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BEFORE THE POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF) DOCKET NO.
 SOUTHLINE TRANSMISSION, L.L.C., IN) L-00000AAA-
 CONFORMANCE WITH THE REQUIREMENTS OF) 16-0370-00173
 ARIZONA REVISED STATUTES 40-360, ET)
 SEQ., FOR A CERTIFICATE OF)
 ENVIRONMENTAL COMPATIBILITY)
 AUTHORIZING CONSTRUCTION OF THE NON-)
 WAPA-OWNED ARIZONA PORTIONS OF THE)
 SOUTHLINE TRANSMISSION PROJECT,) CASE NO. 173
 INCLUDING A NEW APPROXIMATELY 66-MILE)
 345-KV TRANSMISSION LINE IN COCHISE)
 COUNTY FROM THE ARIZONA-NEW MEXICO)
 BORDER TO THE PROPOSED SOUTHLINE)
 APACHE SUBSTATION, THE ASSOCIATED)
 FACILITIES TO CONNECT THE SOUTHLINE)
 APACHE SUBSTATION TO THE ADJACENT)
 AEPCO APACHE SUBSTATION, AND)
 APPROXIMATELY 5 MILES OF NEW 138-KV)
 AND 230-KV TRANSMISSION LINES AND)
 ASSOCIATED FACILITIES TO CONNECT THE)
 EXISTING PANTANO, VAIL, DEMOSS)
 PETRIE, AND TORTOLITA SUBSTATIONS TO)
 THE UPGRADED WAPA-OWNED 230-KV)
 APACHE-TUCSON AND TUCSON-SAGUARO)
 TRANSMISSION LINES IN PIMA AND PINAL)
 COUNTIES.) PREHEARING
) CONFERENCE

17 At: Phoenix, Arizona
 18 Date: November 16, 2016
 19 Filed: November 18, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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INDEX TO EXHIBITS

NO.	DESCRIPTION	IDENTIFIED
1	Excerpt of Exhibit B, Purpose of the Plan of Development, Bates Nos. B-14.43, B-14.44	40
2	Excerpt of Exhibit B, Table 8, Bates Nos. B-14.102 - B-14.113	40

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Power Plant and Transmission Line Siting Committee, at
4 the Arizona Attorney General's Office, 15 South 15th
5 Avenue, in the Basement Conference Rooms A and B,
6 Phoenix, Arizona, commencing at 10:05 a.m. on the 16th
7 of November, 2016.

8

9 BEFORE: THOMAS K. CHENAL, Chairman

10

APPEARANCES:

11

For the Applicant:

12

SUTHERLAND ASBILL & BRENNAN, L.L.P.

13

By Mr. James Guy

Ms. Marty Hopkins

14

One American Center

600 Congress Avenue, Suite 2000

15

Austin, Texas 78701

16

and

17

OSBORN MALEDON, P.A.

By Ms. Meghan Grabel

18

Ms. Kimberly Ruht

2929 North Central Avenue, 21st Floor

19

Phoenix, Arizona 85012

20

For Noticed Potential Intervenor Irrigation and
21 Electrical Districts Association of Arizona:

22

ROBERT S. LYNCH & ASSOCIATES

By Mr. Robert S. Lynch

23

Mr. Todd Dillard, via teleconference

340 East Palm Lane, Suite 140

24

Phoenix, Arizona 85004

25

1 APPEARANCES:

2 For Noticed Potential Intervenor Pinal County:

3 Pinal County Attorney's Office
4 By Mr. Cedric I. Hay, Deputy County Attorney, via
5 teleconference
6 30 North Florence Street
7 Florence, Arizona 85132

6

7 ALSO PRESENT:

8 Mr. Doug Patterson, Manager, Southline Transmission
9 Project
10 Mr. Matthew Virant, Project Manager, Project
11 Development, Southline Transmission Project
12 Mr. John Wallace, Grand Canyon State Electric
13 Cooperative Association, Inc.
14 Mr. Samuel L. Lofland, Ryley Carlock & Applewhite,
15 SunZia
16 Mr. Rhett Billingsley, Senior Attorney, Central
17 Arizona Project, Central Arizona Water
18 Conservation District
19 Mr. Bill Kipp, Southline Transmission Project, via
20 teleconference
21 Ms. Lisa Romeo, Assistant to Chairman Chenal
22
23
24
25

1 CHMN. CHENAL: Good morning. This is the time
2 set for the prehearing conference for the Southline
3 case.

4 Let's go around the room. I generally do this,
5 and then we will get the people on the phone. And spell
6 your name just if Colette doesn't have it. Let's
7 proceed with Mr. Guy.

8 MR. GUY: Good morning, Chairman. James Guy
9 with Sutherland on behalf of Southline.

10 CHMN. CHENAL: Good morning.

11 MS. HOPKINS: Marty Hopkins with Sutherland on
12 behalf of Southline.

13 MS. GRABEL: Meghan Grabel with Osborn Maledon
14 on behalf of Southline.

15 CHMN. CHENAL: Good morning.

16 MS. RUHT: Kimberly Ruht of Osborn Maledon on
17 behalf Southline Transmission.

18 MR. PATTERSON: Doug Patterson with Black Forest
19 Partners, Southline Transmission.

20 MR. VIRANT: Matt Virant with Southline
21 Transmission.

22 MR. LOFLAND: Sam Lofland with Ryley Carlock &
23 Applewhite on behalf of SunZia Transmission.

24 MR. BILLINGSLEY: Rhett Billingsley with the
25 Central Arizona Water Conservation District.

1 MR. LYNCH: I'm Bob Lynch on behalf of the
2 Irrigation and Electrical Districts Association of
3 Arizona.

4 MR. WALLACE: John Wallace on behalf of Grand
5 Canyon State Electric Cooperative Association.

6 CHMN. CHENAL: All right. Can we have
7 appearances on the phone, please, those of you who are
8 on the phone.

9 MR. HAY: Cedric Hay for Pinal County.

10 CHMN. CHENAL: Mr. Hay, nice to --

11 MR. DILLARD: Todd Dillard. Todd Dillard,
12 Irrigation and Electrical Districts Association.

13 CHMN. CHENAL: Okay. Thank you.

14 All right. Mr. Guy, let's do this. Let's see
15 who we have who is intervening in this case. We have
16 the applicant, of course. We have, IEDA has filed a
17 notice of intent to be a party.

18 Mr. Hay, Pinal County has filed a notice of
19 intent, that's correct?

20 MR. HAY: Yes, Your Honor.

21 CHMN. CHENAL: "Your Honor" sounds good.
22 Mr. Chairman is good, too, but...

23 MR. HAY: Force of habit, Mr. Chairman.

24 CHMN. CHENAL: That's good.

25 Is there anyone else who is intervening,

1 formally intervening that the applicant knows about or
2 anyone else on the phone or anyone in the room?

3 MR. BILLINGSLEY: Mr. Chairmen, Rhett
4 Billingsley for Central Arizona Conservation District.
5 We have been monitoring the application and the
6 proceeding, haven't made a decision yet as to
7 intervention but are considering either to intervene as
8 party or limited appearance. We will make a decision on
9 that by the end of the week.

10 CHMN. CHENAL: Okay. I think Mr. Lynch's filing
11 alerted that that was a possibility.

12 MR. BILLINGSLEY: It did.

13 CHMN. CHENAL: Okay. You are aware of the time
14 limits to file a notice of intent to be a party?

15 MR. BILLINGSLEY: Yes.

16 CHMN. CHENAL: Okay. Anyone else, is there any
17 other party who wants to intervene?

18 Mr. Wallace, what is Grand Canyon State
19 Cooperative? I didn't write it all down.

20 MR. WALLACE: It is the electric cooperative
21 association. And some of my members are interested in
22 this application, Mr. Chairman, because of WAPA's
23 portion of this. And we are particularly interested in
24 how those costs that WAPA would incur will be shared
25 among the preference customers of WAPA, of which we are

1 some. And so that is our main interest.

2 I don't believe that we will intervene. We want
3 to monitor this. But that's going to be up to my
4 members, but they are aware of the time deadlines.

5 CHMN. CHENAL: Okay. You are aware there is
6 other ways to get your position into the record with a
7 statement in writing. We have received a couple of
8 those. And you can, of course, intervene. You can make
9 public comment.

10 MR. WALLACE: Okay. Yes, we are. Thank you,
11 Mr. Chairman.

12 CHMN. CHENAL: We will have plenty of
13 opportunity for public comment.

14 All right. This morning I saw, Mr. Guy, a
15 couple of notices of filing of comments, one on behalf
16 of Western Power administration, WAPA, and the other on
17 behalf of Sun Corridor, Inc.

18 MR. GUY: That's correct.

19 CHMN. CHENAL: Were there any other statements
20 that you are aware of?

21 MR. GUY: I am not aware of any others.

22 CHMN. CHENAL: Well, we will make these exhibits
23 at the hearing and they will come in as statements in
24 writing. I don't know that we have to make them
25 exhibits today. I don't think we need to.

1 MR. GUY: We may have included them as part of
2 our exhibit package that we shared with folks this
3 morning. But, you know, however you want to handle that
4 is fine.

5 CHMN. CHENAL: They will come in, be part of the
6 record. We will address it at the hearing. We don't
7 need to make them exhibits necessarily today with this.

8 All right. Mr. Guy, you have notified
9 interested parties obviously they can appear today
10 either in person or on the phone.

11 MR. GUY: We have.

12 CHMN. CHENAL: Okay. We will get to the legal
13 issues. Let's deal with some of the more generic
14 housekeeping items.

15 The Notice of Hearing, the posting and
16 publishing, can you comment on that, Mr. Guy.

17 MR. GUY: Actually, I will let Ms. Hopkins do
18 that.

19 MS. HOPKINS: Thank you, Chairman.

20 Yes, we published the Notice of Hearing in five
21 newspapers, the Arizona Republic and the Arizona Daily
22 Star on October 23rd and 24th, in both of those papers,
23 meeting the statutory requirement, and then
24 additionally, published the Notice of Hearing in the San
25 Pedro Valley News and the Willcox Range News, and the

1 Explorer Newspaper all on October 26.

2 CHMN. CHENAL: Great. And that's the
3 publication. What about the posting?

4 MS. HOPKINS: The signs were posted at six
5 locations, one near -- it contained the same information
6 that the Notice of Hearing has. One was posted near
7 Tortolita substation, another near the DeMoss Petrie
8 substation, another near the Vail substation, another
9 near the Apache substation, one near the Willcox Playa
10 wilderness area. And the sixth one was between Bowie
11 and San Simon. And we have record of that; we have
12 photos of all of those signs posted in an attachment to
13 our Exhibit No. 2, which is the prefiled direct
14 testimony of Matthew Virant on notice.

15 CHMN. CHENAL: Very good. Very good. I notice
16 you filed a notice --

17 Whoop. Has someone joined the conversation?

18 MR. KIPP: Yes. This is Bill Kipp with
19 Southline.

20 CHMN. CHENAL: Okay. Mr. Kipp, welcome.

21 All right. Notice to affected jurisdictions,
22 that, I see, has been filed.

23 MS. HOPKINS: Yes. And we sent the Notice of
24 Hearing to Cochise County, Pima County, Pinal County,
25 City of Tucson, City of Willcox, and the Arizona Game &

1 Fish Department, along with the Arizona Land Department,
2 State Land Department. And those were -- we also filed
3 a notice of filing stating that we made those, we sent
4 those Notices of Hearing to affected jurisdictions.

5 CHMN. CHENAL: Seems to cover all the
6 jurisdictions. I can't think of any that would not be
7 covered by the list that you just read off, what I read
8 when it was filed.

9 All right. Let's talk just about the locations
10 and amount of time. At some point I need to get from
11 the intervenors kind a statement of their position and
12 what they believe their role will be. Would we do that
13 first in order to get a feel for how long this hearing
14 is going to take? We know the location. We know how
15 much time we have reserved, three weeks of hearing.

16 How much time do you think, Mr. Guy, you will
17 need for your case in chief?

18 MR. GUY: I think we talked about that this
19 morning and even after we filed our exhibits last night.
20 And it seems to us that the hearing schedule starts at
21 noon on Tuesday. I think definitely we will run through
22 Tuesday, definitely run through Wednesday, the 30th,
23 with the 1st currently set aside as a tour date. We
24 will take the tour date. I think then we will pick up
25 probably our last panel on Friday. And that would be

1 the environmental panel. So I think there is a good
2 chance that environmental panel would then also carry
3 over to Monday, which I believe would be the 6th. And I
4 think that's probably it. I think -- and the tour is
5 the Tuesday, actually Tuesday, the 6th.

6 CHMN. CHENAL: The 6th. Yeah, so Monday is the
7 5th --

8 MR. GUY: The 5th.

9 CHMN. CHENAL: -- you believe you would finish,
10 and then Tuesday.

11 Okay. Do you have a feel for the intervenors
12 and other people who may have an interest in this case,
13 how long that would extend this case?

14 MR. GUY: I have talked to the two intervenors
15 that have formally filed their notices. And I
16 understand Mr. Lynch at least, what we have talked about
17 primarily are legal issues. And so I don't know if
18 those would need to be handled prior to the hearing or
19 if those were legal issues he might want to get into at
20 the hearing itself.

21 And I talked to Mr. Hay with Pinal County, who
22 doesn't expect to have an extensive role in the hearing
23 itself.

24 So from what I understand right now, we are not
25 expecting a large participation by intervenors.

1 CHMN. CHENAL: Mr. Lynch, can you briefly
2 explain the matters that are of concern to you that
3 prompted you to, you know, to represent IEDA on the
4 intervention and what you believe your role, how long
5 your role might take in this case so we get a feel for
6 the hearing and how much time we will need.

7 MR. LYNCH: Certainly, Mr. Chairman, happy to do
8 so.

9 We are here because our members and associate
10 members use the Parker-Davis transmission in a variety
11 of different ways, either to receive federal hydro power
12 or to transmit power from other sources. And so
13 anything that's going to involve that system and
14 additional cost is of interest to us, and both those two
15 costs that we might end up absorbing and the
16 functionality of the system going forward.

17 We filed four exhibits that are actually related
18 to a single legal issue.

19 Make it clear that we support the granting of
20 the CEC. We like what is being said about how this will
21 play out. There are an awful lot of open questions in
22 this about how negotiations will ultimately develop this
23 project. We, my board, my client's board, asked me to
24 do this intervention so that we could sort of keep an
25 eye on the process. A lot of the heavy lifting will

1 come after the --

2 CHMN. CHENAL: Let me interrupt you just for a
3 second.

4 Mr. Hay, I think it is you, but if you could put
5 your phone on mute. Every paper that is rustled, every
6 creak of the chair is heard very loudly in this room.
7 Or whoever is on the phone, if you put it on mute until
8 you want to speak, that would be helpful. Thank you.

9 Go ahead.

10 MR. LYNCH: We do support the project as
11 proposed. It has a lot of things to be developed in it
12 that are a concern to us that are outside the purview of
13 this proceeding. We intervened in this proceeding so
14 that we could keep an eye on how things are developed
15 and how information is gathered. And we support the
16 issuance of the CEC.

17 We would like to figure out a way with you and
18 Mr. Guy, and I talked about this before you got here, of
19 getting this legal issue focused on and resolved.

20 I have no witnesses. God love you, I do not
21 want to go to Willcox or even Tucson. I want to get
22 this one concern I have resolved in some fashion to
23 protect your process. And then we will monitor.

24 CHMN. CHENAL: So is the major concern,
25 Mr. Lynch, the cost of the upgrade and how that could be

1 passed on to the present users of the line?

2 MR. LYNCH: Well, our major concern ultimately
3 is going to be how Western deals with this.

4 Our concern here is we want to support the
5 issuance of this CEC. We like the proposal as it has
6 been articulated. We believe it is in the best interest
7 of the State of Arizona to issue the CEC. We are
8 concerned that, with so many unknowns, that there are,
9 there are issues that may otherwise crop up. We are
10 concerned with how this is going to have impacts not
11 only on the priorities in our association but in the
12 customers and environmental effects that may come up
13 that could be a problem for the underlying Parker-Davis
14 project on which we depend. So we are concerned about
15 how environmental issues will be dealt with in this
16 proceeding because there are so many unknowns at this
17 point.

18 CHMN. CHENAL: Well, I mean that's a legitimate
19 inquiry in the jurisdiction of the Committee. Cost
20 reimbursement schedule, the reimbursement impacts
21 because of an upgrade of the WAPA line on, you know,
22 your organization I would dare say is probably not
23 within our jurisdiction.

24 I might need to hear briefing on it or argument
25 or briefing on it, but it strikes me, my gut reaction is

1 I am not sure that's something that, you know, is within
2 the purview of the Committee.

3 MR. LYNCH: Mr. Chairman, we are not intending
4 to bring that issue to the Committee.

5 CHMN. CHENAL: Okay.

6 MR. LYNCH: I was trying to give you a
7 background explanation. I know you already know the
8 association and its members from other --

9 CHMN. CHENAL: Yes.

10 MR. LYNCH: -- venues. But the Parker-Davis
11 system is the backbone federal transmission system in
12 Arizona. And anything that happens to it economically
13 or environmentally impacts all of our people.

14 CHMN. CHENAL: What is the legal issue that you
15 would like to see resolved by the Committee, by me? You
16 mentioned you don't want to go to Tucson or Willcox,
17 but -- because you would like to see the legal issue
18 resolved. What is that legal issue?

19 MR. LYNCH: Simply put, it is is Southline the
20 correct applicant for this certificate.

21 I don't know if you have had a chance at some
22 point to look at the exhibits we filed. The first one
23 is FERC ordered Southline and a companion organization
24 that SU FERC were involved, we are concerned about
25 representations that were made there that, if are

1 accepted as fact as FERC did, and then applied to our
2 definitions, there may be some question about whether or
3 not Southline is a, quote, utility.

4 I have suggested to Mr. Guy that I didn't see
5 any reason why the SU FERC or this other organization
6 would want to intervene. But my major concern, and you
7 might imagine he and I don't agree on my legal analysis,
8 is that it get resolved. That means that you, as the
9 Chairman, Commission, the Siting Committee, this issue
10 get closure on the record now and not be one of those
11 things that lingers out into the future, where, as I
12 said to Mr. Guy before we started today, somebody gets
13 mad in Tucson and decides to go hire a lawyer and sue
14 you, not them, sue the Siting Committee and the
15 Commission over a decision-making process. Because this
16 is a subject matter jurisdiction issue which can't be
17 waived, as you well know. It could be brought up at any
18 time during the proceeding.

19 I mean I hate to admit it, but I lost a Ninth
20 Circuit case on that very issue several years ago in a
21 federal rate case. The Ninth Circuit came out of the
22 blue a year after our oral argument and just said these
23 people don't have standing. And we had a case
24 dismissal. It wasn't an issue that was even briefed in
25 the Ninth Circuit.

1 So subject matter jurisdiction, as you well
2 know, is a hand grenade with a pin pulled, and it can go
3 off on you anytime. And I just don't want that to
4 happen because, as I say, we want this process to
5 succeed. We want this line built.

6 CHMN. CHENAL: Okay. Mr. Wallace, is your
7 interest similar or the same as Mr. Lynch's?

8 MR. WALLACE: Very similar, yes.

9 CHMN. CHENAL: All right. Mr. Hay, do you have
10 any particular issues or matters that you will be
11 raising in the intervention by Pinal?

12 MR. HAY: Thank you, Mr. Chairman.

13 I don't anticipate any witnesses. Pinal
14 County's only concern is the increased height of the
15 structures around the Pinal Airpark. Now, I certainly
16 realize that may just be rendered moot because that is
17 part of the WAPA line. That discussion just may be a
18 nonissue as far as this hearing goes. That's the only
19 thing really concerning. Otherwise, Pinal County just
20 kind of wants to keep its finger on the pulse of this
21 project. We anticipate just observing, making sure that
22 there aren't any changes to the proposed route. We
23 don't have any problems with the way it is laid out
24 right now.

25 CHMN. CHENAL: Okay. Thanks very much.

1 Mr. Guy, I am trying to get my hands -- a little
2 better understanding of the issue and procedurally how
3 we deal with it. Maybe you could give me your thoughts
4 on that. It seems like briefing and maybe additional
5 analysis of the issue. And then maybe we address the
6 issue at the beginning of the hearing maybe might be the
7 appropriate way to go. But I would like to hear from
8 you, sir.

9 MR. GUY: No, I think that's right, yeah. And
10 we have just, we had a phone call a day or two ago, and
11 we discussed this briefly this morning. So this has
12 just recently sort of come up. So I think your
13 suggestion perhaps, or that perhaps it is something we
14 do in writing, to brief this issue makes sense. And we
15 can do that fairly quickly prior to the hearing date.

16 I don't actually think it is an issue. I think
17 I understand the ambiguity Mr. Lynch has raised. But I
18 do believe, as we kind of go through the analysis, if we
19 can't get at least comfortable, I think perhaps we can
20 get you comfortable with it, and I think your ruling on
21 the issue would perhaps give him the certainty that his
22 clients are looking for, at least as far as to go
23 forward.

24 So I can get into some of the nuances of it, but
25 it really kind of goes to the way that FERC interprets

1 what a public utility is, what an electric utility is,
2 and some of the words and characterizations that go into
3 that definition, and contrast that with how the Arizona
4 Corporation Commission defines electrical utility. And
5 then you look who is the applicant in a CEC proceeding.

6 And so we are confident Southline Transmission
7 is the correct applicant. We don't think SU FERC should
8 be an applicant at all. They are not constructing
9 anything. And so it would seem to us unnecessary and
10 inefficient to join them as a party or an applicant to
11 this case and perhaps add precedent as to who you want
12 to be applicants in these sorts of cases. So we do
13 think there is some, you know, important policy issues,
14 that it would be helpful for us to talk that out.

15 CHMN. CHENAL: Well, I had nothing better to do
16 at 10:00 last night, so I did enjoy reading that first
17 exhibit so the names are familiar.

18 Let's do this. I will tell you my schedule is
19 peculiar, because all of next week I am going to be
20 enjoying Thanksgiving in Alamos, Mexico, come back the
21 Sunday after Thanksgiving and go down to Tucson on
22 Monday. And then we have the hearing that starts
23 Tuesday. So I am not around to deal with this.

24 So I am going to ask, Mr. Lynch, you to file a
25 brief on this issue stating your position, the legal

1 issue and your position on it. Let's talk about the
2 timing. Then I will ask Mr. Guy to respond to that.
3 And if you want to reply to it, that's fine, but we only
4 have a limited time period with which to do this. So I
5 would like to hear from you what you are comfortable
6 with given our truncated time schedule and holidays.

7 MR. LYNCH: Well, given my personal schedule, I
8 probably couldn't get you a brief until Friday.

9 CHMN. CHENAL: This Friday?

10 MR. LYNCH: I could clearly do it by this
11 Friday.

12 CHMN. CHENAL: I probably -- well, I will read
13 it because it will be e-mailed to me. But that would be
14 fine, I think.

15 Mr. Guy, how much time would you need then to do
16 a response?

17 MR. GUY: I mean I think, I mean we would love
18 to have to Wednesday, Wednesday before Thanksgiving,
19 which is also the Wednesday before the hearing. I think
20 that makes sense to us if we --

21 CHMN. CHENAL: I think that's fine.

22 And if, Mr. Lynch, it you need to do a, or want
23 to do a reply, you can do that anytime. I don't know
24 that you will need to.

25 MR. LYNCH: I couldn't imagine I would.

1 CHMN. CHENAL: Okay.

2 MR. LYNCH: I don't think this issue is
3 complicated. It is just something that needs to get
4 taken care of.

5 CHMN. CHENAL: Let's do that. Let's have it by
6 Friday -- I won't put time limits on it, hour limits --
7 Friday to have your initial brief in stating the issue
8 and your analysis of the issue.

9 And then, Mr. Guy, if you could, have a response
10 by Wednesday of next week.

11 MR. GUY: Absolutely, that works.

12 CHMN. CHENAL: Okay? Yes, just make sure it is
13 e-mailed to me directly and not just to Lisa because I
14 will be picking it up down in Mexico. Okay?

15 Anything further on the issue, Mr. Lynch, that
16 you have raised we can deal with today?

17 MR. LYNCH: No. Mr. Chairman, I think that is a
18 good path to take to get this focused, and you don't
19 need to take any more time on it.

20 CHMN. CHENAL: Okay. Then we won't.

21 Okay. We have the location of the hearings. I
22 think we have arrangements for the accommodations.

23 MR. GUY: I am going to turn it back over to
24 Ms. Hopkins.

25 CHMN. CHENAL: When I say you, I am talking

1 about her really, Mr. Guy.

2 MS. HOPKINS: The Tucson Convention Center is
3 booked from November 29th through December 2nd. And
4 then the Willcox Community Center is booked, again, from
5 December 5th through the 9th, with the exception of
6 Thursday, the 8th, that we discussed that it was
7 unavailable on Thursday. So if we have to go that long,
8 then we will need to discuss how to handle that.

9 CHMN. CHENAL: Well, sounds like we may not need
10 to go that long.

11 And I also notice, we will talk about the tour
12 in a moment, but I also notice your tours finish around
13 noon. I mean there is nothing we can't use the
14 afternoon as hearing, as time for the hearing. I think
15 that would make it more likely then we won't need all
16 that second week, that Thursday.

17 MS. HOPKINS: Absolutely, Chairman, we think
18 that's right.

19 CHMN. CHENAL: I warn you, it is going to take
20 some time to do the CEC and the conditions. And it is
21 not something we want to be rushed to have to get done.
22 So I mean we may use that week, but it may not be for
23 the hearing. It will be after the hearing and working
24 on the CEC.

25 Let me jump ahead. What is the -- -- is there

1 an ability to move the tour to that Thursday --

2 MS. HOPKINS: Yes, Chairman.

3 CHMN. CHENAL: -- versus the Tuesday?

4 MS. HOPKINS: So we have the facility on
5 Tuesday, the 6th. And so if you were inclined to move
6 the tour to the Thursday, the 8th, that would be
7 perfectly acceptable to us. We just need to do a little
8 bit of rearranging. But it is no problem and, in fact,
9 would allow for another full day of hearing on Tuesday.

10 CHMN. CHENAL: Yeah, we will have to see how
11 that goes. My thoughts on that, I mean I think the tour
12 is important to kind of prompt questions and put things
13 in context. So I like to have that earlier rather than
14 at the end. But we will see how it goes. But with any
15 luck, we could have the hearing completed, using the
16 Tuesday afternoon if we have a tour in the morning,
17 maybe Thursday is off day, but when you have the red
18 army gathered, we complete it on Friday, that process.
19 That might be how we have to do it. Okay.

20 MR. LYNCH: Mr. Chairman.

21 CHMN. CHENAL: Yes, Mr. Lynch.

22 MR. LYNCH: I apologize, but it has now occurred
23 to me that there is a second issue that is addressed in
24 our memoranda that we filed that I haven't discussed
25 with you, which is the involvement of the Western Area

1 Power Administration.

2 We agree with Southline that they are not
3 subject to the issuance of a CEC. There is a question
4 about whether the small part of federal land, that
5 requires them to provide you with information. We have
6 briefed that.

7 CHMN. CHENAL: We are going to get into that.

8 MR. LYNCH: Yeah, we have briefed that already.
9 But it is part and parcel of the let's get the legal
10 issues out of the way ahead of time.

11 CHMN. CHENAL: Yeah. We are going to deal with
12 that issue today. I just wanted to get some of this
13 other stuff out of the way. And then we will.

14 MR. LYNCH: Okay. I have not seen Western's
15 statement so I have no idea what they told you so far,
16 but...

17 CHMN. CHENAL: Well, I haven't read it,
18 Mr. Lynch. I just saw it on my desk this morning.

19 Do you have it in front of you, sir?

20 MR. LYNCH: I do now, courtesy of --

21 MR. BILLINGSLEY: Mr. Lofland.

22 CHMN. CHENAL: It is in the docket, I
23 understand.

24 All right. Requests to intervene are decided by
25 the Committee. But I mean, as a matter of the statutory

1 interpretation, it doesn't seem like there is a question
2 that IEDA and Pinal County, you know, as a matter of
3 right, can come in and become parties.

4 MR. GUY: We agree. And we have no objection to
5 either interventions that have been filed.

6 CHMN. CHENAL: Okay. Do the parties agree that
7 April 12th, 2017 is the last date by which this
8 Committee can act in compliance with the statute?

9 MS. HOPKINS: Yes, Mr. Chairman.

10 CHMN. CHENAL: I mean I will tell you we will
11 have this completed well before that. The goal is to
12 have, if a CEC is voted on by the Committee to be issued
13 with conditions, to have that, you know, finalized at
14 the end of the hearing and then signed and filed with
15 Docket Control shortly thereafter.

16 MS. HOPKINS: Mr. Chairman, not to interrupt,
17 but on the facility arrangements, I did just want to
18 note that we also have the Tucson Convention Center
19 booked for the third week.

20 CHMN. CHENAL: For the third week, okay.

21 MS. HOPKINS: If necessary.

22 CHMN. CHENAL: Thank you. All right.

23 I submitted an agenda, sent it to the parties.
24 We filed it. Does the applicant or do any of the
25 intervenors have any comments about the agenda?

1 MR. GUY: We do not. We were okay with the
2 agenda.

3 MR. HAY: Nothing here.

4 CHMN. CHENAL: Okay.

5 MR. LYNCH: For the record, Mr. Chairman, we are
6 fine with your agenda.

7 CHMN. CHENAL: Okay. Just with regard to the
8 venues, I would like to see sign-in forms for the
9 hearing and for public comment, name, address, phone, or
10 e-mail.

11 One of the conditions gets to notifying people
12 who have appeared or presented public comment, if there
13 is going to be a substantial modification to, at some
14 point in the future, to notify. And certainly you want
15 to know how to get ahold of them.

16 I believe, Colette, you are the one who is the
17 gatekeeper for that?

18 THE REPORTER: I can be.

19 CHMN. CHENAL: All right. Will there be any
20 need for security? I don't believe so, but...

21 MR. GUY: Mr. Chairman, we don't believe there
22 is any need for it. We actually are arranging, maybe
23 more accurately described, for the liaison, someone who
24 is able to reach out to local law enforcement and just
25 kind of make them aware what is going on. And we intend

1 to provide that on the first day of the hearing.

2 CHMN. CHENAL: Out of curiosity, given that we
3 are going to be going and visiting a number of these
4 substations, is there any -- do you notify the owners of
5 the substations ahead of time that that's --

6 MR. GUY: We have, and --

7 CHMN. CHENAL: You will see a busload of people
8 show up?

9 MR. GUY: Yes. We have been coordinating with
10 the owners of the substations in developing the tour.
11 And we will certainly coordinate with them as we get to
12 those times.

13 CHMN. CHENAL: All right. Very good.

14 I believe we are going to be taking tours in
15 this case. But if the Committee wants to forego that
16 for any reason, do you have like a Google Earth or
17 virtual tour prepared, or will you have it prepared for
18 the hearing if we need that?

19 MS. HOPKINS: Mr. Chairman, we filed a virtual
20 tour yesterday with our exhibits. And --

21 CHMN. CHENAL: Okay.

22 MS. HOPKINS: -- we will, we plan on presenting
23 that actually the first day. I think on the first
24 witness panel our second witness will go through the
25 virtual tour, because we thought it would provide a lot

1 of really good context for the Committee members.

2 We, if after seeing the visuals, which we think
3 actually provides quite a bit of information, if the
4 Committee decides they no longer need the physical site
5 tours, then, of course, we can cancel those.

6 We also have allotted about half an hour before
7 the physical site tours in the schedule to either go
8 back through the virtual tour or have some kind of
9 discussion at the hearing location before we head out,
10 if that would be beneficial.

11 CHMN. CHENAL: I saw that in your tour workup.
12 Yes, very good. Thank you.

13 We will have daily transcripts, so we will break
14 every 90 minutes.

15 THE REPORTER: It is not daily.

16 CHMN. CHENAL: Oh, they are not? I am going to
17 blame John Foreman for that. No, they are not daily,
18 but we will break every 90 minutes.

19 We will have a wi-fi, robust wi-fi system at the
20 hearing locations?

21 MS. HOPKINS: Yes, Mr. Chairman. We have
22 arranged for several Verizon jet packs that we are
23 testing and will ensure that they are robust.

24 CHMN. CHENAL: Sounds formidable.

25 Okay. Any other issues regarding the hearing

1 itself?

2 (No response.)

3 CHMN. CHENAL: Doesn't sound like there are any.
4 Go ahead.

5 MS. HOPKINS: The hotel arrangements we have
6 been coordinating with Ms. Romeo. And I think
7 everything is taken care of. I just wanted to make sure
8 none of the Committee members were having any issues
9 booking their rooms.

10 MS. ROMEO: No issues.

11 MS. HOPKINS: Okay.

12 CHMN. CHENAL: All right. Let's talk about the
13 exchange of exhibits and witness summaries and
14 testimony. Has that been accomplished?

15 MS. HOPKINS: Yes, Mr. Chairman.

16 CHMN. CHENAL: I am just going to talk to you.

17 MS. HOPKINS: We, as we discussed, we filed all
18 of our anticipated hearing exhibits yesterday. Two of
19 those exhibits were voluminous, and we have filed a slip
20 sheet explaining that we have provided hard copies of
21 those documents to the parties and also to -- we will
22 make them available for the Committee at the hearing.
23 We have several copies here today. So for the folks
24 that are here, they can bring -- they can take those
25 with them now, including you, Mr. Chairman. But

1 those -- and then we also have the virtual tour, which
2 is on a flash drive because it is a very, very large
3 file. And it is a movie file. So those, and those have
4 all been, as I said, filed.

5 Plus we had conversations with the two parties
6 that have intervened about how they would like those
7 exhibits delivered. Mr. Lynch has indicated that he
8 will take home a hard copy today. And we have that here
9 for you. And Pinal County, we are mailing hard copies
10 to them. And we have, we have not heard any objections
11 to the exhibits so far.

12 MS. GRABEL: May I add something, please. There
13 are also going to be provided binders of all of the
14 exhibits and the flash drive to the Committee members at
15 the meeting --

16 CHMN. CHENAL: Great. That's very helpful.

17 Mr. Lynch, I believe you have exchanged exhibits
18 and you don't have any testimony.

19 MR. LYNCH: There is no testimony. We have
20 exchanged the four exhibits related to the second legal
21 issue. And we have no flash drives.

22 CHMN. CHENAL: Mr. Hay, anything on behalf of
23 Pinal County?

24 MR. HAY: No concerns here. They have been very
25 good as far as communicating with us, getting things

1 delivered, that sort. So I think everything is going
2 well.

3 CHMN. CHENAL: Are you going to have any
4 exhibits or -- you are not going to have any testimony,
5 but any exhibits?

6 MR. HAY: No, I don't anticipate any.

7 CHMN. CHENAL: Okay, all right. Thank you very
8 much.

9 MS. HOPKINS: Mr. Chairman, just to finish up
10 that thought, I think you also asked about witness
11 summaries. We also filed our witness summaries
12 yesterday included in the exhibits, and along with
13 presentations that go along with each individual
14 witness. And those have been exchanged with parties as
15 well.

16 CHMN. CHENAL: Okay. They are filed with Docket
17 Control?

18 MS. HOPKINS: Yes.

19 CHMN. CHENAL: Are they in my binder?

20 MS. HOPKINS: Yes.

21 CHMN. CHENAL: Okay, great. All right. We have
22 talked about narrowing the legal issues. We will get
23 back to that in a few minutes.

24 Financial arrangements with the Corporation
25 Commission, I believe that you have approached and had

1 discussions with the ACC and satisfied any concerns they
2 have, is that correct?

3 MS. HOPKINS: Yes, Mr. Chairman. And I will let
4 local counsel speak to that specifically, but I know
5 that they have reached out to them.

6 MS. GRABEL: I am just going to repeat that we
7 have reached out to the proper people at the Arizona
8 Commission. They are fine with what we are doing. We
9 are communicating.

10 CHMN. CHENAL: Perfect. Is there any --
11 different subject -- any related litigation going on
12 regarding the Southline project?

13 MR. GUY: None that we are aware of.

14 CHMN. CHENAL: Well, you are not aware --

15 MR. GUY: I think we would be aware of that.

16 CHMN. CHENAL: Yes, you would be.

17 All right. Now let's get to the legal issue on
18 the questions I raised in the procedural order. And I
19 want to thank, you know, the applicant and Mr. Lynch for
20 responding. I thought the briefing was very helpful.

21 Let's just have a short oral argument, if you
22 will, on the issue of, with Mr. Guy or Ms. Hopkins, on
23 the legal issue. I read everything very carefully. I
24 will tell you right now the thing that struck me the
25 most is the relatively short distance of this, mile and

1 a half, which allays a lot of my concern about this
2 issue. But I still think there is an issue. I still
3 think there is -- it has prompted me to request some,
4 maybe a little more discussion during the case in chief
5 of the WAPA line. There are concerns. I still have a
6 little concern about the issue. So I would like to hear
7 from you and then Mr. Lynch.

8 MR. GUY: Absolutely. Thank you, Mr. Chairman.
9 And like you said, you read the memo. So I won't repeat
10 as far as what we have in there. But I will kind of go
11 through some of the high points.

12 CHMN. CHENAL: Sure.

13 MR. GUY: I mean, first of all, we absolutely
14 agree with the assumption, and we believe it is the
15 right conclusion, that the Line Siting Committee does
16 not have jurisdiction over WAPA as a federal agency with
17 respect to the siting of the WAPA section of this
18 project. So I think what the case law has said is, you
19 know, absent some clear statutory guidance, that the
20 state line siting committees for all the states are
21 preempted by the federal government in that regard.

22 In the case law it was also clear that there are
23 statutes, and, for example, the one that's relevant here
24 is the federal Land Policy and Management Act, that to a
25 certain extent has waived some of that preemption. And

1 the way it has done so is it has, it requires BLM to,
2 when it grants a right-of-way, to condition its grant of
3 right-of-way on the grantee's compliance with a number
4 of things. But what is relevant, of course, is the
5 state substantive standards.

6 So the case law is very clear that WAPA does not
7 have to comply or follow or apply sort of procedural
8 requirements at a state level. But to the extent the
9 state has state substantive standards with respect to
10 certain areas, environmental, health, safety, operation,
11 construction, maintenance of the line, then WAPA may
12 need to comply with those state standards.

13 And our understanding is WAPA very much agrees
14 with that. And they built other projects in Arizona.
15 And, you know, we are not aware of any issues or
16 concerns that have come up with these other projects in
17 Arizona that may be subject to the same sort of
18 requirements.

19 You know, I think the next point that you raised
20 is FLPMA, F-L-P-M-A, it only applies to what is defined
21 in the statutes as public lands, which is Bureau of Land
22 Management land or land administered by the forest
23 system. And in this case, there is 1.5 miles roughly.
24 It, and it is all sort of broken up in three different
25 parts roughly. But 1.5 miles is what we are talking

1 about.

2 So to the extent we identify state substantive
3 standards that WAPA may need to comply with, it is
4 approximately 1 percent of the entire section of the
5 line that WAPA is going to be upgrading.

6 So then that gets us to the question, well, does
7 Arizona actually have state substantive standards that
8 WAPA needs to comply with. I think the case law is also
9 very helpful in this regard, that general, sort of
10 general, nonspecific statements about what a line siting
11 committee might look at is not the kind of state
12 standards that we are talking about. We are talking
13 about very specific, nonvague, nonsubjective standards
14 that actually tell the federal entities what they have
15 to do. And I think the cases that give us a couple
16 examples in that regard, they talk about filling in the
17 ruts when you damage the right-of-way, they talk about
18 reseeding with a certain kind of grass at a certain time
19 of year, they talk about the number of wildlife you can
20 impact, and very measurable, quantifiable standards.
21 That's what I think the case law is talking about.

22 And so if that's the case, we don't think the
23 Arizona Corporation Commission has any of those state
24 substantive standards. What we believe the Line Siting
25 Committee considers and Commission considers are those

1 nine factors in the statute that talk about looking at
2 these factors and these are things you have to evaluate,
3 these are things you have to consider in coming to
4 whether or not you want to grant a CEC. And then there
5 is also the general balancing public interest
6 determination the Commission looks at, where it balances
7 the need for economic reliable power with minimizing the
8 impact on the environment.

9 In fact, one of the cases -- oh, full name --
10 Montana case, there was actually a very similar kind of
11 balancing general provision in Montana. And the court
12 said that's not the kind of thing we are talking about,
13 that's not a state substantive standard, that's too
14 general, too vague, it doesn't give the kind of
15 direction to go.

16 So that's where we come to Arizona. Now, we do
17 think Arizona, as part of the CEC process, does often
18 put conditions when it grants CECs, as you know. And it
19 seems to us sometimes those conditions are fairly
20 specific and could rise to the level of a state
21 substantive standard.

22 And, now, WAPA is not a party. So the CEC
23 itself doesn't apply to WAPA. But it seems to us, you
24 know, so in our view, that doesn't really answer the
25 question, or it may be state substantive standards but

1 it is not a state substantive standard that WAPA
2 necessarily has to comply with.

3 But I think, again, sometimes if that becomes a
4 standard and it is the kind of standard that could apply
5 to some of these BLM lands that WAPA is constructing on,
6 then it could be the kind of state substantive standard
7 that WAPA has to comply with. And we would not argue
8 with that kind of thing, about these conditions. And in
9 this case, you know, that could happen.

10 We have got, for example, the Bureau of Land
11 Management Record of Decision. That grants the
12 right-of-way for this project to both WAPA and
13 Southline. It was generally based on the same
14 environmental study. It is generally based on the same
15 plan of development, the same environmental
16 considerations. And so I do think there is at least the
17 possibility that there can be some conditions imposed in
18 the CEC that would be a state substantive standard that
19 WAPA might need to comply with.

20 And so then you kind of get to the last couple
21 questions in the briefing order. And that is, well,
22 what do we do about it, I mean what do we need to look
23 at at this time to determine whether or not WAPA is in
24 compliance, and does WAPA need to file anything to deal
25 with that. And I think a couple things.

1 First of all, because you don't get to those
2 state substantive standards until you impose conditions,
3 there is really nothing to get WAPA to file or consider
4 or to do to determine whether or not they are going to
5 construct in compliance with those state substantive
6 standards. Because you don't know what that is until
7 the end. Right? But, but to the extent you think there
8 is a standard, and you want to decide whether WAPA is in
9 compliance, I think there are two things to mention in
10 that.

11 Number one, we have all the information we need.
12 There is a Bureau of Land Management ROD that's in the
13 record, filed as part our application, or will be in the
14 record. That is roughly a 600-page document. The first
15 30 pages is the grant of right-of-way. And the last
16 600 pages, or 570 pages, essentially lay out all of the
17 standards that both WAPA and Southline has to comply
18 with as a condition to receiving this right-of-way. And
19 I brought some copies. But, you know, we can talk about
20 that later. We are talking about it now, but the key is
21 what is called the plan of development. And that really
22 lays out, you know, the detailed construction,
23 operation, rehabilitation, and environmental protection
24 plans for the project. And it looks at all these
25 environmental factors and has all of these details.

1 And there is another roughly 100-page document
2 that's in the BLM ROD, Table 8, called Environmental
3 Protection Measures by Resource. And it goes through
4 and really articulates what these standards are and what
5 WAPA has to do, what Southline has to do in order to
6 comply with the BLM land grant.

7 CHMN. CHENAL: Which table is that, Mr. Guy?

8 MR. GUY: Table 8.

9 CHMN. CHENAL: Do you have extra copies?

10 MR. GUY: I do actually, yes.

11 CHMN. CHENAL: I wouldn't mind having a copy and
12 making a copy for the record, or exhibit.

13 MR. GUY: So just to -- yeah, I have got a
14 couple extra copies. So I will hand you two things, and
15 then we have got a couple copies.

16 The first one is two pages that describes what
17 the purpose of the plan of development is. This is
18 Bates No. B-14.43, which is actually an excerpt from my,
19 I believe, Exhibit B-3 of our application, one of the
20 Exhibit Bs in our application. And the second piece is
21 in that same document, Bates No. B-14.102 going through
22 14.113.

23 So we think, to the extent the Committee wanted
24 to evaluate kind of what standards WAPA is going to
25 comply with, all of this document, BLM ROD, is the

1 primary document. There is also the EIS, which is also
2 a very voluminous document that the ROD is based on, but
3 also has a lot of standards, a lot of discussion about
4 that. So we think everything is here to look at. We
5 don't think WAPA needs to file anything else.

6 And then, at least in our brief, what we believe
7 is I don't actually think there is anything for the
8 Commission, or the Committee or the Commission, to do
9 other than adopt whatever standards that it thinks is
10 appropriate. Because if you do anything, you are kind
11 of dragging WAPA into the process. And as I read it,
12 the case law says you really can't do that. You can't
13 sort of require WAPA to be part of the process. And as
14 I understand the process in Arizona, you establish the
15 Committee -- or you establish the conditions and then
16 there is an annual report where you self certification,
17 where you articulate whether or not you are complying
18 with the conditions. So it would seem if you wanted
19 someone to report, see whether or not they were in
20 compliance, that seems to me the obvious thing you would
21 do. And you just have to question, well, can we
22 actually tell WAPA to do that.

23 And I think a lot of this gets back to how you
24 started it off, is we are really only talking about 1.5
25 miles. We are really only talking, we are talking about

1 WAPA has built transmission lines throughout Arizona,
2 the larger Parker-Davis transmission project. And this
3 is a federal statute that, you know, I don't want to
4 speak for WAPA, but I would assume they are going to
5 want to comply with the federal statute. So to the
6 extent there is a condition that's a state substantive
7 standard that WAPA believes they are required to comply
8 with, I would have to assume that they are going to try
9 and comply with that.

10 Happy to answer any questions. I probably went
11 longer than I meant to.

12 CHMN. CHENAL: That's fine. This is an
13 important issue. I don't know how important it is in
14 this case, but it is an important issue.

15 A couple questions in follow-up. First, the CEC
16 is issued to Southline, well, to Southline. And they
17 are the ones who are going to be -- are they not going
18 to be the party funding and constructing the WAPA line?

19 MR. GUY: The current agreement is that
20 Southline will be funding and constructing the new build
21 section.

22 CHMN. CHENAL: New build.

23 MR. GUY: And it will be funding the WAPA
24 section, but WAPA will be constructing that section.

25 CHMN. CHENAL: Okay. You see where I am going.

1 MR. GUY: Yes.

2 CHMN. CHENAL: I mean Southline is, for all
3 practical purposes, the primary party responsible for
4 building that line. Then the argument that WAPA isn't
5 here and under the jurisdiction of the Committee and the
6 Commission, I think, loses some significance if the real
7 party in interest is Southline. And so that, that's to
8 me --

9 MR. GUY: Yeah. And there may be, I think --

10 CHMN. CHENAL: I mean it is a two-edged sword.

11 MR. GUY: Right.

12 CHMN. CHENAL: I mean, yeah, at some point you
13 can say, yeah, WAPA is not here. But, on the other
14 hand, Southline is getting the CEC. And it is a very --
15 it is so -- the project is one project split in two
16 parts. And it is they bifurcated, you know, federal,
17 private, I mean, but it is one line. It is just it is
18 hard to get one's hands around that and argue on the one
19 hand, well, it is really two lines; it is federal
20 jurisdiction remains with BLM, we are only subject to
21 the Commission for the new build section, but it is the
22 same line. And I -- we will hear from Mr. Lynch in a
23 minute.

24 The second point, and I agree with you, Mr. Guy,
25 I think substantive conditions. I think the Montana

1 case discussed this to some extent. I mean the
2 conditions that will come out of this CEC process for
3 the new build section, you know, the part in Arizona
4 that's not WAPA owned, those conditions, I think,
5 arguably become state standards and may somehow apply to
6 this, to the one and a half mile land under the BLM
7 jurisdiction. I am wrestling with what we do with that.

8 There are some general standards and provisions
9 that require the, I think in the ROD, that require even,
10 even for WAPA to comply with, you know, federal, state,
11 county, local permits and requirements. I was looking
12 for the exact language. I can't find that specific
13 condition.

14 MR. GUY: And of course I didn't print off those
15 pages. I know exactly what you are talking about. I
16 saw it in a couple places.

17 CHMN. CHENAL: In my mind I am wondering: Well,
18 if that's a condition, the conditions become state
19 substantive standards, and the ROD requires WAPA to
20 comply with those standards that are generated through
21 this process, is not that the legal vehicle by which we
22 argue or say WAPA has to comply with those conditions?

23 I am not as concerned about a 1.5 miles. But if
24 it was substantially more mileage, it would be a bigger
25 issue to me. And I think this would be the perfect case

1 to, you know, rear its ugly head. But I am not sure 1.5
2 miles is.

3 I have some additional comments but I would like
4 to hear from Mr. Lynch, what your comments are, sir, on
5 this issue, assuming you have any.

6 MR. LYNCH: If you never --

7 CHMN. CHENAL: I know you well enough to know.

8 MR. LYNCH: Mr. Chairman, first of all, Western
9 is not subject to the CEC. We all agree on that.

10 CHMN. CHENAL: Correct, yes.

11 MR. LYNCH: That law is clear.

12 Second, the real question is do they, under the
13 Montana case and the Columbia Basin cases, which is
14 Ninth Circuit cases, this jurisdiction, have a
15 responsibility under that case law to provide this
16 Committee with information related to a state standard
17 that is more stringent than a federal standard that is
18 then currently applicable to the project.

19 To get there, and, again, this is, in my view,
20 part of protecting the record in dealing with this
21 issue, and yes, a mile and a half is a fairly short
22 distance -- of course if it were a mile and a half
23 across the Willcox Playa, a lot of people wouldn't think
24 it was a very short distance -- but I tried to lay out
25 in our memo the thought process I had about what you

1 have to consider and figure out how to deal with this,
2 and for that very reason.

3 I don't have answers. I didn't suggest answers.
4 And it very well may be that there is an argument that
5 the environmental impact statement and the BLM ROD, that
6 Western ROD, which I submitted to you, doesn't really
7 say anything any more than the document Ron Moulton just
8 gave you. In my view it just says this sounds like a
9 good deal to us and we are still negotiating.

10 I want to point out to you that in the Western
11 ROD, it says this has absolutely nothing to do with
12 anything, we will ultimately negotiate with them and
13 there will be a subsequent ROD on that. But, to me, the
14 key issue here is, is the language in 360.06, does it
15 articulate state standards as Montana and Columbia Basin
16 articulate them as specific state standards as against
17 general standards: General standards aren't applicable,
18 specific state standards are, and we are the Bonneville
19 Power Administration in both of those cases. That's the
20 question that I think should be answered on the record
21 in this case, what does 360.06 mean.

22 Number two, the conditions that you put in a
23 CEC, as you said earlier today, are those -- do those
24 become state standards in the context of this and,
25 frankly, as a precedent? And if they do in the eyes of

1 Committee and the Commission, then you make that
2 decision and you stake out that position. Then the
3 question becomes, to me, is there anywhere that isn't
4 already covered in the record, is there anything outside
5 the purview of the EIS that hasn't been addressed that
6 is in fact a state standard.

7 I don't know the answer to the question. I am
8 not going to go through that EIS to try and figure it
9 out. It is not my job. But I think that the applicant
10 very easily, if they knew what, you know, what they were
11 faced with, could show you much of what might be
12 considered a state standard, more stringent than the
13 federal standard, because, actually, it's already
14 covered in the environmental impact statement and the
15 BLM portion, or BLM record of decision. And absent
16 that, I would, were I in your shoes, require of
17 Mr. Moulton and company about whether there was some
18 additional information they could supply that would
19 insulate this record from attack under Columbia Basin or
20 Montana if they do nothing here. No, they are not a
21 party, but they are building everything from the Apache
22 sub to Saguaro with some side exceptions. So that is a
23 parallel to Montana and Columbia Basin.

24 And again let me remind you we support your
25 granting the CEC. We are trying to keep this process

1 from having a problem.

2 I think we need to address this issue and put it
3 to bed and get some decisions out of whether it is you,
4 as the Chairman, the Committee, ultimately the
5 Commission, that just says we consider, based on case
6 law, the following to be state standards; in this case
7 we either find or don't find that some of our standards
8 are more strict than those that have been applied
9 already to the granting of the rights-of-way. If your
10 answer is they have already done it, then there is
11 nothing for Western to give you. If there is something
12 missing that someone could complain about at a later
13 time, say you are not complying and that Western is not
14 complying, maybe they could help. Maybe they would be
15 willing to help on that basis. I don't see how they
16 walk away from either of those cases.

17 And the Fresno County case is no different.
18 That was a federal Power Act case. But, nevertheless,
19 Fresno County said we agree with the holding. The
20 problem with Fresno County was the plaintiffs were
21 saying compliance with substantive standards means you
22 also have to do the proceeding. And the court said no,
23 you don't.

24 And I mean so, again, with the idea of
25 insulating this record from attack, the whole reason I

1 wrote the memo is to put the monkey on your back, or the
2 Committee or the Commission, however that needs to play
3 out. I have no -- I think that the opportunity for this
4 as a practical matter to be a big problem is fairly
5 small. I think as a procedural defect it could come
6 back and haunt this process. And I would hate to see
7 that. And so that's why I ask those questions and why I
8 don't have any answers.

9 CHMN. CHENAL: Well, I noticed -- you had me on
10 the edge of my seat. I was reading the memo right to
11 the point where you said we just have to have the
12 Chairman decide this issue. I was waiting for that
13 suggestion at the end of it.

14 Anything else, Mr. Lynch? Thank you.

15 MR. LYNCH: No, sir.

16 CHMN. CHENAL: Thank you.

17 MR. LOFLAND: Chairman Chenal.

18 CHMN. CHENAL: Yes.

19 MR. LOFLAND: I just have a question, related
20 issue, if that's all right.

21 CHMN. CHENAL: Absolutely.

22 MR. LOFLAND: Assuming there is no jurisdiction
23 over WAPA, which makes sense, I guess, well, for
24 context, we are currently in Superior Court on appeal.
25 We have the benefit of a very robust and well

1 established record. That's kind of where these
2 questions are coming from.

3 Has the Committee or has the position been taken
4 about whether you can consider the project as a whole as
5 it relates to 360.07 and the need analysis? Obviously
6 that's a Commission decision. But the record and the
7 evidence and that information gets developed during the
8 Line Siting Committee process.

9 And so, again, even absent jurisdiction, the
10 question remains does expanding a right-of-way,
11 potentially condemning homes, and increased cost to
12 customers, WAPA, how does that factor into the economic
13 analysis as part of the need component of 360.07? And
14 just a question.

15 CHMN. CHENAL: Certainly. The Committee can
16 look at need in this case alone. And I know the
17 Committee will in this case look at need. I mean if it
18 is just the new build or if it is the upgrade, I mean I
19 look at it as one line when it comes to need, not just
20 half of it. But so I think that --

21 I will echo a comment that Mr. Lynch made. My
22 philosophy is twofold, one, to have a fair hearing, and,
23 two, have a complete record. And I want this to be a
24 complete record. And I think a complete record is
25 helpful to the applicant. Because if it is granted, it

1 is helpful in the event of later appeals. And it is
2 helpful on this very issue to take away a line of
3 attack.

4 So I want, I would like to hear from you if you
5 have anything else to add in response to what Mr. Lynch
6 said. Then I will give you, kind of give you my
7 thoughts where I think we are on this issue.

8 MR. GUY: Sure, I mean just a brief. I mean, I
9 guess as I look at what Mr. Lynch's proposal is, it
10 seems to be asking to do more than I think the Committee
11 needs to do.

12 I mean WAPA is not a party in the case. And no
13 one is making an argument they need to be a party in the
14 case. So it seems to me, because of that, the Committee
15 doesn't need to decide what is a state standard and what
16 is not a state standard. I mean the committee needs to
17 review the factors that are in the statute and determine
18 whether or not a CEC should be granted and impose
19 whatever conditions with that CEC that the record
20 supports. And that, honestly, applies to Southline.
21 And then we know, or we believe from the case law, I
22 mean I think everyone is kind of on the same page on
23 this as well, that may become a state substantive
24 standard. And now it is up to the State of Arizona and
25 BLM, candidly.

1 If you look at the right-of-way grant, BLM will
2 enforce that right-of-way. And I think you referred to
3 earlier the various obligations to comply with state and
4 federal law that are within that right-of-way grant.
5 And, in fact, there are compliance officers. There is a
6 whole compliance program in how BLM monitors whether or
7 not its conditions are being complied with.

8 So I think it doesn't really seem like it is
9 within the Line Siting Committee's concern, concern is
10 maybe the wrong word, but certainly not within something
11 that, you know, jurisdiction or anything that factors
12 into the decision. That's something we make decisions
13 or the Committee makes decisions. BLM has to
14 incorporate that however it thinks it needs to be
15 incorporated. WAPA will comply with it the way it
16 thinks it needs to comply with. And then there can be
17 an enforcement by the State of Arizona and whatever
18 grounds need to be done on that.

19 And I think the one difference perhaps in the
20 Columbia Basin case, because the one thing that Columbia
21 Basin says is WAPA needs to give us some information so
22 we see whether or not they are in compliance. Well,
23 that was a constructed transmission line. The process
24 was over. I mean there was no certification proceeding
25 that the court was ordering WAPA to participate in. It

1 had been granted, the line had been built. So we now
2 want to investigate, and we believe the state wants to
3 investigate, whether or not WAPA is in compliance with
4 those laws, and this is the way we need to do it.

5 And I think if we did anything else, this
6 Committee, or at the Commission level, we are imposing
7 the state's procedural requirements on WAPA in a way
8 that we probably can't. There is probably some
9 flexibility there, but that's, that was sort of my
10 reaction to the relief that was requested in Mr. Lynch's
11 memo.

12 MR. LYNCH: May I, Mr. Chairman? Just a point.
13 Columbia Basin, the Ninth Circuit said if they fail to
14 comply with Section 505 of FLPMA, we can make them move
15 the line even though it is constructed, because this is
16 a federal requirement, this is a federal agency. So the
17 fact that it was a done deal, if you will, constructed
18 line, is not relevant.

19 But, again, my hope is that, however you decide
20 to proceed, that this issue is dealt with in this
21 record. And that, to me, helps protect that record.
22 And that's the best I can say is why I ask those
23 questions.

24 CHMN. CHENAL: Okay. You referenced, Mr. Guy,
25 to the plan of development. Will that plan of

1 development be for the entire line?

2 MR. GUY: It is. The plan of development is, it
3 was part of the application with BLM to grant the
4 right-of-way on all the land that BLM manages for the
5 entire project. And so the actual grant of
6 right-of-way, the sort of first 30 pages of the ROD
7 grants the right-of-way to WAPA for the BLM land. And
8 it grants, well, for both. I mean it grants
9 right-of-way to WAPA for the upgrade section and it
10 grants right-of-way to Southline for the new build
11 section. So it applies to both, plan of development
12 applies to both.

13 CHMN. CHENAL: It is already completed, the plan
14 of development, or is it an agreement in process, in
15 progress?

16 MR. GUY: My understanding, and I think even one
17 of the two pages I gave you there talks about a living
18 document, but there is a plan of development that is
19 currently approved, and it is laid out in that ROD.

20 CHMN. CHENAL: Southline is a party to the plan
21 of development?

22 MR. GUY: Yes.

23 CHMN. CHENAL: Along with WAPA?

24 MR. GUY: Yes.

25 MR. PATTERSON: Yes, and all the federal -- one

1 other thing that may be of interest, there were a number
2 of cooperating agencies that participated in the EIS,
3 including a number of Arizona entities, Arizona State
4 Land, Arizona Game & Fish, County, City of Sierra Vista.
5 And so, you know, from a -- you know, to the extent that
6 state standards needed to be identified and analyzed,
7 potentially addressed, at least part of that process one
8 would think have been, you know, captured in the EIS and
9 the ROD.

10 MR. GUY: And for the record, that was Doug
11 Patterson.

12 And I think, to your point, Mr. Chairman, I mean
13 I fully support having a full record, too. And maybe
14 this is the way to do it. I mean Mr. Patterson, and
15 also we have a couple of witnesses with SWCA that also
16 plan to speak to the ROD and speak to the plan of
17 development, I mean I think we can develop the record
18 fairly well once we get to the hearing.

19 CHMN. CHENAL: I have a question for
20 Mr. Lofland. I want to come back to that.

21 In the SunZia case, there were conditions that
22 were placed that addressed what needed to be in the plan
23 of development or the programmatic agreement, if I am
24 remembering correctly.

25 MR. LOFLAND: It was conditions for ongoing

1 coordination. So for each of the living documents, it
2 was a commitment for stakeholders, counties, you know,
3 basically we had a list of folks we had to invite if
4 they wanted to get notice, have an opportunity to
5 comment.

6 CHMN. CHENAL: But there weren't specific
7 substantive provisions that SunZia was required to
8 include in those agreements?

9 MR. LOFLAND: It is the inverse. The POD
10 requires compliance with your local and state permits.
11 So when we go to get a notice to proceed, we have to
12 show compliance with the CEC conditions.

13 CHMN. CHENAL: Right. Okay. I think what --
14 okay.

15 I will give you my thoughts. There is not going
16 to be a ruling today. I don't know there is going to be
17 a ruling before the hearing starts. I am also waiting
18 to hear from the Corporation Commission. I sent a
19 letter to the Corporation Commission on this issue and
20 others. And I am advised that hasn't been provided yet
21 but it will be before the hearing.

22 Any ruling I make is not going to impact whether
23 a CEC is issued or not. It might be a condition, or
24 whether we want a condition in there. I mean I
25 understand the practical difficulties, I think, of how

1 this issue plays out in this case. But I want to
2 protect the record. I want to make sure that the issue
3 is resolved in a way that doesn't give another outside
4 party an opportunity to attack the record or attack the
5 decision that's made. And I think in the course of that
6 there are a couple things I would like to see as part of
7 the hearing, as part of your case in chief.

8 One is a discussion of the input from the public
9 and from, you know, government agencies and the public
10 and nonprofits, their input into the federal, into the
11 issuance of the ROD, in other words, you know, and the
12 EIS, the scoping, the opportunities for the public to
13 have a say into the decision that was made.

14 A large part of your project in Arizona,
15 Mr. Guy, is not subject to this application, yet it
16 impacts people in Arizona rather dramatically. We heard
17 Mr. Robertson at the last prefiling conference talked
18 about it going through or very near, you know, a
19 neighborhood. I would like to have the record at least
20 reflect that people's concerns have already been taken
21 into consideration in the decisions that have already
22 been made. I think that's important we do that.

23 The other thing is the hunter could be become
24 the hunted on this issue. I would like discussion about
25 the conditions that have been placed on Western for the

1 Western-owned portion of the line, the conditions that
2 have been placed on them for the construction of their
3 line, be it general conditions that comply with all
4 state, local, federal laws, be it specific. You know,
5 they have to comply with the elements, the requirements
6 that are in specific agreement with Game & Fish, Arizona
7 Game & Fish. I want to see the panoply of those
8 conditions that are imposed on Western.

9 I want to compare that then at some point in the
10 hearing to the conditions that we generate for the, you
11 know, the part that's under our jurisdiction. And I
12 want to see, you know, if there are conditions that are
13 more specific or less specific, conditions that we would
14 like to see on the Western line and we have to deal with
15 that. We may very well find that there are conditions
16 that are already in place on the Western line that are
17 conditions we want to see on the other side of the line,
18 let me put it that way.

19 Because I still view this as one line. And it
20 seems to me at some point, to have a bunch of different
21 sets of conditions on one line is not efficient. So at
22 the end of the day, I, through this exercise, as
23 belabored as it has become, I would like to see some
24 continuity of conditions on what I view as a single
25 line. And I think it is important we get into those

1 conditions and, you know, we deal with them somehow in
2 our process.

3 Does that sound fair?

4 MR. GUY: It does. That's good guidance. And
5 we are happy to do that.

6 CHMN. CHENAL: Okay. We will see how this issue
7 develops as we go through the hearing. I believe that
8 the conditions that are developed in the course of our
9 process, CEC process, are state substantive standards.

10 If we come to a point where there is a standard
11 that is developed, the condition that we want to impose
12 that's not on the Western-owned line, I guess we will
13 have to wrestle with that at the time. But right now I
14 think we just go through the analysis like I laid out,
15 or the procedural, we get that evidence in the record
16 and we see where we are. And I am hopeful it won't be a
17 problem, but at the end the day we will have conditions
18 that are in synch for both sections of the line.

19 So those are my thoughts right now. As I said,
20 I am getting some additional information from the ACC on
21 this specific issue. But there won't be any other
22 surprises in the hearing on this issue. I don't want to
23 alarm anybody. I think it is -- it would have been a
24 bigger issue to me if it was a much larger section of
25 the line frankly; although, I still think it is a

1 significant issue. But I think we can deal with it.

2 MR. GUY: Okay.

3 CHMN. CHENAL: So that's, if there is any
4 comments, I will certainly listen to them, but I think
5 for now that's how we ought to proceed.

6 The CEC, I don't know if you have exchanged that
7 yet, Mr. Guy, with -- or filed it of record or exchanged
8 it with us.

9 MS. HOPKINS: Yes, Chairman, we filed it
10 yesterday along with the rest of our exhibits and
11 exchanged with the parties. We haven't had an
12 opportunity to discuss the specific language but plan
13 to.

14 CHMN. CHENAL: What?

15 MS. HOPKINS: Plan to.

16 CHMN. CHENAL: I guess it is a little early to
17 tell whether anybody has any objections with specific
18 conditions in the CEC. I don't know if you have -- you
19 haven't had really conversations of substance.

20 MR. GUY: We have not. I think, for example,
21 Mr. Lynch just got his copy this morning. I am sure he
22 hasn't even reviewed it yet.

23 MR. LYNCH: For the record, I haven't got it
24 yet.

25 MS. HOPKINS: You didn't see it.

1 MR. LYNCH: It is over there.

2 Mr. Chairman, question.

3 CHMN. CHENAL: Yes.

4 MR. LYNCH: These documents that Mr. Guy just
5 provided you, will they be at some point marked as
6 separate exhibits?

7 CHMN. CHENAL: Yes.

8 MR. LYNCH: Even though they are pieces of
9 things that are already going to be in the record?

10 CHMN. CHENAL: Yes. It will be marked as
11 Exhibits 1 and 2 or A and B.

12 MR. LYNCH: Are you going to give us our
13 initials today? We are supposed to have initials from
14 you.

15 CHMN. CHENAL: I was going to get to that but --
16 let's do that right now, Mr. Lynch.

17 MR. LYNCH: Can we just be IEDA-A, B, C, D?

18 CHMN. CHENAL: IED, how is that?

19 MR. LYNCH: IED, okay, okay.

20 CHMN. CHENAL: Does that work for you?

21 MR. LYNCH: Anything works.

22 CHMN. CHENAL: Four exhibits.

23 Are there any other jurisdictional -- let me
24 back up.

25 In terms of the Southline project, after this

1 process and assuming a CEC is issued and it is issued
2 and confirmed by the Corporation Commission, are there
3 any other jurisdictional hurdles you have to jump
4 through to have all the permission you need to construct
5 the project?

6 MR. GUY: The most, the most significant, if you
7 will, is a similar process in New Mexico, which, you
8 know, we are, we expect to file that very soon. I mean
9 it will be filed more likely than not while this case is
10 pending actually. And so that's the most significant
11 regulatory hurdle left. We have things like State Land
12 Department approval, things like that, that are also
13 underway, but that would be it.

14 CHMN. CHENAL: I haven't seen the proposed CEC.
15 Are there any inconsistencies between that and the
16 conditions that are in the, any of the records of
17 decision or the --

18 MR. GUY: None that we have identified yet. We
19 don't expect to see that because the conditions we have
20 included in the draft CEC are not unique to this
21 project. They are typical conditions that the Committee
22 has placed on recent CECs. And those are the same sort
23 of conditions that BLM was aware of when it issued their
24 ROD.

25 CHMN. CHENAL: We will probably work to, like I

1 said, to make the conditions consistent, so you might
2 give some thought to maybe another form of CEC that we
3 can get distributed, you know, before the hearing that
4 incorporates the, you know, the other conditions that
5 apply to the WAPA line.

6 MR. GUY: Okay.

7 CHMN. CHENAL: All right. I am pretty much at
8 the end of the items I wanted to cover.

9 We will have notebooks for the Committee
10 members. You indicated that.

11 MR. GUY: Yes.

12 CHMN. CHENAL: Okay. Do you have a preference
13 on the tour days if we have the hearing in the
14 afternoons and just plow through and not take the
15 afternoon off?

16 MR. GUY: I think that's fine if that works. I
17 mean, as of now, we have the hearing location reserved
18 for the entire day. And that would work fine.

19 CHMN. CHENAL: Okay. We will have a discussion
20 with the Committee about that. But given that we may be
21 able to complete this in two weeks, that might make some
22 sense, especially since we have a day off that Thursday
23 the second week.

24 All right. Are there any other issues that we
25 should talk about? Any legal issue we need to deal with

1 with the briefing schedule that we talked about? Let's
2 see if there is anything else in my notes.

3 I don't have anything further. So anyone on the
4 phone have any, anything you want to talk about before
5 we conclude the hearing?

6 MR. HAY: No concerns here.

7 MR. DILLARD: None here.

8 CHMN. CHENAL: All right. Good. Thank you.

9 Okay. Hearing nothing, we will conclude the
10 prehearing conference. I will look forward to seeing
11 most of you Tuesday in Tucson, the Tuesday after
12 Thanksgiving. So we will see you then. Thank you.

13 (The proceeding concluded at 11:30 a.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings were
4 taken before me; that the foregoing pages are a full,
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12 I CERTIFY that I have complied with the
13 ethical obligations set forth in ACJA 7-206(F)(3) and
14 ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,
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20 COLETTE E. ROSS
21 Certified Reporter
22 Certificate No. 50658

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	26:4,6,34;14;43;24; 45:9;48:19	approximately (1) 36:4	41:2;48:5	brought (2) 17:17; 39:19
A	agreement (4) 42:19; 54:14;55:23;58:6 agreements (1) 56:8 agrees (1) 35:13 ahead (5) 14:9; 23:25;25:10;28:5; 30:4 ahold (1) 27:15 Airpark (1) 18:15 Alamos (1) 20:20 alarm (1) 59:23 alerted (1) 7:11 allays (1) 34:1 allotted (1) 29:6 allow (1) 24:9 alone (1) 50:16 along (5) 11:1;32:12, 13;54:23;60:10 although (1) 59:25 ambiguity (1) 19:17 among (1) 7:25 amount (1) 11:10 analysis (7) 17:7; 19:5,18;22:8;50:5, 13;59:14 analyzed (1) 55:6 annual (1) 41:16 answered (1) 46:20 anticipate (3) 18:13, 21;32:6 anticipated (1) 30:18 Apache (2) 10:9; 47:21 apologize (1) 24:22 appeal (1) 49:24 appeals (1) 51:1 appear (1) 9:9 appearance (1) 7:8 appearances (1) 6:7 appeared (1) 27:12 Applewhite (1) 5:23 applicable (2) 45:18; 46:17 applicant (11) 6:16; 7:1;16:20;20:5,7,8, 10;26:24;33:19;47:9; 50:25 applicants (1) 20:12 application (7) 7:5,22; 39:13;40:19,20;54:3; 57:15 applied (2) 17:1;48:8 applies (4) 35:20; 51:20;54:11,12 apply (5) 35:7;37:23; 38:4;44:5;63:5 approached (1) 32:25 appropriate (2) 19:7; 41:10 approval (1) 62:12 approved (1) 54:19	April (1) 26:7 area (2) 10:10;24:25 areas (1) 35:10 arguably (1) 44:5 argue (3) 38:7;43:18; 44:22 argument (6) 15:24; 17:22;33:21;43:4; 46:4;51:13 Arizona (28) 5:25; 6:3;7:4;9:21,21; 10:25;11:1;15:7; 16:12;20:3;33:7; 35:14,17;36:7,23; 37:16,17;41:14;42:1; 44:3;51:24;52:17; 55:3,3,4;57:14,16; 58:6 army (1) 24:18 around (5) 5:4;18:15; 20:23;23:12;43:18 arranged (1) 29:22 arrangements (4) 22:22;26:17;30:5; 32:24 arranging (1) 27:22 articulate (3) 41:17; 46:15,16 articulated (1) 15:6 articulates (1) 40:4 aside (1) 11:23 associate (1) 13:9 Association (6) 6:2,5, 12;7:21;15:11;16:8 assume (2) 42:4,8 assuming (3) 45:5; 49:22;62:1 assumption (1) 34:14 attachment (1) 10:12 attack (5) 47:19; 48:25;51:3;57:4,4 available (1) 30:22 aware (11) 7:13;8:4, 5,20,21;27:25;33:13, 14,15;35:15;62:23 away (2) 48:16;51:2 awful (1) 13:21	basically (1) 56:3 Basin (7) 45:13; 46:15;47:19,23; 52:20,21;53:13 basis (1) 48:15 Bates (2) 40:18,21 become (7) 26:3; 44:5,18;46:24;51:23; 57:23;58:23 becomes (2) 38:3; 47:3 bed (1) 48:3 beginning (1) 19:6 behalf (10) 5:9,12,14, 17,23;6:1,4;8:15,17; 31:22 belabored (1) 58:23 believes (1) 42:7 beneficial (1) 29:10 benefit (1) 49:25 best (2) 15:6;53:22 better (2) 19:2;20:15 bifurcated (1) 43:16 big (1) 49:4 bigger (2) 44:24; 59:24 Bill (1) 10:18 BILLINGSLEY (7) 5:24,24;7:3,4,12,15; 25:21 binder (1) 32:19 binders (1) 31:13 bit (2) 24:8;29:3 Black (1) 5:18 blame (1) 29:17 BLM (18) 35:1;38:5; 40:2,6,25;43:20; 44:6;46:5;47:15,15; 51:25;52:1,6,13;54:3, 4,7;62:23 blue (1) 17:22 board (2) 13:23,23 Bob (1) 6:1 Bonneville (1) 46:18 booked (3) 23:3,4; 26:19 booking (1) 30:9 both (9) 9:22;13:14; 38:12;39:17;46:19; 54:8,11,12;59:18 Bowie (1) 10:10 break (2) 29:13,18 brief (6) 19:14;20:25; 21:8;22:7;41:6;51:8 briefed (3) 17:24; 25:6,8 briefing (6) 15:24,25; 19:4;33:20;38:21; 64:1 briefly (2) 13:1;19:11 bring (2) 16:4;30:24 broken (1) 35:24	Bs (1) 40:20 build (6) 42:20,22; 43:21;44:3;50:18; 54:10 building (2) 43:4; 47:21 built (4) 18:5;35:14; 42:1;53:1 bulk (1) 58:20 Bureau (3) 35:21; 38:10;39:12 busload (1) 28:7
		B		C
		B-14.102 (1) 40:21 B-14.43 (1) 40:18 B-3 (1) 40:19 back (9) 20:20;22:23; 29:8;32:23;41:23; 49:1,6;55:20;61:24 backbone (1) 16:11 background (1) 16:7 balances (1) 37:6 balancing (2) 37:5,11 based (4) 38:13,14;	call (1) 19:10 called (2) 39:21;40:2 came (1) 17:21 Can (32) 6:6;8:8,8; 9:9,16;13:1;18:2; 19:15,19,24;21:23; 22:16;26:3,8;27:18; 29:5;30:24,24;36:19; 38:17;39:19;41:21; 43:13;50:4,15;52:16; 53:14,22;55:17;60:1; 61:17;63:3 cancel (1) 29:5 candidly (1) 51:25 Canyon (2) 6:5;7:18 captured (1) 55:8 care (2) 22:4;30:7 carefully (1) 33:23 Carlock (1) 5:22 carry (1) 12:2 case (42) 5:3;6:15; 11:17;12:12,13;13:5; 17:20,21,23;20:11; 28:15;34:4,18,22; 35:6,23;36:8,21,22; 37:10;38:9;41:12; 42:14;44:1,25;45:13, 15;46:21;48:5,6,17, 18;50:16,17;51:12, 14,21;52:20;55:21; 57:1,7;62:9 cases (7) 20:12; 36:15;37:9;45:13,14; 46:19;48:16 CEC (30) 13:20; 14:16;15:5,7;20:5; 23:20,24;25:3;26:12; 37:4,17,22;38:18; 42:15;43:14;44:2; 45:9;46:23;47:25; 51:18,19;56:12,23; 59:9;60:6,18;62:1,14, 20;63:2 CECs (2) 37:18; 62:22 Cedric (1) 6:9	

<p>Center (3) 23:2,4; 26:18 Central (2) 5:25;7:4 certain (4) 34:25; 35:10;36:18,18 Certainly (7) 13:7; 18:15;27:14;28:11; 50:15;52:10;60:4 certainty (1) 19:21 certificate (1) 16:20 certification (2) 41:16; 52:24 chair (1) 14:6 Chairman (33) 5:8; 6:22,23;7:22;8:11; 9:19;13:7;16:3;17:9; 18:12;22:17;23:17; 24:2,20;26:9,16;27:5, 21;28:19;29:21; 30:15,25;32:9;33:3; 34:8;45:8;48:4; 49:12,17;53:12; 55:12;60:9;61:2 Chairmen (1) 7:3 chance (2) 12:2; 16:21 changes (1) 18:22 characterizations (1) 20:2 CHENAL (121) 5:1, 10,15;6:6,10,13,21, 24;7:10,13,16;8:5,12, 19,22;9:5,12;10:2,15, 20;11:5;12:6,9;13:1; 14:2,24;15:18;16:5,9, 14;18:6,9,25;20:15; 21:9,12,21;22:1,5,12, 20,25;23:9,19;24:3, 10,21;25:7,11,17,22; 26:6,10,20,22;27:4,7, 19;28:2,7,13,21; 29:11,16,24;30:3,12, 16;31:16,22;32:3,7, 16,19,21;33:10,14, 16;34:12;40:7,9,11; 42:12,22,25;43:2,10, 12;44:17;45:7,10; 49:9,16,17,18,21; 50:15;53:24;54:13, 20,23;55:19;56:6,13; 59:6;60:3,14,16;61:3, 7,10,15,18,20,22; 62:14,25;63:7,12,19; 64:8 chief (3) 11:17;34:4; 57:7 CHMN (120) 5:1,10, 15;6:6,10,13,21,24; 7:10,13,16;8:5,12,19, 22;9:5,12;10:2,15,20; 11:5;12:6,9;13:1; 14:2,24;15:18;16:5,9, 14;18:6,9,25;20:15;</p>	<p>21:9,12,21;22:1,5,12, 20,25;23:9,19;24:3, 10,21;25:7,11,17,22; 26:6,10,20,22;27:4,7, 19;28:2,7,13,21; 29:11,16,24;30:3,12, 16;31:16,22;32:3,7, 16,19,21;33:10,14, 16;34:12;40:7,9,11; 42:12,22,25;43:2,10, 12;44:17;45:7,10; 49:9,16,18,21;50:15; 53:24;54:13,20,23; 55:19;56:6,13;59:6; 60:3,14,16;61:3,7,10, 15,18,20,22;62:14, 25;63:7,12,19;64:8 Circuit (5) 17:20,21, 25;45:14;53:13 City (3) 10:25,25;55:4 clear (5) 13:19;34:19, 22;35:6;45:11 clearly (1) 21:10 clients (1) 19:22 client's (1) 13:23 closure (1) 17:10 Cochise (1) 10:24 Colette (2) 5:6;27:16 Columbia (7) 45:13; 46:15;47:19,23; 52:20,20;53:13 comfortable (3) 19:19, 20;21:5 coming (2) 37:3;50:2 comment (7) 8:9,13; 9:16;27:9,12;50:21; 56:5 comments (5) 8:15; 26:25;45:3,4;60:4 Commission (20) 17:9,15;20:4;32:25; 33:8;36:23,25;37:6; 41:8,8;43:6,21;47:1; 48:5;49:2;50:6;53:6; 56:18,19;62:2 commitment (1) 56:2 Committee (38) 15:19;16:2,4,15; 17:9,14;25:25;26:8, 12;28:15;29:1,4; 30:8,22;31:14;34:15; 36:11,25;40:23;41:8, 15;43:5;45:16;47:1; 48:4;49:2;50:3,8,15, 17;51:10,14,16; 52:13;53:6;62:21; 63:9,20 committees (1) 34:20 Committee's (1) 52:9 communicating (2) 31:25;33:9 Community (1) 23:4 companion (1) 16:23</p>	<p>company (1) 47:17 compare (1) 58:9 complain (1) 48:12 complete (5) 24:18; 50:23,24,24;63:21 completed (3) 24:15; 26:11;54:13 compliance (13) 26:8; 35:3;38:24;39:5,9; 41:20;48:21;52:5,6, 22;53:3;56:10,12 complicated (1) 22:3 complied (1) 52:7 comply (22) 35:7,12; 36:3,8;38:2,7,19; 39:17;40:6,25;42:5,7, 9;44:10,20,22;52:3, 15,16;53:14;58:3,5 complying (3) 41:17; 48:13,14 component (1) 50:13 concern (12) 13:2; 14:12,22,24;15:2,4; 17:6;18:14;34:1,6; 52:9,9 concerned (5) 15:8, 10,14;16:24;44:23 concerning (1) 18:19 concerns (6) 31:24; 33:1;34:5;35:16; 57:20;64:6 conclude (2) 64:5,9 concluded (1) 64:13 conclusion (1) 34:15 condemning (1) 50:11 condition (8) 35:2; 39:18;42:6;44:13,18; 56:23,24;59:11 conditions (42) 23:20; 26:13;27:11;37:18, 19;38:8,17;39:2; 41:15,18;43:25;44:2, 4,18,22;46:22;51:19; 52:7;55:21,25;56:12; 57:25;58:1,3,8,10,12, 13,15,17,21,24;59:1, 8,17;60:18;62:16,19, 21,23;63:1,4 conference (3) 5:2; 57:17;64:10 confident (1) 20:6 confirmed (1) 62:2 Conservation (2) 5:25;7:4 consider (5) 37:3; 39:3;46:1;48:5;50:4 consideration (1) 57:21 considerations (1) 38:16 considered (1) 47:12 considering (1) 7:7</p>	<p>considers (2) 36:25, 25 consistent (1) 63:1 construct (2) 39:5; 62:4 constructed (3) 52:23; 53:15,17 constructing (5) 20:8; 38:5;42:18,20,24 construction (3) 35:11;39:22;58:2 contained (1) 10:5 context (4) 24:13; 29:1;46:24;49:24 continuity (1) 58:24 contrast (1) 20:3 Control (2) 26:15; 32:17 Convention (2) 23:2; 26:18 conversation (1) 10:17 conversations (2) 31:5;60:19 cooperating (1) 55:2 Cooperative (3) 6:5; 7:19,20 coordinate (1) 28:11 coordinating (2) 28:9; 30:6 coordination (1) 56:1 copies (7) 30:20,23; 31:9;39:19;40:9,14, 15 copy (4) 31:8;40:11, 12;60:21 Corporation (6) 20:4; 32:24;36:23;56:18, 19;62:2 correctly (1) 55:24 Corridor (1) 8:17 cost (4) 13:14;14:25; 15:19;50:11 costs (2) 7:24;13:15 counsel (1) 33:4 counties (1) 56:2 County (15) 6:9,18; 10:24,24,24;12:21; 18:19;26:2;31:9,23; 44:11;48:17,19,20; 55:4 County's (1) 18:14 couple (11) 8:7,15; 36:15;38:20,25; 40:14,15;42:15; 44:16;55:15;57:6 course (8) 6:16;8:8; 29:5;35:4;44:14; 45:22;57:5;59:8 court (4) 37:11;48:22; 49:24;52:25 courtesy (1) 25:20 cover (2) 11:5;63:8</p>	<p>covered (3) 11:7; 47:4,14 creak (1) 14:6 crop (1) 15:9 curiosity (1) 28:2 current (1) 42:19 currently (4) 11:23; 45:18;49:24;54:19 customers (3) 7:25; 15:12;50:12</p>
D				
<p>Daily (4) 9:21;29:13, 15,17 damage (1) 36:17 dare (1) 15:22 date (4) 11:23,24; 19:15;26:7 day (9) 19:10;24:9, 17;28:1,23;58:22; 59:17;63:18,22 days (1) 63:13 deadlines (1) 8:4 deal (13) 9:13;19:3; 20:23;22:16;25:11; 38:24;46:1,9,53;17; 58:14;59:1;60:1; 63:25 dealing (1) 45:20 deals (1) 15:3 dealt (2) 15:15;53:20 December (2) 23:3,5 decide (4) 39:8; 49:12;51:15;53:19 decided (1) 25:24 decides (2) 17:13; 29:4 decision (10) 7:6,8; 38:11;47:2,15;50:6; 52:12;57:5,13;62:17 decision-making (1) 17:15 decisions (4) 48:3; 52:12,13;57:21 defect (1) 49:5 defined (1) 35:20 defines (1) 20:4 definitely (2) 11:21,22 definition (1) 20:3 definitions (1) 17:2 delivered (2) 31:7; 32:1 DeMoss (1) 10:7 Department (4) 11:1, 1,2;62:12 depend (1) 15:14 described (1) 27:23 describes (1) 40:16 desk (1) 25:18 detailed (1) 39:22 details (1) 39:25 determination (1)</p>				

<p>37:6 determine (3) 38:23; 39:4;51:17 develop (2) 13:22; 55:17 developed (5) 14:11, 14:50;7:59;8,11 developing (1) 28:10 development (12) 38:15;39:21;40:17; 53:25;54:1,2,11,14, 18,21;55:17,23 develops (1) 59:7 difference (1) 52:19 different (5) 13:11; 33:11;35:24;48:17; 58:20 difficulties (1) 56:25 Dillard (4) 6:11,11,11; 64:7 direct (1) 10:13 direction (1) 37:15 directly (1) 22:13 discuss (2) 23:8; 60:12 discussed (5) 19:11; 23:6;24:24;30:17; 44:1 discussion (7) 18:17; 29:9;34:4;41:3;57:8, 24;63:19 discussions (1) 33:1 dismissal (1) 17:24 distance (3) 33:25; 45:22,24 distributed (1) 63:3 District (2) 5:25;7:4 Districts (2) 6:2,12 docket (3) 25:22; 26:15;32:16 document (8) 39:14; 40:1,21,25;41:1,2; 46:7;54:18 documents (3) 30:21; 56:1;61:4 done (5) 23:21;35:1; 48:10;52:18;53:17 Doug (2) 5:18;55:10 down (3) 7:19;20:21; 22:14 draft (1) 62:20 dragging (1) 41:11 dramatically (1) 57:16 drive (2) 31:2,14 drives (1) 31:21 during (3) 17:18; 34:4;50:7</p>	<p>Earth (1) 28:16 easily (1) 47:10 echo (1) 50:21 economic (2) 37:7; 50:12 economically (1) 16:12 edge (1) 49:10 effects (1) 15:12 efficient (1) 58:21 EIS (6) 41:1;47:5,8; 55:2,8;57:12 either (7) 7:7;9:10; 13:11;26:5;29:7; 48:7,16 Electric (3) 6:5;7:20; 20:1 Electrical (3) 6:2,12; 20:4 elements (1) 58:5 else (8) 6:25;7:2,16; 41:5;49:14;51:5; 53:5;64:2 e-mail (1) 27:10 e-mailed (2) 21:13; 22:13 end (9) 7:9;13:15; 24:14;26:14;39:7; 49:13;58:22;59:17; 63:8 enforce (1) 52:2 enforcement (2) 27:24;52:17 enjoy (1) 20:16 enjoying (1) 20:20 enough (1) 45:7 ensure (1) 29:23 entire (4) 36:4;54:1,5; 63:18 entities (2) 36:14; 55:3 environment (1) 37:8 environmental (12) 12:1,2;15:12,15; 35:10;38:14,15; 39:23,25;40:2;46:5; 47:14 environmentally (1) 16:13 especially (1) 63:22 essentially (1) 39:16 establish (2) 41:14,15 established (1) 50:1 evaluate (2) 37:2; 40:24 even (10) 11:19; 14:21;17:24;44:9,10; 50:9;53:15;54:16; 60:22;61:8 event (1) 51:1 everyone (1) 51:22 evidence (2) 50:7; 59:15</p>	<p>exact (1) 44:12 exactly (1) 44:15 example (3) 34:23; 38:10;60:20 examples (1) 36:16 exception (1) 23:5 exceptions (1) 47:22 excerpt (1) 40:18 exchange (1) 30:13 exchanged (6) 31:17, 20;32:14;60:6,7,11 exercise (1) 58:22 exhibit (6) 9:2;10:13; 20:17;40:12,19,20 exhibits (22) 8:22,25; 9:7;11:19;13:17; 16:22;28:20;30:13, 18,19;31:7,11,14,17, 20;32:4,5,12;60:10; 61:6,11,22 expanding (1) 50:10 expect (3) 12:22; 62:8,19 expecting (1) 12:25 explain (1) 13:2 explaining (1) 30:20 explanation (1) 16:7 Explorer (1) 10:1 extend (1) 12:13 extensive (1) 12:22 extent (8) 34:25;35:8; 36:2;39:7;40:23; 42:6;44:1;55:5 extra (2) 40:9,14 eye (2) 13:25;14:14 eyes (1) 46:25</p>	<p>13:5 FERC (6) 16:23,24; 17:1,5;19:25;20:7 few (1) 32:23 figure (3) 14:17;46:1; 47:8 file (8) 7:14;20:24; 31:3,3;38:24;39:3; 41:5;62:8 filed (24) 6:16,18; 10:16,22;11:2,8,19; 12:15;13:17;16:22; 24:24;26:5,14,24; 28:19;30:17,19;31:4; 32:11,16;39:13;60:7, 9;62:9 filing (3) 7:10;8:15; 11:3 filling (1) 36:16 finalized (1) 26:13 Financial (1) 32:24 find (4) 44:12;48:7,7; 58:15 fine (9) 9:4;21:3,14, 21;27:6;33:8;42:12; 63:16,18 finger (1) 18:20 finish (3) 12:9;23:12; 32:9 first (13) 11:13;16:22; 20:16;28:1,23,23; 34:13;39:1,14;40:16; 42:15;45:8;54:6 Fish (4) 11:1;55:4; 58:6,7 five (1) 9:20 flash (3) 31:2,14,21 flexibility (1) 53:9 FLPMA (2) 35:20; 53:14 F-L-P-M-A (1) 35:20 focused (2) 14:19; 22:18 folks (3) 9:2;30:23; 56:3 follow (1) 35:7 following (1) 48:6 follow-up (1) 42:15 Force (1) 6:23 forego (1) 28:15 Foreman (1) 29:17 Forest (2) 5:18;35:22 form (1) 63:2 formally (2) 7:1;12:15 formidable (1) 29:24 forms (1) 27:8 forward (3) 13:16; 19:23;64:10 four (3) 13:17;31:20; 61:22 frankly (2) 46:25; 59:25 Fresno (3) 48:17,19,</p>	<p>20 Friday (7) 11:25;21:8, 9,11;22:6,7;24:18 front (1) 25:19 full (3) 24:9;37:9; 55:13 fully (1) 55:13 functionality (1) 13:16 funding (3) 42:18,20, 23 future (2) 22:15;64:3 future (2) 17:11;27:14</p>
G				
<p>Game (4) 10:25;55:4; 58:6,7 gatekeeper (1) 27:17 gathered (2) 14:15; 24:18 gave (2) 46:8;54:17 general (9) 36:9,10; 37:5,11,14;44:8; 46:17,17;58:3 generally (3) 5:4; 38:13,14 generate (1) 58:10 generated (1) 44:20 generic (1) 9:13 gets (5) 17:12;27:11; 36:6;41:23;50:7 given (4) 21:6,7;28:2; 63:20 goal (1) 26:11 God (1) 14:20 goes (5) 18:18;19:25; 24:11,14;40:3 Good (18) 5:1,8,10, 15;6:21,22,24;10:15, 15;12:1;22:18;28:13; 29:1,12;31:25;46:9; 59:4;64:8 Google (1) 28:16 government (2) 34:21;57:9 GRABEL (4) 5:13,13; 31:12;33:6 Grand (2) 6:4;7:18 grant (8) 35:2;37:4; 39:15;40:6;52:1,4; 54:3,5 granted (3) 50:25; 51:18;53:1 grantee's (1) 35:3 granting (3) 13:19; 47:25;48:9 grants (7) 35:2;37:18; 38:11;54:7,8,8,10 grass (1) 36:18 Great (3) 10:2;31:16; 32:21 grenade (1) 18:2 grounds (1) 52:18</p>				

<p>guess (4) 49:23;51:9; 59:12;60:16 guidance (2) 34:19; 59:4 gut (1) 15:25 Guy (67) 5:7,8,8; 6:14;8:14,18,21;9:1, 8,11,16,17;11:16,18; 12:8,14;14:18;17:4, 12;19:1,9;21:2,15,17; 22:9,11,23;23:1; 26:4;27:1,21;28:6,9; 33:13,15,22;34:8,13; 40:7,8,10,13;42:19, 23;43:1,9,11,24; 44:14;51:8;53:24; 54:2,16,22,24;55:10; 57:15;59:4;60:2,7, 20;61:4;62:6,18; 63:6,11,16</p>	<p>heavy (1) 13:25 height (1) 18:14 help (2) 48:14,15 helpful (8) 14:8; 20:14;31:16;33:20; 36:9;50:25;51:1,2 helps (1) 53:21 high (1) 34:11 hire (1) 17:13 holding (1) 48:19 holidays (1) 21:6 home (1) 31:8 homes (1) 50:11 honestly (1) 51:20 Honor (2) 6:20,21 hope (1) 53:19 hopeful (1) 59:16 HOPKINS (29) 5:11, 11;9:17,19;10:4,23; 22:24;23:2,17;24:2, 4;26:9,16,21;28:19, 22;29:21;30:5,11,15, 17;32:9,18,20;33:3, 22;60:9,15,25 hotel (1) 30:5 hour (2) 22:6;29:6 housekeeping (1) 9:14 hunted (1) 57:24 hunter (1) 57:23 hurdle (1) 62:11 hurdles (1) 62:3 hydro (1) 13:11</p>	<p>32:12;62:20 including (2) 30:25; 55:3 inconsistencies (1) 62:15 incorporate (1) 52:14 incorporated (1) 52:15 incorporates (1) 63:4 increased (2) 18:14; 50:11 incur (1) 7:24 indicated (2) 31:7; 63:10 individual (1) 32:13 inefficient (1) 20:10 information (10) 10:5; 14:15;25:5;29:3; 39:11;45:16;47:18; 50:7;52:21;59:20 initial (1) 22:7 initials (2) 61:13,13 input (2) 57:8,10 inquiry (1) 15:19 insulate (1) 47:19 insulating (1) 48:25 intend (1) 27:25 intending (1) 16:3 intent (3) 6:17,19; 7:14 interest (8) 8:1;12:12; 13:14;15:6;18:7; 37:5;43:7;55:1 interested (3) 7:21, 23;9:9 interpretation (1) 26:1 interprets (1) 19:25 interrupt (2) 14:2; 26:16 intervene (6) 7:7,17; 8:2,8;17:6;25:24 intervened (2) 14:13; 31:6 intervening (3) 6:15, 25;7:1 intervenors (5) 11:11; 12:11,14,25;26:25 intervention (4) 7:7; 13:4,24;18:11 interventions (1) 26:5 into (14) 8:6;12:19; 17:11;19:24;20:2; 25:7;41:11;50:12; 52:12;57:10,10,13, 21;58:25 inverse (1) 56:9 investigate (2) 53:2,3 invite (1) 56:3 involve (1) 13:13 involved (1) 16:24 involvement (1) 24:25 Irrigation (2) 6:2,12 issuance (4) 14:16;</p>	<p>15:5;25:3;57:11 issue (54) 13:18; 14:19;15:7;16:4,14, 17,18;17:9,16,20,24; 19:2,5,6,14,16,21; 20:25;21:1;22:2,7,8, 15;24:23;25:12; 31:21;33:17,22,23; 34:2,2,6;42:13,14; 44:25;45:5,21;46:14; 48:2;49:12,20;51:2, 7;53:20;56:19;57:1, 2,24;59:6,21,22,24; 60:1;63:25 issued (6) 26:12; 42:16;56:23;62:1,1, 23 issues (14) 9:13; 12:17,19;15:9,15; 18:10;20:13;25:10; 29:25;30:8,10;32:22; 35:15;63:24 items (2) 9:14;63:8</p>	<p>59:14 Land (15) 11:1,2; 25:4;34:24;35:21,22, 22;38:10;39:12;40:6; 44:6;54:4,7;55:4; 62:11 lands (2) 35:21;38:5 language (3) 44:12; 46:14;60:12 large (3) 12:25;31:2; 57:14 larger (2) 42:2;59:24 last (7) 11:19,25; 20:16;26:7;38:20; 39:15;57:17 later (3) 39:20;48:12; 51:1 law (12) 27:24;34:18, 22;35:6;36:8,21; 41:12;45:11,15;48:6; 51:21;52:4 laws (2) 53:4;58:4 lawyer (1) 17:13 lay (2) 39:16;45:24 lays (1) 39:22 least (7) 12:16;19:19, 22;38:16;41:6;55:7; 57:19 left (1) 62:11 legal (17) 9:12;12:17, 19;13:18;14:19; 16:14,17,18;17:7; 20:25;25:9;31:20; 32:22;33:17,23; 44:21;63:25 legitimate (1) 15:18 less (1) 58:13 letter (1) 56:19 level (3) 35:8;37:20; 53:6 liaison (1) 27:23 lifting (1) 13:25 likely (2) 23:15;62:9 limited (2) 7:8;21:4 limits (3) 7:14;22:6,6 line (36) 15:1,21; 18:5,17;34:5,15,20; 35:11;36:5,10,24; 42:18;43:4,17,22; 50:8,19;51:2;52:9, 23;53:1,15,18;54:1; 58:1,3,14,16,17,19, 21,25;59:12,18,25; 63:5 lines (2) 42:1;43:19 lingers (1) 17:11 Lisa (1) 22:13 list (2) 11:7;56:3 listen (1) 60:4 litigation (1) 33:11 little (5) 19:1;24:7; 34:4,6;60:16 living (2) 54:17;56:1</p>
H				
<p>habit (1) 6:23 half (6) 29:6;34:1; 44:6;45:21,22;50:20 hand (4) 18:2;40:14; 43:14,19 handle (2) 9:3;23:8 handled (1) 12:18 hands (2) 19:1;43:18 happen (2) 18:4;38:9 happens (1) 16:12 happy (3) 13:7;42:10; 59:5 hard (4) 30:20;31:8, 9;43:18 hate (2) 17:19;49:6 haunt (1) 49:6 HAY (15) 6:9,9,10,18, 20,23;12:21;14:4; 18:9,12;27:3;31:22, 24;32:6;64:6 head (2) 29:9;45:1 health (1) 35:10 hear (8) 15:24;19:7; 21:5;34:6;43:22; 45:4;51:4;56:18 heard (3) 14:6;31:10; 57:16 hearing (48) 8:23;9:6, 15,20,24;10:6,24; 11:4,13,15,20;12:18, 20,22;13:6;18:18; 19:6,15;20:22;21:19; 23:14,14,23,23;24:9, 15;26:14;27:9;28:1, 18;29:9,20,25;30:18, 22;50:22;55:18; 56:17,21;57:7;58:10; 59:7,22;63:3,13,17; 64:5,9 hearings (1) 22:21</p>				
I				
	<p>idea (2) 25:15;48:24 identified (2) 55:6; 62:18 identify (1) 36:2 IED (2) 61:18,19 IEDA (3) 6:16;13:3; 26:2 IEDA-A (1) 61:17 imagine (2) 17:7; 21:25 impact (5) 36:20; 37:8;46:5;47:14; 56:22 impacts (4) 15:10,20; 16:13;57:16 important (7) 20:13; 24:12;42:13,13,14; 57:22;58:25 impose (3) 39:2; 51:18;59:11 imposed (2) 38:17; 58:8 imposing (1) 53:6 Inc (1) 8:17 inclined (1) 24:5 include (1) 56:8 included (3) 9:1;</p>	<p>interpretation (1) 26:1 interprets (1) 19:25 interrupt (2) 14:2; 26:16 intervene (6) 7:7,17; 8:2,8;17:6;25:24 intervened (2) 14:13; 31:6 intervening (3) 6:15, 25;7:1 intervenors (5) 11:11; 12:11,14,25;26:25 intervention (4) 7:7; 13:4,24;18:11 interventions (1) 26:5 into (14) 8:6;12:19; 17:11;19:24;20:2; 25:7;41:11;50:12; 52:12;57:10,10,13, 21;58:25 inverse (1) 56:9 investigate (2) 53:2,3 invite (1) 56:3 involve (1) 13:13 involved (1) 16:24 involvement (1) 24:25 Irrigation (2) 6:2,12 issuance (4) 14:16;</p>	J	
			K	
			L	

<p>local (5) 27:24;33:4; 44:11;56:10;58:4 location (4) 11:14; 22:21;29:9;63:17 locations (3) 10:5; 11:9;29:20 LOFLAND (9) 5:22, 22:25;21:49;17:19, 22:55;20,25;56:9 long (5) 11:13;12:13; 13:4;23:7,10 longer (2) 29:4;42:11 look (11) 16:22;20:5; 36:11;38:22;41:4; 50:16,17,19;51:9; 52:1;64:10 looking (3) 19:22; 37:1;44:11 looks (2) 37:6;39:24 loses (1) 43:6 lost (1) 17:19 lot (9) 13:21,25; 14:11;28:25;34:1; 41:3,3,23;45:23 loudly (1) 14:6 love (2) 14:20;21:17 luck (1) 24:15 LYNCH (54) 6:1,1; 12:16;13:1,7;14:10, 25;15:2;16:3,6,10,19; 19:17;20:24;21:7,10, 22,25;22:2,15,17; 24:20,21,22;25:8,14, 18,20;27:5;31:7,17, 19;33:19;34:7;43:22; 45:4,6,8,11;49:14,15; 50:21;51:5;53:12; 60:21,23;61:1,4,8,12, 16,17,19,21 Lynch's (4) 7:10;18:7; 51:9;53:10</p>	<p>Matt (1) 5:20 matter (5) 17:16;18:1; 25:25;26:2;49:4 matters (2) 13:2; 18:10 Matthew (1) 10:14 may (23) 9:1;12:12; 15:9,12;17:2;18:16, 17;23:9,22,22;31:12; 35:11,17;36:3;37:25; 43:9;44:5;46:4; 51:23;53:12;55:1; 58:15;63:20 Maybe (12) 19:3,4,5, 6;24:17;27:22;34:4; 48:14,14;52:10; 55:13;63:2 mean (33) 15:18; 17:19;21:17,17; 23:13,22;24:11; 25:25;26:10;34:13; 38:22;43:2,10,12,17; 44:1;46:21;48:24; 50:17,18;51:8,8,12, 16,22;52:24;54:8; 55:12,14,17;56:24; 62:8;63:17 means (2) 17:8;48:21 meant (1) 42:11 measurable (1) 36:20 Measures (1) 40:3 meeting (2) 9:23; 31:15 Meghan (1) 5:13 members (9) 7:21; 8:4;13:9,10;16:8; 29:1;30:8;31:14; 63:10 memo (5) 34:9;45:25; 49:1,10;53:11 memoranda (1) 24:24 mention (1) 39:9 mentioned (1) 16:16 Mexico (3) 20:20; 22:14;62:7 might (13) 12:19; 13:5,15;15:24;17:7; 19:6;24:19;36:11; 38:19;47:11;56:23; 63:1,21 mile (4) 33:25;44:6; 45:21,22 mileage (1) 44:24 miles (5) 35:23,25; 41:25;44:23;45:2 mind (2) 40:11;44:17 minimizing (1) 37:7 minute (1) 43:23 minutes (3) 29:14,18; 32:23 missing (1) 48:12 modification (1) 27:13 moment (1) 23:12</p>	<p>Monday (3) 12:3,6; 20:22 monitor (2) 8:3;14:23 monitoring (1) 7:5 monitors (1) 52:6 monkey (1) 49:1 Montana (7) 37:10, 11;43:25;45:13; 46:15;47:20,23 moot (1) 18:16 more (13) 9:13; 22:19;23:15;27:23; 34:4;44:24;45:17; 46:7;47:12;48:8; 51:10;58:13;62:9 morning (11) 5:1,8, 10,15;8:14;9:3; 11:19;19:11;24:16; 25:18;60:21 most (5) 33:25;62:6, 6,10;64:11 Moulton (2) 46:7; 47:17 move (3) 24:1,5; 53:14 movie (1) 31:3 much (10) 11:15,16; 13:6;18:25;21:15; 32:8;35:13;47:11; 59:24;63:7 mute (2) 14:5,7</p>	<p>nevertheless (1) 48:18 new (7) 42:20,22; 43:21;44:3;50:18; 54:10;62:7 News (2) 9:25,25 Newspaper (1) 10:1 newspapers (1) 9:21 next (3) 20:19;22:10; 35:19 nice (1) 6:10 night (2) 11:19;20:16 nine (1) 37:1 Ninth (5) 17:19,21,25; 45:14;53:13 none (4) 30:8;33:13; 62:18;64:7 nonissue (1) 18:18 nonprofits (1) 57:10 nonspecific (1) 36:10 nonsubjective (1) 36:13 nonvague (1) 36:13 noon (2) 11:21;23:13 note (1) 26:18 notebooks (1) 63:9 notes (1) 64:2 notice (17) 6:17,18; 7:14;9:15,20,24;10:6, 14,15,16,21,23;11:3; 23:11,12;56:4,11 noticed (1) 49:9 notices (3) 8:15;11:4; 12:15 notified (1) 9:8 notify (2) 27:14;28:4 notifying (1) 27:11 November (1) 23:3 nuances (1) 19:24 number (7) 28:3; 35:3;36:19;39:11; 46:22;55:1,3</p>	<p>34:23;37:9;39:11; 40:16,19;43:15,17, 18;44:6;50:19,22; 51:13;52:19,20; 54:16,25;55:7;57:8; 58:19,21 ones (1) 42:17 one's (1) 43:18 ongoing (1) 55:25 only (8) 15:11;18:14, 18;21:3;35:20;41:24, 25;43:20 open (1) 13:21 operation (2) 35:10; 39:23 opportunities (1) 57:12 opportunity (5) 8:13; 49:3;56:4;57:4;60:12 oral (2) 17:22;33:21 order (4) 11:13; 33:18;38:21;40:5 ordered (1) 16:23 ordering (1) 52:25 organization (3) 15:22;16:23;17:5 Osborn (2) 5:13,16 others (2) 8:21;56:20 otherwise (2) 15:9; 18:19 ought (1) 60:5 out (26) 13:21;14:17; 17:11,21;18:23; 20:14;25:10,13; 27:24;28:2;29:9; 33:5,7;39:16,22; 44:2;45:24;46:1,10; 47:2,9;48:3;49:3; 54:19;57:1;59:14 outside (3) 14:12; 47:4;57:3 over (7) 12:3;17:15; 22:23;34:16;49:23; 52:24;61:1 owned (1) 44:4 owners (2) 28:4,10</p>
M		N	O	P
<p>mad (1) 17:13 mailing (1) 31:9 main (1) 8:1 maintenance (1) 35:11 major (3) 14:24;15:2; 17:6 makes (4) 19:14; 21:20;49:23;52:13 making (3) 18:21; 40:12;51:13 Maledon (2) 5:13,16 Management (4) 34:24;35:22;38:11; 39:12 manages (1) 54:4 many (2) 15:8,16 marked (2) 61:5,10 Marty (1) 5:11</p>		<p>name (3) 5:6;27:9; 37:9 names (1) 20:17 narrowing (1) 32:22 near (7) 10:5,6,7,8,9, 9;57:18 necessarily (2) 9:7; 38:2 necessary (1) 26:21 need (38) 8:25;9:7; 11:10,17;12:18;13:6; 15:24;21:15,22,24; 22:19;23:8,9,15; 24:7;27:20,22;28:18; 29:4;35:12;36:3; 37:7;38:19,22,24; 39:11;48:2;50:5,13, 16,17,19;51:13,15; 52:18;53:4;62:4; 63:25 needed (2) 55:6,22 needs (9) 22:3;36:8; 41:5;49:2;51:11,16; 52:14,16,21 negotiate (1) 46:12 negotiating (1) 46:9 negotiations (1) 13:22 neighborhood (1) 57:19</p>	<p>objection (1) 26:4 objections (2) 31:10; 60:17 obligations (1) 52:3 observing (1) 18:21 obvious (1) 41:20 obviously (2) 9:9;50:5 occurred (1) 24:22 October (2) 9:22;10:1 off (7) 11:7;18:3; 24:17;41:24;44:14; 63:15,22 officers (1) 52:5 often (1) 37:17 once (1) 55:18 one (30) 8:15;10:5,6, 9,10;14:22;16:22; 17:10;27:11,16;</p>	<p>package (1) 9:2 packs (1) 29:22 page (1) 51:22 pages (7) 39:15,16, 16;40:16;44:15;54:6, 17 panel (4) 11:25;12:1, 2;28:24 panoply (1) 58:7 paper (1) 14:5 papers (1) 9:22 parallel (1) 47:23 parcel (1) 25:9 Parker-Davis (4)</p>

<p>13:10;15:13;16:10; 42:2 part (17) 9:1,5;18:17; 25:4,9;37:17;39:13; 41:13;44:3;45:20; 50:13;54:3;55:7; 57:6,7,14;58:11 participate (1) 52:25 participated (1) 55:2 participation (1) 12:25 particular (1) 18:10 particularly (1) 7:23 parties (8) 9:9;26:3,6, 23;30:21;31:5;32:14; 60:11 Partners (1) 5:19 parts (2) 35:25;43:16 party (14) 6:17;7:8, 14,17;20:10;37:22; 42:18;43:3,7;47:21; 51:12,13;54:20;57:4 passed (1) 15:1 path (1) 22:18 PATTERSON (5) 5:18,18;54:25;55:11, 14 peculiar (1) 20:19 Pedro (1) 9:25 pending (1) 62:10 people (9) 5:5;12:12; 16:13;17:23;27:11; 28:7;33:7;45:23; 57:16 people's (1) 57:20 percent (1) 36:4 Perfect (2) 33:10; 44:25 perfectly (1) 24:7 perhaps (6) 19:13,13, 19,21;20:11;52:19 period (1) 21:4 permission (1) 62:4 permits (2) 44:11; 56:10 person (1) 9:10 personal (1) 21:7 Petrie (1) 10:7 philosophy (1) 50:22 phone (10) 5:5;6:7,8; 7:2;9:10;14:5,7; 19:10;27:9;64:4 photos (1) 10:12 physical (2) 29:4,7 pick (1) 11:24 picking (1) 22:14 piece (1) 40:20 pieces (1) 61:8 Pima (1) 10:24 pin (1) 18:2 Pinal (11) 6:9,18; 10:24;12:21;18:11, 13,15,19;26:2;31:9, 23</p>	<p>place (1) 58:16 placed (4) 55:22; 57:25;58:2;62:22 places (1) 44:16 plaintiffs (1) 48:20 plan (16) 28:22; 38:15;39:21;40:17; 53:25,25;54:2,11,13, 18,20;55:16,16,22; 60:12,15 plans (1) 39:24 play (2) 13:21;49:2 Playa (2) 10:9;45:23 plays (1) 57:1 please (2) 6:7;31:12 plenty (1) 8:12 plow (1) 63:14 Plus (1) 31:5 POD (1) 56:9 point (15) 11:10; 15:17;16:22;27:14; 35:19;43:12,24; 46:10;49:11;53:12; 55:12;58:9,20;59:10; 61:5 points (1) 34:11 policy (2) 20:13; 34:24 portion (3) 7:23; 47:15;58:1 position (6) 8:6; 11:11;20:25;21:1; 47:2;50:3 possibility (2) 7:11; 38:17 posted (3) 10:4,6,12 posting (2) 9:15;10:3 potentially (2) 50:11; 55:7 Power (7) 8:16;13:11, 12;25:1;37:7;46:19; 48:18 practical (3) 43:3; 49:4;56:25 precedent (2) 20:11; 46:25 preempted (1) 34:21 preemption (1) 34:25 preference (2) 7:25; 63:12 prefiled (1) 10:13 prefiling (1) 57:17 prehearing (2) 5:2; 64:10 prepared (2) 28:17,17 present (1) 15:1 presentations (1) 32:13 presented (1) 27:12 presenting (1) 28:22 pretty (1) 63:7 primarily (1) 12:17 primary (2) 41:1;43:3</p>	<p>print (1) 44:14 prior (2) 12:18;19:15 priorities (1) 15:11 private (1) 43:17 probably (9) 11:25; 12:4;15:22;21:8,12; 42:10;53:8,8;62:25 problem (6) 15:13; 24:8;48:1,20;49:4; 59:17 problems (1) 18:23 procedural (5) 33:18; 35:7;49:5;53:7;59:15 procedurally (1) 19:2 proceed (4) 5:7; 53:20;56:11;60:5 proceeding (9) 7:6; 14:13,13;15:16; 17:18;20:5;48:22; 52:24;64:13 process (23) 13:25; 14:23;17:15;18:4; 24:18;37:17;41:11, 13,14;44:2,21;45:25; 47:25;49:6;50:8; 52:23;54:14;55:7; 59:2,9,9;62:1,7 program (1) 52:6 programmatic (1) 55:23 progress (1) 54:15 project (18) 13:23; 14:10;15:14;18:21; 33:12;34:18;38:12; 39:24;42:2;43:15,15; 45:18;50:4;54:5; 57:14;61:25;62:5,21 projects (2) 35:14,16 prompt (1) 24:12 prompted (2) 13:3; 34:3 proper (1) 33:7 proposal (2) 15:5; 51:9 proposed (3) 14:11; 18:22;62:14 protect (3) 14:23; 53:21;57:2 protecting (1) 45:20 protection (2) 39:23; 40:3 provide (4) 25:5;28:1, 25;45:15 provided (4) 30:20; 31:13;56:20;61:5 provides (1) 29:3 provision (1) 37:11 provisions (2) 44:8; 56:7 public (10) 8:9,13; 20:1;27:9,12;35:21; 37:5;57:8,9,12 publication (1) 10:3</p>	<p>published (2) 9:20,24 publishing (1) 9:16 pulled (1) 18:2 pulse (1) 18:20 purpose (1) 40:17 purposes (1) 43:3 purview (3) 14:12; 16:2;47:5 put (10) 14:4,7;16:19; 22:6;24:12;37:18; 46:22;48:2;49:1; 58:18</p>	<p>61:9 records (1) 62:16 red (1) 24:17 referenced (1) 53:24 referred (1) 52:2 reflect (1) 57:20 regard (4) 27:7; 34:21;36:9,16 regarding (2) 29:25; 33:12 regulatory (1) 62:11 rehabilitation (1) 39:23 reimbursement (2) 15:20,20 related (5) 13:17; 31:20;33:11;45:16; 49:19 relates (1) 50:5 relatively (1) 33:25 relevant (3) 34:23; 35:4;53:18 reliable (1) 37:7 relief (1) 53:10 remains (2) 43:20; 50:10 remembering (1) 55:24 remind (1) 47:24 renewed (1) 18:16 repeat (2) 33:6;34:9 reply (2) 21:3,23 report (2) 41:16,19 REPORTER (2) 27:18;29:15 represent (1) 13:3 representations (1) 16:25 Republic (1) 9:21 request (1) 34:3 requested (1) 53:10 Requests (1) 25:24 require (4) 41:13; 44:9,9;47:16 required (2) 42:7; 56:7 requirement (2) 9:23; 53:16 requirements (5) 35:8,18;44:11;53:7; 58:5 requires (4) 25:5; 35:1;44:19;56:10 reseeding (1) 36:18 reserved (2) 11:15; 63:17 resolved (6) 14:19, 22;16:15,18;17:8; 57:3 Resource (1) 40:3 respect (2) 34:17; 35:9 respond (1) 21:2</p>
Q				
<p>quantifiable (1) 36:20 quickly (1) 19:15 quite (1) 29:3 quote (1) 17:3</p>				
R				
<p>raised (4) 19:17; 22:16;33:18;35:19 raising (1) 18:11 Range (1) 9:25 rate (1) 17:21 rather (2) 24:13; 57:16 reach (1) 27:24 reached (2) 33:5,7 reaction (2) 15:25; 53:10 read (7) 11:7,7; 21:12;25:17;33:23; 34:9;41:11 reading (2) 20:16; 49:10 real (2) 43:6;45:12 realize (1) 18:16 really (15) 18:19; 19:25;23:1;29:1; 37:24;39:3,21;40:4; 41:12,24,25;43:19; 46:6;52:8;60:19 rear (1) 45:1 rearranging (1) 24:8 reason (4) 17:5; 28:16;46:2;48:25 receive (1) 13:11 received (1) 8:7 receiving (1) 39:18 recent (1) 62:22 recently (1) 19:12 record (33) 8:6;9:6; 10:11;17:10;27:5; 38:11;39:13,14; 40:12;45:20;46:20; 47:4,15,19;48:25; 50:1,6,23,24,24; 51:19;53:21,21; 55:10,13,17;57:2,4, 19;59:15;60:7,23;</p>				

<p>responding (1) 33:20 response (4) 21:16; 22:9;30:2;51:5 responsibility (1) 45:15 responsible (1) 43:3 rest (1) 60:10 review (1) 51:17 reviewed (1) 60:22 Rhett (2) 5:24;7:3 right (33) 6:6,14;8:14; 9:8;10:21;11:9; 12:24;18:9,24;19:9; 23:18;25:24;26:3,22; 27:19;28:13;30:12; 32:7,21;33:17,24; 34:15;39:7,43;11; 49:10,20;56:13; 59:13,19;61:16;63:7, 24;64:8 right-of-way (15) 35:2, 3;36:17;38:12;39:15, 18;50:10;52:1,2,4; 54:4,6,7,9,10 rights-of-way (1) 48:9 rise (1) 37:20 Robertson (1) 57:17 robust (3) 29:19,23; 49:25 ROD (16) 39:12;40:2, 25;41:2;44:9,19; 46:5,6,11,13;54:6,19; 55:9,16;57:11;62:24 role (4) 11:12;12:22; 13:4,5 Romeo (2) 30:6,10 Ron (1) 46:7 room (3) 5:4;7:2;14:6 rooms (1) 30:9 roughly (4) 35:23,25; 39:14;40:1 route (1) 18:22 RUHT (2) 5:16,16 ruling (4) 19:20; 56:16,17,22 run (2) 11:21,22 rushed (1) 23:21 rustled (1) 14:5 ruts (1) 36:17 Ryley (1) 5:22</p>	<p>29:11;44:16 saying (1) 48:21 schedule (7) 11:20; 15:20;20:18;21:6,7; 29:7;64:1 scoping (1) 57:12 seat (1) 49:10 second (9) 14:3; 23:16;24:23;28:24; 31:20;40:20;43:24; 45:12;63:23 section (11) 34:17; 36:4;42:21,24,24; 43:21;44:3;53:14; 54:9,11;59:24 sections (1) 59:18 security (1) 27:20 seeing (2) 29:2;64:10 seem (4) 20:9;26:1; 41:18;52:8 Seems (9) 11:5,20; 19:4;37:19,23;41:20; 51:10,14;58:20 self (1) 41:16 sense (4) 19:14; 21:20;49:23;63:22 sent (4) 10:23;11:3; 26:23;56:18 separate (1) 61:6 set (2) 5:2;11:23 sets (1) 58:21 several (3) 17:20; 29:22;30:23 shared (2) 7:24;9:2 sheet (1) 30:20 shoes (1) 47:16 short (4) 33:21,25; 45:21,24 shortly (1) 26:15 show (3) 28:8;47:11; 56:12 side (2) 47:22;58:17 Sierra (1) 55:4 signed (1) 26:14 significance (1) 43:6 significant (3) 60:1; 62:6,10 sign-in (1) 27:8 signs (2) 10:4,12 similar (4) 18:7,8; 37:10;62:7 Simon (1) 10:11 Simply (1) 16:19 single (2) 13:18; 58:24 site (2) 29:4,7 Siting (9) 17:9,14; 34:15,17,20;36:10, 24;50:8;52:9 six (1) 10:4 sixth (1) 10:10 slip (1) 30:19 small (2) 25:4;49:5</p>	<p>somebody (1) 17:12 somehow (2) 44:5; 59:1 someone (4) 10:17; 27:23;41:19;48:12 sometimes (2) 37:19; 38:3 soon (1) 62:8 sort (11) 13:24;19:12; 32:1;35:7,17,24; 36:9;41:13;53:9; 54:6;62:22 sorts (1) 20:12 sound (2) 30:3;59:3 sounds (4) 6:21;23:9; 29:24;46:8 sources (1) 13:12 Southline (27) 5:2,9, 12,14,17,19,20; 10:19;16:19,23;17:3; 20:6;25:2;33:12; 38:13;39:17;40:5; 42:16,16,20;43:2,7, 14;51:20;54:10,20; 61:25 speak (5) 14:8;33:4; 42:4;55:16,16 specific (13) 36:13; 37:20;44:12;46:16, 18;56:6;58:4,6,13,13; 59:21;60:12,17 specifically (1) 33:4 spell (1) 5:5 split (1) 43:15 stake (1) 47:2 stakeholders (1) 56:2 standard (18) 37:13, 21;38:1,4,4,6,18; 39:8;42:7;45:16,17; 47:6,12,13;51:15,16, 24;59:10 standards (32) 35:5,9, 12;36:3,7,12,13,20, 24;37:25;39:2,6,17; 40:4,24;41:3,9;44:5, 8,19,20;46:15,16,17, 17,18,24;48:6,7,21; 55:6;59:9 standing (1) 17:23 Star (1) 9:22 started (2) 17:12; 41:24 starts (3) 11:20; 20:22;56:17 State (47) 6:5;7:18; 11:2;15:7;34:20; 35:5,8,9,9,12;36:2,7, 11,23;37:13,20,25; 38:1,6,18;39:2,5; 42:6;44:5,10,18; 45:16;46:15,16,18, 24;47:6,12;48:6; 51:15,16,23,24;52:3,</p>	<p>17;53:2;55:3,6; 56:10;58:4;59:9; 62:11 statement (5) 8:7; 11:11;25:15;46:5; 47:14 statements (3) 8:19, 23;36:10 states (1) 34:20 state's (1) 53:7 stating (3) 11:3; 20:25;22:7 statute (5) 26:8;37:1; 42:3,5;51:17 statutes (2) 34:23; 35:21 statutory (3) 9:23; 25:25;34:19 still (6) 34:2,2,5;46:9; 58:19;59:25 strict (1) 48:8 strikes (1) 15:25 stringent (2) 45:17; 47:12 struck (1) 33:24 structures (1) 18:15 study (1) 38:14 stuff (1) 25:13 SU (3) 16:24;17:5; 20:7 sub (1) 47:22 subject (8) 17:16; 18:1;25:3;33:11; 35:17;43:20;45:9; 57:15 submitted (2) 26:23; 46:6 subsequent (1) 46:13 substance (1) 60:19 substantial (1) 27:13 substantially (1) 44:24 substantive (20) 35:5, 9;36:2,7,24;37:13,21, 25;38:1,6,18;39:2,5; 42:6;43:25;44:19; 48:21;51:23;56:7; 59:9 substation (4) 10:7,8, 8,9 substations (3) 28:4, 5,10 succeed (1) 18:5 sue (2) 17:13,14 suggest (1) 46:3 suggested (1) 17:4 suggestion (2) 19:13; 49:13 summaries (3) 30:13; 32:11,11 Sun (1) 8:17 Sunday (1) 20:21 SunZia (3) 5:23;</p>	<p>55:21;56:7 Superior (1) 49:24 supply (1) 47:18 support (6) 13:19; 14:10,15;15:4;47:24; 55:13 supports (1) 51:20 supposed (1) 61:13 sure (9) 16:1;18:21; 22:12;30:7;34:12; 45:1;51:8;57:2;60:21 surprises (1) 59:22 Sutherland (2) 5:9,11 SWCA (1) 55:15 sword (1) 43:10 synch (1) 59:18 system (6) 13:13,16; 16:11,11;29:19; 35:23</p>
T				
<p>Table (3) 40:2,7,8 talk (13) 11:9;20:14; 21:1;23:11;30:12,16; 36:16,17,19;37:1; 39:19;63:25;64:4 talked (8) 11:18; 12:14,16,21;14:18; 32:22;57:17;64:1 talking (11) 22:25; 35:25;36:12,12,21; 37:12;39:20;41:24, 25,25;44:15 talks (1) 54:17 terms (1) 61:25 testimony (5) 10:14; 30:14;31:18,19;32:4 testing (1) 29:23 Thanks (1) 18:25 Thanksgiving (4) 20:20,21;21:18; 64:12 thereafter (1) 26:15 third (2) 26:19,20 though (2) 53:15;61:8 thought (5) 28:25; 32:10;33:20;45:25; 63:2 thoughts (5) 19:3; 24:11;51:7;56:15; 59:19 three (2) 11:15;35:24 throughout (1) 42:1 Thursday (7) 23:6,7, 16;24:1,6,17;63:22 times (1) 28:12 timing (1) 21:2 today (11) 8:25;9:7,9; 17:12;22:16;25:12; 30:23;31:8;46:23; 56:16;61:13 Todd (2) 6:11,11</p>				

<p>told (1) 25:15 Tortolita (1) 10:7 tour (16) 11:23,24; 12:4;23:11;24:1,6,11, 16;28:10,17,20,25; 29:8,11;31:1;63:13 tours (4) 23:12;28:14; 29:5,7 transcripts (1) 29:13 Transmission (10) 5:17,19,21,23;13:10; 16:11;20:6;42:1,2; 52:23 transmit (1) 13:12 tried (1) 45:24 truncated (1) 21:6 try (2) 42:8;47:8 trying (3) 16:6;19:1; 47:25 Tucson (8) 10:25; 14:21;16:16;17:13; 20:21;23:2;26:18; 64:11 Tuesday (12) 11:21, 22;12:5,5,10;20:23; 24:3,5,9,16;64:11,11 turn (1) 22:23 two (14) 12:14;13:14; 19:10;30:18;31:5; 39:9;40:14,16;43:15, 19;46:22;50:23; 54:17;63:21 two-edged (1) 43:10 twofold (1) 50:22 typical (1) 62:21</p>	<p>4</p> <p style="text-align: center;">V</p> <p>vague (1) 37:14 Vail (1) 10:8 Valley (1) 9:25 variety (1) 13:10 various (1) 52:3 vehicle (1) 44:21 venues (2) 16:10; 27:8 Verizon (1) 29:22 versus (1) 24:3 view (5) 37:24;45:19; 46:8;58:19,24 VIRANT (3) 5:20,20; 10:14 virtual (5) 28:17,19, 25;29:8;31:1 visiting (1) 28:3 Vista (1) 55:4 visuals (1) 29:2 voluminous (2) 30:19; 41:2 voted (1) 26:12</p>	<p>26:19,20;63:23 weeks (2) 11:15; 63:21 welcome (1) 10:20 weren't (1) 56:6 Western (12) 8:16; 15:3;24:25;45:8; 46:6,10;48:11,13; 57:25;58:8,14,16 Western-owned (2) 58:1;59:12 Western's (1) 25:14 whole (3) 48:25;50:4; 52:6 Whoop (1) 10:17 wi-fi (2) 29:19,19 wilderness (1) 10:10 wildlife (1) 36:19 Willcox (7) 9:25;10:9, 25;14:21;16:16;23:4; 45:23 willing (1) 48:15 within (5) 15:23;16:1; 52:4,9,10 witness (6) 28:24,24; 30:13;32:10,11,14 witnesses (3) 14:20; 18:13;55:15 wondering (1) 44:17 word (1) 52:10 words (2) 20:2;57:11 work (3) 61:20;62:25; 63:18 working (1) 23:23 works (3) 22:11; 61:21;63:16 workup (1) 29:11 wrestle (1) 59:13 wrestling (1) 44:7 write (1) 7:19 writing (3) 8:7,24; 19:14 wrong (1) 52:10 wrote (1) 49:1</p>	<p style="text-align: center;">2</p> <p>2 (2) 10:13;61:11 2017 (1) 26:7 23rd (1) 9:22 24th (1) 9:22 26 (1) 10:1 29th (1) 23:3 2nd (1) 23:3</p> <p style="text-align: center;">3</p> <p>30 (2) 39:15;54:6 30th (1) 11:22 360.06 (2) 46:14,21 360.07 (2) 50:5,13</p> <p style="text-align: center;">5</p> <p>505 (1) 53:14 570 (1) 39:16 5th (3) 12:7,8;23:5</p> <p style="text-align: center;">6</p> <p>600 (1) 39:16 600-page (1) 39:14 6th (4) 12:3,5,6;24:5</p> <p style="text-align: center;">8</p> <p>8 (2) 40:2,8 8th (2) 23:6;24:6</p> <p style="text-align: center;">9</p> <p>90 (2) 29:14,18 9th (1) 23:5</p>
<p style="text-align: center;">U</p> <p>ugly (1) 45:1 ultimately (4) 13:22; 15:2;46:12;48:4 unavailable (1) 23:7 under (6) 43:5;44:6; 45:12,15;47:19; 58:11 underlying (1) 15:13 underway (1) 62:13 unique (1) 62:20 unknowns (2) 15:8,16 unnecessary (1) 20:9 up (14) 8:3;11:24; 13:15;15:9,12;17:17; 19:12;22:14;28:8; 32:9;35:16,24;51:24; 61:24 upgrade (4) 14:25; 15:21;50:18;54:9 upgrading (1) 36:5 use (3) 13:10;23:13, 22 users (1) 15:1 using (1) 24:15 utility (4) 17:3;20:1,1,</p>	<p style="text-align: center;">W</p> <p>waiting (2) 49:12; 56:17 waived (2) 17:17; 34:25 walk (1) 48:16 WALLACE (7) 6:4,4; 7:18,20;8:10;18:6,8 wants (4) 7:17;18:20; 28:15;53:2 WAPA (56) 7:24,25; 8:16;15:21;18:17; 34:5,16,17;35:6,11, 13;36:3,5,8;37:22,23; 38:1,5,7,12,19,23,24; 39:3,8,17;40:5,24; 41:5,11,13,22;42:1,4, 7,18,23,24;43:4,13; 44:4,10,19,22;49:23; 50:12;51:12;52:15, 21,25;53:3,7;54:7,9, 23;63:5 WAPA's (1) 7:22 warn (1) 23:19 Water (1) 5:25 way (13) 14:17; 18:23;19:7,25;25:10, 13;35:1;52:15;53:4, 7;55:14;57:3;58:18 ways (2) 8:6;13:11 Wednesday (5) 11:22;21:18,18,19; 22:10 week (8) 7:9;20:19; 22:10;23:16,22;</p>	<p style="text-align: center;">Y</p> <p>year (2) 17:22;36:19 years (1) 17:20 yesterday (4) 28:20; 30:18;32:12;60:10</p> <p style="text-align: center;">1</p> <p>1 (2) 36:4;61:11 1.5 (5) 35:23,25; 41:24;44:23;45:1 10:00 (1) 20:16 100-page (1) 40:1 11:30 am (1) 64:13 12th (1) 26:7 14.113 (1) 40:22 1st (1) 11:23</p>	