

<p style="text-align: right;">430</p> <p>1 SOAH DOCKET NO. 582-22-0585</p> <p>2 TCEQ DOCKET NO. 2021-1001-MWD</p> <p>3 APPLICATION OF) BEFORE THE STATE OFFICE</p> <p>4 CITY OF GRANBURY, FOR)</p> <p>5 TPDES PERMIT NO.) OF</p> <p>6 WQ0015821001) ADMINISTRATIVE HEARINGS</p> <p>7</p> <p>8</p> <p>9 HEARING ON THE MERITS</p> <p>10 Wednesday, March 9, 2022</p> <p>11 (Via Zoom Videoconference)</p> <p>12</p> <p>13</p> <p>14 BE IT REMEMBERED THAT at 9:00 a.m., on</p> <p>15 Wednesday, the 9th day of March 2022, the above-entitled</p> <p>16 matter came on for hearing at the State Office of</p> <p>17 Administrative Hearings, William P. Clements, Jr.</p> <p>18 Building, 300 West 15th Street, Austin, Texas, before</p> <p>19 PRATIBHA J. SHENOY and SARAH STARNES, Administrative Law</p> <p>20 Judges, and the following proceedings were reported</p> <p>21 remotely by Lorrie A. Schnoor, Certified Shorthand</p> <p>22 Reporter, Registered Diplomate Reporter, and Certified</p> <p>23 Realtime Reporter.</p> <p>24</p> <p>25 Volume 3 Pages 430 - 500</p>	<p style="text-align: right;">432</p> <p>1 (Witness sworn)</p> <p>2 JUDGE SHENOY: Thank you.</p> <p>3 Go ahead, Mr. Hill.</p> <p>4 MR. HILL: Thank you, Judge.</p> <p>5 PRESENTATION ON BEHALF OF APPLICANT (CONTINUED)</p> <p>6 RAY PERRYMAN, PH.D.,</p> <p>7 having been first duly sworn, testified as follows:</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. HILL:</p> <p>10 Q Good morning, Dr. Perryman.</p> <p>11 A Good morning.</p> <p>12 Q You have prepared prefiled testimony in this</p> <p>13 case that has been labeled COG Exhibit 800, and it has</p> <p>14 along with it exhibits -- COG Exhibit 801, 802, 803,</p> <p>15 804, and 805. Are you familiar with those documents?</p> <p>16 A Yes, sir, I am.</p> <p>17 Q Okay. Do you recognize COG Exhibit 800 as your</p> <p>18 prefiled testimony that you prepared for this case?</p> <p>19 A Yes, sir, I do.</p> <p>20 Q Okay. Do you adopt COG Exhibit 800 as your</p> <p>21 testimony as though you were giving it live, on the</p> <p>22 stand, in front of the judge under oath today?</p> <p>23 A Yes, sir, I do.</p> <p>24 Q Okay.</p> <p>25 MR. HILL: Judge, the City offers COG</p>
<p style="text-align: right;">431</p> <p>1 P R O C E E D I N G S</p> <p>2 WEDNESDAY, MARCH 9, 2022</p> <p>3 (9:00 a.m.)</p> <p>4 JUDGE SHENOY: Let's go on the record. We</p> <p>5 are continuing our hearing in SOAH Docket</p> <p>6 No. 582-22-0585. It's TCEQ Docket No. 2021-1001-MWD.</p> <p>7 It's the Application of the City of Granbury for Texas</p> <p>8 Pollutant Discharge Elimination System Permit</p> <p>9 No. WQ0015821001.</p> <p>10 Today is March 9, 2022, and my name is</p> <p>11 Pratibha Shenoy, Administrative Law Judge, and I'm</p> <p>12 co-presiding with Judge Starnes, Sarah Starnes. I'll</p> <p>13 note for the record that all of the counsel who have</p> <p>14 been present on the first day and yesterday of our</p> <p>15 hearing are present again today instead of taking</p> <p>16 appearances.</p> <p>17 And I believe where we left off is</p> <p>18 Applicant's witness, Dr. Perryman.</p> <p>19 MR. HILL: I believe Dr. Perryman is</p> <p>20 online.</p> <p>21 JUDGE SHENOY: All right.</p> <p>22 THE WITNESS: I am indeed.</p> <p>23 JUDGE SHENOY: Okay, great.</p> <p>24 Dr. Perryman, if you could raise your</p> <p>25 right hand.</p>	<p style="text-align: right;">433</p> <p>1 Exhibit 800, along with COG Exhibits 801, 802, 803, 804,</p> <p>2 and 805 for admission into the record.</p> <p>3 (Exhibit COG Nos. 800 through 805 offered)</p> <p>4 JUDGE SHENOY: Okay. And there were no</p> <p>5 prefiled objections to those exhibits or the prefiled</p> <p>6 testimony. Are there any objections that anyone wishes</p> <p>7 to register for the record now?</p> <p>8 (No response)</p> <p>9 JUDGE SHENOY: Hearing none, the City of</p> <p>10 Granbury's Exhibits 800 through 805 are admitted.</p> <p>11 (Exhibit COG Nos. 800 through 805</p> <p>12 admitted)</p> <p>13 MR. HILL: Judge, I pass the witness.</p> <p>14 JUDGE SHENOY: Okay. So for the Executive</p> <p>15 Director?</p> <p>16 MR. TATU: Yes.</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. TATU:</p> <p>19 Q Good morning, Dr. Perryman.</p> <p>20 A Good morning.</p> <p>21 Q I just have a few questions for you regarding</p> <p>22 your prefiled testimony.</p> <p>23 A Yes, sir.</p> <p>24 Q On the third page of your prefiled testimony,</p> <p>25 you have some summaries. And you stated that based on</p>

<p style="text-align: right;">434</p> <p>1 your analysis, you have an estimate of 45.3 million in 2 annual real gross product and 597 jobs in the city of 3 Granbury by 2040 losses. Is that accurate? 4 A Yes, sir, it is. 5 Q And that's also reflected in your Exhibit 804. 6 You have a series of charts there with 7 projected losses. Does that sound right? 8 A That's correct. Yes, sir. 9 Q Okay. So the figures that I just raised were 10 for 2040, and does that assume no additional wastewater 11 capacity for the city from this point forward? 12 A Well, what it assumes is -- not necessarily, I 13 guess, is the short answer. 14 What it assumes is that the growth that's 15 being accommodated by -- that you need a permit for now 16 is not able to because the City's not able to do those 17 things to support the growth in the city and the county. 18 If you had a situation where a permit was -- you know, 19 where it was delayed for years and years and years, you 20 could very well lose that opportunity for growth even if 21 you did get a -- another permit in place at some point. 22 So it's not -- it's not assuming there 23 would never be any wastewater treatment; it's assuming 24 that the needs that are there right now, they're 25 inhibiting growth and socioeconomic development right</p>	<p style="text-align: right;">436</p> <p>1 there would never be another wastewater treatment plant. 2 What I'm assuming is that the needs that are there right 3 now would be substantially delayed in being met or 4 possibly not be met, but either one is sufficient. 5 Q (BY MR. TATU) Thank you for that 6 clarification. 7 But in -- in Exhibit 804, you also have 8 projections for as soon as 2025. Is that correct? 9 A That's correct, yes. 10 Q And could you just summarize those for me? 11 A Sure I'll have to rely on my notes here, rely 12 on my exhibit, but I certainly can. I think I put a 13 small chart in the actual testimony. Let me see. 14 Q There is. 15 A If not -- okay. Let me find it, then. Okay. 16 I apologize for the -- there's a lot of pages here. 17 Finally. If we could go to -- if we could go to Page 35 18 of my testimony, there are some charts there that 19 summarize that. 20 And basically, for 2025 for the city, our 21 estimate is that there would be an annual loss by 2025 22 of about \$13 billion or in -- or in annual -- or 23 \$13 million, my apologies -- in annual gross product, 24 and also about 179 jobs is our estimate. 25 Q Thank you. Just one more question. In your --</p>
<p style="text-align: right;">435</p> <p>1 now -- (audio distortion). 2 MR. TATU: Sorry. Is he cutting off? 3 That's not me, right? 4 JUDGE SHENOY: No. No. 5 THE WITNESS: Did I freeze up or... 6 JUDGE SHENOY: You did, Dr. Perryman. 7 THE WITNESS: I apologize. 8 JUDGE SHENOY: Okay. 9 THE WITNESS: Am I back? 10 JUDGE SHENOY: You're back. I think you 11 cut out on some -- you were saying right now, and then 12 you cut out. So maybe we could back up a little bit in 13 your testimony. 14 THE WITNESS: Sure. 15 A Yeah, what I'm trying to say is -- and I'll 16 probably repeat some that you heard, and I apologize, 17 Your Honor -- what I'm saying is that -- that, you know, 18 economies are dynamic. Things happen in economies on an 19 ongoing basis. And if we significantly disrupt that 20 pattern, then you could lose that growth permanently 21 even if a few years later, you manage to have another 22 wastewater treatment facility or whatever the case may 23 be. You interrupted the opportunity for that growth to 24 happen. And that's how economies evolve and work. 25 And so it's not the case that I'm assuming</p>	<p style="text-align: right;">437</p> <p>1 A Sure. 2 Q -- assessment -- in your assessment of the 3 economic and social needs for the ability to -- of the 4 City to discharge under the draft permit, what 5 information did you find to be the most important in 6 your analysis? 7 A Well, that's a difficult question because, 8 basically, we looked at a lot of information. And 9 basically looking at the population growth, the nature 10 of the community that it is, basically the community 11 that supports the economic growth of the surrounding 12 area with retail operations and services and all the 13 things it takes, financial services, all the things it 14 takes to sort of keep a less densely populated area 15 going, Granbury was kind of the center of that for a 16 large area. 17 I was very surprised, frankly, or at least 18 somewhat surprised. After 40 years, I don't get very 19 surprised often, but I was somewhat surprised when I 20 looked at how rapidly the area had been growing relative 21 to Dallas/Fort Worth. And the reason I say that is, 22 your population growth was 28 percent in the last ten 23 years in that area, 18 percent in Dallas/Fort Worth. 24 And the reason I say that is, I go all over the country 25 all the time. And same thing with housing, similar</p>

<p style="text-align: right;">438</p> <p>1 numbers. I go all over the country all the time talking 2 about how Dallas is one of the most dynamic areas, 3 Dallas/Fort Worth, in the country, in the growth. And 4 when I saw how much more rapidly Granbury was growing, I 5 had a little bit of deja vu, because I was in McKinney 6 back in the late '80s and observed that pattern. And I 7 was in Frisco in the '90s and observed that pattern and 8 saw what happened after that as things continued. So I 9 was struck by that.</p> <p>10 But the core thing to me was the fact that 11 in reviewing everything, there's -- you can't grow 12 without capacity, and the infrastructure you need to 13 grow this area is growing right now and growing very 14 rapidly, and if that path were substantially 15 interrupted, that you could really have some long-term 16 harmful economic and social effects on the area.</p> <p>17 Q Thank you.</p> <p>18 It's interesting, before we came on the 19 record, we were talking about this process of doing 20 these hearings virtually and the effect the pandemic has 21 had on the workforce. In your testimony, you discuss 22 the fact that the pandemic has kind of led to this more 23 people working remotely and the impact that has on 24 smaller cities like Granbury.</p> <p>25 A Sure.</p>	<p style="text-align: right;">440</p> <p>1 balance, on any given day, you're going to see a lot 2 more people working at home post-pandemic than you did 3 pre-pandemic.</p> <p>4 And I think there's two factors. I think 5 the pandemic showed people it was possible and 6 functional, and although I concur with you saying it 7 sometimes has its headaches. But beyond that, that the 8 employers are recognizing if we want to keep skilled 9 workers, we have to give them the flexibility to live in 10 places they would like to live.</p> <p>11 Q Thank you.</p> <p>12 MR. TATU: I have no further questions. 13 Pass the witness.</p> <p>14 THE WITNESS: Thank you, sir. 15 JUDGE SHENOY: Thank you. 16 For OPIC? 17 MR. ARTHUR: No questions, Your Honor. I 18 pass the witness. Thank you. 19 JUDGE SHENOY: Thanks. 20 THE WITNESS: Thank you, sir. 21 JUDGE SHENOY: And who will go first for 22 Protestants? 23 MR. BOOTH: I will, Your Honor. 24 JUDGE SHENOY: Okay. Go ahead, Mr. Booth. 25</p>
<p style="text-align: right;">439</p> <p>1 Q Do you expect that to continue even if the 2 pandemic subsides?</p> <p>3 A Oh, I think it will in the sense that the 4 pandemic certainly ratcheted it up, the number of people 5 who are flexible in where they work and where they live 6 and that sort of thing and made it more attractive. And 7 even in a lot of the documentation, I have some in the 8 report about that.</p> <p>9 What -- underlying all of that is, we have 10 a long-term workforce shortage in this country that has 11 to do basic demographics. We just don't have as many 12 people coming along relative to the needs that we have. 13 And everyone talks about the 10 million unfilled jobs 14 during the pandemic. Eight million of those existed 15 before the pandemic ever started, and they'll still be 16 here long after the pandemic is over.</p> <p>17 And so what that means is, it means 18 employers who want good, skilled workers are going to be 19 more flexible. If the workers want to live remotely and 20 work remotely, they're going to allow that. I know I've 21 certainly allowed a couple of my smart folks to do that, 22 and that's becoming a more acceptable way of working. 23 And, yes, some people will come back to the office. 24 There's no question about that. Some people work a few 25 days in the office and few days at home. But in</p>	<p style="text-align: right;">441</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MR. BOOTH:</p> <p>3 Q Dr. Perryman, my name is Mike Booth, and I had 4 the pleasure of cross-examining you many years ago for 5 the Little Cypress case.</p> <p>6 A Boy, that is a while back.</p> <p>7 Q That is a long time ago.</p> <p>8 A That is a while back.</p> <p>9 Q Unfortunately, they never could finance that 10 lake.</p> <p>11 A That's right.</p> <p>12 Q Can I ask you a few questions about how you -- 13 when you were hired by the City of Granbury?</p> <p>14 A Sure. I'm not sure I recall the exact date.</p> <p>15 Q It doesn't have to be exact.</p> <p>16 A But it would have been sometime in late January 17 or early February. I honestly don't remember, somewhere 18 in that time frame of this year.</p> <p>19 Q Of this year. Okay.</p> <p>20 A Yes.</p> <p>21 Q Have you done work for the City of Granbury 22 before?</p> <p>23 A You know, I've done work in Granbury. I 24 honestly don't remember if my client was the City or 25 someone else.</p>

<p style="text-align: right;">442</p> <p>1 Q Okay.</p> <p>2 A I worked -- I've done some economic development</p> <p>3 work over there, and I also did work many, many years</p> <p>4 ago back around Little Cypress time, I think, or maybe</p> <p>5 around that time, when there was discussion of tearing</p> <p>6 down one bridge before they built the new bridge, and</p> <p>7 that could have caused some economic disruptions there,</p> <p>8 because, as you know, Granbury has a significant tourism</p> <p>9 economy. And we were able to work with the highway</p> <p>10 department and get that worked out. But I honestly</p> <p>11 don't remember if it was the City or someone else who</p> <p>12 was my actual client.</p> <p>13 Q Okay. I want to kind of put some boundaries or</p> <p>14 understanding about what you're testifying for, and so I</p> <p>15 want to clarify that you're not an engineer or a</p> <p>16 biologist?</p> <p>17 A That is 100 percent true.</p> <p>18 Q When you're saying you're not opining about</p> <p>19 issues of water quality, does that mean you don't</p> <p>20 consider yourself a water quality expert?</p> <p>21 A I am not an expert in any of those -- of those</p> <p>22 types of issues. I'm focusing strictly on the economic</p> <p>23 and social development aspects.</p> <p>24 Q Okay. All right. I think Exhibit 801 -- can</p> <p>25 you turn to that, please?</p>	<p style="text-align: right;">444</p> <p>1 I'm thinking about, that's what that document was.</p> <p>2 Q Okay. Have you looked at the -- Title 30 of</p> <p>3 the Texas Administrative Code? That's the section that</p> <p>4 gives the rules for the TCEQ.</p> <p>5 A You know, I believe that I have. I'm not</p> <p>6 100 percent certain. I've read a lot of things that</p> <p>7 looked like that type of thing, I'll put it that way.</p> <p>8 To a nonlawyer, they all kind of look alike. My</p> <p>9 apologies for that.</p> <p>10 Q To a lawyer they sometimes look a lot alike,</p> <p>11 too.</p> <p>12 A That's probably true.</p> <p>13 Q Have you looked at the specifically 307.5, the</p> <p>14 TCEQ's antidegradation rules?</p> <p>15 A You know, if we want to look at it and talk</p> <p>16 about that, I'd rather you put it up there.</p> <p>17 Q Okay.</p> <p>18 A I'm sure I have seen --</p> <p>19 (Simultaneous discussion)</p> <p>20 A -- but let's do that, because I'm not going to</p> <p>21 recall it off the top of my head.</p> <p>22 Q (BY MR. BOOTH) That's fair. Let me do that.</p> <p>23 I'm still learning how to do this. I keep looking and</p> <p>24 finding all these things that show that I have open that</p> <p>25 I didn't think I had open.</p>
<p style="text-align: right;">443</p> <p>1 A Yes, sir.</p> <p>2 Q I'm just trying to figure out what you may</p> <p>3 have -- exhibits or documents you may have reviewed, and</p> <p>4 I had a couple of questions.</p> <p>5 A Yes, sir.</p> <p>6 Q Down here you have a Evaluating Important</p> <p>7 Economic Social Development: Public Sector,</p> <p>8 antidegradation. What was that?</p> <p>9 A Could you tell me where we are?</p> <p>10 Q Okay. It's about one, two -- well, it's</p> <p>11 down -- after you get talking -- listing tabs and</p> <p>12 numbers of exhibits, it says, Antidegradation.</p> <p>13 A In the Exhibit 801, which page is it on?</p> <p>14 Q The first page, sir.</p> <p>15 A First page, okay.</p> <p>16 Q I'm sorry.</p> <p>17 A Yes, I see it. I see it. Yes, sir.</p> <p>18 Q Do you know what that document was?</p> <p>19 A Yes, I believe so. As I recall, it is a</p> <p>20 document actually in spreadsheet form that the</p> <p>21 Environmental Protection Agency makes use of when it is</p> <p>22 determining what is a significant social or economic</p> <p>23 development impairment, and it sort of gave a standard</p> <p>24 for that. I mean, I think there's a common-sense</p> <p>25 standard as well, but it all -- but if it's the document</p>	<p style="text-align: right;">445</p> <p>1 A I share that difficulty with you.</p> <p>2 Q Okay. Here's the specific section I was</p> <p>3 talking about.</p> <p>4 A Yes, sir.</p> <p>5 Q And I'm just trying to figure out how much of</p> <p>6 the environmental laws that you looked at to form the</p> <p>7 basis of your opinions.</p> <p>8 A Well, I mean, I can give you a short answer,</p> <p>9 then we can drill down if you would like. I can tell</p> <p>10 you that I looked at them and read them. I can tell you</p> <p>11 that I'm not an attorney, and I was focused on the</p> <p>12 economic and social development impairment issues. And</p> <p>13 so it was not something that I would have spent a great</p> <p>14 deal of time.</p> <p>15 In terms of anything that might specify</p> <p>16 specific levels of discharge or anything like that would</p> <p>17 not have been something I would have spent an amount --</p> <p>18 Q Okay.</p> <p>19 A -- an amount of time with.</p> <p>20 Q So you don't believe you have any expertise in</p> <p>21 locating the best site for a wastewater treatment plant?</p> <p>22 A Well, I'm certainly -- certainly not from a</p> <p>23 technical standpoint. I have helped locate</p> <p>24 infrastructure before based on the economic effects that</p> <p>25 might occur and that type of thing.</p>

<p style="text-align: right;">446</p> <p>1 Q Okay.</p> <p>2 A But certainly -- but certainly anything</p> <p>3 approaching looking at it from the standpoint of the</p> <p>4 water quality issues or --</p> <p>5 Q Okay.</p> <p>6 A -- or that type of thing, I would not be a</p> <p>7 person you'd want to talk to about that.</p> <p>8 Q Okay. All right. Have you reviewed this</p> <p>9 document here? And it's okay whether you haven't. I'm</p> <p>10 just trying to --</p> <p>11 A I understand perfectly.</p> <p>12 Q This --</p> <p>13 A Again, I would say I glanced at it. I would</p> <p>14 not say that I read it in great detail.</p> <p>15 Q Okay. That's fair enough.</p> <p>16 THE REPORTER: Can I also just please ask</p> <p>17 y'all to try not to talk over each other, because when</p> <p>18 you talk over each other, it cuts out.</p> <p>19 MR. BOOTH: I'm sorry.</p> <p>20 THE REPORTER: That's okay. Thank you.</p> <p>21 THE WITNESS: My apologies, too.</p> <p>22 MR. BOOTH: That's -- I think we're both</p> <p>23 getting bad at that, but...</p> <p>24 MR. ALLMON: Not to interrupt Mr. Booth's</p> <p>25 cross-examination, but he just referred to "this</p>	<p style="text-align: right;">448</p> <p>1 that Mr. Allmon was asking about.</p> <p>2 JUDGE SHENOY: Okay.</p> <p>3 MR. BOOTH: Did y'all hear that part?</p> <p>4 Then I was switching back to another exhibit that we</p> <p>5 were going to talk about, and that's when it zoomed out</p> <p>6 on me.</p> <p>7 JUDGE SHENOY: Okay. I think Mr. Allmon</p> <p>8 had asked -- and, Mr. Allmon, jump in if this is</p> <p>9 wrong -- but you hadn't actually identified what was on</p> <p>10 the screen --</p> <p>11 MR. BOOTH: Oh.</p> <p>12 JUDGE SHENOY: -- for the record, so it's</p> <p>13 just a matter of clarifying.</p> <p>14 MR. BOOTH: Oh. So I cut -- okay. Okay.</p> <p>15 I cut off a little bit sooner than I thought, then. I'm</p> <p>16 sorry. No wonder.</p> <p>17 MR. ALLMON: Yeah, I believe that the next</p> <p>18 step was to identify Exhibit ED-3 as what was being</p> <p>19 looked at.</p> <p>20 MR. BOOTH: Well, I did to my cats here,</p> <p>21 but I didn't to y'all, and I'll do that. I'm sorry.</p> <p>22 This was the document. It's Procedures to</p> <p>23 Implement the Texas Surface Water Quality Standards.</p> <p>24 And it is RG-194. That's January 2012.</p> <p>25 JUDGE SHENOY: And, Mr. Booth, just to go</p>
<p style="text-align: right;">447</p> <p>1 document" without identifying what we were looking at on</p> <p>2 the screen. Perhaps the record will be --</p> <p>3 MR. BOOTH: Oh, I'll be happy to do that.</p> <p>4 Thank you.</p> <p>5 (Pause)</p> <p>6 JUDGE SHENOY: Did Mr. Booth drop off?</p> <p>7 THE WITNESS: I'm not sure. While he's</p> <p>8 not talking, I will offer -- offer up my apology as well</p> <p>9 for us talking over each other, because I know I'm bad</p> <p>10 about that.</p> <p>11 JUDGE SHENOY: Well, that happens and we</p> <p>12 understand.</p> <p>13 Looks like Mr. Booth might have</p> <p>14 disconnected himself while he was trying to do the</p> <p>15 screen share, so let's go off the record for a moment</p> <p>16 and see if he rejoins us.</p> <p>17 (Recess: 9:21 a.m. to 9:24 a.m.)</p> <p>18 JUDGE SHENOY: Let's go back on the</p> <p>19 record. We were off the record briefly for technical</p> <p>20 difficulties and will continue.</p> <p>21 Mr. Booth, you were going to screen share</p> <p>22 again the last document that you had pulled up to talk</p> <p>23 to Dr. Perryman about and just to identify it, whether</p> <p>24 or not you have more questions about it.</p> <p>25 MR. BOOTH: I think I talked about the one</p>	<p style="text-align: right;">449</p> <p>1 back, you had asked Dr. Perryman whether he had reviewed</p> <p>2 this. Was that the question?</p> <p>3 MR. BOOTH: Yes. I asked him whether he</p> <p>4 had reviewed it, and he said generally.</p> <p>5 Q (BY MR. BOOTH) Or, Dr. Perryman, you can</p> <p>6 answer what you said.</p> <p>7 A Yes, that's accurate enough. Yes, sir. I did</p> <p>8 not spend a huge amount of time on it, but I did look</p> <p>9 through it.</p> <p>10 Q Okay. All right. I'm going to stop share and</p> <p>11 keep my fingers crossed. I don't -- I don't know -- I</p> <p>12 don't realize what I hit to...</p> <p>13 Dr. Perryman, let's talk about 801 just</p> <p>14 for a second.</p> <p>15 A Sure.</p> <p>16 Q And I noticed that on your list of documents</p> <p>17 reviewed, you didn't look at the TCEQ's prefiled</p> <p>18 testimony. Was there a particular reason, or you</p> <p>19 thought -- well, or maybe I'm just not seeing it there.</p> <p>20 A I'm not certain. I looked at it, I think,</p> <p>21 prior to my testimony. I don't know that I looked at it</p> <p>22 prior to -- I mean prior to today. I don't know that I</p> <p>23 actually looked at it prior to the prefiled. I just</p> <p>24 don't remember if I did or not.</p> <p>25 Q Okay. Okay. That's good enough.</p>

<p style="text-align: right;">450</p> <p>1 Let's get back to talk about your 2 testimony, then.</p> <p>3 A Yes, sir.</p> <p>4 Q So I'm going to try to summarize what you're 5 saying, and I want you to correct me if I'm wrong or say 6 it better, which I'm sure you can.</p> <p>7 But your -- the point of your testimony, I 8 believe, is to just point out the impacts economically 9 to the area, the city and county were the particular 10 ones you were looking at, of not having wastewater 11 treatment capacity over the periods of time that you 12 were looking at. Is that essentially it, or would -- 13 please tell me what you're trying to do here.</p> <p>14 A Well, sure. I think that's maybe a 70,000-foot 15 summary, but I need to come down just a little bit if I 16 can.</p> <p>17 Q Please.</p> <p>18 A And it's similar to what I said to Mr. Tatu 19 earlier. You know, it's not that you don't have 20 capacity that entire period of time. It's that if you 21 don't have capacity that allows the development to 22 occur, the infrastructure to occur and that type of 23 thing in a timely manner, then you start to move the 24 economy off the path that it's on and likely to stay on, 25 and you begin to have these types of economic impacts.</p>	<p style="text-align: right;">452</p> <p>1 social harms in there, it would actually mean that the 2 impacts I ran were actually on the low side, but that's 3 the -- that's basically -- it was a forward-looking 4 analysis.</p> <p>5 Q Now, did you help the -- I guess you didn't 6 help the City in any alternative analysis of different 7 plant sites and so forth since you just got hired in 8 January?</p> <p>9 A Well, I -- no, sir, I did not. Obviously, in 10 the course of doing this, I have attended several 11 meetings and, of course, listened to a lot of the 12 testimony here, and I've heard a lot of discussion 13 around why this was the site. My analysis certainly 14 showed me that the east side of the area is where the 15 development is occurring and where the greatest need is. 16 But, no, I was not an adviser to the City on where to 17 locate the plant or anything of that nature.</p> <p>18 Q Uh-huh. Did -- it looked like the testimony on 19 rejected alternatives had to do -- other than the ones 20 that are different parts of the city, but basically 21 let's just say all of them, that they were rejected 22 because of cost?</p> <p>23 A Well, again, looking at cost I'm sure was one 24 factor. Again, I was not involved in that evaluation 25 process.</p>
<p style="text-align: right;">451</p> <p>1 Q Okay. Why did you start in your damage 2 estimates or lost income estimates in 2025?</p> <p>3 A Oh, I can't say that I gave that a huge amount 4 of thought in terms of which year to -- I did it in 5 five-year increments. We normally, when we do this type 6 of thing, like to look out roughly around 20 years or 7 so, like in this case to 2040. And I chose to do some 8 incremental ones along the way because the economy gets 9 on a path and tends to move on that path. And so it was 10 not a case of saying anything special. I could have 11 just as easily picked 2026 through 2041 as an example 12 and done five-year increments.</p> <p>13 Q Okay. I'm sorry. My question is, then: Why 14 didn't you start in 2020 or 2019?</p> <p>15 A Well, again, I'm trying to look at the -- at if 16 this permit is not issued, and they're not able to have 17 the wastewater capacity that they need in a timely 18 manner, then what will happen in terms of the future 19 development of the area? So I'm -- it's more like I'm 20 looking forward as opposed to looking back in that 21 regard.</p> <p>22 Some of the historical data that you 23 mentioned is -- you know, it's something we looked at 24 and dealt with and produced in this -- in this analysis. 25 And to the extent there's already been economic and</p>	<p style="text-align: right;">453</p> <p>1 Q Okay.</p> <p>2 A I have -- you know, I've listened to Ms. Dunn's 3 testimony and others on this. I've been in some 4 meetings in anticipation of this hearing with those 5 folks attended. So I've heard some of that discussion, 6 but I would not be the person to speak to that.</p> <p>7 Q Okay. Now, you're not testifying that the TCEQ 8 can't deny this permit, right, based upon environmental 9 factors?</p> <p>10 A Well, I'm -- I'm -- wouldn't begin to tell the 11 TCEQ anything. I'm not an attorney or an expert in that 12 regard. What I -- what I am saying with great 13 confidence is that if this capacity is not built in a 14 timely manner, you are going to see significant economic 15 and social impairment, which I understand is one of the 16 criteria that TCEQ uses in the process. But, obviously, 17 I'm not telling TCEQ what decisions to make. That's 18 well beyond my purview.</p> <p>19 Q And are you -- well, let me -- let me -- you 20 mentioned Mr. Frossard several times as a basis for some 21 of your testimony, so let's look at what he said so we 22 can put it all in perspective.</p> <p>23 A Yes, sir.</p> <p>24 Q Now, this is the page out of his prefiled 25 testimony. It's Page 16, and the highlighted parts in</p>

<p style="text-align: right;">454</p> <p>1 yellow are what I believe you're using to base your 2 opinion that Mr. Frossard was wrong.</p> <p>3 A Yes, sir. Yeah, that's precisely the place. 4 Yes, sir.</p> <p>5 Q Okay. Do you know what a Tier 2 review is?</p> <p>6 A Again, I've read -- skimmed some of the issues 7 about it. I have not looked at it in great detail. My 8 only comment was related to the fact that when I read 9 the permit from an economic development perspective, I 10 definitely see the City making that case, and he's 11 indicated that they didn't. And that was -- that was 12 the sum total of it. I wasn't talking about any of the 13 other aspects of the technical aspects of things.</p> <p>14 Q So you don't know what a Tier 2 review is, 15 then, what makes it up?</p> <p>16 A Again, I've read that. Could I cite it back to 17 you at this point? Absolutely not.</p> <p>18 Q Okay. Do you know what necessary means in the 19 context of the TCEQ rules necessary for important 20 economic or social development? How do you interpret 21 that?</p> <p>22 A Well, I mean, my interpretation of it was 23 that -- that -- would there be significant impairment if 24 you were not able to move forward with this -- with the 25 Executive Director's draft permit, was my</p>	<p style="text-align: right;">456</p> <p>1 economic development. And that's fine.</p> <p>2 A Well, all I was trying to say, Mr. Booth, I'm 3 not an expert on the water quality issues, on what types 4 of reviews are conducted or that sort of thing. I am 5 aware that some level -- I think the phrase I saw was de 6 minimis level -- of degradation is allowed in cases 7 where you have significant impairment of economic and 8 social development.</p> <p>9 I was focused on what constitutes a 10 significant impairment of economic and social 11 development, and that's where EPA gave a standard that 12 they use in some context. And, again, I think that this 13 was, No. 1, multiples of that; and, No. 2, I think 14 there's a common-sense standard as well.</p> <p>15 Q Well, not to criticize your economic opinion, 16 but that's not exactly what the EPA looks at. And, you 17 know, sometimes common sense doesn't matter; but I want 18 to make it clear that you were just testifying that from 19 an economist, you believe that the city needs 20 wastewater, and it's important to economic or social 21 development. I said the city needs wastewater. I'm not 22 trying to trick you.</p> <p>23 A No. No. No. I understand that.</p> <p>24 Q Not necessarily this permit.</p> <p>25 A Well, no, and the only thing I would say about</p>
<p style="text-align: right;">455</p> <p>1 interpretation.</p> <p>2 Q Okay.</p> <p>3 A Would there be significant economic and social 4 disruptions. And I made an attempt to quantify some of 5 those under some recent scenarios, and they were 6 certainly significant by any definition I would -- I 7 could think of. But then also looking at the EPA 8 definition for water quality-type projects, it -- they 9 were well above those thresholds as well.</p> <p>10 Q What do you mean by that, looking at EPA and 11 water quality?</p> <p>12 A Well, the documents you asked me about, I think 13 the first document you asked me about, the degradation 14 document, basically defined anything greater than a 15 1 percent impairment as being significant, and these 16 were showing 4 percent.</p> <p>17 Q Okay. Now, Dr. Perryman, you just said you're 18 not a water quality expert.</p> <p>19 A Oh, absolutely, yes, sir.</p> <p>20 Q Okay.</p> <p>21 A I was speaking of social and economic 22 development impairment, because that's what I was 23 focused on.</p> <p>24 Q Okay. I'm talking about water quality impacts. 25 So you're talking about, like you said, social and</p>	<p style="text-align: right;">457</p> <p>1 that is, they need it in a very timely manner because 2 all this is happening right now. There's development 3 that's not happening. There's literally areas planted 4 that can't be built. There's all sorts of issues 5 happening right now. And so --</p> <p>6 Q Okay. Now --</p> <p>7 A -- this needs -- pardon me. I just --</p> <p>8 Q Go ahead. I'm sorry.</p> <p>9 A -- won't take me a second. I'm saying they 10 need wastewater treatment capacity in a timely manner. 11 I am aware, from past work and other things dealing with 12 these things, if they had to start over and try to do 13 something else, you could potentially have a delay of 14 years or something like that, and that would not be 15 appropriate.</p> <p>16 So I am -- I'm talking about this permit 17 for economic and social development purposes, but I'm 18 talking about it not in the context of any technical 19 aspects of it as much as I am in the context of the need 20 for this to happen in a timely manner.</p> <p>21 Q Good. Now, you're not saying that this is the 22 TCEQ's fault that the City has itself in this situation, 23 are you? And the situation being that they need a 24 permit real bad. They're at capacity. So --</p> <p>25 A Right.</p>

<p style="text-align: right;">458</p> <p>1 Q -- you're not saying that's the TCEQ's fault?</p> <p>2 A It's not my role to assign any type of</p> <p>3 responsibility to anyone in this situation.</p> <p>4 Q Okay.</p> <p>5 A I'm simply saying this is what -- this is the</p> <p>6 situation that's being faced right now, and there are</p> <p>7 some severe consequences if it's not dealt with in a</p> <p>8 timely fashion -- there are economic consequences if</p> <p>9 it's not dealt with in a timely fashion.</p> <p>10 Q So similarly, you're not saying it's my</p> <p>11 clients' fault -- and my clients are the folks that own</p> <p>12 the RV park next door, or Mr. Allmon's clients, who are</p> <p>13 adjacent landowners and concerned about the water</p> <p>14 quality of Rucker's Creek and Rucker's Cove -- that it's</p> <p>15 their fault that the City is at this stage of their</p> <p>16 economic problems because of lack of capacity of</p> <p>17 wastewater treatment plant?</p> <p>18 MR. HILL: Your Honor, I'm going to object</p> <p>19 to the unduly repetitious nature of these lines of</p> <p>20 questions. Dr. Perryman has already testified that he</p> <p>21 is not in a position to attribute blame to the extent</p> <p>22 that's even relevant in this case for one answer or</p> <p>23 another.</p> <p>24 MR. BOOTH: Well, Dr. Perryman is kind of</p> <p>25 changing the -- what he's saying a little bit enough to</p>	<p style="text-align: right;">460</p> <p>1 A I haven't addressed the City of Granbury city</p> <p>2 council as a group in, gee, it's probably been 20, 25</p> <p>3 years or so. So I would say not nothing with regard to</p> <p>4 this issue.</p> <p>5 Q Nothing --</p> <p>6 A Honestly, I don't remember what I said back</p> <p>7 then.</p> <p>8 Q Okay.</p> <p>9 MR. BOOTH: I believe that's all my</p> <p>10 questions, but let me double-check.</p> <p>11 Q (BY MR. BOOTH) I believe you testified,</p> <p>12 Dr. Perryman, that Lake Granbury is important to the</p> <p>13 city's economic well-being. Is that correct?</p> <p>14 A It's certainly one of the major tourism</p> <p>15 attractions, and there's a lot of housing development</p> <p>16 around there as well. Yes, sir.</p> <p>17 Q So do you think it would impair the city's</p> <p>18 economy if Lake Granbury was impacted by algal growth</p> <p>19 that caused various fish kills or people to get sick?</p> <p>20 MR. HILL: Your Honor, I'm going to</p> <p>21 object. The question asked the witness to speculate on</p> <p>22 a circumstance that is not even in evidence in this</p> <p>23 case.</p> <p>24 MR. BOOTH: Well, I don't think -- I think</p> <p>25 it is in evidence, as far as that potential, but it's</p>
<p style="text-align: right;">459</p> <p>1 make me think that he's trying to help y'all prove some</p> <p>2 Tier 2 antidegradation justification, Mr. Hill.</p> <p>3 JUDGE SHENOY: Well --</p> <p>4 MR. BOOTH: And so --</p> <p>5 JUDGE SHENOY: Mr. Booth, I'm going to</p> <p>6 sustain that objection. I think Dr. Perryman has been</p> <p>7 very clear about what he is and isn't an expert in and</p> <p>8 what exactly he's talking about, which is the economic</p> <p>9 and social development impact.</p> <p>10 MR. BOOTH: That's fine. Okay.</p> <p>11 JUDGE SHENOY: Yeah.</p> <p>12 MR. BOOTH: It's important that y'all</p> <p>13 understand it.</p> <p>14 Q (BY MR. BOOTH) And that's all I'm trying to</p> <p>15 do, Dr. Perryman.</p> <p>16 A Yes, sir. And, again, I'm not -- it's not my</p> <p>17 role to assign liability to anyone. I'm just describing</p> <p>18 the situation as it exists and what the economic</p> <p>19 consequences of that situation are if this permit is not</p> <p>20 granted. That's the sum total of what I was trying to</p> <p>21 do in the written testimony and today.</p> <p>22 Q Okay. Have you addressed the council about the</p> <p>23 needs to keep up with their resource limitations like</p> <p>24 wastewater and water -- the city council in this</p> <p>25 instance, City of Granbury?</p>	<p style="text-align: right;">461</p> <p>1 not speculation for somebody to -- of Dr. Perryman's</p> <p>2 expertise and what he's testified to about certain</p> <p>3 things happening. This is like, well, if the wastewater</p> <p>4 plant's not built, this is all the problems that are</p> <p>5 happening. So if Lake Granbury gets messed up</p> <p>6 environmentally, he certainly ought to be able to say</p> <p>7 that that might cause a problem economically.</p> <p>8 JUDGE SHENOY: Mr. Booth, it sounds like</p> <p>9 you're asking a hypothetical. But Dr. Perryman is</p> <p>10 saying the lake is a source of tourism and an</p> <p>11 attraction. And so, conversely, if something were to</p> <p>12 happen to the lake, can he hypothetically say whether</p> <p>13 that would be affected. And he can answer that</p> <p>14 question, so I'll overrule the objection to that extent.</p> <p>15 A Okay. I'll do my best. I think I have this,</p> <p>16 what you're looking for.</p> <p>17 Again, I would agree that to some extent</p> <p>18 it would be speculative, because obviously that's going</p> <p>19 to depend on the scenario that happens and the impacts</p> <p>20 that it has. I've done a lot of work around a lot of</p> <p>21 lakes that had some issues and continue to attract a lot</p> <p>22 of tourism. And, you know, again, I -- it's my</p> <p>23 understanding, having been at a lot of these meetings</p> <p>24 and looked at these things, that's a fairly remote</p> <p>25 possibility here. But if you --</p>

462	<p>1 Q (BY MR. BOOTH) Wait a minute. So you don't</p> <p>2 think it's going to happen from an environmental</p> <p>3 standpoint? That's beyond the scope of your testimony.</p> <p>4 MR. HILL: Your Honor, could the witness</p> <p>5 be allowed to answer the question?</p> <p>6 JUDGE SHENOY: Yes. Mr. Booth, let's let</p> <p>7 Dr. Perryman finish.</p> <p>8 A And I'm certainly not trying to give any</p> <p>9 environmental opinions here at all. I do -- I mean, I</p> <p>10 have worked for some of the folks who prepared some of</p> <p>11 these things before. I know of their reputations and</p> <p>12 their quality and that sort of thing, but I'm not trying</p> <p>13 to get into any of that.</p> <p>14 My point is, I would need to know, you</p> <p>15 know, a lot more information to be able to speculate</p> <p>16 about that. It would actually take a study looking at</p> <p>17 that, and we've done those types of studies before. And</p> <p>18 sometimes you find that it has an impact, and sometimes</p> <p>19 you find that it don't -- that it doesn't, and that</p> <p>20 primarily depends on the degree of the -- of the harm,</p> <p>21 the type of harm, where it is, where it is in relation</p> <p>22 to development. There's a whole lot of issues you would</p> <p>23 have to consider and really analyze in detail to be able</p> <p>24 to answer that question. I've been in situations where</p> <p>25 it had an impact, and I've been in situations where it</p>	464	<p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. HILL:</p> <p>3 Q Dr. Perryman, you should have in front of you a</p> <p>4 copy of 30 Texas Administrative Code Section 307.5,</p> <p>5 which is one of the TCEQ rules that Mr. Booth was asking</p> <p>6 you about a moment ago. Do you see that rule in front</p> <p>7 of you?</p> <p>8 A Yes. Yes. Pardon me. Yes, I do.</p> <p>9 Q Okay. So he was asking you about Tier 2 review</p> <p>10 and whether or not you were involved in a Tier 2</p> <p>11 antidegradation review. And I understand your testimony</p> <p>12 to mean that your review was to assess economic and</p> <p>13 social development issues that are attributable to the</p> <p>14 activities that would be authorized by the draft permit</p> <p>15 in this case. Isn't that correct?</p> <p>16 A That's precisely correct, yes, sir.</p> <p>17 Q Okay. And so you understand that the discharge</p> <p>18 of wastewater -- again, I'm not asking you to speak as</p> <p>19 a -- as any type of aquatic biologist or water modeling</p> <p>20 expert or engineer, but you do understand that the</p> <p>21 discharge of wastewater is an activity that's subject to</p> <p>22 the TCEQ's regulatory action. Is that correct?</p> <p>23 A I am aware of that, yes, sir.</p> <p>24 Q Okay. And so I believe your testimony and your</p> <p>25 assessment in this case was framed around to the extent</p>
463	<p>1 did not.</p> <p>2 Q (BY MR. BOOTH) That's fair enough. Thank you</p> <p>3 for that answer. That was a good answer. And I</p> <p>4 understand.</p> <p>5 MR. BOOTH: Well, Dr. Perryman, it's a</p> <p>6 pleasure to see you again. And thank you for your</p> <p>7 testimony.</p> <p>8 I pass the witness.</p> <p>9 THE WITNESS: Thank you, Mr. Booth. My</p> <p>10 pleasure.</p> <p>11 JUDGE SHENOY: For Granbury Fresh?</p> <p>12 Mr. Allmon or Mr. Bedecarre?</p> <p>13 MR. ALLMON: Yeah, Mr. Bedecarre was going</p> <p>14 to handle him, but he can address whether we have any</p> <p>15 questions or not.</p> <p>16 MR. BEDECARRE: I don't think I have any</p> <p>17 questions.</p> <p>18 JUDGE SHENOY: Okay. Thank you.</p> <p>19 Mr. Hill, did you have redirect for</p> <p>20 Dr. Perryman?</p> <p>21 MR. HILL: I do have a little bit of</p> <p>22 redirect. I don't think much, but let's see how this</p> <p>23 goes.</p> <p>24</p> <p>25</p>	465	<p>1 that activity that was subject to regulatory action, the</p> <p>2 draft permit, to the extent that caused degradation,</p> <p>3 your assessment was whether or not there were important</p> <p>4 or social economic or social development issues that</p> <p>5 would be impacted by the issuance of that permit. Is</p> <p>6 that right?</p> <p>7 A That's correct. Yes, sir.</p> <p>8 Q Okay. And I believe your ultimate</p> <p>9 conclusion -- and you certainly correct me here if I've</p> <p>10 got this wrong -- is that the issuance of the draft</p> <p>11 permit that you've reviewed and that's the subject of</p> <p>12 this case is, in your opinion, necessary for important</p> <p>13 economic or social development. Is that right?</p> <p>14 MR. ALLMON: Your Honor, I'm going to</p> <p>15 object. This witness has admitted he's not an expert on</p> <p>16 the TCEQ rules, but he's being asked to apply standards</p> <p>17 set forth in TCEQ Rule 307.5(b)(2). He is not an expert</p> <p>18 to make that judgment.</p> <p>19 MR. HILL: Your Honor, he's an economist.</p> <p>20 I don't know what expertise you would need to opine</p> <p>21 about economic or social development issues if you're</p> <p>22 not an economist, so --</p> <p>23 JUDGE SHENOY: Okay.</p> <p>24 MR. HILL: -- he's absolutely qualified to</p> <p>25 answer the question.</p>

466

1 JUDGE SHENOY: The way I heard the
 2 question is whether -- if the permit is or isn't issued,
 3 whether there will be economic or social impact. And
 4 that's squarely within Dr. Perryman's expertise.
 5 So maybe, Mr. Hill, just ask it again.
 6 MR. HILL: Sure.
 7 JUDGE SHENOY: If you can.
 8 Q (BY MR. HILL) Let me see if I can get this off
 9 clearly.
 10 Dr. Perryman, correct me if I'm wrong
 11 here, but as I understand your ultimate opinion here is
 12 that if the draft permit, which is the activity that's
 13 subject to regulatory action here in this application,
 14 if the draft permit is issued, or rather not issued,
 15 that it would create social or economic development
 16 consequences for the city of Granbury and the area. Is
 17 that right?
 18 A That's precisely my conclusion. Yes, sir.
 19 Q And then the corollary to that, if I understand
 20 it right, is that the issuance of the draft permit in
 21 your opinion is necessary for important social or
 22 economic development purposes. Is that correct?
 23 A Yes, sir, that is correct.
 24 Q All right.
 25 MR. HILL: Thank you, Dr. Perryman.

467

1 That's all the questions I have.
 2 I pass the witness.
 3 JUDGE SHENOY: Okay. Going back to
 4 Mr. Tatu, do you have anything further?
 5 MR. TATU: Nothing further. Thank you.
 6 JUDGE SHENOY: Okay. Mr. Arthur?
 7 MR. ARTHUR: No, Your Honor.
 8 JUDGE SHENOY: Thank you.
 9 Mr. Booth?
 10 RE-CROSS-EXAMINATION
 11 BY MR. BOOTH:
 12 Q Dr. Perryman, have you ever done a Tier 2
 13 antidegradation review before the TCEQ?
 14 A No, sir. That would be outside my expertise to
 15 handle any of the water quality aspects of that.
 16 Q Well, it's more than just water quality, too.
 17 It's the -- is it necessary to grant this permit even
 18 though there are negative environmental consequences?
 19 A Well, I don't -- I don't -- I don't necessarily
 20 accept that premise that there is because that would be
 21 contrary to what I've seen, but I'm not an expert in
 22 that. But I don't believe I've ever handled -- I've
 23 handled a number of regulatory issues where social and
 24 economic need, public interest, were a critical factor,
 25 but I don't believe I've done one before the TCEQ that

468

1 I'm recalling.
 2 Q Any other states or -- before the EPA, have you
 3 done an antidegradation review?
 4 A Most of mine have been in the context of things
 5 like pipelines or petrochemical facilities or things
 6 like that.
 7 Q Uh-huh.
 8 A And I believe most of those go before other
 9 agencies, if I'm not mistaken.
 10 Q And you're not saying to the judge that the
 11 Commission has to grant this permit even though the City
 12 rejected other alternatives that may have been a better
 13 environmental fit but cost more?
 14 MR. HILL: Your Honor, I've got to object
 15 to the question. Mr. -- Dr. Perryman, rather -- has
 16 stated his opinion in this case explicitly and with
 17 great clarity.
 18 JUDGE SHENOY: I'll sustain that
 19 objection.
 20 MR. BOOTH: Okay. No further questions.
 21 JUDGE SHENOY: Thank you.
 22 Mr. Bedecarre?
 23 MR. BEDECARRE: Sure. I guess I'll ask a
 24 few questions. I don't want to repeat the questions
 25 that have already been asked.

469

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 2 RE-CROSS-EXAMINATION
 3 BY MR. BEDECARRE:
 4 Q So I want to ask you a question, Mr. Perryman.
 5 And I know we've kind of been working around this, but
 6 in the narrowest sense, is your testimony conclusion
 7 regarding whether a legal standard has been met or not?
 8 Yes or no?
 9 A Again, I'll -- the answer I can give you is I'm
 10 not an attorney. I don't pretend to be an expert on the
 11 law. To the extent the legal standard has to do with
 12 social and economic impairment, I can clearly say that
 13 there is significant economic and social impairment if
 14 this draft permit is not issued.
 15 Q So do you know what the standard is that
 16 you're -- that you're offering a conclusion on?
 17 A Well, again, I don't purport to be an expert in
 18 the law itself. The materials that I read indicated an
 19 economic and social impairment, and this would clearly
 20 be a very significant one involving hundreds of jobs and
 21 millions of dollars if this were to happen. And so
 22 I'm --
 23 Q Great.
 24 (Simultaneous discussion)
 25 A -- from that point as I've said from the

<p style="text-align: right;">470</p> <p>1 outset.</p> <p>2 Q (BY MR. BEDECARRE) That's great. So under the</p> <p>3 legal standard, would you analyze economic and social</p> <p>4 development in the absence of a finding of degradation</p> <p>5 of water quality?</p> <p>6 A That sounds like, again, a legal opinion that I</p> <p>7 would not be qualified to give. It's my</p> <p>8 understanding -- as a non-attorney, it's my</p> <p>9 understanding that the language suggests to me that the</p> <p>10 situation you have is, if there is some level of</p> <p>11 degradation, that you need to consider whether the</p> <p>12 failure to grant the permit would be -- would constitute</p> <p>13 significant economic and social impairment.</p> <p>14 The conclusion I reached on that was, yes,</p> <p>15 it would. I did not reach any conclusions regarding</p> <p>16 whether or not impairment actually occurs, and that</p> <p>17 would not be my role to do that.</p> <p>18 Q Okay. Okay. And does the standard that</p> <p>19 you're -- that I suppose you're saying you're not</p> <p>20 offering a conclusion on whether that standard is met.</p> <p>21 Does that standard use the term "economic impairment"?</p> <p>22 A I think it says economic and social</p> <p>23 development, is my recollection. If you want to pull it</p> <p>24 up, we can look at it, but I think it talks about</p> <p>25 economic and social development.</p>	<p style="text-align: right;">472</p> <p>1 Dr. Perryman. Appreciate your time and your testimony,</p> <p>2 and you're free to stay and observe the rest of our</p> <p>3 discussions, or you can certainly carry on with other</p> <p>4 things you need to do.</p> <p>5 THE WITNESS: Thank you, Your Honor. I</p> <p>6 appreciate it very much.</p> <p>7 JUDGE SHENOY: Let's go off the record.</p> <p>8 (Discussion off the record)</p> <p>9 (Recess: 10:07 a.m. to 10:33 a.m.)</p> <p>10 JUDGE SHENOY: Okay. Let's go back on the</p> <p>11 record. It's just about 10:30, a little past, and we</p> <p>12 took a break so the parties could confer. And my</p> <p>13 understanding is that there are some motions that the</p> <p>14 parties would like to -- Protestants would like to</p> <p>15 present, starting with Mr. Booth.</p> <p>16 MR. BOOTH: Okay. Your Honor, I'm going</p> <p>17 to share screen. And what you have now is -- this is</p> <p>18 the notice -- one of the notices that I could find. And</p> <p>19 as you can see, there's no mention that there has been</p> <p>20 a -- a Tier 2 antidegradation review will be looked at,</p> <p>21 because they said at this stage of the game, they were</p> <p>22 saying no significant degradation. And then we turn</p> <p>23 to --</p> <p>24 JUDGE SHENOY: And I'm sorry.</p> <p>25 MR. BOOTH: Yes, ma'am.</p>
<p style="text-align: right;">471</p> <p>1 I don't have it memorized, but if you want</p> <p>2 to look at it, we can. But, again, I'm addressing the</p> <p>3 economic side of it that says if you don't have the</p> <p>4 capacity in the area in a timely manner that this draft</p> <p>5 permit is, as far as I can tell, the only thing that</p> <p>6 would allow to happen without significant delays, that</p> <p>7 you're going to have significant economic and social</p> <p>8 harms.</p> <p>9 Q Does the standard use the phrase "economic and</p> <p>10 social harms"? Yes or no?</p> <p>11 MR. HILL: Your Honor, I've got to object.</p> <p>12 This question -- these questions are unduly</p> <p>13 repetition -- repetitious. He's had the rule in front</p> <p>14 of him. He's testified about it. I don't understand</p> <p>15 why we need to keep asking him the same question over</p> <p>16 and over again.</p> <p>17 JUDGE SHENOY: And I think he's -- he has</p> <p>18 said what his recollection or understanding of it is, is</p> <p>19 that the word "development" is used. And if we do want</p> <p>20 to look at it and confirm what the exact wording is, we</p> <p>21 can do that, Mr. Bedecarre; but, otherwise, I'm</p> <p>22 sustaining the objection.</p> <p>23 MR. BEDECARRE: Okay. No further</p> <p>24 questions. Thanks.</p> <p>25 JUDGE SHENOY: Okay. Thank you so much,</p>	<p style="text-align: right;">473</p> <p>1 JUDGE SHENOY: Mr. Booth, can we go back?</p> <p>2 Is this part of the administrative record? Can you give</p> <p>3 us a page number so we know where we're --</p> <p>4 MR. BOOTH: Yes, it is. Yes, it is. It's</p> <p>5 00002 -- or I guess 0722 down here.</p> <p>6 JUDGE SHENOY: Of the administrative</p> <p>7 record. Okay.</p> <p>8 MR. BOOTH: Yeah.</p> <p>9 JUDGE SHENOY: Thank you.</p> <p>10 MR. BOOTH: And then we have -- these are</p> <p>11 the antidegradation rules that the Commission has. I'm</p> <p>12 going to scroll up to the top to see where we are.</p> <p>13 We've been talking about these. This is 307.5.</p> <p>14 Okay (d) here, to me, says that if you're</p> <p>15 going to be taking a position that you're going to</p> <p>16 exceed -- well, basically make a statement that there is</p> <p>17 degradation, you need to have that in the notice right</p> <p>18 here. And then at that time then, you could introduce</p> <p>19 evidence and other issues. So there's a lot of evidence</p> <p>20 that needs to be introduced if you're going to do this,</p> <p>21 and we get the opportunity to do that.</p> <p>22 And then I'm turning over here to the</p> <p>23 implementation guidance, and that's 194 we talked about</p> <p>24 just a minute ago. And so the Commission has some</p> <p>25 specific things that they have to do if this is the way</p>

<p style="text-align: right;">474</p> <p>1 it's going to be. And one of the things that they're 2 saying that we have not been able -- an opportunity to 3 even address is whether reasonable alternatives to the 4 lowering of water quality are available or unavailable. 5 So my point is, I didn't realize that 6 that's where Mr. Hill was going. I had a suspicion that 7 that's why we talked about it. But at this stage of the 8 game, I think without the notice, we can't go forward in 9 this hearing. And about the best I could offer up is 10 y'all to certify to the Commission this question on what 11 you should do at this stage of the game. 12 I will notice that I don't know whether 13 EPA needs to approve this before or after a permit is 14 granted, because they're saying "proposed," too, so 15 there might be another approval process. 16 So I would move that we continue the case 17 or stop the case subject to being re-noticed and another 18 hearing, or continue the case and give new notice with 19 these additional questions that need to be answered, 20 brought through the process, so we have an 21 opportunity -- the Protestants have an opportunity to 22 present evidence on -- lowering the water quality is 23 necessary for important economic social development and 24 whether there are alternative to the lowering of water 25 quality.</p>	<p style="text-align: right;">476</p> <p>1 circumstances that are part of what lead us to renew 2 this. One of them is that we were not provided the 3 native files for the testimony -- for the modeling done 4 by Mr. Osting until ten minutes till five o'clock on 5 Friday, March the 4th. So the end of the business day 6 prior to the commencement of the hearing is when we 7 obtained or were provided the native files for his 8 modeling. 9 We had some PDFs, but as you could tell 10 from the cross-examination of Mr. Osting, those PDFs are 11 difficult to work with, and it's difficult to even tell 12 which model which one is associated with. So we think 13 that further supports the motion to strike. 14 And we would also note that Mr. Osting, in 15 his testimony, said that he had not even determined what 16 his inputs were until after February 4th for some of the 17 model runs. And February 4th was our deadline for 18 prefiled testimony. 19 The question for rebuttal under the TCEQ 20 rules is whether -- the TCEQ rules provide that a party 21 may prevent rebuttal when another party presents 22 evidence that would not have been reasonably 23 anticipated, and that goes to the evidence that could 24 have been anticipated, not the type of evidence but the 25 evidence.</p>
<p style="text-align: right;">475</p> <p>1 Or I guess an alternative, y'all could 2 certify the question to the Commission and see what they 3 say. And that's it for me. 4 JUDGE SHENOY: Okay. Thank you. 5 MR. BOOTH: Do y'all have any questions? 6 JUDGE SHENOY: Judge Starnes? 7 MR. BOOTH: Do y'all have any questions? 8 MR. ALLMON: And perhaps before questions, 9 I'll both join in the motion and add something just to 10 emphasize. 11 So Granbury Fresh and Dr. Victoria Calder 12 join in the motion and do note the notice was required 13 prior to the comment period. So this goes to the 14 adequacy of that notice was at that stage for persons to 15 provide comment on the social and economic impacts of 16 the discharge. But that's all we have to add. 17 JUDGE SHENOY: Okay. Mr. Allmon, if you 18 would like to go ahead and make your motion now. 19 MR. ALLMON: Yes. Our motion, we are 20 renewing the motion to strike that testimony and 21 exhibits of Mr. Osting previously identified. And in 22 the alternative, requesting leave to provide rebuttal 23 testimony regarding that particular testimony by 24 Mr. Osting. 25 I think there are two changed</p>	<p style="text-align: right;">477</p> <p>1 Now, it's not enough for us to have been 2 able to anticipate modeling evidence from the Applicant; 3 we anticipated they would present modeling evidence. 4 But the particular nature of the evidence presented 5 given, you know, the inputs, the particular inputs, the 6 particular outputs used by Mr. Osting was not something 7 we could have anticipated. It was not something he 8 anticipated as of February 4th. He didn't know what he 9 was going to use yet. 10 And certainly we could not have 11 anticipated the issue which was identified when he 12 testified as to his changing of the depth without making 13 a corresponding change in the particular values for the 14 reiteration rates. That is an issue that on 15 February 4th we could not have anticipated. And a 16 significant part of our rebuttal is to address that 17 issue that we identified in the cross-examination of 18 him, along with identifying that he had not developed 19 his inputs until after February 4th. 20 And for those reasons, we renew our 21 request to provide rebuttal testimony, and if that 22 motion is denied, we are seeking to provide an offer of 23 proof of that rebuttal. The judges need not be present 24 for that offer. So those are our requests -- motion. 25 JUDGE SHENOY: And, Mr. Booth, you join in</p>

<p style="text-align: right;">478</p> <p>1 that motion?</p> <p>2 MR. BOOTH: Yes, ma'am, I do. And I would</p> <p>3 add that there were a number of model runs that we</p> <p>4 weren't provided that we didn't know about until</p> <p>5 Mr. Osting's testimony.</p> <p>6 JUDGE SHENOY: Okay. I will ask -- I'm</p> <p>7 going to let Mr. Hill go last in his response. So I'll</p> <p>8 ask Mr. Arthur or Ms. Pesonen, on behalf of OPIC: Do</p> <p>9 you have any response or comments that you would like to</p> <p>10 make?</p> <p>11 MR. ARTHUR: Your Honor, OPIC takes no</p> <p>12 position at this time.</p> <p>13 JUDGE SHENOY: Okay. Mr. Tatu or</p> <p>14 Ms. Isturiz?</p> <p>15 MR. TATU: Thanks. We don't have a</p> <p>16 position on the motion for continuance.</p> <p>17 With respect to the notice issue, I have</p> <p>18 to be honest and say I haven't really had adequate time</p> <p>19 to look at it, so I can't take a position on it at this</p> <p>20 time. What I was referring to when we were off the</p> <p>21 record in terms of the ED not offering any additional</p> <p>22 evidence is that none of my witnesses have anything to</p> <p>23 add with regard to the Tier 2 analysis regarding the</p> <p>24 economic or social development. They just don't have</p> <p>25 that expertise. Thank you.</p>	<p style="text-align: right;">480</p> <p>1 their opportunity to depose him had closed, not only</p> <p>2 after reviewing his prefiled testimony, but it wasn't</p> <p>3 until after he was done being cross-examined by the</p> <p>4 Protestants that they understood what role he was going</p> <p>5 to play. That's difficult for me to accept. His role</p> <p>6 here has been no secret.</p> <p>7 The requirement or the issue of the notice</p> <p>8 speaks to not if degradation is not anticipated; the</p> <p>9 public notice disclosure is required when degradation is</p> <p>10 anticipated. At no point in this application process</p> <p>11 has there ever been any anticipation, either by the TCEQ</p> <p>12 Staff or by the Applicant, that degradation -- that</p> <p>13 degradation of water quality by more than a de minimis</p> <p>14 extent was anticipated. And, in fact, we feel like</p> <p>15 we've demonstrated that it has not.</p> <p>16 What we have done is satisfied the</p> <p>17 requirement of 307.5(b)(2) that says that if the</p> <p>18 Commission is satisfied with a showing that such</p> <p>19 degradation will occur, they can impose an exception to</p> <p>20 the no greater than de minimis exception.</p> <p>21 The notice requirement that Mr. Booth is</p> <p>22 pointing to, and I guess that Mr. Allmon by extension is</p> <p>23 pointing to, is triggered if and when an application</p> <p>24 comes across the Agency's desk and the Executive</p> <p>25 Director Staff, during the technical review, determines</p>
<p style="text-align: right;">479</p> <p>1 JUDGE SHENOY: Mr. Hill?</p> <p>2 MR. HILL: Okay. Thank you, Judges. I'll</p> <p>3 take these up in order.</p> <p>4 Let's start with the issue of disclosure.</p> <p>5 These are the disclosures that we provided, the</p> <p>6 Applicant provided, in accordance with Order No. 2 on</p> <p>7 January 25 of 2022, which was our deadline for doing so.</p> <p>8 And in that disclosure, we made clear what role</p> <p>9 Dr. Perryman will play in this.</p> <p>10 Let me catch a little bit more. It's</p> <p>11 clear we say that Dr. Perryman doesn't have any opinions</p> <p>12 independent of the City's consultants and experts</p> <p>13 regarding whether the treatment discharges proposed in</p> <p>14 the application will degrade water quality; but we do go</p> <p>15 on to say it's anticipated Dr. Perryman will provide</p> <p>16 expert opinion testimony that even if they do cause</p> <p>17 degradation, the ability to treat and discharge as</p> <p>18 requested by the City and proposed by the TCEQ Executive</p> <p>19 Director is necessary for important economic and social</p> <p>20 development.</p> <p>21 It is, I'll say, difficult to accept the</p> <p>22 argument that the Protestants weren't put on notice</p> <p>23 about the role of Dr. Perryman on January 25 of 2022,</p> <p>24 which was our obligation to disclose his role in this</p> <p>25 case. And to suggest that it wasn't until not only</p>	<p style="text-align: right;">481</p> <p>1 that the draft permit, if it were issued, would, in</p> <p>2 fact, degrade water quality by lower -- by more than a</p> <p>3 de minimis extent. That's when the notice is required.</p> <p>4 It's not required when it's anticipated or when it's not</p> <p>5 anticipated that that event will occur.</p> <p>6 So this isn't a notice issue. This isn't</p> <p>7 a disclosure issue. This is a circumstance where I</p> <p>8 believe that the Protestants may have had this</p> <p>9 anticipated for quite some time and were just waiting</p> <p>10 for the opportunity of Dr. Perryman to get on the stand</p> <p>11 and get off the stand, and we get to this point in the</p> <p>12 case for them to spring this issue. And then that will</p> <p>13 transfer -- or transition me into the motion with regard</p> <p>14 to Tim Osting.</p> <p>15 This is a rehash of the same motion that</p> <p>16 the Protestants made before. With regard to the native</p> <p>17 files, after all of the effort that the Protestants</p> <p>18 made, through their motion to strike, because they</p> <p>19 didn't have enough time to review all the evidence, and</p> <p>20 they needed to scramble to go find somebody to review</p> <p>21 all of Mr. Osting's evidence, it was only brought to my</p> <p>22 attention, on whatever date it was that they cited, that</p> <p>23 the link didn't work for them to be able to access those</p> <p>24 native files.</p> <p>25 By extension, that means that was the</p>

<p style="text-align: right;">482</p> <p>1 first time they actually looked for the native files. 2 But with regard to whether or not that's true, the 3 second that I understood from them that they were having 4 trouble, I tried to find out what was going on, and I 5 made that information available.</p> <p>6 And so it's -- you know, it's sort of a 7 two-headed issue here. I've made that information 8 available as soon as it was brought to my attention that 9 they didn't have it. It's the first time I knew that 10 they didn't have access to native files. In fact, it 11 was the first time I knew that they were even interested 12 in native files. I had been making them available, even 13 though they weren't requested, throughout our production 14 throughout this case. But it also reflects to me that, 15 again, they didn't even take the opportunity to look for 16 this information before they filed their first motion to 17 strike and their motion for continuance.</p> <p>18 In my opinion, this also was a planned 19 event. I think this is designed to cause nothing more 20 than delay of this proceeding without justification. 21 The fact that they only learned from Mr. Osting certain 22 facts that they believe that they learned from him for 23 the first time, they essentially deposed Mr. Osting 24 yesterday, which they had the opportunity to do well 25 before we filed our prefiled case, since January 25th to</p>	<p style="text-align: right;">484</p> <p>1 practice here is to depose the expert as close to the 2 deadline as filing of the prefiled testimony to try to 3 cut off or mitigate against basically having wasted a 4 deposition and hearing deposition answers that, Oh, I 5 haven't formed my opinion.</p> <p>6 But we deposed Mr. Frossard the day before 7 his prefiled testimony was due, and that's the first 8 time we've gotten the information and really a clear 9 articulation of his concerns. And those were also, to 10 some extent, reflected in his prefiled testimony.</p> <p>11 So what are we supposed to do when we get 12 that information? The Applicant -- or the Protestants, 13 rather -- had all the opportunity in the world to try to 14 depose Tim Osting. They chose not to do it. We 15 exercised our ability to depose their expert witnesses, 16 and we are not supposed to use the information that we 17 learned from the deposition?</p> <p>18 And we learned from Mr. Machin just two 19 days before in my deposition from him -- I think it was 20 two days before. It wasn't much more, if that was the 21 case -- of his unequivocal statement that he only made 22 one change to his QUAL-TX model, which was to the 23 barometric pressure. First time we've heard that.</p> <p>24 And, of course, when we went to go 25 truth-test that, we determined that that wasn't, in</p>
<p style="text-align: right;">483</p> <p>1 February 18th.</p> <p>2 This is the same argument that we made in 3 response to their first motion to strike because it's 4 still applicable. It's still cogent. They had all the 5 opportunity in the world.</p> <p>6 Now, what's magical about February 4? The 7 day before I deposed Mr. Frossard, and it was in that 8 deposition that Mr. Frossard essentially gave us a road 9 map to how he -- his concerns on this permit would be 10 satisfied. And he provided a road map -- for the first 11 time, by the way -- provided a road map for what issues 12 he would be looking at, what his concerns were.</p> <p>13 Now, what are my obligations -- as an 14 attorney representing my client, what are -- what are 15 the expert witnesses' obligations to have this 16 information to just sit on it and say, Well, there's 17 nothing we can do with this information?</p> <p>18 We're also put in a difficult position, 19 because as is not unusual in contested case hearings 20 where you don't file expert reports, testifying experts 21 typically don't have their opinions formed until the day 22 they file their prefiled testimony. In fact, 23 Mr. Frossard had new opinions that he included in his 24 prefiled testimony that 24 hours before he didn't have.</p> <p>25 And so, of course, the pattern and</p>	<p style="text-align: right;">485</p> <p>1 fact, the case, what are we supposed to do with 2 Mr. Machin's testimony? And it showed up in his 3 prefiled testimony as well. Are we supposed to just let 4 that go when we find out that, in fact, he did more than 5 he said that he did?</p> <p>6 I mean, this idea is preposterous. It's 7 as though the Protestants are objecting because they 8 didn't put on the case that they should have put on in 9 this contested case hearing. They knew about 10 Dr. Perryman. They knew about Mr. Osting. They knew 11 about Mr. Flores. Fully disclosed.</p> <p>12 As soon as I understood they didn't have 13 information that they claim to have looked at before and 14 leading up to they filed the motion to strike with 15 y'all, as soon as I understand they were just now 16 getting around to look for that, and they didn't have 17 it, I got it to them. And, of course, this is the first 18 time that we've heard from any of them that that put 19 them in a -- some adverse or disadvantaged position.</p> <p>20 So my response to both: This is an effort 21 to create undue delay. This is not an effort to avoid 22 delay if possible so that justice can prevail. This 23 is -- this is a no-questions-asked effort to cause undue 24 delay in this application process.</p> <p>25 Every requirement was satisfied. Every</p>

<p style="text-align: right;">486</p> <p>1 obligation on the Applicant's part was satisfied. And 2 it's not our obligation to make sure that the 3 Protestants put a case together that they want to put in 4 response to ours. That's not our obligation, nor should 5 it be.</p> <p>6 And so as far as the City of Granbury is 7 concerned, the Applicant obviously opposes both motions, 8 and we believe that they should be denied, both.</p> <p>9 JUDGE SHENOY: Okay. Thank you, Mr. Hill.</p> <p>10 I will let Mr. Booth and Mr. Allmon, if 11 you want to make very brief responses, to do so.</p> <p>12 MR. BOOTH: I also would note that the 13 order that the Commission entered wouldn't have allowed 14 for this type of testimony. It allows for questioning 15 whether the ED's antidegradation review was accurate but 16 not whether there's additional Tier 2 factors that we 17 would have to go into.</p> <p>18 This is a totally different case. It's 19 not a discovery issue; it's a jurisdictional issue. And 20 I think when Mr. Tatu goes back and checks, he'll have 21 to agree that we need to re-notice or do something, but 22 we can't go forward with this type of case if we're 23 going to use Mr. Perryman's evidence to show that 24 there's justification for the lowering of water quality 25 standards. And that's all I have to say, Your Honor.</p>	<p style="text-align: right;">488</p> <p>1 perform the evaluation. And as soon as our expert 2 identified for that for us, we notified him that those 3 had not been provided.</p> <p>4 But there was a duty outside of 5 depositions to provide those native files to us as 6 soon -- you know, to provide those native files in 7 response to disclosures. The Protestants in the matter 8 should not have to take a deposition of an expert merely 9 to obtain material that an applicant has a 10 responsibility to provide through disclosures.</p> <p>11 The Applicant's position is imposing a 12 duty on every Protestant in every contested case to take 13 the deposition of every expert that an applicant could 14 offer. The Applicants have the burden of proof, and 15 that is not a burden that is proper for the Commission 16 to place upon the Protestants.</p> <p>17 And so -- and we are -- and we're not 18 saying the Applicant cannot develop testimony that is 19 responsive to the Protestants' case. What we are saying 20 is that under the TCEQ rules, when that evidence 21 contains evidence that could not have been reasonably 22 anticipated, that the TCEQ rules create the opportunity 23 through other parties to present rebuttal to that.</p> <p>24 We are not saying he could not have 25 presented responsive testimony. Ours just goes to the</p>
<p style="text-align: right;">487</p> <p>1 JUDGE SHENOY: Thank you.</p> <p>2 Mr. Allmon?</p> <p>3 MR. ALLMON: Your Honor, quickly I'll 4 note, this is not an effort to add undue delay; this is 5 an issue of making sure we abide by the TCEQ rules and 6 by the requirements of due process.</p> <p>7 As for notice, Mr. Hill cites to the 8 disclosure related to Mr. Perryman. That's not the 9 issue here. The issue here is the TCEQ rule requirement 10 notice to the public before the comment period that the 11 Agency is going to be evaluating whether it has a 12 significant impact -- is necessary for significant 13 economic and social development. That notice was not 14 provided.</p> <p>15 It's the ability of the public to 16 participate in that analysis that's required by the 17 rules, and the disclosure of Mr. Perryman does not 18 address that absence in this case.</p> <p>19 Now, as to Mr. Osting and the issues 20 around that, there's some disagreement on the facts 21 here. We, in fact, were not provided the native files 22 prior to March the 4th. That was not in the materials 23 that had been available in the link. We had looked. We 24 had identified PDFs. Our expert had only made us aware 25 on March the 3rd that the PDFs did not allow him to</p>	<p style="text-align: right;">489</p> <p>1 consequences of that decision. And we note the striking 2 of Mr. Osting's testimony would remove the need for 3 rebuttal testimony here.</p> <p>4 So with that, that's -- those are our 5 arguments. Thank you for your time.</p> <p>6 JUDGE SHENOY: Thank you, Mr. Allmon.</p> <p>7 And I will say, since -- Mr. Tatu and 8 Mr. Arthur, since you have not spoken on this, I'll just 9 ask if at this point you've changed your mind, and you 10 have anything you want to add?</p> <p>11 MR. TATU: I have nothing further. Thank 12 you.</p> <p>13 JUDGE SHENOY: Okay.</p> <p>14 MR. ARTHUR: No, Your Honor.</p> <p>15 JUDGE SHENOY: Okay. Thank you.</p> <p>16 Let's take a ten-minute recess. It's 17 almost eleven o'clock. Let's come back at ten after 18 11:00. Same thing, if you want to disconnect and 19 reconnect, you can; otherwise, we're just going to put 20 ourselves on mute and stop the video. It'll continue to 21 be livestreamed on YouTube, but we'll see you in about 22 ten minutes. And we're off the record.</p> <p>23 (Recess: 10:58 a.m. to 11:11 a.m.)</p> <p>24 JUDGE SHENOY: Let's go back on the 25 record. Judge Starnes and I took a recess so that we</p>

490	<p>1 could discuss the motions and responses that have been</p> <p>2 presented just prior to the recess. And we are going to</p> <p>3 deny both motions.</p> <p>4 As to the notice, I will note that the</p> <p>5 interim order referred questions, specifically Issue M,</p> <p>6 as in Mary, being whether Applicant substantially</p> <p>7 complied with applicable public notice requirements. So</p> <p>8 that is, in fact, a question that we are directed to</p> <p>9 answer by the Commission and that the parties will have</p> <p>10 an opportunity to brief further, to the extent that they</p> <p>11 want to. So we're denying the motion on the notice</p> <p>12 issue.</p> <p>13 And as to the question of whether</p> <p>14 Mr. Osting's testimony or modeling could have been</p> <p>15 reasonably anticipated, we have not heard anything that</p> <p>16 would cause us to change the ruling that we made at the</p> <p>17 prehearing conference regarding the -- substantially the</p> <p>18 similar motion made by the Protestants. So we're also</p> <p>19 denying that motion.</p> <p>20 I understand that Protestants may want to</p> <p>21 make an offer of proof, so what we will do is once we</p> <p>22 are adjourned here, or for purposes of the hearing in</p> <p>23 general, I will stop the YouTube stream, and I will put</p> <p>24 Protestants in a breakout room with the court reporter</p> <p>25 so that you can make the offer of proof. And when</p>	492	<p>1 JUDGE SHENOY: All right. In that case, I</p> <p>2 thank you all very much for being prepared, for</p> <p>3 participating, and giving us a lot to look at and think</p> <p>4 about.</p> <p>5 Let me ask now: There -- well, I'm going</p> <p>6 to turn it over to the court reporter for purposes of</p> <p>7 the offer of proof, and if anyone wants to remain, you</p> <p>8 can. If you'd like to disconnect, you're welcome to go</p> <p>9 ahead and do that.</p> <p>10 MR. HILL: Thank you, Judges.</p> <p>11 (Proceedings concluded at 11:15 a.m.)</p> <p>12 (The following pages, 493 through 499, are</p> <p>13 Protestants' Offer of Proof.)</p>
491	<p>1 you're done, one of you -- I mean, the court reporter or</p> <p>2 whoever wants to, can come back into the main meeting</p> <p>3 room and let me know that you're done. So I will keep</p> <p>4 it open for that purpose, but you'll be in a breakout</p> <p>5 room.</p> <p>6 MR. ALLMON: Your Honor --</p> <p>7 JUDGE SHENOY: And reiterate --</p> <p>8 MR. ALLMON: -- I would note this remains</p> <p>9 a public proceeding during our offer of proof, so we</p> <p>10 would ask that the YouTube stream not be discontinued</p> <p>11 prior to our offer of proof.</p> <p>12 JUDGE SHENOY: Oh. That -- well, that's</p> <p>13 fine as well. Since I don't know that the breakout room</p> <p>14 will work, then I will just remain in the -- we'll just</p> <p>15 stay in the main room. And, obviously, if anyone else</p> <p>16 wants to be present for the offer of proof, you can</p> <p>17 remain while that's being done. And I won't turn off</p> <p>18 the YouTube stream, then.</p> <p>19 But to reiterate the changes to the</p> <p>20 deadlines from what was tentatively proposed in Order</p> <p>21 No. 2, we are going to have initial briefs due on</p> <p>22 April 7th and response briefs due on April 18th.</p> <p>23 Are there any questions or any other</p> <p>24 housekeeping matters that we need to address?</p> <p>25 (No response)</p>	500	<p>1 C E R T I F I C A T E</p> <p>2 STATE OF TEXAS)</p> <p>3 COUNTY OF WILLIAMSON)</p> <p>4 I, Lorrie A. Schnoor, Certified Shorthand</p> <p>5 Reporter in and for the State of Texas, Registered</p> <p>6 Diplomate Reporter and Certified Realtime Reporter, do</p> <p>7 hereby certify that the above-mentioned matter occurred</p> <p>8 as hereinbefore set out.</p> <p>9 I FURTHER CERTIFY THAT the proceedings of such</p> <p>10 were reported by me or under my supervision, later</p> <p>11 reduced to typewritten form under my supervision and</p> <p>12 control, and that the foregoing pages are a full, true,</p> <p>13 and correct transcription of the original notes.</p> <p>14 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>15 and seal this 10th day of March, 2022.</p> <p>16 </p> <p>17 LORRIE A. SCHNOOR, RDR, CRR</p> <p>18 Certified Shorthand Reporter</p> <p>19 CSR No. 4642 - Expires 1/31/24</p> <p>20 Firm Registration No. 276</p> <p>21 Kennedy Reporting Service, Inc.</p> <p>22 100 E. Whitestone Boulevard</p> <p>23 Suite 148</p> <p>24 Cedar Park, Texas 78613</p> <p>25 512.474.2233</p>

A	activity	465:15	458:12	462:24
	464:21	adopt	allow	463:3
abide 487:5	465:1	432:20	439:20	463:3
ability	466:12	adverse	471:6	465:25
437:3	actual	485:19	487:25	469:9
479:17	436:13	adviser	allowed	490:9
484:15	442:12	452:16	439:21	answered
487:15	add 475:9	agencies	456:6	474:19
able 434:16	475:16	468:9	462:5	answers
434:16	478:3	Agency	486:13	484:4
442:9	478:23	443:21	allows	anticipate
451:16	487:4	487:11	450:21	477:2
454:24	489:10	Agency's	486:14	anticipated
461:6	additional	480:24	alternative	476:23
462:15	434:10	ago 441:4	452:6	476:24
462:23	474:19	441:7	474:24	477:3
474:2	478:21	442:4	475:1	477:7
477:2	486:16	464:6	475:22	477:8
481:23	address	473:24	alternatives	477:11
above-ent...	463:14	agree	452:19	477:15
430:15	474:3	461:17	468:12	479:15
above-men...	477:16	486:21	474:3	480:8
500:7	487:18	ahead 432:3	amount	480:10
absence	491:24	440:24	445:17	480:14
470:4	addressed	457:8	445:19	481:4
487:18	459:22	475:18	449:8	481:5
absolutely	460:1	492:9	451:3	481:9
454:17	addressing	algal	analysis	488:22
455:19	471:2	460:18	434:1	490:15
465:24	adequacy	alike 444:8	437:6	anticipation
accept	475:14	444:10	451:24	453:4
467:20	adequate	Allmon	452:4	480:11
479:21	478:18	446:24	452:6	antidegra...
480:5	adjacent	448:1	452:13	443:8
acceptable	458:13	448:7	478:23	443:12
439:22	adjourned	448:8	487:16	444:14
access	490:22	448:17	analyze	459:2
481:23	administr...	463:12	462:23	464:11
482:10	430:5	463:13	470:3	467:13
accommodated	430:17	465:14	annual	468:3
434:15	430:19	475:8	434:2	472:20
accurate	431:11	475:17	436:21	473:11
434:3	444:3	475:19	436:22	486:15
449:7	464:4	480:22	436:23	apologies
486:15	473:2	486:10	answer	436:23
action	473:6	487:2	434:13	444:9
464:22	admission	487:3	445:8	446:21
465:1	433:2	489:6	449:6	apologize
466:13	admitted	491:6	458:22	435:7
activities	433:10	491:8	461:13	435:16
464:14	433:12	Allmon's	462:5	436:16

apology	437:14	assessment	474:4	436:20
447:8	437:16	437:2	482:5	437:8
appearances	437:20	437:2	482:8	437:9
431:16	437:23	464:25	482:12	437:10
applicable	438:13	465:3	487:23	452:3
483:4	438:16	assign	avoid	452:20
490:7	450:9	458:2	485:21	455:14
applicant	451:19	459:17	aware 456:5	473:16
432:5	452:14	associated	457:11	484:3
477:2	466:16	476:12	464:23	basis
479:6	471:4	assume	487:24	435:19
480:12	areas 438:2	434:10		445:7
484:12	457:3	assumes	B	453:20
486:7	argument	434:12		becoming
488:9	479:22	434:14	back 435:9	439:22
488:13	483:2	assuming	435:10	Bedecarre
488:18	arguments	434:22	435:12	463:12
490:6	489:5	434:23	438:6	463:13
Applicant's	Arthur	435:25	439:23	463:16
431:18	440:17	436:2	441:6	468:22
486:1	467:6	attempt	441:8	468:23
488:11	467:7	455:4	442:4	469:3
Applicants	478:8	attended	447:18	470:2
488:14	478:11	452:10	448:4	471:21
application	489:8	453:5	449:1	471:23
430:3	489:14	attention	450:1	behalf
431:7	articulation	481:22	451:20	432:5
466:13	484:9	482:8	454:16	478:8
479:14	asked 448:8	attorney	460:6	believe
480:10	449:1	445:11	467:3	431:17
480:23	449:3	453:11	472:10	431:19
485:24	455:12	469:10	473:1	443:19
apply	455:13	483:14	486:20	444:5
465:16	460:21	attract	489:17	445:20
appreciate	465:16	461:21	489:24	448:17
472:1	468:25	attraction	491:2	450:8
472:6	asking	461:11	bad 446:23	454:1
approaching	448:1	attractions	447:9	456:19
446:3	461:9	460:15	457:24	460:9
appropriate	464:5	attractive	balance	460:11
457:15	464:9	439:6	440:1	464:24
approval	464:18	attributable	barometric	465:8
474:15	471:15	464:13	484:23	467:22
approve	aspects	attribute	base 454:1	467:25
474:13	442:23	458:21	based	468:8
April	454:13	audio 435:1	433:25	481:8
491:22	454:13	Austin	445:24	482:22
491:22	457:19	430:18	453:8	486:8
aquatic	467:15	authorized	basic	best 445:21
464:19	assess	464:14	439:11	461:15
area 437:12	464:12	available	basically	474:9

better	461:8	482:8	483:19	430:21
450:6	462:1	Building	484:21	430:22
468:12	462:6	430:18	485:1	500:4
beyond	463:2	built 442:6	485:8	500:6
440:7	463:5	453:13	485:9	500:18
453:18	463:9	457:4	486:3	certify
462:3	464:5	461:4	486:18	474:10
billion	467:9	burden	486:22	475:2
436:22	467:11	488:14	487:18	500:7
biologist	468:20	488:15	488:12	500:9
442:16	472:15	business	488:19	change
464:19	472:16	476:5	492:1	477:13
bit 435:12	472:25		cases 456:6	484:22
438:5	473:1	C	catch	490:16
448:15	473:4		479:10	changed
450:15	473:8	Calder	cats 448:20	475:25
458:25	473:10	475:11	cause 461:7	489:9
463:21	475:5	capacity	479:16	changes
479:10	475:7	434:11	482:19	491:19
blame	477:25	438:12	485:23	changing
458:21	478:2	450:11	490:16	458:25
Booth	480:21	450:20	caused	477:12
440:23	486:10	450:21	442:7	chart
440:24	486:12	451:17	460:19	436:13
441:2	Booth's	453:13	465:2	charts
441:3	446:24	457:10	Cedar	434:6
444:22	Boulevard	457:24	500:21	436:18
446:19	500:20	458:16	center	checks
446:22	boundaries	471:4	437:15	486:20
447:3	442:13	carry 472:3	certain	chose 451:7
447:6	Boy 441:6	case 432:13	444:6	484:14
447:13	break	432:18	449:20	circumstance
447:21	472:12	435:22	461:2	460:22
447:25	breakout	435:25	482:21	481:7
448:3	490:24	441:5	certainly	circumsta...
448:11	491:4	451:7	436:12	476:1
448:14	491:13	451:10	439:4	cite 454:16
448:20	bridge	454:10	439:21	cited
448:25	442:6	458:22	445:22	481:22
449:3	442:6	460:23	445:22	cites 487:7
449:5	brief	464:15	446:2	cities
456:2	486:11	464:25	446:2	438:24
458:24	490:10	465:12	452:13	city 430:4
459:4	briefly	468:16	455:6	431:7
459:5	447:19	474:16	460:14	432:25
459:10	briefs	474:17	461:6	433:9
459:12	491:21	474:18	462:8	434:2
459:14	491:22	479:25	465:9	434:11
460:9	brought	481:12	472:3	434:17
460:11	474:20	482:14	477:10	436:20
460:24	481:21	482:25	Certified	437:4

441:13	483:14	common-sense	constitutes	465:9
441:21	clients	443:24	456:9	466:10
441:24	458:11	456:14	consultants	466:22
442:11	458:11	community	479:12	466:23
450:9	458:12	437:10	contains	500:13
452:6	close 484:1	437:10	488:21	correspon...
452:16	closed	complied	contested	477:13
452:20	480:1	490:7	483:19	cost 452:22
454:10	co-presiding	concerned	485:9	452:23
456:19	431:12	458:13	488:12	468:13
456:21	Code 444:3	486:7	context	council
457:22	464:4	concerns	454:19	459:22
458:15	COG 432:13	483:9	456:12	459:24
459:24	432:14	483:12	457:18	460:2
459:25	432:17	484:9	457:19	counsel
460:1	432:20	concluded	468:4	431:13
460:1	432:25	492:11	continuance	country
466:16	433:1	conclusion	478:16	437:24
468:11	433:3	465:9	482:17	438:1
479:18	433:11	466:18	continue	438:3
486:6	cogent	469:6	439:1	439:10
city's	483:4	469:16	447:20	county
434:16	come 439:23	470:14	461:21	434:17
460:13	450:15	470:20	474:16	450:9
460:17	489:17	conclusions	474:18	500:3
479:12	491:2	470:15	489:20	couple
claim	comes	concur	continued	439:21
485:13	480:24	440:6	432:5	443:4
clarifica...	coming	conducted	438:8	course
436:6	439:12	456:4	continuing	452:10
clarify	commencement	confer	431:5	452:11
442:15	476:6	472:12	contrary	483:25
clarifying	comment	conference	467:21	484:24
448:13	454:8	490:17	control	485:17
clarity	475:13	confidence	500:12	court
468:17	475:15	453:13	conversely	490:24
clear	487:10	confirm	461:11	491:1
456:18	comments	471:20	copy 464:4	492:6
459:7	478:9	consequences	core 438:10	Cove 458:14
479:8	Commission	458:7	corollary	create
479:11	468:11	458:8	466:19	466:15
484:8	473:11	459:19	correct	485:21
clearly	473:24	466:16	434:8	488:22
466:9	474:10	467:18	436:8	Creek
469:12	475:2	489:1	436:9	458:14
469:19	480:18	consider	450:5	criteria
Clements	486:13	442:20	460:13	453:16
430:17	488:15	462:23	464:15	critical
client	490:9	470:11	464:16	467:24
441:24	common	constitute	464:22	criticize
442:12	456:17	470:12	465:7	456:15

cross-exa... 433:17 441:1 446:25 476:10 477:17	de 456:5 480:13 480:20 481:3 deadline 476:17 479:7 484:2	485:21 485:22 485:24 487:4 delayed 434:19 436:3 delays 471:6 demographics 439:11 demonstrated 480:15 denied 477:22 486:8 densely 437:14 deny 453:8 490:3 denying 490:11 490:19 department 442:10 depend 461:19 depends 462:20 depose 480:1 484:1 484:14 484:15 deposed 482:23 483:7 484:6 deposition 483:8 484:4 484:4 484:17 484:19 488:8 488:13 depositions 488:5 depth 477:12 describing	459:17 designed 482:19 desk 480:24 detail 446:14 454:7 462:23 determined 476:15 484:25 determines 480:25 determining 443:22 develop 488:18 developed 477:18 development 434:25 442:2 442:23 443:7 443:23 445:12 450:21 451:19 452:15 454:9 454:20 455:22 456:1 456:8 456:11 456:21 457:2 457:17 459:9 460:15 462:22 464:13 465:4 465:13 465:21 466:15 466:22 470:4 470:23 470:25 471:19	474:23 478:24 479:20 487:13 different 452:6 452:20 486:18 difficult 437:7 476:11 476:11 479:21 480:5 483:18 difficulties 447:20 difficulty 445:1 Diplomate 430:22 500:6 DIRECT 432:8 directed 490:8 Director 433:15 479:19 480:25 Director's 454:25 disadvant... 485:19 disagreement 487:20 discharge 431:8 437:4 445:16 464:17 464:21 475:16 479:17 discharges 479:13 disclose 479:24 disclosed 485:11 disclosure	
cross-exa... 480:3	deadlines 491:20	deal 445:14 dealing 457:11 dealt 451:24 458:7 458:9 decision 489:1 decisions 453:17 defined 455:14 definitely 454:10 definition 455:6 455:8 degradation 455:13 456:6 465:2 470:4 470:11 472:22 473:17 479:17 480:8 480:9 480:12 480:13 480:19 degrade 479:14 481:2 degree 462:20 deja 438:5 delay 457:13 482:20	described 485:21 485:22 485:24 487:4 described 434:19 436:3 described 471:6 described 439:11 described 480:15 described 477:22 486:8 described 437:14 described 453:8 490:3 described 490:11 490:19 described 442:10 described 461:19 described 462:20 described 480:1 484:1 484:14 484:15 described 482:23 483:7 484:6 described 483:8 484:4 484:4 484:17 484:19 488:8 488:13 described 488:5 described 477:12 described	described 459:17 described 482:19 described 480:24 described 446:14 454:7 462:23 described 476:15 484:25 described 480:25 described 443:22 described 488:18 described 477:18 described 434:25 442:2 442:23 443:7 443:23 445:12 450:21 451:19 452:15 454:9 454:20 455:22 456:1 456:8 456:11 456:21 457:2 457:17 459:9 460:15 462:22 464:13 465:4 465:13 465:21 466:15 466:22 470:4 470:23 470:25 471:19	described 474:23 478:24 479:20 487:13 described 452:6 452:20 486:18 described 437:7 476:11 476:11 479:21 480:5 483:18 described 447:20 described 445:1 described 430:22 500:6 described 432:8 described 490:8 described 433:15 479:19 480:25 described 454:25 described... 485:19 described 487:20 described 431:8 437:4 445:16 464:17 464:21 475:16 479:17 described 479:13 described 479:24 described 485:11 described
D					
Dallas 438:2 Dallas/Fort 437:21 437:23 438:3 damage 451:1 data 451:22 date 441:14 481:22 day 430:15 431:14 440:1 476:5 483:7 483:21 484:6 500:15 days 439:25 439:25 484:19 484:20					

479:4	448:22	479:15	451:25	465:22
479:8	455:13	479:23	453:14	economy
480:9	455:14	481:10	454:9	442:9
481:7	documenta...	485:10	454:20	450:24
487:8	439:7	draft 437:4	455:3	451:8
487:17	documents	454:25	455:21	460:18
disclosures	432:15	464:14	456:1	ED 478:21
479:5	443:3	465:2	456:7	ED's 486:15
488:7	449:16	465:10	456:10	ED-3 448:18
488:10	455:12	466:12	456:15	effect
disconnect	doing	466:14	456:20	438:20
489:18	438:19	466:20	457:17	effects
492:8	452:10	469:14	458:8	438:16
disconnected	479:7	471:4	458:16	445:24
447:14	dollars	481:1	459:8	effort
discontinued	469:21	drill 445:9	459:18	481:17
491:10	door 458:12	drop 447:6	460:13	485:20
discovery	double-check	due 484:7	464:12	485:21
486:19	460:10	487:6	465:4	485:23
discuss	Dr 431:18	491:21	465:13	487:4
438:21	431:19	491:22	465:21	Eight
490:1	431:24	duly 432:7	466:3	439:14
discussion	432:10	Dunn's	466:15	either
442:5	433:19	453:2	466:22	436:4
444:19	435:6	duty 488:4	467:24	480:11
452:12	441:3	488:12	469:12	eleven
453:5	447:23	dynamic	469:13	489:17
469:24	449:1	435:18	469:19	Elimination
472:8	449:5	438:2	470:3	431:8
discussions	449:13		470:13	emphasize
472:3	455:17	E	470:21	475:10
disrupt	458:20	earlier	470:22	employers
435:19	458:24	450:19	470:25	439:18
disruptions	459:6	early	471:3	440:8
442:7	459:15	441:17	471:7	engineer
455:4	460:12	easily	471:9	442:15
distortion	461:1	451:11	474:23	464:20
435:1	461:9	east 452:14	475:15	entered
Docket	462:7	economic	478:24	486:13
430:1	463:5	437:3	479:19	entire
430:2	463:20	437:11	487:13	450:20
431:5	464:3	438:16	economically	environme...
431:6	466:4	442:2	450:8	443:21
document	466:10	442:7	461:7	445:6
443:18	466:25	442:22	economies	453:8
443:20	467:12	443:7	435:18	462:2
443:25	468:15	443:22	435:18	462:9
444:1	472:1	445:12	435:24	467:18
446:9	475:11	445:24	economist	468:13
447:1	479:9	450:25	456:19	environme...
447:22	479:11		465:19	461:6

EPA 455:7	456:16	453:11	F	476:16
455:10	459:8	455:18		476:17
456:11	EXAMINATION	456:3	faced 458:6	477:8
456:16	432:8	459:7	facilities	477:15
468:2	464:1	464:20	468:5	477:19
474:13	example	465:15	facility	483:1
essentially	451:11	465:17	435:22	483:6
450:12	exceed	467:21	fact 438:10	feel 480:14
482:23	473:16	469:10	438:22	figure
483:8	exception	469:17	454:8	443:2
estimate	480:19	479:16	480:14	445:5
434:1	480:20	483:15	481:2	figures
436:21	Executive	483:20	482:10	434:9
436:24	433:14	484:1	482:21	file 483:20
estimates	454:25	484:15	483:22	483:22
451:2	479:18	487:24	485:1	filed
451:2	480:24	488:1	485:4	482:16
evaluating	exercised	488:8	487:21	482:25
443:6	484:15	488:13	490:8	485:14
487:11	exhibit	expertise	factor	files 476:3
evaluation	432:13	445:20	452:24	476:7
452:24	432:14	461:2	467:24	481:17
488:1	432:17	465:20	factors	481:24
event 481:5	432:20	466:4	440:4	482:1
482:19	433:1	467:14	453:9	482:10
evidence	433:3	478:25	486:16	482:12
460:22	433:11	experts	facts	487:21
460:25	434:5	479:12	482:22	488:5
473:19	436:7	483:20	487:20	488:6
473:19	436:12	Expires	failure	filing
474:22	442:24	500:18	470:12	484:2
476:22	443:13	explicitly	fair 444:22	Finally
476:23	448:4	468:16	446:15	436:17
476:24	448:18	extension	463:2	finance
476:25	exhibits	480:22	fairly	441:9
477:2	432:14	481:25	461:24	financial
477:3	433:1	extent	familiar	437:13
477:4	433:5	451:25	432:15	find 436:15
478:22	433:10	458:21	far 460:25	437:5
481:19	443:3	461:14	471:5	462:18
481:21	443:12	461:17	486:6	462:19
486:23	475:21	464:25	fashion	472:18
488:20	existed	465:2	458:8	481:20
488:21	439:14	469:11	458:9	482:4
evolve	exists	480:14	fault	485:4
435:24	459:18	481:3	457:22	finding
exact	expect	484:10	458:1	444:24
441:14	439:1	490:10	458:11	470:4
441:15	expert		458:15	fine 456:1
471:20	442:20		February	459:10
exactly	442:21		441:17	491:13

fingers 449:11	foregoing 500:12	further 440:12	448:25	480:4
finish 462:7	form 443:20 445:6	467:4 467:5	457:8 468:8	482:4 486:23
Firm 500:19	500:11	468:20	472:7 472:10	487:11 489:19
first 431:14	formed 483:21	471:23 476:13	473:1 474:8	490:2 491:21
432:7	484:5	489:11	475:18	492:5
440:21	forth 452:7 465:17	490:10 500:9	478:7 479:14	good 432:10 432:11
443:14	forward 434:11	future 451:18	481:20 484:24	433:19 433:20
443:15	451:20		485:4	439:18
455:13	454:24	G	486:17	449:25
482:1	474:8		486:22	457:21
482:9	486:22	game 472:21	489:24	463:3
482:11	forward-l... 452:3	474:8 474:11	492:8	gotten 484:8
482:16	frame 441:18	gee 460:2	goes 463:23 475:13	Granbury 430:4
482:23	framed 464:25	general 490:23	476:23 486:20	431:7 434:3
483:3	frankly 437:17	generally 449:4	488:25	437:15
483:10	freeze 435:5	getting 446:23	going 437:15	438:4
484:7	Fresh 463:11	485:16	439:18	438:24
484:23	475:11	give 440:9 445:8	439:20	441:13
485:17	Friday 476:5	446:23 462:8	440:1 444:20	441:21 441:23
fish 460:19	Frisco 438:7	469:9 470:7	447:21 448:5	442:8 459:25
fit 468:13	front 432:22	473:2 474:18	449:10 450:4	460:1 460:12
five 476:4	464:3	given 440:1 477:5	453:14 458:18	460:18 461:5
five-year 451:5	464:6	gives 444:4 432:21	459:5 460:20	463:11 466:16
451:12	471:13	giving 492:3	461:18 462:2	475:11 486:6
flexibility 440:9	Frossard 453:20	glanced 446:13	463:13 465:14	Granbury's 433:10
flexible 439:5	454:2	go 431:4 432:3	467:3 471:7	grant 467:17
439:19	483:7	436:17	472:16	468:11
Flores 485:11	483:8	436:17	473:12	470:12
focused 445:11	483:23	437:24	473:15	granted 459:20
455:23	484:6	438:1	473:15	474:14
456:9	full 500:12	440:21	473:20	great 431:23
focusing 442:22	Fully 485:11	440:24	474:1 474:6	445:13
folks 439:21	functional 440:6	447:15 447:18	477:9 478:7	446:14

453:12	467:23	474:18	hired	I
454:7	happen	476:6	441:13	
468:17	435:18	484:4	452:7	idea 485:6
469:23	435:24	485:9	historical	identified
470:2	451:18	490:22	451:22	448:9
greater	457:20	hearings	hit 449:12	475:21
455:14	461:12	430:5	home 439:25	477:11
480:20	462:2	430:17	440:2	477:17
greatest	469:21	438:20	honest	487:24
452:15	471:6	483:19	478:18	488:2
gross 434:2	happened	help 452:5	honestly	identify
436:23	438:8	452:6	441:17	447:23
group 460:2	happening	459:1	441:24	448:18
grow 438:11	457:2	helped	442:10	identifying
438:13	457:3	445:23	460:6	447:1
growing	457:5	hereinbefore	Honor	477:18
437:20	461:3	500:8	435:17	impact
438:4	461:5	hereunto	440:17	438:23
438:13	happens	500:14	440:23	459:9
438:13	447:11	highlighted	458:18	462:18
growth	461:19	453:25	460:20	462:25
434:14	happy 447:3	highway	462:4	466:3
434:17	harm 462:20	442:9	465:14	487:12
434:20	462:21	Hill 431:19	465:19	impacted
434:25	harmful	432:3	467:7	460:18
435:20	438:16	432:4	468:14	465:5
435:23	harms 452:1	432:9	471:11	impacts
437:9	471:8	432:25	472:5	450:8
437:11	471:10	433:13	472:16	450:25
437:22	he'll	458:18	478:11	452:2
438:3	486:20	459:2	486:25	455:24
460:18	head 444:21	460:20	487:3	461:19
guess	headaches	462:4	489:14	475:15
434:13	440:7	463:19	491:6	impair
452:5	hear 448:3	463:21	hours	460:17
468:23	heard	464:2	483:24	impairment
473:5	435:16	465:19	housekeeping	443:23
475:1	452:12	465:24	491:24	445:12
480:22	453:5	466:5	housing	453:15
guidance	466:1	466:6	437:25	454:23
473:23	484:23	466:8	460:15	455:15
	485:18	466:25	huge 449:8	455:22
	490:15	468:14	451:3	456:7
H	hearing	471:11	hundreds	456:10
hand 431:25	430:9	474:6	469:20	469:12
500:14	430:16	478:7	hypothetical	469:13
handle	431:5	479:1	461:9	469:19
463:14	431:15	479:2	hypotheti...	470:13
467:15	433:9	486:9	461:12	470:16
handled	453:4	487:7		470:21
467:22	474:9	492:10		Implement

448:23	434:25	482:7	475:12	472:24
implement...	initial	486:19	477:25	473:1
473:23	491:21	486:19	Jr 430:17	473:6
important	inputs	487:5	judge 431:4	473:9
437:5	476:16	487:9	431:11	475:4
443:6	477:5	487:9	431:12	475:6
454:19	477:5	490:5	431:21	475:6
456:20	477:19	490:12	431:23	475:17
459:12	instance	issued	432:2	477:25
460:12	459:25	451:16	432:4	478:6
465:3	interest	466:2	432:22	478:13
465:12	467:24	466:14	432:25	479:1
466:21	interested	466:14	433:4	486:9
474:23	482:11	469:14	433:9	487:1
479:19	interesting	481:1	433:13	489:6
impose	438:18	issues	433:14	489:13
480:19	interim	442:19	435:4	489:15
imposing	490:5	442:22	435:6	489:24
488:11	interpret	445:12	435:8	489:25
included	454:20	446:4	435:10	491:7
483:23	interpret...	454:6	440:15	491:12
income	454:22	456:3	440:19	492:1
451:2	455:1	457:4	440:21	judges
incremental	interrupt	461:21	440:24	430:20
451:8	446:24	462:22	447:6	477:23
increments	interrupted	464:13	447:11	479:2
451:5	435:23	465:4	447:18	492:10
451:12	438:15	465:21	448:2	judgment
independent	introduce	467:23	448:7	465:18
479:12	473:18	473:19	448:12	jump 448:8
indicated	introduced	483:11	448:25	jurisdict...
454:11	473:20	487:19	459:3	486:19
469:18	involved	Isturiz	459:5	justice
information	452:24	478:14	459:11	485:22
437:5	464:10	It'll	461:8	justifica...
437:8	involving	489:20	462:6	459:2
462:15	469:20		463:11	482:20
482:5	issuance	J	463:18	486:24
482:7	465:5		465:23	
482:16	465:10	January	466:1	K
483:16	466:20	441:16	466:7	
483:17	issue 460:4	448:24	467:3	keep 437:14
484:8	477:11	452:8	467:6	440:8
484:12	477:14	479:7	467:8	444:23
484:16	477:17	479:23	468:10	449:11
485:13	478:17	482:25	468:18	459:23
infrastru...	479:4	jobs 434:2	468:21	471:15
438:12	480:7	436:24	471:17	491:3
445:24	481:6	439:13	471:25	Kennedy
450:22	481:7	469:20	472:7	500:20
inhibiting	481:12	join 475:9	472:10	kills

460:19	432:13	459:23	471:20	434:3
kind 437:15	lack 458:16	lines	478:19	434:7
438:22	lake 441:10	458:19	482:15	lost 451:2
442:13	460:12	link 481:23	485:16	lot 436:16
444:8	460:18	487:23	492:3	437:8
458:24	461:5	list 449:16	looked	439:7
469:5	461:10	listened	437:8	440:1
knew 482:9	461:12	452:11	437:20	444:6
482:11	lakes	453:2	444:2	444:10
485:9	461:21	listing	444:7	452:11
485:10	landowners	443:11	444:13	452:12
485:10	458:13	literally	445:6	460:15
know 434:18	language	457:3	445:10	461:20
435:17	470:9	little	448:19	461:20
439:20	large	435:12	449:20	461:21
441:23	437:16	438:5	449:21	461:23
442:8	late 438:6	441:5	449:23	462:15
443:18	441:16	442:4	451:23	462:22
444:5	law 430:19	448:15	452:18	473:19
444:15	431:11	450:15	454:7	492:3
447:9	469:11	458:25	461:24	low 452:2
449:11	469:18	463:21	472:20	lower 481:2
449:21	laws 445:6	472:11	482:1	lowering
449:22	lawyer	479:10	485:13	474:4
450:19	444:10	live 432:21	487:23	474:22
451:23	lead 476:1	439:5	looking	474:24
453:2	leading	439:19	437:9	486:24
454:5	485:14	440:9	444:23	
454:14	learned	440:10	446:3	M
454:18	482:21	livestreamed	447:1	
456:17	482:22	489:21	450:10	ma'am
461:22	484:17	locate	450:12	472:25
462:11	484:18	445:23	451:20	478:2
462:14	learning	452:17	451:20	Machin
462:15	444:23	locating	452:23	484:18
465:20	leave	445:21	455:7	Machin's
469:5	475:22	long 439:16	455:10	485:2
469:15	led 438:22	441:7	461:16	magical
473:3	left 431:17	long-term	462:16	483:6
474:12	legal 469:7	438:15	483:12	main 491:2
477:5	469:11	439:10	looks	491:15
477:8	470:3	look 444:8	447:13	major
478:4	470:6	444:10	456:16	460:14
482:6	level 456:5	444:15	Lorrie	making
488:6	456:6	449:8	430:21	454:10
491:3	470:10	449:17	500:4	477:12
491:13	levels	451:6	500:17	482:12
	445:16	451:15	lose 434:20	487:5
L	liability	453:21	435:20	manage
	459:17	470:24	loss 436:21	435:21
labeled	limitations	471:2	losses	manner

450:23	meeting	478:3	N	474:19
451:18	491:2	484:22		477:23
453:14	meetings	modeling	name 431:10	486:21
457:1	452:11	464:19	441:3	489:2
457:10	453:4	476:3	narrowest	491:24
457:20	461:23	476:8	469:6	needed
471:4	memorized	477:2	native	481:20
map 483:9	471:1	477:3	476:3	needs
483:10	mention	490:14	476:7	434:24
483:11	472:19	moment	481:16	436:2
March	mentioned	447:15	481:24	437:3
430:10	451:23	464:6	482:1	439:12
430:15	453:20	morning	482:10	456:19
431:2	merely	432:10	482:12	456:21
431:10	488:8	432:11	487:21	457:7
476:5	MERITS	433:19	488:5	459:23
487:22	430:9	433:20	488:6	473:20
487:25	messed	motion	nature	474:13
500:15	461:5	475:9	437:9	negative
Mary 490:6	met 436:3	475:12	452:17	467:18
material	436:4	475:18	458:19	never
488:9	469:7	475:19	477:4	434:23
materials	470:20	475:20	necessarily	436:1
469:18	Mike 441:3	476:13	434:12	441:9
487:22	million	477:22	456:24	new 442:6
matter	434:1	477:24	467:19	474:18
430:16	436:23	478:1	necessary	483:23
448:13	439:13	478:16	454:18	no-questi...
456:17	439:14	481:13	454:19	485:23
488:7	millions	481:15	465:12	non-attorney
500:7	469:21	481:18	466:21	470:8
matters	mind 489:9	482:16	467:17	nonlawyer
491:24	mine 468:4	482:17	474:23	444:8
McKinney	minimis	483:3	479:19	normally
438:5	456:6	485:14	487:12	451:5
mean 442:19	480:13	490:11	need 434:15	Nos 433:3
443:24	480:20	490:18	438:12	433:11
445:8	481:3	490:19	450:15	note 431:13
449:22	minute	motions	451:17	475:12
452:1	462:1	472:13	452:15	476:14
454:22	473:24	486:7	457:1	486:12
455:10	minutes	490:1	457:10	487:4
462:9	476:4	490:3	457:19	489:1
464:12	489:22	move 450:23	457:23	490:4
485:6	mistaken	451:9	462:14	491:8
491:1	468:9	454:24	465:20	notes
means	mitigate	474:16	467:24	436:11
439:17	484:3	multiples	470:11	500:13
439:17	model	456:13	471:15	notice
454:18	476:12	mute 489:20	472:4	472:18
481:25	476:17		473:17	473:17

474:8	471:22	492:13	448:14	435:19
474:12	objections	offered	448:14	online
474:18	433:5	433:3	449:10	431:20
475:12	433:6	offering	449:25	open 444:24
475:14	obligation	469:16	449:25	444:25
478:17	479:24	470:20	451:1	491:4
479:22	486:1	478:21	451:13	operations
480:7	486:2	offers	453:1	437:12
480:9	486:4	432:25	453:7	OPIC 440:16
480:21	obligations	office	454:5	478:8
481:3	483:13	430:3	454:18	478:11
481:6	483:15	430:16	455:2	opine
487:7	observe	439:23	455:17	465:20
487:10	472:2	439:25	455:20	opining
487:13	observed	Oh 439:3	455:24	442:18
490:4	438:6	447:3	457:6	opinion
490:7	438:7	448:11	458:4	454:2
490:11	obtain	448:14	459:10	456:15
noticed	488:9	451:3	459:22	465:12
449:16	obtained	455:19	460:8	466:11
notices	476:7	484:4	461:15	466:21
472:18	obviously	491:12	463:18	468:16
notified	452:9	okay 431:23	464:9	470:6
488:2	453:16	432:17	464:17	479:16
number	461:18	432:20	464:24	482:18
439:4	486:7	432:24	465:8	484:5
467:23	491:15	433:4	465:23	opinions
473:3	occur	433:14	467:3	445:7
478:3	445:25	434:9	467:6	462:9
numbers	450:22	435:8	468:20	479:11
438:1	450:22	436:15	470:18	483:21
443:12	480:19	436:15	470:18	483:23
	481:5	440:24	471:23	opportunity
O	occurred	441:19	471:25	434:20
	500:7	442:1	472:10	435:23
o'clock	occurring	442:13	472:16	473:21
476:4	452:15	442:24	473:7	474:2
489:17	occurs	443:10	473:14	474:21
oath 432:22	470:16	443:15	475:4	474:21
object	offer 447:8	444:2	475:17	480:1
458:18	447:8	444:17	478:6	481:10
460:21	474:9	445:2	478:13	482:15
465:15	477:22	445:18	479:2	482:24
468:14	477:24	446:1	486:9	483:5
471:11	488:14	446:5	489:13	484:13
objecting	490:21	446:8	489:15	488:22
485:7	490:25	446:9	once 490:21	490:10
objection	491:9	446:15	ones 450:10	opposed
459:6	491:11	446:20	451:8	451:20
461:14	491:16	448:2	452:19	opposes
468:19	492:7	448:7	ongoing	486:7

order 479:3 479:6 486:13 490:5 491:20	pandemic 438:20 438:22 439:2 439:4 439:14 439:15 439:16 440:5	pattern 435:20 438:6 438:7 483:25	457:24 459:19 464:14 465:2 465:5 465:11 466:2 466:12 466:14 466:20 467:17 468:11 469:14 470:12 471:5 474:13 481:1 483:9	479:23 481:10 485:10 487:8 487:17
original 500:13		Pause 447:5		Perryman's 461:1 466:4 486:23
Osting 475:21 475:24 476:4 476:10 476:14 477:6 481:14 482:21 482:23 484:14 485:10 487:19	pardon 457:7 464:8	people 438:23 439:4 439:12 439:23 439:24 440:2 440:5 460:19		person 446:7 453:6
Osting's 478:5 481:21 489:2 490:14	park 458:12 500:21	percent 437:22 437:23 442:17 444:6 455:15 455:16	Perryman 431:18 431:19 431:24 432:6 432:10 433:19 435:6 441:3 447:23 449:1 449:5 449:13 455:17 458:20 458:24 459:6 459:15 460:12 461:9 462:7 463:5 463:20 464:3 466:10 466:25 467:12 468:15 469:4 472:1 479:9 479:11 479:15	persons 475:14
ought 461:6	part 448:3 473:2 476:1 477:16 486:1	period 450:20 475:13 487:10		perspective 453:22 454:9
outputs 477:6	participate 487:16	periods 450:11		Pesonen 478:8
outset 470:1	participa... 492:3	perfectly 446:11		petrochem... 468:5
outside 467:14 488:4	particular 449:18 450:9 475:23 477:4 477:5 477:6 477:13	perform 488:1		PH.D 432:6
overrule 461:14	parties 472:12 472:14 488:23 490:9	period 450:20 475:13 487:10		phrase 456:5 471:9
P	parts 452:20 453:25	permanently 435:20		picked 451:11
page 433:24 436:17 443:13 443:14 443:15 453:24 453:25 473:3	party 476:20 476:21	permit 430:4 431:8 434:15 434:18 434:21 437:4 451:16 453:8 454:9 454:25 456:24 457:16		pipelines 468:5
pages 430:25 436:16 492:12 500:12	pass 433:13 440:13 440:18 463:8 467:2	period 450:20 475:13 487:10		place 434:21 454:3 488:16
	path 438:14 450:24 451:9 451:9	periods 450:11		places 440:10
		permanently 435:20		planned 482:18
		permanently 435:20		plant 436:1 445:21 452:7 452:17 458:17
		permanently 435:20		plant's 461:4
		permanently 435:20		planted 457:3
		permanently 435:20		play 479:9 480:5
		permanently 435:20		please 442:25 446:16

450:13	484:1	presented	474:20	488:16
450:17	Pratibha	477:4	480:10	488:19
pleasure	430:19	488:25	485:24	490:18
441:4	431:11	490:2	487:6	490:20
463:6	pre-pandemic	presents	produced	490:24
463:10	440:3	476:21	451:24	492:13
point	precisely	pressure	product	prove 459:1
434:11	454:3	484:23	434:2	provide
434:21	464:16	pretend	436:23	475:15
450:7	466:18	469:10	production	475:22
450:8	prefiled	prevail	482:13	476:20
454:17	432:12	485:22	projected	477:21
462:14	432:18	prevent	434:7	477:22
469:25	433:5	476:21	projections	479:15
474:5	433:5	previously	436:8	488:5
480:10	433:22	475:21	projects	488:6
481:11	433:24	primarily	455:8	488:10
489:9	449:17	462:20	proof	provided
pointing	449:23	prior	477:23	476:2
480:22	453:24	449:21	488:14	476:7
480:23	476:18	449:22	490:21	478:4
Pollutant	480:2	449:22	490:25	479:5
431:8	482:25	449:23	491:9	479:6
populated	483:22	475:13	491:11	483:10
437:14	483:24	476:6	491:16	483:11
population	484:2	487:22	492:7	487:14
437:9	484:7	490:2	492:13	487:21
437:22	484:10	491:11	proper	488:3
position	485:3	probably	488:15	public
458:21	prehearing	435:16	proposed	443:7
473:15	490:17	444:12	474:14	467:24
478:12	premise	460:2	479:13	480:9
478:16	467:20	problem	479:18	487:10
478:19	prepared	461:7	491:20	487:15
483:18	432:12	problems	Protection	490:7
485:19	432:18	458:16	443:21	491:9
488:11	462:10	461:4	Protestant	pull 470:23
possibility	492:2	Procedures	488:12	pulled
461:25	preposterous	448:22	Protestants	447:22
possible	485:6	proceeding	440:22	purport
440:5	present	482:20	472:14	469:17
485:22	431:14	491:9	474:21	purpose
possibly	431:15	proceedings	479:22	491:4
436:4	472:15	430:20	480:4	purposes
post-pand...	474:22	492:11	481:8	457:17
440:2	477:3	500:9	481:16	466:22
potential	477:23	process	481:17	490:22
460:25	488:23	438:19	484:12	492:6
potentially	491:16	452:25	485:7	purview
457:13	PRESENTATION	453:16	486:3	453:18
practice	432:5	474:15	488:7	put 436:12

442:13	451:13	ran 452:2	rebuttal	467:10
444:7	460:21	rapidly	475:22	469:2
444:16	461:14	437:20	476:19	redirect
453:22	462:5	438:4	476:21	463:19
479:22	462:24	438:14	477:16	463:22
483:18	465:25	ratcheted	477:21	464:1
485:8	466:2	439:4	477:23	reduced
485:8	468:15	rates	488:23	500:11
485:18	469:4	477:14	489:3	referred
486:3	471:12	RAY 432:6	recall	446:25
486:3	471:15	RDR 500:17	441:14	490:5
489:19	474:10	re-notice	443:19	referring
490:23	475:2	486:21	444:21	478:20
	476:19	re-noticed	recalling	reflected
Q	490:8	474:17	468:1	434:5
	490:13	reach	recess	484:10
QUAL-TX	questioning	470:15	447:17	reflects
484:22	486:14	reached	472:9	482:14
qualified	questions	470:14	489:16	regard
465:24	433:21	read 444:6	489:23	451:21
470:7	440:12	445:10	489:25	453:12
quality	440:17	446:14	490:2	460:3
442:19	441:12	454:6	recognize	478:23
442:20	443:4	454:8	432:17	481:13
446:4	447:24	454:16	recognizing	481:16
448:23	458:20	469:18	440:8	482:2
455:11	460:10	real 434:2	recollection	regarding
455:18	463:15	457:24	470:23	433:21
455:24	463:17	realize	471:18	469:7
456:3	467:1	449:12	reconnect	470:15
458:14	468:20	474:5	489:19	475:23
462:12	468:24	really	record	478:23
467:15	468:24	438:15	431:4	479:13
467:16	471:12	462:23	431:13	490:17
470:5	471:24	478:18	433:2	register
474:4	474:19	484:8	433:7	433:7
474:22	475:5	Realtime	438:19	Registered
474:25	475:7	430:23	447:2	430:22
479:14	475:8	500:6	447:15	500:5
480:13	490:5	reason	447:19	Registration
481:2	491:23	437:21	447:19	500:19
486:24	quickly	437:24	448:12	regulatory
quality-type	487:3	449:18	472:7	464:22
455:8	quite 481:9	reasonable	472:8	465:1
quantify		474:3	472:11	466:13
455:4	R	reasonably	473:2	467:23
question		476:22	473:7	rehash
436:25	raise	488:21	478:21	481:15
437:7	431:24	490:15	489:22	reiterate
439:24	raised	reasons	489:25	491:7
449:2	434:9	477:20	RE CROSS-E...	491:19

reiteration 477:14	471:13	requirements 487:6	480:2	458:14
rejected 452:19	repetitious 458:19	490:7	reviews 456:4	rule 464:6
452:21	471:13	resource 459:23	RG-194 448:24	465:17
468:12	report 439:8	respect 478:17	right 431:21	471:13
rejoins 447:16	reported 430:20	response 433:8	431:25	487:9
related 454:8	500:10	478:7	434:7	rules 444:4
487:8	reporter 430:22	478:9	434:24	444:14
relation 462:21	430:22	483:3	434:25	454:19
relative 437:20	430:23	485:20	435:3	464:5
439:12	446:16	486:4	435:11	465:16
relevant 458:22	446:20	488:7	436:2	473:11
rely 436:11	490:24	491:22	438:13	476:20
436:11	491:1	491:25	441:11	476:20
remain 491:14	492:6	responses 446:8	442:24	487:5
491:17	500:5	486:11	449:10	487:17
492:7	500:6	490:1	453:8	488:20
remains 491:8	500:6	responsib... 457:2	457:2	488:22
remember 441:17	500:18	458:3	457:5	ruling 490:16
441:24	Reporting 500:20	488:10	457:25	runs 476:17
442:11	reports 483:20	responsive 488:19	458:6	478:3
449:24	representing 483:14	488:25	465:6	RV 458:12
460:6	reputations 462:11	rest 472:2	466:17	S
REMEMBERED 430:14	request 477:21	retail 437:12	466:20	Sarah 430:19
remote 461:24	requested 479:18	review 454:5	466:24	431:12
remotely 430:21	482:13	454:14	473:17	satisfied 480:16
438:23	requesting 475:22	464:9	492:1	480:18
439:19	requests 477:24	464:11	road 483:8	483:10
439:20	required 475:12	464:12	483:10	485:25
remove 489:2	480:9	467:13	483:11	486:1
renew 476:1	481:3	468:3	role 458:2	saw 438:4
477:20	481:4	472:20	459:17	438:8
renewing 475:20	487:16	480:25	470:17	456:5
repeat 435:16	requirement 480:7	481:19	479:8	saying 435:11
468:24	480:17	481:20	479:23	435:17
repetition	480:21	486:15	479:24	440:6
	485:25	reviewed 443:3	480:4	442:18
	487:9	446:8	480:5	450:5
		449:1	room 490:24	451:10
		449:4	491:3	453:12
		449:17	491:5	457:9
		465:11	491:13	457:21
		reviewing 438:11	491:15	458:1
			roughly 451:6	458:5
			Rucker's 458:14	458:10
				458:25

461:10	453:14	440:19	445:8	469:24
468:10	454:10	440:21	shortage	sir 432:16
470:19	463:6	440:24	439:10	432:19
472:22	463:22	447:6	Shorthand	432:23
474:2	464:6	447:11	430:21	433:23
474:14	466:8	447:18	500:4	434:4
488:18	472:19	448:2	500:18	434:8
488:19	473:12	448:7	show 444:24	440:14
488:24	475:2	448:12	486:23	440:20
says 443:12	489:21	448:25	showed	443:1
470:22	seeing	459:3	440:5	443:5
471:3	449:19	459:5	452:14	443:14
473:14	seeking	459:11	485:2	443:17
480:17	477:22	461:8	showing	445:4
scenario	seen 444:18	462:6	455:16	449:7
461:19	467:21	463:11	480:18	450:3
scenarios	sense 439:3	463:18	sick 460:19	452:9
455:5	456:17	465:23	side 452:2	453:23
Schnoor	469:6	466:1	452:14	454:3
430:21	series	466:7	471:3	454:4
500:4	434:6	467:3	significant	455:19
500:17	Service	467:6	442:8	459:16
scope 462:3	500:20	467:8	443:22	460:16
scramble	services	468:18	453:14	464:16
481:20	437:12	468:21	454:23	464:23
screen	437:13	471:17	455:3	465:7
447:2	set 465:17	471:25	455:6	466:18
447:15	500:8	472:7	455:15	466:23
447:21	500:14	472:10	456:7	467:14
448:10	severe	472:24	456:10	sit 483:16
472:17	458:7	473:1	469:13	site 445:21
scroll	share 445:1	473:6	469:20	452:13
473:12	447:15	473:9	470:13	sites 452:7
seal 500:15	447:21	475:4	471:6	situation
second	449:10	475:6	471:7	434:18
449:14	472:17	475:17	472:22	457:22
457:9	Shenoy	477:25	477:16	457:23
482:3	430:19	478:6	487:12	458:3
secret	431:4	478:13	487:12	458:6
480:6	431:11	479:1	significa...	459:18
section	431:21	486:9	435:19	459:19
444:3	431:23	487:1	similar	470:10
445:2	432:2	489:6	437:25	situations
464:4	433:4	489:13	450:18	462:24
Sector	433:9	489:15	490:18	462:25
443:7	433:14	489:24	similarly	skilled
see 436:13	435:4	491:7	458:10	439:18
440:1	435:6	491:12	simply	440:8
443:17	435:8	492:1	458:5	skimmed
443:17	435:10	short	Simultaneous	454:6
447:16	440:15	434:13	444:19	small

436:13	461:1	speculate	446:3	483:3
smaller	481:20	460:21	462:3	485:14
438:24	somewhat	462:15	Starnes	striking
smart	437:18	speculation	430:19	489:1
439:21	437:19	461:1	431:12	struck
SOAH 430:1	soon 436:8	speculative	431:12	438:9
431:5	482:8	461:18	475:6	studies
social	485:12	spend 449:8	489:25	462:17
437:3	485:15	spent	start	study
438:16	488:1	445:13	450:23	462:16
442:23	488:6	445:17	451:1	subject
443:7	sooner	spoken	451:14	464:21
443:22	448:15	489:8	457:12	465:1
445:12	sorry 435:2	spreadsheet	479:4	465:11
452:1	443:16	443:20	started	466:13
453:15	446:19	spring	439:15	474:17
454:20	448:16	481:12	starting	subsides
455:3	448:21	squarely	472:15	439:2
455:21	451:13	466:4	State 430:3	substanti...
455:25	457:8	Staff	430:16	436:3
456:8	472:24	480:12	500:2	438:14
456:10	sort 437:14	480:25	500:5	490:6
456:20	439:6	stage	stated	490:17
457:17	443:23	458:15	433:25	sufficient
459:9	456:4	472:21	468:16	436:4
464:13	462:12	474:7	statement	suggest
465:4	482:6	474:11	473:16	479:25
465:4	sorts 457:4	475:14	484:21	suggests
465:13	sound 434:7	stand	states	470:9
465:21	sounds	432:22	468:2	Suite
466:3	461:8	481:10	stay 450:24	500:21
466:15	470:6	481:11	472:2	sum 454:12
466:21	source	standard	491:15	459:20
467:23	461:10	443:23	step 448:18	summaries
469:12	speak 453:6	443:25	stop 449:10	433:25
469:13	464:18	456:11	474:17	summarize
469:19	speaking	456:14	489:20	436:10
470:3	455:21	469:7	490:23	436:19
470:13	speaks	469:11	stream	450:4
470:22	480:8	469:15	490:23	summary
470:25	special	470:3	491:10	450:15
471:7	451:10	470:18	491:18	supervision
471:10	specific	470:20	Street	500:10
474:23	445:2	470:21	430:18	500:11
475:15	445:16	471:9	strictly	support
478:24	473:25	standards	442:22	434:17
479:19	specifically	448:23	strike	supports
487:13	444:13	465:16	475:20	437:11
socioecon...	490:5	486:25	476:13	476:13
434:25	specify	standpoint	481:18	suppose
somebody	445:15	445:23	482:17	470:19

supposed	482:15	431:6	tentatively	476:15
484:11	488:8	444:4	491:20	476:18
484:16	488:12	453:7	term 470:21	477:21
485:1	489:16	453:11	terms	478:5
485:3	takes	453:16	445:15	479:16
sure 435:14	437:13	453:17	451:4	480:2
436:11	437:14	454:19	451:18	483:22
437:1	478:11	464:5	478:21	483:24
438:25	talk 444:15	465:16	testified	484:2
441:14	446:7	465:17	432:7	484:7
441:14	446:17	467:13	458:20	484:10
444:18	446:18	467:25	460:11	485:2
447:7	447:22	476:19	461:2	485:3
449:15	448:5	476:20	471:14	486:14
450:6	449:13	479:18	477:12	488:18
450:14	450:1	480:11	testifying	488:25
452:23	talked	487:5	442:14	489:2
466:6	447:25	487:9	453:7	489:3
468:23	473:23	488:20	456:18	490:14
486:2	474:7	488:22	483:20	Texas
487:5	talking	TCEQ's	testimony	430:18
Surface	438:1	444:14	432:12	431:7
448:23	438:19	449:17	432:18	444:3
surprised	443:11	457:22	432:21	448:23
437:17	445:3	458:1	433:6	464:4
437:18	447:8	464:22	433:22	500:2
437:19	447:9	tearing	433:24	500:5
437:19	454:12	442:5	435:13	500:21
surrounding	455:24	technical	436:13	thank 432:2
437:11	455:25	445:23	436:18	432:4
suspicion	457:16	447:19	438:21	436:5
474:6	457:18	454:13	449:18	436:25
sustain	459:8	457:18	449:21	438:17
459:6	473:13	480:25	450:2	440:11
468:18	talks	tell 443:9	450:7	440:14
sustaining	439:13	445:9	452:12	440:15
471:22	470:24	445:10	452:18	440:18
switching	Tatu 433:16	450:13	453:3	440:20
448:4	433:18	453:10	453:21	446:20
sworn 432:1	435:2	471:5	453:25	447:4
432:7	436:5	476:9	459:21	463:2
System	440:12	476:11	462:3	463:6
431:8	450:18	telling	463:7	463:9
	467:4	453:17	464:11	463:18
T	467:5	ten 437:22	464:24	466:25
	478:13	476:4	469:6	467:5
tabs 443:11	478:15	489:17	472:1	467:8
take 457:9	486:20	489:22	475:20	468:21
462:16	489:7	ten-minute	475:23	471:25
478:19	489:11	489:16	475:23	472:5
479:3	TCEQ 430:2	tends 451:9	476:3	473:9

475:4	439:3	467:12	449:22	435:15
478:25	440:4	472:20	459:21	443:2
479:2	440:4	478:23	top 444:21	445:5
486:9	442:4	486:16	473:12	446:10
487:1	442:24	till 476:4	total	447:14
489:5	443:24	Tim 481:14	454:12	450:13
489:6	444:25	484:14	459:20	451:15
489:11	446:22	time 437:25	totally	456:2
489:15	447:25	438:1	486:18	456:22
492:2	448:7	441:7	tourism	459:1
492:10	449:20	441:18	442:8	459:14
Thanks	450:14	442:4	460:14	459:20
440:19	455:7	442:5	461:10	462:8
471:24	455:12	445:14	461:22	462:12
478:15	456:5	445:19	TPDES 430:4	turn 442:25
thing	456:12	449:8	transcrip...	472:22
437:25	456:13	450:11	500:13	491:17
438:10	459:1	450:20	transfer	492:6
439:6	459:6	472:1	481:13	turning
444:7	460:17	473:18	transition	473:22
445:25	460:24	478:12	481:13	two 440:4
446:6	460:24	478:18	treat	443:10
450:23	461:15	478:20	479:17	475:25
451:6	462:2	481:9	treatment	484:18
456:4	463:16	481:19	434:23	484:20
456:25	463:22	482:1	435:22	two-headed
462:12	470:22	482:9	436:1	482:7
471:5	470:24	482:11	445:21	type 444:7
489:18	471:17	482:23	450:11	445:25
things	474:8	483:11	457:10	446:6
434:17	475:25	484:8	458:17	450:22
435:18	476:12	484:23	479:13	451:5
437:13	482:19	485:18	trick	458:2
437:13	484:19	489:5	456:22	462:21
438:8	486:20	timely	tried 482:4	464:19
444:6	492:3	450:23	triggered	476:24
444:24	thinking	451:17	480:23	486:14
454:13	444:1	453:14	trouble	486:22
457:11	third	457:1	482:4	types
457:12	433:24	457:10	true 442:17	442:22
461:3	thought	457:20	444:12	450:25
461:24	448:15	458:8	482:2	456:3
462:11	449:19	458:9	500:12	462:17
468:4	451:4	471:4	truth-test	typewritten
468:5	thresholds	times	484:25	500:11
472:4	455:9	453:20	try 446:17	typically
473:25	Tier 454:5	Title 444:2	450:4	483:21
474:1	454:14	today	457:12	
think	459:2	431:10	484:2	U
435:10	464:9	431:15	484:13	
436:12	464:10	432:22	trying	Uh-huh

452:18	456:12	wants 491:2	462:17	478:22
468:7	470:21	491:16	469:5	483:15
ultimate	471:9	492:7	473:13	484:15
465:8	477:9	wasted	480:15	wonder
466:11	484:16	484:3	484:8	448:16
unavailable	486:23	wastewater	484:23	word 471:19
474:4	uses 453:16	434:10	485:18	wording
underlying		434:23	Wednesday	471:20
439:9	V	435:22	430:10	work 435:24
understand		436:1	430:15	439:5
446:11	values	445:21	431:2	439:20
447:12	477:13	450:10	welcome	439:24
453:15	various	451:17	492:8	441:21
456:23	460:19	456:20	well-being	441:23
459:13	Victoria	456:21	460:13	442:3
463:4	475:11	457:10	went 484:24	442:3
464:11	video	458:17	West 430:18	442:9
464:17	489:20	459:24	WHEREOF	457:11
464:20	Videoconf...	461:3	500:14	461:20
466:11	430:11	464:18	Whitestone	476:11
466:19	virtually	464:21	500:20	481:23
471:14	438:20	water	William	491:14
485:15	Volume	442:19	430:17	worked
490:20	430:25	442:20	WILLIAMSON	442:2
understan...	vu 438:5	446:4	500:3	442:10
442:14		448:23	wishes	462:10
461:23	W	455:8	433:6	workers
470:8		455:11	witness	439:18
470:9	Wait 462:1	455:18	431:18	439:19
471:18	waiting	455:24	431:22	440:9
472:13	481:9	456:3	432:1	workforce
understood	want 439:18	458:13	433:13	438:21
480:4	439:19	459:24	435:5	439:10
482:3	440:8	464:19	435:7	working
485:12	442:13	467:15	435:9	438:23
undue	442:15	467:16	435:14	439:22
485:21	444:15	470:5	440:13	440:2
485:23	446:7	474:4	440:14	469:5
487:4	450:5	474:22	440:18	world 483:5
unduly	456:17	474:24	440:20	484:13
458:19	468:24	479:14	446:21	Worth
471:12	469:4	480:13	447:7	437:21
unequivocal	470:23	481:2	460:21	437:23
484:21	471:1	486:24	462:4	438:3
unfilled	471:19	way 439:22	463:8	WQ0015821001
439:13	486:3	444:7	463:9	430:5
Unfortuna...	486:11	451:8	465:15	431:9
441:9	489:10	466:1	467:2	written
unusual	489:18	473:25	472:5	459:21
483:19	490:11	483:11	500:14	wrong 448:9
use 443:21	490:20	we've	witnesses	450:5

454:2	Z	464:9	465:17	433:1
465:10		464:10	480:17	442:24
466:10	Zoom 430:11	467:12	35 436:17	443:13
Y	zoomed	472:20	3rd 487:25	449:13
	448:5	478:23		802 432:14
y'all	0	479:6	4	433:1
		486:16	4 455:16	803 432:14
	491:21	4 483:6	433:1	804 432:15
446:17	00002 473:5	20 451:6	40 437:18	433:1
448:3	0722 473:5	460:2	430 430:25	434:5
448:21	1	2012 448:24	45.3 434:1	436:7
459:1		2019 451:14	4642 500:18	805 432:15
459:12	1 455:15	2020 451:14	493 492:12	433:2
474:10	456:13	2021-1001...	499 492:12	433:3
475:1	1/31/24	430:2	4th 476:5	433:10
475:5	500:18	431:6	476:16	433:11
475:7	10 439:13	2022 430:10	476:17	80s 438:6
485:15	10:07 472:9	430:15	477:8	9
Yeah 435:15	10:30	431:2	477:15	
448:17	472:11	431:10	477:19	9 430:10
454:3	10:33 472:9	479:7	487:22	431:2
459:11	10:58	479:23		431:10
463:13	489:23	500:15	5	9:00 430:14
473:8	100 442:17	2025 436:8	500 430:25	431:3
year 441:18	444:6	436:20	512.474.2233	9:21 447:17
441:19	500:20	436:21	500:22	9:24 447:17
451:4	10th 500:15	451:2	582-22-0585	90s 438:7
years	11:00	2026 451:11	430:1	9th 430:15
434:19	489:18	2040 434:3	431:6	
434:19	11:11	434:10	597 434:2	
434:19	489:23	451:7		
435:21	11:15	2041 451:11	7	
437:18	492:11	24 483:24	70,000-foot	
437:23	13 436:22	25 460:2	450:14	
441:4	436:23	479:7	78613	
442:3	148 500:21	479:23	500:21	
451:6	15th 430:18	25th 482:25	7th 491:22	
457:14	16 453:25	276 500:19		
460:3	179 436:24	28 437:22		
yellow	18 437:23			
454:1	18th 483:1	3		
yesterday	491:22	3 430:25	8	
431:14	194 473:23	30 444:2	800 432:13	
482:24		464:4	432:17	
YouTube		300 430:18	432:20	
489:21	2	307.5	433:1	
490:23	2 454:5	444:13	433:3	
491:10	454:14	464:4	433:10	
491:18	456:13	473:13	433:11	
	459:2	307.5(b)(2)	801 432:14	