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Transcript of Proceedings

August 22, 2023

Horse Heaven Wind Farm v.

EF-210011

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Horse Heaven Wind Farm
Verbatim Record of Proceedings, Adjudicative Hearing - August 22, 2023

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the)
Application of:)
)
)
Scout Clean Energy, LLC, for) Docket No. EF-210011
Horse Heaven Wind Farm, LLC,)
)
)
Applicant.)

ADJUDICATIVE HEARING
VERBATIM RECORD OF PROCEEDINGS

VOLUME 5

August 22, 2023

Lacey, Washington

(CLOSED-RECORD SESSIONS REDACTED)

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22 Reporter. All other participants are
23 appearing remotely via Microsoft Teams.
24
25

INDEX OF PROCEEDINGS	
PROCEEDINGS/WITNESSES:	PAGE NO.
Housekeeping session	768
Roll call of Council	789
Roll call of parties	790
Judge's remarks re morning schedule	793
ANDREW LINES	
Adoption of prefiled testimony	797
KURT KIELISCH	
Adoption of prefiled testimony	801
LINDA LEHMAN	
Adoption of prefiled testimony	805
KARL DYE	
Adoption of prefiled testimony	811
Questions by Council Member Levitt	811
Cross-examination by Ms. Stavitsky	817
RICHARD HAGAR	
Adoption of prefiled testimony	821
Questions by Judge Torem	822
Judge's remarks re upcoming witnesses	828
ERIK JANSEN	
Adoption of prefiled testimony	832
Direct examination by Ms. Perlmutter	834
Cross-examination by Ms. Reyneveld	835
** Closed-record session begins **	841
(Not available to general public per protective order)	
** Closed-record session concluded **	851
Cross-examination by Ms. Reyneveld (Cont.)	852
** Closed-record session begins **	862

INDEX OF PROCEEDINGS (Continuing)	
PROCEEDINGS/WITNESSES:	PAGE NO.
(Not available to general public per protective order)	
** Closed-record session concluded **	877
Cross-examination by Ms. Reyneveld (Cont.)	877
Cross-examination by Ms. Voelckers	882
Oral ruling on applicant's motion to strike TCC response and rebuttal testimony	904
Cross-examination by Ms. Voelckers (Cont.)	917
Redirect examination by Ms. Perlmutter	951
Question by Council Chair Drew	970
Questions by Council Member Levitt	972
Questions by Council Member Livingston	973
Questions by Council Member Young	987
Recross-examination by Ms. Voelckers	999
Recross-examination by Ms. Reyneveld	1006
Recross-examination by Mr. Aramburu	1009
Judge's remarks re schedule	1011
TROY RAHMIG	
Adoption of prefiled testimony	1014
Direct examination by Ms. Perlmutter	1018
Cross-examination by Ms. Reyneveld	1020
** Closed-record session begins **	1038
(Not available to general public per protective order)	
** Closed-record session concluded **	1046
Cross-examination by Ms. Voelckers	1047
Judge's remarks re scheduling	1057
Adjournment	1058

	EXHIBIT INDEX		
	EXHIBIT NO.	PARTY	ADMITTED
1			
2			
3	1002_T_Revised	Scout Clean Energy	832
4	1003_Revised	Scout Clean Energy	832
5	1006_T_Revised	Scout Clean Energy	1015
6	1007	Scout Clean Energy	1015
7	1022_R	Scout Clean Energy	832
8	1033_R_Confidential	Scout Clean Energy	1015
9	1033_R_Redacted	Scout Clean Energy	1015
10	1037_R	Scout Clean Energy	797
11	1038_Revised	Scout Clean Energy	797
12	1039_Revised	Scout Clean Energy	797
13	1041_R_Confidential	Scout Clean Energy	1015
14	1041_R_Redacted	Scout Clean Energy	1015
15	1042	Scout Clean Energy	1015
16	1043	Scout Clean Energy	1015
17	1044	Scout Clean Energy	1015
18	1045	Scout Clean Energy	1015
19	1046	Scout Clean Energy	1015
20	1047	Scout Clean Energy	1015
21	1048	Scout Clean Energy	1015
22	1049	Scout Clean Energy	1015
23	1050	Scout Clean Energy	1015
24	3017_X_Redacted	Counsel for the environment	928
25			

	EXHIBIT INDEX (Continuing)		
	EXHIBIT NO.	PARTY	ADMITTED
1			
2			
3	3018_X	Counsel for the environment	928
4			
5	3019_X_Redacted	Counsel for the environment	928
6	4016_X	Yakama Nation	1016
7	5631_R	Tri-Cities C.A.R.E.S.	826
8	5632_R	Tri-Cities C.A.R.E.S.	807
9	5633_R	Tri-Cities C.A.R.E.S.	811
10	5810_R	Tri-Cities C.A.R.E.S.	801
11	5811_R	Tri-Cities C.A.R.E.S.	801
12	5812_R	Tri-Cities C.A.R.E.S.	801
13	5820_R	Tri-Cities C.A.R.E.S.	807
14	5821_R	Tri-Cities C.A.R.E.S.	807
15	5822_R	Tri-Cities C.A.R.E.S.	807
16	5900_R	Tri-Cities C.A.R.E.S.	821
17	5901_R	Tri-Cities C.A.R.E.S.	821
18	5902_R	Tri-Cities C.A.R.E.S.	821
19			
20			
21			
22			
23			
24			
25			

1 BE IT REMEMBERED that on Tuesday,
2 August 22, 2023, at 621 Woodland Square Loop Southeast,
3 Lacey, Washington, at 8:30 a.m., before the Washington
4 Energy Facility Site Evaluation Council; Kathleen Drew,
5 Chair; and Adam E. Torem, Administrative Law Judge, the
6 following proceedings were continued, to wit:

7
8 <<<<< >>>>>

9
10 JUDGE TOREM: All right. Good
11 morning, everyone. This is Judge Torem. We'll start
12 for August 22nd, 2023, our Day 5 housekeeping session
13 for the Horse Heaven adjudication.

14 And let me just see who's here. I see
15 Ms. Perlmutter and Mr. McMahan on behalf of the
16 applicant.

17 (Audible videoconference
18 disruption.)

19
20 JUDGE TOREM: All right. Folks that
21 come on, if you'll mute your microphones unless you're
22 speaking, that will help quite a bit.

23 All right. So we have Mr. McMahan and
24 Ms. Perlmutter.

25 MR. McMAHAN: All right, Your Honor.

1 JUDGE TOREM: I'm just waiting for a
2 couple other participants to get me to there. I see
3 Mr. Harper, Ms. Reyneveld.

4 Mr. Aramburu I don't see on my screen quite yet.
5 There you are.

6 And for the Yakama Nation, do we have
7 Ms. Voelckers?

8 MS. VOELCKERS: Good morning, Your
9 Honor. Shona Voelckers for Yakama Nation.

10 JUDGE TOREM: All right. Good
11 morning.

12 I want to start this morning in a moment with Lisa
13 Masengale asking a couple questions, I think,
14 Ms. Voelckers, for you about cross-exam exhibits and
15 how we should number them just to confirm for the
16 exhibit list. We'll talk about schedule updates.

17 And then I'm in the throes of finishing, making
18 sure I have everything on, Mr. McMahan, your motion to
19 strike rebuttal and reply testimony. I'll give you a
20 list verbally this afternoon, maybe in a mini
21 housekeeping session after the lunch break.

22 I just want to go over it line and verse one more
23 time so I make sure I get it right for the applicant
24 and right for Mr. Aramburu. It's mostly sketched out.
25 I just want to take another half hour to walk through

1 it so we'll know what's going on with the remaining
2 testimony from Mr. Dunn, Mr. Krupin, Mr. Sharp, and
3 Mr. Simon within a few hours here today.

4 Ms. Masengale, you and I had already corresponded
5 this morning about the exhibits that came in. This
6 would be a great time, if you're on, to ask those
7 questions about labeling.

8 MS. MASENGALE: Absolutely. So in
9 terms of Attachment A, Attachment B, and Attachment C
10 from the Yakama Nation, I just need to know what
11 exhibit numbers the Yakama Nation would like assigned
12 to those, please.

13 JUDGE TOREM: Ms. Masengale,
14 those -- those exhibits are the deposition transcripts,
15 right?

16 MS. MASENGALE: That's correct. So
17 those are the attachments that came in with the motion
18 to supplement the record that was granted. And so I'd
19 just -- it would be helpful if we could assign some
20 exhibit numbers to those, please.

21 MS. VOELCKERS: Good morning, Your
22 Honor. And (videoconference technical difficulties)
23 the question I ask if those have already been assigned,
24 and if not, we can give them -- I believe the next
25 numbers that are available on our exhibit list is 4018,

1 4019, and 4020.

2 (Videoconference technical difficulties) we are
3 asking that the exhibits to those depositions be
4 admitted as well. I do believe I provided, so I don't
5 know if -- really would defer to Ms. Masengale on
6 whether to split those out into separate exhibits or
7 not. (Videoconference technical difficulties) most
8 conducive to the process that you have.

9 MS. MASENGALE: I apologize,
10 Ms. Voelckers. Your audio and video is breaking up for
11 me and for other EFSEC staff as well, so we weren't
12 able to understand what you were saying.

13 MS. VOELCKERS: Okay. I've turned
14 my camera off. Does that help at all?

15 MS. MASENGALE: That is much better.
16 Thank you.

17 MS. VOELCKERS: Okay. And I -- I am
18 having some technical issues this morning.

19 I believe the next numbers that are available on
20 our list are 4018, 4019, and 4020. But we're happy to
21 also split the exhibits off from the deposition
22 transcripts and number those separately. We would
23 defer to Ms. Masengale on what works best for our
24 system.

25 MS. MASENGALE: And I will defer to

1 Judge Torem as to if he has a preference.

2 JUDGE TOREM: Ms. Masengale, I think
3 that was Ms. Voelckers suggested taking the next
4 sequence of exhibits numbers from the Yakama Nations.
5 Makes sense for doing it 4018, 4019, and 4020 for the
6 three attachments, unless you want to break those
7 documents out. I don't know if it helps with the size
8 on storage. But if we label them with the name of the
9 person deposed and maybe go ahead, make the number the
10 name and then underline and adopt a new suffix, like
11 "Dep." Because it's not prefiled testimony. It's
12 nothing like that, but so it's clearly labeled that
13 it's a deposition.

14 And if you need to go out from 4018 in a sequence
15 of attachments, whenever you're done with that
16 sequence, Exhibit B would get a new number and any
17 other attachments, et cetera. And I think all of us
18 will be able to sort out on the exhibit list picking up
19 at 4018 whatever the ultimate numbering is.

20 Does that seem -- that make sense to you,
21 Ms. Voelckers and Ms. Masengale?

22 MS. MASENGALE: This is Lisa
23 Masengale. You're on --

24 (Simultaneous speaking.)

25 ////

1 MS. VOELCKERS: Thank you.

2 MS. MASENGALE: I'm sorry. Sorry.
3 Didn't mean to speak over you, Ms. Voelckers.

4 That works for me. And I'll go ahead and update
5 the exhibit list and get that updated exhibit list out
6 to everyone as soon as possible. And I will make a
7 note there is going to be an underscore "Confidential"
8 version and an underscore "Redacted" version of that
9 Attachment A, which will become Exhibit 4 -- 4018.
10 Thank you.

11 JUDGE TOREM: All right. And,
12 Ms. Masengale, I know that that's going to get into the
13 master exhibit list when you put it out. It might help
14 the parties today for cross-examination to just take an
15 excerpt of the new parts of the exhibits that apply to
16 today and attach that as well. So for ease of
17 reference, they'll be able to pick that up right away
18 and see how you've numbered them particularly as
19 Ms. Voelckers examines the various witnesses today.

20 Thank you. Anything else on that exhibit item?
21 Okay.

22 (Simultaneous speaking.)

23
24 JUDGE TOREM: Moving on.

25 MS. MASENGALE: Sorry, Judge Torem.

1 If I may, I just meant to also let the legal counsel
2 know that they should have received an invitation that
3 will say SOW MFT Service. That is legitimate. That
4 was sent out from WaTech on EFSEC's behalf. And that
5 is an invitation to our secure file sharing so that you
6 can receive the redacted version of Appendix R that was
7 referenced by Judge Torem yesterday. And then there's
8 also Exhibit 4016_X available as well. So that's where
9 we'll be sharing large files that are having some
10 difficulty coming through e-mail this week.

11 JUDGE TOREM: Excellent. Thanks for
12 that update.

13 All right. Today's schedule, we're going to start
14 at 9:00 with Mr. Lines, take his testimony and adopt
15 it, see if anybody has questions, and go through the
16 ones, Mr. Aramburu, that you're sponsoring as well.

17 And then we'll have the Jansen testimony as soon
18 thereafter as possible. And we'll see where the lunch
19 break comes before we get to the Rahmig testimony.

20 I believe once we get to Jansen and Rahmig, we'll
21 probably have the same procedure as yesterday where
22 we're going in and out of closed session.

23 Mr. McMahan, on those items, any information on
24 the Jansen, Rahmig? Or I guess that's Ms. Perlmutter's
25 responsibility today.

1 MR. McMAHAN: Yes, it will be the
2 Perlmutter day, Your Honor.

3 JUDGE TOREM: So, Ms. Perlmutter,
4 anything we need to know about those two witnesses?

5 MS. PERLMUTTER: Not at all, Your
6 Honor. The only thing I would like to take an
7 opportunity to say is to thank everybody that's on the
8 call now for your patience with me in getting
9 scheduling and for your flexibility.

10 As you know, I had COVID. I'm on the last day of
11 my masking apparently. I'm still not allowed to play
12 with the other lawyers. But I really very much
13 appreciate everybody's courtesy and flexibility as I
14 work my way through this.

15 JUDGE TOREM: All right. And,
16 Ms. Perlmutter, as you will be adopting those exhibits,
17 if you want to go over which ones you're going to have
18 Mr. Jansen adopt and Mr. Rahmig as well at the
19 beginning of their testimony so we make sure we have a
20 complete list besides the initial prefiled testimony
21 that came in.

22 I just want to make sure I have the -- any
23 rebuttal or reply testimony or other additional
24 exhibits that they'll be adopting at the outset before
25 we turn them over for cross-exam.

1 MS. PERLMUTTER: Will do.

2 JUDGE TOREM: All right. Thank you.

3 Any other schedule updates that we need to talk
4 about for today? Or if not today, I think we've got
5 that covered the rest of the week.

6 I saw some e-mail about Mr. Simon being added back
7 in, Ms. Voelckers, so I appreciate you finding a spot
8 for that.

9 Mr. McMahan, any other, from the applicant's
10 perspective, witnesses that still need to be sorted out
11 between now and Friday?

12 MR. McMAHAN: I don't believe so,
13 Your Honor. Thank you.

14 JUDGE TOREM: All right. I think,
15 Mr. Harper, we've had all the witnesses the County was
16 intending to present mostly on the land-use days; is
17 that correct?

18 MR. HARPER: That's right.

19 JUDGE TOREM: All right. And,
20 Ms. Reyneveld, we still have Mr. McIvor set for Friday,
21 and I think that was the only witness for CFE, right?

22 MS. REYNEVELD: That's correct.
23 Thanks, Your Honor.

24 JUDGE TOREM: Okay. And for Yakama
25 Nation, I know we have Mr. Wallahee, who was at a

1 funeral yesterday, that we still need to reschedule, so
2 we'll get an update on that as you have it. You may
3 not have one today.

4 Any other witnesses besides Mr. Wallahee that were
5 still up in the air on scheduling?

6 MS. VOELCKERS: Thank you, Your
7 Honor. Shona Voelckers. We are still trying to
8 determine whether Mr. Meninick may be available to
9 testify Thursday or Friday. Because he is also still
10 in services today, so it has not been a good time yet
11 to follow up with him on a specific testimony time. So
12 we're -- continue to work on determining whether or not
13 either of them could be called on Thursday to alleviate
14 some pressure on Friday's deadline, if you will.

15 JUDGE TOREM: All right. Very well.
16 That would be great.

17 Mr. Aramburu, any updates? You said you were
18 withdrawing today the adoption of testimony from Jim
19 Sanders, so I've asked Ms. Masengale to essentially
20 remove all of those exhibits from the record.

21 Were there any other updates from TCC?

22 MR. ARAMBURU: Actually, several
23 updates. Lonnie Click, the Benton County fire chief,
24 is fighting fires in Spokane today, and we're not quite
25 sure when he's going to return. So we'd like to

1 postpone his adoption of his testimony. And we will
2 try to be in touch with him. Things are pretty dire in
3 my old hometown of Spokane these days, so --

4 JUDGE TOREM: Let me -- let me see
5 if we can keep him focused on fires. I know the
6 general rule I've set is that they need to be present
7 to adopt their testimony, but since there's no cross,
8 I'm a little bit afraid that the Chair may have
9 questions on firefighting. But I don't want you to
10 worry.

11 Will the other parties stipulate, if the Chair and
12 the Council members have no questions for Mr. Click and
13 say as much today, that we can just stipulate to the
14 admission of his testimony and keep him focused in
15 Spokane?

16 Okay. I'm seeing nods.

17 Mr. Aramburu, that's my old hometown from my first
18 Air Force station as well. I share your concern for
19 what's going on in Medical Lake and that community. So
20 if we can relieve Mr. Click of this in the back of his
21 mind, I'm all for it.

22 MR. ARAMBURU: Okay. Let's -- let
23 me continue to check on Mr. Click.

24 We are still working on the possibility of
25 rebuttal testimony to Mr. Wiley and rebuttal testimony

1 to Mr. Kobus, both of which we were just informed of
2 late last week. So we're -- we're working diligently
3 in that area. We will inform the parties when we have
4 better information on that.

5 And speaking of that, this morning you indicated
6 that there will be an upcoming ruling on the motion to
7 strike the rebuttal testimony. Mr. Krupin and
8 Mr. Sharp are scheduled for tomorrow. And of course
9 we're still up in the air about the rebuttal testimony,
10 but they'll be available to -- for cross-examination on
11 the material that was not stricken from their
12 testimony.

13 Mr. Dunn has been -- was previously scheduled and
14 is still available, but we haven't scheduled him,
15 because we don't know what your ruling's going to be.

16 And, anyway, I'll keep my mouth shut about
17 something else. Anyway, so --

18 JUDGE TOREM: I apologize in advance
19 for the lateness of this and the tardiness, if that's
20 what you were thinking. So your thought, if it was
21 that, is well-taken and well deserved on my part.

22 MR. ARAMBURU: And Mr. Dunn is -- is
23 the general manager of Benton County PUD and is a busy
24 person. So if you can give us some idea as to whether
25 Mr. Dunn should take some time out of his busy day.

1 I know he was previously scheduled for tomorrow.
2 I think he is available tomorrow morning after about
3 10:30. So I hate keeping him up in the air. He's a
4 busy person.

5 JUDGE TOREM: Understood.

6 MR. ARAMBURU: So anything you could
7 do to help us with that, that would be -- that would be
8 good.

9 JUDGE TOREM: Will be done.

10 One thing I can tell you in advance that will be
11 in the ruling more formally today is that Mr. Simon's
12 testimony as rebuttal to Mr. Poulos, I went through it
13 several times, and I think as rebuttal testimony 5503_R
14 will be not stricken, will come in.

15 So as far as Mr. Simon's testimony, which I think
16 is being scheduled for later in the week, prepare
17 accordingly for Mr. Poulos and Mr. Simon to be
18 head-to-head on that rebuttal and should be considered.
19 That's one I can tell you for sure.

20 The Sharp testimony, you can expect the same
21 direction I went where there was anything about ice
22 throw and recreation will be permitted. The other
23 topics will be stricken. But I can give you that
24 advance heads-up of how I'll formally go through that
25 exhibit by exhibit later this afternoon.

1 All right. As to the rebuttal testimony to Wiley
2 and Kobus, my suggestion and desire is that the
3 rebuttal testimony be limited in scope to what we
4 actually have Mr. Wiley testify to tomorrow as well as
5 whatever Mr. Kobus's -- the deposition is already in,
6 and the supplemental piece that he put in was, I think,
7 limited to the BESS systems. And I don't know what
8 additional testimony might be solicited when he is
9 scheduled, I believe, on Friday. Yes, at time to be
10 determined.

11 MR. ARAMBURU: On that subject, yes,
12 Your Honor, we are intending with regard to the Wiley
13 testimony to address the -- the three questions with a
14 possible rebuttal witness that were presented by the
15 Chair last week. So we will be focusing on those same
16 three questions. We don't know what else Mr. Wiley's
17 going to say, so might want to rebut those materials as
18 well.

19 With respect to -- to Mr. Kobus, we may have some
20 question -- we will focus in any rebuttal testimony on
21 just what the supplementation of his testimony that you
22 allowed last week was, primarily addressing fire
23 issues. And we may have some questions to Mr. Kobus
24 about -- about that matter, but we do not intend to get
25 into any matters other than that that were found in --

1 in the Kobus deposition.

2 JUDGE TOREM: Okay. I hope that
3 clarifies it for Ms. Perlmutter and Mr. McMahan. So if
4 there is going to be an objection to the rebuttal, per
5 se, likely that would be overruled, depending on how
6 it's phrased. And as far as we -- if we stay within
7 that scope, I think we should be time-wise able to move
8 right along and -- and handle things as you've said,
9 Mr. Aramburu. I appreciate that.

10 Tomorrow -- we have a housekeeping session every
11 day. It's possible we could skip some of these coming
12 forward, because we're getting to the end of the funnel
13 here. I don't know what other issues might be there.
14 So at the end of today, when we're done with testimony,
15 I'll see if I can survey all of you about the need for
16 a housekeeping session the next day, and we'll do that
17 again on Wednesday and Thursday. That way you might be
18 able to get back 30 minutes. That time is hard to come
19 by this week.

20 Finally, the public comment hearing. I think
21 there's still some confusion. I don't know why. But
22 the public comment hearing is 5:30 tomorrow. And I
23 understand from staff that some folks are either just
24 listening in today to see what's going on or maybe
25 think that the public comment hearing is today. So

1 I'll mention that at the top of 9:00 hour and let folks
2 that are on the line know what's going on there.

3 Ms. Perlmutter, were you on the line yesterday
4 back and forth when we went into closed session and
5 back and forth?

6 MS. PERLMUTTER: Yes, I was, Your
7 Honor.

8 JUDGE TOREM: Okay. So we'll follow
9 that same procedure today with your witnesses where
10 you'll have a chance to state essentially this is what
11 they would testify about in this general subject
12 matter, and before we go into closed session, you'll
13 let me know when they -- either we need to do it
14 immediately or if we need to take a few basic
15 background questions that the public could be able to
16 hear in an attempt to keep this as transparent, as open
17 as possible.

18 MS. PERLMUTTER: As a heads-up, Your
19 Honor, I suspect that what's going to happen is that
20 I'll introduce them. I will reference their -- the
21 areas of the ASC and their testimony, and then we'll
22 turn them over for cross-examination. So I suspect
23 that that's really going to fall more on Ms. Reyneveld
24 and Ms. Voelckers.

25 JUDGE TOREM: Okay. Well, again, if

1 we have questions that can be an open session, let's
2 try to do that. And we'll see between the two
3 different cross-exams if there's a need to come back
4 out and back in. But staff is building that list as we
5 talk, so it should be a little smoother each day as we
6 get used to that process.

7 Okay. We've got ten minutes till the hearing
8 starts. Does anybody have anything else for our
9 housekeeping session today?

10 MS. VOELCKERS: Your Honor, if I
11 may. Shona Voelckers.

12 JUDGE TOREM: Yes, please.

13 MS. VOELCKERS: First, can you see
14 and hear me okay?

15 JUDGE TOREM: Yes. Your video is a
16 little bit garbled, but your voice, which is what the
17 court reporter needs, sounds better now.

18 MS. VOELCKERS: Okay. I'm going to
19 continue without my video and try to keep
20 troubleshooting on our end. I will confess, I am the
21 least technological-savvy millennial, I know, but I'm
22 grappling with another change in my app somehow that
23 happened overnight.

24 So two things, Your Honor. First is that really
25 appreciate what Ms. Masengale has been able to do

1 during the hearing in terms of sharing exhibits. And
2 given the volume of ones that we're trying to use
3 today, I just was hoping for a heads-up on whether or
4 not she would be available to do that today as well or
5 if she has other commitments, and we can plan
6 accordingly. So that's my first question.

7 JUDGE TOREM: Ms. Masengale, do you
8 want to let us know what your availability might be to
9 be, I guess, our Vanna White where you're displaying
10 the -- the exhibits each time? The people that are old
11 enough got that.

12 Ms. Masengale may have stepped away, but we'll
13 have somebody text her in the chat to ask that
14 question, Ms. Voelckers.

15 Oh. She's saying she can assist as needed. I'm
16 seeing it in the chat.

17 MS. VOELCKERS: Okay. Thank you,
18 Your Honor.

19 And -- and then my second question is for a little
20 more clarity around one of the Council member's
21 attendance. I don't know if the representative for the
22 Department of Agriculture was able to join for any part
23 of yesterday, but we'd appreciate a little bit of
24 clarity around that and, you know, just whether or not
25 he's going to have an opportunity to ask any questions

1 of the witnesses and, you know, just given the
2 sensitivity and the importance of what was shared
3 yesterday, we hope that he will be able to fully view
4 all of it at some point.

5 JUDGE TOREM: I appreciate that
6 concern. I have reached out to Mr. Sandison last
7 night. He and I spoke. He has been busy, much as
8 Mr. Click is, dealing with some fire issues to the
9 north and the harvest season that's going on now. And
10 he and I talked about the need and the importance of
11 viewing the actual videos, not just the transcripts,
12 particularly for the witnesses you presented yesterday.
13 So I assure you, he does have access to all those
14 materials.

15 The fact that he's the head of the Department of
16 Agriculture complicates his schedule. And we knew he
17 was going to miss parts of last week. Yesterday, I
18 think, was kind of overcome by events. So I believe
19 he's planning to sign in today at 9:00, and you should
20 hear him on the roll call. I'm hoping so as well.

21 MS. VOELCKERS: Thank you, Your
22 Honor.

23 And will the video recording of yesterday be
24 available to the parties that -- you know, we all have
25 confidentiality agreements at this -- this point. As

1 counsel, will we all have available -- availability to
2 have that video as well or just the transcripts?

3 JUDGE TOREM: Let me allow staff to
4 address that. I know that Ms. Grantham has been
5 working on those videos, and Ms. Masengale was in
6 charge of some of the recordings yesterday, which
7 complicated her abilities to share slides then. So she
8 stated her appreciation that the parties picked up what
9 could have been a slack for her and multitasking.

10 Ms. Grantham, Ms. Masengale, can you elucidate on
11 what's happening with particularly the confidential
12 versions of the video and how those will be available?

13 MS. GRANTHAM: This is Andrea
14 Grantham speaking. I believe yesterday Joan Owens was
15 working on the recordings, but I can talk with other
16 admin staff and make sure we can get that together.
17 And I think we will try to get that available to the
18 parties since there was an agreement, but I can get a
19 for-sure answer later.

20 JUDGE TOREM: And I see that Joan
21 Owens has already posted in the chat that the public
22 version is already out there, but we're going to take a
23 look and see where we can put that.

24 But, yes, I think the short answer, Ms. Voelckers,
25 is it will be available. It's just a question of

1 making sure we have it in a place where only those with
2 agreements can access, and the Council members, of
3 course.

4 MS. GRANTHAM: Yeah. And this is
5 Andrea again. Joan just let me know that the
6 confidential video is being uploaded to the Council
7 SharePoint. So parties and Council will be able to
8 view it.

9 MS. VOELCKERS: Thank you so much.

10 JUDGE TOREM: Very well.

11 All right. Let's go for five minutes before we --

12 (Audible videoconference
13 disruption.)

14
15 JUDGE TOREM: Hang on, Mr. Aramburu.
16 You're -- we're going to give you five minutes to talk
17 to your witness.

18 We'll come back at 9:00, and we'll start the
19 public session from there. We'll start with Mr. Lines
20 and have his testimony adopted. And I see Mr. Kielisch
21 is ready to do the same.

22 All right. Let's take a brief recess.

23 (Pause in proceedings from
24 8:55 a.m. to 9:00 a.m.)

25 ////

1 JUDGE TOREM: All right. Good
2 morning, everyone. We're on the record in now Day 5 of
3 our evidentiary portion of the adjudicative hearing.

4 (Audible videoconference
5 disruption.)
6

7 JUDGE TOREM: Mr. Aramburu, your
8 mike is open still.

9 I'm going to ask for our Horse Heaven Council
10 members to have a roll call taken today. Then I'll
11 check with the parties, and we'll begin adopting the
12 testimony of those witnesses who are listed for today:
13 Andrew Lines, Kurt Kielisch, Linda Lehman, Richard
14 Hagar, Karl Dye. And then I'll have some explanations
15 for Council members of the other names that were listed
16 and what's going on with them.

17 So, again, welcome to Day 5 of the adjudicative
18 hearing.

19 If the staff would please call the roll of the
20 Council.

21 MS. SHILEY: For the Council:
22 Chair.

23 COUNCIL CHAIR DREW: Kathleen Drew,
24 present.

25 MS. SHILEY: Commerce.

1 COUNCIL MEMBER OSBORNE: Elizabeth
2 Osborne, present.

3 MS. SHILEY: Ecology.

4 COUNCIL MEMBER LEVITT: Eli Levitt,
5 present.

6 MS. SHILEY: Fish and wildlife.

7 COUNCIL MEMBER LIVINGSTON: Mike
8 Livingston, present.

9 MS. SHILEY: Natural Resources.

10 COUNCIL MEMBER YOUNG: Lenny Young,
11 present.

12 MS. SHILEY: Utilities &
13 Transportation Commission.

14 COUNCIL MEMBER BREWSTER: Stacey
15 Brewster, present.

16 MS. SHILEY: And for the Horse
17 Heaven project: Department of Agriculture.

18 And for Benton County.

19 COUNCIL MEMBER BROST: Ed Brost is
20 here.

21 MS. SHILEY: Thank you.

22 JUDGE TOREM: All right. Thank you.
23 Let me check for the applicant who's participating
24 today.

25 MS. PERLMUTTER: Good morning, Your

1 Honor.

2 MR. McMAHAN: Thank you, Your Honor.

3 MS. PERLMUTTER: So this is Willa
4 Perlmutter from Stoel Rives appearing today on behalf
5 of the applicant. With me, although in another room,
6 is Mr. McMahan, Ms. Schimelpfenig, and Ms. Stavitsky.

7 JUDGE TOREM: All right. Thank you
8 for that.

9 I see Mr. Harper.

10 Anybody else joining you today for Benton County?

11 MR. HARPER: Good morning, Your
12 Honor. I'm here with Z. Foster today.

13 JUDGE TOREM: All right.

14 And, Ms. Reyneveld, I see you are here. Thank you
15 very much.

16 And for the Yakama Nation, Ms. Voelckers?

17 MS. VOELCKERS: Good morning, Your
18 Honor and EFSEC Council. Shona Voelckers for the
19 Yakama Nation, joined by Ethan Jones and Jessica
20 Houston.

21 JUDGE TOREM: And note to the
22 Council members today. Ms. Voelckers had some kind of
23 update on her computer for the app for Microsoft Teams
24 last night which is making her connection -- the
25 stability's questionable at times. So she may have her

1 camera off today as an attempt to make sure that the
2 court reporter can hear everything. So no discourtesy
3 intended or implied. It's just a question of
4 connectivity if you don't see Ms. Voelckers today
5 asking her questions.

6 Mr. Aramburu, I see you're here as well for
7 Tri-Cities C.A.R.E.S.

8 So that is everybody for our parties and as many
9 of our Council members as can be present.

10 I will note for the record, Chair Drew, that I had
11 an inquiry during housekeeping today about our
12 Agriculture representative Mr. Sandison's attendance
13 and let the parties know I had spoken with him last
14 night about the importance of catching up on everything
15 before the Council were to meet.

16 I let them know about the stresses in his schedule
17 and also the importance for him to be able to view
18 yesterday's confidential version of the video so he
19 could see the actual witness testimony from the Yakama
20 Nation members, Mr. Heemsah and Mr. Selam,
21 particularly.

22 So those materials will be made available on the
23 Council SharePoint in the confidential video if anybody
24 needs to review those. The public version from
25 yesterday is already up on the website.

1 All right. Turning to this morning's business.
2 Council members, this is your opportunity to ask
3 questions after each witness adopts their prefiled
4 testimony. The parties don't have any questions, per
5 se. And I want to see, because we're having dwindling
6 amounts of time left, if we can avoid the need to
7 recall any of these witnesses if at all possible. So.

8 I'm sure all of you have reviewed their testimony.
9 I'm going to ask that the sponsoring attorney just give
10 a quick moment, one or two lines about the subject
11 matter that's in that. So if it sparks any questions
12 and you remember, "Oh, yes, this is that witness,"
13 there's a lot of them this morning.

14 So, sponsoring attorneys from the applicant, and
15 Mr. Aramburu, from you at TCC, if you give me the
16 30,000-foot overview of what the witness prefiled, that
17 will help spark any questions, if necessary, from
18 Council members.

19 (Witness Andrew Lines
20 appearing remotely.)
21

22 JUDGE TOREM: All right. Let's turn
23 to Mr. Andrew Lines. Let's see if I can get you on my
24 screen. I see you there.

25 Good morning, sir. I'm Judge Torem. I'll ask you

1 to adopt these pieces of witness prefiled testimony.
2 The exhibit numbers are 1037_R, 1038, and 1039. Once I
3 swear you in and we do that, then I'll have an
4 opportunity to have your counsel give the 30,000-foot
5 overview of what you've got, and we'll see if anybody
6 has any questions. If not, it's an easy morning.

7 **THE WITNESS: Thank you, Judge.**

8 JUDGE TOREM: All right. Mr. Lines,
9 if you raise your right hand.

10
11 ANDREW LINES, appearing remotely, was duly
12 sworn by the Administrative
13 Law Judge as follows:

14
15 JUDGE TOREM: Do you, Andrew Lines,
16 solemnly swear or affirm that all of the prefiled
17 testimony you submitted in Exhibits 1037_R, 1038, and
18 1039 is the truth, the whole truth, and nothing but the
19 truth?

20 **THE WITNESS: I have some small**
21 **amendments to --**

22 JUDGE TOREM: Okay.

23 **THE WITNESS: -- add to those, if**
24 **that's okay.**

25 JUDGE TOREM: Yes. If you want to

1 call attention to that, Ms. Masengale, our public
2 records office, if you go slowly, can get that all
3 down, and so can the court reporter. And after that,
4 I'll ask your sponsoring attorney -- looks like it
5 might be Ms. Schimelpfenig -- to give us the
6 30,000-foot overview.

7 Go ahead and call our attention to each exhibit
8 and where the modifications or revisions might be.

9 **THE WITNESS:** Sure. It's only three
10 of them.

11 The first is on Page 2 of both Exhibit 1038 as
12 well as Exhibit 1039, which is the real estate adjacent
13 property value impact consulting report and the
14 addendum thereto.

15 And on Page 2, we would like to change, "However,
16 it should be noted that, here, the project boundary
17 will be in excess of two miles from the nearest
18 single-family residence." That line should be altered
19 to, quote, "However, it should be noted that, here, the
20 planned solar arrays within the project boundary will
21 generally be in excess of two miles from the nearest
22 non-participating single-family residence," end quote.

23 **JUDGE TOREM:** Okay. Thank you.
24 That will be noted.

25 **THE WITNESS:** The second correction

1 is on Page 17 of Exhibit 1038. The first bullet in the
2 middle of the page, we want to change the word
3 "Illinois" to "Washington." And the sentence should
4 now read, "Due to the limited number of existing larger
5 utility scale projects in the state of Washington,
6 we've incorporated other utility scale projects in
7 other states."

8 JUDGE TOREM: All right. So we're
9 substituting "Illinois" for "Washington" on that
10 sentence.

11 THE WITNESS: Correct.

12 JUDGE TOREM: Any other -- any other
13 corrections?

14 THE WITNESS: Yeah. Last one.

15 On Page 39 of Exhibit 1038, it's a few sentences
16 on the top of the page. There's no other information
17 on that page. And we're going to change the end of
18 that sentence.

19 So the sentence in its completion will now read,
20 "The days on market for the test area sale was 236
21 days, while the median days on market for the control
22 area sales were 119 days (ranging from 62 to 221 days).
23 While the test subject was higher than the controlled
24 data, the controlled data indicated general list to
25 sale price ratios of plus 6 percent to negative 18

1 percent and the test sale's ratio of negative 14
2 percent fell within the market parameters," end quote.

3 JUDGE TOREM: All right. I think
4 the court reporter captured all of that.

5 All right. With those corrections and
6 substitutions, you're adopting this as your testimony
7 as per the oath?

8 **THE WITNESS: I am.**

9 (Exhibit Nos. 1037_R,
10 1038_Revised, and
11 1039_Revised admitted.)

12
13 JUDGE TOREM: All right.
14 Ms. Schimelpfenig, a couple sentences so the
15 Council's -- I think we're already -- already oriented
16 by some of the corrections, but just a very quick
17 introduction to this witness, and then I'll see if
18 Chair Drew and the Council members have questions.

19 MS. SCHIMELPFENIG: Thank you, Your
20 Honor.

21 Mr. Lines's testimony was submitted after rebuttal
22 testimony was received about property values. His
23 consulting company, CohnReznick, provided two reports.
24 The first is a real estate adjacent property value
25 impact report, and the second is a site-specific

1 analysis for the Horse Heaven Hills.

2 Based on that analysis and even after making the
3 corrections noted earlier, Mr. Lines has -- concludes
4 that there's not going to be a measurable impact on
5 property values. And I believe that remains the same
6 even after those admissions.

7 JUDGE TOREM: All right. Thank you,
8 Ms. Schimelpfenig. And I see Mr. Lines is nodding in
9 agreement with your quick summary.

10 All right. Chair Drew, any questions for
11 Mr. Lines? I see no questions.

12 Any other members of the Council, if you'll raise
13 your digital hand, I will be able to see if there's any
14 questions for Mr. Lines.

15 And I'm not seeing any, Mr. Lines, so must have
16 been clear as to what was already in there, and the
17 clarifications didn't raise any new questions.

18 Did any party particularly on the clarifications
19 have limited questions?

20 MR. ARAMBURU: On behalf of TCC,
21 the -- the supplement here came rather quickly. We
22 need to take a closer look at that material. I
23 actually don't have his testimony in front of me,
24 because I didn't think it was necessary. So we will
25 reserve the right to potentially ask some questions

1 regarding the supplemental material.

2 JUDGE TOREM: Understood.

3 I'm pretty sure that the "Illinois"/"Washington"
4 won't require any supplemental, but if you have
5 questions, Mr. Aramburu, as to anything else that came
6 up, let me know. And if at some point -- it sounded
7 like, Mr. Lines, you were reading a corrected version.

8 **THE WITNESS: That is correct.**

9 JUDGE TOREM: All right. If you'll
10 make sure Ms. Schimelpfenig can at an appropriate time
11 today send a copy of that to all the parties so
12 particularly Mr. Aramburu doesn't have to rely on the
13 rush notes, that will help him know very quickly if he
14 has any changes or questions that he didn't have
15 previously. Mr. Aramburu, I take it that will help?

16 MR. ARAMBURU: That will be very
17 helpful. Thank you, Counsel, and thank you, Judge.

18 JUDGE TOREM: All right. That will
19 be done.

20 Anything else for Mr. Lines?

21 All right. Thank you, sir. Subject to just
22 getting those other items out, we'll go from there.

23 Mr. Harper, I saw your screen light up. I wasn't
24 sure if that was just the Microsoft Teams calling my
25 attention to you.

1 MR. HARPER: No. I was just going
2 to identify I didn't have questions, Your Honor.

3 JUDGE TOREM: Perfect.

4 Okay. Mr. Lines, thank you very much.

5 (Witness excused.)

6 (Witness Kurt Kielisch
7 appearing remotely.)

8
9 JUDGE TOREM: I'm going to move on
10 to Mr. Kielisch's testimony.

11 Good morning, Kurt Kielisch. How are you?

12 **THE WITNESS: Good morning. Very**
13 **good.**

14 JUDGE TOREM: I have Exhibits, I
15 believe, 5810, 5811, and 5812 that you'll be adopting
16 today.

17 Are those all the exhibits you're aware of, sir?

18 **THE WITNESS: Yes.**

19 JUDGE TOREM: All right. If you'll
20 raise your right hand. We'll follow that same
21 procedure you just saw.

22
23 KURT KIELISCH, appearing remotely, was duly
24 sworn by the Administrative
25 Law Judge as follows:

1 JUDGE TOREM: Do you, Kurt Kielisch,
2 solemnly swear or affirm that all of the prefiled
3 testimony in Exhibits 5810, 5811, and 5812 are the
4 truth, the whole truth, and nothing but the truth?

5 **THE WITNESS: Yes.**

6 (Exhibit Nos. 5810_R, 5811_R,
7 and 5812_R admitted.)
8

9 JUDGE TOREM: All right.
10 Mr. Aramburu is your sponsoring witness. I'm going to
11 ask him to give a one- or two-sentence summary so the
12 Council can be -- have their memories jogged as exactly
13 why you're here.

14 Mr. Aramburu.

15 MR. ARAMBURU: Mr. Kielisch is a
16 forensic appraiser. He's provided testimony concerning
17 other testimony that was submitted by other witnesses
18 that relate to the impact of wind turbines on nearby
19 residences concluding that certain material should not
20 be relied upon, particularly the -- the Hoen material
21 that was previously discussed.

22 JUDGE TOREM: All right. Thank you
23 for that. And we'll recall the Hoen testimony from
24 last week, back and forth, and I believe that was
25 Morgan Shook's testimony.

1 MR. ARAMBURU: That's correct.

2 JUDGE TOREM: Thank you.

3 Chair Drew, Council members, by a show of
4 electronic hands, if any, let me know if there's any
5 questions for Mr. Kielisch.

6 I'm not seeing any.

7 And, Mr. Kielisch, I think that's a reflection of
8 some of the questions Mr. Shook got and perhaps in
9 context with your rebuttal testimony.

10 Any other parties have anything else that comes up
11 as a second thought today?

12 I'm not seeing any.

13 So, Mr. Kielisch, I appreciate you taking the time
14 to be here this morning. We're going to let you go as
15 well.

16 **THE WITNESS: Good. Thank you.**

17 JUDGE TOREM: All right. Have a
18 great day.

19 (Witness excused.)

20 (Witness Linda Lehman
21 appearing remotely.)

22
23 JUDGE TOREM: Mr. Aramburu, your
24 next sponsored witness is Ms. Lehman. Let me get her
25 testimony in front of me.

1 So Linda Lehman. Trying to see if we can get her
2 on the screen so I can make eye contact.

3 **THE WITNESS: Yes, we are here.**

4 UNIDENTIFIED SPEAKER: Can you hear
5 us?

6 JUDGE TOREM: Sort of. Your
7 microphone is a little bit garbled.

8 UNIDENTIFIED SPEAKER: We would need
9 to be made a presenter, sir, to be able to turn on the
10 camera.

11 JUDGE TOREM: Okay. I think we've
12 identified which participant that is, so we'll see if
13 we can get the camera turned on.

14 **THE WITNESS: Thank you.**

15 JUDGE TOREM: All right. I can
16 see -- see you there in the conference room at the City
17 of -- Benton City.

18 **THE WITNESS: That's correct.**

19 JUDGE TOREM: There's a bit of an
20 echo.

21 THE WITNESS: (Videoconference
22 technical difficulties.)

23 UNIDENTIFIED SPEAKER: (Videoconference
24 technical difficulties.)

25 JUDGE TOREM: Perhaps. I think what

1 we're going to try to do is exchange muting your end
2 and muting my end. There might be an echo at some
3 point.

4 My understanding is you have testimony labeled as
5 5632_R and --

6 **THE WITNESS: Yes.**

7 JUDGE TOREM: -- three additional
8 exhibits: 5820, 5821, and 5822.

9 **THE WITNESS: That's correct.**

10 JUDGE TOREM: So I'm going to give
11 you the oath of witness, and we'll adopt them as I
12 think you've seen the prior witnesses.

13 **THE WITNESS: Okay.**

14 JUDGE TOREM: So if you raise your
15 right hand, I'll give you that oath.

16
17 LINDA LEHMAN, appearing remotely, was duly
18 sworn by the Administrative
19 Law Judge as follows:

20
21 JUDGE TOREM: Do you, Linda Lehman,
22 solemnly swear or affirm that the testimony contained
23 in Exhibits 5632, 5820, 5821, and 5822 are the truth,
24 the whole truth, and nothing but the truth?

25 And just wait one second. We'll take you off

1 mute.

2 UNIDENTIFIED SPEAKER: Mute them.

3 JUDGE TOREM: Go ahead, ma'am.

4 **THE WITNESS: I do.**

5 JUDGE TOREM: All right. Thank you.

6 We're going to go on my end and your end both back
7 on "mute" and put Mr. Aramburu on to give us that
8 50,000-foot level. And we'll come back to you off
9 "mute" once we see if the Council members have
10 questions.

11 MR. ARAMBURU: Okay. Ms. Lehman is
12 the -- is the mayor of Benton City, and she has
13 provided testimony concerning the impacts of the
14 project on Benton City and the -- the vicinity,
15 including economic, residential, and other development.

16 She has also discussed the issues of quality of
17 life in the immediate area and has provided testimony
18 and pictures regarding fire suppression, aerial fire
19 suppression in the area of the Horse Heaven Hills,
20 which is immediately south of the city of Benton City,
21 which is at the far western end of the -- of the
22 turbine strings.

23 JUDGE TOREM: All right. Thank you,
24 Mr. Aramburu, for that reminder for Council of Benton
25 City's interest and the mayor's statements and

1 evidence.

2 Chair Drew and Council members, any questions for
3 the mayor of Benton City?

4 All right. Seeing none.

5 Ms. Lehman, thank you very much for making time
6 this morning in the council chambers. I appreciate
7 very much what Benton City has brought, and we can --
8 we understand what the visual impacts and other impacts
9 you testified to are in the prefiled testimony as well
10 as the pictorial items that came in.

11 I imagine that tomorrow evening we're going to
12 hear from some residents of Benton County and Benton
13 City in the public comment hearing that will be at 5:30
14 tomorrow night and also be streamed online. So I look
15 forward to hearing from other residents in your local
16 area about their views on the project tomorrow.

17 All right. Thank you very much.

18 **THE WITNESS: Thank you.**

19 MR. ARAMBURU: Thank you,
20 Ms. Lehman.

21 (Witness excused.)

22
23 JUDGE TOREM: Those exhibits are
24 admitted to the record, as with the ones submitted by
25 Mr. Lines and Mr. Kielisch.

1 (Exhibit Nos. 5632_R, 5820_R,
2 5821_R, and 5822_R
3 admitted.)

4 (Witness Richard Hagar
5 appearing remotely.)
6

7 JUDGE TOREM: All right. We're
8 going to move on to Richard Hagar. And once we get --
9 he is on my screen.

10 Good morning, Mr. Hagar.

11 We'll take your mike off "mute" and see if we
12 don't have any echoes.

13 While we're doing that, Mr. Hagar's testimony is
14 No. 5900, 5901, and 5902.

15 Okay. And I see Mr. Hagar. Your microphone is
16 now unmuted.

17 Those are the only exhibits that you're
18 sponsoring; is that correct?

19 I didn't hear you, so I'm not sure if there's a
20 volume issue.

21 All right. There may be a connection issue on our
22 end. I'm not sure where the volume might be, what the
23 problem is.

24 MR. ARAMBURU: Mr. Hagar, I'm --
25 this is Rick Aramburu, the attorney for TCC. We're not

1 able to hear you.

2 JUDGE TOREM: Let me ask Mr. Hagar
3 disconnect and reconnect, and maybe that will -- on
4 occasion, the "Have you rebooted?" question from IT
5 still proves correct.

6 So, Mr. Hagar, if you can hear me, maybe you can
7 disconnect and reconnect. Worst-case scenario, since
8 we've seen you already, I can give you the oath via
9 telephone, if you want to reconnect that way.

10 And as much as your microphone shows unmuted,
11 we're still not hearing you, Mr. Hagar. So we'll find
12 another way around this.

13 Mr. Aramburu, is there a phone number that staff
14 could reach out to Mr. Hagar? Perhaps you could e-mail
15 that rather than put it in the public record here and
16 send it to Andrea Grantham and/or Joan Owens, and one
17 of the two of them will reach out to Mr. Hagar and see
18 if they can troubleshoot.

19 And on the chat screen there, Mr. Hagar, you
20 should be able to see the call-in numbers. It's the
21 (564) 999-2000, and then those other numbers that
22 follow, 791 534 263, then the pound, will get you in by
23 phone.

24 All right. We'll come back to Mr. Hagar's formal
25 adoption of his testimony once we can actually get an

1 audio line.

2 (Witness Richard Hagar
3 postponed due to technical
4 difficulties.)

5 (Witness Karl Dye appearing
6 remotely.)

7
8 JUDGE TOREM: We're going to now ask
9 if Karl Dye is present, the president of TRIDEC.

10 Staff's going to put you on screen, Mr. Dye. Good
11 morning. Let's see if your audio works.

12 **THE WITNESS: Good morning, Your**
13 **Honor and Chair Drew.**

14 JUDGE TOREM: Thank you very much.
15 That works just fine.

16 Mr. Dye, you're -- you've got one exhibit. It's
17 No. 5633. Any others that you're aware of?

18 **THE WITNESS: Your Honor, just to**
19 **clarify, I'm not aware of that exhibit. I just went to**
20 **the website, looking at exhibits. It was kind of**
21 **last-minute that I put together. So if you're asking**
22 **me to swear that that's what I testified to, could you**
23 **send me a link maybe in the chat, I could look at it,**
24 **and we could come back in the order, please?**

25 JUDGE TOREM: All right. I'll ask

1 to see if we can have that or maybe just have it put up
2 on the screen. Ms. Masengale --

3 **THE WITNESS: Okay.**

4 JUDGE TOREM: -- might be able to
5 share it.

6 And we're looking, Ms. Masengale, for 5633. That
7 was filed July 14th, according to my score sheet here
8 at home.

9 All right. Mr. Dye, that should be the letter of
10 July 12th.

11 Is that essentially what we're sponsoring today?
12 Mr. Aramburu can clarify as well.

13 MR. ARAMBURU: That's -- that's
14 correct. That's the letter signed by Mr. Dye July 12,
15 2023.

16 Do we have the right letter, Mr. Dye?

17 **THE WITNESS: Yes, it is.**

18 MR. ARAMBURU: Thank you.

19 **THE WITNESS: I'm ready to swear**
20 **that that's what we testified -- that's -- that's what**
21 **we submitted.**

22 MR. ARAMBURU: Okay.

23 JUDGE TOREM: All right. So we'll
24 get that done right quickly here, Mr. Dye. Thanks.

25 If you'll raise your right hand.

1 KARL DYE, appearing remotely, was duly
2 sworn by the Administrative
3 Law Judge as follows:
4

5 JUDGE TOREM: Do you, Karl Dye,
6 solemnly swear or affirm that all testimony that's
7 contained in the letter, Exhibit 5633, is the truth,
8 the whole truth, and nothing but the truth?

9 **THE WITNESS: I do.**

10 JUDGE TOREM: Thank you. So that
11 formality will have that document considered as
12 evidence and subject to cross-exam.

13 (Exhibit No. 5633_R
14 admitted.)
15

16 JUDGE TOREM: If anybody else has
17 questions from the Council, Chair Drew, they'll let us
18 know.

19 All right. As you would expect, Mr. Dye, the
20 letter's pretty self-explanatory. Although, we do have
21 one question from our Ecology member, Eli Levitt.

22 Mr. Levitt, if you'll introduce yourself to
23 Mr. Dye, and we can talk about Exhibit 5633.

24 COUNCIL MEMBER LEVITT: Hello,
25 Mr. Dye. My name is Eli Levitt. I work here at the

1 Department of Ecology. I'm Ecology's EFSEC Council
2 member. Thank you for being here today. I appreciate
3 your letter. It sounds like Tri-City C.A.R.E.S. has a
4 fairly broad coalition that includes you, Realtors,
5 Chamber of Commerce, and others.

6 I'm curious: Has Tri-City C.A.R.E.S. or your
7 organization or even to your knowledge the proponents
8 reached out to the Spanish-speaking community in the
9 Tri-City areas to see what those leaders think about
10 this project?

11 **THE WITNESS:** Thank you, Mr. Levitt.
12 That's a relative question.

13 Sorry. I'm getting an echo now.

14 Not to our knowledge. So -- so we have membership
15 on our board at Tri-City Development Council, or
16 TRIDEC, from the Hispanic Chamber, as -- as an example.
17 And, you know, our community is over 40 percent
18 represented by the BIPOC community. And so to my
19 knowledge and from a community outreach perspective, we
20 weren't aware of any community work or community
21 engagement that had been done before the EFSEC filing
22 that initially asked for an accelerated EIS, you know,
23 which has been withdrawn, understanding that.

24 But to our knowledge, there hasn't necessarily
25 been any specific, you know, engagement with the Latinx

1 community, which is, as I say, a large proportion of
2 our community.

3 And I think from an environmental justice and a
4 social justice perspective as far as impacts of
5 development projects, I'd strongly ask EFSEC to
6 consider those as they move forward.

7 Thank you for the question.

8 COUNCIL MEMBER LEVITT: And just one
9 more question.

10 To your knowledge, has your organization, Tri-City
11 C.A.R.E.S., or others who are part of this coalition
12 had any conversation about what your criteria would be
13 for a community-supported renewable energy project,
14 let's say, you know, that might have an impact of more
15 than one or two acres?

16 What does a -- I understand that the group is
17 against this specific project. Or has the -- have
18 these organizations have any -- had any conversations
19 about what kinds of projects they could potentially
20 support in the future?

21 THE WITNESS: Yeah, we actually
22 have. And so just -- just a little bit of background
23 for your question. Our board's represented by
24 community leaders. And so as we've talked about this
25 project, what we've discussed at our board level is the

1 appropriateness for renewable energy projects for that.

2 And as we've gotten deeper into it -- and even one
3 of our board members is WSU Tri-Cities, who this year
4 got funding from the legislature for the Institute for
5 Northwest Energy Futures -- where we look at
6 holistically energy production off-takers, especially
7 as we look to a green transition for the state of
8 Washington.

9 And one of the biggest barriers to renewable
10 generation or any non-emitting generation is
11 transmission. And so, you know, and we look at that.

12 And after the project was submitted by Scout
13 Energy, a group of our board members from TRIDEC had
14 three or four meetings with the developers from Scout
15 Energy and had some -- learned a lot about the project.
16 We wish that would have taken place before they
17 submitted to EFSEC.

18 But through that process, we learned about some of
19 the drivers for this. And transmission actually is a
20 big one. So being able to site this project where they
21 could directly access BPA substations to be able to get
22 the power out without spending a lot of, you know,
23 capex to actually make the transmission work was a big
24 driver for it.

25 And so as a community, we've had those

1 conversations. And I'll say that we do -- have had
2 some discussion even with Benton County as they've
3 looked at, you know, land-use codes in the future to
4 say these areas would be good.

5 Obviously the EFSEC board is aware of Benton
6 County's restriction on conversion of ag lands, which
7 was done after this was submitted, but they've
8 identified industrial areas as appropriate places for
9 industrial development. And while it hasn't been
10 announced yet, the Department of Energy Environmental
11 Management at the Hanford Site, headquarters and DOE
12 has already had one event. We're helping plan another
13 event in September for the potential lease for solar or
14 other non-emitting renewable or just non-emitting power
15 generation projects on the Hanford Site. The DOE, who
16 owns that land, is willing to lease to developers for
17 that.

18 And I think when we look at this project, its
19 proximity to our urban area and the visual corridors
20 are the biggest concerns that collectively our
21 community has. And I think you've heard from TC
22 C.A.R.E.S. and others collectively.

23 When we -- when we think about out of sight, out
24 of mind -- and I'll just bring up that we've all seen
25 reported in the newspaper even some battery storage

1 projects on the west side. I think there's one around
2 Carnation the community's against.

3 Like, as our state looks at Clean Energy
4 Transformation Act, or the CETA standard, 2025, no
5 carbon emissions from energy generation, we've got to
6 have ways that the community's engaged in all of these
7 projects across the board.

8 And I think that from our board's perspective,
9 that's what we'd like to leave EFSEC with, is within
10 what EFSEC can consider, we'd ask these comments to be
11 highly considered and especially as we move forward
12 with our legislature to say that, you know, we've got a
13 good program for our state. It's -- it's something to
14 consider that we've learned through this process
15 working with the Scout developers.

16 COUNCIL MEMBER LEVITT: Okay. Thank
17 you for your candid responses. Appreciate it.

18 THE WITNESS: Thank you.

19 JUDGE TOREM: Based on Mr. Levitt's
20 questions and Mr. Dye's answers, does that raise any
21 other questions, Chair Drew or Council members?

22 All right. I'm not seeing any.

23 Mr. Aramburu, I know some of the response that
24 Mr. Dye had was a little bit outside the scope of
25 things that are for the adjudication.

1 And I see Ms. Stavitsky has a hand up that might
2 be, I'm anticipating, some motion to strike portions of
3 that testimony or have it set aside, Mr. Dye. So let
4 me see what's going on there.

5 Ms. Stavitsky. You're still on "mute."

6 MS. STAVITSKY: Thank you, Your
7 Honor.

8 I'd like to have a chance to review the transcript
9 before I make any motion to strike. I did just have
10 one follow-up question on one of the questions that
11 Council Member Levitt asked Mr. Dye.

12 JUDGE TOREM: Certainly. I think
13 there were no other Council questions, so that would be
14 appropriate now.

15 MS. STAVITSKY: Great.

16
17 CROSS-EXAMINATION

18 BY MS. STAVITSKY:

19 Q Thank you, Mr. Dye, for these additional
20 clarifications. I did have one question for you.

21 Have you read the application for site
22 certificate; specifically, Section 1.12.3?

23 **A I can't make that specific. I don't recall 1.5.3 that**
24 **you referred to. If you'd like to reference it or show**
25 **it on the screen, I'd be happy to write it -- or read**

1 it and give you a comment. But off the top of my head,
2 I -- I don't recall.

3 Q Okay. That's fine.

4 I can -- really what I'm getting at is the subject
5 matter of that so I can describe it.

6 So are you --

7 **A Okay.**

8 Q -- aware that applicant, as part of their outreach
9 efforts that are described in that section, reached out
10 and provided Spanish-language both print ads and radio
11 ads on local radio stations and print media that serve
12 the local Hispanic population?

13 **A Your Honor, am I able to ask a question back?**

14 JUDGE TOREM: Sure. If you don't
15 understand or, you know, want to clarify, just
16 that's --

17 MS. STAVITSKY: I -- I -- I think
18 I'd request that you answer "yes" or "no," Mr. Dye. If
19 something's unclear about the question, you can ask me
20 that.

21 **THE WITNESS: Yeah, before I answer,**
22 **I'd just like to ask you: What's the cont- -- when --**
23 **when -- when did they do that? Before the EFSEC**
24 **application or after?**

25 MS. STAVITSKY: Well, this is

1 information that's in the application. I can't testify
2 about it. I would --

3 **THE WITNESS: Okay.**

4 MS. STAVITSKY: -- represent to the
5 Council that, if they have questions, they can review
6 that section, and same for you.

7 **THE WITNESS: Okay. I'm not aware**
8 **of that.**

9 MS. STAVITSKY: Okay. Thank you.
10 No further questions.

11 **THE WITNESS: Thanks.**

12 JUDGE TOREM: All right. Mr. Dye,
13 in fairness, was there anything you wanted to add in
14 response about the outreach issues?

15 **THE WITNESS: No. I think it's --**
16 **yep.**

17 JUDGE TOREM: All right. Thank you.
18 Council members or other parties, any follow-up?
19 Mr. Aramburu, this was your witness. I want to
20 give you the last word.

21 MR. ARAMBURU: No. Nothing further.
22 Thank you, Mr. Dye, for your involvement here.

23 **THE WITNESS: Thank you.**

24 JUDGE TOREM: All right. Thank you
25 very much, Mr. Dye.

1 **THE WITNESS: Yes.**

2 (Witness excused.)

3 (Witness Richard Hagar
4 appearing remotely.)

5
6 JUDGE TOREM: Mr. Hagar, we're
7 coming back to you and see if we've solved the sound
8 problems.

9 Again, this is -- Mr. Hagar's testimony is 5900,
10 5901 and 5902.

11 Let's see if we can hear you now, Mr. Hagar.

12 Not on the screen. I think there was -- there was
13 a "206" phone number that might still be on "mute."

14 I can see you, and I can see it's muted, so maybe
15 try that "#6" or "*6."

16 There it is.

17 **THE WITNESS: I am no longer muted,**
18 **they say.**

19 JUDGE TOREM: And we can hear you.

20 **THE WITNESS: Coming through? Yay.**

21 JUDGE TOREM: All right. I think
22 there's a slight disconnect between the video and
23 the -- and a lag with the voice, but we can hear you.

24 So without any further ado, I think you've seen
25 the routine. Let me swear you in and get you to adopt

1 these pieces of testimony. And after all that,
2 somebody should have a question for you and not just
3 "Can we hear you?"
4

5 RICHARD HAGAR, appearing remotely, was duly
6 sworn by the Administrative
7 Law Judge as follows:
8

9 JUDGE TOREM: All right, Mr. Hagar.
10 Do you, Richard Hagar -- if you'll raise your right
11 hand -- solemnly swear or affirm that all of the
12 prefiled testimony in Exhibit 5900, 5901, and 5902 are
13 the truth, the whole truth, and nothing but the truth?

14 **THE WITNESS: I do.**

15 JUDGE TOREM: All right. So thank
16 you very much.

17 Those are going to be admitted to the record.

18 (Exhibit Nos. 5900_R, 5901_R,
19 and 5902_R admitted.)
20

21 JUDGE TOREM: Mr. Aramburu, if you
22 will give us a quick 30,000-foot level of what
23 Mr. Hagar is here to present.

24 MR. ARAMBURU: Mr. Hagar has a --
25 has provided testimony which is a critique of other

1 testimonies regarding residential view properties, the
2 impacts of industrial developments on those view
3 properties, the manner and mechanism by which those
4 impacts can and should be assessed for appraisal and
5 economic purposes.

6 So that's the -- that's the general outline of
7 Mr. Hagar's testimony.

8 JUDGE TOREM: All right. Thank you.

9 Council members, you've had a chance to review
10 Mr. Hagar's testimony, his résumé, and Mr. Aramburu's
11 reminded you of what's there.

12 Chair Drew, any questions?

13 And other Council members?

14 Mr. Hagar, I don't know for sure if you've -- one
15 question I think about on these valuation questions is
16 the actual experience of buying and selling homes near
17 or around these renewable energy facilities. And
18 clearly there's not one other than the Nine Canyon in
19 the immediate area in Benton County, Benton City.

20 Do you have any experience with individual home
21 sales around the Nine Canyon in the last couple of
22 decades?

23 **THE WITNESS: No, I do not.**

24 JUDGE TOREM: Do you have any
25 experience with actual sales of homes around any of

1 Washington State's wind farms or other renewable energy
2 facilities outside of the County?

3 THE WITNESS: No. Mine -- my
4 experience is dealing with adverse conditions, whether
5 those are power lines, power substations. I've done
6 studies there in Benton County. Or other negative
7 impacts. And then taking that knowledge and looking at
8 a lot of these studies, I find that these studies are
9 very general. And you're also dealing with -- give you
10 an example of Ellensburg.

11 You only have so many houses for sale at any given
12 time. It's a shortage-driven market. So when people
13 decide to move to Ellensburg to go to college and the
14 like, they don't always have a choice of can I get a
15 home that looks at a windmill, or can I get a home that
16 doesn't look at a windmill.

17 There's very little choice. You either take
18 what's available or you don't live there. So then for
19 having these studies come along and say, "Gee, we see
20 no impact on value," I can understand why they come to
21 the conclusion.

22 But have you talked to the individual people who
23 are buying them? Have they said, "I would rather not
24 look at it"? Or would you pay 5 percent more to not
25 look at that? Those are the sort of questions and

1 surveys that need to be performed other than a lot of
2 the statistical analysis that you are seeing, which is
3 why you are seeing my testimony and questioning a lot
4 of those outcomes.

5 JUDGE TOREM: Thank you. I think
6 that helps the Council give adequate weight, as they
7 consider things, to the Hoen studies and some of the
8 other testimony we had from Mr. Shook regarding values
9 and all of the other appraisal testimony such as what
10 Mr. Lines was offering today.

11 Council, does that add any other questions that
12 might be posed to Mr. Hagar in that regard?

13 All right. Seeing none.

14 Mr. Hagar, thanks for the clarification and for
15 all the efforts to be here with us today. Council will
16 read your testimony. It's now in the record. Thank
17 you so much.

18 **THE WITNESS: You're welcome.**

19 (Witness excused.)

20

21 JUDGE TOREM: Council, there's one
22 other witness, Lonnie Click, who was listed today.
23 Mr. Aramburu, I think, wants to share with you. He's
24 not going to be able to adopt his testimony today, and
25 Mr. Aramburu will explain to you why that may not even

1 be possible later this week.

2 Mr. Aramburu, if you could bring us up to speed on
3 Mr. Click's schedule and what's keeping his attention.

4 MR. ARAMBURU: As indicated in
5 Mr. Click's testimony, he is the Benton County
6 District 1 fire chief. He has extensive background in
7 emergency wildland fires. And -- and I believe at
8 least partially because of that, he has gone over to
9 Spokane to assist with the several fires that are in
10 that community, including the large Gray Fire, 11,000
11 acres or so, and other fires in -- in the community.

12 We -- we have been in contact with him. We do not
13 know when he might return. Gray Fire's only 10 percent
14 contained, so it -- it may be a while. So we would
15 like to have Mr. Click appear before you if we get a
16 chance later in the week, and there may be some
17 questions of this witness.

18 So we will endeavor to have him available for
19 Council questions regarding these issues, but we're --
20 we're not certain of that. And fighting fires in
21 Spokane, my old hometown, is -- is a priority for
22 Mr. Click at this point.

23 But we'll try to get him over here and have him
24 available for Council questions.

25 JUDGE TOREM: And, Council members,

1 the -- in the housekeeping session this morning with
2 the rest of the parties, I suggested that just in the
3 case the exigencies of the fire situation in the
4 eastern half of the state keep Mr. Click from
5 appearing, they would stipulate and agree that his
6 Exhibit 5631 be admitted to the record.

7 So without -- if I don't hear any objections or
8 any other further questions from Council about that,
9 Ms. Masengale can go ahead and mark by stipulation
10 Mr. Click's testimony.

11 (Exhibit No. 5631_R admitted
12 by stipulation.)
13

14 JUDGE TOREM: If Council members do
15 have questions for Mr. Click, please read 5631 again.
16 If you do have questions, I'd appreciate you sending
17 those to me by e-mail. I can share those with the
18 parties. If there are no questions, then we don't have
19 to bother Mr. Click at all.

20 And, Mr. Aramburu, given what we're looking at for
21 him, if there are questions, he can simply be available
22 by telephone as to having to get in front of a video
23 screen. I think we would all love to see him, but we
24 understand the exigencies and would rather have his
25 attentions on the fires and get the questions to us

1 later.

2 Worst-case scenario, if we have questions that
3 need to be posed, we can submit his answers in writing
4 at some point.

5 Chair Drew.

6 COUNCIL CHAIR DREW: Yes, I do have
7 a couple of quick questions for him, but I understand
8 and appreciate the higher responsibility. So I can
9 send those in writing.

10 JUDGE TOREM: Mr. Aramburu, I hope
11 that will accommodate as best we can what's going on
12 this week. That is well beyond our control.

13 MR. ARAMBURU: Yes, we can work with
14 that.

15 And thank you, Chair Drew. We'll look at your
16 questions and get answers from Mr. Click.

17 JUDGE TOREM: All right. Parties,
18 if those questions and answers are submitted after the
19 close of the hearing on August 25th, maybe we'll have a
20 prehearing or post-hearing conference, if necessary, to
21 discuss any concerns parties might have. I'm hoping
22 there will be none, but if there are, we can address
23 those in a post-hearing conference.

24 Council, I think those are all the witnesses, as I
25 go back to my schedule for today, that we're going to

1 have testimony adopted with or without questions from
2 parties.

3 Did I miss anybody that we needed to take care of
4 today?

5 I did want to actually indicate, Mr. Aramburu, you
6 have -- you're formally withdrawing the testimony of
7 Mr. Jim Sanders; is that correct?

8 MR. ARAMBURU: That's correct.

9 JUDGE TOREM: So those exhibits,
10 Ms. Masengale, we'll mark as withdrawn.

11 So, Council, you can disregard anything contained
12 in Mr. Sanders' testimony. If Mr. Sanders makes a
13 public comment tomorrow evening at 5:30, we can
14 consider that as public comment. So I'm not sure if
15 Mr. Sanders is on the sign-up list, but he won't be
16 considered as testimony during the adjudication.

17 All right. I think the next witness we're going
18 to have is Erik Jansen. So I propose that we take a
19 break until about 9:50. When we come back, we'll swear
20 in Mr. Jansen. Ms. Perlmutter will give us the
21 30,000-foot view of his testimony. And then we'll
22 see -- we're anticipating cross-examination from
23 Mr. Aramburu on behalf of TCC, Ms. Voelckers on behalf
24 of the Yakama Nation, and then Ms. Reyneveld will also
25 have questions on behalf of counsel for the

1 environment. And then we'll see how long the redirect
2 might be from Ms. Perlmutter on behalf of the
3 applicant.

4 When we come back, we'll be looking at his
5 exhibits, and we'll be having those adopted. As soon
6 as we get to the questions, we'll know if we need to go
7 into closed-record session based on the confidentiality
8 of the material in his testimony and that might be
9 subject to the questions.

10 Council, we'll come back at 9:50. That gives you
11 about eight minutes to stretch. And we'll take another
12 break at an appropriate point during the Jansen
13 testimony. Thank you.

14 (Pause in proceedings from
15 9:42 a.m. to 9:50 a.m.)

16 (Witness Erik Jansen
17 appearing remotely.)

18
19 JUDGE TOREM: All right. Good
20 morning. We're back on the record in the Horse Heaven
21 adjudication. And we're ready to take up testimony now
22 of Erik Jansen.

23 Good morning, Mr. Jansen. I can see you there.

24 **THE WITNESS: Morning, Judge.**

25 JUDGE TOREM: We're going to have

1 you adopt your testimony, Exhibits 1002_T. That's a
2 revised exhibit. And so is Exhibit 1003. There's
3 another rebuttal reply testimony in there, 1022.

4 Ms. Perlmutter, is that the prefiled testimony
5 we're going to have Mr. Jansen adopt?

6 MS. PERLMUTTER: Yes, it is, Your
7 Honor.

8 JUDGE TOREM: All right. So,
9 Mr. Jansen, I'm going to swear you in, and then there's
10 going to be some cross-examination that's scheduled.
11 I'm just going to go back to that list.

12 It looks like we have three parties out of the
13 five here that are interested. I guess three out of
14 four. I'm going to start with Mr. Aramburu's
15 cross-examination once we adopt your testimony, and
16 then Ms. Voelckers in the Yakama Nation will have some
17 questions for you, and so will Sarah Reyneveld, the
18 counsel for the environment.

19 I've let the Council members know that
20 Ms. Voelckers is having a little bit of connectivity
21 issues. So to help with the sound quality, she may
22 have her video off. I don't know if you've met her
23 before, but she might briefly be on screen for the
24 first few questions. And if we have an audible issue,
25 then we'll go ahead and have her turn off her camera.

1 So you'll get to meet her, but it may not be
2 face-to-face the whole time.

3 MS. REYNEVELD: Your Honor, it's my
4 understanding that Ms. Voelckers would like me to go
5 first in my examination so she can continue to
6 troubleshoot those issues. And she can confirm that if
7 she needs to.

8 MR. ARAMBURU: And --

9 JUDGE TOREM: Okay. I'll --

10 MR. ARAMBURU: And for --

11 JUDGE TOREM: -- take -- I'll take
12 your word for it.

13 Mr. Aramburu.

14 MR. ARAMBURU: For TCC's part, I
15 don't know why we're listed at what looks like 2 --
16 2. -- 2.1 hours. We originally thought we might have
17 two-tenths of an hour of testimony, but -- of
18 cross-examination, but we actually don't -- don't have
19 any at all. And for the Rahmig testimony, similar.
20 We -- we don't have two hours, and we probably won't be
21 asking Mr. Rahmig any questions either. So to try to
22 move things along.

23 JUDGE TOREM: All right. Thank you,
24 Mr. Aramburu. I had done the math and thought it was
25 two-tenths of an hour as well. But if you're

1 withdrawing that for the minute, thank you.

2 Ms. Reyneveld, we'll be com- --

3 MR. ARAMBURU: Thank you.

4 JUDGE TOREM: We'll be coming
5 directly to you, Ms. Reyneveld, and then we'll see
6 where the Yakama Nation is. So, Mr. Jansen, if you're
7 keeping score at home, you're now going to be talking
8 to Ms. Reyneveld first.

9 All right, sir. If you'll raise your right hand,
10 I'll have you adopt these prefiled testimony exhibits.

11
12 ERIK JANSEN, appearing remotely, was duly
13 sworn by the Administrative
14 Law Judge as follows:

15
16 JUDGE TOREM: Do you, Erik Jansen,
17 solemnly swear or affirm that all testimony contained
18 in Exhibit 1002, 1003, and 1022 are the truth, the
19 whole truth, and nothing but the truth?

20 I didn't hear you, so I'm hoping we have audio.

21 **THE WITNESS: I do, Your Honor.**

22 (Exhibit Nos. 1002_T_Revised,
23 1003_Revised, and 1022_R
24 admitted.)

25 ////

1 JUDGE TOREM: All right. Thank you.
2 Any corrections or revisions that you want to
3 point out?

4 **THE WITNESS: No. No, Your Honor.**
5 **Thank you.**

6 JUDGE TOREM: All right.
7 Ms. Perlmutter, I'm going to then tender the witness to
8 them after you give the Council members just a
9 30,000-foot overview of what Mr. Jansen is here to
10 testify about.

11 MS. PERLMUTTER: Thanks so much,
12 Your Honor.

13 Judge Torem and members of the Council, Mr. Jansen
14 is going to be offered today to testify about the
15 impact of the proposed project on local wildlife. His
16 testimony relates specifically to Section 3.4 of the
17 ASC, which is regarding habitat, vegetation, fish and
18 wildlife.

19 And in addition, his testimony will relate to a
20 number of appendices to the application: Specifically,
21 Appendix K, which is biological reports; Appendix M,
22 which is bird and bat conservation strategy.

23 And his supplemental report -- the supplemental
24 reports regarding population viability analysis of the
25 ferruginous hawk in eastern Washington, the multi-scale

1 resource selection of ferrugous -- ferruginous hawk
2 nesting in eastern Washington and at the Horse Heaven
3 Clean Energy Center in Benton County, Washington, and
4 his supplemental report regarding cumulative effect to
5 birds, bats, and land cover from renewable energy
6 development in the Columbia Plateau ecoregion of
7 eastern Oregon and Washington. And I was prepared to
8 ask just a couple of introductory questions before
9 tendering the witness.

10
11 DIRECT EXAMINATION

12 BY MS. PERLMUTTER:

13 Q Mr. Jansen, what do you do for a living?

14 A **I'm a manager at Western EcoSystems Technology based --**
15 **I'm in Corvallis, Oregon. Our headquarters is based in**
16 **Wyoming.**

17 Q And have you been working with Scout Clean Energy on
18 the application for the project that's the subject of
19 this adjudication?

20 A **That's correct. I've been involved in the project**
21 **since 2017.**

22 Q Did you participate in preparing the application for
23 site certification?

24 A **Portions of the -- I was not the primary author. That**
25 **was Tetra Tech. But I did participate in contributing**

1 **and developing portions of the application.**

2 MS. PERLMUTTER: Thanks so much.

3 At this point, I tender the witness for cross.

4 JUDGE TOREM: All right.

5 Ms. Reyneveld -- Ms. Reyneveld, we're going to come to
6 you now, and Ms. Voelckers will have questions
7 afterwards.

8

9 CROSS-EXAMINATION

10 BY MS. REYNEVELD:

11 Q Good morning, Mr. Jansen. My name is Sarah Reyneveld.
12 As you know, I'm an assistant attorney general in the
13 Environmental Protection Division. And I'm counsel for
14 the environment assigned to this matter, which
15 represents the public and its interest in protecting
16 the environment. I have some questions for you.

17 So turning to your revised Exhibit 1002 of your
18 prefiled testimony, you stated that the purpose of your
19 testimony was to provide additional explanation and
20 support for the wildlife- and habitat-related sections
21 of the Horse Heaven wind farm application for site
22 certification, correct?

23 A **I -- I believe so. Is this -- 1022 is the rebuttal to**
24 **Mr. Neutzmann; is that correct?**

25 Q I'm talking about your prefiled initial testimony.

1 **A I apologize, Ms. Reyneveld. That's correct.**

2 Q And as you stated before, you contributed to the
3 development of Section 3.4, the "Habitat, Vegetation,
4 Fish, and Wildlife" section of the revised application
5 for site certification, correct?

6 **A That's correct.**

7 Q And generally speaking, what was your contribution to
8 the section?

9 **A I provided red-line edits and comments on Section 3.4,**
10 **which for the record is "Habitat, Vegetation, Fish, and**
11 **Wildlife." I incorporated elements of my technical**
12 **reports into the -- into the document and generally**
13 **edited and reviewed the -- the section for consistency**
14 **and context.**

15 Q Thank you.

16 And I don't believe you spoke to it. But did you
17 also contribute to Appendix L, which is the wildlife
18 and habitat mitigation plan which counsel for the
19 environment has marked as Exhibit 3017_X?

20 I'm sorry. I couldn't hear your response.

21 **A I'm sorry. I'll -- I'll try to speak up. I apologize.**

22 **That's correct, yes.**

23 Q Okay. So turning to that exhibit, 3017_X --
24 specifically, Appendix L, attachment A -- you authored
25 a memo in response to David Kobus regarding WDFW data

1 request for ferruginous hawk nests and distance to
2 project infrastructure received from the Washington
3 Emergency Facility Site Evaluation Council on November
4 18, 2021; is that correct?

5 **A I -- I believe so, yes. I don't have the document in**
6 **front of me, but I can -- if I produced it, can speak**
7 **to it, yes.**

8 MS. REYNEVELD: Okay. And if it
9 would be helpful, Masengale, can we get that document
10 pulled up in case the witness needs to refresh his
11 memory?

12 Q (By Ms. Reyneveld) And just to refresh your memory,
13 the objective of that assessment was to measure the
14 distance from the nearest wind turbine or access road
15 to the nearest ferruginous hawk within two miles of the
16 project as proposed in the application, correct?

17 **A That's correct. Thank you for reminding me. The --**
18 **the distance assessment. I have that on screen now.**
19 **Thank you.**

20 Q Great.

21 So turning to the "Results" section of that memo
22 on Page 2, you conducted a survey of the ferruginous
23 hawk, and that was between 2017 and 2019, correct?

24 **A That's correct.**

25 Q And at that time, you documented nine ferruginous

1 hawks' nests within two miles of the proposed turbines,
2 correct?

3 **A That's correct. Those nests were considered physically**
4 **present on the landscape.**

5 JUDGE TOREM: Ms. Reyneveld.

6 MS. REYNEVELD: Mm-hmm.

7 JUDGE TOREM: I'm not sure if the
8 sensitivity of the nature of the ferruginous hawk nest
9 data, but we're still in a public session. And I
10 wanted to make sure, if we need to go to a
11 closed-record session, you let me know.

12 MS. REYNEVELD: Okay. Yeah, I mean,
13 if we -- that's fine. I'm going to be asking specific
14 questions about the hawks' nests. So if that, in Your
15 Honor's assessment, would necessitate a closed session,
16 then that's fine.

17 JUDGE TOREM: I just want to make
18 sure if this testimony was marked confidential, that it
19 remains confidential, so...

20 MS. REYNEVELD: Yes. It's not
21 marked confidential, to my knowledge.

22 JUDGE TOREM: Okay. Thank you.

23 MS. REYNEVELD: Thank you.

24 Q (By Ms. Reyneveld) So turning to, I think it's Page 2
25 of your memo. And if you have it in front of you, we

1 don't need to bring it up on the screen, but -- and I
2 think I asked you this. But the survey documented nine
3 ferruginous hawks' nests that were in two miles of the
4 proposed turbines. And you mentioned something in your
5 response to that, and I just wanted you to clarify
6 that.

7 JUDGE TOREM: Ms. Reyneveld.

8 Ms. Reyneveld, I want to interrupt. Ms. Masengale has
9 got a look at some of the exhibits and is indicating to
10 me there's a concern that this might need to be closed,
11 particularly with regard to the actual nest locations,
12 which are --

13 MS. REYNEVELD: Okay.

14 JUDGE TOREM: -- sensitive data.

15 Ms. Masengale, if you want to say anything as to
16 what parts of the exhibit or parts of Appendix L to
17 draw attention for all of the parties that you've
18 called my attention to.

19 MS. MASENGALE: Thank you. This is
20 Lisa Masengale, for the record.

21 We do have it noted as being a redacted version
22 that was submitted as an exhibit. But my concern would
23 be that potentially answers related to nest locations
24 may verge into and go into the confidential nest
25 location, which would be exempt from public disclosure.

1 JUDGE TOREM: So, I guess,
2 Ms. Reyneveld, we have a choice of making sure
3 Mr. Jansen stays with generalities and that we make
4 sure that any of the material that's not redacted, or
5 the redacted portions aren't discussed in the open-
6 record session.

7 So if we can craft things and we can stay in open
8 session, Mr. Jansen, have you seen the differences
9 between the redacted and unredacted versions of the
10 Appendix L and any testimony you might have submitted?

11 **THE WITNESS: I have not, Your**
12 **Honor. But if I must keep it general, then I will try**
13 **to stay within those bounds as -- as close as I can.**

14 MS. PERLMUTTER: Your Honor, if I
15 may.

16 JUDGE TOREM: Yes, please.

17 MS. PERLMUTTER: I would suggest
18 perhaps at this point, given the questioning, given the
19 delicacy of -- of threading this particular needle,
20 that it might be appropriate just to go into
21 confidential session. That way --

22 JUDGE TOREM: Do any parties have --
23 do any parties have an objection to that or any other
24 concern?

25 I'd like to come back out of closed session,

1 Ms. Reyneveld, if the questions take us back away from
2 the needle that we're trying to thread, as
3 Ms. Perlmutter, I think, is accurately saying. I
4 just -- I recognize the wildlife concerns are not
5 necessarily all the data that the Council's going to be
6 considering, can be discussed in -- in the public for a
7 variety of reasons.

8 All right. I'm not seeing any objection. So I'm
9 going to ask staff at this point to move us into
10 closed-record session just to talk about it and make
11 sure that Mr. Jansen can speak more freely and the
12 Council gets the full information.

13 So members of the public, we're going to -- it's
14 now 10:03. We'll see how long this takes, but I'm
15 guessing within the half hour, we'll be back out of
16 closed-record session. It could be much faster. Just
17 depends on where the cross-exam questions and perhaps
18 questions from Council members take us.

19 All right. We'll pause right now while we let the
20 electronics do their thing.

21 ** Closed-record hearing **

22 * Not available to general public per protective order *

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(Closed-record session
concluded.)

JUDGE TOREM: All right. We're coming back into a public session after being in closed-record session to talk about some sensitive and a little bit too specific information about raptors involved in the site around the proposed Horse Heaven wind power project.

We're coming back now. We're still doing the examination of Mr. Erik Jansen. Counsel for the environment, Sarah Reyneveld, is now going to be asking some more general questions, so we came back into the public so that everybody can track as much as possible

1 of what's being presented to the EFSEC Council.

2 Ms. Reyneveld, with that, it looks like everybody
3 is back. I'm not getting any questions. I think
4 there's a couple microphones that might be unmuted. So
5 if you can self-police, that would be great.
6 Otherwise, we'll ask staff, if we hear noise, to mute
7 your microphones.

8 Ms. Reyneveld, go ahead.

9 MS. REYNEVELD: Thank you, Your
10 Honor.

11 Q (By Ms. Reyneveld) Mr. Jansen, just because a nest was
12 not occupied by a ferruginous hawk when you surveyed it
13 doesn't mean that the hawk will not eventually return
14 to reoccupy the nest, correct?

15 **A That's correct, yes.**

16 Q So you agree that those -- those nests could be
17 reoccupied?

18 **A By ferruginous hawk, yes, in the future.**

19 Q Thank you.

20 And Exhibit 3019 on Page 11, you point to the
21 extent of agriculture and encroachment of development
22 as two factors decreasing the likelihood of nesting
23 territories near the project area being reoccupied by
24 ferruginous hawk; is that correct?

25 **A That's correct.**

1 Q If constructed, do you agree that the project could
2 also be a factor that contributes to the permanent
3 abandonment of these nesting territories?

4 **A That could be considered a factor, yes.**

5 Q And I'd like to go back to the revised application.
6 It's, just for your reference, Page 3194.

7 The revised application accounts for a setback of
8 a minimum of .25 miles from occupied ferruginous hawks'
9 nests in the turbine layout; is that correct?

10 **A That's correct. That's why some turbines were dropped,**
11 so we spoke about the (videoconference technical
12 difficulties) that was proximate to a nest, and that
13 turbine has been dropped.

14 Q Thank you.

15 That recommendation of the .25-mile setback was
16 limited to occupied hawks' nests; is that correct?
17 (Audible videoconference
18 disruption.)

19
20 **THE WITNESS: I believe that's**
21 **correct.**

22 Q (By Ms. Reyneveld) What was the basis of the revised
23 application's recommendation for a .25-mile or greater
24 setback? And specifically if you can speak to the
25 .25-mile setback.

1 **A The genesis of that distance was based on the**
2 **recommendations found in priority habitat and species**
3 **document from WDFW, Larsen, et al., 2004.**

4 Q And do you have a copy of that management
5 recommendation per Washington's priority species from
6 Larsen in 2004? It is marked as counsel for the
7 environment's Exhibit 3018_X, for your reference.

8 **A I do not have it in front of me. But I believe those**
9 **recommendations were summarized in the distance**
10 **document that we discussed at the -- at the beginning.**

11 Q Okay. And if we can just pull that up, that would be
12 helpful. And maybe start on the beginning of 71, which
13 is the section pertaining to hawks, is my
14 understanding, if that's possible.

15 I read through this study, Mr. Jansen, at least
16 this section, and I couldn't find where it recommends a
17 specific .25-mile wind turbine setback.

18 MS. REYNEVELD: If you want to just
19 keep on scrolling to 72, Ms. Masengale. I --

20 **THE WITNESS: It's a little -- it's**
21 **a little small for me.**

22 Q (By Ms. Reyneveld) If you could point me to where that
23 is or speak to where -- where that recommendation comes
24 from in this study, if you know.

25 **A I think that there is a summary table at the end of**

1 this section, if I recall correctly.

2 Is it here?

3 Q Here?

4 A "Disturbance."

5 Next page, please.

6 It may have been taken from the no-disturbance
7 buffer, the 400 meters around the periphery of squirrel
8 colonies. I believe that --

9 Q Okay.

10 A I believe that was the -- maybe my disturbance document
11 has -- has it in there.

12 Q Do you need a moment, or would you like to come back to
13 that?

14 A I do need a quick moment. Let me just do some quick
15 math here. 3280.

16 Q Certainly. Take your time.

17 A Yeah, I'm sorry, Ms. Reyneveld. That doesn't -- I'm
18 not seeing where that -- where that comes from. I know
19 that we used and applied Larsen, et al.'s
20 recommendations throughout the -- throughout our
21 recommendations to the project.

22 Under "Disturbance," it says 820 feet, I believe.
23 And that is .16 -- .16 miles. Then .6 miles for
24 prolonged activities.

25 Q Okay. So you don't exactly know where the .25-mile

1 wind turbine setback, what the source of that
2 particular recommendation was?

3 **A No. I'd have to dig, Ms. Reyneveld.**

4 Q Okay. Thank you.

5 According to the application, there was also a
6 recommendat- -- this was also potentially a
7 recommendation from WDFW.

8 By "WDFW," were you referring to the Larsen study?

9 **A That's correct. The priority management**
10 **recommendations. That's from -- that's the document**
11 **that you have in front of you.**

12 Q Okay. So this wasn't part of an independent
13 recommendation from WDFW in addition to that study; is
14 that correct?

15 **A I believe that's correct. At the end of my raptor nest**
16 **report in 2023, I provided -- as an appendix, I**
17 **provided some recommendations that were**
18 **(videoconference technical difficulties) Mike Ritter at**
19 **WDFW, and those are from the 2004 priority habitats and**
20 **species recommendations.**

21 Q Thank you.

22 So generally speaking, even if the Larsen
23 recommendations don't directly reference the .2-mile
24 setback, you would agree that they are dated; is that
25 correct?

1 **A They were produced in 2004.**

2 Q Correct.

3 So there is updated studies and data since then;
4 is that correct?

5 **A I believe that's correct.**

6 Q Okay.

7 **A But these are the published studies and are provided --**
8 **they're pointed to by WDFW when implementing their**
9 **management recommendations for a number of species.**

10 Q Would you say that these recommendations from 2004
11 represent the best available science for setbacks for
12 species like ferruginous hawk?

13 **A I believe that there are additional data out there. We**
14 **had meetings with WDFW just before the -- the submittal**
15 **of -- and that's been a topic of conversation since**
16 **then. And so I think best available science doesn't**
17 **mean it's -- it's -- it's necessarily what's the**
18 **newest. I think that there's old science out there**
19 **that's still good science. I think collectively this**
20 **document from Larsen contributes to best available**
21 **science.**

22 Q Thank you.

23 So I am assuming that you are aware of an August
24 9th, 2023, memo that's been dubbed the Moon memo and
25 has been admitted in this adjudication as

1 Exhibit 4014_X. And that is a memo to Amy Moon titled
2 "Horse Heaven Wind Farm Anticipated Project
3 Modifications for Final Application Certification"?

4 **A That's correct. Yes, I'm aware of that.**

5 Q I just have some general questions about those
6 recommendations.

7 So Section -- in Section 1.3, you agreed, or the
8 applicant agreed in this memo to remove specific
9 turbines -- it looks like 5, 6, 7, and 8 -- from the
10 proposed layout; is that correct?

11 **A That's correct. Turbine removals are discussed in**
12 **Sections 1.3, -4, and 1.5.**

13 Q And without getting into the specific nests, because
14 we're in open session, this includes turbines that are
15 in close proximity to a few of the ferruginous hawks'
16 nests; is that correct?

17 MS. PERLMUTTER: Your Honor, I'm
18 going to object. The phrase "close proximity" is too
19 vague for him to be able to answer.

20 MS. REYNEVELD: Yes, I am going to
21 be asking some clarification about how the applicant
22 defines "close proximity," because I agree it's very
23 vague.

24 JUDGE TOREM: All right.

25 Ms. Perlmutter, I'm going to overrule the objection

1 subject to this clarification.

2 Go ahead, Ms. Reyneveld.

3 MS. REYNEVELD: And in -- I don't
4 know if the witness actually answered that question.

5 **THE WITNESS: Can you repeat the**
6 **question, please? I'm sorry.**

7 Q (By Ms. Reyneveld) This includes turbines that are in
8 what the applicant defines as close proximity to two
9 ferruginous hawks' territories and several nests; is
10 that correct?

11 JUDGE TOREM: And before you answer,
12 Mr. Jansen, again, the closer we get to specifics, the
13 closer we get to the confidential material in the -- in
14 the Moon memo, as we've been calling it. So let's be
15 cognizant of that. And if we need to go back into
16 closed-record session, we can.

17 **THE WITNESS: Noted, Your Honor.**

18 **I believe, Ms. Reyneveld, when we talk -- so**
19 **proximity is discussed in this -- in this memo.**

20 MS. REYNEVELD: Yes. That actually
21 wasn't my question. If we could just -- I can just ask
22 it again.

23 And I'm sorry. The witness is going kind of in
24 and out, so I'm having a hard time hearing you,
25 Mr. Jansen.

1 Q (By Ms. Reyneveld) But my question was that, in 1.3,
2 Section 1.3 of the memo, that you -- the applicant has
3 agreed to remove certain turbines that are in close
4 proximity to nesting territories; is that correct?

5 **A That's correct.**

6 Q And thank you for bringing up the redacted version.

7 And Section 1.4 of the memo, if you could turn
8 there.

9 The applicant has agreed to remove what we were
10 referring to before as Turbine 116, which the applicant
11 defines as in closest proximity to a certain hawk's
12 nest; is that correct?

13 **A That's correct.**

14 Q And from my understanding, this memo defines closest
15 proximity as approximately .5 miles to the most
16 recently occupied ferruginous hawk's nest; is that
17 correct?

18 **A Sure. That's the -- the definition of "proximity." I**
19 **think it was discussed as a characterization of turbine**
20 **relative to the location of the nest.**

21 Q Okay.

22 **A It's described under the "Rationale for Change."**

23 Q So perhaps you can enlighten me.

24 What is the definition of "closest proximity" in
25 this memo?

1 A I don't think it specifically defines what closest
2 proximity is. I think the project looked at nests and
3 the distance of 3.2 kilometers and the rationale
4 (videoconference technical difficulties) was because it
5 was in proximity to that nest we discussed that was
6 occupied in those three years of survey, '17, '18, and
7 '19, that we discussed in the -- the distance paper.

8 MS. PERLMUTTER: Your Honor, if --
9 if I may, it looks like we are getting close now to
10 confidential information. It may be appropriate to --
11 to reconvene in closed session.

12 JUDGE TOREM: Yeah, Ms. Reyneveld, I
13 was getting some notes from Ms. Masengale as well.
14 Some of the information -- some of the things are in
15 the redacted portions of this exhibit. And I know it's
16 hard to keep track, question and answer, as we go. But
17 I think, Ms. Perlmutter, it's well-advised.

18 Do we have many more questions, Ms. Reyneveld, in
19 this area?

20 MS. REYNEVELD: Regarding what
21 "closest proximity" means in relation --

22 JUDGE TOREM: Yeah.

23 MS. REYNEVELD: -- to nests? I only
24 have a few. I have probab- -- I don't know -- probably
25 five.

1 JUDGE TOREM: All right. And I
2 think because we're -- because we're getting into
3 specific numbers and distances, I'm going to ask the
4 public to indulge us one more time as we go to
5 closed-record session to make sure that Mr. Jansen's
6 answers don't stray into things that have been redacted
7 from the public for sensitive and confidential wildlife
8 tracking information.

9 So, Council, again, when we go back into
10 closed-record session, hopefully the same group is
11 built out, we won't be missing anybody. But we're
12 going to do that now.

13 ** Closed-record hearing **

14 * Not available to general public per protective order *

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(Closed-record session
concluded.)

JUDGE TOREM: All right. Members of the public, we're back to finish the questions from counsel for the environment for Mr. Jansen. We're back asking some more general questions about wildlife and raptors.

When we're done with this cross-examination from Ms. Reyneveld, we're going to take a little break. It's now almost 11:00. We're going to see if we can come back after a five- or ten-minute break with the questions and cross-exam from the Yakama Nation.

Ms. Reyneveld, if you'll wrap up your questions now, we'll stay in the public session till we take a recess.

MS. REYNEVELD: Thank you, Your Honor.

Q (By Ms. Reyneveld) Mr. Jansen, in light of this uplifting that we were discussing of the ferruginous hawk from threatened to endangered, it is -- you would agree it is important to protect the historic or

1 unoccupied territories of the hawk for the species to
2 recover from that endangered status, correct?

3 **A Yeah, I think, yes, I would agree that a range-wide**
4 **holistic approach is needed to help the species**
5 **increase its population.**

6 Q So to help the species increase its population, it is
7 critical to not just protect the territories but also
8 to recover the habitat that supports the species that
9 we were discussing; is that correct?

10 **A Recover the habitat. I'm not sure what -- what you**
11 **mean by that, Ms. Reyneveld.**

12 Q Well, make sure that we're also doing more to recover
13 the habitat after the project application to ensure
14 that it continues to be a viable habitat for the
15 species.

16 **A I would say, yes, in general, that's the case. There**
17 **are State programs, like, similar to the Conservation**
18 **Reserve Program, State Area, State Acres for Wildlife,**
19 **I believe it's called -- the acronym is SAFE -- that**
20 **maintain and try to increase native habitats for all**
21 **wildlife.**

22 Q Thank you.

23 Moving on, the revised application proposes two
24 years of standard post-mortality monitoring to assess
25 the impacts of the turbine operation on species such as

1 the ferruginous hawk; is that correct?

2 **A Yeah -- yes, that's correct. And it's**
3 **post-construction fatality monitoring, or PCFM.**

4 **Q** Okay. And do you agree generally that that
5 post-construction mortality monitoring just provides a
6 snapshot of the project's impact on species like the
7 ferruginous hawk?

8 **A Two years of continuous post-construction fatality**
9 **monitoring is consistent with precedent and has been**
10 **applied at all wind turbine -- all wind projects in not**
11 **only Washington but typically nationwide. The duration**
12 **of PCFM, or the fatality monitoring, can be adjusted in**
13 **an adaptive management environment that is done in**
14 **consultation with the technical advisory committee.**

15 **Q** But that -- would you agree that -- and I understand
16 that; that makes sense -- that that sort of two-year
17 monitoring doesn't necessarily capture long-term
18 trends, such as displacement in response to human
19 presence or interspecific competition from other
20 predators; is that correct?

21 **A That -- that's correct. That's why the project has**
22 **undertaken additional measures, such as conducting**
23 **surveys for nesting raptors for five years post**
24 **construction, which in my experiences is above and**
25 **beyond what I have seen at other wind facilities.**

1 Q And you agree, though, that long-term monitoring could
2 provide a perspective on the effectiveness of some of
3 the mitigation measures that you've proposed to the
4 viability of -- of the nesting territories and the
5 hawk; is that correct?

6 A That's correct. The -- the project has also undertaken
7 a (videoconference technical difficulties) system that
8 goes for the -- for the length of the project.

9 MS. PERLMUTTER: I'm sorry,
10 Mr. Jansen. We missed -- we heard "wildlife,"
11 something, "system."

12 You're doing great.

13 THE WITNESS: I'm sorry, guys. I
14 don't know what's going on. Let me try that again.

15 The -- the project has undertaken a wildlife
16 fatality monitoring and reporting program for the life
17 of the project, very similar to what's done at Nine
18 Canyon as well. And, again, I think the -- the
19 duration of any type of monitoring can be adjusted
20 under the adaptive management framework undertaken in
21 the TAC.

22 MS. REYNEVELD: Thank you.

23 THE WITNESS: Okay.

24 MS. REYNEVELD: I appreciate your
25 testimony, Mr. Jansen. I don't have any further

1 questions for you at this time.

2 **THE WITNESS: Sorry. Thank you,**
3 **Ms. Reyneveld.**

4 JUDGE TOREM: All right. Thank you,
5 all. And I appreciate Mr. Jansen trying to stay still
6 and have that microphone pick up. The technology is a
7 challenge for all, me included.

8 It's five after 11. I want to give the court
9 reporter a break. And I think for our schedule, we're
10 still aiming for a lunch break. We may be able to
11 complete Mr. Jansen's testimony, and we'll see how the
12 redirect goes as well and figure out those things when
13 we come back.

14 So let's take a ten-minute break to 11:15. When
15 we get back, Ms. Voelckers, you'll be on for your
16 cross-exam, and you'll let us know if and when we need
17 to go into closed session.

18 Thank you. We'll have a recess until 11:15.

19 (Pause in proceedings from
20 11:05 a.m. to 11:15 a.m.)

21
22 JUDGE TOREM: All right. We are
23 back and ready, I think, in a public session here to
24 take up the cross-examination of Erik Jansen as
25 presented by Yakama Nation.

1 Ms. Voelckers, let's see how your audio quality
2 is.

3 MS. VOELCKERS: Thank you, Your
4 Honor. Shona Voelckers for Yakama Nation.

5 JUDGE TOREM: All right. Let me see
6 if we can put you on the screen here.

7 Is your camera on right now? I'm going to wait to
8 see if I can get you moved over.

9 All right. I see a darker screen, but we can --
10 there you are. It's still looking pretty pixilated, so
11 let's try, Mr. Jansen, to see if Ms. Voelckers can
12 introduce herself. And, Ms. Voelckers, we'll give you
13 an indication if we need to switch the camera off to go
14 with just the audio and see what the court reporter's
15 able to get.

16 Ms. Voelckers, your witness.

17 MS. VOELCKERS: Thank you, Your
18 Honor.

19

20 CROSS-EXAMINATION

21 BY MS. VOELCKERS:

22 Q And good morning, Mr. Jansen. My name is Shona
23 Voelckers, and I represent Yakama Nation in this
24 proceeding.

25 I do apologize to you and the full Council, but I

1 am going to turn my video off so that I can be better
2 heard. And so I appreciate your understanding, as I
3 was really hoping to be able to remain on video for
4 this.

5 MS. VOELCKERS: Your Honor, is that
6 coming through clear?

7 JUDGE TOREM: Yeah, I think that's
8 going to help.

9 So we understand the technical difficulties.
10 Let's press on with the questions and see what
11 Mr. Jansen has for you.

12 MS. VOELCKERS: Thank you.

13 And I will ask Ms. Masengale to please pull up
14 Exhibit 1003, which is part of Mr. Jansen's prefiled
15 direct testimony.

16 MS. SHILEY: Give us one moment
17 here.

18 JUDGE TOREM: All right. She's in
19 the midst of pulling that up.

20 MS. VOELCKERS: If this exhibit
21 isn't able to be pulled up, I can just -- I only have a
22 few questions about it.

23 MS. SHILEY: No. It will be
24 available. Just one moment.

25 JUDGE TOREM: It's coming up. If

1 you want to start your questions, it'll appear on the
2 screen shortly.

3 Q (By Ms. Voelckers) Mr. Jansen, does the résumé
4 contained in Exhibit 1003 include all of your
5 publications?

6 A **I would say more or less. Yeah. Those are the**
7 **relevant ones that are publicly available.**

8 MS. VOELCKERS: Okay. And if we
9 would turn to Page 3. I believe that is where the
10 publications are listed.

11 JUDGE TOREM: And that's being shown
12 on the screen now, Ms. Voelckers.

13 MS. VOELCKERS: Thank you.

14 Q (By Ms. Voelckers) And is it fair to say that your
15 résumé does not include any publications or
16 presentations regarding any raptor species in
17 Washington prior to your engagement with Scout Clean
18 Energy?

19 A **Raptors in Washington. I've written and worked with**
20 **raptors. That's not correct. I've been a consultant**
21 **for over 13 years and have conducted many nesting**
22 **surveys and raptor studies in Washington during that**
23 **time that are not in this "Select Publications and**
24 **Presentation" section.**

25 Q Okay. And I just asked if this included all of your

1 publications, and I -- I thought I heard, but it's
2 actually a little garbled in your answers for me, but
3 there weren't any relevant publications that were not
4 already here.

5 So are these survey reports that were not, you
6 know, complete publications, or were they not
7 considered relevant by you when you submitted this
8 résumé?

9 MS. PERLMUTTER: Your Honor, if I --
10 if I may object. She is mischaracterizing his
11 testimony. My notes indicated that he said that the
12 list included all publications more or less.

13 And I'd also note that she's being argumentative.

14 JUDGE TOREM: Well, I'm going to
15 overrule the "argumentative." I think there was a
16 little bit of confusion on this.

17 Ms. Voelckers, I am going to sustain the objection
18 as far as the -- he did say "more or less," and in the
19 subsequent answer, he clarified that this portion on
20 Page 3 is "Select Publications and Presentations." So
21 I think by the plain meaning of the word, that
22 indicates it's not everything. It's certainly not the
23 ones that are not available to the public.

24 So if you want to rephrase the question, I think
25 the point you're trying to make is the extent of his

1 studies here in Washington outside of the preparations
2 for this application for site certification; is that
3 correct?

4 MS. VOELCKERS: Thank you, Your
5 Honor. That is correct.

6 And certainly just trying to understand the extent
7 of his experience and work on raptor species in
8 Washington State outside of what's on this list in
9 front of us.

10 JUDGE TOREM: All right. So,
11 Mr. Jansen, if you want to respond to just that focus,
12 whatever's not listed here in general, if you can give
13 us an idea and the Council an idea of work you've done
14 regarding raptors in Washington State not listed here
15 and not associated with the Horse Heaven project.

16 THE WITNESS: Certainly. Thank you,
17 Your Honor.

18 Ms. Voelckers, I have -- like I mentioned, I
19 was -- am a consultant for over 13 years. And during
20 that time, I have studied and conducted surveys for
21 raptors, raptor nest, raptor use, extensively in
22 Washington. I worked at many of the wind facilities in
23 Washington during that time. So this "Select
24 Publication and Presentations" section are only those
25 work materials that are publicly available.

1 **For the other studies that I'm referencing, those**
2 **were done for proposed projects and are not publicly**
3 **available. Therefore, I did not list them on the**
4 **résumé.**

5 MS. VOELCKERS: I really appreciate
6 that clarification.

7 Q (By Ms. Voelckers) So the other studies that you just
8 referenced that are not included on the résumé, were
9 any of those not done for a project developer through a
10 contract for that developer?

11 A **Any of those not done? No, they were -- they were all**
12 **done for a -- some type of development project. That**
13 **could either be a solar, typically in renewable energy**
14 **development, and those projects typically include**
15 **solar, wind, geothermal, transmission. And that's all.**

16 Q And in those studies, did you study the ferruginous
17 hawks before your engagement with Scout Clean Energy on
18 this project?

19 A **Yes, that's correct.**

20 Q Is it fair to say, though, that you haven't published
21 any peer-reviewed materials regarding the ferruginous
22 hawks?

23 A **That's correct.**

24 MS. VOELCKERS: Ms. Masengale, I
25 believe I am done with that exhibit now, if you

1 would -- you can take it down, if you'd like.

2 Q (By Ms. Voelckers) I have questions about the
3 materials that you're sponsoring, and I'm trying to not
4 duplicate Ms. Reyneveld's questions, but I hope you'll
5 bear with me since I had these written before her
6 cross-examination.

7 I believe that you stated that this morning that
8 you are not the primary author of the project's
9 application.

10 Can you clarify, though, whether or not you
11 authored any of the original amended applica- --
12 sorry -- original application for site certification?

13 **A As my prefiled direct testimony states, I was not the**
14 **primary author of this document. Tetra Tech had the**
15 **primary core of that work. I stepped in and offered my**
16 **insights, given my history of technical reports at the**
17 **project, and ensured the salient points in those**
18 **technical reports were incorporated into the updated**
19 **ASC.**

20 Q Okay. So before talking about the updated ASC, though,
21 did you contribute to the original ASC?

22 **A Oh, my apologies. Yes, in the same capacity. But it**
23 **was not my primary scope of work in this project.**

24 Q Okay. So you contributed in -- in a capacity to both
25 the original and the updated ASC.

1 Is that fair to say?

2 **A That's fair to say, yes.**

3 Q Okay. Who else contributed to writing Section 3.4 of
4 the original ASC?

5 **A They were a number of different biologists at Tetra**
6 **Tech that I worked with.**

7 Troy Rahmig, who you'll hear from later today, is
8 a -- contributed in fair portions to that material.

9 Project manager Linnea Fulsome [sic], as well as a
10 botanist and other -- the subject matter people at
11 Tetra Tech contributed to that.

12 But the original and updated ASC was not my
13 primary scope of work.

14 Q Is it fair to say -- I'm not familiar with everyone
15 that you just listed off, but is it fair to say that
16 Section 3.4 of the original ASC was drafted by both
17 biologists and other professionals that are not
18 biologists?

19 A I mean, yeah, Scout obviously had a (videoconference
20 technical difficulties) since it's their application.
21 And then other subject matter experts that I
22 mentioned -- wetland biologist, botanist, biologists --
23 all collaborated the original and updated ASC.

24 Q Okay. And I think I just heard you say both the
25 original and updated ASC.

1 So it's fair to say, then, that both the original
2 and the updated were collaborative drafting exercises
3 between the applicant and its biologists?

4 **A Yeah, I believe that's -- that's fair to say. Again,**
5 **the development of the ASC is -- and the work flow in**
6 **developing those materials, probably better suited for**
7 **not only the applicant but also Tetra Tech, who had the**
8 **(videoconference technical difficulties) production.**

9 JUDGE TOREM: You're cutting out at
10 the end of that answer after you said "Tetra Tech."

11 **THE WITNESS: Who were the**
12 **primary -- who -- whose scope of work was their primary**
13 **responsibility.**

14 JUDGE TOREM: Thank you.

15 **Q (By Ms. Voelckers) You've also identified the wildlife**
16 **and habitat mitigation plan for this project as a**
17 **document that you are sponsoring, correct?**

18 **A That's correct.**

19 **Q Who all coauthored that mitigation plan?**

20 **A That's more of a habitat and wildlife mitigation plan.**
21 **It was conducted in the same collaborative spirit as**
22 **the ASC, with biologists, botanists all collaborating.**
23 **And, of course, because it is the applicant 's work**
24 **product, it's their application, they also had an**
25 **opportunity to provide input and review.**

1 Q To your knowledge, did anyone from the Washington
2 Department of Fish and Wildlife provide input on the
3 mitigation plan for this project?

4 **A Yeah, we -- yes. We met with Mike Ritter, Michael**
5 **Ritter with WDFW, over the -- many times over the**
6 **course of the development of these products to discuss**
7 **mitigation ratios, mitigation opportunities, and**
8 **strategies.**

9 Q Would it be fair to characterize WDFW's input as
10 feedback to the applicant on the habitat mitigation
11 plan?

12 **A Yes, I think their input can be considered feedback.**

13 Q WDFW didn't contribute to writing any portion of the
14 mitigation plan, did they?

15 **A No. They're the State wildlife management agency.**

16 Q So then is it fair to say that all representations
17 contained (videoconference technical difficulties)
18 attributed to the applicant and not to WDFW directly?

19 JUDGE TOREM: Ms. Voelckers, I'd
20 have to ask you to repeat that question. Something got
21 garbled in the front, and it sounded echoed. I thought
22 it was something along the lines of, is it fair to say
23 that everything in the application is attributed to the
24 applicant and not to DFW; is that fair?

25 Was that the question, Ms. Voelckers, or did you

1 want to restate it?

2 MS. VOELCKERS: Thank you, Your
3 Honor. Yes, my question is:

4 Q (By Ms. Voelckers) Is it fair to say that all of the
5 representations contained within the mitigation plan
6 should only be attributed to the applicant and not any
7 of them attributed to WDFW?

8 A No, I don't believe that's the case. Again, we met
9 with Mike Ritter many times to discuss impacts, impact
10 classification, and the assignment of mitigation
11 ratios. And in those discussions and in conversations
12 in screen sharing, those types of input and the
13 discussions that we had with Mike are reflected in the
14 habitat mitigation plan.

15 Q Okay. So to be more specific, though, if the habitat
16 mitigation plan says one thing and attributes it to
17 feedback from WDFW, how should we compare that against
18 WDFW's own -- something that WDFW authored, themselves?

19 A What did WDFW author? Can you --

20 Q Author, I said. Yeah.

21 How should we compare the applicant's
22 representations about WDFW's feedback in the mitigation
23 plan with WDFW's own representations about anything
24 that the agency has said?

25 A Yeah, I guess I can't square that discrepancy. You

1 know, we -- we incorporated WDFW's input again
2 regarding wildlife impacts, mitigation options,
3 mitigation ratios, and habitat classification directly
4 into the report. If WDFW wants to say other things
5 outside of that document or have other contradicting
6 evidence, then -- then they -- they're welcome to.

7 Q And is it fair to say the same thing for the
8 application, itself?

9 A I'm sorry, Ms. Voelckers. Can you repeat that?

10 Q Yeah.

11 Is it fair to say that any representation
12 regarding WFW's opinion or recommendations contained in
13 the application, itself, should only be attributed to
14 the applicant?

15 A I'm not sure I follow, but I think that we can safely
16 say that we've followed their published management
17 guidelines as Ms. Reyneveld and I discussed earlier and
18 then incorporated the information from our meetings
19 with Mr. Ritter into the document.

20 Q Okay. I don't believe that answered my question, but I
21 think we can move on.

22 MS. REYNEVELD: Ms. Masengale, if
23 you'd be kind enough to pull up Exhibit 1002, which is
24 Mr. Jansen's direct testimony.

25 And if we could turn to Page 6, please.

1 Thank you.

2 Q (By Ms. Reyneveld) Mr. Jansen, do you see Lines 5
3 through 7 here on Page 6?

4 **A That's correct. Yes, I do.**

5 Q Okay. And it reads that, "Emerging scientific research
6 and other information were continuously incorporated to
7 help inform surveys and recommendations to the client."

8 Does that statement by you include recent
9 scientific research from WDFW?

10 MS. PERLMUTTER: Your Honor -- if I
11 may, Mr. Jansen.

12 I'm going to object to the -- to the use of the
13 word "recent." It's not clear what she's referring to.
14 If she could be more specific.

15 JUDGE TOREM: Ms. Voelckers.

16 MS. VOELCKERS: Thank you, Your
17 Honor. I can -- I would -- I would ask first for
18 Mr. Jansen to clarify what he meant by "emerging
19 scientific research," and then I think I can make sure
20 and ask a specific question off of that.

21 JUDGE TOREM: All right.
22 Emerging -- emerging scientific research first,
23 Mr. Jansen.

24 **THE WITNESS: Sure. Of course.**

25 **Part of being a biologist, you try to stay -- I**

1 try to stay on top of ongoing research that is done out
2 there relevant to any number of species or additional
3 analyses that are done. So the peer-reviewed studies
4 in research articles or information in the gray
5 literature regarding post-construction fatality
6 monitoring or other types of information that may be in
7 a GIS format, a geographic information systems format.

8 So it's constantly digging around and looking what
9 is out there, what's being done, and then helping to
10 make my clients aware of this type of information and
11 maybe how they can incorporate it into the project.

12 Q (By Ms. Voelckers) And in that process of
13 incorporating emerging scientific research, did you
14 include WDFW's emerging scientific research and
15 findings on the ferruginous hawks?

16 A That information came toward the end of the
17 development. I believe that the chronology is that
18 WDFW -- I think you're specifically referring to the
19 core area and home range data that WDFW is referencing.
20 And those types of information came towards the end of
21 the development of these documents and not in time to
22 be able to incorporate it.

23 Q Can you clarify, though, what you consider not -- like,
24 what you -- your opinion is, was too late to be
25 incorporated? I'm trying to understand where the

1 cutoff is on emerging scientific research from your
2 professional perspective.

3 **A So the -- the document had already been produced in**
4 **that time. And in response to this conversation that**
5 **we had with WDFW, we provided, I believe, EFSEC with**
6 **information regarding these discussions.**

7 Q I'm sorry. Can you answer the question that I asked,
8 though, about, you know, where you draw the line at
9 emerging scientific research that you did or did not
10 incorporate from WDFW?

11 **A I can't.**

12 Q All right. Do you consider your most recently
13 published materials listed in your résumé, including
14 one from 2023, to be emerging scientific research?

15 **A Yes. Yeah, I do. I think it -- yes.**

16 Q And did you incorporate your own emerging scientific
17 research into your recommendations to Scout Clean
18 Energy on the project?

19 **A So that document is in 2023, and the ASC is -- was**
20 **produced in 2021. So there's a little mismatch in the**
21 **years.**

22 Q I'm sorry. But was that a "yes" or a "no" on
23 incorporating your most recent research into your
24 recommendations to Scout Clean Energy?

25 **A "Yes."**

1 Q Okay. So your research as recent as 2023 was
2 incorporated but not the most recent research and
3 finding by WDFW.

4 Is that a fair statement?

5 **A No.**

6 MS. PERLMUTTER: I'm going to object
7 again as to the -- to the phrase "the most recent." I
8 think that's vague, and it -- and it creates a lack of
9 foundation.

10 JUDGE TOREM: Ms. Voelckers, any
11 response?

12 MS. VOELCKERS: Your Honor, I
13 couldn't get -- I didn't hear a clear answer to where
14 to draw the line from Mr. Jansen, so I'm still trying
15 to understand where he's drawing a professional line
16 here to determine whether or not the statement in front
17 of us is accurate.

18 MS. PERLMUTTER: Your Honor, if I
19 may respond.

20 JUDGE TOREM: Yes.

21 MS. PERLMUTTER: My dad has a habit
22 of calling me and up asking if I received his last
23 letter. And there's no way to answer that question.
24 The same problem is -- is evident here. "Most recent"
25 is -- is not a concept that -- that can really be

1 addressed by the witness.

2 JUDGE TOREM: All right. Well, I'm
3 glad your dad writes you letters, Ms. Perlmutter.

4 Mr. Jansen, I've got to sustain the objection
5 here. But I would like you to try to dial in and give
6 specific dates. Because I think Ms. Voelckers is
7 trying just to sort out when and where your research
8 stops, what's emerging. If you could say as of a year,
9 that will specify things for everyone, and we can move
10 this line of questioning along.

11 I don't think you're trying to withhold anything.
12 Don't get me wrong. But I think the questions have
13 been a little bit vague, as Ms. Perlmutter points out,
14 but generally Ms. Voelckers is trying to just draw a
15 delineation of what was before and what's current. But
16 we need a date from you as much as you can offer it.

17 Ms. Voelckers, if you want to clarify anything
18 that I just said rather than put words in your mouth,
19 please let me know, and I'll have you pose a question
20 as close as possible so we can get this done and move
21 on.

22 MS. VOELCKERS: Thank you, Your
23 Honor. I will -- I don't disagree with what you said.
24 I -- I'm just trying to understand if there was a
25 different standard applied for different research, so

1 I'll try to ask the question a different way.

2 Q (By Ms. Voelckers) Mr. Jansen, did you incorporate
3 WFW's scientific findings and research that was shared
4 with Scout Clean Energy within the last two years in
5 your recommendations to your client on the project
6 design?

7 A I think -- so yes. But in the end, turbine designs is
8 a commercial decision and outside of my wheelhouse. I
9 think, you know, we're glomming onto this "emerging
10 scientific research" phrase, and I think that's a fair
11 statement to say.

12 I think most -- most recently, we can point to the
13 Moon memo that incorporates information and data from
14 raptor nest surveys and other project-level decisions
15 that the client is making to remove wind turbines and
16 reduce the scope and scale of solar facilities.

17 Does that answer your question? I'm not trying to
18 be evasive.

19 Q I don't believe it did, but if we need to return to
20 this, we can. I think it may be, if we need to return
21 to this in more specific terms on the recent -- the
22 research that WFW has been providing in the findings,
23 we can -- we can do that at that time.

24 A Okay.

25 Q On the next page, Page 7, of your direct testimony --

1 okay. I don't see it on the screen, but it's Lines 14
2 through 17, you said -- you also said that you
3 referenced an integrated spatial data and information
4 into the site design from the Arid Lands Initiative and
5 the Wildlife Habitat Connectivity Working Group.

6 Do you see that there?

7 **A I do. That's correct.**

8 Q What exactly did you incorporate from the Arid Lands
9 Initiative and the Wildlife Habitat Connectivity of the
10 actual project design?

11 MS. PERLMUTTER: Your Honor, I
12 missed that entire question.

13 JUDGE TOREM: I was about to
14 interject the same.

15 I don't know, Ms. Voelckers, what's happening
16 there on your end, but that whole question was very
17 garbled. You want to restate it, please?

18 MS. VOELCKERS: Yes, Your Honor.
19 Thank you. And if it doesn't come through this time, I
20 will find a different solution.

21 Q (By Ms. Voelckers) On Page 7, Lines 14 through 17, did
22 you see that language that I read off about the
23 incorporation of spatial data information from the Arid
24 Lands Initiative and Wildlife Habitat Connectivity
25 Working Group?

1 A Yes.

2 Q Okay. What exactly did you incorporate from the Arid
3 Lands Initiative and Wildlife Habitat Connectivity
4 Working Group in the project design?

5 A So those two pieces of important work model priority
6 conservation areas and priority linkage areas as well
7 as other spatial data from sensitive species that were
8 modeled within those two documents.

9 In doing so, we found that there was a broad
10 east-west connectivity along the escarpment of the
11 Horse Heaven Hills and through the center of the
12 project adjacent to the highway. And so using those
13 data, we essentially attempted or really recommended to
14 minimize facilities within those two areas.

15 Q So was your recommendation to minimize or to avoid
16 facilities within those two areas?

17 A Avoid is always the first step in minimizing impacts
18 by -- by not placing them there, but avoid and minimize
19 were both considered.

20 But, again, in the end, the client has to make
21 their decisions on whether or not to incorporate that
22 into a site design and -- and what to do with that
23 information.

24 We can see some of the results of these site
25 design amendments in the most recent Moon memo.

1 Q And this testimony in front of us was submitted before
2 that was made available to the parties, so -- and
3 we'll -- we'll get to the memo eventually, but I just
4 want to focus on the project design that's at -- that
5 was in the ASC.

6 It sounds like, but can you please clarify:
7 Were -- were you making recommendations for avoidance
8 of these habitat corridors that were ultimately not
9 followed in the ASC?

10 **A No, I don't think that's correct. Again, the ultimate**
11 **decision about site design rests with the developer,**
12 **and I -- it's not up to me to play chess with the --**
13 **with the turbines.**

14 Q Understood.

15 Is your professional opinion that these guidance
16 documents were or were not integrated into the site
17 design contained within the ASC?

18 **A They were. I think if you look at the ASC as well as**
19 **the habitat mitigation plan, that those two work**
20 **products from ALI and the Connectivity Working Group**
21 **were integrated.**

22 MS. VOELCKERS: Okay.

23 Ms. Masengale, if you could please bring up
24 Exhibit 4016. I'll be starting on Page 16.

25 Your Honor, if we could take a five-minute break,

1 I will move myself to an entirely different device in
2 the hope of having a better connection.

3 JUDGE TOREM: Ms. Voelckers, I think
4 it might be fine at this point given the hour. How
5 much time do you have left in cross-exam?

6 MS. VOELCKERS: I do believe I'll be
7 using the full hour that I asked for, so I do have a
8 number of questions and documents to work through with
9 Mr. Jansen.

10 JUDGE TOREM: All right. We started
11 at about 11:15, so let's say you have about 20 to 30
12 minutes max left. Is that correct?

13 MS. VOELCKERS: Well, Your Honor,
14 then I might need a little more time.

15 JUDGE TOREM: Okay. So I think
16 rather than take a five-minute break and come back, I
17 think I'd like to let the Council members go for lunch
18 and ask them to come back at 1:00. By then, you'll
19 have a chance to have solved your tech problems, we
20 hope, and we'll have a chance for Ms. Masengale to get
21 Exhibit 4016 ready. So let's go ahead and do that.

22 I want the parties to stay on for a moment for a
23 pre-lunch housekeeping. I'll try to be quick, but I
24 wanted to give you the ruling on the rebuttal and reply
25 testimony so we know exactly what is available for

1 tomorrow.

2 So, Council members and members of the public,
3 we're going to go ahead and go off the record for about
4 a minute here, let other folks exit, and then we're
5 going to resume back on the record with a ruling I need
6 to make for the parties and kind of a short
7 housekeeping session.

8 We'll come back with everybody at 1:00.

9 (Brief pause in proceedings.)

10

11 JUDGE TOREM: All right. We're back
12 on the record. And I wanted to let the parties know
13 I've been moving things around on it and looking and
14 rechecking at every break that I've had this morning to
15 make sure all of the exhibits that are rebuttal and
16 reply listed in the applicant's motion to strike is
17 accounted for here.

18 I'm going to ask our staff to make sure we don't
19 have any open microphones so that the recording quality
20 is good here.

21 So my ruling on this, Mr. McMahan and
22 Mr. Aramburu, is as follows.

23 I've looked at the applicant's motion to strike
24 the rebuttal and reply testimony of four witnesses.
25 That was filed on August 1st. Tri-Cities C.A.R.E.S.

1 filed their opposition to that motion on August 7th.
2 And just last week, I was able to get you -- maybe it
3 was just yesterday -- the order on reconsideration of
4 Tri-Cities C.A.R.E.S.' prefiled testimony that was
5 originally stricken on July 28th, I believe it was.

6 I want to apply the same standards here to the
7 rebuttal and reply testimony that I included in
8 yesterday's order, and so let's take a look at the
9 exhibits in order.

10 Rick Dunn of the Benton County PUD had all of his
11 testimony stricken originally, and by the rebuttal or
12 the reconsideration, that ruling was upheld by me, and
13 nothing was changed as to Rick Dunn's testimony.

14 Here he's resubmitted Exhibit 5211 and 5212. As
15 much as TCC suggests that the testimony is relevant to
16 the scope and scale of the product -- of the project
17 and to rebut Mr. Poulos's testimony, Mr. Dunn's
18 testimony continues to focus on the net benefits of the
19 project as alleged under CETA. He continues to focus
20 on global CO2 and greenhouse gas emissions. And for
21 those reasons, the testimony is not within the scope of
22 the -- those topics allowed for the adjudication, so
23 I'm striking his rebuttal and reply testimony inclusive
24 of both 5211 and 5212.

25 Shifting to Mr. Paul Krupin, he -- as I said in

1 the motion on reconsideration order, he does -- he
2 remains not a visual expert, so the bulk of his
3 testimony and reply and rebuttal will also be stricken.
4 So that includes 5304_R and the bulk of 5305. I'm
5 going to ask Ms. Masengale if she has Exhibit 5305
6 handy to put up on the screen so it's -- I can indicate
7 to you the portions that are not being stricken.

8 This is Page 2 of Exhibit 5305_R. The language
9 that begins with, "The U.S. census data," and
10 everything on from there until the chart on Page 8 is
11 going to be admitted and not stricken. The reason for
12 that is these charts are factual in nature, and they're
13 produced to show the distance between the homes in the
14 affected area and other wind farms. So these charts
15 are helpful, I think, to the Council and the ultimate
16 fact finder.

17 So from that portion of Page 2, starting with,
18 "The U.S. census data," up until this chart about
19 population are not stricken. The words, "The ASC and
20 visual assessments fail to adequately sample," are
21 opinions that begin again to go into Mr. Krupin's
22 thoughts on visual aspects. Those from that point to
23 the end of the document, Page 37, are all stricken.

24 Exhibit 5306 of Mr. Krupin is likewise stricken.

25 Mr. Sharp's testimony: Sticking to the same

1 standards where I allowed Mr. Sharp to testify as to
2 some other impacts of the project, including his
3 thoughts on ice throw and recreation per the
4 reconsideration order. Applying those same standards,
5 then Exhibit 5403 is stricken in its entirety.

6 Exhibit 5404, which I'll ask Ms. Masengale to
7 bring up, on Page 2 there are a limited number of
8 question and answer items critiquing Mr. Poulos's
9 testimony. No. 2 -- sorry. No. 3, No. 4, and No. 5
10 all make valid, within the scope of Mr. Sharp's
11 expertise, observations and critiques. These are
12 factual basis comparing the size of the Tri-Cities area
13 to the other projects Mr. Poulos discusses. So those
14 question and comments, No. 3, 4, and 5, are not
15 stricken from Exhibit 5404, but the remainder of that
16 exhibit is stricken.

17 The bulk of the rest of Mr. Sharp's exhibits are
18 also stricken. That includes 5405, 5406, 5407, 5408,
19 5409. Skipping ahead, also stricken are 5412, 5413,
20 and 5414.

21 The two exhibits I didn't mention as stricken are
22 5410, which is a map showing recreational uses. 5411
23 is the Kioa (phonetic) trail. That also is a
24 recreational aspect. So as you can see, these are
25 clearly labeled on 5410 on your screen as recreational

1 opportunities. And 5411 likewise shows the trail
2 network that is around in the Kioa -- Kiona ridge
3 trail. I misspoke earlier. K-i-o-n-a. Those two maps
4 are not stricken and will be admitted.

5 Finally, we get to Mr. Simon's testimony. I've
6 looked at Exhibit 5503_R. And as much as it goes into
7 areas that are not necessarily directly within the
8 scope of the adjudication's allowed issues,
9 Mr. Aramburu makes an excellent point that Mr. Simon is
10 simply referring to and responding to another witness.
11 And in doing so, I think it would be reversible error
12 on my part to exclude those rebuttal critiques of, I
13 think it's Mr. Poulos's testimony.

14 Some of what Mr. Simon ventures into is similar to
15 what Rick Dunn had offered. But, again, I think
16 Mr. Simon, in my estimation, has a different expertise
17 than Mr. Dunn. And even if his over- -- the expertise
18 overlaps under the APA 34.05.452, I'm using my
19 discretion to exclude Mr. Dunn's testimony in these
20 areas as unduly repetitious when taken in context with
21 that of Mr. Simon that is being allowed and admitted.

22 Court reporter's going to make an expedited
23 transcript that will be circulated later today. I hope
24 it was clear as I went through those and asked for Lisa
25 Masengale to put up on there and show you exactly what

1 was going on.

2 So as to the motion for striking the rebuttal and
3 reply testimony, that's all I have on that matter.

4 I do see a question from a Council member that's
5 being posed as to the question that I think it was Karl
6 Dye was responding to Mr. Levitt's question, and there
7 will be a portion of his testimony that was stricken.
8 And, Mr. Levitt, off the top of my head, I don't recall
9 exactly what that was, but it had to do with similar to
10 what was just stricken regarding CETA and some other
11 areas that are not directly in front of us for the
12 adjudication.

13 So that transcript will be -- we'll look at it,
14 make sure it's accurately what needs to be stricken.
15 It was kind of done on the fly this morning. And right
16 at the moment, I'm not ready to respond in any exact
17 words. But when we get the transcript, I'll review
18 that with the parties and make sure the Council can see
19 the red-line version of what's there.

20 All right. Thank you, all.

21 COUNCIL MEMBER LEVITT: Thank you.

22 JUDGE TOREM: I don't want to keep
23 you and shorten your lunch period any more. We'll be
24 back at 1:00.

25 Mr. Aramburu.

1 MR. ARAMBURU: I do want to -- I
2 feel compelled at this point to make an objection on
3 the record as to the procedures of this hearing.

4 We're now, at less than 24 hours before witness
5 testimony from Mr. Krupin and Mr. Sharp, making changes
6 in testimony and adding to the time burden on the
7 community group to prepare.

8 We -- last week, we received documents during --
9 during the midst of this hearing that require review,
10 preparation of rebuttal. These materials have come in
11 far, far too late in this process.

12 So the -- so the cumulative impact on our
13 preparation, on our ability to respond to these
14 materials, has been substantial. It will limit what we
15 can do in this -- in these proceedings. It will
16 greatly prejudice our position on these matters. And
17 accordingly, we are -- we want our objection to be
18 clear on the record that packing in things, even while
19 the hearing is underway, is unfair and inappropriate.

20 That can be resolved by providing additional time
21 for us to review these materials. For example, the
22 fire materials brought in at the last moment, highly
23 technical material, and we're scrambling, but we're not
24 sure we're going to be able to get testimony in that
25 regard.

1 So this would be resolved if we had more time. I
2 know what your willings have been in that time, but
3 I -- I want to preserve for the record our concern
4 about the way this is stacking in things at the last
5 minute on an already compressed schedule, and now we
6 have additional work to do this afternoon to go back
7 and look at testimony that's -- that's been stricken,
8 adding to the burden -- to our burden in these
9 proceedings.

10 So I want our record to be clear that we believe
11 this is substantially unfair treatment by -- by EFSEC
12 and a prevention of us from really actively and
13 appropriately participating in these proceedings. So I
14 want that to be a record. And I want to make another
15 formal motion that we be given additional time to reply
16 to these materials.

17 That's -- that's the conclusion of our objection.

18 JUDGE TOREM: Thank you,
19 Mr. Aramburu. I understand. I'll even go so far as to
20 say I sympathize. We're simply doing the best we can.
21 Your objection is clearly noted.

22 I'm giving some further consideration as to what,
23 if any, additional time we might need for preparation.
24 I think I made some inquiries as to additional dates if
25 we needed a supplemental hearing date. I'm still

1 considering that, based on the cumulative impacts not
2 only to Tri-Cities C.A.R.E.S., who I think clearly is
3 taking the brunt of these rulings coming as late as
4 they are. Those are my fault, not the Council's fault,
5 for just work burden and balancing of time.

6 If we need to, I want you to renew that with us on
7 Friday morning's housekeeping, and we'll see where we
8 are, and you'll clearly tell me how much time you might
9 think you need in any supplemental hearing dates. I'll
10 see what I can do, if it's possible. I think that's
11 fair. I understand where you're coming from.

12 As much as that's a compressed schedule, I want to
13 work with you as best I can. And there's no -- there's
14 no intentional slighting of one party over another. If
15 it's coming off that way, it's my insufficiencies, not
16 any angst, undue feelings, or otherwise. I'll work
17 with you.

18 MR. ARAMBURU: Well, I appreciate
19 that concern, but that does not lessen the burden for
20 preparation of testimony. We don't know what your
21 ruling is going to be on Friday. We have to do the
22 best we can. It impacts the -- the cross-examination
23 of -- Mr. Poulos, other -- other witnesses, the
24 inability to prepare the -- the fire -- fire materials,
25 which are plainly important to these proceedings.

1 And -- and so we appreciate that. We would
2 appreciate an earlier ruling so we wouldn't have to
3 spend the time that -- that we are here, and have
4 enough information right now to let you know that we're
5 going to move to strike the supplemental testimony
6 of -- of Mr....

7 JUDGE TOREM: Kobus?

8 MR. ARAMBURU: Krupis (phonetic).
9 Kopus (phonetic). So I wanted everybody to be warned
10 about that.

11 JUDGE TOREM: Okay. Thank you,
12 Mr. Aramburu.

13 MR. ARAMBURU: I think I will
14 just -- I will tell you now what the objection is going
15 to be. Based upon what we're hearing and what we're
16 seeing, I don't think Mr. Kobus wrote the material that
17 is being included here. We'll find out from him. I
18 don't think he wrote the material. I think it was
19 written by somebody else, and it should be stricken.

20 JUDGE TOREM: All right. I'll ask
21 you to confirm that with Mr. McMahan off the record,
22 and we'll see if there's anything we can take care of
23 in advance on a housekeeping session. If we cancel
24 tomorrow's housekeeping session, we'll take it up on
25 Thursday.

1 All right. Let's take a break for lunch. We got
2 51 minutes left.

3 Mr. McMahan, unless you have something you want to
4 say in response to what I've addressed to Mr. Aramburu
5 following the ruling.

6 MR. McMAHAN: Nothing further, Your
7 Honor. Thank you.

8 JUDGE TOREM: All right. Thanks,
9 all, for your patience. We'll come back at 1:00.

10 (Pause in proceedings from
11 12:09 p.m. to 1:00 p.m.)
12

13 JUDGE TOREM: All right. Welcome
14 back, everyone. It's 1:00. I appreciate everybody
15 taking a slightly abbreviated lunch, particularity the
16 parties I spent some time with.

17 Mr. Aramburu, in response to our discussion just
18 prior to lunch and your noted objections as to the
19 compressed schedule, I'm going to ask all parties to
20 send me your notices of unavailability for September,
21 and just go ahead and span the 30 days. Tell me the
22 days that you aren't and are available, in case we
23 decide later in the week to set up a supplemental
24 hearing date.

25 And, Mr. Aramburu, we'll talk a little bit more at

1 housekeepings whether we can break that into half days
2 or if all we need is a half day, just because of
3 Counsel's schedules if we're able to do that. So by
4 close of business on Thursday, counsel's notices of
5 unavailability, and I'll match those up Thursday
6 morning, Friday morning, with what we have from the
7 Council already.

8 All right. Let's turn back to the
9 cross-examination, Ms. Voelckers, that you are working
10 toward. I had suggested maybe out of your one-hour
11 time frame, there was about 30 minutes of that time
12 left. What I'm hoping is you have a, now with the
13 technical issues hopefully resolved and chance to think
14 about what you've already heard from Mr. Jansen based
15 on Sarah Reyneveld's questions and your own so far,
16 that we can narrowly tailor -- without compromising --
17 but narrowly tailor and focus in on the questions
18 you've got, and we'll see where we are.

19 And, Ms. Perlmutter, I hope you're crafting also
20 your redirect in such a way that it's focused as well.

21 Mr. Aramburu, before we get started.

22 MR. ARAMBURU: Speaking of technical
23 difficulties, our Comcast connection has gone out, so I
24 am now appearing here with Carol Cohoe's note. So --
25 so I am participating, but in a slightly different

1 fashion.

2 JUDGE TOREM: Okay. Understood.

3 And I can see the both of you, and we're getting a bit
4 of an echo.

5 Thanks for the note on that, Mr. Aramburu. I
6 appreciate it.

7 MR. ARAMBURU: Okay. Can everybody
8 hear me?

9 JUDGE TOREM: Yes. You're audible.

10 MR. ARAMBURU: Okay. I just wanted
11 to make sure. Thank -- thank you very much. And we'll
12 go silent here and allow the testimony to continue.
13 Thank you.

14 JUDGE TOREM: All right. Appreciate
15 that.

16 All right. Ms. Voelckers, I'm going to mute on my
17 end. Go right ahead on with your questions.

18 MS. VOELCKERS: Thank you, Your
19 Honor.

20 And I am calling from the Yakama Nation's
21 landline, so I will be on a phone line. I don't expect
22 that we'll need to go in closed session.

23 (Videoconference technical difficulties) respectfully
24 point out that the estimate of time that I gave was
25 before we received the Moon memo, and so I will do my

1 best to be as efficient as possible this afternoon.

2 JUDGE TOREM: Thank you,
3 Ms. Voelckers.

4 MS. VOELCKERS: Can everyone
5 (videoconference technical difficulties)?

6 JUDGE TOREM: Yeah, your -- your
7 audio quality is better than before. Not optimal, but
8 better than before.

9 Go ahead.

10 MS. VOELCKERS: Thank you.

11 Ms. Masengale, is it possible to pull up
12 Exhibit 4016?

13 MS. MASENGALE: This is Lisa
14 Masengale. Alex is going to be assisting with sharing
15 her screen.

16 MS. VOELCKERS: Thank you,
17 Ms. Shiley.

18 If you could go to the top of this exhibit to
19 start with so that Mr. Jansen can see what we're
20 looking at.

21 Q (By Ms. Voelckers) Mr. Jansen, do you recognize this
22 report?

23 A I do.

24 Q Have you reviewed it fully?

25 A I -- I have. It's a lengthy document, but I'm -- I'm

1 familiar with the work.

2 MS. VOELCKERS: And, Ms. Shiley, if
3 you could please go to Page 16 of the PDF.

4 Q (By Ms. Voelckers) Mr. Jansen, I've highlighted this
5 paragraph on this exhibit.

6 I believe that you already summarized a little bit
7 of this report's findings before lunch, but can you
8 please read the highlighted portion and let us know if
9 you agree with that finding of the report?

10 A (Witness complies.)

11 I do. With a caveat, if I can discuss?

12 Q Please.

13 A So the -- the modeling that is driven in the Horse
14 Heaven Hills primarily composes two species,
15 black-tailed jackrabbit and Townsend's ground squirrel.
16 When you look at this report in its entirety, you will
17 see a number of figures, like Figure 3.13 on Page 57,
18 that indicates that landscape integrity in the project
19 is low.

20 Similarly, there are several areas within the
21 document that show that the area of the Horse Heaven
22 Hills also has a higher cost, essentially a -- a
23 greater resistance layer that provides a higher cost
24 for wildlife movement through the Horse Heaven Hills,
25 and that is Figure 3.15 on Page 59.

1 **I do -- I do concur with this statement, but there**
2 needs to be a little bit of (videoconference technical
3 difficulties) to the situation in the Horse Heaven
4 Hills according to its modeling.

5 MS. PERLMUTTER: I'm sorry,
6 Mr. Jansen. You broke up completely after "there needs
7 to be a little bit of."

8 **THE WITNESS: Text placed in the**
9 **assessment of landscape integrity in the Horse Heaven**
10 **Hills.**

11 MS. VOELCKERS: If we could go to
12 Page 19 next, please.

13 Q (By Ms. Voelckers) Mr. Jansen, if you could please
14 read the highlighted text, which I believe is the
15 recommendation of the report.

16 A (Witness complies.)

17 **Okay. I've read it.**

18 Q Do you agree with the highlighted text?

19 A **Yeah, I think landscape integrity on large spatial**
20 **scales are inherently important for wildlife movement.**

21 Q And do you agree that future land-use changes and
22 infrastructure development projects, such as wind
23 farms, warrant appropriate consideration of
24 connectivity effects?

25 A **Yeah, I think that's an appropriate statement.**

1 MS. VOELCKERS: Okay. And if I
2 could ask Alex Shiley to please pull up a exhibit that
3 you discussed with counsel for the environment this
4 morning. It's Exhibit 3017. I believe the map that
5 I'm looking for is on PDF Page 38.

6 Thank you.

7 Q (By Ms. Voelckers) Mr. Jansen, are you familiar with
8 this map?

9 A Yes, I am.

10 Q And is it your understanding that this map depicts that
11 habitat backbone that -- that was referenced in the
12 report that we just looked at together?

13 A I believe so. I -- the modeling in the Washington
14 Habitat Connectivity Working Group report is coarse,
15 but this represents the east-west corridor that I
16 discussed along the northern escarpment as well as that
17 north-south linkage area that we discussed.

18 Q And as you look at the project design set on top of
19 those mapped habitat corridors, is it your professional
20 opinion that the project design is consistent with the
21 report that we just looked at?

22 A Yeah, I think the project does a good job
23 (videoconference technical difficulties) those linkage
24 areas. Only a small number of wind turbines are
25 located in the very high linkage centrality. And the

1 solar facilities. So it should be noted that east
2 solar, which is located in the north-south bright red
3 polygon, has been removed, and that wind turbines are
4 unfenced and left open, which minimizes any type of
5 "impedement" to wildlife movement.

6 Q And are you referring to those wind turbines that we
7 see located within the high linkage centrality, I
8 believe is that orange shading?

9 A That's correct. Those wind turbines as well as all
10 wind turbines within the project area will be unfenced.

11 Q And is the siting of those wind turbines that we see
12 here in those linkage areas consistent with the report
13 that we just looked at as Exhibit 4016?

14 A The report never said that wind turbines are prohibited
15 in these areas, but that further consideration must be
16 made.

17 Q So was that a "yes" or a "no," that you considered this
18 location of turbines that we see in front of us to be
19 consistent with the report in Exhibit 4016?

20 A Yes.

21 MS. VOELCKERS: Thank you. We can
22 take that exhibit down now.

23 Q (By Ms. Voelckers) Mr. Jansen, do you agree or
24 disagree that at least one long-term monitoring study
25 has found that raptor guilds at wind turbine farms

1 change the composition because special species
2 dependent on native habitats, such as the ferruginous
3 hawk, decline while other species tolerant of
4 anthropogenic change increased?

5 **A I think you're referring to WDFW's study authored by**
6 **Mr. Watson that looked at that relationship. And that**
7 **study actually found a commensurate decrease in bird**
8 **communities in the control areas where there were no**
9 **wind facilities. So the statistical relationship in**
10 **that study was nonsignificant. However, I do agree it**
11 **generally, in principal, that anthropogenic impacts,**
12 **such as wind energy development and other forms of**
13 **human development, can change the raptor community and**
14 **nesting community.**

15 **Q Do you agree that that potential change is significant**
16 **because some of the species that are tolerant of**
17 **anthropogenic changes are also species that predate**
18 **ferruginous hawks?**

19 **A Yes, I agree. And, unfortunately, based on five years**
20 **of survey data in the Horse Heaven Hills, that the**
21 **raptor community has already changed absent of a wind**
22 **project and that the majority of the nests that we see**
23 **some years are occupied by common raven. And that**
24 **includes ferruginous hawk nests as well occupied.**

25 **Q Mr. Watson was not allowed to testify directly to the**

1 Council. I do have a number of questions I would like
2 to ask you in order to make sure that we all understand
3 where you and Mr. Watson do or do not agree on the
4 science.

5 Before I pull up another document, though, I just
6 want to ask the question to clarify, 'cause I -- and I
7 apologize. This may be a little repetitive of this
8 morning, but I don't know that I got the clear answer.

9 But to be clear, you are aware that WDFW has
10 recommended that the applicant not site any turbines
11 within what WDFW has identified as core use areas of
12 ferruginous hawk territories, correct?

13 **A Yes, I'm aware of that.**

14 **Q** And that includes both historic and occupied
15 territories, correct?

16 **A I believe so, that that was a recommendation that**
17 **Mr. Watson provided based on a study conducted 2007 to**
18 **2014 in northern Oregon and southern Washington.**

19 **Q** Is it your understanding that that's the only study
20 that he's relying upon to make that recommendation?

21 **A There's -- there's probably more, but that's the most**
22 **relevant for the -- for ferruginous hawk movement in**
23 **Washington. There are other estimates from other areas**
24 **within the bird's range.**

25 **Q** And is that the study -- the one that you're referring

1 to, is that the one that talks about the size of core
2 use areas and home range areas and that home ranges are
3 larger than previously thought?

4 **A That's correct. Based on my --**

5 Q Okay.

6 **A -- understanding, my first introduction to that idea**
7 **was during a conversation. We had one meeting with**
8 **WDFW that discussed this. And the information was**
9 **included in the 2001 audit status update for**
10 **ferruginous hawk, which laid the foundation for why**
11 **this species should be uplisted to endangered.**

12 Q Is that status update best available science, in your
13 opinion?

14 **A Can you define "best available science"?**

15 Q I'm going to ask for you to answer the question, and
16 then maybe we can talk about that term.

17 But just in your professional opinion as a
18 biologist, is the status update for the ferruginous
19 hawk published by WDFW best available science?

20 MS. PERLMUTTER: Your Honor, I
21 object. The witness has asked for clarification of the
22 question and shouldn't be made to answer until the
23 question is clarified.

24 JUDGE TOREM: Sustained. I think we
25 need to have a definition of that, Ms. Voelckers. So

1 if you can either state it or ask for the witness to
2 explain his best understanding of the term, and then
3 clarify your question, you can proceed from there.

4 Q (By Ms. Voelckers) Mr. Jansen, how do you define "best
5 available science"?

6 A Well, it's actually written in the Washington
7 Administrative Code 365-195. So it's -- it's been
8 defined in the --

9 Q Again --

10 A -- administrative codes.

11 Q Okay. I'm sorry to interrupt you. But I'm not asking
12 for your -- the legal opinion that you might have. I'm
13 asking for your opinion as a biologist and a
14 professional in your field.

15 JUDGE TOREM: Mr. Jansen, just put
16 it in your own words.

17 THE WITNESS: Yes, sir.

18 You know, I -- I look at best available science as
19 an aggregation of information from various reputable
20 sources. WDFW would, of course, be one of them. I
21 think that best available science includes not only
22 peer-reviewed literature but gray literature. I think
23 that best available science includes site-specific data
24 and information and collectively can be used to inform
25 land management, other management decisions.

1 Q (By Ms. Voelckers) Understanding that that is your
2 professional opinion on best available science, do you
3 consider WDFW's status update for ferruginous hawks to
4 be best available science?

5 **A (Videoconference technical difficulties) of**
6 **(videoconference technical difficulties), yes.**

7 Q I'm sorry. I didn't -- that was garbled on my end.
8 Was that a "yes"?

9 **A I see that as a source of best available science, yes.**

10 Q Okay. Thank you for clarification.

11 So also hearing that definition of "best available
12 science," do you agree or disagree that the two-mile
13 core use area buffers recommended by WDFW for this
14 project are based upon best available science?

15 **A Not as implemented, Ms. Voelckers. I think that it's a**
16 **little bit more nuanced at the Horse Heaven Hills,**
17 **considering the landscape characteristics of existing**
18 **development. A blanket application of a two-mile**
19 **radius, I think, doesn't include that context or**
20 **consideration.**

21 Q And you think the project design as it's currently
22 proposed is consistent with best available science?

23 **A I think with some of the modifications, it's -- it's**
24 **increasing the (videoconference technical difficulties)**
25 **available science, yeah. I think site designs are not**

1 **science.**

2 Q So understanding that we weren't able to ask WDFW their
3 opinion about those new project designs, if we even
4 take into account all the project design modifications
5 included in the Moon memo, is it your opinion that the
6 project design is consistent with best available
7 science?

8 **A Yes.**

9 MS. VOELCKERS: I'm going to try to
10 share something on the screen.

11 Your Honor, I apologize. If I may have just two
12 minutes here.

13 JUDGE TOREM: We're waiting.

14 While we're waiting for Ms. Voelckers,
15 Ms. Reyneveld, if you can hear me, we had a number of
16 your exhibits for cross-exam that were mentioned this
17 morning. I think three of them were 3017, 3018, and
18 3019.

19 Did you have any others that you referenced in
20 cross-examination that you sponsored that I've missed?

21 MS. REYNEVELD: I don't believe so.
22 I believe that's an accurate list, Your Honor.

23 JUDGE TOREM: Did you want to move
24 their admission, or were they just used for purposes of
25 cross and that's it?

1 MS. REYNEVELD: I'll move their
2 admission.

3 JUDGE TOREM: All right. While
4 Ms. Voelckers is working on her exhibit, do parties
5 have any objection to the admission of 3017, -18, and
6 -19?

7 MS. PERLMUTTER: No, Your Honor.

8 JUDGE TOREM: I'm not seeing any
9 other objections. So we'll admit those and take care
10 of that part of the housekeeping.

11 (Exhibit Nos.

12 3017_X_Redacted, 3018_X, and
13 3019_X_Redacted admitted.)

14
15 JUDGE TOREM: Ms. Voelckers, we'll
16 ask you the same question eventually about 4014 and
17 4016 whenever you're ready to display what you've got
18 on the screen. Let's go ahead.

19 Mr. Aramburu, did you have a concern? Apparently
20 not.

21 MR. ARAMBURU: No. I'm -- I'm
22 sorry. We're trying to work through our -- our
23 connection problem, so we will (videoconference
24 technical difficulties).

25 JUDGE TOREM: Thank you.

1 Ms. Voelckers, how's the screen share coming
2 along?

3 MR. ARAMBURU: Okay. So it looks
4 like we're back to working on this.

5 MS. COHOE: Yes.

6 MR. ARAMBURU: So let's put that one
7 back to the --

8 JUDGE TOREM: Mr. Aramburu, we can
9 hear you, so...

10 Ms. Voelckers, any updates?

11 MS. VOELCKERS: Thank you, Your
12 Honor. I was trying to save Alex Shiley from having to
13 share the deposition, but if -- if it would be possible
14 to bring up the deposition for Mr. Watson that's been
15 admitted into the recorded and numbered this morning by
16 Ms. Masengale, I would appreciate that.

17 JUDGE TOREM: All right. We'll find
18 it as we can here.

19 All right. Ms. Voelckers, we're going to be
20 pulling up Mr. Watson's deposition. Do you have a page
21 number you want us to go to?

22 MS. VOELCKERS: Yes. Page of 17.
23 The bottom of Page 17 of the deposition transcript.
24 Line 17.

25 JUDGE TOREM: All right. That's

1 coming up on the screen here momentarily.

2 MS. VOELCKERS: Thank you so much.

3 Your Honor, I believe this is Page 17 of the PDF,
4 but I'm looking for the second half of Page 17 of the
5 transcript, which is a little bit down.

6 Thank you.

7 Q (By Ms. Voelckers) So, Mr. Jansen, if you could
8 read --

9 MS. VOELCKERS: And -- and perhaps
10 we could scroll a little more so that the full answer
11 to the question that starts with, "How do you define an
12 active nesting site," is shown.

13 Sorry. That was a little far.

14 **THE WITNESS: Okay. I've read it.**

15 Q (By Ms. Voelckers) Mr. Jansen, can you see that on
16 Line 17 through 24?

17 **A I can. Yes.**

18 Q Do you agree with Mr. Watson's focus on entire
19 territories rather than specific nesting sites?

20 **A Yeah, that's correct. We -- we discuss both in -- in
21 the reports.**

22 MS. VOELCKERS: Okay. And then if
23 you could scroll down a few more pages to Page 20 of
24 the transcript.

25 Scrolling a little further.

1 Q (By Ms. Voelckers) So the question that I asked of
2 Mr. Watson was whether it was important to avoid siting
3 wind projects close to occupied territories, and he
4 gave a multifaceted answer that, I think, provides a
5 pretty good summary of his concerns about wind energy
6 development.

7 And so I would ask that you read those first few
8 paragraphs starting on Line 9 there before I ask you
9 another question.

10 **A So from 9 to the next -- the next three pages?**

11 Q Those three paragraphs there.

12 **A Oh.**

13 Q I think there's just one more line that's off the
14 screen right now.

15 **A (Witness complies.)**

16 **Okay.**

17 Q Do you agree with Mr. Watson that the ferruginous hawks
18 are a specialized species in terms of their diet?

19 **A I would -- I would agree they -- they -- they typically**
20 **feed on small mammals, from rabbits to ground**
21 **squirrels. I would agree that's very specialized, but**
22 **they -- they do feed on (videoconference technical**
23 **difficulties).**

24 MS. PERLMUTTER: I'm sorry.

25 Mr. Jansen, you cut out after "they do feed on."

1 direct impacts as well as nest occupancy.

2 Q If the technical advisory committee determines through
3 that five-year raptor survey that the changes in the
4 raptor guild at this location are consistent with
5 Mr. Watson's recent research into how raptor guilds
6 change through long-term monitoring, what then happens?
7 What is the -- what is the solution at that point
8 through the TAC, the technical advisory committee?

9 A Yeah, that's a good -- that's a good question. I would
10 not -- I'm hesitant to speculate on the specific
11 management actions the TAC would make in that
12 situation. But there's data now, pre-construction
13 data, to help inform the raptor nesting community post
14 construction. And so the management actions that the
15 TAC could take, I would prefer not to speculate on
16 that.

17 Q In your rebuttal testimony, you said that the TAC was a
18 clearly defined process.

19 Where is the TAC process defined in the
20 application material?

21 A Well, I believe that the -- the TAC and its charter is
22 discussed in the habitat management plan, I believe.
23 And then there's been supplemental material provided to
24 EFSEC as well that discusses the potential charter and
25 the purview of the TAC.

1 Q Where is that supplemental material available to
2 review?

3 **A Once it leaves my desk, I don't know where it goes,**
4 **Ms. Voelckers. I'm sorry.**

5 MS. VOELCKERS: If we could now turn
6 to Page 25 of the transcript.

7 I apologize. One -- one second. I don't think
8 that's the exact page.

9 23 of the -- of the transcript, itself. At the
10 bottom of 23.

11 If we could scroll down so that the -- the answer
12 to that question at the bottom of 23 is visible.

13 Thank you.

14 Q (By Ms. Voelckers) Can you read that, please,
15 Mr. Jansen, before I ask you my next question?

16 **A Starting at Line 23?**

17 Q Yes.

18 **A (Witness complies.)**

19 **Okay.**

20 Q Do you agree or disagree with Mr. Watson that the edges
21 of arid agricultural lands may be key foraging areas
22 for ferruginous hawks, specifically for pocket gophers?

23 **A Yeah, I believe that that resource can be used by**
24 **ferruginous hawk. However, our survey data at the**
25 **project that was done over multiple years that focused**

1 on large birds, including raptors, we surveyed over a
2 thousand hours of survey, and use of ferruginous hawk
3 in the project area was very low.

4 If ferruginous hawk are using the project area for
5 hunting and for taking advantage of pocket gophers, the
6 survey data that we collected did not indicate that.

7 Q Did you conduct any surveys specific to pocket gophers?

8 A No.

9 Q And why not?

10 A They're not a priority habi- -- they're not a priority
11 species in Washington. They -- as far as I believe,
12 they are not. But that type of assessment was not
13 conducted.

14 MS. VOELCKERS: If we could switch
15 now to Exhibit 1022. I have a few questions about your
16 rebuttal testimony, starting on Page 3.

17 Q (By Ms. Voelckers) At Lines 6 through 8, you stated
18 that you do not consider Mr. Neutzmann to be familiar
19 with the body of independent study and research that
20 has been conducted for the project?

21 A That's correct --

22 Q What body -- what body of independent study and
23 research are you referring to there?

24 A So we conducted -- starting in 2017, we initiated a
25 raptor nest survey and continued those biological

1 studies (videoconference technical difficulties) well,
2 since 2017, I suppose, is more than five years.

3 MS. PERLMUTTER: Mr. Jansen, you
4 broke up again.

5 THE WITNESS: Since 2017 is more
6 than five years. But this includes raptor nest
7 surveys, avian use surveys, wetland data, habitat
8 mapping, (videoconference technical difficulties)
9 biological technical studies that were conducted for
10 this project.

11 Q (By Ms. Voelckers) So is it fair to say that you're
12 referring to your own research for this project when
13 you discuss independent studies and research?

14 A My own research in addition to the other studies that
15 were conducted by other firms.

16 Q Which other studies? Tetra Tech?

17 A That -- that's correct. I believe they -- they did the
18 habitat mapping, which is a fine-scale delineation of
19 habitat types at the project area. I believe that they
20 did a rare plant survey, a wetland delineation survey.

21 Q Were any of those peer-reviewed?

22 A Not in the classical sense that you are thinking about.
23 But they certainly go through internal reviews from
24 colleagues.

25 We review our reports with WDFW as well to provide

1 them the opportunity to provide comments on study
2 designs and things of that nature. And they typically
3 do not offer much feedback unless there's something
4 obviously wrong.

5 MS. VOELCKERS: And then if we could
6 turn to Page 4. The next page, please, at the top of
7 Page 4.

8 Q (By Ms. Voelckers) Starting on Line 2, you said that
9 the project cast a wide net that integrated
10 site-specific data, regional data, and expert opinion.

11 You see that sentence there, Mr. Jansen?

12 A I do. Yes.

13 Q Isn't it true, though, that the applicant ignored WFW's
14 expert opinion in its project design?

15 A No, I don't -- I don't believe so. That -- that
16 opinion, again, came at the end of 2021, just prior to
17 the submittal of the updated ASC. And that
18 recommendation, let's say, came from a single meeting
19 where it was discussed, where this unpublished data was
20 discussed, but not enough time to really incorporate
21 that into the document. Because of the lack of --

22 MS. VOELCKERS: If we could turn
23 to --

24 THE WITNESS: -- specificity --

25 MS. VOELCKERS: Oh.

1 THE WITNESS: Sorry. Sorry,
2 Ms. Voelckers.

3 MS. VOELCKERS: Go ahead.

4 THE WITNESS: Because of the --
5 because of the lack of specificity about how to treat
6 historical nests and other things of that nature, there
7 was just not enough time to completely incorporate what
8 Mr. Watson was discussing during that meeting.

9 Q (By Ms. Voelckers) Is this merely a timing issue,
10 then, in terms of tech- -- I mean, timelines on a
11 calendar, or is this a difference of scientific
12 opinion?

13 A I think the lack of spec- -- I think there's a
14 difference in opinion on how to treat some of the
15 resources within each territory; specifically, the
16 historical nests that are no longer on the landscape
17 and in close proximity to large residential houses.

18 My 2023 raptor nest report discusses residential
19 buildings within one kilometer of the various nests
20 within the 18 territories in Horse Heaven Hills. And
21 so I think that there is a fundamental difference about
22 how to treat some of these territories based on --
23 based on Jim's direction during that meeting.

24 Q Are you aware that WDFW is actively working to update
25 the outdated 2004 PHS guidelines?

1 **A I'm not, but I encourage that and look forward to**
2 **seeing that.**

3 MS. VOELCKERS: I'm going to ask
4 that we switch to the -- the final exhibit that was
5 filed by Yakama Nation this morning, EX 4015, please.

6 MS. PERLMUTTER: And, Your Honor,
7 while that's coming up, I'm going to object to any
8 reference to this document. This is something that
9 was -- it's dated July 3rd. It was not produced to us
10 until 6:00 this morning. It was sent to us on -- with
11 a link to a download.

12 We've had no opportunity to question Mr. Watson,
13 who, of course, was deposed on July 14th. We've had no
14 opportunity to review this document.

15 In any event, it's noted as a draft. This is --
16 it's highly inappropriate for this witness to be
17 questioned about a document that was produced to us
18 under these circumstances.

19 MS. VOELCKERS: Your Honor, if I can
20 respond.

21 JUDGE TOREM: Yes, please.

22 MS. VOELCKERS: This is a document
23 that was provided by WDFW in response to Yakama
24 Nation's subpoena, which was never challenged by the
25 applicant, and it was provided immediately following

1 Mr. Watson's deposition.

2 It is a clean copy of what was submitted as
3 Exhibit 8 to Mr. Watson's deposition, which has already
4 been admitted into the record. And I felt the need to
5 bring a clean copy so that the Council would have the
6 most updated version.

7 But this is produced in response to the subpoena
8 the applicant did not challenge. And I'm not going to
9 be asking, you know, Mr. Jansen to speak to the
10 specific provisions within it, but rather, to the --
11 the value of this document to the Council's
12 consideration.

13 MS. PERLMUTTER: Your Honor, may I
14 respond?

15 JUDGE TOREM: I was going to ask you
16 to.

17 MS. PERLMUTTER: Thanks, Your Honor.

18 First of all, whether something is provided --
19 whether a party objected to a subpoena has no bearing
20 whatsoever on the admissibility of a document. That's
21 the first thing.

22 The second thing is that Ms. Voelckers has just
23 represented that this was produced to the -- to the
24 Yakama Nation, quote, immediately following
25 Mr. Watson's deposition. Again, that deposition took

1 place on July 14th. We are here at August 22nd. And
2 at 6:00 in the morning, we got a copy of this.

3 If Ms. Voelckers wants to ask about an exhibit to
4 the deposition, that's a different story. But,
5 frankly, to the extent that she wants to ask him not
6 about the substance of the document but what his
7 thoughts are generally about the idea of this document,
8 which is what I'm hearing, then certainly that can be
9 done without needing to put this document into
10 evidence.

11 JUDGE TOREM: Do you have any
12 concern with her assertion that this was an exhibit to
13 the deposition that was previously admitted, was one of
14 the things stipulated to in Preconference 4 or 5?

15 MS. PERLMUTTER: Again, Your Honor,
16 as you know, I didn't participate in those preparing
17 conferences. I'll tell you that this document came in,
18 again, as I've represented it, two minutes after 6 this
19 morning. I certainly had other things on my mind and
20 was not looking --

21 JUDGE TOREM: Yeah.

22 MS. PERLMUTTER: It was not
23 identified as an exhibit.

24 JUDGE TOREM: And I realize that, as
25 a whole, Stoel Rives did participate, and I --

1 Mr. McMahan can jump in here from the other room there
2 if he disagrees. But I think this was already
3 previously admitted, and we're -- we're fighting and
4 wasting valuable time over a document that's elsewhere
5 in the record and can be used for cross-examination
6 here.

7 Mr. McMahan, do you disagree with that assessment?
8 At least as to the document already being in the
9 record.

10 MR. McMAHAN: Your Honor -- okay.
11 Good. That works.

12 Your Honor, Tim McMahan here. This -- we do not
13 believe this document was actually produced as an
14 exhibit in the deposition at all. So that is the main
15 concern we have, which is kind of fundamental.

16 JUDGE TOREM: Ms. Voelckers, I'm
17 going to ask you to put that on the screen, just the
18 front page of it. And then I'm going to work with
19 Ms. Masengale's expertise, if she's still listening, to
20 take a look at the corresponding deposition exhibit and
21 confirm what I think is going on here.

22 And then I apologize to the Council and other
23 members listening that we're spending some time on an
24 evidentiary point, but I want to be clear if this
25 document can be used today as Ms. Voelckers is

1 requesting or not.

2 Ms. Voelckers, which deposition again for
3 Ms. Masengale so she can pull it up?

4 MS. VOELCKERS: Thank you, Your
5 Honor. The same deposition that was on the screen,
6 Mr. Watson's deposition. And I'm happy, through our
7 housekeeping conference, to provide additional support
8 for this, including the e-mails from WDFW's legal
9 counsel, as well as the specific pages -- I don't have
10 it off the top of my head, but Mr. Watson referenced
11 what was in front of him that day as Exhibit 8 and said
12 that there was a more updated version of that exhibit
13 that was clean of red-line edits.

14 And so immediately after the deposition, I asked
15 for that from WDFW's counsel. Ms. Perlmutter was at
16 the deposition. She did ask questions for about an
17 hour of Mr. Watson. And this -- I don't, again, intend
18 to ask about very, you know, specific recommendations
19 in this document, but I don't understand, based upon
20 the representations of Mr. Watson and legal counsel,
21 that this is materially different than what was in
22 front of everyone as Exhibit 8 in July.

23 And I'm happy to follow up with the parties and
24 Your Honor further in a housekeeping session, but I do
25 want to at least ask the witness about his opinion

1 about the -- the update to PHS guidelines.

2 JUDGE TOREM: Okay. Let's stop the
3 discussion here. It's gotten beyond legalese and the
4 time constraints that we have. This witness is
5 supposed to be on and off before 2:30, and we're using
6 valuable time here. I still need to get back to other
7 people for questions.

8 I can see on the screen an indication that there
9 was such an Exhibit 8. I would very much appreciate it
10 if you would just ask the general question so we don't
11 spend more time spinning around, looking for a document
12 that's potentially not the same document that was at
13 the deposition.

14 So let's see if we can ask your general questions
15 and have Mr. Jansen give his response, and if he needs
16 the document, we'll reengage on this.

17 MS. VOELCKERS: Thank you, Your
18 Honor.

19 Q (By Ms. Voelckers) Mr. Jansen, have you reviewed any
20 of the proposed updates to the 2004 PHS guidelines that
21 WDFW is working on?

22 **A I have not, no.**

23 Q Mr. Watson testified that he had sent a draft, which is
24 the exhibit that I referenced a minute ago, for
25 internal review and that he expected those new

1 guidelines to be formally adopted as early as four
2 months from his deposition in July, which would be
3 before the end of this year and before the end of the
4 Council's review of this specific project application.

5 In your professional opinion, is it important for
6 the Council to incorporate updated guidance from the
7 Washington Department of Fish and Wildlife in their
8 decision on this project?

9 **A Certainly. I believe it's important to, as part of,**
10 **you know, the science -- science is not policy or**
11 **permitting, but it -- it can influence both. And that**
12 **information from WDFW should be as accepted as**
13 **information from the applicant. I don't know what**
14 **these recommendations are, if it's -- if it's feasible**
15 **or not, but I guess that's my answer.**

16 MS. VOELCKERS: Okay. We can move
17 on. Thank you for clarifying that.

18 The last exhibit that I'm going to ask to be
19 shared on the screen is Exhibit 4014, which has already
20 been admitted.

21 JUDGE TOREM: It's been used before,
22 but I don't think, Ms. Voelckers, I've actually
23 formally admitted 4014, -15, or -16. We'll come back
24 to that hopefully as you wrap up.

25 MS. VOELCKERS: Thank you, Your

1 Honor. This is the one -- this is the Moon memo,
2 though, not any of the new exhibits from today.

3 JUDGE TOREM: Yeah, fair enough. It
4 may have been admitted under a different number. But
5 we'll make sure.

6 MS. VOELCKERS: I'm sure
7 Ms. Masengale will set me straight if it's
8 (videoconference technical difficulties).

9 MS. MASENGALE: For the record, this
10 is Lisa Masengale.

11 Sorry. There's an echo.

12 We do have 4014 marked as admitted. But I do want
13 to draw attention to the fact that there's a
14 confidential version of it as well as a redacted
15 version of that exhibit.

16 MS. VOELCKERS: And I don't -- I
17 don't intend to ask anything about the confidential
18 version that was discussed this morning in closed
19 session.

20 Q (By Ms. Voelckers) Do you recognize this document,
21 Mr. Jansen?

22 **A I do.**

23 Q Did you author any portion of Exhibit 4014?

24 **A No. You will see that my name isn't on the cc list.**
25 **Those were -- were people that were involved in**

1 developing -- primarily involved in developing this
2 document. However, I did review the document and add
3 some -- and added some edits.

4 Q Did you participate in any meetings with EFSEC staff or
5 EFSEC consultants regarding this document?

6 A No. I don't believe so. 'Cause I wasn't personally
7 involved does not mean it happened. I believe that's a
8 better question for the applicant and for EFSEC.

9 Q And one thing may be a better question for Mr. Rahmig
10 tomorrow.

11 To the best of your recollection, when did Scout
12 Clean Energy first decide to shift infrastructure away
13 from Webber and Sheep Canyons?

14 A I believe that was done -- we discussed that issue with
15 Mike Ritter during a site visit to the project where we
16 had, I believe it was EFSEC's consultant, WDFW, Tetra
17 Tech, me, and I'm probably missing some other people.
18 But we toured the project, and the infrastructure
19 issues in those canyon areas was discussed.

20 Q And understanding that there was a site visit. Do you
21 know when Scout Clean Energy, though, decided to make
22 that design modification?

23 A I'm not the developer. I don't know those -- those
24 exact dates. But it was informed, I think, during the
25 2019 or 2020 site visits with WDFW.

1 Q And if you know, do you know when Scout Clean Energy
2 first decided to reduce the size of the east solar
3 array?

4 **A I do not know those dates, no.**

5 MS. VOELCKERS: And on Page 3,
6 there's a section that discusses removal of Turbines 5,
7 6, 7, and 8. If we could scroll there, please.

8 Yeah, Section 1.3.

9 Q (By Ms. Voelckers) There's a reference to how this
10 will change resource impacts.

11 Has WDFW had a chance to provide feedback on
12 whether or not they agree with this representation of
13 the impacts of removal of Turbines 5, 6, 7, and 8?

14 **A I don't know what type of outreach Scout conducted**
15 **relative to this document. I would speculate that they**
16 **would be in favor of any type of turbine reduction at**
17 **the project which results in a net decrease in impacts,**
18 **but that's -- that's me speculating.**

19 Q Okay. Thank you for clarifying that that is
20 speculation.

21 So you're not aware of any outreach to WDFW to
22 provide feedback on this proposed design modification?

23 **A Not this specific memorandum, no.**

24 Q So is it fair to say that if I were to walk through
25 additional sections and ask the same question, that

1 you're not aware of any outreach to WDFW to obtain
2 their feedback on any of the design modifications in
3 this memo?

4 **A In spirit, these types of modifications have been an**
5 **ongoing discussion with WDFW. And, again, that --**
6 **that's in spirit. To decrease net impacts at the**
7 **project, reduce the footprint of the solar areas, I**
8 **think in spirit, all of these types of modifications**
9 **have been discussed with WDFW.**

10 Q And I appreciate the spirit of the collaborative
11 discussions that might have happened. I'm trying to
12 better understand, having just recently taken
13 depositions of multiple WDFW biologists on these exact
14 topics, whether they were aware of this memo and
15 whether or not they are able to respond to it in any --
16 in any way that you're aware of.

17 **A I think this was -- the date of this memo could**
18 **probably answer that question. I believe it was August**
19 **8th, which was after you deposed Ritter, Watson,**
20 **Fidorra.**

21 Q To your knowledge --

JUDGE TOREM: Ms. Voelckers.

22 Ms. Voelckers --

MS. VOELCKERS: Yes, Your Honor.

23 JUDGE TOREM: -- this is --

1 MS. VOELCKERS: I have two more --

2 JUDGE TOREM: -- Judge Torem.

3 MS. VOELCKERS: -- questions.

4 JUDGE TOREM: We're right at 2:00.

5 I'm going to cut you off at 2:05. So focus in on what
6 you really need, because you've gone well over the hour
7 we anticipated, and we have a hard stop for counsel for
8 the environment at 4:45 today. Five more minutes.

9 MS. VOELCKERS: Thank you, Your
10 Honor. I was just about to wrap up.

11 Q (By Ms. Voelckers) Mr. Jansen, to your knowledge, does
12 the applicant intend to make any further design
13 alterations to the project?

14 A **I believe that's outside my scope as a biologist and is**
15 **better asked to the applicant, itself.**

16 MS. VOELCKERS: Okay. I don't have
17 any further questions at this time.

18 JUDGE TOREM: All right. Thank you.

19 We have been going for an hour. I want to give
20 everybody a very quick stretch break. We'll be back at
21 2:05.

22 And, Ms. Perlmutter, hopefully you'll have a
23 chance to narrow it way down, as much as you can.

24 2:05, folks. Thanks. We're at recess.

25 ////

1 (Pause in proceedings from
2 2:01 p.m. to 2:05 p.m.)

3
4 JUDGE TOREM: All right. Thank you.
5 We're back on the record here with Mr. Jansen's
6 cross-examination, as scheduled, being complete.

7 Ms. Perlmutter, any redirect?

8 MS. PERLMUTTER: Yes, Your Honor.

9 JUDGE TOREM: Go ahead.

10
11 REDIRECT EXAMINATION

12 BY MS. PERLMUTTER:

13 Q Hi, Mr. Jansen. Thanks for your patience this
14 afternoon. I -- I know that there's a few things that
15 we need to clarify.

16 First of all, can you just explain the difference
17 between active nests and historic nests?

18 A Certainly.

19 Active nests are -- well, it's a little -- little
20 different as -- it's a little difficult because they're
21 not necessarily opposites. So an active nest, in my
22 definition that we've used in the raptor nest survey
23 reports, is a nest that is occupied by a ferruginous
24 hawk and that has evidence of breeding nesting
25 activity. That includes young, eggs, eggshell

1 fragments, or other sign of active -- actively
2 producing young.

3 Q And what's a historic nest?

4 A Historical nests -- thank you.

5 Historical nests are typically nests that have
6 once been occupied or active that's on the landscape
7 and found in WDFW's nest database that has been
8 requested, has been made in public data requests to
9 WDFW through their priority habitat and species
10 database.

11 These historical nests are typically in poor
12 condition in the Horse Heaven Hills. That indicates
13 that recent nesting activity has not occurred at these
14 nests. These nests -- these historical locations can
15 also be in good condition, because other raptor nest --
16 other raptor species may have nested in those nests, or
17 common raven may have nested in those nests, so those
18 nests have been maintained and updated with fresh stick
19 material.

20 Q So let me say this to you to make sure I understand.

21 So these historical nests might be nests that were
22 built by ferruginous hawks, but some other bird just
23 moves in?

24 A Initially they were constructed by ferruginous hawk,
25 and they show the classic characteristics of

1 ferruginous hawk nest construction. So either on the
2 ground or on a cliff, or sometimes they are found in
3 the trees, as we documented at a territory that we
4 talked about earlier today.

5 Q Is there -- and just explain to me, please, the idea of
6 a setback as it applies to this project.

7 What is a setback?

8 A Setback is a distance, so it's a spatial metric, and
9 the distance that turbines or associated infrastructure
10 are physically located from a nest.

11 There can also be other types of restrictions,
12 like temporal restrictions, that reduces activity
13 around a nest during certain periods, so time periods.

14 So setbacks can occur in both space and time.

15 Q And are those addressed in the -- the updated
16 application?

17 A They're incorporated -- yes, space and time is
18 incorporated and reflects WDFW's management
19 recommendations according to Larsen, et al., 2004.

20 Q Great.

21 A It also --

22 Q Go ahead.

23 A It also incorporates some of the personal communication
24 that (videoconference technical difficulties) WDFW.

25 For example, Ms. Reyneveld asked earlier today

1 about the .25-mile distance that was in the distance
2 assessment memo that we discussed. And in looking
3 back -- I provided a poor answer back -- that .25-mile
4 distance came from personal communication with WDFW.

5 Q And do the setbacks, the concept of setbacks -- you've
6 talked about spatial and temporal setbacks. Do those
7 apply to what you've defined as active nests or
8 historical nests, in particular? How do those relate,
9 please?

10 A We've -- we've tried to apply these setbacks to nests
11 that have been occupied during the five years of survey
12 at the project to hone in on those nests that are most
13 sensitive based on the nesting history. They have not
14 been done at all historical ferruginous hawk nests,
15 because simply some of them are simply not on the
16 landscape anymore.

17 I would encourage Council members to review my
18 document -- I believe it was produced in 2022 --
19 Patterns of Ferruginous Hawk Nesting in the Horse
20 Heaven Hills, where I provide photographic evidence of
21 every single nest in the Horse Heaven Hills, every
22 single ferruginous hawk nest in the Horse Heaven Hills.
23 And there you can see the status and condition, the
24 characteristics of the nests in question.

25 Q How often have you surveyed the project area for

1 ferruginous hawks?

2 **A Surveys began in 2017, and collectively there have been**
3 **five years of survey. We took some time off, of course**
4 **(videoconference technical difficulties).**

5 Q Sorry. You broke up.

6 You took some time off for what?

7 **A COVID, because of the travel restrictions.**

8 Q Have you resumed those since?

9 **A Can you please repeat that?**

10 Q Have you resumed -- have you resumed the surveys post
11 COVID?

12 **A Yes, that's correct. We conducted surveys in 2022 and**
13 **2023, and we'll continue those surveys.**

14 Q When was the last time the survey disclosed a
15 ferruginous hawk on the project site?

16 **A We observed individual flying in Webber Canyon this**
17 **year. After close review of the historical nests in a**
18 **helicopter, we saw no evidence of recent nest tending**
19 **or nest activity. The last time a bird was physically**
20 **observed on a nest was in 2019. That was at the nest**
21 **that I discussed earlier with Ms. Reyneveld.**

22 Q Okay. And rather than going into confidential session,
23 that's the -- that's the nest that we discussed in
24 confidential session?

25 **A That's correct.**

1 Q Okay. Let me ask just one cleanup question.

2 You talked about IdentiFlight, and you said that
3 was a brand name.

4 What is IdentiFlight?

5 A IdentiFlight is a -- essentially a system of cameras on
6 top of a extendable pole that's mounted on a trailer.
7 And what this system does is it identifies birds in
8 flight. And the target species links in with the SCADA
9 system at turbines to curtail operation of the turbine
10 until the species has moved out of the danger zone,
11 which -- which can be designed in different ways.

12 The IdentiFlight technology typically has a
13 surveillance radius of one kilometer and can
14 effectively curtail in an area -- one unit can
15 effectively curtail about five turbines.

16 Q And when you --

17 A It is --

18 Q -- say cur- -- sorry. You go.

19 A It is a machine-learning technology, as I indicated
20 earlier, that uses photographic recognition to identify
21 a target species based on its input algorithm. So the
22 more it sees a species, the better it is at identifying
23 a species and effectively curtailing.

24 When you have rare occurrences, like ferruginous
25 hawk in the Horse Heaven Hills, I have seen at other

1 projects that implement IdentiFlight false positives.
2 So ferruginous hawk, although one of the larger Buteo
3 species in North America, has a -- has a overall
4 similar shape to red-tail hawk, Swainson's hawk, and
5 other congeneric raptor species.

6 So the identification and the training mechanism
7 in IdentiFlight I see will come with -- with a lot of
8 false positives because of the rare occurrence of the
9 species on the landscape.

10 Q So let me quickly say that back to you and make sure I
11 understand.

12 First of all, when you talk about Buteo species,
13 what is that?

14 A I'm sorry. So Buteo is the genus for a ferruginous
15 hawk. The scientific name is Buteo regalis, which
16 means a regal broad-wing bird. And so that is -- and
17 there are other species within that Buteo genus, as I
18 mentioned. Broad- -- no. Sorry. Rough-legged hawk,
19 red-tail hawk, and Swainson's hawk are the common
20 Buteos in the project area.

21 MS. PERLMUTTER: Your Honor, can the
22 record reflect my witness is speaking in Latin.

23 Q (By Ms. Perlmutter) The -- and so let me just go back
24 to the IdentiFlight issue. So -- and I'm going to say
25 this back to you quickly so I understand.

1 This is -- this is a system which identifies birds
2 by type. And when you talk about curtailment, I take
3 it they will shut down a turbine if they detect a bird
4 that falls within its algorithm; is that right?

5 **A That's correct. It essentially integrates within the**
6 **SCADA system, which is the operating mainframe of a**
7 **project, and takes it offline. And the turbine is**
8 **still allowed to feather. So feathering means it's**
9 **still freewheel, but it's not actively generating**
10 **electricity.**

11 We've seen a project in Washington, actually,
12 in -- in western Washington, where IdentiFlight is
13 implemented, that negative interactions with the target
14 species can still occur despite the use of
15 IdentiFlight. So it's not a panacea. It's to avoid
16 impacts at a project. It's -- it's a tool in the
17 toolbox, and it's a bright, shiny object that people
18 are keying in on, but it's definitely not the savior
19 that everyone makes it out to be. It's a tool.

20 **Q** Thanks.

21 You talked briefly about -- or there was some
22 discussion about the recovery of a species.

23 What does it mean to recover a species?

24 **A W -- I'll speak specifically to ferruginous hawk. WDFW**
25 **has, in their recovery plan, which I believe was 1999,**

1 from Richardson, et al., WDFW has specific recovery
2 criteria. And that recovery criteria, I believe, is
3 linked to a number of (videoconference technical
4 difficulties) territories within the state. So the
5 recovery criteria is -- is range-wide in Washington and
6 not necessarily site-specific like a project area.

7 Q To your knowledge, is the applicant required to recover
8 the ferruginous hawk species?

9 A No, they're not.

10 Q And there was some discussion about threatened versus
11 endangered species. Can you just tell us quickly what
12 that means?

13 A Yeah, I will try.

14 The distinction between those two classifications
15 is a little nuanced, and it deals with an increasing
16 threat to species viability and the factors that are
17 associated with the population viability of a species.
18 Extinct -- endangered essentially increases that
19 visibility and conservation or concern compared to
20 threatened species. But in my mind, they're still
21 State-listed and a species of conservation need.

22 Q And so does the uplisting of the ferruginous hawk
23 impact any of your conclusions or recommendations?

24 A It does not. I think that the species is still a
25 species of conservation need that is having quite a

1 **difficult time range-wide.**

2 Q Is that taken into -- is that taken into account in the
3 application?

4 A **Is -- is what taken into account?**

5 Q The concern about the -- about the species viability.

6 A **We attempted to address this issue with the population
7 viability analysis that we conducted for the project in
8 response to WDFW's concern about the population. We
9 wanted to model what factors, what sensitivity in the
10 vital rates that affected population viability.**

11 So in its way, yes, population viability was
12 addressed in the application through a supplemental
13 (videoconference technical difficulties).

14 Q You cut out.

15 Supplemental what?

16 A **Report that has been submitted on the EFSEC website.**

17 Q Awesome.

18 You testified that the project could be considered
19 a factor in the abandonment of nests.

20 Is that the only factor?

21 A **No. Unfortunately, the -- the bird faces a myriad of
22 conservation issues that influence nest failure, nest
23 abandonment, and nest occupancy. Those are discussed
24 in the 2021 periodic update from WDFW, and I've
25 provided a summary of some of those stressors in my**

1 technical reports.

2 Over 80 percent of native shrub-steppe habitat in
3 Washington has been eliminated due to agricultural
4 conversion and increasing and expanding development of
5 residential areas and essentially -- of residential
6 areas more specifically in the greater Tri-Cities area,
7 and exurban development places conservation stress and
8 affects nest failure, occupancy, and nest abandonment.

9 There are many more. Use of rodenticide,
10 pesticides, shooting from an uninformed public,
11 (videoconference technical difficulties) collisions,
12 specific species --

13 Q Wait. We lost after "collisions."

14 What did you say?

15 A Vehicle collisions, competition with conspecific
16 species, declining prey populations based on a myriad
17 of other factors, climate change, habitat aversion,
18 drought, fire. I mean, there are a lot of conservation
19 issues that this bird faces not only in Washington but
20 throughout each range in the Western United States.

21 After the bird leaves Washington, after it's done
22 nesting in Washington, research has shown, again from
23 Mr. Watson, that the birds will disperse into the
24 Intermountain West, throughout Colorado, the
25 Intermountain West, Alberta, Utah, go far distances,

1 and then our breeding population in Washington will
2 overwinter in California. Through this annual path,
3 there are a number of -- of hurdles that the bird has
4 to negotiate.

5 Q And you talked about residential development in the
6 Tri-Cities area.

7 Have you had an opportunity to look at that?

8 A Yeah, in depth. Because it's been apparent to me,
9 since flying this area since 2017, that residential
10 development has expanded within core areas of
11 ferruginous hawk.

12 So my 2023 raptor nest report identifies existing
13 development within one kilometer of all historical
14 nests. And those data show that some nests, the
15 territories, the nests within these territories,
16 nest -- residential areas have essentially been built
17 on top of some of these nests.

18 Other data indicates, so looking into the future,
19 you can get on any type of real estate website there
20 is -- Redfin, Zillow, Realtor.com -- and look at open
21 real estate listings in the Horse Heaven Hills. Based
22 on my recent analysis, there are over 591 acres for
23 sale in the Horse Heaven Hills, and I believe over 60
24 percent of those acres are in shrub-steppe habitat.

25 When you compare impacts from project development,

1 specifically in the micro-siting corridor, you can see
2 on Table 3.4-14 of the updated ASC that one acre of
3 dwarf shrub-steppe will be impacted and one acre of
4 sagebrush shrub-steppe will be impacted, for a total of
5 two acres. And, again, this is in the wind energy
6 micro-siting corridor.

7 So when you try to place the impacts from project
8 development in context with other sources of
9 anthropogenic disturbance in the Horse Heaven Hills,
10 you can see that there are relatively fewer impacts to
11 habitat compared to let's say upcoming housing
12 development in the Horse Heaven Hills.

13 I hope that was clear.

14 Q That was wonderfully clear. Thank you.

15 You talked briefly -- you indicated that you met
16 with Mr. Ritter many times to talk about mitigation
17 ratios, mitigation opportunities, and strategies.

18 When you talk about mitigation, what does that
19 mean?

20 A Mitigation is part of the WDFW mitigation policy. It
21 is compensatory habitat mitigation to offset impacts to
22 habitat consistent with the ratios that are discussed
23 in the 2009 WDFW wind power guidelines.

24 And so in these discussions, we talk about the
25 habitat. We talk about the extent of habitat, where

1 the habitat is located, the type of disturbance that is
2 being proposed, and that can include permanent
3 disturbance, temporary disturbance, which those areas
4 will be reseeded by native seed mix, or modified
5 disturbance, where habitat would still be present but
6 modified as is located in the solar fields.

7 Q And what's mitigation ratio?

8 A A mitigation ratio ranges from zero to one, and it's
9 the -- it is a ratio that discusses the amount of
10 habitat that will need to be mitigated for every one
11 acre of proposed impact.

12 So in shrub-steppe habitat, if you have an acre
13 that is being disturbed, the common mitigation ratio is
14 two. So if you impact one acre of shrub-steppe, you
15 have to mitigate that impact by compensating for two
16 acres of shrub-steppe. And that increased mitigation
17 ratio is because shrub-steppe provides a biologically
18 sensitive and important component to the ecosystem and
19 the -- the species that live in it.

20 That is why siting of the project strategically
21 avoided impacts to those areas because they're
22 sensitive, because more needs to be mitigated, and
23 impacts to those types of habitat, shrub-steppe
24 habitat, are -- are difficult to implement but
25 achievable, as seen in other mitigation programs. So

1 that's typically what a mitigation ratio is.

2 Moving further down the line -- so you have
3 shrub-steppe up here, and WDFW management
4 recommendations in the wind power guidelines state that
5 no mitigation is required for agricultural lands
6 (videoconference technical difficulties) are a value to
7 wildlife species.

8 Q So when you talk about compensation, mitigation
9 compensation, what -- what kind of -- are we -- what
10 does "compensation" mean in that context?

11 A It can take a number of forms. You can -- you can
12 provide habitat physical real estate. There are --
13 this is all discussed in the wind power guidelines, but
14 you can physically provide and protect habitat through
15 a conservation easement or other real estate-type
16 endeavor.

17 You can provide funding to WDFW to support their
18 conservation efforts, and they would apply that funding
19 to conserve like-kind or in-kind habitat resources.

20 And so those are the -- the -- the types of
21 mitigation options that are out there.

22 Q And are those -- are those addressed in the habitat
23 mitigation plan?

24 A (Videoconference technical difficulties.)

25 Q I'm sorry.

1 MS. VOELCKERS: Your Honor. Your
2 Honor, Shona Voelckers. This is, I think, getting into
3 new testimony, since we didn't ask about these
4 mitigation specifics. So if that's where this is
5 heading, then we are going to ask for additional time
6 for a recross on these topics that are coming in as new
7 testimony.

8 JUDGE TOREM: Ms. Perlmutter, are we
9 just about done with some of these mitigation issues?

10 MS. PERLMUTTER: We're very close to
11 it, Your Honor. Frankly, it was taking more time than
12 I intended to spend on it. But it was raised by
13 Ms. Voelckers in her -- in her questioning of Mr. -- of
14 Mr. Jansen.

15 JUDGE TOREM: No, I -- I understand
16 that. I just wanted to see if we were coming to an end
17 on it so it didn't expand beyond her cross-exam.

18 MS. PERLMUTTER: That's pretty close
19 to where I was going to stop on this issue.

20 JUDGE TOREM: All right. Thank you.
21 What other questions do we have as we proceed?

22 Q (By Ms. Perlmutter) Mr. Jansen, you've testified -- in
23 a couple places, talked about peer-review studies.

24 What -- what does it mean to be peer-reviewed?

25 A In a traditional sense, you would submit a paper to a

1 scientific journal. So while -- MDPs are found online
2 and are essentially a gold standard, let's say, for
3 scientific research. And peer review essentially, once
4 a journal receives your draft, they start submitting
5 your draft to other members of the scientific community
6 and subject matter experts in that -- in that
7 particular topic to provide critique and comments on
8 your -- on the research that you conducted.

9 Q So what's the effect of having a study peer-reviewed?

10 A It's -- it's attempted -- the attempt is to sharpen the
11 type of information that is out there. Unfortunately,
12 not all scientific data out there -- every -- every
13 project has its own limitations. The attempt is to
14 provide the scientific community with as good of a
15 (videoconference technical difficulties) as it can.

16 Q And you referred twice to something called gray
17 literature. I've never heard that.

18 What does that mean?

19 A Gray literature is typically where -- where I fall in.
20 So, for example, Ms. Voelckers brought up the
21 Washington (videoconference technical difficulties)
22 Working Group report that discusses linkages and
23 corridors. That can be an example of gray literature.
24 WDFW's management guidelines is an example of gray
25 literature. So it hasn't gone through the formal

1 **peer-review process that I described.**

2 Q And Ms. Voelckers asked you about this Washington
3 Connected Landscapes Project report.

4 Is that -- is that the kind of gray literature
5 you're talking about?

6 **A That would be included. Correct.**

7 Q And whose report was that? Who -- who put together the
8 Washington Connected Landscapes Project report?

9 **A I believe that was a collaborative project conducted by**
10 **U.S. Fish and Wildlife Service, Washington Department**
11 **of Natural Resources, as well as non-profits like The**
12 **Nature Conservancy.**

13 MS. PERLMUTTER: Your Honor, I think
14 we may be done with my questioning. I'd like to take a
15 minute to caucus with my colleagues and just make sure
16 nobody's got anything else. But I think we're pretty
17 close.

18 JUDGE TOREM: All right. And while
19 you do that caucusing, I'm going to survey the Council
20 members to put their electronic hands up so we know how
21 many questions or how many members might have questions
22 for this witness.

23 And for those that might not be able to see the
24 screens on the far right-hand side, we've got Chair
25 Drew, Lenny Young, Mike Livingston, and Eli Levitt that

1 will have some questions for you, Mr. Jansen.

2 Ms. Perlmutter, what does the caucus say in your
3 ears?

4 You're on "mute."

5 MS. PERLMUTTER: Sorry. I was
6 coughing.

7 I've been listening to you, so I haven't -- I was
8 waiting to turn to them. If we could have five
9 minutes.

10 JUDGE TOREM: I'll give you two.
11 And I'll just go off camera here and mute. But two
12 minutes to stretch, and we'll come back on. Thanks.

13 MS. PERLMUTTER: Your Honor, I
14 just -- with all respect, I --

15 JUDGE TOREM: Just take it -- you've
16 got two minutes.

17 (Pause in proceedings from
18 2:36 p.m. to 2:37 p.m.)

19
20 JUDGE TOREM: All right.

21 Ms. Perlmutter, short break. What did you get?

22 MS. PERLMUTTER: I have nothing
23 further, Your Honor.

24 JUDGE TOREM: Thank you. Sorry to
25 rush you.

1 Chair Drew, I'm going to turn off my mike here.
2 Your questions, please.

3 COUNCIL CHAIR DREW: Thank you.

4 Thank you, Mr. Jansen, for your testimony today.
5 I wanted to ask specifically about curtailment as a
6 management option. You mentioned the Identiflight
7 technology. But are there other curtailment options?

8 I did hear you in the confidential testimony. I
9 don't think this is confidential. You used a term that
10 is smart curtailment.

11 Could you describe something that you think is
12 smart curtailment that could potentially be considered
13 in a project such as Horse Heaven Hills?

14 THE WITNESS: Sure. Thank you for
15 the question, Chair Drew.

16 There are other technologies out there. I believe
17 DeTect has a -- a curtailment system as well. But
18 those two, DeTect and Identiflight, are used most
19 widely.

20 Smart curtailment typically -- and we apply this
21 for bats in the -- the Midwest a lot when dealing with
22 threatened and endangered federal species.

23 You can curtail -- optimize a curtailment program
24 based on time of day as well as the time of year when a
25 species is most likely to be present. You can

1 integrate project-level data into a curtailment program
2 that optimizes the effectiveness of a curtailment
3 program.

4 For example, based on raptor nesting data that
5 will be conducted five years post-construction, you can
6 incorporate those types of data to selectively identify
7 which turbines should be curtailed using an optimized
8 duration of that curtailment to be more effective in
9 your curtailment strategy.

10 Does that make sense?

11 COUNCIL CHAIR DREW: Thank you.

12 Yes.

13 And that would be done likely with the --
14 integrated into a technical advisory committee that
15 would have resource agencies involved as well?

16 **THE WITNESS: That's correct.**

17 COUNCIL CHAIR DREW: Thank you.

18 JUDGE TOREM: All right. I know we
19 had four Council members total before. We have
20 Mr. Levitt and -- Ms. Grantham, did you have something?
21 Apparently not.

22 MS. GRANTHAM: I did not. I do not
23 know why my hand was raised. I apologize, Your Honor.

24 JUDGE TOREM: All right. Could have
25 been an artifact in the system there.

1 Mr. Levitt, let's come to you and then
2 Mr. Livingston and then Mr. Young.

3 COUNCIL MEMBER LEVITT: Hello,
4 Mr. Jansen. My name is Eli Levitt. I'm a section
5 manager at the Washington Department of Ecology and
6 Ecology's official EFSEC Council member.

7 Thank you for your testimony today. I find the
8 information we've learned from all the experts on this
9 topic quite fascinating.

10 I guess, you know, the life of the project is 30
11 years. So, you know, hypothetically, let's say it goes
12 in, in 2030, wraps up around 2060.

13 During that span, perhaps one topic we haven't
14 gotten into detail about is lots of things can change.
15 Increased temperatures, decreased water availability,
16 increased risk of wildfire over time.

17 How does that all factor into the health of the
18 species we've discussed today?

19 **THE WITNESS: And I'm assuming --**
20 **thank you for that question. I'm assuming you're**
21 **referring to ferruginous hawk?**

22 COUNCIL MEMBER LEVITT: Yes,
23 primarily.

24 **THE WITNESS: Okay. Yeah, I think**
25 **the -- the crystal ball in that type of scenario that**

1 you've put forward with increasing climate change,
2 maybe reduction in prey resources, wildfire, I think
3 that would have to be integrated into a situationally
4 dependent conversation with stakeholders in a technical
5 advisory committee, which should be formed and active
6 during the life of the project.

7 So, for example, if there's an increased risk of
8 wildfire during a particularly dry year, then maybe the
9 project needs to modify some of its operations. Or
10 maybe -- and that's just one example that could be put
11 forward. Maybe more firefighting resources need to be
12 applied in specific areas based on a certain activity.

13 I think the issue of climate change is an
14 important one, and that's essentially the reason for
15 projects like this, is to reduce fossil fuel-emitting
16 energy generation.

17 Does that answer your question?

18 COUNCIL MEMBER LEVITT: Yes. I
19 think so. Thank you.

20 THE WITNESS: Okay.

21 JUDGE TOREM: All right.

22 Mr. Livingston, we'll come to you next.

23 COUNCIL MEMBER LIVINGSTON: Thank
24 you, Your Honor.

25 Hi, Mr. Jansen. Mike Livingston, Washington

1 Department of Fish and Wildlife.

2 So regarding ferruginous hawk, I do have a few
3 questions here. Try to get through them.

4 Maybe one of the last topics you touched on,
5 occupied nest versus occupied territory.

6 Sometimes you can have an individual present in a
7 territory that may not be mated up yet. It doesn't
8 have a mate. And so it may not be tending a nest; is
9 that correct?

10 **THE WITNESS: That's correct. You**
11 **have nonbreeding individuals. So your statement's**
12 **correct.**

13 COUNCIL MEMBER LIVINGSTON: Okay.
14 So they -- they may not be nesting for a year or more,
15 but present in the territory.

16 So, and ferruginous hawks will rebuild or build
17 new nests in a territory, right?

18 **THE WITNESS: That's correct.**

19 COUNCIL MEMBER LIVINGSTON: So the
20 use of territories -- it seems to me the use of
21 territories would be a good and important metric to use
22 in relation to their presence in the project area.

23 **THE WITNESS: That's correct. Some**
24 **territories are composed of multiple nests. And some**
25 **territories, like the one we discussed in the closed**

1 session, is composed of just one nest. I believe that
2 we discussed both territories and nests in the -- in
3 the technical work.

4 COUNCIL MEMBER LIVINGSTON: Yeah. I
5 just wanted my fellow councilpeople to understand
6 the -- the difference. 'Cause sometimes a nest is --
7 is unoccupied for a while, but there will be a bird
8 there waiting to find a mate to then initiate nesting.
9 And so it's important. Yeah, they're lonely, I can
10 see.

11 THE WITNESS: I agree --

12 COUNCIL MEMBER LIVINGSTON: So --

13 THE WITNESS: -- Mr. Living- -- I
14 agree, Mr. Livingston. When -- when we look at WDFW's
15 data from when surveys for this species began in 1978
16 to the most recent statewide survey effort in 2016,
17 when you look at the median year that nests were --
18 territories were occupied in the Horse Heaven Hills,
19 the median year was 1994. Now, this is using your --
20 your PHS data.

21 COUNCIL MEMBER LIVINGSTON: Yeah.

22 So in -- I think it was in Exhibit 1022, in your
23 rebuttal to Mr. Neutzmann, you listed -- and you talked
24 about it actually a little while ago. You listed many
25 factors that have contributed to the decline of

1 ferruginous hawks. And I appreciate you listing those.
2 This is probably more airtime that ferruginous hawks
3 have had in the public eye and for all of the -- the
4 factors that have contributed to their demise in some
5 respects.

6 In -- in -- in response to that, our Fish and
7 Wildlife Commission recently uplisted them to -- from
8 threatened to endangered because of the continuous
9 declines.

10 In a lot of those types of developments that you
11 mentioned, the housing developments and whatnot, we do
12 interact with the local City and County planners. We
13 try to influence them on a regular basis to avoid
14 impacts to priority habitat and species.

15 You know, the difference there between there and
16 today is that we have an official vote as far as, you
17 know, for me for Fish and Wildlife as well as the other
18 Council members, and in a lot of those other venues,
19 all we can do is try to influence them.

20 So, you know, this -- this is a really important
21 point to make that we have this -- this weight upon
22 some of us to try and figure out the right decision.

23 So the -- you know, thinking about that, is there
24 other recommendations you'd have for us to consider
25 relative to our inability to influence those other

1 developments and here we are with this project in front
2 of us, which one that we can actually influence. And
3 I'm just wondering if you have any advice for me going
4 forward related to that.

5 **THE WITNESS:** Well, I think that
6 that's -- I'm humbled that you asked me that. I -- I
7 think -- I think it's difficult. The conservation
8 challenges that the bird faces are -- are stiff. And
9 this bird is -- has a lot of issues against it, not
10 only within its breeding range but also in its
11 overwintering range in California and all the middle
12 times during its travel.

13 I -- I find it -- I found the develop- -- the
14 residential development in the Horse Heaven Hills
15 disheartening, where you have a median distance of .25
16 miles residential development to a nest, most
17 (videoconference technical difficulties) areas. And so
18 I think that better interfacing with the developers in
19 the Horse Heaven Hills could influence the scope and
20 scale of residential development where over 500 acres
21 are planned for sale this year, most within
22 shrub-steppe habitat.

23 Maybe it's -- maybe it's an education thing that
24 working with land developers and critical issue area
25 ordinances and Benton County to stress the reduction in

1 the scope and scale of human development within the
2 Horse Heaven Hills.

3 I don't have a simple answer for you
4 (videoconference technical difficulties) question.

5 COUNCIL MEMBER LIVINGSTON: I
6 appreciate you giving me what you did give.

7 So as a Council member, I am very isolated as far
8 as my ability to ask questions related to WDFW staff.
9 I can't. Then yet during this project, I've had
10 some -- some broader contextual questions about
11 ferruginous hawks, in particular, that I'm hoping that
12 maybe you could help me with, if we could, you know,
13 try anyway.

14 So do you know how many hawks we have left in
15 Washington State?

16 THE WITNESS: The estimates vary. I
17 believe I've gone over this in multiple documents.
18 Your 2001 status update for this species states 40
19 (videoconference technical difficulties) breeding
20 pairs, so 48 times two. But then you have floaters,
21 which are transitory and nonbreeding individuals, as
22 well as juveniles.

23 COUNCIL MEMBER LIVINGSTON: Yeah.
24 Okay.

25 THE WITNESS: So, but those are --

1 those are small population numbers, Mr. Livingston.

2 COUNCIL MEMBER LIVINGSTON: Yeah.

3 Do you -- do you know what the core range of
4 ferruginous hawks are in Washington State?

5 THE WITNESS: Core range, the --

6 COUNCIL MEMBER LIVINGSTON: Yeah.

7 It's the species distribution in Washington and where
8 they're primarily located.

9 THE WITNESS: I do. WDFW,
10 Richardson, et al., in their recovery program,
11 delineated core breeding areas within Washington. And
12 they range from the Rattlesnake Hills, so moving from
13 west to east, Rattlesnake Hills, Horse Heaven, Franklin
14 County and the Juniper Dunes area, the -- the Washtucna
15 Coulee, and I think it's -- I think, is that Grant
16 County? Columbia County. So there are core breeding
17 areas where historical nesting has been focused.

18 COUNCIL MEMBER LIVINGSTON: You
19 broke up a little bit.

20 Did you mention Benton County? 'Cause that's --

21 THE WITNESS: I did. The Horse
22 Heaven Hills in Benton -- Benton and Franklin is -- are
23 the two counties that WDFW mentions most often. But
24 distribution of breeding individuals also occurs
25 throughout the state, in Rattlesnake Hills, Washtucna

1 **Coulee, (videoconference technical difficulties).**

2 COUNCIL MEMBER LIVINGSTON: Okay.
3 Thank you.

4 Just a few more here. Bear with me.

5 Can you consider the foraging areas as habitat,
6 ferruginous hawks'?

7 THE WITNESS: (Videoconference
8 technical difficulties) areas should be considered
9 habitat.

10 COUNCIL MEMBER LIVINGSTON: How
11 about the -- the airspace that they travel in to search
12 for prey?

13 **THE WITNESS: I think that's fair to**
14 **say.**

15 COUNCIL MEMBER LIVINGSTON: So, you
16 know, there's this -- there's this difficult thing. So
17 we're talking about shrub-steppe habitat, and then
18 we're talking about altered habitat. And we're -- most
19 these turbines are getting placed in altered habitat.
20 So there isn't this direct impact on quality
21 shrub-steppe habitat. However, the hawks, range-wide,
22 we've been discussing buffers and setbacks.

23 But I'm just curious. In the airspace where they
24 have to -- you know, where they actually get up in the
25 air and they're riding the thermals, they're searching

1 for prey, would -- you know, the turbines have -- have
2 some area that they occupy in that that is actually a
3 danger zone for the hawks.

4 Do you have any -- any information to share about,
5 you know, relatively speaking, what that danger area is
6 for a hawk?

7 **THE WITNESS:** The -- the -- the
8 danger area is essentially the rotor-swept area that is
9 occupied by the three turbine blades. And that
10 rotor-swept area, I believe, is defined in the ASC, in
11 Section 2.1, I believe.

12 Because there are two turbine options and four
13 turbine types. And each of them have different
14 specifications based on the technology. But those --
15 it's 2.3.1. Those specifications would -- would be
16 different for each turbine technology. And that --
17 that space, that airspace that the rotor-swept area
18 occupies would essentially, if the turbines are
19 operating, would essentially be removed from its
20 airspace habitat, let's say.

21 **COUNCIL MEMBER LIVINGSTON:** Yeah.
22 Yeah, it'd be a difficult thing to try to think of how
23 we would mitigate for airspace loss, but it is
24 something that we struggle with.

25 So in your -- in Exhibit 1022, on Page 10, you

1 discuss how many ferruginous hawk fatalities have been
2 documented in Oregon and Washington at wind facilities.
3 The number you mention was eight over the last 20
4 years.

5 Is it -- is it safe to assume some mortalities go
6 undetected at these facilities?

7 **THE WITNESS: That's correct.**
8 **It's -- and eight is including wind facilities in the**
9 **entire Columbia Plateau ecoregion of Oregon and**
10 **Washington. And then four have been observed,**
11 **documented in Washington wind facilities, including**
12 **three adults and one juvenile.**

13 I think it's a fair statement to say that some
14 individuals have not been recorded, so I think
15 that's -- and so I've attempted -- in my cumulative
16 impact assessment that was submitted in 2023 earlier
17 this year, I've attempted to take those fatality
18 estimates -- because post-construction fatality
19 monitoring produces an estimate, a fatality estimate.
20 And that is essentially derived by number of fatalities
21 per megawatt.

22 And what I've done is calculated the impact to
23 ferruginous hawk through different development
24 scenarios. Development scenario includes increasing
25 megawatts in Washington to respond to legislation.

1 COUNCIL MEMBER LIVINGSTON: Do you
2 know if the -- most of those fatalities are discovered
3 during the formal post-construction survey period?
4 Because there's a -- there's a period of time there
5 that, you know, there will be survey crews out, and
6 they do a lot of different studies to try and figure
7 out mortality, but then at some point that ends, and
8 then you have the life of the project.

9 THE WITNESS: Right.

10 COUNCIL MEMBER LIVINGSTON: And so
11 how do we account for all those that would go
12 undetected afterward?

13 THE WITNESS: That's a really good
14 question. And I think that we can see from previous
15 projects, what this project is going to implement is
16 a -- is a WERS program, worker reporting and incidental
17 handling program, that would -- it would be mandatory
18 for project workers to report any fatalities that they
19 see. Kind of like NTSA, see some- -- see something,
20 say something, kind of thing.

21 You'd see Nine Canyon through Energy Northwest has
22 implemented that strategy and has mandatory annual
23 reporting that's available to the public.

24 What I've seen in -- in my experience is that
25 wildlife fatalities do get reported by operational

1 **staff. Many of the projects that I work on, golden**
2 eagle fatalities (videoconference technical
3 difficulties) birds -- and it's kind of the conspicuous
4 event -- are often reported by -- by employees of
5 the -- of the wind facility.

6 So you do -- you're right in characterizing this
7 intensive period of -- of surveyors specifically
8 looking for dead stuff, but then you have this extended
9 monitoring program that occurs for the life of the
10 project.

11 COUNCIL MEMBER LIVINGSTON: Okay.
12 Thank you.

13 Let's see. I'm getting close to the end here.

14 Do you know if those -- so you describe what
15 the -- the hawks' core range is in Washington.
16 Those -- those larger proj- -- well, let me ask it this
17 way.

18 Were those facilities in the core range of the
19 hawk in Washington/Oregon?

20 **THE WITNESS: Those facilities in**
21 **the core range. The -- the facilities where the**
22 **fatalities occurred?**

23 COUNCIL MEMBER LIVINGSTON: Yeah.
24 Or that estimate of the eight out of the last 20 years.

25 **THE WITNESS: Those four fatalities**

1 in Washington occurred at two wind facilities. And I
2 believe it was the Gorge. I would have to verify with
3 you if this is correct, but I believe it was the Gorge
4 wind resource area and the (videoconference technical
5 difficulties) Snake, kind of Tucannon wind resource
6 area, in Walla Walla and Columbia counties. I believe
7 that's where those occurred.

8 COUNCIL MEMBER LIVINGSTON: Yeah,
9 and the reason I asked that question is that so we
10 don't have such a large facility right in the middle of
11 the core range of the hawk, and so I'm trying to get,
12 you know, get an understanding what we could expect in
13 addition in an -- in a project that is more core range
14 for ferruginous hawks.

15 Let's see.

16 So I guess I would just say: Do you agree with
17 the decline -- that with a declining species, we need
18 to exercise caution beyond what we normally would with
19 a common species like a red-tailed hawk?

20 THE WITNESS: I believe that's a
21 fair statement.

22 COUNCIL MEMBER LIVINGSTON: And
23 here's my final one. I promise.

24 So -- so you took exception to Mr. Neutzmann's
25 testimony where he suggested that the project could

1 lead to the extirpation of the species.

2 But could you -- would you agree that this project
3 could contribute, given the declining nature and
4 every -- every death and mortality with such a small
5 population is additive at some point, and so could you
6 agree to the statement that this could contribute to
7 the expirtation -- expirta- -- expir- -- I am running
8 out of words here -- extirpation of the species?

9 **THE WITNESS:** That's an interesting
10 question. I think that any fatality that occurs to
11 small (videoconference technical difficulties) that the
12 ferruginous hawk has could be a contributing factor.
13 But it's not like ferruginous hawk, if this project
14 gets built, ferruginous hawk are going to start falling
15 from the sky. That's simply not found in any of the
16 data that's been collected at the project, not from
17 avian use surveys, not from raptor nesting surveys.
18 And so I think it could be a contributing factor in
19 addition to all the other stressors that this -- this
20 bird faces.

21 **COUNCIL MEMBER LIVINGSTON:** Okay.
22 Thank you, Mr. Jansen. I appreciate the time.

23 **THE WITNESS:** Thank you.

24 **JUDGE TOREM:** Mr. Livingston, I very
25 much appreciate you bringing your expertise and helping

1 walk me and the Council to those issues.

2 I'm going to return to Lenny Young, and then we'll
3 see if there's any other Council member questions
4 raised by your colleagues.

5 Mr. Young.

6 COUNCIL MEMBER YOUNG: Good
7 afternoon, Mr. Jansen. My name's Lenny Young, and I
8 represent the Department of Natural Resources on EFSEC.

9 And I'm going to start by continuing with a couple
10 more questions following what Mr. Livingston asked you
11 about the collisions and blade strikes that have been
12 documented.

13 Is eight in Oregon and Washington over 20 years,
14 four of those being in Washington, how should we
15 contextualize that? Is that a little? Is that a lot?
16 Is that a big deal? What kind of an influence does
17 that level of documented mortality have on population
18 dynamics? Give us some context around those numbers.

19 THE WITNESS: Thank you for the
20 question, Mr. Young. Appreciate that.

21 Indeed it was over 20 years of data that West has
22 within their database since post-construction fatality
23 monitoring started in Washington and Oregon in 1999.
24 So that -- that estimate was from 1999 to 2020.

25 To contextualize that level of fatality, I would

1 point the Council to the '23 cumulative impact study.
2 That's available online as a supplemental report. And
3 in the appendix, you can see -- let me try to get this
4 right here.

5 In the appendix, you can see the number of
6 documented fatalities during this 20-year period.
7 Those species that are most impacted are those species
8 that are most abundant, right? So of the raptor
9 species most impacted by wind energy development in a
10 direct mortality sense, you can see that red-tail hawks
11 are most often found as a fatality at wind energy
12 projects.

13 I'm hustling to try to pull that up to give you a
14 number, Mr. Young.

15 COUNCIL MEMBER YOUNG: If that's in
16 one of the attachments that we already have in our
17 records, you can just -- you've pointed me to that, we
18 can look -- I can look at that.

19 THE WITNESS: That's correct. It's
20 the 2023 cumulative impact assessment at -- in the
21 Columbia Plateau ecoregion of Oregon and Washington.

22 Here, I have the number. So I mentioned red-tail
23 hawk fatalities. So during this 20-year period, 80
24 red-tail hawks were documented. 78 American kestrel.
25 And the list goes on and on.

1 **One of the most abundant species, the horned lark,**
2 which is a small (videoconference technical
3 difficulties) found in the Columbia Plateau, has been
4 documented 936 times.

5 So that kind of gives you a range of estimates for
6 the most abundant songbird species, horned lark, as
7 well as the two raptor species that are most affected
8 by wind energy.

9 COUNCIL MEMBER YOUNG: Okay. Great.
10 That's good.

11 But as far as -- as far as the ferruginous hawk
12 goes, is that level of mortality of concern?

13 **THE WITNESS: I think as**
14 **Mr. Livingston noted, any level of mortality for small**
15 **population sizes are a concern. See the population**
16 **viability analysis that we conducted for ferruginous**
17 **hawk, and the fatalities could influence the population**
18 **trajectory, which is why it's so important for other**
19 **types of measures to be taken.**

20 Like, Scout has proposed artificial nesting
21 platform as a potential optional conservation strategy
22 to provide nesting opportunities for species in areas
23 where it has historically nested, but nesting substrate
24 is no longer available for another reason. So --

25 COUNCIL MEMBER YOUNG: In those --

1 in those situations, is it considered that nest --
2 nesting opportunities are limiting the population?

3 **THE WITNESS: In some areas, yes.**
4 **WDFW -- yeah, WDFW has installed dozens of artificial**
5 **nesting platforms over the years. The most recent**
6 **(videoconference technical difficulties) 2019.**
7 **Apologies.**

8 COUNCIL MEMBER YOUNG: So is the
9 thought there that additional nesting opportunities
10 could offset or partially offset collisions and blade
11 strikes that cause mortality?

12 **THE WITNESS: That's the -- that's**
13 **the general approach. If you take a bird here, you**
14 **have to grow a bird there, for lack of a better --**
15 **better --**

16 COUNCIL MEMBER YOUNG: How about
17 the -- the timing of the four Washington mortalities?
18 Does that have any suggestion as to whether those
19 mortalities were resident birds or migrants?

20 **THE WITNESS: It doesn't. I can**
21 **look more into the timing of those fatalities. Birds**
22 **occur in Washington typically from around late March**
23 **through when they fledge and start their annual cycle**
24 **around early September.**

25 COUNCIL MEMBER YOUNG: How do -- how

1 do nesting densities in the project area compare to
2 other parts of eastern Washington and other parts of
3 Western North America?

4 **THE WITNESS:** In eastern Washington,
5 as Mike Livingston noted, Benton County and Franklin
6 County are some historical core areas or breeding areas
7 for the species. When looking at the distribution of
8 the species in north America, we are in the northwest
9 edge of the species distribution. You have higher
10 densities and larger populations of birds in, for
11 example, where there are larger expanses of
12 shrub-steppe.

13 Did I break up?

14 **COUNCIL MEMBER YOUNG:** Okay. But --
15 yeah. But as -- as far as Washington goes, if we are
16 thinking about the project area, the Horse Heaven
17 Hills, is that what one might think of as an important
18 heavy-use breeding area versus a peripheral area? How
19 does it -- how does it shake out compared to other
20 places that the hawk breeds in eastern Washington?

21 **THE WITNESS:** Based on our data, as
22 I wouldn't characterize the Horse Heaven Hills as a
23 heavily used breeding area. The majority of historical
24 nests in the WDFW PHS database are considered gone, so
25 no longer on the landscape, or in remnant condition,

1 which is essentially defined as a scattering of sticks
2 on the ground.

3 The occupancy rates of territories within the
4 Horse Heaven Hills is below the statewide average.
5 That's discussed in Hayes and Watson, which I've
6 mentioned a couple times. That's the 2001 periodic
7 update. So you have -- which indicates that birds are
8 nesting at higher rates outside the project area than
9 within the project area. Again, we've only had one
10 nest-occupied territory in the five years of survey.
11 So these birds have to be breeding elsewhere.

12 COUNCIL MEMBER YOUNG: Got it.
13 Thanks.

14 THE WITNESS: In Washington.

15 COUNCIL MEMBER YOUNG: Touching on
16 the IdentiFlight and similar technologies, are those
17 currently in the project proposal, the project design?
18 Are turbines, as proposed, going to be equipped with
19 that technology?

20 THE WITNESS: I don't believe that
21 technology was discussed in the updated ASC.

22 COUNCIL MEMBER YOUNG: Okay. And
23 has there been any type of an effectiveness evaluation?
24 You mentioned that it results in some false positives
25 if the species of focus is relatively scarce.

1 But how about any assessment as to whether it
2 really reduces the mortality? You mentioned that all
3 it does is it throws the blades into sort of a free --
4 free flow as opposed to a power turning.

5 How effective in reducing mortality has the
6 technology been?

7 **THE WITNESS:** That's a good question
8 and a subject of intense scrutiny. McClure, McClure
9 study, which James Watson mentioned, has an
10 effectiveness study. I don't have those numbers
11 offhand for you at this moment, but I'm happy to
12 provide the study and -- and summarize that study, if
13 it would be helpful.

14 **COUNCIL MEMBER YOUNG:** Okay. And my
15 last question is about the PCFM.

16 What do you really see as the relevance of PCFM to
17 the decision that's in front of the -- the Council here
18 in the near future? How is it relevant to the
19 applicant's proposal? What's it going to -- what's it
20 going to bring to the table in terms of usefulness or
21 conservation contribution?

22 **THE WITNESS:** The -- the relevance
23 of such a monitoring study provides sideboards and
24 accountability for the project to adapt and respond to
25 levels of fatality that are not originally anticipated.

1 So these types of studies, Chair Drew had
2 mentioned the use of a technical advisory committee,
3 and these types of data would be reviewed within a TAC
4 to help understand essentially a status or health check
5 on the project to see if it was in the sideboards of
6 some predetermined metric that (videoconference
7 technical difficulties) establishes.

8 COUNCIL MEMBER YOUNG: Is a
9 ferruginous hawk TAC incorporated into the proposal at
10 this time?

11 THE WITNESS: By way of -- of being
12 (videoconference technical difficulties) study a
13 wildlife species that would be studied during PCFM,
14 yes.

15 COUNCIL MEMBER YOUNG: Okay. And I
16 don't want to push you beyond what you know on this.
17 But how would you envision a monitoring benchmarked off
18 of a preset level of mortality that would trigger some
19 kind of a response? What types of conservation
20 measures that could improve the situation might be
21 triggered depending upon the results of PCFM?

22 THE WITNESS: I can't speak to a
23 certain percentage, per se, because that -- that --
24 that should be developed a little bit further down the
25 road. But there are several levers essentially that

1 you could pull to activate additional conservation
2 measures. It could be --

3 COUNCIL MEMBER YOUNG: What would
4 those -- what would those levers be? What would --
5 what additional conservation measures would those lead
6 to?

7 THE WITNESS: Sure. You could --
8 depending on the species affected, you could try to
9 implement additional compensatory mitigation, different
10 types of conservation measures. Let's say you could
11 implement maybe a carry-in scavenging program, which I
12 believe is already in the proposal, because raptors
13 feed on dead stuff, and so removing all dead stuff
14 removes that attraction at the project.

15 You could (videoconference technical difficulties)
16 artificial nesting platforms installed, let's say.
17 There are certain types of measures that can be taken
18 from a habitat perspective as well as a operational
19 perspective, but those types of things should really be
20 designed with specificity down the road based on
21 project-specific data.

22 COUNCIL MEMBER YOUNG: As a -- my
23 last question for you.

24 As a wildlife biologist and considering where --
25 your involvement in this project to date and where we

1 stand today, is there anything you feel that our
2 Council should know that you haven't had the chance one
3 way or another to put in front of us that you'd really
4 like us to be thinking about as we go forward?

5 **THE WITNESS:** I appreciate that. I
6 could talk about this all day. But in the spirit of
7 time, I think I will just leave you with this: That
8 the Washington State University came up with a new site
9 assessment tool for solar siting within Washington, and
10 it's the Least-Conflict Solar Siting project that's
11 available online and open to the public.

12 In looking at those data and the suitability rank
13 for the project, solar siting suitability rank was
14 considered moderately high to high within the proposed
15 solar siting areas. And that includes four different
16 primary elements, including solar suitability,
17 farmland, ranchland, and conservation (videoconference
18 technical difficulties). So I encourage the --

19 **COUNCIL MEMBER YOUNG:** So -- go
20 ahead. Sorry. I cut you off there.

21 **THE WITNESS:** I -- I encourage the
22 Council to -- to be -- at least be familiar with
23 that -- that study. I'm sure the Council's consultant
24 is familiar with it.

25 **COUNCIL MEMBER YOUNG:** So is

1 medium-to-high to high, is high good or high bad?

2 **THE WITNESS: High is good.**

3 COUNCIL MEMBER YOUNG: Okay. Thank
4 you very much.

5 **THE WITNESS: If it was low, then**
6 **there would be more of a conflict with the resources I**
7 **mentioned.**

8 COUNCIL MEMBER YOUNG: Okay. Really
9 appreciate all your testimony and answering questions
10 today. Thank you very much.

11 **THE WITNESS: Appreciate everyone's**
12 **time. I know this went a little long.**

13 JUDGE TOREM: And I'm hoping,
14 Mr. Jansen, it's not going to go a whole lot longer.

15 I want to couch this for all the parties that
16 might want to have recross or redirect. I think the
17 Council members asked some fantastic questions and
18 really created a more developed record on what they
19 need.

20 Looking at the schedule, it's now almost 3:20. We
21 have a hard stop today in an hour and 35 -- well, an
22 hour and a half. We have Mr. Rahmig scheduled to
23 testify. We're already cutting into Mr. Rahmig's time,
24 and I can't imagine the pronghorn are going to get any
25 less attention.

1 If we want to start Mr. Rahmig today and -- he'll
2 be available tomorrow. Is that right, Ms. Perlmutter?

3 MS. PERLMUTTER: That's correct.
4 He's available tomorrow.

5 JUDGE TOREM: All right. We have
6 some efficiencies that I've identified can be made up
7 in tomorrow morning's schedule that I think will go
8 much faster than what's listed. So with that in mind,
9 I'm hoping we can at least start Mr. Rahmig's testimony
10 today and respect the 4:45 stop time.

11 Ms. Perlmutter, do you have any limited redirect
12 based on Council questions?

13 MS. PERLMUTTER: Your Honor, I don't
14 have limited or unlimited redirect.

15 JUDGE TOREM: All right. Zero is
16 zero, whether in Latin or not, right?

17 So let's go and see, Ms. Voelckers, any recross
18 that you think you need to go into based on the
19 Council's or Ms. Perlmutter's previous questions for
20 recross?

21 MS. VOELCKERS: Thank you, Your
22 Honor. I do have a few areas I'd like to address based
23 upon the Council's questions.

24 JUDGE TOREM: All right.

25 MS. VOELCKERS: The first -- and we

1 don't need to pull it up yet, but the first thing I
2 would like to clarify and ask Mr. Jansen about is his
3 rebuttal testimony of Mark Neutzmann.

4 Councilman Livingston was correct that there was a
5 question posed to Mr. Jansen about whether or not he
6 agreed that the project would cause the extirpation of
7 the ferruginous hawk in Washington.

8
9 RECROSS-EXAMINATION

10 BY MS. VOELCKERS:

11 Q Mr. Jansen, you understand, though, that Mr. Neutzmann
12 never actually used the word extirpation in his direct
13 testimony, correct?

14 A **I don't have that in front of me. But if you say that,
15 then -- then that -- that's fine.**

16 Q I can't find it in his testimony, and I -- I expect
17 that in the same way that the other parties, that legal
18 counsel wrote the question to you, so I'm not trying to
19 attribute the question to you. I just wanted to make
20 sure that there wasn't anything that you were aware of
21 where Mark Neutzmann expressed an opinion that the
22 project, itself, was going to cause extirpation of the
23 ferruginous hawk.

24 You're not aware of that, right?

25 A **Not -- not at this time. I think the -- the statement**

1 **is still valid, though, in response to Mr. Livingston's**
2 **question.**

3 Q And I don't disagree. I'm just trying to make sure
4 that the Council's clear where the different biologists
5 in this proceeding are on the same page.

6 Do you know if anyone, be it Mr. Neutzmann,
7 Mr. McIvor, or WDFW's experts who were deposed, do you
8 know of anyone that has taken the position in this
9 proceeding that this project will cause the extirpation
10 of the ferruginous hawks?

11 **A Not -- not -- not that I'm aware of.**

12 Q Isn't it actually fair to say that all of the
13 biologists testifying in this proceeding, including
14 yourself, agree that there are a number of factors that
15 contribute to the precarious position that the
16 ferruginous hawk species is in today?

17 **A I believe that's a fair statement.**

18 Q Is it fair to say, then, that the main difference
19 between your perspective and that of Mr. Neutzmann,
20 Mr. McIvor, and Mr. Watson is that you are looking at
21 the project's potential short-term five-year impacts
22 while the rest of the experts in this case are looking
23 at what the ferruginous hawk needs long-term for
24 recovery of the species?

25 **A No, I don't think that's correct.**

1 Q You were asked about and then I think also relied upon
2 the technical advisory committee in a number of your
3 answers to the Council. So if we could pull up your
4 rebuttal testimony at this time, Exhibit 1022, I do
5 want to ask a little more about your own testimony
6 regarding the technical advisory committee.

7 JUDGE TOREM: That testimony will be
8 on the screen shortly.

9 Here we go.

10 Which page?

11 MS. VOELCKERS: Thank you so much.

12 The bottom of Page 17. And going to the next
13 page. Thank you. The last question on Page 17. The
14 answer starts at Line 20.

15 Q (By Ms. Voelckers) As you know, in his direct
16 testimony, Mr. Neutzmann did express concern about
17 the -- the TAC's lack of, you know, decision-making
18 authority since it's an advisory committee, which is in
19 its name.

20 Did you write that answer there that refers to a
21 number of legal provisions?

22 **A I did.**

23 Q Could you specifically point to where in the RCW
24 Chapter 80.50 the EFSEC has ability to delegate any
25 decision-making or enforcement authority to the

1 technical advisory committee?

2 MS. PERLMUTTER: Your Honor, if I
3 may. First of all, I'm not sure that's a fair question
4 of this witness. But additionally, this goes -- this
5 goes beyond even a generous reading of the -- of the
6 Council's questions.

7 JUDGE TOREM: Ms. Voelckers?

8 MS. VOELCKERS: Your Honor, if I
9 may, the -- the Council -- or the -- the witness has
10 submitted testimony referencing EFSEC's own laws in his
11 opinion about the -- the TAC's decision-making
12 authority, and I'm just asking for more specific
13 citation because I haven't been able to find one.

14 JUDGE TOREM: I think you'll have to
15 take the testimony as it is. He's not going to be able
16 to state any more specifics than is contained in his
17 rebuttal testimony, and the WAC and the law are what
18 they are.

19 Let's move on to another question, if you have
20 one.

21 Q (By Ms. Voelckers) Once the TAC provides
22 recommendations or mitigation strategies to EFSEC, does
23 the TAC, itself, have any power to enforce those
24 recommendations?

25 **A Does the TAC have any enforcement?**

1 Q Correct.

2 A No. I think that's up to the permitting agency that's
3 responsible for enforcing the conditions of the site
4 certificate.

5 Q So to the best of your knowledge, what would happen if
6 there's a disagreement between a recommendation from
7 the TAC and the project owner or certificate holder?

8 A I -- I -- I cannot speak to -- I think that is through
9 the relationship between EFSEC and the technical
10 advisory committee. I -- I can't deal with that -- I
11 can't effectually answer that -- that hypothetical
12 conflict resolution.

13 Q And then on the next page --

14 MS. VOELCKERS: And this will be my
15 final question, Your Honor.

16 If we could scroll down a little bit to the end of
17 Mr. Jansen's answer here.

18 Q (By Ms. Voelckers) On Line 6, Mr. Jansen, you
19 testified that a number of project documents have been
20 developed to clarify the intent and charter of the TAC
21 with EFSEC and counsel for the environment.

22 What are those documents?

23 A I believe we -- I responded to the same question
24 earlier from you. Again, I developed those materials
25 in coordination with Tetra Tech and Scout, and I

1 couldn't really say where they are. Again, once it
2 leaves my desk, I -- I can't really speak to that.

3 Q Okay. So those are the same documents that you
4 mentioned earlier. I just want to make sure I
5 understood.

6 So you're not -- if I represent to you that the
7 parties don't have access to these documents, you don't
8 have any additional information that would contradict
9 my understanding, do you?

10 A I believe the habitat management plan also found in
11 the -- sorry. Let me start that over.

12 The discussion of the TAC is found in the habitat
13 management plan, and the documents that I mention in --
14 on Line 6 of this page, I believe, were developed in
15 response to comments from EFSEC during the development
16 of the DEIS.

17 MS. VOELCKERS: Okay. I think that
18 was a "no" to my question. But I would just state on
19 the record that we -- we aren't aware of what these
20 documents are and have not been able to review them.

21 Those are my questions. Thank you.

22 **THE WITNESS:** I think they're
23 available, Ms. Voelckers, through the public data
24 request in the DEIS.

25 JUDGE TOREM: And, Ms. Voelckers,

1 I'll ask that Mr. Jansen and Ms. Perlmutter work to
2 make sure that the Yakama Nation knows exactly what
3 those documents are here. But we'll do that in some
4 behind-the-scenes informing between parties. I know
5 that's been collaborative and cooperative, and I
6 appreciate that.

7 Ms. Reyneveld, I want to see if you have any --

8 MS. VOELCKERS: Thank you, Your
9 Honor. I was just --

10 JUDGE TOREM: Go ahead.

11 MS. VOELCKERS: I was just -- I'm
12 just hoping for the names of the documents so we can
13 determine if we even have them and then go from there.
14 So that's -- that -- that's my request, and I'm happy
15 to follow up with Ms. Perlmutter directly, but without
16 having the names of documents, I don't know, you know,
17 if we have the complete record in front of us.

18 JUDGE TOREM: All right. And you
19 will have that knowledge as soon as Ms. Perlmutter and
20 Mr. Jansen can clarify what the names of those
21 documents are.

22 Ms. Reyneveld, do you have any follow-up
23 questions?

24 MS. REYNEVELD: I have a few brief
25 follow-up questions for Mr. Jansen. Thank you.

1 And I'd like to clarify my previous answer. The
2 distance document that we discussed was produced
3 November 23rd, 2021. I apologize for misspeaking.

4 And the answer to your last question was, yes, it
5 was produced prior to us having a meeting with WDFW
6 where they mentioned this type of setback.

7 Q Thank you for the clarification.

8 And just for clarification of the record, that
9 doesn't change your testimony agreeing that the
10 two-mile offset recommendation is WDFW's current
11 recommendation for ferruginous hawk offsets; is that
12 correct?

13 A That's correct. I think that's what the testimony of
14 Mr. Watson reflects.

15 MS. REYNEVELD: Thank you,
16 Mr. Jansen, for all your testimony. I don't have any
17 further questions for you.

18 **THE WITNESS: Thank you for your**
19 **time.**

20 JUDGE TOREM: All right. Thank you,
21 Mr. Jansen. We've been going at this for a little
22 while.

23 I hope there's only one correct answer to this
24 question: Does anybody have any further questions for
25 Mr. Jansen? It would be a two-letter answer.

1 MR. ARAMBURU: I do.

2 JUDGE TOREM: Is it going to be
3 short, Mr. Aramburu?

4 MR. ARAMBURU: Yes.

5 JUDGE TOREM: All right. Go ahead.

6 MR. ARAMBURU: If we could put up
7 Exhibit 2014, Page 2.

8 MS. SHILEY: Just one moment. I'm
9 pulling it up.

10 MS. MASENGALE: This is Lisa
11 Masengale. If I could get a clarification. It sounded
12 like you said Exhibit 2014.

13 MR. ARAMBURU: That's -- I believe
14 that's the Moon memo.

15 MS. MASENGALE: Oh. No. That's not
16 the Moon memo. 'Cause I don't have a 2014. So just a
17 moment, if you're referring to the memo.

18 MR. ARAMBURU: Oh. Excuse me.
19 4014, if I misspoke.

20 MS. MASENGALE: Thank you.

21 And just to clarify, is it okay to bring up the
22 redacted version of that?

23 MR. ARAMBURU: That would be
24 correct. And to Page 2, please.

25 MS. MASENGALE: Thank you.

1 Mr. Aramburu, there is no settlement agreement in
2 front of the Council. We're not going to talk about
3 any negotiations.

4 Do you have another question?

5 Q (By Mr. Aramburu) Were you consulted with regard to a
6 possible settlement agreement?

7 JUDGE TOREM: Okay. Mr. Aramburu, I
8 said we're not going to talk about any negotiations.
9 It's irrelevant until it's filed with the Council.

10 MR. ARAMBURU: Okay. No further
11 questions.

12 JUDGE TOREM: All right. Thank you.

13 I'm going to ask that we put tomorrow's proposed
14 schedule up on the screen.

15 Mr. Jansen, thank you very much.

16 We have --

17 **THE WITNESS: Thank you, Your Honor.**

18 **I'll --**

19 JUDGE TOREM: -- Mr. --

20 **THE WITNESS: I'll be -- I'll be**
21 **gone now. Thank you.**

22 JUDGE TOREM: All right. Thank you
23 very much.

24 (Witness excused.)

25 ////

1 JUDGE TOREM: We are supposed to
2 have Mr. Rahmig today until 4:45, and we will start
3 Troy Rahmig's testimony after a break. We're probably
4 going to come back at 4:40 -- 3:45 and have one hour
5 firm to get started with that.

6 Tomorrow's schedule, frankly, is -- in my
7 estimation, can be shortened up. And here's my
8 proposal to the parties and for the Council.

9 Tomorrow's housekeeping will start at 8:45.
10 There's just not that much to do, so we're going to cut
11 15 minutes off.

12 We're going to have -- the swearing in should be
13 done with Ms. Campbell very quickly unless Council has
14 questions I'm not anticipating. Hopefully by 9:10, we
15 should have Mr. Wiley ready to go. The questions have
16 already been circulated. Chair Drew will ask them.
17 And we'll see where Mr. Wiley goes.

18 But I think between 9:10 and 9:35, we should be
19 able to complete Mr. Wiley even with any limited
20 recross. Maybe I'm overoptimistic, but I'd like to
21 have Ms. Cooke ready to go -- and I know Mr. Harper's
22 going to have her listening -- hopefully around 9:35.

23 My hope is that we'll then be able to turn to the
24 Krupin and Sharp testimonies. If we can get them
25 started before the break at 10:15, we will. But if

1 not, I fully anticipate we won't be going till 12:45,
2 given some of the limitations on the testimony that my
3 orders issued yesterday, today, and even previously
4 have laid out. So we'll see where cross-exam goes and
5 redirect on those.

6 So I'm hoping Mr. Rahmig will be made available to
7 complete things before the lunch hour and that we
8 cannot go beyond that 2:45 p.m. with Ms. McClain. It's
9 also possible that I'll hear in the housekeeping
10 tomorrow that one or more of Ms. Voelckers' witnesses
11 might be able to testify. And, if so, Ms. Voelckers,
12 we'll try to see where Ms. McClain can wrap up and
13 where they might be fit in, still leaving a solid break
14 of two to three hours between end of adjudication
15 tomorrow and beginning of the public comment hearing.

16 So those are the comments for scheduling. If the
17 parties have comments on that, I'll take them at
18 housekeeping tomorrow, but I want to set those
19 expectations for Council members or at least
20 anticipations for what tomorrow may hold.

21 Let's take a break until 3:45. I'm killing the
22 court reporter here. And we'll come back and go for
23 one more hour today. Thank you.

24 (Pause in proceedings from
25 3:37 p.m. to 3:45 p.m.)

1 (Witness Troy Rahmig
2 appearing remotely.)

3
4 JUDGE TOREM: All right. Good
5 afternoon, everyone. We're back for the last hour of
6 today.

7 Mr. Rahmig, we're going to get started with your
8 testimony and have you adopt a number of exhibits.
9 Good afternoon. I think you've been listening in and
10 are well familiar with the drill by now.

11 But I'm going to list off the number of exhibits.
12 And, Ms. Perlmutter, if you'll make sure that I've got
13 them all.

14 Council members, we're going to be looking at the
15 prefiled testimony of Troy Rahmig that's Exhibit 1006_T
16 and 1007.

17 You'll find some response testimony at 1033.
18 There's both a confidential and a redacted version.

19 And I believe the rebuttal testimony is similar,
20 1041. Also has confidential and redacted versions.

21 And then we have a number of other in sequence,
22 1042 through 1050.

23 Ms. Perlmutter, is that the sum total of the
24 testimony we're adopting with Mr. Rahmig?

25 MS. PERLMUTTER: Yes, it is, Your

1 Honor.

2 JUDGE TOREM: All right. So,
3 Mr. Rahmig, without spending any other time, I'll have
4 you raise your right hand.

5
6 TROY RAHMIG, appearing remotely, was duly
7 sworn by the Administrative
8 Law Judge as follows:

9
10 JUDGE TOREM: And do you, Troy
11 Rahmig, solemnly swear or affirm that all testimony
12 adopt -- you'll be adopting in the exhibits I just
13 listed and any other answers you give today --

14 **THE WITNESS: I do.**

15 JUDGE TOREM: -- will be the truth,
16 the whole truth, and nothing but the truth?

17 **THE WITNESS: I'm sorry, Your Honor.**
18 **Your Honor, you cut out a little bit there for a**
19 **second.**

20 JUDGE TOREM: I'm sorry.

21 I'm asking if all the answers you'll give today as
22 well as the material contained in those exhibits will
23 be the truth, the whole truth, and nothing but the
24 truth.

25 **THE WITNESS: Yes, they will.**

1 (Exhibit Nos. 1006_T_Revised,
2 1007, 1033_R_Redacted,
3 1033_R_Confidential,
4 1041_R_Redacted,
5 1041_R_Confidential, 1042,
6 1043, 1044, 1045, 1046,
7 1047, 1048, 1049, and 1050
8 admitted.)
9

10 JUDGE TOREM: And one housekeeping
11 matter that I missed before the break.

12 Ms. Voelckers, if you can hear me, I think we have
13 two exhibits -- and Ms. Masengale can confirm -- 4015
14 and 4016. If Ms. Masengale tells me those haven't been
15 made part of the record, I need to do that formally
16 before I forget for today.

17 And while she's looking, parties, if they're
18 not --

19 MS. VOELCKERS: Your Honor.

20 JUDGE TOREM: Yes, ma'am.

21 MS. VOELCKERS: Thank you, Your
22 Honor. We would move to admit all three exhibits that
23 we e-mailed this morning or e-filed this morning. I
24 understand the outstanding concern to be dealt with on
25 one of them. But, yes, we are moving to formally admit

1 all three of the exhibits that we filed this morning.

2 JUDGE TOREM: Understood. So 4014's
3 already in. I think that was the Moon memo. And the
4 other two, 4015 and 4016.

5 Counsel, I'm not sure if Ms. Masengale is able to
6 answer right now, but if there's no objections.

7 MS. PERLMUTTER: There is objection,
8 Your Honor.

9 JUDGE TOREM: Okay. Shall we take
10 it up in -- shall we take it up in housekeeping
11 tomorrow? Shall we do it now?

12 MS. PERLMUTTER: Whichever the Court
13 prefers. It's just as to 4015. It's the discussion we
14 had during the course of Mr. Jansen's testimony.

15 JUDGE TOREM: Okay. So let's --
16 let's admit 4016. And tomorrow, 4015 will be part of
17 our housekeeping.

18 (Exhibit No. 4016_X
19 admitted.)

20
21 JUDGE TOREM: All right.

22 MS. MASENGALE: Judge Torem.

23 MS. VOELCKERS: And, Your Honor --

24 JUDGE TOREM: Ms. Masengale.

25 Ms. Masengale, go ahead. And then we'll hear from

1 Ms. Voelckers.

2 MS. MASENGALE: I apol- -- I
3 apologize, Ms. Voelckers.

4 This is Lisa Masengale. We also have
5 Exhibit 4017.

6 JUDGE TOREM: All right.
7 Ms. Voelckers, we'll take up 4015 and 4017 in the
8 morning.

9 All right. Great.

10 Mr. Rahmig, you've been sworn and adopted your
11 testimony.

12 Ms. Perlmutter, before we hand him over for any
13 cross-exam, is there any -- without having him go
14 through that everything's current and the rest of those
15 questions, those are already in his 1006.

16 Was there any other 10,000-foot two-sentence
17 introduction?

18 MS. PERLMUTTER: Yes, Your Honor. I
19 was just going to indicate that Mr. Rahmig will be
20 testifying about the impact of the proposed Horse
21 Heaven project on wildlife, local wildlife. His
22 testimony is going to relate in particular to
23 Section 3.4 of the amended site certificate regarding
24 habitat, vegetation, and wildlife. Additionally, his
25 testimony will be regarding Appendix J, the wildlife

1 and habitat mitigation plan; Appendix K, biological
2 reports; and Appendix N, revegetation and noxious weed
3 control.

4 I'd be happy to ask a couple of preliminary
5 questions for him and then to turn him over, Your
6 Honor.

7 JUDGE TOREM: All right. Let's make
8 those snappy.

9 MS. PERLMUTTER: Will do.

10
11 DIRECT EXAMINATION

12 BY MS. PERLMUTTER:

13 Q Mr. Rahmig, what do you do for a living?

14 **A I am a wildlife biologist and the endangered species**
15 **program manager at Tetra Tech.**

16 Q And have you been working with Scout Clean Energy on
17 the application for the project that's the subject of
18 this adjudication?

19 **A Yes, I have.**

20 Q Did you participate in preparing the application for
21 site certification?

22 **A Yes, I did.**

23 Q And what was your role?

24 **A My role was specifically related to the updated and**
25 **red-line version of the application basically**

1 assimilating information from studies and -- and
2 research, as Mr. Jansen's been talking about all day,
3 and pulling that information into an assessment of the
4 project on wildlife and plant resources in the project
5 area.

6 MS. PERLMUTTER: Your Honor, at this
7 point, I turn Mr. -- I reluctantly turn Mr. Rahmig over
8 for cross-examination.

9 JUDGE TOREM: All right. Reluctance
10 aside, Mr. Rahmig, I'm going to see whether it's
11 Ms. Reyneveld first or Ms. Voelckers.

12 MS. REYNEVELD: I'm -- I'm fine with
13 Ms. Voelckers going first this time around if she's
14 resolved the technical issues.

15 MS. VOELCKERS: Your Honor, I was
16 going to similarly defer. I think it's just been a
17 long day for everyone. But I can at least begin the
18 questions that I have for Mr. Rahmig today.

19 JUDGE TOREM: Ms. Reyneveld, I'm
20 looking at the estimates. And I think I'm going to ask
21 Ms. Reyneveld to go first. Her estimated time is less,
22 so we can see if we can, Mr. Rahmig, have one attorney
23 today and maybe just get you introduced to Ms. --
24 Ms. Voelckers toward the end there.

25 So, Ms. Reyneveld, I'm going to impose on you to

1 take your time now.

2 MS. REYNEVELD: That works for me.
3 Thank you, Your Honor.

4

5 CROSS-EXAMINATION

6 BY MS. REYNEVELD:

7 Q My name is Sarah Reyneveld. Hello, Mr. Rahmig. As you
8 know, I'm an assistant attorney general in the
9 Environmental Protection Division, and I am assigned as
10 counsel for the environment to this matter, which
11 represents the public and its interest in protecting
12 the environment, and I have some questions for you.

13 So you drafted, as you stated, portions of the
14 revised application for site certification, including
15 updates to Section 3.4; is that correct?

16 A That is correct. Yep.

17 Q Okay. And can you walk us through just briefly what
18 sections you contributed to or what your involvement
19 was?

20 A Yeah.

21 Primarily Section 3.4, as I mentioned. Also
22 the -- the habitat mana -- habitat mitigation plan,
23 that appendices. And my role primarily was, as I
24 mentioned, in completing updates to what is now kind of
25 on the EFSEC website, the red-line version of the

1 application. So certainly familiar with the original
2 application and all it entails and all the studies that
3 came before my involvement, but then been most recently
4 involved in the last almost two years in -- in the
5 updated version of the application.

6 Q Thank you.

7 You also provided a peer-reviewed study of the
8 cumulative impacts on bats; is that correct? Or did
9 you contribute to a study?

10 A No, Mr. Jansen completed the cumulative impact study on
11 bats and birds and habitat. I did peer-review that
12 document.

13 Q Okay. And you're able to answer questions pertaining
14 to the bat species; is that correct?

15 A Sure. You bet.

16 Q Okay. So you would agree that even with appropriate
17 offsets in this project, that there's still a risk of
18 turbine collision, electrocution, and structure
19 collision to the bat species; is that correct?

20 A Yeah, I would say that's a fair statement, yeah.

21 Q And your analysis for this project or at least the
22 project analysis concludes that the highest rates of
23 mortality for bats would probably be among
24 tree-roosting bats; is that correct? Specifically, the
25 hoary and silver-haired bats?

1 A Yes, that's right. That's -- and that's consistent
2 with what we see at other wind facilities in Washington
3 and, frankly, across the country.

4 Q As part of the application or the revised application
5 that you contributed to, did you estimate the annual
6 expected bat mortalities from this project?

7 A The -- the annual mortalities were not estimates, to my
8 knowledge, in the -- in the appendices that includes
9 the -- sorry -- the bird and bat conservation strategy.
10 There is a reporting of the -- the rate of bat
11 occurrence within the project area through acoustic
12 monitoring that was done by Mr. Jansen and his
13 colleagues.

14 So that -- that basically allows us to do some
15 assessment of the relative risk to different bat
16 species. Basically the more present they are, the
17 higher the risk. But I wasn't involved in -- in any
18 estimates, per-megawatt estimates on bats.

19 Q Okay. And it seems like it would be important to
20 assess bat mortalities.

21 So what was your understanding of why bat
22 mortalities were not assessed as part of the
23 application?

24 A Well, it's -- it's a difficult thing to do, first and
25 foremost. I think making an assessment on -- on any

1 species is difficult. I mean, we've been talking about
2 ferruginous hawk all day. But and even in that case,
3 where we know quite a bit about a species, it's
4 difficult to even assess what the potential effects
5 might be on that species.

6 When you think about bats, they're even less well
7 understood. So I think the best we often can do is to
8 find out what species are present, you know, during --
9 when they're -- when they're in the state in the spring
10 through the summer and then make our assessments based
11 on occurrence information, a rate of occurrence
12 information.

13 I do think that, you know, going forward, when a
14 project is in operation, you then have the ability,
15 once you -- once you begin to do more intensive
16 monitoring and actually document bat mortality from a
17 project, you can then use that information to kind of
18 hone in on an assessment or an estimate that is sort of
19 the per-megawatt assessment that you're talking about.

20 Q Okay. So you estimated the rate of bat occurrence but
21 not mortalities.

22 A Correct.

23 Q Correct? Okay.

24 So turning to your reply testimony, I believe it's
25 Exhibit 1041_R.

1 Do you have that in front of you?

2 **A I can get it here. And maybe we can put it up as well.**

3 **I have it here.**

4 Q In that -- great -- testimony, you are replying, in
5 part, to the responsive testimony of counsel for the
6 environment's expert Don McIvor; is that correct?

7 **A That's correct. Yep.**

8 Q And in his testimony, Mr. McIvor provides an estimation
9 of the project's annual expected bat mortalities; is
10 that correct?

11 **A Correct.**

12 Q And in your testimony, you reply to Mr. McIvor's
13 estimation of the project's anticipated bat mortality,
14 stating that his exclusive use of the Nine Canyon wind
15 population to estimate bat fatalities is problematic;
16 is that correct?

17 **A That's correct.**

18 Q So if you think that's problematic, can you walk us
19 through, how would you go about calculating bat
20 mortalities in this project?

21 **A So the -- and maybe I'll start by just noting, the**
22 **reason why I made that statement or included that**
23 **statement in the response testimony or the reply**
24 **testimony is that the work on -- the estimates that**
25 **were made for Nine Canyon were, you know, as part of**

1 the post-construction fatality monitoring that was done
2 back in the early 2000s. I think the estimates were
3 completed in 2003.

4 And they're -- since then, 20 years later, we have
5 learned a lot about how to do a better job of
6 estimating potential fatality or actual fatality of
7 bats from wind energy projects, and the methodologies
8 have changed. The estimator -- the -- the sort of
9 statistical estimators have changed, and we've learned
10 a lot about things like how long a carcass persists on
11 the landscape, and that influences how often you go out
12 and look, for example.

13 So the -- the way that things were done in 2003
14 and prior to that for the Nine Canyon project were
15 certainly the best at the time but aren't exactly
16 applicable to how things are done today. So that's,
17 first and foremost, I think, just in terms of, like,
18 how we -- whether we can extrapolate information from
19 those post-construction fatality monitoring studies at
20 Nine Canyon to this project, there's just some
21 methodology difficulties there.

22 And so then going back to your question about, you
23 know, how do you estimate fatality, I mean, it really
24 does -- the best -- the most accurate way to do that
25 would be to utilize post-construction fatality

1 monitoring data, so going out and actually looking to
2 see if bats are being struck by turbines and at -- at
3 what rate, what species.

4 And then you -- what you do is, is you go out, and
5 you search, and you find bats, for example. You then
6 take into account the other things I've already
7 mentioned, like how long do the carcasses likely
8 persist on the landscape, what's the searcher
9 efficiency, are you -- what's the chance that you're
10 actually finding -- what proportion of the bats that
11 are being struck are you actually finding. A whole
12 host of variables that are at play when we're trying to
13 figure out how many bats are -- are -- are killed by a
14 wind project. And then that's run through software,
15 and you come up with an estimate at that point in time.

16 So that's essentially the process.

17 Q You can extrapolate the projected bat fatality data
18 that you would need and kind of apply it to this
19 project. There's no other source of data. Is that
20 what you're saying?

21 A I think that -- I think that's true. One thing that
22 Mr. Jansen did in that cumulative effects study that
23 you mentioned -- which is on, again, bats, birds, and
24 habitat -- was looked at, again, information that was
25 collected in post-construction fatality monitoring for

1 a host of wind energy projects across the state and --
2 and kind of looked at the relative level of, you know,
3 of fatality that was seen at those projects.

4 So I think if you're going to extrapolate -- I
5 would extrapolate from the -- from, you know, kind of
6 all -- you know, the -- the group of facilities or the
7 collection of information rather than just a single.
8 And that's just, you know, when you think about, you
9 know, statistical validity and sample size, like,
10 having more information is better than having a single
11 point of information. So if I were to extrapolate, I
12 would probably look at that, the cumulative data set
13 versus the single project.

14 Q And did you attempt to extrapolate in your reply the
15 number of bat fatalities?

16 A I believe we did. Let me look. I believe I did. Let
17 me scroll down here a minute here just to refamiliarize
18 myself. And I think we used the one -- roughly one bat
19 per megawatt metric as we were calculating that
20 information. Again, opposed to over two bats per
21 megawatt, which was what was seen in Nine Canyon.

22 So if you look at -- let's see. I think we all
23 have the same version here. I'm on Page -- Page 6 of
24 this document. And in the -- starting on the paragraph
25 that starts on Page -- or sorry -- Line 6, we're

1 talking about the -- this is what I just mentioned, so
2 the mean bat fatality, 1. -- 1.08 bats per megawatt per
3 year essentially. And, again, that's across 37 wind
4 facilities, so not just one, but across 37 during 48
5 studies conducted on the plateau. And that's the
6 resulting number of bats with the total installed
7 capacity across the -- across the state.

8 So I -- actually, now that I'm looking at this, I
9 don't actually think we did the math on 1.03 bats per
10 megawatt and then -- and then applied it to this
11 project. I may be misremembering there, but that could
12 be easily done.

13 Q Okay. Well, wouldn't it be helpful to do so to
14 understand the bat fatalities projected in this project
15 per year?

16 A Yeah, that's something that I think could be done.
17 Again, a matter of timing here. I think this
18 cumulative work that Mr. Jansen did was done -- it was
19 completed earlier this year. So when you think about
20 that relative to when the application -- even the
21 revised application, which was submitted in December of
22 2021, you know, there's -- we've been talking a lot
23 about timelines and matter of process and when things
24 happened. I think, you know, that wasn't included in
25 the application, frankly, because that analysis -- this

1 cumulative analysis was not completed yet.

2 Q Okay. And sitting here today, you're kind of looking
3 at the data and potentially can you do a calculation in
4 terms of the bat fatalities per year from this project?
5 Is that a rough (videoconference technical
6 difficulties) that you can provide us with?

7 A I -- I would prefer not to do math in public, I think
8 as someone said on a previous thing.

9 But nonetheless, I think even whether you're
10 thinking about, like, total number of bats that are
11 potentially affected by the project, I think the -- I
12 think the metric of, you know, bats per megawatt is
13 sort of -- it's sort of become industry standard in
14 terms of how we think about bats that are impacted on
15 the project.

16 So even if we were, say, in implementation, if the
17 project was operating and we were perhaps, during the
18 post-construction fatality monitoring, collecting
19 information and then a technical advisory committee was
20 asking themselves, "Is this too much, or are we within
21 the realm?" I think we would be thinking on a
22 per-megawatt basis anyway rather than a total number of
23 bats estimate.

24 Does that make sense?

25 Q Yeah, it does make sense.

1 And just for clarification of the record, the
2 verbal record, what is that estimation?

3 **A** Well, the -- the cumulative -- when -- when we
4 assessed, particularly Mr. Jansen assessed in the
5 cumulative work that he did, across the, what, 37 wind
6 facilities on the Columbia Plateau ecoregion and in 48
7 studies across those 37 facilities, it was 1.08
8 megawatts per bat per year, and that's in the reply
9 testimony.

10 **Q** Thank you.

11 Moving on, do you know where those bats come from
12 geographically or how widely this impact would be
13 spread across the regional population?

14 **A** Yeah, I mean, these bats are -- they're migratory.
15 And -- and they occur across the country, frankly. The
16 two species, hoary bats and silver-haired bats, that
17 you mention. So they're a widely distributed species.
18 The bats that come -- that are here in Washington, you
19 know, they -- I mean, they're -- they're primarily
20 going to be moving up and down the West Coast, probably
21 west of the Rockies and maybe even spending some time
22 in the Rockies.

23 They're actually -- frankly, that's an example of,
24 I think with bat -- especially migratory bat species,
25 they're a difficult species to study. So that's not a

1 question that we exactly know the answer to, frankly.

2 And, you know, I -- yes, I would say related to
3 that -- and -- and this has, I think, come up in -- in
4 Mr. McIvor's testimony, et cetera -- we also don't have
5 a good handle on the population size of these species.
6 So there are -- there's a lot unknown about migratory
7 tree bats except -- I guess, except for, you know,
8 where they're spending their time during the breeding
9 season, a little less about where they're spending
10 their time during the nonbreeding season. And where
11 they travel in between is -- is a bit of a mystery.
12 They're a hard species to survey for.

13 Q Based on the studies conducted for this project, there
14 is little to no evidence to suggest either the hoary or
15 silver-haired bats breed in the project area; is that
16 correct?

17 A That's true. Yeah, there's -- there are really no or
18 few opportunities to breed or -- or, you know, roosting
19 sites, for example. So they'd be foraging primarily
20 within the project area.

21 Q And would you agree that hoary and silver-haired bat
22 mortalities at the project would contribute to
23 cumulative impacts to the species?

24 A Absolutely. Yes.

25 Q Are you familiar with the Washington State Wildlife

1 Action Plan, which is counsel for the environment's
2 Exhibits 3020 and 3021?

3 **A I am. Yes.**

4 Q Were you aware that the Washington State Wildlife
5 Action Plan has identified both hoary and silver-haired
6 bats as species of greatest conservation need?

7 **A Yes.**

8 Q And just from your understanding, what does that mean?

9 **A I think it simply is just identifying species that**
10 **are -- are, you know, trending downward, for lack of a**
11 **better word. I mean, they're -- they're species --**
12 **they're -- they're not -- you know, we've been talking**
13 **about species that are State-listed or maybe even**
14 **federally listed. Neither of those species are State-**
15 **or federally listed, but they are species that are --**
16 **that are facing a lot of stressors on the landscape.**
17 **Bats in general are. And so they then get elevated to**
18 **species of a greatest conservation need. It allows the**
19 **State to then sort of shine a light on those species**
20 **for conservation efforts.**

21 Q Thank you.

22 And, Mr. Rahmig, do you have Appendix 30 -- or
23 excuse me -- Exhibit 3021 in front of you, or should we
24 pull it up on the --

25 **A I --**

1 Q -- screen here?

2 A I have it in front of me, yes.

3 Q Thank you.

4 So --

5 A You can put it up. Either way.

6 MS. REYNEVELD: Ms. Masengale, if
7 you'd like to put it up, feel free.

8 Q (By Ms. Reyneveld) Just turning to Exhibit 3021,
9 Appendix A-1 of the plan and A1-15 and A1-18. The
10 Washington State Wildlife Action Plan concludes that
11 both species, both the hoary and the silver-haired
12 bats, are highly susceptible to mortality from wind
13 energies facilities; is that correct?

14 A That's correct.

15 Q And the Washington State Action Plan recommends action
16 to monitor wind farms for mortality, avoid siting wind
17 farms in areas of high bat activity, and encourage
18 power companies to curtail wind turbines' use during
19 periods of low wind speed, and that would specifically
20 be on A1-15, I believe. And that -- that applies to
21 both species. Yeah, it's right in this little table
22 here.

23 So given what you know and taking into account as
24 well the gaps in our knowledge about these species, do
25 those recommendations sound reasonable?

1 A Yeah, I think that's -- I think those are all
2 reasonable. Those are -- those are the kinds of
3 recommendations that are routinely applied for on wind
4 facilities sort of around the country. Actually, not
5 so much yet for hoary bats or silver-haired bats, but
6 certainly for other bat species, Indiana bats, other
7 federally listed species, like Indiana bats, northern
8 long-eared bats, et cetera.

9 I would say that they're often applied in
10 situations where a project is sited and, you know --
11 and here, I'll say these words again -- in close
12 proximity, and -- and that's been defined for a few --
13 few of the species, not for these two we're talking
14 about, but I would say within -- maybe I'll just say
15 within a couple of miles of species habitat, sort of
16 known roosting locations or hibernacula, which -- which
17 essentially means there's a likelihood the species will
18 be spending time in the project area, right? So...

19 Q And the action plan, it also mentions curtailment, and
20 you -- you spoke a little bit to that.

21 But in your testimony, your reply testimony in
22 Exhibit 1041_R, you agree -- correct? -- that turbine
23 curtailment could be an important measure to mitigate
24 these impacts on bats?

25 A I think that's a fair statement. Again, earlier we

1 were discussing this related to ferruginous hawks. I
2 think curtailment is -- you know, if the turbines are
3 turned off, you're reducing risk, right? I think the
4 challenge is to make sure that it's done in a smart way
5 so that it's -- and targeted and informed by data
6 collection during operations. So I would just sort of
7 throw on those caveats with that statement.

8 Q Thank you.

9 Specifically, you state in your reply testimony on
10 Page 7, which I believe is up on the screen, you agree
11 that new smart or optimized curtailment could have the
12 ability to reduce hoary bat mortality while also
13 increasing energy production; is that correct?

14 A That is correct.

15 Q And seasonal curtailment of specific towers that cause
16 specific bat fatalities or mortalities could also be an
17 effective mitigation tool.

18 Do you agree with that?

19 A Yeah, I think that's fair. I think, again, targeted
20 curtailment, individual or small groups of turbines,
21 certainly only doing it when the bats are there makes
22 sense, so seasonally.

23 And then you already mentioned the idea of, you
24 know, when -- having -- increasing the point at which a
25 turbine would cut in and start operating, so during low

1 wind speeds. That would be another form. That's just
2 another form of curtailment. So another kind of
3 targeted way to curtail when bats are active to
4 minimize that risk, so yes.

5 Q And a similar question, but perhaps a little bit more
6 specific.

7 You reviewed and replied to the responsive
8 testimony of Mr. McIvor, and specifically Mr. McIvor
9 proposed in that testimony that applicant consider
10 curtailment of the monitoring, indicates when specific
11 towers are kind of disproportionately responsible for
12 mortality events.

13 Would you agree that curtailment is reasonable in
14 those circumstances and could be a helpful mitigation
15 tool?

16 A Yes, I think that's -- I think that's exactly right. I
17 would -- rather than doing sort of blanket curtailment,
18 I would -- I would certainly recommend sort of
19 data-driven decisions about curtailment.

20 Q The revised application, from my review, does not agree
21 to curtail specific turbines that cause bat fatalities
22 or mortalities; is that correct?

23 A That's -- that's correct, yeah.

24 Q And, instead, it leaves these decisions to specialists
25 in a kind of post-constructive TAC; is that correct?

1 **A That's right.**

2 Q And we've discussed it before, but this is an advisory
3 committee, correct?

4 **A It is. That's correct. It's an advisory committee.**

5 Q And there's no guarantee that the advisory committee
6 will utilize curtailment; is that correct?

7 **A I wouldn't say there's a guarantee, although, I would
8 imagine that, you know, if it's a fully and
9 well-functioning advisory committee, they would be
10 considering all options.**

11 MS. REYNEVELD: Thank you.

12 Your Honor, the rest of my questions are
13 pertaining to the antelope. I don't have very many of
14 them. They're not very specific. But I don't know if
15 you would like to go into closed session.

16 JUDGE TOREM: If you think we're
17 going to stray into things that are protected under the
18 confidentiality agreements, then we should do that.

19 Ms. Perlmutter, I'm going to ask your opinion as
20 well as the sponsoring attorney.

21 MS. PERLMUTTER: I think we should,
22 Your Honor.

23 JUDGE TOREM: All right. So,

24 Ms. Reyneveld --

25 MS. REYNEVELD: Yeah, I'm --

1 JUDGE TOREM: -- you were going to
2 say...?

3 MS. REYNEVELD: Yeah, I'm just
4 looking at my questions. I'm mainly asking just
5 whether or not the, you know, GPS collar data was
6 incorporated in those sorts of things. But, yeah, I
7 mean, maybe out of the abundance of caution.

8 JUDGE TOREM: Okay. Let's go ahead
9 and move into closed session. We'll pick up with the
10 pronghorn questions within that session and come back
11 out as soon as possible.

12 ** Closed-record hearing **

13 * Not available to general public per protective order *

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(Closed-record session
concluded.)

JUDGE TOREM: All right. We're back
in the public session. Mr. Rahmig, I think you've
already met Shona Voelckers a couple other times today.
So barring any further technical difficulty, she's
going to press on with her exam at this time.

MS. VOELCKERS: Thank you, Your
Honor.

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CROSS-EXAMINATION

BY MS. VOELCKERS:

Q And good afternoon, Mr. Rahmig. We have met before. But I'm Shona Voelckers. And apologies for not being on camera.

But I'm actually going to ask if -- if Lisa Masengale or Alex Shiley is able to bring an exhibit back onto the screen. I'd like to ask you a few questions about Exhibit 4014, which was discussed earlier today, and my hope is that we could kind of wrap up discussion about the Moon memo so that we can get back to the pronghorn in your testimony tomorrow.

Is that something that we could bring up on the screen, Exhibit --

JUDGE TOREM: I'm sure it's on its way here.

Which page?

MS. VOELCKERS: Just the first page, to start with.

Q (By Ms. Voelckers) Do you recognize this document, Mr. Jansen [sic]?

A For the record, Mr. Rahmig. But, yes, I do.

No problem.

Q Apologies.

I did ask Mr. Jansen about this. I'm sure you

1 were watching for that portion. So some of my
2 questions to you are the same. And my hope is that you
3 would have more information, because you are listed on
4 this memo.

5 Did you contribute to writing this document?

6 **A I did.**

7 Q Which portions of Exhibit 4014 did you write?

8 **A Essentially -- and we can scroll down, if needed. But**
9 **essentially the -- when we were looking at the -- the**
10 **changes to the project, we were attempting in this memo**
11 **to summarize how those changes might influence various**
12 **resources.**

13 And, again, this was sort of an effort to -- it
14 was in response -- it was a data request response to
15 EFSEC, so it was an effort to sort of provide that
16 information in a way that was easily digestible to
17 EFSEC staff. And so I contributed the portions that
18 discuss how the changes in the project would influence,
19 you know, wildlife and habitat resources.

20 Q And you mention the data request from EFSEC, which I
21 believe was dated August 8.

22 But this document was drafted before August 8,
23 correct?

24 **A It was in process for sure, yes.**

25 Q And you -- you talked about the sections on impacts.

1 Could you be a little more specific? And I can maybe
2 ask that we go to Page No. 2.

3 The section on east solar array size reduction,
4 did you write this section of the memo, Mr. Rahmig?

5 **A Yes. The portions that deal with reduction in habitat**
6 **impacts and so forth, yes.**

7 **Q** When did the applicant affirmatively decide to make
8 this project design modification?

9 **A** My -- from my recollection -- again, don't have an
10 exact date for you, but it was when the EFSEC DEIS
11 process, the public review process was occurring, there
12 were public comments related to this east solar array
13 and specifically related to the fact that it -- part of
14 it was on priority habitats, the portions west of I-82.

15 And so I think that prompted discussions about
16 what could be done in that east solar array area to
17 reduce those impacts. And then, you know, when that
18 decision was formally made by the applicant, I don't
19 know. I just know that, you know, it was -- that --
20 that update was provided us, and then we were, you
21 know, able to assess it accordingly.

22 **Q** And you state in your reply testimony on July 12th that
23 the size of the east solar field had been reduced by
24 approximately 67 percent.

25 So is that change that you reference in your own

1 testimony on July 12th, is that any different than what
2 we have here in Section 1.1?

3 **A That's the same, yeah. I think that's basically the**
4 **same, yes.**

5 Q Okay. And if we could scroll down a little bit to
6 Section 1.2.

7 Did you author this section as well, Mr. Rahmig?

8 **A Yes. Again, the portions related to reducing impacts**
9 **on -- on wildlife.**

10 Q To the best of your recollection, when did the project
11 applicant decide that they were going to go ahead and
12 shift infrastructure away from Webber and Sheep
13 Canyons?

14 **A I think the genesis to this -- and Mr. Jansen may have**
15 **spoken about this earlier. There were some discussions**
16 **some time ago with Washington Department of Fish and**
17 **Wildlife. Mr. Jansen mentioned, you know, being out in**
18 **the field and talking about it. I distinctly remember**
19 **conversations in meetings in probably late 2021 where**
20 **we were sort of formalizing that commitment. The**
21 **applicant was sort of formalizing that commitment to --**
22 **to do everything that was possible to pull the**
23 **infrastructure back away from the canyons.**

24 I think that it wound up in this memo -- this
25 is -- you know, this is sort of a collection of those

1 kinds of things that have been discussed over time with
2 EFSEC, WFW, and -- and so forth. And so I would say
3 late 2021 and then formalized in this memo just a
4 little while ago.

5 Q And I -- and I -- and I know that Mr. Jansen did talk
6 about, you know, conversations has happened. And I
7 think in the interest of time, if we could, moving
8 forward, just -- my questions are specific to when the
9 decision was made, not necessarily when the
10 recommendation came from WFW or any other party.

11 So if we can move down to Section 1.3.

12 Did you participate in writing this section of the
13 memo?

14 A Yes. Again, the -- the -- the bullets relative to
15 species impacts and habitat impacts.

16 Q Do you know what this memo is referring to when it says
17 that the rationale for change was a reduction in visual
18 impacts to resources of concern to the Yakama Nation?

19 A I do not.

20 Q Okay. To the best of your recollection, do you know
21 when the applicant decided to go ahead and modify the
22 project design in order to remove these four turbines
23 referenced in Section 1.3?

24 A Again, I don't have an exact date for you. No, I don't
25 know exactly when that occurred.

1 Q Do you know generally when it occurred? Was it earlier
2 this summer?

3 A I -- I mean, that's probably a fair statement. I think
4 this process has been iterative. You mentioned my
5 mention about the change at east solar in my July
6 testimony. I think all of this was happening around
7 the same time, and it was -- the information was
8 collected in this memo in early August.

9 Q Maybe we can get at this more efficiently a different
10 way.

11 Were any of the modifications in Sections 1.1,
12 1.2, or 1.3, were any of the decisions to modify the
13 project in these ways made within the last month?

14 A I -- I don't know the answer to that.

15 Q But you authored these sections or coauthored these
16 sections?

17 A I did. I assessed the changes in the impacts on
18 species and habitat resources, as I mentioned. So, you
19 know, that information came in.

20 This -- this memo was dated, I think, August 9th
21 or something like that, right? So that assessment
22 occurred -- that assessment certainly occurred within
23 the last month. I don't know when the changes -- when
24 it was -- when the decision to make the changes was
25 made. I guess that's the -- maybe the nuance I'm

1 **struggling with.**

2 Q I'm struggling with it too.

3 Did you contribute to Section 1.4?

4 **A I did.**

5 Q And do you know when the applicant decided to remove
6 Turbine 116 from the project --

7 **A I do not.**

8 Q -- design?

9 **A I do not. Nor do I know --**

10 Q Okay.

11 **A -- when the changes are made on any other section of
12 the document.**

13 Q Okay. (Videoconference technical difficulties) asked
14 to write this document?

15 **A I'm sorry. Can you say that again, Ms. Voelckers?**

16 Q Do you know when you were asked to participate in
17 writing this memo?

18 **A I would say probably in the -- the week or two before
19 it's dated. So early -- late July, early August.**

20 Q To your knowledge --

21 JUDGE TOREM: Ms. Voelckers.

22 MS. VOELCKERS: Yeah.

23 JUDGE TOREM: I think -- I'm hearing
24 a pattern of the questions here about the Moon memo,
25 and I think I understand your particular concern if not

1 all of the parties responding to the applicant's
2 updates here.

3 Correct me if I'm wrong, but I want to ask
4 Mr. Rahmig. This iterative process you talked about of
5 these data requests, Mr. Rahmig, this is Data Request
6 No. 9 from August 8th in an ongoing set of requests
7 from EFSEC staff to get more and more current data and
8 a dialogue from the original application to what is
9 ultimately going to be proposed to be built after some
10 SEPA-related mitigation and other concerns expressed by
11 staff?

12 **THE WITNESS:** Yes, I think that's a
13 fair assessment. I mean, the -- and not to speak for
14 them, but the EFSEC staff are in the process of working
15 through a response to, you know, comment on the draft
16 EIS, working towards a final EIS, and in conversations
17 with the -- that I have been involved in with EFSEC,
18 they are certainly interested in keeping in front of
19 them anything that may be changing.

20 Those changes are in response to, you know,
21 probably several things, many of which I'm not privy --
22 privy to. I'm not -- I'm not the developer. And as I
23 mentioned previously, I think decisions to make those
24 have probably spanned from as early as late 2021 till
25 probably as recently as, you know, a month or two ago.

1 I don't have all the details on the timing of
2 those. I was involved in drafting this memo in the
3 week or two before it was dated.

4 JUDGE TOREM: And do you anticipate
5 there's going to be a Data Request No. 10 and maybe a
6 Moon Memo No. 10 probably after the adjudication?

7 THE WITNESS: I can't speak to
8 whether or not EFSEC will have another data request.
9 There -- at some point, there will be a, you know, a
10 revised application, an updated application that
11 reflects outcomes from this process and outcomes from
12 the -- the final EIS process down the road that's a
13 requirement. But whether that's through data requests
14 or memos, I can't say.

15 JUDGE TOREM: All right. I just
16 want to recognize for Ms. Voelckers that, again,
17 this -- the hearing and the adjudication is on the
18 dates we set, and the information -- the Council
19 members, I think, understand this. As Mr. Rahmig just
20 referenced, there's requirements to continue to update
21 this application.

22 So we have a snapshot in time of what's going on
23 with the adjudication, Council members, and this Moon
24 memo has caused -- for at least that reason and maybe
25 more -- some heartburn along the way. But I want to

1 put it in context. And the parties can certainly
2 address this is in their post-hearing briefs as to what
3 the job in front of the Council is between this and the
4 separate parallel SEPA process.

5 Ms. Voelckers, sorry to take a couple minutes.
6 You can resume from there, if you like.

7 MS. VOELCKERS: Thank you, Your
8 Honor. And I just -- I think everyone's aware, but
9 we -- we don't have the opportunity to ask the
10 applicant directly about this memo through testimony,
11 so I'm just trying to best understand from someone who
12 authored the memo, but I can move on since I don't have
13 any more questions about the specific sections.

14 Q (By Ms. Voelckers) To your knowledge, Mr. Rahmig, is
15 the applicant contemplating any further project design
16 alterations at this time?

17 A **Not to my knowledge.**

18 Q So you're not aware of any other potential wind turbine
19 siting changes than what's in front of the Council
20 through the updated ASC and now this memo?

21 A **I don't. But I -- again, I'm -- I'm not privy to that
22 information until the decisions are made.**

23 Q Okay. So -- so it's an iterative process -- so in the
24 iterative process, understanding that there might not
25 be an exact decision made that you could point to, are

1 you aware of any further discussions in this iterative
2 process that we just walked through together that
3 involve additional modifications to turbine siting of
4 the project?

5 **A No, I'm not aware of any.**

6 MS. VOELCKERS: Thank you, Your
7 Honor. Those are my questions for today.

8 JUDGE TOREM: All right. Thank you
9 so much, Ms. Voelckers.

10 Mr. Rahmig, I think you'll be listening to
11 tomorrow's testimony and be ready, but I'm hoping that
12 after the morning return to some of the conditional
13 land-use issues, conditional use permit issues, where
14 the County will be responding to Mr. Wiley's testimony,
15 and then we'll see if Mr. Aramburu has his mystery
16 witness ready to be unmasked at that time or he's
17 requesting time to do that later in the week. That
18 will be determined.

19 But shortly thereafter, after the Krupin and Sharp
20 cross-examinations, I'll hope to put you back on and
21 see if we can keep to a 2:30-ish end time tomorrow.

22 Council members, Chair Drew, any questions about
23 where we're leaving off and where we're picking up
24 tomorrow?

25 I'm not seeing any.

1 I will talk to the parties tomorrow at 8:45.
2 We'll do our housekeeping, and again on the agenda will
3 be the admission and taking care of the Exhibits 4015
4 and 4017. And we'll talk more about schedule
5 adjustments.

6 And, Ms. Voelckers, I'll hope to have an update
7 from you on the ongoing services and other
8 cultural-related grieving processes that the tribe is
9 and their members are enduring at this moment.

10 So thank you, all, very much for a long day.
11 We'll see you early tomorrow at 8:45 for the parties
12 and the usual 9:00 for the Council.

13 Thank you. We're adjourned for Day 5.

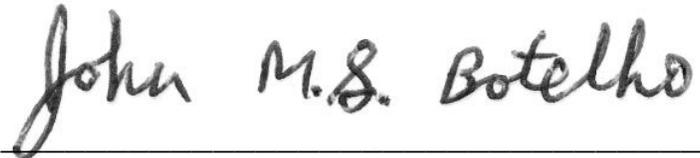
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15 4:41 p.m.)
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1 STATE OF WASHINGTON) I, John M.S. Botelho, CCR, RPR,
2) ss a certified court reporter
3 County of Pierce) in the State of Washington, do
4 hereby certify:

5 That the foregoing proceedings were taken in my
6 presence and were adjourned on August 22, 2023, and
7 thereafter were transcribed under my direction; that the
8 transcript is a full, true and complete transcript of the
9 said proceedings and was transcribed to the best of my
10 ability;

11 That I am not a relative, employee, attorney or counsel
12 of any party to this action or relative or employee of any
13 such attorney or counsel and that I am not financially
14 interested in the said action or the outcome thereof;

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 12th day of September, 2023.

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John M.S. Botelho, CCR, RPR
Certified Court Reporter No. 2976
(Certification expires 5/26/2024.)

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#6 820:15	1033_r_redacted 1015:2	16 855:23 902:24 918:3
	1037_R 794:2,17 797:9	17 796:1 861:6 900:2,21 929:22,23, 24 930:3,4,16 1001:12,13
-	1038 794:2,17 795:11 796:1,15	18 796:25 837:4 861:6 938:20
-15 945:23	1038_revised 797:10	19 861:7 919:12
-16 945:23	1039 794:2,18 795:12	1978 975:15
-18 928:5	1039_revised 797:11	1994 975:19
-19 928:6	1041 1013:20	1999 958:25 987:23,24
-4 858:12	1041_R 1023:25 1034:22	1:00 903:18 904:8 909:24 914:9,11, 14
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	1041_r_redacted 1015:4	2
1 825:6 1028:2	1042 1013:22 1015:5	2 795:11,15 831:15,16 837:22 838:24 906:8,17 907:7,9 937:8 1008:7,24 1049:2
1.03 1028:9	1043 1015:6	2-mile 856:23
1.08 1028:2 1030:7	1044 1015:6	2.1 831:16 981:11
1.1 1050:2 1052:11	1045 1015:6	2.3.1 981:15
1.12.3 817:22	1046 1015:6	20 903:11 930:23 932:12 982:3 984:24 987:13,21 1001:14 1025:4
1.2 1050:6 1052:12	1047 1015:7	20-year 988:6,23
1.3 858:7,12 860:1,2 948:8 1051:11, 23 1052:12	1048 1015:7	2000s 1025:2
1.4 860:7 1053:3	1049 1015:7	2001 924:9 978:18 992:6
1.5 858:12	1050 1013:22 1015:7	2003 1025:3,13
1.5.3 817:23	10:03 841:14	2004 854:3,6 856:19 857:1,10 938:25 944:20 953:19
10 825:13 981:25 1055:5,6	10:15 1011:25	2007 923:17
10,000-foot 1017:16	10:30 780:3	2009 963:23
1002 832:18 835:17 893:23	11 852:20 881:8	2014 923:18 1008:7,12,16
1002_T 830:1	11,000 825:10	2016 975:16
1002_t_revised 832:22	116 860:10 1053:6	2017 834:21 837:23 935:24 936:2,5 955:2 962:9
1003 830:2 832:18 883:14 884:4	119 796:22	2019 837:23 947:25 955:20 990:6
1003_revised 832:23	11:00 877:14	2020 947:25 987:24 1006:16,17
1006 1017:15	11:05 881:20	2021 837:4 896:20 937:16 960:24 1007:3 1028:22 1050:19 1051:3 1054:24
1006_T 1013:15	11:15 881:14,18,20 903:11	
1006_t_revised 1015:1	12 810:14	
1007 1013:16 1015:2	12:09 914:11	
1022 830:3 832:18 835:23 935:15 975:22 981:25 1001:4	12:45 1012:1	
1022_R 832:23	12th 810:10 1049:22 1050:1	
	13 884:21 886:19	
	14 797:1 900:1,21	

2022 954:18 955:12
2023 810:15 856:16 857:24 896:14,
19 897:1 938:18 955:13 962:12
982:16 988:20
2025 816:4
2030 972:12
206 820:13
2060 972:12
221 796:22
22nd 941:1
23 934:9,10,12,16 988:1
236 796:20
23rd 1007:3
24 910:4 930:16
25 853:8 934:6 977:15 1006:6
25-mile 853:15,23,25 854:17 855:25
954:1,3
25th 827:19
263 808:22
28th 905:5
2:00 950:4
2:01 951:2
2:05 950:5,21,24 951:2
2:30 944:5
2:30-ish 1057:21
2:36 969:18
2:37 969:18
2:45 1012:8

3

3 884:9 885:20 907:9,14 935:16
948:5
3.13 918:17
3.15 918:25
3.2 861:3
3.4 833:16 836:3,9 889:3,16 1017:23
1020:15,21
3.4-14 963:2

30 782:18 903:11 914:21 915:11
972:10 1032:22
30,000-foot 793:16 794:4 795:6
821:22 828:21 833:9
3017 920:4 927:17 928:5
3017_X 836:19,23
3017_x_redacted 928:12
3018 927:17
3018_X 854:7 928:12
3019 852:20 927:18
3019_x_redacted 928:13
3020 1032:2
3021 1032:2,23 1033:8
3194 853:6
3280 855:15
34.05.452 908:18
35 997:21
365-195 925:7
37 906:23 1028:3,4 1030:5,7
38 920:5
39 796:15
3:20 997:20
3:37 1012:25
3:45 1011:4 1012:21,25
3rd 939:9

4

4 773:9 907:9,14 937:6,7 941:14
40 812:17 978:18
400 855:7
4014 928:16 945:19,23 946:12,23
1008:19 1047:9 1048:7
4014's 1016:2
4014_X 858:1
4015 939:5 1015:13 1016:4,13,16
1017:7 1058:3
4016 902:24 903:21 917:12 921:13,
19 928:17 1015:14 1016:4,16

4016_X 774:8 1016:18
4017 1017:5,7 1058:4
4018 770:25 771:20 772:5,14,19
773:9
4019 771:1,20 772:5
4020 771:1,20 772:5
48 978:20 1028:4 1030:6
4:40 1011:4
4:41 1058:15
4:45 950:8 998:10 1011:2

5

5 789:2,17 823:24 858:9 860:15
894:2 907:9,14 941:14 948:6,13
1058:13
50,000-foot 805:8
500 977:20
51 914:2
5211 905:14,24
5212 905:14,24
5304_R 906:4
5305 906:4,5
5305_R 906:8
5306 906:24
534 808:22
5403 907:5
5404 907:6,15
5405 907:18
5406 907:18
5407 907:18
5408 907:18
5409 907:19
5410 907:22,25
5411 907:22 908:1
5412 907:19
5413 907:19
5414 907:20
5503_R 780:13 908:6

5631 826:6,15	6:00 939:10 941:2	abandonment 853:3 960:19,23 961:8
5631_R 826:11		abbreviated 914:15
5632 804:23	<hr/> 7 <hr/>	abilities 787:7
5632_R 804:5 807:1	7 858:9 894:3 899:25 900:21 948:7, 13 1035:10	ability 910:13 978:8 1001:24 1023:14 1035:12
5633 809:17 810:6 811:7,23	71 854:12	absent 922:21
5633_R 811:13	72 854:19	Absolutely 770:8 1031:24
564 999-2000 808:21	78 988:24	abundance 1038:7
57 918:17	791 808:22	abundant 988:8 989:1,6
5810 800:15 801:3	7th 905:1	accelerated 812:22
5810_R 801:6	<hr/> 8 <hr/>	accepted 945:12
5811 800:15 801:3		access 786:13 788:2 814:21 837:14 1004:7
5811_R 801:6	8 858:9 906:10 935:17 940:3 943:11, 22 944:9 948:7,13 1048:21,22	accommodate 827:11
5812 800:15 801:3	80 961:2 988:23	account 927:4 960:2,4 983:11 1026:6 1033:23
5812_R 801:7	80.50 1001:24	accountability 993:24
5820 804:8,23	820 855:22	accounted 904:17
5820_R 807:1	8:45 1011:9 1058:1,11	accounts 853:7
5821 804:8,23	8:55 788:24	accurate 897:17 927:22 1025:24
5821_R 807:2	8th 949:19 1054:6	accurately 841:3 909:14
5822 804:8,23	<hr/> 9 <hr/>	achievable 964:25
5822_R 807:2		acoustic 1022:11
59 918:25	9 931:8,10 1054:6	acre 963:2,3 964:11,12,14
5900 807:14 820:9 821:12	936 989:4	acres 813:15 825:11 878:18 962:22, 24 963:5 964:16 977:20
5900_R 821:18	9:00 774:14 783:1 786:19 788:18,24 1058:12	acronym 878:19
5901 807:14 820:10 821:12	9:10 1011:14,18	Act 816:4
5901_R 821:18	9:35 1011:18,22	action 1032:1,5 1033:10,15 1034:19
5902 807:14 820:10 821:12	9:42 829:15	actions 933:11,14
5902_R 821:19	9:50 828:19 829:10,15	activate 995:1
591 962:22	9th 857:24 1052:20	active 930:12 951:17,19,21 952:1,6 954:7 973:5 1006:23 1036:3
5:30 782:22 806:13 828:13	<hr/> A <hr/>	actively 911:12 938:24 952:1 958:9
<hr/> 6 <hr/>		activities 855:24
6 796:25 820:15 855:23 858:9 893:25 894:3 935:17 941:18 948:7,13 1003:18 1004:14 1027:23,25	A-1 1033:9	activity 951:25 952:13 953:12 955:19 973:12 1033:17
60 962:23	a.m. 788:24 829:15 881:20	actual 786:11 792:19 822:16,25 839:11 900:10 1025:6
62 796:22	A1-15 1033:9,20	
67 1049:24	A1-18 1033:9	

adapt 993:24
adaptive 879:13 880:20 932:24
add 794:23 819:13 824:11 947:2
added 776:6 947:3
addendum 795:14
adding 910:6 911:8
addition 833:19 856:13 936:14
985:13 986:19
additional 775:23 781:8 804:7
817:19 835:19 857:13 879:22 895:2
910:20 911:6,15,23,24 943:7 948:25
966:5 990:9 995:1,5,9 1004:8
1057:3
additionally 1002:4 1017:24
additive 986:5
address 781:13 787:4 827:22 960:6
998:22 1056:2
addressed 898:1 914:4 953:15
960:12 965:22
addressing 781:22
adequate 824:6
adequately 906:20
adjacent 795:12 797:24 901:12
adjourned 1058:13,14
adjudication 816:25 828:16 829:21
834:19 857:25 905:22 909:12
1012:14 1018:18 1055:6,17,23
adjudication's 908:8
adjudicative 789:3,17
adjusted 879:12 880:19
adjustments 1058:5
admin 787:16
administrative 794:12 800:24
804:18 811:2 821:6 832:13 925:7,10
1014:7
admissibility 940:20
admission 778:14 927:24 928:2,5
1058:3
admissions 798:6
admit 928:9 1015:22,25 1016:16
admitted 771:4 797:11 801:7

806:24 807:3 811:14 821:17,19
826:6,11 832:24 857:25 906:11
908:4,21 928:13 929:15 940:4
941:13 942:3 945:20,23 946:4,12
1015:8 1016:19
ado 820:24
adopt 772:10 774:14 775:18 778:7
794:1 804:11 820:25 824:24 830:1,
5,15 832:10 1013:8 1014:12
adopted 788:20 828:1 829:5 945:1
1017:10
adopting 775:16,24 789:11 797:6
800:15 1013:24 1014:12
adoption 777:18 778:1 808:25
adopts 793:3
ads 818:10,11
adults 982:12
advance 779:18 780:10,24 913:23
advantage 935:5
adverse 823:4
advice 977:3
advisory 879:14 932:25 933:2,8
971:14 973:5 994:2 1001:2,6,18
1002:1 1003:10 1029:19 1037:2,4,5,
9
aerial 805:18
affected 906:14 960:10 989:7 995:8
1029:11
affects 961:8
affirm 794:16 801:2 804:22 811:6
821:11 832:17 1014:11
affirmatively 1049:7
afraid 778:8
afternoon 769:20 780:25 911:6
917:1 951:14 987:7 1013:5,9 1047:3
afterward 983:12
ag 815:6
agencies 971:15
agency 891:15 892:24 1003:2
agenda 1058:2
aggregation 925:19

agree 826:5 852:16 853:1 856:24
858:22 877:25 878:3 879:4,15 880:1
918:9 919:18,21 921:23 922:10,15,
19 923:3 926:12 930:18 931:17,19,
21 932:4 934:20 948:12 975:11,14
985:16 986:2,6 1000:14 1021:16
1031:21 1034:22 1035:10,18
1036:13,20
agreed 858:7,8 860:3,9 999:6
agreeing 1007:9
agreement 787:18 798:9 1009:11,
12,17,20,21 1010:1,6
agreements 786:25 788:2 1037:18
agricultural 932:8 934:21 961:3
965:5
agriculture 785:22 786:16 790:17
792:12 852:21
ahead 772:9 773:4 795:7 805:3
826:9 830:25 852:8 859:2 903:21
904:3 907:19 914:21 916:17 917:9
928:18 938:3 951:9 953:22 996:20
1005:10 1008:5 1016:25 1038:8
1050:11 1051:21
aiming 881:10
air 777:5 778:18 779:9 780:3 980:25
airspace 980:11,23 981:17,20,23
airtime 976:2
Alberta 961:25
Alex 917:14 920:2 929:12 1047:7
algorithm 956:21 958:4
ALI 902:20
alleged 905:19
alleviate 777:13
allowed 775:11 781:22 905:22
907:1 908:8,21 922:25 958:8
alterations 950:13 1056:16
altered 795:18 980:18,19
amended 888:11 1017:23
amendments 794:21 901:25
America 957:3 991:3,8
American 988:24
amount 964:9

amounts 793:6 1017:25 1018:1,2 1032:22 1033:9 912:18 913:8,12,13 914:4,17,25
Amy 858:1 **applica-** 888:11 915:21,22 916:5,7,10 928:19,21
analyses 895:3 **applicable** 1025:16 929:3,6,8 1008:1,3,4,6,13,18,23
analysis 798:1,2 824:2 833:24 **applicant** 769:23 790:23 791:5 1009:2 1010:1,5,7,10 1057:15
960:7 962:22 989:16 1021:21,22 793:14 818:8 829:3 858:8,21 859:8
1028:25 1029:1 860:2,9,10 890:3,7,23 891:10,18,24
and/or 808:16 892:6 893:14 923:10 937:13 939:25
Andrea 787:13 788:5 808:16 940:8 945:13 947:8 950:12,15 959:7
Andrew 789:13 793:19,23 794:11, 1036:9 1049:7,18 1050:11,21
15 1051:21 1053:5 1056:10,15
angst 912:16 **applicant's** 776:9 892:21 904:16,23
announced 815:10 932:16 993:19 1054:1
annual 962:2 983:22 990:23 1022:5, **applicants** 1006:5
7 1024:9 **application** 817:21 818:24 819:1
answering 997:9 833:20 834:18,22 835:1,21 836:4
answers 816:20 827:3,16,18 839:23 837:16 853:5,7 856:5 858:3 878:13,
862:6 885:2 1001:3 1014:13,21 23 886:2 888:9,12 889:20 890:24
antelope 1037:13 891:23 893:8,13 926:18 933:20
anthropogenic 922:4,11,17 963:9 945:4 953:16 960:3,12 1006:7
anticipate 1012:1 1055:4 1018:17,20,25 1020:14 1021:1,2,5
anticipated 858:2 950:7 993:25 1022:4,23 1028:20,21,25 1036:20
1024:13 1054:8 1055:10,21
anticipating 817:2 828:22 1011:14 **application's** 853:23
anticipations 1012:20 **applied** 855:19 879:10 898:25
anymore 954:16 973:12 1028:10 1034:3,9
APA 908:18 **applies** 953:6 1033:20
apol- 1017:2 **apply** 773:15 905:6 954:7,10 965:18
apologies 888:22 990:7 1047:4,24 970:20 1006:5 1026:18
apologize 771:9 779:18 836:1,21 **Applying** 907:4
882:25 923:7 927:11 934:7 942:22
971:23 1007:3 1017:3 **appraisal** 822:4 824:9
app 784:22 791:23 **appraiser** 801:16
apparent 962:8 **appreciation** 787:8
apparently 775:11 928:19 971:21 **approach** 878:4 990:13
appearing 791:4 793:20 794:11 **appropriately** 911:13
800:7,23 802:21 804:17 807:5 809:5 **appropriateness** 814:1
811:1 820:4 821:5 826:5 829:17 **approximately** 860:15 1049:24
832:12 915:24 1013:2 1014:6 **Aramburu** 769:4,24 774:16 777:17,
appendices 833:20 1020:23 1022:8 22 778:17,22 779:22 780:6 781:11
appendix 774:6 833:21 836:17,24 782:9 788:15 789:7 792:6 793:15
839:16 840:10 856:16 988:3,5 798:20 799:5,12,15,16 801:10,14,15
802:1,23 805:7,11,24 806:19
807:24,25 808:13 810:12,13,18,22
816:23 819:19,21 821:21,24 824:23,
25 825:2,4 826:20 827:10,13 828:5,
8,23 831:8,10,13,14,24 832:3
904:22 908:9 909:25 910:1 911:19

assign 770:19
assigned 770:11,23 835:14 1020:9
assignment 892:10
assimilating 1019:1
assist 785:15 825:9
assistant 835:12 1020:8
assisting 917:14
assume 982:5
assuming 857:23 972:19,20
assure 786:13
attach 773:16
attachment 770:9 773:9 836:24
attachments 770:17 772:6,15,17
988:16
attempt 783:16 792:1 967:10,13
1027:14
attempted 901:13 960:6 967:10
982:15,17
attempting 1048:10
attendance 785:21 792:12
attention 795:1,7 799:25 825:3
839:17,18 946:13 997:25
attentions 826:25
attorney 793:9 795:4 807:25 835:12
1019:22 1020:8 1037:20
attorneys 793:14
attraction 995:14
attribute 999:19
attributed 891:18,23 892:6,7
893:13
attributes 892:16
audible 788:12 789:4 830:24 853:17
916:9
audio 771:10 809:1,11 832:20
882:1,14 917:7
audit 924:9
August 827:19 857:23 904:25 905:1
941:1 949:18 1048:21,22 1052:8,20
1053:19 1054:6
author 834:24 888:8,14 892:19,20
946:23 1050:7

authored 836:24 888:11 892:18
922:5 1052:15 1056:12
authority 1001:18,25 1002:12
availability 785:8 787:1 972:15
average 992:4
aversion 961:17
avian 936:7 986:17
avoid 793:6 901:15,17,18 931:2
958:15 976:13 1033:16
avoidance 902:7
avoided 964:21
aware 800:17 809:17,19 812:20
815:5 818:8 819:7 857:23 858:4
895:10 923:9,13 938:24 948:21
949:1,14,16 999:20,24 1000:11
1004:19 1032:4 1056:8,18 1057:1,5
Awesome 960:17

B

back 776:6 778:20 782:18 783:4,5
784:3,4 788:18 801:24 805:6,8
808:24 809:24 818:13 820:7 827:25
828:19 829:4,10,20 830:11 840:25
841:1,15 851:16,21,24 852:3 853:5
855:12 859:15 862:9 877:8,9,15
881:13,15,23 903:16,18 904:5,8,11
909:24 911:6 914:9,14 915:8 929:4,
7 944:6 945:23 950:20 951:5 954:3
957:10,23,25 969:12 1011:4
1012:22 1013:5 1025:2,22 1038:10
1046:17 1047:8,12 1050:23 1057:20
backbone 920:11
background 783:15 813:22 825:6
bad 997:1
balancing 912:5
ball 972:25
barriers 814:9
barring 1046:20
based 798:2 816:19 829:7 834:14,
15 854:1 912:1 913:15 915:14
922:19 923:17 924:4 926:14 938:22,
23 943:19 954:13 956:21 961:16
962:21 970:24 971:4 973:12 981:14
991:21 995:20 998:12,18,22
1023:10 1031:13

basic 783:14
basically 1018:25 1022:14,16
1050:3
basis 853:22 907:12 976:13 1029:22
bat 833:22 1021:14,19 1022:6,9,10,
15,20,21 1023:16,20 1024:9,13,15,
19 1026:17 1027:15,18 1028:2,14
1029:4 1030:8,24 1031:21 1033:17
1034:6 1035:12,16 1036:21
bats 834:5 970:21 1021:8,11,23,24,
25 1022:18 1023:6 1025:7 1026:2,5,
10,13,23 1027:20 1028:2,6,9
1029:10,12,14,23 1030:11,14,16,18
1031:7,15 1032:6,17 1033:12
1034:5,6,7,8,24 1035:21 1036:3
battery 815:25
bear 888:5 980:4
bearing 940:19
began 955:2 975:15
begin 789:11 906:21 1019:17
1023:15
beginning 775:19 854:10,12
1012:15
begins 906:9
behalf 774:4 791:4 798:20 828:23,
25 829:2
behind-the-scenes 1005:4
benchmarked 994:17
benefits 905:18
Benton 777:23 779:23 790:18
791:10 803:17 805:12,14,20,24
806:3,7,12 815:2,5 822:19 823:6
825:5 834:3 905:10 977:25 979:20,
22 991:5
BESS 781:7
bet 1021:15
big 814:20,23 987:16
biggest 814:9 815:20
biological 833:21 935:25 936:9
1018:1
biologically 964:17
biologist 889:22 894:25 924:18
925:13 950:14 995:24 1018:14

biologists 889:5,17,18,22 890:3,22
949:13 1000:4,13

BIPOC 812:18

bird 833:22 922:7 952:22 955:19
957:16 958:3 960:21 961:19,21
962:3 975:7 977:8,9 986:20 990:13,
14 1022:9

bird's 923:24

birds 834:5 935:1 956:7 958:1
961:23 984:3 990:19,21 991:10
992:7,11 1021:11 1026:23

bit 778:8 784:16 785:23 803:7,19
813:22 816:24 830:20 851:18
885:16 898:13 914:25 916:3 918:6
919:2,7 926:16 930:5 932:8 979:19
994:24 1003:16 1014:18 1023:3
1031:11 1034:20 1036:5 1050:5

black-tailed 918:15

blade 987:11 990:10

blades 981:9 993:3

blanket 926:18 1036:17

board 812:15 813:25 814:3,13 815:5
816:7

board's 813:23 816:8

body 935:19,22

botanist 889:10,22

botanists 890:22

bother 826:19

bottom 929:23 934:10,12 1001:12

boundary 795:16,20

bounds 840:13

BPA 814:21

brand 956:3

break 769:21 772:6 774:19 828:19
829:12 877:13,15 881:9,10,14
902:25 903:16 904:14 914:1 915:1
950:20 969:21 991:13 1011:3,25
1012:13,21 1015:11

breaking 771:10

breed 1031:15,18

breeding 951:24 962:1 977:10
978:19 979:11,16,24 991:6,18,23
992:11 1031:8

breeds 991:20

Brewster 790:14,15

briefly 830:23 958:21 963:15
1020:17

briefs 1056:2

bright 921:2 958:17

bring 815:24 825:2 839:1 902:23
907:7 929:14 940:5 993:20 1008:21
1047:7,13

bringing 860:6 986:25

broad 812:4 901:9

Broad- 957:18

broad-wing 957:16

broader 978:10

broke 919:6 936:4 955:5 979:19

Brost 790:19

brought 806:7 910:22 967:20

brunt 912:3

buffer 855:7

buffers 926:13 980:22

build 974:16

building 784:4

buildings 938:19

built 862:11 952:22 962:16 986:14
1054:9

bulk 906:2,4 907:17

bullet 796:1

bullets 1051:14

burden 910:6 911:8 912:5,19

business 793:1 915:4

busy 779:23,25 780:4 786:7

Buteo 957:2,12,14,15,17

Buteos 957:20

buying 822:16 823:23

C

C.A.R.E.S. 792:7 812:3,6 813:11
815:22 904:25 912:2

C.a.r.e.s.' 905:4

calculated 982:22

calculating 1024:19 1027:19

calculation 1029:3

calendar 938:11

California 962:2 977:11

call 775:8 786:20 789:10,19 795:1,7

call-in 808:20

called 777:13 839:18 878:19 967:16

calling 799:24 859:14 897:22
916:20

camera 771:14 792:1 803:10,13
830:25 882:7,13 969:11 1047:5

cameras 956:5

Campbell 1011:13

cancel 913:23

candid 816:17

canyon 822:18,21 880:18 947:19
955:16 983:21 1024:14,25 1025:14,
20 1027:21

canyons 947:13 1050:13,23

capacity 888:22,24 1028:7

capex 814:23

capture 879:17

captured 797:4

carbon 816:5

carcass 1025:10

carcasses 1026:7

care 828:3 913:22 928:9 1058:3

Carnation 816:2

Carol 915:24

carry-in 995:11

case 826:3 837:10 878:16 892:8
914:22 1000:22 1023:2

cast 937:9

catching 792:14

caucus 968:15 969:2

caucusing 968:19

caused 1055:24
caution 985:18 1038:7
caveat 918:11
caveats 1035:7
census 906:9,18
center 834:3 901:11
centrality 920:25 921:7
certificate 817:22 1003:4,7 1017:23
certification 834:23 835:22 836:5
858:3 886:2 888:12 1018:21
1020:14
CETA 816:4 905:19 909:10
cetera 772:17 1031:4 1034:8
CFE 776:21
Chair 778:8,11 781:15 789:22,23
792:10 797:18 798:10 802:3 806:2
809:13 811:17 816:21 822:12 827:5,
6,15 968:24 970:1,3,15 971:11,17
994:1 1011:16 1057:22
challenge 881:7 940:8 1035:4
challenged 939:24
challenges 977:8
Chamber 812:5,16
chambers 806:6
chance 783:10 817:8 822:9 825:16
903:19,20 915:13 948:11 950:23
996:2 1026:9
change 784:22 795:15 796:2,17
860:22 922:1,4,13,15 933:6 948:10
961:17 972:14 973:1,13 1007:9
1009:4 1049:25 1051:17 1052:5
changed 905:13 922:21 1025:8,9
changing 1054:19
Chapter 1001:24
characteristics 926:17 952:25
954:24
characterization 860:19
characterize 891:9 991:22
characterizing 984:6
charge 787:6
chart 906:10,18

charter 933:21,24 1003:20
charts 906:12,14
chat 785:13,16 787:21 808:19
809:23
check 778:23 789:11 790:23 994:4
chess 902:12
chief 777:23 825:6
choice 823:14,17 840:2
chronology 895:17
circulated 908:23 1011:16
circumstances 939:18 1036:14
citation 1002:13
city 803:16,17 805:12,14,20 806:3,7,
13 822:19 976:12
City's 805:25
clarification 824:14 858:21 859:1
887:6 924:21 926:10 1006:20
1007:7,8 1008:11 1030:1
clarifications 798:17,18 817:20
clarified 885:19 924:23
clarifies 782:3
clarify 809:19 810:12 818:15 839:5
888:10 894:18 895:23 898:17 902:6
923:6 925:3 951:15 999:2 1003:20
1005:20 1007:1 1008:21
clarifying 945:17 948:19
clarity 785:20,24
classic 932:7 952:25
classical 936:22
classification 892:10 893:3
classifications 959:14
clean 816:3 834:3,17 884:17 887:17
896:17,24 899:4 940:2,5 943:13
947:12,21 948:1 1018:16
cleanup 956:1
clear 798:16 883:6 894:13 897:13
908:24 910:18 911:10 923:8,9
942:24 963:13,14 1000:4
Click 777:23 778:12,20,23 786:8
824:22 825:15,22 826:4,15,19
827:16

Click's 825:3,5 826:10
client 894:7 899:5,15 901:20
clients 895:10
cliff 953:2
climate 961:17 973:1,13
close 827:19 840:13 858:15,18,22
859:8 860:3 861:9 898:20 915:4
931:3 938:17 955:17 966:10,18
968:17 984:13 1034:11
closed 774:22 783:4,12 838:15
839:10 840:25 861:11 881:17
916:22 946:18 974:25 1037:15
1038:9
closed-record 829:7 838:11
841:10,16,21 851:12,17 859:16
862:5,10,13 877:4 1038:12 1046:14
closer 798:22 859:12,13
closest 860:11,14,24 861:1,21
CO2 905:20
coalition 812:4 813:11
coarse 920:14
Coast 1030:20
coauthored 890:19 1052:15
Code 925:7
codes 815:3 925:10
cognizant 859:15
Cohnreznick 797:23
COHOE 929:5
Cohoe's 915:24
collaborated 889:23
collaborating 890:22
collaborative 890:2,21 949:10
968:9 1005:5
collar 1038:5
colleagues 936:24 968:15 987:4
1022:13
collected 935:6 986:16 1026:25
1052:8
collecting 1029:18
collection 1027:7 1035:6 1050:25

collectively 815:20,22 857:19 925:24 955:2	compared 959:19 963:11 991:19	conditional 1057:12,13
college 823:13	comparing 907:12	conditions 823:4 1003:3
collision 1021:18,19	compelled 910:2	conductive 771:8
collisions 961:11,13,15 987:11 990:10	compensating 964:15	conduct 935:7
colonies 855:8	compensation 965:8,9,10	conducted 837:22 884:21 886:20 890:21 923:17 935:13,20,24 936:9, 15 948:14 955:12 960:7 967:8 968:9 971:5 989:16 1028:5 1031:13
Colorado 961:24	compensatory 963:21 995:9	conducting 879:22
Columbia 834:6 979:16 982:9 985:6 988:21 989:3 1030:6	competition 879:19 961:15	conference 803:16 827:20,23 943:7
com- 832:2	complete 775:20 881:11 885:6 951:6 1005:17 1011:19 1012:7	conferences 941:17
Comcast 915:23	completed 1021:10 1025:3 1028:19 1029:1	confess 784:20
commensurate 922:7	completely 919:6 938:7	confidential 773:7 787:11 788:6 792:18,23 838:18,19,21 839:24 840:21 859:13 861:10 862:7 946:14, 17 955:22,24 970:8,9 1013:18,20
comment 782:20,22,25 806:13 818:1 828:13,14 1012:15 1054:15	completing 1020:24	confidentiality 786:25 829:7 1037:18
comments 816:10 836:9 907:14 937:1 967:7 1004:15 1012:16,17 1049:12	completion 796:19	confirm 769:15 831:6 913:21 942:21 1015:13
Commerce 789:25 812:5	complicated 787:7	conflict 997:6 1003:12
commercial 899:8	complicates 786:16	confusion 782:21 885:16
Commission 790:13 976:7	complies 918:10 919:16 931:15 934:18 1009:9	congeneric 957:5
commitment 1050:20,21	component 964:18	Connected 968:3,8
commitments 785:5	composed 974:24 975:1	connection 791:24 807:21 903:2 915:23 928:23
committee 879:14 932:25 933:2,8 971:14 973:5 994:2 1001:2,6,18 1002:1 1003:10 1029:19 1037:3,4,5, 9	composes 918:14	connectivity 792:4 830:20 900:5,9, 24 901:3,10 902:20 919:24 920:14
common 922:23 952:17 957:19 964:13 985:19	composition 922:1	Conservancy 968:12
communication 953:23 954:4 1006:4,11,13,21	compressed 911:5 912:12 914:19	conservation 833:22 878:17 901:6 959:19,21,25 960:22 961:7,18 965:15,18 977:7 989:21 993:21 994:19 995:1,5,10 996:17 1022:9 1032:6,18,20
communities 922:8	compromising 915:16	conserve 965:19
community 778:19 812:8,17,18,19, 20 813:1,2,24 814:25 815:21 825:10,11 910:7 922:13,14,21 933:13 967:5,14	computer 791:23	consideration 911:22 919:23 921:15 926:20 940:12
community's 816:2,6	concept 897:25 954:5	considered 780:18 811:11 816:11 828:16 838:3 853:4 885:7 891:12 901:19 921:17 960:18 970:12 980:8 990:1 991:24 996:14
community-supported 813:13	concern 778:18 786:6 839:10,22 840:24 911:3 912:19 928:19 941:12 942:15 959:19 960:5,8 989:12,15 1001:16 1015:24 1051:18 1053:25	consistency 836:13
companies 1033:18	concerns 815:20 827:21 841:4 931:5 932:14 1054:10	
company 797:23	concluded 851:13 877:5 1046:15	
compare 892:17,21 962:25 991:1	concludes 798:3 1021:22 1033:10	
	concluding 801:19	
	conclusion 823:21 911:17	
	conclusions 959:23	
	concur 919:1	
	condition 952:12,15 954:23 991:25	

consistent 879:9 920:20 921:12,19
926:22 927:6 933:4 963:22 1022:1

conspecific 961:15

conspicuous 984:3

constantly 895:8

constraints 944:4

constructed 853:1 952:24

construction 879:24 933:14 953:1

consultant 884:20 886:19 947:16
996:23

consultants 947:5

consultation 879:14

consulted 1010:5

consulting 795:13 797:23

cont- 818:22

contact 803:2 825:12

contained 804:22 811:7 825:14
828:11 832:17 884:4 891:17 892:5
893:12 902:17 1002:16 1014:22

contemplating 1056:15

context 802:9 836:14 908:20 926:19
963:8 965:10 987:18 1056:1

contextual 978:10

contextualize 987:15,25

continue 777:12 778:23 784:19
831:5 916:12 955:13 1055:20

continued 935:25

continues 878:14 905:18,19

continuing 987:9

continuous 879:8 976:8

continuously 894:6

contract 887:10

contradict 1004:8

contradicting 893:5

contribute 836:17 888:21 891:13
986:3,6 1000:15 1021:9 1031:22
1048:5 1053:3

contributed 836:2 888:24 889:3,8,
11 975:25 976:4 1020:18 1022:5
1048:17

contributes 853:2 857:20

contributing 834:25 986:12,18

contribution 836:7 993:21

control 796:21 827:12 922:8 1018:3

controlled 796:23,24

conversation 813:12 857:15 896:4
924:7 973:4 1006:16

conversations 813:18 815:1
892:11 1050:19 1051:6 1054:16

conversion 815:6 961:4

Cooke 1011:21

cooperative 1005:5

coordination 1003:25

copy 799:11 854:4 940:2,5 941:2

core 888:15 895:19 923:11 924:1
926:13 962:10 979:3,5,11,16
984:15,18,21 985:11,13 991:6

correct 770:16 776:17,22 796:11
799:8 802:1 803:18 804:9 807:18
808:5 810:14 828:7,8 834:20
835:22,24 836:1,5,6,22 837:4,16,17,
23,24 838:2,3 852:14,15,24,25
853:9,10,16,21 856:9,14,15,25
857:2,4,5 858:4,10,11,16 859:10
860:4,5,12,13,17 878:2,9 879:1,2,
20,21 880:5,6 884:20 886:3,5
887:19,23 890:17,18 894:4 900:7
902:10 903:12 921:9 923:12,15
924:4 930:20 935:21 936:17 955:12,
25 958:5 968:6 971:16 974:9,10,12,
18,23 982:7 985:3 988:19 998:3
999:4,13 1000:25 1003:1 1006:8,9,
24,25 1007:12,13,23 1008:24
1009:15 1020:15,16 1021:8,14,19,
24 1023:22,23 1024:6,7,10,11,16,17
1031:16 1033:13,14 1034:22
1035:13,14 1036:22,23,25 1037:3,4,
6 1048:23 1054:3

corrected 799:7

correction 795:25

corrections 796:13 797:5,16 798:3
833:2

correctly 855:1

corresponded 770:4

corridor 920:15 963:1,6

corridors 815:19 902:8 920:19
967:23

Corvallis 834:15

cost 918:22,23

couch 997:15

coughing 969:6

Coulee 979:15 980:1

council 778:12 785:20 788:2,6,7
789:9,15,20,21,23 790:1,4,7,10,14,
19 791:18,22 792:9,15,23 793:2,18
797:18 798:12 801:12 802:3 805:9,
24 806:2,6 811:17,24 812:1,15
813:8 816:16,21 817:11,13 819:5,18
822:9,13 824:6,11,15,21 825:19,24,
25 826:8,14 827:6,24 828:11 829:10
830:19 833:8,13 837:3 841:12,18
852:1 862:9 882:25 886:13 903:17
904:2 906:15 909:4,18,21 915:7
923:1 940:5 942:22 945:6 954:17
968:19 970:3 971:11,17,19 972:3,6,
22 973:18,23 974:13,19 975:4,12,21
976:18 978:5,7,23 979:2,6,18 980:2,
10,15 981:21 983:1,10 984:11,23
985:8,22 986:21 987:1,3,6 988:1,15
989:9,25 990:8,16,25 991:14
992:12,15,22 993:14,17 994:8,15
995:3,22 996:2,19,22,25 997:3,8,17
998:12 1001:3 1002:9 1010:2,9
1011:8,13 1012:19 1013:14
1055:18,23 1056:3,19 1057:22
1058:12

Council's 797:15 841:5 912:4
940:11 945:4 996:23 998:19,23
1000:4 1002:6

Councilman 999:4

councilpeople 975:5

counsel 774:1 787:1 794:4 799:17
828:25 830:18 835:13 836:18
851:22 854:6 877:9 920:3 943:9,15,
20 950:7 999:18 1003:21 1016:5
1020:10 1024:5 1032:1

counsel's 915:3,4

counties 979:23 985:6

country 1022:3 1030:15 1034:4

County 776:15 777:23 779:23
790:18 791:10 806:12 815:2 822:19
823:2,6 825:5 834:3 905:10 976:12
977:25 979:14,16,20 991:5,6
1057:14

County's 815:6
couple 769:2,13 797:14 822:21
827:7 834:8 852:4 966:23 987:9
992:6 1018:4 1034:15 1046:19
1056:5
court 784:17 792:2 795:3 797:4
881:8 882:14 908:22 1012:22
1016:12
courtesy 775:13
cover 834:5
covered 776:5
COVID 775:10 955:7,11
craft 840:7
crafting 915:19
created 997:18
creates 897:8
crews 983:5
criteria 813:12 959:2,5
critical 878:7 977:24
critique 821:25 967:7
critiques 907:11 908:12
critiquing 907:8
cross 778:7 835:3 927:25
cross-exam 769:14 775:25 811:12
841:17 877:16 881:16 903:5 927:16
966:17 1012:4 1017:13
cross-examination 773:14 779:10
783:22 817:17 828:22 830:10,15
831:18 835:9 877:12 881:24 882:20
888:6 912:22 915:9 927:20 942:5
951:6 1019:8 1020:5 1047:1
cross-examinations 1057:20
cross-exams 784:3
crystal 972:25
cultural-related 1058:8
cumulative 834:4 910:12 912:1
982:15 988:1,20 1021:8,10 1026:22
1027:12 1028:18 1029:1 1030:3,5
1031:23
cur- 956:18
curious 812:6 980:23

current 898:15 1007:10 1017:14
1054:7
curtail 956:9,14,15 970:23 1033:18
1036:3,21
curtailed 971:7
curtailing 956:23
curtailment 958:2 970:5,7,10,12,
17,20,23 971:1,2,8,9 1034:19,23
1035:2,11,15,20 1036:2,10,13,17,19
1037:6
cut 931:25 950:5 960:14 996:20
1011:10 1014:18 1035:25
cutoff 896:1
cutting 890:9 997:23
cycle 990:23

D

dad 897:21 898:3
danger 956:10 981:3,5,8
darker 882:9
data 796:24 836:25 838:9 839:14
841:5 857:3,13 895:19 899:13
900:3,23 901:7,13 906:9,18 922:20
925:23 933:12,13 934:24 935:6
936:7 937:10,19 952:8 962:14,18
967:12 971:1,4,6 975:15,20 986:16
987:21 991:21 994:3 995:21 996:12
1004:23 1026:1,17,19 1027:12
1029:3 1035:5 1038:5 1048:14,20
1054:5,7 1055:5,8,13
data-driven 1036:19
database 952:7,10 987:22 991:24
date 898:16 911:25 914:24 949:17
995:25 1006:18 1049:10 1051:24
dated 856:24 939:9 1048:21
1052:20 1053:19 1055:3
dates 898:6 911:24 912:9 947:24
948:4 1055:18
David 836:25
day 775:2,10 779:25 782:11,16
784:5 789:2,17 802:18 915:2 943:11
970:24 996:6 1019:2,17 1023:2
1058:10,13
days 776:16 778:3 796:20,21,22

914:21,22 915:1
dead 984:8 995:13
deadline 777:14
deal 987:16 1003:10 1049:5
dealing 786:8 823:4,9 970:21
deals 932:22 959:15
dealt 1015:24
death 986:4
decades 822:22
December 1028:21
decide 823:13 914:23 947:12
1049:7 1050:11
decided 947:21 948:2 1051:21
1053:5
decision 899:8 902:11 945:8 976:22
993:17 1006:5 1049:18 1051:9
1052:24 1056:25
decision-making 1001:17,25
1002:11
decisions 899:14 901:21 925:25
1036:19,24 1052:12 1054:23
1056:22
decline 922:3 975:25 985:17
declines 976:9
declining 961:16 985:17 986:3
decrease 922:7 948:17 949:6
decreased 972:15
decreasing 852:22
deeper 814:2
defer 771:5,23,25 1019:16
define 924:14 925:4 930:11
defined 925:8 933:18,19 954:7
981:10 992:1 1034:12
defines 858:22 859:8 860:11,14
861:1
definition 860:18,24 924:25 926:11
951:22
DEIS 1004:16,24 1049:10
delegate 1001:24
delicacy 840:19

delineated 979:11	developed 994:24 997:18 1003:20, 24 1004:14	899:25 932:14,20 933:1 980:20 988:10 999:12 1001:15 1018:11
delineation 898:15 936:18,20	developer 887:9,10 902:11 947:23 1054:22	direction 780:21 938:23
demise 976:4	developers 814:14 815:16 816:15 977:18,24	directly 814:21 832:5 856:23 891:18 893:3 908:7 909:11 922:25 1005:15 1056:10
densities 991:1,10	developing 835:1 890:6 947:1	disagree 898:23 921:24 926:12 934:20 942:7 1000:3
Dep 772:11	development 805:15 812:15 813:5 815:9 834:6 836:3 852:21 887:12,14 890:5 891:6 895:17,21 919:22 922:12,13 926:18 931:6 961:4,7 962:5,10,13,25 963:8,12 977:14,16, 20 978:1 982:23,24 988:9 1004:15	disagreement 1003:6
Department 785:22 786:15 790:17 812:1 815:10 891:2 945:7 968:10 972:5 974:1 987:8 1050:16	developments 822:2 976:10,11 977:1	disagrees 942:2
dependent 922:2 973:4	device 903:1	disclosed 955:14
depending 782:5 994:21 995:8	DFW 891:24	disclosure 839:25
depends 841:17	dial 898:5	disconnect 808:3,7 820:22
depicts 920:10	dialogue 1054:8	discourtesy 792:2
deposed 772:9 939:13 949:19 1000:7	diet 931:18	discovered 983:2
deposition 770:14 771:21 772:13 781:5 782:1 929:13,14,20,23 940:1, 3,25 941:4,13 942:14,20 943:2,5,6, 14,16 944:13 945:2	difference 938:11,14,21 951:16 975:6 976:15 1000:18	discrepancy 892:25
depositions 771:3 949:13	differences 840:8	discretion 908:19
depth 962:8	difficult 951:20 960:1 964:24 977:7 980:16 981:22 1022:24 1023:1,4 1030:25	discuss 827:21 891:6 892:9 918:11 930:20 936:13 982:1 1048:18
derived 982:20	difficulties 770:22 771:2,7 803:22, 24 809:4 853:12 856:18 861:4 880:7 883:9 889:20 890:8 891:17 915:23 916:23 917:5 919:3 920:23 926:5,6, 24 928:24 931:23 932:22 936:1,8 946:8 953:24 955:4 959:4 960:13 961:11 965:6,24 967:15,21 977:17 978:4,19 980:1,8 984:3 985:5 986:11 989:3 990:6 994:7,12 995:15 996:18 1025:21 1029:6 1053:13	discussed 801:21 805:16 813:25 840:5 841:6 854:10 858:11 859:19 860:19 861:5,7 893:17 920:3,16,17 924:8 933:22 937:19,20 946:18 947:14,19 949:9 954:2 955:21,23 960:23 963:22 965:13 972:18 974:25 975:2 992:5,21 1006:24 1007:2 1009:15 1037:2 1047:9 1051:1
describe 818:5 970:11 984:14	difficulty 774:10 1046:20	discusses 907:13 933:24 938:18 948:6 964:9 967:22
deserved 779:21	dig 856:3	discussing 877:23 878:9 938:8 980:22 1035:1
design 899:6 900:4,10 901:4,22,25 902:4,11,17 920:18,20 926:21 927:4,6 937:14 947:22 948:22 949:2 950:12 992:17 1049:8 1051:22 1053:8 1056:15	digestible 1048:16	discussion 815:2 914:17 944:3 949:5 958:22 959:10 1004:12 1016:13 1047:11
designed 956:11 995:20	digging 895:8	discussions 892:11,13 896:6 949:11 963:24 1049:15 1050:15 1057:1
designs 899:7 926:25 927:3 937:2	digital 798:13	disheartening 977:15
desire 781:2	diligently 779:2	disperse 961:23
desk 934:3 1004:2	dire 778:2	displacement 879:18
detail 972:14	direct 834:11 883:15 888:13 893:24	display 928:17
details 1055:1		displaying 785:9
detect 958:3 970:17,18		
determine 777:8 897:16 1005:13		
determined 781:10 1057:18		
determines 933:2		
determining 777:12		
develop- 977:13		

efficient 917:1
efficiently 1052:9
effort 975:16 1048:13,15
efforts 818:9 824:15 965:18
1032:20
EFSEC 771:11 791:18 812:1,21
813:5 814:17 815:5 816:9,10 818:23
852:1 896:5 911:11 933:24 947:4,5,
8 960:16 972:6 987:8 1001:24
1002:22 1003:9,21 1004:15 1020:25
1048:15,17,20 1049:10 1051:2
1054:7,14,17 1055:8
EFSEC's 774:4 947:16 1002:10
eggs 951:25
eggshell 951:25
EIS 812:22 1054:16 1055:12
electricity 958:10
electrocution 1021:18
electronic 802:4 968:20
electronics 841:20
elements 836:11 996:16
elevated 1032:17
Eli 790:4 811:21,25 968:25 972:4
eliminated 961:3
Elizabeth 790:1
Ellensburg 823:10,13
elucidate 787:10
emergency 825:7 837:3
emerging 894:5,18,22 895:13,14
896:1,9,14,16 898:8 899:9
emissions 816:5 905:20
employees 984:4
encourage 939:1 954:17 996:18,21
1033:17
encroachment 852:21
end 782:12,14 784:20 795:22 796:17
797:2 804:1,2 805:6,21 807:22
854:25 856:15 890:10 895:16,20
899:7 900:16 901:20 906:23 916:17
926:7 937:16 945:3 966:16 984:13
1003:16 1012:14 1019:24 1057:21
endangered 877:24 878:2 924:11
959:11,18 970:22 976:8 1018:14
endeavor 825:18 965:16
ends 983:7
enduring 1058:9
energies 1033:13
energy 813:13 814:1,5,6,13,15
815:10 816:3,5 822:17 823:1 834:3,
5,17 884:18 887:13,17 896:18,24
899:4 922:12 931:5 947:12,21 948:1
963:5 973:16 983:21 988:9,11 989:8
1018:16 1025:7 1027:1 1035:13
enforce 1002:23
enforcement 1001:25 1002:25
enforcing 1003:3
engaged 816:6
engagement 812:21,25 884:17
887:17
enlighten 860:23
ensure 878:13
ensured 888:17
entails 1021:2
entered 1009:22
entire 900:12 930:18 982:9
entirety 907:5 918:16
environment 829:1 830:18 835:14,
16 836:19 851:23 877:9 879:13
920:3 950:8 1003:21 1020:10,12
environment's 854:7 1024:6
1032:1
environmental 813:3 815:10
835:13 1020:9
envision 994:17
equipped 992:18
Erik 828:18 829:16,22 832:12,16
851:22 881:24
error 908:11
escarpment 901:10 920:16
essentially 777:19 783:10 810:11
901:13 918:22 956:5 958:5 959:18
961:5 962:16 967:2,3 973:14 981:8,
18,19 982:20 992:1 994:4,25
1026:16 1028:3 1034:17 1048:8,9
establishes 994:7
estate 795:12 797:24 962:19,21
965:12
estate-type 965:15
estimate 916:24 982:19 984:24
987:24 1022:5 1023:18 1024:15
1025:23 1026:15 1029:23
estimated 1019:21 1023:20
estimates 923:23 978:16 982:18
989:5 1019:20 1022:7,18 1024:24
1025:2
estimating 1025:6
estimation 908:16 1011:7 1024:8,
13 1030:2
estimator 1025:8
estimators 1025:9
et al 854:3 953:19 959:1 979:10
et al.'s 855:19
Ethan 791:19
evaluation 837:3 992:23
evasive 899:18
evening 806:11 828:13
event 815:12,13 939:15 984:4
events 786:18 1036:12
eventually 852:13 902:3 928:16
everybody's 775:13
everyone's 997:11 1056:8
everything's 1017:14
evidence 806:1 811:12 893:6
941:10 951:24 954:20 955:18
1031:14
evident 897:24
evidentiary 789:3 942:24
exact 909:16 934:8 947:24 949:13
1006:18 1049:10 1051:24 1056:25
exam 1046:21
examination 831:5 834:11 851:22
951:11 1018:11
examines 773:19

excellent 774:11 908:9
exception 985:24
excerpt 773:15
excess 795:17,21
exchange 804:1
exclude 908:12,19
exclusive 1024:14
excuse 1008:18 1032:23
excused 800:5 802:19 806:21 820:2
824:19 1010:24
exempt 839:25
exercise 985:18
exercises 890:2
exhibit 769:16 770:11,20,25 772:16,
18 773:5,9,13,20 774:8 780:25
794:2 795:7,11,12 796:1,15 797:9
801:6 807:1 809:16,19 811:7,13,23
821:12,18 826:6,11 830:2 832:18,22
835:17 836:19,23 839:16,22 852:20
854:7 858:1 861:15 883:14,20 884:4
887:25 893:23 902:24 903:21
905:14 906:5,8,24 907:5,6,15,16
908:6 917:12,18 918:5 920:2,4
921:13,19,22 928:4,11 935:15 939:4
940:3 941:3,12,23 942:14,20
943:11,12,22 944:9,24 945:18,19
946:15,23 975:22 981:25 1001:4
1008:7,12 1013:15 1015:1 1016:18
1017:5 1023:25 1032:23 1033:8
1034:22 1047:7,9,14 1048:7
exhibits 769:14 770:5,14 771:3,6,21
772:4 773:15 775:16,24 777:20
785:1,10 794:17 800:14,17 801:3
804:8,23 806:23 807:17 809:20
828:9 829:5 830:1 832:10 839:9
904:15 905:9 907:17,21 927:16
946:2 1013:8,11 1014:12,22
1015:13,22 1016:1 1032:2 1058:3
exigencies 826:3,24
existing 796:4 926:17 962:12
exit 904:4
expand 966:17
expanded 962:10
expanding 961:4
expanses 991:11

expect 780:20 811:19 916:21
985:12 999:16
expectations 1012:19
expected 944:25 1022:6 1024:9
expedited 908:22
experience 822:16,20,25 823:4
886:7 983:24
experiences 879:24
expert 906:2 937:10,14 1024:6
expertise 907:11 908:16,17 942:19
986:25
experts 889:21 967:6 972:8 1000:7,
22
expir- 986:7
expirta- 986:7
expirtation 986:7
explain 824:25 925:2 951:16 953:5
explanation 835:19
explanations 789:14
express 1001:16
expressed 999:21 1054:10
extendable 956:6
extended 984:8
extensive 825:6
extensively 886:21
extent 852:21 885:25 886:6 941:5
963:25
Extinct 959:18
extirpation 986:1,8 999:6,12,22
1000:9
extrapolate 1025:18 1026:17
1027:4,5,11,14
exurban 961:7
eye 803:2 976:3

F

face-to-face 831:2
faces 960:21 961:19 977:8 986:20
facilities 822:17 823:2 879:25
886:22 899:16 901:14,16 921:1

922:9 982:2,6,8,11 984:18,20,21
985:1 1022:2 1027:6 1028:4 1030:6,
7 1033:13 1034:4
facility 837:3 984:5 985:10
facing 1032:16
fact 786:15 906:16 946:13 1049:13
factor 853:2,4 960:19,20 972:17
986:12,18
factors 852:22 959:16 960:9 961:17
975:25 976:4 1000:14
factual 906:12 907:12
fail 906:20
failure 960:22 961:8
fair 884:14 887:20 889:1,2,8,14,15
890:1,4 891:9,16,22,24 892:4 893:7,
11 897:4 899:10 912:11 932:15
936:11 946:3 948:24 980:13 982:13
985:21 1000:12,17,18 1002:3
1021:20 1034:25 1035:19 1052:3
1054:13
fairly 812:4
fairness 819:13
fall 783:23 967:19
falling 986:14
falls 958:4
false 957:1,8 992:24
familiar 889:14 918:1 920:7 935:18
996:22,24 1013:10 1021:1 1031:25
fantastic 997:17
farm 835:21 858:2
farmland 996:17
farms 823:1 906:14 919:23 921:25
1033:16,17
fascinating 972:9
fashion 916:1
faster 841:16 998:8
fatalities 982:1,20 983:2,18,25
984:2,22,25 988:6,23 989:17 990:21
1024:15 1027:15 1028:14 1029:4
1035:16 1036:21
fatality 879:3,8,12 880:16 895:5
982:17,18,19 986:10 987:22,25
988:11 993:25 1025:1,6,19,23,25

1026:17,25 1027:3 1028:2 1029:18	files 774:9	flow 890:5 993:4
fault 912:4	filing 812:21	fly 909:15
favor 948:16	final 858:3 939:4 985:23 1003:15 1054:16 1055:12	flying 955:16 962:9
feasible 945:14	Finally 782:20 908:5	focus 781:20 886:11 902:4 905:18, 19 915:17 930:18 932:16 950:5 992:25
feather 958:8	find 808:11 823:8 854:16 900:20 913:17 929:17 972:7 975:8 977:13 999:16 1002:13 1013:17 1023:8 1026:5	focused 778:5,14 915:20 932:20 934:25 979:17
feathering 958:8	finder 906:16	focusing 781:15
federal 970:22	finding 776:7 897:3 918:9 1026:10, 11	folks 782:23 783:1 904:4 950:24
federally 1032:14,15 1034:7	findings 895:15 899:3,22 918:7	follow 777:11 783:8 800:20 808:22 893:15 943:23 1005:15
feed 931:20,22,25 995:13	fine 809:15 818:3 838:13,16 903:4 999:15 1019:12	follow-up 817:10 819:18 1005:22, 25
feedback 891:10,12 892:17,22 937:3 948:11,22 949:2	fine-scale 936:18	footprint 949:7
feel 910:2 996:1 1033:7	finish 877:8	for-sure 787:19
feelings 912:16	finishing 769:17	foraging 934:21 980:5 1031:19
feet 855:22	fire 777:23 781:22 786:8 805:18 825:6,10 826:3 910:22 912:24 961:18	Force 778:18
fell 797:2	Fire's 825:13	foremost 1022:25 1025:17
fellow 975:5	firefighting 778:9 973:11	forensic 801:16
felt 940:4	fires 777:24 778:5 825:7,9,11,20 826:25	forget 1015:16
ferruginous 833:25 834:1 837:1,15, 22,25 838:8 839:3 852:12,18,24 853:8 857:12 858:15 859:9 860:16 877:23 879:1,7 887:16,21 895:15 922:2,18,24 923:12,22 924:10,18 926:3 931:17 934:22,24 935:2,4 951:23 952:22,24 953:1 954:14,19, 22 955:1,15 956:24 957:2,14 958:24 959:8,22 962:11 972:21 974:2,16 976:1,2 978:11 979:4 980:6 982:1, 23 985:14 986:12,13,14 989:11,16 994:9 999:7,23 1000:10,16,23 1006:7,23 1007:11 1023:2 1035:1	firm 1011:5	form 1036:1,2
ferrugous 834:1	firms 936:15	formal 808:24 911:15 932:18 967:25 983:3
fewer 963:10	firstly 1009:21	formality 811:11
Fidorra 949:20	fish 790:6 833:17 836:4,10 891:2 945:7 968:10 974:1 976:6,17 1050:16	formalized 1051:3
field 925:14 1049:23 1050:18	fit 1012:13	formalizing 1050:20,21
fields 964:6	five- 877:15	formally 780:11,24 828:6 945:1,23 1015:15,25 1049:18
fighting 777:24 825:20 942:3	five-minute 902:25 903:16	format 895:7
figure 881:12 918:17,25 976:22 983:6 1026:13	five-year 933:3 1000:21	formed 973:5
figures 918:17	five-year-long 932:21	forms 922:12 965:11
file 774:5	fledge 990:23	forward 782:12 806:15 813:6 816:11 939:1 973:1,11 977:4 996:4 1023:13 1051:8
filed 810:7 904:25 905:1 939:5 1010:9 1016:1	flexibility 775:9,13	fossil 973:15
	flight 956:8	Foster 791:12
	floaters 978:20	found 781:25 854:2 901:9 921:25 922:7 952:7 953:2 967:1 977:13 986:15 988:11 989:3 1004:10,12

foundation 897:9 924:10
fragments 952:1
frame 915:11
framework 880:20
Franklin 979:13,22 991:5
frankly 941:5 966:11 1011:6 1022:3
1028:25 1030:15,23 1031:1
free 993:3,4 1033:7
freely 841:11
freewheel 958:9
fresh 952:18
Friday 776:11,20 777:9 781:9 912:7,
21 915:6
Friday's 777:14
front 798:23 802:25 826:22 837:6
838:25 854:8 856:11 886:9 891:21
897:16 902:1 909:11 921:18 942:18
943:11,22 977:1 993:17 996:3
999:14 1005:17 1010:2 1024:1
1032:23 1033:2 1054:18 1056:3,19
fuel-emitting 973:15
full 841:12 882:25 903:7 930:10
fully 786:3 917:24 1012:1 1037:8
Fulsome 889:9
fundamental 938:21 942:15
funding 814:4 965:17,18
funeral 777:1
funnel 782:12
future 813:20 815:3 852:18 919:21
962:18 993:18
Futures 814:5

G

gaps 1033:24
garbled 784:16 803:7 885:2 891:21
900:17 926:7
gas 905:20
gave 916:24 931:4
Gee 823:19
general 778:6 779:23 783:11 796:24

822:6 823:9 835:12 840:12 841:22
851:24 858:5 862:14 877:10 878:16
886:12 944:10,14 990:13 1020:8
1032:17 1038:13
generalities 840:3
generally 795:21 836:7,12 856:22
879:4 898:14 922:11 932:5 941:7
1052:1
generating 958:9
generation 814:10 815:15 816:5
973:16
generous 1002:5
genesis 854:1 1050:14
genus 957:14,17
geographic 895:7
geographically 1030:12
geothermal 887:15
GIS 895:7
give 769:19 770:24 779:24 780:23
788:16 793:9,15 794:4 795:5 801:11
804:10,15 805:7 808:8 818:1 819:20
821:22 823:9 824:6 828:20 833:8
881:8 882:12 883:16 886:12 898:5
903:24 944:15 950:19 969:10 978:6
987:18 988:13 1014:13,21
giving 911:22 978:6
glad 898:3
global 905:20
glomming 899:9
gold 967:2
golden 984:1
good 769:8,10 770:21 777:10 780:8
789:1 790:25 791:11,17 793:25
800:11,12,13 802:16 807:10 809:10,
12 815:4 816:13 829:19,23 835:11
857:19 882:22 904:20 920:22 931:5
933:9 942:11 952:15 967:14 974:21
983:13 987:6 989:10 993:7 997:1,2
1013:4,9 1031:5 1047:3
gophers 932:3 934:22 935:5,7
Gorge 985:2,3
GPS 1038:5
Grant 979:15

granted 770:18
Grantham 787:4,10,13,14 788:4
808:16 971:20,22
grappling 784:22
grassland 932:10
gray 825:10,13 895:4 925:22
967:16,19,23,24 968:4
great 770:6 777:16 802:18 817:15
837:20 852:5 880:12 953:20 989:9
1017:9 1024:4
greater 853:23 918:23 961:6
greatest 1032:6,18
greatly 910:16
green 814:7
greenhouse 905:20
grieving 1058:8
ground 918:15 931:20 932:2 953:2
992:2
group 813:16 814:13 862:10 900:5,
25 901:4 902:20 910:7 920:14
967:22 1027:6
groups 1035:20
grow 990:14
guarantee 1037:5,7
guess 774:24 785:9 830:13 840:1
892:25 945:15 972:10 985:16
1031:7 1052:25
guessing 841:15
guidance 902:15 945:6
guidelines 893:17 938:25 944:1,20
945:1 963:23 965:4,13 967:24
guild 933:4
guilds 921:25 933:5
guys 880:13

H

habi- 935:10
habit 897:21
habitat 833:17 836:3,10,18 854:2
878:8,10,13,14 890:16,20 891:10
892:14,15 893:3 900:5,9,24 901:3

902:8,19 920:11,14,19 933:22 936:7,18,19 952:9 961:2,17 962:24 963:11,21,22,25 964:1,5,10,12,23, 24 965:12,14,19,22 976:14 977:22 980:5,9,17,18,19,21 981:20 995:18 1004:10,12 1017:24 1018:1 1020:22 1021:11 1026:24 1034:15 1048:19 1049:5 1051:15 1052:18	24 923:12,22 924:10,19 934:24 935:2,4 951:24 952:24 953:1 954:14,19,22 955:15 956:25 957:2, 4,15,18,19 958:24 959:8,22 962:11 972:21 974:2 981:6 982:1,23 984:19 985:11,19 986:12,13,14 988:23 989:11,17 991:20 994:9 999:7,23 1000:16,23 1007:11 1023:2	heavily 991:23 heavy-use 991:18 Heemsah 792:20 helicopter 955:18 helpful 770:19 799:17 837:9 854:12 906:15 993:13 1028:13 1036:14 helping 815:12 895:9 986:25 helps 772:7 824:6 hesitant 933:10 hibernacula 1034:16 high 920:25 921:7 996:14 997:1,2 1033:17 higher 796:23 827:8 918:22,23 991:9 992:8 1022:17 highest 1021:22 highlighted 918:4,8 919:14,18 highly 816:11 910:22 939:16 1033:12 highway 901:12 Hills 798:1 805:19 901:11 918:14, 22,24 919:4,10 922:20 926:16 938:20 952:12 954:20,21,22 956:25 962:21,23 963:9,12 970:13 975:18 977:14,19 978:2 979:12,13,22,25 991:17,22 992:4 Hispanic 812:16 818:12 historic 877:25 923:14 951:17 952:3 1006:23 historical 938:6,16 952:4,5,11,14, 21 954:8,14 955:17 962:13 979:17 991:6,23 historically 989:23 history 888:16 954:13 hoary 1021:25 1030:16 1031:14,21 1032:5 1033:11 1034:5 1035:12 Hoen 801:20,23 824:7 hold 1012:20 holder 1003:7 holistic 878:4 holistically 814:6 home 810:8 822:20 823:15 832:7 895:19 924:2
habitat-related 835:20 habitats 856:19 878:20 922:2 932:6 1049:14 Hagar 789:14 807:4,8,10,15,24 808:2,6,11,14,17,19 809:2 820:3,6, 11 821:5,9,10,23,24 822:14 824:12, 14 Hagar's 807:13 808:24 820:9 822:7, 10 half 769:25 826:4 841:15 915:1,2 930:4 997:22 hand 794:9 798:13 800:20 804:15 810:25 817:1 821:11 832:9 971:23 1014:4 1017:12 handle 782:8 1031:5 handling 983:17 hands 802:4 968:20 handy 906:6 Hanford 815:11,15 Hang 788:15 happen 783:19 1003:5 happened 784:23 947:7 949:11 1028:24 1051:6 happening 787:11 900:15 1052:6 happy 771:20 817:25 943:6,23 993:11 1005:14 1018:4 hard 782:18 859:24 861:16 950:7 997:21 1031:12 Harper 769:3 776:15,18 791:9,11 799:23 800:1 Harper's 1011:21 harvest 786:9 hate 780:3 hawk 833:25 834:1 837:1,15,23 838:8 852:12,13,18,24 857:12 877:24 878:1 879:1,7 880:5 922:3,	hawk's 860:11,16 hawks 854:13 887:17,22 895:15 922:18 926:3 931:17 934:22 952:22 955:1 974:16 976:1,2 978:11,14 979:4 980:21 981:3 985:14 988:10, 24 1000:10 1006:23 1035:1 hawks' 838:1,14 839:3 853:8,16 858:15 859:9 980:6 984:15 1006:7 Hayes 992:5 he'll 998:1 head 786:15 818:1 909:8 943:10 head-to-head 780:18 heading 966:5 headquarters 815:11 834:15 heads-up 780:24 783:18 785:3 health 972:17 994:4 hear 783:16 784:14 786:20 792:2 803:4 806:12 807:19 808:1,6 820:11,19,23 821:3 826:7 832:20 836:20 852:6 889:7 897:13 916:8 927:15 929:9 970:8 1012:9 1015:12 1016:25 heard 815:21 880:10 883:2 885:1 889:24 915:14 967:17 1006:10 hearing 782:20,22,25 784:7 785:1 789:3,18 806:13,15 808:11 827:19 841:21 859:24 862:13 910:3,9,19 911:25 912:9 913:15 914:24 926:11 941:8 1012:15 1038:12 1053:23 1055:17 heartburn 1055:25 Heaven 789:9 790:17 798:1 805:19 829:20 834:2 835:21 851:19 858:2 886:15 901:11 918:14,21,24 919:3,9 922:20 926:16 938:20 952:12 954:20,21,22 956:25 962:21,23 963:9,12 970:13 975:18 977:14,19 978:2 979:13,22 991:16,22 992:4 1017:21	

homes 822:16,25 906:13

hometown 778:3,17 825:21

hone 954:12 1023:18

Honor 769:9 770:22 775:2,6 776:13, 23 777:7 781:12 783:7,19 784:10,24 785:18 786:22 791:1,2,12,18 797:20 800:2 809:13,18 817:7 818:13 830:7 831:3 832:21 833:4,12 840:12,14 852:10 858:17 859:17 861:8 877:21 882:4,18 883:5 885:9 886:5,17 892:3 894:10,17 897:12,18 898:23 900:11,18 902:25 903:13 914:7 916:19 924:20 927:11,22 928:7 929:12 930:3 939:6,19 940:13,17 941:15 942:10,12 943:5,24 944:18 946:1 949:24 950:10 951:8 957:21 966:1,2,11 968:13 969:13,23 971:23 973:24 998:13,22 1002:2,8 1003:15 1005:9 1010:17 1014:1,17,18 1015:19,22 1016:8,23 1017:18 1018:6 1019:6,15 1020:3 1037:12, 22 1046:23 1056:8 1057:7

Honor's 838:15

hope 782:2 786:3 827:10 888:4 903:2,20 908:23 915:19 963:13 1007:23 1011:23 1047:10 1048:2 1057:20 1058:6

hoping 785:3 786:20 827:21 832:20 883:3 915:12 978:11 997:13 998:9 1005:12 1012:6 1057:11

horned 989:1,6

Horse 789:9 790:16 798:1 805:19 829:20 834:2 835:21 851:19 858:2 886:15 901:11 918:13,21,24 919:3,9 922:20 926:16 938:20 952:12 954:19,21,22 956:25 962:21,23 963:9,12 970:13 975:18 977:14,19 978:2 979:13,21 991:16,22 992:4 1017:20

host 1026:12 1027:1

hour 769:25 783:1 831:17,25 841:15 903:4,7 943:17 950:6,19 997:21,22 1011:4 1012:7,23 1013:5

hours 770:3 831:16,20 910:4 935:2 1012:14

housekeeping 769:21 782:10,16 784:9 792:11 826:1 903:23 904:7 912:7 913:23,24 928:10 943:7,24 1011:9 1012:9,18 1015:10 1016:10, 17 1058:2

housekeepings 915:1

houses 823:11 938:17

housing 963:11 976:11

Houston 791:20

how's 929:1

human 879:18 922:13 978:1

humbled 977:6

hunting 935:5

hurdles 962:3

hustling 988:13

hypothetical 1003:11

hypothetically 972:11

I

I-82 1049:14

ice 780:21 907:3

idea 779:24 886:13 924:6 941:7 953:5 1035:23

identification 957:6

identified 803:12 815:8 890:15 923:11 941:23 998:6 1032:5

identifies 956:7 958:1 962:12

Identiflight 956:2,4,5,12 957:1,7,24 958:12,15 970:6,18 992:16

identify 800:2 956:20 971:6

identifying 956:22 1032:9

Illinois 796:3,9

Illinois"/"washington 799:3

imagine 806:11 997:24 1037:8

immediately 783:14 805:20 939:25 940:24 943:14

impact 795:13 797:25 798:4 801:18 813:14 823:20 833:15 879:6 892:9 910:12 932:15,20 959:23 964:11,14, 15 980:20 982:16,22 988:1,20 1017:20 1021:10 1030:12

impacted 963:3,4 988:7,9 1029:14

impacts 805:13 806:8 813:4 822:2,4 823:7 878:25 892:9 893:2 901:17 907:2 912:1,22 922:11 932:13,14 933:1 948:10,13,17 949:6 958:16

962:25 963:7,10,21 964:21,23 976:14 1000:21 1021:8 1031:23 1034:24 1048:25 1049:6,17 1050:8 1051:15,18 1052:17

impedement 921:5

implement 957:1 964:24 983:15 995:9,11

implementation 1029:16

implemented 926:15 958:13 983:22

implementing 857:8

implied 792:3

importance 786:2,10 792:14,17

important 877:25 901:5 912:25 919:20 931:2 945:5,9 964:18 973:14 974:21 975:9 976:20 989:18 991:17 1022:19 1034:23

impose 1019:25

improve 994:20

in-kind 965:19

inability 912:24 976:25

inappropriate 910:19 939:16

incidental 983:16

include 884:4,15 887:14 894:8 895:14 926:19 932:2 964:2

included 881:7 884:25 885:12 887:8 905:7 913:17 924:9 927:5 968:6 1024:22 1028:24

includes 812:4 858:14 859:7 906:4 907:18 922:24 923:14 925:21,23 936:6 951:25 982:24 996:15 1022:8

including 805:15 825:10 896:13 907:2 935:1 943:8 982:8,11 996:16 1000:13 1020:14

inclusive 905:23

incorporate 895:11,22 896:10,16 899:2 900:8 901:2,21 937:20 938:7 945:6 971:6

incorporated 796:6 836:11 888:18 893:1,18 894:6 895:25 897:2 932:24 953:17,18 994:9 1038:6

incorporates 899:13 953:23

incorporating 895:13 896:23

incorporation 900:23	initiated 935:24	invitation 774:2,5
increase 878:5,6,20	Initiative 900:4,9,24 901:3	involve 1057:3
increased 922:4 964:16 972:15,16 973:7	input 890:25 891:2,9,12 892:12 893:1 956:21	involved 834:20 851:19 946:25 947:1,7 971:15 1021:4 1022:17 1054:17 1055:2
increases 959:18	inquiries 911:24	involvement 819:22 995:25 1020:18 1021:3
increasing 926:24 959:15 961:4 973:1 982:24 1035:13,24	inquiry 792:11	irrelevant 1010:9
independent 856:12 935:19,22 936:13	insights 888:16	isolated 978:7
Indiana 1034:6,7	installed 990:4 995:16 1028:6	issue 807:20,21 830:24 938:9 947:14 957:24 960:6 966:19 973:13 977:24
indicating 839:9	Institute 814:4	issued 1012:3
indication 882:13 944:8	insufficiencies 912:15	issues 771:18 781:23 782:13 786:8 805:16 819:14 825:19 830:21 831:6 908:8 915:13 932:23 947:19 960:22 961:19 966:9 977:9 987:1 1019:14 1057:13
individual 822:20 823:22 955:16 974:6 1035:20	integrate 971:1	item 773:20
individuals 974:11 978:21 979:24 982:14	integrated 900:3 902:16,21 937:9 971:14 973:3	items 774:23 799:22 806:10 907:8
indulge 862:4	integrates 958:5	iterative 1052:4 1054:4 1056:23,24 1057:1
industrial 815:8,9 822:2	integrity 918:18 919:9,19	
industry 1029:13	intend 781:24 943:17 946:17 950:12	J
influence 945:11 960:22 976:13,19, 25 977:2,19 987:16 989:17 1048:11, 18	intend 781:24 943:17 946:17 950:12	
influences 1025:11	intended 792:3 966:12	jackrabbit 918:15
inform 779:3 894:7 925:24 933:13	intending 776:16 781:12	James 993:9
information 774:23 779:4 796:16 819:1 841:12 851:18 861:10,14 862:8 893:18 894:6 895:4,6,7,10,16, 20 896:6 899:13 900:3,23 901:23 913:4 924:8 925:19,24 945:12,13 967:11 972:8 981:4 1004:8 1019:1,3 1023:11,12,17 1025:18 1026:24 1027:7,10,11,20 1029:19 1048:3,16 1052:7,19 1055:18 1056:22	intense 993:8	Jansen 774:17,20,24 775:18 828:18,20 829:12,16,22,23 830:5,9 832:6,12,16 833:9,13 834:13 835:11 840:3,8 841:11 851:22 852:11 854:15 859:12,25 877:9,22 880:10, 25 881:5,24 882:11,22 883:11 884:3 886:11 894:2,11,18,23 897:14 898:4 899:2 903:9 915:14 917:19,21 918:4 919:6,13 920:7 921:23 925:4,15 930:7,15 931:25 934:15 936:3 937:11 940:9 944:15,19 946:21 950:11 951:13 966:14,22 969:1 970:4 972:4 973:25 986:22 987:7 997:14 999:2,5,11 1003:18 1005:1, 20,25 1007:16,21,25 1009:3 1010:15 1021:10 1022:12 1026:22 1028:18 1030:4 1047:21,25 1050:14,17 1051:5
informed 779:1 947:24 1006:5 1035:5	intensive 984:7 1023:15	Jansen's 862:5 881:11 883:14 893:24 951:5 1003:17 1016:14 1019:2
informing 1005:4	intent 1003:20	
infrastructure 837:2 919:22 947:12,18 953:9 1050:12,23	intentional 912:14	
inherently 919:20	interact 976:12	
initial 775:20 835:25	interactions 958:13	
initially 812:22 952:24	interest 805:25 835:15 1020:11 1051:7	
initiate 975:8	interested 830:13 1054:18	
	interesting 986:9	
	interfacing 977:18	
	interject 900:14	
	Intermountain 961:24,25	
	internal 936:23 944:25	
	interrupt 839:8 925:11	
	interspecific 879:19	
	introduce 783:20 811:22 882:12	
	introduced 1019:23	
	introduction 797:17 924:6 1017:17	
	introductory 834:8	

Jessica 791:19
Jim 777:18 828:7
Jim's 938:23
Joan 787:14,20 788:5 808:16
job 920:22 1025:5 1056:3
jogged 801:12
join 785:22
joined 791:19
joining 791:10
Jones 791:19
journal 967:1,4
Judge 769:1,10 770:13 772:1,2
773:11,24,25 774:7,11 775:3,15
776:2,14,19,24 777:15 778:4 779:18
780:5,9 782:2 783:8,25 784:12,15
785:7 786:5 787:3,20 788:10,15
789:1,7 790:22 791:7,13,21 793:22,
25 794:7,8,13,15,22,25 795:23
796:8,12 797:3,13 798:7 799:2,9,17,
18 800:3,9,14,19,25 801:1,9,22
802:2,17,23 803:6,11,15,19,25
804:7,10,14,19,21 805:3,5,23
806:23 807:7 808:2 809:8,14,25
810:4,23 811:3,5,10,16 816:19
817:12 818:14 819:12,17,24 820:6,
19,21 821:7,9,15,21 822:8,24 824:5,
21 825:25 826:14 827:10,17 828:9
829:19,24,25 830:8 831:9,11,23
832:4,14,16 833:1,6,13 835:4 838:5,
7,17,22 839:7,14 840:1,16,22
851:15 858:24 859:11 861:12,22
862:1 877:7 881:4,22 882:5 883:7,
18,25 884:11 885:14 886:10 890:9,
14 891:19 894:15,21 897:10,20
898:2 900:13 903:3,10,15 904:11
909:22 911:18 913:7,11,20 914:8,13
916:2,9,14 917:2,6 924:24 925:15
927:13,23 928:3,8,15,25 929:8,17,
25 939:21 940:15 941:11,21,24
942:16 944:2 945:21 946:3 949:22,
25 950:2,4,18 951:4,9 966:8,15,20
968:18 969:10,15,20,24 971:18,24
973:21 986:24 997:13 998:5,15,24
1001:7 1002:7,14 1004:25 1005:10,
18 1007:20 1008:2,5 1009:24
1010:7,12,19,22 1011:1 1013:4
1014:2,8,10,15,20 1015:10,20
1016:2,9,15,21,22,24 1017:6 1018:7
1019:9,19 1037:16,23 1038:1,8
1046:17 1047:15 1053:21,23

1055:4,15 1057:8
July 810:7,10,14 905:5 939:9,13
941:1 943:22 945:2 1049:22 1050:1
1052:5 1053:19
jump 942:1
Juniper 979:14
justice 813:3,4
juvenile 982:12
juveniles 978:22

K

K-I-O-N-A 908:3
Karl 789:14 809:5,9 811:1,5 909:5
Kathleen 789:23
keeping 780:3 825:3 832:7 1054:18
kestrel 988:24
key 934:21
keying 958:18
Kielisch 788:20 789:13 800:6,11,23
801:1,15 802:5,7,13 806:25
Kielisch's 800:10
killed 1026:13
killing 1012:21
kilometer 938:19 956:13 962:13
kilometers 861:3
kind 786:18 791:22 809:20 859:23
893:23 904:6 909:15 942:15 965:9
968:4 983:19,20 984:3 985:5 987:16
989:5 994:19 1020:24 1023:17
1026:18 1027:2,5 1029:2 1036:2,11,
25 1047:10
kinds 813:19 1034:2 1051:1
Kioa 907:23 908:2
Kiona 908:2
knew 786:16
knowledge 812:7,14,19,24 813:10
823:7 838:21 891:1 949:21 950:11
959:7 1003:5 1005:19 1022:8
1033:24 1053:20 1056:14,17
Kobus 779:1 781:2,19,23 782:1
836:25 913:7,16

Kobus's 781:5
Kopus 913:9
Krupin 770:2 779:7 905:25 906:24
910:5 1011:24 1057:19
Krupin's 906:21
Krupis 913:8
Kurt 789:13 800:6,11,23 801:1

L

label 772:8
labeled 772:12 804:4 907:25
labeling 770:7
lack 897:8 937:21 938:5,13 990:14
1001:17 1032:10
lag 820:23
laid 924:10 1012:4
Lake 778:19
land 815:16 834:5 925:25 977:24
land-use 776:16 815:3 919:21
1057:13
landline 916:21
lands 815:6 900:4,8,24 901:3 932:9
934:21 965:5
landscape 838:4 918:18 919:9,19
926:17 938:16 952:6 954:16 957:9
991:25 1025:11 1026:8 1032:16
Landscapes 968:3,8
language 900:22 906:8
large 774:9 813:1 825:10 919:19
935:1 938:17 985:10
larger 796:4 924:3 957:2 984:16
991:10,11
lark 989:1,6
Larsen 854:3,6 855:19 856:8,22
857:20 953:19
last-minute 809:21
late 779:2 895:24 910:11 912:3
990:22 1050:19 1051:3 1053:19
1054:24
lateness 779:19

Latin 957:22 998:16
Latinx 812:25
law 794:13 800:25 804:19 811:3
821:7 832:14 1002:17 1014:8
laws 1002:10
lawyers 775:12
layer 918:23
layout 853:9 858:10
lead 986:1 995:5
leaders 812:9 813:24
learned 814:15,18 816:14 972:8
1025:5,9
lease 815:13,16
Least-conflict 996:10
leave 816:9 996:7
leaves 934:3 961:21 1004:2 1036:24
leaving 1012:13 1057:23
left 793:6 903:5,12 914:2 915:12
921:4 978:14
legal 774:1 925:12 943:8,20 999:17
1001:21
legalese 944:3
legislation 982:25
legislature 814:4 816:12
legitimate 774:3
Lehman 789:13 802:20,24 803:1
804:17,21 805:11 806:5,20
length 880:8 1006:24
lengthy 917:25
Lenny 790:10 968:25 987:2,7
lessen 912:19
letter 810:9,14,16 811:7 812:3
897:23
letter's 811:20
letters 898:3
level 805:8 813:25 821:22 987:17,25
989:12,14 994:18 1027:2
levels 993:25
levers 994:25 995:4
Levitt 790:4 811:21,22,24,25 812:11
813:8 816:16 817:11 909:8,21
968:25 971:20 972:1,3,4,22 973:18
Levitt's 816:19 909:6
life 805:17 880:16 972:10 973:6
983:8 984:9
light 799:23 877:22 1032:19
like-kind 965:19
likelihood 852:22 1034:17
likewise 906:24 908:1
limit 910:14
limitations 967:13 1012:2
limited 781:3,7 796:4 798:19 853:16
907:7 998:11,14 1011:19
limiting 990:2
Linda 789:13 802:20 803:1 804:17,
21
lines 774:14 788:19 789:13 793:10,
19,23 794:8,11,15 798:3,8,11,14,15
799:7,20 800:4 806:25 823:5 824:10
891:22 894:2 900:1,21 935:17
Lines's 797:21
link 809:23 939:11
linkage 901:6 920:17,23,25 921:7,
12
linkages 967:22
linked 959:3
links 956:8
Linnea 889:9
Lisa 769:12 772:22 839:20 908:24
917:13 946:10 1008:10 1017:4
1047:6
list 769:16,20 770:25 771:20 772:18
773:5,13 775:20 784:4 796:24
828:15 830:11 885:12 886:8 887:3
927:22 946:24 988:25 1013:11
listed 789:12,15 824:22 831:15
884:10 886:12,14 889:15 896:13
904:16 975:23,24 998:8 1014:13
1032:14,15 1034:7 1048:3
listening 782:24 942:19,23 969:7
1011:22 1013:9 1057:10
listing 976:1
listings 962:21
literature 895:5 925:22 967:17,19,
23,25 968:4
live 823:18 964:19
living 834:13 1018:13
Living- 975:13
Livingston 790:7,8 968:25 972:2
973:22,23,25 974:13,19 975:4,12,
14,21 978:5,23 979:1,2,6,18 980:2,
10,15 981:21 983:1,10 984:11,23
985:8,22 986:21,24 987:10 989:14
991:5 999:4
Livingston's 1000:1
local 806:15 818:11,12 833:15
976:12 1017:21
located 920:25 921:2,7 953:10
964:1,6 979:8
location 839:25 860:20 921:18
933:4
locations 839:11,23 952:14
1034:16
lonely 975:9
long 829:1 841:14 997:12 1019:17
1025:10 1026:7 1058:10
long-eared 1034:8
long-term 879:17 880:1 921:24
933:6 1000:23
longer 820:17 938:16 989:24 991:25
997:14
Lonnie 777:23 824:22
looked 815:3 861:2 904:23 908:6
920:12,21 921:13 922:6 1026:24
1027:2
loss 981:23
lost 961:13
lot 793:13 814:15,22 823:8 824:1,3
957:7 961:18 970:21 976:10,18
977:9 983:6 987:15 997:14 1025:5,
10 1028:22 1031:6 1032:16
lots 972:14
love 826:23
low 918:19 935:3 997:5 1033:19
1035:25

lunch 769:21 774:18 881:10 903:17
909:23 914:1,15,18 918:7 1012:7

M

machine-learning 956:19

made 792:22 803:9 902:2 911:24
921:16 924:22 952:8 998:6 1006:21
1012:6 1015:15 1024:22,25 1049:18
1051:9 1052:13,25 1053:11
1056:22,25

main 932:13,15 942:14 1000:18

mainframe 958:6

maintain 878:20

maintained 952:18

majority 922:22 991:23

make 769:23 772:9,20 773:6 775:19,
22 787:16 792:1 799:10 803:2
814:23 817:9,23 838:10,17 840:3
841:10 862:5 878:12 885:25 894:19
895:10 901:20 904:6,15,18 907:10
908:22 909:14,18 910:2 911:14
916:11 923:2,20 933:11 946:5
947:21 950:12 952:20 957:10
968:15 971:10 976:21 999:19
1000:3 1004:4 1005:2 1013:12
1018:7 1023:10 1029:24,25 1035:4
1049:7 1052:24 1054:23

makes 772:5 828:12 879:16 908:9
958:19 1035:21

making 769:17 788:1 791:24 798:2
806:5 840:2 899:15 902:7 910:5
1022:25

mammals 931:20 932:1,2

mana 1020:22

management 815:11 854:4 856:9
857:9 879:13 880:20 891:15 893:16
925:25 932:24 933:11,14,22 953:18
965:3 967:24 970:6 1004:10,13

manager 779:23 834:14 889:9
972:5 1018:15

mandatory 983:17,22

manner 822:3

map 907:22 920:4,8,10

mapped 920:19

mapping 936:8,18

maps 908:3

March 990:22

mark 826:9 828:10 999:3,21

marked 836:19 838:18,21 854:6
946:12

market 796:20,21 797:2 823:12

Masengale 769:13 770:4,8,13,16
771:5,9,15,23,25 772:2,21,22,23
773:2,12,25 777:19 784:25 785:7,12
787:5,10 795:1 810:2,6 826:9
828:10 837:9 839:8,15,19,20 854:19
861:13 883:13 887:24 893:22
902:23 903:20 906:5 907:6 908:25
917:11,13,14 929:16 943:3 946:7,9,
10 1008:10,11,15,20,25 1015:13,14
1016:5,22,24,25 1017:2,4 1033:6
1047:7

Masengale's 942:19

masking 775:11

master 773:13

match 915:5

mate 974:8 975:8

mated 974:7

material 779:11 798:22 799:1
801:19,20 829:8 840:4 859:13 889:8
910:23 913:16,18 933:20,23 934:1
952:19 1014:22

materially 943:21

materials 781:17 786:14 792:22
886:25 887:21 888:3 890:6 896:13
910:10,14,21,22 911:16 912:24
1003:24

math 831:24 855:15 1028:9 1029:7

matrices 932:10

matter 781:24 783:12 793:11 818:5
835:14 889:10,21 909:3 967:6
1009:22 1015:11 1020:10 1028:17,
23

matters 781:25 910:16

max 903:12

mayor 805:12 806:3

mayor's 805:25

Mcclain 1012:8,12

Mcclure 993:8

Mcivor 776:20 1000:7,20 1024:6,8
1036:8

Mcivor's 1024:12 1031:4

Mcmahan 769:18 774:23 775:1
776:9,12 782:3 791:2,6 904:21
913:21 914:3,6 942:1,7,10,12

MDPS 967:1

meaning 885:21

means 861:21 957:16 958:8 959:12
1034:17

meant 774:1 894:18

measurable 798:4

measure 837:13 1034:23

measures 879:22 880:3 989:19
994:20 995:2,5,10,17

mechanism 822:3 957:6

media 818:11

median 796:21 975:17,19 977:15

Medical 778:19

medium-to-high 997:1

meet 792:15 831:1

meeting 924:7 937:18 938:8,23
1007:5

meetings 814:14 857:14 893:18
947:4 1050:19

megawatt 982:21 1027:19,21
1028:2,10 1029:12

megawatts 982:25 1030:8

member 790:1,4,7,10,14,19 811:21,
24 812:2 813:8 816:16 817:11
909:4,21 972:3,6,22 973:18,23
974:13,19 975:4,12,21 978:5,7,23
979:2,6,18 980:2,10,15 981:21
983:1,10 984:11,23 985:8,22 986:21
987:3,6 988:15 989:9,25 990:8,16,
25 991:14 992:12,15,22 993:14
994:8,15 995:3,22 996:19,25 997:3,
8

member's 785:20

members 778:12 788:2 789:10,15
791:22 792:9,20 793:2,18 797:18

798:12 802:3 805:9 806:2 814:3,13 816:21 819:18 822:9,13 825:25 826:14 830:19 833:8,13 841:13,18 877:7 903:17 904:2 942:23 954:17 967:5 968:20,21 971:19 976:18 997:17 1012:19 1013:14 1055:19,23 1057:22 1058:9	middle 796:2 977:11 985:10 midst 883:19 910:9 Midwest 970:21 migrants 990:19 migratory 1030:14,24 1031:6 mike 789:8 790:7 807:11 856:18 891:4 892:9,13 947:15 968:25 970:1 973:25 991:5 1009:24 miles 795:17,21 837:15 838:1 839:3 853:8 855:23 860:15 977:16 1006:6 1034:15 millennial 784:21 mind 778:21 815:24 941:19 959:20 998:8 Mine 823:3 mini 769:20 minimize 901:14,15,18 1036:4 minimizes 921:4 minimizing 901:17 minimum 853:8 1006:6,22 minute 832:1 904:4 911:5 944:24 968:15 1027:17 minutes 782:18 784:7 788:11,16 829:11 903:12 914:2 915:11 927:12 941:18 950:8 969:9,12,16 1011:11 1056:5 mischaracterizing 885:10 mismatch 896:20 misremembering 1028:11 missed 880:10 900:12 927:20 1015:11 missing 862:11 947:17 misspeaking 1007:3 misspoke 908:3 1008:19 mitigate 964:15 981:23 1034:23 mitigated 964:10,22 mitigation 836:18 880:3 890:16,19, 20 891:3,7,10,14 892:5,10,14,16,22 893:2,3 902:19 963:16,17,18,20,21 964:7,8,13,16,25 965:1,5,8,21,23 966:4,9 995:9 1002:22 1018:1 1020:22 1035:17 1036:14 1054:10	mix 964:4 Mm-hmm 838:6 model 901:5 960:9 modeled 901:8 modeling 918:13 919:4 920:13 moderately 996:14 modification 947:22 948:22 1049:8 modifications 795:8 858:3 926:23 927:4 949:2,4,8 1052:11 1057:3 modified 964:4,6 modify 973:9 1051:21 1052:12 moment 769:12 793:10 855:12,14 883:16,24 903:22 909:16 910:22 993:11 1008:8,17 1058:9 momentarily 930:1 monitor 1033:16 monitoring 878:24 879:3,5,9,12,17 880:1,16,19 895:6 921:24 932:16 933:6 982:19 984:9 987:23 993:23 994:17 1022:12 1023:16 1025:1,19 1026:1,25 1029:18 1036:10 month 1052:13,23 1054:25 months 945:2 Moon 857:24 858:1 859:14 899:13 901:25 916:25 927:5 946:1 1008:14, 16 1016:3 1047:11 1053:24 1055:6, 23 Morgan 801:25 morning 769:8,11,12 770:5,21 771:18 779:5 780:2 789:2 790:25 791:11,17 793:13,25 794:6 800:11, 12 802:14 806:6 807:10 809:11,12 826:1 829:20,23,24 835:11 882:22 888:7 904:14 909:15 915:6 920:4 923:8 927:17 929:15 939:5,10 941:2,19 946:18 1015:23 1016:1 1017:8 1057:12 morning's 793:1 912:7 998:7 mortalities 982:5 990:17,19 1022:6, 7,20,22 1023:21 1024:9,20 1031:22 1035:16 1036:22 mortality 879:5 932:14 983:7 986:4 987:17 988:10 989:12,14 990:11 993:2,5 994:18 1021:23 1023:16 1024:13 1033:12,16 1035:12
membership 812:14 memo 836:25 837:21 838:25 857:24 858:1,8 859:14,19 860:2,7,14,25 899:13 901:25 902:3 916:25 927:5 946:1 949:3,14,17 954:2 1006:14,15 1008:14,16,17 1016:3 1047:11 1048:4,10 1049:4 1050:24 1051:3, 13,16 1052:8,20 1053:17,24 1055:2, 6,24 1056:10,12,20 memorandum 948:23 memories 801:12 memory 837:11,12 memos 1055:14 Meninick 777:8 mention 783:1 907:21 979:20 982:3 1004:13 1030:17 1048:20 1052:5 mentioned 839:4 886:18 889:22 927:16 957:18 970:6 976:11 988:22 992:6,24 993:2,9 994:2 997:7 1004:4 1007:6 1020:21,24 1026:7, 23 1028:1 1035:23 1050:17 1052:4, 18 1054:23 mentions 979:23 1034:19 met 830:22 891:4 892:8 963:15 1046:19 1047:3 meters 855:7 methodologies 1025:7 methodology 1025:21 metric 953:8 974:21 994:6 1027:19 1029:12 MFT 774:3 Michael 891:4 micro-siting 963:1,6 microphone 803:7 807:15 808:10 881:6 microphones 852:4,7 904:19 Microsoft 791:23 799:24		

1036:12
motion 769:18 770:17 779:6 817:2,
9 904:16,23 905:1 906:1 909:2
911:15
mounted 956:6
mouth 779:16 898:18
move 782:7 800:9 807:8 813:6
816:11 823:13 831:22 841:9 893:21
898:9,20 903:1 913:5 927:23 928:1
945:16 1002:19 1015:22 1038:9
1051:11 1056:12
moved 882:8 956:10
movement 918:24 919:20 921:5
923:22
moves 952:23
moving 773:24 878:23 904:13 965:2
979:12 1015:25 1030:11,20 1051:7
multi-scale 833:25
multifaceted 931:4
multiple 934:25 949:13 974:24
978:17
multitasking 787:9
mute 805:1,2,7,9 807:11 817:5
820:13 852:6 916:16 969:4,11
muted 820:14,17
muting 804:1,2
myriad 960:21 961:16
mystery 1031:11 1057:15

N

name's 987:7
names 789:15 1005:12,16,20
narrow 950:23
narrowly 915:16,17
Nation 769:6,9 770:10,11 776:25
791:16,19 792:20 828:24 830:16
832:6 877:16 881:25 882:4,23 939:5
940:24 1005:2 1051:18
Nation's 916:20 939:24
Nations 772:4
nationwide 879:11

native 878:20 922:2 932:6 961:2
964:4
Natural 790:9 968:11 987:8
nature 838:8 906:12 937:2 938:6
968:12 986:3
nearby 801:18
nearest 795:17,21 837:14,15
necessarily 812:24 841:5 857:17
879:17 908:7 951:21 959:6 1051:9
necessitate 838:15
needed 785:15 828:3 878:4 911:25
1048:8
needing 941:9
needle 840:19 841:2
negative 796:25 797:1 823:6 958:13
negotiate 962:4
negotiations 1010:3,8
nest 838:8 839:11,23,24 852:11,14
853:12 856:15 860:12,16,20 861:5
886:21 899:14 932:20,22 933:1
935:25 936:6 938:18 951:21,22,23
952:3,7,15 953:1,10,13 954:21,22
955:18,19,20,23 960:22,23 961:8
962:12,16 974:5,8 975:1,6 977:16
990:1 1006:7
nest-occupied 992:10
nested 952:16,17 989:23
nesting 834:2 852:22 853:3 860:4
879:23 880:4 884:21 922:14 930:12,
19 933:13 951:24 952:13 954:13,19
961:22 971:4 974:14 975:8 979:17
986:17 989:20,22,23 990:2,5,9
991:1 992:8 995:16
nests 837:1 838:1,3,14 839:3
852:16 853:9,16 858:13,16 859:9
861:2,23 922:22,24 932:23 938:6,
16,19 951:17,19 952:4,5,11,14,16,
17,18,21 954:7,8,10,12,14,24
955:17 960:19 962:14,15,17 974:17,
24 975:2,17 991:24
net 905:18 937:9 948:17 949:6
network 908:2
Neutzmann 835:24 935:18 975:23
999:3,11,21 1000:6,19 1001:16
Neutzmann's 985:24

newest 857:18
newspaper 815:25
night 786:7 791:24 792:14 806:14
no-disturbance 855:6
nobody's 968:16
nodding 798:8
nods 778:16
noise 852:6
non-emitting 814:10 815:14
non-participating 795:22
non-profits 968:11
nonbreeding 974:11 978:21
1031:10
nonetheless 1029:9
nonsignificant 922:10
north 786:9 957:3 991:3,8
north-south 920:17 921:2
northern 920:16 923:18 1034:7
northwest 814:5 983:21 991:8
Nos 797:9 801:6 807:1 821:18
832:22 928:11 1015:1
note 773:7 791:21 792:10 885:13
915:24 916:5
noted 795:16,19,24 798:3 839:21
859:17 911:21 914:18 921:1 939:15
989:14 991:5
notes 799:13 861:13 885:11
notices 914:20 915:4
noting 1024:21
November 837:3 1007:3
noxious 1018:2
NTSA 983:19
nuance 1052:25
nuanced 926:16 959:15
number 769:15 771:22 772:9,16
796:4 808:13 820:13 833:20 857:9
889:5 895:2 903:8 907:7 918:17
920:24 923:1 927:15 929:21 946:4
959:3 962:3 965:11 982:3,20 988:5,
14,22 1000:14 1001:2,21 1003:19
1013:8,11,21 1027:15 1028:6

1029:10,22
numbered 773:18 929:15
numbering 772:19
numbers 770:11,20,25 771:19
772:4 794:2 808:20,21 862:3 979:1
987:18 993:10

O

oath 797:7 804:11,15 808:8
object 858:18 885:10 894:12 897:6
924:21 939:7 958:17 1009:19,22
objected 940:19
objection 782:4 840:23 841:8
858:25 885:17 898:4 910:2,17
911:17,21 913:14 928:5 1009:25
1016:7
objections 826:7 914:18 928:9
1016:6
objective 837:13
observations 907:11
observed 955:16,20 982:10
obtain 949:1
occasion 808:4
occupancy 932:22 933:1 960:23
961:8 992:3
occupied 852:12 853:8,16 860:16
861:6 922:23,24 923:14 931:3
951:23 952:6 954:11 974:5 975:18
981:9 1006:6
occupies 981:18
occupy 981:2
occur 953:14 958:14 990:22
1006:13 1030:15
occurred 952:13 984:22 985:1,7
1006:17 1051:25 1052:1,22
occurrence 957:8 1022:11
1023:11,20
occurrences 956:24
occurring 1049:11
occurs 979:24 984:9 986:10
off-takers 814:6

offer 898:16 937:3
offered 833:14 888:15 908:15
offering 824:10
offhand 993:11
office 795:2
official 972:6 976:16
offline 958:7
offset 963:21 990:10 1006:6,22
1007:10
offsets 1007:11 1021:17
one- 801:11
one-hour 915:10
ongoing 895:1 949:5 1054:6 1058:7
online 806:14 967:1 988:2 996:11
open 783:16 784:1 789:8 840:7
858:14 904:19 921:4 962:20 996:11
open- 840:5
operating 958:6 981:19 1029:17
1035:25
operation 878:25 956:9 1023:14
operational 983:25 995:18
operations 973:9 1035:6
opinion 893:12 895:24 902:15
920:20 924:13,17 925:12,13 926:2
927:3,5 937:10,14,16 938:12,14
943:25 945:5 999:21 1002:11
1037:19
opinions 906:21
opportunities 891:7 908:1 963:17
989:22 990:2,9 1031:18
opportunity 775:7 785:25 793:2
794:4 890:25 937:1 939:12,14 962:7
1056:9
opposed 993:4 1027:20
opposites 951:21
opposition 905:1
optimal 917:7
optimize 970:23
optimized 971:7 1035:11
optimizes 971:2

option 970:6
optional 989:21
options 893:2 965:21 970:7 981:12
1037:10
orange 921:8
order 809:24 841:22 862:14 905:3,8,
9 906:1 907:4 923:2 1038:13
1051:22
orders 1012:3
ordinances 977:25
Oregon 834:7,15 923:18 982:2,9
987:13,23 988:21
organization 812:7 813:10
organizations 813:18
oriented 797:15
original 888:11,12,21,25 889:4,12,
16,23,25 890:1 1021:1 1054:8
originally 831:16 905:5,11 993:25
Osborne 790:1,2
outcomes 824:4 1055:11
outdated 938:25
outline 822:6
outreach 812:19 818:8 819:14
948:14,21 949:1
outset 775:24
outstanding 1015:24
over- 908:17
overcome 786:18
overlaps 908:18
overnight 784:23
overoptimistic 1011:20
overrule 858:25 885:15
overruled 782:5
overview 793:16 794:5 795:6 833:9
overwinter 962:2
overwintering 977:11
Owens 787:14,21 808:16
owner 1003:7
owns 815:16

P		
p.m. 914:11 951:2 969:18 1012:8,25 1058:15	pause 788:23 829:14 841:19 881:19 904:9 914:10 951:1 969:17 1012:24	permitting 945:11 1003:2
packing 910:18	pay 823:24	persist 1026:8
pages 930:23 931:10 943:9	PCFM 879:3,12 932:19 993:15,16 994:13,21	persists 1025:10
pairs 978:20	PDF 918:3 920:5 930:3	person 772:9 779:24 780:4
panacea 958:15	peer 967:3	personal 953:23 954:4 1006:4
paper 861:7 966:25	peer-review 966:23 968:1 1021:11	personally 947:6
paragraph 918:5 932:12 1027:24	peer-reviewed 887:21 895:3 925:22 936:21 966:24 967:9 1021:7	perspective 776:10 812:19 813:4 816:8 880:2 896:2 995:18,19 1000:19
paragraphs 931:8,11	people 785:10 823:12,22 889:10 944:7 946:25 947:17 958:17	pertaining 854:13 1009:20 1021:13 1037:13
parallel 1056:4	per-megawatt 1022:18 1023:19 1029:22	pesticides 961:10
parameters 797:2	percent 796:25 797:1,2 812:17 823:24 825:13 961:2 962:24 1049:24	phone 808:13,23 820:13 916:21
part 779:21 785:22 813:11 818:8 831:14 856:12 883:14 894:25 908:12 928:10 945:9 963:20 1015:15 1016:16 1022:4,22 1024:5, 25 1049:13	percentage 994:23	phonetic 907:23 913:8,9
partially 825:8 990:10	Perfect 800:3	photographic 954:20 956:20
participant 803:12	performed 824:1	phrase 858:18 897:7 899:10
participants 769:2	period 909:23 983:3,4 984:7 988:6, 23	phrased 782:6
participate 834:22,25 941:16,25 947:4 1018:20 1051:12 1053:16	periodic 960:24 992:6	PHS 938:25 944:1,20 975:20 991:24
participating 790:23 911:13 915:25	periods 953:13 1033:19	physical 965:12
particularity 914:15	peripheral 991:18	physically 838:3 953:10 955:19 965:14
parties 773:14 778:11 779:3 786:24 787:8,18 788:7 789:11 792:8,13 793:4 799:11 802:10 819:18 826:2, 18 827:17,21 828:2 830:12 839:17 840:22,23 902:2 903:22 904:6,12 909:18 914:16,19 928:4 943:23 997:15 999:17 1004:7 1005:4 1011:8 1012:17 1015:17 1054:1 1056:1 1058:1,11	periphery 855:7	pick 773:17 881:6 1038:9
parts 773:15 786:17 839:16 991:2	Perlmutter 775:2,3,5,16 776:1 782:3 783:3,6,18 790:25 791:3,4 828:20 829:2 830:4,6 833:7,11 834:12 835:2 840:14,17 841:3 858:17,25 861:8,17 880:9 885:9 894:10 897:6,18,21 898:3,13 900:11 915:19 919:5 924:20 928:7 931:24 936:3 939:6 940:13,17 941:15,22 943:15 950:22 951:7,8,12 957:21,23 966:8,10,18,22 968:13 969:2,5,13, 21,22 998:2,3,11,13 1002:2 1005:1, 15,19 1006:3 1013:12,23,25 1016:7, 12 1017:12,18 1018:9,12 1019:6 1037:19,21	picked 787:8
party 798:18 912:14 940:19 1051:10	Perlmutter's 774:24 998:19	picking 772:18 1057:23
path 962:2	permanent 853:2 964:2	pictorial 806:10
patience 775:8 914:9 951:13	permit 1057:13	pictures 805:18
pattern 1053:24	permitted 780:22	piece 781:6
Patterns 954:19		pieces 794:1 821:1 901:5
Paul 905:25		pixilated 882:10

planned 795:20 977:21
planners 976:12
planning 786:19
plant 936:20 1019:4
plateau 834:6 982:9 988:21 989:3
1028:5 1030:6
platform 989:21
platforms 990:5 995:16
play 775:11 902:12 1026:12
pocket 932:2 934:22 935:5,7
point 786:4,25 799:6 804:3 825:22
827:4 829:12 833:3 835:3 840:18
841:9 852:20 854:22 885:25 899:12
903:4 906:22 908:9 910:2 916:24
933:7 942:24 976:21 983:7 986:5
988:1 1001:23 1019:7 1026:15
1027:11 1035:24 1055:9 1056:25
pointed 857:8 988:17
points 888:17 898:13
pole 956:6
policy 945:10 963:20
polygon 921:3
poor 952:11 954:3
population 818:12 833:24 878:5,6
906:19 959:17 960:6,8,10,11 962:1
979:1 986:5 987:17 989:15,17 990:2
1024:15 1030:13 1031:5
populations 961:16 991:10
portion 789:3 885:19 891:13 906:17
909:7 918:8 946:23 1048:1
portions 817:2 834:24 835:1 840:5
861:15 889:8 906:7 1020:13 1048:7,
17 1049:5,14 1050:8
pose 898:19
posed 824:12 827:3 909:5 999:5
position 910:16 1000:8,15
positives 957:1,8 992:24
possibility 778:24
post 879:23 933:13 955:10
post-construction 879:3,5,8 895:5
932:16 971:5 982:18 983:3 987:22
1025:1,19,25 1026:25 1029:18
post-constructive 1036:25
post-hearing 827:20,23 1056:2
post-mortality 878:24
posted 787:21
postpone 778:1
postponed 809:3
potential 815:13 922:15 933:24
989:21 1000:21 1023:4 1025:6
1056:18
potentially 798:25 813:19 839:23
856:6 944:12 970:12 1029:3,11
Poulos 780:12,17 907:13 912:23
Poulos's 905:17 907:8 908:13
pound 808:22
power 814:22 815:14 823:5 851:20
963:23 965:4,13 993:4 1002:23
1033:18
pre-construction 933:12
pre-lunch 903:23
precarious 1000:15
precedent 879:9
Preconference 941:14
predate 922:17
predators 879:20
predetermined 994:6
prefer 933:15 1029:7
preference 772:1
prefers 1016:13
prefiled 772:11 775:20 793:3,16
794:1,16 801:2 806:9 821:12 830:4
832:10 835:18,25 883:14 888:13
905:4 1013:15
prehearing 827:20
prejudice 910:16
preliminary 1018:4
preparation 910:10,13 911:23
912:20
preparations 886:1
prepare 780:16 910:7 912:24
prepared 834:7
preparing 834:22 941:16 1018:20
presence 879:19 974:22
present 776:16 778:6 789:24 790:2,
5,8,11,15 792:9 809:9 821:23 838:4
964:5 970:25 974:6,15 1022:16
1023:8
Presentation 884:24
presentations 884:16 885:20
886:24
presented 781:14 786:12 852:1
881:25
presenter 803:9
preserve 911:3
preset 994:18
president 809:9
press 883:10 1046:21
pressure 777:14
pretty 778:2 799:3 811:20 882:10
931:5 966:18 968:16
prevention 911:12
previous 983:14 998:19 1007:1
1029:8
previously 779:13 780:1 799:15
801:21 924:3 941:13 942:3 1012:3
1054:23
prey 961:16 973:2 980:12 981:1
price 796:25
primarily 781:22 918:14 947:1
972:23 979:8 1020:21,23 1030:19
1031:19
primary 834:24 888:8,14,15,23
889:13 890:12 996:16
principal 922:11
print 818:10,11
prior 804:12 884:17 914:18 937:16
1006:21 1007:5 1025:14
priority 825:21 854:2,5 856:9,19
901:5,6 935:10 952:9 976:14
1049:14
privy 1054:21,22 1056:21
probab- 861:24
problem 807:23 897:24 928:23

1047:23	21 927:3,4,6 934:25 935:3,4,20	protected 1037:17
problematic 1024:15,18	936:10,12,19 937:9,14 945:4,8	protecting 835:15 1020:11
problems 820:8 903:19	947:15,18 948:17 949:7 950:13	Protection 835:13 1020:9
procedure 774:21 783:9 800:21	953:6 954:12,25 955:15 957:20	protective 841:22 862:14 1038:13
procedures 910:3	958:7,11,16 959:6 960:7,18 962:25	proves 808:5
proceed 925:3 966:21	963:7 964:20 967:13 968:3,8,9	provide 835:19 880:2 890:25 891:2
proceeding 882:24 1000:5,9,13	970:13 972:10 973:6,9 974:22 977:1	936:25 937:1 943:7 948:11,22
proceedings 788:23 829:14 881:19	978:9 983:8,15,18 984:10 985:13,25	954:20 965:12,14,17 967:7,14
904:9 910:15 911:9,13 912:25	986:2,13,16 991:1,16 992:8,9,17	989:22 993:12 1029:6 1048:15
914:10 951:1 969:17 1009:16	993:24 994:5 995:14,25 996:10,13	provided 771:4 797:23 801:16
1012:24 1058:14	999:6,22 1000:9 1003:7,19 1017:21	805:13,17 818:10 821:25 836:9
process 771:8 784:6 814:18 816:14	1018:17 1019:4 1021:17,21,22	856:16,17 857:7 896:5 923:17
895:12 910:11 933:18,19 968:1	1022:6,11 1023:14,17 1024:20	933:23 939:23,25 940:18 954:3
1026:16 1028:23 1048:24 1049:11	1025:14,20 1026:14,19 1027:13	960:25 1021:7 1049:20
1052:4 1054:4,14 1055:11,12	1028:11,14 1029:4,11,15,17	providing 899:22 910:20
1056:4,23,24 1057:2	1031:13,15,20,22 1034:10,18	provisions 940:10 1001:21
processes 1058:8	1048:10,18 1049:8 1050:10 1051:22	proximate 853:12
produced 837:6 857:1 896:3,20	1052:13 1053:6 1056:15 1057:4	proximity 815:19 858:15,18,22
906:13 939:9,17 940:7,23 942:13	project's 879:6 888:8 1000:21	859:8,19 860:4,11,15,18,24 861:2,5,
954:18 1006:16 1007:2,5	1024:9,13	21 938:17 1034:12
produces 982:19	project-level 899:14 971:1	public 782:20,22,25 783:15 787:21
producing 952:2	project-specific 995:21	788:19 792:24 795:1 806:13 808:15
product 890:24 905:16	projected 1026:17 1028:14	828:13,14 835:15 838:9 839:25
production 814:6 890:8 1035:13	projects 796:5,6 813:5,19 814:1	841:6,13,22 851:16,25 862:4,7,14
products 891:6 902:20	815:15 816:1,7 879:10 887:2,14	877:8,18 881:23 885:23 904:2 952:8
professional 896:2 897:15 902:15	907:13 919:22 931:3 957:1 973:15	961:10 976:3 983:23 996:11
920:19 924:17 925:14 926:2 945:5	983:15 984:1 988:12 1025:7 1027:1,	1004:23 1012:15 1020:11 1029:7
professionals 889:17	3	1038:13 1046:18 1049:11,12
program 816:13 878:18 880:16	prolonged 855:24	Publication 886:24
932:24 970:23 971:1,3 979:10	promise 985:23	publications 884:5,10,15,23 885:1,
983:16,17 984:9 995:11 1018:15	prompted 1049:15	3,6,12,20
programs 878:17 964:25	pronghorn 997:24 1038:10 1047:12	publicly 884:7 886:25 887:2
prohibited 921:14	properties 822:1,3	published 857:7 887:20 893:16
proj- 984:16	property 795:13 797:22,24 798:5	896:13 924:19
project 790:17 795:16,20 805:14	proponents 812:7	PUD 779:23 905:10
806:16 812:10 813:13,17,25 814:12,	proportion 813:1 1026:10	pull 854:11 883:13 893:23 917:11
15,20 815:18 833:15 834:18,20	proposal 932:17,18 992:17 993:19	920:2 923:5 943:3 988:13 995:1
837:2,16 851:20 852:23 853:1	994:9 995:12 1011:8	999:1 1001:3 1032:24 1050:22
855:21 858:2 861:2 878:13 879:21	propose 828:18	pulled 837:10 883:21
880:6,8,15,17 886:15 887:9,12,18	proposed 833:15 837:16 838:1	pulling 883:19 929:20 1008:9
888:17,23 889:9 890:16 891:3	839:4 851:19 858:10 880:3 887:2	1019:3
895:11 896:18 899:5 900:10 901:4,	926:22 944:20 948:22 964:2,11	purpose 835:18
12 902:4 905:16,19 907:2 918:18	989:20 992:18 996:14 1010:13	purposes 822:5 927:24
920:18,20,22 921:10 922:22 926:14,	1017:20 1036:9 1054:9	purview 933:25

push 994:16
put 773:13 781:6 787:23 805:7
808:15 809:10,21 810:1 882:6
898:18 906:6 908:25 925:15 929:6
941:9 942:17 968:7,20 973:1,10
996:3 1008:6 1010:13 1024:2
1033:5,7 1056:1 1057:20

Q

quality 805:16 830:21 882:1 904:19
917:7 980:20

question 770:23 781:20 785:6,14,
19 787:25 792:3 808:4 811:21
812:12 813:7,9,23 817:10,20
818:13,19 821:2 822:15 859:4,6,21
860:1 861:16 885:24 891:20,25
892:3 893:20 894:20 896:7 897:23
898:19 899:1,17 900:12,16 907:8,14
909:4,5,6 923:6 924:15,22,23 925:3
928:16 930:11 931:1,9 933:9
934:12,15 939:12 944:10 947:8,9
948:25 949:18 954:24 956:1 970:15
972:20 973:17 978:4 983:14 985:9
986:10 987:20 993:7,15 995:23
999:5,18,19 1000:2 1001:13 1002:3,
19 1003:15,23 1004:18 1006:3
1007:4,24 1010:4 1025:22 1031:1
1036:5

questionable 791:25

questioned 939:17

questioning 824:3 840:18 898:10
966:13 968:14 1009:23

questions 769:13 770:7 774:15
778:9,12 781:13,16,23 783:15 784:1
785:25 792:5 793:3,4,11,17 794:6
797:18 798:10,11,14,17,19,25
799:5,14 800:2 802:5,8 805:10
806:2 811:17 816:20,21 817:10,13
819:5,10 822:12,15 823:25 824:11
825:17,19,24 826:8,15,16,18,21,25
827:2,7,16,18 828:1,25 829:6,9
830:17,24 831:21 834:8 835:6,16
838:14 841:1,17,18 851:24 852:3
858:5 861:18 877:8,10,16,17 881:1
883:10,22 884:1 888:2,4 898:12
903:8 915:15,17 916:17 923:1
935:15 943:16 944:7,14 950:3,17
966:21 968:21 969:1 970:2 974:3
978:8,10 987:3,10 997:9,17 998:12,
19,23 1002:6 1004:21 1005:23,25
1007:17,24 1010:11 1011:14,15

1017:15 1018:5 1019:18 1020:12
1021:13 1037:12 1038:4,10 1047:9
1048:2 1051:8 1053:24 1056:13
1057:7,22

quick 793:10 797:16 798:9 821:22
827:7 855:14 903:23 950:20

quickly 798:21 799:13 810:24
957:10,25 959:11 1011:13

quote 795:19,22 797:2 940:24

R

rabbits 931:20 932:2

radio 818:10,11

radius 926:19 956:13

Rahmig 774:19,20,24 775:18
831:19,21 889:7 947:9 997:22 998:1
1011:2 1012:6 1013:1,7,15,24
1014:3,6,11 1017:10,19 1018:13
1019:7,10,18,22 1020:7 1032:22
1046:18 1047:3,22 1049:4 1050:7
1054:4,5 1055:19 1056:14 1057:10

Rahmig's 997:23 998:9 1011:3

raise 794:9 798:12,17 800:20
804:14 810:25 816:20 821:10 832:9
1014:4

raised 966:12 971:23 987:4

ranchland 996:17

range 895:19 923:24 924:2 961:20
977:10,11 979:3,5,12 984:15,18,21
985:11,13 989:5

range-wide 878:3 959:5 960:1
980:21

ranges 924:2 964:8

ranging 796:22

rank 996:12,13

raptor 856:15 884:16,22 886:7,21
899:14 921:25 922:13,21 932:20
933:3,4,5,13 935:25 936:6 938:18
951:22 952:15,16 957:5 962:12
971:4 986:17 988:8 989:7

raptors 851:18 877:11 879:23
884:19,20 886:14,21 935:1 995:12

rare 936:20 956:24 957:8

rate 1022:10 1023:11,20 1026:3

rates 960:10 992:3,8 1021:22

ratio 797:1 964:7,8,9,13,17 965:1

rationale 860:22 861:3 1009:3
1051:17

ratios 796:25 891:7 892:11 893:3
963:17,22

Rattlesnake 979:12,13,25

raven 922:23 952:17

RCW 1001:23

reach 808:14,17

reached 786:6 812:8 818:9

read 796:4,19 817:21,25 824:16
826:15 854:15 900:22 918:8 919:14,
17 930:8,14 931:7 934:14 1009:7

reading 799:7 1002:5 1009:3

reads 894:5

ready 788:21 810:19 829:21 881:23
903:21 909:16 928:17 1011:15,21
1057:11,16

real 795:12 797:24 962:19,21
965:12,15

realize 941:24

realm 1029:21

Realtor.com 962:20

Realtors 812:4

reason 906:11 973:14 985:9 989:24
1024:22 1055:24

reasonable 1033:25 1034:2
1036:13

reasons 841:7 905:21

rebooted 808:4

rebuild 974:16

rebut 781:17 905:17

rebuttal 769:19 775:23 778:25
779:7,9 780:12,13,18 781:1,3,14,20
782:4 797:21 802:9 830:3 835:23
903:24 904:15,24 905:7,11,23 906:3
908:12 909:2 910:10 933:17 935:16
975:23 999:3 1001:4 1002:17
1013:19

recall 793:7 801:23 817:23 818:2
855:1 909:8

receive 774:6
received 774:2 797:22 837:2 897:22
910:8 916:25
receives 967:4
recent 894:8,13 896:23 897:1,2,7,24
899:21 901:25 933:5 952:13 955:18
962:22 975:16 990:5
recently 860:16 896:12 899:12
949:12 976:7 1021:3 1054:25
recess 788:22 877:19 881:18
950:24
rechecking 904:14
recognition 956:20
recognize 841:4 917:21 946:20
1047:20 1055:16
recollection 947:11 1049:9
1050:10 1051:20
recommend 1036:18
recommendat- 856:6
recommendation 853:15,23 854:5,
23 856:2,7,13 901:15 919:15
923:16,20 937:18 1003:6 1006:21
1007:10,11 1051:10
recommendations 854:2,9
855:20,21 856:10,17,20,23 857:9,10
858:6 893:12 894:7 896:17,24 899:5
902:7 943:18 945:14 953:19 959:23
965:4 976:24 1002:22,24 1033:25
1034:3
recommended 901:13 923:10
926:13
recommends 854:16 1033:15
reconnect 808:3,7,9
reconsideration 905:3,12 906:1
907:4
reconvene 861:11
record 770:18 777:20 789:2 792:10
806:24 808:15 821:17 824:16 826:6
829:20 836:10 839:20 840:6 904:3,
5,12 910:3,18 911:3,10,14 913:21
940:4 942:5,9 946:9 951:5 957:22
997:18 1004:19 1005:17 1006:20
1007:8 1015:15 1030:1,2 1047:22
recorded 929:15 982:14
recording 786:23 904:19
recordings 787:6,15
records 795:2 988:17
recover 878:2,8,10,12 958:23 959:7
recovery 958:22,25 959:1,2,5
979:10 1000:24
recreation 780:22 907:3
recreational 907:22,24,25
recross 966:6 997:16 998:17,20
1011:20
RECROSS-EXAMINATION 999:9
1006:1 1009:1
red 921:2
red-line 836:9 909:19 943:13
1018:25 1020:25
red-tail 957:4,19 988:10,22,24
red-tailed 985:19
redacted 773:8 774:6 839:21 840:4,
5,9 860:6 861:15 862:6 946:14
1008:22 1013:18,20
Redfin 962:20
redirect 829:1 881:12 915:20 951:7,
11 997:16 998:11,14 1012:5
reduce 899:16 948:2 949:7 973:15
1035:12 1049:17
reduced 1049:23
reduces 953:12 993:2
reducing 993:5 1035:3 1050:8
reduction 948:16 973:2 977:25
1049:3,5 1051:17
reengage 944:16
refamiliarize 1027:17
reference 773:17 783:20 817:24
853:6 854:7 856:23 939:8 948:9
1049:25
referenced 774:7 887:8 900:3
920:11 927:19 943:10 944:24
1051:23 1055:20
referencing 887:1 895:19 1002:10
1006:14
referred 817:24 967:16 1006:4
referring 856:8 860:10 894:13
895:18 908:10 921:6 922:5 923:25
935:23 936:12 972:21 1008:17
1051:16
refers 1001:20 1009:11
reflect 957:22
reflected 892:13
reflection 802:7
reflects 953:18 1007:14 1055:11
refresh 837:10,12
regal 957:16
regalis 957:15
regard 781:12 824:12 839:11
910:25 1010:5
regional 937:10 1030:13
regular 976:13
relate 801:18 833:19 954:8 1017:22
related 839:23 977:4 978:8 1018:24
1031:2 1035:1 1049:12,13 1050:8
relates 833:16
relation 861:21 974:22
relationship 922:6,9 932:7 1003:9
relative 812:12 860:20 948:15
976:25 1022:15 1027:2 1028:20
1051:14
relevance 993:16,22
relevant 884:7 885:3,7 895:2
905:15 923:22 993:18
relied 801:20 1001:1
relieve 778:20
Reluctance 1019:9
reluctantly 1019:7
rely 799:12
relying 923:20
remain 883:3
remainder 907:15
remaining 770:1
remains 798:5 838:19 906:2
remember 793:12 1050:18
reminded 822:11
reminder 805:24

reminding 837:17

remnant 991:25

remotely 793:20 794:11 800:7,23
802:21 804:17 807:5 809:6 811:1
820:4 821:5 829:17 832:12 1013:2
1014:6

removal 948:6,13

removals 858:11

remove 777:20 858:8 860:3,9
899:15 1051:22 1053:5

removed 921:3 981:19

removes 995:14

removing 995:13

renew 912:6

renewable 813:13 814:1,9 815:14
822:17 823:1 834:5 887:13

reoccupied 852:17,23

reoccupy 852:14

repeat 859:5 891:20 893:9 955:9

repetitious 908:20

repetitive 923:7

rephrase 885:24

replied 1036:7

reply 769:19 775:23 830:3 903:24
904:16,24 905:7,23 906:3 909:3
911:15 1023:24 1024:12,23 1027:14
1030:8 1034:21 1035:9 1049:22

replying 1024:4

report 795:13 797:25 833:23 834:4
856:16 893:4 917:22 918:9,16
919:15 920:12,14,21 921:12,14,19
938:18 960:16 962:12 967:22 968:3,
7,8 983:18 988:2

report's 918:7

reported 815:25 983:25 984:4

reporter 784:17 792:2 795:3 797:4
881:9 1012:22

reporter's 882:14 908:22

reporting 880:16 983:16,23
1022:10

reports 797:23 833:21,24 836:12
885:5 888:16,18 930:21 936:25

951:23 961:1 1018:2

represent 819:4 857:11 882:23
987:8 1004:6

representation 893:11 948:12

representations 891:16 892:5,22,
23 943:20

representative 785:21 792:12

represented 812:18 813:23 940:23
941:18

represents 835:15 920:15 1020:11

reputable 925:19

request 818:18 837:1 1004:24
1005:14 1048:14,20 1054:5 1055:5,
8

requested 952:8

requesting 943:1 1057:17

requests 952:8 1054:5,6 1055:13

require 799:4 910:9

required 959:7 965:5

requirement 1055:13

requirements 1055:20

reschedule 777:1

research 894:5,9,19,22 895:1,4,13,
14 896:1,9,14,17,23 897:1,2 898:7,
25 899:3,10,22 933:5 935:19,23
936:12,13,14 961:22 967:3,8 1019:2

reseeded 964:4

reserve 798:25 878:18

reserved 955:10

residence 795:18,22

residences 801:19

resident 990:19

residential 805:15 822:1 938:17,18
961:5 962:5,9,16 977:14,16,20

residents 806:12,15

resistance 918:23

resolution 1003:12

resolved 910:20 911:1 915:13
1019:14

resource 834:1 934:23 948:10
971:15 985:4,5

resources 790:9 938:15 965:19
968:11 973:2,11 987:8 997:6 1019:4
1048:12,19 1051:18 1052:18

respect 781:19 969:14 998:10

respectfully 916:23

respects 976:5

respond 886:11 897:19 909:16
910:13 939:20 940:14 949:15
982:25 993:24

responded 1003:23

responding 908:10 909:6 1054:1
1057:14

response 816:23 819:14 836:20,25
839:5 879:18 896:4 897:11 914:4,17
939:23 940:7 944:15 960:8 976:6
994:19 1000:1 1004:15 1006:3
1013:17 1024:23 1048:14 1054:15,
20

responses 816:17

responsibility 774:25 827:8 890:13

responsible 1003:3 1036:11

responsive 1024:5 1036:7

rest 776:5 826:2 907:17 1000:22
1017:14 1037:12

restate 892:1 900:17

restriction 815:6

restrictions 953:11,12 955:7

rests 902:11

resubmitted 905:14

resulting 1028:6

results 837:21 901:24 948:17
992:24 994:21

resume 904:5 1056:6

resumed 955:8,10

return 777:25 825:13 852:13
899:19,20 987:2 1057:12

revegetation 1018:2

reversible 908:11

review 792:24 817:8 819:5 822:9
890:25 909:17 910:9,21 934:2
936:25 939:14 944:25 945:4 947:2
954:17 955:17 967:3 1004:20
1036:20 1049:11

reviewed 793:8 836:13 917:24
944:19 994:3 1036:7

reviews 936:23

revised 830:2 835:17 836:4 853:5,7,
22 878:23 1006:7 1020:14 1022:4
1028:21 1036:20 1055:10

revisions 795:8 833:2

Reyneveld 769:3 776:20,22 783:23
791:14 828:24 830:17 831:3 832:2,
5,8 835:5,10,11 836:1 837:8,12
838:5,6,12,20,23,24 839:7,8,13
840:2 841:1 851:23 852:2,8,9,11
853:22 854:18,22 855:17 856:3
858:20 859:2,3,7,18,20 860:1
861:12,18,20,23 877:13,17,20,22
878:11 880:22,24 881:3 893:17,22
894:2 927:15,21 928:1 953:25
955:21 1005:7,22,24 1006:2
1007:15 1009:19 1019:11,12,19,21,
25 1020:2,6,7 1033:6,8 1037:11,24,
25 1038:3

Reyneveld's 888:4 915:15

Richard 789:13 807:4,8 809:2 820:3
821:5,10

Richardson 959:1 979:10

Rick 807:25 905:10,13 908:15

ridge 908:2

riding 980:25

right-hand 968:24

risk 972:16 973:7 1021:17 1022:15,
17 1035:3 1036:4

Ritter 856:18 891:4,5 892:9 893:19
947:15 949:19 963:16 1006:17

Rives 791:4 941:25

road 837:14 994:25 995:20 1055:12

Rockies 1030:21,22

rodenticide 961:9

role 1018:23,24 1020:23

roll 786:20 789:10,19

room 791:5 803:16 942:1

roosting 1031:18 1034:16

rotor-swept 981:8,10,17

rough 1029:5

Rough-legged 957:18

roughly 1027:18

routine 820:25

routinely 1034:3

rule 778:6

ruling 779:6 780:11 903:24 904:5,21
905:12 912:21 913:2 914:5

ruling's 779:15

rulings 912:3

run 1026:14

running 986:7

rush 799:13 969:25

résumé 822:10 884:3,15 885:8
887:4,8 896:13

S

safe 878:19 982:5

safely 893:15

sagebrush 963:4

sale 796:20,25 823:11 962:23
977:21

sale's 797:1

sales 796:22 822:21,25

salient 888:17

sample 906:20 1027:9

Sanders 777:19 828:7,12,15

Sanders' 828:12

Sandison 786:6

Sandison's 792:12

Sarah 830:17 835:11 851:23 915:15
1020:7

save 929:12

savior 958:18

SCADA 956:8 958:6

scale 796:5,6 899:16 905:16 977:20
978:1

scales 919:20

scarce 992:25

scattering 992:1

scavenging 995:11

scenario 808:7 827:2 972:25
982:24

scenarios 982:24

schedule 769:16 774:13 776:3
786:16 792:16 825:3 827:25 881:9
911:5 912:12 914:19 997:20 998:7
1010:14 1011:6 1058:4

scheduled 779:8,13,14 780:1,16
781:9 830:10 951:6 997:22

schedules 915:3

scheduling 775:9 777:5 1012:16

Schimelpfenig 791:6 795:5
797:14,19 798:8 799:10

science 857:11,16,18,19,21 923:4
924:12,14,19 925:5,18,21,23 926:2,
4,9,12,14,22,25 927:1,7 945:10

scientific 894:5,9,19,22 895:13,14
896:1,9,14,16 899:3,10 938:11
957:15 967:1,3,5,12,14

scope 781:3 782:7 816:24 888:23
889:13 890:12 899:16 905:16,21
907:10 908:8 950:14 977:19 978:1

score 810:7 832:7

Scout 814:12,14 816:15 834:17
884:17 887:17 889:19 896:17,24
899:4 947:11,21 948:1,14 989:20
1003:25 1018:16

scrambling 910:23

screen 769:4 793:24 799:23 803:2
807:9 808:19 809:10 810:2 817:25
820:12 826:23 830:23 837:18 839:1
882:6,9 884:2,12 892:12 900:1
906:6 907:25 917:15 927:10 928:18
929:1 930:1 931:14 932:11 942:17
943:5 944:8 945:19 1001:8 1010:14
1033:1 1035:10 1047:8,14

screens 968:24

scroll 930:10,23 932:11 934:11
948:7 1003:16 1027:17 1048:8
1050:5

scrolling 854:19 930:25

scrutiny 993:8

search 980:11 1026:5

searcher 1026:8

searching 980:25

season 786:9 1031:9,10

seasonal 1035:15

seasonally 1035:22

section 817:22 818:9 819:6 833:16
836:3,4,8,9,13 837:21 854:13,16
855:1 858:7 860:2,7 884:24 886:24
889:3,16 948:6,8 972:4 981:11
1009:5 1017:23 1020:15,21 1049:3,
4 1050:2,6,7 1051:11,12,23 1053:3,
11

sections 835:20 858:12 948:25
1020:18 1048:25 1052:11,15,16
1056:13

secure 774:5

seed 964:4

sees 956:22

Selam 792:20

Select 884:23 885:20 886:23

selection 834:1

selectively 971:6

self-explanatory 811:20

self-police 852:5

selling 822:16

send 799:11 808:16 809:23 827:9
914:20

sending 826:16

sense 772:5,20 879:16 932:19
936:22 966:25 971:10 988:10
1029:24,25 1035:22

sensitive 839:14 851:17 862:7
901:7 954:13 964:18,22

sensitivity 786:2 838:8 960:9

sentence 796:3,10,18,19 937:11
1009:7

sentences 796:15 797:14

SEPA 1056:4

SEPA-RELATED 1054:10

separate 771:6 1056:4

separately 771:22

September 815:13 914:20 990:24

sequence 772:4,14,16 1013:21

serve 818:11

Service 774:3 968:10

services 777:10 1058:7

session 769:21 774:22 782:10,16
783:4,12 784:1,9 788:19 826:1
829:7 838:9,11,15 840:6,8,21,25
841:10,16 851:12,16,17 858:14
859:16 861:11 862:5,10 877:4,18
881:17,23 904:7 913:23,24 916:22
943:24 946:19 955:22,24 975:1
1037:15 1038:9,10 1046:14,18

set 776:20 778:6 817:3 914:23
920:18 946:7 1012:18 1027:12
1054:6 1055:18

setback 853:7,15,24,25 854:17
856:1,24 953:6,7,8 1007:6

setbacks 857:11 953:14 954:5,6,10
980:22

settlement 1009:11,12,17,20,21
1010:1,6

shading 921:8

shake 991:19

shape 957:4

share 778:18 787:7 810:5 824:23
826:17 927:10 929:1,13 981:4

shared 786:2 899:3 945:19

Sharepoint 788:7 792:23

sharing 774:5,9 785:1 892:12
917:14

Sharp 770:2 779:8 780:20 907:1
910:5 1011:24 1057:19

Sharp's 906:25 907:10,17

sharpen 967:10

Sheep 947:13 1050:12

sheet 810:7

shift 947:12 1050:12

Shifting 905:25

Shiley 789:21,25 790:3,6,9,12,16,21
883:16,23 917:17 918:2 920:2
929:12 1008:8 1047:7

shine 1032:19

shiny 958:17

Shona 769:9 777:7 784:11 791:18
882:4,22 966:2 1046:19 1047:4

Shook 802:8 824:8

Shook's 801:25

shooting 961:10

short 787:24 904:6 969:21 1008:3

short-term 1000:21

shortage-driven 823:12

shorten 909:23

shortened 1011:7

shortly 884:2 1001:8 1057:19

show 802:3 817:24 906:13 908:25
918:21 952:25 962:14

showing 907:22

shown 884:11 930:12 961:22

shows 808:10 908:1

shrub-steppe 932:5,10 961:2
962:24 963:3,4 964:12,14,16,17,23
965:3 977:22 980:17,21 991:12

shut 779:16 958:3

sic 889:9 1047:21

side 816:1 968:24

sideboards 993:23 994:5

sight 815:23

sign 786:19 952:1

sign-up 828:15

signed 810:14

significant 922:15

silent 916:12

silver-haired 1021:25 1030:16
1031:15,21 1032:5 1033:11 1034:5

similar 831:19 878:17 880:17
908:14 909:9 957:4 992:16 1013:19
1036:5

similarly 918:20 1019:16

Simon 770:3 776:6 780:17 908:9,14,
16,21

Simon's 780:11,15 908:5	932:1 979:1 986:4,11 989:2,14 1035:20	Spanish-speaking 812:8
simple 978:3		spanned 1054:24
simply 826:21 908:10 911:20 954:15 986:15 1032:9	smart 970:10,12,20 1035:4,11	spark 793:17
simultaneous 772:24 773:22	smoother 784:5	sparks 793:11
single 937:18 954:21,22 1027:7,10, 13	Snake 985:5	spatial 900:3,23 901:7 919:19 953:8 954:6
single-family 795:18,22	snappy 1018:8	speak 773:3 836:21 837:6 841:11 853:24 854:23 940:9 958:24 994:22 1003:8 1004:2 1054:13 1055:7
sir 793:25 799:21 800:17 803:9 832:9 925:17	snapshot 879:6 1055:22	SPEAKER 803:4,8,23 805:2
site 814:20 815:11,15 817:21 834:23 835:21 836:5 837:3 851:19 886:2 888:12 900:4 901:22,24 902:11,16 923:10 926:25 930:12 947:15,20,25 955:15 996:8 1003:3 1017:23 1018:21 1020:14	social 813:4	speaking 772:24 773:22 779:5 787:14 836:7 856:22 915:22 957:22 981:5
site-specific 797:25 925:23 937:10 959:6	software 1026:14	spec- 938:13
sited 1034:10	solar 795:20 815:13 887:13,15 899:16 921:1,2 948:2 949:7 964:6 996:9,10,13,15,16 1049:3,12,16,23 1052:5	special 922:1
sites 930:19 1031:19	solemnly 794:16 801:2 804:22 811:6 821:11 832:17 1014:11	specialists 1036:24
siting 921:11 931:2 964:20 996:9, 10,13,15 1033:16 1056:19 1057:3	solicited 781:8	specialized 931:18,21
sitting 1029:2	solid 1012:13	species 854:2,5 856:20 857:9,12 878:1,4,6,8,15,25 879:6 884:16 886:7 895:2 901:7 918:14 922:1,3, 16,17 924:11 931:18 935:11 952:9, 16 956:8,10,21,22,23 957:3,5,9,12, 17 958:14,22,23 959:8,11,16,17,20, 21,24,25 960:5 961:12,16 964:19 965:7 970:22,25 972:18 975:15 976:14 978:18 979:7 985:17,19 986:1,8 988:7,9 989:1,6,7,22 991:7, 8,9 992:25 994:13 995:8 1000:16,24 1018:14 1021:14,19 1022:16 1023:1,3,5,8 1026:3 1030:16,17,24, 25 1031:5,12,23 1032:6,9,11,13,14, 15,18,19 1033:11,21,24 1034:6,7, 13,15,17 1051:15 1052:18
situation 826:3 919:3 933:12 994:20	solution 900:20 933:7	specific 777:11 812:25 813:17 817:23 838:13 851:18 854:17 858:8, 13 862:3 892:15 894:14,20 898:6 899:21 930:19 933:10 935:7 940:10 943:9,18 945:4 948:23 959:1 961:12 973:12 1002:12 1035:15,16 1036:6, 10,21 1037:14 1049:1 1051:8 1056:13
situationally 973:3	solved 820:7 903:19	specifically 817:22 833:16,20 836:24 853:24 861:1 895:18 934:22 938:15 958:24 961:6 963:1 970:5 984:7 1001:23 1018:24 1021:24 1033:19 1035:9 1036:8 1049:13
situations 990:1 1034:10	some- 983:19	specifications 981:14,15
size 772:7 907:12 924:1 948:2 1027:9 1031:5 1049:3,23	something's 818:19	
sizes 989:15	songbird 989:6	
sketched 769:24	sort 772:18 803:6 823:25 879:16 898:7 993:3 1023:18 1025:8 1029:13 1032:19 1034:4,15 1035:6 1036:17,18 1048:13,15 1050:20,21, 25	
skip 782:11	sorted 776:10	
Skipping 907:19	sorts 1038:6	
sky 986:15	sound 820:7 830:21 1033:25	
slack 787:9	sounded 799:6 891:21 1008:11	
slides 787:7	sounds 784:17 812:3 902:6	
slight 820:22	source 856:1 926:9 1026:19	
slighting 912:14	sources 925:20 963:8	
slightly 914:15 915:25	south 805:20	
slowly 795:2	southern 923:18	
small 794:20 854:21 920:24 931:20	SOW 774:3	
	space 953:14,17 981:17	
	span 914:21 972:13	
	Spanish-language 818:10	

specificity 937:24 938:5 995:20	standards 905:6 907:1,4	step 901:17
specifics 859:12 966:4 1002:16	start 769:12 774:13 788:18,19 830:14 854:12 884:1 917:19 967:4 986:14 987:9 990:23 998:1,9 1004:11 1011:2,9 1024:21 1035:25 1047:19	stepped 785:12 888:15
speculate 933:10,15 948:15	started 903:10 915:21 987:23 1011:5,25 1013:7	stick 952:18
speculating 948:18	starting 902:24 906:17 931:8 934:16 935:16,24 937:8 1027:24	Sticking 906:25
speculation 948:20	starts 784:8 930:11 1001:14 1027:25	sticks 992:1
speed 825:2 1033:19	state 783:10 796:5 814:7 816:3,13 826:4 878:17,18 886:8,14 891:15 925:1 959:4 965:4 978:15 979:4,25 996:8 1002:16 1004:18 1023:9 1027:1 1028:7 1031:25 1032:4,19 1033:10,15 1035:9 1049:22	stiff 977:8
speeds 1036:1	State's 823:1	stipulate 778:11,13 826:5
spend 913:3 944:11 966:12	State- 1032:14	stipulated 941:14
spending 814:22 942:23 1014:3 1030:21 1031:8,9 1034:18	State-listed 959:21 1032:13	stipulation 826:9,12
spent 914:16	stated 787:8 835:18 836:2 888:7 935:17 1020:13	Stoel 791:4 941:25
spinning 944:11	statement 894:8 897:4,16 899:11 919:1,25 982:13 985:21 986:6 999:25 1000:17 1021:20 1024:22,23 1034:25 1035:7 1052:3	stop 944:2 950:7 966:19 997:21 998:10
spirit 890:21 949:4,6,8,10 996:6	statement's 974:11	stops 898:8
split 771:6,21	statements 805:25	storage 772:8 815:25
Spokane 777:24 778:3,15 825:9,21	states 796:7 888:13 961:20 978:18	story 941:4
spoke 786:7 836:16 853:11 1034:20	statewide 975:16 992:4	straight 946:7
spoken 792:13 1050:15	stating 1024:14	strategically 964:20
sponsored 802:24 927:20	station 778:18	strategies 891:8 963:17 1002:22
sponsoring 774:16 793:9,14 795:4 801:10 807:18 810:11 888:3 890:17 1037:20	stations 818:11	strategy 833:22 971:9 983:22 989:21 1022:9
spot 776:7	statistical 824:2 922:9 1025:9 1027:9	stray 862:6 1037:17
spread 1030:13	status 878:2 924:9,12,18 926:3 954:23 978:18 994:4	streamed 806:14
spring 1023:9	Stavitsky 791:6 817:1,5,6,15,18 818:17,25 819:4,9	stress 961:7 977:25
square 892:25	stay 782:6 840:7,13 877:18 881:5 894:25 895:1 903:22	stresses 792:16
squirrel 855:7 918:15	stays 840:3	stressors 960:25 986:19 1032:16
squirrels 931:21 932:2		stretch 829:11 950:20 969:12
stability's 791:25		stricken 779:11 780:14,23 905:5,11 906:3,7,11,19,23,24 907:5,15,16,18, 19,21 908:4 909:7,10,14 911:7 913:19
Stacey 790:14		strike 769:19 779:7 817:2,9 904:16, 23 913:5
stacking 911:4		strikes 987:11 990:11
staff 771:11 782:23 784:4 787:3,16 789:19 808:13 841:9 852:6 904:18 947:4 978:8 984:1 1048:17 1054:7, 11,14		striking 905:23 909:2
Staff's 809:10		strings 805:22
stakeholders 973:4		strongly 813:5
stand 996:1		struck 1026:2,11
standard 816:4 878:24 898:25 967:2 1029:13		structure 1021:18
		struggle 981:24

struggling 1053:1,2	sum 1013:23	sympathize 911:20
studied 886:20 994:13	summarize 993:12 1048:11	system 771:24 880:7,11 956:5,7,9 958:1,6 970:17 971:25
studies 823:6,8,19 824:7 857:3,7 884:22 886:1 887:1,7,16 895:3 936:1,9,13,14,16 966:23 983:6 994:1 1019:1 1021:2 1025:19 1028:5 1030:7 1031:13	summarized 854:9 918:6	systems 781:7 895:7
study 854:15,24 856:8,13 887:16 921:24 922:5,7,10 923:17,19,25 935:19,22 937:1 967:9 988:1 993:9, 10,12,23 994:12 996:23 1021:7,9,10 1026:22 1030:25	summary 798:9 801:11 854:25 931:5 960:25	
stuff 984:8 995:13	summer 1023:10 1052:2	T
subject 781:11 783:11 793:10 796:23 799:21 811:12 818:4 829:9 834:18 859:1 889:10,21 967:6 993:8 1018:17	supplement 770:18 798:21	table 854:25 963:2 993:20 1033:21
submit 827:3 966:25	supplemental 781:6 799:1,4 833:23 834:4 911:25 912:9 913:5 914:23 933:23 934:1 960:12,15 988:2	TAC 880:21 933:8,11,15,17,19,21,25 994:3,9 1002:21,23,25 1003:7,20 1004:12 1036:25
submittal 857:14 937:17	supplementation 781:21	TAC's 1001:17 1002:11
submitted 794:17 797:21 801:17 806:24 810:21 814:12,17 815:7 827:18 839:22 840:10 885:7 902:1 940:2 960:16 982:16 1002:10 1028:21	support 813:20 835:20 943:7 965:17	tailor 915:16,17
submitting 967:4	supports 878:8	takes 841:14 958:7
subpoena 939:24 940:7,19	suppose 936:2	taking 772:3 802:13 823:7 912:3 914:15 935:5 966:11 1033:23 1058:3
subsequent 885:19	supposed 944:5 1011:1	talk 769:16 776:3 784:5 787:15 788:16 811:23 841:10 851:17 859:18 914:25 924:16 957:12 958:2 963:16,18,24,25 965:8 996:6 1010:2,8 1051:5 1058:1,4
substance 941:6	suppression 805:18,19	talked 786:10 813:24 823:22 953:4 954:6 956:2 958:21 962:5 963:15 966:23 975:23 1006:15 1048:25 1054:4
substantial 910:14	surveillance 956:13	talking 832:7 835:25 888:20 968:5 980:17,18 1019:2 1023:1,19 1028:1, 22 1032:12 1034:13 1050:18
substantially 911:11	survey 782:15 837:22 839:2 861:6 885:5 922:20 932:21,22 933:3 934:24 935:2,6,25 936:20 951:22 954:11 955:3,14 968:19 975:16 983:3,5 992:10 1031:12	talks 924:1 932:12
substations 814:21 823:5	surveyed 852:12 935:1 954:25	tardiness 779:19
substituting 796:9	surveyors 984:7	target 956:8,21 958:13
substitutions 797:6	surveys 824:1 879:23 884:22 886:20 894:7 899:14 935:7 936:7 955:2,10,12,13 975:15 986:17	targeted 1035:5,19 1036:3
substrate 989:23	susceptible 1033:12	TC 815:21
suffix 772:10	suspect 783:19,22	TCC 777:21 793:15 798:20 807:25 828:23 905:15
suggest 840:17 1031:14	sustain 885:17 898:4	TCC's 831:14
suggested 772:3 826:2 915:10 985:25	sustained 924:24 1009:25	Teams 791:23 799:24
suggestion 781:2 990:18	Swainson's 957:4,19	tech 834:25 888:14 889:6,11 890:7, 10 903:19 936:16 947:17 1003:25 1018:15
suggests 905:15	swear 794:3,16 801:2 804:22 809:22 810:19 811:6 820:25 821:11 828:19 830:9 832:17 1014:11	tech- 938:10
suitability 996:12,13,16	swearing 1011:12	technical 770:22 771:2,7,18 803:22,24 809:3 836:11 853:11
suited 890:6	switch 882:13 935:14 939:4	
	sworn 794:12 800:24 804:18 811:2 821:6 832:13 1014:7 1017:10	

856:18 861:4 879:14 880:7 883:9
 888:16,18 889:20 890:8 891:17
 910:23 915:13,22 916:23 917:5
 919:2 920:23 926:5,6,24 928:24
 931:22 932:21,25 933:2,8 936:1,8,9
 946:8 953:24 955:4 959:3 960:13
 961:1,11 965:6,24 967:15,21 971:14
 973:4 975:3 977:17 978:4,19 980:1,
 8 984:2 985:4 986:11 989:2 990:6
 994:2,7,12 995:15 996:18 1001:2,6
 1002:1 1003:9 1019:14 1029:5,19
 1046:20 1053:13

technological-savvy 784:21

technologies 970:16 992:16

technology 834:14 881:6 956:12,
 19 970:7 981:14,16 992:19,21 993:6

telephone 808:9 826:22

tells 1015:14

temperatures 972:15

temporal 953:12 954:6

temporary 964:3

ten 784:7

ten-minute 877:15 881:14

tender 833:7 835:3

tendering 834:9

tending 955:18 974:8

term 924:16 925:2 970:9

terms 770:9 785:1 899:21 931:18
 938:10 993:20 1025:17 1029:4,14

territories 852:23 853:3 859:9
 860:4 878:1,7 880:4 923:12,15
 930:19 931:3 938:20,22 959:4
 962:15 974:20,21,24,25 975:2,18
 992:3

territory 938:15 953:3 974:5,7,15,
 17 992:10

test 796:20,23 797:1

testified 806:9 809:22 810:20
 944:23 960:18 966:22 1003:19

testify 777:9 781:4 783:11 819:1
 833:10,14 907:1 922:25 997:23
 1012:11

testifying 1000:13 1017:20

testimonies 822:1 1011:24

testimony 769:19 770:2 772:11
 774:14,17,19 775:19,20,23 777:11,
 18 778:1,7,14,25 779:7,9,12 780:12,
 13,15,20 781:1,3,8,13,20,21 782:14
 783:21 788:20 789:12 792:19 793:4,
 8 794:1,17 797:6,21,22 798:23
 800:10 801:3,16,17,23,25 802:9,25
 804:4,22 805:13,17 806:9 807:13
 808:25 811:6 817:3 820:9 821:1,12,
 25 822:7,10 824:3,8,9,16,24 825:5
 826:10 828:1,6,12,16,21 829:8,13,
 21 830:1,3,4,15 831:17,19 832:10,
 17 833:16,19 835:18,19,25 838:18
 840:10 880:25 881:11 883:15
 885:11 888:13 893:24 899:25 902:1
 903:25 904:24 905:4,7,11,13,15,17,
 18,21,23 906:3,25 907:9 908:5,13,
 19 909:3,7 910:5,6,24 911:7 912:20
 913:5 916:12 933:17 935:16 966:3,7
 970:4,8 972:7 985:25 997:9 998:9
 999:3,13,16 1001:4,5,7,16 1002:10,
 15,17 1007:9,13,16 1009:20,23
 1011:3 1012:2 1013:8,15,17,19,24
 1014:11 1016:14 1017:11,22,25
 1023:24 1024:4,5,8,12,23,24 1030:9
 1031:4 1034:21 1035:9 1036:8,9
 1047:12 1049:22 1050:1 1052:6
 1056:10 1057:11,14

Tetra 834:25 888:14 889:5,11 890:7,
 10 936:16 947:16 1003:25 1018:15

text 785:13 919:8,14,18

thereto 795:14

thermals 980:25

thing 775:6 780:10 841:20 892:16
 893:7 940:21,22 947:9 977:23
 980:16 981:22 983:20 999:1
 1022:24 1026:21 1029:8

things 778:2 782:8 784:24 816:25
 824:7 831:22 840:7 861:14 862:6
 881:12 893:4 898:9 904:13 910:18
 911:4 937:2 938:6 941:14,19 951:14
 972:14 995:19 1012:7 1025:10,13,
 16 1026:6 1028:23 1037:17 1038:6
 1051:1 1054:21

thinking 779:20 936:22 976:23
 991:16 996:4 1029:10,21

thought 779:20 802:11 831:16,24
 885:1 891:21 924:3 990:9

thoughts 906:22 907:3 941:7

thousand 935:2

thread 841:2

threading 840:19

threat 959:16

threatened 877:24 959:10,20
 970:22 976:8

throes 769:17

throw 780:22 907:3 1035:7

throws 993:3

Thursday 777:9,13 782:17 913:25
 915:4,5

till 784:7 877:18 1012:1 1054:24

Tim 942:12

time 769:23 770:6 777:10,11 779:25
 781:9 782:18 785:10 793:6 799:10
 802:13 806:5 823:12 831:2 837:25
 855:16 859:24 862:4 881:1 884:23
 886:20,23 895:21 896:4 899:23
 900:19 903:5,14 910:6,20 911:1,2,
 15,23 912:5,8 913:3 914:16 915:11
 916:24 937:20 938:7 942:4,23
 944:4,6,11 950:17 953:13,14,17
 955:3,6,14,19 960:1 966:5,11
 970:24 972:16 983:4 986:22 994:10
 996:7 997:12,23 998:10 999:25
 1001:4 1007:19 1014:3 1019:13,21
 1020:1 1025:15 1026:15 1030:21
 1031:8,10 1034:18 1046:21 1050:16
 1051:1,7 1052:7 1055:22 1056:16
 1057:16,17,21

time-wise 782:7

timelines 938:10 1028:23

times 780:13 791:25 891:5 892:9
 963:16 977:12 978:20 989:4 992:6
 1046:19

timing 938:9 990:17,21 1028:17
 1055:1

titled 858:1

today 770:3 773:14,16,19 774:25
 776:4 777:3,10,18,24 778:13 780:11
 782:14,24,25 783:9 784:9 785:3,4
 786:19 789:10,12 790:24 791:4,10,
 12,22 792:1,4,11 799:11 800:16
 802:11 810:11 812:2 824:10,15,22,
 24 827:25 828:4 833:14 889:7
 908:23 942:25 946:2 950:8 953:4,25
 970:4 972:7,18 976:16 996:1
 997:10,21 998:1,10 1000:16
 1006:15 1011:2 1012:3,23 1013:6

1014:13,21 1015:16 1019:18,23
1025:16 1029:2 1046:19 1047:10
1057:7
Today's 774:13
tolerant 922:3,16
tomorrow 779:8 780:1,2 781:4
782:10,22 806:11,14,16 828:13
904:1 947:10 998:2,4,7 1012:10,15,
18,20 1016:11,16 1047:12 1057:21,
24 1058:1,11
tomorrow's 913:24 1010:13
1011:6,9 1057:11
tool 958:16,19 996:9 1035:17
1036:15
toolbox 958:17
top 783:1 796:16 818:1 895:1 909:8
917:18 920:18 937:6 943:10 956:6
962:17
topic 857:15 967:7 972:9,13
topics 780:23 905:22 949:14 966:6
974:4
Torem 769:1,10 770:13 772:1,2
773:11,24,25 774:7,11 775:3,15
776:2,14,19,24 777:15 778:4 779:18
780:5,9 782:2 783:8,25 784:12,15
785:7 786:5 787:3,20 788:10,15
789:1,7 790:22 791:7,13,21 793:22,
25 794:8,15,22,25 795:23 796:8,12
797:3,13 798:7 799:2,9,18 800:3,9,
14,19 801:1,9,22 802:2,17,23 803:6,
11,15,19,25 804:7,10,14,21 805:3,5,
23 806:23 807:7 808:2 809:8,14,25
810:4,23 811:5,10,16 816:19 817:12
818:14 819:12,17,24 820:6,19,21
821:9,15,21 822:8,24 824:5,21
825:25 826:14 827:10,17 828:9
829:19,25 830:8 831:9,11,23 832:4,
16 833:1,6,13 835:4 838:5,7,17,22
839:7,14 840:1,16,22 851:15 858:24
859:11 861:12,22 862:1 877:7
881:4,22 882:5 883:7,18,25 884:11
885:14 886:10 890:9,14 891:19
894:15,21 897:10,20 898:2 900:13
903:3,10,15 904:11 909:22 911:18
913:7,11,20 914:8,13 916:2,9,14
917:2,6 924:24 925:15 927:13,23
928:3,8,15,25 929:8,17,25 939:21
940:15 941:11,21,24 942:16 944:2
945:21 946:3 949:22,25 950:2,4,18
951:4,9 966:8,15,20 968:18 969:10,
15,20,24 971:18,24 973:21 986:24

997:13 998:5,15,24 1001:7 1002:7,
14 1004:25 1005:10,18 1007:20
1008:2,5 1009:24 1010:7,12,19,22
1011:1 1013:4 1014:2,10,15,20
1015:10,20 1016:2,9,15,21,22,24
1017:6 1018:7 1019:9,19 1037:16,
23 1038:1,8 1046:17 1047:15
1053:21,23 1055:4,15 1057:8
total 963:4 971:19 1013:23 1028:6
1029:10,22
touch 778:2
touched 974:4
Touching 992:15
toured 947:18
towers 1035:15 1036:11
Townsend's 918:15
track 851:25 861:16
tracking 862:8
traditional 932:19 966:25
trail 907:23 908:1,3
trailer 956:6
training 957:6
trajectory 989:18
transcript 817:8 908:23 909:13,17
929:23 930:5,24 934:6,9
transcripts 770:14 771:22 786:11
787:2
Transformation 816:4
transition 814:7
transitory 978:21
transmission 814:11,19,23 887:15
transparent 783:16
Transportation 790:13
travel 955:7 977:12 980:11 1031:11
treat 938:5,14,22
treatment 911:11
tree 1031:7
tree-roosting 1021:24
trees 953:3
trending 1032:10

trends 879:18
Tri-cities 792:7 814:3 904:25 905:4
907:12 912:2 961:6 962:6
Tri-city 812:3,6,9,15 813:10
tribe 1058:8
TRIDEC 809:9 812:16 814:13
trigger 994:18
triggered 994:21
troubleshoot 808:18 831:6
troubleshooting 784:20
Troy 889:7 1011:3 1013:1,15
1014:6,10
true 937:13 1026:21 1031:17
truth 794:18,19 801:4 804:23,24
811:7,8 821:13 832:18,19 1014:15,
16,23,24
Tucannon 985:5
turbine 805:22 837:14 853:9,13
854:17 856:1 858:11 860:10,19
878:25 879:10 899:7 921:25 948:16
956:9 958:3,7 981:9,12,13,16
1006:6,22 1021:18 1034:22 1035:25
1053:6 1056:18 1057:3
turbines 801:18 838:1 839:4 853:10
858:9,14 859:7 860:3 899:15 902:13
920:24 921:3,6,9,10,11,14,18
923:10 948:6,13 953:9 956:9,15
971:7 980:19 981:1,18 992:18
1026:2 1035:2,20 1036:21 1051:22
turbines' 1033:18
turn 775:25 783:22 793:22 803:9
830:25 860:7 883:1 884:9 893:25
915:8 934:5 937:6,22 969:8 970:1
1011:23 1018:5 1019:7
turned 771:13 803:13 1035:3
turning 793:1 835:17 836:23 837:21
838:24 993:4 1023:24 1033:8
two-letter 1007:25
two-mile 926:12,18 1006:22
1007:10
two-sentence 801:11 1017:16
two-tenths 831:17,25
two-year 879:16

type 880:19 887:12 895:10 921:4
935:12 948:14,16 958:2 962:19
964:1 967:11 972:25 992:23 1007:6

types 892:12 895:6,20 936:19
949:4,8 953:11 964:23 965:20 971:6
976:10 981:13 989:19 994:1,3,19
995:10,17,19

typically 879:11 887:13,14 931:19
932:9 937:2 952:5,11 956:12 965:1
967:19 970:20 990:22

U

U.S. 906:9,18 968:10

ultimate 772:19 902:10 906:15

ultimately 902:8 1054:9

unavailability 914:20 915:5

unclear 818:19

underline 772:10

underscore 773:7,8

understand 771:12 782:23 806:8
813:16 818:15 823:20 826:24 827:7
879:15 883:9 886:6 895:25 897:15
898:24 911:19 912:11 923:2 943:19
949:12 952:20 957:11,25 966:15
975:5 994:4 999:11 1015:24
1028:14 1053:25 1055:19 1056:11

understanding 804:4 812:23 831:4
854:14 860:14 883:2 920:10 923:19
924:6 925:2 926:1 927:2 947:20
985:12 1004:9 1022:21 1032:8
1056:24

understood 780:5 799:2 902:14
916:2 1004:5 1016:2 1023:7

undertaken 879:22 880:6,15,20

underway 910:19

undetected 982:6 983:12

undue 912:16

unduly 908:20

unfair 910:19 911:11

unfenced 921:4,10

UNIDENTIFIED 803:4,8,23 805:2

uninformed 961:10

unit 956:14

United 961:20

University 996:8

unknown 1031:6

unlimited 998:14

unmasked 1057:16

unmuted 807:16 808:10 852:4

unoccupied 878:1 975:7

unpublished 937:19

unredacted 840:9

upcoming 779:6 963:11

update 773:4 774:12 777:2 791:23
924:9,12,18 926:3 938:24 944:1
960:24 978:18 992:7 1049:20
1055:20 1058:6

updated 773:5 857:3 888:18,20,25
889:12,23,25 890:2 937:17 940:6
943:12 945:6 952:18 953:15 963:2
992:21 1018:24 1021:5 1055:10
1056:20

updates 769:16 776:3 777:17,21,23
929:10 944:20 1020:15,24 1054:2

upheld 905:12

uplifting 877:23

uplisted 924:11 976:7

uplisting 959:22

uploaded 788:6

urban 815:19

usefulness 993:20

usual 1058:12

Utah 961:25

Utilities 790:12

utility 796:5,6

utilize 1025:25 1037:6

V

vague 858:19,23 897:8 898:13

valid 907:10 1000:1

validity 1027:9

valuable 942:4 944:6

valuation 822:15

values 797:22 798:5 824:8

Vanna 785:9

variables 1026:12

variety 841:7

vary 978:16

vegetation 833:17 836:3,10
1017:24

Vehicle 961:15

ventures 908:14

venues 976:18

verbal 1030:2

verbally 769:20

verge 839:24

verify 985:2

verse 769:22

version 773:8 774:6 787:22 792:18,
24 799:7 839:21 860:6 909:19 940:6
943:12 946:14,15,18 1008:22
1013:18 1018:25 1020:25 1021:5
1027:23

versions 787:12 840:9 1013:20

versus 959:10 974:5 991:18
1027:13

viability 833:24 880:4 959:16,17
960:5,7,10,11 989:16

viable 878:14

vicinity 805:14

video 771:10 784:15,19 786:23
787:2,12 788:6 792:18,23 820:22
826:22 830:22 883:1,3

videoconference 770:22 771:2,7
788:12 789:4 803:21,23 853:11,17
856:18 861:4 880:7 889:19 890:8
891:17 916:23 917:5 919:2 920:23
926:5,6,24 928:23 931:22 932:21
936:1,8 946:8 953:24 955:4 959:3
960:13 961:11 965:6,24 967:15,21
977:17 978:4,19 980:1,7 984:2
985:4 986:11 989:2 990:6 994:6,12
995:15 996:17 1029:5 1053:13

videos 786:11 787:5

view 786:3 788:8 792:17 822:1,2

828:21
viewing 786:11
views 806:16
visibility 959:19
visible 934:12
visit 947:15,20
visits 947:25
visual 806:8 815:19 906:2,20,22
1051:17
vital 960:10
Voelckers 769:7,8,9,14 770:21
771:10,13,17 772:3,21 773:1,3,19
776:7 777:6,7 783:24 784:10,11,13,
18 785:14,17 786:21 787:24 788:9
791:16,17,18,22 792:4 828:23
830:16,20 831:4 835:6 881:15
882:1,3,4,11,12,16,17,21,23 883:5,
12,20 884:3,8,12,13,14 885:17
886:4,18 887:5,7,24 888:2 890:15
891:19,25 892:2,4 893:9 894:15,16
895:12 897:10,12 898:6,14,17,22
899:2 900:15,18,21 902:22 903:3,6,
13 915:9 916:16,18 917:3,4,10,16,
21 918:2,4 919:11,13 920:1,7
921:21,23 924:25 925:4 926:1,15
927:9,14 928:4,15 929:1,10,11,19,
22 930:2,7,9,15,22 931:1 932:4
934:4,5,14 935:14,17 936:11 937:5,
8,22,25 938:2,3,9 939:3,19,22
940:22 941:3 942:16,25 943:2,4
944:17,19 945:16,22,25 946:6,16,20
948:5,9 949:22,23,24 950:1,3,9,11,
16 966:1,2,13 967:20 968:2 998:17,
21,25 999:10 1001:11,15 1002:7,8,
21 1003:14,18 1004:17,23,25
1005:8,11 1012:11 1015:12,19,21
1016:23 1017:1,3,7 1019:11,13,15,
24 1046:19,22 1047:2,4,18,20
1053:15,21,22 1055:16 1056:5,7,14
1057:6,9 1058:6
Voelckers' 1012:10
voice 784:16 820:23
volume 785:2 807:20,22
vote 976:16

W

WAC 1002:17

wait 804:25 882:7 961:13
waiting 769:1 927:13,14 969:8
975:8
walk 769:25 948:24 987:1 1020:17
1024:18
walked 1057:2
Walla 985:6
Wallahee 776:25 777:4
wanted 819:13 838:10 839:5 903:24
904:12 913:9 916:10 960:9 966:16
970:5 975:5 999:19 1006:12
warned 913:9
warrant 919:23
Washington 796:3,5,9 814:8 823:1
833:25 834:2,3,7 837:2 879:11
884:17,19,22 886:1,8,14,22,23
891:1 920:13 923:18,23 925:6
935:11 945:7 958:11,12 959:5
961:3,19,21,22 962:1 967:21 968:2,
8,10 972:5 973:25 978:15 979:4,7,
11 982:2,10,11,25 984:15 985:1
987:13,14,23 988:21 990:17,22
991:2,4,15,20 992:14 996:8,9 999:7
1022:2 1030:18 1031:25 1032:4
1033:10,15 1050:16
Washington's 854:5
Washington/oregon 984:19
Washtucna 979:14,25
wasting 942:4
watching 1048:1
Watech 774:4
water 972:15
Watson 922:6,25 923:3,17 929:14
931:2,17 932:4 934:20 938:8 939:12
943:10,17,20 944:23 949:19 961:23
992:5 993:9 1000:20 1007:14
Watson's 929:20 930:18 933:5
940:1,3,25 943:6
ways 816:6 956:11 1052:13
WDFW 836:25 854:3 856:7,8,13,19
857:8,14 891:5,13,18 892:7,17,18,
19 893:4 894:9 895:18,19 896:5,10
897:3 923:9,11 924:8,19 925:20
926:13 927:2 936:25 938:24 939:23
944:21 945:12 947:16,25 948:11,21
949:1,5,9,13 952:9 953:24 954:4

958:24 959:1 960:24 963:20,23
965:3,17 978:8 979:9,23 990:4
991:24 1006:4 1007:5
WDFW's 891:9 892:18,22,23 893:1
895:14 922:5 926:3 943:8,15 952:7
953:18 960:8 967:24 975:14 1000:7
1006:21 1007:10
Webber 947:13 955:16 1050:12
website 792:25 809:20 960:16
962:19 1020:25
Wednesday 782:17
weed 1018:2
week 774:10 776:5 779:2 780:16
781:15,22 782:19 786:17 801:24
825:1,16 827:12 905:2 910:8 914:23
1053:18 1055:3 1057:17
weight 824:6 976:21
well-advised 861:17
well-functioning 1037:9
well-taken 779:21
WERS 983:16
west 816:1 961:24,25 979:13 987:21
1030:20,21 1049:14
western 805:21 834:14 958:12
961:20 991:3
wetland 889:22 936:7,20
WFW 899:22 1051:2,10
WFW's 893:12 899:3 937:13
whatever's 886:12
whatnot 976:11
whatsoever 940:20
wheelhouse 899:8
Whichever 1016:12
White 785:9
wide 937:9
widely 970:19 1030:12,17
wildfire 972:16 973:2,8
wildland 825:7
wildlife 790:6 833:15,18 836:4,11,
17 841:4 862:7 877:10 878:18,21
880:10,15 890:15,20 891:2,15 893:2
900:5,9,24 901:3 918:24 919:20

921:5 945:7 965:7 968:10 974:1
976:7,17 983:25 994:13 995:24
1017:21,24,25 1018:14 1019:4
1031:25 1032:4 1033:10 1048:19
1050:9,17

wildlife- 835:20

Wiley 778:25 781:1,4,12 1011:15,
17,19

Wiley's 781:16 1057:14

Willa 791:3

willings 911:2

wind 801:18 823:1 835:21 837:14
851:20 854:17 856:1 858:2 879:10,
25 886:22 887:15 899:15 906:14
919:22 920:24 921:3,6,9,10,11,14,
25 922:9,12,21 931:3,5 963:5,23
965:4,13 982:2,8,11 984:5 985:1,4,5
988:9,11 989:8 1022:2 1024:14
1025:7 1026:14 1027:1 1028:3
1030:5 1033:12,16,18,19 1034:3
1036:1 1056:18

windmill 823:15,16

withdrawing 777:18 828:6 832:1

withdrawn 812:23 828:10

withhold 898:11

witnesses 773:19 775:4 776:10,15
777:4 783:9 786:1,12 789:12 793:7
801:17 804:12 827:24 904:24
912:23 1012:10

wonderfully 963:14

wondering 977:3

word 796:2 819:20 831:12 885:21
894:13 999:12 1032:11

words 898:18 906:19 909:17 925:16
986:8 1034:11

work 775:14 777:12 811:25 812:20
814:23 827:13 886:7,13,25 888:15,
23 889:13 890:5,12,23 901:5 902:19
903:8 911:6 912:5,13,16 918:1
928:22 942:18 975:3 984:1 1005:1
1024:24 1028:18 1030:5

worked 884:19 886:22 889:6

worker 983:16

workers 983:18

working 778:24 779:2 787:5,15
816:15 834:17 900:5,25 901:4

902:20 915:9 920:14 928:4 929:4
938:24 944:21 967:22 977:24
1018:16 1054:14,16

works 771:23 773:4 809:11,15
942:11 1020:2

worry 778:10

Worst-case 808:7 827:2

wound 1050:24

wrap 877:17 945:24 950:10 1012:12
1047:11

wraps 972:12

write 817:25 1001:20 1048:7 1049:4
1053:14

writes 898:3

writing 827:3,9 889:3 891:13 1048:5
1051:12 1053:17

written 884:19 888:5 913:19 925:6

wrong 898:12 937:4 1054:3

wrote 913:16,18 999:18

WSU 814:3

Wyoming 834:16

Y

Yakama 769:6,9 770:10,11 772:4
776:24 791:16,19 792:19 828:24
830:16 832:6 877:16 881:25 882:4,
23 916:20 939:5,23 940:24 1005:2
1051:18

Yay 820:20

year 814:3 898:8 945:3 955:17
970:24 973:8 974:14 975:17,19
977:21 982:17 1028:3,15,19 1029:4
1030:8

years 861:6 878:24 879:8,23 884:21
886:19 896:21 899:4 922:19,23
934:25 936:2,6 954:11 955:3 971:5
972:11 982:4 984:24 987:13,21
990:5 992:10 1021:4 1025:4

yesterday 774:7,21 777:1 783:3
785:23 786:3,12,17,23 787:6,14
792:25 905:3 1012:3

yesterday's 792:18 905:8

young 790:10 951:25 952:2 968:25
972:2 987:2,5,6,7,20 988:14,15

989:9,25 990:8,16,25 991:14
992:12,15,22 993:14 994:8,15
995:3,22 996:19,25 997:3,8

Z

Zillow 962:20

zone 956:10 981:3