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DEPARTMENT OF  
WATER RESOURCES

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

|                |   |                                                     |
|----------------|---|-----------------------------------------------------|
| In Re SRBA     | ) | Subcase Nos. 63-02529, 63-03163, 63-03274, 63-03323 |
|                | ) | 63-03324, 63-09109, & 63-10435                      |
|                | ) |                                                     |
| Case No. 39576 | ) | RENEWED MOTION TO SEVER SUBCASE NOS.                |
|                | ) | 63-03163 AND 63-03274 FROM CONSOLIDATED             |
|                | ) | PROCEEDING AND REQUEST FOR EXPEDITED                |
|                | ) | CONSIDERATION                                       |
|                | ) |                                                     |

COMES NOW the State of Idaho (hereinafter the "State"), by and through the undersigned deputy attorney general, and renews its motion to sever subcase nos. 63-03163 and 63-03274 from the consolidated proceeding involving subcase nos. 63-02529, 63-03323, 63-03324, 63-09109, and 63-10435 and in accordance with Rule 6(f) of AO1 requests expedited consideration of this motion. The grounds for this motion are as follows:

COPY

1. The district court entered its *Summary Judgment Scheduling Order* on November 3, 2008. The district court set the date of February 16, 2009 for the completion of all Summary Judgment Discovery Served and Responses Completed.

2. The State served discovery on Claimant DBSI TIEGS 979 LLC (hereinafter "DBSI Tieg") on October 20, 2008. This discovery was answered untimely on February 3, 2009.

3. The State filed its *Notice of I.R.C.P. 30(B)(6) Deposition Duces Tecum of DBSI Tieg 979 LLC* ("Deposition Notice") on January 15, 2009, which set the date of February 17, 2009 at 9:00 a.m. for the deposition. The Deposition Notice stated:

In accordance with I.R.C.P. 30(b)(6), DBSI Tieg 979 LLC has a duty to designate one or more knowledgeable representatives to testify on its behalf at this deposition. Specifically, examination is requested on the use of water under water right nos. 63-03163 & 63-03274, the pumps and motors used in the diversion of water, the water delivery system from the well to the field, the beneficial use made of the water, the periods of time when diversions of water occur, the cropping pattern, and the power records evidencing the diversion of water.

Deposition Notice at 2.

4. The State convened the deposition of claimant DBSI Tieg on February 17, 2009, at 9:00 a.m. Counsel for DBSI Tieg made clear during the deposition that the DBSI Tieg representative was not knowledgeable on the water rights and that DBSI Tieg would stipulate to a continuance as follows:

MR. LAWRENCE: And I note—if I can jump in real quick. Pardon me. I know we had this discussion off the record, so I just wanted to get it on the record that we had the substitution of 30(b)(6) representative.

And so that's when it comes to the water rights issues, he's not as educated now as he probably should be, but we're willing to, you know, stipulate to a continuance if that's what the State desires. But I know we talked about that before. I just wanted to state it for the record, as far as deposition preparation goes.

Rule 30(B)(6) Deposition of DBSI Tieg LLC, Testimony of Wayne S. Forrey, ("DBSI Tieg Depo Transcript"). Tr Vol. I, p. 35, L. 25- p. 36, L. 11. A copy of the DBSI Tieg Depo Transcript, without deposition exhibits, is attached as Exhibit 1.

5. The representative of DBSI Tiegs was not able to answer many questions about the subject areas of examination described in the Deposition Notice. A few examples suffice:

Q. Okay. So with respect to the well that is the water source for water right No. 63-3163, have you actually seen the well?

A. I have not.

Q. You haven't?

A. No.

Q. Okay. Have you seen the well for water right No. 63-3274?

A. No.

Q. Okay. So if I ask you whether in fact the well discharges into a ditch, would you have any way of answering that question based on personal knowledge?

A. **I would not.**

Q. Okay. If I asked you whether in fact the wells from either one of these water rights discharges into a pipe for distribution to a sprinkler system, would you be able to tell me from your own personal knowledge?

A. **I would not.**

Tr Vol. I, p. 43, L. 3 through L. 22. (Emphasis added).

Q. Let's go to water right No. 63-3163. Do you know what crops have been grown at the place of use for that water right?

A. **I do not.**

Q. Okay. With respect to water right No. 63-3274, do you know what crops were grown at that place of use?

A. **I do not.**

Tr Vol. I, p. 49, L. 22 through p. 50, L. 4. (Emphasis added.)

Q. Okay. Okay. Do you know when in the farming operation for either one of these water rights when the operator begins farming?

A. **I do not know that.**

Q. Okay. Do you know when the farming operator ceases farming operations in the fall?

A. **I do not know that either.**

Tr Vol. I, p. 55, L. 8 through L. 15. (Emphasis added.)

6. On February 25, 2009, the State received an e-mail from Dylan Lawrence, which stated: "I apologize for the short notice, but I have just been informed and instructed that Moffatt Thomas will be withdrawing as counsel of record for all DBSI-related entities in the SRBA,

including DBSI Tiegs 979, LLC. . . . Because Moffatt Thomas was counsel of record for DBSI Tiegs when that deposition was noticed up, please vacate it.” A true and correct copy of this e-mail is attached as Exhibit 2.

7. The present summary judgment schedule does not provide the flexibility to provide an extension of time for completion of this discovery. The inability of the State to complete this discovery prejudices its completion of briefing regarding summary judgment motions that are due on March 12, 2009.

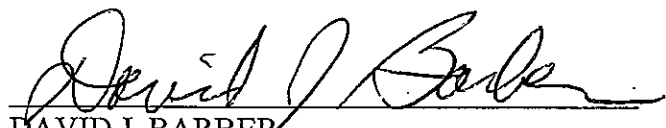
8. The reasonable solution is to sever these two subcases from the consolidated proceeding and to establish a separate schedule to accommodate the uncertainties presented by the bankruptcy of associated businesses and the withdrawal of counsel of record for DBSI Tiegs.

9. The State requests oral argument and an expedited hearing on this motion. Because of the nature of the present matter, the State has not served this *Renewed Motion to Sever Subcase Nos. 63-03163 and 63-03274 from Consolidated Proceeding and Request for Expedited Consideration* on the district court’s Expedited Mailing List. If the district court desires such service, it will promptly do so.

DATED this 26<sup>th</sup> day of February 2009.

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

CLIVE J. STRONG  
DEPUTY ATTORNEY GENERAL  
STATE OF IDAHO

  
DAVID J. BARBER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 26<sup>th</sup> day of February 2009, I caused to be served the original and/or copy of this RENEWED MOTION TO SEVER SUBCASE NOS. 63-03163 AND 63-03274 FROM CONSOLIDATED PROCEEDING AND REQUEST FOR EXPEDITED CONSIDERATION on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

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2. Copies to the following persons:

Jerry L. Tlucek and Mary Lou Tlucek  
Rebekah Tlucek, Kevin Tlucek, Shelley Tlucek  
& Byron Tlucek  
Pioneer Irrigation District  
c/o Scott L. Campbell & Dylan B. Lawrence  
Moffat Thomas Barrett Rock & Fields, CHTD.  
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Boise, Idaho 83701-0829

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1550 S. Tech. Lane  
Meridian, ID 83642

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Boise, ID 83724

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Chief of Natural Resource Division  
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P.O. Box 44449  
Boise, Idaho 83711-4449

Not Applicable

  
\_\_\_\_\_  
DAVID J. BARBER  
Deputy Attorney General



COPY

;

) Subcase Nos. 63-02529,  
 ) 63-03163, 63-03274, 63-03323,  
 ) 63-03324, 63-09109, and  
 ) 63-10435

RULE 30(B)(6) DEPOSITION OF DBSI TIEGS 979 LLC

FEBRUARY 17, 2009

JEFF LaMAR, C.S.R. No. 640

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA )  
 ) Subcase Nos. 63-02529,  
 ) 63-03163, 63-03274, 63-03323,  
Case No. 39576 ) 63-03324, 63-09109, and  
 ) 63-10435

## VOLUME I

RULE 30(B) (6) DEPOSITION OF DBSI TIEGS 979 LLC  
TESTIMONY OF WAYNE S. FORREY  
FEBRUARY 17, 2009

REPORTED BY:  
JEFF LaMAR, C.S.R. No. 640  
Notary Public

## INDEX

|                                          | PAGE |
|------------------------------------------|------|
| TESTIMONY OF WAYNE S. FORREY             |      |
| Examination by Mr. Barber                | 5    |
| EXHIBITS                                 |      |
| 1 - Aerial photograph of water right     | 38   |
| 63-3163, no Bates number                 |      |
| 2 - Aerial photograph of water right     | 38   |
| 63-3274, no Bates number                 |      |
| 3 - Photograph, Bates No. DBSI000069     | 44   |
| 4 - Photograph, Bates No. DBSI000070     | 44   |
| 5 - Photograph, Bates No. DBSI000071     | 44   |
| 6 - Photograph, Bates No. DBSI000072     | 44   |
| 7 - Photograph, Bates No. DBSI000073     | 44   |
| 8 - Photograph, Bates No. DBSI000074     | 44   |
| 9 - Photograph, Bates No. DBSI000075     | 44   |
| 10 - Power records, Bates                | 50   |
| Nos. DBSI000053-000060                   |      |
| 11 - Power records, Bates                | 55   |
| Nos. DBSI000061-000068                   |      |
| 12 - License and Certificate of Water    | 56   |
| Right, dated 07/31/1959, no Bates number |      |
| 13 - License and Certificate of Water    | 56   |
| Right, dated 02/14/1962, no Bates number |      |

1 THE RULE 30(B)(6) DEPOSITION OF DBSI  
2 TIEGS 979 LLC, TESTIMONY OF WAYNE S. FORREY, was  
3 taken on behalf of the State of Idaho at the  
4 offices of the Attorney General of the State of  
5 Idaho, 700 West State Street, Second Floor, Boise,  
6 Idaho, commencing at 9:46 a.m. on February 17,  
7 2009, before Jeff LaMar, Certified Shorthand  
8 Reporter and Notary Public within and for the  
9 State of Idaho, in the above-entitled matter.

## APPEARANCES:

10  
11 For State of Idaho:  
12 OFFICE OF ATTORNEY GENERAL  
13 BY MR. DAVID J. BARBER  
14 700 West State Street, 2nd Floor  
15 P.O. Box 83720  
16 Boise, Idaho 83720-0010  
17 For DBSI TiegS 979 LLC:  
18 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS,  
19 CHARTERED  
20 BY MR. DYLAN LAWRENCE  
21 101 South Capitol Boulevard, 10th Floor  
22 Post Office Box 829  
23 Boise, Idaho 83701  
24  
25

## INDEX (Continued)

|                                         | PAGE |
|-----------------------------------------|------|
| EXHIBITS                                |      |
| 14 - Recommended Water Rights Acquired  | 56   |
| Under State Law, water right            |      |
| No. 63-3163, no Bates number            |      |
| 15 - Recommended Water Rights Acquired  | 56   |
| Under State Law, water right            |      |
| No. 63-3274, no Bates number            |      |
| 16 - Standard Form 1 Objection, Subcase | 57   |
| No. 63-03163, no Bates numbers          |      |
| 17 - Standard Form 1 Objection, Subcase | 57   |
| No. 63-03274, no Bates numbers          |      |
| 18 - DBSI TiegS 979, LLC's Responses to | 57   |
| State of Idaho's First Set of Discovery |      |
| Requests, no Bates numbers              |      |

1 WAYNE S. FORREY,  
2 first duly sworn to tell the truth relating to  
3 said cause, testified as follows:  
4

5 EXAMINATION

6 BY MR. BARBER:

7 Q. All right. Could you please state  
8 your name and spell your last for the record.

9 A. Yes, sir. My name is Wayne S. Forrey.  
10 My last name is spelled F-o-r-r-e-y.

11 Q. Okay. I have some instructions for  
12 you, sir. This deposition's not intended to be a  
13 marathon. If during the depo you need to take a  
14 break for the restroom or for another reason,  
15 please so indicate, and I will certainly  
16 accommodate reasonable requests.

17 If you do not understand a question,  
18 please ask me to rephrase it. I'm not trying to  
19 trick you. I simply want to record your best  
20 answers to my questions.

21 You need to make audible answers to my  
22 questions. Nods of the head are difficult for the  
23 court reporter to include in the record.

24 Do you understand these instructions,  
25 sir?

1 A. I do.

2 Q. Okay. And since we're starting a  
3 little late, I think it will be appropriate for  
4 you to explain -- essentially we're starting at  
5 about 9:45, approximately.

6 What caused your delay this morning,  
7 sir?

8 A. I didn't know when the deposition was  
9 scheduled.

10 So when was it supposed to start?

11 Q. Supposed to start at nine o'clock.

12 A. Oh, okay. A late telephone call  
13 caused my lateness.

14 Q. Okay. Okay. Is there any other  
15 reason -- where did you have to drive from?

16 A. Southwest Boise.

17 Q. I see. Okay. Have you ever been  
18 deposed before?

19 A. I have.

20 Q. What were the circumstances?

21 A. Land-use litigation.

22 Q. When was that?

23 A. First in 1986. Secondly in probably  
24 1998. Again in 2002. And again in 2005.

25 Q. Okay. In 1986 what were the

1 circumstances under which the deposition was  
2 taken?

3 A. It was a federal bankruptcy court.  
4 And I was called as an expert witness by the Court  
5 to testify regarding economic conditions in Twin  
6 Falls, Idaho.

7 Q. Okay. And so you were called by the  
8 Court itself?

9 A. Yes.

10 Q. Okay. And you said you were deposed  
11 in 1998.

12 What were the -- what kind of case was  
13 that?

14 A. Ada County Highway District, again  
15 called as an expert witness to testify to land  
16 values and damages as a result of right-of-way  
17 expansion.

18 Q. Okay. 2002, what was -- what kind of  
19 case was that?

20 A. Same, ACHD right-of-way acquisition  
21 damages to property as a result of right-of-way  
22 expansion.

23 Q. In the 1998 matter, what side were you  
24 called by?

25 A. The defendant, which was ACHD, the

1 government.

2 Q. Okay.

3 A. There was a -- the plaintiff was a  
4 private party not in favor of the right-of-way  
5 expansion.

6 Q. Okay. And in 2002, who called you?

7 A. ACHD, again, a public agency. Ada  
8 County Highway District.

9 Q. And the other side, what kind of party  
10 were they?

11 A. Private parties that were unhappy with  
12 the right-of-way expansion in front of their  
13 property.

14 Q. Okay. 2005, what kind of case was  
15 that?

16 A. That was both ACHD and ITD, State of  
17 Idaho, Idaho Transportation Department. Same  
18 situation, expert witness to provide testimony  
19 about land values and impacts of transportation on  
20 adjoining property.

21 Q. And who called you with respect to  
22 that matter in 2005?

23 A. Well, if I could ask for a  
24 clarification?

25 Q. Sure.

1 A. I was -- I was actually employed by a  
 2 law firm, but their client was ACHD and ITD.  
 3 Q. That's fine.  
 4 A. Okay.  
 5 Q. What client employed you, if that  
 6 makes you feel more comfortable?  
 7 A. Kim Gourley, local attorney here in  
 8 Boise. His client was ITD and ACHD.  
 9 Q. I see. Okay. From where did you  
 10 graduate from high school?  
 11 A. Twin Falls.  
 12 Q. Okay. And when was that?  
 13 A. 1972.  
 14 Q. What education do you have after high  
 15 school?  
 16 A. Bachelor's of science in urban  
 17 planning.  
 18 Q. And what university awarded that  
 19 degree?  
 20 A. Brigham Young University.  
 21 Q. And when was that awarded?  
 22 A. 1982.  
 23 Q. Any other degrees, sir?  
 24 A. I'm presently in a master's degree  
 25 program.

1 Q. What university?  
 2 A. Colorado Theological Seminary,  
 3 master's degree of Biblical studies.  
 4 Q. And do you have an expected completion  
 5 date for that degree?  
 6 A. I do. It would be March of 2010.  
 7 Q. Okay. With respect to your bachelor  
 8 of science in urban planning, did you have any  
 9 courses in botany?  
 10 A. Yes.  
 11 Q. How many courses, sir?  
 12 A. I would say one. It was a botany and  
 13 range science, actually.  
 14 Q. Would it be fair to characterize that  
 15 as an introductory course to those subject areas?  
 16 A. Yes, it would.  
 17 Q. Okay. Do you -- did you have any  
 18 classes in taxonomy with respect to plants?  
 19 A. No, sir.  
 20 Q. What about zoology courses?  
 21 A. No, sir.  
 22 Q. What about biology courses in your --  
 23 A. Yes, I did.  
 24 Q. And what biology courses?  
 25 A. Two levels of biology. I would

1 suspect 101 and 102.  
 2 Q. Okay. I don't know what those refer  
 3 to..  
 4 Is 101 an introductory course?  
 5 A. Yes. Yes.  
 6 Q. And what would -- how would you  
 7 characterize 102?  
 8 A. A continuation to meet the minimum  
 9 graduation requirement.  
 10 Q. Okay. Did you have -- ever have any  
 11 classes in soil science?  
 12 A. No.  
 13 Q. Okay. What about any classes in  
 14 agronomy?  
 15 A. No.  
 16 Q. I want to make sure I understand the  
 17 scope of your expertise. You evidently had a  
 18 class that involved range science.  
 19 A. Uh-huh.  
 20 Q. If you went out into an uncultivated  
 21 area in Ada County or Canyon County, would you be  
 22 able to identify the range plants that you found  
 23 on the site?  
 24 A. Not from that class.  
 25 Q. Okay.

1 A. Growing up in Twin Falls and having  
 2 farm friends and being around farmers, I think I  
 3 could pick out a few plants. But it wouldn't have  
 4 come from my botany class.  
 5 Q. Okay.  
 6 A. So it would have been just my natural  
 7 experience --  
 8 Q. And that was --  
 9 A. -- of living in the Treasure Valley.  
 10 Q. And that was primarily prior to  
 11 graduation from high school?  
 12 A. And since, because of my land planning  
 13 work, working with farmers. So it would have been  
 14 after college.  
 15 Q. Okay. Your land planning work, I  
 16 guess we need to go in and explore that a little  
 17 bit.  
 18 A. Uh-huh.  
 19 Q. So you graduated from high school in  
 20 1972. And then I believe you said you had a  
 21 degree in 1982 from BYU. That's a period of about  
 22 ten years.  
 23 A. Uh-huh.  
 24 Q. Beginning immediately after graduation  
 25 from high school, can you explain to me what you

1 did?

2 A. Certainly. I started right after high  
3 school in Ricks College.

4 Q. Okay.

5 A. Then I transferred a year later to the  
6 University of Utah. Spent a year at the  
7 University of Utah. Then transferred to BYU. And  
8 then there was a death in my family.

9 Q. Uh-huh.

10 A. And I had no financial support.

11 Q. Okay.

12 A. I needed to support my family so I  
13 left school, worked for a period of time, and  
14 completed my degree by correspondence with the  
15 university.

16 Q. So essentially how many credits did  
17 you have at the point in time when you left  
18 school?

19 A. I think it was in the magnitude of 12  
20 or 13 credits short of graduation.

21 Q. I see. And so what classes did you  
22 take by correspondence, the subject areas?

23 A. I took an extra religion class. I  
24 took an extra physical education class. I took  
25 some English, technical writing class. I took a

Page 14

1 psychology class. And I had a special projects  
2 class that a professor had arranged in research.  
3 So I actually did some research on local land-use  
4 planning acts around the nation, different various  
5 states.

6 Q. Okay.

7 A. Focused on Hawaii's LUPA, it's called.  
8 Land-Use Planning Act. I focused on Michigan's,  
9 new Jersey, and a little bit on Idaho.

10 Q. So --

11 A. It was a special assignment to create,  
12 because I needed a special class.

13 Q. Okay. So you had this research  
14 project on land-use planning --

15 A. Uh-huh.

16 Q. And you've identified a series of  
17 states --

18 A. Uh-huh.

19 Q. -- where you reviewed their statutes.

20 A. Uh-huh.

21 Q. So what was the product of this  
22 research project?

23 A. To compare and contrast how each state  
24 approached zoning and subdivision controls, bulk  
25 and density controls, which states seemed to have

1 more lenient land-use laws, which states had the  
2 more strict, prepare a research paper and submit  
3 that to the professor for credit.

4 Q. I see. So after you received your  
5 degree in 1982, what did you do then?

6 A. I actually -- when I left Brigham  
7 Young University, that was late 1977, and I joined  
8 the firm of J-U-B Engineers here in Boise. And so  
9 from beginning of 1978 onward, I've been employed  
10 here in the Treasure Valley. And I had a ten-year  
11 career with J-U-B.

12 So while I was working at J-U-B  
13 Engineers, I completed those correspondence  
14 courses, and then received the degree in 1982.

15 Q. Okay. So what were you doing for  
16 J-U-B Engineers?

17 A. Land planning, subdivision master  
18 planning, entitlement work, and also special  
19 engineering and planning studies, transportation  
20 studies, water and sewer, funding requests with  
21 the government agencies.

22 Q. Okay.

23 A. Civil engineering and civil planning  
24 would be the broad category of that work.

25 Q. And the civil engineering work that

Page 16

1 you were doing, what education classes did you  
2 have that made you familiar with this area?

3 A. I had taken several engineering  
4 courses: One at University of Utah, several at  
5 BYU, and also some special courses by  
6 correspondence at University of Washington.

7 Q. I see. So the engineering classes --  
8 let's go to the University of Utah.

9 A. Uh-huh.

10 Q. What kind of engineering class was it?

11 A. Materials, engineering materials:  
12 concrete, steel, wood, stone, plastics.

13 Q. Okay. So when you say materials with  
14 respect to concrete, you were analyzing, for  
15 example, the compressive strength?

16 A. Uh-huh. Slump, mixtures, moisture  
17 content, permeability, brittleness, tension,  
18 post-tension, all of those kind of factors in  
19 concrete.

20 Q. Okay. So did you ever get any type of  
21 degree in engineering?

22 A. No. No. I did receive a certificate,  
23 though, from the University of Washington for  
24 transportation engineering.

25 Q. And what does that certificate in

1 transportation engineering mean?

2 A. It means I was qualified at that time  
3 to conduct transportation studies.

4 Q. Okay. So when you say you conduct a  
5 transportation study, explain to me what's  
6 involved with that.

7 A. Analyzing what -- what a certain  
8 development would generate from a traffic  
9 standpoint. And that takes some analysis.

10 From this building, for example, at  
11 midnight, this building would not generate much  
12 traffic. But at eight o'clock in the morning, it  
13 would. It would not only attract, but there would  
14 be people leaving. So you have a coming and a  
15 going effort.

16 And you analyze that, given all of the  
17 factors that comprise that traffic pattern. And  
18 then you analyze where that traffic goes. And so  
19 you'd know then what the impact on the system  
20 would be, on the street system.

21 Q. Okay. So how do you analyze where the  
22 traffic goes? Is that an interview process with  
23 people in the building?

24 A. Go through what's called an O&D  
25 analysis, origin and destination. In the case of

1 this building, if I can just editorialize a little  
2 bit, most of the outgoing would be to other State  
3 buildings or perhaps to the airport or to a hotel  
4 for a meeting, a convention center. So those are  
5 your destinations. This is the origin point.

6 Probably not too many employees here  
7 would be going to a liquor store, a strip club, a  
8 7-Eleven.

9 Q. We hope not.

10 A. So you'd use those kind of factors to  
11 say this origin is going to go to that  
12 destination, and how do you get there and what  
13 street would they most likely use. And that's the  
14 analysis.

15 Q. I see. Okay. So I believe you  
16 indicated that you had had these engineering  
17 courses at the University of Utah.

18 And if I recall your testimony  
19 correctly, you said that was a materials course?

20 A. Correct.

21 Q. Were there any other courses in  
22 engineering at the University of Utah?

23 A. No, just that one.

24 Q. Just one course. Would it be fair to  
25 characterize that as an introductory course in

1 materials?

2 A. Yes.

3 Q. Okay. Now, with respect to the  
4 training that you received from the University of  
5 Washington by correspondence --

6 A. Uh-huh.

7 Q. -- how many courses was that?

8 A. Two.

9 Q. Okay. And the subject area of the  
10 first course?

11 A. It was called Traffic Analysis I.

12 Q. Okay. And the subject of the second  
13 course?

14 A. Traffic Analysis II.

15 Q. Okay.

16 A. More in-depth analysis procedure.

17 Q. Okay. Then I also understand -- I  
18 believe I recall that you said that you had some  
19 engineering courses at BYU?

20 A. Correct.

21 Q. Can you tell me what those engineering  
22 courses were?

23 A. Yes. Statics and mechanics. Those  
24 are entry-level engineering courses. Again, talk  
25 about physical forces on materials, wood, fiber,

1 and concrete, steel. And it's the mathematical  
2 application of formulas in the practice of  
3 engineering, civil engineering.

4 Q. Okay. So let's -- let me see if I can  
5 put it in layman's terms.

6 Statics would look at the forces  
7 exerted on a support for a bridge?

8 A. Yes.

9 Q. Okay. And the second course -- I'm a  
10 little hard of hearing -- what was the subject of  
11 the second course?

12 A. Mechanics. Excuse me.

13 Q. Now, mechanics, go over in a little  
14 more detail, explain what that subject area  
15 involved?

16 A. The movement of the material. After  
17 it gets a force applied to it, what does it do.

18 Q. Okay. So your period of time at J-U-B  
19 Engineers was approximately from 1977 to 1987; is  
20 that about right?

21 A. Late 1986. So just about ten years.

22 Q. Okay. And a summary of that work  
23 would be essentially urban planning and traffic  
24 analysis from subdivisions?

25 A. My traffic analysis was a minor part.

1 Primarily municipal.

2 MR. BARBER: Let's just stop for a second.

3 (Telephonic interruption.)

4 Q. (BY MR. BARBER): We were describing  
5 in a little more detail what you were doing with  
6 J-U-B Engineers.

7 A. Yes.

8 Q. And you explained to me, I believe,  
9 that traffic analysis was only a small part of  
10 your work.

11 Explain to me what the rest of your  
12 work at J-U-B Engineers was.

13 A. We could characterize it accurately in  
14 two words: municipal planning. So I worked with  
15 over 20 cities here in Idaho as their city  
16 engineer representing J-U-B. So I helped  
17 master-plan water systems, sewer systems,  
18 community development master plans, growth  
19 studies, economic analysis, some parking studies,  
20 a few traffic analysis along the way. But more  
21 general technical support to small cities in Idaho  
22 as a representative of J-U-B.

23 Q. Okay. So what part of your education  
24 provided you the ability to do essentially a water  
25 study?

1 A. I never represented I had that  
2 ability.

3 Q. Well, I thought you just said water  
4 studies in your analysis as to what you were doing  
5 for the cities. I misunderstood you.

6 A. Okay. So I guess define "water  
7 study"? Is that the question? Municipal drinking  
8 water study, the placement of pipes, the expansion  
9 of the system, the cost to expand systems, the  
10 permits to expand systems or obtain new drinking  
11 water sources. The funding that it would take to  
12 raise rates from the rate payors. That's the work  
13 that I did with J-U-B for our clients.

14 Q. Okay. And so were you sizing the size  
15 of the water pipes, the water mains, et cetera?  
16 Was that part of it?

17 A. Our firm was. I was the  
18 representative in front of the City Council with  
19 the engineering team behind me giving support. So  
20 I was essentially the spokesperson helping the  
21 city, our client, get federal funds or state funds  
22 to expand their water system.

23 Q. So the technical work with respect to  
24 sizing the pipes, everything else for that  
25 municipal water supply, was performed by other

1 persons that were assisting you at J-U-B  
2 Engineers?

3 A. Yes, that's correct.

4 Q. Okay. I believe you said that you  
5 left J-U-B Engineers in late 1986?

6 A. Correct.

7 Q. What did you do then?

8 A. I was appointed by Governor Andrus and  
9 Jim Hawkins in the Idaho Department of Commerce.  
10 I was the administrator of community development,  
11 responsible for all HUD funds coming into the  
12 State of Idaho. And I worked on the second floor  
13 of the Hall of Mirrors. Just as you get off the  
14 elevator, I went left instead of right.

15 Q. Okay.

16 A. For two years I directed all of the  
17 HUD funds coming into the State of Idaho,  
18 community development block grants.

19 Q. So when did you leave the Department  
20 of Commerce?

21 A. Late 1988, essentially January 1 of  
22 '89.

23 Q. Would it be fair to characterize your  
24 work at the Department of Commerce, the Idaho  
25 Department of Commerce, as largely an

1 administrative position?

2 A. Yes.

3 Q. Okay. Okay. After 1988 and your  
4 departure from the Idaho Department of Commerce,  
5 where did you go?

6 A. Created my own private institute by  
7 the name of City Leaders Institute. And initially  
8 it started small, but it grew to over 500 cities  
9 in ten western states that were members of the  
10 institute. And I provided technical information  
11 and a monthly newsletter to each of the member  
12 cities and counties on the topics that I knew they  
13 would have an interest in reading about.

14 Q. And so if this was begun in early  
15 1989, is that still in existence?

16 A. No.

17 Q. So how long did it last?

18 A. Five years.

19 Q. So that would be about 1994?

20 A. Correct.

21 Q. Okay. And so what would you describe  
22 your role as during that five years?

23 A. I was the executive director and  
24 owner.

25 Q. You wrote the newsletter?

1 A. Correct.  
 2 Q. And essentially you did the research  
 3 for the information that was put in the  
 4 newsletter?  
 5 A. Correct.  
 6 Q. What other things did you do?  
 7 A. Did a lot of traveling. I was asked  
 8 to speak at City Council meetings, at conferences,  
 9 at workshops, all kinds of speaking kind of  
 10 functions.  
 11 Q. Okay. So when you left in 1994, did  
 12 you sell the company to someone?  
 13 A. I thought about that. I couldn't find  
 14 a buyer.  
 15 Q. Okay.  
 16 A. So I just closed.  
 17 Q. I see. Closed your doors?  
 18 A. Uh-huh.  
 19 Q. About what time in 1994 did you close  
 20 your doors?  
 21 A. Probably March. I'm going to guess  
 22 March. Spring.  
 23 Q. Okay. And so what did you do after  
 24 you closed your doors to the City Leaders  
 25 Institute?

1 A. I do.  
 2 Q. Okay. What's involved with that?  
 3 A. 32 hours every 24 months. And I'm  
 4 going to be attending the National Planning  
 5 Conference in Minneapolis in April of this year to  
 6 get my 32 hours.  
 7 Q. I see. And where did you say that  
 8 conference is located?  
 9 A. Minneapolis.  
 10 Q. Minneapolis?  
 11 A. Uh-huh. It's the National Planning  
 12 Conference.  
 13 Q. You'd think the planners would pick  
 14 Hawaii or someplace like that to --  
 15 A. It rotates. This year happens to be  
 16 Minneapolis.  
 17 Q. Okay. So this planning consulting  
 18 business that succeeded the City Leaders  
 19 Institute, is that consulting business still in  
 20 business?  
 21 A. It is.  
 22 Q. Okay. And you are the executive  
 23 director still or the owner? How would you  
 24 characterize your position? Let me put it that  
 25 way.

1 A. Consulting, urban planning consulting.  
 2 Q. Okay. Did you form another company?  
 3 A. Yes. Just under my name, Wayne S.  
 4 Forrey, AICP. Stands for the American Institute  
 5 of Certified Planners. I've had that credential  
 6 since 1985, I believe.  
 7 Q. Okay. Maybe I need to back up.  
 8 This certification that you just  
 9 described to me, do you have any other  
 10 certifications, sir?  
 11 A. No.  
 12 Q. The AICP certification, what did you  
 13 have to do to get that?  
 14 A. You have to practice urban planning  
 15 for five years. And then if your experience  
 16 during that five years is deemed acceptable to the  
 17 American Planning Association, APA, then you're  
 18 eligible to sit for a national exam. And if you  
 19 pass that exam, you then receive the AICP  
 20 credential.  
 21 Q. You probably know lawyers have to do  
 22 continuing legal education with respect to their  
 23 Bar license.  
 24 Do you have to do continuing education  
 25 with respect to your certification?

1 A. Principal.  
 2 Q. Principal. Okay. And do you have any  
 3 employees?  
 4 A. No.  
 5 Q. Okay. So explain to me what the  
 6 primary consulting that you do after -- with this  
 7 new entity, Wayne S. Forrey, urban planner.  
 8 A. Uh-huh. Land development, master  
 9 planning of land-use projects, commercial,  
 10 residential, industrial, institutional, as well as  
 11 municipal planning for local government  
 12 comprehensive plans, zoning ordinances,  
 13 subdivision ordinances. Those types of things.  
 14 Q. Okay. So let's go to land  
 15 development. Say I'm a client and I walk in the  
 16 door.  
 17 And what would I be asking you to do  
 18 if it were under the subject area of land  
 19 development?  
 20 A. If you are a farmer or a landowner and  
 21 you have determined that there might be some value  
 22 in changing the use of your land from a farm or a  
 23 rangeland into something -- a higher and better  
 24 use, you could hire me to analyze the ultimate  
 25 highest and best use of that land and prepare a

1 master plan and try and position your land to  
2 receive entitlements. Those are government  
3 approvals to accomplish your goal.

4 And so I have helped dozens and dozens  
5 of landowners take land from a farm to a  
6 developed -- a vertical state with a shopping  
7 center, a hospital, a subdivision full of homes, a  
8 business park, an industrial campus. That's what  
9 I could do to help you.

10 Q. So let's say, for example -- there was  
11 a wind development down by Mountain Home recently.

12 Would you be involved in something --  
13 say, "Well, I got a really windy farm out here.  
14 Can you investigate what the benefits of wind  
15 power might be and whether I have a market for  
16 that?" Is that something you could do?

17 A. No, not the way you described it.

18 Q. Okay.

19 A. However, I was hired by Elmore County  
20 to prepare a comprehensive plan and a zoning  
21 ordinance. And in that comprehensive plan, we had  
22 policies in place to stimulate alternative energy  
23 development.

24 And in the zoning ordinance there are  
25 certain criteria that would govern how you would

1 develop a wind farm. You might hire me to help  
2 you understand the history of that comprehensive  
3 plan and how those policies were put into effect  
4 and how to deal with the ordinance provisions.

5 But I would stop at that point because  
6 you would need a different type of technical  
7 professional to do what you initially described as  
8 to figure out how to get the most energy out of  
9 that wind.

10 Q. Okay. Okay. So let's change hats  
11 here a little bit. I'm a client that walks in the  
12 door and it's under the subject area of master  
13 planning. Explain to me what would be involved  
14 with respect to the master planning.

15 A. First we would have to -- what I would  
16 analyze is, is it doable, is it reality? because  
17 there are places where urban development are not  
18 appropriate. It wouldn't fit no matter how much  
19 the farmer wanted to get a higher value out of the  
20 land.

21 Q. Uh-huh.

22 A. So if we determined that it's possible  
23 under the entitlement procedures in place, that  
24 it's potentially viable for development, then we  
25 would look at the site and the situation, the

1 traffic patterns, the land-use patterns, the  
2 market, what the market will bear, what will it  
3 accept, the costs of development. Make an  
4 analysis to determine if it's worth spending more  
5 money to get more refined into a master plan.

6 Once that decision is made, actually  
7 do a layout of the streets, the lot  
8 configurations, the access points, and start  
9 preliminary work with neighbors, with government  
10 agencies, and ultimately, if everything works  
11 fine, someday end up with a building permit.

12 Q. So the typical client in this  
13 circumstance would be the owner of the undeveloped  
14 land that has an idea that he could change a use  
15 to something else; is that a fair assessment?

16 A. Yes.

17 Q. Okay. And then you mentioned sort of  
18 a laundry list of commercial, residential,  
19 industrial, and institutional. And I'm not sure  
20 what the laundry list applies to.

21 Does the laundry list apply to master  
22 planning for each of those types of uses?

23 A. Master planning and/or entitlement  
24 work.

25 Q. Okay. What's "entitlement work" mean?

1 A. Permits.

2 Q. Okay.

3 A. The ability to actually get a building  
4 permit. One example of an institutional: I was  
5 hired by St. Luke's Hospital. They owned bare  
6 ground at the intersection of Eagle Road and I-84  
7 many years ago.

8 Q. Uh-huh.

9 A. They asked me to change the zoning on  
10 that land and help them with a master plan for a  
11 future medical center. And now today we can all  
12 go out to the Meridian Eagle Road St. Luke's  
13 Hospital. That was something that I did back in  
14 the early '90s.

15 Q. Okay. I believe you also said the  
16 other area was municipal planning?

17 A. Yes.

18 Q. There the client would be some  
19 municipality?

20 A. Or a county -- yes, it would be a city  
21 or a county.

22 Q. Okay. And typically, that would  
23 involve evaluation perhaps of a proposal that is  
24 pending or going to -- or is about to come before  
25 the entity?

1 A. It could be. Or in many cases it's  
2 proactive. The city or county wants to get a  
3 certain type of application, so they're wanting to  
4 change their ordinances to serve as an incentive  
5 to get business to come into their city or into  
6 their county.

7 Q. So an example of that would be the  
8 alternative energy portion of Elmore County that  
9 you described earlier?

10 A. Correct. Correct.

11 Q. Okay. Okay. Are you familiar with  
12 the phrase "water right backfile"?

13 A. I am not.

14 Q. Okay. And I guess I should have  
15 finished the question.

16 Are you familiar with the phrase  
17 "water right backfile" as it applies to records  
18 maintained by the Idaho Department of Water  
19 Resources?

20 A. I am not.

21 Q. Are you familiar with the phrase  
22 "adjudication backfile" as it applies to records  
23 maintained by the Idaho Department of Water  
24 Resources?

25 A. I am not.

1 Q. Okay. Do you know what the phrase  
2 "combined use limitation" means with respect to a  
3 water right?

4 A. I believe I do.

5 Q. Well, can you explain to me -- or tell  
6 me what you understand that phrase to mean.

7 A. I understand that to mean combined  
8 use, being from different sources or from  
9 different types of water rights. There are  
10 surface water rights, underground water rights. I  
11 know there's water rights that have different  
12 status or dates, priorities.

13 Q. Okay.

14 A. And so I'm just visualizing that some  
15 lands would probably have a combination of those.

16 Q. Do you know what the phrase "annual  
17 diversion volume limitation" means with respect to  
18 a water right?

19 A. No, I don't.

20 Q. Okay. Now, I'm going to read  
21 something from the Idaho Rules of Evidence, and it  
22 essentially defines what the term "expert" means.  
23 It basically says, "If scientific, technical, or  
24 other specialized knowledge will assist the trier  
25 of fact to understand the evidence or to determine

1 a fact in issue, a witness qualified as an expert  
2 by knowledge, skill, experience, training, or  
3 education may testify thereto in the form of an  
4 opinion or otherwise."

5 Using that definition -- and let's  
6 assume a hypothetical that I'm an attorney and  
7 you're an expert that I've hired and I've got to  
8 explain what your expertise is to a jury and  
9 you're going to have to explain that to me.

10 So how should I characterize your  
11 expertise?

12 A. Mr. Forrey is a certified urban  
13 planner and has practiced urban planning in Idaho  
14 for over 30 years.

15 Q. Okay. Good. What did you do to  
16 prepare for this deposition?

17 A. Just -- I read one document briefly.

18 Q. What document?

19 A. Excuse me. Two documents briefly.  
20 Two documents briefly.

21 Q. Okay. What were those documents?

22 A. The discovery questions, that had a  
23 list of discovery questions. And then I read a  
24 response to those discovery questions.

25 MR. LAWRENCE: And I note -- if I can jump

1 in real quick. Pardon me. I know we had this  
2 discussion off the record, so I just wanted to get  
3 it on the record that we had the substitution of  
4 30(b)(6) representative.

5 And so that's why when it comes to the  
6 water rights issues, he's not as educated now as  
7 he probably should be, but we're willing to, you  
8 know, stipulate to a continuance if that's what  
9 the State desires. But I know we talked about  
10 that before. I just wanted to state it for the  
11 record, as far as deposition preparation goes.

12 MR. BARBER: Well, fine. I appreciate  
13 that. And it's something I probably should have  
14 done at the beginning as well, since I did have a  
15 few questions about that.

16 Q. The discovery questions, can you  
17 identify what discovery questions those were?

18 A. I'm going off my memory. You want me  
19 to repeat the questions?

20 Q. No, no.

21 A. Or just --

22 Q. No. Again, I'm not trying to trick  
23 you, Mr. Forrey. So there really are two groups  
24 of questions that exist out there. There are  
25 questions that the State of Idaho asks of DBSI

1 Tiegs, and then there are questions that the  
2 claimants collectively, including DBSI Tiegs, ask  
3 of the State of Idaho.

4 And what I'm trying to understand,  
5 which group of those did you look at?

6 A. The questions that I looked at, I  
7 believe, were from the State of Idaho asking for  
8 information from DBSI Tiegs. So I saw a list of  
9 things like "Supply your power records. Identify  
10 the wells and where you apply the water on the  
11 land from those wells."

12 Q. Okay.

13 A. "Show us photographs of the wells.  
14 Give us the pump serial number of the wells." I  
15 saw that list.

16 And then I -- and then another person  
17 helped prepare responses to those questions.

18 Q. Uh-huh.

19 A. And I saw that person's response.

20 Q. Okay.

21 A. Those are the two items I've seen.

22 Q. Okay. And I -- as counsel certainly  
23 acknowledged, probably we're going to have to  
24 continue this deposition to another point in time.  
25 But it seems like to me that what I should do is

1 at least give you the opportunity now to answer  
2 the questions, and perhaps if we need to then  
3 continue it, we can make a determination when we  
4 get done.

5 A. Okay.

6 Q. So let's see here. I'm going to have  
7 this marked as the first exhibit, and I'll give  
8 you that.

9 (Exhibit 1 marked.)

10 MR. BARBER: Here's No. 2.

11 (Exhibit 2 marked.)

12 Q. (BY MR. BARBER): We should have --  
13 you should have in front of you what has been  
14 marked as Deposition Exhibit 1 and Deposition  
15 Exhibit 2. Let's go to Deposition Exhibit 1.  
16 That should be the map of the place of use of  
17 water right No. 63-3163.

18 Have you ever seen this map before,  
19 sir?

20 A. Yes.

21 Q. Okay. What were the circumstances of  
22 reviewing this map in the past?

23 A. I made sure that it was -- I received  
24 an e-mail from a person. And I was transmitting  
25 that e-mail on to Dylan Lawrence. And I wanted to

1 make sure that there were maps in the packet going  
2 to Mr. Lawrence.

3 Q. Okay.

4 A. And so I did not study the map. I  
5 looked at it on the screen and said, "Oh, good.  
6 There's maps," and forwarded the e-mail onward.

7 Q. About when was this?

8 A. Two to three weeks ago. So the --  
9 probably the first week of February-ish.

10 Q. Okay. If you look at Deposition  
11 Exhibit 1, it indicates in the bottom right corner  
12 that it is prepared by Sandy Egbert, E-g-b-e-r-t.  
13 And I'll represent to you that she is an agent out  
14 at the Idaho Department of Water Resources and  
15 works on the Snake River Basin Adjudication.  
16 Perhaps I need to back up a little bit.

17 I assume with your urban planning work  
18 that you have had the occasion to look at USGS  
19 maps of areas in Idaho?

20 A. Yes.

21 Q. And that would be 7.5 minute size?

22 A. Yes.

23 Q. Okay. Have you also had the occasion  
24 to look at aerial photos, sir?

25 A. Yes.

1 Q. And have you looked at aerial photos  
2 that are false infrared, such as Deposition  
3 Exhibit 1?

4 A. Yes, I have.

5 Q. Okay. So would you be able to say  
6 whether you are -- have the competence to read and  
7 interpret a map such as Deposition Exhibit 1?

8 A. Yes.

9 Q. Okay. Look at the legend in the far  
10 left bottom corner that shows, I believe, that the  
11 place of use is outlined in green.

12 A. Uh-huh.

13 Q. If you can look at the map on that,  
14 are you able to determine whether in fact that is  
15 a reasonable representation of the place of use  
16 for water right No. 63-3163?

17 A. I am not.

18 Q. Okay. You'll note that there is a  
19 little symbol used for a point of diversion. It's  
20 a circle with a yellow inside the circle and then  
21 another black dot.

22 Do you see that in the legend, sir?

23 A. I do.

24 Q. And do you see the location of the  
25 point of diversion for water right No. 63-3163 on

1 Deposition Exhibit 1?

2 A. I do.

3 Q. Are you able to confirm whether that  
4 is an approximate location for that point of  
5 diversion? Do you know?

6 A. I am not.

7 Q. Well, let's go to Deposition Exhibit  
8 No. 2. And again, this appears to be an aerial  
9 photo of the place of use for water right  
10 No. 63-3274.

11 Have you seen this map before?

12 A. No.

13 Q. Okay. Again, the place of use is  
14 shown with markings in green.

15 Are you able to confirm whether those  
16 markings are a fair approximation of the place of  
17 use for water right No. 63-3274?

18 A. I am not.

19 Q. Okay. Can you also find the point of  
20 diversion on Deposition Exhibit 2 for water right  
21 No. 63-3274?

22 A. I do see it.

23 Q. And do you know whether that's a  
24 reasonable approximation of where the point of  
25 diversion is located?

1 shows that that number applies to. But I've been  
2 to the Tiegs property many times.

3 Q. Okay. So with respect to the well  
4 that is the water source for water right  
5 No. 63-3163, have you actually seen the well?

6 A. I have not.

7 Q. You haven't?

8 A. No.

9 Q. Okay. Have you seen the well for  
10 water right No. 63-3274?

11 A. No.

12 Q. Okay. So if I ask you whether in fact  
13 the well discharges into a ditch, would you have  
14 any way of answering that question based on  
15 personal knowledge?

16 A. I would not.

17 Q. Okay. If I asked you whether the well  
18 for either one of these water rights discharges  
19 into a pipe for distribution to a sprinkler  
20 system, would you be able to tell me from your own  
21 personal knowledge?

22 A. I would not.

23 Q. Okay. If I asked you whether in fact  
24 the wells from either one of these water rights  
25 discharged into a pond, would you be able to tell

1 A. I do not.

2 Q. Okay. You indicated that you have  
3 some familiarity with infrared photos.

4 Do you know what the red color  
5 indicates in an infrared photo?

6 A. The presence of green, live  
7 vegetation.

8 Q. Okay. Good. I have a couple more  
9 questions. Let's go back to Deposition Exhibit 1.

10 Have you ever been out to the fields  
11 that are the place of use for water right  
12 No. 63-3163?

13 A. I have been to the fields that are  
14 shown on this map.

15 Q. Okay.

16 A. I don't know if they're the fields  
17 pertaining to that number.

18 Q. Okay.

19 A. But I have been on site several times.

20 Q. Okay. Let's go to Deposition  
21 Exhibit 2, water right No. 63-3274.

22 Have you ever been to the place of use  
23 for that water right?

24 A. I've been to the property. I don't  
25 know if I've been to the exact place that this map

1 me whether it discharged -- they discharge into a  
2 pond?

3 A. I know there's a pond on the property,  
4 but I do not know the source exactly of what water  
5 goes where and how it gets to the pond. I could  
6 only answer yes, that I'm aware there's a pond on  
7 the property. But to answer your question about  
8 which well feeds the pond, I do not know.

9 Q. And do you know which property the  
10 pond is on with respect to the water right? Is it  
11 on the water right -- is it on the place of use  
12 for water right No. 63-3163?

13 A. I do not know.

14 Q. Do you know whether it's on the water  
15 right for 63-3274?

16 A. I'm sorry. I don't. I do not know.

17 MR. BARBER: Okay. Well, we'll go off the  
18 record for a minute.

19 (Recess.)

20 (Exhibits 3 through 9 marked.)

21 Q. (BY MR. BARBER): Okay. I believe,  
22 Mr. Forrey, that you have in front of you what has  
23 been marked as Deposition Exhibits 3 through 9.

24 A. That is correct.

25 Q. Okay. And my initial question to you

1 is do you know who took these photos?

2 A. To the best of my knowledge, it is a  
3 employee of South Mountain Ranch, a contract  
4 farmer.

5 Q. Do you know what the employee's name  
6 would be?

7 A. They have several employees. The two  
8 that I would suspect would either be a Matt  
9 Duckett or an Adam Duckett.

10 Q. Can you spell the last name?

11 A. D-u-c-k-e-t-t. M-a-t-t or A-d-a-m for  
12 the first names.

13 Q. I'm a little hard of hearing. The  
14 Matt Duckett I got.

15 The second Duckett?

16 A. Excuse me. Adam.

17 Q. Adam?

18 A. A-d-a-m.

19 Q. Okay.

20 A. Adam Duckett or Matt Duckett. That's  
21 my understanding.

22 Q. Do you know when the pictures were  
23 taken?

24 A. Again, I would say two to three weeks  
25 ago, around the 1st of February. I don't see a

1 date in the photo itself.

2 Q. Okay. If I ask you to show the  
3 location of where these photos were taken on  
4 Deposition Exhibits 1 and 2, would you have the  
5 knowledge to say at this point Deposition  
6 Exhibit 3 was taken and it was taken in a northern  
7 direction? Would you have the ability to do that?

8 A. I believe I would.

9 Q. Okay. Well, let's do that, then.

10 Let's go to Deposition Exhibit 1. And that's the  
11 water right 63-3163.

12 A. Uh-huh.

13 Q. Of the other deposition exhibits, can  
14 you tell me which ones would apply to water right  
15 No. 63-3163?

16 A. Repeat that question.

17 Q. Okay. What I want you to do is take  
18 these exhibits and shuffle them. "This one  
19 applies to 3163. This one applies to 3274," if  
20 you can do that in terms of location.

21 A. I can't do that.

22 Q. Okay. So you can't -- okay. Let me  
23 ask the question this way: Deposition  
24 Exhibit 3 --

25 A. Uh-huh.

1 Q. -- what map does it apply to? Is it  
2 either Deposition Exhibit 1 or Deposition  
3 Exhibit 2?

4 A. I believe it's Exhibit No. 1.

5 Q. Okay. And I'm going to hand you a pen  
6 here. Can you mark on Deposition Exhibit 1 the  
7 location of the -- where the person was standing  
8 that took Deposition Exhibit 3?

9 MR. LAWRENCE: I'm going to object. This  
10 is speculative. I mean it's pretty clear he  
11 doesn't --

12 MR. BARBER: If he doesn't have the  
13 knowledge, that's fine. I don't want him to mark  
14 incorrectly, Dylan. On the other hand, he did  
15 indicate that he thought he could locate where  
16 these photos were taken.

17 And if this is something that we need  
18 to postpone to the continuation of the deposition,  
19 I don't have any problem with that. But I at  
20 least wanted to make you aware I need to  
21 understand what the photos represent.

22 And I was hoping that he would be able  
23 to explain that to me, since it's essentially  
24 pictures of the fields and the irrigation system.

25 Q. So I believe, Mr. Forrey, you

1 understand what the issue is and what I'm trying  
2 to get out of you.

3 And do you feel comfortable trying to  
4 mark the maps today, or would you like to come  
5 back and do it later?

6 A. I would like to have some time to come  
7 back, because I do want to help and answer  
8 correctly and honestly here. But I would need  
9 more time.

10 Q. Okay. And again, as I said at the  
11 very beginning, I'm not trying to trick you. I  
12 just wanted you to understand I need to understand  
13 the photos.

14 A. Sure.

15 Q. And to understand the photos, I need  
16 to know where the person was standing --

17 A. Yes.

18 Q. -- and what direction he was pointing  
19 the camera at the time he took the picture.

20 A. Okay. Given some time, I can help you  
21 with that.

22 Q. Okay. Well, good.

23 MR. LAWRENCE: I mean to the extent this is  
24 continued, it will be in accordance with --

25 MR. BARBER: That's right.

1 MR. LAWRENCE: -- what's been noticed up  
2 here, just to make that clarification. So I don't  
3 want to yet admit that identifying photos through  
4 aerial photos is necessarily within the enumerated  
5 items in the 30(b)(6) notice.

6 MR. BARBER: Just so you understand,  
7 Counsel, this is all for understanding the  
8 irrigation system and the place of use, et cetera.  
9 So at least from my perspective, all the questions  
10 I was going to ask were within the scope of the  
11 notice of the deposition.

12 And I guess if we have an argument  
13 about that, we'll have to talk to the judge at  
14 some point in time. But I would like to avoid  
15 that, certainly. But I didn't want -- if we're  
16 going to have a continuation, I wanted to make  
17 sure that Mr. Forrey understood what I was trying  
18 to understand from your discovery responses,  
19 et cetera.

20 So I'll go on to another area is what  
21 I'll do, and we'll be done here relatively soon.

22 Q. Let's go to water right No. 63-3163.

23 Do you know what crops have been grown  
24 at the place of use for that water right?

25 A. I do not.

1 Q. Okay. With respect to water right  
2 No. 63-3274, do you know what crops were grown at  
3 that place of use?

4 A. I do not.

5 MR. BARBER: Okay. Let's mark this as the  
6 next deposition exhibit.

7 (Exhibit 10 marked.)

8 Q. (BY MR. BARBER): Okay. I believe you  
9 have in front of you what has been marked as  
10 Deposition Exhibit No. 10.

11 A. Yes.

12 Q. Okay. And these are power records  
13 provided to me on discovery from DBSI Tiegs.

14 Let me -- I guess we need to start,  
15 are you an employee of DBSI Tiegs 979 LLC?

16 A. I am not.

17 Q. Okay. So what is your relationship  
18 with DBSI Tiegs 979 LLC?

19 A. I'm employed by Kastera Development.  
20 Kastera Development is under contract to DBSI.  
21 And DBSI is a member of DBSI Tiegs LLC --

22 Q. Let me ask you a question. Is it DBSI  
23 Tiegs 979?

24 A. Yes.

25 Q. Is the number 979?

1 A. It certainly is, sure. It should be.

2 Q. It's DBSI Tiegs 979 --

3 A. 979 --

4 Q. -- LLC --

5 A. -- LLC.

6 Q. -- is my understanding of the correct  
7 terminology?

8 A. All right. So DBSI Tiegs 979 LLC,  
9 DBSI is a member of that LLC. DBSI has a contract  
10 with Kastera Development to master-plan and seek  
11 entitlements for future development of this  
12 property. I am the director of planning and  
13 development for Kastera Development. That's my  
14 relationship.

15 Q. Okay. So did I understand you  
16 correctly, you are an employee of Kastera --

17 A. -- Development, Kastera Development  
18 LLC.

19 Q. Okay.

20 A. That is correct.

21 Q. And you also at the same time have a  
22 separate consulting business; is that correct as  
23 well?

24 A. I have put that on hold. That's how I  
25 became hired by Kastera Development. They were a

1 client of mine, and they asked me to join the  
2 firm. And so that's how I became an employee.

3 Q. Okay. We may need to back up just a  
4 little bit. So this consulting firm that you had,  
5 you said you put it on hold.

6 What do you mean by that?

7 A. I -- I have no clients. It is just on  
8 hold. It's not active right now.

9 Q. Okay.

10 A. Because I'm working for Kastera  
11 Development.

12 Q. Okay. Okay. So in your work as an  
13 employee of Kastera Development, would you  
14 normally see the power records with respect to the  
15 property at DBSI Tiegs 979 LLC?

16 A. I would not.

17 Q. Okay. So have you seen these power  
18 records previously?

19 A. I have not.

20 Q. Okay. There is a service agreement  
21 number up there --

22 A. Okay.

23 Q. -- in the upper left-hand corner. And  
24 I believe Deposition Exhibit 10 says the number is  
25 5741227286.

1 Do you know what that service  
2 agreement number -- what that applies to in terms  
3 of which pump it applies to?  
4 A. I do not.  
5 Q. Okay. Now, in your work as an urban  
6 planner, have you had the occasion to look at  
7 power records in the past?  
8 A. I have.  
9 Q. Do you believe it's within your  
10 expertise to interpret the power records, such as  
11 existing in Deposition Exhibit 10?  
12 A. No, I do not.  
13 Q. Okay. So let's make sure I understand  
14 what you can and can't do. Let's go to Deposition  
15 Exhibit 10 on the first page.  
16 And will you agree with me that it  
17 shows the kilowatt hours used as being 8,220? And  
18 again, it's in the upper portion, sir, over here  
19 (indicating).  
20 A. Yes, I'm just looking here at some --  
21 the pattern and things.  
22 Q. Certainly.  
23 A. I agree with you that that's the  
24 number on this service agreement, 8,220 kilowatts  
25 used.

1 Q. Kilowatt hours used?  
2 A. Yes. And that was on -- well, it  
3 doesn't -- well, let's see. It has a meter number  
4 and a service period, yes. For a duration of 29  
5 days, yes.  
6 Q. And that period's from April 7th  
7 through May 6th of last year?  
8 A. Correct.  
9 Q. Okay. Let's go to the next page, sir.  
10 And you look at the kilowatt hours used.  
11 And do you agree with me it's 52,780  
12 kilowatt hours?  
13 A. I do agree with you.  
14 Q. And it's for the service period from  
15 May 6th to June 5th --  
16 A. Of '08.  
17 Q. -- of '08?  
18 A. Yes, sir, I do.  
19 Q. And would that indicate to you in  
20 terms of number of hours used that the pump was  
21 pumped for a greater period of time in May than it  
22 was in April of 2008?  
23 A. Well, I -- I don't want to split  
24 hairs, but there could have been an electrical  
25 short. Maybe the pump didn't run. Maybe there's

1 wasted energy happening out there. I don't know.  
2 Q. Okay.  
3 A. But the numbers are certainly  
4 different.  
5 Q. Okay.  
6 A. I agree with you there. Some energy  
7 is being expended somewhere out there.  
8 Q. Okay. Okay. Do you know when in the  
9 farming operation for either one of these water  
10 rights when the operator begins farming?  
11 A. I do not know that.  
12 Q. Okay. Do you know when the farming  
13 operator ceases farming operations in the fall?  
14 A. I do not know that either.  
15 MR. BARBER: Okay.  
16 (Exhibit 11 marked.)  
17 Q. (BY MR. BARBER): Okay. You should  
18 have in front of you what has been marked as  
19 Deposition Exhibit 11. And I'll represent to you  
20 that these are copies of power records provided by  
21 DBSI Tiegs 979 LLC to me on discovery. And just  
22 for your information, you can note that in the one  
23 corner there is a Bates No. DBS000061.  
24 Do you see that here in the one  
25 corner, sir?

1 A. Oh, there? Yes, I do see that.  
2 Q. Okay. Now, do you know which pump  
3 these records apply to?  
4 A. I do not know.  
5 MR. BARBER: Okay. Okay. Let's mark this  
6 as the next exhibit.  
7 (Exhibit 12 marked.)  
8 MR. BARBER: Here's the next one.  
9 (Exhibit 13 marked.)  
10 MR. BARBER: Next one.  
11 (Exhibits 14 and 15 marked.)  
12 Q. (BY MR. BARBER): Now, Mr. Forrey,  
13 there has been marked as Deposition Exhibits 12,  
14 13, 14, and 15, collectively, the water right  
15 licenses and recommendations by the director with  
16 respect to the water rights that apply to the  
17 places of use shown in Deposition Exhibits 1 and  
18 2.  
19 First off, have you ever seen  
20 Deposition Exhibit 12 previously?  
21 A. I have not.  
22 Q. Okay. Have you ever seen Deposition  
23 Exhibit 13 previously?  
24 A. I have not.  
25 Q. Have you ever seen Deposition

1 Exhibit 14 previously?  
 2 A. No, I don't believe so.  
 3 Q. Okay. What about Deposition  
 4 Exhibit 15 previously?  
 5 A. I don't believe so.  
 6 MR. BARBER: Okay.  
 7 (Exhibit 16 marked.)  
 8 MR. BARBER: And here's 17.  
 9 (Exhibit 17 marked.)  
 10 Q. (BY MR. BARBER): Okay. We have  
 11 marked as Deposition Exhibit 16 and 17 the  
 12 objections filed by DBSI Tiegs 979 LLC to water  
 13 right numbers 63-3163, 63-3274.  
 14 Have you seen either one of these  
 15 documents previously, sir?  
 16 A. I have not.  
 17 MR. BARBER: Okay. Let's mark this as the  
 18 next exhibit.  
 19 (Exhibit 18 marked.)  
 20 Q. (BY MR. BARBER): Okay. Have you seen  
 21 Deposition Exhibit 18 previously, sir?  
 22 A. If I could have a minute to --  
 23 Q. Certainly. Take your time.  
 24 A. -- make sure.  
 25 (Reviews.)

1 It appears to me that Exhibit 18 is a  
 2 combination of two documents.  
 3 Is it all one document?  
 4 Q. It certainly is, sir.  
 5 A. So my answer is I've seen a portion of  
 6 this document.  
 7 Q. Okay.  
 8 A. I have seen the requests for -- I  
 9 guess it's on the third page, Roman numeral II,  
 10 "Interrogatories and Requests for Production." I  
 11 do recall seeing this list on page 3, 4. Page 5  
 12 doesn't look familiar to me. But I guess it's  
 13 the -- I recognize the questions. I didn't -- I  
 14 did not see some of these answers until today.  
 15 Q. Okay.  
 16 A. So the interrogatory I see -- I've  
 17 seen the request for production and the  
 18 interrogatories. I don't believe I've seen until  
 19 today some of the answers that are provided in  
 20 here.  
 21 Q. Okay. Let's go back to page 10.  
 22 A. Exhibit 10 or page 10?  
 23 Q. No, page 10. I'm sorry.  
 24 A. Oh, I see. It's numbered. Okay. All  
 25 right. I'm there.

1 Q. There's interrogatory No. 9. It says,  
 2 "Identify all persons who assisted in the  
 3 preparation of the responses to DBSI Tiegs 979 LLC  
 4 to these interrogatories and requests for  
 5 production."  
 6 And in the answer I believe you are  
 7 indicated as one of the persons that assisted; is  
 8 that correct?  
 9 A. That is correct.  
 10 Q. Okay. Here is a yellow marker.  
 11 Can you mark those answers that you  
 12 participated in? I'm simply asking you to  
 13 indicate which ones you worked on.  
 14 MR. LAWRENCE: I'm going to object, Wayne.  
 15 You can answer, but the deposition is for oral.  
 16 He doesn't need to mark on anything.  
 17 MR. BARBER: Well, if he can answer, I  
 18 would like him to.  
 19 Q. So can you mark the ones that you  
 20 assisted in providing answers to?  
 21 A. In a global sense, I would have to  
 22 mark them all. My role was to help facilitate  
 23 getting answers. So when I became aware that  
 24 there were questions, discovery requests, I then  
 25 tried to pull together people that could help get

1 those answers.  
 2 So via e-mail and phone contact, I  
 3 contacted different people that I knew would have  
 4 the Idaho Power bills, the ability to go get  
 5 photographs, look at maps, be able to tell the  
 6 court which pump had which serial number, you  
 7 know, as listed in the interrogatories and the  
 8 requests. And so in that sense, I helped  
 9 facilitate trying to get this document put  
 10 together.  
 11 But directly, I couldn't -- if you had  
 12 another color and said, "Show me in pink the ones  
 13 you answered," I wouldn't be able to highlight  
 14 those because I was just in a facilitating role to  
 15 help get the right people to get the answers.  
 16 Q. I see. Okay. Well, then there's no  
 17 need for you to mark anything.  
 18 Well, let's go off the record for a  
 19 minute.  
 20 (Discussion.)  
 21 MR. BARBER: Let's go back on the record.  
 22 And we are going to continue this  
 23 deposition to a date, probably next week sometime.  
 24 Mr. Lawrence is going to propose some dates to me  
 25 in an e-mail or phone call, and I will look at my

1 calendar and respond. We certainly want to get  
2 the deposition finished prior to the 28th of  
3 February.

4 THE WITNESS: Uh-huh.

5 MR. BARBER: And, Mr. Lawrence, do you  
6 agree with that essential analysis of the  
7 continuation?

8 MR. LAWRENCE: I do.

9 MR. BARBER: Okay. I guess we're done for  
10 the day. And I appreciate your cooperation,  
11 Mr. Forrey. And I wish we had been able to finish  
12 today. But I guess you got a preview of questions  
13 you'll be asked. I did want to go through and at  
14 least make you aware of those.

15 One thing that the court reporter's  
16 going to want to make sure is that the ones that  
17 have his little tags on it, he's going to want to  
18 take those home with him. We don't want to run  
19 off with those.

20 THE WITNESS: Today?

21 MR. BARBER: Yes.

22 So he needs to make sure that he's  
23 happy with the documents that he has in his  
24 possession before any of us leave.

25 THE WITNESS: Here they are, in order

1 MR. BARBER: I think we're done, then.

2 (Deposition concluded at 11:10 a.m.)

3 (Signature requested.)

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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified  
Shorthand Reporter, certify:

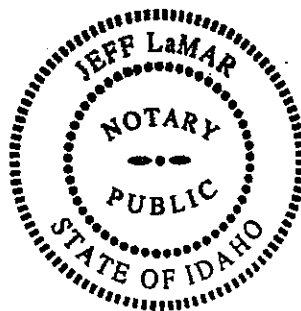
That the foregoing proceedings were taken  
before me at the time and place therein set forth,  
at which time the witness was put under oath by  
me.

That the testimony and all objections made  
were recorded stenographically by me and  
transcribed by me or under my direction.

That the foregoing is a true and correct  
record of all testimony given, to the best of my  
ability.

I further certify that I am not a relative  
or employee of any attorney or party, nor am I  
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal  
this 20<sup>th</sup> day of February, 2009.



A handwritten signature of Jeff LaMar, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

JEFF LaMAR, CSR NO. 640

Notary Public

Eagle, Idaho 83616

My commission expires December 30, 2011

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| <p><b>A</b></p> <p><b>ability</b> 21:24 22:2<br/>32:3 46:7 60:4</p> <p><b>able</b> 11:22 40:5,14<br/>41:3,15 43:20,25<br/>47:22 60:5,13<br/>61:11</p> <p><b>above-entitled</b> 2:9</p> <p><b>accept</b> 31:3</p> <p><b>acceptable</b> 26:16</p> <p><b>access</b> 31:8</p> <p><b>accommodate</b> 5:16</p> <p><b>accomplish</b> 29:3</p> <p><b>accurately</b> 21:13</p> <p><b>ACHD</b> 7:20,25 8:7<br/>8:16 9:2,8</p> <p><b>acknowledged</b><br/>37:23</p> <p><b>Acquired</b> 4:4,7</p> <p><b>acquisition</b> 7:20</p> <p><b>Act</b> 14:8</p> <p><b>active</b> 52:8</p> <p><b>acts</b> 14:4</p> <p><b>Ada</b> 7:14 8:7 11:21</p> <p><b>Adam</b> 45:9,16,17<br/>45:20</p> <p><b>adjoining</b> 8:20</p> <p><b>adjudication</b> 33:22<br/>39:15</p> <p><b>administrative</b> 24:1</p> <p><b>administrator</b><br/>23:10</p> <p><b>admit</b> 49:3</p> <p><b>aerial</b> 3:7,9 39:24<br/>40:1 41:8 49:4</p> <p><b>agencies</b> 15:21<br/>31:10</p> <p><b>agency</b> 8:7</p> <p><b>agent</b> 39:13</p> <p><b>ago</b> 32:7 39:8 45:25</p> <p><b>agree</b> 53:16,23<br/>54:11,13 55:6<br/>61:6</p> <p><b>agreement</b> 52:20<br/>53:2,24</p> <p><b>agronomy</b> 11:14</p> <p><b>AICP</b> 26:4,12,19</p> <p><b>airport</b> 18:3</p> | <p><b>alternative</b> 29:22<br/>33:8</p> <p><b>American</b> 26:4,17</p> <p><b>analysis</b> 17:9,25<br/>18:14 19:11,14,16<br/>20:24,25 21:9,19<br/>21:20 22:4 31:4<br/>61:6</p> <p><b>analyze</b> 17:16,18,21<br/>28:24 30:16</p> <p><b>analyzing</b> 16:14<br/>17:7</p> <p><b>Andrus</b> 23:8</p> <p><b>and/or</b> 31:23</p> <p><b>annual</b> 34:16</p> <p><b>answer</b> 38:1 44:6,7<br/>48:7 58:5 59:6,15<br/>59:17</p> <p><b>answered</b> 60:13</p> <p><b>answering</b> 43:14</p> <p><b>answers</b> 5:20,21<br/>58:14,19 59:11,20<br/>59:23 60:1,15</p> <p><b>APA</b> 26:17</p> <p><b>APPEARANCES</b><br/>2:11</p> <p><b>appears</b> 41:8 58:1</p> <p><b>application</b> 20:2<br/>33:3</p> <p><b>applied</b> 20:17</p> <p><b>applies</b> 31:20 33:17<br/>33:22 43:1 46:19<br/>46:19 53:2,3</p> <p><b>apply</b> 31:21 37:10<br/>46:14 47:1 56:3<br/>56:16</p> <p><b>appointed</b> 23:8</p> <p><b>appreciate</b> 36:12<br/>61:10</p> <p><b>approached</b> 14:24</p> <p><b>appropriate</b> 6:3<br/>30:18</p> <p><b>approvals</b> 29:3</p> <p><b>approximate</b> 41:4</p> <p><b>approximately</b> 6:5<br/>20:19</p> <p><b>approximation</b><br/>41:16,24</p> | <p><b>April</b> 27:5 54:6,22</p> <p><b>area</b> 11:21 16:2<br/>19:9 20:14 28:18<br/>30:12 32:16 49:20</p> <p><b>areas</b> 10:15 13:22<br/>39:19</p> <p><b>argument</b> 49:12</p> <p><b>arranged</b> 14:2</p> <p><b>asked</b> 25:7 32:9<br/>43:17,23 52:1<br/>61:13</p> <p><b>asking</b> 28:17 37:7<br/>59:12</p> <p><b>asks</b> 36:25</p> <p><b>assessment</b> 31:15</p> <p><b>assignment</b> 14:11</p> <p><b>assist</b> 34:24</p> <p><b>assisted</b> 59:2,7,20</p> <p><b>assisting</b> 23:1</p> <p><b>Association</b> 26:17</p> <p><b>assume</b> 35:6 39:17</p> <p><b>attending</b> 27:4</p> <p><b>attorney</b> 2:4,13 9:7<br/>35:6</p> <p><b>attract</b> 17:13</p> <p><b>audible</b> 5:21</p> <p><b>avoid</b> 49:14</p> <p><b>awarded</b> 9:18,21</p> <p><b>aware</b> 44:6 47:20<br/>59:23 61:14</p> <p><b>A-d-a-m</b> 45:11,18</p> <p><b>a.m</b> 2:6 62:2</p> <p><b>B</b></p> <p><b>bachelor</b> 10:7</p> <p><b>Bachelor's</b> 9:16</p> <p><b>back</b> 26:7 32:13<br/>39:16 42:9 48:5,7<br/>52:3 58:21 60:21</p> <p><b>backfile</b> 33:12,17<br/>33:22</p> <p><b>bankruptcy</b> 7:3</p> <p><b>Bar</b> 26:23</p> <p><b>Barber</b> 2:14 3:4 5:6<br/>21:2,4 36:12<br/>38:10,12 44:17,21<br/>47:12 48:25 49:6<br/>50:5,8 55:15,17</p> | <p>56:5,8,10,12 57:6<br/>57:8,10,17,20<br/>59:17 60:21 61:5<br/>61:9,21 62:1</p> <p><b>bare</b> 32:5</p> <p><b>BARRETT</b> 2:19</p> <p><b>based</b> 43:14</p> <p><b>basically</b> 34:23</p> <p><b>Basin</b> 39:15</p> <p><b>Bates</b> 3:8,10,11,12<br/>3:13,14,15,16,17<br/>3:18,20,23,25 4:6<br/>4:9,11,13,16<br/>55:23</p> <p><b>bear</b> 31:2</p> <p><b>beginning</b> 12:24<br/>15:9 36:14 48:11</p> <p><b>begins</b> 55:10</p> <p><b>begun</b> 24:14</p> <p><b>behalf</b> 2:3</p> <p><b>believe</b> 12:20 18:15<br/>19:18 21:8 23:4<br/>26:6 32:15 34:4<br/>37:7 40:10 44:21<br/>46:8 47:4,25 50:8<br/>52:24 53:9 57:2,5<br/>58:18 59:6</p> <p><b>benefits</b> 29:14</p> <p><b>best</b> 5:19 28:25<br/>45:2</p> <p><b>better</b> 28:23</p> <p><b>Biblical</b> 10:3</p> <p><b>bills</b> 60:4</p> <p><b>biology</b> 10:22,24,25</p> <p><b>bit</b> 12:17 14:9 18:2<br/>30:11 39:16 52:4</p> <p><b>black</b> 40:21</p> <p><b>block</b> 23:18</p> <p><b>Boise</b> 2:5,17,24<br/>6:16 9:8 15:8</p> <p><b>botany</b> 10:9,12 12:4</p> <p><b>bottom</b> 39:11 40:10</p> <p><b>Boulevard</b> 2:22</p> <p><b>Box</b> 2:16,23</p> <p><b>break</b> 5:14</p> <p><b>bridge</b> 20:7</p> <p><b>briefly</b> 35:17,19,20</p> <p><b>Brigham</b> 9:20 15:6</p> | <p><b>brittleness</b> 16:17</p> <p><b>broad</b> 15:24</p> <p><b>building</b> 17:10,11<br/>17:23 18:1 31:11<br/>32:3</p> <p><b>buildings</b> 18:3</p> <p><b>bulk</b> 14:24</p> <p><b>business</b> 27:18,19<br/>27:20 29:8 33:5<br/>51:22</p> <p><b>buyer</b> 25:14</p> <p><b>BYU</b> 12:21 13:7<br/>16:5 19:19</p> <p><b>C</b></p> <p><b>calendar</b> 61:1</p> <p><b>call</b> 6:12 60:25</p> <p><b>called</b> 7:4,7,15,24<br/>8:6,21 14:7 17:24<br/>19:11</p> <p><b>camera</b> 48:19</p> <p><b>campus</b> 29:8</p> <p><b>Canyon</b> 11:21</p> <p><b>Capitol</b> 2:22</p> <p><b>career</b> 15:11</p> <p><b>case</b> 1:8 7:12,19<br/>8:14 17:25</p> <p><b>cases</b> 33:1</p> <p><b>category</b> 15:24</p> <p><b>cause</b> 5:3</p> <p><b>caused</b> 6:6,13</p> <p><b>ceases</b> 55:13</p> <p><b>center</b> 18:4 29:7<br/>32:11</p> <p><b>certain</b> 17:7 29:25<br/>33:3</p> <p><b>certainly</b> 5:15 13:2<br/>37:22 49:15 51:1<br/>53:22 55:3 57:23<br/>58:4 61:1</p> <p><b>certificate</b> 3:22,24<br/>16:22,25</p> <p><b>certification</b> 26:8<br/>26:12,25</p> <p><b>certifications</b> 26:10</p> <p><b>certified</b> 2:7 26:5<br/>35:12</p> <p><b>cetera</b> 22:15 49:8</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 49:19<br><b>change</b> 30:10 31:14<br>32:9 33:4<br><b>changing</b> 28:22<br><b>characterize</b> 10:14<br>11:7 18:25 21:13<br>23:23 27:24 35:10<br><b>CHARTERED</b><br>2:20<br><b>circle</b> 40:20,20<br><b>circumstance</b> 31:13<br><b>circumstances</b> 6:20<br>7:1 38:21<br><b>cities</b> 21:15,21 22:5<br>24:8,12<br><b>city</b> 21:15 22:18,21<br>24:7 25:8,24<br>27:18 32:20 33:2<br>33:5<br><b>civil</b> 15:23,23,25<br>20:3<br><b>claimants</b> 37:2<br><b>clarification</b> 8:24<br>49:2<br><b>class</b> 11:18,24 12:4<br>13:23,24,25 14:1<br>14:2,12 16:10<br><b>classes</b> 10:18 11:11<br>11:13 13:21 16:1<br>16:7<br><b>clear</b> 47:10<br><b>client</b> 9:2,5,8 22:21<br>28:15 30:11 31:12<br>32:18 52:1<br><b>clients</b> 22:13 52:7<br><b>close</b> 25:19<br><b>closed</b> 25:16,17,24<br><b>club</b> 18:7<br><b>collectively</b> 37:2<br>56:14<br><b>college</b> 12:14 13:3<br><b>color</b> 42:4 60:12<br><b>Colorado</b> 10:2<br><b>combination</b> 34:15<br>58:2<br><b>combined</b> 34:2,7<br><b>come</b> 12:4 32:24<br>33:5 48:4,6 | <b>comes</b> 36:5<br><b>comfortable</b> 9:6<br>48:3<br><b>coming</b> 17:14 23:11<br>23:17<br><b>commencing</b> 2:6<br><b>Commerce</b> 23:9,20<br>23:24,25 24:4<br><b>commercial</b> 28:9<br>31:18<br><b>community</b> 21:18<br>23:10,18<br><b>company</b> 25:12<br>26:2<br><b>compare</b> 14:23<br><b>competence</b> 40:6<br><b>completed</b> 13:14<br>15:13<br><b>completion</b> 10:4<br><b>comprehensive</b><br>28:12 29:20,21<br>30:2<br><b>compressive</b> 16:15<br><b>comprise</b> 17:17<br><b>concluded</b> 62:2<br><b>concrete</b> 16:12,14<br>16:19 20:1<br><b>conditions</b> 7:5<br><b>conduct</b> 17:3,4<br><b>conference</b> 27:5,8<br>27:12<br><b>conferences</b> 25:8<br><b>configurations</b> 31:8<br><b>confirm</b> 41:3,15<br><b>consulting</b> 26:1,1<br>27:17,19 28:6<br>51:22 52:4<br><b>contact</b> 60:2<br><b>contacted</b> 60:3<br><b>content</b> 16:17<br><b>continuance</b> 36:8<br><b>continuation</b> 11:8<br>47:18 49:16 61:7<br><b>continue</b> 37:24 38:3<br>60:22<br><b>continued</b> 4:1<br>48:24<br><b>continuing</b> 26:22 | 26:24<br><b>contract</b> 45:3 50:20<br>51:9<br><b>contrast</b> 14:23<br><b>controls</b> 14:24,25<br><b>convention</b> 18:4<br><b>cooperation</b> 61:10<br><b>copies</b> 55:20<br><b>corner</b> 39:11 40:10<br>52:23 55:23,25<br><b>correct</b> 18:20 19:20<br>23:3,6 24:20 25:1<br>25:5 33:10,10<br>44:24 51:6,20,22<br>54:8 59:8,9<br><b>correctly</b> 18:19<br>48:8 51:16<br><b>correspondence</b><br>13:14,22 15:13<br>16:6 19:5<br><b>cost</b> 22:9<br><b>costs</b> 31:3<br><b>Council</b> 22:18 25:8<br><b>counsel</b> 37:22 49:7<br><b>counties</b> 24:12<br><b>county</b> 1:3 7:14 8:8<br>11:21,21 29:19<br>32:20,21 33:2,6,8<br><b>couple</b> 42:8<br><b>course</b> 10:15 11:4<br>18:19,24,25 19:10<br>19:13 20:9,11<br><b>courses</b> 10:9,11,20<br>10:22,24 15:14<br>16:4,5 18:17,21<br>19:7,19,22,24<br><b>court</b> 1:1 5:23 7:3,4<br>7:8 60:6 61:15<br><b>create</b> 14:11<br><b>Created</b> 24:6<br><b>credential</b> 26:5,20<br><b>credit</b> 15:3<br><b>credits</b> 13:16,20<br><b>criteria</b> 29:25<br><b>crops</b> 49:23 50:2<br><b>C.S.R</b> 1:21 | <b>D</b> 3:1 4:1<br><b>damages</b> 7:16,21<br><b>date</b> 10:5 46:1<br>60:23<br><b>dated</b> 3:23,25<br><b>dates</b> 34:12 60:24<br><b>DAVID</b> 2:14<br><b>day</b> 61:10<br><b>days</b> 54:5<br><b>DBSI</b> 1:14 2:1,18<br>4:14 36:25 37:2,8<br>50:13,15,18,20,21<br>50:21,22 51:2,8,9<br>51:9 52:15 55:21<br>57:12 59:3<br><b>DBSI000053-000...</b><br>3:19<br><b>DBSI000061-000...</b><br>3:21<br><b>DBSI000069</b> 3:11<br><b>DBSI000070</b> 3:12<br><b>DBSI000071</b> 3:13<br><b>DBSI000072</b> 3:14<br><b>DBSI000073</b> 3:15<br><b>DBSI000074</b> 3:16<br><b>DBSI000075</b> 3:17<br><b>DBS000061</b> 55:23<br><b>deal</b> 30:4<br><b>death</b> 13:8<br><b>decision</b> 31:6<br><b>deemed</b> 26:16<br><b>defendant</b> 7:25<br><b>define</b> 22:6<br><b>defines</b> 34:22<br><b>definition</b> 35:5<br><b>degree</b> 9:19,24 10:3<br>10:5 12:21 13:14<br>15:5,14 16:21<br><b>degrees</b> 9:23<br><b>delay</b> 6:6<br><b>density</b> 14:25<br><b>Department</b> 8:17<br>23:9,19,24,25<br>24:4 33:18,23<br>39:14<br><b>departure</b> 24:4<br><b>depo</b> 5:13<br><b>deposed</b> 6:18 7:10 | <b>deposition</b> 1:14 2:1<br>6:8 7:1 35:16<br>36:11 37:24 38:14<br>38:14,15 39:10<br>40:2,7 41:1,7,20<br>42:9,20 44:23<br>46:4,5,10,13,23<br>47:2,2,6,8,18<br>49:11 50:6,10<br>52:24 53:11,14<br>55:19 56:13,17,20<br>56:22,25 57:3,11<br>57:21 59:15 60:23<br>61:2 62:2<br><b>deposition's</b> 5:12<br><b>describe</b> 24:21<br><b>described</b> 26:9<br>29:17 30:7 33:9<br><b>describing</b> 21:4<br><b>desires</b> 36:9<br><b>destination</b> 17:25<br>18:12<br><b>destinations</b> 18:5<br><b>detail</b> 20:14 21:5<br><b>determination</b> 38:3<br><b>determine</b> 31:4<br>34:25 40:14<br><b>determined</b> 28:21<br>30:22<br><b>develop</b> 30:1<br><b>developed</b> 29:6<br><b>development</b> 17:8<br>21:18 23:10,18<br>28:8,15,19 29:11<br>29:23 30:17,24<br>31:3 50:19,20<br>51:10,11,13,13,17<br>51:17,25 52:11,13<br><b>different</b> 14:4 30:6<br>34:8,9,11 55:4<br>60:3<br><b>difficult</b> 5:22<br><b>directed</b> 23:16<br><b>direction</b> 46:7<br>48:18<br><b>directly</b> 60:11<br><b>director</b> 24:23<br>27:23 51:12 56:15 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                            |                          |                             |                              |                            |
|----------------------------|--------------------------|-----------------------------|------------------------------|----------------------------|
| <b>discharge</b> 44:1      | 13:24 16:1 21:23         | <b>evidence</b> 34:21,25    | <b>extent</b> 48:23          | <b>finish</b> 61:11        |
| <b>discharged</b> 43:25    | 26:22,24 35:3            | <b>evidently</b> 11:17      | <b>extra</b> 13:23,24        | <b>finished</b> 33:15 61:2 |
| 44:1                       | <b>effect</b> 30:3       | <b>exact</b> 42:25          | <b>E-g-b-e-r-t</b> 39:12     | <b>firm</b> 9:2 15:8 22:17 |
| <b>discharges</b> 43:13,18 | <b>effort</b> 17:15      | <b>exactly</b> 44:4         | <b>e-mail</b> 38:24,25       | 52:2,4                     |
| <b>discovery</b> 4:15      | <b>Egbert</b> 39:12      | <b>exam</b> 26:18,19        | 39:6 60:2,25                 | <b>first</b> 4:15 5:2 6:23 |
| 35:22,23,24 36:16          | <b>eight</b> 17:12       | <b>Examination</b> 3:4      |                              | 19:10 30:15 38:7           |
| 36:17 49:18 50:13          | <b>either</b> 43:18,24   | 5:5                         | <b>F</b>                     | 39:9 45:12 53:15           |
| 55:21 59:24                | 45:8 47:2 55:9,14        | <b>example</b> 16:15        | <b>facilitate</b> 59:22 60:9 | 56:19                      |
| <b>discussion</b> 36:2     | 57:14                    | 17:10 29:10 32:4            | <b>facilitating</b> 60:14    | <b>fit</b> 30:18           |
| 60:20                      | <b>electrical</b> 54:24  | 33:7                        | <b>fact</b> 34:25 35:1       | <b>five</b> 24:18,22 26:15 |
| <b>distribution</b> 43:19  | <b>elevator</b> 23:14    | <b>Excuse</b> 20:12 35:19   | 40:14 43:12,23               | 26:16                      |
| <b>District</b> 1:1,2 7:14 | <b>eligible</b> 26:18    | 45:16                       | <b>factors</b> 16:18 17:17   | <b>floor</b> 2:5,15,22     |
| 8:8                        | <b>Elmore</b> 29:19 33:8 | <b>executive</b> 24:23      | 18:10                        | 23:12                      |
| <b>ditch</b> 43:13         | <b>employed</b> 9:1,5    | 27:22                       | <b>fair</b> 10:14 18:24      | <b>focused</b> 14:7,8      |
| <b>diversion</b> 34:17     | 15:9 50:19               | <b>exerted</b> 20:7         | 23:23 31:15 41:16            | <b>follows</b> 5:3         |
| 40:19,25 41:5,20           | <b>employee</b> 45:3     | <b>exhibit</b> 38:7,9,11,14 | <b>fall</b> 55:13            | <b>force</b> 20:17         |
| 41:25                      | 50:15 51:16 52:2         | 38:15,15 39:11              | <b>Falls</b> 1:3 7:6 9:11    | <b>forces</b> 19:25 20:6   |
| <b>doable</b> 30:16        | 52:13                    | 40:3,7 41:1,7,20            | 12:1                         | <b>form</b> 4:10,12 26:2   |
| <b>document</b> 35:17,18   | <b>employees</b> 18:6    | 42:9,21 46:6,10             | <b>false</b> 40:2            | 35:3                       |
| 58:3,6 60:9                | 28:3 45:7                | 46:24 47:2,3,4,6,8          | <b>familiar</b> 16:2 33:11   | <b>formulas</b> 20:2       |
| <b>documents</b> 35:19     | <b>employee's</b> 45:5   | 50:6,7,10 52:24             | 33:16,21 58:12               | <b>Forrey</b> 1:15 2:2 3:3 |
| 35:20,21 57:15             | <b>energy</b> 29:22 30:8 | 53:11,15 55:16,19           | <b>familiarity</b> 42:3      | 5:1,9 26:4 28:7            |
| 58:2 61:23                 | 33:8 55:1,6              | 56:6,7,9,20,23              | <b>family</b> 13:8,12        | 35:12 36:23 44:22          |
| <b>doing</b> 15:15 16:1    | <b>engineer</b> 21:16    | 57:1,4,7,9,11,18            | <b>far</b> 36:11 40:9        | 47:25 49:17 56:12          |
| 21:5 22:4                  | <b>engineering</b> 15:19 | 57:19,21 58:1,22            | <b>farm</b> 12:2 28:22       | 61:11                      |
| <b>door</b> 28:16 30:12    | 15:23,25 16:3,7          | <b>exhibits</b> 3:6 4:3     | 29:5,13 30:1                 | <b>forwarded</b> 39:6      |
| <b>doors</b> 25:17,20,24   | 16:10,11,21,24           | 44:20,23 46:4,13            | <b>farmer</b> 28:20 30:19    | <b>found</b> 11:22         |
| <b>dot</b> 40:21           | 17:1 18:16,22            | 46:18 56:11,13,17           | 45:4                         | <b>friends</b> 12:2        |
| <b>dozens</b> 29:4,4       | 19:19,21,24 20:3         | <b>exist</b> 36:24          | <b>farmers</b> 12:2,13       | <b>front</b> 8:12 22:18    |
| <b>drinking</b> 22:7,10    | 20:3 22:19               | <b>existence</b> 24:15      | <b>farming</b> 55:9,10,12    | 38:13 44:22 50:9           |
| <b>drive</b> 6:15          | <b>Engineers</b> 15:8,13 | <b>existing</b> 53:11       | 55:13                        | 55:18                      |
| <b>Duckett</b> 45:9,9,14   | 15:16 20:19 21:6         | <b>expand</b> 22:9,10,22    | <b>favor</b> 8:4             | <b>full</b> 29:7           |
| 45:15,20,20                | 21:12 23:2,5             | <b>expansion</b> 7:17,22    | <b>February</b> 1:16 2:6     | <b>functions</b> 25:10     |
| <b>duly</b> 5:2            | <b>English</b> 13:25     | 8:5,12 22:8                 | 45:25 61:3                   | <b>funding</b> 15:20       |
| <b>duration</b> 54:4       | <b>entitlement</b> 15:18 | <b>expected</b> 10:4        | <b>February-ish</b> 39:9     | 22:11                      |
| <b>Dylan</b> 2:21 38:25    | 30:23 31:23,25           | <b>expended</b> 55:7        | <b>federal</b> 7:3 22:21     | <b>funds</b> 22:21,21      |
| 47:14                      | <b>entitlements</b> 29:2 | <b>experience</b> 12:7      | <b>feeds</b> 44:8            | 23:11,17                   |
| <b>D-u-c-k-e-t-t</b> 45:11 | 51:11                    | 26:15 35:2                  | <b>feel</b> 9:6 48:3         | <b>future</b> 32:11 51:11  |
|                            | <b>entity</b> 28:7 32:25 | <b>expert</b> 7:4,15 8:18   | <b>fiber</b> 19:25           | <b>F-o-r-r-e-y</b> 5:10    |
| <b>E</b>                   | <b>entry-level</b> 19:24 | 34:22 35:1,7                | <b>fields</b> 2:19 42:10,13  |                            |
| <b>E</b> 3:1 4:1           | <b>enumerated</b> 49:4   | <b>expertise</b> 11:17      | 42:16 47:24                  | <b>G</b>                   |
| <b>Eagle</b> 32:6,12       | <b>essential</b> 61:6    | 35:8,11 53:10               | <b>FIFTH</b> 1:1             | <b>general</b> 2:4,13      |
| <b>earlier</b> 33:9        | <b>essentially</b> 6:4   | <b>explain</b> 6:4 12:25    | <b>figure</b> 30:8           | 21:21                      |
| <b>early</b> 24:14 32:14   | 13:16 20:23 21:24        | 17:5 20:14 21:11            | <b>filed</b> 57:12           | <b>generate</b> 17:8,11    |
| <b>economic</b> 7:5 21:19  | 22:20 23:21 25:2         | 28:5 30:13 34:5             | <b>financial</b> 13:10       | <b>getting</b> 59:23       |
| <b>editorialize</b> 18:1   | 34:22 47:23              | 35:8,9 47:23                | <b>find</b> 25:13 41:19      | <b>give</b> 37:14 38:1,7   |
| <b>educated</b> 36:6       | <b>et</b> 22:15 49:8,19  | <b>explained</b> 21:8       | <b>fine</b> 9:3 31:11 36:12  | <b>given</b> 17:16 48:20   |
| <b>education</b> 9:14      | <b>evaluation</b> 32:23  | <b>explore</b> 12:16        | 47:13                        | <b>giving</b> 22:19        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    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                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>global</b> 59:21<br><b>go</b> 12:16 16:8 17:24<br>18:11 20:13 24:5<br>28:14 32:12 38:15<br>41:7 42:9,20<br>44:17 46:10 49:20<br>49:22 53:14 54:9<br>58:21 60:4,18,21<br>61:13<br><b>goal</b> 29:3<br><b>goes</b> 17:18,22 36:11<br>44:5<br><b>going</b> 17:15 18:7,11<br>25:21 27:4 32:24<br>34:20 35:9 36:18<br>37:23 38:6 39:1<br>47:5,9 49:10,16<br>59:14 60:22,24<br>61:16,17<br><b>good</b> 35:15 39:5<br>42:8 48:22<br><b>Gourley</b> 9:7<br><b>govern</b> 29:25<br><b>government</b> 8:1<br>15:21 28:11 29:2<br>31:9<br><b>Governor</b> 23:8<br><b>graduate</b> 9:10<br><b>graduated</b> 12:19<br><b>graduation</b> 11:9<br>12:11,24 13:20<br><b>grants</b> 23:18<br><b>greater</b> 54:21<br><b>green</b> 40:11 41:14<br>42:6<br><b>grew</b> 24:8<br><b>ground</b> 32:6<br><b>group</b> 37:5<br><b>groups</b> 36:23<br><b>Growing</b> 12:1<br><b>grown</b> 49:23 50:2<br><b>growth</b> 21:18<br><b>guess</b> 12:16 22:6<br>25:21 33:14 49:12<br>50:14 58:9,12<br>61:9,12<br><hr/> <b>H</b> | <b>hair</b> 54:24<br><b>Hall</b> 23:13<br><b>hand</b> 47:5,14<br><b>happening</b> 55:1<br><b>happens</b> 27:15<br><b>happy</b> 61:23<br><b>hard</b> 20:10 45:13<br><b>hats</b> 30:10<br><b>Hawaii</b> 27:14<br><b>Hawaii's</b> 14:7<br><b>Hawkins</b> 23:9<br><b>head</b> 5:22<br><b>hearing</b> 20:10<br>45:13<br><b>help</b> 29:9 30:1<br>32:10 48:7,20<br>59:22,25 60:15<br><b>helped</b> 21:16 29:4<br>37:17 60:8<br><b>helping</b> 22:20<br><b>high</b> 9:10,14 12:11<br>12:19,25 13:2<br><b>higher</b> 28:23 30:19<br><b>highest</b> 28:25<br><b>highlight</b> 60:13<br><b>Highway</b> 7:14 8:8<br><b>hire</b> 28:24 30:1<br><b>hired</b> 29:19 32:5<br>35:7 51:25<br><b>history</b> 30:2<br><b>hold</b> 51:24 52:5,8<br><b>home</b> 29:11 61:18<br><b>homes</b> 29:7<br><b>honestly</b> 48:8<br><b>hope</b> 18:9<br><b>hoping</b> 47:22<br><b>hospital</b> 29:7 32:5<br>32:13<br><b>hotel</b> 18:3<br><b>hours</b> 27:3,6 53:17<br>54:1,10,12,20<br><b>HUD</b> 23:11,17<br><b>hypothetical</b> 35:6<br><hr/> <b>I</b><br><b>Idaho</b> 1:2 2:3,5,6,9<br>2:12,17,24 7:6<br>8:17,17 14:9 | 21:15,21 23:9,12<br>23:17,24 24:4<br>33:18,23 34:21<br>35:13 36:25 37:3<br>37:7 39:14,19<br>60:4<br><b>Idaho's</b> 4:15<br><b>idea</b> 31:14<br><b>identified</b> 14:16<br><b>identify</b> 11:22<br>36:17 37:9 59:2<br><b>identifying</b> 49:3<br><b>II</b> 19:14 58:9<br><b>immediately</b> 12:24<br><b>impact</b> 17:19<br><b>impacts</b> 8:19<br><b>incentive</b> 33:4<br><b>include</b> 5:23<br><b>including</b> 37:2<br><b>incorrectly</b> 47:14<br><b>indicate</b> 5:15 47:15<br>54:19 59:13<br><b>indicated</b> 18:16<br>42:2 59:7<br><b>indicates</b> 39:11<br>42:5<br><b>indicating</b> 53:19<br><b>industrial</b> 28:10<br>29:8 31:19<br><b>information</b> 24:10<br>25:3 37:8 55:22<br><b>infrared</b> 40:2 42:3<br>42:5<br><b>initial</b> 44:25<br><b>initially</b> 24:7 30:7<br><b>inside</b> 40:20<br><b>institute</b> 24:6,7,10<br>25:25 26:4 27:19<br><b>institutional</b> 28:10<br>31:19 32:4<br><b>instructions</b> 5:11<br>5:24<br><b>intended</b> 5:12<br><b>interest</b> 24:13<br><b>interpret</b> 40:7<br>53:10<br><b>interrogatories</b><br>58:10,18 59:4 | 60:7<br><b>interrogatory</b><br>58:16 59:1<br><b>interruption</b> 21:3<br><b>intersection</b> 32:6<br><b>interview</b> 17:22<br><b>introductory</b> 10:15<br>11:4 18:25<br><b>investigate</b> 29:14<br><b>involve</b> 32:23<br><b>involved</b> 11:18 17:6<br>20:15 27:2 29:12<br>30:13<br><b>in-depth</b> 19:16<br><b>irrigation</b> 47:24<br>49:8<br><b>issue</b> 35:1 48:1<br><b>issues</b> 36:6<br><b>ITD</b> 8:16 9:2,8<br><b>items</b> 37:21 49:5<br><b>I-84</b> 32:6<br><hr/> <b>J</b><br><b>J</b> 2:14<br><b>January</b> 23:21<br><b>Jeff</b> 1:21 2:7<br><b>Jersey</b> 14:9<br><b>Jim</b> 23:9<br><b>join</b> 52:1<br><b>joined</b> 15:7<br><b>judge</b> 49:13<br><b>JUDICIAL</b> 1:1<br><b>jump</b> 35:25<br><b>June</b> 54:15<br><b>jury</b> 35:8<br><b>J-U-B</b> 15:8,11,12<br>15:16 20:18 21:6<br>21:12,16,22 22:13<br>23:1,5<br><hr/> <b>K</b><br><b>Kastera</b> 50:19,20<br>51:10,13,16,17,25<br>52:10,13<br><b>kilowatt</b> 53:17 54:1<br>54:10,12<br><b>kilowatts</b> 53:24<br><b>Kim</b> 9:7 | <b>kind</b> 7:12,18 8:9,14<br>16:10,18 18:10<br>25:9<br><b>kinds</b> 25:9<br><b>knew</b> 24:12 60:3<br><b>know</b> 6:8 11:2<br>17:19 26:21 34:1<br>34:11,16 36:1,8,9<br>41:5,23 42:4,16<br>42:25 44:3,4,8,9<br>44:13,14,16 45:1<br>45:5,22 48:16<br>49:23 50:2 53:1<br>55:1,8,11,12,14<br>56:2,4 60:7<br><b>knowledge</b> 34:24<br>35:2 43:15,21<br>45:2 46:5 47:13<br><hr/> <b>L</b><br><b>LaMAR</b> 1:21 2:7<br><b>land</b> 7:15 8:19<br>12:12,15 15:17<br>28:8,14,18,22,25<br>29:1,5 30:20<br>31:14 32:10 37:11<br><b>landowner</b> 28:20<br><b>landowners</b> 29:5<br><b>lands</b> 34:15<br><b>land-use</b> 6:21 14:3<br>14:8,14 15:1 28:9<br>31:1<br><b>largely</b> 23:25<br><b>late</b> 6:3,12 15:7<br>20:21 23:5,21<br><b>lateness</b> 6:13<br><b>laundry</b> 31:18,20<br>31:21<br><b>law</b> 4:5,8 9:2<br><b>Lawrence</b> 2:21<br>35:25 38:25 39:2<br>47:9 48:23 49:1<br>59:14 60:24 61:5<br>61:8<br><b>laws</b> 15:1<br><b>lawyers</b> 26:21<br><b>layman's</b> 20:5<br><b>layout</b> 31:7 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Leaders</b> 24:7 25:24<br>27:18<br><b>leave</b> 23:19 61:24<br><b>leaving</b> 17:14<br><b>left</b> 13:13,17 15:6<br>23:5,14 25:11<br>40:10<br><b>left-hand</b> 52:23<br><b>legal</b> 26:22<br><b>legend</b> 40:9,22<br><b>lenient</b> 15:1<br><b>let's</b> 16:8 20:4 21:2<br>28:14 29:10 30:10<br>35:5 38:6,15 41:7<br>42:9,20 46:9,10<br>49:22 50:5 53:13<br>53:14 54:3,9 56:5<br>57:17 58:21 60:18<br>60:21<br><b>levels</b> 10:25<br><b>license</b> 3:22,24<br>26:23<br><b>licenses</b> 56:15<br><b>limitation</b> 34:2,17<br><b>liquor</b> 18:7<br><b>list</b> 31:18,20,21<br>35:23 37:8,15<br>58:11<br><b>listed</b> 60:7<br><b>litigation</b> 6:21<br><b>little</b> 6:3 12:16 14:9<br>18:1 20:10,13<br>21:5 30:11 39:16<br>40:19 45:13 52:4<br>61:17<br><b>live</b> 42:6<br><b>living</b> 12:9<br><b>LLC</b> 1:14 2:2,18<br>50:15,18,21 51:4<br>51:5,8,9,18 52:15<br>55:21 57:12 59:3<br><b>LLC's</b> 4:14<br><b>local</b> 9:7 14:3 28:11<br><b>locate</b> 47:15<br><b>located</b> 27:8 41:25<br><b>location</b> 40:24 41:4<br>46:3,20 47:7<br><b>long</b> 24:17 | <b>look</b> 20:6 30:25<br>37:5 39:10,18,24<br>40:9,13 53:6<br>54:10 58:12 60:5<br>60:25<br><b>looked</b> 37:6 39:5<br>40:1<br><b>looking</b> 53:20<br><b>lot</b> 25:7 31:7<br><b>Luke's</b> 32:5,12<br><b>LUPA</b> 14:7 <hr/> <b>M</b> <hr/> <b>magnitude</b> 13:19<br><b>mains</b> 22:15<br><b>maintained</b> 33:18<br>33:23<br><b>map</b> 38:16,18,22<br>39:4 40:7,13<br>41:11 42:14,25<br>47:1<br><b>maps</b> 39:1,6,19<br>48:4 60:5<br><b>marathon</b> 5:13<br><b>March</b> 10:6 25:21<br>25:22<br><b>mark</b> 47:6,13 48:4<br>50:5 56:5 57:17<br>59:11,16,19,22<br>60:17<br><b>marked</b> 38:7,9,11<br>38:14 44:20,23<br>50:7,9 55:16,18<br>56:7,9,11,13 57:7<br>57:9,11,19<br><b>marker</b> 59:10<br><b>market</b> 29:15 31:2<br>31:2<br><b>markings</b> 41:14,16<br><b>master</b> 15:17 21:18<br>28:8 29:1 30:12<br>30:14 31:5,21,23<br>32:10<br><b>master's</b> 9:24 10:3<br><b>master-plan</b> 21:17<br>51:10<br><b>material</b> 20:16<br><b>materials</b> 16:11,11 | 16:13 18:19 19:1<br>19:25<br><b>mathematical</b> 20:1<br><b>Matt</b> 45:8,14,20<br><b>matter</b> 2:9 7:23<br>8:22 30:18<br><b>mean</b> 17:1 31:25<br>34:6,7 47:10<br>48:23 52:6<br><b>means</b> 17:2 34:2,17<br>34:22<br><b>mechanics</b> 19:23<br>20:12,13<br><b>medical</b> 32:11<br><b>meet</b> 11:8<br><b>meeting</b> 18:4<br><b>meetings</b> 25:8<br><b>member</b> 24:11<br>50:21 51:9<br><b>members</b> 24:9<br><b>memory</b> 36:18<br><b>mentioned</b> 31:17<br><b>Meridian</b> 32:12<br><b>meter</b> 54:3<br><b>Michigan's</b> 14:8<br><b>midnight</b> 17:11<br><b>mine</b> 52:1<br><b>minimum</b> 11:8<br><b>Minneapolis</b> 27:5,9<br>27:10,16<br><b>minor</b> 20:25<br><b>minute</b> 39:21 44:18<br>57:22 60:19<br><b>Mirrors</b> 23:13<br><b>misunderstood</b><br>22:5<br><b>mixtures</b> 16:16<br><b>MOFFATT</b> 2:19<br><b>moisture</b> 16:16<br><b>money</b> 31:5<br><b>monthly</b> 24:11<br><b>months</b> 27:3<br><b>morning</b> 6:6 17:12<br><b>Mountain</b> 29:11<br>45:3<br><b>movement</b> 20:16<br><b>municipal</b> 21:1,14<br>22:7,25 28:11 | 32:16<br><b>municipality</b> 32:19<br><b>M-a-t-t</b> 45:11 <hr/> <b>N</b> <hr/> <b>N</b> 3:1 4:1<br><b>name</b> 5:8,9,10 24:7<br>26:3 45:5,10<br><b>names</b> 45:12<br><b>nation</b> 14:4<br><b>national</b> 26:18 27:4<br>27:11<br><b>natural</b> 12:6<br><b>necessarily</b> 49:4<br><b>need</b> 5:13,21 12:16<br>26:7 30:6 38:2<br>39:16 47:17,20<br>48:8,12,15 50:14<br>52:3 59:16 60:17<br><b>needed</b> 13:12 14:12<br><b>needs</b> 61:22<br><b>neighbors</b> 31:9<br><b>never</b> 22:1<br><b>new</b> 14:9 22:10<br>28:7<br><b>newsletter</b> 24:11,25<br>25:4<br><b>nine</b> 6:11<br><b>Nods</b> 5:22<br><b>normally</b> 52:14<br><b>northern</b> 46:6<br><b>Nos</b> 1:6 3:19,21<br><b>Notary</b> 1:22 2:8<br><b>note</b> 35:25 40:18<br>55:22<br><b>notice</b> 49:5,11<br><b>noticed</b> 49:1<br><b>number</b> 3:8,10,23<br>3:25 4:6,9 37:14<br>42:17 43:1 50:25<br>52:21,24 53:2,24<br>54:3,20 60:6<br><b>numbered</b> 58:24<br><b>numbers</b> 4:11,13<br>4:16 55:3 57:13<br><b>numeral</b> 58:9 <hr/> <b>O</b> <hr/> | <b>object</b> 47:9 59:14<br><b>Objection</b> 4:10,12<br><b>objections</b> 57:12<br><b>obtain</b> 22:10<br><b>occasion</b> 39:18,23<br>53:6<br><b>Office</b> 2:13,23<br><b>offices</b> 2:4<br><b>Oh</b> 6:12 39:5 56:1<br>58:24<br><b>okay</b> 5:11 6:2,12,14<br>6:14,17,25 7:7,10<br>7:18 8:2,6,14 9:4<br>9:9,12 10:7,17<br>11:2,10,13,25<br>12:5,15 13:4,11<br>14:6,13 15:15,22<br>16:13,20 17:4,21<br>18:15 19:3,9,12<br>19:15,17 20:4,9<br>20:18,22 21:23<br>22:6,14 23:4,15<br>24:3,3,21 25:11<br>25:15,23 26:2,7<br>27:2,17,22 28:2,5<br>28:14 29:18 30:10<br>30:10 31:17,25<br>32:2,15,22 33:11<br>33:11,14 34:1,13<br>34:20 35:15,21<br>37:12,20,22 38:5<br>38:21 39:3,10,23<br>40:5,9,18 41:13<br>41:19 42:2,8,15<br>42:18,20 43:3,9<br>43:12,17,23 44:17<br>44:21,25 45:19<br>46:2,9,17,22,22<br>47:5 48:10,20,22<br>50:1,5,8,12,17<br>51:15,19 52:3,9<br>52:12,12,17,20,22<br>53:5,13 54:9 55:2<br>55:5,8,12,15,17<br>56:2,5,5,22 57:3,6<br>57:10,17,20 58:7<br>58:15,21,24 59:10<br>60:16 61:9 |
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| <b>Once</b> 31:6<br><b>ones</b> 46:14 59:13,19<br>60:12 61:16<br><b>onward</b> 15:9 39:6<br><b>oOo</b> 62:4<br><b>operation</b> 55:9<br><b>operations</b> 55:13<br><b>operator</b> 55:10,13<br><b>opinion</b> 35:4<br><b>opportunity</b> 38:1<br><b>oral</b> 59:15<br><b>order</b> 61:25<br><b>ordinance</b> 29:21,24<br>30:4<br><b>ordinances</b> 28:12<br>28:13 33:4<br><b>origin</b> 17:25 18:5<br>18:11<br><b>outgoing</b> 18:2<br><b>outlined</b> 40:11<br><b>owned</b> 32:5<br><b>owner</b> 24:24 27:23<br>31:13<br><b>O&amp;D</b> 17:24<br><b>o'clock</b> 6:11 17:12 | <b>performed</b> 22:25<br><b>period</b> 12:21 13:13<br>20:18 54:4,14,21<br><b>period's</b> 54:6<br><b>permeability</b> 16:17<br><b>permit</b> 31:11 32:4<br><b>permits</b> 22:10 32:1<br><b>person</b> 37:16 38:24<br>47:7 48:16<br><b>personal</b> 43:15,21<br><b>persons</b> 23:1 59:2,7<br><b>person's</b> 37:19<br><b>perspective</b> 49:9<br><b>pertaining</b> 42:17<br><b>phone</b> 60:2,25<br><b>photo</b> 41:9 42:5<br>46:1<br><b>photograph</b> 3:7,9<br>3:11,12,13,14,15<br>3:16,17<br><b>photographs</b> 37:13<br>60:5<br><b>photos</b> 39:24 40:1<br>42:3 45:1 46:3<br>47:16,21 48:13,15<br>49:3,4<br><b>phrase</b> 33:12,16,21<br>34:1,6,16<br><b>physical</b> 13:24<br>19:25<br><b>pick</b> 12:3 27:13<br><b>picture</b> 48:19<br><b>pictures</b> 45:22<br>47:24<br><b>pink</b> 60:12<br><b>pipe</b> 43:19<br><b>pipes</b> 22:8,15,24<br><b>place</b> 29:22 30:23<br>38:16 40:11,15<br>41:9,13,16 42:11<br>42:22,25 44:11<br>49:8,24 50:3<br><b>placement</b> 22:8<br><b>places</b> 30:17 56:17<br><b>plaintiff</b> 8:3<br><b>plan</b> 29:1,20,21<br>30:3 31:5 32:10<br><b>planner</b> 28:7 35:13 | 53:6<br><b>planners</b> 26:5<br>27:13<br><b>planning</b> 9:17 10:8<br>12:12,15 14:4,8<br>14:14 15:17,18,19<br>15:23 20:23 21:14<br>26:1,14,17 27:4<br>27:11,17 28:9,11<br>30:13,14 31:22,23<br>32:16 35:13 39:17<br>51:12<br><b>plans</b> 21:18 28:12<br><b>plants</b> 10:18 11:22<br>12:3<br><b>plastics</b> 16:12<br><b>please</b> 5:7,15,18<br><b>point</b> 13:17 18:5<br>30:5 37:24 40:19<br>40:25 41:4,19,24<br>46:5 49:14<br><b>pointing</b> 48:18<br><b>points</b> 31:8<br><b>policies</b> 29:22 30:3<br><b>pond</b> 43:25 44:2,3,5<br>44:6,8,10<br><b>portion</b> 33:8 53:18<br>58:5<br><b>position</b> 24:1 27:24<br>29:1<br><b>possession</b> 61:24<br><b>possible</b> 30:22<br><b>Post</b> 2:23<br><b>postpone</b> 47:18<br><b>post-tension</b> 16:18<br><b>potentially</b> 30:24<br><b>power</b> 3:18,20<br>29:15 37:9 50:12<br>52:14,17 53:7,10<br>55:20 60:4<br><b>practice</b> 20:2 26:14<br><b>practiced</b> 35:13<br><b>preliminary</b> 31:9<br><b>preparation</b> 36:11<br>59:3<br><b>prepare</b> 15:2 28:25<br>29:20 35:16 37:17<br><b>prepared</b> 39:12 | <b>presence</b> 42:6<br><b>presently</b> 9:24<br><b>pretty</b> 47:10<br><b>preview</b> 61:12<br><b>previously</b> 52:18<br>56:20,23 57:1,4<br>57:15,21<br><b>primarily</b> 12:10<br>21:1<br><b>primary</b> 28:6<br><b>Principal</b> 28:1,2<br><b>prior</b> 12:10 61:2<br><b>priorities</b> 34:12<br><b>private</b> 8:4,11 24:6<br><b>proactive</b> 33:2<br><b>probably</b> 6:23 18:6<br>25:21 26:21 34:15<br>36:7,13 37:23<br>39:9 60:23<br><b>problem</b> 47:19<br><b>procedure</b> 19:16<br><b>procedures</b> 30:23<br><b>process</b> 17:22<br><b>product</b> 14:21<br><b>production</b> 58:10<br>58:17 59:5<br><b>professional</b> 30:7<br><b>professor</b> 14:2 15:3<br><b>program</b> 9:25<br><b>project</b> 14:14,22<br><b>projects</b> 14:1 28:9<br><b>property</b> 7:21 8:13<br>8:20 42:24 43:2<br>44:3,7,9 51:12<br>52:15<br><b>proposal</b> 32:23<br><b>propose</b> 60:24<br><b>provide</b> 8:18<br><b>provided</b> 21:24<br>24:10 50:13 55:20<br>58:19<br><b>providing</b> 59:20<br><b>provisions</b> 30:4<br><b>psychology</b> 14:1<br><b>public</b> 1:22 2:8 8:7<br><b>pull</b> 59:25<br><b>pump</b> 37:14 53:3<br>54:20,25 56:2 | 60:6<br><b>pumped</b> 54:21<br><b>put</b> 20:5 25:3 27:24<br>30:3 51:24 52:5<br>60:9<br><b>P.O</b> 2:16 |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <b>Q</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <b>qualified</b> 17:2 35:1<br><b>question</b> 5:17 22:7<br>33:15 43:14 44:7<br>44:25 46:16,23<br>50:22<br><b>questions</b> 5:20,22<br>35:22,23,24 36:15<br>36:16,17,19,24,25<br>37:1,6,17 38:2<br>42:9 49:9 58:13<br>59:24 61:12<br><b>quick</b> 36:1                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <b>R</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |
| <b>raise</b> 22:12<br><b>Ranch</b> 45:3<br><b>range</b> 10:13 11:18<br>11:22<br><b>rangeland</b> 28:23<br><b>rate</b> 22:12<br><b>rates</b> 22:12<br><b>read</b> 34:20 35:17,23<br>40:6<br><b>reading</b> 24:13<br><b>real</b> 36:1<br><b>reality</b> 30:16<br><b>really</b> 29:13 36:23<br><b>reason</b> 5:14 6:15<br><b>reasonable</b> 5:16<br>40:15 41:24<br><b>recall</b> 18:18 19:18<br>58:11<br><b>receive</b> 16:22 26:19<br>29:2<br><b>received</b> 15:4,14<br>19:4 38:23<br><b>Recess</b> 44:19<br><b>recognize</b> 58:13<br><b>recommendations</b><br>56:15       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                         |

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                                                                                                                                                                                                 |
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------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Recommended</b> 4:4<br>4:7<br><b>record</b> 5:8,19,23<br>36:2,3,11 44:18<br>60:18,21<br><b>records</b> 3:18,20<br>33:17,22 37:9<br>50:12 52:14,18<br>53:7,10 55:20<br>56:3<br><b>red</b> 42:4<br><b>refer</b> 11:2<br><b>refined</b> 31:5<br><b>regarding</b> 7:5<br><b>relating</b> 5:2<br><b>relationship</b> 50:17<br>51:14<br><b>relatively</b> 49:21<br><b>religion</b> 13:23<br><b>repeat</b> 36:19 46:16<br><b>rephrase</b> 5:18<br><b>REPORTED</b> 1:20<br><b>reporter</b> 2:8 5:23<br><b>reporter's</b> 61:15<br><b>represent</b> 39:13<br>47:21 55:19<br><b>representation</b><br>40:15<br><b>representative</b><br>21:22 22:18 36:4<br><b>represented</b> 22:1<br><b>representing</b> 21:16<br><b>request</b> 58:17<br><b>requested</b> 62:3<br><b>requests</b> 4:16 5:16<br>15:20 58:8,10<br>59:4,24 60:8<br><b>requirement</b> 11:9<br><b>research</b> 14:2,3,13<br>14:22 15:2 25:2<br><b>residential</b> 28:10<br>31:18<br><b>Resources</b> 33:19,24<br>39:14<br><b>respect</b> 8:21 10:7<br>10:18 16:14 19:3<br>22:23 26:22,25<br>30:14 34:2,17 | 43:3 44:10 50:1<br>52:14 56:16<br><b>respond</b> 61:1<br><b>response</b> 35:24<br>37:19<br><b>responses</b> 4:14<br>37:17 49:18 59:3<br><b>responsible</b> 23:11<br><b>rest</b> 21:11<br><b>restroom</b> 5:14<br><b>result</b> 7:16,21<br><b>reviewed</b> 14:19<br><b>reviewing</b> 38:22<br><b>Reviews</b> 57:25<br><b>Ricks</b> 13:3<br><b>right</b> 3:7,9,23,25<br>4:5,8 5:7 13:2<br>20:20 23:14 33:12<br>33:17 34:3,18<br>38:17 39:11 40:16<br>40:25 41:9,17,20<br>42:11,21,23 43:4<br>43:10 44:10,11,12<br>44:15 46:11,14<br>48:25 49:22,24<br>50:1 51:8 52:8<br>56:14 57:13 58:25<br>60:15<br><b>rights</b> 4:4,7 34:9,10<br>34:10,11 36:6<br>43:18,24 55:10<br>56:16<br><b>right-of-way</b> 7:16<br>7:20,21 8:4,12<br><b>River</b> 39:15<br><b>Road</b> 32:6,12<br><b>ROCK</b> 2:19<br><b>role</b> 24:22 59:22<br>60:14<br><b>Roman</b> 58:9<br><b>rotates</b> 27:15<br><b>RULE</b> 1:14 2:1<br><b>Rules</b> 34:21<br><b>run</b> 54:25 61:18 | <b>Sandy</b> 39:12<br><b>saw</b> 37:8,15,19<br><b>says</b> 34:23 52:24<br>59:1<br><b>scheduled</b> 6:9<br><b>school</b> 9:10,15<br>12:11,19,25 13:3<br>13:13,18<br><b>science</b> 9:16 10:8<br>10:13 11:11,18<br><b>scientific</b> 34:23<br><b>scope</b> 11:17 49:10<br><b>screen</b> 39:5<br><b>second</b> 2:5 19:12<br>20:9,11 21:2<br>23:12 45:15<br><b>Secondly</b> 6:23<br><b>see</b> 6:17 9:9 13:21<br>15:4 16:7 18:15<br>20:4 25:17 27:7<br>38:6 40:22,24<br>41:22 45:25 52:14<br>54:3 55:24 56:1<br>58:14,16,24 60:16<br><b>seeing</b> 58:11<br><b>seek</b> 51:10<br><b>seen</b> 37:21 38:18<br>41:11 43:5,9<br>52:17 56:19,22,25<br>57:14,20 58:5,8<br>58:17,18<br><b>sell</b> 25:12<br><b>Seminary</b> 10:2<br><b>sense</b> 59:21 60:8<br><b>separate</b> 51:22<br><b>serial</b> 37:14 60:6<br><b>series</b> 14:16<br><b>serve</b> 33:4<br><b>service</b> 52:20 53:1<br>53:24 54:4,14<br><b>Set</b> 4:15<br><b>sewer</b> 15:20 21:17<br><b>shopping</b> 29:6<br><b>short</b> 13:20 54:25<br><b>Shorthand</b> 2:7<br><b>show</b> 37:13 46:2<br>60:12<br><b>shown</b> 41:14 42:14 | 56:17<br><b>shows</b> 40:10 43:1<br>53:17<br><b>shuffle</b> 46:18<br><b>side</b> 7:23 8:9<br><b>Signature</b> 62:3<br><b>simply</b> 5:19 59:12<br><b>sir</b> 5:9,12,25 6:7<br>9:23 10:11,19,21<br>26:10 38:19 39:24<br>40:22 53:18 54:9<br>54:18 55:25 57:15<br>57:21 58:4<br><b>sit</b> 26:18<br><b>site</b> 11:23 30:25<br>42:19<br><b>situation</b> 8:18<br>30:25<br><b>size</b> 22:14 39:21<br><b>sizing</b> 22:14,24<br><b>skill</b> 35:2<br><b>Slump</b> 16:16<br><b>small</b> 21:9,21 24:8<br><b>Snake</b> 39:15<br><b>soil</b> 11:11<br><b>someday</b> 31:11<br><b>someplace</b> 27:14<br><b>soon</b> 49:21<br><b>sorry</b> 44:16 58:23<br><b>sort</b> 31:17<br><b>source</b> 43:4 44:4<br><b>sources</b> 22:11 34:8<br><b>South</b> 2:22 45:3<br><b>Southwest</b> 6:16<br><b>speak</b> 25:8<br><b>speaking</b> 25:9<br><b>special</b> 14:1,11,12<br>15:18 16:5<br><b>specialized</b> 34:24<br><b>speculative</b> 47:10<br><b>spell</b> 5:8 45:10<br><b>spelled</b> 5:10<br><b>spending</b> 31:4<br><b>Spent</b> 13:6<br><b>split</b> 54:23<br><b>spokesperson</b> 22:20<br><b>Spring</b> 25:22<br><b>sprinkler</b> 43:19 | <b>SRBA</b> 1:5<br><b>St</b> 32:5,12<br><b>Standard</b> 4:10,12<br><b>standing</b> 47:7 48:16<br><b>standpoint</b> 17:9<br><b>Stands</b> 26:4<br><b>start</b> 6:10,11 31:8<br>50:14<br><b>started</b> 13:2 24:8<br><b>starting</b> 6:2,4<br><b>state</b> 1:2 2:3,4,5,9<br>2:12,15 4:5,8,15<br>5:7 8:16 14:23<br>18:2 22:21 23:12<br>23:17 29:6 36:9<br>36:10,25 37:3,7<br><b>states</b> 14:5,17,25<br>15:1 24:9<br><b>Statics</b> 19:23 20:6<br><b>status</b> 34:12<br><b>statutes</b> 14:19<br><b>steel</b> 16:12 20:1<br><b>stimulate</b> 29:22<br><b>stipulate</b> 36:8<br><b>stone</b> 16:12<br><b>stop</b> 21:2 30:5<br><b>store</b> 18:7<br><b>street</b> 2:5,15 17:20<br>18:13<br><b>streets</b> 31:7<br><b>strength</b> 16:15<br><b>strict</b> 15:2<br><b>strip</b> 18:7<br><b>studies</b> 10:3 15:19<br>15:20 17:3 21:19<br>21:19 22:4<br><b>study</b> 17:5 21:25<br>22:7,8 39:4<br><b>Subcase</b> 1:6 4:10,12<br><b>subdivision</b> 14:24<br>15:17 28:13 29:7<br><b>subdivisions</b> 20:24<br><b>subject</b> 10:15 13:22<br>19:9,12 20:10,14<br>28:18 30:12<br><b>submit</b> 15:2<br><b>substitution</b> 36:3<br><b>succeeded</b> 27:18 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                     |                     |                    |                    |                     |
|---------------------|---------------------|--------------------|--------------------|---------------------|
| summary 20:22       | 53:2 54:20          | truth 5:2          | 28:7 30:17 35:12   | 38:17 39:14 40:16   |
| supply 22:25 37:9   | testified 5:3       | try 29:1           | 35:13 39:17 53:5   | 40:25 41:9,17,20    |
| support 13:10,12    | testify 7:5,15 35:3 | trying 5:18 36:22  | use 18:10,13 28:22 | 42:11,21,23 43:4    |
| 20:7 21:21 22:19    | testimony 1:15 2:2  | 37:4 48:1,3,11     | 28:24,25 31:14     | 43:4,10,18,24       |
| supposed 6:10,11    | 3:3 8:18 18:18      | 49:17 60:9         | 34:2,8 38:16       | 44:4,10,11,12,14    |
| sure 8:25 11:16     | Theological 10:2    | Twin 1:3 7:5 9:11  | 40:11,15 41:9,13   | 46:11,14 49:22,24   |
| 31:19 38:23 39:1    | thereto 35:3        | 12:1               | 41:17 42:11,22     | 50:1 55:9 56:14     |
| 48:14 49:17 51:1    | thing 61:15         | two 10:25 19:8     | 44:11 49:8,24      | 56:16 57:12         |
| 53:13 57:24 61:16   | things 25:6 28:13   | 21:14 23:16 35:19  | 50:3 56:17         | way 21:20 27:25     |
| 61:22               | 37:9 53:21          | 35:20 36:23 37:21  | uses 31:22         | 29:17 43:14 46:23   |
| surface 34:10       | think 6:3 12:2      | 39:8 45:7,24 58:2  | USGS 39:18         | Wayne 1:15 2:2 3:3  |
| suspect 11:1 45:8   | 13:19 27:13 62:1    | type 16:20 30:6    | Utah 13:6,7 16:4,8 | 5:1,9 26:3 28:7     |
| sworn 5:2           | third 58:9          | 33:3               | 18:17,22           | 59:14               |
| symbol 40:19        | THOMAS 2:19         | types 28:13 31:22  |                    | week 39:9 60:23     |
| system 17:19,20     | thought 22:3 25:13  | 34:9               | V                  | weeks 39:8 45:24    |
| 22:9,22 43:20       | 47:15               | typical 31:12      | Valley 12:9 15:10  | wells 37:10,11,13   |
| 47:24 49:8          | three 39:8 45:24    | typically 32:22    | value 28:21 30:19  | 37:14 43:24         |
| systems 21:17,17    | Tiegs 1:14 2:2,18   |                    | values 7:16 8:19   | went 11:20 23:14    |
| 22:9,10             | 4:14 37:1,2,8 43:2  | U                  | various 14:4       | West 2:5,15         |
|                     | 50:13,15,18,21,23   | Uh-huh 11:19       | vegetation 42:7    | western 24:9        |
| T                   | 51:2,8 52:15        | 12:18,23 13:9      | vertical 29:6      | we'll 44:17 49:13   |
| tags 61:17          | 55:21 57:12 59:3    | 14:15,18,20 16:9   | viable 30:24       | 49:21               |
| take 5:13 13:22     | time 13:13,17 17:2  | 16:16 19:6 25:18   | visualizing 34:14  | we're 6:2,4 36:7    |
| 22:11 29:5 46:17    | 20:18 25:19 37:24   | 27:11 28:8 30:21   | volume 1:12 34:17  | 37:23 49:15 61:9    |
| 57:23 61:18         | 48:6,9,19,20        | 32:8 37:18 40:12   |                    | 62:1                |
| taken 2:3 7:2 16:3  | 49:14 51:21 54:21   | 46:12,25 61:4      | W                  | willing 36:7        |
| 45:23 46:3,6,6      | 57:23               | ultimate 28:24     | walk 28:15         | wind 29:11,14 30:1  |
| 47:16               | times 42:19 43:2    | ultimately 31:10   | walks 30:11        | 30:9                |
| takes 17:9          | today 32:11 48:4    | uncultivated 11:20 | want 5:19 11:16    | windy 29:13         |
| talk 19:24 49:13    | 58:14,19 61:12,20   | underground 34:10  | 36:18 46:17 47:13  | wish 61:11          |
| talked 36:9         | topics 24:12        | understand 5:17,24 | 48:7 49:3,15       | witness 7:4,15 8:18 |
| taxonomy 10:18      | traffic 17:8,12,17  | 11:16 19:17 30:2   | 54:23 61:1,13,16   | 35:1 61:4,20,25     |
| team 22:19          | 17:18,22 19:11,14   | 34:6,7,25 37:4     | 61:17,18           | wood 16:12 19:25    |
| technical 13:25     | 20:23,25 21:9,20    | 47:21 48:1,12,12   | wanted 30:19 36:2  | words 21:14         |
| 21:21 22:23 24:10   | 31:1                | 48:15 49:6,18      | 36:10 38:25 47:20  | work 12:13,15       |
| 30:6 34:23          | training 19:4 35:2  | 51:15 53:13        | 48:12 49:16        | 15:18,24,25 20:22   |
| telephone 6:12      | transferred 13:5,7  | understanding      | wanting 33:3       | 21:10,12 22:12,23   |
| Telephonic 21:3     | transmitting 38:24  | 45:21 49:7 51:6    | wants 33:2         | 23:24 31:9,24,25    |
| tell 5:2 19:21 34:5 | transportation 8:17 | understood 49:17   | Washington 16:6    | 39:17 52:12 53:5    |
| 43:20,25 46:14      | 8:19 15:19 16:24    | undeveloped 31:13  | 16:23 19:5         | worked 13:13        |
| 60:5                | 17:1,3,5            | unhappy 8:11       | wasted 55:1        | 21:14 23:12 59:13   |
| ten 12:22 20:21     | traveling 25:7      | university 9:18,20 | water 3:7,9,22,24  | working 12:13       |
| 24:9                | Treasure 12:9       | 10:1 13:6,7,15     | 4:4,5,7,8 15:20    | 15:12 52:10         |
| tension 16:17       | 15:10               | 15:7 16:4,6,8,23   | 21:17,24 22:3,6,8  | works 31:10 39:15   |
| ten-year 15:10      | trick 5:19 36:22    | 18:17,22 19:4      | 22:11,15,15,22,25  | workshops 25:9      |
| term 34:22          | 48:11               | upper 52:23 53:18  | 33:12,17,18,23     | worth 31:4          |
| terminology 51:7    | tried 59:25         | urban 9:16 10:8    | 34:3,9,10,10,11    | wouldn't 12:3       |
| terms 20:5 46:20    | trier 34:24         | 20:23 26:1,14      | 34:18 36:6 37:10   | 30:18 60:13         |

|                            |                    |                     |                   |
|----------------------------|--------------------|---------------------|-------------------|
| <b>writing</b> 13:25       | 16 4:10 57:7,11    | 4 3:12 58:11        | 83720-0010 2:17   |
| <b>wrote</b> 24:25         | 17 1:16 2:6 4:12   | 44 3:11,12,13,14,15 | 89 23:22          |
| <b>X</b>                   | 57:8,9,11          | 3:16,17             | <b>9</b>          |
| <b>X</b> 3:1 4:1           | 18 4:14 57:19,21   | <b>5</b>            | 9 3:17 44:20,23   |
| <b>Y</b>                   | 58:1               | 5 3:4,13 58:11      | 59:1              |
| <b>year</b> 13:5,6 27:5,15 | 1972 9:13 12:20    | 5th 54:15           | 9:45 6:5          |
| 54:7                       | 1977 15:7 20:19    | 50 3:18             | 9:46 2:6          |
| <b>years</b> 12:22 20:21   | 1978 15:9          | 500 24:8            | 90s 32:14         |
| 23:16 24:18,22             | 1982 9:22 12:21    | 52,780 54:11        | 979 1:14 2:2,18   |
| 26:15,16 32:7              | 15:5,14            | 55 3:20             | 4:14 50:15,18,23  |
| 35:14                      | 1985 26:6          | 56 3:22,24 4:4,7    | 50:25 51:2,3,8    |
| <b>yellow</b> 40:20 59:10  | 1986 6:23,25 20:21 | 57 4:10,12,14       | 52:15 55:21 57:12 |
| <b>Young</b> 9:20 15:7     | 23:5               | 5741227286 52:25    | 59:3              |
| <b>Z</b>                   | 1987 20:19         | <b>6</b>            |                   |
| <b>zoning</b> 14:24 28:12  | 1988 23:21 24:3    | 6 3:14              |                   |
| 29:20,24 32:9              | 1989 24:15         | 6th 54:7,15         |                   |
| <b>zoology</b> 10:20       | 1994 24:19 25:11   | 63-02529 1:6        |                   |
| <b>0</b>                   | 25:19              | 63-03163 1:7 4:11   |                   |
| 02/14/1962 3:25            | 1998 6:24 7:11,23  | 63-03274 1:7 4:13   |                   |
| 07/31/1959 3:23            | <b>2</b>           | 63-03323 1:7        |                   |
| 08 54:16,17                | 2 3:9 38:10,11,15  | 63-03324 1:8        |                   |
| <b>1</b>                   | 41:8,20 42:21      | 63-09109 1:8        |                   |
| 1 3:7 4:10,12 23:21        | 46:4 47:3 56:18    | 63-10435 1:9        |                   |
| 38:9,14,15 39:11           | 2nd 2:15           | 63-3163 3:8 4:6     |                   |
| 40:3,7 41:1 42:9           | 20 21:15           | 38:17 40:16,25      |                   |
| 46:4,10 47:2,4,6           | 2002 6:24 7:18 8:6 | 42:12 43:5 44:12    |                   |
| 56:17                      | 2005 6:24 8:14,22  | 46:11,15 49:22      |                   |
| 1st 45:25                  | 2008 54:22         | 57:13               |                   |
| 10 3:18 50:7,10            | 2009 1:16 2:7      | 63-3274 3:10 4:9    |                   |
| 52:24 53:11,15             | 2010 10:6          | 41:10,17,21 42:21   |                   |
| 58:21,22,22,23             | 24 27:3            | 43:10 44:15 50:2    |                   |
| <b>10th</b> 2:22           | 28th 61:2          | 57:13               |                   |
| 101 2:22 11:1,4            | 29 54:4            | 640 1:21            |                   |
| 102 11:1,7                 | <b>3</b>           | <b>7</b>            |                   |
| 11 3:20 55:16,19           | 3 3:11 44:20,23    | 7 3:15              |                   |
| 11:10 62:2                 | 46:6,24 47:8       | 7th 54:6            |                   |
| 12 3:22 13:19 56:7         | 58:11              | 7-Eleven 18:8       |                   |
| 56:13,20                   | 30 35:14           | 7.5 39:21           |                   |
| 13 3:24 13:20 56:9         | 30(b)(6) 1:14 2:1  | 700 2:5,15          |                   |
| 56:14,23                   | 36:4 49:5          | <b>8</b>            |                   |
| 14 4:4 56:11,14            | 3163 46:19         | 8 3:16              |                   |
| 57:1                       | 32 27:3,6          | 8,220 53:17,24      |                   |
| 15 4:7 56:11,14            | 3274 46:19         | 829 2:23            |                   |
| 57:4                       | 38 3:7,9           | 83701 2:24          |                   |
|                            | 39576 1:8          | 83720 2:16          |                   |
|                            | <b>4</b>           |                     |                   |



**Barber, David**

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**From:** Dylan Lawrence [DBL@moffatt.com]  
**Sent:** Wednesday, February 25, 2009 3:26 PM  
**To:** Barber, David  
**Cc:** Scott Campbell; John Ward  
**Subject:** Tomorrow's 30(b)(6) deposition of DBSI Tiegs 979, LLC  
**Importance:** High

Mr. Barber:

I apologize for the short notice, but I have just been informed and instructed that Moffatt Thomas will be withdrawing as counsel of record for all DBSI-related entities in the SRBA, including DBSI Tiegs 979, LLC. Therefore, neither I nor any other Moffatt Thomas attorney will be appearing at tomorrow's 30(b)(6) deposition of DBSI Tiegs 979, LLC. Because Moffatt Thomas was counsel of record for DBSI Tiegs when that deposition was noticed up, please vacate it.

Obviously, there will be other issues related to our consolidated proceeding, which we can deal with in due course. The immediate concern, though, is the need to vacate tomorrow's deposition.

Again, I apologize for the short notice, and for any inconvenience.

Dylan

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2/25/2009