?

6 HEARING EXAMINER: I think they're within --
7 they're a mile away from a public well, aren't you, guys?

8 MR. WERST: There's actually a proposed well
9 field. If you'll look, you'll see semi circles on the
10 exhibit. Chip is pointing to that right now.

11 HEARING EXAMINER: Those are wells?

12 MR. WERST: Yes, ma'am.

13 HEARING EXAMINER: Okay.

14 MR. WERST: One thing I'd like you to be aware of
15 is the way it's designed is, of course, a hydraulic trench
16 will be there. And that's going to be maintained the
17 whole time, and they will dewater up to within 1,000 feet
18 and then the rest of that point it will be constructed in
19 the wet as to not cause any greater damage.

20 Hence, that's why you see the number a thousand
21 foot, this is what's going to happen at a thousand foot.
22 Okay.

23 HEARING EXAMINER: Oh, I see. Okay. So it's
24 actually a thousand feet from those wells?

25 MR. WERST: If I may be so bold as to just raise

1 my voice a little. Well exists, for example, here, here
2 and here. And at that point the circular area is a 500
3 foot setback, okay. But what's also not necessarily
4 pointed out is 1,000 feet away is where the dewatering
5 operation will stop and the excavation will continue but
6 dewatering will not.

7 HEARING EXAMINER: And that's in the conditions?
8 Did I miss that in the conditions?

9 MR. WERST: That was supplied to us as part of
10 the dewatering operation plan.

11 HEARING EXAMINER: Do I have that, Chip?

12 MR. BLOCK: I believe -- for the record, Chip
13 Block. I believe that's part of the dewatering CDM --
14 yes, it's part of the CDM information if I remember it
15 correctly. If you look at the second to last paragraph on
16 their -- Harper Brothers Mine numerical draw down model,
17 that page, and go down to the bottom, it begins to
18 allude -- actually, the first paragraph under modeling
19 scenario talks about operations performed, second line,
20 performed over an area 400 feet by 1,000 feet, the area of
21 one dewatering cell. And then it goes on down to say has
22 a draw down -- second paragraph, draw down in distance of
23 1,000 feet.

24 What that is alluding to is that that's going to
25 be a 100 to 1,000 foot setback from any well if I remember

1 the intent of this correctly.

2 HEARING EXAMINER: That doesn't tell --

3 MR. BLOCK: It doesn't come out well enough to
4 you.

5 HEARING EXAMINER: That doesn't tell me that.
6 That just simply tells me that this is 1,000 feet from
7 where they're dewatering, the draw down effect is going to
8 be .4 feet.

9 MR. WERST: Without a hydraulic trench in place.

10 HEARING EXAMINER: In between, okay.

11 MR. WERST: Yes, ma'am. So, therefore, please
12 keep in mind that as Dr. Lee also alluded to, the
13 hydraulic trench was not in that model so it will maintain
14 a much higher water level, subsequently no damage to any
15 well.

16 HEARING EXAMINER: What I understood you to say
17 was that they can't dewater within a thousand feet of
18 those wells, and I don't remember seeing that condition
19 anywhere.

20 MR. BLOCK: From a condition standpoint, I don't
21 believe it's in there, from a condition standpoint,
22 because it was a part of the dewatering, the model.

23 HEARING EXAMINER: The model, all right. So the
24 model forms a basis for a bunch of conditions that are not
25 recognized in the approval?

1 MR. SCHROPP: The model was adopted by reference
2 in a particular condition proposed by the staff.

3 MR. BLOCK: In Condition 10.

4 MR. WERST: If I may ask a quick question of the
5 applicant. I believe it was submitted to us as a
6 dewatering plan, which would be a plan of suggested steps
7 that would happen in cell per cell per cell. And in
8 addition, it was a statement that was made within that
9 dewatering plan or dewatering narrative at that point in
10 time that said they would not water, or dewater, I'm
11 sorry, within 1,000 foot of a potable supply well.

12 HEARING EXAMINER: Okay. Now, I understand what
13 Chip's condition is saying and I understand because you've
14 read all that other stuff. I haven't seen it, it's not in
15 here.

16 I'm concerned that if this goes to the Board of
17 County Commissioners, they're going to want that stated
18 point blank, you know, full face flat out. Because then
19 that's something that they can definitely point to and say
20 there's no misunderstanding here, folks. We told you
21 1,000 feet. No dewatering within 1,000 feet. Because I'm
22 not saying that you guys aren't going to do your job, but,
23 you know, I mean, once this dad gum model gets shoved in a
24 cabinet somewhere, it will get pulled out once in a blue
25 moon for review or whatnot. I think it's better to

1 have -- if you've got prohibitions like this, they need to
2 be stated in the approval.

3 I mean, I'm just more comfortable with everybody
4 knowing what --

5 MR. WERST: If I may be so bold as to make a
6 suggestion here. Maybe if the applicant could just
7 resubmit or electronically submit to both staff again and
8 also yourself the dewatering action plan or dewatering
9 plan, then you would have a copy --

10 HEARING EXAMINER: Then I could attach that as --

11 MR. WERST: -- of it attached as part of the
12 Staff Report, yes, ma'am.

13 HEARING EXAMINER: It's not this big, is it?

14 MR. WERST: No, no, it's very thin.

15 HEARING EXAMINER: I would feel better if it were
16 attached. If we're not going to include specific
17 conditions that if we can attach the plan itself so that
18 it becomes a part of the approval. I mean, that came as a
19 surprise to me when you made that statement because that's
20 not the way I read that, you know, that isn't the way that
21 I read that and somehow the other missed that, which is
22 not saying much.

23 MR. SPICKERMAN: That plan specifically covers
24 this requirement.

25 MR. WERST: Setback for dewatering, yes, sir.

1 And I believe upon review, you'll see that it clearly
2 states that.

3 HEARING EXAMINER: Okay. We're going to have to
4 leave the record open anyway so we can just have that
5 submitted, too, and we'll mark that and attach it as an
6 exhibit to the recommendation that goes to the Board of
7 County Commissioners.

8 I actually, Lee, at this point in time I think I
9 have questions now of Chip. You may be called back up.

10 MR. WERST: Not a problem. I'm -- I think the
11 next couple of days, and I apologize, I was discussing
12 some other things while you were talking about the plan.
13 Would you like me to stay here until 1:00, is that what
14 you're asking?

15 HEARING EXAMINER: What time is our next hearing?
16 All right. Hang loose here until one o'clock. We may be
17 able to finish it. If we don't, we'll have to decide on
18 another day to come back. It shouldn't be more than a
19 couple of hours max because there's just no way to get it
20 done today, not with the hearings that we've got scheduled
21 this afternoon.

22 But I do have -- anybody have any questions of
23 Lee on anything I have asked or anything else you want to
24 ask for the record?

25 MR. SCHROPP: No.

1 HEARING EXAMINER: Okay.

2 MR. WERST: Thank you.

3 HEARING EXAMINER: Chip, I have several.

4 MR. BLOCK: The final staff member that's here is
5 Howard Wegis from utilities. Howard was available in the
6 event that there was a question about the well field
7 operation that you now recognize as along the northern
8 portion of this site.

9 HEARING EXAMINER: Yes, I missed that.

10 MR. BLOCK: And the impact of this operation as
11 conditioned which is inclusive of our understood area of
12 no dewatering within 1,000 feet of the well heads.

13 Howard is here to answer any questions you might
14 have concerning that.

15 HEARING EXAMINER: Okay. Let me have Howard come
16 up, please.

17 I don't know that I specifically have any
18 questions, but I don't know that --

19 MR. WEGIS: For the record, Howard Wegis,
20 utilities. And I was sworn.

21 HEARING EXAMINER: Spell your last name.

22 MR. WEGIS: W-e-g-i-s.

23 HEARING EXAMINER: And you are sworn in, Howard?

24 MR. WEGIS: Yes, ma'am.

25 Thereupon,

1 HOWARD WEGIS,
2 called as a witness by Staff, having been previously duly
3 sworn, was examined and testified as follows:

4 HEARING EXAMINER: Have you had an opportunity to
5 look at the model that Lee Werst was just referring to?

6 MR. WEGIS: No, ma'am. I was consulted with
7 Natural Resources. I don't have the expertise to review
8 that model. Although I have been in utilities for 23
9 years, I'm not a modeler. But I relied on Natural
10 Resources review of that model and their recommendations.

11 HEARING EXAMINER: And they told you that it was
12 their understanding based on their review of the model and
13 the discussion and whatnot contained in the modeling
14 report that there would be no draw down activities
15 occurring within 1,000 feet of the county's wells?

16 MR. WEGIS: Yes, ma'am. And with use of
17 perimeter -- you know, they informed me about the .4 foot
18 draw down without the perimeter ditch and then with the
19 perimeter ditch, essentially no draw down, and I didn't
20 see an adverse impacts to our abilities to withdraw from
21 the well fields.

22 HEARING EXAMINER: Okay. Are there monitoring
23 wells anywhere around those particular wells that run
24 along the north boundary of I think that's Section 12?

25 MR. WEGIS: Utilities does not have any

1 monitoring wells, I believe, in that general vicinity.

2 HEARING EXAMINER: Okay.

3 MS. SANVILLE: For the record again, Lori
4 Sanville.

5 We have installed three new public water supply
6 monitoring wells within those areas within the last six
7 months, and then we have a fourth one over on the other
8 side of getting into the older part of the mine section to
9 treat one of the public water supply wells over there.
10 And those have all been within the last year and they all
11 have those same data loggers which monitor every minute.

12 HEARING EXAMINER: Okay. All right.

13 MR. WEGIS: Madam Hearing Examiner, just to clear
14 this up a little bit is that Natural Resources is
15 responsible for compliance with well field protection
16 ordinance, their division that handles that. That's --
17 just so you understand, that's why utilities doesn't get
18 real involved with that aspect, the monitoring.

19 HEARING EXAMINER: So tell me what your wells --
20 educate me, what do the wells do at this point? I mean, I
21 see them in pretty close proximity to each other --

22 MR. WEGIS: Yes, ma'am, they're spaced every half
23 mile. There's actually what we call a cluster of wells.
24 There's one surficial well, shallow well, and one
25 sandstone well, that first confining unit. And there are

1 production wells for drinking water.

2 HEARING EXAMINER: So you actually are pumping
3 out of them?

4 MR. WEGIS: Yes, ma'am.

5 And then this run approximately five miles to the
6 west of there and we have a water treatment plant there.

7 HEARING EXAMINER: That's the one that's on Alico
8 Extension?

9 MR. WEGIS: It's one mile north of the bend in
10 Alico basically. You know, the bend in Alico Road?

11 HEARING EXAMINER: It's one mile north of it.

12 MR. WEGIS: One mile north.

13 MR. BLOCK: There is another well field that was
14 up there -- for the record, Chip Block -- that runs along
15 that section line that's one mile north of Alico Road, and
16 there is a plant that's south of the airport, if I
17 remember correctly.

18 MR. WEGIS: Green Meadows water treatment plant.

19 HEARING EXAMINER: Okay. I'm not familiar with
20 that one. There's one something down here close to the
21 Corkscrew and Alico Road.

22 MR. WEGIS: Yes, ma'am. That's Corkscrew water
23 treatment plant. This is our Green Meadows water
24 treatment plant, formerly owned by Florida Cities Water
25 Company. Currently owned -- which I do want to point out

1 while I'm up here, I see the date on these two exhibits is
2 in '99. I believe in '99 these wells were owned by
3 Florida Cities Water Company, and that probably explains
4 why they're labeled on those exhibits as Florida Cities
5 Water Company wells. It would actually be Lee County
6 utilities water.

7 HEARING EXAMINER: Okay. So you guys, to your
8 knowledge, there's been no problem with the existing mine
9 causing problems with draw down or any other adverse
10 impacts on the operation of those wells?

11 MR. WEGIS: No.

12 HEARING EXAMINER: Anybody have any questions of
13 this witness?

14 MR. SCHROPP: No.

15 MR. BLOCK: No, ma'am.

16 What Mr. Wegis just pointed -- you asked him a
17 question about monitoring wells. If I understood Mr.
18 Martin's presentation on power point, if you go to the
19 hard copy, Page 14, it says -- there is a power point
20 there that says, monitoring program and it has yellow dots
21 throughout it. If I understood Mr. Martin correctly,
22 those are the monitoring well locations and you'll note
23 that they've got monitoring wells in and around where the
24 utility site is located at.

25 HEARING EXAMINER: Right.

1 MR. BLOCK: And Kirk is still here if you have
2 any more questions.

3 HEARING EXAMINER: There's no wells south of the
4 north part of Section -- I'm sorry, that's Section 1,
5 isn't it? There's nothing south of that then?

6 MR. MARTIN: Lee County public supply wells
7 here, here, here and here. We have them marked. Those
8 are the four wells that are monitored quarterly for a
9 whole slew of parameters specifically looking for water
10 quality.

11 HEARING EXAMINER: The one in the middle is a
12 well?

13 MR. MARTIN: Yes, ma'am.

14 As a matter of fact, I would refer to this as the
15 pool table but these are all wells. Those are all
16 setbacks from the monitor. That's been out there for
17 decades.

18 HEARING EXAMINER: And that's water in that one,
19 too?

20 MR. MARTIN: Yes, ma'am.

21 MR. WEGIS: Just to clear something up. These
22 are proposed sites. The existing wells that run along
23 this section line, township line one mile north is
24 easements for wells and there's proposed well sites there
25 and that's why those --

1 HEARING EXAMINER: In those three areas?

2 MR. WEGIS: Yes, ma'am. Still like the pool
3 table.

4 HEARING EXAMINER: All right. Chip, I've got
5 some questions.

6 MR. BLOCK: Yes, ma'am.

7 HEARING OFFICER: First off, when you did your
8 assessment in this case, you did no assessment of the
9 DRGR, the prohibitions and whatnot on the DRGR, and I was
10 wondering why that was. I mean, this property is in the
11 DRGR.

12 MR. BLOCK: If I can maybe expand on your
13 question to understand the point of the question. Are you
14 talking about the current DRGR moratorium?

15 HEARING EXAMINER: No. What I'm talking about is
16 the -- under the DRGR, Lee Plan policy, as an explanation
17 of the purpose and the goals -- the purpose and the intent
18 and whatnot, and it has a statement in there dealing with
19 no impact to the historical water levels.

20 MR. BLOCK: Yes, ma'am.

21 HEARING EXAMINER: My question to you was,
22 looking at the fact that we're looking at a four-tenths of
23 a foot draw down, that to me is an impact, and I don't
24 understand why you did not do the Lee Plan analysis on the
25 DRGR knowing that the Board of County Commissioners is

1 really hot on this issue at this point.

2 MR. BLOCK: I'll answer the question this way.
3 We looked at the impacts of the proposed operation along
4 with dewatering and its impacts on -- the potential draw
5 down and the water impacts, ground water impacts.

6 Your assumption of a .4 plus draw down would
7 occur in the event that they don't have trenches, the
8 recharging trenches.

9 The applicant is committed to recharging trenches
10 around this site, so the effect is, if I've understood
11 everybody's statements correctly to my professionals in
12 Lee County staff, is that there is no draw down associated
13 to this operation. So staff was quiet on the impact of
14 the draw down because there is no draw down, and that the
15 project had been previously found consistent with the Lee
16 Plan for the DRGR under the previous zoning applications
17 of IPD. So we did not believe that there was a need to
18 address that in the Staff Report. But I will place on the
19 record that we do not believe that there are any impacts
20 on the ground water supply in this area by allowing
21 dewatering.

22 We've stated it but we haven't really said it in
23 the findings and conclusions.

24 HEARING EXAMINER: And because on Attachment H
25 from one of the statements that's made in here, this is

1 the Lee Plan narrative by the applicant, it states in
2 there that land uses in these areas, talking about the
3 DRGR, must be compatible with maintaining surface and
4 ground water levels at their historic levels according to
5 Policy 1.4.5, and then it goes and talks about permitted
6 uses include mineral mining, land mining, or whatever.
7 But my point is here, and I understand what you're saying
8 and, I think you should have really put that in the Staff
9 Report --

10 MR. BLOCK: Yes, ma'am.

11 HEARING EXAMINER: -- but my question is that the
12 modeling, and that was one of the things that Dr. Lee said
13 when he was standing up there, the modeling that they're
14 doing has already been affected, the water level has
15 already been affected by the agricultural endeavor that's
16 on the property, possibly by the other mine in the area,
17 so that we don't know what the historic water level is.
18 So how can we find that this is consistent with that
19 purpose of Policy 1.4.5 at this point? That's what I
20 needed some further explanation from staff on, because
21 your Staff Report talked about the well field and went on
22 and on about the well field, which was nice, but the DRGR
23 has got this major issue out there about the potential
24 effect that mining is having or will have or can have on
25 ground water levels.

1 MR. BLOCK: Yes, ma'am.

2 HEARING EXAMINER: And historic ground water
3 levels. I just didn't see any analysis on that, and it
4 just kind of concerned me that that was sort of, you know,
5 not brought up knowing how the Board's already focused on
6 this area anyway. And the finding of -- previous finding
7 of consistency with the Lee Plan to me does not
8 automatically transfer from one request to the next.

9 I think it needs to be reviewed each time, and if
10 there's been a reinterpretation of the plans and the Lee
11 Plan policies, or whatever, that interpretation, the
12 newest interpretation needs to be in effect and needs to
13 be considered when a new request comes in. So --

14 MR. BLOCK: And I understand your concern, Madam
15 Hearing Examiner. I have heard it and will address it in
16 future cases.

17 I think for this case, this section of the policy
18 that talks about it, and I'll re-read it as you have said,
19 land uses in these areas must be compatible with
20 maintaining surface and ground water levels at their
21 historic levels according to Policy 1.4.5. And then it
22 goes on to say other things.

23 And I think what we have pointed out is that
24 there is a history that Mr. Martin has supplied as part of
25 this case that's shown in the power point of historically

1 going back and even identifying the historic water levels
2 under the agricultural operations that were occurring in
3 the '80s, and that has been provided to staff and has been
4 provided historically, and it's demonstrating through this
5 application.

6 And it may not be stated in the report, but I
7 think what I'm hearing from staff is that we do not
8 believe that there is going to be any adverse impacts or
9 draw down of the water, either surface or ground water
10 levels below what has been occurring at least under the
11 agricultural operations and that takes us back into the
12 '80s. As to go before that, I don't know if we've got
13 that information. Maybe the applicant can further address
14 that. But staff feels comfortable that there is no
15 further impacts beyond what has been happening under the
16 agricultural operations.

17 HEARING EXAMINER: Okay.

18 MR. SCHROPP: May I add at this point? I was
19 going to make the same point that Chip I think just made,
20 that there is evidence in the record, and I'd like to have
21 Mr. Martin at the appropriate time come up and address it,
22 but that evidence of historical water levels in the area
23 does date back to 1981 or '82 which predates the DRGR
24 land use classification in this county, and, of course,
25 was adopted in 1990 so I think provides the evidence

1 necessary to make some findings that you're concerned
2 about.

3 As I said, Mr. Martin can probably address it
4 more thoroughly than -- with some oral presentation.

5 HEARING EXAMINER: Okay. I'd like him to go over
6 all six of the graphs shown on the water level hydrographs
7 when he comes up because I see a marked difference in the
8 top and the bottom given just the location of the line
9 that is shown on the first graph, and I can't -- you
10 know, it's a little small so -- but not the bottom level,
11 I mean, but the one with the six on it. I need him to
12 sort of walk me through.

13 There are several questions that I need to ask
14 you, Chip, on your findings of fact.

15 MR. BLOCK: Yes, ma'am.

16 HEARING EXAMINER: All right. Here are two in
17 specific where you indicate there will be no negative
18 impacts on the quality and quantity of water available to
19 the nearby well field operations.

20 MS. BLOCK: Yes, ma'am.

21 HEARING EXAMINER: Now, there are also
22 residential uses not close, I think half a mile away, I
23 think they indicated somewhere in here I read. But was it
24 your finding on the -- that there was going to be no
25 negative impacts on the nearby well field operations

1 because they are the closest thing?

2 MR. BLOCK: Yes, ma'am. The private wells in
3 that area are further away from this particular site down
4 off of Mallard and a couple of other locations down
5 there. That's the closest private wells. And if we are
6 not experiencing any adverse impacts on the nearest well
7 field operations, as far away as those are, it is not
8 expected that there will be impacts on those private wells
9 in the immediate area, so, yes.

10 HEARING EXAMINER: Okay. But the next one down
11 is your No. 4 which talks about the proposed activity of
12 dewatering the mining operation is appropriate at the
13 subject location as proposed is not expected to have a
14 detrimental impact on the nearby well field operations and
15 private wells. So you do discuss them there.

16 MR. BLOCK: Yes, ma'am.

17 HEARING EXAMINER: I guess this goes back then to
18 the discussion we just had about the historic water table.

19 MR. BLOCK: Yes, ma'am. And, again, I would just
20 reiterate that we do not believe that there's any
21 additional adverse impacts that have been demonstrated
22 through our review of the modeling that will have an
23 adverse impact on the ground water supply in this area.

24 HEARING EXAMINER: Okay. Going to your
25 conditions.

1 MR. BLOCK: Yes, ma'am.

2 HEARING EXAMINER: Condition No. 2.

3 MR. BLOCK: Yes, ma'am.

4 HEARING EXAMINER: Page -- heck if I know.

5 MR. BLOCK: We'll just say Condition 2 and go
6 from there.

7 HEARING EXAMINER: It's Page 4 of your January
8 14th memo. All right. Condition No. 2 indicates that,
9 second sentence, "If staff determines that changed
10 conditions on or near the property result in the threat of
11 detrimental impacts to the public health, safety or
12 welfare not considered at the time of this rezoning, then
13 staff may propose modifications to these conditions deemed
14 necessary."

15 Now, how or when or where is the threshold for
16 threat? I mean, it does, it doesn't, it might? Is this a
17 might have an adverse? I have never seen result in the
18 threat, and for code enforcement purposes, since I get to
19 sit on these things, what does this mean? Where did that
20 come from?

21 MR. BLOCK: Okay. This condition came from a
22 previous -- I'm not sure, one of the three -- one of the
23 three previous zoning actions granted for this overall
24 mine expansion area. And at the time that we wrote this
25 condition, we wrote it when we did not have the expertise

1 on staff to be able to try to model and anticipate
2 potential threats on, in this case, the well field
3 operations. So we were planning through the monitoring
4 efforts to be able to monitor what was happening in the
5 monitoring wells and then if we came across a potential
6 area of either from a -- some type of operation, whether
7 it be the mining operation itself with the potential for
8 contamination of the water because of diesel fuel or oils
9 getting into the lake and thus potentially having an
10 impact on the well field operations or some other unknown
11 threat that through microorganisms not necessarily related
12 to diesel but other microorganisms that might be in the
13 lake and thus potentially threatening the well field
14 operations, we wanted to have some type of condition
15 associated to it so that we could refer back and try to do
16 some type of, you know, correction of the potential
17 problem that might threaten the well field operation out
18 there.

19 I know That doesn't give you any level of good
20 feeling, no comfort.

21 MR. SCHROPP: May I elaborate on that?

22 HEARING EXAMINER: Yes.

23 MR. SCHROPP: In terms of process if your concern
24 is if it's going through a code enforcement process --

25 HEARING EXAMINER: How to enforce this, yes.

1 MR. SCHROPP: I don't think the condition
2 envisions it going through a code enforcement process. If
3 you look at it, it says prior to the Development Order for
4 Phase 2.3, staff may propose new conditions. If the
5 applicant is okay with those conditions, Development Order
6 gets issued. If the applicant is not --

7 HEARING EXAMINER: If not, I get to see it as an
8 appeal.

9 MR. SCHROPP: -- then we bring it to you. So
10 it doesn't come to you in the context of a code
11 enforcement matter, it comes to you in the context of here
12 are some new conditions, is there justification for these
13 new conditions. If we disagree with that, we have the
14 right to bring it to you as an appeal. If we don't
15 disagree with it, then the conditions are fine, then life
16 goes on.

17 HEARING EXAMINER: All right. I have to think
18 about that.

19 MR. SCHROPP: And as Chip says, this is a
20 condition that actually you'll find in one of the previous
21 resolutions that was there. The only change we made was
22 the phasing change.

23 HEARING EXAMINER: Okay. The Condition 13 on
24 like Page 6 or 7.

25 MR. BLOCK: Yes, ma'am.

1 HEARING EXAMINER: I am not sure I understand why
2 the condition was worded this way, mining operations may
3 not impact wetlands located on the subject property, I
4 think there should have been a comma there, except as they
5 be granted in Case DCI2005 -- well, that's this case --

6 MR. BLOCK: Yes, ma'am.

7 HEARING EXAMINER: -- and is provided for in
8 Condition 23.

9 MR. BLOCK: Yes, ma'am.

10 HEARING EXAMINER: Why are we listing the case
11 numbers? Is this for future -- assuming that we're going
12 to have future cases or --

13 MR. BLOCK: This is an attempt by myself again in
14 a codification intent to keep the conditions that were
15 effective within the resolutions. And in this case you
16 can even see the resolution. I didn't take out the
17 parenthetical statement of Z-96-068, but that's where it
18 was adopted. So the period on the first line would
19 disappear, is intended to disappear. Really the
20 parenthetical statement should have disappeared also for
21 the resolution number.

22 And then it would follow up "We have wetland
23 impacts associated to this case only." And that's where
24 the underlining comes in as being granted in this case
25 number and provided for in Condition 23.

1 Condition 23 outlines the specific impacts that
2 have happened to wetlands as being sought as part of the
3 amendment to this application. And I just stated
4 Condition 23 because it specifically identifies that there
5 is a certain acreage, in this case 0.79 acres, as we've
6 heard of jurisdictional impact associated to this
7 application. And we're only approving that.

8 Previously to this point the mining operation,
9 the expansion, was not to allow any impacts on wetlands
10 which if I can refer to help the Hearing Examiner out a
11 little bit, I'll take the microphone with me, one thing
12 that hasn't been stated strongly, but I think has been
13 inferred, is that if you look at the original Master
14 Concept Plan, this area down here in the southwest corner
15 was just a wetland area. It wasn't a preserve. So we
16 needed something -- staff needed something in the time of
17 1996 to identify that that wetland should not be impacted,
18 and that's where we were coming from as part of that. We
19 were not going to allow the impacts to the wetlands.

20 Well, it's now happened. What's going to happen
21 now? That's why we're going through the public hearing
22 process. The applicant indicates it was inadvertence,
23 we're addressing that point.

24 HEARING EXAMINER: So why can't we just simply
25 say except as may be provided for in Condition 3 herein

1 below and just take out the DCI case number?

2 MR. BLOCK: That's fine.

3 HEARING EXAMINER: Because it's going to get you
4 the same place.

5 MR. SCHROPP: Yes.

6 MR. BLOCK: I think what I had was I had the case
7 number and didn't have that condition before and then we
8 added the condition, so I added it in here.

9 HEARING EXAMINER: All right. That makes me feel
10 a little better because throwing a case number in the
11 middle of it and then you've got future -- everybody is
12 going to go back and look at that prior case, try to
13 figure out what's going on.

14 All right. The next page, Condition 18.

15 MR. BLOCK: Yes, ma'am.

16 HEARING EXAMINER: Last sentence of this
17 condition, "Instruction includes signs posted and clearly
18 visible at the scale house, the office and the egress
19 point onto Corkscrew Road." This little fellow don't
20 touch Corkscrew Road. I've hunted all over trying to find
21 a road where you got down to Corkscrew on from this little
22 guy.

23 MR. BLOCK: You're absolutely correct.

24 MR. SCHROPP: Should be Alico Road. I don't know
25 if that's what it says in the original condition or not.

1 MR. BLOCK: It may very well --

2 HEARING EXAMINER: I think it does. I think I
3 saw -- and I'm going duh. By that point in time then I
4 had totally moved the mine from where it was to somewhere
5 over here trying to get it down to Corkscrew Road. Okay.
6 So this is Alico Road.

7 MR. BLOCK: This is Alico Road, yes, ma'am.

8 HEARING EXAMINER: All right.

9 MR. SCHROPP: Then the original condition does
10 read that way.

11 HEARING EXAMINER: That's what happens when you
12 supercopy.

13 MR. BLOCK: Yes.

14 HEARING EXAMINER: All right, let me see. Oh, I
15 understand this is a codification, but, Chip, do we have
16 to have Deviations 1, 2, 3? Those all deal with section
17 line setbacks. We haven't had section line setback
18 requirements since the middle '90s. Do we need to keep
19 doing this? I mean, is this necessary as part of the
20 codification because even if they got involved --

21 MR. BLOCK: I know exactly what you're getting
22 at, Madam Hearing Examiner.

23 HEARING EXAMINER: 150 foot, you know, there's
24 no violation at this stage.

25 MR. BLOCK: Russell and I struggled with this

1 because he asked me the exact same question, and I said
2 I'd rather keep them in there, Russell, from the
3 standpoint of historical value to take it backwards. But
4 we are codifying it. The rule doesn't apply. All
5 deviations have been approved, particularly those
6 deviations from section lines which means under today's
7 rules, those section line setbacks don't apply like you
8 said. I think you can strike them out if you'd really
9 like to.

10 MR. SCHROPP: But if you do that, only Deviations
11 2 and 3 I think apply.

12 HEARING EXAMINER: You're right, it's 2 and 3.

13 Okay. And if you want to -- Deviation 2 and 3, I
14 can just indicate that this deviation is, although
15 approved, is a moot issue as setbacks from section lines
16 are no longer required in the Land Development Code.

17 MR. BLOCK: Yes, ma'am.

18 HEARING EXAMINER: That way then that will take
19 care of the whole situation.

20 MR. BLOCK: I have no problem with that
21 whatsoever.

22 HEARING EXAMINER: But I'm thinking why are we
23 doing this. Okay.

24 MR. SPICKERMAN: Can we put those at the end,
25 then, so then the deviations go in order for what's going

1 to be shown on the MCP instead of having a 1, a 2 and then
2 a 5? You know what I mean?

3 MR. BLOCK: Or you can just indicate --

4 HEARING EXAMINER: Well, I've got Deviation 1, 2,
5 3, 1 and 1.

6 MR. SPICKERMAN: So Deviation 1 or 1 or 1 could
7 be renumbered for when we put the resolution together.

8 MR. BLOCK: I think what Rob is talking about is
9 that you keep Deviation 1, strike -- I think you can
10 strike 2 and 3, just strike that out and if you need a
11 clarification as to why they were taken out, indicate it.
12 And then the following two deviations behind that now
13 become Deviations 2 and 3 and when the applicant redoes
14 the Master Concept Plan, they can just make that same
15 correction.

16 HEARING EXAMINER: Okay.

17 MR. BLOCK: Just give us 1, 2 and 3.

18 HEARING EXAMINER: All right. I'll do it or I'll
19 have the secretaries make the switcheroo on that.

20 All right. Actually, we may be done, Chip. Let
21 me look at the original one that I went through here
22 first, see if I have anything else.

23 All right. I don't have anything else written
24 down that I need to ask you questions on, Chip. That was
25 it. You have been grilled enough. Anybody else have any

1 follow-up on anything that I have asked?

2 MR. SCHROPP: Nothing for Chip, but if I could
3 have Mr. Martin address the issues that you discussed
4 about historical water levels.

5 HEARING EXAMINER: Yes, I would like to have him
6 up here and we may be able to finish up and not have to
7 come back.

8 MR. SCHROPP: You understood the question.

9 MR. MARTIN: One of the points that was brought
10 up was the differences on the hydrographs between the
11 upper three and the lower three. The primary difference
12 there is in the time frame. The upper three represent
13 about 25 years worth of data. The bottom three represent
14 about eight months worth of data. I just did a quick
15 calculation. That's a difference of about 35 to 40
16 times.

17 HEARING EXAMINER: Are you --

18 MR. MARTIN: What I was going to say is I just
19 did a quick calculation. That's about a time difference
20 of about 35 to 40 times. So each of those is about an
21 inch long. Imagine stretching those hydrographs out on
22 the upper part to a meter, you can see it's a real, real
23 flat line that would look very similar to those ones down
24 below. So it's a time frame difference we're looking at.

25 HEARING EXAMINER: Okay. So -- all right. It's

1 just very misleading with the one below the other.

2 MR. MARTIN: I apologize for that. I should have
3 brought it up when it was on the screen even.

4 MR. SCHROPP: Maybe we can submit a larger
5 version of that post hearing so that you have it, don't
6 have to squint.

7 HEARING EXAMINER: That would be good. I have a
8 magnifying glass back there, but I'm not sure how well
9 that's going --

10 MR. SCHROPP: I don't think even that's going to
11 pick it up.

12 MR. MARTIN: My apologies for that.

13 MR. SCHROPP: If we could, maybe submit a larger
14 version of that.

15 HEARING EXAMINER: I'd like that.

16 MR. SCHROPP: But also from a historical
17 perspective what does that -- can you elaborate a little
18 bit on what that shows?

19 MR. MARTIN: Again, I think I made this in the
20 primary presentation, but the data show that there hasn't
21 been any appreciable change in water levels. And what we
22 typically look at is the highs and the lows and the
23 duration of any peaks and valleys. And it shows that over
24 25 years nothing has changed.

25 Now, that -- the monitoring data does not predate

1 agricultural, so I'm guessing there's some agricultural
2 effects in here; however, it does predate the mining
3 activities and does predate DRGR designations and so
4 forth.

5 In my opinion we have a very strong record to
6 show that the mining is not causing an effect but it may
7 or may not reflect some agricultural activities.

8 MR. SCHROPP: Just projecting forward if you can
9 from the present requests or approval, would you expect it
10 to have any appreciable or any impact at all on what the
11 hydrographs would show?

12 MR. MARTIN: Not at all. As I alluded to
13 earlier, the process that Florida Rock is using has
14 evolved over time. It's always been improved. So I'd say
15 if anything things are better from now on. But at this
16 point I don't see any effect the mining has had thus far.
17 I would not expect any in the future.

18 MR. SCHROPP: So no effect on the historical
19 ground water flows or levels resulting from this
20 application?

21 MR. MARTIN: That's correct.

22 MR. SCHROPP: That's all.

23 HEARING EXAMINER: All right. Any other
24 rebuttal?

25 MR. SCHROPP: I don't believe so. I appreciate

1 your time and indulgence on this but I think we're --

2 HEARING EXAMINER: All right. I can't tell you
3 what I'm going to do on this, because I haven't figured
4 out what I'm going to do on the other one yet either. I
5 mean, the historical aspect, the impact to the ground
6 water levels is a concern. I understand the testimony. I
7 need to go back through the entire record because a lot of
8 this is coming at me kind of fast. I need to go back
9 through the entire record.

10 I need to see that exhibit in a larger scale if
11 possible. I don't know yet what my feelings are on this.
12 And I will tell you that if you guys want this thing
13 before May, don't hold your breath because I'm still on
14 Volume 13 of 17 on that 13-day hearing and I still have --
15 I've still got to write that one and I've got about eight
16 or ten cases in my rack in there that I have to make
17 decisions on, recommendations on. So needless to say, I
18 am slightly backed up.

19 I mean, if we could cancel all the hearings
20 between now and the end of February, I'd be all caught
21 up.

22 MR. BLOCK: If you'd like for me to make that
23 note, I'd --

24 HEARING EXAMINER: Go back and continue them all
25 until April or May.

1 MR. SCHROPP: Two items if I may in response to
2 that.

3 HEARING EXAMINER: Oh, God, if you're asking for
4 an expedited, I'm going to shoot you.

5 MR. SCHROPP: I'm not going to run that risk.
6 But time is a little bit sensitive to the applicant here
7 in connection with their activities. As we indicated,
8 we're nearing the end of excavation on Section 11 and hope
9 to move into Section 1 rather expeditiously. If it would
10 help, and I don't know whether you were going to do this
11 or not, but were you going to have the hearing
12 transcribed?

13 HEARING EXAMINER: Yes. It's been four hours and
14 something with this amount of technical detail, I have
15 transcribed. It's easier for me to read the word from the
16 horse's mouth than to try to figure out what the girls
17 have heard.

18 MR. SCHROPP: We were going to offer to do that.

19 HEARING EXAMINER: No, I'll automatically order
20 that. Thank you.

21 MR. SCHROPP: The other thing is obviously, you
22 know, I know you had a 13-day hearing on another
23 application and I know what it was all about. And I can
24 appreciate that, but I have -- you know, I have no ability
25 to address what was presented in the other hearing so I'd

1 ask you to confine to what was presented here on the
2 record. We worked very diligently with staff and took a
3 continuance on this matter, which probably put us after
4 the hearing that you're talking about, but worked very
5 diligently to come up with a plan that was acceptable in
6 all respects, I believe, to Natural Resources.

7 HEARING EXAMINER: Your plan, your request is
8 different than the other one. So, I mean, there are
9 different criteria, there are different considerations.
10 So, I mean, I would not use the same measuring stick for
11 both. It just would not fit.

12 MR. SCHROPP: I appreciate that.

13 HEARING EXAMINER: So let me see what I can do.
14 If I can ever break free of this other one, things will
15 start to come out rapidly. I'll see what I can do for
16 you.

17 MR. SCHROPP: I appreciate it. And we understand
18 your situation. If you need to make the site visit as
19 well, you're more than welcome.

20 HEARING EXAMINER: I'll have my secretary call
21 and set up something so that I can wander out there.

22 All right. Anything else from anybody? Okay.

23 MR. SCHROPP: Holding the record open for some --

24 HEARING EXAMINER: That's right. We're keeping
25 the record open for a condition regarding the recharge

1 trenches, revision of Sheet 7 of the Master Concept Plan,
2 and the submission of that graph.

3 MR. SCHROPP: The hydrograph.

4 HEARING EXAMINER: The hydrograph.

5 MR. SCHROPP: A larger version that's more
6 readable.

7 HEARING EXAMINER: The water level hydrograph.

8 MR. SCHROPP: And also there was a dewatering
9 plan that was referenced that you wanted to attach perhaps
10 as a condition.

11 HEARING EXAMINER: Right. I want the dewatering.

12 MR. SCHROPP: And we'll submit that. We think it
13 might have been attached to the original Staff Report, but
14 we're not sure that that was the latest version, so we
15 will make sure the latest version is submitted with that.

16 HEARING EXAMINER: Okay. Time frame? Next
17 Friday?

18 MR. SCHROPP: Next Friday, that's fine with me.

19 HEARING EXAMINER: Okay. I mean, I can give you
20 longer than that if you need it.

21 MR. SCHROPP: We should be able to get it done by
22 next Friday.

23 HEARING EXAMINER: All right. Next Friday then,
24 that will be the 26th.

25 MR. SCHROPP: No, excuse me, it's the 25th.

1 HEARING EXAMINER: It's Friday, whatever, 5:00
2 p.m. If you need additional time, let me know.

3 All right. This hearing is closed.

4 (Hearing concluded.)
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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

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4 I, Roberta June Bishop, Registered Professional
5 Reporter, do certify that I was authorized to and did
6 stenographically report the foregoing proceedings, and
7 that the typewritten transcript, consisting of pages
8 numbered 1 through 152, is a true record.

9 Dated this 13~~th~~ day of February, 2008.

10

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Roberta June Bishop, RPR

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'05 17:23 '80s 8:23 9:2 10:4 116:13 133:3,12 '81 57:22 '82 56:10,24 57:22 133:23 '85 13:20,21 '88 16:22 57:5 '89 57:5 '90s 35:8 142:18 '96 17:25 '97 17:19 '99 127:2,2	1989 78:24 1991 7:25 8:3,5 12:10 13:9 88:9 100:16 133:23 1983 12:6 1984 7:21 8:6 1985 8:6,8,14,23 13:7 14:7,14 57:4 1988 9:6,8,13 15:15,18 88:12 1990 133:25 1992 9:8,13 16:12 35:8 1996 9:9,14 17:19 140:17 1997 17:2 18:1 1998 28:24 1999 5:3 15:13 19:17 1:00 122:13	- 3 - 3 8:11,16 10:8 11:11,13,15 12:15 13:5,15 15:22 26:24 32:1 37:5 58:4 109:3 140:25 142:16 143:11,12,13 144:5,10,13, 17 3.87 28:8 30:7 32:18 98:19 300 22:25 23:16 81:11,12 35 8:12,17 10:9 12:16 13:6 145:15,20 396 98:11	- 9 - 9 43:22,23 9(b 15:21,22,23 90 38:5 56:3 900 113:10 95 38:5
- 0 - 0.79 32:20 94:2 140:5 036 16:18 06 73:22 09-07-07 32:10 92:25	- 2 - 2 8:1,10,10,16 10:8 11:4, 6,22 12:15 13:5 26:22 27:3,15,17 31:17,19 37:4, 5 38:9 58:4 92:11 136:2, 5,8 142:16 143:11,12,13 144:1,4,10,13,17 2,000 112:25 2,500 113:1 2.1 38:9,11 41:21 66:1 81:14 2.1's 41:24 2.2 27:17 40:13 41:21,24 2.26 30:10 2.3 27:17,18 41:22,23 138:4 2.4 27:18 81:8,13 2.5 27:18 38:9 41:24 2.c 31:18 92:6 20 32:16 45:3,7,9 51:8 73:11,15 107:7 108:24 114:15 115:19 200 23:20 106:9,9 109:18 2000 15:13 19:17 57:5 2001 9:17 10:4 19:1,18 28:11 57:5 2002 28:11 29:2 2003 22:18 2005 24:4 2007 32:5,10 86:6 89:7 92:24,24 93:7 2008 55:5 153:9 22nd 22:18 32:5 92:23 93:7 23 32:17 57:2,9 97:20 124:8 139:8,25 140:1,4 24 48:25 57:2 59:21 69:19 84:2 24/7 75:9	- 4 - 4 15:22,23 22:10,13 58:4 74:14 85:5 119:8 124:17 130:6 135:11 136:7 4.5 109:11 40 45:13 51:8 62:7 145:15,20 400 23:20,24 46:10,25 81:11,12,15 118:20 42 74:21 75:13 421 73:25 74:12 111:21 480 8:3 12:10 13:9,13 16:12 49 74:22 75:2	- A - abilities 124:20 ability 14:1,4 91:24 149:24 able 48:15 54:9 71:2 72:19 88:10,11 91:5 102:4 122:17 137:1,4 145:6 151:21 above 14:19 23:4 48:25 59:10,14,17 64:23 106:25 absolutely 92:6 104:13 141:23 accept 43:9 acceptable 20:3 34:3 150:5 accepted 11:11 36:2,13 42:18,25 79:25 80:5 87:22,25 88:4 97:12 99:19,21,23 access 6:17,18 76:18 accompanied 74:17 accomplish 13:25 accordance 5:17 10:19 16:7 32:3 according 69:8,11 70:21 98:20 131:4 132:21 accurate 28:9 acre 28:8 32:18 acreage 93:11,25 94:1 97:15,18,20 140:5 acreages 30:4 acres 6:1 8:4 9:15 12:10 13:9,13 16:12,13 17:21 18:9 24:10 30:7,7,10 32:20 94:2 98:11,19 113:10 140:5 across 42:5 51:4 54:17 137:5 action 18:24 25:13 121:8 actions 5:10 13:19 91:10 136:23 active 25:25 85:1 activities 56:21 57:14 78:23 91:21 124:14 147:3,7 149:7 activity 19:22 66:9 135:11 actual 39:7 40:19 41:20 42:1 49:6 52:20 93:12,25 94:7 107:15 actually 7:6 9:13 12:18 16:18 17:25 22:18 30:3 35:5,13 38:13,22 39:25 41:2,6,11 42:2,10 62:6 63:10,12 66:19 71:6 72:4,20 76:13 82:7,14
- 1 - 1 6:8,13 9:7,19 10:6 15:17 16:9 19:4,18 21:25 24:4, 7 26:18,19,21,23,23 27:2, 6,16 31:25 35:7,12 37:4, 5,5 38:5 44:20,22 46:3,8 55:9 56:13 58:4 72:14 92:13,22 128:4 142:16 144:1,4,5,5,6,6,6,9,17 149:9 153:8 1,000 23:20,21,24 46:10,25 73:22 111:20 112:25 117:17 118:4,20,23,25 119:6 120:11,21,21 123:12 124:15 1.4.5 131:5,19 132:21 10 59:6 62:6 73:19 93:3,7 94:15 120:3 100 22:25 23:16 81:14 83:8,9 117:4 118:25 11 9:9,16,19 10:6 15:17 16:13,15 17:21 18:9 19:4,18 21:25 24:3,7 26:18 27:2 28:3,11,12 38:5 44:22 46:6 54:24 55:8 149:8 110 41:4 11:00 75:19 11th 33:19 98:7 12 9:7,20 10:6 15:17 16:9, 13,16,22 19:5,18 21:25 24:7 26:18 33:5,6 41:13 44:20,22 49:10 55:9 83:25,25 100:13 124:24 120 41:4 13 110:8 138:23 148:14 13-day 148:14 149:22 14 127:19 14th 31:9 33:18 89:9 90:4 98:7,14 104:6 136:8 150 142:23 152 153:8 15th 8:8	- 5 - 5 18:1 22:11,13 36:24 45:3,9 51:7 62:6 85:5 144:2 50 37:3 500 16:13 81:16 118:2 55 19:6 5:00 152:1	- 6 - 6 20:25 26:14,15 36:24,25 37:24 73:23 74:2 138:24 68 9:21 19:7 37:3 45:24	- 7 - 7 37:24,25 38:1 39:24 93:3,7 94:15 97:24 138:24 151:1 70 45:13 51:8 79 6:1 30:6 7th 32:10 92:24

85:6,10 89:3 93:12 95:5 99:14 101:12,14 102:4,8, 16,23,24 108:6,11,12 110:21,22 114:17 117:8, 24 118:18 122:8 125:23 126:2 127:5 138:20 144:20 add 9:9 19:1 71:21,22 114:13 133:18 added 9:15 16:12 38:22 58:9 62:21 141:8,8 adding 61:12 69:4 addition 17:19 55:17 82:24 120:8 additional 7:11 9:9 27:24 135:21 152:2 address 5:25 25:8 26:7 31:6 34:3,11,14 60:14 69:1 76:5 79:16 86:6 94:10 95:1 97:15 113:16 115:10 130:18 132:15 133:13,21 134:3 145:3 149:25 addressed 12:18 38:20 90:2 addresses 30:20 addressing 76:14 86:9 140:23 adjacent 50:4 52:5 53:21 83:21 86:16 90:14 adjust 60:13 115:2 adjusted 60:14,16 102:10 administratively 35:10 adopted 120:1 133:25 139:18 adverse 44:15 62:18 90:23 91:2 124:20 127:9 133:8 135:6,21,23 136:17 aerial 6:7,22 7:15 11:4 16:14 17:22,23 24:13 28:23,24 29:6,8 30:1 37:8 52:6 55:2 58:18 61:24 76:17 aerials 6:4,7 8:18 28:20 affect 106:23,24 affected 58:22,23 115:13 131:14,15 affecting 46:18 50:22 61:13 106:23 111:13 afraid 68:22 after 8:22 29:6 30:18 31:2 32:6 46:5 47:14 66:20,20 75:19 78:17 100:22 150:3 afternoon 79:18 122:21 AG 15:8 35:18 AG-2 8:14 again 6:20 9:2,8,10,12 10:5 12:11 13:4 14:15 15:24 16:14 35:11 36:20 37:18 38:4,17 46:20 47:20 49:21 51:2,18 53:10 55:5 56:1,24 57:14 58:1 61:15,22 70:21 72:7,21 76:1 82:13 85:2 86:15,16 87:24 100:6 101:23 104:24 111:7	113:15 114:7 121:7 125:3 135:19 139:13 146:19 agency 20:17 25:25 aggregate 45:12 ago 100:13 agree 52:2 62:19 agreed 14:12,16 Agreement 14:10 31:1,13 88:25 agricultural 28:25 83:14, 16,19 100:14 101:4,6,24 116:14 131:15 133:2,11, 16 147:1,1,7 ahead 96:2,4 airport 126:16 airport's 7:14 Alico 6:15,16,20 7:1,9 126:7,10,10,15,21 141:24 142:6,7 all 3:21,24 4:4,5 8:16 10:7 12:3,12 15:12 17:6,7,8,18 19:13 21:1,12,20 22:6 23:2 25:20 35:23 37:17, 18 39:20 40:11,13,18 42:15,25 45:14 48:18 49:24 50:2,6 51:24 53:11,16 55:10 56:2 61:24 62:8 65:20 67:24, 24 68:13 73:18,22 74:13 75:14,17 77:4,9,19 78:13 80:22 81:16 84:4 86:25 87:10,11 88:4,5 90:5 91:9,14 93:2 95:10,17 96:25 97:12 102:15 103:4,6 104:5 105:18 106:16 107:9 108:1,4 109:10 110:9,16 111:1,19 112:6,22 113:6,24 115:19,20 116:3,4,11,22 119:23 120:14 122:16 125:10,10,12 128:15,15 129:4 134:6,16 136:8 138:17 141:9,14,20 142:8,14,16 143:4 144:18,20,23 145:25 147:10,12,22,23 148:2,19, 20,24 149:23 150:6,22 151:23 152:3 allow 23:19 48:15 89:14 90:8 140:9,19 allowed 14:21 16:24 23:24 60:24 77:16 91:21,23 allowing 130:20 allows 37:10 77:7 78:3 115:1 allude 118:18 alluded 77:5 115:25 119:12 147:12 alluding 118:24 almost 75:17 114:15 alone 77:3 along 4:20 39:22 47:13 48:8 52:19 55:6 58:7 64:22 65:21 66:2 83:3 86:16 123:7 124:24 126:14 128:22 130:3	already 4:17 14:5 17:22 24:16 40:16 41:24 44:9 46:6 67:6,7 71:1 82:9 100:19 113:18 131:14,15 132:5 Although 124:8 143:14 Alvin 87:19 always 54:9 76:19 101:8 147:14 ambient 102:4,9 103:23 ambiguity 24:22 amend 20:23 amended 21:1,3 31:19 32:1,8 amendment 140:3 amicably 25:6 among 25:8 amount 24:22 60:14 82:2, 16 104:22,25 113:25 149:14 analogy 77:21 78:2 analysis 55:10 112:13 115:20 129:24 132:3 analytical 115:18 another 18:1 45:2 73:6 77:22 78:10 106:1 122:18 126:13 149:22 answer 17:17 34:21 35:1 56:3 59:3 63:23 64:1 65:1 70:4 90:18 95:15, 16,17 96:10 112:11,20 123:13 130:2 answering 67:12 anticipate 137:1 any 3:5 11:23 14:22 19:25 20:2 21:4 25:15,15 26:5 34:18,21,24 36:8 39:3,7, 25 43:20 46:18 50:3,4,7 52:12 53:4 54:8 56:16 57:17 58:20,22 59:3 61:14 62:2 68:6 70:18,23 79:1,14,16,19 80:3 81:18, 21,22 83:2,3,3,18,23 84:11,12,13 85:11,20 86:2,22,24,25 88:1 90:13 94:6 95:16,18 97:9 99:7, 15 100:18,21 103:24 107:25 113:19 115:21 117:19 118:25 119:14 122:22 123:13,17 124:25 127:9,12 128:2 130:19 132:3 133:8 135:6,20 137:19 140:9 144:25 146:21,23 147:10,10,16, 17,23 anybody 50:22 70:19 85:21 87:2 103:24 122:22 127:12 144:25 150:22 anymore 33:24 78:18 anything 34:20 40:12 55:25 59:24 61:21 73:5 75:16 81:19 82:11 84:12 86:23 113:8 116:23,25 122:23,23 144:22,23 145:1 147:15 150:22 anyway 122:4 132:6	anywhere 45:3,9 65:12 119:19 124:23 apart 13:20 apologies 146:12 apologize 25:19 33:19 39:19 92:13 98:6 100:10 122:11 146:2 apparent 57:15 appeal 138:8,14 appearance 25:14 applicable 12:10 15:4 16:9 18:19 21:22 24:14,15 applicant 3:15 4:10,16,24 11:11 36:16,20 43:14 76:9 80:8 88:2 89:13,19 90:2 93:16 94:7,20 95:21 97:10,14,16 98:16,24 99:12 120:5 121:6 130:9 131:1 133:13 138:5,6 140:22 144:13 149:6 Applicant's 6:8,13 11:4,6, 13 22:13 38:1 43:21,23 75:20 application 14:3 25:8 30:12 44:22,23 88:13 90:6 91:8 133:5 140:3,7 147:20 149:23 applications 130:16 applied 8:1,9 11:19 14:13 18:8 114:8 applies 10:2 13:4 apply 14:4 113:25,25 143:4,7,11 applying 52:17 appreciable 56:16 146:21 147:10 appreciate 41:9 147:25 149:24 150:12,17 approach 25:3,5 27:11 62:15 90:19,19,22 112:4, 4,15 113:20 115:18 appropriate 11:9 98:3 133:21 135:12 approval 11:21 12:3,19 13:13 90:5 91:5,19 93:23 94:19 95:13 98:10,15,16 119:25 121:2,18 147:9 approvals 10:25 11:17 19:3 92:1 approve 89:11,12 93:21 approved 5:8,10,14,15,22 7:25 8:3,4,8,13,15 9:12, 12 10:3 11:16 12:2 13:2 14:5,14,20,25 15:15,18 16:3,16 17:1 18:1,11 19:1 20:23 26:5,11,16 28:15 37:1 69:13 113:18 143:5,15 approving 140:7 approximate 29:9 approximately 6:1 38:5 81:11 88:14 126:5 April 8:8 13:20 148:25 aquifer 14:18,19,22,22 45:20,21 62:8 aquifers 14:24 area 6:2,10,11 7:10,13
---	---	--	---

9:23 10:3 19:18 20:9
23:9 24:16 26:19,24,25
28:4,5,7,16,17,18 29:4,
21,21,22,23,24 30:5,8,8,
10,13,14 31:21 38:24
39:8,8,25 40:3,3,13,14,15
41:12 42:9 44:18,19 45:4
46:4 48:16 50:7,9 53:6
54:24 57:25 58:3 60:6,9,
11,12 61:8 64:11 69:21
71:12 72:3,15 76:14 79:1
80:23 81:1,3 82:2,12
83:4,22 84:20,25 85:1
86:17 90:15 91:10,11
93:13 94:8 98:23 100:12,
14 101:4 105:11 118:2,
20,20 123:11 130:20
131:16 132:6 133:22
135:3,9,23 136:24 137:6
140:14,15
areas 23:1 26:21 29:17
42:18 44:21 50:15 58:23
83:15 84:13 91:19 102:5
108:22 125:6 129:1
131:2 132:19
aren't 15:9 82:22 117:7
120:22
arise 26:5
around 3:8 14:8 40:24
49:25 50:2 52:7 60:8
61:10 67:21,22,25 68:13
83:17,18 101:18 108:6
116:11 124:23 127:23
130:10
array 50:17 55:23 58:11
114:18
arrow 38:23
ask 11:10 50:1 51:10,12
62:9,20 71:3 89:14 96:24
99:20 102:12 110:10,13
120:4 122:24 134:13
144:24 150:1
asked 55:24 66:5 92:22
95:5 122:23 127:16
143:1 145:1
asking 5:13 31:5 37:23
39:18 65:10 122:14
149:3
asks 92:7
aspect 5:15,24 26:8 27:21
34:14 60:20 61:4 76:5
125:18 148:5
aspects 5:13,14 90:6
asserting 24:21
assessment 98:18,23 129:8,
8
assist 92:4
Assistant 3:10
associated 10:15 61:18
79:17 89:21 90:21 91:4,
14 93:8,25 96:6 130:12
137:15 139:23 140:6
Associates 4:22 80:16,17
assume 112:13
assumed 109:12 111:18
115:19
assuming 75:8 104:11

106:12 109:6,7 113:24
139:11
assumption 20:5 130:6
assumptions 113:9
assurance 50:21 61:23
assurances 55:12
assure 44:14 62:1
assures 59:1
attach 20:6 121:10,17
122:5 151:9
attached 12:3,8,12 14:7
25:22 28:21 73:8 74:5,7
104:8 121:11,16 151:13
attaches 22:18
Attachment 130:24
attempt 139:13
attempted 91:13
attend 86:13
attended 86:7,16
attention 22:21 100:8
attenuate 52:13
attenuated 52:11
Attorney 3:5,11 4:1 36:11
39:13 42:23 95:21,23
99:10
August 22:18
authorized 22:19 153:5
automatically 132:8 149:19
available 31:24 34:25 74:7
86:1 92:10 123:5 134:18
average 23:20 57:2,9
aware 8:23 20:4 100:11
101:1,10,22 117:5,14
away 35:17 39:17 61:7
72:20 91:19 104:4
112:12 114:13 117:7
118:4 134:22 135:3,7

- B -

back 6:18,19 12:1 25:4
37:18,20 40:13 41:23
46:1,6 47:15,18,22 48:6
49:14 51:6 52:25 53:10,
22 54:15 55:1 56:10,12
59:5 66:21,25 72:19
75:18,22 77:19 86:5 88:9
89:20 91:15 96:3,13
103:18 104:19 107:17
113:15 114:16 116:13
117:1 122:9,18 133:1,11,
23 135:17 137:15 141:12
145:7 146:8 148:7,8,24
backed 148:18
background 89:24 99:20
backing 65:23 66:16
backup 61:22 75:7
backwards 143:3
Bahamas 78:14
ban 12:23
barely 48:10,11
barrier 46:17 53:12 63:19
64:16
based 14:2 32:20 57:11
73:1 89:24 90:15 97:16
98:18,22,23 104:9 124:12
basically 5:11 7:25 8:9

9:20 14:11 18:3 26:20
27:18 28:16,23 30:1,21
31:3 37:5 38:15 45:8
58:15 62:15 126:10
basis 56:21 119:24
bear 15:19
become 23:9 144:13
becomes 72:15 121:18
before 3:5,24 6:6 19:13
29:6 64:4 67:24 68:15
72:22 133:12 141:7
148:13
began 28:11
beginning 68:16,20 88:15
begins 27:16 32:2 118:17
begs 20:12
behind 47:13 65:5,22
106:18 144:12
believe 5:3 7:12 9:13
13:20 14:1,3 16:12 17:23
19:2 21:7 24:19,21 34:4
38:6 40:17 55:8,15 73:15
79:11,24 84:15 86:5
88:23 92:24 93:11 95:4
98:6 100:13 105:15
118:12,13 119:21 120:5
122:1 125:1 127:2
130:17,19 133:8 135:20
147:25 150:6
below 14:22,25 28:24 49:6,
10 59:11 60:5,23 106:23
108:22 133:10 141:1
145:24 146:1
bend 126:9,10
bends 6:16
berm 28:19 48:13,14
berms 30:16 85:1
beside 67:1,10
best 55:11 63:24
better 35:6 61:14 63:12
76:13 93:5 120:25
121:15 141:10 147:15
between 13:24 14:16 17:14
28:15 29:20 42:9 45:13
50:19 60:22 88:19
111:15 119:10 145:10
148:20
beyond 60:10,11 133:15
big 40:8 41:13 46:4 50:5,
5,6 113:13 121:13
biggest 77:12 106:8
Bishop 153:4
bit 7:16 10:13 15:24 46:3
51:7 53:8 80:22 88:8
107:21 108:23 114:16
116:5 125:14 140:11
146:18 149:6
blank 93:16 120:18
blasting 86:20,20
bless 103:11
Block 3:12,12,18 15:21
21:8 36:10 39:12 42:22
59:25 60:2 61:5 74:6
79:7 84:2 85:22 87:13,
15,18,19 88:5 92:18 94:5
96:5,10,17,22 99:17
104:2 110:12,15 118:12,

13 119:3,20 120:3 123:4,
10 126:13,14 127:15
128:1 129:6,12,20 130:2
131:10 132:1,14 134:15,
20 135:2,16,19 136:1,3,5,
21 138:25 139:6,9,13
141:2,6,15,23 142:1,7,13,
21,25 143:17,20 144:3,8,
17 148:22
blow 53:8 56:18
blowing 83:17,20
blue 29:18,20 120:24
board 6:5 16:4 26:12
93:19,21,23 120:16 122:6
129:25
Board's 132:5
body 52:12
bold 117:25 121:5
boom 77:1
both 11:9 19:21 22:3 41:1
44:4 58:18 115:16 121:7
150:11
bottom 6:21 60:25 69:22,
23 72:9 73:2 109:17,20
111:24 118:17 134:8,10
145:13
bottoms 57:13
boulders 108:19
boundaries 66:14 84:16
boundary 9:10 10:5 29:1,
19 44:17 124:24
bowl 77:23 78:1 84:9
breached 28:16
break 75:18 150:14
breath 148:13
breeze 83:10
brief 4:24
briefe 26:10,10
briefly 10:23 11:18 76:5
bring 34:23 37:18 46:6
59:4,5 79:22 96:3 100:8
102:1 138:9,14
Brinker 79:3
broken 27:4 38:9
Brothers 4:16,25 5:2,5,9
7:17,19,25 8:7 9:1 13:24
14:11,16,24 19:17 22:7,
11,18 23:11 58:14 88:12
106:3 118:16
brought 71:6 79:13 132:5
145:9 146:3
bubbles 40:1
budget 92:18
build 47:9 77:16
built 69:13
bulk 20:9 24:9 44:13
bunch 96:1 119:24
buy 75:5
byplay 103:7

- C -

cabinet 120:24
cake 77:23 78:1
calculate 115:15
calculated 30:6 73:19
104:16,17,21

<p>calculation 145:15,19 calibrate 112:8 call 9:18 21:24 22:2,21 35:25 38:9 42:16 116:25 125:23 150:20 called 4:10 6:17 23:8 36:16 38:10 41:3 43:14 54:10 76:9 80:8 87:16 97:3 100:3 122:9 124:2 came 15:12 21:10 35:20 77:15 88:13 109:1 112:24,25 121:18 136:21 137:5 can't 8:19 33:3 36:23 64:10 65:11 69:9 70:6 105:21 119:17 134:9 140:24 148:2 canal 114:20 cancel 148:19 cap 108:20 capacity 70:17 77:7 care 143:19 carried 35:16 carrier 53:3 carries 64:6 carry 76:16 Case 3:3 22:17 25:16 38:4 40:17 49:20 54:16 57:8 79:12 87:25 88:8,9,9 89:3,10,14,18 93:21,23 94:19 98:3 112:12 129:8 132:17,25 137:2 139:5,5, 10,15,23,24 140:5 141:1, 6,10,12 cases 115:20 132:16 139:12 148:16 caught 148:20 cause 37:14 68:20 72:10 117:19 causing 69:1 127:9 147:6 CDM 4:21 92:1 104:6 118:13,14 CDN 42:17 cell 23:8,13 46:10,10,13, 20,23 47:8,11,14,19,21,23 48:5,6 51:2 52:6,8 53:9, 18,20,21,22,24 54:17 58:17 64:24,24 65:14,20 66:3 67:8,10,17,18 68:1, 3,5 73:19 77:16 82:8 85:7 118:21 120:7,7,7 cells 22:25 23:2,16,16,19, 22,24 51:18 52:7 55:6 58:17 61:23 82:8 114:19, 21 115:21 center 27:16,19 certain 24:22 25:3 67:20 82:16 83:15 101:17 103:15 111:10 140:5 certainly 22:15 25:4 32:22 34:20 certify 153:5 cetera 21:2 45:2 105:19,20 challenging 14:6 change 9:20 31:18 36:21 37:3 39:7 73:12 90:6,7,9 92:6 93:4 115:24,24</p>	<p>116:1 138:21,22 146:21 changed 32:19 92:23 97:18 136:9 146:24 changes 27:9,10 57:4 90:7 93:10 94:7,20 changing 92:11 93:2 94:2 97:19 characteristics 58:16 check 70:20 chemical 55:22 Chief 3:2 34:7,24 79:12 Chip 3:12 19:2 21:7,19 31:8 32:6 59:24 60:2 74:5 83:25 87:11,15,19 96:1 97:15 117:10 118:11,12 122:9 123:3 126:14 129:4 133:19 134:14 138:19 142:15 144:20,24 145:2 Chip's 104:5 120:13 circles 117:9 circular 38:14 48:2 54:3 66:12 118:2 circumference 68:13 Cities 126:24 127:3,4 civil 36:2,4 clarification 5:16 10:18,23 144:11 clarify 25:3,9 72:25 95:6 97:13 class 112:16 classification 133:24 clay 45:19,21 51:9 clays 111:5 clean 107:4 cleaner 77:14 78:4 clear 46:17 49:15 69:3 77:23 125:13 128:21 clearly 18:6 32:25 50:13 53:5 122:1 141:17 clients 4:17 5:1 close 56:24 88:16 102:16 113:12 125:21 126:20 134:22 closed 49:21,21 152:3 closer 8:18 54:14 105:14 closest 21:9 37:12 135:1,5 closeup 7:16 56:19 cluster 125:23 code 25:15 136:18 137:24 138:2,10 143:16 codification 21:6 139:14 142:15,20 codifies 91:23 codify 21:20 91:9,14 codifying 143:4 coincides 24:13 collating 11:23 college 110:10 color 7:5,5 columns 106:9 come 41:21 42:13 46:1 75:13 89:23 96:13 99:18 108:22 119:3 122:18 123:15 133:21 136:20 138:10 145:7 150:5,15 comes 55:8 67:22 99:19</p>	<p>104:20 110:9 132:13 134:7 138:11 139:24 comfort 137:20 comfortable 85:16 90:23 121:3 133:14 coming 46:25 79:24 140:18 148:8 comma 139:4 commence 3:6 comment 72:8 commentary 73:2 comments 3:5 Commission 11:1 Commissioners 16:4 93:19, 21,24 120:17 122:7 129:25 committed 130:9 commodity 85:14 commonly 108:21 Community 3:12 87:20 compacted 111:13 Company 126:25 127:3,5 compare 59:9 compared 102:9 comparison 29:7 61:5 compatible 31:20 131:3 132:19 compensation 30:21 compilation 103:6 complete 38:6 completed 27:3 96:12 106:11 completely 108:4 completion 27:5 complex 112:7,18 114:24 compliance 59:1 125:15 complies 92:1 components 112:6 114:12, 13 Composite 11:11,15 22:3 comprehensive 26:4 90:10 Concept 28:14,25 29:15,19 30:10,12 32:4,8,23 34:1 36:22 37:2 38:3,20,24 39:21 92:23 93:3,5 94:16 97:17 98:25 140:14 144:14 151:1 concern 49:8 68:18 71:5,6 72:12 77:4 83:24 132:14 137:23 148:6 concerned 82:6 107:5 120:16 132:4 134:1 concerning 95:4 123:14 concerns 86:7,10,12,19,23, 24 90:2 concluded 152:4 concludes 31:3 34:6 79:12 conclusion 31:18 86:3 conclusions 92:4 130:23 concur 95:13 concurs 10:21 condition 12:11,21,24 13:2, 4,12,14,15 14:15,16 15:11,23,25 16:5,21,21,22 18:1,2,5 19:1 20:1,8,25 21:3 22:22,22 23:16 24:14,15 31:25 32:11</p>	<p>33:2,25 59:19 61:18 70:13,14 72:4 85:3,17 92:13,22 97:20 98:6,8,18 99:3 102:13 119:18,20,21 120:2,3,13 136:2,5,8,21, 25 137:14 138:1,20,23 139:2,8,25 140:1,4,25 141:7,8,14,17,25 142:9 150:25 151:10 conditional 94:16 conditioned 31:20 123:11 conditions 10:25 11:19 12:3,12,12 13:21 14:5,6, 13 15:4,12 17:16 18:13 19:15,20 20:3,5,6,8,10 21:2,7,20 23:11 24:1,22 25:1,3,11 30:20 31:9,13 32:1,15,16,17 45:6,23 57:7,11 91:9,14 94:1,21 98:1 118:7,8 119:24 121:17 135:25 136:10,13 138:4,5,12,13,15 139:14 conducted 22:24 25:10 58:13 conducting 24:24 conductivity 105:6 106:10 107:9,10 108:12 109:1,3, 11,24 confine 150:1 confinement 45:25 confining 14:19,23,25 125:25 confirm 58:5 confirming 25:24 confirms 23:18 confused 54:20 confusion 23:10 congenial 25:5 conjunction 18:3,7 connection 11:1 12:19 15:4 16:6,25 64:5 149:7 consent 31:1 conservative 63:10 90:18, 19,22 112:4,13 conservatively 62:18 consider 90:20 consideration 79:13 103:19, 21 considerations 150:9 considered 45:5 62:17 92:7 132:13 136:12 considering 68:23 consisted 8:16 consistency 57:12 132:7 consistent 50:17 56:17,18 57:1 69:5 109:2 130:15 131:18 consisting 153:7 consists 44:24 114:17 consolidation 21:5,7 constant 53:2 114:4,22 115:4,7 constantly 101:22 constructed 23:2 106:20 117:18 construction 100:22,22,23 consultant 72:2</p>
---	---	---	--

consultants 4:23
 consulted 124:6
 consulting 4:20
 consumption 20:18
 contain 23:2
 contained 14:11 31:10
 32:16 89:3 91:10 124:13
 contains 115:16
 contamination 137:8
 content 82:16,18
 contention 72:6
 context 138:10,11
 continuance 89:14 150:3
 continuation 89:17
 continue 48:2 54:3 66:12
 67:11 75:20 118:5
 148:24
 continued 47:25 55:5
 continues 48:3 66:11
 continuous 45:21 55:13
 68:17,24
 continuum 53:22
 contour 68:23
 contributing 84:8
 control 21:24 60:19
 controlled 101:12,23
 conversation 86:25
 convert 85:19
 converted 116:15
 conveying 49:20
 copied 73:7
 copies 43:17,17
 copy 15:19 39:22 121:9
 127:19
 Corkscrew 6:21 7:12
 126:21,22 141:19,20,21
 142:5
 corner 7:14 28:2,12 89:5
 140:14
 corners 58:4
 correct 7:7 10:11 19:2
 21:8 30:18 35:22 40:5
 47:2 49:7 52:22 53:17
 66:17 85:14 91:8 92:10
 94:3 104:13 105:7
 106:14 107:6 111:2,4,22
 114:5 141:23 147:21
 corrected 94:22
 correction 16:19 31:25
 33:25 137:16 144:15
 corrections 31:15
 correctly 88:24 118:15
 119:1 126:17 127:21
 130:11
 corridor 76:20
 cosmetic 73:12
 cost 38:18
 costs 37:21,22 38:17,17
 could 6:4,7,9 11:3,8 14:13
 26:9 27:23,25 31:6 42:4,
 16 45:8 59:4,20 60:16
 64:5 69:22 70:5 73:14
 76:13 81:5 84:2 105:14
 107:16 112:13 113:15,24
 115:10,21 121:6,10
 137:15 144:6 145:2
 146:13 148:19

count 74:22
 County 3:3,5,10,12 5:19
 8:15 11:1 12:2 13:12,25
 14:1,4,12,17 15:2 16:4
 24:4,5,14,20 25:7 35:20
 36:11 39:13 42:23 55:20
 78:24 88:16 89:15 93:19,
 21,23 94:23 95:10,21,23
 96:12 99:9 100:7 120:17
 122:7 127:5 128:6
 129:25 130:12 133:24
 153:2
 county's 124:15
 couple 14:8 18:18 39:15
 94:1 97:13 100:9 115:9
 122:11,19 135:4
 course 7:9,13 44:20 58:9
 102:22 117:15 133:24
 cover 83:10
 covered 9:6
 covering 56:4
 covers 121:23
 crawl 67:24
 crawler 65:11 67:21 84:7
 crawls 65:24
 create 53:12 67:10 111:17,
 18 114:13,25
 created 46:9
 creates 66:4 67:9 91:24
 creating 52:9 53:2
 credit 110:11
 creepy 65:11 67:21 84:7
 criteria 150:9
 critical 63:16
 critters 104:12
 cross 30:6 46:1 48:11
 51:1,3,7
 cross-examination 51:13
 cross-hatched 26:19,25
 28:5
 crosses 66:11
 crushed 41:6
 crushing 16:6,25
 cube 114:17
 culminating 8:6
 current 19:10 27:1,11 28:6
 29:15 37:1 38:24 55:4
 56:25 58:10 98:17,19
 129:14
 currently 23:14 26:11
 28:1,6 44:19 56:13 79:3
 126:25
 customers 85:4
 cut 38:10 46:9,13 47:6,21
 48:1,10,11 51:3,16,16,17,
 17 52:11 66:2 107:4
 cutting 47:20 49:18,19
 cypress 98:21

- D -

dad 103:6 113:13 120:23
 damage 117:19 119:14
 dark 40:22
 darn 65:3 75:12
 data 61:9,15,16,20 102:15
 103:1,4 111:16 112:8,9

125:11 145:13,14 146:20,
 25
 date 16:4 32:4,8,9,10,12
 89:6 92:23,25 93:6,8,16,
 17 127:1 133:23
 dated 22:18 89:9 153:9
 dawn 12:1
 day 75:6 83:25 84:1
 109:4,12 122:18 153:9
 days 74:21,22,22,24 75:2,
 6,13 110:8,11 122:11
 DCI 141:1
 DCI2005 139:5
 DCI2005-00105 3:4
 deal 27:21 142:16
 dealing 10:2 15:7,16 16:10
 27:24,25 29:7 129:18
 dealt 14:15 33:2 37:2
 decades 56:15 61:20
 128:17
 decide 122:17
 decisions 148:17
 decreased 60:5
 deemed 97:7 136:13
 deep 48:12 49:13 62:3,7
 69:18,21 70:20 72:10
 73:3,17
 deeper 69:25 70:18,25
 defense 25:15
 defer 81:24 82:4
 definitely 116:1 120:19
 degree 19:19 64:9 68:9
 degrees 60:19
 delete 21:21
 deleted 33:25
 deliberating 22:16
 delineate 98:11
 delineated 26:17
 delineates 27:2 32:24 76:17
 delivery 85:8
 demonstrated 135:21
 demonstrating 133:4
 denial 90:3
 denote 29:1
 denotes 28:8
 DEP 84:20
 Department 87:20
 departments 95:12
 depending 84:18
 depends 45:8 59:12
 depict 98:20
 depicting 93:12
 depicts 29:9
 deposit 66:13,25
 deposited 66:5,6 68:4
 depositing 66:3
 deposition 79:18
 deposits 65:19
 depth 9:21,22 19:6 20:24
 25:19 34:12 37:3 45:8,24
 48:9 59:7,10 94:10,17
 106:21 115:22
 depths 73:10
 Derheimer 3:21 33:5,18
 80:4 85:24 94:25 97:2,5,
 6,13,25 98:12,14 99:6,16
 describe 19:23 23:5 24:25

27:7,10
 described 24:1 48:2 58:13
 describes 27:13
 design 112:11,20 113:16
 designations 147:3
 designed 117:15
 despite 57:12
 detail 19:23 22:16 23:5
 26:7 27:13 34:10 149:14
 details 82:3
 detect 26:5
 determine 60:4
 determines 136:9
 determining 107:8
 detrimental 135:14 136:11
 Development 3:13 9:1
 30:23 32:2 87:20 98:10,
 10,15 106:5 138:3,5
 143:16
 Deviation 143:13,14 144:4,
 6,9
 Deviations 142:16 143:5,6,
 10,25 144:12,13
 device 103:2
 dewater 23:7,7 47:8 48:6
 77:11,16 91:24 107:25
 108:5 117:17 119:17
 120:10
 dewatered 45:10 47:11
 51:3 53:18,20 102:5
 dewatering 5:16,16 10:17,
 19,25 11:2,20 12:17,22,
 24,24 13:14,16 14:15,18,
 21 15:4,12,25 16:1,21,23
 17:7 18:2,3,6,14 19:2,14,
 22 20:10,12,16 22:5,19,
 23,25 23:3,8,12,13,13
 24:2,3,11,15,17,23 25:8,
 9,19,24 26:2 31:22
 34:11,16 44:12 45:5,7,14,
 15 46:9,13,20 47:14,21
 48:5,19 51:2,17 52:5,8
 53:9,23 54:4,17 55:6
 56:14,21 57:14 58:12,17,
 20 60:17 63:4,10 64:24,
 24 65:13,20 66:3 67:8,
 10,17,18 68:1,3,5,21
 69:14 73:19 77:4 78:2
 82:8,17 89:12,15,21,21
 90:4,8,12,21 91:18,20,21,
 22 92:8 99:25 100:18
 101:11 102:10 106:21
 107:23 113:19 114:6,7
 115:21 116:17 117:3
 118:4,6,10,13,21 119:7,22
 120:6,9,9,21 121:8,8,25
 123:12 130:4,21 135:12
 151:8,11
 Diana 3:2
 did 11:23 14:1,4 18:9 32:6
 35:7 49:23 52:15 63:2,6,
 8 76:13 77:11 86:3,9,13
 90:18 97:15 108:12
 110:23 111:1 118:8
 129:7,8,24 130:17
 136:19,25 145:14,19
 153:5

<p> didn't 15:19 21:4 23:12 33:18 34:23 43:4 63:7 75:5 86:22 106:15 124:19 132:3 139:16 141:7 diesel 77:17,19 78:5 137:8, 12 diesels 87:5,6 difference 29:20 43:21 57:11 60:25 68:23 134:7 145:11,15,19,24 differences 27:13 145:10 different 7:18 14:17 18:2 21:14 44:10 50:20 54:12, 19 69:23 71:11 72:5 91:20 98:8 107:10 110:20,22 114:13,22 115:2,3 150:8,9,9 differential 60:22 61:3 differing 17:13 dig 42:2 48:14 51:25 65:6, 9 66:21,23,25 67:23 68:4 77:25 78:1 108:6 digger 87:4 digging 47:14 49:12 65:13 66:16 67:15,21,25 68:1,4 69:20 71:1 81:17 82:9, 10,15,19 108:6,18 digs 65:19 66:19 diligently 150:2,5 dimensions 69:10 direct 41:5 78:13 direction 38:13 directly 21:3 34:18 64:22, 23 director 76:4 78:7 dirt 40:25 41:1 46:24 47:17,17 63:20 67:4,5,7 68:5 81:21 82:9,10,17,18 83:3,5,17 84:24 85:2,11, 14 106:13 107:3,8,9,15 108:18 113:7 dirty 29:7 disagree 138:13,15 disappear 139:19,19 disappeared 139:20 discuss 88:6 135:15 discussed 38:4 44:24 100:10 145:3 discussing 122:11 discussion 31:4 124:13 135:18 distance 29:20 118:22 distributed 50:18 district 8:14 14:21 15:1 16:3,8 17:1 20:17,20 22:4,7,9,12,17,20 23:18 25:24 30:23 31:2 69:9, 11,12 70:5,14,22 84:21 90:1 92:2 101:7 116:13 District's 22:11 ditch 28:25 46:15,16,19,21 48:1,14,21 49:12,21,22,24 52:7 69:17,22,24 72:9,15 114:20 124:18,19 ditches 48:19 49:18,19 55:7 100:14,19 101:1,2, 16 divergence 15:3,24 19:20 division 96:6 98:17 125:16 divisions 95:11 doctorate 43:1 64:9 doctors 43:6,8 document 14:10 91:15 documented 98:25 documents 22:2,16 89:4 doesn't 32:7 33:24 43:20 73:16 97:19 107:18 119:2,3,5 125:17 136:16 137:19 138:10 143:4 dog's 80:21 doing 21:11,15 33:2,16 41:21 44:2 50:10 61:19 67:15 82:7,7 93:2 106:2 131:14 142:19 143:23 don't 19:2 22:2 23:7 25:14 27:23 39:17 52:12 53:4 55:25 58:3,23 59:5 61:14 62:1 64:9 69:15,19 70:4 72:23,25 74:4 75:6 82:3 85:16,20 86:24 92:18 94:5 96:2,5,17,21 97:25 98:6 99:14 100:9, 17 111:6 113:22 116:22 119:18,20 122:17 123:17, 18 124:7 129:23 130:7 131:17 133:12 138:1,14 141:19,24 143:7 144:23 146:5,10 147:16,25 148:11,13 149:10 done 6:5 9:17 16:7 21:17 30:25 31:1 34:20 35:13, 20 46:5 47:25 51:1,15 53:21 54:13 55:18 63:17 68:6 72:24 73:15 75:4,24 76:14 89:17 90:16 101:2 104:16 105:16 106:13 112:24 113:6 115:20 116:7 122:20 144:20 151:21 door 72:19 dots 127:20 down 7:11 17:21 27:4 28:2 37:17 38:9,11 43:21 45:17 46:13,25 50:6 51:24 52:9,10,13,13,16,20 57:9 62:21 64:18 67:1 68:25 69:1 71:1 73:10, 22,22,24,25 74:3,15 81:19 84:19,19 85:5 87:2 89:14,15,18 104:23,24 106:4 107:18 108:24 110:1,2 111:14,21,23 112:3,13 113:2 118:16, 17,21,22,22 119:7 124:14,18,19 126:20 127:9 129:23 130:5,6,12, 14,14 133:9 135:3,4,10 140:14 141:21 142:5 144:24 145:23 downs 61:13,17 Dr 43:5 62:9 90:17,25 119:12 131:12 drag 37:15,16 64:21 76:24 drags 40:24 drain 49:18 69:6 111:25 114:9,10,11,15,19 115:3 drainage 70:1 72:10 114:20,23 drastically 50:20 draw 51:24 52:9,10,13,13, 16,20 55:1 61:13 62:21 69:1 73:10,21,22,24,25 74:15 84:19,19 106:4 111:21 112:3,13 113:2 118:16,22,22 119:7 124:14,18,19 127:9 129:23 130:4,6,12,14,14 133:9 drawing 52:9 drawings 54:9,21 drawn 52:8,24 55:3 104:17 DRGR 129:9,9,11,14,16,25 130:16 131:3,22 133:23 147:3 drilling 14:24 drinking 126:1 drive 41:7 dropping 66:16 drought 57:4,5,7 59:19 61:18 droughts 57:3 103:21 dry 59:14,16,20,20 60:21 81:21 due 43:25 57:7 92:18 116:12 dug 41:24 45:14 62:6 69:18 duh 142:3 duly 4:11 36:17 43:15 76:10 80:9 87:16 97:3 100:3 124:2 dump 37:13 41:11,13,18 87:1 dumping 65:22,23 67:25 84:7 dumps 37:10 42:1 duration 146:23 during 6:1,2 28:11 35:3 68:21 83:15 88:21 90:17 91:7,12 94:11,22 100:22 dust 42:12 81:18,20,23,25 82:2,11,23,24 83:10,12, 17,20 84:9 85:17 dusty 82:14 duties 64:5 </p>	<p> easy 54:19 112:9 ecologist 80:17 ecology 80:1 economical 77:13 Ed 3:16 4:18 34:14 63:24, 25 64:2,4 76:1,8 82:13 86:14,15 Ed's 82:12 edge 60:9 64:25 educate 125:20 effect 23:14 50:9 53:2 56:16,20 61:16 69:16 84:19,19 103:22 107:3 113:19 114:2,6,23 119:7 130:10 131:24 132:12 147:6,16,18 effective 38:18 58:15 115:23 139:15 effectively 45:16 effects 61:11 63:3 147:2 efficient 38:15,18 efficiently 45:17 effluent 22:25 23:3 efforts 137:4 egress 141:18 eight 145:14 148:15 either 7:18 38:11 48:13,14 56:1,21 60:10 61:11 89:18 95:20 99:15 104:17 133:9 137:6 148:4 elaborate 137:21 146:17 electric 37:22 76:24 77:12, 18 87:4 electrical 77:14 electrically 37:15 electronically 121:7 elevation 68:23 71:1,7 72:9,16 elevations 73:2 else 27:23 34:20 40:12 49:20 50:22 63:22 73:5 75:16 85:21 87:3 105:22 113:8 116:23,25 122:23 144:22,23,25 150:22 emphasize 62:16 encompass 76:14 encompassed 20:13,14 end 17:11 43:19 44:13 68:16 80:20 84:9,10 107:14 143:24 148:20 149:8 endeavor 131:15 enforce 137:25 enforcement 25:16 91:16 136:18 137:24 138:2,11 engaged 19:22 engaging 24:3 engineer 27:7 engineering 36:2,4 enormous 108:18 enough 69:18 82:20 119:3 144:25 ensure 26:3 52:20 entering 61:2 entire 19:21 30:13 115:18 148:7,9 </p>
--	--

- E -

<p>entirely 28:8 entirety 9:18 19:7 26:17 entry 76:17 environment 77:14 101:23 Environmental 3:21 32:15 42:8 72:2 78:4 94:25 95:18 97:6,8,19 98:5,17 envision 76:25 77:23 envisioned 23:6 envisioning 82:14,23 envisions 138:2 equal 59:11 113:24 equipment 27:9 especially 50:5 68:16 101:9 essence 17:10 essentially 9:5 13:17 16:22 30:18 46:9,17 47:12 48:4,14 51:19 55:13 56:14,20 61:9 66:16 69:22 71:5 72:22 114:4, 16 115:14 124:19 establish 61:14 102:4 105:16 106:22 established 28:19 100:20,21 101:11 102:2 117:3,5 establishing 114:22 estimated 62:22 estimating 62:18 estimation 62:17 evaporation 113:23 evapotranspiration 111:25 113:4 114:10 even 67:2 82:17 83:17 88:25 90:22 100:22 133:1 139:16 142:20 146:3,10 event 102:3 123:6 130:7 ever 39:17 40:2 68:6 150:14 every 55:15 103:8 125:11, 22 everybody 63:14 96:21 100:18 105:20 121:3 141:11 everybody's 130:11 everyone 3:25 everything 7:4 9:19 11:3 50:10 54:10 83:11 91:24 112:10 evidence 14:2 133:20,22,25 evolved 17:15 58:14 147:14 exact 143:1 exactly 70:6,20 98:1 103:12 142:21 exaggerated 54:21 107:21 exaggeration 54:8,11 examined 4:11 36:17 43:15 76:10 80:9 87:17 97:4 100:4 124:3 EXAMINER 3:1,2,9,18,23 4:5,7 5:4 7:4 8:21 10:7, 12 11:5,12 15:22 17:3,6, 18 18:12,17,20 20:22 21:9 22:6 26:14 31:7 32:13 33:12 34:5 35:1, 18,23 36:4,8,11,13,25</p>	<p>37:25 39:4,11,13,15,17,20 40:6,8,11,18,21,23 41:10, 16,19 42:4,21,23,25 43:4, 9,20 44:7 46:22 47:3,16 48:8,17 49:1,5,8 50:1,24 51:11,22,24 52:2,19,23 53:15,25 56:6 57:16,21 59:24 62:3,9,12 63:2,6,8, 21,25 64:8 65:2,18,21 66:15 67:13 68:18 70:11 71:3,18 72:11 73:4,8,18, 21 74:1,9,12,19,23 75:5, 8,11,15,22 76:2,21 78:6, 9,15,19,25 79:4,8,10,11, 21 80:3,5,11,13,18 81:3, 9,12,15 82:5,20 83:2,7,24 84:4 85:6,10,18,23,25 86:11,22 87:4,8,11 88:1, 4,5 90:5 92:4,12,16 93:2 94:4 95:7,20,22 96:1,7, 14,19,25 97:9,12,24 98:9, 13 99:5,9,12,14,18 100:5 101:20 102:12 103:3,9,24 104:3,5,20 105:1,8,18,24 106:7,15,19 107:1,7,14,19 108:2,10,16,25 109:6,10, 17,20 110:1,3,8,14,16,25 111:3,19,23 112:22 113:13 114:3,9 115:5,11 116:3,16,18,22 117:3,6, 11,13,23 118:7,11 119:2, 5,10,16,23 120:12 121:10,13,15 122:3,15 123:1,3,9,15,21,23 124:4, 11,22 125:2,12,13,19 126:2,7,11,19 127:7,12,25 128:3,11,18 129:1,4,15,21 130:24 131:11 132:2,15 133:17 134:5,16,21 135:10,17,24 136:2,4,7 137:22,25 138:7,17,23 139:1,7,10 140:10,24 141:3,9,16 142:2,8,11,14, 22,23 143:12,18,22 144:4,16,18 145:5,17,25 146:7,15 147:23 148:2,24 149:3,13,19 150:7,13,20, 24 151:4,7,11,16,19,23 152:1 example 60:21 71:7 118:1 examples 56:7 excavate 37:11 47:9 63:19 64:18,23 67:9 68:15,17 excavated 17:22 23:9 24:16 28:16 29:4,10,23 30:9,9 84:20 85:15 excavating 37:19 38:6,16 68:24 70:18 71:22 77:20 excavation 8:5 12:5,9 13:1,12 14:5 16:1,23 17:9,12,24 18:4 19:6 20:11,14,24 23:23 24:8,8 27:5 28:4,7,11,12,16 29:3,15,16 31:22 35:3 38:13 39:8 48:7 64:15,17 65:1 66:14 74:18 82:7 84:16 91:22 92:8 118:5</p>	<p>149:8 excavator 37:15 41:5 47:10 Excel 103:11 except 139:4 140:25 exception 8:4,14,15 10:9 12:4 15:8 93:7,18 excuse 27:17 151:25 Exhibit 6:8,13 11:6,11,13, 15 22:3 23:17 26:13 28:21 32:9 36:23 37:23 38:1 39:24 43:21,23 117:10 122:6 148:10 exhibits 22:3,10,13 127:1,4 exist 33:24 108:15 existed 28:24 29:5 108:14 existence 100:15 existing 13:7 24:25 28:1 30:16 31:20 69:6 70:9 99:1,2 101:3 127:8 128:22 exists 118:1 expand 66:13 67:2 129:12 expanded 15:14 expanding 9:2 expansion 8:6 9:6,18,23 10:3 12:14 15:8 16:10 18:13 19:22 21:25 91:11 136:24 140:9 expansions 9:4,5 expect 105:22 147:9,17 expected 90:13 135:8,13 expedited 149:4 expeditiously 149:9 experience 43:3 78:19,21 99:25 experiencing 135:6 expert 36:2,3 42:18,20 43:10 79:25 80:1 87:22 97:7 99:21 expertise 124:7 136:25 explain 34:9,10,12 64:5 106:17 110:6,7 explains 30:15 127:3 explanation 4:24 63:1 73:23 82:4 129:16 131:20 explicit 24:11 exposed 47:4 expressly 16:3 extend 52:16 108:24 extended 29:16 extends 45:3 extension 6:17 126:8 extensive 58:25 extent 29:14,18 46:12 58:18,18 61:24,24 extreme 16:15 extremely 87:6</p>	<p>facts 4:1 fair 17:14 fairly 34:21 56:17,17,23 57:1 58:17 84:17 fall 91:15 falls 47:13 familiar 126:19 familiarity 7:21 far 7:14 28:2 52:16 54:18 64:11 83:12 107:4 112:12 135:7 147:16 farmer 35:16 farming 35:14 101:1 farthest 37:6,12 fashion 48:2 fast 85:15 148:8 fattest 106:8 feature 114:20 February 32:5 92:23 93:7 148:20 feel 121:15 141:9 feeling 33:8 70:23 137:20 feelings 148:11 feels 133:14 feet 9:21 19:7,7 23:20,20, 21,21,25 41:4 45:4,7,9, 13,24 46:10,11 48:12,13, 22,25 49:6 51:8,8 54:17 57:10,10 59:22 62:6,7 68:24 69:19 73:11,11,15, 22,22 81:11,12 107:15 108:24 109:4,11 111:20 112:25,25 113:1 117:17, 24 118:4,20,20,23 119:6, 8,17 120:21,21 123:12 124:15 fellow 40:24 103:10 141:19 felt 90:23 91:8 few 31:14 43:6 95:1 96:9, 20 field 28:13,18 29:9 30:16 35:21 36:3 80:2 90:13 95:10,14 117:9 123:6 125:15 126:13 131:21,22 134:19,25 135:7,14 137:2,10,13,17 fields 40:7 42:20 83:16 124:21 figure 21:14 50:12 57:8 73:14,16,19 74:18 141:13 149:16 figured 148:3 file 20:21 filed 14:6 31:8 filing 25:7 fill 45:1 51:7 58:12 65:13 67:4,5,7 77:5,6,20 filled 47:15 51:18 67:8 101:2 filling 67:17 77:21 fills 66:3 final 12:20 17:19 18:24 26:24 123:4 Finally 55:10 58:25 find 15:20 33:3 50:18 71:24 90:12 131:18 138:20 141:20</p>
--	--	--	--

- F -

finding 31:18 132:6,6
134:24
findings 31:10 90:10 92:3
130:23 134:1,14
fine 3:9 18:23 96:22
138:15 141:2 151:18
fingers 74:22 75:13
finish 122:17 145:6
finished 95:19
Fire 104:4
firm 4:15
first 5:15 8:6 9:6 10:7,17
11:21,23 12:14,17 14:19,
22,25 15:7 27:15 28:23
31:17 33:15 41:3,4 45:25
68:16 74:3 77:13 78:16
88:5,13,16,17 100:3
103:15 107:2 118:18
125:25 129:7 134:9
139:18 144:22
fit 150:11
five 27:4 75:18 78:8,20
109:13 110:4 111:10
126:5
flagging 30:17
flat 120:18 145:23
flip 12:20 52:25
Flipping 29:2
flood 61:18 101:4
flooded 101:25,25
Florida 3:16,17 4:18,19,23
5:1,2,6 7:2,10,17,18
14:20 15:1,12 16:3,7
17:1,15 19:16 20:2,15,16
22:4,8,12 23:18 24:3
25:23 64:3 78:7,13,20
79:2 81:24 83:13 84:21
97:22 98:3 101:7,11
116:10,12,21 126:24
127:3,4 147:13 153:1
flowing 82:2
flows 115:2 147:19
fluctuations 57:13
flying 81:23 82:11
focused 132:5
folks 5:1 75:17 120:20
follow 27:5 47:13 80:10
139:22
follow-up 86:2 145:1
followed 30:17
following 9:10 12:6 33:13
90:24 91:25 144:12
follows 4:12 36:18 43:16
76:11 87:17 97:4 100:4
124:3
foot 22:25 23:16 41:13
57:1 81:14 83:8,9 107:7
115:19 117:4,21,21
118:3,25 120:11 124:17
129:23 142:23
force 68:15
foregoing 153:6
form 19:22 69:5,25
format 43:25
formation 47:12 69:25
formerly 126:24
forms 119:24

Fort 3:4 4:15
forth 52:25 69:12 70:20
79:13 89:20 113:23
147:4
fortunately 88:11
forum 36:2 42:18 87:24
forward 38:14 147:8
found 23:22 130:15
foundation 66:18
four 48:12 53:19,23 55:2,
18,19 57:10 58:1,6 68:24
74:19 75:13 128:8
149:13
four-tenths 129:22
fourth 29:8,8 125:7
frame 19:18 145:12,24
151:16
Frank 73:7 104:8
Franklin 3:15 4:15
frankly 30:25
free 150:14
Friday 151:17,18,22,23
152:1
front 65:5,6,7 104:7
fuel 37:21 38:17 77:18
78:5 137:8
full 53:11 55:4 77:23
115:18 120:18
fun 78:18
further 34:15 35:25 38:9
61:7 115:9 131:20
133:13,15 135:3
future 9:3 25:15 26:5
44:20 132:16 139:11,12
141:11 147:17

- G -

gauges 101:15
gee 35:5
general 6:9 8:4 9:24 12:5,
9 13:12 14:5 60:9 125:1
generally 5:8 6:11 7:23
37:7 50:16
geologic 54:9
geology 42:19 43:10 44:10,
24
geometry 106:4
gets 111:13 120:23 138:6
getting 17:11 47:6 65:10
82:15 110:10 112:7
125:8 137:9 142:21
girls 149:16
give 10:15 44:5,8 54:13,22
72:19 77:22 116:5
137:19 144:17 151:19
given 13:18 20:4 58:20
74:6 97:21 134:8
gives 78:3
glass 146:8
go 3:8 5:11 8:25 17:12,16
27:20 28:9 34:9 37:23
47:22 50:25 51:4 52:3
53:10,11 56:10 65:11,12
69:21 75:22 78:17 89:15
90:25 95:8 96:2,3,11,12,
15 99:20 101:25,25

103:9 106:15 109:11
110:14 111:10 112:18,19
118:17 127:18 133:12
134:5 136:5 141:12
143:25 148:7,8,24
goals 90:10 129:17
God 103:11 107:15 113:2
149:3
goes 21:1 38:25 44:6 46:5,
15 64:12 66:11 73:17
88:9 93:20 106:4 118:21
120:16 122:6 131:5
132:22 135:17 138:16
gone 23:11 63:19 64:17
Good 3:1,23 4:13 44:5
45:22 49:17 50:21 55:10,
12,25 58:11 70:12,21
71:22 72:7 77:21 78:16
84:24 86:9 87:18 102:20
104:14 137:19 146:7
got 12:8 19:13 21:14
33:12,19 35:16 39:25
44:1 48:18 49:15 50:5,6,
12 51:7,8 53:10 54:16
55:12,24 56:2 57:7 58:1,
10 60:24 61:13 62:5,7
63:9 64:15 65:3,4,4,5
68:2 74:1,3 83:7 84:6,7,
7 85:1 96:23 103:3,12
104:3 107:3,3,11 108:2,7
113:7 114:10,18,18 121:1
122:20 127:23 129:4
131:23 133:12 141:11,21
142:20 144:4 148:15,15
gotten 54:14
governed 21:13
gradual 107:21,23
granted 12:9 13:9 19:4
136:23 139:5,24
graph 74:16 134:9 151:2
graphically 29:25
graphs 134:6
gravity 111:13
great 115:14
greater 19:19,23 22:16
60:24 98:4 111:10
117:19
Green 5:9 7:19 10:1
29:14,21 42:9 126:18,23
grid 114:17,19
grids 114:17
grilled 144:25
ground 16:6,24 20:18 26:4
48:12 49:6,10 51:20 52:1
55:14 59:8 61:7 68:19
71:7,25 82:15 95:17
113:14 130:5,20 131:4,25
132:2,20 133:9 135:23
147:19 148:5
group 86:1
grows 54:3
guess 6:8 7:22 11:3,4
18:24 22:21 24:17 25:12,
12 26:9 40:11 68:9
69:19,20 86:2 135:17
guessing 147:1
gum 103:6 113:13 120:23

gut 70:23
guy 41:23 57:19 141:22
guys 42:5 48:17 57:25
73:4,24 81:18 85:6,19
112:24 116:7 117:7
120:22 127:7 148:12

- H -

habitat 98:21
half 8:10,16 10:8,9 12:15
125:22 134:22
halfway 107:10
hand 4:3 6:11 8:2 59:6
62:6 112:12
handles 125:16
handling 88:15
handout 27:24
Hang 51:11 122:16
happen 39:18 67:22 77:15
103:1 117:21 120:7
140:20
happened 111:16 140:2,20
happening 85:17 89:23
133:15 137:4
happens 77:25 142:11
happy 32:23 34:25 59:3
hard 40:15 43:17 54:21
127:19
Harper 4:16,25 5:2,5,9
7:17,19,25 8:7 9:1 13:24
14:11,16,23 19:17 22:7,
11,17 23:11 38:25 58:13
88:12 106:3 116:10
118:16
hasn't 140:12 146:20
hatching 30:6
haul 37:13 38:22 42:1
hauling 49:19
haven't 68:9 83:18,23
92:21 120:14 130:22
142:17 148:3
having 4:10 15:3 36:16
41:19 42:5 43:14 50:7
61:16 63:15 71:8 75:12
76:9 80:8 83:12 85:11
87:16 97:3 100:3 124:2
131:24 137:9 144:1
Hayden 4:23
he'll 27:10 34:9
he's 34:20 51:14 65:10
67:13,21,23,24 68:1,2,3
76:4 79:24 96:8
head 60:22,25 62:20 80:21
86:12 114:22
heads 115:2 123:12
health 136:11
healthy 83:22
HEARING 129:7
heard 132:15 140:6 149:17
HEARING 3:1,2,6,9,18,23
4:5,7 5:4 7:4 8:21 10:7,
12 11:5,12 14:2 15:22
17:3,6,18 18:12,17,20
20:9,22 21:9 22:6 26:14
31:2,7 32:13,22 33:12
34:5 35:1,18,23 36:4,8,

11,13,25 37:25 39:4,11, 13,15,17,20 40:6,8,11,18, 21,23 41:10,16,19 42:4, 21,23,25 43:4,6,9,20 44:7 46:22 47:3,16 48:8,17,18, 19 49:1,5,8 50:1,24 51:11,22,24 52:2,19,23 53:15,25 56:6 57:16,21 59:24 62:3,9,12 63:2,6,8, 1,25 64:8 65:2,18,21 66:15 67:13 68:18 70:11 71:3,18 72:11 73:4,8,18, 21 74:1,9,12,19,23 75:5, 8,11,15,22 76:2,21 78:6, 9,15,19,25 79:4,8,10,11, 21 80:3,5,11,13,18 81:3, 9,12,15 82:5,20 83:2,7,24 84:4 85:6,10,18,23,25 86:11,22 87:4,8,11,22 88:1,4,5 90:5 92:4,12,16 93:1 94:4,22 95:7,20,22 96:1,7,14,19,25 97:9,12, 17,24 98:9,13,24 99:5,9, 12,14,18 100:5,11 101:20 102:12 103:3,9,24 104:3, 5,20 105:1,8,18,19,24 106:7,15,19 107:1,7,14,19 108:2,10,16,25 109:6,10, 17,20 110:1,3,8,8,14,16, 25 111:3,19,23 112:22 113:13 114:3,9 115:5,11 116:3,16,18,22 117:2,6, 11,13,23 118:7,11 119:2, 5,10,16,23 120:12 121:10,13,15 122:3,15,15 123:1,3,9,15,21,23 124:4, 11,22 125:2,12,13,19 126:2,7,11,19 127:7,12,25 128:3,11,18 129:1,4,15,21 130:24 131:11 132:2,15 133:7,17 134:5,16,21 135:10,17,24 136:2,4,7 137:22,25 138:7,17,23 139:1,7,10 140:10,21,24 141:3,9,16 142:2,8,11,14, 22,23 143:12,18,22 144:4,16,18 145:5,17,25 146:5,7,15 147:23 148:2, 14,24 149:3,11,13,19,22, 25 150:4,7,13,20,24 151:4,7,11,16,19,23 152:1,3,4 hearings 97:7 122:20 148:19 heck 40:2 41:22 136:4 held 115:3 help 6:5 32:17 95:6 140:10 149:10 Hence 117:20 Henderson 3:14 4:15 herein 140:25 hey 35:21 Hi 97:5 hidden 20:1 high 61:1,11 85:4 101:18, 18 103:15 higher 49:16 60:11 68:19	69:17 70:2,24 71:1,24 109:13 110:4 119:14 highest 115:20 highlight 15:19 highs 56:17 57:1 146:22 himself 21:19 historic 131:4,17 132:2,21 133:1 135:18 historical 15:10,10 129:19 133:22 143:3 145:4 146:16 147:18 148:5 historically 7:24 11:18 132:25 133:4 history 9:24 10:14,23 17:15 19:13 88:7,8,20,22, 24 132:24 Hold 39:4 82:20 96:21 148:13 holding 114:3 150:23 Hole 4:21 36:19 52:1 65:4,6,7 77:25 81:6 82:15 113:14 Holiday 64:10 homogeneous 105:20,21 honest 107:15 113:2 hope 149:8 Hopefully 44:5 hoping 72:13 horizontal 44:4 54:12 109:12 110:19,23 111:1, 7,9,17 horse's 149:16 hot 7:5 130:1 hour 83:25 84:1 hourly 83:1 hours 84:3 122:19 149:13 house 141:18 how 8:22 27:23 30:15 41:11,22 42:10,10 44:11 46:4,7 50:8 60:1,4,13 61:5 62:3 63:17,19 64:17 65:9,10 66:5 69:1 70:20 73:17 76:14 78:6,19 80:23,24 81:1,3 92:14 95:7 102:6,9 103:1 112:12 115:13 131:18 132:5 136:15 137:25 146:8 Howard 3:20 94:24 95:8, 15 123:5,5,13,15,19,23 124:1 However 13:23 24:12 25:2, 12 52:16 55:11 92:18 147:2 hydrographs 103:12 huh 75:5 103:10 110:14 hung 14:8 hunted 141:20 hydraulic 45:22 46:17 53:3,12 100:15 101:16 102:10 105:6 106:2,9 107:8 109:1,2,11,24 117:15 119:9,13 hydrogeologist 100:7 hydrogeology 99:24 hydrograph 59:19 151:3,4, 7	hydrographs 56:8 103:16 134:6 145:10,21 147:11 - I - I've 4:25 7:20 9:25 12:8 16:20 24:2 27:17 33:12 44:1 50:12 51:15,15 52:24 54:13,14,16 55:3 95:12 104:3 108:16 129:4 130:10 141:20 144:4 148:15,15 I-75 6:16 i.e 14:18 idea 21:16 54:14,22 57:17 105:23 106:18 110:19 112:3 113:16,17 identical 18:16 identification 6:14 11:7,14 22:14 38:2 43:24 identified 4:17 26:12 identifies 94:6 98:19 140:4 identify 140:17 identifying 133:1 ignoring 18:21 illustrate 73:16 imagine 86:18 145:21 immediate 135:9 immediately 50:4 90:14 impact 5:25 27:22 28:8 30:5,7,8,10 32:18,20 34:21 35:6,7,11 57:14 62:19 68:20 79:16 83:13, 19 93:11 94:2 98:4,19,20 123:10 129:19,23 130:13 135:14,23 137:10 139:3 140:6 147:10 148:5 impacted 30:22 33:9,22,22 35:3 94:8 140:17 impacting 61:8 impacts 26:3 31:23 44:15, 15 50:15 53:4,5,7 61:25 83:23 89:12 90:7,13,24 91:2,5 92:9 93:12,13 99:1,1,2 124:20 127:10 130:3,4,5,5,19 133:8,15 134:18,25 135:6,8,21 136:11 139:23 140:1,9,19 important 29:13 62:25 79:20 improved 147:14 inadvertence 140:22 inadvertently 5:25 6:2 27:22 35:8 Inc 4:17,25 5:2,5 inch 145:21 inches 49:10 incised 73:3 incising 69:25 70:25 72:10 incline 107:22,23 include 7:8 16:14 40:15 45:24 63:6,7,8 121:16 131:6 included 18:25 62:25 97:23 includes 90:9 92:3 141:17 including 63:3,5 inclusive 123:11	incorrect 74:14,16 increase 9:21 19:6 20:24 39:7 indicate 134:17 143:14 144:3,11 indicated 10:17 11:21 12:14 15:14 19:5 24:19 26:6 31:12 40:14 76:3 79:14 134:23 149:7 indicates 20:10 30:21 40:15 136:8 140:22 indicating 8:10,11,12 26:20,25 37:9 44:18,19 indication 39:25 indigenous 98:21 individually 92:15 indulgence 11:2 148:1 Industrial 8:25 Industries 5:6 industry 45:1 inefficient 37:21 inferred 140:13 information 30:2 32:20 48:18 89:16,20,24 91:25 102:21 112:19 118:14 133:13 informed 124:17 Inge 4:23 initial 16:10 Inn 64:10 input 79:19 inserted 13:12 inside 53:5 inspection 24:4,14 installation 78:23 installed 101:15,15 125:5 instead 49:14 63:12 72:19 144:1 Instruction 141:17 instrument 21:24 intake 106:24 intended 19:25 26:21 29:10,23 33:9 139:19 intensive 82:24 intent 50:14,21 119:1 129:17 139:14 intents 88:25 interesting 24:12 115:5 internal 6:17 92:20 interpret 24:7 interpretation 13:1 17:13 132:11,12 interpretations 17:14 20:6 interpreted 25:15 interpreting 23:10 into 14:24 15:12 17:11 19:18 21:18 27:4,12 28:7,17 37:10 38:9 44:12 46:2,15,21 47:6,22 48:11 49:22 54:5,5 56:18,18 60:14 62:8 64:4 65:20 66:19 67:23 69:25 70:5, 13,22 71:16 72:22,23 83:20 85:1,7 103:20 106:15 107:25 110:9 111:10 112:16 125:8 133:11 137:9 149:9
--	---	---	--

introduce 43:5 77:17
introduced 100:15 103:2
introductions 3:8
invariably 7:18
involved 7:20 20:17 30:4
34:12 81:18,20 84:12
88:10,11,18 89:1 125:18
142:20
IPD 3:4 9:3,12,19 10:3,10
15:15 20:23 31:19 88:13
130:17
irrigate 101:4
isn't 107:9 121:20 128:5
issuance 30:23
issue 13:24 27:24 69:2
70:23 72:24,25 82:3
97:19 130:1 131:23
143:15
issued 11:1 25:25 116:12
138:6
issues 10:15 12:18 26:5
31:4 79:12,15,16 86:6,9,
19 99:7 145:3
item 93:25
items 149:1
itself 12:19,19 50:20 60:10
85:11 108:11,13 121:17
137:7

- J -

January 3:3 31:8 33:18
56:10,24 89:9,9 90:4
98:7,14 104:6 136:7
job 76:13 86:9 120:22
June 5:3 13:20 153:4
jurisdictional 40:19 140:6
just 3:18,21 4:24 5:12
6:22 7:23 10:14,15
11:17,18 15:7,10 18:14
21:18 22:1,21,24 23:22
24:1,2 28:10,21 29:6
31:17 32:21,24,25 34:14
35:1 37:20 39:6 44:17
45:16 46:23 47:7,20
48:2,10,11 51:2,6 52:25
53:8,9 54:1,13 55:1,23
56:7,12,19 57:11,23
58:12 62:1 63:15 66:24
67:1,11 70:19 71:4 72:8,
16,25 73:10,11,16 76:24
77:3 78:18 84:8,11 85:15
91:23 93:15 96:3 97:13
99:1,2,7 102:16,19 112:3
113:8 114:23 117:25
119:6 121:3,6 122:4,19
124:5 125:13,17 127:16
128:21 132:3,4 133:19
134:8 135:18,19 136:5
140:3,15,24 141:1 143:14
144:3,10,14,17 145:14,18
146:1 147:8 150:11
justification 138:12
justify 24:23
jut 107:18

- K -

keep 11:3 15:6 18:8 23:3
43:7 58:2 67:1 68:22,24
77:19,20 81:19 82:1
93:15 94:13 102:22
103:20 107:17,22 119:12
139:14 142:18 143:2
144:9
keeping 94:14 150:24
keeps 48:3,4 58:22 78:4
Ken 4:21 34:17 72:2
79:14,17,22 80:7,11,15
84:15
kept 105:20
key 38:10 46:9 47:6,21
48:1 51:16,16,17 52:7,11
58:16 66:2
kind 15:11 20:12 21:19
24:13,17,19 40:1 46:4
50:7 51:6 52:25 53:9
54:13 61:22 64:6 66:22
67:2 68:7 77:5,21 81:18,
22,22 84:11 85:11 99:20
107:20 115:25 132:4
148:8
kinds 48:18
Kirk 4:21 26:6 34:11
42:17 43:1,13 57:16 59:4
60:2 71:8 75:16,24 90:18
95:6 110:7,16 128:1
know 20:19 22:2 27:23
43:4 49:10,18 56:1,11
58:3,19 59:5 61:8,11,14
62:6 65:12 69:19 70:4
74:4 75:6,11 80:25 81:25
82:3 83:7,20,24 84:13,15,
19 94:25 95:2,7 96:2,17
104:23 107:4,19 110:12
113:7 120:18,23 121:20
123:17,18 124:17 126:10
131:17 132:4 133:12
134:10 136:4 137:16,19
141:24 142:21,23 144:2
148:11 149:10,22,22,23,
24 152:2
knowing 90:24 95:9 121:4
129:25 132:5
knowledge 60:1 116:6
127:8
known 5:8 101:5 108:21
knows 70:19

- L -

labeled 127:4
lack 60:1 103:21
LADD 3:16,16 4:18 34:14
41:4 63:24 64:2,2,6,9,19
65:15,19,24 66:17 67:6
76:1,8,12,22 78:8,12,16,
22 79:2,9 82:13,13,22
83:5 84:23 85:9,13
86:15,15,24 87:6
laid 34:22
lake 51:19,25 52:11 54:2,

4,5,16 55:4 65:5 94:10
113:5 137:9,13
land 9:9 48:23 49:4 87:23
131:2,6 132:19 133:24
143:16
lands 49:18 69:6
Lane 86:17
language 91:19 92:6 94:10,
16
large 37:15 41:5 52:11
54:4 64:20 76:24 77:1,12
82:25 102:3
larger 6:7 8:24 146:4,13
148:10 151:5
last 9:15 10:4 22:22 30:3
32:9 38:7 42:3 43:6
64:10 86:5 89:6 117:2
118:15 123:21 125:6,10
141:16
late 8:23 9:2 10:4 24:4
100:10
later 15:11 16:4 32:5 46:2
laterally 64:20,25 65:24
66:2,10,11 67:2
latest 104:6 151:14,15
law 4:15
lawyers 24:17
lay 111:14
layer 14:19,23,25 45:19
layers 111:14,15
leading 6:15
leads 6:19
learned 92:14,21
learning 92:20
least 34:7 49:16 81:20
94:14 96:14 112:17
113:3 133:10
leave 33:10 41:25 79:18
122:4
leaves 83:6
leaving 85:14
Lee 3:2,12,20 12:2 14:12,
17 15:2 51:10 55:20
62:9,11,14,14 63:5,7,13
64:15 67:4 68:9 70:2,8,
17 71:16,21 73:6,10,20,
25 74:11,17,21 75:1,6,13
78:23 88:15 90:17,25
91:1 94:23 95:2 96:7,8,
10,23 99:17,22 100:2,7,7
104:8 112:5 119:12
122:8,23 124:5 127:5
128:6 129:16,24 130:12,
15 131:1,12 132:7,10
153:2
left 26:12 66:22
left-hand 89:5
legal 13:24
less 12:12 38:16 61:1,3
111:9,15 115:22,22
lesser 115:21
letter 22:11,12,17 23:17,18
24:5,20 25:22
level 12:23,25 13:17 27:12
46:17 48:21,24,25 49:1,6,
10,25 51:20 52:1 53:2
55:13 57:4,10 59:1,8,9,

11,17 61:6,7 69:18,23
71:2,7,11,23 72:5,6
101:7,17,18 102:5,9
103:23 107:23 115:4
119:14 131:14,17 134:6,
10 137:19 151:7
levels 23:4 46:18 50:14,16,
19 51:21 53:13 55:14
56:8,16 57:8 58:16,22,23
59:7,20 60:3,5,10,11,22
61:1 70:6 100:21 101:16
102:7,25 129:19 131:4,4,
25 132:3,20,21 133:1,10,
22 145:4 146:21 147:19
148:6
lies 23:10
life 138:15
light 29:18
lighting 86:23,24
like 3:8 10:14 11:2,18
31:6 34:8,13 35:25 38:19
42:16 43:19,19 48:12
49:3 51:10 54:23 58:4
61:21 62:6 66:18 68:6,19
69:14 70:23 72:14 85:4
87:22,25 93:1 96:11
97:22 100:8,11,25 101:10
102:1 111:6,11,12 112:9
117:14 121:1 122:13
129:2 133:20 134:5
138:24 143:7,9 145:5
146:15 148:22
likely 33:8 59:18
likes 43:8
limestone 45:11 51:8 66:20
67:16 68:1,3 108:3
limestones 111:11
limited 5:14 58:17 61:23,
24,24 84:2
limits 28:15
line 29:8,14,18 38:21
40:15,19,22 64:21 76:24
107:4 118:19 126:15
128:23,23 134:8 139:18
142:17,17 143:7 145:23
linear 37:16,19 114:25
lines 37:15,16 143:6,15
list 22:9
listed 4:25
listing 139:10
literally 98:2 102:25
literature 109:3
litigation 14:8
little 7:16 10:13 15:24
34:10,11 35:16 40:1,2,12,
24 41:19,23 42:8 46:3
51:6 53:8 80:20,21,23
88:8 103:10 104:11
107:12,21 108:23 110:7
114:24 116:5 118:1
125:14 134:10 140:11
141:10,19,21 146:17
149:6
load 67:19
loaders 66:6
loading 41:11
located 14:25 28:13 55:19

56:23 58:2 102:3 127:24
139:3
location 6:10 35:15 69:23,
24 70:24 91:3 134:8
135:13
locations 55:16,18,19,24
56:2 127:22 135:4
loggers 125:11
logistic 40:12
long 53:17 56:11,22 58:7
77:1 78:6 145:21
long-term 57:24
longer 21:21 56:10 143:16
151:20
longitudinally 67:3
look 8:18 28:20 37:8 41:7,
8 61:19 63:22 70:5,13,
15,22 72:2,8 73:2,21
103:13,13,14,15 116:4
117:9 118:15 124:5
138:3 140:13 141:12
144:21 145:23 146:22
looked 9:1 90:21 95:11,12
130:3
looking 39:21 40:8 57:10
60:3 65:25 72:12 73:16
74:9 91:16 94:14 104:5
105:16 106:2 111:5
113:4,10 114:5 128:9
129:22,22 145:24
looks 54:23 72:14 103:17
loose 122:16
Lori 3:17 4:18 86:14
116:20 125:3
losing 33:1
lost 27:18
lot 43:2 44:1 81:18 82:11
83:14,22 84:8 87:5 96:5
113:7 148:7
lots 113:7
loud 87:8
love 51:14
low 57:9 61:11
lower 12:22,25 13:16
45:20 59:20 60:10,22
70:8 71:9,18 72:15 89:5
107:25 108:23 145:11
lows 56:17 57:2 146:22
luck 11:23

- M -

ma'am 36:10,12 39:12,14
40:10,22 41:15 42:22
63:13 79:7 87:13 99:15
101:21 102:18 105:13,23
106:17 107:13,24 108:15,
21 109:9 110:15 117:12
119:11 121:12 123:24
124:6,16 125:22 126:4,22
127:15 128:13,20 129:2,
6,20 131:10 132:1
134:15,20 135:2,16,19
136:1,3 138:25 139:6,9
141:15 142:7 143:17
machine 41:8,25 65:16
66:2,10 68:7 76:23 77:2,

7,8,12
machines 77:18,19
Madam 3:18 31:7 68:18
79:11 88:5 93:1 99:18
117:2 125:13 132:14
142:22
made 13:21 16:19 17:20
38:21 66:18 81:18,21
105:1 120:8 121:19
130:25 133:19 138:21
146:19
magnifying 146:8
magnitude 112:14
main 9:20 49:8 62:15
mainly 7:20
maintain 48:24 53:13 75:2
119:13
maintained 46:16 48:23
49:22 54:4 101:17
117:16
maintaining 58:15 131:3
132:20
major 72:14 112:10 113:5
131:23
make 34:25 43:20 48:14
52:17 61:5 63:12 66:12,
14 69:3 71:4 72:9 73:3
78:15 84:23 85:16 87:12
93:10 95:2,9 97:22 99:4
112:19 121:5 133:19
134:1 144:14,19 148:16,
22 150:18 151:15
makes 116:3 141:9
making 43:7 68:7 95:4
Mallard 86:17 135:4
man 113:6
Management 14:21 15:1
16:3,8 17:1 20:16,20
22:4,7,9,10,12 25:23
30:23 36:5,6 69:9 81:19,
25 82:25 84:21 90:1
92:2 101:7,12 116:13
manmade 84:5
manner 6:9 9:6 24:24
25:9
many 6:19 58:13 114:14,
14
map 55:23
mark 43:21 122:5
marked 6:13 11:6,13 22:13
38:1 43:23 56:9,23 61:9
116:23 128:7 134:7
marks 8:19
Martin 4:21 19:23 23:5
24:24 34:11 42:17 43:2,
5,7,13,25 44:8 47:2,5,19
48:10,23 49:3,7,17 50:12,
25 51:15,23,25 52:5,22,
24 53:17 54:1 56:7
57:19 58:1 59:12,18
60:16 61:9 62:5 63:22
69:3 70:4,12,19 72:1,21
73:14 74:25 75:3,10,24
90:18 94:11 95:6 103:1
105:14 107:17 110:17
111:2,4,22 112:2 113:15
114:5,12 115:9,12 116:9

127:21 128:6,13,20
132:24 133:21 134:3
145:3,9,18 146:2,12,19
147:12,21
Martin's 43:18 127:18
mash 20:4
Master 28:14,25 29:15,19
30:9,11 32:4,8,23 34:1
36:21 37:1 38:3,20,24
39:21 92:23 93:3,5 94:16
97:17 98:25 140:13
144:14 151:1
material 45:1,4,8,9,15,16,
17,18 47:7,9 51:2,7
64:22,22 65:17,19 66:3,4,
21,23 76:16,18,19 77:20
106:22,22
materials 44:10,11
matter 93:22 102:18
128:14 138:11 150:3
max 122:19
maximum 23:20 45:24
46:12 115:19
May 4:19 8:23 18:3 20:19
26:5 30:25,25 32:17 35:5
42:7 58:4 60:9 65:25
68:20,25 73:6 75:1 83:21
84:15 88:16 96:8 99:8
100:9 107:14 108:22,24
115:24 116:4 117:25
120:4 121:5 122:9,16
133:6,18 136:13 137:21
138:4 139:2 140:25
142:1 144:20 145:6
147:6,7 148:13,25 149:1
Maybe 35:1 56:4 60:6,11
63:16 67:2 68:19 73:12
74:1 83:21 110:6 121:6
129:12 133:13 146:4,13
McLean 4:21 27:7,19 34:8
36:1,7,15,19,19 37:1 38:3
39:9,16,19 40:5,7,10,17,
19,22 41:2,15,17,25 81:6,
6,11,13
MCP 98:19,20 99:2 144:1
me 3:8 4:19 5:1 6:5
15:19,20 19:2 27:17
35:2,13 39:18 43:8 46:22
50:1,13 64:14 65:3 68:12
69:3 71:3 74:7 78:18
85:19 86:11 94:23 96:13
102:8,12,19,21 107:3
109:22 110:12 113:1,8
114:16 115:10 116:4,5
119:5,6 121:19 122:13
123:15 124:17 125:19,20
129:23 132:4,7 134:12
140:11 141:9 142:14
143:1 144:21 148:8,22
149:15 150:13 151:18,25
152:2
Meadow 5:9 7:19 10:1
42:9
Meadows 126:18,23
mean 17:9 41:13 48:25
49:18 57:4 59:9 60:23
65:12 75:11 81:19 82:8

83:13,22 101:18,18 107:4
110:10 120:23 121:3,18
125:20 129:10 134:11
136:16,19 142:19 144:2
148:5,19 150:8,10 151:19
meaningful 23:23
means 49:19 54:11 106:12
112:8 143:6
measure 104:14,24 110:22
measured 111:7
measurement 104:18
measures 42:11 110:21
measuring 110:23 150:10
meeting 86:4,13,21
member 123:4
members 3:19,22 96:12
memo 74:5 98:7,14 136:8
memorandum 31:8,12,16,
19 32:2 74:8 89:8,25
90:4,9 91:13 92:3,11
94:21
memory 94:3
mention 79:17
mentions 38:25
meter 145:22
methodologies 44:12
methodology 46:2 58:14
63:16
meticulously 5:18
microorganisms 137:11,12
microphone 140:11
middle 38:11 68:21 106:7
107:11 128:11 141:11
142:18
might 25:16 79:19 82:12
96:7 123:13 136:16,17
137:12,17 151:13
mile 117:7 125:23 126:9,
11,12,15 128:23 134:22
miles 126:5
million 76:25
mind 15:6 18:8 55:11 58:2
100:25 102:20,22 103:20
107:17,22 119:12
Mine 3:4 5:9,23 6:10,11,
18,19,25 7:1,2,10,11,13,
19,19,20,22,23,24 8:3,7,
22 9:2,18,22 10:1,24
11:10,10,22 12:14 15:7,
14,16 16:12 18:19,20,21
19:21,21 21:24 28:6
33:13 45:19 53:10 54:16
57:21 58:14 64:5,11
66:19 72:24 73:25 76:4
78:10,10,11,12 79:2,3
101:3,3 106:3 113:11,17,
18 116:8,11 118:16
125:8 127:8 131:16
136:24 142:4
mined 6:2 40:4 44:18,19
45:12 93:14 102:5,17
mineral 131:6
mines 7:6,8 79:1 108:17
minimize 61:25 82:2
minimum 23:4 98:11
mining 5:8,20 6:1,3,24
7:11,17 8:14,25 9:21,25

<p>12:2 15:5 16:13 18:7 19:7,16 26:16 27:8 28:14,15 30:24 35:15,15 37:6 40:16 43:6 44:4,11, 12,21,25 45:23 53:5 54:24 55:12 56:13 58:3,8 60:9 68:9 78:22 81:1,20 85:1 88:12,15,18 90:8 91:10,14,23 93:13 110:8 131:6,6,24 135:12 137:7 139:2 140:8 147:2,6,16 minor 16:19 31:14,25 34:14 35:11 73:6,12 minus 97:23,24 98:2 minute 15:20 21:19 55:15 56:19 75:18 102:24 103:4,4,6,7,8,8 125:11 minutes 75:18 mish 20:4 misleading 146:1 miss 118:8 missed 121:21 123:9 mistake 35:21 misunderstanding 120:20 mitigation 30:21 mixing 77:23 78:1 model 63:3,7,9,9 90:21 106:4,4 109:18 110:6 111:17,18,20 112:1,2,7,7, 9,23 113:23,25 114:1,1, 14,17 118:16 119:13,22, 23,24 120:1,23 124:5,8, 10,12 137:1 modeler 124:9 modelers 112:16 modeling 52:15 63:1 73:15 89:21 90:15,19 91:25 95:17 96:9,11 104:9 115:18 118:18 124:13 131:12,13 135:22 MODFLOW 114:12,15,16 115:1 modification 5:21 9:14,17 10:4 23:19 26:9 27:1 30:12,14,25 34:9 modifications 136:13 modified 9:8 19:9 31:9 modify 5:7,13 18:10 20:23 21:22,22 31:5 modular 114:12 module 115:1 modules 113:22 moisture 82:16,18 85:3 moment 5:12 99:17 momentarily 17:13 monitor 49:24,25 50:14,18, 19 56:2 57:16 106:11 125:11 128:16 137:4 monitored 55:21 128:8 monitoring 26:4 44:14 49:23,24 50:2,3,7,10,20 55:13,18,23,25 56:11 57:22,23,24,25 58:7,25 60:3,6,8,11,12 61:6,22 62:1,3 95:4,7 99:24 100:21 101:8 102:2,15, 15,23 103:2 105:10</p>	<p>124:22 125:1,6,18 127:17,20,22,23 137:3,5 146:25 Montes 4:21 36:20 81:7 month 58:19 months 13:20 100:13 125:7 145:14 moon 120:25 moot 24:17 143:15 moratorium 129:14 more 7:16 17:15,24 20:15 23:5 24:10 25:2,2,5 26:7 29:25 31:17 32:24 34:10, 11 38:15,16,18,18,19 40:12 45:7,24 46:10 50:12 56:12,19 60:23,25 63:10 64:13 70:17 71:6 74:6 75:7 88:8 101:12, 22,23 107:21 112:7,8,9, 18,19 114:24 115:6,17,17 121:3 122:18 128:2 134:4 150:19 151:5 morning 3:1,24 4:13 87:18 100:11 most 29:13 31:10 44:1 45:16,16 58:1 72:3 85:4 110:18 mouth 149:16 move 6:7 37:17 42:2 53:21 63:17,20 64:16,17 65:7 66:7 68:2 76:18 149:9 moved 19:18 78:10 142:4 movement 38:14 109:25 moves 37:7 41:7 64:25 65:15 66:2 moving 37:8 47:20 48:4,5 67:21 83:18 much 8:2 12:12 26:10 38:18 42:10 53:22 59:20 61:12 77:17 78:19 119:14 121:22 must 74:2 78:15 98:11,16 116:24 131:3 132:19 muzzle 80:22 Myers 4:15 Myers-Harper 3:4 myself 88:19 139:13 <p style="text-align: center;">- N -</p> name 62:12 63:25 80:13, 15 87:19 100:5 116:18 123:21 names 7:18,22 58:6 narrative 120:9 131:1 narrow 42:8 Natural 3:19 5:18 57:7,11, 13 62:14 84:5 90:25 94:24 95:15 99:18 100:20 102:8 124:7,9 125:14 150:6 nature 34:19 near 48:23 49:3 55:19 59:13 136:10 nearby 86:4 134:19,25 135:14</p>	<p>nearest 135:6 nearing 149:8 nearly 27:3 necessarily 68:19 69:24 70:9 118:3 137:11 necessary 23:2 34:10 54:6 55:11 91:8 134:1 136:14 142:19 neck 42:8 80:20 need 3:25 10:22,23 21:22 25:12 31:1 32:17 34:16 35:22 36:21 69:21 70:15, 17 71:2 72:8 73:21 92:16 93:10,15 94:10,13 121:1 130:17 134:11,13 142:18 144:10,24 148:7, 8,10 150:18 151:20 152:2 needed 25:20 34:23 43:4 89:13 131:20 140:16,16 needless 148:17 needs 32:19 77:8 79:18 94:12 95:2,6 132:9,12,12 negative 31:23 83:12,19,23 88:23 92:9 134:17,25 neighborhood 86:4 neighbors 86:16 net 114:1,6 network 50:18,20 never 10:10 77:25 136:17 new 11:10 14:4 19:21 32:8 38:3,8 47:21 91:10 92:3 93:16 94:10 97:17 99:2 125:5 132:13 138:4,12,13 newest 132:12 next 13:10 14:10 23:8,17 26:13 29:2,6,12,13,25 31:25 34:9,10 36:1 42:16 47:12,19 48:6 52:1 53:21 55:8 63:17,20 68:4,5,12 72:19 75:6,24 95:9 105:3 106:2 107:1 111:23 122:11,15 132:8 135:10 141:14 151:16,18,22,23 NGBD 59:22 nice 24:5 46:4 50:5 78:15 83:9,10 131:22 night 64:10 nine 98:1 No 3:3,7 6:13 8:21 11:6, 13 12:3,11,22,24 13:16 14:21 16:1,23 18:3 20:10,11 21:4,6,21 22:10, 11 24:8,11,15 26:3,14,15 33:5,6,23 35:15,25 36:10, 12,25 37:24,25 38:1 39:9,12,14,25 40:14 42:22,24 43:22,23 44:15 45:7,13,24 46:10 51:25 52:17,20 53:6 56:15,20 57:14 58:1 65:2 75:12 79:7 80:4,23 83:5,15 84:2 85:24 88:3 90:23 91:4 92:6,10 95:24,25 97:11 98:6,14,25 99:3,11, 13 104:1,2 114:1 119:14 120:20,21 121:14,14</p>	<p>122:19,25 123:12 124:6, 14,19 127:8,11,14,15 128:3 129:8,15,19 130:12,14 133:14 134:17, 24 135:11 136:2,8 137:20 142:24 143:16,20 147:18 149:19,24 151:25 noise 86:22,25 non 30:8 77:18 none 61:20 nor 90:14 102:5 norm 103:17 north 12:15 13:5 26:22,23 38:12,12 55:19 58:2 124:24 126:9,11,12,15 128:4,23 northeast 69:17 northern 8:9 9:7 16:15 38:7 123:7 northwest 7:14 Nos 22:13 not 7:8 12:23 14:1,4,23 16:5,24 18:6,9,21 19:1, 19,25 20:1,1 23:13 24:25 25:13,17 27:12 28:8 29:21,23 31:22,23 33:10, 21 34:17 38:23 40:4 41:1 42:6 43:2 46:18 47:3,5 48:20 50:8,11,22 52:2,16 56:4 60:7 61:3, 8,16,17 62:17,25 63:8,16 65:15 67:4,12 68:22 69:24 70:8,9,17,25 71:8, 16,23 72:3,9 73:3 76:19 77:11,15 78:18 82:14 83:16 85:10,22 86:8,13 88:10,11 89:12 90:13,20 91:21,22 92:8,14 95:8 97:21 99:3,22 101:1,5,8 102:5,15 104:11 105:1, 20,21 106:23 107:4,24,25 110:3 111:3,25 113:7,17, 18 115:24 117:19 118:3, 6 119:13,24 120:10,14,22 121:13,16,20,22 122:10, 20 124:9,25 126:19 129:24 130:17,19 132:5,7 133:6,7 134:10,22 135:6, 7,13,20 136:12,22,25 137:11 138:6,7 139:1,3 140:9,17,19 141:25 145:6 146:8,25 147:6,7,12,17 149:5,11 150:10,11 151:14 note 12:21 20:24 61:16 84:14 86:2 94:9 127:22 148:23 noted 4:25 10:18 20:7 24:4 94:7 notes 94:2 nothing 88:22 128:5 145:2 146:24 noticed 73:10 notified 25:7 noting 93:12 now 7:3 15:6 17:8 20:22 40:24 43:19 47:21 48:8</p>
---	--	--	---

50:2,25 51:3 54:7 55:1
67:17,23 69:7 70:7 71:4,
8 79:20,21 90:1,11
100:8,17 101:10 102:12,
22 103:3 105:5,8 106:1,
1,2 107:1 108:2,7 114:15
116:15 117:10 120:12
122:9 123:7 134:21
136:15 140:20,21 144:12
146:25 147:15 148:20
number 12:18 36:24 55:21
74:21 89:17 110:17
117:20 139:21,25 141:1,
7,10
numbered 153:8
numbers 44:21 92:15
139:11
numerical 106:4 118:16

- O -

o'clock 122:16
oath 87:21
obfuscated 20:2
objection 80:3 88:3
objections 36:8 42:21,24
88:1 97:9,11
objectives 59:2 90:11
obtain 13:8
obvious 62:20 77:3
obviously 20:1 62:22 67:12
70:13 74:13 149:21
occasions 89:17
occur 5:19 10:19 24:11
28:7 83:21 112:14 130:7
occurred 5:25 9:5,6 27:22
28:17,18 29:3 30:15 32:6
57:14 86:5
occurring 35:15 56:15
112:3 124:15 133:2,10
occurs 31:17
octagons 40:1
October 17:23
off 31:7 37:13 42:1,13
46:18 49:20,20 50:14,15
52:14,21 53:13 55:7
58:16,22 59:6 71:7 72:18
75:6 77:13,13 78:1 81:5
83:20 86:11 129:7 135:4
off-road 37:10 41:18
off-site 44:15
offer 98:3 149:18
office 89:9 141:18
OFFICER 129:7
officially 97:21
Oh 33:11 39:16 117:23
142:14 149:3
oils 137:8
Okay 3:9,23 5:4 10:12
11:12 18:17,22 21:9
32:13 33:12 34:5 36:4,8,
13 39:10,21 40:6,23,23
41:10,16,19 42:4,7,14,21,
23 43:9 44:7 46:22
47:16 49:5 50:1,24,24
52:2,23 53:25 56:6,6
57:24 63:8,25 64:7 65:4

66:15 67:18 68:7,11,14
70:11 74:2,9,12,16 75:22,
24 76:2,21 78:9,19,25
79:4,8 80:5,13,18 81:15
82:5 83:11 85:18 87:4,9
88:1 97:9,24 98:9,12
99:4,6,9 101:4 103:23,24
104:6,7 105:1,3 106:1
108:2,10,25 109:10,15,23
110:25 111:19,23 112:22
114:9 115:8,11 116:3,25
117:13,22,23 118:3
119:10 120:12 122:3
123:1,15 124:22 125:2,12
126:19 127:7 133:17
134:5 135:10,24 136:21
138:5,23 142:5 143:13,23
144:16 145:25 150:22
151:16,19
old 7:2,9,10,12 17:24
18:19,20,21 19:21 55:3
79:2
older 125:8
on-site 104:9 106:10
Once 51:18 69:14 72:22,24
85:2 86:16 120:23,24
one 10:17 13:20,20 20:7,
10 21:21,23 22:6,8,21
26:10,13 27:24 29:14
34:14 35:1,7 37:9,17
38:13,19 39:6 40:9 46:23
47:5 50:5,5 53:21 54:25
56:5,18,23,25 57:5,19
59:4,19,25 60:16 62:22
63:17,17,18,19 64:13
69:7 71:9,22 73:7,7
74:2,3,4,4,6,10,13,14
76:5 77:11,22 78:12
80:20,23 82:8 88:16 89:4
91:15 93:2 105:21 106:1
107:2 110:11,18 111:12
117:2,14 118:21 122:16
125:7,9,24,24 126:7,9,11,
12,15,20,20 128:11,18,23
130:25 131:12 132:8
134:11 135:10 136:22,22
138:20 140:11 144:21
145:9 146:1 148:4,15
150:8,14
ones 21:21,22 41:13 50:6
56:12 88:17 91:17
102:16 110:23 112:17,18
145:23
ongoing 46:7 55:1
only 10:2 13:4 16:20 18:5,
9 21:10,23 32:14 33:19
35:2 57:24 69:18,20
71:1,23 74:23 75:19
84:14 93:4 101:1 106:13,
22,24 107:15 108:11
111:4 114:7 138:21
139:23 140:7 143:10
onto 66:24 141:19
open 13:1 17:13 94:13,14
95:19 122:4 150:23,25
opens 23:8
operate 62:24

operated 37:16 77:17
operating 19:11
operation 5:8 7:17 8:15
9:21,25 15:5,13 16:13
17:20 18:8,10 19:8 22:24
35:14 37:6 58:8 60:9
76:5 84:1,3 85:2 88:12,
18 89:22 90:8,12,14
91:15,23 93:13 95:10,14
118:5,10 123:7,10 127:10
130:3,13 135:12 137:6,7,
17 140:8
operational 34:14
operations 8:25 16:25
19:16 27:11 30:24 34:15
37:16 64:2 76:4 78:7
82:3 83:14,20 88:15
118:19 133:2,11,16
134:19,25 135:7,14
137:3,10,14 139:2
opinion 73:1 93:4 112:17
147:5
opportunity 124:4
opposite 87:7
oral 134:4
order 10:22 30:23 45:17
46:17 47:8 49:10 54:9
72:7 98:10,11,15 116:12
138:3,5 143:25 149:19
ordinance 125:16
organics 45:2
original 7:23,24 8:3 11:10,
22 12:10 13:8,9,13 15:7
29:11 30:11 32:7 57:21
58:8 74:15 89:10 98:5,9
140:13 141:25 142:9
144:21 151:13
originally 23:22 33:10 67:7
other 6:22 12:18 14:22
22:7 25:8 29:22 32:14
33:1 48:18,19 52:12 63:2
74:4,13,16 76:5,22 79:1,
16 84:13 85:20 93:25
96:6,11 99:8 102:1
105:18 109:24 113:22
116:23 120:14 121:21
122:12 125:7,21 127:9
131:16 132:22 135:4
137:10,12 146:1 147:23
148:4 149:21,25 150:8,14
others 18:18 62:7
Otherwise 75:11 77:9
our 4:20 25:14 34:7,8,23
36:1 42:16 51:7,7,8
56:20 57:12 61:22 66:13,
21 67:1 72:2 79:12
84:20,21 85:1 86:1,3,16
89:25 92:20 113:16
115:18,19 122:15 123:11
124:20 126:23 135:22
out 4:20 5:18 10:20 11:3,
8,19 15:10,11 19:14
20:20 21:15 22:1 23:15
24:2 25:20 26:22 27:17,
19,23 28:10,21 30:22
32:24,25 34:13,15,22
35:21 36:23 37:6,12

38:19 41:22,24 44:18
46:14,20,25 47:14,17,17,
17,22 48:14 49:13 52:9
54:15,22 57:3,11 59:18
64:17 65:6,9,13,22,23
66:16,21,25 67:5,16,16,
19,25 68:1,4,19 71:19
72:15,17,18 73:4 80:21
81:16 82:9,10,10,18
83:14,22 85:1,7 86:4
90:17 91:7 92:5 93:1,9
94:11,12 95:10 96:3,16,
19 101:2 102:1,14
103:17 104:17 105:4
108:7,17,18 109:7 113:5
118:4 119:3 120:18,24
126:3,25 128:16 131:23
132:23 137:17 139:16
140:10 141:1,13 143:8
144:10,11 145:21 148:4
149:16 150:15,21
outer 66:13
outlined 7:4 28:14 94:21
outlines 140:1
outright 12:23
outside 50:10,10 53:4,6
71:17
outwardly 67:11
over 6:11,25 7:10 8:2 9:7,
9 13:18 19:7,16 26:21
27:18 28:9 36:22 38:5
41:12 54:2 58:9,14 61:20
63:11 66:24,25 68:2
78:10 89:15 96:22
105:12 107:21 113:6
116:15,16 118:20 125:7,9
134:5 141:20 142:5
146:23 147:14
overall 10:1 44:8 113:11
136:23
overburden 41:3 45:2 48:5
81:17
oversight 30:16
overview 9:24 10:13,15
44:9
owned 5:6 7:3 126:24,25
127:2

- P -

p.m 152:2
package 11:24 12:7 102:19
114:16,19,24 115:3
packages 111:25 113:4
114:10
packet 13:10 14:11 18:25
30:3
pad 41:6 63:21 64:21
65:4,8 66:18,21,24 67:6,
9,23,25 77:17
page 12:20 13:15 15:22,
22,23 22:22 29:2,8,25
30:3 31:17,18 32:1,4
33:13 92:5,11,13,14
104:7 105:5 106:3
118:17 127:19 136:4,7
138:24 141:14

<p>pages 93:18 153:7 paginate 92:14 painful 19:12 paragraph 106:8 109:15, 19,20 118:15,18,22 parameters 55:21,22 128:9 parenthetical 139:17,20 Parker 3:2 part 8:1,9 9:7,15 10:7 11:22 12:15,16 13:5,5,5 15:9,15 18:7 23:23 29:11 30:12 33:22 35:13,14,18 44:21 61:25 80:24 91:23 93:20 113:9 118:9,13,14 119:22 121:11,18 125:8 128:4 132:24 140:2,18 142:19 145:22 participate 25:16 particular 13:14 20:7 22:22 24:12 38:4,20 58:24 88:18 89:18 90:8 94:6 103:14 105:10,10,11 120:2 124:23 135:3 particularly 6:24 72:12 143:5 pass 11:3,8 20:19 27:23 Passarella 4:22,22 34:17 72:2 79:14,23 80:7,12,15, 16,16,17 81:1,4,24 83:12 84:18 passed 22:1 24:2 28:10,21 32:24,25 past 10:25 29:16 97:7 path 47:9 paths 41:25 pathway 50:19 pattern 51:2 66:12 peaks 146:23 people 57:3 per 53:23 102:24 109:4,12 120:7,7 percent 38:6 56:3 82:19 85:3,5 perfect 61:3 perfectly 20:3 performed 12:23 13:17 16:2 104:15 105:4,9 106:10 118:19,20 perhaps 13:1 151:9 perimeter 46:15,16,19,21 48:9,19 49:12 52:20 55:6 58:21 61:10 83:3 116:7 124:17,18,19 period 139:18 permeability 110:19,20,21, 24 111:7,8,9,15,17 115:14,15,16,25 permit 8:5 12:9,19 13:8,12 14:7,13 20:16,20 22:5,19, 23 23:19 24:2 25:25 30:24,25 60:17 69:8 70:14,22 101:6,11,12,13, 14 permits 16:8 24:6,7 59:21 84:21,22 permitted 9:22 14:20 15:1 16:2 18:7 20:11,12 23:22</p>	<p>24:9 25:10 29:15 69:10 70:5 131:5 permitting 9:25 89:25 person 42:8 perspective 6:12,20 7:13 146:17 pertaining 13:14 15:25 pertinent 10:24 11:20 ph 6:25 Ph.D 110:10 Phase 26:19,21,22,22,23, 23,24,24 27:1,2,3,6,15, 16,17,17 37:4,4,5,5,5,5 38:5,9,9,11 40:13 47:12 138:4 phases 5:10 26:17 27:4,14, 16 phasing 5:21 19:9 20:23,25 21:3,10 26:9,11,16 27:10 34:9 36:21 39:7,23 41:20 80:19 89:11 90:6 138:22 photograph 37:8 phrase 17:8 phrases 17:11 physical 55:22 pick 26:22 64:8 146:11 picked 66:4,6 picture 44:5 84:24 100:17 107:20 113:2 pile 64:23 piles 83:3,5,8 84:24 pinky 7:5 pit 13:1 23:9 53:10 66:19 67:1 77:5,6 pits 12:22 13:16 16:1,23 17:7,12 20:12,13 23:7,12 24:8 91:22 place 6:18 22:25 38:8 51:16 69:9,14 76:20 100:19 105:22 119:9 130:18 141:4 plan 5:15 26:11,16 28:1,6, 6,14 29:1,11,15,20 30:10, 12 32:4,6,8,23 34:1 36:22 37:2 38:3,20,24 39:21 44:17 61:25 62:1 80:19 81:19,22,22,25 84:11 90:10 92:23 93:3,5 94:16 97:17 98:25 102:6, 13 118:10 120:6,6,9 121:8,9,17,23 122:12 129:16,24 130:16 131:1 132:7,11 140:14 144:14 150:5,7 151:1,9 Planned 8:25 31:21 34:17 Planner 87:21 88:18 92:19 planning 87:23 97:8 137:3 plans 5:17,21 98:11 132:10 plant 37:10,14 38:22 39:1 66:8 76:16,17 126:6,16, 18,23,24 play 103:4 please 4:3 22:10 62:12 75:18,19 100:9 102:22 103:19 106:19 110:5,12 116:18 119:11 123:16 plus 56:3 97:22,24 98:2</p>	<p>130:6 pockets 107:11 point 4:2 6:16,22 9:10 11:19 13:3,11,23 14:12, 17 15:3,6,9,11 17:8 18:12 19:14 20:15,15 22:19 23:15,15 24:17 25:18 27:8 29:1,3,17 33:4 35:7,9,16,20 37:6,7, 9,12,17,20 38:14,19,19 43:18,25 44:16 47:5 48:1 49:17 53:3 58:20 60:6,15 62:24 66:7 70:12 71:2,22 73:6 75:12 76:17 78:5 88:14 89:23 93:1 95:4,10 101:22 102:1,6,17 103:18 104:22 107:2 117:2,18 118:2 120:9,18,19 122:8 125:20 126:25 127:18,19 129:13 130:1 131:7,19 132:25 133:18,19 140:8, 23 141:19 142:3 147:16 pointed 35:20 36:23 59:18 68:18 90:17 91:7 92:5 93:9 118:4 127:16 132:23 pointing 94:11 117:10 points 37:12 94:15 95:2 100:9 103:15 145:9 policies 90:10,11 132:11 policy 129:16 131:5,19 132:17,21 pontoon 42:5 pool 128:15 129:2 portion 5:7,14,22 7:8 8:12, 17 10:1,24 16:10,16 29:5 34:7 38:7 76:22 94:18 123:8 portions 16:15 position 24:23 possible 112:18 148:11 possibly 131:16 post 114:1 146:5 posted 141:17 potable 120:11 potential 50:15 61:25 84:19 108:14 130:4 131:23 137:2,5,7,16 potentially 137:9,13 pounds 76:25 pour 78:1 power 38:17 43:18,25 77:14 107:2 127:18,19 132:25 pre 114:1 pre-existing 116:12 preclude 14:23 precluded 23:13 24:25 predate 146:25 147:2,3 predates 133:23 preferred 111:14 present 3:7 147:9 presentation 3:22 25:20 29:13 31:3 34:7,8,24 39:2 43:18 63:15 75:20 86:3 87:12 88:7,22 91:7, 12 94:12,18 95:1,3,9,19</p>	<p>127:18 134:4 146:20 presented 14:2 61:15 88:23 97:14 149:25 150:1 presently 9:22 26:15 preserve 40:3,14,15 42:9 50:7 140:15 preserved 28:3 29:10,11 preserves 42:12 president 64:2 80:16 presume 12:25 presuming 93:22 pretty 8:2 53:22 56:25 82:24 86:9 113:13 125:21 prevalent 101:8 previous 13:18 19:3 21:1, 13,20 45:23 47:23 63:18 78:21 91:9 101:24 130:16 132:6 136:22,23 138:20 previously 4:11 5:22 18:10 23:2,11 36:1,17 38:23 42:17 43:15 64:16 76:3, 10,15 79:25 80:9 87:16, 24 97:3 99:19,23 124:2 130:15 140:8 primarily 20:17 24:15 27:2 32:16 86:21 primary 19:5 45:18 86:18 145:11 146:20 principal 80:17 87:20 printed 89:6 prior 30:23 69:4 98:10,15 100:18,21 138:3 141:12 private 90:14 91:3 135:2, 5,8,15 probably 6:5 8:19 18:6 20:5,19 26:12 27:12 29:12 31:22 32:18 57:2,5 59:13,14 61:2 63:24 73:14 76:13 81:14 82:19 86:8,18 87:1 98:2 105:13 106:20 107:16 108:22 113:12 114:14 115:10 127:3 134:3 150:3 problem 61:12 92:7,10 94:6 122:10 127:8 137:17 143:20 problems 52:18 127:9 proceeded 9:2 proceeding 21:23 proceedings 91:16 153:6 proceeds 38:14 process 5:17 6:1,23 9:1,3 10:20 16:6 22:23 23:6,24 25:4,17 26:2 27:8,11 34:12,16 37:19 38:8,18 41:5 45:12 46:5,6 47:10, 25 48:4 51:5 53:19,20 54:3,4 55:5 58:10 67:11 92:21 137:23,24 138:2 140:22 147:13 processes 6:3 27:10 processing 38:25 41:12 76:16 production 126:1 Professional 153:4</p>
--	---	--	--

professionals 130:11
 profile 65:15,25
 program 26:4 44:14 49:23
 55:12 59:1 78:4 82:25
 127:20
 progress 44:3
 progression 28:22 64:19
 prohibit 16:5,24
 prohibitions 121:1 129:9
 project 11:20 19:13,17
 27:7 30:24 35:4 68:17
 84:22 102:3,7 106:12
 130:15
 projecting 147:8
 projects 6:23
 property 11:9 15:13 17:20
 24:9 32:3 49:25 50:3
 55:15 56:24 57:18 68:14
 129:10 131:16 136:10
 139:3
 proposal 89:16 107:25
 proposals 31:10
 propose 136:13 138:4
 proposed 19:10 25:9 26:1
 27:1 31:21 33:21 34:16
 39:8,23 45:14 80:19
 90:12,20 94:20 99:1
 113:20 117:8 120:2
 128:22,24 130:3 135:11,
 13
 proposing 21:17
 protect 42:12 81:23
 protected 33:3,7,16,23
 98:17,22 99:3
 protection 125:15
 proven 58:15
 provide 88:19 89:16 92:14
 102:14
 provided 16:20 32:21
 91:25 103:16 133:3,4
 139:7,25 140:25
 provides 45:22 50:21 90:4
 93:16 133:25
 provision 14:23
 provisions 90:25
 proximity 102:16 125:21
 prudent 25:2 55:11
 public 3:7 55:20 87:21
 94:22 117:4,7 125:5,9
 128:6 136:11 140:21
 pull 57:2
 pulled 60:24 120:24
 pump 47:17 48:6 53:22
 54:5 75:6 106:24,25
 pumped 46:14,15,20 47:22
 69:15 101:3
 pumping 126:2
 pumps 53:10,11,15,18 75:8
 purchased 5:2
 purple 9:11
 purply 7:5
 purpose 19:5 45:15 46:19
 105:24 129:17,17 131:19
 purposes 16:2,23 17:9,12
 20:11,14 24:8 29:13 47:6
 136:18
 put 3:21 6:4,11 8:2 47:17

65:6 71:2 91:12 93:18
 101:14 131:8 143:24
 144:7 150:3
 putting 49:14 67:16 72:22,
 23 85:7

- Q -

qualified 27:12
 quality 31:23 34:19 55:17
 59:2 92:9 128:10 134:18
 quantitative 62:18
 quantity 31:24 92:9 134:18
 quarterly 55:18,21 102:21
 103:5 128:8
 question 17:17 20:13 35:2
 39:18 40:12 50:1 51:10
 56:3 59:25 64:1,13 65:3
 67:12 68:12 70:21 71:3
 72:7,8,24 74:3 80:18
 90:17 102:13 104:14
 105:14,25 107:1 111:23
 112:12,21 113:17,18,19
 115:12,14 116:9 120:4
 123:6 127:17 129:13,13,
 21 130:2 131:11 143:1
 145:8
 questions 34:18,21,24
 35:25 39:3,5,11,15 42:7
 51:12,13,14 52:4 59:3
 62:10 72:21 79:4,6,15,19
 85:20,21 86:2,19 95:14,
 15,16,18,20,22,24,25
 96:5,8,10,20,23 99:8,9,
 11,12,15 103:25 110:17,
 18 112:11 115:10 122:9,
 22 123:13,18 127:12
 128:2 129:5 134:13
 144:24
 quick 29:6 44:2 46:23
 53:1 120:4 145:14,19
 quickly 88:6
 quiet 87:6 130:13
 quieter 87:5
 quite 30:24 56:11 96:20

- R -

rack 148:16
 rainfall 103:21 113:23
 raise 4:3 117:25
 raised 90:3,11 107:24
 raises 65:2
 range 57:1,9 69:19 81:14
 82:19 109:2
 rapidly 150:15
 rather 19:12 21:13 30:7,17
 35:14 53:14 91:16
 101:24 143:2 149:9
 re-emphasize 63:14
 re-read 132:18
 read 22:24 120:14 121:20,
 21 134:23 142:10 149:15
 readable 151:6
 readings 102:24
 reads 14:18 15:25
 ready 4:5 87:11

reaffirmation 12:9
 real 41:12 46:23 50:13
 53:1 54:18,23 112:9
 113:2 125:18 145:22,22
 realistic 54:14
 realize 54:21
 realizing 19:20
 really 12:12 15:9,14 18:5
 30:6 33:23 37:14 38:8
 40:8 44:5 45:1 47:4
 54:22,23 78:2,5,16 80:19
 82:22 85:4,4,16 86:20
 88:22 93:2,4 99:7 107:18
 111:6 112:17 130:1,22
 131:8 139:19 143:8
 reason 43:7 54:25 60:21
 86:8 111:12
 reasonable 20:5
 reasons 27:20 28:9 60:17
 77:12
 rebuttal 147:24
 recall 19:10 24:10 51:17
 52:6 54:24 86:24 87:2
 received 24:20 93:6,9
 recent 6:3 17:15 31:10
 56:12 74:6 110:19
 recess 75:21
 recharge 23:1,3 47:23
 52:17,19,24 53:1,3,6,12
 54:5,17 59:7,9,10,15,16
 60:3,7,13,23 62:16,20,23,
 23,25 63:4,11 68:13 71:8
 72:15 85:2 94:11,17
 150:25
 recharging 130:8,9
 recited 13:15
 reclamation 32:3
 recodification 21:12
 recognition 30:19
 recognize 26:2 123:7
 recognized 119:25
 recommend 91:5 93:22
 recommendation 89:10,11,
 13 90:3,5 95:13 122:6
 recommendations 31:14
 124:10 148:17
 recommended 91:18 94:19
 record 3:19 4:14 20:20
 25:13,21 36:19 60:2
 62:13 75:23 80:14,15
 81:6 87:19 94:13,14 97:5
 99:22 100:6 116:19
 118:12 122:4,24 123:19
 125:3 126:14 130:19
 133:20 147:5 148:7,9
 150:2,23,25 153:8
 recover 66:23
 recovers 104:19
 recovery 104:25
 red 29:8 30:5
 redo 144:13
 reduced 62:22
 refer 6:9 7:17 9:19 43:5
 51:6 54:8 103:18 105:14
 107:17 128:14 137:15
 140:10
 reference 6:22 38:21 57:17

120:1
 referenced 151:9
 referencing 74:10
 referred 10:1 41:17 44:25
 46:8 102:23 108:20
 referring 124:5
 refers 20:8,8
 refinements 8:24
 reflect 11:17 13:21 19:10
 22:4 32:8,12,17,19 93:8
 97:18 147:7
 reflected 16:21 28:10 32:4,
 11
 reflects 17:22 18:6 28:7,
 23,24 29:25 30:4,8 31:9
 32:24 34:1
 regard 12:4 25:18 34:19
 79:15 94:13
 regarding 94:17 95:16
 96:9 150:25
 regional 56:21
 Registered 153:4
 regulated 84:20
 regulating 20:18
 regulations 8:24 13:8 25:1
 101:14
 reinterpretation 132:10
 reiterate 76:23 135:20
 relate 88:6
 related 21:2,10 87:1
 137:11
 relates 80:19
 relating 18:13
 relative 6:10 59:8
 relatively 35:11
 released 104:23
 relied 19:3 124:9
 remain 33:21 34:2
 remainder 5:19 18:10 19:4
 33:4,8,11,16,20 34:1,8
 remaining 9:15
 remember 35:6 36:24
 118:14,25 119:18 126:17
 reminded 35:13
 Removal 41:3
 remove 45:16 48:5 63:20
 renewal 13:8,11 14:7,13
 renumbered 144:7
 replacement 77:6
 replay 103:8
 Report 21:18 25:22 30:20
 31:7 32:7 39:22 73:9
 89:4,6 92:12 103:5
 121:12 124:14 130:18
 131:9,21 133:6 151:13
 153:6
 Reporter 153:5
 represent 145:12,13
 representatives 89:19
 representing 3:15 4:16
 represents 29:14,18
 request 5:7,24 10:16 15:9
 26:8 27:21 76:6 89:12
 97:8 132:8,13 150:7
 requested 8:7 10:18 31:19
 requests 147:9
 require 45:7

required 8:24 13:7 27:11
46:16 48:24 59:21 84:15
99:4 143:16
requirement 45:22 121:24
requirements 45:6 142:18
requires 22:23 23:16
requiring 98:22
residential 134:22
residents 86:4
residual 82:16
resolution 5:22 9:14 11:24,
24 12:7,13,16,21 13:10,
15,18 15:20 16:17,20
17:25 18:8,25 19:6 20:22
21:2,23 37:2 54:18 93:20
139:16,21 144:7
resolutions 11:9,16 13:19
21:13,14,20 23:14 45:23
88:24 91:20 138:21
139:15
resolve 25:5
resolved 14:9 25:17 35:10,
19
Resources 3:20 5:18 42:19
43:10 62:14 91:1 94:24
95:16 99:18 124:7,10
125:14 150:6
respectfully 31:15 32:11,19
33:24
respects 150:6
respond 72:1,7 110:18
response 149:1
responsibility 64:11 78:13
responsible 125:15
rest 18:2 46:24 96:2 116:8
117:18
restored 35:10
resubmit 121:7
result 39:6 63:9 83:18,19,
23 136:10,17
resulted 105:4,5
resulting 147:19
resupply 73:12,14
retention 23:1
retrenching 116:7,11
review 10:23 22:15 39:23
62:15 89:2 98:16 113:9
120:25 122:1 124:7,10,12
135:22
reviewed 97:21 102:21
132:9
reviewing 102:7
revised 32:10,23 93:8,17
94:15 104:9
revision 151:1
rezoned 9:8 10:10
rezoning 8:7 9:3 15:18
26:1 136:12
rid 65:10
right 3:24 4:3,5 10:7
11:23 17:6,18 18:20 22:6
35:23 37:9 38:11 39:20
40:9,11,13,18 42:25
47:13,19,21 50:13 51:22
55:1 65:18,20 66:1,23
67:24 70:7 71:18 72:17,
18 73:18,20,23 74:13

75:17 76:20 78:23 80:20,
22,22,23,24 81:2,16
82:22 84:4,18 85:7,7
87:11 88:4 94:4 96:25
97:12,25 103:5 104:5
105:18 106:23 108:4
109:10 110:4,16 111:19
112:22 114:15 115:24
116:3,22 117:10 119:23
122:16 125:12 127:25
129:4 134:16 136:8
138:14,17 141:9,14
142:8,14 143:12 144:18,
20,23 145:25 147:23
148:2 150:22,24 151:11,
23 152:3
Rinker 7:1,3
ripple 107:3
risk 77:9 149:5
river 111:24 114:10,24,25
115:2,6
RMC 7:13
Road 6:15,17,18,20,21 7:1,
9,12 37:13,13 38:22
42:1,1,9 126:10,15,21
141:19,20,21,24 142:5,6,7
roads 76:18 82:1,6 87:2
roadways 37:9
Rob 3:10 144:8
Roberta 153:4
Rock 3:16,17 4:18,20,23
5:2,2,6 7:2,10,17,19
15:12 16:6,25 17:15
19:16 20:2,15 22:8,12
23:18 24:3 41:1,2,7
45:12,17,18 46:14 47:1,3,
7,8,14,18 48:7 63:21
64:3 65:4,8 66:18 67:5,
6,9,16 77:6,9,16,16
78:7,20 79:2 81:20,24
85:12,13 106:15 107:4,
11,25 108:3,5,7,11,13,20
111:10 116:10,21 147:13
Ron 4:23 35:5,13
room 75:19 86:18
roughly 17:21
routed 23:1
row 109:18 114:21
rows 106:9
rule 143:4
rules 16:8 143:7
run 65:21 82:25 124:23
126:5 128:22 149:5
running 6:21 48:3 52:14
53:18 55:6 74:23 75:9
runs 38:11 126:14
rural 83:14
Russ 4:5 35:2 39:5 86:12
88:21
Russell 3:14 4:9,14 36:23
44:9,17 72:25 88:19 91:7
142:25 143:2

- S -

safeguards 26:3
safety 77:4 136:11

said 35:21 63:15 64:16
69:14 74:20 76:15 89:2
111:20 116:5 120:10
130:22 131:12 132:18
134:3 143:1,8
Sam 3:20 51:12 52:3
62:14 67:15 70:21 71:3
73:5 75:3,15 96:7 104:8
112:5
Sam's 72:7,21
same 13:17,22 30:1 39:23
51:5,19,21 52:1 54:1
57:23 68:16 71:6 72:6
88:14 93:6 105:5,22
109:19,20 113:25 114:25
125:11 133:19 141:4
143:1 144:14 150:10
sand 45:2 77:24 78:2
108:4,7,23 109:8 110:5
111:6 115:13
sands 109:3,4 111:8
sandstone 14:22 45:20
125:25
SANVILLE 3:17,17 4:18
116:11,17,20,20 125:3,4
sat 66:24 89:18
satisfied 90:1 91:2
saturated 101:22
saves 37:13
saw 61:10,15,17 76:12
142:3
saying 12:24 24:5 67:14
71:4 105:20 109:23
120:13,22 121:22 131:7
scale 54:11,12,14,15,18,23
81:4,5 141:18 148:10
scenario 118:19
schedule 19:9,11 20:24
21:10
scheduled 122:20
schedules 86:20
SCHROPP 3:14,14 4:6,9,
13,14 5:5 6:15 7:7 8:22
10:11,13 11:8,15 15:23
17:5,10,19 18:15,18,23
21:6,16 22:15 26:15
32:14 33:6,15,20 34:6
35:5,19,24 36:6 39:6,10
42:15 43:11,17 59:4,16,
23 63:24 64:4 76:1,3
79:11,22 82:12 84:14
86:1,13 87:10 88:3 92:5,
22 93:9 95:25 97:11
99:13 104:1 113:12
120:1 122:25 127:14
133:18 137:21,23 138:1,
9,19 141:5,24 142:9
143:10 145:2,8 146:4,10,
13,16 147:8,18,22,25
149:1,5,18,21 150:12,17,
23 151:3,5,8,12,18,21,25
Schropp's 88:7
Science 98:5
Sciences 3:21 94:25 95:18
97:6
scooping 65:22,23
screen 146:3

sea 48:25
season 59:13,14,16,20
101:18,18,19,20
seated 4:19
second 5:21 11:4 12:6
17:4 26:8 39:4 47:7
77:13,14 78:17 92:5
105:5 106:8 118:15,19,22
136:9
secretaries 144:19
secretary 92:16,19 150:20
Section 8:1,10,11,12,16,16,
17,19 9:7,7,9,16 10:8
11:22 12:16 13:5,6
16:15,16 17:21 18:9 19:4
24:3,4,7,10 27:2 28:2,11,
12,23 35:7,12 38:5
44:20,20,22,22,22,25
46:3,6,8 48:11 51:1,4,7
54:24 55:8,9,9 56:13
72:14 81:14 100:13
105:10 107:8 111:24
124:24 125:8 126:15
128:4,4,23 132:17
142:16,17 143:6,7,15
149:8,9
Sections 9:19 10:6 12:15
15:17 16:9,13 19:18
21:25 26:18 46:1
sediments 106:11
see 6:12 7:11 8:19,19
12:1,11 21:18 27:15
28:4,22 29:2,16 37:4
42:4 47:11 50:5 51:25
52:10 53:1 54:9,15,18
56:14,16,20,25 57:4,13
58:11 60:8 61:11 63:15
66:9,18 69:15 70:6,22
80:20 102:8 103:13,18
104:18 117:9,20,23 122:1
124:20 125:21 127:1
132:3 134:7 138:7
139:16 142:14 144:22
145:22 147:16 148:10
150:13,15
seeing 41:20 54:20 70:19
82:22 102:25 119:18
seeking 5:16 10:18
seems 113:1,8
seen 72:3 83:18,23 108:16
120:14 136:17
self-regulating 60:20 61:4
semi 117:9
send 68:25
sending 62:23 68:19,22
70:9
sense 33:23 66:14 99:4
111:16 116:4
sensitive 149:6
sent 104:8
sentence 109:17,21 111:24
136:9 141:16
separate 22:3,9 26:17,21
89:3 91:17
separates 45:19
September 32:10 86:5,6
89:4,6 92:24

sequence 54:2 sequency 44:3 series 11:8,15 51:17 114:22 services 92:20 set 21:21 47:10 60:17,17 61:16 150:21 setback 28:3,15 29:4,22,24 30:13 40:14,16,16 83:8,9 84:16 118:3,25 121:25 142:17 setbacks 40:5 128:16 142:17 143:7,15 sets 102:14 setting 84:5,6 Settlement 14:10 88:25 seven 74:18,21,22 75:3 98:1 several 17:23 26:6 104:3 105:3,8,11 123:3 134:13 sewing 68:6,7 shall 12:23 13:17 14:19,21, 23 16:2,5,24 24:11 32:3 shallow 49:12 125:24 shared 89:20 sheer 77:3 Sheet 93:3,3,7,10,17 94:15 151:1 shoot 149:4 short 39:2 56:22 76:24 95:1,3 shortly 19:24 32:6 79:18 should 4:1 6:5 20:19 25:13 26:12 31:23 33:13 51:22 70:24 93:20 95:14 99:3 103:23 113:8 131:8 139:4,20 140:17 141:24 146:2 151:21 shouldn't 122:18 shoved 120:23 show 46:7 47:7,13 50:21 52:5 53:9 54:2,7 56:19 65:24 68:12 99:2 100:23 112:3 113:21 146:20 147:6,11 showed 38:23 107:2 showing 44:3,17 50:16 shown 9:11 10:5 17:24 26:19 29:10,19 30:5,9 32:9 38:23 51:1 61:21 66:19 132:25 134:6,9 144:1 shows 6:9 27:13 30:1 44:3,20 50:12 52:15 64:19 146:18,23 side 7:1,12 35:12 48:13,14 52:12 56:1 65:22 66:10, 11 72:13,13,14 125:8 sideways 110:3 significant 13:24 84:17 significantly 14:17 signs 40:2 141:17 similar 16:22 44:9 145:23 simple 112:2,18 114:7 simplistic 60:19 112:4 simply 30:13,16 119:6 140:24	simulate 114:20 simulating 114:23 since 7:21 18:21 72:12 78:24 88:17 89:17 91:18 100:16 109:12 136:18 142:18 sinking 77:10 sir 39:9 106:19 121:25 sit 65:4,7 67:10 77:8 89:14,15 136:19 site 5:20 11:22 23:3 25:10 33:21 34:2 35:14 42:2 44:8,17 46:18 47:24 50:14,15,23 52:14,15,21 53:13,13 55:7 56:15 57:15 58:16,22 59:2 61:7,10,19 71:7 72:17,18 83:6 85:18 105:12,15,17 106:12 108:17 123:8 127:24 130:10 135:3 150:18 site-related 78:22 sites 128:22,24 sits 64:21,21 65:17 66:17 situation 30:18 69:16 70:14 72:10 108:3 143:19 150:18 six 53:19,23 58:19 74:19, 23 75:4 100:13 125:6 134:6,11 size 41:8 55:4 76:25 113:10 slashed 40:13 slew 128:9 Slide 59:6 63:17,18 66:25 slides 29:12 44:1,3 slight 93:10 slightly 48:15 148:18 slug 104:9,11,25 105:4 106:10,13 109:2 110:7, 20,25 111:5 115:15 small 23:23 50:13 58:17 61:23 77:1 134:10 smaller 46:11 74:15 77:17 98:3 So 4:2 5:5 6:12 7:4,21 8:13,14 9:1 10:7 11:2 14:5 15:3,20 16:19 17:16,23 20:20 21:9,20 23:24 24:16 25:7,18 26:20 27:18 30:15 32:7, 10 33:13,24 35:19 37:10, 17,23 39:2 40:23 41:10 43:8 46:18,20,23 47:3,16, 19 49:1,10 50:20 52:7,24 53:3,15,20,23 54:13,14,20 55:3,20,24 56:2,10 57:10, 11,21 58:10 59:16 60:25 61:3,7 62:7,19,24 63:2,9 65:7,16,21 66:9,15,22 67:2,4 69:12,21,24 70:15, 20 71:1,12 72:5 73:15 74:2,12,15,23 76:19 77:4, 8 79:18 81:15 82:22 83:11,16 84:4 85:6,10,15 86:13 88:17,19 91:13,15 92:20 93:4,15 94:12,13	96:11,15 97:8 98:2,7 99:1 100:14,18,20 101:16,22 102:3,5,25 103:3,9 105:3,21 106:12, 21 107:7,14 108:10,25 110:5,25 111:13,14,15,16, 19 112:9,10,14,20 113:23,24 114:1,3 115:16,19,21,23 116:24 117:5,23,25 119:11,13,23 121:5,17 122:4 125:17,19 126:2 127:7 130:10,13,17 131:17,18 132:13 133:25 134:10 135:9,15 137:3,15 138:9 139:18 140:15,24 141:8 142:6 143:25 144:6 145:20,24,25 146:5 147:1,3,14,18,25 148:17 149:25 150:8,10,13,21 151:14 sole 93:18 solution 26:1 some 6:4,22 7:11 23:10 27:9 35:9 42:7 43:7 44:3 47:6 51:13 52:13 56:7,7, 8,9,12 58:16 60:19 61:17 62:5 86:12,17 93:10 95:5 105:22 108:16,18,21 111:11,14 113:22 122:12 129:5 131:20 134:1,4 137:6,10,14,16 138:12 147:1,7 150:23 somebody 43:8 somehow 121:21 someone 63:22 something 43:1 54:7 60:7, 18 61:19 101:8 103:14, 17 114:21 115:25 120:19 126:20 128:21 140:16,16 149:14 150:21 sometime 28:10 sometimes 26:6 71:24 somewhat 87:7 somewhere 45:13 49:20 57:9 81:15 120:24 134:23 142:4 soon 53:20 sorry 39:16 63:4 64:13 109:15 116:20 120:11 128:4 sort 10:14 18:21 132:4 134:12 sorted 109:4,7 sought 140:2 sounds 78:16 south 6:16,21 7:12 10:8 13:5 14:20 15:1 16:2,7 17:1 20:16 22:4,8 25:23 38:12,12 54:25 72:13 84:21 101:7,11 116:12 126:16 128:3,5 southerly 17:21 18:9 southern 8:1,11,17 9:15 11:22 12:16 16:15 southwest 28:2,12 83:13 97:22 98:3 140:14 space 58:20	spaced 125:22 speak 34:18 36:20 41:4 65:16 speaking 41:6 special 8:4,13,15 10:9 12:4 15:8 specialty 36:5 species 33:3,7,16,23 98:18, 23 99:3 specific 14:12 26:2 57:3 78:9 79:14 121:16 134:17 140:1 specifically 12:4 16:1 19:14 56:4 71:13 81:17 86:23 121:23 123:17 128:9 140:4 Spell 123:21 spend 44:13 SPICKERMAN 3:7,10,10 36:12 39:14 42:24 95:24 99:11 121:23 143:24 144:6 spike 61:17,17 spikes 103:15 spot 67:20 105:21 spray 83:1 square 68:7 squint 146:6 stability 77:8 78:3 stable 66:17 stack 48:15 stacking 114:18 staff 3:19,22 5:18,19 10:20,21 17:14 21:18 25:22 30:20 31:6,11,14 32:1,7 34:13 35:9 36:9 39:11,22 42:21 49:23 73:9 74:6 79:6 87:12,16 89:2,4,5,10,15,16 90:3,22 91:1 92:11,20 94:19,21, 23 95:11,13 96:12 97:3, 19 98:17,22 100:3 101:15 120:2 121:7,12 123:4 124:2 130:12,13,18 131:8,20,21 133:3,7,14 136:9,13 137:1 138:4 140:16 150:2 151:13 staff's 33:7 51:12 stage 60:18 68:20 142:24 stamped 93:6 standing 62:24 131:13 standpoint 88:7 95:3,19 119:20,21 143:3 start 21:11 22:16 37:17,18 38:10 41:10,21 46:9 47:6,10,20,21 48:1,7 49:12,13,17 52:6 54:15 56:12 68:4,15 72:22,23 81:17 82:10 112:6,7 150:15 started 3:24 15:3,14 51:15 52:7 57:21,22,22,24 88:15 starting 37:20 67:23 starts 27:19 37:5 38:13 106:3 state 20:19 25:12 62:12
--	--	--	---

63:25 80:13 93:6 100:5 116:18 153:1 stated 120:17 121:2 130:22 133:6 140:3,12 statement 92:8,10 120:8 121:19 129:18 139:17,20 statements 130:11,25 states 98:15 122:2 131:1 station 57:25 status 25:24 stay 49:11 122:13 stayed 64:10 stays 76:20 82:16 stenographically 153:6 step 16:14 27:25 36:22 110:6 114:16 steps 120:6 stick 150:10 sticks 80:21 still 10:9 12:10 15:6 25:25 35:18 46:24 47:20,23 52:16 67:21 73:18 75:1 85:3 92:14,21 93:6 96:8 109:19 128:1 129:2 148:13,14,15 stipulation 14:9 stockpile 66:4 stockpiled 76:18 85:12,13 stockpiles 83:9 85:11 stood 8:22 stop 17:3 40:2 46:22 67:20 117:4 118:5 storage 83:3 storm 69:8 straight 11:3 straightforward 34:22 stretching 54:15 145:21 strike 143:8 144:9,10,10 strip 81:8 strong 147:5 strongly 140:12 structural 77:7 78:3 struggled 142:25 stuff 41:14 42:12 67:19,19 82:6 84:7 103:4 110:9 116:23 120:14 sub 27:4,15 subject 20:9 44:23 91:25 135:13 139:3 submission 151:2 submit 32:23 98:16 121:7 146:4,13 151:12 submittal 104:6 submitted 30:11 32:5 33:10 39:22 97:16 98:24 99:2 102:8,19,21 120:5 122:5 151:15 subsequent 32:22 subsequently 64:25 119:14 subsidiary 5:6 successful 25:14 suck 71:19 sucker 107:12 suckers 40:3 sucking 49:13 72:17,18 sudden 17:8 suggest 31:15 32:11,19	33:24 suggested 120:6 suggestion 121:6 suit 14:6 summarization 103:6 summarize 44:15 summary 19:12 58:12 94:18 supercopy 142:12 superseded 9:13 supplemented 89:8 supplied 118:9 132:24 supply 55:20 117:4 120:11 125:5,9 128:6 130:20 135:23 support 77:7 supports 34:15 suppose 40:25 supposed 17:9 29:22 74:14 Sure 17:5 52:2,17 64:6 69:3 71:4 72:9 73:3 84:23 85:16 97:22 136:22 139:1 146:8 151:14,15 surface 48:24 49:1,4 52:12 131:3 132:20 133:9 surficial 14:18 125:24 surprise 121:19 surrounded 46:24 108:4 surrounding 6:10 31:21 51:20 55:7 60:5 61:8 86:17 91:2 surrounds 47:24 survey 33:3,7,16,23 99:3 surveyed 69:8 101:15 suspect 86:8 Suzie 3:21 32:17 33:3 34:3 80:3 85:22,23 94:5,25 95:1,17 96:15,23 97:2,5 99:14 swear 3:25 sweet 39:2 swing 66:22,24 67:9 switcheroo 144:19 sworn 4:2,4,11 36:17 43:15 76:10 80:9,11 87:17 97:4,6 99:23 100:4 123:20,23 124:3 system 49:21 58:21 61:2 116:8	takes 55:14 74:18 91:19 104:23 133:11 taking 24:23 41:8 72:20 82:17 85:7 100:19 107:7 114:19,21 talk 4:3 10:14 32:15 44:10,13 46:3,4 57:3 talked 44:9,18 86:21 88:21 89:19 95:12 131:21 talking 17:7 38:24 40:25 41:1,1 48:9 49:23 71:12, 13,14 73:23 81:8,9 83:25 84:4,25 91:11 105:9,11 112:16 122:12 129:14,15 131:2 144:8 150:4 talks 20:25 33:15 118:19 131:5 132:18 135:11 tall 41:14 tank 104:22 tapped 62:8 target 45:19 team 4:20 teaspoon 77:24 technical 149:14 technically 103:14 108:21 110:5 teeny 80:20 tell 50:8,13 69:9 70:6 86:11 109:21,22 119:2,5 125:19 148:2,12 telling 109:21 tells 119:6 ten 32:4 75:17 107:15 111:12 148:16 tend 76:18 98:1 tender 36:3 42:19 80:1 tendered 42:17 79:25 87:24 tends 52:10 87:5 tenth 78:17 term 20:13,14 45:2 56:10, 11,22,22 58:7 terms 6:24 53:19 58:18,19 59:14 70:12 137:23 test 104:25 108:10,12 110:7,20,25 115:15 testified 4:11 36:17 43:15 76:10 80:9 87:17 97:4 100:4 112:5 124:3 testifying 3:25 4:1 testimony 148:6 testing 104:10,11 106:10,13 109:2 tests 105:4,9 111:5 116:23 text 74:17 than 17:24 19:19 21:13 30:7,17 35:6,14 40:12 45:7,24 46:10,11 59:21 69:23 70:2,8,18 71:9,11, 18,24 72:5,16 74:15 76:13 87:5 88:9 91:16 101:24 108:23 109:13 110:5,20 111:9,11 122:18 134:4 149:16 150:8,19 151:20 Thank 33:6 35:24 42:14 43:11 59:23 68:11 75:15	76:12 79:9,10,22,23 85:25 87:9,10 96:25 99:6,15,16 100:5 123:2 149:20 that's 7:4,7,20 9:24 10:11 12:7,16 13:1,10,10 15:15 17:10 18:2,5,23 19:12 20:9 21:8,9,16,17 23:6 25:18 28:8,13 33:17,20 34:3,12 36:25 38:24 39:20,25 41:17 42:6,14, 15 44:12 45:3,11,12,14, 18 49:17 51:8,20 52:22 53:17 54:16 55:3,13,18 58:12 61:24 62:19,24 63:13 64:7 65:10 67:18 68:14 69:8 71:21 72:13 74:9,10 75:14 78:2 80:24 81:9,13,14 82:5 84:16 85:13 87:10 88:14 93:4 101:4,8,11 102:6,10,13,20 103:1,11,12 104:13,15,25 105:7,16,23,24 106:14 109:3 111:22 113:13,20 114:7 115:5,14 117:16,20 118:7,13,24 120:19 121:19 123:4 124:24 125:16,17 126:7,7,15,16, 22 128:4,16,18,25 130:25 131:15,19 132:25 135:5 139:5,17,23 140:18,21 141:2,25 142:11 145:15, 19 146:9,10 147:21,22 150:24 151:5,18 them 8:19 15:10 22:2,9 41:14 43:19,19 44:1 56:1 58:6 62:19 72:20,20 77:19 82:4 86:18 89:15 92:15 93:20 96:3,9,12,24 110:23 113:25 114:3,15 115:22 125:21 126:3 128:7 135:15 143:2,8 148:24 then 7:1 9:14 13:7 18:12, 18,24 19:10 21:1,23 26:24 27:3,16,17 32:14 34:13 41:5,21,21 43:10 44:11,15,21 46:5,15,23 47:18,19 48:7 52:7 53:11,16,22 54:1 55:8,9 57:22 61:5,18 63:9 64:15 65:22 66:7,10,24 67:8,19 68:2,25 73:4 74:14 81:13 83:17 93:18 96:3,20,22, 23 99:2 101:25 103:16 104:18,24 106:4 107:11 108:5,10 109:10,22 111:19 117:18 118:21 120:18 121:9,10 124:18 125:7 126:5 128:5 131:5 132:21 135:17 136:12 137:5 138:9,15,15 139:22 141:7,11 142:3,9 143:18, 25,25 144:1,12 151:23 theory 37:11 there's 6:16 12:21 17:24 18:15,18 25:22 27:8
--	---	---	--

- T -

33:22 35:25 38:16,16 44:14 56:20 63:21 70:23 81:13,17,20 82:10 84:2, 15 110:22 111:14 114:14 117:8 120:20 122:19 125:23,24 126:20 127:8 128:3,5,24 132:10 135:20 142:23 147:1 therefore 100:14,20 119:11 Therein 23:10 Thereupon 4:8 36:14 43:12 76:7 80:6 87:14 97:1 100:1 123:25 these 8:18 13:19 21:11 22:15 37:15,16 42:5 46:1 50:4 55:25 56:2,7,9,10, 11,19 57:20 66:7 77:19 83:14 92:15 98:1 100:19 101:16 110:11 111:18 127:1,2 128:15,21 131:2 132:19 136:13,19 138:12 They'll 41:25 47:8,9 108:22 they're 37:19,20,23 38:6, 10,21 40:5 47:18 50:2 59:21 67:15,15,16,17 82:6,7,9 86:8 92:16 93:2 100:12 102:23 105:16 106:2 107:24 108:4,6 109:23 117:6,7 119:7 120:17 125:22 127:4 131:13 they've 10:10 17:6 82:9 83:7 91:11 127:23 thickness 45:4,13 115:13, 16,17,19,24 116:2 thin 121:14 thing 20:3 48:4 54:1 62:16 65:3,11 68:8 77:15 84:14 102:20 105:3 114:25 117:14 135:1 140:11 148:12 149:21 thingie 87:5 things 25:5,8 32:14 56:25 60:1 63:12 69:7 75:12 82:1 84:8 95:5 97:14 107:2 111:5,13,14 113:24 122:12 131:12 132:22 136:19 147:15 150:14 think 12:8 16:20 17:14,16 18:5,15 19:3 20:5 24:6, 14 25:20 29:12 30:11 33:2,7,13 34:6,15,23 45:6 46:11 48:12 56:3 57:19 59:25 60:16 65:10 70:12, 15 72:23,25 73:1,7 74:19 79:19 82:23 83:8 88:19 92:19 93:15 94:5,12 95:6 96:10 97:14 99:6 100:9, 17 107:20 110:7 116:4, 25 117:6 120:25 122:8, 10 124:24 131:8 132:9, 17,23 133:7,19,25 134:22,23 138:1,17 139:4 140:12 141:6 142:2,2 143:8,11 144:8,9 146:10, 19 148:1 151:12	thinking 143:22 third 5:24 27:21 92:13 thoroughly 134:4 though 49:2 82:17 thought 13:23 20:2 25:2 71:16 81:22 115:6 thousand 54:16 117:20,21, 24 119:17 threat 136:10,16,18 137:11 threaten 137:17 threatening 137:13 threats 137:2 three 5:14 18:13,15 26:17, 21 29:12 48:12,22 49:6 55:2 56:9 68:24 76:24 90:5 91:16,20 94:19 95:11 108:3,5,7 125:5 129:1 136:22,23 145:11, 11,12,13 threshold 136:15 through 5:10,11 6:23,23 7:2,24 8:25 9:3,12 10:14 11:17 14:3,9 17:12,16 23:11 25:4,17 27:9,20 30:18 32:16 42:2,2 51:5 55:5 56:8,24 66:13 83:1 84:6,20 86:21 89:25 91:13 92:20 99:20 103:9 106:13 107:10 116:5 133:4 134:12 135:22 137:3,11,24 138:2 140:21 144:21 148:7,9 153:8 throughout 5:8,11 10:3 11:16,20 19:21 26:17 53:13 55:15 102:3 105:15,17 116:14 127:21 throwing 141:10 thus 46:19 137:9,13 147:16 till 64:25 time 4:2 12:2,2,17 14:3 16:16 18:12 19:18 24:12, 13,20 26:6 27:3 29:5 35:2 37:13 38:16,16 40:25 44:13 51:13,14 53:16,23 54:2,8 56:8 57:23 58:9,14,19 59:12 61:20,23 64:14 68:16 69:13 78:16,17,17 79:20, 21 88:14,17 89:24 93:14 94:15 104:18,23,25 114:22 117:17 120:10 122:8,15 132:9 133:21 136:12,24 140:16 142:3 145:12,19,24 147:14 148:1 149:6 151:16 152:2 times 53:11 77:4,9,19 83:15 109:13 110:4 115:3 145:16,20 timing 13:19 tires 41:14 today 4:15 5:13 10:2 15:9, 16 16:11 20:10 21:17 26:8 27:21 31:4 36:3 42:20 76:6 79:13 80:2 87:21 91:1 94:23 97:8	122:20 today's 37:21 38:17 143:6 toe 66:20 together 70:15 82:21 91:24 93:19 144:7 told 75:3 120:20 124:11 Tom 4:19,21 27:7 36:1,15, 19 46:8 48:1 81:4,6 ton 108:3,5,7 Tony 25:23 took 19:16 30:13 150:2 tool 112:20 114:7 tools 112:11 113:16 top 11:24 46:13 47:1 56:9 60:25 66:1 77:24 86:11 108:5 134:8 topographical 65:16 topography 69:11,17 70:24 tops 57:12 total 30:8,10 53:23 totally 96:21 142:4 touch 141:20 toward 38:21 88:23 towards 37:7 38:22 55:19 66:7,8,13 township 128:23 Tracy 4:23 traffic 42:10 86:19 trans 68:15,17 105:19 transactions 7:3 transcends 7:21 transcribed 149:12,15 transcript 153:7 transducer 55:14 transfer 132:8 transitivity 104:15 105:17 115:15,17,20 116:1 transmittal 104:7 transport 77:18 traveling 87:2 traverse 67:3 treat 44:11 125:9 treatment 10:24 126:6,18, 23,24 trench 47:23 48:9 49:15 52:19,25 53:1,4,6,12 54:5,17 59:8,10,10,15,17 60:3,7,13,23 62:16,21,23, 25 63:4,11,11 68:12,13 69:5,15,21 71:9,23 85:2 94:11,17,17 102:10 112:23 116:17 117:15 119:9,13 trenches 23:1,3 48:8,20 52:17 58:21 69:7 73:3 100:15 101:16 130:7,8,9 151:1 trenching 90:20,25 116:8 triangles 40:1 tried 86:6 trip 10:14 trips 78:15 trolls 102:23 trouble 41:20 116:6 truck 86:19 trucks 37:14 41:11,13 66:5,7,7 67:19 76:16	82:25 84:6 85:8 87:1 true 113:2 153:8 Trust 78:18 try 25:3,5 76:19 77:25 91:9 96:2 110:18 114:19 137:1,15 141:12 149:16 trying 13:25 21:12 30:17 37:11 60:8 79:16 141:20 142:5 turn 96:19,22 tweaks 31:14 two 13:19 18:14,15 22:1,9 33:12 48:13,22 49:5 61:20 89:3 94:14 99:7 104:16 109:13 110:4 111:9 127:1 134:16 144:12 149:1 type 137:6,14,16 types 111:10 typewritten 153:7 typical 46:11 typically 21:11 48:23 49:9 50:18 83:5 109:13 110:21 111:4,8,11 115:3 146:22 typing 92:15
- U -			
			ultimately 11:1 14:9 66:8 unconsolidated 45:1 106:11 under 10:9 13:7 15:8,15 20:3 24:1 25:10 26:2 64:22 66:22,23 71:24 78:13 90:10,22 92:5,5 118:18 129:16 130:16 133:2,10,15 143:6 underground 71:10 78:23 underlain 51:9 underlying 55:3 underlining 139:24 Underlying 45:11,18 underneath 65:6,9 68:2 108:7 understand 10:22 64:13 67:13 71:4,5,8 100:24 112:23,23 120:12,13 125:17 129:13,24 131:7 132:14 139:1 142:15 148:6 150:17 understanding 89:25 124:12 understands 100:18 understood 78:20 119:16 123:11 127:17,21 130:10 145:8 undertaking 112:10 unfortunately 55:2 88:10 unit 125:25 unknown 137:10 unknowns 112:19 unless 16:2 49:15 until 17:7 47:25 51:11 88:12 100:13 122:13,16 148:25 unusual 83:17 up 6:4 7:14 8:12 10:4

15:6 17:7 23:8,24 26:22
28:18 31:4 34:23 39:24
40:2,24 41:7 48:15 49:15
53:8 59:5 60:17 64:8,16
65:23 66:1,4,6,9,16 67:17
73:11,11 75:13 79:23,24
80:21 84:9,10 87:2 88:12
95:20 96:3,21 99:18,19
100:13 104:20 107:14,18
108:23 109:1 110:1,2,6
112:19,24,25 117:1,17
122:9 123:16 125:14
126:14 127:1 128:21
131:13 132:5 133:21
134:7 139:22 145:6,6,10
146:3,11 148:18,21
150:5,21
upcoming 43:18
updated 32:7
upland 29:21 71:11,14
upon 21:19 33:25 89:24
90:15 97:16 98:18,22,23
122:1
upper 44:25 45:15,20
47:12 51:2 145:11,12,22
ups 61:17
us 24:5,23 35:21 77:4,7
78:3,3,4 93:16 118:9
120:5 133:11 144:17
150:3
use 16:5,24 20:18 25:10
32:2 44:14 76:23 77:21
87:23 88:24 101:6,24
102:6 111:4,11 113:3,22
115:1,18,21,23,23 124:16
133:24 150:10
used 7:2,10 23:6 27:8
28:25 42:11 45:3 54:20
68:2 111:17,25
users 91:2
uses 31:21 77:13 131:2,6
132:19 134:22
using 112:6 147:13
usually 48:13 49:19 101:6,
17
Utilities 3:20 94:24 123:5,
20 124:8,25 125:17
127:6
utility 91:3 127:24
utilize 28:1 82:24
utilized 62:17 116:14
utilizing 14:24

- V -

validity 14:6
valleys 146:23
valuable 85:14
value 15:10 105:5,6 109:1,
3 143:3
values 109:12,14 110:5
111:18
varies 62:7 84:18
various 5:10,10 7:22
vary 62:5
varying 20:6 27:4 115:12,
24

vastly 54:11
vegetation 83:16
vehicles 42:13
verbiage 31:18
versa 104:21
version 32:7 59:6 146:5,14
151:5,14,15
versus 84:5 91:22
vertical 44:4 46:1 51:1,3
54:8,10,11,20 58:18
61:24 109:11,13,24
110:20 111:3,5,8,15,18
114:18
very 26:2 44:2 45:21,21,22
49:3 50:17 52:16 58:7,
11,15,25 59:18,20 71:21
76:23 77:1 85:3 87:8
88:6,16 95:3 98:2 101:8
102:3 104:7,14 109:17
111:24 112:2,4,4 114:7
121:14 142:1 145:23
146:1 147:5 150:2,4
vice 64:2 104:21
vicinity 125:1
view 23:12 44:4 52:6
65:16,16 66:1
viewed 23:12
violates 70:14
violation 19:25 24:6,21
142:24
virtually 18:16
visible 141:18
visit 31:1 85:18 150:18
visits 108:17
voice 64:6 118:1
void 77:6,21
voiding 21:12
volume 104:16,17 148:14

- W -

W-e-g-i-s 123:22
waiver 25:15
walk 37:16 39:17 134:12
walking 37:20 38:16 67:1
walks 40:24
wander 150:21
want 22:2 25:14 44:2 54:7
58:23 62:9 63:13 73:1
96:17,21 97:13,25 110:14
112:11,20 113:16 114:14
115:10 120:17 122:23
126:25 143:13 148:12
151:11
wanted 19:14 54:25 60:18
76:4,15,23 84:23 85:15
137:14 151:9
wants 96:15,16
warehouse 77:1
wasn't 29:22 30:9 38:20
140:15
watching 102:25
water 12:23,25 13:17
14:20 15:1 16:3,6,7,25
17:1 20:16,18,20 22:4,7,
8,10,12 25:23 26:4 30:22
31:24 36:5,6 42:19 43:10

45:20 46:14,14,16,18,20,
25 47:15,17,18,22 48:6,
15,21,24 49:11,13,14,15,
19,20,21,25 50:9,14,16,19
51:18,19,20,20 52:1,9,12
53:2,3,11,13 54:5 55:4,
13,14,17 56:8,16 57:4,8,
10 58:16,22,23 59:1,2,7,
8,11,13,17,20 60:5,10,14,
21,23 61:1,2,6,7,12 62:8,
21,23,23 64:16 66:23
68:20,22,25 69:4,8,9,15,
18 70:2,9,10,18 71:2,9,9,
11,11,13,14,14,19,19,23,
23,24 72:4,5,6,17,18,22,
23 75:7,19 77:24 78:1
82:1,7,10,25 84:21 90:1
92:1,9 95:17 100:20
101:2,6,7,7,12,16,18,19
102:4,7,9,25 103:23
104:16,17,18,20,22
109:25 113:7 115:22
116:13 119:14 120:10
125:5,9 126:1,6,18,22,23,
24 127:3,5,6 128:9,18
129:19 130:5,5,20 131:4,
14,17,25 132:2,20 133:1,
9,9,22 134:6,18 135:18,
23 137:8 145:4 146:21
147:19 148:6 151:7
water's 61:1
watered 82:1
Waterhouse 25:23
watering 82:5
way 20:2 27:17,19 37:17,
18,19 49:18 61:14 62:18
64:20,20 66:13 67:1,2,23,
24 70:16 92:20 96:3
101:1,21,23,24 103:14,17
104:15 107:22 110:9
114:19,23 117:15 121:20,
20 122:19 130:2 139:2
142:10 143:18
ways 104:16 110:22
we'd 32:22 77:17,18
we'll 34:11 52:3 64:8
75:19 103:14,19 122:5,17
136:5 151:12
we're 5:13,16 15:6 16:10
17:13 18:21 21:17 27:25
29:7 30:17 33:10 34:25
40:25 41:1,6 46:18 47:20
50:16,22 51:4 52:8 57:9
59:13,14 61:15 66:20,20
70:13,25 71:1 72:9 73:3
75:24 82:15,15 83:25
84:4 91:5 94:9,14 95:9
103:17,20 109:6 111:5
113:10 114:5 121:16
122:3 129:22 139:11
140:7,21,23 145:24 148:1
149:8 150:24 151:14
we've 4:17 23:11 34:22
38:4 43:5 51:7,8 55:12,
24 56:2 57:7 58:10
61:13 62:5,7 79:12 85:1
108:7 122:20 130:22

133:12 140:5
Wednesday 3:3
week 53:19 74:24
weeks 53:23 58:19 74:18,
21 75:3
Wegis 3:20 94:24 95:8
123:5,19,19,22,24 124:1,
6,16,25 125:13,22 126:4,
9,12,18,22 127:11,16
128:21 129:2
weighs 76:24
weight 77:3
welcome 96:13 150:19
welfare 136:12
well 4:2,20,22 17:10 29:4
40:7 50:17 61:6,9 74:1,
13 77:8 79:2,3 83:6
84:17 86:7 90:13 95:10,
14 100:23 101:5 104:23,
24 105:10 106:11 109:4,
7 111:6 117:4,7,8 118:1,
25 119:3,15 120:11
123:6,12 124:21 125:15,
24,24,25 126:13 127:22
128:12,24 131:21,22
134:19,25 135:6,14
137:2,10,13,17 139:5
140:20 142:1 144:4
146:8 150:19
wells 14:24 49:24 50:2,3,8,
19 55:20 56:2,9,23 58:3,
6,9,10 60:4,6,8 62:4
90:15 91:3,4 95:5,7
102:2,15,20,22,24 117:11,
24 119:18 124:15,23,23
125:1,6,9,19,20,23 126:1
127:2,5,10,17,23 128:3,6,
8,15,22,24 135:2,5,8,15
137:5
went 11:17 12:15 13:18
35:9 43:25 58:7 74:4
77:12 131:21 144:21
Werst 91:1 94:24 95:2
96:7 99:17,22,22 100:2,7,
7 101:21 102:18 103:8,
11 104:4,13,21 105:7,13,
23 106:6,14,17,20 107:6,
13,16,20 108:9,14,20
109:5,9,15,19,23 110:2,4
117:2,8,12,14,25 118:9
119:9,11 120:4 121:5,11,
14,25 122:10 123:2
124:5
west 7:1,9 51:4 126:6
wet 45:14 59:13 81:21
85:3 101:19,20 117:19
wetland 5:25 6:2 27:22
28:2,4,7,13,13,15,17,17
29:1,4,5,9,19,21,23,24
30:5,7,8,13,22 32:18,20
33:4,8,11,17,21 34:2,18,
19,21 35:3,8,11 49:11,11,
14,14,16 50:9,15 55:24
56:2 68:25 69:11 71:10,
14,17,17,19,20 72:5,14,16
79:15,15,17 80:1 83:4
84:13,16,25 89:12 90:7

93:11 94:2 97:15,18,20 139:22 140:15,17 wetlands 49:9,9 50:4,22 55:7 56:4 58:24 69:12 72:3,19 81:23 83:13,21, 22 84:13 139:3 140:2,9, 19 what 6:17 8:2 9:18 11:18 13:23,25 17:10 19:10,19 20:13,14 21:15,17,24 22:1 23:6 28:10 29:7 30:15 32:24,25 33:9 34:12 37:23 38:8,10,15 40:1 41:17 42:11 43:8 44:2,5,9,25 47:11 48:1,9 50:9,25 51:1,15,25 52:8, 10 54:13,23 55:3,12 56:14 60:7,19 62:19,24 63:13 65:10 66:12,20 67:13,15,17,23 68:2 69:3, 10 70:6 71:4,12 73:1,15 74:9 81:9 82:6 86:12,21 88:6,21 92:4 93:1,15 97:16 98:23 100:8 101:10 102:8,13,23 103:12,19,23 104:14,25 105:16,17 107:8 108:2 109:7,14,21,21,23 110:21 111:7,16 112:3,10,14,20, 24,24,25 113:2,10,18 114:5,6,9,11,21 118:24 119:16 120:12 121:4 122:13,15 125:19,20,23 127:16 129:15 131:7,17, 19 132:23 133:7,10,15 136:19 137:4 141:6,25 142:11,21 144:2,8 145:18 146:17,18,21 147:10 148:3,4,11 149:16,23,25 150:1,13,15 what's 9:10 17:9,24 23:8 34:20 41:3 49:1 54:10,21 67:22 78:21 100:23 102:16 117:21 118:3 140:20 141:13 143:25 whatever 26:13 40:2 72:16 83:21 96:8,15 113:1 131:6 132:11 152:1 whatnot 7:5 46:25 120:25 124:13 129:9,18 whatsoever 143:21 when 9:1 21:11,14 22:16 30:11 41:7,10,23 49:17 54:14 57:3 60:2,21 61:1 62:15 63:16,17,20 64:15, 17 67:15,19 68:17,21 71:12 81:16 82:6,10 83:9 86:18 88:12 93:9,19 102:7 103:3,5 104:18,20 105:8 108:5 111:5 113:6, 22 121:19 129:7 131:13 132:13 134:7 136:15,25 142:11 144:7,13 146:3 Whenever 112:6 where 6:12,16 17:21 25:18,21 27:25 28:12,18 29:3 30:16 32:2 44:12	46:6,14 49:16,23 50:19 52:12 53:1 55:20 56:13 57:16 64:20 65:12 67:18 69:16 71:2 72:4 74:4 81:25 91:19 92:7 93:13 105:15 106:8 108:3,17 118:4 119:7 127:23 134:17 136:15,19 139:17, 23 140:18 141:21 142:4 whereas 115:3 wherever 25:6 whether 34:3 36:24 48:20 72:17 91:3,21 96:2 113:17 137:6 149:10 which 4:16 6:8 7:2 8:10, 11,12 9:8,13,14,22 10:20 12:8,22,22 13:16 15:8,16 18:25 20:17 21:18 23:8, 17 26:12 27:2,2,4 28:3,4 37:2,7,9,19,20 38:3,11,21 39:23 40:13 41:3 46:23 48:1 54:11,17 58:3 71:9 79:2 93:8 98:19,20 101:17,24 104:6 105:5 106:3 108:24 109:15 115:25 120:6 121:21 123:11 125:11 126:25 131:22 133:23 135:11 140:10 143:6 150:3 while 37:12 64:19 65:13 66:9 68:1 76:17 122:12 127:1 who 3:25 4:18 91:1 112:17,18 whole 48:20 80:21 84:8 100:17 103:10 105:23 113:7 117:17 128:9 143:19 wholly 5:6 why 27:10 28:9 34:10 91:5 96:17 103:11 112:1 117:20 125:17 127:4 128:25 129:10,24 139:1, 10 140:21,24 143:22 144:11 wide 42:10 50:17 80:23,24 81:1,3,12,16 wider 64:16 will 3:9,25 5:11 19:23 21:24 22:10,11,24,25 23:5 24:24 26:6,14 27:5, 7,20 28:7,18 30:22 31:23 33:21 34:2 37:13 38:8 44:5 47:12 62:21,24 77:10 83:10 85:12,13 88:6 90:12 92:8 93:8,9, 17,17,18 95:1,10 98:24 100:23 101:15 102:4,14 106:21 107:23 110:13 116:25 117:3,16,17,18 118:5,5,6 119:13 120:24 130:18 131:24 132:15 134:17 135:8,22 143:18 148:12 150:14 151:15,24 wind 84:5,9 Winslow 73:7 104:8 wish 48:17	withdraw 124:20 withdrawn 115:22 within 40:20,21 50:11 77:6 84:25 91:10,22 103:16 117:4,6,17 119:17 120:8, 11,21 123:12 124:15 125:6,6,10 139:15 without 16:18 30:1 39:17 62:22 63:3 78:4 92:15 119:9 124:18 witness 4:10 36:1,16 39:5 42:16,18 43:14 75:25 76:9 79:5 80:8 85:20,21 87:16,23 95:22 97:3,7 99:10,21,24 100:3 103:25 124:2 127:13 witnesses 4:4 won't 42:2 50:18 wondered 84:11 wonderful 21:16 92:17 wondering 129:10 word 149:15 worded 93:5 139:2 words 29:22 63:2 109:24 work 31:7 42:6 43:8 59:6 60:1 73:4 75:1,4 94:12 95:7 111:6 worked 5:18 10:20 30:22 34:13 48:21 78:25 150:2, 4 working 18:21 38:21 41:20 53:16 60:7 100:12 110:9 works 27:16,19 41:6 46:7 48:20 world 37:21 112:16 worried 69:4,5 worse 63:12 worst 57:5 115:23 worth 41:8 75:3 145:13,14 would 6:8 8:2 11:4 12:22, 25 13:16 24:17,22 25:7 26:15,22 31:6,15,25 32:18 33:24 34:8 36:3 37:14,17 40:19 42:19 45:5,9 47:22 59:17 60:23 61:11,19 62:16 63:24 64:1 68:15,18 69:19,20, 20 70:8,15,25 71:23 72:6,10,11,24 75:12 76:1 77:15 79:20,21 80:1 81:24 82:4 84:14 85:4 86:2 87:22,24 89:5 93:5, 22 96:11,17 98:2 100:25 103:15 105:1,13 107:16 108:11,12 110:6 112:13, 14 115:5,6 116:9 120:6, 7,10 121:9,15 122:13 124:14 127:5 128:14 130:6 135:19 139:18,22 145:5,23 146:7 147:9,11, 17 149:9 150:10,11 write 63:16 148:15 writeup 104:9 written 98:18 144:23 wrong 19:3 61:20 74:1 wrote 24:5 74:3 136:24,25	- Y - year 5:11 56:12 59:12 83:15 86:5 125:10 years 5:9 6:19,24 11:16,20 14:9 17:24 27:5,9 43:2 55:3 58:13 78:8,20 101:9 116:15 124:9 145:13 146:24 yellow 127:20 Yes 4:6 7:7 11:5 15:23 33:11,15 36:7 40:10,22 41:15 50:21 51:23 56:4 61:18 62:11 63:13 67:14 72:11,16 73:8 74:2,11,25 75:10 79:3 80:12,22,24 81:3,9 85:9 87:13 99:5 101:21 102:18 103:12 105:13,23 106:6,17,19 107:13,24 108:9,15,21 109:5,9 110:15 117:12 118:14 119:11 121:12,25 123:9,24 124:16 125:22 126:4,22 128:13,20 129:2,6,20 131:10 132:1 134:15,20 135:2,9,16,19 136:1,3 137:22,25 138:25 139:6,9 141:5,15 142:7, 13 143:17 145:5 149:13 yesterday 31:8,13 102:19 yet 18:1 41:1 97:22 148:4, 11 you'd 3:8 43:18 113:3,25 143:8 148:22 you'll 12:21 52:6 117:9,9 122:1 127:22 138:20 you've 19:13 20:7 21:14 49:15 50:5,6 53:9 60:24 68:6 84:6,7,7 96:23 103:3,11 107:3,3,11 108:2 114:9,18,18 120:13 121:1 141:11 Youngquist 6:25 7:8 yourself 121:8 - Z - Z-00-076 18:25 20:22 37:2 Z-81-185 11:25 Z-88-210 15:18 Z-92 21:2 Z-92-036(a 16:17,20 Z-96 21:2 Z-96-068 17:25 139:17 ZAB-83-260(a 12:7 ZAB-84-195 12:17,21 ZAB-85-49 13:11 zoned 9:19 zoning 8:24 9:14,25 10:3 11:9 12:1 19:12 20:1 23:14 24:25 25:1,4,10,13, 17 31:20 37:2 87:23 88:13 91:10 130:16 136:23 zoom 53:8 56:18 57:13 zoomed 51:6
---	---	---	---